

Free Markets, the Rule of Law, and Classical Liberalism

by *Richard M. Ebeling*

The history of liberty and prosperity is inseparable from the practice of free enterprise and respect for the rule of law. Both are products of the spirit of classical liberalism. But a correct understanding of free enterprise, the rule of law, and liberalism (rightly understood) is greatly lacking in the world today.

Historically, liberalism is the political philosophy of individual liberty. It proclaims and insists that the individual is to be free to think, speak, and write as he wishes; to believe and worship as he wishes; and to peacefully live his life as he wishes. Another way of saying this is to quote from Lord Acton's definition: "By liberty I mean the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and custom, and opinion."¹ For this reason, he declared that the securing of liberty "is the highest political end."²

Lord Acton did not say, you will notice, that liberty is the highest end, but rather the highest political end. In the wider context of a man's life, political and economic liberty are means to other ends. What ends? Those that give meaning and purpose to his sojourn on earth. Liberalism does not deny that there may be or is one ultimate Truth,

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or one moral "right," or one correct conception of "the good" and "the beautiful." What liberalism has argued is that even the wisest and best men are mere mortals. They lack God's omniscience, omnipresence, and omnipotence. Mortal men look at and understand the world within the confines of their own imperfect knowledge, from the perspective of their own narrow corner of existence, and with extremely limited mental and physical powers compared to those possessed by the Almighty.

As a result, since no man may claim access to an understanding of man and his world equal to God's, no man can claim a right to deny any other person the freedom to follow his conscience in finding answers to these profound and ultimate questions. They are so crucial to man's very being as a spiritual and moral person that they must be removed from the arena of politics and political control. They must be left to the private and personal confines of each man and his conscience.

The reason for this should be evident. Political control is fundamentally the power of physical force. It is the right to demand obedience from the citizenry either to do or not do something under the threat of the use of coercion. Political power can be used to command people regarding how they may live, how they may think, and how they may act. It is one man bending the will of another to his wishes under the threat of physical harm.³

Some men have faced such threats or uses of force and not given up their faith or beliefs or ideas. But liberalism argues that no man should be confronted with torture or death because of where his conscience leads him. Furthermore, once political power is used to dictate what men may believe and how they may peacefully act, society is faced with an endless struggle as those with conflicting faiths, beliefs, and ideas battle for control of the reins of political authority. It becomes a life-and-death confrontation to determine whose conception of the good, the beautiful, the right, and the just shall be imposed on all. In such a battle over truth and virtue man's world becomes an earthly hell of human and material destruction.

There thus arose the idea of tolerance, that each man should respect the right of every other man to be guided by the dictates of his conscience.⁴ But even tolerance was soon seen to be authoritarian; it implied that the one tolerating the free thoughts and actions of another was doing so as if he were giving a privilege to someone else, a privilege that if given could at any time be taken away. Hence, it was insisted that freedom of conscience was a fundamental right possessed by all men, and not something permitted or allowed, say, by a majority for the benefit of a minority.⁵

But how was the political authority—the government—to be prevented from overstepping its boundaries and encroaching on such individual rights as freedom of conscience and other elements of personal liberty? How were men with political power to be restrained from abridging other men's rights? All law is man-made, regardless of the source of the inspiration for the law. It is men who articulate and agree on the law, who codify it, and who establish and enforce the procedures and mechanisms for its respect and enforcement. Man, therefore, can never be separated from law and the legal process.

Public Accountability

A way to assure that society lives under a rule of law and not a rule of men is to insist that even those who implement and enforce

the law be held accountable under certain clearly defined procedures in their dealings with the citizenry. Or as the English legal philosopher Albert Venn Dicey expressed it in the late nineteenth century: "With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."⁶

An essential element of the rule of law is that it specifies what government may not do to the citizenry. For example, neither the government nor its various legal agents may hold an individual without bringing charges against him before a judge within a specified period of time. The writ of habeas corpus assures that no man is physically seized and held for an indefinite duration without charges being brought against him in a court of law. If it is not demonstrated to the court that a breach of the law has occurred and that there is sufficient evidence for holding the accused, he must be let go.⁷ Or as Dicey explained it, "Liberty is not secure unless the law, in addition to punishing every kind of interference with a man's lawful freedom, provides adequate security that everyone who, without legal justification, is placed in confinement shall be able to get free."⁸

