

# Liberty

## Free Rush Limbaugh!

December 2003

\$4.00

by Thomas S. Szasz

## Arnold Schwarzenegger: A Republican Bill Clinton

*by R. W. Bradford*

## Mass Murder in Deseret

*by William Grigg*

## The Tax Revolt that Worked

*by Michael New*

## Blues in the Key of zzz

*by Richard Kostelanetz*

## The Second Amendment on Trial

*by Dave Kopel*

Also: *Frank Fox* examines the mind of a man who could tolerate Stalin, but not bad writing; *Fred Smith* reports from the trade wars in Cancun; *Richard Kostelanetz* discovers his secret government file . . . plus other articles, reviews & humor.



*"Liberty is a thing above price." — Justinian*

# How to Subscribe to

## Liberty

**Liberty takes individual freedom seriously . . . and the status quo with more than one grain of salt!**

Every issue of *Liberty* brings you news you can't miss, opinions you won't find anywhere else, and the best libertarian writing in the world.

*You won't want to miss a single issue!*

### Act Today!

*Liberty* offers you the best in individualist thinking and writing. So don't hesitate. You have nothing to lose, and the fruits of *Liberty* to gain!

Use the coupon below or call:

**1-800-854-6991**

Please enter my subscription to *Liberty* immediately!

- 12 issues (One Full Year) \$29.50  
 24 issues (Two Full Years) \$56.00

Add \$5 per year for foreign subscriptions.

name \_\_\_\_\_

address \_\_\_\_\_

city \_\_\_\_\_ state \_\_\_\_\_ zip \_\_\_\_\_

I enclose my check (payable to **Liberty**)

Charge my  VISA  MasterCard

signature \_\_\_\_\_

account # \_\_\_\_\_ expires \_\_\_\_\_

Send to: Liberty, Dept. L,  
P.O. Box 1181, Port Townsend, WA 98368

# Letters

## Got What's Coming to Her

I just finished reading Jo Ann Skousen's account of her daughter throwing water balloons at parked cars. Thank goodness there were cops on hand to take her daughter to jail. Why was her teenage daughter vandalizing private property? Hasn't Skousen taught her daughter respect for other people's property? The police were justly defending private property. Punk kids vandalizing private property should never get off with just a slap on the wrist. Not even Skousen's daughter.

Skousen is completely wrong to argue that the police were overacting when they drew their guns, handcuffed, repeatedly cursed at, charged the teenagers with felony battery of a police officer, and refused for eight hours to allow Skousen's daughter to speak with her parents or an attorney. Skousen should accept that her daughter was caught in an act of vandalism and is now paying the price for hooliganism

Robert K. Stock  
Medford, Ore.

## Down the Drain

The Grassy Knoll wasn't all that crowded!

Geez, and here I thought that TV's *Hardball* commentator, socialist Chris Matthews, was the only remaining person on the planet who still believed that Oswald shot Kennedy. Now *Liberty* (November) comes out with a story supporting that absolutely asinine and obviously incorrect notion. My flabber is gasted, my mind is bogged!

As an advanced degree design engineer who made straight A's in physics, and who has read perhaps a dozen books on the Kennedy assassination, when I saw the Zapruder film, I knew the "shot which killed Kennedy" had come from close to the ground in order to form the exit wound on the top of

Kennedy's head. (There is absolutely no doubt that the hole at the top rear of Kennedy's head was an exit wound.) I later saw a British documentary which said that the fatal shot came from a storm drain at street level at the right front of the Kennedy car. The assassin could have simply exited the drain through the storm drain tunnel into a creek a few yards away without being detected. Probably three shooters (none of whom were Oswald) took a whack at Kennedy, but the one in the storm drain killed him! The probable shooter was a French Corsican mafia type who was later killed in South America while trying to perform similar deeds!

Moreover, the Mafia kingpin for New Orleans and southeastern U.S., on his deathbed, told his lawyer that the Mafia had made a big mistake in killing Jack Kennedy, that they should have killed Bobby instead!

The credibility of *Liberty* took a big hit with me on this one! For me, the British documentary explained all, leaving absolutely no doubt about how it happened!

Jim R. Siler  
Santa Barbara, Calif.

## Murdered by the Corsican Mafia

David Ramsay Steele contends that none of those who claim to have been part of a conspiracy to assassinate Kennedy "has produced names, dates, places, and other plausible touches" (p. 32n), but his review omits the one source which provides exactly that: Gregory Douglas's *Regicide: The Official Assassination of John F. Kennedy* (2002). Douglas was friends with the late Robert Crowley, former Assistant Deputy Director for Clandestine Operations in the CIA. Before his death in 2000, Crowley gave Douglas some of his papers. One of these documents, reproduced in this book with Crowley's handwritten notations, is a memorandum summarizing the ratio-

*continued on page 4*

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

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

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

Opinions expressed in *Liberty* are those of the authors and not necessarily those of the Liberty Foundation. Copyright © 2003 Liberty Foundation. All rights reserved.

R.W. Bradford  
*editor & publisher*

Stephen Cox  
John Hospers  
Bruce Ramsey  
Jane S. Shaw  
*senior editors*

Brien Bartels  
David Boaz  
Alan W. Bock

Douglas Casey  
Eric D. Dixon  
Brian Doherty

David Friedman  
J. Orlin Grabbe

Bettina Bien Greaves

Leon T. Hadar  
Gene Healy

Robert Higgs  
Bill Kauffman

Dave Kopel  
Bart Kosko

Richard Kostelanetz

Loren E. Lomasky  
Sarah McCarthy

Wendy McElroy  
William E. Merritt

Robert H. Nelson  
Randal O'Toole

Ross Overbeek  
Durk Pearson

Jeff Riggensbach  
Scott J. Reid

Ralph R. Reiland  
Sheldon Richman

Timothy Sandefur  
Sandy Shaw

Jo Ann Skousen  
Mark Skousen

Tim Slagle  
Fred L. Smith Jr.

Martin M. Solomon  
Clark Stooksbury

Thomas S. Szasz  
Martin Morse Wooster

Leland B. Yeager  
*contributing editors*

Thomas Fuller  
Patrick Quealy

Kathleen Bradford  
*assistant editors*

John Bergstrom  
S.H. Chambers

Rex F. May  
*cartoonists*

Jon Kalb  
*computer consultant*

Jim Switz  
*associate publisher*

Katelyn B. Fuller  
*editorial intern*

**2 Letters** Poison pens and love letters: a mixed mailbag.

**5 Reflections** We go biometric on the Canadians, demand affirmative action for couch potatoes, go drinking with Bill Clinton, get waylaid en route to a tryst, goto hell, crawl inside Saddam's mind, and pierce the veil of ignorance.

## Features

**11 The Republican Bill Clinton** Count *R.W. Bradford* out of the love-fest for Arnold Schwarzenegger. Plus: *Stephen Cox* and *Ralph Reiland* on the elevation of the action hero to political superstar.

**15 Limbaugh's Disease** Thank goodness Rush is getting treatment! *Thomas Szasz* rejoices. Now maybe Limbaugh will be able to make something of himself.

**17 Rescuing Free Trade From the Bureaucrats & Special Interests** *Fred Smith* sifts through the ashes of the free trade talks in Cancun.

**23 Gun Rights at the Supreme Court** Is the "right to keep and bear arms" meaningless? That's not the Supreme Court's opinion, *Dave Kopel* reports.

**28 The State Department, Senator Fulbright and Me** Sometimes paranoids have real (silly) enemies, *Richard Kostelanetz* discovers.

**35 Friedman Counterattacks** In *Liberty's* August issue, J.C. Lester attacked Jeffrey Friedman's "post-libertarianism." In this issue, *Friedman* and *Ari Armstrong* strike back — but do they convince *Lester*?

## Reviews

**42 Mass Murder in Deseret** *William Grigg* looks into the history of the Mormon Church at a time when the Latter-day Saints were tensed for Armageddon and Utah was hostile territory for Gentile wagon trains.

**47 The Critic and the Tyrants** Marcel Reich-Ranicki was an astute literary critic, famously vicious to other authors yet strangely nice to Stalin. *Frank Fox* reads between his lines.

**49 Blues in the Key of zzz** How do you ruin the blues? Easy, says *Richard Kostelanetz* smother them in the blather of PBS.

**50 The Tax Revolt That Worked** *Michael New* explores why California's sky-high taxes are not even worse.



**53 Notes on Contributors** Scoundrels, raconteurs, and muckrakers.

**54 Terra Incognita** Why, God? Why?

# About Your Subscription

**Q: When does my subscription expire?**

A: Please look to the right of your name on your mailing label. There you will find (unless you are getting a renewal notice) the number of issues left in your subscription, followed by the word "left," as in "3 LEFT."

**Q: I've moved. Where do I send my change of address information?**

A: Liberty, P.O. Box 1181, Port Townsend, WA 98368. Please include your previous address (it's best to send us your label from your magazine) and telephone number. Allow us six weeks to receive and process your address notification.

**Q: I'm receiving duplicate copies; what should I do?**

A: Take a look at both mailing labels, clip 'em out and send 'em to us. We'll make sure that you receive all the issues you've paid for.

**Q: I think you've charged my credit card incorrectly; what can I do?**

A: Call us at 800-854-6991 (during normal business hours on the West Coast) or email us at

[circulation@libertysoft.com](mailto:circulation@libertysoft.com)

We'll take down your information and then try to solve your problem as soon as possible.

**Q: Can I change my address on your toll-free number, too?**

A: No. We must get your address corrections in writing, either by U.S. mail or by email.

**Q: Can I communicate with your fulfillment department by email?**

A: Yes; send your communications and queries to us at

[circulation@libertysoft.com](mailto:circulation@libertysoft.com)

We'll try to get back to you as soon as possible.

The editorial offices can be reached at 360-379-0242.

Our sales and subscription fulfillment office can be reached at 800-854-6991 (foreign callers call 360-379-8421).

## Letters, from page 2

nale and planning of Operation Zipper (no prize for guessing where the name came from).

The CIA found out that Kennedy was passing secret documents to the Soviets. Kennedy may have been convinced that the Joint Chiefs of Staff were going to lead the country into nuclear war over Cuba. The Joint Chiefs had expressed interest in covertly inciting war with Cuba in a plan called Operation Northwoods, but Kennedy rejected the proposals. It is also possible that photos of JFK in three-way sex may have fallen into Soviet hands.

Either way, the JCS and CIA were convinced that Kennedy was a threat to the country, and that impeachment or other legal removal was too uncertain and long-term. They hired Sam Giancana from Chicago, who brought in four Mafiosi from Marseilles. Crowley was evidently proud of his role in the plot. A memo to his boss, James Angleton, dated Aug. 10, 1964, says: "The forthcoming [Warren] Commission report is a wonderful piece of creative writing and will be extensively promoted by our good friends at the *NY Times*" (p. 194).

One person has mounted an ad hominem attack on Douglas on the Internet, but he seems, especially in light of Douglas's response, less credible than Douglas. I have found no evidence that Douglas's book is a hoax. If Steele has such evidence, he should share it with us.

Michael Acree

San Francisco, Calif.

### The Public Fools Itself

As a longtime JFK assassination buff (since 1964, when in England I read Mark Lane's articles in the left-wing *National Guardian*), I read with great interest David Ramsay Steele's Historiography in the November 2003 issue of *Liberty* ("Wasn't It a Little Crowded on that Grassy Knoll?"). The otherwise superb article, one of the most lucid and logical I have ever read on the JFK assassination, is marred by some egregious errors in a footnote about the Bush administration. It *might* have been a "calculated lie" if "Bush asserted that Iraq possessed newly developed weapons of mass destruction ready for immediate delivery

against other countries." I am something of a news junkie, and never heard Bush assert any such thing. As a matter of fact, he said we needed to act against Saddam Hussein *before* the threat became imminent. (See, e.g., Bush's "State of the Union Address," 2003, where he said, "Some have said we must not act until the threat is imminent. Since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike? If this threat is permitted to fully and suddenly emerge, all actions, all words, and all recriminations would come too late.") Of course, Saddam Hussein had used WMD in the past, and the latest evidence from David Kaye's report indicates Hussein did have a program for development and deployment of WMD.

The other big lie that the leftwing and others continue to promulgate, which Steele calls "Bush's other big lie," is "that Saddam Hussein had something to do with 9/11." Bush and his surrogates *never* asserted or claimed that Hussein had anything to do with 9/11 (even though much of the public believed it, just as they believe in a conspiracy to assassinate JFK — since there are circumstantial reasons to believe both). In fact, they went out of their way to deny that, and pinned blame for the attack firmly on al Qaeda. So, they did assert a Saddam-terrorism connection, which has proven correct.

Ron West

Gulf Breeze, Fla.

*David Ramsay Steele replies:* The autopsy pictures show that Kennedy was hit twice from behind. The Zapruder film shows an eruption of material from the upper front of Kennedy's head, consistent with an exit wound. As I stated, if there were any hits from in front there must have been an immense conspiracy which

*continued on page 52*

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

Mail to: Liberty Letters, P.O. Box 1181, Port Townsend, WA 98368. Or email to: [letterstoeditor@libertysoft.com](mailto:letterstoeditor@libertysoft.com).

# Reflections

## Terrorists from the Great White North

— Bush administration officials reportedly angered lawmakers by refusing to take a stand on illegal aliens obtaining U.S. driver's licenses and by avoiding questions about the recognition of Mexican identification cards. The sidestepping comes on the heels of the Treasury Department announcing it will "leave in place rules that allow financial institutions to accept Mexican identification cards, called *matricula consular*, which often are used by undocumented immigrants to open bank accounts."

The move was applauded as a victory for immigration and Latino groups, who traditionally vote Republican. Bush is unlikely to alienate the Hispanic population before next year's presidential election. According to the Census Bureau, that population continues to explode in size within the U.S., especially in the South and West. Those who wonder why the Bush administration is "casual" about the ID of Hispanics while pushing vigorously for imposition of biometric passports for Canadians need ask themselves one question: how many Canadians will be voting in the next presidential election?

—Wendy McElroy

## Unsportswomanlike

**conduct** — On NPR the day of the Supreme Court decision on affirmative action, the topic was achieving balance in collegiate sports. The host said, "The U. S. population is 53 percent female, so I guess we should aim for 53 percent female participation in college sports."

This is an amazing statement, even leaving aside its confusion between the percentage of women in the United States and the percentage of women in college. If this woman had ten children and the percentage of blacks in the United States were ten percent, would she feel it necessary that one of her children choose a spouse of that race? Or is it sufficient that her children have all marriage options open to them so they can choose freely? Currently, there are no barriers to entry for women in collegiate sports, other than the inability of most women to engage in, say, collegiate-level football, or the interest level of many women in playing certain sports.

Should women be drafted to achieve gender equality in sports? Should taxpayers be dunned to allow the government to bribe more women to engage in sports they would normally forgo? If this led to the vaunted gender equality sought by this NPR host, and it resulted in dramatic loss of fans' interest in watching collegiate sports, would she mandate attendance?

Currently couch potatoes in their late 40s make up about three percent of the population, yet not *one* is represented in collegiate football! Who will address this travesty?

— Ross Levatter

## High times at White House High

Maybe I was a little too hard on Bill Clinton. In retrospect,

he seems quite likable. I bet he's the kind of guy who would never let your beer get empty. Of course, he also seems like the sort who would skip out, leaving you with the tab, pretend he forgot to leave you with some money when he took that chick home, and promise to make it up to you next time. He's like that buddy you loved to party with in college, until he met this girl you couldn't stand and started bringing her to everything.

— Tim Slagle

## Affirmative reaction

— Despite the ban on racial preferences in California school admissions since implementation of Proposition 209, UC Berkeley was recently found to be accepting a disproportionate number of minority applicants with below-average qualifications. The colorblind standard mandated under 209 still allows schools to consider a student's "disadvan-

tagged" background, a loophole pro-preference admissions officers have evidently exploited.

What's more surprising is some of the public reaction here in the Mecca of political correctness. An on-line poll by SFGate.com, a left-leaning news site affiliated with the *San Francisco Chronicle*, showed an amazing 83 percent "no" response to the question: "Should minority students be admitted to UC Berkeley with sub-par scores?"

One might shrug this off as some unscientific fluke, except that the same thing happened back in June when the



Supreme Court caved on the subject of racial preferences in the University of Michigan case. At that time the liberal SFGate crowd went 57 percent against the court, responding that "admissions should be colorblind." I remember re-reading the question and responses and at first thinking I must have it backwards; I'd never seen an SFGate poll that wasn't clearly tilted the other way on any socio-political question.

I have no idea why this one issue seems to be resonating to the Right at this time. Maybe the Jayson Blair disaster triggered an enlightenment experience for some of the *New York Times* devotees I see around me every day. Maybe others reflected on the irony of Sandra Day O'Connor's statement justifying her support for affirmative action in the Michigan case, saying we probably wouldn't need it 25 years from now. Isn't that what they were saying 25 years ago? But I admit I'm fishing around — I'm intrigued by this, but I really don't get it.

— Michael Drew

**Check pointless** — Somewhere in my town, this very night, an evildoer is creeping into a bedroom not his own. He's bent on robbery, murder, rape, and other obsessions of the criminal mind. Meanwhile, about 900 yards away, two police cars have set up a checkpoint on the highway. They're checking seat belts.

No matter how talented our cops, they can't nab burglars and enforce the state's governance of our private habits at the same time. Even an unbelted blockhead knows that one price for seat belt laws is undetected burglary. Even students failing Economics 101 know that every human transaction bears a fee in time, money, or opportunity. Shrewd thieves with degrees in economics vote in droves for seat-belt legislation.

But cops aren't economists, and if I were a cop choosing

between pleasant conversations with careless motorists and encounters with drug-, alcohol-, and poverty-crazed midnight marauders — well, guess my choice. Unlike politicians who write seat-belt laws, cops are rational.

The National Highway Traffic Safety Administration says 4,200 lives could be saved annually if 90 percent of us buckled up. Those harsh, metallic clicks are Beethoven's

---

*Washington offers incentives to cops: write 40 seat belt tickets in a three-month period and you get a cute little model police car.*

---

*Fifth Symphony* to the ears of the NHTSA. So they'll bluster and bribe municipalities to roadblock streets and highways. How many cops, you have to wonder, are sucked away from fighting crime? And how many undetected felons are creeping through bedroom windows?

And while we're compiling costs, how many heart-attack victims bound for the ER perish at that deadly checkpoint? "Officer, I really gotta get to the hospital . . ." and then the click of closed eyes. Talk about costs. And what about other costs of delay? Delay to work and consequent dismissal, delay to amorous assignations. ("I tell you, Heathcliff, I was gonna be by the big rock on the moors by 9:15, but the seat-belt checkpoint stopped me cold." Farewell romance.)

If each member of the state legislature who voted for primary seat-belt laws volunteered to donate an hour a night to man a checkpoint out on the highway — gratis, no charge to us tax-paying motorists — well, that's different. Still a humiliating invasion of privacy, but no cost in murder,

rape, and robbery due to misallocation of crime-fighting resources. Sad to say, the volunteering spirit, even in Tennessee, has not yet overwhelmed the hearts of many state legislators.

The politicians feel free to crowd in beside me in my Mazda and inspect my use of that strap with a buckle on the end. But they won't invite me, their employer, to the closed hearing on the new tax plan, which will yield proceeds to be used in highway blockades that make me tardy to work. Why are they so disrespectful of my privacy, but so zealous in guarding their own, even when they're legislating my motoring future? They also won't allow me to check out their bathrooms to see if they've got safety strips in the shower and tub bottom. If they're involved in my personal adventures in risk-

**THE INEXORABLE SPREAD OF CIVILIZATION**



taking, why not a quid pro quo? Guess how many of us fall, conk our head, and are subsequently buried due to the lack of shower and tub safety strips. More than 4,200 of us, I bet. Or how about death by barbecue — which could be avoided by mandating all-brick, no-wood construction in public buildings. That has costs, too. Just ask the Lumberman's Association of America. They'll find plenty.

In my state, freedom reigns. There's no mandatory brick construction law — yet. But they did run a "click it or ticket" campaign for half of May and all of June. It was an immense success with 14,061 citations. (And probably at a cost, says the skeptic, of roughly 80 rapes, 150 homicides, and 200 burglaries.) 1,463 checkpoints were set up. (Costs: 6 heart-attack victims late to the ER, 150 workers docked for tardiness, 200 romances unconsummated.) A bonus of our state's obsession with our safety was the issuance of 533 "child restraint" violations. Alabama's loving kindness toward motorists is not matched by its verbal skills. Child-restraint violations are not what they sound like — they mean unbuckled or improperly buckled kids. Great! My state is now in the child-rearing business like the 1921 Petrograd workers' councils in Bolshevik Russia. That's progress?

Thanks to heat from the Feds, Alabama now has a primary — not a secondary — seat-belt law. This means the bluesuits can stop and ticket a seat-belt offender solely for that sin — not because they stopped him for speeding and noticed his unbelted condition. And they can set up those deadly blockades to catch the unbelted. This is a powerful new weapon in law enforcement, like RICO.

And evidently it works, because a recent government survey breathlessly announces that seat-belt use is higher in states with primary seat-belt laws. *Wow*, would you believe it? Who would be surprised that if the state got the power to monitor my car radio and fine me 50 bucks for listening to rock and roll, I switch to Strauss waltzes? We motorists may elect state legislators who regulate our personal habits, and we may even be self-destructive, but we are not irrational.

The state of Washington uses what the strapped-down bureaucrats call "emphasis patrol," another cloudy phrase like "child restraint" violations. (Euphemisms flourish in this land of statist make-believe.) And Washington, a state that teaches computer skills in grammar school, but evidently not English ("emphasis patrol"?), offers incentives to cops: write 40 seat-belt tickets in a three-month period and you get a cute little model police car. If you ask me, writ-

ing 50 tickets ought to get them a transfer to New Hampshire, the only state that has no seat-belt laws.

None of the above is intended to silence that giant clicking sound. Yes, seat belts save lives. It's just that among the slings and arrows of outrageous fortune, seat-belt careles-

---

*Alabama ran a "click it or ticket" campaign for half of May and all of June. It was an immense success with 14,061 citations — at a cost, estimates the skeptic, of roughly 80 rapes, 150 homicides, and 200 burglaries.*

---

ness is only a nuisance, overwhelmed by tides of potential calamities. But even more importantly, as that old country song says, it's "nobody's business but my own."

— Ted Roberts

**Teetotal nonsense** — On a trip to Texas, I stopped at a steakhouse for dinner. After I ordered my meal and drink, the waitress asked me for my "Unicard," which stands for "universal identification card." It's an ID used

Wanted:

# Assistant Editor

Liberty seeks to hire immediately an assistant editor. We're looking for a computer literate individual with good language skills.

Gain experience, training, and responsibility in a working environment where the individual is important.

Salary commensurate with skills.

For further information, contact:

R.W. Bradford

email: [rwb@cablespeed.com](mailto:rwb@cablespeed.com)

telephone: (360) 379-0242

# Word Watch

by Stephen Cox

A reader who is not a libertarian but who follows this column and is therefore a great American anyway, has notified me that "fusion words," as he calls them, have increased, are increasing, and ought to be diminished. He's right.

By "fusion words" he means such diseased expressions as:

incase (incase you're wondering what happened to my space bar);

alot (I know there are alot of these misspellings);

breakup (where I didn't breakup my words);

goto (but you know where you can goto);

alright (if it's not alright with you);

turnoff (and when you leave, turnoff the light).

I'm not sure why people write things like that. They've been writing some of them for a long time: witness "alright," which has been kicking around long enough to shed its second, vestigial "l." Occasionally one of these impostor words even succeeds in legitimizing itself. The best example is "online," the Internet word. You can tell from the pronunciation — the little pause between the two syllables, the unnatural accent on the second — that "online" did not start out in life as a normal English word. It's two words, jammed together.

Fortunately, "on" and "line" are never fused in any but digital environments. No one writes, "She waited online for tickets." (Of course, nobody except metropolitan New Yorkers and people subject to the radiations of the New York dialect says "waited on line" in the first place. Everybody else says "in line.") "Online" is a linguistic adaptation to a new technological context. It may not deserve its success, but you can see how it got it.

Fine. But what new situation mandates "I don't know; it's upto you?" None. It's just the result of a primitive misunderstanding on the part of people who are used to hearing "up" before "to" and who therefore believe that they're in the same word. One possible synonym for "a primitive misunderstanding" is "illiteracy." That may sound harsh. But if you're literate — if you're actually able to read — you are aware that "upto" is not a word. You don't read it in Jane Austen. You don't read it in Ernest Hemingway. You don't read it in *Mad* magazine. You may read it in the *New York Times*, but that's because nobody proofreads the *New York Times*. Anyone who reads can pick up on this stuff. If you can't, you're illiterate.

Harsh? Not harsh enough. To be literate means to have mastered a certain system of signs and significations. It means being able to notice verbal patterns and distinctions, in the same way that being "computer literate" means being able to notice patterns and distinctions among electronic and mechanical phenomena. I am not computer literate. I

can use a computer to do a few things, but when a list of "options" pops up, I usually cannot distinguish among the various items on the list. I would make the same kind of comment about a driver who could turn the steering wheel but couldn't distinguish a caution sign from a stop sign. He might slow down for both of them; he might even get where he wanted to go, but he wouldn't be highway literate.

So don't blame your computer for the eerie growth of fusion words; blame the education system. Signs from the fellow inhabitants of my building, who are not exactly addicted to the computer screen, yet who are not exactly sharecroppers, either, often beg people to "cleanup" after themselves and predict that water will be "shutoff" for repairs. But I can't conclude without quoting my loyal reader, who mentions a set of computer instructions that whispers modestly, as to the soul's own ear, "We assume for our example that in this application you use option-click and escape alot." Ah, escape alot with me, / The best is yet to be . . .

**Political note** — It's back. In his first debate with the other Democratic presidential candidates, Wesley Clark declared, "I've come up with a better economic plan in the past ten days than George Bush has come up with in two years in this country." Question: what doesn't belong in that sentence? Answer: the last three words.

Some time ago I remarked in these pages that you can always tell a leftist, because he can't avoid saying "in this country." It's the Left's most prominent shibboleth. It first came to national prominence in the 1972 film *The Candidate* (a good film, despite what follows). Robert Redford plays a modern liberal politician who is running for governor. During a debate with his conservative rival, he manages to work up a fit of self-righteousness about the debate itself: "We haven't discussed race *in this country!*" Well, fine. But what were they doing instead? Discussing race *in Moldova?*

"In this country" is an especially ridiculous verbal tic: it never adds anything to the thought, but it always occupies the last, and therefore climactic, spot in its clause, as if it really meant something to realize that there *is* a country and that *this is it*. Also, there's the sly little implication that "this country" is a very weird and backward place, not at all like those other countries, because it is inhabited by "Bush" or allows "handgun ownership" or lacks "single-payer" (i.e., government) healthcare, or won't learn the metric system, or any of these other because that professional uplifters and nags are embittered about. The implication is sly, and it's small. It stands just out of the limelight, embarrassed to be seen too clearly. But during the next sorry year, we can expect the Democrats to use it constantly. Let's just hope that it doesn't spread to anybody else.



throughout Texas to prove that you are eligible to drink in a dry or semi-wet county. Drinkers once had to be members of a supper club in order to enjoy some spirits.

For a small fee of two to five dollars you can apply for a Unicard. If you don't have a Unicard, you're charged a small fee for that day, depending on the county. An establishment serving liquor is a "club," and its "membership committee" has three days to consider your application. Presenting it at another participating liquor establishment is considered applying for membership at that private club as well, starting the temporary membership process all over again. However, in some wet counties and bars, the fee is waived.

What is the point of a Unicard? If a group sits down at a table to drink, only one person has to show his Unicard for the whole table. Why? Isn't the purpose of the card to check whether each drinker is cleared by the state to drink at the bar? Well, no: the Unicard is only a sloppy way of keeping tabs on the number of drinkers — or on the amount one drinks. A person can flash a Unicard that's torn, tattered, and ten years old, and they'll still serve him alcohol. The Unicard is an artifact of outdated liquor laws that manages to rake in a few tax dollars for the state.

If I seem frustrated by this, it's because I am. I can't find any credible information about the Unicard on the Web. There is nothing at [texasonline.com](http://texasonline.com) or the website of the Texas Alcoholic Beverage Commission. My father and mother, both Texans, are unfamiliar with the Unicard law. A Texas friend told me that laws about the Unicard vary from county to county, town to town, and district to district, but knew nothing more. None of my relatives in Texas are familiar with the law.

On three separate occasions, I asked bartenders the reason for the continued use of the Unicard in Texas. None had the foggiest clue. How can the citizens of an entire state put up with this arbitrary enforcement of vague liquor laws? Texans aren't known for teetotaling.

