in the people taken collectively, but rather in individuals considered separately? If the latter position (which I think the correct one) is adopted, does this allow a larger role for independent courts than our authors are willing to countenance?

Quirk and Bridwell have, in sum, written an insightful and provocative book that every student of American constitutional law needs to study carefully. When one contemplates the manifold unconstitutional acts of the Supreme Court, there is a strong temptation to say, with Voltaire, "Ecrasez l'infâme." ❖

One Man, One Creed

THE AFFIRMATIVE ACTION FRAUD
Clint Bolick
Cato Institute, 1996, x + 170 pgs.

Clint Bolick, it appears, does not suffer from the vice of false modesty. Mr. Bolick attracted considerable attention owing to his opposition to Lani Guinier's nomination as Assistant Attorney General for Civil Rights; his relentless campaign against her support for proportional representation helped lead Clinton to withdraw her nomination.

Writing of his battle, Bolick observes: "Lani Guinier and I have some important things in common. Both of us . . . have toiled productively in the vineyards of public interest litigation. We both have spent most of our legal careers representing powerless minority individuals, and derive enormous personal fulfillment and inspiration from helping set matters right. Perhaps most significantly, we care greatly about ideas, and understand that in today's society lawyers armed with the right ideas have the power to change the world" (p. 90).

Should we join Mr. Bolick in his celebration of himself? At first, those drawn to a classical liberal perspective may be inclined to do so. He comes before us as a vigorous defender of individual rights—for Bolick, as for Albert J. Nock, the state is the enemy. Accordingly, he mounts a forceful attack on affirmative action in education and employment, and on what he terms "racial gerrymandering." These programs, aimed to advance the interests of groups judged disadvantaged, ride roughshod over individual rights.

Given the vigor of Mr. Bolick's defense of the individual, the temptation is strong to greet this book with applause. But it is a temptation that should be resisted. Bolick's argument rests on radically confused views about history and society; many of his proposals would, if applied, undermine the free society for which he professes admiration.

According to our author, "the civil rights vision constructed on the principles of natural rights was incorporated into the nation's founding

charters" (p. 27). In the classical liberal view, as stated by John Locke and Thomas Paine, rights are held by individuals equally under the law and are universal in scope. This conception of rights, Bolick holds, found expression in the Declaration of Independence and the Constitution.

But all was not well. The "same Constitution that served as a charter of civil rights also embodied a blatant nullification of civil rights: the institution of human slavery" (p. 28). Much of early American history embodies a "conflict between ideals and practices" (p. 28). The abolitionists took up the struggle for liberty, culminating in the founding of the Republican Party and the election of Abraham Lincoln in 1860. Faced with the abolitionists, Bolick cannot contain himself; it is unlikely that Charles Sumner has been so enthusiastically praised since Longfellow's celebratory poem.

But at this point, the fundamental flaw in Bolick's account stands apparent. His contention may be summarized in this way: (1) the Constitution and Declaration of Independence rest on natural rights; (2) Slavery contradicts individual rights; (3) Therefore, the 'fundamental charters' betray the principles to which they proclaim allegiance. But why not read the second premise as a reason to question the first? Why not, that is to say, hold that the "fundamental charters" do *not* incorporate natural rights in the sense defended by Bolick?

In this way, one can avoid asserting that the Founding Fathers were blatant hypocrites who called for universal liberty while at the same time cementing slavery firmly in place. This was exactly a key point raised by Chief Justice Taney, in his much maligned opinion in *Dred Scott*. (For Bolick, Taney's decision is "infamous" [p. 30].)

But here an objection at once demands consideration. Is not Bolick perfectly correct that slavery violates individual rights, understood in a classical liberal fashion? If so, surely those of libertarian bent must support Bolick over Taney. But here precisely lies the fundamental failing of Bolick's analysis. Principles of morality cannot be read into the Constitution at will.

Bolick has jumped from his own adherence to natural rights, and the undoubted fact that many of the Framers were influenced by classical liberal views, to the false claim that his ideology is incorporated as an "ideal" in the Constitution. In so doing he discovers a "contradiction" in that document that is in fact of his own devising.

Much sounder in this respect (though in few others) were some of the abolitionists whom Bolick admires. He quotes William Lloyd Garrison at length (p. 29); but he neglects to inform his readers that Garrison strongly opposed the Constitution. Unlike Garrison and his ilk, the Framers realized that the dictates of a philosophical system and the exigencies of a legal order are two very different things. They did not propose as fundamental law measures, such as the abolition of

slavery, which had not the remotest chance of adoption.

