

## VII

Having presented ideas on banking, slavery, and the law, Spooner still remained poor, continuously threatened with poverty. America seemed unwilling to reward him for his contributions. His fate was not singular;

in the nineteenth century, scientists, writers, and inventors, could seldom support themselves from their research and writing. Their income came from teaching, law, medicine, or some similar time-consuming work. Joseph Henry (1794–1878), for instance, made fundamental contributions in the physical sciences, notably in understanding electromagnetism; he supported himself teaching, and later with a government job as director of the Smithsonian Institution.<sup>1</sup>

With his longest (and incomplete) work, *The Law of Intellectual Property* (1855), Spooner intended to guarantee a living for those working with their minds. He argued that the English and American copyright laws protecting authors, and patent laws protecting inventors, were inadequate and unconstitutional. They were inadequate because they failed to protect a citizen's right to his intellectual property; they were unconstitutional because they deprived citizens of their property.

His argument followed *Trial by Jury* in tracing the rights of intellectual property back to the common law; existing laws are dismissed, and "the law of intellectual property" is established from first principles. Essentially the idea is that productions of the mind, no less than productions of the hands, are property. Like life and liberty, property is one of these inalienable and self-evident natural rights. Existing laws are unconstitutional because they confiscate the thinker's production and without his or her consent give it to others. With their property rights secured, men of intellect could then be sure of a living for their work.

Beyond the natural justice of restoring inherent rights to the intellect, Spooner hoped his work would encourage writing and invention in the interest of the people. The intellect was capable of "defending, enlightening, enriching, and elevating" everyone. "It is poor economy," he wrote, "on the part of the common people, to attempt by stealing their [intellectual workers'] knowledge, instead of buying it, to defraud intellect of its wages." If unpaid, men of thought will serve those who will pay — oppressive governments, monopolists, armies, and other established powers; intellectuals themselves will then become agents of oppression. (*Law of Intellectual Property*, p. 240)

Although Spooner's theory of knowledge may seem somewhat crude ("knowledge is property"), his sociology of knowledge is quite modern and accurate: those thinkers who serve the status quo are richly rewarded, those who serve humanity are impoverished, if not worse treated. "Thus legislators, judges, lawyers, editors, teachers of all kinds, physicians, and soldiers are continually selling their knowledge — and, perhaps, quite as frequently their ignorance and falsehoods — for money." (*Letter to Scientists and*

<sup>1</sup> "Joseph Henry," *Dictionary of American Biography*.

*Inventors*, p. 7) Spooner wanted to eliminate these frauds and replace them with those who would “enlighten, enrich, and liberate all mankind.”

In the 1850's, hard-pressed for money and unable to finish *The Law of Intellectual Property*, Spooner turned to mechanical inventions (which he had praised so amply).

For one of his ideas he received a patent from the government: “#15,021, Improvement in Elastic Bottoms for Chairs and other articles — patented June 3, 1856.”<sup>2</sup> Spooner wrote his friend George Bradburn:

“I have great confidence that it is going to be valuable. I wish I had the money for it now, that I might give my attention to other things. The world is ‘famishing for lack of knowledge,’ which I could give them; and I every day reproach myself for being engaged in such commonplace business as making money, or getting a living.” (May 25, 1856)

Since the world failed to appreciate his genius or to buy his books, Spooner hoped they might buy his beds and chairs. “If I should establish a good reputation for beds and chairs,” he continued, “that may prove such a stepping stone to public favor, that I may hope to resume my profession of author, philosopher, reformer, and oracle . . .”<sup>3</sup>

In search of financial support for the manufacture of his patented elastic bottoms, Spooner turned to his friend and more successful inventor, Elias Howe. Howe was himself hardly established in the 1850's; he had invented the sewing machine in 1845, but could find a market for the invention only in England. Moreover, he had to suffer a long court battle over his patent rights, which were resolved in his favor only in 1854. Thus, when Spooner applied to him for help, Howe had little spare capital to advance. At first Howe seems to have bought an option on Spooner's patent (although he was late in making his payment), but eventually, in the fall of 1857, he wrote Spooner not to count on him. Later Spooner experimented with paint; again he turned to Howe for support. Whatever the details of the transaction, Spooner emerged feeling cheated and wrote a pamphlet, “The Sewing Machine Fraud.” Fortunately, this seems never to have been printed and not to have survived in manuscript. “Suffer he must,” wrote Smith, “from your unmeasured vituperation — but more from your merciless logic.” Understandably, this matter ended Spooner's friendship with Elias Howe.<sup>4</sup>

Failing as an author and as an inventor, Spooner turned next to business, and in 1863 he organized the Spooner Copyright Company. The company

<sup>2</sup> Commissioner of Patents, *Report*, 1856, II, 305; III, 458.

