

Liberty

July 1989

Vol 2, No 6

Four Dollars

Dangerous Liaisons:
Ayn Rand
and
Nathaniel
Branden

Why Not Feel Sorry for Exxon?

by Murray N. Rothbard

Viking Iceland: Anarchy That Worked

by David Friedman

The Myth of the Rights of Mental Patients

by Thomas Szasz

Puritanism Comes Full Circle

by Jeffrey Tucker

Nude Dancing in Memphis

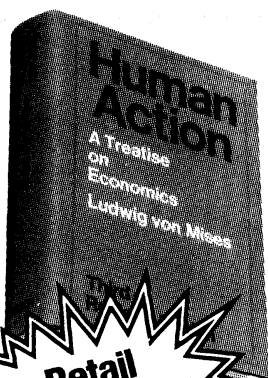
by Michael Williams

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Liberty (ISSN 0894-1408) is a review of libertarian and classical liberal thought, culture and politics, published bi-monthly by Liberty Publishing, 1532 Sims Way, #1, Port Townsend, WA 98368 (Mailing Address: PO Box 1167, Port Townsend, WA 98368). Subscriptions are \$19.50 for one year, \$35.00 for two years. Foreign subscriptions are \$22.00 for one year, \$40.00 for two years. Recent single issues are \$4.00 each, plus \$1.00 for postage & handling.

Second-Class Postage Paid at Port Townsend, WA 98368. POSTMASTER: Send address changes to *Liberty*, PO Box 1167, Port Townsend, WA 98368.

Manuscripts are welcome, but will be returned only if accompanied by SASE. Queries are encouraged. A Writer's Introduction is available: enclose SASE and send to the address given above.

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Letters

Agnostic Commies for Freedom

Murray Rothbard ("The End of The Secular Century," May 1989) says "it is atheism for which burial rights must be conducted." I have great respect for Murray's grasp of history, and just about everything else, but I question his sources here. In Europe, including the once rabidly Dutch Reformed Holland, Catholic France, England, and in much of the rest of the world, religion is rapidly losing adherents and influence, while liberty seems to be making strides mainly in communist countries, where the leaders, coincidentally or not, are not religious.

Tom Palven
Farmingdale, N.J.

Beardless Economists

I would like to take issue with some of the points made by Murray Rothbard in his recent critique of public choice economics ("Public Choice: A Misshapen Tool," May 1989). Rothbard argues that the public choice school is merely redoing—badly—what had already been done by Charles Beard and his followers. I know Beard's work only at second hand, but it was my impression that his analysis, like that of Marx, was in terms of the economic interest of classes, not individuals. What the public choice school attempts to do is to deduce political outcomes from the assumption that *individuals* act rationally in their own interest. That is a very different project, and one that I would expect most libertarians and most economists to find more plausible and more attractive. Rothbard's assertion that public choice economists deny "any motivation in human history except monetary gain" is of course utter nonsense, as any curious reader can determine by actually reading the works Rothbard is criticizing.

Rothbard refers to "David Ricardo's bitter opposition to land rent, which stemmed from his failure to understand that landlords perform the highly important function of allocating scarce lands to their most productive uses." In Chapter XIV of *The Principles of Political Economy and Taxation*, his principal work, Ricardo

expressed his *disagreement* with Adam Smith's suggestion that ground rent was an especially suitable thing to tax. Ricardo's argument ends with the following sentence: "And if it be considered that land, regarded as a fit subject for exclusive taxation, would not only be reduced in price, to compensate for the risk of that taxation, but in proportion to the indefinite nature and uncertain value of the risk would become a fit subject for speculation, partaking more of the nature of gambling than of sober trade, it will appear probable that the hands into which land would in that case be most apt to fall would be the hands of those who possess more of the qualities of the gambler than of the qualities of the sober-minded proprietor, *who is likely to employ his land to the greatest advantage*" (Italics mine). I do not understand how the last part of that sentence could be written by someone who failed "to understand that landlords perform the highly important function of allocating scarce lands to their most productive uses."

An economist taking issue with a criticism of his work by Gordon Tullock once remarked that the amount Tullock had written was even more impressive considering that he apparently did not know how to read. The same might be said of Rothbard.

David Friedman
Chicago, Ill.

Anarchy and Accuracy

So now Noam Chomsky is supposed to be a hero to libertarians (Jeffrey Tucker, "An Anarchist's Appraisal," March 1989)? The *same* Chomsky who has been an admirer and apologist for every totalitarian Marxist state for the last two decades? Chomsky's major political crusade in recent years has been to try to convince the world that the thousands of Cambodian refugees who fled in horror from the genocide of the Khmer Rouge are all lying when they tell of millions having been slaughtered by the Communists; such accounts reflect badly on Socialism, therefore they *must* not be true.

In fact, Chomsky has proclaimed that intellectuals have a moral duty to lie

about atrocities committed by Marxist states, since such criticism retards the spread of socialism: "Honest people will have to face the fact that they are morally responsible for the predictable human consequences of their acts. One of these acts is accurate criticism, accurate critical analysis of authoritarian state socialism in North Vietnam or in Cuba or in other countries that the United States is trying to subvert. The consequences of accurate critical analysis will be to buttress these efforts, thus contributing to suffering and oppression." In other words, we should only speak the truth if it advocates the cause of Marxist socialism.

Given that Chomsky elevates mendacity to a moral principle, why should we believe *anything* that he says about the CIA or American foreign policy?

Robert Sheaffer
San Jose, Calif.

Just Another Voice of Bitterness

"The Voice of Bitterness" was an appropriate title for Justin Raimondo's review (May 1989). He begins recognizing the amazing Ayn Rand, the greatest popular champion of reason since Jefferson, and ends with bitter, backbiting, unsupportable statements.

Upon first reading, it appeared that the flow of the article (matter-of-fact to bitterness) may have been a clever writing technique; a subtle means of communicating the trend he was describing in Ayn Rand's life.

Nope. I don't buy it. It looks like Raimondo is just comfortable slinging mud. As to "What has Peikoff ever created on his own?" I would say plenty. My favorite is *Ominous Parallels* (Stein and Day, 1982). This tightly written beginner's philosophy lesson does an excellent job of relating the components of a coherent philosophy to world events that have troubled us all.

Hey Raimondo, I had not heard of you before; what have you ever done? If I hear of you in the future I will think "Bitterness."

Randy Paulsen
Litchfield Park, Ariz.

Adding Outrage to Insult

I was outraged when I first read the comment by "SLR" entitled "Holiday revisions" in the Reflections section of the January 1989 issue. I immediately reread it in the hope that the writer did not really intend to insult those of us who served

continued on page 6

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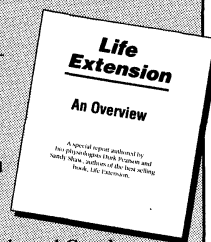
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honorably and faithfully in the armed forces of the United States and those of our comrades-in-arms who sacrificed their minds, physical capabilities, and even their very lives in the *service of their country*.

Those of us who did serve are painfully aware of how our government misused that service and many of us are now engaged in the fight to restore liberty.

It's hard enough convincing most people of the libertarian concept without alienating our most valiant potential allies.

Richard Partridge
Brigham City, Utah

International Standards

Shortly after the November elections, I happened to hear an N.P.R. broadcast of an interview with an English fellow named Kevin Boyle. Mr. Boyle is the director of the London-based organization known as "Article 19"—the International Centre on Censorship.

I wrote a letter to Mr. Boyle and explained the N.E.S. problem to him. I wrote that Ron Paul's vote totals had been excluded on election night, and that the N.E.S. effectively falsified the vote totals, much as Margaret Fries reported ("A Conspiracy of Silence," May 1989). Then, in early February, I received a very encouraging response from Mr. Boyle on "Article 19" letterhead. He told me that the International Centre on Censorship planned to contact the N.E.S. to begin an investigation. He wrote that in his correspondence with the N.E.S. he would inform them that they had fallen short of international standards for unbiased media reporting of election coverage and that their omissions and falsifications constituted intolerable bias in contravention of the international standards which "Article 19" uses to assess fair and democratic elections. He also wrote that mem-

bers of the Libertarian Party U.S. should contact FAIR at 666 Broadway, Ste. 400, NY, NY 10012, for further help. He also suggested that we contact the International Human Rights Law Group, Elections Monitoring Division, at 733 Fifteenth Street NW, Washington, DC 20005, for additional help.

Sally Anne Moore
Cincinnati, Ohio

Walter Williams: Pro and Con

I agree with Chester A. Arthur ("Who votes for third party candidates?" March 1989) that Walter Williams should be considered to head the LP ticket in 1992.

The man is witty and thoroughly engaging. What's more, he has a gift for explaining libertarian principles and the predatory nature of government in terms anyone can grasp. At our convention, which drew a large number of outsiders, Williams had leather-clad bikers and three-piece Republican types alike eating from his hand.

Williams' strongest point, to my mind, is his ability—fortified by his own impressive work on the subject—to collapse the entire house-of-cards case for the welfare state in about 10 seconds flat. The fact that he is black and from a "disadvantaged" background (I don't know if he would use that word) gives him a credibility no white candidate can hope to climate.

Now the caveats. Although he pulled no punches in his description of taxation as legalized robbery, Williams said he thinks a tax of around 10 percent would be necessary and acceptable for funding what he sees as government's legitimate functions of protecting lives, property and individual rights. On defense matters he is not the pure non-interventionist many or most libertarians are; although the specific issue did not arise, my impression was he would support Grenada-type military actions.

Steve Smith
Birmingham, Ala.

Bullet-Proofing the LP

The LP Oath has one function your writers (Johnny Fargo, "The Oath of Purity," and Ethan O. Waters, "Taking the oath," May 1989) have neglected: it protects the party, and the rest of us, from the backlash of a political assassination.

All around us, governments are pushing people around; generally their victims submit, believing the govern-

ments are basically right. We are telling them it's not true. This is heady stuff.

There are people who have lost everything: business bankrupt, wife in an asylum, kids run away and few friends left; all because of some petty bureaucrat's vindictiveness. There are other people with a low tolerance for harassment, who make mountains out of every bureaucratic molehill. When we tell them there's no justification for the wrong that's been done to them, one of them might seek revenge.

If this ever happened, within hours the media would find "Radical Libertarians" to justify it, glory in it, and explain on the evening news how such assassinations are inherent in "true" libertarianism.

To the media, the LP is official libertarianism. With the oath, the LP can either say, "He wasn't one of us" or, "He renounced violence in writing when he joined us." Either way his violence clearly does not represent other libertarians. I for one appreciate this protection.

Tom Porter
Reseda, Calif.

Popeye the Libertarian Man

In one of my recent dreams, the legendary Popeye is seen wandering the corridors of a libertarian convention. He is muttering, "I yam what I yam and that's all what I yam." Soon he attracts a crowd of libertarian hallway philosophers (ever on the lookout for a *celebrity* to run for president) who are fascinated by the implications of his musings.

One of them says, "That's very interesting Popeye, but let's clarify a few points. Are you saying something like A is A, I exist therefore I is, or do you mean simply that you think you're a yam?"

"The Great Oath Debate" (May 1989) had that kind of effect on me. It was, like the discussion in the above dream, kind of silly.

EOW is clearly a good and intelligent man. But like many libertarians (it's happened to me too) he has gotten himself mired in the consideration of hypothetical possibilities that have little or nothing to do with the real world. These bizarre "what if" problems are no different from some of the wacko questions we have all been asked by non-libertarians. "What if you open the borders and the Mexican Army decides to immigrate to California?" Or, "What if one half of a viable Siamese twin wants to commit suicide?"

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Letters Policy

We invite readers to comment on articles that have appeared in *Liberty*. We reserve the right to edit for length and clarity. All letters are assumed to be intended for publication unless otherwise stated. Succinct, typewritten letters are preferred. Please include your phone number so that we can verify your identity.

Reflections

Calling Ronald Reagan — Ok. So I spent the better part of the last eight years badmouthing Ronald Reagan. He wasn't cutting back government, I said. Taxes are actually rising. Restrictions on individual liberty are increasing. The heavy hand of the State is getting heavier.

Even so, sometimes I feel a nostalgia for the old boy. Like when President Bush changed his mind about gun control in response to the deranged murder of 5 school children in California. At first, Bush stood fast, refusing to fall victim to the hysteria. His standing firm against hysteria only lasted a few days. Quicker than the Prez can get Lee Atwater on the phone, Bush relented, using his extraordinary powers to prohibit further importation of so called "assault weapons." The next thing I knew, he was bragging up his war on "assault weapons."

I also feel nostalgia for the Actor when I hear reports about Bush's plan for a new minimum wage. The Democrats want a minimum of \$4.65, with a lower minimum for the first 2 months at a new job. This is more than Bush can stomach. Much better, he says, is \$4.25 per hour, with a lower minimum for six months. This despite the fact that raising minimum wage will *not* benefit low income Americans. One needn't even understand the economics of the free market to grasp this: according to Department of Labor figures, only one poverty-struck person in seventy is actually working at minimum wage, and only one person of every thirteen earning minimum wage is poverty stricken.

But raising the minimum wage is politically popular. Apparently most people fall prey to the logic of "How can anyone support a family on \$134 per week?" The fact that the overwhelming majority of minimum wage earners are young and have no family, work part time or have other sources of income is lost on them. In Washington last year, voters passed a 71% increase in the state minimum wage by a margin of 4 to 1.

Bush probably understands economics and almost certainly knows that raising the minimum wage won't help relieve poverty. But he also knows a popular issue when he runs into one.

Reagan's faults were many. But he stood fast: he opposed increasing gun control, even after he was shot by a Jodie Foster groupie. In fact, he did much to dissipate the post-assassination-attempt hysteria. And his firm opposition to an increased minimum wage kept the issue off the Congressional agenda for eight years.

At last I have found what it takes to make Ronald Reagan look good: George Bush as President.

—RWB

Death and taxes update — You may have thought that one of the few side benefits to an all-out nuclear holocaust was that at least you got to stop filling out IRS forms. Think again.

According to a March addition to the Internal Revenue Manual, as the nuclear dust settles, "IRS operations will be concentrated on collecting the taxes which will produce the greater

revenue yield." Apparently, the IRS intends to begin yanking out the gold teeth of their former fellow citizens, who'll be easy to spot in the dark anyway, glowing brightly for a few centuries.

It is comforting to know that the IRS is prepared for the Big One.

Irradiated taxpayers can expect to confront newly minted IRS form 8741, "Claim for Losses in the Event of a Near Groundburst," and Form 2558, "Request for a Three Month Extension in the Event of Taxpayer Records Incineration" (remember, an extension to file is *not* an extension to pay!), and handy IRS Form 9433, "Documentation of Extraordinary Medical Expenses in the Event of Severe Radiation Burns" (please keep your peeling fingers from sticking to the form!)

According to news accounts, the government's emergency planners expect the IRS to resume tax collections within 30 days or so, after the pocket change has cooled off a few hundred megarads.

—MH

The Panamanian Shuffle — I heard a report on the radio that President Bush announced that he was ordering troops into Panama to "protect the American civilians and soldiers" there. The implications of this presidential action are fascinating: if troops are needed to protect the soldiers, who will protect the troops?

Apparently, the arguments against giving aid to opponents of the socialist dictatorship of Nicaragua don't apply to the right-wing dictatorship in Panama. So the U.S. government is busily trying to organize opposition to Noriega's dictatorship and even willing to back up that offer with U.S. troops.

Ironically, Bush's anti-Noriega campaign is the one course of action that promises to strengthen Panamanians support of their dictator. Now all elements of Panamanian society can unite under the slogan: Yanquí go home!

—RWB

Why not feel sorry for Exxon? — To say that the oil spill has been blown up to hysterical dimensions is a grave understatement. Hysteria abounds everywhere, and everywhere the term "disaster" is freely used. Even Pat Buchanan, who of all the media commentators I thought would be most resistant to the wiles of environmentalism, used that term. The Idiotic Overstatement Award of the Year goes to Alaska Judge Kenneth Rohl, who opined about the oil spill, "We have a man-made destruction that has not been equalled, probably, since Hiroshima."

Hundreds of thousands of innocent Japanese were massacred at Hiroshima; *that's* a disaster. Over the last several months, the Ayatollah's government has murdered thousands of political prisoners; a million Iranians and Iraqis were killed in their late monstrous war; the Pol Pot regime, in the mid-1970s, genocidally massacred one-third of the Cambodian population. *Those* are disasters. *That's* "man-made destruction." In the

Valdez oil spill, not a single human life was lost. Not a single person was even injured.

Furthermore, *those* disasters were intentional; the oil spill was, quite obviously, an accident. *Who* suffered the loss of the oil spill? None other than the Exxon Corporation, which lost ten million gallons of crude oil; in addition to the \$5 million this loss represents, Exxon will be forced to pay cleanup costs, as well as compensation to the economic losses incurred by the fishing industry in Alaska. And so the only loser is Exxon, suffering from the negligence of its allegedly drunken sea captain. So is everyone feeling sorry for Exxon, as I do? Hell no; to the contrary, Exxon has been reviled every day by virtually everyone in the media and in public life. Contrary to government when it commits an accident or similar "externality," Exxon, as a private corporation, must pay the costs it inflicts on others. So what's

What's the problem? Once in a while, an accident happens. Are we to ban all oil tankers because once in a long while a tanker runs aground? Are we to outlaw all shipping because some ships sink? Are we to prohibit all air flights because once in a while a plane crashes?

the problem? Once in a while, accidents happen. Are we to ban all oil tankers, because once in a long while, a tanker runs aground? Are we to outlaw all shipping because some ships sink? Are we to prohibit all air flight because once in a while a plane crashes?

The problem, of course, is that environmentalists don't give a tinker's dam about paying for external costs. They have their own agenda, scarcely hidden any more. Look at all their bellyaching about the poor birds, and the sea otters, and the salmon, etc. Look at their whining, too, about the beauty of the pristine blue water now befouled with black or brown oil slicks. (Well, hell, maybe a coating of black on blue waters provides an interesting new esthetic experience; after all, once you've seen one chunk of blue water, you've seen them all.) The environmentalists are in pursuit of their own perverse and anti-human value-scale, in which every creature, animal, fish, or bird, heck even *blue water*, ranks higher than the wants and needs of human beings. The environmentalists welcome this trumped up "crisis," because they want to shut down the Alaska pipeline, which supplies a large chunk of domestic American oil; they want to reverse the Industrial Revolution, and get back to pristine "nature," with its chronic starvation, rampant disease, and short, ugly, and brutish life span.

Note the difference between the berserker reaction to the Valdez oil spill, and the response to the last great oil spill in 1978, off the French coast, when the Amoco Cadiz let loose no less than 60 million gallons of crude oil into the Atlantic—the worst oil spill in history. There was no hysteria, no screaming headlines, no bellyaching on television. The courts quietly forced Amoco to pay \$115 million to compensate for costs of the accident, and that was that. The reactions were different because, in the meantime, the virus of environmentalism has deeply infected our culture. Arguing on the basis of private firms paying the costs of liabilities they impose upon others is all very well, but, as we see in the smears against Exxon, it is not enough. We must no longer allow the environmentalists to seize, undisturbed, the

moral high ground, and arrogate to themselves the good of the cosmos while the rest of us are portrayed as narrow, selfish, short-sighted, and immoral. There is no greater immorality than deep opposition to mankind *per se*, and environmentalism must be exposed as that kind of immoral and destructive creed. Only then will the party of mankind be able to take back our culture.

—MNR

Motown Mysticism — For the past two years, Detroit has enjoyed the dubious blessings of an urban transport system known as People Mover. Recently, it has become the center of a scandal of sufficient moment to generate shrill editorials from both of the city's newspapers, official outrage from the mayor's office, and a bevy of pronouncements from both real and self-appointed community leaders. Has all this moral passion arisen from the fact that this boondoggle costs four times the highest preconstruction estimate? Because it is crime-ridden, unreliable and little-used? Or perhaps from a realization that the promised rejuvenation of the neighborhoods which it "serves" has not occurred? Nope. None of the above. It seems that someone discovered that a small portion of the steel used in the supporting frames for the track was processed in S***h A****a.

When this news first broke, a friend remarked to me, *as a joke*, that the contractor would probably be made to identify the exact portion of the steel that came from the Bad Place and yank it out. Ah, but in this age of synthetic political rage such things are not jokes. The contractor did in fact have to remove the offending girders and put in moral replacements. (The nationality of the new beams was never disclosed. Probably Albanian).

I have two questions about all this. First, can steel be exorcised? If you melt down bad steel and reshape it into new sections, does it become good steel? Is the evil therein part of its *essentia* or merely of its *accidens*? I'm going to have to pore over the *Summa Theologiae* on this one. Second, doesn't this whole matter represent a belief in witchcraft?

The entire episode is totemistic and puerile. To reduce moral dudgeon to such an imbecilic and pathetic level robs it of any general power and makes all concerned seem like canting hypocrites.

—WPM

The times they are a changin' — Free expression on college campuses is coming under increasing attack, not from a reactionary faculty, but often from students themselves. To add irony to injury, the tool they are using to restrict the expression of their peers is the ancient enemy of student speech, "community standards." Stanford, the University of Michigan, Emory, the University of Wisconsin and the University of Massachusetts at Amherst have taken or are about to take action to restrict forms of expression considered offensive, in an attempt to promote, of all things, tolerance.

A draft amendment to the code of student conduct at Stanford seeks to ban any remarks "directly addressed" to people "expressed in words, pictures or symbols that are commonly understood to convey, in a direct and visceral way, hatred or contempt for human beings of the sex, race, color, handicap, religion, sexual orientation or national and ethnic origin in question." (This was revised from an earlier, more virulent version.) Canetta Ivy, a Stanford junior serving on the three-member Council of Presidents that heads the university student government, illustrates the audacity of the anti-free-speech movement. "We don't put as many restrictions on freedom of speech as we should," she claimed. "What we are proposing is not completely

in line with the First Amendment . . . I'm not sure it should be. We at Stanford are trying to set a standard different from what society at large is trying to accomplish." (The proposal is meeting some resistance from the Stanford faculty and the ACLU.)

The notion that through restrictions one finds tolerance is in the tradition of Orwellian "double-think." The measure is designed to keep hate-groups like the Klan and the Neo-Nazis away from campuses. Since far-right crazies rarely venture onto campuses anyway, the real victims of this sort of regulation will be those students who have an alternative viewpoint that may be branded as "hateful" by those who wish to prevent them from speaking or going to press. Is opposition to affirmative action a position that expresses "hatred" or "contempt?" Some might think so. The results of such measures will be a classic chilling effect on students who would rather play it safe than court retribution.

In a related case, a student at Tufts University faced disciplinary charges for selling a T-shirt on campus that offered "Ten Reasons Why Beer is Better Than Women at Tufts." The student had offended community standards, according to campus feminists—though the fact that he had sold over five dozen shirts before he was apprehended brings that claim into question. After consultation with legal authorities, the charges were changed. The content of the shirt was no longer a factor. Instead, the administration charged the vendor with selling T-shirts "for profit" without permission.

If community standards are to have any meaning, they must be open to challenge. Campus reactionaries seek to institute an administrative status-quo based on what they currently believe to be accepted norms. They ignore the questions: Accepted by whom? If the community believes something, why must it be protected from those who dissent? Presumably the standards can defend themselves.

In fact, those who would restrict free expression, whether they come from the left (like today's advocates of intolerance) or the right (like McCarthyites of the 1950s), see freedom as a process that is desirable only for attaining their own goals. Once their goals are met, freedom becomes a potential threat. Perhaps it is the purveyors of this sort of thinking who need a lesson in tolerance.

—JSR

Customary mediocrity — A few weeks ago, I came upon a group of shelves labelled "Government Publications" at my local library. Mostly they were filled with goodies like "Biannual Report of the President's Select Commission on Salmon Canning" and "The Radish—New Perspectives." One item, however, seemed more promising. *Customs Today* is the official quarterly magazine of the United States Customs Service. Although *CT* is obviously available to the public, its contents are clearly intended to be read almost exclusively by customs officers. My curiosity piqued, I perused the last few issues. The most interesting portion consisted of round-table discussions among customs officials and U.S. attorneys. They dealt mostly with drugs and pornography. In one case, then Attorney General Edwin Meese III was a participant.

These seminars had two common characteristics. On the one hand, the intellectual quality is quite low. All manner of myths and folk beliefs float like a miasma over the lucubrations of these federal policemen. All of them seem to just *know* that pot leads to heroin, that child pornography leads to child molestation, and pictures of naked women lead to rape and murder. Phrases such as "We can't prove this, but everyone

knows it instinctively" and "Maybe one particular guy hasn't actually committed this crime yet, but you know he's headed in that direction" abound. There seems to be no cognizance of the broader world of criminological scholarship, no recognition of any other possible point of view. The exchange of ideas remains at the barroom level.

The second characteristic that impressed me is the total lack in these discussions of any idea of the legitimacy of civil liberties and procedural safeguards. Instead, there is a chilling hostility to all constitutional restraints. The attitude is comparable to that of a burglar toward burglar alarms—they are seen simply as obstacles to overcome. The difference, of course, is that a burglar's goals are quite limited; he does not typically claim to be acting as the moral guardian of the community.

What I'm trying to convey is my sense of shock that all of these high-level discussions about important issues affecting our lives and our liberties seem to have taken place on such a medio-

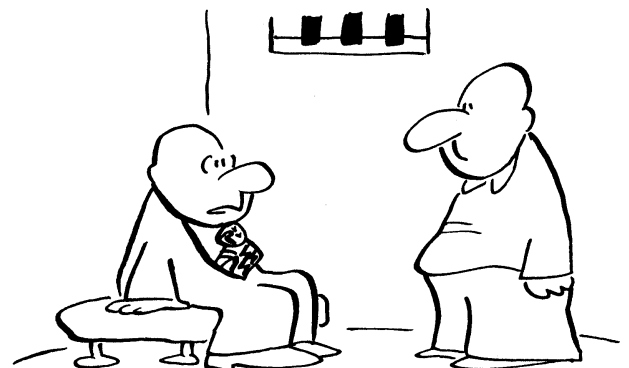
All manner of myths and folk beliefs float like a miasma over the lucubrations of these federal policemen. All of them seem to just know that pot leads to heroin, that child pornography leads to child molestation, and pictures of naked women lead to rape and murder.

cre level. It is as if the whole Anglo-Saxon classical liberal tradition does not exist. The operational viewpoint is purely that of statism and positive law. Or, to put it more crudely, we don't like these people and we don't like what they do and read and smoke, and we're going to crush them.

Can anything be done about this situation? Should those of us who value liberty start an "outreach" program to "educate" such people? Now you tell me one. No, I am merely giving warning that, should you find yourself in a confrontational situation with a typical federal officer, don't expect to be dealing with Thomas Jefferson.

—WPM

Inexhaustible fusion energy and the environmentalists — The scientific world has been set agog by the biggest scientific news in years: the possibility that nuclear fusion energy has been produced at room temperatures—as has been reported by two University of Utah chemists. Teams of scientists all over the globe have been rushing to try to replicate the experiment, because, if true, it means a virtually inexhausti-



"My necktie violated local community standards!" Baloo

ble supply of cheap energy. The resource is sea water, and the equipment is no more complex or expensive than a kitchen laboratory. The prospect is joyous for mankind, for this means an enormously higher standard of living for all, and an end to the spectre of the disappearance of energy that has been highly touted in recent decades.

You would think that the environmentalists would be happy, too, especially because nuclear fusion, unlike fossil fuels, is virtually pollution free, and, unlike nuclear fission, causes no toxic waste that is difficult to dispose of. But, shockingly, you

Paul Ehrlich, long-time worrier about the "population bomb," complains that the prospect of cheap, inexhaustible power is "like giving a machine gun to an idiot child." The fact that such power is clean, we are told, is "beside the point." It only means that man, dammit, will use more rubber tires and employ "non-polluting" bulldozers to knock down trees.

would be wrong. Instead, our beloved left-environmentalist leaders are, as usual, wringing their hands in anguish. Washington author Jeremy Rifkin laments: "It's the worst thing that could happen to our planet." And Stanford biologist Paul Ehrlich, long-time worrier about the "population bomb," complains that the prospect of cheap, inexhaustible fusion power is "like giving a machine gun to an idiot child"—that's *us*, folks. [Paul Ciotti, "Some Find Research Troubling," *LA Times/Washington Post*, April 23.] The fact that such fusion power is clean, charges Rifkin, is "beside the point." For this only means that man, dammit, will use more rubber tires, and employ "non-polluting" bulldozers to knock down trees or "build housing developments on farmland."

This latter point is an interesting one: somehow, farmland, because it is, I suppose, closer to nature, is good, at least vis a vis housing, which provides shelter for *people* (Ugh!) The fact that farmland, as productivity increases, becomes increasingly more useful for urban or suburban activities is, of course, disregarded by environmentalists. Environmentalists cannot be expected to be interested in whether a resource is used economically or not, for what is "economic" is using that re-

source most efficiently in supplying people's wants. Environmentalists are not interested in supplying people's wants—quite the contrary.

In fact, as Mr. Ciotti puts it, "worst of all" about the possibility of fusion power, to the environmentalists, is that "cheap inexhaustible energy would let the planet support many more people than its current population of 5.2 billion." There we have it: the environmentalist creed is fundamentally animated by a hatred of people, by hostility to the human race. —MNR

A minor complaint — I kind of like the slogan of Libertarian International: "A United Nations without the Nations." Only trouble is, it still leaves the "United" part in. —EOW

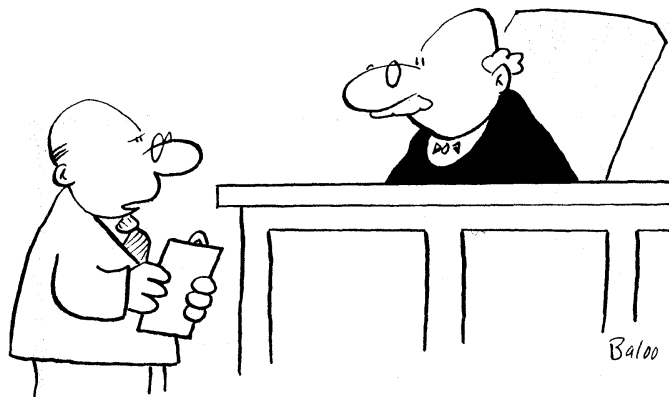
My Congress, Wright or Wrong — It was 1973 and things were looking grim for John Paul Mack. He was the manager of a discount store when Pamela Small, a 20 year-old black college student, came in to buy some window blinds. He told her to follow him into the storeroom, where he grabbed a hammer and bludgeoned her with it five times, exposing her skull in several places. He then stabbed her repeatedly in the chest and shoulder with a steak knife and slit her throat. He hauled her body into her car and, believing her dead, went to a movie. Ms Small recovered and identified John Paul Mack. At first he denied everything, but after failing a lie-detector test, he confessed to what he called a "mistake," explaining that, "I blew my cool for a second." He plea-bargained the charge to "malicious wounding" and was sentenced to 15 years in jail.

But John Paul Mack was lucky. His brother was married to the daughter of Congressman Jim Wright of Texas. In 1975, Wright pulled a few strings, entirely legally, and got Mr. Mack released to a job as a file clerk in Mr. Wright's office. So John Paul Mack never served a day of hard time for the brutal assault he committed.

Instead, he served the public. As Jim Wright's career advanced so did Mr. Mack's. Congressman Wright's staff has always been characterized by high turnover, probably the result of Mr. Wright's unwillingness to trust even his most loyal staffers. But Mr. Mack stayed on the job, and gained the confidence and trust of Mr. Wright. According to *The Wall St Journal*, he "became almost a son" to the Hon. Mr. Wright, who takes considerable pride in Mr. Mack's achievements as a public servant. When Congressman Wright ascended to the position of Speaker of the House, he named Mr. Mack Chief of Staff of the House Democratic Steering and Policy Committee, where he earns \$89,500 per year. "He's my best friend," Mr. Wright says, "he's really my brother."

The story of Mack's brutal assault first surfaced two years ago. But an aid to Wright called in several influential reporters and convinced them that running the story would only hurt the rehabilitated Mack. Tony Cuelho, House Democratic Whip and a golfing buddy of Mack's explained that he had done his penance: besides serving 27 months in the county jail before Wright sprung him, "he had worked to pass some very caring bills."

John Paul Mack's luck ran out the first week in May. The *Washington Post* ran a story on his background, including an interview with the victim. The brutal nature of the attack was underscored with photographs of the wounds. Several Democratic



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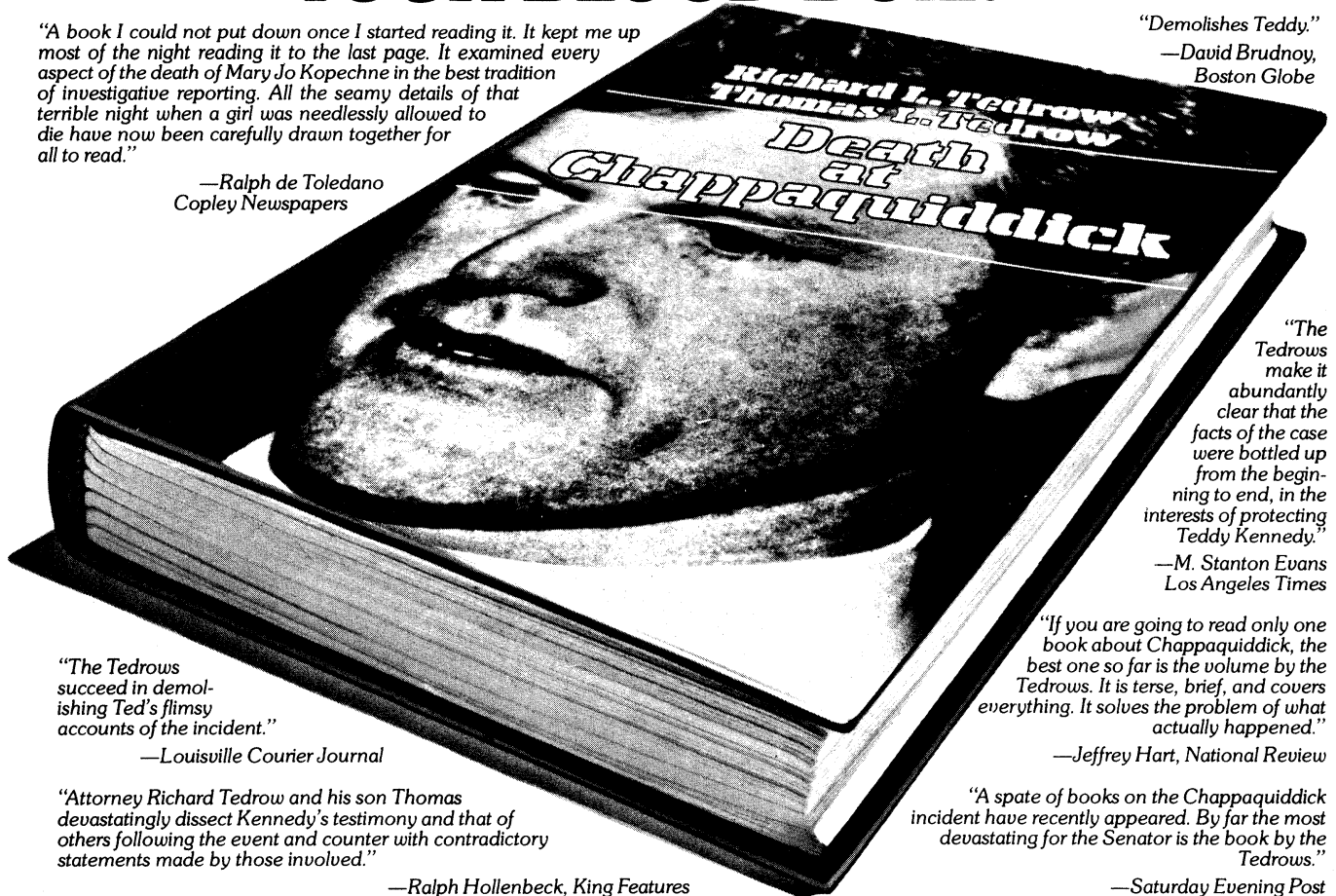
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Congresswomen called for Mr. Mack's resignation. Mr. Mack again acknowledged that it had been a "mistake" to bludgeon and stab the woman and leave her for dead, and resigned his office to save future embarrassment for the Hon. Mr. Wright, who accepted his resignation with regret.

Ultimately, the Mack revelations and resignation will be a minor footnote in the career of Congressman Wright. His critics have a much larger fish to fry than John Paul Mack.

The Ethics Committee's investigation of Mr. Wright has uncovered substantial evidence that Mr. Wright has taken specific actions to transfer money from the pockets of taxpayers to the pockets of his friends, and that these friends have generously given Mr. Wright substantial campaign contributions, a job for his wife at which she is not required to work, a condominium, a Cadillac, huge loans, large sums of money channeled to him through corrupt business deals, purchases of huge quantities of the "book" the Hon. Mr. Wright had written as a means of getting around legal limits on the payments to Congressmen, etc. Further examples of the corruption of the Honorable Speaker of the House are in the newspapers almost every day, and there is no need to recapitulate them here.

For a variety of political reasons, the Hon. Mr. Wright won't likely survive. But in the meantime, three observations are in order:

1. If evidence of a corrupt bargain is required to remove the Hon. from the Hon. Mr. Wright's name, then the chances are good that he will be Hon. for a long time. Contemporary politicians have long since learned to avoid making specific deals. Instead, they make their transactions in a primitive way: you do me a favor (say, enable real estate developers to buy S&Ls and loot them leaving the taxpayers to make up the depositors' losses) and I'll do you a favor (give your wife a job at which she is paid without working), without any explicit arrangement. So the Hon. Mr. Wright wastes a few billions of taxpayers' dollars because, he says, he thinks it is good public policy, and his enriched pal gives Mrs. Wright a job for \$18,000 a year and a Cadillac to drive because, he says, it is smart business to hire people and not require any work.

2. The reason that Congress is so corrupt and so corruptible is that it has so much power. So long as voters grant vast powers to Congress, powers to tax, to spend, to control people and their property, it will be in the interest of some to buy influence over individual Congresspeople. These deals will be made on an explicit, businesslike manner, if the law allows. But if not, they will be made with the terms not spoken. The deals may be disguised, but so long as Congress has power to give or withhold vast benefits, the deals will be made.

