

### III

How did it happen, Lysander Spooner wondered, that the country had been so financially exuberant in 1836, and almost bankrupt by 1840? Returned to his father's farm, he set out to discover — from his own experience — why there was so much failure in a country of seemingly unlimited land, resources, and human ingenuity.

Since the failure was so evident in banks, they were closely scrutinized.

Most Americans blamed the depression of 1837 on the Second Bank of the United States (if they were Democrats), or on Andrew Jackson (if they were Whigs). The Jacksonians often argued that the only sound circulating medium was hard specie, and they denounced all paper — whether currency, bonds, mortgages, stock — as evils by which the rich exploited the poor. Some Jacksonians were less sweeping and blamed the failure only on the fact that banks were a government monopoly, and they argued that free competition in banking would end the country's fiscal problems. The Whigs generally believed that the failure of 1837 could be traced directly to Jackson's Specie Circular of 1836, requiring government agents to accept only specie in payment for public lands, and to his attack on the Bank itself.<sup>1</sup>

Lysander Spooner's analysis is remarkably independent of these party battles. In his economic writings — as in all his work — he struggled for universal truth. Spooner claimed that his principles “are just in themselves — they are the principles of natural law . . .” And he argued that, “Natural law, in regard to all human rights, is capable of being ascertained with nearly absolute certainty.” (*Poverty*, p. 63) These laws were to Spooner as clear and certain as mathematical principles and, hopefully, would be indisputable.

Spooner summarized his banking and currency ideas in a communication to the *Worcester Palladium*, July 15, 1840. Although the full details did not appear until 1861 (*A New System of Paper Currency*), his legal defense of the system, *Constitutional Law Relative to Credit, Currency and Banking*, appeared in 1843, and *Poverty, Its Illegal Causes and Legal Cure*, appeared in 1846. Together, these works provide principles worked out in detail for a completely voluntary political economy, one capable of functioning without governmental intervention, and without coercion, public or private.

Anarchists have always found it easy to describe the evils of government; the difficult problem has been to develop or even to describe practical ways in which a non-coercive system might function.

Spooner provides both a banking system and a system of currency. Because the government now controls and issues all our currency, we tend to separate currency from private banking. In Spooner's time, the government issued no paper currency at all, and banks printed their own money; these bills, in one, five, ten, and larger denominations, circulated in the community, and supposedly were redeemable in specie. Banks were often defined by their power to issue notes. In 1839, Daniel Webster had asked, “What is that, then, without which any institution is not a bank, and with

<sup>1</sup> Bray Hammond, *Banks and Politics in America* (Princeton, 1957), *passim*.

which it is a bank?" Webster answered, "It is the power to issue promissory notes with a view to their circulation as money."<sup>2</sup>

The problems in such a system were many: notably, fluctuating values, speculation, fraud, and bankruptcy. But there were also deficiencies in the alternate "hard-money" system, based only on gold and silver coin. Tending to impede investment, trade, and expansion, such a currency was deflationary. In the United States (especially in the West) this problem was aggravated by the chronic shortage of coin; there was seldom enough to carry on ordinary business.<sup>3</sup>

To provide a freely operating economy with a medium of exchange, Spooner suggested a system which he believed would provide a currency of almost unchanging value, and which would still be completely flexible to expand and to contract with trade. Amasa Walker, a Boston businessman, dismissed the system as "modern alchemy," yet he was amazed at its detail and consistency.<sup>4</sup>

Essentially, Spooner sought the most stable commodity in the community, land; from this he structured his banking and currency system. Land was chosen not because it was peculiarly valuable in the way gold was, but simply because it was generally so stable. In *Considerations for Bankers and Holders of United States Bonds* (1864), Spooner suggested that banks could also be founded on railroad stock or even upon government bonds. (*Considerations for Bankers*, pp. 9–10)

A bank's assets would consist of \$100,000 worth of mortgages or some other type of indebtedness. Trustees would accept this paper and would issue interest-paying Primary Stock to the owners; to the public and to debtors they would issue Circulating Stock, and would charge interest. Should the bank fail, holders of the stock would not be left penniless (as they normally were); they would, essentially, foreclose on the mortgages and receive a share in the primary assets of the bank. If the bank had been so unwise as to issue too much currency, holders of the currency would gain full control of the mortgages.

Growing out of local needs, and controlled by local people, Spooner's system is autonomous and completely separated from the state. Previous government regulation had allowed only certain individuals, through incorporation and limited liability, to escape the payment of their debts. "If

<sup>2</sup> Harry E. Miller, *Banking Theories in the United States before 1860* (Harvard, 1927), 12.

