Interpreters of Economic Ideas: Thurman Arnold (1891-1969)

(I am grateful to Bruce Caldwell and Steve Medema for comments on an earlier draft)

Craufurd Goodwin

August, 2016

"…lawyers and economists have always been a frustrating force in American society. There is no more possibility of getting rid of them than a dog has of getting rid of fleas." Thurman Arnold to Rexford G. Tugwell, August 22, 1967 (Gressley 474)

Background

A category of public intellectuals that resides at the fringes of what we think of today as economic science has received little attention from historians of economics and should, I suggest, receive more. The main objective of those in this category has been to discover how economics could be useful in explaining and solving policy problems in fields different from but adjacent to those that are thought of as economic and along paths that are different from the conventional ones of applied economics. These "fringe economists" are seldom interested in economics for its own sake, only for what it can do for them. One of their main achievements has been to bring economic thinking of a certain kind to an audience that is much broader and more diverse than is typically reached by conventional disseminators of economics such as textbook writers and specialists on economics in the media. The impact that these interpreters have had on the economic policies that they address, and sometimes backward onto economic science as well, has yet to be fully understood.

The economic public intellectuals that I have examined have several qualities in common that help to justify their treatment as a group. First, they all have a general acquaintance with economics, at least to the level of an undergraduate major, and they all make frequent use of it. They employ simple market analysis but have little interest in technical developments in the economics discipline. Policy controversies intrigue them but disputes over theory do not. They are respectful of economics as a scholarly discipline but they do not hesitate to take issue with parts of it that seem to them mistaken or troublesome. All of those I have examined have had warm friendships with prominent economists and, we may presume, have had some impact on these economists' thinking. Finally, they are usually bigger-than-life characters with colorful personal lives. They all have had many devoted followers in their own major fields, where they are warmly remembered, but they are largely forgotten by economists and historians of economics.

The three economic public intellectuals upon whom I have worked to date are Roger Fry, Aldo Leopold and Walter Lippmann (Goodwin 1998, 2008, 2014). Fry was an artist, art historian, pioneer aesthetician and leader of the Bloomsbury Group where he became a close friend of John Maynard Keynes and was in contact with Ralph Hawtrey and other economists. He brought Thorstein Veblen's ideas back to Bloomsbury when he returned from a stint as curator at the Metropolitan Museum of Art in New York. He engaged with economics because of a concern for the survival of the artist in a competitive market

economy. He was especially interested in the distinctive demand for artistic goods. There seems some likelihood that Keynes's famous description of the securities markets as a beauty contest came from Fry's description of an art auction. Keynes's famous disaggregation of the demand for goods and services making up gross domestic product may even owe something to Fry's division of the demanders for artistic goods into those he called snobbists, classicists, esthetes, speculators and others. Aldo Leopold was an ecologist who went through a rigorous undergraduate economics program at Yale and was a prodigy in the U. S Forest Service, put in charge of a national forest soon after graduation. He found to his dismay that the development strategy implied by his economics training led to some tragic environmental results and he developed the idea of a "land ethic" to supplement utilitarian valuation when he turned to teaching and research at the University of Wisconsin. There he was in the midst of a community of Institutional economists led by John R. Commons. Walter Lippmann, perhaps the most influential American journalist of the twentieth century, as an undergraduate at Harvard took courses from Frank Taussig and Thomas Nixon Carver. Over his career he developed friendships with a remarkable range of prominent economists, notably Keynes, but also such diverse figures as Henry Simons and Wesley Mitchell. He drew the attention of his large reading public to the emerging sub-discipline of macroeconomics and the mounting dangers he perceived in concentration of economic power in both business and labor. All three of these public intellectuals produced iconic books in their fields that touched on economics and expressed their core ideas: *Vision and Design* by Fry, *A Sand County Almanac* by Leopold, and *The Good Society* by Lippmann. All three were uncomfortable with the assumption of the rational actor used in economic models, and they turned to psychology for enlightenment

In this paper I examine a fourth member of this category of economic public intellectual, Thurman Arnold, one of the most prominent legal scholars and practitioners of the twentieth century. He fits well with the other three; indeed he applauded the new sub-discipline of Keynesian macroeconomics popularized by Lippmann and he knew and often quoted Lippmann, whom he called "one of the most learned economic pundits of our time" (FC 93). He too wrote an iconic book, *The Folklore of Capitalism*. Arnold is remembered well by legal scholars today, but mainly for his contributions to a range of topics in legal studies, for his revival of interest among lawyers in antitrust, and for his defense as a practicing lawyer of "underdogs" of various kinds, especially civil liberties cases, that others were reluctant to defend. Arnold has been well served by legal historians with a fine biography (Waller 2005), two collections of his letters and miscellaneous writings (Gressley 1977 and Arnold and Douglas 1961), an examination of his role as social critic (Kearny 1970) and at least five accounts of his years in the Justice Department (Ayer 1971, Brinkley 1993, Kolasky 2013, Miscamble 1982, and Waller 2004). Among the few economists to examine Arnold's contributions to economics were Corwin Edwards, an economist at the Justice Department (Edwards 1943) and Warren Samuels (Samuels 1979). Arnold was very interested in a range of economic questions and had many prominent economists as friends, notably Walton Hamilton, one of the founders of the Institutionalist movement. He seems to have had remarkably abundant energy. A friend remembers that he seldom stopped talking. It seems also that he seldom stopped writing.

He grew up in Laramie Wyoming in a well-to-do family; his father was a prominent lawyer and rancher who liked to write and recite poetry. He was raised with traditional western frontier values of independence, closeness to nature, and skepticism of eastern culture; these he never abandoned. After a year at Wabash College he attended Princeton University where he took courses in economics, and Harvard Law School. Although happier in the law at Harvard than in the liberal arts at Princeton Arnold was skeptical about how the faculty at both places dealt with human behavior; this would become for him a lifelong concern. He reminisced in his autobiography about what he was taught about psychology at Harvard. "Each individual endowed with free will by his creator had two little men at the top of his head. One was called Reason, the other Impulse. Reason was a highly reliable little man. Impulse, on the other hand, was completely unreliable and untrustworthy. He was unable to follow any logical and consistent course of conduct. He was prone to be influenced by the blandishments of demagogues. He was a pushover for unsound schemes. It was, therefore, the function and duty of the little man called Reason to put his foot squarely on the back of the neck of Impulse whenever that individual began to err and stray like a lost sheep, as was usually the case. The law was the quintessence of human reason" (Arnold 1951, 21). It was in his college days, evidently, that Arnold's skepticism of conventional scholarly endeavor had its roots.

After a brief stint in private practice in Chicago Arnold served as artillery officer in France during World War I. After the war he returned to Laramie to practice law with his father, enter politics, and help to set up a law school at the University of Wyoming. He became mayor of Laramie and the single Democratic member of the Wyoming legislature. In 1927 he left to become Dean of the College of Law at the University of West Virginia. Soon he attracted the attention of leaders in the legal profession, especially for his statistical studies of legal variables, and received offers of professorships at Yale and Harvard. He chose Yale and in 1930 entered one of the most stimulating and productive periods in his career, with a group of colleagues with whom he maintained contact over many years, including Hamilton, two future members of the Supreme Court, William O. Douglas and Abraham Fortas, Harold Lasswell, distinguished political scientist engaged in creating a new multi-disciplinary field of policy science, and Edward S. Robinson and Harry Stack Sullivan, two psychologists with whom he offered Law School seminars. At Yale Arnold was close to the "legal realists" among the lawyers, and to the "institutionalists" among the economists. He has also been described as at that time a thorough-going progressive (Gresley 21), but he refused to accept these labels, or any other. Soon after arriving at Yale he began consulting and working part time for the Federal Government.

In 1938 Arnold entered the second of the most influential periods of his career when he was appointed Assistant Attorney General for Antitrust. There has been controversy over whether his appointment by President Roosevelt reflected a conscious redirection of the New Deal from construction of monopolies under the NRA and AAA to their destruction under Arnold; Arnold thought it did, but it seems likely that it did not (Arnold 1951, 139; Miscamble 1982, 25; Hawley 1966, 48). Nevertheless, over a few years Arnold turned a sleepy backwater of the Justice Department into a powerhouse of brilliant young lawyers and economists who challenged concentrations of economic strength in business, labor and the professions; this included on the staff such future luminaries as Supreme Court Justice Tom Clark, and Attorney General Edward Levi. However, by 1943 Arnold had built up so many enemies among those he

had investigated and prosecuted, and since wartime seemed to demand a warm and friendly relationship with power centers in the economy rather than adversarial ones, Roosevelt eased him out into a Federal Appeals Court judgeship for the District of Columbia which he left after only two years to start his own law firm that became in time one of the most prominent in the country, Arnold, Fortas and Porter. One of his earliest decisions in private practice was to defend pro bono many of the federal employees persecuted for their supposedly un-American activities, notably Owen Lattimore, professor at Johns Hopkins University, authority on China, and president of the Institute of Pacific Relations.

Arnold's serious engagement with economics began when he became puzzled and depressed by the seeming inability of the modern social sciences to come to grips with the enormous economic, social, and political challenges of the 1930s. He asked what explained this discouraging incapacity and what could be done about it. His location at Yale among an immensely diverse and stimulating community of lawyers, economists, political scientists, sociologists, anthropologists, and psychologists made him reflect on how all these disciplines had evolved and what stood in the way now of their getting together and making contributions. Arnold described his role as historian of the social sciences as, perhaps, more like that of an anthropologist than a lawyer. This may have been because of his experience with a seminar which "he attempted to give in the Yale Law School with a great foreign anthropologist [name unknown]" (*Folklore of Capitalism*, hereafter FC, 183). He wished that real anthropologists had done the job that he concluded needed to be done, but sadly "the anthropologist stops at the solemn threshold of law and economics, convinced of his unworthiness to proceed. He says in excuse, 'I am no economist or lawyer'" (FC 348).

Arnold had high hopes for what a well-conceived scientific study of society and its problems might reveal. "I choose the term 'Political Dynamics' to refer to a science about *society* which treats its ideals, its literature, its principles of religion, law, economics, political systems, creeds, and mythologies as part of a single whole and not as separate subjects, each with its own independent universe of principles." (FC 349). Clearly he had in mind projects for this new science that could be undertaken without a lot of advanced planning. For example "The American economic scholars meeting in Chicago every year have never been visited by observant men asking themselves the pertinent question: 'Why should such apparently intelligent men, when gathered in a group, attempt authoritatively to conceal the facts about political institutions? The study of the reaction of social organizations to the formulas produced by such bodies, and the effect on the general folklore of these formulas, have not been given a classification or a name. There are of course novels and biographies which have attempted the job of describing the moving force of economic and legal folklore, but they have done this at odd times and not in an orderly and scientific study, since they were written for a public rather than for a laboratory" (FC 348).

To assess the impact of the social sciences over time Arnold said he would focus on "symbols of government," a rather obscure concept that he defined in the preface to his first book that bore this title. "By the symbols of government we mean both the ceremonies and the theories of social institutions. Ordinarily, these ceremonies and theories are collected and studied, not as symbols, but as the fundamental principles of the separate sciences of law, economics, political theory, ethics, and theology. In this book we propose to examine law and economics, not as collections of truths, but as symbolic thinking and conduct which condition the behavior of men in groups" (*Symbols of Government*,

hereafter SG, iv). Arnold argued that most historians of ideas mistook the relationship between ideas and institutions. They thought that ideas came into fashion and institutions and ceremonies grew up around them. He found that often it was just the opposite. Institutions and ceremonies became established, stimulated the growth of ideas, and then used these ideas as defense mechanisms against those who questioned their legitimacy. Utopian thinkers on the right and the left were frequently the most mistaken in their judgments. For example, "The age-old dream of all utopians – that if we can get men to agree on a principle, institutions and social organizations will arise which will adhere to and carry out that principle – was the basis of short-lived optimism and confidence which followed the destruction of the German empire" (FC iv).

