

# Liberty

August 2003

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## FDR & America's Concentration Camps

### The Court Legalizes Discrimination

*by Robert Levy*

### Admitting Stupidity: Getting Into College Today

*by Alex Mouhibian*

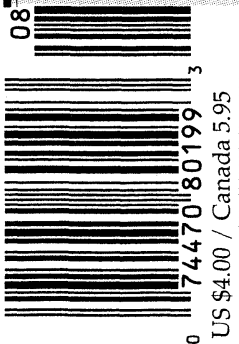
### The New Technology for Invading Your Privacy

*by Chip Pitts*

### Saying "No" to the Last Good War

*by Stephen Cox*

Also: *Terry Anderson* explores the market for ecology, *Jo Ann Skousen* watches some strange movies, *Tim Sandefur* examines the thin line between lunacy and genius in science fiction, and *Alan Bock* talks with America's most famous convicted pot grower . . . plus other articles, reviews and humor.



*"Liberty is the doctrine, harmony the way of life." — Sebastian Faure*

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# Letters

## Three Cheers for FDR

In his review of *Rethinking the Great Depression* (June), by Gene Smiley, Alan Ebenstein wrote, "Smiley convincingly demonstrates that the policies of Franklin Roosevelt's New Deal — far from abating the Great Depression — in fact abetted it."

If this is true, why was FDR reelected three times by comfortable majorities? He was reelected because for most Americans life began to get better almost as soon as he became president. They were more likely to have a job. They also benefited from a growing public sector of the economy paid for by steeply progressive taxation. The first minimum wage law was passed. The government protected labor unions. Union membership grew rapidly.

These reforms, while distressing to most readers of *Liberty*, were pleasing to the voters.

Unemployment remained high during the '30s. Nevertheless, it never again reached the 27 percent it rose to while Herbert Hoover was idly sitting in the White House waiting for Adam Smith's invisible hand to fix the economy. Smiley argues that the invisible hand was just about to get a grip on things when Roosevelt loosened its fingers.

To test this hypothesis we would need to travel back in time to 1932. Then we would need to engineer the reelection of Hoover. Perhaps we could entrap Roosevelt in flagrante delicto with a beautiful, young intern. Then we could measure the economic numbers of the second Hoover administration against those of the first Roosevelt administration.

Economists cannot prove their theories with controlled experiments the way chemists and physicists can. With varying degrees of integrity they accumulate facts in order to try to demonstrate whatever they want to believe in.

Nevertheless, no one can blame the Democrats for the onset of the Great Depression.

John Engelman  
Walnut Creek, Calif.

## Rendering Unto Caesar

I have to disagree with Leon Drolet ("Michiganistan," June) regarding Jesus' answer to the question, "Is it lawful to pay taxes to Caesar?" He was indeed talking about taxes, but in a way that would mean one thing to the Romans, and another to the Jews.

That the question would be asked at all shows that this was a point of controversy, and for good reason: the first commandment says, "Thou shalt have no other gods before me," and Caesar considered himself a god. Moreover, Deuteronomy 17:15 states, "Thou shalt in any wise set a king over thee that the Lord thy God shall choose: one from among thy brethren shalt thou set king over thee: thou mayest not set a stranger over thee, which is not thy brother." Caesar was a foreign king, and Herod was chosen by the Romans, not God.

That the Pharisees and Herodians sought to trap Jesus with the question shows that they figured he would stick to Jewish law, and say no.

Jesus asked to see the tribute money, and asked, whose image is this? Caesar, they replied. Well! The coin had a *graven image of a foreign god!* A good Jew shouldn't even have it in his purse. So he said to give to Caesar what is Caesar's and to God that which belongs to God.

Which raises the question, what belongs to Caesar, and what to God? Caesar owns his coins and his troops, and they should be sent back to him. Israel, its people, and their labor and goods rightfully belong to God and should be dedicated to his service. But only the religious Jews would see it

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## Letters, from page 2

that way. The Romans and Herodians figured everything material belongs to Caesar, and would be happy with the answer. Nor could the Pharisees explain the difference without admitting to their own heresy in supporting the Roman occupation.

The idea that Jesus was separating church and state, or separating the physical from the spiritual, only serves to mask the political nature of his ministry and to excuse Christians from resisting tyranny.

Rycke Brown  
Grants Pass, Ore.

### The President's Motives

In June's *Liberty*, R. W. Bradford mentions three motives for president Bush's decision to conquer Iraq: to avenge the disgrace of his father, to further his popularity, and as a religious crusade. Let's take them in order.

To avenge the "disgrace" of his father. Problem: we won the Gulf War! I was there and I distinctly remember winning. The stated objective was accomplished. Anyway, by invading Iraq this time, Bush the younger is basically saying that his father was wrong not to finish off Iraq, which was the kind of criticism that Bush the elder received at the time. In what way is this being the good son?

The war was fought to further Bush's popularity. Problem: fighting a war did not gain Bush the elder reelection in his reelection effort.

Bush is on a religious crusade. There are three problems with this theory.

1) Iraq is a secular state. This argument would work much better if we were talking about theocratic Iran (or atheistic North Korea for that matter).

2) To believe he could convert a country that is 96 percent Muslim to Christianity, he would have to be deranged. Whatever you feel about Bush, he has given no sign of being schizophrenic.

3) One of the rules of good, rational thinking is to be able to extrapolate and form a hypothesis that is subject to being disproved. If Bush were crazy enough to be on a crusade, he would have flooded Iraq with evangelists and fundamentalist missionaries by now. Instead the administration is (wisely) being careful to give no impression that it is attempting to Christianize anyone.

In the time that I have been reading *Liberty*, I fear that Bradford's ego has expanded in a geometric fashion. He seems to be showing more and more contempt for the public and almost no ability to self-criticize. Perhaps if this letter is printed he can prove me wrong, but somehow, I don't expect to see it. This contempt for the "stupidity" of the people (compared to Bradford?) and the delusional ravings of the AHAs (Aging Hippie Anarchists) like George Harper seems like a clever conspiracy to scare away any respectable, middle-class voter who might have thought about voting libertarian.

Walter Morey  
Palm Bay, Fla.

### Not Nuts, Eccentric

As a sometime reader of the *New American* (produced by the John Birch Society and formerly known as *American Opinion*), I was surprised at R.W. Bradford's characterization, in his otherwise cogent review of William F. Buckley's *Getting it Right*, of the Bircher leadership in the 1950s and '60s as, well, nuts. I admit to being relatively ignorant of the history of conservatism in the U.S. (including its associations with the radical Right and libertarianism). However, my current reading of the *New American* makes it clear that the John Birch Society's differences from Buckley come down to two main points: 1) The Birchers are thoroughly libertarian in their rejection of using U.S. governmental power for, for example, (a) the War on Drugs (which I believe Buckley supports), and (b) supporting other nations' struggles for democracy (which I also believe Buckley supports); and 2) The Birchers believe that there is a global communist conspiracy to undermine the United States' sovereignty and bring the U.S. under the hegemony of a global government.

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As for the first point, the Birchers seem to have been far more effective in encouraging and channeling a desire for strictly constitutional government among ordinary Americans than (for example) the Libertarian Party has. They do this by appealing to the (conservative?) idea that liberty can only exist in a society when the individuals in that society maintain high levels of moral character — a position clearly held by Jefferson and other Founding Fathers for whom libertarians seem to have great respect. As far as I can tell, the Birchers' theistic approach to liberty leads them to essentially the same political positions as libertarians, and it seems to me a shame that libertarians view the Birchers with such disdain, given the coincidence of their goals.

As for the second point, apart from eccentricities of the founder of the Society, about which I am ignorant, writers in the *New American* for the most part thoroughly document their claims, providing what seems to me to be a powerful case for their overall claim of a global communist conspiracy. Their documentation and reasoning, although dramatic, is usually thorough. I would challenge any serious libertarian who believes that Soviet communism is dead to read two books by the KGB defector Anatoliy Golitsyn, *The Perestroika Deception* and *New Lies For Old*.

Dave Zook  
Atlanta, Ga.

## What a Friend We Have in John Birch

I was quite angered by R.W. Bradford's review of William F. Buckley, Jr.'s book *Getting It Right* in the June issue of *Liberty*.

I am no fan of Buckley and never have been, but what annoyed me was Bradford's sarcastic references to the late Robert Welch and the organization he founded in 1958 — The John Birch Society. I would not be a Libertarian today were it not for my involvement with the Birch Society over 30 years ago. It was through the Society's publications that I first heard of Rand, Mises, Hayek, Friedman, Rothbard, Greaves, and many others. Libertarians and Birchers should be allies, not adversaries, in our joint struggle for individual liberty.

Bradford took a cheap shot at a fine

man, Robert Welch, and a good organization, the JBS, and it was uncalled for. By the way, the Birch Society is still around, 45 years later, and growing daily.

Mark Richards  
West Milford, N.J.

## Miracle Drug

Medical marijuana is no "scam," despite Jeffrey Schaler's accusations to the contrary (*Reflections*, July).

Marijuana is demonstrably and directly effective in the efficacious treatment of any number of physical and emotional traumas and has been cited as beneficial in treatment of asthma, glaucoma, pain, nausea, loss of appetite, and insomnia. It is useful as an antibiotic, aids in withstanding the side-effects of chemotherapy, and alleviates seizures, tumors, brain cancer, etc. Many research scientists are on record as believing that as much as 80 percent of all commercial medical preparations could benefit from inclusion of one or more of the elements found in marijuana. A survey in Boston discovered that more than 50 percent of all doctors would prescribe marijuana to their patients knowing *only what we know about marijuana now*. Since medical research has been heavily constrained since the '70s, the feeling is very prevalent that there are many more beneficial uses of marijuana yet to be discovered — lost to us by an illogical and vengeful government and non-thinkers such as your Dr. Schaler.

Marijuana is demonstrably one of the least damaging therapeutically active substances known to man with not one single death attributed to it in over 5,000 years of recorded usage. On the other hand, smoking tobacco is the largest direct cause of death in the country with over 400,000 deaths annually. Over 150,000 deaths are directly attributed to alcohol (not counting the 50 percent of highway deaths and over 65 percent of murders in which alcohol plays a part). More than 1,000 deaths are attributed to aspirin. Caffeine is responsible for as many as 10,000 deaths by some estimates from stress, ulcers, and triggering irregular heartbeats, etc. "Legal" drugs like Valium either from deliberate or accidental overdose or mixing with alcohol account for approximately 25,000 annual deaths, and illicit drug over-

doses cause another 5,000.

When you examine what the "good" doctor says — and more importantly, what he doesn't — it is clear that he is simply against the use of a substance through which some might find pleasure, even if at the same time it helps in overcoming their medical problems. Schaler is much too ready to swallow the propaganda dished out by the puritanical heirs to Prohibition rather than doing any research of his own or even examining the research done by others.

Big Jim Eaves  
Los Angeles, Calif.

## Only Human

As a physician I feel I must respond to Ralph Slovenko's *Reflection* (July) about long patient waiting times in physicians' offices.

First, please note that *no* physician schedules four patients every 15 minutes, as seeing 16 patients an hour is a physical impossibility. Sometimes four patients may be scheduled at the beginning of the hour with the entire hour allotted to those four patients, but each patient is still allotted 10 to 15 minutes for their visit, or 24 to 32 patients for the average day. Slovenko seems to have a great deal of empathy for those waiting in the physician's office but little empathy for the patient being examined at that moment by the physician.

What puts me off schedule each day is the patient who schedules an appointment (usually 15 minutes) for a minor problem, but when speaking to me brings up four or five other problems and will *not* be put off to another visit. I am also put off schedule by the patient who, having been seen for his minor problem and having established that the physician is competent and caring, then brings up (usually as the physician is just about to exit the examination room to get to the next patient on time) his real concern. My personal favorite: "By the way, doc, does it mean anything that the toilet bowl is full of blood after I poop?" At this point the patient, the physician, and long-waiting Mr. Slovenko have just had their schedules rearranged, as this is not a concern that can be rescheduled. This happens many times each day.

Could I schedule half as many patients each day, or refuse to work in

urgent problems on top of an already full schedule? Sure, but at current levels of compensation, I would quickly go bankrupt and be out of practice, and those patients I was not able to see would have to seek care in an uncrowded office elsewhere. Could my staff start calling patients and warning them to come later or reschedule? They try, but other pressing duties and inability to reach patients (even in this day of cell phones) prevent much success.

I do appreciate Slovenko's willingness to lead a walkout from my waiting room. This would solve the problem, as waiting times for those who did not walk out would be greatly reduced. In fact, I would encourage anyone who felt that the services I offer are not worth the wait to leave and seek care elsewhere now and in the future. Alas, despite my failings as to remaining on schedule, my waiting room is full. There is no shortage of physicians in my area, but there is always a shortage of competent, caring docs in every area. Vote with your feet, Ralph, but you may find yourself coming back to that crowded waiting room, which may be crowded because of the excellence of medical care being offered at that location.

Everest A. Whited, M.D.  
Pflugerville, Tex.

### Child Support vs. Children

Having been a divorced father now for four years with three (now) teenage boys that survived the divorce proceedings fairly well, I would like to

comment on Stephen Baskerville's article "The Federal Bureau of Marriage?" (July). My personal ordeal was not nearly as horrendous as some of the examples related in the article, but I found out just what Baskerville was talking about firsthand — that the father is guilty until proven innocent and the family court/friend of the court monopoly exists unapologetically as a moneymaking operation first and foremost.

After paying child support for two years and never missing a payment because it was taken directly from my check (even though my ex-wife and I shared equal custody and she made as much as or more than I made), I received a form letter from the friend of the court. The first line thanked me (or whomever) for making the payments on time. What followed was two pages of threats outlining exactly what they could and would do if I dared to cross them.

I found this particularly interesting because I am now involved with a woman who has been divorced for 16 years, who was actually physically abused during her marriage (I've seen the pictures from the hospital), whose ex-husband left her for another woman and is now over \$18,000 behind in child-support payments. This same friend of the court office that threatened me, even though I never missed a single payment, will not even return a phone call when she leaves a message, and will do virtually nothing, let alone

what they threatened me with, to collect any of the money she is owed. Her caseworker often leaves a voice mail message that states, "Don't leave a message today, I'm not returning calls so I can catch up on my case files."

The most relevant tie here to Mr. Baskerville's article is where he admonishes the reader to "follow the money." The friend of the court assesses an 8 percent penalty on the unpaid balance for child support. This late charge is not passed on to the children to whom it is due — it is kept by the court! To add to the audacity of this behavior, the "interest" dollars are collected first whenever they receive money from him — any remaining money is then sent to the intended spouse and children. To date she has received many checks for less than \$3.00.

As for her ex, he'll never get out from under this yoke. Because they take their cut off the top, only the pittance they send to her comes off what he owes, and the following month he is charged another 8 percent on the unpaid balance and he now owes more than he did the previous month, even if he paid the full court-ordered amount. Still, it's hard to feel sorry for him — he was recently sued for paternity by a woman he had an affair with 13 years ago who he just found out had his child, confirmed by DNA analysis. She sued after so many years because her welfare suddenly ran out!

Bruce Niederer  
Essexville, Mich.

### The War Between the States

If abolitionist William Lloyd Garrison properly disparaged the Constitution because it protected Southern slavery, and if, in his First Inaugural address, President Lincoln stated clearly that he had no intention to interfere, and no legal right to interfere, with the institution of slavery in those states where it existed, then it is pure invention to put it down that Lincoln invaded the South "to prevent the people of South Carolina from being kidnapped from American law," as Robert R. Reed (Letters, July) suggests.

Joseph Sobran's assessment ("Liberty & Disunion," April) cannot be set aside by simply adding yet another

## Errata

The June *Liberty* contained three egregious factual errors:

On p 16, the "Mother of All Bombs" that the U.S. tested in an attempt to terrorize the Iraqis was described as a "21,000 ton monster." It was actually a "21,000 pound monster."

On page 19, George Bush was described as "only the second incumbent president of the 20th century to fail to be re-elected," when in fact, he was the fourth (Taft, Hoover, and Carter all preceded him).

And on page 25, the 9/11 bombings were reported to have been "inspired by Osama Bin Laden who grew to hate the U.S. because, during the Gulf War, our military put bases and 100,000 troops in the cities of Mecca and Medina," when in fact, our military put troops only elsewhere in Saudi Arabia.

We should have spotted all of these obvious errors. We apologize to our readers for our negligence, and thank those readers who wrote us to bring them to our attention.

R. W. Bradford  
Thomas Fuller  
Kathleen Bradford  
Patrick Quealy  
Katelyn B. Fuller

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# Reflections

## *Equal opportunity imperialism* —

Remember that \$78.5 billion war spending bill? Congress slipped in \$5.5 million for the Library of Congress for the purchase and installation of a public address system for the library buildings. That will definitely show the terrorists we mean business. Then, of course, the Senate added an extra \$15 million for the Equal Employment Opportunity Commission. Presumably the EEOC was charged with making sure that the military killed Iraqis without regard to race, color, creed, or country of origin.

— Alan W. Bock

## *Don't blame the victim* —

Benton Harbor, Michigan, erupts into violence, and leftists across America start making excuses for the disorderly behavior: poverty, no jobs, substandard housing, lack of health insurance. . . . Perhaps they should think about Bush's invasion of Iraq the same way: yes, we were out of line invading Iraq, but we were just acting out because we were still angry about 9/11. After years of institutionalized terror, and disillusionment with peace processes, we just lashed out at the terrorist system that sought to subjugate us.

— Tim Slagle

## *Ur-spam* —

My friend Garrett Brown went out of town for a few days and asked me to pick up his mail for him. You know what happened when I did. Although he'd been gone no more than 72 hours, I had to wrestle an enormous ball of crumpled paper out of his box and pick through it to find out if

there was any actual mail amid the colored circulars for car-washes, lawn turf, amazing new kitchen toys, and special sales on underwear (can't they get some new models, for God's sake?). There were also some of those stiff white notices about missing children who are now 34 years old.

When Garrett got home and I presented him with this nasty mess, not very well sorted and smoothed, I admit, we both remarked on the fact that the U.S. Postal Service is now devoted principally to the dissemination of trash. I thought it might be a good idea for all those people who are so concerned with passing laws against spam to take a hard look at this other scandal. After all, we're paying taxes to have a ton of spam — real physical spam — get dumped on us every day.

Garrett had a better idea. "Why don't the environmental-

ists who are always protesting against waste and the destruction of trees and so forth start demanding that the Post Office be put out of its misery? After all, the Post Office is doing everything that the environmentalists claim to hate."

All right, you environmentalists. The challenge has been issued. The gauntlet has been thrown. Which do you love more — the environment, or the government? — Stephen Cox

## *Them mysterious WMDs* —

America's conquest of Iraq was justified, George W. Bush and his staffers told us over and over, by Iraq's possession of Weapons of Mass Destruction (WMD), weapons so terrible their mere possession justifies conquest. There are three kinds of WMD, Bush explained: chemical, biological, and nuclear, and Iraq

had the first two and would soon have the third.

So Bush went to war and quickly conquered the smaller, poorer, weaker country. But our military forces searched and searched for WMD, without finding any trace of them, aside from a few low-tech bits of equipment that could conceivably be used as part of the process of manufacturing them. Each of these was trumpeted by the Bush administration as fresh evidence that Iraq was manufacturing WMD. (After all, what other use could Iraq have had for equipment for manufacturing fertilizer?)

Bush and his administration continue to maintain that they were right all along, that Iraq and its dictator did indeed possess WMD, but somehow forgot

or failed to use them in the war, while remembering to destroy or hide every trace of them.

Some of the warmongers have taken a different tack: America had to conquer Iraq for reasons that were so recon-dite that Bush believed that ordinary Americans could not understand them, so he and his staff used Iraq's alleged possession of WMD as a convenient excuse. Thomas Friedman argues this in a recent *New York Times* column. The U.S. had to go to war because "America needed to hit someone in the Arab-Muslim world" in order to "level the balance of power between the Arab world and the West." But "the Bush team felt it could never win public or world support" for this rationale. So Bush used the WMD argument "for PR reasons."

Meanwhile, Bush's political aides point out that while a



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few opponents of the war might be upset about the fact that he lied to convince Americans to go to war, most people are happy about the war and its outcome. "We may have gone to war because of weapons of mass destruction, but we have made our conclusions based on the reaction of the Iraqi people," said Frank Luntz, a Republican pollster. "Are we relieved? Yes. Do we feel good about ourselves? Absolutely." Another Republican pollster, Glen Bolger, warned the president's critics not even to look into the matter: "Every time the Democrats talk about this stuff, they run the risk of having it backfire." And the Republican chairman of the Senate Intelligence Committee dismissed the whole matter as "a big

---

*Bush has tried to give voters the false impression that his claim that Iraq had WMD was actually true, just as he tried to convince voters that Saddam was involved with al Qaeda.*

---

fuss about parsing words" and "dismissed" the suggestion that his committee should investigate the question as "a bit of theater," according to a report in *The New York Times*.

The administration's strategy seems to be working. Support for the conquest of Iraq remains strong, and a great many Americans are not even aware that no WMD were found. 22% of Americans told pollsters that Iraq had used WMD against the American invaders. 34% said they believed that the U.S. had found WMD during the invasion. And 57% believe that Iraq had WMD at the beginning of the war.

Some observers suspect that Bush is trying to give voters the false impression that his claim that Iraq had WMDs was actually true, just as he tried to convince voters that Saddam was involved with al Qaeda — a move that worked to the extent that an invasion-eve poll revealed that nearly one American in four believed that Saddam was the boss of al Qaeda.

This suspicion is supported by the curious fact that an amazing 55% of respondents who identified themselves as Republicans and say that they "follow foreign affairs very closely" believe that WMD had been found by U.S. invaders, presumably because their "very close" attention to foreign affairs included listening to Bush's and his spokesmen's repeated claims that one or another piece of industrial junk somehow constituted evidence of Iraqi WMD.

The same poll that revealed the massive ignorance of the whole matter by the public in general and supporters of the war in particular also revealed that 68% of Americans continue to believe the invasion of Iraq was a good idea.

The task before those who are critical of ever-expanding state power remains a daunting one. — R. W. Bradford

***If you can't say something nice . . .*** — People used to say that Americans were rude and aggressive. Europeans still say that we are. The fact is, however, that you can always tell who's an American when you're standing at the ticket window in a European train station. We're the ones who are waiting quietly in line, and when we accidentally step on someone's feet, we always apologize —

and mean it.

Americans are nice. Indeed, this niceness that has been creeping over us during the past hundred years or so has gotten so very nice that it's becoming ridiculous.

Fresh proof appears in a new book by Henry Mark Holzer and Erika Holzer, *Fake Warriors*. The Holzers have had adventurous careers as writers, as lawyers (they were once the attorneys for Ayn Rand), and as activists for a variety of good causes. They are transparently sincere people, but a few years ago they developed a deep interest in phonies. First they wrote a book about Jane Fonda's supposedly well-intentioned propaganda for the Communist side in the Vietnam War (*Aid and Comfort*). I don't need to tell you what a phony Jane Fonda has always been. One thing led to another, and now the Holzers are concerning themselves with the strange group of phonies who pretend to have been Fonda's enemies — the people who claim to have been American combat soldiers (heroic soldiers, of course), and weren't.

There is, it seems, an enormous number of people running around the country talking about how they were shot up or shot down or captured or tortured or raped or all of the above in Vietnam, for which they were rewarded with multiple Purple Hearts, military promotions, and Congressional Medals of Honor, the story of which would be readily available if their operations had not been so sensitive or secret or embarrassing in some way to the military authorities that said authorities proceeded to destroy, sequester, or black out all indication of said operations from normal official records. The phonies have, as you may well imagine, used their false and often ridiculous "experiences" to procure for themselves such real and substantial things as jobs, loans, wives, veterans' benefits, promotions, election to political office, appointment to judgeships, favorable treatment for criminal offenses, and publicity, publicity, publicity.

Now, here's the place where niceness comes in. Virtually no one who listens to one of these phonies' accounts — and this goes for hard-boiled journalists as well as lovelorn ladies — is ever so mean as even to think of questioning or investigating their stories. No, we're Americans, and we'll take it all on faith. Come to think of it, how many times have you ever heard a reporter ask any public figure for the evidence that supports his statements? Certainly not. That would be rude!

There remain, nevertheless, some rude people on this continent. There are the Holzers, who are properly outraged by all of the above; and there is a considerable community of like-minded folks who operate Internet services devoted to the exposure of military phoniness. But to me, the most surprising thing about the Holzers' book is the many accounts it offers of what happens when people actually try to check on somebody's military record.

Usually these people are checking because it is a point of honor with them not to acquiesce in anybody else's phoniness, especially that of a friend or relation. It requires a special integrity to seek the truth about something like that, a special ability to bear emotional risks. But what are they told when they inquire? Very often, what they hear from the official record-keepers and investigators is: "Why embarrass him?" "Drop it." "Just let it go." Relatives of a fake warrior whose corpse was scheduled to receive military honors were



told that, whether he deserved them or not, "no one was hurt having a military funeral." In other words, be nice. Forget about it. Honoring a phony won't "hurt" anyone.

It's apparent that in this matter, as in the matter of Bill Clinton's scandals, there are two very different groups of Americans. One group consists of people for whom niceness is not the first consideration, for whom honor and honesty are of somewhat more serious concern. The other group consists of people who are horrified only by attempts to insist on the importance of those two qualities. Of course, the people in the second bunch are always having their trust abused; they are always being bamboozled, tricked, fooled, and cheated. But apparently that doesn't hurt them. They are the people whom that mean, sarcastic St. Paul encountered 2,000 years ago, when he complimented the people who went to church in Corinth on the fact that they were always so nice, even "if a man bring you into bondage, if a man devour you . . . if a man smite you on the face." — Stephen Cox

**A strange coincidence** — Defense Secretary Donald Rumsfeld confirmed recently that an independent advisory group is looking into what U.S. intelligence services were reporting before the war compared with what they found in Iraq once the war was won. It's not to identify scapegoats, says Rummy, but to improve capabilities. Fine. But how many noticed that this committee was set up last October? This means that back then the administration already believed (knew?) that a war was inevitable — enough to set up an after-action assessment system — but kept up the pretense that it all depended on what the U.N. inspectors found. — Alan W. Bock

**Concealed logic** — While doing some research on gun control laws recently, I learned that Washington is a "shall issue" concealed carry state.

It was a little startling to me that I was in a state that would allow almost any competent person, or even me, to walk into a sheriff's office, pay a fee, wait a few weeks, and be given a permit to carry.

I was born and raised in Ohio, where the laws are considerably more restrictive. Every year, Republicans in the state legislature try to push a concealed-carry bill through, and every year the bill fails to pass. Ohio law effectively forbids concealed carry except in a broadly defined set of circumstances that make those who carry guilty until proven innocent.

I was researching the matter because I had recently been involved in an extended discussion with some pro-gun-control acquaintances back in Ohio. A few of them had propounded the standard arguments against concealed carry: it is vigilantism, it will lead to anarchy, and so on. And of course they asked me, with smiles of smug superiority indicating their confidence in my answer, "Can you honestly say you'd feel safer if you knew that anybody walking by you on the street might have a gun?" The smiles were replaced with confusion and indignation when I answered in the affirmative.

For the past four years, I lived in Columbus and attended The Ohio State University, the third-largest university in America. Big university, big city, not a little crime. I lived in off-campus housing mostly rented by students, and I fre-

quently had occasion to be out at night, walking down High St., the main drag through campus. As a rule, any time I was on High St. after nine in the evening, I would be harassed or threatened. Right outside one of our favorite restaurants on that street, my roommate watched someone get mugged, and this was a few weeks before someone randomly fired a bullet through the establishment's front window. The campus newspaper carried stories about a "campus rapist," who as far as I know still hasn't been apprehended. Several fatal shootings occurred in the campus area while I lived there. Someone I knew was jumped twice in the exact same spot on campus (unhappily for his assailants, he carried a knife and knew how to use it). A former classmate was robbed at gunpoint while walking between two dorms. We also had several large, violent post-football-game riots every year.

