from *Lysander Spooner: Dissident Among Dissidents*, in Men Against the State by James J. Martin. Pages 167-201

Chapter VII
Lysander Spooner, Dissident Among Dissidents

The economic and social concepts which formed the basis of American anarchist thought were first stated by Josiah Warren. Most of the significant contributions of others, especially of an economic nature, were made by men with varying degrees of relationship to Warren. There was one important exception, Lysander Spooner, an independent radical whose political and economic writings paralleled those of the better known group for many years. Regardless of the use made of his works, Spooner remained apart from the individualists except for brief instances of association during his later life, when his most powerful tracts in support of anarchist principles were written. By the 1880's however, his works were being widely read by the native anti-statists. The career of Spooner is that of a man whose radicalism increased rather than decreased with advancing age. He was born January 19, 1808, in Athol, Massachusetts.[1] The early part of his life was spent on his father's farm, which he left at the age of 25 to become a clerk in the office of the registry of deeds in Worcester. He began the study of law shortly thereafter under John Davis and Charles A. Allen, jurists of considerable esteem in the state. Finding the practice of law closed to him by a statute which required three years of additional study on the part of non-college-trained bar candidates, he conducted a campaign which secured the repeal of the statute.

Spooner's first seven years as a lawyer were spent in Ohio[2] rather than in Massachusetts, however, during which time he participated in the rapidly spreading free thought campaign. His *The Deist's Reply to the Alleged Supernatural Evidences of Christianity* became one of the better known pamphlets against religious orthodoxy.[3] Its general tone gave an indication of his later disdain for constituted authority other than the church.[4]

The career of Spooner the jurist is far less important than that of Spooner the critic of the Constitution and legislative processes. His criticisms were both economic and political in nature. The two overlapped, and often came from his pen alternately, so that no clear separation can be observed. He regarded the Constitution primarily as a device which afforded opportunities to minority groups to exploit others through the instrument of special privileges. The opportunity might accrue to private citizens, or to a small group within the government at any particular time, but to him the important fact lay in the manipulation of the "fundamental law of the land" to the benefit of financial, commercial, and landed interests, and to select politicians.[5]

Where Spooner derived his interest in finance is not known. The 1837 panic undoubtedly was foremost among the sources. The principal impression he derived from the political controversy it produced was not the contest of personalities involved, but rather the nature of banking by private corporations and the increasing complication resulting from the activities of political and governmental bodies. To those interested in keeping credit open to competition and private pursuit, he issued a warning that a maze of artificial restrictions and legal escape-mechanisms was in the early stages of construction. Such was the message of his *Constitutional Law Relative to Credit, Currency and Banking* (1843), portions of which were still being incorporated in the free banking literature of the anarchist press a half century later.

"To issue bills of credit, that is, promissory notes, is a natural right....The right of banking, or of contracting debts by giving promissory notes for the payment of money is as much a natural right as that of manufacturing cotton."[6]; Such was Spooner's premise in opening his attack upon the contention that state charters should be required to engage in the banking business. Banking was either a totally reprehensible activity and should be entirely suppressed, or all pretense at protection of the citizenry should be abandoned and the enterprise opened to all who wished to enter it. Spooner saw no escape from the logical conclusion that the intrusion of the federal government into matters of legal tender, bank chartering, and incorporation was based upon expediency.

Spooner assumed that the constitutional clause forbidding the impairment of the obligation of contracts was an acknowledgement of the natural right of men to make contracts.[7] There was no doubt in his mind that creation of compulsory legal tender and granting of bank charters were direct infringements of contracts. The making of a contract, he said, was an "act of real persons," and was of necessity restricted to persons, for there were no others who could do so. Therefore, he declared,[8]

The idea of a joint, incorporeal being, made up of several real persons, is nothing but a fiction. It has no reality in it. It is a fiction adopted merely to get rid of the consequences of facts. An act of legislation cannot transform twenty living, real persons into one joint, incorporeal being. After all the legislative juggling that can be devised, "the company" will still be nothing more, less or other, than the individuals composing the company. The idea of an incorporeal being, capable of carrying on banking operations, is ridiculous.

The impact of such incorporation? Spooner said it freed men of contractual obligations as individuals. When profits accrued from banking operations, the stockholders in whose names the chartering had taken place appeared as individuals to collect; yet, the cloak of anonymity was there to protect them as individuals in the case of losses. Escape through the provision of a collective personality was at hand, when liability for their contracts, beyond their ability or desire to meet as individuals, presented itself to the banking company. Thus a hypothetical financial firm with total capital of $50,000 might signify its intention to enter the business of banking to the extent of $10,000, issue the sum of $40,000 in unconditional promises to pay, and then default on this latter sum, losing only the original amount which they intended to risk. The desire to limit the extent of promises either of companies or of individuals should be expressed in the contracts themselves, not in limited liability by law, for if law lessened the responsibility expressed in the contract, it impaired the obligation thereof.[9] It was impossible to regard bank charters as anything else than artifices giving to certain individuals "the advantage of two legal natures,one favorable for making contracts, the other favorable for avoiding the responsibility of them."[10]

Thus Spooner laid the cause of the evils in the banking business of his time squarely on the doorsteps of the legislatures. In later writings he was to go into great detail on the part, played by the national government in placing the country's banks in the hands of a minority group. Meanwhile, a personal encounter with the federal government itself occupied his attention. From 1841 to 1845, steady inroads on the revenues of the federal post office department were made by private express companies. One of these was the American Letter Mail Company, which Spooner founded in 1844. Originally carrying letters between Boston and New York, the scope of the firm soon included Philadelphia and Baltimore.[11] It was a source of embarrassment to the Democratic administrations of the period to see this company, as well as other letter mail companies, making profits from carrying letters for 5 and 10 cents each, while providing service somewhat more expeditious than that furnished by the federal postal system. Increasing complaint by patrons over the dilatory and expensive government operations finally provoked congressional action. A bill calling for reorganization of the post office system and proposing a new schedule of rates drew critical fire in the Senate from objectors who noted that private companies would still be furnishing cheaper service. Senator William D. Merrick of Maryland, sponsor of the bill,[12] replied that there was to be no attempt at competing with these firms; they were to be put out of business by "penal enactment."[13]

Again Spooner went to the Constitution for support of his thesis that the passage of such legislation would be a clear transcendence of the authority granted Congress. Article 1, Section 8 merely provided that Congress might establish post offices and post roads of its own. Said he: "The Constitution expresses, neither in terms, nor by necessary implication, any prohibition upon the establishment of mails, post offices, and post roads by the states or individuals."[14] Had Congress been granted the power to establish stage coaches and steamboats, this act would not have conferred exclusive rights to the operation and establishment of all stage coach and steamboat lines. The power to establish and the power to prohibit were distinct powers, and in the case of additional mail services Congress distinctly did not have the power to prohibit.[15]

Spooner also asserted that the establishment of a government monopoly over the mails, followed by the exclusion therefrom of such materials as it cared, was actually an infringement upon the freedom of the press. This latter meant not merely the freedom of printing papers and books but the freedom of selling and circulating them as well. This was a very important point, for without the latter, the former was of no value at all. Therefore this selling and circulating freedom implied the right of publishers to reach buyers in any manner they chose.[16] Should the government be the sole carrier, it might ban the publications it did not approve of.

There were other considerations. Besides the social and commercial objections of slowness and costliness, Spooner advanced a moral objection to an exclusive national system. "Its immense patronage and power, used, as they always will be, corruptly, make it also a very great political evil." Competition in this pursuit would provide a reduction both in costs and time spent in delivery as well as "the political benefits of a very material purification of the government."[17]

The circulation of these ideas in a small booklet failed to be of any avail in the struggle against the government, however, and the independent companies were virtually eliminated in 1845 by a congressional act providing stiff fines for the carrying of mails by other than the government postal system. Spooner finally liquidated his own firm after exhausting his resources fighting the government over a seven month period.[18] The gradual adoption of a rate of postage similar to that charged by his company nevertheless gave him a measure of personal satisfaction.[19] Thus ended his one experience as a businessman. He had sought to expose the wastefulness of government operation, a perennial anarchist charge, while at the same time attempting to demonstrate the merits of completely free competition. This was good anarchist economics.

Up to this time Spooner had hardly begun his work as an economic pamphleteer. Primarily concerned with money, banking and credit, he later grew to be regarded by the anarchists as on a par with Greene as an advocate of free banking. Like Greene, he stressed the monetization of durable wealth other than specie and the opening of the business of banking to all who wished to enter it.

In 1846 Spooner published another essay indicting political interference with free processes and accusing the judiciary of gross dereliction in permitting widespread violations of the laws of contracts and the principles of natural law. His *Poverty: Its Illegal Causes and Legal Cure* set forth his basic beliefs with respect to the relation between men and the production of wealth, and the reasons for the lack of harmony in these relations. The "economical propositions'[20] he set forth to establish hinged on the proposition that it was a principle of natural law that every man was entitled to "all the fruits of his own labor.[21] That this might be feasible, it was necessary that every man be his own employer or work for himself in a direct way, since working for another resulted in a portion being diverted to the employer. To be one's own employer, it was necessary for one to have access to one's own capital or to be allowed to obtain it on credit. This postulated the presence of men with surplus capital to loan, and a rate of interest sufficient to induce them to do so. It was to the interest of the potential self-employed laborer, however, to seek capital at the lowest possible rate of interest, and that required that free banking be allowed, implying, as a result, the monetization of many types of wealth:[22]

As the materials for banking credit are abundant.... it is obvious that if free competition in banking were allowed, the rate of interest would be brought very low, and bank loans would be within the reach of everybody whose business and character should make him a reasonably safe person to loan to.

