

Liberty

February 2000

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Teach
Creationism

The WTO Wars

The Streets of Seattle

by R. W. Bradford

Inside the WTO

by Bruce Ramsey

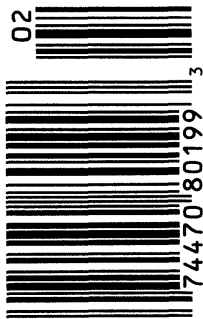
Your PC as Big Brother

by Declan McCullagh

It Once Began With Ayn Rand

by Martin Morse Wooster

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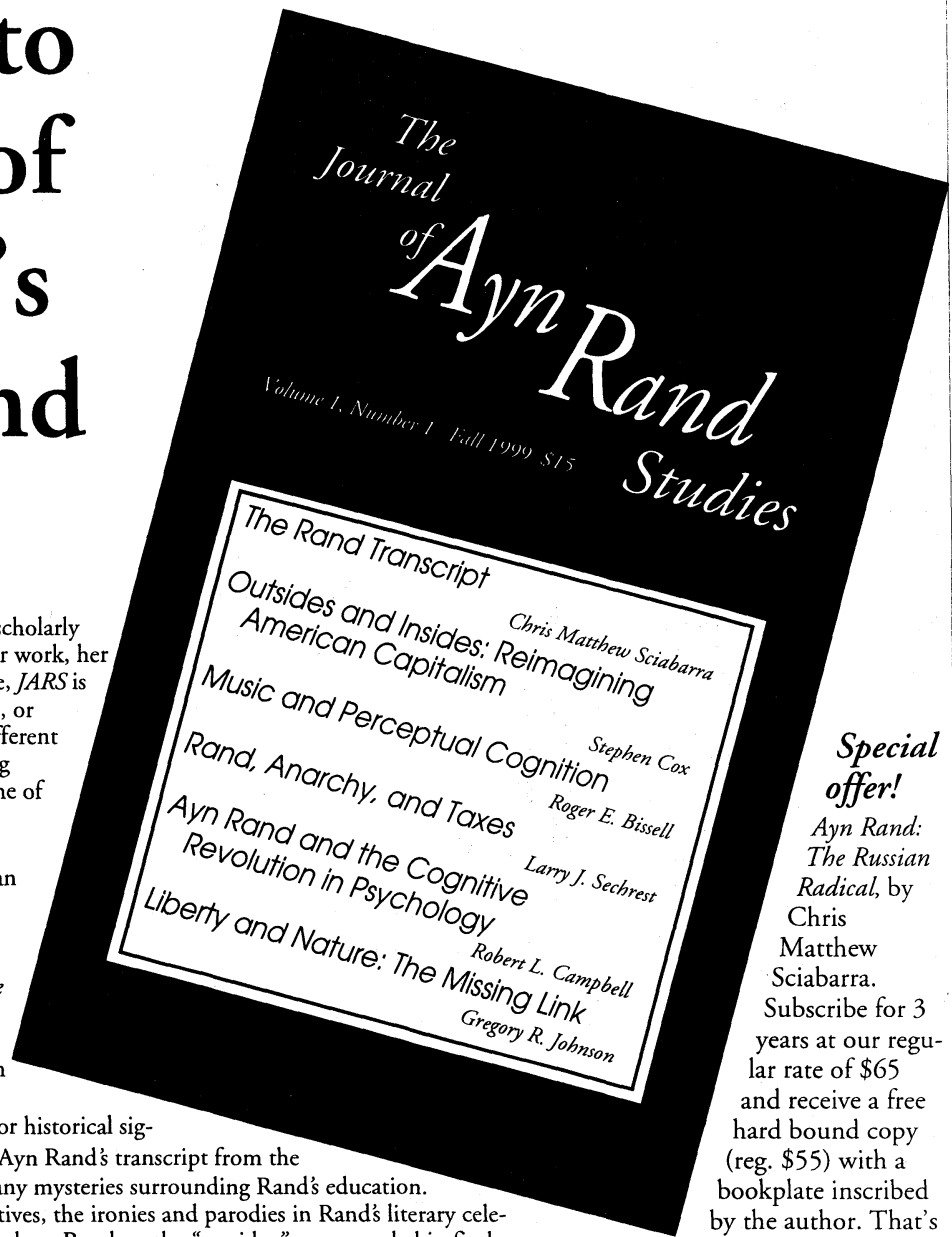
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Jane S. Shaw
senior editors

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Letters

It's about blankety-blank time

R. W. Bradford's suggestion that Libertarians tackle drug legalization ("An Opportunity for the Libertarian Party," December) as a wedge issue in the upcoming presidential follies is a welcome approach. Largely because it is about damn time.

This Drug War, fomented by the Demopublicans and the Republicrats, is costing far more than money (although plenty of that for sure). We are losing our constitution and the voters necessary to maintain that document. The crimes of the drug war are costing many lives. Our police are now armed and trained by the military, leaving us on the verge of becoming a police state. The Mexican Border is the new Berlin Wall. Illegal drugs are creating gargantuan, tax-free profits for the world's criminal lords. The enforcers of the laws against drugs have become thugs.

There is no doubt in my mind that your quest is needed and that it may succeed. And, like the slavery issue, unless dealt with it may rent the fabric of our flag by creating a new civil war. Please continue on a course that has great promise for our future.

Allan Erickson
Eugene, Ore.

Dead right

I don't care if a corpse runs as the Libertarian candidate on the drug issue, he's got my vote. I believe that far more people than you realize would turn out to vote on this issue on a national level. I also feel that Clinton got a large number of votes for his *faux* candidness about his marijuana use.

Mike Plylar
Kremmling, Colo.

Rx for success

I enthusiastically endorse the idea of a presidential candidate running upon the plank of drug legalization, or at least marijuana legalization.

I can't think of a better stance to gain a beachhead and foothold in the con-

sciousness of American political thought. The war on Americans ripping apart the fabric of our country called the War on Drugs is a main reason that many are becoming members of the Libertarian Party, as it is the only political party with this plank. I can think of no better way to salvage what is left of individual freedom from unjust persecution and incarceration than ending this ill-conceived war on "drugs," and in having our presidential candidate touting the message.

Robert Grayson
Aiea, Hawaii

Drugs will stunt our growth

I read with great interest R. W. Bradford's argument for the Libertarian Party using marijuana legalization as a wedge issue. Unfortunately, I believe that if the LP follows Bradford's advice, it will be in even more trouble membership wise than it already is.

The drug issue is probably the least effective reason that the average person would have for joining and voting for the LP. I remember all too vividly when I first joined the party 11 years ago that any time I tried to talk about it to someone I thought might actually join during one of our county party's events, the easiest and fastest way for my sales pitch to be destroyed was for someone to say "Oh yeah, you're the bunch that wants to legalize all the drugs, aren't you?"

I believe that promoting the LP simply as the "pro-drug" party will be a disaster for the LP because, while most tolerant people will understand why we are pro-legalization once they have been exposed to our platform, if the first thing that they hear about us is that drugs should be legalized, they simply will refuse to listen further.

Kevin L. Padfield
Kokomo, Ind.

Anti-ATF Platform

R.W. Bradford suggests that the wedge issue of legalization of marijuana

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Reflections

History lesson — GOP presidential hopeful John McCain says that he admires President Harry Truman because Truman went to war in Korea without taking a poll. Indeed he did. Truman was so anti-poll that he refused to poll the U.S. Congress, as required by the Constitution.

—Sheldon Richman

Koo-koo-ka-choo — On December 11, President William Jefferson Clinton used the bully pulpit of the presidency to launch a new government initiative to protect Americans from unsafe eggs. It seems that a tiny percentage of ordinary chicken eggs somehow get contaminated with salmonella, and a small percentage of people (those already weakened by more serious diseases or old age) could get sick if they eat them uncooked.

Clinton's War on Eggs will be fought on two fronts. New regulations on egg producers are being prepared which will reduce the tiny percentage contaminated with salmonella to an even tinier percentage. And a public relations campaign will inform Americans of the need to wash their hands if they come in contact with raw egg and to refrain from eating eggs raw (say, in holiday eggnog), or partially cooked (soft boiled or fried).

And so it comes to pass that the president who began his term in office hoping to go down in history as the president who solved the medical care crisis (by having the government take over a sixth of the U.S. economy) now aspires to go down in history as the Egg Man.

A healthy thing for all Americans, I think. —R. W. Bradford

Silly suits — An outfit called the Second Amendment Foundation just filed a series of lawsuits against big city mayors who are suing gun manufacturers. The Foundation asserts that the suits interfere with Second Amendment rights. This action is as intellectually bogus as the lawsuits that the mayors are pushing. And it has my 100% support. —

Clark Stooksbury

Pot party? — I was mildly shocked by some of the responses to R.W. Bradford's article urging the Libertarian Party to use the drug issue as a wedge to gain respectable vote totals and build the organization. It would be foolish to take a viable idea like drug legalization and join it to a lost cause like the Libertarian Party.

Legalization is poised for a take-off. Two governors — Minnesota's Jesse Ventura and New Mexico's Gary Johnson — support it. Ventura did so *before* he was elected. The success of medical marijuana initiatives across the country is also a good sign, if only because it shows that people are ignoring their rulers on this issue.

What the issue needs is a well-funded educational campaign to bring the outrages involved in fighting the war into the public consciousness. If George Soros were to decide that legalization is a better approach than harm-reduction, he

might start a campaign that illuminated the stories in the book *Shattered Lives* (See "Victims All," *Liberty*, February 1999). This would make the drug-war atrocities public knowledge.

I'm no Pollyanna, but I believe that most people would recoil at the human cost of the War on Drugs if they saw the faces of middle-aged home-owners gunned-down because somebody thought they might be growing pot, or if they knew that grandmothers are serving 30-year sentences for selling a little weed.

The Libertarian Party, on the other hand, has spent a generation mired in irrelevance, trotting its nominees out quadrennially for debates with nominees from the other nut parties and collecting something less than 1% of the vote. There is no indication that its platform of near-total abolition of government will ever have more than a microscopic constituency.

The anti-government program in general has floundered since the 1994 elections, while medical marijuana initiatives have succeeded, often against strong opposition from politicians like Bob Barr and Steve Forbes, who otherwise claim to oppose big government.

I'm not predicting a breakthrough on the drug issue. I always bet on the forces of evil. But there is more hope for that issue than for the success of the Libertarian Party, especially if the Party is tied down by the suggestions that some *Liberty* correspondents make in the January issue. These readers would send the LP into political battle with empty slogans like "personal responsibility" and "getting government off our backs." Don't hold your breath for anything good to happen because somebody shouts that.

—Clark Stooksbury

In to Africa — I recently attended a speech at which an assistant secretary of state explained U.S. policy toward Africa. There is more policy toward Africa than you might think: antiterrorist policy, antidrug policy, weapons proliferation policy, peace policy, war policy. It used to be, the assistant secretary said, that the United States let the European imperial powers take care of Africa. But "that time is passed," she declared.

One proof of her statement is provided by the war between Eritrea and Ethiopia. I had to admit, quietly, to the Ethiopians at my table, that I was a bit fuzzy on this war; I thought it ended when Eritrea won its independence. They assured me that this was a new war, and it had been going on for 18 months. But the U.S. government proposed a "peace accord" — i.e., a political settlement — and got the Ethiopians to sign it. The Eritreans were still being cagey, but at least they stopped fighting. "We will not countenance a resumption of the fighting," the assistant secretary announced.

Really. Well, why not? What's it to us?

That's not the sort of question one asks at this sort of event, and I didn't ask it. Nobody else did, either. Most of the questions were from Ethiopians, and they went the other way: Why are you Americans so unwilling to condemn aggression in Africa? Do you have a different standard for Africa than for the Balkans and the Persian Gulf?

Hey, cop, get with it. Make an arrest. It's your job.

—Bruce Ramsey

Bill "States' Rights" Clinton — When Clinton vetoed the Washington D.C. budget for a variety of reasons, including its ban on any future legalization of medical marijuana, he sent this message to Congress, bureaucratically titled: "District Of Columbia Appropriations Act, 2000 — Veto Message From the President of The United States (H. Doc. No. 106-135) (House of Representatives, September 28, 1999)"

No, he never used the m-m words. He phrased it thus, "Controlled Substances. The bill would prohibit the District from legislating with respect to certain controlled substances, in a manner that all States are free to do." Uh, the states are free to legalize medical marijuana. Right. And Clinton's Justice Department is free to come into those states and arrest those who try to take advantage of that legislation. I get it.

I guess this country is a lot freer than I thought!

—Peter McWilliams

Cigarettes and Windows™ and wild, wild lawyers— Instead of seeing Bill Gates as a monopolistic predator, most Americans see him as a central player in the country's increased productivity and enhanced international competitiveness. "I'm glad he's not Japanese," says my son. With no government subsidies, no special tax incentives, and without forcing anyone to buy anything, Gates has delivered a revolution in efficiency to every sector of American life.

"It's hard to say where we'd be now without him," says a medical researcher at a New York university. "Gates created a new environment of technology, nurtured it along. Twenty years ago, when a physician would ask for information on a surgical procedure, or on how to treat an illness, I'd have to go to the Index Medicus in the library, look up the citation, the article's title and journal source, and go to the medical journal collection in the library for the full text. If it wasn't in stock, we had to request a copy with an inter-library loan, or request a copy from the National Library of Medicine in Washington. It took 10 to 15 days, and requests for information came in while patients were in the operating room, under the knife, so to speak. Today, the information is available instantly, online. More times than I can remember, I've been told by a doctor that the information saved someone's life. I hate to think of the opposite, about what was happening when it took two weeks."

A few days after the Microsoft ruling, the lawyers began to circle. "Lawyers are scouring the judge's scathing finding that Microsoft used its monopoly to hurt consumers and competitors, looking for opportunities to seek monetary damages," reported *The Wall Street Journal*. "Veterans from the cigarette wars are plotting to sue Microsoft in a wave of private litigation," said the *Washington Post*. "If the onslaught

unfolds as expected, teams of lawyers will turn Microsoft into the next Philip Morris, tangling the company in courts across the country."

Robert Hall, a Stanford economics professor (and potential "expert witness") estimates the price of a copy of Windows 98 might have been \$10 lower, were it not for the misconduct described in Judge Jackson's findings. In the money game of class action lawsuits, that means \$10 multiplied by more than 100 million copies, then tripled (triple damages), producing a jackpot of \$1.5 billion for the lawyers — and \$15 for each allegedly damaged customer.

"It's a sad day for entrepreneurs," said Brad Silverberg, a former Microsoft senior vice president. "It's a sad day for consumers. It's a sad day for innovation." It's not, however, all sad. The good news is that the richest man in the world is now on the side of tort reform.

—Ralph R. Reiland

Republican rainbow — I have little patience with politics, so my observations may be off-base. But I think that Republicans have benefited handsomely from their so-called debates. The strange assortment of competitors has shattered the media's stereotypes of Republicans as greedy, bombastic, and boring. The image had already started to blur when George W. Bush was tagged as a "compassionate conservative," but it cracked when the self-described descendant of slaves (Alan Keyes) and the son of a janitor (Gary Bauer) went on stage with multi-millionaire Steve Forbes, each of them running for president, and with about the same success.

Further crumpling the stereotype, Keyes surprises at every turn — he even expressed sympathy with the Seattle protesters. And Orrin Hatch turns out to be avuncular and plain speaking, no threat to anyone but, all in all, a nice guy. John McCain is probably closer to a Democrat than any in the bunch, so he's favored by the media.

—Jane S. Shaw

Crazy about cars — Here's a good one. It's from a New Yorker article by Joe Klein and Jane Mayer. It's a quotation from Al Gore.

"Bill Clinton sees a car going down the street and he says, 'What are the political implications of that car?' . . . I see a car going down the street and I think, How can we replace the internal-combustion engine on that car?"

Here's what I think: Is that a joke? If so, what does it mean? And what does it mean for someone like Al Gore to tell a joke?

I also think: What would this country be like if George Washington had seen a carriage coming down the street and had thought, "What are the political implications of that carriage?" What would this country be like if Grover Cleveland had seen his first lowly, dirty, sputtery Duryea car coming down the street and had thought, "How can we replace that internal-combustion engine?" And I think, how did we ever get to the place in political history where millions of people can take the thoughts of Gore and Clinton as anything but a joke?

—Stephen Cox

Hillary's hagiography — Gail Sheehy, who has written a book about Mrs. Clinton, was on Chris Matthews' show *Hardball* the other night, and she did a swell job of defending her heroine. In fact, she aggressed her heroine,

and she did it every bit as well as the heroine herself could have done.

To Matthews' astonishment, Sheehy refused to admit that the president's wife had ever done *anything* wrong. She hadn't been wrong about the health care plan, because Bill Bradley now plans to follow through on it. (Hooray.) She hadn't been wrong in blaming all her husband's troubles on a Right-Wing Conspiracy, because there really *is* a Right-Wing Conspiracy and it's always been out to get the Clintons. Mrs. Clinton believed all her husband's ridiculous lies, one right after the other, but apparently she wasn't wrong about that, either. It's only her critics who persist in being wrong.

So I'll admit it. I've been wrong. I've been wrong about Gail Sheehy, in this very reflection. She did concede that Mrs. Clinton has been guilty of one little flaw: *She's "self-righteous"* (but we can easily forgive her that).

The fact that Hillary Clinton's gigantic, preposterous, stupefying, literally incredible self-righteousness is the cause of all her other manifold failings and failures never seemed to occur to the woman who knows all about her and is therefore qualified to harangue the nation about what really makes her tick.

Ms. Sheehy was in a position to let us know, however, that Mrs. Clinton's goal in life is to be elected the first woman president. I know that this laudable ambition will reassure you about all the other things.

—Stephen Cox

The corn product is as high as an elephant's eye — Political pundits have a self-interest in keeping political races competitive. That's why no rational person should be surprised to see them promoting the viability of the campaigns of John McCain and Bill Bradley. Their function is pretty much the same as the "color man" in televised sports. They offer an occasional "colorful" comment and try to convince couch potatoes that the game is close and exciting even when it's a blowout. And that's why so little of what they say is perceptive in any way.

The most insightful comment on the current presidential campaign is Jane Shaw's observation, in this issue of *Liberty*, that the debates among Republican hopefuls show them to be a much more interesting bunch of guys than the Democratic candidates, who, as nearly as I can tell, are androids of some kind.

At the Iowa debate, candidate McCain (who isn't competing in Iowa) launched into an attack on ethanol subsidies, hoping to score points with voters in other states for his courage and candor. (Ethanol is the chemical name for grain alcohol, i.e. vodka undiluted by water. Its production has been subsidized for decades in this country, initially on the theory that it might be a good alternative to petroleum as fuel. Since it increases the prices paid to corn farmers, it is as popular in Iowa as peanut subsidies in the Jimmy Carter household.)

Except for Alan Keyes, the other hopefuls responded by swearing that they think subsidizing the production of ethanol is a great or at least a good idea. Steve Forbes tried to take a moderate position, or at least one consonant with his general opposition to government subsidies: he favors continuing the subsidy only until 2007, as a "test." Apparently, decades of subsidy haven't been test enough. He closed his comments by endorsing subsidized research for other uses

for corn.

Front-runner George Bush wasn't about to let Forbes, his closest rival in Iowa, score any points on the issue:

I support ethanol whether I was here in Iowa or not. (Applause) I support ethanol because it's good for the air. It's good for the air, good for the quality of the air. It also reduces our dependency on foreign oil.

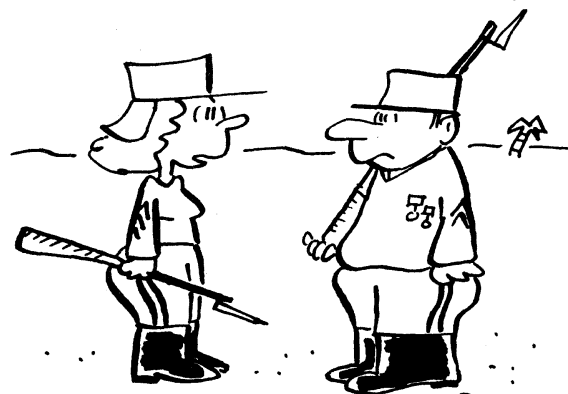
And if I become president, I'm going to spend money on research and development to find additional uses for agricultural products. This is a fantastic renewable resource. It's not only here in Iowa. It's all across the midwest. It's in the state of Texas. Forbes is right. Steve's right on that. We ought to spend money. We ought to spend money on better and more uses for agricultural products. Who knows? Maybe someday we'll be driving automobiles with 100% corn product. And guess what? We can grow it right here in Iowa.

I don't know about you, but I'm looking forward to driving a car made entirely of Iowa-grown "corn product."

Alan Keyes used the question to go off on a riff that moved me greatly:

I was reading in the *New York Times* the other day where they were declaring the family farm dead, and I think it was then repeated on one of the major news shows. And folks look at the family farming system as if the only thing we get from the family farm is the food. It has actually been the case since the Republic was founded that the family farm from Jefferson all the way forward has been understood as one of the bedrock sources of the moral character of this nation, of the sense of the combination of individuality and commitment to community, of the ability to shoulder hard work, at the same time that you value the achievements of individuals in the context of their contribution to family and community. That sense of individualism that also knows how to dedicate itself to the good of others has been born and has been nurtured and has been sustained in America's family farming sector. We lose the family farm and we lose the nursery of America's moral character. We can't afford that. And I think we therefore have a stake that goes beyond money, it goes beyond food, it is vital to the future of this country. Where did we get the young men and women that were willing to sacrifice themselves in battle, rise to the extraordinary tests of war every time we ask them to, have the courage that used to be supposedly restricted to aristocrats? We found them in the fields of America, behind the plow, nurtured in the family farms of this country. We cannot let that die any more than we can let America's heart and individuality and courage die because it's not just a question of money. It's a question of America's moral decency.

This oration brought tears to my eyes; although, as the



"But I joined the Legion to forget you!"

poet says, "I wiped them soon."

Orrin Hatch got into the general spirit of nuttiness when Tom Brokaw (can there really be such a person?) asked him whether he thought there was a relationship between legalized abortion and violence in schools:

I sure do. There is insensitivity to life in our society today. When you have 40 million babies that have been aborted since *Roe v. Wade* there comes an insensitivity that affects all of us. But I'll tell you what I'd do. I think the president of the United States ought to do in order to try and change things, is not expect from the American people something that he himself is not willing to do. I think the president of the United States ought to set a moral tone in this country. And he ought to do what is right. He ought to be a person of integrity and decency. When he goes to the movie industry, a person like this — and that's what I would try to bring. When I go to the movie industry and I go to the videotape industry and I go to the music industry, I'll have a moral power to talk to those people and say look let's get together. There is too much obscenity, pornography, violence, and crime in our society today, and it is about time you people started living up to your responsibilities as well. These young kids that have committed these murders, let me tell you something, one in particular mentioned that it was videogame Doom that he was playing. The kid in West Paducah, Kentucky. He had never shot a gun before to my knowledge he went in and knew exactly what to do because he had been playing video games. They learn how to rape, they learn how to murder, they learn how to treat other human beings wrongfully. And I tell you, I'd set an example. I think that is the first thing the president can and should do and I think the American people will follow suit.

The senator's time ran out before he had a chance to carry his notion to one of its logical conclusions: the Pentagon could save a lot of money by replacing basic training with a huge video arcade, so that kids who never before fired a gun could learn how to kill. Undoubtedly, this would also make military recruiting a lot easier.

One viewer asked the sensible question: "What political philosopher or thinker do you most identify with and why?" Forbes cited John Locke and Thomas Jefferson; Keyes cited the Founding Fathers in general and denounced the income tax. Bush responded, "Christ. Because he changed my heart." This was such a swell response

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How Environmental Regulation Prevents People From Protecting the Environment — Environmental economist **Rick Stroup** explains how iron-fisted regulators provide powerful incentives against private landowners caring for the environment. (audio: A402; video: V402)

The U.S. Forest Service: America's Experiment in Soviet Socialism — The country's premier expert on the U.S. Forest Service, **Randal O'Toole**, tells a sad tale of excessive road building, clearcutting and the strangling effects of Soviet-style centralized decision-making. (audio: A403; video: V403)

Environmental Religion in the Schools — Author **Jane Shaw** explores how schools indoctrinate children in the New Religion of Mother Earth. In this religion, wealth and production are among the deadly sins. (audio: A404; video: V404)

The Liberty Privacy Panel — **R.W. Bradford, Fred Smith, David Friedman** and **Doug Casey** explore the privacy issues of today and of the 21st century. (audio: A405; video: V405)

Advancing Liberty in the Courts — Washington Supreme Court Justice **Richard Sanders** explains how libertarians get more bang for their buck by supporting judicial candidates. You'll hear how one libertarian justice can make a huge difference! (audio: A406; video: V406)

A Libertarian in Congress — The sole libertarian in Congress, **Ron Paul**, on the art of building coalitions and on how he led the effort to slay the privacy-invading Know Your Customer regulations. Hear him recount the history of the Social Security number as an identifier, and learn how laws on immigration, welfare reform, and health care are shredding your privacy. (audio: A407; video: V407)

Does the Libertarian Party Have a Future? — **R.W. Bradford** makes a powerful case that the LP is failing to advance freedom, and suggests a controversial new approach that could lead to a political breakthrough. Judge for yourself whether the provocative strategy he outlines will propel the LP into the big leagues. (audio: A408; video: V408)

Exciting Minute of the 1999 *Liberty* Editors' Conference!

Al Gore's War on Freedom and Mobility — Al Gore hates the internal combustion engine. If he gets his way, America's cities will look a lot more like the cities of communist Europe, so says **Randal O'Toole**. (audio: A409; video: V409)

Selling Liberty in an Illiberal World — **Fred Smith** offers a revolutionary approach to spreading libertarian ideas, and explains how to frame issues for maximum appeal. (audio: A410; video: V410)

Contracts and the Net — The Internet will reshape contract law, argues **David Friedman**, at the expense of judicial power. Learn how netizens are developing institutions to allow for private litigation, and hear how arbitration and reputation loss are actually more potent on the Net than in real space. (audio: A411; video: V411)

How to Write Op-Eds and Get Them Published — Join former *Business Week* editor **Jane Shaw**, *Orange County Register* senior columnist **Alan Bock** and *Seattle Post-Intelligencer* business reporter **Bruce Ramsey** for a workshop on how you can air your opinions in the newspaper. Learn Jane's six points that will send you on your way to publication, and hear the one phrase which Ramsey says is taboo at his paper. (audio: A412; video: V412)

What Does Economics Have to Do With the Law, and What Do Both Have to Do With Libertarianism? — **David Friedman** explores how economics and law relate to each other and to libertarianism. (audio: A413; video V413)

Urban Sprawl, Liberty and the State — Urban sprawl may turn out to be one of the hot-button issues of the next elections. Learn why environmentalists want you caged in cities, and how they plan to do it with **Jane Shaw**, **Richard Stroup**, **Fred Smith**, and **Randal O'Toole**. (audio: A414; video: V414)

My Dinner With James Madison — **Scott Reid** views modern America through the eyes of a Founding Father. Our Madison discusses some little known alternatives at the Constitutional Convention, and why they would have been better for freedom. (audio: A415; video: V415)

The New Liberty and the Old — **R.W. Bradford** explains how fundamental changes are reshaping the libertarian movement, and forthrightly takes on the advocates of the non-aggression imperative. (audio: A416; video: V416)

Using the First Amendment to Smash the State — **Durk Pearson** and **Sandy Shaw** tell how they've used the First Amendment to wage total war against the government. Learn how they brought the FDA to its knees, and share their secrets for successful litigation. (audio: A417; video: V417)

Making Terror Your Friend — In a world overrun with authoritarian creeps, **Doug Casey** highlights the attitudes and techniques that set him apart from the controlled masses. (audio: A418; video: V418)

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End the Drug War or Forget About Freedom — **Alan Bock** journeys to the heart of darkness in America's failed effort at drug prohibition. The casualties of the war, says Bock, are a lot of harmless people and your civil rights. (audio: A419; video: V419)

Juries, Justice and the Law — Fully informed jury activist **Larry Dodge** explains the history and the importance of jury nullification, including efforts underway to increase the power of juries. (audio: A420; video: V420)

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that Hatch seconded Christ's nomination, adding that Abraham Lincoln ("who fought for equality and freedom for everybody") and Ronald Reagan, whose denunciation of the Soviet Union as the evil empire was "one of the most profound statements philosophically that was said in our generation," were also major influences.

Then came a genuinely scary moment. John McCain cited his greatest hero: Theodore Roosevelt, who oversaw the greatest increase of government power of any peacetime president. Gary Bauer closed with his personal testimony about the saving power of Jesus Christ.

To summarize: half of the candidates saw Christ as the "political philosopher or thinker" with whom they most identify, one cited one of the most politically evil presidents in American history, and only two cited figures who could conceivably be described as political philosophers.

But the most preposterous moment came when Tom Brokaw, who spent the debate strutting around the huge stage in front of the candidates, posing pontifical questions, concluded the affair with these well-rehearsed words:

Let me just say something that you need to hear from a reporter. Let me just say that it takes a lot of courage and it takes a lot of energy to run for president of the United States. We all owe all of these men a great debt as well as the Democrats who are running. It's a personal privilege for me to share the stage not only in Iowa but across the country because there are few more important things that we'll do in our lifetime than pull the lever for the president of the United States, especially as we enter a new century. There's no piece of software that will do that for us. It requires our commitment with our mind and our heart. Your presence here tonight is a great tribute to your commitment as citizens to this process as well. Thank you all very much.

Almost every word he uttered was utter nonsense, designed merely to flatter the candidates and the audience. It doesn't take courage to run for president; it takes power lust. And pulling the lever in the voting booth is one of the least important things that Americans do. The major party candidates from whom they choose seldom disagree on any substantial matter, and the candidate who gets elected will pretty much ignore everything he promised during the campaign anyway. That's why typically fewer than half of Americans bother to vote. The idea that this election is more important than most because we are entering a new century is just silly: was McKinley's election in 1900 anything special?

Perhaps the most preposterous nonsense that Brokaw uttered was his contention that voting requires using one's "mind and heart." The overwhelming majority of voters choose their candidates out of habit, and most of the others choose them out of whimsy.

One of the voters and candidates whose minds and hearts are now so prominently on display — most likely Bush or McCain — will almost certainly be our next president. And for most Americans, it will make hardly any difference at all.

—R. W. Bradford

Rebellion in Latteland — In November, thousands of protesters descended on Seattle to voice their support for global poverty. Union-inspired wage inflation has forced industrialization beyond our borders, and people want it stopped. More could be done for the plight of poor

people overseas, had the protesters traveled there to organize the workers into unions like our own, but SUVs don't travel well over open oceans, and Third World police don't shoot rubber rounds. "Fair Trade, not Free Trade" was the mantra. So Fair is preferable to Free. But would Lincoln have been immortalized for being fair to slaves? Would Sir William Wallace have been an inspiration to Scotland, had he used his dying breath to scream the word "fairness!?" In reality, the protesters' biggest victory was chasing convention business away from Seattle, thus resulting in less work for union electricians, carpenters, and dock workers.

—Tim Slagle

The peaceable kingdom — A recent meeting between Christian Right leader, the Reverend Jerry Falwell, and gay rights activist, the Reverend Mel White, suggests that America may at last be sobering up. The view that America was a terribly racist, homophobic, sexist, xenophobic place — that laws mandating "fairness" were the obvious remedies — has been dominant for some time.

All this is surprising because America, unlike Europe, was never a consensus society. National unity, consensus, was Europe's game and many people died to determine whether God wanted mankind to be Catholic or Protestant. In America, we learned from that experience and separated church and state, not because we rejected religious (or other) values but precisely because we felt that values were best formed privately. In America, all faiths were free to proselytize; none was free to coerce.