I don't mean to suggest that the campus is in a "bad part of town" where crime is rampant; this all happened over the course of four years. Still, I think it reasonable to consider this a place where one should not walk alone at night — maybe not even in a group — without some means of self-defense. By my last year in Columbus, I had begun to weigh seriously the risks and benefits of buying a gun and learning to use it. On the debit side, a gun costs money, and by carrying one I would risk facing concealed weapons charges. On the credit side, possessing a gun and knowing how to use it meant I wouldn't die if attacked by a murderous wacko rapist nutcase.

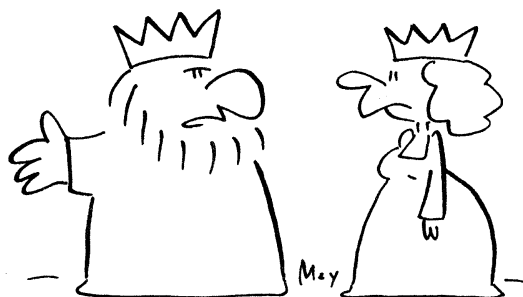
If I hadn't been a poor college student who couldn't afford to buy a weapon, much less pay for training to use it responsibly, I probably would have decided to arm myself.

When the aforementioned campus rapist was at his worst, signs were put up all over campus advising women to lock their doors and windows, to be wary of strangers, not to open their doors for anyone, not to walk alone, not even to open their windows to cool their apartments in the intense summer heat — in short, to live in fear.

Members of an area libertarian group called FreeOhio thought this was a little silly, so they made signs with a different suggestion: "Warning: campus rapist. Women, lock your doors and windows and get a gun."

One guess how well that went over with the PC police. The signs got torn down as quickly as they got put up.

The forces of good finally decided that they would fight the rapist with a "march against rape." I suppose that the marchers thought the outpouring of solidarity would make the campus rapist turn to a life of temperance and chastity. Well-intentioned though it was, it looked to me more like a



"Of course we have a pluralistic society! There must be millions of people out there."

willing embrace of victimhood than a meaningful statement.

The people from FreeOhio showed up at the march. They handed out fliers advising those in attendance that there were more effective ways to combat rape than to protest against it, and that chief among these was possessing and knowing how to use a gun.

This mightily pissed off the campus feminists, greens, student government politicians-to-be, and other assorted socialists, who whined to the police on hand that these people were disruptive and should be arrested. To the consternation of the protesters, the police shrugged and told the protesters that pro-gun people had as much right to be there as anyone else. "In fact," one of them piped up, "just last week I taught my girlfriend how to use a 9mm pistol. I think it's a good idea." Another agreed: "These guys actually have a good point. It's good to be able to defend yourself."

Now, as an editorial intern with *Liberty*, I have relocated to Port Townsend, Wash. The people here are really nice. Bad things happen so infrequently compared to a bigger city in Ohio that I fail to notice any crime at all. I wouldn't think twice about leaving my window open on a hot day while at work, or leaving my car unlocked — and I certainly don't feel a need to carry a gun.

Still, it's just as well that the legislators of Washington haven't made concealed carry illegal. It gives me a warm, fuzzy feeling to know that any guy I pass on the streets of this quaint Victorian village might be packing a Glock with enough rounds to lay waste to over a dozen violent criminals.

As might be expected of young people attending a big state university nowadays, many students in Columbus, including friends of mine, are adamantly anti-gun. They don't understand my way of thinking. They would be nervous to know that retirees and tourists in a small town *may* be *legally* carrying guns. Apparently, that makes them more nervous than the *certain* knowledge that drugged-out muggers, crazed rapists, and psychotic murderers, who know that law-abiding people definitely *don't* have guns, are *illegally* packing serious heat and stalking the streets looking for victims.

I guess you can't argue with logic like that.

— Patrick Quealy

**Free to obey** — The United States' occupation forces are certainly choosing a peculiar way to teach Iraq about the glories of democracy. The Coalition Provisional Authority is working on a code of conduct for the Iraqi media that are now exulting in their post-Saddam freedom and sometimes publishing stuff that borders on the intemperate.

Well, we can't have that, now, can we? How can a democratic society emerge if the press is free enough to be sometimes irresponsible? Or, as Mike Furlong, a senior adviser to the Coalition Provisional Authority, told *The Associated Press*: "There's no room for hateful and destabilizing messages that will destroy the emerging Iraqi democracy. All media outlets must be responsible."

I didn't make that up.

It isn't just ambitious bureaucrats in occupation offices in Baghdad who are dreaming up ways to exert control over Iraqi media. A group of purported legal and media experts have met in Greece under the auspices of the U.S. State

Department to develop a code of conduct for the Iraqi media. Among the ideas: pass laws with penalties for hate speech and defamation, and set up a council to draw up a code of conduct, hear complaints, and regulate the media.

Naheed Mehta, a coalition spokesman, said the code-makers in Baghdad didn't want to censor the media. They

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*Western occupation of Bosnia and Kosovo has featured similar efforts to control the media by establishing penalties for journalists or media outlets that run afoul of the government authorities.*

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just want to, as *AP* put it, "stifle intemperate speech that could incite violence and hinder efforts to build a civil society."

Unfortunately, this impulse to censor the media — and let us be clear, when a government or de facto government entity exerts control and imposes penalties on a media outlet, that is censorship — is hardly new. Western occupation of Bosnia and Kosovo, which is still ongoing, has featured similar efforts to control the media by writing codes of conduct and establishing penalties for journalists or media outlets that run afoul of the governing authorities (as well as blatant efforts to manipulate elections). The floating assemblage of international bureaucrats on the make that constitute what most media choose to call the "international community" has never been shy about believing it has superior wisdom and the right to impose it upon benighted provincials everywhere. This conviction that the way to establish "democracy" is to begin with detailed rules, regulations, codes, and commissions of enforcers should also give us an insight into the way many American officials who work in other countries would operate in this country if there were no pesky First Amendment and long tradition of press freedom to get in their way. If their first impulse in another country is to regulate the media, don't you suppose they secretly wish they could do it at home?

These wannabe press overlords should fold up their tents and slink home.

— Alan W. Bock

**Getting it wronger** — I really enjoyed Bill Bradford's review of Buckley's novel *Getting It Right*. In fact, I was thinking of using Bradford's title, "Getting It Wrong," if I had reviewed it. Buckley called his book a "novel" because he was too lazy to research a history, and it gives him a convenient escape when his critics point out its errors. I'm not as familiar with Rand and her circle as Bradford is, but to me the entire book is suspect because the fictional story line about the Mormon was egregious!

There are sound reasons for putting a Mormon into the anti-Communist story, and in fact Buckley could have introduced a real live Mormon, W. Cleon Skousen, who was a leader in the anti-Communist movement in the '60s and '70s. Mormons have a particular belief that America is the Promised Land, and that the Constitution is a divinely inspired document. They even have a prophecy foretelling

that someday the U.S. Constitution “will hang by a thread,” and the “elders of Israel” (Mormon priesthood holders) will be needed to “lift it up.”

Consequently most Mormons are political conservatives, and devoutly anti-Communist. With a little effort Buckley could have created a fascinating side story, with a devout Mormon who feels divinely called to save America, and the world.

When I had lunch with Buckley a year ago, he talked about his Mormon missionary character and asked whether certain aspects of his plot would be believable. I offered to read those chapters for accuracy, but he didn't take me up on my offer. Not surprisingly, he ended up “getting it wrong” from the very first page. His missionary works alone, with no companion. The missionary is in Austria to teach English eight hours a day, and reads Steinbeck instead of scriptures. He offers beer to the first Hungarians he meets — with the young wife of his mission “supervisor” along for the ride; and he goes to bed with one of the Hungarians immediately, without any sense of remorse. Later, his Mormon professor at Princeton not only invites his young Mormon protégé for “sherry and conversation” every afternoon, he has a mistress ensconced in an apartment somewhere.

Buckley uses all the wrong terminology, and doesn't even get his geography right (there is no Mt. Olympus in Utah, nor is there a University of Salt Lake City). Sure, there are many jack Mormons who secretly drink and commit adultery, but why bother to create a character with certain specific, identifying traits if you aren't going to use those characteristics to further the plot? It's as if he wrote a novel about the Roman Empire, in which all the Roman characters were Greek. Of course, the beauty of writing a “novel” is that you have a ready answer for every criticism: that part was intended to be fiction.

I agree with Bradford that Buckley needed to fully identify who was real and who was fiction, so that readers who wanted to learn something about the simultaneous rise of the Birch Society and the Objectivists could actually do so. I came away from the book knowing better than to quote any of it as fact. It is apparent from all the sections of the book in which Buckley himself either appears or is mentioned that his feelings were hurt when he was rejected by the Randians and he simply wanted to vindicate himself. Without the Buckley name, this book would never have been published.

— Jo Ann Skousen

***The victims of victimless crime*** — The release of twelve people who spent as long as four years behind bars thanks to the uncorroborated testimony of a single undercover drug agent working in the little town of Tulia, Texas, suggests that with enough hard work and solid evidence injustice can eventually be reversed. Without changes in laws and the way they are enforced, however, similar injustices will occur again.

What seems to have happened in Tulia is roughly this: Tom Coleman, an undercover agent for one of those highly touted regional drug task forces, worked for 18 months putting people in jail for cocaine possession or sales. Coleman claimed he bought drugs from the defendants, but he worked alone, with no audio or video, and found no drugs or money during the arrests he made. But he was supported

by his superiors and juries were willing to convict based on his word alone.

Coleman arrested 46 people (39 of them black) and 38 were convicted or accepted plea bargains. Eventually activists and journalists began to listen to the families of those convicted, most of whom had no record of drug use. The U.S. Justice Department and Texas Attorney General's office finally investigated, the state's highest court ordered new trials, and the legislature passed special legislation allowing these twelve people to be freed on their own recognizance (the rest had already been paroled or released) while the rest of the legal mess is sorted out. Coleman is under indictment.

Most of the media who eventually noticed this injustice have focused on the racial angle — most of the defendants were black, Coleman was white, and most of the jurors were white. That's probably a valid concern, but the extent to which laws against possessing chemicals invite this kind of abuse deserves attention as well.

“Victimless crimes” don't necessarily lack for a victim. Relatives, friends, the user him- or herself, sometimes even strangers can in some sense be viewed as victims of out-of-control use of certain drugs, including alcohol. But a crucial difference is that there is no complaining victim, like a person whose house has been burglarized, who is willing and even eager to call the police, point out the crime, help search for clues, and keep calling to see if the police have any leads on the dastardly perpetrator.

Neither the buyer nor the seller of an illicit substance is likely to complain to the police, even (or especially) if they think they have been cheated. So the police have to rely on undercover informants (often career criminals themselves) or undercover agents who can penetrate private places and use deception to catch perpetrators. This leads to law enforcement practices in which deception, rather than honesty, is rewarded, and many instances of officers who become corrupt or go on the take. And it can lead to officers who are willing to boost their “body count” of arrestees through dishonest means. Tulia is by no means the only place where such things have happened.

Laws that can be enforced only through undercover work

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and deception exact a price both from law enforcement people who would prefer to operate openly and honorably, and from society at large, in decreasing respect for law and its institutions. Those who defend the failed and discredited policy of drug prohibition should be required to explain just how high a price they are willing to exact from others in order to control their lives. — Alan W. Bock

**White lies** — My first thought upon hearing of the rioting in Benton Harbor, Mich., on the nights of June 16 and 17, was that the rioters were African Americans. Probably that was because there are problems between blacks and the police where I live, and if any riot were touched off in my city by a high-speed chase, it would be a riot by black people.

I read the story on CNN.com. There was no reference to race. None at all. This was a full-length news story, written as if it had occurred in Iceland.

The next day I read an *Associated Press* story. It did mention race — in the 18th paragraph. The story didn't say anything about the race of the rioters, but it did say the town was overwhelmingly black. You could guess the rest.

I found another story. There it was, where it belonged, in the lead paragraph: black population, white cops.

Why was this fact left out of the first story I read, and only hinted at in the second? Because news organizations are self-censoring.

Is this something demanded by the people in Benton Harbor, Mich.? No. I expect the people throwing rocks and bottles would like it to be known that they are African Americans. Is it demanded by black racial organizations? Maybe, but I don't think so. I think it's a function mainly of the internal workings of white reporters and editors. They are uncomfortable with the whole issue of race. They are not able to talk about it freely, so they just leave it out.

— Bruce Ramsey

**The party of limited government** — The Bushies are crowing about barely getting a Republican-majority Senate to go along with a modest tax cut. But think of the scale: President Bush initially asked for \$726 billion in tax cuts over several years, and the House passed the measure. Then, after the Senate said it would only go for \$350 billion, the administration cut its bargaining position to \$550 billion. Was the final figure halfway between the 550 and 350? No, it was \$350 billion.

It won't be long before the phrase, "negotiating like a Republican" is a universal term of scorn for people who always get snookered.

— Alan W. Bock

**Hope for a generation?** — As a liberty-loving American in her twenties, I have often worried about the political ideas or non-ideas of my fellow youth, and about the fact that libertarianism is growing past middle age; the *Liberty* reader profile shows that 65 percent of *Liberty* readers are 40 years old or older, whereas only 15 percent of readers are under 30.

I have found hope for my generation in a seemingly unlikely source: the recent release of a single by rap/hip hop group Black Eyed Peas, featuring Justin Timberlake (Britney Spears' former boy toy of N'Sync fame). The title of the sin-

gle is "Where's the Love," and a sampling of the lyrics is as follows:

What's wrong with the world, mamma?  
People livin' like they ain't got no mammas  
I think the whole world's addicted to the drama  
Only attracted to the things that'll bring the drama  
Overseas, yeah, we tryin' to stop terrorism  
But we still got terrorists here livin'  
In the U.S.A., the big CIA . . .

Wrong information always shown by the media  
Negative images is the main criteria  
Infecting the young minds faster than bacteria  
Kids wanna act like what they see in the cinema . . .

Justin Timberlake and the Black Eyed Peas may or may not be politically motivated, but it is clear that they have intuited something "wrong with the world"; they have linked this wrongness with the War on Terror, and the fact that our very government is involved in terrorist activities on the homefront. "Where's the Love" also criticizes the content and honesty of the media, and points a finger at the American hunger for sensationalism over substantive news content. Is this just another song of youthful rebellion? Maybe. But Plato thought that music had the power to influence, and to corrupt. Let us hope for the right type of corruption.

— Katelyn B. Fuller

**Prevaricus maximus** — This fall will be tenth anniversary of the passage of the Brady Act. Let's take a trip back down memory lane, to the November 1993 date when President Clinton signed the bill.

The president emotionally told the story of a friend of his who was an Arkansas gun dealer. The gun dealer sold a firearm to an escaped mental patient, who then murdered six people.

"My friend is not over it to this day," said the president, as the crowd applauded. "Don't tell me this bill will not make a difference. That is not true. That is not true."

Well, "not true" turns out to be a pretty good summation of the president's story, which he told not only at the Brady signing, but throughout the 1992 campaign.

The *Arkansas Democrat-Gazette* tracked down the origin of the tall tale. Back in 1984, an Arkansas man named Wayne Lee Crossley used a .45 pistol and a shotgun to murder four people in a bar. Contrary to the Clinton story, Crossley didn't buy the guns himself; he convinced a woman friend to buy the guns for him. The Brady Act does nothing to prevent people with clean records from buying guns for anyone they want.

A White House staffer admitted that the man may just have been treated at a mental institution, rather than having "escaped from a mental hospital." Simply having undergone mental therapy does not legally disqualify a person from owning a gun, under the Brady Act, or any other federal law.

Moreover, there is no central registry of persons who have been involuntarily committed to mental hospitals, and the Brady Act does nothing to create such a registry.

And while the president spoke movingly about how his "friend is not over it to this day," the "friend" who sold the guns died several years before.

Even if the Brady Act's proponents had been scrupulous with the truth, the Act has no legitimate basis in federal law.

Imposing controls on how a gun store sells a gun to an in-state buyer is not the regulation of interstate commerce, the purported constitutional basis of congressional authority to pass the Brady Act. Whether the Brady Act violates the Second Amendment shouldn't even be an issue, because the Act is beyond the scope of the powers which the people of the United States granted Congress under our Constitution. If such laws are legitimate under our constitutional system, they might be arguable as state laws, but never as congressional statutes.

— Dave Kopel

**Rock on, Annika** — People seemed to want to see Annika Sorenstam playing in a men's golf tournament for almost every reason but the one that seems to me most pertinent. Annika Sorenstam is an individual athlete of remarkable skill and accomplishment who wanted to test herself against the best who play the game. She did so and showed that if she were on the men's tour all the time she would probably improve further and be quite respectable — hardly a threat to win every week, but a solid professional golfer.

Why the rush to make her representative or emblematic of a larger group of people or some sort of symbol for large-scale issues in society? Most of the progress in the world has been made by individual people who, whatever group others identified them with, strove to fulfill their potential as creative individuals. Sorenstam is yet one more individual transcending the urge to tribalism that still lingers in modern society in order to seek the best she can be as an individual person. Good for her.

— Alan W. Bock

**No safe use for tyranny** — In "Dialog with an Absolutist" (July) Bruce Ramsey lists "ten cases in which [libertarianism] falls short." One of them — to the surprise of no one who has ever listened to the tiresomely predictable "analyses" of conservatives who unaccountably imagine themselves to be libertarians — has to do with drugs. When libertarians "oppose all drug laws with the term prohibition, thereby making an analogy to liquor prohibition, they imply the existence of a safe use," Ramsey intones. "And for some prohibited drugs there is no safe use."

Oh really? Which drugs are those? Since Ramsey offers no specifics, it's difficult to embark on a point-by-point refutation. But anyone who has ever done much reading about the drugs our government invests the majority of its time and our money prohibiting — heroin, cocaine, marijuana, and LSD — knows that none of them is any more unsafe than alcohol. Just like alcohol, all of them have been used and are used by millions of people who also hold jobs, take care of families, and shoulder all the same sorts of responsibilities handled routinely by their drug-free coevals. There is plenty of evidence to support this claim in Jacob Sullum's new book *Saying Yes: In Defense of Drug Use*. I think Ramsey might find that book more enlightening than the government propaganda he's apparently been spending his time reading.

The simple fact of the matter is that, in order to bolster popular support for its preposterous drug policies, the U.S. government has invested many, many years and a good deal of our money in telling outright lies about the effects drugs have on their users. One of the first steps toward opening one's mind to the truth on the drug issue is being willing to acknowledge this simple fact. The next step is taking a look

through the available literature to find out what the government has been covering up. One would think these two steps would pose few problems for any true libertarian. After all, what sort of "libertarian" is reluctant to believe that the government lies? Or does it lie only when it wants to make war on Iraq, while maintaining a strictly truthful policy when discussing "dangerous drugs"?

— Jeff Rigenbach

**Getting it right** — Donald Devine of the American Conservative Union has issued a memo ([www.conservative.org/pressroom/revitalizingconservatism.asp](http://www.conservative.org/pressroom/revitalizingconservatism.asp)) on the sad state of mainstream conservatism, lamenting that the traditional conservative principles of limited constitutional government and personal liberty have been lost amid the increasing talk of war and empire. It's nice to see some mainstream conservatives once again grappling with such issues. It will be even more interesting to see whether Don Devine's comments get traction among old-line conservatives.

— Alan W. Bock

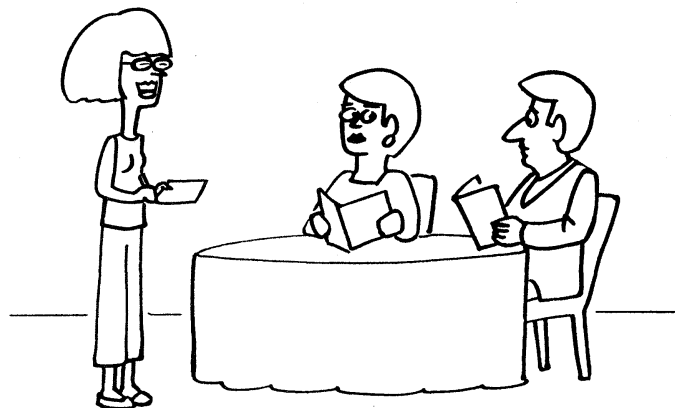
**Bill Bennett's brain on dopamine** — It is easy to laugh at moral guru William Bennett losing millions of dollars to casino slot machines and video poker. The hypocrisy is just too naked: he made those millions largely by preaching conservative restrictions on personal liberty while his own political action group Empower America called for restrictions on legalized gambling.

But the former Drug Czar has more to teach us: he reminds us just how deeply irrational we are and how that irrationality can affect ourselves and society.

Bennett is an intelligent man of letters. He holds a Ph.D. in political philosophy and a Harvard law degree. He has written or edited several books. Yet he would sit for hours at a time playing \$500-a-bet slots and video poker even though he knew that the house had a 2–5% advantage on each pull of the lever. Bennett knew that his expected payoff was always negative, and in fact he reportedly lost about 8 million dollars. That is textbook irrational behavior. He would have been better off buying shares in the casinos.

How can someone so smart keep doing something so dumb?

One answer is that our emotions often cloud our reason when it comes to probability. Studies show that we are good at kidding ourselves about how badly we estimate odds.



SHCHAMBERS

"Hello. My name is Francine and I'll be your nutrition coach this evening."

Many people think that some numbers are luckier than others — seven is the most popular Lotto digit. Or they think that a fair coin is likely to come up heads if it has come up tails on the last three independent tosses. They simply think they have some control over purely chance events.

Losers also tend to be in denial about the extent of their losses. Social psychologists call this mindset “Heads I win, tails it’s chance.” A good example is Bennett’s statement to the media that “Over ten years, I’d say I’ve come out pretty close to even” in light of the documented extent of his gambling losses and the joint effects of the house odds and the law of large numbers.

A more disturbing answer is that evolution may have wired our brains to reward gambling behavior. A March study in *Science* showed that a monkey’s midbrain neurons spur the production of dopamine when the monkey faces uncertainty. Dopamine is the feel-good neurotransmitter involved in drug stimulation and addiction as well as in Parkinson’s disease and schizophrenia. Brain-wired monkeys watched geometric patterns on a computer screen and got a drop of sugar syrup when certain patterns appeared. Different patterns had different probabilities of syrup reward. The monkeys’ dopamine neurons fired most when the syrup reward was most uncertain and fired least when it was certain.

This dopamine sculpting of our brains may help us find better predictors of our hunter-gatherer environments. But it favors surrender to the one-armed bandits in a casino where the only useful information to learn is that the house has the advantage. It also helps explain why Las Vegas remains the most popular tourist destination in the country and why Americans lose more money on legalized gambling each year than they spend on movies and music and sporting events combined. Gambling uncertainty gives us a dopamine high.

This raises a Bennett-like question: is it moral for state governments to sponsor lotteries and to tax gaming proceeds?

Bennett can now more consistently answer No because he has publicly sworn off gambling — though only time will tell if his dopamine neurons agree. The religious right has always opposed gambling as part of its general opposition to victimless or “consensual” crimes. Now they can point to evidence of a genetically hard-wired weakness in a gambler’s brain even if godless evolution did the hard wiring.

The late great Harvard philosopher Willard Quine gave a better answer. He saw state lotteries as a worthwhile “sub-

sidy of intelligence” because they “lighten the tax burden of us prudent abstainers at the expense of the benighted masses of wishful thinkers.” Casino shareholders also get a cut, but these are investors and not gamblers. They range from ordinary folk to pension plans.

So there is a new maxim for Bennett to add to one of his books on virtue: fools will always part with their money. Legalized gambling just makes sure that some of it pays for public goods.

— Bart Kosko

**Don’t spook the sheeple** — In last year’s hit movie *My Big Fat Greek Wedding*, there’s a running gag on how the father of the bride is intent on showing everybody he meets that many words in the English language have Greek origin: “Give me a word, any word, and I show you how the root of that word is Greek.” His daughter is continually embarrassed by his word game, and hides her face whenever he starts it. I sometimes feel the same way when libertarians offer their solution to all the world’s problems: “Give me a social ill and I’ll tell you how it can be fixed with liberty.”

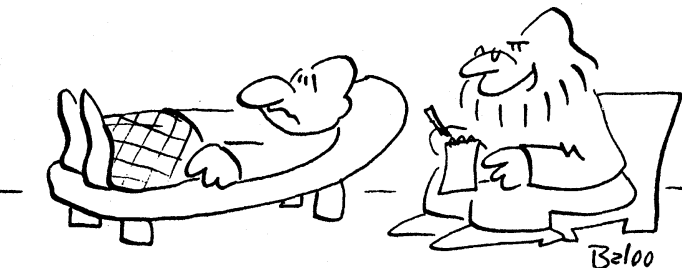
I’ll admit I’ve bought into it also. How would libertarians help feed the homeless? “Well, with less government restrictions on agriculture, food would become much cheaper, and Americans would save fewer leftovers. Hence the quality of food in the dumpsters would improve, and homeless people could eat more nutritious meals. You see, liberty can feed the homeless.” It’s really satisfying to convince yourself that government is the root of all problems. For the most part, I still believe it. Unfortunately, we are so far away from the Libertarian Utopia we dream of that our grand ideas seem somewhat delusional to the average American.

In America the government is representative of the people. The 14th Amendment destroyed a lot of States’ rights, and the 17th moved us closer to pure democracy. While both run contrary to our Framers’ intent, they are now the law of the land. The reason there are entitlements is that there are huge groups of Americans who want entitlements. Whether a libertarian society can ever bring forth peace and prosperity is irrelevant as long as there are great segments of America opposed to liberty.

It occurs to me that George W. Bush might be as libertarian a candidate as we can ever hope to have in the White House, in the present political climate. We can talk about election reform, ballot access, and all the other hindrances that prevent us from ever achieving power, but until the American public turns, we’re never going to get very far. We all hope for the nuclear option, the as-yet undiscovered strategy that will make our party the majority; but until we discover it, we might have to resign ourselves to small policy victories. Meanwhile, going around arguing about what might happen in a Libertarian Utopia, where self-government is the law of the land, is always going to make us look like that kooky Greek dad.

— Tim Slagle

**The Jessica Lynch Story** — Jessica Lynch was not your typical soldier. She was a waif-like 20-year-old blonde from a small town in West Virginia. She was sent to Iraq, and her unit was ambushed by Iraqi forces. They shot and stabbed her, but she emptied her machine gun into them. After she ran out of ammo, she was captured and



“A paranoid, ch? — I have ways of dealing with paranoids.”

taken to an Iraqi hospital, where she was abused by her captors — until she was rescued by daring American soldiers.

Coming at a time when the invasion seemed to be bogging down, this was the first piece of upbeat news from Gulf War II. The heroic actions of Jessica and her rescuers inspired Americans, at the same time illustrating the perfidy of our opponents.

There was one problem with the story. Virtually every detail in it was false.

Lynch was injured, all right, but not by enemy fire. Her extensive injuries resulted from her vehicle's collision with another U.S. Army vehicle. She had not shot a single enemy soldier, or even fired her gun at one. Nor did the Iraqis abuse her; in fact, they saved her life, giving her better medical care than they gave to their own people. And while her rescue did involve Americans bursting into the hospital and firing their weapons, the Iraqis offered no resistance — they welcomed the American soldiers and were anxious to turn Lynch over to them.

That truth is the first casualty of war is by now a cliché. But this episode illustrates something far more important than the propensity of politicians and military bureaucrats to lie.

Nobody ever said it was easy being a journalist. Consider the dilemma faced by *Washington Post* reporters Susan Schmidt and Vernon Loeb, who broke the story of Lynch's capture and rescue, and are now taking an awful lot of heat for it.

Neither Schmidt nor Loeb was present at Lynch's capture and rescue. They had to rely entirely on "sources," i.e., on public relations men for the military.

The lies in the story were invented not by the reporters, but by the unnamed PR men. It was a dramatic story, and obviously an important one. They had no means of verifying its accuracy, but it came from a source that they believed reliable.

But they had forgotten that bureaucrats have powerful

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*Can anyone believe that the professional liars who concocted the story have been punished for lying? Of course not, they were rewarded.*

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incentives to lie and very few incentives to tell the truth. They are liars in the classic sense: they say what is convenient, what will help their careers, what will advance their agenda. Consequently, every word that comes from their mouths requires independent verification.

