

# Liberty

May 1997

Vol. 10, No. 5

\$4.00

## Bill Clinton: Philosopher- King?

### Star Wars vs.

### Star Trek

*by Todd Seavey*

### Is Freedom of the Press a License to Steal?

*by R. W. Bradford*

### Life, Liberty, and the Pursuit of Jefferson

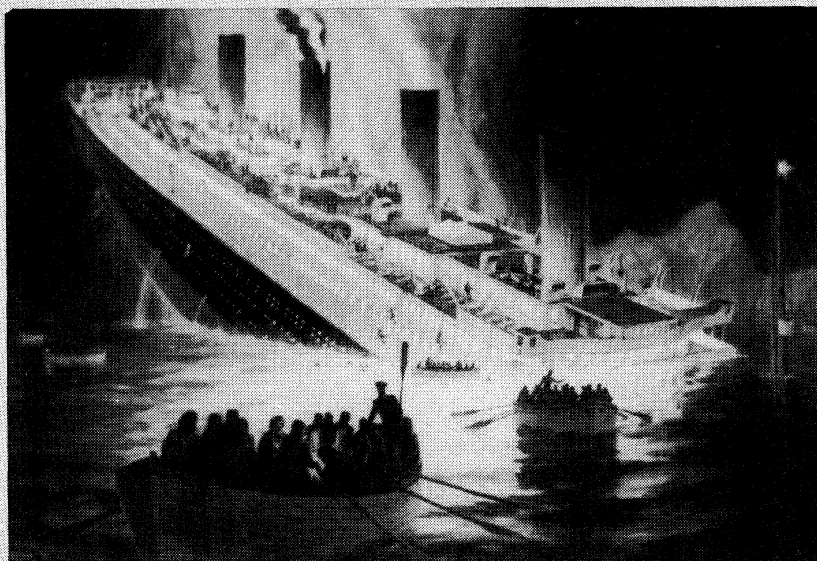
*by David N. Mayer*

### Blackboard Bungle: Why Schools Fail

*by Nathan Crow*

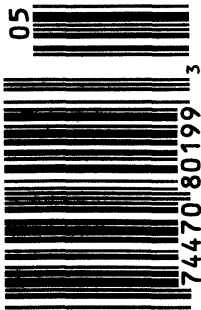
### Mysteries of the Titanic

*by Stephen Cox*



Facts in the *Titanic* case are like an iceberg. At first, they seem phosphorescently clear. Then, suddenly, they invert themselves and re-emerge with a very different color, directly in the path of whatever theory you have afloat.

**Also:** *Harry Browne* on the real road to social security, *Robert Higgs* on the bloody hinge of American history, *Jane Shaw* on the foolishness of the elite, *Randal O'Toole* on the demise of the Forest Service . . . plus other Articles, Reviews, and Humor



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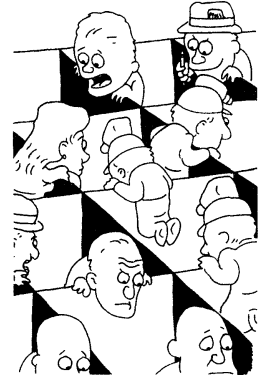
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cover illustration: painting by William G. Muller, 1981

# Letters

## Our Right to Medicine

Thomas Szasz's bleak assessment of the California medical marijuana initiative vastly underestimates its libertarian implications ("Marijuana Sellout," March 1997). As one of the organizers of Proposition 215 who shares Dr. Szasz's aversion to the therapeutic state, I can attest that it was specifically designed to undercut government controls on the drug market. Were Dr. Szasz to examine the ballot argument for Proposition 215, he would find it blissfully innocent of blatherings about "medicalization" and a "more rational drug policy." Rather, Proposition 215 was focused on guaranteeing people's *right to medicine*.

One of the glories of Proposition 215 is that it does not place medical marijuana under the control of any state drug bureaucracy. Rather, it *liberates* marijuana from state control by giving patients the right to use and obtain it on the "written or oral recommendation or approval" of a physician. The allowance for oral recommendations is especially radical, since it effectively circumvents the existing system of prescription drug regulations, whereby physicians must fill out triplicate prescription forms so that narcotics authorities can monitor their practice. Unlike previous reformist efforts, which aimed merely to "reschedule" marijuana as a Schedule 2 controlled substance, Proposition 215 effectively removes it from the scheduling system entirely! Another, equally libertarian provision of Proposition 215 is to allow patients to cultivate marijuana for themselves. The purpose of this is to ensure that patients' access to

marijuana is not blocked by the FDA, DEA and other drug bureaucracies. In upholding individuals' right to produce their own medicine, Proposition 215 liberates marijuana from the hands of the pharmaceutical-regulatory complex, which holds that consumers must be "protected" from their own decisions by government regulation.

Of course, Dr. Szasz may still complain that Proposition 215 is only a medical marijuana measure and requires a physician's approval — but any broader measure would surely have failed at the polls. The significance of Proposition 215 (and Arizona's Proposition 200) lies less in its narrow provisions than in the fact that it constituted a popular no-confidence vote in current drug policy. By calling into question the credibility of federal drug authorities, the stage has been set for a wider debate. If they were wrong about this, what else might they be wrong about? Already, Czar McCaffrey has been forced to call for a review of marijuana by the Institute of Medicine — the same institution which, in a similar review back in 1982, recommended complete decriminalization. Take heart, Dr. Szasz — Proposition 215 is hardly the last word, but just the first step toward a historic turn-around in drug policy.

Dale H. Gieringer  
Berkeley, Calif.

## Libertarian Central Planning

Harry Browne's article "Does the Libertarian Party Have a Future?" (March 1997) reflects what Friedrich Hayek called "the pretense of knowledge." Harry presumes to possess the requisite knowledge to plan the future success of the Libertarian Party. But as Hayek so often pointed out, such "fatal conceit" is doomed to fail.

Thousands of Libertarians all over the country collectively possess infinitely more knowledge about liberty and electoral strategy than any single Libertarian planner. Rather than attempting to centrally plan the future of the party in a top-down fashion, the national party hierarchy should instead be seeking out and utilizing the knowledge and expertise of Libertarians all across the country.

At a recent state LP convention, I asked a panel of LP members whether the national party hierarchy had ever asked them what the national LP could do to strengthen the party. They looked at me like I was from Mars. So I asked them what they would say if they were asked. I received three brilliant ideas: (1) a brochure on zoning (and possibly brochures on other local issues) created by the national LP for local candidates (with a blank space to stamp their name and address); (2) an Internet clearinghouse in which LP members in one state could learn what members in other states were doing; and (3) a professionally produced videotape on the LP that could be played on local cable-access stations.

The post-election situation in the national LP reflects the mess that comes with Libertarian central planning. The national LP recently sent out a fundraising letter entitled "A Personal Message from Harry Browne." The letter requested money to promote the central plan established by the national party hierarchy. Shortly thereafter, Browne announced the formation of a committee to explore his renewed candidacy for president.

A top-down, central plan for liberty — especially one that advances the personal goals of the party hierarchy — will bring only damage and defeat to the LP. The party must instead seek out and capitalize on the ideas, insights, knowledge, and expertise of thousands of individual Libertarians. Electoral success at the top depends on a solid foundation at the bottom.

Jacob G. Hornberger  
Ashburn, Va.

## Devil's Pact

Would I give up my "favorite" government program, if it meant that I would never have to pay income tax again? You're damned right I would! But I am not on welfare, Social Security, Medicare, Medicaid, a federal retiree, or struggling to finance a college education. The Harry Browne Libertarian election 'bargain' was a flawed proposition, because its premise was that the majority of the electorate did not already have a hand deep in some federal pocket. That is patently untrue. The bulk of federal entitlement expenditures goes straight to middle-class Americans, who gain far more from the

*continued on page 12*

## Letters Policy

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

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# Reflections

***The campaign justifies the means*** — In their lust for re-election, President Clinton and his henchmen appear to have violated the laws of the United States as well as common morality. But they had good reason. "I would remind you that we were fighting a battle not simply for our re-election," Clinton explained, "but over the entire direction of the country for years to come, and the most historic philosophical battle we've had in America in quite some time — over the direction of the budget, over our commitment to education, over whether we would dismantle large chunks of our environmental regulations and our public health regulations."

Philosophy battles, generally fought in the pages of scholarly journals, used to be quite inexpensive. But now that our Philosopher-King is running things, philosophical battles cost millions of dollars!

His immoral and illegal fundraising methods were not his fault, Clinton explained. It was the fault of those Americans who disagreed with him. "I don't regret the fact that we worked like crazy to raise enough money to keep from being rolled over by the biggest juggernaut this country had seen in a very long time." He was doing it for the good of the country.

—RWB

***I'd like to thank the cats who made this award possible*** — In the American century, it has often been said that the U.S. is the new Rome, the new Empire dedicated to the defense of civilization against the forces of barbarism. And now we have new evidence for this idea: Hillary Clinton has received a Grammy for the reading of her book *It Takes A Village*. Students of classical history might be reminded of the emperor Nero, who received awards from all parts of the empire for the public recital of his poems. Nero, of course, had to resort to the threat of the arena's lions to help convince people to grant him awards, while government handouts to equally trailblazing artists do the job for Hillary. Does this mean that humanity is making progress? Well, at least Nero always knew that he was a better artist than leader of his country. I wonder if the Clintons have the same wisdom.

—OB

***The law and Mr. Gore*** — On March 3, Al Gore told a press conference that during the past two years, "I made calls to ask people to host events and to ask people to make lawful contributions to the campaign. On a few occasions I made some telephone calls from my office in the White House. I never did anything that I felt was wrong, much less illegal. I was advised that there was nothing wrong with that practice." With those words, Vice President Gore confessed to approximately fifty felonies, punishable by a total of 150 years in prison and a fine of \$250,000.

Unhappily for the vice president, 18 U.S.C. 607 (a) states:

"It shall be unlawful for any person to solicit or receive any contributions . . . in any room or building occupied in the discharge of official duties . . . any person who violates this section shall be fined not more than \$5,000, or imprisoned not more than three years, or both."

This law has been on the books since 1883, and is sufficiently well-known to members of Congress that almost any day you can see them walk out of the Capitol to make calls to donors on cellular telephones. It was also well-known to the administration. In early 1995, White House Counsel Abner Mikva sent a memo to all in the White House, noting that "[c]ampaign activities of any kind are prohibited in or from Government buildings. This means fundraising events may not be held in the White House; also, no fundraising phone calls or mail may emanate from the White House."

But Gore was apparently too busy re-inventing government and raising some \$40 million for the campaign to read the memo.

He wasn't the only high-level administration figure who didn't realize fundraising in the White House is illegal. The day before, the subject had come up on ABC's "This Week" television program. One of the pundits on the program was former White House staffer George Stephanopoulos, who said that the Democrats needed money in 1994 and 1995, and "of course the vice president was raising money." When asked by Sam Donaldson for more information, Stephanopoulos said, "You put in special phones, special faxes, special computers that are for political work, for the fund-raiser work."

Donaldson asked, "But still inside of a government building?" Stephanopoulos replied, "Sure. Absolutely." Another panelist said, "You cannot raise money in or from a government building." Stephanopoulos responded, "Well, I mean, that's nuts."

Gore told the press conference he wasn't going to do it anymore. But . . . "Everything I did, I understood to be lawful. I never did anything I thought was wrong, much less illegal," he added. "My counsel advises me that there is no controlling legal authority or case that says that there was any violation of the law whatsoever in the manner in which I asked people to contribute to our re-election campaign." (During the press conference, Gore used the phrase "no controlling legal authority" seven times, as if it were a magic talisman to ward off danger. Translated from legalese into English, it means that no vice-president has ever been charged with violating this law in the past.)

Four days later, President Clinton told a press conference that perhaps he too had made telephone solicitations from the White House on behalf of his campaign: "I told him to leave that possibility open because I'm not sure, frankly. I don't like to raise funds in that way. I never have liked it very much. I prefer to meet with people face to face, talk to them, deal with them in that way. But I can't say, over all the hun-

dreds and hundreds and maybe thousands of phone calls I've made in the last four years, that I never said to anybody while I was talking to them, 'Well, we need your help,' or 'I hope you'll help us.'"

The president also offered a novel theory on the meaning of the law: "It's clear that what the law is on this going back a long time is that it's as if he'd written a letter [to] somebody from the White House. Does solicitation occur when he wrote the letter or when the letter is received? And the law is clearly that the solicitation is consummated, if you will, when the person is solicited and where the person is solicited."

Meanwhile, a growing number of Congressmen have asked that Attorney General Janet Reno appoint a special prosecutor to investigate the charges of illegal fundraising. Reno has refused so far, arguing that if there's any evidence of wrongdoing by either of her bosses, she will bring the charges herself. She hasn't commented on Gore's confession, nor on Clinton's admission that he cannot remember whether he committed this particular crime. —CAA

**Six of one** — Bill Clinton says that the era of big government is over. Judging by his state of the union address, I guess we've entered the era of lots of little government. —SR

**Philosophic goulash** — Friends of the interventionist state are always delighted when a famous capitalist denounces the "excesses" of the system. The February issue of the *Atlantic Monthly* gave them reason to cheer. George Soros, author of its cover story, "The Capitalist Threat," is not merely a famous capitalist, he is a billionaire speculator on international finance markets, and his article is a frontal attack on laissez faire.

In the article, Soros extols — but does not explain — Karl Popper's ideal of an "open society," and contrasts it with the worldwide laissez faire economy he alleges we live in. The only characteristic of the "open society" that he mentions is that it recognizes man's fallibility, thus rejecting the very notion of an ultimate truth. Because free-marketeers boast of the market's efficiency, Soros charges them with the hubris of believing they have the truth. For this sin, he argues, they pose a threat to the open society of the same sort that the Soviet empire posed during the cold war.

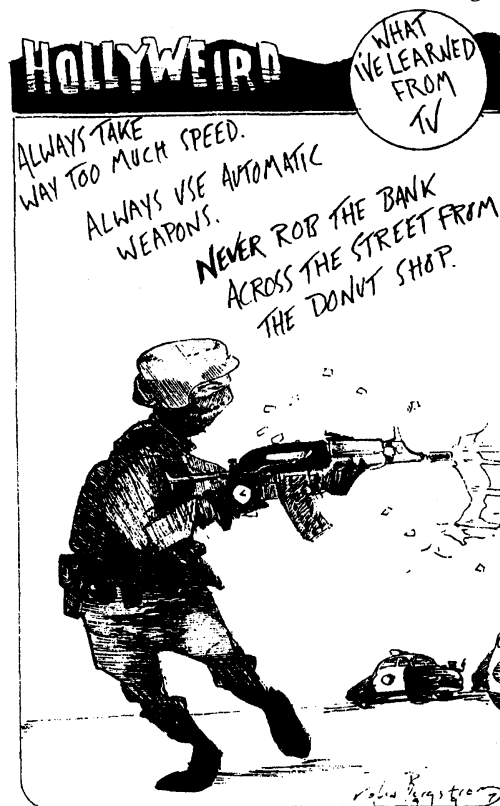
Markets are inefficient, he says, illustrating his point with a discussion of a subject he knows very well: financial markets. Because market participants shape the future by their present expectations and actions, supply and demand independent of expectations is a chimera. And without independently determined supply and demand, he says, the market cannot achieve the balance that economists call "equilibrium." This makes a free market inherently unstable. Therefore, we need govern-

ment regulation and institutions like central banks, to protect us from the outcomes of that incalculable market.

Soros is wrong from the start. Today's worldwide economy is hardly laissez faire. In virtually every nation in the western world, the government consumes more than 40% of the GNP, a condition that hardly suggests a large degree of economic freedom. And existing political barriers to international trade are by no means insignificant.

Mr. Capitalism also seems unaware that there have been several revolutions since he took Economics 101. The requirement that market participants must have perfect knowledge for an efficient equilibrium has long since hit the classroom dustbin. And as for the myth of independently given supply and demand, well, the Austrian school debunked that years ago. Instead, these free-market economists emphasize the role of the entrepreneur, whose alertness to previously unthought of (unexpected) wants and opportunities helps move markets towards previously unimagined equilibria — a condition we can expect no well-meaning bureaucrat to anticipate, much less plan for.

The spectacle of a person with so little understanding about the system in which he has made his fortune may be worth a smile. But parts of his article are less than funny. Soros proposes that citizens of the western world pour billions of dollars into other countries in the name of a "global open society," ignoring overwhelming evidence from Africa and South America that development aid does not help poor nations at all, but rather tends to inhibit necessary pro-market reforms. On the whole, Soros strongly resembles other billionaire families, such as the Rockefellers — who, having made their fortune, went around spreading their anti-capitalist philosophy. Of course, it took the Rockefellers two generations to decline that far. George Soros appears to have made it in a single lifetime. —OB



**If you're so rich, why aren't you smart?** — Boiled down to its essentials, zillionaire capitalist George Soros's criticism of free-market capitalism amounts to the observation that its advocates are quite certain that it is very good at fulfilling human needs. Since an open society is a good thing and necessarily admits to fallibilism, capitalism is bad. Apparently, Soros read some Karl Popper before he went off to earn his billions as a mega-capitalist. The obvious question for Soros is, are you certain that an open society is a good thing?

Soros's sophomoric rehashing of Popper's theory illustrates an all-too-common phenomenon: the tendency to believe that a person is smart simply because he is successful at making money. When I read it, I was reminded of a story I read about Niels Bohr, the pioneering nuclear physicist. After a reporter for *Life* magazine finished interviewing the scientist, he

noticed a horseshoe nailed above the door to his office. "Dr. Bohr," he said, "you are one of the greatest scientists in the world today. Surely, a man of science like you does not believe in the old superstition that nailing a horseshoe over your door will bring you good fortune." Bohr replied, "Of course not. But I am told that it brings good luck whether one believes it or not."

Nor must one understand how free markets work in order to benefit from them. For this, Soros can be thankful. —RWB

**George Bush, meet Ralph Klein** — If George Bush ever lies awake nights wondering whether breaking his emphatic and repeated pledge of "No new taxes" cost him the presidency, he should look to the experience of Ralph Klein, in Alberta, Canada. In 1993, Klein faced a situation remarkably like the one Bush faced in 1988. His predecessor had financed increased spending with huge budget deficits, and the provincial government's debt was skyrocketing. Like Bush, he ran for office on a platform of no new taxes. Like Bush, the only way he could avoid a tax increase was to cut spending.

Indeed, since Alberta is a province, not an independent nation, it could not finance its deficit by inflating its currency. So Klein had even less room to maneuver than did Bush. He therefore promised to cut spending, sell off government enterprises, and balance the budget. He went even further: he promised to begin to pay off the government debt.

As with Bush, Klein's promise to get government under control and to refuse ever to raise taxes proved to be a popular one with voters. He won his election.

But once elected, Klein was no Bush. He cut spending, privatized government services, and balanced the budget. And Albertans under the government of Klein, unlike Americans under George Bush, suffered nary a tax increase during his tenure. Klein was attacked for his spending cuts and ridiculed for his privatizations. But he stayed the course.

This year, he faced re-election, as Bush did in 1992. His slogan was "Vote for Ralph Klein because we did what we said we were going to do. We kept our promises." His campaign was lackluster; he didn't even bother to campaign the final two days, on the theory that voters knew his record.

Unlike Bush, he was re-elected in a landslide.

Meanwhile, 1,000 miles south of Alberta, George Bush's son George W. Bush was elected Governor of Texas, and was already being touted as a possible Republican candidate for president in 2000, running second in the polls behind Colin Powell.

He hadn't made the "no new taxes" promise when he ran for office — in the Lone Star state everyone just assumes any candidate for governor will oppose any tax increase. But apparently George W. Bush is his father's son.

In January, George W. Bush sent his first budget to the legislature for consideration. It contained a whopping increase in the sales tax, already the third highest in the nation.

His daddy would be proud. I wonder what Ralph Klein's son is doing. —CAA

**Tongass morass** — In 1954, Congress prodded the Forest Service to promote some industry in the then-territory of Alaska. The agency agreed to let a single company cut about 160 million board feet of wood per year — enough to

build 2,000 or more houses — for fifty years at noncompetitive prices. Louisiana-Pacific got the contract, which also allowed it to cut most of the timber from the gigantic Tongass National Forest during the next fifty years.

Since then, the company has cut more than six billion board feet and paid the U.S. Treasury less than \$5 million. Administering the timber cutting has cost taxpayers well over \$100 million. Virtually all of the wood went to Japan.

Environmentalists began agitating to stop the cutting and save taxpayers money more than two decades ago. Congress passed a reform law in 1990 which directed the Forest Service to increase cutting fees to competitive rates. But Louisiana-Pacific sued, saying that the new fees violated its contract. The contract was probably illegal in the first place, but no one had legal standing to challenge it.

Then the mill got into trouble because of pollution violations. Louisiana-Pacific figured that it wasn't worth it to add pollution equipment to the mill unless it could extend the contract another fifteen years. But environmentalists, backed by the Clinton administration, opposed such an extension.

The administration also saw that the Supreme Court would probably rule against it if the contract case ever made it that far. So the administration cut a deal with the Alaska congressional delegation: pay \$140 million to Louisiana-Pacific, another \$110 million to Ketchikan to develop new industry, and shut down the mill.

All those involved got what they wanted. Environmentalists got the mill closed, the pollution stopped, and the harvest of the forest stopped. People in Ketchikan got \$110 million to fool around with (that's over \$13,000 per person). And Louisiana-Pacific got \$140 million to walk away from the mill. Everyone is happy.

Oh yes, the taxpayers. They'll be paying a quarter of a billion dollars on top of the \$100 million or so that they've already paid to have their forests cut. But they probably didn't pay much attention to something like this. —RO'T

**Doppelgängers 'R' us** — The supposed moral quandaries posed by the prospect of human cloning have inspired much public excitement and quasi-theological punditry. But how likely is it that people will actually want to make "copies" of themselves? Well, according to the *Economist*, six out of a hundred people admit they are interested in cloning themselves — a figure that is surely lower than the real one. So parenting a clone may be more than a



fantasy; it could be the title of a future *New York Times* bestseller.

Having a clone instead of a child will interest several kinds of people. First, there are those so convinced of their own uniqueness, brilliance, charm or beauty that they cannot bear to see such a precious gene configuration snuffed out. Of course, in some cases — such as that of shockingly smart British biologist Richard Dawkins — such a self-evaluation may be justified (and Dawkins says he's interested).

In others, however, the desire to clone would generally be a manifestation of delusional narcissism, most likely of the wounded kind. Thus, clone-parents will surely include a large proportion of people who believe that but for the ill-will, incompetence, or neglect of parents, school, society, etc. they would have achieved great things, or at least not spent their entire lives as sniveling neurotics. For these folks, the opportunity to do their lives over again (so it will be imagined) by parenting a clone would be very attractive — offering not only the opportunity to see themselves grow up right, but the opportunity to prove that mom and dad, Miss Smith, and Father Flaherty were wrong, wrong, wrong. Could you have been another Rubinstein if pleas for lessons had not fallen on stingy ears? See that your clone is less-soned daily, starting at age three. Have recently recovered memories convinced you that your serenity was ruined by molestation? Padlock your clone's underwear. Feel sure that public-school bullying and look-say reading wrecked your character and your English? Homeschool your clone.

I hope I don't sound too facetious; all such terrors, abuses, and deprivations are serious matters and have blighted lives, and the opportunity to do right by your kids where you were done wrong by your brutal peers and ostensible protectors deserves no scorn. The reason I question the motivation has more to do with its practicality than its nature; for as most of us learn, our parents' endeavors to protect us from the kind of damage they themselves experienced (even when successful) often spawn hurts they did not anticipate. Besides, a sense of bitter regret over one's own history is not the foundation of choice for successful child-rearing.

Such concerns are not, however, the primary source of objections to human cloning (already illegal in some coun-

# Liberty Live . . .

Intellectual sparks flew at "Cultivating Liberty," *Liberty's* 1996 Editors' Conference.

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*Libertarianism As If (the Other 99% of) People Mattered.* If we're so right, why ain't we free? **Loren Lomasky** offers some advice about communicating to the obstinate people of an unfree world. (Audio: A204; Video: V204)

*The Unappreciated Politics of Ludwig von Mises.* **R.W. Bradford** makes the Misesian case for democracy. (Audio: A206; Video: V206)

*Recollections of Mises' NYU Seminars.* **Bettina Bien Greaves** takes you back to the famous Mises seminar at New York University, which she attended with several other libertarian notables-to-be. (Audio: A207; Video: V207)

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*The Threat from Metro.* Randal O'Toole exposes the arrogance of "urban planners" — and reveals the disastrous

long-term consequences of their "new urbanist" designs. (Audio: A220; Video: V220)

*Religion and Liberty.* Jane S. Shaw, Timothy Virkkala, David Friedman, Richard Stroup, and R.W. Bradford debate the historical and philosophical relations of man, God, and state. (Audio: A221; Video: V221)

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tries). To the extent that clone-dreaders are not simply responding to the subconscious legacy of bad science fiction movies, what they probably resent is the overt narcissism of parenting a clone. This resentment is particularly fierce because such narcissism merely reflects what is found in "normal" parents, but which people would prefer not to look at. Millions of parents live through their kids, and it isn't just tennis moms who are guilty. Sons may be rejected because they are unpopular, or gay, or awkward at sports; daughters because they are too plain, too nervous, or too beloved of the other parent. What are these but reactions to the wounded narcissism of a parent whose best-laid plans have gone awry?

And setting such psychological issues aside for a moment, consider the scientific interest of cloned parent-child pairs. Cloning is as close as we are going to get to finding out how many of our virtues and failings really are due to nature, how many to nurture. (How many are due to our own choices, of course, will always remain in doubt.)

Even the suggestion of a scientific interest here will, to be sure, strike many people as monstrous — and not simply because they would rather not know the answer to the nature-nurture controversy. Their objections will take the form of sympathy for the plight of the clone-child, who, they suppose, would be fated to grow up without his "own" identity. But this seems specious, on several grounds. First of all, it is hard to see what justification a clone could make to having been brought into the world, considering the alternative — i.e., not ever existing. It is not, after all, as if a clone could be "born as someone else." You, you lucky devil of a clone, are you; and if you hadn't been cloned, you wouldn't be here to complain. (Try telling that to your fourteen-year-old clone-child.)

There is, of course, one situation in which a clone might legitimately complain about having been brought into the world: that is, if his clone status makes him so miserable that he wishes, literally, never to have been born (the fate which, a Greek poet famously thought, was the most devoutly to be wished — just before dying young). Such a miserable state is all the more likely to be brought about by the panicked condemnation of clone-children by religious fanatics, whose concerns I have not yet addressed. (Let it suffice to say that no major religion's texts forbid it: conclude, therefore, that either the gods are indifferent to the problem, or overlooked it, or employed scientist-gods who insisted, like their human counterparts, that mere mortals could never do the trick.)

I can't help wondering, finally, whether being a cloned child might actually augment one's happiness, by increasing closeness between parent and child. Many identical twins report feeling a unique and precious bond with each other; and parent-child relations are in all lands lauded for their

loveliness. It will be interesting to see whether something still more precious may yet emerge in the relation between clone-parents and their children.

—NC

**Where pork grows on trees** — I rarely make political predictions, but I am now predicting that the Forest Service, founded in 1905 and leader of the Progressive movement, won't survive until its 100th birthday. The agency is so demoralized and its long-time supporters so alienated from it that it will probably be merged into the Department of the Interior and lose its identity.

The Forest Service's historic placement in the Department of Agriculture helped insulate it against political meddling by administrations because the Secretary of Agriculture traditionally doesn't spend much time worrying about forests or western resources. By comparison, agencies in the Department of the Interior, such as the Park Service and Bureau of Land Management, have traditionally been much more political and have been kicked around by presidents and secretaries of the interior for decades.

Several secretaries of the Interior, including Harold Ickes (under FDR) and Cecil Andrus (under Carter), have resented the Forest Service's independence and have proposed hostile takeovers of the agency. But the Forest Service's friends, including both industry and environmental interests, strongly defended it.

But in 1993 the Clinton administration took the almost unprecedented step of firing a chief of the Forest Service. The only other president to have done so was Taft, who fired the agency's founder, Gifford Pinchot, a decision that cost him his re-election. (It inspired Teddy Roosevelt's third party challenge, and the former president actually outpolled the incumbent Taft.) The fact that Clinton's new chief was a career Forest Service employee made the firing palatable and few people protested.

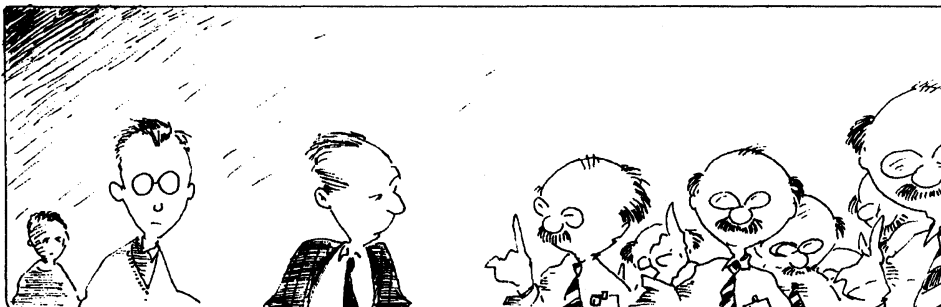
Late in 1996, however, that replacement retired and Clinton hired someone who is little more than a political hack. If Reagan had proposed this, the protests would have been heard in the deepest wilderness areas in the country. But no one even bothered to question Clinton.

So when the next Secretary of the Interior proposes transferring the Forest Service to that department, it is likely to happen. This will mean that the national forests, already the victims of Congressional pork barrelling, will also be a proud source of presidential pork.

—RO'T

**The rules of the game** — The phrase "government ethics" is an oxymoron, so it's rather difficult to take seriously any of the brouhaha over Newt Gingrich's ethical problems.

You'd need dozens of hours to read through transcripts and other documents to discover whether Gingrich or the Democrats are more right — or less wrong — in their argument about whether he acted unethically. And even if you were sure which side was speaking for the angels, what difference would it make?



ALL THOSE IN FAVOR OF CONTINUED FUNDING FOR CLONING RESEARCH SAY "AYE"

Politicians treat government and politics as a game — a very serious game, but a game nonetheless. The purpose of the game isn't to discover the truth or to change America for the better. The object is to put more points on the scoreboard than one's opponents do. And one scores points by catching one's opponents in contradictions or embarrassing situations — or by taking their words out of context — or by making them seem less concerned for what's right than the scorer is.

You may enjoy the game, and you may find yourself rooting for one side or the other. But you should never forget that it is a game — and never let yourself believe that the future of America depends on which side wins. It doesn't — anymore than America's future depends on the outcome of a Lakers-Bulls basketball game or the Super Bowl.

Should you care whether Newt Gingrich comes through the attacks in one piece? You might want to see him survive — if you're eager to see him raise the minimum wage again, continue to trash American health care with more "reforms" like the Kassenbaum-Kennedy bill, pass budgets that make the government bigger and bigger far into the future, and keep on threatening to execute drug dealers.

But, then, if he doesn't survive, his successor probably will do the same things. So what difference does it make?

By the way, has anyone heard who won the Bulls-Lakers game? —HB

***Separating cash and state*** — Everyone's crying about the influence of money in politics and proposing limits on liberty as a solution. How easy it is to overlook the obvious. You want money out of politics? Get politics out of the business of giving away other people's money. —SR

***Felony, mystery, and authority*** — Okay, let's review things. There is credible evidence that Bill Clinton has done the following:

1. Stolen somewhere around \$100,000,000 from the taxpayers to fund his own personal investments and the investments of his business partners;
2. Used the state police as procurers for his sexual escapades;
3. Sexually assaulted a young state employee after she failed to respond to his invitation that she have sex with him in exchange for career advancement;
4. Offered another sexual partner a state job for which she was unqualified in exchange for her keeping their sexual relationship secret;
5. Accepted campaign contributions from the government of mainland China, in exchange for providing it with secret intelligence information that was the property of the U.S. government;
6. Accepted a campaign donation from an American businessman doing business in Paraguay, in exchange for our government intervening on behalf of Paraguay's beleaguered president.

Each of these is an outrage. Each involves plundering from the citizenry for the aggrandizement of Clinton's own political power, wealth or sexual pleasure. One throws in sexual assault, and another, arguably, treason. If even one of the charges is true, Bill Clinton is unfit for public office.

Nevertheless, it appears that for the most part the American public doesn't much care about any of these

charges. The evidence is extraordinarily strong for several of these, but most Americans are indifferent. Sure, he probably stole some, they say, but don't most all politicians do that? So what if he has a roving eye, they say — he's an attractive man, and, besides, he's married to Hillary. Sure he solicited and accepted campaign contributions from illegal sources, but that's just politics.

There is, however, one offense that Americans seem unwilling to forgive Bill Clinton: he allowed people who gave his campaign substantial donations to sleep over in the Lincoln bedroom of the White House. Unlike the others, this involved no cost to the public, involved no sexual predation, and didn't sell out American interests to foreign powers. Indeed, it is probably not even illegal. In the court of public opinion, Bill Clinton thus finds himself in a strange position — not unlike that of Al Capone, who was never convicted of his various beatings, extortions, and murders, but was finally convicted of tax charges.

How can this be? Why do Americans care far more about the renting out of the Lincoln bedroom than they care about theft, assault, and treason?

This strange behavior, I submit, is understandable only to those who grasp that politics is a new, but not revolutionary, religion. Traditional religions hold that there is an otherworldly, non-corporeal being (a god or gods) not bound by the laws of nature, but able to intervene in human life and perform magic. The new political religion has secularized this worldview: it holds that there are special corporeal entities in this world that are exempt from the laws of nature and able to perform magic. These secularized gods are called governments, and they perform miracles every day. They can create wealth out of nothing (by inflation), bestow moral value to acts of wanton destruction (by declaring war), and take money from all of us, somehow redistributing it so that we are all better off.

Bill Clinton is the Elmer Gantry of this new religion. He is the evangelist who came to town and brought the flock back into the churches, renewed their wavering faith, mesmerized them with sermons far better than the regular preacher (boring old George Bush, or Jimmy Carter, or Ronald Reagan or Bob Dole). Everyone pretty much knows that not all the money collected when they pass the plate is turned over to the church, and it's a little embarrassing when the preacher gets caught with his hand up the choir director's skirt. But you gotta take the good with the bad. After all, when he's in the pulpit, the pews are filled, the sale of liquor temporarily declines, and everyone feels a little more virtuous.

But like Elmer Gantry, Clinton seems to have gone too far. Not content to skim the collection plate and have his way with impressionable young devout women, Clinton has decided to rent out the sacred relics for cold hard cash.

This is sacrilege!

—RWB

***Actuarial actualities*** — Social Security has brought a new dimension to such concepts as annuities, insurance, and retirement. No long, complicated contracts. No actuarial tables to pore over. Social Security operates on a very simple principle: the politicians take your money from you and squander it.

It really is ludicrous that you should be asked to buy an annuity on terms that require your premiums to rise when-

ever the insurance company runs out of money, and without your having any idea what pension you'll receive — if any — when you retire.

Some might say that it is Orwellian to call this an insurance program. I believe it's more appropriate to think of it as Monty-Pythonian.

The system is back in the news because a government committee has proposed ways to reform it. But if you understand that the purpose of the scheme is simply to provide another way for the politicians to get their hands on your money, you won't be tempted to think that any reform will succeed.

Various "privatization" proposals have been suggested. And some people point to the Chilean scheme of partial privatization as a model for the U.S. But all these schemes involve very long transition periods — in which taxes would be gradually reduced and we would gradually be given more and more control over our own money.

But a transition program lasting years is a recipe for political meddling. Can you imagine how much mischief the politicians could get into during those, say, 30 years or more? How many times they would change the rules? How they would react to the first stock market crash that caused some people to lose their savings?

One suggestion from the government committee is to let the Social Security Administration invest some of its meager reserves in the stock market — instead of having them all in government bonds, as they are now. This would increase the yield and supposedly reduce the constant pressure to increase the Social Security tax.

Of course, this would give the government dangerous leverage over companies in which it holds stock. But something more important is overlooked when it's suggested that the Social Security system generate additional revenue by investing in stocks. What if it does? However much the added revenue, the politicians will just squander it — as they've squandered the money already available to them. So they'd still come back every few years — pushing another tax increase to bail out a bankrupt system.

Every proposal from the government committee allows the politicians to continue to run your retirement for you. We're told the government has to do this because, otherwise, some people won't take care of themselves properly.

Of course, some people wouldn't provide for their own retirement — just as some of them won't brush their teeth. But it is wrong to hold the rest of us hostage — to force us into a fraudulent Social Security

scheme (or force us to display our teeth for government hygiene inspectors) simply because some people won't take responsibility for their own lives.

If it weren't for government-induced inflation and the taxing of interest income, those who don't understand investments could do quite well just by leaving their money in bank savings accounts.

