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Even if the English had wanted to compete with Spain on its own terms for domination over the New World, the British Crown did not have the resources to carry it out. So the first English settlements in America were organized, not by the government, but by private companies, which were granted Royal Charters, that is monopoly privileges over specific territories. These companies issued stock, which could be bought by small investors. Corporate directors would then administer the enterprise, much like companies on the New York Stock Exchange today.

Such projects, because of the risk involved, required cheap labor, and thus served as important opportunities for the English poor who saw the various colonizing expeditions as hope for a new lease on life, a chance to begin again. Companies attempted to recruit as many as could squeeze onto a ship. After a period of indentured service, the colonists they could become land owners and free men. By sub-dividing its chartered territory in as many ways and as rapidly as possible among the settlers, the company could enhance the investment of its shareholders.

The benefits to the government of chartering such corporations were essentially to: 1) Get the poor of England off the streets, and alleviate the population problem; 2) create new markets for British products such as wool, (Tk,tk); 3) Obtain raw materials such as (Tk,Tk, ...) inexpensively, rather than pay good money for these things to competing powers; 4) Find a short cut

to the Indies to cut costs on oriental spices, herbs and oils;  
5) convert the heathen to Christianity, in particular Protestant Christianity. There was widespread feeling in Britain that the natives of the New World risked conversion to the Catholic Church by the Spanish and the French.

The Virginia Company was the first to be granted a Royal Charter to set up a trading post in America, and in May of 1607, one hundred and four Pilgrims founded Jamestown, named after the British King. Unaccustomed to the rigors of the labor required of a pioneer, and decimated by a malaria epidemic, the settlement was left with only 30 inhabitants by the Fall of that same year. British settlers continued to arrive, with a death rate continuing at about the same pace. Some died by disease, others from Indian raids. Of the 1600 immigrants who had settled in Jamestown by 1616, only 350 survived.

Aside from the difficult conditions under which it had to operate, however, the Virginia Company had serious structural defects. For example, no private property was allowed. Most of the settlers were under indentured service for a period of seven years, in exchange for being included on the expedition. Only the bare necessities of existence were provided. At the end of seven years hard labor, one might receive a small plot of land, if anything at all. There was no incentive to produce. Instead of working for the benefit of the Company, many workers spent

their time looking for gold. Morale was dismal, as the pilgrims were permitted to own nothing, and worked only to enhance profits for stockholders. "Every man allmost laments himself of being here, and murmurs at his present state," wrote Governor Thomas Dale in a letter in 1611. (Morrison. p.89).

Dale had indentified the problem, but unfortunately for both the workers the the success of the Virginia Company, implemented an entirely mistaken program. Rather than increase rewards for good work, he hoped to improve performance by increasing the severity of the discipline. Neglect of one's duties earned an indentured colonist a public whipping. Many of the settlers left England to practice their Puritain faith free from persecution by authorities of the Anglican Church. Unpon arrival in America, however, the colonists discovered that neglect of one's duties to the Church of England also earned a public flogging and a heavier work load. Increasing the austerity of the conditions under which the settlers had to work was to no avail. As one company offical observed, the colony was "full of mutiny and treasonable inhabitants."

British presense on the American continent would never have been felt if England had allowed this situation to continue. Virginia needed to produce a profitable product. It also needed a system of landholding and private ownership. Only then would the colonists feel they had a personal stake in the corporation and, therefore, the country. Not to enjoy these rights was, in

fact, a violation of English Law. "All liberites," of British settlers, declared the original Charter of the Virinia Company must be protected "to all intents and purposes as if they had been abiding and born within our realm of England."

In later years, the British authorities would violate this maxim routinely, and sow the seeds of American discontent, ending in Revolution, and the creation of a new nation.

But the early Virginia settlement restored the right to property. After the seven-year terms of their contracts expired, the indentured workers were granted ownership of 50 acres ownership of land. The people, generally the ones on-the-outs of British society, heard about the opportunity, and sailed across the Atlantic by the hundreds. The Plantation Captain John Smith (check title) provided a good analysis on why Jamestown suddenly began to prosper: "When our people were fed out of the common store, and labooured jointly together, glad was he that could slip from his labor."

Though certainly no libertarian, Smith understood that people will not happily work for no corresponding reward. By allowing farmers to keep the land they cultivated, the company flourished. By 1617 Virgina numbered about 1000 European settlers eagerly building homes and new lives for themselves.

Sir George Yeardley took over the governorship of the Virginia colony and 1618, when he promotly awarded fifty acres of

land to each settler, effective immediatley instead of after seven years service. The Company also abolished arbitrary rule. Adopting the common law of England, over Dale's military-style dictatorship, the Virginia Company was governed "by laws not men." Yeardley created a General assembly and a House of Burgess, elected by the free men of the colony. As America's first legislative body, it had the power to pass local laws, which could be vetoed only by the Virginia Company's directors in London.

Sir Edwin Sandys was made Treasurer of the colony in 1619. Sandys was a Puritain leader in the House of Commons, and so brought religious tolerance to America. In addition, Sandys advocated abolishing the single corporate colony in favor of settlement by individuals and easy aquisition of land.

Thus the seeds of American constituional Democracy were planted. Derrived from the English common law tradition, and implemented in the New World through the trial and error methods of private investors hoping to turn a profit, the Virgina Company began the construction of political institutions that, more than any human society in world history, have protected man's freedom, ensured his prosperity, and prevented the West from tumbling back into another Dark Ages.

By 1621, the Virginia colony population reached 4000. There seemed no end in sight for prosperity for the settlers and stockholders. The compnay took not only British subjects, but

foreigners as well, Poles, (tk, tk), and the evidence indicates that they held all the rights of Englishmen.

Tobacco was the major industry, which brought in tremendous profits. (Tk exmaples indicating growth of tobacco industry).

But then catastrophy struck. Three thousand Virginian settlers suddenly disappeared, according to the records of the company. Because the local government had neglected the defense of the colony, the settlement was massacred in 1622 by Indians. The Virginia Company was virtually wiped out. The colonists had relied too heavily on the good will they enjoyed with Chief Powhattan (Check title), and did not anticipate that his successor would be his brother, Opechancanough, who resented British encroachment on his cornfields.