But if the Constitution does not enact classical liberalism, what are libertarians to do? Must they not, with Garrison, cast that document aside? I do not think so. The federal system of the Constitution serves to promote classical liberal policy far better than would a centralized authority, even one that proposed complete adherence to individual rights. Such at least was the opinion of our country's founders.

Bolick himself admits that many of the civil rights measures of the glorious '50s and '60s do not fully conform to the Creed.

Mr. Bolick of course dissents. He supports fully the efforts of the Radical Republicans after the Civil War to overthrow the federal system. Since the Southern states violated the natural rights doctrine that Bolick accepts, away with their powers! He especially admires the Fourteenth Amendment: "The amendment was aimed at restricting the power of state governments, which were the principal violators of civil rights" (p. 32). If the federal system had to go in order to promote "civil rights," so be it: "never before or since has a Congress been so motivated by philosophical absolutes" (p. 31).

Unfortunately, the Supreme Court frustrated the Radicals' plan, as Bolick views it, to make Thomas Paine's collected works the law of the land. In the *Slaughter House Cases* (1872), the Court rejected the use of the "privileges and immunities" clause of the Fourteenth Amendment to undermine state sovereignty; and in *Plessy* v. *Ferguson*, it upheld racial segregation in railroads.

The first decision especially enrages our author. The power of the central government to annul "oppressive" state laws must be maintained. "A central mission of the Institute for Justice [Bolick's organization] is to overturn the *Slaughter House Cases*" (p. 148, n. 26). As a result of these decisions, the Radicals' plan appeared to be thwarted.

But the battle was not over. A civil rights movement arose which brought pressure to bear to remove the legal disabilities suffered by blacks. And this movement stood firmly committed to exactly the individualist rights that Bolick advocates. The modern civil rights movement "did not question American values and principles, but embraced them" (p. 35).

After a mighty struggle, the individualist vision of Paine appeared poised to triumph. *Brown* v. *Board of Education* ruled school segregation illegal; the Civil Rights Act of 1964 forbade racial discrimination in public accommodations; and the Voting Rights Act of 1965 effectively

secured for blacks the unimpeded exercise of the right to vote.

Alas, our story has a sad ending. For Martin Luther King, "the Declaration of Independence was the highest expression of the civil rights vision"; but despite the "clear articulation" of "classical rights, the movement during the 1960s subtly embraced a change in goals" (p. 37). No longer were individual rights the sole aim; now government could be used to restrict freedom of association. And worse was to come. Affirmative action has become the order of the day, and the individualist vision is no more. Now, minorities struggle as groups for special privileges.

Mr. Bolick's account of the civil rights movement falls victim to the identical fallacy that ruins his account of the Constitution. He attributes his own philosophical dogmas to the civil rights movement; when its adherents fail to act as Bolick wishes, he accuses them of betraying the principles that he himself has foisted on them.

If Bolick's account were correct, we would confront an incredible situation. As he sees matters, the civil rights movement "anchored its cause firmly" (p. 35) in the American Creed, a phrase Gunnar Myrdal used for the commitment of the American people to individual rights. But if Americans were overwhelmingly committed to the American Creed, how did we get legal segregation in the first place? "Everyone" accepted a Creed that, according to Bolick, calls for equal rights for all; yet segregation somehow was widespread. Perhaps the American Creed, in the Revised Standard Bolick Version, was confined to rather fewer people than he imagines.

Bolick himself admits that many of the civil rights measures of the glorious '50s and '60s do not fully conform to the Creed. As Bolick rightly notes, the Supreme Court in *Brown* v. *Board of Education* did *not* decide the case "on the right of black school children to be treated as individuals and not segregated on the basis of their skin color" (p. 72). Instead, it relied on sociological speculation. Further, the centerpiece of the movement, the 1964 Act, restricts freedom of association in a way sharply at variance with Bolick's reading of the Creed. Neither the Court nor the Congress, then, can be listed as adherents.

And is it plausible to take the civil rights activists as sudden betrayers of views they had long professed? Did adherence to the Declaration of Independence suddenly give way to demands for quotas, as Bolick thinks?

