



Karl Marx: A Failed Vision of History

Philosopher Karl Marx believed he had discovered the key to history: Capitalism would be overthrown by communism and oppressed workers would finally be free. History did not work out that way.

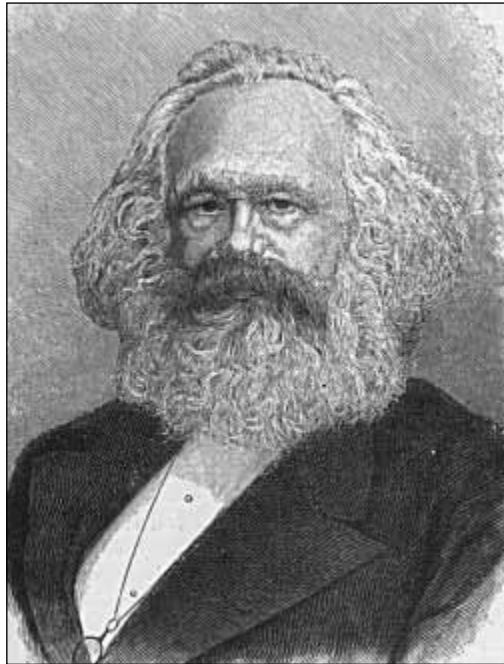
In the late 1700s, the Industrial Revolution began in England. Powered machines and factory time schedules replaced the natural rhythms of farm life. Men, women, and children labored at repetitive mechanical tasks, making goods that they did not own. For the first time, masses of people depended entirely on money wages to survive.

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The era of capitalism was beginning. Landowners had dominated the old era. They gradually lost power. A new class of business people—merchants, bankers, and industrialists—rose to power.

During the early years of industrialization in England, workers had no say in what their wages or working conditions would be. The typical workday was 12 hours not counting meal times. Children under 10 commonly worked in the factories and coal mines.

Up to about the 1880s, worker living conditions were awful in English industrial cities such as Manchester. Entire families crowded into single-room apartments. Dirt, garbage, sewage, industrial wastes, foul air, and polluted water poisoned the environment. In the English industrial cities, 25 percent of all children under age 5 died of disease and malnutrition.



Karl Marx (1818–1883) was the founder of modern communism. He believed that economic forces, particularly struggles between economic classes, determined history. (Perry-Castañeda Library, University of Texas at Austin)

As the new industrial owners, called capitalists, gained more political power, the English Parliament repealed worker protection laws going back to the time of Queen Elizabeth I. New legislation made worker attempts to form labor unions illegal under criminal conspiracy laws.

The increasingly powerful capitalists pointed to the economic ideas of Adam Smith to support their vision of freedom. In 1776, the year the American Revolution began, Adam Smith had written *Wealth of Nations*, the first complete description of a new economic system called capitalism. Smith had called for the freedom of capitalists to operate their businesses as they saw fit with little interference from government.

(Continued on next page)

Ideas

Ideas matter. They influence how people act and are important in human history. The expression of ideas can even be worth money as intellectual property. This issue of *Bill of Rights in Action* looks at some historically important ideas and some issues surrounding intellectual property. The first article examines the ideas of Karl Marx, the architect of the theories of Communism. The second article explores the ideas of Social Darwinism espoused by Herbert Spencer, which had a significant impact on America in the late 19th century. The last article looks at current issues of intellectual property, focusing especially on downloading music from the Internet.

World History: Karl Marx: A Failed Vision of History

U.S. History: Social Darwinism and American Laissez-faire Capitalism

Current Issues: Copying Music and Movies from the Internet: “Digital Piracy” and “Fair Use”

A German philosopher, Karl Marx came to live in England at the peak of its Industrial Revolution. He had a far different vision than Smith. He focused on the exploited and impoverished industrial workers.

The Alienated Worker

Karl Marx was born in 1818 in a part of Germany then called Prussia. As a young university student, he spent a lot of time drinking and getting into bar fights. He still managed to study hard.

Marx joined a group of students who studied the German philosopher, Georg Hegel. Hegel taught that every important idea (thesis) produced another idea that was its opposite (antithesis). The resulting conflict or struggle between them resulted in an entirely new idea (synthesis). Later in his career, Marx would build on Hegel's philosophy to explain how class struggle in history leads to a final, perfect society. Hegel had been idealist. He believed ideas shaped history. Marx, however, was a materialist. He believed economics shaped history.

Marx earned his doctor's degree in philosophy at age 23. For a brief time, he wrote for a German newspaper, attacking Prussian censorship laws. He also wrote philosophical essays.

In one of them, Marx coined one of his most memorable phrases, calling "religion the opium of the people." By this he meant that religion acts like a narcotic, easing the pain of the poor and oppressed in a "heartless world." But like a narcotic, it failed to cure the poverty and oppression. Although Marx's parents were born Jews, his father converted to Christianity. Marx was indifferent about religion all of his life.

In 1843, Marx married Jenny von Westphalen, the attractive daughter of a liberal-minded aristocratic father and middle-class mother. The young couple soon moved to Paris, where Marx found work as a journalist.

Paris was a hotbed of radical thinking. Marx dived into the study of economics. He reached the conclusion that the new industrial workers labored for wages that barely kept them alive while creating enormous wealth for their capitalist employers.

