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Edited by Bruce Caldwell

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The plan is provisional. Minor alterations may occur in titles of individual books, and several additional volumes may be added.



THE COLLECTED WORKS OF  
F. A. Hayek

VOLUME II

THE ROAD TO SERFDOM  
Text and Documents

*The Definitive Edition*

EDITED BY

BRUCE CALDWELL



The University of Chicago Press

# THE COLLECTED WORKS OF F. A. HAYEK

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## EDITORIAL FOREWORD

The first volume in *The Collected Works of F. A. Hayek* was the last book that Hayek wrote, *The Fatal Conceit*. It was the first volume in two respects: it was volume 1 in the series, and it was the first published, in 1988. The founding general editor was the philosopher W. W. Bartley III, and he initially envisioned that the series would contain twenty-two volumes—at least, that was what was noted in the material describing the planned series in *The Fatal Conceit*. Wisely, Bartley added the proviso that “the plan is provisional.” It is now anticipated that there will be nineteen volumes in all, but the original proviso still applies.

Much has happened since 1988. A second volume produced under Bartley’s editorship was published in 1991, but it was a posthumous contribution, Bartley having succumbed to cancer in February 1990. Soon thereafter Stephen Kresge took over the position of general editor, and under him five more volumes were produced. The volumes in the series did not appear in numerical order: to date, volumes 1, 3, 4, 5, 6, 9, and 10 have been published.

In spring 2002 Stephen Kresge asked me whether I might be interested in becoming the next general editor. I was, and after the Hayek family and representatives from the University of Chicago Press and Routledge all signed off, my work began. The first year or so was taken up with getting editorial material shifted from California to North Carolina, rethinking the ordering of the volumes, establishing relationships with existing and potential volume editors, and seeking funds to support the project.

*The Road to Serfdom: Text and Documents—The Definitive Edition* is the first volume to appear under the new general editorship. Others are on the way. I anticipate fairly steady progress over the next few years as the project moves toward completion.

In the first volume Bill Bartley briefly stated the editorial policy for the series as follows: “The texts of subsequent volumes will be published in corrected, revised and annotated form” and “essays which exist in slightly variant forms, or in several different languages, will be published always in English or in English translation, and only in their most complete and finished form unless some

## PLANNING AND THE RULE OF LAW

Recent studies in the sociology of law once more confirm that the fundamental principle of formal law by which every case must be judged according to general rational precepts, which have as few exceptions as possible and are based on logical subsumptions, obtains only for the liberal competitive phase of capitalism. —Karl Mannheim<sup>1</sup>

Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of the great principles known as the Rule of Law. Stripped of all technicalities, this means that government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge.<sup>2</sup> Though this ideal can never be perfectly achieved, since legislators as well as those to whom the administration of the law is entrusted are fallible men, the essential point, that the discretion left to the executive organs wielding coercive power should be reduced as much as possible, is clear enough. While every law restricts individual freedom to some extent by altering the means which people may use in the pursuit of their aims, under the Rule of Law the government is prevented from stultifying individual efforts by *ad hoc* action. Within the known rules of the game

<sup>1</sup> [Karl Mannheim, *Man and Society in an Age of Reconstruction*, op. cit., p. 180. —Ed.]

<sup>2</sup> According to the classical exposition by A. V. Dicey in *Introduction to the Study of the Law of the Constitution*, 8th ed. (London: Macmillan and Co., 1915), p. 198, the Rule of Law "means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power; and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of government." Largely as a result of Dicey's work the term has, however, in England acquired a narrower technical meaning which does not concern us here. The wider and older meaning of the concept of the rule or reign of law, which in England had become an established tradition which was more taken for granted than discussed, has been most fully elaborated, just because it raised what were new problems there, in the early nineteenth-century discussion in Germany about the nature of the *Rechtsstaat*. [For more on the latter tradition, see F. A. Hayek, *The Constitution of Liberty*, op. cit., chapter 13. —Ed.]

the individual is free to pursue his personal ends and desires, certain that the powers of government will not be used deliberately to frustrate his efforts.