Despite his uncertainty about the exact methodological category into which his own work should be placed Arnold soldiered ahead. Partly because of his ironic style, called by some smart-alecky and others a mix of Voltaire and a cowboy, and partly because he was writing at first mainly for an audience of lawyers and later for the general public, it is sometimes difficult and aggravating for a modern economist to follow his reasoning and his conclusions. The problem is accentuated by his frequent use of anecdote and narrative (story telling!) about policy issues and cases before the courts that interrupt his argument. Arnold seldom used footnotes and references and we can only guess at the origins of some of his ideas. He seemed reluctant to give credit to prominent contemporary economists. The influence of Thorstein Veblen seems obvious in places, as in his ironic style, picked up perhaps from his friend Walton Hamilton who prepared a memorandum on Veblen for his use. Some of his few acknowledgements are to heterodox economists of his own day such as Stuart Chase and George Soule, and later John Kenneth Galbraith, perhaps designed in part to irritate his more respectable economics readers. But even here his compliments were few. After reviewing a book by Chase he remarked: "Yet neither he nor anyone else can point to any organized body of learning which is devoted to the task of finding methods by which society can be induced to recognize and follow its best interests. If there has been any advance in creating such a body of learning since Aristotle it is scarcely perceptible" (SG 4). Arnold's biographer Spencer Waller describes him in summary as follows. "Arnold was a social critic in the tradition of H. L. Mencken, whom he befriended in the 1930s and who read and commented on drafts of *The Folklore of Capitalism.* He was an ironist in the tradition of Thorstein Veblen. He was a comedian in the tradition of Groucho Marx. He was a cynic in the tradition of W. C. Fields. He was a radical, not so much because of the substance of his ideas but because he treated being right or wrong almost as not mattering" (Waller 205, 76-77).

The approach taken in this paper is to put aside all of Arnold's skepticism of the social sciences and issues that rise from his style and attempt to identify the set of questions to which he directed his research, then see how he answered them. The questions are: 1. how can we understand the history of science, and especially of the social sciences, so as to explain their currently lamentable performance? 2. What is the current state of the social sciences and how can they be made more useful in the present crisis? 3. What reforms in policies, practices, and institutions may be inferred from the answers to questions 1 and 2 to bring about an end to the depression? 4. What needs to be done in this time of crisis to protect a free society from crippling concentrations of economic power?

Some Ideas from Arnold's Works Worth Reflection

Some of the highlights of Arnold's career and the ideas that emerged from his experiences are quite different from those we usually see in the history of economics, and so it may be helpful to the reader to identify in advance some of them that are so stimulating they are explored in some depth below. Overall we see a distinguished scholar in the law, a field adjacent to economics, urgently seeking answers to policy questions, and rather than consulting the latest textbook in economics he goes to the history of economics for enlightenment. From this approach he was led to some intriguing observations: for example that progress in both law and economics has been affected from time to time by institutional structures that constrain exploration in some directions, such as in the use of the experimental method, and place great emphasis on others, such as the perfection of theory. In his discussion of economics he used terminology and ideas from the humanities, especially from theology and the history of science, that grate on the ears of more conventional historians today, ideas such as folklore, symbols, myths, sacred texts, high priests, and, like Veblen, "ceremony."

In his concern with economic policy Arnold focused on the destructive effects of concentrations of power in an economy, not only because of the well-known reduction in efficiency that came from monopoly but also from the consequences of the mal-distribution of income for political and social stability. Whether or not the reader agrees with Arnold's observations in this area it must be remembered that Arnold's position was set forth repeatedly to millions of Americans in the 1930s and 1940s. Arnold was especially critical of modern economics for failing to follow what he understood were best practices in modern science that he inferred from the natural sciences and medicine with their heavy emphasis on application and experimentation. He offered a wide range of comments and suggestions about economic practice that might only have come from a serious and well-informed outsider. He discussed the problems presented to economists by insistent public demands for confident prophesy. He returned often also to the opportunity presented to create a category in the civil service of highly-trained social scientists. He took note of how one social science could be especially valuable to another, for example how useful economics was to the law in providing a simplified social philosophy not dependent on morality. Like other public intellectuals who came to economics late in their careers Arnold was puzzled by the use of abstraction to explain human behavior. He appreciated the usefulness of the rational actor in models but he worried also that it erected barriers to creative thinking about human action.

Over all in Arnold's writing was consciousness of things like myth and superstition that stood in the way sometimes of sensible economic policies: policies like unbalanced fiscal policies to restore full employment, rejection of unreasonable fear of inflation, and concentration at times on the short-run rather than the long. The most damaging myth for economic policy, he thought, was that the corporation was just a private individual writ large rather than a whole new kind of institution.

The History of the Social Sciences, Especially Economics: The Arnold Take

Answers to his four questions were proposed by Arnold in a rather fumbling way, first in an article in the *Annals of the American Academy of Political and Social Science* in 1934 entitled "Theories about Economic Theory" and then in his first important book *Symbols of Government* (1935). This book reads almost like the notes of a scholar who has come to intellectual history for the first time and says "Look,

see what I found." Soon after came a more polished second book on the same themes, *The Folklore of Capitalism* (1937) that became a best-seller and went through 22 printings and a second edition by 1961. Arnold's earliest close engagement with economics began after this book had been published when he was appointed Assistant Attorney General in 1938. Then he was forced to confront the question of just how dangerous concentration of market power was in an economy and what could be done about it. On this subject he made many public statements before Congress and in periodicals such as the *Atlantic Monthly*, *Collier's, Common Sense, American Mercury, Harper's*, *New Republic*, *Reader's Digest, American Heritage, Saturday Evening Post*, *Dun's Review*, *New York Times Magazine*, and more (Waller 2005, 99 and 207-211); some of these pieces were gathered together in a third book entitled *The Bottlenecks of Business* (1940, hereafter BB). Drafts of these works, correspondence and other Arnold papers are contained in The American Heritage Center of the University of Wyoming. The case he made against, and the conclusions he reached about, concentrations of economic power were important contributions to the debate over these matters during the late 1930s and 1940s when threats to the survival of a free society were on many minds. *The Reader's Digest* in 1941, with an eye on these writings, called Arnold one of the ten most powerful men in Washington (Waller 2005, 102).

Arnold reflected on economic policy first as a politician in Wyoming, as mayor of Laramie and a state legislator. Until then his background had been almost entirely in the law, and it showed; for example in how he handled the challenge of prohibition. He presumed that a democratic legislature in its wisdom when constructing policy consulted the preferences of voters and the findings of science and reached conclusions consistent with these two bodies of thought. These conclusions were then presented to executives for implementation. The result was that "The 'people' in this democracy were supposed to choose sound economic principles in preference to unsound ones like a scholargarchy. They were to reject unsound legal principles like a theocracy" (FC 43). Thus, it was not for an executive to challenge legislative wisdom that ultimately came from the people. Accordingly, although far from a teetotaler himself, he put prohibition in place with draconian thoroughness in Laramie. The Great Depression that he began to study soon after he reached Yale seemed different. It worried him that unlike the situation with prohibition there was no clear understanding about what had caused the crisis or what should be done to cure it. What was worse, the social sciences were not mobilizing to gain understanding of what to do. So, thrust into the heady multi-disciplinary environment of the Yale Law School, he began to read widely, especially in the history of science and the social sciences, including law.

He was surprised and somewhat chagrined to discover that the process of human inquiry was not as simple as he had imagined. It was not merely a matter of brilliant innovators proposing novel hypotheses that were then tested through experience and when sustained implemented in public policy. Instead the growth of human understanding, and of human progress overall, was constrained in many complex ways by practices and institutions that most innocent people thought lay beyond the boundaries of science. His own posture in examining this history, he felt, should not be that of a revolutionary or even a reformer; to be persuasive he must remain a detached observer. Moreover, he appreciated that the symbols and folklore that he discovered had complex consequences for society beyond their impact on scientific progress alone and should not be carelessly changed or rejected. It was

important to examine how society dealt with the folklore and institutions without making hasty recommendations for intervention.

One of his strongest findings from the reading of history was that a variety of self-interested bodies typically intervened in scientific progress to affect its forward movement either positively or negatively. These bodies could be economic, ideological, philosophical, theological, or political. Typically they generated what he said, using a theological metaphor, were a priestly caste and bodies of sacred literature that constrained scientific progress. In many societies still, and in the West not long ago, the search for truth in writings of the ancients was confined to theological texts. With the coming of the Enlightenment, rational thought of wise ancestors came to be the basis on which limits to the extension of inquiry were based, especially in economics and the law. But these rational limits were not necessarily "reasonable." "In an age where Reason is God, constitutions or fundamental creeds are always supposed to be the result of rational thought on the part of our forebears…. However formulated, all these kinds of constitutions perform the same purposes. They furnish the limits beyond which controversy must not extend" (FC 27-28).

Within the sacred literature and priestly castes of the social sciences Arnold found that by the 1930s economic debates had replaced political ones. "We believe in the capitalistic system, as we used to believe in democracy, not as a tool, but as a set of abstract principles to be followed. The systems of government over which we have our theological disputes are no longer monarchy, aristocracy, and democracy, but Capitalism, Communism, and Fascism. Capitalism is a good thing in the abstract. It has its following of learned men and philosophers. It [the term] is no more descriptive of social organization today than the theology of the monarchy was descriptive before the French Revolution. It is instead an arsenal of weapons to be used against new organizations, rising because of compelling need, but hampered because they have as yet found no place in accepted institutional mythology" (FC 45).

Arnold concluded from his reading that each community of learning proclaimed truth and established bodies of scholars that acted as gatekeepers to further inquiry. The church had, of course, its hierarchy of priests that interpreted the scriptures. The law had its structure of courts, and "like the bible, the Constitution became the altar whenever our best people met together for tearful solemn purposes, regardless of the kind of organization" (FC 79). Economics had groups of "sound" economists who did not necessarily agree on all of their findings but did agree on core beliefs. "Economic theory had no separate institution to speak ex cathedra, other than the two political parties, each of which hired experts to study it and advise them. Whatever was produced by any political platform had to have its background of scholarly research. It was the duty of each party to consult only sound economists. Legal theory, on the other hand, was manufactured by the Supreme Court of the United States" (FC 62). Because government often failed to observe "sound" economic theory it tended to be viewed with suspicion or scorn by "sound" economists. These economists, he explained sarcastically, found that "The great trouble with the legislative branches was that they were influenced by an unlearned, untheoretical, illogical, and often corrupt force called 'politics'. Politics was continually putting unworthy persons in power, as opposed to business where, because of economic law, only worthy persons rose to the top" (FC 64). Congress, economists thought, was especially guilty of political misbehavior. "A body influenced by political considerations could not give any disinterested judgment as to the soundness of

any economic theory. Hence Congress was perceived by respected economists to be constantly picking unsound theories, listening to unsound economists, and letting the practical convenience of the moment overweigh the needs of posterity. Politicians were the kind of people who would not care if a thing called bureaucracy was established as long as it gave them jobs" (FC 64). Given this level of concern Arnold was surprised "that the sound economists did not demand a Supreme Court of Economics" (FC65).