What should Schmidt and Loeb have reported? Only what they knew: that they had been told the story of Lynch's heroic capture and rescue by a military spokesperson who refused to be identified, and who might or might not be telling the truth. That's not such a dramatic story. But it was true, and a reporter's job is to tell the truth. Schmidt and Loeb forgot this, or had never learned it.

There has been a lot of hand-wringing and finger-pointing about the episode. But it seems pretty clear that the

story has a happy ending for the military and the Bush administration. The false story concocted by army PR people got tremendous play, raised morale and helped build support for the invasion. In a world where a quarter of Americans believe that Iraq used weapons of mass destruction against Americans, where a third believe the U.S. forces found WMD in Iraq, and where more than a fifth of Americans believe that Saddam Hussein is head of al Qaeda, how many Americans noticed the follow-up story of the military's deliberate lying to them? And, in the atmosphere of feel-good celebration of the easy victory, how many really care?

Can anyone believe that the professional liars who concocted the story have been punished for lying? It is far more likely that they have been rewarded, for the same reason that the military and administration did nothing to dispel the false information until their hands were forced weeks later.

— R. W. Bradford

**Shopping spree** — Being against the war apparently hasn't caused W. Va. Sen. Robert Byrd's pork-barrel instincts to deteriorate. Among the spending items slipped into the war spending bill was \$437,000 for the Huntington Sanitary Board of Huntington, W. Va., for the construction of wastewater treatment facilities. Nancy Pelosi, the very embodiment of the San Francisco Democrat, scored \$200,000 for the House of Aids Research Institute. What you didn't know was that this is not just a War on Terror, but an all-out assault on the most dreaded scourge of all, government underfunding.

— Alan W. Bock

**Praise the Lord and cut the interest rates** — Today's absurdly low interest rates are an obvious attempt by the administration and the Federal Reserve to goose the stock market and the economy. When you lower the cost of borrowing money, both businesses and consumers will borrow more of it, and spend it. Businesses buy capital goods and advertising, and consumers buy stuff — everything from homes and cars to computers and washing machines.

The problem is that making money cheap is inherently inflationary: the only way you can cut the price of anything that people really want is to increase its supply, and since money is no longer anything more than paper with ink on it, the government can make as much of it as it wants to. But inflating the money supply doesn't just increase buying: when demand increases, so do prices.

The government has tried to hide this fact in two ways. First, it has monkeyed around with the Consumer Price Index, which is the means by which most people gauge inflation. Second, it has fretted about the possibility of deflation, or a general decline in prices — despite the fact that the CPI, even after being eviscerated by the government, is still rising by 2.2% per year. This level of inflation, which used to be considered scandalously high, has somehow come to be treated as if it were non-inflationary.

In the time it takes a child to grow up and enter college, the value of every dollar his parents put aside for him will have been reduced by 32%.

But none of this has stopped politicians and the financial press from wringing their hands over the imminent danger

of deflation, which now means exactly the opposite of what it ought to mean.

Keeping interest rates at ridiculously low levels is inflationary in another way as well: it makes the dollar less attractive to investors, stimulating them to sell American money and buy other currencies, with which they can get higher interest rates. This reduces the value of the dollar in terms of those other currencies, which means, in turn, that the stuff we import costs more and the general level of prices goes up.

Inflation is one limiting factor on the effectiveness of interest-rate reductions. There are two others.

Reducing interest rates reduces the yield on savings and investments, making people reluctant to save, and thereby depleting the capital stock which fuels the economy. Right now, the True Yield on Saving — that is, the yield on money market funds after taking into account the impact of the federal income tax and inflation — is -1.71%. This means that if you invest \$10,000 in a money market fund, in one year you'll have \$9,829.

Even the Fed cannot cut interest rates to less than zero. Right now, the target Fed Funds rate (the rate at which banks make overnight loans to each other, which the Fed controls by supplying new money) is 1%. There's not much more room to cut.

Americans appear to be convinced that the best way to manage the economy is to have a good manager in charge of it. The man in charge of setting interest rates and of managing the economy is Alan Greenspan. Greenspan is almost certainly the savviest manager in the Fed's 80-year history.

He understands an awful lot about the market process and respects the value of *laissez-faire*.

*No man, not even one as wise as Alan Greenspan, is capable of replacing the market process with a command-and-control system — not without doing substantial harm in the process.*

But no man, not even one as wise as Alan Greenspan, is capable of replacing the market process with a command-and-control economy — not without doing substantial harm in the process. It is not a question of finding the right man for the job, but of allowing the process to work. If Greenspan's writing during the years when he was closely associated with Ayn Rand is any indication, he realizes this. But you cannot tell it by his actions at the Fed.

In the end, he will screw things up, just as all his predecessors have.

How much better it would have been if he had responded to his appointment to chair the Fed in the way in which Ludwig von Mises, the great economist, responded when he was asked what he would do if he were made the economic czar: by abdicating. But power is intoxicating and, apparently, not easy to resist.

Meanwhile, America's admiration for the *Führerprinzip* remains untouched. In Oregon, unemployment is rising and income is falling, and the state has reacted by appointing its

own new economic czar.

The *Oregonian's* business section ran this headline:

"Shouldering the Economy: With hopes high, Marty Brantley takes on the herculean task of reviving Oregon."

According to the paper, Brantley is well-suited for the job. He has a degree in political science and has had a successful career as an ad salesman and general manager of a television station. Besides, he is "a consummate Portland insider" who knows a lot of rich, powerful people and "possesses an extraordinary facility handling people." If anyone in Oregon thinks these qualities are not enough to "revive" the state, the *Oregonian* couldn't find him, or didn't consider his ideas newsworthy. As far as the paper is concerned, the only obstacle that Brantley faces is his agency's lack of clout in political circles.

I remember the bureaucrats in Rand's *Atlas Shrugged*, who thought that the only thing they needed to save the economy was "wider powers" for themselves. The economy ended in rubble. Marty Brantley will not get power as wide as they got, and the economy of Oregon will not suffer as much as theirs did. The different outcome is only one of degree.

— R. W. Bradford

**Pot and kettle** — West Virginia Sen. Robert Byrd had a point in his criticism of President Bush exploiting an aircraft carrier for a photo opportunity. But criticizing somebody for "flamboyant showmanship" and self-aggrandizement at taxpayers' expense sounds a bit odd coming from somebody who has made sure West Virginia has a Robert C. Byrd Highway, a Robert C. Byrd Drive, the Robert C. Byrd Locks and Dam, the Robert C. Byrd Honors Scholarship Program, the Robert C. Byrd Institute, the Robert C. Byrd Institute for Advanced Flexible Manufacturing, the Robert C. Byrd Life Long Learning Center, the Robert C. Byrd Green Bank Telescope, the Robert C. Byrd Health Sciences Center, the Robert C. Byrd Academic and Technology Center, the Robert C. Byrd United Technical Center, the Robert C. Byrd Library, the Robert C. Byrd Learning Resource Center, the Robert C. Byrd Rural Health Center, the Robert C. Byrd Hilltop Office Complex and — of course — the Robert C. Byrd Federal Courthouse and Robert C. Byrd Federal Building.

— Alan W. Bock

**Swiss on the rocks** — I recently spoke at a conference in Geneva and was saddened to see Switzerland imitating some of the mistakes of other nations, rather than keeping to its traditions. For example, Switzerland has for many centuries been much less centralized than other nations, even nations with strong federalist traditions such as Australia and the U.S. But now, the central government is growing so important in Switzerland that many of its cantons are hiring their own lobbyists to work the central government. In the traditional Swiss system, lobbying was much less necessary, since decisions were directly made by local governments or popular assemblies.

Switzerland, like other nations, is also finding that massive immigration from unfree countries, coupled with the failure to implement a strong assimilation policy, makes it difficult to maintain traditional liberties. Even by European standards, Switzerland has opened itself to a massive amount of Muslim immigration. One-sixth of the Swiss pop-



ulation is not Swiss, and in Geneva, the city of the great Protestant reformer John Calvin, the number of Muslims entering the public schools exceeds the number of Protestants. In response to Muslim interest group lobbying, many mayors have announced segregated, female-only hours at public swimming pools. So non-Muslim families lose the freedom to exercise at the hours of their choice, in order to accommodate the gynophobia of immigrants.

— Dave Kopel

**The tyranny of law** — People who regard the current administration as a danger to liberty should reflect on the Democratic candidates for president. It's a caution to think that Richard Gephardt stands on their extreme right. And this is what Gephardt said on June 23 about the Supreme Court decision in the Michigan affirmative action cases: "When I'm president, we'll do executive orders to overcome any wrong thing the Supreme Court does tomorrow or any other day." He was speaking at a forum sponsored by Jesse Jackson, and he spoke with the patented indignation of Jackson himself, or perhaps of Joe McCarthy.

— Stephen Cox

**A sad note** — Jim Grey, the California judge who had been pursuing the Libertarian Party presidential nomination in hopes of focusing his campaign on marijuana legalization, on the theory that legalization might prove to be the "wedge issue" that could get enough voters to abandon the Republican-Democratic duopoly, has decided to seek the LP nomination for U.S. Senator instead. He hadn't found the level of support and encouragement that he needed, and the chance to take on Sen. Barbara Boxer instead proved too tempting.

It's a shame, I think, for LPers who don't want to continue to pursue strategies that have been proven a failure through long experience. And marijuana legalization can't be a wedge issue in a Senate race. As the LP's membership continues to drop, and its candidates for president offer no hope of getting even one half of one percent of the vote, the situation for the LP is getting bleak.

— R. W. Bradford

**Panhandlers, cell phones, and restaurant autism** — There are certain things I think I've figured out, though they remain obscure to other people.

Some people wonder, for example, why there are practically no left-wing talkshow hosts, and none successful on the national level, except Alan Colmes, who does all he can to make friends with right-wingers. The explanation is twofold. To be successful on the grand scale, you have to express the sentiments of the majority of likely listeners, which in this country means that you have to be on the right. To be fresh and interesting, however, you have to provide something

different from the sentiments purveyed by the official media. Since those are left-wing sentiments, the moral is the same: you must position yourself on the right. Very simple: I solved the problem.

If you needed any further proof of my intelligence, I'd let you in on my solution to the free-will problem, the riddle of French political conduct, and the mystery of the *Mary Celeste*.

But I have to confess that there are some problems I cannot solve. I can't come anywhere near solving them. I'll give you three examples:

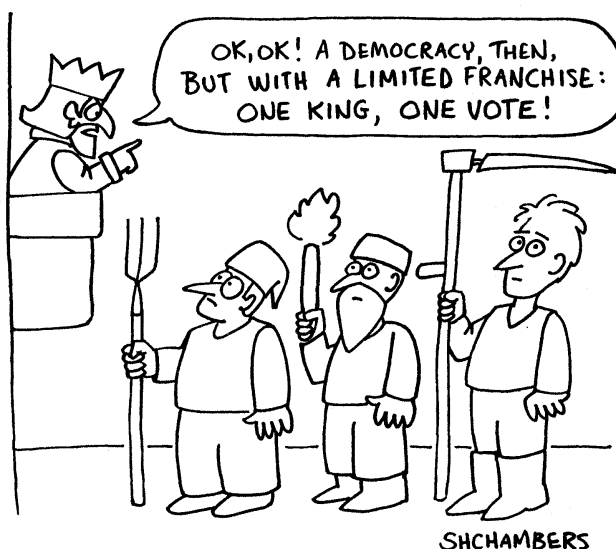
1) The Passion for Panhandlers. About 20 years ago, somebody stumbled on a mysterious truth: if you station bums at busy intersections with signs saying "Hungry: Will Work for Food," motorists will give the bums cash. They will take some trouble to do so, and they will do it without making any demand or embarrassing suggestion that any work be performed in exchange. By now, everyone knows that "work-for-food" is just another means of begging, and that the beggars are by no means trying to rehabilitate themselves

by finding legitimate work. Anyway, what prospective employee would expect anyone to run out on the median strip during the evening rush hour and offer him a job? The whole thing is patently ridiculous. Yet people still roll down their windows, stick out their hands, and give the bums money. Why?

Please don't provide any generic rationales. I don't want to hear about "2,000 years of indoctrination in the [alleged] Christian ideal of selflessness." I don't want to

hear about "the ethical corruptions of the modern liberal culture." I want to know what these strange people think they're doing at the moment when they hit that power-window button and stick those bills into those grimy hands. What could it possibly be?

2) The Overspeakers; Or, Those Who Talk Over Their Hosts. Instead of passing out money to bums on my way home, I usually listen to Los Angeles' favorite drive-time talkboys, John and Ken. Almost every day, John and Ken interview some guest who has a political point to make, and almost every day they ask the guest a question that anyone could answer with a yes or no, only to find that the guest regards the query as an invitation to repeat, over and over again, the inane talking points with which he or she began. Worse: when J and K try to interrupt and restate their question, in the faint hope of bringing the conversation to some higher intellectual level, the guest simply continues to talk. Talk, blab, blat, bleat, emit continuous syllables — the noise goes on with no pause at all. Additional attempts at intervention produce precisely the same effect. The guest just continues yapping, in the same tone and cadence, even after John



turns to Ken and says, "It's happening again! Hello! Hello out there! I don't understand it — he just keeps talking! They all do this. Hello! Hello! STOP! He's paying no attention. For God's sake, STOP! He won't stop. They're all like this. Why is this happening?"

Why indeed? And it doesn't happen only on the John and Ken Show. It happens 50 percent of the time when anyone who's being interviewed about anything even remotely resembling an ideological topic is asked a genuine question. The guest talks right over it. Why?

Now, suppose you had some controversial point to make. You were invited to make it (for free!) before a huge audience of your fellow citizens. You would have to know that somebody might possibly, conceivably ask you a question that really meant something. You would have to know that an acceptable answer would have to consist of something more than a dogged reassertion of what you've already said. And you would have to know that American audiences value, indeed vastly over-value, courteous and calm responses. You have this knowledge. But what do you do? You decide to do

## Word Watch

by Stephen Cox

I've heard that in English-speaking countries the question most commonly asked about the Bible is, "Why does it emphasize those words? I mean, uh, like, all those words in italics?" The question comes from readers of the King James translation. That's the one that says, "And God saw the light, that *it was* good." People naturally wonder why you're supposed to raise your voice when you get to a passage like "it was."

The answer is, you're not. The translators of the King James Version, which is simultaneously a great work of art and a faithful rendition of its original sources, valued faithfulness so highly that they used warning italics when they inserted words that do not appear in the original but are necessary to fill out the sense in English.

So the question that seems insignificant actually points to a very significant issue, the relationship of art and responsibility.

Since I started writing these monthly reflections about words, I've taken hundreds of questions from readers — some hostile, some incomprehensible, but most of them lucid, friendly, and interesting. Perhaps it's time to give you a sampling of what I see when I turn on my email.

The most commonly asked question isn't really very significant but is a serious annoyance to people who don't know the answer: "Does the period go inside or outside the quotation marks?" I'm asked that two or three times a day.

The answer depends on where you are. In America, it's "inside"; in Britain, it's "outside." Why? Different typographical conventions, that's all. The same goes for commas. Note, however, that in both Britain and America question marks and exclamation points always go along with the voice that is questioning or exclaiming. Thus:

Joe says that Hillary Clinton is "Lucrezia Borgia without the smarts!" (Joe's exclamation)

Joe says that Hillary Clinton is "Lucrezia Borgia without the smarts"! (author's exclamation)

Obviously, that's not just a difference in typography; it's a crucial effort to establish responsibility for the emotions involved.

Here is the second most common question: "It's never okay to start a sentence with 'But,' is it?" Sure it is. Why not? The same applies to "And." Like any other words, these two can

appear too frequently, but what's the grammatical principle that forbids them to stand at the start of a sentence? There isn't one. And what's the bad effect on the audience? There isn't one. Case closed.

We can dispose in a similar way of two other questions that continually leak from the bad grammatical consciences of our countrymen: "Aren't passives considered wrong?" and, "You shouldn't use contractions, should you?" Well, what's wrong with a contraction, if you want an informal tone? And what's wrong with a passive, if it helps you achieve the right emphasis?

"America was founded by statesmen, not by politicians!"

"That book wasn't 'written'; it was typed!"

A question that's asked with surprising frequency is, "What's a split infinitive?" At a certain age (around 42, I believe), a lot of people suddenly get very nervous about this issue. They start rummaging through their prose, and others', trying to find any fissionable infinitives that may be concealed on the premises. Their zeal often exceeds their knowledge. I had a professor in graduate school, a prominent man in his field, who believed that "had recently arrived" was a split infinitive, because "recently" comes between the two parts of the verb. There was only one problem — "having arrived" is not an infinitive. If the phrase were "to recently arrive," then there would be an infinitive ("to arrive") and it would be split. But if you don't have an infinitive to start with, sorry, you can't split one. Years after I obtained my degree, my former professor asked me to read a draft of one of his articles. It was excellent, except that it was loaded with split infinitives. I explained that to him, but I don't think he understood. His work is still loaded with them.

Well, what's the matter with splitting infinitives, anyhow? Nothing, basically. You can't split an infinitive in Latin and Greek, because those languages don't have two-part infinitives. Only English does. When grammarians trained in classical languages got loose on English, they forbade doing things that can't be done in Latin and Greek, and one of those is splitting an infinitive. "Huh?" you say. And you're right. It's wacky. But many people who care about language have been taught that splitting infinitives is a nasty, low-class thing to do. In addition, a split infinitive is one of the easiest grammatical errors to spot (once you know what it is), so people can easily look over your job application or your scientific paper, find a split, and declare you illiterate. My advice, therefore, is: don't split infinitives.

the most obnoxious, annoying, counter-productive thing possible. Again, what are these strange people thinking?

3) The Spatially Challenged. You're walking down the street and suddenly the man coming toward you looks you in the face and screams, "The hell I will! What do you take me for, an idiot?" Of course you do, but that's only a minor part of your reaction. Your body immediately prepares for fight or flight. Then you realize what's happening: he's just screaming into his cell phone.

Or how about this: you're sitting in a restaurant, talking in

low but distinguishable tones with the friends at your table, but your words are drowned out by a booming voice that's reciting every detail of some stranger's sex life. You look around angrily, trying to discover where they put the loud-speaker. But no — what you're hearing is that gentleman over by the window, 50 feet away, who is making sure that every person in the place is privy to things you wouldn't see on an X-rated website. Now, why would any human creature want to talk like that?

I've thought of several reasons, none of them at all suffi-

"Hey! Who's the final authority on this stuff — you?" Well, yes, in a way. It's you or me or whoever takes the trouble to think about the logic of language and the psychological associations and effects of the various ways of using it. In the Declaration of Independence, Jefferson advances certain claims; then he says, "To prove this, let facts be submitted to a candid world." He didn't have to put it in exactly that way. He could have said, "If anybody wants to know why, here's the facts and hopefully if everybody's honest and paying attention, they'll admit that they're true." There's no law against writing things like that. But think it over. When you use two "they's" in the same phrase, you're making your audience stop and worry about whether they refer to the same thing or not. Why make people do that? And when you take 22 words to say what might be said in 11, you're tiring your audience's patience. Why do that, either?

Let's get even more basic. The fundamental principle of the Indo-European languages is parallelism. You can violate the principle if you want to. You can make "facts" plural and give that subject a singular verb (the "s" in "here's"). You can do it again by giving "everybody" (singular) a plural complement ("they"). This will alert your audience to the fact that you don't care about the logic of language. But it won't help your argument.

Ultimately, it's the logic and effect that count, rather than the

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*"Hey! Who's the authority on this stuff — you?" Well, yes, in a way.*

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rules. When McDonald's opened its first restaurant in Russia, a tremendous line formed in front of the doors. One of the people who waited for hours to get in was a young man who was struggling with English. A TV reporter asked him, "What are you waiting to buy?" He replied, with a big, slightly puzzled grin, "I egzbeect Beeg Mac!" He thought that "expect" meant "am waiting for," and he was wholly innocent of the English indefinite article. But he was much more charming than a speaker of perfect English who, at such a peak of dramatic exuberance, would dawdle around with "a" or substitute an emotionless "wait" for the richly optimistic "expect." If the young man were writing an opinion for the Supreme Court, I'd want him to use a different kind of language, but his actual use of words was like the cow's use of its brains — good enough for the purpose.

Anyway, you can work all of these issues out for yourself, or you

can get a jump on them by consulting other people who have given them thought. These people are authorities, but they are not oracles. Because they're using logic, not receiving divine illumination, they can make mistakes. You don't have to agree with them. But check them out. The almost universally acknowledged leader in the field is "Fowler" — that is, *A Dictionary of Modern English Usage*, by H.W. Fowler, published in 1926 and revised by various hands in the years succeeding. (Buy from a used bookstore; the current revision is a dumbing down.) Fowler is usually right, but again, it's the logic that counts. Even when he's wrong, he displays his logic, so you can think about it and decide for yourself.

And he's fun to read. "Fowler" is basically a bedtime book; you leaf idly through it, finding entertaining things about language that you never noticed before. "Elegant variation" is most people's favorite Fowlerism. That's his name for the unsettling practice of changing words when you're not changing the thing they refer to. Examples: "They spend a few weeks longer in their winter *home* than in their summer *habitat*." "The Bohemian Diet will be the second Parliament to elect *women* deputies, for Sweden already has several *lady* deputies." After reading that sentence, you'll be very likely to agree with Fowler that "it is the second-rate writers, those intent rather on expressing themselves prettily than on conveying their meaning clearly, & still more those whose notions of style are based on a few misleading rules of thumb, that are chiefly open to the allurements of elegant variation."

Fowler was distrustful of the rule against split infinitives, but rather than just laying down the law, he explored the logic and psychology at luxurious length:

The English-speaking world may be divided into (1) those who neither know nor care what a split infinitive is; (2) those who do not know, but care very much; (3) those who know & condemn; (4) those who know & approve; & (5) those who know & distinguish.

Guess which group Fowler was in? Yet his description of Group 1 begins in this way:

Those who neither know nor care are the vast majority, & are a happy folk, to be envied by most of the minority classes . . .

The Victorian mentality gave English speakers a set of tools that the rest of the world still envies: the *Oxford English Dictionary*, the *Dictionary of National Biography*, the *Encyclopedia Britannica*, and a *Leading Authority on Usage* that is also a hoot.

cient. One that I tried was our era's famous "breakdown in civility," but that explanation had a number of fatal defects. First, it's sheer determinism: nobody has to be uncivil. Second, it's only a negative explanation: civility may be absent, but that doesn't explain where civility went. And third, it's the kind of explanation you'd see in *The New York Times*.

Another possibility, I thought, was: "They don't really know how loudly they're talking." Well, maybe; but if they can't tell what their volume is, why aren't they talking *ultra-softly*, at least half the time? Then I thought about the explanatory capabilities of arrogance, aggression, the lust for self-advertisement, and all the other psychic impulses that make people want to get in other people's faces. But this turned out to be the worst explanation of all, because, as I found, it was directly contradicted by experimental evidence.

Have you ever stared directly and menacingly at one of these space invaders, with the obvious implication that if he doesn't lower his voice, you're gonna come after him with a chocolate cream pie? Have you ever raised your own voice in

an obvious attempt to shout over him? Have you ever inclined your ear unto him and, with studied facial gestures, demonstrated that you were following with fascination every degrading episode of his last divorce? I've tried all three of these experiments, many times, and never once have I seen the faintest sign of the subject's responsiveness to his audience. I have sat in public places where all conversation ceased, all heads turned, and all eyes focused on the Mussolini-like orator — and the glazed look never left his face. (Or, to be fair, *her* face; it happens just as frequently with *her*.) He wasn't trying to ingratiate, impress, intimidate, or insult. He really didn't care who looked at him, or what those people might be thinking. He wasn't trying to get into anybody's face; he was just . . . what? What (yet again) was he thinking?

Explain that to me, you psychologists, sociologists, demologists, and psychoepistemologists! And when you offer your explanation, I hope it's accompanied with a cure.

— Stephen Cox

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## Letters, from page 6

layer to the whitewash heaped on Lincoln's war.

Jack Dennon  
Warrenton, Ore.

### Hack and Slash

Stephen Cox is obviously a/an pretentious/arrogant S.O.B.!

James S. Ferry  
Morris, Ill.

### The Coercion of SUVs

Since the roads are controlled by government monopoly, libertarians shouldn't apply standards of behavior to road users that they justifiably support in the context of a free market. Competition drives business owners to consider the impact of one customer's behavior on another customer, and regulate it to maximize satisfaction overall. In these cases, it is unnecessary for customers to consider the welfare of their fellows directly; that is, they can be selfish. Also, competitors may occupy different niches in the same market, collectively satisfying a wide range of customer tastes and expectations.

On the road, however, as with, for example, law enforcement, a different moral standard applies. The average libertarian would call the police if they saw a burglar entering someone else's home, even though they have nothing directly to gain, and would eventually pay a share of the taxes that support the police response. Selfishness in this case becomes unacceptable.

When a person buys an SUV, he

pays more for a larger vehicle. He also pays more to cover increased fuel consumption. If the markets in vehicles and in fuel are reasonably free, each person gets what he pays for and no one else has reason to complain. Similarly, if air pollution laws are evenhanded, and inhibit behavior in proportion to the environmental costs incurred against the breathing public, SUV owners would be paying their way again via higher registration fees or more anti-pollution equipment.

A handful of SUV owners actually use them for the things we see in SUV ads, like climbing giant sand dunes or traversing swamps, and these special requirements should be considered. However, when a typical SUV owner gains by having better visibility in traffic, and by being safer in a larger, stronger vehicle in the event of a collision, he does so directly at the expense on the non-SUV drivers in the vicinity. They suffer from decreased visibility, especially from behind the SUV, and increased physical risk in an accident involving an SUV. If those other drivers bought SUVs in order to level the playing field, we'd all be back where we started. Higher costs and increased pollution would no longer be balanced by better visibility or safety, and yet it would behoove each driver to continue such wasteful behavior.

In short, the libertarian ideal of "Every man for himself," which I generally support, should, in the context of government monopolies, be moderated

with a version of "Down in front."

John Susko  
East Brunswick, N.J.

### Lies, Damn Lies, and SUV Statistics

In his rebuttal to Karen De Coster, regarding SUVs, Jeff Riggenschach relies on his often-repeated mantra, "the occupant death rate in SUVs is 6 to 8 percent higher than it is for ordinary passenger cars." Statistics can be "tortured" to give up anything. If his statistics are from an anti-SUV entity, they are suspect. Government (National Highway Traffic Safety Administration) currently "imputes" drunk drivers into statistics without any evidence (National Motorists Association, *News* May/June). Politically correct, anti-liberty issues *du jour* often determine statistical outcomes.

Other possible influences on alleged increased deaths in SUVs:

1) SUVs are driven in hostile environments far more than other vehicles. They're used in many emergency situations, such as in the excessive number of storms this past winter.

2) Testosterone levels of SUV drivers tend to be far higher than, for instance, the soccer-mom minivan crowd.

These scenarios reflect on the situation, and *drivers*, not just the vehicle. Riggenschach has not taken these variables into account when forming his SUV death-rate hypothesis.

Jim Kinard  
Lancaster, Ohio

# A License to Discriminate

by Robert A. Levy

If its June 23 rulings about the University of Michigan's affirmative action programs are any indication, the Supreme Court thinks "equal protection" means "protection from *obvious* violations of the Constitution," and that discrimination is just fine, provided you disguise it.

When the Constitution says that no state may "deny to any person within its jurisdiction the equal protection of the laws," it apparently means that Michigan can discriminate in favor of African-Americans, Hispanics and Native-Americans who would like to enroll in the state's taxpayer-funded university. That's how the U.S. Supreme Court reads the equal protection clause of the 14th Amendment — with the evident approval of President Bush, who declared on June 23, immediately after the court's long-awaited rulings on two Michigan affirmative action cases, that "Today's decisions seek a careful balance between the goal of campus diversity and the fundamental principle of equal treatment under the law."

