

# Liberty

April 2004

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Sexing It Up:  
How Scholars  
Fake History

## Rights During War

*by Dave Kopel*

## A Day at the Caucuses

*by R. W. Bradford*

## Making Your Neighborhood Burglar-Friendly

*by Randal O'Toole*

## The Procrustean Marriage Bed

*by William Merritt*

## The Man Who Invented Television, and How RCA Stole Credit for It

*by Miles Fowler*

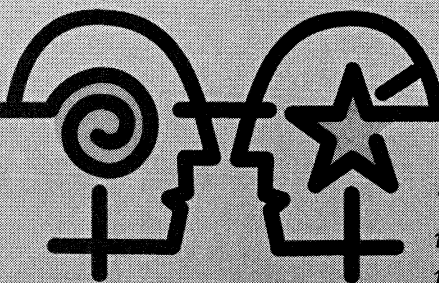
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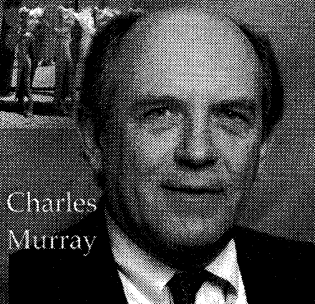
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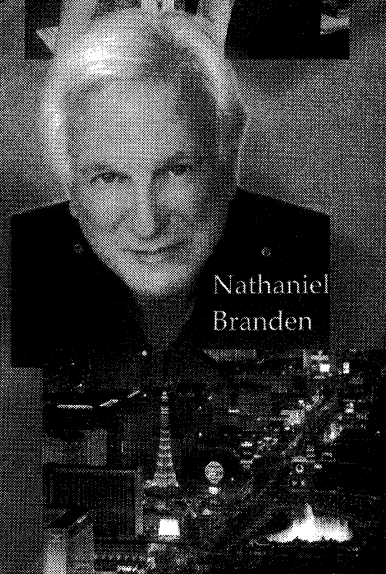
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## Letters

### It's a Start

Greg Newburn writes in the January Liberty, "Although the Libertarian Party has run a candidate in every presidential election since 1972, the Party has failed to garner more than 1% of the popular vote." This statement is not true. In 1980 Ed Clark got 1.07% of the popular vote.

It should also be mentioned that the Libertarian Party polled 1.7% of the U.S. House vote in 2000, and 1.6% of the U.S. House vote in 2002.

Richard Winger  
San Francisco, Calif.

### Japan's Bush Doctrine

Those who feel the preemptive surprise attack on Iraq, which killed thousands of civilians, was morally justified cite the following beliefs:

1. Saddam Hussein was a nasty man.
2. Iraq might be giving aid and support to our enemies.
3. Iraq might possess "weapons of mass destruction," i.e. chemical, biological, or nuclear weapons.
4. Iraq had oil, which we were getting along without, but they might disrupt our access to affordable oil.

I am old enough to remember Dec. 7, 1941, when the Japanese staged a preemptive surprise attack on the U.S. fleet at Pearl Harbor, killing 254 civilians. They sincerely believed the following:

1. FDR was a nasty man.
2. The U.S. was giving aid and comfort to Japan's enemies, sending planes and pilots to China, sending American naval units into Japanese waters, etc.
3. The U.S. had huge stocks of chemical weapons, and a U.S. Army Chemical Corps. The U.S. had biological weapons and was supplying anthrax to the British. The U.S. did not yet have nuclear weapons, but they were trying hard with the Manhattan Project.

4. The U.S. had oil, which Japan could not get along without. In conjunction with British and Dutch allies, the U.S. disrupted *all* of Japan's oil supply.

Japan was strictly conforming to American legal and moral standards. We owe them an apology for that "Day of Infamy" slander.

Erik Buck  
Liberty, Mo.

### Roots of Suicide Bombing

Regarding Frank Fox's "connection between the ideologues of anti-Semitic hatred and the . . . Islamists of today," let's remember that the Palestinian Arabs welcomed Jewish refugees (their fellow Semites) from European persecution with open arms for eleven centuries. Jews were treated better in Palestine than any other country.

Why did this warmhearted attitude change? Could it be because the arriving masses of Jewish emigres stripped them of their land and freedom?

We used to think that the willingness to give one's life for what one deeply believes was a mark of greatness, particularly in the fight for freedom. The Islamic development of suicide bombing (not a historical Muslim tactic) reflects the depth of their outrage at the violation of their most cherished rights and sensibilities.

We'll never find peace or security until we learn to understand how other peoples think and feel and why they feel driven to do what they do.

Martin P. Choate  
Los Angeles, Calif.

### Unconstitutional but Popular

In "Court Guts First Amendment" (February), Mark Tapscott properly chastised the U.S. Supreme Court for upholding the Bipartisan Campaign Reform Act of 2002. But ranking that "with such previous infamous decisions as Dred Scott, upholding slavery

*Liberty* (ISSN 0894-1408) is a libertarian and classical liberal review of thought, culture and politics, published monthly by the Liberty Foundation, 1018 Water Street, Suite 201, Port Townsend, WA 98368. Periodicals Postage Paid at Port Townsend, WA 98368, and at additional mailing offices.

**POSTMASTER:** Send address changes to Liberty, P.O. Box 1181, Port Townsend, WA 98368.

Subscriptions are \$29.50 for twelve issues. Foreign subscriptions are \$34.50 for twelve issues. Manuscripts are welcome, but will be returned only if accompanied by a self-addressed, stamped envelope (SASE). A writer's guide is available: send a request and an SASE.

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in 1858" is off-point and improper. *Dred Scott v. Sandford*, 60 U.S. 393 (1856) was about jurisdiction — not slavery. At 60 U.S., p. 454, the Court ruled:

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.

The Court was referring to article 3, section 2 of the Constitution, where its jurisdiction was, and still is, limited to cases between "Citizens of different States." Scott, not being a citizen, had no standing. Prior to the 13th Amendment (1865), federal courts had no power over slavery. States were free or slave by their choice.

We seem to judge Supreme Court decisions by whether they are popular rather than whether they are constitutional. When a federal court ruled that the words "under God" in the Pledge of Allegiance — added by an Act of Congress — violated the First Amendment, we gagged. But that was just as unconstitutional as *McConnell, United States Senator, et. al. v. Federal Election Commission, et. al.* The separate-but-equal *Plessy v. Ferguson* (1896) decision violated the 14th Amendment but it was cheered as reasonable under the circumstances.

James Harrold, Sr.  
Springdale, Ark.

## The Market for Law

Bruce Ramsey is mistaken in regarding Hernando de Soto's work as "a standing refutation of libertarian anarchism."

As Ramsey correctly points out, what de Soto's work shows is that a healthy economy crucially depends on property titles, identity records, and other institutions of formal law. But this is no critique of anarchism, because libertarian anarchists do not advocate dispensing with formal law. Rather, they advocate dispensing with state-monopoly law — and the distinction between formal law and informal law does not line up with the distinc-

tion between state-monopoly law and competitive market law.

As the research of scholars like Bruce Benson, Tom Bell, and others has shown, history is filled with examples of legal systems that were perfectly formal — complete with official procedures, court records, and the rest — and yet private, competitive, and non-governmental. In late medieval Europe, for example, the private system of commercial law known as the Law Merchant outcompeted the government legal system because the private system was the more "formal" of the two: more consistent and predictable, and more widely accepted.

Hence the state is not necessary for formal law.

Nor is it sufficient. Ramsey describes de Soto's horror stories as cases "where the state absents itself." But Peru, India, and Egypt are not anarchist societies. They are societies in which a powerful and oppressive state not only fails to protect property

rights but also *prevents* the rise of any formal legal institution that would do so.

Roderick T. Long  
Auburn, Ala.

## For and By the Rule Makers

Leland Yeager's article, "Monarchy: Friend of Liberty," (January), and letters to the editor that followed, overlooked the salient and inescapable point that all forms of government are essentially oligarchies. Whether the legislative and executive powers are vested in a monarch, a unicameral parliament, or a bicameral legislature operating in a republic, the one important question is: who decides? And the answer is: "Not you."

Every rule-making and rule-enforcing authority, whether a school board or zoning council, a state legislature or a garden club, eventually is operated by and for the benefit of those who make and enforce the rules.

## From the Editor . . .

Since the March *Liberty* went to press, the Democrats have sent Howard Dean back home to Vermont and anointed Sen. John Kerry as the heir presumptive to Bush II. U.S. casualties in Iraq continue to mount, along with doubts that Iraqis will be ready for democracy by June 30. That's the date when the president wants them to take over so he can devote his full resources to winning another term.

H. L. Mencken once observed that democracy is the theory that the common man knows what he wants, and deserves to get it good and hard: what the common man apparently wants this year is a choice between two candidates who seem to agree that the war is a swell idea, will fight out the election on the burning issues of gay marriage and what Bush was doing during the Vietnam War.

But spring is on its way, and the changing season brings more than goofy political news. It brings us opportunities for exploration, for renewal, and for controversy. In the magazine you are holding, Bill Merritt explores the weird world of government-regulated marriage and Randal O'Toole discovers the dirty little secret of "smart growth." Lanny Ebenstein and yours truly continue to debate the wisdom of waging war against Saddam, and Dave Kopel reopens the issue of the court martial (and death sentence) of an Indiana civilian during the War Between the States.

An article in these pages recently inspired some boneheads to threaten the life of its author, drawing the attention of the *New York Times* and the *Washington Post*. Jimmy T. LaBaume reports on the situation and offers a charmingly rednecked analysis. Tim Sandefur invites you to his hometown, where history is palpably alive. Your humble editor takes part in democracy.

Our reviews start with the strange case of Philo T. Farnsworth, who invented television only to have credit taken by a mega-corporation, and end with an unjaundiced look at the century of Stalin, Hitler, and Mao (that is, the Century of Peace). In between, we examine the thinking of a sharp mind, the hallucinations of herstorians, and the reasons that some nations are rich and others are poor — a question that arises as faithfully as the flowers of spring, and will continue to arise, as long as the world remains as goofy as it is.

R. W. Bradford

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That's human nature, and no system can ever overcome it. No one who has what it takes to gain and exercise power or wealth cares a damn about those who don't. They may pander to the populace but they never really care about it when it's time for decision and action.

Jim Doran  
Malabar, Fla.

## In Praise of Gridlock

Ordinarily, I look forward to reading the contributions of Stephen Cox with more anticipation than I do most other contributors to *Liberty*. His learned Paleocon insights sometimes even rival those of my favorite writers of that stripe: Joe Sobran and Tom Bethell. However, his March analysis of Bush's (most unclassical) liberalism falls flat in the end. Like the liberals he forever chastises, he appraises intentions rather than what is actually likely to be accomplished. Thus, he prefers the halfway measures of Bushian socialism to the "wacky and unlimited schemes" that Democrats gravitate toward. Like the legions of unsophisticated voters everywhere, Cox simply fails to consider the entire relevant political context. When Democratic presidents propose bad policy, vast armies of right-wing regiments mobilize in opposition. When Republican presidents propose a slightly diluted potion of essentially the same swill, the conservative tempest is considerably muted, at best. In an era of rampant statism, are we not better served by a Democrat in the White House who arouses the fiercest defensive tactics from conservatives? Let's bring back gridlock.

Bruce Earnheart  
Dayton, Ohio

## Oops!

In his March 2004 article, "The Trouble with Steinbeck," Nicholas Varriano pointed out that the message of *The Grapes of Wrath* is inconsistent with assertions by the economists that he quotes. Those assertions, however, are inconsistent with the facts.

He quoted Milton Friedman in *Free to Choose*, "Whenever the free market has been permitted to operate, whenever anything approaching equality of opportunity has existed, the ordinary

man has been able to attain levels of living never dreamed of before. Nowhere is the gap between rich and poor wider, nowhere are the rich richer and the poor poorer, than in those societies that do not permit the free market to operate."

Since the fall of the Soviet Union, the standard of living of 80 percent of the Russians has declined, often to subsistence levels. The same can pretty much be said for the other Warsaw Pact countries, and for Mongolia. Similarly, the spread of free market reforms in Latin America has been responsible for the spread of inequality and poverty there.

Varriano used Henry Hazlitt's *Economics in One Lesson* to repeat two hoary libertarian dogmas. First, raising the minimum wage increases unemployment among the poor. Second, labor unions reduce wages for workers not in the unions.

We can see that the first dogma is false by looking at the economic history of our country since 1992. President Clinton raised the minimum wage in 1993 and 1997. During his administration, unemployment declined, especially among the poor. Since his election in 2000 President Bush has not raised the minimum wage. Two and a half million fewer Americans have jobs than was the case when Clinton left the White House.

Concerning the second dogma, when some companies in an industry become unionized, employers in non-union companies must raise wages in order to compete with wage rates in unionized companies. They also tend to raise wages in order to discourage union activity among their employees. That is why in the 1960s, when a higher percentage of Americans belonged to unions, real after-tax income for most blue collar workers was higher than it is now.

Libertarian economic policies benefit the rich and the talented. The poor, and most employees, benefit from the economic reforms favored by John Steinbeck.

John Engelman  
Wilmington, Del.

# Reflections

**Dean who?** — The conventional wisdom, pre-Iowa caucus: this is 1972 all over again, and Dean is McGovern. The conventional wisdom, post-Iowa caucus: this is 1972 all over again, and Dean is Muskie. — Brien Bartels

**Them dumb clods?** — My friend Larry Sechrest has taken a lot of flack in his home town of Alpine for writing in the January *Liberty* ("A Strange Little Town in Texas") that people there are, well, pretty stupid. "The students here are among the worst to be found anywhere," he wrote. "I am prepared to defend to the death the proposition that Sul Ross, and this area of Texas more generally, is the proud home of some of the dumbest clods on the planet."

Apparently, some of those dumb clods took him literally: his car was vandalized and he got two death threats.

I suspect Sechrest has fallen prey to the common tendency of intellectuals to believe that all intelligence is reflected in literacy and numeracy, and to conclude that the subliterate and sub-numerate are ignorant or stupid. Many kinds of knowledge are neither verbal nor numerical, but a good many intellectuals don't appreciate them or even know that they exist. It takes complex and specialized knowledge to chase down a steer and rope him, a talent that I suspect may be present in some of the "clods" that Sechrest wrote about in *Liberty*.

Any intelligent person who has watched a professional basketball game or two has noted that a good point guard employs a tremendous amount of complex intelligence in running his team's offense — despite the fact that he may be hard-pressed to put together a coherent sentence in a post-game interview. — R. W. Bradford

**Doublespeak.gov** — Who would have thought that an Internet domain name could be a great joke unto itself? The Department of Justice has created *lifeandliberty.gov* — a website that promotes and defends the Patriot Act.

Adding insult to injury — or, as the case may be, hilarity to horror — a banner atop the page quotes the Declaration of Independence: "We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their

Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these Rights, Governments are instituted . . ." John Ashcroft's webmaster picked a convenient place to stick that ellipsis. The next words in the Declaration declare that governments "deriv[e] their just Powers from the Consent of the Governed." Even Ashcroft, I suppose, couldn't stomach that much hypocrisy. — Patrick Quealy

**The enemy of my enemy** — Registered as a Democrat in New York City, where primaries are more important than November elections, I support Dennis Kucinich and donated my art for a Kucinich auction here on Feb. 22 for two solid libertarian reasons — he voted against war in Iraq and he voted against the Patriot Act. That's enough for me. I'll vote for him for the same reason I customarily vote Libertarian in November — not to win but to keep certain important ideas in public circulation. — Richard Kostelanetz

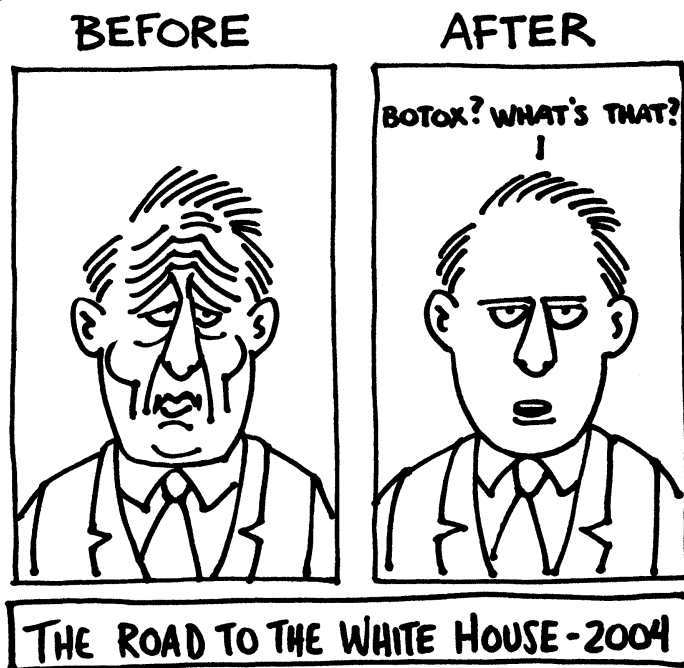
**Getting it wrong, getting it right** — As the fog of uncertainty slowly evaporates around the weapons of mass destruction, some people should have to face what they said. Mostly they are not.

Given the difficulty of proving the weapons were not there, the fog is never going to be wholly lifted. There is always the possibil-

ity that an underground bunker stuffed with anthrax will be discovered, but the risk recedes and now is rather low. At some point a reasonable person has to reach a conclusion, provisionally of course, that the weapons were not there.

This is a bigger question for some than others. Some, myself included, opposed the war whether Iraq had these weapons or not, because we didn't think Saddam Hussein would dare use them against us. We may have doubted their existence, but it wasn't central to our view. It was central, though, to the case made by the Bush administration and its supporters.

How many of them now acknowledge they were wrong? Not Bush, though in his pathetic interview with Tim Russert he was no longer willing to assert that the weapons were



S. H. Chambers



there. Bush's rambling was a tacit admission of error. Of course, nobody expected a frank admission. He is a politician, after all.

The commentariat is supposed to be different. Mainly it is not, though there is Bill O'Reilly, who did admit error. A hoot of "Told you so!" came from the Left and growls from the Right. O'Reilly replied in a column:

"All I did was admit that my analysis was wrong and guys like U.S. weapons inspector Scott Ritter were right. I placed the blame for the faulty intelligence right where it belongs: on CIA chief George Tenet. Not on Bill Clinton. Not on Tony Blair. And not on President Bush, although I do believe all of those men were not skeptical enough about the WMD intel in the runup to the war."

That ought not to be so remarkable a statement. O'Reilly is not giving up any political preferences. He is not turning Democrat. He is simply stating that he accepted as true some statements that were false. We are all subject to that — and yet so few of us ever say so.

For months now, the line from the supporters of war is WMD or none, the world is better off without Saddam Hussein. So it is, but that was not the reason they gave to sell a war. Nor would it have made a sale. We went to war to preempt the use of Weapons of Mass Destruction, and it now seems there was nothing to preempt. That is an amazing result, a really shocking result, and it cannot possibly be correct that it doesn't matter.

Facts matter. Honesty matters, too, and people show it best when they get the facts wrong. — Bruce Ramsey

**Bush, the horsefly** — This election cycle, some libertarians seem eager to ally themselves with the left half of the mainstream body politic in ousting the current administration (and, of course, its insufferable chief executive) on account of its confirmed transgressions against freedom. Something about that line of reasoning bothers me, and I've just recently put my finger on it. I am reminded of Aesop's story of The Fox and the Hedgehog:

A fox once tried to ford a swift river but slipped and was

carried away downstream. Not the best swimmer, he was tumbled about by the frigid current and nearly drowned. When he finally staggered up on the far bank, he was so exhausted that he collapsed in the mud and was promptly set upon by a swarm of horseflies, from whom could not defend himself. Presently, a kindly hedgehog passed by and offered to remove the fattest flies. The fox considered this a while and then said "Please don't! The flies you see attached to me have already satisfied themselves for the most part, and you can't make them give my blood back. If you were to pull them off, their brother horseflies are eagerly awaiting their turn; I would soon be drained entirely!"

My point is that as bad as the Republicans have been with the Patriot Act and the Homeland Security gestapo, and

as hard as they've been on the First Amendment, they have *not* significantly weakened, for example, the Second Amendment any further than did the previous Democrats; nor have they raised taxes or pushed for nationalized health care. Both parties have their favorite uses for the state when they are in office, and the consequential legislation has a way of sticking around long after those who put it in place have faded from the scene. History doesn't give me much hope for reducing government through political means; perhaps the best libertarian use of elections is merely to slow its growth. It's quite possible that the majority of the total damage to

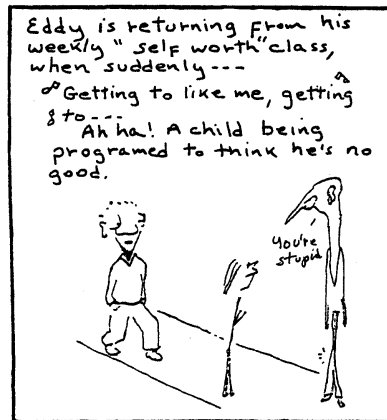
freedom which Bush will ever do has already been done: the question is, will the damage he may yet do outweigh that which an eager new Democratic administration will inevitably incur? The grass always does look greener on the other side of the fence, but when politicians or other parasites are involved, perhaps change is not always good. — Max Orhai

**All dressed up and nowhere to learn** —

The lower house of the French parliament has approved a measure forbidding students in public schools to wear religious apparel. The ban has popular support and is expected to pass the French senate and become law shortly. It is not some fringe movement propelled into the limelight by fanatical ideologues. If the coverage in the international press is

## EDDY IN AMERICA

By Andy von Sonn



# Bush Lied

by R. W. Bradford

By now it's so apparent that Saddam Hussein had no deployable WMDs, and almost certainly no WMDs at all, that even President Bush and his less goofy partisans have confessed as much. This is important, because the claim that Hussein possessed WMDs and might deploy them against us was the basis for the U.S. invasion, conquest, and occupation of Iraq.

Not surprisingly, the enemies of the president have been quick to charge that he simply lied about this. My local Democratic Party is already distributing "Bush Lied" yard signs. The charge makes good politics, but it is almost certainly untrue. Bush and his minions had been told by the Central Intelligence Agency that Saddam had WMDs as well as the means and inclination to deploy them. The CIA provided the same "intelligence" — maybe "stupidity" is a better word — to Clinton and his minions, who also believed Hussein possessed WMDs. The intelligence agencies of other western nations had arrived at the same conclusion.

Bush was telling the truth when he said that he believed that Hussein possessed WMDs. But that doesn't mean that he deserves a free ride. For one thing, as president, he is responsible for the performance of the executive branch of government, which includes all American intelligence agencies. More concretely, he had two good reasons to doubt the intelligence reports he was getting.

First, for more than a year prior to the invasion of Iraq, Bush and his entire administration were scouring the world for an excuse to invade Iraq. He provided a powerful incentive for his underlings — including his intelligence agencies — to provide him with such a rationale. Think about it. Would Bush have been more pleased if his intelligence agencies had said, "Sorry, Mr. President. While it appears that Iraq did at one time possess programs for producing WMDs, we don't have any concrete evidence that it now actually possesses any deployable WMDs," than if they had said what in fact they did say, namely, that Saddam was a madman with the power and inclination to unleash WMDs on innocent people?

Second, and more importantly, there is an underlying incentive for intelligence agencies to overestimate the ability of America's chosen enemies. If the agencies underestimate the ability of an enemy to fight back, as they did in 1962 when they told President Kennedy that Cuban dictator Fidel Castro could be forced from office by an invasion of Cuban exiles provided with American equipment and training, the agencies find themselves in very hot water. Heads roll.

But what happens when intelligence agencies overestimate the military might of an enemy? U.S. forces roll in for an unexpectedly easy victory. There may be a little grumbling about "bad intelligence," but in the euphoria of military victory, there are no calls for the heads of intelligence professionals.

Imagine yourself in such a situation. Your evidence is insufficient to arrive at any solid conclusion, but you are

under pressure to provide a definitive answer. If you choose conclusion A and it turns out you are wrong, you will be humiliated and fired. If you choose conclusion B and it turns out to be wrong, perhaps you will be subjected to some mild reprimands. Of course, a failure to provide a definitive answer will certainly have unfortunate consequences: after all, why has the government given the CIA all those billions of dollars if they cannot give a definitive answer to a question like this?

A sensible president — whether bent on going to war or not — would have had good reason to doubt the intelligence reports he got. But Bush was not being sensible. He was hell-bent for war, and thrilled to be provided with a means of justifying the war to the American people.

So while Bush is not technically a liar in this matter, he is a fool. He foolishly led America into war because of information that he had every reason to doubt. He should have shown restraint and waited for more reliable information — remember, Hussein had just allowed U.N. weapons inspectors into his facilities. Instead, he clutched at the dubious rationale that was offered him. He took us rashly into a foolish war, for reasons that ranged from extremely dubious (that Hussein possessed deployable WMDs) to those that were ridiculously false (that Hussein was an important ally and co-conspirator of Osama bin Laden). George W. Bush is a fool, a

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*Bush didn't lie about WMDs. He was "fooled" by his own "intelligence." And usually, folly is more destructive than evil.*

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fool who led us into a foolish war that has already cost billions of dollars and hundreds of American lives.

Folly is generally a more destructive force than evil. But Americans have a predilection to ascribe evil rather than folly to the motives of those with whom they disagree. Libertarians should know this well, thanks to their experience with Ayn Rand and Murray Rothbard, who almost invariably ascribed evil motives to those with whom they disagreed. This predilection explains the "Bush Lied" yard signs. And it explains why George W. Bush may turn out to be a one-term president.

More than a decade ago, I surveyed the American political landscape and predicted that the GOP would win Congress, at the time in total control of Democrats for decades, and that Bill Clinton would be the last Democrat elected president for a long, long time. It was a rash prediction at the time, but it proved to be right on the money.