Consider two young men, each 25 years of age, beginning their careers today. Mr. Faith-in-Government has the usual Social Security taxes taken from his paycheck as his salary grows over the years, and he finally retires on a Social Security pension at age 65. Meanwhile, Mr. Go-It-Alone — by some miracle — is exempt from Social Security. So he puts exactly the same amount aside as Mr. Faith-in-Government — except that he puts it into a savings account paying 4% a year. At age 65, here's how they stand, using the current Social Security rules:

- Mr. Faith-In-Government will receive \$1,100 a month for the rest of his life. When he dies, he will leave no capital for his heirs.

- Mr. Go-It-Alone will receive \$2,328 per month — twice as much. And he won't even have to touch his capital, which means he'll leave \$698,359 for his heirs. Or, if he doesn't care about his heirs, he can at age 65 use his savings to buy a lifetime annuity from an insurance company, which will pay him \$4,015 per month for as long as he lives.

(In both cases, it is assumed the individual puts aside 15.30% [the combined employee and employer contributions] of the first \$60,600 he earns each year, that he starts at age 25 making \$25,000 a year, and that he receives a 5% raise every year until he retires at 65.)

The biggest reason that any private pension plan outshines Social Security is that very little money is invested through Social Security. Most of it is spent as soon as it is taken from the individual. Thus the capital has no opportunity to grow, as it would in a private plan.

So long as Social Security remains in government's hands,

it will be in trouble. We can't leave our retirement money lying around on the, because the politicians will grab it and spend it to please those with the most political importance.

The only way to make Social Security safe is by getting the government completely out of it, by selling off government assets to acquire the capital to purchase lifetime annuities for those who are dependent on Social Security today — and let everyone else out of bondage. —HB

### Liberty's Editors *Reflect*

CAA	Chester Alan Arthur
HB	Harry Browne
OB	Oliver Becker
RWB	R.W. Bradford
NC	Nathan Crow
SR	Sheldon Richman
RO'T	Randal O'Toole

### Letters, continued from page 4

present system than they ever pay out in annual federal income taxes — \$5.3 trillion dollars worth, to date — and they know it. Browne might as well have attempted to garner votes from American soldiers and sailors by asking, "Would you agree to abolish the military establishment, if you never had to pay any income tax again?" The question is absurd. Nobody willingly

breaks their own rice bowl.

Browne proposes greater collective action as an answer to present political defeat: expansion of Libertarian Party membership, accumulation of an enormous political war chest, more extensive advertising, and widespread media exposure, leading step by step towards another major party influencing American politics. In other words, beat them at their own game. The devil's pact — where success means you lose your

soul. An LP of 200,000 members will not be the same entity it is today. There will be compromise after compromise, and desertion of one principle after another, until in the end one can no longer distinguish Democrats from Republicans from Libertarians. Then, and only then, will we start to place candidates into political office. For that is the collective price of collective success.

Carl D. Alexander, Jr.  
Port Angeles, Wash.



## Inquiry

# Mysteries of the Titanic

*by Stephen Cox*

Guilt and innocence 85 years after the tragedy.

**Time:** 1:40 a.m., Monday, April 15, 1912.

**Place:** The deck of a steamship lying motionless in the North Atlantic. The sky above is gaudy with stars, like the arch of an enormous stage.

**Action:** A man is looking at a lifeboat. He is making a decision.

What this man decides will strike many people as a very unpleasant surprise. It will make him as hated and reviled as any private figure of his generation. His act will be studied by the investigative commissions of two great nations. It will be reproduced, and distorted, by every medium of popular information and entertainment. And it will remain — like thousands of other decisions that were made that night — a subject of endless controversy, an emblem of the mysteries that surround moral judgments.

The ship was the White Star liner *Titanic*. The man was J. Bruce Ismay, Managing Director of the White Star line. If you want to try making sense of the *Titanic* disaster, and of the countless other attempts to make sense of it, you might start with the comparatively simple story of J. Bruce Ismay.

### **“There Is No Time to Waste”**

Ismay's life was inseparable from that of the White Star line. In 1867, when he was five years old, his father Thomas, a self-made capitalist, bought White Star in a liquidation sale. It was a mere name; there were no ships attached; but he built it into the symbol and the reality of modern progress — a fleet of great steamships providing fast, dependable, and comfortable service between England and America.

Thomas Ismay was a hard man. When he left his house (a work of pigheaded ostentation that was staffed by 32 servants but possessed neither decent heating nor modern bathtubs), he would place a stone on any fallen leaf that defaced his grounds. If the leaf remained in place when he returned, he would assemble his ten gardeners and “demand to know what they had been doing all day.”<sup>1</sup>

Bullied and occasionally humiliated by his father, Bruce

Ismay developed into a cranky, psychologically isolated adult. He was tall, well-built, well-dressed; but he was shy and self-defensively arrogant, full of inhibitions and inabilities. He would not speak in public (his father had enjoyed public speaking). He would not ride a horse (he had once accidentally ruined his father's horse). He would not drive a car, and he would not give advice to his chauffeur, because, he believed, the chauffeur “is in charge, and if he thinks we should go so fast it is not for me to interfere.”<sup>2</sup>

Thomas Ismay died in 1899. Three years later, Bruce Ismay arranged the sale of White Star to J.P. Morgan and his associates, retaining a managerial role but surrendering ultimate financial responsibility. Morgan was trying to monopolize North Atlantic shipping. His effort failed; the French line and the mighty Cunard line remained outside his grasp. But Ismay had a plan for improved competition. White Star would not try to rival the speed of Cunard's liners; it would build somewhat slower ships, but they would be larger and more attractive.

The *Titanic* was Ismay's triumph. 883 feet long and 93 feet broad, she was the largest movable object ever constructed. In keeping with Ismay's purpose, the *Titanic* offered luxurious first-class accommodations and unusually comfortable arrangements for second-class and third-class passengers. Another great selling point was the *Titanic's* promise of dependability. The vessel's enormous power could drive her through any Atlantic storm. Her hull, which was divided into 16 watertight compartments, was designed to stay afloat if any two contiguous compartments were flooded. Since this was the worst accident her builders thought they needed to provide against, they regarded *Titanic* as virtually unsinkable. She seemed immune even from the effects of political problems. When transatlantic shipping was disrupted by a coal strike in Britain, White Star procured coal from other ships and gave it to *Titanic*. The great ship began her maiden voyage as scheduled, at noon on Wednesday, April 10, 1912 — bound from Southampton to New York. Ismay went along for the ride.<sup>3</sup>

What he did during the voyage was not remarkable enough for anyone to remember in detail. He slept in his beautiful suite on B deck. He came to dinner with the other first-class passengers. He walked the decks, enjoying the unusually calm weather. When the ship stopped at Queenstown, Ireland, on April 11, he conferred with the Chief Engineer about the possibility of trying her out at top speed on April 15 or 16 — a trial that was never to take place. Just before lunch on Sunday, April 14, Captain E.J. Smith found Ismay on A deck, talking with some other passengers. Smith silently handed him one of several wireless messages

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*The Titanic was 883 feet long and 93 feet broad, the largest movable object ever constructed.*

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received that day, warning of ice near *Titanic's* course. Ismay "glanced at" the message and put it in his pocket. About 7 p.m. that evening, when the captain was walking out of the smoking room, he saw Ismay sitting there and asked him to return the message. Ismay did so. The *Titanic* continued moving at 25 miles an hour — not her top speed, but a very respectable one — in the direction of the ice.

At 11:40 p.m., while Ismay was sleeping, an iceberg emerged from the moonless darkness directly in *Titanic's* path. As the ship swerved to port, the little dark-blue mountain passed quietly along her starboard side, leaving at least 250 feet of gashes below the waterline and opening at least five watertight compartments to the sea. Two hours and forty minutes later, the *Titanic* sank.

Ismay's actions now become visible in brief, dramatic flashes. About 11:50, he appeared on the bridge, two decks above his cabin, wearing an overcoat hastily thrown over his pajamas. He asked Captain Smith if the ship was seriously damaged. Smith replied, "I am afraid she is." Ismay started to walk down into the vessel, but he encountered the Chief Engineer, who said that he thought the pumps would keep her afloat. Ismay returned to the bridge. There he overheard the captain saying something about lifeboats. The White Star line and its shipbuilders had considered the *Titanic* so safe as to be "a lifeboat in herself." They had therefore not provided enough lifeboats for all the people on board. Ismay knew this.

The Managing Director next materialized on the port side of the boat deck. Crewmen had begun to uncover the boats, but no passengers were waiting to use them. Ismay stood alone and silent. At perhaps 12:35 a.m., Third Officer Herbert Pitman was uncovering a lifeboat on the starboard side when he found himself standing next to a man "that was dressed in a dressing gown, with slippers on." The man said to him "very quietly, 'There is no time to waste.'" The man was J. Bruce Ismay.

Not recognizing him, and convinced that the ship was in no danger, Pitman proceeded with his work "in the usual [presumably slow] way." But the mysterious stranger insisted that the lifeboat should immediately be loaded with women and children. Pitman told him sharply that he was awaiting the captain's orders. "Very well," said Ismay. Pitman was now unsettled enough to walk to the bridge and ask the cap-

tain. Smith told him to "go ahead." With Ismay's assistance, Pitman loaded passengers into lifeboat No. 5. Ismay called out twice, "Are there any more women before this boat goes?", and a last woman shyly approached. "I am only a stewardess," she said. "Never mind," Ismay responded. "You are a woman, take your place."

But the crisis was beginning to tell on him. As No. 5 began its descent to the water, he hung from the davit, shouting excitedly, "Lower away! Lower away! Lower away! Lower away!" It was too much for Fifth Officer Harold Lowe, who was down on the deck, trying to work the ropes. Lowe shouted at Ismay, "If you will get to hell out of that I shall be able to do something." Ismay did not reply. "Do you want me to lower away quickly?" Lowe demanded. "You will have me drown the whole lot of them."

Ismay walked silently away, and Lowe went on lowering No. 5. Once it was safely in the water, he turned to the next boat in line, No. 3. At that moment, there was an explosion and a brilliant flash of light. The *Titanic* was firing distress rockets. In the sudden brightness, Lowe saw Ismay standing quietly beside him, prepared to help with another boat.

By 1:40, a last lifeboat remained in the davits on the starboard side; Ismay thought it was the last one left on the ship. It was a boat with a wooden bottom and canvas sides — "collapsible" lifeboat C. It could carry 47 people. Ismay helped load the boat with twenty-seven women and children. All, or almost all, were third-class passengers. Hiding somewhere in the shadows at the bottom of the boat were four men later described as Chinese or Filipino "stowaways." Six crewmen also entered.<sup>4</sup>

An officer called out for more women. No one responded. Ismay looked around. His view to port was blocked by deck houses, but he could see the forward part of the starboard deck. No other passengers were visible. The sea was climbing up *Titanic's* bow. The lifeboat was starting to move. This

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*If First Officer Murdoch had decided to hit the berg head-on, Titanic would not have received any fatal wounds. The 200 people who were sleeping closest to the bow would have died; but that would have been many people fewer than the 1500 who did die.*

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was the moment. Ismay climbed in. A certain Mr. W.E. ("Billy") Carter, a man from Bryn Mawr, Pennsylvania, appeared and climbed in too.

During the next five minutes, Collapsible C traveled with difficulty down the side of *Titanic*, now listing sadly to port. Thirty-five minutes after the boat reached the water and rowed away, Ismay could have seen *Titanic* plunge beneath the ocean. But Ismay did not see it. He did not want to see it. He was rowing with his back to the ship. Afterwards, he was glad that he had done so.

Just before dawn, the Cunard liner *Carpathia* arrived at the scene. She had picked up *Titanic's* wireless distress call and had raced toward her position through a sea filled with icebergs. The *Carpathia's* decks were lined with lookouts, her

lifeboats were swung out, her sides were hung with electric lights, her gangways were open, and she was firing rockets. Ismay climbed aboard the *Carpathia* at 6:15 a.m. He was safe.

### "He Ought to Have Gone Down with the Ship"

But Ismay's troubles had barely begun. He soon learned that two-thirds of the *Titanic's* passengers and crew (more than 1500 people) had perished. They included the *Titanic's* captain, one of her designers, most of her crew, most of her third-class passengers, and most of the male passengers in first and second classes — among them, such prominent people as John Jacob Astor and Benjamin Guggenheim. The lost also included Bruce Ismay's butler and his secretary, Mr. Harrison, whose presence on the ship had apparently slipped his mind. Ismay was especially horrified to learn that many women had died. In a state of nervous collapse, he repaired to the cabin of the ship's doctor and refused to leave. The doctor provided opiates. Ismay "kept repeating that he ought to have gone down with the ship."<sup>5</sup>

Many people agreed. In New York, where the *Carpathia* was heading, the newspapers were intensely interested in the question of why, as the *Wall Street Journal* put it, "the greatest or least official of the line" should have been saved while passengers were lost. Soon the papers would be calling Ismay "The Most-Talked-of Man in the World" — a dubious honor, especially when the title appeared in conjunction with such ominous terms as "public opinion," "on trial," and "pariah."<sup>6</sup>

The intellectuals were also starting to work themselves up. Admiral A.T. Mahan, the distinguished historian and theorist of naval power, wrote to a newspaper criticizing Ismay for failing to accept the duty of evacuating everybody else before saving himself. According to Mahan, Ismay had undermined the essential principle of "individual responsibility." Brooks Adams — historian, descendant of presidents, and distinguished meddler with many theories — pronounced Ismay morally "responsible" for everything that had gone wrong with the *Titanic*. Adams said he could recall "nothing at once so cowardly and so brutal in recent history" as Ismay's escape in Collapsible C. Ismay should at least have "prove[d] his honesty and his sincerity by giving his life." Adams hoped Congress would "make it plain that such men cannot be kept in control of passenger ships if we can help it."<sup>7</sup>

The politicians were already in motion. An investigating committee of the United States Senate, hastily organized by William Alden Smith (Rep., Michigan), was determined to grab Ismay before he could get back to England. When the *Carpathia* reached New York on April 18, Senator Smith marched onto the ship, ignoring the "Please Do Not Knock" sign on Ismay's quarters, and summoned him to attend a hearing scheduled to open the very next morning.<sup>8</sup>

If Bruce Ismay typified the business elite of the early twentieth century, William Alden Smith typified the populist political power. Starting out in life as a popcorn seller on the streets of Grand Rapids, he had become a wealthy lawyer, a newspaper owner, and a crusader against the House of Morgan and other big-business interests. He was an ingenuous busybody, cherishing the typically twentieth-century American assumption that if anything goes wrong, the United States government ought to do something about it.

Smith reacted to the sinking of the *Titanic* by calling the

White House, only to discover that President Taft's conception of duty was not entirely up to date. The president was mourning the loss of his confidant, Major Archie Butt, a victim of the disaster. Nevertheless, Taft planned no immediate government action; the *Titanic*, after all, had been a vessel of British registry and had never managed to enter American waters. So Smith decided that Congress should become involved, in the person of himself. His intention, as it matured, was to enable passengers or their survivors to sue White Star under the provisions of the Harter Act, which was

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*When Captain Smith maintained Titanic's speed, despite ice warnings, he was not being mindlessly irresponsible; he was following the custom of his profession.*

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helpful to plaintiffs who could show that officials of a steamship company had been aware of negligence, even though they had not caused it.<sup>9</sup>

Ismay began his testimony before Smith, his natural enemy, in the worst possible way. His description of his own conduct went as follows:

I was in bed myself, asleep, when the accident happened.

The ship sank, I am told, at 2.20.

That, sir, I think is all I can tell you.<sup>10</sup>

This could not have satisfied anyone's curiosity, let alone Senator Smith's. To the delight of future historians but the severe discomfiture of Ismay, Smith demanded information on every conceivable point of contact between the disaster and the Managing Director, including his possible influence on, and therefore responsibility for, the ship's navigation; his conduct on the boat deck; his conduct on the rescue ship; and his frustrated attempt to return to England. Smith called a long series of crewmen and passengers to testify about their experiences, with particular attention, whenever possible, to the conduct of Mr. Ismay.

What emerged from this testimony was proof that Ismay had exerted very little influence on anything. For better or worse, he had not told the captain what to do about icebergs. He had not incited him to try for a speed record; he had specifically not wanted that to happen. He had not attempted to direct the launching of lifeboats, though he had tried to help where he could. He had not deprived any other passenger of a means of escape. He had not directed actions aboard the rescue ship. He had not tried to direct any coverup of anything. As to the number of lifeboat accommodations, his ship had met, and even exceeded, the regulations of the British Board of Trade.

But should Ismay have gotten into a lifeboat?

Out in the provinces, where towns named "Ismay" were considering a change,<sup>11</sup> the moral issue may have seemed that starkly personal. But to Senator Smith, the real issue remained that of corporate guilt — in many possible forms. He demanded evidence that White Star officials had not tried to fool the public into believing that *Titanic* had survived, so that they could try to reinsure her. He demanded stockholders' records from the Morgan holding company. He

demanded that Dow, Jones furnish complete information on the (minor) fluctuations of the company's stock subsequent to the disaster. He demanded to know how Dow, Jones handled the news.

Smith even pursued the Marconi Company, whose wireless operators had saved the surviving passengers by summoning *Carpathia's* aid. He subjected company officials, among them the great Guglielmo Marconi himself, to tireless and almost incredibly hostile questioning. He wanted to know whether they had connived with Ismay or White Star to block the news of *Titanic's* fate. He also attempted to

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*Many of the crew worked hard to get passengers up to the boat deck; a few decided to do the opposite and tried to keep third-class passengers from crossing first-class and second-class territory. Others had no idea of what to do.*

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arouse public indignation about the help that Marconi officials had given *Carpathia's* operator, and the surviving *Titanic* operator, to sell their personal reminiscences to the *New York Times*.

Smith's moral concerns seem to have been exacerbated by envy of Marconi's reputation: "As [Smith] later confided to friends, he could never resist swinging at 'handmade halos.'"<sup>12</sup> It did no good for Marconi and his fellow executives to show, over and over again, that they had not profited from the transaction with the *Times*, that they had facilitated it because they believed that their heroic employees deserved a chance to make some extra money, and that the arrangement, which was suggested to the operators when they were entering New York harbor and had resulted in the immediate publication of their stories, had not exactly delayed the nation's news. Marconi reminded Smith that people had the right to sell their stories. But Smith cudged him into agreeing that the practice should be discouraged, and he made him repeat, like a schoolchild, a declaration that he was testifying before Smith "voluntarily." Then Smith bullied Marconi's subordinates about their "vicious" practice.<sup>13</sup>

Bullying tactics were also applied to Ismay. Rejecting his vigorous requests that he be allowed to return to England, Smith angrily insisted on reserving him for future testimony. Smith then tried to get him to confess that he had been accorded complete fairness and courtesy. During smoking breaks in the halls, Ismay had entertained reporters with angry remarks about Senator Smith's procedures and with outbreaks of revived confidence in his own innocence. But he publicly acquiesced, testifying that he had met with no "discourtesy" and had "no fault to find."<sup>14</sup>

Smith had used political power to humble Ismay and (in the vernacular expression) make Ismay like it. Smith had also done something more important. In the words of a friendly commentator, he had "bent an instrument, constitutionally intended for the sole purpose of obtaining data useful to legislation," into a means of "mobilizing the power of public opinion" about social and moral issues.<sup>15</sup> One should not exaggerate Smith's inventiveness; he was part of a trend. But

he had provided one precedent for all those far-reaching inquiries to which subsequent generations have become accustomed, inquiries inspired by elected officials' expansive idea of their moral as well as legislative authority.

In Ismay's case, however, the moral inquisition came to naught. Smith could find no evidence that Ismay (or any other corporate official) was directly responsible for what happened to the *Titanic* or was privy to any negligence. Neither could he find a way to grapple with the problem of Collapsible C — the problem of determining whether Ismay, the managerial and familial embodiment of the White Star line, had a responsibility to stay with *Titanic* until all the other passengers had gone.

In fact, Smith gave up looking for ways to grapple with such problems. The most he could say, in his concluding speech to the Senate (May 28, 1912), was that Ismay's presence had "unconsciously" "stimulated the ship to greater speed than it would have made under ordinary conditions." Smith regarded this kind of stimulation as something that "the restraint of organized society" should contrive to prevent. He was not able to demonstrate that Ismay had done anything wrong, but he could not bring himself to forgive Ismay's existence as a corporate leader emanating "unconscious" influences.

Smith's treatment of Ismay was in striking contrast to his treatment of the *Titanic's* captain, who had incomparably more to do with the disaster but whom Smith was very reluctant to criticize. He had known the captain; he had liked him. Besides, the captain had not been a corporate official but a mere employee. Smith held that the captain's failure to reduce *Titanic's* speed had helped to cause the deaths of 1500 people; nevertheless, he eulogized him as "strong of limb, intent of purpose, pure in character, dauntless as a sailor should be." The captain's excessive speed was just the defect of his dauntlessness.

In fact, Smith argued, "laxity of regulation" on the part of the British Board of Trade was "largely" responsible for the

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*W.T. Stead, who had published stories about liners running into icebergs and running out of lifeboats, settled down by himself to read a book. He would die doing what he thought was important.*

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loss of life. Following a course that has become well-traveled by American politicians, the Senator steered straight from the land of moral responsibility to the land of technical fixes. Once safety was assured by regulation, there would be no need to wonder who was responsible for disasters. There would be no disasters.

After praising the virtues of regulation, Smith proposed far-reaching new regulations on shipping. He also warned against "concentration of control" in the maritime industry, a matter which, of course, had precisely nothing to do with *Titanic's* misfortune. With equal irrelevance, he demanded a higher proportion of American citizens in the U.S. merchant marine. In his Senate speech of May 28 and in his written



report of the same date, Smith also demanded vigorous regulation of wireless communication. Given his treatment of Marconi, that was predictable.

Smith's investigation was not much help to plaintiffs seeking redress for White Star's negligence. The inevitable lawsuits were settled out of court, years later, for a small fraction of the money sought.<sup>16</sup> Smith's legislative proposals did lead to a general tightening of regulation over navigation and communication. It is interesting, however, that the reforms most closely connected with the *Titanic* disaster were already being implemented by the shipping companies themselves. Immediately after the disaster, Ismay and virtually every other manager of a shipping line ordered enough lifeboats and liferafts to accommodate everyone on board their vessels. By mutual agreement, the lines also moved their shipping track farther south in iceberg season. White Star spent 250,000 pounds refitting *Titanic*'s sister ship, *Olympic*, so that she could float with six watertight compartments flooded. Harold Sanderson, Ismay's corporate assistant, stated that even if such reforms were neither "wise" nor necessary, they had to be carried out in order "to satisfy the public, on whom we are dependent for our living."<sup>17</sup>

In any event, Senator Smith escaped from his hearings with the legislative proposals that he desired, and Ismay escaped for the second time from the *Titanic*. He took ship for England, leaving the great liner sinking behind him in a sea of regulatory proposals.

### "Exercise Your Own Common Sense"

But Ismay was not free yet. On reaching home, he was summoned to appear before another body of investigators, a court convened by the British Board of Trade.

Lord Mersey, a canny old judge who looked exactly like the little man in the Monopoly game, presided over the court as Wreck Commissioner. He was assisted by Attorney-General Sir Rufus Isaacs and attorneys representing White Star, the third-class passengers, labor unions, and various other interests. The record of the 36-day British inquiry is a monument of intelligence and fairness. Mersey and the lawyers practicing before him showed distinguished analytical ability, whether they maintained, with Attorney-General Isaacs, that the *Titanic* was lost through "negligent navigation," or they insisted, with Sir Robert Finlay, counsel for White Star, that she was lost to "circumstances which are quite unprecedented, and could not have been anticipated."<sup>18</sup>

Lord Mersey took nearly an opposite approach from that of Senator Smith. Smith began with moral outrage and ended with proposals for government regulation; Mersey emphasized problems of regulation while trying — without success — to avoid issues of moral culpability, which he considered beyond the competence of his court. Morality kept slipping away from Smith's inquiry; it kept slipping into Mersey's.

Mersey was skeptical, as Smith was not, about the usefulness of regulation. He even entertained a thought that the twentieth century would come to regard as virtually heretical, the thought that consumers might bear some responsibility for their own protection. Reflecting on evidence that ships customarily proceeded at full speed despite the danger of ice, Mersey asked, "Have you ever considered who the people are who are really responsible for it, if it is a wrong custom or practice? Is it not the passengers?"<sup>19</sup> Passengers desired high

speed; captains and corporations obliged.

And there was only so much that could be done with consumers, even consumers like Mersey himself. When one of the attending lawyers, W.D. Harbinson, suggested that regulations require the posting of certain instructional notices to passengers, Mersey responded:

Exercise your own common sense. Do you think, Mr. Harbinson, that if such notices were stuck up, any body would ever read them[?] Judging for myself I do not believe anyone would ever read them; I never should. Perhaps I ought to. The question is, What would happen, not what ought to happen. Have you ever been on board a ship?

*Harbinson:* I have never been to America, but, if I may relate my personal experience, every time I go across the Channel one of the first things I do is to read the notices.

*Mersey:* You are one of the most extraordinary men I have ever come across. The first thing I do, if it is about the middle of the day, when I get on a cross-Channel steamer is to get some lunch, and the notion that I should go about the decks or about the ship reading all the notices that are stuck up never occurred to me.<sup>20</sup>

Mersey was quite prepared to advocate new regulations, if he thought them useful. But his mind focused on risks.

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*Benjamin Guggenheim and Victor Giglio helped at the boats. Then they took off their lifebelts and sweaters and appeared in evening clothes. "We've dressed up in our best," Guggenheim said, "and are prepared to go down like gentlemen."*

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There was a risk to every form of travel — even walking.<sup>21</sup> Safety could not be guaranteed. Regulation also had its risks. It might be unwise or even harmful. To Senator Smith, the "laxity" of current lifeboat regulations was an obvious reason for stricter regulations. To Lord Mersey, apparent "laxity" might represent an adjustment to risks that he didn't understand. He was approaching a hazardous area, and he would proceed with caution.

Along the way, he amassed twice as much evidence as Senator Smith, although he was constantly trying to exclude irrelevant or unhelpful information. He was reluctant, for example, to summon passengers to testify, thinking that they would provide a less educated view of issues that crew members and technical experts had already developed. For Mersey and the Attorney-General, Ismay was not a high priority. They wanted to know how the *Titanic* was built, what happened in her engine room, how hard it was to reach her boat deck, what risks were involved in launching the boats, what risks were run in the whole affair. Mersey did not know if rules could reduce such risks; he meant to find out.

Nevertheless, he believed that neither the presence of risks nor the presence of regulations could relieve responsible individuals of their duty to use good judgment — whoever the individuals were. When Ismay was finally examined, on days 16 and 17 of the British investigation, this was the issue. Was Ismay responsible, in some sense, for the decisions made

on board the *Titanic*, and if so, did he use good judgment?

Mersey's inquiry turned up some evidence of a degree of involvement, which, though slight, might imply responsibility. Hadn't Ismay suggested that a speed trial be held at some time before the ship reached New York? That was consultation, perhaps supervision. And hadn't the captain shown him the wireless warning that ice might be encountered at such and such a place? In response, Ismay claimed that he "had nothing to do with the navigation," that he intentionally kept away from it, and that he didn't even understand "latitude and longitude."<sup>22</sup> He demonstrated his innocence of naviga-

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*Officer Lowe gathered volunteers from other boats and steered toward the people in the water, although he waited to do so until "the drowning people had thinned out."*

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tion by a number of absurdly uninformed comments. If Ismay had been in charge of the *Titanic*, she would never have gotten as far as she did.

But what about the lifeboats? Do you remember discussing the number that *Titanic* should carry? "No, I do not." When you got into Collapsible C, you saw no other passengers waiting to enter — but do you know whether there was an attempt to call more of them up to the boat deck? "That I do not know." Did you inquire? "No, I did not." Why didn't you yourself go to see whether there were more passengers for the boats? "I presumed that there were people down below who were sending the people up." So you thought that everyone had already come up? "I knew that everybody could not be up."<sup>23</sup>

It was a bad moment. A worse one followed. Where do you think all those other people were? "I can only suppose the passengers had gone to the after end of the ship." You could not see them? "I presume they went there. I was really not thinking about it."<sup>24</sup>

Suddenly, the issue had transformed itself from a problem of action to a problem of thought. It was hard enough to say whether Ismay had a responsibility to save everyone before trying to save himself. Many people said that he had such a responsibility; no one had succeeded in demonstrating it. But it would be much harder to say whether he had a responsibility to think through this issue of responsibility, to try the case within himself, weighing all the available evidence, while he was standing next to Collapsible C.

The question embarrassed Ismay. It embarrassed everyone. The problem was basic; the tools for handling it were hopelessly inadequate. Mersey put an end to Ismay's reminiscences and proceeded, with obvious relief, to aspects of the investigation more closely linked to possible regulatory reforms.

Much later, during final arguments, A. Clement Edwards, one of the labor lawyers, went after Ismay. He, Edwards claimed, had been no ordinary passenger on the *Titanic*, and he had had "special moral obligations" to the other passengers. Mersey replied, "I do not think I can deal with moral duties." This did not stop White Star's counsel from defending Ismay's decision about the extent of his moral duty. He

invited Mersey to analyze the risks that Ismay confronted on the boat deck. Ismay could have gone searching for other passengers to put into Collapsible C — but was there any chance that he could have brought them to the boat in time? No; and there was every chance that he would have sacrificed his own life. That wouldn't have been duty; that would have been "suicide."<sup>25</sup>

Mersey devoted one paragraph of his report to Ismay and the affair of Collapsible C. He rejected the argument that Ismay had a "moral duty . . . to wait on board until the vessel foundered. . . . Had he not jumped in he would merely have added one more life, namely, his own, to the number of those lost."<sup>26</sup> The report recommended that vessels slow down at night in the presence of ice. It recommended that vessels be required to carry lifeboats for all, whenever practicable. It recommended various other regulatory reforms, and further study of still others.

Ismay had escaped again.

### "Well, Boys, Do Your Best"

After the conclusion of the British inquiry, the Managing Director of the White Star line began to fade from the popular consciousness. But an impression remained, and it was not very flattering. It was associated with a certain general impression of *Titanic* herself. Scholars of the disaster have routinely recorded this impression, and perpetuated it. "The *Titanic*," one says,

was the incarnation of man's arrogance in equating size with security; his pride in intellectual (apart from spiritual) mastery; his blindness to the consequences of wasteful extravagance; and his superstitious faith in materialism and technology.<sup>27</sup>

This view gained authority from the technocratic proposals that resulted from the two great inquiries. If the sin of Ismay and his associates was blind faith in technology, the occasion for sin might be removed by new regulations on the

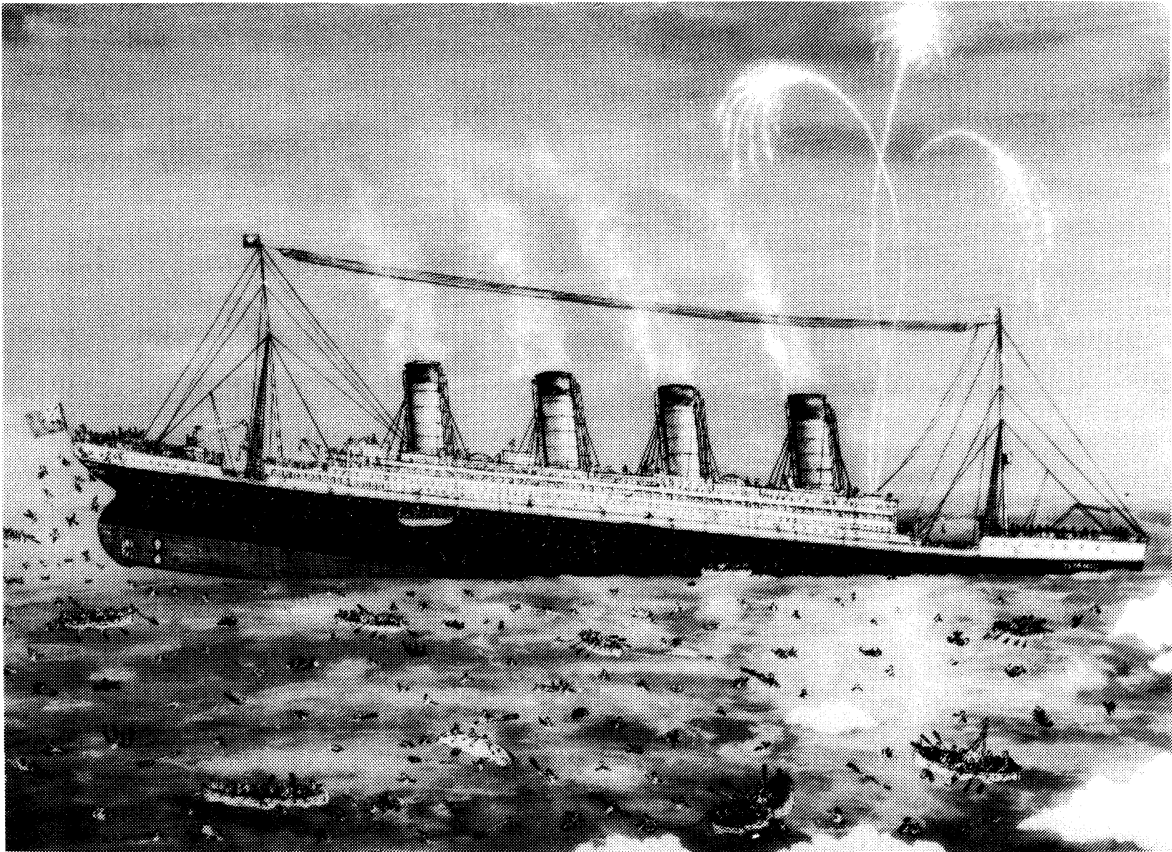
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*When all the women and children in the vicinity had entered a lifeboat, it was lowered away, whether it was full or not. Men who could have been saved were left to perish.*

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use of technology. The post-*Titanic* age could congratulate itself on the provision of lifeboats for all, while marveling at the arrogance of people who had once believed in "unsinkable" ships. The mystery here is why advocates of technological solutions should regard other people's faith in technology as a moral problem.

And this is far from the only mystery. Almost all the presumably unsinkable judgments about who or what was to blame for the *Titanic* disaster, and why, are as fragile and vulnerable as *Titanic* herself proved to be. This fact was demonstrated again and again by the British investigators. They were obsessed with the technical analysis of risks in navigation and ship construction. But their research into the risk factors persistently discovered evidence that complicated the issue of moral responsibility. Their investigation showed that



Painting by Milton Bond. 1989

*The sea was climbing up Titanic's bow. The lifeboat was starting to move. This was the moment.*

statements about this issue ran a considerable risk of encountering what may be called the black iceberg.

Icebergs are popularly regarded as white. But when a melting iceberg becomes top-heavy and capsizes, it turns dark blue until the water runs out of it. At night, icebergs undergoing this metamorphosis are exceptionally hard to see. The iceberg that struck the *Titanic* was probably one of these "black" icebergs. It was invisible until it was only a third of a mile away, and it looked dark as it passed the ship.<sup>28</sup>

Facts in the *Titanic* case are like that iceberg. At first, they seem phosphorescently clear. Then, suddenly, they invert themselves and re-emerge with a very different color, directly in the path of whatever theory you have afloat.

Consider the theory that the *Titanic* exemplified an arrogant overconfidence in the works of human hands, an arrogance that was demonstrated by the shocking events of April 14-15, 1912. It is a fact that the events were shocking; but it is not clear that the shock wave, which devastated Ismay and his company, the officials of the British Board of Trade, and many other people associated with *Titanic*, was produced by any revelation of prevailing arrogance and blindness. Better evidence of these things would have been a lack of shock, a recognition that the disaster was nothing more than the latest symptom of the prevailing vice. But what the shock wave actually registered was the unusual nature of the event. People were shocked because they had assumed that modern technology had made travel in the North Atlantic remarkably safe.

Their assumption was correct. In the 20 years preceding *Titanic*'s maiden voyage, over nine million passengers crossed between Britain and the United States or British North America. The great majority crossed in British vessels. But only 82 of those vessels' passengers were lost.<sup>29</sup> Furthermore, the "unsinkable" *Titanic* was unsinkable, within the intended meaning of that word. Investigation indicated that she would have floated if three of her forward compartments had been flooded, and her builders did not imagine a crisis that could involve more than two.

But surely one could have imagined an iceberg slicing 250 feet of gashes in a modern ship? Yes, indeed. But imagination would have been greatly aided by some examples of this having happened, and there seem not to have been any. Several modern ships had crashed head-on into icebergs — *Arizona* in 1879, *Concordia* in 1899, *Columbia* in 1911 — but they had not sunk. This was no miracle; it was modern technology.