Translation: under the guise of seeking a more "diverse" educational climate, the Constitution may be treated as so much tissue paper. Essentially, that's the pronouncement from the nation's highest court and the nation's chief executive. As for the legislative branch — or, more precisely, two legislators who are also Democratic candidates for president — it mattered little which way the court ruled. The day before the Michigan decisions, in a debate sponsored by Jesse Jackson's Rainbow/PUSH Coalition, Reps. Dick Gephardt of Missouri and Dennis Kucinich of Ohio said they'd simply issue executive orders supporting affirmative action if the high court stuck down the Michigan policy. There you have it: return of the king.

If a public university wants to implement racial preferences in its admissions policy, the court gave its blessing, then added a useful tip: obfuscate; don't let on that slots are reserved for minorities. A separate admissions track for Hispanics won't pass muster. Neither will a quota for

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African-Americans, nor a numerical scheme for Native-Americans that looks like a quota. That's why the court, in a 6-3 opinion written by Chief Justice William H. Rehnquist, invalidated the program adopted by the University of Michigan College of Literature, Science, and the Arts in *Gratz v. Bollinger*. The college used a 150-point system with 100 points required for admission and 20 points automatically granted for minority status. "The factor of race," said the court, is "decisive" for virtually every minimally qualified applicant among the favored three minorities.

On the other hand, if a public university seeks those same ends but camouflages its intent with rhetoric suggesting a "holistic" or "highly individualized" approach centering on a "flexible assessment of applicants' talents, experiences, and potential," that ploy will survive the court's scrutiny. Thus did Justice Sandra Day O'Connor, writing for a five-member majority in *Grutter v. Bollinger*, uphold the University of Michigan Law School program that treats race as a mere "plus factor" and is designed to enroll a "critical mass" — ranging between 10 and 17 percent — of underrepresented minority students. Never mind testimony that applicants in certain racial and ethnic groups were "many, many (tens to hundreds) times" more likely to be admitted than non-minorities.

The good news from Justice O'Connor is that "race-conscious admissions policies must be limited in time." While non-binding, the "Court expects that 25 years from now, the use of racial preferences will no longer be necessary." That is little consolation to Americans who responded to a recent Pew survey and indicated, by an overwhelming 3-to-1 margin, their current disapproval of "giving [minorities] preferential treatment." Nor is the court's quarter-of-a-century window much solace to those who remember the past 25 years of discriminatory admissions in the aftermath of Justice Lewis F. Powell's 1978 opinion in *University of California v. Bakke*.

In that seminal case, the state medical school reserved 16 of 100 seats for selected minorities. Bakke, a white male, was rejected in favor of a less-qualified minority applicant. Four justices said that the university's race preferences were permissible as a remedy for past societal discrimination. Four others voted to invalidate the program on statutory grounds. Justice Powell provided the key fifth vote for invalidation; but he added, in a separate opinion not joined by any other justice — and not integral to the majority holding — that attaining a diverse student body might be important enough to justify race preferences.

Powell's position, although not technically a holding of the court, has been the foundation for many affirmative-action programs. In *Gratz* and *Grutter*, for the first time, the Supreme Court officially adopted the Powell view that diversity is a "compelling state interest." Here are the implications: The equal protection clause bans state discrimination, but the ban is not absolute; states cannot always treat everyone in exactly the same way. Still, when states discriminate on the basis of a "suspect class" like race, they are subject to "strict scrutiny" by the courts. First, the state must show that it has a compelling reason to discriminate. Second, the state's program must be "narrowly tailored" to accomplish the specified goal. That is, the program may not sweep too broadly and unduly harm non-minority applicants.

After *Gratz* and *Grutter*, an admissions program intended to promote racial diversity will satisfy the first part of the two-part test. State universities, in establishing such a pro-

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*A recent poll found that 84 percent of Ivy League professors voted for Al Gore in 2000. If colleges were really worried about diversity, they would be promoting preferential hiring of Republican professors. Don't hold your breath.*

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gram, need only ensure that it is narrowly tailored. In *Grutter*, the law school passed that second test. In *Gratz*, the undergraduate college failed. Nonetheless, while overturning the *Gratz* point scheme, the court offered a road map sufficiently elastic to guarantee that Michigan and other states will be able to craft racially preferential admissions policies that will survive judicial review.

That's big news, and a major disappointment to opponents of racial preferences. The plaintiffs in the two Michigan cases did not challenge the use of race-conscious remedies to

counteract proven anti-minority discrimination by the state. Nor did the plaintiffs challenge outreach efforts to communicate the university's equal opportunity and non-discrimination policies as a means of enlarging the pool of minority applicants. If a state is to be in the business of providing college education at public expense — a topic for another day — then discrimination against minorities must be redressed, and outreach programs are unobjectionable.

But the race-based preferences in *Grutter* are very different. There the court implicitly condoned four injustices: punishment of individuals to advance group interests; discrimination that often benefits non-victims and harms those who have done no wrong; preferences for minorities who are relatively wealthy and have endured few of life's hardships; and prejudicial treatment of other minorities and whites who may be relatively poor.

By what principled means do we decide which groups are to be advantaged? Shall we include Pacific Islanders? Laotians? Arab-Americans? What percentage minority lineage is sufficient to qualify? Jewish blood won't get you very far because Jews are already over-represented. But Franklin Rubinstein's mother is Mexican-American, so he garnered an admissions boost at a top law school. After all, said Rubinstein, "I brought the unique perspective of growing up half-Jewish and half-Mexican."

Even worse, preferential admissions will inevitably lead to one of two lamentable outcomes: either lower standards for graduation or higher dropout and flunk rates. Multiple studies have shown that less qualified applicants cannot compete unless standards are relaxed. And qualified minorities are stigmatized, tarred with the presumption that their matriculation is attributable not to their ability but to the color of their skin.

Meanwhile, college administrators will trumpet the attainment of diversity — by pigmentation, of course — though not diversity of viewpoint, the quintessential ingredient of an educational institution. Indeed, a recent poll by Luntz Research found that 84 percent of Ivy League professors voted for Al Gore in 2000, 6 percent for Ralph Nader, and 9 percent for George Bush. If colleges were really worried about diversity, they would be promoting preferential hiring of Republican professors. Don't hold your breath.

Justice O'Connor, not persuaded by those arguments, relies instead on legal briefs filed by corporate leaders who insist that "the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people," and military leaders who proclaim that a "racially diverse officer corps is essential to national security." Those assertions, dubious on their own terms, are irrelevant. If corporations want more minority executives, let them hire from private universities that can implement affirmative action programs without raising constitutional concerns. Or let the corporations fund scholarships for deserving minority applicants, or recruit inner-city talent.

Moreover, businesses and the military can draw from the vast majority of public universities that admit virtually all applicants. There is no reason to believe that minority graduates of those universities would not be qualified for military leadership positions. Only the elite schools have restrictive

*continued on page 41*

# TIA Lives!

## The Rise of the New Secret Police

by Joe W. (Chip) Pitts III

“Total Information Awareness” has been rechristened “Terrorist Information Awareness,” but it’s still the same high-tech invasion of every American’s privacy.

The Patriot Act, the Homeland Security Act, the executive orders enhancing government power and diminishing freedom, and proposed legislation like “Patriot II” raise serious legal and practical concerns. However, the most serious long-term threat to liberty from this administration isn’t from a new law. It is from the extralegal practice of using technology against law-abiding inhabitants of the U.S.

### TIA Lives!

The most threatening of these programs is the “Total Information Awareness” (TIA) initiative. It raised a hullaballoo in this country as journalists, citizens, and politicians found out who and what were involved. Former Iran-Contra mastermind John Poindexter runs the Total Information Awareness program, developed by the Defense Advanced Research Projects Agency (DARPA), with and for the Department of Justice, FBI, CIA, DIA, and NSA. It is a plan to put every electronic trace you leave into a huge “virtual information repository.” (It’s too grandiose to be called a mere “database”.) The repository would be compared with patterns of terrorist conduct to predict and prevent terrorism. Yes — the groceries or magazines you buy, videotapes you rent, alcohol you consume, trips you take, hotels you stay in, checks you write, speeding tickets you receive . . . all are to be included in this database.

As I discussed in my article “Totalitarian Information Awareness” (March), serious technical issues exist which call into question whether this new Defense Department system could ever work as intended. Even if it could, it would be at an enormous social cost: a level of constant and pervasive electronic surveillance that would radically change America for the worse. I have not been alone in decrying this program.

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Conservative *New York Times* columnist William Safire and others have strongly condemned the program, with Safire calling it a “super-snoop’s dream.” So has left-liberal *Times* columnist Maureen Dowd.

Sen. Ron Wyden (D-Ore.) attached a rider to an omnibus spending bill (Public Law 108-7) in February that subjected the program to at least a little scrutiny, expressing a non-binding “sense of Congress” that TIA shouldn’t be deployed against U.S. persons (i.e., U.S. citizens or permanent residents) except after consultation with Congress and in a way that doesn’t violate Americans’ traditional civil liberties. Contrary to most reports, however, Congress didn’t “ban” or “prohibit funding for” the initiative. Congress merely conditioned future funding on receiving by May 20 a joint report responding to its concerns from the secretary of defense, the attorney general, and the director of the CIA. The rider also requires notice to Congress before TIA is used — with, however, a significant caveat allowing deployment *without* notice “in support of” military or foreign intelligence operations abroad (or against non-U.S. persons).

Undersecretary Pete Aldridge of the Defense Department and TIA documents have repeatedly put the budget for TIA at a mere \$10 million in fiscal year 2003; the reality is that “PR Pete” and the report to Congress refer only to the integrative subset of the effort technically known as “TIA,” excluding the 16 individual core research and development programs that are being integrated. These happen to cost an additional

\$137.5 million for fiscal year 2003, and several hundred million dollars more over the planned multi-year funding period.

The ever-accelerating spin from the TIA office has overtaken that of the spinning globe being X-rayed by the "all-seeing eye" of the previous TIA logo. As the public apprehension over TIA grew, the creepy logo, the biographies of the main players, the detailed charts and system descriptions, and other revealing information disappeared from the TIA

*Previously in human history, natural limits, including physical barriers of time and space, meant that the impact of technology upon power wasn't much of a concern.*

website. A comforting report was delivered by the late May deadline to Congress, offering assurances of the highest respect for "existing" privacy and other laws and a new commitment to include privacy technologies in deployment. The report misleadingly suggests several times that only foreigners will be spied on. In the same spirit, the program's name was changed from "Total" Information Awareness to the more politically palatable "Terrorism" Information Awareness. They've added an internal oversight board and an external advisory board, but Poindexter's still in charge. *And the program continues essentially unchanged.* A rose by any other name may still be a rose, but a rotting thornbush by any other name still stinks.

The report to Congress is arguably deficient in many respects, especially in not assessing in detail, as required, the "likely efficacy of systems such as [TIA]. . . in providing practically valuable predictive assessments of the plans, intentions, or capabilities of terrorists or terrorist groups." The report also misleads in various ways. In assessing TIA's impact on civil liberties, the report stresses (p. 27) that "the TIA Program is not attempting to create or access a centralized database that will store information gathered from various public or privately held databases." That's because, although the databases are going to be decentralized, they still will be widely accessible (or, as Appendix A-11 says, "virtually centralized"), and also perhaps because, according to the prior version of TIA's website, the very term "database" is considered inadequate to encompass TIA's ambitions. Misleading statements from administration officials that TIA was "only a research program" are belied by statements such as that on page 5 of the report that Poindexter's team will be continuously applying TIA system technology "using real-world data and real users to solve real-world problems" throughout the initial multi-year funding period.

### Legal Threats

The emphasis in the new TIA report on the protections of existing law fails to take into account the diminutions of those protections accomplished by the USA Patriot Act and other measures. The report says that "DARPA affirms" that TIA is "only using data and information that is . . . foreign intelligence and counter intelligence information legally obtained and usable by the Federal Government under exist-

ing law." But the breakdown in the Patriot Act of the previous "wall" between domestic law enforcement work (traditionally the province of the FBI) and foreign intelligence work (traditionally that of the CIA) goes beyond the sensible sharing of information. It also means that the Foreign Intelligence Surveillance Act regime, involving secret courts rubber-stamping the requests of law enforcement personnel, and lowered standards for gathering and using information against foreign spies and terrorists, has now been imported into the sphere of domestic policing and applied to U.S. citizens and permanent residents as well as "agents of a foreign power."

This means that traditional constitutional safeguards like meaningful judicial review, warrants before searches, and probable cause guaranteed by the Fourth Amendment can now be essentially ignored if law enforcement labels its work "in connection with a terrorism or espionage investigation." You may have heard about the FBI's enhanced ability to seize library and bookstore records without telling you, and you may know that the informant in these seizures will be subject to criminal penalties for telling anyone about the disclosure. But section 215 of the Patriot Act requires secret disclosure on FBI demand not just of book and library records, but "any tangible thing." Section 213 similarly allows your house, place of business, or other location to be secretly searched without prior notice. Section 216, among others, expands the government's electronic surveillance power over the content of your communications, even absent probable cause for belief that a crime has been committed. The vague definition of terrorism in section 804 (any illegal actions seen as dangerous to human life that are undertaken to "coerce or intimidate" civilians or the government) is broad enough to encompass sit-ins such as those popular in the civil-rights and Vietnam eras, or creative but peaceful protests by groups ranging from Greenpeace to anti-abortion activists to NRA activists.

So one must realize that TIA works in conjunction with the threats from new laws like the Patriot Act. But at least the authority given under such laws was democratically enacted, subject to debate, and bounded by legal constraints. Our Defense Department, Justice Department, and Homeland Security Agency, by contrast, seem increasingly to resort to TIA and other means not bounded by such constraints because they are wholly outside the framework of existing law.

### Extralegal Threats

Defense Secretary Rumsfeld and President Bush, by merely labeling U.S. citizens "enemy combatants," have denied them the most fundamental right we have — habeas corpus, the right to demand that the authorities present before a magistrate "the body" detained in order to justify the detention. This violates, in addition, Fifth and Sixth Amendment rights to due process of law, to the assistance of counsel, to confront hostile witnesses, and to a speedy and public trial. They say this is nothing new, pointing to the widely disparaged *Quirin* case involving German saboteurs in World War II, including one U.S. citizen, who abandoned their uniforms upon arrival and were captured trying to commit terrorist acts, then executed. But even *Quirin* occurred in the context of a declared war with a visible end, unlike the



“War on Terror,” and involved not just detentions but trials (after all, the Supreme Court heard the case). The current actions, by contrast, not only lack constitutional justification; they are truly unprecedented in U.S. history.

Due process under the Fifth Amendment and rights under the Sixth Amendment are rendered meaningless if someone like Yassir Hamdi (a U.S. citizen born in Louisiana) cannot even challenge the government’s allegation that he was captured on the battlefield in Afghanistan. But the 4th Circuit Court of Appeals accepted the government’s argument earlier this year that he can’t do so. Another U.S. citizen, José Padilla, was captured at O’Hare International Airport and held in solitary confinement in a military brig without allowing him to meet with counsel. Attorney General Ashcroft has similarly held a number of U.S. citizens without trial or charge in an abuse of the “material witness” statute, including Intel software engineer Mike Hawash, a U.S. citizen who, after over a month in jail and pressure from Silicon Valley and colleagues, was eventually charged with weak accusations of supporting “terrorist groups.” Ashcroft’s own Department of Justice inspector general recently reported on the hundreds of indefinite detentions, denials of the right to counsel, and other abuses that took place after 9/11. The use of Homeland Security Agency resources to track down the “Killer Ds” — the Texas Democrats trying to avoid Tom DeLay’s forced redistricting vote by fleeing to Ardmore, Okla. — was only the most ridiculous abuse of power lately.

And yet government representatives including Ashcroft and his former deputy, Viet Dinh (who just retired to return to teaching law), have repeatedly said recently that citizens should “trust” them. Well, TIA programs will tell them, among other things, who trusts them and who doesn’t, just as they will institutionalize a requirement that we trust government with our information whether we like it or not. And we may not like it: the automation of data collection reduces us to a number, or similarly truncated aspect of ourselves. As shown by incidents including mistaken names on the “no-fly” list (people banned from flying because their names are similar to those of terrorists or “persons of interest”), such automation limits your ability to rebut what the government says about you.

While belatedly recognizing in the report to Congress that Americans are “rightly” concerned that massive data collec-

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*The privacy policies on which we’ve come to depend will be fairly meaningless as the government increasingly gains access to private databases.*

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tions on their activities “implicate[s] privacy interests,” Poindexter and administration officials continue to plead in the report for Americans to trust government not to misuse the data after it’s collected. Some parts of the report coyly pretend that collecting data on U.S. citizens is not even currently “contemplated,” while other parts (e.g., on the same page) make clear that such data is already being collected and used (in accordance with “existing” law, of course). Some parts of the report pretend that nothing has been deployed

yet, while other parts make clear that this is untrue.

The beauty of TIA, to Ashcroft and Poindexter, is that it operates completely in the dark (Potemkin reports to Congress aside), without even the need to violate laws, because this arena is almost completely unregulated.

### Privacy Protections?

Defenders of TIA in public statements and in the report to Congress claim that the parade of horrors envisioned by

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*The groceries or magazines you buy, videotapes you rent, alcohol you consume, trips you take, hotels you stay in, checks you write, speeding tickets you receive . . . all are to be included in this database.*

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critics can never occur, because the project will be conducted in strict conformity with all the nation’s “existing” privacy laws. Well, they neglect to tell you that the U.S. doesn’t have extensive privacy laws. In fact, there is no omnibus, comprehensive privacy law at all. The First Amendment freedom of belief, opinion, religion, and expression; the Second Amendment provision allowing keeping and bearing arms; the Third Amendment protection against quartering troops; the Fourth Amendment protection from unreasonable searches and seizures, and so on, protect you only from specific government actions — not from the government broadly snaring information from private sources. Those private sources respect privacy only inconsistently, with the aim of gaining and keeping the trust of their customers, and their privacy policies are generally subject to change at any time. Private companies almost always reserve rights to amend privacy policies unilaterally, without substantial notice, and without respecting rights pertaining to data collected prior to the change. When the government comes calling, some will ask for a subpoena if the laws allow them to do so; most will just roll over. So all those privacy policies on which you’ve come to depend will be fairly meaningless as the government increasingly gains access to private databases.

The Privacy Act of 1974 similarly protects only against action by specific government agencies, as do the handful of other agency-specific privacy laws (e.g., in the telecommunications context, protecting “customer proprietary data” from use by telecommunications companies). Most importantly, these few, limited laws typically contain *exceptions* for law enforcement and national security efforts. Moreover, recent counterterrorism legislation (e.g., the Patriot Act and the Homeland Security Act) *amends* these already piddling privacy protections in myriad ways to ensure that the government is given an even bigger free hand with which to slap you. For the administration and TIA officials to avoid pointing this out, while unctuously reassuring Americans that their rights are protected, amounts to gross deception.

### Technology and Power

Technology used to enhance and concentrate power in both private and public hands poses a new challenge not only to libertarians, but to progressives and conservatives as well.

Previously in human history, natural limits, including physical barriers of time and space, meant that the impact of technology upon power wasn't much of a concern. Developments in computing power, and in monitoring, microelectronics, database, and communications technology, offer tremendous benefits to society, ranging from video phones that keep friends and families connected to customized Internet products and services. But the shared vision of being "all connected, all the time" also has its downside, as we all know from being besieged by email spam, the renewed popularity of involuntary "candid camera" type programs, and cell phones, pagers, and similar devices going off in theatres or interrupting the most intimate moments with a call from the boss. Each is an inconvenience, but not a threat — so long as we control the intrusions through personal choice and the filtering technologies develop along with the computer and communications technologies. It's when we lose individual control that the real difficulties start.

It used to be the case, for example, that what went on in the privacy of one's home or backyard was protected in practice, so long as no one was hurt and there were no adverse spillover effects on society outside the home. This principle was reaffirmed just a couple of months before 9/11 in the June 2001 *Kyllo* case. There, Justice Scalia wrote for the Supreme Court that technology, like the remote thermal imaging technology used in that case to scan a private home for evidence that marijuana was being grown using heat-sensitive lamps, remains subject to traditional Fourth Amendment probable cause requirements and is presumptively unreasonable without a search warrant. Such decisions are now necessary because the power of technology has grown to the point that virtual omniscience, previously reserved for gods, suddenly has become a real possibility. TIA's name for its primary database initiative — Genisys — echoes the biblical creation story, in what can only be an unintentional irony.

As its report to Congress claims, TIA may not be intended to create dossiers on all Americans. But that will be possible at the click of a button once data is collected on all of us and on our legitimate relationships (which TIA aims to distin-

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*Forgive me if I'm reluctant to trust this administration with more power, given its track record on privacy and civil-liberties issues.*

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guish from "terrorist" relationships). It may not be TIA's intent to create a society in which Big Brother is always watching you. But that will be the system's capability upon completion: all that will be needed to expand the power of the various face, voice, gait, and other recognition systems will be to add more minute cameras, microphones, monitoring stations, or other sensor hardware. As such unprecedented new power to collect information is deployed, it will unavoidably change our culture, perhaps irreversibly. We may resist it now, but most will ultimately accept as normal the new level of government monitoring and control in our daily lives. Forgive me if I'm reluctant to trust this administration with more power, given its track record on privacy

and civil-liberties issues. Even if you do trust our current military and civilian leaders, what's to stop a future tyrant from abusing such a powerful system?

### Respect Constitutional Norms

We won't be able to stop the private advance of technology, including that sought by TIA, and it isn't a good idea to try. And not all the TIA subprograms are bad. Sure, we know that terrorists use technology to communicate using encryption and transfer funds clandestinely, and that they use disposable cell phones and Internet cafes, ultimately, to fly planes into gleaming skyscrapers. And we know that tyrants can now abuse ever-more-powerful technologies against their own citizens. But that doesn't mean we should prevent all private encrypted communication, or ban secure Internet sales, air travel, or capital markets . . . or, for example, the universal translation, legal database sharing, and scenario planning work being done under TIA auspices. Pessimists like Bill Joy, the chief scientist of Sun Microsystems, who ironically wants to identify and stop dangerous technologies in their tracks via flat bans in certain cases, are fighting the wrong battle. It's both impossible and unwise to try to stop innovation. Some risks are inevitable in life, and it's a chimaera to think that we can return to some imaginary, pastoral Golden Age. We also need the full force of our technical talents to be unleashed to defend us against the terrorists' own use of technology. Whatever you may think of the NRA's mantra that "if guns are outlawed, only outlaws will have guns," it has relevance in this context.

But Poindexter takes technological optimism to a new extreme, with what seems to be a merely rhetorical homage to privacy and acknowledgement of the alarming implications of many TIA programs. What's needed is a nuanced review of the specific threats we face from terrorists, and tailored responses that accord with traditional constitutional norms — gathering and sharing information on individuals whom the facts indicate are terrorists, as opposed to a dragnet that sucks up information on hundreds of millions (or, as they envision, billions) of innocent people. We need to use technological tools sensibly, to identify real terrorists and contain the downsides of technological and other risks, while allowing the upsides to pass through.

What's *not* needed is a blunt instrument that mainly affects ordinary, peaceful activity as opposed to terrorist activity. And that's what remains wrong with TIA, whatever it may be called, and whatever may be the merits of some of its components. Overall, it's still a massive government initiative focused on developing technologies that completely bypass the Fourth Amendment requirements of probable cause and warrants before searches and seizures. In that sense, it's of a piece with the sidestepping of probable cause requirements in such laws as the Patriot Act, and in policies like Attorney General Ashcroft's unilateral relaxation of a prior attorney general's "Levi Guidelines" against FBI monitoring of peaceful religious and political groups (which could also violate both the First Amendment and the Fifth Amendment's protections against self-incrimination). With expanded information sharing under the Patriot Act and Homeland Security Act between the FBI, the CIA, and other intelligence agencies, the U.S. government is back in the

*continued on page 41*

# A Day in Court

by Alan W. Bock

Ed Rosenthal cultivated marijuana to help the sick. He was arrested, tried, convicted in federal court — then sentenced to just one day in prison.

When the city of Oakland's government actually tried to implement Proposition 215, initially by making the Oakland Cannabis Cooperative a deputized branch of city government, it decided, despite the Supreme Court decision that medical necessity and patients' cooperatives provide no protection from federal prohibition laws, to grow cannabis for certified patients. For help, it turned to Oakland resident Ed Rosenthal.

For many years, Rosenthal had written a column on cultivating the demon weed for *High Times* magazine. He had made a career of writing about marijuana, especially how to grow it. When I visited him in Oakland last year, I discovered that his interest grew from a larger interest in plants and gardening. His entire yard was full of greenhouses and plants of varying degrees of exoticism — none of them cannabis — and he talked knowledgeably and enthusiastically about all of them.

If anyone should know how to grow the stuff, he should. The city deputized him and he had several hundred plants growing in a warehouse when federal agents arrested him last year. He was found guilty in January.

On June 4, he was sentenced to one day in prison, already served on the day he was arrested. Everyone, including Rosenthal himself, was surprised. It seemed strikingly, dramatically lenient considering he had been convicted of federal felonies that could have brought up to 60 years in prison. When I talked to him the next morning, he said he had expected 21 to 27 months.

But he didn't think Judge Charles Breyer's rulings in the case showed him any favor. Although Judge Breyer acknowledged later that the prosecutor had misled the grand jury to

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obtain an indictment, he ruled against defense objections to the validity of the search warrant that ensued. He questioned prospective jurors and dismissed all who said they favored the medical use of marijuana. Then he foreclosed defense arguments that so much as mentioned the word "medical."

Breyer dismissed defense arguments based on the Ninth and Tenth Amendments and the interstate commerce clause with a laconic "you've got your record." He dismissed allegations of jury tampering or a tainted jury — despite the fact that a juror acknowledged that she had consulted with a lawyer during deliberations — though it's strictly *verboten* to discuss a case with anyone, especially a somebody involved in the justice system — and passed the advice (to listen to the judge and abide by his interpretation of the law despite misgivings) to other jurors.

"Judge Breyer handled the entire case," Rosenthal told me after the trial, "right up until the final day, as a partner to the prosecution rather than as an impartial arbiter. And he made it clear that he expected federal courts in the future to act as if California law authorizing sick people to use marijuana did not exist."

In sum, Breyer did everything possible to ensure a conviction, and then at the end gave an unexpectedly light sentence. Ed Rosenthal is not in prison, but he is on probation for three years, which means the court can intrude into his life at any time with no warning. That could mean no use of

cannabis, even though he is a certified patient under California law.

Of course, he will appeal the conviction, to try to get the 9th Circuit Court of Appeals to declare that the way Judge Breyer handled this case was inappropriate and will not guide future cases.

Until that appeal is decided, however, the situation for patients is unchanged. Legally, the federal enforcers have as much authority as they need to continue charging patients and caregivers and having federal courts treat them no differently than participants in the black market.

Contrary to common impression, the U.S. Supreme Court decision in the 2001 case did not invalidate California law or the laws of the other states that have authorized medical marijuana. When Justice Ginsburg asked the Justice

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Department lawyer arguing the case why the government had not invoked the doctrine of federal supremacy (federal law trumps state law) in this case, she answered that it wasn't an issue and if the court decided for the government it would simply be the case, as in some other areas, that state law differed from federal law, and state and federal enforcers would have to enforce their own laws.

That means in theory that all state and local law enforcement officials in California are duty-bound to enforce California law. A provision in the state constitution even requires that state officials enforce state laws even when they think it conflicts with federal law, unless and until a competent federal court has ruled that there's a contradiction and state law has been trumped. Nobody, despite a lot of brave talk, has filed a challenge to California's law in federal court on constitutional or any other grounds.

Federal officials are duty-bound, however, to enforce federal law, which places marijuana or cannabis on Schedule I under the Controlled Substances Act, strictly prohibiting its use for any purpose, medical or otherwise. You can make a strong case — I did it in some detail in my book *Waiting to Inhale: The Politics of Medical Marijuana* — that it is actually illegal to keep marijuana on Schedule I since it doesn't fit any of the criteria, but the relevant bureaucracies have spurned this argument along with other legal challenges. And I don't expect Congress to develop common sense and courage on the issue any time before Iraq becomes a functioning and independent democracy.

Until recently the feds disdained to get involved in cases involving fewer than a thousand plants. Recently, however, they have gone after medical marijuana patients and cultivators, mostly people like Rosenthal who have something of a public profile on the issue, in what looks like a deliberate attempt to make California's law null and void in practice, through a combination of incarceration and intimidation.