It no longer looks so prescient. I failed to foresee that Bush could be swept up in the paranoid hysteria with which Americans reacted to the terrorist attack of 9/11, and that he would fall under the influence of advisors who wanted war against Iraq and were eager to capitalize on that hysteria. I failed to anticipate the folly of George W. Bush.

any indication, the law is not terribly controversial in France.

The reason for the clothing ban is that, as reported in *The Guardian*, "The government argues that a law is needed to protect France's secular traditions and to ward off rising Islamic fundamentalism."

Not even Bush and the Republican congressional leadership would support a measure like this one. It ought to give pause to leftists who think that America is an epitome of backwards, right-wing extremism that should look to the enlightened social policies of European democracies.

— Patrick Quealey

***New tyranny for old*** — This is a reflection no one will like.

Am I hard-hearted? Am I lacking in the spirit of romance?

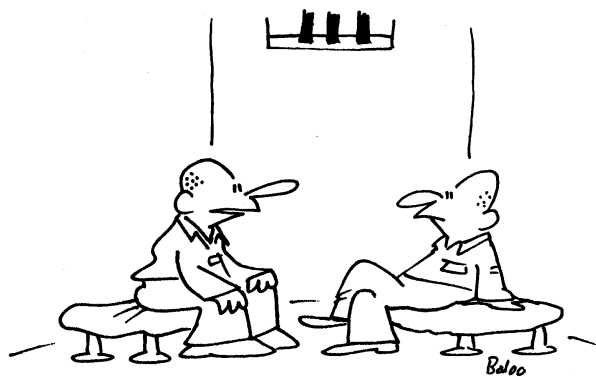
I don't think so. But the recent spectacle of thousands of people lining up in a nondescript government corridor so that a San Francisco city official with a political point to make would license them to be married didn't make me want to weep for joy, despite the testimony of city officials that it had that kind of effect on them.

I guess that counting future voters has a softening influence. I, however, am just a private citizen, and any mob makes me nervous. The fact that the mob consisted of gays and lesbians didn't make me feel any better than I would have felt if the same number of hets had taken leave of the same number of senses.

Marriage is a contract. Anyone should be able to make one. It's a different thing to say that marriage of one kind or another should be sanctioned by the state. That's a relatively new thing in human history.

Here's another issue. The tangible benefits of homosexual marriage, the benefits that gay partners could not get through normal civil procedures, such as writing a god-damned will, or simply by living together and enjoying each other's company, consist almost entirely of the ability to claim the health insurance benefits provided by one's spouse's employer and the ability to claim one's spouse's Social Security income after he or she has died. OK. The first benefit is a tax that you impose on your spouse's company by means of the government's decision to license your marriage. The second benefit is a tax that you impose on everybody else, in the same manner. Don't pretend that claiming these benefits is some kind of high moral enterprise.

I'd say pretty much the same thing about straight couples



"The way I see it, nobody's perfect."

who get married in order to do this kind of thing. Either an employer wants to extend coverage to spouses or domestic partners — as many employers do — in order to buy the services of the working spouse, or the benefits are politically mandated and the nonworking spouse is ripping the employer off. As for Social Security, the benefits that it accords to spouses were originally intended to care for women who, in days of yore, were much less likely to have good jobs and pension benefits than their husbands. This logic falls far short of covering Steve, of Adam and Steve, Inc. — just as short as it falls in the case of nonworking modern heterosexuals. A nice set of entitlements you have there, Grandma.

Some other obvious problems are associated with the way in which gay marriage was suddenly "legalized" by the mayor of San Francisco. Suppose that "marriage: only hets need apply" is unconstitutional, yet another one of those things that weren't unconstitutional when any part of the Constitution was written but now, magically, are. Or just

*Very few people are desperate to get married. They may be desperate for sex, love, or companionship, but those are separable commodities. Once people have secured them, their lust for weddings visibly declines.*

suppose it's a bad law. I'm not superstitious about law. But I don't want to see a *mayor*, not even the mayor of San Francisco, declaring a law null and void, just because he feels like it. Tomorrow he may feel like nullifying some other laws, laws that protect my life and property. That's why we have a constitutional system — to keep officials from doing any damned thing they feel like.

And what are we to think of the lemminglike character of the rush to marriage in San Francisco? I'll tell you what I think. I think there is far too much made of weddings in this country to begin with. A friend of mine just paid *one hundred fifty thousand dollars* for his daughter's wedding. A middle-class friend. As if he could afford it. As if anybody could afford it. But the idea that thousands of gay and lesbian couples had spent every moment of their lives waiting, hoping, and praying to *prove their love* in the only way possible, then rushed in a mob to do so, a minute after the chance presented itself — this idea staggers the imagination.

Very few people are desperate to get married. They may be desperate for sex, love, or companionship, but those are separable commodities. Once people have secured them, their lust for weddings visibly declines. What we saw in the Retirement Home for Thirty-Five Year Olds wasn't marriage as romance but marriage as a political demonstration, a party thrown to affront "George Bush," a demon who was lurking everywhere in the prenuptial speeches that the happy couples lavished on the press. How touching. Don't forget the rice.

What a terrible reflection all this makes on the long struggle of homosexuals to throw off the chains of social disap-



proval and find their own way in society, no matter what other people think. That struggle, which was waged with great courage and horrible losses throughout the past two hundred years, has resulted in the elimination of every significant legal restriction on the dignity and happiness of gay people. It is an enormous victory for individualism. Evidently, however, the collectivist psychology remains. Homosexuals are not equal — at least in the minds of many homosexuals — unless they are licensed by the state.

— Stephen Cox

### **Developing new jobs —**

The nature of modern media is to look on the dark side of every issue. A great example is the 15,000 layoffs Kodak just announced. Of course, this is a tragedy for 15,000 families, and the networks would like you to think there are 15,000 people one step closer to homelessness, and 35,000 children will be going to bed hungry tonight.

I wouldn't expect Dan Rather to look at a positive aspect of this story: people aren't using film anymore. Digital cameras are amazing and affordable. For the cost of the film and processing for ten 24-shot rolls, anyone can now buy a new camera that will hold 240 pictures. The best part is, it's entirely reusable. You can store hundreds of photo albums in a little corner of your hard drive, and people can send pictures around the world in a fraction of the time it took to process a roll of film. It's also good news for the environment. No more photo processing means a lot less

toxic chemicals being introduced into wastewater.

For me, it's bittersweet to see the passing of a technology so fondly connected to holidays, vacations, and boyhood hobbies. It's hard to think that the familiar smell from inside a fresh foil pack of 35mm will soon be nothing more than a memory, or that I will never again enjoy the anticipation of opening an envelope of recently processed photographs.

The history of modern civilization is that of people changing occupations. As the Industrial Revolution rolled forward, fewer farmers were required to till the earth, so that people were free to create other things, like light bulbs and phonograph records; airplanes, automobiles, and cameras. Before the invention of the camera, only the rich could afford to have a portrait painted. Today, portraits are so common that a government issued portrait is a requirement for any-

*News You May Have Missed*

## **Fat Liberation Front Makes Gains**

WASHINGTON, D.C. — Authorities here have concluded that the recent firebombings of Jenny Craig outlets across the country are not, as originally suspected, the work of the Fat Liberation Front, a militant, extremist offshoot of the "fat acceptance" movement. Instead, there is growing evidence that the attacks on 33 franchises of the wholesome, cheery weight-loss chain in 14 states were organized by an entirely different group, the Abrasive Fat Lesbian Acceptance Movement, headed by the formerly wholesome and cheery former talk-show host Rosie O'Donnell. Nevertheless, law enforcement officials still believe that the FLF is a far more serious threat, since its stated objective is to "eliminate" the remaining 35 percent of adult Americans who are not overweight and eventually the full 70 percent who are not technically obese, and it has no compunctions about using weapons of mass consumption, including Oreos, Cheetos, and Frappuccinos, to achieve its utopian vision of a nation of total porkpies.

While the "fat acceptance" movement makes only moderate demands, such as an end to job discrimination against humongous people, the acceptance of tents as proper attire in offices and workplaces, larger airplane seats, larger movie theater seats, larger supermarket carts, larger fast-food restaurant portions, and a large Coke and large fries on the side, the Fat Liberation Front has a ruthless, apocalyptic ideology. Secret documents obtained from the group portray the obese as a

supreme "master race" that will someday dominate and devour the whole world even though it only meant to take just one tiny little bite. The FLF is believed to be divided into small, clandestine groups known as fat cells that produce, under assumed names, all miracle diet books like *Dr. Atkins' New Diet Revolution*, *The Fat Flush Plan*, *The South Beach Diet*, etc., and secretly concoct all quack weight-loss pills and supplements — Zantrex, "fat burners," "carb blockers," "fat transporters," etc. FLF agents and operatives have thus managed to instill in the American public the demented idea that weight can be quickly and permanently lost without the effort of eating less and exercising more over a long period of time, which has fed an overwhelming public obsession with food, a national inability to resist impulse, and the general emergence of human bodies so vast that they need their own ZIP code.

Recent obesity statistics suggest that the FLF is now working on an accelerated timetable to achieve its mad goal of forging the American populace into one bloated, amorphous mass of sedentary butterballs capable of occupying the entire planet as long as they don't have to walk to get there. In response, government health officials are urging Americans to read the ingredients labels on packaged foods while they eat them, to engage in regular, repetitious aerobic exercises like lifting and pointing the remote, and to please pass the Doritos.

— Eric Kenning



one who wants to travel. Thanks to digital technology, those 15,000 people from Kodak are now free to devote their energies to other pursuits to make all our lives fuller. I don't know what they'll do, as the future always guards her secrets; but despite the forecast of gloom from the usual sources, those 15,000 layoffs indicate that we're all a little richer today.

— Tim Slagle

**Claptrap saves lives** — I live in the Pacific Northwest, a Mecca of that special brand of liberal who is so "enlightened" that he manages to answer the deepest problems of humanity in the space allotted by a 3"x12" bumper sticker. These bumper stickers attempt to mass-produce profundity, and are almost always pretentious, if not downright stupid. "War is not the answer" and "Visualize World Peace" are two of my favorite specimens. The quintessential example, however, is "Art Saves Lives." I could understand "Art is Beautiful," or even "Art Makes Life Worth Living," but "Art Saves Lives" blows me away. To a large extent, the history of humanity is the history of the struggle against

hunger, war, and oppression. Today, millions of people labor just to get enough to eat, are at the mercy of natural phenomena, or live at the whims of tyrants. Maybe from the comfort of an affluent, Pacific Northwest community one can contrive to equate art with survival; maybe a romantic, self-congratulatory appraisal of what it means to be alive has some pull. That environment, however, is not the world. I have no doubt that these people are well intentioned. I don't think they mean to belittle the horror that for so many is the reality of survival. After all, art is beautiful and expressive; art, it could be argued, is what makes us human. But penicillin saves lives. Food saves lives. The rule of law saves lives.

Maybe I'm reading too much into a bumper sticker, but I don't believe it is a coincidence that the same people who put that bumper sticker on their car are often the people who believe that opening a "dialogue," an "exchange of ideas," is the solution to humanity's problems. It's a nice sentiment, one that certainly works in their neighborhoods, where everyone's needs are met, and everyone acknowledges the same basic codes of social behavior. Maybe someday the world will be a place where such approaches will work; maybe someday art will save lives. But that is not the case today, and I'm pretty sure there's a large segment of America that doesn't know it.

— Andrew W. Jones

**Conservative surprise** — It is surprising to see a conservative call for a constitutional amendment limiting state-licensed "marriage" only to one man with one woman. Given all the recent intelligence about the ambiguities of gen-

der, may I predict that one likely result of such an amendment, if imposed, will be a flood of lawsuits benefitting no class as much as litigious lawyers whom neo-cons and regular cons are forever trying to retire to the poorhouse?

— Richard Kostelanetz

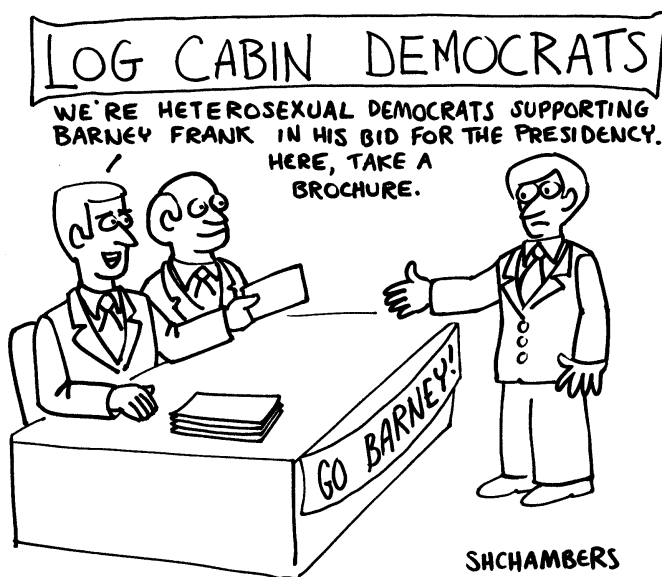
**Brave new boob tube** — Justin Timberlake exposes Janet Jackson's breast, and shocked viewers of the Super Bowl are outraged. The federal government has been mobilized to protect the American people from this latest grievous assault on their freedom and well-being. To hear FCC Commissioner Michael Powell rant about the impropriety of the incident, you'd think Jackson and Timberlake had done something really awful, like conquer a country on false pretenses, or run up a \$500 billion budget deficit.

Is it too much to wish for that all the soccer moms and Super-Bowl couch potatoes who are worked up over Jackson's momentarily visible flesh would register the same outrage over . . . something that matters? What about our commander-in-chief's lying about why we've killed thou-

sands, lost hundreds of soldiers, and spent billions of dollars in Iraq? What about the federal government's runaway spending that recently caused the public debt to top \$7 trillion for the first time ever?

It's not the end of the world. It's a boob. The sun will still come up tomorrow, and the Earth will keep spinning on its axis. Get pissed off about something that *matters*.

— Patrick Quealy



## By invitation only

— Austrian economist Hans-Hermann Hoppe's case for government immigration controls (presented, among

other places, in *Journal of Libertarian Studies* vol. 13, no. 2) is often cited by anti-immigration libertarians. I first read Hoppe's case against immigration (a version of it, anyway) in mid-2000, after hearing about it at a Cato forum on Ludwig von Mises. In the Q&A, after Israel Kirzner and Don Boudreaux had both spoken, a Towson student directed a question toward Kirzner and received a brief but pointed reply:

Student: The Mises Institute, and especially Lew Rockwell, have taken a very strong anti-immigration stance, and it's my personal opinion that that's not in the tradition of Mises, and it's not in the tradition of economic liberalism, and I was just wondering what Professor Kirzner thought about that — if that's, uh . . . in the tradition of Mises' work, and his thought.

Kirzner: I would tend to agree with you that it is not in the, in the tradition of Mises' thought.

I would like to have heard a more detailed response from Kirzner; he doesn't appear to have written about immigration much, if at all. An analysis of Hoppe's argument from

# Word Watch

by Stephen Cox

It was a few days after Howard Dean delivered his weird, ranting speech at the end of the Iowa caucus.

"Strictly from the literary point of view," I remarked, "the campaign is now progressing nicely."

"What!" my friend objected. "None of the candidates has anything going for him in the words department. Nothing. No verbal skills at all. No eloquence, no charm, no sense of humor . . ."

"You mean, you don't think it's funny when John Edwards says, 'I think that the president of the United States needs to be able to walk and chew gum at the same time?'"

"No, as Edwards would say, *not hardly*. You know, it's that folksiness of his that really sticks in my craw. It's so obviously, ridiculously phony. He's a rich lawyer, for God's sake! And that 'gum' joke has been around since Gerald Ford. And what about John Kerry? His big line is, 'Goodbye, George Bush, and don't let the door hit you on your way out.' Now that's fresh and charming, isn't it? You've gotta have no sense of humor at all, if you think that's funny."

"Agreed," I said. "But things are really on the upswing now, after Dean's speech."

"Are you kidding? The punchline of that speech was '*hyaarrrrrrhh!*' Except that the syllable managed to last a lot longer than that. Clearly an effort worthy of Daniel Webster."

"Sure. But I'm not talking about what Dean said in that speech; I'm talking about the things that were said about it. The speech was a fountain of humor — other people's humor, but humor nonetheless. My favorite is the joke about its being the 'I Have a Scream Speech.' Now, *that* is a scream. It shows that we are finally awakening from our long rhetorical nightmare."

"Wait a minute. The 'Scream' thing is just a pun. And I thought you didn't like puns. Puns, you keep telling me, are the lowest form of humor."

"Somebody keeps telling you that, but I prefer not to repeat myself. And actually, I wouldn't say that, even once, because puns usually aren't even a form of humor. I mean, what's funny about those headlines on the sports page — you know, the ones that mention 'Amazing Grace' simply because some tennis player or bowler or something happens to be named Gracie Something? Or those listings for hair stylists — that's always the punniest part of the phone book. The Hairport. Shear Ecstasy. Hair and Now. What are they laughing at? The only thing that's funny about that kind of pun is laughing at the people who come up with them."

"Then what's so great about 'I Have a Scream?'"

"First, I want you to admit that you think it's funny. You laughed at it, didn't you?"

"Yes, I admit that I did."

"Well, you didn't laugh just because 'Scream' sounds like 'Dream,' did you? It's because . . . Well, I'll have to give you the whole explanation."

"I assume that I have no choice."

"None whatever. Here it is. There are a lot of theories about why human beings laugh, but the best theory is that laughter is what happens when we suddenly realize that something we feared,

respected, or were generally intimidated by isn't actually worth our fear, respect, or feeling of intimidation. We realize that and behold! We are freed from those troublesome emotions. We feel free. Just for a moment, perhaps, but . . . for that moment, we laugh. Notice, this theory isn't about words per se, much less about the sound of words. Calling something a scream instead of a dream doesn't make it funny. What makes it funny is the transformation of Howard Dean, a man whom some people respected and some people feared, just as some people feared and some people respected Martin Luther King, who gave the "I Have a Dream" speech, into a person you don't need to worry about in any way, because suddenly you know that Dr. Dean has nothing like the stature of Dr. King, or anybody else: he's not a dreamer; he's just a screamer."

"Thanks a lot for the theory. But God damn it, there's still a pun in there!"

"Sure there is. But 'I Have a Scream' is essentially the same kind of joke as calling Howard Dean 'Ho-Ho' or 'Howard the Duck.' And it's just as welcome, too, as a sign that something good may be going on in American politics. What's happening in all these jokes is that people are refusing to take politicians seriously, and are associating this particular politician with ducks from outer space and ludicrous images of childhood (how many adults call themselves Ho-Ho, pray?). All that the pun in 'I Have a Scream' does for the joke is to concentrate the revealing comparison of Dean to King into a single explosive moment. It provides the suddenness that comedy requires."

"Again, thank you very much for explaining all this at such great length. I want you to know, however, that after listening to you, I no longer regard any of those jokes as funny."

"Of course you don't. Few jokes are funny after they're explained. One of the funniest things in the world is what kids write on their schoolbooks: 'In Case of Fire, Throw This In.' But what would happen if you explained that joke? You'd have to point out that it wouldn't be funny to someone who neither feared nor respected those books, someone who just didn't care about them, one way or the other. Then you'd need to show that the joke happens in three stages. Stage 1 ('In Case of Fire'): the audience believes that it is reading official advice about saving something valuable. Stage 2 ('Throw This In'): the audience suddenly realizes that the advice is to toss the supposedly valuable object into the nearest burning stairwell. Stage 3: for one glorious moment, the audience understands what it means to be emotionally free of books."

"Well, you're right. That one's not funny anymore, either."

"Nothing is, if you let it go on too long. Not even Howard Dean."

"I guess not. Nobody cares anything about him now — as you say, one way or the other. He's finished."

"And that's what comedy is all about — liberation from our cares. In some cases, the liberation turns out to be permanent."

"But Bill Clinton was funny. And he's still around."

"Yes, yes. That may be true. But let me explain. This may take a while . . ."



another Austrian perspective would be valuable, particularly since Hoppe's position appears to be associated with the institution bearing Mises' name. Perhaps Kirzner kept his answer brief so as not to rock the Rockwell boat — the Mises Institute appears to like Kirzner, and there's no point making enemies arguing over a tangential issue.

Hoppe opens his argument against open immigration in our current welfare state for a predictable reason: if the destitute hordes from other lands had *carte blanche* access to the United States and our government mandated generosity, there would be no end to the drain on our economy. Which is plausible enough.

But he also argues against the common libertarian position that we should at least work toward opening our borders while simultaneously attempting to block newcomers from latching on to the public teat, even though we may not have the political power to ditch the welfare state before easing restrictions on immigration. He sees scaled back welfare as an insufficient condition for open borders, because although this would reduce the incentives to immigrate to the U.S., the incentives would not vanish. Therefore, he argues, the government needs to maintain some type of immigration policy.

America's immigration policy, he contends, should be rooted in the idea of "invitation" — that people should only come to the U.S. if they are invited to come here. He makes an analogy to free trade. The voluntary nature of trade means that goods and services cannot justly be inflicted on us without our permission; we agree to receive them by vol-

untarily engaging in commercial transactions.

The anarcho-capitalist system that he envisions would use this "invitation" system to regulate immigration naturally and completely. In a society consisting of networks of privately owned land and utilities, there is no such thing as "public" land or property. Therefore, there can be no "free" immigration — only an invitation to enter a specific piece of property. No invitation, no entry. Hoppe recognizes, of course, that we don't live in an anarcho-capitalist society. But we should support a government that preserves as many of the features of such a society as possible — which would include restricting immigration to an invitation-only system.

Our current federal government, he observes, could not deal with the raft of private requests for exceptions to a general immigration policy. So if we want to preserve an anarcho-capitalist society's sense of restricted entry to private property, we should impose strict limits on the number and quality of immigrants we allow into the U.S.

I don't see any problem with Hoppe's idea of an invitation-based system of immigration. But I don't think it would have the consequences that Hoppe sees. It seems to me that a great many of the poor of the world would be invited into an anarcho-capitalist America, if for no other reason than to be employed as cheap laborers. Inviting workers to provide labor at below prevailing wages would be a profitable activity, just as importing textiles or machine tools that are less expensive than local textiles or machine tools is profitable. And an extensive network of private utilities and property would develop to enable a steady influx of foreigners.

So if, as Hoppe would have it, we should strive for an immigration policy that would be most similar to what would happen under anarcho-capitalism, we should do exactly what most "open borders" libertarians advocate — ease immigration restrictions as much as possible, and reduce the size and scope of the welfare state to discourage free riders.

— Eric D. Dixon

#### *News You May Have Missed*

### **Super Bowl Broadcast Outrages Pop Fans**

HOUSTON — National Football League and television officials have agreed to reassess Super Bowl broadcasts after conceding that the controversy over Panthers coach John Fox's decision to go for a two-point conversion with his team behind 20–16, which may have ultimately cost Carolina the game, overshadowed the carefully crafted commercials and the sensational halftime entertainment that drew a near-record 143 million viewers to the broadcast on Feb. 1.

"The controversy over the game sadly compromised the integrity of the sales pitches and performances of entertainers dressed in S/M gear," said NFL commissioner Paul Tagliabue. "The sight of Janet Jackson's bare right breast was not just one for the highlight reels, it was a crowning moment in NFL history, but the distraction caused by the unfortunate, unforeseen, and unscripted antics of 22 men who kept

getting onto the field, interrupting the breathtaking suspense of the commercial and pop competition, spoiled what for millions of Americans is the most sacred holiday of the year, Super Bowl Sunday."

In 2005, the NFL, CBS, MTV, and AOL executives who organized this year's event agree, the anachronistic "football" competition will be relegated to irregular, infrequent two-minute intervals amid a thrilling four-hour display of commercial and pop exhibitionism, and no score will be kept, though during a special "halftime" event in the middle of the broadcast "referees" in striped tuxedos will award prizes to one of the two "gridiron" teams for presentation, costuming, originality of creative concept, and awesomeness of exposed body parts. At the end of the broadcast several coveted "Lombardi Trophies" will be presented to the winning ad agencies and entertainment lawyers.

— Eric Kenning

### ***Pragmatist in moral clothing***

— Perhaps the most important lesson to be drawn from the revelation that the "father" of Pakistan's atomic bomb program has been an active nuclear proliferator is that making foreign policy decisions based on self-righteous morality is dubious business.

Relations among nations are almost always conducted on the basis of cold-blooded calculation about the perceived interests of the countries involved. Dressing the process up in moral rhetoric might sell a policy to some people, but it can cloak what is really going on, promote misunderstanding, and often enough lead to outcomes that are less desirable than those resulting from policies based on realistic analysis.

What seems to have led to the public unraveling of the Pakistani proliferation presided over by Abdul Kadeer Khan was

Libya's decision to allow inspectors to preside over the dismantling of its own embryonic nuclear weapons program. It soon became obvious that Khan had provided Libya much of the technical wherewithal. So now he has confessed to providing nuclear technologies to Iran and North Korea.

Pakistani President Pervez Musharraf — who was shocked, deeply shocked, that such misbehavior occurred— has pardoned Mr. Khan and vows to get to the bottom of the scandal. Sure.

Trade in nuclear and missile know-how among Pakistan, China, North Korea, Iran, and Libya has been an open secret for years. Before becoming president in a military coup, Musharraf was army chief of staff. Nuclear proliferation would have been impossible without the cooperation of the military Inter-Services Intelligence (ISI) agency. Perhaps it is possible all this happened without Musharraf's knowledge. But it is hardly likely.

So Pakistan was a proliferator and Musharraf is something of a bad actor. But after the terrorist attacks of 9/11, the interests of the United States and Musharraf converged. To a great extent they are parallel still. At some point they will probably diverge again.