And yet (here the iceberg of fact inverts itself again) all this is known because the ships survived. Before the advent of wireless communication, ships might be lost to icebergs and the world never know.

On board the *Pacific* from Liverpool to N.Y. — Ship going down. Confusion on board — Icebergs around us on every side. I know I cannot escape . . .

So runs a message found in a bottle on the shore of the Hebrides, after the liner *Pacific* disappeared in 1856. On February 11, 1893, the White Star cargo ship *Naronic* sailed

from Liverpool, bound for New York. On March 4, two lifeboats were sighted, 300 miles apart. They were empty. No one knows what happened; it could have been an iceberg.<sup>30</sup>

A fatal encounter with ice was a small risk, to be sure, but one not easy to calculate. What does one do in the face of such risks? One consults experience — one's own experience and the experience preserved in custom. A long parade of North Atlantic captains testified before Lord Mersey that when they sailed under *Titanic* conditions (iceberg warnings, darkness, but good weather, with clear visibility) they never slowed down, and neither did anybody else. They could still see no reason to slow down. So when Captain Smith maintained *Titanic's* speed, despite ice warnings, he was not being

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*Most people in the lifeboats showed little desire to go back and save anyone, even if they might be close enough, and even if they might have friends or relatives dying in the water.*

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mindlessly irresponsible; he was following the custom of his profession.

But the talk of weather introduces more hazards to deduction. The weather on April 14 was exceptionally good; there were no waves. Such conditions, Mersey was repeatedly told, might be seen only once in a lifetime. This good weather meant good sailing. It also meant that no surf would break at an iceberg's foot. Icebergs would therefore be doubly hard to see.

Captain Smith knew that.<sup>31</sup> But he believed that an iceberg could still be seen if the night remained clear. This sounds very foolish, until one reads the testimony of the British inquiry's old sea dogs. They maintained that the glow of a white iceberg would be visible even on the darkest night.

But what about a black iceberg? Ah, that might be a problem. But how often does one see such a thing? A very experienced captain told Lord Mersey that he had never even heard of black icebergs until he read about them "in the papers." Perhaps, suggested the Attorney-General, people don't know how many black icebergs they encounter without being able to see them.<sup>32</sup> Unless, of course, they run into them.

Assume, however, that black icebergs are rare. A flat calm on the North Atlantic is also rare. The conjunction of a black iceberg, a flat calm, and a large, fast ship is an exceptionally rare, perhaps an unprecedented, circumstance. Now, what deduction do you make from that? Do you agree with counsel for the White Star line, who argued that unprecedented circumstances cannot be guarded against? Or do you agree with the Attorney-General, who argued that "unusual conditions necessitate unusual precautions"? Well, said Lord Mersey, unusual conditions don't excuse you unless they are so unusual that you are not even aware of them.<sup>33</sup>

Captain Smith's moral responsibility must bear some relationship to his awareness of risk, but no one has ever been able to compute either the risk or the awareness. After 85 years of *Titanic* books, and one full-length biography, Smith remains an enigmatic figure. There was something about him that inspired his passengers' trust. Probably it was his self-contained, professional manner. From this fact, passengers

might have inferred one of two things: either that he was thinking intently, or that he was not thinking at all. They took the risk of inferring the former.

Nobody knows exactly what Smith thought about his own risks on that strangely calm Atlantic night. Nobody knows what he had in mind, earlier in the voyage, when he failed to exercise such humdrum duties as holding lifeboat drill and developing plans for managing emergencies. The cause of his neglect may have been hubris, an arrogant faith in his vessel's safety. In light of what I said above, it may have been a well-founded faith that simply happened to be wrong. Some people believe it was an old man's forgetfulness — yet Smith was only 62 years of age and was not necessarily, as is usually reported, on the verge of retirement.<sup>34</sup>

Whatever one believes about that issue, neither hubris nor forgetfulness can explain the mistakes he made after he realized that his ship was sinking. He was intent on getting people into the lifeboats, but he failed to give any clear organization to the effort or to mobilize his officers to act in concert. Many of the crew worked hard to get passengers up to the boat deck; a few decided to do the opposite and tried to keep third-class passengers from crossing first- and second-class territory. Others had no idea of what to do. On deck, volunteers wandered from one boat station to another, helping out as best they could.

Meanwhile, Smith appeared and disappeared in various locations, giving brief orders to various individuals and involving himself personally in a variety of tasks. He provided an example of stoic calm. But none of this amounted to effective leadership, which would have required distinct and comprehensive delegation of authority.

Did Smith's final mistakes result from a failure to assume personal responsibility, or from an attempt to assume too much? No one can say. None of the testimony that emerged

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*Captain Lord took account of every risk except the risk of being the kind of person who cares only about the risks.*

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from the disaster sheds any light on this; testimony could not even establish how he came to die. According to one witness,

He said, "Well, boys, do your best for the women and children, and look out for yourselves." He walked on[to] the bridge.<sup>35</sup>

Soon after, the ship went down.

It seems certain, however, that considerable loss of life resulted directly from an excess of moral responsibility on the part of people who were working to save lives. The captain, and everybody else, believed that the policy in regard to lifeboats should be "women and children first." They thought that was the right principle. But what exactly did it mean? On the starboard side of the boat deck, where Bruce Ismay happened to be, it meant "women and children first, then men." People on the port side were more puritanical. Their interpretation was "women and children only"; when all the women and children in the vicinity had entered a lifeboat, it was lowered away, whether it was full or not. Men who could have



been saved were left to perish; some of the men who enforced the rule proceeded to die by it.<sup>36</sup> As one of Lord Mersey's assistants suggested, "women and children first" may also have produced the kind of delays that allowed boats to be launched with unused spaces. Time had to be taken to separate women and children from associated males.<sup>37</sup> Then, since time was short, there was pressure to launch the boats, even if they were not full.

An excess of moral responsibility also led officers to worry about lowering boats that were filled to capacity, for fear they would buckle and dump their passengers into the sea. The boats were perfectly sound, but the *Titanic's* officers did not know that, or trust their knowledge. They wanted to save people, not to kill them; as a result, they killed many people who would have fitted safely into the boats but who were not invited to enter. Moral principles helped to create a situation in which boat accommodations meant for 1178 people were used by only about 700. Like most other things connected with the *Titanic*, morality showed both a bright surface and a dark and dangerous one.

We have now moved very far from the conception of the *Titanic* that lingers in the popular imagination, that of a ship whose passengers were doomed by technological arrogance and corporate greed. That *Titanic* belongs to the world of myth. The *Titanic* of fact, the *Titanic* on which we are now sailing (or sinking), was imperilled by obstacles much more difficult to chart — the incalculability of certain risks, the opaqueness of certain intentions, the unpredictability of results from even the best intentions, and the reversibility of "obvious" deductions from "known" facts.

### "Make Your Ship as Unsinkable as You Can"

While we are considering reversibilities, let us look at the most notorious example of the *Titanic's* supposed moral failure — her neglect to carry enough lifeboats for all on board.

If there is blame here, there is blame enough to gratify all tastes. Enemies of corporate greed can say that accommodations for 1178 out of a possible 3547 people (of whom, luckily, *Titanic* was carrying only about 2200) look like a bad joke. Enemies of government regulation can reply that the Board of Trade required an even less handsome provision of 962 spaces. But people on each side will be left to wonder what White Star and the Board of Trade could possibly have had in mind.

One thing they had in mind was keeping costs as low as possible. As churlish as it may be to mention this, even lifesaving equipment can, at some point, have a prohibitive cost. Mersey asked, rhetorically, "If vessels are made by different devices so secure that they cease to be commercially valuable, they cease to go to sea at all?" The answer, of course, is "yes."<sup>38</sup> But lifeboats did not represent a major cost; nor was the space required for lifeboats an indispensable financial asset. The *Titanic's* builders provided all classes of passengers with advantages that were much costlier than lifeboats, and not all of these advantages were strictly necessary to attract business.

The basic question was, How many lifeboats can be used effectively? In the *Titanic's* case, the answer was, Enough lifeboats to carry everyone. The *Titanic* took a fairly long time to sink, and the weather was perfectly calm. Given adequate

training of crew members, twice as many boats might have been launched, if they had been provided. But this fact, like so many other facts about the night of April 14-15, can be delusive. Weather on the North Atlantic is seldom calm, and if a ship is going to sink, it can sink quite rapidly. It will also, quite probably, develop a list so severe that lifeboats on one side cannot be lowered, because they will hit the hull, and lifeboats on the other side cannot be loaded, because they are swinging too far from the deck. If there is any sea running, boats can probably be launched only on the lee side, so "boats for all" will mean boats for all on both sides of the ship.

The ideal complement of lifeboats for *Titanic* would therefore have been about 60 on each side. This would mean a line of boats over 2000 feet long, over four times longer than *Titanic's* boat deck. Arrangements could be made to swing

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*The Titanic sank in two hours and 40 minutes, the length of a classic play.*

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more than one boat from each pair of davits, or to stack boats and rafts on deck. But as the number of boats increases, so do the difficulties of working with them; and any lifeboat is a dangerous thing to work with. If there are serious time constraints, or a heavy list, the results are predictable. The Cunard liner *Lusitania*, which was torpedoed in 1915, sank in only 18 minutes. The scene of horror was rendered yet more horrible by lifeboats crashing into the ship, the sea, and crowds of passengers.<sup>39</sup>

Even in the "normal" circumstances of a North Atlantic sinking, it is virtually inconceivable that lifeboats could help everybody escape from a very large ocean liner. The *Andrea Doria*, like every other post-*Titanic* liner, carried lifeboats for all, but after she was injured in a collision in 1956, she listed so badly that few of those boats could be used effectively. Ninety-seven percent of the people on board were saved — chiefly because other ships soon arrived and transferred passengers with their own boats.<sup>40</sup> In 1912, lifeboats were valued primarily for their ability to ferry a few people at a time from a distressed liner to a rescue ship. The point was to build liners that would stay afloat until help arrived.

The idea that every great liner should function as "its own lifeboat" was sensible and widely shared. It was the basis for the apparently bizarre regulatory system commonly in use, in which the required number of lifeboat accommodations was based on the tonnage of ships, not on the number of people they carried. The largest liners had the best chance of staying afloat, so they could do with a smaller proportion of lifeboat spaces than other vessels. Considering the dangers of decks overcrowded with "lifesaving" equipment, it was thought that liners that could carry several thousand people probably should not have boats for all.

That was the reasoning. Even after the *Titanic* disaster, the editor of *Scientific American* published a book called *An Unsinkable Titanic*, in which he emphasized the hazards of relying on lifeboats and argued that unsinkability should continue to be the goal. During the British inquiry into the *Titanic* disaster, Attorney-General Isaacs took it for granted that "it is much more important to make your ship as near as

unsinkable as you can than to provide boats," and Lord Mersey answered, "Of course it is."<sup>41</sup> That exchange reflected the wisdom of shipowners and regulators almost everywhere.

When Mersey finally recommended the requirement of lifeboats for all, he was bowing to public opinion, the authority to which shipowners had already bowed. So far as public opinion was concerned, the provision of those boats was a risk-free moral necessity. The decision to provide them may have been right (on balance, I think it was), but it wasn't as

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*Even in the "normal" circumstances of a North Atlantic sinking, it is virtually inconceivable that lifeboats could help everybody escape from a very large ocean liner.*

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simple as the public thought. Like some of the other morally fraught decisions I have mentioned, it represented a juggling with risks, risks that were no more calculable after the *Titanic* than before it.

### **"It Would Have Been Outrageously Bad Seamanship"**

Juggling with risks can have some very odd effects on moral judgment. Risks can be juggled away as if they had no weight at all; or they can become the focus of attention, until all that people can see is the heavy objects that keep landing in both their hands.

The first of those two effects appeared in the American public's response to Bruce Ismay's moral problem. Before the *Titanic* disaster, it was universally agreed that the managers of a steamship company had no business interfering with the management of the ships themselves. The risk was too high. (Given Ismay's ignorance of navigation, it was stupendously high.) There would also, quite obviously, be heavy risks involved if a corporate official tried to assume responsibility for the evacuation of a ship. Such a person could easily do more harm than good.

As it happened, Ismay assumed none of these risks. When he was handed the iceberg warning on April 14, he did not advise Captain Smith to slow down. When the *Titanic* was sinking, Ismay helped other people enter the lifeboats, but he felt no duty to manage the operation or to go down with the ship as a consequence of his management responsibility. He acted like an ordinary passenger and entered a lifeboat when he saw no other passengers competing for the space. But popular opinion noticed only the fact that Ismay failed to make the *Titanic* slow down and failed to make sure that his fellow-passengers escaped. It took no account of the risks that he (and everyone else) would have run if he had tried to take charge.

Lord Mersey and his investigators experienced the second effect of a juggling with risks. They never lost sight of the risks inherent in any decision, including the risk of pronouncing moral judgment. Sometimes, they were simply mesmerized by the risks appearing on either hand. They were particularly impressed by the strange case of the *Titanic's* swerve.

When the lookouts told First Officer William Murdoch

that there was an iceberg dead ahead, Murdoch turned the ship to port. *Titanic* nearly missed the iceberg. She did miss the violence of a head-on collision. Testimony showed, however, that if Murdoch had decided to hit the berg head-on, *Titanic* would have repeated the famous experience of the *Arizona*: her bow would have crumpled, but she would not have received any fatal wounds to her starboard side. She would have remained afloat. Even Ismay knew that. The 200 people who were sleeping closest to the bow would have died; but that would have been many people fewer than the 1500 who did die.<sup>42</sup>

One could easily conclude that the ideal officer would calculate the risk of swerving and the risk of not swerving, and decide to hold his course. Unfortunately, however, no one would have hailed such a person as the savior of 1500 innocent people. Instead, everyone would have damned him as the murderer of 200 innocent people.

This problem tormented Mersey and his assistants. They did not know what to do with it. Attorney-General Isaacs tried going at it head-on. He said that if a liner were purposely driven into the ice, "I hope I am not on it, that is all." Sir Robert Finlay, counsel for White Star, was determined to have things both ways, and in the strongest terms. He argued that "it would have been outrageously bad seamanship" for Murdoch not to have swerved, even though, "as things turned out," what he did "was unfortunate — most unfortunate." Mersey conceded that Murdoch exercised "good seamanship." Still, he reflected, if Murdoch had held his course he "would have saved the ship." Like White Star's lawyer, Mersey was juggling madly; but he was by no means happy with his act. Finally even he surrendered:

It is not worth while discussing it. Have we got anything to do with it? We are all agreed that Murdoch was quite right in doing what he did.<sup>43</sup>

That was that. Yet Mersey was not just trying to escape. He was being very careful. He had been thinking about the relationship between risk and moral responsibility. He was aware that his own inquiry could change that relationship. A running of risks that was quite innocent before the disaster

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*Senator William Alden Smith was an ingenious busybody, cherishing the typically twentieth-century American assumption that if anything goes wrong, the government ought to do something about it.*

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might now, with improved awareness of one set of possible consequences, transform itself into "negligence of a very gross kind." That is what Mersey thought about Captain Smith's way of dealing with the risk of ice. But Mersey was clearly not prepared to tell seamen that they should take the risk of running their vessels into icebergs. He let that alone; he was too careful to run such risks. And yet, as he said, "a man may make, as we all know, a mistake which is due sometimes to too great care."<sup>44</sup> The risks remained heavy on both his hands.

But what should one conclude about the too great care exercised by Captain Stanley Lord, master of the steamship *Californian*, and provider of yet another strange episode in the *Titanic* story? Here was risk management, of a very conscientious kind — but neither Mersey nor any of the other investigators was of two minds about it.

The *Californian* was a vessel of the Leyland line. It was owned, ironically, by the same Morgan holding company that owned White Star. On April 14, the *Californian* encountered field ice and stopped for the night. Another ship appeared in the vicinity and started firing rockets. But Lord neglected to awaken his wireless operator to find out what was wrong. The *Californian* sat still until morning. Then one of Lord's officers woke up the operator, who immediately discovered that the *Titanic* had foundered. Lord got the *Californian* going and maneuvered around the ice until he arrived, several hours too late, at the site of *Titanic*'s wreck. He kept all mention of rockets out of his log, and he hoped that no one would be the wiser.

Unfortunately for Captain Lord, two of his crewmen informed the American press, and he was left to explain himself, somehow. He claimed that the *Titanic* was not visible from the *Californian*; it must have been some other ship that was firing rockets. This made people wonder why Captain Lord had not tried to assist that other ship.<sup>45</sup>

The real explanation, as Attorney-General Isaacs surmised,<sup>46</sup> was that Captain Lord, meeting field ice for the first time in his career, had decided that he did not want to test his own ship against the unaccustomed risk. It is possible that Lord was hesitant to rouse his wireless operator because he did not want to confirm the fact that another vessel was in distress and find himself obligated to do something about it. He weighed the risks, both from ice and from moral responsibility, and he tried to reduce them to the lowest possible level.

For this he was censured by both Lord Mersey and Senator Smith, and he was fired by the Leyland line, which discovered that his inordinate skill at risk management made him a distinct liability to public relations.

But lurking near this episode is yet another glittering fact that can reverse itself and become a hazardous black berg. Why is it, one may ask, that Captain Lord of the *Californian* was blamed for moral irresponsibility, while Captain Rostron of the *Carpathia* was applauded as a moral hero? Lord had a duty not to risk his ship and the lives of his crew. So he didn't. But Rostron took that risk, and more: Lord carried no passengers; Rostron carried almost 800. Would Rostron have become the hero of April 15, 1912, if he had driven *Carpathia* at full speed onto one of the icebergs that littered her path? Should Rostron have been praised for assuming such a serious risk, while Lord was denounced for refusing it? Perhaps public opinion was wrong again.

Once you reach this longitude, the sky darkens and the ocean fills with ice. There is danger here, the danger of losing all memory of what morality is. To avert disaster, we will have to make a hard turn to starboard and then try to find a safer course.

### "I Knew It Was My Duty"

At 12:00 a.m. on April 15, lookout Reginald Lee climbed down from the *Titanic*'s crow's nest. His ill-fated watch was

over, and he went to his assigned lifeboat, No. 11. But instead of staying there, he started forward to work on the other boats. By the time he returned to No. 11, there was no room for him. Attorney-General Isaacs asked him if he had had "orders" to help with those boats — if he "had to do it." Lee replied, "I knew it was my duty, and that is why I went there. I did not have any orders myself." Lee went to assist with No. 13, was ordered into it, and was saved.<sup>47</sup>

Chief baker Charles Joughin was listed as the crewman who was supposed to enter boat No. 10 and take charge of it. But he busied himself by going downstairs to find more women and children, bringing them to the boat deck, and

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*Senator Smith warned against "concentration of control" in the maritime industry, a matter which, of course, had precisely nothing to do with *Titanic*'s misfortune.*

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assisting or "throwing" them into the lifeboat. At 1:10, the boat left without him. "Why," he was asked by one of Mersey's assistants, "did you not go, seeing that you were in charge?" "I would have set a bad example," he replied. After the departure of No. 10, Joughin went to his room and took a drink, apparently a nice long drink. When the ship sank, he was sufficiently fortified to step off the stern, swim out to a boat, and wait until the people on it were inclined to help him aboard.<sup>48</sup>

At 2:05 a.m., while Captain Lord was sitting tight in the chartroom of the *Californian* and *Titanic*'s last boat was being lowered, Captain Smith walked to the wireless cabin where the young operators, Jack Phillips and Harold Bride, were still sending distress calls. Smith told them, "You can do no more . . . You look out for yourselves." But, as Bride testified, "Mr. Phillips took the 'phones when the Captain had gone away and he started in to work again." The two boys kept working, and they kept writing their wireless log. Water was coming into their cabin on the top deck. Bride went into their bedroom for a moment, and when he came back he found a crewman trying to steal Phillips's lifebelt. He and Phillips fought with the intruder and knocked him out. "I did my duty," Bride said. "I hope I finished him." The wireless boys sent their last message three minutes before *Titanic* sank. Then they swam to an overturned lifeboat. Bride lived; Phillips died.<sup>49</sup>

None of the people in these stories was heedless of risks, but none of them equated moral responsibility with risk management. They were not self-sacrificing altruists. There were limits to what they would do for others. They would save themselves if they could. They might even kill to preserve their lives. But they measured risk to their lives against what was most valuable to them within their lives — a sense of duty. This, it appears, was their difference from Captain Lord, who took account of every risk except the risk of being the kind of person who cares only about the risks.

### "What Was It You Were Afraid Of?"

But Lord is a sympathetic character compared to some of the people aboard the *Titanic* — or, more properly, some of

the people who had been aboard the *Titanic* but had been lucky enough to find places in her lifeboats. The moral conduct of people in the boats was not something that either Senator Smith or Lord Mersey set out to analyze. Smith was more interested in discovering lapses in corporate morality; Mersey was more interested in keeping to the technical details of the disaster itself. But neither of them could restrain his curiosity, and the testimony of the boats is on record. The record is very mixed.

When the *Titanic* sank, hundreds of people were swept off her decks into the freezing water. Upheld by their lifebelts, they were slowly dying of exposure. They were screaming for help; the noise was terrible. In some lifeboats, passengers or crewmen, or both, immediately decided to help. Lifeboat No. 4,

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*Smith's treatment of Ismay was in striking contrast to his treatment of the Titanic's captain, who had incomparably more to do with the disaster. The captain, after all, had not been a corporate official but a mere employee.*

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loaded with wealthy women, was one of the last to escape from the *Titanic*. But when the ship sank, No. 4 turned and began to rescue people: "Some of the women protested, but others persisted, and we dragged in six or seven men." They picked up people crying in the water until no more cries were heard.<sup>50</sup>

In boat No. 14, Officer Lowe gathered volunteers from other boats and steered toward the people in the water, although he waited to do so until (in his brutal way of putting it) "the drowning people had thinned out."<sup>51</sup> By the time that happened, he was able to pick up only four people, one of whom did not survive.

But most people in the lifeboats showed little desire to go back and save anyone, even if they might be close enough, and even if they might have friends or relatives dying in the water. Boat No. 5, commanded by Officer Pitman, could offer 24 vacant spaces. But when Pitman proposed going back, his passengers (especially the ladies) objected that "it was a mad idea"; they would be "swamped." Pitman did not go back. He halted, listening to the cries until they gradually "died away." Senator Smith wanted to know what the cries were like.

*Pitman:* Well, I can not very well describe it. I would rather you would not speak of it.

*Smith:* I realize that it is not a pleasant theme, and yet I would like to know whether these cries were general and in chorus, or desultory and occasional?

*Pitman:* There was a continual moan for about an hour.<sup>52</sup>

In some boats, almost any evasion was enough to prevent an attempt at rescue. Quartermaster Robert Hitchens, commanding boat No. 6, explained to Lord Mersey that he could not rescue any of the people crying in the water because he didn't know "what direction to take. . . . I had no compass." To which Mersey replied, "You had your ears. Could not you hear where these cries came from?" Hitchens' passengers had wanted to go back, but Hitchens had refused. He said "there

was only a lot of stiffes there." The passengers rebelled; one of them, the famous Molly Brown, eventually threatened to throw Hitchens overboard. But by then it was too late.<sup>53</sup>

The most arresting non-rescue story is the little epic of lifeboat No. 1. Among the boat's occupants were two persons aptly named for the ludicrous parts they were about to play — Sir Cosmo Duff Gordon and his wife, Lady Duff Gordon, best known as "Lucile," a fashionable dress designer. With them was her secretary, Miss Francatelli. The lifeboat was not exactly filled. It could accommodate 40 people, but through the haste of the supervising officer it had been lowered with only twelve. Seven of the twelve were crewmen.

On entering No. 1, Sir Cosmo somehow found his accommodations cramped. He did not realize, he told Lord Mersey, that "there was plenty of room in the boat for more people." He admitted that it did occur to him "that people in the water could be saved by a boat," but it was evidently not his boat he was thinking of. The idea of personally trying to save anybody never crossed his mind. He was too busy worrying about his wife, who became violently seasick as soon as No. 1 touched the (absolutely calm) waters of the ocean: "We had had rather a serious evening, you know." Sir Cosmo noticed that someone was rowing the lifeboat, but he didn't know where, and he didn't know why, and he didn't care. He speculated that the rowers wanted to make enough noise to "stop the sound" of the dying.<sup>54</sup>

Crewman Charles Hendrickson testified that he suggested going back, but his suggestion was quashed by the Duff Gordons, or by Lady Duff Gordon and Miss Francatelli: "they were scared to go back for fear of being swamped." So Hendrickson stopped suggesting.

*Mersey:* Then am I to understand that because two of the passengers said it would be dangerous you all kept your mouths shut and made no attempt to rescue anybody?

*Hendrickson:* That is right, Sir.<sup>55</sup>

The only rescue that the crewmen of No. 1 attempted was the rescue of the Duff Gordons from the British inquiry. The crew's attachment to the Duff Gordon family had been improved by charitable contributions of five pounds each, delivered by Sir Cosmo on the decks of the *Carpathia*. Most of the crew showed up to testify that *nobody* in No. 1 had wanted to go back. But why not?

*Mersey:* I want to know why? What was it that you were afraid of? — *George Symons (crewman in charge of No. 1):* I was not afraid of anything; I was only afraid of endangering the lives of the people I had in the boat.

How? What was the danger? The ship had gone to the bottom. She was no longer a danger. What were you afraid of? — At that time the ship had only just disappeared.

Never mind, it had disappeared, and had gone down to the bottom, two miles down, or something like that. What were you afraid of? — I was afraid of the swarming.

Of what? — Of the swarming of the people — swamping the boat.

That is it, that is what you were afraid of. You were afraid there were too many people in the water? — Yes.

And that your boat would be swamped? — Yes.

I am not satisfied at all.<sup>56</sup>

And no wonder. It would have been quite a job for anybody to crawl out of the freezing darkness into a lightly loaded boat standing high in the water, unless he had had

help from the people inside. Boat No. 1 could hardly have been swamped by the human "swarm"; it would have had plenty of time to turn back before being engulfed.

But we have the testimony of the lifeboat's company, page after page in the British inquiry.

*Thomas Scanlan (counsel for the National Sailors' and Firemen's Union):* It would have been quite a safe thing to have gone back? — *Albert Horswill (able seaman):* Yes.

... Did it not occur to you that the proper thing to do under those circumstances was to row back? — It would have been the proper thing to do, but I had to obey the orders of the coxswain of the boat, so it was no good my suggesting anything at all.

Had the coxswain on your boat said "Oh, we must not go back"? — There was no conversation. I never heard any orders from the coxswain at all.

You must have been greatly touched when you heard those poor creatures screaming for help? — Yes.

Did you suppress your feelings and say not a word to anybody? — Yes, that is right. I hardly knew what I was doing at the time, and I did not suggest anything at all.

You had two ladies and three gentlemen in the boat? — That is right, Sir.

Is this you[r] evidence, that they also suppressed their feelings, and said nothing? — That is right. I did not hear them say anything.

Did it not occur to you that it was really an inhuman thing to leave those people to perish when you could have gone to their assistance and rescued some of them? — It was inhuman.

It was an inhuman thing? — Yes.

Did you feel it to be so at the time? — I did feel it, Sir.

Why did not you say something to those passengers? — I had to obey the orders of the coxswain of the boat. I was in the boat just the same as they were.

*Mersey:* You will not get him away from that, you know.<sup>57</sup>

"I was only following orders" would become one of the great moral excuses of the twentieth century. But in Able

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*Ministers of the gospel denounced Ismay and his corporate associates as exponents of pagan excess.*

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Seaman Horswill's story, there were no orders. And neither was there an effective concept of moral duty.

*Mersey:* I do not understand your frame of mind. You were surprised that no one made the suggestion that your boat should go back? — *Robert Pusey (fireman):* Yes.

Then were you surprised that you did not make the suggestion? — No.

Then you were surprised that no one else made the suggestion, but you were not surprised that you did not make it? — No.

It is a curious state of mind . . .<sup>58</sup>

Even more curious was the continuing state of mind of Sir Cosmo Duff Gordon, whose testimony made him look so pathetic that Mersey begged his examiners not to press him too hard: "The witness's position is bad enough." Sir Cosmo

was asked, since he had thought it "natural" to contribute 35 pounds to the crew of his lifeboat, whether he might not have thought it "equally natural" to consider saving some other people from a horrible death. Again he said that the possibility hadn't occurred to him.<sup>59</sup>

There were certain things that Ismay had failed, somewhat mysteriously, to reflect upon. The mystery of Duff Gordon lay in his apparent refusal to reflect on anything. Mersey could not chart the weird interior of Duff Gordon's mind; it seemed to have no features. He gave it up.

### "Spectators of a Drama"

But whatever one thinks of Sir Cosmo Duff Gordon (and I don't think very much of him), one may still ask questions about the standard of duty that he failed to honor. The questions arise from the use of that word "natural."

It may appear perfectly natural to set some value on the lives of others and try to save them if you can. "Natural," however, is a word that can be used far too freely. It can be used to provide an eternal rationale for customs that are merely local and temporary. Asked by Senator Smith for the

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*Forty-four years after the Titanic, when the Andrea Doria lay sinking off the New England coast, many crewmen took to the boats and left their terrified passengers behind.*

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reason behind the policy of "women and children first," Second Officer Charles Lightoller replied haughtily that it was "the rule of human nature." Ismay also pronounced it "natural." But that was 1912. In 1997, enforcing the "natural" rule of "women and children first" would probably get you sued for discrimination. Even in 1912, what was considered "natural" could vary with political ideology. Harried by Senator Smith about the sins of the Marconi Company, one of Ismay's business associates remarked that it was "only human nature" for wireless operators to sell their stories to the newspapers. Smith snapped, "What kind of human nature is that?"<sup>60</sup>

In this connection, it is interesting to notice one of the most recent books published about the *Titanic*.<sup>61</sup> Its author, Steven Biel, is not especially concerned with the rights and wrongs of the disaster itself. He is concerned with what people made of it afterwards. He has therefore compiled the reactions of a multitude of Americans — politicians, preachers, editorialists, feminists, antifeminists, conservatives, socialists, spokesmen for ethnic causes, spokesmen for Americanism — most of whom believed that they had found some deep moral meaning in the events of April 14–15.

These profound, permanent meanings — the kind that one finds in newspapers — often resulted from nothing more than a willingness to ignore fact, abandon logic, and give free rein to the partisan spirit. Thus, ministers of the gospel denounced Ismay and his corporate associates as exponents of pagan excess, "inhuman monsters who seek to cover their moral deformity with the dazzling splendor of mammon's throne." Drinking from the same pure spring of self-righteousness, socialists described Ismay as "the epitome of



capitalism," so perfect a product of capitalism that "even capitalism finds it hard to stomach him." To Biel, it seems obvious that the meaning of the disaster grew out of "present circumstances and ideological purposes." It "seared itself into American memory not because it was timeless but because it was timely."<sup>62</sup>

But this is wrong. The *Titanic* disaster had meaning, and continues to have meaning, because it was a magnificent elaboration, within time, of timeless moral problems.

The problems themselves — involving, as they do, the relationship of duty to danger and of risk to moral responsibility — were not invented in 1912 and are not out of date in 1997. And some of the moral principles that responded to such problems have proven very durable, much more durable, in fact, than the follies, cruelties, and infatuations of popular moralists.

Those moral principles — or, perhaps more properly, moral expectations — involved an idea of duties that could

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*Like most other things connected with the Titanic, morality showed both a bright surface and a dark and dangerous one.*

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not be reduced to risk management. The popular opinion of 1912 doubtless carried this idea to an absurd extreme. Captain Smith was regarded as a hero simply because he was willing to go down with the ship. He was celebrated to such a nauseating degree that George Bernard Shaw felt impelled to object; Smith's idolators, he said, had mistaken "sensational misfortune for inspiring achievement." Yes, but there is at least some dignity in deciding that other things may matter besides not being drowned.<sup>63</sup>

Forty-four years after the *Titanic*, when the *Andrea Doria* lay sinking off the New England coast, many crewmen took to the boats and left their terrified passengers behind. This was not a refreshing comment on mid-twentieth-century morality (though it is far from the worst comment that might be cited). Some people tried to cover it up — but no one said it was right.<sup>64</sup> Probably no one would say so today, despite the fact that the action was entirely "natural," in one sense of that word.

But the assumption of moral responsibility is always more artificial than natural. It is the product of choice, not of some purely spontaneous urge. This is the message of the great works of literary art that focus on the problems of moral responsibility, whatever the specific solutions they suggest. These works endure because they reveal, with intensity and rigor, all the possibilities of moral choice. And this thought draws us closer to the permanent significance of the *Titanic* disaster, much closer than we could come by trying to discover whether the particular moral principles invoked on the boat deck of the White Star liner are still alive (or ought to be alive) today.

The *Titanic* has endured because it presented the great problems of morality — which is itself artificial — in the exacting form that one expects from a great work of artifice, a great literary drama. Only in this way could one of 1912's numerous "floating (or sinking) hotels" (in Shaw's words)

have transformed itself into an "august event" (in Thomas Hardy's).<sup>65</sup> It was the kind of transformation that one expects from a consummate work of art.

Even while it was happening, the event seemed artificial. An historian of the disaster, summarizing this constant theme of the *Titanic* literature, describes some features of "the final act of the tragedy":

the great ship lying motionless on a sea as still as a millpond under the glittering canopy of stars; the rockets soaring aloft into the darkness from the bridge; the lively ragtime airs played by the ship's orchestra assembled near the head of the grand staircase; the passengers standing about in groups, or pacing slowly up and down in the bitter cold . . . the strange feeling that not a few of them had of being spectators of a drama rather than actors in it; and all the time the black water rising higher and higher towards the slanting decks.<sup>66</sup>

As in a theatre where a production is so brilliantly staged that the audience cannot suspend its sense of disbelief but continues conscious of the artistry of sets and action, so on the decks of the *Titanic*. "We had our eyes wide open and noticed everything that was going on," said third-class passenger August Wennerstrom, "but could not feel any sorrow — or even fear. It was more like we were part of an audience in a wonderful, dramatic play."<sup>67</sup>

The sets were perfect — magnificent in size yet intricately scaled to the dimensions appropriate for each scene of individual choice. The cast was enormous, yet not so enormous as to prevent its members from being known as individuals. The choices that each character faced were complex, demanding. The characters were faced, moreover, with the absolute necessity of choice. They *had* to choose. But this was an intellectual drama, not a mere thriller. The characters had time to reflect on their choices (or not to reflect, if that was their way of choosing). The *Titanic* sank in two hours and 40 minutes, the length of a classic play.<sup>68</sup>

The obvious contrast is with the sinking of the *Lusitania*, where action was compressed into a mere 18 minutes. Like the *Titanic*, the *Lusitania* provided plenty of grist for "ideological" mills. She would be remembered chiefly as a political incident. But the *Titanic* would be remembered, more richly, as a drama of her passengers' moral decisions — even when the nature of those decisions would be hotly debated or abjectly misunderstood. And the dramatic intensity of the *Titanic* was great enough to infuse all the events that surrounded it: the deliberations in the lifeboats, the contrasting choices of the *Carpathia* and the *Californian*, and the enormous re-creations of the whole cycle of events, as staged by the American and British investigators — spectators with their own decisions to make.

Like any great, enduring play, the *Titanic* has spawned a host of critics. To criticize the performance properly, however, one must understand that the performers were not just actors; they were quite capable of being critics, too, and inspectors of their own actions. Often, as we have seen, they thought of themselves primarily as spectators. But these spectators were not idle; they had critical decisions to make, decisions about right and wrong. It has been argued, indeed, that a sense of morality depends on an essentially theatrical sense of self-observation, a sense that allows one to become, as Adam Smith supposed, a critical "spectator" of one's own

performance. Many of the acts performed in the drama of the *Titanic* failed the test of criticism; many resulted from evasion or absurd rationalization. (These acts also have their dramatic interest.) But others fulfilled the most rigorous demands of the internal critic.

While the *Titanic*'s passengers climbed to the boat deck, her engineers kept working deep inside her, trying to keep her electricity on and her pumps in operation. They did so, until the very end. All of these men perished. Thomas Andrews, who helped to build the ship, calculated how long she would last, then tried to make sure that the passengers and the women in the crew got into lifebelts and into boats. Finally, he went to the smoking room and waited by himself, without his lifebelt. Writer and editor W.T. Stead, who had published stories about liners running into icebergs and running out of lifeboats, settled down by himself to read a book. He would die doing what he thought was important.<sup>69</sup>

These were all superb performances, whether they were meant to assist other people or only, at last, to assert the actors' sense of dignity. Were they only performances? Perhaps. But if so, the roles selected were appropriate to a moral drama, a drama about what it is right to choose, and they were performed for the moral satisfaction of the actors themselves. This is something other than a "social drama" or drama of social forces.<sup>70</sup> It is a drama of people who made individual decisions, often strange and mysterious ones, the dynamics of which can never be truly known.

