



# The Non-Economic Debates In *Liberty*



By Wendy McElroy

This article deals with three debates — natural rights versus egoism, children's rights, and intellectual property - all of which are integrated by the question: What is a right? What is it based upon? Do all human beings have rights? And to what specifically can one claim a right? Although these debates were widespread, the context of this article is the individualist-anarchist periodical **Liberty**, published and edited by Benjamin R. Tucker from 1881 to 1908. Although **Liberty** stressed economic issues (Tucker declared: "Liberty, to be effective, must find its first application in the realm of economics."), the publication's major debates were in the arena of ethics since the American libertarians were largely in accord on economic matters. What economic debates took place were generally between the **Liberty** circle and the British individualists.<sup>2</sup> Ethics was the area hotly debated among the Americans and the core debate in ethics was natural rights versus egoism.

This debate was sparked by Max Stirner's **The Ego and His Own [Der Einzige und Sein Eigenthum]** for, even though the first English translation appeared in 1907, quite late in the individualist-anarchist history,<sup>3</sup> the main impact of the book came ten years before when Tak Kak (the pseudonym of James L. Walker) used **Liberty** as a forum for Stirnerite egoism.<sup>4</sup>

## Benjamin R. Tucker and the Champions of *Liberty*

Stirnerite egoism, as interpreted by the anarchists, claimed that enlightened self-interest was the realistic basis of human conduct and that the acting individual and no one else should be the beneficiary of his own actions. With this insistence came the rejection of altruism and of any obligations except as assumed by contract. Duty, and its corollary of rights, were discarded. There was no objectively definable right or wrong. Natural rights and morality were discarded as myths, or, to use the egoist terminology, "ghosts."

This was a radical break with the libertarian tradition whose roots had been firmly based in natural rights theory which claimed that there was an objective right and wrong based on the nature of reality and the nature of man. Natural law had been the basis of the libertarian revolt against government since libertarians insisted on obeying nature rather than imposed authority.

The first article on egoism appeared in *Liberty* of March 6, 1886 and was entitled **What is Justice?** Written by Walker, the article stated that "right," "justice" and "wrong" are "merely words with vague, chimerical meanings." In July of that year, Walker attacked the notion that people should be consistent, that abiding by a principle should rule one's life. Of such a person he wrote:

The process of thought that brings him to recognize himself can nevermore be continued as a process in which himself would be only a factor, for he is a greater factor than his ideas. Henceforth ideas are simply his possession.<sup>6</sup>

Walker claimed that "the devotee of a fixed idea is mad. He either runs amuck, or cowers as mesmerized by the idea."<sup>7</sup>

It is in early 1887 — shortly after the death of Lysander Spooner, America's foremost advocate of natural rights<sup>8</sup> — that the natural rights advocates challenge egoism. John F. Kelly, a Spencerian, accurately assessed Walker's position as: ". . . the idea of rights is a foolish phantasy, or that there are no rights but *mine*, — that is to say, there are no rights, only might."<sup>9</sup> The natural rights advocates (John F. Kelly, Gertrude Kelly, Sidney H. Morse and J.W. Lloyd) accused the egoists (Walker, Tucker and George Schumm) of not only destroying natural rights but the entire libertarian movement, for they could not conceive of any other basis for individualist-anarchism. Gertrude Kelly expressed these sentiments in a letter to **Liberty**:

My friends, my friends, have you completely lost your heads?  
Cannot you see that without morality, without the recognition

## Benjamin R. Tucker and the Champions of *Liberty*

of other's rights, Anarchy, in any other than the vulgar sense, could not last a single day?<sup>10</sup>

To the contrary, the egoists believed that "egoism is the solid base of Anarchism . . . it destroys the awe, the reverence, and obedience upon which all despotisms thrive."<sup>11</sup> The egoists contended that instead of destroying rights, they were reducing the concept to its proper place as an extremely useful, artificial construct with which to organize society. Tucker advocated a society by contract and viewed rights as the product of contract. To Tucker, rights were:

. . . a tacit agreement or understanding between human beings . . . as individuals living in daily contact... not to trespass upon each other's individuality, the motive of this agreement being the purely egoist desire of each for the peaceful preservation of his own individuality.<sup>12</sup>

John F. Kelly astutely attacked the idea of rights springing full grown from contract. He wrote:

What I contend is that it is impossible to base a society upon contract unless we consider a contract as having some binding effect, and that the binding effect of a particular contract cannot be due to the contract itself.<sup>13</sup>

By this statement Kelly was pointing out that contract itself presupposes a moral system, for what does it mean to contract if not to exchange voluntarily what is mine for what is yours. Inherent in the definition of contract is the concept of property - yours and mine - which is a moral concept. Tucker acknowledged this problem with rights deriving from contract in an article seven years after the debate. He wrote: "There is no moral obligation upon the individual either to make a contract, or to keep a contract after making it. . .,"<sup>14</sup>

What this appeal to contract made clear, however, was that the egoists were not trying to abandon libertarianism, but simply trying to ground it in something other than the nature of man which they thought to be a weak basis. They shared the natural rights goal of individual liberty, but attempted to reach it through a different method. Tak Kak expressed this difference: "A theologian, a moralist, and myself condemn rape and will try to prevent it. The first says that he bases his action upon the law of God, which he obeys. The second says that he bases his action upon a moral law."<sup>15</sup> He continues to explain that his opposition was based on

## Benjamin R. Tucker and the Champions of *Liberty*

his own enlightened self-interest which tells him that an attack upon a member of his society is an attack upon his own safety.

There is no question but that the egoists won this debate. In a July, 1887 article, entitled A **Final Statement**, John F. Kelly declared:

I suppose I owe the readers of **Liberty** an apology for continuing to occupy space in discussing a subject in regard to which I am told 'everybody' thinks me in the wrong. Well, 'everybody' will soon have a chance to read something else, as, whatever may be the result of the present letter, it will be my last.<sup>16</sup>

Except for a brief letter to the editor in which he informed Tucker that he no longer could be a distributor for **Liberty** since "... a distributor is in effect a second publisher," John F. Kelly never appeared in **Liberty** again.<sup>17</sup> His sister Gertrude Kelly also withdrew in protest, saying of the egoists: "We might well be led to suppose that you had been 'hired by the enemy' to bring disgrace upon . . . Anarchism."<sup>18</sup> Sidney H. Morse, who wrote under the pseudonym of "Lazarus," also departed.

With these departures (which Tucker lamented), the future issues of **Liberty** had extremely weak representation of the natural rights position. In particular, the Spencerian influence sharply declined since both John and Gertrude Kelly had been major conduits and critics of Spencer. It is not until Victor Yarros, an associate editor of **Liberty** and, next to Tucker, its strongest voice, rejected egoism and returns to natural rights theory that this position and Spencer receive fair treatment.<sup>19</sup> As a whole, however, the periodical remained egoistic.<sup>20</sup>

Because both sides argued convincingly, this was a dynamic debate. The egoists were quite persuasive in maintaining that everyone should act, not from duty, but from their own perceived self-interest. The natural rights advocates were correct in maintaining that without some system of morality which predates contract, libertarianism is not feasible. Perhaps the way out of this conflict is to stop viewing egoism and natural rights as antagonistic positions. If rights are, in fact, based on man's nature then it is in a man's enlightened self-interest to act according to them. This statement asserts two things: there *are* rights based on the nature of man and one should give priority to them in guiding one's actions. The first assertion is a point of fact for which natural rights theory

## Benjamin R. Tucker and the Champions of *Liberty*

provides the philosophical justification. The second assertion — that they should have high priority - is a value judgment for which egoism provides the solid basis of long-term, enlightened self-interest. Thus, there is no contradiction in the term "natural rights egoism."<sup>21</sup>

Although the debate was fairly balanced in quality and content, there was at least one respect in which the egoists were more consistent with individualism than were the natural rights advocates. The egoists acted as a counter to an idea that was growing in popularity and which had disastrous consequences for individualism: it was the idea of society as an organism, different from and superior to the individuals who comprised it. Even though he was an individualist, Spencer was largely responsible for this concept of society. The Spencerian John F. Kelly in responding to Walker's claim that the individual is God and that only individuals exist, stated: ". . . society is an organism;. . . consequently, like all other organisms, it must have special methods of functional activity."<sup>22</sup> It was left to the egoists to maintain that society is merely a collection of the individual interactions of the people within it. Society, for Tucker, functioned in the same manner as individuals functioned — by contract. The egoists ridiculed Spencer's organismic theory of society as "the logic of the crowd" as opposed to the logic of the individual.<sup>23</sup>