— James Barnett

**Back on track** — One of the changes in education over the past 50 years is the demise of "tracking" — grouping students according to ability. In a 1950s New York City grammar school, for example, the top sixth-grade class was officially labeled 6-1, the next was 6-2, and so on down. Not very subtle. Gradually, tracking succumbed to new ideas about diversity, equality, and self-esteem. It was replaced by classes that mingled all levels of skill.

But today — in high school at least — tracking is back, thanks to Advanced Placement classes. A *Newsweek* cover story has called the surge of AP classes "a transformation of

American secondary education." The magazine even created a new "100 best" list of public high schools in America, based on the number of students taking AP tests (or the IB test, a European-based equivalent), adjusted by the number of graduating seniors.

AP classes are supposed to be college-level courses for unusually capable high school students. Each has a national standardized test, given once at the end of the school year. At some universities, scoring well does allow students to get college credit, but that is not why AP classes are sweeping the nation. Rather, they allow the best students to be grouped into the same classes, and (in an era of grade inflation) their scores signal to colleges who those students are. According to *Newsweek*, Harvard treats the AP test as "a better predictor of college grades than the SAT." (Students typically retake the SAT tests, but generally take an AP exam just once.)

Students are studying two or three AP courses at once, starting as early as the sophomore year. I harbor some doubt as to whether these kids are ready for college-level courses, and although the classes are tough, I don't know how they compare to what college freshmen experience. The course design is driven by the national tests, so there is little room for teacher creativity or lengthy investigation into non-test topics.

So there's good and bad in the AP phenomenon, but it illustrates how people get around restraints imposed on them. In this case, education gurus pursuing philosophical goals frustrated parents who were eager to get their children into top colleges and teachers who were tired of indifferent pupils. Entrepreneurial, dissatisfied people do not stand in line waiting like sheep to be shorn. They figure out solutions. AP tracking evolved as a way around



## Learn at Liberty!

*Liberty* offers full-time, paid internships at all times of the year. Interns work closely with the editors. Responsibilities generally include fact-checking, research, circulation, advertising and editing.

*Liberty* interns have gone on to become editors at *Liberty*, *Reason* and *Regulation*, authors of articles in major magazines and newspapers, researchers at important think tanks, and to win major fellowships and scholarships.

For information, email [rwb@cablespeed.com](mailto:rwb@cablespeed.com).

the ban on ability grouping. It may be an inefficient solution, but it seems to be satisfying much of affluent America.

— Jane S. Shaw

**The veil of ignorance wears thin** — State-guaranteed medicine for all is an idea now embraced by the left half of the political spectrum. I find it even in the new book by Gregg Easterbrook, a writer I had not thought of as a leftist. The book, *The Progress Paradox*, is mostly about how Americans feel worse about living better. Then, at the end

## Another Dangerous Drug

It seems that Rush Limbaugh isn't the only bellicose conservative with a drug problem. An upcoming issue of *The National Enquirer*, which broke the Limbaugh story, will reveal that many top officials in the Bush administration are addicted to a drug called Hubris, a powerful cocaine-like stimulant that is said to give users a sense of power and invulnerability and is patented and distributed by Nemesis, the Greek pharmaceuticals giant. The literature on the drug, dating back to the 5th century B.C., lists serious side effects, including patricide, incest, blindness, madness, chronic attacks by furies, and (more recently) an irresistible urge to station beleaguered troops among sullen, resentful populaces. Nevertheless Hubris is frequently prescribed by syndicated pundits, talk-radio hosts, drunks in bars, and other professional anger-mismanagement consultants, and its street name, "Chickenhawk Viagra," suggests its potent appeal. For centuries ill-fated conquerors have been told, "Don't leave home without it," and it's currently being marketed in a major-media campaign by Careen, Skidmore & Lurch, a Madison Avenue advertising firm, under the slogans "Put Zoom in Your Doom" and "Seize the Day, or Seize Something."

A research team at Johns Hopkins has found that rats fed Hubris and placed inside a labyrinthine trap were much more likely to describe the trap as a successful ongoing operation than a control group of rats fed a placebo. They were also much more likely to receive employment offers from the Fox News Channel. Although Hubris is being legally sold in pharmacies after the FDA, following a careful 27-year approval process, concluded that it was, like, totally cool, there is also an active black market for the large quantities of the drug needed to really get in over your head. According to the imminent *Enquirer* report, addicted Bush administration officials have been sending the White House housekeeper out to D.C.-area parking lots to procure it from furtive dealers known as neo-con artists who secrete the contraband capsules in hollowed-out copies of the collected works of Leo Strauss. Meanwhile, at the Ozymandias Institute, a treatment facility designed specifically to care for Hubris addicts who find themselves sinking in desert sands, doctors said that there were openings in their detox program for senior administration officials who had reached the point where they'd much rather occupy a nice quiet padded cell than a country.

— Eric Kenning

of the book comes the author's own ideas to fix the world, starting with medicine.

Says Easterbrook, "The failure of the United States to see that every one of its citizens and legal immigrants has adequate medical insurance remains one of the scandals of our age."

Why? Because, he says, "To become ill or be injured is not a moral failing. In most cases, illness or injury are, fundamentally, accidents — and a prosperous, compassionate society must insure all its members against accidents."

I'll admit that if people's successes in life were mainly the result of accidents, the welfare state would make a lot of sense. Certainly the push to socialize medicine is based partly on the idea that the need for care is a result of accident. Yet I think of the two times I have been in the hospital for serious injury. One resulted from reckless driving by someone else and one from the reckless use of a rope swing by myself. The only person I ever watched die was a smoker who was stricken with lung cancer.

I wonder whether Easterbrook would disallow a claim if the insured party helped to cause his own condition? Probably not.

And what counts as an accident? Heart disease, stroke, cancer? These are the big killers of old age. Most of the expenses of the medical system are for old patients — patients who *knew* they would probably be facing one of these diseases.

Libertarians oppose the claim of socialized medicine with an argument about individual rights. But this argument, which is about what individuals ought to be allowed to do, would make no sense if their lives were corks in a creek, meaning that they could not actually take charge. Fundamentally, libertarians are willing to make accidents an individual responsibility because they believe that accidents are an exception to the rule that people make their own luck.

Easterbrook never considers this. Like so many egalitarians, he never argues for his premise. He merely states it. In a book of more than 300 pages, he asserts the case for universal medical coverage in two pages and moves on.

The scary part is that most people I know would agree with him.

— Bruce Ramsey

**Laissez download** — Ignored in the debate over whether the music industry has a right to sue those who download music without paying for it is an important economics lesson. We say that a corporation cannot continue to make so-called "obscene" profits for very long before a competitor will appear within the market to challenge the monopoly. The reason the music industry is in trouble is that technology has reduced the cost of recording music down to pocket change. Had the music industry's prices reflected that reduction, or if it had embraced MP3s rather than attacking them, the industry would not be in trouble. Until they start building websites where music can be downloaded quickly and at a reasonable price, the only people who are going to make any money will be their lawyers. — Tim Slagle

# The Republican Bill Clinton

*by R. W. Bradford*

It sounds too good to be true — California voters have just elected as governor a social liberal and political conservative. What could be wrong with that?

Pardon me, but I shall not join my libertarian friends who are celebrating the election of Arnold Schwarzenegger.

Sure, he can't do much worse as governor than Gray Davis, the *reductio ad absurdum* of conventional left-liberal Democratic politics. Davis' entire career was spent in politics, first as a professional staffer to elected officials, then as an elected official himself. His *modus operandi* has always been the same: give special interests whatever they want in return for dollars or votes. Get elected using the votes and dollars the special interests provide.

In times when business is good and tax receipts are high, this works fairly well. And when tax receipts skyrocket thanks to huge profits from an irrationally spectacularly bull market, it works spectacularly well: there is more than enough money to deliver favors to every interest group.

But when reality hits the stock market and the zillionaire owners of stock options become mere millionaires and the flow of cash into the coffers of the state falls sharply, the process doesn't work so well. Since Americans have long believed that prosperity is the product of government, declining prosperity brings declining popularity.

Faced with this situation, the only way Davis could figure to increase his popularity was to increase the rewards he gave to the interests that supported him. This meant even more spending and a bigger deficit — and a financial crisis, if your constitution prohibits budget deficits, as do 49 of the 50 states. (Happily for President Bush, who is in more or less the same situation, the federal Constitution contains no such prohibition).

Making Davis even more unpopular and adding to the state's financial woes was the absolutely moronic approach that Davis took toward government control of the distribution and production of electric power. He oversaw partial

---

deregulation of the system, enough to put residents of the state in the perilous situation of having no long-term supplies in a very volatile market. When the crisis inevitably happened, he reacted exactly the way a person with absolutely no familiarity with how markets work — that is, a person like himself — always reacts: with panic and sheer stupidity. He made long-term contracts to buy power at the spiking prices. The brownouts ended, but the state's treasury hemorrhaged and business activity, as well as ordinary life, was hurt by higher power prices.

There were 135 candidates on the ballot to replace Gray Davis. Any one of them would be better than he was, if only because by chance, they'd be bound to do something that made more sense.

Schwarzenegger was elected to replace Davis because he was a star and because he failed to annoy very many voters. Part of the way he did this was by refusing to take on the socially conservative views that are a requisite for surviving a Republican primary. But it is easy to overestimate the impact of his moderate (i.e., more-or-less libertarian) views on abortion, drugs, and homosexuals: all he did was refuse to embrace these social conservative views or repudiate various comments he'd made in the past that seemed coherent with a more libertarian approach.

Probably the four campaign promises he made were much more important factors:

1. He would not raise taxes.
2. He would not reduce spending on education, the most popular government subsidy program.
3. He would eliminate a particularly unpopular increase in car taxes that Davis had enacted in an attempt to reduce the budget shortfall.
4. He would eliminate the state's budget deficit.

He refused to say how he would solve the problem, and for very good reason. There are only two ways to reduce the deficits: cut spending or raise taxes. Schwarzenegger not

*Arnold made the same decision that Gray Davis would have made: just promise to solve the problem and worry about details later, after the election.*

only promised not to raise a single tax: he also promised to eliminate an existing tax that annually produces \$12 billion in revenue. So he obviously has to cut spending. The size of the deficit, and his promise to leave education spending intact, means that the spending cuts from non-educational programs will have to be huge. Cuts in any program inevitably alienate the people who benefit from the program, and huge cuts in many programs inevitably alienate huge numbers of people.

So Arnold made the same decision that Gray Davis would have made: just promise to solve the problem and worry about details later, after the election. Add to this his massive celebrity, ample financial resources, skill at public relations, and the support and advice of his Kennedy relatives — and his victory was almost inevitable. But voters have no idea how he will deal with the crisis he faces.

In an ideal world, I suppose, he would argue that his

huge plurality is a mandate from the electorate for radical action and convince California's overwhelmingly left-liberal Democratic legislature to cut back all sorts of spending. Of course, in that ideal world, Bush would apologize for undermining our civil liberties and instigating a jihad against Iraq, end the War of Drugs, and veto just about all spending authorized by Congress.

We don't live on Big Rock Candy Mountain. It's hard to predict with any kind of accuracy what will happen in the Golden State, but the chances that Arnold will have the will to pursue the needed spending cuts are infinitesimal. In the two weeks following his election, all he did to address the problem was to meet with President Bush to ask for federal aid.

Of course, Schwarzenegger's evasion of his responsibility to give voters even a glimmer of how he'll deal with the crisis caused little concern among California voters. Americans have long believed that whenever they face a political crisis, a leader will emerge who is able to deal with it effectively. That's why we remember Abe Lincoln, Teddy Roosevelt, and Franklin Roosevelt as great men. Arnold is simply another politician promising miracles. Who better than a man who has portrayed dozens of heroes?

Why did Arnold run for the nation's second highest office? As nearly as I can figure, his motivation was pure lust for power. Like Bill Clinton, he is a specimen of politician in its purest form, a man with no convictions except the belief that the world would be a better place if he were running things.

Such men are actually the least influential politicians of all: they are merely pawns of the incentives they face, the interests they represent, and circumstances completely beyond their control.

I don't know what Arnold will do as governor. But I know enough to rejoice that I am not a resident of California.

# Terminating the Democratic Machine

*by Ralph Reiland*

A Nazi groper, running the fifth-largest economy on the planet? I mean, this time you gotta see why left-liberals are mad!

Nixon was one thing, with the hiring of burglars and all to lift McGovern's secrets, and the bombing of Cambodia on the sly — and goofy, like when he'd shoot his arms straight up in the air like a giant V, I guess for Victory (or maybe it was a big human Y, for Yes), but at least Nixon didn't pronounce it "Collifornia," and he didn't grab up a Kennedy woman for his own. No, this time it's worse. I saw the nude Arnold photos on Drudge. Nixon wouldn't even walk along the surf without wearing his suit and tie, and dress shoes.

And I can empathize with left-liberals on why it was bad during Reagan. Sure, they snickered at the beginning. Here's a guy with no economics courses from Harvard. But then inflation dropped from 13.5 percent to 1.9 percent and it was harder to keep up the laughs. Harder still when unemployment fell from 9.7 percent to 5.3 percent.

And the Communist thing wasn't so easy for liberals under Reagan. No one at Yale in 1982 was saying that the Soviet Union was ready to collapse, or that it was "evil," or that democracy was going to toss Communism on the ash heap of history. And yet here's a guy from *Bedtime for Bonzo* who gets it right, on all three counts.

Still, that was all easier for left-liberals than what's going on now in California. Reagan's dad was no storm trooper, on the wrong side, and Reagan never told a story about how he and the boys got bucked up behind the curtain before going out on stage, and no one at the gym came forward to say that Reagan said blacks weren't sharp enough to run South Africa.

And I can understand why left-liberals hate George W., straight from those days of the hanging chads right up to when our troops just shot past the Baghdad museum and didn't even bother to stop and make sure no one was looting any old pots. But still, bad as that all is, Bush has never been caught tossing subordinates up in the air and carrying them above his head into the men's room, and, far as I know, Bush has never said that you've got to give it to Hitler for the way he whipped up those crowds at the Nuremberg stadium.

The lesson in all this? For all those accusations and last minute pop-ups against Schwarzenegger, it wasn't clear on election day how much of it was true and how much was just trash politics. What is clear is that the mud balls didn't stick. Voters seemed more interested in cleaning up Sacramento than in electing Mr. Clean. And, hopefully, what that might mean, if the media guys are paying attention, is that we're going to see a lot less mud in the next election.

Another lesson, and one that's not such good news for the Democrats, is that Republicans can now see what's in a winning ticket, even in Democratic strongholds, like with Giuliani in New York and now with Schwarzenegger in California. What won in both cases is a policy mix of fiscal conservatism and social liberalism, a position that's consistent, i.e., consistently libertarian, in that it seeks to put a lid both on how much the government can grab out of our wallets and on the regulations and laws that mandate how we live.

In Schwarzenegger's case, that comes down to a stance that's pro-business and anti-tax, a perspective that's pro-choice on abortion and supportive of gay civil unions. It's a position that sees free-spending legislators as the problem, not individual freedom.

Bottom line: it looks like this isn't, as they say, your father's Oldsmobile. Under the headline "The New Republican Party?", here's how *Sacramento Bee* columnist Daniel Weintraub described the scene on the steps of the capitol the day before the election: "Arnold Schwarzenegger plays guitar while Twisted Sister singer Dee Snider sings the campaign anthem, 'We're Not Gonna Take It.'" The rally at the state capitol drew about 10,000 supporters and was a rainbow of ages, races, and social statuses.

No wonder the Democrats fear Schwarzenegger.

---

# 30 Ways to Lose Your Governor

*by Stephen Cox*

Here are 30 things I will always remember about the California recall election:

1. Gov. Joseph Graham "Gray" Davis Jr., now deposed, referring to the recall as a "joke."

2. Former Gov. Joseph Graham "Gray" Davis Jr., dismissing "this recall" as "just a buncha sour grapes by a buncha losers."

3. The organized bodies of businessmen who passed resolutions deploring the recall campaign, and who sent their spokesmen to visit the media to laugh at the idea that a governor who had racked up a \$38 billion deficit might not be good for business.

4. The 20 high officials of the University of California who, four months ago, looked back at me like restless dachshunds when I asked how they thought the recall would affect the university. One of them mentioned that he'd heard on National Public Radio that there wouldn't be a recall. Another said that we'd wait and see if there was one. There was one, all right.

5. The Democratic operatives who assured the media that their secret polling data inspired great confidence in the governor's survivability, and whose assurances were routinely headlined by the press and the three established networks, right up to the end.

6. Chris Matthews, famed for his lifelong experience as a political insider, who predicted on the eve of the election that Gov. Davis would survive and that Democratic Lt. Gov. Cruz Bustamante, the only man whom Californians detested more than Gov. Davis, would beat Arnold Schwarzenegger in the gubernatorial replacement vote. Final vote tally, recall question: Yes, 55.3%. Final vote tally, gubernatorial replacement question: Arnold Schwarzenegger, 48.7%; Cruz Bustamante, 31.7%.

7. The *Los Angeles Times'* contention that the timing of its publication of "groping" charges immediately before the election was for reasons other than the difficulty of locating, among the casts of thousands who have hung out on Schwarzenegger's movie sets during the last three decades, enough females willing to make anonymous charges against him.

8. CNN's expert on the media, who, when asked if there might be anything to the public's idea that the *Times* had simply lain in wait to smear Schwarzenegger, replied (I swear to God, this is what he said), "I haven't read the stories involved, but I've talked to the editors. . . . It went through the natural journalistic process."

9. The woman who showed up at a feminist rally against Schwarzenegger to voice her outrage against him for

grabbing her behind and telling her that she had "a nice ahs," a quarter of a century ago.

10. Sen. Joseph Lieberman, oft called the Conscience of the Senate, responding to the last-minute attacks on Schwarzenegger's reputation: "You know, after reading in the paper this morning about the pill popping and skirt chasing and Hitler praising, it would be very tempting to point out Republicans' hypocrisy on values. But would it be right to do? Absolutely."

11. Peter Camejo, gubernatorial candidate of the Green Party, the party of principle, defender of civil liberties and equality for all, discussing the last-minute allegations, largely anonymous, against his opponent: "If he were a black

---

*The governor contended, throughout the campaign, that although the state is \$38 billion in the red, "we do not have a budget deficit. The budget is balanced."*

---

man, he'd be in jail. If he was brown, he'd be in jail. If he were a poor white he'd be in jail. What does it tell us about our society that a rich white person can do the type of things that he's alleged to have done?"

12. The news personality on MSNBC who on election day referred, in her best reportorial manner, to "Arnold Schwarzenegger's victims."

13. Gov. Joseph Graham "Gray" Davis Jr., solemnly weighing the accuracy of the largely anonymous charges against his opponent: "Are all 15 women and their families lying?"

14. The voters who refused, for once, to take any such nonsense seriously.

15. The servants of the established media, who assumed, as always, that the voters did, would, *must* take it seriously.

16. Gov. Davis' complaint that the recall election would cost \$60 million, \$70 million, or \$80 million (various figures were cited) — at a time when the state was paying \$29 million a day to finance the monstrous debts needlessly incurred by his administration.

17. The name of Gov. Davis' leading front group: Californians Against the Costly Recall.

18. CNN *Headline News*, identifying the recall as "the election, which is costing \$55 million."

19. Leading Democrats' insistence that recall elections, formerly a central plank in the progressive platform, were plainly "undemocratic," since they might result in the deposition of a sitting governor.

20. Gov. Davis' insistence that the recall election was an "insult" to the "eight million voters" who had made him governor. Final vote tally, 2002 gubernatorial election: Davis, 3,533,490; 47.3% of total votes cast.

21. Gov. Davis' insistence that, because of him, California's "environment is the best in the nation," a statement that sent Californians scurrying to their encyclopedias, to discover when Montana had seceded.

22. Gov. Davis' attempt to rally voters by signing a bill allowing illegal aliens to obtain driver's licenses, one of the

most unpopular pieces of legislation in California history — thus putting the lie to the old saw that the Republicans are the Stupid Party.

23. Gov. Davis' attempt to enhance his credibility with an ad campaign based on the endorsements of Bill Clinton and Al Gore, nationally discredited politicians.

24. Gov. Davis' attempt to start a bandwagon by running Clinton-endorsement ads on the same right-wing radio shows that specialized in attacking both him and Clinton.

25. Gov. Davis, believing that his goose was cooked unless he savaged the Democratic lieutenant governor who ran against Schwarzenegger in the replacement race, suggesting in a matter-of-fact way: "He [Schwarzenegger] happens to be the alternative. He's going to win Question Two. If people don't want him to be governor, then the alternative is to allow me to complete the term."

26. CNN, commenting on the concession speech of a governor famous for his merciless trashing of opponents: "No matter what your politics are, you have to have a pang of sympathy."

27. Chris Matthews, commenting on the concession speech of a governor famous for his merciless trashing of opponents: "Most people don't realize, there's a lot of graciousness in politics. He thanked everyone, everyone who'd worked for him."

28. Democratic Congresswoman Loretta Sanchez, turning eagerly on Davis after his defeat, and blaming the disaster on his willingness to work with Republicans.

29. The governor's contention, throughout the campaign, that although the state is \$38 billion in the red, "we do not have a budget deficit. The budget is balanced." He did not explain that the books were "balanced" by massive borrowing.

30. My discussion, after the election, with a prominent member of San Diego's institutional elite, who told me that he had intended to vote for Schwarzenegger, then decided to vote for Bustamante instead.

"But," I stammered, "Bustamante is a bigot and a spendthrift. His campaign was bought and paid for by the Indian gambling industry. He's also stupid. And he's spent years criticizing the outfit you work for."

"Well, yes," he smiled. "I'm a liberal, though. I voted no on the recall, too."

"You voted no! You voted to keep a guy in office who claimed that California doesn't have a deficit!"

"The governor claimed that? When?"

"In his last speech! In a lot of his speeches!"

"Well, we don't have a deficit. The budget's balanced."

"That's because we're borrowing billions of dollars to make it 'balanced'!"

"So the governor wasn't lying, then." He said it with a smile of satisfaction.

This man, an economist by profession, is one of the most intelligent and competent executives I know. He is also, very obviously, a citizen of that other world, the world where logic need not come, the world of the ruling class — the officials and bureaucrats, the educationists, the standard media, the complacent rich.

On October 7, however, *this* world had its way.

# Limbaugh's Disease

by Thomas Szasz

Rush Limbaugh has been outed as a secret drug user and gone off to rehab. Will he learn anything from his plight?

Exposed as an illegal user of "legal" (prescription) drugs, Rush Limbaugh has declared that he is an "addict" and said that he would check himself into a "treatment" center.

I oppose the War on Drugs. I regret when anyone gets injured by it. It will be interesting to see whether Limbaugh learns anything from his plight. When he returns to the airwaves — assuming he'll be able to do his job when he is "healthy" and not "suffering from drug addiction" — will he reassume his role as a bigoted drug warrior or will he realize that he has been waging a war against liberty, responsibility, and the rule of law and act accordingly?

I have long been on record opposing drug prohibition in any form. I believe that we have a constitutional right to use any drug we please, that (bad) habits are not diseases, and that efforts to change habits are not treatments. Twenty-nine years have elapsed since the first publication of my book, *Ceremonial Chemistry*. Since then, the Cold War has ended and the political geography of our world has been transformed. But the War on Drugs rages on. The combatants — drug providers and drug prohibitionists alike — have too much to gain from their participation in the hostilities to end it.

Millions of people the world over continue to grow, manufacture, smuggle, sell, buy, ingest, inhale, and inject illegal drugs, and other millions persecute and prosecute them as participants in a medical-heretical depravity. The pervasive criminalization and medicalization of drug use transformed self-medication into "drug abuse" and created a political-economic drama with a vast cast of characters whose roles require that they engage in violence, endangering partici-

---

pants and non-participants in the drug war alike.

Despite this vast, worldwide turmoil, few people seem to question the premises used to justify waging a War on Drugs or the morality of the means with which it is pursued. This is because the War on Drugs is but one manifestation, albeit a very dramatic one, of the great moral contest of our age — the struggle between two diametrically opposed images of man: between man as responsible moral agent, "condemned" to freedom, benefiting and suffering from the consequences of his actions; and man as irresponsible child, unfit for freedom, "protected" from its risks by agents of the omniscient state.

In the Cold War, this struggle was cast as the conflict between the "hazards" of capitalism and the "security" of communism — the production and distribution of goods and services regulated by the market or the state. In the drug war, the struggle is cast as the conflict between persons opposing laws aimed at protecting adults from themselves and persons supporting such protections as requirements for the security of society.

So long as a drug remains outside of the human body — in the field, the laboratory, or the store — it is an inert substance. No drug poses a danger to the person who does not use it. As soon as the possession of a drug is made illegal, however, it becomes dangerous — not pharmacologically,

but juristically and socially.

It is an abuse of language to call such a drug “dangerous,” as if it were a criminal; and it is folly to declare a “war” on it. War can be fought only by some people against some other people. The War on Drugs is thus a battle fought by governments, firstly against their own citizens, and secondly against foreigners who grow or sell substances which the

*His achievements while “on drugs” ought to convince anyone — especially him — that drug prohibition rests, just as did alcohol prohibition, on equal parts of deception, self-deception, and hypocrisy.*

drug warriors have chosen to prohibit. For nearly a century, the governments of the civilized world — led by the United States — have waged a crusade against certain drugs.

Psychoactive drugs are as old as civilization. Prior to the 20th century, deploying the criminal law to prevent a person from ingesting whatever substance he wanted would have been considered an absurd usurpation of his most elementary right, a right far more basic than his right to vote. Yet today, the psychoactive drugs people want the most are illegal, while the psychoactive drugs they do not want at all are often forcibly administered to them, especially if they are diagnosed as mentally ill.

Although the War on Drugs is typically viewed as a medical or public health effort to prevent illness or maintain health, it is actually a quasi-religious, ceremonial struggle to rid society of evil — the forbidden drug standing as a scapegoat for a variety of the problems that beset modern societies. To understand the popular support for this war, it is necessary to keep in mind that the scapegoat’s social function is symbolic. Persecuting scapegoats “works” not because it protects society from harm, but because it reaffirms the group’s core values and reassures people that its guardians are doing their job. The scapegoaters of the phar-

**Jail Rush Limbaugh!** — That’s what Keith Olbermann of MSNBC thinks Florida authorities should do about Limbaugh’s admission that he is addicted to prescription painkillers. Olbermann’s logic is simple: on hundreds of occasions, he said, Limbaugh proclaimed that illegal drug users should take responsibility for their actions and accept their just rewards. Surely such an individual deserves to be prosecuted.

Olbermann, I am pretty sure, is no drug warrior. He doesn’t suggest that the government jail all drug users. But he thinks Rush deserves special treatment because of his hypocrisy.

However tempting the notion of tossing the garrulous fan of the drug war into the hoosegow may be, I think Olbermann is as wrong as wrong can be. The last time I checked, hypocrisy wasn’t a crime.

What he proposes amounts to singling Limbaugh out for

macopoeia have been at their job since the beginning of the last century. The result is not drug peace but an unending drug war, accompanied by the popular belief that the medical-criminal control of drug use is a “scientific problem,” and the popular acceptance of punishments for violating such controls far more severe than those meted out for violent crimes against others. The minimum penalties imposed by U.S. federal law for the following offenses tell the story: kidnapping — 4.2 years; rape — 5.8 years; attempted murder with harm — 6.5 years; possession of LSD — 10.1 years.

A hundred years ago, a person in Limbaugh’s position could have bought laudanum (tincture of opium) and obtained pain relief legally and without endangering his hearing. Limbaugh, if rumors are right, bought Vicodin (a combination of hydrocodone and acetaminophen) illegally. As a result, he may have lost his hearing and is now stigmatized as a drug law violator.

History is not likely to remember Limbaugh for his support of conservative causes, regardless of how mistaken they might be. However, given his immense influence, history might well remember him if, freed from “rehab,” he would oppose the War on Drugs with the same vigor with which he has supported it. His achievements while “on drugs” ought

*History is not likely to remember Limbaugh for his support of conservative causes. But history might well remember him if, freed from “rehab,” he would oppose the War on Drugs with the same vigor with which he has supported it.*

to convince anyone — especially him — that drug prohibition rests, just as did alcohol prohibition, on equal parts of deception, self-deception, and hypocrisy.

The Twenty-first Amendment solved America’s “alcohol problem.” Repeal of drug prohibition — which, significantly, requires no constitutional amendment — would solve our “drug problem.” □

special treatment because of his political beliefs. This is repugnant. It is also all too common in American public life: don’t forget Clinton’s unleashing the IRS on critics of the administration, Kennedy’s unleashing the FBI on U.S. Steel executives, or Nixon’s persecution of the people on his “enemies list.” — R. W. Bradford

**Rush to leniency** — I’m glad that Rush Limbaugh is addicted to painkillers. Maybe now that he has been forced to admit publicly that he has a drug problem, he might lighten up on all the pot smokers. Actually, his support for the drug war was one of the few places I disagreed with him. I think, unfortunately, it’s going to swing the other way. Just as you don’t find very many ex-smokers who don’t mind sitting in the smoking section, Rush will probably complain that he got addicted because the laws were too lenient. I hope I’m wrong. — Tim Slagle



# Rescuing Free Trade From the Bureaucrats & Special Interests

*by Fred Smith*

Holy Cobden! It's the 21st century and we're still debating free trade!?!