The disaster caused the Company to come under political attack in England. It was thought that both the board of directors and the local Colonial assembly had ignored its most basic responsibility: the protection of the citizenry from potential aggressors. The corporate charter was revoked, and the colony fell under the Crown's direct control. This did not effect very much the political conditions of Virginia, as the Crown maintained the elective assembly and rule of law. Indeed, the colony entered into a long period of sustained prosperity.

In a declaration of 1924, the colonists themselves testified to the tremndous effects of the liberalizing policies brought in

by Yeardley and Sandys: The reforms "gave such encouragement to every person here that all of them followed their particular labors with singular alacrity and industry."

Despite the fact that the government assumed control over the Virginia Company, the early colonization of the New World by Britain took place almost exclusively under auspices of the corporate charter, granted by the Royal authorities and funded by private investors. The Plymouth Company arrived in America in 1620, and the Massachusetts Bay Company landed in 1628. Private property was not permitted at first in these settlements either, as old habits die hard. But in order to attract settlers, they soon adopted liberalizing reforms similar to Virginia's.

The British had discovered a better way to build an empire -- and with hardly the use of any public funds. From brutal first hand experience, they learned the importance of protecting property rights, and providing for the common defense of its people -- lessons the West often forgets. Moreover, the Virginia company, and others that followed its example, established on virgin American soil, unblemished by feudal customs and institutions, a tradition of representative government subject to the common law.



## CHAPTER SEVEN

For liberty's survival, the opening up of the New World to European settlement could not have come at a better time. The seventeenth century in England was a period of steady consolidation of power for the crown. The Church fell under subjugation of the King, violating the first chapter of Magna Carta. Parliament became a non-factor in the government of England, surrendering to the Crown the power to legislate by proclamation. The King looked to Caesar as a model, and saw the written law as a nuisance to his reign, "rotten parchment bonds," as Shakespeare put it. Henry VIII, a symbol of arbitrary rule under the Tudor dynasty, could execute his wives for not giving him a son, and behead a Sir Thomas More for disagreeing with him over the primacy of the Pope.

Under the Stuart Kings, beginning with the reign of James I in (Tk date), judges who disagreed with the Crown's position lost their seats on the King's Bench. When asked his opinion in advance of one case, Chief Justice Edward Coke told the King that he "would do that which would be fit for a judge to do." Coke, a great defender of "rule by law," was immediately stripped of his position. This became routine practice in succeeding years. Charles I removed three judges with whom he disagreed; ten were removed by Charles II. James II removed 13, even though he ruled for only three years. The continental powers of France and Spain, which did not have a Magna Carta, or a tradition of law, had far more despotic monarchies.

If there had been no New World for people to flee to, the seeds of liberty probably would have died in England's soil. Not only had the discovery of America permitted the expansion of trade, and a corresponding increase in wealth. It had given the individual Englishman a new sense of importance and independence. The spirit of adventurous individualism, boldness, and self-assertion would have been impossible without the opening of a new frontier -- where the shackles of authority could be discarded. The mere existence of unsettled territory posed an implicit challenge to political and religious authority. One could go to America, and read, expound and interpret the Bible himself. Moreover, it turned out that there was room in the New World for all kinds of political and religious arrangements. It was a blank slate; a chance to examine what has worked and what has failed in the past, and begin again. Moreover, the priority of any infant colony was to attract people -- which generally meant the kind of person deserting a stifling European order.

But there was another development in England -- aside from the emergence of a powerful merchant interest -- that led to the recovery of a legal tradition that began with Magna Carta. That was the rise to prominence of Sir Edward Coke, the great figure in the battles between the Crown and the courts. The Stuarts had asserted their supremacy over the law by appealing to the old concept of the divine right of kings. Coke -- a towering

political figure and intellect of the period -- was an important obstacle to Crown's quest for absolute power, his legal commentaries provided the intellectual ammunition for the Glorious Revolution of 1688. Thomas Jeffersson more than a century later, wrote of Coke's Littleton Tenures that it was "the universal law book of students, and a sounder Whig never wrote, nor a profounder learning in the orthodox doctrines of the British Constitution, or in what was called British liberties."

Educated at Trinity College and in Law at the inner Temple, Coke served Queen Elizabeth as soliciter General and as Attorney General. He went on to serve as Chief Justice of the Common Pleas and of the King's Bench under James I. A man of aggressive personality, Coke's significance was primarily political in the context of his period. He saw as his mission to stand before royal authority, in all its arrogance, and say no, "the king hath no prerogative but that which the law and the land follows" (Proclamations, 12 Co. 74, 76 1611, from Corwin, p.43) In this case, he was telling James that he could not condemn a man except through ordinary court procedure, without royal interference. On another occasion he declared that it was illegal and contrary to Magna Carta for James to "make a thing unlawful which was permitted by the law before." Coke was the only judge who dared tell the King he had no right to delay legal proceedings until James could consult with them. This act of defiance cost him his Chief Justiceship.

Coke's most important single statement in terms of eloquence and importance for students of the American Constitutional tradition, was his decision in the so-called Dr. Bonham's case, written in 1610. The Court of the Common Pleas <sup>ruled</sup> that Parliament had no right under the common law of England, to grant the London College of Physicians monopoly privileges, and thus had no right to punish Bonham for practicing medicine without a license:

"And it appears in our books," said Coke, "that in many cases, the common law will controul acts of Parliament, and sometimes adjudge them to be utterly void: for when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it and ajudge such act to be void."

In these words begins a tradition in English legal thought for judicial review of legislation. Aside from calling into question the legitimacy of the law enforced <sup>membership? to the</sup> ~~legitimacy of the~~ American Medical Association, and other ~~legally constituted~~ unions, ~~with forged membership,~~ Coke's idea forms the intellectual basis for the U.S. Supreme Court nullifying unconstitutional acts of American legislative bodies. It defined the role of judges not as law makers, but as interpreters of law. They have no creative power, only the power to say no, and as such form an important check on the caprice of elected assemblies.

Coke, defender of the rule of law, competed with Bacon,

promoter of absolute Monarchy, as the major intellectual forces of the time. Bacon's advantage was that<sup>19</sup> he was a glib philosopher with grand schemes for mankind, while Coke preferred the steady ground of law, experience and precedent. Bacon was the champion of so-called enlightenment and "pure reason." Coke limited himself to what was written in Magna Carta, and as such was a constant foiler of the monarch's glorious visions. Needless to say, it was Bacon, not Coke, who was celebrated by the Crown.

