

DOES LITERATURE WORK AS SOCIAL SCIENCE?

THE CASE OF GEORGE ORWELL

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LITERARY AND SOCIAL SCIENCE TRADITIONS

We live in a world that has, to say the least, a certain fascination with public intellectuals. Some public intellectuals are drawn from the academy, but many of the most influential members of this hardy, if indefinable, breed come from other pursuits. Because they have not undergone the rigors of a professional or Ph.D. degree, they show little respect for the conventional boundaries that separate one field of inquiry from another. They can, and often do, move quickly from the humanities to the social sciences and back again, and are often not aware as to how, or even whether, they have made the journey. Lawyers, especially academic lawyers, are frequently able to fill the niche of public intellectuals. Law is a parasitic discipline. It attaches to all human endeavors that involve either disputes or cooperation between two or more people, which is to say that it touches all aspects of human life, either as an unwelcome intruder or an indispensable aid. Lawyers develop skills to match the breadth of their occupational assignments, so per force function like public intellectuals who are happy to draw inspiration from whatever source lies close at hand. Often, therefore, they work with materials from both the humanities and the social sciences. The ability to spin a compelling narrative is, of course, one of the great skills of the trial lawyer,

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as is the ability to marshal quantitative data in complex litigation. So our broad portfolio of business contains stock on both sides of the intellectual divide, even if it guarantees mastery of neither.

In dealing with these public issues, we lawyers often work in competition with writers, who frequently double as journalists. This hardy breed also specializes in the quick study, and may acquire skills in both the arts and the social sciences. These writers have a penchant for making strong pronouncements about human behavior, so that the question arises, how should their insights and ideas be incorporated into our evaluation of social phenomenon? More specifically, this essay asks the extent to which we, both as lawyers and as citizens, should rely on literature and social science in dealing with the complex forms of human behavior that are subject to legal regulation in all its forms. As already noted, it is dangerous for someone trained in law to move into such heady territory, even when it concerns matters adjacent to legal studies. Nonetheless, the relationship that these two fields have to the law is too important to be left only to persons steeped either in the humanities or social sciences. Lawyers have to say their piece as well.

My principal target on this occasion is perhaps the most famous public intellectual of the last century, George Orwell, whose work combines literary appeal with strong critiques of the existing social order. In some sense it is perhaps too strong to call Orwell a social scientist in that he did not engage in any formal or quantitative work. Yet by the same token, he did write serious social commentary on the kinds of large questions that attract the attention of social scientists and political thinkers of all stripes. Perhaps for this reason some people might prefer the term social critic or political philosopher instead. But I do not care about the exact term, for what interests me is the transition from literary work to social theory. On this topic, the connection between literature and politics was exceptionally strong in the turbulent 1930s and 1940s when Orwell wrote. Even within western democracies there were sharp debates over the desirability, necessity, or futility of central planning. And these were in a sense small potatoes compared with the challenges that totalitarian forces of the left and right posed to any form of democratic institution.

At one level the interaction between literature and social science might be seen as synergistic. It is commonplace for lit-

erary writers to use fiction and narrative to convey their strong dissatisfaction with the present social, economic, or political order. Often their expertise lies in the dissection of character, description, and plot. Sometimes these writers explore the psychological dimensions of the characters they create. Sometimes they examine how normal people respond to dramatic crises. Other times they take the opposite tack to explore how alienated and disturbed people respond to routine events.

As befits his time, however, Orwell wrote with a larger intention. Throughout his life he was both essayist and novelist, and in the case of a "novel" like *Down and Out in Paris and London*, the separation between the autobiographical and the fictional is razor thin at best.¹ In both settings, Orwell had a powerful self-definition as an outsider. Although he grew up within the system, he viewed himself as a man with a mission, as the man who fought against its dominant practices, as the man who could not be tamed or domesticated by it. That sense of having grown up as an outsider, a fighter against orthodox complacency, comes through with great vividness in his posthumous essay "*Such, Such Were the Joys . . .*," in which he recounts the harsh experiences he endured as an impecunious and socially isolated scholarship boy at an English preparatory school.² The lesson that shines through is that the fault lies not in Orwell himself, but in his stars—that is, in the unthinking and entrenched system into which he was thrown against his will. Orwell often conceived of himself as a minority of one who had to stand firm against the crowd. He projected his determination to fight against the odds, to communicate the sufferings and hardships of life, and to champion the cause of the socially dispossessed. His knack for turning a phrase and describing a scene both offer obvious clues as to why he was, and is, regarded as one of the great stylists of the twentieth century.

Yet what I find troubling about Orwell's approach is his easy willingness to generalize from his own experiences. To Orwell, private pain was the source of his public knowledge. He never hesitated to treat his life, his pain, or his literary impulses as an accurate description of some larger social reality.

1. PETER DAVISON, *GEORGE ORWELL: A LITERARY LIFE* 25–26 (1996).

2. See generally George Orwell, "*Such, Such Were the Joys . . .*," in *A COLLECTION OF ESSAYS* 9 (1954).

It is at this point that the clash between the literary and the social science approaches begins to bite. The point is, of course, not unique to Orwell, but applies to many writers who invoke the literary form as a vehicle of social criticism.

To go into autobiographical mode for the moment, this point was first brought home to me as a freshman at Columbia College in my course on Contemporary Civilizations in the fall of 1960. The topic before the class was the condition of the working class in England and France during the middle of the nineteenth century. My teacher on the occasion was an excellent historian who suffered a premature death, Paul Noyes. He was then a raw assistant professor on his first teaching assignment, back from a Marshall Scholarship, which I believe he held at Oxford. The two excerpts that our class read side by side were a selection from Balzac—I believe that it was from *The Girl With the Golden Eyes*³—and an account of the position of the English working class offered by an English industrialist/apologist, Andrew Ure.⁴ Balzac used his vast literary powers to capture the desperate plight of the French worker, while Ure, writing in the tradition of Adam Smith, used somber prose and dry statistics to emphasize the steady rate of progress under the system of manufacturers and the vast increases in productivity and longevity that it generated. To the class, Balzac's imagery won the debate in a rout; to Noyes, ever the nonsentimental historian, Ure had the better of the argument by far. Noyes hammered home the reason why: in dealing with large scale social movements the prosaic was more important than the dramatic. We needed to know statistics about life expectancy, literacy rates, caloric intake, and the like. We had to know something about infrastructure, investment, and technical advances. We had to understand the importance of an endless array of small incremental improvements. Noyes was a historian, after a fashion, who thought about these matters in the way in which Robert Fogel has thought about nutrition.⁵

3. HONORE DE BALZAC, *THE GIRL WITH THE GOLDEN EYES* (1835), *cited in* 2 *INTRODUCTION TO CONTEMPORARY CIVILIZATION IN THE WEST* 263 (Contemporary Civilization Staff of Columbia College eds., 3d ed. 1961) [hereinafter *CONTEMPORARY CIVILIZATION*].