On the natural rights side, John F. Kelly pointed out an inconsistency of **Liberty** and egoism that continued until **Liberty's** demise in 1908.<sup>24</sup> Kelly claimed that Tucker was hypocritical to claim on the one hand that there was no mortality, "It is only on egoistic and utilitarian grounds - that is, grounds of expediency - that I believe in equal liberty,"<sup>25</sup> and then on the other hand to condemn "with an air of moral indignation" anyone who committed aggression or fraud. When Tucker was outraged by lies he ascribed to Burnett G. Haskell, editor of the San Francisco **Truth**, Kelly responded: "... translated according to your theory, this means no more than that on some occasion Haskell . . . found it to his advantage to state what was not the fact, — and . . . if you found it to your advantage, you would do the same."<sup>26</sup>

Nevertheless, Tucker continued to condemn people with an "air of moral indignation" and, in unguarded moments even sided with what were clearly natural rights positions. An example of this was children's rights.

## Benjamin R. Tucker and the Champions of *Liberty*

The debate over children's rights began in *Liberty* on May 4, 1895 with the publication of excerpts from J. Greevz Fisher, the *British Individualist*.<sup>27</sup> Tucker prefaced these excerpts with the statement: "It is pleasant to quote here with my warmest approval a letter from his pen . . ." <sup>28</sup> In this article Fisher addressed one of the central questions in children's rights: do parents, simply by the act of giving birth, assume a legal obligation to support that child? Fisher wrote:

To whom are the parents responsible? Is it to the child? If yes, how so? The child is a person who may have come as undesired as . . . any pest which dogs men's steps and thwarts their efforts in the pursuit of happiness or pleasure.<sup>29</sup>

Fisher emphasized that neglect is not aggression: "We must not interfere to prevent neglect, but only to repress positive invasion."<sup>30</sup>

But if parents have no inherent obligations to the child, do they then have any inherent right of control over the infant? Greevz addressed this point:

If a person . . . alleging parentage, beats, enslaves, or defrauds a child, the *Individualist* has a perfect right to interfere. He can voluntarily associate himself with the child in a mutual defence organization . . . Neglect can be better remedied by upholding liberty for anyone directly to supply the wants of the neglected. It cannot be safely dealt with by a third party to force someone, supposed to be responsible to undertake the duty.<sup>31</sup>

Therefore, if a parent refuses to assume an obligation toward the child or abuses that obligation once it has been assumed, he loses all right of control over the child, and any third party may assume that right. The obligation is consensual. As Tucker phrased it: ". . . no person, parent or not, may be rightfully compelled to support any helpless being, of whatever age or circumstance, unless he has made that being helpless by some invasive act."<sup>32</sup>

In agreeing with Greevz, Tucker ran counter to egoism. If rights and obligations derive solely from contract, as egoism maintains, then the "right" of third party interference makes no sense whatever. Where is the contract from which such a right derived? Tucker was made acutely aware of this heresy by Henry Replogle writing under the pseudonym of "H" in the periodical *Egoism*. Tucker responded to this attack: ". . . H very properly takes me to task

## Benjamin R. Tucker and the Champions of *Liberty*

editorially for my wholesale endorsement . . . of J. Greevz Fisher."<sup>33</sup> With this admission, Tucker returned to the idea of rights deriving from contract. This, of course, raised the question whether an infant who is unable to contract has any rights at all. Remaining consistent, Tucker maintained that infants are totally without rights of any kind. He argued that "the material with which the sociologist deals may be divided into two classes, — owners and owned."<sup>34</sup> What made one an owner (into which category would fall self-owners — the claim to moral jurisdiction over one's own body) is the ability to contract. What makes something property, such as a chair or a dog, is the inability to contract. Given these categories, children are clearly a species of property. Tucker continued:

Now, under this classification the child presents a difficulty; for, while unquestionably belonging in the category of the owned, he differs from all other parts of that category in the fact that there is steadily developing within him the power of self-emancipation . . .<sup>35</sup>

Tucker considered children to be a form of property with an expiration date (the moment they are able to contract). And the person with title to this property is the mother for, as Tucker pointed out:

Certainly the mother's title to the child while it remains in her womb will not be denied . . . If then, the child is the mother's while in the womb, by what consideration does title to it become vested in another than the mother on its emergence from the womb . . . 7<sup>36</sup>

Needless to say, there are several problems with Tucker's position. His critics quickly pointed out that ownership *means* that something is yours until you relinquish title to it; they rejected the concept of expiring property.

