

Friedrich A. Hayek,
The Road to Serfdom (1944)*

III: Individualism and Collectivism

The socialists believe in two things which are absolutely different and perhaps even contradictory: freedom and organization.

—Élie Halévy.

Before we can progress with our main problem, an obstacle has yet to be surmounted. A confusion largely responsible for the way in which we are drifting into things which nobody wants must be cleared up. This confusion concerns nothing less than the concept of socialism itself. It may mean, and is often used to describe, merely the ideals of social justice, greater equality, and security, which are the ultimate aims of socialism. But it means also the particular method by which most socialists hope to attain these ends and which many competent people regard as the only methods by which they can be fully and quickly attained. In this sense socialism means the abolition of private enterprise, of private ownership of the means of production, and the creation of a system of "planned economy" in which the entrepreneur working for profit is replaced by a central planning body.

There are many people who call themselves socialists, although they care only about the first, who fervently believe in those ultimate aims of socialism but neither care nor understand how they can be achieved, and who are merely certain that they must be achieved, whatever the cost. But to nearly all those to whom socialism is not merely a hope but an object of practical politics, the characteristic methods of modern socialism are as essential as the ends themselves. Many people, on the other hand, who value the ultimate ends of socialism no less than the socialists refuse to support socialism because of the dangers to other values they see in the methods proposed by the socialists. The dispute about socialism has thus become largely a dispute about means and not about ends—although the question whether the different ends of socialism can be simultaneously achieved is also involved.

This would be enough to create confusion. And the confusion has been further increased by the common practice of denying that those who repudiate the means value the ends. But this is not all. The situation is still more complicated by the fact that the same means, the "economic planning" which is the prime instrument of

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socialist reform, can be used for many other purposes. We must centrally direct economic activity if we want to make the distribution of income conform to current ideas of social justice. "Planning," therefore, is wanted by all those who demand that "production for use" be substituted for production for profit. But such planning is no less indispensable if the distribution of incomes is to be regulated in a way which to us appears to be the opposite of just. Whether we should wish that more of the good things of this world should go to some racial élite, the Nordic men, or the members of a party or an aristocracy, the methods which we shall have to employ are the same as those which could insure an equalitarian distribution.

It may, perhaps, seem unfair to use the term "socialism" to describe its methods rather than its aims, to use for a particular method a term which for many people stands for an ultimate ideal. It is probably preferable to describe the methods which can be used for a great variety of ends as collectivism and to regard socialism as a species of that genus. Yet, although to most socialists only one species of collectivism will represent true socialism, it must always be remembered that socialism is a species of collectivism and that therefore everything which is true of collectivism as such must apply also to socialism. Nearly all the points which are disputed between socialists and liberals concern the methods common to all forms of collectivism and not the particular ends for which socialists want to use them; and all the consequences with which we shall be concerned in this book follow from the methods of collectivism irrespective of the ends for which they are used. It must also not be forgotten that socialism is not only by far the most important species of collectivism or "planning" but that it is socialism which has persuaded liberal-minded people to submit once more to that regimentation of economic life which they had overthrown because, in the words of Adam Smith, it puts governments in a position where "to support themselves they are obliged to be oppressive and tyrannical."¹

The difficulties caused by the ambiguities of the common political terms are not yet over if we agree to use the term "collectivism" so as to include all types of "planned economy," whatever the end of planning. The meaning of this term becomes somewhat more definite if we make it clear that we mean that sort of planning which is necessary to realize any given distributive ideals. But, as the idea of central economic planning owes its appeal largely to this very vagueness of its meaning, it is essential that we should agree on its precise sense before we discuss its consequences.

"Planning" owes its popularity largely to the fact that everybody desires, of course, that we should handle our common problems as rationally as possible and that, in so doing, we should use as much foresight as we can command. In this sense everybody who is not a complete fatalist is a planner, every political act is (or ought to be) an act of planning, and there can be differences only between good and bad, between wise and foresighted and foolish and shortsighted planning. An economist, whose whole task is the study of how men actually do and how they might plan their affairs, is the last person who could object to planning in this general sense. But it is not in this sense that our enthusiasts for a planned society now employ this term, nor merely in this sense that we must plan if we want the distribution of income or wealth to conform to some particular standard. According to the modern planners, and for their purposes, it is not sufficient to design the most rational permanent framework within

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which the various activities would be conducted by different persons according to their individual plans. This liberal plan, according to them, is no plan—and it is, indeed, not a plan designed to satisfy particular views about who should have what. What our planners demand is a central direction of all economic activity according to a single plan, laying down how the resources of society should be “consciously directed” to serve particular ends in a definite way.