So important is evidence of a sense of moral drama that we are willing to honor it even when we are baffled by the particular code of values that seems to be involved. When the

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*In 1997, enforcing the "natural" rule of "women and children first" would probably get you sued for discrimination.*

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*Titanic* got into trouble, Benjamin Guggenheim and his secretary Victor Giglio went on deck in sweaters and lifebelts. They helped at the boats. Then they took off the belts and sweaters and appeared in evening clothes. "We've dressed up in our best," Guggenheim said, "and are prepared to go down like gentlemen."<sup>71</sup> We may not honor, or even understand, the code of moral dignity, of responsibility to oneself, that Guggenheim thought was embodied in his evening clothes. But we can respect his decision to live up to it.

### **"He Was Never the Same Again"**

The moral drama enacted on April 14-15, 1912, has always had a curious ability to transform and intensify people's impression of themselves as "actors" or "spectators."

In 1953, during the production of the film *Titanic*, Barbara Stanwyck was lowered in a lifeboat down the side of a giant *Titanic* model into a water tank. She knew it was a model, and she knew it was a water tank. But when "she caught a glance up at those left behind to 'die' with the ship, she burst into a flood of uncontrollable tears. She said everything had suddenly seemed so real."<sup>72</sup>

A few years later, another *Titanic* film was made: *A Night to Remember* (1958). Lawrence Beesley, who had survived the

*Titanic*, was hired as a consultant. Watching the production, Beesley decided that he wanted his chance to be among the passengers who did not survive. Unfortunately, he was not a member of the actors' union. So he forged a pass, boarded the "*Titanic*," and stood with the extras who were preparing to "die." But "right at the last minute, as the cameras were due to roll, the director spotted [him] . . . Picking up his megaphone, he instructed the amateur impostor kindly to disembark." Beesley had missed his chance to explore "an alternative version of history."<sup>73</sup>

But what shall we say of Bruce Ismay's alternatives — the various parts he might have played in the drama of April 14-15?

He could have performed a starring role, at least in the popular imagination, if he had been the captain of industry

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*The Titanic disaster had meaning, and continues to have meaning, because it was a magnificent elaboration, within time, of timeless moral problems.*

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that Senator Smith expected to see, the kind of man who seized control of events and could easily be held responsible for their consequences. But he did not see himself as that kind of man. He was a corporate bureaucrat with a justifiably limited idea of his own power.

Ismay could also have had a starring role if he had given his life in an attempt to find other passengers for Collapsible C. The attempt might have been futile. In any event, he did not make it. He did not hold, with A. Clement Edwards, that he "owed [his] life to every other person on that ship."<sup>74</sup> It is hard to find any definite reason why he should have.

Ismay could have played a still more interesting role if he had chosen to demonstrate, purely for his own satisfaction, an heroic fortitude in the face of death. He could have performed this part only if he had taken a certain highly personal view of the dramatic possibilities of his life; it was not something for public opinion, or a congressional committee, to decide. Ismay did not take that view. He did the work that was immediately at hand; he did it bravely; then he left in Collapsible C.

The dramatic possibilities of the role that he did assume are real enough, but some subtlety is required to appreciate them. Subtlety is completely lost whenever the mysteries of human choices are transformed into myths designed for unreflective minds. In the Nazi propaganda film *Titanic* (1943), the ship hits an iceberg because Ismay, the villainous capitalist, demands that she set a speed record.<sup>75</sup> The class-conscious British film *A Night to Remember* presents a series of scenes in which determined efforts are made to keep steerage passengers from reaching the boat deck; then it shows Mr. Ismay shamefacedly entering Collapsible C, beneath the contemptuous stare of the attending officer. In *Titanic*, a CBS television melodrama (1996), a crowd surges around Collapsible C; a father from third class, denied entrance, is torn, screaming, from his family; then Ismay sneaks out of the shadows and claims his illicit place in the boat, while fellow passengers loudly protest. An advertisement for the musical *Titanic*, set

to open on Broadway on April 23 of this year, describes a character named "J. Bruce Ismay" who "pushed Captain Smith relentlessly to set speed records," then "quietly boarded one of the lifeboats while the crew remained behind."<sup>76</sup> These are dramas that not even Senator Smith could applaud.

The real J. Bruce Ismay lived out his life at his home in London and his fishing retreat in Ireland, never venturing again on the North Atlantic. The House of Morgan considered him an embarrassment and forced him to retire from his father's steamship line. He continued to serve on the boards of other companies; his favorite company was a railroad. He did not discuss the *Titanic*; his wife thought such discussion was bad for him. But the historian of the White Star line, who knew Ismay's wife, assures us that

he was never the same again. He had always been very shy, so much so that few people on board the *Titanic* knew who he was. For once he had come out of his shell, and working with the crew, had done all he could to assist in getting the passengers into the boats. So he was heartbroken to come home to face all the calumny of the Press and public.<sup>77</sup>

His wife gave parties, but he did not attend. He liked to read his business papers on a park bench, where he enjoyed talking to people who were down on their luck; he gave them advice and money, but he never told them who he was. He liked to stand in the crowd to watch parades. He sometimes went to afternoon concerts, where he "always took two seats, the second one for his hat and coat."<sup>78</sup>

When Bruce Ismay entered Collapsible C, he thought that he was acting rightly. When he reached the *Carpathia*, he was shattered by doubts. Subjected to the pressures of public criticism, his resolve strengthened; he decided again that he was right. But we will never know what shape the drama took in his own mind as he performed it, silently and mysteriously, until he died, the victim of a stroke, in 1937. □

## Notes

1. Wilton J. Oldham, *The Ismay Line: The White Star Line, and the Ismay Family Story* (Liverpool: The Journal of Commerce, 1961) 68, 109–110.

2. Oldham 64–65, 136–37, 163.

3. One principal source for my account of Ismay's actions on April 10–15 is "the British inquiry" (abbreviated BI): *Proceedings . . . on a Formal Investigation Ordered by the Board of Trade into the Loss of the S.S. "Titanic,"* May 2–July 3, 1912 (London: H.M. Stationery Office, 1912): testimony of J. Bruce Ismay, 437–43, 450, 456, 463–64; Edward Brown, 233, 235; and George Rowe, 420. The other principal source is "the American inquiry" (AI): *"Titanic" Disaster: Hearing before a Subcommittee of the Committee on Commerce, United States Senate, 62nd Congress, 2nd Session, April 19–May 25, 1912* (Washington: U.S. Government Printing Office, 1912): testimony of Ismay, 3–5, 7, 11, 13, 17, 915–19, 928, 931–35; Joseph Boxhall, 246–47; Henry Etches, 784–85; Charles Lightoller, 57–58, 430–31; Harold Lowe, 389–90, 401; Herbert Pitman, 276–77; George Rowe, 519–24; and A.H. Weikman, 1095. I use the "preliminary" or first daily printings of the American testimony; page numbers in the second half of later printings can vary — fortunately, in regular ways. Times for the lowering of lifeboats are fairly well approximated in *Shipping Casualties (Loss of the Steamship "Titanic")* (London: H.M. Stationery Office, 1912): 38. This is the Report of the British investigation, hereafter abbreviated "BR."

4. Archibald Gracie, *The Truth about the "Titanic"* (New York: Mitchell Kennerley, 1913) 300, summarizes what is known about the population. I discount the strange testimony of Hugh Woolner, who suddenly remembered that, by the way, he had helped to quell a mob at Collapsible C (AI 854), about 20 minutes after it was actually launched;

and Jack Thayer's recollection, which is filled with discrepancies, of Ismay "push[ing] his way into" a boat (both cited in Walter Lord, *The Night Lives On* [New York: William Morrow, 1986] 128–29. As to the "stowaways," who were discovered, by Rowe's account (AI 520), only "when daylight broke," they obviously benefited from other passengers' tacit permission. Lifeboats are large, but not that large. 5. Ismay AI 17, AI 929; Lightoller, AI 426; Arthur Rostron, marconigram, cited at AI 1123; Oldham 195–96. Feeling responsible for the butler and secretary, Ismay provided their widows, as Oldham says, with a generous lifetime annuity. 6. Wyn Craig Wade, *The Titanic: End of a Dream* (Middlesex, Eng.: Penguin, 1979) 74; *New York Times* (April 21, 1912) 2. 7. A. T. Mahan, in Gracie 321–23; Brooks Adams, in Wade 375.

8. Wade 156–57. 9. My discussion of Senator Smith relies on the long and very sympathetic account in Wade. On the Taft connection, see esp. Wade 146. On the Harter Act, see esp. 196–97, 221, 362. Wade's admiration for Smith is shared by many other *Titanic* people. John P. Eaton and Charles A. Haas even praise Smith's "objectivity" — *Titanic: Destination Disaster: The Legends and the Reality* (New York: Norton, 1996) 107. 10. Ismay, AI 3.

11. Ismay, Texas, did change. Ismay, Montana, which was named in honor of May and Isabel Earling, daughters of a railroad president, heroically resisted — until 1993, when it renamed itself Joe, Montana, in honor of Joe Montana. See Walter Lord, *Night Lives On* 212–13; and Jonathan Raban, "The Unlamented West," *New Yorker* (May 20, 1996) 61, 66. 12. Wade 368–69. Wade doesn't call this envy. He treats it as righteous political indignation. 13. Guglielmo Marconi, AI 484–85, 817, 493–94; William Alden Smith, AI 841. 14. Wade 165–66, 183, 195–96; Ismay, AI 930.

15. Wade 429. 16. Lord, *Night Lives On* 206–10. 17. Ismay, AI 927; Wade, 449; Harold Sanderson, BI 471. 18. Sir Rufus Isaacs, BI 900; Sir Robert Finlay, BI 850. 19. John Charles Bigham, Baron Mersey, BI 759. 20. Mersey, W.D. Harbinson, BI 624. 21. Mersey, BI 490. 22. Ismay, BI 440.

23. Ismay, BI 452, 443, 453. Why had people lingered below decks? The usual answers, and true enough, involve lack of awareness that the ship was actually going down, a desire not to leave baggage behind, the complexity of some routes to the boat deck, isolated attempts by crewmen to keep third-class passengers in third-class areas, and the general failure of officers to organize evacuation of the lower regions. 24. Ismay, BI 464. 25. A. Clement Edwards, BI 785; Mersey, BI 799; Finlay, BI 809. 26. Mersey, BR 40.

27. Wade 442. 28. Alfred Crawford, AI 810; Alfred Olliver, AI 528. 29. Isaacs, BI 580. 30. On *Pacific* and other victims of ice, see Wade 56–57; on *Naronic*, see Oldham 122–24. 31. Lightoller, BI 306–307. 32. Frederick Passow, BI 572; Isaacs, BI 669. 33. Finlay, BI 850; Isaacs, BI 903; Mersey, BI 907. 34. Gary Cooper, *The Man Who Sank the Titanic?: The Life and Times of Captain Edward J. Smith* (Stoke-on-Kent: Witan, 1992) 59; Eaton and Haas 77. 35. Edward Brown, BI 234.

36. Gracie, 114–323, establishes the port-starboard disparity in exhaustive detail. Even on the port side, however, some males had to be invited into boats because they were needed to manage them. 37. Roche, BI 772. 38. Mersey, BI 543. 39. Des Hickey and Gus Smith, *Seven Days to Disaster: The Sinking of the Lusitania* (New York: Putnam's, 1982) 204–34. 40. William Hoffer, *Saved! The Story of the "Andrea Doria" — the Greatest Sea Rescue in History* (New York: Summit, 1979).

41. J. Bernard Walker, *An Unsinkable Titanic: Every Ship Its Own Lifeboat* (New York: Dodd, Mead, 1912); Isaacs, Mersey, BI 596. 42. Ismay, AI 16; Edward Wilding, BI 514; Mersey, BI 855. 43. Isaacs, BI 658; Finlay, Mersey, BI 855. 44. Mersey, 835. 45. Edwards, BI 796. The same question is asked by Lord, *Night Lives On* (165–91), and Wade (338–61), who provide very useful introductions to the *Californian* episode.

46. Isaacs, BI 957–58. 47. Reginald Lee, BI 75. 48. Charles Joughin, BI 145; Walter Lord, *A Night to Remember*, rev. ed. (New York: Holt, 1976) 151–52, 170. 49. Harold Bride, *New York Times* (April 19, 1912) 1–2; AI 1050, BI 388; BR 67. 50. Emily Ryerson, AI 1104; Walter Perkins, AI 582. 51. Lowe, AI 409–10. It is fair to mention that Lowe was always quite prepared to save people who might appear at the edge of the crowd. 52. Henry Etches, AI 786; Olliver, AI 529–30; Alfred Shiers, BI 114; Pitman, Smith AI 283–84.

notes continued on page 42

## Vindication

# The Misunderstood Mr. Jefferson

by David N. Mayer

Fashionable attacks on Thomas Jefferson obscure his one ruling passion: the "holy cause of freedom."

Sadly, modern Americans seem to have done a better job preserving what Thomas Jefferson has left us in bricks and mortar than we have preserving his ideas. Tourists visiting Charlottesville, Virginia, can witness firsthand the ongoing efforts to preserve Jefferson's home at Monticello as well as his splendid little "Academical Village," the Lawn, which is still a vital center of student life at the University of Virginia. Further down the road, near Lynchburg, Virginia, preservationists have begun restoring Poplar Forest, Jefferson's retreat home.

Scholars have been less successful in keeping alive his philosophy, particularly his ideas about government — despite the copious record he left in his writings. Ken Burns's recent PBS documentary, *Thomas Jefferson*, is a case in point. It features a parade of scholars who simultaneously declare their own inability to understand Jefferson, and mislead others with interpretations of his life and thought that are as questionable as they are contradictory.

Burns informs the viewer, for example, that Jefferson's life was full of contradictions: the "man of the people" with the tastes of an aristocrat, the natural rights philosopher who owned slaves, the "lifelong champion of small government who more than doubled the size of the United States," and so on. Most of these alleged contradictions really aren't as antithetical as they appear, for they are based on faulty assumptions or misunderstandings of principles. Joseph Ellis, for

example, reasserts the bromide — common among modern "liberal" academics — that the ideals of equality and the pursuit of happiness, as expressed in Jefferson's Declaration of Independence, are unattainable or contradictory. But there's nothing contradictory about equality of rights and each individual's pursuit of happiness, if the concept of rights is properly understood. Herbert Spencer's law of equal freedom, the radical Whigs' concept of "natural liberty," and Jefferson's concept of "natural society" all accounted for how the two can work together. The fact that many of today's intellectuals simply don't get it reveals much more about them than it does about Jefferson.

Misinterpretations of Jefferson's political thinking seem pandemic these days. The 1993 celebrations of the 250th anniversary of Jefferson's birth, for example, typically championed his reputation as "father of American democracy." Chief Justice William Rehnquist, speaking at the University of Virginia, echoed the views of many Jefferson scholars that "the permanence of Jefferson resided not in his specific theories or acts of government, but in his democratic

faith." While it is certainly true that Jefferson was a leading proponent of representative democracy — in *Democracy in America*, Alexis de Tocqueville called Jefferson "the most powerful advocate democracy has ever sent forth" — his devotion to democracy was neither absolute nor unqualified. Indeed, Tocqueville thought it significant that Jefferson once warned James Madison that "the tyranny of the legislature" was "the danger most to be feared" in American government. To Jefferson, democracy and its associated principles — majority rule, equal rights, direct representation of the people in government — were valuable, not as ends in themselves, but as essential means to a greater end, the maximization of individual freedom in civil society. Liberty was Jefferson's highest value; he dedicated his life to what he once called "the holy cause of freedom."<sup>1</sup>

### A Radical Whig

What repeatedly drew Jefferson away from his tranquil domestic life at Monticello and back into the political fray was precisely that "holy cause of freedom," to which he felt duty-bound whenever he saw liberty threatened

by a powerful central government — whether it was the British government under King George III or the United States government under Federalist administrations. His passion for this cause was reflected in the language that he used in his political writings. Jefferson, the zealous defender of religious freedom, tended to use words such as *holy*, *orthodox*, or *catholic* when discussing political, not religious, prin-

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*Burns' documentary distracts us from the real tragedy of Jefferson's position on slavery by focusing on the myth that Jefferson fathered children by his slave, Sally Hemings.*

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ciples; he reserved words such as *heretic* or *apostate* to denounce politicians whom he regarded as the enemies of liberty. He summed up his life's work in a letter written relatively early in his public career, in 1790, soon after his return to the United States following his ambassadorship to France. "[T]he ground of liberty is to be gained by inches . . . [W]e must be contented to secure what we can get from time to time, and eternally press forward for what is yet to get. It takes time to persuade men to do even what is for their own good."<sup>2</sup>

Jefferson's philosophy of government, accordingly, stressed the perpetual need to limit government's powers. As he once wrote, "The natural progress of things is for liberty to yield and government to gain ground."<sup>3</sup> The notion that government inevitably threatened liberty was part of the radical Whig tradition in which Jefferson's early intellectual life had been steeped. Like John Locke, Algernon Sidney, and other English radical Whig political philosophers, Jefferson understood, paradoxically, that it was government, which was created to "secure" individual rights, that posed the greatest danger to those rights through the abuse of its legitimate powers. Hence Jefferson, like other "Whigs" of his time — and like the classical liberals of the nineteenth century — was profoundly distrustful of concentrated political power and intensely devoted to the ideals of lim-

ited government and the rule of law.

To Jefferson, the significance of the American Revolution was the opportunity it gave Americans to create a republican form of government — that is, a government not only founded in theory upon the consent of the governed, but one that was continually responsible to the will of the people — "the only form of government which is not eternally at open or secret war with the rights of mankind," he maintained. He understood the American constitutions, state and federal, to implement in practice the theory of government he so eloquently presented in his original draft of the Declaration of Independence, where he stated the "self-evident" truths that all men are created "equal & independent," that from that equal creation they derive "rights inherent & inalienable, among which are the preservation of life, & liberty & the pursuit of happiness," and that "to secure these ends, governments are instituted among men, deriving their just powers from the consent of the governed." The creation of republican governments alone, however, was not sufficient to guard against abuses of power. Jefferson also understood the value of devices such as written constitutions, the division and separation of powers, and the people's power to amend constitutions. The fundamental principle of his constitutionalism was most cogently expressed in his draft of the Kentucky Resolutions (1798), where he wrote:

[C]onfidence is everywhere the parent of despotism — free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power. . . . In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

Zealously guarding liberty, Jefferson was suspicious of the use of governmental power. He feared that without the rule of a higher law, the achievement of the American Revolution would be lost. The governments in Europe "have divided their nations into two classes, wolves and sheep." If the people of America once become "inattentive to the public

affairs," he warned, "you and I, and Congress, and Assemblies, judges and governors shall become wolves. It seems to be the law of our general nature, in spite of individual exceptions."<sup>4</sup>

Like Thomas Paine, who in *Common Sense* had distinguished government and society, Jefferson understood that the realm of politics was quite limited; outside it, individuals should be free to fashion their lives as they saw fit, through voluntary social relationships. The "essence of a republic," he wrote, was a system in which individuals "reserve to themselves personally the exercise of all rightful powers to which they are competent," delegating others to their "representatives, chosen immediately, and removable by themselves." He believed this "proximate choice and power of removal" was "the best security which experience has sanctioned for ensuring an honest conduct in the functionaries of society" — in other words, for preventing those in power from becoming "wolves."

### Jefferson & Natural Rights

The Declaration of Independence listed three natural, or "inalienable," rights: life, liberty, and the pursuit of happiness. Elsewhere in his writings Jefferson referred to others: expatria-

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*When Jefferson realized that America needed also to be a manufacturing nation, his political economy matured into a full acceptance of market capitalism.*

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tion, religious freedom, freedom of trade, and the right to hold property. All these rights might be understood as particular manifestations of one basic natural right, liberty, which Jefferson regarded as sacrosanct as life itself: as he wrote in his 1774 essay, *A Summary View of the Rights of British America*, "The god who gave us life, gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them."

Jefferson regarded as a basic principle of good government the guarantee to all of the enjoyment of these rights. In 1816, discussing the "rightful limits"



of legislators' power, he maintained that "their true office is to declare and enforce only our natural rights and duties, and to take none of them from us": "No man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him; every man is under the natural duty of contributing to the necessities of society; and this is all the laws should enforce on him; and, no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third." He added that "when the laws have declared and enforced all this, they have fulfilled their functions, and the idea is quite unfounded, that on entering into society we give up any natural right."<sup>5</sup> Two years later, in a report which he prepared as chairman of the Commissioners for the University of Virginia, Jefferson included in his syllabus of the basic principles of government "a sound spirit of legislation, which, banishing all arbitrary and unnecessary restraint on individual action, shall leave us free to do whatever does not violate the equal rights of others."

Fundamental to Jefferson's political philosophy, then, was the idea that no government could legitimately transgress natural rights. In order for law to be binding, it must not only proceed from the will of properly authorized legislators, but it must also be "reasonable, that is, not violative of first principles, natural rights, and the dictates of the sense of justice." In the final paragraph of his Virginia Statute of Religious Freedom, for example, Jefferson added a declaration that the rights therein asserted were "the natural rights of mankind," and that although the legislature which enacted the Bill had no constitutional power to restrain subsequent legislatures, any future act repealing it or narrowing its operation would be "an infringement of natural right."

### Slavery: The Central Paradox

The institution of slavery was so troubling to Jefferson, throughout his life, because he realized that it violated the natural rights of an entire race of people. That Jefferson owned slaves himself, knowing all too well the evils of the institution that he so frankly

described in his *Notes on the State of Virginia*, was the greatest flaw of his private life; the philosopher of the American Revolution, the greatest liberating event in the history of the world, personally participated in what John Hope Franklin calls in Burns's film "a transgression against mankind." And that Jefferson abandoned his early zeal for emancipation (his praiseworthy efforts to abolish slavery in Virginia, which culminated in his writing the Northwest Ordinance prohibition on slavery), and instead

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*Jefferson abandoned his early zeal for emancipation and instead acquiesced in the continued existence of slavery.*

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acquiesced in the continued existence of slavery — as well as its spread to other territories in the West — unmistakably was the greatest flaw of his public life.

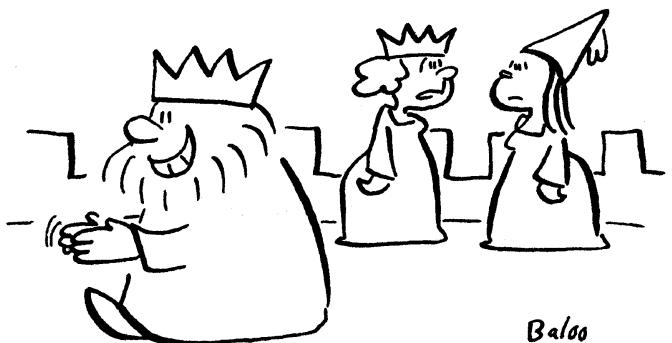
Like so many others, Burns distracts us from the real tragedy of Jefferson's position on slavery by focusing on the myth that Jefferson fathered children by his slave, Sally Hemings. The claim is based on an oral tradition kept alive among Hemings' descendants — dubious evidence, not only because it is self-serving and unreliable, but also because of its use as political propaganda, first by Jefferson's Federalist enemies and later in the nineteenth century by antislavery Whig and Republican politicians who sought to discredit Jefferson and the antebellum Democratic party. (Today the story is still kept alive to push others' political agendas.) Virtually all reputable Jefferson scholars agree that there is no contemporary evidence of any sexual relationship whatsoever between Jefferson and Hemings, but few are willing to dismiss the allegation as a myth, for fear of being called racist. So, like the historians interviewed in

Burns's film, "politically correct" white scholars hedge a bit, saying "we don't know" the truth.

If we set aside the Hemings family's tradition as the myth that it is, it appears most likely that Sally Hemings' children were fathered by either Peter or Samuel Carr, Jefferson's nephews and wards, raised by him at Monticello as if they were the natural sons that he never had. His nephew's abuse of a young slave girl on Jefferson's mountain was no less scandalous to Jefferson and his family than if he himself had perpetrated the abuse — which explains, in part, why Jefferson's only response to the allegations was silence. But it speaks volumes about the extent to which slavery not only debased the slave but also corrupted the morals of the master, as Jefferson himself had observed in *Notes on the State of Virginia*: "The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the [one] part, and degrading submission on the other." That this "rottenness" had set in within his own family, and that Jefferson had been powerless to prevent it and even unwilling to acknowledge it, is the real story that remains untold.

### The Agrarian Myth

Another myth about Jefferson that Burns perpetuates is his supposed agrarianism. Jefferson's vision of America's future, on this view, was of an "agrarian paradise" — implying that Jefferson's small-government philosophy was appropriate only for the pre-industrial America of the early nineteenth century, a convenient rationalization that apologists for the modern regulatory-welfare state have been asserting since Woodrow



"He just found out about the doctrine of implied powers!"

Wilson's "New Freedom" speech in 1913. In the 1780s, when Jefferson wrote his much-quoted statements about farmers being the most "virtuous" citizens, he was essentially agrarian in outlook. But after the War of 1812, Jefferson realized that America needed also to be a manufacturing nation, and his political economy matured into a full acceptance of market capitalism. In the 1810s Jefferson experienced an awakening when he read the *Treatise on Political Economy* by the French anti-mercantilist philoso-

as we have submitted to them," noting that "the rights of conscience we never submitted, we could not submit" because men are answerable for them to God only. "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg."

When Jefferson wrote to Madison late in 1787, expressing his great disappointment that the new federal Constitution included no explicit guarantee of rights, the first such right that he listed was freedom of religion. He surely had in mind the kind of broad statement of "natural right" expressed in his Virginia Statute, which provided that "no man shall be compelled to frequent or support" any religion, nor any "suffer, on account of his religious opinions or belief," and that "all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capabilities." Although the language finally adopted by Congress in proposing what would become part of the First Amendment — stating that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" — was far less explicit than the language of the Virginia statute, Jefferson interpreted it to be just as comprehensive a guarantee. In other words, he understood the First Amendment freedom of religion clause, like the Virginia statute, to leave the formation of religious opinions solely to "the reason of man."

As president, Jefferson faithfully adhered to this principle and to his broad view of the rights guaranteed by the First Amendment. He departed from the precedent set by his predecessors, Washington and Adams, by refusing to recommend or designate any day for national prayer, fasting, or thanksgiving. As he explained his policy, in a letter made public early in his presidency, he noted that since Congress was prohibited by the First Amendment from acts respecting religion, and the president was authorized only to execute its acts, he had refrained from prescribing "even occasional performances of devotion." In famous words, he

declared that the First Amendment mandated a "wall of separation between Church and State."<sup>6</sup>

### First Amendment Absolutist?

Collaborating again with James Madison in 1798, Jefferson opposed as unconstitutional the Sedition Act, which had made it a criminal offense to make any "false, scandalous, and malicious" statement against either President John Adams or the Federalist-controlled Congress. If Jefferson was — as some critics have charged, both in his time and today — less than fully libertarian in his defense of freedom of the press in the years that followed his election in 1800, it was because he was deeply troubled by what he perceived as the "licentiousness" of the press of his time. During his presidency he expressed concern that his Federalist opponents were "pushing its [the press's] licentiousness and its lying to such a degree of prostitution as to deprive it of all credit." This was, he had noted, "a dangerous state of things" because "even the least informed of the people have learnt that nothing in a newspaper is to be believed." To another correspondent he bemoaned the fact that "nothing can

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*Jefferson bemoaned the fact that "nothing can now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle."*

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pher Antoine Louis Claude Destutt de Tracy, who, among other things, regarded the productive value of the trader or manufacturer as equal to that of the farmer; defended the rights of industrious persons to seek profits as "rewards for their talents"; and viewed commerce generally as the "fabric" of society. Jefferson was so enthusiastic about Tracy's treatise that he personally undertook the task of translating it into English, so that it could be used as the basic economics text in American universities. But this profound evolution in Jefferson's ideas about political economy is utterly ignored in Burns's documentary, as it generally is in high-school and college textbooks.

### Separating Church & State

To Jefferson, religion was a matter of conscience, a private matter that ought not concern government. For that reason, he joined his friend and collaborator, James Madison, in calling both for the free exercise of religious beliefs and for a strict avoidance of government "establishment" of religion. "The opinions of men are not the object of civil government, nor under its jurisdiction," his original text declared. As he explained the purpose of the Virginia Statute in *Notes on the State of Virginia*, "Our rulers can have authority over such natural rights only

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*When pressed to draw a line between "the inestimable liberty" and the "demoralizing licentiousness" of the press, Jefferson came down on the libertarian side.*

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now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle."<sup>7</sup>

Despite his belief in the efficacy of state laws against false and defamatory publications, it is important to note that, as president, Jefferson consistently followed a "hands-off" policy, as required by the First Amendment. In his Second Inaugural Address, he explained his administration's policy as an "experiment" that had been "fairly and fully made" to determine "whether freedom of discussion, unaided by power, is not sufficient for the propagation and protection of truth." The press,

"confined to truth, needs no other legal restraint," he maintained. "The public judgment will correct false reasonings and opinions, on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press, and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion." The Second Inaugural, then, did more than reiterate Jefferson's steadfast denial of federal authority over freedom of the press: it revealed that, when pressed to draw a line between "the inestimable liberty" and the "demoralizing licentiousness" of the press, Jefferson came down on the libertarian side. He would leave to the marketplace of ideas, and ultimately to "the censorship of public opinion," the restraint of falsehoods.

#### **Federalism: "A Few Plain Duties"**

Jefferson took very seriously the "chains of the Constitution." These included not only the enumeration of powers in the main text of the Constitution and the specific limitations on powers found in the Bill of Rights, but also two other devices to keep powers restrained by dividing them: federalism, which divided powers between the states and federal government; and the separation of powers, which divided federal powers among the three branches, legislative, executive, and judicial.

Federalism was, to Jefferson, the "true theory of our constitution"; and in a classic statement, made shortly before he was elected president, he described it thus:

The true theory of our Constitution is surely the wisest and best, that the States are independent as to everything within themselves, and united as to everything respecting foreign nations. Let the general government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations, except as to commerce, which the merchants will manage the better the more they are left free to manage for themselves, and our general government may be reduced to a very simple organization and a very unexpensive one — a few plain duties to be performed by a few servants.<sup>8</sup>

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In Jefferson's view, the whole field of government in the United States was divided into two departments, "domestic" and "foreign," each department having "distinct directories, coordinate and equally independent and supreme, in its own sphere of action." To the state governments were reserved "all legislation and administration, in affairs which concern their citizens only"; to the federal government was

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*Jefferson once warned James Madison that "the tyranny of the legislature" was "the danger most to be feared" in American government.*

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given "whatever concerns foreigners, or the citizens of the other states." The "foreign," or federal, sphere, moreover, was strictly limited to the few functions enumerated in the Constitution.

Nothing better illustrates Jefferson's strict interpretation of federal powers under the Constitution than his 1791 opinion on the constitutionality of a bill to establish the Bank of the United States. Jefferson considered the Tenth Amendment, which provided that "all powers not delegated to the U.S. by the Constitution, not prohibited by it to the states, are reserved to the states or to the people," to be "the foundation of the Constitution." It reiterated the general principle of federal powers expressed by the language of Article I: that the legislative powers of the federal government, vested in the Congress of the United States, were limited to those "herein granted" in the Constitution. "To take a single step beyond the boundaries thus specifically drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition."

The rest of Jefferson's opinion shows what he regarded those "boundaries drawn about the powers of Congress" to be: they were expressed in Article I, the enumerations of Congressional power, construed (as Jefferson would later put it) "according to the plain and ordinary meaning of its language, to the common intentment of the time and those who framed

it."<sup>9</sup> "The incorporation of a bank, and other powers assumed by this bill, have not . . . been delegated to the U.S. by the Constitution," Jefferson concluded, arguing that they were neither "among the powers specially enumerated" nor "within either of the general phrases" of Article I, the "general welfare" and "necessary and proper" clauses. He understood the "general welfare" clause to be a statement of the purpose for which the specific power of laying taxes was to be exercised, not a grant to Congress of "a distinct and independent power to do any act they please, which might be for the good of the Union." To interpret it as the latter, Jefferson observed, "would render all the preceding and subsequent enumerations of power completely useless" as it would, in effect, "reduce the whole instrument to a single phrase," of empowering Congress to do whatever it pleased. Similarly, he took quite literally the word "necessary" in the "necessary and proper" clause. The Constitution, he argued, restrained Congress "to the necessary means, that is to say, to those means without which the grant of the power would be nugatory"; otherwise, the "necessary and proper" clause also "would swallow up all the delegated powers, and reduce the whole to one phrase."

Jefferson's opinion on the constitutionality of the bank bill thus presented a theory of strict interpretation of the Constitution. To say that Jefferson was a literalist or a strict constructionist, however, is insufficient. Although he was a "strict constructionist" with regard to most of the powers granted Congress in Article I, section 8, especially where federal powers could pre-empt state law, he could interpret federal powers under the Constitution quite liberally in matters involving foreign affairs, which he regarded as an exclusive responsibility of the national government since the time of the Articles of Confederation. (Hence, in his second term as president, he enforced one of the most draconian laws ever passed by Congress — at least prior to the Civil War — the Embargo, which curtailed virtually all foreign trade in a futile attempt to keep the United States out of the war between Britain and France.) He also could be quite liberal in interpreting power-restraining or rights-guaranteeing provisions of the Constitution, as his inter-

pretation of the First Amendment religion clause demonstrates.

### Constitutional Scruples

Upon becoming president in 1801, Jefferson reiterated his ideal of a federal government limited to its legitimate powers assigned by the Constitution: a government reduced to "a few plain duties performed by a few servants." His Inaugural Address declared his general support for the idea of "a wise and frugal government, which shall restrain men from injuring one another, [but] which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned." More specifically, in his first annual message, in December 1801, he declared that it was his administration's policy "to reduce expenses to what is necessary for the useful purposes of government," and he described those concerns that he considered appropriate for the federal government. "When we consider that this government is charged with the external and mutual relations only of these states; that the states themselves have principal care of our persons, our property, and our reputation, constituting the great field of human concerns, we

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*Jefferson considered the Tenth Amendment "the foundation of the Constitution."*

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may well doubt whether our organization is not too complicated, too expensive; whether offices and officers have not been multiplied unnecessarily, and sometimes injuriously to the service they were meant to promote."

Jefferson's administration pursued a policy of economy in government, drastically reducing the size of the federal payroll while simultaneously repealing all internal taxes, including Alexander Hamilton's hated excise on whiskey. Abolition of internal taxes made possible the elimination of the internal revenue service employed to collect them; this resulted in a significant decrease in the Department of Treasury, by far the largest of the executive departments. Jefferson also recommended reductions

in the army, the navy, and the diplomatic corps.

In addition to the repeal of internal taxes and drastic reductions in federal expenditures, Jefferson also enthusiastically endorsed the plan prepared by his Secretary of the Treasury, Albert Gallatin, to pay off the entire national debt — some \$83 million — within sixteen years by annual appropriations of \$7,300,000. Believing it wrong for the present generation to saddle future generations with a huge national debt, Jefferson sought to establish the principle of “pay-as-you-go” in the federal budget. During the eight years of Jefferson’s administration the debt actually was reduced by almost a third; extraordinary expenses not foreseen at the beginning of his presidency — chiefly, the Louisiana Purchase and increased naval costs associated with the Barbary Wars — forced the modification of Gallatin’s plan. Nevertheless, the plan to extinguish the debt was largely successful because of the large increase in revenue from import duties that accompanied the growth in American commerce during this period. Indeed, the increased revenues actually created a surplus later in the administration, prompting Jefferson to recommend a constitutional amendment permitting expenditures for roads and other improvement projects, as noted below. After his retirement from the presidency, Jefferson urged continued effort to pay off the debt by reducing federal expenditures, noting that increased public debt would bring increased taxation “and in its train wretchedness and oppression.”<sup>10</sup>

As president, Jefferson thus sought to accomplish the objective he had stated in his First Inaugural Address and reiterated elsewhere in his writings at the start of his presidency: to restore the constitutional equilibrium between the states and federal government by keeping the latter “a wise and frugal government” limited to its sphere. Later in his presidency, when he recommended that Congress appropriate money for such projects as establishing a national university, construction of roads and canals, and improvements to rivers and harbors, Jefferson called for a constitutional amendment to authorize such expenditure because these projects were not among the enumerated powers of the federal government.

Critics of Jefferson, both past and present, have cited the Louisiana Purchase as an example of Jefferson’s failure, as president, to adhere consistently to his doctrine of strict interpretation of federal powers. Rather than showing his hypocrisy, however, the entire episode of the Louisiana Purchase illustrates the seriousness of Jefferson’s constitutional scruples. Jefferson understood the importance of the Purchase: it secured New Orleans and control of the Mississippi and was therefore vital to the interests of the United States. Although Albert Gallatin presented Jefferson with arguments supporting the constitutionality of the Purchase, Jefferson remained sufficiently troubled to draft a constitutional amendment explicitly making the Louisiana territory part of the United States. No important adviser or supporter of Jefferson apparently urged either the necessity or the practicality of such a constitutional procedure, however. Indeed, Jefferson’s close friend Senator Wilson Cary Nicholas argued strongly against it, saying that a declaration from Jefferson that the treaty exceeded constitutional authority would lead to its rejection by the Senate or at least to the charge of his willful breach of the Constitution.