A more controversial objection was that the property theory of children allowed parents — especially the mother in whom primary title to the child resided — to abuse the child in any manner without affording the child any protection whatsoever. Tucker, who resented the accusations of cruelty, declared: "I have the welfare of children as sincerely at heart as any of my critics, and . . . I believe that an observation of the principles here formulated would secure to children, on the whole, greater happiness . . ."<sup>37</sup> Tucker believed that by making the child the property of the mother he was

## Benjamin R. Tucker and the Champions of *Liberty*

actually protecting the child against aggression at large because such aggression would be punishable as a violation of the mother's property rights.

As to aggression by the mother herself, Tucker was asked if he would stand by while a mother threw her baby into the fire. He responded:

. . . it is highly probable that I would personally interfere in such a case. But it is as probable, and perhaps more so, that I would personally interfere to prevent the owner of a masterpiece by Titian from applying the torch to the canvas . . . If I interfere in either case, I am an invader . . . and as such I deserve to be punished.<sup>38</sup>

The most astute comment on Tucker's position came from the American natural rights advocate, J. Wm. Lloyd, who realized fully that Tucker's position was the inevitable outcome of egoism. The issue was not children's rights but whether anyone who is unable to contract (owing to illness, age or mental deficiency) has any rights at all. The debate, in fact, was a throwback to natural rights versus egoism. Lloyd wrote:

I do not think Mr. Tucker's critics can successfully attack his position while admitting contract as the ethical basis of Anarchism . . . I do not accept contract as the ethical basis of anarchism in the first place.<sup>39</sup>

Lloyd felt so strongly about this issue that he proclaimed: "Henceforth, I am no anarchist."<sup>40</sup>

The British Individualists (J. Greevz Fisher, John Badcock, William Gilmour) who had not been involved in the egoism debate and who had never rejected natural rights, approached the argument in a different manner. They simply stated that human beings have rights and proceeded from there.<sup>41</sup>

In August 1895, in the same issue as Tucker's notorious article "L'Enfant Terrible," J. Greevz Fisher and William Gilmour introduced two important new words into the discussion. Fisher wrote: ". . . during the whole period of control, the parent is not an owner at all, but, if legal jargon can solve a sociological question, a *trustee*."<sup>42</sup> [Emphasis mine.] William Gilmour remarked: ". . . I think that *guardianship not ownership*, is the real question at issue."<sup>43</sup> [Emphasis mine.] Here the words "trustee" and "guardianship" were introduced. By guardianship or trusteeship, Fisher meant a legal presumption of control over the infant with a cor-

## Benjamin R. Tucker and the Champions of *Liberty*

responding legal presumption of a duty to provide care. This presumption of control rested on the fulfillment of the duty and upon the child's consent if and when it is able to give it. Interestingly, both sides of the debate rejected the notion that parenthood as such entails any obligations.

The Individualists, although they seemed to give a better presentation than the egoists, never really addressed Tucker's main contention:

Might is the measure of right everywhere and always, until, by contract, each contracting party voluntarily agrees . . . [I]f contract determines rights, my position regarding parent and children is invulnerable.<sup>44</sup>

Nor did they address the intriguing question of whether a mother, by virtue of owning the fetus, has title to the fully developed fetus when it emerges. Tucker maintained: ". . . if we take the other course, and admitting that the child had the possibilities of the man, declare that therefore it cannot be property, then we must also for the same reason, say that the ovum in the woman's body is not her property . . . [she] thereby loses her right to commit suicide."<sup>45</sup>

Tucker's argument ignores the fact that the fetus is not an independent being, but part of the mother's body and as such is unquestionably subject to ownership and disposal by her. To say that a woman owns a part of her body is not at all to conclude that when that "part" reaches its potential and becomes independent, it is still subject to ownership. Since the property claim was based on the fetus being a biological aspect of the mother, when this is no longer the case then the property claim no longer exists. At birth the child is an independent human being not subject to ownership.