The dispute between the modern planners and their opponents is, therefore, *not* a dispute on whether we ought to choose intelligently between the various possible organizations of society; it is not a dispute on whether we ought to employ foresight and systematic thinking in planning our common affairs. It is a dispute about what is the best way of so doing. The question is whether for this purpose it is better that the holder of coercive power should confine himself in general to creating conditions under which the knowledge and initiative of individuals are given the best scope so that *they* can plan most successfully; or whether a rational utilization of our resources requires *central* direction and organization of all our activities according to some consciously constructed “blueprint.” The socialists of all parties have appropriated the term “planning” for planning of the latter type, and it is now generally accepted in this sense. But though this is meant to suggest that this is the only rational way of handling our affairs, it does not, of course, prove this. It remains the point on which the planners and the liberals disagree.

It is important not to confuse opposition against this kind of planning with a dogmatic *laissez faire* attitude. The liberal argument is in favor of making the best possible use of the forces of competition as a means of co-ordinating human efforts, not an argument for leaving things just as they are. It is based on the conviction that, where effective competition can be created, it is a better way of guiding individual efforts than any other. It does not deny, but even emphasizes, that, in order that competition should work beneficially, a carefully thought-out legal framework is required and that neither the existing nor the past legal rules are free from grave defects. Nor does it deny that, where it is impossible to create the conditions necessary to make competition effective, we must resort to other methods of guiding economic activity. Economic liberalism is opposed, however, to competition's being supplanted by inferior methods of co-ordinating individual efforts. And it regards competition as superior not only because it is in most circumstances the most efficient method known but even more because it is the only method by which our activities can be adjusted to each other without coercive or arbitrary intervention of authority. Indeed, one of the main arguments in favor of competition is that it dispenses with the need for “conscious social control” and that it gives the individuals a chance to decide whether the prospects of a particular occupation are sufficient to compensate for the disadvantages and risks connected with it.

The successful use of competition as the principle of social organization precludes certain types of coercive interference with economic life, but it admits of others which sometimes may very considerably assist its work and even requires certain kinds of government action. But there is good reason why the negative requirements, the points where coercion must not be used, have been particularly stressed. It is necessary in the first instance that the parties in the market should be free to sell and

buy at any price at which they can find a partner to the transaction and that anybody should be free to produce, sell, and buy anything that may be produced or sold at all. And it is essential that the entry into the different trades should be open to all on equal terms and that the law should not tolerate any attempts by individuals or groups to restrict this entry by open or concealed force. Any attempt to control prices or quantities of particular commodities deprives competition of its power of bringing about an effective co-ordination of individual efforts, because price changes then cease to register all the relevant changes in circumstances and no longer provide a reliable guide for the individual's actions.

This is not necessarily true, however, of measures merely restricting the allowed methods of production, so long as these restrictions affect all potential producers equally and are not used as an indirect way of controlling prices and quantities. Though all such controls of the methods or production impose extra costs (i.e., make it necessary to use more resources to produce a given output), they may be well worth while. To prohibit the use of certain poisonous substances or to require special precautions in their use, to limit working hours or to require certain sanitary arrangements, is fully compatible with the preservation of competition. The only question here is whether in the particular instance the advantages gained are greater than the social costs which they impose. Nor is the preservation of competition incompatible with an extensive system of social services—so long as the organization of these services is not designed in such a way as to make competition ineffective over wide fields.

It is regrettable, though not difficult to explain, that in the past much less attention has been given to the positive requirements of a successful working of the competitive system than to these negative points. The functioning of a competition not only requires adequate organization of certain institutions like money, markets, and channels of information—some of which can never be adequately provided by private enterprise—but it depends, above all, on the existence of an appropriate legal system, a legal system designed both to preserve competition and to make it operate as beneficially as possible. It is by no means sufficient that the law should recognize the principle of private property and freedom of contract; much depends on the precise definition of the right of property as applied to different things. The systematic study of the forms of legal institutions which will make the competitive system work efficiently has been sadly neglected; and strong arguments can be advanced that serious shortcomings here, particularly with regard to the law of corporations and of patents, not only have made competition work much less effectively than it might have done but have even led to the destruction of competition in many spheres.

There are, finally, undoubted fields where no legal arrangements can create the main condition on which the usefulness of the system of competition and private property depends: namely, that the owner benefits from all the useful services rendered by his property and suffers for all the damages caused to others by its use. Where, for example, it is impracticable to make the enjoyment of certain services dependent on the payment of a price, competition will not produce the services; and the price system becomes similarly ineffective when the damage caused to others by certain uses of property cannot be effectively charged to the owner of that property. In all these instances there is a divergence between the items which enter into private calculation and those which affect social welfare; and, whenever this divergence

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becomes important, some method other than competition may have to be found to supply the services in question. Thus neither the provision of signposts on the roads nor, in most circumstances, that of the roads themselves can be paid for by every individual user. Nor can certain harmful effects of deforestation, of some methods of farming, or of the smoke and noise of factories be confined to the owner of the property in question or to those who are willing to submit to the damage for an agreed compensation. In such instances we must find some substitute for the regulation by the price mechanism. But the fact that we have to resort to the substitution of direct regulation by authority where the conditions for the proper working of competition cannot be created does not prove that we should suppress competition where it can be made to function.