4. ANDREW URE, *THE PHILOSOPHY OF MANUFACTURES* (1835), *cited in* *CONTEMPORARY CIVILIZATION*, *supra* note 3, at 243. The essay was written as a response to the Factory Act of 1833. *Id.* at 242.

5. See, e.g., ROBERT W. FOGEL, *STRATEGIC FACTORS IN NINETEENTH CENTURY AMERICAN ECONOMIC HISTORY: A VOLUME TO HONOR ROBERT W.*

To Noyes's mind, Balzac's story offers us at best a statistical sample of one, and perhaps not even that.

I cannot speak for everyone in that class, but Noyes won me over. From that time forward, I have been deeply suspicious of the dramatic crossover from literature to social science. The literary author has no obligation to track the truth while writing fiction. But the price that is paid for that liberty—dare one call it a self-indulgence—is that the fiction cannot be treated as though it is a representative instantiation of some generalized underlying social state of affairs, given the obvious risks of embellishment and fabrication. It is simply too easy for the novelist—or today's docudramatist—to shift water from one shoulder to another. When the critics are at a distance, and friends are close at hand, literature is projected as an accurate and vivid mirror of the world; when the critics close in, and the friends are absent, oh well, then some degree of literary license has to be tolerated in the name of creative imagination. The writer is allowed, to use a phrase that the English novelist Margaret Drabble invoked on Gretchen Helfrich's *Odyssey* talk show in evaluating Orwell, the luxury to speak of "warning not prophecy."⁶ To that observation, my response is that this clever equivocation opens the door to literary opportunism. If the world does not turn out as predicted, then the warning has been heeded. If not, then warnings can be recast after the fact to be the prophecies that they never were at the time.⁷ The

FOGEL (Hugh Rockoff ed., 1992); Robert W. Fogel, *Exploring the Uses of Data on Height: The Analysis of Long Term Trends on Nutrition, Labor Welfare, and Labor Productivity*, 6 SOC. SCI. HIST. 401–02 (1982); Robert W. Fogel, *New Sources and Techniques for the Study of Secular Trends in Nutritional Status and the Process of Aging*, 26 HIST. METHODS 5 (1993).

6. Audio recording: Gretchen Helfrich, *Odyssey* Talk Show on Station WBEZ (Nov. 11, 1999), available at <http://www.wbez.org/services/ram/od/od-991111.ram> (an audio covering Helfrich's interview with Epstein may be downloaded from this Web site).

7. The same strategy has often been employed by environmental doomsayers whose predictions of widespread chaos made some thirty years ago have been everywhere falsified by subsequent events. For a merciless dissection of that art, see Ronald Bailey, *Earth Day, Then and Now*, REASON, May 2000, at 18, who notes that activists such as Paul Ehrlich and Lester Brown never have to confess error because they know how to "get out ahead of a parade that has already started. When things get better, they claim that it's only because people heeded their warnings, not because of longstanding trends and increased efficiencies." *Id.* at 28. The real risk of course is that someone will believe them, even though the firmest protection against environmental risks comes often from new technologies and ideas in what look at first blush to be unrelated areas.

proposition remains sonorous, but it also becomes nonfalsifiable.

On balance then, I think the humdrum accounts given by social science are more reliable than the recounting of dramatic incidents that become the stuff of literature. A literary rendition may well teach someone to be sensitive to the ravages of poverty, but it will not indicate whether poverty is in decline or on the increase. It will not give comparative figures across different cities, states, or nations. It will not show its impact on longevity. We are rightly skeptical of social science data that is prepackaged to validate some prior point of view. Adopting the social science method does not require us to accept any and all work just because it falls within the genre. In particular, we should show even greater skepticism of literary works that have the same mission, but which are not subject to the same set of research protocols.

In dealing with grubby data, sometimes we have to look hard for explanations of powerful social trends. Think back to the condition of the working class in Europe in the mid-nineteenth century. One well-documented feature of this period was the expansion of large cities, stoked by migration from the farm.⁸ One nagging question asks why people choose to brave the hazards of a long journey in order to work under hellacious factory conditions so vividly described by Balzac and others. Perhaps we can hazard an explanation. An image that dominates popular and social thought conjures up the bucolic pleasures of farm life, and the communion that agricultural workers have with nature. Don't believe it. Even today, farm work ranks among the dirtiest and most dangerous occupations. Accidents and disease are common; exposure to the elements takes its toll upon the farmer.⁹ One hour of stoop-labor should convince any doubter of the false romanticism of agricultural work, especially before the huge labor-saving (and life-saving) machines and technologies of the twentieth century.

That observation helps explain why nineteenth century workers agreed to assume the risk of accident in contracting

8. KARL MARX & FRIEDRICH ENGELS, *THE COMMUNIST MANIFESTO* (David McLellan ed., Oxford Univ. Press 1992) (1848).

9. In 2001, agricultural deaths comprised approximately 12.2% of all occupational fatalities; mining deaths comprised about 2.6% of the occupational fatalities. U.S. DEPT. OF LABOR, BUREAU OF LABOR STATISTICS, *available at* <http://www.bls.gov/iif/oshwc/cfoi/cftb141.txt> (last visited Apr. 23, 2002).

with their industrial employers. Unfortunately, the usual answer given to that question is one that speaks of the exploitation of the worker by the firm—a leaf from Marx and Engels.¹⁰ The more accurate response does not require any appeal to the idea of exploitation at all. The farmer-worker is often a sole proprietor with no one to sue but himself. The worker who is denied by contract or by law the right to sue his employer has a practical position that is no worse than the farmer who labors on his own account and has no one to sue either. Indeed, that person may be better off if the factory environment he enters turns out to be less dangerous than the farming conditions he left. Now the compensation for injuries on the job comes, as it were, in an *ex ante* form that requires no lawsuit to collect. It is a reduced risk of injury in the first place.