In 1844, Marx wrote that the worker was alienated, or separated, from the fruits of his own labor. To correct this injustice and achieve true freedom, Marx said the workers must first overthrow the capitalist system of private property. The workers would then replace cap-

italism with a communist economic system, in which they would own property in common and share the wealth they produced.

While in Paris, Marx befriended Friedrich Engels, also a German. Engels' father owned a share in several textile mills in Manchester, England. Although Engels worked in the family business, he soon began to publish works critical of capitalists.

Engels published a report on the dreadful conditions of the working class in England. "A horde of ragged women and children swarm about here," he wrote, "as filthy as the swine that thrive upon the garbage heaps and in the puddles."

In 1845, the French government expelled Marx for his political writings. Marx, his wife, and their year-old daughter moved to Brussels, Belgium, where Engels soon joined them.

Communist Manifesto

In Brussels, Marx and Engels joined a small radical workers' group and persuaded the members to name it the Communist League. The league then asked Marx and Engels to write a manifesto, a statement of the group's beliefs. During the winter of 1847–48, Marx did most of the writing of what became his most famous work: the *Communist Manifesto*.

"A specter is haunting Europe—the specter of Communism." This is how Marx began the *Communist Manifesto*. He went on to describe what he believed to be a scientific and economic explanation of how history had progressed in the past and would unfold in the future.

The history of society, Marx wrote, "is the history of class struggles." Marx attempted to show that throughout history one economic class always oppressed another: "Freeman and slave, patrician and plebeian, lord and serf, guildmaster and journeyman." But eventually the downtrodden class rose up, overthrew its masters, and created an entirely new society.

Marx wrote that the industrial capitalists and others using private property to make profits made up the oppressive class of his time. Marx called this class the bourgeoisie, which used its wealth and control over government to exploit the industrial working class. Marx named this class the proletariat.

According to Marx, the value of a product is based on the labor used to manufacture it. Marx pointed out that

workers' wages fell far short of the price of the products they made. This was because the capitalists made a profit on what they sold. Marx called the profit "surplus value" and thought that it exploited the workers. Marx said that capitalists had alienated the worker from the results of his labor, forcing him to become "enslaved by the machine." This exploitation, argued Marx, would soon bring about a new class struggle that would end with the "violent overthrow" of the bourgeoisie by the proletariat.

Marx described the Communists as those who best understood the class struggle. They would unify the proletariat, lead it in the revolution, and take control of the government.

During what Marx called the "socialist phase" of the revolution, the new proletarian government would confiscate all capitalist private property like factories, mines, farms, and other businesses. The government would then operate these enterprises for the benefit of the workers.

When the proletariat finally controlled economic production, Marx declared that all classes would disappear and class struggles would end. In this "communist phase," there would no longer be a need for a government.

Marx expected that the proletarian revolution would soon occur in Germany or England and then take place worldwide. He ended the *Communist Manifesto* with these rousing words:

Let the ruling classes tremble at a Communistic revolution. The proletarians have nothing to lose but their chains. They have a world to win. Workers of the world unite!

A New Home in England

By the time Marx published the *Communist Manifesto* in 1848, worker uprisings had broken out in Germany and several other European countries. Marx and Engels moved to Germany where they wrote articles attacking the government. By 1849, however, the European governments had crushed all the revolts. Marx concluded that the revolts had been premature.

Expelled from Belgium and again from France, Marx took his wife and family to London, which remained his home for the rest of his life. In London, he gave lectures and wrote articles for newspapers (including Horace Greeley's *New York Tribune*). But he never held a steady job.

Harassed constantly by creditors and threatened with eviction, Marx appealed to Engels for financial support. Engels, who was working for his father's textile firm in Manchester, responded generously.

With help from Engels and some timely family inheritances, Marx supported his growing family. Marx adored his children and loved to make up stories to tell them. He was devastated when three of them died within a few years of one another, leaving three surviving daughters.

In between firing off numerous essays critical of other European radicals, Marx spent his time in the British Museum researching capitalism. In 1867, after many delays, distractions, and health problems, Marx finally published the first volume of *Capital*, a major analysis of capitalism and his most important work.

In *Capital*, Marx pointed out numerous contributions that capitalism had made to economic progress, especially in the area of technology. But he wrote that capitalism was doomed. He predicted that as capitalism developed, a small number of powerful monopolies would drive many enterprises out of business. To successfully compete against one another, these "cut throat" monopolies would reduce worker wages. Finally, a class struggle between the workers and the capitalists would bring on a revolution, replacing capitalism with communism.

Marx was quite vague in his description of society after the revolution. In an 1875 essay, he described the government during the "socialist phase" as "the revolutionary dictatorship of the proletariat." But he stated that this dictatorship would act in the best interests of the workers and would gradually disappear.

Marx also expected that once the proletariat had taken control of all capitalist property, wealth would flow more abundantly for the benefit of all. Then in the "higher phase of communist society," individuals would finally be free to develop their abilities and talents to the fullest. Marx put it this way: "from each according to his ability, to each according to his needs."