In the aftermath of the collapse of the free trade talks in Cancun, European Union trade negotiator Pascal Lamy noted: "We would have all gained from an agreement. Now we all lose." He went on to state that he would not "play the blame game." But, of course, others soon did and, in truth, there was plenty of blame to go around. The anti-globalization forces, who rioted in Seattle a few years earlier, deserve a portion of the blame — they were elated that once again they had played their part in derailing any move toward global trade liberalization. American and EU economic protectionists were also pleased — as the talks collapsed, one whispered to me, "There is indeed a God in heaven!" U.S. Trade Representative Robert Zoellick was irate, blaming the G-21 (a recently formed group of developing-world nations led in part by India and Brazil) for posturing rather than negotiating. And certainly the developing world showed no eagerness to dismantle its own trade barriers. The U.S. position was that the Cancun collapse reflected a "failure of will."

The collapse could more accurately be described as a failure of political entrepreneurship. Free trade creates massive benefits — that the political process seems incapable of crafting a means of realizing these benefits suggests lack of creativity, not lack of will.

But Cancun remains a tragedy. The failure to make progress suggests continued sluggishness in economic liberalization throughout the world. Now, the creative winds of change will blow more slowly through the corrupt and inefficient economies of the world. Expanded trade would have

---

triggered that scouring storm and done much to give hope to the peoples of the developing world. Still, no one should have been surprised by this collapse. For the last decade or so, the World Trade Organization (WTO) has added members, expanded its agenda, and pursued complex trade-expanding programs via endless negotiations.

Cancun participants, in keeping with most trade negotiation strategies of the last decade, gave lip service to the value of free trade in advancing consumer welfare. However, the actual negotiations focused on producer concerns. Each nation sought to balance the fears of those businesses that might lose out to foreign imports and the hopes of those producers eager to export abroad. Yet, the governments made no real effort to clarify the impact of liberalized trade on consumers, no real effort to explain that agricultural subsidies benefit the few at the expense of the many. That failure made it all too easy for anti-globalists to argue that trade destroyed the livelihoods of the poor of the world, that it merely enriched multinational corporations. Non-governmental organizations (NGOs) joined traditional economic protectionists in arguing for "fair" rather than "free" trade. With no one making the moral case for trade, many came to view trade policy as another zero-sum game — gains to some nations would be offset with losses to others. That framing

made collapse all but inevitable.

The collapse was a serious setback to all those who had hoped for a more liberalized global economy. Still, the outcome may not be altogether a bad thing. The current approach to opening the world economy has many problems. If this failure leads to a more politically effective free trade strategy, the results may yet be positive. However, this will require that free trade advocates find ways to build political coalitions favoring trade liberalization in both the developed and the developing world. The indirect mercantilist approach that has long dominated thinking in this area must be abandoned.

The Cancun failure was not unexpected. At Seattle in 1999, the developing world had blocked efforts by the EU and the United States to link trade and the environment. Developing nations saw linkage (making trade conditional on environmental, labor, human rights, and religious rules) as nothing more than an attempt to subject their nations to the same crippling regulations that the wealthy nations had adopted. Many hoped the United States under the Bush administration, supposedly more sympathetic to free trade and less beholden to labor and environmental interests, would champion liberalized trade. At Doha in 2001, the U.S. had seemingly moved in this direction, agreeing to changes in Trade-Related Aspects of Intellectual Property Rights (TRIPS).

More importantly, at the September 2002 Earth Summit in Johannesburg, South Africa, the United States had allied itself with the developing world against the vested interests of the EU-NGO alliance. Earlier Earth Summit conferences had been totally dominated by Malthusian environmentalists seeing economic development as a threat to our planet. Environmentalists sought to restrict trade via such policies as "sustainable development" (Don't use resources!) and the precautionary principle (And don't seek to develop technological alternatives, either!). Those in the developing world recognized that these policies would slow or even stop economic development, relegating their nations to perpetual poverty. In contrast, at the Johannesburg Earth Summit, the U.S. joined with the developing world in championing economic and technological development. The message of this

---

*The collapse of the Cancun meeting left many participants shocked and depressed.*

---

conference was that poverty was the greatest source of pollution, that only economic and technological growth could advance both human welfare and environmental protection at the same time.

Yet, as Cancun approached, the United States seemed to move away from this most-hopeful alliance. In an effort to eliminate U.S. and EU agricultural subsidies (an issue that has been blocking trade liberalization for decades), the U.S. formed an alliance with the EU. That alliance stemmed from pledges that the wealthier nations would dismantle their agricultural subsidy programs (total agriculture subsidies by the U.S. and the EU are estimated at over \$300 billion annu-

ally — the subsidy to a cow per year in Europe exceeds the annual per capita income of many poorer nations!). Such an alliance could be justified as necessary to persuade the EU to be more flexible; instead, it seemed to make the U.S. less so. Certainly, the commitments by the U.S. and the EU noted in the agreement were vague; the timing of when we would actually discontinue agricultural subsidies was even more so. Moreover, that pledge (weak as it was) was still conditioned on the poorer nations of the world moving simultaneously to eliminate their own trade barriers. This "reciprocity" demand seemed to many developing-world leaders a betrayal of the earlier U.S. position. "Trade — Not Aid" was replaced by "Trade — once you've taken brave actions that we've not yet taken!"

Of course, trade barriers in the developing world are high. Indeed, because most trade takes place between neighbors, the intra-developing world trade barriers impose greater costs on the poor of the world than do the protectionist practices of the developed world.

Disappointed at these developments and frustrated by the slow progress in fleshing out the details of the pending Doha agreements (numerous deadlines to finalize details on agricultural and other aspects of the trade deal were routinely missed in the months leading up to Cancun), developing-world negotiators created the G-20+ (an ad hoc alliance of 20 or so developing-world nations). That group largely supplanted the Cairns Group (a group led by Australia and other second-tier nations) and pushed vigorously for the U.S. and the EU to do what they'd long promised: abandon their agricultural subsidy programs. The wealthy nations, they suggested, should move first in the elimination of trade barriers. Of course, G-20+ leaders were fearful of exposing their fragile economies to the fierce competitive winds that trade liberalization would entail; moreover, they were skeptical that Europe and the United States would actually repeal agricultural subsidies. Then, the EU negotiators insisted that the WTO commit itself to serious consideration of the "Singapore issues," a complex set of trade-related agreements that had received little serious attention at earlier sessions. Many developing-world nations felt they lacked the capacity to deal with some of these topics (expertise on investment and competition rules, two of the Singapore items, is not widespread). The G-20+ said no; the EU suggested a compromise. And then Korea and Japan, nations most protective of their agricultural interests, moved to block any "compromise," a few African nations walked out (WTO agreements require "consensus"), and the talks collapsed. When Conference Chairman Luis Ernesto Derbez of Mexico gaveled the Cancun session to a close on September 14, many in attendance were shocked and depressed. To have come so close to a serious discussion of how to dismantle the primary barrier to trade liberalization — the agricultural subsidy issue — and then to fail was depressing.

### **The Paradox of Trade Policy**

After the disasters of the Depression era and the horrors of World War II, world leaders almost universally sought expanded economic linkages via trade. Cordell Hull's view that "Free trade was God's diplomacy" motivated the original negotiators of what was to become the International Trade Organization (a group much like the current WTO),

but almost everyone accepted the classical liberal view that trade was a positive sum game — benefiting both consumers and producers. The challenge was to find some institutional framework within which the various political obstacles (specifically the major tariffs which limited trade) might be eliminated. The first effort was proposed the ITO. However, that

---

*With no one making the moral case for trade, people came to view trade policy as another zero-sum game — gains to some nations would be offset with losses to others.*

---

institution (unlike the World Bank and the IMF, the other two global economic organizations created at the same time) was opposed by the United States (several senators felt that it compromised U.S. sovereignty). As a result, the negotiating arrangements which had been set up as an interim measure, the General Agreement on Tariffs and Trade (GATT), became the institution within which broad-based trade agreements would be arranged. GATT, on paper a much weaker organization, was a great success. Yet, that success was somewhat paradoxical.

The strategy employed by GATT negotiators (and since 1995 by WTO negotiators) proceeded along mercantilist rather than free trade lines. Trade negotiators focused on expanding exports (gaining “market access” for their exporters). They were reluctant to reduce their own trade barriers, doing so only as necessary to persuade other nations to make “concessions” (allowing their consumers to purchase imports). Note the confused language of trade negotiations. Trade is voluntary exchange. By its nature, it is beneficial to both parties so there is no reason for seeking “concessions” or for demanding that our trading partners open their markets to our goods before we open our markets to their goods. A “concession” after all merely reduces a penalty placed on one’s own consumers. “Market access” merely expands the choices available to one’s own consumers. But the trade establishment uses these terms and thus acts as if trade is a zero- or even negative-sum game.

One implication of the GATT-WTO focus on producer interests is the complexity of trade agreements. The business community demands highly specialized rules to ensure its competitiveness in export markets, while seeking equally complex rules to limit foreign competition. Trade agreements are thus highly complex rule books taking up hundreds or even thousands of pages. Free trade is simple: all that is needed is to abolish tariffs and other import restrictions. Fair trade is complicated: it requires convoluted regulations detailing the complex deals that carefully balance an interest group in one nation against that of another. There is little room for principled argumentation in mercantilist agreements. Moreover, in this interest group political framework, it became increasingly difficult to block other interest groups from joining the game. As NGOs became more powerful, they argued (with some justification) that if business representatives were afforded special privileges in these trade

negotiations, then NGO representatives also should be allowed a voice and a vote. Lori Wallach, an anti-globalization activist and Naderite, argued this in her book *Whose Trade Organization*. Of course, adding more special interests to the trade negotiation process makes progress even less likely.

Despite these inherent contradictions, this indirect approach to free trade worked during GATT’s first several decades. Global trade grew rapidly. The broad gains from generalized reductions in trade barriers (mostly tariffs) overcame domestic oppositions in most areas. But GATT’s success owed less to the acumen of the early trade negotiators than to the mood of the times. GATT was created along with an array of other international organizations in the aftermath of World War II. At that time, both the general public and most of the intellectual elite saw protectionism, as exemplified in the trade wars of the interregnum between the world wars, as having exacerbated, and perhaps even caused, both the Great Depression and World War II. The result was a widespread agreement with the sentiment that “if goods don’t cross national boundaries, armies soon will!”

The free trade mantra had considerable power. But the GATT framework was weak. GATT was little more than an organizational setting in which various governments could systematically explore trade liberalization agreements — and obtain opinions as to whether some action might violate agreements already reached. In its early years, special interests tended to neglect it. The gains available from defending or extending tariffs weren’t very substantial, so most inefficient domestic firms simply ignored trade policy and focused their energy on getting direct subsidies. In the early post-WWII era, the relatively small scale of global trade created only minor dislocations in domestic markets. Capital, labor, and ideas moved more slowly in those early years. Moreover, in the immediate post-war era, the demands for consumer goods were so large compared to the productive capacity of a war-devastated world that few nations faced any real problems in selling whatever they could make. As a result, the world experienced a massive expansion of global trade along with a general reduction of tariffs.

---

*Trade is voluntary exchange. By its nature, it is beneficial to both parties so there is no reason for seeking “concessions” or for demanding that our trading partners open their markets to our goods before we open our markets to their goods.*

---

Unfortunately, as global competition became a reality and trade became an ever more significant element in domestic economies, vulnerable sectors of the economy began to pay more attention to trade policy. Growing protectionist pressures at home encouraged our trade negotiators to seek ever greater concessions from our trading partners abroad to build domestic support for trade liberalization and, thus, offset domestic protectionists.

Protectionist rhetoric still played badly in the policy

arena, so protectionists sought new rhetoric and new tools. The older protectionist device, the tariff, gave way to non-tariff barriers (NTBs) based on safety, environmental, or health arguments. Free trade remained the ideal, but increasingly arguments were heard that trade liberalization should not be allowed to harm other key societal values.

---

*Environmental thinking is largely Malthusian — too many people consume too many resources.*

---

Exacerbating this trend was the shift, fully effected by 1995, from the relatively weak GATT to the relatively stronger WTO. Both the GATT and the WTO are mercantilist in structure, but the WTO created more powerful means of enforcing agreements and thus became a more attractive target for protectionist interests. Gradually the logical clarity of free trade rhetoric faded, replaced by the murky, egalitarian language of fair trade. Protectionists, seeking to disguise their special-interest agenda, advanced arguments for restricting trade based on a wide array of populist concerns — safety, national security, preservation of cultural character, religious freedom, child labor, women's rights, the family farm, and environmental protection. Efforts by protectionists to strengthen their case led them to seek out ideological groups associated with these values. These groups, now known as NGOs, were more effective in promoting non-tariff trade barriers. They have become a dominant force in the trade debate. Their ability to cloak protectionist policies in moral terms subverts popular support for free trade.

As the scope and scale of international organizations and interest areas expanded, other global conferences and treaties grew in importance. In the economic sphere, trade treaties remained dominant but other agreements began to force their way into the policy debate. In the last few decades, governments have negotiated treaties supporting human rights, religious liberty, and a host of other values. The most significant of these are the multilateral environmental agreements (MEAs). These treaties see trade as a threat to the environment and seek to force "better" environmental regulations on backward nations. For example, the Convention on International Trade in Endangered Species (CITES) seeks to reduce trade in endangered animals (such as elephants). The environment, it was argued, required that we suppress trade. That the economic values associated with these species (as collector species, for hunting purposes, and as non-traditional medicines) might encourage the protection of these species (presuming always that they were managed as private property) received little consideration.

The trade agenda was expanded in other areas by incorporating the TRIPS provisions into the WTO. There is, of course, a clear need to ensure continued economic rewards for innovation. Intellectual property rules (trademarks, patents, and copyrights) have a long-established role in ensuring that innovators are compensated. Yet the inclusion of TRIPS into the WTO framework transformed a mutually advantageous agreement into an agreement that benefited

only the wealthier nations. Few IP rights are held by citizens or firms in the developing world. For people in less developed nations, TRIPS meant (at least for the near future) a loss with no offsetting gains. The TRIPS agreement might better have been arranged outside the WTO framework. Moreover, the introduction of TRIPS encouraged other interest groups with even more one-sided agendas to push for the incorporation of their agendas into the WTO framework. Environmentalists and labor advocates could now reasonably argue that if owners of intellectual property were entitled to use the trade process to advance their concerns, then environmentalists ought to be allowed to do the same.

This was tragic because today environmental thinking remains largely Malthusian — too many people consume too many resources. So environmentalists have favored policies restricting trade and innovation (and population growth, of course). Trade protectionism is an ideal way of suppressing growth. And CITES ushered in a host of MEAs — the Basel Treaty limiting trade in hazardous materials, the Persistent Organic Pollutants (POPs) treaty regulating trade in certain chemicals, the Prior Informed Consent (PIC) treaty demanding prior approval of trade in any good that might entail risks, the Montreal Treaty limiting CFCs in order to reduce alleged threats to the stratospheric ozone layer, the Biodiversity Treaty threatening mining and other economic developments, and, of course, the Kyoto Treaty, which would curtail energy use around the world. These treaties were negotiated, signed, and ratified by different coalitions of interest groups but proceeded on a parallel track to trade negotiations.

The goal was to export "good" environmental policies from America and the EU to the world by defining acceptable production methods. Often these environmental treaties included trade sanctions as a means of enforcement. Such provisions were in conflict with the GATT-WTO rules, which limited trade restriction to the finished product being traded. Nation-states, under trade laws, were sovereign — each nation would decide its own environmental, health, safety, and labor rules. Trade rules could be foolish, but they must be based on the product's characteristics — not the produc-

---

*The subsidy to a cow per year in Europe exceeds the annual per capita income of many poorer nations!*

---

tion or process method (PPM) used to bring it to market. This PPM rule meant that a product arrived as it was — its upstream history was irrelevant to trade policy.

The growth of NGO-endorsed treaties meant that the two streams of international policy were on conflicting paths. Trade policy respected national sovereignty; environmental and social policies sought to weaken sovereignty by harmonizing global societal rules, to force "good rules" on the backward governments of the world. Many of these non-trade related treaties were viewed by many nations as mere verbiage. Human rights treaties were routinely signed by dictators; treaties guaranteeing the rights of women were signed

by theocratic patriarchies. Of course, treaties are not actually "signed" by a nation — some individual or group of individuals negotiates for that nation. Those responsible for trade policy tend to be fairly influential; trade policy is important and, thus, some importance is given to the question of who would best represent the nation. Non-trade treaties seem far less significant to most countries and, thus, the individuals assigned the negotiating task may well have little knowledge or interest in how that treaty might affect their nation's overall welfare. The Basel Treaty, for example, threatens trade in scrap materials. Copper scrap plays an important role in the Chilean metals sector and the treaty is harmful to Chile's economy; yet, Chile, or rather the Chilean health minister, signed the Basel accord. Only after the fact did the Chilean trade and industry ministries realize the problem.

The failure of trade advocates to advance policy on pro-consumer, egalitarian grounds became more serious over time. Trade policy became increasingly identified as "mere" economic policy. The non-trade agreements were the "moral" areas where idealistic groups and crusading national bureaucracies could demand a more just and egalitarian world. This problem intensified with the end of the Cold War. During the Cold War, these aspirations were disciplined by the realpolitik fact that any effort to curtail trade with a nation might well result in that nation's joining the Soviet camp. That discipline disappeared when the Cold War ended. With national security supposedly assured, these other agendas became more powerful and the will to resist them weakened. Utopian treaties such as the International Criminal Court (to rid the world of the brutality of war) and the Commission to Eliminate all forms of Discrimination Against Women (CEDAW) proliferated. During the Cold War, trade had often been curtailed because of national security policy. That precedent made it easier to advocate trade sanctions to advance other moral agendas. The fact that limiting trade to those nations able to meet the criteria established by the various utopian groups dominating the NGO world would mean no trade at all seems to have received too little consideration.

Of course, the moral and practical reasons for free trade still exist. Most Americans still believe in the freedom of individuals to enter into those voluntary exchanges they believe would benefit them. Liberalized trade still increases wealth, and only global trade offers any hope of alleviating world poverty. But trade negotiations were handled by pragmatic bureaucrats who gave little weight or thought to such arguments. Ceding the moral voice to non-trade areas has caused many to view trade as inherently amoral. Fair trade became free trade with a human face!

### **After the Fall: Alternative Paths for Trade Policy after Cancun**

In the aftermath of Cancun, the various parties have seen different problems and different solutions. U.S. Trade Representative Robert Zoellick sees Cancun as a failure of political will; he specifically blames the leaders of the developing world for political posturing rather than engaging in serious negotiations. It was their failure, he believes, to challenge their protected domestic interests, to seek realistic solutions to the transitional difficulties of trade liberalization, that led to the Cancun collapse. There is some truth in this.

But it can better be argued that the failure of free trade policies at Cancun reflected more a failure of political entrepreneurship by all world leaders. The simple fact is that there has been little effort by any trade leader to mobilize the pro-trade constituencies at home and abroad that are essential if trade liberalization is ever to become a reality.

Still, there are some signs that nations are reappraising the "you first" strategy that derailed Cancun. Soon after Cancun, the G-20+ alliance dissolved and some called for a quick resumption of talks, hoping that emphasis might again

---

*Trade policy is determined by those interest groups involved. The outcome varies depending upon the participants.*

---

be placed on dismantling EU and U.S. agricultural subsidies. There was also a greater willingness to discuss steps toward reducing developing-world trade barriers. Unfortunately, with the proximity of presidential elections in the U.S. (and the growing support for protectionism among leading Democratic candidates), there is little enthusiasm in America for any early resumption of negotiations.

For the moment the U.S., the EU, and various Asian nations seem content to neglect multilateral trade arrangements such as the WTO. These nations are now focusing on bilateral and regional trade arrangements. However, this approach is risky. As noted, trade policy is determined by those interest groups involved. The outcome varies depending upon the participants. WTO-style multilateral agreements attract a broad array of interest groups, increasing the likelihood that the results will consider the public interest. In contrast, bilateral agreements attract a narrower spectrum of interest groups. In the economic sphere, only those economic interests involved in the specialized trade in that arena are likely to participate. Thus the economic perspective is more likely to be tactical, not strategic. In contrast, the NGOs seek precedents; their perspective remains strategic.

In Seattle, efforts by powerful NGOs to mandate labor and environmental linkage — that is, to subordinate trade policy to environmental or labor rules — failed. After Seattle, however, the Bush administration sought Trade Promotion Authority (TPA), an arrangement whereby the ability of Congress to block trade agreements is weakened. To garner support for TPA, the Bush administration increased the power of labor and environmental groups. That result, coupled with the narrow interest representation at bilateral trade talks meant that the Jordanian, Singaporean, and Chilean "free trade" agreements included provisions that would have been rejected in Seattle. The environmental section of the Chilean Free Trade Agreement, for example, holds Chile responsible for enforcing its environmental rules. But does this mean that Chile will be held accountable if it fails to adopt U.S.-style enforcement practices? Will Chile face U.S.-style environmental litigation? Bilateral agreements of this sort pose great dangers for all developing economies. Note that at Doha, efforts again to link trade with labor and environmental policy were blocked. Bilaterals and regionals

are far more likely to attract and permit special interest arrangements than multilateral trade agreements. Moreover, only multilateral agreements are ever likely to address the major agricultural subsidy problem which is now blocking all progress.

### Can Free Trade Prevail?

The producer-focused approach to free trade has failed. To address non-tariff barriers, overcome the powerful protectionist interests that still exist in every nation in the world,

---

*Human rights treaties were routinely signed by dictators; treaties guaranteeing the rights of women were signed by theocratic patriarchies.*

---

and eliminate agricultural and other subsidies that distort global trade, a more effective approach is required.

We must find ways of raising the saliency of consumer gains that trade liberalization would achieve. First and foremost, we must clarify the egalitarian case for free trade. Macroeconomic arguments for trade are too easily defeated by countervailing arguments that focus on the "orphans and widows" left destitute as jobs flee abroad. Yet, jobs lost abroad are likely to be replaced by jobs created by expanded imports, by reduced tax burdens and by expanded exports. Trade is everywhere correlated with improved standards of living. Legitimizing the creative destruction of the market is nowhere more difficult, or more important, than in the area of trade.

Trade advocates might take a lesson from Clayton Yeutter who, as Secretary of Agriculture on a trade-related visit to Europe, spoke directly to European consumers. He noted the burden that the EU agricultural subsidies imposed on the European family. Reaching over the heads of the EU politicians in this way was heavily criticized, but it offers a model for a renewed trade debate. Developing pro-consumer arguments for trade — and then devising a communication strategy to ensure that these arguments are heard in the policy debate — is the major task the pro-trade community should undertake. Developing this pro-consumer voice in the developing world and ensuring that this voice is heard in the wealthier nations of the world is even more important.

Free traders have accepted too quickly the conventional political argument that consumer interests will always be trumped by producer interests. The Left has never accepted that moral arguments cannot prevail over economic arguments. And the growing power of NGOs indicates that non-economic interests may well be more powerful in many global arenas. Moreover, the cost of mobilizing diffuse interests has dropped (and is dropping) as the costs of communication decline.

Rather than simply mobilizing export-oriented producers to offset import-fearing producers, we should encourage producers to mobilize consumers (at home and abroad) who will benefit from trade liberalization! U.S. agricultural interests, for example, should finance ad campaigns aimed at European consumers. Campaigns pointing out the reduced

tax burden that would follow the elimination of agricultural subsidies might change the European political landscape. Polling data already suggests that younger voters oppose protectionist agricultural policies; a vigorous campaign might well make those attitudes more politically effective.

But American and European voters are also moved by the plight of the poor of the world. The response to the AIDS epidemic makes this point clear. If the pro-trade business community would reach out to groups able to link free trade to the plight of the poorer peoples of the world — African, Asian, and Latin American — the case for free trade would become far easier. To date, only the anti-globalization NGOs have employed this strategy. But their message — while emotionally effective — is ridiculous. Does anyone really believe that creating greater opportunities in the developing world — increasing access to potable water, modern medicines, electricity, and transportation — constitutes a threat to the poor? Third World faces on billboards throughout Europe and the United States asking for the opportunity to escape poverty through trade would go far toward weakening the power of domestic protectionist forces. Producers should work with foreign consumer groups to explain the benefits of trade — and then ensure that this message becomes part of the policy debate.

The anti-trade NGO moral voice has been very effective at undermining support for economic liberalization. At Seattle and Doha, anti-trade NGOs failed to subordinate trade to their utopian agenda, but they did succeed in portraying themselves as the moral voice of the developing world. That situation changed in Johannesburg as newly formed pro-market and pro-technology groups joined with free trade groups in the United States to champion economic and technological growth and free trade. But much more needs to be done in this area. Poorer nations seem aware that their future depends upon expanding global trade, but they have not found their "voice," a way to articulate those hopes in ways that would effectively challenge the anti-trade NGO position. Yet, at Johannesburg last year, the message that poverty was the most significant cause of environmental degradation came across loud and clear. The cry was "Trade — Not Aid!"

In Cancun, the re-emergence of the U.S.-EU alliance and the creation in turn of the G-20+ set back this process. But an alliance for economic liberalism remains viable and must yet emerge. A breakthrough uniting U.S. free traders with those in the developing world to undermine the political strength of protectionists is overdue.

### Trade Policy Must Return to Its Principled Roots

The mercantilists' approach to expanding trade worked fairly well in the early post-war era, but it is failing today. We need to revamp the trade debate, revalidating the once well-understood principle that trade is mutually advantageous, that trade makes it possible (and, indeed, requires) that people of different faiths, colors, nationalities, and beliefs work together to advance their mutual interests. The highest priority of the WTO should be to clarify the moral case for expanding trade. The linkage arguments should be challenged, not accommodated. Trade is a complex process

*continued on page 27*

# The Second Amendment Before the Supreme Court

by Dave Kopel

There are three main ways of interpreting of the Second Amendment's "right of the people to keep and bear Arms," but a look at Supreme Court case law shows that two of them are based in wishful thinking.

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Second Amendment is only 31 words. But the meaning of those 31 words has been the subject of considerable debate.

There are four main interpretations of the Second Amendment. The Standard Model is that the right to bear arms belongs to individual American citizens. The states' rights view is that the right belongs to state governments, to control their National Guards. The collective view is that the right to bear arms belongs collectively to all the people, but in practice may be exercised only by the government — like collective property in a communist country. Another interpretation — propounded by Gary Wills — is that the Second Amendment means nothing at all.

The overwhelming weight of Supreme Court precedent supports the Standard Model. A few ambiguous cases could be read as consistent with the Standard Model or with the states' rights theory. The collective rights and nihilist views can find no support in Supreme Court jurisprudence. Let's look at some of those Supreme Court cases, starting with the Court's most important decision, the 1939 *Miller* case, and working our way back to the very beginning.

## ***United States v. Miller* (1939)**

*Miller* grew out of a 1938 prosecution of two bootleggers (Jack Miller and Frank Layton) for violating the National Firearms Act by possessing a sawed-off shotgun without having paid the required federal tax. The federal district court dismissed the indictment on the grounds that the

---

National Firearms Act violated the Second Amendment. Freed, Miller and Layton were never heard from again, and thus only the government's side was heard when the case was argued before the Supreme Court.

The key paragraph of the Supreme Court's *Miller* opinion is this:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.

This paragraph has been read to support either the Standard Model or the states' rights theory. By the states' rights theory, the possession of a gun by any individual has no constitutional protection; the Second Amendment only applies to persons actively on duty in official state militias.

In contrast, the Standard Model reads the case as adopting the "civilized warfare" test of 19th-century state supreme court cases: individuals have a right to own arms, but only the type of arms that are useful for militia service; for example, ownership of rifles is protected, but not ownership of Bowie knives (since Bowie knives were allegedly useful only for fights and brawls). The main case cited as authority by the *Miller* Court, *Aymette v. State*, is plainly in the Standard Model, since it interprets the Tennessee constitution's right

to arms to protect an individual right to own firearms, but only firearms suitable for militia use; *Aymette* states that the Second Amendment has the same meaning.

### **Hamilton v. Regents (1934)**

Two University of California students, the sons of pacifist ministers, sued to obtain an exemption from participation in the University of California's mandatory military training program. The two students did not contest the state of California's authority to force them to participate in state

---

*By the states' rights theory, the possession of a gun by any individual has no constitutional protection; the Second Amendment only applies to persons actively on duty in official state militias.*

---

militia exercises, but they argued, in part, that the university's training program was so closely connected with the U.S. War Department as not really to be a militia program. A unanimous Court disagreed, and stated that California's acceptance of federal assistance in militia training did not transform the training program into an arm of the standing army. States had the authority to make their own judgments about training.