Following his removal from the Court, Coke held a seat in Parliament from 1621 to 1628, <sup>during</sup> which he was a vocal thorn in the side of Royal prerogative. He spoke out against the Crown's right to grant corporate monopolies, stood for the rights of the House of commons, and opposed Royal grants to friends of the King. James, exasperated by the eloquent and much publicized criticism, ~~had~~ confiscated Coke's papers and threw him in prison, where he remained for seven months.

Coke continued to play a major role in Parliament, however, into his late seventies, when he succeeded in initiating and passing the Petition of Right, calling for limits to the power of Charles I, which expanded Magna Carta further, formed the basis for the Bill of Rights of the Glorious Revolution of 1688, Thomas Jefferson's Declaration of Independence in 1776, and the <sup>US</sup> Constitution of the United States, ratified in 1788, and the American Bill of Rights, which <sup>was</sup> ~~were~~ added later.

The Crown again in 1633 confiscated all Coke's writings,

including his Second Institute, a commentary on Magna Carta, which was in manuscript form. Coke was on his death bed at the time. By order of the House of Commons, his Second Institute was finally published in 1642. The Second Institute, furnished much of the moral and intellectual justification for England's rejection of the devine right of kings, allowing for the overthrow of James II in the Glorious Revolution. It did the same for America's break with Britain, and its principles were practically copied down word for word in many of the constitutions of the orginal 13 states. Coke's Institutes built the foundation on which the U.S. Constitution rests. For American jurists, it was their legal Bible.

Coke set into motion a political movement that was both conservative and radical. His aim was to preserve a legal tradition that began with Magna Carta. But he he wanted to eliminate the surpremacny of the Crown which created it. By moving cautiously through established methods and procedures, he hoped to free man from the dead hand of oppressive custom. He was the enemey of utopia, grand schemes, and abstract philsophy. Yet he wanted to create a political order that had never ~~occurred~~ <sup>existed</sup> before. He looked to the past to discover how to move into the future. No greater friend of freedom ever lived than Sir Edward Coke.

## CHAPTER EIGHT



America was first and foremost a disproving ground for utopian schemes, both of the religious and secular variety. The two religious movements -- Puritain and Quaker -- most influential in shaping American mores and tradition of law are more-or-less dead. The Holy Experiments of the Cambridge-educated Puritains in Massachusetts and William Penn's Quakers either dissolved, or were transformed, by the realities of America's wilderness.

New England was settled by the Puritains. As is true with many early Americans, these pilgrims saw their mission as both radical and conservative. It was radical in the sense that they sought to build a new society from scratch. But they also wanted to return to first principles of Christianity. They wanted to undo the excesses of the Renaissance, and what they saw as a period of extravegant enhancement of the institutional Church with all its periferies. They wanted to live as the apostles lived, by god's word alone, unadorned by irrelevant trappings. They called their place of worship a "meeting house." It was a dangerous distraction to call that meeting house "a church," said Richard Mather. "There is no just ground from scripture to apply such a trope as church to a house for a public assembly." They did not believe that mediaries were needed to talk to God, but that the individual could address Him directly. They were less interested in dogma and theological dispute than in living the Christian life. They sought to convert not so much by force

of argument, but by power of example. They were builders, not thinkers. They referred not to their "creed," but to The New England Way, a term later expanded to The American Way. Even though Puritainism exists today only in diluted form, Puritain institutions, attitudes, and ways of doing things, continue to influence American politics, religious beliefs, and mores.

Unlike the settlers of Virginia, whose primary motive was profit, the Puritains set sail for the New World solely for religious reasons. There, they hoped to establish their New Canaan. The first Puritain colonists obtained a patent from the Southern Virginia Company, agreed to settle near the mouth of the Hudson River, and live for seven years under indentured servitude. On November 9, they arrived instead on Cape Cod, which was outside the Virginia boundary, and declared themselves free men. "None had the power to command them," wrote their able Captain William Bradford.

The terrain of New England was rough, the climate, cold and stern, suiting perfectly the Puritian character. The Hudson River, meanwhile, had been colonized by the Dutch. Bradford and the other leaders of the expedition drew up the famous Mayflower Compact, promising "just and equal laws." Thus, New Plymouth would be the second example of Englishmen exporting British law to the New World.

The Puritain settlers, however, found the setting up of the

perfect religious community difficult, and their troubles were reminiscent of Jamestown a decade earlier. As in Virginia, land in New Plymouth belonged to the community, not individuals working and living on it. The Puritain did not view private property as evil in itself. But it was tainted from their perspective, chiefly because of the sins it would lead men to commit in order to obtain it. Moreover, the entire purpose of the pilgrimage was to establish a Christian community, not to get rich. All work, therefore, should be to that end. It seemed a logical assumption.

But the colony failed to prosper. Half the colonists were dead by the end of the first Winter. While this development did not completely dissipate the enthusiasm of the settlers, who had travelled to the New World for spiritual, not worldly reasons, it inspired Bradford to reconsider the arrangement.

"They began to think how they might raise as much corn as they could, and obtain a better crop than they had done, that they might not still languish in misery," wrote Bradford in his record on the progress of the colony. "The governor (with the chiefest among them) gave way that they should set corn every man for his own particular, and in that regard, trust to themselves."

According to Bradford, he "assigned to every family a parcel of land," concluding: "This had very good success, for it made all hands very industrious, so as much more corn was planted than

otherwise would have been by any means the Governor or any other could use, and saved him a great deal of trouble, and gave far better content."

The elimination of collectivism in favor of private ownership created prosperity. The Puritains set themselves up as a small trading post, exchanging their surplus corn to the Indians for beaver skins, which they in turn shipped back to England. By 1633 the Pilgrims purchased the land outright from the London-based Pierce Company, which had acquired a territorial charter. This allowed the London merchants to turn an immediate profit without having to undergo the expense and risk of financing their own journey. It also enabled Plymouth to set itself up as a self-governing colony.

Moreover, the Puritains, having heard about the massacre of Jamestown by the Indians in 1622, would not make the same mistake. They built a fort overlooking (Cape) and armed a militia to defend the settlement against attack. Meanwhile, the settlers carried on cordial relations with the Indians, and maintained a trading arrangement that benefited all concerned.