In 1882, Marx published his last writing, a short preface to the Russian edition of the *Communist Manifesto*. Russia was mainly a rural peasant society with little industrial development. Thus, Marx had ignored it as lagging far behind in the march toward revolution. He now, however, admitted that the Russian peasants were at "the starting-point for a communist development."

Karl Marx died in London on March 14, 1883. Only 11 people showed up at the funeral. His lifelong friend and benefactor, Friedrich Engels, spoke at his graveside. Engels predicted that Marx's "name and work will endure through the ages." After Marx's death, Engels assembled Marx's notes and published volumes two and three of *Capital*.

"Everything Should Be Doubted"

Karl Marx is an important figure in philosophy, sociology, economics, and history. Marx developed a detailed explanation of the entire course of human events. For example, his theory of class struggle attempts to explain why and how human history develops. Marx also produced many insights as to how groups of people behave, how capitalism operates, and how technology sometimes has negative effects on workers.

But the proletarian revolution that Marx expected never happened in any advanced industrialized country. Contrary to Marx's predictions, economic conditions gradually improved for most workers in capitalist societies.

Marx also failed to anticipate major reforms like the expansion of the right to vote, laws abolishing child labor, social security, and the right of workers to join unions. Workers in capitalist countries seemed more interested in improving their wages and working conditions than in joining a revolution.

Of course, a communist revolution did occur in Russia in 1917. Vladimir Lenin, the first leader of the new Soviet Union, concentrated all power in the Communist Party. After Lenin, Joseph Stalin used violence and starvation to end private ownership of agricultural land, causing the death of millions of peasants. The Communist Party became a privileged ruling class, relying on force to stay permanently in control.

Karl Marx had a vision of a new just society based on economic plenty shared by all. Marx believed that in such a society individuals would achieve true freedom. But when the revolution finally came in Russia and later on in other countries, Marx's vision of freedom turned into tyranny.

Probably the greatest flaw in Marx's vision was his certainty that economic forces controlled history and flowed in only one inevitable direction. Perhaps he should have taken to heart his favorite motto: "Everything should be doubted."

For Discussion and Writing

1. Do you think Marx would have approved of communism in the Soviet Union under Lenin and Stalin? Explain.
2. Do you think it likely that a revolution as Marx described it could ever take place in the United States? Explain.
3. Which one of these forces do you think is influencing events the most in the world today: economics, nationalism, race and ethnicity, religion, or technology? Give reasons for your choice.

For Further Reading

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When, Francis. *Karl Marx, A Life*. New York: W. W. Norton, 2000.

A C T I V I T Y

What Is a Just Society?

1. The five panels described below include thinkers from world history. Each student should select one of these thinkers to research and role play during a panel discussion.
2. Each student should research the following things about his or her thinker: where and when the person lived; the key parts of the person's life; the main ideas the person held.
3. Each student, in the role of his or her character, should prepare a response to this question: What is a just society?
4. The panels, in turn, will present their discussions in front of the rest of the class:
 - a. Each panel member, speaking in character, introduces who he or she is.
 - b. Each panel member explains his or her vision of a just society.
 - c. The panel members ask each other questions and debate what a just society is. Members of the rest of the class may also ask questions.
5. After all panels have presented their discussions, each student should write his or her own personal response to the question: What is a just society?

The Panels

Religious Leaders: Moses, St. Augustine, Siddhartha Gautama, Mohammed, Martin Luther, Mother Teresa

Revolutionaries & Reformers: Thomas Paine, Maximilien Robespierre, Vladimir Lenin, Mohandas Gandhi, Jane Addams, Martin Luther King

Political Visionaries: Machiavelli, Voltaire, Thomas Hobbes, Thomas Jefferson, Jeremy Bentham, Susan B. Anthony

Capitalists & Their Critics: Adam Smith, Thomas Malthus, John D. Rockefeller Sr., Robert Owen, Eugene V. Debs, Emma Goldman

Critical Thinkers: Socrates, Frederick Douglass, Mark Twain, Chief Joseph, John Dewey, Rachel Carson

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Standards Addressed in This Edition of Bill of Rights in Action

National High School World History Standard 35: Understands patterns of nationalism, state-building, and social reform in Europe and the Americas from 1830 to 1914. Understands how different movements and ideas influenced society in the 19th century (e.g., . . . the essential ideas outlined in Marx and Engel's *Communist Manifesto* and their meaning in the context of late 19th-century economic, political, and social conditions)

California Social Studies Standard 10.3: Students analyze the effects of the Industrial Revolution in England, France, Germany, Japan, and the United States. (6) Analyze the emergence of capitalism as a dominant economic pattern and the responses to it, including Utopianism, Social Democracy, Socialism, and Communism.

California Social Studies Standard 11.2: Students analyze the relationship among the rise of industrialization, large-scale rural-to-urban migration, and massive immigration from Southern and Eastern Europe. (7) Analyze the similarities and differences between the ideologies of Social Darwinism and Social Gospel (e.g., using biographies of William Graham Sumner, Billy Sunday, Dwight L. Moody).

National Civics Standard 25: Understands issues regarding personal, political, and economic rights. Understands contemporary issues that involve economic rights such as . . . copyright . . .

California Social Studies Standard 12.2: Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured. (2) Explain how economic rights are secured and their importance to the individual and to society (e.g., . . . copyright and patent).