<sup>3</sup> Hammond, *Banks and Politics*; J. Van Fenstermaker, *The Development of American Commercial Banking: 1782–1837* (Kent, Ohio, 1965), 65f; Charles C. Huntington, "A History of Banking and Currency in Ohio Before the Civil War," *Ohio Archaeological and Historical Quarterly*, XXIV (July, 1915), 235–533.

<sup>4</sup> Amasa Walker, "Modern Alchemy," *Banker's Magazine and Statistical Register*, new series, XI (December, 1861), 407–416.

such bank charters are valid," Spooner maintained, "their effect is to give to individuals the advantage of two legal natures — one favorable for making contracts, the other favorable for avoiding the responsibility of them, when made." (*Constitutional Law*, p. 21) Spooner argues that all banking charters are unconstitutional for they violate the natural right of all men to make free contracts. Moreover, the legislature, in granting special favors to some and none to others, abuses its powers. Anyone could open a bank under Spooner's system. "It leaves," he says, "the business of furnishing a currency open to free competition."

Spoooner's number one selling point was that, "The system would furnish, at all times, an abundant currency." (*Ibid.*, p. 14) Free competition would increase the number of banks and, thereby, the amount of money in circulation. Almost until the twentieth century, the United States suffered (as the colonies had) from a lack of money. There were never sufficient funds for all the needs of the country. Spooner's system was intended to remedy that need.

Spoooner's banking and currency system provided suggestions to eliminate virtually all flaws evident in the American business system. Since it was practical and detailed, he hoped businessmen would respond to its superior features and quickly adopt the system. But Spooner had a much larger aim in view than helping businessmen; he believed he had laid the grounds for a complete system of economic justice.

In *Poverty: Its Illegal Causes and Legal Cure* (1846), Spooner indirectly describes what he conceives to be a perfect society. In the good state each man would possess his own workshop or farm; each could work hard and prosper. Men were held in poverty primarily by their inability to borrow money in order to establish themselves in either a shop or a farm. Spooner has little vision of the industrial revolution, mass production, or an enslaved working class. In his experience, large scale industry was yet to be established. Could he have read the future, a future of might and wealth accompanied by extremes of wealth and poverty, he would have rejected it. An even distribution of wealth was much more important than an increase of the country's overall wealth. Social Justice, in Spooner's view, should not be subordinated to the Gross National Product.

"The luxury, the vices, the power, and the oppressions of the overgrown rich, and of those who are becoming such at the expense of other men's rights, are probably much greater evils than the simple poverty of the poor would be, if it were the result of natural and necessary causes." (*Poverty*, p. 41)

The final achievement of an equitable economy would be a harmonious society, where all were truly equal and where class conflict did not exist. Most of the existing class antagonism arose, Spooner thought, from differ-

ences in wealth. Men can only act justly toward those with whom they share similar experiences and have had close social ties; such bonds of sympathy cannot exist between the rich and the poor. The two classes are at odds because they lack “sufficient personal acquaintance, and sufficient similarity of experiences with each other, to awaken their sympathies, and thus soften or avert the collision of their feelings, interests, and rights.” Unless men can have “an approximation to equality in their pecuniary conditions” there will be class war. (*Poverty*, p. 46)

Even though their excess wealth might lead to social conflict, vice, and oppression, “the overgrown rich” would not voluntarily relinquish their advantages.

Spooner believed change could come through the courts. The rich are rich because they have a monopoly on money given them by the state; their prerogatives are protected by legal tender laws. If the courts would overthrow such privilege, justice could be restored.

All regulation of the currency, Spooner argued, was unconstitutional because it impaired the individual’s right of free contract. Outside the consent of contracting parties, any encumbrance on a contract violated the fundamental reason for forming societies – to protect property. The right to make and the obligation to fulfill contracts provided the bedrock of civilization. Abandon it, and there could be no law, no justice, no civilization. Without it, no property could be safe.

These principles of justice and natural law were already established in American constitutional law. Spooner begins *Constitutional Law Relative to Credit, Currency and Banking* (1843), with the statement that “The Constitution of the United States, (Art. 1, Sec. 10), declares that ‘No state shall pass any law impairing the obligation of contracts.’” On this basis alone, the courts should overthrow all governmental interference with the currency, and allow a free banking system.

Spooner believed the courts had to enforce his interpretation, or else to admit that no contract was valid or secure. He underestimated the ability of jurists to live with inconsistencies, and he had too great a faith in the neutrality of judges. They were usually no less in the pay of the wealthy than other government officials. In *Trial by Jury* (1852), Spooner recognizes this more clearly and turns from the judges and lawyers to the jury in order to see justice done. Eventually, in *Revolution* (1880), he turned to direct action. But he never abandoned or lost faith in the validity of his ideas of natural law and justice.