

Liberty

February 2003

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Lincoln vs. Liberty

Suppose the Globe Is Warming

by Robert H. Nelson

The New Face of Feminism

by Bettina Bien Greaves

Guns, Bush, and the Courts

by Dave Kopel

The Crucifixion of H. L. Mencken

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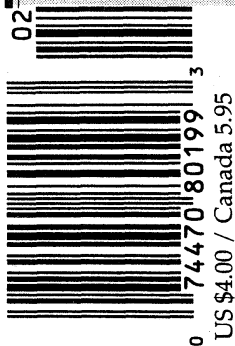
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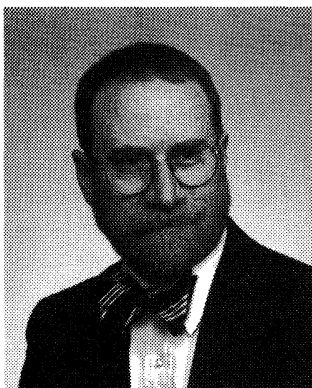
The Strange Politics of Noam Chomsky

by Barry Loberfeld

Also: Mark Skousen remembers his year at the helm of America's oldest freedom enterprise, Stephen Cox visits the New Religions, Jacques de Guenin recalls the revolution that succeeded . . . plus other articles, reviews & humor.



"What more felicity can fall to creature, than to enjoy delight with Liberty." — Spenser



What Dionne Warwick Reveals about the Drug War

by Sheldon Richman

The American Inquisition got another one recently. Singer Dionne Warwick, who was found with nearly a dozen marijuana cigarettes at the Miami airport, had her charges dropped in return for promising to undergo "drug treatment" and to make anti-drug public-service announcements.

Let's look at what Ms. Warwick's case says about the "war on drugs," which is not a war on drugs at all, but a war on people. This modern-day Inquisition is designed to hunt down drug heretics. Ultimately, its victims are punished not just for what they do, but also for what they think. And what they think are forbidden thoughts about drugs. Instead of believing, say, that a glass of wine is okay, but a joint is bad, they may

think that a joint is not much different from a glass of wine. We can't have people thinking that. That's why Ms. Warwick was offered the deal. As a celebrity, she is more valuable as a convert than as a convict.

That the Inquisition is aimed at thoughts can be readily seen in the terms of her deal. To avoid trial she had to promise to attend "drug treatment." This "treatment" consisted of talk by her and by psychiatrists, psychologists, or other mental-health personnel. Ms. Warwick, under obvious duress, perhaps said she was stressed and thought that marijuana would help her to relax. Or maybe they explored how low self-esteem "caused" her to use drugs. Or maybe her interest in drugs was attributed to mental illness. (If so, why is the criminal law involved?) She probably said she sees the error of her ways and won't do it again. Nationwide, the taxpayers pay hundreds of mil-

lions of dollars to finance this inflated nonsense that goes by the name "treatment." Most of the people there are trying to stay out of jail.

Then there are those public-service announcements. Here is where Ms. Warwick will do public penance by recanting her heresy. She will probably tell kids not to use illegal drugs. How convincing will that be? Until recently, she apparently saw nothing wrong with using marijuana. She "got religion" (an apt phrase here) just after criminal charges were filed against her and then dropped. A coincidence? If not, why should anyone believe anything she says about drugs? It is certainly more likely that she'll deliver her anti-drug message only because she could go to jail if she refuses. When someone has that strong a personal interest in making a statement that conflicts with her own previous conduct, we are entitled to skepticism, if not outright

incredulity.

While Ms. Warwick will avoid prison in return for her reeducation and public recantation, others are not so fortunate. The prison statistics are a scandal. According to the U.S. Bureau of Justice Statistics, in 1999 more than half (57 percent) of federal prisoners were drug offenders. That's more than 68,000 people. In 1997, state prisons held 251,200 drug offenders, about 20 percent of state prison inmates. A disproportionate number of those prisoners are black.

Americans are losing their liberty for having unapproved ideas and acting on them peacefully about what substances they should be free to ingest. That is unworthy of a self-described free society.

*Sheldon Richman is senior fellow at The Future of Freedom Foundation (www.fff.org) in Fairfax, Va., author of *Tethered Citizens: Time to Repeal the Welfare State*, and editor of *Ideas on Liberty* magazine.*

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Letters

Overlooking the Evidence

Timothy Sandefur ("Why Secession Was Wrong," Dec.) overlooks the long and contentious process of ratifying the Constitution. I wonder how Sandefur would parse his way around this statement by Shelby Foote: "If any of the original states ratifying the Constitution had the slightest idea that if they joined this new government they wouldn't be able to leave it again, not one would have joined."

Ken Lucas
Scottsdale, Ariz.

Liberty and War

I fully appreciate the fact that you are giving libertarians both sides of the debate about the potential of war with Iraq. I have protested both the war in Vietnam and the Gulf war. I now fully support our country going in and taking over Iraq.

I believe that libertarians who object to our involvement in this war forget the basic premise of being a libertarian: don't initiate force.

Force has been initiated against us. Gene Healy's excellent argument ("Iraq: the Wrong Place, the Wrong Time, the Wrong War," Jan.) against our engagement with Iraq omits one vital part. He does mention 9/11 but, fails to mention the 3000 of our citizens killed. This is bigger than Pearl Harbor.

After the attack at Pearl Harbor we sent forces into North Africa and the South Pacific. We did not directly attack Japan and Germany. I would guess our president sees this in an appropriate way.

If we have troops in Iraq it is only a few hundred miles over mainly desert to control Medina and Mecca. I suspect that we could then deal with the Muslim world in a serious fashion.

Tom Joslin
Seattle, Wash.

Fat Is Therapeutic

Randal O'Toole's piece, "How Fat Are We?" (Nov.), is just what the doc-

tor ordered! With all the upcoming (and surely politically correct) books about the "evils" of "fast food," common sense must reign, not the Centers for Disease Control.

I have discovered over the years that there is no need to take an anti-anxiety pill after a "bad-hair day." My substitute remedy: a quick pint of Haagen-Dazs (any flavor) should do the trick. And, if that don't do it, head to the freezer and pull out those frozen White Castle cheeseburgers you've secretly kept (after your better half ordered you to destroy them . . . something or other 'bout fat)! Now, add extra mayo, pull out a frosty one from the fridge, throw the salad in the trash or, better still, feed it to the cat. Last, but not least, wash it all down with a 6-pack of Bud! You'll feel fantastic.

Fred Bluestone
Pembroke Pines, Fla.

Devolution Now!

Once again R. W. Bradford reports the failures of the Libertarian Party ("Freedom at the Ballot Box," Jan.). Perhaps he is correct and it is time to reconsider our party. As an LP member for at least 25 years, I long ago concluded that libertarianism will never be accepted by more than a small minority of people. We need our own party, but we need a party that can succeed.

To succeed, our party should have no ideology, just one simple goal: move power to the smallest possible unit of government — from federal to state to local to individuals. We would seek not to downsize government programs, but simply to *downslide* them (and their funding). By advocating local control instead of abolition, we could gain the support of people on both the left and the right.

Richard D. Fuerle
Grand Island, N.Y.

Libertarians vs. Republicans I

Bruce Ramsey laments that only six Republican congressmen adhered

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briefly to libertarian principles to vote against Bush's War (*Reflections*, December). There were in fact many others who voted against the war. Democrats all.

In comparing the Democratic and Republican parties, let's look at history. Which party gave us Internet censorship and the Communications Decency Acts I and II? Which party fought to retain conscription? Under which party's president did social welfare programs grow (a) \$51 billion in 1995–2000 and (b) \$96 billion in 2001–2002? Which party controlled Congress from 1995 forward while discretionary federal spending grew 7 percent annually? Which party's government threatened Canada with trade sanctions if they ended restrictions on marijuana? Which party submitted to Congress the largest budget in the history of the Republic — \$2.13 trillion? Which party calls for a constitutional amendment banning abortion? Which party's government ordered banks and brokerage firms to report "suspicious" transactions to the government? Which party's Senate Majority leader slipped the Brady Bill through the Senate after it was known to be dead? Which party works hard for corporate welfare programs like missile defense and the new Stealth fighter? I could go on, but *Liberty* only runs 56 pages.

Democrats may like big government, but Republicans love truly humongous government.

On civil liberties, there is absolutely no comparison. Janet Reno at least professes regrets. John Ashcroft never will. It is no accident that the ACLU — and I am proud to sit on my county ACLU board — is filled with liberal Democrats, not conservative Republicans.

Far worse than all of the above put together is a Republican president who kidnapped an American citizen, threw

him into a Navy Gulag, denied him access to counsel, and claimed that a presidential *lettre de cachet* defining the kidnappee as an "unlawful combatant" allowed the president's minions to ignore the Constitution. This is not merely big government. It is tyranny already born, crying lustily in the cradle.

To give Ramsey his due, it is indeed true that many Libertarians support their own party and not the large party that stands close to theirs.

Unfortunately, a few libertarians instead advocate supporting the party of huge and tyrannical government that now occupies the White House.

George Phillies
Worcester, Mass.

Libertarians vs. Republicans, II

Does Chuck Muth ("The Republican Killers," Jan.) really expect libertarians to support Senate candidates like South Dakota Republican congressman John Thune, based on his lifetime rating of 83 by the American Conservative Union? Given the differences between the conservative and libertarian social agendas, I would not automatically assume that Thune's libertarian and conservative rankings would be similar.

Third party candidates may well affect the outcome of races between major party candidates. But major party officeholders themselves set up the rules that generally give the election to the candidate with the most votes, rather than requiring a runoff when no candidate receives a majority.

The vote totals achieved by so-called "spoiler" candidates generally reflect the dissatisfaction of voters with the choices that the Republicans and Democrats present to them. If third-party candidates were not around, Thune may well have been elected to the Senate - but he would likely be casting votes on the legislative agenda of President Al Gore.

Charles Barr
Las Vegas, Nev.

A New Strategy Needed

I greatly enjoyed the debate in the January *Liberty* about the effectiveness of the Libertarian Party. ("Freedom at the Ballot Box," "The Republican Killers") As a disillusioned former Libertarian Party activist, I have a suggestion, based on history, that might

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provide a useful alternative to our current frustration.

Not many people know that in the early 1900s, the state government of North Dakota (my home state) was run by a socialist organization called the Non-Partisan League. This group ran candidates under both the Democratic and Republican party labels. This group had a profound influence on the state, founding the only state-run bank in the U.S., and erecting a protectionist system for the state's agriculture. Later the NPL was absorbed into the Democratic party, which was ironic, since most successful NPL candidates were actually Republicans.

Why can't libertarians for a group to adopt this strategy? In Arizona, where I live now, there are many districts that are so heavily Republican or Democratic that the other major party doesn't bother to field a candidate. I imagine this is true in other states as well. Since candidates are chosen by primary, we could run our candidates in the primary of the weaker major party. Or we could run Independents in other races where there are two candidates, especially where there's little difference between them. We could also endorse non-members who made a minimum score on a pro-liberty ideological test, rather than expecting them to be 100% with our party line. Otherwise we could end up opposing a good man like Ron Paul simply because of his stand on abortion, for example.

That brings me to the second part of my argument: why do so many libertarians assume that we're closer to the Republicans than to the Democrats? We can woo liberals, too: I myself am a former liberal. We can stress civil liberties and opportunities for minorities. Look at the Institute for Justice—it's done our cause immeasurable good by helping out the poor, the elderly, and minorities, the same people the Democrats claim to favor. And why would liberals, if they really thought about it, support putting people in jail for victimless crimes? If the Dems are truly marginalizing themselves, that may be where the true opportunity lies.

Vaughn L. Treude
Phoenix, Ariz.

Real Tax Reform

Sheldon Richman, in his musings

on "Fiscal Force," (December), misses one of the best examples of what he calls the "Humpty-Dumpty" use of words by the IRS. As Richman writes, the IRS says that filing a tax return is "voluntary" in the (non)sense of "allowing taxpayers to determine the correct amount of tax and complete the appropriate returns, rather than have the government determine the tax for them." Thus, the IRS definition of "voluntary" is: "being allowed to do something for oneself rather than having the government do it for him."

In the next breath, the IRS maintains that "The requirement to pay taxes is not voluntary." Thus, by the IRS definition, paying taxes is *not* something I would be allowed to do myself, rather than having the government do it for me.

I can live with that. Let the government pay the taxes for me.

T. Anthony Rowls
Sherman Oaks, Calif.

War Wimps

In "Wail of the War Wimps" (*Reflections*, Dec.), Clark Stooksbury stated his case rather mildly—by my standards. Chicken Hawk? I think a more appropriate term would be Chicken Shit!

My father, who was a mortar squad leader on Bougainville and a forward observer on Guam and Iwo Jima, said it best: "What happens in war is that one bunch of politicians gets mad at another bunch of politicians so they tell their people, 'Let's you and them go fight.'" Another cause of war is when one government has something another government wants. As Jacob Bronowski put it: "War is a highly organized and co-operative form of theft."

The practical fact is that young men are yanked out of their lives, guns are thrust into their hands, and they are sent off to kill other young men who have been yanked out of their lives and guns thrust in their hands. While these young men huddle shivering in their foxholes hoping that they will live to see the next sunrise, the people who cause the problems—the politicians, generals, priests, mullahs, tribal elders—sit back in their comfortable digs and move their chess pieces around.

When those who declare war, vote for war, or send troops into battle, have to actually go with those troops them-

selves . . . When they know that they, themselves, will have to shiver in a foxhole, endure an artillery or mortar barrage, draw a bead on another human being, press the trigger, and watch their "target" drop and writhe on the ground—in the full knowledge that someone else may be drawing a bead on them—then, and only then, will we learn what is really worth fighting for.

Ken Valentine
Alta Loma, Calif.

Buying the Farm

This is a response to Steve Cox's appeal ("Word Watch," *Reflections*, Jan.) for a history of the expression "to buy the farm" as a synonym for dying. I first ran across it in Heinlein's *Starship Troopers*, and my recollection is that ol' Robert A. went to enough trouble to make sure his readers grasped the context that it was a probably a neologism that he included in the book's future-speak. Heinlein presented it as military slang for a soldier's death, especially (but not always) in battle.

Tom Flynn
Amherst, N.Y.

Stephen Cox asks where the cliché "he bought the farm" came from. Just in case you haven't heard from anyone else, tell him it comes from the old barn storming days.

When pilots wanted to set up an air show they would rent a farm close to a town, since they needed both room and a crowd. It didn't take long till farmers realized those planes carried gas and sometimes crashed. They began demanding a cash deposit up front to cover the contingency.

When someone went out in a really spectacular crash that did a lot of damage, his contemporaries would say that he had "bought the farm." It originally meant to die in a really spectacular way, now it just means to die.

Paul Kelly
Boulder, Colo.

Stephen Cox speculates on the origin of the expression "bought the farm." I do not claim to know the ultimate source, but the first time I heard it was in pilot training in the early 1940s. If some unfortunate airplane driver lost a tug of war with Sir Isaac Newton and dug a big hole in the ground he was

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Reflections

The posh life in Kabul — The Overseas Private Investment Corp. is looking into financing a \$40 million deal to build a Hyatt Regency in Afghanistan's capital, Kabul. Apparently the new hotel would be across the street from the American Embassy. Guess we couldn't expect all those "nation builders" being brought in for a day or three of lucrative consulting to put up with anything less than four-star standards.

— Alan W. Bock

Media note — In 1997, voters in Seattle created the Sound Transit Authority, funded in part by a special tax attached to the purchase of automobile license plates. In 2002, voters abolished that tax. Local government officials have refused to stop collecting the tax on grounds that the 2002 measure conflicts with the 1997 measure, and they do not know which law should take precedence over the other. So owners of motor vehicles are still paying the fee. All this has been duly reported by the local media.

One wonders how the local media would have reacted if someone in the area had been apprehended whipping African-Americans in his backyard, and offered the defense that he didn't know whether chattel slavery was illegal, since prior to the ratification of the 13th Amendment in 1865, the laws of the United States authorized chattel slavery, and he didn't know which of the laws took precedence over the other.

— R. W. Bradford

Once you're hooked, it's all downhill — I admit it. I'm addicted. I'm hooked on the white powder. I know it's dangerous. I know it can kill me. I know many people (including the rich and famous) have died as a result of doing it. But I can't help it. The rush I get when I'm doing it is incredible. And even though it is pretty expensive and my nose gets all red, dry, and painful after every episode, I plan to keep on doing it. I can't help it. When I'm not doing it, I think about how bad I want to go right back to it.

I've had debates with my conservative friends about whether or not the government has a vested interest in keeping people like me from doing stuff like this. Especially since it is inherently dangerous. They seem to think it is just fine for the government to prohibit people from doing stuff like this. Not me, however. I'm going to seek out this incredible white powder whenever and wherever I can, no matter the danger. Yep, I'm going to keep on skiing.

— Chris Henderson

Old hate in new bottles — You know how "the right wing" is always supposed to be spreading "hate"? Consider these loving and pacific comments from former president Clinton about the Trent Lott follies, as reported by the AP on Dec. 18:

"How can they [the Republicans] jump on him when

they're out there repressing, trying to run black voters away from the polls and running under the Confederate flag in Georgia and South Carolina?"

"I think that the way the Republicans have treated Senator Lott is pretty hypocritical, since right now their policy is, in my view, inimical to everything this country stands for."

"Everything"! Suppose that Lott had said that about anyone. Clinton practically called for a revival of the House Un-American Activities Committee or Sen. McCarthy's Permanent Subcommittee on Investigations. (Although it's interesting that Clinton made his remarks "while attending an event for the European Travel Commission.") If that revival occurred, however, would there be a public figure willing to ask, as someone asked Sen. McCarthy, "Have you no decency? At long last, have you no decency"? — Stephen Cox

We're not in Kansas any more — A threatened transit strike in New York City forced officials to write contingency plans which included allowing limousine and livery car drivers to pick up passengers. Perhaps another solution would be to abandon the laws which restrict the ability of gypsy cabs to operate within the city.

For the rest of America, such a disaster is inconceivable. Mr. and Mrs. Middle America moved out to the suburbs years ago where there isn't a single union to threaten everyday travel. The worst travel worry for most Americans is a flat tire or a dead battery. Organized extortion is something to keep in mind when you hear urban planners talk about the benefits of public transit.

— Tim Slagle

The race war — From about 1968 to 1992, liberals were against war. Then they went wholehog for intervention in Bosnia.

"Bosnia turned these liberals into hawks," writes George Packer in "The Liberal Quandary Over Iraq," *The New York Times Magazine*, Dec. 8. "People who, from Vietnam on, had never met an American military involvement they liked now were calling for U.S. air strikes to defend a multiethnic democracy against Serbian ethnic aggression. Suddenly the model was no longer Vietnam. It was World War II and armed American power was all that stood in the way of genocide."