A distinctive quality and merit of the rule of law is that it attempts to, if not completely eliminate, then reduce as much as possible all arbitrary power in the hands of those who administer the political regime and the legal order. Friedrich Hayek, for example, has emphasized that the rule of law refers to laws of an abstract and general nature equally applied to all men independently of any particular circumstance.⁹

Since this may seem rather nebulous, it can be better understood through the expression *end-independent rules*.¹⁰ We can think of this, for example, in terms of the rules of road. These rules specify whether cars are to be driven on the right or left side of the road; that all cars must stop and wait while the traffic light is red, and may go when the light turns green; that posted speed limits must be followed; and that if a police car or an ambulance is coming down the road, all

other drivers are to pull over and stop until it has passed.

These rules of the road are general and uniform, in that they apply equally to all drivers and do not privilege or burden anyone. Furthermore, as long as every driver follows these rules, he is free to travel on the roads whenever he desires, for whatever purpose he may have in mind. Nor can any driver be pulled over by police patrolling the roads and highways for a traffic violation unless there is an infraction of these general and uniform rules of the road.

The general and abstract rules are “end-independent” because they do not imply or require any particular outcome or result from the actions and interactions of the citizenry, as long as they follow the rules. Thus, whether people follow the rules of the road to get to work, or to visit the family dentist, or simply to get out of the house for a while and just drive around is immaterial. The very nature of a free society under the rule of law is that the society, itself, has no purpose, or “manifest destiny” or “historical role” that it is called upon to play. A free society has no plans or purposes separate from the individual plans and purposes of its individual citizens.

Selfishness versus Great Causes

That a free society has no plan or purpose or higher calling independent of those of its citizens has bothered many who think that nations should have “callings” to “greatness.” They see in the individual plans and purposes of the citizenry a narrowness and selfishness not worthy of great causes and great men. One leading voice in the first half of the twentieth century who wanted nations to pursue great causes under great men was Werner Sombart, a German Marxist who later in the 1930s became an outspoken apologist for Hitler’s National Socialism.¹¹

During World War I, Sombart published a small volume of what he called “patriotic reflections” titled *Traders and Heroes*.¹² He contrasted the trader or man of commerce, who, Sombart insisted, sees no farther than his own profits to be made through market

transactions, with the spirit of the hero that brings forth the virtues of courage, obedience, and self-sacrifice. “The trader,” Sombart said, “speaks only of ‘rights,’ the hero only of his duties.”¹³

Now, of course, the question that Sombart’s depiction of the characteristics of the “hero” leaves unanswered is: obedience to whom, and sacrifice for what? In Sombart’s view it was the state, through its political leaders, that dictated the goals for which the citizenry was to make those sacrifices and that demanded obedience to achieve the national tasks. The individuals of the society were to sacrifice their own goals, purposes, plans, and dreams. These were narrow, mundane, and petty. The great political leaders make the other members of society conform to a higher plan and purpose, one which they claim to discern through intuitive insights and understandings that ordinary men cannot comprehend or grasp. Hence, they are expected to obey the commands of those leaders in the service of an imposed hierarchy of ends to which they must sacrifice their individual plans and purposes.

In a society of Sombart’s heroes, the rules under which the citizenry now act are end-dependent. That is, the legal rules and regulations under which men are made to live direct them to act and interact in ways that are meant to assure particular outcomes. The citizenry’s actions are made to follow paths leading to the outcomes that the political leaders consider the desirable configuration for the society. How else can it be assured that the actions of all the people move in the direction that the nation’s call to greatness demands? It should be clear that this requires the abrogation of the individual’s own freedom of action, choice, and decision-making. He is made into the tool of another man’s ends. He serves ends that others have assigned to him, and not his own.¹⁴

It should also be clear this is why those who desire to assign higher purposes and callings for society tend to be suspicious of and often actively hostile toward free enterprise and the market economy. The essence of every type of collectivism, whether it be called socialism, communism, fascism,

Nazism, or the interventionist-welfare state, is the desire and intention of imposing on society a politically engineered design to which all men are expected and, if required, forced to conform.