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

Economic planning of the collectivist kind necessarily involves the very opposite of this. The planning authority cannot confine itself to providing opportunities for unknown people to make whatever use of them they like. It cannot tie itself down in advance to general and formal rules which prevent arbitrariness. It must provide for the actual needs of people as they arise and then choose deliberately between them. It must constantly decide questions which cannot be answered by formal principles only, and, in making these decisions, it must set up distinctions of merit between the needs of different people. When the government has to decide how many pigs are to be raised or how many busses are to be run, which coal mines are to operate, or at what prices shoes are to be sold, these decisions cannot be deduced from formal principles or settled for long periods in advance. They depend inevitably on the circumstances of the moment, and, in making such decisions, it will always be necessary to balance one against the other the interests of various persons and groups. In the end somebody's views will have to decide whose interests are more important; and these views must become part of the law of the land, a new distinction of rank which the coercive apparatus of government imposes upon the people.

The distinction we have just used between formal law or justice and substantive rules is very important and at the same time most difficult to draw precisely in practice. Yet the general principle involved is simple enough. The difference between the two kinds of rules is the same as that between laying down a Rule of the Road, as in the Highway Code, and ordering people where to go; or,

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

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

This argument is twofold; the first is economic and can here only briefly be stated. The state should confine itself to establishing rules applying to general types of situations and should allow the individuals freedom in everything which depends on the circumstances of time and place, because only the individuals concerned in each instance can fully know these circumstances and adapt their actions to them. If the individuals are to be able to use their knowledge effectively in making plans, they must be able to predict actions of the state which may affect these plans. But if the actions of the state are to be predictable, they must be determined by rules fixed independently of the concrete circumstances which can be neither foreseen nor taken into account beforehand: and the particular effects of such actions will be unpredictable. If, on the other hand, the state were to direct the individual's actions so as to achieve particular ends, its action would have to be decided on the basis of the full circumstances of the moment and would therefore be unpredictable. Hence the familiar fact that the more the state "plans," the more difficult planning becomes for the individual.

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

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

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

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

In fact, as planning becomes more and more extensive, it becomes regularly necessary to qualify legal provisions increasingly by reference to what is "fair" or "reasonable"; this means that it becomes necessary to leave the decision of the concrete case more and more to the discretion of the judge or authority in question. One could write a history of the decline of the Rule of Law, the disappearance of the *Rechtsstaat*, in terms of the progressive introduction of these vague formulas into legislation and jurisdiction, and of the increasing arbitrariness and uncertainty of, and the consequent disrespect for, the law and the judicature, which in these circumstances could not but become an instrument of policy.<sup>3</sup> It is important to point out once more in this connection that this process of the decline of the Rule of Law had been going on steadily in Germany for some time before Hitler came into power and that a policy well advanced toward totalitarian planning had already done a great deal of the work which Hitler completed.

There can be no doubt that planning necessarily involves deliberate discrimination between particular needs of different people, and allowing one man to do what another must be prevented from doing. It must lay down by a legal rule how well off particular people shall be and what different people are to be allowed to have and do. It means in effect a return to the rule of status, a reversal of the "movement of progressive societies" which, in the famous phrase of Sir Henry Maine, "has hitherto been a movement from status to contract."<sup>4</sup> Indeed, the Rule of Law, more than the rule of contract, should prob-

<sup>3</sup>[Hayek discusses the decline of the rule of law in *The Constitution of Liberty*, op. cit., chapter 16.—Ed.]

<sup>4</sup>[Sir Henry Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*. Fourth American edition from the tenth London edition (New York: Henry Holt, 1906), p. 165. English jurist and historian Sir Henry Maine (1822–1888), from 1877 the Whewell professor of international law at Cambridge, wrote extensively on the origins and growth of legal and social institutions. The line is taken from the final sentence of chapter 5, titled "Primitive Society and Ancient Law." —Ed.]

ably be regarded as the true opposite of the rule of status. It is the Rule of Law, in the sense of the rule of formal law, the absence of legal privileges of particular people designated by authority, which safeguards that equality before the law which is the opposite of arbitrary government.