The United States government will probably not push to make everything about the scandal public because that would be likely to damage a temporary ally who is already vulnerable. It might even offer to exchange silence about the scandal for more cooperation in the hunt for al Qaeda fighters who are probably hiding and plotting along the Afghan-Pakistan border.

Does all this sound surprisingly amoral and unduly tolerant of Bush? Welcome to the reality of international relations.

— Alan W. Bock

**Property rights on the frontier** — In an effort to give something back to my community — oops, I slipped into Newspeak there — I have been writing a few columns in our newspaper (*The Bozeman Daily Chronicle*) focusing on local issues. Bozeman, Mont., is considered a small city (with about 30,000 people plus a 10,000-student university), and, I have discovered, it is racked with division. Politically, we are a microcosm of the United States. You can have lunch with the Pachyderms (one, but not the largest, Republican club) and be reminded of the importance of property rights and the need to keep snowmobiles in

Yellowstone Park, say the Pledge of Allegiance, and pray. Two days later, you can go across town to the Second Friday Forum at the Congregational Church (lunch, but no prayers or pledge) and hear ponderous pleas to make Bozeman “bike and pedestrian and transit friendly.” (Transit? Yes, we have an embryonic system of mostly empty buses).

As part of my new mission, I attended a meeting about a local park (I am beginning to understand Oscar Wilde's observation that the trouble with socialism is that it takes up all your evenings). Bozeman has an ambitious “Main Street to the Mountains” trail system, and part of that system borders land owned by the Bozeman Deaconess Foundation, owner of the local hospital. Hikers, runners, and bikers are upset because the hospital recently rebuilt its retirement community in such a way that one of the buildings is visible from the ridge trail (170 feet away). Now the foundation is

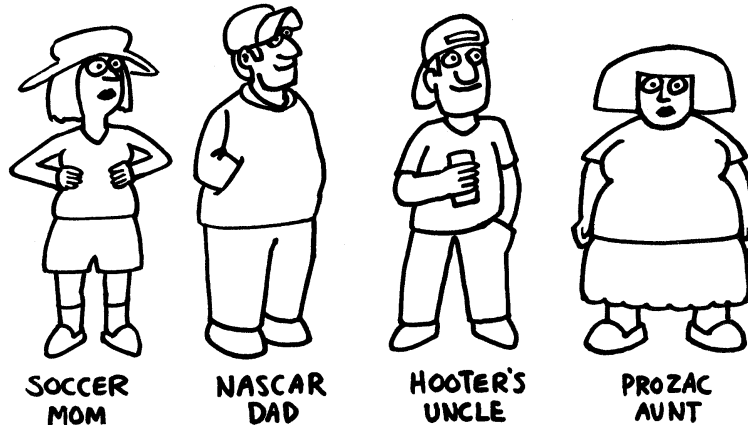
building a five-story addition. The addition has turned out to be a godsend for activists, however, because the hospital needs a variance from the usual three-story zoning. This has given the city government (and neighborhood constituents — we actually have a city employee whose job is to represent neighborhoods!) a chance to force a few concessions from the hospital. The meeting I attended was to gather “public input” to guide the hospital in creating its plans.

Participants at the meeting stood up and waxed eloquent in expressing their wishes for a buffer zone on hospital property and shared their visions for hiking trails and lighted ski trails, also on hospital property. It was almost an hour and a half before anyone brought up the idea that demanding such things might be “takings” and that perhaps the “Friends of Burke Park” might consider offering to pay for such concessions.

The next day (in my reportorial role), I asked a member of the Bozeman Recreation and Parks Advisory Board, which was collecting the input, about the idea of paying for “takings.” First, this individual didn't think that there could possibly be enough private money to pay for what was wanted. And, second, if it came to using city funds, he could think of many higher priority uses for the limited money available for parks.

In other words, if they can get it for free, the advocates of Burke Park want the moon. If they have to pay for it, heck, there are much greater park needs after all.

## THE FOUR ESSENTIAL VOTING BLOCS



SHCHAMBERS

## WIN THESE, AND YOU'RE IN THE WHITE HOUSE

And so it goes in Bozeman. I have my work cut out for me.  
— Jane S. Shaw

**The right democracy** — With the U.S. presidential election coming up, Bush would like to end formal control of Iraq before the summer campaign season gets into full swing, so the administration set a date of June 30 to hand over what some would call sovereignty to something resembling an Iraqi government.

However, Shiite Muslims — the same group that has established a theocratic state in Iran — make up 60 to 65 percent of the Iraqi population, so the U.S. has been reluctant to sponsor a democratic election that could lead to another theocratic (and probably anti-American) state in Iraq. It proposed holding regional caucuses that would select a provisional government to take power on June 30, with national elections to follow, perhaps in 2005.

That plan was set back when Grand Ayatollah Ali al-Husseini al-Sistani, Iraq's most influential Shiite cleric, said elections should be held before the handover of power, or the Iraqi government would not be viewed as legitimate. Over the next few days more than 100,000 people demonstrated in Baghdad. That got the attention of the U.S.

Seeking a way out, the U.S. authorized the United Nations to send a special envoy to Iraq to try to mediate the problem. Lakhdar Brahimi, a former Algerian foreign minister, said after meeting with al-Sistani that holding elections before June 30 would be difficult, but that it was important to hold them as soon as possible. He also warned Iraqis that civil war was possible, even though few Iraqis desire it.

"Brahimi seems to have walked a fine line and pointed a way toward compromise," said Jon Wolfsthal, deputy director of the Non-Proliferation Project at the Carnegie Endowment for International peace. "Whether Sistani will go for it is another question."

Some observers believe that al-Sistani, who is notably reclusive and makes statements only through aides, does not have the kind of political aspirations that could lead to an Iran-style Islamist theocracy. We can only hope that is true, as he seems to be the key figure now in the development of Iraqi government. He will probably need to be convinced that the United States does not have imperial designs on Iraq. Let's hope the administration can do so. If it doesn't, civil war, bloodshed, and a tragic fiasco are all too likely.

— Alan W. Bock

**Secrecy vs. security** — Excitement rippled across the Internet on Feb. 13 as rumors were confirmed that good-sized chunks of proprietary Microsoft source code were available on file-swapping services. Someone had leaked portions of the jealously guarded code underlying the

Windows NT and Windows 2000 operating systems.

The leaked code has several implications, none of which will make it any easier for Bill Gates to sleep at night. At first glance, it looks like bad news for consumers, too. Experts correctly point out that the availability of the code could make it easier for malicious people to see how these operat-

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*Any programmer worth his salt will tell you that hiding implementation details is a terrible way to make software secure.*

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ing systems are put together and find new ways to compromise them with viruses or other malicious code.

Well, that's true. Microsoft's security model amounts to: "Don't tell anyone anything about how Windows works, and hope nobody figures anything out." Security experts have a disparaging name for that kind of thinking: "security through obscurity." Sure enough, within a week of the code leak, SecurityTracker.com was reporting the first vulnerability the code had revealed.

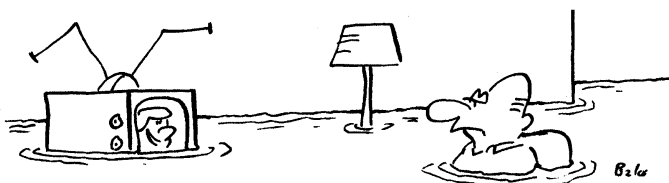
Any programmer worth his salt will tell you that hiding implementation details is a terrible way to make software secure — in fact, it's harmful. The complete source code of the Linux operating system is available for anyone who wants to download it, yet the security problems of Windows are monumentally worse than those faced by Linux users. That's in large part because Linux has been subject to close scrutiny by sharp professionals all over the world. Any hacker who is so inclined can turn Linux inside out, find problems with the code, and fix them before anyone ever installs and relies upon the operating system.

Compare this with Microsoft's strategy for vetting software: Microsoft people write the code, Microsoft people test the code, Microsoft people sell the programs, and nobody outside of a few big buildings in Redmond knows what's going on under the hood.

I think more libertarians than not are sympathetic to Microsoft. They see it as a company providing a product (Windows) that is criticized for its very success, even as consumers all over the world rely upon it. But the lesson libertarians should learn from Microsoft is the limits of intellectual property law. Intelligent people can disagree about whether, and to what extent, legal intellectual property protection is a good idea or is consistent with libertarian principles. But the empirical data tell us unequivocally that the international Linux community, which maintains its open-source operating system without remuneration except for the fun of it, makes a more secure and reliable operating system than Microsoft's proprietary one. Fun and benevolence, in the world of software, are more potent than the profit motive.

— Patrick Quealy

**What the right hand's doing** — Many libertarians have accused me of acting a little Republican lately, so it doesn't surprise me that Clark Stooksbury would be piling on with the rest of them. Let me reassure you all that I am just as libertarian as the rest of you. The predominant



"... followed by fair and warmer tonight."



reason for my shift to the Right is self interest. In order to earn a living as a political satirist, I have to be marketable, and if I'm upsetting both sides of the aisle, I've successfully narrowed my demographic down to about 1 percent, if even that much.

Since I have two choices, a few people might wonder why I have decided to align myself with the Right. The major reason is that as a standup comedian I am in the business of free speech, and the Right is more tolerant of it. Yes, the Left will rush to my side if I want to use obscenities, defecate on stage, or burn a flag, but if I want to make jokes about homelessness, gender bias, or racism, they will shun me. This essentially happened in the '90s, when all my college work dried up because of a college fad called "political correctness." Needless to say, I'm a little bitter.

Despite the fact that libertarians are right on every single issue, we have yet to convince the rest of America that we are, and until that happens we will always poll under 1 percent. The biggest enemies I see aligned against us are not in political power. They are those who control the popular culture, the education of children, the churches, and the courts. These are the foxholes where leftist environmentalists, hippies, and feminists have dug in, and until we can

root them out, we will remain in a stalemate. That is why I have selected these particular victims for my comedic assault; the more we all laugh at them, the more quickly they lose their credibility.

In a final thought, let me mention that I have a hard time criticizing George Bush. The alternative to Bush was Al Gore. I will not forget the presidential debates in 2000. When asked about a litmus test for judicial nominees, George Bush said his only requirement would be a literal understanding of the Constitution. Gore responded that most educated people recognize the Constitution as a flexible document. (I paraphrase.) When forced to choose between those two, George Bush is obviously closer to our goals, and with him in office we are moving forward, if only incrementally.

As long as there is that swing vote on the Supreme Bench, any hope of a high court that values the Constitution over pop culture is simply a pipe dream. Had Al Gore won in 2000, and been reelected this year, the dream of a constitutional High Court would be at least another 20 years away. I can't wait that long. By then, I'll be on Social Security and

Medicare and a card carrying member of AARP, demanding my entitlements from Washington just like every other old buzzard.

If Al Gore had won, the Kyoto Treaty would have been ratified, and the United States would have signed onto the International Criminal Court by now. The Department of Energy would probably be rationing petroleum, and the United Nations would be threatening to sue us, if the Earth doesn't cool off pretty quickly. (Of course, this winter was exceptionally cold, but environmental Leftists still blame American prosperity for causing it.) If you think that lawsuits are a burden on society, just imagine the havoc that could be wreaked by the trial lawyers of the World Court, attacking a defendant as deeply pocketed as the United States. You might loathe what George Bush did in Iraq, but

you have to admire him for thumbing his nose at the UN.

Yes, the Patriot Act is one of the most dangerous pieces of legislation ever rushed through Congress, and yes, the Department of Homeland Security makes me uncomfortable.

But we are in a war. As much as terrorists resemble the straw men of totalitarianism described in 1984 or the movie *Brazil*, I believe they are real. It doesn't matter if



the president is as right as Lincoln, or as left as FDR, the Leviathan always grows in wartime. (I might add that what this administration is doing to foreign nationals is less abhorrent than what FDR did to Japanese-Americans in California.) I can only imagine how a Gore administration would have reacted to 9/11. Is Waco too distant a memory for you to construct a likely scenario?

Yes, it was George W. Bush that signed the bill that put the uniform on the federal employee who incited me to throw my pants at him, but please remember that the TSA screeners were a construction of the Left, not the Right. The Right fought against the federalization pretty hard, and only allowed it through as a last minute concession.

There are offenses against liberty on both sides of mainstream politics, and we all want to attack the injustice in our own fashion. Fighting amongst ourselves, however, is not going to do anything positive. The Libertarian Party has national conventions for that purpose anyway; places where you might slip, and say that you think some regulation of alcohol and drugs is probably necessary, and people will

start screaming like the aliens in *Invasion of the Body Snatchers*.

I recently ran across two Libertarians arguing about the "I Oppose the Initiation of Force" pledge, which initially, every card carrying LP member is forced to sign. There is some debate as to whether removing the requirement would increase membership, or just water down the quality of members. My first National Convention was in Utah, back in 1994, and the pledge was a very hot topic back then too. I like when a story comes full circle, and I've thought that if the issue becomes big again, it would be nice to leave the party on the same argument I walked in on. I really wanted to get in between these two and scream, "Yes, the pledge causes a membership problem. In fact, the reason why we suffer for members is because we're the kind of people who would waste ten years arguing about a stupid pledge! If we can stop the arguing, *that* might increase our membership."

Republicans never argue amongst themselves about who is more Republican. They might disagree on specific issues, but what makes them a political party is the understanding that they all have roughly the same goals, and are willing to compromise a little for the sake of a greater good. Groups of people that argue over purity are not political parties, they are religious fanatics. (Hippies and vegetarians often argue about who uses the least petroleum and animal products, so I'm not including Democrats here).

We are a lonely 1 percent of America, and subdividing ourselves any further only increases the futility of our mission. In the meantime, Mr. Stooksbury, I'll let you sweep the

right side of the room in peace, if you let me finish up on the left.

— Tim Slagle

***Safe until November*** — Is there going to be a draft? The question is in the air; *Time* magazine prominently discussed it in its turn-of-the-year issue. And there is evidence that plans are being slowly and quietly laid to impose one. By now, most people have heard that the government advertised late last year for volunteers to serve as members of Selective Service System Local Boards. Local Boards are groups of five citizen volunteers who, upon imposition of a draft, decide who in their community will receive deferments, postponements, or exemption from military service. The Bush administration denied that the timing of the advertisement had any significance, but when media began to

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*Until November, everything Bush does will be about reelection. If he is reelected, expect the draft to be imposed in early '05.*

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comment, the ad abruptly disappeared from the website of the SSS. It has since reappeared on the front page of the site, but with a disclaimer: "There is NO connection between this ongoing, routine public outreach to compensate for natural board attrition and current international events."

Meanwhile, the SSS has requested \$28 million in its 2004 budget, which is \$5 million more than it got last year. Although this is not proof that the draft is coming, it does indicate that the SSS will be expanding. Also indicative is a report by GovExec.com: "The Army's plan to temporarily increase its force levels by 30,000 soldiers could become permanent if a handful of senators can garner support for new draft legislation likely to be included in the fiscal 2005 defense authorization bill." A back door draft measure?

So far, the military has avoided using a draft by satisfying its manpower demands through "stop-loss" orders. Since last November, the Army has extended its stop-loss orders to cover active-duty soldiers deployed in Iraq and Afghanistan, preventing some 7,000 soldiers from either retiring or being discharged. But stop-loss orders are a short-term fix, at best. Already the murmuring of discontent within military ranks (not to mention their families) is rising. Enlistment is falling due to such draconian measures.

On the state level, there have been unmistakable moves in that direction. For example, in Alaska, Selective Service registration is now a requirement to get a Permanent Fund check — the annual "oil dividend" check that amounted to over \$1,000 last year. Almost every eligible Alaskan registers for the check. The state plans to turn information from dividend applications over to the feds, who will automatically register the eligible Alaska males who haven't yet signed up.

No one expects such a dramatic and controversial move as the imposition of a draft prior to the November elections. Until November, everything Bush does will be about reelection. The Bush administration wants to explode any political bombshells right here and right now while there are

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several months of recovery time possible, which is why it is acting in February rather than in October to defuse claims that the president was AWOL during part of his stint with the Texas National Guard. The clumsiness with which the administration is proceeding may negate the strategy, of course, but I'm betting (and I think they are too) that people will soon be bored with hearing about Bush's military dental records. Nothing short of a sleazy sex scandal or the spousal murder of a pregnant wife can sustain public interest for a period extending into months.

If Bush is reelected, then I expect a draft to be imposed in early '05. If Kerry is elected, then probably not. I say "probably" because Kerry is not opposed in principle but merely pragmatically to imposing a draft.

— Wendy McElroy

**Ron Crickenberger, RIP** — My friend Jacqueline called to me as she was checking her email. She had disturbing news about the Libertarian Party's former political director. "Ron Crickenberger has cancer . . . melanoma, in two lymph glands and in his bones. And it's inoperable."

"Oh Christ," I said. "He's dead."

I immediately regretted saying such a thing, even in private. But my little medical education told me that much. In terms of what it does to the human body and the relative rapidity with which it does it, advanced metastasizing melanoma is as close to a shotgun blast as any cancer can aspire to be. To paint you a picture, it starts when one of those little sun freckles turns purple and begins to grow tentacles like the fever dream of a hack science fiction writer. Its tentacles invade the lymph system, and from there every healthy organ of the body is as wide open as the harem after all the palace's defenders are dead.

I write that just so you understand what it does to the victim, the family, and their bank account; and so you understand and perhaps feel relief that within 24 hours of my friend getting that email, Ron was dead. He is survived by his partner, Noelle, and two children.

Ron was the LP's political director from 1997 until he was laid off last year. It was a strategic position for him. He was one of a very few activists who understood what makes a political party different from a think tank like Cato or an educational nonprofit like Advocates for Self-Government, or *Liberty* or the Elks Club or the Episcopal Church, for that matter. A party participates in elections. It targets elections that are within the reach of its limited resources. It nurtures a farm team of competent local officials who can seek higher office, and uses various means to keep the incompetent and "off-message" out of races and out of public view.

Ron was a political operator, as opposed to the rest of us mere activists and dilettantes. *Campaigns & Elections* magazine named him a rising star in 2000, despite the fact that he insisted on laboring for such a weird little political boutique. And he was more willing to stand up for his beliefs than most of the characters who show up for party meetings to hear themselves talk. Picture 50 or so libertarians staging a "street protest" of the drug war, in Orange County back in 2000, at the close of the LP convention, and a cop car rolls by slowly. The deputy in the right hand seat ostentatiously rolls up his window, so we can see he's not threatened by our rhetoric. I'm carrying a sign and it droops a little bit because

I'm at bottom a bourgeois son of the suburbs who craves approval from such authority figures. Suddenly Ron is in my face, and he's shouting at the deputy. I wish I could remember exactly what he said, but now it sounds like "You can't handle the truth!" when I play it back in my head. Except not stolen from Jack Nicholson, and not on any script. Just the indignation of one guy trying to change the world and not getting a lot of help doing it.

I was one of those who wasn't a huge help to Ron. In fact, the night before I had selfishly hogged a joint he was trying to share with someone else. Without an offer. I just kind of grabbed it and inhaled it. It was rude. I don't even claim the mitigation of already being baked . . . and drunk. Fortunately that was not our only interaction. I would call him up from the headquarters of my local LP to his office in D.C. with some panicky and unreasonable request, and he'd be the voice of reason. We agreed that the drug war should play more of a role, not less, as a wedge issue for the LP, although it wasn't like I did any lobbying on our collective behalf. His advocacy of the drug war strategy, on the other hand, might have been one reason the LP decided not to continue its employment relationship with him after the 2002 election.

After his employment (and his health insurance) ended, Ron wanted to do some contract work, maybe for state parties. Since I was a staffer at one such state party, he asked to examine copies of any contracts I'd signed, and I emailed him one. Doing that made me wonder for a second about our mutual condition. He an LP former staffer, myself a soon-to-be-former state party staffer, wandering around the country and singing for our suppers in a party that, it was becoming clear, had already reached its high water mark. He thanked me later and when I had to discontinue my own employment relationship, I assumed I wouldn't hear from him again. Sadly, I was right.

So, it's 2004, another presidential year, and the party is not growing at all like it has in all previous presidential years. McCain-Feingold has slashed its revenues. Ron's gone, many activists have been defeated or have defected to the Republicans, and I was conned into a Libertarians for Dean mirage. Where does the movement go from here?

If the party were a survivor of a plane crash in the mountains, it would have been dispatched, mourned, and cannibalized to sustain the stronger survivors by now. Unfortunately, the party's future won't be that simple or pretty. A lot of people make a huge emotional investment in the party, at least until it's burned out of them. The idealistic and the competent will have to continue their forced alliance with its egotists, frauds, incompetents, and insane. A lot of time and talent is going to continue to go into the LP, with some transient successes here and there, but no particular impact on the continuing crisis. (I hate to say this, but a city councilman elected in some small town isn't going stop the wars in Iraq, on Drugs, or on individual liberty, and besides he probably could have gotten elected easier without the party.) And although it's blasphemous and cruel (to Ron, who probably wouldn't agree with a word in this obit) to parallel the man's fate with the party's, I'll say this in public.

The LP: it's dead.

— Brien Bartels

# Burglar-Friendly Neighborhoods

*by Randal O'Toole*

Bike paths do more than provide yuppies a chance to ride their bicycles.

Almost everyone has seen the famous film of the St. Louis housing project that was intentionally blown up in 1972, just 16 years after it was built. Though it had won several architecture awards, it and other housing projects proved to be unlivable due to high crime rates.

These housing projects led architect Oscar Newman to develop a crime-prevention theory known as Defensible Space. Newman's theory, which is old hat to libertarians, is that people will defend their private property, but common areas such as parks, public courtyards, and hallways are left unprotected.

One of Newman's most important publications can be downloaded from the Department of Housing and Urban Development's website.\* Yet the theory has been totally ignored by urban planners today, particularly those planners who promote so-called smart-growth planning, also known as New Urbanism.

Planners are fond of quoting Winston Churchill, who said, "We shape our buildings and afterwards our buildings shape us." The basic idea behind both Defensible Space and New Urbanism is to shape human behavior through urban design. But the goals of Defensible Space and New Urbanism are quite different: the former aims to protect residents against crime, while the latter aims to impose a "sense of community" on residents and discourage them from using the evil automobile.

The two theories make opposite recommendations about almost every major aspect of urban design (see table). This is really not surprising given that Defensible Space is

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all about maximizing private property while New Urbanism aims to maximize the commons to promote a sense of community.

The theory of Defensible Space has been carried the furthest in Great Britain, where many police departments have architectural liaisons on staff to help developers design housing and other developments that will minimize crime. Developments that meet basic Defensible Space principles are certified by English police as Secured by Design, and such developments no doubt command a price premium.

Though begun in the U.S., New Urbanism has also spread to Britain, and was recently endorsed by the Deputy Prime Minister. This has stunned the police liaisons, who describe New Urbanism as "criminogenic."

"Cars are isolated from owners; the public realm abuts private space; the large amount of communal green space lacks ownership, purpose, and influence; the layout is ludicrously permeable, providing offenders with complete anonymity and opportunity to wonder around, familiarizing, searching for vulnerable targets, offending and escaping," says West Yorkshire Architectural Liaison Steven Town. "At what point is a stranger's presence inappropriate, suspicious, or challengeable?" In a New Urban development, "residents quickly lose confidence, whilst offenders become

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<http://www.huduser.org/publications/pubasst/defensib.html>



ever bolder and contemptuous. The design has unintentionally taken control from residents and handed it into the hands of the anti-social."

Peter Knowles, the architectural liaison officer of the Bedfordshire Police Force, recently compared developments designed to New Urbanist standards with those designed to

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*The basic idea behind both Defensible Space and New Urbanism is to shape human behavior through urban design.*

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Secured by Design standards. The developments had about the same population densities and income levels, but variable levels of subsidized "affordable" housing.

Knowles' analysis concluded that crime was more than five times greater in the New Urban developments than in the Secured by Design developments. This included nearly eight times as many home burglaries, more than five times as many stolen cars, more than five times as many auto break-ins, and nearly four times as much criminal damage. Dealing with crime in the New Urban neighborhoods cost the police three times as much.

Knowles also found that increasing the amount of subsidized, low-income housing in a neighborhood from 20 to 30 percent increased crime in both kinds of neighborhoods. But it increased crime by 40 percent in the New Urban neighborhoods and only by 12 percent in the Secured by Design neighborhoods.\*

Stephen Town points to a development of 21 homes built on a cul de sac that was virtually crime free after it was built. Then planners constructed a bike path through the neighborhood to a nearby shopping center. Burglaries increased to nine times the national rate and residents described their neighborhood as "a hellhole."

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\*Knowles' complete report can be read at [www.operationscorpion.org.uk/design\\_out\\_crime/policing\\_urbanism.htm](http://www.operationscorpion.org.uk/design_out_crime/policing_urbanism.htm).

American urban planners seem totally oblivious to Defensible Space principles. Numerous cities have been influenced by planners to forbid cul de sacs and large-lot developments and to promote mixed-use developments, narrow streets, and other New Urban designs. Most of these rules apply to new developments, but planners have also set their sights on reconfiguring existing developments to these standards. Cul de sacs are to be connected by pedestrian paths if not by streets, and zoning codes are being rewritten to allow mixed uses in neighborhoods that currently have just single-family dwellings.

When Peter Knowles' report was published on the Web, American New Urbanists were quick to deny that it applied here. Robert Steuteville, the editor of *New Urban News*, says, "[W]e are not aware of any reports of significant or elevated crime in any of the more than 200 sizable New Urban communities."

Of course, this may not mean that such crime does not exist; it may only be that New Urbanism is so politically correct that no one has yet dared report it. U.S. urban planners

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*When planners constructed a bike path through the neighborhood to a nearby shopping center, burglaries increased to nine times the national rate and residents described their neighborhood as "a hellhole."*

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have shown a complete lack of interest in whether the people who live in New Urban developments really drive less, as the planners claim. It would be surprising whether any planners bothered to find out what their ideas did to local crime.