To be sure, workers and employers do not have to stand pat with a no-liability regime just because the current employment is safer for the worker than his next best job. Competition still drives firms; workers are still willing to accept lower wages in exchange for higher rates of physical security. So once again the more prosaic theories of mutual gain through contracting—theories that would have held scant appeal to Orwell—might help explain the evolution of practices. And to some extent only they can explain what did in fact happen: the early systems of workers' compensation were concentrated in dangerous industries—rails and mines—and they antedated by over thirty years the adoption of the workmen's compensation laws in England in 1897.¹¹

Now it may well be that the explanation that I have offered is incomplete, for clearly there were many distortions in land markets that could have also pushed workers off the farms and into the cities. The most obvious of these would be the enclosure of lands that stripped many marginal producers of property to which they held only customary title.¹² A strong argu-

10. See generally MARX & ENGELS, *supra* note 8.

11. For a discussion, see Richard A. Epstein, *The Historical Origins and Economic Structure of the Workers' Compensation Law*, 16 GA. L. REV. 775 (1982).

12. For one such reference, see H.G. WELLS, *THE OUTLINE OF HISTORY* 821 (1921):

The bigger men were unchallenged rulers of Great Britain, and they set themselves to enact laws, the Enclosure Acts, that practically confiscated the unenclosed and common lands, mainly for the benefit of the larger landowners. The smaller men sank to the level of wage workers upon

ment could be made that the legal system should have recognized these claims by some analogy for prescriptive rights. But it would be a mistake to believe that this one shift would have been sufficient to offset the huge pressures that drove England toward industrialization in the nineteenth century. It would be equally misguided to take the position that the proper response to defects in agrarian land policy would have been to alter the rules that governed the employment relationship in industrial settings. What happened in the countryside should, perhaps, have been undone. But for these purposes it hardly matters whether that course of action was just unattainable or also unwise. Either way, it hardly improves matters in the country to adopt an inferior mode of industrial organization in the city. Here, as in general, one cannot counter the adverse effects of one imperfection with the creation of yet another.

I. LITERARY OVERGENERALIZATION

The dangers of literature as social science run deeper. Orwell himself was aware of the reporting biases of literary types. In his essay on Charles Dickens, he noted insightfully that "Dickens nowhere describes a railway journey with anything like the enthusiasm he shows in describing journeys by stagecoach."¹³ And Orwell further elaborates that Dickens did not have a clue of the businesses and trades of his various merchant characters who are more remembered for their oddities than their business acumen. We should never infer national savings rates from the financial habits of *David Copperfield's* Mr. Wilkins Micawber.¹⁴ If hesitant about Micawber, we should also take with a grain of salt David Copperfield's youthful experiences at Murdstone & Grimby, not to mention the educational oddities of Mr. Gradgrind (even the name is political) in *Hard Times*.¹⁵

The irony is that Orwell in his own way has fallen into the same trap as Dickens. Orwell has some great insights about

the land over which they had once possessed rights of cultivation and pasture.

13. George Orwell, *Charles Dickens*, in A COLLECTION OF ESSAYS BY GEORGE ORWELL 55, 92 (1954).

14. See generally CHARLES DICKENS, *DAVID COPPERFIELD* (Nina Burgis ed., Clarendon Press 1981) (1850).

15. See generally CHARLES DICKENS, *HARD TIMES* (Gwen Jose ed., Cambridge Univ. Press 1996) (1854).

himself, although I must confess that his account of his children in "*Such, Such Were the Joys . . .*" was much less credible to me after having raised three children, none of whom are as malleable and impressionable as Orwell supposes his fellow classmates to have been.¹⁶ The last time I read the essay I had uneasy sympathy (perhaps undeserved) for Mr. and Mrs. Simpson (Bingo), who must have had their hands full with this precocious, but problem, child whose own hang-ups made it hard for him to adjust to the routines of an English school. At the very least, I am convinced that I would not accept Orwell's account of his own youth without first undertaking cross examination and hearing adverse witnesses, both standard fact-finding precautions. But even if we assume that the adult Orwell had great self-understanding of the youthful Orwell, so that he could see through the foibles of those whom he knew, we still have to challenge his literary method. Quite simply, Orwell cannot win large scale political debates by generalizing autobiographical information, however compelling.

Let me give an example of what I mean. Recently, I read for the first time Orwell's 1936 novel, *A Clergyman's Daughter*.¹⁷ In this book Orwell does little to conceal his overlapping distastes for both religion and capitalism as they operated in England in the 1930s. Orwell himself certainly harbored an immense distaste for totalitarian regimes, and an abiding fondness for democratic socialism: "Every line of serious work that I have written since 1936 [the date of the Spanish civil war] has been written, directly or indirectly, *against* totalitarianism and *for* democratic socialism, as I understand it."¹⁸ But even if democratic socialism had the virtues that Orwell attributed to it, the question remains: what could we say about the overall desirability of that system (here understood as the collective ownership of the means of production, or at least extensive government planning and control over industrial policy) in comparison with the decentralized market alternative? Orwell makes that choice easy through his ability to construct a para-

16. See generally Orwell, *supra* note 2.

17. GEORGE ORWELL, *A CLERGYMAN'S DAUGHTER* (Harcourt Brace Jovanovich 1960) (1935).

18. GEORGE ORWELL, *WHY I WRITE* 313, 318 (1947).

gon of the old order that embodies the worst of all human traits, no matter what political system one endorses.¹⁹

The protagonist of the story is a twenty-something woman, Dorothy Hare, whose father is the Reverend Charles Hare, Rector of St. Athelstan's, Knype Hill, Suffolk. The worthy Charles has, after a fashion, two claims to fame. The first is his masterful ability to avoid payment of his lawful debts. He is able with astonishing success to berate, bully, feint, insult, parry, postpone, and promise his gullible creditors (whom we think the less of for their stupidity). His specialty is using his high religious position to insulate him from his mundane business and moral obligations. His second sin is worse still, in that he browbeats his daughter Dorothy in a shameless fashion into becoming the unwilling agent of his own self-indulgences: consumption of life's pleasures—the finest cuts of beef, the best wines—off the back of the tradesmen of a lower social class. Religion and capitalism are indissoluble, although perhaps not in quite the way that R.H. Tawney thought.²⁰ Any social system, Orwell reminds us, that produces or tolerates such base types in high places creates a bastion of privilege that merits our scorn and disapproval.