This could not be, said Spooner, because of two judicial dicta upholding "arbitrary and unconstitutional" statutes, providing for the legalization of the banking business by the state and fixing the rate of interest, the so-called "usury laws." The first placed the granting of credit into the hands of a few, the second restricted the recipients of credit in a similar manner. It was not possible to determine an arbitrary rate of interest and expect it to operate to the best advantage of the less fortunate. Interest rates depended upon the character of the security tendered the "capitalist" in payment for the loan. The greater the degree of risk involved, the higher would be the rate of interest charged. But the standardization of a fixed rate of interest served to tie this rate of interest to the most approved security,[23] and those unable to tender this approved security obtained no credit. The result? A violation of the right to make contracts, and the granting of a monopoly of the right of borrowing money to those few able to present the type of security deemed safest.[24] It was a pernicious statute, warned Spooner, which allowed one man to borrow enough capital to employ a hundred laborers, but which forbade the individual laborers the facility of borrowing enough to employ themselves independently.[25]

From such materials was fashioned the industrial system, as well. The collection of scattered loanable capital under the control of single bank directories, and its subsequent loan to a few individuals in large sums, brought about the familiar hiring pattern, with "compulsory" selling of one's labor to the privileged employer.[26] Thus the usury laws, on first glance a protection of the less fortunate from exorbitant rates of interest, but actually operating to keep them from achieving economic independence in self-employment and placing them at the mercy of a favored employing group.[27]

The legal structure of debts and the way they were incurred was condemned as the other chief cause of poverty. Here again legal construction was responsible. Spooner declared that a debt had no legal obligation, and usually no moral one, beyond the means and ability of the debtor to pay at the time the debt became due. If this principle were adopted, it would put to an end an entire class of contracts, which, he said were "fraudulent and immoral" from the

beginning. "The law requires no impossibilities from any man," he explained. "If a man contract to perform what proves to be an impossibility, the contract is valid only for so much as is possible," and thus to insist on the fulfillment of a manifest impossibility was absurd.[28] Freedom to contract for any interest rates would give creditors an opportunity to insure against the possibilities of non-payment in full by charging extra interest, almost in the nature of an insurance premium against default. This was not permitted, but the courts allowed creditors to harass the debtors indefinitely until the amount originally due was obtained. This process merely created another "class tension" within society without enhancing the creditor's chance of getting paid.[29] Furthermore, as things stood, the legal structure actually was providing a type of special protection not afforded the remainder of the community. It was the responsibility of the creditor to judge for himself the capacity of the debtor before taking the risk of entrusting property to him. To grant the former permission to indefinitely pursue until satisfaction had been received, amounted, in Spooner's opinion, to protection 14 against the legitimate consequence of his own negligence." Mutual benefit was the only foundation for entry into contracts; at least the particular contract in question "should contemplate no injury to either party." Therefore, if the debtor had "faithfully exercised his best ability for its preservation," the binding nature of this and all similar contracts was at an end when it reached the limit of the debtor's means.[30]

Extremes of wealth brought about by "positive legislation" also underlay most crimes against property and provided the foundation for fraud and vice in general. The tendency for society to separate into "castes" on the basis of their unequal wealth brought about most of society's diseases. What was the influence of reform?[31]

Legislatures, courts, prisons, churches, schools, and moral associations of all sorts are sustained at an immense cost of time, labor, talent, and money. Yet they only mitigate, they do not cure the disease. And Re all efforts to cure diseases, without removing the cause, they must always be inadequate to the end in view. The causes of vice, fraud, crime, excessive wealth and excessive poverty, must be removed, before society can be greatly changed.

While Spooner pointed out the infringement by statute law on the right of contract, he had no formula to offer as a solution, nor any recommendation to make along positive lines. "Each man has the natural right to acquire all he honestly can, and to enjoy and dispose of all that he honestly acquires; and the protection of these rights is all that anyone has a right to ask of government in relation to them."[32] This was his only concession to state interference with the economic life of the people, that each person's rights might be consistent with the equal rights of all the others. A government interfering with this formula of natural right, as they had in the matter of contracts, did so for the benefit of some at the expense of others, and in this class of action he placed nearly all statute law applying to men's "pecuniary interests":[33]

Nearly all the positive legislation that has ever been passed in this country, either on the part of the general or state governments, touching men's rights to labor, or their rights to the fruits of their labor, . . . has been merely an attempt to substitute arbitrary for natural laws; to abolish men's natural rights of labor, property, and contract, and in their place establish monopolies and privileges; to create extremes in both wealth and poverty; to obliterate the eternal laws of justice and right and set up the naked will of avarice and power; in short, to rob one portion of mankind of their labor, or the fruits of their labor, and give the plunder to the other portion.

These were not the words of a proletarian at the barricades but of an established lawyer in a staid community, and they illustrate the degree of affection for natural law as well as aversion for the legislative process and its product. The abolition or disregard of all this intricate mass of legislation, and insistence by the judiciary upon the simple principles which he had outlined would suffice to bring the government into proper focus with relation to the people. It would no longer be an engine of "plunder, usurpation, and tyranny." Otherwise "the ignorant, the weak, and the poor," he said, would be the continual victims of government.[34]

Spooner's research in finance resulted in his proposal in 1861 for a decentralized banking structure strikingly similar to that of Greene's a dozen years before, and of Samuel Adams' and the Massachusetts Land Bank associates of 1740, although he indicated no knowledge of either at this time. It was based on the same principle: that currency should represent an invested rather than a specie dollar, and that mortgages on "property of a fixed and permanent nature" were to comprise the backing. Thus the currency would represent a certain amount of property, fulfilling Spooner's belief that sound money need not be backed by specie but by any type of durable, tangible wealth.[35]

Intended for operation in local areas, the Spooner bank plan incorporated a number of safeguards which were to provide assurance to the public that the mortgages behind the mutual money would always be ample. In the first place, the record of the mortgages were to be open to public inspection, so that each individual might judge for himself as to the sufficiency of the backing. The articles of the banking association were to be circulated in a widespread manner, in which were to be reproduced copies of the mortgages and the certificates of the appraisers, whom Spooner asserted would be "entitled to confidence" if they were selected from the community for their character and judgment. The amount of currency issued was to be restricted to from one-third to one-half of the total value of the real property involved in mortgages. Finally, in the articles of association it was to be made plain that all mortgages were to be made mutually responsible for each other; an insufficient mortgage had to be made good by the banking company. The effect of this provision was expected to make the bank founders examine each others' mortgages carefully and thus guarantee the integrity of all, since no one would wish to put in a good mortgage in the knowledge that one or more worthless ones were also entered.[36] Freedom from fraudulent appraisal was essential, therefore, making it necessary that free access to the records be provided to all for scrutiny at their pleasure. A sound mutual banking system would be provided when those who were to use the currency had the opportunity to know fully by what it was backed and by whom the mortgages which it represented had been appraised. Thus a democratic type of certification, said Spooner, would replace certification by one man or by agents of the state.

Spooner advanced much the same arguments for his bank as had Greene. It would furnish a stable, abundant currency with a low interest rate guaranteed by competition and limited only by the amount of real property, which was exceedingly more plentiful than specie. It would break up the monopoly of money by opening its possession to all who had something to mortgage. It would distribute credit equally through the community and by its abundance would bring about cash payments universally. It would diversify industry by affording credit for engaging in the production of new commodities as fast as they were invented.[37]

Adhering to his long-held premise that the state governments had no constitutional power whatever to prohibit any kind of banking which was naturally just and lawful," he maintained that the system could be introduced lawfully and at the same time bypass chartering or special legislation. The arrangement of the very fact that the conventional banking system required so much special legislation in its favor and the large volume of surveillance necessary thereafter was "sufficient evidence," charged Spooner, that it was naturally vicious and deserved abolition.[39]

Spooner's *New System of Paper Currency* attracted the attention of Amasa Walker, one of the nation's outstanding financial conservatives. Walker questioned Spooner's standing as an exponent of finance, but admitted his plan was an honest one with no element of fraud or deception in its make-up. He noted also its similarity to that of Greene's but concluded with finality that neither would ever succeed.[40] Spooner, who designated Walker as "the highest authority in the country in opposition to all paper currency that does not represent gold and silver actually on hand," considered his objections beside the point, and was incensed and bitter at the condemnation received from such high conservative quarters.[41] He expected the economist to oppose any type of paper which represented property other than coin even though of equal market value, but what was particularly irking was to find himself compared with John Law. This notorious eighteenth century speculator had made no attempt to make his notes redeemable, it was pointed out, while the currency issued under his plan was backed by double its face value in mortgages on property which were appraised in terms of their values in gold dollars.[42]

Spooner introduced his bank project twice more, in 1864 and 1873, at which times federal activity in finance drew his excoriation. His mastery of vituperation became evident as he marshalled objections to the growth of practices and policies which benefited a narrowing minority. Two of the prominent measures by which the administration financed the Civil War, the Legal Tender Acts and the National Banking Act, came under especially bitter fire. He condemned the legal tender acts as clearly unconstitutional on two counts; (1) for interfering with the right of contract, (2) for exceeding the grant of power to Congress.

Congress was delegated nowhere in the Constitution to provide a national currency, or to establish a legal tender which everyone was under obligation to accept and use in the contraction and payment of debts. The power to coin money and to regulate its value did not include the power to make its use universal and mandatory. The parties to a contract alone had the power to fix the tender. What the debtor agreed to pay and the creditor to receive was the legal tender, and Congress had no authority to alter this arrangement. Parties had no legal obligation to make their contracts payable in coin. "They are at perfect liberty to make them payable in wheat, corn, hay, iron, wool, cotton,

pork, beef, or anything else they choose." The real purpose in coining money and establishing it as legal tender was not to force it upon parties to contracts, but to provide commodities whose qualities and quantities might be precisely ascertained, and which would be available for use by all who cared to do so. Congress did not make its money legal tender; the persons who used it as such made it so. To assert that Congress could fix the tender in payment of a debt, in a manner which made it independent of the agreement of the parties concerned, was to establish the power of Congress to make part of the contract, and that they clearly did not possess. Thus, he concluded, the general government was exceeding its commission and infringing on the right of contract by forcing into circulation its own currency and that of the banks it chose to authorize, to the exclusion of all others.[43]

The National Banking Act of February 25, 1863 was also a governmental creature in the interests of a privileged group. Congress had no more power to guarantee the notes of bankers than it had those of farmers, workers or merchants, nor to print their bank notes any more than to furnish their physical properties or pay the bank officers' salaries.[44] Congressional protection of private banks from liability for debts because they were at the same time engaged in performing services to the government also came under fire. The section of the act imposing a ten per cent tax upon all bills in circulation not authorized by Congress was declared even more reprehensible, especially in its potentialities, for by an extension of this principle, he saw nothing in the way of bringing the entire industry and commerce of the land under arbitrary control of congressional favorites.[45]

The appearance of A New Banking System in 1873 was not a response to the financial panic of that year but to the serious fire which devastated part of Spooner's adopted home city of Boston. He proposed that a plan be adopted to help rebuild by making use of the large reservoir of loanable capital in the form of real property in the state, and brought out once more his now familiar arguments in favor of the decentralized mutual banking scheme. Interwoven among the outlines were new blasts at government control of finance, pointing up evils which he painted in lurid shades and, with tendencies toward overstatement, laid directly at the door of the banking act of a decade before.[46]

It pained Spooner to hear constantly of the "National banking system" in tones which suggested a huge impersonal mechanism divorced from humanity and clothed with awesome characteristics. He went to the opposite extreme in denouncing the entire structure as palpably private in all respects and worthy of little reverence. The legal person known as a bank Spooner defined as a group of about 50 people, the actual lenders of money. It was his estimate that in a nation of nearly 40 millions, some 100,000 controlled all credit, and thus exercised similar power over the nation's property and labor:[47]

The "National" system so called, is in reality no national system at all; except in the mere fact that it is called the national system and was established by the national government. It is, in truth, only a private system; a mere privilege conferred upon a few, to enable them to control prices, property, and labor, and thus swindle, plunder and oppress all the rest of the people.