To create conditions in which competition will be as effective as possible, to supplement it where it cannot be made effective, to provide the services which, in the words of Adam Smith, "though they may be in the highest degree advantageous to a great society, are, however, of such a nature, that the profit could never repay the expense to any individual or small number of individuals"—these tasks provide, indeed, a wide and unquestioned field for state activity. In no system that could be rationally defended would the state just do nothing. An effective competitive system needs an intelligently designed and continuously adjusted legal framework as much as any other. Even the most essential prerequisite of its proper functioning, the prevention of fraud and deception (including exploitation of ignorance), provides a great and by no means yet fully accomplished object of legislative activity.

The task of creating a suitable framework for the beneficial working of competition had, however, not yet been carried very far when states everywhere turned from it to that of supplanting competition by a different and irreconcilable principle. The question was no longer one of making competition work and of supplementing it but of displacing it altogether. It is important to be quite clear about this: the modern movement for planning is a movement against competition as such, a new flag under which all the old enemies of competition have rallied. And although all sorts of interests are now trying to reestablish under this flag privileges which the liberal era swept away, it is socialist propaganda for planning which has restored to respectability among liberal-minded people opposition to competition and which has effectively lulled the healthy suspicion which any attempt to smother competition used to arouse.² What in effect unites the socialists of the Left and the Right is this common hostility to competition and their common desire to replace it by a directed economy. Though the terms "capitalism" and "socialism" are still generally used to describe the past and the future forms of society, they conceal rather than elucidate the nature of the transition through which we are passing.

Yet, though all the changes we are observing tend in the direction of a comprehensive central direction of economic activity, the universal struggle against competition promises to produce in the first instance something in many respects even worse, a state of affairs which can satisfy neither planners nor liberals: a sort of syndicalist or "corporative" organization of industry, in which competition is more or less suppressed but planning is left in the hands of the independent monopolies of the separate industries. This is the inevitable first result of a situation in which the people

are united in their hostility to competition but agree on little else. By destroying competition in industry after industry, this policy puts the consumer at the mercy of the joint monopolist action of capitalists and workers in the best organized industries. Yet, although this is a state of affairs which in wide fields has already existed for some time, and although much of the muddled (and most of the interested) agitation for planning aims at it, it is not a state which is likely to persist or can be rationally justified. Such independent planning by industrial monopolies would, in fact, produce effects opposite to those at which the argument for planning aims. Once this stage is reached, the only alternative to a return to competition is the control of the monopolies by the state—a control which, if it is to be made effective, must become progressively more complete and more detailed. It is this stage we are rapidly approaching. When, shortly before the war, a weekly magazine pointed out that there were many signs that British leaders, at least, were growing accustomed to thinking in terms of national development by controlled monopolies, this was probably a true estimate of the position as it then existed. Since then this process has been greatly accelerated by the war, and its grave defects and dangers will become increasingly obvious as time goes on.

The idea of complete centralization of the direction of economic activity still appalls most people, not only because of the stupendous difficulty of the task, but even more because of the horror inspired by the idea of everything being directed from a single center. If we are, nevertheless, rapidly moving toward such a state, this is largely because most people still believe that it is must be possible to find some middle way between "atomistic" competition and central direction. Nothing, indeed, seems at first more plausible, or is more likely to appeal to reasonable people, than the idea that our goal must be neither the extreme decentralization of free competition nor the complete centralization of a single plan but some judicious mixture of the two methods. Yet mere common sense proves a treacherous guide in this field. Although competition can bear some admixture of regulation, it cannot be combined with planning to any extent we like without ceasing to operate as an effective guide to production. Nor is "planning" a medicine which, taken in small doses, can produce the effects for which one might hope from its thoroughgoing application. Both competition and central direction become poor and inefficient tools if they are incomplete; they are alternative principles used to solve the same problem, and a mixture of the two means that neither will really work and that the result will be worse than if either system had been consistently relied upon. Or, to express it differently, planning and competition can be combined only by planning for competition but not by planning against competition.

It is of the utmost importance to the argument of this book for the reader to keep in mind that the planning against which all our criticism is directed is solely the planning against competition—the planning which is to be substituted for competition. This is the more important, as we cannot, within the scope of this book, enter into a discussion of the very necessary planning which is required to make competition as effective and beneficial as possible. But as in current usage "planning" has become almost synonymous with the former kind of planning, it will sometimes be inevitable for the sake of brevity to refer to it simply as planning, even though this means leaving to our opponents a very good word meriting a better fate.