Liberals supported military interventions in Haiti, East Timor, and Kosovo, and itched for intervention in Rwanda. They mostly supported the post-Sept. 11 move into Afghanistan, which Packer says was a war of national security but had human rights as a side benefit. For liberals, the overrunning of al Qaeda training camps was less important than the videos of happy, unshrouded women.

Now comes an invasion of Iraq, Packer says, and the liberals are suspicious but unsure.

All this surprises me, because liberals are almost my mirror opposite. I was for most of the struggles of the Cold War, because communism was a worldwide movement that ultimately laid a political claim to me. But Serbian nationalism never was, nor was Indonesian nationalism. I had no stake in who won in Kosovo or who ruled Haiti, East Timor, or Rwanda. As a rule, when their interest is involved, liberals want to run and hide, it's only when they are disinterested that they want to fight.

Well, I think I have figured them out. What motivates them is ethnicity and race. We all think about these things, but liberals and leftists think about them more. To them, South Africa in 1985 had a much more evil government than Burma, because it was whites oppressing blacks, whereas in Burma it was Asians oppressing Asians. It was not important to liberals that there was considerable freedom of the press in South Africa but none at all in Burma, or that there was some democracy in South Africa and none in Burma. Nor were liberals interested in blacks oppressing blacks in Africa — at least not until the open butchery in Rwanda. And they have had little to say about the recent chaos in Nigeria.

It seems the reason for this is that the cause that inspires liberals and anoints them with moral superiority is civil rights for black Americans. Any issue that can be fitted into that mold will be their issue. The other mold they use, as Packer says, is World War II, which they see as a crusade to stop the Holocaust.

Each involves collective guilt and collective redemption, which are the core tenets of modern liberal ideology. Some liberals seem to think these are at the core of their opponents' ideologies as well. That is, deep down their opponents must be motivated by racism, sexism, backlash, anger, and hate.

It is a false assumption. Your opponent is rarely a mirror image of you. And one illustration of this is the similarity of thinking by liberals and libertarians about a war on Iraq.

This may be the first issue in years about which I agree with Al Gore. And maybe the last.

— Bruce Ramsey

The Independentista Party — The next time New York City Libertarians (calling ourselves the Independentista Party to woo Nuyoricans) get an opportunity to pitch a candidate for mayor, may I recommend it be one who runs on a platform of New York City indepen-

dence. Disassociating ourselves from all the larger entities that take more in taxes than is returned, the Independentistas should advocate free access to all drugs, casino gambling, the elimination of the minimum wage, unlimited immigration, and the termination of welfare (prompting all the vagrants sent here to move out). And, when folks from Jersey, Westchester, or Connecticut come to NYC for its superior culture, charge them a toll — make 'em pay for the privilege of visiting a superior country.

— Richard Kostelanetz

Lott thought he felt he didn't agree —

The old saw about America having two parties — an evil party and a stupid party — was richly confirmed by the Trent Lott debacle.

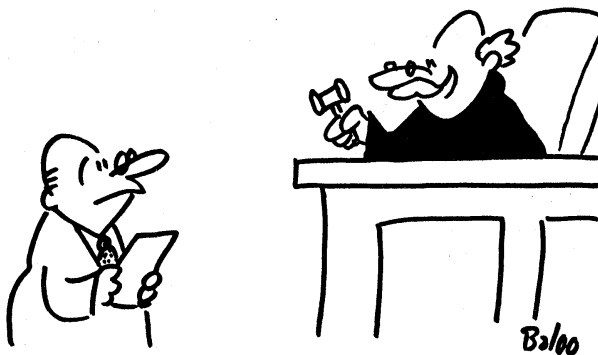
Lott, Republican pretender to majority leadership of the United States Senate, went to the 100th birthday celebration for retiring Republican Sen. Strom Thurmond. Fifty-four years earlier, Thurmond had bolted the Democratic Party and campaigned for president on the States Rights ticket. His motive was opposition to President Truman's proposed civil-rights legislation, which intended, among other things, to eliminate racial discrimination in federally funded jobs. In context, the States Rights Party stood for the maintenance of racial segregation in the South.

Thurmond, who is said to have been the first senator to hire a black aide, long ago made his peace with the civil rights movement. He is respected by both blacks and whites in his home state of South Carolina. Lott, however, could not leave the events of 1948 alone. He insisted on saying that he was happy that his own state, Mississippi, had voted for Thurmond, and that "if the rest of the country had followed our lead, we wouldn't have had all these problems over all these years."

What did that mean? It didn't mean anything. It certainly didn't mean that Lott, one of the biggest buckets of political pabulum that has ever caused the American palate to shrink away in disgust, was announcing his support of resegregation. Even if Lott believed in that, it's the last thing he would ever come out and say. The fact that he said what he said is the best possible evidence that he didn't mean it.

Naturally, however, the high-volume spokesmen of the evil party, the Democrats, started publicly interpreting Lott's remarks — his "racist statement" (Albert Arnold Gore Jr.) — as a revelation of the fact that he spent every night in sympathetic analysis of the early speeches of Adolf Hitler. The Democrats knew better, of course. I am certain that not one of these people ever seriously entertained the thought that Lott was a racist. But they saw their political opportunity, and they took it.

Of course, Lott began explaining and regretting and explaining again and regretting still more, and the affair got worse and worse, because this leading spokesman of the Grand Old Party can't talk his way out of a paper bag. Besides, he looks exactly like a used-car salesman. I know they said that about Nixon, but this time, it's true. He might not be able to help looking like that, but he does. It's impossible to listen closely to what he's saying, because you're always thinking how much he looks like a used-car sales-



"Let's get right on with this next case, Counselor — three more convictions and I can retire!"

man.

And now, with apologies to any actual used-car salesmen who may be reading this, I'll continue.

To me, the most interesting of Lott's explanations and regrets was the one he came up with *second*. He said that his "words were terrible," but that the mistake he had made was a "mistake of the head and not of the heart, because I don't accept those policies of the past, not at all."

In other words, "Please forgive me — I can't THINK."

Or, alternatively, "Please forgive me — I THOUGHT that segregation was a good idea; then I realized that I didn't FEEL that way."

Take your pick. The only thing more pathetic than this alternative is the alternative faced by every person who walks into a voting booth in America. Will it be Evil today — or Stupid?

— Stephen Cox

Another Lincoln — On May 8, Jose Padilla was arrested by federal agents in Chicago. The agents told the press that they believed Padilla had met with al Qaeda leaders in Pakistan. Padilla was turned over to the military and has been held incommunicado ever since, pursuant to a personal order from President Bush.

Initially, this might seem to violate two provisions of the Bill of Rights. The Fifth Amendment specifies that "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." Padilla is undoubtedly being deprived of his liberty. The "due process of law" in this case, so far as I can tell, consists of being held without being informed of one's rights, without being able to consult an attorney, without being able to plead for one's own release, all because the president ordered it.

The Sixth Amendment seems to suggest that the president has no such rights: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Padilla has been held for 225 days. He has not been allowed to see his attorney, or anyone else. He has not been tried by any jury. He has not been confronted by any witnesses. He has been denied access to counsel.

Fortunately, there are those who care about the rights of American citizens. One such person, an attorney named Donna Newman, filed a suit on behalf of Padilla. Bush's attorney, John Ashcroft, argued that Newman was not a friend of Padilla, and therefore had no right to plead for his right to counsel, and argued that because Padilla has been labeled an "enemy combatant," he is not entitled to the rights guaranteed by the Constitution.

In U.S. District Court on Dec. 5, Judge Michael Mukasey ruled that Bush did have the right to declare Padilla an "enemy combatant" and to hold him indefinitely, provided that Bush had "some evidence to support his finding." But he rejected the idea that Padilla could not be allowed to con-

sult with counsel, calling Bush's argument a "gossamer speculation," and observing that the government had extensive experience in dealing with terrorists and other dangerous prisoners who are entitled to meet with their attorneys. He told Bush's legal representative that the government must find a way to allow Padilla to meet with attorneys by Dec. 30.

On that date, Padilla will have been held for 239 days. And he still will not even know that anyone is trying to get Bush to recognize his rights. Unless a higher court rules otherwise, Padilla can still be held indefinitely, without the right to trial, or to secure evidence in his defense, or to face witnesses against him. The right to confer with an attorney will mean little, because George Bush believes that he has the power to arrest an American citizen, declare him to be an "enemy combatant," and hold him forever. And the courts go along with it.

This is all too reminiscent of another Republican president, Abraham Lincoln, who believed he had the right to

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suspend part of the Constitution in time of war. Of course, Lincoln faced a real war, one in which more Americans died every day (as a percentage of America's population) than have died in all 464 days of the "War on Terror" taken together. Lincoln's suspension of the right of habeas corpus had a gossamer veil of legality, since the Constitution specifies that "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." But it was only a veil: Lincoln hadn't suspended the writ in an area in rebellion, but in non-rebelling states where people merely disagreed with the president.

Meanwhile, Jose Padilla sits in jail, with no more rights than if he were the victim of a totalitarian government.

— R. W. Bradford

And sodomy for all — The U.S. Supreme Court has agreed to revisit the question of whether state laws that prohibit sexual activities conducted in privacy between consenting adults violate the U.S. Constitution.

In the case of *Lawrence v. Texas*, the court will revisit an issue it decided in favor of state regulatory power by a five-to-four margin in 1986. In *Bowers v. Hardwick*, the court decided there was no constitutional right to private homosexual sex and left Georgia's law prohibiting sodomy in place (while quietly hoping, like most of us, that the state wouldn't be too aggressive in enforcing it).

Back in 1986, 24 states and the District of Columbia still had sodomy laws on the books. Now only 13 do. Texas and

three other states ban only homosexual sodomy, while the other states ban all sodomy (defined as "deviant sexual intercourse" and usually interpreted to include anal and oral intercourse).

In the Texas case, the court could use "equal protection" to strike down the law. If the same act is legal for heterosexuals but illegal for homosexuals, homosexuals are being denied equal protection of the law. But what about states that ban certain sexual practices for everybody (but seldom enforce the laws)?

Assistant District Attorney A. William Delmore, of Harris County, Texas, argued in a brief that, "government may require adherence to certain widely accepted moral standards and sanction deviation from those standards." This is a pernicious doctrine. Government should confine itself to protecting citizens' rights and punishing those who harm or violate the rights of others, leaving moral standards that don't involve outright harm to churches, civic organizations, and families.

There is no doubt that sodomy laws are objectionable in a free society. But are they forbidden by the U.S.

There is no doubt that sodomy laws are objectionable in a free society. But are they forbidden by the U.S. Constitution?

Constitution? Roger Pilon, Director of Constitutional Studies at the Cato Institute, thinks so. First, he cites the Ninth Amendment, which says in its entirety: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." That was included in the Bill of Rights to remind us that the framers not mentioning an individual right doesn't mean people didn't have it. We might find in that reminder a right to privacy, to sexual freedom, or the more general right of a free citizen to be left alone by government if he or she is not harming another person. Roger Pilon also thinks the Fourteenth Amendment, which states in part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," forbids laws that intrude into private bedrooms. "That clause was meant to be the principal font of rights against the states, to protect the freedom and personal integrity of the individual," he told me. Clarence Thomas has been especially interested in the "privileges or immunities" clause as a guarantee of individual liberty, and he might be able to use it in this case to good effect.

I also would include the clause that guarantees the states will maintain a "republican" form of government, arguing that part of the definition of such a government is that it protects individual rights rather than violating them. Unfortunately, there are almost no decisions extant that deal with this issue.

— Alan W. Bock

The axis of dumb — Could the international situation get any more confusing? Bush's foreign policy team is

supposed to be brilliant. I guess they'd have to be to follow this web of intrigue.

After a bunch of Arabs crashed airplanes into American landmarks, the U.S. invaded largely Pashtun Afghanistan to depose the Taliban. In order to take out the Taliban, the U.S. made common cause with Afghanistan's neighbor, Pakistan. Pakistan is run by a military dictator and has nuclear weapons with which it menaces its neighbor, India. We've subsequently discovered that Pakistan's secret service all but invented the Taliban in order to pacify its basket-case neighbor. With friends like these . . .

Now the U.S. has mounted a campaign against Iraq, which is run by a military dictator who may have weapons of mass destruction he might use to menace his neighbor, Israel. But, as the Bushies press all the diplomatic flesh they can lay hands on in order to forge an anti-Iraq alliance, lo and behold, North Korea announces it has weapons of mass destruction which Pakistan helped it to produce.

Pakistan continues to play a vital role in our pacification of Afghanistan. I suppose it follows that the next step in the War on Terror is we reoccupy Germany with help from Saudi Arabia because the Sept. 11 criminals came from Hamburg.

— Brien Bartels

Four answers — to the question asked in a headline in the Dec. 13 *Wall Street Journal*: "Can Hermeneutics and Quantum Theory Shape Your Reality?"

1. Yes, especially if you're a college professor looking for a government grant.

2. Why can't *Liberty* ever have headlines like this?

3. Whew! I'm glad my reality has shape, after all.

4. More confirmation of the idea that the *Wall Street Journal* has been taken over by space aliens. — Owen Hatteras

"We wish you a Merry Xmas" — One of the greatest threats to religious freedom in America is the ignorance of public school employees. In a school district near Sacramento, Calif., a school principal announced that the word "Christmas" would not be allowed in the school. In Yonkers, N.Y., a school superintendent ordered the removal of all religious decorations, including Hanukkah symbols. These things generally are done by school officials who do not understand the First Amendment's prohibition of the establishment of religion, and think such prohibitions are required by a Constitution which they, being public school employees, have never read. The law, of course, does not require schools to ban mention of Christmas. In fact, California law specifically prohibits schools from banning religious statements.

But while such Scroogery rouses the indignation of students and parents — and rightly so — religious conservatives actually profit from the ignorance of so-called educators. They have much to gain by portraying themselves as a persecuted minority, and these infringements give them that opportunity. Conservative talk show hosts, for instance, have got a lot of mileage out of saying that, in the recent *Newdow* decision, the Ninth Circuit declared it unconstitutional to say "under God" in a classroom. In fact, it did no such thing. Any student and any teacher may pray voluntarily, at any time he wishes, in any public school in

the United States. He simply may not try to force or intimidate others into doing so.

— Timothy Sandefur

An epiphany for Hillary? — A positive note from November's election was that universal health care lost in Oregon by nearly a four-to-one margin. Four-to-one. In Oregon. Could it be possible everyone is waking up from the bureaucratic nightmare that is single payer health care? A side benefit was that, after looking at those results, Hillary Clinton remarked that she was way too "liberal" to ever be elected president. We can only hope.

— Tim Slagle

The case for SUV bashing — Time was when every libertarian knew that, in order to defend someone's right to engage in a certain behavior, it was neither necessary nor (in at least a few cases) desirable to endorse or recommend that behavior in and of itself. You could consider gambling a foolish waste of time and money but defend people's right to engage in it if they wanted to. You could consider drug use irrational and disgusting but defend people's right to engage in that too. The fact that an activity is consensual, and therefore outside the proper bounds of state action, does not mean it is noble or admirable or advisable in itself.

To judge from the rising chorus on the SUV controversy, however, some people in this movement of ours have lost track of this simple truth. (Or could it be that they're simply too unreflective to have seen the obvious?) Nearly two years ago, the Cato Institute sounded the first joyous notes of what was to become a full-throated hymn of praise to the SUV in movement publications, bringing out a flashy, six-page study by a pair of Rutgers University economists that showed that SUVs "are saving lives." A little over a year later, *Reason* devoted its cover and not a few inside pages to a frankly billed "defense of the SUV," and four months after that, *Reason's* Jacob Sullum devoted his syndicated column to raising the by-now familiar hosannas. "People like SUVs," Sullum announced, "because they're roomier, more comfortable, and safer than lighter, smaller cars."

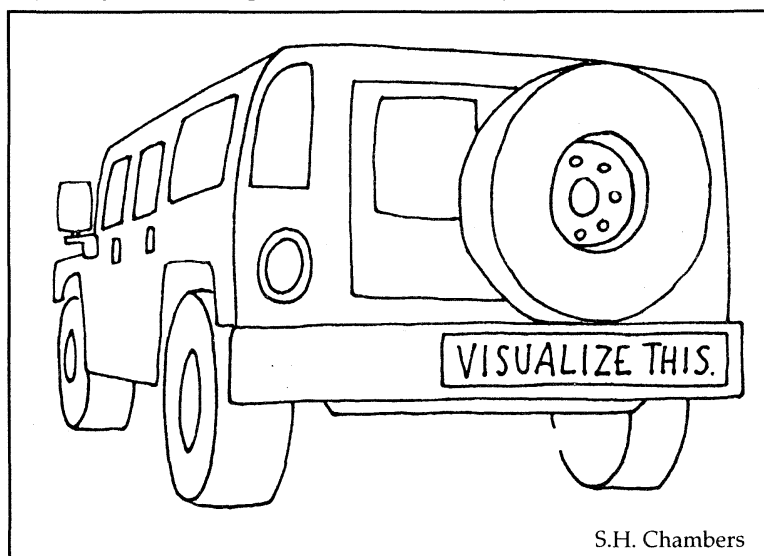
But this is disingenuous to say the least. It's a simple tautology to propose that any given vehicle is "roomier than smaller cars." If the cars it's being compared to are smaller, then, ipso facto, it must be roomier. And comfort is a matter of opinion. Personally, I've never ridden in or driven any SUV that came anywhere close to the comfort I got used to back in the late '80s and early '90s when I was driving an Audi 5000.

As for safety, well the story isn't quite as simple as Sullum and the Cato study, upon which his assertion largely is based, would lead us to believe. After all, what does

"safer" mean to the ordinary driver? To the ordinary driver, does "safer" mean, as Cato's economists patiently explain, the more SUVs we've had on the road in recent years, the bigger the "decrease in traffic accident fatalities per capita, fatalities per licensed driver, and fatalities per registered vehicle," to say nothing of "fatalities per vehicle mile traveled"? Is this the kind of information that is likely to convince a particular driver that SUVs are "safer" than passenger cars? Or is the ordinary driver more likely to be impressed with statistics on how much safer (or how much less safe) any particular SUV driver or passenger will be while traveling in that vehicle? What the ordinary driver wants to know, I think, is not the overall trends in traffic fatalities since SUVs became popular, but rather the odds that he or she will be hurt or killed in an accident in an SUV.

Looked at in this way, the figures tell a somewhat different story. As Stephanie Mencimer summed it up in the December *Washington Monthly*, "The occupant death rate in SUVs is 6% higher than it is for cars — 8% higher in the largest SUVs. The

The main reason is that SUVs carry a high risk of rollover; 62% of SUV deaths in 2000 occurred in rollover accidents." Part of the reason doubtless lies in the fact that, though SUVs, being top-heavy, are prone to roll over, "SUV roofs are not reinforced to protect the occupants against rollover." The



S.H. Chambers

fact is that, from the point of view of the individual driver, SUVs are not "safer." The fact is that people buy SUVs, not because they are safer than smaller, lighter cars, but because they believe they are. And they believe this because they are uninformed. If they were informed, they would know that the safety and roominess they are seeking in an SUV more likely can be had, at a comparable price, in a number of high-end station wagons.