Adam Smith, in his first book, *The Theory of Moral Sentiments*, referred to the social engineer as “the man of system,” who looks at society as if it were a giant chessboard upon which he moves the human chess pieces until the overall pattern created is one to his own liking. What the man of system totally disregards is that each of these human pieces on the chessboard of society has his own will, wishes, desires, dreams, goals, values, and beliefs, which motivate his own movements independent of any attempt by that social engineer to direct and dictate his place and position in society.¹⁵

Property Provides Autonomy

Classical liberalism has always emphasized the inseparable connection between individual liberty and the right to private property. Partly it has been based on the idea of justice: that which a man produces honestly and peacefully through his own efforts, or which he acquires through voluntary acts of exchange with others, should be considered rightfully his. The case for private property has also been made on the basis of utilitarian efficiency: when men know that the rewards from their work belong to them, they have the motives and the incentives to apply their industry in productive and creative ways.¹⁶

But in addition, the classical liberal has defended the institution of private property because it provides the individual with a degree of autonomy from potentially abusive political power. Private property gives the individual an arena, or domain, in which he has the ability to shape and design his own life, free from the control of political force. As a private owner of some of the means of production—even if it be only his own labor—he can search out the employment for himself that he considers most attractive and profitable, given his own personal purposes and plans. A community of individu-

als, each of whom owns varieties of property that he is at liberty to apply and utilize in various ways, provides a network of potential relationships of production, trade, and association among men outside and independent of the orbit and control of government. Private property gives reality to the ideal of individual freedom.¹⁷

The networks of voluntary, peaceful, and private association form the elements of what has been called “civil society.” They are the “intermediary institutions” that stand between the power of the state and the single, isolated individual; they supply support and give assistance to the individual in the economic, social, cultural, and spiritual needs of life. But they also offer protection and strength to the lone individual who otherwise would face the power of government on his own. It is not surprising, therefore, that historically the more the power and intrusive reach of the government extends into the affairs of the citizenry, the more the state attempts in various ways to undermine and replace these voluntary associative institutions of civil society with its own bureaucratic structures. The weakening or elimination of the intermediary institutions of civil society leaves the individual increasingly dependent on the political caprice and largess of those who manage the agencies of government. He becomes a pawn in the hands of those men of system whom Adam Smith warned us against.¹⁸

Where the rule of law is practiced and respected, the creative energies of man are set free. Each man is at liberty to utilize his own knowledge for his own purposes, but the very nature of the free-market economy is that he must apply that knowledge and his abilities in ways that serve the ends of others in society as well. Since no man can attain all his goals, beyond some of the more primitive ones, through his own labor and the particular resources that may be in his ownership and control, he enters into exchange relationships with others in society. Men begin to specialize in producing things for which they have a comparative advantage over their neighbors to extend their trading opportunities with others in the growing

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community of men. The interdependency that a division of labor creates makes each member of society increasingly conscious that he must serve his fellow men in order to accomplish his own ends.¹⁹

The individuals on that great chessboard of society move themselves about, forming connections, relationships, and associations with those around them as they discover opportunities for mutual improvement. Patterns do take form; configurations of human interconnection do take shape. But these patterns are not planned or designed; they emerge from the relationships that men choose to establish among themselves, with no conscious intention of generating much of the institutional order and structure that result from their market and social interactions.

As Hayek pointed out, drawing on the insights of some of the political economists of the eighteenth century, the social order that develops is to a great extent “the results of human action, but not of human design.”²⁰ And, as Hayek emphasized, it is all to the better that this is the case. Why? Because the emergent social patterns, order, and institutional arrangements incorporate the knowledge, ability, and creativity of the multitudes of human participants. No single mind or group of minds—no matter how wise and well-intentioned—could ever know, understand, and appreciate all the fragmented knowledge, insight, and ability that exist as divided knowledge and creative potential in the minds of all the members of humanity as a whole. If all that man knows, that he can do or might imagine, is to be taken advantage of and brought into play

for the general good of all mankind, then every individual must be left free to use what he knows, and do what he wants to do, according to his own design.²¹

What irks the social engineer when he looks around at the free society is that it appears to be a world without a “plan,” a jumble of social chaos. What the classical liberal sees is a world of multitudes of plans, each one being the plan given by an individual to his own life. There is order, pattern, and structure to this world, but an order, pattern, and structure generated out of the interconnections that individuals have formed among themselves through their voluntary market and social relationships.