The question of what could be the subject of ownership was the theme of another major debate: intellectual property. Although it is usually contended that this debate was over the ownership of ideas, this is not accurate. Lysander Spooner, perhaps the leading advocate of copyright and patents stated: "The air, that a man inhales, is his, while it is inhaled."<sup>46</sup> James Walker, a leading opponent of copyright and patents stated: "My thoughts are my property as the air in my lungs is my property. . ."<sup>47</sup> Both sides of the debate agreed that each man owns his own thoughts which he is free to express or not as he so pleases.

## Benjamin R. Tucker and the Champions of *Liberty*

Nor was the debate centered around an individual's right to use and dispose of his property, his own ideas. Walker wrote on this:

If any person wishes to live by imparting his ideas in exchange for labor, I have nothing to say against his doing so and getting cooperative protection without invading the persons and property of myself and my allies... whatever he can do by contract, cooperation, and boycotting . . . let him do at his pleasure.<sup>48</sup>

As long as the monopoly of ideas was based on contract, the opponents of intellectual property were content.

The point of contention was whether the discoverer of an idea could claim ownership not only over it, but over all instances of the idea and so claim that no one else had the right to use his own particular instance of that idea existing within his own mind without the discoverer's permission. Spooner, and the advocates of intellectual property in **Liberty**, based this claim of extended ownership on the contention that ideas were the product of labor and that a man owns what his labor produces. Spooner phrased it: ". . . the principle of individual property . . . says that each man has an absolute dominion, as against all other men, over the products and acquisitions of his own labor . . ."<sup>49</sup> To Walker and Tucker, the reward of labor was the specific idea. More than this could not be claimed because, as Henry George stated: "No man can justly claim ownership in natural laws, nor in any of the relations which may be perceived by the human mind, nor in any of the potentialities which nature holds for it. . ."<sup>50</sup>

Whether non-contractual ownership of ideas extended beyond one's body was the key question and, because of this, it is more accurate to label the opposing forces as "extensionists" and "anti-extensionists" than as pro- and anti-intellectual property.

Ultimately, the debate over non-contractual copyright and patents revolved around three core issues: What is property? What are the essential characteristics which enable something to be owned? What is an idea?

There were a number of interesting side issues. The anti-extensionists (Tucker, Walker, J.B. Robinson, Wm. Hanson) attacked the Spencerian notion that such ownership, if it did exist, should have a time limit. The extensionists (Yarros, A.H. Simpson, J. Wm. Lloyd), despite being influenced by Spencer, granted that property rights could not expire. There was some debate on utilitarian grounds with extensionists claiming that without a

## Benjamin R. Tucker and the Champions of *Liberty*

legal monopoly no one would write great literature. Tucker responded that Shakespeare had written all his works a century prior to the first copyright law. He quoted George Bernard Shaw's comment, ". . . the cry for copyright is the cry of men who are not satisfied with being paid for their work once, but insist upon being paid twice, thrice, and a dozen times over."<sup>51</sup>

The central issues, however, remained: What is property? What is an idea? The extensionists maintained that property was simply "wealth . . . that has an owner,"<sup>52</sup> which right of ownership was acquired either by discovery or by labor. Tucker, however, asked the question in a more basic form; he asked why property exists at all. What is it in the nature of man and of reality that makes such a concept necessary? He postulated that property arose as a means of solving conflicts caused by scarcity. Because all goods are scarce there is competition for their use. Because the same chair cannot be used at the same time and in the same manner by two people, it was necessary to determine who should use the chair. Property arose as an answer to this problem. As Tucker wrote: ". . . if it were possible, and if it had always been possible, for an unlimited number of individuals to use to an unlimited extent and in an unlimited number of places the same concrete thing at the same time, there would never have been any such thing as the institution of property."<sup>53</sup>

Ideas, however, could be used at the same time and in the same manner by an infinite number of people. If one man discovers the principle of electricity and builds a generator on his own land, this in no way impedes another man's ability to discover electricity and build his own generator as well. In other words, extended ownership of ideas ran counter to the purpose of property, to why the concept even arose.