As an example, consider the 2003 Audi A6 Allroad Quattro wagon; compare it with the 2003 Ford Explorer. A fully loaded Explorer costs almost exactly the same amount as a minimally loaded Audi Quattro, but the minimally loaded Quattro has all the same goodies as the Ford, and a few more the Ford doesn't have. Moreover, the Quattro isn't top-heavy, doesn't roll over, and affords significantly better protection to both driver and passengers than any Ford on the road. Sullum makes much of the fact that "[a]lthough most SUV owners don't take them off road, they still value four-wheel drive in rainy or icy conditions." But such drivers would get even better traction from the computer-

controlled all-wheel drive in the Quattro.

All this information is available on the Internet to anyone, including those at the Cato Institute and *Reason* magazine. Why, then, the rush to defend the SUV?

Is it a naive belief that markets are always right? In a sense, of course, they are. But they don't necessarily or even usually reward excellence, only the ability to supply what people want. People do not always, or even usually, want excellence. To economists, of course, the term "excellence" is meaningless, indistinguishable from whatever is wanted by some buyers. Everyone always thinks his choice is the most excellent of the alternatives; otherwise he wouldn't have chosen it. But there is another kind of excellence, the excellence of being well adapted and well designed to serve intended purposes. It is with this sort of excellence in mind that Macintosh enthusiasts decry the Windows operating system as an inferior product despite its market dominance.

The SUV is the Windows of the automotive world — an inferior product that has achieved market dominance in its niche by relying on the ignorance of the buying public. For,

The fact that an activity is outside the proper bounds of state action does not mean it is noble or admirable. Some libertarians have lost track of this simple truth.

as H.L. Mencken memorably put it, "Nobody ever went broke underestimating the taste of the American public."

So why the rush to defend the SUV? I suspect it's as simple as this: SUVs are currently under attack by Greens, "Progressives," and many mainstream liberals, all of whom are calling for government action against the marketing of these vehicles. The SUV cheerleaders' reasoning goes, "my enemy's enemy is my friend; if the liberals and the left hate SUVs, then we must love them." This is, of course, absurd.

I'd argue for a more judicious take on this controversy. Government should not interfere in the market for SUVs. On the contrary, it should end the millions of other regulations already in place on the auto industry. If it weren't for certain of those regulations, it is unlikely the SUV would have come into existence in the first place. The absurd idea of putting a luxury passenger car body on a truck chassis began to look attractive to manufacturers only when government-mandated fuel economy standards for passenger cars began to make it impossible to legally produce the kinds of big, heavy, vulgar vehicles a significant portion of the American public always has favored. — Jeff Rigenbach

Political discourse — Sen. Lott said that Strom Thurmond should have been elected president in 1948. So? At a 100th birthday party isn't it excusable to flatter the honoree without worrying about the precise meaning or exact accuracy of the words of praise? The uproar among politicians and in the media over a possible sinister meaning hidden in Lott's words surprised me, but it shouldn't have.

These people are anxious to find or invent material that will titillate the public or sway "rationally ignorant" voters. Even in some universities nowadays, professors must be careful lest their words are interpreted as mean or insensitive.

A kind of Gresham's Law of political discourse is at work, as was illustrated again in the 2002 elections: bad arguments crowd out policy analysis involving political philosophy and economics. One implication is that we should beware of throwing ever more decisions of life into the democratic political arena. With government limited to its core functions, politicians would be better able to monitor the bureaucrats adequately, and voters to monitor the politicians. But too many people, including supporters of McCain-Feingold, look for a remedy in curbing freedom of political speech and freedom to contribute toward paying for it.

None of this is to deny that party leaders should perhaps be chosen nowadays for their political skills and for ability to foresee and forestall any twisting of their words.

— Leland B. Yeager

The call of the north — Radical left-wing filmmaker Michael Moore recently released his new fictional documentary, *Bowling for Columbine*. A portion of the film is a fawning Valentine to that chilly social utopia to the north: Canada. In several interviews Moore has waxed fondly about Canada's peaceful culture. One wonders, "If it's so perfect, why doesn't he move there?"

I've had the same question about newsreader Peter Jennings, who never misses an opportunity to complain about America, the nation that has made him a millionaire many times over. I suspect the reason that Moore and Jennings haven't migrated north is good old-fashioned self-interest. Canadians with earnings in the neighborhood of Jennings' and Moore's are taxed at a rate just shy of 90%.

Could we get these guys deported?

— Tim Slagle

Gateway to nonsense — The RAND Corporation, which started life as the Air Force's think tank, has become the latest organization to debunk one of the more enduring myths of devoutly ignorant drug warriors — that marijuana is a stepping stone or "gateway" that leads to "harder" drugs like heroin or cocaine. Noting that certain studies show those who use marijuana are more likely to use heroin or cocaine than those who never have used marijuana, RAND does an essentially statistical and partially sociological study, which shows those coincidences are not causative and these numerical associations would be there whether or not there is something about marijuana that leads people to want to try other drugs.

Although RAND trumpeted its study as "challenging an assumption that has guided U.S. drug policies since the 1950s" — which is true enough — it is hardly novel among those with a modicum of respect for science. The 1999 Institute of Medicine report on medical marijuana, commissioned (and then ignored except for one convenient sentence) by then "drug czar" Gen. Barry McCaffrey, reported "no evidence that marijuana serves as a stepping stone on the basis of a particular physiological effect" and then

dropped in the sentence, "the legal status of marijuana makes it a gateway drug," without further comment.

The IOM report didn't tease out the obvious implication of that statement — that the best way to disassociate marijuana from "hard" drugs would be to legalize it — but it doesn't take a lot of intellectual heavy lifting to do so. Unfortunately, like most drug warriors, current "drug czar" John Walters is more into intellectual heavy lying than heavy lifting.

— Alan W. Bock

I'm going to miss you, Al — Is Al Gore's decision not to run for president a good thing for liberty?

Yes, in the sense that it registers a major pre-campaign defeat for the anti-libertarian ideas that Gore tried to use to get himself back in the ring, ideas like a "single-payer" (i.e., communist) federal "health insurance" scheme. Gore's much-publicized lurch to the left was visibly unhelpful to him. The more press coverage he got, the lower (despite all the puffing by the media) fell the sales of his insipid books, and the lower he himself fell in the opinion polls.

I'm afraid, however, that the answer is also No, in the sense that the absence of Gore, who retained some standing with Democratic Party professionals, makes it easier for even meaner, more vicious exponents of American socialism to muscle their way onto the ticket. There are politicians who are not so easy to laugh away as the palpably ridiculous Mr. Gore.

On balance —

No, not on balance. I'm not feeling balanced about this issue. What I'm about to say comes straight from a grieving heart.

I'm going to miss Al Gore.

Gore was God's gift to every political writer in America, except those chained in the deepest dungeons of *The New York Times*. He wasn't just stupid and maladroit. He was *reliably* stupid and maladroit. He never did anything right, and he did so many wrong things that you could never run out of copy, so long as Al Gore was around. And he always insisted on being around.

There's still hope, of course — and let's keep hope alive — that Gore will continue to insist on staying active, and that people will pay some attention to his continued blatherings. In fact, the former is virtually inevitable. But the latter . . . I'm not sure that he'll attract enough audience to make noticing him seem like anything but a sad exercise in nostalgia, or an obvious way of providing filler.

So, goodbye, Al. I'm sorry, truly sorry, that I won't have you to kick around anymore.

— Stephen Cox

One cheer for Al Sharpton — Trent Lott's recent statement that "we wouldn't have had all these problems" if the segregationist candidate, Strom Thurmond, had won the presidency, reflects badly enough on Lott. But the reaction among Republicans is far more upsetting. Rush Limbaugh and others dismissed the gravity of Lott's remarks as though their offensiveness was a trumped-up charge. That's understandable. Bigots like Al Sharpton and Jesse Jackson have made careers of going about with a racism gun, shooting everything in sight. Their credibility further is weakened by the vein of racism running through

the Civil Rights Establishment. But, this time, they were right. Lott did not "misspeak." Presumably accustomed to whispered jokes among Southern paleo-cons, Lott didn't even really apologize. Segregation, he said, was a "discarded practice of the past" — apparently, of no more moral significance than a 1984 Chevy Nova.

Never did Lott address the circumstances leading up to Thurmond's 1948 run for the presidency. In 1946, on a roadside in Monroe, Ga., a white mob murdered a black World War II veteran, his wife, and two of their friends. One of the corpses was found with 180 bullet holes in it. President Truman was so horrified, he began a campaign to pass new civil rights laws and more vigorously enforce those already existing. In retaliation, Thurmond and a handful of others split from the party, denouncing Truman for trying to undermine the "Southern way of life."

The desegregation movement was a great moment in American history because it represented a rededication to the principles of the Declaration of Independence: all men are created equal and it is wrong for the government to distinguish between individuals because of their race. But it should come as no surprise that a prominent Republican soullessly mouths the words of regret over his seeming to

Segregation, Sen. Lott said, was a "discarded practice of the past" — apparently of no more moral significance than a 1984 Chevy Nova.

endorse the "discarded policies of the past." Conservatives simply do not believe in the Declaration's principles.

In 1993, Russell Kirk (who preceded Robert Bork as America's leading conservative intellectual) told a Heritage Foundation audience: "don't I believe in equality of opportunity? No, friends, I do not. The thing is not possible. First of all, genetic differences cannot be surmounted between individual and individual. Thomas Jefferson and the whole



"This Michael Jackson's a pretty good performer, but she ain't no Betty Grable!"

school of 'created free and equal' knew nothing whatsoever of human genetics. Inequality is the natural condition of human beings. Charity may assist those not favored by nature, but attempts to impose an artificial equality of condition and intellect, although in the long run they fail, meanwhile can work great mischief in any society and — still worse — damage human nature itself."

Kirk and his supporters may dissemble, but the racial tinge of such words is undeniable. Compare them, for instance, to the "cornerstone speech" of Confederate Vice President Alexander Stephens: "Our new government is founded upon the great truth that the Negro is not equal to the white man. This truth has been slow in the process of its development, like all other truths in the various departments of science. It was so with the principles announced by Galileo. It was so with Adam Smith and his principles of political economy. It was so with Harvey and his theory of the circulation of the blood. It is stated that not a single one of the medical profession, living at the time of the announcement of the truths made by him, admitted them. Now, they are universally acknowledged. May we not, therefore, look with confidence to the ultimate universal acknowledgment of the truths upon which our system rests? . . . With us, all of the white race, however high or low, rich or poor, are equal in the eye of the law. Not so with the Negro."

Republicans are absolutely right to cry "Double Standard!" Former KKK dragon and Democratic Sen. Robert Byrd, for instance, sails neatly by while Jackson and Sharpton say nothing. But it would be even greater hypocrisy for our leaders to demand that, say, Yasser Arafat denounce terrorism in every speech, while minimizing the offensiveness of a Mississippi good ol' boy who tells his audience that things wouldabin bettah if thar hain't bin nunna dat dee-seg-ruh-gay-shun. — Timothy Sandefur

Rewriting history — In politics, it is amazing how the banners of the victors change after the battle.

I am thinking of Initiative 776, approved last November in the state of Washington. The initiative was a mopping-up measure following an earlier one by the same sponsor to remove a state property tax on cars. Before the earlier one, I paid about \$650 a year for my Washington license tabs. After it, about \$85. I-776 promised to reduce everyone's tabs to \$30.

The measure repealed two sets of taxes: a \$15 tax levied

in four counties and a 0.3 percent property tax levied in the public transit district in three of the same counties. Two-thirds of the tax being repealed went to Sound Transit, a Seattle agency on the verge of building light rail.

For voters around Seattle, I-776 would affect light rail more than anything else. But the plan for light rail is none too popular, having doubled in price and shrunk in miles by one-third since 1996. It has its fervent supporters, espe-

The plan for light rail is none too popular, having doubled in price and shrunk in miles by one-third since 1996.

cially in Seattle, but likely not a majority. So the campaign against I-776 — funded by labor, environmental groups, Boeing, and others — argued that I-776 was *not* about light rail.

It was about democracy and good government, about the sponsor, Tim Eyman, about roads, about buses. It was not, not, not about light rail because it didn't mention a revote on light rail. (Actually, it did, but what the hell.)

The measure passed statewide. But inside the light-rail taxing district, the majority was strongly against it. A great cheer came up from the leaders of Sound Transit: their people had supported light rail! Light rail had won a moral victory!

But they never had waged a moral battle. They never had undertaken a defense of light rail. They had claimed the battle was about something else.

This has happened before. In 1995 there was a measure on the Washington ballot that required government to compensate property owners if regulations reduced the property's value. A great campaign was put up against this, with two main messages. First, the measure was poorly written. Second, it would cost the taxpayers a lot of money. The first was a technical argument and the second a conservative argument. Neither was a liberal or environmental argument.

The statewide "no" vote was 59%. Following it was a wave of congratulation. Voters had supported the environment and rejected property rights. And that is how the measure is remembered today.

— Bruce Ramsey

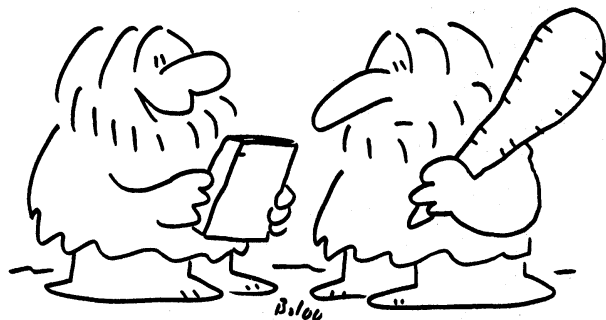
Word watch — "What do you mean?" Paul exclaimed, when the December issue of *Liberty* came out, with my customary "Word watch" Reflection in it. "You haven't come to closure!"

"Closure!" I replied. "I wasn't trying to *close* anything!"

"No, no! I'm talking about the word. The word 'closure.' You were discussing the fact that people abdicate responsibility for what they've just done by saying that they're moving on with their lives or they're in recovery or something..."

"I never mentioned recovery."

"Well, that's another one, then. But you forgot to mention closure. When people are trying to get rid of something, they always say that they want to come to closure, they're trying



"Now that we've invented language, I've drawn up some talking points."

to achieve closure, they're working toward closure, they're sure that we're all together on this and we're all working toward closure. And that's a lot funnier than anything that you mentioned in that reflection of yours."

At this point, I have to tell you that Paul has a peculiar sense of humor. You may remember that scene near the end of *The Fountainhead* — the movie version — where Gail Wynand signs a contract with Howard Roark, then reaches for a gun and shoots himself. He shoots himself off-camera, but you know that he's done it because you hear the gun go off and you see the pages of the contract blown back by the blast. When we were leaving the theater after viewing the film, Paul said that there was one thing he didn't understand: "Why did he shoot that contract?"

You see what I mean.

"What's funny about closure?" I asked.

"It's funny because they want both things at once. They want to move on with their lives, quote unquote, and the faster the better, but they also want to bring everything to a stop. They want to stop the things they don't like, anyway, such as their debts and their friendships and their plans for something that they don't want to do but they promised to do. They want to bring all *those* things to closure . . ."

"Pretty funny."

"It is, really. Really it is. But you've gotta think about it."

"I'm thinking. It's hard, but I don't want to bring the process to closure. Not yet. That would be premature. Soon, though."

"I'll say one more thing."

"Go ahead."

"This is one of those committee words."

"Committees? We have committees?"

"Yes we do. Everybody does. You can inoculate for smallpox, but you can't inoculate for committees. Even tattoo parlors have an elaborate committee structure. And committees have special words. That's where 'agenda' comes from, of course, and why everybody is assumed to have one. And once you've got your agenda written out, you can put 'action items' on it. I like action items. They're a way of telling people that they've got to do something by telling them that it's something they've already received. There it is on the agenda — the action item. Anyway, committees are always coming to closure. They 'come to closure,' but they also 'leave open' their 'option' to 'revisit the proposal' at some future date. It's a great method of having both things at once. Imagine what would happen if God did things like that."

"I can't imagine."

"Neither can I. But it would be almost as much fun as a committee meeting."

"All the same, I hope we live to see closure on this 'closure' issue."

"So do I. But the real problem is, it doesn't make any sense. 'Closure.' I was 25 years old before I knew that there was such a thing in the world, and I'd been closing doors all that time. I mean, what have you 'achieved' when you've 'achieved closure'? Does it mean that you're through with something? You can forget all about it? You can file it away in that drawer that only your 'administrative assistant'

knows how to find? Or is it just a way of saying, 'This is the Rolling Stones' Fourteenth Farewell Tour'?"

"I don't know."

"Neither do I. But that's the point, isn't it?"

— Stephen Cox

P. R. boot camp — The U.S. State Department is bringing Iraqi exiles to Washington for what it calls "media training." Will these would-be post-Saddam rulers be instructed in how to set up a government that balances power and respects the individual rights of citizens? Not exactly. Instead, they'll stay at the classy Radisson and get lessons in how to handle themselves in media interviews and how to give speeches. The hope is, apparently, that they'll learn to lie as well as their sponsors. — Alan W. Bock

Time to sober up — The post-election emails and faxes from the Drug Policy Alliance tried to put a cheerful face on the failure of drug reform measures on the November ballot, noting that, since 1996, voters have approved 19 of 24 state drug policy reform initiatives. But releases before the election had crowed that voters had placed themselves on the reform side 17 of 19 times. The reformers lost three and won two on Nov. 5, and the ones they lost were more prominent and potentially more important than those they won.

The midterm election this year was a significant setback for a drug reform movement that had been riding fairly high with shrewdly selected issues centered around medical marijuana patients and the idea of treatment rather than incarceration for nonviolent offenders.

Time magazine's cover story for Nov. 11 (released before the election) highlighted this success and predicted more, noting that 80% of Americans support making marijuana available medicinally and 72% prefer fines rather than jail for marijuana possession. Although it included more than its fair share of bad puns and "clever" winks to hippie-ness (a trivializing temptation no journalist seems able to resist), the *Time* article included a fairly accurate assessment of the

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relatively small health risks associated with smoking cannabis and acknowledged (as government spokesmen almost never do) that there is solid scientific evidence for some medical benefits.

But the voters spoiled the story, rejecting a measure in Ohio that would have provided treatment rather than incarceration for simple possession offenders (similar to Proposition 36, which California voters passed and which is working fairly well) and, measures that effectively would have legalized possession of small amounts of marijuana for any purpose.