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VI: Planning and the Rule of Law

Recent studies in the sociology of law once more confirm that the fundamental principle of formal law by which every case must be judged according to general rational precepts, which have as few exceptions as possible and are based on logical subsumptions, obtains only for the liberal competitive phase of capitalism.

—Karl Mannheim

Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of the great principles known as the Rule of Law. Stripped of all technicalities, this means that government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge.³ Though this ideal can never be perfectly achieved, since legislators as well as those to whom the administration of the law is intrusted are fallible men, the essential point, that the discretion left to the executive organs wielding coercive power should be reduced as much as possible, is clear enough. While every law restricts individual freedom to some extent by altering the means which people may use in the pursuit of their aims, under the Rule of Law the government is prevented from stultifying individual efforts by *ad hoc* action. Within the known rules of the game the individual is free to pursue his personal ends and desires, certain that the powers of government will not be used deliberately to frustrate his efforts.

The distinction we have drawn before between the creation of a permanent framework of laws within which the productive activity is guided by individual decisions and the direction of economic activity by a central authority is thus really a particular case of the more general distinction between the Rule of Law and arbitrary government. Under the first the government confines itself to fixing rules determining the conditions under which the available resources may be used, leaving to the individuals the decision for what ends they are to be used. Under the second the government directs the use of the means of production to particular ends. The first type of rules can be made in advance, in the shape of *formal rules* which do not aim at the wants and needs of particular people. They are intended to be merely instrumental in the pursuit of people's various individual ends. And they are, or ought to be, intended for such long periods that it is impossible to know whether they will assist particular people more than others. They could almost be described as a kind of instrument of production, helping people to predict the behavior of those with whom they must collaborate, rather than as efforts toward the satisfaction of particular needs.

Economic planning of the collectivist kind necessarily involves the very opposite of this. The planning authority cannot confine itself to providing opportunities for unknown people to make whatever use of them they like. It cannot tie itself down in advance to general and formal rules which prevent arbitrariness. It must provide for the actual needs of people as they arise and then choose deliberately between them. It must constantly decide questions which cannot be answered by formal principles only, and, in making these decisions, it must set up distinctions of merit between the needs of different people. When the government has to decide how many pigs are to

be raised or how many busses are to be run, which coal mines are to operate, or at what prices shoes are to be sold, these decisions cannot be deduced from formal principles or settled for long periods in advance. They depend inevitably on the circumstances of the moment, and, in making such decisions, it will always be necessary to balance one against the other the interests of various persons and groups. In the end somebody's views will have to decide whose interests are more important; and these views must become part of the law of the land, a new distinction of rank which the coercive apparatus of government imposes upon the people.

The distinction we have just used between formal law or justice and substantive rules is very important and at the same time most difficult to draw precisely in practice. Yet the general principle involved is simple enough. The difference between the two kinds of rules is the same as that between laying down a Rule of the Road, as in the Highway Code, and ordering people where to go; or, better still, between providing signposts and commanding people which road to take. The formal rules tell people in advance what action the state will take in certain types of situation, defined in general terms, without reference to time and place or particular people. They refer to typical situations into which anyone may get and in which the existence of such rules will be useful for a great variety of individual purposes. The knowledge that in such situations the state will act in a definite way, or require people to behave in a certain manner, is provided as a means for people to use in making their own plans. Formal rules are thus merely instrumental in the sense that they are expected to be useful to yet unknown people, for purposes for which these people will decide to use for them, and in circumstances which cannot be foreseen in detail. In fact, that we do *not* know their concrete effect, that we do *not* know what particular ends these rules will further, or which particular people they will assist, that they are merely given the form most likely on the whole to benefit all the people affected by them, is the most important criterion of formal rules in the sense in which we here use this term. They do not involve a choice between particular ends or particular people, because we just cannot know beforehand by whom and in what way they will be used.

In our age, with its passion for conscious control of everything, it may appear paradoxical to claim as a virtue that under one system we shall know less about the particular effect of the measures the state takes than would be true under most other systems and that a method of social control should be deemed superior because of our ignorance of its precise results. Yet this consideration is in fact the rationale of the great liberal principle of the Rule of Law. And the apparent paradox dissolves rapidly when we follow the argument a little further.