Spooner recited the catalog of objectionable consequences, which included not only the limited supply of loanable capital but the accompanying high rates of interest. American manufacturers borrowed from the banks and then passed the high interest rates on to the ultimate consumers of their products. They could do so safely because the scarcity of money capital would preclude competitive action while the tariff walls would effectively restrain foreign competition to a minimum. The return to specie payments, in view of this situation, he charged, was a false issue, for the real purpose behind the hard money argument was to make credit even harder to obtain and thus insure the continued oligarchical control of the national financial structure.[48]

Spooner's *Our Financiers, Their Ignorance, Usurpations and Frauds*, which first appeared in Tucker's *Radical Review* in 1877,[49] summarized most of his previous stands in which he attacked the federal government as the real power upholding a privileged banking system. Protesting the prohibition by the government through taxation of any other than its own money, and the mass of regulatory and licensing legislation attending the entry into the banking business, he now mustered his choicest polemics for an attack upon the nation's financiers and their part in encouraging monopoly in business and industry. This was now inevitable in view of the increasing centralization of finance. "The establishment of a monopoly of money is equivalent to the establishment of monopolies in all the businesses that are carried on by means of money,"[50] he insisted, "equivalent to a prohibition upon all businesses except such as the monopolists of money may choose to license" through possessing the power of denying credit.

For over twenty years after Spooner's death, the pages of Tucker's *Liberty* were to propagate this declaration, the "money monopoly" becoming the *bete noire* in Tucker's critical evaluation of maturing American capitalism.[51]

II.

The evolution of Lysander Spooner's philosophy to that of unalloyed anti-statism cannot be adequately observed through an examination of his economic thought alone. A long series of political writings paralleled his others. Through these runs the thread of persistent concern over the concepts of natural law, natural justice, and natural rights which eventually led him to denounce all man-made government as superfluous and the legislative process as pure chicanery.

In two small books titled *The Unconstitutionality of Slavery*, the first of which appeared in 1845,[52] he advanced interpretations of law, justice, and government which became basic premises for his attack upon statute law and the nature and functions of the institutions of majority rule. He was not yet a confirmed anti-statist and his preoccupation in these essays was not with the authority of the Constitution but with its interpretation. He criticized Wendell Phillips and William Lloyd Garrison as guilty of grave inconsistency for holding the Constitution to be a slavery-supporting document. It was as an independent slavery-hating lawyer and not as an active participant in political abolitionism that Spooner wrote these works, however. Despite extended relations with Gerrit Smith[53] and the fact that some of his writings became Liberty Party campaign materials in the late 1840's,[54] there is no evidence of his membership in the party at any time, nor of political affiliation with Smith. His books are important for an entirely different reason than as contributions to the literature of the anti-slavery movement.

Spooner was unsatisfied with the use of the word "law" except when defined as "an intelligible principle of right"[55] which existed in the nature of man and things. It of necessity had to be a permanent, universal and inflexible rule, incapable of being established "by mere will, numbers, or power." If this was the case, then, natural law was paramount to whatever rules of conduct might be established by man acting alone or in groups: "There is, and can be, correctly speaking, no law but natural law." In later writings he was to define natural law as "the science of men's rights,"[57] which were in their possession as such strictly on their standing as individuals. There were no such things as group rights, declared Spooner; "Society is only a number of individuals."[58]

Looking about him, he had to admit, nevertheless, that the definition which had come to be universally adopted was not that of the principle of "natural justice" but that of statute or decree. This latter he conceded to be nothing but the prescriptions of "self-styled governments, who have no other title to the prerogative of establishing such rules than is given them by the possession or command of sufficient physical power to coerce submission to them." This he condemned as an undisguised corruption of the term "law," which achieved dignity among the general populace because of the latter's "blind veneration for physical power." Such tacit approval of crime masquerading as law suggested to him an earlier age of human life when another type of superstition had "allowed falsehood, absurdity and cruelty to usurp the name and throne of religion."[59]

Taking up Noah Webster's definition of municipal law,[60] which appeared to be that generally understood as sufficient to cover all usages in ordinary life, Spooner engaged in a structural analysis of it clause by clause, with the intent of demonstrating that it was in reality a shield for reprehensible behavior. He took particular exception to the phrase "supreme power of the state" as the evident source of the status of law. This expression apparently meant force in its largest concentration, which might be in the person or persons of one or several men. This rendered the principle of law extremely uncertain, and, in cases of wide dispersal of power through various factions, actually served to nullify it.[61] If law stemmed from the physical force requisite to obtain obedience thereto, then there was no real distinction between law and force, a condition which deprived it of all "moral character" and rendered it exceptionally unpalatable to a considerable audience. Another implication of this definition, said Spooner, was that a command to commit an injustice was as legal as a commission to perform justice, as long as it emanated from a source sufficiently strong to effect coercion.

If the concept of "law" was unsatisfactorily vague and impermanent, that of the "state" was even more so. Politically or sociologically, there appeared nothing fixed in its nature, character, or boundaries. Again it was the "will and power of individuals" which determined its establishment, and perpetually subject to abolition or incorporation

within that of another, if overcome by individuals of greater strength. "A 'state,' " he pronounced, "is simply the boundaries within which any single combination, or concentration of will and power are efficient, or irresistible, for the time being."[62] Natural law, which recognized the validity of contracts "which men have a natural right to make,"[63] permitted the foundation of government on this basis, but only if the contract was that of an association of individuals, entered into consciously and voluntarily by each as an individual. This governmental contract might authorize means such as statutes "not inconsistent with natural justice for the better protection of men's natural rights,"[64] but under no conditions might it sanction the destruction of natural rights while ostensibly acting in a manner which might be interpreted as furthering them:[65]

…if the majority, however large, of the people enter into a contract of government called a constitution by which they agree to aid, abet or accomplish any kind of injustice, or to destroy or invade the natural rights of any person or persons whatsoever, this contract of government is unlawful and void. It confers no rightful authority upon those appointed to administer it. The only duties which anyone can owe to it, or to the government established under cover of its authority, are disobedience, resistance, destruction.

The idea that there was any inherent authority or sovereignty in a government as such Spooner scouted as an imposture, as he also did the belief in the right of a majority to restrain individuals from "exercise" of natural rights through the utility of "arbitrary enactments." These doctrines he placed in the same category as that of divine right of kings. Judicial tribunals were bound to declare the government or the majority acting in an illegal capacity, whenever involved in promoting anything which subverted natural law and its underlying principle, natural justice, which he defined in one place as "the rendering of equivalents."

Wendell Phillips"[66] reaction to Spooner's political philosophy, apart from his position on the constitutional status of slavery, produced a number of expected categorical rejections, but none more strong than that dealing with the duty of the judiciary. The purpose of a civil government of necessity required that the majority decide what was law, he said. Under Spooner's conception, not only was it an impossibility to conceive of "regular" government, but its adoption was "the first step toward anarchy."[67] In view of the fact that this latter term was not yet used in its scientific concept, the remark had a prophetic quality, in considering the extremity to which Spooner's logic carried him twenty years later.[68] It was Phillips' idea that people were bound to obey all legislative statutes, however unjust, until the body responsible for their passage arrived at their repeal. He did admit that revolution was a proper step in opposition to the "bad laws of a State," but that the laws remained on the statute books, and that judges were bound to enforce them until necessity was removed by the occurrence of a revolt.[69] In some ways the discussion tended to concern two different things, which at times was more or less admitted. Phillips said, "Mr. Spooner is at liberty to say that much of what the world *calls* law is not obligatory because it is not just.... But to assert that because a thing is not right it is not *law*, as that term is commonly and rightfully used, is entering into the question of what constitutes the basis of government among men."[70]

But Spooner pointed out that as a consequence of this belief, it would be impossible to distinguish between constitutional and unconstitutional laws, in the conventional sense, since those that were constitutional *were* binding only until repealed. This would therefore give illegal statutes the same status as the legal, and end by cancelling out the constitution and substituting the unlimited power of the government. Furthermore, while waiting for the repeal of a hateful enactment, the government might take such steps in the curtailment of civil rights and interruption of suffrage as to put it beyond popular power to have any effect in righting the evil condition.[71]

Where his previous theorizing had been confined primarily with an evaluation of the state as a political organism stemming from origins laid in force, with its effectiveness depending on the application of still more force when functioning through a government, Spooner now took up the matter of the composition of government. Aiming to neutralize Phillips' constant dwelling upon law and government as reflections of the majority will, he undertook to precipitate the majestic conception along lines of his own. Looking at the United States Constitution, he declared that the convention delegates represented only one-twentieth of the whole population in the country, and that statutory legislation was produced by men who represented only half of that number.[72] In view of the fact that voters chose a particular representative on the basis of his views on a limited number of "topics," this person was required to legislate on hundreds of others, therefore on such occasions he represented no one but himself. He charged constitutional and statutory law were "manufactured in a ridiculous and fraudulent manner," and especially so when they invaded or destroyed "the natural rights of large bodies of the people."[73] The judges who presided

over their enforcement he considered hardly above the level of "felons."[74] This attack upon representative government he writings after the Civil War. Its inclusion in an anti-slavery pamphlet obviously intended to defend the Constitution from charges of being a slavery-protecting document[75] indicates the direction of his thought. The Spooner of 1887 was hardly more an anarchist than the Spooner of 1847.

By 1852, his attack upon government entered a new phase with the publication of *An Essay On The Trial By Jury*. This was a heavily documented book which undertook to supply a radical revisionist study of this institution and its place in the state of his time. It was still being reprinted in an abridged form by the radical press as late as 1912.[76] The work had for its core the thesis that any legislation either in England or the United States which was in conflict with the common law was summarily invalid.[77] Its subject matter was the evolution of trial by jury from the times of Magna Charta to the mid-nineteenth century and its transformation into a piece of machinery of the state.

In establishing his objections, he made known that it was his understanding that juries in criminal cases over this long period of time were established to function in four specific capacities. There had been "no clearer principle of English or American constitutional law" than the recognized role of the jury in judging the facts of the case, what the law was, and the "moral intent of the accused." But, a fourth though rarely mentioned mission remained, their "primary and paramount duty":[78]

to judge of the justice of the law, and to hold all laws invalid that are in their opinion, unjust or oppressive, and all persons guiltless, in violating or resisting the execution of such laws.