In practice also, state law enforcement people have

approached the issue of medical marijuana very differently. The California Narcotics Officers' website still has a position paper with the running legend "MARIJUANA IS NOT MEDICINE" in all caps.

Local police and district attorneys differ radically. In San Francisco the city government issues ID cards to patients, city police have been officially instructed since the early 1990s to make marijuana enforcement their lowest priority, and the district attorney, Terence Hallinan, is not only a medical marijuana advocate but a patient. In Placer County, near Lake Tahoe, where Steve Kubby was tried, police told him several times that "that law doesn't apply here." In general, northern California cities (with the exception of some rural counties) have tried to cooperate with patients and doctors and implement the medical marijuana law, while southern California localities have been indifferent or hostile — although the southernmost major city of San Diego recently passed a relatively patient-friendly municipal implementation ordinance. State Sen. John Vasconcellos has tried several times to get a uniform state law passed and signed that places medical marijuana issues in the health department, which would issue ID cards to patients, so far to no avail.

Politically, however, things may be changing. The Rosenthal case got considerable publicity and led to angry public protests from jury members and public officials, including California's attorney general. Although they might not change their ways on cases already in the pipeline, the federales might think twice about the next patient or provider they're planning to arrest. The possibility that any jury in California on any marijuana case involving a lot of plants but short of an outright plantation will automatically vote to acquit on the assumption that it is probably a medical marijuana case has to weigh on all concerned.

Congress might act this year on H.R. 1717, which would allow juries in federal cases in states with a medical mari-

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*Proposition 215 was never challenged in court because no competent legal authority believes it would be declared unconstitutional.*

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juana law to be informed if there is a medical aspect to a case. But I would be amazed if President Bush, that endlessly compassionate conservative, didn't veto it if it passed.

Unfortunately, the attitude of most federal officials is probably close to that of John Coleman, former assistant DEA honcho, who has pontificated: "The states like California have done a real injustice to a lot of their citizens by passing laws that are just so clearly unconstitutional." A more complete misunderstanding of the Constitution, the idea of federalism, and the current status of the law is hard to imagine. Proposition 215 was never challenged in court because no competent legal authority believes it would be declared unconstitutional. Yet these ignorant yahoos can make such statements and hardly anybody in the media knows enough even to ask pointed questions.

But people with that mentality are in power. And they are still on a mission to nullify California law. □

# The Market for Ecology

by Terry L. Anderson

Free market environmentalism has established itself as a viable policy alternative. But it's easy to overestimate its impact. The real work lies ahead.

Consider two recent statements about the ideas emanating from free market environmentalism (FME). In their book, *The Betrayal of Science and Reason*, Paul and Anne Erlich write that "the only extensive treatment we've found on water in a brownlash book, a chapter by Terry L. Anderson in one of Ronald Bailey's books, is basically sound and sensible. . . . Instituting many of the market-based solutions proposed by Anderson could help avoid widespread, devastating shortages." In contrast, Richard Behan, former dean of forestry at Northern Arizona University, calls the FME movement the equivalent of "the economic Taliban; a fanatic sect of unbending believers in the superiority of free markets."

These two statements suggest that free-market environmentalists have successfully put their ideas on the radar screens of environmental advocates. When FME shows up, however, it is still often seen as a target, not a friendly force. Simply being on the radar screen is a position in sharp contrast to the early 1980s when the ideas from FME were first planted. Then, those of us who were thinking about the connection between markets and the environment were voices in the wilderness, both figuratively and literally.

Just how much progress have we made? The simple answer is that we have made significant progress, but that we have lots left to do. On the bright side, consider what some unlikely people are saying about FME. After a speech I made to 1,800 people at the Land Trust Rally in Austin, Larry Seltzer, president of The Conservation Fund, wrote, "Your market-based approach is a timely and positive message for the land trust community. We applaud your leadership." In another letter, Don Kennedy, former president of Stanford

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and now editor of *Science*, acknowledges our contribution: "I've certainly borrowed from the ideas in FME."

Free-market environmentalists can also point to dozens of books and articles that are changing the terms of the environmental debate. Richard Stroup's book, *Eco-nomics*, and mine with Laura Huggins, *Property Rights: A Practical Guide to Freedom and Prosperity*, are two of the most recent examples. The "Political Economy Forum" series, published by Political Economic Research Center (PERC), a free-market environmental think tank, now has 22 volumes on a variety of environmental topics, and the Cato Institute has a long list of important books. Though Bjorn Lomborg is not a card-carrying free-market environmentalist, his book, *The Skeptical Environmentalist*, certainly adds to the arsenal and continues the tradition of Julian Simon, who was. On an annual basis the Pacific Research Institute's Index of Leading Environmental Indicators provides evidence that environmental quality is increasing mostly as a result of market, as opposed to political, forces.

FME has also developed useful pedagogy and curricular materials. With "Facts not Fear" and a new series by Greenhaven Press, Jane Shaw has provided parents and teachers with many examples that counter the standard gloom and doom, command-and-control environmentalism.

*Eco-Detectives*, a curriculum for high school classes, is the all-time best-selling curriculum of the National Council on Economic Education, an organization that is not necessarily associated with FME. PERC's FME Syllabus is used extensively to bring FME ideas to college classes. The information in all of these materials is disseminated effectively through teacher workshops sponsored by PERC, FEE, and the Foundation for Teaching Economics.

Free-market environmentalists can also claim a few policy successes, though the list is not as long as we would like. Arguably FME's best success is in the area of water marketing as suggested by the earlier quotation from Paul and Anne Erlich. Water markets were referred to as "kiddie car economics" when they were first proposed in a book I published with the Cato Institute in 1983, but now they are being implemented in many states and in England, Australia, and Chile.

Though not as pure as fully defined, defended, and transferable private property rights solutions (the true test of FME), other policy changes reflect the FME message of getting the incentives right. For some federal lands, the U.S. government now charges user fees and allows those fees to be reinvested in the lands where they are collected. While bureaucratic problems with this program remain, it is a recognition of the importance of incentives. "Cap-and-trade" approaches are applied to sulfur dioxide, fisheries in the form of individual transferable quota, and most recently to water quality. Though not pure examples of FME because the output is set by political rather than market processes, these approaches recognize the value of establishing tradeable property rights, a major step forward in the environmental debate.

Lest I paint a picture that is more rosy than reality, there are at least three areas where FME has not had much success. As already suggested, real FME policy changes are too few and far between. Even with "friends" in the current administration, there have been few changes to celebrate as suggested by the the C- grade the Bush administration received in PERC's midterm report card. When people such as Paul Erlich embrace markets, they usually mean political manipu-

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lation of prices such as a carbon tax. FME has found a place in few classrooms at any level, from elementary to graduate school. A few courses pay lip service to the ideas, but FME is hardly standard fare.

So what can be done to improve the reputation of FME? We should start by abandoning old tactics that were useful in getting attention but have proven less useful — or even counterproductive — in extending our reach. In my case, I have enjoyed raising the possibility of privatizing Yellowstone National Park at programs with journalists. Though this got their attention, it also generated headlines such as

"Economist Argues Yellowstone Should Worship Almighty Dollar." I'm still willing to engage in reasoned discussions about privatization as in a Cato paper with Vernon Smith and Emily Simmons, but to lead with that punch undermines credibility and any chance of getting non-believers to listen to FME's practical ways of improving environmental quality. I think calling environmentalists "watermelons" (green on the outside and red on the inside) also ought to be avoided because it alienates the people we are hoping to communicate with.

This is not meant to say that we should not be willing to put forth radical policy reforms, but we should only do so when they are backed with good reason and evidence of potential success. A good example is the Cato privatization

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paper, in which we provided evidence that current public ownership is flawed, and then followed with arguments for privatization that countered the standard objections, especially "fairness." Another example is attacking the Endangered Species Act by simply saying it leads to "shoot, shovel, and shut up." Although these arguments are accurate, we will convince more people with data and statistical analyses such as those showing that forests in North Carolina are harvested at a younger age if red-cockaded woodpeckers are near, since the woodpeckers are more likely to occupy a forest if it is allowed to mature. Don Leal's work is another example of the power of empirical evidence in winning arguments. It shows how land managers of state trust land do a much better job, fiscally and environmentally, with land they manage that abuts federally managed land, because the state trust managers face incentives closer to the bottom-line orientation of the private sector.

With the right agenda, I am convinced that FME can continue to gain influence. This agenda has less to do with changing policy and more to do with changing actions within business decisions. Consider the example of International Paper capitalizing on private land recreation. In the early 1980s, the company was strictly in the business of growing trees for lumber and paper. The 30-year lag between planting and harvest meant up-front costs with no revenues. When environmental entrepreneur Tom Bourland joined the company, he recognized the potential for better land stewardship if the company were earning profits from fee recreation. Tom had to change the way timber managers viewed the resource base and the way recreationists, especially hunters, viewed paying for access to the company's land. He demonstrated that profits could be increased if wildlife migration corridors were left between harvest areas, if controlled burns were used to manage undergrowth, and if riparian areas were left unharvested. Each of these contributed to more wildlife habi-

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# The Leisure of the Theory Class

by Eric Kenning

Postmodern theorists have transgressively embraced the self-marginalizing functions of their discourse. Yet now, the very possibility of theory has been destabilized by a subversive and viral Other: an unutterable entity that refuses to be subsumed by the familiar technologies of magniloquence.

Remember Lookism? Throughout the 1990s it was a leading campus thought crime, or more precisely, eye crime and misdemeanor. It meant, usually, glancing at a woman with intent to commit aesthetic evaluation. You don't hear so much about it now, and it could be that we Lookists are no longer being watched. Someone, probably a Whisperist, must have whispered into an administrative ear, pointing out that most women actually like to be discreetly admired by passing strangers and go to some trouble to make sure it happens. In Milan Kundera's recent novel *Identity*, a Frenchwoman returns from a walk tearful and disconsolate because "Men don't turn to look at me anymore."

While it lasted, Lookism was one of the more eye-catching artifacts of the long struggle of the academic mind against aesthetic pleasure. It seems to have recently ended in the formal surrender of the academics, but in prose style the fight goes on, much like those Japanese soldiers in the jungles of Borneo or Sumatra who continued fighting World War II long after it was over.

Recently I picked up a book called *The Discourse of the Sublime* and found this sublime passage: "[T]he discourse of the sublime might now be seen as requiring the autonomous subject, not as producing it; requiring it to delay as long as possible the recognition that the fractured social subject, the subject as event not continuum, is the 'real' subject posited by its theory. In other words, the discourse of the sublime produces *in theory* an autonomous subject position in order to negate the subject agent it in fact confronts 'in practice,' in the real. This practice it confronts includes, of course, itself, the theory of the sublime." I like that "In other words."

The book, published in 1989, was an early warning signal

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of a new academic embrace of the sublime and the beautiful, which have become hot topics in the kind of theory-infested conferences, seminars, panels, colloquia, courses, dissertations, and books that not long ago were assuring us that beauty was merely a socially constructed figment of our Eurocentric, phallogocentric, bourgeois, patriarchal imaginations. It sacralized the hegemonic surveillance of the Male Gaze. It devalored the transgressive narrativity of postcolonial alterity. In the academic world, as in the contemporary art world, beauty has for decades been an illegal alien, leading a furtive, marginal, undocumented existence.

But if aesthetic pleasure has become an academic Cinderella story, or at least a Cinderella narrative, the new theoretical embrace of it is ambivalent as well as smothering. In the 18th century the sublime (majestic, awe-inspiring, melancholy, dark) and the beautiful (regular, smooth, delicate, elegant, bright) were seen by Edmund Burke and Immanuel Kant, who wrote treatises on the distinction, as contrasting but complementary aesthetic qualities. Now partisans of the sublime brush off beauty as hopelessly fussy and frowsy and just so utterly two years ago and unchic: "Whereas the concept of beauty seems outmoded — passé, even — in relation to the current practices of criticism in the arts, sublimity has suddenly become fashionable" (Paul Crowther, *The Kantian*

*Sublime*). But there are also fierce partisans of beauty, like Elaine Scarry of Harvard who, in *On Beauty and Being Just*, recoils from the sublime as "an aesthetic of power," or Wendy Steiner of the University of Pennsylvania who, in *Venus in Exile*, finds in the sublime, as set forth by the meticulous, mild-mannered, and celibate Kant, a bullying, chest-pounding machismo responsible for all the ugly shock tactics of modern and postmodern art. If this kind of thing catches on, the American Empire will soon be divided between the Sublime Party and the Beautiful Party, just as the Byzantine

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*The impulse behind Lookism, the fundamental academic impulse to translate every pleasure into political sour grapes, hasn't entirely disappeared.*

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Empire was divided between two political-theological factions, the Blues and the Greens, originally rival teams at the chariot races.

It's clear that the impulse behind Lookism, the fundamental academic impulse to translate every pleasure into political sour grapes, hasn't entirely disappeared. Neither has the itch for obscurity, even though some of the new aesthetic books, like those by Scarry and Steiner, are clearly written. While Basque and the languages of remote aboriginal tribes have yielded up their secrets to linguists and anthropologists, the dense, twisted tongue still widely spoken in the hermit kingdom of academic theory has never been satisfactorily studied or explained. There isn't even a dictionary.

In 1998 the theorist Judith Butler, a professor at the University of California at Berkeley who has a cultish following among academic feminists, was awarded first prize in the annual Bad Writing Contest sponsored by the journal *Philosophy and Literature*, and this was the winning sentence: "The move from a structuralist account in which capital is understood to structure social relations in relatively homologous ways to a view of hegemony in which power relations are subject to repetition, convergence, and rearticulation brought the question of temporality into the thinking of structure, and marked a shift from a form of Althusserian theory that takes structural totalities as theoretical objects to one in which the insights into the contingent possibility of structure inaugurate a renewed conception of hegemony as bound up with the contingent sites and strategies of the re-articulation of power."

Butler and other postmodernist theorists have defended these labyrinthine sentences as if they were laboratories, arguing that, like theoretical physicists, they are dealing with difficult and elusive concepts, and so, like theoretical physicists, they are hard to understand. But in 1996 a theoretical physicist, Alan Sokal, famously upended them with a banana peel called "Transgressing the Boundaries: Toward a Transformative Hermeneutics of Quantum Gravity," a pastiche of pseudoscientific postmodernist nonsense that he submitted to the then-fashionable journal *Social Text*. The editors, encumbered by their thick theoretical burkas, fell for the hoax and solemnly published it.

The University of Chicago classics scholar Martha

Nussbaum, alluding to "the thick soup of Butler's prose" in a 1999 *New Republic* review of several of her books, noted that her "obscurity creates an aura of importance. . . . It bullies the reader into granting that, since one cannot figure out what is going on, there must be something significant going on, some complexity of thought, where in reality there are often familiar or even shopworn notions, addressed too simply and too casually to add any new dimension of understanding." This is on the right track. It's a trick, as Nussbaum pointed out, of the more oracular sort of philosophical trade, offering incense and initiation rather than argument. But she didn't see that all that exquisite obscurity is also a self-affirming, class-consolidating social ritual, like an annual charity ball or sailing regatta.

Theory gives people with nothing to say a way of saying it at interminable length. It's a comfortable, privileged, tenured, and ceremonial existence, with long vacations, sabbaticals, and travel allowances to get the theorists from one conference to another, where they preen, drink, and mate. The fretwork elaborations of syntax and vocabulary that go with the vogue for theory are ultimately ornamental status indicators, like the elaborate lace worn centuries ago by members of the European aristocracy and limited to their class alone by sumptuary laws.

It's tempting to think that theory will eventually just fade away. Boredom is lethal for social and political regimes. It subverted the old regimes of Europe and their jaded aristocracies, and, more recently, Marxist regimes were done in not just by their economic inertia and everyday oppression but also by the devotion of their ruling classes to a monotonous, torpid, stolid Stalinoid style. So boredom should logically cause the collapse of the academic theory regime, whose

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*While Basque and the languages of remote aboriginal tribes have yielded up their secrets to linguists and anthropologists, the dense, twisted tongue still widely spoken in the hermit kingdom of academic theory has never been satisfactorily studied or explained.*

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prose productions are as deadly as the full text of a Soviet Politburo member's six-hour speech on the Five-Year Plan for Cement Quota Fulfillment in the Kazakh S.S.R. But it probably won't. Theory seems to have become an incurable academic rash.

The theorists themselves have for years been announcing the end of theory, or admitting its lack of real-world consequences, but they just keep doing it, they can't help it, there's nothing else to do. The literary theorist Jonathan Culler has defined "post-theory" as "the theoretical discussions animated by the question of the death of theory." Theory-class celebrities like Culler, Butler, Andrew Ross, Gayatri Chakravorty Spivak, Antonio Negri, and Homi K. Bhabha continue to draw large academic crowds, publish unreadable books, and occupy well-upholstered academic chairs.

*continued on page 36*



# The Trouble With Friedman

by J. C. Lester

For more than a decade, Jeffrey Friedman has used his “scholarly journal” *Critical Review* to attack liberty. This time, he doesn’t get the last word.

When *Critical Review* was launched in 1987, it was a welcome addition to the universe of libertarian scholarly journals. Over the years since, under the editorship of Jeffrey Friedman, it has evolved into something very different. Unlike conventional scholarly journals, Friedman insists on getting the last word in every controversy. And Friedman has become a vociferous opponent of contemporary libertarianism.

Many people that take a scholarly interest in libertarianism undoubtedly read Friedman, and presumably he persuades some of them to his anti-libertarian views. His criticism of libertarians certainly merits response.

Friedman’s “What’s Wrong With Libertarianism” is a good specimen of his criticism of libertarian thinking.<sup>1</sup> In this lengthy essay, he criticizes libertarianism — as he understands it — by focusing on two key points: that libertarianism is empirically unjustified and really held for inadequate, “philosophical” (a priori) reasons; and that libertarians cite empirical evidence in favor of libertarianism but ultimately fall back on the a priori reasons. Friedman calls the attempt to be both a priori and empirical the “libertarian straddle.”

I should say immediately that I believe some of Friedman’s criticisms correctly identify errors in certain versions of libertarianism: these versions are inadequately a priori or they are question-begging as regards the conception of liberty. However, his other criticisms are mistaken: they are justificationist (demanding an impossible epistemological support) or misunderstand the libertarian conception of liberty.

Ironically, these show Friedman to be guilty of a priori

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anti-libertarianism. And he is also guilty of an anti-libertarian straddle whereby he wants to cite evidence against libertarianism but can always fall back on its lack of justification and its supposed conceptual in clarity. Thus, Friedman’s criticisms leave the most extreme version of non-justificationist libertarianism — minimizing proactive impositions — an unscathed conjecture.

I shall tackle various points in Jeffrey Friedman’s “What’s Wrong With Libertarianism” in the order in which they arise. Though Friedman’s article is quite lengthy, at almost 25,000 words, I can usefully reply in far less. This is partly because I agree with his oft-restated criticisms of aprioristic libertarianism and the inadequacy of some accounts of libertarian liberty, so I do not need to defend them. And it is partly because his oft-restated justificationist criticisms and his errors about the correct interpretation of libertarian liberty (as opposed to various non-libertarian conceptions of liberty) can best be responded to relatively briefly, as I have written at length about similar issues in *Escape from Leviathan*.<sup>2</sup>

## The Epistemology of the Anti-Libertarian Straddle

Friedman begins his abstract with the assertion that “Libertarian arguments about the empirical benefits of capitalism are, as yet, inadequate to convince anyone who lacks libertarian philosophical convictions” (p. 407). This assertion is itself empirically false. Many British libertarians, including

me, were convinced to become libertarian — sometimes from socialist ideologies — by “arguments about the empirical benefits.” Even if there are no similar American libertarians, which I doubt, I am led to believe that Friedman knows some of the British ones. However, there are always larger-than-normal conjectural leaps in a change of ideology that a justificationist, such as Friedman, might misconstrue as being due to “libertarian philosophical convictions.” When Friedman

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*In reality, much or even most libertarian philosophy is intended to complement empirical work.*

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writes of “philosophical libertarianism” he means only an aprioristic version that does not require empirical input. In reality, much or even most libertarian philosophy is intended to complement empirical work.

After examining the arguments in several libertarian books, Friedman concludes that “libertarians do not yet possess an adequate critique of government interference in the market economy — a critique, that is to say, that establishes not only why the state should be kept on a very short leash, but why it should be emasculated” (408). The use of “establishes” betrays Friedman’s justificationist epistemology.

As Karl Popper’s critical rationalist epistemology explains, it is illogical to suppose that universal theories can be established with finite evidence (even if such evidence were not itself conjectural, which it is). But that does not mean that we cannot validly advance bold universal conjectures that we test as best we can. However, Friedman combines his epistemological error with other philosophical ones that reinforce it, as we shall see.

Friedman thinks that a “purely consequentialist, ‘empirical’ libertarianism could, on its own, largely accept as valid the meliorist aims [of the welfare state], challenging mainly whether the state is capable of achieving them without causing even worse problems” (409). But when libertarians have read of research and economic theory that appear to refute all the assertions that the state is the solution, rather than the problem, it is hard to see how they could see any list of “meliorist aims” as being other than due largely to empirical misunderstandings. It would be equally presumptuous for libertarians to assert that purely consequentialist, “empirical” anti-libertarianism could, on its own, largely accept as valid the meliorist aims of libertarianism, challenging mainly whether the market is capable of achieving them without

causing even worse problems.

Justificationism arises again in the statement that “[l]ibertarian conclusions require not only extensive evidence of government failure, but an empirically substantiated reason to think that such failure is always more likely than the failure of civil society” (410). An “empirically substantiated reason” — especially that something is “always more likely” — is not an epistemological possibility. But a critical preference for a conjecture is possible. In order to maintain a critical preference for the libertarian conjecture one need only refute putative examples of government success. Friedman’s main criticism of the market — for he focuses only on this aspect of libertarianism — is that there is no guarantee that it is and will “always” be better than state intervention. As this is an impossible demand (and one to which John Gray also succumbs, as I explain in *Escape from Leviathan*), this criticism amounts, ironically, to a kind of philosophical anti-libertarianism (more precisely, aprioristic anti-libertarianism). This is every bit as erroneous as the so-called philosophical libertarianism that Friedman is attacking.

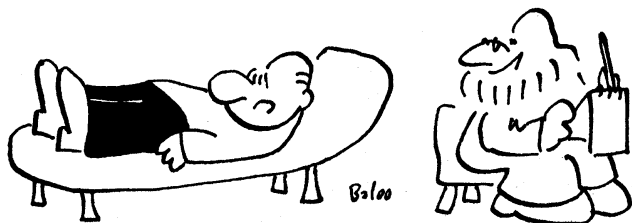
### Liberty and the State

But now consider the other main issue, from my perspective, that Friedman raises. Does the state deprive people of freedom (or liberty)? Friedman thinks that it does not because he misunderstands the libertarian conception of interpersonal liberty, as do many libertarians themselves, as involving the absence of “coercion” in some sense. And as all property systems use coercion to enforce themselves, he is able to conclude that “strictly in terms of negative liberty — freedom from physical coercion — libertarianism has no edge over any other system” (428).

However, an analysis of the libertarian conception of interpersonal liberty shows it to be about what I formulate as “the absence of proactive impositions” (though I am not claiming that this formula is perspicuously clear and without philosophical problems). And all property assignments, including that of self-ownership, are derivable from applying this conception. It is true that interfering with the (libertarian) property of others will count as a proactive imposition as a very good rule of thumb. But the abstract theory need not assume any kind of property, nor moral rights.

Thus Friedman errs in concluding that “Boaz is mistaken in describing taxation as ‘aggression against the person or property of the taxpayer.’” Because the “social-democratic baseline” is inherently proactive in its impositions and so does flout libertarian liberty, I cannot usefully summarize all the relevant arguments here. Any attempt to do so would merely give rise to the myriad further questions and criticisms that I discuss in *Escape from Leviathan*. However, once one grasps that libertarian liberty is about the absence of proactive impositions (or some similar formulation) one can easily understand the general dangers of infringing such liberty and why the onus of argument must be on those who advocate doing so.

I claim that my interpretation of the libertarian conception of liberty is what libertarians intuitively grasp, though they do not express it clearly. But having mistakenly discussed a Hobbesian, zero-sum freedom instead, Friedman decides that it is better to choose “positive freedom,” which is the ability to “attain a goal” we choose (431). As this is clearly about



“People are skeptical about everything I say.” “Oh, come now!”

want-satisfaction, I see it as about a kind of welfare rather than any kind of liberty (though it does not much matter what terms we use).

Friedman then suggests that “the social democrat wants to equalize positive freedom, but more rigorously than does the libertarian.” The libertarian does not want any such thing. He wants to maximize interpersonal liberty (minimize proactive impositions). He might well think, as I do, that this will also maximize want-satisfaction. But to “equalize” the ability to “attain a goal” we choose has nothing to do with libertarianism. Friedman’s view that libertarians “would arbitrarily extend positive liberty only to those who happen to have acquired title to pieces of the world” is confused just because libertarians typically suppose that (libertarian) private property clashes less with getting more of what you want than any known alternative. And Friedman, as usual, offers little argument or evidence to the contrary beyond mere logical possibility.

None of what I have written entails that the libertarian conception of liberty is intended to be the “correct” conception of liberty or its “essence,” as Friedman accuses libertarians of intending (431). But there is something that for libertarians liberty is, and it is not what Friedman supposes, nor is it advocated for the reasons he supposes. So Friedman is mistaken in his assertion that “[t]he assumption that liberty is embodied in libertarianism *relatively* more than in other systems is necessarily false, however — unless we are speaking of positive liberty” (432). For Friedman never suspects that liberty may be understood as the absence of proactive impositions (or some similar formulation), and *this* liberty is necessarily more embodied in libertarianism than elsewhere.

So with my preferred version of libertarianism I can accurately invert Friedman’s charge, thus: “The way [anti-]libertarianism incorporates consequentialist and philosophical arguments feeds on and breeds complacency at the same time” (433). Instead of complaining that “consequentialist libertarians do not yet appear to have established a valid reason why government intervention in a free-market economy might not sometimes be better at meeting human needs than

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*Friedman thinks that the state does not deprive people of liberty because he misunderstands the libertarian conception of interpersonal liberty.*

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laissez faire,” (438) when such a reason is logically impossible, why doesn’t Friedman support his case? There is no reason he should not be able to give what is logically possible — one real example of government success.

He surely does attempt to do this on other occasions, and he mentions public goods and the need for economic redistribution in his article. But when he does so he always has his philosophical anti-libertarianism to fall back on: libertarians cannot justify the thesis that they must always be right. So we can again invert his accusation, thus: “Divine intervention might seem to be the only thing that could make sense of this [anti-]libertarian straddle: the notion that one need not

choose between a priori and a posteriori rationales for a[n] anti-]libertarian world (although, if one had to choose, one would choose the a priori rationale)” (435).

Consistent with his justificationist approach, Friedman writes that occasionally “Boaz does make consequentialist arguments of sufficient generality to justify libertarianism, if they are sound” (439). Obviously Friedman must think they are unsound. Justificationists typically have higher standards of “justification” for things they do not currently accept. Friedman doubtless thinks that diZerega is “justified” in his view that “democracy is a spontaneous order” (439). But as he does not give any argument to this effect, I merely note

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*Because of inadequacies in his own “philosophical” anti-libertarianism, nothing Friedman has written is a threat to libertarianism properly understood.*

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that democracy is proactively imposed, and hence cannot be spontaneous. And presumably Friedman also feels fully justified in asserting that “there remain, at the very least, some public goods and, in principle, the need for economic redistribution” (445). Which public goods? Why is there a need, in principle, for economic redistribution? We are not told, so cannot reply. It is enough for Friedman that he knows these things to be justified.

It might be generally true, I do not know, that “[a]mong libertarian economists there is a parallel conviction that a sound philosophical case for libertarianism has already been made — by libertarian philosophers” (448). However, this is certainly not true of all libertarian economists or of David Friedman in particular. David Friedman tends to scorn libertarian philosophy — I answer criticisms from his *The Machinery of Freedom in Escape from Leviathan* — and presents only consequentialist arguments. Why does Jeffrey Friedman ignore this prominent example?