An important reason why economists and lawyers and social scientists more generally had made so little progress in understanding the economy, Arnold asserted, was because they had developed contempt for most of the principal actors in the economy, business persons and politicians. Economists appreciated that participants in the economy typically exhibited enough self-interest to make markets work satisfactorily most of the time, but not enough of the time to make them loved in the way physicians loved their patients. Humans were just too unpredictable to make economic models predictable. Deplorably, the scholars observed, these actors behaved not like rational economic beings but rather like unpredictable loose cannons. These scholars decided how humans should behave before they studied them. Sometimes their scholarly contempt stood squarely in the way of scientific progress. "The human race appears under this attack as a group of 'unconscious hypocrites,' or 'dupes.' Adults are described as children. Businessmen are thought of as knaves and thieves. Such realists sit on pillars and laugh or weep (according to their temperaments) at the human race because of what it is, instead of something which it isn't. They are in the same intellectual position as a naturalist who insists on writing on the foolishness of animals or as a beekeeper who discourses on the 'empty and meaningless' buzz of a bee. The probability of such a point of view producing competent biologists is small" (SG 7).

As elsewhere in his reflections, the comparison to medicine in this case seemed to him apt. He used a medical observation to explain what he considered was a reason for a paucity of applied economics. "Legal and economic thinkers can therefore never discover new techniques in government [public policy], because they cannot look at the world as it is without a shudder. A physician who maintains an attitude of horror and disapproval every time he enters a sick room would soon be compelled to retreat to some quiet place where he could philosophize on illness in the abstract. It is only natural that our governmental scholars [students of public policy] should go back to the learning of the past. The confusing events of their own day constantly contradict their most fundamental assumptions. The road to discovery is thus closed to all who refuse to accept the world as it is" (SG 6).

The characteristics and behavior of the institutions that constrained the social sciences remained the object of Arnold's attention for the rest of his career. He was intrigued that these institutions had features in common throughout history. For example, they often encouraged the growth of utopian thinking. They tended also to ignore the interests of those directly affected by inquiry, such as the unemployed during the depression. The severity of the constraints imposed on inquiry tended sometimes to stimulate angry responses within society and within science. Other times the constraints were simply tolerated until they were abandoned as too costly. The most regrettable constraint that was sometimes imposed on science was a prohibition against the testing of, and experimentation with, fresh thinking and new hypotheses such as implications from macroeconomic theory about how to increase aggregate demand. This led to stagnation and unnecessary suffering among those who might

have benefited from new knowledge. His conclusion overall was that the natural and physical sciences had been successful in breaking the bonds of those parts of their institutional folklore that became too restrictive, perhaps because of the strength of their practical applied fields like medicine and engineering. The least success was to be found in the social sciences, and especially the two that interested him the most, economics and the law, where he found that applied practitioners had little authority, and theory reigned supreme. The New Deal was, of course, an example of experimentation on a grand scale in both theory and policy, and Arnold was quick to note that most of the experiments had failed. But this was no reason to reject all experimentation as the critics among the price theorists insisted. Quite the contrary; experiments should continue as long as plausible hypotheses for testing were put forth.

Among the many historical examples Arnold used to illustrate his findings about economics was a favorite from the history of medicine. He reported that in the 17th century Jesuits working in Peru discovered that quinine was effective in treating malaria. This finding was referred to the University of Paris which had been given responsibility by the church for sustaining authority in such matters through a group of theologians ready always to reach a judgment about the legitimacy of any innovation. In describing this case he reminded his readers of the parallels to the social sciences in the current depression. In Paris "It was the duty of these carefully chosen scholars to make a unified whole out of the learning of the time. They spent their lives studying those fundamental principles, the violation of which brings ruin. Their logic was unassailable as the economic logic and legal logic of today. They had the same distrust of immediate practical advantage, the same fear of mysterious and impending moral disaster lying in wait to destroy the national character of a people who deserted fundamental principles to gain present ends. The medieval physician could see no profit in saving a man's body if thereby he lost his soul. Nor did he think that any physical relief could ever be worth the violation of the fundamental principles of medicine" (FC 55). So, "it was not surprising that the University of Paris declared the use of quinine unconstitutional and banned the drug as dangerous" (FC 56). And thus "sound" economists in the 1930s banned the proposals of the new macroeconomists and Institutionalists.

To those who could not see immediately the parallel in this narrative to attempts to find a way to end the depression he pointed it out: "The tactics in the war against disease bore a striking resemblance to the tactics of the modern war against social problems, in that the principles of medicine were much more sacred and important than the health of the patient" (FC 56). He did not name names but it was clear he thought the new macroeconomists and Institutionalists of the 1930s who were looking for new ways to fight depression were like the heroic Jesuits and were destined to take a place beside them in the history books. "The historian of the future will be amazed at a great people's simple belief that sound legal and economic principles, discovered by close students of these mysteries, were the only means to national salvation. He will be equally amazed at the naïve fears that opportunistic action or judgment based not upon learning but on political expediency, whatever its temporary benefits, would necessarily lead to disaster if it did not fit into some preconceived theory" (FC 58). Arnold thought the denouement of the quinine story was as important as the story itself. Despite the ban by the theologians, an entrepreneur ("quack") named Talbot discovered that he could quietly mix quinine into

an elixir with honey and sell it without naming the contents and, thereby, not infringing the ban. Arnold could see parallels to the Talbot elixir in such proposals as the Townsend plan to increase aggregate demand. Townsend, who Arnold admitted was a "quack like Talbot," was at the same time an important force in the progress of economic policy. Townsend, an American physician, proposed in 1933 a generous program of old-age pensions to increase aggregate demand that was said to have influenced the Social Security legislation of 1933 and amendments thereafter. "In the thinking of economists" Arnold wrote," Townsend was regarded as a dangerous phenomenon. He was attacked on logical grounds which are entirely irrelevant to the part he played in the social scene." However, "without his leadership the passage of the Social Security Act might have been delayed for years" (FC 89). Arnold did not mention, but he may have thought of, Keynes as another beneficent quack.

Arnold found what he considered to be other striking parallels between inquiry in the social sciences and theology, especially in relation to the doctrine of original sin. He told in his autobiography of his first acquaintance with this doctrine and how it should be treated. "My grandfather, a thorough student of Presbyterian theory, would have strenuously opposed any attempt to prohibit prostitution by enforcement of the law. It was his belief that God put sin into the world to test mankind. To prohibit any form of sin by law would be directly counter to the teaching of the Holy Bible. The church had exclusive jurisdiction over morality. It was the function of the church to see to it that its members did not commit sin." (Arnold 1951, 13). Certain principles in economics had become so widely accepted that to challenge them would suggest endorsement of sin. "The principle of balancing the fiscal budget was so sacred that any other course was economic sin and would inevitably lead to some sort of unspecified economic or social hell" (FC xv). Theological practices could be used to illuminate sclerosis in economic policy thinking as well as stagnation in theory. For example, the rational actor assumed in economic models was at base a theological concept. "This abstract man is usually called the 'Thinking Man' because today rational thought is the way of economic and legal salvation. In earlier times when faith was thought to be better than reason, the men who feared God were at the receiving end of public exhortation. It was the doubters who created the breeding ground for heresy. Today, in an age of reason, the doubters are not considered dangerous. It is the unthinking man or the uneducated man who are led astray by unsound principles such as Communism or Fascism, which are the modern equivalent of heresy" (FC 5). Religious heresy in the Dark Ages was replaced by economic heresy in the modern era. The treatment was the same. "All arguments against heresy follow the same pattern. A devil must first be discovered who is trying to lead the people astray. A Hell must be invented which illustrates what happens to those who listen to the Devil. The conception of free will is essential. Then the age-old story is told. Russia and Germany listened to the Devil. They are therefore in Hell. In our rational and sophisticated age the Devil and the Hell become very complicated. The true faith is Capitalism. Its priests are lawyers and economists. The Devil consists of an abstract man called a demagogue. He is the kind of person who refuses to be moved by sound economists and lawyers and who is constantly misleading the people by making the worse appear the better reason" (FC 4-5).

Arnold's distinction between topics that were closed or open to inquiry and discussion in science seems to modern eyes quite similar to Imre Lakatos's differentiation between the "hard core" and the "protective belt" of a scientific research program. And indeed there are similarities. But there are also

important differences. In particular Arnold did not confine his subject to what Lakatos thought of as science. Arnold discovered that constraints on investigation and discussion could be found in any area of inquiry, including jurisprudence and economics, the two fields that were of particular concern to him. Arnold, also, was more interested than Lakatos in the social and cultural conditions that explained the openness or "closedness" to inquiry at any time. He was fascinated by the evolution, and current state, of the practices and institutions that protected the equivalent of the Lakatosian hard core. He was intrigued especially by the universal human resistance to novelty in the ways they think and live and that were at the root of intellectual conservatism. "It may be asserted as a principle of human organization that when new types of social organization are required, respectable, well-thought-of, and conservative people are unable to take part in them. Their moral and economic prejudices, their desire for approval of other members of the group, compel them to oppose any form of organization which does not fit into the picture of society as they have known it in the past"(FC 3).

He saw resistance to change as "on the one hand the balance wheel of social organization and on the other hand its greatest element of rigidity" (FC 3). It was also the principle that stood in the way of discovering and implementing successful policies to deal with the depression. To some degree recalcitrance was simply a widespread human characteristic (FC 90-91). For this reason conservative practices in economics had been translated into "symbols of government" that included resistance to managed monetary and fiscal policy, commitment to fixed exchange rates, and obsessive fear of inflation. In a preface to the second edition of *Folklore* in 1962 he wrote: "In the field of monetary and fiscal policy, however, nineteenth-century symbols still cloud the realities of the twentieth-century industrial revolution and frustrate American economic progress. Just as during the depression we were unable to utilize our full productive capacity because of a lack of consumer purchasing power, so today we are still unable to utilize it for the same reason….And thus under the same economic symbols and rituals that we had during the great depression we are developing today the same symptoms that prolonged that depression. The only time we were free from the tyranny of these nineteenth-century economic images was during the Second World War" (FC x-xi).