Trial by jury, declared Spooner, indicated a fundamental attitude among Anglo-Saxon people toward their institutions, a distrust of the government. This was reflected in the numerous impediments placed in the way of unrestrained exercise of power by a few, which the governmental conception made feasible and inviting. Unsatisfied by the machinery of obstruction placed within the governmental structure itself, another restraint on the exercise of power was reserved for erection outside it, this being the trial by jury. This, he said, was a trial "by the country," in contra-distinction to a governmental tribunal. Its ideal objective was to define and locate popular liberties against the govemment, rather than allowing the government to set its own limits of operation. It was an impossibility for the people to have any liberties apart from those graciously granted them by the government, unless they were allowed to determine the nature of them through a process free from any degree of governmental interference.

On one particular matter Spooner was emphatic, and that was on defining the term "jury" and interpreting its origin. It was a technical term, he insisted, derived from the common law; hence when the American constitutions, federal or state, provided for the jury trial, it was in the spirit of the common law that this tribunal was to be constructed, and not merely a facsimile which the government chose to devise in its image. In other words, it was the "thing" and not the "name" which was to be provided, thus making it obligatory that jury selection be made according to common law principles.[80]

Of these, two were absolutely essential: (1) in the particular geographical area in question, all the adults were eligible for selection thereon; (2) when the time of actual selection for any particular case was at hand, it should take place in such manner as to bar all possibility of its choice by the government, or governmental interference in the selection.[81] Any legislation which infringed on these two principles was "unconstitutional," therefore, and the judgments of juries which owed their existence to such special circumstance were absolutely "void," since trial by jury had been "abolished" by the first intrusion of the government into such affairs. Spooner charged that in the England and United States of his time, there existed sufficient evidence that the "true" trial by jury did not exist at all, nor had it done so for many years. In England the establishment of property qualifications restricted the selection to less than the whole, an illegality exceeded only by the removal from the people of the right of selecting the sheriffs. Formerly popular officials in charge of the selection of juries, now, said Spooner, they were little more than the king's "tools," and allowed for virtual selection by the king of such juries as he might wish.[82] In the United States, things were hardly any better. He declared that there was no state in which all the names of "adult males" living within its bounds were placed in a box for jury selection. The fact that jurors were selected by sheriffs who owed their appointments to state governors, or by county court judges and clerks of circuit or county courts, was conclusive proof of the "illegality" of the operation of the system in this country.[83] On the basis of common law criteria, he believed that there never had been a single legal jury trial in the history of the country since the adoption

of the Constitution. Hence juries were of no use in controlling the government or preserving popular liberties. Nor was this all; protested Spooner:[84]

If the real trial by jury had been preserved in the courts of the United States-that is, if we had had legal juries, and the jurors had known their rights,-it is hardly probable that one-tenth of the past legislation of Congress would ever have been enacted, or at least, that, if enacted, it could never have been enforced.

Later anarchist hatred of legislation carried no more implications than did this.[85] His proposal included two specific recommendations for rectifying this trend away from popular control. First he proposed appointment of jurors from the names of all adult males contained in a common jury-box for the area regardless of the size of the unit, without those chosen learning that fact from the officials designated to select. Secondly, and also in line with common law conceptions as he saw them, all judges presiding over juries in criminal trials should of necessity be chosen by the people, and not appointed by the government acting in either its executive or legislative capacity.[86]

Spooner had other things in mind besides the guaranteeing of fairness to any particular individual seeking justice through the jury trial system. He was convinced that a jury, obtained in such a way as to preclude the possibility of the government learning its composition, made it exceedingly difficult for the government to pack it with its partisans.[87] Therefore, the jury "veto" was a much sounder guarantee against the perpetuation of "unjust and oppressive" laws than reliance upon repeal by a succeeding legislature brought into power by the exercise of the franchise:[88]

As unanimity is required for a conviction, it follows that no one can be convicted, except for the violation of such laws as substantially the whole country wish to have maintained. The government can enforce none of its laws (by punishing offenders, through the verdicts of its juries), except such as substantially the whole people wish to have enforced.

Spooner, obsessed with the importance of the struggle for the preservation of minority rights, felt that at best the "government" was a portion or "faction" of the people, interested in the support of its program. The legislators involved were "irresponsible" during the period for which they were elected, generally free from fear of removal and neither accountable nor "punishable" when their term in office had elapsed. Hope of a greater degree of honesty on the part of a succeeding legislature was not sound; if the group they were elected to replace could be proved to have been elected for "motives of injustice," it merely demonstrated that a portion of society had desired to establish injustice, and might succeed in more effective manner at a subsequent date. Change was no guarantee of betterment; it might even result in a worsening of conditions. A government that could enforce its laws for one day without making recourse to the "whole" people directly or through one of its representative tribunals was an absolute government. Trial by jury served the function of demanding that the government obtain its consent before punishing the violators of the laws it passed. It was the further supposition that twelve men chosen by lot from the mass of the people constituted a more representative cross-section of "the country" than any group representing "the government." Trial by jury gave to anyone the freedom of choice to violate any of the govemment's laws, should such individual be willing to allow the jury to decide whether the law broken was a just one. Should even a "reasonable doubt" exist as to the justice of the law, the benefit of such doubt should be given to the defendant and not to the government.[89]

In one sense, said Spooner, trial by jury was a formal establishment of the right of revolution, which no government ever willingly acknowledged. Government never admitted the injustice of its laws, and revolt was possible only by such elements as actually established a degree of physical strength superior to the government. If they should prove unsuccessful, regardless of the justifiability of the rebellion, they were always subject to punishment for treason, since the government in power alone judged the nature of treason.[90] Trial by jury in the sense in which he was speaking of it was the only real support for this "right of resistance." Constitutions were no effective limit to the power of the government, if those in power felt that the people would not compel them to remain within its restrictions. "If the people are as good as their word, they may keep the government within the bounds they have set for it; otherwise it will disregard them."[91] Granted the existence of a jury trial system which still remained in complete popular control, resistance to governmental overbearing was thus made available, and neutralization of "tyrannical" legislation made possible without recourse to violence.

Spooner dismissed the argument that the government was an instrument created by the people for the purpose of furthering their own interests, and that to allow the jury, a popularly chosen and representative body, to invalidate acts of the government, was to pit the people against themselves. He pointed out that regardless of the degree of faith in the impartiality of the government existing among the people as a whole, there already were a number of "tribunals" before which acts of the government were required to undergo review. To add the jury to both houses of the national legislature, the president, and the judges of the federal court system was no significant deviation.[92]

In his mind, the real issue was even more basic than this. It was imperative that the jury once more be installed in its previous position of theoretical dominance to preserve the small amount of political liberty wrung from past despotisms.[93] The divine right of kings, he said, was "fast giving place" to another fetish, the belief that in a given area, the larger number of the people had a right to govern the smaller. Granted that majority rule might be less onerous than rule by a single tyrant, still the principle was no more true. "Obviously there is nothing in the nature of majorities that insures justice at their hands," he declared; they had the same frailties as minorities, and had no qualities which made it evident that they were immune from acting in an oppressive manner. The "question of right" remained far above the matter of political tactics, and was no more determined in a situation where two men ruled one than where one man ruled two. To take for granted the coincidence of justice and majority will, he warned, "is only another form of the doctrine that might makes right.[94]

Another implication stemmed from the assumption of the virtuousness of majority rule. Minorities had no rights in the government. This was a necessary concomitant, in view of the fact that the majority determined what rights the minority were to enjoy, without hindrance from the latter. This was an intolerable situation; the minority should have at least one weapon available unqualifiedly at its disposal:[95]

It is indispensable to a *free* government...that the minority, the weaker party, have a veto upon the acts of the majority. Political liberty is liberty for the *weaker party* in a nation. It is only the weaker party that lose their liberties when a government becomes oppressive. The stronger party, in all governments, are free by virtue of their superior strength. They never oppress themselves. Legislation is the work of the stronger party; and if . . . they have the sole power of determining what legislation shall be enforced, they have all power in their hands, and the weaker party are the subjects of an absolute government.

Nor would Spooner countenance majority rule on the basis of the argument that the side of superior numerical strength was a more or less valid indication of probability of being "right." The "lives, liberties and properties of men" were of too great esteem to risk them to possible destruction unless the action in which men engaged was based on "certainty beyond a reasonable doubt,"[96] and this was insured only by the unanimity which the jury principle made obligatory. In one sense, this process enabled the minority to "defeat the will" of the majority, but only in a negative capacity. No possibility of passage of laws by the minority existed; the refusal to back laws which they found undesirable to themselves was all that the trial by jury might reinforce, at best.[97]

Such was the gist of Spooner's plea on behalf of the reinstatement of a system of trial by jury which confirmed anti-statists of a later generation, as well as Spooner himself during his last years, viewed as the only sure protection from governmental oppression short of violent revolutionary action. *Trial by Jury* also marked the end of his political writing which retained any noticeable element of restraint. In a series of pamphlets titled *No Treason*[98] which he began publishing a short while after the close of the Civil War, he compounded an attack on the conduct of the war, the Republican Party, and eventually the entire structure of political democracy. While the earliest of the series reflected in part the disillusionment of a portion of the intellectual fringe of the New England anti-slavery element, and dwelt at some length upon the material consequences of the war,"" the last developed into an attack upon the institutional state and the United States Constitution which surpassed in extremity and daring any similar document written and published by a native American. Many of the arguments and much of the spirit of *No Treason* were revived fifteen years later, when a fully-developed anarchist press was in full bloom.

Spooner's anti-government sentiments were thoroughly aroused by boasting on the part of elements of the North over the crushing of Southem "dissent" in the name of "liberty and free government." He said it resembled a holy war fought in the interests of establishing a state religion, and in actuality took the form of a repudiation of government by consent.[100] The idea of a government by consent implied an important principle: consent from each individual person who was required to furnish support to the government either through the paying of taxes or

supplying some type of personal service. Without this, it must be admitted that the government in question is not founded on consent at all. To obtain the consent of only so many as was necessary to obtain control over the remainder was not establishing a government by consent; rather, it was the fruition of "a mere conspiracy of the strong against the weak." Consent could not be presumed in any case whatsoever, despite the prevailing tendencies of governments to do so. Spooner held that the surest sign that a government was not "free" was the prevalence of coercion in securing support of any number of persons, no matter how small. "There is no other criterion," he charged, "by which to determine whether a government is a free one, or not, then the single one of its depending, or not depending, solely on voluntary support."[101]

Having expressed his conception of the anarchist foundation of society, the voluntary organization through free association, he went on to hammer away at the orthodox understandings of government by consent and the sensitive problem of treason. He considered the South "equally erroneous" with the North concerning allegiance. The latter he claimed insisted that each individual was held in allegiance to the federal government, the former similarly claimed such adherence was due the state government. Spooner disavowed the owing of "involuntary" allegiance on the part of the individual to either of these political structures.[102]The very word "allegiance" itself appeared nowhere in the Constitution. Nor did any similar word, implying the existence of such "services" as fidelity or obedience to the government, occur in the document. His examination of the preamble to the Constitution convinced him that the latter "professes to rest wholly on consent," and that any material relation or spiritual attitude toward the government on the part of the individual persons stemmed wholly from this condition of consent. Duty or obligation were not a part of this matter, nor could either be so at a later time.[103]

In addition to this, several facts convinced him that at best the Constitution could not be construed in any sense but that of an "association during pleasure." Those who made it had no power to contract for others than themselves in political or any other matters. To maintain that a group of men might make political agreements binding on future generations was as valid as to believe that they also possessed the power to make business or marriage contracts mandatory upon them. In the case of those who adopted the Constitution, no evidence existed to indicate the period of time for which they pledged their support. Hence the "original parties" to this article of government were, at most, bound for no longer than the period during which they cared to give it their support, and certainly for no longer a time than their own life span."[104] Spooner insisted that if the Constitution was to be considered the work of individual persons, there was "no escape" from such conclusions as these.