Despite the success of the Plymouth colony, Puritan influence in America would have been minimal if it had not been for the great Puritan migration of the 1630s, prompted in large part by the accession of Charles I to the throne in 1625. King Charles continued the repressive policies of James I, who had

boasted that he would subdue the Puritains, and make them conform to the practices of the English Church. Charles also wanted to restore ritual to the Puritain services, complete with candles, chants, alters and crucifixes. In addition, the government embarked upon a program to purge the universities of all Puritain influence.

In conjunction with his plans to eliminate Puritain practices from England, Charles began imprisoning opposition political leaders, and confiscating the property of merchants who refused to pay taxes already vetoed by Parliment. In 1628, Parliment presented the King with a catalogue of grievances, known as the Petition of Right, denouncing the arbitrary arrest and prosecution of British subjects without due process, demanding a halt to taxes not approved by Parliment, and calling for an end to the quartering of soldiers in people's homes. The King responded by dissolving Parliment and arresting the leaders of the opposition -- a sequence of events that brought liberal political forces into alliance with the Puritians against the Crown.

Prospects for liberty, religious or secular, appeared even gloomier on the European continent. The French Calvinists (Huguenots) were squashed by French forces at La Rochelle in October of 1628. The Spanish armies overran Calvinists in Bohemia and the Rhineland. The Protestant powers in Germany had ~~only~~ a ten year string of uninterupted losses to show for their

efforts. As John Winthrop put it in 1629: "All other churches in Europe are brought to desolation, and it cannot be but the like judgement is coming upon us." Prospects in the Old World for the survival of Puritainism appeared bleak. They would have to look to the New World for a future.(Liggio. p.169)

In August of 1629, an important conference took place at Cambridge Univeristy, the intellectual center for the Puritain movement in England. This meeting would have a profound impact on the future of America. The Puritains at Cambridge had often discussed the possibility of resettling in the New World, particularly after the Plymouth Pilgrims had proved that it could be done successfully. Their leader, John Winthrop, was a 40 year-old, Cambridge-educated lawyer. He and his associates decided at the conference to join the Massachusetts Bay Company, provided the following conditions were met: officers of the company would be chosen soley from the immigrants to New England; the stockholders would agree to sell all shares of stock to the settlers; and the colonists could take the King's charter for the company with them. Since the Royal Charter did not specify its location, this opened the way for a transfer of the governing body of the company from London to Boston. It was a clever legal trick by the Puritains, and it allowed the colony independence from the Crown.

With 17 ships leaving the English coast in 1630 for the New

World, the Great Migration had begun. "We shall be," Winthrop prophesized, "as a City upon a Hill. The eyes of all people are upon us." A phrase repeated often by politicians, it expresses perfectly America's sense of destiny.

The Puritain Movement in the America, it seems, could have easily become fanatical and Utopian, as it had in some places in Europe. But usually fanaticism is born out of conflict. The pilgrims in the New World would not be hounded for their religious beliefs. Moreover, there would be little occasion for constructing grand intellectual schemes for society, as the daily concern for the colonists would be survival. The rugged wilderness environment, the winters, the threat of Indian attack, required men of action.

In addition, the Bible is not a manifesto. It is a narrative. Christ did not espouse axioms, or laws, for the most part, but trasmitted the Word through parables and stories. It is the realities of daily experience and individual conscience that informs the Christian how to act. Chistianity is not an ideology or a social plan. Rather, it shows the individual, through Christ's example, how to conduct his life. Following him involves a personal decision. One does not obtain move a millimeter closer to Heaven when forced to pray.

If religious disputes arose, the vast territory allowed a dissenter to move to another community, or start his own. Thus, in America we had a proliferation of Protestant sects. The



Presbyterian, Congregational, Baptist, Methodist and other protestant churches are all offshoots of the early Puritain settlements. It was impossible in colonial times to prevent people from leaving a colony if conditions, whether political, religious or social, grew intolerable. We've all heard the expression that people vote with their feet. Boundless physical space is a formidable obstacle to the social planner and, therefore, is a vital ally of freedom.

Upon arrival, the colonists of Massachusetts Bay quickly established settlements around Boston, and built fisheries in Marblehead. They discovered a market for dried Cod Fish that became so important an industry that someone carved a statue of a Codfish from wood, placed it in a "meeting house," and dubbed it "The Sacred Cod," demonstrating a sense of humor even about Christianity, which forbids idol worship. Massachusetts Bay also prospered in the raising of cattle, poultry, horses, pork, corn and other vegetables. By the 1640 they established a healthy trading relationship with the West Indies, which paid for New England food products with molasses. Molasses could be distilled into rum, which in turn became another major New England industry up until the time of the American Revolution. Without molasses from the West Indies, New England could not have prospered, and thus could not have attracted more British settlers.

Very important for New England's development was the lack of



any guild system. Anyone who wanted to be a blacksmith, a shoemaker or a carpenter could be one. As a result, there was never any shortage of craftsmen: spinners, weavers, joiners, iron wrokers, or whatever. The famous work ethic of the Puritains, far from excluding anyone from a trade, mandated that everyone be engaged in one. "An hour's idleness is as bad as an hour's drunkenness," was a phrase often repeated by Reverend Hugh Peter. All work, from the Puritain perspective, is sanctified by God, and should be engaged in as diligently as prayer.

It is difficult to say whether protestantism created capitalism, or capitalism created protestantism. Both developments involved clean breaks with the old medieval feudal order. Both stressed the importance of the individual. Was it the Reformation that created the cracks in the feudal hierarchical system that permitted the rise of free trade; or was it Capitalism that broke up the old arrangements, making possible the protestant rebellion against the medieval church?

Whatever the answer to these questions, it is certain that the protestants had characteristics favoring the development of capitalism that the Catholic Church did not possess. First, the Puritains, and their protestant brethren, rejected the powers of the priesthood. In their view, all members of the Christian community had equal power to know God. No authority-figure had an inside track to Heaven.

These attitudes are found also in Calvin's views on how one

his to conduct his daily affairs: "We shall not rush forward to seize in wealth or honors by unlawful actions, by deceitful and criminal arts, by rapacity and injury of our neighbors; but shall confine ourselves to the pursuit of those interests, which shall not seduce us from the path of innocence."

This attitude dominated the lives of the early settlers of New England, who saw their work as a holy mission. Calvin put the same value on a worker as a minister, and taught that all honest callings are sanctified by God and should be pursued with equal fervor. While Calvin himself was intensely collectivist, as were the early Puritain leaders in America, it is easy to see how this Protestant Work Ethic could be transformed into a Capitalist Ethic. The New England protestants modified Calvin's socialist thinking out of the necessity of life in the wilderness, to say that wealth is good, not only for the individual, but the community as well, so long as it is pursued in a lawful, honest, and Christian spirit. For reward encourages work, and work is a holy endeavor.