A necessary, and only apparently paradoxical, result of this is that formal equality before the law is in conflict, and in fact incompatible, with any activity of the government deliberately aiming at material or substantive equality of different people, and that any policy aiming directly at a substantive ideal of distributive justice must lead to the destruction of the Rule of Law. To produce the same result for different people, it is necessary to treat them differently. To give different people the same objective opportunities is not to give them the same subjective chance. It cannot be denied that the Rule of Law produces economic inequality—all that can be claimed for it is that this inequality is not designed to affect particular people in a particular way. It is very significant and characteristic that socialists (and Nazis) have always protested against "merely" formal justice, that they have always objected to a law which had no views on how well off particular people ought to be,<sup>5</sup> and that they have always demanded a "socialization of the law," attacked the independence of judges, and at the same time given their support to all such movements as the *Freirechtsschule* which undermined the Rule of Law.

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

The conflict between formal justice and formal equality before the law, on the one hand, and the attempts to realize various ideals of substantive justice and equality, on the other, also accounts for the widespread confusion about the

<sup>5</sup>It is therefore not altogether false when the legal theorist of National Socialism, Carl Schmitt, opposes to the liberal *Rechtsstaat* (i.e., the Rule of Law) the National Socialist ideal of the *gerechte Staat* ("the just state")—only that the sort of justice which is opposed to formal justice necessarily implies discrimination between persons. [German jurist Carl Schmitt (1888–1985) was a critic of liberal parliamentarianism and defender of the authoritarian state. In the 1930s he attempted to reconcile his views with those of the Nazis, offering legal justifications of their takeover of the government and defending the Nuremberg Laws that excluded Jews from public and social life. Though he lost favor with the Nazis by 1936, outside of Germany he was often viewed as the legal theorist of National Socialism. Hayek also refers to the *Freirechtsschule*, which is the German term for "legal realism," a doctrine that holds that instinct rather than rule-following is the actual basis of judicial interpretation of the law. —Ed.]

concept of “privilege” and its consequent abuse. To mention only the most important instance of this abuse—the application of the term “privilege” to property as such. It would indeed be privilege if, for example, as has sometimes been the case in the past, landed property were reserved to members of the nobility. And it is privilege if, as is true in our time, the right to produce or sell particular things is reserved to particular people designated by authority. But to call private property as such, which all can acquire under the same rules, a privilege, because only some succeed in acquiring it, is depriving the word “privilege” of its meaning.

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

The Rule of Law was consciously evolved only during the liberal age and is one of its greatest achievements, not only as a safeguard but as the legal embodiment of freedom. As Immanuel Kant put it (and Voltaire expressed it before

him in very much the same terms), “Man is free if he needs to obey no person but solely the laws.”<sup>6</sup> As a vague ideal it has, however, existed at least since Roman times, and during the last few centuries it has never been so seriously threatened as it is today. The idea that there is no limit to the powers of the legislator is in part a result of popular sovereignty and democratic government. It has been strengthened by the belief that, so long as all actions of the state are duly authorized by legislation, the Rule of Law will be preserved. But this is completely to misconceive the meaning of the Rule of Law. This rule has little to do with the question whether all actions of government are legal in the juridical sense. They may well be and yet not conform to the Rule of Law. The fact that someone has full legal authority to act in the way he does gives no answer to the question whether the law gives him power to act arbitrarily or whether the law prescribes unequivocally how he has to act. It may well be that Hitler has obtained his unlimited powers in a strictly constitutional manner and that whatever he does is therefore legal in the juridical sense. But who would suggest for that reason that the Rule of Law still prevails in Germany?

To say that in a planned society the Rule of Law cannot hold is, therefore, not to say that the actions of the government will not be legal or that such a society will necessarily be lawless. It means only that the use of the government's coercive powers will no longer be limited and determined by pre-established rules. The law can, and to make a central direction of economic activity possible must, legalize what to all intents and purposes remains arbitrary action. If the law says that such a board or authority may do what it pleases, anything that board or authority does is legal—but its actions are certainly not subject to the Rule of Law. By giving the government unlimited powers, the most arbitrary rule can be made legal; and in this way a democracy may set up the most complete despotism imaginable.<sup>7</sup>

<sup>6</sup>[I was unable to locate the quotation attributed to Kant, but for the other, Hayek refers to François Marie Arouet de Voltaire, *Oeuvres Complète de Voltaire*, vol. 23 (Paris: Garnier, 1879), p. 526, where Voltaire writes, “La liberté consiste à ne dépendre que des lois.” —Ed.]