The American equivalent of Secured by Design is a program called Crime Prevention through Environmental Design (CPTED). But this program lacks the focus and

*continued on page 24*

	New Urbanism	Defensible Space
<b>Basic vision</b>	Create neighborhoods that bustle with pedestrians and activity	Create neighborhoods where strangers are easily identified as people who may not belong
<b>Private vs. public</b>	Minimize private lots, maximize public areas	Minimize common areas, maximize private yards
<b>Street pattern</b>	Maximize connectivity, forbid cul de sacs	Maximize cul de sacs to deny criminal escape routes
<b>Street width</b>	Narrow streets to discourage driving	Wide streets to ease police patrols
<b>Parking</b>	Hide parking in back to deemphasize the auto	Keep parking public to discourage thefts
<b>Mixture of uses</b>	Promote walking by mixing commercial and residential	Keep uses that attract outsiders out of residential areas

# The Procrustean Marriage Bed

*by William Merritt*

No matter how strongly you believe that marriage can occur only between a man and a woman, you cannot ignore the fact that marriage is an acknowledgement of the specialness of a relationship that can never be replaced by civil unions and equal taxation.

Since the first American worker had the first Social Security deduction confiscated from his paycheck, the government has frittered away every opportunity to turn Social Security into something other than a miserable pyramid-swindle by actually investing Social Security deductions in ways that workers would have invested the money themselves. All of which suggests . . .

Well, it sure doesn't suggest that the government get into the stock market. The government would do better by stuffing our money under its mattress than by playing the market. This is not because the government is financially stupid, exactly. It's because the government has mixed motives that make it act stupidly. It is not possible for a government that is democratic (even in the good sense) to invest purely for financial gain.

The moment the government figured out that tobacco stocks looked like a good bet, somebody would start complaining about subsidizing lung cancer. Current and future Social Security recipients (i.e., all of us) would be cut out of a portion of our retirement benefits while the government hunted up some less lucrative but nicer place to park our money. The same thing would happen with defense contractors. And pharmaceuticals. And agribusinesses. And petrochemical companies. And industries that pollute. Or don't pay "living wages." Or exploit foreign labor. Or aren't American-owned. This would go on until all that was left were low-performing, Earth-friendly, fair-traded, union-partnered, "socially useful," do-gooder operations that encouraged racial, gender, and species equality, but didn't produce anything that anybody wanted to buy, and had no prospects other than continuing to be artificially propped up by gigantic infusions of federal cash. In other words, the

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whole, bleak pyramid scheme would start all over again. Government involvement in the world of finance would be no different from what it already is in the world of matrimony.

Because states set the rules for marriage, all sorts of social concerns have been layered onto an institution that, in private hands, was about the relationship between individuals. States want to protect public health, so people can't take their vows until they have their blood tested. States want to protect children, so unhappily married couples can't sit down at the kitchen table and decide how their divorces are to be handled. States don't want to have to take care of surviving spouses, so they set out what a person may, and may not, bequeath in a will. States worry about lovers going off half-cocked, so they build in a waiting period between the time when people buy their marriage licenses and the time when they can actually take the plunge. States decide which people are too young to marry. Or too closely related. For a long time, states decided whether people were too distantly related, inventing a whole new crime called miscegenation and making it the state's business to be sure that the bride and groom were properly color-coordinated.

Along with defining the rules of marriage, states have taken it upon themselves to define the very nature of the

institution, so that marriage can only be between one man and one woman. Which means that, if you happen to be one man and several women, or a bunch of guys and gals, or a

*Because states set the rules for marriage, all sorts of social concerns have been layered onto an institution that, in private hands, was about the relationship between individuals.*

pair of guys, or a couple of ladies, you are out of luck. At least, that's the traditional way the states parcel out who gets to be married.

But as surely as social sensibilities would interfere with government investment decisions, sensibilities about who gets to walk down the aisle together are now pressing up against state definitions of marriage and, at least in some places, the heat is on to let any two people get married, just as long as they are old enough, don't flunk their blood tests, aren't first cousins, and have endured the requisite cooling-off period. The country is teetering on the edge of one of those culture squabbles that will go on forever because both sides really do believe what they believe and, with states controlling the definition of marriage, you only get to have it one way. No matter which way the states have it, they dump everybody into a fistfight nobody needs, and nobody can ever resolve.

No matter how strongly you support the equality of every American before the law, you simply cannot overlook the fact that, to people who believe marriage is a sacrament, that's exactly what it is: a sacrament — a joining together by God of a man and a woman. To try to include unions between two men or two women is not only an affront to God — it doesn't make sense. To such people two people of the same sex *can't* be married, any more than a dog can be a minister. Ministry doesn't have anything to do with dogs.

On the other hand, no matter how strongly you believe that marriage can occur only between a man and a woman, you cannot ignore the fact that marriage is an acknowledge-

ment of the specialness of a relationship that can never be replaced by civil unions and equal taxation, by joint-property agreements, changes in inheritance laws, or a sensitive rethinking of who gets to pull the plug when one of you won't die.

And all of it, the whole unending argument that's about to go careening down through the generations, is as artificial as the class strife created by unequal tax laws. If states got out of the marriage business, people would just get married. And how they got married, and to whom, would be just one more doctrinal dispute, just one more reason to attend whichever church they went to, instead of some other church.

Men could say "I do" to each other in all-male churches. Women could take the plunge in guy-proof covens. Muslims could return to their roots. A hundred thousand Mormon men, and some much larger number of Mormon wives, could come out of their closets. Unitarians could start ordaining dogs. And the people who think that marriage is a sacrament could go to the altar in churches that practice the exact sacraments that they would have decreed if they had been God.

Religious sects whose members care enough not to recognize each others' communions and baptisms would be just as free to think of each others' alleged "marriages" as the blasphemous sacrileges they are, and hold them up as examples

*Men could say "I do" to each other in all-male churches. Women could take the plunge in guy-proof covens. A hundred thousand Mormon men, and some much larger number of Mormon wives, could come out of their closets.*

of the perverted ways of every other church in the world, all of which have fallen into error and sin. The whole issue of who can marry whom would drop out of the larger public debate, and the rest of us could go back to worrying about where our retirement money is really going to come from. □

## Burglar-Friendly Neighborhoods, from page 22

research that backs up Britain's Secured by Design. Documents prepared by CPTED advocates say very little about what kind of designs will reduce crime. One CPTED newsletter even endorses New Urbanist principles without ever saying how banning cul de sacs and requiring stores in every neighborhood of 500 homes will create defensible space.

Even if planners pretend not to understand Defensible Space, most Americans are fully aware of the benefits cul de sacs, separated uses, and visible parking have for their security. Neighborhoods strongly resist efforts by planners to connect cul de sacs or insert bike paths or commercial uses in their midst. In Portland, new homes in neighborhoods built following New Urban designs have sold slowly, even given the huge subsidies offered by local officials smitten by planners' utopian dreams.

As one proponent of Defensible Space says, New Urbanism is "filled with religious and so-far unsubstantiated beliefs." We know that is true with respect to auto driving. One study done by New Urbanists themselves compared several urban areas and found that the one with the highest population density, most intensive transit service, and most pedestrian-friendly design also had the highest per capita driving.

In April, a new anti-New Urban group called the American Dream Coalition\* will hold a national conference on "Preserving the American Dream" in Portland, Ore. West Yorkshire Architectural Liaison Stephen Town will review New Urban developments in that city and describe the situation in England. Perhaps this will lead to some objective research on crime and New Urbanism in the U.S. □

\* [americandreamcoalition.org](http://americandreamcoalition.org)

# The Case for Conquering Iraq

Santa Barbara  
February 12, 2004

Dear Bill,

I regret that it is necessary to turn to first principles to continue our discussion of whether the U.S.-led invasion of Iraq was justified, but the new technological circumstances facing humanity seem to make this inevitable.

When, in our new era, is war just? Humanity no longer lives in a Lockean state of nature where individuals can live relatively isolated lives. Rather, our lives are more connected now than they have ever been.

To repeat the major point made in my previous letter, we now — and will increasingly in the future — live in a world in which a few madmen (or madwomen), literally anywhere in the world, will be able to kill millions and even billions of people. This will lead to new values and new institutions.

Seen in this light, war with and in Iraq was regrettably justified. The doctrine of preventive or preemptive war is vital.

The libertarian ideal, again, is not to eliminate the use of force, but to reduce it to the greatest extent possible. Sometimes it is permissible, and even morally required, to initiate the use of force.

It is helpful that through the war in Iraq the principle is being established that leaders of nations who have or may use weapons of mass destruction against their own or other peoples will not be allowed to remain in power. This principle being established, moreover, I am confident that the world will be a more peaceful place in the future than would otherwise have been the case. When is war justified? We no longer live in a world in which a “fortress America” can secure itself against hostile regimes or even individuals intent on our destruction. Accordingly, the best way forward for the United States is continued increasing involvement in and with the rest of the world. This does not require American unilateralism, but it will require increased American leadership.

The United States should not entrust our and the world’s fate to the United Nations. France, Germany, and Russia are uncertain allies, much less

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China. Were it up to the United Nations, Saddam Hussein would still be in power and the prospects for world peace would be less bright than they now are.

Finally, Bill, please allow me to close on this thought. It is almost inevitable that there will again be a major terrorist attack in the United States. Let us hope, for the sake of civil liberties and the libertarian society that we both value, that this will be as long in the future and as minimal as possible. Humanity lives in a new world and new age.

So, again, have I persuaded you? Do you believe the world now or in the future would be a more peaceful place

had the United States, Great Britain, and other nations not removed Saddam Hussein from power? I await your response.

Best,

  
Alan

Port Townsend  
February 17, 2004

*While nuclear  
weapons  
undoubtedly cause  
mass destruction of  
life and property, it  
is not clear to me  
just how "mass" the  
destruction caused  
by chemical and  
biological weapons  
has ever been.*

Dear Lanny,

I find two challenging points in your letter. The first is the principle that "leaders of nations who have or may use weapons of mass destruction against their own or other peoples will not be allowed to remain in power," thus justifying the invasion of their countries.

What does this mean? The fulcrum of this principle is on a phrase whose meaning is a little slippery. Just what are "weapons of mass destruction"?

The phrase is so new that I've never seen it in a dictionary. But Congress has trod where philologists fear to go, enacting a law defining the term to mean nuclear weapons, biological weapons, and chemical weapons. (The FBI uses a slightly different definition, so it can count Timothy McVeigh, whom it apprehended, as a perp of WMDs.)

Well, why has Congress defined WMDs as only these three types of weapons? While nuclear weapons undoubtedly cause mass destruction of life and property, it is not clear to me just how "mass" the destruction caused by chemical and biological weapons has ever been. Surely, as a matter of factual history, they have been responsible for far less death and destruction than has gunpowder. Or clubs. Or knives.

What singles out chemical and biological weapons? Why are they in this stigmatized category, which guns, knives, and bombs are not?

And while we're talking about WMDs, could you explain to me why the incendiary bombs dropped on Dresden and Tokyo during World War II fail to qualify as WMDs?

Dresden was Germany's seventh largest city, with a pre-war population of more than 600,000. For three days in February 1945, British planes dropped enough bombs on it to virtually destroy the city.

Britain inflicted this holocaust, according to Winston Churchill (March 25, 1945) "merely for the sake of increasing terror." The damage was so extensive that it is impossible to know how many civilians were killed: estimates range from 35,000 to 500,000.

The two-day fire bombing of Tokyo by the U.S. in March 1945 destroyed a twelve-square-mile area, killing 100,000 civilians. "No other air attack of the war," the Army Air Force noted, "either in Japan or Europe, was so destructive of life and property." Then the U.S. started bombing other major Japanese cities, dropping nearly 20 million pounds of bombs during a ten-day period. By the time Japan surrendered, over 56 square miles of Tokyo had been reduced to ashes, as were major portions of other Japanese cities. There were hundreds of thousands of additional civilian casualties:

Everything combustible would be consumed, and the fierce temperatures generated would ensure that by radiant heat alone the conflagration would cross streets and canals. In some cases the heat would soften the asphalt in the streets, so that fire equipment mired down and was lost to the flames. Water



sprayed on the fire would simply vaporize; glass panes would soften and drip from metal window frames. Here and there, incredibly, concrete melted. No living thing could survive in such an atmosphere. [Lee Kennett, *A History of Strategic Bombing*, New York, 1982]

These bombing attacks were far more destructive of life and property than the atomic bomb attacks on Hiroshima and Nagasaki. Why should they be excluded from the awful category of WMDs? And just why include chemical and biological weapons, which have been used only occasionally and ineffectively in war and have caused relatively few casualties?

Let us suppose for a moment that, contrary to all evidence, Saddam Hussein possessed nuclear, chemical, and biological weapons and was willing and able to use them, and that this justified declaring him a war criminal and conquering his country.

Would not the same logic lead one to conclude that Harry Truman, who authorized the atomic bombing of Hiroshima and Nagasaki, was also a war criminal whose country ought to be invaded and conquered?

And what of Franklin Roosevelt, who authorized the fire-bombing of Tokyo and other Japanese cities, where the destruction was much worse? Should he likewise "not be allowed to remain in power"? Or Winston Churchill, who admitted that the purpose of the holocaust of Dresden was done "merely for the sake of increasing terror"?

Perhaps it does. Perhaps Churchill, Roosevelt, or Truman

who ordered up holocausts should also have been branded as war criminals and their countries invaded and conquered. But whether or not the logic of your position justifies invasion of the United States and Britain and the capture of Truman, Roosevelt, and Churchill, it doesn't justify the invasion of Iraq and the capture of Hussein.

Truman, Roosevelt, and Churchill actually possessed WMDs and used them for purposes of terror. Saddam Hussein did not possess WMDs and therefore posed no threat to use them for purposes of terror. Curiously, while Iraq had no deployable WMDs, the U.S. and Britain both do. And leaders of both have indicated a willingness to use them. Surely you don't want to justify invasion of the U.S. and Britain, not to mention Israel, France, India, the Ukraine, Pakistan, South Africa, and North Korea?

I proceed to your second interesting claim that: "we now — and will increasingly in the future — live in a world in which a few madmen (or madwomen), literally anywhere in the world, will be able to kill millions and even billions of people."

You cite no evidence for this assertion, and it seems dubious to me. Could you tell me what convinced you of its truth?

Sincerely,



R.W. Bradford

Santa Barbara  
February 21, 2004

Dear Bill,

I notice with interest that you avoid answering my concluding question: "Do you believe the world now or in the future would be a more peaceful place had the United States, Great Britain, and other nations not removed Saddam Hussein from power?"

The answer is clearly, no. The world is more peaceful because Saddam Hussein was removed from power, and is likely to become more so. This being granted, the original decision to go to war with Iraq is even more justified retrospectively than it was prospectively.

I share your angst and concern with respect to the new world and new age we have entered. However, the potential proliferation of weapons of mass destruction beyond the nation-state level, to individuals anywhere in the world, creates new circumstances that will require new values and new institutions.

One of Locke's cardinal points with respect to state power is that where there is no one to enforce the law, there is no law. Law requires its enforcement to exist.

Have no doubt, Bill, that the United States military is the greatest force for peace in the world. While we may decry the circumstances that have led to the situation where world peace is dependent on what the United States does — and on America maintaining the strongest military in the world — this does not change the reality.

Were the United States to withdraw from the world militarily, chaos and violence would break out across the globe.

I can imagine you and others now objecting: "Well, perhaps this is true enough, but who gave the United States the right to intervene around the world, even if it is a force for good and peace?"

To answer that objection, I return to first principles. The overriding libertarian

*Have no doubt, Bill,*

*that the United*

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*greatest force for*

*peace in the world.*

*continued on page 53*

# Dumb Clods and Proud of It

by Jimmy T. LaBaume

When a tiny west Texas town gets international attention for its pandemic stupidity, how do local people react? With a parade, naturally.

I was among the first in Alpine, Texas, to read Larry Sechrest's article, "A Strange Little Town in Texas," in the January issue of *Liberty*. It was an affectionate portrait, but it did include some rather acidic comments on the level of intelligence of Alpine's citizens: among them, Sechrest claimed, can be found "some of the dumbest clods on the planet."

Word of this got back to Alpine six or seven weeks later, and the locals did not take kindly to it. A local newspaper and radio station editorialized against Sechrest's sentiments and a campaign was started to get Sechrest fired from his tenured position at the local "university." Sechrest's car was vandalized and a couple of anonymous clods left threatening messages on his telephone answering device. The city organized a "We Love Alpine" week, which began with a parade and ended with a rally. Sechrest installed motion detectors at his house and learned that Sul Ross State University has cut his summer teaching schedule (and thus his income).

The story was picked up by a television station in Midland, some 175 miles away, and eventually by the *Houston Chronicle*, *The New York Times*, the *Washington Post*, and even the *London Telegraph*. The websites of both the *Times* and the *Post* reported it was the most widely emailed of all their articles the day it was published.

I thought that it made several good points and didn't take any of its criticism personally. But, after giving it some thought, the only surprise is that I was surprised. I've seen these folks in action before. In fact, my loved ones and I have been targets of their malicious gossip and victims of their

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wrath more than once.

One of the better things to come out of the stir is that it provoked a great deal of self-assessment amongst us. Never have I had so many people tell me how smart they are and how much they have accomplished in their lives in the face of so much adversity — all, of course, in an attempt to distance or distinguish themselves from any of the sociological groups that Sechrest identified.

My own self-assessment seems to place me either solidly within, or closely aligned with, several of those groups.

I was raised in the trans-Pecos-Big Bend region of Texas and have lived in Alpine, off and on, for almost 35 years. I suppose that would place me amongst the "natives." But, at least I did not marry someone who was born here (she was a Yankee, but has gotten over it) and therefore have not contributed to the "inbreeding" Dr. Sechrest mentions. At any rate, this is the group that I probably identify with more than any other — even though group identity is counter to my individualistic libertarian nature.

I am definitely among those Texans who believe that states have the right to secede. This is regardless of the fact that Lincoln, with his War of Yankee Aggression, used military force to deny us that right. In the process, he murdered 630,000 Americans (a proportion of the population at that

time equivalent to 5.5 million today), usurped the Constitution, and destroyed the federal Republic. He may have "saved the Union," but only in a geographic sense.

Further, there are many of us who believe that Texas is not legitimately a state. We never agreed to join the Union. We were *annexed by* the Union. We live in an occupied territory.

There were also a couple of minor errors in Sechrest's article that need to be corrected. He referred to Bush II as a Texan. In fact, neither he nor Bush I was born here. The term "carpetbagger" comes to mind.

Further, the statement that Dubya is "more dangerous than he looks" is probably the understatement of the century. As the person who commands the world's largest arsenal of the most awesome firepower known to man, he is probably the most dangerous man to have ever lived.

But back to my self-assessment: I have lived in Mexico and spent extended periods of time in South and Central America. I speak, read, write, and understand Spanish. Since the word "Hispanic" means "Spanish speaking," I suppose that makes me Hispanic. Most of my 35 years in Alpine have been spent living on the south side of the tracks, in the *barrio* with the "Mexican trash." Although I do not pretend to be one of them, I have, over the years, developed very good friends and confidants amongst them. I have the best neighbors that anybody could possibly ask for. I would never consider living on the "white trash" side of town. My neighbors are so much better at minding their own business.

I am also one of those tenured full professors who are not engaging in much original research anymore. The first reason is time. My colleagues at other universities are appalled when I tell them about our teaching loads. Twelve to 14 credit hours per semester just does not leave much time for research. Those that attempt to do both generally find that at least one or the other, and usually both, get shortchanged.

The second reason is that nearly all university research is funded by the government. I have two problems with this. One is that accepting money taken from the American productive class at the point of a gun is immoral. The second is that the game is being played solely for the sake of playing the game — just to see who can launder the most of the stolen money — which explains why 95 percent of what one sees in the so-called "professional journals" is either irrelevant or downright silly.

With all that said, I can see where Dr. Sechrest made at least two mistakes. First, he underestimated the territoriality of west Texans. (We inherited that from our brothers from Tennessee who gave their lives at the Alamo for our freedom from a tyrannical Mexican government.)

His second mistake was in portraying the problem as though it is new and unique to Alpine and Sul Ross. It is neither new nor unique. A comparison of public education in

rural west Texas with public education in the larger cities would be similar to comparing Odessa College to MIT. The worst class I have ever had in my entire teaching career was in 1984 at New Mexico State, a large land-grant university. Again, my colleagues at other universities assure me they are facing the same problem. In the words of Joseph Farah of *WorldNetDaily*, our problem is that we are "immoral, fat, lazy and stupid."

The fact is, the product of these mandatory government propaganda camps (some still call them "public schools") is our raw material at the university and, with a few outstanding exceptions, it is inadequate. I say, "Okay, guys, you have a fat steer weighing 1,100 pounds. He cost you \$800 to produce. What is your break-even in dollars per hundred

weight?" They look at me like I have just introduced quantum physics. Just a few days back I used the word "gulag" in class. Not a single student in a class of 20 knew what I was talking about.

They can sing the praises of "multiculturalism." They can laud the virtues of "diversity." They can "get in touch with their cosmic feelings" (provided they've had enough Ritalin), but they couldn't solve a quadratic equation if their lives depended upon it.

Today, the common areas of our schools (and especially those in the larger cities) more closely resemble prisons than they do campuses. Our classrooms more closely resemble group psychotherapy sessions than places for learning.

Before we can hope to solve this problem, we must understand what caused it. We know it is not due to any kind of recent genetic change. It is mathematically impossible for the




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*The story was picked up by a television station in Midland, some 175 miles away, and eventually by the Houston Chronicle, the New York Times, the Washington Post, and even the London Telegraph.*

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"dumb" gene to have manifested itself so prominently in the phenotype in only one or two generations.

Students and parents blame the teachers. Teachers blame the administrators. Administrators blame the parents, and the infinite loop is closed. The truth is that, although all of these may somehow be accomplices — guilty of aiding and abetting — none of them are totally to blame. It is the system that has failed us.

Nationwide, SAT scores peaked in 1962 and have been in a steady decline ever since. As a high school senior in 1962, I was president of the debate club. "Federal aid to education" was a constant on our topic list. All the old mossbacks warned us, "Don't do it. If you take their money, they will

tell you how to run your business." All the "progressives" wailed, "But just think of all the things we can buy and do with all that money." As it has turned out, the mossbacks were absolutely right. And one thing always leads to another.

Within only a few years the death stake was driven into the heart of "public" education with the Civil Rights Act of 1965, which set the stage for idiocy like forced bussing. "Gasp! He's a racist," I imagine you whispering across your upper front teeth. Not! To hate someone for no reason other than the color of his or her skin is illogical, irrational, and, yes, downright stupid. I am a realist and, like Thomas Jefferson, "There is no truth existing which I fear, or would wish unknown to the whole world."

The *truth* is that intelligence is up to 85% heritable, and that people of different races, on average, have different levels of intelligence. The *truth* is that Asians, on the average, have higher IQs than any other racial group, followed by Europeans, mestizos of Latin America, American Indians, and African Americans — in that order. The *truth* is that every normal distribution has two tails. There are some very bright and some very dull people in all races.

The *truth* is that 40 years of association forced at the point of a bayonet in a futile hope that learning will somehow take place magically through the process of osmosis has not changed these fundamental relationships. Instead, students have *all* gotten dumber. No classroom teacher, of whose students half have an IQ of 140 and half have an IQ of 85, can do much for either group. Add the pressures of codified racism (affirmative action laws) and the "lowest common denominator" soon becomes the norm. This is the type of nonsense that has led to insane concepts such as "outcome based education." No one fails because it might "hurt their sensibilities."

So what can we do about this? Schools should be re-segregated, not by race, but by *scholastic aptitude*. This must be accompanied by free and uninhibited inter-group mobility based on achievement *regardless* of race, creed, color, sex or national origin.

The sad part is that the radical reform needed is just not politically possible. No one is willing to speak out for fear of being labeled a "racist" or "hater" and suffering the social, economic, and even physical consequences. We are silenced by the unjustified guilt trip in which the culturally dominant white liberals immerse themselves, weeping and wailing.

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*Never have I had so many people tell me how smart they are and how much they have accomplished in their lives.*

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There can and will be no fix as long as the racism of affirmative action, in all its forms, remains the law of the land. The current climate of rabid political correctness brought on by our egalitarian statist-collectivist brainwashing simply won't allow it. Finally, the powerful, organized educator and administrator lobby groups would never stand for it.

Still, the only way to completely address this problem is

to close the government schools, board the windows, put them on the auction block and give the productive class its money back. Public schools (including, yes, state-supported universities such as Sul Ross) can easily be replaced by private and home schools.

Some will cry, "Oh! But many a child would be 'left behind' without 'free' education!" Not so, as is borne out by the history of education in both America and Great Britain. England's system was not completely "free" until 1870. Horace Mann's infamous Common School Movement didn't

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catch steam in America until the 1850s. Literacy rates in both places are lower today than they were then. Not a single one of America's Founding Fathers spent a single hour in a publicly financed schoolhouse.

Further, anyone with even a rudimentary understanding of economics knows that competition, coupled with private property and freedom of choice, always yields greater diversity of product offered in the marketplace. Education is no exception. Private schools would offer more varied curricula; specialty and night schools would emerge because private businesses are consumer oriented. The quality would also be better because that is what the consumer is looking for. Barry Simpson said it best: "Economic theory shows us that private businesses cater to the needs of diverse consumers far better than bureaucracies. History tells us that a private system is feasible, that those at the bottom of the ladder will gain the education they need, and that literacy will not suffer if the mass of the public school system disappears." And last but not least, such a system would be infinitely more respecting of the dignity and worth of the individual than our current charade.

To those teachers and administrators who wail, "You are threatening our jobs!" I say, "If you are any good at what you do, you could likely make more money doing it in the private sector." (Plus, you wouldn't be surrounded by buffoons and idiots, because such do not survive in competitive markets.) If you are not any good at what you do, then why is the American productive class paying you anyway?