Jefferson’s reply to Nicholas’s letter, stating in particularly striking terms his lingering constitutional scruples, has been one of the most often quoted of Jefferson’s writings on constitutional matters:

When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe & precise. I had rather ask an enlargement of power from the nation where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in possession of a written Constitution. Let us not make it a blank paper by construction.

Conceding the likelihood that the framers’ enumeration of powers was “defective” — for “this is the ordinary case of all human works” — he urged, “Let us go on then perfecting it, by adding by way of amendment to the constitution, those powers which time & trial show are still wanting.” In the present case, he concluded, it was “important . . . to

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set an example against broad construction by appealing for new power to the people.”<sup>11</sup>

When Jefferson finally dropped the matter and acquiesced in the Louisiana Purchase despite the lack of a constitutional amendment, he did so not because he had given up strict construction but because he was following his advisers’ recommendation not to press the constitutional problem, realizing that it could jeopardize a treaty so vital to the nation’s security. “What is



practicable must often control what is pure theory; and the habits of the governed deter mine in a great degree what is practicable," he noted. Jefferson took solace in what he regarded as the "good sense" of the people, not to permit this one precedent to destroy the whole edifice of enumerated powers upon which constitutional limitations on the federal government rested. Indeed, a common-sense resolution of

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*Jefferson enforced one of the most draconian laws ever passed by Congress — at least prior to the Civil War — the Embargo, which curtailed virtually all foreign trade.*

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his constitutional qualms was suggested by Thomas Paine, who reassured Jefferson that "the cession makes no alteration in the Constitution; it only extends the principles over a larger territory, and this certainly is within the morality of the Constitution, and not contrary to, nor beyond, the expression of intention of any of its articles." If a new power had been added by construction to those powers assigned by the Constitution to the federal sphere, it was only the power to add to the domain of what Jefferson aptly called the "empire for liberty."<sup>12</sup>

The fact that, despite these assurances, Jefferson remained troubled about his constitutional scruples — for years after his presidency — only underscores the degree of his scrupulous regard for the "chains of the Constitution." Unable to square the acquisition of Louisiana and its incorporation into the Union with his theory of federal powers, Jefferson came to regard it as an extraordinary action of executive prerogative — he, as president, going beyond the strict limits of the law, for the good of the country. Even then, he still hoped for an "act of indemnity" by the nation, one that "will confirm & not weaken the Constitution, by more strongly marking out its lines."

### The Jeffersonian Presidency

With regard to the proper allocation of federal powers, Jefferson took

equally seriously the principle of separation of powers. It is a mistake to try to label Jefferson's presidency as either "strong" or "weak." Where the Constitution assigned powers exclusively to the president, Jefferson vigorously exercised them; where powers were assigned to or shared with other branches, however, Jefferson both preached and exercised strict restraint.

Unlike modern presidents, who assert the power as commander-in-chief to send U.S. armed forces anywhere in the world without the consent of Congress, Jefferson was respectful of Congress's war power. When U.S. ships fought against pirates in the Mediterranean, Jefferson — recognizing that the Constitution gave Congress alone the power to declare war — publicly took the position that until Congress authorized offensive measures, the Navy could engage only in defensive actions.<sup>13</sup> His position — which modern commentators consider one of the most restrictive interpretations of executive war powers ever uttered by an American president — showed that he wished the decision committing American naval forces to hostilities in the Mediterranean to be not a unilateral one, but one in which Congress shared.

Jefferson also held a quite narrow view of the executive power. On one occasion he wrote, "I am but a machine erected by the constitution for the performance of certain acts according to the laws of action laid down for me."<sup>14</sup> In his view, executive power was limited both by constitutional restraints and by law.

As president, Jefferson sought to keep his constitutional distance from the Congress. He could hardly have done otherwise without opening himself to charges of hypocrisy (by his enemies) or charges of backsliding (from his friends), for the Republicans in the 1790s had been sharply critical of what they perceived as Federalist attempts to institute an English monarchical and ministerial system. Consequently, early in his administration, Jefferson declared that he would abandon "all those public forms and ceremonies which tended to familiarize the public idea to the harbingers of another form of government." These included the annual speech to Congress, which to Jefferson was too reminiscent of the

king's opening of Parliament. In sending a written message rather than delivering it in person, he broke with the precedent that George Washington had set and started a tradition that lasted more than a century. Not until Woodrow Wilson did presidents deliver their state of the union addresses in person. The modern spectacle — with both houses of Congress assembled in the House chamber in wait on the president, whose presence is loudly announced and greeted with two separate standing ovations — would have appalled Jefferson.

In at least one area, however, Jefferson was a "strong" president: in his assertion of his equal power — equal with the other two branches of the federal government, particularly the Supreme Court (dominated at the time by Federalists) — to interpret the Constitution. The constitutional theory that scholars have called Jefferson's "tripartite" doctrine was fully developed in Jefferson's mind by the time of his presidency. He explained his doctrine in a letter written to Abigail Adams in 1804, defending his actions in discontinuing prosecutions and par-

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*Perhaps Jefferson's greatest political legacy is the extent to which he devalued politics.*

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doning offenders under the Sedition Act:

You seem to think it devolved on the judges to decide on the validity of the sedition law. But nothing in the constitution has given them a right to decide for the executive, more than to the Executive to decide for them. Both magistracies are equally independent in the sphere of action assigned to them. The judges, believing the law constitutional, had a right to pass a sentence of fine and imprisonment, because that power was placed in their hands by the constitution. But the Executive, believing the law to be unconstitutional, was bound to remit the execution of it; because that power has been confided to him by the constitution.

The Constitution, he concluded, "meant that its co-ordinate branches should be checks on each other." Accordingly, to give the judiciary the

right to decide questions of constitutionality "not only for themselves in their own sphere of action, but for the legislative and executive also in their spheres, would make the judiciary a despotic branch."<sup>15</sup>

Jefferson had seemed not at all troubled by the fear of conflicts arising from the departments' divergent interpretations of the Constitution. In part, this may have been due to the fact that, in Jefferson's day, for all practical purposes, the legislature and the executive continued to determine for themselves whether or not they were acting within the bounds of the Constitution. If a truly difficult conflict arose between two or more branches, it could be resolved by the ultimate arbiter of constitutional questions — the people, acting in their elective capacity. By periodically choosing officers for two of the three departments of national government, the people, Jefferson believed, have an opportunity to "reintegrate" the Constitution, by demonstrating their approval or disapproval of those branches' interpretation of it.<sup>16</sup>

### Power to the People

Though not an advocate of "frequent and untried changes in laws and constitutions," Jefferson nevertheless refused to look at constitutions with "sanctimonious reverence . . . like the ark of the covenant, too sacred to be touched."<sup>17</sup> Accordingly, he favored revisions of laws and constitutions, as the needs arose. His view was clearly distinct from that of Chief Justice John Marshall, who in his famous opinion in *McCulloch v. Maryland* argued that the Constitution was "intended to endure for ages to come" as a rationalization for the expansion of federal powers by judicial interpretation. Jefferson, with his Whig heritage of distrust of law and government, looked to the people rather than to the courts when he thought of adapting the Constitution, or of determining the application of its provisions, to new circumstances. Always suspicious of men in power, Jefferson was particularly reluctant to entrust so important a role as the interpretation of the federal Constitution to any one body of men — especially to a Supreme Court dominated, as it then

was, by John Marshall. Hence he preferred that constitutional difficulties remain unresolved, or that the mode of resolving them remain awkward and uncertain, than that mutual jealousies give way to confidence in the government at Washington.

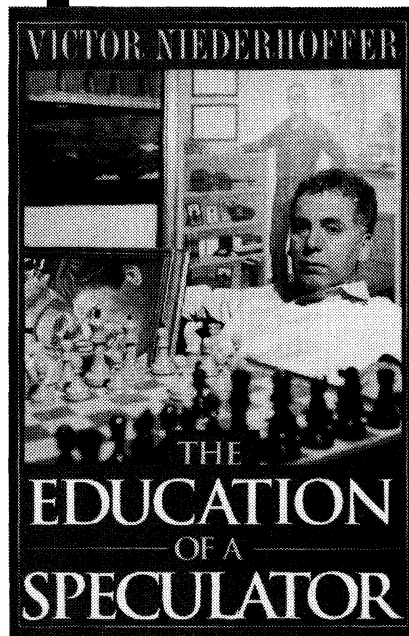
In the early 1820s, during the Virginia campaign against the claim that the United States Supreme Court was the ultimate arbiter of constitutional questions, Jefferson again emphasized the role of the people

themselves. As he wrote one correspondent in 1820, "I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power."<sup>18</sup>

The notion that control by the people over their government, according to

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their own "wholesome discretion," informed by education, constituted the "true corrective" of abuses of power is distinctively Jeffersonian. Indeed, the emphasis that Jefferson placed on popular participation and control — making the people themselves a vital element in constitutionalism — was the pre-eminent hallmark of Jefferson's constitutional thought. None of his contemporaries, with the possible exception of John Taylor of Caroline, quite so emphasized this element. It in fact underlay many of the other aspects of his constitutional thought. Both the pure theory of separation of powers as well as the theory of federalism that Jefferson espoused were ultimately derived from his thoroughgoing republicanism: with each branch of the federal government, and with each state in the Union, determining constitutional questions, potentially in conflict with one another, some common ground was necessary; and that common ground — in effect, the glue that held Jefferson's constitutional system in place — was in fact the active participation of the people.<sup>19</sup>

This explains Jefferson's lifelong emphasis on the importance of education as well as his support for a system of public schools. The purpose for his "Bill for the More General Diffusion of Knowledge," as he explained it in *Notes on the State of Virginia*, was that of "rendering the people . . . the ultimate guardians of their own liberty." "Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe their minds must be improved to a certain degree." Jefferson's bill sought to do so by giv-

ing all citizens a basic schooling in reading, writing, and history. The emphasis on historical education was quite deliberate, Jefferson explained:

History by apprising them of the past will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views.

Beyond this basic schooling, the best students — the "natural aristocracy," determined by merit, or "genius" — would receive advanced training at the institution to which he devoted the final years of his life, the University of Virginia, where he hoped the "vestal flame" of republicanism would be kept alive.

### Little Republics

In later years Jefferson coupled his support of public education with one other proposal, which he considered equally necessary to the preservation of republicanism: his proposed system of local government by "little republics," or wards. His proposal was to divide the counties into wards of such size that every citizen can attend, when called on, and act in person. "What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing & concentrating all cares and powers into one body." The "secret" of maintaining freedom, he suggested, was to make the individual alone "the depository of the powers respecting himself, so far as he is competent to them, and delegating only what is

beyond his competence by a synthetical process, to higher & higher orders of functionaries, so as to trust fewer and fewer powers, in proportion as the trustees become more and more oligarchical." This system of republics would become a vital element of constitutionalism.

"Where every man is a sharer in the direc-

tion of his ward-republic, or of some of the higher ones, and feels that he is a participator in the government of affairs, not merely at an election one day in the year, but every day; when there shall not be a man in the State who will not be a member of some one of its councils, great or small, he will let the heart be torn out of his body sooner than his power be wrestled from him by a Caesar or a Bonaparte," he also observed.<sup>20</sup>

Jefferson thus envisioned that the active involvement of citizens in the government itself would be the most

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*Liberty was Jefferson's highest value; he dedicated his life to what he once called "the holy cause of freedom."*

---

effective check on the abuse of governmental power. An educated, actively involved citizenry would be both self-reliant — managing directly those affairs to which individuals were alone competent — and vigilant, keeping a close watch over their elected officials to whom they had entrusted all other affairs, and making certain that they did not turn into "wolves."

Jefferson's proposed ward system also gives added meaning to his support for the principle of "rotation in office," one of whose goals is to increase the level of popular participation in government by mandating turnover. Term limits, as proponents argue today, can break the virtual monopoly that incumbent, professional politicians hold on some offices, and create a way to return to the "citizen-politician" model of the 19th century. The appeal of term limits to modern-day Jeffersonians is exactly the same as its appeal to Jefferson himself: it enhances the possibility that each citizen may become, in his words, "a participator in the government of affairs, not merely at an election one day in the year, but every day."

A full understanding of Jefferson's ideas regarding constitutional change — and indeed, of his constitutional thought generally — must take into account Jefferson's dual emphasis on education and participation. The essentially negative view of politics that



"What a fuss! — You'd think nobody ever ran over a mayor before!"

Jefferson held thus ultimately influenced his constitutional thought in a profound way.

Jefferson regarded as truly modest the achievements of his generation, believing that subsequent generations, learning from additional experience, would improve on the founders' handiwork, with the problem of maintaining a free government becoming far simpler as subsequent generations hit upon better and better solutions. Hence he recommended that every generation create anew their constitutions — a recommendation that reveals both his assumptions that constitution-making was a relatively simple matter and that the people, as a whole, were fully competent to the task.

### Jefferson's Legacy

Although he was an eminent member of what Dumas Malone has called the "great generation," Jefferson disclaimed its greatness. Throughout his life Jefferson deliberately downplayed his public service. For example, in 1800 he drafted a list of his services that emphasized his role in introducing olive trees and upland rice into South Carolina, noting that "the greatest service which can be rendered any country is, to add a useful plant to its culture."

Perhaps Jefferson's greatest political legacy is the extent to which he devalued politics. During nearly half a century of public service, Jefferson held many high political offices: President of the United States, Vice-President of the United States, Secretary of State, U. S. Ambassador to France, Member of Congress, Governor of Virginia. Nevertheless, he asked to be remembered in his epitaph for only three accomplishments: author of the Declaration of Independence, author of the Virginia Statute of Religious Freedom, and father of the University of Virginia. Liberty and knowledge, not political power, were his highest values.

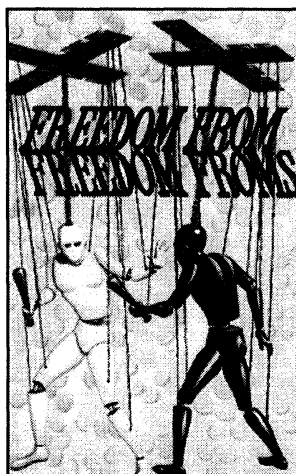
The author of the Declaration of Independence died on July 4, 1826, the fiftieth anniversary of the adoption of the Declaration, the date Americans have chosen for the celebration of the nation's birthday. Like his fellow Patriot of '76, John Adams, who also died that day, Jefferson was fully aware of the symbolism; his final words,

reportedly, were, "Is it the Fourth?" Significantly, he wrote in his last letter of the libertarian meaning of American independence: "May it be to the world, what I believe it will be, (to some parts sooner, to others later, but finally to

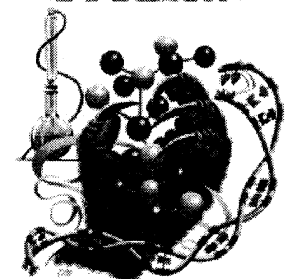
all,) the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government."<sup>21</sup> □

### Notes:

1. Jefferson's Response to Address of Welcome by the Citizens of Albemarle, February 12, 1790.
2. Jefferson to the Rev. Charles Clay, January 27, 1790.
3. Jefferson to Edward Carrington, May 27, 1788.
4. Jefferson to Edward Carrington, January 16, 1787.
5. Jefferson to Francis W. Gilmer, June 7, 1816.
6. Jefferson to Nehemiah Dodge and others, A Committee of the Danbury Baptist Association, in the State of Connecticut, January 1, 1802 (Draft).
7. See Jefferson to John Norvell, June 11, 1807 (suggesting that editors divide their newspapers into "four chapters" — "Truths," "Probabilities," "Possibilities," and "Lies").
8. Jefferson to Gideon Granger, August 13, 1800.
9. Jefferson to James Madison, December 24, 1825.
10. Jefferson to Samuel Kercheval, July 12, 1816.
11. Jefferson to Wilson Cary Nicholas, September 7, 1803.
12. Paine to Jefferson, September 23, 1803.
13. Jefferson, First Annual Message, to Congress December 8, 1801.
14. Jefferson to Dr. Benjamin Rush, June 13, 1805.
15. Jefferson to Abigail Adams, September 11, 1804.
16. See Jefferson, First Annual Message to Congress (Draft), December 8, 1801.
17. Jefferson to Samuel Kercheval, July 12, 1816.
18. Jefferson to William Charles Jarvis, September 28, 1820.
19. Cf. Mayer, David, *The Constitutional Thought of Thomas Jefferson*, Charlottesville: University Press of Virginia, 1994.
20. Jefferson to Joseph Cabell, February 2, 1816.
21. Jefferson to Roger C. Weightman, June 24, 1826.



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## Reprimand

# License to Steal

*by R.W. Bradford*

Exactly what does the First Amendment establish?

Does the Constitution's prohibition of laws "abridging the freedom of speech, or of the press" grant special rights to journalists, rights not enjoyed by other citizens?

Many journalists are convinced that it does. The public's right to know, they argue, is so important that journalists and publishers should be exempt from requirements others face to produce evidence and to testify in court. If, for example, a newspaper publishes information that would prove your innocence in a criminal case, and the reporter who wrote the story promised the source of that information that he would not identify him, the reporter will very likely refuse to testify or provide information. This "right to keep sources confidential" is widely cherished by reporters, but not by the courts, which routinely threaten contempt of court charges against journalists who cite it when refusing to testify.

Journalists sometimes see this right as similar to attorney-client privilege, doctor-patient privilege, or clergyman-penitent privilege. But plainly it is not. Those rights to confidentiality grow out of the right to be secure against self-incrimination, and a belief that an individual ought to be able to seek competent professional advice without the risk that his advisor will use what the information reveals about him in a court of law. If a person cannot communicate

openly with his attorney, he is effectively denied the right to defend himself. If a person cannot communicate openly with his pastor, he is effectively denied the right to seek spiritual help. If he cannot communicate openly with his physician, he is effectively denied the right to seek medical help.

All these rights to confidentiality emanate from the same source as the right to communicate confidentially with one's husband or wife: the other person involved is seen as an extension of oneself, so that being forced to reveal such a communication is tantamount to being forced to testify against oneself.

But the individual who seeks to tell a reporter something in confidence is neither seeking counsel of a highly personal nature nor engaging in the most intimate of communication. He is revealing information to the public. And the journalist who receives the information is not involved in an intimate relationship or counseling. He is gathering information to pass on to the public. There is no sense in which his relationship is analogous to these other forms of privileged

communications.

### **Expropriating Privacy**

Not content with this special privilege, journalists have recently begun to claim more new rights not granted to others. In March 1992, two young women applied for jobs at a supermarket in North Carolina. Their applications for employment contained false information about their backgrounds. And their applications were fraudulent in a more fundamental sense: they were not looking for work. They already had jobs, as producers for ABC News, which had given them a \$50,000 budget to go to North Carolina and get jobs with the supermarket so that they could conceal electronic equipment on their persons and record information about its operations.

Six months later, ABC News ran a report on the supermarket. It was an extremely negative report, resulting eventually in the supermarket losing millions of dollars and many of its employees losing their jobs. The supermarket's owners sued ABC for fraud. A jury found ABC at fault and required it to repay the salaries ABC's employees had received from



the supermarket, plus court costs and damages.

After the court decision, ABC staged a "town meeting" discussion for live broadcast. Among the members of the expert panel were perhaps the two most influential men in broadcast journalism: Roone Arledge, president of ABC News; and Don Hewitt, long-time producer of *60 Minutes*, the television news program that virtually invented "investigative" broadcast journalism.

The very first question from the audience consisted of a short speech about the importance of freedom of the press, concluding with these words: "My question is that if you take away the camera or if you take away the journalists' right to go anywhere, don't you subvert the democratic process?"

Don Hewitt thanked the questioner for giving him a "softball question," and then gave the following answer:

We started doing this [using hidden cameras] many many years ago and I don't see anything wrong with it. The only thing I see wrong with it now is that it's being used, I do see it being used as a stunt in many, many instances. But I don't see anything wrong with going in if you can. I don't think people have a right of privacy when they're committing a crime. I don't think people have a right of privacy when they're committing malfeasances [sic]. If it were illegal to show somebody on hidden camera committing a crime, then every crook who robbed a bank has got a lawsuit because he gets caught on a camera doing it. I don't think you have a right to prohibit anyone from coming into a premise where something illegal may be happening. Now they claim nothing illegal was happening and they claim that they have the documentation that it was.

This is a fascinating response. Hewitt offered two defenses for the behavior in question:

1. People who are committing crimes have no right to privacy.
2. If we denied people the right to misrepresent themselves in order to gain admittance to private property so that they can record the activities of people they believe have done something wrong, then we would also have to stop using cameras in banks to record criminal activities.

Each of these defenses is, of course, absurd. The U.S. Constitution protects all Americans from unreasonable

induce their employees to apply fraudulently for employment with other firms. Would Hewitt accept the legitimacy of secreting cameras in the offices of the executives of ABC?

Hewitt's second defense is just plain silly. No one has suggested that all photography ought to be illegal and grounds for a lawsuit. Is Hewitt really unable to see any significant difference between a bank openly photographing the activities in its lobby and a journalist fraudulently and secretly photographing individuals in a situation where they have every reason to believe that their right to privacy is being respected?

The discussion wandered and the subject of the right of journalists to invade people's privacy wasn't touched upon again until the hour was nearly over, when a member of the audience asked the following question:

Let's assume that a story is very important. It's a story of abuse of patients, serious public health. What sorts of things would be improper to get that story? Would you break into the premises at night? Would you think it was appropriate

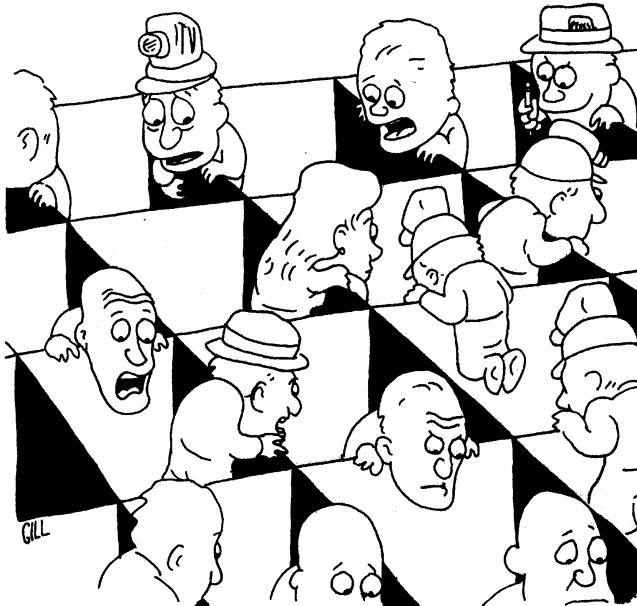
to jimmy the locks on the documents? Would you think it [would] be appropriate to place a bug in the office of the president to get that story? Assuming that the story was true, would that be justified?

Moderator Ted Koppel summarized the question "Are there any limits?" and directed the question to Hewitt. Hewitt responded with a single word: "No." Koppel was incredulous. "No?!?" he asked.

Hewitt repeated, "No!"

This was too much for Roone Arledge, whose network had just been ordered by a jury to pay for its fraud and invasion of privacy in the supermarket case. "Of course there are limits," he said.

Perhaps sensing the shock of those around him, Hewitt seemed to change his mind. "There are limits," he said,



search and seizure, whether they have committed crimes or not. To obtain a search warrant or to do surveillance of an individual in a private situation, law enforcement agents must convince a judge that there is reasonable cause to believe that evidence for a crime will be discovered. By Hewitt's theory, journalists should not be so constrained. Their belief that a person has committed a crime justifies any invasion of privacy.

Consider the fact that in Georgia, sodomy is a felony. By Hewitt's theory, television journalists could secrete cameras in the bedrooms of anyone they believe to be committing that particular crime and show the resulting pictures on television. Consider another example, this one closer to Hewitt's home. It is plainly illegal for corporate executives to

but it was difficult to tell what he meant, since his conversation then began to meander:

I find what's been going on here, these sweeping generalities, and nobody got down to specifics. The senator has these generalities. "You're entertainment" and "You censor people." Listen to all this stuff over there. They're all generalities. I mean if you had one specific it would be interesting, but you're

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*The Dallas Morning News apparently believes that freedom of the press includes the freedom to receive stolen property and profit from its publication.*

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making these wild statements. You're too good for that. You're one of the few guys who ever sat in the United States Senate who should still be there. You shouldna left. Warren Rudman shouldn't have left. Bill Bradley shouldn't have left. Paul Simon shouldn't have left, and it would have been a better country.

I'm sure you're thinking, okay, Don Hewitt surely doesn't believe that journalists may invade the privacy of anyone they believe is committing a crime, breaking into their premises at night, jimmying their locks if necessary, placing bugs in their offices. He

must have been drunk or disoriented or confused by the pressure of being interviewed in front of a television camera. I don't know, maybe he was.

### A License to Steal

A few weeks later, the *Dallas Morning News* got hold of thousands of pages of documents that were the property of the attorneys defending Timothy McVeigh, the man accused of planning and executing the Oklahoma City bombing. Among these documents was a page that seemed to be a confession by McVeigh. (McVeigh's attorney later said that it was a false statement they had prepared to show to a witness to see if it would shake his story).

It was obvious that these documents were the property of the defense attorneys. It was also obvious that they had been stolen, since their publication could only harm McVeigh's case. Nevertheless, the *Dallas Morning News* published them, raising the question of whether freedom of the press includes the freedom to receive stolen property and profit from its publication, as well as the question of whether publishing this particular document might constitute obstruction of justice.

On March 3, *ABC News Nightline* reported on the story. Anchorman Chris Wallace interviewed several journalists and attorneys on the issues involved. He posed the following question to Jeffrey Toobin, ABC Legal Analyst:

Jeffrey Toobin, you're a working reporter. Someone hands you a stolen document. Any qualms about using it, if you believe it to be true, any qualms about reporting it?

Without a moment's hesitation, Tobin answered:

Not really. I'd go with it if it were true. On an issue of this importance. There are 168 people dead here. People want to know about who did this. This is highly significant information in terms of learning who did this.

I don't know what to make of this. It seems many journalists see their occupation as a license to commit wrongdoing. I am one journalist who

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*60 Minutes' producer said, "I don't think you have a right to prohibit anyone from coming into a premise where something illegal may be happening."*

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does not. The principle of equality before the law is one of the most important principles of a free society. Our ancestors fought and died for it. The notion that some occupations endow those who pursue them with the right to exempt themselves from normal morality and law is pernicious and wrong, whether that occupation is policeman or journalist. □

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### notes to "Mysteries of the Titanic," continued from page 28

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53. Robert Hitchins, Mersey, BI 48; Frederick Fleet, AI 366; Arthur Peuchen, AI 338; Mrs. J.J. Brown, in Gracie 134-39. 54. Sir Cosmo Duff Gordon, BI 284, 288, 278. 55. Charles Hendrickson, Mersey, BI 119, 121. 56. Mersey, George Symons, BI 258. 57. Thomas Scanlan, Albert Horswill, Mersey, BI 275. 58. Mersey, Robert Pusey, BI 295. 59. Mersey, BI 285; Duff Gordon, BI 286. 60. Lightoller, AI 88; Ismay, AI 9; P.A.S. Franklin, Smith, AI 672. 61. Steven Biel, *Down with the Old Canoe: A Cultural History of the "Titanic" Disaster* (New York: Norton, 1996). 62. Biel 72, 128, 132. 63. George Bernard Shaw, *London Daily News*, May 22, 1912; in Shaw, *Agitations: Letters to the Press 1875-1950*, ed. Dan H. Lawrence and James Rambeau (New York: Ungar, 1985) 149. 64. Hoffer, esp. 135-39, 208-209. 65. Shaw 148;

Thomas Hardy, "The Convergence of the Twain." 66. Geoffrey Marcus, *The Maiden Voyage* (New York: Viking, 1969) 150. 67. August Wennerstrom, in Wade 299. 68. Like many other writers, Biel (156-60) recognizes the appeal of this dramatic situation, but he prefers to attribute it to Cold War nostalgia for an age that offered "time to die," instead of instant death in atomic warfare. One wonders whether this theory also applies to *King Lear*.

69. Isaacs, BI 930; Lord, *Night to Remember* 77-78, 86-87, 103-104, 111; Cooper 43. 70. As Biel (8) considers the disaster. 71. Etches, *New York Times* (April 20, 1912) 9. 72. Cooper 156. 73. Julian Barnes, *A History of the World in 10 1/2 Chapters* (London: Cape, 1989) 173-74. In 1912, Beesley had published a book arguing (A) that *Titanic* was the world's "safest ship";

(B) that she had succumbed to a "one-in-a-million accident"; (C) that everybody is morally responsible for such accidents, because everybody shares "the immorality of indifference"; and (D) that "the remedy" for this universal sin is legislation, by which "the possibility of such a disaster occurring again [will be] utterly removed" — *The Loss of the SS Titanic: Its Story and Its Lessons* (Boston: Houghton Mifflin, 1912) 4, 233, 240, 248-49. The conclusion is similar to Senator Smith's, but the logic is much more mysterious. 74. Edwards, BI 453. 75. Paul Heyer, "Titanic" *Legacy: Disaster as Media Event and Myth* (Westport CT: Praeger, 1995) 126. 76. *New York Times* (February 9, 1997) H14. 77. Oldham 216, 220-24, 232; quotation 217. 78. Oldham 229-30.

## Discovery

# Mission to Moscow: The Lost Papers of Ludwig von Mises

by Richard Ebeling

In an obscure, nondescript building in Moscow lay thousands of pages of intellectual treasure.

During the first days of May 1945, the war in Europe was approaching its end. The Soviet Army, having conquered eastern Germany, began its conquest of Bohemia. Reaching the small town of Halberstadt, the Soviet soldiers began to fan out and occupied the railway station. On a track

siding were 24 box cars that the Nazi authorities had been preparing to evacuate to territory still in their control.

When Soviet officials opened the box cars, they found them stuffed with documents, files, dossiers, and personal and official papers that the Gestapo had looted from France, Belgium, Austria, Holland, Poland and many other countries, including Germany itself.

Among these literally millions of pages of stolen documents were the "lost papers" of Ludwig von Mises.

### A Lion of Capitalism

In the period between the two world wars, Ludwig von Mises was one of the most famous and controversial economists on the European continent. Born in Lemberg, Austria-Hungary on September 29, 1881, Mises entered the University of Vienna in 1900 and was awarded a doctoral degree in 1906. In 1909, Mises was hired by the Austrian Chamber of Commerce in Vienna as an economic advisor. And in 1913, he was given the title of privatdozent, giving him the right to teach at the University of Vienna as an unsalaried lecturer.

For the next twenty-five years,

while he was living in Europe, Ludwig von Mises caused firestorms of controversy. In 1912, Mises published *The Theory of Money and Credit*, in which, besides its many original theoretical insights, he demonstrated that inflations and depressions were not inherent to a capitalist economy, but were the result of government control and mismanagement of the monetary system.

But the whirlwind of debate that surrounded him for the rest of his life was caused by an article he wrote in 1920, and two years later expanded into a profoundly important book, *Socialism*. In this book, Mises demonstrates that the central planners of a socialist state would have no way of knowing how to use the resources at their disposal for least-cost and efficient production. Without market-created prices, the planners would lack the necessary tools for "economic calculation." The reality of the promised socialist utopia would be poverty, economic imbalance, and social decay. Furthermore, Mises demonstrated that any type of collectivism that was applied comprehensively would result in a terrible tyranny, since the state would monopolize everything needed

for human existence.

In 1927, Mises published *Liberalism*, in which he presented the classical liberal vision of the free and prosperous society, one in which individual freedom would be respected, the market economy would be free, open and unregulated, and government would be limited to the functions of protecting life, liberty, and property. He followed with *Critique of Interventionism* (1929), in which he argued that the interventionist-welfare state was not a "third way" between capitalism and socialism, but a set of contradictory policies that, if fully applied, would eventually lead to socialism — and that Germany was heading down a dangerous political road that would lead to the triumph of national socialism.

### The Theft and Its Aftermath

Not surprisingly, both Marxists and Nazis viewed Ludwig von Mises as a serious intellectual enemy. In fact, in 1926, the Soviet journal *Bolshevik* published an article calling him a "theoretician of fascism." What was his "crime"? In a 1925 article on "Anti-Marxism," Mises had written that a Marxist Russia and a "national social-

ist" Germany would be natural allies in eastern Europe — thereby anticipating the infamous Nazi-Soviet pact of 1939. By 1932, Mises knew that the coming Nazi victory in Germany would threaten Austria. As a classical liberal and a Jew, he could be sure that after the Nazis took over Austria, the Gestapo would come looking for him.

In March 1934, he was offered a way out by William E. Rappard, director of the Graduate Institute of

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*The employees of the archive where Mises' papers were kept were forbidden to tell even family members where they worked; they couldn't even eat at restaurants patronized by foreigners.*

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International Studies in Geneva, Switzerland, who invited him to accept a position as Professor of International Economic Relations. He accepted and moved to Geneva in October 1934.

But Mises kept his apartment in Vienna, where he and his mother had been living since 1911. After she died in late 1937, he returned the apartment to the owner of the building, but continued to sublet a room from the new tenant. In this room he stored his papers, manuscripts, family and personal documents, correspondence, and files of his own and other writers' articles, as well as most of his personal library, which included thousands of volumes.

In March 1938, Germany annexed Austria. Within a few days the Gestapo came to Mises' apartment. He was safe in Switzerland, but the Nazis boxed up everything in his room and carried it off. In March 1939, Mises sent out a let-

ter of "information" to friends in Europe, explaining what had happened to his possessions. Friends still in Vienna had attempted to intercede on his behalf to get back his papers and belongings. The Gestapo claimed that they did not know where they were. Until his death in 1973 in New York, Mises believed that everything had been destroyed — either by the Nazis or in the chaos of the war.

But Mises' papers had not been destroyed. Instead, they had been kept by the Nazis and had ended up in Halberstadt, Czechoslovakia, along with most other documents, papers and archival collections the Nazis had seized in various German-occupied countries. The 24 railway box cars in which this massive cache was stored were turned over by the Soviet Army to the KGB, and transported to Moscow.

In the 1950s a special building was constructed in Moscow to store and preserve these papers, including 20 million captured documents from 20 different countries. From the outside, the building looked like an ordinary residential complex. It had no nameplate on the door, and only the bars on the windows suggested that it was something other than what it appeared. For the next 45 years the only people allowed access to the documents stored in the building were members of the KGB and the Ministries of Police and Foreign Affairs. The employees of this special archive were forbidden to tell even family members where they worked, and restricted from meeting with foreigners — or even eating at restaurants patronized by foreigners.

Each of the archival collections had been carefully studied and organized by the KGB. Mises' papers were divided into 196 files containing more than 10,000 items. In 1951, the KGB prepared an index to his papers, with a one-paragraph description of each of the files. The entire collection was labeled "Fund #623—Ludwig von Mises."

With the collapse of the Soviet Union in 1991, the documents were declassified, and the archive was opened and

renamed the Center for Historical and Documental Collections. Even foreigners could now request to see parts of the collection.

## Tracking Down the Papers

I first heard a rumor that Mises' papers might be in Moscow in summer 1993. My wife Anna and I were visiting Vienna to look for archival material about his life for the intellectual biography that I am now writing, a Viennese friend told me that some German diplomats had been in Moscow looking for material about anti-fascist Germans and had come across a reference to Mises' name among the indexes of captured documents they were permitted to examine.

In 1994, I had found Mises' "information" letter from 1939 among Friedrich Hayek's papers at the Hoover Institution at Stanford University, so I now had a clearer idea of exactly what the Nazis had stolen. But it was only in July 1996 that I found out the exact location of Mises' "lost papers." I went to the Holocaust Museum in Washington, D.C., hoping that the researchers there could tell me whether a Gestapo file on Mises had survived the war. No one knew of one. I asked a research staffer whether they could find out if any of Mises' papers were

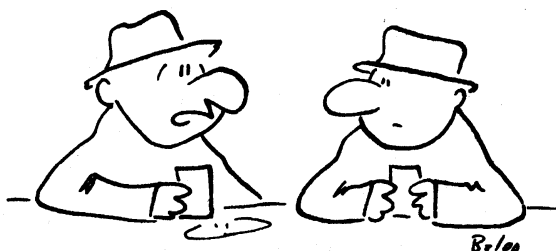
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*Why didn't the existence of Mises' papers come to light before now, and why hadn't anyone taken the time to examine them and obtain copies?*

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now in Russian hands. She introduced me to a senior researcher, Karl Modek, who specializes in Holocaust material relating to the Soviet Union. Opening a spiral binder containing the names of the Russian archives, he turned to the pages listing the fund numbers and the names of collections in the archive. There it was: "Fund #623—Ludwig von Mises."