The rule of law provides the societal rules of the road within which those individuals may freely move about as they see fit. The rules for the free society are fairly simple and straightforward: thou shall not kill; thou shall not steal; thou shall not bear false witness—no fraud or deception in relationships with others. Beyond these types of simple rules, each individual is free to follow his own conscience and interests in all other matters.

A Lawless World

The world in which we live today is to a growing extent a lawless world, if by lawless we mean circumstances in which the rule of law is increasingly not respected or even understood. The law, in practice, is more and more end-dependent in its purpose and application. Some in society do not like the pattern of relative income shares that results from the interactions between employers

and employees, so they use the power of the state to redistribute income and wealth according to their conception of material justice and fairness.

Others do not approve that some in society like—indeed enjoy—smoking, especially while they are having a drink and after a meal, so they restrict or increasingly ban private establishments from setting their own rules on the basis of what they consider the preferences and desires of their customers by totally prohibiting smoking in what they declare to be “public” places. Still others believe that the citizenry cannot be trusted to make sufficiently wise choices concerning their own retirement planning or their medical-insurance coverage, so they enact laws and regulations that impose rules that will guarantee the creation of the social engineer’s preferred patterns for such social behavior on the part of those whose choices and decisions he considers less enlightened than his own.

To assure, as the phrase goes, that there will be “no child left behind,” the social engineers are imposing more national regulations on standards for education in schools around the country, to create more of a single pattern of learning and its measured success to which all educational institutions and children will be required to conform. One of the contributions for which Hayek was awarded the Nobel Prize in economics was his insightful reminder that competition can and should be seen as a discovery process, through which each of us discovers our potential and ability in the rivalry of the marketplace. Indeed, Hayek said, it is in the competitive process that men are stimulated to see how far they can push themselves and their abilities, what new ideas and important innovations they can come up with, and what their most productive and valuable role and place may be in the social system of the division of labor for the mutual benefit of all.²² How can this play out in the crucial arena of devising new and better ways of educating the young, when the men of system, the social engineers, in Washington, D.C., increasingly nationalize the content and form of learning in all the schools across the nation?

The latest trend in this direction is the growing fear that the new global economy threatens the livelihood and material standards of living of the American people. A chorus of special-interest groups and intellectual elites are warning that investment opportunities and many relatively well-paying jobs are being lost to other countries around the world. They conjure up nightmare visions in which America buys everything from the rest of the world, where labor is cheaper and production costs are much lower, and that America is left with nothing to manufacture at home. International trade and investment will leave the United States an economic wasteland of poverty and dependency on cheap products made in China and outsourced labor services supplied by India.

What we are hearing is the 21st century’s version of the early nineteenth-century Luddites, who at that time raised the alarm that the Industrial Revolution would soon result in unemployment for the vast majority as the emerging machine age made human labor redundant. The industrial machine age did indeed result in the replacement of a wide variety of human labor. But this freed tens of millions of hands to then do new and different work with the assistance of more and better tools, so that the quality, variety, and quantities of goods and services available to all were expanded beyond anything that could be imagined at the time. Our modern standard of living began with the Industrial Revolution and the machine age that it introduced.

After thousands of years of appalling poverty, more and more parts of the world are beginning to join and catch up to the West in terms of standards and quality of living. We should be hailing this as one of man’s greatest hours in his long existence on this earth. This great transformation will, of course, bring changes, even dramatic changes, in the structure and patterns of the global system of division of labor, as billions of people on other continents find new and more productive and profitable niches in the world’s network of trade, commerce, and industry.²³

Each of us, Leonard Read said, must become candles of liberty in the darkness of collectivist ideas. The brighter we each shine through our understanding and ability to articulate the meaning of freedom, the more we will be beacons that can attract others.