We then return to the justificationist error with Friedman’s assertion that “[a]ll of the painstaking research of Chicago- and Austrian-school economists could not explain why every government regulation, let alone every government redistribution of wealth, would necessarily do more harm than good” (450). So what? How can Friedman seriously complain about the absence of logically necessary proofs of the superiority of every possible libertarian policy?

Near the end of his article Friedman suggests that libertarians are “precluded by their own ideology — which effectively celebrates whatever consumers freely choose as, ipso facto, good — from criticizing consumerism” (453). Nobody is trapped in an ideology, though it might prompt him to a certain position at the start of an argument. It would be as idle to say that Friedman is precluded by his own anti-libertarian ideology from understanding certain things. Of course, Friedman is, in a sense, “precluded” by his philosophical and empirical views from accepting libertarianism. But he is not precluded from coming to understand that these are errors, if they are so.

Friedman has done a good service in emphasizing the

inadequacy of a certain libertarian philosophical position. However, because of inadequacies in his own "philosophical" anti-libertarianism and his anti-libertarian straddle, nothing he has written in "What's Wrong With Libertarianism" is a threat to libertarianism properly understood. Friedman has presented no argument and cited no evidence that criticizes critical-rationalist (or non-justificationist) libertarianism (as minimizing proactive impositions). Justificationist anti-

libertarianism is a futile endeavor. But I do not doubt that Friedman can, and I certainly hope that he will, move on to non-justificationist anti-libertarianism. □

### Notes

1. *Critical Review*, Summer 1997, pp. 407–67.
2. *Escape from Leviathan: Liberty, Welfare and Anarchy Reconciled*, Macmillan/St. Martin's, 2000.

## The Leisure of the Theory Class, *from page 32*

Individual theories, like all fashions, have a short shelf life. Hardly anyone in the theory mall is hawking deconstruction now, and nothing could be more old-hat than the New Criticism that once reigned supreme over every English department in the land. The New Historicism, a heavily advertised novelty maybe a decade ago, is already gathering dust. But theory itself staggers on, nourishing itself on its own obituaries. Still, maybe beauty and the sublime, which seem to exist somewhere out there beyond the Text, where there's supposed to be Nothing, will gradually have a subver-

sive, genuinely transgressive effect on the theory class.

Scientists tell us that chimpanzees can be observed looking intently at beautiful sunsets. But far more amazing is the thought that even the clannish primates known as postmodernists are now probably gazing wistfully at the evening horizon, trying to make up their theoretical mind. Does a sunset merely valorize the hegemonic essentialist discourse of "day" and "night"? Or is it, on the contrary, a liberating self-deconstructing sublime narrative of postdiurnal Otherness? WWDD? (What Would Derrida Do?) Beauty may yet make monkeys, or even Lookists, out of all of them. □

## The Market for Ecology, *from page 30*

tat and more wildlife. Then he had to contract with the hunters to get them to pay for restricted access in return for better hunting. The proof of his success is in the numbers; IP's net profits from non-timber sources went from zero in 1980 to \$25 million in 1998. This happened because Tom Bourland could account for the impact of changes in land management on revenues and costs and contract with consumers to pay for environmental outputs.

Similarly, British Petroleum recently implemented an internal "cap-and-trade" program to reduce carbon emissions. Though we can question the value of the reduction, in hindsight we cannot question its impact on the company's profits. Sir John Browne, BP's CEO, required that all divisions of the company meet his targeted reductions, but allowed them to meet the targets by trading with other divisions that might be able to supply reductions at a lower cost. I doubt that he had a good measure of the potential impact of this program on company profits. But he took a chance, and it paid off as employees discovered ways of reducing carbon emissions at a profit.

Of course, not all companies can afford to take such a chance because they may not have the financial cushion that BP has, but if they can better account for the potential savings and better contract with employees who can implement such savings or with buyers who might purchase what would otherwise be wasted, we will have examples of doing environmental good while doing well. As one entrepreneur friend put it, "The decision to set up internal metrics associated with carbon emissions at BP was quite a bet on John Browne's part. The net result is that not only did BP reduce its emissions, it saved money. This is exactly the type of correlation that I believe exists throughout industry regarding the management of environmental concerns, be it an asset properly managed or a pollutant properly controlled. The problem is that the savings are buried in a very intricate set of operating expenses." Environmental problems arise from the lack of markets both within firms and between firms and consumers. It is such

entrepreneurs whom free market environmentalists need to reach if we are to make environmental quality an asset instead of a liability and turn attention away from command-and-control, at worst, and non-profit production, at best. Reaching these entrepreneurs will be a two-way street. FME has much to learn from carefully studying the details of successes and failures in contracting for environmental quality. What was the nature of the internal contracts at IP and BP that switched on entrepreneurship within the companies? What was the nature of the external contracts with recreationists who are now paying for access to IP lands? What are the costs of enforcing those contracts? How are those costs minimized?

FME also has much to teach entrepreneurs, if we do the research that will answer these questions. There is a rich body of literature, starting with the work of Nobel laureate Ronald Coase, explaining the importance of contracting costs and applying the theories of contracting costs to aspects of business outside the environment. If we can capitalize on this literature and expand it to include business applications to environmental quality, FME will have a new product to sell — one that will produce the purest form of free-market environmentalism.

It is fair to to say that FME has come a long way. In fact, we've come so far that we can't say "free-market environmentalism" and expect to get attention. FME is no longer considered an oxymoron, and because of the hard work of many think tanks, it is no longer considered moronic. But we haven't worked ourselves out of jobs. We need to be vigilant so that the concept is not usurped by those who want to say they are for markets because they offer a gentler, more pragmatic solution, but who really want to call taxes and regulations "market-based." We need to bring the pragmatic environmentalists into the FME fold. And we need to bring business leaders into the fold, not so much through public policy, but through better ideas for marketing the environment. If we build on our successes and help integrate environmental quality into the bottom lines of business around the world, we increase the supply of environmental quality, and, more importantly, the supply of liberty. □

# Admitting Stupidity

by Alex Mouhibian

Crazy? Nuts? Have I cracked my crock? Hell, no. I'm just trying to get into college.

Shoot me.

Yes, you heard correctly: shoot me. Some people need money, companionship, spiritual enlightenment, purpose with which to fulfill their lives — but right now all I need is a bullet. Not a fatal one, to be sure; you can lodge it in my leg or my foot or — wait! I've got it: bust it right in the Salisbury sweet-spot, smack dab in the middle of it, so that way it'll clog my waste-elimination organs, causing me to become obese and to suffer all the wonderful complexes, dilemmas, and psychological traumas that come with it!

Crazy? Nuts? Have I cracked my crock?

Hell, no. I'm just trying to get into college.

Spoilage in an institution is like J.Lo in her Grammy attire — it's visible at all levels. It should thus be no surprise that the ardent backlash against reason and values in academia can be traced right down to the front of its pearly gates, and the guidelines for admission into the ivory that lies beyond them.

An article in the July 12, 2002 *Wall Street Journal* (the source, unless otherwise noted, of all quotations here) reported the adoption of a new admissions system by the University of California, which has been applied most essentially in its two elite schools, UCLA and UC Berkeley. The main feature of this new system: a beefy portion of credit allotted for a category entitled "life challenges." The definition of "life challenges": "a wide range of personal, family or psychological obstacles," among them "immigration hardships, living in a high-crime neighborhood [and] having been a victim of a shooting."

Told you not to go scavenging for my marbles.

The reason, as served up by Carla Ferri, director of UC undergraduate admissions, is: "You bring in students that

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can tackle the academic programs with enthusiasm, with strength, and with purpose. That's what we're looking for." (The question of how this enthusiasm, strength, and purpose is going to magically appear in a tough university atmosphere, when it hasn't been enough to sustain a requisite performance in a low-level high school, goes unanswered.)

The result, as anyone could guess, has been an encouragement and subsequent dysentery-like profusion of the Halle Berry syndrome. "The new standard has led to a flood of sob stories on college-application essays, in some cases after university staffers have coached minority students on how to identify and present their hardships." The UC system spends \$85 million a year on its outreach program. The outreach workers, "Besides helping college-bound students pick courses . . . coach them on how to write the essays that are a part of their college applications." One such outreach worker from UCLA, reports the article, recently gave students at a high school "examples of life challenges that could help the students gain admission, such as *having to do homework in the bathroom for lack of any other quiet place to study.*" (Presumably as an explanation for why it always turns out like . . .)

If you've suffered any hardship, you'd better emphasize it. If you haven't, you'd better make one up. And if you're wondering how any of this can possibly be spot-checked, you're not alone.

(It currently isn't by the UCs. Nor can it be. Only gunshots are even feasibly provable, by way of a photo of the wounded body part. But even then, who's to tell from a picture that somebody's scarred ass-cheek isn't actually a boot-spurred

consequence of a Western-themed prom night gone awry?)

The universal admissions slogan about the purpose of the college application, "getting to know more about you," now means: getting to know more about what you think may have screwed you over.

One need not ponder much about the implications of encouraging and basing admission criteria on mope over merit, tears over temerity, sobs over substance and, most bluntly of all, excuse over excellence. It's more pernicious than merely acting as a clinic for irresponsibility; it's a dagger in the heart of those students who hold any degree of dignity or integrity. The article mentions such a person, Ms. Hyejin Jae, who was spurned by both Berkeley and UCLA despite a swell GPA and a 1410 SAT score, because she didn't want to shed light on the fact that she's the daughter of a struggling Korean-immigrant pastor. "I didn't want too much of a pity party," she said.

Too bad for her. Because the entire university system is one big pity party, and its effects stretch beyond giving its

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*A study by the Center for Equal Opportunity found that "the odds of being admitted if you were a black student with the same qualifications as a white applicant were 174-to-1."*

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victims bad hangovers. How do you think rewarding admission on the basis of whose essays most accurately reflect the plots of bad made-for-TV *Lifetime* movies affects the attitudes of students like Ms. Jae — both to the universities they should be looking forward to and the state of academe in general?

This isn't to say that real hardships should not be mentioned, or that having survived through an unfavorably dealt hand says nothing about one's character. However, the proper context for such information is only as *an addition* to merit, not a replacement for it. Assuming the fullest legitimacy of the "hardship" claims, all that penalizing the more skilled and merited for the misfortune of the significantly less merited does is restrict the former from achieving the accomplishments which benefit the latter most of all. Just imagine your brother dying under the knife of a negligent brain surgeon. How sympathetic would you be if the surgeon's excuse was that he had to write his med school papers with Lysol?

Nevertheless, Ms. Ferri's rationale explains why, as the article reports, Bianca Martinez (daughter of a breast-cancer patient) got admitted to UCLA with an 1110 SAT score, Dania Medina (whose sister has Down's syndrome) with an 1100, and Rosaura Novelo and Susana Pena (both daughters of lower-income fathers) with sewer-pit scores of 980 and 940, respectively, while the average accepted SAT score at UCLA is around 1350.

But wait. Even in this already muddled oil painting — considered so beautiful and so touching by so many — there are a few confusingly changing colors. For you see, this rationale does not quite explain why Stanley Park, who had to tutor in order to pay the rent for his breast-cancer-infected single mother, while scoring a whopping 1500 on the SAT, got rejected by both Berkeley and UCLA. Nor does it explain

why Ms. Jae was still turned down after an appeal.

Ah, but then we find that there is another, alternate purpose to the hardships criterion behind sensitive sentiment: "to make the student body as reflective as possible of the state's population."

So as it turns out, the new "hardships" jargon is, for the most part, just a bunch of California hot air. The program is really affirmative action under a different gift-wrapping — one made modestly, to be sure, from recycled brown paper bags and a worn shoestring for a ribbon. It's yet another loophole to the racial-preferences-barring Proposition 209, passed in the Golden State in 1996. And to that effect, both Mr. Park and Ms. Jae suffer hopelessly from being Korean.

Since the expressed purpose of the "elite" universities is now to be demographic replicas of the populace rather than institutions of intellectual exchange and education, UC was disturbed by the finding that "simply using poverty as an index of disadvantage would reduce diversity, because it wouldn't help middle-class blacks and Hispanics and it would 'pull in' lots of low-income Asians." What does this revelation entail — besides heavily challenging the role of income in a student's academic potential and revealing that the *true* victims of the anti-merit criteria are those who *have* suffered the hardships yet persisted to excel anyway?

It entails a retreat — back into the hollow anachronistic confines of preferential treatment, to the truly despicable and unjustifiable spectacle that is judgment by pigmentation.

Apparently, the so-called "outreach" programs are nothing but nouveau underground railroads built to usher in "increases in under-represented racial and ethnic minority participation in postsecondary education," according to a university blueprint. As a former Berkeley admissions director informed *The Wall Street Journal*, the University of California "is under 'tremendous pressure' from Hispanic legislators to show that the big investment in outreach is paying off in higher Latino enrollment." Ergo, the programs are offered only at low-rated high schools, and admission points are automatically rewarded to all who join.

In point of fact, this isn't a retreat at all. For UC never really quit the rotten practice of racial preferences in the first place. As of last year, UC doubled the weight of the SAT II subject tests, one of which is Spanish (as a foreign language). In fall of 2001, the average SAT score of Hispanics who got into UCLA was 1168 — 24 points below the average white or Asian who got *rejected* and 181 points below those accepted. Even greater disparities exist with black students. Prop. 209 has been observed at a rate ranking somewhere below the anti-sodomy laws in Texas.

All of this is hardly unique to Berkeley and UCLA. Affirmative action (and the hardships hullabaloo as well, to a lesser extent), officially or not, stands tall at just about every elite university in the nation, as one can easily find by merely viewing the average differences in the SAT scores and GPAs of non-minorities (whites or Asians) and minorities (blacks or Hispanics) enrolled.

The celebrity AA case whose fishnet-clad gams currently occupy the national spotlight involves the University of Michigan, Ann Arbor. The admission-values formula for Michigan is as follows: 80 points for a perfect GPA, 20 for being a minority, 20 for being a scholarship athlete, 12 for a

perfect SAT score, 4 for being the child of an alumnus, 3 for an outstanding essay, and bonus points for "socioeconomic status and other characteristics."

No artist in the world could draw such a clear illustration of absurdity for caring eyes to see. According to Michigan's code of values, your skin shade is twice as important as being superbly intelligent (as all those who score even near perfect on the SAT must be) — and nearly *seven* times more important than having remarkable writing skills and a demonstrable grasp of the English language. Therefore, found a study by the Center for Equal Opportunity, "the odds of being admitted if you were a black student with the same qualifications as a white applicant were 174-to-1." The median SAT score of admitted blacks was 230 points below that of whites, with the average GPA lagging by a half-point in a four-point system.

The great retreat that is AA is in full gear, and despite the many roadblocks of public outrage it has encountered, it continues ever backward — dozing on through the gates of graduate schools, plunging recklessly into the damp, desultory abyss that awaits it.

What is this abyss, exactly?

Like most "progressive" causes, affirmative action could not be more ancient if it were a sensible Parisian thought. Its fundamental premise is the same that ruled societies of status in the past: that it is legitimate to evaluate an individual based entirely on factors over which he has no control. Whether that factor is color, caste, or creed, the principle is the same: preordination above personal quality. In other words: collective judgment versus individual evaluation.

When the Founding Fathers drafted the Declaration of Independence and the Constitution, they established a society based on *value*, for the first time in history, as a national principle. As those finely penned signatures were drawn on the

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*Once upon a time, followers of this doctrine were called white supremacists, and later, Nazis. Today, they're called civil rights advocates.*

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sacred documents, the fate of the age-old institution of racism was sealed under "D" for doomed, devastated, and disqualified — even if many people were yet to realize it. The sentiments the Founders espoused were the matches that lit the fire of the passionate and philosophical abolitionist movement which, while certainly brewing before, flourished almost immediately after Independence Day. It was this abolitionist movement, and *not* what it sought to abolish, that was unique to America.

Booker T. Washington realized this. He realized that the only way to crack the stale notion of racism was to expose its contradiction with Americana in the purest, most powerful way. Washington called for a mass demonstration: a cry to actually *demonstrate* — skills, talents, work ethic, *value*. What Booker T. advocated, in essence, was a direct appeal to the principles fought for by that other Washington before him.\*

Booker T.'s famous slogan was that the necessity for blacks was not to whine or seek government coercion, but

"prepare to compete in the market." The free market knows only objective value, not color, and as such Washington explicitly saw *it* as the arena for the demise of racism. (It is appropriate to mention here that some of the most vehement intellectual voices in favor of abolition came from the free-market economists, such as John Stuart Mill, which prompted the pro-slavery Thomas Carlyle to call economics the "dismal science.")

The results of this former slave's efforts were magnificently visible. One was the Tuskegee Institute, which he founded with the donations of whites and blacks, workers

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*At the University of Michigan, your skin shade is twice as important as being superbly intelligent — and nearly seven times more important than having a demonstrable grasp of the English language.*

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and industrialists alike, the amount of those donations ranging from a single calf from a black farmer to \$25,000 given by Andrew Carnegie for the construction of the school's building. The Institute became one of the premier schools in the country, setting the precedent for a number of other black schools (e.g., Dunbar High School in Washington, D.C., and the Frederick Douglass Academy in Harlem) which came to be regarded just as highly.

Washington summarized his view of the racial question this way:

I think the whole future of my race hinges on the question as to whether or not it can make itself of such indispensable value that the people in the town and the state where we reside will feel that our presence is necessary to the happiness and well-being of the community. No man who continues to add something to the material, intellectual, and moral well-being of the place in which he lives is long left without proper reward.†

This was the spirit which fostered and characterized a number of prosperous black towns in the early 20th century. It provided a sense of value to the black "community" which led to a marriage rate higher than that of whites from 1880–1940 — a period in which all but 19% of black children were born to married parents, while today all but 30% *aren't* (a considerable difference, since illegitimacy has been proven to be the main root of modern black plight). It ignited a black rise into the middle-class from 1940–1960, during which the black poverty rate fell from 87% to 47% (despite notable racial barriers), not to mention a pervading wholesomeness that made poor black neighborhoods relatively safe and crime-

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\*To see Booker T. Washington's appeal in action, I suggest his autobiography, *Up From Slavery*.

†That is, of course, only in a community which values materials, intelligence, and morality. Such is not and has not been the case in many countries which have ruthlessly persecuted their most productive minorities for religious, ethnic, and envious reasons — e.g., Malaysia, old Eastern Europe, and Ottoman Turkey, where it was more valuable to be a little boy than a talented man. Incidentally, those persecuted minorities — Chinese, Jews, and Greeks and Armenians, respectively — all found productive and peaceful homes from which they've prospered in America.

free throughout both those time spans.

Even mentioning such a savagely retrograde concept as racial preferences in the same breath as the sublime founding principles and Booker T. Washington is cause enough to cringe. That it is promoted by those who are labeled champions of progress and equality is cause to heave. For racial preferences are racism by any definition.

Modern America recognizes racism in any discrimination based on color or ethnicity, and racial preferences clearly meet this standard. But more importantly and insultingly, racial preferences are premised on the purest kind of racism:

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*The beneficiaries of affirmative action find themselves in an environment which all but assures their failure. It's a waste.*

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the belief that certain races are innately inferior, needing lowered standards and expectations if they are ever to have a chance.

This is the attitude of most guilt-gagged white liberals, though they try to admit it only amongst themselves. Inevitably, however, it breaks out in the open, such as in 1995 when former Rutgers University president France Lawrence told a faculty meeting: "The average SAT [score] for African-Americans is 750. Do we set standards in the future so we don't admit anybody? Or do we deal with a disadvantaged population that doesn't have that genetic, hereditary background to have a higher average?"

Once upon a time, followers of this doctrine were called white supremacists, and later, Nazis. Today, they're called civil rights advocates, while labeling *opponents* of their doctrine racists, and getting away with it! In any case, they're nothing but condescending self-supremacists — the elitist-intellectuals.

Keeping in mind that it expresses the core assumptions of affirmative action, examine Mr. Lawrence's statement once more. Especially the last sentence. What does it imply? Not only that blacks are genetically inferior, but that the success of anyone is determined, not by his actions and merits, but his genetic code. It implies not only that blacks need lowered standards, but that the success of any black person is thanks only to a handout by his all-knowing, all-loving white guardian angels. (This last is again revealed explicitly when anti-AA black successes are explained away with assertions that any such success is achieved on the foundations of affirmative action, acknowledged or not.)

Just look at the latest hysterical crusade to ban the SAT. Apparently, the SAT is an Anglophile. Why? Because certain minorities don't do as well on it. Ergo, it's "culturally-biased." Such a claim is easily disproved by the fact that Asians and Caribbean blacks both routinely outperform whites on the aptitude test. But forget the proof — the only way that a math-and-grammar exam is inherently biased against certain races is if an innate characteristic of those races is stupidity!

Frederick Douglass, the famous black abolitionist-activist, once passionately proclaimed: "If the Negro cannot stand on his legs, then let him fall!" How does the predestination- and preordination-oriented AA fare when measured against

Douglass, his old abolitionist movement, and the principle of freedom for responsibility it fought for?\*

Affirmative action, however, is not merely making Frederick Douglass spin in his grave like a dreidel on speed. As with most "progressive" causes, racial preferences most harm the very people they are purported to protect. This is due to the simple fact that it's much easier to get in than pull out intact.

Nationally, only 30% of black freshman graduate in four years, compared to 60% of whites. Stretch it to six years, and the proportion remains one-sided: roughly two-thirds of blacks to 90% of whites. At UCLA, the majority of blacks and Hispanics are taking remedial math and science courses. The numbers are also high at Berkeley, and were much higher before Prop. 209.

The reason for this is that the practice of preferences ushers many black and Hispanic students into schools where they are unfit and unprepared to compete. The victim-beneficiaries of affirmative action find themselves in an environment which all but assures their failure. It's a waste.

To the temporary extent that Prop. 209 was observed in California, the number of black students enrolled in the U.C. system rose, even though their enrollment at Berkeley and UCLA dropped. The students were attending the universities in the system for which they were more aptly suited. As a result, U.C. San Diego, which had only one black freshman honor student out of a 3,268-strong class a year before the proposition (a GPA of 3.5 and up being the honors-qualifier), by 1998 had fully 20% of black freshmen riding the honor roll — the same proportion as that of whites. No longer were potential UCSD honor-rollees sweltering in the bogs of Berkeley.

Thinking of the highly purposed legislators pushing to enforce these quota systems, one can't help but wonder if

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*To hell with reality. I need some schooling, and there's a 9mm round I've got to get shot with in time for appeals.*

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they ever devote a penny's worth of consideration to the consequences of their escapades, or whether they even care.

Any notion that they actually do care must be abandoned in light of the experience of the last 40 years. It has been the anti-American actions of the statist intellectuals and politicians during this period — the defeatist, disparaging, racial-warfare attitude *they* have promoted, the irresponsibility and decadence *their* welfare programs sponsored and created incentive for, the lowered standards *they* have enforced, and the ostentatious failure of the monopolized public schools *they* run which have ensured that so many blacks enter post-secondary institutions underprepared.

If the well-being of black people truly concerned these

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\*Here you can also ask yourself which is the most dangerous kind of racism. The racial-hatred kind, which is minuscule and inconsequential today, confined mainly to a bunch of dimwits who aren't satisfied with celebrating Halloween just once a year? Or the "intellectual" inferiority kind, which has the self-proclaimed superiors attempting to enslave the inferiors on the basis that they know what's best for them?



welfare-statists, they would have long-since noticed the failures of their grand orchestrations, and taken action to address them. They would have noticed, for example, that the vast majority of the impoverished and criminal come from fatherless homes, and that the incomes of two-parent households are nearly equal for both black and white,\* and they would have seen how decades of their impositions have led to only one-third of black children being raised in two-parent homes. A real concern for the well-being of black people might prompt them to see how their monopolized inner-city public schools, which poor minorities can least afford to avoid, have resulted in 63% of black fourth graders being unable to read — and adopt a different approach. It just might dawn on them that their welfare state has created a cycle of poverty and dependency which sucks up every welfare recipient like a tornado — that a decent reduction in its force like the Welfare Reform Act liberated half its victims from the endless impoverished swirl — and that enacting further reductions might just be the wise thing to do.

If this were to happen, whining about disparities would be replaced with actually uncovering their roots. The truth about the bureaucratic “reach-out-and-touch” mentality would surface: that we’d all be much better off if the legislators would reach out and touch themselves.

This, of course, will never happen. The statist’s and their intellectual apologists’ justification for their own existence is their alleged expertise in making decisions for everyone else. The reality that their care for their charges has been careless and destructive is not one they will entertain.

\*In 1995, the median black two-parent family income was \$41,307, while the white two-parent median was \$47,000. But this slight disparity can be easily attributed to the fact that most black people live in the South, where wages are lower — and that, during the previous year, black two-parent families out-earned white two-parent families in roughly 130 cities and counties.

## A License to Discriminate, from page 22

enrollment policies that might be affected by the court’s affirmative-action decisions. Racial preferences, therefore, do not principally enlarge the supply of qualified minority applicants but, rather, distribute that supply in favor of the more selective schools. Even without racial preferences, minority applicants have ready access to public universities, although less access to the top few percent.

The heart of the matter, aptly stated in the legal brief filed by the Cato Institute, is this: “Preferences reflect outright racial stereotyping about how people will (or should) think or behave on account of their skin color or ethnicity. [T]hey cut

## TIA Lives!, from page 24

COINTELPRO era of spying on its own citizens.

Given Poindexter’s leadership of the program, we shouldn’t be surprised at the dissembling and disinformation on TIA and these other measures now being spoon-fed to Americans. But TIA has become a gravy train for many private companies seeing an opportunity and taking it — whether or not the technologies will ever work, and regardless of the implications for liberty if, God forbid, they do. Unless citizens start speaking up and demanding that

It’s much easier to blame it all on “social circumstance.”

It is impossible for the admissions process to be completely objective. A general manager can’t look only at scoring averages when constructing a basketball team, lest he end up with 13 shooting guards. Universities have holes to fill. This is understandable. They need students with different types of talent and different fields of academic interest, and fulfilling such a need inevitably results in discrepancies in the test scores and GPAs between the admitted and the forbidden. But such discrepancies are like Michael Moore’s wit in their slightness, and are definitely not the problem.

The problem is enforced diversity, not of intellect and interest, but in *levels* of intellect and interest. The problem is a formula under which ability becomes liability, character is sacrificed to victimology, and independence succumbs to pre-ordained grouping. These traits are most bluntly manifest in racial preferences and the “hardships” system. But just as the admissions process is an example of the pervading decay of academe, so are there pervading consequences of the decay of the admissions process. Now, most universities award admission points for “community service,” while disregarding paid employment. That is, singing jingles to homeless whales is valued more highly than being a productive contributor to society.

Perhaps it was stupid of me to expect otherwise. Knowing what is known about the depravity of academe, maybe it was outright dumb. At least I’m willing to admit it. If only the elitist intelligentsia would do the same.

But because they won’t, institutions once devoted to preparing students for and teaching them the mastery of reality continue to erode all respect for reality, with all its laws and ramifications, its hard and uncompromising demands for reason and logic. So to hell with reality. I need some schooling, and there’s a 9mm round I’ve got to get shot with in time for appeals. □

against a bedrock constitutional principle that forbids government to judge individuals as members of racial or ethnic groups.” Yes, favored minorities may derive some advantage from preferential treatment, but “the state’s awarding of valuable opportunities on the basis of skin color or ancestry necessarily diminishes those who are not benefited and, more importantly, erodes the national fabric and commitment to equality of opportunity.”

That said, the Supreme Court has spoken. Now the battleground shifts chiefly to the states. California, Florida and Washington have abolished race-conscious admissions. Three down, 47 to go. □

Congress take action, the self-interest of business will reinforce congressional inertia to eventually bring TIA into existence in whole or part.

At a minimum, Congress should hold public hearings with the goal of much more vigorous oversight, so that only those whom the facts indicate to be terrorists are entered into the TIA system. If, however effective oversight proves to be difficult or impossible (as is likely), Congress should step up and scuttle this ridiculous boondoggle. Otherwise, the few remaining vestiges of privacy in this country could be obliterated, to the lasting detriment of our culture and liberty. □

# Living and Dying the State's Way

*by Jeffrey A. Schaler*

If you think doctor-assisted suicide puts people in charge of their own lives, think again.