Arnold concluded from his reading of economics that a body of doctrine had emerged after the industrial revolution of the 18th and 19th centuries that had gained authority because it strengthened the position of those with growing economic power. "Adam Smith did not think up principles by which the merchant and manufacturer gained power. He supplied them with a philosophy after they had taken charge of the temporal government" (FC 39). It is worth repeating one of the summary accounts he gave of the evolution of modern economics and jurisprudence. He described these two fields not as aberrations to be deplored and corrected but as natural consequences of the economic growth and the related appearance of new economic institutions over two centuries. "The science of economics rose with a merchant class which demanded its place in the sun. As the comforts of the present world increased, the future life became less important and the church, the chief custodian of the blessings of that life, lost its influence. Reason displaced mysticism and the law became the great repository of the symbols of government. Yet the law did not entirely explain the competitive struggle of commercial interests. Its ideals were too high. A large part of its reasoning was devoted to proving that it should not interfere with the details of commercial competition. Hence a philosophy was needed to justify the

disorderly struggle of a commercial class which insisted on respectability and prestige. The philosophy was required to justify a selfish struggle for money and power by a class which refused to submit to regulation in terms of ethical ideals. Therefore the philosophy of economics was created to show how unhampered selfishness on the part of competing groups, was productive of the greatest good in the long run. The fundamental laws of economics were invented to prove that the greatest good to the world comes from the unimpeded competitive activities of enlightened greed. A man who would work only for profit was postulated as the typical human being, and a complicated theory showing how this selfishness was the real cause of all our temporal blessings was painstakingly built up. This theory today supplements the law as one of our most important symbols of government" (SG 73-74). Economists in their theory of markets essentially presented the economic system as a game of dominoes. "If a set of dominoes is set upright, each close to the next, and you push over the first domino, all the rest of them will fall in rapid succession. This notion is at the root of theoretical economic thinking. Such a faith, exemplified and celebrated by the sacred writings of an economic priesthood, seems to be a psychological necessity for the perpetuation of stability in government institutions. When that faith does not depart too far from reality, it clothes our social organizations with dignity and prestige, and persuades the less fortunate among our citizens to accept their lot with resignation and equanimity" (Arnold 1951, 77)

Arnold did not call for rejection of economics as it was then practiced. Something better would have to be found to take its place. He was not a crusader for a fundamentally different economics or for dismissal of economics altogether. Confidence in economic science, he thought, was essential for maintenance of social stability. "Human institutions, in an environment which worships reason, fail in influence and prestige unless they appear to be firmly founded on reason and fundamental principle. They are apt to go to pieces out of sheer lack of self-confidence if their philosophical assumptions are attacked, just as a devout individual may suffer intensely if he loses faith in his religion. The 'truth' or 'falsity' or even the content of the fundamental principles to which the individual clings for moral support is completely immaterial" (SG 9). Arnold in the 1930s was anxious not to attack economics root and branch but to identify and reduce the obstacles to economics contributing to a better understanding of the economy and opportunities for reform.

The Condition of Contemporary Economics, and How to Make it Better

Arnold was disgusted with the failure of economists overall in the 1930s, orthodox and heterodox alike, to rise to the challenge of the depression. But perhaps, he suggested, always looking for an analogy, an examination of theology would help to explain this failure of economics to date and outline a better path forward. He found that throughout history when an established church faced a major crisis its typical response was to claim that the current system was not to blame. For example, this was the clerical reaction to the crusades: "when men plan crusades based on an institution they do not understand, a vast dialectic literature pours forth to aid a faith which is in conflict with the facts that they observe. Thus, the depression witnessed the greatest flood of legal and economic literature the world has ever known" (FC 115). Arnold found that he could divide this recent economic literature into two categories. "The first pointed out that from the point of view of a census of resources and labor there was no earthly reason for so many slums, such inadequate medical care, so much waste of mineral

or agricultural resources, so few clothes, and so little food…. The second pointed out the danger of efficient national organization, by reciting the parable of the wild Russian and the cruel German….The net result was that economic theory became so complicated that it was almost useless for the only practical purpose to which it could be put; that is, for authoritarian argument" (FC 116).

It was tragic, Arnold thought, to see participants in the economy coming to the economics profession during the current serious economic crisis to be met with such a confusing response. He gave an example of a farmer who, faced with fixed costs and falling prices for his product, feared bankruptcy, a condition Arnold knew well from his Wyoming law practice. He asked the economist, What should he do? "If the farmer in the above case puts his problem before an economist he will get a solution which either involves a complete overhauling of the economic structure (if the economist happens to be a radical), or else recommends letting the farmer suffer for the good of the existing economic structure (if the economist happens to be a conservative). In either case, economic theory will start out with a general world plan, and treat the farmer's case as a mere incident, or illustration" (SG 19). Both economics and the law were disciplines rooted in stable theory with little appreciation of their core principles, and as a result they had trouble dealing with particular cases such as this one. In the farming case and in other areas of economic policy, "economic and legal theories are methods of preaching rather than of practical advice. These sciences are talking about communism, capitalism, fascism, socialism, bureaucracy, and individualism as separate and identifiable things. They are testing any plan to meet a particular situation by identifying it as belonging to one of these classifications" (SG 21).

Most serious in Arnold's eyes was that economists on the left and the right when considering economic policy rejected experimentation, the method that in science discovered the best path forward. "Everywhere one looks one sees nothing but planners for a better society among the reformers, and persons who cling to the present as the best possible of all societies among the conservatives. We are still informed by the scientists most learned in both law and economics that governmental institutions are not to be experimented with. The method which in affairs of science was the only road to new knowledge is closed to the student of government" (SG 21). It seems that Arnold may have taken his enthusiasm for experiment and trial and error from the writings of John Dewey (Kearny 1951, 10) as well as from observation of Great Britain: "the English have become notorious for that mysterious process of 'muddling through' which seems successful, and yet antithetical to all principles of rational government. Americans, however, have faith in written documents, and in sharp delineations of functions and power. They refuse to muddle, and thus prolong their period of confusion" (SG 123).

Arnold called for a new policy-oriented social science perhaps along the lines of that proposed by his Yale colleague Harold Lasswell (1971). In a statement, oft-quoted by his critics as evidence of totalitarian tendencies, while arguing for a multidisciplinary and experimental approach and greater sympathy for humane values, Arnold wrote: "From a humanitarian point of view the best government is that which we find in an insane asylum. In such a government the physicians in charge do not separate the ideas of the insane into any separate sciences such as law, economics, and sociology; nor then instruct the insane in the intricacies of these three sciences. Nor do they argue with the insane as to the soundness or unsoundness of their idea. Their aim is to make the inmates of the asylum as comfortable as possible, regardless of their respective moral deserts" (SG 232-233).

The travails of Roosevelt's brain trust demonstrated to Arnold the difficulty economists had in responding creatively to crisis when the thinking available to them was so confused and constrained. "Like all groups of learned men since the council of Nicea, this brain trust split in all directions on doctrinal points…. In 1936 the inflation of legal and economic thought in America had achieved a volume never before experienced. The thinking men of the country were all busy thinking and the more they thought, the more mixed up they became" (FC 117). It seemed that when economists became sufficiently confused they turned from theory to empirical research, but not experimentation or application where they might have found enlightenment. "When a real scholar wanted to visit the temporal world of events, he protected himself from vanities by a pair of dark glasses called 'the statistical method.' These obscured his vision so much that he could not see enough at any one time to contaminate him" (FC 130). The problem was that the empirical research of the economists addressed the wrong data. "Economists did not study personalities, habits, and disciplines. It was assumed that laws of supply and demand were more important" (FC 133). The contrast with the thinking of businessmen was striking. "Had Ford followed current beliefs at any time, he would never have built his plant. He was, however, thinking in terms of organization. He did not understand the complicated fiscal world of the economist and hence it did not hamper him" (FC 133).

Arnold found that the terminology of economics was often used casually without appreciation of hidden norms and meanings and this added to the confusion. Moreover, the content of the terms was kept static while the reality was evolving. As an example, he pointed out that the term "social cost" was used by economists mainly when discussing the production of goods of which they disapproved. "The term 'cost of government' is used to prevent the government from entering into the distribution of goods. Private industry is supposed to 'cost' no one anything, unless it is engaged in some activity of which people disapprove" (FC 170). Polar opposite terms, like competition and cooperation, caused confusion because frequently they did not correspond to the real world. "The process of creating abstract realities out of polar terms and surrounding them with scholarly definition has always accompanied the decline of great religions. It is not surprising therefore that in a time when private property and rugged individualism are more myths than realities we should find law and economics more theological than ever before in our history" (FC 184).

When economists found themselves deeply puzzled about what to do in the 1930s Arnold discovered that often they turned to education, meaning changes in the behavior of their units of analysis, as a solution to their troubles. If economic actors behaved in a way that was destructive, perhaps the way to proceed was to retrain them through education to behave differently. Make them behave like the rational actors in the models where everything turned out well. "The result was that Education became the cure for everything. Voters had to be educated, businessmen had to be trained, people had to be taught to respect the Constitution, and so on. The word 'education' was simply a substitution for preaching in a mystical age. The phenomenon is one which always has occurred and always will" (FC 134).

Despite his disclosure of certain myths and symbols as the cause of sclerosis in economic science, Arnold was not ready to dismiss folklore and did not call for science to cleanse itself of such complexities. He thought this would be neither possible nor desirable, "for when institutions are functioning effectively it

is the power of superstition rather than the power of reason that holds them together." It was only in times of crisis, such as the present, when old institutions and practices seemed no longer to work at all, that the entrenched myths upon which they rested should be examined critically and if necessary replaced: "when the institutions have become impotent to meet social needs, these same institutions have the effect of throwing respectable, moderate and kindly people out of power because they cannot free themselves of the old myths long enough to be effective leaders" (FC 136). Myths, symbols and other folklore played different roles in different disciplines and they had to be examined individually. In the law the judiciary was the device that had the authority to approve folklore; in economics it was economic theorists who repeated policy positions like slogans that became essentially symbols not subject to challenge. "There has always been an uneasy feeling that lawyers are tricky fellows (as compared with economists) and that the language of the law is a devious kind of logic. Therefore, the judicial institution is worshiped because it seems to prove that at least within its priestly portals the language of the law is used with truth, with logical finality, and with authority. Our economic creed, however, has been usually so implicitly accepted that ordinarily all one has to say is 'thrift,' or 'the law of supply and demand,' or 'balance the budget,' and the evil spirits disappear. Therefore, no supreme court of learning has ever been needed to personify the authority of economics" (FC 151).

The creation of new creeds and new myths became especially challenging, Arnold thought, when fundamental norms were in conflict, as they were in the Great Depression, for example "in the problems of relief and of unemployment." "Everyone insists on pretending that the country must balance its budget. But the literature of budget balancing is one of sorrow and not of hope. There is a very complicated set of absolutely contradictory ideas behind this apparently simple phrase. Budget balancing requires that relief be cut down at a time when there are available goods to be distributed to the needy. Our religion of individualism, which once was strong enough to starve people for moral reasons, has lost this potent magic. Therefore, we must take care of the needy and balance our budget at the same time. As is inevitable, a great literature has arisen out of this conflict" (FC 153). The solution to this inconsistency might be found if economists adopted some of the practices of the natural and physical sciences, especially experimentation with a variety of hypotheses. "When men begin to examine philosophies and principles as they examine atoms and electrons, the road to discovery of the means of social control is open" (F 164). The power of myths and symbols in the formation of economic policy was especially regrettable when it led to inhumane practices – as it sometimes did: "we find, throughout history, the finest and most humanitarian people lined up solidly in defense of indefensible social abuses. A few of them, no doubt, are the beneficiaries of such abuses, but most of the defenders are engaged in a battle for the defense of pure symbols which they have confused in their minds with the safety of the nation and their own class" (SG 253).