Since the archive has been open to everyone since 1991, a question arises: why didn't the existence of Mises' papers come to light before now, and why hadn't anyone taken the time to examine them and obtain copies? I



"My wife treats me like royalty — she sends articles about my shortcomings to tabloid newspapers."

found out the reason only this month, from Dr. Kurt Leube, former personal assistant to Friedrich A. Hayek, a permanent research scholar at the Hoover Institution, and professor of economics at California State University at Hayward.

In 1994, Dr. Leube also had heard that Mises' papers appeared to have survived in Russia. He found out that some Austrian researchers, including Gerhard Jagschitz of the University of Vienna and Stefan Karner of the University of Graz, had traveled to Moscow and seen the indexes to Austrian documents captured by the Soviet Army. They confirmed that they had seen an index to Mises' papers. Dr. Leube asked them several times to examine the files and describe their contents. They wrote back that they had neither the time nor the interest.

In a speech delivered last month at Hillsdale College, Dr. Mansur Mukhamedjanov, the Director of the Moscow Center for Historical and Documental Collections, summarizes the situation concisely:

The Ludwig von Mises fund was accessible to researchers. But from the time when the archive has been opened nobody, not one researcher, looked into or worked with the materials of this fund. Russian economists who are involved in working out the concept of market reform never showed any interest in Mises' fund. I don't think they even know about its existence. Foreign researchers were interested in anything but Mises. Some of them probably saw the index and knew that such a fund existed, but nobody, I repeat, nobody ever showed any interest or desire to look into the documents. Our careful records show that no researchers ever requested Fund #623, "Ludwig von Mises."

And so the Mises papers remained unexamined until my wife and I arrived in Moscow last October. She is Russian-born and had spent almost all of her life in Moscow. She contacted friends in Russia who arranged invitations and visas for our trip to Moscow. On our behalf, they contacted the archive director to arrange access to Mises' papers. As Dr. Mukhamedjanov recalled, "You should have seen their faces when the first portion of the files was delivered to them from our storage! 'Are you interested in making any photocopies?' I

asked. Anna and Richard looked at me and said: 'Yes, we need to copy absolutely everything!'"

From October 17 to 27, we spent every working day examining each of the files. We arranged the photocopying or microfilming of virtually the entire collection of papers, manuscripts, articles, correspondence, personal documents and related material.

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*Newly discovered papers show Mises debating economic policy with the intellectual leaders of his time, including such notables as Friedrich Hayek, Oskar Morgenstern, and Eric Voegelin.*

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(These photocopies and the microfilm are now at Hillsdale College.)

### Lifting the Veil

What exactly did the Gestapo seize in 1938? An enormous amount of material. Ludwig von Mises had taught at the University of Vienna from 1913 until 1934 (except for the war years). He had organized a private seminar for Viennese scholars, which met twice a month in his offices at the Chamber of Commerce. He maintained a voluminous correspondence. And he was a prolific writer and a much sought-after policy analyst. All of these facets of his life are reflected in the "lost papers."

Mises kept copies of the course outlines and bibliographies for his university seminars. They trace many of his interests and areas of work. He devoted many semesters to the problems of money, credit, and the business cycle. He gave special attention to the problems of the methodology of the social sciences and the critics of the "subjectivist" or marginal utility approach to economic theory. Students were assigned the task of writing "protocols" or summaries of class lectures; Mises saved some of these and they give insights into his teaching style and method of argumentation. For example, in 1927 he delivered a lecture on Böhm-Bawerk's essay, "Power or Economic Law" (*Macht oder ökonomisches Gesetz?*). According to a summary pre-

pared by Fritz Machlup, who later became a leading expert on competition and monopoly theory, Mises emphasized that it would be better to use the word "power" exclusively in the political sense, since in the long run only government intervention can give agents in the private sector the ability to defy the forces of the market. He further argued that interventionist defenses of regulation are often at the most "primitive level" of theoretical understanding, and ignore the tendency of intervention in one corner of the market to create negative consequences for surrounding markets.

Mises also kept records of his private seminar, including lists of participants and topics. They show what a wide group of scholars, including foreign visitors and students of many disciplines, participated in the circle. In 1933, for example, Hugh Gaitskill, who later became the head of the British Labour Party, spent a semester in Vienna and attended the private seminar. He delivered a talk on "Economic Calculation," criticizing Mises' views on planning under socialism. Also in 1933, Eric Voegelin, later a leading conservative in the United States, delivered a talk on "The Politics of Fascism." Papers were also delivered by the famous sociologist Alfred Schutz (who had studied with Mises at the university), by Friedrich Hayek, and by Oskar Morgenstern, who later developed "Game Theory." Among the more important artifacts is a series of papers on the methodology of the social sciences — some by Mises and Morgenstern — that was delivered in 1934; these were preserved intact.

As senior economic analyst for the Austrian Chamber of Commerce, Mises was responsible for analyzing the economic situation in Austria and the effects of various policies proposed or implemented by the Austrian government. Among the papers are several critically evaluating the tax and spending policies of the government during the Depression. They show Mises as a careful "applied economist," weighing up the economic situation in Austria and arguing for cuts in spending and taxation, lowering of tariffs, elimination of exchange controls, and proposing that state-run enterprises be cut back. Among the new documents are many he wrote after 1918, when he was trans-

ferred back to Vienna to work as an economic specialist for the Austrian War Ministry. In this capacity, he often wrote detailed memoranda on topics such as war inflation, the currency relationship between Austria-Hungary and Ukraine, the problems of government borrowing in wartime, and the relation between private industry and the military. (The archive also includes many of the documents relating to Mises' ser-

been considered lost during the war, like virtually all his work from this period. The newly discovered articles include a speech (given in 1926 after a lecture tour in the United States) that describes the growing danger to the American economy of interventionism.

Mises kept almost everything. The fund reveals that he was an active participant in an organization devoted to lowering tariffs throughout Europe, and it includes the records of invitations from research institutes, professional associations, universities — even the League of Nations. It even includes train ticket stubs from a journey to a conference and the receipts from meals eaten at hotels during various lecture tours.

More importantly, the fund also includes a number of unpublished articles on topics such as "Business Management and Bureaucratic Administration" and "The Logical Problems of Economics." Here, in greater detail than in some of his other works, Mises analyzes the harmful effects of state-managed industries, and describes how growing government intervention and control affects public psychology and decisions in the private-sector.

Mises maintained a large correspondence with many economists and businessmen, as well as with organizations such as the Rockefeller Foundation, through which he helped his students and colleagues obtain grants for extended research trips to America.

The fund includes these along with thick files of other correspondence — including not only letters he received, but carbon copies of his own letters. They show Mises debating economic policy with the intellectual leaders of his time, including such notables as Friedrich Hayek and Lionel Robbins, then a leading expositor of Austrian economics at the London School of Economics. Subjects include the monetary causes of the great Austrian inflation of the early 1920s and the unworkability of socialism. After Hayek moved to London in 1931, he and Mises shared letters comparing and criticizing increasingly interventionist policies in England and Austria. And in December 1931, Robbins wrote that while others in England were being won over to collectivism, the consequences of government intervention during the Great Depression were making an even "stronger" case that only a

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*Among millions of pages of documents stolen by the Nazis were the "lost papers" of Ludwig von Mises.*

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vice in World War I, when he served as an artillery officer on the Russian front.) In 1919, he evaluated for the Austrian Finance Ministry the costs and benefits of a trade treaty with newly independent Hungary, which had a newly established socialist government. And he served as the financial director for the Austrian Reparations Commission in the early 1920s, for which he arranged the financing of Austria's payments to the Allied powers.

Mises wrote a large number of articles on a wide variety of economic policy topics for Viennese newspapers and journals — articles that up till now, had

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*Mises argued that the interventionist-welfare state was not a "third way" between capitalism and socialism, but a set of contradictory policies that, if fully applied, would eventually lead to socialism.*

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free economy could solve the problems of the world.

Through these thousands of pages of material, Ludwig von Mises is shown to be more influential and important than even his strongest admirers had imagined. They add to our knowledge of Mises as economic theorist and policy analyst, someone thoroughly conversant with the historical facts and statistical data of his time. They demonstrate the great impact he had on a large number of students and scholars and his enormous influence on Austrian economics between the wars — an influence whose scope and meaning can now really be understood for the first time.

In sum, the papers discovered in Moscow provide a rich source of new information about the most important free market economist of the 20th century, and lift a veil from the life and work of one of the leading figures of our time. □

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# Do Inalienable Rights Outlaw Punishment?

by John C. Goodman

A closer look at George Smith's case against capital punishment.

George Smith's provocative article ("A Killer's Right to Life," *Liberty*, November 1996) intended to make the case against capital punishment. It did much more. Unintentionally perhaps, Smith actually made a case against punishment as such. Indeed, if one follows Smith's argument to its logical conclusion, one has a case against any kind of legal procedure, criminal or civil.

Here is the essence of Smith's position:

(1) Everyone has inalienable rights, even people who commit heinous crimes.

(2) Since the meaning of "inalienable" is "cannot be transferred, surrendered, or forfeited," people who commit heinous crimes do not thereby forfeit their rights.

(3) Capital punishment by definition deprives people of their inalienable right to life.

(4) Right implies duty: if Y has the right to take action X, everyone else has an obligation not to interfere with Y's taking action X.

(5) Therefore, we (the non-criminals) have an obligation not to violate a criminal's right to life by executing him.

Although Smith focuses on capital punishment, the structure of the argument applies with equal force to imprisonment, which is a form of enslavement and surely deprives the prisoner of the right to pursue his own happiness. By implication, other sanctions — such as fines and restraining orders — could be called into question as well.

If Smith is correct, we could not

have a system of enforceable laws. But enforceable laws are essential to a free society. Are individual rights incompatible with social order? I don't think so.

I think Smith's argument goes wrong the same way that the arguments of many other libertarians go wrong: it assumes that all actions belong to one of two sets, those people have a right to take and those they have no right to take. From this it follows that either we have a "right to punish" those who violate the rights of others, or we have no such right. The latter conclusion would lead to chaos. But to say we have a "right to punish" — indeed, to say we have a "right to use force" — can easily lead to contradictions, as the following examples illustrate.

Example. Consider two people in the middle of the ocean on a lifeboat built for one. Most of us would have no problem concluding that each is justified in trying to survive. But to say each has a "right to try to survive," because, say, of a general "right to life," implies that each is obligated not to try to survive because of the obligation of each not to interfere with the other's exercise of his rights.

Another example. Murphy, be-

yond all reasonable doubt, is judged (by a jury and everyone else in his community) guilty of committing murder. Acting on this judgment, Murphy's neighbors imprison him. However, people are not infallible. And in this case, Murphy is actually innocent — despite the fact that all evidence points to his guilt.

As in the case of the lifeboat example, most people would feel comfortable with the following statement: Murphy's neighbors are justified in trying to imprison him, *and* Murphy is justified in trying to escape. But to say that Murphy's neighbors have a right to imprison him implies that he has a moral obligation to go to prison. On the other hand, to say that Murphy has the right not to be imprisoned (because he hasn't done anything wrong) implies that his neighbors are obligated not to imprison someone judged to be guilty beyond a reasonable doubt.

In both these examples, people are justified in taking conflicting actions. Can we also say there is a conflict of rights? If every right implies a duty not to interfere with the exercise of that right, then a conflict of rights implies a contradiction. (More formally, if rights conflict, they are not "compossible.")

These examples suggest a sort of

moral Gödel's Theorem. Rights theory must always be either incomplete or contradictory. If we want to avoid contradictions, there must be a set of actions to which the terms "right" and "no right" simply do not apply.

I propose that any time justifiable force is being used, the language of rights does not apply. There is nothing

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*If Smith is correct, we could not have a system of enforceable laws. But enforceable laws are essential to a free society. Are individual rights incompatible with social order? I don't think so.*

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wrong with the statement that "an act of force violates a right." There is something wrong with the statement that "there is a right to use force."

To justify the use of force requires a theory that is more fundamental than the theory of rights. Call it meta-rights theory. The language of such a theory would be the language of justice. Among the conclusions of meta-rights theory: (1) we are justified in punishing those who violate the rights of others, and (2) through their evil deeds, those so punished forfeit not their inalienable rights, but the moral authority to invoke the concept of right in order to avoid punishment.

### An Incompleteness Theorem

Many philosophers would object to the notion that every right entails a correlative duty on the part of others not to interfere with the exercise of that right. Wesley Hohfeld, for example, argues that some justifiable actions are "mere liberties," which impose no duties on others. On this view, "mere liberties" are subordinate to, or at least have lower status than, "claim rights." What seems to be needed, however, is a justification for actions that has higher status than claim rights, not lower status. In order to answer Smith, we must be able to distinguish circumstances when we must respect rights from circumstances when we have no such obligation.

Fortunately, my task here is more narrow. I want to persuade the reader

that a certain view of rights is untenable. Accordingly, consider the following five characteristics of rights:

- (1) All rights are individual rights.
- (2) All rights entail obligations on the part of others not to interfere with the exercise of those rights.
- (3) All rights are known, or at least easily discovered and verified.
- (4) Rights theory describes all actions (completeness).
- (5) All rights are compossible (noncontradiction).

These characteristics, broadly considered, constitute the classical view of rights. They are imbedded in the general theory of the common law. And they are consistent with Lockean theory — à la Robert Nozick. But even to one who is not a libertarian, a rights system with these characteristics should have considerable appeal.

To acknowledge and respect rights is a hallmark of a civil society. If, in addition, the system of rights satisfied the five characteristics, moral people would be assured that through voluntary action and free exchange they could act freely — secure in the knowledge that whenever they acted (a) their actions would be sanctioned by right, (b) all others would have an obligation not to interfere with their actions, and (c) their actions would not infringe on the rights of others.

The desirability of such a system of rights is almost self-evident, regardless of where one believes that rights come from (God, A is A, legislative fiat, etc.). It would seem, therefore, that a task of moral philosophy should be to discover and specify such a system of rights.

Now put aside all your preconceived notions of what rights people have and consider all the possible allocations of rights. Is there any conceivable way to assign rights that satisfies the five characteristics? Yes, there is. There might be only one rights holder (a king who has the right to do whatever he wishes) or only one permissible action (no one has the right to take any action other than bow to Mecca). Simplistic notions like these meet all five characteristics, but they do so at the expense of an absurd oversimplification of society.

**THEOREM:** *As long as the number of rights holders and the range of permissible actions are robust, no system of rights can satisfy all five characteristics.*

I will not attempt a formal proof, leaving that for professional philosophers more adept than I. Intuitively, however, we have already given two examples in support of the theorem. Let's consider one more.

Suppose McCoy steals a pig from Hatfield. Hatfield apprehends McCoy, retrieves his pig, and asserts his right to punish McCoy. Specifically, Hatfield asserts the right to administer X lashes, which implies that McCoy has an obligation not to interfere. Hatfield moreover, agrees that were he to administer X + 1 lashes, this would be too much punishment — constituting a violation of McCoy's right not to be punished beyond just desert and giving McCoy a right to retaliate against Hatfield.

The questions for moral philosophy are: (1) Is there a right to X which imposes a correlative duty on McCoy? and (2) Is X knowable? By the second question, I mean: Is there an objective method for deriving X, independent of the subjective claims of the two parties? If the answer is no, the right to punish in this case cannot satisfy characteristic number five.

Note that the right to take specific actions must derive from more general rights. With respect to punishment, if there is no such thing as a right to a specific retaliatory act, then there is little point in asserting a general right to retaliate.

As a practical matter, the Hatfields and the McCoy's may negotiate a pun-

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*Rights theory must always be either incomplete or contradictory.*

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ishment "price" for the theft of the pig; indeed, this is how such disputes used to be resolved. Or, they can submit the question to trial by combat. Or to trial by jury.

These methods of deciding outcomes jettison the language of "rights" and rely instead on procedure. If a procedure is justified, we may assert that the actions that flow from it are justified. But, in doing so, we are outside the confines of the five characteristics we assigned rights.

Just procedures may encompass subjectivity and even error. We may

conclude, years after the fact, that we punished an innocent person and violated his rights — but that we were right in believing that we were justified in doing so at the time because we followed correct procedures. By contrast, we can never conclude we had a right to violate a right.

The conclusions reached here have application to the long-running dispute between anarcho-capitalists and limited-government libertarians.

A final example. Hatfield, AK-47 in hand, is marching McCoy down the street toward a hangman's noose. McCoy has committed a thoroughly reprehensible act and deserves to be hanged. Even so, McCoy lies and declares his innocence. Fellow townspeople have no knowledge of the facts surrounding the original crime.

Are the passersby obligated to stand aside and let Hatfield hang McCoy? Or, since hanging is a violent and irreversible act that potentially

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*We may conclude, years after the fact, that we punished an innocent person and violated his rights — but that we were right in believing that we were justified in doing so at the time.*

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threatens everyone, are passersby justified in stopping the execution and demanding evidence of a crime? Failing to be convinced of McCoy's guilt, are they justified in prohibiting the execution indefinitely? If you answer "yes" to the second and third questions, then by implication you accept the argument for a minimal state that may legitimately act despite lack of unanimous consent by the governed.

We have now come full circle on Smith's question about capital punishment. Hatfield cannot claim he has a right to hang McCoy, because that would obligate everyone else not to interfere. Other people cannot be so obligated independent of their knowledge of the facts. However, Hatfield can claim he is justified in hanging McCoy (despite McCoy's inalienable rights), and a judge and jury may legitimately agree with him. □

## Critique

# The Hollow Ring of Inalienability

by Timothy Virkkala

Is capital punishment just? The answer to that question falls under the domain of moral and political philosophy. Appropriately, George Smith began his disquisition on the subject with a frank and humble statement of how such questions are answered: "Doing political philosophy consists largely of deciding where we don't want to go and then figuring out a way to end up somewhere else."

Where didn't he want to go? "I felt no sorrow whatever at the thought of executing a brutal and sadistic killer — and, to be honest, I still don't. But there remained the nagging issues of inalienable rights and whether capital punishment is consistent with the libertarian theory of restitution." So above all else, Mr. Smith demanded that any justification of capital punishment be consistent with "the libertarian theory of restitution" and the idea of "inalienable rights."

This being the case, we should not be in the least bit surprised to find strong negative reactions to his fascinating article. Why? Because few libertarians put much stock in the idea of "inalienable rights" (which even its adherents find confusing), and because there is not *one* libertarian theory of restitution, but *many*. A case against capital punishment that is twisted around these two notions can only seem weak to most of us. It would have been more effective to concentrate, say, on the outrageous moral horror of making a mistake in judging the accused in capital cases.

Smith writes:

The concept of inalienable right, as used by individualist thinkers, arose during the social contract debates of the seventeenth and eighteenth cen-

turies. Social contract theory has many variations. In its early forms, it was often used to justify absolute sovereignty. Philosophers claimed that the people had irrevocably transferred all of their rights to government, so their rights could not be restored without the government's consent. Since the social contract was an imaginary construction, not a historical reality (virtually all philosophers agreed on this point), there was no way to decide empirically which rights had been surrendered to government and under what conditions.

All well and good.

In their assault on absolutism, individualist philosophers maintained that some rights can never be delegated to government, because they are inalienable. Such rights are inherently linked to innate human characteristics which even consent cannot transfer, abandon, or forfeit. If a human faculty, such as conscience, cannot be alienated, then neither can the right to exercise that faculty.

Many things can be written about this passage. That it makes precious little sense seems obvious enough: if a faculty cannot be alienated, then there is no point in having a right to it. After all, we use rights to defend against actions that harm us. If we can be harmed, the relevant faculty can be alienated, no?

Consider: I have the faculty of reason. But then Joe Blow whacks me on the head, and I'm left in a booming, buzzing confusion, repeating words I'd known in the past, but without sense or sensibility, rhyme or reason. Do I

then have the faculty of reason? No. Injured by the blunt, unreasoning fists of Joe Blow, my most precious trait has been taken from me.

We talk of rights to threaten the likes of Joe Blow, so that such blokes think twice (at least) before swinging their fists at heads as precious as mine. Rights are articulations of threats. We can reify them all we want, pretend they have some sort of deep metaphysical meaning, pretend they are built into the warp and woof of things, but they remain signals of actions. They remain threats — enhaloed, no doubt,

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*If a faculty cannot be alienated, then there is no point in having a right to it.*

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with the rewards of peace (no one would accept them if they did not entice as well as threaten); but hallowed or not, they are first and foremost game plans for retaliation. *If you cross this line, a right subtly says, then we will take action.*

With force.

Not merely defensive force, but retaliatory force, too. (This understanding of rights may rub against the grain of much rights talk. But consider: a right is a claim to obligatory treatment; "obligatory treatment" means treatment that we can "legitimately compel" from others. When we say that the flip side of a right is an obligation, we mean that we may react with force if that right is violated.)

After the fact of any conflict — any tussle in a bar, any forcible groping in a dark passage, any skirmish in a subway — the peaceful people will pick up their law books and sort out the mess. And they will not hesitate (I hope) to exercise police power to bend the will of the recalcitrant malefactor. Joe Blow may have won the fight, rendering me senseless, but my rights direct my neighbors or agents to arrest, try, and (I also hope) convict Mr. Blow.

The punishment? Capital? Well, here the whole question gets difficult.

One of the difficulties is right here before us. As with so many moral concepts, we are dealing as much with fiction as with fact.

This can't be helped, of course. The realm of values and ideals and norms

and the like — indeed, of the idea of "good, better, best" — is in our heads, and turns on our imaginings nearly as much (if not more) than on the objects of our intentions. And we can't really get around this: while the *objects* of our intentions often seem to have that definite, unflighty feel of "fact" about them, around many of our imaginings, utopias, plans, and stratagems the flight of "fancy" seems a more justly placed category.

Though I'm sure Smith will balk at this assertion of mine, even he suggests as much. Remember the story he told? First, there was social contract theory, "an imaginary construction" that was meant to solve problems of conflict. Against this fiction the individualist wielded a new kind of right, an "inalienable" one. Where did he find this right? In the deep ontological structures of the Life World? The bowels of Christ? Faërie? Oh, all sorts of origins were claimed for these rights, but a phrase of our vulgar age will do as well as any: "he pulled it out of his ass." Social contract theory was a fiction, and the best weapon against its abuse was also a fiction. These days we have anti-missile missiles; in days of yore they made do with *anti-fiction fictions*.

For of course inalienable rights were *posited*, "made up." Before social contract theory blossomed, such rights had little play in human discourse. (Their prehistory can be constructed, of course, but so can the "social contract" — Aristotle used the theory, after all, when he needed a rabbit but had only a hat.) But with the rise of contractarian thinking, of a sudden inalienable rights appeared in the world, doing marvelous things. Political philosophy thus mirrored the world of literature: Cervantes and Hobbes, Fielding and Locke, Sterne and Rousseau . . . who says there is no progress in the arts? Even unto the present age we are awash in all types of fictions and in all types of rights.

Inalienable rights may be fictional, but this does not make them *meaningless*. (After all, fiction is not *meaningless*.) And because they were invented to fight a peculiar twist in contractarian moralizing, they had their own distinctive essence, and differed from other rights often talked about. "Inalienability" did the trick. It unsettled the set notions of authority, allowed for the

freeing up of the avenues of political obligation, and helped make a great deal of room for individuals to find their own ways through the maze of this world.

But despite these political and social revolutions the payoff for inalienable rights was always a little hard to figure exactly, because the fiction it opposed was itself more than a bit slippery. It had something to do with rebellion, with justifying (some) revolts. But beyond that its meaning and applicability were always more than a little confused.

After all these years, for Smith to dust it off and turn this hoary tool into a weapon against killing convicted murderers — well, doesn't this seem a bit odd?

Of course, odd fictions can be fun and challenging, even useful. Hey, I *like* fiction. Indeed, even now I'm re-reading *The Lord of the Rings*, and a more-fictive-than-thine fiction can hardly be imagined. And there's no doubt that untrue tales and arresting images have often been used in philosophy to make a point. Remember Gyges' Ring of Invisibility in Plato's *Republic*? If you had a ring of power,

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*Where did the individualist find this "inalienable" right? In the deep ontological structures of the Life World? The bowels of Christ? Faërie?*

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would you use it? (Let's all think about this for a minute. Okay . . . enough!)

I think Smith succumbed to a dangerous temptation, to use a tool forged for one purpose for a completely different purpose. Ideas have consequences, and some ideas force one's hand in peculiar ways. He would better have snuck to the Crack of Doom and thrown his Ring of Inalienability into the fire.

And taken another, very different, crack at capital punishment.

Perhaps in another try he might arm himself with better fictions, and maybe even a few facts. After all, facts have their uses, too. □

George Smith's reply to these criticisms will be featured in the next issue of *Liberty*.

# Reviews

*Emancipating Slaves, Enslaving Free Men: A History of the American Civil War*, by Jeffrey Rogers Hummel. Open Court, 1996, xiii+421 pp., \$35.96 (hc), \$17.96 (sc).

## The Bloody Hinge of American History

Robert Higgs

The Civil War was the Great Event of American history. Much of what happened in the preceding centuries can be seen as part of a process that culminated in the war, and much of what has happened since can be seen, directly or indirectly, as a consequence of the war. Before the war, millions toiled in legally sanctioned lifetime slavery; afterward, the laws permitted slavery only as punishment for crime. Before the war, the country was constitutionally a federation of sovereign constituent states (these United States); afterward, it was de facto a unitary state with a dominant central government (the United States). Before the war, individual freedom had tended to expand; afterward, it tended to shrink.

No subject in American history has given rise to as much writing — thousands of books and countless articles — as the Civil War. Why do writers continue to grind out still more? Haven't previous authors viewed the great conflict from every conceivable perspective, supported judgments for and against every significant politician and general, and traced the paths of thousands of others involved in the fray? Surely, one might have thought, at this stage no one can do much more than sweep up the crumbs.

Yet, notwithstanding the enormous

literature, the publication of Jeffrey Rogers Hummel's *Emancipating Slaves, Enslaving Free Men* is a major event in Civil War scholarship. I know of no other book like it in perspective, structure, or conclusions. It will have an invigorating and altogether healthy effect on lay and scholarly understanding of America's pivotal cataclysm.

Hummel's book is simultaneously elementary and advanced, thanks to its unique architecture. Each of its chapters presents a succinct, clearly written narrative of the relevant historical developments falling under its rubric. The first five chapters cover ante-bellum developments; the next five, the war itself; and the last two, post-bellum developments. Well-chosen contemporary quotations add luster to the narrative. The sources of the quotations appear in twenty-two pages of notes at the back of the book, leaving the text itself uncluttered by scholarly apparatus or intramural quibbling.

Immediately following each chapter, as well as the prologue and the epilogue, is a bibliographical essay. Here Hummel displays not only a mastery of the vast literature but also an extraordinary analytical ability. Experts will relish these essays for their discriminating descriptions of hundreds of books and articles and even more for the light they shed on prevalent misconceptions, errors, and oversights. Together, the bibliographical essays occupy 110 pages

and the narrative chapters 255 pages, but the essays, owing to their smaller print and more closely spaced lines, actually account for more of the book than the page counts suggest. Readers with limited interest can skip the scholarly essays. Those who want to look up a particular point will find the 33-page index is excellent.

### Conventional Wisdom

Winners tend to write the histories, and Civil War history is no exception. But southern sympathizers have hardly been mute. During the first half of the twentieth century, historians sympathetic to the Confederate cause gained a substantial hearing; but later, especially as racial attitudes changed in the twenty years after World War II, these renditions of the story lost ground, eventually becoming so rare as to seem cranky. Among academic historians,

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*"Emancipating Slaves, Enslaving Free Men" is a major event in Civil War scholarship, and will have an invigorating and altogether healthy effect on our understanding of America's pivotal cataclysm.*

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even in the South, such views are now extremely rare.

Historical understanding varies greatly among people who know anything at all about the war. At the level of "what every schoolboy knows," the prevailing myth is pretty simple: The southerners (the bad guys), in order to preserve slavery, attempted to secede from the United States; the northerners (the good guys, led by the saintly Abraham Lincoln), provoked by the bombardment of Fort Sumter, rose up in righteous indignation to free the slaves and, after much bloodshed, did free them; the victors then reconstructed the nation, amending the

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Constitution to ensure a level playing field for the blacks. (The wily southerners soon reestablished white supremacy, but that's supposed to be another story.)

Even as we transcend this vulgar understanding, we find that the question of secession continues to be viewed as locked tightly to the question of slavery. Because nobody now wishes to defend the perpetuation of slavery, a defense of southern secession labors under a heavy burden. Hummel, however, willingly takes up this burden.

### Against Slavery, For Secession

At the outset, Hummel proposes that we can advance our understanding of why the war occurred by posing two questions: First, why did the southerners want to secede? Second, why didn't the northerners allow them to secede? Refusing to be tied in the usual knot, Hummel insists that "slavery and secession are separate issues" (8). Like the abolitionist Lysander Spooner, whom he cites, Hummel will draw "no moral analogy between slaves violently rising up to secure their liberty and the central government violently crushing aspirations for self-determination on the part of white southerners" (205). By simultaneously condemning slavery (along with all the social and political evils it fostered) and the northern resort to violence to prevent southern secession, Hummel stakes out a seldom-occupied territory among historians.

All serious historians appreciate that, whatever his personal attitudes toward slavery and blacks, President Lincoln did not resort to armed force to suppress the secession in order to destroy slavery. Indeed, during the interim between his election in 1860 and his inauguration in 1861, Lincoln supported a proposed unamendable constitutional amendment that would have prohibited interference with slavery in the states where it already existed.

Lincoln made his reasons for waging war against the Confederacy utterly clear in a letter to newspaperman Horace Greeley on August 22, 1862:

My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it; and if I could save it by

freeing some and leaving others alone I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do not believe it would help save the Union. (207-8)

When prosecution of the war bogged down in 1862, Lincoln formulated the Emancipation Proclamation, largely to dissuade Britain and other powers from recognizing the Confederacy and partly to encourage blacks to join the Union army. When formally promulgated on January 1, 1863, the proclamation freed not a single slave, as it applied exclusively to territory then under rebel control. Noting that the proclamation left slavery intact in all areas under U.S. control, the London *Spectator* observed: "The principle is not that a human being cannot justly own another, but that he cannot own him unless he is loyal to the United States" (210).

Later, as Union troops advanced, hundreds of thousands of slaves fled to the safety of army camps, finding freedom and a rather wretched existence, as supplies were often insufficient to feed the refugees as well as the soldiers, and commanders resorted to putting the runaways to work as laborers. Even where the rebels retained control, slavery began to break down, as the presence of nearby Union troops encouraged the slaves to resist the impositions of their owners. Union victory, of course, finally did result in the complete destruction of slavery. In 1865 the victors forced the vanquished to ratify the Thirteenth Amendment. (How many Americans have ever considered that vital portions of the Constitution were ratified at gunpoint?)

### Slavery's Achilles Heel

The decay of slavery within the Confederacy during the war illustrates a fact of supreme importance for Hummel's interpretation of ante-bellum political maneuvering and his assessment of whether the war was necessary to destroy slavery. Put simply, slaves preferred freedom to slavery and, given a fair chance to escape, they would run away from their owners.

The fugitive slave issue, which Hummel characterizes as slavery's Achilles heel, was so important to the southerners that it played a crucial part in the compromise that gave rise to the



U.S. Constitution of 1787. Article IV, Section 2, stated in part: "No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due." This provision, to the extent that it received effective enforcement, prevented the free states from serving as havens for runaway slaves and thereby placed a mighty prop under the slave system in the South.

Congress passed legislation to enforce the Constitution's fugitive slave clause in 1793; under the law, national and state courts shared jurisdiction over the recovery of runaways. The number of slaves successfully escaping to the free states, almost all from the border states, probably never exceeded a thousand per year, but Hummel argues that "without a fugitive slave law, the number would have soared" (55).

Besides enjoying the cooperation of the federal government and the free states in the apprehension and return of runaways, the slave states socialized the enforcement costs of the slave sys-

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*Even prior to the war, all slave states suppressed free speech, censored the mail, tightly restricted manumissions, and closely regulated the movement and activities of free blacks.*

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tem by requiring virtually all able-bodied white men to serve in the local slave patrols. "Exemption usually required paying a fine or hiring a substitute. The slave patrols thereby affixed a tax that shifted enforcement costs to small slaveholders and poor whites who owned no slaves" (48).

In the three decades before the war, the emergence and growth of the abolitionist movement heightened the southerners' worries about runaway slaves. All slave states moved to suppress whatever fostered slave escape: they suppressed free speech, censored the mail, tightly restricted manumissions, and closely regulated the movement

and activities of free blacks. As Hummel writes, "The South's siege mentality turned it into a closed society" (25). This slavery-related repression contrasted starkly with the flowering of individual freedom in many other spheres of American life in the 1840s and 1850s.

Appreciating the vulnerability of the slave system to runaways, William Lloyd Garrison and some other abolitionists supported secession by the North. In their view, a separate free nation adjacent to the slave South would serve as an asylum for runaways far more effectively than the free states of the United States, which remained subject to the federal fugitive slave law.

In the 1830s and 1840s radical abolitionists increased their efforts to evade the fugitive slave law and to challenge it in court. The "underground railroad" spirited a number of slaves to freedom in Canada. Seven northern states passed personal liberty laws, prohibiting state officials from assisting in capturing runaways or forbidding the use of state or local jails to confine fugitive slaves. These developments spurred southerners to demand new protection of their property rights in slaves.

One upshot was the passage of a new federal fugitive slave act as part of the Compromise of 1850. This law, which Hummel calls "one of the harshest congressional measures ever" (94), created federal commissioners to assist in capturing runaways, empowered these officers to conscript the aid of any private citizen, and paid them fees that created a financial incentive for them to identify blacks as escaped slaves.

As Hummel observes, free blacks in the North now "had no legal recourse if a Southerner claimed they were escaped slaves. Consequently the law fostered an unsavory class of professional slave catchers, who could make huge profits by legally kidnapping free blacks in the North and selling them into slavery in the South" (94). Some previously hostile or indifferent northerners came to support abolitionism after witnessing such horrifying abductions.

### Was Slavery Efficient?

For more than thirty years, economic historians trained in neoclassical economics have tortured their data and pounded their word processors in a debate over the efficiency of slavery.

Robert W. Fogel and Stanley L. Engerman, most notably in their 1973 book *Time on the Cross*, argued that large slave plantations were much more efficient than northern farms. Critics disputed the claim, arguing that the apparent efficiency advantage reflected among other things such factors as the abnormally high price of cotton circa 1860 or the greater labor input coerced from the slaves. Though valuable facts have been unearthed along the way, several rounds of this debate have done

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*The revenue act of 1862 included a stamp tax not unlike the one that had inflamed the American colonists in 1765.*

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little to close the gap between the disputants.

Hummel, unlike the neoclassical economists, never forgets that efficiency is a welfare concept that presupposes the existing property rights regime. In this light, finding that slavery was efficient amounts to little more than finding that theft benefits thieves when legal conditions allow them to get away with it. Hummel does not lose sight of the crux, which is that the slaveowners were kidnappers and thieves — that slavery "involved a compulsory transfer from black slaves to white masters" (40); hence, "the ability to coerce the slave is [the slave system's] only possible advantage over free labor" (65).

Hummel faults Fogel for continuing to view "coercion and wages as merely two alternative ways to motivate workers" and for failing to "comprehend the fundamental economic distinction between a voluntary transaction, which with its mutual gains moves the transactors toward greater efficiency and welfare (given initial endowments), and a coercive transfer, which with its nearly inevitable deadweight loss must reduce efficiency and welfare" (70).

Hummel's penetrating discussion of the efficiency debate, on pages 61–70, is by itself worth the price of the book.

### Tyranny on Both Sides

Both sides fought under a flag of freedom: the North (eventually) to release the slaves from bondage, the

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South to gain political self-determination. But waging war has its own logic, independent of the belligerent's motive for fighting. In wartime, political authority dilates and individual liberty shrinks. The Civil War was no exception.

When Lincoln took office as president, eight slave states remained in the Union. Lincoln's call for 75,000 troops to suppress the "rebellion" prompted four of them — Virginia, North Carolina, Tennessee, and Arkansas — to join the Confederacy. Virginia governor John Letcher wrote to Lincoln: "You have chosen to inaugurate civil war, and having done so, we will meet it in a spirit as determined as the Administration has exhibited toward the South" (141).