It wasn't a clean sweep for the drug warriors. Voters in Washington, D.C. approved a measure to require treatment instead of jail with a 78% margin. In Massachusetts, 19 local non-binding resolutions passed, instructing legislators to vote for making marijuana possession a civil rather than criminal offense.

In San Francisco, voters approved a measure directing city officials to look into growing and distributing cannabis to patients who qualify for it. That would mean the feds, who have been aggressively closing medical marijuana cooperatives and dispensaries in California, would have to think about arresting city officials.

On balance, however, the election results were a setback for drug reformers, especially if you count those few who dreamed of the Democrats taking over Congress, making Michigan Democrat John Conyers chairman of the Judiciary Committee, and were prepared to hold hearings on marijuana medicalization and decriminalization.

Consequently, I especially was interested to attend a national conference of the Marijuana Policy Project and Students for Sensible Drug Policies in Anaheim. The pre-publicity suggested it would be something of a triumphal affair, celebrating Tuesday's victories and planning the next steps. It turned out to be more sober and sobering, a reassessment of where the movement stands. From the speakers and panels, I got the idea this setback might be almost a blessing — a reminder that drug law reform will be a long, difficult battle in which reformers will have to work in coalition against people with deeply rooted, vested interests in the status quo. Most of the attendees seemed to absorb this message and to leave the meeting determined not to be deterred. It will be interesting to see if the attitude lasts.

— Alan W. Bock

Let them eat sense of belonging — The saddest thing about the leftists is the perversity of their priorities. Although they wrap themselves in the flag of Compassion for the Poor, they routinely support policies that harm the poor most of all: the minimum wage, for example, which costs hundreds of thousands of entry-level jobs and harms most those for whom the Democratic Party claims to feel the most pain.

Another example is the left's opposition to the increase in food productivity. Environmentalist terrorist groups attack genetically modified crops, lobbyists stall food irradiation, and pseudo-intellectuals impose on the Third World international agreements which stifle industrialization. Just like conservatives, liberals talk of the "spiritual value" of

things while turning their backs on the inhumane impact of their actual policies.

Activists in Oaxaca, Mexico, have managed to stop the placement of a McDonald's in the town. A "historic preservation society" blocked the new restaurant in order to preserve the sanctity of the city's culture. Francisco Toledo, a famous Mexican artist, led the society. "This place is not for McDonald's," he told FoxNews. "This is a sacred space."

Of course, McDonald's employs millions of people around the world — McDonald's is a franchise operation, so the restaurants are not owned by a central corporation — and provides cheap food. What Toledo is really saying is that it is more important to have "sacredness" than to have jobs and cheap food. Now, perhaps he is right. Perhaps having a McDonald's in town is really just as dire a fate as he thinks. But what about the people who could have had jobs and cheap food? Why do they not have a say in that decision? Toledo believes that it is better for a poor man to be unemployed and to pay more for food, than to have a McDonald's in the area. And yet this attitude passes for "compassion" among leftists.

Perverse compassion isn't limited to the left, however. Conservatives denounce free trade just as fervently and with precisely the same inebriated morality. If you're not

Just like conservatives, liberals talk of the "spiritual value" of things when turning their backs on the inhumane impact of their actual policies.

paying enough for steel, the government must force you to pay more. Sure, this increases inflation and lowers the quality of available steel, but this is the conservative version of compassion: that is, compassion for the American steel industry, which uses the law to bilk us all.

I recently was taken to task for criticizing an episode of *The Twilight Zone* which denounced the Evil Capitalist main character, Mr. Whipple, for streamlining operations by replacing his factory workers with machines. Greedy Mr. Whipple described at the beginning of the episode how many thousands of people each year were injured on his job site before automation. Yet he is portrayed as evil for his decision to automate. In other words, it is good for people to suffer on-the-job injuries and to pay more for products because these things contribute to a "sense of belonging." Modern society, with its safe production and its cheap, easily available products, just alienates us from one another and results in nasty old "atomistic individualism."

This alienation thesis is hokey; probably the most enduring hokey Marxism ever produced. It is a disease that affects only the elites. The jobs that the Oaxaca McDonald's would have offered workers, or the improved nutrition offered by genetically engineered crops, the lives Mr. Whipple saved, and the products that he made cheaper — these matter a lot more to poor people than all the elite sen-

timentalizing over community and interpersonal bonds. Anyone with a sane concept of morality should agree with this.

"It is all very well for us, sitting pretty," said C.P. Snow half a century ago, "to think that material standards of living don't matter all that much. It is all very well for one, as a personal choice, to reject industrialization — do a modern Walden, if you like, and if you go without much food, see most of your children die in infancy, despise the comforts of literacy, accept twenty years off your own life, then I respect you for the strength of your aesthetic revulsion. But I don't respect you in the slightest if, even passively, you try to impose that choice on others who are not free to choose."

— Timothy Sandefur

Shoot first, ask questions later — What the Bush administration is proposing in Iraq is not a preemptive war; it is a preventive war. "There's a well-accepted definition for preemptive war in international law," Joseph Cirincione, director of the Non-Proliferation Project of the Carnegie Endowment, told me in a phone conversation. "Preemptive war is justified by an imminent threat of attack, a clear and present danger that the country in question is about to attack you. In such a case a preemptive attack is recognized as justifiable." The most widely (though not universally) accepted recent example is Israel's decision to attack first in 1967 when Arab armies obviously were preparing to attack. But what the administration is discussing in terms of Iraq is not an imminent threat of attack on the United States (which might justify a preemptive strike) nor even on any of Iraq's neighbors. What the administration wants to do is to attack Iraq to prevent or neutralize a *potential future threat*. That's very different from an imminent threat.

The United States never has before undertaken a preventive war. If we were to go to war simply because a country's leader is dictatorial, despotic, and has weapons of mass destruction, there would be no shortage of countries to attack: Pakistan, China, North Korea, and possibly Russia would all qualify.

Attacking Iraq because it poses a potential future threat someday might not strictly be, "a pretext for outright aggression," as Cato Institute foreign policy analyst Ted Carpenter suggested to me, but it would be a dangerous precedent. Do we want the United States to strike first whenever we see a potential problem? That would keep our military very busy and provide plenty of grist for those who see this country as an imperialist aggressor.

Mr. Cirincione, who recently co-authored the new book, *Deadly Arsenals: Tracking Weapons of Mass Destruction*, believes it is virtually certain that Iraq still has chemical and biological weapons and is probably trying to obtain nuclear weapons. But that doesn't make the threat imminent.

— Alan W. Bock

Putting Jefferson to music — I was surprised to see a throwaway comment in *Liberty* ("A Literary Life and Its Discontents," by Richard Kostelanetz, December 2002) that composer Randall Thompson "is now forgotten." Anyone involved in choral music knows Thompson well.

Thompson's *Alleluia* is one of the most often performed sacred works and his *Testament of Freedom* is the purest libertarian piece of classical music I've heard or sung. Readers of *Liberty* might want to seek out a recording of this stirring, classic call to arms in the fight for freedom. It was written to honor the 200th birthday of Thomas Jefferson, in 1943, when Thompson was head of the music division of the School of Fine Arts at the University of Virginia. Soon after the all-male UVa. Glee Club debuted the work on Jefferson's birthday bicentennial, Thompson's *Testament* was broadcast nationwide and then to armed forces overseas in the tense months leading up to D-Day. (I have a private recording of the Reston Chorale performing it with the Virginia Chamber Orchestra on the occasion of Thomas Jefferson's 250th birthday in 1993 and several other recordings are available.)

At the Foundation for Economic Education Seminar in Las Vegas last May, I gave a talk on freedom themes in jazz and opera. The pickings were slim in opera, but I managed to wrest a few messages from Beethoven's *Fidelio* and some Verdi operas. A better example was Thompson's *Testament of Freedom* since it contains pure libertarian texts from the pen of Thomas Jefferson set to appropriately stirring music. The full text is too long to include here, but I will summarize it below:

(1) The first movement opens boldly: "The God who gave us life gave us liberty at the same time. The hand of force may destroy but cannot disjoin them." These words are excerpted from Jefferson's first great freedom tract, "A Summary View of the Rights of British America," written in May 1774, somewhat by accident, when he was laid up with dysentery and had nothing much else to do during the long days of his recovery. In June, the full 23-page, 3,000-word pamphlet was printed in Williamsburg and without attribution due to its incendiary nature. It then was reprinted in Philadelphia and appeared as far away as England. It gained the widest currency of any of Jefferson's pre-war writings.

(2) The second movement begins, "We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery." This text was written on July 4, 1775. It first was called "A Manifesto on Arms." Published two days later as "The Declaration of Causes and Necessity of Taking Up Arms," the paper raged against a long list of British provocations and culminated in an all-out cry: "Arms we will employ for the preservation of our liberties, being with



"Your problem is very, very common — I'm going to refer you to Oprah."

one mind resolved to die free men rather than to live slaves."

(3) The third movement has a martial feel: "We fight not for glory or for conquest," but "against violence actually offered, we have taken up arms." This is another passage from "The Declaration of Causes and Necessity of Taking Up Arms (July 6, 1775). The Battle of Bunker Hill had just taken place, in June 1775, and there was still a strong debate for and against "taking up of arms" in America. It is also important to remember that 56 fairly rich men soon pledged their "lives, fortunes and sacred honor" against the world's

mightiest empire with scant chance for victory. They surely would have been hung for treason had they lost. As men of principle, they sought to justify their actions with such lofty words as Jefferson's, later amplified by Randall Thompson's powerful music.

(4) The final section moves forward 46 years. It is from a letter to John Adams in 1821 beginning: "I shall not die without a hope that light and liberty are on steady advance." This letter is very similar to Jefferson's final letter, also written to Adams, ten days before both he and Adams died on the 50th anniversary of the Declaration. In a

chilling preview of 20th century wars, Jefferson wrote: "Even should the cloud of barbarism and despotism again obscure the science and liberties of Europe, this country remains, to preserve and restore light and liberty to them."

Perhaps the most dramatic performance of Thompson's Testament came on Jefferson's birthday in 1945 when victory in Europe was in sight. President Franklin D. Roosevelt had died the day before in Warm Springs, Ga., and many other major concerts were being cancelled. Instead of cancelling the Carnegie Hall concert scheduled for Jefferson's birthday, Serge Koussevitsky conducted the Testament in FDR's honor, preceded by some other works and followed by a minute of silence then *The Star-Spangled Banner*.

Thompson is well remembered for *Allcluia* and *Testament of Freedom*, but he was an educator as well as a composer. I won't go over his entire resumé but, after his war years in Virginia, he became the first Walter Bigelow Rosen Professor of Music at Harvard, and chaired the Harvard Music Department from 1952–1957. An axiom of classical music is that "greatness stands the test of time." *Liberty* readers can test the two composers any time they want. They need only buy any version of Thompson's *Testament of Freedom* and compare it to any work by Milton Babbitt, a "serial" composer. (In brief, serial music arranges twelve tones in a row and treats those tones as a math exercise, thereby rejecting any tonal center or programmatic content.) Babbitt advocated an extreme in serialism called "total serialism," i.e., music not only based on a single arrangement of all twelve pitches, but also with serialism in dynamics (volume), duration (note length), timbre (tone color), and register (pitch). It is robotic music — an aural computer game. In time, serial music and Babbitt may be forgotten, but we will be singing Thompson's great works for centuries. — Gary Alexander

LP Spoilers?

In last month's *Liberty*, R. W. Bradford reported that there were no Libertarian spoilers in the November 2002 election. That may be true for Congress, but it wasn't true for the Oregon governor's race, which was perhaps the most important race for the state's property-rights advocates in many years.

On one side was Democrat Ted Kulongoski, who strongly support Oregon's confiscatory land-use laws. On the other side was Republican Kevin Mannix, who supports giving landowners compensation for regulations that reduce the value of their property. Then there was Libertarian Tom Cox.

Kulongoski outpollled Mannix by 36,219 votes. But Cox received 57,760 votes. Even if you assume that many of those votes would not have gone for Mannix, it is likely that Cox spoiled Mannix's chances. So Oregon is stuck with another four, and probably eight, years of the most repressive land-use regulations in the nation. Thank you, Libertarian Party.

— Randal O'Toole

Last month, I described a method for determining whether the presence of an LP candidate in a race affected its outcome, and applied that method to *every* race for governor, the House of Representatives, and the Senate, and concluded that no LP candidate had made a difference. I included Oregon's gubernatorial election in this analysis. It wasn't even one of the races whether the LP came close to changing an outcome.

The math in this case is pretty straightforward. If one assumes that *every one* of the 57,760 voters who chose the Libertarian would have chose either the Republican or Democrat had the Libertarian not been on the ballot, Republican Mannix would have had to capture the votes of 46,990 of them — that's 81.5% of the total — to change the outcome of the election. If some voters chose not to vote for governor at all if they have no option to vote for the LP — and there is evidence that a great many votes are in this category — the GOP share of the would have to have been much larger even than the 81.5% figure.

There exists precious little data on how those who vote for Libertarians would vote absent the Libertarian alternative. So far as I have been able to discover, no exit polling on this subject has ever been done. A poll of voters who indicated they would vote for Libertarian Ed Thompson in Wisconsin's gubernatorial race indicates that 30% would have voted Democrat, 30% Republican, 27% Green, with the remainder not voting, if the Libertarian had not been on the ballot. Obviously the Republican candidate wouldn't be able to get anywhere near the minimum 81.5% of the total vote if Oregon is even remotely like Wisconsin.

A recent study in Washington state, which showed that Democrats are about 23% more susceptible to Libertarian direct mail efforts than are Republicans, also tends to undermine the notion that most LP voters would vote Republican if there were no LP candidate on the ballot.

— R. W. Bradford

Suppose the Globe Is Warming . . .

by Robert H. Nelson

Global warming means longer growing seasons, milder winters, greater prosperity — so why are so many people worried about it?

The geographic center of population in the United States in 1900 was in Bartholomew County, Ind.; today it is in Phelps County, Mo. — about 100 miles farther south, corresponding to an average increase in daily temperatures over much of the United States of about two degrees Fahrenheit. As it happens, this is half of the current predictions for the most likely level of global warming over the next century. Over the past 100 years, Americans have already voted with their feet that they are willing to pick up and move to obtain a warmer climate. With a moderate amount of global warming, they could stay put and get the same benefit.

Almost all climate models predict that global increases in temperature will be greater toward the North and South Poles, and locations close to the equator will experience less — and possibly little — warming. In other words, temperatures in Miami a hundred years from now may be about what they are today, but Minneapolis temperatures on average may be considerably warmer. Climate models also predict that the greatest warming impacts will be in the winter and at night, just the times when a little more warmth might be most appreciated in places like Minneapolis.

It is beginning to sound as though global warming is an answer to someone's prayers. Instead of complaining, maybe we should be thanking our lucky stars. Canada and Siberia may boom. Indeed, Yale University economist Robert Mendelsohn writes, in a study published by the American Enterprise Institute, that there has been a "near revolution" during the past five years in predictions of the socioeconomic impacts of global warming. It now appears that "many countries will benefit from warming. . . . The industrialized nations of the earth happen to lie in boreal and temperate climates, where warming is likely to prove beneficial."

Mendelsohn is a widely respected economist who has published numerous articles in the leading journals of the economics profession. One of his collaborators in climate change research has been fellow Yale economist William Nordhaus, the co-author with Paul Samuelson of recent editions of the classic introductory textbook, *Economics*. Mendelsohn and other economists with similar messages have been largely ignored by the media because they turn the conventional thinking about climate change upside down.

The more recent and more optimistic estimates of warming impacts on society reflect a variety of developments in the socioeconomic modeling of climate change. The best estimates of sea-level rise have fallen by about 50% over the past decade, now requiring less expenditure to mitigate higher ocean levels. Agricultural productivity is now expected to rise considerably as a result of the fertilization effect of higher levels of carbon dioxide in the atmosphere.

The most important improvement in socioeconomic modeling of the effect of global warming is to take much greater account of the dynamic changes that occur as climates change. Many of the old modelers were already predisposed to see increased temperatures in a negative light; they saw all harms and ignored the many potential benefits. But now some researchers are attempting to be more analytically neutral; they are doing actual scientific work, as opposed to using science as a propaganda tool in support of

strong existing moral convictions.

For example, global warming might curtail the ski season for existing resorts, perhaps driving some of them out of business. This is a real cost of climate change, the kind that should be factored into studies of net impacts. However, it is also necessary to take into account that the ski resort may be able to relocate 100 miles farther north at an equally attractive site. Moreover, golfers in places like Pennsylvania may now be able to play in March, creating a new benefit that needs to be accounted for. As long as the climate

Contemporary environmentalism offers a secularization of older Christian teachings, especially as found in the more ascetic strains of Calvinism and Puritanism.

changes are not too large and the rate of warming is not too rapid — new modeling calculations have reduced predictions in these regards as well — the process of social and economic adjustment need not be painful.

In fact, for some people it will not be painful at all. Instead of having to move south in search of warmer climates, a warmer climate will now move to them. They will be able to stay in their old familiar communities and with their families and friends, even as they have milder winters and longer growing seasons for their cornfields and gardens.

There is a strange paradox in the international politics of climate change. The countries in northern temperate zones will likely experience actual economic gains. If there are any major negative impacts (there are still large uncertainties in climate modelling), the countries nearest the equator are most likely to experience them. As Mendelsohn explains, "North America, Europe, and the former Soviet-bloc countries are all likely to benefit from warming, while tropical and subtropical regions of Africa, South America, and Asia are more likely to suffer damages."

Yet, it is the possible losers near the equator who are the countries that have been staying out of the Kyoto discussions and other international climate change negotiations. A main reason given by President Bush for his rejection of the Kyoto Protocol in March 2001 was the absence of provisions for restraining greenhouse emissions by less developed countries.

The poorer countries of the world today are in fact much more concerned with their current pace of economic development than with any future changes in world climate. Rather than rich nations such as the United States spending trillions of dollars over the next few decades for climate mitigation — and mostly for the benefit of the poorer nations nearer the equator, as it now seems — these less developed nations would much rather receive the funds directly. If the poor countries were offered a choice — mitigation of global warming by a few degrees or a few trillion dollars of funding (the cost of mitigation) that could instead be directed to poor countries — what sense would it make for them to

choose the slightly cooler climate? What would help them more: trillions of dollars or slightly cooler temperatures? The answer is obvious.

So why are Europeans virtually hysterical about the American rejection of the Kyoto agreement? The only way to make sense of Kyoto is in terms of environmental religion. In contrast to Americans, a majority of Europeans have largely given up on Christianity. This does not mean, however, that they have abandoned religion. Many of them have now redirected their old religious fervor from the Christian Bible to a new environmental gospel.