Furthermore, the anti-extensionists argued that copyright and patents contradict the essential characteristics of property. One of these characteristics is that the property be transferable, that it be alienable. William Hanson expressed this: "He who conceives an idea has it in his own right. It is his property; but it is non-transferable. No conceiver of an idea can transfer it bodily from his own brain to that of another, and thus deprive himself of it."<sup>54</sup> Walker added to this discussion of transferability: "The giver or seller parts with it [property] in conveying it. This characteristic distinguishes property from skill and information."<sup>55</sup>

## Benjamin R. Tucker and the Champions of *Liberty*

As to the question of what an idea is, the extensionists claimed it is a form of wealth and the product of labor. The egoist J.B. Robinson had a different approach. He asked: "what is an 'idea'? Is it made of wood, or iron, or stone? . . . the idea is nothing objective . . . that is to say, the idea is not part of the product; it is part of the producer . . .,"<sup>56</sup> Robinson was arguing that ideas cannot be owned because they are part of a human being. They are the result of labor in the sense that the muscles on an arm are the result of exercise. It is nonsensical to say that either the muscle or the idea is a product independent from the producer. They are both part of the producer and, therefore, not subject to ownership by another. The extensionist J. Wm. Lloyd objected, however. He wrote: "Is this distinction a true one? . . . a formless idea is inconceivable, . . . So, practically it is all one whether we copyright an idea or patent a form."<sup>57</sup>

Although copyright and patents are secondary to the question of the ownership of extended ideas, most of *Liberty's* debate revolved around these two issues, and they were treated separately. The debate over patents and copyrights began in earnest in July of 1888 when Tucker reprinted excerpts from Henry George.<sup>58</sup> George stated in condemning patents: "Ownership comes from production. It cannot come from discovery."<sup>59</sup> This distinction between discovery and production was important. The extensionists claimed that when a man discovers the law of electricity and mixes his labor with raw materials to express this natural law in the form of a generator, he has performed the labor of production and, thus, has title to the generator. The act of discovery, however, gives him no more right to the principle of electricity than simply discovering a valley would give him title to that land. The discoverer of electricity, therefore, cannot prevent someone else from discovering — five minutes or five years later — the same principle of nature and from using this idea for his own benefit. To claim otherwise is to say that the first discoverer has ownership rights over an aspect of nature, of a physical relationship. Tucker claimed that patents violated the libertarian and Spencerian principle of equal liberty. He said: "From the moment a patent or copyright is granted no man is free to acquire the same fact — to elaborate from, if he can, the same new ideas — and in a similar manner employ those new ideas for his private advantage."<sup>60</sup>

When Victor Yarros offered the Spencerian contention that one

## Benjamin R. Tucker and the Champions of *Liberty*

would have the right to prove before a jury that the idea is independent, Tucker responded that such reversal of proof (the defendant would be guilty unless proven innocent) ran counter to all methods of fair trial. He suggested that Spencer advocated this because to do otherwise and "to go to a jury on a question of independence of invention or authorship, with the burden of proof on the complainant . . . would be sure victory for the defendant . . ." <sup>61</sup>

Copyrights were handled somewhat differently. The excerpts from Henry George which sparked this debate had been criticized by Tucker because, even though George rejected patents, he accepted the validity of copyright. Tucker claimed: "the same argument of that demolishes the right of the inventor demolishes the right of the author." <sup>62</sup> Tucker, however, set the stage for the perceived difference between the two forms of extended ideas. He wrote:

The central injustice of . . . patent laws is that it compels the race to pay an individual through a long term of years a monopoly price for knowledge that he has discovered today although some other man . . . in many cases very probably would have discovered it tomorrow. <sup>63</sup>

The issue that separated patents from copyright — was probability. Simultaneous inventions are not uncommon and there are many instances of several people "originating" the same theory independently. A commonly cited example is that of Menger, Walras and Jevons, who independently conceived of marginal utility at about the same time. Extensionists like Yarros, however, did not think it probable that two men would independently originate Hamlet or A School for Scandal. He claimed that copyright protected not an idea, such as marginal utility, but the particular form of expression of that idea, the actual pattern of words. He wrote: "Copyright would not prevent anyone's writing a book to express the same ideas that Spencer has expressed; it would simply prevent the appropriation of the fruits of his toil." <sup>64</sup>

Tucker addressed both points. He agreed that it was extremely improbable that two men would write the same poem, but insisted that it was not impossible. Simply throwing letters randomly up in the air, he insisted, would eventually render a piece that began, "Shall I compare thee to a summer's day . . ." As to the extreme improbability of this, he wrote:

## Benjamin R. Tucker and the Champions of *Liberty*

To discuss the degrees of probability . . . is to shoot wide of the mark. Such questions as this are not to be decided by rule of thumb or by the law of chances, but in accordance with some general principle . . . among the things not logically impossible, I know of few nearer the limit of possibility than that I should ever desire to publish **Liberty** in the middle of the desert of Sahara; nevertheless, this would scarcely justify any great political power in giving Stanley a right to stake out a claim comprising that entire region and forbid me to set up a printing press.<sup>65</sup>

As to the ownership of a form of expression, of a pattern of combining words, Tucker commented: ". . . the particular combination of words belongs to neither of us . . . the method of expressing an idea is itself an idea, and therefore not appropriable."<sup>66</sup> In commenting on owning a "form of expression," Walker said: "If the printer may not copy new books, of course the shoemaker may not copy new shoes . . . ,"<sup>67</sup> thus pointing out that all ideas (whether of shoes, poems, chairs, hairstyles, or clothing) are a form of expression but that the question of granting a legal monopoly only occurred to people in the instance of literary expression. The consistent extensionist would have to admit that speech is a product of labor and a form of expression and that, theoretically, one would be entitled to legal protection for every sentence he spoke so that no one afterward could speak it without permission. Spooner came close to advocating this when he wrote: "So absolute is an author's right of dominion over his ideas, that he may forbid their being communicated even by the human voice if he so please."<sup>68</sup>

Another argument used by the anti-extensionists was that by publishing something without a contract to protect the content one was, in effect, abandoning it. This was counter to Spooner's contention that the law must presume a man wishes to retain control over his property so long as it has any value to him. Thus if an idea is valuable, to publish it does not decrease its value, and it remains property. Tucker analyzed the issue differently. He wrote: "If a man scatters money in the street, he does not thereby formally relinquish title to it . . . but those who pick it up are thereafter considered the rightful owners . . . Similarly a man who reproduces his writings by thousands and spreads them everywhere voluntarily abandons his right of privacy and those

## Benjamin R. Tucker and the Champions of *Liberty*

who read them . . . no more put themselves by that act under any obligations in regard to the author than those who pick up scattered money put themselves under obligations to the scatterer.<sup>69</sup>

He expressed the core of this argument and of his position on intellectual property in saying: "You want your invention to yourself? Then keep it to yourself."<sup>70</sup>

This debate was fairly well balanced in terms of content and of the number of advocates on each side. The main weakness of the extensionist position was the rigidity of Yarros and A.H. Simpson who tended to repeat their arguments rather than deal with the shifting context of the debate and the new objections raised by the anti-extensionists.

These debates have obvious relevance to modern libertarianism. Because they are theoretical, they have lost none of their freshness or vigor. Much has been said about learning from the mistakes of the past, but it is equally important to learn from the achievements. To paraphrase Santayana's famous quote: "Those who do not learn from the achievements of the past are destined never to surpass them." Libertarianism has a rich tradition of achievements on which to build and through which to surpass itself.

### Footnotes

1. *Liberty*, 6(1888):5.
2. An exception to this were the Georgists with whom the anarchists violently disagreed regarding the single tax issue.
3. This edition was translated by Stephen Byington with an introduction by James L. Walker. Published by Tucker two years after Walker's death, Tucker proclaimed: "I have been engaged for more than thirty years in the propaganda of Anarchism, and have achieved some things of which I am proud, but I feel that I have done nothing for the cause that compares in value with my publication of this volume." *Liberty*, 16(1907):1. Individualist-anarchism, as an active force in America, ceased in 1908 with the destruction through fire of the *Liberty* offices.
4. Walker published a series of twelve articles in *Egoism* (May 1890 - September 1891), Georgia and Henry Replogle's Stirnerite periodical, which later comprised part of his book *Philosophy of Egoism*. Walker apparently evolved a theory of egoism independently and was later surprised to discover the similarity with Stirner. It has been contended that the American Anarchists misinterpreted Stirner. The