This argument is twofold; the first is economic and can here only briefly be stated. The state should confine itself to establishing rules applying to general types of situations and should allow the individuals freedom in everything which depends on the circumstances of time and place, because only the individuals concerned in each instance can fully know these circumstances and adapt their actions to them. If the individuals are to be able to use their knowledge effectively in making plans, they must be able to predict actions of the state which may affect these plans. But if the actions of the state are to be predictable, they must be determined by rules fixed independently of the concrete circumstances which can be neither foreseen nor taken into account

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beforehand: and the particular effects of such actions will be unpredictable. If, on the other hand, the state were to direct the individual's actions so as to achieve particular ends, its action would have to be decided on the basis of the full circumstances of the moment and would therefore be unpredictable. Hence the familiar fact that the more the state "plans," the more difficult planning becomes for the individual.

The second, moral or political, argument is even more directly relevant to the point under discussion. If the state is precisely to foresee the incidence of its actions, it means that it can leave those affected no choice. Wherever the state can exactly foresee the effects on particular people of alternative courses of action, it is also the state which chooses between the different ends. If we want to create new opportunities open to all, to offer chances of which people can make what use they like, the precise results cannot be foreseen. General rules, genuine laws as distinguished from specific orders, must therefore be intended to operate in circumstances which cannot be foreseen in detail, and, therefore, their effect on particular ends or particular people cannot be known beforehand. It is in this sense alone that it is at all possible for the legislator to be impartial. To be impartial means to have no answer to certain questions—to the kind of questions which, if we have to decide them, we decide by tossing a coin. In a world where everything was precisely foreseen, the state could hardly do anything and remain impartial.

Where the precise effects of government policy on particular people are known, where the government aims directly at such particular effects, it cannot help knowing these effects, and therefore it cannot be impartial. It must, of necessity, take sides, impose its valuations upon people and, instead of assisting them in the advancement of their own ends, choose the ends for them. As soon as the particular effects are foreseen at the time a law is made, it ceases to be a mere instrument to be used by the people and becomes instead an instrument used by the lawgiver upon the people and for his ends. The state ceases to be a piece of utilitarian machinery intended to help individuals in the fullest development of their individual personality and becomes a "moral" institution—where "moral" is not used in contrast to immoral but describes an institution which imposes on its members its views on all moral questions, whether these views be moral or highly immoral. In this sense the Nazi or any other collectivist state is "moral," while the liberal state is not.

Perhaps it will be said that all this raises no serious problem because in the kind of questions which the economic planner would have to decide he need not and should not be guided by his individual prejudices but could rely on the general conviction of what is fair and reasonable. This contention usually receives support from those who have experience of planning in a particular industry and who find that there is no insuperable difficulty about arriving at a decision which all those immediately interested will accept as fair. The reason why this experience proves nothing is, of course, the selection of the "interests" concerned when planning is confined to a particular industry. Those most immediately interested in a particular issue are not necessarily the best judges of the interests of society as a whole. To take only the most characteristic case: when capital and labor in an industry agree on some policy of restriction and thus exploit the consumers, there is usually no difficulty about the division of the spoils in proportion to former earnings or on some similar principle. The loss which is divided between thousands or millions is usually either simply disregarded or quite

inadequately considered. It we want to test the usefulness of the principle of "fairness" in deciding the kind of issues which arise in economic planning, we must apply it to some question where the gains and the losses are seen equally clearly. In such instances it is readily recognized that no general principle such as fairness can provide an answer. When we have to choose between higher wages for nurses or doctors and more extensive services for the sick, more milk for children and better wages for agricultural workers, or between employment for the unemployed or better wages for those already employed, nothing short of a complete system of values in which every want of every person or group has a definite place is necessary to provide an answer.

In fact, as planning becomes more and more extensive, it becomes regularly necessary to qualify legal provisions increasingly by reference to what is "fair" or "reasonable"; this means that it becomes necessary to leave the decision of the concrete case more and more to the discretion of the judge or authority in question. One could write a history of the decline of the Rule of Law, the disappearance of the *Rechtsstaat*, in terms of the progressive introduction of these vague formulas into legislation and jurisdiction, and of the increasing arbitrariness and uncertainty of, and the consequent disrespect for, the law and the judicature, which in these circumstances could not but become an instrument of policy. It is important to point out once more in this connection that this process of the decline of the Rule of Law had been going on steadily in Germany for some time before Hitler came into power and that a policy well advanced toward totalitarian planning had already done a great deal of the work which Hitler completed.

There can be no doubt that planning necessarily involves deliberate discrimination between particular needs of different people, and allowing one man to do what another must be prevented from doing. It must lay down by a legal rule how well off particular people shall be and what different people are to be allowed to have and do. It means in effect a return to the rule of status, a reversal of the "movement of progressive societies" which, in the famous phrase of Sir Henry Maine, "has hitherto been a movement from status to contract." Indeed, the Rule of Law, more than the rule of contract, should probably be regarded as the true opposite of the rule of status. It is the Rule of Law, in the sense of the rule of formal law, the absence of legal privileges of particular people designated by authority, which safeguards that equality before the law which is the opposite of arbitrary government.