Their beliefs are also less novel than it may appear. Contemporary environmentalism offers a secularization of older Christian teachings, especially as found in the more ascetic strains of Calvinism and Puritanism. It is no accident that environmental religion is most popular in old Protestant countries such as Holland, Sweden, and Germany. As theologian Mark Stoll explains, "modern society displays everywhere unintended consequences of the doctrines laid down by John Calvin, William Perkins, Richard Baxter, and scores of Calvinist and Puritan men of the cloth. . . . The world has been transformed with new answers that are often only old ones rephrased." Environmentalism is a leading case in point.

The "sin" of climate change is that it puts human beings in the place of God. In actually changing the climate of the earth — an idea that would have been inconceivable a mere two centuries ago — humanity is altering "the Creation" as it was given to us. Human beings today are literally "playing God." And there is no greater sin in the Bible than to seek to take the place of God.

As the Bible tells us, God will destroy those who challenge His authority. The biblical punishment typically is an environmental calamity — devastating flooding, famine, disease, pestilence, and so forth. Today, it is not God (explicitly) but global warming that will bring on virtually the same environmental calamities. Owing to current human sinfulness, including a gross excess of consumption, rises in global temperatures will soon cause the oceans to rise and flood the land, food supplies to dwindle, hurricanes to rage, and diseases such as malaria to spread to new areas of the world.

This story, of course, is as old as Adam and Eve. Human beings have challenged God and now they will be punished severely. In modern environmentalism, the biblical imagery has been replaced by a new contemporary set of religious metaphors that appeal to the many secular people of our time who may nominally even consider themselves "atheists."

Our current depraved condition is compounded by the fact that we are destroying the world for material gain. According to a Calvinist way of thinking, a life of luxury and high living is a corruption and a temptation to further sin. Mendelsohn and other current economists who are busy calculating the benefits and costs of global climate change — and find little or no likely problem for the world for at least the 21st century — are the new voices of false prophets.

In Calvinist theology, a calling is pursued for the sign it

continued on page 24

John Rawls and the Veil of Incoherence

by Jan Narveson

John Rawls' theory of justice has two elements: individual liberty and the "favor the bottom" principle that justifies the welfare state. Not surprisingly, Rawls fails to reconcile these two elements.

John Rawls, undoubtedly the most famous and revered political philosopher of our time, died Nov. 24, 2002. He was 81. His philosophical fame rested especially on his two major books, *A Theory of Justice* (1971) and *Political Liberalism* (1993). The many obituaries in recent newspapers and journals emphasize his personal modesty, to the point of reclusiveness, and that trait is confirmed by all who knew him. (This author met him but did not know him well personally. I did however study his two books intensely.) Rawls was the subject of much adulation throughout most of his philosophical life. This has resonated in his obituaries.

But adulation does not serve well the cause of philosophy. Rawls was devoted to philosophy. In his lifetime he became extremely famous for setting forth, as he supposed, two basic principles which were to delimit the arena of political justice, and also for setting forth, as he thought, a foundational argument for them. Everyone cites these, both the principles and the foundational idea, and much learned ink has been spilled discussing them. But far too much of the discussion is adulatory rather than critically rational. Above all, it will not do to accept Rawls' own word about his intentions as if those intentions were fulfilled by the mere fact of his proclaiming them. In fact, Rawls' system is a failed enterprise, a fabric which will not bear the weight he wanted it to hold, and those who hold it up as something like definitive of liberalism need to get back to their drawing boards.

In particular, it simply will not do to say, as so many seem to think Rawls does, that "he put individual rights ahead of the common good." This simply is not true. He was not even trying to do that. He did claim to put individual rights above social utility, specified in *utilitarian* terms.

But utilitarianism is not a view of the common good. It is the view that *aggregate* cardinal utility is the supreme end of all moral and political action. But aggregation, in principle, overrides individuals, and thus cannot count as the common good. The common good must be good for all, not merely most. The view that we all have individual rights which cannot be sacrificed in the name of utility is a view that Rawls purports to hold, and he spends a great many of the 600 or so pages of *A Theory of Justice* saying this.

The funny part of it is that this doesn't seem to be true anyway, when you look at his two principles. Only the first of them purports to set forth strong rights for all, rights to liberty that are not to be outweighed by anything. Or so he says — repeatedly when he proclaims that liberty has "lexical priority" over his other principle. That assertion might render credible the idea "that the state's first duty with its citizens is to respect this capacity for autonomy — to let them live life according to their own lights, and to treat them, in Kant's phrase, 'as means not as ends'" (Ben Rogers' obituary in *The Guardian*, Nov. 27, 2002). Yet when we get to the second principle — the "favor-the-bottom principle," as it has been called, a problem arises. For this second principle appears to tell us that society should supply those at the bottom of the heap with whatever it takes to make them as well off as they can be — the "maximin" idea. But who is going

to supply these less fortunate people with the goods in question and how? The answer is, as it can only be, the more fortunate people, and the answer to the other question is that they will be compelled to supply it to them. So much for the liberty of all — and so much for treating all people as ends and not as means. For the second of Rawls' principles obviously entails — as Nozick pointed out so long ago, in a criticism that Rawls never responded to, let alone effectively replied to — that the talented and energetic are to be used as

Rawls' system is a failed enterprise and those who hold it up as something like definitive of liberalism need to get back to their drawing boards.

means to the end of the well-being of the unfortunate and perhaps lethargic or otherwise unenterprising. So the contradiction between the two principles is stark.

There is worse to come. Rawls and Rawlsians piously supposed that he had at last found the happy medium between out-and-out egalitarian redistribution and out-and-out free-enterprise libertarianism and moreover, that it is his device of the Veil of Ignorance that made this possible. But he's done nothing of the sort. The second principle is plainly inconsistent with the first one as it stands, no matter how you interpret it. But the second, in being "maximin," is a maximizing principle. But if we are to favor the worst-off maximally, we can only do that if we aim at making them exactly as well off as everyone else. If they are not so, then in principle it is possible that they could be still better off — at the expense, of course, of those above, but that's the name of this game, remember.

Rawls often employed the language of Pareto optimality, and talked, misleadingly, as though the second principle was not to be fulfilled at the expense of the first one, but only if the "bottom" people can be made better off without making others worse off. Now, if you mean by this to allow for people of great heart as well as deep pockets, people who think they themselves are well off only if others are too and thus voluntarily support the poor, that would be fine. But it isn't what Rawls meant, and certainly not what his droves of followers think. They obviously mean to implement the welfare state, rather than to point out that those who wish to help others are welcome to go ahead and do their best at it, thanks. And the welfare state imposes, involuntarily, on the taxpayers who support it.

In fact, you can read the Two Principles in only two ways. Either Rawls really means it about lexical priority, in which case you can throw the second principle into the dustbin; for, since it can only be implemented as a principle of justice at the expense of the first principle, making that first principle as inviolate as he proclaims it to be leaves you no room at all to apply the second one. Alternatively, he really means it about maximin, and liberty be damned; in which case he may as well throw the first principle into the trash can — and will end with egalitarian socialism, not

with the mixed economy that he and his followers apparently think he has justified. You can't have it both ways, and Rawls offers no hint of an idea that could effectively split the difference between the two. That's what he needs, but as the principles are stated, it can't be done, and he certainly didn't do it, nor even tried hard to do so. I believe he simply didn't understand the point, as would be suggested by his utter failure to respond to Nozick's challenge, let alone to respond effectively.

This brings us to the Veil of Ignorance. But here again we have problems. Rawls opens *A Theory of Justice* with the assertion that he accepts the standard economic conception of human practical rationality. But then he proposes that social principles must be negotiated (so to speak) behind the Veil of Ignorance. Of course, since nobody knows who he is behind that Veil, there isn't really any "negotiation" to do, as many have pointed out. But never mind, for now the question is only what someone behind the Veil will do.

Which brings us the question whether they will, in their cloudy paradise, take any notice of the fact that the folks out there in the real world are, given the standard economic theory of rationality, quite incapable of paying any attention to anything handed down from behind the Veil, if it conflicts with what they would do anyway.

There is the further point that the classic conception of the Social Contract calls for unanimous agreement, agree-

Rawls claims to put individual rights above social utility, specified in utilitarian terms. But utilitarianism is not a view of the common good. It is the view that aggregate cardinal utility is the supreme end of all moral and political action.

ment by all on the fundamental principles. But you don't need a Veil for that. Quite the reverse, in fact. A real agreement among all is an agreement among real people, not idealized nonentities, and the agreement will be a compromise among them, each modifying his pursuit of his interests to the extent needed to achieve social benefits. The classic liberals supposed that the effect of this would be the liberty principle, alias Hobbes' First Law of Nature, Locke's Law of Nature, etc. Those principles do not give us anything like maximin. They give us only, Do Unto Others as You Would Have Them Do Unto You, that is, general reciprocity. How much social insurance of the welfare-state type that includes is an interesting question, but on the most plausible analysis, the answer is None, so far as compulsive requirement is concerned. Rather, it will leave our interest in health and safety to the insurance business or co-ops, all of which are voluntary, and to our good will and sentiment for others — not to compulsory state action.

All this means that in essentials, Rawls' theory is a massive failure. The adulation for his character and person are all very well, but if it is the truth about society we seek, then it is not to be found, so far as the major matters are concerned, in the works of Rawls. □

Liberty and Union Don't Go Together

by Joseph Sobran

Neither logic nor history provide any support for the notion that American States are bound forever into one country.

Timothy Sandefur makes a better case against secession than Lincoln ever did, which ought to tell us something. Still, I find it unconvincing.

Nearly all modern discussion of secession overlooks the force of the word *state* in the 18th century. Thanks to the Civil War, to most Americans today a "state" means a mere subdivision of a larger polity — a province rather than a locus of sovereignty. Who today would describe Maryland and Connecticut as "free and independent states"? (Let alone that they "are, and of right ought to be, free and independent states"!.) Yet this is the status the Declaration of Independence claims for them. It nowhere asserts that they are only parts of "a new nation," "one nation, indivisible," or any "nation" or "Union" at all. That idea was alien to Americans in 1776.

Shortly afterward, while the states were still fighting for independence from Great Britain, the Articles of Confederation said in Article II: "Each state *retains* its sovereignty, freedom, and independence" (my emphasis). This meant their independence of each other as well as of Britain.

In 1783 the Treaty of Paris, concluding the Revolutionary War, recognized not a single entity called "the United States of America," but 13 "free, sovereign, and independent states," which it named individually.

Did these states give up their hard-won (and jealously retained) "sovereignty, freedom, and independence" when they ratified the Constitution? Surely such a grave step — a virtual reversal of the Revolution — would have had to be made explicit. It was not. Even Anti-Federalist opponents of ratification never, as far as I know, charged that the Constitution itself denied the sovereignty of the states; they merely feared that the destruction of state sovereignty

would be the practical *result* of ratification. And with good reason, as it turned out.

As Sandefur notes, three states ratified the Constitution while reserving the right to secede from the Union later. But Sandefur asserts: "There can be no conditional assent to the Constitution, just as (at common law) there can be no new terms in agreeing to a contract." If so, it would seem to follow that the three conditional ratifications were invalid, and that the three states still "retain their sovereignty, freedom, and independence."

These states were not adding "new terms" to a contract already concluded; they were spelling out their understanding of the terms of the contract itself. Secession was not a "constitutional right." Rather, the Constitution *presupposes* the right of secession, the same right the Declaration claims.

Evidently, since nobody objected to these conditional ratifications at the time, everyone accepted them in principle. *Of course* free and independent states could secede "unilaterally" from a mere confederation! Again, the distinct older meanings of "state" and "federal" have been forgotten. Today "federal" has actually become a synonym for "centralized"! A trace of the old view survives in the Constitution's habit of speaking of "the United States" in the plural: not "it," but "them." The Civil War has even had baneful semantic consequences.

The Constitution doesn't forbid secession — nor could it, given the very nature and definition of a state. Nor does it provide for any power to suppress secession. It was left to Lincoln to assert the novel doctrine that a seceding state was in "rebellion," which in turn forced him into incoherent positions and plainly unconstitutional actions.

For example, in 1861 Lincoln ordered the arrest of 31 Maryland legislators on the mere suspicion that they were about to vote for secession. And after conquering the seceding states, he installed puppet military regimes in them.

Given the relatively meager and strictly limited powers of the federal government, as originally envisioned, was it really reasonable to kill people for trying to withdraw from it? Hundreds of thousands of them? Can Mr. Sandefur really believe this?

Throughout the war he notoriously suppressed dissent in the North. All this (and there was much more) required him to defy the federal government's constitutional duty to "guarantee to every state in this Union a republican form of government, and . . . protect each of them against invasion," not to mention its duty to honor the Bill of Rights. These clear usurpations of power refute — and mock — Lincoln's rhetorical claim that self-government itself was the Union cause.

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may offer of God's favor. Hard work is undertaken not for the material outputs that are produced, but for the labor that disciplines unruly souls. Many contemporary environmentalists seem to see actions to prevent climate change in a similar light. Whether there is any actual benefit or not, it is important to spend trillions of dollars for climate mitigation as an act of moral statement. It shows our contrition for our wayward living and further offers a "sacrifice" — as a primitive tribe might sacrifice a fat goat — to our environmental "god."

For many environmentalists, economists are always seeing the world backwards. They believe economists count as benefits what are really costs and as costs what are really benefits. The very act of committing large resources to a good cause may technically be "inefficient," but we are likely to become better people — morally speaking — as a result. The largely useless crusade for "recycling" as an end in itself, it might be noted, has a similar moral character.

If environmentalists have become the new missionaries to save modern civilization from its sins, there may be little harm in all this for the rich countries. They can easily enough afford to indulge in some economic waste for its own sake. The current poorer nations of the world, however, are more likely to experience real suffering.

They may be doubly victimized. Unlike Europe and

The Constitution remains "the supreme law of the land," superseding state laws and constitutions, only as long as those states choose to remain within the Union — just as one is bound by the rules of a club only as long as one remains a member.

Finally, as Madison assured his readers in *Federalist* 45, the powers of the federal government were to be "few and defined," largely confined to foreign relations, while the powers remaining with the states were to be "numerous and indefinite," governing most of the ordinary business of social life. Given the relatively meager and strictly limited powers of the federal government, as originally envisioned, was it really reasonable to kill people for trying to withdraw from it? Hundreds of thousands of them? Can Mr. Sandefur really believe this?

Without the right of secession, the states have no ultimate peaceful defense against federal usurpations. This is not a very subtle point. The explosive and uncontrollable expansion of the federal government after 1865 speaks for itself.

When every American child today is born \$100,000 in debt — his share of the "national debt" imposed on him without his consent by the federal government, as its annual budgets have leaped from millions to trillions — can we really congratulate him on enjoying self-government? Or might it be more honest to tell him frankly that he is a slave?

This, of course, is not the chattel slavery Lincoln opposed. It is the new slavery to the state, the consolidated state, that Lincoln helped establish. It is what Hilaire Belloc presciently called "the Servile State," in which some men are systematically forced to work for others. And it is here. □

North America, they cannot afford a large loss of worldwide economic output; many of their people are now living in dire poverty, even at the edge of mere physical survival. Lacking a long Judeo-Christian heritage, they are also likely to feel resentment at being used as instruments of the missionary urges of the Western world. People in places like India and China are today being told that they must abandon their current false religions. Environmentalism is the latest form of religious imperialism.

We are living today in an age when Marxism, socialism, and other older secular religions of the 20th century have failed. Mainstream Protestantism — which so thoroughly adapted itself to secular ideas — is in crisis. The Roman Catholic church often seems equally confused. It is understandable that many people are looking for new religious outlets.

The environmental crusade against climate change, however, is more likely to benefit the rich of the world and to harm the poor. It would be more in keeping with traditional Jewish and Christian teachings for the rich to take large direct steps to help the poor. The Kyoto Protocol is a major diversion from that essential task. In his tale of the Grand Inquisitor, Dostoevsky reminded us that it is a very old story — religious ideals perverted by a clever (now environmental) priesthood for the benefit of the rich and powerful. □

A Year at FEE

by Mark Skousen

Is the sun setting on the world's oldest freedom organization?

The Foundation for Economic Education (FEE) is often called "America's oldest freedom organization." It predates the Institute for Humane Studies, the Cato Institute, and the Libertarian Party; its monthly magazine *The Freeman* (now *Ideas on Liberty*), was published for years before *Reason* or *Liberty* began publication. FEE was founded in 1946 by Leonard Read, a libertarian businessman and prolific writer most famous for his book *Anything That's Peaceful* and his essay "I, Pencil." For almost 60 years, the Foundation has been located in a 35-room mansion on a five-acre estate in Irvington-on-Hudson, just 20 miles north of Manhattan. Through its books, student seminars, and *The Freeman*, FEE has been associated with some of the biggest names in the freedom movement: Ayn Rand, Ludwig von Mises, Henry Hazlitt, and Milton Friedman, among others. Even Ronald Reagan, John Wayne, and Lawrence Welk wrote letters of support to Read. (Go to www.FEE.org for a delightful color photograph of Ronald Reagan reading *The Freeman*, while his wife, Nancy, rests on his shoulder.)

Yet since the passing of its founder in 1983, FEE has fallen into obscurity while the Cato Institute, the Heritage Foundation, and Hillsdale College have become household names. It has struggled to survive financially and *The Freeman* has dropped to only 5,000 paid subscribers. A series of presidents, including Hans Sennholz and Donald Boudreaux (now chairman of the economics department at George Mason University), worked hard to resurrect the glory years of FEE. Their efforts were valiant. But despite these valiant efforts, when I became president of FEE in August, 2001, many of my friends in politics and finance had never heard of it.

So now it was my turn to take on the challenge of resur-

recting FEE. I thought my background had prepared me well. I hold a Ph.D. in economics from George Washington University. I've been a professor of economics and finance at Rollins College for 16 years. I've edited a very successful investment newsletter and spoken on economics and liberty to a wide variety of audiences. Having written over a dozen books, including three textbooks, *The Structure of Production*, *Economic Logic*, and *The Making of Modern Economics*, I felt it was time to focus my efforts on spreading the word.

And I had a long experience with FEE. I have been an avid reader of *The Freeman* since the 60s, a columnist since 1994, and a financial supporter of FEE. I knew Leonard Read and have lectured at the FEE mansion many times over the past two decades. FEE published my Ph.D. dissertation, *Economics of a Pure Gold Standard*, in 1988 and a pamphlet, *What Every Investor Should Know About Austrian Economics and the Hard Money Movement*, in 1995. For many years, I have recommended FEE in my investment newsletter, *Forecasts & Strategies* as the one organization worthy of a tax-deductible contribution. Most importantly, economic education has always been as much my passion as the world of investing.

So when Gary North, a longtime FEE supporter, urged me to apply for the job as president in early 2001, I jumped at the opportunity. When the FEE board approved my

name, our family suddenly dropped our easygoing lifestyle in Florida and moved to New York, with less than a month's notice.

Attract Attention!