Viewed in this light, the issue of treason also underwent a qualification through definition. Governments not founded upon the principle of "consent" assumed the unwavering fidelity of all people living under them, and were inclined to view all resisters as treasonous. This was the addiction of the absolutist, said Spooner, and was a "false and calumnious" application."[105] Treason properly designated meant only treacherous or deceitful conduct resulting in a wilful breach of faith; an open enemy in the act of rebellion could not be construed a traitor under any stretching of the meaning of the word."[106] For this reason he dismissed the heated northern sentiment which leaned toward wholesale indictment of the South on this charge. Treason rested its entire case upon the supposition that the accused person had at one time granted his consent, and had subsequently acted in an unfaithful manner. Unless prior consent could be proved against the person involved in treachery accusations, the case could not stand, since it was impossible to be treasonous to a government if support to it had never been *voluntarily* yielded.[107]

Such tightly-wired theoretical arguments filled much of the *No Treason* pamphlets. Indulgence in personalities and specific citations was not prominent until the final number of the series appeared in 1870. In this he flatly rejected the entire Constitution and all the political usages that had grown under it throughout its existence, after a quarter century of writing about the problem created by its devious interpretation. It is true that in view of his doctrine of individual voluntary consent he had long been dubious of the process of adoption, due to the by-passing of the women, children, Negroes, and a large percentage of the nation's white adult males through state property qualifications. Now his opposition was summary in nature. He was convinced that the instruments of government were being utilized almost wholly in the interests of a few favored segments of the population. Written in a provoking and inflammatory style, midway during the Reconstruction period, its sentiment was transmitted almost intact to a later time when conscious anarchists absorbed it into their propaganda.

Spooner recited his argument that the Constitution possessed no authority of itself, and that it merely represented a contract drawn up among persons now long dead, even though relatively few persons then living had been allowed

to take formal part in expressing either approval or dissent at the time of its adoption. He denied the possibility of legally establishing its binding character upon generations since that time; "There is in the Constitution nothing that professes or attempts to bind the 'posterity' of those who establish it." To assume as much amounted to making people the "slaves of their foolish, tyrannical and dead grandfathers."[108] Thus Spooner in a prominent sense was engaged in reviving the stand of the critics of Thomas Hobbes and the social contract theory, who held that the only persons bound to such an agreement were those actually participating in a pact of submission to a ruler. Therefore, being unable to act for anyone but themselves, they could certainly be unable to bind their posterity to an unchanging order."[109]

The principal onslaughts in this last pamphlet were directed at the voting, taxpaying, and lawmaking functions performed under the representative democracy. It was his contention that neither participation in elections nor the paying of taxes were valid evidence of either support or attachment to the Constitution, despite general assertions in the affirmative. The manner in which these functions were performed precluded such an interpretation. A voluntary vote indicated support of the basic document of government; however, denoted Spooner, the restricted number allowed access to the ballot made the process the obvious workings of a minority. Without citing actual statistics, he estimated that no more than one-sixth of the entire nation's population had access to the voting booths, and only a fraction of those qualified actually performed the act of voting. Therefore, all those failing to vote technically withheld their support of the Constitution, and thus the government was clearly a conscious product of a minority. This was not his only argument. He questioned the possibility of determining those who actually voted voluntarily, as well as specifically locating the "voluntary supporters" of any given government:[110]

As everybody who supports the Constitution by voting does so secretly, and in a way to avoid all personal responsibility for the acts of his agents or representatives, it cannot legally or reasonably be said that anybody at all supports the Constitution by voting. No man can reasonably or legally be said to do such a thing as to assent to, or support, the Constitution, unless he does it openly, and in a way to make himself personally responsible for the acts of his agents, so long as they act within the limits of the power he delegates to them.

The secret ballot he looked upon as a source of two kinds of evil. It enabled groups of people who were not in accord to continue acting without an understanding, and to look forward with expectancy to belonging to the more numerous group in the hopes of thus forcing their desires and wills upon the other. In addition it permitted the rise of an office-holding group which operated in an irresponsible vacuum, blessed with anonymity through the secret ballot, which destroyed the possibility of planting specific responsibility. "The secret ballot makes a secret government," charged Spooner: "Open despotism is better than this. The single despot stands out in the face of all men and says: I am the State: my will is law; I am your master. I take the responsibility of my acts; . . . But a secret government is little better than a government of assassins."[111]

The combination of the secret ballot and Article 1, Section 6 of the Constitution served to demolish any notions remaining that a government of open responsibility was intended. Elected to office by people whom they did not know, senators and representatives were protected by this part of the Constitution from responsibility for any legislation which they might subsequently pass while in this office. The right to vote out incumbents every two, four, or six years was no "remedy" for this situation; they were merely replaced by others who exercised similar ..absolute and irresponsible" power.[112] A person injured by the passage of legislation was unable to place responsibility upon a single person either inside or outside the legislative halls, and least of all the latter: "these pretended agents of the people, of everybody, are really the agents of nobody."[113] The claim of legislators to being the representatives of the people, while at the same time being granted immunity by the Constitution for their actions as legislators, he decried a contradiction, since one could not be responsible and irresponsible for the same thing at the same time.

In like manner, the payment of taxes was no more a valid method of determining voluntary support[114] to the Constitution than participation in voting. The theory that taxes were paid voluntarily was involved in this interpretation, disregarding the "practical fact" that most tax remittances were made "under the compulsion of threat." Taxpayers acceded to the policies of the abstraction "the government" through fear of jail, confiscation, or violence should they make physical resistance.[115] Unable to determine the nature of the "government," the individual knew only the tax-collector, another person representing himself as an "agent" of this "government," and payment was made with no comprehension of the destination of eventual disposal of his money. He warned that a

tax structure of this kind was a serious threat to "liberty," since all political power eventually depended upon money, and the entity controlling the money collected in taxes might pursue a course of action ruinous to the very supplier of the funds thus utilized. That taxes might be justified on the basis that collection was made by some men from other men, for the purpose of "protecting" them, he labeled as "perfect absurdity." He considered individuals competent enough to make their own arrangements of this kind, and certainly no warrant existed for the protection of anyone against his will.[116] Advised Spooner, "the only security men can have for their political liberty consists in keeping their money in their own pockets, until they have assurances perfectly satisfactory to themselves that it will be used for their benefit."[117]

The *No Treason* blast touched other items of controversial content. Oaths given by governmental officials, soldiers, naturalized persons and the late rebels of the South he dismissed as "of no validity or obligation" due to the inability of specifically designating to whom they were given. Pledges to support the Constitution in the name of "the people of the United States" or similar generalities were written off as ineffective and inadequate.[118] Nor did he believe that the governments of European countries entertained degrees of political virtue lacking in his own land. The monarchies of Europe he described as corrupt alliances between "discredited royalties" and large continental banking houses. Since the latter supplied the funds which equipped and paid the various armies, the power of the national states of Europe logically lay in the control of finance capitalism. It was impossible for a ruling house to survive in any other way. Adequate credit relations had to be maintained with the banks to remain in power, while these latter received the benefits derived from the exploitation of the taxpayers, trade relations with weaker neighbors and satellites, and the regimentation of the submerged colonial peoples of the respective countries.[119] Our diplomatic relations with these lands were thus involving the United States government with even less worthy individuals acting in a supposed representative capacity on their own part.[120]

In spite of the extremity and provocativeness of his attacks upon both the theory and practice of government in the United States, it is unlikely that Lysander Spooner's writings excited more than local intellectual curiosity. For over ten years after the completion of the *No Treason* series his writings in defense of anarchism were buried in a number of treatises on free banking. Due to his preference for non-associative criticism, it is probable that Spooner might have remained in obscurity for the remainder of his time had not the great increase of anarchist writing and periodical publication of the period after 1880 brought some of his defenses of anti-statism to the attention of a wide international reading audience of radical bent.

The publication of his pamphlet *Natural Law*[121] in 1882 came to the attention of anarchist groups both in the United States and Europe. A short while later, as an independent contributor to *Liberty*, his standing in the anarchist camp grew rapidly. *Natural Law* was an essay in political and social philosophy primarily, but written to establish the thesis that human legislation was impotent and futile when made in ignorance, conscious or otherwise, of the "principle of justice" embodied in "natural law."

Spooner's primary objective was to establish the principles of natural law and what he terrned the "science of justice," which, he said, stemmed from the phenomenon of "natural rights." Each person either came into the world with these rights, or else he passed his existence without them, for clearly they were not capable of being manufactured and distributed by men at some undesignated time later on.[122] What was known as justice merely defined what rights all obtained at birth, and to deny that such was the case put all discussions of justice and rights forever off the agenda of humanity. If there was no natural principle of justice, then the possibility of a moral standard[123] did not exist, and the concepts of "justice" and "injustice" themselves were absolutely meaningless. Furthermore, the concept of crime was mere imagination, and all that transpired on earth resembled natural occurrences such as rainstorms and the growth of vegetation.[124] "If justice be not a natural principle," he deduced, "governments have no reason to take cognizance of a non-entity, and all their professions of establishing justice or of maintaining justice are simply the gibberish of fools."[125]

On the other hand, if it were admitted that there was such a thing as a natural principle of justice, then it must of necessity be no more susceptible to alteration or change than gravitation. Thus there was no place for the legislation of men in this situation either, for it was an "assumption of authority and dominion" where the right to do so did not exist, nor where the necessity for such was needed. Thus there was a "science" of justice, "that each should live honestly toward each other, 11126 which was capable of being learned as were the other sciences. In fact, he

insisted that for the most part, the fundamentals of the science of justice were often learned and practiced before the words which were used to describe it were understood.[127]

How, then, were governments and legislation to be accounted for? To Spooner, both were subversions of natural justice and natural law, growing from an attempt of a portion of mankind to live off the production of the remainder, and extended as far back in history as the period when the systematic cultivation of the soil made possible an accumulation of material wealth in excess of that needed for daily needs on the part of the cultivators.[128] From the actual slavery of both the producer and his product there evolved an emancipation from the former condition. The retention of ownership of land and the means of production made it mandatory that the newly freed in body "sell" their labor, which practically restored the former situation. The relative mobility of the non-owning group and the tendency for the earning of a living to become lodged in a groove of unending insecurity promoted a large volume of social disruptions such as stealing. This prompted the passage of numerous laws defining such activities as crimes, "to keep these dangerous people in subjection." There was just one purpose for the formation of the historic state, "simply to keep one class of men in subordination and servitude to another.[129] As unpalatable as such an interpretation might prove to be among other shades of society, conservative, liberal, or radical, the fact that *Natural Law* went into three editions in three years [130] indicated the acceptability of its message among the anarchists.