Libertarians sometimes forget this fact. They seek to increase the number of libertarians (a commendable goal) rather than working toward a society of libertarian institutions. Far more people might support privatization, school choice, federalism, and so forth if we explained why these institutional arrangements improved their prospects for advancing their own values. Sometimes free market and business types seem more interested in converting people than in moving toward a liberal society.

Great American individualists such as Thomas Jefferson recognized liberty as the highest value. But America also knew the hierarchic values of Alexander Hamilton, with his preference for order and efficiency, and Thomas Paine's egalitarian preferences, which identified fairness to the "little guy" as the key social objective. The genius of America was not consensus but rather a culture and an institutional creativity that made it possible for diverse values to coexist in peace. The centralizing tendencies of the hierarchists were checked by an ad hoc alliance of egalitarians and individualists. Individualists never saw political power as the key to advancing their views, but in America neither did egalitarians from Paine through Andrew Jackson.

The balance was destroyed by the progressive movement's successful capture of the egalitarian high ground. Progressives — today's liberals — have consistently argued that anything worth doing is best done politically. Mankind, equipped with the proper set of federal laws and guidelines, can achieve heaven on earth. The statist abduction of egalitarian values accounts for our modern civil rights laws and our coercive environmental policies (God is banned from our schools; Gaia worship is compulsory).

Thus, I find it encouraging that two people, representing

groups that have argued strongly for government endorsement of their opposing viewpoints, have gotten together peacefully and as individuals. There is no way that government can endorse both their views — but it could recognize that it shouldn't seek to do so, that their favorite issues, like so many others, had best be resolved privately. Perhaps this means that America is coming to its senses about its own heritage. It's about time.

—Fred L. Smith

Inches to centimeters, dust to dust — “NASA Failures Prompt Vow of Program Reform”: so said the banner headline in the *Los Angeles Times*. Translated, those words meant that NASA officials planned to find out why their two 1999 missions to Mars had ended in total failure, taking 357 million innocent little tax dollars with them

But don't get your hopes up. The idea is *not* that NASA may be wasting your money, and that somebody finally needs to investigate and maybe put a stop to that. Quite the opposite. The rest of the article consisted largely of wailing from the agency and from science policy wonks about how *little* money the space program is spending. These people suggested that space missions might start being successful if their price could just be made a little higher. Maybe a lot higher

Well, no one knows why the latest Mars probe committed suicide. But the probe that died earlier last year, the Mars Climate Orbiter, perished because of what the *Times* delicately called “a navigation error.” To put that in plain English, the first gang of guys who worked on the Orbiter did their calculations with English measurements, but the second gang of guys went metric, and nobody noticed the discrepancy

Tell me, space fans, was that a problem induced by “underfunding”? I mean, how much do you want us to spend on those little rulers that have inches on one side and centimeters on the other?

—Stephen Cox

Swords and nudity don't mix — On November 28th a naked man brandishing a sword attacked a congregation at St. Andrews Catholic Church in a suburb of London, another sign that sword control is well overdue.

Swords have no legitimate sporting necessity; their only purpose is for killing people. Yet England's laws governing swords lag far behind the rest of the industrialized world. There are still more swords in the hands of private citizens in England than almost anywhere else on the planet. This is a residual effect from the “Knights of the Round Table”

mentality that infects most British citizens, a violent heritage they refuse to abandon. Quite possibly, it also reflects the anti-Catholic sentiment that has prevailed in England for centuries. From the point of view of many English Protestants, it makes little or no difference how many Roman Catholics are mowed down by swords.

But people around the world are asking, how many more tragedies must Britain endure before it catches up with the rest of civilization?

—Tim Slagle

Tax revolt, 1999 model — On Nov. 2, voters in Washington (the state, not the death star) had an opportunity to reduce radically the cost of vehicle license plates. On their ballot was an initiative to replace the state's license plate fees with a flat annual \$30 charge.

One of the things you notice when you cross the Columbia River into Oregon is that the cars on the road are newer and more expensive than those you saw in Washington — a curious phenomenon, considering that residents of Washington enjoy higher incomes than Oregonians. Why the difference?

Two reasons: Washington has a substantial sales tax (around 8% in most counties), while Oregon has no sales tax. And Washington license plate fees (based on the value of the car) are among the highest in the country, while Oregon charges a flat \$28 license plate fee for two years.

When Washington's secretary of state announced that a small group had gathered the hundreds of thousands of signatures needed to put the anti-tax initiative on the bal-

lot, various special interests immediately organized a campaign to defeat it. The campaign was intense and well-financed, with thousands of television commercials, millions of pieces of direct mail, and organized campaigning by nearly every union and government body in the state. The campaign for the measure had virtually no money; it consisted primarily of an occasional interview on television of someone who favored the measure. The only support came from the Republican Party (which endorsed it by a small margin after having previously voted against endorsement) and the Libertarian Party.

The measure passed easily.

Understandably, foes of big government began to tout it as evidence of a rising anti-government feeling. I wish it were. But it isn't.

The measure passed because the government had simply gotten too arrogant and too greedy. The licensing fee had grown to a point where it was obviously ridiculous. The last

The Annotated Emma Lazarus

Give me your tired,¹ your poor,²
Your huddled masses yearning to breathe free,³
The wretched refuse of your teeming shore.⁴
Send these, the homeless, tempest-tossed⁵ to me:
I lift my lamp beside the golden door.⁶

— Emma Lazarus

¹ October 12, 1998: Six illegal Mexican immigrants died as they slept on railroad tracks in Texas.

² November 29, 1982: Benita Rivera Hernandez was struck by a car while running from the Border Patrol. Her legs were amputated. Four other illegal Mexican immigrants were killed by the same car in California.

³ September 5, 1980: Felix Tavarez and 21 other illegal Dominican immigrants died of asphyxiation in the hold of a freighter going to Miami.

⁴ October 26, 1981: 33 illegal Haitian immigrants died near Florida when their boat capsized.

⁵ December 17, 1998: Eight illegal Cuban immigrants died when their boat capsized en route to Florida.

⁶ June 28, 1987: Hector Carillo Flores and 17 other illegal Mexican immigrants died of dehydration and convulsions in a locked railroad car in Texas. “They appear to have gotten excessively hot,” said William Harrington of the Border Patrol.

—Martin Solomon

time I renewed the plates on my motorcycle — a nine-year-old model that cost \$4,500 new — it set me back nearly \$100. Owners of newer cars paid much more.

I have lived in Washington for 19 years. During that time, the property tax on my home has increased five-fold. The sales tax has gone up by 58%. The cost of water, sewage, and garbage collection is now more than five times what it was when I arrived here. Yet there has been little resistance to these increasing taxes because most voters saw them as necessary and even salubrious.

License plate fees, on the other hand, were inflated by the artificially high values assigned to vehicles; and they were raised surreptitiously, with tiny increases engineered to finance programs entirely unrelated to the ownership of cars.

One of the favorite tactics of those opposing the tax cut was to list the government services that would have to be cut if it were enacted. I suspect that this had a lot to do with why the measure passed. A huge portion of the money went to subsidize the state-owned ferry system, which is regularly used by only a small portion of residents of the Puget Sound region. Voters in the eastern portion of the state almost never use it, and couldn't see any reason why they should pay a substantial annual fee for its subsidy. The system needs a huge subsidy because (guess what?) it is an inefficiently managed government enterprise. But that's another story.

The license fee also financed a hodgepodge of other government services, including even marriage counseling. Voters simply couldn't see why these programs should be financed by owners of motor vehicles. Since the election, people have put off buying new license plates until the new law takes effect on January 1, and local governments have rushed to increase taxes before that date.

Of course, the best part of the measure from a libertarian perspective is the provision requiring a popular vote on all proposed increases in taxes or government fees. Most voters, I suspect, barely noticed this provision, which was added to the initiative to keep the state from raising other taxes to make up for the lost revenue from license plate fees.

The new law is the price that advocates of ever-bigger government paid for their arrogance. It will be much more difficult for them to raise taxes until and unless this measure is repealed. But I doubt it will be impossible: voters in Washington continue to favor a powerful and intrusive government.

Meanwhile, the passage of this anti-tax initiative makes Washington an even better place to live. It remains one of a handful of states that have no income tax at all, and its taxes on real estate remain low in comparison to real estate taxes in some other states, even after their growth during the past twenty years. Its constitution, and its supreme court, provide much better protection of individual rights than those of other states. It's no libertarian nirvana, but compared to the rest of the country, it's pretty good — especially now that its automobile taxes are among the nation's lowest, and state and local governments can't even raise fines for overdue library books without a vote of the people. —R. W. Bradford

Space junk — Another NASA lemon has disappeared into the black hole of Mars. Mars has now consumed more resources in one year than its nearest competing planet, the Corporation for Public Broadcasting. —Tim Slagle

Monomania — While on a recent trip to Seattle, I was tempted to ride on the local religious icon — the monorail relic from the 1962 world's fair. I discovered that it was "out of service" at the time — and that it is very often out of service. Like most political systems, this was a "special" project by a company that soon moved onto other areas. Parts, therefore, are a major problem — many have to be specially manufactured. In contrast, junk yards throughout America (and the world) keep old Chevies and Fords running forever. Isn't it time for the mass transit types to recognize that the automobile has already solved the problem? —Fred L. Smith

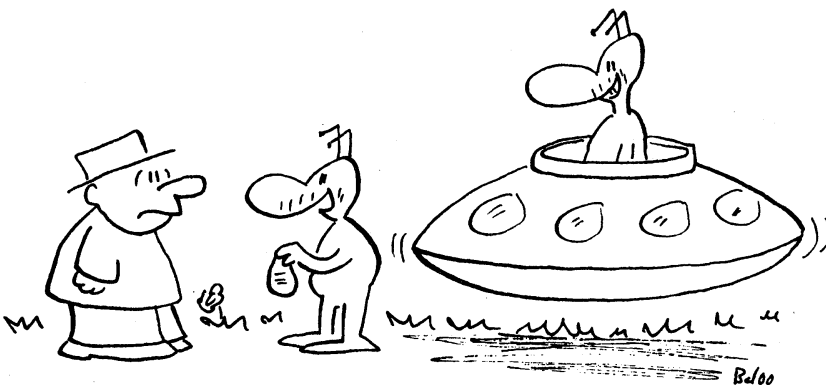
Barry's world — This is a portion of a speech that the nation's drug czar, General Barry McCaffrey, gave on Veteran's Day, November 11, 1997, at the Vietnam War Memorial in Washington:

A ceremony at this site brings to mind the images of the nearly three and a half million men and thousands of women who served in the Vietnam theater. It also brings into sharp focus the faces of mothers, fathers, young wives, and children who braved the uncertainty of that conflict, waiting with anticipation for the return of loved ones.

Our country did not treat any of you with the respect, support, and compassion you deserved. It was a shameful blot on our history to send our country's young men and women off to this terrible conflict and then use our soldiers as objects of blame for the divisive political struggle that ripped the nation apart for a decade.

More than 58,000 died and over 303,000 were wounded. The bloodshed was terrible, and the suffering has not ended. At least 80,000 of our ranks still suffer from severe service-connected disabilities; around 6% of our Vietnam War comrades suffer from drug abuse or dependence; 11% suffer from current alcohol abuse; many are homeless; and others still suffer from war-related psychological and physical problems.

This continuing heavy human toll demands that we Americans vigorously support the finest possible health care in our Veterans' Administration facilities and sustain strong outreach programs to assist veterans suffering from drug and alcohol dependency and physical and emotional wounds. Our nation needs to



"You bet we're here to help you — we've got some great drugs to sell!"

make the sacrifice for those who sacrificed so much in Vietnam.

I wonder whether McCaffrey knows — or cares — that his deception about medical marijuana is the direct result of B.E. Smith's federal incarceration. B.E. served two tours of duty in Vietnam as "point man" for his platoon — the most dangerous position, as it draws "first fire" from the enemy and permits the other platoon members to take cover and prepare for battle. He courageously volunteered for his two tours of duty and for the heroic defense of his platoon.

B.E. served as "point man" for California medical marijuana patients by volunteering to be the first medical marijuana patient tried and sentenced by the federal government since the passage of Proposition 215. He turned down a plea agreement that would have netted him no prison time, so that people would see what the federal government was doing to both sick people and the voters of California.

B.E. is in federal prison now because he used medical marijuana to treat his Vietnam-induced post-traumatic stress disorder — one of McCaffrey's "others [who] still suffer from war-related psychological and physical problems."

Happy Veteran's Day, general.

Here's a letter from B.E. Smith's wife:

For all of you who get this email, can you please forward his new address so people can write him. It encourages his heart, and helps keep him going. His birthday was November 6, and he couldn't even call home, so let's really pick him up with cards and letters now. He won't be able to call me as much, as this place is very big, with only a few phones, and they rotate in using them. Also, even in visiting they have to be pre-approved, so I don't know when I'll be able to see him. So, if you all help me get BE's address out, we can flood him with love and encouragement, and wish him Happy Birthday, and Happy Thanksgiving too! And then Merry Christmas! Love, Mary Gale Smith. His address is: B.E. Smith-11691-097, PO Box 6000, Sheridan, Oregon, 97378. Please be sure to put your first and last name and full return address, or B.E. will not get it.

I'm sure Mary Gale Smith would like to hear from you, too. She's a good Christian woman who doesn't understand why her man does the crazy things he does, but she loves him just the same. Her e-mail is: besmith@snowcrest.net

If only General McCaffrey would listen to commentators from Walter Cronkite to Bill Moyers to Geraldo Rivera to John Stossel who have called the War on Drugs "another Vietnam." If only Drug Czar McCaffrey would listen to Vietnam War veteran McCaffrey (again, from McCaffrey's Veteran's Day speech November 11, 1997):

Nearly three decades have passed since our time in Vietnam. The historians may still be sifting through mountains of documents. However, most of us assembled here already know what we learned from the War.

First, we must not commit our youth to war without the support of the American people. For in a democracy, lack of such support produces catastrophic divisiveness and weakening of national will, which are essential to winning.

[Amen!]

Second, we must not send our sons and daughters to war without a clear understanding of national aims and the costs for achieving them. For failing to articulate these requirements leads to flawed strategies and higher casualties.

[Amen! Amen!]

Third, victory will be paid for in blood by the men and women who serve and by loved ones at home who must bear separations, recoveries from wounds, and ultimate sacrifices.

[Such as life sentences without possibility of parole for drug offenses.]

And fourth, as individuals, we learned that to survive and succeed when conditions are appalling and your life is on the line requires: moral and physical courage, competence, self-discipline, and trust in your buddies.

[I feel the trust; I'm not sure I have the other qualities in sufficient quantity to stand up to the \$50 billion drug war machine, but I'm doing my best.]

But did McCaffrey listen? No.

Here's what General Drug Czar McCaffrey asked of America as he stood before the Vietnam Memorial:

Our nation needs your help:

First, help Vietnam veterans in need. Get involved in state, local, and veteran organizations. Offer your energy, time, money, and support.

[Help get B.E. Smith out of prison, for example.]

Second, battle the evil of illegal drugs. Get involved in state, local, and community anti-drug efforts.

[There are none so blind as those who dare not see.]

Third, improve your community. Get involved in other activities to make your community better. Our nation's leadership system works from the bottom up."

[Except when it comes to medical marijuana initiatives, of course.]

Watch while McCaffrey whisks past ironic, skinny dips in hypocritical, and winds up in endless orbit around arrogant ignorance.

—Peter McWilliams

Battle of the Coral Sea — Colonies of coral have been found growing on North Sea oil platforms. Dismantling the platforms would destroy the habitat of a threatened species. So don't dismantle them, right? But when industry and nature are found coexisting peacefully, eco-Marxists show their true stripes: Greenpeace still battles the oil rigs, holding that they are destructive to natural coral reefs.

—Tim Slagle

Alexander the Good — Libertarians have long been dedicated to the idea that the traditional, bipolar political spectrum obscures more than it reveals. This idea of getting beyond Left and Right spawned the LP's most charming outreach device, the "World's Smallest Political Quiz." But it sometimes seems that this approach — equal parts genuine insight and marketing ploy — itself obscures more than it reveals. Repeating the "Left is good on social issues/Right is good on economic issues" mantra may lead many libertarians to think there's more moral health left in the Left than there really is. These days, the largest threats to freedom of speech and freedom of association come from identity politics pushed by multi-culti-crypto-commies from the port side of the spectrum. And the old antiwar liberals seemed to have all but vanished when Clinton's cluster bombs rained down on the Serbs. In such times, it's hard not to be skeptical about the lingering hope of an "opening to the Left."

But then again, there's Alexander Cockburn. An occasional dose of the transplanted Irishman's "Beat the Devil"

column in *The Nation* is enough to restore one's conviction that the anti-state movement can find friends on both sides of the aisle.

In recent issues of *The Nation*, Cockburn's been giving hell to democratic socialist Daniel Lazare for his denigration of the Constitution. According to Lazare, overriding the Second Amendment would constitute a victory for "the fine old Jacobin principle that no right is inalienable except the right of the democratic majority to exercise its untrammelled sway over the whole of society." Cockburn will have none of this. He uses his attack on Lazare as a launching-off point for a broader critique of modern-day liberalism: "For some years I've argued here and elsewhere that on many fundamental issues of freedom liberals have either been asleep or on the wrong side." Among those: "a jury's right to nullify" "satanic abuse hysteria (denying due process to the accused)" and "the state run amok (Waco)."

On this last, Cockburn's outrage is palpable: "To this day one can meet progressive types who devote many of their waking hours to activities designed to save Mumia abu Jamal who didn't give a toss about the Branch Davidians and their terrible slaughter by the federal government, and who still don't." That sentence is taken from one of the single best columns I've read on the murders at Mount Carmel: "Waco and the Press." In that column, Cockburn quotes Ted Koppel on the recent unravelling of the FBI's Waco coverup; said Herr Koppel on *Nightline*, September 1, 1999: "The credibility of the FBI, which probably did tell the truth about most of what happened, that credibility is badly damaged, while the credibility of conspiracy theorists . . . is newly enhanced. It is on these two fronts that the greatest damage has been done." There's the real tragedy of Waco for you. As Cockburn puts it: "In this disgusting paragraph Koppel defines his career role as flack for state power. For him the issue is not that an agency of government planned mass murder, just as the so-called conspiracy nuts first surmised. For him the issue is the credibility of the state. For the liberal elite — in whose ranks most so-called conservatives can be numbered — this is always the issue." For that passage, I can forgive a hell of a lot of ideological impurity.

Cockburn himself is quite tolerant of what he sees as ideological impurity. Tolerance, that much-touted leftist virtue, is honored more in the breach than in the observance when it comes to ideological deviation from the progressive "norm." Yet Cockburn practices what many leftists only preach, reaching out to people with whom other progressives wouldn't deign to associate. As the exchange with Lazare

reveals, Cockburn's talked a bit to Gun Owners of America's Larry Pratt without running screaming from the room. Cockburn can be found praising House Republicans for opposing the war on Serbia and cutting off funds to an FBI computer surveillance system. And a recent *American Spectator* piece by Brian Doherty on Rep. Ron Paul, has Cockburn praising Paul to the skies for, among other things, his opposition to Clinton's foreign wars. Pressed by Doherty to articulate some area of disagreement with Rep. Paul, Cockburn merely opines that the congressman's "reverence for gold is a little excessive."

More important than his stand on any given issue or his willingness to cross ideological divides is Cockburn's libertarian sensibility. Cockburn is gripped by the Irishman's innate suspicion that the powers that be are out to screw him, his neighbor, and anybody else that lacks the power to defend himself. This makes his writing bristle with the kind of high-octane state-hatred that hasn't been seen in *Reason* in quite some time.

It is true that Cockburn's bad on capitalism. Who cares? If any movement needs a big tent, it's the anti-state movement, lest we fragment into so many tiny bands of what Russell Kirk called "chirping sectaries." The struggle of our time is, in the main, not a question of Left vs. Right, but of Liberty vs. Power. In that fight, Cockburn is on our side. —Gene Healy

Cats are people too — Environmental activists want to curb sprawl by creating "urban growth boundaries" around cities. People would be allowed to settle within the boundaries but not outside them. To get an idea of how this might work, we can look at the policy adopted by the National Audubon Society for cats.

In the official cat resolution adopted by its board of directors, the Society points out that cats (like people) are "nonnative predators in all habitats in which they occur." They are "exceptional and prolific predators" who have had more of a role in "the extinction of more bird species than any other cause, except habitat destruction." Audubon wants its chapters to work with authorities to "restrict and regulate the maintenance and movement" of cats.

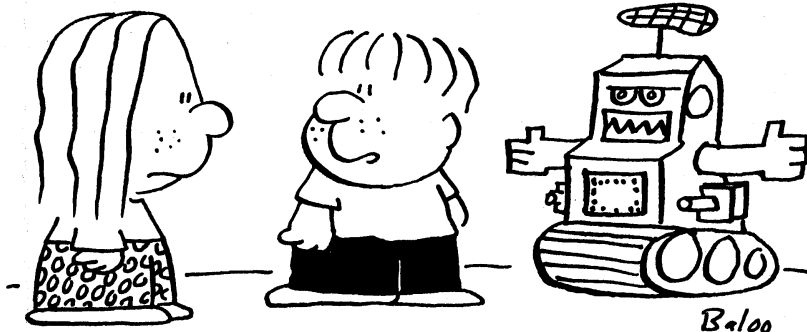
The goal for many cat owners, Audubon's website indicates, will be to "convert an outdoor cat into a contented indoor pet." This is just what they are recommending for humans, too: stay inside those boundaries, curl up in a ball, and stop messing with the wildlife.

—Jane S. Shaw

A birdbrain in the hand beats a bird-brained Bush!—

Funny, isn't it, to think that Dan Quayle's presidential bid stalled because the former Vice-President lacked brains and gravitas. After watching George W. Bush's recent pratfall in the Republican presidential debates, Quayle must be seething with indignation. Punch-drunk and tongue-tied, W. staggered through the debates mumbling "11th-largest economy in the world . . ." and generally making one wistful for the eloquence of his father.

Both Quayle and Dubya are men of stunningly average intellect. But the difference is this: Quayle, one could sense, wanted to be smarter, and tried doggedly to improve himself. His wife Marilyn,



"I got it for Christmas — I only hope I'll never have to use it!"

clearly the brains in the family, once noted that for some years, every summer Dan would try to struggle through Plato's *Republic*. It says something good about Dan Quayle, I think, that he recognized his limited intellectual gifts, and worked up a bit of a sweat trying to improve himself. (Hell, I never made it all the way through the *Republic* either.)

W., on the other hand, never even tried. He thinks reading's for geeks. When asked by Tucker Carlson in *Imagazine* to name something he's not good at, W. responded: "reading a 500-page book on philosophy or public policy or something." Cute. The G.O.P. establishment has anointed a smirking trust-fund kid who can't talk, doesn't read, and considers his intellectual underachievement a badge of honor.

Danny Boy, come home. All is forgiven. —Gene Healy

Violent nonviolence — Reports from Seattle during the WTO meeting again raise the question of a supposed contrast between violent and nonviolent demonstrations. Much that happened was violent on any plausible definition, but television aired some complaints about police response to supposed nonviolence, such as demonstrators' chaining themselves to property or to each other and sprawling on streets and sidewalks. Such behavior deliberately blocks access to meeting places and obstructs people's ordinary comings and goings. It employs physical force: it intrudes physical objects, if only the demonstrators' bodies, into places where other persons have a right to pass. If not precisely the same as shooting people or beating them up, it is at least a *threat* of physical violence in the literal sense. Anyone trying to pass the obstructions risks being mauled himself or making contact with the demonstrators' bodies in a manner susceptible to being misreported as aggression.

Blockades harm people physically or impose risk on them in still other ways. They increase the risk of accidents by diverting traffic onto routes less familiar to drivers and by rattling drivers; they obstruct the passage of rescue vehicles; they divert police resources from their ordinary security functions; they contribute to a climate of confusion in which the police risk making mistakes at the expense even of perfectly innocent persons.

Let us be hard-nosed in our perceptions and our distinctions. We should not confer respectability on supposedly merely passive physical invasion of other people's space; we should not let it share in the dignity of free speech and reasoned argument. Blockades are not speech. What happened in Seattle was the opposite of free speech and reason.

—Leland Yeager

Is Congress obsolete? — The lack of decent training about the Constitution in public schools, coupled with government propaganda on the subject enabled Bill Clinton to state openly that he is deliberately violating the Constitution. The Constitution clearly provides in Article I, Section 1 that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Yet, Clinton openly admits (even brags) that Executive Orders and Department of Justice lawsuits are intended to bypass the Congress in formulating law. For example, the White House made it clear that the threat of lawsuits by federal public housing against the firearms industry was at least in part

because of the resistance of Congress to passing the national gun-control legislation desired by Clinton.

In a recent press conference, Joe Lockhart, the White House Press Secretary said, "The legislative branch certainly has enough authority [to pass laws]. Should they choose not to exercise that, we have other ways of doing it." Congresswoman Helen Chenoweth-Hage (R-ID) has filed suit challenging those extra-constitutional ways of legislating, arguing that Clinton's Executive Order 13061 that creates the American Heritage Rivers Initiative (a new set of rules to control users of rivers and owners of land near rivers) is an unconstitutional usurpation of the Congress's sole authority under the Constitution to make law.

The appellate court has already ruled that congresswoman Chenoweth-Hage does not have *standing* to file the suit! Yikes! If a Congresscritter does not have standing to challenge a violation of the separation of powers, then who does? The case has been appealed to the U.S. Supreme Court.

Clinton's creation of the immense Grand Staircase-Escalante National Monument in Utah by Executive Order coincidentally (ha!) halted the development of a multibillion dollar low sulfur coal mine that would have competed with James Riady's coal from Indonesia.

As Lockhart explained, "Stroke of the pen, law of the land. Kinda cool."

—Durk Pearson & Sandy Shaw

Bombs over Texmexico — The FBI is investigating two mass graves near the Texas-Mexico border, which the Mexican Attorney General's office says may contain "hundreds of bodies" of organized crime victims.

I suppose NATO will begin air strikes south of the border any day now.

—Brien Bartels

The comforting presidency — *The New Republic* has hypothesized that Americans have a natural attraction to dumb presidents. I suspect it's more a case that voters seem to be most attracted to presidential hopefuls who seem comfortable in their own skins — who have achieved either enough maturity or self-knowledge to have a pretty good idea of who they are and to have ceased worrying too much whether everybody will like them.

That was certainly one of the main appeals of Ronald Reagan, while a certain sense of trying too hard undermined Jimmy Carter. George Bush, I think, both benefited and was hurt by this tendency — he had a certain goofy, don't-give-a-damn charm but wasn't utterly comfortable with himself. Bill Clinton is a scurrilous scawlag bordering on the criminal in his utter disregard for others, but he also seems comfortable to be just that; he plays various pseudo-humanitarian games, but he knows he really isn't fooling too many of us and he doesn't care and we love him for it.

I would contend this comfortable-in-your-own skinniness is the main appeal of John McCain and the major bane of Al Gore, who never seems to know who he is and is clumsy about trying to find himself. Forbes used to know who he is but doesn't seem to any more. Gary Bauer and Alan Keyes are content to make a living as fringe characters, so they are comfortable and thus have an appeal to certain elements. And the possibility that Dubya is still finding himself and that's why he doesn't like to appear in public worries Americans more than the possibility that he might not know

much. I'm not sure where Bill Bradley fits into this. He's a thorough phony but he may be a sincere phony who is comfortable with his phoniness. But I think the American people will eventually dope him out. —Alan Bock

Federalizing loco law enforcement — One of the more disturbing aspects of the Battle for Seattle during the WTO confab was the news, reported by CNN and others, that "more than 160 active duty military personnel, including a small number of Special Forces troops, were sent to Seattle by the Defense Department." These troops were deployed before it became obvious just how large-scale the protests would be (though not before most sentient Americans were aware something would happen on the streets of Seattle). CNN said the "military specialists are in place largely to provide expertise and assist in coordinating a federal response in the event of a terrorist attack during such a high-profile event."

Thus the blurring of the distinction between the military and law enforcement continues apace. The old *Posse Comitatus* law forbade the use of the military in domestic law enforcement, for the very good reasons that fighting wars and enforcing laws are different missions requiring different skills, and nobody wanted a military-dominated government. But exceptions were made for the Drug War. Some military forces got into trouble a few years ago when buttressing the Border Patrol. And now it seems that the remote possibility of terrorism furnishes yet another excuse for using military personnel in what are essentially domestic — and local, not even federal — law enforcement situations.

—Alan Bock

Lies, gun lies, and suicide statistics — The headlines said it all — "Handguns Dramatically Increase Suicide Risk — Study." Research published in the *New England Journal of Medicine* (NEJM) seemed to prove that buying a handgun makes it more likely that you'll kill yourself. Gun control advocates immediately leapt on the study as more evidence that society needs stricter regulations — it "goes a long way to blowing away the argument that handguns are protectors," said a spokesperson for the Violence Policy Center, quoted in *The Los Angeles Times*.

But the study does not prove what the headlines claimed. More importantly, the headlines missed the point that suicide is about more than gun control.

The study looked at whether recent (legal) gun purchasers in California — an overwhelmingly prosperous, young, white, male sample — killed themselves shortly after buying a gun. The actual number of suicides amongst recent purchasers was very small — only 114 out of 238,292 in the survey period killed themselves with a handgun (and we do not know whether it was with the particular handgun purchased). In such a small group, the potential for statistics being skewed by "false positives" — where suicide follows purchase of a handgun, but the two events are not connected — is much greater. The statistical significance of the findings is therefore slightly suspect.

NEJM was also at pains to point out in an editorial that "the current findings do not demonstrate that the purchase of a firearm caused suicidal behavior or actually increased the risk of suicide among those who purchased handguns."

In all probability, the suicide rate for recent purchasers of rat poison is greater than that of the general population. Having decided to commit suicide, a person is likely to use the most efficient method. Someone who has rat poison handy will take that. A gun owner will more likely use a gun than jump in front of a train.

These ideas are backed up by existing evidence. According to Gary Kleck, Professor of Criminology at Florida State University, nine out of thirteen previous studies found a significant association between gun ownership and gun suicide, but only one found an association between gun ownership and total suicides. In other words, the more guns there are, the more likely a suicide is to use a gun, but the number of guns has no effect on the overall level of suicide. This is borne out internationally. Japan, Sweden and Germany, with small numbers of guns in comparison to the United States, have higher suicide rates (16.72, 15.75 and 15.64 per 100,000 respectively, compared with this country's 12.06). It is safe to say that buying a gun does not mean that you're more likely to change from being contented to being suicidal.

Nor does the NEJM study "blow away" (odd language for a gun control advocate) the defensive argument for guns. An interesting observation that does emerge from the study is that the risk of death from homicide was lower among recent gun purchasers. This may mean that gun owners are more able to protect themselves; it may also mean that legal gun purchasers are less likely to be victimized in any event — unsurprising given their higher socio-economic status. But to claim that the study blows "away the argument that handguns are protectors" is flying in the face of what the study actually says.

Finally, in one piece of good news, it appears that Americans are getting less and less likely to kill themselves with guns. Figures released on Nov. 18 by the CDC show that the number of suicides by firearms has dropped from 19,213 in 1993 to 17,767 in 1997, a decline of 10%. Intentional self-inflicted gun injuries have decreased even further, from 6,514 to 3,699 in the same period — a decrease of 45%. This echoes a dramatic decrease in the number of homicides and assaults with firearms in those same years. Suicide is a probable measure of how generally discontented a society is, and so the falling numbers are to be welcomed. It can vary over time — suicide was once known as "the English disease," but England now has a rate much lower than that of the United States and many European neighbors.