I immediately went to work to restore the glory days of FEE, telling the board that my plan was to think big and make FEE a household name. I read everything I could about FEE, including Leonard Read's private diaries and essays. My wife, Jo Ann, and I worked twelve-hour days,

FEE has fallen into obscurity while the Cato Institute, the Heritage Foundation, and Hillsdale College have become household names.

including weekends, to turn a candlestick (Leonard Read's favorite symbol of liberty) into a lighthouse. I paid my respects to Andrew Carnegie, the legendary financier buried a few miles away in Sleepy Hollow Cemetery, by following his advice to "attract attention." The first thing I did upon arriving was to replace the 50-year-old sign at the Broadway entrance with an impressive new sign. Here are some of the other FEE accomplishments in my first year:

- We acquired Laissez Faire Books, the largest distributor of books on liberty in the world.
- We created the annual Leonard E. Read Book Award for Excellence in Economic Education.
- We publicized FEE by obtaining complimentary exhibit booths at the Money Shows and other major investment conferences around the country.
- We created the James U. Blanchard III Memorial Scholarship Fund to finance scholarships for needy international students to attend FEE seminars. We raised over \$60,000 in our first year and eight international students were recipients of the Blanchard scholarships this summer.
- We updated our primary website, www.FEE.org, and created a daily news service, www.FEEnews.org, with Ron Holland as editor. He did a terrific job and FEE won an award for this new daily news service. This past summer, FEE.org was averaging 30,000 new visitors each month — not "hits," visitors.
- We dramatically expanded our high school and college outreach program, with Dinesh D'Souza serving as our spokesman on college campuses, and Greg Rehmke expanding his debate program into the homeschool arena.
- We invited Nobel Prize economist Milton Friedman to write an article for *Ideas on Liberty* (a first).

The FEE National Convention: First Time on Nationwide TV

Perhaps our greatest achievement was the FEE National Convention ("FEE Fest") at Las Vegas in early May. It put FEE on the map and people are still talking about it. We attracted nearly 900 paid attendees, 100 exhibitors, and 80 speakers (including Ben Stein, Charles Murray, Ron Paul, Nathaniel Branden, and Dinesh D'Souza). FEE Fest was co-

sponsored by Reason Foundation, Heritage Foundation, Young America's Foundation, Institute for Humane Studies, Leadership Institute, Goldwater Institute, *Liberty* magazine, and dozens of other freedom organizations. Our seminar director, Tami Holland, put together this program in only four months and Kim Githler, president of the Money Show, was able to negotiate a contract with Bally's/Paris Resort Hotels without requiring a minimum deposit (thus minimizing our risk). We made some money — \$14,000 — on the convention, but more importantly, we made FEE visible for the first time in decades, and introduced hundreds of people to free-market economics in the course of three wonderful days. "I feel an electricity that I have not felt in many years among libertarian gatherings," commented Nathaniel Branden. We received extremely favorable comments from attendees, and even today people write us to ask when the next FEE convention will be.

As a result of the convention, FEE appeared on nationwide television for the first time when C-SPAN Book TV taped speeches by Dinesh D'Souza, Harry Browne, Michael Ledeen, Charles Murray, Tom DiLorenzo, and me. C-SPAN Book TV broadcast these speeches from the FEE convention repeatedly from May until November. C-SPAN was so impressed with the FEE convention that they wanted to bring two crews to the next one.

As an added benefit of the convention, FEE acquired two new prestigious toll-free numbers, 1-800-USA-1776 and 1-888-USA-1776. These numbers — previously owned by the U.S. Bicentennial Commission — were valued by an independent media consultant conservatively at \$400,000. The toll-free numbers were donated by Terry Easton, a telecommunications expert who attended the FEE convention and was so impressed with the "new" FEE that he offered to help FEE financially in many other ways.

FEE Summer Seminars: "You Changed My Life!"

The FEE convention also led to the doubling of student/teacher seminars. We sold out all of our student seminars this past summer and even had to add an additional seminar because of higher demand. Over 175 students attended. One major supporter who attended the FEE convention was so pleased that he more than doubled the number of scholarships he awarded to FEE summer seminars.

In addition, we made money on all our seminars this summer (a first). We cut costs by using staffers and trustees to teach. My wife, Jo Ann, and the staff prepared 3,200 meals in the FEE kitchen, thus saving thousands of dollars. But the best part was the response of the students. (One student wrote me, "I will be forever grateful to FEE for making this life-changing event possible. It was one of the most enjoyable and productive weeks in my life.") Of all the things we did in 2002, the student seminars were the most rewarding.

My Most Controversial Decision: Inviting Rudy Giuliani to Speak

Every year FEE plans a fall dinner in October for trustees and supporters. My goal was to put FEE on a national ped-

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The Romance of the New Religions

by Stephen Cox

They may believe nutty things, but not everyone involved in new religions is nuts.

There is a book in my possession called the *Pocket Dictionary of New Religious Movements*. It was written by a Canadian college professor named Irving Hexham. It's a small-format book, only 120 pages long. I bought it on impulse, while I was looking for something else, then promptly set it aside and forgot it. A few weeks later, it bobbed to the top of a pile of stuff, and I discovered what a treasure I had acquired.

For one thing, it's a fine work of scholarship. Its six or seven hundred entries cover the whole field of new age, occult, counterculture, eastern-import, Atlantis-based, UFO-contacted, meditationally oriented, life-changing experiences. The publisher is the evangelical InterVarsity Press, but don't let that frighten you. Hexham is not only a deeply learned guide but an exceedingly fair one. He takes each religion as it comes, doesn't get satirical about any of them, tells you where to find more information, if you want it, and never loads the dice. Well, that's not quite true. If he thinks there's Nazi or fascist influence lurking somewhere in the historical background of one of the groups or individuals he's discussing, he's certain to give that background a lot of emphasis, perhaps overemphasis; and he spends a good deal of time showing that he detests the "anti-cult" and "deprogramming" movements. He has the odd idea that people should be left to make up their own minds, supposing that they have any — an idea that leads him to harbor bad feelings about both the fascists and the folks who grab their sisters-in-law and lock them in a motel room till they've brainwashed them out of the brainwashing they got

in the ashram. I can't criticize Hexham for this prejudice of his.

"New religions" is a word he uses in place of "cult" — which, again, is fair enough, since nobody knows what a cult is, anyhow, and why start off with invidious words? Besides, many of the new religions have very respectable roots in ancient philosophic or religious traditions. Some of the fruits are respectable, too. Nobody could hold a grudge against Baha'i, or laugh at it, either. You might yawn. But Hexham's next entry after "Baha'i" is "Alice Bailey," and here's what he says about her: "At the age of fifteen Bailey had a vision of an entity who she said was Christ but who she later, under theosophical influence, decided was a mystic teacher, Koot Hoomi. . . . After a dispute with the Theosophical Society in 1920, she founded the Arcane School. Her most important idea was the coming of a new world master who would unite East and West" (p. 22).

Well, good for Alice. We could use a new world master. And her notion is a good deal more exciting than Baha'i. A big step downward in respectability, though.

On the following page, we encounter Moses David Berg

(“Mo”), founder of the modestly denominated Children of God movement. Berg “claimed to have received revelations from a host of spiritual beings, including creatures he called ‘the Abominable Snowman’ and ‘the Pied Piper.’ These revelations led him to advocate polygamy . . .” This is a *great* deal more exciting than Baha’i.

But excitement is the keynote of Hexham’s book. You might regard that as a curious thing, considering the dull way in which the new-religion groundswell first started heaving through our culture. As Hexham suggests (25), “new religions” tend to be 19th- and 20th-century products of the intellectual conflict between science and Christianity. People whose faith in Christianity was undermined by scientific criticism started packing up their religious feelings and moving elsewhere. So far, this seems as uninspiring as the rituals of any other moving day. But wait! Having relieved themselves of the burden of Christianity, people were now free to resort to gaudier ideas, such as Wicca, spiritualism, British Israelism, channeling, pungent Western misinterpretations of dusty Eastern mysticisms — almost anything, in short, that could satisfy a lust for travel to exotic climes.

I remember hearing a Christian minister address this theme. “I won’t fight with you,” he said, “if you tell me you can’t believe in Christianity. But please don’t follow that up

I’ve known quite a few people who were involved in “new religions.” Very few of them were nuts. They believed nutty things. That’s different.

by telling me what your horoscope had to say this morning.”

The general rule — again, I’m excepting Baha’i, and whatever new religion you happen to think is respectable — is to turn something ancient and distant into something just plain goofy, and then to turn that goofy thing into something goofier still. (Witness Alice Bailey’s struggles with Theosophy.) On the evidence of Hexham’s book, the visionaries of this world spend virtually all their time quarreling with other visionaries. But you can’t keep ‘em down. They just keep comin’. And there’s a genuine pleasure in contemplating the strange blossomings of their religious imaginations, each with its own bright colors and its own rich, heavy smell.

The categories alone are enough to inspire you with the spirit of romance. “UFO religions.” “Cargo cults.” “Audience cults” (a new one on me — Hexham uses it to refer to religious groups that center on the paid seminar or lecture series). “Yogic” as opposed to “Abramic” religions.

And the movements — here the door of glory opens wide. The New Church. The New Thought. The New Age. The Order of the Golden Dawn. The Oneida Community. The Ananda Community. The Findhorn Community. Phineas Parkhurst Quimby’s Science of Happiness, which

became Mary Baker Eddy’s Christian Science. Guy and Edna Ballard’s I Am Movement, which bore new fruit in Elizabeth Clare Prophet’s Church Universal and Triumphant. AMORC. Positive Thinking. EST.

And people, all these people who arrived as messengers of new ideas, all these people who, as Sinclair Lewis put it, took it as their professional duty to “box with the ineffable.” Ignatius T.T. Donnelly. Judge Rutherford. Ananda Kentish Coomaraswamy. “Bo” and his friend “Peep.” Poor David Koresh. Dr. William S. Sadler, who started recording what one of his patients said after falling asleep, and decided that he was hearing messages from a spirit being — next stop: Urantia! Simon Kimbangu, prophet of the Kimbangist church, who received a vision of Jesus and as a result was

The great religions are the romances of the soul with God. The little religions are the romances of the soul with itself.

jailed for life in the Belgian Congo; fortunately, however, “people began to see [Kimbangu himself] in dreams, and his movement spread” (68).

Most of these visionaries seem to have written books — and what a glorious vindication of the word, or at least of words, has resulted thereby! Madame Blavatsky’s *Isis Unveiled*. Wallace D. Fard’s *The Secret Ritual of the Nation of Islam in a Mathematical Way*. Erich von Daeniken’s *Chariots of the Gods*. Lobsang Rampa’s *The Third Eye*. Shirley MacLaine’s *Out on a Limb*. Helen Schucman’s *A Course in Miracles* (“the book has sold almost two million copies” [36]).

And do not forget the concepts. Mesmerism. Ascended masters. Alien abduction. I-thou. Gaia. Kundalini. The Age of Aquarius. Lemuria (or Mu), the Pacific Ocean counterpart of Atlantis. Ancient astronauts. Theosophy. The much harder to pronounce Anthroposophy. Emergent evolution. And — what we are all, surely, on our way to: Deification.

Well, there are about a million ways to look at this spectacle. Here are some.

1. These people are just a bunch of nuts.
2. They’re all in it for the money.
3. All religions are the same, anyhow.
4. Who am I to judge? I’m sure they all make people happy.
5. How can I get my boyfriend out of Scientology?

I am sympathetic to number 5. I can’t get enthusiastic about 1–4.

I’ve known quite a few people who were involved in “new religions.” Very few of them were nuts. They believed nutty things. That’s different. And no, not every screwball notion gets thought up because somebody wants to make money off it. A real screwball cares mainly about his screwball theories. The money’s fine if it comes in, of course.

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estal, so I invited the #1 speaker in America, former mayor Rudy Giuliani, to be the keynote speaker. I didn't think this choice would be out of character, since past speakers have included Lady Margaret Thatcher, Bill O'Reilly, and Paul Gigot (new editorial page editor of *The Wall Street Journal*). Although not a libertarian, Giuliani had almost single-handedly transformed the world's most powerful city from a stifling, dirty, dangerous metropolis into a thriving, safe, and clean city. Giuliani proudly points to the recommendations of the Manhattan Institute, a free-market think tank, as having influenced his decision to cut taxes, privatize, and deregulate the city's economy. And few questioned his leadership during the terrible days after the terrorist attacks in September, 2001. I probably would not have moved to New York if Giuliani hadn't been mayor, because the New York of ten years ago simply wasn't safe or inviting.

In my mind, the biggest risk was financial — Giuliani gets a high honorarium and we had reserved the big ballroom at the New York Hilton. My goal was to attract the largest gathering of freedom lovers in New York history and to let them know that FEE was the place to learn more. Kim Githler again came to our aid by co-sponsoring the event and negotiating excellent terms with the Hilton. The chances of getting Giuliani were slim, however, since he turns down nine out of every ten requests. But everything fell into place when Giuliani accepted my invitation. And John Stossel of ABC News graciously agreed to be Master of Ceremonies for the event. Talk about a one-two punch! I quickly arranged pledges from supporters to buy patron tables to cover the cost of Giuliani's honorarium, and Tami Holland went to work selling tickets. Everything was set for a spectacular extravaganza that would elevate FEE to national prominence.

However, I failed to take into account one thing — the extreme reaction of some libertarians around the country to my choice of Rudy Giuliani as a speaker at a FEE event. Many were outraged that I would select a "fascist" and a "thug" who "represents everything inimical to what FEE stands for," to quote some of the more colorful lines from libertarians on the Internet. I was attracting attention, all right, but not the kind I was expecting. I countered by explaining that the Liberty Banquet was not an endorsement of Giuliani's political record, but an outreach program. We wanted the general public to become familiar with FEE as the best source of sound economics, and what better way to attract the public than to invite America's hero after Sept. 11? Thousands of investors and business people didn't know FEE from Adam, but they knew Giuliani, and by coming to a banquet with America's mayor as speaker, they would be introduced to a powerful new organization that could change their lives forever.

The only way we are going to make a difference in this world is if we reach out to people who don't yet agree with us. Sound economics is too important to leave only to libertarians! Henry Grady Weaver wrote in a FEE pamphlet: "I [already] believe in free enterprise. Explain it to those who don't, not to me." Amen!

It didn't seem to matter that John Stossel, a true libertarian hero, was willing to appear on stage with Giuliani, or that Giuliani had done wonders to restore the value of life, liberty, and property (the libertarian trinity) in the city of New York. I was amazed how closed-minded my libertarian friends were to Giuliani's positive contributions. "It's like inviting the devil to church," accused John Pugsley. My response: "I already did that when I invited Doug Casey to speak at the FEE National Convention on Sunday, May 5." Many Christian libertarians, including me, were offended by Doug's attack on Christianity, but I was willing to listen to his opinions. I wish libertarians could be more tolerant

I didn't think choosing Rudy Giuliani to speak would be out of character, since past speakers have included Lady Margaret Thatcher, Bill O'Reilly, and Paul Gigot.

and open-minded, more willing to have a dialogue with those whose views differ from their own. As Ben Stein, our keynote speaker at the FEE convention, said, "It's funny how libertarians are so controlling." (I was criticized for inviting Ben Stein, too, because he wasn't a pure libertarian.)

Ironically, another organization, Washington Policy Center, dedicated to "advancing limited government and free markets," promoted their own banquet in Seattle two weeks before ours. The keynote speaker? Rudy Giuliani. They had over 850 attendees in a very successful outreach program.

Mission Aborted!

It was during this ongoing debate over Giuliani that I received a startling telephone call from the chairman of the FEE board. He said the executive committee had met and decided to ask for my resignation. He did not go into details, aside from saying the board did not share my grand vision for FEE. He cancelled the Liberty Banquet and all future FEE national conventions.

I must admit that this move was the most shocking and disappointing event I've ever experienced in the freedom movement, and it came at a time when FEE was on the verge of once again making a real impact. Over the past ten years my wife and I had put our hearts and souls, as well as a good deal of money and reputation, into FEE and then it ended like this! It seemed unfair to us and destructive to FEE's future. I have no doubt that the board members are good people and well-intentioned supporters of liberty. They volunteer their time, donate funds, and attend board meetings without compensation. Several board members were quite supportive of my presidency and wrote letters on my behalf. But I did not want to cause further controversy by fighting a divided board, so I agreed to resign. I still feel a great sadness about this.

Looking back, I made lots of mistakes as president, things I would do differently if I had the benefit of hind-

sight. I would have worked more closely with the board and spent more time raising money. I probably tried to do too much too soon. But I think we did some things right and, in large measure, fulfilled the mandate I was given.

When I became FEE's president, the organization was coming off a difficult year financially and charitable giving was plummeting across the country. I am pleased that in the six months before I was asked to resign, FEE's revenues were up 30% and contributions were up 20%. And I am proud of the FEE convention and the student seminars.

After the executive committee cancelled the fall dinner, I was worried about the financial burden the cancellation of

When I was asked for my resignation, it was the most shocking and disappointing event I've ever experienced in the freedom movement, and it came at a time when FEE was on the verge of once again making a real impact.

the Liberty Banquet would put on FEE, since it would still have the expense of honoring Giuliani's contract while returning the patron table donations. So with the help of my publisher, Tom Phillips, and Kim Githler of the Money Show, we resurrected the Liberty Banquet and it went off on schedule Oct. 25 at the New York Hilton. It had lost momentum after the initial cancellation and a three-week delay in sending out the major promotions, but we still managed to attract 250 paid attendees. Rudy Giuliani was the perfect gentleman and quite a few libertarians gave him a standing ovation.

Jo Ann and I have appreciated the many letters and emails of support we have received during this difficult period. I continue to teach on college campuses, write my investment letter, speak at conferences, and author books. Instead of writing a column for *Ideas on Liberty*, I am now a contributor to *Liberty* magazine. I have my free time back

but, to paraphrase John Maynard Keynes, I'd rather be the slave of some great cause.

Whither FEE?

Jo Ann and I will persevere, but what about America's oldest freedom organization? An aggressive new FEE is unlikely under the current board. The new toll-free numbers have been returned to Terry Easton (upon his request), the daily news service is dormant, and the Blanchard Scholarship Fund is looking for a new home. There's talk among a few board members of selling the FEE mansion and distributing the assets of FEE to other freedom organizations. Such an action would be most unfortunate. As one FEE supporter wrote, "it would be a crime to discontinue FEE since it was the first free-market foundation preaching in the wilderness to the business community which was then plagued with Keynes' dogmas."

FEE deserves to survive and prosper. Many organizations do a fine job of lobbying in Washington, researching public policies, supporting important libertarian scholarship, and fighting the enemies of freedom. But only one organization is dedicated solely to educating students, teachers, businesspeople, and citizens on the principles of free markets and sound money. And, if there's anything the world needs desperately, it's a strong dose of sound economics and an enthusiastic FEE. Jo Ann and I sincerely hope FEE can regain its influence.