A century ago, Lord Acton's observation that power corrupts and absolute power corrupts absolutely was profound. Today it is obvious and even trite. The reason is simple: the growth of the power of government has increased the payoff for corruption.

3. There is a cruel irony in Speaker Wright's defense that in hiring Mr. Mack he was giving a second chance to a man who has made a mistake. "There's a meanness out there, a feeding frenzy," Mr. Wright commented upon accepting Mr. Mack's resignation. If calling for the resignation from high public office of a man who committed a particularly brutal and vicious act is motivated by "meanness," then what is the proper way to characterize the motives of the Hon. Mr. Wright when he tried to get the Federal Home Loan Bank to fire an attorney because he was homosexual? (It was, of course, only incidental that the attorney

was investigating the financial shenanigans of Mr. Wright's friend and benefactor.) —RWB

Finders, Keepers? — If animal-rights militants get their way, bacon double cheeseburgers and vellum editions of *Atlas Shrugged* will soon become endangered species. Animals have rights, and there are things no person or group may do to them (without violating their rights). Presumably these things include killing an animal solely in order to make use of its body parts.

But what if the animal in question just happens to have a fatal accident? If I come along at a lucky moment (lucky for me, that is), I'm surely in the clear if I allocate the deceased's mortal remains to the satisfaction of my wants, even my animal wants. Although a few philosophers believe that human cadavers have

Stopping the killing of animals won't mean that we have to give up Rhogan Jhosh or Boeuf Bourguignonne, or even black leather straps and rhinoceros-hide whips, though it will mean that the prices of these necessities of elegant living will rise dramatically.

rights (such as the right not to be desecrated), no one, as far as I know, has extended this to animal cadavers.

But why wait for the lucky chance? Some far-sighted entrepreneur should get ready for the era of animal rights by establishing computer-monitored game reserves. These would be like regular nature reserves, except that every square meter would be kept under close observation by TV cameras. Within seconds of an antelope choking on a thistle, a gnu falling over a cliff, or a wombat being struck by lightning, robot paramedics would zoom up to certify brain death, then robot butchers and robot furriers—or perhaps at first just a robot refrigeration unit—would move into action.

So stopping the killing of animals won't mean that we have to give up Rhogan Jhosh or Boeuf Bourguignonne, or even black leather straps and rhinoceros-hide whips, though it will mean that the prices of these necessities of elegant living will rise dramatically. Possibly the moralists will decide that we may help a few mortally wounded or incurably sick beasts on their way out of this vale of tears, just as we do with humans, which would somewhat enhance the supply of meat, fur, leather, bonemeal, insulin, goose down, and so forth.

There's one serious complication. Most animals who die naturally don't fracture their skulls running into trees. They die at the claws of other animals. At the point where they step out of time and into eternity, they are someone's brunch, and that someone is salivating as copiously as Professor Rothbard contemplating the prospect of an agnostic novelist having his brains blown out. Isn't it an infringement of the predator's rights to filch the prey with which that predator has mixed her labor?

It would be feasible to keep a supply of surrogate cadavers ready, cunningly confected out of soybeans and chickpeas. The robots could swipe the real corpses and swiftly substitute fake ones. They could even do something to hypnotize the thwarted predator so that she didn't know what she was missing. But is any of this morally defensible? It is heartless to feed a naturally

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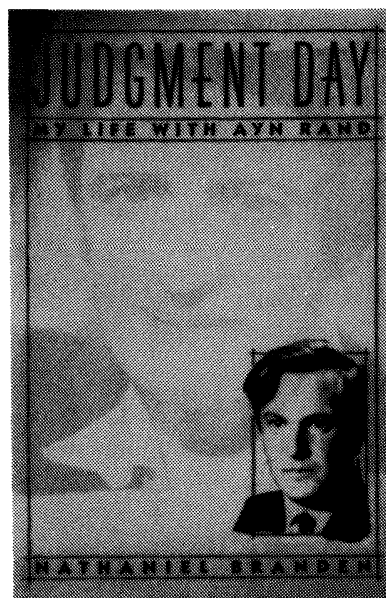
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meat-eating animal on leguminous mush (except of course when that animal is human). Surely not even an animal-lover could be such a brute as to force his cat to be a vegetarian, for instance.

The problem may one day be partially solved by genetic engineering. We might be able to raise cows, pigs, bears, and minks, entirely without nervous systems. It would then be OK to use the fur and the meat, since "cultured" flesh, without consciousness and without the capacity for pain or pleasure, is, I guess, bereft of rights. As bacon, a cultured pig really might go to meet its maker. Even a taste for human flesh could ethically be catered for in this manner.

But since meat is muscle, and no doubt requires at least a spot of occasional exercise to develop the appropriate bouquet, a two-tier pricing system may develop, with "cultured meat" underselling "found wild meat." Snobbery being what it is, you would be able to buy cultured meat treated to appear as found wild meat, and perhaps a carefully crafted imitation pelt could be left lying by the kitchen door, to give the guests a favorable impression.

—DRS

Son of Heaven, or whatever — Did you ever notice that the only time Reagan ever got into trouble with the press was when he did something right? Two occasions, one trivial and one profound, spring to mind. The first was when he said that without women, men would still be wearing animal skins and clubbing each other over the heads. Could anything be more self-evidently true than that? Nevertheless, he was widely criticized, not so much by feminists, I imagine, as by the lickspittles thereof.

But to the more profound . . . Reagan went to Bitburg, and honored the memory of a bunch of poor fall guys who got drafted into the German Army and blown away in the war. Reagan said that they were victims of Nazism. They sure as hell were, as anybody who has gotten that cute little "Greetings" notice from Uncle Sugar can substantiate. Of course, that statement caused a lot of people to froth at the mouth, despite its undisputable truth. The German draftees, unlike some Vice Presidents I could name, didn't have any choice in the matter . . . which leads me to another Vice President (he'll always be Vice President Bush to me) and another funeral:

Reagan went to Bitburg, and honored a bunch of poor fall guys who got drafted into the German Army and blown away. He said they were victims of Nazism. They sure as hell were, as anybody who has gotten that cute little "Greetings" notice from Uncle Sugar can substantiate.

Whereas Reagan honored some dead soldiers who were never in a position to make any choices about their fate, Bush has, by his attendance at a funeral, legitimized the bloody reign of Hirohito. Yes, I've heard all about how it wasn't Hirohito who planned the war and the atrocities and so forth, but the fact remains that he endorsed it all, approved it all, sent congratulatory telegrams to victorious admirals, and never, to my knowledge, made the slightest gesture to ameliorate the brutality of the Japanese war machine. (He could have resigned as

Emperor, you know. That would have been dangerous, you say? No more dangerous than it would have been for your German kid to turn down the opportunity to join the Wehrmacht.)

Interestingly, all this took place without a trace of outrage from the press or anybody else. There's a double standard at work here or something. It's more or less all right, it seems, to be hostile to Japan in general, or at least to the businessmen and workers there who are competing with us, most of whom were born after the war and can bear no blame for it. But there's a sort of perception that it would be dirty pool to hang any of this blame on Hirohito. The only way I can explain it is that the government-media-academia establishment can't get over its rapture in the presence of political power. Thus, Hirohito is held blameless, not in spite of the fact of his political responsibility, but because of it. The poor grunts in the German army, I suppose, should be denied all human compassion, let alone honor, while the carcass of a murdering hereditary emperor is laid honorably to rest in the presence of giddy worshipfulness from heads of state and other pimps and parasites from all over the civilized world.

—RFM

Artifactual Catch 22 — In the March issue of *National Geographic*, Harvey Arden makes an interesting point about private trade in Indian artifacts: "Most of these pieces are what archaeologists call 'without provenance'—no record of the physical context from which they were dug. Hence, they are nearly useless for the interpretation of history. Literally, pieces lifted from the puzzle of our common past, never to be fitted."

The solution, Mr Arden argues, is to increase the penalties for unearthing artifacts without authorization of the government, pointing to a recent case in Kentucky where "public outrage" over private archeology had resulted in a new law making searching one's own land for artifacts a felony.

Curiously, it apparently did not occur to Mr Arden that the reason artifact collectors and traders do not label the provenance of their artifacts is that by doing so, they would risk confiscation of their artifacts and possible imprisonment, under the same laws that Mr Arden advocates strengthening.

—RWB

Atlas Schwartzed — I recently had the pleasure of witnessing a public performance by Peter Schwartz, an official spokesman for the Objectivist Rump. "The Virtue of Selfishness" was the topic of his performance, according to the advertisements placed by the Harvard Students of Objectivism. But the ads skimmed on details, so I didn't know what to expect.

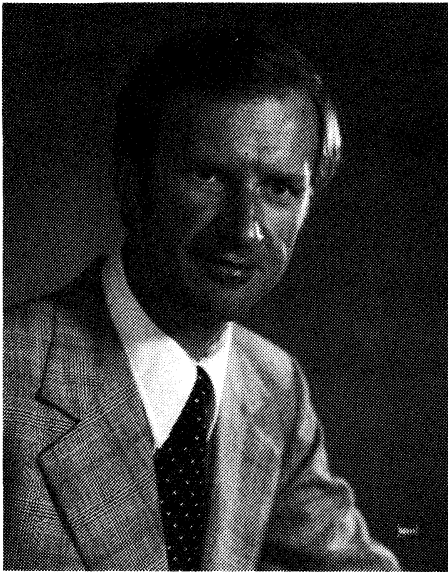
Perhaps it would be a free-wheeling discussion of Objectivist topics, I thought. Or a confrontational experience with an audience half-filled with Harvard Marxists denouncing Capitalism, Property and Aristotle himself.

It turned out to be something quite different—a dry rehash of Ayn Rand's thoughts read from notes and presented in excruciatingly precise terms. The deathly dullness of his monologue was enlivened only by its irony: the selfish person, he advised, "lives not by looting nor by mooching off of others . . . He produces his own values . . . As Ayn Rand says. . ."

And so his defence of the importance of thinking for oneself wore on, consisting almost entirely of quotations cribbed from Ayn Rand's writing. There was nothing that a perusal of Rand's writings would not reveal. Schwartz's performance underscored the stagnation of Objectivist thinking since Rand's death.

"I am committed to a more successful Libertarian Party."

—Matt Monroe



"The growth the LP has achieved has been the result of the dedication, generosity and hard work of our members, and the vision of our ideas. But for far too long, LP members have tolerated conditions that hinder the growth of our movement. The National LP has been characterized by in-fighting, bureaucratic waste, and outright incompetence.

It is time for the members to take control of the National LP, to use it as a tool for furthering our goal of Liberty. The LP needs sound management, competence and professionalism. That is why I am running for LP Chairman. There is work to do, and I want to see it done.

Here is a brief summary of what I believe the LP can accomplish:

- Increase membership from its current level of 6,800 to 10,000 by 1991.
- Increase revenues to \$40,000 per month from the current level of \$25,000 per month.
- Obtain ballot status in nearly all states prior to 1992, so we can concentrate our efforts on the campaign.
- Reform the National Office so that it provides assistance to state and local parties in a competent and cost-efficient manner.

To achieve these goals, I think we should do the following:

1. Management for Growth: Hire the best people we can find to manage the LP National Office, with a high priority on efficiency, competence, and reliability, so that we can achieve our goals.

2. Reduce the size of the National Committee to no more than 15, and encourage it to act as a Board of Directors overseeing LP activities, rather than a mini-legislature complete with bickering and infighting.

3. The LP 2000 Program: In the next century, the LP will be led and run by the people we recruit in the next few years. Now is the time for us to begin an active student organization, to develop recruiting campaigns, and to organize student conferences.

4. The Permanent Campaign: full-time professionals doing the work so far done only in election years: ballot access, lobbying, public speaking, candidate development, etc.

Achieving our goal of Liberty requires a lot. I am convinced that we can make substantial progress. To achieve that goal, I am committed to work with every element within the LP and the libertarian movement."

—Matt Monroe

A Record of Achievement

As Texas LP Finance Chairman (1980-82):

1981: developed Independence Pledge program.

Result: raised more than \$200,000 for Texas LP since 1981.

As National LP Finance Chairman (1982-85):

1982: developed Liberty Pledge program, modeled after program in Texas.

1983: implemented professional telephone fundraising efforts.

1983: implemented regular, profitable direct mail fundraising campaigns, financing initial efforts out of his own pocket.

1984: developed the Torch Club for \$1,000 donors to attract and honor those who make larger gifts to the LP.

1984: instituted regular program of postpaid inserts in the *LP News* for fundraising.

Result: LP revenues increased 24% by 1984, reaching all-time high, excluding Koch-influenced 1980. (Since Monroe's tenure, revenues have fallen by 23%.)

As National LP Membership Chairman (1987-89):

1987: implemented the "instant membership" program advocated by Russell Means, printed and paid for 30,000 instant membership cards for prospective members; resulting in nearly 3,000 instant members.

1988: personally financed membership programs when National LP failed to provide promised funding.

1988-89: organized and mailed lists of prospects and new members to state organizations, co-ordinated and facilitated membership activities at the state level.

Result: National LP membership up 23% since 1987.

Yes! I want to help build a more successful Libertarian Party. Send me information on your program for the Libertarian Party and your race for Chairman.

Name _____

Address _____

City _____ State, Zip _____

Phone (day) _____ (evening) _____

Dr. Matt Monroe 1213 Hermann Dr, #655 Houston, TX 77004

Wanted:

One helluva good writer, new or used...

...to share the load in writing the *Silver & Gold Report*.

If you get the job, you'll be working for the toughest, most demanding editor you've ever seen. You'll work hours you wouldn't believe—and you'll learn things about writing and the silver and gold industry you wouldn't believe.

If you do a good job, you'll probably be hated by half of the hard-money industry. And you'll be proud of it, because so many of them are sleazeballs it's an honor to be hated by people like them.

I'm leaning towards a heavyweight writer whose ego is still smaller than his or her typewriter. But I'm not unwilling to take a chance on a bright trainee.

Age means nothing to me. The two best writers I've ever had came to me, the one as a twerpy teenager, the other as a 70-year-old retiree. Likewise, race etc. are totally irrelevant. It's what's between your ears that counts!

Good pay, good incentives, and a congenial working atmosphere. No moonlighters, no freelancers, please. If you really want the job, write me a letter at 251 Lafayette Circle, Suite 310, Lafayette, CA 94549. Explain what you're looking for from the job and convince me you're the person for the job.—D. Rosenthal

We were not there to hear Peter Schwartz. We were there to hear Ayn Rand, as narrated by Schwartz. He delivered the gospel in clear monotones, enlivened only by sporadic attempts at sarcasm; occasionally he stumbled over the notes, but quickly recovered. He showed nothing approaching joy in his task; his visage held the hard edge of an ideal Randist hero or Soviet *politruk*.

The deathly dullness of Schwartz's monologue was enlivened only by its irony: the truly selfish person, he advised, "lives not by looting or mooching off of others. He produces his own values. As Ayn Rand says . . ."

During the question and answer period the tone switched from intellectual pedantry to downright indoctrination. His style was abrasive, didactic—not surprising, I guess. He began most answers with an instructive comment or two—"You have made two flaws," "You proceed from an incorrect concrete," "You must define your terms"—and proceeded to define the questioner's terms or to correct his flaws or concretes before providing the proper response from the Gospel according to Ayn.

I don't want to be hostile. This was a group of well-meaning people, even down to the fellow in the back who offered some Marxist criticism (which Schwartz was quick to label gratuitously). I'll bet that the Harvard Students of Objectivism have interesting, open and informative meetings. But I saw or heard nothing from Schwartz to convince me that the criticisms of the Rand inner-circle are anything but true; in other words, they flow from correct premises, and affirm that A is A. —JSR

Hungary for change — Zita, Empress of Austria, Queen of Hungary, died this spring at the age of 96, last of the European rulers swept away by the Great War. I used to be fond of mentioning Zita to students in my early-twentieth-century literature courses. Naturally, they had never heard of her, but the mere fact of her continued existence was a lesson in historical consciousness. It demonstrated how close we still were to that strange pre-war world, the world of *The Wasteland*, Part 1, the world in which admirals wore ostrich plumes and to be a grand duchess meant something and my midwestern grandfather bought pictures of imperial coronations for his stereoscope.

One world ended in 1918; another may be ending now. If the Soviets withdraw from the fractured zone of Europe where Zita once ruled (and it is by no means certain that they have started to withdraw), a number of things may happen. A de-NATO'd and de-Warsaw'd Europe may fall under the hegemony of a re-constituted Germany, or be abjectly Finlandized. Revivals of national independence may set Hungary at the throat of Rumania, Yugoslavia at the throat of Albania, Poland at the throat of all her neighbors. A literal application of Solidarity's economic principles may keep eastern Europeans as poor as they have been under Stalinism, or invite military dictatorships. Or a free Europe may once again lead the world in cultural and economic progress.

Do North American libertarians have anything interesting to say about these interesting possibilities, or are we content simply to wish that the U.S. would desist from entangling alliances—a wish still older and more honorable than Zita, but hardly

a full and sufficient response to the complexities of international relations? Has libertarian foreign policy made any advances in the past 96 years? —SC

Lies my allies told me — On March 9th, *The Independent*, London's latest quality daily and, it seems, worthy of its name, published an article under the headline, "Churchill 'knew of Japanese plan to attack Pearl Harbour.'" The writer, Nick Cohen, reported on a new book, *Codebreaker Extraordinary*, the memoirs of Eric Nave, written with James Rusbridger. Nave was an officer at the British Code and Cipher School, based first in Hong Kong, later in Singapore. After the war, Nave served as director of Australian counter-intelligence. Rusbridger was an officer with MI6, in Britain.

What Nave and Rusbridger reveal is that by 1940, the British had broken Japanese naval code, JN-25. According to the authors, "The [British] Far East bureau knew that the [Japanese] task force had sailed from the Kuriles on 26 November, refuelled at sea eight days later, so a little work with the relevant charts placed the task force off Hawaii on 7 December." All information received was of course immediately and continually forwarded to London. Capt. Nave writes: "I naturally assumed that Churchill had ensured that all these vital decrypts were being shared with his great friend and ally Roosevelt and that by now [December 1] the Americans were well aware that a Japanese task force had been in the Pacific for over a week and that an attack was planned for 7 December either against Hawaii or the Philippines . . . [Upon hearing of the attack], what I could not understand was how the Americans could be so unprepared when the British had such a wealth of accurate intelligence available about Japan's plans."

Nave and Rusbridger raise the question: "Did Churchill want to bring America into the war so badly that he deliberately concealed from Roosevelt the news that the task force had sailed and that an attack would be launched on 7 December 1941? Is [this] the reason why to this day the British government will not permit any official disclosure about FECB's abilities against JN-25 prior to December 1941?"

"Did Churchill want to bring America into the war so badly that he deliberately concealed from Roosevelt the news that the task force had sailed and that an attack would be launched on 7 December 1941?"

According to *The Independent*, posing that question has led to the suppression of the book. A prominent British publisher, Bodley Head, cancelled publication plans after being informed by the authorities that revealing signals intelligence, even after fifty years, would be a violation of the Official Secrets Act. To have ignored the government warning would have meant an expensive law suit for the publishing house. As *The Independent* notes, "when the new Official Secrets Bill becomes law," such a law suit will be "unwinnable" for the defendants.

The reason for this is that in Margaret Thatcher's new version of the notorious law, according to *The Economist* (March 11), criminal sanctions will now apply to current or former civil servants who release information that "damages the interests of the United Kingdom abroad"; such sanctions will also apply to cur-

rent or former members of the secret services who release even information that damages no party at all; and, most important, the defense of acting in the public interest will in all cases be abolished. Thus, all the dirty secrets, little and big, of the bureaucrats will be safe from the public, presumably forever.

I hope that *Codebreaker Extraordinary* finds a publisher in the United States, and soon. In the Soviet Union *glasnost* is producing amazing historical revelations by the authorities; for instance, the admission that the estimated 200,000 to 300,000 persons killed at Bykovnia, outside of Kiev, were the victims not of the Nazis, as previously maintained, but of Stalin's security forces (*New York Times*, March 25). Isn't it time for some *glasnost* in the West on Pearl Harbor, British and American war-crimes, and other hitherto taboo questions? One possibility that Nave and Rusbridger do not canvass and that could be discussed once their book is available is, of course, that Churchill did inform Roosevelt of the impending attack. —RR

Providing for the General Welfare Dept.

— Effective January 1, 1989, the federal government ordered all nursing homes to turn away mentally ill and retarded patients or risk losing their government certification. This edict applies not only to federal-state Medicaid patients, but also to private patients who are paying their own bills to the nursing homes.

According to tax funded humanitarian Terry Coleman, Deputy Administrator of the Federal Health Care Financing Administration, the measure was promulgated because our caring government does not approve of housing the mentally ill and retarded in nursing homes; by prohibiting them from nursing homes, the Feds hope to force the States to provide other facilities.

Great.

The federal government is kicking helpless people out of places where they are cared for, sometimes at their own expense, in order to force other levels of government to provide care according to the specifications of our caring federal government. The legions of mentally ill and retarded roaming the streets will presumably spur the states into action. Asked about what happens to the unfortunates who are kicked out into the cold bureaucrat Coleman said, "the law doesn't answer it."

Coming next: The federal government shuts down grocery stores and restaurants to force the states to feed the hungry . . . the federal government shuts down hospitals to force the states to provide medical care for the indigent . . . that's the ticket!

—MH

Investing in freedom — A few days ago, I was talking to an old friend about politics. He brought up the subject of the Libertarian Party. He expressed annoyance at those who support liberty but are not involved in the LP. He told me how he had worked in various LP campaigns and how he believed that his work was effective in advancing libertarian ideas.

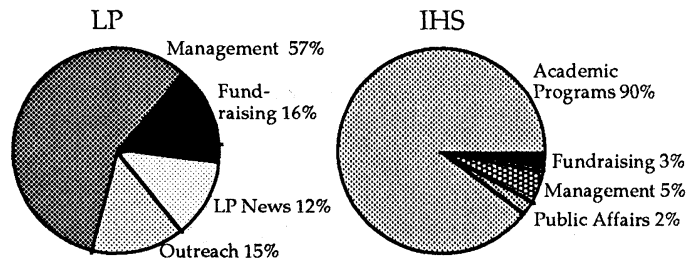
I was surprised to hear him say, as our conversation proceeded, that he never makes financial contributions to the LP. "This seems very strange," I said. "Why don't you put your money where your mouth is?"

"I work hard for my money," he replied. "And I don't want to waste it. The national LP spends practically nothing on outreach or political activity. Almost all the money it raises is used to pay the overhead. I give my money to specific campaigns and to other libertarian activities where I feel it is better spent."

This seemed amazing to me, so I checked it out. I was surprised to learn that my friend had been right. In fact, out of every dollar given to the national Libertarian Party, only 16¢ is spent on outreach or politics. The remainder goes for fund raising expenses and national office overhead.

Now I realize some overhead expenses are quite high, and that in a small organization such fixed overhead expenses are bound to be a larger percentage of expenses than in a large organization. It is simply a matter of economics of scale.

But even so: when only 16¢ of every dollar goes toward the stated purpose of the organization, I think something is wrong. I don't know exactly what the problem with the National LP is, but I suspect it involves inefficiency, political in-fighting, bureaucracy and just plain waste. Other libertarian organizations are much more efficient. For example, the chart below shows the breakdown of the Institute for Humane Studies spending for 1988, compared with the Libertarian Party.



There may not be much I can do about the problems with the National LP, but one thing I can do is take the course of action that my friend follows: channel my cash contributions to organizations that get more bang for their buck. In the meantime, I think that if the LP is ever going to be an effective organization, it needs a radical change in its management. —CAA

But at least they unplugged Dan Rather — Some provisional lessons of Tian An Men Square:

1. A tyranny that cannot control everything is remarkably close to controlling nothing.
2. When a tyranny goes to seed, it becomes a committee. China is a billion-member committee.
3. The committee of the Peoples Republic of China closely resembles that of a large American university. Making changes in a large American university is like moving a cemetery.
4. What people are willing to fight about is not the same as what they are willing to acquiesce in. The gap between acquiescence and violence is the space in which political maneuvering takes place. In China, the space broadened, then narrowed. This is a pre-revolutionary situation.
5. Revolutions occur when expectations have grown great, not when conditions have grown worse.
6. Mao was right to be scared.

—SC

That was then, this is now — "Drop Ayn Rand, leave Objectivism alone. We do not want you." With those words, Leonard Peikoff has expelled philosopher David Kelley from the Objectivist movement. Kelley was found guilty of consorting with libertarians. Among the crimes cited by Peikoff is that Kelley autographed copies of his book *The Evidence of the Senses* for Laissez-Faire Books. Curiously, Peikoff himself autographed copies of his book, *The Ominous Parallels*, at an autograph party at Laissez-Faire Books in 1982. —RWB

Polemic

The Myth of the Rights of Mental Patients

by Thomas Szasz

"Permit me then . . . to tell you what the freedom is that I love, and that to which I think all men are entitled. . . . It is a state of things in which liberty is secured by the equality of restraint."

—Edmund Burke¹

During the past quarter of a century, "the rights of mental patients" has become a frequently discussed subject in the medical, psychiatric, psychological, and legal literature as well as the popular press; indeed, it has even attracted the attention of the United Nations as an area where human rights and ostensibly therapeutic practices appear to be on a collision course.²

Whence comes the idea of giving rights to, or guaranteeing the rights of, mental patients? It comes from two sources: the long legal-psychiatric tradition of depriving mental patients of rights; and the recent—ostensibly civil libertarian, but actually bureaucratic-statist—fashion of giving rights to members of special "oppressed" groups, such as blacks, women, and homosexuals.

On Liberty and Rights

We must keep in mind that individual liberty is a matter of political philosophy and law—not mental health; that (literal) illness is a matter of pathology—not psychopathology; that the connection between rights and diseases is a matter of social convention—not science; and that, in the American political tradition, human beings are considered to possess civil rights not because they are men or women, Christians or Jews, healthy or sick, but because they are persons.

Prior to this century the term *civil rights* meant the protection of the individual against coercion by the State. It stood for limits on State power.

Somewhere down the line, the phrase underwent an Orwellian metamorphosis and came to mean the moral legitimacy of a special interest group—such as blacks and women—to use the power of the State to impose its demands on the rest of the people. Although this metamorphosis has had undesirable effects on blacks and women, its most seriously injured victims, not surprisingly, have been mental patients.

I say "not surprisingly" because, according to conventional wisdom, the insane are irrational and hence do not know, and cannot properly articulate, their own needs and rights. Which raises the question of who is entitled to—who should—speak for them? When, some thirty years ago, I began to address the problem of the rights of persons *called* mentally ill, I emphasized that I speak for myself only; and noted that inasmuch as many different kinds of persons are called "mental patients," they cannot all have the same interests—and that, in any case, they can and should speak for themselves. As for what is now called "mental health advocacy," I have stood firmly for the policy of viewing so-called mental patients as

persons, presumed competent and innocent until proven otherwise, who ought to be treated by the law with the same disregard for their psychiatric status as they are for their religious status.

What has actually happened since then is nearly the opposite. Rallying to the battle cry of "civil rights for mental patients," professional civil libertarians, special-interest-mongering attorneys, and the relatives of mental patients joined conventional psychiatrists demanding rights *for* mental patients—*qua mental patients*. The result has been a perverse sort of affirmative action program: since mental patients are ill, they have a right to treatment; since many are homeless, they have a right to housing; and so it goes, generating even a special right to reject treatment (a right every non-mental patient has *without* special dispensation). In short, the phrase "rights of mental patients" has meant everything but according persons called "mental patients" the same rights (and duties) as are accorded all adults *qua citizens* or *persons*.

The Rights of Mental Patients

A recent British study, titled "The Rights of Mentally Ill People," exempli-

fies both the futility of trying to secure rights for mental patients *qua* mental patients and the uncomprehending stubbornness with which this quest is now pursued throughout the English-speaking world. Prepared by Chris Heginbotham—the National Director of MIND (the National Association for Mental Health of England and Wales) and a Board Member of the World Federation for Mental Health—the report also illustrates that the professional protectors of the rights of mental patients are just as great a threat to their rights as the psychiatrists against whom these self-appointed guardians propose to guard them. Contradicting the title of his report Heginbotham begins by asserting that “People with mental illnesses are a disadvantaged . . . minority in every country” and then, in characteristic collectivistic-statist style, confuses and equates needs and rights: “This Report concentrates primarily on the needs [sic] of people defined as having a diagnosable mental disorder.”³

But ignoring a person’s—especially an adult’s—wants and pontificating about his needs renders attending to his rights virtually impossible.

No matter: When Heginbotham uses the word *right*, he means not the legal right to be left alone but, on the contrary, the moral right to make a justifiable demand on others. “It can reasonably be argued,” he writes, “that every person has the right to be treated according to the following principles,” and then enumerates the goods and services that certain persons “ought” to be given, psychiatric treatment among them: “To a large extent this Report is concerned with rights—the right of people with diagnosable mental illnesses to be treated with ‘equal concern and respect’ . . . This must include the right to receive proper care, support, and treatment for any illness, physical or mental.”⁴

After contemptuously dismissing the view “that the term ‘mental illness’ is . . . a myth,”⁵ Heginbotham proceeds to opt for accepting, without further discussion, the World Health Organization’s definition of mental illness and its estimate of frequency: “A rough estimate

suggests that at any time no less than 40 million people—perhaps as many as 100 million—in the world are suffering from the most serious mental disorders as defined by WHO.”⁶ So much for what is mental illness. With that problem out of the way, the Report proceeds to concentrate on what to do about mental illness and comes down squarely in support of conventional psychiatric interventions, as the following sentence illustrates: “The release of these people [involuntarily hospitalized patients], admirable in theory, has often been disastrous in practice. A recent sample survey of New York’s homeless found that 96% had at one time been in a psychiatric hospital.”⁷ This is a hopelessly sloppy way to talk about so complex and controversial a policy as deinstitutionalization. Does Heginbotham contend that deinstitutionalization has been disas-

Prior to this century the term civil rights meant the protection of the individual against coercion by the State. Somewhere down the line, the phrase underwent an Orwellian metamorphosis and came to mean the moral legitimacy of a special interest group to use the power of the State to impose its demands on the rest of the people.

trous for the patients (even if they prefer to be out of the hospital at any cost)? For the patients’ families (especially if they prefer to keep the patients in the hospital at any cost)? For the people in the cities whom they annoy and disturb (and who have nothing tangible to gain by deinstitutionalization)? All of the above? In whose judgment has this policy been disastrous? In the judgment of the patients who prefer to be out of mental hospitals (at any cost)? Of the patients who prefer to be in mental hospitals (at any cost)? Of the patients’ families? Of the people in the city? All of the above? Obviously, the answers vary, if for no other reason than because these parties often have conflicting interests, which Heginbotham systematically fails to acknowledge.

Psychiatric Rights in the Soviet Union?

One of the many ironies of the “mental patients’ rights movement” is the

way its rhetoric fits so perfectly the collectivistic-paternalistic spirit of traditional Oriental despotism and contemporary Communism. Indeed the Russians—always a soft touch for the statist mentality that eagerly relinquishes real freedoms in return for fictitious rights—have now joined the parade of giving persons defamed as mental patients rights, the better to justify taking away their liberties. In January 1988, *Tass* reported the enactment of a set of psychiatric reforms, among them a law making it a crime “to lock up a patently healthy person in a mental hospital.”⁸ No psychiatrist engaging in this practice prior to the enactment of the new law was named, much less punished. After all, no bureaucrat—political or psychiatric—is ever guilty of anything. In any case, the important thing is not worrying about past psychiatric abuses but proclaiming future guarantees against them, enshrined in new rights. American politicians, lawyers, and even civil libertarians are proud that American patients, *qua* mental patients, have rights; henceforth Russian mental patients, *qua* mental patients, will have exactly the same

rights: “People receiving psychiatric assistance . . . are guaranteed legal aid by a lawyer with a view to ensuring their rights,” *Tass* said.⁹

No doubt, mental patients in the Soviet Union need all the rights they can get, and then some. Emboldened by *glasnost*, Sergei Grigoryants, chief editor of the magazine *Glasnost*, writes: “According to official data, nearly five million people are listed on the psychiatric register in the Soviet Union. . . . To be on it officially permits a healthy person to be placed in a psychiatric prison at any time and to be deprived of all rights” (emphasis added).¹⁰ Of course, like all conventional critics of psychiatry, Grigoryants protests only against “healthy people” being forced to become the patients of psychiatrists he himself characterizes as “criminal[s] . . . defending [their] right to murder.”¹¹ It is mysterious, as I remarked elsewhere,¹² what on earth about mental illness renders a person suffering from it a fit

subject for compulsory care by murderers.

I regard all this sound and fury as a collective exercise in deception and self-deception.¹³ How can one Soviet state agency protect the rights of a person whose rights have been abrogated, presumably rightfully, by another state agency? And, most importantly, when a so-called mental patient's right to liberty conflicts with his right to treatment—whether in the USSR or in the U.S.—what official, on the basis of what criteria, decides which right should prevail? We cannot escape from

this psychiatric trap of our own making: The ostensible aim of every involuntary psychiatric intervention is to treat a person for his mental illness; its actual result is that the person is de-

prived of liberty. Similarly, the ostensible aim of every psychiatric reform is to make the mental health system less susceptible to abuse; its actual result is that the system and its abuses become more resistant to criticism. Ironically, the promoters of psychiatric slavery—both in the U.S. and in the USSR—now employ the identical rhetoric of “dangerousness to self and others” to identify certain individuals as mental patients, and the identical justification of the patients’ “special rights” to legitimize incarcerating them.

Rights and Responsibilities

An important corollary of the notion that civil rights adhere to individuals *qua* persons, as against individuals *qua* members of one or another special group, is the conjoining of rights and responsibilities, liberties and duties. This is why, for hundreds of years, Anglo-American political philosophers exempted three groups of human beings from the class of full-fledged persons: infants, idiots, and the insane. Because children, retarded persons, and psychotics are considered to be unable to fulfill the social *duties* of normal adults (which some of them are indeed incapable of fulfilling), individuals assigned to these categories are deprived of *rights* and exempted from responsibilities.

Mutatis mutandis, because the rights and responsibilities of an individual cannot be disjoined (or can be disjoined

only temporarily and to a very limited extent), the very idea of the rights of mental patients is a patent absurdity: How could a person be allowed to enjoy the privileges of individual liberty without any corresponding responsibility to obey the law? Because rights and responsibilities cannot—and, in fact, are not—so disjoined, I maintain that the words *mental patient* and *right* contradict each other and are mutually exclusive, just as Rousseau maintained that “The words *slave* and *right* contradict each other and are mutually

The ostensible aim of every psychiatric reform is to make the mental health system less susceptible to abuse; its actual result is that the system and its abuses become more resistant to criticism.

exclusive.”¹⁴ It is ironic, however, that while no one in Rousseau’s day would have disagreed with his assertion about the oxymoronic character of attributing rights to slaves, hardly anyone today agrees with my assertion about the oxymoronic character of attributing rights to involuntarily hospitalized mental patients. Why is this so? How can people not see that the mental patient’s right to treatment is, in fact, a hypocritical disguise for the psychiatrist’s right to assault the patient—physically, chemically, electrically, and in every other way—and call it “treatment”?¹⁵ After pondering this question for some time, I have concluded that the answer probably lies in the secularization of a fundamental Roman Catholic principle of ethics, namely, the Principle of Double Effect. Without ever mentioning this principle, perhaps even without being fully aware of it, many people—in and outside of the mental health professions—now support psychiatric slavery by falling back on a therapeutic (in)version of this classic, Thomistic idea.

The Principle of Double Effect

Clearly articulating this particular form of moral reasoning in his *Summa Theologica*, St Thomas Aquinas is credited with its authorship. In a chapter titled “Whether it is lawful to kill a man in self-defense?” Aquinas justified the otherwise illicit act of killing a man as follows:

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention. Accordingly the act of self-defense may have two effects, one is the saving of one’s life, the other is the slaying of the aggressor. Therefore this act, since one’s intention is to save one’s own life, is not unlawful . . .¹⁶

The *New Catholic Encyclopedia* defines the Principle of Double Effect as: “A rule of conduct frequently used in moral theology to determine when a person may lawfully perform an action from which two effects follow, one bad, the other good.”¹⁷ For example, it is consid-

ered permissible for a physician to give an aged patient a painkiller, provided the aim is to relieve pain, even though the effect may also be to hasten death. This principle is often applied in the contemporary Catholic analyses of such topics as abortion, contraception, and suicide.

Obviously, this mode of reasoning is in no sense peculiarly Catholic or restricted to Catholics. Anyone intent on rationalizing his own morally complex and conflicting choices can make use of it—and many people do. For example, Paul Ramsey—said to be “the most influential American Protestant writer on medical ethics of his generation”—has applied it to the problem of abortion. David Smith, a professor of religious studies at the University of Indiana, condenses and explains Ramsey’s position as follows:

direct abortions are justified in situations where a nonviable fetus threatens its mother’s life. In that case: the intention of the action, and in this sense its direction, is not upon the death of the fetus . . . [but is] directed toward the *incapacitation* of the fetus from doing what it is doing to the life of the mother . . . This distinction between *incapacitation* and *direct killing* solves the problem of explaining how love can justify abortion. If justifiable abortions are properly described as *incapacitating* rather than *killing*, then one can say that such actions are justifiable actions of love to the aborted fetus. One has not done

something unloving to the fetus itself.¹⁸

Amen. Truly, the human mind is an organ of self-justification. But if this is the way prominent theologians reason, is it any wonder they support psychiatric coercions of all kinds, and that jurists, physicians, and lay persons support them as well?

The Principle (and Practice) of Double Effect in Psychiatry

Such, then, is the evidence that has persuaded me that the Principle of Double Effect offers the right angle from which to view the antithetical arguments of the conventional psychiatrist supporting psychiatric deprivations of individual liberty, and his critic (such as myself) opposing such deprivations. I present herewith, in schematic forms, two dialogues that exemplify the standoff.

Concerning contraception:

Critic: You say you are a good Catholic and yet you take birth control pills. Your behavior proves that you are not a good Catholic. You are a hypocrite.