<sup>3</sup> Lysander Spooner to George Bradburn, May 25, 1856. Spooner Papers, New York Historical Society.

<sup>4</sup> Gerrit Smith to Lysander Spooner, November 8, 1861. Spooner Papers, New York Historical Society. There are several cryptic letters between Spooner and Howe in both the New York Historical Society and the Boston Public Library.

was incorporated to sell Spooner's banking ideas to those who wished to open a bank under his system as expounded in *New System of Paper Currency* (1861). The "Articles of Association of the Spooner Copyright Company for Massachusetts," provide a practical demonstration of Spooner's *Law of Intellectual Property*. Those who would use the banking ideas would pay a one percent fee for use of the "invention." The ideas themselves, as property, were capital for the company. The company was legally incorporated with trustees and charter, but evidently not a single customer was ever found.

Ironically, Spooner came into some money through a strange libel suit prosecuted by Gerrit Smith. The New York Democratic Vigilant Association (Buchanan supporters) attempted to blame John Brown's attack on Smith, to whom they attributed Spooner's 1858 manifesto, "Plan for the Abolition of Slavery." They published their attack in the *New York Herald*, October 27, 1859, and as a pamphlet.<sup>5</sup> Gerrit Smith sued them for libel because they had falsely linked him with Spooner's broadside; he had seen it only months after publication and had then feared it would be "laughed at as a 'joke' . . ."<sup>6</sup> It was true that Smith had contact with John Brown, but the evidence the Association used to prove an alliance was largely false.

Smith retained several attorneys in the case, but Lysander Spooner was his chief lawyer. By his own testimony, Spooner was in the best position to prove the falseness of charges against Smith. In the long legal maneuverings, however, Spooner proved to be quite impatient and threatened to resign several times because Smith did not take his advice exactly as offered. A member of the committee libeling Smith was in the diplomatic corps, and whether he could be sued in the New York courts was unclear. Smith's other lawyer, Charles Sedgwick, wanted to drop the issue, but Spooner believed the case should be pushed to the Supreme Court if necessary. When his advice was not followed, he offered his resignation. Spooner wrote Smith that he was acting "not from wounded pride, but from a feeling of the inutility, and unprofitableness and even impertinence of my offering arguments, that were to produce no effect."<sup>7</sup> Smith, however, convinced him to stay on and in fact did follow many of Spooner's recommendations.

The Vigilant Association had made their accusations in the hopes of

<sup>5</sup> Their work can be followed in the *Herald*, October 19, October 20, October 21, October 22, and October 27, 1859.

<sup>6</sup> Gerrit Smith to Lysander Spooner, February 2, 1859. Spooner Papers, New York Historical Society. For accurate evidence of Smith's connection with John Brown, see the preface by Boyd B. Stutler in the new edition of the *Provisional Constitution and Ordinances of the People of the United States* (Weston, Mass., 1969).

<sup>7</sup> Lysander Spooner to Gerrit Smith, August 29, 1860. Spooner Papers, New York Historical Society.

discrediting the Republican party and particularly William Seward, the Republican candidate for governor. Once the election had ended with Seward's victory, they were eager enough to settle out of court. Smith settled for costs and lawyers' fees — most of which went to Spooner. The two thousand dollar fee was a minor fortune for him since he managed to live on about two hundred dollars a year. Gerrit Smith wrote, "From the bottom of my heart do I rejoice that a good Providence has at last brought round to you some recompense for your invaluable services in the cause of freedom and of sound sense. Little did we foresee this way of your getting pay for writing your admirable books."<sup>8</sup>

<sup>8</sup> Gerrit Smith to Lysander Spooner, October 25, 1860. Spooner Papers, New York Historical Society.