A more plausible interpretation suggests itself. What if the civil rights movement aimed, not to enact a philosophical creed, but to help blacks? When the laws of the 1960s failed fully to secure for blacks the improvements in condition the movement sought, a shift took place to other means to achieve them. If Bolick deplores these measures, so be it; but that is his affair, not a sudden abandonment of

principle by the civil rights movement.

Bolick's inability to see any point to views that counter his own individualism prevents him from understanding the shift in the civil rights movement. On the interpretation I have suggested, the civil rights movement wished to advance the interests of blacks. So ordinary an objective is for Bolick beyond the pale: he wants to live in a color-blind society in which individuals do not take their race as primary. "Blacks and whites too often see the world through race-tinted prisms of divergent experiences, and think of themselves not as individuals but as members of groups" (p. 10).

Bolick is right to criticize public schools; but state grants for fees to private schools are hardly the free market in action.

Why *should* people view their world in a color-blind way? Because doing so is mandated by the American Creed? This is a matter on which Bolick can speak with authority: it is his Creed. But he should not indict people for inconsistency because they do not follow his own philosophy.

I fear there is one final complication. Does Bolick fully adhere to classical liberalism? In at least two places he does not. He rightly notes that every "restraint against discrimination interferes with freedom of association and reduces the choices individuals otherwise are free to make" (p. 41). That is well said; and the 1964 Civil Rights Act, as he also notes, does exactly that. But he by no means condemns the Act. Its grant of power to the central government to block discrimination by the states is in his view all to the good. He seems on balance to support the Act, although his discussion lacks his normal tone of absolute conviction (p. 42).

Another instance leaves no room for doubt that Bolick's classical liberalism is not absolute. He endorses a Wisconsin school choice plan in which low-income children can "apply the state portion of their education funds . . . as full payment of tuition in nonsectarian private schools" (p. 140). Mr. Bolick is right to criticize public schools; but state grants for fees to private schools is hardly the free market in action.

Bolick's support for "school choice" reflects a touching but naive faith in the power of education to "empower" minorities. Successful people tend to be better educated than those who fare less well; therefore, educate people and they will succeed. This of course does not follow; but Mr. Bolick is not one to require proof for an article of his Creed. To stop to consider the connection between education and success can only prevent full application to the task at hand. Education aids empowerment; let us proceed with it. The Creed has spoken. ❖

What Remains of Socialism?

THE PHILOSOPHY AND ECONOMICS OF MARKET SOCIALISM: A CRITICAL STUDY
N. Scott Arnold
Oxford University Press, 1994, xiv + 301 pgs.

N. Scott Arnold's outstanding book makes a vital contribution to the debate over socialism; but Arnold has in part misconceived his own achievement. Since the collapse of socialism in the Soviet bloc, the world has had to recognize a fact long known to students of Mises. Centrally planned socialism is not, as its proponents imagined, a system vastly more efficient than the "anarchy of the market." Far from it: socialism cannot solve the calculation problem and thus cannot function at all.

Absent a price system, socialist planners cannot determine which resources should be directed to the consumer goods they wish to produce. Faced with the collapse of their dream, what can socialists do? Oskar Lange offered the most popular socialist response: why not a socialist system that uses market pricing? The schemes that have drawn inspiration from Lange's idea have been many and various; but the main instance Arnold wishes to investigate may be simply described. (Incidentally, Lange was not, as Arnold states, Mises's first opponent in the calculation debate [p. 39].)

The type of socialism Arnold considers relies heavily on workers' cooperatives. Firms are not owned by capitalists—these the socialist regime has banished to outer darkness—but by the workers who labor in them. But like capitalist firms, cooperatives buy and sell on a free market: no central authority directs them to set certain prices. The state does not remain totally idle: its policies largely determine the rate of investment. With this plan, market socialists hope, the advantages of socialism can be retained and the problem posed by Mises avoided.

What is one to think of this system? Arnold establishes, with immense skill at careful argument, that market socialism is far inferior in economic efficiency to the free enterprise system. But he thinks that he is doing something else as well. I propose first to describe the main lines of Arnold's criticism of market socialism and then to explain how he misconceives his own project.

Our author has seized hold of a key point in his assessment of market socialism. In order to function, a market socialist system cannot allow capitalist enterprises in any significant number to exist. Put otherwise, market socialism can be seen as a list of prohibitions: it forbids certain "capitalist acts between consenting adults," in Robert Nozick's famous phrase. By contrast, a free enterprise economy does not forbid workers' cooperatives: they, just as