Catholic woman: You are wrong and unfair to me. There is nothing I want more than to have a baby. Besides, I don't take birth control pills; you use that term only to humiliate me. I take a medicine prescribed for me by a physician to regulate my irregular and painful menstrual periods.

Critic: Regardless of what you say, the effect of the medicine you take is that you are less likely to become pregnant.

Catholic woman: That may be. But, I swear to God, that is not my intention. And I may get pregnant. It is not certain—as you very well know—that the medicine will prevent it.

Concerning commitment:

Critic: You say you are a humanist and love liberty and yet you incarcerate innocent persons. Your behavior proves that you are neither a humanist nor do you love liberty. You are a hypocrite.

Psychiatrist: You are wrong and unfair to me. There is nothing I want more

than to liberate my patients from the shackles of their mental illness. Besides, I don't incarcerate anyone; you use that term only to humiliate me. I hospitalize patients to enable them to recover from their illnesses.

Critic: Regardless of what you say, the effect of your intervention is that your patient is deprived of liberty.

Psychiatrist: That may be. But, I swear by Hippocrates, that is not my intention. Anyway, the patient will soon be discharged. And it is not certain—as you very well know—that the patient objects to such a temporary loss of liberty.

I maintain that the words mental patient and right contradict each other and are mutually exclusive. The mental patient's right to treatment is, in fact, a hypocritical disguise for the psychiatrist's right to assault the patient—physically, chemically, electrically, and in every other way—and call it "treatment."

Although these dialogues are imaginary, the situations they describe are not. It is important to note here that while the Catholic and Psychiatric Principles of Double Effect appear to be similar, they are by no means identical—the latter, in fact, being an inversion of the former. In Catholic theology the initial act cannot be morally evil albeit some of its consequences might be: for example, self-defense is a right even though it may cause the assailant's death, which is wrong. In the psychiatric ethic, the initial act can be evil, so long as its consequence is not: for example, it is wrong to deprive a person of liberty, but if it cures him of mental illness then it is all right. In short, whereas in Catholicism the means cannot be evil, although some of its consequences might be—in psychiatry, good ends justify evil means.

This mode of reasoning, more than any other, is now used to justify the incarceration and involuntary treatment of street persons. According to current psychiatric doctrine, homeless mentally ill persons are hospitalized against their will *solely because* they are ill and *not because* they are homeless. For example, apropos of the forcible hospitalization of Joyce Brown, the New York bag lady who attracted much attention in the fall

of 1987, Luis Marcos, a psychiatrist and vice president for mental health of the city's Health and Hospitals Corporation, declared:

We are dealing with people who are severely mentally and physically ill. And people have a right to be treated and cared for The civil liberties unions believe people should be free to live in the street and to deteriorate. We believe people should be free from hallucinations and mental illness. She [Joyce Brown] was not hospitalized because she was living on the streets—she was hospitalized because in the judgment of at least three psychiatrists she needed medical psychiatric help.¹⁹

Does anyone really believe this? Or is this merely psychiatric ceremonial chanting which, like religious incantation, it is in bad taste to scrutinize? Does

Marcos really believe that had Joyce Brown been living in a multi-million-dollar condominium on Park Avenue on a tax-free annual income of \$500,000, she would have ever come to the attention of his roving psychiatrists cruising the streets looking for patients, much less that she would have been forcibly hospitalized in a public mental institution?

Marcos's assertion is troubling on another count as well. His insistence that Joyce Brown "was not hospitalized because she was living on the streets" implies that she has a right to live on the streets. But does she? This question brings to mind Anatole France's famous anti-libertarian cry that "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."²⁰ With this phrase—made immortal by generation after generation of socialists and statist—France in effect mocked precisely the sort of equality before the law extolled by Edmund Burke and every adherent to the rule of law before and since then. Did France really advocate or believe that the poor should be allowed to steal bread? Surely, he must have known that such a rule would annul any rational person's decision to operate a bakery. The same principle ap-



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plies to sleeping under bridges or on hot air grates: Allowing the poor to sleep on the sidewalks of New York would inevitably lead to no one—poor or rich—having the cultural and social amenities and protections everyone needs for sleeping at night.

I therefore defend what France ridicules—namely, that the law would forbid rich and poor equally from sleeping on the sidewalk. But, as we saw, Marcos and the majority of psychiatrists whose point of view he clearly represents evidently believe that Joyce Brown and other street people should be allowed to sleep on the sidewalks. Why? Because the proposition, proudly supported by psychiatrists and pseudo-civil-libertarians, that mental patients have a right to reject treatment has become extended to mean that they also have a right to sleep on the sidewalks. This strikes me as an absurd *non sequitur*. Every medical patient has the right to reject treatment. However, we do not interpret the fact that arthritics have the right to reject treatment to mean that they have the right to copulate on the sidewalks. Surely, husband and wife (or perhaps any man and any woman) have the right to have sexual intercourse. But not anywhere: in private, yes; in public, no. The same reasoning applies, it seems to me, to sleeping, eating, urinating or defecating. Assuredly, we have a basic human right to engage in these acts (necessary for survival itself)—but not on someone else's property. The street person who disrupts the public order by sleeping on the sidewalk violates the rights of others just as surely as does the person who disrupts traffic by leading a political protest (without permission to do so). The argument that we should view and excuse a homeless person's sleeping on the sidewalk as non-

criminal because he has no other choice and hence no criminal intent to act illegally is no more convincing than the argument that we should view and excuse a poor person's stealing as non-criminal because he has no other choice and hence no criminal intent to act illegally.

Psychiatric Rights: Double Effect or Double Talk?

Regardless of whether the mental patient is given rights or deprived of rights, the bottom line for his relationship with society is the latter's legitimate power to incarcerate him. It is important to re-emphasize that long ago the need therapeutically to justify psychiatric confinement has become an autonomous cultural belief. Months after picking her off the sidewalk on October 28, 1987, and taking her to Bellevue against her will, psychiatric and legal authorities were still deliberating what to do with Joyce Brown. Like medieval theologians trying to determine how many angels can dance on the head of a pin, mental health experts in New York in 1988 try to determine how much, if any, Haldol this allegedly psychotic woman "needs":

In testimony over the last two days in a courtroom at Bellevue Hospital, Dr. Maeve Mahon, the psychiatrist who had been treating Miss Brown at the hospital, said Miss Brown refused to shower regularly, sometimes talked and laughed to herself, made threatening gestures to staff members and was abusive to black men on the hospital staff. Miss Brown is black. Dr. Mahon asked the court for permission to administer Haldol, an antipsychotic drug, over a three-week period to test whether it had a beneficial effect on Miss Brown's condition.²¹

New York Civil Liberties Union lawyers representing Miss Brown produced psychiatrists who testified that she was not psychotic and hence did not need Haldol. The attorney for New York City countered "that without medication, Miss Brown would be forced to remain in the hospital without receiving any benefit from it."²² Not surprisingly, the judge

ordered more psychiatric examinations: "I just want a pure strain of psychiatric judgement," he said.²³ Note that all of the players in this drama—including Miss Brown, her lawyers, and their psychiatrists—validate the fiction that her confinement has, or may have, two effects: loss of her liberty and treatment of her mental illness; and that aiming at the latter target justifies hitting the former.

It is bad enough that the terms *mental patient* and *right* contradict each other, just as the terms *slave* and *right* contradict each other. What makes the current debate concerning the civil rights of mental patients even more mindless is the utterly false idea that mental illness itself is a condition that deprives a person of liberty and that anti-psychotic drugs are treatments that restore the lost liberty. In the psychiatric literature this falsehood is actually treated as if it were fact. "Patients released from mental institutions refuse to return to inpatient care," writes the editor of a psychiatric journal.²⁴ Does this mean that such patients vote with their feet, like political refugees who refuse to return to the oppressive regimes they have fled? No. For "these misled mentally ill," explains the author, "this kind of liberty, from any medical or humanistic point of view, is worse than any form of imprisonment."²⁵

These comments, and countless others like them, illustrate that, virtually without exception, psychiatrists are hostile to the idea that the mental patient should have a right to reject treatment, indeed that he should have any *rights* at all that override his (alleged) *needs*. At a conference in 1987 on involuntary hospitalization, sponsored by Beth Israel Medical Center in New York, Stephen L. Rachlin, chairman of psychiatry at Nassau County Medical Center, declared: "The right to refuse treatment illustrates the clash between patients' 'rights' and their 'needs': It's one right too many."²⁶ The issue once again is simply the pros and cons of coercive psychiatric paternalism, to which Rachlin's remarks add nothing new. In any case, neither the reasoning nor the rhetoric matter: the inertia of psychiatric tradition is enough to annul in practice whatever innovation might be introduced in principle. "The trend to protect psychiatric patients' rights to refuse treatment by judicial review has meant



"I may be way out of line here, but as far as I'm concerned, it's people like you that give welfare recipients a bad name!"

little change in outcome, but greater expense, delay, and intrusion,"²⁷ added Rachlin, and on this score I agree with him.

It is worth noting that there was, evidently, complete unanimity at this conference concerning the desirability of coercive psychiatric paternalism. "A psychiatric patient's refusal to take medication is most often a reflection of illness, not an autonomous decision, and should be resolved on clinical, not judicial grounds,"²⁸ opined another psychiatrist. The validity of this dubious claim is also irrelevant, since the courts virtually routinely uphold the psychiatrists' recommendations. "In Massachusetts, for instance, 96% of patients' medication refusals were overridden" by the courts. In short, the mentality of giving-rights-to-mental-patients has only added fuel to the already brightly burning fires of what I have called "therapy by the judiciary": the existence (material reality) of "mental illness" and its "treatment" is re-affirmed by judges prescribing the treatment:

One judge, having been told that Mellaril produces the least extrapyramidal side effects, ruled that all patients in such disputes be treated with Mellaril; another ordered that a patient be given Cogentin "at the first sign of any side effect." A third directed the hospital to raise a patient's dose of neuroleptic, if necessary, "but by no more than 50 mg/week."²⁹

This is the kind of absurdity that we saw happen in the past, when Religion and the State were united, and is the kind of absurdity we see happening now, when Psychiatry and the State are united. Formerly, the State lent its power to support the proposition that consecrated bread and wine were, literally, body and blood; now it lends its support to the proposition that misbehavior is disease and poisoning is treatment. Hence, the dramatic psychiatric shedding of tears over the mental patient's loss of liberty from a "medical or humanistic point of view" is pure hypocrisy. The truth is that mental illness *qua* illness cannot cause loss of *political liberty*; but that involuntary mental hospitalization can and does cause precisely

the loss of such liberty, and only its cessation can restore it.

Conclusions

My first conclusion and recommendation, then, is that we not chase after every violation of the "rights" of mental patients—not because helping a single person out of a single predicament is not morally meritorious, but because a

The very idea of giving rights to the mental patient expresses society's collective contempt for him; the mental patient's failure to protest against this ritual reinforces society's collective sense of being justified in patronizing him.

coercive-statist psychiatric system can create new "abuses" much faster than we can abolish the old ones (assuming we can do that). Thus, genuine and rational concern for human well-being, just as genuine and rational concern for human rights, must entail, as Roger Pilon observed,

a concern about those systems that tend to the protection of human rights and those that tend to their violation. Far from trying to separate the moral from the political or economic, then, far from trying to avoid "politicizing" one's moral concern, those with a deep and abiding interest in human rights must come in the end to the realization that human rights constitutes precisely that nexus between the moral and the political and economic that theorists of the 17th and 18th centuries, theorists of the classical liberal tradition, recognized so well and articulated so clearly. They must come to realize, in short, that human rights are what political and economic systems at bottom are all about.³⁰

I believe that candor and decency require us to acknowledge that, because of its history and social consequences, the idea of mental illness embodies within itself the notion of diminished or absent personal autonomy. When writers on the rights of mental patients assert that "Mentally ill persons should receive humane, dignified, and professional treatment"³¹—as does Timothy W. Harding, the leader of an expert mission of the International Commission of Jurists to investigate allegations of mistreatment of mental

patients in Japan—they are, in effect, pleading for their own right to involuntarily treat persons they themselves categorize as mental patients.³² Since the Commission comes down squarely in support of psychiatric coercions when required by what mental health professionals consider to be the best interests of the patients, the central problem of so-called psychiatric abuses remains untouched:

How do we make psychiatric treatment dignified when the patient rejects the psychiatrist's intrusion into his life? Antonin Artaud's complaint, usually expressed less eloquently, echoes through the ages in

the autobiographical writings of mental patients: "I myself spent nine years in an insane asylum and I never had the obsession of suicide, but I know that each conversation with a psychiatrist, every morning at the time of his visit, made me want to hang myself, realizing that I would not be able to slit his throat."³³ Apologists for psychiatric paternalism consistently avoid the challenge implicit in Artaud's cry—not for psychiatric help, but for freedom from it.

Is there a way out of this labyrinth? There is—for those looking for an exit. I add this caveat because, for perfectly good reasons, many persons are not looking for such an exit. Involuntary, institutional psychiatry, appropriately adapted to time and place, serves the interests of many individuals and groups: mental health professionals like it because it legitimizes them not only as healers but as the protectors of society as well; mental patients—for the most part, most of the time—like it because it legitimizes them as sick and offers them an escape from the day-to-day cares of normal life; and, last but not least, the parents of mental patients, politicians, and the legal system like it because it provides them with a legitimate mechanism for distancing themselves from mental patients and subjecting the patients to the control of the State.³⁴ To paraphrase Voltaire, if there were no mental illness, it would be necessary to invent it.

But it is not necessary to invent mental illness, as it has been handed down

to us by our ancestors, authenticated by the most solid scientific credentials imaginable: Mental illness is either a proven or a putative disease of the human body as a biological machine. The ultimate fallacy in this idea is that it is believed to morally justify the psychiatrist's domination of the mental patient on the one hand, and the mental patient's evasion of his responsibility to mind his own business on the other hand. By the latter I mean that if mental patients are to be accorded the same rights as other adults in our society, then they must also be expected to assume the same responsibilities. In other words, they must be seen as moral agents who have the duty to take care of their own biological, personal, and financial needs and the needs of those who depend on them, and to respect the rights of others and the law of the land. Accordingly, if they break the law, they must be punished in the criminal justice system, not treated in the mental health system. In proportion as we excuse persons with mental, but not with medical, illnesses, we join the chorus of hypocrites singing the theme song of the mental health industry—"Mental illness is like any other illness"—all the while making certain that the phrase "rights of mental patients" continues to serve the best interests of the singers.

Curiously, my insistence that we view so-called mental patients as persons first, and as mentally ill second, has led Sir Martin Roth to pay me what I consider to be the highest compliment possible. In the final paragraph of a scathing attack on my work, Roth writes:

He [Szasz] has been a powerful fighter for the freedoms, rights and responsibilities of psychiatric patients. The attitude of the law and the legal profession to psychiatry and mental disorder has been transformed by the writings of Thomas Szasz, in the USA. He is obsessed by the need he feels for psychiatric patients, psychotic or neurotic, to be accepted by us all as human beings of no less value than ourselves. . . .³⁵

To that indictment, I proudly plead guilty. However, Roth does not stop here but adds:

. . . and therefore not ill; for if they are thought of as mentally ill, they cannot but be devalued, dehumanized, degraded. This is the conclusion at which he has to arrive;

and hence comes the necessity to stand logic on its head in order to get there.³⁶

The phrase "and therefore not ill" is rubbish and has nothing to do with my insistence that we distinguish the literal meaning and uses of *disease* from its metaphorical meanings and uses. As for "standing logic on its head," the less said the better. I should like to reiterate that I cannot help but feel that the very idea of giving rights to the mental patient expresses, once again, society's collective contempt for him; and that the mental patient's failure to protest against this ritual reinforces society's collective sense of being justified in patronizing him. After all, Catholics do not

have a specially identified right to accept or reject Holy Communion. Jews do not have a specially identified right to accept or reject the Jewish dietary laws. Patients with arthritis or diabetes do not have specially identified rights to accept or reject treatment for their diseases. Giving mental patients such specially identified rights is, in my opinion, simply our way of casting them out of the human community. In past ages, when men did this to their fellow men, at least they honestly acknowledged what they were doing. Surely, doing the same thing and denying it is not moral progress. □

This paper was first presented at the Wellcome Institute for the History of Medicine, London, July 18, 1988.

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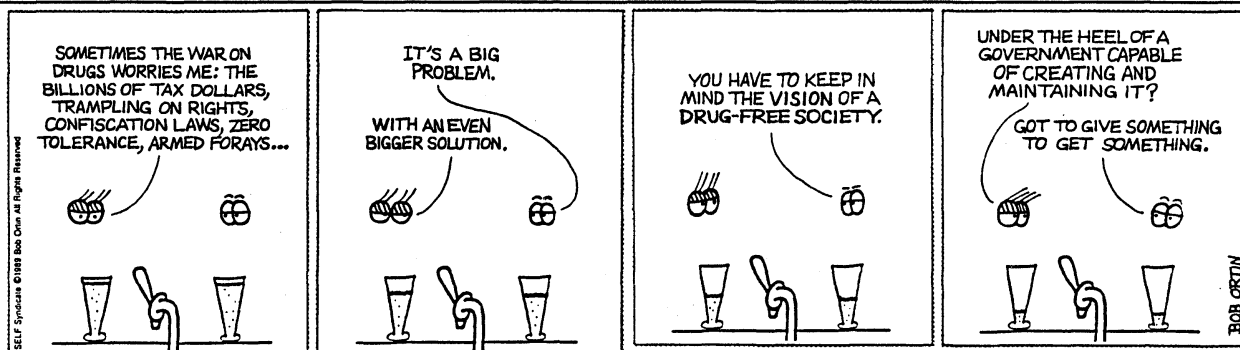
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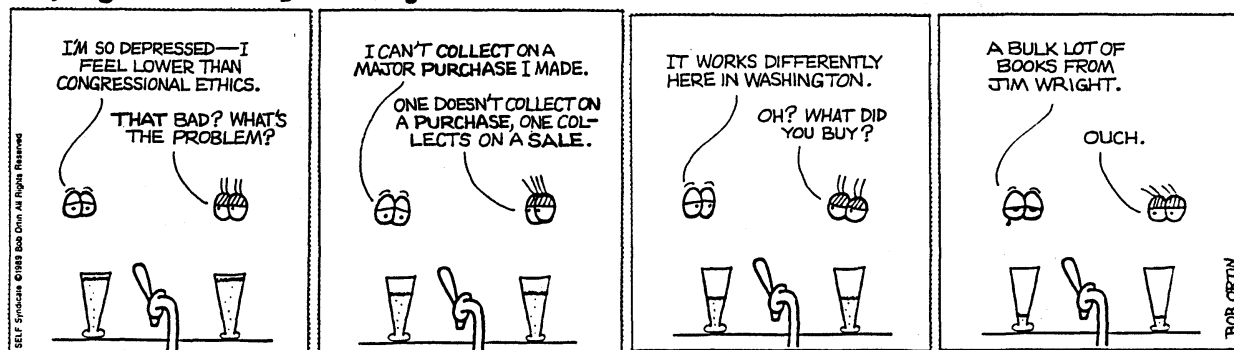
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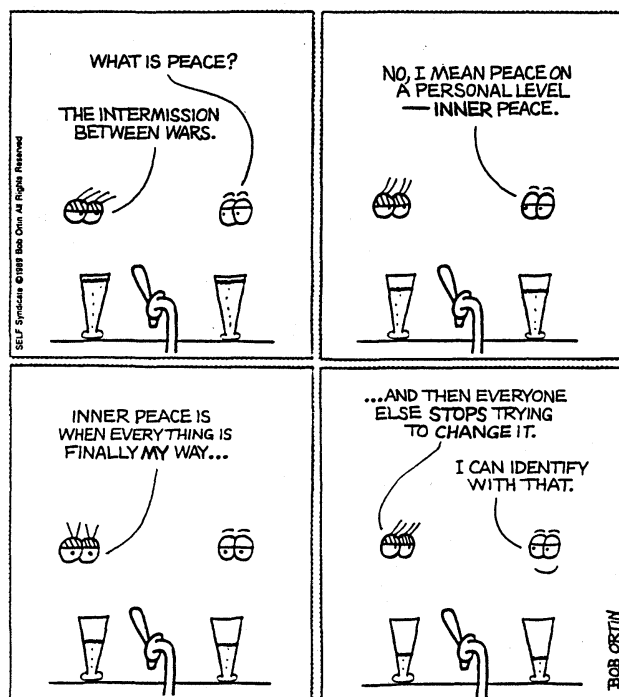


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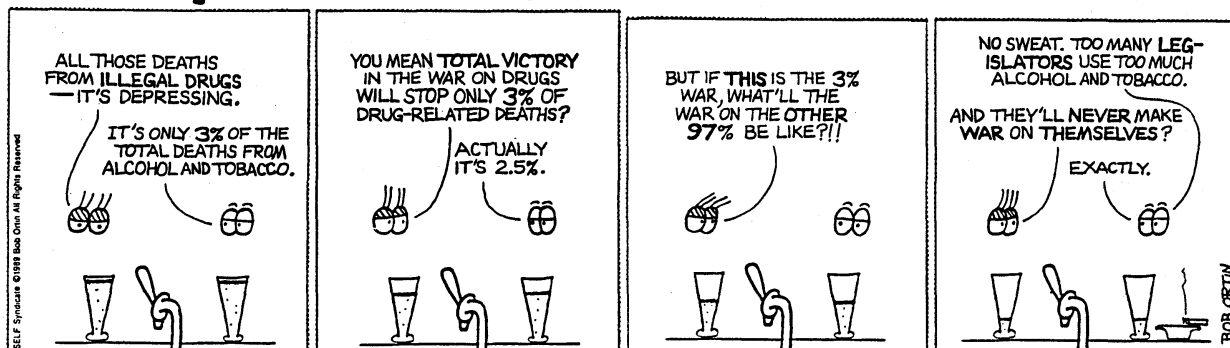
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by John Hospers

No matter how promising the libertarian idea may be, it has yet to yield universal agreement, even among libertarians. Prof. Hospers explores a fundamental divergence in libertarian thinking.

We have all been involved from time to time in discussions on social and political issues—punishment, welfare, firearms, defense, and countless others. On some of these, but not all, there is a distinctively libertarian position. Sometimes it strikes people as extreme, and they're inclined to reject it out of hand because it contradicts what is vaguely called "common sense." But sometimes they stay with it long enough to see the rationale of the position.

I have found, in trying to present the libertarian position on various issues, that libertarians do not always speak with one voice; different views keep emerging under the libertarian label.

First, there are those who take certain principles—not always the same ones—that they believe to be libertarian, and attempt rigidly to deduce consequences from them, which they apply strictly and without exception. This I'll call *closed* libertarianism—because it treats libertarianism as a system closed to new experience. Its theory is "pure as the driven snow," without any contamination from other theories or historic events.

There are also those who either interpret the principles more liberally or permit a certain latitude in their application. These libertarians sometimes find the "closed" libertarian view too extreme. This view we may call *open* libertarianism, because it is open to experience and external theories. (Open libertarianism may still be pure as the driven snow: it has just drifted a bit.)

What the open system and closed system libertarians say differs from issue to issue, and one could be open on one topic and closed on another. Let me begin with an example. Most libertarians—open or closed—agree with Ayn Rand's statement that no human being's life should be a non-voluntary mortgage on the life of another. This statement has vast implications: for example, that no one may deal with another by force, for force is opposed to voluntariness; and that there should be no government welfare programs, for such programs do make one life mortgaged non-voluntarily to another.

Should this principle be implemented immediately? A closed libertarian would likely say that government welfare payments should simply be stopped, period—the sooner evil is checked the better. An open libertarian, on the other hand, probably would not put the draconian change into effect suddenly: many people would starve, there would be riots in the cities that would take more money to quell than the welfare would cost; or, it would be unfair to terminate at once something on which people's expectations are based, pulling the rug out from under

them without warning—at least we should wait until the economy is freer and jobs are more easily available. It's all right to be pure, but don't go pure right away no matter what the circumstances. And so on for other issues—let foreign aid peter out gradually rather than cause huge dislocations by cutting it off at once, and so on.

Neither of these alternatives is a strict consequence of the Randian principle, which does not entail that the welfare system must be totally abolished at once. All that Rand's principle implies is that in an ideal system there would be no system of state welfare, and none would have started. It doesn't tell you specifically what to do to correct past errors. It doesn't logically imply either that you should put it into practice at once, whatever the conditions, or that you should phase the system out gradually. You need other premises to derive either of these conclusions.

Consent

When you become a member of the Libertarian Party you sign a statement that you do not advocate the initiation of force in achieving your goals. Besides

being a bit vague (when are you initiating? and what kind of force? etc.), the statement is negative. A positive one would be what we may call the Principle of Consent. Ayn Rand said, "In any enterprise involving more than one person, the voluntary consent of all parties is required." Many persons indeed would say that this is *the* central tenet of libertarianism.

We often employ this principle in our dealings with others. If you take someone's belongings without his or her consent, that's theft; if the person voluntarily gives it to you, that's a gift. Consent transforms the first into the second. Consent is what transforms rape into ordinary sexual intercourse. Consider also the quick answer given (not merely by libertarians) to such questions as the following: Is it all right for someone to play a tape all night long in your bedroom while you're asleep, without your permission? No, for you didn't consent. Is it all right for someone to try an experiment on you that involves some risk? Again, not without your prior voluntary consent.

But now let's consider this case: The murderer didn't consent to be tried or imprisoned. Perhaps we should put a qualification into the principle such as "unless he has violated the rights of others," and then we have to enter the forbidding domain of rights in order to determine what kinds of acts constitute rights-violations and why. Or perhaps another qualifier will do. (More on this in a moment.)

This case, however, opens up a much larger problem. Not only did the murderer not consent to be punished, he didn't even consent to the government under which he lives. And come to

think of it, *neither did you or I*. We may have voted for the candidate who is now in office, but there are endless details of the rules that govern us that we didn't consent to, and didn't even know about. We may approve having legislative, executive, and judicial branches of government, but I don't remember being asked about this, or consenting to it. Neither of course did we consent to most of the conditions under which we live—to be born at this place and at this time, of these parents, under these social conditions, or indeed to be born at all. It would be absurd to require consent to all these things, most of which occurred under conditions quite outside our control. The scope of consent must be narrowed—at least to the kind of situation in which choice is possible.

But in whatever way we try to do this, the problem of consent to government rears its head again: we feel that in something that affects our lives so constantly and profoundly, we *should* have a choice; if we shouldn't subject ourselves to surgery without our prior consent, what about the coercive actions of government that affect all of us constantly? And this of course is the old problem that has divided libertarians from the outset. Following the Principle of Consent, it would seem that closed libertarians must be anarchists, because even limited government violates the Principle of Consent.

Let me mention two ways to try to get around this:

1. We could say that we gave *implicit* consent. There is, surely, such a thing as implicit consent. If you knew that your next door neighbor was dropping his excess soil onto your yard from his own, and you saw him do this and did nothing to stop him, not even saying one word, one might well say that you implicitly consented to his doing it, and had no cause to complain about it afterwards. Or, if you hire someone to mow your lawn every Saturday afternoon, and have paid the person regularly for three months each week after he's finished, and today he goes ahead and mows your lawn when you're not at home and then asks for his pay, and you say "I didn't consent to your doing it *this* Saturday," he might well say that you implicitly consented, because a pattern has been established for every Saturday afternoon even though nothing was stated explicitly, and you did nothing

to indicate otherwise.

But unfortunately most cases in which implicit consent is alleged are not this clear-cut. John Locke thought that continued residence in a country constituted consent to its laws. Most commentators on Locke, however, have not found this very plausible. The residents of East Berlin didn't consent to being there when the wall prevented them from moving west. And there are many other cases: did you implicitly consent to support your children by the act of having them? If a man and woman live together for years unmarried, and ten years later the man finds someone else and kicks the woman out, couldn't she claim (though they never discussed such a possibility) that there was an implicit agreement that the income they had earned together belonged to them jointly? They shared their incomes; they had a joint checking account, and there were other pooling arrangements between them. Does all this show that there was an implicit consent to continue the arrangement, and to make reparations if one of them discontinued it? It's not very clear exactly *what if anything* was implicitly consented to, and courts are still divided on this. My point is merely that implicit consent is a ticklish business. There are plausible cases of implicit consent, but in the critical case, consent to government itself, implicit consent doesn't seem very plausible at all.¹

2. You can also take another line: you can agree that government violates the Principle of Consent, but contend that this is not the only principle with which our moral arsenal should be stocked—and that one of the things we have to do is to adjudicate among different principles when they come into conflict with each other. Possible examples are: the Harm Principle (do not knowingly harm others), the Principle of Justice (treat others in accord with their deserts), and the Principle of Fair Play (mutuality of restrictions: if A may not do X to B, B in similar circumstances may not do X to A). Following this line, the Consent Principle is not sufficient by itself, and sometimes one or more of the other principles may outweigh it; and when it does, the consent of each party is not required. When justice transcends consent, the murderer need not consent to his own arrest and punishment. (There are many, often overlapping,

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ways in which to try to handle this kind of situation.)²

Consent and Contract

It is not my present purpose to enter again the controversy about limited government and no government. What I want to do is raise some issues *other* than consent to government, that libertarians do not seem to discuss very much. I shall assume that there exists a system of law, but will ask in specific cases what it should and shouldn't be. I'll do this briefly in three areas, designed to bring out the differences between open and closed libertarians. First I shall continue with the concept of consent; second, privacy; and third, risk and endangerment.

Contract would seem to be the clearest and simplest example of consent: a contract should be enforced if both sides

voluntarily consented to its terms. But some problems arise even here as we progress from the simplest to more complex cases:³

1. Smith sells a violin to Jones. Jones thinks it's a Stradivarius and pays a considerable price for it. Smith makes no claims for it. Later Jones discovers that it's not a Stradivarius, and demands his money back.

If Smith had made this claim for it, the contract would be fraudulent. But that is not so in this case; Smith is under no obligation to return any of Jones' money.

2. White sells Black a house. Black buys it because it's next to a vacant lot, so he has a nice view. Later White, who also owns the vacant lot, builds a house on it. Black claims he wouldn't have bought the house but for the vacant lot. However, Black has no comeback here; the vacant lot was not part of the agreement. (Even if White said at the time of sale that he *intended* to keep the lot vacant, and later built on it saying "I've changed my mind," the vacant lot was still no part of the contract.)

3. An oil company buys land from a farmer at \$1,000 per acre, and the farmer willingly sells. Later it turns out that there was oil under his land. The oil company knew this but said nothing; the farmer, on the other hand, didn't ask about this (it didn't occur to him that

there might be oil). Had he known he could have sold the land for \$10,000 an acre. There was concealment of information, but no fraudulent claims. We might be a bit more uncomfortable about this one, because of the concealment; still, does the buyer have to disclose *all* information (all "relevant" information? and what does that include?)—even what wasn't asked for? It would seem that there is no violation of contract here.

4. Brown contracts to ship for Green a cargo on the ship *Peerless*, and does. But unknown to either of them there are two ships, both with the same

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name. Brown shipped on the one, and Green expected the shipment on the other. Nothing in the contract allowed for such a misunderstanding. Neither party really violated the contract, yet it was not fulfilled. The court merely tried to resolve the misunderstanding in a way that didn't hurt either party too much.

5. A contractor agreed to build an apartment building at a certain location. He encountered swampy terrain; every time he made headway on the building it collapsed in the muck. Finally he left the scene and said that the task was impossible. The owner of the land sued him for breach of contract. The judge went along with the contractor, saying that he was excused from the terms of the contract because it was simply *impossible* to live up to its terms. (Yet this wasn't allowed for in the written contract, which didn't say "X agrees to build *unless* . . ." But neither did it say "X agrees to build whatever the condition of the subsurface . . .")

6. An American railroad company ordered a shipment of railroad ties from Scotland via the nearest port, Glasgow, and the port of shipment was given in the contract. The shipper couldn't ship from Glasgow because of a strike, and shipped from Aberdeen instead, absorbing the cost of extra transportation and delivering the ties on time. The railroad

company, which no longer wanted the ties, sued for breach of contract, saying "It was in the contract that you had to ship from Glasgow and you didn't do it." And according to the explicit terms of the contract, the company was right. Yet the court decreed that the contract had been fulfilled, because the *presumed intent* of the shipper was to get the ties to their destination as soon as possible, and this intent was fulfilled.

7. Let's try one with a different twist. You are struggling in the quicksand, and someone comes with a large tree branch to get you out; as you grasp for it, he says, "Not so fast; I want you to sign over to me all your possessions, and then I'll rescue you." You agree, believing it's better to be poor than dead. Yet no court in the land would honor such a contract; why?

(a) The very fact that such a contract was agreed to at all could be taken as a sign of mental impairment: "he'd have to be crazy to do that," "He wasn't in his right mind," etc, and a person who is *non compos mentis* can't sign valid contracts. Courts do sometimes employ this device. But what if there is no evidence of mental impairment, much less of insanity? The person would just rather be alive and poor than rich and dead. Isn't that perfectly rational. Let's consider another way:

(b) Such a contract could be held to be *coercive*, and coercive contracts are not voluntarily arrived at. If you do something in response to a gunman's orders while a gun is held at your back, you are not (as a rule) held legally liable for what you were forced to do, and any agreement made under such conditions is not binding. But is the present example one of coercion? Coercion is a slippery concept.⁴ The gunman example is a classic case of coercion, yet some have said of it "You voluntarily agreed to give your money rather than your life; that's what you willingly agreed to do under the circumstances. All the gunman did was limit your choices a bit." Yet there are countless cases of one's choices being limited which would not usually be considered coercion. An unemployed man reluctantly accepts a job at

starvation wages, because no one else within a thousand miles can use his skills at the moment; socialists call this a "coercive contract," though libertarians deny that it is coercive, claiming that it was voluntary on both sides.

A mother says to her daughter of marriageable age, "If you don't marry this man you'll never get a penny from me, and you have no other means of support." Assume that the daughter is unattractive (unlikely to get other offers) and somewhat mentally retarded, and that there is no public welfare, so she could well starve if she goes against her mother's wishes. The girl hates and fears the man. Shall we say that under the circumstances she was *forced* to obey her mother's demand? Or should we say that she voluntarily agreed (and if so isn't this straining the meaning of "voluntary")? In common everyday parlance we would usually say "Her mother made her do it." Was it like the gunman case, enough to be placed under the same heading, or not? And should the quicksand case be labeled coercive just because both alternatives are rather unpleasant? Is it a case of being forced, or of voluntary bargaining?

We often agree to conditions we dislike because we see the alternatives as being worse. There is a "slippery slope" here: if you say that a man's agreement to work at semi-starvation wages (because there are no other jobs available within a thousand miles) is coerced, what is to stop you from saying "I'm being coerced into working five days a week at the office" because you share with others the human condition of having to work to stay alive? Wherever we draw the line with coercion, surely it should not have the outcome that practically everything we do is coerced.

Before concluding with consent, let me consider a few cases that don't involve contract.

A man has violent epilepsy caused by an abnormal brain condition. A brain operation would correct the condition. If he says yes, you may operate, there is no problem about consent. If he says no, don't operate, libertarians would say that the operation should *not* be performed. Some physicians would favor

operating on him anyway, for his own good, saying that he doesn't realize how much freer and happier he will be afterward. "The correction of his condition," writes Dr. Vernon Mark, "will give him more rather than less control over his own behavior. It enhances, and does not diminish, his dignity and his humanity."⁵ I think the libertarian position would be, even if we are all sure that he would be happier or better off after the surgery, the operation should not be performed without his consent: it's for him and him alone to decide.

So far so good. But now consider a pedestrian who suffered brain damage when the car ran over his head. The insurance company contacted him at once and he agreed to settle the case for \$1,000. But he didn't have much of a brain left with which to make the decision. Would a libertarian be committed to saying, "Well, it was *his* decision, and he consented, so that's final"?

As we pursue this line of argument, we seem to encounter no end of situations similar to the one just described. What of a person who literally doesn't know what he's doing? What of a person who is extremely stupid, and can't anticipate or control events in his own

a judgment about the disposition of another's life is upsetting to libertarians; it strikes at the personal responsibility that is central to libertarian thought. The show-stopper is that sometimes there isn't much of a person left with which to make any decision.

One constantly does things on behalf of children, protecting them from danger, by force if necessary. And many elderly people are in the same situation as children. The old lady has rather lost her moorings; sitting alone in her apartment, she thinks she is somewhere else; she recognizes no one and relies on her children to feed and clothe her. On her own, she would not survive. Perhaps her one strong desire is to remain in her house of 40 years. But there is no way to enable her to do this. If others don't tend to her needs, she dies. And she is unable to consent to (or for that matter to reject) the moves necessary to keep her alive.

In a Massachusetts case a few years ago, a man of 60 was terminally ill with leukemia. The question arose whether he should be given chemotherapy to halt the disease—treatment involving pain, nausea, and in his case only about a 30% chance of success. He was totally incapable of understanding the situation or making choices. He had no family to make the decision for him. But the judge said that he had the same right as a competent person to forego treatment or not. So the judge employed "substituted judgment"—that is,

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life? What of someone who suffers from advanced senility or Alzheimer's disease, and can't make any decisions, and people who don't even know where they are or whom they are with?

People are constantly declared mentally incompetent without their consent. And libertarians rightly object to the injustice of this: many people lose their bank account, their homes, their rights under the law, because a judge declares them *non compos mentis*. Still, the judge's pronouncement is not usually an act of cruelty or sadism; it is a response to a problem. The problem is that the person is no longer capable of estimating the consequences of her actions.

The idea of letting one person make

what would a competent person have chosen if he had understood the situation? The judge, substituting his judgment for the patient's, decided that he would not undergo the chemotherapy.⁶

In a subsequent case in the same state, a girl was born with multiple birth defects, including severe mental retardation and total blindness and deafness. An operation for removing some of the defects would have a 40% chance of succeeding. The hospital was afraid of a lawsuit, and asked a judge to decide. The judge decided that the operation should be performed, and it was successful—thus saddling the parents with the lifelong job of caring for this child, when they already had other children

whom they had a difficult time supporting.⁷ The legal difference between the two cases was: in the first, there was a substituted judgment, which applies only when the condition is terminal, and it permits life-sustaining treatment to be discontinued; it does not allow life-saving treatment to be withheld. The second case was not terminal, and indeed the baby did survive the operation, though with handicaps so enormous that most of us would rather not be alive than to live in that condition. In either case, there is no possibility of choice by the person whose life is at stake. If a closed libertarian insists on voluntary consent as being necessary in every case, the going gets pretty rough.