Arnold was attracted by what he took to be a new kind of economics – presumably macroeconomics and Institutionalism – that, he said, was emerging in the increasingly complex and technical economy of the 20th century in tension with the microeconomics of the 19th century and was to be found especially in the new business schools and among groups of heterodox social scientists. He concluded quickly that in the early macroeconomic inquiries economists had been on the wrong track by focusing on the level of prices rather than production and employment as their criteria. This became especially evident in the

buildup to the Second World War when victory depended upon output. “A nation that fears production, that regards it as a step toward a new depression which should only be tolerated during an emergency, enters the race for production dragging a ball and chain” (Arnold 1942, 17). Restrictive British policy in the 1930s had left that nation unprepared for its own defense. “They were afraid of industrial plenty, which alone can give a nation wealth in peace or strength in war” (Arnold 1942, 34).He thought it was still an open question whether this new economics of full employment would attain its own orthodoxy and would have the strength to overcome the old one. “The new class, however, has already shown signs of developing a creed of its own and a set of heroes. In our universities it is represented by a group of younger economists, political scientists, and lawyers. True, these men are often branded as unsound. Older universities look at their new economic thinking with suspicion, but its prestige grows with the prestige of the class of business and social technicians which it represents. Its mythology does not include the worship of the American Businessman. So far it is destructive only. On the positive side it is as yet undeveloped. However one should remember that a fully developed creed and mythology are not found until a class which they support is securely in power” (FC 39).

Arnold concluded, on reflection, that it should be no surprise that economists had remained so conservative for so long. Their commitment to human freedom helped in the explanation. Like their forefather Thomas Robert Malthus, and many clergymen since, they preferred a situation in which men could learn from their mistakes over a system of control by a well-informed elite. If humans were left free to select among economic policies while guided by “sound” economic preachers, and still they made the wrong choices, they would become better people through learning from the costs of their mistakes. It was far better when dealing with untutored man “to make him free to sin in order to make a more noble fellow out of him” (FC 66). This policy, he admitted, had caused a good deal of heartburn among policy makers and advisors over the years, when they added up the cost of error, but economists remained committed even so to human freedom as a paramount value. This was the posture of most economic advisors who, Arnold said, believed that “it was far better to trust to the feeble judgment of the common herd, and to guide them through love of virtue and fear of hell, of Inflation, or Bureaucracy, or Regimentation, or whatever name hell happened to have in the particular field of learning, at the particular time. Of course, the results were discouraging to the economists. They regretted man’s tendency to follow false economic reasoning, just as the preachers regretted man’s tendency to sin. Nevertheless, they felt that the only refuge was in a deeper search for the Word and in more fervent preaching” (FC 66).

In addition to the internal imbalance within economics between theory and application that constrained experimentation and imaginative response to practical problems Arnold discerned another constraint that grew out of the demands placed on economists to move away from an appropriate analytical role to prophesy, a function for which there was always a ready human demand and in an earlier era of faith was performed by theologians. This observation about the insistence upon prophesy in government and among the public at large, rather than conditional forecasts, is similar to the discovery by the first members of the Council of Economic Advisers that prophesy at both the micro and macro levels was expected of them more than anything else. President Truman famously called out for a one-armed economist rather than one who said “on the one hand this and on the other hand that.” Arnold mused

in 1949: “The role of the economist as an economic prophet is one which in other governments has been performed by priests, medicine men, and augurs…. The function which the economist performs today was performed in Rome by a college of augurs who studied the flight of birds and examined the entrails of geese. If objectionable laws were proposed by one of the Roman proconsuls, the college of augurs would decide that the auguries were bad for the legislation. Conservative economists during the Roosevelt Administration voiced similar warnings. These were disguised as a scientific analysis of economic principles. Actually these economists were performing the same function that medicine men have performed since time immemorial. They were warning people in terms of their own phobias and prejudices. This is not a criticism of the economic prophet. He is necessary for our spiritual comfort and to preserve our belief in our traditional institutions. But in times of change when older traditions do not seem to meet present needs, there will always be great clamor and conflict among the medicine men of the time, who today happen to be the economists” (Arnold 1950, 1-2). A particular problem with economists as prophets was that they were typically unsuccessful. “The predictions of the most respected economists of the time are usually wrong, because the most respected economists reflect all of the more firmly held popular delusions. The predictions of radical economists are usually wrong because they reflect the firmly held delusions of their own group” (SG 103).

Economics and Law (and Sociology)

Arnold struggled to reconcile the two fields that interested him most, law and economics, with each other and with the other social and behavioral sciences. To this end he explored the methods used in these subjects. The bottom line, he concluded, was that the two disciplines of law and economics were inextricably entwined, and each could barely exist without the other. But, at the same time, they had evolved along different paths so that cooperation had become complicated, and sometimes even impossible. He thought that what distinguished economics most from other disciplines was that it attempted, unsuccessfully he thought, to reconcile efficiency with morality by setting up an abstract man for whom morality was not a consideration. “It makes that philosophy palatable by proving that maximum social justice can only arise out of the unfettered operation of human selfishness” (SG 72). By contrast sociology focused mainly on morality, and sociologists studied the particulars of a normative system. In some respects law was more like economics, but it also had differences. “In the same way [as economics], law, since it was a moral and logical science, had to be based on an abstract man who needed to be preached to in order to save him from sin. He is capable of being trained by judicial parables and statutory exhortation. The economic man on the other hand, since he is invented to explain why moral and humanitarian ideas cannot be pushed too far, is an automatic fellow. All he needs is intelligent selfishness, and under the great economic principles, his sins will all cancel each other, and everything will work out for the best. He doesn’t need to be preached to. He doesn’t even need to understand the economic principles, since he can’t help following them. All that he needs to do is to follow his self-interest intelligently. If he does not do so, it makes no difference whether the reason is temporary greed, or lofty humanitarianism – the result is the same. Economic law is violated, and disaster results.” The key difference between law and economics, then, was in how they envisaged actors in their models. “In broad general outline, the economic man is an automaton, who needs only to

be wound up and set going. The legal man is a sinner who must constantly be exhorted, and subjected to the influence of ideals hung just in front of his nose" (SG 77-78).

At the core of Arnold's thinking was a picture of this stark difference between the abstract figures pictured by lawyers and economists. The "legal man" must be provided always with a guide to good behavior. "The economic man needs no such guide. If a problem is regarded as coming within the area of economics, the law should keep the hampering principles out of the picture. Economic man needs no such governmental instruction in order to make his conduct conform to economic law, any more than falling bodies need regulations to show them how to fall. Nothing but catastrophe awaits the legal system which attempts to gild the economic lily" (SG 80-81). A man who would work only for profit was postulated as the typical human being, and a complicated theory showing how selfishness was the real cause of all our temporal blessings was painstakingly built up. That theory today supplements the law as one of our most important symbols of government" (SG 74).

One way in which economics and the law were very much alike, Arnold claimed, was in how they treated the subject matter of their inquiry, human beings. They both were reluctant to accept humans as they were, rather than as what they might become. In both cases the systems, based on the economic or the legal man, were thought to yield the best results if only humans would behave like the assumptions in the models. When they did not and made poor choices, troubles arose and it was their fault as sinners, not the fault of the models. "The power of this simple argumentative device throughout the ages is unquestionable. It makes us satisfied with what we have been thinking by showing that our theories were not to blame. It prevents others from proving to us that it is our theories that were wrong. It presupposes a sort of group free will. It is an essential dialectic weapon in the armory of the preacher. It also stops experimentation. It succeeds in arresting discoveries. It successfully delayed the physical and medical sciences for hundreds of years. It is today equally successful in delaying the techniques of social organization" (SG 98). The behavior of "sinners," to the extent that it was examined at all, was consigned by economists and lawyers to the relatively new field of sociology which was still having difficulty organizing itself as a science. "Necessarily, the way of sociology as an organized science has been difficult. Into this classification has been dumped everything that the law or economics found inconvenient to handle, since it was this very need for a general dumping ground which created the classification of sociology as a separate science" (SG 88).

At root, Arnold found that the tension between economics and the other social sciences grew out of the depth of the conservatism of American economic theory and policy, and resistance to reform. He came increasingly to believe that this conservatism could be attributed to the economist's image of what Arnold called, ironically, the "thinking man," by which he meant the well-educated citizen who accepted without question the verities of the older economics and the new jurisprudence. In his description of the "thinking man" his customary irony is clearly in evidence. "Let us briefly describe him. He is the fellow we might all become if the demagogues would only let us alone. He is the gentleman who accepts sound and rejects unsound principles. He does not sit upon the interpretation of the laws of the nation, because that requires the peculiar and artificial reasoning of the law. Here we must call upon the sound jurist, who is in constant combat with unsound jurists. It is the duty, however, of the thinking man to distinguish between sound and unsound jurists and follow the former. In the field of sociology and

economics, however, the thinking man sits on matters of principle in his own right. He chooses the reasoning of the Brookings Institution and throws out of the window the unsound theories of General Hugh Johnson [Administrator of the National Recovery Administration]. He may be misled for a short while, but in the long run he is hard to fool. He hates superficial reasoning and quack remedies. He is imbued with the pioneer spirit of America. He knows that we must balance the budget. His duty is to warn against impending doom, so that if unsound theories are followed he will be able to say that it was not his fault. He never sacrifices principle for expediency. Our colleges are devoted to the task of training him. It is through the study of things like Latin and Greek that he develops the mental muscles which enable him to understand complicated theories. He knows the lessons of history and follows them. He distrusts politicians and sees through their wiles. It is to him that genuine statesmen appeal" (FC 6-7). In this description of the "thinking man" Arnold was, of course, describing what he thought of as the "unthinking man."

Arnold was not complimentary about efforts made by law and economics in the 1930s to deal with the depression by working together. They were both hampered by the character of their disciplines. The "economic and social sciences "are busy discovering principles which will lead to ultimate good. The adoption and successful operation of these principles are hindered by two things, usually referred to as human nature and politics. The principles are thus only partly effective. The margin of ineffectiveness is called lag. There is not very much that can be done about it except to denounce the politicians and try to keep them out of politics. Behind the advance guard of political and economic theory, marches the law. Here there is another lag, because the law must move very slowly or it will fly all to pieces and become bureaucratic" (SG 92). Any efforts to support prices that were failing drastically during the depression were dismissed as destructive in the long-run, the only run that mattered. "The word 'artificial' is applied to any economic advantage arrived at in a new way. The idea is deeply embedded that the only 'natural' rise in price is one that has occurred without governmental action. It is better to suffer under a sound principle than to thrive under an unsound one" (SG 93).

So, what to do about the Great Depression? Confront the Current Folklore

When Arnold was appointed Assistant Attorney General for Antitrust there was anger and surprise among some who had read *Folklore* and concluded from its ironic style that this was a lawyer who did not appreciate the importance of competition and a policy to enforce it. But the critics had not read the book carefully. He was not opposed to an antitrust policy, just the way it had been implemented so far. From his reading of law and economics he was convinced that potentially the two working together could solve many of society's problems by reforming policy toward business. He made several points very forcefully. He was not an advocate of the "bigness is bad" doctrine associated with Louis Brandeis. Indeed, bigness was often the way economies of scale were achieved in production and it could be consistent with responsible corporate behavior. He used the example of the Ford Motor Company that was both very large and very efficient but did not try to monopolize the auto industry. Rather, Arnold was opposed to economic actors, big or small, who "misbehaved." Performance not principle was his guiding philosophy. "Each of these organizations should be compelled to use its powers and privileges to pass the savings of mass production on to the consumers, but the activities which are reasonable in one

case may not be reasonable in another. The test is performance, and that test can only by applied case by case" (BB 275).

But how to get performance to an acceptable level? He thought both economists and legal theorists were on contradictory tracks in understanding this question, both of which were wrong. They both got tangled up with the role for rules. He had little use for rules to which, he concluded, both disciplines had become addicted. "Social sin in the economic sciences consists of imposing rules to straighten out complicated situations. Social sin in the legal sciences consists in failing to work out logically a complicated set of rules" (SG 86). These two approaches "leave a whole set of ideals unrepresented and without a logical place in our organized learning and thinking. Such ideals as are left out of the picture may roughly be described as 'humanitarian' and 'practical'. They are the ways of thinking found in philanthropy and business" (SG 86).