<sup>7</sup>The conflict is thus *not*, as it has often been misconceived in nineteenth-century discussions, one between liberty and law. As John Locke had already made clear, there can be no liberty without law. The conflict is between different kinds of law—law so different that it should hardly be called by the same name: one is the law of the Rule of Law, general principles laid down beforehand, the “rules of the game” which enable individuals to foresee how the coercive apparatus of the state will be used, or what he and his fellow-citizens will be allowed to do, or made to do, in stated circumstances. The other kind of law gives in effect the authority power to do what it thinks fit to do. Thus the Rule of Law could clearly not be preserved in a democracy that undertook to decide every conflict of interests not according to rules previously laid down but “on its merits.” [Locke described the state of nature as “a state of perfect freedom.” He went on to say, however, that men form civil societies and submit themselves to laws in order better to preserve their liberty and property. See John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), Treatise 2, chapters 4, 9. —Ed.]

If, however, the law is to enable authorities to direct economic life, it must give them powers to make and enforce decisions in circumstances which cannot be foreseen and on principles which cannot be stated in generic form. The consequence is that, as planning extends, the delegation of legislative powers to diverse boards and authorities becomes increasingly common. When before the last war, in a case to which the late Lord Hewart has recently drawn attention, Mr. Justice Darling said that "Parliament had enacted only last year that the Board of Agriculture in acting as they did should be no more impeachable than Parliament itself," this was still a rare thing.<sup>8</sup> It has since become an almost daily occurrence. Constantly the broadest powers are conferred on new authorities which, without being bound by fixed rules, have almost unlimited discretion in regulating this or that activity of the people.

The Rule of Law thus implies limits to the scope of legislation: it restricts it to the kind of general rules known as formal law and excludes legislation either directly aimed at particular people or at enabling anybody to use the coercive power of the state for the purpose of such discrimination. It means, not that everything is regulated by law, but, on the contrary, that the coercive power of the state can be used only in cases defined in advance by the law and in such a way that it can be foreseen how it will be used. A particular enactment can thus infringe the Rule of Law. Anyone ready to deny this would have to contend that whether the Rule of Law prevails today in Germany, Italy, or Russia depends on whether the dictators have obtained their absolute power by constitutional means.<sup>9</sup>

Whether, as in some countries, the main applications of the Rule of Law are laid down in a bill of rights or in a constitutional code, or whether the principle is

<sup>8</sup>[English jurist Charles John, First Baron Darling (1849–1936) served as a conservative MP, a judge, and member of several royal commissions. For more on Lord Hewart, see the foreword to the 1956 American paperback edition, note 25.—Ed.]

<sup>9</sup>Another illustration of an infringement of the Rule of Law by legislation is the case of the bill of attainder, familiar in the history of England. The form which the Rule of Law takes in criminal law is usually expressed by the Latin tag *nulla poena sine lege*—no punishment without a law expressly prescribing it. The essence of this rule is that the law must have existed as a general rule before the individual case arose to which it is to be applied. Nobody would argue that, when in a famous case in Henry VIII's reign Parliament resolved with respect to the Bishop of Rochester's cook that "the said Richard Rose shall be boiled to death without having the advantage of his clergy," this act was performed under the Rule of Law. But while the Rule of Law had become an essential part of criminal procedure in all liberal countries, it cannot be preserved in totalitarian regimes. There, as E. B. Ashton has well expressed it, the liberal maxim is replaced by the principle *nullum crimen sine poena*—no "crime" must remain without punishment, whether the law explicitly provides for it or not. "The rights of the state do not end with punishing law breakers. The community is entitled to whatever may seem necessary to the protection of its interests—of which observance of the law, as it stands, is only one of the more elementary requirements." See E. B. Ashton, *The Fascist: His State and His Mind*, op. cit., p. 127. What is an infringement of

merely a firmly established tradition, matters comparatively little. But it will readily be seen that, whatever form it takes, any such recognized limitations of the powers of legislation imply the recognition of the inalienable right of the individual, inviolable rights of man.