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Social Darwinism and American Laissez-faire Capitalism

British philosopher Herbert Spencer went a step beyond Darwin's theory of evolution and applied it to the development of human society. In the late 1800s, many Americans enthusiastically embraced Spencer's "Social Darwinism" to justify laissez-faire, or unrestricted, capitalism.

In 1859, Charles Darwin published *Origin of Species*, which explained his theory of animal and plant evolution based on "natural selection." Soon afterward, philosophers, sociologists, and others began to adopt the idea that human *society* had also evolved.

The British philosopher Herbert Spencer wrote about these ideas even before Darwin's book was published. He became the most influential philosopher in applying Darwin's ideas to social evolution. Born in 1820, Herbert Spencer taught himself about the natural sciences. For a brief time, he worked as a railroad surveyor and then as a magazine writer. Spencer never married, tended to worry a lot about his health, and preferred work to life's enjoyments.

In 1851, he published his first book. He argued for laissez-faire capitalism, an economic system that allows businesses to operate with little government interference. A year later, and seven years before Darwin published *Origin of Species*, Spencer coined the phrase "survival of the fittest."

Darwin's theory inspired Spencer to write more books, showing how society evolved. With the financial support of friends, Spencer wrote more than a dozen volumes in 36 years. His books convinced many that the destiny of civilization rested with those who were the "fittest."



Herbert Spencer (1820–1903) applied Charles Darwin's ideas about evolution to society. He believed that keeping government limited would ensure the "survival of the fittest." (Perry-Castañeda Library, University of Texas at Austin)

The "Fittest" and the "Unfit"

Herbert Spencer based his concept of social evolution, popularly known as "Social Darwinism," on individual competition. Spencer believed that competition was "the law of life" and resulted in the "survival of the fittest."

"Society advances," Spencer wrote, "where its fittest members are allowed to assert their fitness with the least hindrance." He went on to argue that the unfit should "not be prevented from dying out."

Unlike Darwin, Spencer believed that individuals could genetically pass on their learned characteristics to their children. This was a common, but erroneous, belief in the

19th century. To Spencer, the fittest persons inherited such qualities as industriousness, frugality, the desire to own property, and the ability to accumulate wealth. The unfit inherited laziness, stupidity, and immorality.

According to Spencer, the population of unfit people would slowly decline. They would eventually become extinct because of their failure to compete. The government, in his view, should not take any actions to prevent this from happening, since this would go against the evolution of civilization.

Spencer believed his own England and other advanced nations were naturally evolving into peaceful "industrial" societies. To help this evolutionary process, he argued that government should get out of the way of the fittest individuals. They should have the freedom to do whatever they pleased in competing with others as long as they did not infringe on the equal rights of other competitors.

Spencer criticized the English Parliament for "over-legislation." He defined this as passing laws that helped the workers, the poor, and the weak. In his opinion, such laws needlessly delayed the extinction of the unfit.

Spencer's View of Government

Herbert Spencer believed that the government should have only two purposes. One was to defend the nation against foreign invasion. The other was to protect citizens and their property from criminals. Any other government action was “over-legislation.”

Spencer opposed government aid to the poor. He said that it encouraged laziness and vice. He objected to a public school system since it forced taxpayers to pay for the education of other people's children. He opposed laws regulating housing, sanitation, and health conditions because they interfered with the rights of property owners.

Spencer said that diseases “are among the penalties Nature has attached to ignorance and imbecility, and should not, therefore, be tampered with.” He even faulted private organizations like the National Society for the Prevention of Cruelty to Children because they encouraged legislation.

In the economic arena, Spencer advocated a laissez-faire system that tolerated no government regulation of private enterprise. He considered most taxation as confiscation of wealth and undermining the natural evolution of society.

Spencer assumed that business competition would prevent monopolies and would flourish without tariffs or other government restrictions on free trade. He also condemned wars and colonialism, even British imperialism. This was ironic, because many of his ideas were used to justify colonialism. But colonialism created vast government bureaucracies. Spencer favored as little government as possible.

Spencer argued against legislation that regulated working conditions, maximum hours, and minimum wages. He said that they interfered with the property rights of employers. He believed labor unions took away the freedom of individual workers to negotiate with employers.

Thus, Spencer thought government should be little more than a referee in the highly competitive “survival of the fittest.” Spencer's theory of social evolution, called Social Darwinism by others, helped provide intellectual support for laissez-faire capitalism in America.

Laissez-Faire Capitalism in America

Historians often call the period between 1870 and the early 1900s the Gilded Age. This was an era of rapid

industrialization, laissez-faire capitalism, and no income tax. Captains of industry like John D. Rockefeller and Andrew Carnegie made fortunes. They also preached “survival of the fittest” in business.

American scholars like sociologist William Graham Sumner praised the new class of industrial millionaires. Sumner argued that social progress depended on the fittest families passing on their wealth to the next generation.

According to the Social Darwinists, capitalism and society itself needed unlimited business competition to thrive. By the late 1800s, however, monopolies, not competing companies, increasingly controlled the production and prices of goods in many American industries.

Workers' wages and working conditions were unregulated. Millions of men, women, and children worked long hours for low pay in dangerous factories and mines. There were few work-safety regulations, no worker compensation laws, no company pensions, and no government social security.