But what does this denunciation of religion and capitalism tell us about parsons and ministers of limited means who are scrupulous in their payment of bills? We should surely not want to generalize that all parsons and ministers are paragons of virtue. Why then take the argument in the opposite direction? Again we see the literary creation of a sample of $n = 1$, without the slightest sense of when literary imagination leaves off and social reality begins.

Once Orwell dispatches religion, he takes on capitalism. Once again he does not offer a formal demonstration of the in-

19. The same is true with documentary recreations. The Javert-like character of the police officer Vincent Della Pesca in the recent movie *The Hurricane* gains its power by making it appear that vengeance is the motive of a single public official who stalks the boxer Ruben Carter from the time that he is a boy. Then we find out that it is all literary creation, to move the plot along. But this bit of license falsifies the social setting, even if it does not negate the tragedy of (what we still presume) was a false conviction for murders that Carter did not commit. See Amy Westfeldt, "The Hurricane" Movie Found to Be Offensive by Victims' Families, CHI. TRIB., Feb. 9, 2000, at C2.

20. See generally R.H. TAWNEY, RELIGION AND THE RISE OF CAPITALISM: A HISTORICAL STUDY (1926). The central thesis of the book was that the virtues of the Protestant ethic helped usher in the factory and market systems of modern capitalism.

efficiencies of competition in supplying the ultimate level of public goods. Now his literary charge takes the form of a detailed description of the sweaty palms, reddish hue, oily complexion, and revolting secretions of the one businessman, Mr. Warburton, who actively seeks out the attentions and affections of a younger, if thoroughly repulsed, Dorothy. And needless to say, Orwell takes his swipe at education when he plants a desperate Dorothy in the horrid school run by the cheap and loathsome Mrs. Creevy, whose name reinforces her low character. Orwell is the master of literary character assassination for political ends. From his writings, it is all too easy to assume that only disfigured individuals engage in commercial transactions.²¹

II. HAYEK AND ORWELL

Orwell's portrayal of commerce in *A Clergyman's Daughter* differs rather dramatically from the way that people who work in commercial trades think about commercial morality. It is worth pausing to comment on the relationship between Hayek and Orwell.²² Nineteen ninety-nine was not only the fiftieth anniversary of the 1949 publication of Orwell's *1984*, it was also the 100th anniversary of the birth of Friedrich Hayek. More to the point, Hayek and Orwell were contemporaries in England from the early 1930s to the late 1940s. Hayek published *The Road To Serfdom* in 1944,²³ to great critical acclaim, and equally critical denunciation.²⁴ Orwell wrote a short, elegant, courteous, ironic, but none-too-perceptive book note about it. Its key passage reads as follows:

21. Nor is Orwell the only author who uses nasty physical descriptions to help in character assassination. Nietzsche, for example, uses the technique in *The Twilight of the Idols*, in which he begins his attack on Socrates by pointing to his ugly appearance, which he treats as "almost a refutation" of his ideas for the Greeks. Friedrich Nietzsche, *Twilight of the Idols*, in *THE PORTABLE NIETZSCHE* 474–75 (Walter Kaufman ed., 1982).

22. For elaboration, see Richard A. Epstein, *Visionaries Revisited*, CHI. SUN-TIMES, Nov. 7, 1999, at 30A.

23. The publication history of the book is recounted in Milton Friedman, *Introduction to the Fiftieth Anniversary Edition* of FRIEDRICH A. HAYEK, *THE ROAD TO SERFDOM* xvii–xx (Univ. of Chicago Press 1994) (1944). By 1994, the book had sold over 250,000 copies in hardcover and paperback.

24. For instance, see HERMAN FINER, *ROAD TO REACTION* (1945), singled out by Hayek in his 1956 *Preface to The Road to Serfdom*. HAYEK, *Preface to the 1956 Paperback Edition* of *THE ROAD TO SERFDOM*, *supra* note 23, at xxx n.4.

Professor Hayek is also probably right in saying that in this country the intellectuals are more totalitarian-minded than the common people. But he does not see, or will not admit, that a return to "free" competition means for the great mass of people a tyranny probably worse, because more irresponsible, than that of the State. The trouble with competitions is that somebody wins them. Professor Hayek denies that free capitalism necessarily leads to monopoly, but in practice that is where it has led, and since the vast majority of people would far rather have State regimentation than slumps and unemployment, the drift towards collectivism is bound to continue if popular opinion has any say in the matter.²⁵

It takes a fair bit of ingenuity to unpack the sense and nonsense that Orwell jammed into this short passage. On the positive side of the ledger, Orwell joins a long list of authors who have feared and condemned monopoly. But his insistence that competition leads to tyranny reminds me of the contemporary writings of folks like Friedrich Kessler, who saw the same dangers of fascism in standard form contracts.²⁶ But of course

25. George Orwell, *Review: The Road to Serfdom by F.A. Hayek, The Mirror of the Past by K. Zilliacus* [hereinafter *Review*], in III THE COLLECTED ESSAYS, JOURNALISM AND LETTERS OF GEORGE ORWELL: AS I PLEASE, 1943-1945, at 118 (Sonia Orwell & Ian Argus eds., 1968) [hereinafter COLLECTED ESSAYS] (a reprinting of Orwell's April 9, 1944, *Observer* book review). The following excerpt summarizes Orwell's argument:

Taken together, these two books give grounds for dismay. The first of them is an eloquent defense of *laissez-faire* capitalism, the other is an even more vehement denunciation of it. They cover to some extent the same ground, they frequently quote the same authorities, and they even start out with the same premise, since each of them assumes that western civilization depends on the sanctity of the individual. Yet each writer is convinced that the other's policy leads directly to slavery, and the alarming thing is that they may both be right.