Privacy

What should libertarians say about privacy? The Constitution doesn't mention it at all, but some of the amendments do protect privacy in different ways. The first amendment permits free association, protecting your "private space" against those who would invade it; the third amendment protects against the quartering of soldiers in private homes; the fourth amendment protects privacy by prohibiting unreasonable searches and seizures of persons, houses, papers, and effects.

What is the importance of privacy? Why do we value it? It is intimately bound up with our dignity as human beings, with the respect owed by one person to another. "Privacy," writes Charles Fried, "provides us the context for many of our most significant ends, such as love, trust, friendship, respect; it is a necessary element in these relations; without privacy they are inconceivable. A threat to privacy is a threat to our integrity as persons . . . Privacy is the necessary atmosphere for these attitudes and actions, as oxygen is for combustion."⁸

There is some disagreement as to how privacy should be defined. Some philosophers of law contend that what defines privacy is that there are limits to the access which others should have to observe or perceive you—even representations of you: thus, someone may not without your consent take a picture of you and feature it on the cover of a magazine—doing this without your con-

sent is an invasion of your privacy. But more usually, privacy is defined in terms of *information* about you which you may not wish others to possess, aspects of your personal life which (it is felt) you are entitled to keep to yourself if you choose, and which others may not bandy about without your consent.

Invasion of privacy must be distinguished from defamation (libel and slander). In defamation, a person must intentionally and maliciously say or write something false about you, and thereby cause you damage. In invasion

We must be quite sure what is to count as being defensive and offensive. Very often a person thinks he's defending himself when everyone around him considers his act to be one of offense.

of privacy, nothing false need be said; all that is required is that your privacy be invaded. But there is much disagreement about what that comes to in specific cases. A millionaire tries to keep his wife's suicide out of the newspapers, but doesn't succeed because "news comes first." A father whose six-year-old daughter was mangled by a passing car tried to keep the daughter's picture out of the paper but didn't succeed; though years later, when an organization devoted to automotive safety used the same picture on a poster to warn pedestrians, he sued them for invasion of privacy and won.⁹

Some libertarians allege that privacy requires protection only when there is a violation of another right (already protected by law), property rights. Thus, others can examine your private papers by breaking into your home, but this action is already prohibited by laws protecting property rights. It would seem, however, that there are examples of invasion of privacy that are not violations of property rights: you can hear people's conversations without trespassing on their property; you can stand in the street and with proper equipment can record everything that is said in the living room. Interestingly, this result was anticipated more than 150 years ago by John Marshall, first Chief Justice of the Supreme Court, when he wrote, in a remarkably prescient passage: "Ways may some day be developed by which the Government, without removing papers

from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. Advances in the psychic and related sciences may bring means of exploring unexpressed beliefs, thoughts, and emotions . . . Can it be that the Constitution affords no protection against such invasion of individual security?"¹⁰

The life of an astronaut in space has virtually no privacy: even his bodily functions are monitored. But of course he consents to all this before he decides to become an astronaut. By contrast, being subjected to electronic surveillance surely is an invasion of a person's privacy if he or she hasn't consented to it. Being bugged is about as

clear an invasion of privacy as one could cite. Should all such actions therefore be prohibited by law? Most libertarians have the impulse to say yes, and perhaps they are right. But consider: if your life hung in the balance, would you still want to honor the person's privacy? What if there was a plot against your life and the only way to prevent being murdered was to get the incriminating evidence by electronic surveillance? Are you still sure you would oppose the surveillance—under *all* conditions? Before accepting a general rule, test it on the most difficult cases. Isn't the reason the law admits some cases of invasion of privacy—the safety of others—at least sometimes valid?

Sometimes the law respects your privacy and sometimes not, and sometimes the law in one state is at odds with the law in another. Everywhere in the United States you can find out who's in jail by dialing a certain telephone number—you are told what they're accused of and when they are to appear in court. All this is public knowledge, along with the contents of any trial. The accused has not consented to all this, but it is considered important for anyone who wants it to have this kind of information. Thus people who have knowledge of a certain case can come forward and testify, and one is guaranteed that there will be no secret trials.

But what a defendant says to his attorney is legally protected ("privileged"): he can confess to

multiple murders and be confident that his attorney will never tell a soul. His position is rather like that of a priest in relation to his confessor: no matter what the confessor says, the priest is sworn to silence.

More controversial is the relation between physician and patient. New York was the first state—in 1828—to guarantee confidentiality in the physician-patient relationship. The theory was that if a patient was not guaranteed that his communication with his physician would be kept confidential by the physician, the patient would stay away from physicians and his health would suffer. I suspect that this decision was never more appropriate than in today's controversy about requiring physicians to report AIDS cases.

In 34 states, physician-patient communications are privileged. When a passenger in a New York taxicab falsely claimed whiplash, and sued the cab company, his physician was not permitted to testify in the case, although one sentence from him would have thrown out the whole case. That sentence was, "I've been treating this man for sciatica for two years."

In New York, communications with physicians, psychologists, and dentists are privileged. Communications with nurses are privileged in Arkansas. In New Jersey communications with physicians are not privileged—physicians must answer court questions—but communications with newspaper reporters are privileged. In Georgia and Tennessee, physicians must tell all about their patients in court, but psychologists may not do so.¹¹

A politician can't claim invasion of privacy because he sought the job that involves the publicity; he can sue for libel if falsely accused, but invasion of his privacy "goes with the turf." Here, however, is a former opera superstar whose voice has declined with the years and she no longer wants to be listened to; she sings only behind closed doors. But her neighbor trains an amplifier on her apartment door and listens and records and publishes, the general theme being "she ain't what she used to

be." Her apartment was not entered, and the sound-waves were recorded out in the hall, not in her living room. In any usual sense there appears to be no violation of property rights. Are we quite sure that we want her to have no recourse against such snoopers? Or perhaps that we do want her to have it? Which shall we decide?

And here emerges a curious situation: closed libertarians can take either of two opposed positions on privacy, depending on whose interests they most want to protect. If you have a right to privacy, then the person who invades

Though slogans may win quick converts, these converts may find a principle attractive on Tuesday, and drop it for a different one on Wednesday. We must be always inquiring, always probing, testing our most satisfying formulations. Only then will our movement become what Anatole France once described as "a moment in the conscience of man."

the privacy of the ex-opera star is a rights-violator; a person's privacy should be protected, and wherever exactly the line is, no one may cross it. On the other hand, you might see the issue from the point of view of the other person: he can say whatever he likes about the ex-opera star, he can record her decaying voice without her permission and even sell the unauthorized recordings—all these are part of *his* freedom to act in accordance with *his* judgment, and if her feelings are hurt or her privacy intruded upon, that's just tough luck—she would have the same right to do it to someone else.

The open libertarian need not decide between these polar opposites. He will say, as usual, that there is no simple general answer that can be given in advance: you have to learn the specific details of the individual case and then balance the one general principle against the other in order to decide. This is a messy and often indecisive procedure, of course, and is one reason (though again an inconclusive one) why closed libertarians don't like it.

Risk

To live at all is a risk. You take a risk when you cross the street or the lawn.

As a rule we sue people only for damages or injury when these *have* occurred, not when they might have occurred but didn't. And so the closed libertarian says, "No fine and no punishment unless the damage has actually been done." But the open libertarian says, "Not so fast—it should also be punishable to engage in *very dangerous* activities."

It may seem that if we make this move, we are muddying the clear waters of libertarian thought. Do we want to ban dangerous activities like mountain-climbing? But mountain-climbing is something people do voluntarily in full knowledge of the danger. What about one's actions constituting a danger to others—or even being reasonably perceived as doing so? A woman is walking along a city street, and she notices a man behind her. She turns into a small empty street, but he turns be-

hind her also. She would like to call the police, but even if they were there what would be the charge? He hasn't harmed her. Harassment? He hasn't done even that (and libertarians don't like harassment laws anyway). He has the same right to walk the streets that she has. Maybe he wasn't going to bother her at all. Nothing has happened yet. Perhaps it will; but until that happens he's not guilty of anything.¹²

Still, let's think about it some more. It's illegal to drive on the left side of the road (in a nation with right-side driving laws) with two-way traffic, or to drive 100 miles per hour in a residential zone. To do these things is extremely risky, and a person can be arrested for doing them even though no injury or damage has yet occurred in the particular case. And let's ask: aren't you sort of glad they are prohibited? Would you really prefer it if starting today people could drive on whatever side of the street they liked? Aren't you glad that if the bridge is out there has to be a warning of this? and that there have to be signs at railroad crossings? and that the use of dangerous but necessary chemicals, such as those used in fumigation, is rigidly controlled, and that some, like the plastic explosives that destroyed Pan

Am 103 in December 1988, are prohibited entirely? Yet all these are cases of stopping people from causing damage or injury *before* they have done it.

And what of *attempts* that don't succeed? Smith plants a bomb in Jones' bed, set to go off at 2am, and it does, but Jones happens to stay away that night. Should Smith be liable only for damage to Jones' room? Or: Brown pulls the trigger, intending to kill Black, but unknown to Brown someone has substituted blanks for bullets in the gun, so Black is unharmed. Some libertarians have held that there should be no penalty for unsuccessful attempts.¹³ Do you agree?

And then there's *conspiracy* to commit a crime. A man plans a crime without actually wielding a knife or a gun, like Charles Manson; he is the mind, the others are his arms and legs. But he doesn't take any overt actions. Should he be legally guilty of anything? Many libertarians say no. They contend that others are free to accept or reject his suggestion—that he only planted ideas in their minds, that it's their responsibility alone if they carry them out. Yet, it would seem, he is as much a cause of the crime as the ones who carry it out. And his intention is just as evil. If you were the intended victim of a conspiracy to kill you, would you not consider it fitting to have your conspiratorial assailant arrested, assuming his role in the crime could be proved?

The gun-control issue hinges on the question of degree of risk. Having guns is dangerous: you might shoot someone by accident, a child might get hold of the weapon, and so on. Yet if someone is threatening to use force against you, threatening that person with a gun may be the only way to keep him from killing you. It is for this reason that the founding fathers of the US guaranteed Americans the right to bear arms: nobody should be a sitting duck in the face of another's violence.

But that leaves important questions unanswered. You have a right to keep and bear arms—only in your home, or anywhere you may happen to go, including someone else's home? And which arms may you have? Does the Constitution entitle you to a Saturday night special? a semi-automatic? a machine gun? or just *some* means to defend yourself—perhaps a butcher knife, or a karate chop? Is it all right to make

small nuclear bombs in your basement, or perhaps carry them around in your briefcase, so that if someone bothers you you can eliminate him with despatch? How about keeping a supply of poison gas on hand?

Some libertarians have expressed the following view: you can have any weapon at all provided that you use it *only defensively*; you may not use any weapon, not even a butcher knife, or your own body as in martial arts, offensively. Of course we must be quite sure what is to count as being defensive and offensive: very often a person thinks he's defending himself when everyone around him considers his act to be one of offense.

In any case, is this view acceptable? It's rather embarrassing that practically every weapon that can be used for defense can also be used for offense, so every weapon is liable to misuse. This unfortunate fact makes it much more difficult to stake out a clear legal position. Suppose you have an aggressive paranoid neighbor who acts first and thinks afterwards. He manufactures poison gas with which to kill anyone who might trespass six inches on his side of the property line. Don't you rather want to prevent him from engaging in this activity rather than try to stop him after he uses it, if you're still around? Of course, we may say, his behavior is risky to himself also: depending on how the wind blows, he's as likely to get it back in his face as to kill you with it. But he might not care about that; he might be more interested in getting you than in preserving himself; many people destroy their own lives if in doing so they can destroy the lives of others. Can there be defense against this, short of waiting for the fatal act? Or should we compromise our purity a bit, and legally prevent people from using such vehicles of destruction at all? Isn't the use of some things just too risky to be tolerated?

"Sometimes I think that what I really want to do is to kill people and drink their blood."

Dr. Allen Wolfe looked at the young man in the chair across from him. The face was round and soft and innocent looking, like that of a large baby. But the body had the powerful shoulders of a college wrestler. There

was no doubt that Hal Crane had the strength to carry out his fantasies.

"Any people in particular?" Dr. Wolfe asked.

"Women. Girls about my age. Maybe their early twenties."

"But no one you're personally acquainted with."

"That's right. Just girls I see walking down the street or getting off a bus. I have a tremendous urge to stick a knife into them and feel the blood come out on my hands."

"But you've never done anything like that?"

Crane shook his head. "No, but I'm afraid I might."

Dr. Wolfe considered Crane a paranoid schizophrenic, who might possibly act out his fantasies. He was a walking time-bomb.

"Would you be willing to take my advice and put yourself in a hospital under my care for a while?"

"I don't want to do that," Crane said.

"I don't want to be locked up like an animal."

"But you don't really want to hurt other people, do you?"

"I guess not," Crane said. "But I haven't done anything yet."

"But you might," Dr. Wolfe said.

"I'm afraid you might let yourself go and kill someone."

Crane smiled. "That's just the chance the world will have to take, isn't it? I told you I'm not going to let myself be locked up."¹⁴

I daresay that most libertarians, though feeling a certain mental discomfort about this case, would decide that he shouldn't be incarcerated—he hasn't done anything yet, and he might never do so, and to lock up people for what you think they might do is the hallmark of a police state.

I agree with this, but I would still ask a couple of questions: (1) Can extremely dangerous people and conditions be tolerated if the result is vastly increased en-



"Not bad, Betsy, but we wanted something more forceful."

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dangerment for all of us? Driving on the wrong side of the road constitutes extreme endangerment for everyone, even if in a given case nobody is hurt. There's no hue and cry about arresting people for driving on the wrong side *before* an accident occurs. Suppose now that Hal Crane and the thousands of violence-prone and hate-filled psychopaths are all freed, with the result that the streets and countryside are one-tenth as safe to be in as they are now. Would you still favor the same policy if the fraction were one-hundredth? (2) Let's suppose that psychotherapy would resolve Crane's internal conflict and cure his condition, but that he won't consent to psychotherapy. May it be that we should expose him to it anyway, for his sake and for ours? If he's cured he saves himself and who knows how many others who might otherwise be his victims. Closed libertarians say no, we may not do it: we can't even offer him a choice, psychotherapy or detention. He'd be foolish to turn down such a choice, perhaps, but if he does, we still have no right to detain him against his will, not even for an hour of psychotherapy twice a week, even if the danger

he creates through his present psychological condition is extreme. He hasn't been convicted of a crime, so we have no right to detain him even for purposes of therapy. But if we grant him this, we shall be greatly endangering ourselves. Isn't his condition *his* problem? Why should we make ourselves less safe because he won't consent to therapy?

I raise these questions, not to get you to accept a certain answer, but to get you in the habit of viewing a problem in its full complexity before opting for some neat formula that sounds attractive and will make thinking thereafter unnecessary. I want us all to feel uncomfortable about these cases, and not escape the discomfort through some easy slogan. Such a slogan may win quick converts—but that only gets us fair-weather friends: they may find an inadequately comprehended principle attractive on Tuesday, and drop it for a different one on Wednesday. We must be always inquiring, always probing, testing our most satisfying formulations. Only then will our movement become what Anatole France once described as "a moment in the conscience of man." □

A somewhat different version of this article was given as a talk at the California and Nevada Libertarian Party Convention, at Las Vegas, on February 19, 1989.

Notes

1. See for example A. John Simmons, *Moral Principles and Political Obligation* (Princeton University Press, 1979), Chapters 3 and 4.
2. See Simmons, *op. cit.*, Chapter 4; also David Gauthier, *Morals by Agreement* (New York: Oxford University Press, 1981).
3. Some of the following examples are taken from Charles Fried, *Contract as Promise* (Harvard University Press, 1981).
4. See John Hospers, *Introduction to Philosophical Analysis* (Prentice-Hall, 3rd edition 1988), pp. 371-373.
5. Dr. Vernon Mark, "Brain Surgery in Aggressive Epileptics," in Ronald Munson, ed., *Intervention and Reflection: Basic Issues in Medical Ethics* (Belmont, Calif.: Wadsworth Publishing Co., 2nd edition 1983), Chapter 5. See also John Kleinig, *Ethical Issues in Psychosurgery* (London: Allen & Unwin, 1985).
6. Arthur Miller, *Miller's Court* (Boston: Houghton Mifflin Co., 1982), pp. 245-246.
7. *Ibid.*, pp. 251-252.
8. From Charles Fried, *An Anatomy of Values*. Quoted in John Arthur and William Shaw, eds., *Readings in Philosophy of Law* (Prentice-Hall, 1984), p. 606.
9. See Charles Gregory and Harry Kalven, eds., *Cases and Materials in Torts* (Boston: Little Brown & Co., 1969), p. 925.
10. Quoted in C. Paulsen and S. Kadish, eds., *Criminal Law and Its Processes* (Boston: Little, Brown, 1962), p. 873.
11. Ronald Munson, *op. cit.*, p. 234.
12. Arthur Miller, *op. cit.*, Chapter 5.
13. Randy Barnett, "A New Paradigm of Criminal Justice," in R. Barnett and J. Hagel, eds., *Assessing the Criminal* (Boston: Ballinger, 1977), Chapter 16.
14. Ronald Munson, *op. cit.*, p. 235. Quoted in John Hospers, *Human Conduct* (Harcourt Brace Jovanovich, rev. ed. 1982), p. 299.

History

Private Law Enforcement, Medieval Iceland, and Libertarianism

The traditional history of many nations starts with a strong

by David Friedman

Iceland is known to men as a land of volcanoes, geysers and glaciers. But it ought to be no less interesting to the student of history as the birthplace of a brilliant literature in poetry and prose, and as the home of a people who have maintained for many centuries a high level of intellectual cultivation. It is an almost unique example of a community whose culture and creative power flourished independently of any favouring material conditions, and indeed under conditions in the highest degree unfavourable. Nor ought it to be less interesting to the student of politics and laws as having produced a Constitution unlike any other whereof records remain, and a body of law so elaborate and complex, that it is hard to believe that it existed among men whose chief occupation was to kill one another.

—James Bryce, *Studies in History and Jurisprudence* (1901), p. 263.

leader who put the country together—Arthur, Charlemagne, George Washington. The history of Iceland also starts with a strong ruler. His name was Harald, and he ruled over one of the small kingdoms making up what is now Norway. After being rejected by the woman he wanted to marry on the grounds that he was too small a king, Harald swore that he would neither wash nor comb his hair until he had made himself king over all of Norway; for some years they called him Shaggy Harald. When he had completed his career of conquest he washed his hair; everyone was impressed at how much better he looked. He went down in Norwegian history as Haraldr inn hárfagri—Harald Fairhair.

What Harald established was not merely a single monarchy over all of Norway, it was also a monarchy with considerably more power over the Norwegian populace than its predecessors. The change was not uniformly popular. Norwegians of the ninth century had two major professions—farming and piracy. Many of those who disapproved of the change voted with their feet—or rather their oars. They loaded their longships with their families, their retainers, and as much of their stock as would fit and sailed west; by some estimates as much as ten percent of the population left. Many of them went to Iceland, which had recently been discovered. That is the beginning of the history of Iceland, as the Icelanders tell it.

The settlement began, according to the Icelandic sources, about 870 AD. In 930 AD, the Icelanders held an assembly at which they agreed on a common legal system for the whole island. It was based on Norwegian legal traditions, with one major exception. The Icelanders decided they could do very well without a king.

The central figure in the Icelandic system was the chieftain. The Icelandic term was *Goði*, originally meaning a pagan priest; the first chieftains were apparently entrepreneurs among the settlers who built temples for the use of themselves and their neighbors and so became local leaders. The bundle of rights that made up being a chieftain was called a *godorð*. A *godorð* was private property; it could be sold, lent, inherited. If you wanted to be a chieftain, you found one who was willing to sell his *godorð*, and bought it from him. The term *godorð* was also used for the group of men who followed a particular chieftain.

What were the rights that made up the position of being a chieftain? One, perhaps the most important, was the right to be the link by which ordinary people were attached to the legal system. If you wanted to sue someone, one of the first questions you had to ask was who his chieftain was. That would determine what court you ended up suing him in—just as, in the U.S. at present, the court you are sued in may be determined by what state you are a citizen of. Everyone had to be connected with a chieftain in order to be part of the legal system. But the link between the chieftain and his thingmen was a voluntary one—the chieftain, unlike a feudal lord, had no claim over his thingman's land. The thingman was free to switch his allegiance to any chieftain willing to have him.

Other rights included in the *godorð* were a vote in the legislature

and a hand in picking the judges (by our standards jurymen—there were 36 on a court) who decided legal cases. The court system had several levels, starting at the thing court and going up through the quarter courts to the fifth court.

Under the legal system set up in 930, the 'government' of Iceland had one part-time employee. He was called the lawspeaker and was elected (by the inhabitants of one quarter, chosen by lot) for a three-year term. His job was to preside over the legislature, memorize the law, give legal advice, and, during the course of his three years, recite the entire law code aloud once. The recitation took place at the *Althing*—an annual assembly, lasting two weeks, of people

from all over Iceland. The *Althing* was also where the legislature met and where cases in the four quarter courts and the fifth court were tried. At each *Althing* the lawspeaker recited a third of the law. If he omitted something and nobody objected, that part of the law was out. Think of it as an early form of sunset legislation.

I have described the legislature and judicial branch of the government established by the Icelandic settlers but have omitted the executive. So did they. Aside from the lawspeaker there were no government employees.

You and I are Icelanders; the year is 1050 AD. You cut wood in my forest. I sue you. The court decides in my favor, and instructs you to pay ten ounces of silver as damages. You ignore the verdict. I go back to the court and present evidence that you have refused to abide by the verdict. The court declares you an outlaw. You have a few weeks to get out of Iceland. When that time is over, I can kill you with no legal consequences. If your friends try to defend you, they are violating the law and can in turn be sued.

One obvious objection to such a system is that someone sufficiently powerful—where power is measured by how many friends and relatives you have, how loyal they are, and how good they are at fighting—can defy the law with

The chief occupation of Icelanders was not killing each other. The chief occupation was suing one another; the killings merely provided something to litigate about.

impunity, at least when dealing with less powerful individuals. The Icelandic system had a simple and elegant solution to that problem. A claim for damages was a piece of transferable property. If you had injured me and I was too weak to enforce my claim, I could sell or give it to someone stronger. It was then in his interest to enforce the claim in order both to collect the damages and to establish his own reputation for use in future conflicts.

The victim, in such a situation, gives up part or all of the damages, but he gets something more important in exchange—a demonstration that anyone who injures him will pay for it. The point is made in a more permanent

sense if it is clear that the same person who enforced this claim would do so under similar circumstances again. The powerful individual who took over such claims and enforced them might be a chieftain acting for one of his thingmen or he might be merely a local farmer with a lot of friends; both patterns appear in the Icelandic sagas.

It may help to understand the legal institutions of medieval Iceland if we look at them as an extreme case of something familiar. Our own legal system has two kinds of law—civil and criminal. There is a sense in which civil law is enforced privately and criminal law publicly. If someone breaks your arm, you call a policeman; if someone breaks a window—or a contract—you call a lawyer. The lawyer in a civil case does, as an employee of the plaintiff, the same things that the district attorney would do as an employee of the state.

In medieval Iceland all law was civil. The victim was responsible for enforcing his claim, individually or with the assistance of others. The victim who transfers his claim to some more powerful individual in exchange for half what he is owed is like a plaintiff who agrees to split the damages with his lawyer instead of paying him a fee.

It could be argued that even if this provides a workable way of enforcing the law, it is unfair. Why should the victim of an aggressor have to give up part or all of the damages owed to him in order to win his case? Perhaps it is unfair—but less so than the system under which we now live. Under our system, the victim of a civil offense, like the injured Icелander, must pay the cost of proving his case, while the victim of a criminal offense gets no damages at all unless he files, and pays for, a parallel civil suit.

Because the Icelandic system relies entirely on private enforcement, it can be seen as a system of civil law expanded to include what we think of as criminal offenses. It is similar to our civil law in another sense as well. Under our system, the loser of a civil case typically, although not inevitably, ends up paying money damages to the winner; the loser of a criminal case typically ends up with a non-monetary payment, such as a jail

term or, in extreme cases, execution. Under the Icelandic system the typical settlement was a cash payment to the victim or his heirs. The alternative, if you lost your case, was outlawry. The payment for killing someone was called *wergeld*—man gold.

Before assuming that such a punishment is obviously insufficient to deter crime, it is worth asking how large the payment was. My estimate is that the payment for killing an ordinary man was the equivalent of something between 12.5 and 50 years of an ordinary man's wages.* That is a considerably higher punishment than the average killer receives today, allowing for uncertain conviction and probable parole.

The comparison is even more favorable to the Icelandic system if one allows for the distinction made under that system between killing and murder. If you were a law-abiding Icelander and happened to kill someone, the first thing you did after putting down your sword or your axe was to go to the nearest neighbor, stick your head in the door and announce "I am Gunnar. I have just killed Helgi. His body is lying out by the road. I name you as witness." One of the early Norwegian law codes specifies that "The slayer shall not ride past any three houses, on the day he committed the deed, without avowing the deed, unless the kinsmen of the slain man, or enemies of the slayer lived there, who would put his life in danger." By reporting the killing you established yourself as a killer, not a murderer. A murderer was a secret killer, someone who killed and tried to conceal the deed. The *wergeld* paid for a killing corresponds to the punishment imposed on a murderer in our system who turns himself in immediately after the deed.

The distinction between killing and murder was important in two ways. Murder was regarded as shameful; killing, in a society where many people were armed and where going viking was a common activity for young men out to see the world, was not. The two acts also had different legal consequences; by committing murder you forfeited

all justifications, such as self-defense, that might make your action legal.

One question which naturally arises in reading a description of the Icelandic system—or anything else very different from our own society—is how well it worked in practice. Did powerful chieftains routinely succeed in defying the law with impunity? Did the system result in widespread violence? How long

The "government" of medieval Iceland had one part-time employee. He was called the lawspeaker, and during the course of his three years he was required to recite the entire law code aloud once. If he omitted something and nobody objected, that part of the law was out. Think of it as an early form of sunset legislation.

did it last? What was the society which developed under that legal system like?

A powerful chieftain who wished to defy the law, as some certainly did, faced two problems. The first has already been discussed; his victim could transfer his claim to someone who was also a powerful chieftain. The second was that, under the Icelandic system, the party who lost a court case and ignored the verdict was in an inherently weak position. Many of his friends might refuse to support him. Even if he had supporters, every fight would create a new set of law cases—which his side would lose. If someone on the other side was killed, his kinsmen would expect to collect *wergeld*; if it was not paid, they would join the coalition against the outlaw. Thus the coalition against someone who defied the law would tend to expand. As long as power was reasonably well distributed, so that no single faction had anything approaching half the fighters in Iceland on its side, the system was, in essence, self-enforcing. There is a scene in *Njal's Saga* that provides striking evidence of this stability. Conflict between two groups has become so intense that open fighting threatens to break out in the middle of the court. A leader of one faction asks a benevolent neutral what he will do for them in case of a fight. He replies that if they start losing he will help them, and if they are winning he will break up the fight before they

kill more men than they can afford. Even when the system appears to be breaking down, it is still assumed that every enemy killed must eventually be paid for. The reason is obvious enough; each man killed will have friends and relations who are still neutral—and will remain neutral if and only if the killing is made up by an appropriate *wergeld*.

Our main sources of information on the Icelandic system are the sagas, a group of histories and historical novels written in Iceland, mostly in the late thirteenth and early fourteenth centuries. On first reading, they seem to describe quite a violent society. That is hardly surprising. At least since Homer, the spectacle

of people killing each other has been one of the principal ways in which writers entertain their audience. The chief innovation of the saga writers was to spend as much time on law suits as on the violent conflicts that generated them. The one error in the quotation from Bryce with which I started this

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* See my article, "Private Creation and Enforcement of Law—A Historical Case," *Journal of Legal Studies*, 8 (March 1979), 399-415.

essay is the claim that the chief occupation of Icelanders was killing each other. The chief occupation of the characters of the sagas appears to be suing each other; the killings merely provide something to litigate about.

A more careful reading of the sagas tells a different story. The violence, unlike that in contemporary accounts elsewhere in Europe, is on a very small scale. The typical encounter in a saga feud involves only a handful of people on each side; everyone killed or injured is named. When two such encounters occur in consecutive chapters of a saga it seems as though the feuding is continual—until you notice that a character not yet born at the time of the first encounter is participating in the second as an adult. The saga writers telescope the action, skipping over the years that separate the interesting parts.

The Icelandic system finally collapsed in the thirteenth century, more than three hundred years after it was established. The collapse was preceded by a period of about fifty years characterized by a relatively high level of violence. According to an estimate by one scholar, deaths from violence during the final period of collapse (calculated by going through the relevant historical sagas and adding up the bodies) totalled about 350. That comes to 7 deaths a year in a population of about 70,000, or about one death per ten thousand per year.

That is comparable to our highway death rate, or to our combined rates for murder and non-negligent manslaughter. If the calculation is correct, it suggests that even during what the Icelanders regarded as the final period of catastrophic breakdown their society was not substantially more violent than ours. To put the comparison in terms of contemporary societies, one may note that in three weeks of the year 1066 Norway, Normandy, and England probably lost as large a fraction of their combined population to violence (in the battles of Fulford, Stamford Bridge, and Hastings) as Iceland did in fifty years of feuds.

It is not clear what the reason for the

breakdown was. One possibility is that increasing concentration of wealth and power made the system less stable. Another is that Iceland was subverted by an alien ideology—monarchy. Traditionally, conflicts involved limited objectives; each party was trying to enforce what he viewed as his legal rights. Once the conflict was settled, today's enemy might well become tomorrow's ally. During the final period of breakdown, it begins to look more and more as though the fighting is no longer over who owes what to whom but over who is going to rule Iceland.

If you were a law-abiding Icelander and happened to kill someone, the first thing you did after putting down your sword was to go to the nearest neighbor and announce "I am Gunnar. I have just killed Helgi. His body is lying out by the road. I name you as witness." By reporting the killing you established yourself as a killer, not a murderer. A murderer was a secret killer, someone who killed and tried to conceal the deed.

A third possible cause is external pressure. From Harald Fairhair on, the kings of Norway took a special interest in Iceland. In the thirteenth century, after the end of a long period of civil war, Norway had a strong and wealthy monarchy. The Norwegian king involved himself in Icelandic politics, supporting one side and then another with money and prestige. Presumably, his objective was to get one or another of the chieftains to take over Iceland on his behalf. That never happened. But in the year 1262, after more than fifty years of conflict, the Icelanders gave up; three of the four quarters voted to ask the king of Norway to take over the country. In 1263, the north quarter agreed as well. That was the end of the Icelandic commonwealth.

Anarcho-capitalism and Civilization

The medieval Icelandic legal system comes closer than any other well-recorded historical society that I know of to being a real-world example of the sort of anarcho-capitalist system I described in *The Machinery of Freedom*. One might almost describe anarcho-capitalism as the Icelandic legal system

applied to a much larger and more complicated society.

In both systems, enforcement of law is entirely private; neither depends on enforcement by an organization with special rights beyond those possessed by all individuals. Private enforcement agencies are a more formalized version of the arrangements by which individuals and coalitions in Iceland used force to protect their rights. The major difference between the two systems is that in Iceland there was a single system of courts and legislature, whereas under the institutions described in *The Machinery of Freedom*, for instance, there could be many independent courts, each using whatever set of laws it thought would sell.

One more thing should be said about the Icelandic Commonwealth. If we judge societies by how much they produced that is still of interest to us, Iceland must rank, along with

such better-known societies as Periclean Athens and Elizabethan England, as one of the great successes. It had a population of about 70,000—a large suburb by current standards. Of the sagas that it produced, there are probably half a dozen or more currently in print in English paperback translations, some seven hundred years after they were written. The best of them—I would recommend *Egil's Saga* and *Njal's Saga* to start with—are stories better written than the great bulk of what is published today.

I once tried to construct a crude measure of the importance of Iceland to our civilization, in part as a response to friends who wondered how I could be interested in such an obscure place and time. I did it by counting trays in the card catalogs of two major university libraries, in order to estimate what fraction of the cards were for books filed under Iceland or the Icelandic language. It came to about a tenth of a percent—one book in a thousand. That is a very small fraction of a library, but it is a very large influence for seventy thousand people seven hundred years ago. □

This article is excerpted from the Second Edition of *The Machinery of Freedom*, which Open Court Books is scheduled to publish this summer.

Dispute

Ecology and Economy

Environmental issues are troubling to many libertarians, and—now that socialism is dying—are probably the most significant source of (apparent) anti-libertarian ideas and sentiments. Here the debate continues . . .

Ecological Ostriches Libertarians on the Environment

Ron Courtney

There is an unthinking arrogance in the libertarian movement, a smugness that assumes that the libertarian philosophy is the supreme answer to every kind of problem that human beings may encounter. People who have this attitude are quick to dismiss any and all questions by serving up the correct libertarian remedy, after which they can stop thinking about the problem. There is a naive hubris working here, an assumption that we have all the answers and therefore don't have to worry too much about the questions.

I'm not sure whether Jane Shaw belongs in this category, though her rather scanty article on property rights and the environment ("Private Property: Hope for the Environment," *Liberty*, November 1988) brushes off John Hospers' environmental concerns ("Liberty and Ecology," *Liberty*, September 1988) as if they were a few inconsequential ants that had wandered into our lovely libertarian picnic. The problem with her attitude and that of the few other libertarians who have shown any interest in environmental matters is that their total reliance on libertarian property-rights theory is very difficult and time-consuming to implement in the real world. While they are perched in their ivory towers tossing out correct theory,

the Earth's biological clock is ticking along and we are continuing to contaminate our planet's ecosystem.

I'd love to be able to say with complete assurance that every threat to the air, water, vegetation, soil, animal and human life of the world can be neatly countered by looking in our Junior Libertarian Guidebook and pulling out the appropriate property-rights application. But it's just not so. If we lived in an ideal worldwide libertarian culture, there would certainly be far less pollution than there is now because of mutual respect for each other's right to life and property, but we may be hundreds of years away from that ideal. The world's ecosystem cannot wait that long. A purely libertarian solution to environmental problems will take massive amounts of education on a worldwide scale to generate enough public support to make it work. By the time enough people understand and support our solutions, irreversible damage will have occurred to the life-sustaining processes of the Earth.

I live in a rural area close to the Chesapeake Bay, the biggest estuary in the world, a body of water that supports a great diversity of marine and human life. The Bay is a dying organism. For the past 200 years it has been subjected to ever-increasing pollution, and most people who have studied the problem think that the Bay will never recover. Thousands of acres of shellfish grounds have had to be declared unusable be-

cause the marine life within is so contaminated that it is dangerously toxic to humans. Annual yields of crabs and oysters are a small fraction of what they were a few decades ago. Some species of fish that used to be common in the Bay area have totally disappeared; others are nearly gone and the few remaining are often diseased and tumor-ridden.

It is fatuous to suggest that private

I'd love to be able to say with complete assurance that every threat to the air, water, vegetation, soil, animal and human life of the world can be neatly countered by looking in our Junior Libertarian Guidebook and pulling out the appropriate property-rights application. But it's just not so.

ownership of the Chesapeake Bay would solve all these problems. Who is going to own it? From whom is a potential owner to purchase the Bay? How would anybody arrive at a reasonable monetary value for it? What about all the rivers that empty into the Bay? Wouldn't they also have to be privately owned and therefore relatively

pollution-free in order for this private property solution to work? Doesn't all this seem like an enormously complex and lengthy process to work out, particularly given the current educational and political conditions we'd have to work with? What's the point in struggling for decades to develop a purely libertarian way of preserving the ecology of the Chesapeake Bay, only to find that there's no life left to preserve?

Jane Shaw's assertion that "in the long run, private ownership is an environment in which nature flourishes" is true in the general sense that most

What's the point in struggling for decades to develop a purely libertarian way of preserving the ecology of the Chesapeake Bay, only to find that there's no life left to preserve?

resources are managed more efficiently in private hands rather than in public ones, but efficient management is often a short-term quest for higher profits to the detriment of long-term environmental consequences.

There are hundreds of farms in the rural area where I live, nearly all of them fairly close to two large rivers that flow into the Chesapeake. Farmers spray large amounts of chemical fertilizers, toxic pesticides and herbicides on their fields every year. When it rains, tons of these chemicals run off into the streams that feed into the rivers that empty into the Bay. Each of these farmers is pursuing, on his privately owned land, his own immediate rational self-interest. By using chemicals he is supporting himself and his family; without them he can't produce a successful crop. Yet each farmer is also doing substantial harm to the rivers and the Bay through the same actions that seem self-evidently beneficial to him. Although it is commonly known that agricultural run-off is a major cause of water pollution, it is virtually impossible to find a farmer who will admit it; so the inexorable poisoning of the waters continues year after year.

If there is a workable libertarian solution to this problem, one that can be implemented within a reasonable time, given the attitudes of the farmers, I'd love to hear it. We simply do not have the time to educate people so they will voluntarily stop poisoning the waters in order to avoid harming the lives of others. Nor can we rely upon some utopian scheme of private ownership of the waters. If the poisoning of the Chesapeake and other bodies of water is to be stopped before it's too late, what realistic alternative is there to passing laws to ban the use of chemical fertilizers and pesticides?

In her article, Shaw blithely asserts that the safe disposal of toxic waste is not a major health problem, though she doesn't offer any information to back up this statement. I don't know how things are in her neighborhood, but here in Virginia there have been numerous instances of health hazards caused by improperly buried toxic waste, virtually all of them by private firms on private land. In some cases the chemicals were buried or stored years ago and the companies went out of business or the land was sold, and the new owners woke up one morning to find that their property is so toxic as to be unusable. Often the water table has been poisoned by leaking toxic waste containers that contaminate the drinking water from wells for miles around the site. In one well known case, the owner of a toxic-waste disposal firm was found to be pouring a highly toxic chemical into a stream on his own personal property. He was caught because of the massive fish kill that occurred just downstream from the spot where his privately owned stream emptied into the river. So much for the theory that private ownership of water resources will cause them to be managed in an environmentally sound manner, and so much for the absurd idea that the safe disposal of toxic waste is not a problem.