A necessary, and only apparently paradoxical, result of this is that formal equality before the law is in conflict, and in fact incompatible, with any activity of the government deliberately aiming at material or substantive equality of different people, and that any policy aiming directly at a substantive ideal of distributive justice must lead to the destruction of the Rule of Law. To produce the same result for different people, it is necessary to treat them differently. To give different people the same objective opportunities is not to give them the same subjective chance. It cannot be denied that the Rule of Law produces economic inequality—all that can be claimed for it is that this inequality is not designed to affect particular people in a particular way. It is very significant and characteristic that socialists (and Nazis) have always protested against "merely" formal justice, that they have always objected to a law which had no views on how well off particular people ought to be,⁴ and that they have always demanded a "socialization of the law," attacked the independence of judges, and at the same time

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given their support to all such movements as the *Freirechtsschule* which undermined the Rule of Law.

It may even be said that for the Rule of Law to be effective it is more important that there should be a rule applied always without exceptions than what this rule is. Often the content of the rule is indeed of minor importance, provided the same rule is universally enforced. To revert to a former example: it does not matter whether we all drive on the left- or on the right-hand side of the road so long as we all do the same. The important thing is that the rule enables us to predict other people's behavior correctly, and this requires that it should apply to all cases—even if in a particular instance we feel it to be unjust.

The conflict between formal justice and formal equality before the law, on the one hand, and the attempts to realize various ideals of substantive justice and equality, on the other, also accounts for the widespread confusion about the concept of "privilege" and its consequent abuse. To mention only the most important instance of this abuse—the application of the term "privilege" to property as such. It would indeed be privilege if, for example, as has sometimes been the case in the past, landed property were reserved to members of the nobility. And it is privilege if, as is true in our time, the right to produce or sell particular things is reserved to particular people designated by authority. But to call private property as such, which all can acquire under the same rules, a privilege, because only some succeed in acquiring it, is depriving the word "privilege" of its meaning.

The unpredictability of the particular effects, which is the distinguishing characteristic of the formal laws of a liberal system, is also important because it helps us to clear up another confusion about the nature of this system: the belief that its characteristic attitude is inaction of the state. The question whether the state should or should not "act" or "interfere" poses an altogether false alternative, and the term "laissez faire" is a highly ambiguous and misleading description of the principles on which a liberal policy is based. Of course, every state must act and every action of the state interferes with something or other. But that is not the point. The important question is whether the individual can foresee the action of the state and make use of this knowledge as a datum in forming his own plans, with the result that the state cannot control the use made of its machinery and that the individual knows precisely how far he will be protected against interference from others, or whether the state is in a position to frustrate individual efforts. The state controlling weights and measures (or preventing fraud and deception in any other way) is certainly acting, while the state permitting the use of violence, for example, by strike pickets, is inactive. Yet it is in the first case that the state observes liberal principles and in the second that it does not. Similarly with respect to most of the general and permanent rules which the state may establish with regard to production, such as building regulations or factory laws: these may be wise or unwise in the particular instance, but they do not conflict with liberal principles so long as they are intended to be permanent and are not used to favor or harm particular people. It is true that in these instances there will, apart from the long-run effects which cannot be predicted, also be short-run effects on particular people which may be clearly known. But with this kind of laws the short-run effects are in general not (or at least ought not to be) the guiding consideration. As these immediate and predictable effects become more important compared with the

long-run effects, we approach the border line where the distinction, however clear in principle, becomes blurred in practice.

The Rule of Law was consciously evolved only during the liberal age and is one of its greatest achievements, not only as a safeguard but as the legal embodiment of freedom. As Immanuel Kant put it (and Voltaire expressed it before him in very much the same terms), "Man is free if he needs to obey no person but solely the laws." As a vague ideal it has, however, existed at least since Roman times, and during the last few centuries it has never been so seriously threatened as it is today. The idea that there is no limit to the powers of the legislator is in part a result of popular sovereignty and democratic government. It has been strengthened by the belief that, so long as all actions of the state are duly authorized by legislation, the Rule of Law will be preserved. But this is completely to misconceive the meaning of the Rule of Law. This rule has little to do with the question whether all actions of government are legal in the juridical sense. They may well be and yet not conform to the Rule of Law. The fact that someone has full legal authority to act in the way he does gives no answer to the question whether the law gives him power to act arbitrarily or whether the law prescribes unequivocally how he has to act. It may well be that Hitler has obtained his unlimited powers in a strictly constitutional manner and that whatever he does is therefore legal in the juridical sense. But who would suggest for that reason that the Rule of Law still prevails in Germany?