The Court used the Second Amendment to support a point about a state government's power over its militia.

*Hamilton* used the Second Amendment as a reminder of the expectation by all the Founders that states would supervise the militia. This reminder would be consistent with the states' rights theory and with the Standard Model.

### **United States v. Schwimmer (1929)**

A divided Supreme Court held that a female pacifist who wished to become a United States citizen could be denied citizenship because of her energetic advocacy of pacifism. The Court majority found the promotion of pacifism inconsistent with good citizenship because it dissuaded people from performing their civic duties, including the duty to bear arms in a well-regulated militia. Since it is agreed by Standard Modelers and their critics alike that the federal and state governments have the authority to compel citizens to perform militia service, the *Schwimmer* opinion is consistent with the Standard Model and the states' rights model.

### **Stearns v. Wood (1915)**

After World War I broke out in Europe, the U.S. War Department sent "Circular 8" to the various National Guards, putting restrictions on promotion. Plaintiff Stearns, a major in the Ohio National Guard, was thereby deprived of any opportunity to win promotion above the rank of Lieutenant Colonel. Stearns argued that Circular 8 violated many parts of the Constitution, including the Second Amendment.

Writing for a unanimous Court, Justice McReynolds contemptuously dismissed Stearns' claim without reaching the merits. Since Stearns' present rank of major was undisturbed, there was no genuine controversy for the Court to

consider, and the Court would not render advisory opinions.

### **Twining v. New Jersey (1908)**

In *Twining*, the Supreme Court refused to make the Fifth Amendment self-incrimination guarantee in the Bill of Rights applicable to state trials, via the Fourteenth Amendment. In support of this result, the majority listed other individual rights which had not been made enforceable against the states, under the Privileges and Immunities clause.

The Second Amendment here appears — along with Seventh Amendment civil juries, Sixth Amendment confrontation, and Fifth Amendment grand juries — as a right of individuals, but a right only enforceable against the federal government.

### **Trono v. United States (1905) and Kepner v. United States (1904)**

After the United States won the Spanish-American War, the Philippines were ceded to the United States. Congress in 1902 enacted legislation imposing most, but not all of the Bill of Rights on the territorial government of the Philippines. The *Trono* case and the *Kepner* cases both grew out of criminal prosecutions in the Philippines in which the defendant claimed his rights had been violated.

In *Trono*, at the beginning of Justice Peckham's majority opinion, the congressional act imposing the Bill of Rights was summarized: "The whole language [of the Act] is sub-

---

*As one of the "essential and inseparable features of English liberty," the right to arms was obviously a right of free individuals, not a power of state governments.*

---

stantially taken from the Bill of Rights set forth in the amendments to the Constitution of the United States, omitting the provisions in regard to the right of trial by jury and the right of the people to bear arms . . ." *Kepner* had similar language.

As with other cases, the "right of the people" to arms is listed in a litany of other rights which are universally acknowledged to be individual rights, not states' rights.

### **Maxwell v. Dow (1900)**

*Maxwell* was the majority's decision not to make the right to a jury in a criminal case into one of the Privileges or Immunities protected by the Fourteenth Amendment. Regarding the Second Amendment and *Presser* (discussed below), the Court wrote:

In *Presser v. Illinois*, 116 U.S. 252, it was held that the Second Amendment to the Constitution, in regard to the right of the people to bear arms, is a limitation only on the power of the Congress and the National Government, and not of the States.

*Maxwell* used *Presser* only to show that the Second Amendment does not in itself apply to the states.

### **Robertson v. Baldwin (1897)**

The Court refused to apply the Thirteenth Amendment to



merchant seamen who had jumped ship, been caught, and been impressed back into maritime service without due process. The Court explained that Thirteenth Amendment's ban on involuntary servitude, even though absolute on its face, contained various implicit exceptions. In support of the finding of an exception to the Thirteenth Amendment, the Court argued that the Bill of Rights also contained unstated exceptions:

The law is perfectly well settled that the first ten Amendments to the constitution . . . [are] subject to certain well-recognized exceptions arising from the necessities of the case. . . . Thus, the freedom of speech and of the press (article 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (article 2) is not infringed by law prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (art. 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or the verdict was set aside upon the defendant's motion. . . .

In 1897, state laws which barred individuals from carrying concealed weapons were common, and usually upheld by state supreme courts; the laws did not forbid state militias from carrying concealed weapons. The prohibitions on concealed carry are the exceptions that prove the rule. Only if the Second Amendment is an individual right does the Court's invocation of a concealed carry exception make any sense.

### **Brown v. Walker (1896)**

When a witness before an Interstate Commerce Commission investigation invoked the Fifth Amendment to refuse to answer questions under oath, the majority of the Supreme Court ruled against his invocation of the privilege against self-incrimination.

Dissenting, Justice Stephen Field (perhaps the strongest civil liberties advocate on the Court during the 19th century) carefully analyzed English and early American precedent, reflecting his vivid appreciation of the long Anglo-American struggle for liberty against arbitrary government. All constitutional rights ought to be liberally construed, for:

As said by counsel for the appellant: "The freedom of thought, of speech, and of the press; the right to bear arms; exemption from military dictation; security of the person and of the home; the right to speedy and public trial by jury; protection against oppressive bail and cruel punishment, — are, together with exemption from self-incrimination, the essential and inseparable features of English liberty."

As one of the "essential and inseparable features of English liberty," the right to arms was obviously a right of free individuals, not a power of state governments.

### **Miller v. Texas (1894)**

Franklin P. Miller was a white man in Dallas who fell in love with a woman whom local newspapers would later call "a greasy negress." In response to a rumor that Miller was carrying a handgun without a license, some Dallas police officers invaded Miller's store with guns drawn. A shoot-out ensued, and the evidence was conflicting as to who fired first, and whether Miller realized that the invaders were police officers. Miller killed one of the intruders during the shoot-out.

During Miller's murder trial, the prosecutor asserted to the jury that Miller had been carrying a gun illegally.

Appealing to the Supreme Court in 1894, Miller alleged violations of his Second Amendment, Fourth Amendment, Fifth Amendment, and Fourteenth Amendment rights. Regarding the Second Amendment, Miller claimed that it negated the Texas statute against concealed carrying of a weapon.

A unanimous Court rejected Miller's contentions: a "state law forbidding the carrying of dangerous weapons on the person . . . does not abridge the privileges or immunities of

---

*In the late 19th century, many state governments violently suppressed peaceful attempts by workingmen to exercise their economic and collective bargaining rights.*

---

citizens of the United States." This statement about concealed weapons laws was consistent with what the Court would say about such laws three years later, in the *Robertson* case.

Moreover, the Second Amendment, like the rest of the Bill of Rights, only operated directly on the federal government, and not on the states.

But did the Fourteenth Amendment make the Second, Fourth, and Fifth Amendments applicable to the states? Here, the *Miller* Court was agnostic: "If the Fourteenth Amendment limited the power of the States as to such rights, as pertaining to the citizens of the United States, we think it was fatal to this claim that it was not set up in the trial court."

Just eight years before, in *Presser*, the Court had said that the Second Amendment does not apply directly to the states; *Miller* reaffirmed this part of the *Presser* ruling. Another part of *Presser* had implied that the right to arms was not one of the "privileges or immunities" of American citizenship, although the *Presser* Court did not explicitly mention the Fourteenth Amendment.

In *Miller v. Texas*, the Court suggested that Miller might have had a Fourteenth Amendment argument, if he had raised the issue properly at trial.

Miller was a private citizen, and never claimed any right as a member of the Texas Militia. But according to the Court, Miller's problem was that the Second Amendment was raised against the wrong government (Texas, rather than the federal government), and at the wrong time (on appeal, rather than at trial). If the states' rights theory were correct, then the Court should have rejected Miller's Second Amendment claim because Miller was an individual rather than the government of Texas. Instead, the Court treated the Second Amendment exactly like the Fourth and the Fifth, which were also at issue: all three amendments protected individual rights, but only against the federal government; while the Fourteenth Amendment might, arguably, make these rights enforceable against the states, Miller's failure to raise the issue at trial precluded further inquiry.

### **Logan v. United States (1892)**

The issue before the Court was whether the prisoners in federal custody, who were injured by a mob, had been deprived of any of their federal civil rights.

Logan affirmed the position of *Cruikshank* (below) that the First and Second Amendments recognize preexisting fundamental human rights, rather than creating new rights.

### **Presser v. Illinois (1886)**

In the late 19th century, many state governments violently suppressed peaceful attempts by workingmen to exercise their economic and collective bargaining rights. In response to the violent state action, some workers created

---

*According to Cruikshank, the individual's right to arms is protected by the Second Amendment, but not created by it, because the right derives from natural law.*

---

self-defense organizations. In response to the self-defense organizations, some state governments, such as Illinois', enacted laws against armed public parades.

Defying the Illinois statute, a self-defense organization composed of German working-class immigrants held a parade in which one of the leaders carried an unloaded rifle. At trial, the leader — Herman Presser — argued that the Illinois law violated the Second Amendment.

The Supreme Court ruled against him unanimously. First, the Court held that the Illinois ban on armed parades "does not infringe the right of the people to keep and bear arms." This holding was consistent with traditional common law boundaries on the right to arms, which prohibited terrifyingly large assemblies of armed men.

The Court further held that the Second Amendment by its own force "is a limitation only upon the power of Congress and the National Government, and not upon that of the States."

### **United States v. Cruikshank (1875)**

An important part of Congress' work during Reconstruction was the Enforcement Acts, which criminalized private conspiracies to violate civil rights. Among the civil rights violations which especially concerned Congress was the disarmament of freedmen by the Ku Klux Klan and similar gangs.

After a rioting band of whites burned down a Louisiana courthouse which was occupied by a group of armed blacks (following the disputed 1872 elections), the whites and their leader, Klansman William Cruikshank, were prosecuted under the Enforcement Acts. Cruikshank was convicted of conspiring to deprive the blacks of the rights they had been granted by the Constitution, including the right peaceably to assemble and the right to bear arms.

In *United States v. Cruikshank*, the Supreme Court held the Enforcement Acts unconstitutional. The Fourteenth Amendment did give Congress the power to prevent interference with rights granted by the Constitution, said the

Court. But the right to assemble and the right to arms were not rights granted or created by the Constitution, because they were fundamental human rights that pre-existed the Constitution:

The right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is, and always has been, one of the attributes of citizenship under a free government. . . . It is found wherever civilization exists.

A few pages later, the Court made the same point about the right to arms as a fundamental human right:

The right . . . of bearing arms for a lawful purpose . . . is not a right granted by the Constitution. Neither is it in any manner dependent on that instrument for its existence. The second amendment declares that it shall not be infringed; but this . . . means no more than it shall not be infringed by Congress . . . leaving the people to look for their protection against any violation by their fellow citizens of the rights it recognizes, [to state and local governments.]

According to *Cruikshank*, the individual's right to arms is protected by the Second Amendment, but not created by it, because the right derives from natural law. The Court's statement that the freedmen must "look for their protection against any violation by their fellow citizens of the rights" that the Second Amendment recognizes is comprehensible only under the individual rights view. If individuals have a right to own a gun, then individuals can ask local governments to protect them against "fellow citizens" who attempt to disarm them. In contrast, if the Second Amendment right belongs to the state governments as protection against federal interference, then mere "fellow citizens" could not infringe that right by disarming mere individuals.

### **Scott v. Sandford (1856)**

Holding that a free black could not be an American citizen, the Dred Scott majority opinion listed the unacceptable consequences of black citizenship: black citizens would have the right to enter any state, to stay there as long as they pleased, and within that state they could go where they wanted at any hour of the day or night, unless they committed some act for which a white person could be punished. Further, black citizens would have "the right to . . . full liberty of speech in public and private upon all subjects which [a state's] own citizens might meet; to hold public meetings upon political affairs, and to keep and carry arms wherever they went."

Thus, the "right to . . . keep and carry arms" (like "the right to . . . full liberty of speech," and like the right to interstate travel without molestation, and like the "right to . . . hold public meetings on political affairs") was an individual right of American citizenship. The plain source of the rights listed by the Court is the United States Constitution.

Another part of the Court's opinion began with the universal assumption that the Bill of Rights constrained congressional legislation in the territories:

No one, we presume, will contend that Congress can make any law in a territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the territory peaceably to assemble and to petition the government for redress of grievances.

Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any-

one to be a witness against itself in a criminal proceeding.

The Taney Court obviously considered the Second Amendment as one of the constitutional rights belonging to individual Americans. The “states’ rights” Second Amendment could have no application in a territory, since a territorial government is by definition not a state government. And since Chief Justice Taney was discussing individual rights which Congress could not infringe, the only reasonable way to read the Chief Justice’s reference to the Second Amendment is as a reference to an individual right.

### **Houston v. Moore (1820)**

The Houston case grew out of a Pennsylvania man’s refusal to appear for federal militia duty during the War of 1812. The failure to appear violated a federal statute, as well as a Pennsylvania statute that was a direct copy of the federal statute. When Mr. Houston was prosecuted and convicted in a Pennsylvania court martial for violating the Pennsylvania statute, his attorney argued that only the federal government, not Pennsylvania, had the authority to bring a prosecution; the Pennsylvania statute was alleged to be a state infringement of the federal powers over the militia.

When the case reached the Supreme Court, both sides offered extensive arguments over Article I, section 8, clauses 15 and 16, of the Constitution, which grant Congress certain powers over the militia.

Responding to Houston’s argument that congressional power over the national militia is plenary (and therefore Pennsylvania had no authority to punish someone for failing to perform federal militia service), the State of Pennsylvania lawyers retorted that congressional power over the militia was concurrent with state power, not exclusive. In support of this theory, they pointed to the Tenth Amendment, which reserves to states all powers not granted to the federal government.

If, as some writers claim, the only purpose of the Second Amendment were to guard state government control over

the militia, then the Second Amendment ought to have been the heart of the state of Pennsylvania’s argument. But instead, Pennsylvania resorted to the Tenth Amendment to make the “state’s right” argument.

Justice Bushrod Washington delivered the opinion of the Court, holding that the Pennsylvania law was constitutional, because Congress had not forbidden the states to enact such laws enforcing the federal militia statute.

Justice Joseph Story, a consistent supporter of federal government authority, dissented. He argued that the congressional legislation punishing militia resisters was exclusive, and left the states no room to act.

Deep in the lengthy dissent, Justice Story raised a hypothetical: what if Congress had not used its militia powers? If Congress were inert, and ignored the militia, could the states act? “Yes,” he answered: the Second Amendment “may not, perhaps, be thought to have any important bearing on this point. If it have, it confirms and illustrates, rather than impugns, the reasoning already suggested.”

Justice Story’s dissent is inconsistent with the states’ rights theory that the Second Amendment somehow reduces Congress’ militia powers. Immediately after the Second Amendment hypothetical, Justice Story wrote that if Congress actually did use its Article I powers over the militia, then congressional power was exclusive. There could be no state control, “however small.” If federal militia powers, when exercised, are absolute, then the theory that the Second Amendment limits federal militia powers is incorrect.

Second Amendment case law from 1820 to 1939 is consistent with only one interpretative model, the Standard Model of an individual right to deep and bear arms. That is one reason why, until the 1960s, the United States Department of Justice acknowledged the Second Amendment as an individual right, and why Attorney General Ashcroft was correct in returning the Department of Justice to its long-standing, original position regarding the Second Amendment. □

---

## Rescuing Free Trade, from page 22

---

in its own right — the first step toward a better world. To hold trade hostage to other values is to run the risk that these first steps will never be taken, that there will never be a window opening onto a freer, richer, fairer world.

Pascal Lamy and Robert Zoellick are undoubtedly highly accomplished trade negotiators. They probably do believe that trade liberalization is a good thing and fight to the best of their abilities to advance it. But like so many intellectuals, they despair of ever making rational policies politically viable. Adam Smith, after all, in *The Wealth of Nations* doubted that free trade could ever prevail in the political world. Lamy and Zoellick are in good company.

But, history suggests that they, and Adam Smith, for that matter, are wrong. In the mid-19th century, two British businessmen, Richard Cobden and John Bright, recognized the tremendous gains possible through trade liberalization and, being entrepreneurs themselves, went about organizing a campaign to persuade the British citizenry of that fact. They pamphleteered, organized speeches and rallies, petitioned

Parliament, and worked generally to strengthen the pro-trade constituency. They used the skills they had honed as successful businessmen to market free trade — and they succeeded. The Corn Laws were repealed and Britain enjoyed an era of great economic prosperity.

Zoellick and Lamy are excellent representatives of the types of intellectuals who staff the national and global bureaucracies that have evolved over the last several centuries. Though neither is a businessman, they are well connected to the business leaders in their respective spheres. Could they not challenge the pro-trade business community to take on the task outlined in this article — to seek out and amplify the pro-trade consumer voice, both at home and abroad?

Free trade advocates in the developed world must join with the pro-trade forces in the developing world. The hour is late — but the Cancun failures have clarified the need for a new approach. Trade remains the best hope of the unfortunate of the world. They — and we — should fight for its expansion. □

# The State Department, Fulbright and Me

by Richard Kostelanetz

Ever thought you were watched and plotted against by people in high places? Four decades after penning a few unflattering words about a government scholarship program, one art critic discovers that sometimes paranoia is justified.

Nearly four decades ago, *The Nation* published a critique of the famed Fulbright Program. The writer, then in his mid-twenties, who had been a Fulbright scholar in London the year before, found some problems worth noting. Sometime later *The Nation* published attacks on him without extending the customary editorial courtesy of inviting its writer's reply, which appeared, instead, in a later issue.

I was that writer, and when I included the Fulbright article and my reply to my critics (see p. 30) in *Crimes of Culture* (1995), little did I then know how many people were secretly upset. Thanks to a Freedom of Information Act (FOIA) request that took several years to drop fruit, I now know more.

What I discovered is at once chilling and comical. Top brass in the State Department — all grown men — fretted at length about my critique. The paper trail left by their correspondence tells a story of prestigious men acting like school-children, passing notes under their desks with fantastic gossip about the new kid in class. Even Sen. Fulbright, still a saint to some, was drawn into their secret conspiracy about how to handle the Kostelanetz Problem. I remain at once flattered and surprised that they took such inordinate interest in someone they initially regarded as a nonentity.

What my FOIA file shows is a nexus of influence and intrigue that would go a long way toward vindicating many garden-variety conspiracy theories. It is said that you're only paranoid if they're not following you. My case proves that the powers that be indeed take a great interest in the lives of

---

ordinary people who cross them. What they say — and what they decide to do — may be considered a state secret, not to be discovered for many decades unless a particularly fruitful and persistent FOIA request intervenes.

I've heard reports that the Ashcroft Justice Department has shut down the FOIA, so I'm pleased to report the receipt in 2003 of new papers after persistent requests. A few years ago, I discovered over the Internet that a file featuring me existed at the Board of Foreign Scholarships. I photocopied the reference and sent it to the "FOIA Officer, Board of Foreign Scholarships, Dept. of State, Washington, D.C." This envelope came back to me, apparently unopened, with a label pasted across the recipient's address: "Return to Sender, Foreign Service Post Name, Zip Code, Room Number and/or Destination Required."

Undaunted, I telephoned the Institute of International Education, 809 U.N. Plaza, New York, NY 10017-3580. I think someone there must have suggested that I write again to the Department of State in April 2001. Back came a letter, dated July 30, 2001, asking me for my birth date, citizenship status, and evidence of the records. This information I promptly provided, assuming I'd dropped my pennies in a well, until January 2003, nearly two years later, when I received from the Department of State a letter informing me: "After a thor-

ough search of this [records storage] system conducted by professional employees familiar with its contents and organization, no records responsive to your requested were located." What a depressing rejection slip this was for a writer.

However, since my request sought material pre-dating 1973, I was advised to write the National Archives and Records Administration near D.C. As my request mentioned the Fulbright Program, I could also inquire at their archives at

*A few years ago, I discovered over the Internet that a file featuring me existed at the Board of Foreign Scholarships. I photocopied the reference and sent it to the "FOIA Officer, Board of Foreign Scholarships, Dept. of State, Washington, D.C."*

the University of Arkansas. No less obedient than a dog, this I did, reminding the recipient at Arkansas that I'd been a guest lecturer there only a few years ago. The surprise was receiving last March, nearly three years after beginning my quest, a letter from a woman in the Special Collections division of the National Archives and Records Administration. She had a folder "generated as a result of your article in *The Nation* magazine in 1966." For only eight bucks, I could get 30 pages of photocopies from archives of the Fulbright Program at the University of Arkansas. No names were blacked out of my file, unlike the other FOIA responses I've seen, even though some of the people mentioned in my copies might still be alive. Never before was the price of my American citizenship so cheap and so unmediated.

Here's what the previously hidden papers told me. On June 16, 1966, a copy of my article was sent from Anthony F. Merrill, identified only as an "Information Officer," to the London Fulbright office. As the files have only carbon copies of letters sent, I cannot tell what letterhead might have appeared on the original, which is to say I don't know for what entity Merrill was then working. Searching Google, as one customarily does with unique names nowadays, I tried to find any record of his government employment. I had no luck, though I wonder if this AFM was the same guy who published *The Rammed Earth House* with *Harper's* in 1947, as it was not uncommon for sometime authors to take public relations jobs, especially with the government, that offered "security" to those once insecure.

In this letter, Merrill dutifully characterizes *The Nation* as "a small circulation but highly respected liberal magazine which commands considerable respect among certain elements of the American intellectual community." To someone else the following day, "Tony Merrill," as he signed himself, sent a clipping from *The Nation* with this advice: "CU/IR thinks in view of low calibre of the author a high calibre rebuttal would be out of order. We are considering a not-for-publication letter to the editor noting flagrant misstatements, touching on unfortunate character of the former grantee, and suggesting that *The Nation* has been victimized and asking the

editor for his views on how to deal with the matter." I can't for the life of me discover what the hell "CU/IR" might be, though that moniker is repeated later in the correspondence. Perhaps IR refers to "International Relations" and CU to "Cultural Undertakings." Or perhaps "Undertakers."

On one photocopy is this handwritten addendum signed "C. F...": "Query: Oscar Handlin should see this note." The rest of the handwriting in the copy is indecipherable, but this explains how Handlin was enlisted. A subsequent letter reveals that its author must be Charles Frankel, a Columbia University professor of philosophy (no joke), then on leave to the Department of State. I remember seeing him on the Morningside Heights campus only a few years before, a smug, slick, over-dressed martinet, less a truth-seeker than a publicist from whom only the foolish would purchase a used textbook; all in contrast to Handlin, whom I remember, probably lecturing at Brown several years before, as visibly insecure — a plump Brooklyn Jew called "fat Oscar" behind his back at a time when anti-Semitism had not yet vanished from the Ivy League.

The Arkansas archive also sent me a four-page, single-spaced letter addressed to Merrill by D.P. Edgell, the executive director of the London Fulbright Program, defending his support of my scholarship, and yet another letter from the "Cultural Affairs Officer" at the embassy there. The most interesting detail in Edgell's letter is his identification by name of two "negro students" who had, he says, no trouble with housing. Whether inadvertently or intentionally Edgell omitted a third Fulbrighter, much darker than the others, named Clyde Taylor, who did encounter the deleterious prejudice cited in my *Nation* reply. It was Edgell, no one else, who provided the misinformation repeated by Handlin, making the Harvard professor look like a puppet. Another significance of Edgell's letter is that nothing is said about the issue of war debts. His refusal to refute me on this charge suggests implicitly that my later recollection of his own dinner-table testimony, as reported in my contemporaneous reply, must have been correct. (Perhaps he didn't know what the "correct line" from the State Department was meant to be.) That other letter from London in my FOIA file — less than two pages

*"I must say Kostelanetz appears to be a very strange character," opined the illustrious Sen. Fulbright. "Someone made a serious mistake in giving him a scholarship." Imagine how much mileage my book publishers could have gained from such a senatorial encomium. Dammit.*

from the embassyman — is prefaced, "Official-Informal//Unclassified." One wonders how much strategic thought lay behind that initial editorial decision.

On June 24, 1966, someone named Dayton W. Hull, apparently Tony Merrill's superior, mailed both these letters to Handlin at Harvard. The Harvard professor responds a few days later, "I think that this deserves a response. I leave it to

*continued on page 33*

# In Darkest Fulbright: The State Secrets of Scholarship

by Richard Kostelanetz

An aura of sanctity so envelopes some American institutions that they seem above criticism. Who is to say that the Statue of Liberty is hardly graceful as architecture and somewhat obscene as a symbol, or that the small isolated college can become to many young people a prison of boredom, or that the Fulbright Program, which sends American scholars and lecturers abroad and selects foreign students to study here, is not quite the gift horse it seems to be. It is indicative that in Walter Johnson and Francis J. Colligan's recent pseudo-hagiography, *The Fulbright Program* (1965), the only negative judgments are attributed to Communist newspapers!

But surely, one's tragic sense begins to nag, there must be some black spots on the Fulbright Program; and if one reads the book carefully he notices that a certain episode which the authors consign to the McCarthyite past — a kind of "dark night of the soul" which will supposedly never happen again — raises a major, continuing problem. Since the Fulbright Program is an appendage of the government, there is nothing to prevent a bureaucrat from sabotaging an otherwise acceptable applicant by presenting unfavorable "evidence" against which he cannot defend himself, if he knows about it at all. Even the most reputable scholar may not receive the reward he deserves if his F.B.I. file contains too many hate-letters from busybodies, because he burned his draft card as a young man, or if he forgot to pay his income tax last year.

Those foreign students invited to study in the U.S. say that especially if they study in cities, the meager stipend is hardly sufficient, and they resent the law forbidding them to seek employment here. American teachers who accept Fulbrights to lecture abroad I have met here and there; I have observed roughly that many a scholar needs them less to teach abroad than to get a vacation away from the university paperwork, the noisy family, the declining marriage, the failure to receive a promotion, or the departmental squabble. Academic society needs such subsidized outlets, no doubt; but it is somewhat disingenuous for professional historians, such as Johnson and Colligan, to portray every lecturer as eager to spread the gospel to the heathen.

However, I can speak of the American Fulbright scholars sent abroad, for I had a grant myself last year to do research at the University of London. I learned about England, investigated my subject, and generally enjoyed my new friends. Nonetheless, I can attest that the Program itself is far from congenial, if at all admirable. First, it is difficult to discern the purpose of the scholarship. Is it supposed to offer a year of graduate education to recent cum laudes? Is the intention to subsidize the research of maturing scholars? Should it flood the country with sub-

diplomats — "cultural ambassadors," if you will — who will spread good cheer, become model citizens, and spout the American point of view on all occasions? The program's officials mention all these purposes here and there; but because such aims are hardly complimentary, the result is confusion in their own minds as well as the scholars'.

The first purpose strikes me as fantasies; for recent graduates in America are generally not mature enough as scholars to do much work on their own. Their applications usually outline hastily imagined projects which they may or may not fulfill. They generally embarrass the program because they are so ill-equipped to handle the work the universities accept them to undertake. More than one sponsor has telephoned the program's Executive Secretary to ask why so-and-so was selected since he hardly appears interested in the project he proposed for himself. Many of these young Fulbrights, one discovers, need another year to decide if law school might suit them better than academic work; and the grant affords some the first year away from their parents. The shame is that often they have taken places that might otherwise go to students with real research to do. The second purpose hardly seems operative; for so few of the Fulbright scholars are mature. In the British program, which is reportedly the most competitive, I would estimate that, at the most, about one-third seemed incipient professionals — people capable of doing scholarly or creative work of some substance; and I would doubt if the percentage is higher in other countries.

If the program considers itself an adjunct of diplomacy, it should select red-cheeked fraternity presidents rather than aspiring scholars and thus undermine its ostensible aim. Still, the

---

*Since the Fulbright Program is an appendage of the government, there is nothing to prevent a bureaucrat from sabotaging an otherwise acceptable applicant by presenting unfavorable "evidence" against which he cannot defend himself, if he knows about it at all.*

---

program's bureaucrats often mention this subsidiary "purpose" to discipline behavior they find recalcitrant, to justify asking a Fulbright to give gratis lectures (often, "humorous after-dinner talks") up and down the land, and to support their own presence in the country. However, the high-handed bureaucrats, armed with secretaries to type letters and place telephone calls, gener-

ally create more bad feeling among local scholars than the most obnoxious student ever could. Also, many of the Fulbright programs are subsidized by war debts accrued from the sale of World War II military and agricultural surpluses — a fact that is nothing but an embarrassment to both those who do research and their hosts.