Spooner, now living in retirement in Boston, contributed two final additions to the anti-state literature which, although producing little new thought, were the most amazing and daring of all in that they were addressed to prominent public figures in American political life. Shortly after the appearance of *Natural Law*, his *Letter to Thomas F. Bayard*was featured in *Liberty*.[131] Using the veteran Delaware senator as a symbol of the representative government which he despised so thoroughly, the unregenerate Boston anarchist summed up his arguments against the delegation of legislative power,[132] the secret ballot, the passage of legislation, and the validity of the Constitution.[133]

In the summer of 1885 Tucker began the publication of *Spooner's A Letter to Grover Cleveland: On His False, Self-Contradictory, and Ridiculous Inaugural Address*, [134] which ran through 19 lengthy installments and ended shortly after the Haymarket[135] explosion, when the first genuine crisis in American radical activities was precipitated. This was the most elaborate of the summations which he was to contrive, and like his manifestoes addressed to Bayard, synthesized his early contributions with little new material added. To the readers of *Liberty* it was a work of contemporary freshness, and it achieved sufficient popularity among them to warrant publication shortly afterward in book form.[136]

His association with the growing number of Tuckerites stimulated him to even more drastic repudiations of the state. He inveighed against the right of the state to take the life of anyone, or interfere with men's individual private contracts, or erect monopolies of land or money to the benefit of some at the expense of others.[137] He went on to ridicule the concept of "public rights," as he had long before, and several other generalities and platitudes from the Cleveland inaugural speech.[138] He denied the existence of a "public trust," generally cited as the wellspring of authority vested in the presidency, and declared that the devotion to the "public welfare" would inevitably lead to the destruction of men's individual rights under the guise of promoting their prosperity.[139] He reserved his most eloquent contempt for the party system,[140] which he thought a type of game which stimulated artificial relationships of antagonism among men naturally undisposed to belligerency, promoting synthetic conflict for the purpose of aggrandizing crafty leaders. In no less vigorous manner did he depreciate the activities transpiring in what the President had described as "the halls of national legislation." To Spooner these were mere cockpits to which the lawmakers invited the representatives of all conceivable conflicting interests, where the former might "favor or oppose. . . . according as they can better serve their own personal interests and ambitions by doing the one or the other."[141] At the same time, he commented acidly on the patronizing attitude of the political elements in taking credit for such material prosperity as was enjoyed, while continuing the process of vitiating the efforts of non-political individuals and encouraging an increasing degree of dependence upon the ability of the government, now fully engaged in supplying a favorable state of affairs wherein the favored monopolies might function.[142]

Spooner's death in 1887[143] brought to an end both his pamphleteering and his anonymous contributions to *Liberty* at the time when the nationwide loose affiliation of antigovernment intellectuals was at its peak. With this group his prestige grew with the passing of time, so that some twenty years later, examining their antecedents, those with a historical bent were willing to admit that Spooner's contributions to American anarchism were fully as

important as Josiah Warren's.'" The undecorated egoistic doctrines of Max Stirner were already looming in the writings of the Tucker group, intruding on the earlier basis of anarchist thinking, and altering some of the tenaciously-held concepts, especially those dealing with the abstraction of natural right. The flowering of American anarchism under the leadership of Benjamin Tucker, and the gradual swing to intellectual egoism, is a many-sided and personality-filled account best considered in relation to new circumstances which tended to modify the contributions of its important forerunners.

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1. Brief biographical data can be located in *Dictionary of American Biography*, XVII, 466-467, and *Appleton's Cyclopedia*, V, 634-635. See also the entry in Sprading, Great Libertarians, 258, and Liberty, IV (May 28, 1887), 4-5. Tucker's six column obituary notice is a short biography in itself, incorporating much material which appears in no other work. Tucker, as the executor of Spooner's literary effects, had access to valuable documentary items and unpublished manuscripts, all of which were destroyed by fire in 1908.

2. While living in Ohio, Spooner collaborated with another lawyer, Noah H. Swayne, in an attempt to prevent the state board of public works from "draining" the Maumee River. See *Spooner vs McConnell et al. An Argument Presented to the United States Circuit Court in Support of a Petition for an Injunction to Restrain Alexander McConnell and Others from Placing Dams in the Maumee River*, Ohio (n.p., 1839); *Liberty*, IV (June 18, 1887), 8.

3. Albert Post, *Popular Freethought in America*, 1825-1850, p. 288. Spooner authored a similar treatise which appeared two years earlier. *The Deist's Immortality and an Essay on Man's Accountability for His Belief* (Boston, 1834).

4. Said Spooner, "All men of common sense disregard authority." *Deist's Reply*, 41. *The Deist's Reply* was run serially in Underhill's *Cleveland Liberalist* during part of 1836. Post, *Popular Freethought*, 63.

5. Spooner did not believe that the Constitution was a class document; his earlier criticisms centered around its interpretation to the advantage of one element of the populace or another. After the Civil War, his attacks bore directly upon the very authority of the Constitution, and grew in audacity and antagonism.

6. Spooner, *Constitutional Law Relative to ... Banking*, 24.

7. "It is obvious that all these arguments in favor of laws controlling the obligation of contracts are urged almost entirely by men who have been in the habit of regarding the legisltive authority as being neraly absolute - and who cannot realize the idea that 'the people' of this nation . . . should ordain it that their natural right to contract with each other, and 'the obligations of contracts' when made, should not be subjects of legislative caprice or discretion." *Constitutional Law Relative to . . . Banking*, 16.

8. *Constitutional Law Relative to..... Banking*, 20. 9.

9. *Constitutional Law Relative to..... Banking*, 21.

[10] *Constitutional Law Relative to . . . Banking*, page cited above.

11. *Liberty*, IV (May 28, 1887), 4.

12. S. 51; for text see *Congressional Globe*, 28 Cong., I Sess., XIII, 431-432. Sections 10-14 provided for the outlawing of the private mail companies. The arguments on the part of proponents of the bill did not concern issue of revenues, but of furnishing a "great governmental instrument of service," and heavy subsidization was expected to equalize heavy deficit operational expenses anticipated. There was no stress on its political significance as far as a

source of sympathetic supporters at election times, while it was brought out that in most areas the postmasterships were not attractive financially.

13. Remarks by Merrick in *Congressional Globe*, 28 Cong., 2 Sess., XIV, 206.

14. Spooner, *The Unconstitutionality of the Laws of Congress Prohibiting Private Mails*, 5.

15. *Private Mails*, 19, 22.

16. *Private Mails*, 16. He asserted that the concept of "freedom of speech" included the freedom of transmission of manuscript correspondence.

17. "Government functionaries, secure in the enjoyment of warm nests, large salaries, official honors and power, and presidential smiles-all of which they are sure of so long as they are partisans of the President-feel few quickening impulses to labor, and are altogether too independent and dignified personages to move at the speed that commercial interests require. They take office to enjoy its honors and emoluments, not to get their living by the sweat of their brows.... The consequence is, as we now see, that a cumbrous, clumsy, expensive and dilatory government system is once established, it is nearly impossible to modify or materially improve it. Opening the business to rivalry and free competition is the only way to get rid of the nuisance." *Private Mails*, 24.

18. *Liberty*, IV (May 28, 1887), 5. Fifty years after its publication, Spooner's pamphlet attacking the restriction of the private mail companies was still being sold to the readers of *Liberty*, along with 21 of his other publications. Liberty, X (May 19, 1894), 12.

19. In a letter to Stephen Pearl Andrews, Spooner expressed disappointment that editors such as Horace Greeley downgraded Spooner's private mail company and tried to minimize his influence. "The latter may think it was their editorials that caused the reduction," Spooner commented, "But I affected the debates in Congress, and the votes in 1843, 1844, and 1845 show that something besides editorials, or the example of English nostage, caused the disturbance in Congress, and *forced* them (for they acknowledged themselves forced), to a reduction." Spooner to Andrews, July 4, 1851, Baskette Collection. See also Spooner, *Who Caused the Reduction in Postage?* (Boston, 1851). Tucker called him "the father of cheap postage in America." Spooner has come in for recognition in a recent popularized treatment of the early days of the federal postal system; see Ernest A. Kebn, Henry M. Goodkind, and Elliott Perry, "Look Before You Lick," in *Readers Digest*, L (June, 1947), 125-127. A recent evaluation sympathetic to the private companies is Frank Chodorov, *The Myth of the Post Office* (Hinsdale, Ill., 1948).

20. Spooner,*i*, 8, 23.

21. *Poverty*, 7-8.

22. *Poverty*, 15.

23. *Poverty*, 8-9.

24. *Poverty*, 9-10.

25. "Of all the frauds by which labor is cheated out of its earnings by legislation...probably no one is more purely tyrannical or more destructive...than that monopoly of the right to borrow money." *Poverty*, 12-13.

26. *Poverty*, 15-16.

27. ". . . almost all fortunes are made out of the capital and labor of other men than those who realize them. Indeed, large fortunes could rarely be made at all by one individual, except by his sponging capital and labor from others. And the usury laws are the means by which he does it." *Poverty*, 11.

28. *Poverty*, 65-67

29. *Poverty*, 18-19, 46-47

30. *Poverty*, 22, 73

31. *Poverty*, 54.

32. *Poverty*, 59.

33. *Poverty*, 59-60.

34. *Poverty*, 61-62.

35. The plan of this bank had actually been written in 1860, but was published along with *A New System of Paper Currency* a year later as *Articles of Association of a Mortgage Stock Banking Company*. For the details of the operation of the bank see Spooner, New Paper Currency, 9-13.

36. *New System of Paper Currency*, 14-15, 21-23. It was his belief that a local bank founded on fraudulent mortgages would be discredited at home, and get no circulation in other places at all. Having no credit at home, it certainly would get none "abroad," hence there would be no danger of swindling of the public by bad banks.

37. *New System of Paper Currency*, 5, 15, 17-20.