....

Between them these two books sum up our present predicament. Capitalism leads to dole queues, the scramble for markets, and war. Collectivism leads to concentration camps, leader worship, and war. There is no way out of this unless a planned economy can be somehow combined with the freedom of the intellect, which can only happen if the concept of right and wrong is restored to politics.

Both of these writers are aware of this, more or less; but since they can show no practicable way of bringing it about the combined effect of their books is a depressing one.

Id. at 117-18, 119.

26. Friedrich Kessler, *Contracts of Adhesion—Some Thoughts About Freedom of Contract*, 43 COLUM. L. REV. 629, 640-42 (1943).

that entire line of argument misses the point that Hayek stressed so emphatically in *The Road to Serfdom*—free entry into product and labor markets goes a long way to constrain the misbehavior of firms by opening up choices to both workers and consumers.²⁷ Rather than see this point, Orwell confuses competition in markets with races. Someone wins and loses races, and Orwell's clear import is that races are a zero-sum game. Even that point is wrong as a matter of practice, for participants enter races for the same reasons that they enter any other form of consensual arrangements—because they posit that their expected gain in material and social satisfaction will exceed their anticipated cost. By thinking of races in static form Orwell overlooks the *systematic* social gains from competition. Orwell is of course correct to note the peril of monopoly, but wrong to assume that free capitalism “necessarily” leads to monopoly. That conclusion presupposes the absence of new entry and innovation, and, further, that the antitrust law (or competition policy, as it is called in Europe) is helpless to deal with the threats of price-fixing and horizontal mergers. Orwell's somber conclusion that popular opinion would prefer the yoke of government to the bumps and turns of a private economy assumes that separate decisions of firms, as opposed to policies of nations—tariffs, monetary, and fiscal policy—account for the ups and downs in the economy. So while his prediction of popular sentiment was validated in the short run, it did not anticipate either the conservative successes of Margaret Thatcher or, for that matter, the centrist policies of Labor's present Prime Minister, Tony Blair. It goes without saying that Orwell had no sense of the turmoil of innovation in computers and biotechnology.

Given his lack of sophistication, it is not surprising that Orwell was mistaken in describing Hayek as an eloquent defender of *laissez-faire*.²⁸ On this point, he could have usefully referred to the deep intellectual affinities between Hayek and Blair. Alas, Hayek was *not* the thorough-going libertarian or utilitarian, even in 1944, that Orwell makes him out to be. Rather, Hayek denied that anyone knows enough to construct

27. “And it is essential that the entry into the different trades should be open to all on equal terms and that the law should not tolerate any attempts by individuals or groups to restrict this entry by open or concealed force.” HAYEK, *supra* note 23, at 42.

28. Orwell, *Review*, *supra* note 25, at 117.

any viable social order, so that spontaneous generation of coherent social practices was, for Hayek, the best path to what Hayek later termed (as did Lyndon Johnson, with different intentions) "the Great Society."²⁹ Recently, I wrote an essay titled *Hayekian Socialism* to comment, or even lament, how much Hayek was prepared to tolerate government intervention into the market.³⁰ For starters, Hayek accepted a bloated role for government in the provision of medical services and unemployment benefits.³¹ More generally, Hayek's own views reflected something of the social democratic philosophy that permeated his native Austria before he migrated to England in the 1930s.

But in a sense all this is by-the-by, for Hayek had a far better sense of the systematic consequences of various economic arrangements; in addition, and perhaps because of this knowledge, he had a much firmer and accurate read of commercial morality than Orwell ever possessed. Hayek thought that commerce functioned best with unreflective obedience to trade custom by members of any close-knit business group or community. To Hayek, local knowledge of discrete circumstances cannot be obtained by anyone who seeks to plan in a top-down way, but can only come from those who are steeped in the mores and practices of their own specialized institutions.³²

That said, Hayek had to ask the question, what kinds of individuals, with what sort of character traits, were likely to succeed in trade when entry and exit into the business were open, and when legal enforcement of the applicable business norms was both costly and spotty? More to the point, Hayek had to ask not only how a single individual related to the system, but also how that system continued to maintain some sustainable equilibrium over time. This is not an easy task, because the theory must take into account not only the few institutions that flourish over time, but also those that collapse before starting, and those whose promising beginnings peter out over time. Working through these calculations requires an

29. FRIEDRICH A. HAYEK, LAW, LEGISLATION AND LIBERTY: RULES AND ORDER 148 n.11 (1973) ("The expression 'the Great Society,' which we shall frequently use in the same sense in which we shall use Sir Karl Popper's term 'the Open Society,' was, of course, already familiar in the eighteenth century.").

30. Richard A. Epstein, *Hayekian Socialism*, 58 MD. L. REV. 271 (1999).

31. HAYEK, *supra* note 23, at 120-21.

32. For his most famous exposition, see Friedrich A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 520 (1945).

appreciation of the many different types of personalities who interact in the marketplace. The durability of social institutions, like the durability of companies, cannot be explained by focusing on the extreme personality types who are least likely to gain the trust needed to engage in repeat transactions.

Given these constraints, what type of individual is likely to succeed, and what type is likely to fail? On this view, Hayek's basic position is that folks who are oily, greasy, unkempt, and generally disreputable turn out, as the word disreputable suggests, to lack the positive reputation that eases commercial dealings.³³ In reaching that conclusion, I am not speaking of the ineffable, even if I am speaking of the intangible. Reputation is a valuable commercial asset because a good reputation reduces the cost to others of doing business with you. A good reputation creates trust that you will keep your word, which in turn confers upon you a real competitive advantage by reducing the costs that others must spend in monitoring your behavior. In this environment, individuals who are not comfortable with keeping promises will migrate to some other profession. The assortment of individuals across trades is not random, even on issues of style, character, and decorum. Certain people fit in better in an office, and others do better in the field. People generally do better in selling and servicing products that they like and use as consumers. Commerce thus tends to self-select individuals who are suited to their particular trade. One cost of the planned economy is that the state tries to match persons with occupations, without having any accurate measure of these subjective predilections.