Returning to the local issues, the fact that Dr. Sechrest has suffered property damage, received obscene phone calls, and even had his life threatened several times is irrefutable evidence that there is, indeed, a wild-eyed, gap-tooth, ignorant element amongst us. These people must be brought to justice. That would seem easy enough because we have enough city, county, state, and federal edict enforcers in the area to

*continued on page 53*

# Rights During War

*by Dave Kopel*

In 1864, the U.S. Army court-martialed an Indiana civilian and sentenced him to death. What does this case teach us about the Second Amendment and the limits of presidential powers?

After Attorney General Ashcroft promulgated an official Department of Justice position recognizing that the Second Amendment is an individual right, gun prohibition advocates attacked him for changing long-established Department of Justice policy. Actually, it was only under Richard Nixon that the attorney general created an official policy claiming that the Second Amendment was not an individual right. President Lyndon Johnson's attorneys general, while not creating an official policy, also denied that the Second Amendment protected an individual right. But before the Johnson-Nixon era, things were very different. Let's take a look at the first Supreme Court case in which the U.S. Department of Justice cited the Second Amendment.

During the Civil War, in 1864, an Indiana man, Lambdin P. Milligan, was charged with aiding the southern rebellion against the national government. Although Indiana was under full Union control, and courts in Indiana were functioning, Milligan was tried before a military court martial and sentenced to death. In 1866, a unanimous Supreme Court overturned Milligan's conviction, holding that martial law can only be applied in theaters of war, and not in areas where the civil courts are functioning. *Ex Parte Milligan*, 71 U.S. 2 (1866).

During the argument before the Court, Milligan's lawyers had claimed that Congress could never impose martial law. They pointed out that the Fourth Amendment (no searches without warrants), Fifth Amendment (no criminal trials without due process), and Sixth Amendment (criminal defendants always have a right to a jury trial) do not contain any exceptions for wartime.

The attorney general, who was defending the legality of

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Milligan's having been sentenced to death by court martial, retorted that under conditions of war, the protections of the Bill of Rights do not apply. Thus, the federal government could disarm a rebel, without violating his Second Amendment right to keep and bear arms. The attorney general urged the Court to construe the Second, Third, Fourth, Fifth, and Sixth Amendments *in pari materia* (as being of the same cloth).

He first claimed that in times of war, the president was the sole judge of the necessity of what needed to be done:

After war is originated, whether by declaration, invasion, or insurrection, the whole power of conducting it, as to manner, and as to all the means and appliances by which war is carried on by civilized nations, is given to the President. He is the sole judge of the exigencies, necessities, and duties of the occasion, their extent and duration.

The attorney general then noted that Milligan's argument was based on the Fourth, Fifth, and Sixth Amendments. The attorney general continued:

In addition to these, there are two preceding amendments which we may also mention, to wit: the second and third. They are thus:

2. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.



3. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

He then came to the heart of the argument: if the Fourth, Fifth, and Sixth Amendments apply in time of war, so does the Second. And that would lead to the absurd result of the government forbidden to disarm the enemy:

It will be argued that the fourth, fifth, and sixth articles, as above given, are restraints upon the war-making power; but we deny this. All these amendments are *in pari materia*, and if either is a restraint upon the President in carrying on war, in favor of the citizen, it is difficult to see why all of them are not. Yet will it be argued that the fifth article would be violated in "depriving of life, liberty, or property, without due process of law," armed rebels marching to attack the capital? Or that the fourth would be violated by searching and seizing the papers and houses of persons in open insurrection and war against the government? It cannot properly be so argued, any more than it could be that it was intended by the second article (declaring that "the right of the people to keep and bear arms shall not be infringed") to hinder the President from disarming insurrectionists, rebels, and traitors in arms while he was carrying on war against them.

These, in truth, are all peace provisions of the Constitution and, like all other conventional and legislative laws and enactments, are silent amidst arms, and when the safety of the people becomes the supreme law.

Accordingly, the attorney general concluded that all of the Bill of Rights had an implicit exception for wartime necessity.

Thus, the attorney general explained, the Second Amendment belongs to individuals, but if a Confederate rebel were disarmed, his Second Amendment right would not be violated, since the Second Amendment would not apply to him — even though the Second Amendment has no explicit exception for wartime. Likewise, if Congress declared martial law in a region, a civilian would be subjected to a court martial, rather than trial by jury, even though the Sixth Amendment (which guarantees jury trials) has no explicit exception for wartime. The attorney general plainly saw the Second Amendment as guaranteeing an individual right.

The United States government also made another argument showing that the Second Amendment belongs to individuals. On behalf of Milligan, attorney David Dudley Field presented a passionate and superb argument that the ulti-

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*If the Fourth, Fifth, and Sixth Amendments apply in time of war, so does the Second. And that would lead to the absurd result of the government forbidden to disarm rebels.*

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mate issue at bar was the supremacy of the civil power over the military, a principle at the very heart of Anglo-American liberty and republican government.

Field made much of the fact that the Fifth Amendment's requirement that persons could only be tried if they had first been indicted by a grand jury had an explicit exception for military circumstances ("except in cases arising in the land or

naval forces, or in the militia when in actual service in time of war or public danger"). Field pointed out that Milligan (an Indiana civilian with Confederate sympathies) was plainly not within the terms of the exception.

In response, the attorney general turned the argument over to Benjamin Franklin Butler. A very successful lawyer, Butler had been one of the most prominent Union generals during the Civil War. A few months after his Supreme Court

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*According to the gun prohibition lobbies, the Second Amendment can only be violated when the federal government interferes with state militias.*

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argument, Butler would be elected to Congress from Massachusetts, and would become one of the leading Radical Republicans.

Butler told the Supreme Court that the whole Bill of Rights contained implicit exceptions which were not stated in the text. For example, despite the literal language of the Fifth Amendment and the Second Amendment, slaves in antebellum America had been deprived of liberty without due process and had been forbidden to possess arms:

The constitution provides that "no person" shall be deprived of liberty without due process of law. And yet, as we know, whole generations of people in this land — as many as four millions of them at one time — people described in the Constitution by this same word, "persons," have been till lately deprived of liberty ever since the adoption of the Constitution, without any process of law whatever.

The Constitution provides, also, that no "person's" right to bear arms shall be infringed; yet these same people, described elsewhere in the Constitutions as "persons," have been deprived of their arms whenever they had them.

Butler's point, presented on behalf of the attorney general, was that the right to arms and the right not to be deprived of liberty without due process were individual rights guaranteed to all "persons." Yet despite the literal guarantee to all "persons," slaves had been deprived of their liberty without a fair trial, and had not been allowed to own or carry guns. Thus, there must be an implicit "slavery exception" in the Second Amendment and the Fifth Amendment. And if there could be an unstated "slavery exception," there could also be an unstated "in time of war" exception.

Butler's argument is totally incompatible with the claim that the Second Amendment right does not belong to individuals. According to the gun prohibition lobbies, the Second Amendment can only be violated when the federal government interferes with state militias. But there were no federal laws forbidding states to enroll slaves in the state militias. (The federal militia was whites only, but this did not prevent the states from structuring their own militias as they saw fit.)

Although there was no federal law interfering with state

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# A Day at the Caucuses

*by R. W. Bradford*

Democracy without elections, tolerance through exclusion, and casual duplicity weave together to form the rich and beautiful tapestry of American democracy.

In the state of Washington, any registered voter can participate in major party caucuses, have his presidential preference recorded for posterity, and elect delegates to the county convention. The county convention elects delegates to the state convention, which in turn elects delegates to the national convention, where the party's nominee is crowned in a major television event.

As the February caucus approached, I toyed with the idea of going to the Democratic event. I'd attended two Republican presidential preference caucuses in the past, and thought it might be fun. Besides, I could stand up for Howard Dean, a sure loser if ever there was one, and thus run no risk of helping elect America's next tyrant. And if, by some miracle, Dean's campaign was resuscitated and he were elected president — well, worse things have happened. Dean has been the most articulate opponent of the Iraq war and promised a balanced budget. What the hell.

In 1988, when I went to my first Republican caucus, I stood up for Pat Robertson. I'd first encountered Robertson on a televangelism program a decade and a half earlier, and had seen the Rt. Rev. cure a home viewer of hemorrhoids. I was under the impression that hemorrhoids were not one of the major problems facing the nation that year, but I figured if Robertson could cure the piles, he might be able to get the economy moving.

Okay, so my purpose was entirely mischievous, but I had an evening free, so off I went. I met with about 20 other local citizens in a room in the community center, and dutifully stood up for Pat. We debated the resolutions the county party leaders had sent us to ratify, and voted them all down. They were palpably idiotic, and the local Republicans succumbed to the logic of my insightful criticism of them.

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Robertson carried the county and carried the state, thanks in some very small part to my support.

I attended the GOP caucus again in 1996, this time not as a prank. Steve Forbes was running for the presidency with a campaign centered on massive tax reductions. He actually seemed sensible, at least in the context of politicians. Remember, this was before he decided the only way he could capture the nomination was to remake himself as a member of the religious right.

Anyway, come 9:30 a.m. on Saturday, Feb. 7, 2004 I dragged my sorry carcass out of bed and hauled myself to the local state park, where the Democrats had rented part of a multi-purpose building for the occasion. I parked my motorcycle and got in line to enter the building. I was one of about 700 people there, about twice as many as could fit in the space, so half the precincts had to meet outside in the cold. I found my precinct and went toward its caucus station, an outdoor table covered with campaign literature, with a chair in the center that had a sheet of paper taped to it labeled with my precinct number. As I walked toward the table, a gray-haired woman with a Clark-for-President sweatshirt approached me and said rather accusingly, "Why are you here? Aren't you a Libertarian?" "Not today," I said. "I like your beard," she replied, and went over to the table to

take charge. I signed in and indicated my preference for Dr. Dean, then wandered around the outdoor caucuses and back into the building, trying to see how the votes were going. It was pretty chaotic, but everyone seemed to be having fun.

Most precincts were neck-and-neck between Dennis Kucinich and Howard Dean. The rule was that for a candidate to be awarded any delegates to the county convention, he had to get 15% of the vote. It looked to me like Kerry might get a few delegates, but all the others would go to the anti-war duo.

Back outside at my precinct, I watched the votes tallied up by the gray-haired lady who liked my beard and a woman wearing a Kerry button. They finished the tally, and the lady in the Clark sweatshirt announced the results to the assembled multitude:

Kucinich	51
Dean	48
Kerry	23
Clark	20
Edwards	7
Uncommitted	5
Hillary Clinton	1
Sharpton	0

She explained that to get any delegates to the county convention, a candidate had to have at least 24 votes, and encouraged those who signed in as uncommitted or Edwards supporters (Edwards was sure to lose, she explained) to change their votes to Clark and Kerry. And it would also be a good idea for some of the Dean and Kucinich delegates to change their votes too, just to make sure that Kerry and Clark got support from our precinct. This seemed odd to me, since I figured that Kucinich and Dean supporters would just as soon have it end with no vote changes, giving each camp four delegates to the state convention.

There followed a strange array of people who climbed up on the table and made short speeches on behalf of their candidates. My favorite was the Clark lady (the one who liked my beard). She explained, "There are three anti-war candidates — Dean, Clark, and Kucinich. Let's make sure we have delegates for all three, in case something happens to Kucinich and Dean." Odd again: not only was a double homicide of

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*A sincere man wearing a cowboy hat explained that he also wanted to be a delegate to the national convention, and promised that if elected, he would take Amtrak to the convention in Boston.*

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Kucinich and Dean far too much to hope for, but the pamphlets for Clark had detailed his "Iraq Success Strategy" in three simple steps:

- Work with Allies to Help with Security & Reconstruction
- Use Linguists & Intelligence Experts Against Insurgents
- Ongoing Transfer of Authority to Iraqis

These three policies were all ones that the hated Bush advocates, and, indeed, are part of American policy in Iraq.

Dean and Kucinich pamphlets, in contrast, were openly critical of the war. Kerry's slick pamphlets didn't mention the war at all.

I may not have found this politicking very convincing, but enough people changed their votes (including three Kucinich voters and one Dean voter) to bring the Clark and Kerry tallies up to the number that enabled each, by the caucus rules, to have one county convention delegate and Kucinich and

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*We needed three alternates, and three volunteers raised their hands. The guy in the cowboy hat said he'd tell the bosses of our decision. The election was completed without the formality of voting.*

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Dean each to lose one delegate. We were then told to meet with other people of the same presidential preference and select our delegates. I joined the Dean supporters.

A very sincere woman announced that she wanted to be a national delegate and it would help her case if she were elected. A similarly sincere man wearing a cowboy hat explained that he also wanted to be a delegate to the national convention, and promised that if elected, he would take Amtrak to the convention in Boston. He added that he had run unsuccessfully for the non-partisan office of port commissioner. Then he saw a young person — a 20-something guy — and announced that youth was important, so this guy should be the third delegate. Then he said we needed three alternates, and three volunteers raised their hands. The guy in the cowboy hat said he'd tell the bosses of our decision. The election was completed without the formality of voting.

I sallied over to the table that was serving as precinct central. The Clark lady who liked my beard and the Kerry lady were trying to figure out how to apportion the delegates. The rules were pretty clear: each candidate who gets at least 15 percent of the total vote got a proportional number of delegates. Doing the simple math, Dean and Kucinich each got 2.6 delegates and Kerry and Clark got 1.3 each. Rounding off, this meant that the two anti-war candidates each got three delegates and Kerry and Clark each got one. But the Clark lady and the Kerry lady, who seemed to be in charge, were saying, "That's not fair. Kerry and Clark should each get 1.5 delegates and Dean and Kucinich 2.5 each." This struck me as more than a little bit odd, since the rules had no provision for partial delegates, but I didn't want to get in an argument, so I wandered back into the building again.

There, a middle-aged man looked at me and hollered, "What are you doing here? Are right-wing nuts trying to take over the Democratic Party?" I didn't recognize him, but I recognized the name on his name tag. I had met him in 1981, when I had gone to his shoe repair business to get the heels on my boots replaced, only to be quoted a price that was higher than the price I had paid for the boots. He was an "activist" and had subsequently been elected county commissioner (a small-town big shot, in the immortal words of

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# Worth a Forty-Seven Mile Commute

by Timothy Sandefur

Placerville is a place where one can walk among rowdy bikers, yuppie tourists, ostrich-walking locals, and elderly churchgoers — and one celebrate American progress.

In September of 2002, when I took a job in Sacramento, I decided right away that I wanted to live in the nearby town of Placerville. I wanted to stay away from the city crowds and traffic, and I had been through Placerville a few times before, on vacations. Still, it took some time before I realized just how right the town is for me.

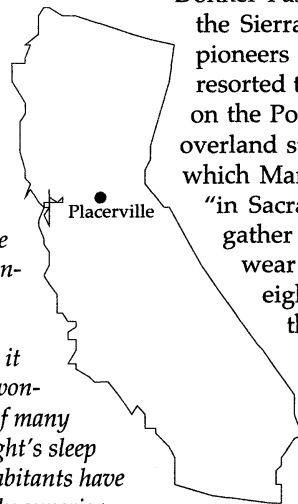
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*"If any man has his health & will work, he can make more than ten times as much here as he can in the states in the same length of time. But many, very many, that come here meet with bad success & thousands will leave their bones here. Others will lose their health, contract diseases that they will carry to their graves with them. Some will have to beg their way home, & probably one half that come here will never make enough to carry them back."*

— A Placerville Miner, 1850

*"This fine, handsome, at the same time dilapidated town, is the county seat of Eldorado [sic] county, is situated twelve miles north of the Sacramento Valley Railroad... Having the finest climate in the world, like ancient Rome much of its original attractiveness still lingers about the quiet streets, dainty little homes and deserted business buildings. The location and altitude combine to make the atmosphere so sweet that I fancied it had a taste like Bartlett Spring Water. This climate is wonderfully exhilarating. I found myself enduring a walk of many miles with little fatigue, and was surprised that one night's sleep could dissipate the effects of so much exertion. The inhabitants have fair, clear complexions, and I fancy that they are morally superior to the inhabitants in the valleys. The hoodlum element certainly does not flourish to any great extent, for the window panes of those vacant houses remain unmolested, which fact speaks volumes for the youth of the town."*

— Caroline M. Churchill,



Placerville was once the third largest city in California. Eight miles from Sutter's Mill, where gold was discovered in 1848, the town lies at the foot of what is now Interstate 50's rise toward Lake Tahoe. The interstate climbs through Donner Pass, a treacherous road over the frozen granite of the Sierra Nevada, which gets its name from a group of pioneers who became trapped in the snow in 1846 and resorted to cannibalism to stay alive. Placerville was a stop on the Pony Express line, and the penultimate stop on the overland stage route connecting St. Louis with Sacramento, which Mark Twain traveled in 1861. He later recalled that "in Sacramento it is fiery summer always, and you can gather roses, and eat strawberries and ice-cream, and wear white linen clothes, and pant and perspire at eight or nine o'clock in the morning, and then take the cars and at noon put on . . . your skates, and go skimming over frozen Donner Lake, seven thousand feet above the valley, among snow banks fifteen feet deep, and in the shadow of grand mountain peaks that lift their frosty crags ten thousand feet above the level of the sea. There is a transition for you! Where will you find another like it in the Western hemisphere?" Placerville rests at the center of that transition.

It is at the center of other transitions as well: the transition from urban to rural; the historical transition from an era

of backbreaking manual labor, to mass production and standardization; the transition between a labor-based economy and an economy of tourism and artistry and self-expression.

In *The Substance of Style*, Virginia Postrel explains that the character of a neighborhood, and a person's choice to live there, are in many ways forms of self-expression. I chose my home not just because of price and convenience, but because something about the location reverberates with my personality. It's eclectic and unusual. Main Street, Placerville is home to at least four art galleries — and to a Harley Davidson store

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*Like the weekend tourists, I was drawn to Placerville by the charm of its history. History is hard to come by in California, and it's precious to me.*

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which attracts crowds of leather-clad bikers every weekend.

One thing everyone notices about the city is its history. The 19th century is everywhere in Placerville. "Downtown" looks almost unchanged from 1850, the date of a photo displayed in the window of a Main St. studio where passersby can conveniently compare. The Placerville Hardware Store has been in continuous operation since 1852, the city's newspaper, the *Mountain Democrat*, has been published since 1851, and the Round Tent Store (now a restaurant) opened in 1849. City Hall was once the headquarters of the Confidence Fire Company, a volunteer firefighting service which opened after much of the city burned in 1856. But it isn't just the architecture. The Hanging Tree bar commemorates the execution of three desperados in 1849 — an act that earned Placerville the nickname "Hangtown"; a dummy swings from a makeshift gallows on the second floor. At Christmastime, a horse-drawn stagecoach gives free rides to tourists, and an authentic stage is on display at the Army recruiting office. From the town's half-dozen antique stores to the Thomas Kinkade gallery (the first; Kinkade got his start in Placerville), the city is full of nostalgia for the "olden days."

It shares that nostalgia with much of America. Our national image of "home" is usually a small Victorian house, and the notion of "boyhood," even today when we plan trips to Mars, is based largely on *Tom Sawyer*. It's not so clear why this should be. It isn't that the 19th century was a "simpler time" before nuclear bombs and planes running into buildings. The 19th century was *not* simpler, but infinitely more complicated and distressing: the Battle of Antietam, on Sept. 17, 1862, remains the bloodiest day in American history, with over 22,000 killed, wounded, or missing. Even Placerville lost men in the Civil War — their graves lie beneath a flag in the Union Cemetery on Bee St. Life was not simpler, but cruder, and shorter, with no vaccinations, rudimentary anesthetics, primitive understanding of communicable disease, and a mechanics-and-iron technology that was both dangerous and grueling. One hundred and thirty years ago, gangs of Chinese and Irish immigrants were blasting and hacking a path for the Central Pacific through Donner Pass, an engi-

neering feat even by today's standards. Nobody knows how many died.

One sees none of that in the insipid glow of Kinkade's paintings, only comfort radiating from the windows. But we associate Victorian warmth with comfort precisely because life was so much harder then. All food tastes better when you're hungry, and all rest is more refreshing when you're as exhausted as Victorian laborers were. In 1852, 106,000 men were employed in California's mines. By 1860 that had dropped to 83,000, as the great majority who did not "strike it rich" found work in stores, on farms, or on railroads. And mining work was terribly hard. Because it had no major source of water, Placerville's "Old Dry Diggins" did not serve for gold panning. Either gold had to be dug out of the mountains in tunnels, or sought out by pocket miners who depended on luck to find "pockets" of gold, or water had to be diverted through troughs to permit sluice mining. "The diggings here have been exceedingly rich," wrote a British visitor in the 1850s. "Men used to pick the chunks of gold out of the crevices of the rocks of the ravines with no other tool than a bowie knife; but these days had passed and now the whole surface of the surrounding country showed the amount of real hard work which has been done. . . . Along the whole length of the creek, as far as one could see, on the banks of the creek, in the ravines, in the middle of the principal and only street of the town, and even inside some of the houses, were parties of miners, numbering from three or four to a dozen, all hard at work, some laying into it with picks, some shoveling the dirt into the 'long toms,' or with long handled shovels washing the dirt thrown in, and throwing out the stones, while others were working pumps or baling water out of the holes with buckets."

In the 1890s, daily wages for factory workers reached about \$2 a day, up from about \$1.25 in 1860. Labor in the goldfields was much less certain. Despite the massive immigration of the Gold Rush, there was still a shortage of labor, and one economist estimates the daily wage for an unskilled worker in California at \$3.78 in 1850, compared to 83 cents per day in the Midwest. But they dropped quickly after that. And that \$3.78 would buy very little compared to today. In 1900, it took an average of ten hours of labor to buy a pair of jeans; today it takes about three and a half. In 1900, a three-

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*Our national image of "home" is usually a small Victorian house, and the notion of "boyhood," even today when we plan trips to Mars, is based largely on Tom Sawyer.*

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pound chicken cost two hours and forty minutes of labor; today it costs about 14 minutes. In the early days, goods in California were particularly expensive because a product's price had to make up not only the price of transportation around the tip of South America or across the Panamanian isthmus, but also the cost of sending the empty ship back to the east coast. And prices could rise very high in bad sea-



sons; in November 1849, flour and pork cost \$125 per barrel in Placerville; butter \$200 a barrel. Dried apples rose to \$1.50; potatoes and onions \$1.50 per pound.

Job security was non-existent: a mining accident could kill or wound with no notice. Although the Wild West was not so wild as is often suggested, sudden and lonely death was a daily possibility. Fond as I am of old graveyards, I took a walk through Placerville's Union Cemetery, and found many ornate marble stones, proclaiming not just the names, but the native lands of the deceased, and bearing the symbols of fraternal organizations: Blakely, 1897, Bremen, Germany, a Mason; Roller, 1883, Italy, an Oddfellow; Johns, 1877, Ohio, also an Oddfellow. One major reason for joining a fraternal order in those days was that foreigners arrived without friends or family, and wanted a decent funeral, which the order would provide. (Of course, there are no Chinese graves.)

And life could be immensely boring. Before the arrival of the Pony Express and the telegraph, mail was extremely slow, and miners were so desperate for letters that one recalled the lines at the Sacramento Post Office extending a half-mile in length. Towns here would be cut off for months when winter snows closed Donner Pass. In 1856, a Norwegian immigrant named John Thompson built a pair of snowshoes and began carrying 60 pound bags of mail between Carson Valley and Placerville. A contemporary writer named Dan DeQuille (a friend of Mark Twain) wrote that "Snowshoe" Thompson "glided over fields of snow that were in places from thirty to fifty feet in depth, his long Norwegian shoes bearing him safely and swiftly along upon the surface of the great drifts. . . . Through him was kept up the only land communication there was between the Atlantic States and California." The fact that Thompson did this for five winters without pay suggests the miners' desperation for news and word from home. Newspapers from the east cost a dollar each in 1850, and one miner wrote home on March 15 that "my great anxiety is for my wife & child. . . . The last time I heard from them was dated the 14 August. I think Margaret has written often but owing to the disarrangement of the Post Office & the distance that I am from one, (50 miles) makes it very difficult to get [l]etters." Another miner recalled that he and his Placerville companions

. . . alternated in the work of shovelling and carrying the dirt in pails to the rocker, and in rocking out the gold and clearing away the tailings. We worked in the water and muddy clay with wet feet and mud covered clothes, as hard and as constant as we could. When the black sand and gold was panned out at the close of the day, we found nearly \$300. Elated at our success, we felt weariness, blistered hands, and sleep vanish. Our wet and mud covered garments, and water-soaked boots were like the purple of kings, and the glass slipper of Cinderella. The next day a like success attended us. The evening came, and we were light of heart — in spirit, like giants refreshed with new wine. We talked of loved ones at home — wives and children; of what we would do for them and our aged parents. Starkweather's eyes often moistened as he spoke of his wife, and at times he grew impatient and nervous at the thought of the long, long months that had passed since he had heard from her. The mails came from the Atlantic to the Pacific in steamers, crossing the Isthmus of Panama on pack mules; and often it would

be from four to six months before they would reach San Francisco, and from thence to the mines, as chance would find the means of forwarding. The third day's labor the result was not so favorable. The golden dream was broken; the placer exhausted. Days of prospecting followed, with only weariness for our wages.

In such a situation, it is no wonder that pleasures that appear simple to us were so much more intense in the Victorian memory. In his autobiography, Twain said that his memory made his boyhood "as real as it ever was, and as blessed. . . . I know how a prize watermelon looks when it is sunning its fat rotundity among pumpkin-vines . . . how inviting it looks when it is cooling itself in a tub of water under the bed, waiting . . . and I know how the [hickory] nuts, taken in conjunction with winter apples, cider, and doughnuts, make old people's tales and old jokes sound fresh and crisp and enchanting, and juggle an evening away before you know what went with the time." The pleasures of

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*A metropolis has its uses, but to me it could never be home any more than I might live on an assembly line or at the bottom of a waterfall.*

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the 19th century seem sweeter in the memory precisely because they were so rare.