Although wages did rise moderately as the United States industrialized, frequent economic depressions caused deep pay cuts and massive unemployment. Labor union movements emerged, but often collapsed during times of high unemployment. Local judges, who often shared the laissez-faire views of employers, issued court orders outlawing worker strikes and boycotts.

Starting in the 1880s, worker strikes and protests increased and became more violent. Social reformers demanded a tax on large incomes and the breakup of monopolies. Some voiced fears of a Marxist revolution. They looked to state and federal governments to regulate capitalism. They sought legislation on working conditions, wages, and child labor.

Social Darwinism and the Law

Around 1890, the U.S. Supreme Court began aggressively backing laissez-faire capitalism. Supreme Court Justice Stephen J. Field asserted that the Declaration of Independence guaranteed “the right to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others”

The Supreme Court ruled as unconstitutional many state laws that attempted to regulate such things as working conditions, minimum wages for women, and

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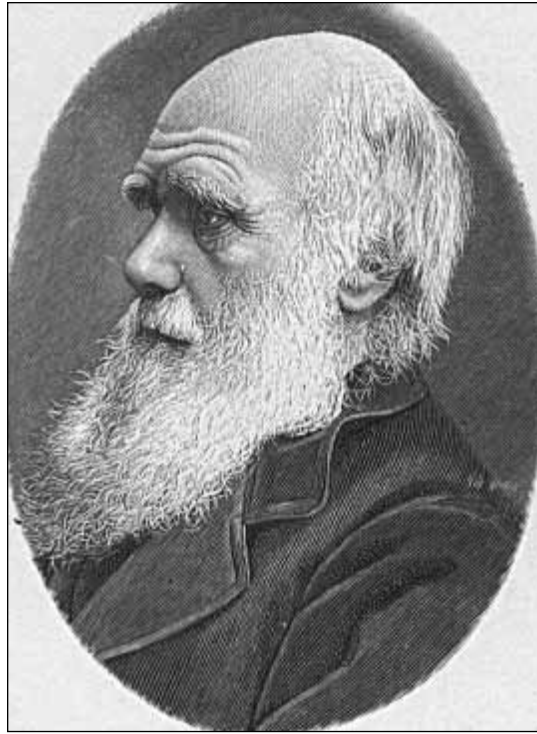
child labor. The courts usually based their decisions on the Fifth and 14th amendments to the Constitution. These amendments prohibited the federal and state governments from depriving persons of “life, liberty, or property, without due process of law.” (The Supreme Court interpreted “persons” as including corporations.)

In 1905, the U.S. Supreme Court used the “due process” reasoning to strike down a New York health law that limited the workweek of bakers to 60 hours. The majority of the justices held that this law violated the 14th Amendment’s “liberty” right of employers and workers to enter into labor contracts. In a famous dissent, however, Justice Oliver Wendell Holmes criticized the majority decision. In a memorable phrase, he said: “The 14th Amendment does not enact Mr. Herbert Spencer’s Social Statics [one of Spencer’s books on Social Darwinism].” [*Lochner v. New York* 198 U. S. 45 (1905)]

In 1890, reformers got Congress to pass the Sherman Antitrust Act. This law focused on “combinations” like monopolies (also called trusts). It banned them if they interfered with interstate commerce by eliminating competition and keeping the prices of goods high. When cases reached the Supreme Court, however, the justices largely ignored the control of consumer prices by monopolies. Instead, the justices focused on the behavior of “bad trusts” that used unfair tactics against competitors.

The Supreme Court limited the protest rights of labor unions in a 1911 case that outlawed some economic boycotts. The Supreme Court continued to make decisions that weakened unions until the 1930s.

Despite a hostile Supreme Court, Progressive Era reformers became increasingly successful in curbing the abuses of laissez-faire capitalism. For example, in 1906, Congress passed the Pure Food and Drug Act that prohibited companies from selling contaminated foods and misbranded drugs.



Charles Darwin (1809–1882) was probably greatest scientist of the 19th century. Darwin’s theory of evolution explained how species evolved over time. He did not believe in Social Darwinism. (Perry-Castañeda Library, University of Texas at Austin)

By 1912, both the federal government and many states had adopted Progressive reform legislation aimed at ending child labor and improving working conditions. That year saw three major candidates for president, all espousing Progressive ideas (Democrat Woodrow Wilson, Republican Howard Taft, and Progressive Theodore Roosevelt, who had broken from the Republicans because he believed Taft was not progressive enough). The idea of passing more laws to correct society’s ills had replaced the Social Darwinist view that civilization best advanced when the “fittest” had their way while the “unfit” were allowed to die out. Americans had increasingly come to believe that society could choose its future, which might require government regulations on private enterprise.

In England, Herbert Spencer grew increasingly pessimistic as he witnessed a swelling tide of legislation that attempted to end the evils of industrialization and laissez-faire capitalism. Spencer died in 1903 and was buried in the same London cemetery as that great enemy of capitalism, Karl Marx.

For Discussion and Writing

1. Social Darwinists believed that society naturally evolved by individual competition and the “survival of the fittest.” Do you agree or disagree? Why?
2. Do you agree or disagree with Herbert Spencer’s view of government? Why?
3. Would you support laissez-faire capitalism in the United States today? Explain.