Shaw's suggestion that migratory birds and other wildlife should be privately owned is one of the most bizarre ideas I've ever seen in a serious publication. Ownership implies control, and I'd love to hear Ms. Shaw's solution to the problem of owning and controlling millions of birds that spend the summers in North America and the winters in Central and South America. (Let's see,

maybe if we built a few million cages, privately owned, of course . . . but then we'd have a monstrous bird poop problem . . . Ah ha! I have the solution! We'll sell the mountains of bird poop to the farmers to use in place of chemical fertilizers, thus solving two ecological problems at once. A privately owned bird in the cage is worth two in the bush!)

Despite the incredible complacency of people such as Shaw, there are serious threats to the survival of life on Earth. These threats require immediate attention. It's not just a matter of the death of a few birds or a few fish or of the inconvenience of having to close a few beaches because of medical waste washing up on the shore. The breakdown of the ozone layer that protects us from harmful ultraviolet sunlight and the heating up of the planet because of the greenhouse effect are problems that threaten our survival. Political decisions are going to be forced upon us, and laws are going to be passed at some point as people demand that their leaders do something to rescue the ecosystem. This could very well lead to an enormous expansion of the power of the state at the expense of liberty and capitalism. Do we as libertarians want to stick our heads in ideological sands and pretend there is no problem, thus leaving the field to the collectivists and statists who usually hang around ecological issues looking to gulp down some power? Or would it be more in our interest to realize that in this area government action is both inevitable and even necessary, and begin to work out practical solutions to these ecological problems, solutions that will minimize and contain the coercive thrust of the state so that we will have maximum liberty and a healthy environment in which to enjoy it? □

Protect the Environment by Protecting Liberty

Jane S. Shaw

Ron Courtney is willing to throw out his libertarian principles as long as *something* is done *immediately* to keep the world from environmental catastrophe. He wants action, and government action, he says, is "inevitable and even necessary."

Instead of burying our heads in

"ideological sands," he thinks we should get on the government band wagon.

Considering that pollution has been building in Chesapeake Bay for the past 200 years, and the greenhouse effect has not yet been confirmed (or even detected), perhaps Courtney could devote a little time to understanding the property rights paradigm he so hastily dismisses. Coming up with "practical solutions" that put the government in charge when you don't understand the source of the problem is the kind of policy that turned a 1973 increase in the price of crude oil into an eight-year energy crisis.

Courtney seems to believe that libertarian property rights theory is some mystical idealistic regime in which everyone owns property and is considerate of his neighbor. He doesn't seem to realize that private property rights are the foundation for most of the productivity, civility, and responsibility that exist in the real world today.

Please bear with me while I outline the theory again briefly. Ownership of property makes people accountable for their treatment of what they own. A person who damages his own property suffers a loss of wealth, while someone who improves it—or sells it to someone who will improve it—gains wealth.

What Courtney fails to understand is that a property rights system, backed by a court system, also holds *non-owners* accountable. If you damage my car (whether you are an owner yourself or not) you must compensate me because I have a property right in the car. It doesn't matter if you like or respect me or not; you have a legal obligation not to damage my property. In the real world, recognition of this obligation encourages cooperation and a relatively peaceful society.

But property rights aren't always clear. Economist Richard Stroup¹ says that property rights must be *defined* (that is, there isn't doubt about who has the right), *defensible* (you must be able to prove that you were damaged and what or who caused it), and *divestible* or transferable. (He calls these the "3-Ds").

For the purpose of this response, the first two Ds are the most important. Pollution comes about because property rights are either ill-defined or indefensible. Even if you can define your right to

air as your breathing space, air is so fugitive that it's very difficult to prove that you are harmed by, say, a smokestack a mile away. The problem is similar with water pollution; in the U.S. there are virtually no private property rights to water (except for the right to divert it in the West). In England, however, the lack of property rights is not quite so complete: Fishing rights are privately owned, and owners of these rights can and do obtain compensation for, and even injunctions against, dam-

The problem of identifying the polluter (and the damage each polluter is responsible for) is just as tricky if a government agency were in charge! That is why, in spite of 17 years of an increasingly expensive Clean Water Act, virtually nothing constructive has been done to reduce non-point pollution.

aging releases into the water.

Courtney has it backwards when he disparages private rights with his story about the owner who pours a highly toxic chemical into his privately owned stream which then kills fish in the river the stream empties into. The point is not that the polluter's action took place on his privately owned land but that there was no owner of the *river* (or of the fish) to go to court to protect the right to clean water. It's the property right of the person whose land or water is polluted that we are concerned with here, not whether the individual who caused the pollution did so privately or on a public street.

In his discussion of agricultural runoff, again Courtney misses the point. If the bay were owned, the bay owner would have the right to obtain damages or an injunction against the polluter, just as the owner of a car has the right to obtain damages from the person who hits it. A more practical version of private ownership might be private ownership of fish, oysters, and other products, allowing the owners (and owners of

beaches, if they are injured) to sue for damages or for injunctions.

It is true that even with ownership, agricultural runoff or "non-point" pollution would be a problem. That is because such emissions are inherently difficult to identify—the defensibility problem arises here. Even in England, where fishing rights can be defended, it is difficult to identify the cause of harm that stems from many small, dispersed emissions of pollutants. If property rights were always easy to defend we wouldn't have much of a pollution problem.

But keep in mind that the problem of identifying the polluter (and the damage each polluter is responsible for) is just as tricky if a government agency were in charge! That is why, in spite of 17 years of an increasingly expensive Clean Water Act, virtually nothing constructive has been done to reduce non-point pollution. And even some collectivists might find Courtney's "realistic alternative" of banning the use of chemical fertilizers on farmland located near waterways as going a bit far.

Courtney says it is "fatuous to suggest that private ownership of the Chesapeake Bay" would solve all its environmental problems. Certainly privatizing the bay would be difficult, but a small aspect of the bay is private already, and the evidence indicates that the bay is better off in a small way as a result: privately-owned oyster beds produce higher value per pound than public ones because they are not overharvested and they are taken better care of. One of the big problems, though, *The Washington Post* reports, is that the government of Maryland fails to enforce private ownership and so there is a lot of poaching. And Courtney wants us to hand over more power to governments like this!

Actually, I do not reject government action in all cases. Unless property rights can be defined and defended (and this can happen over time, usually through an evolutionary process), government action may be required. But it should be the last resort, not the first response. The history of federal involvement in pollution control is a sad one. Superfund (the multi-billion-dollar program to clean up "orphan" hazardous waste dumps) is largely recognized as a giant pork barrel; so is the Clean Water

Act. The Clean Air Act has been used to promote regional economic rivalry as much as (or more than) it has been used to achieve clean air. When politicians have the power that these acts give them, they have little incentive to use it for the sake of the public, but a great incentive to use it for narrow political goals.

There is a lot more to say in response to Courtney's complaints. He claims with certitude that toxic waste is a "major health problem," but he probably doesn't know that almost no harm from existing hazardous waste has been medically verified. Claims of health harms

It is foolish to intrude further on property rights when the absence or incompleteness of property rights is the cause of the problem in the first place. Private solutions are working today and we ought to try to expand them rather than embrace "practical" statist solutions that increase the power of the government without achieving much that is good.

from hazardous waste dumps such as Love Canal have ended with out-of-court settlements for which no judicial standards of proof had to be met, and scientific evidence does not so far support plaintiffs' claims. A 1985 compilation of health studies at 21 well-publicized waste sites (including Love Canal) did not find epidemiological evidence of any long-term health effects. Researchers from the Environmental Defense Fund reviewed these and other studies and agreed that no "serious, life-threatening" diseases had turned up in statistically significant numbers, although they argued that better designed studies might have revealed "subtle effects."²

Contamination of groundwater can be dangerous, but not all claims of contamination warrant anxiety. Bruce Ames, Chairman of the Department of Biochemistry at the University of California at Berkeley, wrote in 1986: "Of 35 private wells shut down in Silicon Valley because of their supposed carcin-

ogenic hazard in an EPA study, only two were of greater possible hazard than ordinary tap water . . . and the most polluted well (2,800 ppb trichloroethylene) is still at least 1,000 times less of a possible hazard than an equal volume of cola, beer, or wine."³

The above two paragraphs only touch on the full picture, but they should give you an idea that my statements about toxic waste are based on research, not mere hearsay or newspaper reports, as Courtney's seem to be.

I didn't actually make the suggestion that Courtney calls "bizarre"—private ownership of migratory birds and other wildlife. My point was that if wild animals were privately owned, we wouldn't worry about their extinction. This statement is true for migratory birds, too, but as Courtney's attempt at satire makes clear, private ownership of migratory birds is difficult. Perhaps it is impossible, but I'm not so sure. We've already seen another migratory species—salmon—essentially privatized through "salmon ranching." Salmon migrate hundreds of miles from fresh water to the ocean and then return to spawn. This homing characteristic enables entrepreneurs to claim ownership to salmon smolts.

Now consider waterfowl. After migrating south for the winter, millions of birds return to the prairies of the north central United States and Canada to nest and nurture their young. This process is repeated every year. Perhaps property rights to these nesting grounds is the key to survival. Courtney is probably unaware that private organizations such as Ducks Unlimited do in fact protect nesting grounds by obtaining easements on millions of acres of wetlands (his "cages," I guess) in the United States and Canada. The property owners maintain the wetlands rather than drain them for agriculture. Property rights (in this case, rights to land rather than birds) are more powerful than Courtney seems to realize.

It was a lack of property rights to American bison in the 19th century that nearly led to its extinction. (In addition, the U.S. government promoted extermination of the bison to help subjugate the Plains Indians, who were dependent on the bison.) A Plains Indian would probably have been as scornful as Courtney if someone had proposed private ownership then. (In some areas Indians did develop property rights. The Montagnais

Indians of the Labrador peninsula gave families rights to beaver-trapping areas on streams. This prevented the beaver's extinction in spite of great demand for beaver pelts from French fur traders.)⁴

Establishing property rights to bison would have been difficult, just as it was difficult a few years later for the cowboys to establish rights to other nomadic animals, sheep and cattle. The Great Plains didn't have enough wood to build fences, and the plains' sparse vegetation meant that the animals needed vast stretches of land to graze on. Yet property rights and the means to enforce them did develop. Branding was adopted and human "fences" of cowboys patrolled the range to keep the herds separate. And entrepreneurs invented barbed wire, which permitted low-cost fencing of vast stretches of the plains.⁵

Courtney may treat private ownership of migratory birds as a joke but he ought to realize that the biggest obstacle to private ownership is not the characteristics of birds themselves but the fact that the state has made private ownership of wildlife illegal.

I hope that I have amplified some of the points not thoroughly discussed in my article last November. My major point is that it seems foolish to intrude further on property rights when the absence or incompleteness of property rights is the cause of the problem in the first place. I am convinced that private solutions are working today and that libertarians ought to try to expand them rather than embrace "practical" statist solutions that increase the power of the government without achieving much that is good. □

Notes

1. Stroup is a Senior Associate of the Political Economy Research Center. I am indebted to him for most of this analysis. Terry Anderson and P. J. Hill, cited below, are also Associates of PERC.
2. Amanda M. Phillips and Ellen K. Silbergeld, "Health Effects Studies of Exposure From Hazardous Waste Sites—Where Are We Today?" *American Journal of Industrial Medicine* 8:1-7 (1985), pp. 1-7.
3. Bruce Ames, "Water Pollution, Pesticide Residues, and Cancer," *Water*, Vol. 27, No. 2 (Summer 1986), p. 24.
4. See Harold Demsetz, "Toward a Theory of Property Rights," *American Economic Review* (May 1967), pp. 347-359. This essay has been reprinted in Eirik G. Furubotn and Svetozar Pejovich, eds., *The Economics of Property Rights* (Cambridge: Ballinger, 1974), pp. 31-42.
5. See Terry Anderson and P. J. Hill, "The Evolution of Property Rights: A Study of the American West," *Journal of Law and Economics* 12, (1975), pp. 163-179.

Survey

The Political and Demographic Dimensions of Contemporary Libertarianism

by John M. Scheb, II

What sort of people are inclined toward libertarian ideas? Last fall, Prof Scheb polled 646 randomly selected citizens to find out.

There can be little doubt that libertarianism is an increasingly important force in American political thought. However, libertarianism has received very little attention from those social scientists who examine political attitudes and behavior. In large part, this is a function of habit; libertarianism doesn't fit into the established vocabulary of social and political analysis. Whatever the causes of this neglect, it is time that academicians, and political scientists in particular, took libertarianism seriously.

In this study I propose a means of identifying libertarians among a random population sample by using a set of statements on contemporary policy issues. After identifying a subsample of libertarian respondents, I compare libertarians to others to determine whether libertarians are distinctive, both in demographic terms and in terms of their political party affiliations and presidential preferences.

Respondents to political surveys are often asked to locate themselves on the standard liberal-conservative spectrum. Yet, the liberal-conservative scale is somewhat simplistic. On that scale, libertarians, authoritarians and populists, despite their sharply divergent views, are lumped together as "moderates" or as "others." However, if we ask everyday folk to describe their political views using terms other than liberal and conservative, they often have difficulty doing so. The term libertarian is not even familiar to everyone with libertarian views.

A better ideological classification scheme relies not on self-identification, but instead is based on the views people express on a variety of public issues. They may then be placed in a typology based on what they think about issues, rather than their sometimes emotional reactions to labels like liberal or conservative.

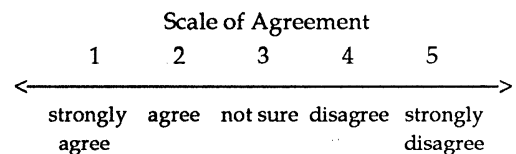
The Survey

Between October 16 and 19, 1988, I conducted a national

telephone survey of 646 adults, contacted through random digit dialing. The margin of error for the survey is $\pm 4\%$, at a 95% confidence level. Respondents were asked to evaluate a set of statements on current policy issues. They were also asked about their political and religious affiliations, and their preferences in the 1988 presidential election. Finally, a standard list of demographic questions were asked.

Respondents were read several statements on current social, economic and defense issues. For each statement, they were asked whether they agreed, disagreed, or were not sure. If they indicated agreement or disagreement, they were asked whether they agreed or disagreed strongly. Thus the responses for each statement were arrayed along the scale indicated in Figure 1.

Figure 1.



Using the responses to policy issues statements, I was able to identify a subsample whose responses reflected a libertarian outlook. I did so by constructing two scales, one based on economic issues; the other based on social issues and defense/foreign policy issues. I placed the scales at right angles intersecting at their means, so that individual respondents were arrayed in a two-dimensional field, and thus divided the sample into four roughly equivalent groups, designated "populists," "liberals," "conservatives" and "libertarians."

The subsample designated "libertarian" constitutes approximately 26% of the sample. While this 26% may not be

* In other four-fold models of this type, the "populist" quadrant is sometimes referred to as "authoritarian."

described as "hard core" libertarians, their responses generally favored the libertarian (i.e., non-interventionist or

Figure 2.

Two-dimensional Classification of Respondents

	Social and Defense/Foreign Policy Issues	
	interventionist	anti-interventionist
Economic interventionist	populist (26%)	liberal (24%)
Economic anti-interventionist	conservative (24%)	libertarian (26%)

anti-government) position on the issues. No doubt some of the respondents placed in this category would balk at being labelled libertarians, either because the term is unfamiliar to them, because they misunderstand it, or because they dislike the label altogether.

Table 1 (below) compares the mean responses of the libertarian subsample to the mean responses of others in the sample. For most of the issues, the differences between the libertarians and other groups are statistically significant at an extremely low level of probability. What this means is that for most issues, there is only a very slight chance that the observed differences between groups are statistical flukes.

Table 1 shows that the 26% subsample identified as libertarians are more likely than others to oppose mandatory health insurance, oppose trade protectionism, and oppose increasing the minimum wage. They are more likely to support the abolition of farm subsidies and the privatization of the post office. They are also more likely to agree that the federal government spends too much on welfare programs. In terms of social issues, the libertarians are more likely to oppose the position that public school students be required to say the pledge of allegiance, more likely to oppose the

death penalty for convicted drug dealers, and more likely to oppose making homosexual practices criminal. They are more likely to support legalized abortion, the Supreme Court's ban on school prayer, and the legalization of drugs. On defense issues, libertarians are more likely to oppose American military intervention in Central America, oppose "Star Wars," and believe that the national defense budget should be reduced. Again, there is some variation within the 26% of the sample classified as libertarians. Some express stronger pro-liberty or anti-government positions than others. But the comparisons in Table 1 do show that the people here designated as libertarians are statistically distinguishable from the rest of the sample in terms of their views on the issues.

Political Leanings

Conventional wisdom holds that libertarians are disenfranchised with the two major parties and, to some extent, my data support this argument. As Table 2 (see below) shows, libertarians are more likely than others to be "independents." Those libertarians who express a preference between

Table 2.

Political Party Identifications: Libertarians vs Others

	entire sample	libertarians	others
Democrat	33%	30%	34.5%
Independent	36%	40%	34.5%
Republican	31%	30%	31.0%

the parties are evenly divided between the Democrats and the Republicans. This ambivalence is easily understood. Libertarians are at odds with the Democratic Party on the economic issues of taxation, regulation and redistribution, but they are equally repelled by the Republican Party's interventionist positions on the social and foreign policy/defense issues. If the two-party system were not so ingrained in both political tradition and law, the Libertarian Party might be

able to make substantial inroads into a vast segment of the population that is disenfranchised with the two major parties. On the other hand, it may well be that libertarians are by nature so individualistic that any party would have difficulty commanding their support and loyalty over time.

In terms of preferences in the presidential election, libertarians were slightly more likely to support Bush than Dukakis, but considerably less supportive of Bush than others in the sample. The most telling statistic in Table 3 (see next page) is that libertarians were, at least at the time of the survey, much more likely to be undecided than were others in the sample. Just as libertarians were most likely to see themselves as independent voters, they were least likely to be satisfied with the choice between Bush and Dukakis.

Are Libertarians Demographically Distinguishable?

The final question is: How do libertarians differ from others demographically? Without belaboring the statistics, suffice it to say that they are, on the whole, younger, wealthier and better educated than

Table 1. Policy Issue

Mean Scores—Libertarians, Others, and the Entire Sample

	libs	others	all
Economic Issues:			
Mandatory employer health insurance	2.40	1.62	1.82
Protectionist import restrictions	3.34	2.26	2.54
Increased minimum wage	2.48	1.86	2.02
Abolish farm subsidies	2.75	3.46	3.28
Privatized Post Office	2.68	3.49	3.27
Welfare payments are too high	2.57	2.92	2.83
Social issues:			
Mandatory public school flag pledge	2.89	2.10	2.31
Death penalty for drug dealers	3.73	2.96	3.17
Legalized abortion	1.98	2.91	2.66
Legalized drugs	3.81	4.41	4.26
School prayer ban	2.68	3.69	3.42
Criminalization of homosexuality	3.86	3.07	3.28
Defense/Foreign Policy Issues:			
Use of force in Central America	3.50	3.17	3.26
SDI development	2.97	2.52	2.64
Defense budget cuts	2.30	2.58	2.51

the rest of the sample. They are more likely to be male than female, whereas females outnumber males in the rest of the sample. Not surprisingly, given their individualism on the social issues, libertarians are much less likely to be affiliated with a particular religious denomination than are others in the sample. Those libertarians who express a religious affiliation are most likely to be "mainline" Protestants, i.e., Episcopalians, Lutherans, Methodists or Presbyterians. Demographically, then, libertarians are distinguishable from the general population.

Table 3.

Preferences in Presidential Race: Libertarians vs Others

	entire sample	libertarians	others
Bush	50%	44%	53%
Dukakis	39%	41%	38%
undecided	11%	15%	9%

Table 4.

Demographic Profiles
of Libertarians vs Others

	Libertarians	Others
Race		
white	90%	85%
black	6%	9%
hispanic	2%	4%
other	2%	2%
Sex		
male	55%	45%
female	45%	55%
Age		
18-29	34%	25%
30-44	35%	34%
45-64	22%	27%
65 and over	9%	14%
Education		
not h.s. grads	8%	10%
h.s. graduates	20%	36%
some college	20%	25%
college grads	31%	22%
grad-prof degrees	21%	7%
Income		
under \$15K	7%	15%
\$15-25K	17%	23%
\$25-35K	22%	20%
\$35-45K	20%	16%
\$45-55K	11%	9%
\$55-65K	6%	5%
over \$65K	14%	8%
not sure	3%	4%
Religion		
mainline Protestant	29%	25%
other Protestant	21%	34%
Catholic	23%	26%
Jewish	3%	2%
other	7%	7%
none	17%	6%

Conclusion

This study has identified 26% of the adult population whose ideological sympathies run generally in the libertarian direction. These people are found to be distinctive demographically, in that they tend to wealthier, better educated and less religious (in the denominational sense) than others in the sample. Politically, many are independent in terms of party identification. Those who express a preference between the two major parties are evenly divided between the Democrats and the Republicans. In the presidential election, they favored Bush slightly more than Dukakis, but were likely to be undecided after other voters had made up their minds. Libertarianism is a social and political phenomenon worthy of the attention of social scientists. Perhaps the most interesting question is: Will libertarians, who tend to be younger than other people of ideological types, retain their libertarian views as they grow older? Or will they become conservatives? □

Comment

Dimensions of Ideology

by James S. Robbins

The model Professor Scheb utilizes, the so-called "Nolan Chart," was introduced by James L. Sundquist in *Dynamics of the Party System* (1973), and lately popularized by the Advocates for Self-Government (among others). It is a useful heuristic for demonstrating the relationship of libertarianism to other political orientations. There are, however, some aspects of the model that have yet to be clarified.

One such aspect is the disposition of Foreign Policy and Defense issues. Scheb has combined these with Social issues, but the rationale for this grouping is elusive. One's approach to questions of external security and interstate relations need not have a direct relationship to one's outlook on matters of internal policy. For example, one may be opposed to coercive actions taken by the state internally, yet endorse such actions externally, if one believes that, in absence of such actions, a foreign power will take more drastic action. Arguments for both isolationism and interventionism can be made from a libertarian perspective, depending on how one perceives external threats.

On the other hand, grouping defense issues with economic questions is also questionable. Certainly, the debate over the size of the defense budget has

an economic dimension, but should not be measured in purely economic terms. Strategy and diplomacy are not economic issues, even though foreign policies have economic effects. The solution to the problem may rest in a third dimension which would consider one's attitudes towards defense, foreign policy, and perhaps "nationalistic feelings." Such a dimension would be difficult to represent graphically, but would show more accurately the striations in political orientation.

It would have been interesting to compare the question "Are you a liberal or conservative" to various issue stances to see how the traditional self-identifications relate to the externally imposed, issue-based group definitions. And this leads to another question altogether—are people what they say they are, or are they what the analyst says they are? One may be emotionally attached to a label, such as "conservative," a fact which Professor Scheb regards as a problem. Yet, one may be just as emotionally attached to an issue position. Some respondents probably related what they thought about an issue. Others may have given gut-level responses about matters which they have not given much or any thought. There is a large body of literature on the question of voter rationality and consis-

tency (known as "constraint" to social scientists), and while there are no definitive answers, one should be aware of the debate.

The poll omits mention of the Libertarian Party, the candidacy of Ron Paul or any other party or candidate aside from the dominant two. Scheb's investigation of the question of voter disenchantment would have profited from an investigation of whether the "independents" were satisfied to choose between Republicans and Democrats as situations warranted, connected to other parties, or fed up with the system altogether. There are many reasons for being uncommitted to a party or candidate besides dissatisfaction. Referring to those who do not identify themselves as either Republicans or Democrats as "Independents" is as problematic as describing those who call themselves neither conservatives or liberals as "moderates."

Finally, there is the question of distinguishing libertarians from others demographically. This is the most important part of the piece. If one isolates a sub-group of libertarian tendency, and then finds significant differences be-

tween this sub-group and others, one may find clues towards the factors which underlie the formation of the sub-group. Yet, while Scheb presented the percentage differences, he failed to test them for significance—that is, he didn't state how much of a difference really is a difference. For example, Scheb contends that libertarians tend to be "wealthier." The income data seem to bear this out. Yet, only the difference in the lowest category is significant, which means that libertarians are less likely to earn under \$15,000, but as likely to earn any other amount. None of the racial differences were significant. The gender difference was. The age difference was significant only in the youngest cohort (i.e., "libertarians" are more likely to be 18–29 than "others" are). Scheb's best supported claims are that libertarians are better educated (three of the five categories show significant differences), that they are less likely to be non-mainline Protestants, and more likely to have no religion. For the party/candidate preference data, differences of 10% are significant, and the closest the data come is 9% ("libertarians" vs. "others" in support of Bush).

These data bear an interesting similarity to the demographic profiles in both the Liberty Poll (*Liberty*, July 1988)

and the as yet unpublished poll conducted by *Liberty* at the 1987 Libertarian Party convention. All three surveys tend to confirm what has long been observed, namely that libertarians tend to be white, male, well-educated, and come from non-religious backgrounds. The respondents to the Liberty Poll and the LP poll differed from the libertarian quartile in the Scheb study in one important way: they tended to group at the ends of the income scale. Scheb's subjects were more likely to have middle incomes. However, the average libertarian income in all polls was above the national average.

Identifying characteristics that libertarians have in common is useful for expanding the base of the movement. It is especially important for election strategy, to ensure that scarce funds are spent effectively by targeting those more likely to cast an LP ballot. Outreach efforts aimed at well-educated, white males from non-religious backgrounds with higher than average incomes could tap latent libertarian sentiment. It is also interesting to note that, according to Scheb's data, those with more libertarian beliefs tend to identify themselves as Democrats and to have supported Michael Dukakis for President in 1988. This calls into question those recruitment efforts aimed at Republicans. □

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Letters (continued from page 6)

These kinds of questions are interesting, no doubt about it. But they are also absurdist, and the lack of non-absurdist answers to them is insufficient reason for a person to refrain from a clear, succinct, and yes, narrow statement of his or her ethics.

Please, Mr. Waters, come in out of the cold. Join with your brethren in the LP in declaring to the world that which you are convinced of.

And let us all try to save active consideration of those un-likely ethical exceptions for our hallway conversations at the next LP convention.

Perry Willis
Santee, Calif.

Not with an Oath, but a Mantra

Congratulations to Johnny Fargo for what may be a marketing breakthrough for libertarians! With a slogan like "Just a little less brute force, please," how can people resist jumping on our

bandwagon?

There's still room for radical libertarians ("No more brute force, ever!"), but I still suspect that the political spectrum has just reorganized itself. It used to require a large quantum jump for those becoming libertarians. Now it's a continuum, with a strong force of attraction at our end.

The battle, of course, is still not won—we must still convince people that the policies we advocate actually do represent a reduction of brute force. We will have to deal with ambiguities and with utilitarians who will want to "increase government force to reduce the aggregate of brute force." But these difficulties are no greater than before, while our persuasiveness may have been multiplied.

I'm tempted to repeat "Fargo's Request" like a mantra.

Dave Burns
Austin, Tex.

Historical Sketch

Nude Dancing in Memphis

by Michael Williams

The decline of indigenous American art-forms is often decried. The solution, we are told, lies in yet another "National Endowment." But, in some cases the state actually *impedes* artistic development.

Nude dancing is probably as old as civilization itself. As soon as *homo erectus* invented clothing, certain individuals discovered the pleasure and profit of taking them off again. Almost immediately, others were outraged by such scandalous behavior and tried to stop it, often enlisting the government to help them. From the fertility rites of prehistoric tribes, to the ceremonial temple "virgins" of antiquity, to the biblical Salomé, right down to the present-day topless bar, the commercial skin industry has been in almost continual conflict, interrupted by usually brief periods of symbiosis, with the law.

Although it would be morally instructive to consider the grand sweep of the history of ecdysiasm, I will limit my survey here to a period of ten years, from 1973 to 1982, in the city of Memphis, Tennessee. Readers may be surprised to learn that Memphis, often derided as the "cultural backwater of the Mississippi," developed during this period a flourishing nude entertainment industry. The topless, and later bottomless, bars of Memphis became famous nationwide, surpassing in quality many more well-known entertainment centers such as New Orleans or Atlanta, and even approaching the level of the world-famous Palomino Club of North Las Vegas.

Topless dancing first appeared in Memphis in the early 1970s, in small storefront clubs. Whereas the traditional American burlesque show had a theatrical format, these places were more cabaret style, like a very small Las

Vegas lounge show. The stages were small; the dancers did double duty serving drinks; and from the beginning, there was the peculiar institution of the "table dance."

The table dance may have originated in Memphis, for it was not until much later that I observed it elsewhere. For a fee, typically \$3.00 in the early days, any dancer in the place would gyrate, topless, for one entire number on the constantly blaring juke box, right by your table—or, as the art developed, right between your knees. Signs on the walls admonished "positively no touching"; but the lighting was poor, and no doubt considerable touching went on anyhow, perhaps for an additional fee negotiated during the dance.

Table dances were the driving force of the business. Out of each \$3.00 fee, the management retained \$1.00 and the dancer \$2.00. The dancers also received commissions on drinks, as well as tips, and there was usually a not insignificant cover charge; but it was table dances that really brought home the bacon.

Although precise figures are hard to come by, a typical club might gross ten thousand dollars on a good night. If it were a military payday with the place

full of sailors and marines, the take could be far more; and it was all in cash, in small bills, passed hand to hand in dim light. This made it easy to skim profits for avoiding taxes and for "tips" to supplement the meager earnings of public officials charged with enforcing the law. In addition, profits from other enterprises could easily be laundered through the clubs on slow days.

Curiously, there was no outright ban on topless dancing itself in the state that gave the world the Scopes Monkey Trial, and in the city that banned all Charlie Chaplin and Ingrid Bergman movies because of his leftist politics and her loose morals. But conflict between the skin industry and the law was inevitable. In retrospect, it seems likely that the fix was in with certain progressive elements of the city administration.

For whatever reason, a direct ban on nudity was not attempted; instead, the enemies of art attempted to exert control through alcohol regulation. Apparently it was all right to look at bare breasts as long as you did not drink while doing so. This represented a serious threat to the industry. Even though table dances were the major source of income, the profits on drinks were by

no means insignificant; and of course, the customer with a few sheets to the wind was more amenable to the idea of shelling out three bucks for a table dance. No club could prosper without some kind of alcohol for sale.

Now at that time in the State of Tennessee, beer and mixed drinks were controlled by different agencies. This separation of powers made it possible for the club operators to "switch" from one control board to the other. Thus when the beer board made it illegal to serve beer in establishments featuring topless dancing, the clubs would give up their beer licenses and obtain mixed-drink licenses; and vice versa.

Apparently the anti-nudity forces were seldom able to control both boards simultaneously: thus, when one board ruled against the industry, the other board saw it as an opportunity to collect the graft the first had rejected. So for several years it was all right to watch topless dancing in Memphis as long as one did not drink either (a) hard liquor or (b) beer—depending on the current regulatory situation. (Ultimately, the situation seemed to stabilize in favor of beer.)

The next major advance came in 1977, when for the first time, totally nude dancing appeared in Memphis—topless, bottomless, the works: "high heels and a smile." This innovation was introduced rather casually and precipitated a predictable reaction from the outraged moralists; but evidently a more favorable atmosphere in the courts—and also perhaps a more "sympathetic" law-enforcement philosophy—made successful legal challenges unlikely. Some of the clubs (and some of the dancers) were reluctant to change over at first, but the free market prevailed. Those unwilling to satisfy their customers' desires soon found themselves with no customers to satisfy.

Within six months there was not an ordinary topless bar left in town; they had all gone bottomless. Although topless table dances remained on the menu at \$3.00, a new item was far more popular: the totally nude table dance, priced at \$5.00, of which the house retained \$2.00. The dancer's marginal effort in

taking off a bottom as well as a top was minimal, and the profits had almost doubled; and since customers willingly paid the higher prices, everybody involved was better off—as with all voluntary exchanges.

Touching was still theoretically forbidden; but as before, this rule was not always strictly observed. Many dancers were quite willing to perform a "real good" table dance for \$10.00, negotiable downwards if business was slow. Un-

more table dancing and serving fewer drinks.

Some of the dancers were transients, working to earn enough money to move on; some were divorcees with kids, who found it difficult to work at a conventional job because of the hours, lack of training or whatever; some were "motorcycle mamas," sometimes with truly remarkable tattoos; some were drug addicts or alcoholics; and doubtless many were perfectly able to find work at a "straight" job, but found nude dancing more rewarding, either financially or artistically.

Patrons came from all walks of life. The largest and most prosperous establishments were located near the airport and did considerable business with salesmen, businessmen and others passing through town. Around the middle and end of each month, the ranks would be swelled by large numbers of sailors and marines from nearby Millington Naval Air Station. Other customers might be honest workmen on their way home; a bridegroom-to-be out for a last (?) celebration with his buddies; college students taking a break from the books; bikers; hustlers of one kind or another; and of course the occasional undercover police agent. Known boyfriends of the dancers were usually barred, in the interest of domestic tranquility.

Violence was seldom a problem. The announcer or "Disk Jockey" was usually a large and powerful type, and there was also the manager and the bouncer, and perhaps a couple of parking-lot guards who might be around at peak

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Curiously, there was no outright ban on topless dancing itself in the state that gave the world the Scopes Monkey Trial, and in the city that banned all Charlie Chaplin and Ingrid Bergman movies because of his leftist politics and her loose morals.

less the manager noticed the extra effort and had to be appeased, the dancer pocketed all the overage (or palmed it, at least; she normally did not have pockets available). Of course, both dancer and customer ran a slight risk of arrest for public lewdness, and this did actually happen a few times, but the general impression was that the fix was in and that the risk was very small. Some dancers refused to appear totally nude, just as some (often the same ones) had previously refused to appear topless. There was generally no house rule requiring them to disrobe; they simply made much more money if they did. Some even refused to go on stage at all and were actually waitresses, subsisting on tips and drink percentages while the others stripped down and cleaned up. Generally the dancers did not mind the non-performing waitresses; the dancers could maximize their income by doing

Sex and God

One day in late 1977, at the beginning of the "bottomless revolution," I went to a little hole-in-the-wall club near Memphis State University. This place, one of the few in town without a cover charge, was just a short drive from the Liberty Bowl Sports Complex; and that summer, a world-famous television evangelist was holding a week-long revival at the stadium.

I was sitting in the bar, sipping a beer, when one of the dancer/waitresses came over. "If you want another beer, you'd better order now," she said.

"Why?" I asked. "Is the price going up?"

"No," she replied, "but that revival will be over in a few minutes, and this place will be packed to the walls."

Argument

Fetal Rights

The Implication of a Supposed Ought

by Tibor R. Machan

Among the many issues considered in connection with the abortion controversy, there is one that has, unfortunately, received little attention. To wit, if the "pro-life" position is roughly right—that is, if conception of a human being entails a serious right to life for the conceptus—then certain radical legal consequences follow. If zygotes, embryos, and fetuses have a serious right to life, then *miscarriages or spontaneous abortions must become subjects of extensive and constant police scrutiny.*

Every state has some public policy regarding police investigation of unexplained deaths and homicides. (See, Wayne R. LaFare & Gerold H. Israel, *Criminal Procedure* [St. Paul, Minnesota: West Publishing Company, 1985], Chapter 1.) The authorities must determine that there is no reasonable ground for suspecting murder or some other variety of illegal killing. Now, if a fetus or zygote has a right to life, it follows that any activity on the part of the pregnant woman (or even a companion or stranger) that might result in a miscarriage (say, arising from some sport or a minor traffic mishap) could constitute negligent homicide. (See *Criminal Law* 21 Am Jur 2nd Par. 132; *Model Penal Code* Article 210 Section 210.1 & 210.4 Criminal and negligent homicide [1962]; *Commonwealth v. Nelansky*, 55 N.E. 2nd 902 [MA. 1944].)

In the death of an adult or even a child, the public accessibility of the deceased makes it relatively easy to determine whether foul play reasonably can be assumed. Innumerable forensic methods and devices exist for this purpose. Simply checking the body will usually provide investigators with suffi-

cient information to determine whether there is ground for suspecting a crime. Often there are members of the public well-acquainted with the deceased, and these friends, family and neighbors can testify to suspicious circumstances, history, and the like. The same situation, however, *does not apply in the case of deceased zygotes.*

Whatever it is that is created at conception—whether it is something that is human or something that is only potentially human—it is often not known to exist until long after conception. Women do not know that they are pregnant immediately after they have conceived. The plain fact is that "unborn children" are hidden for several weeks from the kind of public exposure that even babies enjoy. While in advanced civilizations many of these unborn are monitored by physicians, this usually occurs only after having lived and been vulnerable to mistreatment for several weeks. This alone seems to violate the "ought implies can" provision of ethics, which states that if someone is *required* to act in a particular way, it must be *possible* for that person to carry out the responsibility. The veil of ignorance that surrounds the early stages of pregnancy causes many problems unforeseen by the advocate of fetal rights.

Even if immediate knowledge of

conception were possible for a pregnant woman the situation would be the same. What is required is *public* knowledge as well as *private* knowledge. It is the rights-protecting authorities who must be able to know of the existence of the embryo, zygote or fetus in order to protect their rights. This requirement is not easy to meet.

Of course, one could imagine the following: At the moment of any possible conception—that is, whenever heterosexual intercourse takes place between fertile parties—an extensive machinery of examination, registration and supervision of possible pregnancies would be generated. Every woman would have the constant duty to check whether she is pregnant. If the answer is in the affirmative, the woman would immediately have to register the conception of the new human being. She would then have to submit to constant inspection and supervision, so as not to permit the possibility of a neglectful miscarriage—for example, from sports, recreation, work, or play, or any of a number of other activities.

This kind of "solution," however, conflicts with the existence of the rights of persons to not have their lives unreasonably scrutinized by authorities—or, as the 4th Amendment of the U. S. Constitution puts it, "against unreasonable

searches." The threat to the rights of possible parents would be enormous—indeed, to do their duty, governments must violate human rights on numerous fronts. A veritable police state would have to be established so as to uphold ordinary justice.