But in the face of its drudgery, the 19th century was devising solutions, and this is the second reason for the nostalgia. Mass production and the transportation boom brought the first age of commercialism, and a wave of household gadgetry whose significance today is hard to appreciate just because life is so much easier now. That "sliced bread," which was introduced in 1930, should become the standard for measuring "the greatest thing," is a small indication of the difficulty of even everyday tasks in an age before electricity or gasoline power. As Jacob Bronowski wrote,

It is comic to think that cotton underwear and soap could work a transformation in the lives of the poor. Yet these simple things — coal in an iron range, glass in the windows, a choice of food — were a wonderful rise in the standard of life and health. By our standards, the industrial towns were slums, but to the people who had come from a cottage, a house in a terrace was a liberation from hunger, from dirt, and from disease; it offered a wealth of choice. The bedroom with the [newspapers] on the wall seems funny and pathetic to us, but for the working class wife it was the first experience of private decency. Probably the iron bedstead saved more women from childbed fever than the doctor's black bag. . . .

This was the first time in world history that a major sector of the economy grew up around simply providing people pleasure. Like the 19th, the 18th century was hard going, but people have less fondness for it because it produced fewer of the surviving pastimes, toys, and holiday traditions than the 19th. With factory labor, steam power, and the invention of the light bulb, productivity increased, and with it, leisure time. Victorians invented notions of happiness that we take for granted today: tourism, baseball, the Hershey bar (intro-

duced in 1900). Christmas gift-giving had been around for centuries, but it was the department store that popularized it as the holiday of childhood. Indeed, "childhood" itself took on a new meaning in the 19th century, as kids came to be seen as consumer goods, rather than capital investments. The first child labor law was passed in 1916; precisely as technology made child labor less necessary, childhood itself came to be seen as a season for enjoyment. Of course, 19th century conservatives decried the rise of "superficial materialism," but the Sears catalog and the department store didn't just make life easier — it made life more enjoyable. Deborah Davis explains:

At the Bon Marché, and Le Louvre, and Au Printemps and the other department stores that soon followed, women felt protected from the unpleasantness of everyday life. These stores were splendid, self-contained universes created specifically for women, where their only obligation was to live out fantasies and spend money. Customers were attracted to the stores by eye-catching window displays and merchandise from all over the world, and by affordable items that served as bait. While some people remained outside, window-shopping — "licking the windows," as the French expression *leche-vitrines* would have it — those who ventured inside found a dream world of vast assortments of clothing, accessories, and home furnishings, all under one roof. . . . Shoppers enjoyed two other popular features as well: sales and a revolutionary returns policy. The Bon Marché dazzled Paris with its first white sale, a January event that provoked shoppers into a buying frenzy.

Placerville was far removed from Paris in the 1880s, but the residents shared the spirit of consumer satisfaction. This town's middle class Victorian houses (and the modern ones that imitate their architecture) express our notion of "home" precisely because the 19th century was the first to realize the thought that any man might own his own home — indeed, could order it through the Sears catalog! The 19th century invented "the American dream."

These elements that underlie modern nostalgia for Victorian days — the hard work and the rise of consumer culture — point to a third reason so many people think fondly of that age: freedom.

In the 1890s, the federal government spent about \$300 million a year, of which almost half went to pay veteran's

an age before government bureaucracy came to stifle much of the entrepreneurial spirit that Americans admire. Mark Hopkins, who ran hardware stores in Placerville and Sacramento, became one of America's wealthiest men as a manager of the Central Pacific. Philip Armour, of Armour hot dog fame, got his start in Placerville, as did car baron John Studebaker, who began his profession here making

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*The pleasures of the 19th century seem sweeter in the memory precisely because they were so rare.*

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wheelbarrows. Even if a person failed, there remained the opportunity to try again. "Men are up one day, down tomorrow, and up again the day after," wrote a European, describing post-Civil War America. "No man loses face because he has failed, unless he has allowed himself to fail for a trifle." Today, the stereotypical American is still the cowboy, because he represents the free man; he embodies those characteristics necessary for survival on the frontier: hard work, honor, resiliency — in short, "rugged individualism."

Of course the 19th century saw the rise of collectivism, too. The International Workingman's Association, founded by Karl Marx in 1861, was soon prominent in San Francisco politics, and in 1878, the Workingmen were powerful enough to call a new Constitutional Convention, where delegates considered serious proposals to ban ownership of more than 640 acres of land, or to prohibit corporations entirely. Racial minorities were the primary victims of the Populist movement. In California, these were the Chinese, whose treatment at the hands of natives and European immigrants is the closest thing to slavery in California's history. The Chinese first arrived during the Gold Rush, and by 1876 a quarter of all non-natives in the state were from China. Whites imposed abusive taxes on them, prohibited them from attending public schools, and beat or killed them with impunity. The persecutors claimed the Chinese worked too hard for low wages, and thus "stole the jobs" of whites; indeed, they admitted that they hated the Chinese not because they were indolent or stupid, but because they were smart and worked hard: "California," wrote Twain in 1870, "imposes an unlawful mining tax upon John the [Chinese] foreigner, and allows Patrick the foreigner to dig gold for nothing — probably because the degraded Mongol is at no expense for whiskey, and the refined Celt cannot exist without it." The 1878 Constitutional Convention prohibited the Chinese from voting or owning property, and punished with forfeiture any corporation that dared hire them. By the end of the century, the rise of collectivism would ban all Chinese immigration, and establish antitrust law, the Interstate Commerce Commission, and the foundations of Progressivism. In 1906, even Theodore Roosevelt, who coined the phrase "rugged individualism," would say that "[n]o small part of the trouble that we have comes from carrying to an extreme the national virtue of self-reliance, of independence in initiative and action." But while American

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*The 19th century was not simpler, but infinitely more complicated and distressing.*

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pension benefits. There was no income tax, no regulatory welfare state, and little government interference in business or education. The president had eight cabinet officers, and nobody had ever heard of "urban renewal," "take permits," or "FICA." America was no Galt's Gulch by any stretch — and certainly not for racial minorities — but for the most part, Americans expected to be free to go into any business of their choosing, and to enjoy undisturbed the fruits of their labor — or to learn from their mistakes. The great rags-to-riches stories of Andrew Carnegie and Henry Ford date from

politics moved on to establish the regulatory welfare state, American nostalgia for the Victorian age and the "Wild West" remained. It is rooted (often unconsciously) in memories of a time when a person might live out of the sight of authority, build a business or work with the spirit of "pioneer enterprise" to buy a house, enjoy the new consumer goods, and relish in the warm comforts of home after a hard day's labor.

Like the weekend tourists, I was drawn to Placerville by the charm of its history. History is hard to come by in California, and it's precious to me. But if we choose our communities as a form of self-expression, there is another reason I love this town: its tranquility. Though the common observer might not think it, I am at heart a solitary person; a lover of books and cats. A metropolis has its uses, but to me it could never be home any more than I might live on an assembly line or at the bottom of a waterfall. Weekends I spend in the calm of my house writing, or walking to the Old Town Grill for a gourmet burger, or browsing the volumes at The Bookery. Of course, as a libertarian, I believe in a degree of freedom that most people find shockingly extreme, and as an Objectivist, I admire the colossal buildings and magnificent machines and boisterous commerce of the city. But I have always felt more comfortable in a quiet communion with my thoughts and those of others; I have an autumnal personality, and I find that in my hometown. The splendid isolation of the Old West may be gone forever, but in this small aspect it remains: in my "cabin," beyond the ruckus of the city, there is an irreplaceable freedom to life. Ironically, that freedom is far greater than anything the 19th century ever knew: it is made possible by modern conveniences and the nearness of the city. Recalling his days as a miner in Placerville, one writer described "[t]wo weeks passed with but little success, and at hard labor. The ground, our bed; the tent, our covering by night; griddle cakes and pork, our food, with coffee from acorns, and tea from mountain mint — without sugar or milk." For such people, seclusion brought less pleasure. But today I can have the charm without the desolation: the '49ers were isolated too, but loneliness soon enveloped them, separated from their friends and family, with little entertainment and few comforts. Another miner recalled a night on his journey to Placerville in the 1850s:

[T]he night was cold and cheerless. The stars shone with their usual brilliancy through the clear atmosphere of this high altitude, and the mountain peaks could be seen standing out bare and white like huge sentinels above the lower surrounding forests. There is something, an undefinable feeling that all men experience, I believe, when alone in the solitude of a mountain camp: an awe and loneliness, that hardly can be expressed. What if I

be taken suddenly ill or attacked by wild beasts. Thoughts of home, friends and far-away scenes came trooping into the mind. The vastness and grandeur of the surroundings lead the thoughts to God and of one's insignificance as a factor in the universe.

With the invention of electric light, the ambulance, and the cellular telephone, we can today creep to the edge of solitary darkness, but keep our feet firmly on the safety of the modern day.

My praise of solitude would strike some as timorous and superficial; conservatives routinely deride libertarians for supposedly ignoring the value of community and preaching "atomistic individualism." But this is not fair. Freedom of

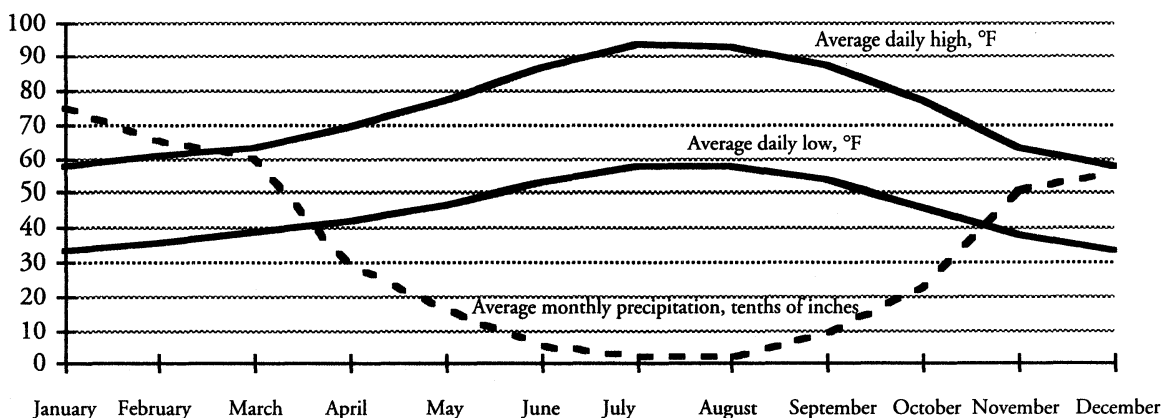
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*The definition of freedom is to be left alone, to choose one's associations for oneself. My neighbors respect my silence and I respect theirs; we are friendly; we do not impose; it is the very image of peace.*

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association means that we can choose our own boundaries, and the growth of technology has increased one essential aspect of that freedom by giving us control over the level of intimacy we share with others. Civilization, Ayn Rand said, means setting people free from each other. And though communitarian critics have scoffed that this is just an excuse for self-indulgence, it is clear that people like me are willing to pay a great deal of money for solitude — or, more accurately, the ability to be solitary when we want to. While riding the Overland Stage, Twain described the "station buildings" where passengers would spend the night in common bedrooms, in common beds, and share common meals. Conditions like these fostered the development of frontier toleration. People from diverse lands and backgrounds found themselves together in 19th century California — one writer said that Placerville's population "like all mining towns at that time, was of a mixed class, good, bad and indifferent, representing nearly every nationality on the globe and some of the worst elements of them all" — and they had

## The Weather in Placerville



to learn to get along (even with the Chinese, once the courts struck down the anti-Chinese laws). With the arrival of the hippie culture in the 1960s, northern California became famous for its toleration of widely divergent lifestyles, even offensive and bizarre ones. And today, Placerville contains a remarkable diversity for a small town: punk rockers with

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*Someday, a century from now, people will look back fondly at the turn of the 21st century. They will smile at our naïvete. They will marvel at our resilience.*

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metal bits hanging from their faces, cowboys driving horse trailers up the highway, elderly churchgoers in suits, art collectors strolling the Main St. galleries, yuppie skiers in spandex and stocking caps, even a woman who takes her pet ostrich, Winston, for a walk on a leash every now and then. Diversity proliferates only because of freedom; that alone

reconciles community with privacy. Community can be a delight — and nothing is sweeter than July 4th at the Placerville Fairgrounds — but the definition of freedom is to be left alone, to choose one's associations for oneself. My neighbors respect my silence and I respect theirs; we are friendly; we do not impose; it is the very image of peace.

Nighttime brings a silence as enveloping as though the whole earth has suddenly evaporated, leaving only me and my bedroom. There are no nuisances; no crimes; no national hypocrisies; only the sounds of raindrops and a curious deer walking past the window. Then dawn; parents leading freshly scrubbed children to church beneath the meditative gaze of a hawk on a telephone pole; skiers returning from Tahoe with snow on their cars; bearded bikers bragging to each other at Hangtown Harley; pretty girls shopping for incense and belly chains at the "Goddess" store; and Winston out for a walk with his owner. I watch it all from a warm coffee shop and imagine: someday, a century from now, people will look back fondly at the turn of the 21st century. They will smile at our naïvete. They will marvel at our resilience. They may long for our quaint pastimes and our primitive technology, or wonder how these could alleviate our brutish lives. I only hope they can find this sort of calm. □

## Placerville: By the Numbers

Population (year 2000): 9,610

Males: 4,423 (46.0%), Females: 5,187 (54.0%)

Median age: 38.3 years

Median household income: \$36,454 (year 2000)

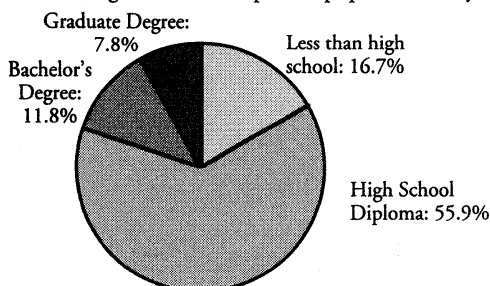
Median house value: \$156,500 (year 2000)

Unemployed: 8.2%

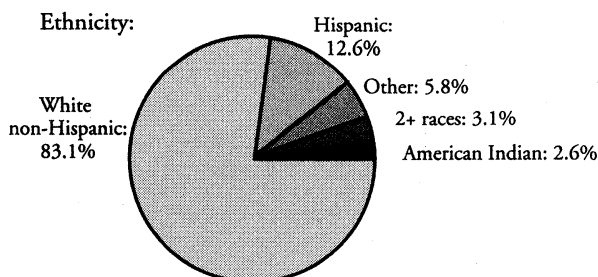
9.0% Foreign born

5.8% Latin America, 1.7% Europe, 0.9% North America

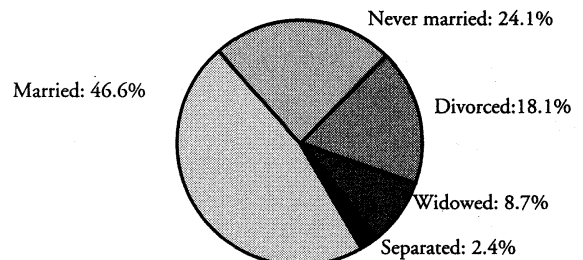
Education (highest level completed, population 25 years and over)



Ethnicity:



Marital status (population 15 years and over)



Crime in Placerville (2001):

2 murders (20.8 per 100,000)	153 burglaries (1592.1 per 100,000)
3 rapes (31.2 per 100,000)	140 larceny counts (1456.8 per 100,000)
4 robberies (41.6 per 100,000)	
69 assaults (718.0 per 100,000)	44 auto thefts (457.9 per 100,000)
City-data.com crime index = 395.7 (higher means more crime, US average = 330.6)	

Nearest commercial airport: Sacramento International (55 miles)

Nearest colleges or universities, 2,000 or more students:

Sierra College, Rocklin (31 miles) enrollment 9,313

American River College, Sacramento (about 38 miles) enrollment 13,984

California State University-Sacramento, Sacramento (about 46 miles) enrollment 20,830

Library: El Dorado County Library. Operating income: \$1,901,669; 343,328 books; 452 serial subscriptions

Elevation: 1,866 feet

# Reviews

*The Last Lone Inventor: A Tale of Genius, Deceit, and the Birth of Television*, by Evan I. Schwartz. HarperCollins, 2002, 323 pages.

## Meet Philo T. Farnsworth

Miles Fowler

Once, when I was a child, I asked my parents, "Who invented television?" I knew that Edison had been credited with inventing the light bulb and that Bell had invented the telephone. (I didn't know then about Elisha Grey, who invented the telephone at the same time but did not get his patent application in as quickly as Bell.) It seemed reasonable to suppose that every invention had its lone creator. To my surprise, my parents didn't know who had invented television. After some persistence on my part, they suggested that television was an invention so complex that it had to have had many inventors. In some sense this seems true. Thousands of engineers refined television, but refinement of an idea is not invention. In *The Last Lone Inventor*, Evan I. Schwartz presents a convincing case for Philo Farnsworth as the lone creator of television as we know it today. The idea of television went back to the 19th century, but all systems before Farnsworth were essentially species of what is called mechanical television. Conceived by Paul Nipkow and brought as near as it could be to perfection by John Logie Baird in 1925, mechanical television was a dead-end that could not produce a clear picture and was as

different from Farnsworth's electronic television as Newtonian physics is from Einsteinian physics. As well as telling the technical story of this invention in layman's language, Schwartz tells the story — by turns inspiring and saddening — of how Farnsworth won official credit for his invention from the United States Patent Office only to

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*Philo Farnsworth was the lone inventor of television as we know it today.*

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have that credit robbed from him by the public relations machine of RCA. (Although he had a genuinely visionary side, there was more than a little of Jim Taggart in RCA president David Sarnoff, as we will see.)

In 1930, Farnsworth was granted three television patents (for which he had applied in 1927), one of which was for the crucial image dissector tube. This device makes it possible to turn light bouncing off of an image into electron beams so that they can then be reassembled and projected onto a specially coated screen. In 1934, RCA tried to interfere with these patents, claiming that RCA's then chief research engineer, Vladimir K. Zworykin, had

invented television earlier than Farnsworth. The U.S. Patent Office ruled in favor of Farnsworth the following year, pointing out that, as originally written up, Zworykin's idea would not have worked, and that, indeed, Zworykin's claim to have demonstrated his invention in 1924–25 was abysmally lacking in documentation as well as credibility. RCA appealed this decision, but it was upheld in 1938. In that year, however, RCA had Zworykin's patent rewritten to include Zworykin's Iconoscope, a device he did not actually invent any earlier than 1929. Reluctantly, the Patent Office granted the revised application under the 1923 filing date. While it was not unusual to grant a revised patent keeping the earliest date (Farnsworth revised his own patent after 1927 because the Patent Office recommended that his original request for one patent be split into three), the 15 years that had elapsed on Zworykin's application and the addition of a device not included in the original patent made for mischief that has bedeviled scholarship of television history ever since. Taking advantage of the false impression that Zworykin's invention of the iconoscope preceded Farnsworth's patent for the image dissector by four years, Sarnoff announced at the 1939 New York

World's Fair that RCA had invented television. (Actually, this claim was further misleading because Zworykin worked for Westinghouse, not RCA, in 1923, and he did not officially join RCA until 1930.) Although in testimony before Congress in 1940 Sarnoff was gracious enough to allow Farnsworth a secondary place after RCA, in 1952, he broadcast a documentary on NBC television — then owned by RCA — crediting the invention to himself and Zworykin, never mentioning Farnsworth at all.

Some writers still suggest that Farnsworth lost some of his patent battles with RCA. In truth, Farnsworth never lost any key patent case regarding television. He never contested RCA's claim to have made certain improvements on his television system. RCA was entitled to patents on those improvements once it acknowledged that it had based its system on his. It was in the court of public opinion that the self-promoting Sarnoff triumphed over Farnsworth, who, modest to a fault, lacked the money, influence, and ruthlessness needed to beat Sarnoff at his own game.

Part of the problem of the public's perception is confusion about what constitutes the invention of television. The distinction between mechanical and electronic television was crucial to the patent conflict between Farnsworth and Zworykin. The terms used to describe this distinction are themselves actually misleading. All television systems contain an electrical component to transmit the signal. To be accurate, what we refer to as mechanical television is really a hybrid mechanical and electrical or electronic system. By the time Zworykin and Farnsworth came

along there were already experimental mechanical television systems. Zworykin had actually learned of mechanical television from one of his professors when he was a university student in Russia. What Farnsworth invented was the first fully electronic television system. Unlike the earlier mechanical systems, which scanned an original image by means of moving disks containing pinholes that pick up the light bouncing off of the object being televised, Farnsworth's image dissector directly converted light into beams of electrons, eliminating the need for any moving parts in the image scanning process. Unlike the earlier mechanical systems, Farnsworth's all-electronic television produced images that a viewer could actually recognize rather than the murky shadows reported by those who witnessed demonstrations of mechanical television. What Zworykin seems to have done in his 1923 patent application was to propose an electronic improvement upon what was essentially still a mechanical scanning system, and the U.S. Patent Office later declared that it doubted that it worked. This is why Zworykin's patent application languished for 15 years while Farnsworth's patent cleared in three.

What was worse than Zworykin's fraudulent claim to priority was that he visited Farnsworth's San Francisco laboratory in 1930 and stole the design for the image dissector. (It is a credit to Zworykin's brilliance if not his sense of ethics that he did not need to steal drawings or written documents but instead carefully watched a dissector being built and later had his own laboratory staff build one based on his memory.) Sarnoff later made his own visit to Farnsworth's lab, with the hapless Farnsworth hoping that RCA was about to propose a licensing agreement. Instead, in what Schwartz characterizes as wishful thinking, Sarnoff told Farnsworth, "There is nothing here that I need." Sarnoff's fool-

ish stubbornness was further demonstrated by his subsequent offer to buy Farnsworth's patents for a flat \$100,000 with no hope for any licensing fees. When Farnsworth rejected it, his financial backers supported him because they had already sunk that much into

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*RCA claimed their chief research engineer, Vladimir K. Zworykin, had invented television earlier than Farnsworth.*

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his work; to accept such an offer would have meant their taking no profit whatsoever. Schwartz speculates that, had Sarnoff been willing to offer at least \$500,000, Farnsworth's backers might have overruled him and sold away the patent rights. Sarnoff's stubbornness was expensive: RCA spent at least \$50 million trying to "get around Farnsworth," yet the best the company came up with was the image orthicon (for which the Emmy Awards — originally intended to be called the Immy Awards — are named), which was little more than a first-rate refinement of Farnsworth's original invention.

In 1939, while RCA was telling the world that it had invented electronic television, the company's chief patent attorney, Otto Schairer, and the president of the newly formed Farnsworth Television & Radio Corporation, Edwin "Nick" Nicholas, were in the midst of several months of difficult negotiations. "Only the clear underlying fact that neither company could get along without the other kept the discussions alive," recalled George Everson, one of Farnsworth's earliest financial backers. Finally, in September 1939, RCA agreed to pay the Farnsworth Corporation \$1 million plus royalties. Farnsworth would also be able to license his inventions to Philco, Zenith, or any other television manufacturer. After 13 years (Farnsworth's original startup, Crocker Research Laboratories, was formed in 1926 in San Francisco primarily by officers and directors of Crocker Bank, some of whom were on the board of the new corporation), it looked as if Farnsworth and his investors might



"You have a syntax error in line 125010."



finally receive some remuneration for all of the hard work and money that went not only into inventing television but also into battling RCA. Presenting a clear example of how capitalism can make strange bedfellows, Schwartz writes:

The licensing pact put Sarnoff and Farnsworth in an odd position. For the first time, they were on the same side, with the same interest in pushing television forward to their mutual benefit. If any other company wanted to enter the television business, they now needed two licenses, to make use of the patents of both. The meaning was clear: Philo T. Farnsworth had denied David Sarnoff the television monopoly he had coveted, but now that their battle was over, they needed to find a way to cooperate. (p. 272)

Unfortunately, there were obstacles yet in the way. Even before the settlement between the two companies had been reached, World War II broke out. Television broadcasting, which had begun to be commercialized in Britain and Germany in the late 1930s, using separate and not always legal licenses from Farnsworth and RCA, came to an abrupt halt. (The BBC Television Service unceremoniously went off the air on September 1, 1939, during the broadcast of a Mickey Mouse cartoon, not to return to the air until June 7, 1946. No explanation for the shut down was televised; viewers had to turn on their radios in order to learn what was happening.) British television makers immediately converted to the manufacture of radar screens. Soon, American television factories would also put their commercial operations on hold for the duration of the war. Both RCA and Farnsworth began manufacturing military electronics instead of television sets.

While RCA had the resources to wait out the storm, Farnsworth Corporation did not, and Farnsworth's key television patents expired in 1947 — just weeks before American television sales skyrocketed. RCA's most important patents, on the other hand, didn't expire until after 1955. Although Farnsworth Corporation operated for a decade, financial crisis forced it to sell off the remaining television patents that had been granted later than the original key ones, and the proceeds of this sale were insufficient to keep the

company afloat.

In 1949, International Telephone and Telegraph Corporation (ITT) purchased the company. The new management kept Farnsworth on as vice president of research, but he never went back to television, designing other types of electronics instead. He eventually took up a personal quest to develop fusion energy — a quixotic project that nearly bankrupted him in his retirement.

Farnsworth only appeared on television once during the 1950s, on the CBS game show *I've Got a Secret*, the very premise of which was sobering: the panelists had to guess the occupation or claim to fame of a mystery guest, and Farnsworth won \$80 and a carton of cigarettes because no one could guess who he was or what he had done. In a touching denouement, however, Farnsworth was able to watch the first Apollo moonwalk almost two years before his death. His widow told Schwartz that Farnsworth's heartfelt declaration was, "This has made it all worthwhile" (297).