For Further Reading

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A C T I V I T Y

Abolish the Federal Estate Tax?

Some social critics today argue that the United States is in a new Gilded Age. As evidence of this, they point to the decrease in government regulation of industry, recent disclosures of corporate financial abuses, a weak union movement, and an increased concentration of wealth among a small percentage of Americans. A current controversy involves attempts to eliminate the federal estate tax.

The federal estate tax, first imposed during the Civil War, is a tax on inherited assets valued at more than \$1 million. Called the “death tax” by its critics, this tax falls on the wealthiest 2 percent of American families. The highest tax rate for the largest estates is currently set at 55 percent.

Under President George W. Bush’s 2001 tax cut law, the federal estate tax will gradually decrease until it ends completely in 2010. But this will not be permanent. In 2011, the estate tax will return at its 2001 rates.

Those in favor of permanently abolishing the federal estate tax make these arguments:

- The “death tax” is a form of government confiscation of wealth earned by individuals who have the right to pass it on to their heirs.
- Individuals who have already paid income and other taxes should not have their lifetime savings and property taxed again at death.
- This tax is not just a burden for rich individuals, but for the owners of family farms and businesses.
- It is unfair for the federal estate tax to be phased out and then restored to its 2001 rates in 2011.

Those opposed to permanently abolishing the federal estate tax make these arguments:

- Not taxing inheritances of extremely wealthy people will create a perpetual class of rich people. The American ideal is that people should earn their own wealth.
- Permanently abolishing the federal estate tax is nothing less than a tax break for billionaires.
- Ending the estate tax will worsen the current federal budget deficit and cost billions of dollars in lost revenue needed for Medicare, school, environmental, and other programs.

- Eliminating the estate tax in 2010 and after would cause a major drop in revenue just when huge numbers of workers will retire and will need Social Security.
- It is fair that the super rich, who benefit the most from the American economy, pay more taxes than less wealthy taxpayers.

What do you think is the fair thing to do?

Form small groups to discuss the following proposed federal estate tax laws. After the discussion, the members of each group should take a vote on what they believe is the fairest law. Each group should then report to the class the results and reasons for its vote, including minority views.

Proposed Federal Estate Tax Laws

1. Permanently and completely abolish the federal estate tax now.
2. Permanently abolish the federal estate tax after it phases out in 2010.
3. Restore the federal estate tax after 2010, but exempt family-owned farms and businesses, raise the value of taxable estates, and/or reduce the tax rate.
4. Restore the federal estate tax after 2010 at the 2001 tax rate (current law).
5. Permanently and completely restore the federal estate tax now at the 2001 tax rates.

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Copying Music and Movies from the Internet: “Digital Piracy” and “Fair Use”

Copying free digital music and movie files from the Internet has become easy and popular. Most of the copying violates current law. Should the law be changed?

- Joel, a high school student, uses a free Internet service that enables him to locate, download, and copy digital files containing copyrighted songs and music of his favorite singers and bands.
- Maria, a university student, bypasses the security system on the copyrighted movie DVDs she has purchased. She makes digital copies of the DVDs on her computer and trades them with her classmates over the university’s high-speed network.

Did Joel or Maria do anything illegal? In Joel’s case, he violated copyright law by copying music on his computer without paying for it or getting permission from the copyright owners. In Maria’s case, she violated a recent copyright law that prohibits anyone from tampering with security devices on DVDs.

Both these cases illustrate cases of stealing called “digital piracy.” Some, however, argue that copyright laws have gone too far and that consumers should have greater “fair use” rights to access and reproduce copyrighted works.

Basic Copyright Rules

Copyright law attempts to reward creators of works of art and to encourage them to create more works. It gives the creator of an original work the “exclusive right” to reproduce, sell, and distribute copies of it. For example, if a person writes a book or a song, others may not sell the book or song without the author’s consent. In effect, the law grants to creators a monopoly that rewards them for their original works and motivates them to produce more. The copyright exists for a limited time. After that, the work falls into the public domain and anyone may copy it.



Joe Heller/Green Bay Press-Gazette

The founders of the United States recognized the importance of copyright. Article I, Section 8, of the Constitution states: “Congress shall have the power . . . To promote the Progress of . . . useful Arts, by securing for limited Times to Authors . . . the exclusive Right to their . . . Writings . . .” In 1790, Congress passed and President Washington signed the nation’s first copyright law “for the encouragement of learning.”

Copyrighted materials must be “original works of authorship.” Original works of writing, music, film, technology, and other creative areas are “intellectual property” that people own and may copyright. Copyrighted works must be recorded in a “fixed” medium. This can be a printed document, audio recording, video, film, or other medium. Although no one may copyright facts or ideas, authors may copyright their expression of them.

Once people record their original works in some “fixed” medium, the works are automatically copyrighted. For enhanced protection, creators may register their works at the U.S. Copyright Office.

Currently, the law sets the length of most copyrights to the lifetime of the author plus 70 years (a total of 95 years for movies). After that, the work goes into the public domain and anyone may copy and distribute it.

Copying or distributing copyrighted work without permission is called “copyright infringement.” The copyright owner may sue an infringer in civil court for lost sales and other money damages. In addition, the government may prosecute infringers in criminal court for violating U.S. copyright laws.