To be sure, this set of market incentives is not foolproof in the way it "assigns" people to occupations, or "polices" their conduct once they get there. But that is something that can be said of any system of legal enforcement. In any isolated market transaction, it may pay for someone to breach a deal in order to pocket some larger gains. But individuals who have invested heavily in their trade or profession do not have any easy exit options. The gains that they might obtain from breach will therefore be offset by the loss of future transactions that could be worth far more to them than the paltry profits they receive from the immediate transaction. Generally, long experience in

33. See Epstein, *supra* note 30, at 278–79 (describing Hayek's Darwinian approach to economic theory).

the trade is a bonding device that makes it difficult for misfits to prosper in business. When merchants do get old, their horizons shorten—unless they hope to pass their business on to a junior partner, often their son or daughter.

The needs of commerce therefore often work at powerful cross purposes with literary descriptions of outliers, most of whom would wash out early on in their careers. On balance then, Hayek's account of merchants is both more subtle and more accurate than its Orwellian alternative. Vivid accounts of self-destructive behavior at the brink of ruin—as befalls Orwell's protagonist, Gordon Comstock in his 1936 novel, *Keep the Aspidistra Flying*³⁴—help "spice up" the plot. But on this point Orwell again comes off second best to Hayek's more prosaic and workmanlike account of merchants.

III. WHEN N DOES EQUAL ONE

Orwell's effort to use literature to explain social situations is unpersuasive in seeking to explain patterns of routine behavior. It may well be that no two people have the same desires for milk or music, but none of these perturbations undermines the basic laws of supply and demand. The subjective grounds for valuation may well explain why, with price constant, one individual will purchase goods that another will not. Indeed, variation within human beings has to be presupposed in order to explain why all individuals do not desire the same goods with the same intensity. That said, however, we can still infer that any increase in price will result in a reduction in demand, even if we cannot identify which individuals in a large population will stop or reduce their purchases. In seeking, therefore, to understand either economics generally or commerce more specifically, the individual variations drop out of the equation. It seems that Orwell's views into market behavior are not insights, but mistakes. They rely too much on personal introspection and distaste and not enough on empirical generalization. As Orwell said of himself, he was no theorist: "I became pro-Socialist more out of disgust with the way the poorer sec-

34. GEORGE ORWELL, *KEEP THE ASPIDISTRA FLYING* (Seckler & Warburg 1959) (1936).

tion of the industrial workers were oppressed and neglected than out of any theoretical admiration for a planned society."³⁵

His technique is, however, far more valuable in dealing with the central theme of his great novel *1984*, that of totalitarian excess.³⁶ Here the task is no longer to understand the market behavior of large disaggregated groups of consumers. In this context, we do not have a large number of repetitive events—sales, leases, mortgages—of the same type. So, it is fair to ask, of what use is general economic theory when it turns out that *n does equal 1*? Stated otherwise, the key point about totalitarian regimes does not concern the slow movement and migration by the mass of merchants' consumers. Instead, the question is how a single individual—whose actions could be either heroic or demented—shapes the behaviors of political institutions over which he has captured control. In large populations, this one person could be many standard deviations away from the norm. Any judgment as to how that person will respond to ordinary stimuli is likely to be wrong because it rests on the assumption that folks like that are not all that different from ourselves.

The point here does not apply only to these extreme cases, but also to others that are markedly less so. Thus, one common feature of economic analysis is to apply the general theories of deterrence to criminals as though they were rational individuals, seeking to maximize their gains when subject to external constraints. Some criminals surely act in this fashion, but many criminals are not drawn from the fat part of the bell curve. The high number of suicides after murders should offer a strong clue that the usual assumptions of deterrence theory do not hold with distraught and distressed individuals. Thus, it becomes improbable in the extreme to think that changes in legal doctrine or severity of sanctions will have large impacts on the behavior of this subset of the population, even if these same changes will be closely monitored by other individuals for whom criminal behavior is nothing more or less than a way of earning a living.

The same concern applies to some political leaders with extreme personality traits. Now the behavior of individuals

35. Orwell, *Author's Preface to the Ukrainian Edition of Animal Farm*, in *COLLECTED ESSAYS*, *supra* note 25, at 403.

36. GEORGE ORWELL, *1984* (Bernard Crick ed., Clarendon Press 1984) (1949).

trapped in the center of the normal distribution does not offer much guidance as to how any misfit who has bulled his way to the top of the political order will behave. Nor will it help to think of how other political figures might have acted in particular circumstances. One reason why Hitler was able to succeed is not that no one thought he could be quite evil enough to carry out the fiendish plans he outlined in 1925 in *Mein Kampf*.³⁷ Rather, Hitler's contemporaries compared him to other political leaders who always shrank from their own verbal excesses, and thus missed the twisted attitudes that warped the man. Yet since Hitler was outside the domain of common experience, even for depraved politicians, everyone underestimated the extremeness of his views because they refused, before it was too late, to treat him as an outlier among outliers. Clearly that mindset had a great deal to do with Neville Chamberlain's ill-fated policy of appeasement in Munich.³⁸ Political leaders in the democratic nations of western Europe routinely underestimated his diabolical responses. It is this tactical advantage that truly evil people have over ordinary individuals who from time to time fall from grace.

It is in trying to understand the behavior of extreme deviants that the literary imagination has a certain working advantage over a quantitative social science. The science types deal with the centralizing tendencies of large populations that can be arrayed in normal distributions. The literary type, armed with psychological insights, just might be able to get inside the head of the one isolated person who makes all the difference in the political arena. Indeed, one great weakness of political science generally is that it has no satisfactory theory of how a Hobbesian sovereign is able to aggregate so much personal political power in the first place. Men like Hitler or Stalin were not drawn from the middle of the human distribution, and part of their success lay in the fact that ordinary people were lulled into a false sense of security because they simply could not take these pathological types at their word. Yet the mystery remains, how could these tyrants speak in ways that millions of independent minds were prepared to obey? How is

37. ADOLF HITLER, *MEIN KAMPF* (Ralph Manheim trans., Houghton Mifflin 1943) (1925).

38. JOHN KEEGAN, *THE SECOND WORLD WAR* 40 (1989).

it that such machines of terror and power could retain themselves for as long a period as they did?