It is now fashionable to clamor for “assisted suicide,” sometimes described as “the right to die” or “death with dignity.” But curiously the right to suicide — to kill oneself without harassment or hindrance from the state — is not at all popular. Many of those campaigning for “assisted suicide” are among the most effective opponents of an individual’s right to suicide, that is, death by one’s own hand.

Suicide today is usually construed by society as a symptom of mental illness. As such, the possibility of suicide, or of being “a danger to oneself or others,” which usually refers to being a danger to oneself alone, is grounds for locking someone up and taking active steps to prevent that person from taking his own life. Even though suicide and attempted suicide are no longer criminal offenses, there is no effective right to suicide.

In practice, very few psychiatrists will ever come across a suicide or attempted suicide that they do not believe to be a symptom of mental illness — especially if extreme physical pain or physical disability are absent. If you try to commit suicide and the authorities catch you and keep you alive, or if you merely talk about suicide, thereby communicating a pre-occupation with the idea of suicide, you are likely to be jailed in a mental hospital and supervised to make sure you do not get a chance to kill yourself. You will be coerced into staying alive against your will.

Those who lean towards protecting a “right to die” in cases of physical suffering tend to be silent when it comes to protecting a right to suicide in cases of existential suffering or among those people who want to end their life simply because they have had enough of living, because life seems

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absurd to them, or for any number of other non-suffering reasons. If one has a right to suicide, one does not have to satisfy anyone else that one’s suicide is wise or proper.

In view of this actual persecution of suicide with very little opposition from intellectuals or physicians, how do we account for the popularity in these same quarters of “assisted suicide”? These two positions are totally compatible. “Assisted suicide” does not grant individuals the right to commit suicide at all. It merely sanctions homicide with the state’s permission, by giving physicians a legal monopoly on providing the means to die by one’s own hand.

And while physician-assisted suicide often refers to giving a patient a lethal dose of medication, at the patient’s request, which the patient then administers to himself, many of those favoring “assisted suicide” really seem to want something different: the legalization of euthanasia or “mercy killing.” This may involve killing someone who is unwilling to kill himself or apparently incapable of doing so.

Derek Humphry, founder of the Hemlock movement, president of Euthanasia Research & Guidance Organization (ERGO), and author of two international bestselling books, *Jean’s Way* and *Final Exit*, defines euthanasia this way: “Euthanasia is a doctor giving a lethal injection by request.” And what is ERGO’s position regarding euthanasia? “ERGO

. . . holds that voluntary euthanasia, physician-assisted suicide, and self-deliverance, are all appropriate life endings depending on the individual medical and ethical circumstances."<sup>\*</sup>

The same people who want the state, through the agency of authorized physicians, to be able to kill people also want the state, through the agency of authorized physicians, to be able to stop people from killing themselves. Their position is thus consistent: individuals do not have any right to kill themselves, whereas the government has every right to kill

*Many of those favoring "assisted suicide" really seem to want something different: the legalization of euthanasia or "mercy killing."*

individuals, if, for example, the government considers that the individual's life is now too painful or too harrowing. Your body does not belong to you: it belongs to the government.

This contrasts sharply with the traditional liberal or libertarian view that a person rightfully owns his or her own body, the principle that helps explain why slavery is and should be illegal, while abortion is and should be legal. No grown human is the property of another, whereas a fetus has not yet ceased to be the property of its mother. Just as people who advocate legalizing marijuana for medicinal purposes often oppose the right to drugs as property, people who advocate legalizing "assisted suicide" in the name of compassion often oppose the right to the body as property.

Suicide is a form of homicide. Thomas Szasz, who argues for the right to suicide in his important book, *Fatal Freedom: The Ethics and Politics of Suicide* (Syracuse University Press, 2002), makes the distinction between killing oneself ("auto-homicide") and killing someone else ("heterohomicide"). Much talk about "assisted suicide" blurs this distinction by describing as "suicide" cases where a physician kills a patient who has (perhaps) previously signed a consent form.

Often such patients are comatose or otherwise unable to make a decision at the time. Consequently, "assisted suicide" can easily be stretched to include cases where a doctor, faced with a patient who cannot currently decide, or who perhaps at the time even wants to live, will be able to kill that patient.

Consider, for example, a recent landmark ruling by the Supreme Court of Victoria, Australia, as reported in the June 7, 2003 issue of the *British Medical Journal*: The court ruled that an elderly woman with severe dementia, kept alive for years by tube feeding, be allowed to die because the food and hydration given constituted a medical procedure rather than palliative care and could thereby be legally refused: "Judge Stuart Morris said that the public advocate Julian Gardner, who was appointed the woman's guardian, would now be

able to decide whether it is time for her to 'die with dignity.' . . . 'The court had made it clear everyone has a right to refuse medical treatment,' said Mr. Gardner. 'This case is about someone who, while they were competent, made their views and wishes about medical treatment clearly known.'" ("Court rules food and hydration are treatment," *British Medical Journal*, 2003; 326:1233 [June 7]). Whose interests are served by keeping this woman alive? Whose interests are served by killing this woman? I cannot see how dignity is within the realm of experience or interest for such a person at this stage of her life. People project their wishes and feelings onto others, and are even more inclined to do so when a person is in a coma, severely demented, or dead, that is, when the person cannot communicate with them.

Some argue that since self-assassination is a right, delegated assassinations are equally a right. If someone can decide to kill herself, she can therefore equally decide to make a contract with someone else to kill her, perhaps including in such a contract a stipulation that her being unconscious is to be no barrier to killing, or even that her frantic protests at the time of imminent death are to be disregarded because of the prior contract. People have likely asked others to kill them and their requests have likely been heeded in private. These private and illegal agreements will always continue, and just because they are illegal does not mean they are morally right or wrong. However, these are private agreements and arrangements that the law cannot and should not tolerate in the public domain — especially by empowering certain people, but not others, with the power to kill.

The risks are too great for the principle of freedom of contract to be extended to the engineering of one's own decease. Suicide cannot be delegated via a legally binding contract. The opportunities for abuse, and the costs of abuse, it seems to me, are too great. For example, relatives who do not wish to pay the bills to continue caring for a family member, and who also do not wish to take the responsibility of withdrawing support, can take recourse in an "assisted suicide," which is on paper at the request of the victim, but in fact at the request of the relatives, who communicate their wishes to a compliant physician.

The law does not tolerate and ought not to tolerate consensual, contractual heterohomicide. For one thing, it might be difficult to ascertain whether the killing contract was genuine or fraudulent. The consequence of error can obviously be quite serious. For another, if one of the parties wanted to rescind the contract, there could be problems, especially if the contract included a directive to ignore any attempt on the victim's part to stop the killing.

Assisted suicide, as normally conceived, is also unnecessary. Anyone who wants to die can stop eating or drinking, and can be made comfortable with morphine or similar drugs. The morphine is not administered to kill the person; it merely stops him from feeling any discomfort as he dies from starvation or disease.

A 91-year-old woman addressed her remarks to me at a recent round-table discussion on euthanasia and assisted suicide, saying she wanted to end her life while she felt good about it, rather than suffer with possible sickness unto death. I asked her if she was willing to commit suicide when the time was right for her. It is a difficult decision, to be sure:

<sup>\*</sup><http://www.finalexit.org/about.html>. For more on the confluence of euthanasia and assisted suicide see "Administration and Compounding of Euthanasic Agents," Royal Dutch Society for the Advancement of Pharmacy, The Hague (1994), at <http://www.wweek.com/html/euthanasics.html>; and Derek Humphry's views on "Euthanasia in Practice" at <http://www.finalexit.org/practice.html>.

most people want to live until they are incapable of committing suicide. The taking of one's life when life is still good is unappealing. This person said no: she wanted someone else to do it for her, because, in her words, she was a "coward."

Unfortunately, many people assume that medical expertise may be relevant to the decision whether to live or die, to kill or let live. However, the decision to commit suicide is an ethical decision, not a medical decision. While doctors may be trained to make ethical decisions, so may non-doctors, and in any case non-doctors may be more knowledgeable about what to consider when making the decision to live or die in any particular case, such as their own.

The principle that doctors should have any say in determining whether individuals be killed or kept alive is itself an ominous one. There is nothing scientific or medical about the decision to end one's life. Ethics pertains to right and wrong conduct. Who is to decide what is right and wrong when it comes to suicide? One can only decide this for oneself.

A priest may or may not be a good person to talk to when considering suicide. The same is true for a psychotherapist, or for one's barber or stockbroker. But really it is an individual's responsibility to decide whom to ask for advice, if one should ask anyone at all. The difference between talking to a priest and talking to a physician about suicide is that the priest is not empowered by the state to assist with killing people.

In some ways a physician may be the last person one should talk to about ending one's life. While a physician may be skilled in prescribing pain medication and treating disease, he is unnecessary when it comes to suicide. Most people who do commit suicide do so without consulting a doctor.

Belief in "mental illness" adds to confusion about suicide. Psychiatrists, psychotherapists, and the courts hold that persons who are likely to harm themselves may be committed to a mental hospital for "treatment." This is because people believe that wanting to commit suicide is a symptom of men-

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*Suicide cannot be delegated via a legally binding contract. The opportunities for abuse, and the costs of abuse, it seems to me, are too great.*

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tal illness. While attempting suicide may not be an actual crime, it is treated as if it were: people who talk about or attempt suicide are likely to end up in a jail called a mental hospital. Whether one is behind bars in a mental hospital or behind bars in a prison, one is deprived of liberty by the state. Your physician may not kill you but he can collaborate in depriving you of liberty by putting you in a mental hospital against your will. He may also order that you be given certain drugs that you do not want. He may order that electric shocks be passed through your brain. All this he can do in the name of compassion and medicine.

Thus, doctors and psychotherapists are key players when it comes to interfering with the right to suicide. On the one hand, people want doctors to assist them with killing people, and on the other hand, they want doctors and psychotherapists to forcibly prevent people from committing suicide, by

consigning them to mental hospitals.

At least three barriers to clarity regarding the right to suicide can be removed easily enough: we must differentiate between "assisted suicide" and suicide, that is, death by one's own hand; we must recognize that the decision to live or die is an ethical decision, not a medical decision; and we must recognize the role physicians and psychotherapists play as agents of the therapeutic state in depriving people of the liberty to live and die.

If we call things by their right names we can eliminate the problems associated with the first two barriers. If we remove the power given by the state to physicians to kill people we can remove the third barrier. Add to this removing the power of physicians and psychotherapists to have people committed to mental institutions and we'll have come a long way to protecting the sacred right to suicide.

There is one other important issue that is a key part of interfering with the right to suicide: the drugs used to commit suicide are often difficult to obtain because of prescription laws. This, too, is a function of our mental health laws, pharmacracy, and the therapeutic state. A person may want to use any number of drugs to cause a painless death, but because these drugs are only available by prescription, a person who does not have a prescription must engage in criminal activity in order to purchase them. So, if a person wants to commit suicide he should beware of sharing the intention because he could easily be locked up in a mental hospital. If someone tries to purchase the drugs she wants to kill herself, she can be jailed on illegal drugs charges. If prescription laws were repealed, the right to suicide could be protected.

Imagine the following scenario: you are walking along a bridge with a friend, who suddenly announces his intention to commit suicide by jumping over the bridge. What options do you have?

Since this person is your friend, you would likely try to talk him out of suicide. If you fail to persuade him, you could say goodbye and walk away. He does not necessarily have a right to commit suicide — any more than he does to have sex in public or in the presence of another, unwilling person, so you might report him to the police. The police could arrest him for breaking a no-suicide-in-public law. You could physically try to prevent him from jumping off the bridge. Or you might push him off the bridge — and call it assisted suicide.

Just as people ought to be free to put whatever ideas they want into their minds, they ought to be free to put whatever substances they want into their bodies. People are free to read or not to read any written material. They are free to listen to what they want to listen to. They are free to eat what they want to eat. It follows that a person is free not to eat, that is, a person's right to starve himself is as basic as is the right to satisfy his hunger.

Most of the confusion regarding euthanasia, assisted suicide, physician-assisted suicide, and suicide, can be easily resolved by making sure that heterohomicide is not excused by law, the power to treat people against their will is taken away from doctors, and the prescription laws are repealed.

Freedom rests on the rights to life, liberty, and property. When the state interferes with the right to suicide, it interferes with all three of these fundamental rights. □

# Reviews

*Defend America First: The Antiwar Editorials of the "Saturday Evening Post," 1939–1942*, by Gareth Garrett. Ed. Bruce Ramsey. Caxton Press, 2003, 285 pages.

## Saying "No!" to the Good War

Stephen Cox

A deservedly popular genre of literature is the imaginary history, the history of a world that did not happen. I think especially of Robert Harris' novel *Fatherland* (1992), which is about what Europe would have been like if Hitler had succeeded, and MacKinlay Kantor's *If the South Had Won the Civil War* (1960), perhaps the finest work in the genre.

But imaginary history is not limited to novels. Reading real history, one discovers plausible arguments for courses of action that were never taken. When the arguments are intelligent, detailed, and colorful, one glimpses both the world as it was, at the moment before the crucial decision was made, and the world as it might have been, if the logic of the arguments had been followed and the world had gone in that other direction. A good example is the arguments against the ratification of the Constitution, or the arguments for a pacific adjustment of sectional differences in 1860 and 1861.

Arguments may also be retrospective. Consider the speculations published by historian Geoffrey Perret in the May issue of *North & South*, indicating that the Civil War might have been shorter and less appallingly bloody had President Lincoln accepted

mature strategic advice during its opening stages. When one reviews such arguments, one realizes, once again, that human action is by no means fated; that individual decisions count, and that alternative decisions may open the way not just to different but to better worlds. Read, and imagine yourself there.

Almost everyone who thinks about it realizes that World War I need not have been fought, that practically no one but the Bolsheviks either profited or was likely to profit from it, and that America's dramatic entry into the war was one of the most embarrassing missteps that Columbia ever made on the stage of history. A score of alternative histories might be written about a world that had not fought that war, or had not fought it to a conclusion, and every alternative history that omits World War I — every history that I can think of, anyway — takes place on a wiser, wealthier, and happier planet. That planet would certainly not have seen a Chancellor Adolf Hitler, and it probably would not have seen a Great Depression or a New Deal, either. Perhaps it would not have seen an atom bomb.

About World War II, and America's entry into it, there has seemed much less room for imaginative alternatives. Yet in the 1930s, antiwar sentiment was strong virtually throughout the

world, and isolationist sentiment was dominant in the United States. Unless one assumes that the isolationists were simply insane, one must assume that some of their arguments, at least, were compelling. One must assume that they could plausibly imagine a world in which the United States did not participate in another war, and a world that might have been better because

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she didn't. It is also possible — though not very popular — for Americans of the 21st century to imagine such a world.

That is the opportunity that Gareth Garrett and his editor, Bruce Ramsey, extend to the current generation of readers, the vast majority of whom have been taught that American participation in the Second World War was not only inevitable but unquestionably right and meritorious. Garrett, a libertarian political and financial writer and chief editorialist for the *Saturday*

*Evening Post*, America's leading mainstream magazine, put the contrary case with exactness, force, and flamboyant color. He believed that America's idea of liberty was the hope of the world, and he maintained that American liberty could best be preserved by a heavily armed neutrality. He argued eloquently (and also charmingly) against all the assumptions that justified America's entry into war, meanwhile providing a pungent commentary on the underhanded means by which the American political establishment worked to make that entry seem inevitable.

The degree to which Garrett's arguments succeed will be assessed by individual readers in individual ways. Indeed, the isolationists (or "noninterventionists") disagreed strongly among themselves. Some (much scorned by Garrett) were sympathizers of Hitler or his sometime ally Stalin, hiding their political motives behind a phony concern for "peace." Some, such as Isabel Paterson and Rose Wilder Lane, were more libertarian than Garrett, refusing to endorse a neutrality that armed itself with the tyrant's weapon of conscription. At the opposite end of the spectrum, there were others, such as Anne Morrow Lindbergh, who believed that America could never be strong enough to avoid accommodations with tyrannies that she regarded as part, at least, of "the wave of the future." Some thought that Hitler and Stalin would ultimately destroy each other; some thought that the British Empire would ultimately emerge victorious; some pictured a Nazi empire destroyed by its internal contradictions.

Garrett said this:

The principle of free government is in mortal competition with the ruthless totalitarian principle. This compe-

tion will continue, even beyond the war into peace . . . so long as the totalitarian principle endures. We cannot believe it will endure for long. If it be not destroyed, it will defeat itself. Meanwhile, however, no one can be sure of what will or will not happen to free government. (pp. 93-94)

He wanted to arm a free America, but not to risk its arms and its tradition of limited government on another overseas round of total war.

Issues of war and peace are always complicated, even when totality is not at stake. Prudence and idealism, risks and resources: all must be weighed and the results of each possible course of action imagined as vividly as possible. The results of the weighing will not be final. There is only one real test — the one set of events that actually takes place — and it has no scientific control. History is a stranger to experiment.

Yet Garrett is plainly right about one thing: most Americans shuffled toward World War II in a fog of impressions and sentiments, a fog from which American thinking would be very slow to emerge. Indeed, it has not emerged. Garrett put it this way:

If [America] should come awake one morning to read in the newspaper headlines, or hear by the radio, that it had walked backward into war, it would take it no doubt as having been somehow inevitable from the first, and yet nobody would be able to say quite how or why it happened. (61)

Ask an American what started the war, and he will say, "The attack on Pearl Harbor." Ask him what led Japan to attack Pearl Harbor, and he won't have a clue.

This book may help. Few people knew more about the workings of America, and the American government, than Gareth Garrett. Few people

have written about America in a more individual and interesting way. But forget the politics. As literature, this book is always colorful, intense, vital. Garrett's leading literary characteristic is the ability to turn the factual into the memorable. Here, for

instance, is Garrett on the American war psychology:

The crusader theme — America going forth to destroy the aggressor, liberate the world and establish a millennium of the four freedoms — produces its effects principally in the higher brackets of emotion. The crusader finds that he must reach also the lower brackets. He consults the book of propaganda and it tells him that it is not enough for people to hate what they are going to destroy; they must be made to fear it, too. To the crusaders, who of course are fearless, believing that people for their own good must be made afraid, become themselves the fear bringers. (218-29)

That's the way they work, all right — and now you can picture it.

*Defend America First* is a worthy sequel to Ramsey's collection of Garrett's essays on the Roosevelt revolution, *Salvos Against the New Deal* (Caxton, 2002). It benefits from the same intelligent and generous selection of material and the same tasteful and informative editing. Did you know that America gave over 11 billion dollars — equivalent to about 170 billion dollars in today's money — in Lend-Lease aid to Stalin (206)? It might be over-optimistic to assume that the aid

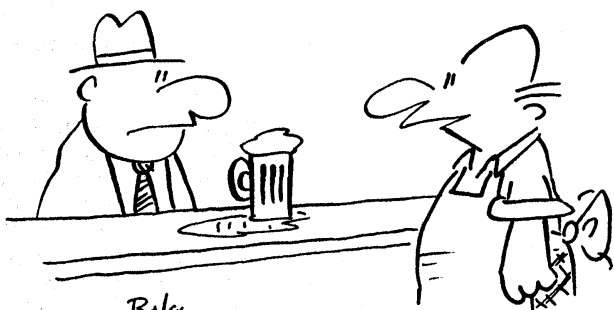
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*Ask an American what started the war, and he will say, "The attack on Pearl Harbor." Ask him what led Japan to attack Pearl Harbor, and he won't have a clue.*

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was more helpful in destroying Hitler's tyranny than it was in maintaining Stalin's.

And did you know that it has long been rumored, and never disproven, that a Democratic senator from Nevada died before the 1940 election and was "kept on ice in a hotel bathtub" until after he was safely returned to office (40)? That's what Ramsey tells us. It's not the reviewer's job to make jokes about something that is already funny enough. It may be noted, however, that the perfection of air conditioning has removed all former limits on possibilities for re-election. □



"So there's a fly in your beer — why begrudge a fellow creature a little happiness."

*Red Thunder*, by John Varley. Ace, 2003, 411 pages.

# Libs in Space

Timothy Sandefur

John Varley is my very favorite writer, a man of spectacular imagination and impeccable dramatic timing, who can make the most bizarre premise not only believable, but spellbinding. He stormed the science fiction magazines in the late 1970s with a series of short stories that brought him two Nebula Awards and three Hugo Awards. He published three anthologies (*The Persistence of Vision*, *Blue Champagne* and *The Barbie Murders*), and five novels. His "Gaia Trilogy" novels, *Titan*, *Wizard*, and *Demon*, are spectacular and compelling. *The Ophiuchi Hotline* continued his weirdly inventive "Eight Worlds" alternate universe, and *Millennium* — originally conceived in the 1970s as an outline for a film, and finally made into a two-and-a-half-star movie in the '80s — is a stroke of genius in the time-travel genre. Then he disappeared.

He had gone to Hollywood to write screenplays, but other than *Millennium* (and an excruciating massacre of one of his finest stories, "Overdrawn at the Memory Bank," starring Raul Julia), none were filmed. Finally, in 1992, he returned with *Steel Beach*, his best novel to date, full of the wild ingenuity, adventure, and drama that makes his work so special. It was followed by *The Golden Globe*, which won the Libertarian Futurist Society's Prometheus Award for best libertarian s.f. novel.

At his best, Varley's writing is as smooth as glass (with jagged edges in all the right spots), so that you find you've read another 80 pages before you realize it. As Algis Budrys once wrote, "Varley feels that . . . the trans-

action is ultimately between the reader and the story, not with the author, who, if all is well, has done his job and has no need to intrude as a personality." His characters are strong and clever, independent but vulnerable, with a hint of the cynicism which is borne of deep idealism. The futures he imagines are far from spotless, nor are they bleak dystopias. Instead, Varley portrays a time which, like ours, suffers from the ills, and profits from the joys, of cultural evolution. In his "Eight Worlds" series, for instance, the characters can change sexes as easily as we change clothes — something which, no doubt, would mortify the conservatives who today dread the "dehumanizing" effects of genetic research. He doesn't condemn innovation, but he does not pretend that we can deal with innovation with painless ease, either. Thus the drama of his short story "Options" arises from the family stresses that result from a mother's decision to become male. The theme of Varley's finest work isn't to forewarn and prevent, but to show that we can only survive innovation by changing, not by framing a sappy nostalgia for the good old days, or longing for an unrealistically pristine tomorrow. Varley is a dynamist, and his work is what Nietzsche called yes-saying. "We waver," said Nietzsche, in *Human, All Too Human*, "but we must not become anxious about it, or surrender what has been newly won. Besides, we cannot go back to the old system; we have burned our bridges behind us. All that remains is to be brave, whatever may result. Let us step forward, let's get going!"

Set in the near future (unusual for Varley), *Red Thunder* focuses on a group of teenagers who stumble across a drunken former astronaut named

Travis Broussard, whose family turns out to hold the secret of space exploration. When they discover that NASA's Mars mission is doomed, and that the Chinese mission will reach the planet first, the friends decide to construct their own ship from spare parts, to rescue the American astronauts, and beat the Chinese. The story is lively and the climax every bit as exciting as we have come to expect. It doesn't quite meet Varley's highest standard; it contains some awkward asides, moments that seem like sermonizing. At one point, when two characters get into a friendly "yo mamma so ugly" contest, Varley seems to fear the reader will be offended, and pauses to explain: "A little Racism 101 footnote. . . ." He adds similar asides elsewhere, serving no apparent purpose but to slip in editorial comments. But although these moments are unusually intrusive for Varley, they only last a sentence or two, and hardly spoil the novel.

The preaching is more obvious in some scenes where characters discuss their plans. Broussard spends four pages lecturing the band on the shortcomings of government space travel: "This country has never really had a 'space program.' What we've had is a series of races." The result, he con-

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*Americans should be the first on Mars. What's more, they should arrive, as Varley's ragtag astronauts do, in a Bigfoot pickup truck with an American flag wagging on the tip of its antenna.*

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cludes, has been huge, wasteful programs which wasted time, technology, and lives by going the fast, expensive, and dirty route:

Say Columbus took the Apollo route to the New World. He starts off with three ships. Along about the Canary Islands he sinks the first ship, just throws it away deliberately. And it's his biggest ship. Come to the Bahamas, he throws away the second ship. He reaches the New World . . . but his ship can't land there. He lowers a lifeboat, sinks his third ship, and rows ashore. He picks up a few rocks

on the beach and rows right back out to sea, across the Atlantic . . . and at the Strait of Gibraltar he sinks the lifeboat and swims back to Spain with an inner tube around his shoulders.

It's awful to think that this was being printed when *Columbia* dissolved in flames in the western sky, killing seven astronauts and America's first reusable spacecraft. Varley's passion for space infuses *Red Thunder*, and he is right: Americans *should* be the first on Mars. What's more, they should arrive, as Varley's ragtag astronauts do, in a Bigfoot pickup truck with an American flag wagging on the tip of its antenna. Exploration is not the product of bureaucracies, political agendas, and PowerPoint presentations. That sort of thing may plant a flag on the moon, just as it sent Lewis and Clark to the Pacific, but it cannot bring life to lifeless places. That can only be done by rugged individualists, people who are fanatics and starry-eyed idealists, whose word for "hubris" is "gumption." The Wright Brothers were weird obsessives who invented the airplane in their spare time, in their bicycle shop. Why shouldn't such people land on Mars as well?

Politicize space travel, and only politicians will travel in space. Rick Tumlinson of the Space Frontier Foundation imagines what it would have been like if America's western expansion had been run the way space is:

A new Waggonautics and Wilder-nautics Agency is created to manage the frontier. . . . [G]overnment engineers [are] called in to develop a new Conestoga Wagon and Log Cabin capable of dealing with the extreme conditions encountered by the explorers. Some thirty years after the original expedition a small but relatively high tech cabin is reaching completion some hundred miles west of the Mississippi. Serviced by a completely self sufficient giant Conestoga Shuttle, the cabin faces delay after delay as government priorities shift, and there is doubt as to if it will ever be ready for its first four Wilder-nauts. As endless debates between engineers and scientists continue as to its usefulness, with some proposing the development of unmanned wagon trains to lower the risks to humans . . . an entire generation of potential pioneers are denied the

chance to move out into the new world. . . .

Americans should get to Mars first, and they should get there in a garage-built private spacecraft. Moreover, that's *why* they should be first. Ingenuity cannot be regimented; it is the possession of thousands of otherwise anonymous people with no political clout, and often with little ability to articulate their ideas. They crossed North America in the 19th century because they were tough and deter-

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*Libertarians have traditionally had an affection for crackpots, precisely because we know that the line between lunacy and genius is usually drawn only in retrospect.*

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mined. Many never made it, and many who did were wild and unsavory characters. But they had something that made them stand out from the rest of the world. They're still around, tinkering in their garages on ideas that might some day take us into space, even though the Exploration Establishment would scoff at them. They're people like Richard Speck and his team at Micro-Space Inc., competitors for the X-Prize, a \$10 million reward for the first privately built spacecraft to carry three people into space, return, and launch again within two weeks. They're people like Leik Myrabo, who has devised a way of boosting payloads to orbit on a column of laser light, which quickly heats the air underneath a mushroom-shaped booster, causing the air to explode and push the booster upward. They're people like Justin Kare, who proposes the ingenious idea of shooting laser-launched objects toward a spacecraft, which then blasts the objects with its own laser, and collects the transferred momentum in a magnetic sail.