A decreasing suicide rate is undoubtedly a good thing, but to think that gun control laws can magically reduce that rate is going too far. Suicide is far too serious a subject to be used as a pawn in the struggle over firearms. In terms of the cost in human lives, it inflicts much more damage on society than homicide. It is about time it was given the kind of attention it really deserves.

—Jain Murray

Ricky Ricardo, call your office — Friends recommended Wim Wenders' *Buena Vista Social Club* and I often like films about musicians (beginning with *Monterey Pop*), so I went to see it.

It is hard for me to believe how inadequate and incomplete the film is. Technically, it suffers from a nervous cameraman, abetted by a nervous editor, so that the big

screen is never still, not even when it should be. The jumpy camera partially accounts for the absence of strongly memorable images, which are one measure of distinguished filmmaking. Conversely, some of the nonmusical scenes are clichés, beginning with the elderly Cuban musicians' awed impressions on their first visit to New York City, made worse by a limited and undistinguished representation of my home town.

The intellectual insufficiencies are many and more dangerous.

When the musicians individually introduce themselves, a much younger man, otherwise buried in the band, identifies himself as a kind of facilitator. What does that mean? What exactly does he do? The film doesn't say.

More than once the elderly musicians complain that their kind of music was unknown for many years, as though they were victims of changing fashions in commercial culture. Hold on, you say; there's no commercial culture in Cuba, and certainly no commercial music. If these guys were working other trades in recent decades, as they claim, the reason is that the state didn't support them as musicians. Nowhere in the picture does anyone ask why and how this happened. Nor does anyone ask why they didn't leave Cuba.

Knowing nothing in particular about this case, but knowing something about culture in Communist countries, I venture that the absence of support resulted from "cultural policy" that was favoring something else. The film says nothing about this.

Similarly, while the film shows the elderly musicians in New York, it doesn't deal with the crucial issue of how they

were paid. When the Bolshoi Ballet came to New York decades ago, the Soviet government collected the promoters' money while giving the musicians change for expenses.

To my ears, this Afro-Cuban pop music scarcely compares with what I've been hearing in New York for the past decades, beginning with the band organized around Machito, which was the taken name of the late Frank Grillo — a band that in some form still exists. (The great Columbia University radio station, WKCR, celebrated Machito's birthday on 3 December with a 14-hour marathon.) Indeed, *The Buena Vista Social Club* reminded me of a far superior documentary about Machito that I'd seen over public television perhaps a decade ago. One point of that film was that independent Cuban culture survived better in America than it did in Cuba, just as much Russian culture survived better in New York during the Soviet decades.

That thought made me suspect that the music featured in the *Buena Vista Social Club* was dismissed in Communist Cuba as exemplifying a decadence that allegedly went north and that the elderly musicians featured in the film were those who had the misfortune to stay behind. While relieved to see their evident pleasure in returning to the music of their youth, I wanted a film with more clarity and less dishonesty.

—Richard Kostelanetz

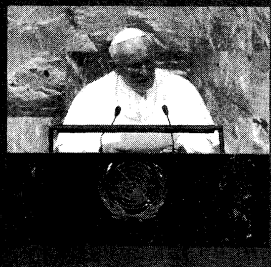
Picture this — Rush Limbaugh sits at a banquet table with William F. Buckley, Jr. and Henry Kissinger celebrating the fact that Buckley's Public Broadcasting System program *Firing Line* is the longest running single-host talk show in television history. Some threat to big government these guys are.

—Sheldon Richman

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Has Compassion Gone Astray?

by Jacob G. Hornberger



As part of his presidential campaign theme of "compassionate conservatism," Texas Gov. George W. Bush recently announced nearly \$500,000 in state-financed grants to Christian groups in Texas. "America will be changed because people of faith and good heart are willing to help people in need," Bush said. "I believe rallying the armies of compassion, thanking the soldiers in the armies of compassion, is the next bold step in welfare reform."

Bush failed to explain, however, exactly who are the saints in the grant-making process — the state legislature, tax collectors, judges, sheriffs, the taxpayers, or the governor himself.

Here's how the system works. The state of Texas imposes sales and property taxes on the people of Texas. These taxes are not voluntary. For example, if a person refuses to pay his property tax, the state effects recovery

of the tax by foreclosing a tax lien on the person's property. If the property owner continues to refuse to pay the tax, his property is sold at a foreclosure sale, and a state judge issues a writ of possession to the new owner. Law-enforcement officials serve the writ on the now-former owner and force him to vacate the property. If he refuses to vacate and instead decides to resist forcibly, he most likely will find himself in the hereafter for "resisting arrest."

When Governor Bush uses tax monies to assist Christian groups, is he acting compassionately? All that he has done is distribute money that the state has forcibly taken from other people. How does that make the governor a compassionate person? Doesn't compassion connote the willing use of one's own money for benevolent purposes?

What about the members of the Texas legislature? Does their mere enactment of sales or property taxes convert them into compassionate people?

Tax collectors, judges, and law-enforcement personnel? Does their use of force to recover the taxes entitle them to share in the collective compassion?

What about the Texas people? Since they paid the taxes, are they entitled to

claim a pro rata share of the collective goodness? What about those who didn't like paying their taxes? Are they nevertheless to be considered soldiers in Governor Bush's army of compassion?

Let's ask a different question: Can Governor Bush's conduct be reconciled with religious principles?

Suppose a thief robs you of your money and tells you that he's donating the money to a local church. Wouldn't you still consider him a thief even though he was helping Christians with the money he had stolen from you? Wouldn't you still expect him to be criminally prosecuted for the robbery?

What church pastor, knowing that the money had been stolen, would accept it? Wouldn't ministers refuse the money and advise the thief to return it to its proper owner?

Is the process different, in moral terms, when Governor Bush assists people with the money that has been taxed from the people of Texas?

The Christian who supports and participates in this process must ask himself some uncomfortable moral questions. Is it morally permissible to use the force of the state to take money from a person to whom it belongs in order to give it to another person? Can a private act of

immorality be converted into a moral deed simply by making it legal? Is the Christian who supports this process actually sanctioning a violation of Christian principles rather than participating in a charitable process?

How can compassion mean anything unless it comes from the willing heart of an individual? If a person is forced to commit an act of kindness, how can he truly be considered to have acted compassionately? For that matter, doesn't God's great gift of free will entail the right to say "No" — the right to reject one's neighbor?

How can the conscience of an individual be expected to develop when decisions on whether to love one's neighbor or not are made at the ballot box and as part of the political process?

Modern-day political campaigns provide politicians with the opportunity to garner votes by being charitable with the tax monies that have been forcibly extracted from the citizenry. Why not separate compassion and the state and restore moral decision-making to individuals?

*Mr. Hornberger is president of The Future of Freedom Foundation, publisher of **Your Money or Your Life: Why We Must Abolish the Income Tax** by Sheldon Richman.*

THE FUTURE OF FREEDOM FOUNDATION

11350 Random Hills Road, Suite 800
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The Streets of Seattle

by R. W. Bradford

Protesters waged war on private property and free trade, while police waged war on innocent bystanders.

“You cannot enter,” the man said. He was dressed in blue jeans, hiking boots, and a hooded sweatshirt. He had a plaid bandana pulled up over his face, like a bank robber from a matinee film from the 1930s. “We won’t let you enter,” he added.

The setting for this confrontation was the Sheraton Hotel in Seattle. I was there to pick up my press credentials to attend the World Trade Organization meetings, which were about to begin. But I hadn’t really planned on spending much time observing the assemblage of politicians, lobbyists and bureaucrats from 135 countries. The big story, I had figured, was going to happen in the streets.

The announced purpose of the WTO is the promotion of free trade. As soon as the Seattle meeting was announced, opponents started planning to protest that principle, the WTO, and life in general. It would be “the protest of the century.” They planned it like a military operation. It would involve scaling buildings (to hang banners), disrupting meetings, and bringing WTO meetings — along with the entire city of Seattle — to a halt. Better still, it would involve preventing the conference from getting under way in the first place. Protesters hoped to accomplish this goal by the simple expedient of surrounding the sites of various WTO meetings, linking arms, and refusing to allow anyone to enter.

So far as I had been able to find out, there were no WTO meetings scheduled for the Sheraton, where the WTO’s press office was set up. But the protesters were there anyway, arms locked in a double row, with a paramilitary officer corps supervising their lines, making sure that people kept their arms locked, propping up the will of wavering protesters, and confronting anyone who tried to get through the lines. Anyone like me, for example.

“I’m a journalist,” I explained, “I’m here to get my press credentials.” “You cannot pass,” the masked man told me, signalling his minions to surround me and to shore up the

line. “You’re a journalist,” he said. “You must be part of a union. You know the importance of respecting picket lines.”

“Is this a union picket line?” I asked. “No,” he said. “But this is the same as a union picket line. We’re here to stop the rape of the planet by corporations. We have every right to be here. We’re just exercising our right to be on the public streets. You should just go home.” He and his locked-armed friends began to push me away. “This is a non-violent demonstration,” shouted another organizer through a bullhorn.

I was tempted to suggest that the woman repeating “This-is-a-non-violent-demonstration” through the bullhorn had more than a little in common with the FBI agents who shouted “This is not an assault!” through their own bullhorns as they assaulted the Branch Davidians, and that the masked and hooded man had more in common with a Klansman than with Gandhi. I wondered: would he have presented the same defense of actual Klansmen, if the KKK had organized its members to surround and lock arms about a public building where Jesse Jackson was about to speak? “They’re just exercising their right to be on the public streets, Reverend Jackson. You should go home. This is a non-violent demonstration.”

But these people were plainly not there for dialogue, and I was not there to confront them. So I turned and walked away. A small cheer went up from the protesters in the immediate area. Another victory over corporate greed.

I figured I could pick up my press credentials later. Right now, I’d wander around downtown Seattle and take a good close look at the demonstration. First, I walked to a side

entrance. Like the first entrance I'd tried, it was blocked by a double row of arm-locked protesters. Between the protesters and the hotel entrance was a row of ominous-looking policemen, dressed from head to toe in black, carrying shields and clubs, wearing helmets with face masks, hiding their identities almost as completely as the protest honchos.

The streets to the north and east of the hotel were blocked by police, some on horseback, some on foot, in the same riot armor as those at the doors. I took a spiral route away from the hotel, but still within the area controlled by

Somehow, nutballs of both the left and right have come to imagine that the WTO is a Satanic conspiracy, perhaps because they have tired of other Satanic conspiracies, like the Council on Foreign Relations or Big Oil.

demonstrators. Here and there I'd encounter broken windows, and once in a while I'd see the breaking of windows and other acts of vandalism — mostly slogans being spray-painted on walls, but also violence to newspaper vending machines and dumpsters. People were scaling buildings to hoist signs. Others were standing around and shouting moronically.

By my estimate perhaps 5% of the people in the streets were engaged in vandalism, 15% were blocking entrances to buildings, 40% were demonstrating "peacefully," 30% were curiosity seekers, and fully 10% were journalists. I was one of 2,500 who had press credentials, and many others were there without them. Seattle was like a giant soundstage, set up for our benefit — though not necessarily our comfort or efficiency.

It was also like a block party. People were exuberant, many of them singing, chanting, dancing or playing musical instruments. Well, that might be an exaggeration: mostly they were playing drums improvised from white plastic buckets. But there was always that undercurrent of violence.

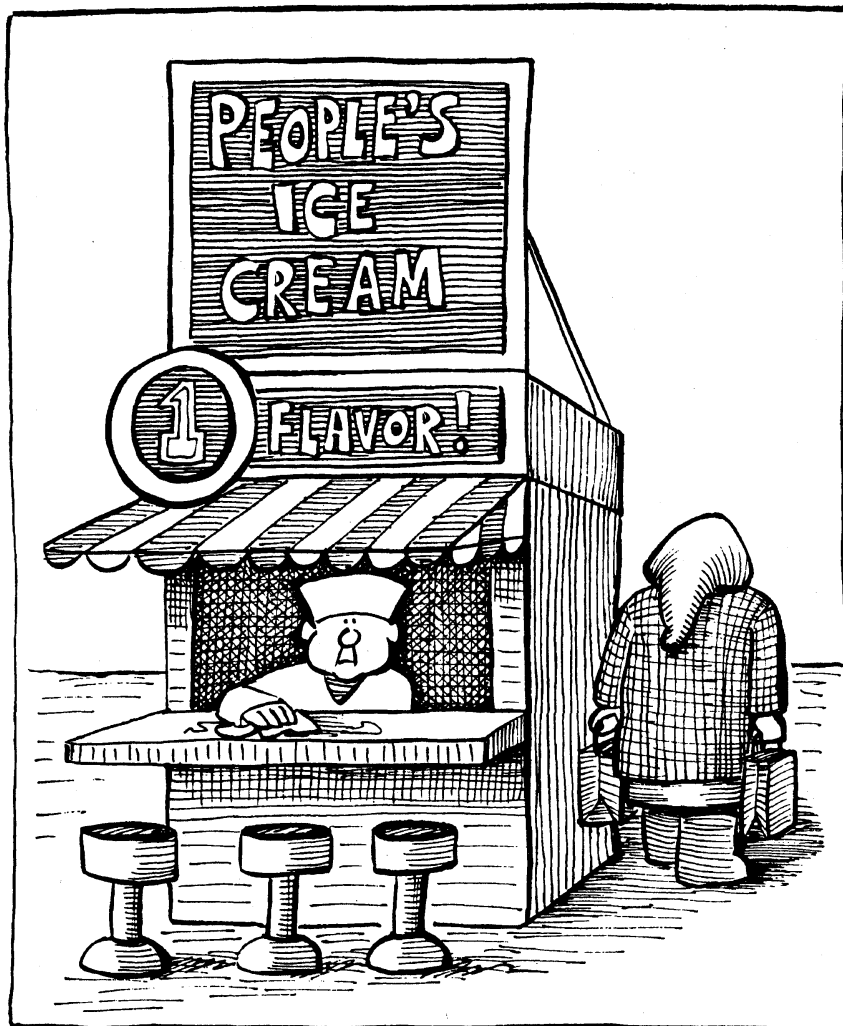
I got my first whiff of tear gas, when, for no reason that I could fathom, police fired it into a crowd. It was sufficiently unpleasant to make me retreat. I ducked into (what else would an editor of *Liberty* duck into?) a Borders bookstore. But before I got a chance to check out the latest offerings in the political science section, journalistic duty called: I heard what sounded like explosions outside. I went back to the street, and someone told me the police were firing flash-bang devices, intended to scare people.

I'm not a young man anymore, and wandering about for hours in Seattle's intermittent drizzle carrying a 10-pound computer was not the most pleasant sort of

exercise. Witnessing the ongoing riot was interesting at first, but it got a little boring. Someone breaks a window, some people over there chant some obscene slogans, across the street someone is playing drums and people are dancing, then the police fire tear gas grenades or flash-bang devices and everyone runs, except for the demonstrators who had thoughtfully equipped themselves with gas masks, then someone else breaks a window or tears down a sign . . . or whatever. A never-ending story can be a pretty boring one.

I returned to the hotel and decided to try breaching the lines of locked-arm protesters. This time, there were no line supervisors around, just comparatively normal folk. But soon I got myself into a heavy and hostile argument with them. For a while I thought that maybe one of them was going to deck me. But I kept talking and at last managed to convince them to let me through. They said, "If we let you through, the cops will just send you back anyway." I said, "Well, right now it's you who are holding me back and when I write my story, you're going to look like the bad guys. If you let me through and the cops hold me back, then they'll look like the bad guys in my story." It didn't hurt that with my beard, flannel shirt and levis, I looked a lot like they did. They were suspicious, but it helped.

Then I came up against the police lines. I explained my situation to one of the cops and asked to get through. He



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said that he couldn't unless someone from the WTO press office came out and told him it was okay. I said I'd try to call the WTO press office and arrange it. When I got back to the protest line (four feet away from the police line) one of the people who'd let me through offered to let me use her cell phone. I was clearly making headway. Unfortunately, I didn't have a phone number and it was very noisy in the street. So I thanked her and went in search of a pay phone in a quieter location. A bad move: every pay phone I could find was in use.

Finally, I went into a small business and asked to use its phone. Thank God for small business: my request was granted. I got the hotel, but the person who answered told me that the WTO press office had no telephone, so he couldn't connect me. This seemed a bit strange. He also said that he couldn't talk to me any longer because the police were clearing out the area around the hotel and the hotel was evacuating the lobby because tear gas was leaking in. Evacuating to where? I wondered.

"Where's the press office?" I asked. "Second floor," he said. "Well, when you evacuate the lobby why don't you give them a message for me?" He agreed; and, like a fool, I gave him my name and phone number and waited. I waited about fifteen minutes or so. Then I asked the kindly proprietor to take a message for me if the WTO press people called back. I wanted to get back to the Sheraton (some 4 or 5 blocks away) to see the battle that the phone guy described to me. I figured the police might have cleared the protesters with tear gas by now, and I thought I might be able to get into the hotel to get my credentials.

But the situation at the hotel was exactly the same as it was when I left it a half hour before. I returned to the same spot in the line and asked the same man who'd let me through what had been happening. "Nothin', man." The phone guy had fabricated his account of the tear gas attack as an excuse to hang up on me. Sheraton hospitality, I guess.

It took another ten minutes to convince the protesters to let me through the line *again*. Once more, I approached the police officer, explained my situation, and asked when he thought I might be able to get my credentials. This time, he

The masked and hooded man had more in common with a Klansman than with Gandhi. I wondered: Would he have presented the same defense of actual Klansmen, if the KKK had organized its members to surround and lock arms about a public building where Jesse Jackson was about to speak?

responded by tersely telling me that he wasn't going to answer any more questions. I asked him his name, figuring that it might be an interesting detail when I wrote my story. He threatened me with a club.

Being unarmed and of as pacific a nature as Clint Eastwood at the start of "Thunderbolt and Lightfoot," I left.

I walked to another entrance, picking a spot where the protesters were wearing union bumper stickers and seemed

to be having a good time. I explained my situation. Apropos of nothing, one responded, "We're Canadian postal workers, just down here for the day."

I believe that candor should be met with candor. "I thought Canadian postal workers just sat around all day smoking dope, throwing away half the mail and delivering the rest days late," I said, summarizing a perception fairly common among citizens of the socialist paradise to the north. "Yes!" one of my new friends responded. "We worked hard for those rights and we're not going to give them up." I wasn't sure whether he was joking. He seemed to be serious, in fact. But who can tell about people from

Once more, I approached the police officer, and asked when he thought I might be able to get my credentials. This time, he responded by tersely telling me that he wasn't going to answer any more questions. I asked him his name. He threatened me with a club.

another civilization? Mulling the problems of multiculturalism, which seemed to be at the root of all my difficulties that day, I decided that I had enough philosophical work to occupy myself. So I gave up my quest for official credentials. Obviously, I didn't need them to cover the story on the streets; and as Yeats said, there's more enterprise in walking naked.

As I walked away, the word buzzed through the crowd: "The WTO has cancelled today's meetings!" Whee! It was like the celebration of some sports championship. There was more singing and dancing and drumming, and people eagerly made plans to come back tomorrow and the next day and every day that the WTO tried to meet.

But the violence continued to escalate, and the looting started. A group of perhaps 15 boys — I'd judge their age to be around 13 — ran into a Radio Shack store and started to help themselves. The store was open for business, so the gang simply entered through the front door, took what they wanted, and left.

I don't know what bothered me more, witnessing the violence of the so-called "protesters" or watching the police stand by doing nothing while two hoodlums wantonly destroyed private property only a few feet away. (Apparently they thought beating a newspaper vending machine to death with pieces of pipe made a powerful statement against capitalism.) Downtown Seattle had become totally lawless, literally anarchic. And it was a hideous sight. When I saw workmen trying to clean up the broken glass and cover the broken windows with plywood, I had an urge to help them, as an act of solidarity, to do something constructive amidst the orgy of destruction and maybe to demonstrate that I wasn't part of it.

According to news reports, police arrested fewer than 30 people that day, out of all those wantonly destroying property and interfering with the freedom of other people to assemble and speak and write and carry on their business. I spent seven hours in one area of the riot — it was impossible

to get to parts of it because of police lines — and I estimate that I saw at least 1,500 people commit acts of violence, mostly by locking arms to keep others from exercising their rights, or by trespassing on other people's property. I saw about 500 people committing crimes of overt violence. Based on these observations, I'd guess that about 10,000 protesters committed crimes — which means that, if the police arrest reports are accurate — the odds were more than 300 to 1 that a criminal would avoid arrest. No wonder those 13-year-olds were running out of Radio Shack with stereos.

The organizers of the protest achieved exactly what they were seeking. Their success was inextricably related to the looting and vandalism. Once they locked their arms and blocked the streets, the conditions were optimal for both ordinary crime and for vandalism and looting. The so-called "Eugene anarchists," who were most visibly engaged in vandalism and looting, had the conditions they needed to

I never saw a single attempt by a police officer to defend life or property or to arrest anyone engaged in criminal behavior. But I saw lots of police tear gas, pepper spray and rubber bullets fired into groups of people, most of whom were entirely innocent of any act of violence.

vandalize with impunity. Eugene, Oregon, is only a few hours away from Seattle by automobile, and the anarchists who have long been living there could come up to Seattle on any day. The reason they chose November 30 is the same reason the gang of 13-year-olds chose November 30 to loot the Radio Shack store: no one was there to stop them. And no one was there to stop them because the protesters had taken over.

The Protesters

The WTO is a worldwide organization of governments that is dedicated to lowering import taxes and reducing non-tariff barriers to international trade. Now, I think cutting import taxes is an excellent idea, but I do have some qualms about the WTO. I don't see why you need an international organization to cut taxes and get rid of barriers. I don't see any reason why the United States shouldn't simply lower its import taxes unilaterally.

But it was quickly apparent that the demonstrators were not there to protest against reducing trade barriers. Indeed, they seemed remarkably uninterested in protesting the WTO. They were after bigger game. Their signs carried slogans like "Capitalism is cannibalism" and "Fuck Corporations." Mining, agriculture, lumbering . . . all were targets of their indignation. So, apparently, was offering higher wages to people in Third World countries, unless the wages were comparable to wages in the U.S. Trade itself was apparently a target. It was plain from my conversations with protesters that virtually all were there to struggle against the free market process, against private property, against almost any kind of economic activity whatsoever.

Actually, the protesters consisted of three kinds of people: those with leftist totalitarian motives, those with

direct self-interest in issues like protectionism; and dupes of the first two groups.

It's easy to see why the totalitarian left opposes trade liberalization. Leftists are getting desperate: the collapse of Soviet communism, the abandonment of socialism by China, and the increasing prosperity of those parts of the world that have embraced more-or-less free economies have them horribly demoralized. And international trade is a convenient symbol of what leftists oppose more than anything else: free markets.

Of course, they seldom couch their arguments in purely anti-market terms: this sort of rhetoric doesn't work very well right now. So they argue that free markets despoil the environment — who doesn't like forests, natural beauty, clean air and clean water? — or that they harm workers in poor countries.

This argument is embraced by many in the second group of protesters: those who own or work in industries that cannot compete with producers in other countries. The sheep farmer in Wyoming has a strong motive to oppose free trade. He produces wool at a price several times the free market international price. If the U.S. allows free import of wool, he is out of business.

Of course, it wasn't sheep ranchers who filled the streets of Seattle. They work to protect their privileged position by diverting a portion of their protected profits to their representatives in Congress, who work very hard to keep the wool tariff in place.

The bulk of those in Seattle who were there to promote their narrow self-interest were labor union members, many of whom have managed to obtain wages far higher than any they could get in the free market, thanks to American labor laws, restrictions on importing the goods like those they produce, and restrictions on immigration of workers.

Those with a self-interest in restricting trade seldom reveal that interest. In the case of WTO negotiations, they actually claim that they want to restrict imports in order to help the poor foreign worker who is paid less than the American worker, and may also work under less salubrious or pleasant conditions. That's why well-heeled unionists travel hundreds of miles to participate with scruffy "anarchists" in frustrating the Seattle police force. Sure. They do it entirely because they are philosophically committed to ensuring that foreign workers get paid the same as American workers.

Of course, people who take jobs in third-world foreign-owned factories do so because the pay is higher and the working conditions are pleasanter than the other jobs available to them. And of course, they'd prefer to be paid American wages, work American hours, get American vacations, etc. But thanks to union-backed immigration restrictions, they cannot come to the U.S. and get one of those jobs. They take a job at a foreign-owned factory for the same reasons that anyone takes a job anywhere: the wages are better than those at alternative positions open to them, the working conditions are better, the work is more interesting or more fun. When a new employer opens shop, he increases the demand for labor. And when you increase demand for anything, its price tends to rise. Third World wages are rising, but not because of anything that American unionists or leftists are advocating.

Most of the protesters I spoke to in the streets of Seattle

were neither doctrinaire leftists nor workers nor owners of protected industries. They were merely fools, people who hadn't really thought the issues through. They believe — as nearly all people do — that it's better for people to earn more money than less, better to maintain places of natural beauty than to destroy them, better to enjoy clean air and water than to die of pollution. They just haven't the faintest idea of how to achieve any of that, nor have they any intention of devoting five minutes to learning. The fact that the only way their goals can be achieved is by freeing trade and freeing markets is as foreign to them as quantum mechanics or Sumerian syntax.

And so they protest. When properly organized and led by doctrinaire leftists bent on revolution and unionists determined to maintain their legally privileged status, they are a formidable force.

The WTO is an organization of marginally successful politicians and bureaucrats who mostly talk, talk, talk. Somehow, nutballs of both the left and right have come to imagine that it is a Satanic conspiracy, perhaps because they have tired of other Satanic conspiracies, like the Council on Foreign Relations or Big Oil.

I checked my email after I finally got my computer plugged in and wrote the first draft of this article. Someone sent me the *Drudge Report*, which carried on at length about the failure of the big media to cover the protest. I don't know whether Matt Drudge was right about this, but he was certainly wrong when he reported that the demonstrators were there to oppose "globalism." They were against private property and free markets. Not a single person I spoke to mentioned globalism and I don't recall seeing any antiglobalism signs.

It's hard to say who's more deluded: the leftists who see WTO as a conspiracy of bloated capitalists bent on despoiling Mother Earth and driving everyone in the world deeper and deeper into poverty, or the rightwingers who see it as a conspiracy of clever internationalists to undermine national sovereignty and impose socialism on a global scale.

The Seattle media were receptive to portraying the riot as a peaceful protest except for a few bad apples. After all, Seattle takes pride in being mellow and laid-back. Say what you like, smashing, burning and looting are not laid-back.

But I have no doubt that rightwingers like Matt Drudge who see the protesters in Seattle as opponents of globalism are the most deluded of all.

The most common thing I saw spray-painted on buildings was a capital "A" with a circle around it, intended as a call to anarchism, by punks too cowardly to battle in the marketplace of ideas or to commit their acts of violence when they face any personal risk. These are the kind of people who give anarchy a bad name. The second most common graffiti was "We are winning. Never forget." Sure, I thought, you're winning. People who put on hoods and masks and engage in mass destruction of property are

winners. Real winners.

The Thin Blue Line

During all this, I never saw a single attempt by a police officer to defend life or property or to arrest anyone engaged in criminal behavior. But I saw lots of police tear gas, pepper spray and rubber bullets fired into groups of people, most of whom were entirely innocent of any act of violence.

This, of course, is not new. During the past half century, police have come to see themselves much more as defenders of "law and order" than as defenders of life and property. I recall my surprise in 1972 when I heard a retired British policeman describe his job as "the protection of life and

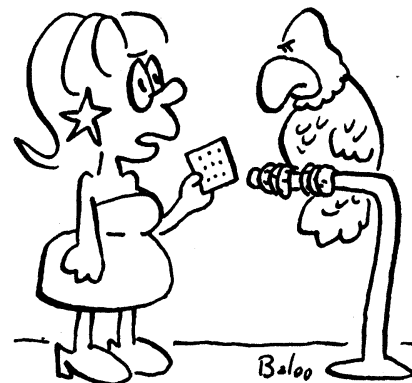
I don't know what bothered me more, witnessing the violence of the so-called "protesters" or watching the police stand by doing nothing while two hoodlums wantonly destroyed private property only a few feet away.

property." I'd never heard an American policeman express that sentiment, and I haven't heard one since.

The behavior of the police in Seattle was remarkably similar to that of the violent protesters. The latter claimed to be anarchists, opposed to government, but they chose private property as their target; the police were ostensibly there to protect life and property but engaged in indiscriminate violence against private individuals.

Protection of life and property, of course, would mean arresting those who vandalize or loot. It would mean apprehending, or threatening, or firing weapons at, only those who seemed to have committed a crime. Far too typical were episodes like one I saw on local television: a man walking to his apartment building was gassed by police along with a few protesters; when he approached the police, he had pepper spray shot directly into his face. Or the man who approached the police line shouting something (he was out of range of microphones) holding his arms extended from his sides, obviously not a threat to anyone. An officer ran toward him, kicked him forcefully in his sex organs, then shot him at point blank with a rubber bullet. Or the college students who were trying to get out of a parking lot when an officer approached. Thinking he was going to offer help, the driver opened her window; the officer blasted the students with pepper spray.

Then there was the police



"I don't know whether it is biotech free!"

policy of first allowing protesters to commit violent acts ranging from vandalism to blocking access to public streets and sidewalks to looting, then, the next day, arresting people for no reason and confiscating (stealing) gas masks and cell phones from anyone who had them, on the pretext that such items might be useful to protesters. I dare say that gas masks are also pretty useful to innocent people who have to walk through clouds of tear gas to get to their homes.

Now I am sure that somewhere, some of the 1,200 Seattle policemen acted to defend life and property. But I never saw it happen, just as I never encountered any protesters who expressed opposition to the looting and vandalism or showed any sign of disapproval.

But from what I saw in the streets, there were two riots going on: anti-WTO protesters committing wanton and almost random violence against private property and police

Most of the protesters I spoke to in the streets of Seattle were neither doctrinaire leftists nor workers nor owners of protected industries. They were merely fools.

engaged in acts of wanton and almost random violence against the mostly-innocent people who happened to be on the streets.

The Media

The news media, despite their tremendous resources, have a very difficult time getting a story right. The eleven o'clock TV news repeatedly assured the public that most of the demonstrators were non-violent and only a tiny percentage were engaging in violence. One news department even found some protesters who said that they deplored the violence and vandalism. I didn't. I asked perhaps twenty protesters — people carrying signs, locking arms to restrict access to buildings or engaging in sit-ins on the street — what they thought of the vandalism. They said things like, "Well, capitalism is ripping us off every day, so it's understandable why some people want to rip off big business." And, "Maybe they go too far, but we have to do something to save Mother Earth." And, "Tactically it's bad for our cause." But not one deplored the vandalism or the violence.

I was a guy who looked like one of them. They didn't perceive me as a reporter, but as a fellow protester, so they were probably being honest with me. If I'd shown up with a suit and tie and a cameraman and a sound man to record my interviews, the protesters might have answered differently. After all, they chanted, "The whole world is watching," so why not try to tell the media something that makes for better public relations? And the Seattle media were receptive to portraying the riot as a peaceful protest except for a few bad apples. After all, Seattle takes pride in being mellow and laid-back. Say what you like, smashing, burning and looting are not laid-back.