This extraordinary extension of state power can also be considered a violation of the "ought implies can" provision, although in a somewhat complicated sense. *Ought* not only implies *can* in a physical sense, but also in a moral sense: a moral obligation must not require immoral acts. Rights must be compossible—the human right of a fetus cannot contradict the equally basic human right of anyone else (although some *prima facie* rights theories allow for the ranking of human rights).

Accordingly, even if all pregnancies could be detected immediately upon conception, the institutional arrangements required for this would involve extensive rights violations and, thus, make discovery of negligence and other criminal conduct during pregnancy morally impossible.

A legal policy consistent with the idea that the human being is formed at conception could not be carried out in a society that respects the sovereignty of all of its citizens, including pregnant women. If a law is unenforceable in principle, it is inoperative. This, in turn, suggests that the "pro-life" position implies a set of legal consequences that are impossible in the very society that supposedly recognizes the rights of its citizens in all cases other than the unborn. If we

add to these considerations the possibility that some alternative theory of when a human being comes into existence makes better sense and does not imply the widespread official violation of individual rights, then the case against the "pro-life" position seems very strong indeed. Before it could even be considered sound, it would have to be shown that the widespread intrusion into the lives of persons discussed here is not implied by the "pro-life" doctrine.

The normal respect for and protection of individual human rights cannot be extended to the being that is created by conception—not, at least, without absurd invasion of the rights of adult human individuals. □

The author thanks Prof. Cliff Perry for his help with legal data.

Michael Williams, "Nude Dancing in Memphis" (continued from page 50)

hours. These guards carried nightsticks openly; and inside, you might sometimes see the end of a sap sticking out of the Disk Jockey's pocket. In five years, I rarely saw a fight, probably no more than took place in ordinary bars in the same period, and these were quickly squelched.

Drugs, other than the legal ones, were usually kept discreetly out of sight. Many of the dancers were undoubtedly on something or other; this was precisely the sort of work that such a person could do, managing to be at least somewhat productive instead of a total drain on society. The managers knew that erratic behavior generated customer ill will and increased the chance of a police inquiry; so most of the time, everyone was careful on the premises.

Prostitution was not blatant; but who knows what transactions were arranged in whispers over the constantly blaring background music? The house usually required an "exit fee": in order to leave the club before the end of the shift, a dancer had to pay the management a fee of perhaps \$30.00. Because of the size of this fee, I suspect—though I lack first-hand experience—most such arrangements were made for later.

There matters stood for several years after the alcohol board situation stabilized. The show seemed on for an indefinite run.

But then, without warning, came the

collapse. In the fall of 1982, the mayor, who had held office for an unprecedented three terms, stepped down to become a judge. The day the new interim mayor took office, the dancers had to put their bottoms on again. Naturally, after nearly five years of total nudity, ordinary toplessness had limited appeal, and business fell off sharply. Then, following a special election, yet another new mayor took the helm—with even more disastrous results.

The new mayor was a former county court clerk who had won largely on name recognition; for years people had been writing checks payable to him to buy license plates. He immediately began a vicious campaign against the skin industry and other victimless crimes like prostitution. Before long the prostitutes of Memphis, and sometimes their customers, were being given the guided tour of Memphis' magnificent new Criminal Justice Complex (which sounds almost like a psychiatric condition). At the same time, the restrictions on topless dancing, were tightened even further.

A grass-roots organization calling itself MAD, an acronym for "Memphians Against Degeneracy," began picketing the clubs, lobbying local politicians and attracting media attention. These efforts were countered by an outfit styling itself MASH (Memphians Against Social Harassment). The industry fought back too,

using such slogans as "At least we're not on welfare!" and (this one on a sign held by a five-year-old) "Please don't take my mommy's job!," but it was like trying to hold back the tide. MADness prevailed, and for a few months, even topless dancing was banned.

It was the New York Metropolitan Opera that finally reestablished topless dancing in Memphis. Learning that a touring company of the Met was coming to town with an opera featuring nudity, MASH agents filed a formal complaint. They charged that singing in Italian could hardly excuse the heinous crime of exposing one's breasts. Then during the opera, a couple of females in the audience (dancers from the clubs) stood up at the appropriate juncture and went topless along with the diva (or perhaps it was the coloratura; accounts differ). This ploy attracted nationwide publicity and made the city officials appear almost as ridiculous as they really were.

Rather than appear even more ridiculous by busting the Metropolitan Opera, the forces of morality relented and allowed topless dancing to return. Cynics also speculated that the city officials had at last been made aware of the financial advantages of a symbiotic relationship. Whatever the arrangements, topless dancing returned to Memphis; but old-timers considered it a mere shadow of the glories of days gone by. □

Appraisal

The Spirit of '89

by James S. Robbins

Churchill said that the Soviet Union under Stalin was a "riddle wrapped in a mystery inside an enigma." Recent democratic reforms back in the USSR are as puzzling as some of Stalin's plots. In this essay, our Russia watcher unwraps some of the mystery.

On March 26, voters in the Soviet Union went to the polls to participate in the election of delegates to the first ever USSR Congress of People's Deputies. The elections, lauded as the most free since 1917, were as revolutionary as the body for which they were conducted. Unlike previous

elections, with single candidate ballots, little or no campaigning, agitators flushing out the citizens for the necessary 99.9% turnout, and Communist victories by about that margin, these elections saw multiple candidates, active campaigns, and the defeat of CPSU (Communist Party of the Soviet Union) stalwarts on their home ground. Some commentators were absolutely overwhelmed. "By all means let's get excited," Hendrik Hertzberg wrote in *The New Republic*. "What has happened is stupendous, magnificent, stirring—one of the great events of the century . . . unreservedly good, true and beautiful."

Well—it was an important event, but let's not lose our heads. To take these elections at face value and see in them an expression of freedom for its own sake would be premature. They offer promise, undoubtedly, but promise of what is another question.

The election chose delegates to a new state body, the Congress of People's Deputies, which was proposed at the 19th All-Union Party Conference last summer. 2895 candidates ran for 1500 Congressional seats. A Further 750 seats were reserved for delegates from various public organizations, including the CPSU, which claimed 100 mandates. When the Congress convenes

later this month, it will choose the 750 delegates who will go on to form the revitalized Supreme Soviet.

On a purely mechanical level, there are some interesting comparisons to Western-style (that is, free) elections. Access to mass media was guaranteed by an equal time provision, which was implemented with a thoroughness befitting the age of *glasnost*. While not all candidates received space in major publications, they were granted local, regional, and, in the case of those running for All-Union mandates, national exposure. The service was free of charge, naturally. A familiar debate occurred over state funding of election posters, pamphlets and other materials. Some objected to candidates receiving contributions from any sources other than the state, which apportioned equal stipends of about 60,000 rubles. Ultimately small contributions from official groups (not individuals) were allowed, but given the anti-establishment tenor of the campaign, a candidate whose presentation came off as too slick was likely to lose support, not attract it.

Every candidate had a platform, and unlike their U.S. counterparts, these platforms *meant* something. It was defi-

nately an "issues" election, but considering the fact that the voters had enjoyed no political voice their entire lives, one shouldn't read too much into it. The Party supplied a pro-*perestroika* platform for all of its candidates, who sometimes ignored it and campaigned on their own themes—a move that brought criticism, especially from those who had adhered to the platform and lost.

Opinion polls did play a role in this election, reports to the contrary notwithstanding. In fact, opinion polling is one of the growth industries in the Soviet Union. It is seen by the Party as a useful means of keeping in touch with public attitudes. While the usual "horse-race" polling did not take place with the same intensity as in the U.S., Party polls were taken regularly, and occasionally released to the media.

Participation was just under 90%, a fact which argues for the fairness of the process. If participation rates continue to drop, it will be a sign that democracy has indeed come to the land of the Soviets. A few groups, the Lithuanian Freedom League, the Ukrainian Catholic Church and other dissident organizations, boycotted the election. One group, the Lion Society, voted against

everyone, utilizing the option to cross-off candidates. As was widely reported, even some candidates who ran unopposed, such as party boss Yuri Solovyev, failed to carry a majority and must run again. The "crossing-off" option is a novel little innovation. If we could learn anything from the East, this would be it.

Why were the elections held? This is an intriguing question. Gorbachev made it clear that the purpose of the elections was to further *perestroika*. The reason Gorbachev used elections and is convening the Congress of People's Deputies is because he cannot institute his reforms through other channels. If he could, he would have already. Attempts to utilize these other channels

have been underway for many years. Restructuring is rooted in the Andropov Secretaryship. Brezhnev put a virtual stop on Party and state promotions for about ten years, ruining the economy in the process. Andropov reacted to the policy of stagnation by instituting the largest personnel turnover since the days of Stalin. Gorbachev oversaw the process, along with the currently discredited Ligachev. The Chernyenko interregnum slowed but did not stop the turnover, and when Gorbachev took power he had already reshaped most of the lower Party apparatus to his liking. Over the next few years the personnel changes reached higher in the apparatus, and soon the Politburo was purged of its most "reactionary" elements. Still, resistance persisted. Attempts to use the Central Committee to institute reform were also failing. Gorbachev threatened to call a Party Conference, a general meeting at which major internal measures could be carried out swiftly. When results were not forthcoming, he acted on his threat, and the Conference convened in the summer of 1988. Here the proposal for the new Congress was hashed out. It was a compromise measure, one Gorbachev had been holding in reserve. Having failed to restructure Soviet society through traditional means (putting one's own cadre in place), Gorbachev would now appeal to the people for results.

In some ways this was a safe thing to do. Gorbachev knew that the voters

would reject and thereby discredit Party officials who followed the "old" practices, or who were not vocal in their support of reform. It would be a vengeance vote. Gorbachev could then use the results of the election to pressure some of these elements out of the ruling circles of the Party, which he did at the April 26 Central Committee plenum. About one third of the CC resigned.

Gorbachev took pains to make certain that votes against Party members were interpreted as anti-individual, not anti-CPSU votes. The leading role of the

The reason Gorbachev used elections and is convening the Congress of People's Deputies is because he cannot institute his reforms through other channels. If he could, he would have already.

Party was to remain unquestioned. The prospects for a multi-party system were never entertained by anyone inside the regime, although the development of "pluralism in one party" was discussed. Even media star Boris Yeltsin would not endorse a new party, though reformers outside the CPSU see it as a necessary development for true democracy.

At the same time that the Party is being cleansed, Gorbachev is shifting more power to the state, and to himself. The new Congress is a state body, and though its delegates will be Party members, they will not act in their CPSU capacity. The 750 delegates who enter the Supreme Soviet will be the new focus of power. The term of a representative to the Supreme Soviet will be one year; one fifth of the Congress will rotate through annually. Gorbachev will undoubtedly be selected to lead this body.

The question arises, what exactly are the powers of the new Supreme Soviet? The answer is that nobody knows. Its duties have not yet been explicitly defined, and this could result in problems for Gorbachev. Ill-defined power is potentially unlimited power, and not necessarily something one can control. Consider the meeting of the Estates General in 1789 France. The assembly had been called for a specific purpose, namely to raise taxes. Yet because the Estates General had not convened in living memory, its powers were uncertain. It was clear that more would be discussed than simply the tax issue. Delegates ar-

rived with "memorials" from their constituencies, statements of discontent. But even these were mild, the most radical of them calling for a written constitution. Nobody expected the meeting to turn into a revolution. However, Louis XIV faced opposition both from disgruntled bourgeoisie and angry nobles. The Estates General gathered dissidents and reformers of every stripe from around France, who, meeting in an atmosphere of ill-defined powers, eventually reached a critical mass, and began to exercise power as they wished. The armed

forces mutinied, and the chaos of the revolution followed.

That is the very definition of power—its exercise. Where there are few guidelines, people will seek to extend power as far

as possible. The new Supreme Soviet will bring together many disaffected elements, and place in their hands a series of partly-defined powers. The nationalities are already making their presence felt, with demonstrations along the rim of the Soviet Empire. The Lithuanian Sajudis Movement won 31 of 39 Congressional seats, the strongest showing for a nationality group. When these delegates meet their counterparts from the other Baltic states, the Ukraine, Georgia, Armenia and Central Asia, the effect could be synergistic.

The Soviet Union faces other important problems, chief among them being food. Gorbachev assessed the election at a March 29 meeting with journalists, but prefaced his remarks with a lengthy discourse on food. "Food is the real, fundamental problem," he stated. He said that if it was not resolved, *perestroika* would be endangered. He extolled some of the reform efforts, especially the workings of private plots, but maintained that more decentralization was necessary. If the public begins to blame *perestroika* for their problems instead of the previous system, or demands restructuring be implemented more swiftly, Gorbachev will be faced with a no-win situation. Already Party critics are beginning to point out that it has been four years since Gorbachev took office, and "the people" want results. This may be why Gorbachev stated that his three goals for the immediate future are to "promote

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Reappraisal

The Campaign of '88 A View from the Political Trenches

by Jamie Potter

A wide variety of well-known Libertarian Party leaders, former candidates and philosophical spokesmen have responded to the results of the 1988 election by concluding that the low vote totals were a crushing blow to the LP and to its rank and file, that the Libertarian Party strategy is futile, or it is simply foolish to work within the political process itself. Of course, these positions have been followed up with proposals about how the Libertarian Party should shift emphasis, change strategy, or disband altogether.

One problem with these proposals and the positions upon which they are based is that they are all coming from the top down. Before the LP's leaders write off the Party or radically change it, on grounds that past efforts have disappointed the rank-and-file, they should consider what those of us in the political trenches think. It is worse than foolish to hammer the last nail in the LP's coffin when the Party itself remains full of life.

It is for this reason that I offer my opinions on the 1988 campaign.

The Reality of Growth

I was born a libertarian, though that fact eluded me for my first 24 years, despite the apparent contradiction of agreeing with my father's conservative positions on economic issues and my mother's liberal positions on free speech and lifestyle issues. I first encountered the word "libertarian" in a television ad for Ed Clark in 1980. I was still politically homeless at the time, and eventually voted for John Anderson. But the word and the idea made an impression on me.

It was a few years later when I began to understand and accept libertarianism as my political philosophy. After I had nibbled at the writing of John Hospers

and Murray Rothbard, I devoured Auberon Herbert's *Right and Wrong of Compulsion by the State* in a single sitting. I remained aloof concerning the Libertarian Party for several more years, preferring the safe haven of "small l" libertarianism to the public exposure of the "big L" version. It was the 1988 campaign that changed all that.

In one fateful Albany, N.Y. gathering of libertarians, I met Ron Paul, Andre Marrou, Russell Means, Marshall Fritz, Barbara Branden, and Peter Breggin. These were real people with real strategies for the promotion of libertarian ideas. The main vehicle for those strategies was the Libertarian Party. Soon after this gathering I traded in my "small l" for a "big L" and spent 1988 helping to push that vehicle along. What were the results of the 1988 LP campaign?

First, it brought me into the Party. I finally signed on the dotted line in September and I expect many others did the same. Overall membership has gone up.

Second, campaign activity encouraged me to further investigate, join, and support other groups in the libertarian movement (Libertarian International and Advocates for Self-Government, for example). Again, other people must have had the same encouragement and membership, donations, and inquiries must have swelled for these other groups during the 1988 campaign.

Third, involvement with the Libertarian Party during 1988 made me a proselytizer for libertarianism. For the first time, I openly spoke to friends, relatives, and even strangers about libertarian ideas. The campaign acted as a convenient starting point for discussion and the Party was the logical organization to direct interested persons toward. Many people showed interest enough in our movement to ask for more information; several

people were pleased enough with our policies to vote for Ron Paul; a few were so impressed by our ideas that they joined the LP. (The personal high point of my efforts occurred when my parents called just two days before the election and told me that they were voting for "your Ron Paul.")

Fourth, my involvement with the campaign stimulated my activism on behalf of libertarian ideas. I have sent several letters to the editors of our local papers, which in turn, stimulated other local people to contact me and get involved in libertarian activism. I also made contact with the media at our two local colleges that resulted in a headline article about the Libertarian Party and a talk show invitation for the New York LP Senatorial candidate. When the LP Senate candidate visited, I arranged a press conference for him, making other media contacts in the process. This paid-off later when I was able to get local news coverage of the fact that the News Election Service was refusing to tally and report

The campaign acted as a convenient starting point for discussion. Many people showed interest enough in our movement to ask for more information; several people were pleased enough with our policies to vote for Ron Paul; a few were so impressed by our ideas that they joined the LP.

Libertarian Party votes.

My activism during the campaign peaked with my participation in a debate on the New York Senate race organized by local church leaders. Since the LP candidate was unavailable, I got the nod. The debate involved a Republican State Assemblyman, a Democratic area chairman, and the Socialist Vice-Presidential candidate, so I had to organize my libertarian positions into a form that I could present to the public with maximum impact. What a growing experience that was!

As for the low vote totals . . . this member of the rank and file was not crushed. Maybe the News Election Service blackout (see Margaret Fries, "A

Conspiracy of Silence," *Liberty*, May 1989) was a blessing for me, in that I evaluated the results of the 1988 campaign personally before the vote totals came out. Whether Ron Paul received 432,000 votes or 1,430,000, I considered the 1988 Libertarian Party campaign a success. Certainly finding other libertarians who lived in my area was good, and getting friends, relatives, and sometimes perfect strangers, to consider the Libertarian positions enough to vote for Ron Paul or even join the Party was worthwhile; but

without a doubt the single most important and successful aspect of the 1988 campaign was the personal growth and commitment I experienced.

As I see it, our job now is to refuel that vehicle. Locally, I am working to maintain contacts with new found libertarians, extend my involvement with other libertarian organizations, continue my personal proselytizing, and organize plans for more local activism. Nationally, I suggest we Libertarians start a campaign war chest now, work to complete a

good portion of ballot access before the 1992 campaign begins, and develop our own vote collecting and reporting system. While we're at it, I would love to see our own television station, economist Walter Williams as our candidate, five million votes in 1992, a Libertarian president by the year 2000, a libertarian society within our lifetime, water that runs uphill soon after, an eventual end to entropy . . . oh, and more realistic goals; let's not encourage over-optimism among the rank-and-file! □

James S. Robbins, "The Spirit of '89" (continued from page 54)

democracy, maintain and extend *glasnost*, and exercise control."

Gorbachev also lashed out against those reporters who felt that *perestroika* was too short on redistribution of wealth. "[T]he press cannot confuse social justice with levelling," he maintained. "They are different things. While strengthening social security and justice, we cannot support an atmosphere of levelling. That's fatal, that's a blow against the entire economic reform, against the society, against its morality." (Why can't our President say things like that?) At the same time, the Soviet Union is introducing a graduated income tax, to appease rising complaints about the unequal growth of personal wealth.

Low morale among the armed forces is a difficult factor. Still stinging from its defeat in Afghanistan, facing personnel cuts and few opportunities for promotion, being used as a scapegoat for political maneuvering (as shown in the case of the Georgian riots and their aftermath), and losing budget money and prestige, the Red Army cannot be considered the most energetic supporter of *perestroika*. Gorbachev has taken steps to ameliorate these problems, but the MVD, the internal security police, is also being built up.

Finally, there are Party members who will continue to resist Gorbachev's moves to strip them of power. Their recent presence in the Soviet media is not so much a tribute to *glasnost*—after all, they had been there all along, but few had made it into the press—as it is an indication of their gathering organizational strength. They are beginning to learn the new rules of the game. These forces are certain to exploit any discontent that could be turned against Gorbachev, as

was illustrated in the critical *Pravda* articles which followed the recent CC plenum.

Thus there are many factors which could contribute to large-scale instabilities. The deciding factor will be the complexion of the new Parliament. Major changes are sure to be put in place. For his part, Gorbachev is not commenting on the specific goals he will pursue. Others are not so tight-lipped. Mikhail Pol-

Where there are few guidelines, people will seek to extend power as far as possible. The new Supreme Soviet will bring together many disaffected elements, and place in their hands a series of partly-defined powers.

taranin, Boris Yeltsin's journalistic advisor, made some definitive statements in the April 3 edition of the Viennese magazine *Profil*. Poltaranin was already working on some draft laws for Parliament. He stated that the "progressive forces have the majority" in the People's Congress, but downplayed the emergence of "total opposition." Furthermore, he was of the opinion that opponents outside the Congress would not be tolerated. "The most important thing is that Parliament is above the apparatus," he said. "So far the Supreme Soviet has simply been a voting machine. The orders came from the apparatus. We want things to run the other way around: the Supreme Soviet is to tell the apparatus what it has to do. It must be clear. If the apparatus

does not do what the Supreme Soviet wants, it will be fired." Other Soviet commentators have called the new system the "Dictatorship of the People."

It is far too early to heap praise on the Soviet leadership. As I have mentioned before in these pages ("Perestroika and Liberty," November 1988), *perestroika* is the Party line. The leadership shows tolerance, but only of those who promote restructuring. Those who oppose it are "not above criticism"; in other words, they are targeted. Public discontent is being used as a tool to the end of eliminating opposition, and allowing restructuring to move forward. Once *perestroika* has been achieved (and nobody seems to know exactly what that entails), *glasnost*, the elections and the other manifestations of "liberalism" may disappear or be defanged. The March elections do give cause for hope. The 1994 elections will give more cause, if they take place. And the true indicant of democracy, the peaceful transfer of power from one ruling party to another, would be the crowning achievement.

There are many roads open to the Soviet Union. The situation becomes more complex daily. Soon the new Congress will convene, and the Supreme Soviet shortly thereafter. In the fall, Republican elections will extend the new system to the regional level, giving more opportunities for disruption. Nationality groups are growing stronger and more brazen, and the Soviet people are tiring of waiting for results. Both revolution and reaction simmer beneath the surface. If Gorbachev can successfully reform the Soviet system, it will be an impressive accomplishment. But even if he does, what happens next? Will the land of the Russians finally become host to the blessings of liberty? Let's wait and see. □

Reviews

Judgment Day: My Years With Ayn Rand, by Nathaniel Branden.
Houghton Mifflin, 1989, 438 pp., \$21.95.

Who Is Nathaniel Branden?

R. W. Bradford

Nathaniel Branden's *Judgment Day* takes its title from the conventional Christian view of the day of reckoning, at which all scores will be settled amidst great tribulation. The specific day of reckoning to which Branden refers occurred in 1968, when hyper-individualist novelist Ayn Rand discovered that the reason Branden was unwilling to renew his love affair with her was that he had begun, some years earlier, an affair with a woman 35 years her junior. Even before he began his affair with a beautiful young model, Branden warned her that if Rand ever found out about their relationship, "you would see an explosion such as you cannot even begin to imagine." (p. 328)

Branden was right: when Rand learned of his affair, she reacted with a fury that challenges the imagination. The rift extended far beyond Rand and Branden, into the movement that had grown up around Rand and her philosophy, most of whose members felt the urge to side either with Branden or with Rand. It ended long friendships and split love affairs and divided families.

Branden, a prominent psychotherapist, was intimately involved with Rand both intellectually and sexually, and played a pivotal role in the political-cultural movement that had grown up around her. In *Judgment Day*, he shares his memories of his bizarre relationship with Rand and presents an intimate view

of the strange brew of people and ideas that resulted in the Ayn Rand cult. For this reason alone, it is an important book. In her own peculiar way, Rand was the most influential political or philosophical novelist of her generation. Her novels and philosophy, taken together, were undoubtedly the largest factor in the resurgence of libertarian thinking during the past quarter century.

Branden was there at the beginning of the movement—indeed, a good case can be made that he was its planner and chief executive, so his memory of its endlessly fascinating, endlessly weird world is important. As with any memoir, the truth and value of this book is a function of the author's candor and credibility. Those who believe Branden is a genius and a man extraordinarily in touch with himself will likely find *Judgment Day* insightful, perspicacious and profound. Those who view Branden as a purveyor of psycho-babble who initially gained his reputation by leeching off Ayn Rand will find *Judgment Day* nearly worthless.

My own inclination, when I began *Judgment Day*, was to view Branden as an extremely intelligent and perceptive man. I had heard him lecture about Ayn Rand's philosophy several times in the 1960s and read his book *Who Is Ayn Rand?* I had read the account (such as it was) that Rand wrote in *The Objectivist* of her break with him. I had read his response. I had reserved judgment on him and on Rand, on grounds that I possessed insufficient information, though I was pleased that their rift would (or so I

thought) do away with the cultish aspects of the Objectivist movement.

Since the rift, I had followed his career only peripherally. I knew he had moved to Los Angeles, continued his psychotherapy, and written a few popular books on psychology. I did hear the two lectures on Rand that Branden produced shortly after her death in 1982, both of which impressed me as insightful.

I had read *The Passion of Ayn Rand* written by Barbara Branden, his former wife and also a former close associate of Rand, when it was published three years ago. *Passion* included the first detailed account of the rift between Rand and Branden. It left me convinced that Rand had caused a great deal of harm to many of those who admired her novels and her thinking. She insisted that they toe the party line; she apotheosized even her casual opinions into fundamental philosophical principles; she reacted angrily and viciously toward those who disagreed with her on any matter no matter how peripheral to her thinking. Nathaniel Branden had been Rand's lieutenant and had been a party to the negative things Rand did, but in many ways he was her victim as well as her collaborator. Rand, it seemed to me, acted crazily. She demanded his sexual services as the price of her support for his activities, then angrily and bitterly denounced him for the crime of choosing a younger woman over her.

But *Passion* is a biography, not a memoir like *Judgment Day*; Barbara Branden relied only secondarily on her own memories of Rand, and she had been neither as intimately involved with Rand nor the Objectivist movement as had Nathaniel Branden. So I hoped that *Judgment Day* would fill in some of the gaps in the story of Rand's life, especially in the story of the cult that grew up around her and of her relationship with him.

At the Center of the Circle

Although subtitled "My Life with Ayn Rand," *Judgment Day* is really a

narrative of Branden's life, from his childhood in suburban Toronto virtually to the publication of the book. But it concentrates on his years with Rand, which began when he visited her at her home in the San Fernando Valley on March 2, 1950, and ended when she expunged him from her life on August 25, 1968. During those 18 years, Nathaniel Branden ingratiated himself with Rand, first as adulatory fan, then successively as student, colleague, lover, co-Pope, and Chief Inquisitor of the cult that he propagated around her ideas.

Branden first encountered Ayn Rand though *The Fountainhead*, Rand's extraordinary novel about the importance of personal integrity. "Between the ages of fourteen and eighteen," Branden writes, "I read and reread *The Fountainhead* almost continuously, with the dedication and passion of a student of the Talmud." (18) At the age of 19, he wrote Rand a letter, in care of her publisher, asking her about her political beliefs. She never answered. He wrote her again a few months later, asking whether she had any novels that he had not yet discovered. This time she responded with a short note. Branden wrote her a much longer fan letter, asking several philosophical questions. This time Rand responded with a letter several pages long. Branden fired off another missive, this time including his phone number. A few days later Rand called and invited him to visit her.

He was fascinated by her logical, precise answers to his questions, and she was fascinated by his quick mind and obvious intellectual infatuation. When Rand asked him whether man was good or evil by nature, he responded that he saw man as neither, but that he had potential for both. She asked whether he saw life as benevolent or as malevolent. "I thought the question strange, that I thought of life as neutral and containing both benevolent and malevolent possibilities." (47) Rand quickly weaned him away from these common-sensical notions, and he and Rand were "falling in love, not romantically, but intellectually." (46)

On his second visit, he brought along Barbara Weidman, a former girl friend from Winnipeg, where he had

spent a year working in his uncle's jewelry store. She also was profoundly impressed by *The Fountainhead*, though not so fanatically as he. Before long, Barbara and Nathan (he didn't change his name from Nathan Blumenthal to Nathaniel Branden until 1954, and he remained "Nathan" to his friends) were regular visitors to Rand's household. In August 1951, Barbara and Nathan moved to New York to continue their educations. Only a month later, Rand called to tell them that she and her husband were pulling up stakes and would arrive in New York in three weeks.

Nathan continued to have strong sexual feelings for Barbara, which were not reciprocated. But gradually, under prodding from both Rand and Nathan, Barbara came to accept Rand's view that sexual choices reflect a person's deepest values, and that because Nathan was intelligent and agreed with her about important issues, she should desire him. In the summer of 1952, she agreed to marry him. In January 1953

keeping their relationship secret from their spouses. "We must do nothing to hurt Frank or Barbara," Rand told him. (155) So she called in her husband and his wife and explained why it was entirely rational for Nathan and her to have an affair, to meet secretly at her apartment for one afternoon and one evening per week. "Faking reality does not work," Rand told them. "What realistic alternative is there to what we're proposing?" (159)

"This does not mean that Nathan does not love you," she told Barbara. "He's your husband and nothing will ever change that. Look at the age difference between Nathan and me. We have no future, except as friends. I'm not going to make myself ludicrous with a younger man." (158)

(The quotations here are the product of what Nathan calls his "vividly keen memory . . . I am not suggesting that all of the words reported are verbatim, but I am confident they are faithful to the essence of what was said and to the spirit

and mood of the occasion."[vii] It is worth noting that this version of the conversation differs considerably from the account of the only other living witness of the same events,

In her own peculiar way, Rand was the most influential political or philosophical novelist of her generation.

Rand and her husband Frank O'Connor served as matron of honor and best man at their wedding.

Nathan recalls the first year of marriage as "the best in our entire relationship." (127) Even so, he acknowledges that a problem persisted: "the disparity in Barbara's and my desire to make love." (118) Naturally (?!?), he discussed this problem with Rand, who advised that he stop making passes at Barbara while she vacuumed and allow nature to take its course.

In September 1954, he began an affair with Rand, though at first it was not consummated:

"We won't have an actual affair," she said. "The romance will be non-sexual, in the ultimate sense."

Part of me felt relieved by this statement; another part, more dominant, felt disappointed.

"You mean it will be sexual in everything but fact," I answered. (155)

As advocates of rationality and honesty, he and Rand never considered

Barbara. In the "Author's Note," Nathan advises that he relies on more than his "vividly keen memory." He also employs "a variety of documents and materials which I talk about in the Epilogue." Curiously, the only document or material he refers to in the Epilogue is Patrecia's diary, from which he had quoted her first impressions of him.)

Frank protested, but was overwhelmed by the logic of Ayn's and Nathan's argument. Barbara rationalized that since Nathan and Ayn had assured them that their relationship would not be sexual she could accept it.

Neither Nathan nor Ayn was surprised when their relationship became overtly sexual a few months later. "I was clearly the initiator," Branden recalls. (160) "Having been engaged in the act of penetrating her consciousness in every way I possibly could, since first reading *The Fountainhead*, the actual sex act felt almost like a continuation of the same endeavor. The desire to 'know' her in every conceivable sense, includ-

ing the biblical, was central to my interactions with her." (164)

Nor were Barbara and Frank surprised when they got the news. In a bizarre passage, Nathan explains how the affair was almost Barbara's fault, really.

Looking back, it strikes me that another woman in Barbara's place might have said, "I understand your feelings for each other, and I am not going to quarrel with them or try to change them. But just the same, this is very painful for me, and I need to be by myself for a while. I'm going away for six months and leave you and Ayn a free hand, to do whatever you wish. I will not subject myself to standing by as a passive participant." If Barbara had said that, she would have refused to be an adversary, I would have had nothing to fight against, and I would have had to endure the pain of six months without her, and I suspect that would have ended my romance with Ayn right then. (159)

Alas, Barbara did not follow his ex post facto advice. She stayed by his side, apparently as both "passive participant" and "adversary." The affair continued intensely for a few years until it was interrupted by the depressions of Rand and the deceptions of Branden.

Meanwhile, both Rand's and Branden's careers were progressing nicely. Branden got a Master's Degree from NYU and began to practice psychotherapy. Rand continued work on her magnum opus, *Atlas Shrugged*. Their social circle expanded, mostly by the addition of Barbara's and Nathan's relatives and friends from Canada: Leonard Peikoff (Barbara's cousin), Allan Blumenthal (Nathan's cousin), Joan Mitchell (Barbara's closest childhood friend), Alan Greenspan (Joan's husband, briefly), Elayne Blumenthal (Nathan's sister) and her husband Harry Kalberman, Reva Fox (another of Nathan's sisters), Sholy Fox (Reva's husband) and Mary Ann Rukavina (a friend of Joan Mitchell's). Ayn was undoubtedly the mentor of the group, and Nathan was undoubtedly number two in the chain of command, by virtue of

his intellectual vigor, he tells us. His sexual relationship with Rand remained a secret from the "The Collective," Rand's ironically nicknamed body of "individualist" followers.

A Cultish . . . Aspect

Atlas Shrugged was published in 1957. It was an immediate bestseller and its unapologetic advocacy of capitalism and selfishness generated considerable controversy. Shortly after its publication, Nathan began a series of lectures about Rand's philosophy (by now

Branden shares his memories of his bizarre relationship with Ayn Rand and presents an intimate view of the strange brew of people and ideas that resulted in the Objectivist movement. Once and for all, he ends any controversy about whether it was a cult. For this reason alone, it is an important book.

dubbed "Objectivism"). Thanks to his considerable skill as a lecturer and to Rand's endorsement and participation, his lectures were very successful, both financially and in terms of building a movement. Before long, he had incorporated his enterprise as the Nathaniel Branden Institute, and was offering his lectures to an increasingly wide audience by means of tape transcription.

In retrospect, Branden understands a great deal about the movement he created and ran. "There were implicit premises in our world to which everyone in our circle subscribed, and which we transmitted to our students at NBI," Branden observes.

- Ayn Rand is the greatest human being who has ever lived.
- *Atlas Shrugged* is the greatest human achievement in the history of the world.
- Ayn Rand, by virtue of her philosophical genius, is the supreme arbiter of any issue pertaining to what is rational, moral, or appropriate to man's life on earth.
- Once one is acquainted with Ayn Rand and/or her work, the measure of one's virtue is intrinsically tied to the position one takes regarding her and/or it.
- No one can be a fully consistent individualist who disagrees with Ayn Rand on any fundamental issue.
- Since Ayn Rand has designated

Nathaniel Branden as her "intellectual heir," and has repeatedly proclaimed him to be an ideal exponent of her philosophy, he is to be accorded only marginally less reverence than Ayn Rand herself.

- But it is best not to say most of these things explicitly (excepting, perhaps, the first two items). One must always maintain that one arrives at one's beliefs solely by reason. (258-9)

Amazingly, immediately after summarizing this creed, Branden asserts, "We were not a cult in the literal, dictionary sense of the word, but certainly there was a cultish aspect to our world." (259)

That the Objectivist movement was in fact a cult is underscored by Branden a few pages later:

I looked for ways to reassure Ayn of my devotion. I became her "enforcer."

If someone in our group did something to offend Ayn or "the cause," or was not behaving as a "good Objectivist," I would invite that person to lunch and in a quiet but deadly voice I would inform him or her of the nature of the transgression. If the offense was big enough, say, being friendly with someone who had been critical of Ayn, or gossiping about another Collective member—our whole group convened to hear the charges, and almost always it was I who took the role of prosecutor. (267)

He describes one such "trial," against a young woman who had "wronged" Leonard Peikoff:

. . . I became an avenging angel, laying before her the wrong she had done, with the cold, quiet earnestness of an inquisitor out of the Middle Ages—while Frank listened passively, Leonard looked righteous and wounded, Barbara watched the frightened girl with gentle sternness through circles of smoke rising from her cigarette holder, and Ayn listened eagerly, clapping her hands in appreciation of my theatrically lucid formulations. (267)

Branden's repentance for his sins as inquisitor is not universal. He has no apparent regret for his excommunication of economist Murray Rothbard. After explaining that Rothbard had committed the crime of independent thinking (he argued for anarchism because govern-

ments inherently violate individual rights), Branden explains that "Murray refuse[d] to acknowledge Ayn as his source of some of his ideas, having to do with the concept of causality . . . I challenged his assertion, on the telephone, and asked him to come over so we could discuss the situation in person. He refused angrily in a way which signaled that this matter was far more serious than I had supposed." (263) It's hard to see how Branden's attack on Rothbard differs from his attacks on other transgressors, except that Rothbard refused to accept the jurisdiction of Branden's Inquisition. Just like an anarchist!

It seems unlikely that a cult would have grown around Rand had it not been for Branden. He was clearly its architect and chief executive. However much Rand might have wanted a cult, she had neither the skill nor the temperament to design or run one.

Rand was a genius. She wrote two novels that "changed the lives" of many readers, convincing them that careful consideration of philosophical ideas was an exciting and necessary activity, and more: that her own philosophical beliefs were both prerequisites to individual happiness and of vital importance to the world. She convinced many intelligent people that she was the prophet of a crucially important new philosophy.

But Rand was far too wrapped up in her own life and far too psychologically isolated to organize and manage a cult. Her life revolved around her writing and a very small circle of friends. She was profoundly isolated from other human beings: she simply could not grasp the motives of most people. She was no more able to perform the psychological manipulations necessary to the management of a cult than she was able to keep her files organized.

In a 1971 interview, Branden acknowledged that Rand had little interest in her movement:

Question: Was [Rand] ever concerned with building a movement as such.

Branden: Not really.

Question: Was that your job primarily?

Branden: I think I was the one who first saw the possibility of generating

a philosophical movement. She told me many times that I was responsible for the existence of what the press was to call "the Objectivist movement"—which I accomplished through Nathaniel Branden Institute. So I guess I can say that I was the "practical" man in the situation, so far as the cultural spread of Objectivism was concerned. (*Reason*, Oct 1971, p. 13)

Branden, on the other hand, had the skill, the inclination and the psychological sensitivity needed to run a cult. And unlike his mentor, whose stature as a popular novelist provided her with fame and fortune, he had everything to gain from the effort. He craved recognition, power and money, all of which were available from the cult, none of which he was likely to obtain by other means.