In contrast to the asceticism of the Medieval monk who retreats to a monastery for prayer and contemplation, the New Englander believed his business, his craft, and the support of his family an intensely Christian enterprise. Important for the development of a market system, the Protestant Work Ethic created reliable patterns of behavior. It was certain that a good

protestant would carry out the terms of an agreement, with diligence, care and honesty. Puritainism, because it rejected the prememinence of human authority, demanded individual responsiblity, and thus freed him from institutional restraints. Whereas the Catholic church -- essentially a medieval institution -- regarded the merchant with intense suspicion until relatively recently, the Protestants lifted social stigma from the trader. It was okay to charge interest on money and still be a Christian. A minister had no greater claim on salvation than a banker.

Because Massachusetts Bay was independent from the Crown, it was also free to establish its own form of government, and it did so according to the ideals of Sir Edward Coke and Magna Carta. As early as 1635, John Winthrop, in his record on the colony, wrote, it was vital "to frame a body of laws in resemblance to Magna Carta," underscoring the power the tradition of English law held over the Puritain leadership. There were annual elections for governor, duputy governor and the governor's council, which doubled as the Supreme Court. To vote, one had to own stock in the Company and be a Christian in good standing. Most adult men met these qualifications. The governors council spilt into two houses over a dispute over ownership of a stray pig, an amusing event that created the approximate stucture of modern American state and federal governments.

Because Winthrop and his council generally made decisions

according to their own interpretation of scripture, the stockholders -- or voters -- wanted more checks on his discretionary power. Even though the Royal Charter stated that the colony "shall make no laws repugnant to the laws of England," and even though the Puritains took this prohibition seriously, Winthrop agreed that this alone was not adequate to protect liberty. "The people had long desired a body of laws, and thought their condition very unsafe while so much power rested in the discretion of magistrates," he wrote in 1639.

The Massachusetts "Body of Liberties" was passed in 1641. This historic charter declared it a violation of common law to impose taxation without representation; said that no one shall be deprived of life, liberty or property without due process of law; and guaranteed the rights of the accused to be tried by jury. The Body of Liberties even expanded English protections for the individual, forbidding cruel punishment, the mistreatment of animals, and the beating of one's wife, "unless it be in his own defense upon her assault!" (Morison)

The Massachusetts form of government was copied in Connecticut. The Fundamental of Connecticut and New Haven were adopted in 1639. More liberal still was Rhodes Island, founded by Roger Williams, the great proponent of Religious Liberty. Williams, a Puritan preacher who had fallen from grace in the Massachusetts colony, began his own in Narragansett Bay.

Williams accepted the outcasts from the other colonies, refused to try and convert the Indians unless they desired it, encouraged the emigration of Quakers and Catholics, and floundered around from sect to sect himself. There was no common set of religious beliefs binding the Naragansett Bay colony together. Its basis for unity was religious freedom.

A major Puritan contribution to the American political tradition, and way of thinking about government, was its "federal" system of meeting houses, otherwise known as congregationalism. There was no central authority, monarch, or Pope dictating religious ritual and creating churches by fiat. Rather, a group of Christians got together and established places of worship themselves. They would recognize one especially inspiring, learned and holy member as their minister. It would then be up to him to hold the attention of his congregation, and thus earn his keep. If he failed to inspire, the congregation would get a new minister. If there was a split, a new place of worship would come into being. The system, of course, was a direct attack on the idea that there can be a single human authority. God speaks through scripture, which everyone can read for himself, and through the hearts of individuals.

Congregational churches would vary, to address the particular spiritual needs of the membership, "Virtues of their own for which others are not praised: corruptions of their own for which others are not blamed," as states the opening chapter of the

Ambridge Platform.

This federal system of churches inspired the town meeting form of local government that still exists in many New England communities today, and is a powerful influence on the concept of states' rights to govern themselves. Congregationalism, which expanded to federalism in the political realm, creates competition between communities, and meets differing needs that people have in a variety of ways. An increase of variety, an expansion of choice and possibility, always enhances freedom for the individual.

The New England colonies formed a confederation in 1643 for the purpose of settling boundary and trade disputes that might develop, and to provide a mutual defense against possible aggression on the part of the Spanish, French or Dutch colonies. The New England Confederation would play a major role in King Philip's War of 1675-76, thwarting the Spanish monarch's colonizing ambitions in North America, and foreshadowed the Articles of Confederation adopted in (tk date) during the American Revolution.

An important difference between the New England settlers and the Spanish, French and Dutch colonists, was that the English considered the New World to be home. The other Europeans saw their stay in America as temporary, and eagerly waited for the day when they could return to their mother land. The English

considered the New World as a place to build a new life, while the other European powers saw America as chiefly an opportunity for raw exploitation. The British settlers planted roots in the American soil, and their numbers increased constantly throughout the colonial period. Over time the British held a decisive edge in terms of sheer manpower over competing colonizing powers. London had little difficulty routing the Dutch in New York and winning the French and Indian War, because of the indigenous population of Englishmen who fought willingly on the side of the Crown in order to preserve their way of life. Cotton Mather in 1684 was the first European on record to use the term American. He was proud to wear the label. But he also considered himself an Englishman.

The Puritains have received terribly unfair treatment in our pop culture, largely because of the Salem Witch trials of 1692. Witchcraft was a capital crime in Massachusetts, but was also an almost entirely dead-letter. The witch hunt began, in fact, as something of a prank. A group of young girls accused a half negro, half Indian slave of practicing witchcraft. It is likely that the slave would have been beaten to death had she not confessed. The young girls continued to accuse others, in part because they enjoyed the attention, and in part because they did not want it known that they had lied.

But Lietenant Governor William Stoughton saw the incident as an opportunity to grab power from liberal Governor (tk ) Phips.

There was concern among Puritain hardliners that the homogeneity of the Puritain community was in danger under Phips' movement of Massachusetts Bay in the direction of religious pluralism.

Phips, a weak man, appointed Stoughton to investigate the matter. Stoughton played on the fears of the Puritain purests, and through a combination of demoggogery and skillful use of his position as chief justice, and began the witchhunt. Most people, in fact, thought the whole thing was nonsense, but did not speak out for fear of being branded a witch. They did not fear the witchcraft so much as they feared Stoughton.