The best approach to public policy, Arnold thought, and which he implemented when in government, was to operate from a broad injunction in legislation such as that found in the Sherman Act which said, in effect, "The real hazard that confronts us is the disappearance of free commercial enterprise. The available remedy is to stamp out restraints" (BB 295). The next question was how, in practice, to stamp out the restraints, and he concluded that this could best be done with a cadre of extremely bright and imaginative public servants, economists and lawyers, operating through the courts, who were as clever as the business people whose work they were examining and policing. No matter how effective the rules that might be put in place to constrain bad behavior by perpetrators of restraints of trade, they would not be effective for long; the miscreants would find ways to get around them. Moreover, if new boards or regulatory bodies of the conventional sort were created they would be corrupted sooner or later, probably sooner. He understood the idea of capture of regulators by the regulated before it was incorporated in the economics literature (Gressley 71).

He was confident that the courts could not be corrupted and therefore he proposed to use them in the front lines of protection of free competition. He wrote to Dexter Keezer in 1947: "An administrative tribunal taking drastic action against a powerful political group cannot survive. We have watched the Labor Board swing too far under union pressure and then we see Congress destroying its public prestige and power. Under our tradition and habits you cannot do that to courts" (Arnold 1961, 107). The battle between enemies of the public interest and the defenders should be expected to go on forever, but a satisfactory detente could be achieved through experimentation with new methods of intervention and, overall, acquiescence in experimentation with new methods of control and muddling through. Conditions for the success of this strategy were that energetic public servants should have powerful tools of investigation and intervention, including criminal prosecution, and should not be distracted into performing useless studies and reports such as those of the Temporary National Economic Committee of which Arnold himself was a reluctant member (Gressley 48).

Reflecting at the end of the 1930s on the apparent attractiveness of the idea of "planning" Arnold was sympathetic to the intent of the planners and their supporters, but he found their plans simply utopian. "Liberals and radicals alike turned to a vague idea that the remedy lay in a planned economy. Now, of course, no government group or industrial group can exist without making plans. However, these

thinkers did not have any specific plans in mind. They were basing their faith in the thought that a set of experts could be selected who would understand the whole matter and make plans for them. The treatises of the time on the economic health of the nation spent most of their time pointing out the paradox of want in the midst of plenty, of idle capital and idle labor. Surely, they said, wise men if put in charge would not permit such things to happen" (Arnold 1942, 44-45). The failure of planning over the decade had led to the growth of cartels under the NRA as, seemingly, the only alternative to the status quo. This cure was worse than the disease. But the emerging policy in wartime opened the opportunity to break up the cartels once and for all. "Our present necessity of putting everybody to work offers an opportunity to break the grip of these cartels on our productive system. We need only safeguard that new production from the future domination of those same groups that have restricted production in the past…. Out of this war there may grow a production economy rather than a restrictive price economy" (Arnold 1942, 68-69 and 81).

After his intense period of reading and discussion at Yale during the 1930s, and as he watched from his post in the Justice Department the rise of communism and fascism in Europe, Arnold became certain that liberal democracy in a competitive market economy was the most satisfactory form of government. He wrote in 1940: "The only type of economic structure in which government is free and in which the human spirit is free is one in which commerce is free" (BB 283). Dictators arise not from the free choice of citizens but from the collapse of free markets. "Men give up their freedom not through a free-will choice, but because there is no choice between the food and shelter and security offered by a dictator and the starvation and unemployment offered by the anarchy which follows when the free market is gone" (BB 284). But the Great Depression had revealed that there were at least two fundamental flaws in the free market system as it currently existed, one that we would call today macro and the other micro. First, there were frequent fluctuations in the overall demand for goods and services that were destabilizing for the society and polity as well as for the economy. He was optimistic that professional economists were beginning to understand this problem and were proposing reasonable solutions to it through managed fiscal and monetary policy. Second, the human greed that he accepted was the necessary motive force behind economic activity led, if unconstrained, to inexorable pressures to reduce competition. This second potential market failure was insufficiently appreciated by leaders of the free world. "In that social structure dying of auto-intoxication they refuse to clean out the accumulated poison of the little business monopolies" (BB 285). Economic actors everywhere, big and small, might applaud free competition, but they were also quick to make a case that monopoly or monopsony in the markets in which they themselves operated should be an exception. Market concentration in their own case, they insisted, would lead to social benefits. Arnold reflected in 1947: "It has been my experience that any group, whether from labor or industry or the professions, which gets itself in a position where it thinks it has special privileges will fight for them with complete intolerance" (Arnold 1961, 111). Arnold suggested solutions to both of these flaws. The collapse of the competitive market system in the 1930s, Arnold thought, was the most obvious reason for both the macro and micro troubles. "The progress of the disease is not pleasant. It first creates a major depression. If it goes on too long it ends in revolution. Such revolutions are not revolts – they are only the dying agonies of thousands of little monopolies which have tried to insulate themselves from competitive progress" (BB 286).

Before solutions to either micro or macro problems could be implemented, however, it was necessary first to clarify economic thinking that Arnold was convinced had become too narrow and affected by outdated myths and beliefs. Roosevelt's First New Deal while well-meaning was ineffective in part because it was out of step with the contemporary folklore: "the program violated two basic tenets of the economic fundamentalists. The first was the one inherited from our Puritan forbears that the life of the poor must be made as uncomfortable and insecure as possible in order to induce them to work. The other was the nineteenth-century doctrine of the separation of business and government. Hence, except for a brief period during the first days of the NRA, the New Deal, instead of reassuring business, literally scared it to death. Class was being aroused against class, was the cry. The government was a peculiarly vicious sort of Santa Claus, because it distributed gifts to the undeserving. And on top of that it was destroying the Constitution, step by step. Property was no longer sacred. Business was being threatened by government competition. Socialism and Communism were on the march in the land of free enterprise" (Arnold 1951, 49). Ironically, one of the serious barriers to acceptance of sensible economic policy was the ignorance not of the working class but of the educated elites. "To allow persons uneducated in the principles of law and economics to have a large voice in government policies seems to invite demagogues to power through their ability to mislead the untutored masses. Yet throughout the Depression it was the untutored voter who proved to be right, and the educated voter, caught in the traditions of the past, to be wrong. It was demagogues like Upton Sinclair, [Francis] Townsend, and [Huey] Long who, with their ideas that the productive capacity of the country was sufficient to help all citizens, started us on our present program of social security. In those days no conventionally educated economist could possibly have supported the idea of old-age pensions for everyone" (Arnold 1951, 56-57).

At both macro and micro levels longstanding myths stood in the way of economic policy reform. A particular obstacle to creative macroeconomic thinking that Arnold discussed often in the 1930s was identified also by Keynes: the preference among intellectuals in the Western tradition for long-run rather than short-run solutions. Perhaps, Arnold speculated, like other issues this could be traced to another theological doctrine embedded in the culture. "The quaint moral conceptions of legal and economic learning by which the needs of the moment could be argued out of existence were expressed by 'long run' arguments. Such arguments always appear in religious thinking. From this point of view the future is supposed to be the only reality, just as Heaven in the Middle Ages was the only reality. All else is regarded as temporary, shifting and ephemeral. This way of thinking allows men to ignore what they see before them in their absorption with the more orderly blueprint of the future" (FC 96). Before he went to administer the antitrust program in the Justice Department Arnold put the Sherman Act in the category of those policies that had hopelessly long-run objectives and stood in the way of short-run solutions. "Thus antitrust laws became popular moral gestures and their economic meaninglessness never quite penetrated the thick priestly incense which hung over the nation like a pillar of fire by night and a cloud of smoke by day" (FC 96). When in office Arnold found that he might combine the long-run objectives of the Sherman Act with short run targets that he could design.

A particular example of a long-run emphasis that stood in the way of solving short-run problems was the economist's position on the social costs of technological change. In the long run, economists pointed

out, worker displacement would be taken care of by absorption and thus was not really a problem. “In this way an industrial economist could prove that a hundred particular individuals who had been discharged because of the introduction of machinery had not really been discharged at all because of the laissez faire heaven which lay in the future” (FC 97). Workers who appealed for what would later be called “adjustment assistance” had not grasped that their problem would be solved in due course by the market and did not call for short-run intervention by the state,

In addition to insistence on the long run, a number of more specific myths had become embedded in thinking about economic policy, for example the dangers inherent in tariff protection, flexible exchange rates, inflation, and unbalanced fiscal budgets. He conceded that when these myths were first proposed they often had constructive purposes. They built up consensus among the people that was important in a democracy and warded off selfish or mindless critics who would have introduced policies that were worse than those protected by the myths. Yet many of the myths often survived too long and impeded policy reform. He wrote regretfully in 1962 that prejudice against unbalanced budgets remained alive and well. “We are as yet unable to think of our national wealth in terms of productive capacity. We are unable to utilize that productive capacity for pressing national needs such as schools, health, and education because it would unbalance the fiscal budget” (FC xx).

The most dangerous anachronistic myth at the micro level was that in all important ways the modern corporation was essentially the same as a private individual: “the personification of the great corporation actually worked to monopolize the mantle of protection designed for the individual” (FC 191). If the modern corporation had been conceived as some kind of new economic institution rather than as the equivalent of a person, economic history would have been quite different. “Since we thought of them in terms of individuals to whom correct principle should be taught by the precept and example of the judicial process, the antitrust laws, designed to offer some sort of regulation, actually became the bulwark of defense of these organizations against any regulation whatever. They offered an escape valve through which the energy of reformers was dissipated, permitting the organizations to go on undisturbed” (FC 216).

Ironically, many free market economists who otherwise might have been concerned about large concentrations of power were taken in by the myth of the corporation as person. “The reason, of course, was that since logic did not create that mythology, logic could not destroy it. It was a product of the conflict created by great organizations struggling and finally achieving a place in the mystical hierarchy of rugged individuals. Liberals, caught in the same religion, usually ended by supporting the oracles of its authority” (FC 224). Arnold expected little progress in the reform of policy toward corporations until the myths were confronted. “It is difficult to see how the thing could be done otherwise so long as corporations are regarded as individuals without public responsibility, instead of as an integral part of our government. There are likely to be many attempts to reform, but no real change until the general folklore on this subject changes” (FC 246). The consequences of the corporate myth were manifold. Anticipating Galbraith’s *Affluent Society,* still decades down the road, as well as issues alive in the 21st century, he wrote of free-wheeling corporations that paid exorbitant executive salaries and sold bonds to small investors knowing they were worthless (FC 268 and 281). Arnold conceded that sometimes when myth stood in the way of some economic process that was widely desired a “sub rosa”

organization would appear, like a bootlegger. But this was no way to handle a serious issue. The power of myth should be faced up to and addressed. “We cannot be practical about social problems if we are under the illusion that we can solve them without complying with the taboos and customs of the tribe. The corporate personality is part of our present religion” (FC 205).