The biggest threat facing the Fulbright scholar is lack of money. He simply does not receive enough to subsist, even alone; and those with families or those assigned to cities with higher standards of living are further disadvantaged, because they receive no supplements to their stipends. For scholars with families, indeed, the situation is nearly intolerable, because most countries legally prohibit him and his spouse from taking a job that requires a working permit — a rule that is fair enough where considerable unemployment exists. However, with the same innocence of realities that keeps them from supplying increments, the Commission fails to consider what happens to a family of two, or three, or four forced to live on 558 pounds (the English stipend for ten months), sometimes in places where rents equal those of American cities. First, they often live in hopelessly crowded and unheated conditions, at times in a noisy slum — a situation hardly conducive to serious study. Second, both the husband and wife attempt to get work outside the province of the working permit, for example as translators, Gallop pollsters, researchers, part-time teachers, commercial artists, typists, barmaids, or baby-sitters. Some even develop a small business in books or paintings: one sent his wife back to the States to earn money that would also provide for him. If the Fulbright offers financial hardship to the grantee, it demands nothing but sacrifice from the spouse.

The money situation would not be so terrible if the scholar were native to the place and knew the local by-ways of cutting costs. However, strange places are as a rule more expensive than home; and if one is to fulfill the role of an honored guest, rather than a bohemian outcast, the expenses escalate. In London, for example, the housing officer advises the incoming Fulbrights not to look for apartments south of the Thames because, she told us, it is “too slummy” for Americans. Actually, many of the buildings in South London are comfortable; the neighborhoods, safe and convenient; the rents, cheap; the people, Cockney. She really meant that the area is too totally working class and notoriously unfashionable for an American Fulbright. An additional problem is that the Commission expects the supposedly classy Fulbright scholar to socialize with the local folk, even if he can not afford a round of drinks at the pub. In London, I knew of a couple who were slum-dwellers by tradition, sedentary by nature, and Spartan by habit — the sort who live in New York on less than 3,000 dollars per year. Still, they spent the equivalent of three Fulbright awards in ten months; like many others in the program, they borrowed money from home.

To make matters worse, the American scholar is subject to the accumulative tradition of fleecing; but where the well-heeled tourist pays freely to escape threats and complications, the Fulbrighter cannot afford such blackmail. What does the local Commission do about white-collar thievery? Rather than representing the interests of the student, it often supports the thieves, of course, on the grounds of good “public relations” with the hosts. For example, when a Negro student had consid-

erable difficulty finding lodging for himself and his family, the Commission refused to supplement his stipend or to acknowledge that James Crow resided in England. Rather than representing the students in their relations with the country, it acts on behalf of locals, thereby gaining for itself a certain reputation as the crook’s best friend. In short, it is absolutely impossible to fulfill the role the Commission idealizes on such a minuscule stipend.

Indeed, the major thorn of the Fulbrights is precisely these bureaucrats: for, in the deepest sense, the Program is a kind of colonialist HARYOU [a program for Harlem youth] in which several executives live in regal style (“fat-cattin’”) while the peons in whose name the disbursement is run starve on a pittance. These officials consider themselves pseudo-diplomats; thus, they have plush offices in sumptuous buildings, as well as clerks, secretaries, and receptionists. Their personal salaries are as much as ten times that of the scholars they support. Moreover, having little to do, except making themselves more important than they really are, they become nuisances to the scholars, cajoling them into participation in all sorts of official

---

*It is difficult to discern the purpose of the scholarship. Should it flood the country with “cultural ambassadors” who will spread good cheer, become model citizens, and spout the American point of view on all occasions?*

---

functions and invading their lives with the unashamed abandon and impatience of the police.

Yet worse, these officials tend to be failed academics — men with good degrees, a record of diligence, grandiose ambitions, but little success; thus, they exhibit considerable *ressentiment* toward those young scholars, who obviously more talented and productive, have free time to develop their budding interests. These officials are the sort who, upon failing to attain the dean-ship or the professorship at the university back home, would become deans of admissions or of freshmen or of financial aid; abroad, they become royalty with their own castles. They enjoy being disciplinarians; and their favorite threat is the standard recourse of the weak official — to put a black mark in one’s record. (Who puts, one wonders, the black marks on their records?) Or some have been known to write professors who supplied references for a brilliant but difficult girl, threatening never to honor their opinions again. As cultural ambassadors, they are hardly effective. They are rightly blamed for the selection of immature students, and local teachers object to their high-pressure tactics in placing students in universities. In my observation, the only natives of the host country who like these carpetbaggers are the most transient guests at their plush parties. The selection committees abroad are generally elderly V.I.P.’s with little sense of matters academic or intellectual; and like all self-conscious squares they prefer the safe and traditional to the adventurous and contemporary, often to the anger of the local professors who support the application of a bright American student whom the committee stupidly rejected.

As a rule, when a charitable program exists more for the sake of its officials than its recipients, the beneficiaries become dupes in the perpetuation of the bureaucratic machine; and despite its initially honorable intentions, the Fulbright Program is now no different. As the student sits in his unheated hovel, slaving away on his research, gulping his soup to keep warm, fraternizing with his fellow poor, the bureaucrats live with the other diplomats in the plush neighborhood in town, eat the best food, attend well-heeled parties, and travel profusely. The student is being exploited so that the bureaucrat can live in

---

*The officials become nuisances to the scholars, cajoling them into participation in all sorts of official functions and invading their lives with the unashamed abandon and impatience of the police.*

---

expense-account comfort. As the bureaucrats prefer the most exploitable and obedient students, the European teachers complain, quite rightly, that Fulbrights are not as challenging and exciting as the young people they meet in America. One can hardly imagine, say, Norman Mailer, Marshall McLuhan, Allen Ginsberg, or William Faulkner as Fulbrights; and perhaps this explains why so few major books have been written on Fulbright patronage.

Anything less than immediate overhaul of the program will only bring the program into disrespect, not only with American students but also with foreign scholars. First of all, we must remove its subsidy from war debts. Forgive the debt; pay for the program out of American money. Second, give the scholars sufficient funds to meet the area's standard of living, adding increments for those who have families or who reside in areas commonly known to be more expensive. Third, stop insisting that the scholars be cultural ambassadors; young Americans are gregarious enough to be fine emissaries without being self-conscious missionaries.

Fourth, encourage mature scholars, rather than recent graduates. In this respect, I recommend the following process of selection: A student on his own initiative writes a professor of his choice at a foreign university, asking to do research under him and presenting evidence of his own competence and of the relation of his interests to the professor's; if the professor decides to accept the applicant, then he sends a note to the local consulate. Providing that both the sponsor and his prospective student are of a demonstrably high caliber, a professional selection committee in Washington should award the grant. The student will therefore join the community of scholars at the invitation of the community, rather than become a cipher foisted upon a local university. Not unlike a student abroad on his own funds, the Fulbright would be responsible to the local consulate.

Fifth, abolish the Educational Commissions and their local selection committees. They are fundamentally unnecessary; and the money saved should go toward increasing the stipend. If the salary of England's chairman alone were divided evenly among

the 100-plus Fulbrights, the result would be nearly fifty pounds more per person — or a ten percent increase; and were all the Commission's office expenses similarly redistributed, the per-student increase would be even larger! These reforms will, I believe, produce a program more suitable to Senator J.W. Fulbright's ideal, expressed in his foreword to *The Fulbright Program*: "The optimum utilization of physical, cultural, spiritual, and human resources, and the perfect adjustment of the individual within the social framework."

#### Addendum

When the previous essay appeared in *The Nation* I expected a defensive reply, but little did I expect that several institutions and individuals, supposedly with reputations to worry about, would discredit themselves so blatantly. A protesting letter signed by the historian Oscar Handlin, as honorary chairman of the board administering the Program, was sent to *The Nation*, which dutifully forwarded it to me requesting a rejoinder. Since Handlin's note was riddled with patent errors, as well as spelling mistakes (the most memorable being "San Hose College"), I assumed that the misinformation had been provided by others, who had perhaps authored the letter for Handlin as well. It seems likely, at any rate, that this chaired professor at Harvard had not rechecked their "research," done his own homework, or even proofread the reply attributed to him. Only because the signature agrees with another "Oscar Handlin" I have before me can I assume that the note actually passed under his hand. Such patent exploitation of professional eminence, coupled with lack of personal integrity, is alas not untypical of certain intellectual powerhouses, who should have more respect for themselves, especially in dealing with younger people. Needless to say perhaps, when a student cites so much erroneous data, he is customarily flunked; and when he lets another write something submitted under his name, he is generally expelled. Thus do academic powers practice an egregious double standard. In a recent *American Scholar*, Handlin then has the *chutzpah* to complain that his generation is not sufficiently respected by its juniors. Surprise?

Resisting my initial polemical temptations, I mailed the letter directly to Handlin with an accompanying note expressing my disappointment that "a scholar of your eminence should

---

*When a charitable program exists more for the sake of its officials than its recipients, the beneficiaries become dupes in the perpetuation of the bureaucratic machine.*

---

allow his good name to be used for such lowly work. Were you not an historian I once respected, and the mentor as well of one of my own best teachers, I would gleefully demolish it. Sadly, you have been victimized by those who would make you their spokesman; and unless I hear from you otherwise, I trust you shall want to rescind your letter." Nothing more came from Handlin — not even an appreciation of thanks for offering to rescue his reputation from disgrace (or any other sign of basic



humanity). However, a revision of his letter did appear, with spelling mistakes corrected, in *The Nation* (Oct. 31, 1966), more than four months after my piece. Perhaps in awe of my warning to Handlin, *The Nation* rather suspiciously failed to extend to me the customary courtesy of showing me his text in advance, let alone inviting, as before, my rejoinder to accompany his protest. Since Handlin distorted fundamental facts and generally debunked my reputation as a reporter, this editorial failure was especially shameful; several telephone calls, in addition to much overcoming of equally suspicious resistance, were required to make sure that the following reply I immediately drafted did appear in the weekly *Nation*, some four issues later. Most of Handlin's assertions are acknowledged in my reply. Not one of his criticisms of my essay was acceptable; most of the time, he patently did not know what he was talking about.

I'm continually appalled that an historian as eminent as Oscar Handlin should allow his reputation to be exploited by organizations that win his allegiance; however, here his associates betray his trust, for his letter is full of mistakes and falsifications. In fact, there were three (not two, as he says) Negro Fulbright scholars my year, and the third, who lived in Manchester, was considerably darker, which is to say less invisible, than the other two. Second, our contingent included several nonacademics, both by profession and personality; and my list of eccentrics, in context, exemplifies the kinds of people totally excluded from the Fulbright commissions' beneficence. (Also, William Faulkner was in fact a Fulbright lecturer, not a scholar.) I would have used examples from my own generation, were not their names so generally unfamiliar. Third, when Handlin says that British stipends give 6 pounds per week and American 15 pounds, he can arrive at this discrepancy only by unscrupulously juggling statistics, dividing the total British sum (£325) into a fifty-two-week calendar year, and the American (£558) into a thirty-five-or-so week academic year; and as I said in the earlier article, the English could take formal jobs where we (*sans* a working permit) could not. Since Handlin did not attempt to live on the stipend, he is simply not qualified to judge its adequacy — unlike immigrants long

deceased, we Fulbrights are able to speak for ourselves. I understand that the stipend awarded Rhodes scholars is now nearly twice that of a Fulbright, though residing in Oxford is considerably less expensive than the British cities. That the program is no longer supported by war debts, even as part of "joint contributions" is news to me (as the executive secretary himself told me otherwise, at dinner on Feb. 16, 1965); and may I trust that my other reformative proposals, which Handlin indicatively does not dispute, will become realities with equal haste.

What irritates me more about Handlin's letter are, first, its moral premise and, second, his own damned presumptuousness. His irate tone ("particular [sic] poor grace") presumes that the poor should never complain about relief, solely and simply because they are recipients of a government dole. (Need I say more?) Second, he claims to know more about my life than I do. Of the two "people with whom [I] chiefly came into contact at the commission," I happened to meet one, the more eminent (Cleath Brooks), only once; and how I spent my own money or where it came from would interest only an incipient totalitarian — the sort who would also feel inclined to revise the facts of history to his own convenience. Finally, contrary to what Handlin tells me about myself, I did not at all suffer "unhappiness in London," but many of the discomforts that all the scholars felt I would attribute to needless deficiencies in the Fulbright program. My essay dealt not with my own experience but a highly touted program that must reform itself or earn an increasingly bad name. — Richard Kostelanetz

*The Nation* dissociates itself from all passages in the above letter which characterize Oscar Handlin, deprecate his behavior, or ascribe motives to him. — Editors

Nor did the magazine ever explain the reasons for such an unusual, patently self-compromising concluding editorial rejoinder to me, obviously taking flag-waving pride in what would customarily be regarded as the absence of integrity!

Reprinted from *Crimes of Culture* by Richard Kostelanetz (Autonomedia, New York, 1995). Originally published in *The Nation* (1966).

## The State Department, Fulbright and Me, from page 29

Charles Frankel to decide whether the response ought to come from the [State] Department or from the B.F.S. [Board of Foreign Scholarships]. If the latter, I will be glad to write." His eagerness to help is repeated in a letter of July 5, 1966.

Apparently no more a summertime beachman than Handlin, Hull replies on July 8: "Charles is inclined to feel that we should not have a Government official making this kind of response. He feels that high-level or not, it would be better for the response to come from a private individual, namely you." Hull adds, "Perhaps you can get a useful idea or two from my draft letter," which turns out to be two single-spaced pages, dated the previous day, directed to Carey McWilliams, *The Nation's* editor at the time, who was thus prepared for receipt of the official rejoinder from Handlin. I suspect that more "advice" was directed to *The Nation*, probably with telephone calls, but there was no evidence in the papers sent to me.

On July 13, Handlin sent his first letter to *The Nation* with its reference to "San Hose College," making me wonder again

if it were ever physically read by the man who purportedly signed it. How did this copy get to files residing in Washington? Was it sent from Cambridge by Handlin? Or was it prepared in D.C., perhaps by one of the conspirators whose correspondence I obtained with my FOIA request, who signed it with Handlin's name? Since this is a copy of the letter, the original of which I had returned to Handlin with the considerate advice not to publish it, I'm pleased to have an authentic copy; I was relying only on memory when I critiqued it.

I also found in the Arkansas Fulbright file the machinations behind the revival of Handlin's lame letter. On Sept. 22, someone identified as "William C. Ackerman, special assistant" sent Charles Frankel a draft of a letter that he directs the latter to send to Sen. Fulbright. Ackerman also sends to "Mr. Canter," apparently stationed between him and Fulbright himself, a "letter I originated, and which Dr. Frankel promptly signed."

A copy of Frankel's ghosted letter I now have as well,

dated Sept. 23, 1966. Opening "Dear Bill," it explains, "I am advised [by whom, pray tell? — RK] that Carey McWilliams, editor of *The Nation*, sent a copy of the Handlin letter to Mr. Kostelanetz. After receiving that letter, Mr. Kostelanetz advised Dr. Handlin that he would produce further, as he said, negative comment on the program if Dr. Handlin wished to argue the claim further."

What next? Fulbright replied on Sept. 26, 1966: "For my own satisfaction I am very pleased indeed to have these statements, particularly the letters from Handlin and Edgell. I must say Kostelanetz appears to be a very strange character. Someone made a serious mistake in giving him a scholarship." The bigger mistake was my not having access to Fulbright's testimonial before. Imagine how much mileage my book publishers could have gained from such a senatorial encomium at that time. Dammit. You'd think my citizenship entitled me to immediate copies of whatever any senator said about me. "I gather from your letter that you feel it wise not to say anything further about this," Sen. Fulbright continues to tell Frankel. "Personally, I would be willing to insert in the Congressional Record with appropriate comments, the material you sent to me, but I do not wish to make your job any more difficult than it is." Whether those documents were actually published in that "historical" record, I do not know. I don't know how to check, naturally wondering whether anyone ever reads it, because I can't recall anyone ever telling me about documents relating to me appearing in what is, after all, the epitome of "vanity publishing." A Google search about this question turned up nothing. Rechecking Google again, I wonder if this William C. Ackerman edited an esoteric 1948 book about radio, which I probably should know, maintaining an interest in that medium. (Hey, Ackerman, if you're still alive and read this, could you please send me a copy, thanks.)

On Oct. 3, Ackerman, apparently anxious, reported to Frankel: "I have looked through a file of *The Nation* without finding that the Handlin letter has been used, or that the subject of the Kostelanetz letter [sic] has otherwise been dis-

---

*Little did these bureaucratic functionaries imagine that decades later I would have the perverse pleasure of relieving my three-decade-old paranoia with the real names, most of them previously unknown to me, of my Real Enemies.*

---

cussed in *The Nation*." He advises: "My suggestion is to discuss with Dr. Handlin and verify from him that the letter has not appeared and that Handlin was pressed on this by Kostelanetz." He concludes, "Want me to call Dr. Handlin?" The sloppy typing, epitomized by capital letters whose bottoms are well above the adjacent horizontal line, suggests that these words came directly through Ackerman's hands. Unlike his puppet Handlin, he wouldn't let anyone compromise his communication.

Next chronologically I find in the Fulbright file a carbon dated Oct. 6, 1966, apparently of a memo addressed to

"Margo" enclosing the draft of a letter that Ackerman wants Frankel to send to Fulbright. Dated the following day, the draft says, "I do not feel inclined to raise these questions by making a public record — through the Congressional Record — or other means — of the controversy. May I say, too, that I appreciate your thoughtfulness in not pursuing this by publication, which could, I believe, had [sic] too little result for the effort that would in all probability be required." Dammit. I

---

*Can I be alone in wondering why all these guys, purportedly all adult men, bothered with such elaborate machinations in dealing with me?*

---

wonder if I'll ever have another chance to be published in the *Record*. A "low calibre" writer, you know, needs every appearance he can get.

On Jan. 4, 1967, Ackerman, my most assiduous reader, sent a copy of my *Nation* rebuttal not only to Mr. Hull (remember him?) but also to "Mr. Roland," a new name in this history, as "the latest development in this story. It may be the last, though Ralph Vogel [yet another new name] is covering [sic] Mr. Handlin on the Kostelanetz letter and Mr. Handlin may say something more. Though I doubt it." (What, pray tell, does "covering" mean in this context?)

At the bottom of this single "reference slip," Ackerman asks Mr. Hull, "Should not these papers come to rest in CU/IR, where some were borrowed?" Came to rest "these papers" did, though perhaps not where their authors wished. Can I be alone in wondering why all these guys, purportedly all adult men, bothered with such elaborate machinations in dealing with me? Were they bullies with excessive spare time? Or did they want to please Sen. Fulbright, their boss of bosses? Or did they conspire to set up Handlin to look dumb? I remain mystified about their motives.

Little did these bureaucratic functionaries imagine that decades later copies of their papers would "come to rest" in my hands and that I would have the perverse pleasure of relieving my three-decade-old paranoia with the names, real names — not pseudonyms — most of them previously unknown to me, of my Real Enemies. Hooray for the FOIA! Repeat after me: Hooray for the FOIA! Hooray for the FOIA! Hooray for the FOIA!

One truth I learned from this experience then (and repeat to everyone now) is that you should never, but *never*, sign your name to "research" done by somebody else, at least not before checking it yourself. This has a corollary: never let your intellectual integrity be exploited by any institution, particularly by a government organization. Paranoia about such possibilities is thoroughly healthy; Handlin wasn't paranoid enough. No amount of money, no promises of fame and "prestige" are worth being treated with such condescension. A second truth is that you should never discredit yourself with young people who might have visible careers, no matter if your advisers or handlers dismiss them as "low calibre." Your lack of character will be remembered, sometimes cancel-

*continued on page 53*

# Lester Agonistes

by Jeffrey Friedman

J.C. Lester misconstrues my theory of empirically unfalsified post-libertarianism as somehow anti-libertarian.

J.C. Lester's "Attack" article (a whole new genre of literature — who knew?) in the August *Liberty* squeezes quite a bit of misinformation into three pages. Lester has poorly served those readers of *Liberty* who don't have direct knowledge of the views I've expressed in the journal I edit, *Critical Review*.

Without going into Lester's literally incomprehensible claim that my article "errs" in failing to take account of his allegedly sound version of libertarianism (a version he does not deign to set forth — to find out what it is, one must read a book he published three years after my article appeared), let me set the record straight about three issues.

1. Lester repeatedly characterizes my position as "anti-libertarian." This is misleading, at best. In my 1997 *Critical Review* article (see pp. 449–60), I proposed an argument for libertarianism, an argument based on the nature of politics. In the years since then, *Critical Review* has published a great deal of research advancing this argument. The basic idea, as I wrote in 1997, is that politics — even more than the other departments in human life — is pervaded by ignorance, misinformation, demagoguery, and ideology. This accounts for the perverse effects of government action better than any extant form of libertarianism does.

My argument may not be a tradi-

---

tional form of libertarianism, but it produces libertarian conclusions. For if there is an alternative to politics — such as capitalism — that is less likely to produce perverse results because it is less pervaded by ignorance, we should prefer that alternative. Is it

---

*The failure of free-market economics to produce 100-percent libertarian conclusions leads libertarians to endorse inadequate, "philosophical" (a priori) reasons for such conclusions.*

---

really fair, then, to call my position "anti-libertarian"?

The whole point of the four-part 1997 article Lester attacks is to clear away unconvincing and unsustainable versions of libertarianism (parts I–III) so as to introduce the argument from political ignorance (part IV). As I wrote, my aim in the essay was "to diagnose the failings of libertarianism

and propose a remedy for them."

2. Lester manages to get my point about "the libertarian straddle" exactly backwards. I never claimed that, as he puts it, "libertarianism is empirically unjustified and really held for inadequate, 'philosophical' (a priori) reasons." On the contrary: I argued that almost none among us would ever have become a libertarian if not for encountering the empirically based arguments of free-market economists (sometimes transmitted through novels). I quoted with approval David Boaz's acknowledgement that "few of us would be libertarians if we thought a strict adherence to individual rights would lead to a society of conflict and poverty," and I went on to contend that "libertarian philosophy is self-sustaining if one accepts its premises, but one would only accept them if one had already been pushed in a libertarian direction by consequentialist considerations."

My position, therefore, is the precise opposite of the one Lester presents. Libertarianism *seems* initially to be justified by the empirical claims of free-market economists — but, as

---

the abstract of my article tried to point out, in an admittedly ambiguous passage quoted by Lester, this appearance turns out to be illusory. The failure of free-market economics to produce 100-percent libertarian conclusions (for instance: what is economically inefficient about a law that would redistribute \$10 from a billionaire to a bag lady?) leads libertarians to endorse inadequate, "philosophical" (a priori) reasons for such conclusions.

3. Lester interprets my rejection of extant empirically based cases for libertarianism as requiring an impossibly high, "justificationist" standard of proof. This is simply a misunderstanding. I did not say that libertarians have to demonstrate in advance that every government intervention will fail. I did say, however, that libertarians must provide reasons to think such failure *likely*. Such reasons are the "bold conjectures" called for by the Popperian, falsificationist model of science Lester endorses. They are embodied in theories about why government programs have tended to fail in the past. My essay showed, however, that the extant theories of government fail-

ure, such as public-choice theory, *have already been falsified* by empirical research.

Without an unfalsified theory to explain why government failure is likely, Lester's position amounts to the claim that no government program has ever succeeded in the past. One wonders what Lester would count as "success." Clearly government programs do succeed at some level: mail gets delivered, fires get extinguished, income gets redistributed, etc. If these government activities are to be considered failures, it can only be in comparison to the hypothetically more efficient free-market provision of mail, fire fighting, employment, and so on. For this comparison to succeed, one needs a hypothesis about why markets are likely to work comparatively *better* than governments — a hypothesis based, presumably, on a conjecture about why markets have worked comparatively better in the past. Such a hypothesis is just what the argument from political ignorance provides. And it has the advantage of being unfalsified by empirical research. □

---

# Friedman Falls Short

by J. C. Lester

Jeffrey Friedman sets out to "set the record straight about three issues." But his most important point is not listed among his numbered corrections of my errors. This is where he writes that he will not respond to my "literally incomprehensible claim" that he does not deal with what I assert is the libertarian conception of liberty and with its critical-rationalist defense. But I say more than enough about these and why his own account is confused for him to begin to come to grips with

---

the problem. I don't know why he doesn't respond to the arguments I put forth. It is no excuse that I did not attempt to summarize all of *Escape from Leviathan*, where I have written at length about this. I did not suggest or imply that familiarity with that work

is a prerequisite of any fruitful argument, or I should hardly have bothered to put forth the arguments that I did.

1. Friedman then objects that the "anti-libertarian" label that I give him is "misleading, at best" (though he later moderates this, asking whether it is "really fair"). Having read various articles by Jeffrey Friedman it certainly never occurred to me that he was, or considered himself to be, a libertarian. He has advocated "postlibertarianism" before and does so again in the article to which I responded. Presumably what comes after libertarianism is not itself libertarianism, which is somehow rejected. He asserts in his letter that his argument "produces libertarian conclusions. For if there is an alternative to politics — such as capitalism — that is less likely to produce perverse results because it is less pervaded by ignorance, we should prefer that alternative." But, presumably, if there isn't such an alternative, we can't prefer it. So that hypothetical statement is not a libertarian conclusion, is it? It would only be a libertarian conclusion if it were not hypothetical: "As there is an alternative . . ." Perhaps Friedman has some more libertarian-like arguments in other places. And perhaps Friedman looks like a libertarian when his views are compared with mainstream political views. But I take a libertarian to be someone who thinks that we should have either no politics or as little as possible. Friedman certainly does not appear to think this. Or perhaps he would attempt to take refuge in some non-libertarian conception of liberty as he did in the article. I explained what was wrong with this. He completely fails to reply.

Friedman's article may well, as he states, "clear away unconvincing and unsustainable versions of libertarianism." But he fails to realize how these can be made convincing and sustainable (using the methods and arguments I outlined and to which he does not properly reply). The final "argument from political ignorance" is not obviously a libertarian argument: it does not advocate libertarianism or have libertarian conclusions. Perhaps it is intended to be compatible with some important aspects of libertarianism,

---

but it is actually called "Transcending Libertarianism," which would appear to entail rejecting libertarianism, albeit by somehow going beyond it (or is

---

*Having read various articles by Jeffrey Friedman it certainly never occurred to me that he was, or considered himself to be, a libertarian.*

---

Friedman sacrificing accuracy for the more arresting appearance of iconoclasm?).

Hence for Friedman to call himself a libertarian appears "misleading at best." But nothing important hangs merely on how we label any of Jeffrey Friedman's views. There is no serious philosophical or theoretical issue in that. If he really is advocating libertarianism in some serious but subtle way then that is significant. But I cannot see it. And it is not evident to me that he wants to make himself clear.

2. The fact that empirical issues are often what attract people to libertarian thinking, as Friedman realizes, does not gainsay the fact that libertarianism is completely empirically unjustified (for no finite amount of positive instances, even if themselves true and unproblematic, can begin to prove or support any universal theory). In his article, Friedman repeats ad nauseam the criticism that libertarian thinking cannot be justified empirically. So I can't see why he denies that his position is that, in my words, "libertarian-

ism is empirically unjustified and really held for inadequate, 'philosophical' (a priori) reasons" and asserts that I have his theory backwards. Even the example he chooses to give in his letter appears to corroborate this view: "The failure of free-market economics to produce 100-percent libertarian conclusions . . . leads libertarians to endorse inadequate, 'philosophical' (a priori) reasons for such conclusions." I can only guess that Friedman's confusion about the nature and possibility of epistemological justification — as is clearer in his next point — is somehow to blame here.

3. If critical rationalism is true, libertarians cannot "provide reasons to think" that government failure is "likely." Those would be reasons attempting to support the libertarian conjecture instead of admitting that it is a conjecture and dealing with criticism. Such reasons would not themselves be, as Friedman thinks, "bold conjectures" but an attempt at a justification of a thesis. So they are not, as he suggests, the "falsificationist model of science" (whereby we seek empirical, but still theory-laden, falsifications instead of so-called empirical support). Nor are they the broader critical-rationalist model of epistemology, which includes falsificationism, that I actually mentioned (whereby we seek criticism in all its forms instead of any kind of supposed support). It is irrelevant, even if true, that theories of government failure have been falsified.

This does not entail that my position is reducible to "no government program has ever succeeded in the past" (it is very odd to imply that a critical rationalist, or a falsificationist, is guilty of this form of induction just because he does not support his thesis). My thesis is that state intervention makes things worse in such a systematic way that we are better off completely without it. And this is offered as an entirely epistemologically unjustified and unsupported conjecture. We can-

not show that a universal thesis, or any part of it, is "likely" or supported. All we can usefully do with this universal thesis is attempt to see whether it withstands criticism (including, but not limited to, empirical tests). Friedman has corroborated what I suspected throughout his article: he does not understand critical rationalism (even in its narrower falsificationist version). Combined with his failure to grasp what I assert, admittedly controversially, is the correct libertarian conception of liberty, he is all at sea on the topic he writes about at such great length on so many occasions.