The end result was the hanging of 14 women and five men, four more dying in jail from sickness, and the pressing to death of one for not confessing his guilt. Fifty-five of the accused saved themselves by admitting guilt and implicating others.

The Salem Witch trials paled in comparrison with what was happening in Europe during this period, and all convictions were overturned after the scare ended. But it was an appalling example of moral cowardice that grips a community when it falls under control of a tyrant. It created a stain on that community that still has not been erased. But the fact that the Salem episode so humiliated and shocked the Puritain community is testimony to the protestant Heritage in America of humane laws, religious tolerance, and respect for the rights of idividuals.



Salem was a strange aberration in the history of New Engalnd, and does not accurately represent the reality.

The fact is, Puritainism was the cutting edge of what would become known as The American Way. The Puritain doctrine itself taught men that they were significant as individuals before God, that it was up to them to open their own hearts to discover devine truth, rather than rely on institutions to interpret scripture for them. Their belief that God loves the individual person contributed to their conviciton that laws must protect individuals from the whim of human rulers, who are no less subject to God's laws than beggers. All classes of men are equal in God's eyes. The Puritains saw their fundamental social responsibility as difusing authority on earth, so as to free the individual to more diligently focus on the words of the King of Heaven.

The Puritains began with the assumption that their community would follow the laws of God, but then discovered that this conincided perfectly with the Common Law of England: "that distinction which is put between the laws of God and the laws of men become a snare to many," states The Book of General Lawes and Liberties of 1648, the most important of the early records of Massachusetts law. "When the authority is of God anf that in the way of ordinance Rom. 13.1 and when the administration of it is according to deductions, rules gathered from the word of God, and the clear light of nature in civil nations, surely there is

no humane law that tendeth to common good (according to those principles) but the same is immediately a law of God, and that in way of an Ordinance which all are to submit unto and that for conscience sake. Rom. 13.5" (Boorstin)

They had discovered, in effect, that Scriptural law was already embodied in the common law of England. The realization that God became man, suffered and died "for me," and that "I am important to Him," is to experience Christian conversion. It is the individual's relationship to God that brings him eternal life. But if a Christian lives forever, than perpetuation of the state -- which is a temporal human creation -- is no longer the highest moral obective.

But this is exactly the message of Magna Carta, which says that the earthly ruler is subject to a higher law. The higher law treats man, the individual, as the paramount creation. It is the responsiblity of the ruler, therefore, to protect and defend God's children, to treat them with reverence, not to use them to serve state purposes. It makes no difference whether the New England Puritains received their political philosophy from scripture, or from Magna Carta. The conclusion is the same. Scripture places man at the center of the cosmic order; The Great Charter makes the individual central to <sup>the</sup>~~any~~ secular order.

## CHAPTER NINE

Laissez faire pretty well describes the governing principles of William Penn, who founded Pennsylvania in 1681. The colony had virtually no government at all until 1756 when the Quakers finally relinquished control, or rather, non-control, under heavy political pressure. William Penn's Quakers had hoped to govern by example rather than force. They believed, mistakenly, in the inherent virtue of human nature: that people, if presented with with reasoned arguments, and if treated fairly, will lead good lives according to precepts laid down in the Gospels. The rigid adherence to their ideal of non-violence, no matter what the circumstances, led to both the success and demise of William Penn's Holy Experiment. Where the Quakers were successful, they had a profound influence on American political thought; but they failed ultimately to confront the reality of man's character, irreparably flawed and at times vicious. This accounts for their virtual elimination as a religious, political or cultural force in America.

The Quakers, a Puritain sect founded in 1650 by George Fox in England, suffered under the reign of Charles II, who imprisoned some 3000. Many were publically flogged and hanged. Curiously, the Quakers sought out martyrdom, often travelling to places where they knew they would meet hostility for the express purpose of being persecuted. From this they actually gained strength, and grew in numbers, which had a wearing effect on their tormentors. By 1670 they had achieved toleration in

England, and the more practical ones even began seeking political office. The British authorities had grown weary of trying to bring Quaker religious practices within accepted boundaries of the the Church of England and exasperated that punishment for not conforming only made them more cheerful.

Even though the Quaker purests would never think of retreating in the face of persecution heaped on them in all parts of Europe -- Germany, Holland, even Russia -- they still yearned for a pure land, away from corruptions of the Old World. This was William Penn's dream. He was assisted by the fact that the Crown owed his father, Admiral Sir William, 16,000 pounds in loans and back salary. In addition, young Penn had inherited a small fortune from his father, who was not a Quaker. The admiral was in fact rather aghast by his son's religious practices, and had administered a sound thrashing to William when he was thrown out of Christ Church, Oxford for exhibiitng contempt for the English Church.

The King, finding it an easy way to get out from under his debt to the Penns, gladly granted William proprietary ownership of the land West of the Delaware River and North of Maryland.

Penn immediately began advertising the colony to his fellow Quakers, not only in England, but in other parts of Europe as well. In 1682, he issued a pamphlet, entitled Some Account of the Province of Pennsylvania, outlining the benefits of

emigrating to his colony. He offered complete religious liberty and easy access to land. A 5000 acre country estate, with a city lot in Philadelphia tossed in, would cost 100 pounds. If you could not afford that, you could rent a 200 acre farm from Penn for a penny an acre.

Also in 1682, Penn wrote his famous constitution for the colony, called the Charter of Liberties, guaranteeing more freedoms than any previous constitution in history (Get a copy for a footnote). Penn was actually reluctant to prescribe any political form at all on the grounds there was "nothing the wits of men are so busy and divided upon. It is true," wrote Penn, "they seem to agree to the end, to wit, happiness; but, in the means, they differ." He was convinced, however, that "Any government is free to the people under it (whatever be the frame) where the laws rule."