One reason why Orwell was so effective in his denunciation of totalitarianism is that he was an outlier himself with some understanding of what fueled others who were more troubled, and far more troubled, than himself. I have done no systematic examination of Orwell's life, but from what fragmentary evidence I have been able to assemble, I am taken by what I perceive to be his self-destructive streak. Orwell almost did not survive his self-imposed hand to mouth existence, as recorded in *Down and Out in Paris and London*,³⁹ before he became an established writer in the mid-1930s. I must also confess that whenever I stare at pictures of Orwell, I see a face wracked with tension. The word that comes to mind to describe his appearance is "tortured." That impression is only reinforced by his own account of the arduous conditions to which he voluntarily exposed himself throughout his life. Whether he was in Paris, London, Wigan Pier, or Spain, he always seemed to veer toward the precipice. It is no surprise that he died of tuberculosis and other assorted ailments in January 1950 while he was still forty-six years of age.⁴⁰

All this, of course, says nothing about personality, but I have been impressed by the remarks of Margaret Drabble, who noted that Orwell had a somewhat unstable personality, with a touch of temper and perhaps even cruelty in his personal relations.⁴¹ Then there is his writing itself. I have already referred to his masterful essay, "*Such, Such Were the Joys . . .*" By his own account, Orwell was a troubled loner who was forced to bear all the indignities of being poor. But other scholarship boys doubtless got on far better than he, so it seems odd to attribute all his travail to the insensitivity of others. Orwell himself was no easy person, and it is not difficult to sense his pent up rage at being close to, but never part of, some elite upper circle.

39. GEORGE ORWELL, *DOWN AND OUT IN PARIS AND LONDON* (Peter Davison ed., 1997) (1933).

40. See MICHAEL SHELDEN, *ORWELL: THE AUTHORIZED BIOGRAPHY* 442 (1991).

41. Margaret Drabble, 1984: Orwell and Our Future, Address at the University of Chicago conference (Nov. 12, 1999).

The totalitarian impulses in Orwell are also brought out in the passages from his essay, *Politics and the English Language*, which contains some real fighting words:

I said earlier that the decadence of our language is probably curable. . . . Silly words and expressions have often disappeared, not through any evolutionary process but owing to the conscious action of a minority. . . . There is a long list of flyblown metaphors which could similarly be got rid of if enough people would interest themselves in the job . . . to reduce the amount of Latin and Greek in the average sentence, to drive out foreign phrases and strayed scientific words . . . with the scrapping of every word or idiom that has outworn its usefulness.⁴²

I am not quite sure how to read this passage. As drafted it does not necessarily require some degree of collective action to cure the English language of some of its internal deficiencies (assuming that one is willing to tar all words of Latin and Greek origin with that designation). It could well be that all Orwell means to suggest is that sound writers will become trend-setters by pruning away the excesses of their own prose. At this point, we could envision a benevolent process of linguistic competition where the better stylists drive out the inferior ones. But for all its imprecision, the passage suggests an intolerant view toward those whose view of language differs from Orwell's. Orwell likes punchy words: "to drive out foreign phrases and strayed scientific words," to "scrap[] . . . every word or idiom that has outgrown its usefulness," and to "rid" the language of its various imperfections are words that invite an image of coercion, not competition, of domination and not exhortation.

Last, I think that we have to look at the situation in 1984 itself. In one sense the comfortable reading is to assume that Orwell identified himself with Winston Smith, the man who could not quite stand up to the titanic fury of O'Brien.⁴³ But my reading of Orwell is somewhat different. I think that Orwell is both repelled by and attracted to O'Brien. It is a bit the way in which some radical feminists are obsessed by the por-

42. George Orwell, *Politics and the English Language*, in IN FRONT OF YOUR NOSE 1945-1950: THE COLLECTED ESSAYS, JOURNALISM AND LETTERS OF GEORGE ORWELL 137-38 (Sonia Orwell & Ian Angus eds., 1968).

43. ORWELL, 1984, *supra* note 36.

nography whose baleful influence they denounce—too frequently. The long description of O'Brien's fiendish intensity; his devious intelligence in cross-examining Winston; and the lavish attention he pays to every detail of the scene—all these elements lead me to think that one reason why Orwell is so effective in his condemnation of totalitarian practices and institutions is that he fought to contain some of those impulses within himself. So he is able to explain some of the fury associated with the behavior, although to my mind at least, it never quite matches the portrait of totalitarian behavior that is found in Arthur Koestler's 1941 masterpiece, *Darkness at Noon*.⁴⁴

In dealing with the totalitarian impulse, Orwell does a credible job in exposing the twisted personalities of the leaders. But he utterly fails to explain the durability or success of any totalitarian regime. On this point we have Orwell's implicit prophecy that the totalitarian nations will grow stronger over time so that their sheer mass will crush a prostrate world. His reasons for so thinking are outlined in that short review he wrote of *The Road to Serfdom*.⁴⁵ He believed that the capitalist system required the prospect of war to keep itself whole. He thought the same thing about most forms of collectivism. So he wrote: to "sum up our present predicament. Capitalism leads to dole queues, the scramble for markets, and war. Collectivism leads to concentration camps, leader worship, and war."⁴⁶ There was not much difference between the two systems, at least for one who could not see the distinction between the scramble for markets and war.