Lincoln undertook to hold the remaining slave states in the Union at any cost. In Maryland he suspended the writ of habeas corpus, imposed military occupation, and imprisoned leading secessionists without trial. Chief Justice Roger Taney wrote an outraged opinion declaring that the president had no constitutional authority to take these actions, whose effect would be that "the people of the United States are no longer living under a Government of laws, but every citizen holds life, liberty and property at the will and pleasure of the army officer in whose military district he may happen to be found" (142). Lincoln ignored Taney's opinion and prepared standing orders (never served) for Taney's arrest. When Maryland held elections in the fall of 1861, federal provost marshals watched the polls and arrested secessionists attempting to vote.

In Missouri the administration took even more drastic actions. In an early confrontation with an angry crowd, army troops killed twenty-eight people, mostly innocent onlookers, thereby turning many Unionists into secessionists. Ostensibly loyal but clamped under martial law, Missouri became the scene of its own bitter civil war, featuring brutal guerrilla forays and scorched-earth tactics by the Union army, for the duration of the war and beyond. These events left a "legacy of hatred" that would "continue to plague Kansas and Missouri long after the rest of the country attained peace" (144). The outlaw Jesse James was just one of the many involved in the Missouri conflict who

continued to hold a grudge.

In Kentucky, where sympathies were similarly divided,

Federal authorities declared martial law; required loyalty oaths before people could trade or engage in many other daily activities; censored books, journals, sermons, and sheet music; and crowded the jails with Rebel sympathizers. By 1862 the military was interfering with elections, preventing candidates from running, and dispersing the Democratic convention at bayonet point. The net result was that the people of Kentucky felt greater solidarity with the rest of the South at the war's end than at its beginning. (146)

Unable to hold Virginia, the Lincoln administration finagled the creation of a new state, West Virginia, in 1863. By further political chicanery, the Republicans admitted Kansas and Nevada to the Union as states in 1861 and 1864, respectively. "And let us not ignore," writes Hummel, the "tampering with the soldiers' vote" when ballots were not secret and "most of the army's junior officers and paymasters were members of the Republican Party" (258). By such shenanigans, Lincoln managed to get himself re-elected in 1864, though General George B. McClelland, the candidate of a Democratic Party whose platform called for an immediate cessation of hostilities, received 45 percent of the popular vote even on this sharply tilted political playing field.

Lincoln did not hesitate to act as a dictator when doing so served his purposes. A favorite tactic was to toss political dissidents or other troublesome persons into jail; at least 14,000 civilians met that fate at the hands of the Lincoln administration, not to speak of the many others similarly treated by state and local authorities. Union authorities monitored and censored the mails and telegraphs, and at one time or another closed more than 300 newspapers. In promulgating his Emancipation Proclamation and in taking many other actions, Lincoln chose to ignore Congress.

Confederate authorities behaved similarly. President Jefferson Davis suspended the writ of habeas corpus in various areas. Confederate commanders sometimes instituted martial law, required loyalty oaths, and made mass

arrests. "The courts viewed anyone not supporting the Confederacy as an enemy alien, outside any legal protections accorded to citizens." Private vigilance committees "imposed, to the point of lynching, their own versions of loyalty," and "the military's provost marshals required passports of travelers in nearly all Confederate-held territory" (261). In the later stages of the war, Confederate army officers earned the hearty hostility of the southern people by seizing property, especially foodstuffs and workstock, as the opportunity arose to resupply their units in this convenient way.

### War Brought Big Government

When, to the surprise of most war hawks on both sides, the war turned out to be big, gory, and protracted rather than short and glorious, the warring governments faced the basic problem of going to war in a market economy: how to channel resources away from their current owners and into the war machine. Aside from receiving gifts, only two methods can serve. The government either buys the resources or just takes them. The former method can be facilitated by imposing new kinds of taxes, raising the rates of existing taxes, borrowing funds, or printing new money. Both

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*Lincoln did not hesitate to act as a dictator when doing so served his purposes. A favorite tactic was to toss political dissidents into jail.*

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sides employed each of these means to get control of resources, though the mix of methods differed.

To make a complicated story as simple as possible, one could say that for the most part the North borrowed funds and bought resources, and for the most part the South printed paper money and bought resources. As a result, while the paper dollar lost about half of its value in the North during the war, the purchasing power of paper money in the Confederacy fell by more than 95%, and many southerners abandoned the use of money and resorted to barter in 1864 and 1865. To stimulate

purchases of its bonds, the Union government created the national banking system, in which federally chartered member banks had to buy U.S. bonds as backing for the national bank notes they might issue in making loans to customers. Like many other innovations of the Civil War, the national banking system remains a part of our economy today.

The war was tremendously expensive in dollars as well as blood. In four years the federal government spent \$3.4 billion, far more than it had spent in the entire preceding history of the United States (\$1.8 billion). Although borrowing accounted for 77 percent of Union revenues, other receipts rose enormously: from \$56 million in fiscal 1860, nearly all from customs, to \$334 million in fiscal 1865, including \$209 million of internal revenue.

Republican politico James G. Blaine called the revenue act of 1862 "one of the most searching, thorough, comprehensive systems of taxation ever devised by any Government" (222). It included excises on a vast collection of goods, everything from liquor and tobacco to meat, carriages, and professional services, plus a stamp tax not unlike the one that had inflamed the American colonists in 1765! The wartime Congress also imposed taxes on nearly everything that would stand still: incomes, inheritances, and real estate. Not surprisingly, many people attempted to evade these taxes; hence the creation of the Internal Revenue bureaucracy, another of the war's diabolical legacies to succeeding generations.

Still scrambling for funds, Congress authorized the issue of fiat paper money, the famous "greenbacks," and declared them legal tender. Ultimately, \$431 million was put into circulation by this means. When counterfeiters began to issue greenbacks of their own, the government established the Secret Service, another agency that refused to die after the war. While it was monkeying with the money, Congress banned private minting; thereafter the federal government would have, as it never had before, a monopoly of the mintage. To eliminate competition with the new paper money — greenbacks and national bank notes — Congress placed a 10% tax on the issuance of notes by the state banks, thereby ensuring that they would no longer be issued.

In the financially less developed South, the Confederates had limited success in collecting taxes, which covered only 7% of their war expenses, or in borrowing money, which financed about a fourth of their spending. Not that they didn't try. They imposed taxes on imports, exports, and excess profits; a graduated income tax; license fees, excises, and taxes in kind. "A sequestration law, passed in response to the Union confiscation acts, expropriated all northern private property within Confederate jurisdiction" (228).

Mostly, however, the Confederacy just printed money — ultimately more

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*Chief Justice Roger Taney wrote an outraged opinion declaring that the president had no constitutional authority to take these dictatorial actions. Lincoln responded by preparing standing orders for Taney's arrest.*

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than \$1 billion. Southern states added another \$45 million, and local governments and private companies spewed out assorted "shinplasters," a kind of small-denomination homemade money substitute. After injuring southerners with hyperinflation, the outpouring of new fiat money insulted them at the conclusion of the war by becoming totally worthless. Hyperinflation, and the economic collapse of the southern economy it hastened, may have done as much to ensure the rebels' defeat as their reversals on the battlefield.

The Republican-dominated Congress took advantage of its control to raise tariffs dramatically, to authorize subsidies to railroad companies and to states establishing agricultural, mechanical, and military colleges, to create a Department of Agriculture, and to serve its favored constituents in a variety of other ways, all of which Hummel lumps under the heading of northern "neo-mercantilism."

The Confederate government, in contrast, did much more to involve itself directly in the ownership, control, and operation of productive enterprises, including arsenals, powder mills, smelt-

ers, mines, foundries, shipyards, textile mills, flour mills, salt works, and assorted other enterprises. Late in the war the government "took possession of all un-captured southern railroads, steamboats, and telegraph lines outright, incorporating their employees and officers into the military" (236). Hummel calls these activities "State socialism." He concludes that despite the South's avowed loyalty to states' rights, "Confederate war socialism was more economically centralized than the Union's neo-mercantilism, which at least relied heavily on private initiative" (238).

Ironically, their socialism, like so many other policies the rebels adopted to wage war, also contributed to their defeat. "Rebel central planning, while adequately serving the single-minded goal of supplying conventional armies, otherwise misallocated resources and fostered inefficiencies" (238). Moreover, "the despotic centralization of Jefferson Davis and his West Point cabal alienated the southern people from the cause of independence" (289).

What they could not get in any other way, both governments just took. Hummel estimates that the South got "somewhere between one-fifth and one-third" of its soldiers by conscription and used draft exemptions as "the mechanism for manipulating the labor market" (250). The North had better luck attracting volunteers, partly by paying large bonuses for enlistments, but in the latter half of the war the Union also resorted to conscription, and about 6% of those who served in its ranks were draftees.

In the land of the free the people did not take kindly to conscription, and disturbances broke out in hundreds of places. Mayhem and murder ensued in draft riots, most notably in New York, where rampaging Irish immigrants and others vented their fury on local blacks. Draft evasion reached extreme levels in both the North and the South.

### Aftermath

When the guns finally fell silent in the spring of 1865, the devil must have been smiling. Some 360,000 northern and 260,000 southern soldiers had died; some 400,000 combatants had been seriously wounded, many maimed for life. Even those who survived intact would have to live with the nightmares of the

horror they had experienced. For countless relatives and friends of those who did not return home, the heartache would never end. Across the South, where more than 50,000 civilian casualties augmented the military losses, many towns and cities, railroads, farms, and mills lay in ruins, and frightening specters loomed over the region's economic, social, and political future. For sowing with slaves, Americans had reaped a whirlwind.

Twelve years later, Reconstruction had run its course, the damaged

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*Hummel argues that the war destroyed the best government the country ever had, but he may overstate the degree to which the growth of government sprang from war-related causes.*

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southern economy had been repaired and reorganized with free labor, and the rebels had regained political control of their states. Tired of trying to secure justice for southern blacks, northerners abandoned them to the tender mercies of their erstwhile masters. Although the freed people managed to continue improving their economic conditions, around the turn of the century the southern whites created piecemeal the Jim Crow system of racial segregation and political disfranchisement that would inhibit and insult black people in the South until it was finally dismantled in the 1960s. So much blood, so little to show for it.

Nor was that disappointment all. Hummel argues that the war destroyed the best government the country ever had: "The national government that emerged victorious from the conflict dwarfed in power and size the minimal Jacksonian State that had commenced the war" (328). With the old federation of sovereign states shattered forever, the national government began the long march that eventually transformed it into the monstrous police state we know today. Intellectuals, who had taken seriously the ideals of state sovereignty and secession, became for the most part worshippers of central government power. Federal taxing and

spending ratcheted up; federal involvement in economic life increased in important sectors, including banking and transportation. The national debt, almost negligible before the war, had reached \$2.8 billion by the war's end. Tariffs, jacked up to finance the war, remained high for decades afterward.

No one can deny that the Civil War was a turning point in the long-run growth of government in the United States, but Hummel may overstate the extent of government power in the late nineteenth century and the degree to which the growth of government that did occur sprang from war-related causes. A huge retrenchment did take place immediately after the war, and some war-spawned measures, such as the subsidization of railroad building, the income tax, and almost all of the federal excise taxes, were terminated within a few years.

Much of the growth of government in the late nineteenth century occurred at the municipal level, as cities undertook to impose public-health regulations and to build schools, paved streets, transport and water-supply systems, sewers, and other urban infrastructure, all of which probably would have occurred even if the war had never happened.

At the federal level, such developments as passage of the Act to Regulate Commerce (1887), the Sherman Antitrust Act (1890), and the Food and Drugs Act (1906), as well as many other interventions, might have occurred in any event. Despite the political entrenchment of mildly statist Republicans, recurrently waving the bloody shirt, something approximating classical liberalism retained a strong hold on most Americans, even many opinion leaders, prior to the Progressive Era. Still, though one may quarrel about magnitudes, Hummel is surely correct to argue that the war permanently augmented the size and scope of government.

### War Weighed in the Balance

Nowadays few Americans hesitate to conclude that, on balance, the war was a good thing. Yes, it was horrible in many ways, but it was the price that had to be paid to destroy slavery. Hummel does not dispute the war's great benefit: "the last, great coercive blight on the American landscape, black

chattel slavery, was finally extirpated — a triumph that cannot be overrated” (350). Moreover, “the fact that abolition was an unintended consequence in no way gainsays the accomplishment” (352).

But a justification of the war on the grounds that it destroyed slavery holds only if the war alone could destroy slavery. Hummel denies that this horrible price — one dead soldier for every six freed slaves — had to be paid. Thus, for him as for the abolitionist Moncure Conway, the war that has such grandeur in American mythology reduces to “mere manslaughter” (355).

Although Hummel accepts the research of economic historians who have shown that slavery was flourishing and not at all on the brink of withering away, he argues that even without the war it would have petered out:

Slavery was doomed politically even if Lincoln had permitted the small Gulf Coast Confederacy to depart in peace. The Republican-controlled Congress would have been able to work toward emancipation within the border states, where slavery was already declining. In due course the Radicals could have repealed the Fugitive Slave Law of 1850. With chattels fleeing across the border and raising slavery’s enforcement costs, the peculiar institution’s final destruction within an independent cotton South was inevitable. (353)

Maybe. But one wonders whether slavery could have been ended easily or quickly in the border states; whether the Gulf Confederacy might have been able to stem the flow of runaways; and whether, ultimately facing a serious threat to its slave system because of escapees fleeing to the North, it might have gone to war later. In the last scenario, we have the worst of worlds — a prolongation of slavery and the horrors of war.

Of course, no one can know. Counterfactuals defy direct testing; we cannot rerun history to find out what would have occurred had some critical event not happened. Yet all causal thinking necessarily involves counterfactuals. Too often in historical analysis the counterfactuals lie quietly between the lines, frequently in the form of unquestioned assumptions. A great merit of Hummel’s book is that it brings new counterfactuals to the surface, compelling a reconsideration of

assumptions too long taken for granted, such as the assumption that the secession required that Lincoln wage a war to preserve the Union and the assumption that only a terrible civil war could end slavery.

It is worth recalling that the people of every slave society in the New World save two — Haiti and the United States — managed to terminate this vile institution without immersing themselves in blood. In Haiti the slaves quite justifiably took matters into their own hands;

the masters got no more than they deserved. But in the United States the termination of slavery occurred only in conjunction with a disastrous war and bitter reconstruction that left many issues unsettled and harmed a great many innocents. How tragic that the means by which men overthrew a wicked institution should also have been the means by which they arrested the progress of their own freedom, that emancipating slaves entailed enslaving free men. □

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***The Manufactured Crisis: Myths, Fraud, and the Attack on America’s Public Schools*, by David C. Berliner and Bruce J. Biddle, Addison-Wesley, 414 pp., 1995, \$25.00 (hc), \$15.00 (sc).**

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## Blackboard Bungle

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Nathan Crow

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How bad are American public schools? For the last ten years at least, we have been exposed to a flood of scandal stories describing the scholastic deficiencies of the young: their ignorance of history, inability to add or subtract, nonexistent writing skills, and outright illiteracy. According to one panel of eminent critics, the public schools have had an impact comparable to an invasion of the U.S. by a mighty army. Many programs for reform have been proposed, seemingly to no avail, and a recent study shows that American students rank just above — shudder — Jordan in mathematics, and not even within shouting distance of supposed academic superpowers like Japan. Moreover, most Americans believe that this situation is something new — that the public schools have grown rapidly worse in the last 20 or 30 years. Today’s kids, so many believe, are not just dumb. They are way dumber than you or your dad’s generations. They are the dumbest kids ever.

Well, that’s all bunk. Or so say David C. Berliner and Bruce J. Biddle, authors of *The Manufactured Crisis*, who maintain that this familiar litany is a lie,

planted in the gullible American mind by devious ideologues with a hidden agenda. Things are just fine, the authors claim. American students are as skilled as ever, compare well to young people in other industrialized countries, and attain such excellence even though the U.S. spends less per student than other industrialized nations. Furthermore, students in the vaunted private schools actually perform no better than those in public schools, which hold their own despite mandated watering-down of curricula and expensive insistence upon their teaching even the crippled (formerly warehoused), dim-witted (formerly ignored), or feral (formerly expelled) children of the republic. In short, our public schools are terrific. Beliefs to the contrary are misimpressions created by right-wing propagandists and other “enemies of the public schools” to advance the cause of vouchers, a neoliberal panacea the authors consider not just unhelpful, but a demonstrated failure — a menace.

The most plausible of these claims is that the Great Decline never happened. Concurring with the authors of *The Bell Curve* (to whose offensiveness they otherwise testify with the predictable litany), Berliner and Biddle claim that the

death of America's SAT scores has been greatly exaggerated. The worst they allow is that the average ("aggregate") score hasn't budged for decades. And to the credit of the public schools, the authors note, the average scores of minority groups, especially blacks and American Indians, have steadily improved since 1976. (Caucasian students have declined a little since then; but among whites fewer top students and more weak students are taking the test, so that is not significant.) True, average scores declined substantially from 1963 to 1976; but the test has been taken by a steadily higher percentage of students, many of whom had relatively poor, uneducated parents. Furthermore, the authors say, there has been no decline at all in average PSAT\* scores since 1959 — and that test is given to representative samples.

More important than these, however, is the undeniable fact — deliberately suppressed by the authors — that the total number of very high verbal scores has declined drastically, with the number of students scoring 700 or better (the best is 800, the worst 200) declining about 60% from 1967 to 1993. Berliner and Biddle go out of their way to conceal this artifact of national stupidification, claiming that "top-ranked students . . . have tended to hold their ground" (39) and "the top fifth of high school seniors have continued to score at a healthy level in both subtests of the SAT" (20). And although the authors claim that the SAT is the only standardized test that shows any decline, the average score on the SAT's "English Composition" test (a "subject" test given to a minority of relatively capable students) also declined sharply in the 1970s and never recovered.

### The Glory of the Unofficial Algorithm

Not content with such statistical legerdemain, the authors boldly dismiss the whole notion that book-learned math skills are important. Second-graders "who sell chewing gum on the streets" in poor countries, they tell us, have practical math skills that enable them effectively to retail their products; but they still can't "solve the in-school

problems with approved in-school algorithms" (30). Message: relax. Our students are street-smart; so what if they are school-stupid? There is always a future in chewing gum. Berliner and Biddle's frivolously uncritical attitude is an impressive display of current educationist views. It does not even occur to them to consider such questions as: Could the gum retailers represent the cream of Third World youth? Is there a value to "in-school problems" and algorithms (useful for engineering, exploring data with spreadsheets, or ferreting out bullshit education statistics, for example)? And, if the real world does such a good job of teaching real-world skills, why should we pay for kids to attend school at all? If schools don't teach the skills they aim to teach, and

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*American students' average score on some items is only 1% better than we'd expect from a chimpanzee.*

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those skills are worthless or arbitrary anyway, maybe we should just skip it.

But never mind. Rather than draw out such implications, the authors prefer to psychologize. Why are Americans upset about schools? "[S]ome adults," they conclude, are just "eager to find young people dysfunctional" (31). Thus, they task the National Center for Education Statistics for its "appalling . . . education bashing [note: "education"=public school status quo] on the basis of tests that do not measure real-world skills" (31). (Like marketing gum on the sidewalks of Managua?) The test they themselves "bash" for its special remoteness from these vaunted skills is the National Assessment of Educational Progress (NAEP), a test of skills and knowledge that the federal government has administered to representative groups of private and public school students for a little more than 20 years, usually at four-year intervals. As with the PSAT, student's NAEP scores have mostly been flat, except for "Hispanics" and blacks, who, happily, have improved.

### The Way We Learn Now

So set aside the Great Decline to ask a more important question: how well

are the public schools doing in absolute terms? The answer is, Very badly. In math, for example, the NAEP reviewers noted that only half of American 17-year-old Americans could solve "even moderately challenging" math problems, e.g., "decimals, fractions, [and] percents. And only "6 percent [of 17-year-olds] reached the highest level," which involves (according to the NAEP) "multi-step problem solving and algebra" (29). (Apparently, geometry, trigonometry, calculus, statistics, etc. do not blight the NAEP's horizons.)

Not to worry, say Berliner and Biddle. Such superficially dismal results indicate only that average students cannot do the most advanced work — not surprising, given that the test was designed to yield such a distribution. The belief that a 17-year-old in his twelfth year of government tutelage should be able to solve problems in fractions and algebra is, they say, a "flaw in reasoning."

How do they demonstrate this "flaw"? By pointing out that kids in other nations are not reaching the "advanced" level either — in fact, as the General Accounting Office noted, for the 13-year-olds, "10 percent of the students in Taiwan . . . meet this standard," and Taiwanese students are the best in the world at math (the bookish kind, anyway) (29). Berliner and Biddle believe such factoids conclusively refute the myth of the Great Decline — after all, even powerhouse Taiwan gets only one out of ten of its students to the advanced level!

The authors must think that their readers are as inept at math as the average American 17-year-old, and too stupid by far to notice that to make U.S. public school students look half as good as Taiwan's, our 17-year-olds have to be compared (unfavorably yet) with their 13-year-olds.

Berliner and Biddle are somewhat persuasive in arguing that other international differences are either nonexistent or exaggerated. They cite, for example, a study showing that American nine-year-olds are near the top of the heap in reading comprehension. Unfortunately for their argument, data in their own book (and elsewhere) show that however able U.S. fourth-graders may be, things tend to get worse from year to year — so that by the end of their eighteenth year,

\* The PSAT, or pre-scholastic assessment (*née* "aptitude") test, is taken a year before the SAT.



American students (especially the American elite) have drifted far behind their European counterparts\*.

A major cause of this pattern, it seems to me, is egalitarian America's neglect of, or even outright hostility to, the "gifted." In much of Europe, intellectual skills are admired and rewarded, and perhaps ten times more Europeans than Americans take the equivalent of what is here known as an "advanced placement" (AP) course. Over the years various attempts have been made to change this — by creating special programs for the bright, by adding more AP courses, by creating high schools for the gifted on the model of New York City's special high schools (Bronx Science, etc.). But such reforms have consistently been foiled by educationists playing on the average citizen's resentment of smart kids, a persecuted minority if there ever was one.

Berliner and Biddle share such *resentiment*. They offer specious criticisms of gifted programs, beginning with the observations that identification of the gifted is not "foolproof" (what is?) and that more middle-class and upper-class white students get in than poor and "minority" students (a category which

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*The belief that a 17-year-old in his twelfth year of government tutelage should be able to solve problems in fractions and algebra is, they say, a "flaw in reasoning."*

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presumably doesn't include Asian-Americans — perhaps Berliner and Biddle view such students as "honorary white people"). But their most important objection, by far, is that "enrichment programs . . . impose the burden of *failure* on the majority of students . . . Thus, they tend to lower morale [and] destroy a sense of community . . ." (208–209).

This, of course, is disgusting. But the authors do have at least one interesting, and perhaps valid, observation about

gifted programs: referencing a study by Robert Seigler and Kenneth Kotovsky, they argue that

[s]tudents who are identified as "gifted" in school tend to be very good at convergent thought, at learning what is already known, and at short-term accomplishments. In contrast, those whom we honor for their accomplishments as adults are more likely to exhibit divergent thought, discovery, and long-term, profound achievements. . . . [T]hese two groups of people may not overlap much in the real world (210).

There is some truth here. But I suspect that much of the problem could be solved by casting the net wider — loosening the criteria for admission, allowing for some selection by interest, and thus including about one quarter of students in a truly academic regimen, *à la* the French and the Germans.

### **They Really Are Smarter Over There**

As we have seen, Berliner and Biddle's account of international differences is selective and uncritical, and at times so slippery that it can fairly be called dishonest. American eighth graders don't perform as well in math as Japanese eighth graders, they tell us; but again we should relax. Those eighth-graders who have taken algebra do better than their Japanese counterparts, and those who have taken pre-algebra do almost as well. But that is irrelevant. The reason most American eighth-graders aren't in algebra class is because they aren't *ready* for algebra class; as we saw earlier, the poor things are still trying to master fractions, decimals, and percents, subjects that they have been "taught" in some form since third or fourth grade, and which many will still be struggling with five years later when they enter a job market with diminishing room for people who think that  $1/2 + 3/4 = 4/6$ . Such realities are too painful for the authors to contemplate, and so they conclude that the students' weaknesses are the product merely of how "instruction is scheduled." This, though they are so ignorant of math curricula that they don't even know what pre-algebra is, remarking only that it "sounds odd to us" (56).

It is true, as the authors note, that students in our best states (North Dakota, Iowa) compare well in math

even with the geniuses of the Orient, but the authors make far too much of this. No doubt there are provinces of Taiwan and Korea that soar as high above their domestic dummies as the brilliant farmers of North Dakota, population 638,800, do above the innumerate numbskulls of scholastically avant-garde California, population 29,760,021 (and dead last in the most recent NAEP). The authors' intellectual dishonesty is nowhere better shown than in this bizarre attempt to compare a handful of our best to other nations' averages.

Berliner and Biddle's hostility to private schools is obvious, which may

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*The average American student exists in a vacuum that leaves him utterly incapable of comprehending political and economic events.*

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account for their failure to examine seriously the role that private tutoring centers, or *jukus*, play in advancing Japan's educational excellence, such as it is. That aside, I would have to agree with them that there is little if any reason for Americans to look to Japan's regimented, authoritarian, and stupidly uniform public schools as a model. Do we want a system where every 11-year-old in the country gets the same math lesson on the same day? Where students obsessed with passing tests grind away their youth with eight hours of memorization a night, preparatory to a life of drudging for a corporation? American schools may not be the wonder of the world that Berliner and Biddle would have us believe, but the authors are mostly right in inveighing against the gross exaggeration of foreign schools' virtues.

### **The Talented One-Hundredth**

One way of dealing with the public schools' failure to produce many graduates who are more than degreed yahoos is to write off the life of the mind as a peculiar obsession of chronically dissatisfied pedants. This is the authors' tactic. After discussing some interesting new research showing that public school students in bygone days were just as ignorant as today's crop, they

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\* On the other hand, a higher proportion of Americans than Europeans go to college, where they presumably catch up on what they've missed. (The inefficiency involved in this process is a separate problem.)

observe that "students seem never to have known as much social studies material as the test developers wanted them to know." People like Chester Finn, who think students given twelve years of instruction ought to know at least when the Civil War was fought (within 50 years, that is — call it the self-esteem standard) and who Jefferson was and what the First Amendment says, the authors dismiss as part of a "sour tradition" capiously inclined to find "the next generation wanting" (34).

Such glib dismissals no doubt go down well with youthful ignoramuses and mentally vacant educationists; but to those who value the humanities and what Berliner and Biddle call "social studies," and are taxed to the gills to pay for their furtherance, American students' ignorance of history is indeed frightening. The NAEP history test actually shows that students know next to nothing about the American past. Only 1% of public school twelfth-graders scored at the "advanced" level, and 57% scored below "basic," which is the lowest level and ought really to be designated "feeble." But things are even worse than that. Most of the test items are multiple-choice with four options, so a student has a 25% chance of "knowing" an item even if he fills in the blank at random. Thus, the NAEP reports that 26% of public school eighth-graders "know" at least "one consequence of Nat Turner's rebellion" — but this score is only 1% better than we'd expect from a chimpanzee. And some other scores are actually worse than random.

More bad news. On the few items that require written responses, the NAEP's scoring method is so bizarrely forgiving as to discredit even that talented hundredth (W.E.B. DuBois was, it seems, an optimist). Look at figure 1, for example, which is drawn from the most recent NAEP history exam, and briefly answer the question: "What attitudes displayed toward American Indians by other Americans are suggested by this magazine cover?" (Spelling, grammar,

and handwriting do not count, as will soon become clear.)

Now look at figure 2, and consider what the NAEP classifies as a "proficient" response (this is a cut above "basic," and is supposed to designate "solid academic performance"): "that some people felt sorry for the Native American" [sic]. That such an attitude is not at all suggested by the illustration seems obvious to me, but perhaps you disagree. If so, consider the sample "advanced" response — supposedly indicative of truly "superior perfor-

WHAT SHALL WE DO WITH OUR INDIANS?



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**Figure 1:** The original NAEP test illustration shows the entire cover of Frank Leslie's *Popular Monthly*, September 1876.

mance": "that they were less than human and far behind rest of the world and they were a nuisance to frontier-farmers and settlers and had to be put away on reservations" [sic, of course].

As you can see, this student is simply "telling what he knows" about nineteenth-century white Americans' attitudes towards Indians; his answer relates only remotely to the magazine cover. Yet this qualifies as "advanced" work, a level reached by only one out of a hundred public school students. What the NAEP really appears to show is that the average American student knows nothing about history or the assessment of historical evidence. He exists in a vacuum that leaves him utterly incapable of comprehending political and economic events, and can no more "think"

about history than I can "think" about Navajo grammar.

## The Current Alternatives

It's worth noting that private school students, though unimpressive by absolute standards, at least do better than their peers in government schools. For twelfth-graders, about twice as many non-Catholic private schoolers as public schoolers reach the "proficient" and "advanced" levels in history, and about 50% more private school students (including Catholic school students) score "basic" or above\*.

Although it is not clear how much, if any, of this private school advantage reflects differences in students' family life and socioeconomic status, certainly the finding itself is familiar enough. Various efforts to measure the differences in academic performance between private schools and public ones have found consistently that the differences are generally significant, but not terribly impressive.

I suspect that part of the reason lies in the fact that such a high proportion of private schools in the U.S. are Roman Catholic. Without wishing to offend, I will note what no one else has, viz., that Catholic schools (with some superb Jesuit exceptions) are in the main profoundly anti-

intellectual, especially in interpretation of texts ('twere well not to look too curiously upon it) and in science, where vanish even the paltry private school advantages ferreted out in a famous study by the indefatigable James

\* The exact figures for "at or above basic" are 41% of public school students, 59% of "non-public" school students; for "at or above proficient," it's 10% public school students and 18% of nonpublic students; for "at or above advanced," it's 1% public, 1% Roman Catholic, and 2% "other nonpublic." The first two categories are basically the same for the Catholics and non-Catholics. *NAEP 1994 U.S. History: A First Look*, by Paul L. Williams, et al. Office of Educational Research and Improvement, U.S. Department of Education, 1995. If you call (800) 424-1616, they may well send you a free copy of this and other documents in the series.

Coleman. But their failing stems not just from the Roman Catholic schools' ingrained hostility to the scientific method, and in the case of their fundamentalist cousins, to scientific findings themselves; it has institutional causes as well.

I'm not referring just to the religious schools' characteristic adoption of public school rituals such as football worship and lock-step advancement through single-age classrooms. There is also their general habit of following curricula that resemble those of the public schools. Finally, there is some parochial schools' inclination to hire only state-certified teachers. The latter policy has obvious economic advantages, since it filters out anyone without a demonstrated long-term ambition to work as a teacher; but the costs cannot be denied. Education majors have the lowest IQ's, lowest GPA's, and lowest SAT/ACT scores of any college major, and 'twas ever thus. This may not pose much of a problem in the early primary grades, where the material itself (if not its presentation) has been mastered by even the dimmest teacher, and curriculum and training count for more. The cost, however, rises steadily with the rarity of the academic skills required, peaking with math, science, and perhaps writing, although this is a skill that is seldom taken very seriously in the United States.

Nevertheless, economic theory would seemingly indicate that private schools should offer enormously superior services. Why aren't private schools better than they are?

One reason, surprisingly, is money. Americans are raised on the image of the private school as New England prep school, complete with moss-covered granite walls, smart blue uniforms, and half-demented but brilliant English teachers who communicate the love of Poetry and Life on long walks through alleys of birches. But probably less than ten percent of American private schools are anything like this Hollywood image. In fact, contrary to American myth, the typical private school spends an average of about \$2,500 a year per student — about half of what the public schools spend. (The data here is com-

plex and difficult to get a handle on, and perhaps the difference is not so great as this. But there is no doubt that a substantial difference exists.) Most private schools are church schools of one kind or another — the majority Roman Catholic, and many of the rest evangelical Protestant (Seventh Day Adventist, Baptist, and the like). They charge low tuition, often give generous scholarships to the children of the deserving poor, and pay the poor wretches who teach for them very little. Such schools are in a poor position to compete financially for the more competent teachers. Non-religious private schools are

#### NAEP "proficient" response (8th grade)

What attitudes displayed toward American Indians by other Americans are suggested by this magazine cover?

That some people felt  
sorry for the Native Americans

#### NAEP "advanced" response (8th grade)

What attitudes displayed toward American Indians by other Americans are suggested by this magazine cover?

that they were less than  
human and far behind rest  
of the world and they were  
a nuisance to frontier farmers and  
settlers and had to be  
put away on reservations

Figure 2

mostly struggling academic-emphasis high schools — wannabe preps — that strive to be mainstream but have to take what they can get, plus a handful of special-ed academies that do their best to heal the wreckage of their peers public and private. Finally, there is a melange of military academies, New Age nursery schools (for all ages), art schools, etc.

Unfortunately, we don't know how well the handful of relatively well-financed private schools are doing academically; "nonpublic" is far too broad a category to give any sense of what is going on out there. Pressure should be put on the NAEP to collect better data on per-student expenditures and private school characteristics; it is quite possible that secular private schools which spend as much as the publics are doing considerably better by comparison. Until such a study is performed, we are stuck with what we have, and that isn't much.

Next, we have the little-noted fact that private schools are in an unusual economic situation: their fees are paid by

parents, who do not themselves receive the services of the school, and therefore have a difficult time assessing them. I do not suggest that children should evaluate the schools themselves, although this does not seem unreasonable (to me, anyway) for adolescents. But the situation here is different than with most consumer decisions — "family socialism," though presumably benevolent, impedes the kind of rapid feedback found with services directly obtained.

But at least as important as all this is that private schools do not necessarily compete primarily on the basis of academic services. Despite all the policy wonk school-chat and media hair-pulling to the contrary, most parents are fairly well satisfied with prevailing academic results. (This is a fairly consistent finding in polls.) Besides, most parents tend to blame their child for his academic failings and credit him, not his teachers, for his successes; and they find intellectual performance difficult to assess anyway. Why spend a lot of money on something you don't understand, can't measure, and perhaps find vaguely threatening? Then again, academic problems

are often cured only with doses of hard work, which detract from family life. Many American fathers want their sons not inside doing a sissy three hours of homework a night, but sharing with dad manly pursuits like tossing a football or watching television. I know that this is not a popular view of parents, who are supposed to be uniformly devoted to junior's mental development. But any teacher can tell you how many parents come in asking for more homework; they are generally balanced, at least, by those who think there is already too much by half.

Where private schools do compete very successfully is in providing safety and order. The violent and chaotic American public school is a national disgrace. Even where beatings and robberies, if not shootings, are not a daily occurrence, bullying, sexual harassment, and bad manners are often institutionalized. Of late these bad habits have been aggravated by "mainstreaming" laws and the identification of tendencies to violence as "oppositional defiant disorder," whose combined

results keep some public school classrooms in a continual uproar. The great virtue of private schools is that they generally have no truck with such nonsense — although a voucher-fed stream of former public school students could probably destroy this last remaining island of decency easily enough.

Private schools also offer other distinctions, of course. The rich want their children to go to school with others like

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*Private school students, though unimpressive by absolute standards, at least do better than their peers in government schools.*

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them (and of course a few properly appreciative scholarship youngsters), and in private schools, they can and do. Equally important, to many parents, are racial distinctions — especially in the South, where increasing numbers of parents send their offspring to Christian academies that are virtually all white.

In sum, private schools, a small minority excepted, offer not so much academic excellence, but rather characteristics easily assessed by parents: civil order, class and ethnic homogeneity, a common religion\*. Nevertheless, they commend themselves academically in doing at least somewhat better than the public schools — at considerably lower cost. This is a pattern that has been seen in voucher-financed Milwaukee private schools, where debate about whether the academic results are the same as or better than those of public schools has obscured the fact that the kids are doing *at least* as well for much less money.

### Ye Olde Money Solution

The authors attribute a great many of the problems with the low end of the public school system — and here they

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\* It may be, as the authors seem to suggest, that some degree of ethnic homogeneity by itself helps improve academic results. "No other country [besides America]," they write, "has ever tried to cope with so many partially-assimilated groups, and this fact poses significant problems for public schools" — which, at least as presently conceived, must offer roughly the same package to every student. (227)

do acknowledge serious deficiencies — to America's relatively greater gap (compared to Europe) between middle-class or wealthy people and the poor. The gap exists, of course; and it's also true that poverty is correlated with school failure, as it is with all sorts of problems. But Berliner and Biddle, it seems to me, have at least partially reversed the problem. They announce that we have too many poor kids whose failure is inevitable, and conclude that redistributionist economic measures are called for; but it's at least as likely that people stay poor because they are badly served by the public schools. In other words, the authors conclude that Johnny got an "F" because he is poor. From the same data, I conclude that because the public schools don't know how to teach poor kids like Johnny and encouraged his *lumpen* bad manners, he failed math and English, grew up rude, and is therefore unlikely to escape poverty. The one thing we probably agree on is that Johnny is a boor and got an F, and that he got his manners and his F in a public school that failed to teach him a damn thing. How much further down the road do we have to go before we conclude that continuing to finance public schools is not going to help Johnny, his future cellmates, or his five children by four different mothers?