In the same 1971 interview, Branden came very close to acknowledging his role in creating the cult:

I played a major role in the Ayn Rand mystique . . . I feel I owe an apology to every reader of *Who Is Ayn Rand?* and every student of Objectivism who ever heard me lecture at NBI—not only for perpetuating the Ayn Rand mystique but also

It seems unlikely that a cult would have grown around Rand had it not been for Branden. However much Rand might have wanted a cult, she had neither the skill nor the temperament to design or run one. Branden, on the other hand, had the skill, the inclination and the psychological sensitivity needed to run a cult.

for contributing to the dreadful atmosphere of intellectual repressiveness that pervades the Objectivist movement . . . It was I who created the Ayn Rand circle in New York. (*Reason*, Oct 1971, pp. 12–16)

Branden changed Rand's life in important ways that better made her more eligible for cult worship; and Rand, who found his youthful adulation and fascination with her philosophy almost addicting, gradually supplanted her friendships among her contemporaries with more and more and more of Nathan and his circle. Her relationships with intellectuals of similar maturity and status (such as Henry Hazlitt and Isabel Paterson) died out as well. Branden took control of her social life. Every member of the Collective but one was far young-

er than Rand and was recruited by Branden. They offered her the same adulation that Branden did. They were intimidated by Rand's brilliance. She no longer operated within a circle of equals; her relationship with the Collective was clearly a status relationship. Her inclinations toward pontificism were rewarded. Bennett Cerf, her publisher, shared this view; in his memoirs, he wrote: "She was not helped by her sycophants . . . These people tell her she's a genius and agree with everything she says, and she grows more and more opinionated as she goes along." (*At Random*, New York: Random House, 1977, p. 251)

Of course, a cult requires both leaders and followers; no harm was done to those who refused to participate. But thanks to the skill of Rand as a novelist, there never seemed to be a shortage of followers.

Arrogance and Contempt

During the years of their secret sexual relationship, Rand was always extravagant in her praise of Nathan. Shortly after the publication of *Atlas*, Nathan recalls, a journalist asked him, "Do you feel entirely worthy of the things Miss

Rand says about you?" I answered, without arrogance and with total honesty, 'Yes, I feel worthy.' It all felt entirely natural; entirely right." (230)

It did not, however, feel natural or right to Nathan to think of his friends as worthy of praise, or even, for that

matter, a kind word. Practically every description of others in the Collective is cloaked in pejoratives. The following account is typical:

One day she (Barbara) suggested we visit her sixteen-year-old cousin, who was very troubled about his life; perhaps I could help him by supporting his interest in ideas and encouraging his self-confidence. I met a nervous, high strung boy, gloomy and in doubt about virtually every aspect of himself. But he had read and liked *The Fountainhead*, and he became more animated as we talked about it. He obviously found the book inspiring; it seemed to give him hope that he might create a satisfying future for himself. He told me that he was going to study medicine;

his father was a prominent physician in Winnipeg; discussing medicine, his spirits seem to drop again. I wondered why Barbara's first cousin looked so frightened and unhappy and what would become of him. His name was Leonard Peikoff.

Subsequent mention of Peikoff treats him virtually as an idiot, unable to keep the most fundamental ideas straight in his mind. Judging from Nathan's description, it is difficult to understand how Peikoff managed to graduate from high school, let alone earn a Ph.D. from NYU for his thesis on the law of ontology.

Similarly, he remembers Alan Greenspan, now Chairman of the Federal Reserve Board, as "somberness incarnate, looking chronically weary, resigned and unhappy . . . not a free enterpriser, but a Keynes-ian [and] a logical positivist." (133) But Nathan was "convinced he had a first class mind, his philosophy notwithstanding," and proceeded to educate him about the error of his ways. The highlight of Greenspan's "conversion," Nathan relates, occurred at a party in Winnipeg:

I spied Barbara and Alan talking intently in a corner, their heads close together. A long time later they emerged, and Barbara pulled me aside to declare gleefully, "Guess what? I got him to admit that banks should be operated entirely privately, that there should be no government-chartered banks." I laughed incredulously. "How?" I asked. "How did you do it? I didn't know you even knew what a chartered bank is." She grinned triumphantly. "I didn't. But somehow we got talking about them. So I led him into explaining what they were and why they were considered to be necessary—as if I were checking on his understanding. Then I persuaded him that government shouldn't be involved, that a free market in banking is preferable. I sold him on the merits of a completely unregulated banking system. Just by arguing on the basis of the information he provided." I shook my head in admiration . . . Back in New York I loved telling the story of Barbara's victory over chartered banks. (134)

This story, Nathan tells us, is "hilarious."

Branden's cousin, Allan Blumenthal, is treated with contempt from the moment he is introduced early in the book.

Allan was an A student, a model son, the very essence of decorum in just about every conceivable respect . . . Two years older than I, Allan would sometimes drop pompous rebukes to the effect that I should be more family-oriented and "more

Why didn't Branden transcribe the lectures and publish them in books so that students could reflect on the lecture's content as they studied them, review passages they found difficult, and struggle and come to grips with the complex and difficult subject matter? The reason, I suspect, is that Branden was not trying to educate. He was trying to build a cult.

conventional," meaning more compliant; at such times he would show puzzling flashes of irritation . . .

He was now twenty-three years old, of medium height and slight build, with light hair and blue eyes, a bit effeminate, perhaps, in the manner of an English schoolboy—as "correct" as ever in demeanor. . . he began talking with a kind of driven candor about some painful personal problems. I was on fire with the concept of ideas being able to explain emotions and behavior—and with the possibility of changing emotions and behavior by changing the ideas that gave rise to them. I was able to help him, for which he thanked me earnestly. (18,108-9)

Later Nathan describes how Blumenthal and his wife "reign like kings and queens" among their friends, many of whom were former or current therapy clients of Allan's, leaving Nathan "wonder(ing) about the fact that so many of the men in this group were homosexual." (300) Despite Nathan's apparent contempt for him, Allan had gained immeasurably from their relationship:

One evening, at a party. . . [Allan] unexpectedly began to talk about how much I had contributed to his and Joan's life, and how much everyone in the Collective had been helped by me. I struggled between wanting to appreciate his words and finding his manner obsequious, sub-

tly self-abnegating, and sycophantic. "You gave me my career," he was saying. "You taught me to believe in myself. You made my marriage to Joan possible. You contributed so much to our happiness. I hope you know how appreciative I feel. I can't think of a time when, if we asked for help, you weren't right there. Look around this room: think how much you've given to everyone here. You gave us Ayn's world. You gave us our best selves. Not one single person would be as happy as they are now if it had not been for you. You must feel very proud. You ought to." . . . I felt an intense desire to escape. (358-9)

Branden is convinced that Blumenthal was not the only one who owed him a great deal. In fact, despite his apparent contempt for virtually all other members of the Collective, he believes all benefited from their relationship with him. When Alan Greenspan was thinking of quitting his job to form an economic consulting firm with a partner, he told Branden about his worries over the riskiness of the project. Branden encouraged him to go ahead and take the plunge: "You're still in your twenties. How can you be worried about security now? Take the leap." The move worked out spectacularly well for Greenspan, who, like Blumenthal, thanked Branden:

"You believed in me," he said, shaking his head wonderingly. "How could you be sure? I would never be sure of such a thing." I said, "What difference does it make? You've done it." He laughed, "Nathan, I'll never forget what you've given me." This last statement I had heard, or would hear, from almost everyone in the Collective. "I'll never forget what you've given me, I'll never forget what you've done for me." The sentiment's painful irony was to become apparent only many years in the future. (191)

Sooner Perish than Publish

The years following the publication of *Atlas Shrugged* were prosperous and busy for Nathan. He added new lecture courses, began a publishing operation, a movie theater, and a theatrical produc-

tion company. Ironically, several of the new lecture courses were the work of his contemptible disciples: Mary Ann Rukavina on "Esthetics of the Visual Arts," Alan Greenspan on "Economics of a Free Society," Leonard Peikoff on "Ancient Philosophy," "Modern Philosophy," "Contemporary Philosophy," "Objectivism's Theory of Knowledge" and "Nazism and Contemporary America: The Ominous Parallels". Branden developed other lecture series himself: "Contemporary Theories of Neurosis," "Basic Principles of Objectivist Psychology," and "The Psychology of Mental Illness," but the last two of these included lectures by Branden's despised cousin, Allan Blumenthal. One wonders if perhaps in retrospect Branden might think he owes refunds to those who paid to hear someone as moronic (in his opinion) as Leonard Peikoff lecture on philosophy. In addition, Barbara lectured on "The Principles of Efficient Thinking," Nathan's sister Reva Fox lectured on "Principles of Child Rearing," and Rand supplied three early plays for Nathan to read. In 1967, NBI advertised a new series, "The Principles and Practice of Non-Fiction Writing," to be given by Edith Efron. Efron, however, was excommunicated from the Collective before her lectures began, and the course was cancelled.

The courses were offered live in New York, and in other cities on audio tape. From coast to coast, in Europe and even in nuclear submarines, groups of enthusiastic "students of Objectivism" gathered around tape recorders and listened to members of the Collective lecture them. The cost was typically \$2.50 to \$3.50 per lecture. NBI's "business representatives" (who received commissions as high as 10%) were contractually bound to allow no discussion of the contents. Regularly enrolled students who wished to repeat a tape could do so, at the option of the business representative, by paying the visitor's fee, or by enrolling for the course again, at a slightly reduced fee.

All this was, presumably, tremendously profitable for Branden, the sole owner of NBI. The most valuable asset of NBI was certainly Rand's repeated bless-

ings and endorsements, which were quoted prominently and often in virtually all the advertising and news releases of the organization. Branden paid her nothing for her endorsement.

Branden's decision to offer his lectures by tape was certainly peculiar. Conventional lectures offer the opportunity for those attending to ask questions and allow the speaker to gauge the response or comprehension of his audience. By offering lectures by tape transcription, Branden lost these advantages, raising the obvious question: why not transcribe the lectures and publish them in books?

Branden's repentance for his sins as Grand Inquisitor of the Objectivist Movement is not universal. He has no apparent regret for his excommunication of economist Murray Rothbard, for instance. . . .

The reason, I suspect, is that publication would have enabled students to reflect on the lectures' content as they studied them, to review passages they found difficult, to struggle and come to grips with the complex and difficult subject matter. Given the tremendous demand for the material (as indicated by the popularity of the tape sessions), the sales of published lectures would be certain. Why didn't this occur to Branden, as the president of an educational organization?

But NBI was not an educational organization. It was a cult. The same characteristics of taped lectures that make them ineffective means of education make them effective as means of spreading a cult's doctrine. The controlled pace limits the auditors' chance to reflect or respond to the message and denies them the ability to make a critical review of passages they find difficult to understand. Discussion (or anything else) that encourages challenges or disagreement is detrimental to cult leadership. Cult leaders have no need for feedback from their followers. Caring or paying attention to what their followers think can easily be interpreted as evidence of uncertainty or, worse yet, of the humble human nature of the leaders. If the lectures had been published, the audience would have been larger, but the material would have been read and analyzed

in a manner less sympathetic to Objectivism.

And, not incidentally, the tape transcription method maximized revenue: correcting for twenty years of inflation, the fee for listening to a series of approximately 20 hours of taped lectures amounts to about \$150.

The Liar as Hero

During the years immediately after the publication of *Atlas*, Rand's popularity continued to grow. In 1959, Random House published a new edition of her novel *We The Living*, which was originally published in 1936. Unlike the first edi-

tion, the 1959 edition sold very well. Branden gloats about its popularity, but provides little new information. As in his earlier book on Rand, Branden neglects to mention that, contrary

to her explicit claim in its introduction, Rand made significant ideological changes in the second edition. He repeats Rand's story that the film version of the book made in Italy in 1943 had been suppressed by the fascist government, despite the evidence that it had never been banned. (See "The Search for *We The Living*", *Liberty*, Nov 1988.)

Demand for Rand was so great that Random House agreed to publish a book by Nathaniel and Barbara in 1962. *Who Is Ayn Rand?* consists of four essays: three by Nathaniel on Rand's novels and a remarkably elliptical biographical essay by Barbara. Since Rand split with Branden, he has condemned it. It has become a rarity and a curiosity. Its back cover features a photograph of Barbara, the perfect ice blond, looking like a character from a Hitchcock film, and of Nathaniel, looking like the cat that has just eaten the family canary.

Also in 1962, Branden and Rand began to publish *The Objectivist Newsletter*, a four-page monthly in which they offered the official Objectivist view on everything that mattered. This was the first (and only) business venture of Branden's in which Rand profited: she was a full partner. By 1964, its circulation had reached "close to 15,000," NBI courses were offered in 54 cities with "about 3,500 students" enrolled, not counting the "several thousand" who audited individ-

ual lectures. (*The Objectivist Newsletter*, Dec 1964, p. 51) A year later, the *Newsletter* announced that its "growing circulation" had enabled it to adopt a "magazine format," and that with the format change, its name would be changed to *The Objectivist*. (The new format was actually a 16-page booklet, which contained about the same amount of writing as the *Newsletter*.)

Although the Objectivist movement was prospering, Rand herself was depressed for several years after publication of *Atlas*. According to Branden, her depression was caused by the fact that public response to her *magnum opus* had been insufficiently adulatory. Whatever the explanation of her depression—Rand was at an age when many women undergo menopause—it affected her sex life with Branden: Branden tells us he had sex with Rand only about a dozen times during the two years after *Atlas*'s publication.

At about the same time that Rand was coming out of her depression, Branden decided that he did not want to renew their nearly dormant sexual relationship. She was simply too old for him. He did not tell Rand about his change of heart. Instead, he strung her along, telling her that he had psychological problems. He was upset because of his deteriorating relationship with his wife.

Since Rand's repudiation would cost Branden his income, the power he exercised as co-leader of the Objectivist cult, and such reputation as he enjoyed as an intellectual, one might think that he lied to her to protect his wealth, power and reputation. But one would apparently be wrong. He lied to his lover, he tells us, out of concern for her, because he believed that the unpleasant truth would be very painful for her. During the years to follow, he tells us, she often asked him whether her age was an impediment to their relationship. But he heroically lied and lied and lied, to protect her from the pain he, as a psychologist, knew she would suffer.

Rand made valiant efforts for several years to help Nathan with his problem. She would ask him probing questions. He would make up lies to fend her off; she would analyze his statements at

great length, seeking a solution. Of course, no solution was found, but the process maintained Rand's support of his enterprises and kept him out of her bed.

His relationship with Barbara was unenviable: "My fists clenched, in an agony of frustration and loneliness, while Barbara lay beside me reading a book." (363) But his relationship with her had never been a source of satisfaction. She had married him because she believed it was the rational thing to do and had never felt a powerful sexual attraction to him.

Liberation for the Hell of It

In February, 1961, a new woman entered Nathan's life. She was a tall and slender fashion model, who sat in the third row at his lectures in New York City. He was attracted to her immediately; at least that seems a safe inference from his lengthy and romanticized description of his first noticing her in his audience. He insists that "In the beginning I

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did not think about the young woman—or not very much," (281) just prior to his two page rhapsody about their first meeting. I presume that this is intentional literary irony, not an example of his failure to understand his own feelings.

Her name was Patrecia Gullison. Her physical beauty gave her an entrée into the world of the Collective, where good looks were always appreciated. "She has the type of looks I like," Rand told Nathan. "You know, long legs, very slender, high cheekbones, light eyes. She's the physical type of my heroines." (293)

Patrecia was attracted to him, but Nathan tried to keep his distance. Preoccupied by an unhappy marriage and the problems of keeping Rand at bay, he was not anxious to get involved in another relationship. Although Nathan doesn't speculate about it, I suspect his godlike status within the Objectivist cult convinced her that he was not really available to her. Still,

Patrecia was young and gorgeous, and, unlike Barbara or Ayn, she worshipped him in an uncritical fashion.

Early in 1962, Nathan learned that she was engaged to be married to Larry Scott, another NBI student. Apparently Patrecia had concluded that their status difference was too great to overcome. Nathan attended her wedding on May 31, 1962; he recalls thinking "I do not like this. I do not like Patrecia marrying another man." (308) Did Rand have similar thoughts at Nathan's wedding to Barbara nine years earlier?

Branden saw Patrecia and her new husband occasionally during the next year, but he did not see her alone until October 1963, when he chanced upon her in the street and invited her to his office for coffee. Love was apparently in the air. He insisted on a ground rule reminiscent of the rule Ayn had imposed on her affair with him 9 years earlier: the affair was to be kept secret. Patrecia was to tell no one, not even her husband. Ayn must not know because

"I cannot deliver a new blow to her. I can't. And I can't accept losing her, either—she's too important to me. Since I was fourteen years old, this woman has been at the center of my thoughts and my values and everything I admire." (328) Nor

could they tell Barbara: "I'm still trying to make the marriage work. I'm not ready to give up and walk away. But there's another consideration: if I tell her the truth, then I put her in a position of having to join me in lying to Ayn. Is it right to do that?" (328) It occurred to neither of them that having an adulterous affair might not be a good way to "make a marriage work," or that Barbara might not want to join the deception of Rand. Patrecia agreed to join in lying and to keep the affair secret from her husband. In January, 1964, Nathan and Patrecia "made love for the first time . . . 'Patrecia and Nathan,' I said to her exultantly, and she answered from somewhere inside her music, 'Nathan and Patrecia.'" (329)

So he continued to lie to Ayn as he had for years, only now he had something else to lie about. Although the escalation of his lying that his affair with Patrecia had engendered bothered him

more than his previous lying, he believed (or so he claims) that his love of Patrecia would be his salvation: "When I thought of the lies and deceptions to which I was now committed, I felt self-hatred. When I thought of the man beginning to awaken within me, I felt pride. The ascent into liberation, the descent into hell, had begun." (329)

The ascent/descent took four and a half years. He continued to fend off Ayn, explaining his inability to perform in terms of his own psychological problems. She continued to expend tremendous amounts of energy trying to help him. Sometimes she suspected the real problem, but always he fervently denied that his desire for her had dimmed.

NBI and the Objectivist cult continued to grow and prosper. New anthologies of Ayn's essays were published in 1964 and 1967. Each included a few entries by Nathan, and went through many printings. Circulation of *The Objectivist* passed the 21,000 mark in 1966.

Late in 1966, Nathan told Barbara the truth about his affair with Patrecia. (This varies from Barbara's account in her book: she says he told her he was "about to begin a sexual affair with Patrecia"—*Passion*, 336.) Always willing to portray Barbara in an ugly light, he describes how she tried to win him back, in an account strikingly similar to Rand's fictional description of an event in the sex life of the heroic Henry Reardon and his evil wife Lillian in *Atlas Shrugged*. One wonders: Was life imitating art? Or is the master psychologist now recasting his own life in an artistic mode?

At about the same time, he devised a plot to get Ayn to accept losing him to Patrecia:

Ayn was fond of Patrecia, and it was this fondness that I hoped to cultivate. I was convinced that if Ayn grew to know Patrecia before discovering that my feelings were romantic, she would see in Patrecia what I saw. My goal was to be with Patrecia openly and to integrate our relationship into my Objectivist life. I was convinced that my desire was a rational one and I hoped that in the

end Ayn's own rationality would assert itself. But it was imperative that Ayn come to this conclusion on her own. I wanted her to accept that age had become an insurmountable barrier to our romance, that our time as lovers had come and gone. I wanted her old benevolence and basic sanity to come back to her. I wanted her to grasp that I had to have a private life apart from her, and that this life included a woman who was my contemporary. And I wanted her to be the one to tell me these things. (364)

Not much came of this preposterous plan, but it apparently bought some time for Nathan by placating Patrecia's demand that he tell Rand the truth. The burden of all the lying on both Patrecia

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and Nathan eventually became too much. In the summer of 1968, the Judgment Day Nathan had feared was drawing near. In pieces he revealed the truth to Rand. He no longer loved her. She was too old.

She was heartbroken; her worst fear had been realized. Even so, she tried to salvage NBI. At first, she considered maintaining a professional relationship with Nathan, but this was too difficult. So she turned to Barbara, who had comforted her, suggesting Barbara might continue NBI.

But Nathan had never told Ayn the final piece of the truth, that he had been having an affair with Patrecia for over four years. When Ayn decided to make Barbara her heir, it was too much. Barbara could no longer stand the deceit. She told Nathan that she had to tell Ayn about his love of Patrecia.

On August 25, 1968, Ayn Rand discovered that the man she had loved and to whom she had dedicated her life had been deceiving her systematically for years. All the years she had spent and all the intellectual energy she had expended trying to help him with his "psychologi-

cal problem" had come to naught. Her life was ruined.

She confronted Nathan angrily, assaulted him and humiliated him in front of other members of the Collective. But it is difficult to believe that she humiliated him or hurt him as much as he had hurt her by his lies and his fraud.

When Ayn learned that Barbara had known of his deception, at least for some of that period, she turned on Barbara as well. In imitation of Nathan's inquisitorial methods, Ayn ordered Barbara to appear for trial before the Collective. Barbara refused the jurisdiction of the court and was excommunicated.

Ayn denounced them in *The Objectivist*:

"Mrs Branden suddenly confessed that Mr Branden had been concealing from me certain ugly actions and irrational behavior in his private life, which were grossly contradictory to Objectivist morality and which she had known about for two years." (May 1969,

p. 4. Rand's statement was dated Sept 15, 1968; *The Objectivist* was behind in its publishing schedule.)

She never specified the content of his "ugly actions." Instead she suggested that there had been financial improprieties and mismanagement at NBI—charges hotly contested by Nathan, but supported in part by his admission that upon liquidation NBI left him with nothing.

Nathan claims that about a third of NBI students sided with him, a third with Rand, and a third, indifferent, with neither. This is self-flattery, at least if the circulation figures of *The Objectivist* are any indication. Between 1968 and 1969, its average circulation declined by 2,047, or about 11%. That was less than the decline of 17% from 1966 to 1967.

Nathan and Barbara made their separate ways to Los Angeles. Patrecia and Nathan got married; he published his book. In 1973, Nathan obtained his Ph.D. in psychology from the California Graduate Institute, an unaccredited school founded in 1968. Patrecia died in a mysterious accident. Nathan remarried, this time to his business manager. In 1976, Nathan attempted a

reconciliation with Ayn. She would have none of it.

Ayn grew older and more bitter toward Nathan. Her attitude toward Barbara softened; she began to view her as a fellow-victim of Nathan. Rand died in 1982. She left her entire estate, both literary and monetary, to Leonard Peikoff, the only member of the Collective she had not turned against. He also inherited the Objectivist cult that Branden had designed and built. But just as Rand seemed to lack the heart to run a cult, Peikoff seems to lack the skill. Today, what remains of the Objectivist cult appears to be gradually but constantly atrophying.

Brand of Bitterness

Shortly after Rand denounced Branden in the pages of *The Objectivist*, Branden consulted George Berger, an attorney with Louis Nizer's office, about the possibility of suing Rand for libel. After reading half a page of the denunciation, Berger asked, "How old is Miss Rand?" After reading a page, he asked, "And how old are you?" A paragraph or two later, he said, "Hell hath no fury like woman scorned." (407)

Nor, as is apparent from *Judgment Day*, hath hell a fury like a man scorned. Branden's frequent descriptions of Barbara's sexual performance with him is both nasty and irrelevant. Just as Rand broke *The Fountainhead* into four parts, named for four central characters, so Nathan breaks *Judgment Day* into four parts based on the women in his life: Barbara, Ayn, Patrecia and (in his Epilogue) his current wife Devers. So much of *Judgment Day* is about Branden's sexual relations with these women that it is impossible to review the book without discussing them. (Although Branden spares us little, his book is not pornographic—a small favor, for which we should be grateful.)

In a book about his relationship with Rand, why should we care about how good a lover Barbara was on any given night? (He does not subject Rand's sexual performance to the same scorekeeping, thank God.)

In her relations with other men, Nathan portrays Barbara virtually as a

whore; in her relations with him, he portrays her as cold and unloving, except occasionally when she has an ulterior motive. Nathaniel Branden is the kind of man who believes that when a woman rejects him sexually, she is making a profound psychological confession. His cruelty to his former wife is unrelenting. It is one of the most repellent aspects of this memoir.

Judgments

There's more to *Judgment Day* than the story of Branden's relationships with women: there are endless speculations into Branden's and everyone else's psychology, romantic claptrap (e.g. "'This is the way I like to see the countryside,' I said, 'as a backdrop to your face.' 'This is the way I like to see the world,' she answered, 'as a backdrop to your face and your body'" [italics his, 330]), rehashes of parts of his other books on psychology, and excerpts from *Who Is Ayn Rand?*

Nathaniel Branden is the kind of man who believes that when a woman rejects him sexually, she is making a profound psychological confession. His cruelty to his former wife is unrelenting. This is one of the most repellent aspects of this memoir.

Still, *Judgment Day* is a valuable work. Its discussion of the internal dynamics of the Collective fills in many of the gaps in the story told in *The Passion of Ayn Rand*, and provides hitherto unpublished details about Nathan's relationship with Rand. It is also a highly entertaining confession of his own psychology, although one wonders why a man would want to reveal so much. Its greatest value, in my judgment, is that it removes, once and for all, any controversy about whether the Objectivist movement was a cult.

In *Judgment Day*, Branden offers more than his judgment of Rand and her judgment of him: he offers the reader an opportunity to judge him and Rand and the movement that Rand spawned. As I read *Judgment Day*, I discovered that my judgment of Rand and Branden was changing.

Despite Branden's best efforts to portray himself as the victim of Rand's bizarre irrationalities, I gradually began to

perceive Rand as the victim of Branden's deception and power-lust. The full story of Branden's and Rand's relationship with each other and to the Rand cult will never be understood totally. But with the publication of *Judgment Day*, we now have a version of the story by its most important participant aside from Rand herself. Along with Barbara Branden's perceptive biography and a variety of secondary sources, it is now possible to come to grips with the life of Ayn Rand and the strange cult that grew up around her.

An unflattering self-portrait of Nathaniel Branden emerges from the pages of *Judgment Day*. But there are no demons in this story. For the same reasons that one must reject Branden's theory that Rand was somehow a demon who ruined the lives of many of her followers (and would have ruined his, except for his heroic virtue), so one must reject the theory that Branden was some

sort of demon. There is no doubt that he exploited Rand and built a cult around her. But the damage the cult did, both to the lives of its members and to the philosophy it advocated, was not the result of the sins of others, but of the human frail-

ties of virtually all involved.

Ayn Rand was a significant novelist and thinker. But she was also a human being, a vain and insecure woman. She fell in love with Nathan Blumenthal, a handsome and intelligent man 25 years her junior. Their affair brought her great joy; it also brought her terrible pain and embarrassment. Somewhere along the way, with her lover's help, a cult grew up around her philosophy that caused immense pain to many of her willing devotees.

The events of Ayn Rand's life, both happy and sad, may help provide insights into the writing of her novels and the development of her thinking. Her fiction and her philosophy have both strengths and weaknesses, and deserve to be judged on their merits, not on the events of her life.

Rand's important legacy is her novels and essays. The vanity and silliness that surrounded her cannot obscure her accomplishment. □

The Libertarian Idea, by Jan Narveson.
Temple University Press, 1988, xiv + 367 pp., \$34.95.

Contractarianism vs Utilitarianism

Leland B. Yeager

Jan Narveson, a Professor of Philosophy at the University of Waterloo, Ontario, provides a foundation for doctrines of strictly limited government. In particular, he gives a grounding for personal freedom and personal rights, including property rights, a grounding that Robert Nozick merely assumed in his *Anarchy, State, and Utopia* (1974) but avowedly did not provide. This grounding is contractarian; Narveson rejects the utilitarianism espoused in his own *Morality and Utility* (1967). So we read in the jacket blurbs, in the author's preface, and especially in Roy Childs's rave review in the *Laissez Faire Books* catalogue of March 1989.

This book is indeed a major contribution to the philosophical controversy over libertarianism. It ranks in importance with Nozick's book, John Rawls's *A Theory of Justice* (1971), Robert Axelrod's *The Evolution of Cooperation* (1984), David Gauthier's *Morals by Agreement* (1986), and Henry Hazlitt's masterly but inadequately appreciated *The Foundations of Morality* (1964). I'll assign it and spend class time on it in my seminar in political economy.

Narveson argues that libertarianism is a coherent doctrine, free from internal contradiction and capable of being put into practice. It accords with morality. Each person has the right to use his "fundamental personal resources" (at a minimum, his body and mind) however he sees fit providing that he does not violate any other person's similar right over his own resources. (p. 165) "Rights are founded on considerations of efficiency, if of a fundamental kind." (334) (Narveson rejects other purported groundings of rights, including Alan Gewirth's maneuvers with his principle of generic consistency—167–174).

Narveson accepts a two-pronged libertarian thesis: "first, that practically everything done by modern governments violates someone or others' rights; and second, that likewise practically everything they do is inefficient." (334) He finds the libertarian case strong on such policy issues as political authority, law enforcement and punishment, defense, compulsory redistribution, the welfare state, the treatment of children, pornography, zoning and other regulations, and laws against private discrimination. This is not to say that he accepts all specific policy positions of the Libertarian Party. Incidentally, he issues some advice to libertarian political parties (333): their adherents should emphasize and participate in efforts by individuals and voluntary associations to handle problems that the welfarist assigns to the state.

What made me hurry to buy Narveson's book is its claim, trumpeted by Roy Childs, to derive personal rights and their implications for political philosophy by a contractarian approach, rejecting utilitarianism. Narveson gives ample credit to David Gauthier, whose *Morals by Agreement* strikes me, however, as an unnecessarily prolix spinning out of a point adequately made by Gordon Tullock in the *Quarterly Journal of Economics*, 1985, namely, that someone who routinely behaves in an exploitative rather than cooperative manner will soon run out of other persons to non-cooperate with.

The general idea of contractarianism, according to Narveson, "is that the principles of morality are (or should be) those principles for directing everyone's conduct which is reasonable for everyone to accept. They are the rules that *everyone* has good reason for wanting everyone to act on, and thus to internalize in himself or herself, and thus to rein-

force in the case of everyone." (131) But "morality is obviously not the result of a literal contract: and indeed, it cannot be." (131) "What the philosopher would really like is . . . an agreement that literally everyone would find it reasonable to accept" (134). The contractarian approach "hopes to generate moral principles for societies out of the nonmoral values of individuals" (166).

Narveson thus disavows appealing to any explicit social contract. He avoids the reliance on fictions and on the weasel word "conceptual" that mars the contractarian writings of the Public Choice school. He asks what people *would* find it *reasonable* to accept. Well, reasonable in view of what? In view of probable effects on the functioning of their society and so ultimately on their happiness—isn't that true? And what would the "nonmoral values of individuals" be other than positive attitudes toward utility or happiness, broadly conceived?

As these questions suggest, I wonder in what sense Narveson has chosen contractarianism *over* utilitarianism. His contractarianism seems to mean an emphasis on the distinctness of individuals. Each person has a life (only one life) of his own. He has his own purposes and aspirations and projects. He is no mere processing station for converting goods and experiences into contributions to an impersonal aggregate utility, no

The utilitarianism that Narveson rejects is almost a straw-man version. In recognizing the advantages and prerequisites of social cooperation, he is on the way, if only he would realize it, to adopting a sounder version.

mere branch factory that might properly be reconverted or closed down to serve some overarching social efficiency. Individuals can best serve their own diverse purposes in a society whose members respect each others' personalities and rights and appreciate the gains available to each through peace and security, specialization, and trade—through contract. *Social cooperation* in the sense just suggested is so nearly indispensable to individuals' effective pursuit

of happiness in their own diverse ways that it counts as a near-ultimate criterion of moral precepts, institutions, and policies. The concept has this force in the writings of such eminent utilitarians as Ludwig von Mises and Henry Hazlitt. Narveson himself, significantly, uses the very term "social cooperation" a few times.

The utilitarianism that Narveson rejects is a peculiarly unacceptable version. He seems to mean the doctrine whose supreme criterion is the maximum aggregate of cardinally measurable and interpersonally comparable utilities, implying a willingness to sacrifice the utilities of some persons for bigger increments to the utilities of others. The doctrine calls on each person to work for this maximum, remaining impartial between his own and other persons' aspirations (150–153 especially). It invokes "equality of the value to *anyone* of a unit of *anyone's* utility" (92); it requires counting all utility units of all persons equally. (152) (Equal counting by whom—by Adam Smith's impartial benevolent spectator or by each actual person?) Narveson repeats Nozick's objection: "A rational agent will not make sacrifices simply for the good of others; she will do so" only if "she" sees the good of others as her own or as instrumental to what she deems good. (233)

But self-styled contractarians have no monopoly on recognizing facts of reality that any even halfway perceptive utilitarian must also recognize. Among them are these: Individuals have lives and purposes of their own and do not regard themselves as mere instruments in the service of some higher entity. Individuals are not indifferent between their own interests and purposes, those of persons they love, and those of mere acquaintances and strangers. Furthermore, trying to impose or cultivate any such unnatural impartiality would itself be subversive of human happiness. What does serve happiness is social cooperation, which presupposes that individuals pursue their own interests within the rules of ordinary morality, including, notably, respect for the rights of others.

Narveson says he has shifted away from his earlier espousal of utilitarianism. Yet his 1967 book was no straightforward and systematic presentation. It contains many sensible but scattered remarks. It postulates a concern for other

persons and their happiness as well as for one's own. It pays no attention to social cooperation as a quasi-ultimate criterion of morals, institutions, and so forth. It pays only slight attention to the distinction between act and rule utilitarianism and none to the concept of indirect utilitarianism subsequently developed by John Gray. His book of 1967 was on

the right track, but it is understandable that Narveson might have thought that he could do better now. What he now rejects is almost a straw-man version of utilitarianism. In recognizing the advantages and prerequisites of social cooperation, he is on the way, if only he would realize it, to adopting a sounder version.

Asking what individuals *would* agree

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to—diverse individuals with personalities and purposes of their own—is a way of both taking into account the facts of the human condition and also of applying the utilitarian criterion of happiness, broadly conceived. I cannot understand—and Narveson does not help his readers understand—how anyone could seriously avow a grounding of ethics and political philosophy actually at loggerheads with a sensible (non-caricature) version of utilitarianism.

Roy Childs praises Narveson's writing style extravagantly. Actually, many passages string together long quotations from other writers, although without obtrusive indentations. Autobiographical remarks (for example, concerning religion and classical music) make Narveson's writing charming in spots. Still, Narveson smears his points over too many pages; his writing is the oppo-

site of tight. In that respect it resembles several books in political philosophy that have recently come to my attention. Apparently a rambling, essayistic, laid-back style is acceptable in philosophy nowadays. It seems acceptable to sweep together and publish, evidently without much pruning, whatever notes one may have written for oneself in repeated stabs at figuring out what, if anything, one has to say. Perhaps I exaggerate, but I do miss a crisp attention to the business at hand. Narveson does not compensate his readers with anything like the delightful quirkiness of Nozick's writing.

Still, Narveson's book is an important contribution to its genre. Readers will benefit from grappling with its arguments, and in particular from pondering whether it has vanquished utilitarianism in favor of a genuinely distinct contractarianism. □

in the form of IRS regulations, forms, and case law citations. His advice appears well grounded.

I recommend this book over some more technical works costing considerably more because of readability, often laced with Pilla's accounts of his own experiences representing clients with the IRS. He doesn't try to convince the reader that the IRS is immoral or unconstitutional, but he never forgets whose side he's on.

Of course, one should remember that IRS rules, court decisions and administrative procedures are constantly changing. Even the best information is quickly dated. Keeping up with the myriad changes is a major industry all to itself. So while the November 1988 book is fairly fresh, it will gradually become obsolete. (Pilla also publishes a monthly newsletter to update taxpayers on relevant developments.)

Pilla's book, I suspect, may lead some readers to be unrealistic in their disputes with the IRS. It emphasizes positive elements of the administrative process without giving much weight to the grim fact that even the best procedural defenses are often not enough to stave off serious tax problems. Often, the only major benefit of a procedural defense is to buy time.

It also overlooks the problem of dealing with the actual IRS personnel. In any particular case, one must deal with particular IRS agents, a particular IRS office, a particular IRS district, and a particular federal court district. In any actual tax dispute, these are all important factors. The same course of action may have different results in different places.

This book can be highly useful for those facing IRS problems. But like so many good self-help works, it is at its best providing a helpful overview and insights into particular tactics. This is not surprising: if any single book could replace a whole taxpayer representation industry, we wouldn't be facing the IRS problem we have today.

It is important that this book's readers avoid the temptation to rely solely on their own ability to solve their own problems. Personal navigation through IRS waters is fraught with peril, just as are self-medication and self-representation in law. Dealing with the IRS is frustrating enough, even for the best prepared and experienced tax practitioners. And

How Anyone Can Negotiate with the IRS—and Win!
Daniel J. Pilla. Winning Publications, 1988, 267 pp., \$12.95.

Guerilla Tax Revolt Tips

Mike Holmes

Tax help books containing exclamation points in their titles should be avoided, so I had a certain reluctance to read, much less review, *How Anyone Can Negotiate with the IRS—And Win!* To my pleasant surprise, however, this self-help book by Daniel Pilla is an exception to the rule.

As is evident from its title, this book is directed to taxpayers who intend to negotiate with the IRS rather than challenge the underlying legal foundations of income taxation. This is not a book kamikaze tax resisters will find useful.

Its cover blurb somewhat luridly promises "a daring exposé of the vulnerability of the system and the people who run it," but for the most part it leads taxpayers through a series of fairly detailed procedures for responding to IRS de-

mands for information, documentation and payments.

Pilla, who is described as a "Tax Litigation Consultant" (presumably not an attorney) takes a highly legalistic approach to his subject and counters what he terms the "IRS Big Bluff" with technical references and advice on the internal procedures and rules the government is obliged to follow in serious audit or collection matters. Much of the contents are straight from IRS regs or administrative procedures, but Pilla nicely condenses this into a short, punchy and readable format designed for specific applications and situations.

He gives his chapters catchy titles ("15 IRS Bluffs and Intimidations—And How to Counter," "10 Ways to Prove Deductions," "4 Ways to Pay Taxes on Your Terms—Not Theirs," etc.) and provides the reader with substantial detail,

taxpayers are often caught up in the emotional tide of defending previous business decisions made or with anger over the treatment they've gotten from the system. Let's face it, it is easier to be objective about someone else's problem than your own. The temptation to magnify the tax issues into personal confrontation with the unjust tax system is lessened when the taxpayer has a buffer between himself and the government.

Rebels Without a Clause

A brief disclaimer is in order: I am a Certified Public Accountant. Along with other "tax practitioners" (lawyers, enrolled agents, and others), I get income from helping the victims through the tax maze. It is reasonable to suspect that I am interested in preserving the current tax system from radical overhaul. Many libertarians look suspiciously upon me and my fellow tradesmen because our standard of living would drop if the "truth" about the tax system became known.