To say that in a planned society the Rule of Law cannot hold is, therefore, not to say that the actions of the government will not be legal or that such a society will necessarily be lawless. It means only that the use of the government's coercive powers will no longer be limited and determined by pre-established rules. The law can, and to make a central direction of economic activity possible must, legalize what to all intents and purposes remains arbitrary action. If the law says that such a board or authority may do what it pleases, anything that board or authority does is legal—but its actions are certainly not subject to the Rule of Law. By giving the government unlimited powers, the most arbitrary rule can be made legal; and in this way a democracy may set up the most complete despotism imaginable.⁵

If, however, the law is to enable authorities to direct economic life, it must give them powers to make and enforce decisions in circumstances which cannot be foreseen and on principles which cannot be stated in generic form. The consequence is that, as planning extends, the delegation of legislative powers to diverse boards and authorities becomes increasingly common. When before the last war, in a case to which the late Lord Hewart has recently drawn attention, Mr. Justice Darling said that "Parliament had enacted only last year that the Board of Agriculture in acting as they did should be no more impeachable than Parliament itself," this was still a rare thing. It has since become an almost daily occurrence. Constantly the broadest powers are conferred on new authorities which, without being bound by fixed rules, have almost unlimited discretion in regulating this or that activity of the people.

The Rule of Law thus implies limits to the scope of legislation: it restricts it to the kind of general rules known as formal law and excludes legislation either directly aimed at particular people or at enabling anybody to use the coercive power of the state for the purpose of such discrimination. It means, not that everything is regu-

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lated by law, but, on the contrary, that the coercive power of the state can be used only in cases defined in advance by the law and in such a way that it can be foreseen how it will be used. A particular enactment can thus infringe the Rule of Law. Anyone ready to deny this would have to contend that whether the Rule of Law prevails today in Germany, Italy, or Russia depends on whether the dictators have obtained their absolute power by constitutional means.⁶

Whether, as in some countries, the main applications of the Rule of Law are laid down in a bill of rights or in a constitutional code, or whether the principle is merely a firmly established tradition, matters comparatively little. But it will readily be seen that, whatever form it takes, any such recognized limitations of the powers of legislation imply the recognition of the inalienable right of the individual, inviolable rights of man.

It is pathetic but characteristic of the muddle into which many of our intellectuals have been led by the conflicting ideals in which they believe that a leading advocate of the most comprehensive central planning like H.G. Wells should at the same time write an ardent defense of the rights of man. The individual rights which Mr. Wells hopes to preserve would inevitably obstruct the planning which he desires. To some extent he seems to realize the dilemma, and we find therefore the provisions of his proposed "Declaration of the Rights of Man" so hedged about with qualifications that they lose all significance. While, for instance, his declaration proclaims that every man "shall have the right to buy and sell without any discriminatory restrictions anything which may be lawfully bought and sold," which is admirable, he immediately proceeds to make the whole provision nugatory by adding that it applies only to buying and selling "in such quantities and with such reservations as are compatible with the common welfare." But since, of course, all restrictions ever imposed upon buying or selling anything are supposed to be necessary in the interest of the "common welfare," there is really no restriction which this clause effectively prevents and no right of the individual that is safeguarded by it.

Or, to take another basic clause, the declaration states that every man "may engage in any lawful occupation" and that "he is entitled to paid employment and to a free choice whenever there is any variety of employment open to him." It is not stated, however, who is to decide whether a particular employment is "open" to a particular person, and the added provision that "he may suggest employment for himself and have his claim publicly considered, accepted or dismissed," shows that Mr. Wells is thinking in terms of an authority which decides whether a man is "entitled" to a particular position—which certainly means the opposite of free choice of occupation. And how in a planned world "freedom of travel and migration" is to be secured when not only the means of communication and currencies are controlled but also the location of industries planned, or how the freedom of the press is to be safeguarded when the supply of paper and all the channels of distribution are controlled by the planning authority, are questions to which Mr. Wells provides as little answer as any other planner.

In this respect much more consistency is shown by the more numerous reformers who, ever since the beginning of the socialist movement, have attacked the "metaphysical" idea of individual rights and insisted that in a rationally ordered world

there will be no individual rights but only individual duties. This, indeed, has become the much more common attitude of our so-called "progressives," and few things are more certain to expose one to the reproach of being a reactionary than if one protests against a measure on the grounds that it is a violation of the rights of the individual. Even a liberal paper like the *Economist* was a few years ago holding up to us the example of the French, of all people, who had learned the lesson that "democratic government no less than dictatorship must always [*sic*] have plenary powers *in posse*, without sacrificing their democratic and representative character. There is no restrictive penumbra of individual rights that can never be touched by government in administrative matters whatever the circumstances. There is no limit to the power of ruling which can and should be taken by a government freely chosen by the people and can be fully and openly criticised by an opposition."