When the Founding Fathers signed the Constitution of the United States in 1787, Benjamin Franklin, looking toward the half-sun carved on the back of the president's chair, observed, "I have often in the course of the session, looked at that [chair] behind the president without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun."

In a similar vein, as I was leaving FEE at the end of my presidency, I stood before the large portrait of Leonard E. Read located above the mantel in the living room of the FEE mansion and wondered whether Len was smiling or sad.

I think that, for a year at least, he was smiling. □

Religions, from page 28

Maybe he'll do a few things to help it come in. As for his theories, however, he'll argue to the death for them.

But no, just because someone's a screwball, that doesn't mean you can't call him one. L. Ron Hubbard wasn't really on the same road as St. Thomas Aquinas, and anybody should be qualified to judge between them. And no, again: all religions are not the same. The great religions are the romances of the soul with God. The little religions are the romances of the soul with itself.

They are also the romances of the soul with romance. And that's what makes them fun.

What if somebody gave you convincing evidence that if you went to your computer right now, and you called up such and such a website, you could chat with a warrior from one of the ancient civilizations that still inhabit the planet Mars? And you went to your computer, and there he was!

The guy from Mars! If that happened, you'd be thrilled. Don't tell me that you wouldn't. It would be the most romantic thing that ever happened to you. It would give you a new and much more glamorous view of the universe. It would change your life.

Very unfortunately, there are no ancient civilizations inhabiting the planet Mars. You're not going to be able to contact them, and you probably won't even be able to imagine that you are. Not everyone is qualified to live in the New Age. But you can do the next best thing. You can enjoy watching the behavior of the people who think that such propositions make perfect sense. I think you'll agree — the show is worth the ticket.

Now in conclusion — I'm sorry. Even after reading Hexham's book, I have no idea how to get your boyfriend out of Scientology. □

Guns in the Dock

by Dave Kopel

The Bush administration has reasserted the legal doctrine that the Second Amendment guarantees an *individual* right to bear arms. But for much of this century, courts have ruled otherwise.

President Theodore Roosevelt carried a handgun for protection, loved hunting, and twice used his State of the Union to promote marksmanship training in all American schools. George W. Bush has gone even further in concrete work to protect Second Amendment rights, and victories last November by Second Amendment candidates in Missouri, Minnesota, Colorado, and other states mean that almost all of President Bush's nominees for the federal judiciary will take office. Although the president has not imposed a Second Amendment litmus test on prospective nominees, there is little doubt that his judges will be considerably more respectful of Second Amendment rights than most Clinton appointees have been.

These judges are not, however, likely to be aggressive innovators, but rather will be careful to follow precedent. For federal courts deciding issues arising under the United States Constitution, state court cases are not binding precedent, but they can provide guidance. So let's take a look at two of most important state court cases on the Second Amendment: the first case to use the Second Amendment to declare a gun control law unconstitutional, and the first case to claim that Second Amendment rights belong to the government, not the people.

In the 1846 case *Nunn v. State* (1 Ga. 243), the Georgia Supreme Court was faced with a challenge to a recently enacted handgun ban. Because the Georgia state constitution did not have its own right-to-arms provision, the Georgia Supreme Court turned to the U.S. Constitution's Second Amendment.

The Georgia legislature had banned the sale and possession of knives intended for offensive or defensive purposes, and pistols, except "such pistols as are known and used as

horseman's pistols." The law made an exception which allowed the possession, but not the sale, of the banned weapons if the weapon were worn "exposed plainly to view."

The Georgia Supreme Court combined natural rights analysis with the Second Amendment to declare the law unconstitutional. True, the Georgia Constitution had no right to arms, but the absence of an explicit right did not empower the legislature to infringe upon the fundamental rights of Americans. Since when, inquired the Georgia court, "did any legislative body in the Union have the right to deny to its citizens the privilege of keeping and bearing arms in defence of themselves and their country?"

The court wrote that "The language of the *second* amendment is broad enough to embrace both Federal and State governments nor is there anything in its terms which restricts its meaning" (emphasis in original). Interestingly, anti-slavery activist Lysander Spooner had made a similar argument the year before, in his 1845 book, *The Unconstitutionality of Slavery*, in which he argued that state laws which forbade slaves to possess arms unless their master consented were a violation of the Second Amendment.

The Georgia court kept the introductory clause to the Second Amendment firmly in view: "our Constitution assigns as a reason why the right should not be interfered

with, or in any manner abridged, that the free enjoyment of it will prepare and qualify a well-regulated militia, which are necessary to the security of a free State." So: "If a well-regulated militia is necessary to the security of the State of Georgia and of the United States, is it competent for the General Assembly to take away this security, by disarming the people? What advantage would it be to tie up the hands of the national legislature, if it were in the power of the States to destroy this bulwark of defence?" (emphasis in original).

This argument anticipated the U.S. Supreme Court's ruling in the 1886 case *Presser v. Illinois*. While upholding a particular gun control law (against armed mass parades in

The notion that the Second Amendment is a power of the government, rather than a right of the people, was invented in 1905.

public), the U.S. Supreme Court noted that state gun control laws which interfered with the militia of the United States would be unconstitutional.

The Georgia court described the Second Amendment as an "unlimited right" which meant:

The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be *infringed*, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained: the rearing up and qualifying of a well-regulated militia, so vitally necessary to the security of a free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this right, originally belonging to our forefathers, trampled under foot by Charles I and his two wicked sons and successors, re-established by the revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own *Magna Charta*! And Lexington, Concord, Camden, River Raisin, Sandusky, and the laurel-crowned field of New Orleans plead eloquently for this interpretation! And the acquisition of Texas may be considered the full fruits of this great constitutional right.

The Nunn opinion concluded by holding that the state legislature's ban on concealed carrying was valid because it did not interfere with a citizen's Second Amendment right; but insofar as the law "contains a prohibition against bearing arms openly, it is in conflict with the Constitution, and void . . ." Since the indictment did not specify that Mr. Nunn's weapon was concealed, the charges were quashed.

The Nunn court's approach to natural rights was not unusual for its time; in an 1857 Massachusetts case, Chief Justice Lemuel Shaw — perhaps the most influential state court judge of the period — used principles of "natural justice" to find that the state constitution required the use of grand juries for infamous crimes, despite the absence of any grand jury language in the Massachusetts Bill of Rights (*Jones v. Robbins*, 8 Gray 329 [Mass. 1857]). In *The Bill of Rights* (1998), Yale law professor Akhil Amar analyzes the

similarities between Nunn, *Jones v. Robbins*, and similar rights-protective cases from antebellum state courts.

After the Civil War, Georgia added a right to arms to its state constitution. The final form of the right, adopted in 1877 is: "The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne." Since then, Georgia courts have measured gun control laws against the Georgia state constitution, without relying on the U.S. Second Amendment.

While not all court decisions in the 19th century were as supportive of the Second Amendment as was Nunn, no case from that century ruled that the Second Amendment was anything other than an individual right.*

The notion that the Second Amendment is a power of the government, rather than a right of the people, was invented in 1905. In the town of Salina, Kan., James Blaksley was convicted of carrying a pistol while intoxicated. When he appealed his conviction, neither Blaksley nor the prosecutor argued that the Second Amendment did not pertain to individuals, and the matter was therefore never briefed. The government attorney had simply argued that the local law was a reasonable gun control. Nevertheless, the Kansas Supreme Court chose to issue a decision announcing that the Second Amendment, and the right to arms in the Kansas

Disarmament of individual citizens by Kansas' proslavery government was denounced as a violation of the Second Amendment by the 1856 national Republican Convention and by Massachusetts radical Republican Charles Sumner.

state constitution, did not belong to citizens (*Salina v. Blaksley*, 83 P. 619 [Kan. 1905]).

According to the Salina court, the "right to arms" meant only that the state militia, in its official capacity, and while in actual service, could not be disarmed. The Salina court rejected or misdescribed every 19th-century source of authority which it used. (No 18th-century or prior sources were cited.)

The Kansas court rejected the Kentucky case of *Bliss v. Commonwealth* (12 Ky. [2 Litt.] 90 [1822] [Kentucky state constitution found to forbid a ban on concealed carry]) and the long line of cases holding that, in order to secure a well-regulated militia, individual citizens needed to be able to

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*In 1842, a concurring opinion by an Arkansas Supreme Court judge said that the Second Amendment right was merely "an assertion of that general right of sovereignty belonging to independent nations, to regulate their military force" (*State v. Buzzard*, 4 Ark. 18, 32 [1842] [Dickinson, J., concurring]). This is the only known document from the 19th century asserting that the Second Amendment does not guarantee a right of individuals to possess firearms. The concurring opinion was not cited by any other 19th-century court. Even in Arkansas, all subsequent case law regarded the Second Amendment as an individual right (e.g., *Fife v. State*, 31 Ark. 455, 456 [1876]).

The Coercive Anarchism of Noam Chomsky

by Barry Loberfeld

The world famous philosopher's "anarchism" ultimately amounts to its very opposite.

An essay on radical behaviorist B.F. Skinner was the last thing I expected to encounter when I picked up Noam Chomsky's classic political tract *For Reasons of State*. However, I soon recognized the value of this piece, which I found notable for its presentation of the MIT linguist's own notions of freedom and dignity — and what constitutes their negation.¹

For me, Skinnerian behaviorism has long been a dead issue because Skinner's concept of control requires an impossible definition of freedom. What would constitute for Skinner an entity with free will, a being whose behavior is governed by what's "inside the skin," not by its environment? At first, I thought only a wind-up toy would qualify. But I soon realized that even this fails to meet his standard: the toy is not "free" to walk forward if a wall blocks its way; its behavior too is determined by its environment. To Skinner, interaction with an environment is "control" by that environment. "Freedom" can only be behavior that occurs *apart from any environment* — i.e., apart from reality.

One of Chomsky's many telling criticisms of Skinner relates to this point: "The libertarian whom [Skinner] condemns distinguishes between persuasion and certain forms of control. He advocates persuasion and objects to coercion. In response, Skinner claims that persuasion is itself . . . [a] form of control." Well put, Professor. This libertarian wholeheartedly agrees, which is why I was shocked to see Chomsky later put forth a theory of behavior that itself confuses persuasion with coercion:

"The most obvious form of control . . . is differential wages. . . . Since the industrial revolution, [socialism] has been much concerned with the problems of 'wage slavery' and the 'benign' forms of control that rely on deprivation and reward rather than direct punishment." And: "There is,

of course, no doubt that behavior can be controlled, for example, by threat of violence or a pattern of deprivation and reward. . . . Sanctions backed by force restrict freedom, as does differential reward. . . . [I]t would be absurd . . . to overlook [as does Skinner] the distinction between a person who chooses to conform in the face of threat, or force, or deprivation and differential reward and a person who 'chooses' to obey Newtonian principles as he falls from a high tower."

In a passage from *Beyond Freedom and Dignity*, Skinner says much the same thing: "Productive labor, for example, was once the result of punishment: the slave worked to avoid the consequences of not working. Wages exemplify a different [approach]: a person is paid when he behaves in a given way so that he will continue to behave in that way" (p. 30, which, no, Chomsky doesn't quote). Both Skinner and Chomsky believe the same thing, that economic persuasion is not persuasion but "control" — coercion — and those subject to it are not free. Whereas the traditional taskmaster beat those who did not obey orders (force), today's marketplace employer simply fires them ("deprivation") — or, if they do obey, pays them ("reward"). Capitalism controls all behavior by matching different behaviors with different wages ("differential reward"), with zero being the wage for some behaviors (again, "deprivation").

Susan Lopez wants to be a singer like her idol, Jennifer Lopez. However, she is not *free* to be one. She isn't thrashed when she opens her mouth. It's just that no one (including Professor Chomsky) will pay her to sing; she is "free" to sing only to the extent that she is "free" to starve. Consequently, she has no choice but to work at the only job for which people will pay her — collecting bedpans at the retirement home. This is not what she wants to do at all, and she would prefer at the very least to work only part-time, but that means the loss of her medical benefits. For Chomsky, Susan Lopez is not free — free to be "able to do as one pleases," which is the "natural goal" of a "decent

Chomsky believes that economic persuasion is not persuasion but "control," and those subject to it are not free.

society," one in which all the Susan Lopezes will have the same freedom as "those fortunate few [e.g., Jennifer Lopez] who can choose their own work generally do today." And, as Providence would have it, the professor knows exactly what will take us to this Promised Land: the redesign of our culture to approximate the "socialist dictum, 'From each according to his ability, to each according to his needs.'" The first part will eliminate "reward," the second "deprivation."

His program for clause one is quite simple: stop paying people to work. No wages, no "wage slavery." Chomsky doesn't tell us who will accomplish this or how. He is skeptical, even scornful, of the suggestion that people work for "extrinsic reward," be it money or "prestige [or] respect," and won't work (i.e., will "vegetate," in his characterization) without it. The "decent society" will have "no shortage of scientists, engineers, surgeons, artists, craftsmen, teachers, and so on, simply because such work is intrinsically rewarding."² Any intimation that "history and experience" might cast doubt on this is dismissed as having "the same status as an eighteenth-century argument to the effect that capitalist democracy is impossible."³ He insists that "from the lessons of history we can reach only the most tentative conclusions about basic human tendencies" at one (anti-empirical) moment, only to insist elsewhere that "[w]e also find . . . that many people often do not act solely, or even primarily, so as to achieve material gain, or even so as to maximize

applause." Exactly where we find these "many people," the professor, renowned for his copious footnotes, provides not even a clue. My own impression, if I may borrow Chomsky's words against Skinner, is that "the claims are becoming more extreme and more strident as the inability to support them and the reasons for this failure become increasingly obvious."

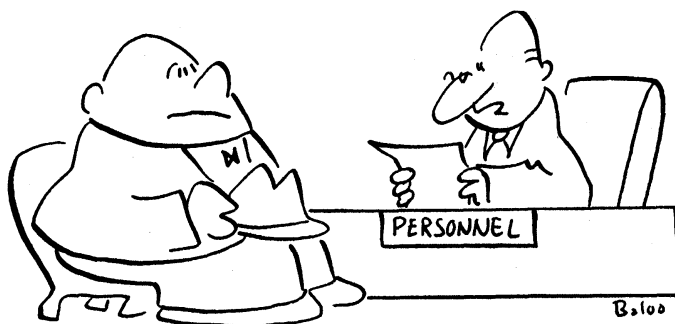
Chomsky writes, "interesting and socially useful work is . . . rewarding in itself." Socially useful — determined how and by whom, absent the mechanism of supply and demand? "Were we to rank occupations by social utility in some manner" — what manner? The answer comes in the form of a question: "Is it obvious that an accountant helping a corporation to cut its tax bill is doing work of greater social value than a musician, riveter, baker, truck driver, or lumberjack?" It is, if "social value" denotes how everyone allocates his personal resources. That's why the accountant earns far less than Jennifer Lopez but far more than Susan Lopez.⁴ But the professor uses the term "social value" to denote how *he* would allocate everyone else's resources. What emerges is another implicit "dictum": from each according to his own judgment, to all according to Chomsky's. This is a clear (though unacknowledged) echo of Skinner's behaviorist tenet that "the control of the population as a whole must be delegated to specialists."

And how can Chomsky guarantee that the jobs that are "socially useful" (e.g., bedpan collection) will be the same that people (e.g., Susan Lopez) find "interesting"? He can't, which is why we're informed that in this "decent society, socially necessary and unpleasant work would be divided on some egalitarian basis." But the obligatory mention about "egalitarian basis" tells us only *how* people will ideally do the work; it doesn't tell us *why* they'll do it. Since the work is not "interesting," it cannot be "rewarding in itself." That leaves only two alternative motivations: the button of "direct punishment" or the switch of "deprivation and reward." A self-professed "libertarian and humanist" who seeks to guide and free us from any manifestation of "authoritarian rule," Chomsky himself can find only sundry "forms of control" blocking all the exits.

For most socialists, people are selfish creatures who wouldn't even give you a smile unless you paid them and wouldn't toss a penny to the poor unless you forced them. But for Chomsky, people are selfless souls who are content to work for work's sake and are more than delighted to have the fruits of their labor given to others. These one-dimensional models of motivation simply ignore the way that many different and complex members of humanity are able to speak for themselves in the forum of the market, where each names his price and others take it or leave it. Of course, this is the very "wage slavery" Chomsky denounces.

What about the second clause — "to each according to his needs" — the other half of the moral formula to free us from such "slavery"? Here Chomsky provides no argument at all. He has nothing to say about the sort of practical policies that would be needed to implement this principle (and thus eradicate "deprivation"). Apparently, if any sense at all is to be made of this, we must make it ourselves.

One way that is sometimes suggested is a guaranteed



"How come you got fired from all these food-service jobs?"

income or a ration of basic necessities. In contrast to the free-market, the free-lunch frees Susan Lopez to sing full-time without starving. Leaving aside the question of how the government of the "decent society" will acquire the wealth for this distribution, does this distribution satisfy Chomsky's standard of freedom? Here "history and experience" offer two answers: socialist dictatorship and social democracy. The first is easily disposed of: Noam Chomsky himself would be the last person in the Free World not to concede that Communist governments, in their monopolization of all resources, employ "deprivation and reward" as a means of exacting obedience from their subjects.

But what about a social democracy, which, as a matter of "positive rights, simply gives people what they need, no questions — or obligations — asked? A decisive *no* comes from 1971's *Regulating the Poor*, edited by Francis F. Piven and Richard A. Cloward, which concludes that welfare programs arise "from the need to stem political disorder during periods of mass unemployment, and to enforce low-wage work during periods of economic and political stability. The institution of relief is thus best understood, not as charity, but as a system for regulating the poor." So, "when the destitute become disorderly and tumultuous, often on a scale which threatens political stability," the amount of a welfare payment is raised in order to quiet them down ("reward"). "Once turbulence subsides," the amount of a payment is lowered to sub-wage levels ("deprivation") and the poor

Chomsky's program is quite simple: stop paying people to work. No wages, no "wage slavery."

"are forced off the relief rolls and into the low-wage labor pool." Yes, "wage slavery"!

The only remaining political option is anarcho-syndicalism, so it's hardly surprising that this approach is so closely associated with Chomsky.⁵

Here we must run our own Gedanken experiment. Let us imagine that there are no ethical or economic problems in a situation in which the kids who were hired at a Big Burger outlet Monday take over the store Tuesday. They kick out the manager and break all ties with the corporate home office, and no police intervene to protect property rights. Having truly seized the means of production from the bosses, these workers have at last freed themselves from "wage slavery" and the concomitant "deprivation and reward." Or have they? The fact is, they *still* must arrive for work on time, look presentable, keep the place clean, cook the right food the right way, and be courteous, or else they won't get paid — by the only real boss: the sovereign consumer, who pays (or doesn't pay) the salaries of all the employees of Big Burger, from its CEO to the guy working the fryer.