Throughout his career, Varley has been compared to Robert Heinlein, a comparison he wears with pride, having written a screenplay for *Have Spacesuit, Will Travel*, and putting countless references to Heinlein in *Steel Beach*. *Red Thunder* is more clearly an homage, full of the youthful wonder at

space travel which energizes Heinlein's best work and is the loveliest sentiment in s.f. In books like *Have Spacesuit* and *Rocket Ship Galileo*, Heinlein told stories of average kids — a little nerdy, perhaps, easy to tease, but just like the kids who read his stories — who, through quirkiness, luck, and absolute devotion, manage to reach the stars they adore. Varley's novel recaptures that feeling, and thus seems a bit homey, or at least unrealistic. But is it? Consider the story of David Hahn, a Michigan Boy Scout who, in 1995, came close to building a nuclear reactor in the family's garden shed. "Sure," *Harper's* reported three years later, "they thought it was odd that David often wore a gas mask in the shed, and would sometimes discard his clothing after working there until two in the morning, but they chalked it up to their own limited education. [His stepfather] says that David tried to explain his experiments but that 'what he told me went right over my head.'" Hahn tried to construct a kind of reactor which government projects had given up as a lost cause decades before. But the 17-year-old "was determined to get as far as he could by trying to get his various radioisotopes to interact with one another. . . . [He] took the highly radioactive radium and americium out of their respective lead casings and, after another round of filing and pulverizing, mixed those isotopes with beryllium and aluminum shavings, all of which he wrapped in aluminum foil . . . and tenuously held together with duct tape."

With people like these, and ideas like these, there is no excuse for being Earth-bound in 2003. The future has been made by people like David: driven, curious misfits, creative in spite of themselves, and often in spite of authorities. Their rebellions can be amusing, self-destructive, or dangerously subversive. Sometimes their manner can reach the abusive extremes of the stereotypical suffering artist. Sometimes it can be the fevered obsession of the mad scientist. And sometimes it can be the epic vision of a Newton or an Einstein. There is no way for us to tell in advance. But in times and places where conformity and sacrifice have been the rule, the charismatic impulse of creativity has



been made a political crime, and science has been driven under the machinery of the state. Professor Fang Lizhi, for example, who now teaches quantum theory at the University of Arizona, lived the life of a devoted Marxist in China, but he aroused suspicion when he rejected the Official Physics. "[T]he Chinese textbook I was studying," Fang told *Popular Science*, "quoted Lenin to say that the Copenhagen school [of atomic structure] was bourgeois and wrong. Bourgeois — that's nonsense . . . ! The result was that in 1957 I was expelled from the Party. So I couldn't hold on to my job." During the Cultural Revolution of the 1960s, he was forced to drag farm carts like a donkey, because he was a "stinking intellectual." Yet he continued to study, secretly carrying a copy of Russian physicist Lev Landau's *Classical Theory of Fields*. "I read it in the coal mine," he recalled.

Free nations, by contrast, suffer a thousand cranks and mediocrities for every good new idea. Visionaries and crackpots stand side-by-side, and many occupy both categories. Libertarians have traditionally had an affection for crackpots, precisely because we know that their wondrous flow of inventions, contentions, and hallucinations are the only real signs of life in any nation, and that the line between lunacy and genius is usually drawn only in retrospect. From the seeming randomness of Whitman's free verse poetry, to the butterfly-fast notes of Parker's modern jazz, to today's discomfiting ideas about genetic manipulation or family relationships, a free society allows creativity, even though most new ideas end up being wrong, and many dangerous. Despite the preponderance of wrong and dangerous ideas, a free society allows creativity and eccentricity because every now and then, some new visionary with a little gumption and a lot of know-how comes up with an idea that changes everything — and then the rest of us say, "Now why didn't I think of that?" These are the sorts of people Varley is writing about — and writing for. They are the people who will take us to Mars . . . if we ever do go.

"Pioneers," writes the Micro-Space

team, "whether mountain men or religious outcasts, computer hackers or web nerds, are peculiar people. They invest their lives and assets in the pursuit of their dreams, yet they can seldom tap government treasuries. All mankind eventually benefits, but those who lead

the way into a frontier often walk alone." Private space exploration won't be any easier than the exploration of the West was. Frontiers are deadly places. But the question is whether Americans will have the guts to say yes to that challenge. □

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*Spellbound*, directed by Jeff Blitz. ThinkFilm, 2003, 95 minutes.

*A Mighty Wind*, directed by Christopher Guest. Warner Bros., 2003, 91 minutes.

*Rabbit Proof Fence*, directed by Phillip Noyce. HanWay, 2002, 94 minutes.

*Russian Ark*, directed by Alexander Sokurov. Wellspring, 2002, 96 minutes.

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# Instead of a Blockbuster

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JoAnn Skousen

*Spellbound* is a surprisingly entertaining documentary about the 1999 Scripps-Howard National Spelling Bee. I know, you're probably thinking that a movie about a spelling bee is about as exciting as watching the grass grow, but this brilliantly conceived and edited film is intense and funny, heart-warming and heartbreaking. Audiences care deeply about the eight young competitors and their families who are highlighted in the film.

Many viewers of *Spellbound* have reported feeling flashbacks to the gut-wrenching, heart-stopping, breath-holding days of gymnastics meets and Little League games. Me, I have figure skating flashbacks.

For nearly eight years, I was a "skating mom," as my youngest daughter, Hayley, rose through the ranks of competitive figure skating. Skating was the hub around which we built the rest of our lives. "We skate,"

we would explain, as she left school early for practices and choreography sessions, missed school entirely for competitions, planned family vacations around training schedules, and checked on the availability of ice rinks whenever we traveled. "We skate," was enough motivation when we rose at 4:30 for 6 a.m. lessons, bundled up when the rink temperatures hovered in

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*You're probably thinking that a movie about a spelling bee is about as exciting as watching the grass grow, but this brilliantly conceived film is intense and funny, heart-warming and heartbreaking.*

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the 20s, and devoted holidays and summer vacations to intensive practicing while non-skating friends and siblings slept in. Despite the often bitter-

sweet realities of competitive sports, the joy of what we shared as mother and daughter during those years lingers on. When a back injury abruptly ended her competitive skating career, just weeks after she successfully defended her title as Florida state champion, I was as devastated as she was. Even today we miss it.

In *Spellbound*, director Jeff Blitz tells a true story that mocks the mockumentary format honed to delicious perfection by Christopher Guest and Eugene Levy in such cult favorites as *This Is Spinal Tap* and *Best in Show*, without ever mocking the real-life subjects of his documentary. We meet the "real"

Catherine O'Hara in a farmhouse in Ambler, Pennsylvania, a woman so sincere, so earnest, and so unintention-

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*Even taking into account the ensemble's intended self-mockery, this film is more pleasant breeze than mighty wind.*

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ally funny that you have to love her, whose husband reports (just as earnestly) that he walks around the hotel (on the outside) to settle his nerves

while waiting for his daughter's turn to spell. The self-important Scripps-Howard official word-pronouncer reminds us of Fred Willard's outrageously earnest "color commentaries" in *Best in Show*, as he describes the experience of being hounded "throughout the country" by autograph seekers. During the interviews, we laugh at the earnestness of people who care so deeply about something that ultimately matters so little, and realize that it isn't the spelling bee itself that we find so compelling, but the glimpse into the personal stories and family relationships that matter indeed.

Did I mention that they are earnest?

Blitz skillfully selected which of the 249 finalists to highlight, offering a cross-section of ethnic and socio-economic backgrounds. The parents appear quirky and driven, but not abusively so, allowing us to see the stage parent in ourselves without wincing too painfully. We cheer for Angela, whose Mexican immigrant parents don't even speak English; for Harry, the quirky young boy who suffers from logorrhea (and yes, I spelled it correctly); for Neil, a first-generation Indian whose home village of 5,000 will be fed by his grandfather if the spelling gods allow him to win; for Ashley, the earnest black girl from D.C. whose only study aid is a dictionary; and equally for the charmingly sweet competitor whose parents hired five tutors to help prepare.

Part of the fun for intellectuals like us (you, Dear Reader, and me) is playing along, seeing whether we could have made it to the top (or indeed, past Round 1). I won't spoil it for you by listing the words here, but I will admit that I missed a few. Okay, a lot. But I knew a lot too, and so will you. In many respects, *Spellbound* is more gripping than the car chase in *The Matrix: Reloaded* and funnier than the deadpan interviews in *A Mighty Wind*. These unrehearsed kids and their parents are magical. *Spellbound* is, in a word, spell-binding.

*Spellbound* might not have been as funny or edited in quite the same way if it weren't for the popularity of the Guest-Levy mockumentaries that have attained cult status in recent years, surpassing *The Rocky Horror Picture Show*

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### Personals

Gay libertarian man, 43, seeks friends in the San Francisco area or worldwide. [mdf1960@yahoo.com](mailto:mdf1960@yahoo.com)

### Real Estate

**House for sale** in libertarian hot-bed-area. Elko (N.) Nevada. Skiing, hunting, fishing, casinos. 3,700 sq. ft. log with 4 acres — View! Indoor jetted pool. More info/photos on [WWW.farmers@rabbitbrush.com](http://WWW.farmers@rabbitbrush.com) Fax: 775-738-4960 \$330,000.

on a recent list of Top Ten Most Influential Films. Guest's influence is seen in the non-narrated set-up of Blitz's interviews with the spellers and their families, the deadpan shots of hometowns, the juxtapositions of action and interviews. Truth be told, however, Guest's and Levy's latest mockumentary, *A Mighty Wind*, suffers by comparison. It is funny, but predictable. As a fan of their entertaining earlier works, I felt a little like the parents at a talent show, willing them to excel, laughing hopefully at their jokes, yet knowing that they were falling a little flat this time. Even taking into account the ensemble's intended self-mockery, this film is more pleasant breeze than mighty wind. See it, if you are a fan, but see *Spellbound* as well.

On the other hand, *Rabbit Proof Fence*, set in western Australia in the 1930s, is an independent film whose subtle, hands-off telling of a true tale mimics the traditional documentary format without mocking it. One hundred years ago the colonial Australian government decided it would breed aborigines out of existence by declaring every half-breed aboriginal child to

*Rabbit Proof Fence recreates the amazing true story of 12-year-old Molly, her 6-year-old sister Daisy, and their 8-year-old cousin Gracie, who were kidnapped and transported to a training camp more than 1,200 miles from their home.*

be white. These children were declared wards of the state, taken forcibly from their mothers, and raised in orphanages or foster homes where they were trained to become servants. If they were allowed to marry at all, it would be to white men or women of comparable social status. Thus, "within four generations they will lose all traces of their aboriginal ancestry," Kenneth Branagh's character, the territorial minister of aboriginal affairs, explains.

*Rabbit Proof Fence* recreates the

amazing true story of 12-year-old Molly, her 6-year-old sister Daisy, and their 8-year-old cousin Gracie, who were kidnapped and transported to a training camp more than 1,200 miles from their home. Determined to return to their mothers, the three manage to escape and hide from bounty hunters for weeks as they make their way home by following the coast-to-coast fence erected to keep rabbits from invading and destroying the crops and pasture land on the other side.

Ironically, these proliferating rabbits were not indigenous to Australia, but were brought there as a food source by British settlers who did not realize that on a continent without natural predators, rabbits would multiply and quickly become a threat to every living plant. More ironic still is the fact that most of these children were fathered by men sent to build the rabbit-proof fence. The film's metaphoric title reminds viewers that the white settlers were also invaders, "multiplying like rabbits" until they covered the continent. No fence was rabbit proof enough to keep them out.

This is a heroic tale of indefatigable determination in the face of seemingly insurmountable odds. The three remarkably natural, unaffected young actresses seem completely focused on the task at hand and utterly oblivious to the camera. The best directors seem to disappear from a film, and Australian director Phillip Noyce directs these girls with such a light touch that he does just that. Known for such thrillers as *The Saint*, *The Bone Collector*, and more recently *The Quiet American*, Noyce has produced another quiet winner.

A ghost story without spooks, *Russian Ark* is, in fact, a ghost story without even a story. But it's a film with a gimmick, and that gimmick works gloriously well: nearly 1,000 actors dressed in period costumes representing half a dozen historical eras are shot in one 99-minute take. The camera weaves in and out of crowds and rooms within the Hermitage, floating

up stairs and around corners, while various eras of Russian history fade in and out of the camera's vision. Writer, director, and visual designer Alexander Sokurov spent 15 years planning the film, which only became technically possible with the recent development of high-quality digital cameras.

We never see the narrator, who has awakened to find himself dead.

*Nearly 1,000 actors dressed in period costumes representing half a dozen historical eras are shot in one 99-minute take.*

Indeed, we seem to be his eyes. He follows a guide, who wonders where he has awakened "this time," and seems satisfied to discover that he is "again" inside the Hermitage in St. Petersburg, observing and participating in various significant scenes of Russian history. Even Isadora Duncan's Isadorables appear briefly.

About his selection of the Hermitage as his setting, Sokurov has said he was "curious to know what it was to live inside a work of art, the Hermitage museum, an architectural monument, as well as in the Hermitage, the historical residency of the Russian State. Have a try to live inside a piece of jewelry — in a Fabergé Easter egg!" Sokurov succeeds in creating the splendor of opening a Fabergé egg to find a living, miniature world whirling inside.

Spoken in Russian with English subtitles, it is sometimes difficult to



"You know, predestination *would* speed things up on Judgement Day."

decide who is speaking each line; the one-take format precludes editing closeups of the speakers into the scenes. During the final ballroom scene one actress winks at the camera, a digital version of rabbit-ears behind someone's head or Lord Byron etching his name into a pillar of the Parthenon,

and impossible to edit out without marring the concept of the film. There isn't any suspense, or even much of a story — this is a philosophical, intellectual piece. Nevertheless, the film is a visual and historic wonder, a stunning trip through the Hermitage that you will never forget. □

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*By Order of the President: FDR and the Internment of Japanese Americans*, by Greg Robinson. Harvard University Press, 2001, 336 pages.

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# Homegrown Himmler

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Bruce Ramsey

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In the eyes of most historians, Franklin Roosevelt bore little responsibility for the wartime internment of the Japanese Americans. Greg Robinson, assistant professor of history at the University of Quebec, argues in this book that most historians are wrong.

Roosevelt wasn't much interested in the Japanese Americans, he writes. But that does not absolve him of responsibility. He signed the detention order. He knew what the policy was. And, writes Robinson, Roosevelt showed "an astounding casualness about the policy and an indifference to its effect."

The federal government was of two minds about citizens of Japanese descent. In 1940 the FBI had reported that the Hawaiian Japanese, citizens and non-citizens, were overwhelmingly loyal. So had a White House intelligence unit. On the other side, Frank Knox, the War Republican FDR chose as secretary of the Navy, argued that the Japanese in Hawaii could not be trusted and should be put in camps. Henry Stimson, the former Taft and Hoover official FDR appointed as secretary of war, wanted all Japanese, in

Hawaii and on the Pacific coast, put in camps — a step that Attorney General Francis Biddle said was illegal.

On February 19, 1942, Roosevelt issued Executive Order 9066, ordering the removal of the West Coast Japanese. The Democratic-controlled Congress quickly backed up the order with legislation. Ethnic Japanese were ordered removed from Washington, Oregon, and California. Of the 112,000 people affected, 70 percent were citizens.

In his review of documents, Robinson finds that this order was "not based strictly on military considerations." The military was also of two minds. Gen. Mark Clark and Adm. Harold Stark, speaking for the top brass, reported that internment was not necessary. The military commander of the West Coast, Gen. John DeWitt, thought it was. Roosevelt took the latter view, agreeing with Stimson.

More than 100,000 ethnic Japanese lived in Hawaii. The Japanese there were about 35 percent of the population. It was a much greater proportion than on the West Coast, and it meant that a far greater proportion of whites in Hawaii knew Japanese and trusted them.

Robinson says that while Roosevelt "had played a largely passive role in the decision to evacuate the West Coast Japanese," he "actively campaigned for mass removal in Hawaii." FDR argued in a memo to Knox, "I do not worry about the constitutional question — first, because of my recent order, and second, because Hawaii is under martial law." But the military commander of Hawaii, Delos Emmons, opposed internment. He didn't think it was necessary. There were logistical problems of moving 100,000 Hawaiian Japanese to places like Idaho and Nevada, and political problems, too. Eventually, Roosevelt gave it up.

Back on the mainland, camps were made of wooden barracks surrounded by fences and guards, and placed in thinly populated areas, mostly in the desert. Roosevelt's first administrator was Dwight Eisenhower's brother Milton, who took the job with the idea that the Japanese would be resettled. When he discovered that the intention was to keep them confined, he resigned, writing that most of them were loyal.

The camps were run by civilians. The agency in charge, the War Relocation Authority, was patterned after a New Deal agency, the Resettlement Administration. Roosevelt's left-wing vice president, Henry Wallace, who had been secretary of agriculture during the 1930s, asked to use Japanese-American labor to reclaim the desert and create "model agricultural communities," and nominated one of his own deputies to have the job. That was one farm program that never materialized.

Internment reflected the fears of most Americans, and amplified them. The fact of internment seemed to confirm that Japanese were not to be trusted. If they were so innocent, why had they been locked up? Pressure arose from several quarters, including the War Relocation Authority itself, for Roosevelt to say publicly that most Japanese were loyal. John McCloy, assistant secretary of war and an "architect of the internment," Robinson says, strongly supported such a statement. Roosevelt ignored these appeals for months. Finally, on February 1, 1943, he issued such a statement.

This statement, Robinson says, is held up by Roosevelt's supporters as proof that the president's thoughts were good and pure. "In fact," writes Robinson, "Roosevelt approved verbatim a text written by others and had little to do with it."

As the tide of war turned, so did the thinking of some who had championed internment. McCloy was an early supporter of an army regiment of Japanese Americans, which became the 442nd Combat Team. Stimson agreed; he argued that "the Japanese problem in this country after the war would admit of a far easier solution if voluntary enlistment were permitted." Roosevelt agreed to the unit, but for a different reason: he thought it would be good propaganda.

The extraordinary bravery of the 442nd, which fought in Italy, undermined the rationale for the internment. So did the rollback of Japan's forces in the Pacific. In 1944, several of the New Deal liberals, including Interior Secretary Harold Ickes and Undersecretary Abe Fortas, began pushing for the end of internment. Knox died, and Stimson, also a Republican, called for an end to the policy. Later that year, the Supreme Court was to rule on the internment in the case of *Korematsu v. United States*, and Attorney General Biddle believed the government would lose.

"Once the consensus on ending exclusion was cemented," Robinson writes, "the chief problem was stage-managing the request to win Roosevelt's approval."

Stimson went to Roosevelt. His response was to suggest that Stimson call the governor of California, Earl

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*Of the 112,000 people "relocated" to the camps, 70 percent were citizens.*

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Warren, and get Warren's approval. Warren would later become Chief Justice of the Supreme Court, and be known as a liberal, but in 1942 he had been elected in California largely on his enthusiasm for interning the Japanese. Why would Warren offer to let them out? Besides, he was a candidate that year for the Republican nomination for

president — that is, to run against FDR — so it was not likely that he would accept responsibility for bringing back the "Japs."

Nor would Roosevelt. He put off the matter until after the 1944 election. It was in December, on the eve of the *Korematsu* decision (which the government, ironically, won) that the decision was made to end the internment. Even then, the decision was ascribed not to Roosevelt but to Stimson.

Having read Stimson's diary, Robinson concludes that the secretary of war did, in fact, have "a racist streak" about the Japanese. But he cared about the Constitution, and was worried, in his words, about "blowing a tremendous hole" in it. Roosevelt didn't. "The internment," Robinson concludes, "was not fundamentally inconsistent" with Roosevelt's "overall

political philosophy and world view."

Robinson has written a concise, focused, and well-researched volume. Those who celebrate the demolition of

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*Roosevelt played a largely passive role in the decision to evacuate the West Coast Japanese, and he actively campaigned for mass removal in Hawaii.*

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the FDR myth will have wished for more vitriol, and perhaps a few fireworks. But the facts are here, and even Arthur Schlesinger, Jr., admits in the cover blurb that "it was not FDR's finest hour." □

## Notes on Contributors

Terry L. Anderson is Executive Director of PERC — The Center for Free Market Environmentalism in Bozeman, Mont.

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

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

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Jo Ann Skousen is a writer and critic who lives in New York.

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

## New York City

Curious solution to Gotham's troubles, from the *Gotham Gazette*:

New York police have increased enforcement of laws against petty crimes, catching the following criminals:

Jesse Tavaras, who sat on a milk crate in front of the Bronx hair salon where he works, and was convicted of "unauthorized use of a milk crate."

Pedro Nazario, who fed pigeons in Morningside Park on his 86th birthday, and was fined \$50.

Pregnant teenager Crystal Rivera, who sat down to rest on a subway stairwell, and was fined \$50.

Yoav Kashdia, an Israeli tourist, who sat on two seats in a nearly empty subway car, and was fined \$50.

## New York City

Curious solution to the curious solution to Gotham's troubles. From the *New York Post*:

The Patrolmen's Benevolent Association has launched a \$100,000 campaign called "Don't Blame the Cop," in response to public disapproval of increased ticketing for obscure traffic laws.

## Carlsbad, N.M.

Nomenclatural note, from a report in the *Carlsbad Current Argus*:

Explaining the name-change of U.S. Route 666 to 491, Highway and Transportation Secretary Rhonda Faught says that the original number's "negative connotation" was one officials didn't want associated with N. Mex. because it discouraged tourism and area economic development.

## Saudi Arabia

Evidence that a happy employee is a more productive employee, from a dispatch in *The Guardian*:

Saudi Arabia's leading executioner, Muhammad Sadd Al-Beshi, says he lives a normal life, except for when he severs heads: "It doesn't matter to me: two, four, ten — as long as I'm doing God's will, it doesn't matter how many people I execute."

## Maryland

Unlikely source of classified information, as found by the *Edmonton Journal*:

FBI agents have enlisted the help of three 8th graders, who teach the agents how to convince Internet pedophiles that they are teenage girls.

## Australia

Advice to Down Under professionals, reported in the *San Diego Union Tribune*:

An Australian sex workers' support group has published a pamphlet with tips for establishing repeat business such as "always act like you enjoy it," and "don't wear shoes in bed."

## Berlin

German police are as necessary as their American counterparts, from a dispatch by *Reuters*: Alarmed teachers at a pre-school called police to report a giant spider crawling in a sandbox. Investigators discovered that the arachnid was a rubber toy.

## Canada

Triumph for animal rights, reported by the *Seattle Times*:

A British Columbia woman who petted a killer whale was fined \$74 under the Canadian Fisheries Act's marine mammal regulations. In a stern warning to future miscreants, the judge said that "the sentence next time will be quite different."

## England

Curious athletic event, from a *Reuters* dispatch: Continuing a decades-old tradition, 200 runners will compete this year in a marathon race against a horse.

## Illinois

Surprising technology in gamer toys, reported by the *Straits Times*:

The National Center for Supercomputing Applications has created a supercomputer using 70 individual Sony PlayStation II devices.

## Iraq

Curious advertising strategy, from a dispatch to the *San Jose Mercury News*:

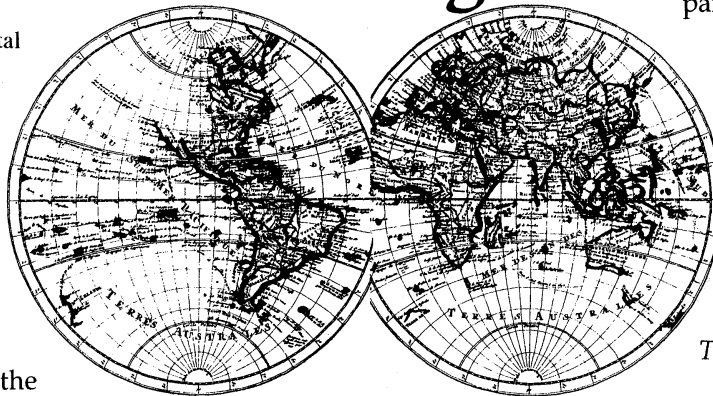
In Iraq, Toyota Land Cruisers are called "Monicas," after Monica Lewinsky. "They are a very tempting car . . . just as Monica tempted Clinton, they will tempt you," says auto dealer Marwan Shaban.

## Melbourne, Australia

Triumph for liberty Down Under. From the *Melbourne Herald Sun*:

The Federal Court has ruled that a convicted heroin dealer will be allowed to claim a \$220,000 tax deduction for money he lost during a drug deal.

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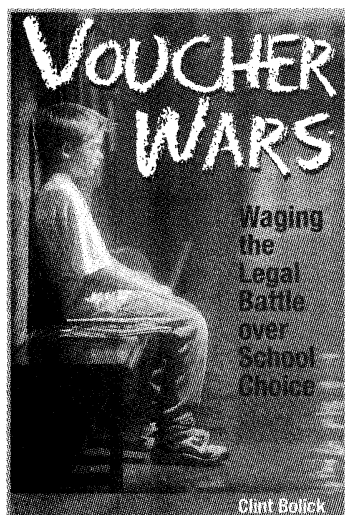


Special thanks to Martin Solomon, Owen Hatteras, Russell Garrard, and William Walker for contributions to Terra Incognita.

(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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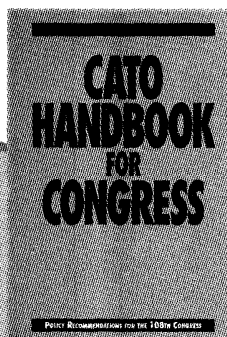
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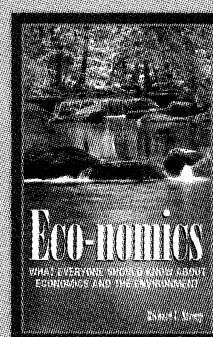
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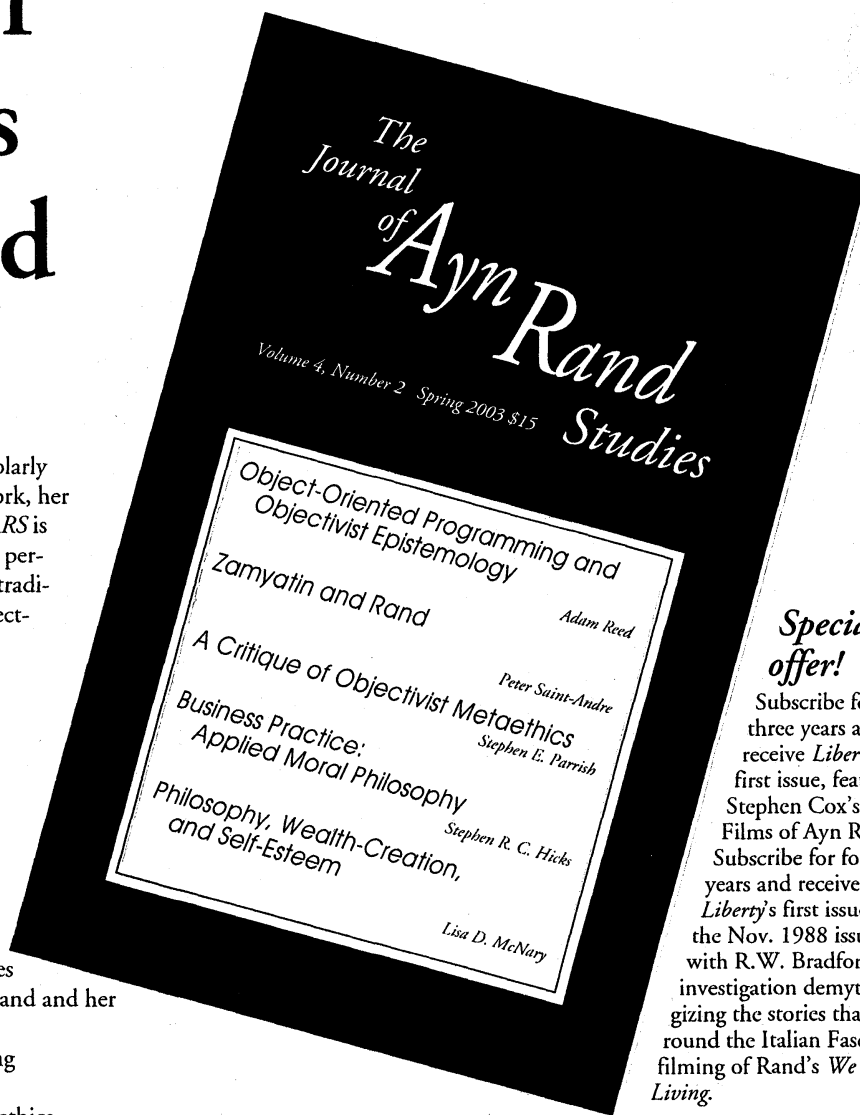
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