Courts have long recognized a “fair use” exception to copyright law. For example, over the years courts ruled that individuals may copy limited amounts of copyrighted material for critical reviews, news reporting, research, and teaching. Congress wrote the concept of fair use into the 1976 Copyright Act. Congress noted that no clear definition of fair use is “possible, and each case raising the question must be decided on its own facts.” The law gives courts four factors to consider in determining whether something is fair use:

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
- (2) The nature of the copyrighted work.
- (3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- (4) The effect of the use upon the potential market for or value of the copyrighted work.

Music Copyrights

The nation’s first copyright law protected only books, maps, and charts. A work could be protected by copyright for no more than 28 years. Then it went into the public domain. Congress added copyright protection for published sheet music in 1831. In 1909, Congress gave composers the exclusive right to make sound recordings. But after a composer has made a sound recording, the law gives others permission to make a recording of the work if they pay the composer a set fee.

When tape recorders brought on the first wave of mass music piracy, Congress in 1972 outlawed copying copyrighted sound recordings. The new law, however, allowed consumers to make audiotape copies of original sound recordings for “home use.” Home use was considered a form of fair use.

Starting in the early 1990s, MP3 computer software, freely available on the Internet, enabled users easily to make perfect digital copies of CDs and online music files. Some argue that it is fair use for a person who legally acquires a CD or online music file to copy it for personal purposes.

Many people, however, began to download music from various unauthorized web sites and then “share” it with others on the Internet. This violated the copyright of music composers, publishers, and recording companies to reproduce and distribute their works.

The Napster Case

Napster was an online company that developed a free service, enabling users to locate and download MP3 music files and share them with others. By 1999, Napster users were sharing 10,000 MP3 music files per second over the Internet.

In 2000, major recording companies, music publishers, and a few rock bands joined to sue Napster for massive copyright infringement. These plaintiffs charged that Napster facilitated wholesale illegal copying that cut CD sales and undermined plans to sell music online.

Napster argued that it had no way of knowing if its users were engaged in any illegal activity. Napster also claimed that copying music on the Internet for personal use was similar to home audio and video taping, which are fair-use exceptions to copyright infringement.

Before trial, the federal judge in the case ordered Napster to block all files containing unauthorized copyrighted works. When Napster could not do this, the judge ordered the company to disable its file-sharing service pending the outcome of the trial. But Napster went out of business by mid-2002, and the case never went to trial.

So far, neither Congress nor the Supreme Court has acted to specifically outlaw Napster-like file sharing. As a result, new free file-sharing services, financed mainly by advertising, have appeared on the Internet to replace Napster.

Movie Copyrights

Congress granted movies copyright protection in 1912. In the 1970s, the movie industry tried to stop people from copying films on video recorders. Consumers won a victory in 1984 when the U.S. Supreme Court exempted video “home recording” from copyright infringement, another example of fair use.

Recently the movie industry has installed a security code on most DVDs. It prevents copying them on VCRs and computers. Although the Digital Millennium Copyright Act of 1998 makes it illegal to do so, hackers can bypass the security code. This allows digital copying and transmission of unauthorized DVD movies over the Internet.

Digital Piracy and Fair Use

Today, downloading and copying CD and DVD digital files from U.S. and foreign Internet web sites are as popular as ever. Because of digital piracy, say music

industry representatives, CD sales have sharply fallen. Similarly, the motion picture industry reports that Internet users download 350,000 movies every day, depressing DVD sales.

Alain Levy of EMI Recorded Music fears, “We are allowing a whole generation to believe that recorded music should be free.” If this view should prevail, Levy and others doubt many would invest in the expensive recruitment, tours, and marketing of new music talent. Jack Valenti, chairman of the Motion Picture Association of America, says bluntly, “When you take what is not yours and not freely offered, you are stealing.”

Major music recording companies are just beginning to sell music at reduced prices over the Internet. The movie industry will undoubtedly follow as soon as high-speed Internet connections become more common. But music executive Miles Copeland wonders, “How do you compete with free?”

While not defending digital piracy, critics of Hollywood and the major recording labels say that there should be more fair use of copyrighted works. According to fair-use advocates, consumers should have the right to make copies of their CDs and DVDs so they can play them at home, at work, in the automobile, and on portable devices. In addition, users may need backup copies to restore lost, stolen, or damaged discs. Supporters of more fair use also say that music fans should have the right to download and copy “sample” songs to help them decide if they want to buy entire albums.

The Length of Copyright Protection

Another current issue involves the length of copyright protection. In 1998, Congress passed the Copyright Term Extension Act. It extended copyright protection for 20 additional years. This means copyright protection now lasts 70 years after the author’s death.

Critics called the law the “Mickey Mouse Extension Act,” because Disney’s character Mickey Mouse had been scheduled to go into the public domain in 2003. The entertainment industry, including Disney, had pushed for the copyright extension law.

Stanford University law professor Lawrence Lessig challenged the law in a case that went before the U.S. Supreme Court. Lessig pointed out that the Constitution gave Congress the power to issue copyright protection for “limited times” only. He argued, among other things, that existing copyrights are not

limited if they can be continually extended by Congress. In 2003, however, the U.S. Supreme Court in a 7–2 ruling held that the law did not violate the Constitution. [*Eldred v. Ashcroft*] The court noted: “History reveals an unbroken congressional practice of granting to authors of works with existing copyrights the benefit of term extensions so that all under copyright protection will be governed evenhandedly under the same regime.”