The Talks End

Of course, the protesters weren't the only people at the WTO meeting who opposed economic liberty. The European Union countries wanted to continue to subsidize their own

farmers and exclude agricultural imports. The U.S. wanted to "link" labor laws and environmental regulation to trade, to exclude the products of countries who don't pay appropriate minimum wages or provide benefits like paid maternity leave, or who don't impose mandatory recycling on their populations. President Clinton eventually showed up to shilly-shally around these issues, and on the question of whether the protesters were violent criminals or courageous idealists. A little of both, he thought.

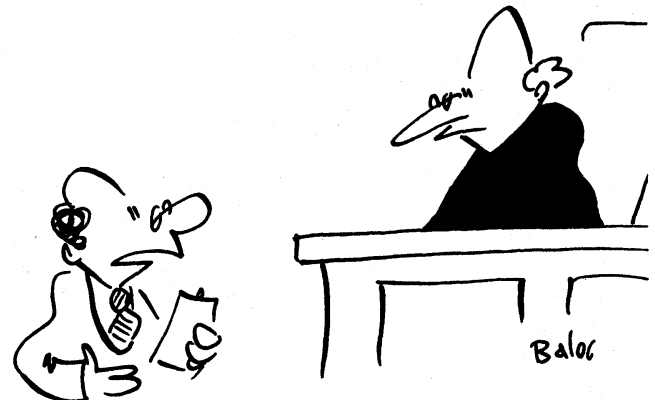
The Third World representatives would have nothing of the U.S. or European positions. They realized that if they couldn't undercut U.S. and Western European labor costs, they'd never be able to produce anything at a competitive price. And they knew that the European Union's restrictions on the import of agricultural, mineral and forest products have the effect of keeping the Third World poor. They stood firm in the face of western sophistry, and in the end, the talks got nowhere. Representatives of the poor, third world countries whom the protesters claim to be saving from the horrors of free trade were the most articulate advocates for free trade. I have my doubts that even a single one of the protesters knew or understood that.

The WTO is a bureaucratic institution whose stated purpose is to reduce those trade barriers. It isn't terribly good at this job, but its efforts seem more effective than past efforts to reduce trade barriers. The WTO came to Seattle to set an agenda for further reduction of trade barriers. The streets of Seattle were taken over by special interests and their dupes. The other two players in the protectionist drama — the consumer and the low-cost producer — were absent.

Whether the war in the streets contributed to failure of the talks I do not know. But it provided a lot of encouragement for those who oppose free markets, private property and free trade. As far as the forces against human liberty are concerned, the Battle of Seattle was a great victory.

* * *

Mayor Paul Schell, who at first encouraged the protesters to come to Seattle and ordered his police not to interfere with their violence during the first day, then outlawed all protest for the duration of the conference and ordered his police to engage in virtual war which inflicted great harm on thousands of innocent people, evaluated his performance in these words: "Seattle came through with flying colors, and only a little bit of broken glass. We preserved life, the WTO was not shut down and free speech was protected."



"My client has suffered enough, Your Honor — he was arrested by the Seattle police."

Inside the WTO

by Bruce Ramsey

There was a lot at stake in the WTO meetings. The protesters didn't have a clue about what was happening or what they were protesting.

The "Battle of Seattle," held in the streets November 29 - December 3, 1999, around the World Trade Organization, was a strange and revealing time. There were two sets of demonstrations. The first, on Nov. 30, was the "fair trade" parade by the AFL-CIO that attracted more than 30,000 people, including the federation president, John Sweeney. Sweeney said they were not against trade, but wanted a different set of rules for it. Officially, they wanted observance of the International Labor Organization's "core" labor standards, which have to do with the freedom to organize unions and the abolition of child labor, forced labor and discrimination. Unofficially, they wanted protection from cheap imports.

The unionists were entirely peaceful. Some of them even marched with their kids. But they were totally upstaged by a group led by something called the Direct Action Network. This group seized control of key downtown intersections, blocking delegates, press and vendors from the state convention center. Protesters linked arms, and for those who broke the chain, as I did twice, they rushed around and linked arms again. A few got through; I didn't. One guy yelled at me, "Hey, another unhappy customer!" and protesters laughed. It was a game. They weren't angry at me, but I sure as hell was angry at them.

"We have a right to do this," a young woman said.

I tried again at a different intersection, this time in front of a line of about ten cops in Darth Vader-type riot gear, 30 feet away. They did nothing.

That day groups of "anarchists" from a nihilist cult in Eugene, Ore., smashed the windows of Niketown, Nordstrom, Old Navy, Bank of America and Starbucks with hammers. They passed up Barnes & Noble, Gameworks and Bartell Drugs. Most of the targets had an international connection.

Seattle's mayor, Paul Schell, had the cops under heavy restraint. I saw a police car, four cops inside, come to the

north end of Seattle's Pike Place Market, very slowly. A band of about 20 young men, all in black, with black cloths over their faces or black stockings over their heads, trooped by that police car. Here were masked men in the midst of civil disorder. The cops did nothing.

The next day the mayor stirred from his somnambulation and declared a no-protest zone. More than 500 demonstrators were arrested, most of them for protesting in the no-protesting zone. The WTO meeting got underway.

The demonstrators had tried to shut down the conference in order to be "listened" to. Of course, that meant delegates from 135 countries didn't get listened to.

Later in the week, inside the huge WTO press room, some people from the Rain Forest Action Network put up a big banner and began hollering. Everyone in the building had to have a badge, but the WTO had accredited a handful of people from some 750 private organizations, including the Rain Forest Action Network. Reporters, cops and cameramen all rushed toward the man hollering. I broke out laughing. An enviro looked at me in disgust and said, "So you're not going to listen to him."

Yeah, that's right. I wasn't.

The Rain Forest Action Network had just held a press conference out in the hall, and only two reporters had showed up. They were hollering because — well, that's just what the Rain Forest Action Network did. Ralph Nader had been in our press room and gotten lots of attention without hollering. The French farmer who had dumped cow poop on a French McDonald's was there, *sans* excrement, and had not had to holler.

I had been boning up on the WTO for six months. I had read the anti-WTO stuff — the written equivalent of hollering — and had listened to more rational opponents at some length. I didn't think most of them knew what they were talking about.

They called the WTO undemocratic because it wasn't "listening" to them. Said a colleague, "They aren't such good listeners themselves." That was true.

The opponents called the WTO "undemocratic" because they weren't in it. Only governments were in it. Most of those governments were democratic, but some not. In any case, the WTO does not have separate seats for the Ruckus Society.

The WTO is not a government. Thank goodness. It is a club for governments, where they get together and talk. It

Under the U.S. Constitution, treaties require a two-thirds vote of the Senate. Since Harry Truman's days, trade deals like NAFTA and the WTO are called "agreements" and ratified by simple majorities in both houses of Congress.

holds meetings. Most of the WTO's 500 employees are translators.

The WTO is best thought of as a kind of treaty, under which governments make commitments to each other. U.S. officials are careful never to call it that. When WTO Director-General Mike Moore was in Seattle Oct. 1, he called it a treaty and immediately corrected himself. Under the U.S. Constitution, treaties require a two-thirds vote of the Senate. Since Harry Truman's days, trade deals like NAFTA and the WTO are called "agreements" and ratified by simple majorities in both houses of Congress. That name is not in the Constitution; it was cooked up by Secretary of State Cordell Hull during World War II and tried out during the Truman Administration. On the rare occasions when these "agreements" are challenged on constitutional grounds, they are justified under the foreign commerce clause. Anyway, the Republicans had a chance to kill the idea in the 1940s, and didn't. For half a century that's the way it's been done.

Still, it functions as a treaty. Because it's a complicated treaty, it has a tribunal for settling disputes. This tribunal is open only to governments — WTO members bringing complaints against other WTO members. If Canada brings a charge against Australia, and they can't work it out, Canada and Australia pick three judges. The protesters referred to these judges as "unelected." That's right. So are our federal judges. At least the WTO judges are chosen by the parties involved, as in a private arbitration.

These judges decide whether Australia broke the treaty. If it did, they can authorize Canada to retaliate by putting a discriminatory tariff on Australian goods — a power Canada had anyway, but had agreed under the WTO treaty not to use.

Unlike a U.S. judge, the WTO judges cannot define a remedy or impose one. It cannot force *anything* . . . The WTO has no army, no cops and no power to tax. Its annual budget, contributed by members, is about the size of the budget of a medium-sized school district.

The WTO cannot expel a member, or keep one in. But in spite of all its weaknesses, the WTO *has* gotten the U.S. government to change regulations that it did not want to change. And that is something.

A handful of these cases has been made into *causes celebres* by the WTO opponents.

Trading in Fear

There was, for example, the gasoline case. The Environmental Protection Agency had set a rule for the composition of gasoline. It was different for each refinery, because it was based on the output of that refinery on a date in the past. EPA bureaucrats had applied a different standard to the foreign refiners. EPA's defenders said it was because they did not trust the foreign refiners. Their opponents say the EPA was trying to do several U.S. refiners a favor. Anyway, the Venezuelan government took the case to the WTO, which ruled that the United States had discriminated against a WTO member. The ruling said the United States could set any environmental standard it wanted. But it had promised in the WTO treaty to treat all WTO members the same. And it hadn't done that.

To the anti-WTO people, this ruling meant the WTO had put profits before clean air and declared vital health regulations to be a trade barrier.

There was the tuna/dolphin case. The United States required its tuna fishermen to have nets that didn't entangle dolphins. The United States had then banned the import of all tuna not caught with that kind of net. Mexico took the case to the WTO and won. The United States had violated the WTO treaty, in which countries had agreed not to distinguish between products based on how they were made. A can of tuna was a can of tuna; if it was Mexican tuna, the production process was up to the Mexicans.

To the anti-WTO people, this ruling meant we couldn't protect dolphins.

Then came the shrimp/turtle case. It was essentially the same issue as the tuna/dolphin case. The United States had banned the import of shrimp not caught in nets with Turtle Excluder Devices. This time, the WTO ruled the other way, saying that sea turtles (unlike dolphins) are endangered, so therefore the United States could do this, even though it was trying to protect foreign turtles rather than its own.

But the United States had applied the law differently to the Asian countries than to the Caribbean countries, the WTO said, so the United States had broken the WTO treaty.

To the anti-WTO people, this ruling meant we couldn't protect sea turtles. Dozens of demonstrators at Seattle were dressed as turtles. Signs said, "Turtles are not a Trade Barrier."

They had *won* the turtle case on the main issue. It didn't matter. They didn't want to be seen to win. They wanted to be seen to lose. They *knew* the WTO was against turtles.

Another issue was forests. The United States proposed to cut tariffs on wood and paper to zero. The greens argued that zero tariffs would increase the demand for wood and paper, thereby increasing the cut of trees. That was bad.

The zero-tariff proposal was called "advanced tariff liberalization." It was not about cutting trees, a matter that had never been the subject of a WTO agreement. But the enviros called it "The Global Free Logging Agreement." Sometimes

they put that name in quotes and sometimes not; but they called it that so often that their own people thought that's what its name was. It was a wonderful name. "The Global Free Logging Agreement" neatly suggested global government, global profiteering and global ruin.

If you read their arguments, you'd see an estimate that free trade would increase logging worldwide by 3 to 4 percent. The estimate was attributed to a Finnish consultant. This was the old tactic of taking a "fact" from your enemy. It's a neat tactic, providing you get the fact right. They didn't. The U.S. Trade Representative circulated a letter from the Finnish consultant saying that the 3 to 4 percent was an off-the-cuff estimate of industry growth unrelated to any WTO deal. It had been said in the course of a dinner speech.

No matter. The greens kept calling the zero-tariff proposal the "Global Free Logging Agreement."

Fearing to Trade

The real issue of the WTO, and of the Battle for Seattle, was the freedom of commerce. To the AFL-CIO marchers, and to some of the others, it was "fair trade versus free trade." To some of the radicals, it was capitalism. One group unfurled a banner, "CAPITALISM KILLS." A graffiti sprayed on the window of a fancy retailer said, "NO TRADE."

This was the Left speaking. It was a very organized Left. They had worked on the Battle of Seattle for months. They had gone to training camps. They had kept in touch by Internet. They had come from all over North America, and a few from abroad. It was amazing how many of them there were.

The trade community was organized, too, for the things it did. Seattle has a network of trade-related groups — the Asia Society, the Washington State China Relations Council, the World Trade Club, the Washington Council on International Trade. For years, these buttoned-down outfits have hosted luncheon and dinner speeches by eminent professors, international journalists, State Department officials and foreign politicians. They were proud that the WTO was having its

The WTO cannot force anything. It has no army, no cops and no power to tax. But in spite of all its weaknesses, the WTO has gotten the U.S. government to get rid of regulations that it did not want to change. And that is something.

conference in their city. President Clinton would be there. Trade ministers from about 160 countries would be there.

And then came this horde of self-righteous Visigoths.

They came to do battle — to "speak truth to power," to validate their feelings, to market their ideas. They appeared to be in favor of a small-is-beautiful world. It was never clear. They were definitely against free trade, corporate profits and big business. The more intellectual ones held forth against "globalization," just as the more intellectual among the union leaders denounced "neoliberalism." Both of these were code words for capitalism.

The local capitalists were all in favor of the WTO. Seattle's

two most prominent captains of industry, Boeing CEO Phil Condit and Microsoft CEO Bill Gates, were honorary co-chairman of the WTO Seattle Host Committee. Each had given public statements earlier in the year. To each of them, the issue was simple: Their enterprise was morally good. That was obvious. Much of its revenue, in Microsoft's case more than half, came from outside the United States. Boeing could not be in the airplane business, or Microsoft in the software business, without the world market. They simply had

The United States could set any environmental standard it wanted. But it had promised in the WTO treaty to treat all WTO members the same. And it hadn't done that. To the anti-WTO people, the WTO had put profits before clean air and declared vital health regulations to be a trade barrier.

to have it.

Argument finished.

To the anti-WTO side, that argument just showed that the purpose of free trade was to swell Boeing's and Microsoft's profits. Obviously, that was bad.

Their issue was "democracy." If we Americans don't want to buy products from Burma, they said, we should have that right. If we have a campaign to save sea turtles, and decide we don't want to import shrimp caught with Turtle Excluder Devices, we should have the right. The right was stated in the traditional American way, of people against rulers. Except that the "we" was always collective.

This was a defense of the prerogatives of governments.

The trade groups, which late in the game were augmented by a national corporate lobby, countered with the principle of "rules-based trade." It was an unfortunate term, because the protectionist lobby — steel and textiles, mainly — used it to justify the U.S. anti-dumping laws. These were rules, too. What the free-traders meant by "rules-based trade" was rules to limit government discretion. That's mainly what the WTO is. The WTO is an organization of governments that provides due process of law to international business.

This is a useful idea. But it's a legalistic idea, and the Battle of Seattle was not a battle about legalisms. What was needed was an assertion of the individual's moral right to make a living and to buy and sell with foreigners. The Cato Institute talked about that, and the Competitive Enterprise Institute did too. Both had conferences in Seattle in the run-up to WTO. Jack Kemp of CEI came to town during WTO and gave a speech quoting Winston Churchill, speaking to the House of Commons in 1904, "We say that every [citizen] shall have the right to buy whatever he wants, wherever he chooses at his own good pleasure, without restriction or discouragement from the state."

But business generally didn't use the moral-right-to-trade argument. They don't think in terms of rights. They argued the economic benefits of trade, and when pushed, the social, human-rights and national security benefits. (They used the term "trade" rather than "free trade," but they were arguing

a free-trade position.)

They made a good case. But it was largely not a moral case.

As the WTO meeting approached, the trade groups found themselves invited to debates, many of them with audiences stacked hopelessly against them. To his credit, their chief spokesman always went; and if he tended not to match the moral fervor of their opponents, he certainly got better at pointing out the implications of the "fair" trade argument. He corrected their factual errors — over and over again.

In this battle, the free-traders were on the side of the President of the United States, Bill Clinton. That was nice, in a way, but in some ways, not.

In negotiating, the U.S. took largely a free-trade position. So did Clinton. He was clearly for freer trade, especially in the protected environs of agriculture. But Clinton always *said* "free and fair trade." He had to keep the unions in the tent, and they were restless. Clearly the 30,000-plus AFL-CIO demonstrators in this supposedly free-trade city had shown that. (Seattle is also more unionized than most American cit-

What the free-traders meant by "rules-based trade" was rules to limit government discretion. That's mainly what the WTO is. This is a useful idea. But it's a legalistic idea. What was needed was an assertion of the individual's moral right to make a living and to buy and sell with foreigners.

ies, starting with the 40,000-member Aerospace Machinists at Boeing.)

Clinton's negotiator, Charlene Barshefsky, did her best to keep the U.S. anti-dumping laws off the WTO agenda. Ditto for textile quotas. These two laws were blatantly protectionist. The Americans didn't want to talk about sugar, peanuts, milk, the Jones Act, or any number of protectionist things.

In addition, the United States was pushing environment and labor as talking points for trade agreements. This was to placate the enviros and the unions. We'd had to put that stuff in NAFTA, and it hadn't amounted to much. Europe, governed mainly by parties of the soft left, supported us. The low-wage countries wanted nothing to do with it. It didn't matter whether they were poor capitalist countries, like Panama, or poor socialist ones, like Cuba. Or middle-wage capitalist countries, like Brazil. They saw labor and environmental as excuses for rich countries to block their products.

And they were probably right.

If it was one-country, one-vote, the poor countries could have simply outvoted the rich ones. But the WTO does not operate by voting. It operates by consensus. In theory, one member who opposes an agreement can stop it. In practice, it is not so easy. The poor countries had always been railroaded. At Singapore, most of the deals were done by about 25 ministers in a place called the Green Room. This time, the little countries were determined to stand up.

Labor was the sticking point. The Americans and Europeans were asking only for a group to study it. Nothing on the negotiating agenda for the next four years. No sanctions. Just a talking shop. Nothing to worry about. The low-wage countries were suspicious as hell. It was the nose under the tent. No, no, no, they were assured. No nose. No tent.

Then Clinton came to town and told the *Seattle Post-Intelligencer* that eventually labor standards should be in trade agreements, and should be enforceable by sanctions. The U.S. delegation was stunned. He had undercut them. But he had stroked the unions, whose support Al Gore needed. Maybe this would help the vice president, a man who helped himself by staying out of town.

Fidel Castro almost came to town, though. The Seattle City Council, which had made common cause with the Sandinistas in the 1980s, invited him, and the University of Washington made a lecture hall ready for him. Cuba had been a founding member of the GATT in 1947, as had China; and though Mao had taken his country out of the GATT (to its regret today), Castro had stayed in. That gave Castro, a man generally forbidden to come to the United States, the right to come to Seattle. He was apparently going to do it. But the attorney general of Florida had asked the attorney general of Washington to arrest the Cuban President, as the British had arrested Pinochet. She would never have done it, of course. Imagine Fidel in the King County Jail! He must have known the risk of that was low, but still, he complained, he had been given no assurances from the U.S. State Department.

His foreign minister did come. Felipe Perez was just 34 years old, with close-cropped hair, a natty gray suit, and a pugnacious manner. He was hosted by Castro's local acolytes, by the United States Chamber of Commerce and by the Boeing Co. He complained to the press that he had not been able to line up anything with Microsoft in the short time the State Department had allowed him to stay.

In the end, the Third Ministerial Conference of the WTO failed. Its purpose was to set an agenda for trade talks that would go on for the next four years. But the trade ministers could not agree on what that agenda should be. For the first time all 135 members, plus about 30 observers (including China, Russia and Taiwan) had been given the right to be in all six working groups. Pascal Lamy, the chief negotiator for the European Union, bellyached that the process was so bloated as to be "medieval."

The WTO was also getting sensitive stuff. The focus was no longer tariffs. The most contentious issue was state protection for farmers. Governments were talking among themselves about how they were going to go home and cut off their own farmers.

Health standards were also at stake. In 1994, WTO members had agreed not to use phony health issues to block trade. Health standards for imports were to be based on science. Under that rule, a WTO panel had said Europe could not ban American and Canadian hormone-fed beef. The Europeans had not conducted a risk assessment of the North American beef, and they would not agree to conduct one and be bound by its findings.

Investors' rights was an issue. In the 1990s the industrial

continued on page 32

Report

Is It True What They Say About Hillsdale?

by An Anonymous Alumnus*

“An old, mad, blind, despised, despotic king.” — Shelley about George III

On October 17, 1999, Lissa Roche killed herself, with a single shot to the head. She was standing in a stone gazebo in the arboretum at Hillsdale College, in Hillsdale, Michigan. She had lived in the town for many years, as had her husband, George Roche IV (a teacher at the college) and her father-in-law, George Roche III, the college's president.

I knew Lissa Roche. She was dedicated, with an unexpected sense of humor, and she deserved her reputation as the hardest worker in the school's Central Hall. She once gave me a book, just because I admired it. But what surprised nearly everyone was the detail that made her suicide into national news: since 1980, she had been having an affair with her father-in-law, one of the most prominent figures in higher education and a widely-admired political conservative.

George Roche had served as director of seminars at the Foundation for Economic Education, and when he arrived at Hillsdale in the 1970s, he became the youngest college president in the country. By the time he resigned in disgrace on November 10, he was the longest-sitting college president in the country. He left behind him a school that had, under his leadership, become almost legendary — and also, in the process, had become what one student aptly called “a personality cult.”

It started soon after Roche became president. The federal Department of Education had determined that federal regulations came along with government financing — if a school received federal grants, then certain restrictions were “incorporated” with that money, for example affirmative action. Hillsdale and several other schools simply shrugged at this: they had never received federal grants. Hillsdale, founded in 1844, had been among the first schools in the country to admit blacks and women: it needed no lessons in “racial diversity,” and the government, so far as the school was concerned, could keep its money.

But that did not satisfy the Department of Education, which claimed also that “federal funding” was received by

schools when their students received *personal* federal loans and grants. In other words, even though the student was receiving the money, and then deciding in turn where to spend it, the federal regulation followed the money like a stain. Roche and the Board of Trustees balked: this would imply that federal regulations applied to every college, store, or household in the country because they were “incorporated” with the federal loans and grants, with the money changing hands from one to the other to the other. If federal regulations followed the grant beyond its original recipient, then why not apply the title of higher education to the entire economy?

Roche took the case to court, along with Grove City College, in Grove City, Pennsylvania. The case went to the Supreme Court, and in 1984, in *Grove City College v. Bell*, the Court sided with the Department of Education. Justice Powell wrote “I [concur] reluctantly and write briefly to record my view that the case is an unedifying example of overzealousness on the part of the Federal Government.”

What made Hillsdale remarkable, though, was its reaction: it did not give up, but instead began assembling the Hillsdale Independence Fund. If a student applied who could only afford to come by using a government loan — say, a GI Bill loan — the school would finance the student with Hillsdale's own money. And so, until 1998, when Grove City became able to do the same, Hillsdale was the only college in the country that refused all federal funding of any sort.

* The author wishes to remain anonymous because he has friends at Hillsdale and fears the possible recriminations of this article, a fear justified by the school's record.

Ludwig von Mises had been so taken by the place that his wife left his personal library to the school. Ronald Reagan spoke there when he was governor. Phil Gramm spoke there when he was still a university professor. Dan Quayle and George Bush spoke at the same conference once, long before they were a team. Hillsdale had already been a mecca for free-marketers, but now it became nearly a dream.

In an era when "political correctness" threatened traditional instruction in history, philosophy, or literature, Hillsdale stuck fast to a rigorous core curriculum, requiring all students to take a great books course and a Western Civilization course. Hillsdale stridently defends Western Civilization, and shuns race-oriented or sex-oriented courses. No Black Student Union exists on campus, although students have tried to start one, but student religious clubs, literature clubs, and even classical-civilization clubs are strong.

The Fatal Flaw

Yet Hillsdale had a terrible weakness, and that weakness was powerfully described in 1996 articles in *Lingua Franca* magazine and *The Chronicle of Higher Education* which, as I personally recall, caused quite a stir. *Lingua Franca* pointed out that Hillsdale had to draw a fine line between conservative supporters and libertarians: between, on one hand, the religious right, and on the other, believers in reason and free-

Roche left behind him a school that had, under his leadership, become almost legendary — and also, in the process, had become what one student called "a personality cult."

market individualism. The school, and especially Roche personally, tried to steer a middle course. But in fact, the school fell deeper and deeper under the sway of religious conservatism. And that meant heavier restrictions on student freedoms, an extension of the "in loco parentis" policy by which the school was run, and heavy censorship of the college's newspaper, *The Collegian*.

A school that receives federal funding must permit a certain measure of student freedom in its campus newspaper, because the First Amendment is one of those regulations that comes along with government money. But the completely private funding at Hillsdale means that the Bill of Rights is simply not incorporated on that city block. Student freedom of speech is heavily restricted — the student handbook openly bans student demonstrations — and their lives are manipulated to a sometimes dystopian extent.

In 1991 student Mike Nehls had had enough, and he began publication of an underground student newspaper, distributed off campus, called *The Hillsdale Spectator*. He was immediately called in for disciplinary action, and forced to "voluntarily leave" the school — and to sign a nondisclosure agreement.

These non-disclosure agreements, and the similar intimidation of students who speak out against the administration, have a powerful "chilling effect" on those students who would criticize the administration. And it means that a great

deal of the "news" that a student receives on the campus is through rumor and innuendo, rather than open channels. The facts are simply not forthcoming. Thus when some female students began, in 1998, to complain of a stalker on the campus, peering through their windows and hiding in the bushes, and when one of the rumors told of a student having been raped, *The Collegian* ran only a statement from Dean Barker discounting the stories. Whether there was a campus stalker remains a mystery to me, as to many other students. Federal regulations require student newspapers to print campus crime statistics. But Hillsdale doesn't have to — because it receives no federal money. In a 1997 case, when a student became violently intoxicated and assaulted several other students in a dorm, police were summoned. The police had to use pepper spray, and drag the student off in handcuffs. But no story about it appeared in *The Collegian*. One student reporter resigned, penning a furious resignation letter that was printed in *The Collegian*. Its allegations of censorship were made somewhat more powerful by the fact that the letter itself was censored — the editors had removed the portions relating to the incident and replaced them with the word "censored" in brackets. The irony, however, accomplished nothing. When that year's editor, Daniel Bielefeld, graduated, he admitted in an article that the only way to end censorship would be for the students to simply refuse to publish. That has not happened. Bielefeld now works at the Leadership Institute, an organization dedicated to free press on college campuses.

The censorship and the pervasiveness of rumor make it difficult to get to the bottom of nearly anything at Hillsdale. And that leads to an element of genuine fear in the students. After Bielefeld's departure, no students applied to serve as the *Collegian's* editor — until the administration is said to have threatened one student reporter with the loss of her scholarship if she did not take up the duties. This, too, is a rumor: I asked her myself whether this rumor was true; she replied that she could not discuss it.

Many professors speak to reporters only on condition of anonymity. One told the *Lingua Franca* reporter he feared his phone was tapped. Another told the *Toledo Blade*: "One gets along with Dr. Roche as long as one uncritically accepts what he says. He once told me, 'There's room for only one idea man on campus,' to which I responded, 'That's a bad idea.' He said 'People who have raised questions on our campus in good faith about certain matters are no longer here.'"

Simply put, Hillsdale is not an "open society," and sometimes can even be a police state. Dormitory rooms are subject to search at any time without notice, and searches are frequent, usually at night. Following conservative intellectuals, the school scoffs at "the right to privacy" both in theory and in practice, and I can recall a conversation with Dr. Roche when he, too, scoffed at the notion.

In 1996, a member of a fraternity, Tau Kappa Epsilon, was accused of tarring and feathering a statue on campus. Some fraternity members still talk of gestapo-like tactics in the investigation of the fraternity that followed. One told me of being roused from his bed at midnight to have his hands and his room searched for tar or feathers. Of course, this too, is merely a rumor: not a word appeared in the *Collegian*. The fraternity was found guilty of various offenses, and lost its charter. Its house was torn to the ground.

Another rumor told of the student who had received an "entrepreneurship grant" from the school to start a cable-radio station that would serve only the dormitories — and who, at the last minute, had the grant revoked when the administration discovered it would have no control over the programming.

Some students have responded. Many have left, either voluntarily or "voluntarily." Some have started the "Hillsdale Liberation Organization," and rumor has it that the school is seeking to find those students responsible.

When news of the Roche scandal broke, Hillsdale responded characteristically. "One thing we could never be accused of is covering up anything," said the college's vice president, Ron Trowbridge, who promised to be entirely forthcoming with the students at a "convocation" to be held that week. The next day, however, Trowbridge told newspapers that the convocation would include no mention of Roche, and that the school had spoken its last about the incident. Few pointed out that the school had yet to say *anything* about the incident. Some students were frustrated at the administration's silence at the convocation. There, students heard only veiled references to "Dr. Roche's early retirement" and "the events of the past few weeks," and were informed that they would "have to make up their own minds" about what had happened. As *Weekly Standard* writers Tucker Carlson and Andrew Ferguson noted, "If you'd arrived on campus from Mars — or even from Washington — and had somehow missed the local news and the front pages of the region's major newspapers, you would have had no idea that the president of Hillsdale had just been forced from office in the wake of a suicide-sex scandal." What news the students have received has come almost entirely from the Internet and off-campus newspapers, although issues of the *Toledo Blade* (highly critical of the school) have been mysteriously disappearing from the library.

And the school's reason for not being more open with students? Trowbridge explains, "What people are wanting us to do," he explains, "is to deny George his constitutional right

Simply put, Hillsdale is not an "open society," and sometimes can even be a police state. Dormitory rooms are subject to search at any time without notice, and searches are frequent, usually at night. The school scoffs at "the right to privacy" both in theory and in practice.

to privacy. You can get sued for that." This may sound like hypocrisy, but as the *Lingua Franca* article pointed out, Hillsdale's careful tightrope between conservative and libertarian has meant a good deal of cutting and pasting of the ideas that the school loves to say "have consequences."

Walking the Tightrope

When one student body president complained about a brick in the "donor's walk" which had a pro-choice message inscribed on it, the brick was immediately chiseled out, and the money refunded: a point for conservatives. And it seems as though conservatives are winning. The student religious

organization on campus — the Intervarsity Christian Fellowship — has tripled in size this year.

This points to another problem Hillsdale faces: its student body. Hillsdale may manipulate the students' lives, but many of the students like it that way. An active recruiter of home-schoolers, Hillsdale attracts the sort of students who have led intellectually cloistered lives, being taught comfortable traditions rather than challenging ideas. Many of these students arrive believing, for instance, that Genesis is the literal truth, and that evolution is a hoax. Roche himself wrote an entire chapter in his book *A World Without Heroes* attacking Darwin's theory of evolution.

Hillsdale, like conservatism in general, fosters obedience to established authority and tradition, not the corrosive

The censorship and the pervasiveness of rumor make it difficult to get to the bottom of nearly anything at Hillsdale. And that leads to an element of genuine fear in the students.

inquisitive nature of science. Many of these students are simply not curious. The *Weekly Standard* reported that:

Two days before [the convocation] a number of student leaders — editors of the paper, heads of various campus organizations — were summoned to a meeting with Hillsdale's chaplain and two of the college's deans. The purpose of the gathering was to talk about current events at Hillsdale. "There will be no discussion of President Roche," the group was informed moments after sitting down. This is the sort of thing that on an ordinary campus would spark a sit-in, maybe an effigy-burning. At Hillsdale, it provoked only tepid complaints, even from the local guardians of free speech. "I haven't gotten explanations," says Teresa Masterson, [a *Collegian* reporter] "They don't *have* to tell us. We don't have a right to know. We already know more than we need to know." Again, the others nod. More details, Masterson says, would just be fodder for "human curiosity." The way she says it, "human curiosity" sounds about as appealing as "human waste."