Arnold was always on the lookout for analogies in history that would strengthen his arguments. Here he said: “The ideal that a great corporation is endowed with the rights and prerogatives of a free individual is as essential to the acceptance of corporate rule in temporal affairs as was the ideal of the divine right of kings in an earlier day” (FC 184). Since the business creed that had evolved in America rested upon the principle that the citizen in an economy should be impeded as little as possible, the image and the identity afforded the individual when transferred to the corporation gave remarkable protection. “It was this identification of great organizations with the dignities, freedom, and general ethics of the individual trader which relieved our federation of industrial empires from the hampering restrictions of theology which always prevent experiment. Men cheerfully accept the fact that some individuals are good and others bad” (FC 188-189). The corporation’s purpose was said to be analogous to the utility maximizing objectives of the individual, and its employees were thought of as having the same heroic qualities as the private entrepreneur; in contrast government employees were given the pejorative term “bureaucrat” and assigned a much lower ranking in the social hierarchy.

While the corporation gained freedom of action and prestige from its identification with the rugged individual, government experienced just the opposite. Everything it did in the economy was perceived as wasteful and illegitimate. “Government itself could not be efficient because it did not operate for profit, which was an essential element of efficiency. If a man did not work for profit, he became bureaucratic, unless he happened to be a minister of the gospel, a professor, or perhaps a scientist. Hence, government clerks could not fail to be bureaucratic. This extended down to the lowest governmental units. Municipal light plants were bad in principle.” The demoralizing effect of this denigration of public servants was a serious social problem. “The attitude described by the term ‘bureaucracy’ is so deep seated that it destroys the confidence of officials in their ability to take practical action unless they are able to escape into some other atmosphere. If they call themselves a corporation, or a political party, or any familiar symbol which permits freedom of action, their difficulties disappear” (SG 226). The notion of the inefficient and corrupt governmental bureaucracy spread throughout society and among all social classes: “The fact that government organization could not be put to practical use was tied up to character, the home, religion, law, and the science of economics. Any counter-proposal was some form of Socialism, which led to both bankruptcy and bureaucracy” (FC 204),

The vector for the spread of this derogatory picture of government employees was not economic analysis; it was myth, gossip, and prejudice. Moreover, the vision became a self-fulfilling prophecy. When legislators became persuaded that government employees were mainly inefficient free-loaders naturally they were unwilling to provide them with salaries required to attract highly competent civil servants. And thus incompetent free-loaders they got. Sometimes government leaders were clever enough to camouflage their activities to make them look corporate. “Government found that by adopting the device of a government corporation it gave its activities a little of the freedom which was enjoyed by private corporations and escaped the rules and principles which hampered action when it

was done by a government corporation. In other words, it gave the Government some of the robes of the individual" (FC 193). The comparative symbolism of heroic corporation and corrupt government helped to explain the appearance of a field of industrial organization within economics based on theory rather than empirical examination, "a separate science of economics, designed to prove that it was not organizations but principles which were operating in the field of the production and distribution of goods" (FC 199). This approach taken by modern economics, he thought, gave the common man confidence in the economic system as he knew it. Using a phrase made popular by Walter Lippmann in *Public Opinion* (7-8)*,* he wrote "the only important thing was the little pictures in the back of the head of the ordinary man. So long as they existed the great organization was secure in its freedom and independence" (FC 199). An optimum situation for policy discussion was when theoretical positions and their protective myths had been softened up and were open to the creation of new folklore.

Perhaps at an early time this preferred status as an individual provided the corporation necessary protection from critics who did not appreciate its potential contribution to the economy through production with economies of scale. But as time went on and the need for social control of business grew, the myth of the equivalence of the corporation and the individual became a barrier to progress. "This curious attitude is the result of a philosophy that great organizations dressed in clothes of individuals achieve long-run unselfish and humanitarian results by pursuing their selfish interests. The only control needed is that of an umpire. The only formulas needed are standards by which the umpire can apply the rules of the game…. The entire priesthood of law and economics directed their detailed directions and inhibitions at political organization. The standards which they held up to private business were purely inspirational" (FC 108). One of the benefits of the special treatment given corporations was that they were free in the critical period of their youth to pursue their own affairs while simply paying nominal attention to principles explained to them by economists. Little did these businessmen worry about theoretical economics in the day-to-day conduct of their enterprises. Their religion of the beauties of competition was a symbol representing the early history of the tribe, performing the same function as the tradition of military glory in Rome. These men developed a real understanding of the public psychology necessary to conduct their own small principalities. They hired public relations counsel who used words and slogans for effect, rather than as part of the search for the holy grail" (FC 109).

Arnold did not presume to suggest precisely what needed to be done to control the modern corporation in the public interest, but he was confident that if the corporation were better understood sensible public policies would emerge. Perhaps, he thought, the large corporation was more like government than the private entrepreneur and more might be learned about it from political science than from economics. Moreover, he thought it likely that a variety of approaches should be taken toward different kinds of corporations depending on their circumstances. "Had it not been for our elaborate economic and legal doctrine it would have been easy for the nation to fumble its way into a solution of these different problems by using different methods in each one. Some presented dangers of inflation, others did not. The learned theology of the time, however, convinced men that the same general principles of credit, noninterference with business, bureaucracy, the gold standard, the Constitution, and individualism operated without regard to particular organizations or personalities" (FC 104).

The challenge now was to ease away from the accepted folklore, both macro and micro, because it had become obsolete. Fear of inflation was one of the most serious and paralyzing bugaboos. “The fear of inflation haunted the business community throughout the entire depression in spite of the fact that a realistic appraisal clearly showed that the only thing we had to fear was continued deflation and a sluggish nonexpanding economy” (FC xviii). One of the policies that grew from a fear of inflation was insistence on balancing the fiscal budget. Despite the human costs, polling data showed the wide public commitment to a balanced budget. “Budget balancing meant, in practical terms, that, for the present at least, many people would have less to eat, poorer houses, less electricity, and so on, in the face of abundance. Yet even in such times an overwhelming majority of those who voted in the poll, rich and poor, agricultural and industrial, voted that the primary need of the Government was to balance its budget” (FC 102). Perhaps the fear of inflation and unbalanced budgets had come from a misreading of recent history. “The philosophical learning which made budget balancing a cure for all ills was inseparably intertwined with a larger learning surrounding the word ‘inflation.” For most people inflation meant a repetition of what they had read had happened in Germany, which they believed was due to a wicked manipulation of the German mark intentionally engineered by people who were following the wrong principles” (FC 102).

The first challenge in maintaining adequate effective demand in the face of obsolete folklore was to identify experiments that showed promise of becoming solutions. The correct perspective for economists toward these experiments should be that of the clinical physician. Keep an open mind in selecting among alternative hypotheses from theorists of different kinds. Since the exact nature of the macroeconomic disease that faced the economy was uncertain, a variety of experimental clinical trials should be undertaken. When a promising policy innovation was discovered (analogous to a medical treatment) it should be tried and if found to be unsuccessful rejected without shame or embarrassment. Another promising trial should then follow in its stead. But standing in the way of this approach were the myths and symbols that had been erected in the 19th century to protect an earlier economic system from criticism and reform. In his support for experimentation as an essential part of the methodology of economics Arnold was at least a couple of decades ahead of the widespread acceptance of this doctrine as seen in the programs of, for example, the Office of Economic Opportunity in the 1960s (Fourcade 112-114).

Arnold did not argue for any particular new macroeconomic program. Rather, he argued for open minds to consider the options and for recognition of the obstacles that stood in the way of creative thinking, in particular the possibility of an intellectual holy war that must precede any serious innovations. “In this country, since it was particularly devoted to rational principle, the attempt of new organizations to rise in response to vital needs gave rise to a holy war between the great principles of good and evil. This was the “fault” of no one. It simply illustrated the inevitable working of a law of political dynamics. When a new organization attempts to rise in an atmosphere of religious devotion to a governmental mythology, it cannot succeed without the development of a set of principles and a mythology all its own. The emergence of this new set of principles and mythology cannot be accomplished without some sort of holy war, the violence of which depends on the habits and culture of the people” (FC 12). The obstacles to intellectual progress that would emerge from this holy war mattered less to Arnold than the barriers

that were thrown up to policy reform. Looking ahead to the McCarthy years of the next decade he worried about the human costs of the holy war. “And thus the holy war between Capitalism, Communism, and Fascism is one of the greatest obstacles to practical treatment of the actual day-to-day needs of the American people. Even agricultural credit and soil conservation become tainted with Communism. All sorts of sensible suggestions are drowned in the din of battle… Every practical scheme for social betterment had to be tested for tendencies leading to one or the other of these systems. If it led to Communism or Fascism, it was thought better to humiliate the unemployed or to waste natural resources rather than take steps which would change the ‘capitalistic system’” (FC 14-15).

Like his friend Leon Keyserling Arnold counted upon competitive markets in an expanding global economy to solve many of the micro and macro problems of the United States and the world in the long run. He explained in 1949 “The techniques of the twentieth century have made our free-trade area too small. Inexorable economic forces are pushing us to unite Europe and the Western Hemisphere with the United States in a new free-trade area. I would expect those forces to win over all the conflicting pressures which now confuse our purpose” (Arnold and Berle 1950, 10). He had faith that economic forces, if not impeded, would lead to the increase in production that was required to fulfill the humanitarian objectives of the 20th century. He was doubtful that economic ideas would be the motivating force for change. He did not accept the power, seen by Keynes, in the ideas of “some defunct economist”. “When, and how, is the present conflict between the nineteenth-century habits of thought and twentieth-century economic necessities going to be resolved? Is it going to be done through the readings of books of liberal economists and the rejection of the ideas of reactionary ones – in other words, through the process we call education? I think not…. I doubt if thinking had anything to do with the movement away from restrictions and toward the free markets of the nineteenth century. It was the blind and cruel expansion not tempered by humanitarianism until the twentieth century. But it did give the world the greatest aid that it had yet known” ((Arnold and Berle, 13).

Preservation of the Free Market Economy

During the second half of the 1930s, and especially after the market collapse of 1937, concern among American liberal intellectuals grew about the future of the very idea of a free market economy and a free society. The focus of their attention shifted away from unemployment and loss of production to the long-term danger posed by the rise of dictators and demagogues around the world. Was there the possibility that the citizens of a democracy would lose faith in a free society that did not meet their expectations? By the end of the 1930s the suffering of the depression had lasted a decade, too long by any standard. Arnold was discouraged by the three suggested approaches he observed to the situation: first, revolutionary change of some sort that he thought would never be accepted in America, second, planning of the NRA kind that had been discredited by experience, and third, laissez faire, even when there were few signs that the system would cure itself if left alone. “Thus the radical Utopia of planning was set up against the conservative Utopia of laissez faire, and common sense was the first casualty in the ensuing struggle” (BB 274).

By World War II he was fully convinced that a competitive market system remained the only realistic option for a liberal democracy. He wrote in 1945:“Of course competitive doctrine is a kind of folklore

but so is every other economic theory. In my view it is the only one that we can operate under. It is part of our cultural pattern and no nation can change that pattern" (Arnold 1961, 105). Common sense told Arnold that the two basic causes of market failure could be dealt with rather easily by a sensible government. Aggregate demand fluctuated and needed to be compensated from time to time by governmental action. "We are coming to realize the absurdity of people going without goods because inventories of these very goods have become too large" (BB 14). Within most individual markets the constant pressures for monopoly had to be confronted and resisted. "Where restraints of trade are let alone they grow like weeds because they are profitable. After they have become established, they are capitalized – that is, given a value in dollars and cents. Investors put their savings into them. Even charities and colleges become dependent on them. They become part of the so-called "capital structure" (BB 46). A constant battle against restraint of trade had to be the government's main responsibility if the liberal economy and free society were to be preserved. But the public must be persuaded.