38. "…it seems plain enough that government has constitutionally no more power to forbid men's selling an invested dollar than it has to forbid the selling of a specie dollar. It has constitutionally no more power to forbid the sale of a single dollar, invested in a farm, than it has to forbid the sale of the whole farm. The currency here proposed is not in the nature of a credit currency,…it constitutes simply of bona fide certificates of Stock, which the owners have the same right to sell that they have to sell any other Stocks." *New System of Paper Currency*, 17.

39. *New System of Paper Currency*, 47-51.

40. Amasa Walker, "Modern Alchemy," in *The Banker's Magazine and Statistical Register*, XI, new series, 407-413.

41. See Spooner's remarks of twelve years later in *A New Banking System: The Needful Capital for Rebuilding the Burnt District*, 75-77, 413.

42. "The property that is represented by the paper, and which constitutes the real money, is just as real substantial property as is gold or silver, or any other money or property whatever. Ant it is really an incorrect and false use of the term to call such money *paper money*, as if the paper itself were the real money; or as if there were not money, and no value, outside of the paper. A dollar's worth of land, wheat, iron, wool, or leather is just as much a dollar in real value as is a dollar of gold or silver; and when represented by paper, it is just as real money, as far as value is concerned, as is gold and silver." Spooner, "Gold and Silver as Standards of Value," in *Radical Review*, 1, 765. This article was later translated and reprinted in the French language Costa Rican anarchist periodical *Le Semeur*, I (October, 1927), 1-6. Stress is Spooner's.

43. Spooner, *Considerations for Bankers and Holders of United States Bonds*, 37-49, 67-68.

44. *Considerations*, 73-78.

45. *Considerations*, 81-84.

46. Spooner, *New Banking System*, 5-6, 16-17, 25-33, 55-56.

47. *New Banking System*, 19-20.

48. *New Banking System*, 68-74.

49. This was reprinted as a separate pamphlet this same year; page citations are from this latter edition.

50. Spooner, *Our Financiers*, 12.

51. For late critical writings and support of the localized free banking system by Spooner, see Our Financiers, 3-13, 16-18; *The Law of Prices: A Demonstration of the Necessity for an Indefinite Increase of Money*, 3, 11-13; *Universal Wealth Shown to be Easily Attainable*, 3-9, 18-20.

52. *The Unconstitutionality of Slavery; Part Second* followed in 1846, and the two were combined in 1847, in a single work. Subsequent editions appeared in 1853, 1856 and 1860. Spooner's other writing on the slavery question, again hinging on the legal aspect, was confined to a slim volume titled *A Defence for Fugitive Slaves Against the Acts of Congress of February 12, 1793 and September 18, 1850*, published in Boston in this latter year. Page citations from the first of the works on the unconstitutionality of slavery are from the 1845 edition, while from the second, the edition of 1856 has been used, the 1846 edition being especially scarce.

53. Smith had high praise for Spooner's thesis, and remarked at one time that he believed it to be "unanswerable." Frothingham, *Gerrit Smith*, 202. For later legal relations between Spooner and Smith, see Harlow, *Gerrit Smith*, 417-422.

54. See for instance its unanimous approval at the 1849 convention of the Liberty Party. Frothingbam, *Gerrit Smith*, 190. For the failure of the formal inclusion of his main point in the Liberty Party creed, due to lack of support in the Midwest, consult Theodore C. Smith. *The Liberty and Free Soil Parties in the Northwest* (New York, 1897), 89, 98-101, 118-119.

55. Spooner, *Unconstitutionality* (1845), 5.

56. *Unconstitutionality* (1845), 8.

57. In his *Poverty: Its Illegal Causes and Legal Cure* of 1846, Spooner had pronounced, "Natural law is the science of men's rights.... It is impossible that men can have any rights (either in person or in property), in violation of natural law,-for natural law is justice itself. . . . The nature of justice can no more be altered by legislation than the nature of numbers can be altered by the same means." *Poverty*, 63.

58. Spooner, *The Law of Intellectual Property*, or, *An Essay On the Right of Authors and Inventors to Perpetual Property in Their Discoveries and Inventions*, 103; same author, *Poverty*, 64.

59. *Unconstitutionality* (1845), 11-12.

60. Of the twenty-five definitions for the word "law," Spooner extracted the second, "municipal law"; "a rule of civil conduct prescribed by the supreme power of a state, commanding what its subjects are to do, and prohibiting what they are to forbear; a statute." *An American Dictionary of the English Language; Exhibiting the Origin, Orthography, Pronunciation, and Definitions of Words* (New York, 1839), 488.

61. *Unconstitutionality* (1845), 12-14.

62. *Unconstitutionality* (1845), 15.

63. *Unconstitutionality* (1845), 8.

64. "This is the legitimate and true object of government: ... rules and statutes not inconsistent with natural justice and men's natural rights, if enacted by such government, are binding, on the ground of contract, upon those who are parties to the contract which creates the government, and authorizes it to pass rules and statutes to carry out its objects." *Unconstitutionality* (1845), 9.

65. *Unconstitutionality* (1845), 9-10.

66. On the background of the publication of *Phillips' Review of Lysander Spooner's Essay on the Unconstitutionality of Slavery*, see Carlos Martyn (ed.), *Wendell Phillips the Agitator* (Boston, 1890), 216-217.

67. *Review*, 15.

68. "Mr. Spooner's idea is practical no-govermentism. It leaves everyone to do 'what is right in his own eyes.' After all, Messrs. Goodell and Spooner... are the real no-government men;…" *Review*, 10.

69. *Review*, 25.

70. *Review*, 9.

71. See the extended development of this point in Spooner, *Defence for Fugitive Slaves*, 28.

72. *Unconstitutionality* (1856), 153-154.

73. "The whole object of legislation, excepting that legislation which merely makes regulations, and provides instrumentalities for carrying other laws into effect, is to overturn natural law, and substitute for it the arbitrary will of power. In other words, the whole object of it is to destroy men's rights. At least, such is its only effect. . . . Yet the advocates of arbitrary legislation are continually practising the fraud of pretending that unless the legislature !nake the laws, the laws will not be known. The whole object of the fraud is to secure to the government the authority of making laws that never ought to be known." *Unconstitutionality* (1856), 142.

74. *Unconstitutionality* (1856), 137, 152.

75. There was of course a fundamental disagreement between Spooner and Phillips as to the sanction of slavery. Phillips maintained that it was recognized and allowed under English common law, which Spooner denied. He rejected Phillips' proof through utilizing the assumption that the villein of Magna Charta times was the equivalent of the 19th century slave. It was Spooner's opinion that the common law was improperly designated when assumed to be that prevailing in early 13th century England. Actually, he said, it predated the beginning even of the royal state, and that no subservience of one man to another predated the establishment of such superior and inferior relationships by the state, in one capacity or another. Hence, he concluded, to observe that government abolished slavery at any particular time was merely to witness the undoing of a vicious condition which it had established under different circumstances in the first place. Spooner, Law of Intellectual Property, 170-173, 226-227; Phillips, *Review*, 94-95. For contradictory interpretations of slavery and origins of English common law, see William S. Holdsworth, *A History of English Law* (12 vols. London, 1922), 11, 1, 30-31. It is beyond the scope of a work of this kind to enter into extended discussion of the complicated matter of the natural law doctrine and its implications. Of great value, especially with relation to the United States are Charles G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930); Benjamin F. Wright, *American Interpretations of Natural Law* (Cambridge, Mass., 1931). See also Hans Kelsen, *General Theory of Law and State* (Anders Wedberg, translator) (Cambridge, Mass., 1945).

76. An abbreviated edition of this work, edited by Victor Yarros, appeared in Boston in 1890 under the title *Free Political Institutions*, after having been printed serially in Liberty from June 8 through December 28, 1889. A

second edition in book form was published in London in 1912, under this same title. See the brief interpretation by A. John Alexander, "The Ideas of Lysander Spooner," in *New England Quarterly*, XXIII (June, 1950), 200217, which stresses this work.

77. Spooner, *Trial by Jury*, introduction, i.

78. *Trial by Jury*, 5. Spooner believed that if the jury had no right to judge "of the justice of the law," it would be no protection to the accused person, since the government might easily go on from there to dictate the "laws of evidence" and the weight that might be given to such evidence as they cared to admit in any given trial. Many ideas expressed in this work had already been given by Spooner in others written in 1850. See for example *Defence for Fugitive Slaves*, 5-6, 18-25, 67-70; *Illegality of the Trial of John W. Webster*, 3-15.

79. *Trial by Jury*, 6.

80. *Trial by Jury*, 142.

81. *Trial by Jury*, 143.

82. *Trial by Jury*, 155.

83. *Trial by Jury*, 156.

84. *Trial by Jury*, page cited above.

85. By this time Spooner was convinced that the study of statutory and constitutional law was not one of a definite science of abstract and permanent principles, but one of a technique of language. Like Warren, he objected to the uncertainty and nebulousness of wording which made statutes capable of a wide variety of interpretations. This only strengthened his suspicions that the "government of law" which he heard constantly mentioned in platitudinous speeches in actuality depended upon the judgment, in many situations, of a single man as to what the law really was.

86. *Trial by Jury*, 156, 164.

87. Spooner castigated the practice of the government, on empanelling juries, of inquiring of prospective jurors whether they had scruples against finding verdicts of guilty in cases of a specific crime. Mentioning as examples the fugitive slave laws and capital punishment, he was convinced that in such cases the government was clearly overstepping its bounds. *Trial by Jury*, 8-9.

88. *Trial by Jury*, 7.

89. *Trial by Jury*, 13-15, 178-180, 189-190.

90. *Trial by Jury*, 16.

91. *Trial by Jury*, 19.

92. *Trial by Jury*, 12.

93. One of Spooner's special distastes was the doctrine that "ignorance of the law excuses no one," a "preposterous" device which the courts asserted as a means of preserving "absolute power in the government." The right of the jury to judge the statutes of the government and to decide whether they infringed on the rights of the citizens was thus vitiated. *Trial by Jury*, 181.

94. *Trial by Jury*, 206-207.

95. *Trial by Jury*, 214-215.

96. *Trial by Jury*, 208. Spooner would probably have been delighted by lbsen's assertion that the majority was always wrong.

97. "It will be said that if the minority can defeat the will of the majority, then the minority rule the majority. But this is not true in any unjust sense. The minority enact no laws of their own. They simply refuse their assent to such laws of the majority as they do not approve. The minority assume no authority over the majority; they simply defend themselves. They propose a union; but decline submission." *Trial by Jury*, 218-219.

98. This series was to have consisted of six numbers, but only 1, 2 and 6 ever were published. In the foreword to the sixth series, Spooner revealed that the previous three were non-existent, but gave no reason for the hiatus.