Berliner and Biddle might reply that we ought to attempt to equalize funding for schools serving poor kids. Although it is true that many poor districts spend less than the suburbs, it is also true that among the worst schools in the world are American inner city schools, whose per-student costs are typically comparable to those of expensive preps. In Chicago, for example, a city whose schools have been identified by the federal government as the worst in the nation, per-student spending exceeds \$7,000 a year. (With most classrooms exceeding 30 students, that's over \$200,000 per classroom.) And if the money solution could do the trick, it would surely have worked in Kansas City, where they've gone about as far as they can go. A federal judge there ordered that \$200 mil-

lion a year be spent on inner city schools, so as to equalize suburb and city (surely there's something in the Constitution about that). Almost ten years later, the schools were beautiful and equipped with every imaginable device whose lack supposedly obstructs the flowering of disadvantaged, inner city youth. The teachers were well paid. The administrators were trained. The consultants were in clover.

The test scores, however, didn't budge.

### Born with an Instructional Toy in His Mouth

Berliner and Biddle's treatment of the relation of intelligence to scholastic success sadly confirms the intellectual corruption of the left. Beginning with a self-contradictory and simply false treatment of *The Bell Curve*, they launch into an attack on "the rich," whom they fault for sending their kids to "well-funded public schools in the affluent suburbs." The "rich," they write, buy their kids "instructional toys, encyclopedias, computers, and first-rate health care," things "only wealthy parents can buy for their children" (49-50). Surely the authors are too smart to really believe this invidious claptrap. But perhaps they think that their audience is too dumb to consider that the average middle-class home has all of what they assert are prerogatives of the "rich," and that most working-class families have at least some and could easily get the rest if they wanted to. Here we see left-liberalism at wit's end, trying desperately to invent class divisions where none exist and relying on prejudice to supply what analysis cannot. All of this has to do with leftists' traditional compulsion to assert that intelligence has almost nothing to do with heredity (an absurdly radical stance that no psychologist of any stature would endorse); it must be rather a



"Oh, yeah? — let's see how tough you are without those tattoos!"

"trait" that "parents can buy," if they have enough money.

### An Un-American Conclusion

To be fair to the authors, they make a persuasive case that American schools are not really much worse academically than they were 20 years ago. As noted earlier, there was a decline during the 1960s and early '70s, but math scores have actually bounced back since then (1990 NAEP math scores were the highest ever); and if the "elite" verbal group never recovered, it has not declined further. Besides, the earlier decline, especially in verbal scores, may well have other causes than what schools do, notably the epidemic addiction to television. Moreover, the authors may well be right that much of what they call the "hysteria" about decline stems from the vain unwillingness of older Americans to accept that their own generations

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*Despite all the media hair-pulling to the contrary, most parents are fairly well satisfied with prevailing academic results.*

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were about as feeble as today's kids. And a final factor in the perceived inferiority of today's youth is that the majority of opinion-leaders probably grew up with relatively smart kids, and are relatively smart themselves; when they find out how bad things are in general, they are shocked.

*The Manufactured Crisis* is an interesting book, and it is a pity that it is marred both by the authors' ignorance of economics (a failing I haven't the space to discuss) and by their preconceived commitment to government schools. They have interesting observations to make on a host of matters, and if they are a bit absurd in attributing criticism of state schools exclusively to right-wing ideologues — well, I can probably get along with anyone who also detests William Bennett. And we need not be concerned with their surprising conclusion that American public schools compare reasonably well with those of foreign countries. Why, after all, should we expect otherwise? There is little reason to believe that most European or other governments are bet-

ter than ours in other respects. And even where the authors seem most chained to their prejudices — as in their hatred of anything that smacks of "privatizing" (vouchers, etc. — read state subsidy in sheep's clothing) — I sometimes can't help feeling slightly sympathetic. Their conclusions, though wrongly premised, buttress my own view that vouchers are insidiously destructive of true freedom\*.

At the end of their book, the authors suggest various tired "innovations" such as "cooperative learning," computerized education, etc., which, though predictably in line with their liberal-egalitarian world view, are hardly credible as effective teaching methods, let alone as ways out of the trap for inner city youth and others caught in the brutal machine of state schooling. But whatever the authors' intentions, the real message of *The Manufactured Crisis* may be that there is no easy solution, and maybe no "solution" at all, to the problems of education — and by extension, to the problems of ignorance, ugliness, and incompetence. Such a message goes against the contemporary American grain, which bids us to always be ready with a quick remedy: whole language, E.D. Hirsch's shopping list of names and definitions, vouchers, or "national standards." (The poverty of criticism in this area is revealed, for example, by the bizarre mixture of panic and credulity that greeted the announcement by Chris Whittle — a kind of exalted ad man — that he, with the help of a former president of Yale, would open a chain of nationwide, for-profit schools, with a foolishly presupposed emphasis upon "computers.")

This has partly to do with the dream of equality: when school is done right, all of us will be so smart we can hardly stand it. But in reality, maximally effective instruction should have two results: (a) during the early stages of instruction, a narrowing of the gap between high-IQ and low-IQ subjects (substitute "native ability" for IQ if you wish), and (b) during later stages, a widening of the gap. For the materials covered during the first eight years or so are within the potential grasp of a

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\* Even charter schools may present similar problems. Already a struggling private school in Arizona has "gone charter," and a once-free institution has been colonized by the state. This is not progress.

very high proportion of students; thus, it is probable that differences in achievement can be reduced by improving the quality of instruction so that every student reaches his basic potential. For example, probably 98-99% of students can learn to read well enough to understand basic directions; so there is no absolute constraint upon their achievement, only the practical constraints of teaching quality and degree of perseverance. The situation over the long term is quite different. There is an absolute con-

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*Where private schools do compete very successfully is in providing safety and order.*

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straint upon anyone's ability in a given area, be it math, music, physics, or literature. Probably the most familiar of these is math; there seems little reason to believe that a majority of the population is capable of attaining excellence in, say, advanced calculus, just as there is little reason to believe that a majority could master the violin, grasp quantum physics, run a four-minute mile, or produce an intelligent critique of "The Wasteland." And even if someone figures out both how to teach much better than we do, and how to institutionalize better teaching, such constraints will continue to fly in the face of America's hysterical optimism.

So David Berliner and Bruce Biddle are probably right: the Great Decline is a myth, and there is no "crisis." A crisis requires a critical moment. But a few brilliant teachers and institutions excepted, American public schools have always been bad, and are bad now: anti-intellectual, crime- and bully-ridden warrens of mediocrity, they generally subsist on the ignorance of a people sentimental about their own school days, resentful of those who experienced something better, and determined to perpetuate the regime that made them what they are. Most of the proposed reforms have the potential to destroy what little exists of a free and dignified private sector, in exchange for benefits that seem dubious at best. Amelioration is offered by homeschooling, by private schools that shore up islands of wisdom one by one, and even by the solitary dedicated public school

teacher. But given the institutional incentives and fantastic beliefs of state education, there is no remedy short of

abolition. That is difficult for many people to swallow. But I suspect it is the truth. □

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***The Vision of the Anointed: Self-Congratulation as a Basis for Social Policy*, by Thomas Sowell. Basic Books, 1995, 305 pp., \$25.00 (hc), \$14.00 (pb).**

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## Who Watches the Botchers?

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Jane S. Shaw

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Thomas Sowell writes so many books that it is hard to keep up with them, much less evaluate them. However, they group themselves thematically. So, to appreciate *The Vision of the Anointed*, it is helpful to consider two earlier books.

In 1980, Sowell's densely packed *Knowledge and Decisions* explored the trend toward political control of decision making. *Knowledge and Decisions* is a broad and powerful argument that central authorities cannot have the knowledge necessary for reasonable decision-making, so political control has disastrous consequences. (It is an amplification of F. A. Hayek's essay on "The Use of Knowledge in Society," in which Hayek argued that the dispersion of knowledge is the main reason why socialism cannot work.)

In 1987, in *A Conflict of Visions*, Sowell again addressed the decision-making process, but in a more abstract way, offering a dispassionate explanation for the gradual erosion of freedom over the past century or so. Sowell said that there are two major ways of viewing human nature. Those who hold the "constrained" vision (Adam Smith, for example, or the American Founding Fathers) see human beings as inherently flawed, not likely to change fundamentally. They don't want the government to try to overturn or revamp the decisions that people make individually, since these decisions are made within the constraints inevitable in life.

In contrast, the "unconstrained" vision (held by Rousseau, for example, and reflected in the French Revolution) sees people as capable of being made more idealistic and better-behaved. In *Conflict*, Sowell reveals a preference for the constrained vision; but he focuses on the intellectual distinction, not the political point.

By 1995, the trend toward political control showed little sign of abating, his polite discussion of the two kinds of visions had drawn no blood, and Sowell's patience must have been running out. In *The Vision of the Anointed*, Sowell brings together the messages of the two books. He argues that the dominance of elites who hold the unconstrained vision has caused the loss of freedom and the social deterioration described in *Knowledge and Decisions*. And he spells out how the elites keep that vision in spite of all evidence to the contrary.

*Vision* is smaller than *Knowledge and Decisions* but larger than *Conflict*, and is more journalistic and policy-oriented than either. Much of the book illustrates how the "anointed" (the newspaper columnists, politicians, and others who influence public opinion — the second-hand dealers in ideas) operate to avoid facing reality. Since the 1960s, he says, the elites have repeatedly asserted the existence of a crisis, demanding and obtaining government action. Most, if not all, of these policies have failed dismally, a fact that has not led the anointed to reconsider their arguments. If things don't work out the way they were supposed to, it is the fault of some-

one else — usually Republicans. ("Few histories have been rewritten so completely and so soon as the history of the Reagan administration" [82], he comments.)

*Vision* gives three examples of failures that the anointed refuse to acknowledge: the failure of the war on poverty to reduce dependency on welfare, the failure of sex education to reduce out-of-wedlock pregnancies, and the failure of sociological theories of criminal justice to reduce crime. In each case, the new policy chosen actually appears to have increased the problem.

No matter. As Sowell explains, when poverty rose rather than fell, opinion leaders redefined the intent of their program. It hadn't been to reduce dependency after all, but to reduce poverty — if necessary, through redistribution. And when illegitimate births rose, opinion leaders rewrote history. There hadn't been enough sex education (even though, according to Sowell, nearly half

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*Since the 1960s, the elites have repeatedly asserted the existence of a crisis, demanding and obtaining government action.*

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of all schools had sex education as early as 1968). When crime rates rose, the elite hid the problems by making it socially unacceptable to talk about them. Promoting law and order became the equivalent of racism.

Much of *Visions* is devoted to illustrating just how the elites distort facts to uphold their view of the matter at hand. For example, in recent years, family and household income figures have been used to support the idea of the "disappearance of the middle class" or "economic stagnation" (50). But the declining size of the family, which is even more dramatic among blacks than whites, explains much of the "decline" in income. Per-capita income figures show a quite different picture.

This deception was conscious; Sowell points out that "New York Times" columnist Tom Wicker knew how to use per-capita income statistics when he wished to depict success for the Johnson administration and family income statistics when he wished to



depict failure for the Reagan and Bush administrations" (51).

Another technique is to lump together mild and extreme activities, and treat them all as manifestations of the worst end of the spectrum — or, as Sowell says, "to list a whole string of adverse things, with the strong stuff up front to grab attention and the weak stuff at the end to supply the numbers" (47). A Louis Harris poll reported that "37% of married women are 'emotionally abused' and 4 million 'physically abused.'" But "abuse" as measured by this poll included such things as a husband's "stomping out of the room" and "grabbing his wife," as well as actual violence. Victims are also lumped together to create a misleading impression. It is widely believed that "wife-beating" is common, but, says Sowell, violence against women is far more likely to be against separated, divorced, and never-married women rather than wives. "The least likely of all victims is a wife" (173).

Sowell explores other techniques for maintaining the vision, such as the selection of "mascots" — groups that are always treated sympathetically — and of "targets" — groups that are attacked because they don't conform to the preferences of the anointed. Mascots include the handicapped, the homeless, and criminals. Targets include business executives, religious groups, and families. (By the way, Sowell contends that the "traditional" family isn't as dead as the elites claim it to be. Although he does not provide extensive evidence for his claim, he points out that in 1992, 71 percent of all Americans under 18 were living with both their parents [61].)

As much as I admired the power of Sowell's logic, I found myself unconvinced by some of his arguments. For example, Sowell dismisses the substitution of phrases such as "he or she" for the male pronoun as merely another attempt by the elites to affirm their commitment to sexual equality, noting that, historically, "he" was used to mean both men and women. This is true enough, but his claim that "no one intended to exclude women" (147) is far too sweeping.

Also, Sowell weakens his credibility by relying on secondary sources for some data. His figures on actual violence against women, for example, come from the book Christina Hoff Sommers'

*Who Stole Feminism?* And his statistics on the current family come from a media conference at Columbia University on the American family.

These quibbles aside, *The Vision of the Anointed* is a valuable and stimulating book. Thomas Sowell is a man with a mission. Now 66 years old, he knows his days of writing are limited. He long ago proved himself a scholar and is

now trying to get his message understood by those who can bring about change. *The Vision of the Anointed* should be viewed as a book that builds on his past writing. In that light, especially, his arguments ring true.

Sowell's anger, too, rings true. His final comment on the elites is: "Seldom have so few cost so much to so many" (260). □

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***Star Wars; The Empire Strikes Back; Return of the Jedi — Special editions, 1997, written and directed by George Lucas.***

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## Rebels vs. the Federation

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Todd Seavey

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This year's re-release of the three Star Wars movies reminded moviegoers of two important truths: you can't trust the Empire, and Star Trek looks incredibly lame (and socialist) compared to Star Wars.

To illustrate the difference, consider one of the nice added touches in the re-releases of the Star Wars films: the addition of footage at the end of *Return of the Jedi*, showing celebrations of the evil Emperor's death on various planets, including the Imperial throneworld, Coruscant. It's a celebration for the characters and viewers alike, a final resolution of all the moral and physical conflicts that preceded it — a climax that Trek, which has no central narrative drive or moral purpose, could never give us. The Emperor, incidentally, is named Palpatine, a variation on the Palatine hill in Rome, a city synonymous with the decline of republic into empire (Palpatine's name appears in the Star Wars novel but is not spoken in the films). The corrupt politics of Coruscant will reportedly figure more prominently in the three prequel films that Lucas wants to begin releasing in 1999. (The prequels will depict the final days of the galactic Republic and the growth of the

Emperor's power, which means they'll probably have even more libertarian-conservative resonance for moviegoers than the existing films.)

### The Star Wars Revolution

For future historians, the whole Thatcher-Reagan-Gorbachev-Gingrich era will blur together into a single crisis of faith in big government (as surely as the eighteenth century blurs together for us). Those historians may conclude that it was no coincidence that the crisis period began promptly after the release of *Star Wars* in 1977.

Well, all right, the Star Wars series may not have changed history, but it is one of the few products of late twentieth-century pop culture that qualifies as mythic. Darth Vader, for instance, may be the creepiest personification of evil to haunt the Western imagination since Satan. A Darth Vader action figure was even part of a fully-restored Haitian voodoo altar on display recently at Chicago's Field Museum, right next to centuries-old symbols of magic and power. It's easy to forget how magical these films are and lump them in with the countless imitators that came along later. Big-budget science fiction movies of the Arnold Schwarzenegger variety, with all their macho excess, make *Star Wars* look almost feminine by compari-

son, like a fairy tale or an Arthurian legend. Maybe that's because the Star Wars movies take old-time virtue and morality (and the threat of authoritarian bureaucrats) as seriously as monsters and pyrotechnics.

That's probably the only part of my analysis that George Lucas would agree with. As a Hollywood liberal in the Steven Spielberg vein (witness Lucas's liberal message-of-the-week series *Young Indiana Jones*), Lucas probably wouldn't want Star Wars to be labeled conservative; he'd likely prefer timeless. And one *can* argue that Star Wars has its liberal side, insofar as a tolerant, multi-ethnic, low-tech group (sometimes prone to New Age-like mysticism) is fighting a vast military-industrial complex. The explosion of the Death Star space station then becomes the ultimate expression of "sticking it to the Man." Fair enough. There are plenty of reasons to fight tyrannical empires.

### Meanwhile, Back on Earth

Star Trek — despite all its fanatic followers, its frequent conventions, its three spin-off series, and the huge role it played in the childhoods of countless science fiction fans — can't hold a candle to Star Wars, and every last Trekkie knows it. Trek can throw as many

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*Star Trek looks incredibly lame (and socialist) compared to Star Wars.*

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Vulcans, transporters and shuttlecraft at the American psyche as it wants — they won't strike the kind of primal chords that Star Wars' stormtroopers, light sabers, and Death Star space stations do. Star Trek lacks Star Wars' romantic sweep and moral impact. George Lucas created more magic in six hours of Star Wars films than Gene Roddenberry and his successors have managed to eke out of more than 800 hours of Trek on television and film. The success of last year's *Star Trek: First Contact* doesn't change that. While the Trek characters take orders from quasi-military bureaucrats back at Federation HQ and cruise through space with the haughty detachment of anthropologists, Star Wars' Luke Skywalker and friends learn the

secrets of ancient Jedi knights and lead a band of outnumbered but brave rebels against a tyrannical galactic empire. *Which matters more, I ask you?*

### The Trouble with Trek

Something's not quite right about the Trek universe.

Drama requires tension and conflict, whether it's Macbeth struggling against his conscience or King Kong against biplanes. Trek is set in a near-utopian future, and utopias don't allow much conflict. No matter how much they use the phasers in a given episode, we know in our hearts that all is well in the Federation. The original *Star Trek* television series had the seeds of utopianism in it, but retained a sense of adventure, mainly because it owed so much to the *Captain Video* generation of space cadet shows that preceded it. The modern Trek spin-offs, however, have fallen prey to Roddenberry's optimism. No matter what happens to Trek characters like the Klingon warrior Worf and the Bajoran ex-terrorist Kira — even if they're tortured by evil Romulans and made to confess childhood sexual molestation — we never feel there's a real danger of them coming out of the situation much changed. The characters are as resilient as those on any sitcom, and sitcoms are not drama.

Nor is Star Trek's careful maintenance of the status quo a good formula for science fiction, which draws its strength from constant extrapolation and fresh twists. That's why the genre is generally better suited to films than to episodic television. Too many science fiction shows seem to use up their creative juices in the opening title sequence. We learn, say, that scientists have created a super-intelligent orangutan who is on the run from the law, but after that tantalizing initial premise, each individual episode is as disposable — and does as little to expand on the premise — as any installment of *Charlie's Angels*. The orangutan becomes a coal miner, saves people from a burning building, goes surfing, etc.; but there is rarely any permanent change in his mental or legal status that alters our perspective on the series or advances the basic conflict.

One of the worst offenders of this kind was the series *Galactica 1980*, the terrible sequel to the 70s series *Battlestar Galactica*. The premise of *Galactica 1980*

was that a massive fleet of humanoid aliens was hovering above the Earth hoping to quietly colonize it before they could be attacked by their enemies, the evil cyborgs called the Cylons (whom you may remember from their glowing red eyes and their voices, which inspired the robot chorus in the song "Funktown"). So what did we get in almost every episode? Two guys from the alien fleet driving around America on motorcycles, getting a feel for their new world by fighting the occasional corrupt sheriff, wife-beater, or street

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*The Star Wars series may not have changed history, but it is one of the few products of late twentieth-century pop culture that qualifies as mythic.*

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gang.

Trek's episodic nature makes it vulnerable to the same sort of stagnation. Star Wars, in keeping with classic narrative rules, has focus and direction — a clearly-defined, epic struggle with a visible end.

### Experimental Evidence

Luckily for concerned media analysts, the fates have provided us with a glimpse of what Trek might look like if injected with a dose of Star Wars' romanticism: the syndicated, budget-challenged but spirited show *Babylon 5*. Its creator, J. Michael Straczynski, pitched Paramount on the idea of a space station where competing races meet to engage in trade and diplomacy. Paramount said no and then made *Star Trek: Deep Space Nine* anyway — a series with the same premise — while Straczynski went off to make *Babylon 5*. So we have a "control" and an "experimental" Trek-type show, as it were, broadcast every Saturday evening.

The result? Despite *Babylon 5*'s spending only half as much money per episode as *Deep Space Nine*, despite Straczynski's being stretched thin by writing *all* the episodes himself, and despite the awfulness of many of its actors, *Babylon 5* seems to have all the meaning and drama and life that the sterile Trek world lacks. Characters die unexpected but meaningful deaths (in

last season's finale, we even got to see nuclear weapons dropped on a shrieking Melissa Gilbert by her real-life husband Bruce Boxleitner, who plays the captain of the Babylon 5 space station). Competing empires engage in selfish tactical maneuvers instead of just being *misunderstood* (as every minor race seems to be on Trek). Allegiances form and collapse. Earth's government goes fascist in wartime instead of adhering politely to a Prime Directive, as Trek's Federation supposedly does. An ancient war between two alien races representing Order and Chaos (the major plotline of the series' first three and half seasons) ended recently, not with a big explosion, but with humanity and other races refusing to take sides in the conflict and opting for freedom instead, demanding that the two ancient foes leave and let the younger races control their own destinies.

Straczynski has vowed that *Babylon 5* will never become stale and that it will never feature cute kids or cute robots. He takes the vow seriously, comparing it to Spiderman's realization that "with great power comes great responsibility." Straczynski and his fellow *Babylon 5* creators (including the ubiquitous Harlan Ellison) cite influences such as *Hill Street Blues*, *The Prisoner*, *Thunderbirds*, the historic struggles of the Jews, the comic book *Nexus*, and the film *Casablanca* (which also obviously inspired the bustling but seedy spaceport Mos Eisley in *Star Wars*, described by Ben Kenobi as a "wretched hive of scum and villainy"). What all of these sources have in common — and what Trek lacks — is the sense that a truly rich, complex world is *not* one that is easily controlled but one that is constantly falling apart and being remade, constantly fighting against disasters and setbacks.

*Babylon 5*'s second season ended with one human character's grim menorah-lighting monologue about how the space station's crew had failed as the galaxy's "last, best hope for peace" and could only hope they'd be victorious in a costly war against the chaos-loving Shadows. The monologue became the next season's title sequence

narration, which is comparable to unveiling new *Star Trek* narration that says "We once went boldly where no one had gone before — but that was before the Federation was destroyed."

Of course, *Star Trek*'s twenty-fourth century is much too stable — and its inhabitants too emotionally well-adjusted — for that sort of thing. Maybe that's why the characters in *Star*



*Trek: First Contact* (the first *Trek* film to generate real tension since 1982's *Star Trek II: Wrath of Khan*) traveled back to the twenty-first century, a time when space explorers still experienced all those obsolete but interesting emotions such as fear, anger, and courage.

### The Power of the Force

I meet people from time to time who say that the first *Star Wars* movie was impressive in its day, but that it looks primitive by today's standards. I don't know whether these people are very poor observers or just say such things to sound hip and modern.

Despite Lucas's fiddling and improvements for the re-releases, the truth is that none of the megabudget special effects films to come out since *Star Wars* have shown anything close to its cinematic skill or attention to detail. Sure, film stock ages. Hair cuts go out of style. But dedication and artistry stand the test of time, with or without '90s computer-animated enhancement.

For the *Star Wars* series, alien languages were created by combining real Earth languages because, Lucas realized, ad-libbed gibberish just doesn't have a convincing-yet-alien sound to it. Elaborate backgrounds were created for even the minor characters, so that their costumes and weapons would seem parts of organic, albeit unseen, cultures. Every inch of every set is convincingly designed, with few hints of the hokiness that creeps into lesser sci-fi. The aerial battles, particularly the famous Death Star trench finale from the first film, were modeled on footage of actual dog-fights and have a realism that money alone can't create.

And while we may think of grittiness in science fiction films as starting with the dirt, sweat, and saliva of *Alien* (1979), there's a detailed, real-world slovenliness to things in *Star Wars* — such as Han Solo's spaceship, the rebel headquarters, and the dwarfish Jawas' robot holding pens — that makes *Star Wars* far more believable, whether viewed in 1977 or 1997, than anything in, say, *Total Recall*.

*Trek*, on the other hand, has an oddly sanitized feel to it, emotionally and physically. The *Trek* characters can be lost in a swamp on some primitive planet and it still feels like we're watching a group of jumpsuited, TV-commercial-ready Meineke repairmen or a bunch of aquarium tour guides. *Trek* isn't a failure by any means, but it's just a TV show, even when it's on the big screen.

### The Voice of a Generation

*Star Wars* is a classic, and I rushed to see it again when it opened. All right, I admit I waited a few days, to let the crowds die down. I'm getting too old to fight long lines. I suppose I'm

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getting too old for this sort of thing in general. Over the past few months, I've been indulging in some pop culture nostalgia — bought a new *Micronauts* comic book (based on the '70s action figures), saw the Godzilla movie *Destroy All Monsters!* at Lincoln Center (it was my favorite when I was four), went to a Fixx concert (remember "One Thing Leads to Another"?). I swear I'm going to stop all this now — no more rock, no more comic books, no more TV (except to see how *Babylon 5* ends). All high-brow grown-up stuff from here on. And yet...

Sometimes the kids are right. Grown-ups (or Hollywood people, at least) picked *Annie Hall* over *Star Wars* for the Oscar in 1977. I'm sure the Academy felt it was the grown-up thing to do, what with all those neuroses and relationship issues in *Annie Hall*. But how many of us believe that Woody Allen bickering with Diane Keaton will have the legendary cinematic resonance, 50 years later, of Darth Vader crossing swords with Ben Kenobi? It's already been 20 years, and I think the answer is becoming apparent.

## Icons and Archetypes

In the end, *Star Trek* is iconic at best — like Mr. Ed or lava lamps. *Star Wars*, on the other hand, is archetypal. If you see it for the first time as a child, it seems to encapsulate the struggle between good and evil with such clarity, you can hardly believe the story was put together in a specific time and place, rather than being knowledge we were all born with. Reason, conscience, humor, love of *Star Wars* — they all seem instinctual to me now. I shudder with horror when people tell me they "aren't sure" if they've seen all the *Star Wars* movies. Aren't sure? As if this were nothing more than episodes of *Barney Miller* we're talking about? You can miss some, even most, *Star Trek* episodes and still get the idea. Miss one of the *Star Wars* movies and you're only two-thirds alive.

Or to put it in terms the Trekkies can appreciate: if a super-intelligent alien race landed on Earth tomorrow to judge our worthiness for continued existence, and they demanded that we show them what we've accomplished so far in film or TV, wouldn't *Star Wars* be our best hope for survival? It's how I'd want to be judged. □

## Booknote

**False Tag** — We all know how hard it is to sell anything literary in this essentially philistine culture. It often helps a writer to have a tag that, by itself, is meant to create interest among publicists and, better, book-buyers. Such terms as "feminist," "black," "Jewish," "gay," "New York," and "California" have functioned in this way. *Daughters of the Fifth Sun* (Riverhead, 1996, 284 pp., \$13.00), edited by Bryce Milligan, Mary Guerrero Milligan, and Angela de Hoyos, claims to be the first "Collection of Latina Fiction and Poetry" from a commercial publisher. According to the back cover, "Although there have been other Latino anthologies, never before has one been as focused and strong in content and as universally endorsed by the leading figures in the Latina literary community." See what I mean? A book whose contents are in general no better or worse than many other collections of contemporary writing needs something else to succeed in the marketplace.

Especially troublesome is the merchandising epithet "Latina." It is finally no better than "black," which was scarcely appropriate for writers (and people) with a variety of skin hues ranging from dark brown to off-white. (I recall Albert Murray once telling me that there's no "black and white" in America, but "white and part-white, and, Richard, you look kinda dark.") *Daughters of the Fifth Sun* includes a Puerto Rican aristocrat who took her doctorate on the mainland and writes in Spanish before co-translating herself into English, a Los Angeles native with "a Cuban mother and an American father," native Mexicans now living in the U.S., several Americans with no more "credential" than Hispanic surnames, a Brazilian who has lived in the U.S. since 1960 teaching Spanish at American universities, a San Antonio-born undergraduate whose French surname masks her "Mexican and German descent," a Cuban who took her degrees in the U.S. before finding a university teaching position in South Africa, the impoverished descendant of two-century-old South Texas landowners, "a fifth-generation Californian of Mexican and Native American (Chumasch) heritage," a Dominican who writes only in English, a

## Notes on Contributors

Chester Alan Arthur is *Liberty's* political correspondent.

"Baloo" is the alter ego of cartoonist Rex F. May.

John Bergstrom is a California cartoonist and animator.

Oliver Becker is an editorial assistant at *Liberty*.

R.W. Bradford is editor of *Liberty*.

Harry Browne is the author of *Why Government Doesn't Work* and *How I Found Freedom in an Unfree World*. Not long ago he ran for the presidency of the United States.

Stephen Cox is Professor of Literature at UC-San Diego and author of the biographical introduction to Isabel Paterson's *The God of the Machine* (Transaction).

Nathan Crow is assistant editor of *Liberty*.

Richard Ebeling is Ludwig von Mises Professor of Economics at Hillsdale College.

James Gill is *Liberty's* staff artist.

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Richard Kostelanetz is a critic, artist, and anthologist living in New York.

David N. Mayer is Professor of Law and History at Capital University, and the author of *The Constitutional Thought of Thomas Jefferson*.

Randal O'Toole is editor of *Different Drummer*.

Sheldon Richman is the author of *Separating School and State*.

Todd Seavey has written articles for *New York Press*, *National Review*, *Spy*, and other publications.

John Goodman is president of the National Center for Policy Analysis.

Jane Shaw is senior associate at the Political Economy Research Center in Bozeman, Montana.

Timothy Virrkala is managing editor of *Liberty*.

Nuyorican educated partly in Europe and now living in Kansas, and a Chilean Jew who writes in Spanish although she has taught at Wellesley for 16 years.

To account for non-Hispanic surnames, the editors use the elaborate "Notes on the Contributors" to identify Greek, Polish, and other alien ancestors. (This is really unnecessary for Latin Americans, who know that surnames in their countries are no more exclusively Hispanic than U.S. surnames are typically Anglo-Saxon, and for the same reason.) Another peculiarity of these notes is their habit of identifying a great variety of often unfamiliar literary awards ("the Empresario Award de San Antonio," "a gold medal from the Commonwealth Club of California," "the 1993 Latino Literature Prize in Poetry," "the Jeanetta [sic] Rankin Award in Human Rights," etc.). It brings to mind Northrop Frye's com-

ment that awards probably shouldn't be given to anyone over the age of twelve.

Looking at this "Latina" mix, I wonder what Americans would think of a Spanish-language anthology of "Angloistas" that contained writers with Anglo surnames writing in their native Spanish; an Israeli who writes in Hebrew even though she has lived awhile in Bogotá; an American who took her degrees in Buenos Aires before going to teach in Spanish Morocco; Americans, Englishwomen, Austrians, Africans, and even Hong Kong-born Chinese (accounting for the Brazilian) emigrating to Spanish-speaking countries and then writing in the local tongue; and so on. Looking at such a book in a Spanish-language store, most Americans would think "Angloista" a merchandising tag no less false to the variety of English-language writing.

—Richard Kostelanetz

# Terra Incognita

## *New York, New York*

Notes on the benevolent origins of totalitarianism from director Milos Forman, as reported by Frank Rich in the *New York Times*:

"The Nazis and Communists began by attacking pornography, homosexuals — it always starts very innocently."

## *Gresham, Oregon*

Unusual views on diversity in qualifications for public office, uncovered by the *Portland Oregonian*:

Democratic House candidate George Kelley has been through various troubles with the law, including both a 1991 charge of failing to pay child support and a 1993 arrest for menacing his wife with a handgun. He now says he has overcome his problems, and notes that "we need people in the Legislature who have a broad range of experiences."

## *Auckland, New Zealand*

Progress in pedagogy, explained by a Waikato University professor, quoted in the *NZ Herald*.

Professor of education Dr. Jody Hanson spends up to 20 hours a week doing research on "mentoring" by women in brothels and massage parlours; she explains that "you can't go down to the local polytech and do a course in B and D."

## *Cincinnati*

Ohio's war on crime, as reported in the *Cleveland Plain Dealer*:

A woman was recently arrested for violating a 1958 ordinance against feeding other people's parking meters.

## *The Netherlands*

Innovations in safe sex, as reported by *Restaurant Hospitality*:

The Dutch government has issued new guidelines for sadomasochistic rituals that are performed in a brothel. The *Sunday Times* of London reported that according to the new rules, "Clients involved in sadomasochistic acts would have to be bound and gagged in such a way that they could work themselves free in an emergency in a maximum of 30 seconds."

Besides restricting methods of bondage, the government also has urged that night tables be stocked with wire cutters, proposed heavy taxes on prostitution and full pensions for prostitutes, and recommended that leather-wear and safety expenses be made tax deductible.

## *Australia*

Progress in public finance, as described in *The Dominion* of Wellington, New Zealand:

Australia's government has introduced legislation that would allow it to tax telephone numbers as much as \$100,000 per year.

## *U.S.A.*

Unusual perspective on the Holocaust, reported by *USA Today*:

After the first television showing of *Schindler's List* drew more than 55 million viewers, director Steven Spielberg commented that the show's huge audience "could not possibly be more gratifying to the survivors and the millions who did not survive."

## *Wellington, New Zealand*

Frontiers of promotion, reported by the *Christchurch Press*.

During the Auckland-Wellington cricket match, Scott McKenzie ran across the field, naked except for his cricket pads and a protective box, before being arrested by a buxom female policewoman. It was later learned that both McKenzie, a male stripper, and the police officer, an actress, were hired by promoters of the cricket match.

## *U.S.A.*

The march of economic science, according to *The Wall Street Journal*:

After spending five hours dining with Louis Farrakhan, Jude Wanniski claimed that the Nation of Islam leader heard his "supply side perspective" on modern history and "drank it in as if he had just come upon an oasis in a desert."

## *New Zealand*

Interesting intellectual challenge, from an advertisement in the *New Zealand Herald*:

"Imagine a Cow that can produce 700 kilograms of prime meat and 240 square feet of leather every year for up to 35 years!"

## *Janesville, Wisc.*

A difference of opinion in America's Dairyland, reported by the *Milwaukee Journal-Sentinel*:

A Janesville woman accused her boyfriend of beating her after she told him the Greenbay Packers "sucked."

The boyfriend explained that he had been angry because he believed she had taken \$300 that he needed to pay a previous domestic abuse fines.

## *Racine, Wisconsin*

Advanced development of the "safety net," in the home of American Progressivism, as reported by the *Milwaukee Journal Sentinel*:

A six-year-old from a low-income family in Milwaukee qualifies for 36 programs, including 18 providing services to prevent drug and alcohol abuse and six to prevent crime and juvenile delinquency.

(Readers are invited to forward newspaper clippings or other items for publication in *Terra Incognita*.)



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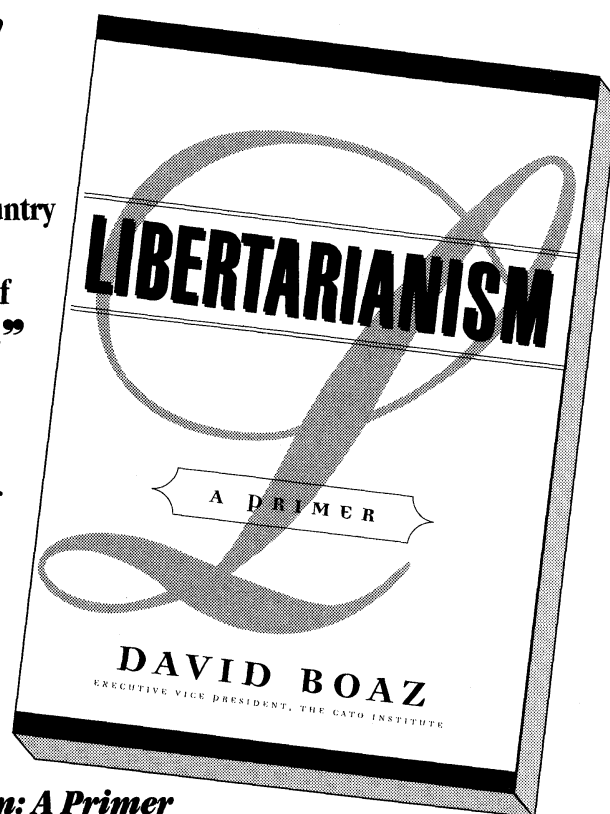
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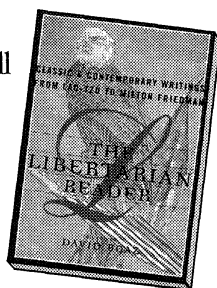


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