America's Role in the World

Inevitably, this will change, as well, America's role and place in the global community of nations. Some industries and service sectors will diminish or be entirely replaced by producers and suppliers in other parts of the world. But trade is a two-way street. Imports are paid for with exports. In fact, the only reason a nation exports anything is to use those foreign sales as the means of paying for goods and services that can be purchased from abroad less expensively than if they were to be made at home.

Other industries and service sectors will emerge or expand in America, instead, as the citizens of the United States discover in the arena of international commerce and competition their better and more efficient niches to serve their neighbors at home and their fellow human beings around the world. When the next generation looks back at our present time, say, 25 years from now, they will be able to see the market processes by which these new patterns and trading relationships emerged and took shape. And they will see the improvements and gains that resulted from these processes in a way that we cannot yet imagine, any more than those who feared the machine age in the early decades of the nineteenth century could imagine the wondrous improvements in the human condition that were visible when one looked back at the beginning of the twentieth century.

We can never possess tomorrow's knowledge today. We can never know what innovations, creative ideas, and useful improvements will be generated in the minds of free men in the years to come. That is why we

must leave men and their minds free. The man of system, the social engineer, who sees only the apparent problems from these global changes, wants to plan America's place in the new, emerging global economy. But to do so, he must confine and strait-jacket all of us to what his mind sees as the possible, profitable, and desirable from his own narrow perspective with the knowledge he possesses in the present.

Soviet-style central planning may seem to have been cast into the dustbin of history (to use a Marxian phrase), but in fact the underlying idea is alive and well around the world, including the United States. Ideological elites and voting majorities not only do not recognize the individual rights of others to live their lives in ways of their own choosing, but they increasingly do not even show tolerance for any range of difference of opinion and action. They are determined to plan our lives and our futures—and indeed even our thoughts in this increasingly anti-liberal age.²⁴

Leonard Read, the founder and first president of FEE, once penned a book with the title *Anything That's Peaceful*.²⁵ In it he said that if we are to regain the liberty that we have lost, and the fully and consistently applied rule of law that once was the guardian of our liberty and freedom of enterprise, we must reawaken in our fellow citizens an understanding of what liberty, the rule of law, and individual self-responsibility mean. But this cannot come about unless each of us is willing to participate in a process of self-education in which we become knowledgeable about liberty and its opposite. And we must be willing and courageous enough to consistently defend free-

dom, self-responsibility, and all of their implications.

Each of us, Leonard Read said, must become candles of liberty in the darkness of collectivist ideas. The brighter we each shine through our understanding and ability to articulate the meaning of freedom, the more we will be beacons that can attract others. Quoting an old English saying, Read reminded us that it is the light that brings forth the eye and the ability to see.

None of us who care about liberty can avoid in good conscience our responsibility in this matter. I will close with the words of the Austrian economist Ludwig von Mises, who was one of the greatest and brightest lights for liberty in the twentieth century: “Everyone carries a part of society on his shoulders; no one is relieved of his share of responsibility by others. And no one can find a safe way for himself if society is sweeping towards destruction. . . . What is needed to stop the trend towards socialism and despotism is common sense and moral courage.”²⁶ □

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2. *Ibid.* p. 22.

3. Ludwig von Mises, *Liberalism: The Classical Tradition* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1996 [1927]), pp. 4, 52–55; Ludwig von Mises, *Human Action: A Treatise on Economics* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1996), pp. 145–57; Ludwig von Mises, *Theory and History: An Interpretation of Social and Economic Evolution* (Auburn, Ala.: Ludwig von Mises Institute, 1985 [1957]), pp. 49–50.

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5. Guido de Ruggiero, *The History of European Liberalism* (Gloucester, Mass.: Peter Smith, 1981 [1927]), pp. 18–19.

6. Albert Venn Dicey, *The Law of the Constitution* (Indianapolis: Liberty Classics, 1982 [1885; revised ed., 1914]), p. 114.