Some of what Orwell says is doubtlessly true. The well-known difficulties in making public choices help explain why some nations will pad their defense expenditures for the benefit of the military-industrial complex. But that said, there is far more that Orwell does not understand because of his pervasive ignorance about the operation of both government and markets in a democratic state. In different ways, and for different reasons, both organizations respond to the demands of the median voter who does not have the same disposition as the

44. ARTHUR KOESTLER, *DARKNESS AT NOON* (Daphne Hardy trans., 1941).

45. Orwell, *Review*, *supra* note 25.

46. *Id.* at 119.

outlier.⁴⁷ Median voters do not like war. American voters would rather tour Europe than die there. With the increase in wealth that market economies can supply, the military no longer offers *a*, let alone *the*, major path to social advancement. Service in the military no longer carries with it the same cachet that it did in former times. Democracies still fight wars, but the American response to the 1990 Iraqi invasion of Kuwait, and more lately to our relentless hunt for Osama bin Laden in Afghanistan, should remind us of the extent to which western governments now go to avoid their own military casualties. The lesson of Vietnam was that democratic institutions cannot today support military efforts that do not pertain to national survival when large numbers of soldiers come home in body bags. The levels of political protest spread to the middle-classes. Lyndon Johnson could not survive politically in 1968 even after a landslide victory in 1964. Far more modest military interventions in Kosovo and Somalia may fail today as public tolerance continues to grow thinner. So what reason was there to think that Stalinism could survive the death of Stalin?

Orwell also misunderstood the direction in which technology would take political discourse. His view, heavily influenced by nineteenth century developments, was that technological advances always worked in favor of the state. He took what might be termed a "brawny" account of technology. More and bigger tanks, planes, and rockets would carry the day. God would work in favor of the big battalions. The larger populations of the Soviet Union, and perhaps China, would prevail. But he was wrong. Massiveness turns out to be a liability, not an asset. On the economic front, minnows can swim where whales are beached. China and India struggle while Hong Kong prospers on the strength of trade alone. The image of 1984 in which the world will devolve into three massive nations—Eurasia, East Asia, and Oceania—was no more credible in 1949 in the final stages of the break-up of colonial empires than it is today.

This point was brought home to me when I traveled through Europe in the summer of 1965. I can recall going to

47. For an early discussion of public choice theory, see JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* 3–9 (1962).

East Berlin that July. It did not take a social scientist to figure out that the standard of living was far higher in surrounded West Berlin than in the East German capital. The symbolism of forcing people to purchase East German coinage (which could not be converted back) did not escape us even then: East Germany was an empty amusement park to which you had to pay an admission fee to tour, so long as you did not open your camera case. The East German money was so light to the touch that it could fly away in a gentle breeze, and East German chocolate was so inedible that it was better to keep worthless East German coins as a souvenir. The local cynicism was oft-expressed in black humor. I can still recall the shopkeeper who sold me what passed for a chocolate bar—a hollow wafer-like structure with a microscopic layer of nasty chocolate on top of it—for my converted East German marks: “Kapitalismus is gut wenn man gut unter Kapitalismus isst” which loses only a little of its punning punch in English: “Capitalism is good when one eats well under capitalism.”

The measure of progress in the military domain reveals a parallel story. Brawn again takes second place to precision. What is needed is sophisticated weaponry and highly trained personnel. Those advances depend on the ability to develop miniaturized technologies. The chaotic start-up in the United States was more likely to leapfrog some technical obstacle than the hierarchical state-run apparatus in the Soviet Union. Monopoly in military organization has the same deadening influence that it has in economic areas. We saw the clear outcome of these divergent paths in the Falkland War in the early 1980s where the British technology swept aside the Argentine advantage in numbers. This was true even in the face of Britain's evident locational and logistical disadvantages of fighting in Argentina's backyard, thousands of miles from its home base.⁴⁸ The huge tank battles and artillery barrages of the Second World War counted as peak performance in one generation; they did not represent the harbingers for our current tactics that rely heavily on precision electronics, sophisticated air power, and highly trained special forces. In 1950, Hayek believed that Socialism would fall of its own weight after two generations, or so my late colleague Walter Blum assured me

48. See generally MAX HASTINGS & SIMON JENKINS, *THE BATTLE FOR THE FALKLANDS* (1983).

in conversation. The Berlin Wall came down in 1989 because East Germany's dilapidated economic system could no longer support a military or police state. Orwell had no sense that the monopoly of power at the top would erode because of the inability to feed, house, and clothe people at the bottom.

Orwell was wrong for yet another reason. He argued in 1984 that a determined state could retain sole control over information and technology.⁴⁹ But the transistor radio is a lot smaller than the vacuum tube radio it displaced; the silicon computer chip is smaller still. Long before the rise of the Internet it became clear that improved communications from cheap and miniaturized technology would do more to undermine the power at the center than to prop it up. 1984 imagines a world of super-surveillance in which determined autocrats bombard a helpless population with constant propaganda. It envisions no countervailing forces such as radio free Europe, an underground press, or a single web connection. 1984 reads as though imaginary wars are enough to keep docile populations in check. It assumes that no one can write letters home from the imaginary front. In some circumstances a combination of location, tradition, and language might keep one country isolated from outside influences. That explanation could easily account for the downward spiral in North Korea, from which there may be no easy escape. But the cosmopolitan and open traditions in Europe and the United States work heavily against the world-wide reemergence of any totalitarian regime, with the emphasis on "total." In a word, Orwell proved wrong historically because the last fifty years of the twentieth century in Europe and the United States turned out a lot better than the first fifty years of the twentieth century. Yet Orwell could not understand the future path because he could never remove his socialist blinders or overcome his own literary skills.

IV. PARTING WORDS

Some object lessons should emerge from this analysis. I can think of two. The first is that we should beware of the use of literary imagination as a source of social understanding. The masters of plot and character are best at writing fiction, not at explaining complex social systems and making recom-

49. ORWELL, 1984, *supra* note 36.

mendations for their reform. The second is political, and in a sense more important. It is my prediction that *1984* will continue to be read, but over time read more and more as a period piece. People from my own generation—those over fifty, say—will continue to relate to the Soviet threat because, having lived through the time, they understood the risks involved. Yet my children's generation, and hopefully their children's generation, will not relate to *1984* as either warning or prophecy for the best of all reasons. Its gloomy descriptions of life are, and will remain, too far off the mark to raise current fears even if they retain the power to move the abstract imagination. The loss of influence of one work of literature is a small price to pay if we can keep our legal, economic, and political institutions together so that *1984* remains a relic of Orwell's past, and never becomes a part of our future.