Although the Quakers comprised the official religion of the colony (check this), Penn stressed that no religion would be compulsory. Settlers poured into the colony, not only from England, but from Ireland, Scotland, Wales, and Germany. Five hundred Dutch and Swedes already lived in Philadelphia when Penn arrived. But their colony, formerly New Sweden, had disintegrated under the rigors of the frontier. Penn formed the first English colony to actually welcome foreign immigrants, even those of competing European powers -- thus initiating an important American tradition. Led by Francis Daniel, the German Quakers

settled Germantown. Lutherans, Huguenots, Mennonites and Catholics also made the pilgrimage to Penn's colony on the promise of religious liberty. In the first year, 3000 settlers arrived, and by 1684 2500 lived in Philadelphia. By 1689 Pennsylvania's population had swollen to 12,000. According to Andrew Hamilton, a Pennsylvania lawyer writing in 1739, the remarkable prosperity of the colony, far out pacing its neighbors, can be attributed to "the constitution of Mr. Penn," which Mr. Penn himself described as "not so governmentish."

As a result of Penn's live-and-let-live approach to colonial rule, the tax burden in Pennsylvania was extremely light. It included a minimal duty on liquor, an export duty on furs, and a small sales tax. Moreover, on the few occasions when Penn proposed a tax increase, he was inevitably voted down by the Quaker dominated council. When Penn returned to England in 1684 to promote his colony, he handed full responsibility for government of the colony to the council. In keeping with the Quaker approach, a meeting of the council was not called from October 1684 to the end of March 1685. There were no meetings between November of 1686 and March 1687, and virtually none again for another year-and-a-half. Pennsylvania during this four year period had virtually no government at all.

The minimal taxes that existed were rarely collected. When William Dyer arrived from in 1685 to collect the King's customs,

he was ignored for the most part, and was shocked to find that no one paid any attention to the Royal Navigation Acts. Back in England, William Penn began to worry that his proprietary charter might be revoked by the Crown if his colonists did not comply with British law. He appointed as deputy governor of the colony John Blackwell, a tough Puritan bureaucrat. Most important, he was a non-Quaker, a vital attribute for any government administrator.

When Blackwell arrived in December of 1688, he had difficulty finding the offices of the government, and found the council room empty, littered with unread documents, and covered with dust (Edwin B. Bronner. "William Penn's Holy Experiment" 1962) Instead of an escort greeting him upon his arrival in Pennsylvania, Blackwell was jeered at by the neighborhood youngsters.

Council President Thomas Lloyd, a Quaker, passively resisted Blackwell's administration. Lloyd announced that Blackwell's orders could not be carried out unless they were officially stamped by the Council's Great Seal, which Lloyd kept under his own authority. Lloyd then refused to stamp any of Blackwell's documents. Hence, government remained at a grinding standstill to Blackwell's increased frustration. Blackwell found the state treasury so bankrupt that he was unable to hire a messenger for the purpose of calling a council meeting. Of 12 Blackwell Justice of the Peace appointments, four flatly refused to serve.



On April 2, 1689, Blackwell began impeachment proceedings against Council President Thomas Lloyd, charging him with about a dozen crimes and misdemeanors. Blackwell argued that William Penn had given Blackwell authority to carry out Penn's wishes; and since Penn was the propriatary owner of the territory, reasoned the deputy governor, Penn's commands were absolute. Moreover, since Blackwell was Penn's agent, Blackwell's orders were absolute as well -- or so he thought. Blackwell's harrangue did not impress the council.

In a heated rage at Quaker insolence, Blackwell at one point waved his sword in the air and threatened to run through anyone who protested his decrees. Blackwell then began sumarily dismissing particularly uncooperative councilmen, at which point the remaining members also headed for home. It was clear to Blackwell at this point that he had no hope of bringing order to the colony of Pennsylvania, and resigned. "I now only wait for the hour of my deliverance," he wrote to Penn in 1689. "These people have not the principles of government amongst them."

While empathizing with poor Blackwell, Penn ultimately sided with the council, reappointing the entire board as his deputy governor. He apologized for his mistake in appointing Blackwell. He reminded them, though, that Thomas Lloyd had been offered the position, but refused to serve, and that he could not find a single "Friend" who wanted the post. "I have thought

fit," wrote Penn, "to throw all into your hands, that you may all see the confidence I have in you."

It was back to business as usual in Pennsylvania. The council rarely met, and the colony enjoyed tremendous prosperity. During the 30-year period between 1680 and 1710, for example, the population of Pennsylvania increased by some 24 fold, actually surpassing the number of New York inhabitants. New York's population, during this same period only doubled, a poor showing in comparrison to other colonies.

New York's less auspicious economic development can be traced to the manorial system implemented by the initial Dutch settlements. The feudal land holding structure remained in New York even after the British pushed the Dutch out of the Hudson River territory, and this greatly impeded the progress of the colony.

By 1700 Philadelphia, less than 20 years in existence, had outstripped New York as a cultural center and was challenging Boston for the top spot. Philadelphia was the second colonial town to have a printing press, and the third to publish a newspaper. It had the best hospitals, following in the Quaker tradition of compassion. Because of the book collection of James Logan, Philadelphia's library placed second only to Cotton Mather's in Massachusetts. Logan, a scientist and classical scholar, served as Penn's secretary in 1699.

Pennsylvania foreshadowed the ideals of the American

Revolution. It was the first large state to permit citizens of various nationalities and religious faiths to enjoy equal protection under the law. The success of Penn's colony greatly interested the liberal philosophers of the 18th and 19th centuries -- Mill, Hume, Adam Smith, Madison, Hamilton and Jefferson. It had proved under real life conditions that society could go a long way towards total laissez faire before conditions began to decay into anarchy. Philadelphia with virtually no government came very close to achieving its ideal as the City of Brotherly Love. It was a vision of America to be, and would provide a fitting location for the signing of the U.S. Constitution in the Fall of 1787.

Despite the fact that Pennsylvania under the non-rule of the Quakers was a tremendous success in terms of its economic progress, number of settlers, and cultural advancement, King William grew peeved at Pennsylvania's state of anarchy, its refusal to abide by the Royal Navigation Acts, and its total uselessness as a fighting force against French incursion in the West. He revoked William Penn's proprietary ownership, and made Pennsylvania a Crown colony over the Quaker leader's bitter objections.

The King restored Penn's charter in 1694 after the Quaker leader promised to levy taxes to support King William's War against the French, raise a militia, and obey the Navigation

Acts. Moreover, William was not enamored with the prospect of dealing with Pennsylvania's ungovernable Council, and thought it easier to leave the responsibility of enforcing the laws of England in Penn's hands.