## Benjamin R. Tucker and the Champions of *Liberty*

- "Stirnerite egoism," in the present article, refers specifically to this interpretation whether it was accurate or not.
5. *Liberty*, 3(1886):8.
  6. *Liberty*, 4(1886):8.
  7. *Liberty*, 4(1887):5.
  8. Although it is speculation, it is interesting to ponder whether the demise of Tucker's natural rights mentor facilitated Tucker's swift conversion to egoism.
  9. *Liberty*, 4(1887):7.
  10. *Liberty*, 5(1887):7.
  11. *Liberty*, 4(1887):6.
  12. *Liberty*, 3(1886):8.
  13. *Liberty*, 4(1887):7.
  14. *Liberty*, 11(1895):4.
  15. *Liberty*, 4(1887):5.
  16. *Liberty*, 4(1887):7.
  17. Kelly, however, maintained his own subscription to *Liberty* and asked that his other subscriptions be transferred to the Proudhon Library, a series of reprints Tucker was publishing.
  18. *Liberty*, V(1887):7.
  19. For Yarros' repudiation of these egoist beliefs, see *Liberty*, VIII(1891):2-3.
  20. For a detailed discussion of *Liberty* and egoism, see James J. Martin, *Men Against the State* (Colorado Springs, Colo.: Ralph Myles Publisher, 1970).
  21. There would remain the egoist contention that all ideas and ideologies are merely "phantasies" which, of course, could not be reconciled with natural rights.
  22. *Liberty*, IV(1887):7.
  23. For such attacks, see *Liberty* VIII(1891):4, and *Liberty* VII(1892):2-3.
  24. Although Tucker periodically stated intentions to revive *Liberty*, it never appeared in any form thereafter.
  25. *Liberty* VI(1895):4.
  26. *Liberty* IV(1887):1.
  27. Reprinted from the London Personal Rights, the journal of the Personal Rights Association edited by J.H. Levy.
  28. *Liberty* X(1895):5.
  29. *Ibid.*
  30. *Ibid.*
  31. *Ibid.*
  32. *Ibid.*, p. 8.
  33. *Liberty* XI(1895):3.
  34. *Ibid.*
  35. *Ibid.*
  36. *Liberty* XI(1895):4.
  37. *Liberty* *Ibid.*, p. 5.
  38. *Liberty* XI(1895):1.
  39. *Liberty* XI(1895):6.
  40. *Liberty* XI(1895):7.
  41. The British Individualists were clearly influenced by Spencer. For Spencer's view of children, see *Social Statics*. Other Americans also had a different approach. Outside the *Liberty* circle, particularly among those who wrote for *Lucifer*, the *Light Bearer*, there were advocates of natural rights for children. Stephen Pearl Andrews went so far as to suggest full sexual rights for children at a time when such were not possessed by adults.
  42. *Liberty* XI(1895):6.
  43. *Liberty* *Ibid.*, p. 6. It is perhaps more accurate to class William Gilmour as a Scottish Anarchist rather than a British Individualist. On this particular issue, however, he seems in full accord with the British.
  44. *Liberty* XI(1895):4.
  45. *Liberty* XI(1895):5.
  46. Lysander Spooner, *Law of Intellectual Property*, 1855, page 17. Reprinted by M&S Press, III, Weston, Mass., 1971. Spooner was one of the two major influences on the intellectual property advocates. He differed from Spencer, the second influence, in that he did not advocate a time limit on patent and copyright and

## Benjamin R. Tucker and the Champions of *Liberty*

- he did not believe that the first discoverer of an idea could bar someone who similarly discovered it from its use.
47. **Liberty** VII(1891):4.
  48. **Ibid.**
  49. Spooner, **Law of Intellectual Property** 1855, p. 88.
  50. **Liberty** V(1888):4.
  51. **Liberty** VII(1891):6.
  52. Spooner, **Law of Intellectual Property**, p. 15.
  53. **Liberty** XIV(1902):3.
  54. **Liberty** VIII(1891):6.
  55. **Liberty** VII(1891):3.
  56. **Liberty** VIII(1891):5.
  57. **Liberty** VIII(1891):6.
  58. Tucker reprinted this from George's single-tax paper, **The Standard**, first printed on June 23, 1888. During the en-
  59. **Liberty** V(1888):4. This was of course in clear contrast to Spooner who claimed that discovery was a source of ownership.
  60. **Liberty** VII(1891):5.
  61. **Ibid.**
  62. **Liberty** V(1888):4.
  63. **Liberty** VII(1890):4.
  64. **Liberty** VII(1890):4.
  65. **Liberty** VII(1890):5.
  66. **Liberty** V(1888):4.
  67. **Liberty** VII(1891):5.
  68. Spooner, **Law of Intellectual Property**, p. 125.
  69. **Liberty** VII(1891):6.
  70. **Liberty** VII(1891):5.