There is no evidence that Arnold was assigned by anyone the role of critic-in-chief of monopoly and spokesman for the Second New Deal to the American people. He seems to have picked up the mantle from personal conviction. But he became a loud voice making the case for a particular brand of liberalism and he should be placed among those with roughly the same objective in the 1930s and 1940s: Walter Lippmann, Friedrich Hayek, Henry Simons, Lionel Robbins, and others. A distinguishing feature of Arnold's many articles and presentations on the subject was his reverence for the Sherman Act as an effective rhetorical device and a broad manifesto for defense of the competitive market economy. Happily, he observed, it had become a sacred document no longer subject to challenge. "I have always found that even the slightest amendment is treated as an amendment to a prayer book would be treated by the House of Bishops of some established church…. This tradition, though it makes the Act more clumsy in its operation, nevertheless is the thing that gives it its strength" (BB 98). Since the Sherman Act had taken on the character of a political constitution he was able to move on to explore its implementation.

In contrast to his first two books in which he set out to understand the economy and economic science, his third book The *Bottlenecks of Business,* was a work of public relations. There he was doing a selling job for the free market economy as well as for his own division in the Justice Department. A strategy he spelled out openly was to emphasize in all he did and said the value of free markets to consumers. He thought the emphasis in the past had been, by contrast, too much on benefits to small business. Frequently in pursuing a prosecution or making a speech for market freedom he estimated the savings to consumers, current and prospective, from his actions. He calculated that savings to consumers from prosecution of a cartel among milk distributors in Chicago reduced costs to consumers by $10 million each year (BB 194). He published a long memorandum by the economist Corwin Edwards setting forth the likely saving in food costs from prosecutions in that area (BB 225-239). He was hopeful that he could mobilize a consumer movement to support competition across a wide range of consumer goods: "the only thing needed to obtain the cooperation of the great army of American consumers for antitrust enforcement is to show them how it can aid the distribution of the products they have to buy. They are not interested in economic principles. They are interested in the price of pork chops, bread, spectacles,

drugs and plumbing. To catch their imaginations you must talk in terms of concrete items in the family budget. Antitrust enforcement must come down from the blue sky of economic and legal theory and concern itself with these family budget items, one at a time" (BB 123). In his hopes for organized support from consumers Arnold was overly-optimistic. It did not materialize.

Arnold's discussion of the details of how he thought action should proceed in government to protect freedom of trade sometimes sounded like simply a defense of what he was doing in the Antitrust Division, and in part it was. But it was also the sorting out in his mind of what would work in practice. First, there was his notion of a cadre of brilliant young lawyers and economists recruited at the end of their post-graduate training, before they accepted clerkships, became associates in law firms, or entered tenure track appointments in the top universities. These young people would accept the challenge of finding ways to resist the agglomeration and misuse of economic power wherever it might crop up, and they would be given salaries, prestige and all available tools to get their job done. They would use the criminal law as well as civil law; consent decrees would be employed only in connection with settlement of criminal cases not as painless solutions to cases brought against monopolists. Their work would never be done, and the cadre would constantly be refreshed as the older members moved along in their professional lives. To many this plan must have seemed quixotic, but in fact it was the rough blueprint for the new antitrust division that he created in only five years. The idea seems rather like a circulating collection of Plato's young guardians coming from a reader of classical literature who was faced with a demanding task in the real world. In defense of his plan he wrote "If you want the democratic way, you can maintain it only by preserving a free market through the use of continuous governmental power against those who destroy it" (BB 130).

Conclusion

For historians of economics who may wonder still after reading this essay why they should pay attention to the writings of this eccentric lawyer and public intellectual, a number of reasons may be suggested. The first is a rather obvious one; this was a very bright and creative scholar who approached the history of economics in ways that were very different from what are familiar to us today, or even then, and he came up with insights and observations that are thought-provoking at the very least. For example, his distinction between parts of an area of inquiry that are subject to questioning and debate, and those that are not, raised issues for policy and for theory that were not examined again until decades later. His extensive use of irony, cynicism, and humor in his historical narrative is unusual and stimulates reflections on the potential consequences of this style as a heuristic approach. His exploration of the cultural context to help explain the development of economic thought also deserves attention. His frequent references to the history of religion and science gave his work a distinctive flavor. They cause us to think about myths, creeds, sacred texts, and priestly castes, concepts that seldom appear in the history of economics as we know it. Arnold's observation that too much weight given to economic theory and not enough to applied economics might be a cause of stagnation in economics was ahead of its time. And, of course, Arnold was one of the first to attempt a reconciliation of economics and the law and to explore the different paths of their development. Like some other economic public intellectuals Arnold did not accept a position in any ideological or methodological tradition. His correspondence spans Aaron Director and John Kenneth Galbraith.

In addition to the attraction of Arnold's writings on their own we must not forget the role he played in the political and intellectual life of the 1930s and 1940s. As a result of his energetic entrepreneurship he, more than almost anyone in high places, explained to the American people the importance of free markets in a free society and the dangers that grow from concentration of market power. The model he developed for the justice department as defender of free trade was powerful in his own time and afterward. Through his best-selling books and articles he was a vigorous contributor to the discussion among intellectuals of the future of liberal values, and through his persuasive interactions with the wider public he had few equals since the Federalist debates. By the end of the 1930s there were at least three prominent variants of the liberal approach to what were widely perceived as serious structural dangers in free-market economies. One was the approach associated with Louis Brandeis, that sheer bigness was at the root of the problem and government should move aggressively to break up concentrations of power. The second approach, associated with Friedrich Hayek, was that a powerful government attempting to do good by "planning" an economy could become worse than the problem. Growth of government was the road to serfdom. The distinctive third approach, taken by Arnold, was in a way a middle ground. He argued that bad behavior by any actors in the economy, big or small, was reason for punitive governmental action. All those who sought to restrain competitive trade should be confronted and constrained by nimble forces of government that were prepared to take all actions necessary to protect the free market, and thereby the free society.

It seems appropriate to end this essay with extracts from obituaries of Arnold by two of the most distinguished legal scholars of the twentieth century, both of whom knew him well. Edward H. Levi, Attorney General and Dean of the Law School and President of the University of Chicago, wrote: "He had the capacity for taking a penetrating, humane and creative look at the institutions of law and society. He had the driven curiosity and special kind of objectivity of a scientist. Arnold's objectivity was aided by a Twainian sense of humor – an ability to understand and create the comic. But unlike Twain, there was an inner gaiety. The humaneness involved an understanding of human error, gullibility and pretense. It involved an enormous sympathy for individuals and a desire to be of help. There was no pretense in the desire and drive to be of help…. He was a great deal more learned than he let on. He didn't want to be trapped by the lesser concepts which men create as pale images of what they ought to mean, and which are then used to forestall inquiry and block insight. *The Symbols of Government* and *The Folklore of Capitalism* were among the few generative works in American jurisprudence projecting an understanding of the purposes, functioning and flexibility of the American legal system" (Levi 1970, 983).

And finally, Eugene V. Rostow, Sterling Professor of Law and Public affairs at the Yale Law School. "In gait, cigar and style, Thurman Arnold looked like a leathery old cowboy in a Remington painting, despite his student days at Princeton and Harvard, and his years in the East as professor, government trust-buster, judge and lawyer. He was not, however, a cracker-barrel philosopher, but a shrewd and perceptive social critic in the tradition of Thorstein Veblen – much funnier than Veblen, and much more the man of action.

Arnold had many important and attractive qualities, including a low tolerance of injustice. But the most distinctive feature of his mind was a Third Eye that permitted him to see contradictions and absurdities

concealed from most of us by veils of pomp. When the Post Office was trying to suppress "Playboy," for example, Arnold argued as its lawyer that the mission of the magazine was to demonstrate the mammalian character of American womanhood. And, in paying tribute to the eloquence of President Kennedy's famous Inaugural Address, he wondered what exactly is wrong after all with citizens asking their government to do something for them"(Rostow 1970, 985).

References

Arnold, Thurman Wesley. 1934. "Theories about Economic Theory." *Annals of the American Academy of Political and Social Science* 172: 26-36.

------. *1935. The Symbols of Government*. New Haven: Yale University Press.

------. 1937. *The Folklore of Capitalism*. New Haven: Yale University Press.

------. 1940. *The Bottlenecks of Business*. New York: Reynal and Hitchcock.

------. 1942. *Democracy and Free Enterprise: The Baxter Memorial Lectures*. Norman: University of Oklahoma Press.

------. 1951. *Fair Fights and Foul*. New York: Harcourt, Brace and World.

------ and Adolph A. Berle. 1950. *The Future of Democratic Capitalism: Benjamin Franklin Lectures, Second Series,* 1949. Philadelphia: University of Pennsylvania Press.

------ and William O. Douglas. 1961. *Selections from the Letters and Legal Papers of Thurman Arnold*. Washington, D.C. : Victor H. Kramer.

Ayer, Douglas. 1971. "The Ideological Journey of Thurman Arnold in the Interwar Period." *Stanford Law Review* 23: 1049-1086.

Brinkley, Alan. 1993. "The Antimonopoly Ideal and the Liberal State: The Case of Thurman Arnold." *Journal of American History* 80: 557-579.

Edwards, Corwin D. 1943. "Thurman Arnold and the Antitrust Laws." *Political Science Quarterly* 58: 338-355.

Fourcade, Marion. 2009. *Economists and Societies*. Princeton: Princeton University Press.

Goodwin, Craufurd D. 1998. *Art and the Market: Roger Fry on Commerce in Art*. Ann Arbor: University of Michigan Press.

-----. 2008. "Ecooogist Meets Economics: Aldo leopold, 1887-1948." *Journal of the History of Economic Thought* 30: 429-452.

-----. 2014. *Walter Lippmann: Public Economist*. Cambridge: Harvard University Press

Gressley, Gene W., editor. 1977. *Voltaire and the Cowboy: The Letters of Thurman Arnold*. Boulder: Colorado Associated University Press.

Hawley, Ellis. 1966. *The New Deal and the Problem of Monopoly*. Princeton: Princeton University Press.

Kearny, Edward N. 1970. *Thurman Arnold Social Critic: The Satirical Challenge of Orthodoxy*. Albuquerque: University of New Mexico Press.

Kolasky, William. 2013. "Thurman Arnold; an American Original." *Antitrust* 27: 89-104

Lasswell, Harold. 1971. *A Pre-View of Policy Sciences*. New York: American Elsevier.

Levi, Edward H. 1970. "Thurman Arnold." *Yale Law Journal* 79: 983-984.

Lippmann, Walter. 2007 (1922*). Public Opinion*. BN Publishing.

Miscamble, Wilson. 1982. "Thurman Arnold Goes to Washington: a look at antitrust policy in the later new deal*." Business History Review* 56:1.

Rostow, Eugene V. 1970. "Thurman Arnold." *Yale Law Journal* 79: 985-986.

Samuels, Warren. 1979. "Legal Realism and the Burden of Symbolism: The correspondence of Thurman Arnold*." Law and Society* 13: 997-1011.

Waller, Spencer Weber. 2004. "The Antitrust Legacy of Thurman Arnold". *St. John's Law Review* 78: 569-613

------. 2005. *Thurman Arnold: A Biography*. New York: New York University Press.