Schwartz is clearly partisan throughout, but his favoring "Phil" Farnsworth's claim is difficult to fault since the evidence appears to be overwhelming. On the other hand, his account of Farnsworth, the man, largely based on interviews with the inventor's widow, Elma "Pem" Farnsworth, may be sanitized. Mrs. Farnsworth certainly remembers her husband as having faults, chiefly a serious drinking problem, but although she admits that she once considered divorce because of his drinking, the problem was not sufficient to dissuade her from remaining married to him for 45 years. Farnsworth may have been the mild and virtuous man he is portrayed as being. Why else would he have eschewed every opportunity to stick it to RCA? Schwartz notes that Farnsworth believed in self-reliance to the extent that even when Congress called him before anti-monopoly hearings, expecting him to testify against RCA, he made only innocuous points and even presented evidence that tended to absolve RCA of charges that it was trying to soak consumers by selling inferior radio tubes. (RCA, still in the midst of its dis-

pute with Farnsworth, had, in fact, asked him to present this evidence!) Thanks in part to Farnsworth's refusal to feed it ammunition, a Congressional witch hunt into the communications and other industries was stopped cold.

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*What was worse than Zworykin's fraudulent claim to priority was that he visited Farnsworth's San Francisco laboratory in 1930 and stole the design for the image dissector.*

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Farnsworth's only certifiable weakness, his tendency to drink too much, appears in hindsight to have been related to bouts of depression — no doubt caused or exacerbated by his major disappointments in business.

On the other hand, Schwartz portrays Sarnoff with what can best be described as a mixture of equally guarded admiration and contempt. Sarnoff, an immigrant who worked his way up the hard way as a newspaper boy and telegraph operator, is given credit for appreciating what television could mean to posterity, but, for him, this was all the more reason to want undue credit for it. Like Jim Taggart in *Atlas Shrugged*, Sarnoff relied on pure public relations to create the perception that he, not Farnsworth, was the "Father of Television." According to RCA, in fact, this was Sarnoff's official title! (Although RCA made the distinction of referring to Zworykin as the "Inventor of Television," his 1966 National Medal of Science Award calls him the "Father of Television," too. Because the statue of Farnsworth that stands in the Capitol Building in Washington, D.C. — a gift from Farnsworth's native Utah — labels him the "Father of Television," we can see that television clearly needs the pater-

**The (Libertarian) Connection, open forum since 1968. Subscribers may insert four pages/issue free, unedited. Factsheet Five said, "Lively interchange of point, counter-point and comments." Eight/year, \$20. Strauss, 10 Hill #22-LZ, Newark NJ 07102.**

nity test that Schwartz and other Farnsworth biographers have recently provided.)

Schwartz seems to admire Sarnoff's nerve even as he is appalled by his ruthlessness. While one danger for industry in making deals with leviathan is that government will ultimately take the upper hand, Sarnoff thrived on cleverly manipulating this system to his own advantage. RCA (as Schwartz never lets the reader forget) was originally created by a Congressional edict making it both a subsidiary of General Electric and a government-approved monopoly on radio-related patents. Sarnoff, however, always dreamed of being the top dog, not having to answer to GE or anyone else in business; so when Congress proposed to knock down the "radio combine" it had created, Sarnoff played a successful game of "don't throw me into that briar patch" when he leaked his "secret fear" that GE would be forced to spin off RCA as an independent entity. Incredibly, the government fell for it.

Among Sarnoff's many failings was an inability to understand that not only will posterity behave in accord with the lofty ideals we espouse, but it will also recapitulate our most shameful behavior. He wanted to leave the twin legacy of a world brought together in understanding by the miracle of instantaneous electronic communication and a corporation that would benignly but profitably bring about and maintain that communication. Instead he left a legacy of participation in industry-government pacts that sometimes stifle innovation while pretending to promote it, and a corporation that did little else than survive off of its patents and past glory until,

finally, after Sarnoff's death, RCA and its subsidiary, NBC, were reabsorbed into the original parent company.

The fact that atrocities can be broadcast in the age of television for an indignant world to see, but still are allowed to occur, can be explained by the ability of those who control television to edit and editorialize the most appalling events so that no one sees them for what they are. Sarnoff, himself, was the first television spin doctor when he took credit away from Farnsworth by virtue of the fact that RCA always had the bigger podium, from the 1939 World's Fair to ownership of NBC. It must be a testament to Farnsworth's modesty or the lack of savvy public relations at his corporation that no one approached NBC's rival, CBS, about using their airwaves for an early announcement that Farnsworth was the true inventor of television.

Besides his interviews with Farnsworth's widow, Schwartz had access to the archived records of RCA and Farnsworth's notebooks as well as other primary sources. Although he did not need to refer to many secondary sources, an evaluation of works such as Albert Abramson's *The History of Television: 1884-1941* might have put the continuing controversy over Zworykin versus Farnsworth into context. Readers who wish to read such an approach to the controversy should see Paul Schatzkin's *The Boy Who Invented Television*.

Schwartz says that he became interested in the development of radio and television as well as Farnsworth's conflict with RCA while researching the history of the more recent computer revolution. Both developments illustrate what happens when a new technology is introduced and individuals, corporations, and governments compete to manipulate and benefit from it. Even before Schwartz pointed this out, I had noticed a rough parallel between RCA's position in the mid 1920s and that of IBM 60 years later. RCA, too, faced the problem of myriad startups violating its radio patents and not being able to fight them all in court. RCA's solution was to offer licensing agreements to these competitors and only sue the few who refused to submit. The result was that RCA only had

25 percent of the radio market, but it earned licensing fees from the other 75 percent. Of course, for IBM to benefit from this history lesson, they would have had to take steps before designing their personal computer. IBM put their computer on the market with only one patented component and

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*Farnsworth's key television patents expired in 1947 — just weeks before American television sales skyrocketed.*

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never saw the PC clones coming. All that their competitors had to do was reverse engineer the one patented component. When the courts accepted reverse engineering as a legitimate process that did not violate IBM's sole patent, Big Blue's monopoly on personal computers that could run on Microsoft software came to an end, and the upshot of the much-ballyhooed war between IBM and Apple was that Microsoft (and the consumer to a large extent) won it. In contrast, RCA was in a stronger position than the one in which IBM later found itself because the radio corporation owned so many separate patents that no one could have gotten around all of them.

I particularly enjoyed Schwartz's background information, trivia, and unexpected side trips. For example:

- Farnsworth spent his childhood along Idaho's Snake River, and he went to the same high school in Rigby that individualist-novelist Vardis Fisher had attended a decade earlier.\*

- It was while plowing a field in the Snake River country that Farnsworth realized that just as he went back and forth making rows in his father's field, so an electron beam could scan and reconstruct an image line by line. A most primitive technology thus inspired quite a modern one.

- I was also intrigued by the account of Philo and Elma Farnsworth's 1937 trip to Germany to collect royalties on his television tech-

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\*See my articles in *Liberty*, "Bad Boy of the WPA," March 2002, and "The Forgotten Individualist," May 2002.

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nology, which had been used in the 1936 broadcast of the Berlin Olympics seen by 160,000 people in specially equipped German theaters. It was "the largest television audience yet" (228). Meeting with Paul Görz, the president of Fernseh, which was one of two main television companies in Germany at the time (the other, Telefunken, had made its questionable licensing deal with RCA), Farnsworth was told that the Nazi government refused to allow Fernseh to pay him anything. In fact, the German government cancelled the Farnsworths' exit visas, and it was only with the help of Görz that the couple managed to get out of the country. Not surprisingly — in light of what Schwartz's book demonstrates people will do when given the opportunity to rewrite history in their own favor — the historical website for the now defunct Telefunken AG not only awards the firm full credit for televising the Olympics but also attributes the invention of the electronic television camera to one of Telefunken's scientists.

- Some of Farnsworth's assistants were to become luminaries in the world of technology. One of Farnsworth's early lab assistants was Russell Varian, the inventor of the klystron tube and owner of the first high-tech business to open in Silicon Valley. Another veteran of Farnsworth's lab was Harry Lubcke, who would one day become president of the Academy of Television Arts and Sciences.

- William Paley, head of CBS radio and television, disliked David Sarnoff with such a passion that he made sure to purchase CBS's first television equipment from Farnsworth in 1937. Oddly, Schwartz does not mention the role played by another Sarnoff-hater in the expansion of Farnsworth's company in 1937: Walter Gifford, president of AT&T, made a lucrative, mutually beneficial cross-licensing deal with Farnsworth in that year. The deal with AT&T is mentioned, but Gifford's personal involvement is not. Gifford's dislike for Sarnoff, mentioned in an earlier chapter, was nakedly bound up in anti-Semitism, so I must wonder whether Schwartz was so disgusted with Gifford that he omitted his name later in the book so as not to associate him with Schwartz's hero.

- Cinema legend Mary Pickford sat in front of Farnsworth's experimental television camera and complained that his lights were hotter than any she had encountered on a movie set. This was undoubtedly true. Indeed, one of

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*Farnsworth won \$80 and a carton of cigarettes because no one could guess who he was or what he had done.*

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Zworykin's creditable improvements on Farnsworth's camera was finding a way to increase its sensitivity in nearer to normal lighting.

- In 1931, Farnsworth formed a partnership with the Philco Company in Philadelphia and thus found himself conducting his research across the Delaware River from RCA's Camden, N.J. facility. The two companies began monitoring each other's television transmissions — undoubtedly the only people who could have done so at the time. This allowed Farnsworth to see for the first time that his competition was improving the picture quality of

his invention by leaps that would make it necessary for him to license their patents just as they would need his.

Schwartz played a role in seeing that Farnsworth was at last officially recognized at the 2002 Emmy Awards. Another Farnsworth biographer, Paul Schatzkin, sat next to Farnsworth's widow as host Conan O'Brien introduced her as the first woman ever to appear on a television screen. (She and her brother were Farnsworth's first lab assistants.) David Sarnoff's son, Tom Sarnoff, was also present as his father was recognized — almost in the same breath — for seeing that Farnsworth's invention was refined and brought to the world.

As to why the question of priority in the invention of television matters, I cannot substantially improve on Schatzkin's answer: "It matters because the suppression of the true story deprives us of some important knowledge of the human character. It tempts us to believe that progress is the product of institutions, not individuals. It tempts us to place our faith in those institutions, rather than on ourselves." □

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*Restoring the Lost Constitution: The Presumption of Liberty*, by Randy E. Barnett. Princeton University Press, 2004, xviii + 366 pages.

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# A Sharp Mind at Work

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Leland B. Yeager

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Randy Barnett describes how his thinking evolved away from a quasi-anarchist rejection of the Constitution in the style of Lysander Spooner. Since his personal account has already appeared as an article in the March *Liberty*, I will not go over it again here.

Refreshingly, Barnett shoots down fictions, especially the fiction that governments "deriv[e] their just Powers from the Consent of the Governed." True enough, that rhetorical flourish does appear in the Declaration of Independence. The Declaration does not, however, assert any consent by the individual citizen. Instead, it empha-

sizes "certain unalienable Rights." In condemning the rule of George III, it identifies the illegitimacy of tyrannical government scornful of its subjects' interests. But "Governments long established should not be changed for light and transient Causes. . . ." By implication, the more a government earns acquiescence by securing people's rights, the more nearly legitimate it is. This I take to be pretty much Barnett's position.

None of us, except for naturalized citizens, was ever asked whether we individually consented to the authority of the U.S. government. Its overall character and activities, instead of ever being proposed and consented to, are the unintended result of piecemeal accretions over time. Still, most of us probably acquiesce in them. What real alternative do we have?

Randall G. Holcombe explains the rationale of having any government at all ("Government: Unnecessary but Inevitable," *Independent Review*, Winter 2004). If protection were left only to private agencies, large and powerful ones would have a greater appeal to customers than small ones. One protection agency or coalition of agencies would thus tend to emerge dominant. This *de facto* government would have a profit incentive to exploit the public as well as protect it. Since some government or other is inevitable, people are better off maintaining a reasonably decent constitutional regime (or installing one when the opportunity arises) than risking anarchy followed by a drift into mafia-type tyranny.

Throughout his book Barnett refers to laws that are "binding in conscience" — binding in the consciences

even of persons opposed to particular laws. When laws and the Constitution that authorizes them have this property, they have it not because of actual or fictitious consent but rather because they serve by and large to protect the natural liberties of the people. "[T]o bind in conscience a law must be necessary to protect the rights of others without improperly violating the rights of those upon whom it is imposed" (p. 84). Recognizing natural rights solves pervasive social problems and is "essential to enabling diverse persons to pursue happiness while living in society with others" (81). "[I]f you want a society in which people can pursue happiness, and in which civil society can enjoy peace and prosperity, then you had best respect certain rights" (82). Natural rights are not mysterious, mystical entities; they are the moral entitlements needed in a social context to protect individuals and associations from aggression by others, including the state (84). Barnett reads the Bill of Rights and the 14th Amendment in particular as recognizing natural rights in this sense. "[T]he Constitution . . . is a means to the end of achieving justice — which is itself a means to facilitating the pursuit of happiness by each person living in society with others" (346).

All this adds up to defending rights, justice, laws, and government itself as means of protecting social cooperation, which in turn is prerequisite to the effective pursuit of happiness. This defense is an application of (indirect) utilitarianism (although Barnett does not employ the term "social cooperation" and does not label himself a utilitarian in this book). It stands in contrast with fiction-loaded contractarianism in ethical and political philosophy. Barnett's position is consistent with the one, similar to Bland Branshard's, that I espoused in *Ethics as Social Science*. A citizen's duty to obey a reasonably decent government and to disobey only in truly exceptional cases derives from the ordinary moral obligation to support rather than subvert a framework of peaceful, voluntary, and mutually beneficial interactions. Scorning that obligation by arrogating special privilege to oneself, exempting oneself from the ordinary rules of decent conduct, and

picking and choosing which laws to obey would subvert a generally useful institution, which government is, even if perhaps only a "necessary evil." Respecting that obligation contributes to our own and our fellows' welfare,

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*The Constitution should be interpreted by what its actual text means, not by the conjectured intentions or purposes of those who drafted or accepted it.*

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especially considering the Hobbesian alternative of war of all against all. I can readily imagine conditions in which I would feel bound in conscience to obey the laws of an absolute monarchy, even while regretting some of its specific policies and its lack of democratic elements.

The U.S. Constitution represents and institutionalizes a relatively decent political system. At one time, judicial conservatives like Robert Bork and Edwin Meese gained much attention by claiming that it should be interpreted according to the original intent of its framers and ratifiers. Much is wrong with this idea. For one thing, no single and coherent intention underlies the whole document or its individual provisions. Like a contract or other legal document, it represents a compromise between the diverse intentions or wishes of the parties to it. It is perverse to interpret the Constitution according to the philosophical predilections, for example, of some of its framers and ratifiers.

What matters in a legal document is what the parties actually agreed to and put in writing. The Constitution should be interpreted by what its actual text means, not by the conjectured intentions or purposes of those who drafted or accepted it. For the most part, its meaning is clear to an unbiased reader. Words and phrases that are fuzzy or whose meanings have undergone some drift over time are to be understood as they were generally understood at the time of the drafting. The "originalism" that Barnett advocates is an originalism of meaning or

"Almost every Jew in America owes his life to laissez faire capitalism. It was relatively laissez faire America that welcomed Jews in unlimited numbers and *progressive*, New Deal America that turned them away by the boatload and back to Auschwitz. For Jews especially, God Bless America should be God Bless laissez faire capitalism." For The Jewish Debt to the Right, see Intellectually Incorrect @ intinc.org

understanding, not of intent.

Determining *what* the Constitution says properly comes before deciding whether we *approve* of what it says. To read it in a way that justifies currently accepted outcomes puts the evaluative cart before the interpretive horse (96). Barnett repeatedly insists on the significance of a *written* text. "[T]he fact that the Constitution was put in writing is what mandates that its meaning must remain the same until it is properly changed — or candidly rejected — and the very actors whose behavior it is supposed to constrain cannot on their own change it to something they prefer without defeating the purpose of putting its guarantees and restrictions in writing in the first place" (96). "Amending" it by judicial interpretation undercuts the very purpose of a written constitution and weakens constitutional limits on government power of sorts that even those doing the "redaction" approve of (357).

Abundant historical material, including quotations from James Madison and others and citations to contemporary documents such as Samuel Johnson's dictionary, supports Barnett's insistence on looking to the text itself for the meaning of a constitution or other document. Although we are not bound by the original intentions of the framers, their expressions of intention may indeed be part of the evidence concerning the original meaning of a word or phrase (135).

On one question — whether navigation is included in the power of Congress to regulate interstate commerce, a question at issue in *Gibbons v. Ogden* (1824) — Barnett even says that although extraconstitutional evidence made the *intention* of the framers pretty clear, the issue remained of whether they managed to have the actual text *say* what they meant. Barnett concludes from his further research into word usage that "commerce" was indeed probably, though not indisputably, understood to include "navigation" (291–292).

For interpreting provisions of the Constitution that still remain vague, Barnett endorses "a general Presumption of Liberty, which places the burden on the government to establish the necessity and propriety of any infringement on individual freedom"

(259–260). This presumption is no mere wishful thinking. It derives from the Constitution itself, and particularly from the Necessary and Proper restriction of Article 1, Section 8, the Privileges and Immunities clause of

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*"Amending" it by judicial interpretation undercuts the very purpose of a written constitution and weakens constitutional limits on government power.*

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Article IV, Section 2 (cf. the Privileges or Immunities clause of the 14th Amendment), the Ninth Amendment's protection even of unenumerated rights, and the Tenth Amendment's reservation to the states or the people of powers not delegated to the United States.

A Presumption of Liberty would respect all the improperly discarded protective clauses of the Constitution and curtail all the improperly stretched delegations and supposed delegations of power to the central government. The Constitution does include some provisions (e.g., the 16th and 17th Amendments) that, even correctly understood, make champions of liberty unhappy. But "[t]he original meaning of the entire Constitution, as amended, is much more libertarian than the one selectively enforced by the Supreme Court" (355–356).

Barnett gives a long discussion of the Privileges and Immunities Clause of Article IV and the Privileges or Immunities Clause of the 14th Amendment, how it was improperly gutted by a five-to-four decision in *The Slaughter-House Cases* (1873), and how its effect was largely restored by appeal to the Fifth Amendment's Due Process Clause. Generations of

scholars have generally applied the scornful label "substantive due process" to decisions holding certain state laws unconstitutional under that clause (e.g., *Lochner v. New York*, 1905); yet, as Barnett explains, the due process of law without which persons may not be deprived of life, liberty, or property *does include* judicial review.

I'll add one example of the nonconstitutional attitude. In a letter to *U.S. News & World Report* (July 2, 2001), Secretary of Education Rod Paige wrote: "President Bush has offered me and the U.S. Department of Education the opportunity to change the whole enterprise of elementary and secondary education. I am eager to implement his . . . plan. . . ." Those remarkable words prompted me to write the Secretary and ask where among the limited powers constitutionally delegated to the U.S. government, especially considering the Tenth Amendment, he found authority "to change the whole enterprise of elementary and secondary education." Eventually I received a reply from a lawyer in the Department, airily citing the general-welfare clause.

But that clause, Article I, Section 8, *limits the taxing power* of the federal government to the purpose of "pay[ing] the Debts and provid[ing] for the common Defense and general Welfare of the United States." It was not understood to negate the entire structure of the government being established by the Constitution, one whose very limitation and separation of powers was meant to serve the general welfare. A limit on the federal taxing power does not authorize Congress to pass whatever laws somebody might consider



"Maybe we just shouldn't go to parties during election years."

beneficial. In *The Federalist* 45, James Madison specifically mentioned "finance" among the powers of Congress that are not enlarged but only accompanied by a more effectual mode of administration. And Madison was writing before the Tenth Amendment made this limitation on federal powers even more explicit. Soberingly, the willingness to twist the taxation clause and even the whole Constitution expressed by the Education Department's lawyer comes not just from left-liberals but from a Republican administration.

This reader found two big questions left dangling at the end of the book: *how* does Barnett foresee getting his message understood and the lost Constitution restored? It is not enough to say that the passages relegated to oblivion by judicial "amendment" continue to exist in writing. And what is to be done with cases in which a wrongful stretching of the Constitution has built itself into the very structure of the political system and into the expectations and planning of business firms and individuals? (Laws affecting or establishing the money and banking system, Social Security, and Medicare come to mind as examples.) After all, one of the main purposes of law is to provide a stable framework that improves people's capacity to predict the behavior of their fellows and to make mutually beneficial agreements with them.

As for the first question, I suppose Barnett hopes that the fruits of his and like-minded scholarship will make headway in law schools and law reviews, in the briefs of attorneys in constitutional cases, in court decisions, and eventually in the awareness and possibly even the consciences of politicians and voters. The findings of the Public Choice school may also make headway. Truth has force of its own.

As for the second question, a clue perhaps appears in Barnett's remarks concerning noxious emissions from agriculture and industry that cross state lines. The power granted Congress to regulate commerce, meaning trade and exchange but not economic activity in general, and only "Commerce with foreign Nations, and among the several States, and with the Indian tribes" (Article I, Section 8),

does not cover such emissions. Barnett's proposal is a constitutional amendment giving Congress the power to regulate them (351). Barnett even considers it an advantage of specific amendments that they underline the illegitimacy of federal authority in their absence; they are signs of taking a written constitution seriously. I conjecture, then, that Barnett would favor amendments legitimizing temporary federal authority in the above-mentioned monetary and entitlement areas during a period of orderly restoration of more constitutionally proper arrangements. (But I, anyway, am wary about a general welcome to amendments. It would open the way to giving legal status to various kinds of vague platitude, as in the proposed but now defunct Equal Rights Amendment and as in the draft treaty for a constitution for the European Union. Platitudes given legal status would

provide opportunities for creative interpretation and for litigation.)

Whether or not Barnett's scholarship ever has much impact on practical jurisprudence and politics, this much is

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*The Constitution includes some provisions that, correctly understood, make champions of liberty unhappy.*

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true: he pulls together a vast amount of documentary and other evidence bearing on constitutional history and court decisions, including revisionist scholarship. He reasons carefully in assembling this evidence. His book offers mental exercise and intellectual challenge. It affords the reader the genuine pleasure of observing a sharp mind at work. □

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***Bold Spirit: Helga Estby's Forgotten Walk Across Victorian America***, by Linda Lawrence Hunt. University of Idaho Press, 2003, 300 pages.

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# Walking Into Herstory

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R. W. Bradford

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I love reading books about road trips, especially when there is more to a trip than getting from point A to point B, and I have a fascination with American social history. So I was thrilled to learn about *Bold Spirit*, advertised by its publisher as the story of a Norwegian immigrant woman who in 1896 "dares to cross 3,500 miles of the American continent to win a \$10,000 prize. On foot . . . The money was needed to prevent foreclosure of [the] mortgage [on her family's home]. . . Leaving with only five dollars each

and dressed in full-length skirts, [Helga Estby and her daughter] follow the railroad east . . ."

So I got the book and eagerly began to read it. Linda Lawrence Hunt tells the exciting tale of the two women crossing the country, a story, she said, that had been suppressed so effectively that the only traces of it lay in the memories of Estby's family and newspaper accounts of her visits to towns along the way. Time and again, Hunt has to resort to speculation about what happened and why, to so great an extent that it is difficult to believe that her account even remotely resembles



history — at least if history has much to do with discovering and telling the truth about the past.

Since nearly all the documented evidence comes from newspaper stories whose origin was Estby herself and the stories that she provided the reporters in one city sometimes contradict the stories she told reporters in other cities, the story has hardly any credibility at all.

Estby claims, for example, to have gone on the long walk from Spokane to New York, in order to get an award of \$10,000, the very premise of the book. Well, who offered the award? Estby told reporters in one town that it was offered by “a wealthy woman” from New York, but told another it was offered by “eastern interests.” She told other reporters that she had a “written contract,” and still others that she and her daughter were required to wear a particular kind of “bicycle skirt” because the unnamed party wanted to prove the “endurance of women.”

She told numerous reporters that the deal required that they walk all the way, though she eventually said, after being observed hitching a ride on a wagon, that it only required that they travel without riding on a train. The closer she came to New York, the vaguer she got about the details of the promised reward, and when she finally got there, no reward was forthcoming, a fact that didn't seem to surprise or upset her very much.

Happily, the family homestead escaped foreclosure, undermining the credibility of Estby's rationale for the venture. But the family was not without tragedy while she was away: her youngest child, still a baby, died while she was on her trip, an event that she exploited, like many elements of her story, to appeal for funds from newspapers.

By the time Hunt is through adding surmises to fill in the gaps in the historical record, Estby has emerged as a heroic mother and pioneering feminist, courageously going on a dangerous mission to save her family's home. It never seems to occur to Hunt that Estby may have been a publicity hound who abandoned the hard way of living she had chosen for herself in rural eastern Washington for a more glamorous life as a celebrity.

Estby had abandoned her husband and family on at least two other occasions. Hunt mentions this fact, which she learned from letters written by Estby's abandoned children, but dismisses it by theorizing that “perhaps [her absences] were to help her mother in Wisconsin after her stepfather's death.” Perhaps they were. But perhaps they were earlier attempts to escape the man she had married and the children she had borne.

It's not that Hunt has deserted the conventions of history. *Bold Spirit* is filled with footnotes and has an extensive bibliography. The problem is that nearly all of the references are about events largely external to the story. I was reminded of the idiot anti-Semitic conspiracy books I encountered as a teenager. They too teemed with footnotes and had excellent bibliographies. But when I read the notes, I'd discover that a claim like, “Of Germany's 41 million people in 1870, only 2 million were Jews, but they secretly controlled the government and kidnapped

Gentile babies to suck their blood at secret rituals,” was supported by an old *Encyclopedia Britannica* entry documenting Germany's total population and Jewish population but (what a surprise!) making no mention of secret Jewish control or Jews sucking baby blood. Hunt doesn't write on that scale of lunacy, but she documents details like the population of Spokane and the emigration of Estby and her parents, while leaving undocumented all sorts of details that are critical to her account of the trip, her heroic interpretation of Estby's life, and the pernicious suppression of Estby's story by her family.