99. Despite his hatred of things political, Spooner and a few associates in the East formed a curious little group known as the Free Constitutionalists, with the aim of defeating the Republican Party in the 1860 election. Convinced that the Republican stand on the slavery issue was hypocritical, the Spooner group believed that a defeat would cause a rupture in the party and a reforming of lines with all those not entirely opposed to slavery no longer part of its structure. The issue of slavery in the territories was a blind to cover the real issue, whether a man was a slave in any of the states in the Union. Spooner contended that if he was a slave in one state, he was in the same status in all, and if free in one, he was a free man in all the remainder. See the interesting *Address of the Free Constitutionalists to the People of the United States* (Boston, 1860), 2-4, 7-19, 30, 38-46, 53-54. Spooner underestimated the capacity of the South for rebellion. Five years before the war began, he predicted that the South would not secede. Deploring force, he was unable to comprehend the possibility of its utility in settling the matter of slavery or sectional controversy, which he continued to consider in abstract and legal or constitutional dress. See his *Unconstitutionality of Slavery* (1856), 293-294.

100. Spooner, *No Treason* (No. 1, The Suppression of the Rebellion Finally Disposes of the Pretence That the United States Government Rests on Consent), 3-6, 10. Spooner later entered into a thoroughgoing economic interpretation of the war. He asserted that control of Southern markets was the real motive behind Northern business participation in the war, and not any love of abstract liberty or justice. The loan of enormous sums of money at high rates of interest to the North was now going to be repaid by the Republican administration through a large-scale tax program, with an extra advantage thrown to the manufacturers in the form of high tariffs. He labeled Grant "the chief murderer of the war," and the "agent" of the "new policy" of high tariffs, high taxes and monopoly of the currency through the creation of the new banking system. *No Treason* (No. VI, The Constitution of No Authority), 54-58. See also Curti, *Peace or War*, 71, 134.

101. *No Treason* (No. 1), 6-8; *No Treason* (No. 11, The Constitution), 13.

102. *No Treason* (No. 11), 13.

103. *No Treason* (No. 11), I 1.

104. *No Treason* (No. 11), 3-5, 11, 16.

105. *No Treason* (No. 1), 12-14. The American Revolution, said Spooner, was the result of separate voluntary actions taken by individuals; the colonial governments had no right to absolve the people from allegiance to the king, and when acting as legislatures, it was in the capacity of individual revolutionists only. Therefore George III erred in calling the colonists traitors, since they had not declared their allegiance to him as individuals, and betrayed nobody.

106. *No Treason* (No. 11), 7-8.

107. *No Treason* (No. 11), 8, 11-12.

108. *No Treason* (No. VI), 3-6. Nearly a half century before, Thomas Jefferson declared, "Can one generation bind another in succession forever? I think not.... Rights and powers can only belong to persons, not to things. A generation may bind itself as long as its majority continues in life; when it has disappeared, another majority is in place, hold all the rights and powers their predecessors once held, and may change their laws and institutions to suit themselves." Thomas Jefferson to Major John Cortwright, June 5, 1824, in Andrew A. Lipscomb (ed.), *The Writings of Thomas Jefferson* (19 vols. Washington, 1904), XVI, 48.

109. Ernst Cassirer, *The Myth of the State* (New Haven, 1946), 173-175.

110. *No Treason* (No. VI), 11. If people wished to conduct a government on the order which the Constitution provided for, then there was no reason why they should not sign the "instrument" itself, so as to openly certify their wishes and also to make themselves individually responsible for such govermnental acts as might transpire. It was Spooner's belief that the reason the people at large were not asked to sign the Constitution was the fear that if given the opportunity as individuals, they would have rejected it. *No Treason* (No. VI), 26-27.

111. *No Treason* (No. VI), 28-29.

112. *No Treason* (No. VI), 23.

113. *No Treason* (No. VI), 25.

114. Said Spooner on this matter in 1852, "Trial by the country, and no taxation without consent were the two pillars of English liberty ... and the first principles of the Common Law. It was a principle of the Common Law, as it is of the law of nature, and of common sense, that no man can be taxed without his personal consent. The Common Law knew nothing of that system . . .of *assuming* a man's own consent to be taxed because some pretended representative, whom he had never authorized to act for him, has taken it upon himself to consent that he may be taxed. This is one of the many frauds on the Common Law . . . which have been introduced since Magna Charta. Having finally established itself in England, it has been stupidly and servilely copied and submitted to in the United States." *Trial by Jury*, 222-223.

115. *No Treason* (No. VI), 14-15.

116. *No Treason* (No. VI), 15-17.

117. *No Treason* (No. VI), 17.

118. *No Treason* (No. VI), 35-36, 39-41.

119. He was especially outspoken in his denunciation of the "National Debt," which he dismissed as a fiction, declaring that the war had been actually paid for as it had been fought, and that the whole debt might be defaulted by the mere act of individuals refusing to pay taxes. Not a penny of actual wealth would be destroyed by this process, concluding that the Republican slogan "maintaining the National Honor" was a "merr, shibboleth," designed to mask a gigantic levy upon the taxpayers in order to pay the interest on the loans of the Northern bankers. *No Treason* (No. VI), 56, 58-59.

120. *No Treason* (No. VI), 42-43, 47-51.

121. The full title of this pamphlet was *Natural Law; or the Science of Justice; a Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society, Showing That All Legislation Whatsoever Is an Absurdity, a Usurpation and a Crime*. For a reprint see *Liberty*, I (March 18, 1882), 4.

122. *Natural Law*, 12.

123. *Natural Law*, 11, 15.

124. "All comparisons as honesty vs. dishonesty, justice vs. injustice, etc., postulate a natural principle, otherwise they are meaningless words and admit that the greatest force and fraud are the only laws for governing the relations of men with each other." *Natural Law*, 14.

125. *Natural Law*, 10.

126. *Natural Law*, 6. He foresaw the need of voluntary associations, however, "for the maintenance of justice" and "protection against wrong-doers," the former among themselves, the latter a defense against outside molesters. He retained the Warrenite principle of respecting the individual right of choice to remain outside the association, holding coercion unjustified under any circumstances.

127. This he believed could be observed in the conduct of young children, especially in the reactions to theft and bodily aggression. *Natural Law*, 8-9.

128. *Natural Law*, 17.

129. *Natural Law*, 18, 20-21. For the similarity of Spooner's interpretation to the sociological concept of the state as developed by later students, compare with that of Franz Oppenheimer, *The State*, 15-21, 274-289.

130. *Natural Law* was read eagerly by European anarchists, and furnished the inspiration for the series of articles published in the Swiss anarchist periodical Le Revolte under the title "Law and Authority." These sought to establish in the minds of the readers of the anti-statist press the relative novelty of codified law in the whole of human history, and to disprove the beneficial character ascribed to civilizations noted for extended legal systems. For a friendly American commentary see *Liberty*, I (July 22, 1882), 1.

131. As "A Letter to Thomas F. Bayard: Challenging His Right and the Right of All Other So-called Senators and Representatives in Congress-To Exercise Any Legislative Power Whatever Over the People of the United States," it was first published in *Liberty*, 11 (May 27, 1882), 2-3, and then in pamphlet form. Bayard, a senator from 1869 until his resignation in 1885 to enter Cleveland's cabinet, provoked Spooner into writing "A Second Letter to Thomas F. Bayard," after the latter read a speech delivered in Brooklyn on April 6, 1884, which appeared in Liberty, 11 (May 17, 1884), 6-7. For Bayard's speech see Boston Herald, April 6, 1884; for his senatorial tenure, *Congressional Globe*, 41 Cong., 1 Sess., LXII, 1; *Congressional Record*, 49 Cong., I Sess., XVII, 4. For biographical material consult Charles C. Tansill, *The Congressional Career of Thomas Francis Bayard*, 1869-1885 (Washington, 1946).

132. ""…under the pretence that this instrument gives them the right of all arbitrary and irresponsible dominion over the whole people of the United States, Congress has now gone on, for ninety years and more, filling great volumes with laws of their own device, which the people at large have never read, nor even seen, nor ever will read or see; and of whose legal meanings it is morally impossible that they ever should know anything. Congress has never dared to require the people even to read these laws. Had it done so, the oppression would have been an intolerable one; and the people, rather than endure it, would have either rebelled, and overthrown the government, or would have fled the country. Yet these laws, which Congress has not dared to require the people to even read, it has compelled them, at the point of the bayonet, to obey." *Letter to Bayard*, 7. Page citation is from the pamphlet edition.

133. *Letter to Bayard*, 3-6, 8-10.

134. The Letter appeared in Liberty almost without interruption from June 20, 1885 through May 22, 1886. Its actual writing was completed May 15.

135. The relations between Tucker and the American anarchists and the Haymarket group are discussed in Chapter VIII.

136. As a book of 112 pages it came out July 3, 1886 under a slightly different title: *A Letter to Grover Cleveland, On His False Inaugural Address, the Usurpations and Crimes of Lawmakers and Judges and the Consequent Poverty, Ignorance and Servitude of the People*. Citations are from this edition or from the serial articles in *Liberty*.

137. Spooner, *Letter to Cleveland*, 31-80.

138. For the text of the President's address see *Congressional Record*, 49 Cong., I Sess., XVII, 2-3; James D. Richardson, *A Compilation of the Messages and Papers of the Presidents*, 1789-1897 (10 vols. Washington, 1898), VIII, 299-303.

139. *Liberty*, III (June 20, 1885), 2-3; (July 18, 1885), 2; *Letter to Cleveland*, 7-8, 11.

140. *Liberty*, III (August 15, 1885), 2; (September 12, 1885), 2; (October 3, 1885), 2; (October 24, 1885), 2; *Letter to Cleveland*, 15-16, 22, 24, 27, 30.

141. *Liberty*, III (August 15, 1885), 2; *Letter to Cleveland*, 17.

142. The influence of Tucker's hammering at the monopoly-granting power of the government is evident in the following: if a government is to 'do equal and exact justice to all men,' it must do simply that and nothing more…if it gives monopolies, privileges, exemptions, bounties or favors to any, it can do so only by doing injustice to more or less others. It can give to one only what it takes from others; for it has nothing of its own to give to anyone. No honest government can go into business with any individuals, can give no one any special aid to competition, or protect anyone from competition. It can do no one any favor, nor render to any one assistance which it withholds from another. it must take no cognizance of any man's 'interests.'" *Liberty*, III (August 15, 1885), 3; *Letter to Cleveland*, 15.

143. A 3 1/2 hour memorial meeting was held in Boston on May 29, 1887, at which one of the speakers was the old abolitionist friend of Spooner, Theodore Dwight Weld. See report of this gathering in *Liberty*, IV (June 18, 1887), 7-8.

144. See for instance the article "The First American Anarchist" by Clarence Lee Swartz in *Liberty*, XV (February, 1906), 53-54.