It's no wonder the students haven't followed Bielefeld's advice to cease publication: half the students are afraid of the school — the others have no objection to authoritarianism. It is fitting that Hillsdale is also the repository of the papers of Russell Kirk, perhaps the most influential conservative thinker of the century, who loved the school. As William Rusher once observed, Kirk held the banner of the "metaphysical dream of the Middle Ages against that of the Enlightenment."

Hillsdale does precisely the same thing. Its classical education is strong for the same reason that its science education is weak, and for the same reason that it regulates the students' conduct and expression: because tradition, dogma, authoritarianism, are central to Hillsdale College. And the students who are willing to accept that are intellectually docile, much like medieval peasants.

And this is why so many Hillsdale professors praise the Middle Ages, as a time when people "knew their place." Hillsdale education stops before the nineteenth century

begins — read Aristotle, Augustine, Aquinas and Adam Smith — but no Foucault, no Derrida, and *no* Darwin.

This intellectual outlook is backed up by Hillsdale's pervasive siege mentality. The entire world really is out to get them. Recently, the government began inquiring whether it could apply regulations to schools if their students' parents receive tuition tax breaks. When the government goes through such bizarre intellectual gymnastics as this, in order to get its fingers into Hillsdale, one can understand the school feeling paranoid. Every innovation, every challenge to its ideal of independence, becomes a danger. At Hillsdale, freedom merely means independence from outside interference.

Hillsdale as an institution, and George Roche as its leader, became intertwined over almost thirty years into a monument which one did not question, or challenge, one merely admired. How reminiscent of the Ayn Rand cult!

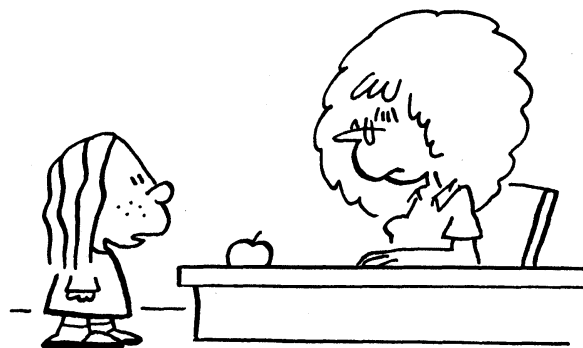
And yet Hillsdale provides a magnificent education. It is consistently ranked among the top of its category and region.

Only when donors demand an accounting of how their money is spent — and this is true of any college — will they see real change. And only with such oversight will Hillsdale realize that freedom means more than independence — it also means tolerance.

Its great-books course, like its history and classics courses, are powerful intellectual adventures. And the professors at Hillsdale are among the finest people in higher education.

Incredibly dedicated men and women, these teachers care profoundly about their students, and some of them remain my good friends. The real tragedy of the Roche scandal is that this is a blemish on their resumes from which they may never recover.

I remember, when I first arrived at Hillsdale, the sense of adventure and excitement at being at such a monument to freedom. And I remember noticing immediately the cynicism and disillusionment of its seniors. I didn't understand it — until I was a senior. By then, it was too late: I had invested too much in my education in Hillsdale. I received a great education there, and I'm proud of that. But what made me cynical was to see a school with so much potential turn its back on the opportunity to nurture students' independent thinking; to see it coddle cherished fairy tales; to see it crush opposition,



"I didn't do my science homework because I got caught in a time warp."

terrify students with gestapo tactics, encourage an us-against-them mindset that intellectually cripples far more students than it helps, or an intellectual resignation to authority that lulls, rather than awakens. And yet, in a way, it was a powerful education for me. I thought I knew what conservatism was — Hillsdale showed me what it *really* is.

Hillsdale must now dig its way out of a humiliating dent in its religious right armor. It has appointed a committee, including William F. Buckley and William Bennett, to find a new president. (Bennett soon resigned in protest against the school's stonewalling on the whole subject of Roche's resignation.)

One hopes they will choose a president who believes more in fostering curiosity and tolerating different opinions. Since the prime candidate is acting president Robert Blackstock, who, as provost, was in charge of the *in loco parentis* system, and who — rumor, again, has it — actively encourages students to spy on their roommates for scholarship funds, the chances seem nil. Only when donors demand an accounting of how their money is spent — and this is true of any college — will they see real change. And only with such oversight will Hillsdale realize that freedom means more than independence — it also means tolerance. □

Ramsey, "WTO," from page 28

countries had negotiated a proposed investment treaty. They called it the Multilateral Agreement on Investment. The MAI promised equal treatment and due process of law for foreign investors. The Left went ballistic over the MAI, and in 1998, shot it down. A weaker version of it was proposed at Seattle by Japan, South Korea, Singapore, Switzerland, Panama, Poland and the European Union — but not by the United States.

Other issues included "competition policy" — antitrust, and global standards on patents and copyrights. And, of course, there were those issues of labor and environmental standards.

The reader may be getting uneasy. This thing that is not a government begins to smell like one. We start with anarchy, proceed to the rules of *laissez-faire* (which, indeed, is a rule-based system), and pass on to global social democracy.

The WTO was not designed for that. It cannot enforce that — in its present form. But there are those, such as Fred Smith, president of the Competitive Enterprise Institute (and a contributing editor of this magazine), who are raising the alarm about what the WTO could become.

In 1996 former WTO Director-General Renato Ruggiero made the statement, often quoted against him, that the WTO was creating "the constitution for the global economy." The current WTO treaty is not a Constitution; it's more an Articles of Confederation, but not really even that. But these things don't stay the same. Lamy's complaint about the "medieval" procedures may prompt a reevaluation of the WTO. The organization, which has largely been about expanding free commerce, may continue to do so; there is certainly more to be done. But it may also come to be something different. Perhaps, in the future, those who believe in free trade may find themselves out in the street.

At Seattle, the free traders were on the inside. They should stay on the inside if they can. But they will have to work at it. Their opponents have declared a victory, and are still cheering. □

Your PC as Big Brother

by Declan McCullagh

A new campaign to spy on you via the Internet has some surprising allies.

If you were already worried about your privacy, prepare to get really spooked. In the future the Feds may find it easier than ever to eavesdrop on your e-mail, Web browsing and Internet phone calls.

The group of technical experts who run the Net is weighing whether it should change technical standards to allow police and other meddlesome government snoops the means to conveniently wiretap our online actions.

There are so many things wrong with this intrusive idea, which the Internet Engineering Task Force (IETF) debated at its November meeting in Washington D.C., that it's difficult to know where to start criticizing it. The measure was defeated, but it is frightening to think that the IETF — generally a libertarian-leaning crowd — seriously considered adopting this scheme.

The thinking among some veteran participants is that U.S. law may require Internet snoopability in the future, so it is best to hold their noses, do the dirty deed, and get it over with now.

"The basic problem is that the government will probably demand of IP telephony the rules that govern wiretaps," says University of Pennsylvania electrical engineering professor Dave Farber, a board member of the Electronic Frontier Foundation and the Internet Society. "... I wish we didn't have the law. But given that the law is there, it's wiser to make sure it just applies to the stuff that's IP telephony and not all of our data traffic."

Farber might have a point if Congress had approved such a law, the president had signed it, and the courts had declared it to be constitutional.

But since that hasn't happened, it makes little sense for the IETF to race to support surveillance. "There is no reason for the IETF to build surveillance capabilities into the architecture of the Net," says Barry Steinhardt, associate director of the American Civil Liberties Union. (Adding snooping

abilities also introduces security holes, something that IETF has vehemently opposed in the past.)

There are also good historical reasons for the IETF to be leery of law enforcement and wiretaps.

In the past, government agencies have subjected hundreds of thousands of law-abiding Americans to unreasonable surveillance, illegal wiretaps and warrantless searches. Eleanor Roosevelt, and Martin Luther King, Jr. are just two prominent examples. Feminists, gay rights leaders and Catholic priests have also been spied on. The FBI used secret files and hidden microphones to discredit political opponents, sway the Supreme Court and influence presidential elections.

Malfeasants at the Los Angeles Police Department are doing the same thing today. Last month the L.A. county public defender's office filed court papers detailing police and prosecutors' abuses of power and apparent perjury.

"All of the cases which the Los Angeles District Attorney denied, under oath, in November of 1998 were related to a wiretap, were in fact the result of the [government's] wiretap operations," the documents say. One single illegal wiretap produced over 65,000 pages of printed logs — so many that a forklift was required to move them.

Under U.S. law, courts are supposed to review wiretap requests to verify that they are reasonable. But judges are often complicit. One judge authorized the San Bernardino District Attorney to wiretap public pay phones for four months. The cops intercepted 131,202 conversations that the district attorney's office kept for a decade — but never made any arrests.

As a society, we have a choice: We can trust police never to become overzealous, trust prosecutors never to become too ambitious, and trust judges never to become too uncritical. Or we can just simply ditch wiretapping for good.

It may seem a radical idea, especially to lazy cops who have come to depend on that firehose flow of information. (Of course they could still bug rooms and use informants.)

Yet some law enforcement officials have in the past suggested exactly that. Attorney General Ramsey Clark prohibited federal police from using wiretaps and told Congress in 1967, "We make cases effectively without wiretapping or electronic surveillance." Detroit's police commissioner felt the same way, calling wiretapping "an outrageous tactic" that "is not necessary."

In a famous dissent in a 1928 Supreme Court case, Justice Louis Brandeis chose even more dramatic words: "The evil incident to invasion of the privacy of the telephone is far

The so-called digital telephony law requires taxpayers to pay for phone companies to rewire their networks for police eavesdropping. The Cellular Telecommunications Industry Association estimates that complying with CALEA will cost over \$4 billion.

greater than that involved in tampering with the mails . . . As a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wiretapping."

Some modern civil libertarians like the ACLU take Brandeis' point one step further, arguing that wiretapping by its very nature violates the Fourth Amendment's prohibition on "unreasonable searches." They point out that private conversations with a spouse, doctor, or priest are often intercepted.

If the total cost is taken into account, wiretaps don't seem to be that efficient an investigative tool. According to government statistics, in 1998 police intercepted 2,313,210 conversations but the taps — 71% were for drug-related crimes — resulted in only 911 convictions.

An equally alarming — though less obvious — effect of allowing police to wiretap is that they become reliant on the tactic and start to demand even more. Consider the Communications Assistance to Law Enforcement Act (CALEA), which the FBI pressured Congress into approving in 1994. The so-called digital telephony law requires taxpayers to pay for phone companies to rewire their networks for police eavesdropping.

The Cellular Telecommunications Industry Association estimates that complying with CALEA will cost over \$4 billion. According to the Personal Communications Industry Association, local telephone companies will have to spend \$1.73 billion — and this money will come from higher taxes on Americans.

Worse yet, the Federal Communications Commission has indicated that CALEA, which applies to "telecommunications carriers," will spread to cover some forms of Internet

telephony too.

What's most disturbing, though, is that CALEA has set an alarming precedent: The government has the right to alter new technologies for easy surveillance. The White House in 1991 planned to do just that. A "top secret" memo obtained by the Electronic Privacy Information Center through a Freedom of Information Act request said that President Bush had approved a plan to use CALEA's legislative momentum to ban encryption products that did not have backdoors for the Feds. "We will have a beachhead we can exploit for the encryption fix," a top Bush aide wrote.

Now the FBI is telling the Internet Engineering Task Force that they should build in surveillance. "If a standards-setting body is going to fully carry out its mission in addressing the needs of all groups, you've got to recognize government's legitimate need to protect public safety and, under specific circumstances, conduct surveillance," Barry Smith, supervisory special agent in the FBI's digital telephony and encryption policy unit, said.

Perhaps. But an even better way to protect the public's safety from the government might just be to eliminate wiretapping altogether, and let the IETF engineers go back to the much more valuable business of keeping the Internet humming. □

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Strongarm Suits

by David Kopel

Unable to get Congress to pass new gun laws, President Clinton tries an end run through the courts.

Gun prohibition groups have had a rough time in recent years. Even after the Columbine High School murders, they were unable to push any major new anti-gun laws through Congress, or through any states other than California. The demand for new laws to "do something" about Columbine ran into the problem that none of the proposed new laws (like destroying gun shows through administrative regulation) could possibly have prevented Columbine.

But the anti-gun groups are nothing if not creative. Thus, the Center to Prevent Handgun Violence (the litigation arm of Handgun Control, Inc.) has orchestrated lawsuits all over the country against handgun manufacturers. The suits have been brought by the CPHV in conjunction with twenty-nine big-city mayors, including the mayors of New Orleans, Chicago, Miami, and St. Louis.

In late December, President Clinton and Andrew Cuomo (the Secretary of Housing and Urban Development) announced that HUD would sue also, unless gun manufacturers surrendered to the plaintiffs' demands.

HUD deceived Congress on August 4, 1999, when HUD's General Counsel, Gail Laster, told the House Subcommittee on Criminal Justice, Drug Policy, and Human Resources: "HUD has no authority on its own to bring litigation. . . . I repeat, HUD does not plan to bring any action on its own against the gun industry." And since HUD will be filing suit in the name of thousands of public housing authorities throughout the United States, rather than in its own name, Ms. Laster's testimony was deliberately misleading, but not, strictly speaking, a flat-out lie.

Political analysts speculated that the HUD lawsuit was an effort to raise Cuomo's profile, since he is rumored to be a leading contender for the vice presidential nomination, should Al Gore win the Presidential nomination. Additionally, President Clinton appeared to be displaying the antipathy to gun owners which is common among rap-

ists and other violent predators.

If we put aside the motives of the suitors, we find that the suits are vexatious, and based on untenable theories.

First, there is the allegation that handgun companies have conspired to keep their products from having various child-proof devices, or devices to keep unauthorized persons from using the guns.

Product liability suits using this theory have already been tried in numerous courts, with private plaintiffs abetted by the CPHV. The cases have been a universal failure. For example, in the 1999 California case of *Dix v. Beretta*, not only did the CPHV lose, the California trial court ordered the CPHV to pay part of Beretta's litigation costs.

The cases founder because the "safety" devices which the CPHV demands make the gun less reliable. For example, a "magazine disconnect" prevents a gun from firing even if there is bullet in the chamber, unless the magazine (ammunition clip) is in the gun. So if someone drops the magazine clip while attempting to put it in the gun in an emergency, the gun becomes of no use, and the gun-owner could be killed by a criminal. For this reason, many police officers refuse to buy guns with magazine disconnects.

Other devices which the CPHV demands haven't been invented yet, like palm print recognition devices embedded in a gun's grip. Even if they were invented, many users would not want to trust their lives to a microchip functioning instantly and perfectly.

Even simpler devices are not foolproof. At a December 1998 mayors' meeting, CPHV attorney Dennis Henigan attempted to demonstrate how easy it is to remove a trigger

lock in an emergency; he wasn't even able to get it off the gun.

Spurred by an earlier round of failed suits by anti-gun groups, many states in the 1980s enacted "defectless product liability" laws which prevent product liability suits from being brought against firearms which work as intended.

Thus, some of the city suits evade the product liability issue by raising claims of "negligent marketing" and "public nuisance" — claiming that the handgun companies deliberately supply handguns to criminals.

One supposed proof of this claim is that in recent decades, handgun companies have brought out new models which are smaller and more powerful than previous models. This is certainly true, but it is hardly proof that the guns are made for criminals. Thirty-one states allow adults who can pass a background check and a safety class to obtain a permit to carry a handgun for protection. Many of the other nine-

If Clinton, Cuomo, and the gun-hating mayors actually believed that trigger locks, palm-print readers, and other "safety" devices do not make guns unreliable, they'd insist that their own bodyguards use guns equipped with such devices.

teen allow handgun carrying in certain circumstances even without a permit (for example, in one's car while traveling).

Thus, there is a large market of lawful purchasers who are especially interested in portable guns with enough stopping power to disable a criminal. The city lawsuits ignore this fact. The refusal to acknowledge the legitimacy of defensive gun sales is not surprising, since CPHV head Sarah Brady opposes all non-government defensive gun ownership. "To me, the only reason for guns in civilian hands is for sporting purposes," she explains.

In a direct assault on the First Amendment, suits have

also been brought against three firearms industry trade associations, who do not sell guns; they do nothing other than educate the public and lobby against various measures pushed by the gun prohibition groups.

While the lawsuits are unlikely to succeed, the sheer cost of litigation could be fatal to many handgun companies, as former Philadelphia Mayor Ed Rendell (the first mayor to consider a lawsuit) happily noted. Even if all the gun companies in America were put together, they would not constitute a single Fortune 500 company.

The lawsuits are cleverly structured to prevent the defendants from filing a motion to consolidate the cases (which would reduce legal costs). And the lawyers working at CPHV's direction have been smart enough not to sue ammunition manufacturers, who are much wealthier than gun companies, and who could easily afford to pay for lawyers to handle every case from start to finish.

Unlike the cigarette companies, the handgun companies cannot buy off the tort lawyers and politicians by giving them a share of the companies' profits. And unlike cigarette executives, handgun company officers have never claimed that handguns do not kill.

But besides killing, handguns also save many innocent lives (sometimes by killing criminals). That is why every police department in America buys handguns from the very same companies that the mayors are suing. How hypocritical for the mayors to sue the very companies which enhance public safety by providing the mayors' own police departments with firearms.

Indeed, most of these mayors are protected 24 hours a day by taxpayer-paid police bodyguards who are outfitted with firearms supplied by the lawsuit victims. So are Andrew Cuomo and Bill Clinton, who are guarded by the Secret Service. If Clinton, Cuomo, and the gun-hating mayors actually believed that trigger locks, palm-print readers, and other "safety" devices do not make guns unreliable, they'd insist that their own bodyguards use guns equipped with such devices.

Legislation to outlaw the abusive lawsuits has been enacted in fifteen states, including Texas, where Gov. Bush enthusiastically signed the bill. (In fact, he signed it just a few weeks after Columbine.) Similar national legislation has been proposed by Rep. Bob Barr (R-Ga.). Notably, the legislation is supported by groups like the United States Chamber of Commerce, which have little interest in guns per se, but which recognize that if the gun cases succeed, then companies that make alcohol, automobiles, high-fat food, knives, and many other products will be next in line for tort lawyer predation.

Although the CPHV protests that the legislative reforms interfere with its litigation rights, there is no right to bring vexatious litigation which chills the exercise of constitutional rights; that is why the Supreme Court, in the 1964 case *New York Times v. Sullivan*, restricted libel suits which chilled First Amendment rights. Legislation to ban lawsuit abuse reaffirms the fundamental principle of our republican government that policy decisions about important matters (such as banning guns) are the responsibility of the legislature acting under the Constitution; a collection of tort lawyers, mayors, a cabinet secretary, and a violent criminal should not be allowed to usurp the legislative power. ┘

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For information, write:
R.W. Bradford, Editor, *Liberty*
P.O. Box 1181, Port Townsend, WA 98368
email: rwbradford@bigfoot.com

Let's Teach Creationism

by Bart Kosko

Fundamentalist Christians are correct: creationism should be taught in the schools. But they won't like the results.

The Kansas State Board of Education voted in August to allow state teachers not to teach evolution or the Big Bang theory of cosmic creation. Then New Mexico's State Board of Education voted 14-to-1 in October to ban creationism from the state curriculum.

The New Mexico decision went too far. There *is* one point where the creationists are right: Schools *should* teach creationism in science classes. Creationism offers an ideal case study of the scientific method. But creationists may not like the result.

All good theories should have a central claim and creationism does: God created the world. Most versions further claim that God created Earth and that He created the life forms on its surface.

But science demands mechanisms. It demands to know how something happens. So what is the mechanism of creationism? How did God create the world? Did He just say "Behold!" and the world appeared? Then how does this "beholding" work? Does it have a mathematical description? Does it obey the law of energy conservation?

Creationism just asserts that a miraculous power did something miraculous. It does not say how. So it barely counts as a theory at all. It also does not say what this miraculous power or creature is or how the power or creature works. It puts forth one miracle to explain another and yet it describes neither. So creationism looks more like a restatement of the creation event than an explanation of it.

Scientists do not have these problems when they explain where the latest variety of yellow sweet corn comes from. Farmers grow large fields of corn and look for an occasional mutation. Sunlight might cause the mutation when a random photon hits part of a DNA coil in a corn plant and changes its genetic blueprint. Farmers plant the seeds from the mutated corn and repeat the process until they produce a new variety. This theory of creation uses only the mechanisms of variation and selection.

Science also demands testability. That means that some evidence could lead one to reject the theory as false. What evidence would contradict the claim that God made the world? Does it matter if the universe expands until it ends in a heat death (as it looks as if it will) or if gravity makes it contract back to a point? What possible data would refute the claim?

Creationism must fill in the blank: God did not create the world if — what? Here science draws a hard line. No such negative data means no scientific theory. A scientific theory must in principle risk something in test. That is what makes it scientific.

We may not be able to directly test the Big Bang theory in a laboratory but we can test some of its logical consequences. We do not have to replay a video of the universe to see if there was a Big Bang just as we do not have to see a mountain form to test theories about mountains. Big Bang theories predict that the primordial explosion that created the world left footprints as background noise hissing throughout the entire expanding universe. Finding such background noise led to a Nobel Prize. But the more important point is that the lack of such data would in time have led scientists to reject the Big Bang theory.

Scientists would also reject the Big Bang theory if the universe contained more helium than hydrogen or if it contained less matter than anti-matter. They would reject the sweet-corn theory if variation and selection did not produce new varieties or even if they did not produce their gene frequencies at the predicted rate. Creationists have offered no

such critical tests of their theory.

And scientists have found indirect ways to test the Big Bang theory in their labs. Creationists have often said such tests were impossible.

The Big Bang theory asserts that the universe started cooling fractions of a second after the super-hot Big Bang explosion. That should have produced strings and other "topological defects" in the structure of space-time. But the same mechanisms should produce string-like vortices when heated liquid helium cools into a super-fluid state. Something like this happens when water freezes to ice in an ice-cube tray and leaves lines and cracks and other defects in the ice cubes. Two teams of scientists found just such vortices in 1996 and they might well have found otherwise.*

* Bauerle, C., et al., "Laboratory Simulation of Cosmic String Formation in the Early Universe using Superfluid 3He," *Nature*, vol. 382, 332 - 334, 25 July 1996; Ruutu, V. M. H., et al., "Vortex Formation in Neutron-irradiated Superfluid 3He as an Analogue of Cosmological Defect Formation," *Nature*, vol. 382, 334 - 336, 25 July 1996.

Creationists have offered no indirect lab tests of their theory. Science also demands evidence and it does so ruthlessly: It proportions belief to evidence. Strong claims require strong evidence. And no evidence requires no belief. So what is the evidence for creationism? Where are the footprints? To say that the Bible says God created the world is to reason in a circle because that just restates creationism. Creationists often criticize competing theories but they have so far failed to produce a single atom of evidence for their mechanism-free hypothesis. That alone warrants no belief in it.

Science also shaves with Occam's razor: It favors the simplest theory that explains the facts. That undercuts the conceptual need for creationism even if it does not address its popular appeal. What we can explain with creationism we can explain without it.

So creationism has its place in any study of the scientific method. It offers a rare example of a popular theory that has no mechanism or testable content and one that lives on despite a complete lack of evidence and predictive power. Creationism belongs in textbooks because it is a textbook example of pseudo-science. □

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could motivate a significant number of people to vote libertarian. I agree with his thinking and believe it to be a good idea, especially considering the arguments he gives on property seizures and the medical argument. But unlike Bradford, I think there are other good wedge issues: tobacco, alcohol, and firearms.

The tobacco issue is a perfect issue. The government says that 25% of Americans smoke, which is around 50 million people. This is probably more people than belong to either the Republican or Democratic parties. These people are subject to a hate campaign that effects them every day, multiple times.

The other people who are subjected to the vicious treatment doled out to smokers — alcohol drinkers and gun owners — are probably 70 to 80 million people. I suggest that 75 to 80 percent of these people do not belong to a political party and rarely if ever vote. A strong stand by the LP would capture the attention of these potential voters.

Gene Leverett
Limon, Colo.

Affirmative Wedge

R. W. Bradford's argument for using the "wedge issue" of legalization of marijuana was, I think a good one. I hope the Libertarian Party's candidate for president the United States, whoever it might be, will seriously consider the suggestion. Properly submitted with perhaps a "White Paper" it might well pay considerable political dividends.

Might I suggest affirmative action as another possibility? Polls show that majorities of all of the racial and ethnic groups are against quotas and "minority set asides." As the voters of California and Washington have demonstrated, the American people will vote against this government plan to institute a racial, sexual or ethnic spoils system if given the opportunity. Few people are aware of how the Federal Government has permeated racial, ethnic, and sexual prefer-

ences throughout the economy through Federal Acquisitions Regulations (the "FARs", that govern contracting with the federal government) and through the coercive tactics employed by the Equal Employment Opportunities Commission. I speak from personal experience as a Federal employee in stating that the concept of "diversity" is being relentlessly pushed throughout the federal government by EEOC Managers, through endless diversity, and "sensitivity" training, all at taxpayer's expense. Frivolous EEO complaints by federal employees are constant. In the last year I have seen statistics on, one out of every 26 Federal employees filed an EEO complaint. That is nearly four per cent of Federal employees. Agencies "win," if that is the correct word, about 95 percent of the complaints. The lowest cost for processing one of these complaints I've seen is \$65,000. This means that it costs about \$1,300,000.00 for each complaint that is found to have any validity.

As your readers might know, Gov. Jeb Bush of Florida recently, through an Executive Order, ended all racial, ethnic, and sexual set-asides in the government (or at least in the Executive Department of that government) of that State. This is something a Libertarian Party presidential candidate could promise to do. I recall then President George Bush stated he was going to issue such an Executive Order back in, I believe, 1991. The firestorm of outrage from the so-called "civil rights" lobby made him fearful of the possible political repercussions, so he changed his mind.

Loren L. Baker
New Highlands, Calif.

Bradford responds: While I think the LP should oppose the War on Tobacco and affirmative action, I don't believe its opposition would work as a "wedge issue." There are plenty of politicians in both major parties who oppose the tobacco war, and almost all Republicans oppose affirmative action.

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In Defense of the Fourteenth Amendment

by Roger Pilon

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law.” — U.S. Constitution, Article XIV, Section 1

In his “Liberty, States’ Rights, and the Most Dangerous Amendment,” (*Liberty*, August), Gene Healy takes me to task for my support of the Fourteenth Amendment. Sounding for all the world like a libertarian Robert Bork, he concludes with a counsel of despair: in the battle between my moderate view of the amendment and the radical views of the likes of Professor Catharine MacKinnon, the outcome has been all but foreordained, he says, thanks to the modern American legal culture. Thus, “given federal supremacy and the vast powers the Fourteenth Amendment confers on Congress and the courts, it matters little whether Roger Pilon is right about the amendment’s original meaning.” Healy’s position, in contrast, appears to involve radical surgery: “If we can ever rid ourselves of federal supremacy, losing the Fourteenth Amendment will be no sacrifice at all.”

That’s a big “if,” of course, about which Healy offers no counsel. Moreover, even if federal supremacy were to recede to within its constitutional bounds, we’re likely to lose the Fourteenth Amendment in the fullest sense only by subsequent amendment — as with Prohibition — and the likelihood of that is rather less, I expect, than the likelihood that my views will eventually prevail. So perhaps we should learn to live with the amendment — and encourage others, especially judges, to better understand its meaning and import. At the least, let’s see what there is to the dispute that Healy has brought to these pages.

Local Tyranny: An Enduring Problem

The enduring problem of local tyranny is the springboard for Healy’s critique. As we all know, political decentralization in the name of liberty doesn’t guarantee liberty. From the political machines that often control state and local politics to zoning boards, licensing commissions, inspection agencies, sheriff’s departments, and much more, the horror stories are legion. The Fourteenth Amendment was written with local tyranny in mind: it affords a federal appeal when

states or their subdivisions violate individual rights to life, liberty, and property. But things haven’t always worked out that way, as we also know. In fact, no area of constitutional jurisprudence is more vexing today than that involving the Fourteenth Amendment. Often both Congress and the courts have used the amendment not to protect but to violate rights. Yet local tyranny in endless variety persists.

Thus, the question Healy poses is what should libertarians think of the Fourteenth Amendment? He answers, in effect, “not much.” In fact, with seeming approval he twice invokes Lord Acton, writing to Robert E. Lee following the Confederacy’s defeat: “I saw in States’ Rights the only available check upon the absolutism of the sovereign will.” In contrast, late 20th century libertarians “have come full circle,” Healy notes: “Today, the libertarian orthodoxy holds that the Fourteenth Amendment perfected the Framers’ design, fulfilling the promise of the Declaration of Independence.” Those who promote the new orthodoxy urge “that the amendment be given robust application against the states, in order to secure our natural rights to life, liberty and property.”

In truth, it was not the Fourteenth Amendment alone but the full set of Civil War amendments — Thirteen through Fifteen — plus the later Nineteenth and Twenty-Sixth Amendments that “perfected” the Framers’ design. Nowhere is that more clear, of course, than with the Thirteenth Amendment, which erased finally the original design’s oblique recognition of slavery. But the Fourteenth Amendment was crucial too in affording an important measure of protection against state and local tyranny. We all know

why the Bill of Rights applied only against the federal government, not against the states — a point the Supreme Court confirmed in 1833. Were it otherwise, the institution and practices of slavery could not have endured, and no union would ever have been formed. Upon that understanding the Constitution and, two years later, the Bill of Rights were ratified, with the hope and expectation by many that slavery would in time wither away. That didn't happen. It took a civil war to end the institution. The notorious "black codes" were soon enacted in the southern states. And the Fourteenth Amendment was the answer. In that sense, at least, the amendment "perfected" the original design.

But my case for the Fourteenth Amendment is "deeply flawed," Healy says, because (1) it ignores the circumstances of the amendment's inception, which call into question the amendment's political legitimacy, and (2) it depends, if the amendment is to be at all effective, on "a Panglossian view of judges and federal supremacy," which modern legal culture hardly supports. There's truth in both criticisms. But it's hardly fatal. Let's look more closely.

Consent: Always a Messy Business

Throughout my published work, Healy claims, I have tied political legitimacy to consent — although not, he grants, without qualification. And quite properly, he adds, I have excoriated those who've ignored constitutional provisions brought about through consent — whether it be the political branches arrogating power to themselves (as during the New Deal) or the judicial branch either ignoring its responsibilities (the unwarranted restraint of the post-1937 Court) or exercising unauthorized power (the later activism of the Warren and Burger Courts). Yet the Fourteenth Amendment, Healy claims, was hardly the product of consent. Indeed, it was ratified "at the point of a bayonet." Because the new orthodoxy ignores that history, preferring instead the story from "immaculate conception," it is fatally flawed, he concludes.

Not so fast. Let's start with the theory of the matter, then turn very briefly to the facts. As moderns, we all believe that consent of some kind is a *sine qua non* of political legitimacy. But there, of course, is the rub. Consent of what kind? Once we press the idea of consent — sometimes even in the ordinary contractual setting, to say nothing of the social contract setting — we start to see problems, both theoretical and practical. What process shapes the issues to be decided, for example? Or how does anything short of unanimity bind dissenters? (Prior unanimous consent is of course a myth.) Even if one found unanimity, how does that bind succeeding generations? Those are but a few of the questions that bring us to the qualifications in my discussions of legitimacy that Healy simply glosses, seeing me instead, in essence, as an all but pure consent man.