Me? I'm not going to conclude that Estby was a publicity whore who went on her escapade to escape the life she'd made for herself and then suppressed her own story from the shame of realizing that her action had resulted in the death of one of her children. But after reading *Bold Spirit*, I think that hypothesis is as consistent with the actual facts that Hunt offers as Hunt's own theory. □

*The Power of Productivity: Wealth, Poverty, and the Threat to Global Stability*, by William W. Lewis. University of Chicago Press, 2004, 217 pages.

# The Wealth and Poverty of Nations

Bruce Ramsey

Bill Lewis is an intellectual of business, more like a Peter Drucker than an economist. He was founder and head of the McKinsey Global Institute. He's not a libertarian, nor does he build his case for the market the way most libertarians would. He thinks empirically — data, data, data — reasoning inductively from data to operational principles.

And yet, by this unfamiliar route, he arrives at territory that supporters of the market will easily recognize.

The question Lewis set out to answer was why poor countries are poor and rich ones rich. It had been asked before, and answered by looking at the big differences between nations: history and culture, capital markets, labor markets, etc. Lewis' approach was to look at specific businesses. He made a point not to focus on export industries, like cars in Japan and software in India. Each is

only a sliver of that country's employment; software in India, for instance, employs some 350,000 versus 25 million in retailing and 50 million in dairy farming.

The McKinsey Institute staff went to work. What is the difference between the way a bank runs in the United States and in India? How many people do the work, how do they go about it, and how much are they paid? Then homebuilding, food processing, retailing, manufacturing.

The first-level answer to his question came back quickly: poverty results from low productivity, from using too many people to do a job. But why are so many used?

One answer is that if a country is poor, the wage rate will be low, and people will be cheaper than machines. But as an explanation of poverty this is circular. And, Lewis found, it is often not true. In Brazil most of the productivity gap with the United States might be made up if work were reorganized. Closing part of the gap would require new machines, but most of them would pay for themselves by saving labor at today's wages.

So why don't they do it?

*Because they don't have to.*

Most people, and most business managers, are not profit-maximizers. Improvement requires change, and change is painful. Most people change when they must, which is generally when they are faced with a profit-maximizing rival who is eating their lunch.

Cherish the carrot, but rely on the stick.

The sentimental favor the carrot. It

is said, for instance, that companies in poor countries need more "access" to capital. Lewis replies: "There is plenty of capital in the world. It has proved that it will flow anywhere with the prospect of making a good profit."

It is said that if you educate people, they will be more productive. Ask the Russians about that; they are well educated and poor. Lower-class Mexicans are ill educated, but in the construction industry in Houston they learn on the job, and their productivity is world-class.

"Time and time again in the advanced economies," Lewis writes, "the education level of the workforce did not explain the differences in labor productivity." It might explain how many people could write a cogent letter to the editor, but it was only loosely connected to their work.

What matters most, says Lewis, is *competition*. What makes a country richer is that its market is open to someone who can shake it up, and *that someone do that*. His American example of this is Wal-Mart. In the 1990s, Wal-Mart and other stores like Costco and Home Depot were a major reason why productivity, and the standard of living, increased faster in America than in Japan or Europe.

Japan's car, steel, and consumer electronics manufacturers are global market-shakers that have the highest productivity for those industries anywhere. But inside Japan, land restrictions make it difficult to build a supermarket or big-box store. Its mom-and-pop-dominated retail sector has less than half the productivity of retail in the United States. And that

retards other sectors. Japan has lots of little food shops, which means it must have lots of drivers with lots of little delivery trucks that make lots of stops. Along with land restrictions, this results in lots of little food processors.

Homebuilding is another industry in which

Americans are more efficient. The principal reason, says Lewis, is the subdivision. Americans build houses in batches. In so many other countries it is difficult to get big pieces of land, because of lack of clear title (India), the need for political connections

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*If a country is poor, the wage rate will be low, and people will be cheaper than machines. But as an explanation of poverty this is circular. And it is often not true.*

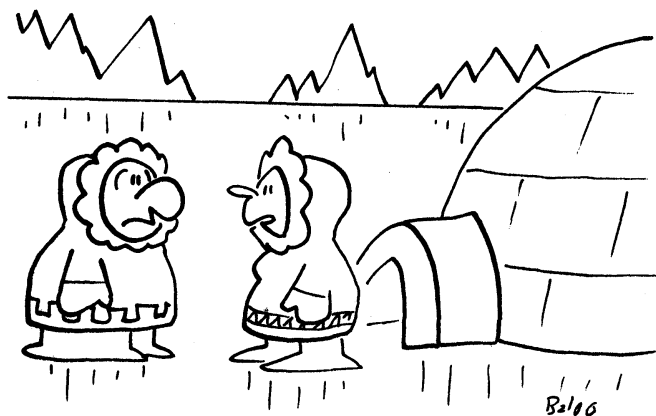
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(Russia), protected farming (Japan), environmental controls (Britain), and often the lack of a standard system to finance streets and utilities. Also, in the poorest countries the buyer cannot get a mortgage, because there is no one who will lend money long-term on the security of a land title. In those places houses are typically built by their owners, one load of bricks at a time.

Regarding land, Lewis' point is one we've heard from Hernando de Soto: clarify property rights in land. Like de Soto, Lewis focuses on the informal sector of street markets. Libertarians tend to celebrate the spontaneity of property and contract, but there is a downside. The average street hawker has a pitiful inventory. He wastes his labor, and he is poor.

Looking at businesses in Russia and Brazil, Lewis concludes that the street vendor survives only because he is unregulated and untaxed. That is unfair to the formal businesses, which have to bear the full burden of government. In Russia, foreign supermarket chains have refused to invest. In Poland, where street vendors were enrolled and taxed, the French came in with "hypermarkets." Poland progressed, Russia didn't.

In his look at companies, Lewis talks of one government company that has world-class productivity: Pohang Iron & Steel in South Korea. The CEO up to the mid-1990s was a general who insisted on three conditions: no political influence on what



"But, how could you be suffering from burnout?"

the company bought, none on who it hired, and no requests for gifts. In addition, he was a brilliant manager. Elsewhere, state companies haven't measured up. In India, where 40 percent of business employment is in the state sector, the productivity of state companies ranged from 10 percent of their private rivals to half.

At the end of his book, Lewis grapples with big ideas. The poverty of poor countries, he says, is from their own policies. These policies partly reflect business interests who use the state to shield themselves from competition, and partly reflect the ideology of elites who subordinate the market to social ends. Some of their ideas, he says, are from "political philosophies developed in Europe in the twentieth century."

The result is predatory government, which is the central problem of the crushingly poor countries. He adds: "Predation cannot be remedied from the outside. Countries have to do this for themselves."

This is a valuable book. Its virtue is not its style; Lewis's writing is clear but pedestrian. He repeats himself, and when he relies on other people's books, he sometimes accepts explanations that he might better have left alone. He is better at economics than political theory. But he has supervised

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*It is said that if you educate people, they will be more productive. But the Russians are well educated and poor. Lower-class Mexicans are ill educated, but their productivity is world-class.*

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and organized such a good piece of work that when he sticks to first-order generalizations from his data, which is most of the time, he is as solid as a bungalow.

Lewis confirms much of the free-market canon, and in a way the free-marketeers have generally not done and some of them refuse to do. They should read it. □

***A History of Force: Exploring the Worldwide Movement Against Habits of Coercion, Bloodshed, and Mayhem*, by James L. Payne. Lytton Publishing, 2004, 265 pages.**

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# A Century of Peace?

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Martin Morse Wooster

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As libertarians, one of the first rules we learn is "don't commit force or fraud." But what if force used by individuals or governments is on the decline? How does that affect liberty?

That's the thought-provoking question asked by James L. Payne in his provocative new book *A History of Force*. Payne is not always persuasive, but he's a good writer that readers can argue with. Libertarians who enjoy analyzing the past will find *A History of Force* worth their time and money.

James L. Payne is a political scientist who has written many important public policy books. Among them is an analysis of the American tax system (*Costly Returns*) and a book about why the federal government is always expanding (*The Culture of Spending*). His book *Overcoming Welfare* was one of the more important welfare reform books of the 1990s.

Many of Payne's earlier books were published either by academic presses or by commercial houses that specialize in public policy. But Payne chose to publish *A History of Force* himself. The first question most readers have with self-published books is why the author couldn't find a publisher. Usually a self-published book is flawed in some way, in part because writers who are their own publishers don't think they need to be edited.

*A History of Force* is an exception to the usual rule about self-published books. It is competent and professionally written. If commercial publishers

rejected this book, they made a mistake.

Payne's thesis is a simple one. If you look at long-term trends, nearly all measures of violence in the world show a steady decline over the past few hundred years. Look at statistics, Payne argues, and you'll see that governments are increasingly less likely to use violence against their own citizens or start wars in other countries. And the likelihood that people will take arms against the state is also far less than it used to be.

For example, for most of human history it was the rule that governments were overthrown by force, and if a coup failed, the losers were usually executed. That doesn't happen very much these days. In the days of Stalin and Lenin, leaders of losing political factions in the Soviet Union were routinely rounded up and shot. But the plotters of the failed 1991 coup against Mikhail Gorbachev announced that they not only had no intention of killing the last leader of the USSR; they even planned to give Gorbachev office space in Moscow for his foundation.

Terrorism remains a problem, of course. But terrorists these days are nearly entirely from the Muslim world. Except for animal-rights acti-

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vists and the occasional lone nut such as Timothy McVeigh or Theodore Kaczynski, few in the West now think that using force against the state or blowing up buildings is a wise idea. The Weather Underground, Payne reminds us, committed 800 bombings between 1969-72, while Puerto Rican terrorists committed 100 bombings and the anti-Castro Omega-7 group conducted 50 bombings during this period. In Northern Ireland, terrorists killed 474 people in 1972; there only have been sporadic killings in that region since 1996. And Payne predicts that one consequence of the revulsion the world had towards the killers of September 11 is a further reduction in terror conducted by Europeans and Americans. "The evidence suggests, then, that *organized* terrorism originating from the developed countries is on the decline," Payne concludes.

Governments are also less likely to use force than they once were. The execution rate in the U.S. has dropped by about ninety percent. And the U.S. is far less likely to punish incorrect ideas than it once was. In 1960, the *New York Times* published a paid advertisement by civil rights groups that made false accusations about the way Montgomery, Alabama police treated protesters. The city of Montgomery's commissioner of public affairs, L.B. Sullivan, sued for libel, and the case ultimately reached the Supreme Court, which in 1964 declared that public officials can't sue even for statements known to be false. This opened the floodgates for anyone to mock politicians without fear of retribution. Accuse the president of horrible

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*Governments are increasingly less likely to use violence against their own citizens or start wars in other countries.*

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misdeeds, and government officials won't kick down your door and seize your computer.

One consequence of the healthy and necessary freedom to make fun of politicians and the political process, people's trust in government and in politics is steadily declining. And given the increasing distaste of the state to use force against its foes, Payne sees an opportunity for voluntarists to gradu-

ally create charitable, non-coercive organizations that would perform many government functions.

But a government does not need to use force to wield power, and our non-forceful state grows bigger and fatter every day. And while everyone is free to make jokes at the President's expense, questioning the authority of

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### Day at the Caucuses, from page 34

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Anytime Annie), and managed to be re-elected a time or two. Two decades ago, I had been involved in an attempt to reduce county taxes; perhaps he remembered me from this experience, and believed that the desire to reduce taxes was *prima facie* evidence of right-wing nutism.

the police or other security officials is still not a wise idea. Non-forceful bureaucrats can still arbitrarily ruin people's lives.

Still, *A History of Force* is a well-written examination of history that will deepen reader's understanding of some important — and neglected — trends which have helped shaped our times. □

I noticed that he, like me, was wearing a Dean button, and I was vaguely surprised that he was attacking a fellow Dean supporter. But I could see nothing to be gained by responding to him, and, having done my bit for democracy, I continued though the throng to the parking lot, mounted my motorcycle, and returned home. □

## Notes on Contributors

*Baloo* is a *nom de plume* of Rex F. May.

*Brien Bartels* is executive director of the Libertarian Party of Washington State.

*Alan W. Bock* is a senior columnist for the *Orange County Register* and the author of *Waiting to Inhale*.

*R.W. Bradford* is editor of *Liberty*.

*Scott Chambers* is a cartoonist living in Arizona.

*Stephen Cox* is a professor of literature at the University of California San Diego and the author of *The Titanic Story*.

*Eric D. Dixon* is an editor and webmaster for U.S. Term Limits.

*Alan Ebenstein* is author of *Friedrich Hayek: A Biography*. He is an adjunct scholar of the Cato Institute.

*Miles Fowler* is a writer living in Charlottesville, Va.

*Andrew W. Jones* is an assistant editor of *Liberty*.

*Eric Kenning* is a freelance writer living in New York.

*Dave Kopel* is research director at the Independence Institute and author of *Antitrust After Microsoft*.

*Richard Kostelanetz* has worked with audiotope, videotape, holography, and film.

*Dr. Jimmy T. LaBaume* is a professor teaching economics and statistics at Sul Ross State University in Alpine, Texas.

*Wendy McElroy* is editor of *ifeminists.com* and is the author of *The Reasonable Woman*.

*William Merritt* is a senior fellow at the Burr Institute and lives in Portland, Ore.

*Max Orhai* is an editorial assistant at *Liberty*.

*Randal O'Toole* is senior economist with the Thoreau Institute and author of *Reforming the Forest Service*.

*Patrick Quealy* is an assistant editor of *Liberty*.

*Bruce Ramsey* is a journalist in Seattle.

*Timothy Sandefur* is a College of Public Interest Law Fellow at the Pacific Legal Foundation.

*Jane S. Shaw* is a Senior Associate of PERC — The Center for Free Market Environmentalism in Bozeman, Mont.

*Tim Slagle* is a stand-up comedian living in Chicago whose website is [www.timslagle.com](http://www.timslagle.com).

*Andy von Sonn*, a former linebacker for the Los Angeles Rams, is an attorney who lives in Hawaii.

*Martin Morse Wooster* is a writer living in Silver Spring, Md.

*Leland B. Yeager* is Ludwig von Mises Distinguished Professor Emeritus of Economics at Auburn University.

## Libertarian Case for Conquering Iraq, from page 27

principle is not merely not to initiate force, but includes a moral imperative to help create a world in which force is used as little as possible.

The proliferation of weapons of mass destruction — particularly biological and chemical weapons — is a new, and frightening danger. The United States and other nations must work to combat it, occasionally using preemptive force, as necessary.

What concerns me most about the new generations of weapons of mass destruction is that anyone in the world may, soon enough, be capable of building or creating them and potentially killing millions or even billions of people. I am surprised you question the likelihood of this possibility.

As technology advances and becomes more accessible, do you not think such attacks become more likely, and potentially more destructive? For example, it has been speculated that a "super" virus could be created that could kill hundreds of millions. Do you not think that this and other possibilities will not become increasingly feasible in coming years?

Accordingly, the doctrine of preemptive war — and, more generally, the preemptive use of force — is more vital than ever before. The world will look back on the war with Iraq as a great step in the direction of world peace.

Best,



Lanny

Port Townsend  
February 21, 2004

## Dear Lanny,

Your letter was sufficiently provocative that I didn't have the time to respond to every issue you raised. My answer to your question about whether the world is more peaceful with the removal of Saddam is most assuredly "No." But the April *Liberty* goes to press in two days, and I have a million chores to attend to, so an explanation of why I think you are wrong will have to wait.

You also anticipate — and dispense with — an objection you think I might raise: that the U.S. has no "right" to intervene. Here you are barking up the wrong tree: my opposition to the war has nothing to do with America's (or any other nation's) "rights" to intervene. I object entirely on prudential grounds: I believe that the U.S. invasion, conquest, and occupation has made the world a more dangerous and less peaceful place.

This also will have to await my next letter.

Regards,



Bill

## Dumb Clods and Proud of It, from page 30

field an army. However, the government's propensity to murder people because of their ideas (Ruby Ridge and Waco) along with its track record of failing to perform one of its only legitimate functions — protecting its citizens (see the hundreds of court rulings like *Zelig v. County of Los Angeles* which state that cops are not legally responsible for protecting individual citizens) — said justice may be in doubt.

Incidentally, those criminals who threatened Larry Sechrest and vandalized his property should be aware of one of the significant differences between him and me. He sleeps with two loaded, stainless steel, M1911 .45 caliber autos next to his bed. I sleep within arm's reach of an 18 inch barreled Benelli Super 90 semi-automatic twelve-gauge shotgun, fully loaded with eight rounds of #00 buckshot, with another eight rounds of assorted buckshot and slugs riding on a side saddle. Thanks to regular practice, I can send 72 .30-caliber-sized projectiles downrange accurately and consistently in under two seconds. I will not hesitate to exercise my God given, constitutionally guaranteed right to defend my life, my family, and my property. I am willing to exert whatever level of force necessary to stop any violence that may be initiated against me or anyone I love.

I understand that we also have a small group of emotion-driven ignoramuses amongst us who are calling for Prof. Sechrest to be fired. I have even heard on the street that there are some who would have the president of the university, Dr. R. Vic Morgan, fired — just because, although he has made it

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*I sleep within arm's reach of an 18 inch barreled Benelli Super 90 semi-automatic twelve-gauge shotgun, fully loaded with eight rounds of #00 buckshot.*

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clear that Dr. Sechrest does not speak for Sul Ross, he steadfastly defends Dr. Sechrest's God given, constitutionally guaranteed right to speak his mind.

These morons need to carefully consider what Martin Niemöller once said. "First they came for the Jews and I did not speak out because I was not a Jew. Then they came for the Communists and I did not speak out because I was not a Communist. Then they came for the trade unionists and I did not speak out because I was not a trade unionist. Then they came for me and there was no one left to speak out." □

## Rights During War, from page 32

militias, there were state laws forbidding individual blacks to possess arms. So Butler's argument assumed that the Second Amendment right to arms inhered in individuals — including slaves, if the Amendment were read literally, without the implied exception for slavery he claimed.

The Milligan case provides one more bit of evidence that the individual rights view of the Second Amendment was originally the only view. The notion that the Second Amendment does not belong to individuals was created in the 20th century by the Kansas Supreme Court in the 1905 case of *Salinas v. Blaksley*. □

### Portland, Ore.

Dispatch from the battlefield in the War on Terror, reported by the *Seattle Times*:

The Department of Homeland Security has announced that it will award a \$2.6 million grant to social-service agencies and charities in Oregon. The money will go to homeless shelters and soup kitchens, and to help poor Oregonians pay their rent, utility, or mortgage bills.

### Blaine, Wash.

Another report from the front in the War on Terror, from a dispatch in the estimable *Peninsula Daily News* of Port Angeles, Wash.:

Border guards found a hand grenade in an American woman's car at the U.S.-Canadian border at Blaine just south of Vancouver, shutting down the nation's busiest border crossing for an hour. The woman, who had made a wrong turn, thought she was about to enter Vancouver, Wash., some 300 miles south of the Canadian border. She did not know that the fake hand grenade was in her car. It had been put in the glove box by her husband, a member of the U.S. Army.

### Washington, D.C.

Disturbing information, from a brochure published by the Department of Homeland Security:

"Many potential terrorist attacks could send tiny microscopic 'junk' into the air."

### Seattle

Innovation in the contentment of domestic animal companions, noted on CBC's fine morning program "Sounds Like Canada":

A company named High Maintenance Bitch caters to pet owners who want only the finest for their dogs. It sells suede pet passports, pet body tattoos, and a "Mosaic Martini drinking dish."

### Research Triangle Park, N.C.

Snappy repartee of technology gurus, reported on CNN.com:

David Bradley, who wrote the computer code that is used to reboot unresponsive PCs by pressing the "Ctrl," "Alt," and "Delete" keys, sat on a panel with Bill Gates at a 20-year celebration for the IBM PC. Bradley said of the key combination, "I may have invented it, but Bill made it famous." Gates didn't laugh.

### Indiana

Reassuring professional opinion that one in 25 priests sexually abusing children is a "small number," from the estimable *Fort Wayne Journal Gazette*:

"The percentage of priests with credible claims against them in the Indianapolis Archdiocese since 1950 is about 3.9 percent,"

said Bishop John M. D'Arcy, head of the Diocese of Fort Wayne-South Bend. The small percentages are very little consolation.

### New Hampshire

The limits of environmental ethics aboard the presidential campaign bus of the Hon. Dennis Kucinich, M.C., as reported in *The Wall Street Journal*:

Originally, there were two main rules on board: no drugs and no shoes. But the latter rule was dropped when the heating system failed to keep up with New Hampshire weather.

### Tampa, Fla.

Theological observation from the website of the Travel Channel:

"There's historical basis for a Christian nudist lifestyle," said Bill Martin, noting that "in Isaiah 20:2, God tells Isaiah to go into the wilderness naked for three years." Martin is co-founder of Natura, a Christianity-themed nudist colony near Tampa.

### U.S.A.

A legal tussle over intellectual property escalates to a legal battle over truth itself, from a dispatch in the *Washington Post*:

Gillette filed a federal lawsuit alleging that Schick stole one of the 50 patents protecting the Mach3 concept. Schick filed a countersuit, charging that Gillette falsely advertised that its razors offer "the best a man can get."

### U.S.A.

Admirable candor in marketing, observed in an advertisement for Pfizer Inc.'s famous tumescence-inducing product Viagra, in *The Wall Street Journal*:

"In a recent study, the majority of men had an erection in 20 minutes. The men in the study . . . took 100 mg at least two hours after eating and then used a stopwatch to see how fast they got an erection that allowed them to have sex."

### Olympia, Wash.

Finally, an answer to a timeless question of deep spiritual importance: what would Jesus want Caesar to drive? From the *Seattle Times*:

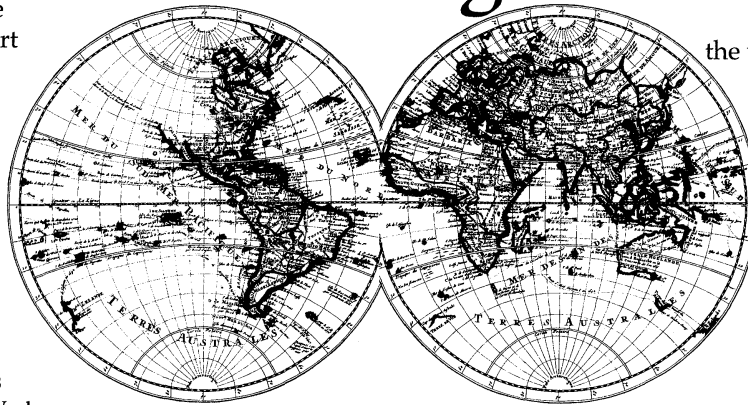
State government should do more to help protect God's creation, and it should start by buying more fuel-efficient cars. That's the crux of a new report due to be released by state religious leaders.

### Alpine, Texas

From a political advertisement in the *Desert-Mountain Times*, telling voters why they should reelect District Attorney Frank Brown:

"The Texas Narcotics Officers Association named Frank Brown its Prosecutor of the Year. **Frank is the only candidate who has received this prestigious honor.**" (Bold in original.)

## Terra Incognita

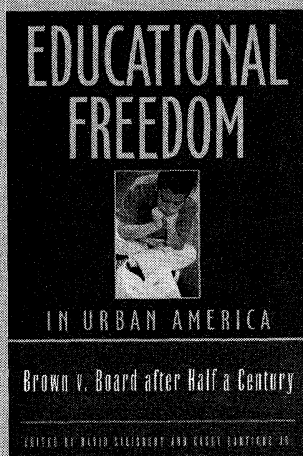


Special thanks to Russell Garrard, William Walker, and Fletcher Rice for contributions to Terra Incognita.

(Readers are invited to forward news clippings or other items for publication in *Terra Incognita*, or email to [terraincognita@libertysoft.com](mailto:terraincognita@libertysoft.com).)



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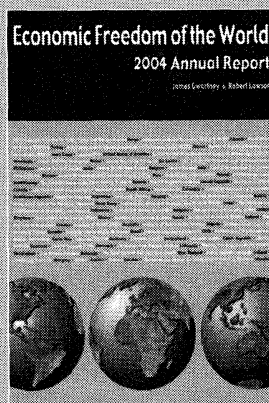
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Edited by David Salisbury and Casey Lartigue Jr.

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ISBN: 0-88975-209-5

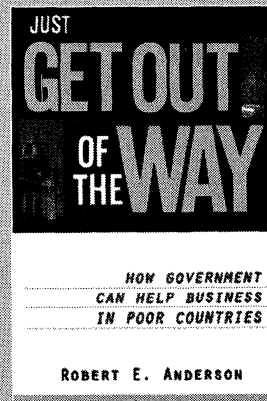
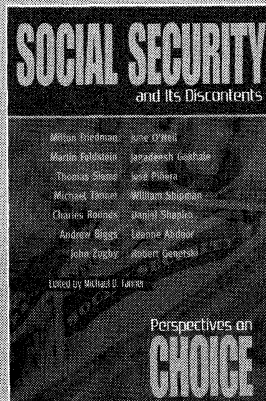


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I couldn't believe the City of Redmond said politicians and realtors  
could have portable signs, but my bagel shop couldn't.

If that ban stayed in place, my right to free speech  
would have a hole in it bigger than my bagels.

I am fighting for my First Amendment rights.

*I am IJ.*



*Dennis Ballen  
Redmond, WA*

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*Institute for Justice  
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