7. Lord Hewart, *The New Despotism* (London: Ernest Benn, Ltd., 1929), pp. 28–29; Francis W. Hirst, *Liberty and Tyranny* (London: Duckworth, 1935), pp. 67–74; Richard M. Ebeling, “Civil Liberty and the State: The Writ of Habeas Corpus,” *Freedom Daily* (April 2002), pp. 9–15.

8. Dicey, p. 132.

9. F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1962), pp. 148–61.

10. Geoffrey Brennan and James M. Buchanan, *The Reason of Rules: Constitutional Political Economy* (Cambridge: Cambridge University Press, 1985), pp. 1–18.

11. Werner Sombart, *A New Social Philosophy* (Princeton, N.J.: Princeton University Press, 1937).

12. Werner Sombart, *Handler und Helden: Patriotische Besinnungen* (Munich: 1915).

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14. However, on the meaning of “leadership” in a free society, see Leonard E. Read, *Elements of Libertarian Leadership* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1962); and *The Coming Aristocracy* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1969).

15. Adam Smith, *The Theory of Moral Sentiments* (New Rochelle, N.Y.: Arlington House, 1969 [1759]), pp. 242–43.

16. Jean-Baptiste Say, *A Treatise on Political Economy, or the Production, Distribution, and Consumption of Wealth* (New York: Augustus M. Kelley, 1971 [1821]), pp. 127–32; William Huskisson, *Essays on Political Economy* (Canberra: Australian National University, 1976 [1830]), pp. 45–64; Frédéric Bastiat, *Economic Harmonies* (Princeton, N.J.: D. Van Nostrand, 1964 [1850]), pp. 199–235; John R. McCulloch, *The Principles of Political Economy, with Some Inquiries Respecting their Application* (New York: Augustus M. Kelley, 1965 [1864]), pp. 25–36.

17. For recent statements of this idea, see, James M. Buchanan, *Property as a Guarantor of Liberty* (Brookfield, Vt.: Edward Elgar, 1993); Tom Bethell, *The Noblest Triumph: Property and Prosperity through the Ages* (New York: St. Martin’s Press, 1998); and Richard Pipes, *Property and Freedom* (New York: Alfred A. Knopf, 1999).

18. Edward Shils, “The Virtue of Civil Society,” *Government and Opposition*, Winter 1991, pp. 3–20, and Robert Nisbet, *Twilight of Authority* (New York: Oxford University Press, 1975); also, Richard M. Ebeling, *Austrian Economics and the Political Economy of Freedom* (Northampton, Mass.: Edward Elgar, 2003), Chapter 6: “Classical Liberalism and Collectivism in the 20th Century,” pp. 159–78, especially, pp. 168–72.

19. Adam Smith, *The Wealth of Nations* (New York: The Modern Library, 1937 [1776]), Book I, Chapters 1–3, pp. 3–21; Mises, *Human Action*, pp. 143–76.

20. Friedrich A. Hayek, “The Results of Human Action, but not of Human Design” [1967] in *Studies in Philosophy, Politics and Economics* (Chicago: University of Chicago Press, 1967), pp. 96–105; reprinted in Richard M. Ebeling, ed., *Austrian Economics: A Reader* (Hillsdale, Mich.: Hillsdale College Press, 1991), pp. 134–49.

21. Hayek, *The Constitution of Liberty*, pp. 22–38.

22. Friedrich A. Hayek, “Competition as a Discovery Procedure” [1969] in *New Studies in Philosophy, Politics, Economics and the History of Ideas* (Chicago: University of Chicago Press, 1978), pp. 179–90; and Thomas Sowell, *Knowledge and Decisions* (New York: Basic Books, 1980).

23. Richard M. Ebeling, “Globalization and Free Trade,” *The Freeman*, April 2004, pp. 2–3; on this general theme of the benefits from freedom of trade and its continuing importance today, see Richard M. Ebeling, *Austrian Economics and the Political Economy of Freedom*, Chapter 10, “The Global Economy and Classical Liberalism: Past, Present and Future,” pp. 247–81; and on related aspects of the same issue, Richard M. Ebeling and Jacob G. Hornberger, eds., *The Case for Free Trade and Open Immigration* (Fairfax, Va.: Future of Freedom Foundation, 1995).

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