What counts as a "government" (or state) "success"? As Friedman realizes (I think), it is where the government does better than the opportunity cost: the best that a non-government institution would do. It is not a sufficient criterion of success merely that "mail gets delivered, fires get extinguished"

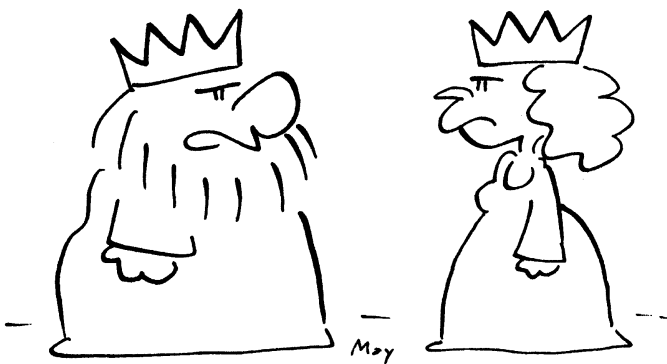
---

*We cannot show that a universal thesis, or any part of it, is "likely" or supported. All we can usefully do with this universal thesis is attempt to see whether it withstands criticism.*

---

(Friedman teases when he adds the anti-libertarian example that "income gets redistributed.") This comparison does not need "a hypothesis about why markets are likely to work comparatively better than governments." They can be compared without such a hypothesis. And any such hypothesis could not be "based" on anything to do with "why markets have worked comparatively better in the past." All this is simply demanding justification and induction.

Perhaps critical rationalism is a false epistemology. Maybe a more nuanced libertarian conception of liberty still does not entail libertarian conclusions. But before they can be refuted they have at least to be understood, which Friedman has yet to do. □



"I can't help politicizing everything!"

# Friedman Rules

by Ari Armstrong

J. C. Lester somehow has failed to see the tremendous intellectual achievements that Jeffrey Friedman has made in his effort to make libertarianism defensible.

While reading J.C. Lester's recent article, "The Trouble With Friedman," I glanced at the cover of the magazine to verify the publication date. For a moment I thought I had been sent a back issue. But the cover verified what I thought was the case: I was reading the August 2003 edition of *Liberty*. This struck

me as strange because Lester addresses a 1997 article by Jeffrey Friedman in *Critical Review* titled, "What's Wrong with Libertarianism?" Why is a years-old article suddenly grist for a pop (well, as "pop" as anything libertarian can be) monthly publication?

This is especially odd considering that two prominent libertarian scholars — Chris Matthew Sciabarra and Tom Palmer — responded to Friedman's essay in the pages of *Critical Review* dated (a mere) five years ago, in the Summer 1998 issue (Vol. 12, No. 3). In response, Friedman recapitulated his earlier criticisms and expanded them. Nor does Lester note other important articles by Friedman that add significant context to his critique. For example, in Fall 1998 (Vol. 12, No. 4), Friedman writes an introductory essay, titled "Public Ignorance and Democratic Theory," that begins to outline his own approach to libertarian theory. He notes that "the public is overwhelmingly ignorant when it comes to politics" (397), so he sensibly points to the case for keeping the political sphere as limited as possible.

Enter the New Millennium! Now that Friedman has finished up his studies at Yale and become a professor in his own right at Columbia, he has

---

helped start a pop venture of his own (again, as "pop" as anything associated with the lovable elitist can be) — a new magazine distributed on college campuses called *The Dissident*. Now, can anybody who writes for a magazine called "The Dissident" really be all that bad? Here are a few of the articles that appeared in that publication's inaugural issue: "A New Kind of Empire," "Globalization vs. Capitalism," "Vanishing Voters — A Blessing in Disguise?", and "The Rise of the 'Neoconservatives'." This is a strange publication indeed to be associated with a person who, according to Lester, is "anti-libertarian." (In fact, Friedman has described himself as a "postlibertarian," which strikes me as a pretentious way of saying he's a libertarian who disagrees with some other libertarians.)

Indeed, Friedman has written the most exciting defense of libertarianism I've read in years in *The Dissident*. One would think his article, "Theory Gets a Reality Check: Philosophy, Economics, and Politics as if Verisimilitude Mattered," would merit at least a mention in Lester's article (though the timing of the respective writings may have

been the sticking point). Lester's right about one thing: Friedman can write on and on. His essay approaches 18,000 words in length, though it's well worth the effort.

Perhaps what's most frustrating is that Lester fails to answer the issues raised in the '97 article, even as he neglects to point out the actual shortcomings of Friedman's work.

On the other hand, merely the fact that Lester chose to address the '97 essay — and *Liberty* chose to publish the critique — says something about the significance of Friedman's work. I regard it as perhaps the most important work of intellectual history specifically about the modern libertarian movement. True, most self-described libertarians lack the stamina or interest to work through the material, and some who do read it may react defensively. For the rest, though, Friedman offers a "red pill" experience. Even if one concludes he's wrong, or at least not completely right, it's difficult to avoid fundamentally reevaluating one's beliefs. And the publication of Lester's article reaffirms what I love about *Liberty*: the newsstand magazine is not afraid to throw contemporary

---

political debates in the blender with esoteric intellectualism (I mean, “non-justificationist anti-libertarianism?”) and, with a perfectly straight face, offer up the concoction as refreshment.

To his credit, Lester grants that “some of Friedman’s criticisms correctly identify errors in certain versions of libertarianism.” Unfortunately for Lester, his own views must be included in this category. And Lester fundamentally misunderstands the point of Friedman’s essay. Lester seems to believe that Friedman’s purpose is to defeat libertarianism and defend statism. For instance, Lester cites “Friedman’s main criticism of the market,” even though Friedman’s point was not to criticize the market, but only to criticize certain libertarian defenses of the market. There is a huge difference between those purposes, and Lester’s misunderstanding leads him to undue hostility toward Friedman and an uncharitable (and inaccurate) reading of his work.

Lester does attempt a clever refutation of Friedman’s critique by describing what he believes is an “anti-libertarian straddle.” According to Lester, Friedman is a “justificationist” because he demands the “epistemological impossibility” of proving the market “is always more likely” to produce good results. This error, ironically, leads Friedman to adopt an “aprioristic anti-libertarianism,” according to Lester, even though Friedman claims to be attacking apriorism. And of course Lester is on to something here. After all, we do not wonder whether an apple we toss into the air finally will fall to the ground, even though we have not shown that gravity must always apply.

However, even though a superficial reading of Friedman’s work might seem to support Lester’s interpretation, Lester nevertheless is attacking a straw man. At the outset, Friedman describes the problem he is addressing. Citing Richard Cornuelle’s 1991 article, “The Power and Poverty of Libertarian Thought,” Friedman notes the debate libertarians face today is not one between outright socialism and capitalism (such as Mises and Hayek faced), but rather one over modest economic interventions in the context of a largely free market. Libertarians, Friedman argues, have not (yet) succeeded at

arguing against (what their opponents believe to be) modest interventions.

In his article in *The Dissident*, Friedman (thankfully) synthesizes his work and wraps it in a neater package. Because Lester apparently ignores Friedman’s other essays in *Critical*

---

*The goal of Lester’s libertarianism is to “minimize proactive impositions.” Yeah, that’ll get ‘em marching in the streets.*

---

*Review*, he fails to see the larger picture Friedman is attempting to piece together. In Winter-Spring 1995 (Vol. 9, Nos. 1-2), Friedman writes an introduction to this “Special Issue: Rational Choice Theory and Politics.” Later (as noted), Friedman discusses public ignorance. It is only when Friedman’s work is viewed as a totality that it becomes obvious he’s trying to clear away the clutter to make room for his own brand of libertarian theory.

Lester unwittingly serves as Friedman’s accomplice in demonstrating the pervasiveness of the “libertarian straddle” — and the difficulty many libertarians have even in understanding what the problem is.

Friedman demolishes the view that libertarianism can ultimately be grounded on a “non-initiation of force axiom.” Sure, in popular discussions, it can be helpful to say we’re against “force” and in favor of voluntarism. But at a deeper level (where Friedman swims) the definition of “force” depends on our definition of property rights, which in turn depends on inherently normative theories. “Coercion” is a conclusion, not a premise. Besides, few people are willing to sacrifice human well-being for some axiomatic political theory — on the popular level other ethical concerns again trump.

But Lester completely misses Friedman’s point and instead offers a superficial restatement of the libertarian “axiom.” Lester believes “an analysis of the libertarian conception of interpersonal liberty shows it to be about what I formulate as ‘the absence of proactive impositions.’” Lester claims his “theory need not assume

any kind of property, nor moral rights,” but it must if it is to become a libertarian theory, for otherwise what counts as “proactive” and an “imposition” remains unclear.

One selection from Lester’s article perfectly encapsulates the problem of the libertarian straddle:

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.

The great killer is “also.” Lester clearly believes “want-satisfaction,” associated with “positive liberty,” is merely coincidental to the libertarian project, not its goal. Instead, the goal of Lester’s libertarianism is to “minimize proactive impositions.” Yeah, that’ll get ‘em marching in the streets: “Hey, hey, ho, ho, minimize proactive impositions, or go!” In the real world, people don’t care about whether proactive impositions are minimized — nor should they. They care about “want-satisfaction.” But based on Lester’s stated commitments, if it could be shown that “minimized proactive impositions” (let’s call them MPI) do not in fact maximize want-satisfaction, he would nevertheless advocate MPI.

Now, if we can establish that MPI is a necessary means to achieving human well-being, we’re finally talking Friedman’s language. But it’s important to keep the argument straight. We support MPI because we support human well-being, not vice versa. It simply doesn’t work to “straddle” the arguments, to pretend that MPI is a goal unto itself, to which human well-being just happens to be related. The libertarian straddle does precisely what Friedman describes: it tends to foster a theoretical codependence between “moralistic” arguments and consequentialist ones, and it makes libertarianism seem implausible to most people.

So Lester basically misses the point, and he doesn’t describe any actual problems with Friedman’s work. That’s a shame, because Friedman needs significant criticism. While a complete discussion of Friedman’s errors would require a Friedman-length essay, I will

---

outline a few of the major problems here.

*Ethics:* by consequentialism, Friedman seems to mean utilitarianism (see p. 450 of his 1997 article). But of course what this actually means is highly problematic, and Friedman makes little effort to sort this out. What consequences matter, and to whom? Until Friedman delves into this, his consequentialism is but another version of empty apriorism. And what happens if a sort of consequentialism can be justified that isn't utilitarian? It looks like the libertarian moral philosophers can keep their jobs, after all.

*Elitism:* much of Friedman's own case rests on voter ignorance. People are fairly good at running their own lives, but terrible at making system-wide decisions. But we're stuck in a democratic regime, and it would seem that ignorant voters therefore cannot be educated about their ignorance. Similarly, Friedman describes problems with "elite" opinions about politics, but he seems to assume something like a "super-elitism" capable of comprehending the problems of the elites. Finally, how might a society that orga-

nizes itself to avoid the pitfalls of mass political ignorance remain stable, without new elites attempting to form self-serving power structures? Thus, Friedman seems to slip into a unique elitism that tends to ignore some of the danger of elites. On the other hand, simply the fact that Friedman spends so much time advancing his ideas seems to suggest he believes he can influence elites and, in Hayekian form, eventually the society.

*Disdain:* libertarians are often "crusty" sorts of persons. Often they are quick to berate and slow to listen. (I speak from experience here, to my embarrassment.) One reason for this is that they're relatively less ignorant about politics than are most voters, and with increased understanding comes a need for increased patience. Unfortunately, once a disdainful attitude is assumed, initial understanding becomes a barrier to intellectual growth. And Friedman is one hell of a smart guy. I can see why he loses patience with his libertarian critics, many of whom fail to "get it." But his impatience leads to overly curt rhetoric, which in turn leads to hostile

defenses. And sometimes Friedman is too quick to dismiss theorists he disagrees with — like Ayn Rand, Sciabarra, and the public-choice economists — without giving them a fair hearing or trying to pick up their useful insights.

But Friedman's work is also full of wonderful insights (even for those who may think he's on the wrong track). For instance, his skewering of Charles Murray (1997) is a joy to read. His essay in *The Dissident* is potentially paradigm-shifting. Whether his achievements are ever recognized by the libertarian movement, Friedman has offered one of the most important reformulations of libertarian theory of all time. His contribution is an insight of intellectual history, combined with a new synthesis of a wide range of existing ideas. Friedman has been enormously effective at bringing his ideas to young intellectuals — there's even a "Critical Review Alumni Association." He will drag libertarians — kicking and screaming if necessary — to a defensible theory. And then libertarians will cease to be their own worst intellectual enemies. □

---

# Friedman Fails

by J. C. Lester

Political theory and philosophy do not date very fast. It is not odd to seriously (re)consider arguments that are indefinitely old. I chose the Friedman article I did because it seemed to usefully encapsulate Jeffrey Friedman's central criticisms of libertarianism (or at least "orthodox libertarianism," as he calls it in the abstract to his article). Since Friedman still stands by this article and does not regard his libertarian critics as having refuted it, and as I have a different perspective, there is nothing especially odd about adding my own two cents. The result appeared to be sufficiently of interest for a popular libertarian journal to publish it. I cannot see anything very odd about that either. And I

---

can't see that it is a fault that I did not additionally address Friedman's other articles in which he expands on his preferred reasons for limiting the political sphere. These are quite another matter. I was not writing a criticism of all Friedman's writings, as Ari Armstrong prefers; I sought only to identify some important errors that are in his 1997 article, and which often

crop up in his other articles as well.

It is natural to assume that Friedman is not a libertarian when he insists that he is a "postlibertarian." If he really is some kind of a libertarian after all then he is himself chiefly responsible for any confusion. But it does not matter much whether we call Friedman a libertarian or not, does it? Labels are not important. In the other



Friedman article that Armstrong cites, Friedman certainly puts forth a general case for allowing the free market, though a free-market conservative might not see anything that clashes with his own views. Friedman also appears to defend redistribution by taxation in certain cases and certainly “if that is the only way to prevent starvation” (that the free market really might result in starvation seems an unlibertarian assumption). Much of the substance of Friedman’s pro-market argument seems to be reinventing Austrian economics with respect to criticizing perfect competition theory and universal self-interest (which he mistakenly thinks Adam Smith assumed: “contrary to Adam Smith — we should drop the self-interest assumption”). Much of his anti-democracy argument is redolent of W.H. Mallock (*The Limits of Pure Democracy*, London, 1918). So I can’t see anything new or “exciting” in it.

Armstrong does not tell us what issues Friedman supposedly raises that “Lester fails to answer.” So I cannot answer that charge further. And I am not concerned with pointing out all the “shortcomings of Friedman’s [general] work.” I wonder who all the libertarians are who find that reading Friedman makes it “difficult to avoid fundamentally reevaluating one’s beliefs.” I did not personally find anything especially challenging in them. Having read several of Friedman’s articles I was always left with the same view. He was repeatedly making the same basic mistake about justification and the libertarian conception of liberty. This seemed worth putting in one article. I don’t suppose that my “esoteric intellectualism” was intended as light-hearted “refreshment” in *Liberty*, which I believe has room for many kinds of writing.

Armstrong’s next point is clear but unimportant. It hardly matters whether Friedman was *intending* to criticize the market or “only to criticize certain libertarian defenses of the market.” The substantive point is that his criticism fails because of its justificationist assumptions and misunderstandings about the libertarian conception of liberty. His *purposes* are not important to the argument. I cannot, so far, see any “hostility” or any

“uncharitable” or importantly “inaccurate” reading of his work in anything I wrote.

Armstrong suggests I am “attacking a straw man” because Friedman is really arguing that libertarians “have not (yet) succeeded at arguing against (what their opponents believe to be) modest interventions.” But, as we have just seen, what I was criticizing was Friedman’s mistaken reasons for dismissing what Armstrong calls “certain libertarian defenses of the market.” (I do also think that libertarians have succeeded — intellectually, not politically — in refuting even “modest” interventions, though I do not see how this is relevant.) And the misconceived idea that they have not “justified” their case with a universal theory based on the evidence can also obscure this point. Friedman’s so-called “own brand of libertarian theory” simply does not relate to the points I am criticizing — except insofar as it still exemplifies them. As I explicitly reject both the pure a priori defense of libertarianism and the attempt to justify it empirically, how are my points supposed to be “demonstrating the pervasiveness of the ‘libertarian straddle’”? This is another incoherent charge that Armstrong fails to explain.

Contrary to Armstrong, I did not “completely miss” Friedman’s points about the problems with thinking that “coercion” and the “non-initiation of force” can explicate libertarianism; in fact, I largely agreed with them and I said so. I have argued along similar lines for about 20 years and restate my criticisms in *Escape from Leviathan*. Such analytical points are entirely separable from issues at the “popular level.”

However mistaken my theory of liberty may be (and I am aware of some unsolved problems and apparent paradoxes with it), I don’t think it can usefully be dismissed as a “superficial restatement of the libertarian ‘axiom.’” I quite understand Armstrong’s common-sense error that property and moral rights must be assumed “for otherwise what counts as ‘proactive’ and an ‘imposition’ remains unclear.” But he might like to consider two things here: 1) We can assume that nothing is owned and then attempt to derive the form of ownership that will minimize the extent to which persons proactively

(rather than reactively or defensively) impose on each other (for even if nothing is owned, you appear objectively to impose proactively on someone — what he is — if you enslave him rather than leave him alone). 2) Such a derivation can be “objective” in the sense that it need make no reference to morals. The major criticisms and counter-criticisms involved in such a thought experiment are too long to go into here, but I have discussed those I could think of in “Liberty as the Absence of Imposed Cost: The Libertarian Conception of Interpersonal Liberty,” *Journal of Applied Philosophy* 14, No. 3 (1997): 277–88 (and in more detail in the chapter on liberty in *Escape From Leviathan*, Macmillan/Saint Martin’s, 2000).

Armstrong then again asserts that I am guilty of the “libertarian straddle.” Friedman’s libertarian straddle is defending libertarianism empirically but then falling back on an a priori defense when that fails.

I simply do not do this. I defend libertarianism as, among other things, maximizing liberty and optimizing want-satisfaction. I don’t shift from my welfare claim. I do not say that want-satisfaction is either “merely coincidental” to libertarianism or “its goal.” So there is no “killer” error here, whatever that is. Critical rationalist libertarianism is about the conjecture that there is no sound reason not to maximize people’s liberty, not that there is some goal liberty will promote. Minimizing proactive impositions is not the goal;

---

*Friedman’s criticism fails because of its justificationist assumptions and misunderstandings about the libertarian conception of liberty.*

---

that is a theory about what liberty involves. That theory in political philosophy has nothing to do with attempting to “get ‘em marching in the streets.” Armstrong asserts that people “care about ‘want-satisfaction.’” I agree. He then thinks that “based on Lester’s stated commitments” I would

*continued on page 53*

# Reviews

## Mass Murder in Deseret

---

William Grigg

---

When the Utah Sentencing Commission recently proposed the elimination of the firing squad as a method of executing convicted murderers, the Mormon leadership issued a terse statement declaring that it "has no objection to the elimination of the firing squad in Utah." This was necessary, reported The Associated Press, because of a:

purported church doctrine that held that justice was not done unless a murderer's blood was shed. . . . [S]ome in Mormon-dominated Utah still believe the firing squad is necessary for religious reasons. Commission members feared that belief could hurt the chances of the proposed change [getting through] the Legislature.

"If we hadn't [asked for the Church's position]," said commission member Paul Boyden, "this probably would have been a question among some legislators and it may have not made it out of committee."

The Mormon doctrine at issue here is called "blood atonement," and it dictates that there are certain sins — including, but hardly limited to, murder — that place the offender beyond the redemptive capacity of Christ's atonement. "If these offenses are committed," wrote Joseph Fielding Smith, the tenth Mormon Church president, "the blood of Christ will not cleanse [the offenders] from their sins even though they repent. Therefore their

only hope is to have their own blood shed to atone, as far as possible, in their behalf."

In his quasi-official book *Mormon Doctrine*, late Mormon Apostle Bruce R. McConkie insisted — dishonestly — that "there is not one historical instance of so-called blood atonement in this dispensation" (the period since the Mormon Church was founded in 1830). However, McConkie obliquely acknowledged that Utah's preferred method of execution was inspired by the doctrine:

This doctrine [of blood atonement] can only be practiced in its fulness [sic] in a day when the civil and ecclesiastical laws are administered in the same hands. . . . [I]t was not and could not be practiced in this dispensation, except that persons who understood its provisions could and did use their influence to get a form of capital punishment written into the laws of the various states of the union so that the blood of murderers could be shed.

During the reign of Brigham Young, the second Mormon prophet who was also Utah's first territorial governor, the Church-dominated Utah legislature embedded the doctrine into law. By permitting the Utah state government to dispense with the firing squad, the Mormon Church signaled, at the very least, that it no longer expected a doctrine that had been central to its theology to be reflected in civil law.

In "Deseret," the Mormon name for the sprawling territory they occupied

and claimed during the mid-19th century, encompassing not only modern Utah but parts of several other states, condemned murderers were offered the choice of death by firing squad — which would shed their blood, albeit stingily — or decapitation by guillotine. And, pace McConkie, there is abundant evidence that blood atonement was practiced by Mormon leaders during the period of the Deseret theocracy.

### Visions and Violence

Mormon history is replete with violence, with the Saints (as they refer to themselves) just as often victimizers as victims.

"Like many new faiths, nineteenth-century Mormonism had a dark side of violence and fanaticism," writes Will Bagley in *Blood of the Prophets*.

The devotion of early Latter-day Saints and their mix of politics and religion repeatedly provoked conflict with their neighbors. The Saints regarded such opposition as persecution of their righteousness, and battles with their neighbors drove them from Ohio, Illinois, and finally into Mexico in 1847. [The territory was ceded to the U.S. the following year, following the Mexican-American War.] Each new struggle generated further bitterness and zealotry, which in turn provoked new resistance and opposition. This vicious cycle inexorably fueled the fanaticism and emotions that led to Mountain Meadows.

It was at Mountain Meadows, a southern Utah oasis, that Mormon militiamen slaughtered the entire complement (save 17 small children younger than eight, who were regarded as "innocent blood" under Mormon doctrine) of a California-bound wagon train on Sept. 11, 1857. The wagon train's considerable wealth in livestock, assets, and gold was plundered, much of it being taken by Mormon leaders as "tithes." Among the atrocity's victims were several Mormon "back-outs," or apostates, who were "blood atoned" for the sup-

posed sin of trying to flee to California.

The surviving children were adopted by Mormon families, some of them taken into the homes of the men who murdered their parents (pleas from the child survivors' relatives in Arkansas resulted in federal action to return them to their families). Despite the involvement of high-ranking Mormon leaders and a trail of evidence leading up to Brigham Young himself,

---

*For nearly the entire first century of the religion's existence, faithful Mormons were marinated in hatred toward "Gentiles."*

---

only one man — John D. Lee — was tried and executed, 20 years later, for the massacre.

The massacre occurred at a time when the Deseret theocracy was girding for war with the federal government. It also immediately followed the murder, in Arkansas, of Mormon Apostle Parley P. Pratt, at the hands of the bitter, violent husband of a woman Pratt had baptized and taken as a wife in polygamous marriage. Bagley and Denton both describe, in careful detail, how Mormon leaders maneuvered the California-bound wagon train from Arkansas to the remote meadows by denying it provisions. Mormons who defied these orders were punished, some of them beaten. At the same time, Mormon pulpits resounded with apocalyptic warnings of a coming conflict with the "Gentiles," and reminders of oaths Mormons had taken in their temple to avenge the "blood of the prophets" — slain founder Joseph Smith, his brother Hyrum, and now Pratt.

Notes Bagley: "It was not a happy time for outsiders to visit the settlements of Utah Territory." In fact, as he points out, the wagon train was probably doomed from the moment it entered Utah. Word quickly spread through the ranks of the Mormon lay priesthood that the train included men responsible for the lynchings of Smith, Hyrum, and Pratt. Foul rumors were put into circulation traducing the emigrants as a pack of violent degenerates. In fact, the party was composed of

respectable, church-going people, led by a man descended from French Protestants, who had fled their homeland in search of religious freedom.

As the train slowly proceeded through southern Utah, Mormon Apostle George A. Smith went ahead of it, riling the residents of each Mormon settlement with speeches invoking the Saints' duty to avenge their martyrs and smite the enemies of the Church. Both Bagley and Denton contend that Young and his underlings intended to stage a phony "Indian" attack on the train in a classic example of what is called "asymmetrical warfare": the objective was to demonstrate that the Mormons controlled access to the overland trails.

Bagley records that shortly before the initial attack on Sept. 7, Young met with a group of local Indians to whom he "gave" the wagon train's cattle. The intent was to use the Indians (aided by local Mormons in disguise) as a deniable asset. This scheme comported with Mormon doctrine. As outlined in the faith's fundamental scripture, the *Book of Mormon*, the Indians (or "Lamanites") were descended from ancient Hebrews who colonized the Americas in 600 B.C. It was the Lamanites' prophetic destiny to ally themselves with the Mormons to overthrow the rule of the "Gentiles" and inaugurate the millennial kingdom. At the time the Arkansas wagon train appeared in Utah, the Mormons — particularly in southern Utah — were in the grip of a feverish millennial frenzy, believing that the apocalyptic final battle with the "Gentiles" was at hand.

### Money Digging and Murder

Joseph Smith, founder of the Mormon Church and "author and proprietor" of the *Book of Mormon*, entered local public life as a young "money-digger." A low-caliber con artist who dabbled in folk magic, Smith charged people a fee to use his supposed gift of Seership to find buried treasure, although his gift yielded no tangible payoffs.

In 1830, after a series of claimed celestial visitations, Smith published the *Book of Mormon*, which he described as a volume of scripture and history compiled on plates of gold by ancient Hebrew prophets living in the

Americas. Smith insisted that the record had been inscribed in "Reformed Egyptian," and that he had translated it by "the gift and power of God."

The final product, however, seemed oddly familiar for a book with such exotic origins. Its text featured huge sections from the Bible (including New Testament phrases anachronistically placed in the mouths of characters said to live before the birth of Christ), and its narrative was composed in a burlesque of King James English. But it found a ready readership among spiritual seekers, and within a few years of its publication Smith presided, as "Prophet, Seer, and Revelator," over a small but growing movement with branches in Ohio and Missouri.

The *Book of Mormon* reflects common early 19th-century speculations about the Hebrew origins of the American Indians. From the beginning, the Mormon Church conducted missionary outreach to the Indians, seeking to "redeem" them as fellow members of "scattered Israel."

As the Mormons moved into Independence in western Missouri, further revelations pronounced by Smith designated the area as the site of a future Mormon Zion, and suggested that the local Indians would play a role

---

*The wagon train was probably doomed from the moment it entered Utah.*

---

in driving away the "Gentiles" — a prospect that was, understandably, less than welcome to the area's original settlers. An 1832 revelation to Smith promised that God would "consecrate the riches of the Gentiles" to the Mormons. Another divine dispatch pointedly predicted that Jackson County, Mo. — "Zion" — would "not be obtained but by purchase or by blood. . . ." Mormon settlers in Missouri soon found themselves the targets of mob violence.

In 1833, the state legislature created a Mormon refuge in Clay County, and an uneasy peace settled over the state. But within a few years, Mormon settle-

ments began to expand beyond the county, and a militant spirit gripped the Church's leadership. On July 4, 1838, amid the pomp and bluster of a military parade, Sidney Rigdon, Smith's unbalanced second-in-command, gave a provocative speech threatening death and destruction to both Gentiles and Mormon apostates. If the Mormons were attacked by their enemies again, Rigdon bellowed with Smith's approval, "it shall be . . . a war of extermination, for we shall follow them till the last drop of blood is spilled, or else they will have to exterminate us."

Shortly before Rigdon's speech, a secretive Mormon paramilitary organization called the Danites had been created, its members bound by blood oaths and taught to recognize each other by the use of secret signs. Organized as an elite praetorian guard within a larger Mormon militia, the Danite band "developed an infamous reputation for its intimidation of Mormon dissenters and its warfare against anti-Mormon militia units," in the words of Mormon historian D. Michael Quinn.

Members of the Danite order played a central role in an August 1838 riot in Gallatin County, Mo. After a gang of anti-Mormons forbade a Mormon to cast a ballot, the rejected voter made the "Danite sign of distress." A melee soon erupted, with the antagonists beating each other with four-foot-long oaken clubs. The Mormons got the better of that brawl. Shortly thereafter Smith asserted publicly his readiness to propagate his religion by the sword.

An October 1838 ambush of Missouri militiamen by Mormon guerrillas at Crooked River prompted Governor Lilburn Boggs to issue an order calling for the Mormons to be "exterminated or driven from the state." Those words had a horrifying resonance when, a few days later, an anti-Mormon mob murdered 17 Mormon men and boys — including a 9-year-old child — at Haun's Mill, a small outlying settlement. The "Haun's Mill Massacre," writes Sally Denton, became "a rationale and justification for future vengeance and bloodshed — the undeniable evidence of the persecution so central to the growing faith."