It is pathetic but characteristic of the muddle into which many of our intellectuals have been led by the conflicting ideals in which they believe that a leading advocate of the most comprehensive central planning like H. G. Wells should at the same time write an ardent defense of the rights of man.<sup>10</sup> The individual rights which Mr. Wells hopes to preserve would inevitably obstruct the planning which he desires. To some extent he seems to realize the dilemma, and we find therefore the provisions of his proposed "Declaration of the Rights of Man" so hedged about with qualifications that they lose all significance. While, for instance, his declaration proclaims that every man "shall have the right to buy and sell without any discriminatory restrictions anything which may be lawfully bought and sold," which is admirable, he immediately proceeds to make the whole provision nugatory by adding that it applies only to buying and selling "in such quantities and with such reservations as are compatible with the common welfare."<sup>11</sup> But since, of course, all restrictions ever imposed upon buying or selling anything are supposed to be necessary in the interest of the "common welfare," there is really no restriction which this clause effectively prevents and no right of the individual that is safeguarded by it.

Or, to take another basic clause, the declaration states that every man "may engage in any lawful occupation" and that "he is entitled to paid employment and to a free choice whenever there is any variety of employment open to him."<sup>12</sup> It is not stated, however, who is to decide whether a particular employment is "open" to a particular person, and the added provision that "he may suggest employment for himself and have his claim publicly considered, accepted or dismissed,"<sup>13</sup> shows that Mr. Wells is thinking in terms of an authority which decides whether a man is "entitled" to a particular position—which certainly

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"the interests of the community" is, of course, decided by the authorities. [Hayek incorrectly listed Ashton's quote as being found on p. 119, not 127.—Ed.]

<sup>10</sup>[English novelist H. G. Wells (1866–1946) is best remembered today for such science fiction classics as *The Time Machine* and *The War of the Worlds*. In his day he was also known for his biting social satires, contributions to popular history, and involvement with numerous progressive causes. In 1939 he drafted a "Declaration of the Rights of Man" that was published in *The Daily Herald* and other newspapers, and which elicited much commentary. Some of these ideas were later worked into the Universal Declaration of Human Rights that was adopted by the UN General Assembly in December 1948. Wells's "Declaration" was reprinted under the title "Ten Points for World Peace," *Current History*, vol. 51, March 1940, pp. 16–18, from which subsequent citations are taken.—Ed.]

<sup>11</sup>[Wells, "Ten Points for World Peace," op. cit., p. 18.—Ed.]

<sup>12</sup>[Ibid.—Ed.]

<sup>13</sup>[Ibid.—Ed.]

means the opposite of free choice of occupation. And how in a planned world "freedom of travel and migration" is to be secured when not only the means of communication and currencies are controlled but also the location of industries planned, or how the freedom of the press is to be safeguarded when the supply of paper and all the channels of distribution are controlled by the planning authority, are questions to which Mr. Wells provides as little answer as any other planner.

In this respect much more consistency is shown by the more numerous reformers who, ever since the beginning of the socialist movement, have attacked the "metaphysical" idea of individual rights and insisted that in a rationally ordered world there will be no individual rights but only individual duties. This, indeed, has become the much more common attitude of our so-called "progressives," and few things are more certain to expose one to the reproach of being a reactionary than if one protests against a measure on the grounds that it is a violation of the rights of the individual. Even a liberal paper like the *Economist* was a few years ago holding up to us the example of the French, of all people, who had learned the lesson that "democratic government no less than dictatorship must always [sic] have plenary powers *in posse*, without sacrificing their democratic and representative character. There is no restrictive penumbra of individual rights that can never be touched by government in administrative matters whatever the circumstances. There is no limit to the power of ruling which can and should be taken by a government freely chosen by the people and can be fully and openly criticised by an opposition."<sup>14</sup>

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

How even a formal recognition of individual rights, or of the equal rights of minorities, loses all significance in a state which embarks on a complete control of economic life, has been amply demonstrated by the experience of the various Central European countries. It has been shown there that it is possible to pursue a policy of ruthless discrimination against national minorities by the use of recognized instruments of economic policy without ever infringing the letter of the statutory protection of minority rights. This oppression by means of economic policy was greatly facilitated by the fact that particular industries or activities were largely in the hands of a national minority, so that many a measure

<sup>14</sup>[Hayek quotes from a leading article entitled, "True Democracy," *The Economist*, vol. 87, November 18, 1939, pp. 242-43.—Ed.]

aimed ostensibly against an industry or class was in fact aimed at a national minority. But the almost boundless possibilities for a policy of discrimination and oppression provided by such apparently innocuous principles as "government control of the development of industries" have been amply demonstrated to all those desirous of seeing how the political consequences of planning appear in practice.