Thus, when he cites me as saying that consent, and only consent, is the ground of legitimate power, he doesn't say that in the cited essay I was not so much defending that assertion as addressing the line in the Declaration of Independence that speaks to the point. And I was doing so as part of a larger effort to show how difficult it is — indeed, impossible — to locate political consent in the real world that deeply satisfies. In fact, throughout my published work I have argued that the difficulty of locating such consent is one reason for concluding that there is an air of illegitimacy that surrounds government as such. Government is, as the Founders rightly

understood, a necessary evil — a forced association to which we should turn only when we must, the better to avoid the resort to force that necessarily follows. Thus, in an essay on legitimacy that appeared in the *Cato Journal* in 1992 I argued that "legitimacy" is best understood as a function not simply of consent but, more deeply, of reason, a point I went on to discuss in some detail.

Nevertheless, however problematic a phenomenon consent may be in the real world, including the consent of the ratification process, it plays an important role in determining whether a given constitution or regime or law or legal decision is at least politically legitimate, if not morally so. Constitutional ratification, for example, is the "big bang" that gets a legal regime off the ground, affording it such legitimacy as it can in an imperfect world. And other forms of consent, including the subsequent ratification of constitutional amendments, help sustain the regime, from time to time, along the way. Again, consent is far from a perfect indicator of legitimacy, given the problems noted above. And at the margin it fails, falling into circularity: for not *any* form of consent will do. But if, at the other end, immaculate conception is all that will do (a conception that respects the rights of even the last hold-out), then only anarchy will pass the test. Anarchy is more satisfying morally, I admit, but not likely to be the state of affairs that any of us enjoys in this lifetime.

In determining the legitimacy of any given measure, therefore, we have to look beyond consent to reason (about which a bit more below). We have to determine not simply what the law is, insofar as possible, but whether it is just, which is not a

We have to determine not simply what the law is, insofar as possible, but whether it is just, which is not a matter of consent, in most cases, but of reason.

matter of consent, in most cases, but of reason. Once we recognize all of that, once we realize that consent and reason together enter into judgments about legitimacy, we're in a better position to judge whether any given constitution, amendment, or statute is or is not legitimate.

Healy's first complaint about the Fourteenth Amendment, then, is that the process by which it was ratified didn't go by the book. As "legally reconstituted" southern states were busy ratifying the Thirteenth Amendment, he says, radical Republicans in Congress refused to seat southern congressmen, which allowed the "rump Congress" to propose the Fourteenth Amendment consistent with the two-thirds requirement of Article V. Then when (most) southern states rejected the amendment, which thus failed the three-fourths requirement of Article V, Congress responded with the Reconstruction Act of 1867, which effectively placed those states under martial law. It was to end military rule, Healy concludes, that southern states eventually ratified the Fourteenth Amendment, even as New Jersey and Ohio were rescinding their earlier ratifications. Nevertheless, by joint resolution, Congress declared the amendment valid.

I readily grant that the Fourteenth Amendment was not brought into being through immaculate conception. But

again, if that were the test, the Constitution itself would not pass it: the delegates to Annapolis and, later, Philadelphia were not really authorized to draft a new document, after all; moreover, when it comes to consent, very few of those who were in the original position — to say nothing of the rest of us — actually consented to be bound by the new Constitution. Yet Healy rests his entire argument from consent on the ratification procedures set forth in that document. And he begins his account of the wayward process by speaking of the “legally reconstituted” southern states. In precisely what sense were those states “legally reconstituted”? Was that done with the consent of the just-freed former slaves, for example? We all know what conditions were like in the South immediately after the Civil War. If consent is a problematic touchstone for legitimacy in the best of times, in times like those it can be little more than suggestive.

Again, why did radical Republicans in Congress refuse to seat representatives sent from the South? Healy invites us to believe that, regarding the Fourteenth Amendment, it was to enable Article V's two-thirds requirement to be met. Could the story be more complicated than that? Could the scars of the war, on all sides, be too fresh to allow for “normal” procedures? Georgia, for example, sent Alexander H. Stephens, vice president of the Confederacy, to the U.S. Senate, even though he was in federal prison awaiting trial for treason. And quite apart from the absence of black suffrage, the infamous black codes, instigated by many of those same newly minted southern representatives, argued that the war was far from over. War and its aftermath, as we know, are not the conditions that encourage respect for constitutional niceties.

Finally, regarding the Reconstruction Act of 1867, the initial failure of most southern states to ratify the Fourteenth Amendment was only one factor that led to its passage — and probably not the most important. Given uncontroverted evidence that southern officials were continuing to persecute blacks, the act imposed military rule to protect the civil rights of “all persons,” maintain order, and supervise the administration of justice. Those perpetrating or supporting the violence that gave rise to the act were hardly in a position to complain about procedural unfairness. The procedures that led to adoption of the Fourteenth Amendment may be troubling from some distant, purist perspective, but the immediate times were hardly pure. What should Congress have done — turn a blind eye to what was going on? We should be grateful that constitutional measures were in fact “rammed through,” under trying circumstances, the better to provide us all with a measure of protection against local tyranny in the future.

That historical sketch, like Healy's, is only a sketch, of course. My purpose is not to re-fight the Civil War, from slavery to secession to war and Reconstruction. Rather, it is simply to argue that abstract moral and legal principles must be applied in complex, often uncertain, factual settings, where “second-best” is sometimes the best there is. Again, that does not mean that anything will do. Thus, Healy is mistaken when he notes that “the squalid history of the Fourteenth Amendment poses serious problems” for my critique of Franklin Roosevelt's “extra-constitutional thuggery” during the New Deal — when FDR browbeat the Court into rewriting the Constitution by threatening to pack it with six additional members. Inviting us to liken those actions to the “thuggery” of Reconstruction Republicans, Healy raises the

specter of “selective indignation.” Is Pilon guilty of invoking the principles of consent and legitimacy, he asks, only against constitutional changes he “dislikes”?

No, I am not. Despite my dislike of the Sixteenth Amendment, for example, I accept its political legitimacy (although there too the history of its ratification is not without controversy). The issue, in the end, is not what I or anyone else likes or dislikes. Rather, it is whether, especially under extraordinary circumstances, the process and the consent it is designed to demonstrate at least approximate what one would hope to see under ordinary circumstances. Under extraordinary circumstances, the Reconstruction Congress took significant steps to approximate a normal ratification process, which doubtless would have been easier to do had

The Fourteenth Amendment was written with local tyranny in mind: it affords a federal appeal when states or their subdivisions violate individual rights to life, liberty, and property. But things haven't always worked out that way.

there been anything like a regular franchise, including black voters, in the defeated southern states. The final procedure was far from perfect, to be sure, but at least there was a process that, given the circumstances, came close. By contrast, FDR never even tried to amend the Constitution. He simply rammed his unconstitutional programs through a pliant Congress, then threatened the Court when it indicated it wouldn't go along. The Court got the message. There was the famous “switch in time that saved nine.” And the Court began reading the Constitution in ways it had never done before — all without even a pretense at amendment.

More recently, Yale's Bruce Ackerman has attempted to legitimate those changes by arguing that the election of 1936 amounted to a “constitutional moment.” Nonsense! Article V cannot be ignored altogether. Thus, again, not *any* form of consent will do. FDR's respect for the Constitution was captured best, perhaps, in a letter he wrote to the chairman of the House Ways and Means Committee in 1935: “I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation.” And his close confidant, Rexford Tugwell, one of the principal architects of the New Deal, put the matter plainly when he wrote some 30 years later: “To the extent that these [New Deal policies] developed, they were tortured interpretations of a document [i.e., the Constitution] intended to prevent them.” Not much ambiguity there.

But there is a second ground on which to distinguish the actions of the post-Civil War Congress from those of FDR — without having to resort to likes and dislikes — and that has to do with the merits of the matter. Quite simply, the Reconstruction Congress got it right, substantively, whereas FDR got it very wrong. We come at last, then, to the substantive issues — and thus, indirectly, to the second of Healy's arguments against the new libertarian orthodoxy, namely, that it depends on “a Panglossian view of judges and federal supremacy.” Unfortunately, this leg of Healy's critique is not

as focused as the first — doubtless in the nature of the matter. Let me summarize my own views, therefore, after which I will take up Healy's criticisms in the order he presents them.

Rights and Remedies: The Fourteenth Amendment

The "promise" of the Declaration, as noted above, was that Americans would enjoy their natural rights to life, liberty, and the pursuit of happiness under governments instituted to secure those rights and do the few other things their constitutions authorized them to do. It was a vision of limited government, dedicated to securing individual freedom and to upholding principles of individual responsibility. But again, the Constitution's oblique recognition of slavery and its practices compromised that vision. After the Civil War the Thirteenth Amendment abolished slavery as a constitutionally recognized institution, but it didn't abolish other state practices — whether or not connected with slavery — that also compromised the Declaration's vision. States in most cases were not subject to federal oversight regarding how they treated their own citizens, for the Bill of Rights continued to apply only to the federal government, not to state governments. Thus, it was to afford a federal remedy for state wrongs that the Fourteenth Amendment was written.

The idea behind the Fourteenth Amendment, then, was essentially remedial. Section one defined federal and state citizenship. It then prohibited states from making or enforcing any law that abridged the privileges or immunities of citizens of the United States; from depriving any person of life, liberty, or property without due process of law; or from denying to any person within its jurisdiction the equal protection of the laws. As the debates surrounding the amendment's adoption made clear, the Privileges or Immunities Clause was meant to be the principal font of substantive rights under the amendment. Blackstone had said that the phrase "privileges and immunities" referred to our "natural liberties." It was also understood to refer to our classic common law rights, grounded in property (broadly understood) and contract, as Healy notes. And of particular importance, those who drafted and debated the clause intended it to incorporate the Bill of Rights, for the first time, against the states. By contrast, the Due Process Clause, although mentioning "life, liberty, or property," was intended primarily to protect procedural rights against state infringement. And the Equal Protection Clause, as its language makes clear, was meant to ensure that states did not discriminate in applying the law.

By implication, those rights were to be protected by the courts, state or federal, through cases or controversies that were brought before them. Thus, in the infamous *Slaughterhouse Cases* of 1873, which eviscerated the Privileges or Immunities Clause, the plaintiffs sought protection from a Louisiana statute that erected a private monopoly, the effect of which was to deprive them of their right to a lawful calling, as they phrased it. In applying the provisions of the Fourteenth Amendment, judges did not have to make any new law; they had simply to apply the law that was already there, in the amendment, to the facts before them, much in the fashion of common law judges.

But section five of the amendment gave Congress a role too: "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." The operative word there is "enforce," not "make." When it drafted the amendment, in the Reconstruction context, Congress surely

had in mind the possibility that, in a given case, Congress might have to draft legislation to ensure that the rights secured by section one would be secured in fact, against obdurate state officials. In that regard, however, it is important to notice that the amendment protects not against private but against state action or omission; it is not a general police power of a kind reserved to the states. Nevertheless, if a state should deny to any person the equal protection of the laws — and especially if there should be a pattern of such denials, unaddressed or inadequately addressed by the courts, as happened during Reconstruction and, more recently, when Jim Crow laws were challenged — there is ample power in Congress to remedy those denials by "appropriate legislation." Such legislation should not create new rights, of course. Rather, its function is simply to better secure the rights we already have when states fail to do so or when states themselves violate them.

In sum, then, the role of both the courts and the Congress under the Fourteenth Amendment is relatively limited. Indeed, if states behaved as they ought to, there would be no role at all. It is only when states abridge, deprive, or deny that courts or Congress have any authority to step in. And even then, the authority is simply to take measures "appropriate" to remedying the wrong. States, in short, have the same obligations and responsibilities as ordinary people: they cannot violate rights; and they're responsible for carrying out their contractual duties to protect people equally. When they fail, there is a federal remedy, just as there is a state remedy when individuals fail in their duties toward others.

With that brief analysis by way of background, let's now return to Healy's critique of "the new orthodoxy." After arguing that the amendment cannot be justified from a consideration of its origins, he admits that by now the issue is "ancient history" and the amendment is not going away. Given what he believes about its illicit origins, however, he contends that if libertarians are to embrace the amendment,

I readily grant that the Fourteenth Amendment was not brought into being through immaculate conception. But again, if that were the test, the Constitution itself would not pass it.

"they'll have to look for pragmatic reasons for doing so. The argument must be that the amendment has been, and will continue to be, an effective weapon in the struggle for individual liberty."

Not so fast, again. Unlike many libertarians, Healy comes across here as a pragmatic positivist. The amendment is justified, he contends, either by consent — he believes not — or by the fact that it "works." There is a third alternative, of course, namely, that the amendment is justified because it is right — because it captures and protects (at least in principle) all and only those rights that we have to be protected. The demonstration of that point is well beyond the scope of this response, to be sure. But as a general matter the point is not at all difficult to grasp. It's what the Founders asserted in the Declaration when they listed the "self-evident" truths —

truths grounded in reason. And Healy himself seems to appreciate the point when he calls my substantive account of the amendment “strong.” In truth, whatever strength my account conveys stems from the amendment itself.

Nevertheless, even if I am right in believing that the authors of the amendment got it right, Healy is surely right in arguing, by implication, that libertarians should not embrace the amendment if, by and large, it’s been and continues to be used not to protect but to destroy liberty. However correct or noble our theories may be in the abstract, that is, if their application leads to destruction, we should reconsider them. We turn, then, to the record, and to the series of practical and theoretical points Healy makes regarding it, taking them in the order in which he raises them.

The Actual Record: A Mixed Bag

Before summarizing the actual record of the courts and Congress in applying the Fourteenth Amendment — and this, like Healy’s, will be a selective summary at best — three preliminary points need to be made. First, as already noted, the Court got off to a profoundly poor start with the *Slaughterhouse Cases* in 1873, barely five years after the amendment was ratified. In a bitterly divided five-to-four ruling, the Court eviscerated the principal substantive clause in the amendment, the Privileges or Immunities Clause, rendering it “a vain and idle enactment,” as Justice Field put it in dissent. Today, in fact, that decision is widely thought to have been mistaken. In the term just finished, interestingly, the Court took tentative steps to revive the clause — for the second time in 126 years. The fact remains, however, that Fourteenth Amendment jurisprudence has been seriously distorted by its absence.

For about half that time the Court tried to do under the Due Process Clause what should have been done under the Privileges or Immunities Clause — applying a theory of “substantive due process” that was never entirely convincing. The effort eventually collapsed under the weight of emerging ideas about social justice, although it enjoys selective currency still. The Court then turned to the Equal Protection Clause, which afforded even less substantive guidance. Indeed, under the Equal Protection Clause, treated as a font of substantive rights, one can get almost any result one wants. Thus, in its current state, Fourteenth Amendment jurisprudence is an invitation to both judicial and congressional chicanery. The wonder is that we haven’t had more. That we’ve had a fair measure is beyond doubt: Healy is surely right in that. But he overstates the matter, as we will see, and ends in unwarranted despair.

The second preliminary point concerns the deeper reason the Court and Congress have often appeared rudderless in interpreting and applying the Fourteenth Amendment — but not that amendment alone. It is that by and large they have had no serious theory of the matter, certainly no theory that goes to the heart of it, to the classical theory of rights that stands behind the amendment and, more generally, behind the Constitution as a whole. As a result, they fall prey too often to any transient theory of justice — when they themselves are not promoting such a theory. This too is a point that Healy homes in on. But here too it leads him to a counsel of despair, which I will try to avoid when I return to the point below.

Finally, the general absence of a well-grounded theory of

the Constitution, and the press of “progressive” ideas during the first third of the 20th century, culminated in the constitutional revolution of 1937 and ‘38, the effects of which have been far-reaching, including for the Fourteenth Amendment. Healy does not address this complex issue, but it is a factor nonetheless in the jurisprudence of the amendment. In particular, after a browbeaten Court reread the General Welfare and Commerce Clauses in 1937 to allow for a vast expansion of Congress’s redistributive and regulatory powers — thus eviscerating the doctrine of enumerated powers — it turned a year later to the Bill of Rights, which in principle still frustrated that expansion. In the notorious *Carolene Products* case, the Court distinguished two kinds of rights: “fundamental,” such as voting, speech, and, later, certain “personal” rights;

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and “nonfundamental,” such as property, contract, and the rights involved in “ordinary commercial transactions.” Thereafter, courts would give “strict scrutiny” to laws implicating “fundamental” rights, finding most unconstitutional. By contrast, they would give “minimal” scrutiny to laws implicating nonfundamental rights, finding most to be constitutional.

That opened the floodgates not simply for federal but for local tyranny as well, especially in the economic area. And the tyranny continues as courts “defer” not simply to the political branches of the federal government but to states and their endless, often petty and corrupt regulatory schemes. Thus are rights that were meant to be protected by the Fourteenth Amendment invaded, thanks to judicial deference. But the bifurcated Bill of Rights has led to invasions on the other side too as courts have applied “strict” scrutiny to state measures affecting “fundamental” rights. Here, however, armed with no serious theory of rights, courts have often been persuaded to find “rights” that are no part of the design — extinguishing other rights, in the process, that were meant to be protected. And here, the breakdown of the line between “private” and “public” looms large. More generally, however, it should be clear that the problems of interpretation and application that Healy points to go beyond the Fourteenth Amendment. In the end, they concern the larger state of American constitutional law.

In the Courts

But despite that larger state of affairs, the record, surprisingly, is mixed. In fact, Healy himself, after cataloguing what he takes to be the failures, has to grant that he has not been “entirely fair” to the Fourteenth Amendment — citing free speech and criminal procedure as areas in which “the amendment has been the source of some of the Court’s proudest moments, some of the greatest vindications of liberty in American constitutional law.” Still, his catalogue of cases calls for attention, so let’s turn to it.

The first thing that strikes one about Healy’s list is that

almost every example on it involves the hopelessly confused area of discrimination — and racial discrimination at that. It would not be far afield to say that we are still fighting the Civil War. In fact, think how different our jurisprudence — and nation — might be if the *Slaughterhouse Cases* had been rightly decided and the Civil Rights Act of 1866, which the Privileges or Immunities Clause was meant to constitutionalize, had been faithfully applied. Jim Crow *de jure* segregation would have been prohibited. Private *de facto* segregation, including discriminatory contracts and restrictive covenants, would have been allowed. But since nothing in that arrangement prohibits people from associating if they want to, private barriers would likely have broken down in time. More important still, the legal distinction between “private” and “public” would not have been compromised by a legal regime that prohibited

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private association. When Jim Crow did fall at last with the Civil Rights Act of 1964, it was easy for Congress to move from the evil of public segregation to the evil of private segregation that resulted not from private choice, necessarily, but from the force of law. The law had forced segregation, both public and private. Now the law would end segregation, even where it should otherwise be permitted.

The moral and legal confusion over such matters is everywhere today, and it is captured in Healy’s list. Thus, he begins with *Brown v. Board of Education* and argues that equality before the law “shifted effortlessly” thereafter into “forced equality of outcome.” The problem with the line of cases he cites, however, is that they all involve charges of continuing public discrimination, where the issues — including especially the remedial issues — are far more complicated than in cases of private discrimination, where there should be no causes of action. Public institutions may not discriminate, except on grounds that are narrowly tailored to their functions. That does not mean, however, that forced busing, to say nothing of judicial taxation, both of which Healy rightly criticizes, are appropriate remedies for proven public discrimination. That courts have overreached in fashioning remedies for public discrimination cannot be doubted. It does not follow, however, that they ought not to have a power to fashion remedies for clear public sector wrongs. Thus, it is something of a stretch to say, as Healy does, that judges under the Fourteenth Amendment have seized “vast” coercive powers. *Missouri v. Jenkins*, the judicial taxation case, was an exception. What is more, as Healy himself notes, in recent years federal courts “have cooled somewhat” to desegregation lawsuits. That understates it. However uncertainly, courts today are leading us out of the mess that earlier courts led us into.

In Congress

The power of courts aside, what of the power of Congress under section five of the Fourteenth Amendment? On this issue, Healy seems to think that he makes his most telling points against my views. He begins, however, by overstating

them. Thus, he has me arguing that Congress should “routinely” invoke section five to strike down state violations of individual rights; and he quotes me as saying that Congress can step in when states “fail to secure [rights] against private violations.” I don’t believe I’ve ever said the first; the second is taken out of context, as Healy later seems to acknowledge. But given that overstatement, I’m not surprised to find myself charged, in the case of Congress too, with opening the door to “vast federal power,” with encouraging Congress to invoke section five to criminalize everything from school gun possession to carjacking to violence against women.

The issues here are complex, so let’s sort them out carefully. As noted earlier, enforcement under the Fourteenth Amendment falls primarily to the courts, through cases or controversies brought before them by private parties. But if states should abridge, deprive, or deny — especially if there should be a denial of equal protection, and there should be a pattern of such denials, unaddressed or inadequately addressed by the courts — then clearly, Congress has the power “to enforce, by appropriate legislation, the provisions of [the] article.” As a practical matter, that hardly amounts to a power to “routinely” strike down state violations or omissions: however much Congress may have papered the nation with law for the better part of a century, it simply cannot move that quickly or “routinely.” That’s one reason why case-by-case enforcement by the courts is the norm, congressional enforcement the exception.

But there are deeper reasons too, which go to the very structure and function of the Constitution. The operative principle of the Constitution, captured by the doctrine of enumerated powers, takes the form of a presumption: most power is reserved to the states or the people. The Tenth Amendment, the final documentary evidence of the original understanding, makes that clear. And, by way of illustration, it helps us to see why most of what Congress does today under the Commerce Clause is unconstitutional. That clause was written to enable Congress to regulate — or “make regular” — commerce among the states. It was meant to ensure the free flow of goods and services among the states, especially in light of the protectionist measures states were erecting under the Articles of Confederation. Thus, it was largely a defensive measure — put there to protect free trade. Since 1937, however, the Commerce Clause has been read as authorizing Congress to regulate, for any purpose, anything that “affects” interstate commerce, which in principle is everything. That transforms the clause from a shield to a sword. And it contradicts the very idea of a government of limited powers. Indeed, if the Framers had meant for Congress to be able to do virtually anything it wanted under the commerce power, why would they have enumerated Congress’s other powers — or defended the doctrine of enumerated powers throughout the *Federalist Papers*? In sum, the larger, background presumption helps us to understand the clause and apply it properly.

The Fourteenth Amendment should be read and applied in the same way. To be sure, it gave a greater measure of power to the federal government — and greater security against state violations — but it did not fundamentally overturn the original design — including, in particular, the original presumption. Thus, an individual’s first avenue of recourse against state violations, assuming efforts at the state level fail, is modest: it is with the courts. Only if that fails, or is otherwise inappropriate (perhaps because the cases are too

numerous or the issues too large), may Congress step in under a presumption against congressional action. But that doesn't mean that Congress need create a "federal crime," as Healy suggests. In fact, properly read, section five does not authorize Congress to create federal crimes, or even federal causes of action against private parties. Rather, it authorizes Congress "to enforce" provisions that obligate states to not abridge, deprive, or deny. Of those three modalities, the first two present few problems, at least in principle: if remediation through the courts should prove unavailing, for whatever reason, Congress can legislate to prohibit states from abridging or depriving, and the executive branch can enforce those provisions against the state officials doing the abridging or depriving. The third modality — which is where section five often arises — is a bit trickier. How should Congress enforce the obligation of states to apply the law equally? That means compelling states not simply to stop what they're doing but to do, affirmatively, what they've not been doing. In the extreme, as during Reconstruction, one imagines federal officials taking over state institutions that administer justice. Short of such extraordinary circumstances, however, Congress has authority to compel state officials, through whatever means may be necessary, to apply the law equally.

Properly read, then, section five does not grant Congress "vast" powers. Given the background presumption, moreover, occasions to use the powers section five does grant arise infrequently and only when the resources of the courts prove insufficient — as after the Civil War or when the nation decided to end Jim Crow in more than a piecemeal way. Thus, when I chided Congress in the *Washington Post* for using the Commerce Clause rather than section five when it enacted the Church Arson Prevention Act in 1996, I said, as Healy notes, that Congress would have had "ample authority" under section five "if the facts had warranted it." Right there, of course, is the crucial qualification. As Healy adds: "Reading between the lines, I surmise that [Pilon] doubts that the facts warranted it." Absolutely. On the facts, there was no denial of equal protection of a kind that would have authorized Congress to act under section five. Congress's power, like the courts' power under section one, is remedial. As such, it must rest on some factual predicate. Thus, not only was the act unauthorized by the Commerce Clause; it was not authorized under section five either.

But suppose Congress acts anyway, notwithstanding the absence of any factual predicate. Public choice theory predicts it will, Healy believes. If it does, and "if the only check against federalization of crime is to be found in the judiciary's willingness to overturn congressional findings of fact, then that's no check at all," he says. First, as I've argued above, federalization of crime is never authorized under section five. But second, regarding what might be authorized, Healy is right about the reluctance of courts to challenge congressional findings of fact. That may be changing, however. And it should change, for the practice bespeaks the kind of judicial deference to the political branches that came out of the New Deal, which reduced the judiciary to a less than equal branch. Thus, in a recent administrative law decision, the Court of Appeals for the District of Columbia Circuit took the EPA to task on its factual findings. And in the 1995 *Lopez* case, which limited Congress's commerce power for the first time in nearly 60 years, the Supreme Court was not at all reluctant to challenge Congress's implicit assertion (made by the solicitor general on

behalf of Congress after Congress neglected to make such findings itself) that guns at school affected interstate commerce. Those are but two examples of an apparently growing willingness by the courts to get back into the business of, well, judging.

Restoring the Judiciary

And that brings me to what Healy seems to believe is his clincher, the inadequacy of the judiciary. I quite agree that despite the judiciary's many successes in applying the Fourteenth Amendment, as noted above, both the courts and Congress have abused it. Courts have ignored rights that were meant to be protected, found "rights" that were never there to be found, and fashioned remedies that were both

Today, there are a number of judges who are rediscovering those simple truths. Given the larger winds in the culture, they are often all that stand between us and tyranny. Given the vagaries of those winds, I want them to continue to stand until their numbers can be swelled by the Gene Healys of the world.

inadequate and, more often, beyond their power. And Congress has sometimes done the same, with the sanction of the courts. But as Healy cites me as saying, the answer to bad judging is better judges and better judging. Yet he calls that answer "profoundly unsatisfying" — and calls me "a dreamer." In a striking admission, however, he himself says: "I don't have a more practical answer." Given that, let's look more closely at mine.

Early on in his essay Healy had said that my case for the Fourteenth Amendment was "deeply flawed" because, in part, it depended on "a Panglossian view of judges and federal supremacy." I believe I've answered the federal supremacy part: under the Fourteenth Amendment, properly understood, federal supremacy is not as vast as Healy has made it out to be. Regarding the judges part — and the "properly understood" caveat — there's no question that the amendment deserves better judging than it's had over the past 130 years, starting with the *Slaughterhouse Cases*. But as already noted, it's not the Fourteenth Amendment alone that has suffered at the hands of less than well-trained or well-intentioned judges. Thus, is it the Fourteenth Amendment alone that Healy would abandon? Perhaps it is the Constitution itself.

Regardless of the answer to that, the problem of errant judges is tied in part to the political process through which judges are selected. But that amounts to saying that the issues are rooted in the larger culture, which is also true. And the issues are rooted especially, as Healy notes, in that part of the culture that trains future judges, the law schools of the nation. That is not a uniform world, to be sure, but there is no question that it leans considerably in one direction, especially at the nation's more elite law schools. And Healy is right also in his contention that among many in those schools the classical theory of rights that stands behind

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Roger & Me

by Gene Healy

Roger Pilon is still wrong. The Fourteenth Amendment was born in sin and has been up to a lot of mischief since.

I thank Roger Pilon for his cordial and measured response to my tirade in last August's *Liberty*. To a considerable extent, we agree on matters of principle. Alas, in the application of principle to reality, a vast gulf separates us.

Let's begin where we agree. Ideally, political obligation is founded on consent. Government everywhere lacks this foundation. Lysander Spooner was right in this much, at least: that the kind of "consent" that undergirds our Constitution differs markedly from the kind that binds us in normal contractual relations.

Real consent — unanimous and formally expressed as Spooner would have required — would make government as we know it impossible. However appealing that may sound, as Pilon notes, we're not likely to see this state of affairs in any of our lifetimes. And so we search for second-best solutions. Constitutional "consent," expressed via Article V's amendment process, is one such solution, albeit quite distant from Spoonerian consent. It requires some people (those in state legislatures or ratifying conventions) to consent for others, including those without the vote, those who oppose the amendment, those not yet living who will be governed by it. Where the legislators or conventioners got the right to consent for the rest of us remains to be convincingly explained.

But still, constitutional consent has a great deal to be said for it. In the political theory that informs the Constitution, power rests with the people, until that power is ceded by certain of their number through the amendment process. Getting two-thirds of Congress and three-fourths of the States to agree to an amendment is by no means easily accomplished. Thus, if we take Article V seriously, it requires a substantial degree of social accord to delegate any new powers to the federal government. This puts the presumption where it ought to be: against centralized power.

In a Cato Policy Report essay entitled "On the First Principles of Federalism," Pilon cogently describes that pre-

sumption, and the philosophy undergirding our Constitutional order: "Plainly, power resides in the first instance in the people, who then grant or *delegate* their power, *reserve* it, or *prohibit* its exercise, not immediately through periodic elections but rather institutionally — through the Constitution. The importance of that starting point cannot be overstated, for it is the foundation of whatever legitimacy our system of government can claim. What the Tenth Amendment says, in a nutshell, is this: if a power has not been delegated to the federal government, that government simply does not have it."

Well said. Thus far, Pilon and I agree: contractual consent where possible. Where such consent is not possible, then constitutional consent via the Article V amendment process, as a second line of defense. The Article V process may not always produce just results, or good amendments, but to the extent that federal powers can be legitimate, they must arise through that process.

I'd stop here, but in his response to my *Liberty* article, Pilon goes further. Contradicting the fine sentiments quoted above, he holds that, on occasion, when extraordinary historical circumstances present themselves and the federal government acts in the name of our natural rights, it can acquire powers never delegated to it constitutionally. Despite his protestations to the contrary, Pilon thus embraces a modified version of what is known in legal academia as "the Ackerman thesis."

Pilon chides Yale's Bruce Ackerman for his thesis that the Constitution can be amended by extraconstitutional means. Professor Ackerman argues that, in unique historical circumstances, there arise "constitutional moment[s]" whereby pop-

ular support for new federal powers obviates the need to amend the Constitution via the Article V procedure. Ackerman gives two main examples where this process occurred: one is the New Deal. The other, of course, is the Fourteenth Amendment.

Roger Pilon reviles the first, embraces the second, and denies the charge of "selective indignation" about abuse of constitutional process. He gives two reasons. First, Pilon argues that with the Fourteenth Amendment's ratification, though there were procedural flaws, "under extraordinary circumstances, the Reconstruction Congress took significant steps to approximate a normal ratification process." By contrast, "FDR never even tried to amend the Constitution." He merely intimidated the Court, which then capitulated to his will, "without even a pretense at amendment."

I suppose there is a difference there, but it seems to me largely an aesthetic one. It's the sort of sensibility that might lead one to prefer a Soviet show trial to a summary execution, as the former at least pays homage to the idea of the rule of

Real consent — unanimous and formally expressed as Spooner would have required — would make government as we know it impossible. However appealing that may sound, as Pilon notes, we're not likely to see this state of affairs in any of our lifetimes.

law. For my part, I'd prefer force to present itself as force, rather than cloaking itself in the trappings of legal process.

Besides, insofar as the touchstone of the amendment procedure is "the consent it is designed to demonstrate," as Pilon suggests, then the Fourteenth Amendment never "came close." To the extent the Article V process occurred, the amendment was twice rejected: once when the Southern states voted it down, and again when New Jersey and Ohio rescinded their ratifications. It's true that FDR didn't play by the book either, but let's put things in perspective. FDR's abuse consisted of proposing legislation that violated the spirit of the Constitution's independent judiciary. The Radical Republicans' abuse consisted of securing "assent" to a constitutional amendment by means of a military dictatorship. At least a New Dealer can argue that, given the popularity of New Deal programs, had FDR taken his chances with Article V, he might well have gotten an amendment. We know to a moral certainty that the Radical Republicans wouldn't have: they tried and failed.