Driven from Missouri, the Mormons were welcomed in Illinois as refugees, and they settled in a swampy riverside community called Commerce, which Smith renamed Nauvoo. The Mormon metropolis soon became a self-contained city-state, with all of its civic powers residing in the hands of Smith — Prophet of the Church, mayor of the city, com-

***Blood of the Prophets: Brigham Young and the Mountain Meadows Massacre*, by Will Bagley. University of Oklahoma Press, 2002, 493 pages.**

***American Massacre: The Tragedy at Mountain Meadows, September 1857*, by Sally Denton. Alfred A. Knopf, 2003, 306 pages.**

***Under the Banner of Heaven: A Story of Violent Faith*, by Jon Krakauer. Doubleday, 2003, 372 pages.**

mander-in-chief of the Nauvoo Legion, and the land baron who controlled all real estate in the city.

Since his days as a money-digger, Smith had frequently been in court, and his prophetic exploits since then had created a lengthy list of aggrieved creditors. Missouri officials also sought to extradite him for various charges arising from the 1838 "Mormon War." Nauvoo's eccentric municipal laws made it all but impossible to extradite Smith, and the Mormon prophet controlled the courts within his realm.

Smith unveiled the doctrine of blood atonement in the same revelation officially inaugurating the practice of polygamy, also known as "plural" or "celestial" marriage. Canonized as section 132 of the *Doctrine and Covenants* (one of four volumes regarded by Mormons as scripture, the other three being the *Bible*, *Book of Mormon*, and *Pearl of Great Price*), the

document quotes the Lord as conferring on Smith the power to "seal" a man to as many "virgins" as he desired. This conferral occurred somewhat tardily; Smith (as even Mormon historians now admit) began to practice "plural marriage" more than a decade prior to receiving the "revelation" authorizing it. Many of his "plural wives" were teenagers — some as young as 14 — who had been told that by marrying Smith they were guaranteeing their family's salvation.

Those who enter into the covenant of "celestial and plural marriage" are assured of exaltation to godhood even if they "commit any sin or transgression . . . whatever, and all manner of blasphemies" — as long as they "commit no murder wherein they shed innocent blood. . . ." But there is a catch for those under the covenant who sin in such manner: to be redeemed, they must be "destroyed in the flesh, and . . . be delivered unto the buffetings of Satan unto the day of redemption, saith the Lord God."

Some highly placed members of the Mormon elite became disaffected by Smith's philandering, alarmed over his growing political ambitions (illustrated by his bid for the presidency), and appalled by the violence that invariably accompanied his designs.

In the summer of 1844, a group of dissidents published its concerns in a newspaper entitled the *Nauvoo Expositor*. Smith responded by having the city council decree that the paper was a "public nuisance" and order its suppression. The paper's office was sacked, the printing press was destroyed, and most of the paper's first and only run was collected and burned.

This riot staged under the color of municipal authority led to the arrest of Smith, his brother Hyrum, and two other Mormon leaders. They were incarcerated in Carthage, Ill. awaiting trial when an anti-Mormon mob attacked the jail, shooting Smith and Hyrum to death and seriously wounding future Mormon Prophet John Taylor.

The murder of Smith is central to what Will Bagley calls the "myth of persecuted innocence." It was also memorialized in the "Oath of Vengeance" taken by Mormons under-

going the temple "endowment" ritual, the quasi-Masonic initiation rite administered in the Nauvoo Temple, and later, after the Mormon hijra to the Rocky Mountains, in temples built in St. George and Salt Lake City.

In *Under the Banner of Heaven*, Jon Krakauer summarizes:

The oath required Mormons to pledge, "I will pray, and never cease to pray, and never cease to importune high heaven to avenge the blood of the Prophets on this nation, and I will teach this to my children, and my children's children unto the third and fourth generations."

This oath, Krakauer explains, was recited by every Mormon participating in the standard temple ritual until 1927, when it was removed from the endowment ceremony due to outside pressure. News of the oath had leaked to the press, causing an uproar over its treasonous implications.

### The "Reformation"

Thus for nearly the entire first century of the religion's existence — beginning with the Missouri-era threats to redeem "Zion" by bloodshed — faithful Mormons were marinated

---

*At Mountain Meadows, a southern Utah oasis, Mormon militiamen slaughtered everyone on the wagon train, except for 17 small children who were adopted by Mormon families.*

---

in hatred toward "Gentiles" and taught the redemptive power of sanctified violence. In the early 1850s, the sense of besetting persecution by unbelievers so central to the Mormons' communal identity became outright paranoia after Mormon leaders unveiled the previously disavowed practice of polygamy. The nascent Republican Party identified polygamy and slavery as "twin relics of barbarism" and declared war on both.

Like despots both ancient and modern, Brigham Young eagerly seized on this external threat to consolidate his power. He also ramped up Mormon recruitment efforts in Great Britain and Scandinavia (where Mormon mission-

aries carefully concealed the doctrine of polygamy) as a way of building up his kingdom. To cut down on the time and expense involved in bringing new Mormons to "Zion," Young ordered the construction of handcarts — rickshaw-like vehicles used to carry the pilgrims and their possessions across the plains.

The handcart initiative led to disaster in late 1856 as two companies of Mormon immigrants (known as the Martin and Willie companies), promised by Mormon leaders that God would hold back the winter snows, were caught in an abnormally early and severe blizzard. More than 200 men, women, and children died, making the Martin/Willie debacle "the worst disaster in the history of America's overland trails," recalls Bagley.

Despite the fact that the handcart disaster was a direct outgrowth of Young's "inspired" immigration scheme, "Mormon leaders refused to shoulder any blame for the catastrophe," Bagley continues. Jedediah Grant, high-ranking first counselor in the Mormon Church presidency, "laid the blame on the victims. . . . [He] blamed the death and suffering of the handcart Saints on 'the same disobedience and sinfulness that had induced spiritual sleepiness among the people already in Zion.'"

For several months prior to the handcart tragedy, Grant had presided over an orgy of fanaticism called the "Reformation," which foreshadowed — on a much smaller scale — the purgative violence of the Chinese Cultural Revolution. In Mormon settlements throughout Utah, Young, Grant, and their underlings excoriated the Saints for their hidden sins and unblushingly advocated blood atonement as the means of cleansing the Mormon realm of apostasy and corruption.

"We have those among us," announced Grant in early 1856, "that are full of all manner of abominations, those who need to have their blood shed, for water will not do, their sins are of too deep a dye." Mormon priesthood leaders, he insisted, had a "right to kill a sinner to save him, when he commits those crimes that can only be atoned for by shedding his blood. . . . We would not kill a man, of course,

except to save him."

In an 1857 sermon, Young insisted that "holy murder" (as it was mockingly characterized by Mormonism's critics) was actually the distillate of Christian charity. Claiming to know hundreds of people who could have been saved "if their lives had been taken and their blood spilled on the ground as a smoking incense to the

---

*Despite the involvement of high-ranking Mormon leaders — a trail of evidence leads to Brigham Young himself — only one man was ever tried for the mass murder.*

---

Almighty," Young asked his followers if they would "love [such a] man or woman well enough to shed their blood?" Grant advised the sinners among the Saints to petition Young "to appoint a committee to attend to their case; and then let a place be selected, and let that committee shed their blood."

Among the Utahans who drank deeply of the blood-drenched doctrines of the Reformation was Danite John D. Lee. Bagley notes that Lee "linked blood atonement to obedience and wrote that during the Reformation everyone in Utah believed in it." Lee would later write, "It was taught by leaders and believed by the people that the Priesthood were inspired and could not give a wrong order." A resident of southern Utah, which was on fire with the Reformation spirit, Lee would be the central figure in the single most horrifying act of religious violence in American history.

In his *Confessions*, written as he awaited execution in 1877, Lee described his sentiments as he helped carry out the Massacre:

My faith in the godliness of my leaders was such that it forced me to think that I was not sufficiently spiritual to act the important part I was commanded to perform. My hesitation was only momentary. Then feeling that duty compelled obedience to orders, I laid aside my weakness and my humanity, and became an instrument in the hands of my superiors and my leaders.

Lee's anguished reflections, committed to paper after his leaders had made him the scapegoat for the Massacre, bridge the gulf between ancient acts of tribal and religious fanaticism and the systematized butchery of modern totalitarian states. Every large-scale enterprise in modern political murder ultimately depends on the active participation of individual men willing to become "an instrument in the hands of . . . superiors and leaders."

### The Retreating Tide

"Historians of the LDS faith often explain Mountain Meadows as an example of frontier violence," writes Bagley.

Yet the endorsement of such actions by a ruling elite made frontier violence in the Mormon West fundamentally different from [common] vigilantism and hooliganism. . . . Today the religion has abandoned its support of 'holy murder' and virtually every practice — polygamy, theocracy, blood atonement, consecration, communalism, millennialism — that made it so provocative in the nineteenth century. Doctrines such as belief in unquestioned obedience to the Lord's anointed persist, but the 'old-time religion' described [in *Blood of the Prophets*] . . . has little relation to today's LDS church, which for a century has been firmly committed to becoming no more controversial than Methodism.

But as the tide of Mormon theocracy retreated, it left isolated puddles of the "old-time religion" throughout the intermountain West. Mormon fundamentalism, whose adherents remain committed to the pure, uncut "restored gospel" as taught by Smith and Young, are examined by Krakauer in *Under the Banner of Heaven*.

Krakauer initially wanted to write a book examining the career of Mark Hoffman, who is serving a life sentence for murdering two people in 1985. A sociopath who was also a gifted forger, Hoffman — who was raised in a devout Mormon home, and served a mission for the Church — lost his faith as a result of studying the Church's unexpurgated history, which the ruling hierarchy seeks diligently to suppress.

Hoffman recognized that this desire to control access to history made the Mormon hierarchy vulnerable, and

he devised a cunning scheme: he forged a series of "ancient" manuscripts documenting Mormonism's origins in folk magic and occultism, and used the spurious documents to extort large payments from the Church. The eagerness with which Mormon leaders, particularly Gordon B. Hinckley (since elevated to the post of "Prophet, Seer, and Revelator"), snapped up and salted away Hoffman's forgeries offered eloquent testimony of the Church's unease with its origins, and the fragility of its official historical narrative.

As his credit became overextended and his schemes began to unravel, Hoffman murdered two people with homemade parcel bombs, and nearly killed himself when he accidentally set off a third. Hoffman murdered two people, and was prepared to murder at least one more, simply as a diversion to buy time from his creditors.

---

*Mormon history is replete with violence, with the Saints (as they refer to themselves) just as often victimizers as victims.*

---

Hoffman ended up in prison, where Krakauer asked to interview him. Hoffman refused, but suggested Krakauer interview his cellmate Dan Lafferty who, along with his brother Ron, murdered a young woman and her young child as an act of blood atonement. Krakauer's interviews with Lafferty were his entrée into the world of Mormon fundamentalism.

Like Hoffman, the Lafferty brothers lost their faith in mainstream Mormonism as a result of researching the Church's history. But where Hoffman became a murderous nihilist, the Laffertys chose the path of fundamentalism, as taught in a small clique calling itself the "School of the Prophets." As the brothers worked to restore primitive, polygamous Mormonism, their sister-in-law Brenda Lafferty became an impediment. In the summer of 1984, Ron reported a "revelation" instructing him to "remove" Brenda through blood atonement; her 15-month-old daughter Erica was des-

ignated a "child of perdition" and thus slated for "removal" as well. The deed was done on July 24 — "Pioneer Day," the official commemoration of the Mormon arrival in the Salt Lake Valley.

After entering Brenda's duplex in American Fork, Utah, Lafferty came upon Erica in her crib. The toddler, recognizing her uncle, smiled up into the face of her murderer. "I spoke to her for about a minute," Lafferty told Krakauer. "I told her, 'I'm not sure what this is all about, but apparently it's God's will that you leave this world; perhaps we can talk about it later.'" He then eviscerated the child with the same ten-inch boning knife he would later use to murder her mother.

Like John D. Lee, Dan Lafferty wrestled with his conscience and won, supposedly with divine assistance. "It was like someone had taken me by the hand that day and led me comfortably through everything that happened," he related to Krakauer.

Ron had received a revelation from God that these lives were to be taken. I was the one who was supposed to do it. And if God wants something to be done, it will be done. You don't want to offend him by refusing to do His work.

The Mormon Church's de-emphasis of blood atonement, and its continuing efforts to "mainstream" its doctrines and practices, illustrate that its official definition of "God's work" has changed dramatically over the past century. But the Church continues to claim that its leaders have an exclusive franchise on divine revelation and authority, and Mormon doctrine still defines righteousness as unflinching, unqualified obedience to "The Brethren." The vestiges of blood atonement, theocracy, and similar doctrines are still present in Mormon scripture.

Mormon leaders have never honestly and candidly addressed and repudiated the Church's history of violence, nor acknowledged the Church's official complicity in the Mountain Meadows Massacre. Until Mormon leaders own up to this aspect of their heritage, it would be wise to assume that sanctified violence is encoded in the religion's doctrinal DNA. □

*The Author of Himself: The Life of Marcel Reich-Ranicki*, by Marcel Reich-Ranicki. Trans. Ewald Osers. Princeton University Press, 2001, 404 pages.

# The Critic & the Tyrants

Frank Fox

I once overheard a prominent scholar speak angrily of a colleague with whom he disagreed: "I will kill him with a footnote," he said in a tone of menacing finality. It occurred to me at the time that writing can be a homicidal impulse. This idea was recently reinforced when reading Marcel Reich-Ranicki's autobiography. In this awkwardly titled book, he has proudly quoted literary adversaries such as the novelist Rolf Dieter Brinkmann who screamed at him, "I should have a machine gun here and shoot you down," the poet Christa Reinig who imagined his death from a variety of terminal illnesses, and the playwright Peter Handke, who described him as "a barking and slobbering leader of the pack . . . whose 'killer lust' had been further enhanced by the Ghetto." Strange that the Warsaw Ghetto should have been mentioned by a German as a criticism of a Jewish critic who survived it. It is even more odd that Reich-Ranicki has paraded these and other such insults as badges of honor. Equally odd are other curious self-indulgences — the aphorisms from German classics sprinkled liberally throughout the volume, which like the sexual encounters he enumerates receive more space than they deserve.

Marcel Reich (Ranicki was added later), born in Poland in 1920, was sent by his parents to Berlin at the age of nine to a well-to-do uncle. His parents subsequently joined him. He had a

thorough grounding in literature at a prestigious Gymnasium, and gained at a very young age a deep and abiding passion for German literature, especially theater.

On Oct. 28, 1938, the young Reich joined some 17,000 other German Jews of Polish origin ordered out of Germany and left stranded in no man's land at the border town of Zbaszyn. His family had earlier departed Berlin for Warsaw. Less than a year later, the German armies invaded Poland. Accompanied by an older brother, he left their parents' apartment and boarded a truck to escape to the East, but as the Russians advanced they returned to Warsaw.

His account of life in occupied Warsaw is a gripping Holocaust testimonial. In a chapter that is unsparing in its depiction of German cruelties and humiliations, he describes trying to make sense of the barbarities perpetrated by men shouting insults in his beloved language. He wanted to imagine what the average German soldier thought of the "oriental-seeming individuals, with unusually long side-locks and bushy unkempt beards," clad in exotic ankle-length caftans and round hats. He wondered how the German soldiers felt as they heard an idiom that grated on their ears and speculated that had there been a scholar among them he would have recognized the "ugly-sounding" Yiddish as derived from the German of Walther von der Vogelweide and other medieval troubadours. Such academic ruminations

aside, he might have noted that such negative images of East European Jews were commonplace among German Jews as well. As for the German invaders, they did not distinguish between Jews wearing caftans and those in modern garb.

It was during this time, and shortly before being confined to the Ghetto with his family, that he fell in love with Tosia, a girl from Lodz whom he tried to console after her father hanged himself. He applied and was accepted as translator in the Ghetto's administration. His comments on the Ghetto police, on the importance of smuggling, and particularly on his association with Emanuel Ringelblum, the archivist of the Ghetto, and Adam Czerniakow, the chairman of the Jewish Council, are gripping. Recounting the shocking humiliations inflicted by German soldiers on Jews, he concluded that the German soldiers behaved as they did because they could do in Poland what they could not have done at home. This is what happens, he wrote, when "human beings are granted unlimited power over other human beings."

In spring 1942 he heard the first rumors of Jews being gassed, and he commented on the increase of random executions in the Ghetto. In one of the book's most dramatic moments, he was asked, in August 1942, to take notes at a meeting where SS Sturmbannführer Hermann Hofle pointed to playground swings across the street and warned

---

*It occurred to me that writing can be a homicidal impulse.*

---

the council leaders that they would be "strung up" there if he was disobeyed. Chairman Czerniakow was given an ultimatum to hand over many more thousands of Jews for deportation, and shortly after that he swallowed cyanide.

Reich and Tosia decided to marry, mindful that their days might also be numbered. In September, his parents were deported to the gas chambers of Treblinka. As the final demise of the Ghetto neared, Tosia herself was rescued from the cattle cars by a member of the Jewish police they knew. In

January 1943, they made their escape out of a line of people marched to deportation and found a hiding place. The following month, another Jewish policeman arranged for the two to leave the Ghetto for the Aryan side.

What followed was one of the more compelling stories from the literature of the "righteous gentiles." A *szmalcownik*, an extortionist who traded in Jewish lives, suggested that Reich and his wife stay with his brother Bolek, a typesetter, and his wife Genia in a Warsaw suburb. They hid in the cellar, ate

---

*He soon became known as an expert on German literature and would generalize that "most writers understand no more about literature than birds do about ornithology."*

---

enough just to stay alive, and rolled thousands of cigarettes, which Bolek sold. It was Bolek who said to them solemnly: "Adolf Hitler, the most powerful man in Europe has decreed: these two people here shall die. And I, a small typesetter from Warsaw, have decided they shall live. Now we shall see who wins." Sitting in the dark for months, Reich told stories to entertain his hosts, stories from the formidable reading of his youth in Berlin. One day, as the fighting front neared, a Jewish-Russian soldier named Fishman pounded on their door. They were liberated, and promised Bolek and Genia that they would not tell their Polish neighbors what happened. Reich however, did not forget that it was two Poles who saved their lives.

Reich joined the Polish armed forces that were being assembled in Lublin by the Russians. He was posted to the propaganda office handling military censorship. Eventually he was assigned to the Ministry of Public Security in Warsaw and was sent to London for intelligence work as a member of the consulate, his cover. He was to gather information on Polish émigrés in Western countries. In this account of service to the Communist authorities, Reich did his best to minimize what he did.

It was at this time that he changed

his name to Reich-Ranicki and joined the Polish Communist Party. His rationale was that he and Tosia owed their lives to the Red Army. More truthfully, he wrote of his lifelong attachment to a "world-wide universal movement" that would solve "the great problems of mankind." He wrote, with evident pride, that ever since his youth he had been impressed by a piece of classic German prose notable for its "grandeur, rhetoric and wealth of metaphors — the Communist Manifesto by Karl Marx and Friedrich Engels."

Worried by the trials of Jewish Communist leaders, he returned to Poland in 1949. Even though he sensed that as a Jew he might be accused of "cosmopolitanism," he rejected the possibility of escaping to the West, but in spite of being a "good Prussian," he was imprisoned for two weeks and relieved of duties. Still retaining his Party membership, he was assigned to the publishing house of the defense ministry where he set up a German section. He worked as a critic and wrote of the works of Arnold Zweig, Hans Fallada, and Anna Seghers. He soon became known as an expert on German literature. Before too long he established his persona, a critic who felt that he was the essential agent to interpret the writer to the world. Interviewing Anna Seghers he concluded that she did not understand her own work and generalized that "most writers understand no more about literature than birds do about ornithology." In the more permissive time following Stalin's death he was able to meet such writers as Bertolt Brecht and Heinrich Boll. He became known for his radio broadcasts and published the first of his numerous works on German literature. As his reputation grew so did hurt feelings, as his cultivation of a writer would be followed by harsh criticism. He rationalized that he had never known a writer who was not vain or egocentric and added lamely that he was "all too aware of the pain and suffering which can be caused by critical reviews."

But now literary success was knocking more insistently at his door and West Germany was beckoning. Reich-Ranicki and his wife, confronted by a rising tide of official anti-Semitism and an eye-opening visit to the German Federal Republic in 1957, decided to leave Poland, an escape they planned

very carefully.

The last third of the autobiography is a story of what can only be described as a meteoric rise as Reich-Ranicki and his wife make their home in West Germany. From the pages of the *Frankfurter Allgemeine* to *Die Zeit* and finally back to the *Allgemeine*, he eventually became known as the "Pope" of literary criticism, one who could make or break an author. Television firsts such as *The Literary Quartet* and the publication of his important work, *German Literature in West and East*, established him as an arbiter in German letters. But controversies with Germany's literary elite followed. He did not feel accepted. Hans Werner Richter, who headed Group 47, a literary group that included the most prominent names in German literature, said of Reich-Ranicki: "He somehow remained an outsider." There was much resentment when Reich-Ranicki published his most negative criticisms under the title *Nothing but Drubbings*.

---

*"Adolf Hitler, the most powerful man in Europe has decreed: these two people here shall die. And I, a small typesetter from Warsaw, have decided they shall live. Now we shall see who wins."*

---

Even as a well-known critic he was not invited to become a staff member of *Die Zeit* whose editors noted that he was a "power-conscious, quibbling individual." Reich-Ranicki was shocked to hear this. The word used had been *Rabulistich*, a quibbler, pettifogger, a term favored by Joseph Göbbels as in "Jewish-Marxist quibbling." The disputes continued even when he finally received the coveted post at the literary section of the *Allgemeine*. Reich-Ranicki quoted an 18th-century German writer who said, "People find me interesting and avoid me . . . they like viewing me from afar." Was it that or anti-Semitism?

There were further reminders of his sufferings in the Warsaw Ghetto. In 1973, Joachim Fest of the *Allgemeine* invited Reich-Ranicki and his wife to



celebrate the publication of Fest's book on Hitler. They were shocked when they were introduced to the guest of honor who was none other than the war criminal Albert Speer. "I kept silent, horrified," recalled Reich-Ranicki. He felt that Fest should have warned him about such an invitation.

Especially offensive was the historian Ernest Nolte's lecture published by Fest in the *Allgemeine* in which the former argued that the German murder of Jews was not unique and was simply a consequence of Bolshevism. Fest defended Nolte even as, according to Reich-Ranicki, Nolte compared the killing of Jews to killing vermin and praised the Waffen SS. Reich-Ranicki's friendship with Fest came to an end. There seemed to be no end to injuries and enmities. His autobiography was published too early to note that in 2002, the prominent writer Martin Walser published *Tod eines Kritikers* ("Death of a Critic"), clearly aimed at Reich-Ranicki and replete with anti-Semitic innuendoes.

Reich-Ranicki would be more deserving of our sympathies if it were not for his harsh attacks on those who befriended him, fine writers and decent men such as Heinrich Boll and Günther Grass, assaults that reflected the title of his book *Nothing but Drubbings*. After all, "drubbings" are beatings. Hardly a word to describe literary criticisms. Whom is Reich-Ranicki thrashing? A survivor I know, a man who underwent incredible suffering at the hands of the SS, worked in America alongside someone who had helped him but who drank and once referred to him as a "damn Jew." When the ugly words were uttered the survivor struck him so hard that he might have killed him. When he told me about it I said: "I know you were provoked but you should not have confused that man with the SS who wanted to kill you and whom you wish you could have killed."

Neal Acherson, a fellow critic, acclaimed Reich-Ranicki as one who devoted himself to fighting "stupidity" and "bad workmanship," and thus fulfilled "his life's duties." But what were Reich-Ranicki's "life's duties" in one of mankind's most terrible centuries? He lived under two of history's worst dictatorships and he failed to understand

adequately the racism of one even as he served the other. His duty was to proclaim his hatred for both the red and brown dictatorships, a task more important than playing stern schoolmaster to unruly authors. Reich-

Ranicki seems to have missed a crucial point about himself. In the eyes of the Germans who continued to insult him he was still an East European Jew, an *Ostjude*. This was a badge he should have worn proudly. □

---

*The Blues — A Musical Journey*, presented by Martin Scorsese. Vulcan Productions, 2003.

---

# Blues in the Key of zzz

---

Richard Kostelanetz

---

Ever since I first discovered blues music, which will always have an appeal for certain bored teenagers (who might also be turned on by Ayn Rand, though I wasn't), I've preferred the tightly constrained elegant art to jazz, say, which always struck me as deleteriously formless. That accounts for why my collection of extended music writing, *On Innovative Music(ian)s* (1989), includes a chapter on B.B. King beside appreciations of John Cage, Milton Babbitt, and Elliott Carter.

With this background, you can imagine how disappointed I've been with Martin Scorsese's exhaustively pro-

---

*Talking heads are the esthetic armpit of American public television documentaries.*

---

moted PBS series *The Blues*. Given the apparent ambition to produce a Public Television Epic (on the Ken Burns scale), Scorsese and his associates have thinned out the subject to an appalling degree. The directorial formula appears to have been mixing marvelous historical footage of the great blues singers,

much of it too brief, with extended sections on contemporaries both playing and, alas, remembering. Since few current blues singers (other than King) are as exalted as the past masters, the latter sections depend too much on talking heads, which I've always considered the esthetic armpit of American public television documentaries. (Another mark of publicly funded films has been endless credits, here helped with choice background music, but nonetheless interminable as names upon names flow up the screen.)

Even though the opening episode paid the currently customary obligatory acknowledgment to Africa, I remain unpersuaded. Much like baseball and basketball, blues music is an indigenous art born here and developed here, arising, like those sports, from opportunities and experiences in a new world. (Just because African-Americans predominate in professional basketball, should we regard the hoop game too as reflecting Africa?) African music, especially African pop music featured here, seems closer to contemporary pop music everywhere else. To my ears, American blues had more influence abroad on white Brits than on black Africans.

Indeed, I would argue that the best African-American music exceeds anything coming out of Africa per se, black as well as white (likewise with African-American literature and visual art), just

as life in America is better for dark-skinned people, inequalities notwithstanding, than it is in Africa. It's no wonder that far more Africans emigrate here than Americans emigrate there. I recall Muhammad Ali declaring after a fight in Zaire that he was "glad my granddaddy got on the boat." Glad I am that my Russian-Jewish grandfather "got on the boat" as well.

The point of this digression is that while kowtowing to current academic fashions might persuade money-people and their highfalutin "advisors," a disregard of truth undermines esthetic aspirations. Indeed, this fashion-mongering has always been one reason why even the most pretentious PBS documentaries don't survive as well as classic film documentaries, such as, say, Leni Riefenstahl's *Olympia* or even D. A. Pennebaker's *Monterey Pop*, both of which, incidentally, eschew the PBS passion for Talking Authorities.

Since I found myself frequently turning away (or off), I might have missed any appreciation of blues poetry, beginning with such erotic inventions as, say, Blind Lemon Jefferson's "crocheting" for fellatio. It was four decades ago that the white literary critic Stanley Edgar Hyman wrote a classic essay on the blues poets' remarkable inventions within a limited constraint of English (not African) couplets. When I think the blues are misunderstood, as they often are, I am

---

*Like baseball and basketball, blues music is an indigenous art born here and developed here, arising, like those sports, from opportunities and experiences in a new world.*

---

reminded of an earlier Hyman review demolishing a British lefty named Paul Oliver for miscopying and misreading the blues. I didn't see anyone demonstrate how the great blues singers use their guitars not just to accompany their voices but to substitute; so that, after the first verse is sung, the second verse can include only the opening words before completion by the guitar alone.

Again against current fashionable

thinking, I'm not entirely sure that the blues (as distinct from work songs) had much to do with slavery or other racist American sins. Few of the blues even mention it, preferring instead the eternal "universal" subjects of loneliness and loss. In one episode, the great singer Son House says the blues are about relations between men and women who love each other and fail their love in one way or another. Nonetheless, the same filmmakers who included this declaration did not take it seriously. One more problem with this PBS series is failing to distinguish the

rigorously secular blues from gospels and spirituals, which are religious songs. What would you think of a classical music critique that confused Lieder with arias?

One of the virtues of owning video-editing equipment is that I can tape garrulous PBS documentaries, cut out the dross, and in this case, from the choice historical footage make for myself a tape or compact disc that can be treasured for decades. I'm sure I won't be alone in making this move with the PBS *Blues*. □

---

*The Legend of Proposition 13*, by Joel Fox. Xlibris, 2003, 244 pages.

---

# The Tax Revolt That Worked

---

Michael New

---

There are relatively few books about the late 1970s tax revolt that are sympathetic to the goals of the tax reformers. With the exception of Alvin Rabushka and Pauline Ryan's *The Tax Revolt*, most books that deal with Proposition 13, such as Robert Kuttner's *Revolt of the Haves* and Peter Schrag's *Paradise Lost*, range from skeptical to downright hostile.