The Quakers' Holy Experiment would ultimately fail because of their inability to cope with the tough moral choices that confront any government. It can be defended as heroic for an individual to undergo persecution for living according to his own conscience and religious beliefs. In 1650, Quaker founder George Foxx went to prison rather than take up arms for England against Charles Stuart. But pacifist principles take on a new moral dimension when non-Quakers are forced to suffer because of the refusal of a Quaker government to provide a defense. James Logan recognized the problem when Indians routinely began slaughtering settlers on Pennsylvania's Western frontier:

"I always used the best argument I could, and when I pleaded that we were a peaceable people, had wholly renounced war, and the spirit of it; that we were willing to commit ourselves to the protection of God alone," wrote a despairing Logan in a letter, dated September 2, 1703, to Penn in England. "When I pleaded this, I really spoke my sentiments; but this will not answer the English government, nor the methods of this reign. Their answer is, that should we lose our lives only, it would be little to the Crown, seeing 'tis our doing, but others are involved with us."

Both France and Spain had tremendous stakes in North America

and were in continuous wars with Britain over control of territory and trade. This meant that they were also at war with Pennsylvania, whether the Quakers wanted to acknowledge this or not. The settlers on the Western frontier, mostly non-Quaker Germans, were growing increasingly alarmed at the lack of protection. They thought it the most fundamental duty of the legislator to defend his people, regardless of private religious scruples.

In 1755, the Delaware Indians, under urging by the French, initiated a series of bloody massacres. The French hoped to prevent the purchase of territory by the Pennsylvanians from the Six Nations, and convinced the Delawares that their way of life was threatened by the colony's westward expansion. The Quakers were shocked by the attacks by a tribe they thought was friendly. At first the Council in Philadelphia responded by denying that the attacks had occurred. Once the facts were undeniable, it argued that unfair treatment of the Indians must have provoked the massacres. The survival of the colony was threatened because of the Quakers' false assumptions about the virtue of human nature. Aside for the reality of such motives as greed and a lust for power, sometimes honest disagreements are irreconcilable. Reason, good arguments and compromise cannot, by themselves, guarantee security.

The Quaker legislators disagreed. They refused to

appropriate any funds for defense, even after the horrific bloodbath 1756. Instead of an armed regiment, the Quaker assembly created a commission to make sure the settlers were treating the Indians fairly. This provided little comfort for the frontiersmen seeing their wives raped and butchered, their children scalped, their crops destroyed and their homes in flames. Even more unsatisfactory from the British point of view was the announcement of one French commander from Fort Duquesne that he had "succeeded in ruining three adjacent provinces," including Pennsylvania, completely "destroying the settlements over a tract of country thirty leagues wide." The Quakers remained unimpressed, even when desperate German settlers rioted in the streets of Philadelphia demanding action on the part of the assembly. Less concerned with the responsibilities of government than whether the laws they passed violated their religious beliefs, the Quaker intransigence grew more rigid against the peaceful nature of the Delawares continued to mount.

As it became more apparent that they could no longer remain pure to their faith and at the same time hold the reigns of power, the Quakers began to turn away from the problems of the world. Moreover, Penn's colony came under intense political pressure in England. The social respectability that the Quakers in London had achieved had dissipated, as news of the border massacres reached Europe. The London "Friends" urged the

Pennsylvania Quakers to give up government so that they could avoid some blame for the blood letting by the Indians, and the embarrassing military conquests by the French. On June 4, 1756, six leading Quaker assemblymen handed in their resignations.

The political winner in all this was Benjamin Franklin, a Quaker of practical methods. He had issued a pamphlet in 1747 entitled Plain Truth, providing a platform for a new political party. Franklin made a powerful case against pacifism in government, and so gained the enthusiastic support of the non-Quaker population of Pennsylvania and, perhaps more important, the ruling establishment in England: "The enemy, no doubt, have been told, that the People of Pennsylvania are Quakers, and against all Defence, from a Principle of conscience," he wrote. "To refuse defending one's self, or ones Country, is so unusual a thing among mankind, that possibly they may not believe it, till by experience they find they can come higher and higher up our river, seize our vessels, land and plunder our plantations and villages, and retire with the booty unmolested."

In 1756, Franklin asserted in more strident terms his concern for the fate of the settlers on the frontier who were "continually butchered," concluding, "I do not believe we shall ever have firm peace with the Indians till we have well drubbed them" With the Quaker departure from government, Franklin and his followers dominated Pennsylvania politics into the American

Revolution.

The Quakers were further disgraced when it became apparent that Quaker opposition to violence translated into their refusal to fight for American independence. In addition to being ridiculed as cowards (unfairly in my opinion), they were subjected to charges of treason. At this point, the Quakers withdrew almost completely from public life, and concentrated their energies inward, towards further purifying their individual consciences. It is a curious fact that as the rigid dogmas of the Puritains of Massachuesetts softened during the 18th Century to accomodate the world outside their community, the doctrinaire pacifism of the Quakers grew more intense in unyielding definance to the realities of daily experience. For this reason, continued Quaker influence in the world has virtually disappeared.

Despite the ultimate impracticality of the Quaker tradition, without it there probably would have been no American Revolution. It would have been very difficult to explain exactly what it was Americans were fighting for if the Quakers had not in fact implemented William Penn's political philosophy: that government has no right to use force against individuals to serve the purposes of the community. There would have been no experience of such a society to point to without Pennsylvania. Quaker rule provided the needed historical precedent. They were adverse to using force to an extreme. But it was the radical nature of the Quaker conception of government that led to



the new political theory that would emerge in 1787.

Even with his departure in (tk), and the abdication of Quaker rule in 1756, William Penn's philosophy continued to hold sway over the colony. His Charter of Privileges remained until 1776 when, as a state that had declared its independence from England, it formed its own government. The Pennsylvania Constitution was the most democratic of all the colonies, mandating annual elections, and requiring the retirement of legislators after four terms in office, thus subjecting officials to their own laws. The governor, who never had much power anyway, was completely eliminated, giving all authority to the legislature. Moreover, every bill passed by the General assembly would have to be printed for consideration by the people at large before it could become law in the next legislative session. The Pennsylvania Constitution completely obliterated privilege, government grants and chartered monopoly.

It was in Pennsylvania that the most radical ideas about politics and constitutional authority expressed in the Revolution found a voice. The Quakers and their successors in public life questioned assumptions about the principles of government that were taken for granted everywhere else. This colony, more than any other, had first hand experience of life without monarchy, oligarchy or feudal rule of any kind.

It almost worked. With a few modifications to take into

account the unpleasant reality of man's nature, it would work.