The debate, however, continues over whether copyright protection should last so long. Many urge Congress to shorten the protection. They point out that the purpose of copyright is to reward the creator of a work and to encourage more works. They say that copyrights now last so long that the creators of these works are long dead and the benefits go to enrich media giants. Lessig says: “We now have an incredible concentration of copyrights in a few entities. Never has there been a point where more of our culture has been controlled by fewer people.”

Lessig argues that Americans have less access to artistic works and information. He points out that only “2 percent of work 75 years old is currently exploited commercially. . . .” He says it could be put on the Internet except for copyright restrictions. But, he says, “Congress’s practice is to extend protection generally. It cannot see beyond this 2 percent—for among other things, the 2 percent includes Mickey.”

Supporters of copyright extension point out that the European Union and other countries have adopted the life plus 70 years formula for copyrights. They say that it is becoming the international standard. They argue that American copyright holders deserve the same protection.

Valenti points out that copyrighted material is an important asset. He says: “Intellectual property, consisting of the core copyright industries, movies, TV programs, home video, books, musical recordings and computer software comprise almost 4 percent of the nation’s Gross Domestic Product, gather in some \$45 billion in revenues abroad, and has grown its employment at a rate of four times faster than the annual rate of growth of the overall U.S. economy. Whatever shrinks that massive asset is **not** in America’s interests.”

For Discussion and Writing

1. Do you see any difference between unauthorized downloading of copyrighted music from the

- Internet and shoplifting CDs from a store? Explain.
2. What is fair use? Look at the guidelines for courts and examples of fair use in the article. Decide whether each of the following is fair use or copyright infringement:
 - a. Burning copies of purchased CDs to use at home or in a car.
 - b. Sharing copies of purchased CDs and DVDs over the Internet.
 - c. Copying “sample” music album singles from unauthorized web sites for personal use.
 - d. Setting up a web site, financed by advertising, that distributes free unauthorized copies of CDs and DVDs.
 3. How would you have decided the Napster case had it gone to trial? Give reasons for your decision.
 4. Do you think the current length of copyright protection is reasonable? Explain.

A C T I V I T Y

Should File Sharing of Music and Movies Over the Internet Be Allowed by Law?

In this activity, student role play members of a congressional committee considering the following statute: **It is hereby established as fair use for people to share copies of purchased music CDs with others over the Internet. The sharing must be for non-commercial purposes only.**

Divide into small groups. Each group will be a congressional committee. Each committee should do the following:

1. Make a list of the pros of the proposed statute.
2. Make a list of the cons of the proposed statute.
3. Discuss the statute. (Use information from the article, consider the pros and cons you have listed, and look at the brief arguments below.)
4. Decide whether you favor or oppose the statute. Be prepared to report back to the class on your decision and the reasons for it.
5. Have the groups report back, discuss the issue, and hold a vote.

Some Arguments on Both Sides

From the Free Music Philosophy website: “Free Music means that any individual has the freedom of copying, distributing, and modifying music for personal, noncommercial purposes. . . . [S]omething that

can be copied arbitrarily many times, like music, should be set free. . . . Musicians currently make money through a variety of sources: sales of records, merchandise and concert tickets, and royalties from commercial airplay. Freeing music will certainly not be detrimental to the sales of merchandise and concert tickets, nor will it affect compulsory or performance royalties. If anything, it will improve sales since people will continue supporting artists they like by going to their concerts and buying their merchandise. Profits from record sales will also not be affected because people will be encouraged to buy directly from the artist for the added bonuses of liner notes, lyrics sheets, and packaging.”

Phil Galdston, Grammy Award-winning composer, lyricist, and music publisher from the MusicUnited.org web site: “Our livelihood is seriously and negatively impacted by unauthorized downloading of our work through peer-to-peer networks. . . . Every time someone downloads a song of mine without my permission, I am losing all that follows from it: the ability to support my family, the capital needed to continue to re-invest in my business, and the economic incentive to continue to create. . . . [M]usic is only in the air because my colleagues and I, through inspiration, hard work, and perseverance, have put it there. We are due our just compensation for its use, including via download. Just as importantly, as individual creators, we are entitled to decide when and how it may be downloaded. All of this is about the basic principles of private property—principles that I have to believe most of those promoting or excusing or defending unauthorized peer-to-peer downloads would defend in any other situation.”

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PostScript

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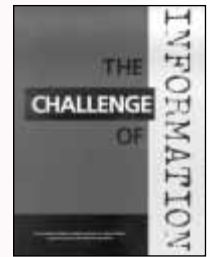
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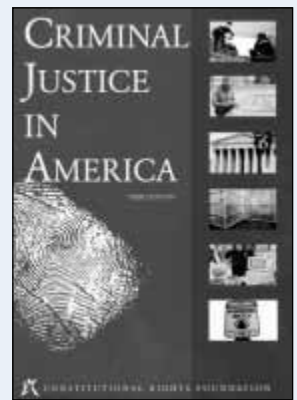
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