That is part of the reason Joel Fox's *The Legend of Proposition 13* is a welcome addition to the scant literature on the subject. But the appeal of Fox's book goes far beyond its ideological sympathy to the tax revolt. Fox, who served as a longtime aide to Howard Jarvis, was heavily involved with the campaign to enact Proposition 13. Furthermore, as president of the Howard Jarvis Taxpayers Association, Fox was intimately involved with efforts to defend Prop. 13 from judicial and political attacks. This gives Fox a number of unique insights about the proposition's passage, its impact, and most importantly, its legacy.

Fox begins his book by talking about the origins of Prop. 13. It all began in the mid-1960s when Howard Jarvis accompanied a middle-aged woman to the Los Angeles County Hall of Administration. The woman appealed to county officials to lower her soaring property taxes. However, county officials were not persuaded and insisted that she would have to pay the full amount on her bill. The shock this woman felt was so great that she had a heart attack in the county building and died that same day.

Jarvis told this story on a number of occasions, and it even led to one of Jarvis' favorite sayings on the campaign trail: "Death and taxes may be inevitable, but being taxed to death is not inevitable." More importantly, the story of the woman's death eventually led to a tax revolt that would change the fiscal history of California and the rest of the country.

*The Legend of Proposition 13* neatly recounts that history. The book describes the campaign to enact Proposition 13, detailing the vicious and desperate scare tactics used by Jarvis' opponents. Fox also describes

the ways in which state and local governments attempted to circumvent Prop. 13 in the years following its passage. Finally, he talks about the frequent legal attacks on the proposition, culminating in the Supreme Court's 1992 *Nordlinger* decision which upheld its constitutionality.

Fox also responds to the many criticisms of Proposition 13. He provides thoughtful responses to those who argue that it has reduced education funding and caused inequitable tax burdens. He also counters some of the more outlandish arguments. For instance, in 1995 Robert Wright of *The New Republic* suggested that Prop. 13 was responsible for the acquittal of O.J. Simpson. Wright argued that because of it, local governments lacked sufficient resources to hire competent policemen. However, Fox discovers that police in Los Angeles actually earned higher salaries than police in comparable cities such as New York and Chicago.

Unfortunately, Fox fails to describe in sufficient detail the spark that Proposition 13 provided to the tax limitation movement. During the late 1970s, most other states lacked the combination of soaring property taxes, a recalcitrant legislature, and a large surplus that made Prop. 13 a reality in California. As a result, most attempts to

---

*"Death and taxes may be inevitable, but being taxed to death is not inevitable."*

---

enact similar measures failed. However, in the years following Proposition 13's enactment, 17 states passed expenditure limits. And California's spending limit, known as the Gann Amendment, enjoyed some success at limiting government growth during the 1980s. The raising of the Gann limit in the early 1990s has contributed greatly to California's current fiscal woes.

However, this is a minor shortcom-

ing. In an entertaining and highly readable book, Fox does a fine job detailing both the history and legacy of Proposition 13. At the end of the book he talks about the accomplishments of the proposition, and he is correct when he says that one of its most important achievements is its durability. Despite facing an enormous amount of criticism from the media and elected officials, Proposition 13 still stands strong. In fact, during the past 25 years, no one has even made a serious effort to significantly change it. This is because most

people in California support it and appreciate all that it has accomplished.

Indeed, Proposition 13's durability continues to pay dividends. This past summer, with California facing a \$38 billion deficit and with Democrats controlling the executive and both houses of the state legislature, the only obstacle to a painful tax hike was Prop. 13's two-thirds supermajority requirement for a tax increase. A quarter century after its enactment, Proposition 13 continues to deliver victories to California taxpayers.

The legend continues. □

# WHAT'S REALLY BEHIND THOSE ENVIRONMENTAL LAWS?

Has *your* land been  
secretly used as collateral  
for unsustainable  
government spending?  
Find out the *truth* Call

WHITEHURST INTERNATIONAL

1-866-696-2646

1-866-OWN-COIN

*Ask for George*

**Libertarian Attorney** — Not all attorneys are Democrats. I fight the good fight against government regulations in Real Estate and Estate Planning. Licensed in Washington State. Mark K. Funke, Esq. P: 206-632-1535 — [www.funkelaw.com](http://www.funkelaw.com)

---

**Letters, from page 4**


---

successfully fabricated almost all the medical, photographic, and ballistics evidence.

My two main arguments against the Conspiracy theory were the absence of a sufficient motive and the senselessness of any Conspiracy to conduct the assassination in the way in which it must have been done. Jim R. Siler ignores both these arguments. Michael Acree ignores the second, and for the first refers us to Douglas's book. He also ignores my point that the CIA could have ousted Kennedy by exposure, or threatened exposure, of compromising information.

Douglas's *Regicide* relies crucially on numerous alleged primary sources which cannot be independently checked — for example, "translated" Soviet documents whose Russian originals have never been produced and which are not listed in any archive. Douglas's earlier book on Gestapo chief Heinrich Müller was a similar concoction and is also widely regarded by researchers as fraudulent. Among its revelations was that Hitler did not shoot himself in Berlin but escaped by plane to Barcelona. To pick just one of Douglas's uncorroborated "facts," does Michael Acree really believe that Kennedy was in the habit of handing out, as mementos, photographs of himself engaged in sex with multiple partners?

Neither Siler nor Acree lets us know whether he thinks Kennedy's body was snatched and operated on to produce false wounds, or whether another corpse was substituted for Kennedy's — both miracles of stage magicianship and, as I pointed out, both completely unnecessary to any competent Conspiracy.

Ron West agrees with my analysis of the Kennedy assassination but takes issue with what I said about Bush's misstatements on Iraq. Defenders of Bush now point to one remark in which he implied that the Iraqi threat was not yet "imminent." But for months officials of the Bush administration vigorously disseminated the false claims that Iraq had WMD ready to launch, and that Saddam Hussein had "links" or "ties" with al Qaeda (actually his sworn enemies). These

mendacious assertions will be given quite an airing over the next twelve months. Here's one typical quotation:

"The Iraqi regime possesses biological and chemical weapons, is rebuilding the facilities to make more and, according to the British government, could launch a biological or chemical attack in as little as 45 minutes after the order is given. The regime has long-standing and continuing ties to terrorist groups, and there are al Qaeda terrorists inside Iraq" (President George W. Bush, radio address, Sept. 28, 2002).

### **God, Guns, and Bruce Ramsey**

Bruce Ramsey's suggestion ("Liberty at the Fringe," Sept./Oct.) that there can be no general right to own a weapon is devoid of support in law, history, logic, and in common sense — it is flawed observation — for every person has a God-given right to self-defense and possesses therefore an inalienable right to be armed; rendering equally irrelevant the artifact used and the opinions of legislators.

Jack Dennon  
Warrenton, Ore.

### **Putting the Lie to O'Reilly**

By coincidence I picked up Franken's book the same day I read Tim Slagle's review ("Al Franken is a Big, Boring Hypocrite," November). Slagle does not report the main lies by O'Reilly and thereby trivializes the accusations. He does not report Franken's research on O'Reilly's boast that he won two prestigious Peabody awards and his eventual admission, under questioning, that he had actually won a much less prestigious award.

I myself saw O'Reilly refuse to allow Jude Wanniski to speak the moment Wanniski started to offer opinions about Iraq that O'Reilly didn't like. And we all saw that O'Reilly was one of the biggest promoters of the repeated lies used to attack Iraq.

O'Reilly is a liar and a bully. And Americans are dying now in Iraq because of a war launched on lies.

Jon Basil Utley  
Washington, D.C.

### **Punch, But Not Punchline**

I can't remember the last time I read a book review that so thoroughly misrepresented the content of a book as Tim Slagle's review of Al Franken's *Lies and the Lying Liars Who Tell Them* does.

Slagle attempts to portray Franken's book as though it doesn't expose blatant lies and misrepresentations by Anne Coulter, Bill O'Reilly, Sean Hannity, and George W. Bush. But it does, and Slagle focuses only on the more ambiguous and questionable ones, and even misrepresents what Franken says the lies are.

The "lie" regarding Sandy Berger and Condoleezza Rice was not just that there were two different accounts of a meeting between the two — the lie is that Rice claimed in one interview that Berger had not warned her that Osama bin Laden was a threat, when in fact he did — as Rice later admitted. Rice's statement to the *New York Times* was the lie; the account given in *Time* was correct.

The "lie" regarding Evan Thomas, Jr. and Norman Thomas is that Coulter wrongly said Norman was the father (rather than grandfather) of Evan Jr. — again Slagle failed to reveal what Franken pointed out. It would have been fair to criticize Franken for hypocrisy in his attempted satire of using end notes to illustrate one of Coulter's techniques of dishonesty, but Slagle's description is just as dishonest.

Slagle is correct that Franken is an unabashed left-winger, and that he comes across as worshipful of Bill Clinton. Some of his jokes fall flat, and he does occasionally commit the same kind of failings that he points out in others. But Slagle's failure to find humor in the book, as well as its exposure of abundant dishonesty by right-wing pundits and politicians, reveals more about Slagle's character than Franken's.

Jim Lippard  
Phoenix, Ariz.

### **Justice, Not School Vouchers**

Bart Kosko advocates that America provide education vouchers for bright young Palestinians who are presently not receiving quality educations because "Palestinian schools are too poorly staffed and funded for the task." I applaud Kosko's concern, but I question the depth of his knowledge of Palestinian affairs. The root cause of the failure of Palestinian schools is the same as the cause of the general failure of Palestinian self-governance, i.e., Palestine is under occupation by a hostile country — Israel.

Rather than applying Band-Aids to

the wounds of a suffering people, we libertarians should voice our dissent to the present American policy of funding Israel's cruel occupation of Palestine and mistreatment of Palestinians in their own homeland. Israel's occupation, and especially the settlements, amount to theft of Palestinian land, and there is no basis for condoning that theft.

Richard Vajs  
Franklin, W.Va.

### A Confounding Question

I remain confounded by the question "Should libertarians renounce their alliance with the Right?" that R.W. Bradford poses in your October issue.

I think this observation from Lord Acton seems apropos: "At all times sincere friends of freedom have been rare, and its triumphs have been due to minorities, that have prevailed by associating themselves with auxiliaries whose objects differed from their own; and this association, which is always dangerous, has been sometimes disastrous, by giving to opponents just grounds of opposition . . ." — From Acton, *The History of Freedom*.

Dan Klein  
Santa Clara, Calif.

### Fulbright and Me, from page 34

ing your genuine professional achievements among those who care. Thanks to wisdom gained from this experience, Handlin's foolish mistakes have not been mine in the decades since.

One final note: biographical notes for Charles R. Frankel (1917–79) still mention his tenure as assistant secretary of state, and later time spent working at the National Center for the Humanities during the William Bennett administration at the NEH, which established a "prize" in his name during the Lynn Cheney administration. However, Oscar Handlin, a more substantial scholar two years older and still alive when last I checked, does not acknowledge the Board of Foreign Scholarships among his many credits, perhaps reflecting his final judgment on those patently duping him. And can I be alone in wishing that *The Nation* had more respect for its contributors and, by extension, for itself? □

### Friedman Fails, from page 41

advocate applying my theory of liberty even if it "does not in fact maximize want-satisfaction." Why does he not quote my "stated commitments" that entail this? In fact, I have no commitments of this sort. If I thought that what libertarianism entailed would seriously damage general want-satisfaction then I would reject libertarianism. But that does not show that I am really a utilitarian of some kind, just that I would accept this kind of refutation (among others) of the libertarian conjecture.

We cannot, and should not, attempt to "establish that MPI [minimizing proactive impositions] is a necessary means to achieving human well-being." That would be justificationist folly. Is Armstrong seriously advocating it as a possible goal? Then he has completely misunderstood my points about justificationism as well as about

the libertarian conception of liberty. I never said that MPI is "a goal unto itself." I said it is what libertarian liberty entails; whether that is desirable or not is an entirely separate issue. I did not say that "human well-being just happens to be related" to it. There are arguments and evidence that indicate that the connection is much more than a coincidence. As MPI is not a moral argument and as I do not rely on it when consequentialist arguments fail there is no "straddle" on my part. I conjecture that the reason that libertarianism might "seem implausible to most people" (ideological apathy aside) has more to do with their justificationist outlook than any "straddle" that libertarians use.

So it would seem that Armstrong misses both my points entirely and is instead concerned with broadly defending Friedman's neither bold nor original defense of markets (rather than liberty). □

## Notes on Contributors

Ari Armstrong is Publications Director for the Libertarian Party of Colorado.

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

James Barnett is a freelance writer in Virginia.

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

Scott Chambers is a cartoonist living in California.

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

Frank Fox is the author of *God's Eye: Aerial Photography and the Katyn Forest Massacre*.

Jeffrey Friedman is editor of *Critical Review*.

William Grigg is an author, editor, and semi-professional guitarist who lives with his family in Appleton, Wis.

Eric Kenning is a freelance writer living in New York.

Dave Kopel is co-author of the new book *Supreme Court Gun Cases*.

Richard Kostelanetz has worked with audiotape, videotape, holography, and film.

J.C. Lester is author of *Escape From Leviathan*.

Ross Levatter is a physician practicing in Green Bay, Wis.

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

Michael J. New is an adjunct scholar with the Cato Institute.

Bruce Ramsey is a journalist in Seattle.

Ralph R. Reiland is the B. Kenneth Simon professor of free enterprise at Robert Morris University.

Ted Roberts is a freelance humorist living in Huntsville, Ala.

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

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

Fred Smith is president of the Competitive Enterprise Institute.

Thomas Szasz, M.D. is professor of psychiatry emeritus, SUNY Health Science Center, Syracuse, New York.

## U.S.A.

Disturbing result of America's brand-driven culture, from the records of the Social Security administration:

In 2000, 49 children were named Canon, eleven Bentley, five Jaguar, and one Xerox.

## Norway

Advance in psychology, from a dispatch from Reuters:

The government of Norway has awarded a 53,000 kroner grant to help Lena Skarning, 33, to establish herself as a professional witch. Skarning hopes to develop "products like magical bath oil, water potions, or facecreams to help users have clearer dreams at night."

## Tampa, Fla.

Ambitious attempt to establish a "suicide-free zone" thwarted, from the *Fort Lauderdale Sun-Sentinel*:

The leader of the shock rock group Heil on Earth said an onstage suicide will happen during a private St. Petersburg concert in defiance of a new city law designed to stop it.

## Albany, Ore.

Curious lawsuit in the Beaver State, from a report in the *Seattle Post-Intelligencer*:

Parents are suing a substitute teacher because she told their daughter, who suffers from a disease that left her bald, that Jesus would perform a miracle overnight which would cause the girl to grow "the most beautiful blonde hair anyone has ever seen." The teacher promised that if no hair grew, she would shave her head. She did.

## California

Helpful advice from an African-American activist protesting a new energy drink, from a report in the *Atlanta Daily World*:

"As black men we should be building a nation of strong black leaders, not a nation of superenergized, drunk pimps."

Special thanks to Russell Garrard, P. Geddes, Owen Hatteras, Martin Buchanan, 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).)

## Korea/Corea

The advance of scholarship along the Pacific Rim, from a report in the *Boston Globe*:

North and South Korean scholars held a joint conference recently to resolve to work together to change the spelling of Korea to "Corea." They believe that Japanese imperialists changed the spelling before the 1908 Olympics in London, so that Korea would be behind Japan in the ordering of athletes.

## Houston, Tex.

A small victory in the War on Drugs. Reported by the *Houston Chronicle*:

A teenage boy has been arrested and accused of delivering a dangerous drug, after sharing his inhaler with a peer who was having an asthma attack. The school nurse said it was a violation of the district's no-tolerance drug policy, and reported the student to the campus police.

The boy was suspended from school for three days, and faces expulsion and juvenile detention on drug charges.

## Florida

*Miami Herald* reports amazing similarity between humans and pigs:

Big Daddy Ice Cream has agreed to give plaintiffs free ice cream as part of a settlement of fat-content watching consumers who ate the ice cream, thinking it was low in fat because of mislabeling.

## U.S.A.

Advance in epidemiology, from an article in the *Seattle Times*:

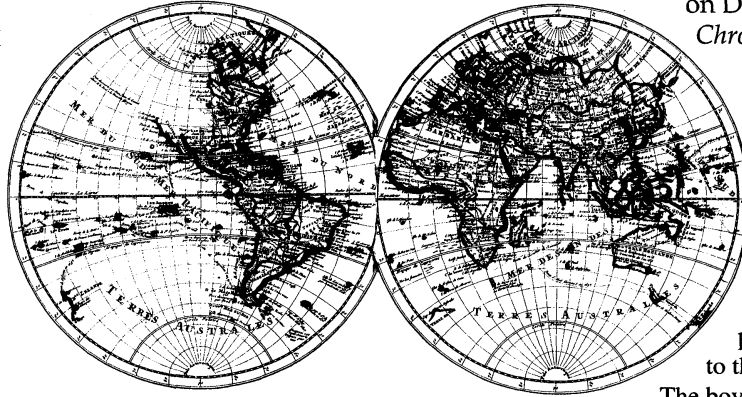
A recent study claims that urban sprawl contributes significantly to obesity in America.

## Tennessee

Latest weapon in the war for a clean environment, from the *Vanderbilt Hustler*:

The Murfreesboro City Council recently adopted a good hygiene policy. It states "No employee shall have an odor generally offensive to others when reporting to work."

# Terra Incognita

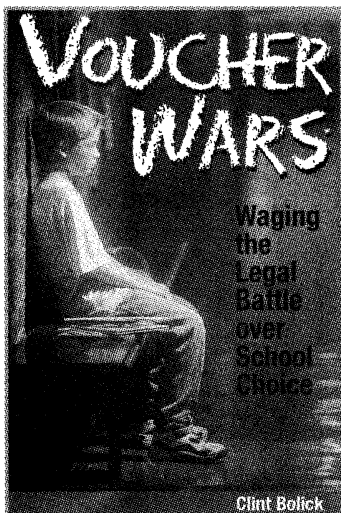


Statement of Ownership, Management, and Circulation (required by 39 U.S.C. 3685). Title of Publication: *Liberty*. Publication Number: 002-132. Date of filing: 9/26/03. Frequency of Publication: Monthly. Number of issues published annually: 12. Annual Subscription price: \$29.50. Complete Mailing Address of Known Office of Publication: 1018 Water St. #201, Port Townsend, WA 98368, Jefferson County. Complete mailing address of Headquarters or General Business Office of Publisher: Same as above. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor: R.W. Bradford (publisher & editor), address same as above; Thomas Fuller (assistant publisher), address same as above. Owner: Liberty Foundation, address same as above. Known Bondholders, Mortgagees, and Other Security Holders: None. Total Number of Copies - (average issue during the previous 12 months): 12,481; (issue nearest filing date): 10,623. Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541 - (average): 6,354; (issue nearest filing date): 5,190. Paid In-County Subscriptions Stated on Form 3541 - (average): 10; (issue nearest filing date): 0. Non-USPS Paid Distribution - (average): 2,644; (issue nearest filing date): 4,875. Other Classes Mailed Through USPS - (average): 5; (issue nearest filing date): 0. Total Paid and/or Requested - (average): 9,013; (issue nearest filing date): 10,065. Free Distribution Outside the Mail - (average): 0; (issue nearest filing date): 0. Total Free Distribution - (average): 0; (issue nearest filing date): 0. Total Distribution - (average): 9,013; (issue nearest filing date): 10,065. Copies Not Distributed - (average): 3,468; (issue nearest filing date): 558. Total - (average): 12,481; (issue nearest filing date): 10,623. Percent Paid and/or Requested Circulation - (average): 100; (issue nearest filing date): 100. - I certify that all information furnished on this form is true and complete: (signed) **Thomas Fuller (assistant publisher)**.

# CATO INSTITUTE

## NEW AND FORTHCOMING BOOKS

CIVIL SOCIETY • INDIVIDUAL LIBERTY • FREE MARKETS • LIMITED GOVERNMENT



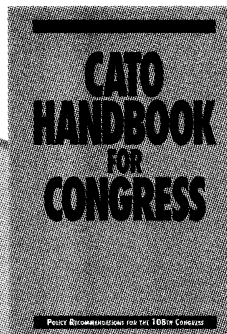
### ***Voucher Wars: Waging the Legal Battle over School Choice***

Clint Bolick

**T**he recent Supreme Court school voucher decision has brought the issue of educational freedom and quality to national attention. This book recounts the drama and the tactics of the 12-year battle for choice and, in the process, distills crucial lessons for future educational freedom battles. March 2003

277 pp./Cloth \$20.00 ISBN 1-930865-37-6

Paper \$12.00 ISBN 10930865-38-4



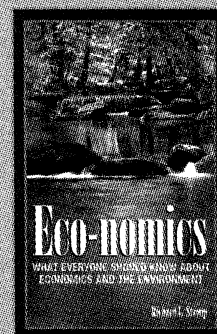
**W**ith federal spending out of control under a Republican Congress, the cuts in taxes and spending proposed in the *Cato Handbook for Congress* are needed now more than ever. It covers such hot topics as the federal budget, Social Security, Internet regulations, corporate governance, the war on drugs, and civil liberties, since 9/11. 700 pp./\$25.00 paper ISBN 1-930865-39-2



**D**ennis Tito wasn't the only entrepreneur interested in exploring the final frontier. The issue is how to open space to private travel and other commercial ventures. Edited by Ed Hudgins, the book includes Buzz Aldrin on space tourism, Liam Sarsfield on NASA in the 21st century, and Wayne White on property rights in space. 250 pp./\$25.00 cloth ISBN 1-930865-19-8/\$15.00 paper ISBN 1-930865-18-X



**O**pen access, the policy requiring that a company or industry share its network, facilities, or specific technologies with rivals, is now viewed by legislators and bureaucrats alike as the preferred method of regulation. Adam Thierer and Clyde Wayne Crews Jr., however, show how regimes that respect property rights—including the right to exclude rivals—better serve consumers and innovation. 131 pp./\$12.95 paper ISBN 1-930865-42-2



**I**t's one thing to be passionate about protecting the environment. It's another to be successful at it. In this book, Richard Stroup explains why many of our environmental laws have failed us and how we might improve environmental protection. *Eco-nomics* is an indispensable guide to learning how to think about both economics and the environment. 100 pp./\$9.95 paper ISBN 1-903865-45-7

To order call 1-800-767-1241 or visit [www.cato.org](http://www.cato.org).

Cato Institute • 1000 Massachusetts Ave., N.W. • Washington, D.C. 20001 • [www.cato.org](http://www.cato.org).

# At last. A scholarly journal dedicated to the study of Ayn Rand's thought and influence.

*The Journal of Ayn Rand Studies* is the first scholarly publication to examine Ayn Rand: her life, her work, her times. Welcoming essays from every discipline, *JARS* is not aligned with any advocacy group, institute, or person. It welcomes scholarly writing from different traditions and different perspectives, facilitating a respectful exchange of ideas on the legacy of one of the world's most enduring and controversial philosophers.

*JARS* is edited by R.W. Bradford, libertarian writer and publisher of *Liberty*; Stephen Cox, author of many books and articles on Ayn Rand, Isabel Paterson, and libertarianism; and Chris Matthew Sciabarra, characterized by *The Chronicle of Higher Education* as "Rand's most vocal champion in academe."

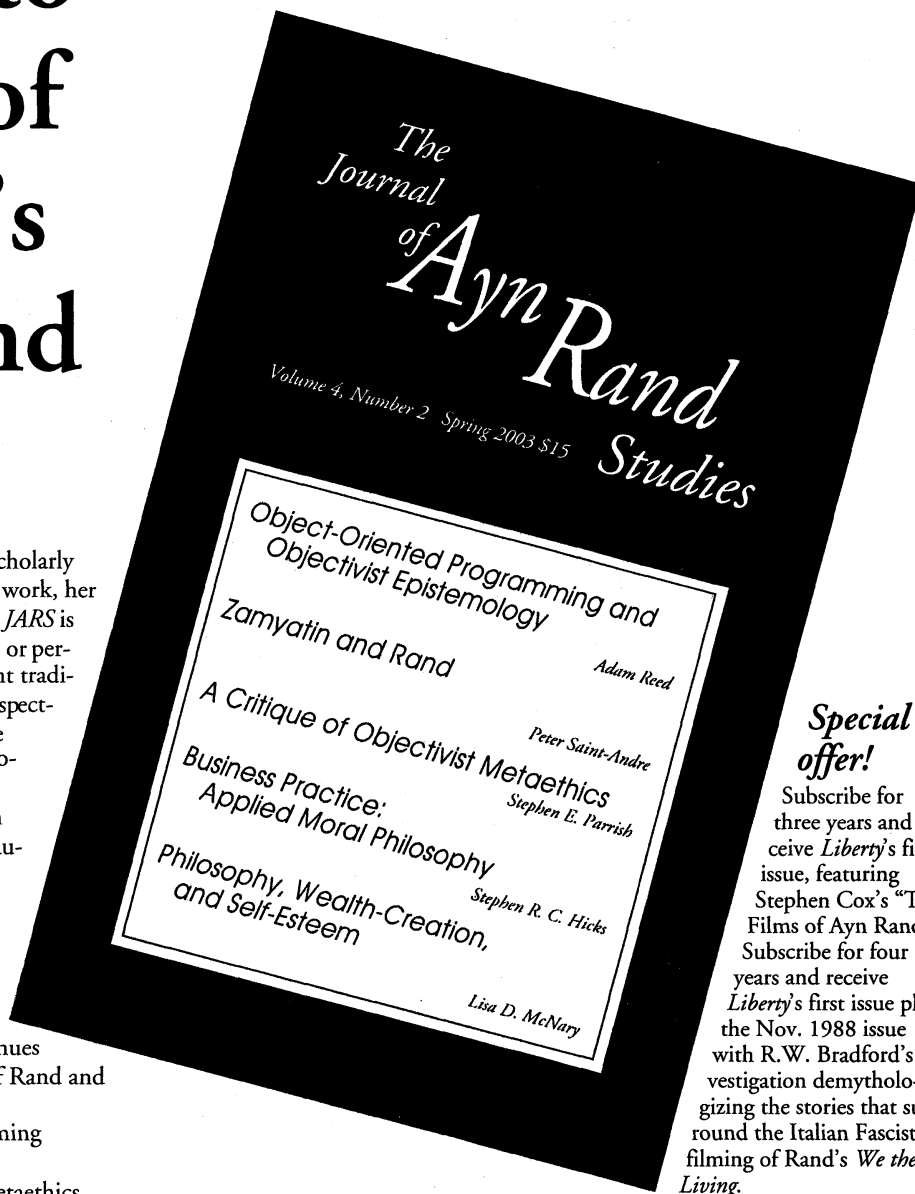
Our three years have been milestones for Rand scholarship. Our Spring 2003 issue continues our tradition of first-rate scholarly discussion of Rand and her work. Among its features:

- Adam Reed on Object-Oriented Programming
- Peter Saint-Andre on Zamyatin & Rand
- Stephen E. Parrish critiques Objectivist metaethics
- Stephen Hicks and Lisa McNary on Objectivism & business
- Mimi Gladstein on Ayn Rand literary criticism
- Michelle Kamhi on Rand's aesthetics
- Fred Seddon on Nyquist's *Ayn Rand Contra Human Nature*

Plus — Provocative discussions featuring Jane Yoder, Tom Porter, and Carolyn Ray.

Annual subscription: \$25 individuals, \$40 institutions  
 Two year Subscription: \$45 individuals, \$75 institutions  
 Three year subscription: \$65 individual, \$100 institutions  
 Four year subscription: \$85 individual, \$130 institutions

**Charter subscriptions are still available!**



## Special offer!

Subscribe for three years and receive *Liberty's* first issue, featuring Stephen Cox's "The Films of Ayn Rand." Subscribe for four years and receive *Liberty's* first issue plus the Nov. 1988 issue with R.W. Bradford's investigation demythologizing the stories that surround the Italian Fascist filming of Rand's *We the Living*.

## Yes!

Please enter my subscription to the *Journal of Ayn Rand Studies*. I enclose my check in full payment.

- Four Years: individuals \$85, institutions \$130 plus "The Films of Ayn Rand" and "The Search for *We the Living*"
- Three Years: individuals \$65, institutions \$100, plus "The Films of Ayn Rand"
- Two Years: individuals \$45, institutions \$70
- One Year: individuals \$25, institutions \$40
- I want a charter subscription. Start my subscription with Vol 1., No. 1.

name \_\_\_\_\_  
 address \_\_\_\_\_  
 city \_\_\_\_\_ state \_\_\_\_\_ zip \_\_\_\_\_

Send to:  
 Journal of Ayn Rand Studies  
 1018 Water Street, Suite 301  
 Port Townsend, WA 98368