Such libertarians often fall prey to naive or unscrupulous "tax advisors" who expound theories about how you don't *really* need to file or pay federal income or Social Security taxes, usually because of some obscure legal loophole that the advisor has uncovered. These "tax rebel" advisors will even share their secrets with the common folk, usually in high priced motel room seminars or via thick, cross-referenced legal "self-help" sets, on the condition their anti-tax customers pledge to stick religiously to their prescribed methodology. Usually, this entails some form of non-filing or non-reporting of income, or employing some barely legal procedure designed for the Amish or hopelessly cloistered monkish orders.

Perhaps the most famous—and for a time successful—of these advisors was Irwin Schiff, an accountant and insurance salesman who penned the popular *How Anyone Can Stop Paying Income Taxes* in the late 1970s, and a similar tome about bailing out of the Social Security system. Even several stints in the federal pen hasn't damped his ardor, although his experience has served to discourage his followers, some of whom have suffered similar fates.

Other tax rebels sell multi-volume treatises on the history of the infamous 16th Amendment, which authorized the income tax. Some of these arguments

delve into the fascinating history of the amendment's ratification, alleging fraud and deception, or that a number of ratifying states were not legally admitted into the Union. Other arguments rest on complex and obscure definitions of "income," "wages" or "money." The appeal of nearly all these approaches is simple. Despite the complicated legalistic reasoning employed, the practical consequences involve immediate cessation of tax payments until the ex-taxpayer is hauled into court, whereupon these magic bullet arguments are to be deployed against the amassed legal muscle of the federal government, which has

Pumped up by an amateur's worship of empty legal formalism, they pursue their quixotic enterprise until the IRS grabs everything they own and throws them in the hoosegow.

been duping taxpayers for 75 years.

For the hundreds, even thousands, who've tried this, the do-it-yourself tax revolt process gets even more confusing. Sometimes their advisor will serve as a "litigation consultant" (for an additional fee), but usually the tax resisters are urged to defend themselves *pro se* (without benefit of legal counsel) ostensibly because real attorneys are "too crooked to put the arguments across." (I suspect the real motivation behind the *pro se* defenses is more practical, namely, that no intelligent lawyer will usually touch one of these cases. For one thing, they can be disbarred from practice before federal courts for even bringing these arguments up, and can be fined \$5,000 to boot!)

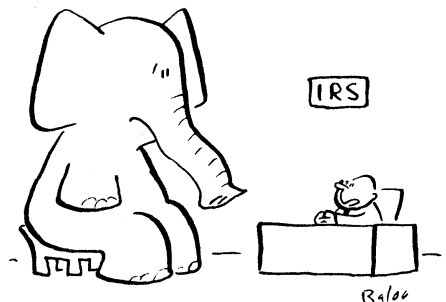
So far, no tax rebel has won a major case employing any of these exotic constitutional arguments. A few lower court decisions have been decided in favor of tax rebels by juries, usually on some technical defect of the prosecution. The overwhelming majority of taxpayers end up quitting this game before the legalities are played out. Most end up paying heavy fines and their back taxes plus interest either directly or via outright government confiscation.

Do-it-yourself tax rebellions, in sum, have a dismal history, including challenges to the tax system from sincere and heroic litigants (for example, Jim Lewis, 1984 Libertarian Party vice presidential nominee, who recently spent time in federal prison).

The motivations of many in this movement are not so pure. They can be summed up by one or both of these two words: greed and cult. I believe that most of those engaged in lone-wolf tax battles do it because they want to keep their money, despite the common sense knowledge that the government tax mafia will break their legs (and empty their wallets) if they try to hold out. Most of the purely greedy back down fairly soon after the draconian IRS machine revs up against them.

But some individuals are so self-deluded that even the wrathful power of the IRS cannot dissuade them from their quest. Pumped up by an amateur's worship of empty legal formalism, they pursue their quixotic enterprise until the IRS grabs everything they own and throws them in the hoosegow. Like health, religious or political cultists, tax protest cultists cling to dogmas peddled by their gurus, oblivious to personal hardships or adverse consequences.

In fact, the sting of defeat only increases the sense of martyrdom among the truly faithful, who are endlessly appealing their cases and strategizing over how to get their miracle legal arguments in front of the right forum. The Holy Grail on this quest is a jury box full of honest citizens who will hear their impeccable logic and mind-boggling legalisms and disregard the instructions of prosecutors and judges. Like other cultists, tax rebels seldom lose hope, and are quite resentful when others (even ideologically sympathetic libertarians) are



"I find it very hard to believe, Mr Finnegan, that you simply 'forgot' to file."

less enthusiastic about their self-imposed plights.

The problem is, even if these tax rebels are right, they'd lose. As Russell Means is fond of saying, they are practicing the "logic of self-defeat."

Suppose some tax rebel were to prevail in court all the way to the top, and that the income tax were held unconstitutional. The American judiciary would be shocked, of course. Would courts require the return of every stolen income tax dollar collected since 1913? Would a vast restitution program immediately require privatization of all federal government assets to make amends? Would libertarian nirvana finally be at hand?

Common sense and history tell us otherwise. In the fantastic event that such a victory were to occur, Congress and the Executive branch (and the several states) would undoubtedly rush in, pass whatever *ex post facto* Constitutional amendments were needed to rectify the legal error, and the IRS would continue harassing the citizenry as if nothing had ever happened.

Even in the highly unlikely event that federal judges would impoverish the very system which keeps them em-

argument that Ohio didn't really enter the Union, or that the 16th Amendment was not ratified within the prescribed time frame, or that the commas were misplaced.

Serious reform of the tax system will come about only when the public is convinced that the power of government should be reduced. No miracle courtroom victories, legal "magic bullets" or ritual incantations of constitutional mumbo jumbo—be it the illegitimacy of the Federal Reserve, the true nature of money, or amendment ratification niceties—will break the shackles of our op-

pressive tax system in the absence of widespread public demand for radical surgery. No government will commit financial suicide because of empty legal formalism.

Those inclined to practice do-it-yourself tax rebellion should stick to the back roads and dusty procedural corridors. These are ably explored by Dan Pilla and other down-to-earth tax warriors, who are fighting the IRS on its own turf, one guerilla battle at a time, rather than fighting courtroom wars intended to be the final Armageddon for the income tax. □

*Evolutionary Epistemology,
Rationality, and the Sociology of Knowledge*

G. Radnitzky and W. W. Bartley, III. Open Court, 1987, 475pp., \$39.95/ \$14.95.

From Amoeba to Rationalist

Jeremy Shearmur

This is a worthwhile collection of essays. It is not, other than marginally, about political philosophy. And while its philosophical approach is robustly realistic and rationalistic, it bears the mark of Karl Popper and, especially, William Bartley, rather than of Aristotle and Ayn Rand. However, the collection should be of interest to many readers of *Liberty*. It provides a stimulating introduction to "evolutionary epistemology," and it addresses philosophical problems that are likely to have occurred to intelligent people outside the artificial confines of philosophy classes: for example, must a rationalist base his rationalism on a non-rational commitment to reason?

Bartley, who is the general editor of the new Collected Works of F. A. Hayek, and is also engaged on writing the biographies of both Hayek and Karl Popper, provides sizable introductions to each of the first two sections of the volume, on "evolutionary epistemology" and rationality. He also contributes an essay to the third section, on the sociology of knowledge. He writes clearly and fluently, and he is a good salesman for some exciting

and controversial ideas. Some of the other essays, however, are pedestrian in content and style. Others will be heavy going even for those who have a strong background in philosophy.

Let's look more closely at the contents of the volume.

First, there is "evolutionary epistemology." By this, some writers mean the attempt to take a biological perspective on us, our senses, and the way in which we understand the world, and to see us as the product of biological evolution. One way to get a feel for such an approach is through an example that Bartley discusses. Scientists investigated the information that a frog's eye passes to its brain. The frog responds to a limited range of features of its environment. One can explain the frog's responses if it is seen as a product of an evolutionary process, that has built into it certain hypotheses about its environment. It is as if the frog had been designed so that its food would come in small, moving, fly-sized shapes; so that danger would come to it in sudden shadows looming from above; so that safety would be found by it in dark areas, and so on.

The evolutionary epistemologist looks

Serious reform of the tax system will come about only when the public is convinced that the power of government should be reduced. No miracle courtroom victories, legal "magic bullets" or ritual incantations of constitutional mumbo jumbo will break the shackles of our oppressive tax system. No government will commit financial suicide because of empty legal formalism.

ployed thereby committing legal hari-kari, you can rest assured that the other parts of the government would immediately rush to the rescue of the hated income tax.

The individual tax rebel is a self-defeating warrior. He virtually always loses: so far tax rebels have lost every precedent-setting cases. He will lose again. Taxes will not be abolished by the

at human beings much as scientists look at the frog. He seeks to understand our cognitive processes and our sensory apparatus in terms of their biological functions, seen as evolutionary products. Several essays in the present volume explore this approach. Their authors are broadly sympathetic to Popper's work, while some "evolutionary epistemologists" are not. Their essays include an argument for the reality and the causal efficacy of the mind from Popper himself and a hypothesis, from Guenter Waechtershaeser, about a connection, in certain primitive organisms, between sight and nutrition. Donald Campbell surveys the prehistory of evolutionary epistemology within philosophy (although he does not mention Adam Smith's anticipation of it). He also defends the view that learning is a process involving blind variation and selective retention. His and the other essays in this section should interest those who admire David Kelley's development of Ayn Rand's ideas about perception but who have wondered what a competing approach to the issue might look like.

Unfortunately, the first part of the volume does not include an essay by someone informed but skeptical about evolutionary epistemology. There is an article by Gerhard Vollmer on "Supposed Circularities in Evolutionary Epistemology" that defends "evolutionary epistemology" against unnamed critics. But it conveys the impression that critics of evolutionary epistemology are only such because they fall prey to a variety of fallacies. This is grossly unfair both to critics and proponents, who usually see themselves as engaged in a daring intellectual enterprise.

Why might someone object to evolutionary epistemology?

First, some of its proponents seem to confuse psychology (and all issues of substantive scientific knowledge) with epistemology and with arguments about the character and validity of our knowledge. Indeed, some proponents of evolutionary epistemology (though not those represented in this volume) write as if popular science is to replace philosophy. Even such an idea is perhaps not as crazy as it may sound. Interesting philosophical arguments have been offered as to why epistemology should be "naturalized." One may easily argue that it is illegitimate to make a rigid separation between common-sense or scientific knowledge and whatever is supposed to constitute

the "foundations" of our knowledge. But adoption of this kind of "evolutionary epistemology" must be explained and argued for, and argument brings its supporters back to old-fashioned philosophical engagement.

Second, evolutionary epistemology, as represented in this volume, involves a realistic but fallibilistic interpretation of science. It takes science as aspiring to tell us the truth about the world, and as explaining the world as we experience it in terms of the interrelations of entities and laws that go beyond what we can experience directly. On the basis of our (fallible) scientific knowledge, the evolutionary epis-

The evolutionary epistemologist looks at human beings much as scientists look at the frog. He seeks to understand our cognitive processes and our sensory apparatus in terms of their biological functions, seen as evolutionary products.

temologist builds tentative explanations of ourselves and of the way in which we come to know the world. But the scientific knowledge invoked is tentative, and many philosophers argue that a realistic understanding of the character of scientific knowledge is itself highly problematic.

In my view, the volume would thus have gained considerably if it offered more explanation and critical discussion of the philosophical status it claims for evolutionary epistemology.

The second part of this volume—on the theory of rationality—takes off from Bartley's *The Retreat to Commitment*, which explains that a would-be rationalist will encounter people who are self-confessedly not rationalists, concerning whom the rationalist may feel smugly self-confident. He can say to himself: I am rational, while these poor benighted souls are irrationally—or, at least, non-rationally—committed to their particular beliefs. Bartley, however, has argued that these people may well respond: We are non-rationally committed, but so are you. We are committed to the tenets of our faith; you are committed to reason. However, our position is clearly to be preferred, for we, after all, are open about the fact that we are making such a commitment—

indeed, we glory in it—whereas you seem to believe that you are not making it.

A "rationalist" might claim: I only hold views that can be rationally justified. But his critic could respond: Justification amounts to saying that one thing is justified in terms of something else; what is the "something else" in the terms of which you justified reason? The demand for justification simply generates a regress. Some rationalists have themselves said that rational justification just has to stop somewhere, and, the critic of rationalism can claim, this is the point at which rationalists make their non-rational commitment.

This is challenging stuff, something much closer to debates in the real world than is much "academic" philosophy. Discussion of Bartley's solution takes up the second section of this volume.

It starts from the idea that rationality is to be understood as a matter not of justification but of holding one's views open to criticism. The rational person is not one who claims that he can *prove* what he is saying, Bartley argues, but the one whose claims are open to criticism—including the claim that the rational person is the person whose claims are all open to criticism!

The essays in this part of the book represent the to and fro of academic argument about such claims. Two related arguments are brought against it. First, suppose that someone could show that Bartley was wrong; that, in some sense, his position was dogmatic, not open to criticism. But look, a defender of Bartley might then say, you were claiming that my theory is not open to criticism, yet you have just produced . . . a criticism of it! So my position is vindicated. But this kind of "Heads I win, tails you lose" gambit was clearly not intended by Bartley, and perhaps the fact that it can be generated within Bartley's theory should be taken as fatal.

The second argument, advanced in somewhat ponderous fashion by John Post, is that Bartley's views are involved in a formal paradox, closely akin to the "liar" paradox. The liar paradox is perhaps best known in the following form: *This statement is false.* If this statement is true—then it tells us that it is false. If it is false—then it is false that it is false, so it is true. Post argues that a similar paradox can be generated from the statement, "This statement is possibly false," and, further, that this problem infects Bartley's theory of rationality.

Bartley offers responses, and other essays offer responses to him. But this part of the volume is less than satisfactory. Some important disagreements are not explored in any detail, and certain writers seem almost to be talking past one another. The volume would, in my judgment, have been greatly improved if some of the discussion had been made more accessible. The reader who is initially captivated by a fascinating and important problem is likely to end by feeling baffled.

The third section of the volume contains essays that relate, in one way or another, to the sociology of knowledge. Peter Munz contributes an over-long and under-edited response to Richard Rorty's relativistic *Philosophy and the Mirror of Nature*. Much that Munz says is to the point. But it all could have been said much more briefly and less self-indulgently. Antony Flew contributes an odd piece, which defends the claim that there cannot be a naturalistic explanation of choice or of language. He has good points to make, and he includes some interesting discussion of Locke and of Hume. But he also rides several of his favorite hobby horses—from the politics of British education to a further episode in his long-running polemic against the Edinburgh School in the sociology of science. It is all good fun, and he makes some nice points. But it would have been more interesting to see him using his very considerable analytical talents upon more powerful contemporary naturalistic writers in the theory of knowledge. Indeed, it would have been interesting to read him on the naturalistic tendencies within some writers on "evolutionary epistemology."

Bartley rounds the volume off with an elegant essay about classical liberal political philosophy. It is based on a piece that first appeared in a Hayek *estschrift*, but which Bartley has rewritten to tie together the various strands in the present volume. Bartley's contributions bring the volume alive, and he has a real gift for putting difficult things clearly and making ideas that are not widely appreciated both interesting and attractive.

All in all, there is much in this volume which should interest the reader of *Liberty* who has a taste for philosophy but who does not necessarily have a specialist training. True, it would be better if more of the contributions had the fluency of Bartley's, and if there had been more critical interchange about matters of substance. But perhaps those needs will be met in a subsequent collection. □

***Puritan Economic Experiments*, by Gary North.
Dominion Press, 1988, 68 pp.**

Puritanism Comes Full Circle

Jeffrey A. Tucker

Puritanism has long fascinated Americans of all political stripes. H.L. Mencken thought "there is only one honest impulse at the bottom of Puritanism, and that is the impulse to punish the man with a superior capacity for happiness—to bring him down to the miserable level of 'good' men, i.e., of stupid, cowardly and chronically unhappy men."

Gary North takes a radically different view. The author of 30 books and hundreds of articles, Dr. North was formally trained as an economic historian. One of the New Right's most important intellectuals, he is also co-founder of an American school of theological thought called Reconstruction, which applies a hard-nosed Calvinism to public policy.

This short book, an excerpt from his Ph.D. dissertation, deals with a forgotten chapter in American history: the 17th-century Puritan policy of economic interventionism in New England. In an excellent—and, for him, typical—display of research, North assembles letters, diaries, and other documents from the era to illustrate how and why the Puritans tried interventionism, and why they failed. He also discusses the philosophical and theological underpinnings of the Puritan economic experiments, but here he is less persuasive, perhaps because of his own Puritan-like theological position (about which more later).

The Protestant Ethic at Work

Puritan economic intervention took three forms: common ownership of land, price controls, and sumptuary laws. The consequences of common property among the early Pilgrims is best known. Less well known is the origin of that common ownership. North shows that the Pilgrims were not 17th-century socialists, as is commonly thought.

Before the Pilgrims left Holland, a group of British "gentlemen adventurers" agreed to pay their traveling costs. Upon arrival in America, the British insisted

that the colony be set up as a joint-stock company, wherein the assets of individuals were to be equally shared. Since Governor William Bradford was the chief agent of the company, he had to impose a common storehouse in 1621. Soon the Pilgrims were threatened with famine. After years of bare subsistence, the Pilgrims bought out their British directors in 1627, and spent 15 years paying back their debt at interest rates of 30 to 50 percent. After the sale, Bradford divided up the livestock, the food, and the housing, and placed them in private hands. Prosperity followed.

The Pilgrims made one exception to privatization, however: meadowland, of which there was an extreme shortage. All the previous problems continued here: free-riding, overutilization, minimal upkeep, and social discord. The Puritans were confused about whether land should ever be considered private property. For decades they tried various forms of rationing (restricting the hours of access, etc.) to solve the problems inherent in common ownership. Finally, they gave up, and a system of private land ownership developed in Boston and Cambridge between 1662 and 1700.

Price and wage controls were the major interventionist measures of the Puritans of the Massachusetts Bay Colony, the "City on a Hill" under the governance of John Winthrop. Instead of wage minimums, the Puritans imposed wage *ceilings* on producers such as carpenters, bricklayers, and thatchers. Anyone violating the statutes was fined a day's salary. Once again, the predictable results followed: shortages, economic chaos, and wide-spread law breaking. Eventually, the statutes were repealed and wages were left "free and at liberty as men shall reasonable agree." Later, however, the conduct of the Puritan producers was again deemed unreasonable by the authorities, and they reimposed the controls. As a result, the 1630s saw price and wage controls periodically imposed and removed, with each intervention leading to shortages of the good or service targeted.

The excess profits law of 1635 provided imprisonment for those who violated the "true intent" of the price and wage controls. Was anyone prosecuted? There is at least one case recorded, that of Capt. Robert Keayne. In 1639, Keayne was convicted of economic oppression and price gouging in a dispute with a woman over a pig. He confessed his crime, paid his fine, and 15 years later was still trying to clear his name. In his will, he wrote that his offense "was so greatly aggravated and with such indignation pursued by some, as if no censure could be too great or too severe, as if I had not been worthy to have lived upon the earth." Yet his offense is "not only now common almost in every shop and warehouse but even then and ever since with a higher measure of excess." At the time, his accusers "were buyers"; but now "they are turned sellers and pedaling merchants themselves," so that the crimes neither "are worthy questioning nor taking notice of in others."

The highwater mark for these controls was 1676, but North shows that the final Massachusetts attempt at price controls was made in 1720: an incredibly complex set of regulations on the price and size of a loaf of bread. It is doubtful that anyone was brought to trial under it, and after its failure, controls were abandoned for good.

The most interesting interventions, however, were the sumptuary laws, which regulated the clothing that different classes of people were allowed to wear. For example, in 1651 the Massachusetts civil magistrates declared their "utter dislike that men or women of mean condition, educations, and callings should take upon them the garb of gentlemen"; they may not wear "gold or silver lace, or buttons, or points at their knees," or "walk in great boots." "Women of the same rank" may not "wear tiffany hoods or scarves, which though allowable to person of great estates, or more liberal education, yet we cannot but judge it intolerable in persons of such like condition."

The Puritans prided themselves on being People of the Book. But what possible Biblical justification could such laws have? It is to be found in the Larger Catechism of the Westminster Confession of Faith (1645), one of the most influential Protestant theological statements ever written. Elaborating on the "Fifth" Commandment to "honor thy father and thy mother," the Catechism stresses that this means "all superiors in age and gifts; and especially such as, by God's ordinance, are over us in place of authority,

whether in family, church, or commonwealth."

As North notes, there is nothing unusual (or even unlibertarian) in wanting class distinctions. The problems stem from enforcing this status through government coercion rather than social sanction. Under Puritanism, luxury goods (lace, spice, sugar, tobacco, wine, wigs) were fiercely taxed, restricted, and morally condemned. Taverns, brewers, and liquor sellers were harassed throughout the 17th century in Puritan communities, with licensing used as the primary means for controlling "drunkenness, excessive drinking, [and] vain expense of money [and] time." Even shuffleboard—as a symbol of leisurely living—was considered a threat to the community.

In imposing these laws, the Puritans, however, ran up against a social paradox that their own theology created. They preached the virtue of work, savings, and property, and condemned envy of others' wealth. But such doctrines, combined with a relatively free market, lead to prosperity and social mobility. Yet social mobility is incompatible with the Puritan desire to freeze the status of individuals in society. (In many ways, this paradox eventually confronted the American conservative movement; it split between those happy with the flux of free markets and those who insisted on the frozen social hierarchy of statism.) The second generation of Puritans (1660–1690) abandoned most of these laws, to the horror of the first generation, of course.

Confronted with all this, the reader might conclude that Mencken was right: these laws were an outgrowth of the Puritan desire to control the behavior of others and restrict the avenues toward the good life. But North says this is a "superficial" view. He says the Puritans' instinct to control prices and wages, own land in common, and regulate patterns of dress and behavior, was the product of latent medievalism. They were "the followers of Thomas Aquinas in the field of economics." "They carried with them the baggage of the early scholastic traditions," which inspired them toward a futile search for a "just price" and "just wage" set by some exogenous moral standard and not by the market.

There are problems with this position. Alejandro Chafuen, Marjorie Grice-Hutchinson, Joseph Schumpeter, and Raymond De Roover have shown that the late-scholastic economists (1500–1650) were remarkably free-market oriented, especially as regarding the freedom to set

prices and wages. North grants this, but thinks it irrelevant because the Puritans "were not familiar with the later scholastic tradition." Yet St Thomas (1226–1274), the most influential early scholastic thinker, also thought that the "just" price and wage were the market ones. And as Chafuen notes, St. Thomas's works, especially the *Summa Theologica*, "were the starting point for most of the schoolmen."

Instead of wage minimums, the Puritans imposed wage ceilings on producers such as carpenters, bricklayers, and thatchers. The predictable results followed: shortages, economic chaos, and wide-spread law breaking.

At one point in the book, North grants that St. Thomas's "just" price and wage were market-set. But since St. Thomas made a possible exception for times of crisis, North says his thesis still holds. The facts weigh against this contention, however, for the Puritans imposed these laws without reference to crises.

Furthermore, North presents no evidence to show that the Puritans had the slightest interest in what St. Thomas said about economics. And even if they had been familiar with his teachings, the Puritans were famous for their bitter hatred of everything Catholic; they would have been unlikely to exempt the economic thought of the Church's principle theologian. As Lord Acton noted, the bulk of Puritan theology descended from sects that defined themselves in terms of anti-Catholicism and their religious zeal largely consisted of opposing and crushing anything that smacked of "Romanism." Thus if the Puritans had read St. Thomas, they would have done so only in an attempt to refute him.

Why then does North advance this explanation for the Puritan economic experiments? Some clues are provided in the introduction. He tells the reader that most of the research was done in the late sixties and is "no doubt out of date in terms of the latest findings, claims, and interpretations of professional historians. But who knows? Maybe the professionals are all wrong anyway."

But, then again, maybe not. The bulk of the evidence proving the free-market

orientation of scholastic economics appeared after North completed his dissertation. In the late sixties, theologians concerned with social and economic matters (and economists and other social scientists concerned with theology) still accepted Max Weber's celebrated thesis that the Calvinist ethic inaugurated the spirit of capitalism. If we find that the Puritans (devoted Calvinists) exhibited non-capitalist behavior, it could be reasonably hypothesized, according to this view, that they were still influenced by remnants

Under Puritanism, luxury goods (lace, spice, sugar, tobacco, wine, wigs) were fiercely taxed, restricted, and morally condemned. Taverns, brewers, and liquor sellers were harassed throughout the 17th century in Puritan communities. Even shuffleboard was considered a threat to the community.

of pre-Reformation (Catholic) thought.

Since the late-sixties, however, Weber's thesis has been largely undermined and, quite possibly, refuted altogether, most directly and thoroughly by a re-confirmation of a thesis advanced by the eminent economist Hector M. Robertson in his book *Aspects of the Rise of Economic Individualism: A Criticism of Max Weber and His School* (1933 and 1950; reprinted Fairfield, N.J.: Augustus M. Kelley Publishers, 1973). Joe Peden, Professor of History at Baruch College, notes that "Weber's thesis is no longer considered scholarly. Recent literature shows that Weber misunderstood the nature of both Calvinism and Catholicism. Further, he overlooked the early development of markets so that his explanation doesn't cover the phenomenon he is studying." Robertson had been correct all along in saying, "the Jesuits favored enterprise, freedom of speculation, and the expansion of trade as a social benefit. . . the religion which favoured the spirit of capitalism was Jesuitry, not Calvinism."

Rather than confront the view that capitalism may be more Catholic than Calvinist in origin, North chooses not to treat it. Rather than change his thesis (that Puritans were interventionist Thomists in

disguise), he decided to, as he says, "get this material back into print rather than wait until I have spare time to update it extensively."

Eventually, however, free-market Calvinist thinkers will have to confront the growing body of literature that shows: a) rigorous free-market thought follows a direct ascendance from Aristotle to St. Thomas to the late-Scholastics to the French economists like Turgot and Say to the Austrian economists (whose origins have also been shown to be Catholic in Smith and Grassl [1986]); and b) that the radical Calvinist tradition of the Puritans represented a departure from this tradition precisely because it was not Scholastic.

In his introduction, North advances a second thesis for Puritan economic intervention: "the Puritans never fully broke with the theory of natural law, and it was the Scholastics who had imported and baptized this humanist myth of ancient Greece and Rome." On the face of it, this is puzzling. After all, it is generally thought that the free society flows from the tradition of natural law, which led to Lockean natural rights, liberalism, and finally to full-scale capitalism. What's more, his startling assertion about natural law is never buttressed or even mentioned elsewhere in the book.

There is much more that lies behind the Northian claim than first appears. To understand it, and the theology that lies behind it, we must examine the movement and theology of Christian Reconstructionism.

A Catalog of Isms

Together with his father-in-law R.J. Rushdoony, Gary North is co-founder of the theology and movement of Christian Reconstructionism. Begun in 1973 with the publication of the 900-page book *The Institutes of Biblical Law* by Rushdoony (Craig Press), the movement's ideology has made amazing advances. Well over a hundred books, thousands of articles, and dozens of conferences have followed. Christianity Today and The Washington Post have reported on their activities, Bill Moyers directed a PBS special on them, and they and their devoted followers and sympathizers can be found at any major conservative or libertarian gathering.

In addition to a host of committed pastors, activists, writers, and academics around the country, Reconstructionism claims the support of some very public names. John Lofton, columnist for the *Washington Times*, prominent Northern

Virginian educator Robert Thoburn, and influential Florida pastor James Kennedy are all devoted Reconstructionists. Pat Robertson, Marvin Olasky, and Herbert Schlossberg are all strongly sympathetic. Howard Phillips (Conservative Caucus) and M. Stanton Evans (Education Research Institute) are said to have been directly influenced by Reconstructionism. Even education secretary William Bennett evidenced a commitment to their political program at one time. In addition, there are thousands of mainstream Christian evangelicals who appreciate the victory orientation of Reconstructionism, if not every jot and tittle of its doctrines. The entire Christian Right has learned much from the theology, politics, and strategy of the Reconstructionists.

The status of Reconstructionism-proper is hard to judge because of its kaleidoscopic factions. Like the New Right, the movement was most influential around the time of the 1984 Presidential campaign. There were only two (although very hostile) factions at the time, North's and Rushdoony's, and explicitly Reconstructionist churches and schools were popping up all over the country. But five years later, Reconstructionism-proper is in disarray, having gone the way of many other sectarian enthusiasts since the Reformation: there are endless factions within factions and schisms within schisms. Lift your ear from the ground for a moment and you lose track of them all.

Broadly speaking, Reconstructionism combines Calvinism and New Right political activism, but in a particularly radical fashion. The New Right wants tax cuts and traditional "Judeo-Christian" values. Reconstructionists want a totally free market (no Fed, no income tax, free trade, free immigration) operating under the judicial code of Old-Testament theocratic laws. Reconstructionism teaches that the Bible supplies not only the road to salvation, but the "marching orders" and the "blueprint" for every area of public life, including how the economy, education, and the state should be structured. Their books outline Biblical views of psychology, sociology, mathematics, music, and architecture. They have also pioneered a theology of Christian resistance to the State—and put it into practice through homeschooling. The way they see it, the world and all its inhabitants are responsible to God and must act in terms of His commandments.

Reconstructionists have been classified as "Puritans" but they want to clarify the use of that label. "The dynamic Puritanism of Governor John Winthrop's

Massachusetts Bay Colony" became "stodgy, rationalistic, and almost mechanical," says North. He wants a "new Puritanism" that "offers men the hope of a God-honoring social transformation." Their theology is actually a unique hybrid of doctrines that have existed in some form at various times in Christian history. The following four points provide the foundation:

1) God's Providence, a traditional Calvinist doctrine, which teaches the total depravity of man, his complete dependence on God's grace for redemption, and God's absolute predestination of every individual soul to heaven or hell from before the creation of the world.

2) Presuppositionalism, the teaching of the late C. Van Til, which says that the Bible is not only inerrant, but that all truth must be capable of a rigorous Biblical defense or it isn't truth. The Bible must be "presupposed" in all intellectual endeavors. Presuppositionalism tends to minimize the role of reason and it is particularly hostile to the tradition of natural law. "The Bible has no such terms as 'Nature,'" says Rushdoony. "Not Nature but God is the source of all natural phenomena."

3) Postmillennialism, which predicts (and works toward) the triumph of God's kingdom on earth before the return of Christ. This opposes the dominant view of American evangelicalism, which teaches the decline of civilization prior to the apocalypse and Christ's return. This difference—the prospect of earthly victory instead of "rapture" (when the saved are assumed bodily into Heaven to escape the tribulations of the final days)—is what inspires Reconstructionists toward political action. They have devoted tremendous resources to promoting this point of view, which has been responsible for reviving this Puritan doctrine, invisible even twenty years ago.

4) Theonomy, a social order based on the laws that governed Old Testament Israel. As a rule, Reconstructionists say they accept all Old Testament laws that weren't explicitly reversed or amended in the New Testament. In practical terms, this means strict enforcement of property rights, freedom of contract, and severe punishments for offenders of Biblical law. This includes the death penalty for adulterers, homosexuals, incorrigible children, and idolaters, and replacing prisons with indentured servitude for non-capital crimes.

All Reconstructionists say they agree on these four points. But so far as I can

tell, no two theonomists agree on the precise applicability of a whole host of laws, especially those concerning property rights, marriage, and the definition of an "idolater." James Jordon, who wrote a

commentary on property-rights legislation in the Old Testament (*The Law and the Covenant*, ICE, 1984), has recently taken to questioning the theonomic credentials of Greg Bahnsen, author of the first widely

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regarded defense of theonomy, *Theonomy in Christian Ethics* (P&R, 1984, 2nd ed.).

The Northians have been battling the Rushdoonians for years. The Northians think that the visible church—"the training ground for Dominion"—should be preeminent over all other institutions in society (although it should remain organizationally separate from the state). They also practice a form of the high-church Anglican liturgy (with elements of the Catholic Mass) and their ministers wear collars. Once the most highly organized, they are now in total disarray.

Rushdoonians, in the anabaptist tradition, see virtually no role for the visible church in society, and follow the Puritans in their disdain for liturgy. Rushdoony

Reconstructionists support strict enforcement of property rights, freedom of contract, and severe punishments for offenders of Biblical law. This includes the death penalty for adulterers, homosexuals, incorrigible children, and idolaters.

himself advocates an adherence to Levitical dietary laws and takes a different view of tithing and taxation from the Northians.

A striking feature of Reconstructionists is their self-assuredness: they view themselves and their doctrines as the culmination of 2000 years of redemptive and intellectual history. No other Christian group has had comparable wisdom, they say, because none has been given all the tools they themselves possess; and with their special God-given knowledge, they can remake the world.

But this is perhaps too stark a picture; for the most part they are sincere and responsible. There are some excellent minds among them—especially North's and Rushdoony's—and they have to be credited for taking religion seriously, which far too few scholars do.

A "Christian Nation"?

An assessment of Reconstructionism must separately examine its formal institutions, its scholarly impact, and its broad appeal.

The formal Reconstructionist organizations are, however, breaking apart as I write, especially the groups centered at

Tyler, Texas, under the aegis of Gary North. It was to be the new "City on the Hill" and attracted a huge number of devoted followers from around the country. But their church fell into crisis last year after a series of excommunications, defections, and rumors of scandal. They were attacked as a cult by a major Dallas newspaper, and their membership fell by three-quarters.

Of late, leaders within Reconstructionism can't distance themselves from each other fast enough. Each seems intent on starting his own school of thought. Persistent and bitter infighting has severely damaged all Reconstructionist organizations.

On the scholarly front, there are problems as well. With few exceptions, they are shut out of the academy. Perhaps that is to be expected for such a radical school of thought. But they might have benefited by taking a different approach in their materials, perhaps making them more accessible to unReconstructed audiences. For example, North's book on *Puritan Economic Experiments* is an excellent empirical study of pre-Colonial America. But he intersperses his lucid prose with unsubstantiated claims drawn from his theological position. Recall that he thinks natural law is a "humanist myth of ancient Greece and Rome" that was "baptized" by the Scholastics. This view has been given a serious—if ultimately unconvincing—defense in Rushdoony's *By What Standard?* (1983). But North gives us no footnote or elaboration to his father-in-law's book. And since the point received no elaboration, it could have been omitted.

On the other hand, North is capable of superb work. He contributed an excellent article to *Man, Economy and Liberty*, the *festschrift* for Murray Rothbard, and his essay on reason and intuition in economics in *Foundations of Christian Scholarship* (1979), a book that he edited, is outstanding. And parts of his continuing economic commentary on the Bible show real promise (*Dominion Covenant* [Tyler: ICE, 1983], *Moses and Pharaoh* [1985], and *The Sinai Strategy* [1986]).

Reconstructionism has a broad appeal within evangelical Christianity. Defined as a loose body of Christian thought, or perhaps a religious-based Right-Wing political program, it is doing very well. Organizations and institutions have never mattered much to the mainstream of evangelicals. And for evangelicals looking for an intellectual and Biblical defense of their hard-right conservative views of politics,

the Reconstructionist alternative stands alone among Protestant sects. By tailoring their message to appeal mainly to Southern Evangelicals in Baptist and Pentecostal-oriented churches, the Reconstructionists are continuing to grow despite organizational disasters.

Bill Moyers thought that the Reconstructionists have been underestimated, which is why he taped a show on them for PBS. The Northians refused to participate, and were portrayed as a cult. But those who chose to be interviewed—particularly Rushdoony and ex-Northian David Chilton—came off well. Rushdoony, for example, looks and talks like an Old Testament prophet (and a calm, reasonable, and persuasive one at that).

Such media appearances are on the increase. So if the last few years are any indication of what is to come, the future of Reconstructionism will be a mixed bag. Their organizations will continue to fall into disarray; their body of thought will remain outside the halls of academia; but within political and popular evangelical circles, the prominence of Reconstructionist ideas will continue to expand and fill the existing intellectual vacuum.

Despite the anti-Christian bias of many libertarians, and the haughty zeal of some Reconstructionists, there is some common ground between the groups. There is agreement on economic issues, like taxes, bureaucracies, the Federal Reserve, public schools, central planning, anti-socialism, etc. They are generally in favor of much smaller government.

The problem is that, in practice, Reconstructionists don't concentrate their lobbying efforts for these aspects of their social theology. Instead, they tend to gravitate toward issues like anti-feminism, prayer in schools, the right to take off work on the sabbath, and a broad enforcement of the death penalty. Or they focus on symbols, like having the United States declared a "Christian nation."

But libertarians shouldn't let the long-run agenda of Reconstructionists interfere with the potential for short-run alliances. The Reconstructionists aren't likely to be any more successful than their Puritan ancestors in building their version of the kingdom of God on earth. And in these darkening days, it is going to take alliances with other non-mainstreamers to make the libertarian light shine. □

The author thanks Llewellyn H. Rockwell of the Mises Institute for helpful comments and suggestions.

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Terra Incognita

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Christopherson didn't have the \$1,000,000, but he gave the kidnappers his car, the gold jewelry he was wearing and a check for \$1.6 million. The car was later recovered and the check bounced.

The kidnapper turned out to be Robert Hassan, a "collection agent" from Renton, Washington. His slogan, displayed on a plaque on his office wall, is: "Living by chance, loving by choice, killing by profession."

Hassan had been hired by the Washington Attorney General to collect money owed to Washington citizens, in accordance with a recommendation by the Drug Enforcement Agency and the IRS, who had used Hassan's services several times in the past.

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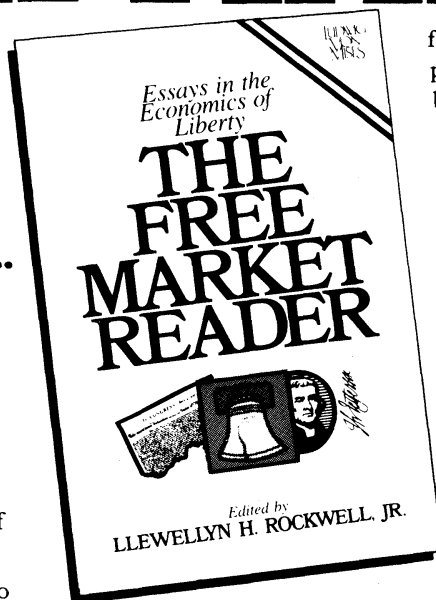
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