From a Moral "Ought," to a Constitutional "Is"

But what I find most intriguing is Pilon's second reason for distinguishing Radical Republican thuggery from the Rooseveltian variety. That reason, he says, goes to "the merits of the matter": "Quite simply, the Reconstruction Congress got it right, substantively, whereas FDR got it very wrong." Which raises a host of questions: When, exactly, does "getting it right" trump constitutional processes? How far will "the merits of the matter" take us? Can we go further than "ram[ming] through" amendments that are "right," as with the Fourteenth? Can we later take those amendments a little

(or a lot) farther than text and history alone would justify, bending the law for the higher good of individual liberty? Can we even ignore amendments legitimately ratified, if those amendments "get it wrong"? Early on in his response, Pilon writes that "we are likely to lose the Fourteenth Amendment in its fullest sense only by [a] subsequent amendment" that repeals it. Let's say we did. In Pilon's worldview, why should Congress and the Court obey the repealing amendment?

Interesting questions all. The answers to some of them can be gleaned from Pilon's response in this issue of *Liberty*. In his "Defense of the Fourteenth Amendment," Pilon makes it plain that he approves of the Reconstruction Act of 1867, which made the amendment possible. That act, which was passed during peacetime, two years after Lee's surrender at Appomattox Courthouse, carved the South into five military districts under martial law. It did so without reference to an enumerated power that could plausibly support it, and in direct violation of the Constitution's guarantees of trial by jury and *habeas corpus*. How does Pilon square his support for the Reconstruction Act of 1867 with the stated goal of Cato's Center for Constitutional Studies: "to revive the idea that the Constitution authorizes a government of delegated, enumerated, and thus limited powers, the exercise of which must be further restrained by our rights, both enumerated and unenumerated"? The "merits of the matter" must take us quite far indeed.

The point here is not to "re-fight the Civil War," to engage in Southern revanchism, nor in any way to minimize the abomination of human slavery or the repugnance of the post-war Black Codes. The point is that violations of rights, however egregious, do not give rise to federal powers absent a constitutional delegation of authority. To hold otherwise is to repudiate constitutionalism. Say it ain't so, Roger.

Judges and Justice

Roger Pilon's treatment of the Reconstruction Act of 1867 and the Fourteenth Amendment suggest, I think, that he's willing to let moral theory trump constitutionalism. But whether I'm right or wrong about that, the larger issue raised by our debate is whether the Fourteenth Amendment gives the federal courts "vast power" to enact their own moral theories.

Pilon is somewhat underwhelmed by my parade of horrible Fourteenth Amendment decisions. He notes that "almost every example on it involves the hopelessly confused area of discrimination — and racial discrimination at that." But in our race and gender-obsessed country, that should be little comfort. One might just as well downplay post-WWII British socialism by pointing out that it involved issues intertwined with class.

I think it's significant that the centerpiece of Fourteenth Amendment jurisprudence — the first line of cases one reads when studying the amendment in law school — consists of a massive judicial power grab. Under *Brown v. Board of Education's* coercive, centralizing progeny, federal judges have taken to running school districts like conquered provinces, ordering new construction, tax increases, and shoveling students around like human concrete. Pilon says, in this regard, that "courts are leading us out of the mess that earlier courts led us into." They're sure taking their time about it. November 8th's *Washington Post* reports that, although 40-odd school districts have been released from court supervi-

sion since *Brown v. Board*, some 500 more districts in 210 lawsuits remain under federal court orders.

But Pilon is right that things could have gone much worse. As George Mason University law professor David Bernstein — himself a supporter of a “strong” Fourteenth Amendment — noted in a Cato Policy Analysis published by Pilon’s own department: “During the Warren Court era, liberal legal scholars hoped that the Supreme Court would even find a right to a minimum income in the Fourteenth Amendment. Had it not been for the Nixon administration’s appointment of several new, more conservative justices, the Supreme Court might very well have entrenched the American welfare state in the morass of modern constitutional law.”

Having narrowly avoided catastrophe, it seems to me we ought to do more than exclaim, “Whew! That was a close one!” We ought to pause for reflection before charging again to the edge of the cliff. But for Pilon, it’s full speed ahead. The Privileges or Immunities Clause is, he thinks, the sword in the stone that, once freed, can be used to strike down meddling state and local laws that inhibit economic and personal freedom. But surely the Left will be eager to wield that sword, using it as a weapon for social engineering and redistribution. Indeed, when the Court dusted off the clause last term in *Saenz v. Roe*, it was not to vindicate economic liberty, but rather to frustrate welfare reform in California. As Justice Thomas noted in his dissent, the majority’s decision in *Saenz* raises “the specter that the Privileges or Immunities Clause will become yet another convenient tool for inventing new rights, limited solely by ‘the predilections of those who happen at the time to be Members of this Court.’”

Congress and Crime

Judicial abuses of Fourteenth Amendment authority are only half of the story. In my August article, I suggested that congressional abuses of the Fourteenth Amendment — actual and potential — are equally disturbing.

In his response, when Pilon turns to congressional enforcement of the Fourteenth Amendment, he suggests that I’ve overstated certain of his views. Specifically, he denies arguing that Congress should routinely invoke Section Five of the Fourteenth Amendment to strike down state violations of individual rights. It is possible that I’ve mischaracterized Pilon’s position here. I based my assertion in part on congressional testimony Pilon gave on July 20, 1995, in which he

We should promote a narrow view of Congress’s enumerated powers because, as Roger Pilon has argued so often and so well, that is the extent of the powers authorized by our Constitution.

argued that Congress has the power “to negate state actions that deny citizens the privileges and immunities of citizens of the United States.” Since Pilon views our privileges and immunities as coextensive with our natural rights, and since states violate our natural rights routinely, I thought he was arguing for a good deal of congressional involvement in regulating state-level regulators. I think this is a monumentally bad idea (who regulates the regulators that regulate the reg-

ulators?)* If Pilon opposes using Section Five in this way, I’m glad to hear it, and I apologize for attributing to him views he doesn’t hold.

But, on the issue of federalization of crime, I confess I don’t understand Pilon’s position. If, as Pilon writes in his response, “federalization of crime is never authorized under Section Five,” then why did he write, in Cato’s Handbook for the 105th Congress, that “if the facts had warranted it, the Church Arson Prevention Act of 1996 might have been authorized not on commerce clause grounds, but on Fourteenth Amendment grounds”? The Act in question federalized the crime of church-burning. As Rep. Henry Hyde explained upon introducing the measure: “this legislation will give Federal authorities the tools necessary to prosecute

How come every time someone speaks favorably about states’ rights, we have to hear about Orval Faubus, but when new federal programs are proposed, nobody brings up the Fugitive Slave Laws or Indian “relocation”?

and bring to justice people who burn, desecrate, or otherwise damage religious property.” If Section Five does not authorize the creation of federal crimes, then it could in no wise authorize the passage of the Church Arson Prevention Act.

State Action and Inaction

Pilon’s discussion of the Church Arson Protection Act highlights some of the problems posed by the state action doctrine: that imperfectly honored tenet of Fourteenth Amendment jurisprudence holds that the amendment only allows regulation of state actors. What freedom we’ve enjoyed from unbridled judicial and congressional regulation under the Fourteenth is due to the state action doctrine. But Pilon wants to repeal the doctrine. In his “Defense of the Fourteenth Amendment,” Pilon writes: “it is important to notice that the amendment protects not against private but against state action or *omission*.” (Emphasis added).

Of course, protecting against state “omission” is equivalent to protecting against private action. When the Fourth Circuit Court of Appeals held that Congress lacked the authority under the Fourteenth Amendment to enact the Violence Against Women Act, it based its opinion on the state action doctrine. If, when the Supreme Court hears the case this term, it adopts Roger Pilon’s theory that Congress has the authority to “protect [citizens] against state . . . omission[s],” then the floodgates are open for a deluge of federal hate crimes laws.

Worse still, if it is legitimate for Congress to legislate

* If Congress has the power to “enforce” our natural rights at all levels of government, then woe betide the Republic when it elects a Congress with a different view of natural rights than Roger Pilon’s. (Most Congresses throughout the 20th Century fit this description.) Luckily, the Court’s 1997 decision in *City of Boerne v. Flores*, which restricted Congress’s authority under Section Five, makes this particular nightmare scenario far less likely in the short term.

directly against private violence — like a church burning — in the absence of affirmative state action, then why isn't it legitimate to legislate against private racial discrimination? If the state action requirement is gone, then the public-private distinction is gone, and discriminatory hiring at Denny's is as open to regulation as discriminatory hiring of cops.

Pilon would doubtless answer that we have a right to be protected from violence, but not from other people's refusal to associate with us. I couldn't agree more. But the Supreme Court has not often understood these subtleties of classical liberal rights theory. Consider, for example, *Reitman v. Mulkey*, in which the Court struck down California's Proposition 14. That pro-freedom initiative, enacted by California's voters, forbade the state from denying "the right of any person [to] decline to sell, lease or rent [property] to such person or persons as he, in his absolute discretion, chooses." But according to the Court, a state constitutional

If, as Pilon writes, "federalization of crime is never authorized under Section Five," then why did he write, in Cato's Handbook, that "if the facts had warranted it, the Church Arson Prevention Act of 1996 might have been authorized not on commerce clause grounds, but on Fourteenth Amendment grounds"?

provision that guarantees property rights would have "involve[d] the state in private discriminations to an unconstitutional degree." Combine a weakened state action requirement (which Pilon supports) with the modern passion against private discrimination, and you get cases like *Reitman*. "Intellectual fashions may come and go," as Pilon notes, but the rage against private prejudice is deeply rooted, and backed by federal power. We have not seen the last of it.

What Is To Be Done?

Pilon complains that I haven't provided a practical answer to the problems posed by the Fourteenth Amendment. It's a fair point; let me try to remedy that defect.

For the short term, my answer is for libertarians to make common cause with decentralist conservatives. We should join them in promoting a narrow view of Congress's enumerated powers under Article I, section 8 — and in promoting a narrow view of federal powers under the Fourteenth Amendment. The "Leave Us Alone Coalition" — that loose conglomeration of pro-freedom interest groups which Michael Greve has identified as the strongest political force behind a return to real federalism — wants to be left alone by the Court as well. And among conservatives on the federal bench, there's far more enthusiasm for reinvigorating enumerated powers constraints than there is for reviving the *Lochner* Court and feeding it steroids.

We should promote a narrow view of Congress's enumerated powers because, as Roger Pilon has argued so often and so well, that is the extent of the powers authorized by our Constitution. We should promote a narrow view of the Fourteenth Amendment, because that's the smart thing to

do, and because the original meaning of that amendment doesn't matter much. Is this the sort of results-oriented constitutionalism for which I've criticized Roger Pilon? Hardly. Given that the Fourteenth Amendment was never legitimately ratified, we're freer to adopt a narrow construction of the amendment than we would otherwise be. By giving a narrow reading to the Fourteenth Amendment (which was not a product of constitutional consent), courts keep faith with the Tenth (which was). From this perspective, the post-Civil-War Court's crabbed construction of the Privileges or Immunities Clause in *Slaughterhouse* might well be justified as a blow for originalism.

The strategy outlined above is, it seems to me, more prudent and more practical than Pilon's plan to first push for a broader interpretation of the Fourteenth Amendment and then hope that broad interpretation isn't hijacked by the Left. As for a longer-term strategy — one aimed at restoring the kind of decentralist constitutional order I'd ultimately like to see — I can give but little guidance. For one thing, we ought to work toward restoring the good name of secession and states' rights. (How come every time someone speaks favorably about states' rights, we have to hear about Orval Faubus, but when new federal programs are proposed, nobody brings up the Fugitive Slave Laws or Indian "relocation"?). And toward that end, as libertarians, we ought to dethrone Thaddeus Stevens from atop our pantheon of heroes, and restore Jefferson to his rightful place.

Jefferson considered the states "the true barriers of liberty in our country." And rather than viewing federal judges as the surest guarantors of our freedom, he saw them as a "subtle corps of sappers and miners constantly working underground to undermine the foundations of our confederated fabric." Doubtless he'd consider us fools for embracing a system in which so much of our liberty depends on what side of the bed Justice O'Connor arose any given morning.

Can we ever restore a Jeffersonian constitutional order? I don't know. I know it's worth trying. And I fear we'll never get there if the very people who should be leading the fight have decided instead to join the forces of centralization. ┘

Pilon, "The Fourteenth Amendment," *continued from page 45*

the Constitution, and the Fourteenth Amendment in particular, "has the intellectual status of phrenology and creation science." "To which a good libertarian can answer," as Healy says in a closely related context, "So what?" Intellectual fashions come and go, especially in law schools, even the best of which are still trade schools. The beauty of law school is that, if you keep your nose clean, you'll eventually get out — into the real world. There you find that certain simple truths, like those in the Declaration of Independence, keep coming back as true. The theory of natural rights is not an arcane mystery, accessible only to the initiated. For centuries it has been the stuff of ordinary common law judges. Today, there are a number of judges who are rediscovering those simple truths. Given the larger winds in the culture, they are often all that stand between us and tyranny. Given the vagaries of those winds, I want them to continue to stand until their numbers can be swelled by the Gene Healys of the world who are asking questions that weren't even asked a decade or two ago. By my reading, the winds are blowing in the right direction. ┘

Letters, from page 38

People strongly motivated on those issues will be inclined to vote for major party candidates. I agree with Mr. Padfield that drug legalization will get little support from the "average American." But it isn't the average American the LP should hope to reach at this point in its history. The average American is ill-informed and votes mostly out of habit and whim, almost always choosing a major party candidate. He has almost no interest in voting for a minor party unless it is very famous and well-financed, like Perot's past two campaigns and the Wallace campaign of 1968. Minor third parties like the LP have to seek their votes from unaverage Americans, people who are either better informed, or more intellectual, or who have a very strong motive to abandon their habitual support of major party candidates or their total indifference to the electoral process.

In harm's way

I have two questions for Gene Healy ("The fetal conceit," December).

Is it wrong to harm another if he is incapable of seeking justice or possesses

no property?

If life does not exist from conception, exactly when or rather at what level of competence or value of property is "due process" accorded to an individual?

Lawrence Slavicek
West Chicago, Ill.

Gene Healy responds: I fear Mr. Slavicek has missed my point, which centered on constitutionalism, rather than abortion as such. Even if life begins at conception and abortion is murder, the federal government cannot act to proscribe abortion without reference to a power specifically enumerated in the Constitution. The Commerce Power won't do, and neither, I think, will the Fourteenth Amendment, which got us into this mess in the first place by federalizing the issue with *Roe v. Wade*.

Enough, already

I would like to add my own voice to that of Fred Bluestone (Letters, December): Enough, already, about who did what to whom when, why, and how often, in the Objectivist movement prior to the big break in 1968! While endlessly rehashing these old grievances may be therapeutic for those directly involved, it can get incredibly wearisome for those

of us who weren't involved in the Big Schism, or even Objectivism, that far back.

Eric Oppen
Iowa Falls, Iowa

Fourth thoughts

As someone who has enjoyed *Liberty* for years, I have a hard time understanding what Sarah McCarthy is doing in its pages. Readers looking for sophomoric left-wing rhetoric can pick up *The Village Voice* for free nowadays. Her "Third Thoughts about the Sixties" paean in the November issue's Reflections section would embarrass Ron Kuby. When I read how thanks to the enlightened sixties, our rulers "strive to wage wars with no casualties" because they "recognize that Americans will not tolerate the tragic waste of human life," I started gasping for breath. Could it be that all the Yugoslav civilians our government has killed and maimed with cluster bombs are like the unborn, in that from a certain point of view they don't qualify as human?

As for Ms. McCarthy's incredible statement that the government now needs "very good explanations" before waging a war — which was the very good explanation for the war on Yugoslavia? Was it "We have to drop bombs on them because they are using our bombing raids as cover to sneak around and blow up their own buildings, thus creating refugees"? Or was it "We have to drive Serbs out of an important part of their own country because they are ethnic cleansers"?

David Blount
White Plains, N.Y.

Sarah McCarthy Responds: There was a time in America when the lives of young American males — as well as non-Americans — were considered expendable. Thanks to the rebellion of the 60s anti-war activists, at least this form of slaughter has become for the moment, obsolete.

No Sex, Please. We're Libertarians

Whose idea was it to stick a bunch of porno ("Sex Behind Bars," January) in your otherwise very fine magazine? We were revolted. What's wrong with leading good, clean Christian lives? If we wanted pornography, we'd subscribe to *Playboy*.

Mr. & Mrs. Rodney Peters
Los Angeles, Calif.

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Reviews

Ready Or Not: Why Treating Children as Small Adults Endangers Their Future—and Ours, by Kay S. Hymowitz. The Free Press, 1999, 292 pages.

Kids, These Days!

Jane S. Shaw

At some point, members of each generation conclude that the younger set is going to pot. Jazz was viewed as degenerate, Mozart as frivolous, and I'm sure that aristocrats deplored the tinkerers who couldn't get a decent job but whose tinkering propelled the Industrial Revolution.

But some generations do change history for the worse, and I am uneasy about this one. For me, the school shootings represent a series of unprecedented events that is terribly troubling. Other changes, from casual teen sex to addiction to violent video games, are less profoundly worrisome, but they too suggest that something is different and amiss.

Apparently, a lot of Americans share my worries, which explains the interest in a new book that has received favorable comment in such places as *The Wall Street Journal* and *The New York Times*. *Ready or Not: Why Treating Children as Small Adults Endangers Their Future — and Ours* is a good place to start a much-needed evaluation of the state of childhood and youth. It is not, however, in any way scientific; rather, it's a set of intuitive conclusions of a thoughtful critic of today's culture.

In mulling over the state of child-

hood and adolescence today, we need to address two questions: First, is something fundamentally different — and unfortunate — happening with young people today? Second, if so, what should be done about it? Hymowitz suggests that something is different, and wrong. To cure it, she recommends going back to a more traditional child-rearing philosophy.

Hymowitz argues that today's child rearing reflects an ideology that emerged in the 1950s through the writings of psychologists and legal philosophers. This viewpoint perceives children as "autonomous, independent individuals discovering their own reality" rather than as beings that need to be molded into responsible citizens. Today's experts, Hymowitz explains, view a child as inherently "competent and self-sufficient," an "already complete, finished individual lacking only some skills and information." All you have to do as a parent or teacher is to let the child's inherent character emerge; that is, you need to get out of the way.

This attitude, says Hymowitz, departs from the 19th century American approach to child rearing, through which parents attempted to develop a person with an "internal moral compass." This approach was

particularly American, adopted to produce citizens suitable for life in a republic composed of responsible individuals. Hymowitz calls this the "republican" tradition. Its replacement she calls "anticulturalism," because it is based on the idea that the child should develop "independently of the prevailing culture, and even in opposition to it."

The trouble with today's approach, explains Hymowitz, is that it leads parents, teachers and other adults to avoid responsibility for education and guidance and ultimately to prevent their children from developing into responsible adults. Children are treated as more mature than they are, with the result that they never really grow up. She argues that moral and ethical people cannot emerge by simply lifting societal and family pressures.

With anecdotes, contemporary quotations, and allusions to television sit-

The trouble with today's approach is that it leads parents and teachers to avoid responsibility for education and guidance and ultimately to prevent their children from developing into responsible adults.

coms, Hymowitz argues that the anti-cultural ideology pervades each stage of children's development, from babyhood (in a chapter entitled "Baby Geniuses") to postadolescent youth, a period exemplified by the *Seinfeld* television show.

When Hymowitz marshals popular culture to support her argument, she is not very persuasive. To make the point that parents are encouraged to let their child develop naturally, she cites Benjamin Spock's advice, "Take it easy and follow your baby's lead." Yet Dr.

Spock was around for a long time; he nurtured the baby-boomer.* Similarly, I'm not sure it's quite fair to blame this ideology for the emphasis on creativity rather than learning that is found in elementary school. (To me, the creativity emphasis seems to be more an egalitarian technique for keeping bright children from excelling too much.)

Yet there is certainly something to her argument that parents and teachers are relying on letting the child's "selfhood" emerge and that their failure to provide guidance is related to the violence, incivility, and general lack of discipline that seem to characterize kids today. Many readers, thinking of their own childhood or their children's, will find much in *Ready or Not* that rings true.

But one feels a desire for data, not just anecdotal observations, especially since Hymowitz pulls her punches. Seeking acceptance from elite opinion leaders, Hymowitz, a senior fellow at the Manhattan Institute, takes pains not to sound like a cultural conservative. (It worked: *The New York Times* review applauded Hymowitz's "nuanced" argument.) The only two

Nor was the "republican" childhood that Hymowitz prefers a Golden Age. When parents had more power over their children, some undoubtedly abused it.

child liberationists I have heard of are Hillary Clinton and Marion Wright Edelman — neither one is mentioned. Nor does Hymowitz take on the public school establishment, which undoubtedly contributes to the trends she cites.

Most important, Hymowitz avoids criticizing the lifestyle of today's families. My guess is that single parenthood and dual-income families have resulted in less parental supervision and involvement, which explain much about today's youth. Yet for the most

* My personal reliance on Dr. Spock's book was so great that I resent any criticism of him!

part Hymowitz ignores these factors. She only faintly alludes to the probability that parents welcome the new ideology because it excuses them from having to spend a lot of time training their children.

Nor am I convinced that the problems Hymowitz identifies are as bad as she thinks. In spite of the tragedies surrounding today's teens, I see a lot of favorable signs in today's culture. The "postadolescents" that I meet do not seem to have turned out too badly — even if they are the products of a divorce or two.

Nor was the "republican" childhood that Hymowitz prefers a Golden Age. When parents had more power over their children, some undoubtedly

abused it. The emphasis on sexual abstinence tended to encourage manipulative behavior among both boys and girls: Adolescent males developed strategies to overcome girls' resistance, while girls figured out how to entice and then reject them. And as sexuality was sublimated into romantic love, young people built up unrealistic hopes that led to disappointment and broken marriages.

Even so, I think *Ready or Not* offers a useful perspective on our youth, though it is far from the last word. The causes of violence and incivility and the question of whether today's youth are morally and ethically worse off than their antecedents are subjects that merit more research. ┘

It Still Begins With Ayn Rand, by Jerome Tuccille, Pulpless.com, 1999, 183 pages.

It Once Began with Ayn Rand

Martin Morse Wooster

In 1971 libertarian activist Jerome Tuccille decided to publish a New Journalistic memoir of late-1960s libertarian politics. The result was *It Usually Begins With Ayn Rand*, a hilarious, extremely well written account that's one of the best books ever written about libertarianism. (It's still in print.)

Tuccille drifted out of the libertarian movement, becoming an author of business books and biographies of Donald Trump, Rupert Murdoch, and the Hunt family. Now he has drifted back into libertarianism, producing a sequel to his best book. But fans of Tuccille's earlier book will find *It Still Begins With Ayn Rand* to be a major disappointment.

The first third of the book, and the best part, describes Tuccille's campaign for governor of New York on the Free Libertarian Party ticket in 1974. The

remaining two-thirds are Tuccille's retelling of the political history of America from 1975 onwards.

Collectors of Libertarian Party political trivia will recall Tuccille's race as the one where they paraded a naked lady on a horse through the streets of Manhattan. Tuccille explains why this happened. (The horse, you see, was named "Taxpayer.") But the remainder of his account shows why most LP campaigns rarely get anywhere.

By Tuccille's account, many of the activists who nominated him to be their candidate actually thought they had a chance to smash the state. "This is the year to bring the libertarian revolution to New York," Tuccille recalls activist Louis Rossetto as saying. "It's do or die! Seize power now or fold up the tents!" (Years later, Rossetto went on to found *Wired*.)

But at the same meeting, Tuccille recalled, he met Arthur Finkelstein, just beginning his career as a Republican

political guru. Finkelstein, Tuccille recalls, "looked like an unmade bed. His hair hadn't been combed in a month and he had his stockings feet tucked under his buttocks like a rumpled Buddha." But while part of Finkelstein's message was screwy, the

Tuccille's memoir of the 1974 campaign is mildly enjoyable, but it is only one-third of the book. The remaining two-thirds are pretty dreadful stuff.

core of his advice was sound: to achieve political success in New York cost (at the time) six dollars a vote.

At first Tuccille tried to have thorough discussions of libertarian philosophy, but few cared. Then he decided to practice "stuntism," which garnered huge amounts of publicity. The naked woman on a horse was one memorable stunt. Showing up in a safari jacket with a fishing rod to show he was "fishing" for votes also worked. And Tuccille found riotous applause on college campuses whenever he talked about legalizing drugs and decriminalizing prostitution. (On college campuses, Tuccille recalls, "I was on safe ground with sex, drugs, sodomy, even bestiality. Save taxes for a different group.")

But in the end, Art Finkelstein was right. The Free Libertarian Party raised \$70,000 and received 12,000 votes, far less than the one percent needed to obtain a line on the ballot.

Tuccille's memoir of the 1974 campaign is mildly enjoyable, but it is only one-third of the book. The remaining two-thirds are pretty dreadful stuff.

Tuccille tries to show that our last four presidents, viewed through libertarian eyes, were pretty bad. His revelations — Ronald Reagan was duped by his advisers! George Bush was a doofus! Bill Clinton can't keep his pants on! — are only shocking to readers who have spent the past quarter-century in a bomb shelter. Even his Dan Quayle jokes fall flat.

Moreover, Tuccille has no first-hand knowledge of the events he

chronicles. Nor is Tuccille a professional historian, or someone who has spent a good deal of time studying primary documents or interviewing presidential aides. So why should we read him? Tuccille never satisfactorily answers this question.

His efforts to place himself, like Forrest Gump, in the center of national events, are not very successful. "In 1981," Tuccille writes, "when Ronald Reagan took command of the administrative branch of the federal government, his presidency offered the greatest hope for a libertarian revolution since the Tuccille for Governor campaign of 1974."

Does anyone outside the Tuccille

family believe this?

At the end of his book, Tuccille argues that a tepid Christian libertarianism will be the winning political philosophy that will finally smash the state. But given the dull third-hand recounting of American political history Tuccille provides, it's likely that his readers will give up long before they reach the final chapter.

If you were involved in Tuccille's 1974 campaign or have an extremely deep interest in libertarian history, you may find *It Still Begins With Ayn Rand* provides some limited pleasure. But other readers would do well to skip this book. Tuccille was once a very talented and witty writer; he's now just a bore. ┘

Crossing: A Memoir, by Deirdre N. McCloskey. University of Chicago Press, 1999, xvi and 266 pages.

Break on Through to the Other Side

Janice Presser

"Does it have a happy ending, Mommy?" My daughter would ask me that question each time I wrote a book. I imagine her as she was then, my inquisitive little six year old redhead with the serious eyes, asking Deirdre McCloskey the same question, about *Crossing*, her book about her gender change: "Auntie Deirdre, does it have a happy ending?"

One might normally expect a memoir of an academic, free-market economist to focus on academic conflicts to gain acceptance in a field dominated by Keyensians and Socialists. Deirdre McCloskey faced a different sort of conflict. A conflict within herself and with her family about who she was at a most basic level.

Ambiguity makes most people uncomfortable. Black and white only, no shades of gray, is the preferred color scheme of the unadventurous mind. But the memoir by the former Donald

McCloskey forces the reader to examine the gray areas. Deirdre's story is about her crossing, not across an artificially constructed boundary, but one of biology. With no change of chromosomes, the black and white determinants of her genetic maleness, Deirdre crossed that border into womanhood; she left her male self, Donald, forever cast off.

In this account of her gender transformation from male to female, McCloskey notes that we pay little attention to the crossings people make when emigrating from one country to another. The experience of being, say, a Dane in Chicago, may be unusual, but not threatening to anyone. Denmark is not invading Illinois, and Chicagoans can safely assume that the visitor arrived via O'Hare, rather than being teleported from some alternative universe. There is no mystery in such crossings.

Deirdre's crossing was more dramatic, at once more personal and more

public. Like a private event, the most profound change occurred within: the eclipsing of Donald by Deirdre, the unfolding of Deirdre into the full bloom of mature womanhood. This process, shared with and supported by friends and fellow travelers — is there no feminine equivalent? sister travelers, perhaps? — should have proceeded unchallenged by any authority other than Deirdre. But challenged she was, with the full weight of a bureaucracy devoid of compassion, understanding, humanity.

Just as the medical establishment has planted its flags on the human body, the psychiatric establishment has claimed as its purview the human mind. DSM-IV, the current Diagnostic and Statistical Manual, bible to researchers and insurance companies, classes sexual and gender identity disorders together. Yet for Donald/Deirdre, it was more a matter of congruency of feelings and actions.

Donald's sister, a Harvard-trained psychologist, viewed her brother's personal, internal set of feelings as evidence of pathology and she therefore acted — on two occasions — to voice her disdain by arranging for involuntary psychiatric commitments, citing as her reason her love for him. Love cloaked in a coercive activity.

It is all too easy to force psychiatric "care" on the person whose situation or feelings have been defined as pathological. For the well-functioning crosser, such imprisonment is nothing less than political. Shades of the Zabriski Institute!

One of the diagnostic criteria of Gender Identity Disorder is "clinically significant distress or impairment in social, occupational, or other important areas of functioning." As Donald, we have a well-respected economist. As Deirdre, we have a well-respected economist. As Donald, a husband, father, colleague, friend — as men define their friendships. As Deirdre, an ex-wife, bereft mother, colleague, friend — as women define their friendships. Who do we declare the healthier? More importantly, do we have the right to ask that question? And do we have the right to allow the medical-legal complex to act on the answer?

Like Deirdre's psychologist sister, mental illness specialists learn to differentiate normal from abnormal.

There are people who suffer mental illnesses which have organic bases — dementia, intoxication, schizophrenia, for example. Physicians have gained the power, from the state, to force treatment on such unfortunate people, all in the name of compassionate care for those deprived of reason. But Deirdre's crossing was reasonable, not the rash act of an impulsive person. While Deirdre exhibits some change in social attitudes and style toward a more typically feminine direction, the brilliant economist rationality never seems to waver.

Still, could something have been terribly wrong with Donald? There has been at least one case of a male with Dissociative Identity Disorder (formerly called Multiple Personality Disorder) where a strong, female alter ego maintained control of the body for time sufficient to have the final, irrever-

McCloskey's story is about her crossing, not across an artificially constructed boundary, but one of biology. With no change of chromosomes, the black and white determinants of her genetic maleness, Donald crossed that border into womanhood.

sible genital surgery. These cases are difficult to screen out, especially by those mental health professionals who have never seen (or acknowledged), much less treated, those whose prior lives required that they dissociate to survive. (This is usually due to severe, unremitting, early abuse.) What does Dissociative Identity Disorder have to do with crossing? Very little, it turns out. The vast majority of crossers are no more or no less disturbed than the general population.

The DSM-IV defines mental disorder as "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a signifi-

cantly increased risk of suffering death, pain, disability, or an important loss of freedom." The absurdity of treating an illness so as to prevent "an important loss of freedom" by involuntary incarceration in a psychiatric facility is obvious.

The definition continues: "In addition, this syndrome or pattern must not be merely an expectable and culturally sanctioned response to a particular event, for example, the death of a loved one. Whatever its original cause, it must currently be considered a manifestation of a behavioral, psychological, or biological dysfunction in the individual. Neither deviant behavior (e.g., political, religious, or sexual) nor conflicts that are primarily between the individual and society are mental disorders unless the deviance or conflict is a symptom of the dysfunction in the individual, as described above."