This may be inevitable in wartime, when, of course, even free and open criticism is necessarily restricted. But the "always" in the statement quoted does not suggest that the *Economist* regards it as a regrettable wartime necessity. Yet as a permanent institution this view is certainly incompatible with the preservation of the Rule of Law, and it leads straight to the totalitarian state. It is, however, the view which all those who want the government to direct economic life must hold.

How even a formal recognition of individual rights, or of the equal rights of minorities, loses all significance in a state which embarks on a complete control of economic life, has been amply demonstrated by the experience of the various Central European countries. It has been shown there that it is possible to pursue a policy of ruthless discrimination against national minorities by the use of recognized instruments of economic policy without ever infringing the letter of the statutory protection of minority rights. This oppression by means of economic policy was greatly facilitated by the fact that particular industries or activities were largely in the hands of a national minority, so that many a measure aimed ostensibly against an industry or class was in fact aimed at a national minority. But the almost boundless possibilities for a policy of discrimination and oppression provided by such apparently innocuous principles as "government control of the development of industries" have been amply demonstrated to all those desirous of seeing how the political consequences of planning appear in practice.

Notes

1. Quoted in Dugald Stewart's *Memoir of Adam Smith* from a memorandum written by Smith in 1755.
2. Of late, it is true, some academic socialists, under the spur of criticism and animated by the same fear of the extinction of freedom in a centrally planned society, have devised a new kind of "competitive socialism" which they hope will avoid the difficulties and dangers of central planning and combine the abolition of private property with the full retention of individual freedom. Although some discussion of this new kind of socialism has taken place in learned journals, it is hardly likely to recommend itself to practical politicians. If it ever did, it would not be difficult to show (as the author has attempted elsewhere—see *Economica*, 1940) that these plans rest on a delusion and suffer from

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an inherent contradiction. It is impossible to assume control over all the productive resources without also deciding for whom and by whom they are to be used. Although under this so-called "competitive socialism" the planning by the central authority would take somewhat more roundabout forms, its effects would not be fundamentally different, and the element of competition would be little more than a sham.

3. According to the classical exposition by A.V. Dicey in *The Law of the Constitution* (8th ed.), p. 198, the Rule of Law "means, in the first place, the absolute supremacy or pre-dominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of government." Largely as a result of Dicey's work the term has, however, in England acquired a narrower technical meaning which does not concern us here. The wider and older meaning of the concept of the rule or reign of law, which in England had become an established tradition which was more taken for granted than discussed, has been most fully elaborated, just because it raised what were new problems there, in the early nineteenth-century discussion in Germany about the nature of the *Rechtsstaat*.
4. It is therefore not altogether false when the legal theorist of National Socialism, Carl Schmitt, opposes to the liberal *Rechtsstaat* (i.e. the Rule of Law) the National Socialist ideal of the *gerechte Staat* ("the just state")—only that the sort of justice which is opposed to formal justice necessarily implies discrimination between persons.
5. The conflict is thus *not*, as it has often been misconceived in nineteenth-century discussions, one between liberty and law. As John Locke had already made clear, there can be no liberty without law. The conflict is between different kinds of law—law so different that it should hardly be called by the same name: one is the law of the Rule of Law, general principles laid down beforehand, the "rules of the game" which enable individuals to foresee how the coercive apparatus of the state will be used, or what he and his fellow-citizens will be allowed to do, or made to do, in stated circumstances. The other kind of law gives in effect the authority power to do what it thinks fit to do. Thus the Rule of Law could clearly not be preserved in a democracy that undertook to decide every conflict of interests not according to rules previously laid down but "on its merits."
6. Another illustration of an infringement of the Rule of Law by legislation is the case of the bill of attainder, familiar in the history of England. The form which the Rule of Law takes in criminal law is usually expressed by the Latin tag *nulla poena sine lege*—no punishment without a law expressly prescribing it. The essence of this rule is that the law must have existed as a general rule before the individual case arose to which it is to be applied. Nobody would argue that, when in a famous case in Henry VIII's reign Parliament resolved with respect to the Bishop of Rochester's cook that "the said Richard Rose shall be boiled to death without having the advantage of his clergy," this act was performed under the Rule of Law. But while the Rule of Law had become an essential part of criminal procedure in all liberal countries, it cannot be preserved in totalitarian regimes. There, as E.B. Ashton has well expressed it, the liberal maxim is replaced by the principles *nullum crimen sine poena*—no "crime" must remain without punishment, whether the law explicitly provides for it or not. "The rights of the state do not end with punishing law breakers. The community is entitled to whatever may seem necessary to the protection of its interests—of which observance of the law, as it stands, is only one of the more elementary requirements" (E.B. Ashton, *The Fascist, His State and Mind* [1937], p. 119). What is an infringement of "the interests of the community" is, of course, decided by the authorities.