What does it mean, then, that there is a diagnostic code for Gender Identity Disorder, but none for "Well Adjusted Person with Feelings of Being the Opposite Gender"? Gender dysphoria — unhappiness with one's genetic gender — even sounds pathological. But isn't it normal to be unhappy with what doesn't seem right?

"Gender dysphoric" is an interesting concept. If I am unhappy that I was not born with a silver spoon in my mouth, am I "class dysphoric?" If I sometimes wish that I were 5'8" instead of 5'2," am I "height dysphoric?"

Most distressing to me, an active feminist since the late 60's, was Deirdre's account of the treatment of crossers by the radical feminist establishment. By refusing to include these women-by-choice, by according a second class — or worse — status to crossers, the alliance of sisterhood that was the dream of the women's movement is fragmented. But Deirdre, the Heroine, found her own well where accepting women gather and from them she created community.

I return to my imagination and to the sound of my daughter's insistent question as she asked it more than 20 years ago. "Does it have a happy ending?" I urge Deirdre to answer. And my imagined Deirdre, in her wisdom borne in her analytic, economist scholar self, tempered by her more recently acquired, culturally feminine values,

answers thus:

There was a time when I would have added up the pluses and the minuses, believing that economics, the study of predictable human action, would give me direction. Now I know that the most important factors would be on both sides of the equation, at the same time plus and minus, but never cancelling

each other out.

In my mind, I respond to the puzzled look on my daughter's face. She is too young to understand the dialectics of gender, of life. I merely tell her that it is Deirdre's story, just as we have our stories, and that it must have a happy ending because at last Deirdre, like the Velveteen Rabbit, feels real. □

Banal Nationalism, by Michael Billig. Sage, 1995, 208 pages.

Everyday Nationalism

Martin Tyrrell

Michael Billig's first book, *Social Psychology and Intergroup Relations* (1976) was important in popularizing Social Identity Theory, or the "new" social psychology, as it was then sometimes called. Social Identity Theorists like Henri Tajfel had found that powerful group loyalties could be established on the basis of trivial collective identities. In particular, student volunteers randomly assigned to so-called minimal groups were observed to discriminate against the unseen and anonymous members of equally minimal out-groups. To the researchers, this seemed illustrative of some fundamental psychological process, a tendency to identify with a wider group and then to act on the basis of the (social) identity it afforded. When a significant part of any person's self-esteem derives from being a member of a group, they concluded, many people feel motivated to act on behalf of that group and against other, rival, collectives. What is more, if minimal groups, with no relevance beyond the laboratory, could touch off feelings of loyalty and inspire their members to acts of meaningless discrimination, then real world collectives could be expected to do so to a much greater extent and over much longer periods of time.

Twenty years on from *Social Psychology and Intergroup Relations*, Billig seems less convinced by Social

Identity Theory. In *Banal Nationalism*, his most recent work, he is dismissive of what he sees as its overly individualistic approach. Nationalism cannot be explained solely in terms of identity, he argues, for national identity is more than just a psychological state. It is also a way of life and of habitually seeing and interpreting the world, one which has become "enhabited." This is particularly true where the nationalism in question is the "banal nationalism" of the book's title.

Banal nationalism, Billig proposes, operates inconspicuously, establishing an almost subliminal loyalty until, eventually, it is unchallenged common sense. At its most unobtrusively mundane, the fact that it is nationalism at all might well be overlooked completely or even denied outright. Many commentators who can easily recognize nationalism in its more exotic, and therefore more marginal, forms (the nationalism of Neo-Nazis, for example, or of Third World National Liberationists) are, in Billig's view, slower to acknowledge its role in mainstream politics closer to home. Increasingly, he complains, the West is depicted as a series of blandly interchangeable liberal democracies, either post-national already or national in so inoffensive and inclusive a sense that post-nationalism cannot be far off. And yet, Billig argues, it is, in fact, in these more established societies that

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the most widespread sense of national identity tends to be found, the consequence of a subtle, but ubiquitous, national subtext. "The metonymic image of banal nationalism," he writes, "is not a flag which is being consciously waved with fervent passion; it is the flag hanging unnoticed in a public building" (8). It is through a succession of such mundane "flaggings" that banal nationalism is perpetuated and citizens "unmindfully reminded of their national identity" (154).

In short, simply existing in a particular place during a particular era leads to a particular national identity becoming "enhanced" and on so wide a scale that almost anyone is capable of at least the occasional nationalistic twitch. Anyone at all. Billig himself admits to a taste for international sport, confessing that "If a citizen from the homeland runs quicker or jumps higher than foreigners, I feel pleasure. I want the national team to beat the teams of other countries" (125). Many liberals — and many libertarians — have surely felt the same and over matters of far greater importance. Given the right conditions, national passions appear capable of stirring even in the mind of someone who, like Billig himself, earnestly disavows them. As a "collection

Other types of state might create a sense of loyalty and pride among their citizens, but nationalism is distinctive in that it considers nationals as born, not made, and nationality as irreversible.

of ideological habits" (6) nationalism is nothing, he suggests, if not resilient.

One feature of *Banal Nationalism* is that the terms "state" and "nation" are used almost synonymously. That is understandable, I suppose, but objectively, it is not always easy to say which states are nation-states and which are not. Nationalism is possibly best thought of as a style of politics more conspicuous in some policies and attitudes than in others. Or as a temptation to which many political establishments find themselves succumbing. At

any rate, in *Banal Nationalism*, all states are, by implication, nation-states. Similarly, citizenship and nationality are seen as being approximately the same thing. But this is not how most nationalists and many nationals have seen things. In nationalism, nationality has usually meant membership in an alleged ethnic community, something quite separate from the purely bureaucratic issue of citizenship. Historically, in most large modern states, some citizens have been more national than others and some of the more national citizens have felt the need to remind their less national fellow citizens that this was how it was. Sometimes the reminder was subtle, sometimes not so subtle. Such is nationalism.

It is, I believe, its reliance on an alleged ethnicity as the basis for political order which distinguishes nationalism. Other types of state — a monarchy, a multi-ethnic empire or federation — might create a sense of loyalty and pride among their citizens, but nationalism is distinctive in that it considers nationals as born, not made, and nationality as irreversible. Frequently, therefore, nationalist propaganda depicts the nation as a family, a stock, kith and kin. Groups which deviate from the alleged national type, where they have not been completely excluded, have usually been relegated to lower levels of citizenship than nationals "proper". They are guests, neighbors or, at best, distant relations. But they are not family.

Some commentators (Elie Kedourie, for instance) call what I have described "ethnic" nationalism and distinguish it from "civic" nationalism, a more benign variant less concerned with homogeneity. But empirical attempts at identifying existent civic nations (Michael Ignatieff's *Blood and Belonging*) have been disappointing whilst more theoretical efforts (David Miller's *On Nationality*) have been wishful and evasive. Billig rejects the idea of civic nationalism without actually committing himself to the view that nationalism must therefore be ethnic. But he is skeptical that nationalism can be other than exclusivist and is, I think, rightly so. Nationality is by definition a divisive concept; a national community which did not exclude someone is a contradiction in terms. As states

become more national, so do their administrations become more choosy as to who can and cannot cross the border, and who can stay once they get across. Significantly, Billig sees the persistence of immigration as a political issue as a sign of (ethnic) nationalism's enduring appeal.

Nationalists oppose immigration primarily out of concern that immigrant communities will undermine the supposed ethnic solidarity of the nation and, in so doing, destabilize the

American football, basketball and baseball have never caught on in Europe, where even Worldwide Wrestling cannot displace soccer. There is no conspiracy. It is choice and choice alone which ensures that parts of American culture play internationally.

nation-state. This was what Enoch Powell, a leading British Conservative, argued in the late 1960s when he suggested that a liberal immigration policy amounted to a nation building its own funeral pyre. "Rivers of blood" were confidently forecast. Powell died last year. A few years before he died, he gave a last interview to the BBC. In the course of this, it was put to him that he was a racist. Powell, usually evasive, replied that there was nothing wrong with being a racist and that racial and national homogeneity were inextricably connected both to each other and to the overall stability of national society in general. The interviewer was dumbstruck at hearing the nationalist argument followed to where it leads and voiced without the

Erratum

In the January issue of *Liberty*, we wrote concerning Wendy McElroy's article on Grace Verne Silver, "Wendy McElroy recalls a life of anarchism, agitation, and intellectual growth." Ms. McElroy has advised us that the subject of her article did not lead such a life. Our apologies.

slightest embarrassment. But Powell was a political maverick and this was becoming true even in the late 1960s. One of his several critical biographers has suggested that we will never see his like again. I would agree with that. These days, the reluctance of many mainstream politicians to oppose immigration on such purely nationalistic grounds is notable. A purely nationalistic response — which is to say a racist response — would not be popular, so politicians are reduced to hypocrisy when it comes to immigration, a sure sign that nationalism is in decline.

The Decline of Nationalism

It is this decline which Billig understates. Although nationalism continues to be a substantial conservative force, one whose fortunes might well revive, the present political order is no longer based on an imagined national homogeneity. These days, in Europe, you frequently meet a category of person which scarcely existed fifty years ago: people of no clear nationality. How should the child of a French mother and German father growing up in Luxembourg and attending an English-speaking school be categorized? And what will be the nationality of that child's children? These are not purely academic questions. There are already thousands of people like that in Europe and there will be many thousands more. Gellner thought that somebody without a nationality would provoke revulsion but, in fact, they provoke only curiosity, and every year they have been provoking less of it.

Banal Nationalism also overlooks the extent to which culture has become globalized. The foreign is no longer as foreign as it once was. The mass media, cheaper travel, greater access to education have all made it increasingly more familiar. We live in the least insular world there has ever been. Yet Billig is suspicious. What appears to be global is, he protests, really just American. Nor is this just another airing of the double standards of patrician British nationalism (Coca Cola bad, appellation controlée good; French bistro good, McDonald's bad) for Billig detects a political subtext. In globalized culture, he reads arguments for American hegemony. For the masses, there is Worldwide Wrestling ("You-

Ess-Ay"); for the highbrows, Richard Rorty ("His postmodernist, anti-philosophical philosophising is the flight path of Uncle Sam's bald-headed eagle, flying across the globe at any time of its choosing," or so it says on page 158).

From this it is but a short step to conspiracy-lite and some further overwriting:

The global culture is like water, pouring and trickling from higher ground, deluging valley and plane. The flow has the irreversibility of a Niagara. On

the lower ground, embankments can only be built with great effort, and then, the water, as if in insulted anger, rushes with increased ferocity against the ramparts, seeking the parched markets beyond. (149)

A seemingly profound but, in fact, wholly inappropriate simile. Global culture, by which Billig means American culture, by which he means something or other, does not as a matter of fact wash over the world like one unending torrent, drenching everyone with its dubious politics. Some bits of

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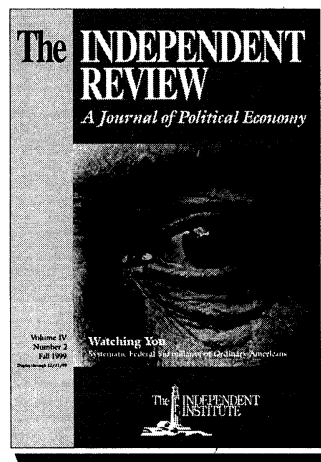
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American culture catch on, and some don't. American football, basketball and baseball have never caught on in Europe, where even Worldwide Wrestling cannot displace soccer. There is no conspiracy. It is choice and choice alone which ensures that parts of American culture play internationally. In contrast, the fundamentalist Islam

Ernest Gellner said that nationalism was the style of politics which suited capitalism. Marx said otherwise. Marx was right. Freer markets have meant fewer nationalists and less fervent nationals.

over which he is, in a moment of cultural relativism (remember that?), sentimental, would offer him no choice at all.

Methodological Collectivism

In *Banal Nationalism*, not just global culture but nationalism itself are depicted as ahuman forces relentlessly imposing themselves upon individual lives. And imposing themselves to such an extent that those lives are almost incidental. It is as if, in order to be a properly social, social scientist, Billig feels obliged to eschew individualism entirely or as entirely as can be. "National identities," he at one point writes, "are ideological creations caught up in the historical process of nationhood" (24). And elsewhere there are other, similarly Marxish allusions: the dominant ideology thesis, for example, historical materialism, "late" capitalism. If Billig has cooled towards Social Identity Theory, he has not cooled towards some of its more improbable premises. As I recall it, virtually every conflict in the world — the Middle East, Northern Ireland, Quebec — could be explained using Social Identity Theory. Or rather, it could be described using Social Identity Theory jargon. But few solutions were proposed. Solutions were not in the spirit of Social Identity Theory, which was fatalistic. It was deemed to be inevitable that people should have social identities and it was deemed to be equally inevitable that, since they had them,

they would fight over them. Whereas even Marx envisaged a Utopia that would end all conflict, Social Identity Theory offered only unending dialect. Thesis and antithesis but never synthesis.

Michael Billig might well protest that this is how things are. But this is not, in fact, how things are. Intergroup conflicts and the identities which sustain them are not, in practice, as inexorable as Social Identity Theorists imagine. Groups are, in the end, only the individuals that comprise them. And because they are comprised of individuals, they are vulnerable to individual differences in fervor. I think that, over the past half century, there has been a significant decline in collectivist fervor at the individual level, which is the only level that matters. Ernest Gellner said that nationalism was the style of politics which suited

capitalism. Marx said otherwise. Marx was right. Freer markets have meant fewer nationalists and less fervent nationals.

Louis Althusser thought individuals were merely the bearers of economic forms; to Michael Foucault, they were an invention of recent date; to Jacques Derrida, illusions. Often, it seems as though some social theorists are out to abolish people. If Michael Billig is rarely quite so bold, still the urge is clearly there. Why, after all, should people — troublesomely unpredictable — be allowed to get in the way of a nice bit of theory? With some really good bathwater, who needs a baby? Though *Banal Nationalism* includes some sharp observations on national identity in particular and collective identity in general, these are, in the end, in spite of the bizarre methodological affectation of its author. □

American Abundance: The New Economic and Moral Prosperity, by Lawrence A. Kudlow, Forbes, 1998, 177 pages.

The Born-Again Optimist

Richard Kostelanetz

Three decades ago, many of us had a thrill hearing R. Buckminster Fuller (1895-1983) deliver extemporaneously brilliant lectures about how technological development was making the world better for everyone. Even before the availability of personal computers, Fuller would cite the popular dissemination of machines originally regarded as elitist (such as the automobile and the telephone); "ephemeralization," was his epithet for doing more with less (and less money); the potentiality for agricultural abundance, etc. It was a stunning performance that some of us saw again and again, if only to appreciate not just the details but the vision of so many indices pointing to better lives for all.

No one I've heard or read since reminds me of Fuller as much as

Lawrence A. Kudlow, who bills himself as "currently Chief Economist, Director of Research and Senior Vice President [of] a financial services firm." This looks to me like one title too many for someone who also appears frequently on the financial television shows that I don't watch because the comments tend to be too vacuously general or self-interestedly specific.

Though Fuller and Kudlow scarcely resemble each other as lecturers — the former talking rapidly and looking like an eccentric inventor, while Kudlow speaks deliberately and wears tailored clothes — both have a spectacular capacity for presenting unfamiliar evidence to account for their optimism. "And the Census Bureau recently reported that the home ownership rate for native-born citizens in 1996 was about the same as that for foreign-born citizens, and that foreign-born Hispanic citizens were more likely to own a

home than those born in the U.S."

However, where Fuller based his optimism on technology, Kudlow focuses on economic preconditions. That 120 million Americans own stocks means that they learn to think like proprietors, rather than employees. 120 million is also the number of people employed, meaning that the American owner-class is now as large as its employee class. Since the value of stocks is twelve trillion dollars in recent years, a lot more Americans have a lot of money to spend as well as save. Kudlow also cites lower tax rates, the decreasing prices of oil, and the lower prices for machines whose markets are openly competitive (VCRs, cellular telephones, etc.) to document genuine progress. Long ago I was taught to disparage "trickle-down economics," because it supposedly benefited the rich at the expense of the poor. But I've learned that, thanks to the wealth created by economic activity, many people formerly poor get richer along with the rich.

Thanks to a connection made by Jack Kemp (the only prominent Republican who will ever get my vote), Kudlow became Associate Director for Economics and Planning Office of Management and Budget, at the beginning of the Reagan administration, and that experience becomes the center of his understanding of the government's role in creating (or at least not hindering) prosperity. His interpretation of recent politics is that Clinton at his best is extending Reagan's policies, and that accounts for why the general (but not universal) prosperity of the past fifteen years is continuing. One of Kudlow's more spectacular forecasts is that increased tax revenue will produce growing Federal surpluses in the coming years, providing the precondition for paying off the inflated national debt.

Kudlow's writing is filled with wonderful sentences that are the literary version of "sound bites":

Tony Blair sounds more like Margaret Thatcher than John Major did.

Population growth is a plus because of the potential creativity of individual men and women.

Resources are not scarce; they are limitless — because technology is boundless.

Unlike the private sector, the government is not disciplined by the marketplace, nor is it subject to bottom-line profit considerations.

These are the sorts of sentences you like to repeat to your friends, hoping

they will think their brilliance is your own.

Even in his bad writing, Kudlow reminds me of Fuller, whose optimism drove him to pack more punches into a single sentence that it could hold, often

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deflecting his points into peripheral clauses and adjectives, rather than to the subject and predicate.

Consider this monstrosity from Kudlow:

Led by an extraordinary burst of Information Age technological innovation and investment, which has transformed every nook and cranny of our new economy, and bracketed by free-market policies that have reduced taxes, virtually eliminated inflation, deregulated nearly all industrial, financial and labor market sectors, expanded market-opening free trade, reduced the Federal budget share of the economy, and the deficit, and ended the Cold War, the completely transformed U.S. economy is the strongest in the world. Whew. Perhaps this is German in

translation.

Kudlow draws from the brilliant historian David Hackett Fischer the yet more awesome theme that inflation accompanies moral deterioration while a stable economy, by contrast, becomes a precondition for moral improvement, all of which seems reasonable, given current statistical decline in welfare rolls and illegitimacy. (I can hear Bucky Fuller saying that technology will induce similar social benefits.)

Kudlow is the new Fuller: ahead of his time, brimming with insight. I look forward to more books from him, ideally elaborating his optimism much as Fuller did. In sum, Kudlow has offered the fullest explanation known to me of wealth-creation. □

author's-works page aren't existing books at all, and her novel *We The Living* was out of print from 1936 to 1959. And her novelette *Anthem* was out of print from 1938 to 1946.

The open rewriting of the past, however, is found at the end of the blurb: "Ayn Rand founded the Ayn Rand Institute in Los Angeles to carry on her legacy. It can be found on the Internet at www.aynrand.org." She didn't, of course. And she'd made very clear in public comment that she wanted no successor to NBI to exist, beyond some kind of grant apparatus, such as the Foundation for the New Intellectual. But her wishes were immaterial to Peikoff, who proceeded to set up the ARI, once he'd hooked Ed Snider to pay for it. (And who wriggled off the hook, to his credit, once Peikoff's repression of dissent showed itself.) — Steve Reed

Booknotes

Rewriting History, Episode 43-99

— The latest printing of the hardback version of *The Fountainhead*, again using the pagination and type (and typos) of the 25th anniversary (1968) edition, has bounced once more to a new imprint, Scribner Classics. It had been at Bobbs-Merrill and at Dutton. Its price has risen from \$45 to \$50. The jacket is elegant, retaining Frank O'Connor's painting (though smaller) and using an extended quote on the back instead of a picture of Rand. About all that's different in the book itself, apart from a handsome binding job, is a detailed list of Rand works that clearly has been inflated. I say "inflated" because some individual taped lectures, such as "Faith and Force," are now listed as distinct works

under one of several categories. Nowhere does it note that these are *not* books.

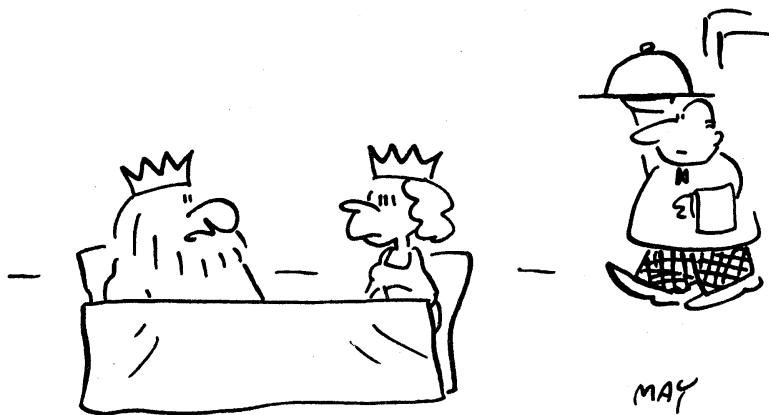
Under the subheading "Essays on Art," along with *The Romantic Manifesto*, are listed two books that don't yet exist: "Fiction Writing" and "The Art of Fiction." These will be transcribed and redacted lectures, but both are at least many months, if not years, from being published. (At least they had the minimal decency to list Rand's original "New Left" book as one of her works, rather than Peter Schwartz's fingerprint-smearing, parasitical reworking of same.) Inflation, certainly, and ending up as misleading to anyone who delves into the very wordy jacket-flap blurb, wherein it's opined that none of her books "have ever been out of print." Half of the "books" on the

The New Federal League

— You should put on a catcher's mask before reading *Legal Bases: Baseball and the Law* (Temple University Press, 1998, 226 pages). Roger Abrams, a law professor and baseball arbitrator, describes nine important legal incidents from the modern liberal perspective. Each chapter will be interesting to any baseball fan, and contains details known only to the aficionado.

Abrams sounds like a Hayek devotee when he glorifies private ordering and private dispute resolution, in his chapters on the baseball union and the Andy Messersmith and Carlton Fisk arbitrations. But when he gets into collective bargaining agreement (CBA) and arbitration thereunder, he's way off base. Without the threat of forced unionization and forced "good faith bargaining" under the Wagner Act, there would have been no CBA, or one with drastically weakened protections for players. Without the CBA there would have been no arbitration. The arbitrators' decisions, invalidating the reserve clause in Andy Messersmith's contract, and awarding large damages for owner collusion in not bidding for Carlton Fisk and other free agents, are both products of the Wagner Act. Abrams is a fan of coercive labor laws. Strike one against him.

While Abrams admitted that application of antitrust law is tremendously



"Am I going to leave a big tip? — I'm not even going to pay!"

Notes on Contributors

uncertain, he misses the related point that the competition favored by antitrust advocates is opposed to the dynamic process described by Kirzner, Schumpeter and many others. Baseball's exemption from antitrust law, while seemingly helpful, is really a sword of Damocles hanging over professional baseball: whenever teams propose to do something unpopular — like move the franchise — you can count on the local U.S. senator threatening to end that exemption.

Meanwhile, he ignores the real monopolies. The Federal Communications Commission blocked exhibition of baseball on cable television until the mid 1970s. This monopolistic policy of limiting the televising of baseball to a single favored group of government-granted monopolies kept fans from convenient access to their favorite sport and cost players and owners millions. Abrams doesn't even mention it.

Abrams is a fan of coercive antitrust laws but doesn't mind government-imposed monopolies. Strike two!

Abrams briefly discusses subsidies, but does not examine their implications. The large subsidies provided by many cities and counties in ballpark construction and operation have greatly increased the revenues of the clubs, and thus made each players' marginal contribution much higher. Thus taxpayers — whether baseball fans or not — bear the expense of multi-million dollar player salary increases. Abrams' failure to come to grips with subsidies: Strike three, you're out!

To top it off, Abrams makes egregious factual errors, obvious even to the casual fan: Jackie Robinson was Rookie of the Year in 1947, not 1946. Baseball expanded in 1961 from 16 to 18 clubs, not to 22. Even more idiotically, Abrams declares that Pete Rose is "the modern game's greatest hitter," apparently based on only one datum: that Rose accumulated a few more hits than any other player. Rose also created vastly more outs than anyone in baseball history and had poor slugging and on-base averages. By any objective standard, Rose doesn't even belong in the top 25 modern hitters.

Even so *Legal Bases* has some value: it can help one get a clearer understanding of how federal labor law has distorted the game.

—Martin M. Solomon

Anonymous is a alumnus of Hillsdale College.

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

Brien Bartels is a reporter in Ellensburg, Washington.

Alan Bock is a senior columnist for the *Orange County Register*.

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

Scott Chambers is a cartoonist living in Arizona.

Stephen Cox is the author of the recently released *The Titanic Story*.

Gene Healy is a lawyer practicing in Virginia.

David Kopel is Research Director of the Independence Institute in Colorado.

Bart Kosko is a professor of electrical engineering at the University of Southern California and author of *The Fuzzy Future*.

Richard Kostelanetz is an independent critic of culture and politics living in Manhattan.

Declan McCullagh is a reporter working in Washington, D.C. He also runs y2kulture.com

Peter McWilliams is the author of 35 nonfiction books and has appeared five times on *The New York Times* bestseller list.

Iain Murray is senior policy analyst at the Statistical Assessment Service, a non-profit organization working to improve understanding of quantitative information.

Durk Pearson is co-author of *Life-Extension: A Practical, Scientific Approach*.

Janice Presser is executive vice president of the Gabriel Group

Bruce Ramsey is a reporter for the *Seattle Post-Intelligencer*.

Steve Reed is a typography consultant and free-lance reviewer living in Los Angeles.

Ralph Reiland is an associate professor of economics at Robert Morris College in Pittsburgh, Pennsylvania.

Sheldon L. Richman is editor of *The Freeman*.

Jane S. Shaw is a senior associate of the Political Economy Research Center and coauthor with Michael Sanera of *Facts, Not Fear: Teaching Children about the Environment*

Sandy Shaw is co-author of *Life-Extension: A Practical, Scientific Approach*.

Tim Slagle is a stand-up comedian living in Chicago.

Fred L. Smith is president of the Competitive Enterprise Institute.

Martin Solomon is an assistant editor at *Liberty*.

Clark Stooksbury is an assistant editor at *Liberty*.

Martin Tyrrell is a writer and researcher based in Europe.

Martin Morse Wooster is an associate editor of *The American Enterprise*.

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

Coming in Liberty

"What if the U.S. Had Stayed Out of World War II?"

When Pat Buchanan suggested that the U.S. might have avoided war with Germany, mainline politicians and journalists had fits of hysteria and name-calling. *Michael Drew*, in contrast, gives the question serious thought.

"Return to Belgrade" After the NATO aggression, *Stephen Browne* went to Yugoslavia to check up on old friends, engage in dialogue over the war and U.S. motives, and discover how people coped with the bombing.

"I Cop A Plea" *Peter McWilliams* tells of his ordeal over his use of marijuana for medicinal purposes.

"Bill Gates Shrugged" The World's Richest Man explains, through *Michael Giorgino*, why he went on strike.

"Was Orwell an Anti-Semite?" *David Ramsay Steele* and *Martin Tyrrell* debate the issue.

Terra Incognita

Port Angeles, Wash.

A sensible voice for public education, reported in the *Peninsula Daily News*:

"I would personally rather have my kid take Pokemon cards to school than a gun," said Tim Collins, in response to a move to ban Pokemon from an elementary school.

New York

A prurient observation from Eric Alterman in *The Nation*:

If the sixties were the age of the war reporter and the seventies the age of the investigative reporter, then the late nineties may go down in history as the age of the blowjob reporter.

Plymouth Township, Mich.

Public safety is victimized by inadequate funding, from the *Detroit News*:

The township's Board of Trustees voted down an \$8,000 request from Police Chief Lawrence Carey to replace the police department's 12-gauge shotguns with rapid-fire AR-15 rifles. Carey wanted to equip patrol cars with the rifles because he claimed they are safer than shotguns. "You can't control the rounds when you use a shotgun in an urban setting," he said. "You can get rapid shots and controlled rounds with a rifle. And everything a shotgun can do, you can do with a rifle." Carey plans to request the rifles again next year.

Mexico City

The War on Drugs mutates into a war on stench, from Reuters:

The home of Andres Vazquez, who makes a living tanning goat and lamb hides, has been searched by police more than 300 times over the past eight years. They come looking for Mexico's most wanted drug lords, kidnappers, assassins and thieves.

"This man works in an environment with a very strong odor," said police commander Ruben Castillo, "as there is some rotting of the skins,"

Iowa

The travails of seeking the most powerful office in the world, reported in *The New York Times*:

Wherever Mr. Bush went, cameras and flashes heralded his way, and teenage girls squealed with delight to be near him.

Poland

A decade after the collapse of the Iron Curtain, Western decadence invades the birthplace of the Warsaw Pact, from Reuters:

Sex magazines were delivered to mailboxes of every Polish legislator Tuesday ahead of a debate on tightening restrictions on sexually explicit publications.

Portugal

Sad development for collectors of United Nations collectibles, reported in *Coin World*:

Portugal has recalled all of the 1999 100- and 200-escudo coins commemorating the work of UNICEF because the name of the country was misspelled.

The name of the country as it appears on coins is REPUBLICA PORTUGUESA. However, a typographical error was introduced when the hubs were made and the letter E was dropped, giving the name of the nation as REPUBLICA PORTUGUSA.

Minnesota

Internet gambling claims another victim, from the *Minneapolis Star Tribune*:

A University of St. Thomas sophomore has been charged with trying to swindle more than \$75,000 from St. Thomas and other private colleges in order to cover losses from sports betting on the Internet.

According to court documents, Harberts faxed a letter Nov. 18 to the president of St. Thomas, demanding \$20,500 to keep the sender from giving information to the news media that would result in investigations and fines by the National Collegiate Athletic Association. Similar letters seeking lesser amounts were sent in subsequent days to Macalester, Augsburg, St. Olaf and Carleton colleges.

Wisconsin

The Badgers of Wisconsin make an unprofitable trip to the "Granddaddy Of Them All", from the *Milwaukee Journal Sentinel*:

In the wake of last month's audit, Athletic Director Pat Richter has been busy fielding questions about why, even though the Badgers won the game, the University of Wisconsin ended up losing \$286,700 on this year's Rose Bowl.

Washington

A clear-eyed vision of the future from the Washington State Department of Transportation:

The WSDOT has begun a study of State Route 104. The capacity vision for the roadway will need to reflect the area's vision for growth.

Cyberspace

What to get for the rightwinger who has everything, from *WorldNetDaily*:

WorldNetDaily Golf Balls: Top Flite Tournament Plus balls. Get golf's greatest name in quality, feel and distance with something extra: the WorldNetDaily.com logo. Emblazoned in three colors, the Top-Flite/WorldNetDaily.com golf ball is the perfect gift for dads, friends, and the rich uncle who has "everything."

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

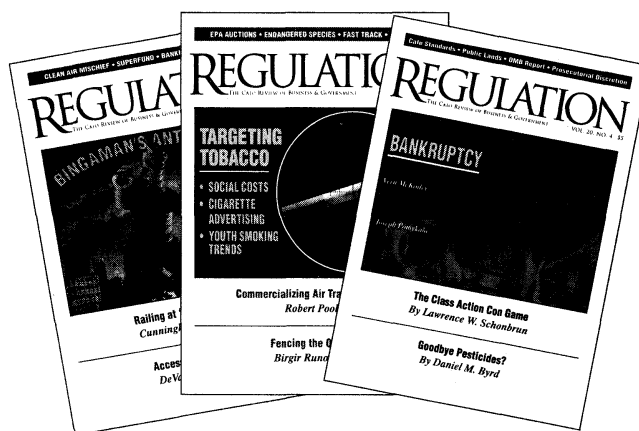
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