Fundamentally, either Smith gives *something* — food, clothing, medicine, money, acknowledgment, friendship, consent, cooperation, approval, sex, love — to Jones ("reward") or he doesn't ("deprivation"). What isn't either

"deprivation" or "reward"? Chomsky's terms cover (and condemn) all of the give-and-take inherent in human interaction — "a handy explanation for any eventuality." That's what he says of Skinner's theory, and it's especially appropriate to quote it, since his own terms are, too obviously, merely commonplace synonyms for Skinner's technological-sounding "negative reinforcement" and "positive reinforcement."⁶ And, like Skinner's, Chomsky's contention that we are "controlled" by this either-or, "given the vacuity of the system . . . can never be proved wrong."

But just who's enslaving whom in "wage slavery"? Am I the consumer controlling the kid behind the counter

Either Smith gives something — food, clothing, medicine, money, acknowledgment, friendship, consent, cooperation, approval, sex, love — to Jones ("reward") or he doesn't ("deprivation"). What isn't either "deprivation" or "reward"?

through "deprivation" by withholding my money if he doesn't "take my order"? Or is he controlling me through "deprivation" by withholding the burger (which I need for food) if I don't obey his demand for a specific sum of money (for which I had to work)? Is my physician coercing me into working (for wages) by denying me medical care if I don't pay him, or am I coercing him into working (as a physician) by denying him money (for food, clothing, etc.) if he doesn't treat me? The very logic of "wage slavery" casts each man as both slave and master.⁷ I am reminded at this point of the wonderful cartoon that has one mouse in the Skinner box saying to the other, "Have I got this guy trained! All I have to do is press on this bar and he gives me food."

The Chains That Bind Us All

How could it be otherwise? Freedom, for Chomsky, could only be behavior that occurs apart from any *social* environment — i.e., apart from one's fellow human beings, whose every response to one's every action constitutes either "deprivation" or "reward." To free oneself from Chomsky's "slavery," one must live apart from society and provide his own food, shelter, medical care, companionship, etc.⁸

For money and definitions alike, bad drives out good. Absurdist conceptions of freedom serve only to undermine valid ones, which in turn exposes us to the kinds of political schemes proposed by Skinner and Chomsky. Consider how the "theory" of 30 years ago has become the "practice" of today. While Skinner's name may not have the currency it once did, his environmental determinism has actually become the *de facto* psychological ideology of the "social constructionist" left, which also, in the wake of Communism's demise, has adopted an "anarchist" persona mirroring Chomsky's.

But there is a slight difference between the two thinkers. Skinner's implicit vision of who would be a free man is as

unimaginable as a square circle, yet Chomsky's can (to some degree) be conceived and has, in fact, recently been dramatized: Tom Hanks in *Cast Away*. But whatever might be said of such a life, it has never been one that men of freedom and dignity have sought. □

Notes

1. This worthiness was recognized also by editor James Peck, who included an abbreviated version of the essay in 1987's *The Chomsky Reader*. As Clemson University psychologist Robert L. Campbell has observed, "Once Chomsky put forth these arguments, the demise of behaviorism . . . [was] assured. B.F. Skinner never answered Chomsky's arguments in print . . ." (dailyobjectivist.com/Extro/dividedlegacyofnoamchomsky3.asp).

2. Chomsky believes he's making a point when he asks whether a Harvard psychologist "would become a baker or lumberjack if he could earn more money that way." Personally, I'd like to ask whether Chomsky would trade the money, prestige, and respect of an MIT professorship for a post at, for example, Brooklyn Polytechnic.

Also, looking at the last item on this list, we might ask why the teachers' unions are forever telling us that we must raise salaries if we want to attract more and "better" people to go into teaching. Will people suddenly recognize the "intrinsically rewarding" nature of education once "differential reward" (i.e., the lure of better-paying jobs) is eliminated?

3. If the professor still "awaits a rational argument" for the importance of "extrinsic reward" (i.e., incentives, monetary and otherwise), he'll find possibly the best in James D. Gwartney and Richard L. Stroup's *What Everyone Should Know About Economics and Prosperity*, 1993.

4. This is not to affirm that prices are the only values. For an important clarification, see "Market Value" in Harry Binswanger (ed.), *The Ayn Rand Lexicon: Objectivism from A to Z*, 1986, pp. 280–1.

5. It would be quite an understatement to say that Chomsky's actual position vis-à-vis anarchism and statism is somewhat "problematic." Can he really somehow be both a socialist and an anarchist — or does logic force him off the fence? In *Class Warfare* (1996, pp. 122–3), he declares, "[R]ight now I'd like to strengthen the federal government. The reason is . . . in this world there happen to be huge concentrations of private power [i.e., business corporations] which are as close to tyranny and as close to totalitarian as anything humans have devised . . . [s]o you end up supporting centralized state power" to fight that "private power." This is a wholly unremarkable statement: socialism, the suppression of private enterprise, operatively requires "centralized state power." Who, from Lenin to Rothbard, would object? Even more along these lines, he (in a September 1999 interview with *The Progressive*) decries privatization as a crusade to destroy "every aspect of human life and attitudes and thought that involve social solidarity." What kind of libertarian, let alone anarchist, considers state

coercion, not mutual consent, the foundation (indeed, the whole) of "social solidarity"? Worse yet, our New Left radical is parroting "corporate liberal" Robert Kuttner, who too uses "social solidarity" to label the meta-value supposedly evinced by welfare state programs (*The Life of the Party: Democratic Prospects in 1988 and Beyond*, 1987, pp. 16–7). But compare all this with the fact that Chomsky regularly identifies himself as a "classical liberal" and earnestly bemoans how *liberalism*, a term that once stood for opposition to (or at least limitations on) state power, has been "perverted" to mean "a commitment to the use of state power for welfare purposes." He even fancies himself a kind of "[Old Right] conservative, like [Sen. Robert] Taft, [who] wants to cut back state power, cut back state intervention in the economy — the same as someone like [Sen.] Mark Hatfield — to preserve the Enlightenment ideals of freedom of expression, freedom from state violence, of law-abiding states, etc." (quoted in Milan Rai, *Chomsky's Politics*, 1995, p. 188 n. 24). Now compare that with his conviction that "New Deal liberalism . . . [and] its achievements, which are the result of a lot of popular struggle, are worth defending and expanding" (*The Common Good*, 1998, p. 5). If this is still not enough, I give you the *lagniappe* of a "socialist" who worries about the danger that corporations — social bodies — pose to individualism, since "[t]here's nothing individualistic about corporations" (*Keeping the Rabble in Line*, 1994, p. 280). Though if that's true, then wouldn't these corporations be veritable fonts of "social solidarity" — not "private power" — which would consequently obviate the need for their suppression by "centralized state power"?

My "conclusion" is that Chomsky's political vocabulary, like Skinner's techno-cant, is a dialect of Newspeak that I'll "happily leave to others to decode."

6. Skinner seems to anticipate this when he writes, "What the layman calls a reward is a 'positive reinforcer'" (p. 31).

7. The term "wage slavery" is generally associated with Marx's prediction that wages under capitalism would eventually fall to rock bottom, so that the worker, much like a slave, would be laboring for subsistence — hence, "wage slavery."

But near the end of his essay, Chomsky writes, "An increase in wages, in Marx's phrase, 'would be nothing more than a better remuneration of slaves, and would not restore, either to the worker or to the work, their human significance and worth'" (original emphasis). So, whereas subsistence wages drive the worker into "misery, agony of toil, slavery, ignorance, brutality [and] mental degradation" (again, Marx), even ever-increasing wages deny him his "human significance and worth," the absence of which we evidently must acknowledge like the presence of the emperor's nouveau apparel. Wages plummet, wages soar, wages stagnate — it's all the same "slavery."

8. Elsewhere (p. 390), Chomsky reveals that he (like Marx in "On the Jewish Question") agrees when "Rousseau argues that civil society is hardly more than a conspiracy by the rich to guarantee their plunder."

Letters, from page 6

said to have "bought the farm."

W. T. Furgerson
Louisville, Tenn.

The Editor responds: There is considerable scholarly literature on the origin of the phrase "bought the farm." Several hypotheses are advanced, but no con-

clusive evidence. One fact is well-established: the earliest recorded usage was in 1955. This eliminates Heinlein's *Starship Troopers*, published 1959, as a source. Kelly's explanation that it came into use during the barnstorming days immediately after World War I is not

very plausible either: It's unlikely that the expression was in common usage for more than 30 years without being recorded. If Furgerson's memory is correct, the expression was widely used for more than a decade without being recorded; this too seems unlikely.

A Model for Libertarian Activists

by Jacques de Guenin

A century and a half ago, a small group of men challenged entrenched power, convinced the public that taxes should be cut, trade freed up, and government reduced — all within a decade.

We are in 1838, at which time the United Kingdom was divided into roughly six social classes:

- The elder branch of the aristocracy, who owned practically all the land and had a majority in parliament.
- The younger branch of the aristocracy, who owned little or nothing since, in order to avoid the partition of properties, only the first-born son inherited property. Since noblemen despised creative work, members of this class could sustain themselves only through the exploitation of the working classes: external exploitation through wars, conquests, and colonization; internal exploitation through taxes, tithes, charges, and monopolies. They made up the larger part of Army and Navy officers, the clergy, and colonial administrators. They also emigrated to the colonies, where they became landowners. (At that time, the U.K. had 45 colonies.)
- Manufacturers, bankers, and traders. The Industrial Revolution was in full swing, and this class was becoming more and more significant.
- Shopkeepers and craftsmen
- Factory workers
- Farmers. They rented their land from the big landowners, led a rather miserable life, and hired even more miserable agricultural workers.

The parliament had around 580 members, 160 of whom were elected by the counties and 420 by the burroughs. There were two major parties, the Tories and the Whigs. Certain conditions were required in order to be an elector. These conditions were such that the counties elected only aristocrats. The burroughs elected aristocrats too, but they also elected representatives from the manufacturing and trade bourgeoisie. However, each party was controlled by

the aristocracy so that, whatever the majority, the parliament was controlled by the aristocracy.

The Corn Law

In 1838, the kingdom was plagued by a law called the Corn Law, which restricted the import of grains. It was introduced in 1815, and amended several times. It concerned all grains, but its effect was particularly tragic in the case of wheat, a requisite for making bread, then a vital food for most people.

Before Napoleon's continental blockade, the import of wheat was relatively free, and custom duties were not very high. The blockade gave English producers a quasi monopoly, followed by a rapid increase in prices. At the end of the Napoleonic wars, the price of wheat fell by half, and producers were alarmed. In 1815, they managed to promote a law whose object was to stabilize the price of corn at a high level. No foreign wheat could enter the market if the market price was below 80 shillings a quarter. Without ever reaching that level the price of wheat rose again considerably, as did the price of bread, the staple diet of the workers. Working classes became very poor. Their consumption of manufactured goods decreased. Exports also decreased, as ships could no longer carry return freight such as grain. Manufacturers were forced to make workers redundant which increased poverty even more.

The law impoverished workers and traders, but it

worked well for the aristocracy. It raised the cash value of the most important agricultural product, thereby raising the rent that the aristocrats could charge for land, virtually all of which was owned by them. Not surprisingly, the aristocracy was opposed to any reform.

In 1828, however, the government of the Duke of Wellington managed to amend the legislation a little. Wellington was intelligent enough to perceive how precari-

The Corn Law helped to make the Britain of 1838 a place where social inequality was extreme, destitution was prevalent, and criminality was high.

ous the situation was, and his prestige gave him freedom to maneuver. He introduced a so-called "sliding scale," working thusly: when the price of wheat reached 73 shillings per quarter, foreign wheat could be imported without duty. When it fell below that price, foreign wheat was charged a duty. It was a small improvement, and a very insufficient one.

Besides grain, there was a complicated protectionist system affecting a number of other vital food products such as sugar. These tariffs were called "differential" because they depended on a product's origin. They guaranteed an outlet for colonial products, and were a significant source of revenue for the colonists.

The Corn Law helped to make the Britain of 1838 a place where social inequality was extreme, destitution was prevalent, and criminality was high. The decrease of all consumption resulted in lower tax revenues. The state deficit was increasing to the point of threatening its credit.

History of the League

In 1838, the Anti-Corn Law Association was created in London, but had little success in changing things. In October 1838, seven men from Manchester decided to take matters into their own hands. They modified the statutes and the name of the Association, which became "The Anti-Corn Law League," or, more popularly, the League.

Their aim was to mobilize public opinion to put pressure on parliament to repeal the Corn Law. The League proclaimed that repealing the Corn Law would have extraordinary benefits for the kingdom. It would:

- increase industrial outlets
- develop employment
- decrease the price of bread
- increase industrial and agricultural productivity through competition
- promote peace between nations.

Manchester was a good base for the League because it was the major manufacturing city in the country, and its activity was particularly affected by the strangling of international trade.

The founders surrounded themselves with people from the middle class: industrialists, merchants, bankers, traders.

Among its leaders, four were to play a decisive role: George Wilson, the president, who administered the huge machinery of the League with great competence and rigor; Charles Villiers, the spokesman of the league in Parliament; Richard Cobden, its most active and most influential member; and John Bright, a great orator, and a faithful disciple and friend of Cobden.

Richard Cobden was born in 1804 to a poor farm family. He was trained by an uncle to become a clerk in his warehouse. At 21, he became a travelling salesman, and was so successful that he was able to set up his own business by acquiring a factory making printed cloth. His company became very prosperous. At the age of 30, he left the management of the company to his brother so that he could travel. He wrote some remarkable articles in which he defended two great causes: pacifism, in the form of nonintervention in foreign affairs, and free exchange. He revealed himself to be a clear and brilliant economist.

From 1839, he devoted himself exclusively to the League, neglecting even his family, though he was very fond of them. He displayed the talents of a great tactician, being rational, skillful, tenacious, and resolute. He was to be elected MP for Stockport in 1841.

John Bright was a manufacturer from Lancashire. He belonged to a Quaker family. He was to be elected to the Commons in 1843. He was a very eloquent speaker — clear, precise, and moving, especially when describing poverty, revealing a deep conscience and a quasi-religious sense of his responsibilities. Even though he was self-educated, he supported his eloquence with well-chosen literary and historical references.

A determined individualist, he considered freedom of exchange as the remedy for all economic evils. He was very wary of state intervention in economics and society.

A nonconformist, he pleaded for the equality of religions under the law, criticized the privileges of the Church of England, supported the separation of church and state, and asked for the right of Jews and atheists to swear a non-Christian oath and be allowed into Parliament.

Within the League, he acted as the unconditional supporter of Cobden and a star speaker. But he avoided appearing as a formal forefront leader, because, as a Quaker, he was not accepted by all groups.

These four people played the major roles in the League, but many more people of high quality and reputation spent a lot of their time, money, and talent for it.

For seven years, until the final victory, the League endeavored to gain more and more people to its cause, radiating farther and farther from Manchester until it covered the whole kingdom. Meetings were organized in the larger cities. In London, they were held weekly. Everywhere they took place in the largest rooms available, containing several thousand people in London, and up to 10,000 in Manchester. Everywhere, all seats were booked and many people were left outside. More and more subscriptions made it possible to finance books, brochures, periodicals, and even to pay professors to spread understanding of economics among the general public.

The first spectacular breakthrough happened in 1841.

That year, the League managed to win over the so called "dissident churches," i.e., the non-Anglican ones. Sixteen hundred "dissident" priests responded to the call of the League, and 700 of them gathered in Manchester. They decided to preach the cause of freedom of exchanges throughout the kingdom, as it was "in agreement with the Laws of providence that it was their mission to propagate."

The League then endeavored to put the farmers on their side. That was trickier insofar as the latter believed that their fate was linked to protection. Within two months, Cobden held 40 meetings among the agricultural population. To quote Bastiat, "There, often surrounded by thousands of farmers and laborers among whom, no doubt, also sneaked in some troublemakers, a cool, skillful, and eloquent Cobden impressed his audience, and even aroused sympathy among his most implacable opponents."

The aristocracy, which had treated the League with disdain resulting from their feeling of political invulnerability, began to worry. They scrutinized the public and private lives of the principal leaders of the League, but soon realized that they had more to lose than to win at this game. They then spread the litany of eternal protectionist sophisms: the protection of farmers against the invasion of foreign products, the lowering of workers' salaries by factory owners taking advantage of the lower cost of subsistence, national independence, outlets for colonial products, control of the sea, etc.

But a remarkable feature of the League was that its actors were skillful economists, and none of these sophisms could stand up to them. Tirelessly, they demonstrated that *only the full and unilateral repeal of all obstacles to free trade could bring about prosperity for all.*

With poverty and its causes becoming more and more obvious, the aristocracy attempted to soothe the situation through charity. They organized subscriptions to help the poorest. They introduced laws reducing daily working hours. But manufacturers, in turn, took measures to help the truly needy directly. At the same time, the League clearly showed that the only source of hardship was spoliation by the aristocracy.

But the aristocracy still had one defense: its majority in parliament. Then, in a new phase of its action, the League methodically endeavored to have the maximum number of its supporters elected to parliament. At the request of Cobden and Bright, several thousand free-traders registered on electoral lists, and kicked out all those who did not have any right to be on them.

At the elections of 1841, five League members, including Cobden, had been elected. Sir Robert Peel, the leader of the Tories, was again prime minister. Extremely clever and competent, he came from the manufacturing bourgeoisie, and he sought to attract its members into Parliament. Being a lucid opportunist, he soon realized that the League held the truth about the causes of poverty, and that its progress was irreversible. But he felt obliged to defend the interests of the class which had brought him into power. He certainly foresaw that the supporters of the League would obtain a majority in Parliament sooner or later, and thought he might as well implement himself the measures that would become

inevitable. During the next five years, he took measures aimed at alleviating the most severe poverty, thus giving some tokens of satisfaction to the free-traders, and, on the other hand, to broaden the outlook of the aristocracy.

In order to improve public finances, he introduced an income tax, exempting revenues below 150 pounds, that lasted three years. He introduced a series of custom duty reforms. Straight import prohibitions were abolished. Oxen,

The League endeavoured to put the farmers on their side. That was tricky because farmers thought that their fate was linked to protection.

sheep, and fresh and salted meat, the import of which had been prohibited, were now admitted with low duties. Duties on 650 basic consumer goods such as flour, oil, rice, vinegar, beer, wool, cotton, linen, and leather were considerably reduced and the duties for 430 products were eliminated. Export duties, which notably penalized machinery and coal, were abolished.

Economic activity grew, poverty diminished, and, in accordance with the Laffer Law, customs revenues actually increased.

Concerning the Corn Law, Peel acted very cleverly. Experience had shown that the price of wheat on the market fluctuated around 56 shillings, and never rose above 65 shillings. The ceiling of the "sliding scale," at 73 shillings, was therefore pointless. Peel reduced the ceiling to a fixed rate of 56 shillings, which gave to the people the impression of a great discount — without really addressing the problem — and still keeping rents high.

Cobden feared that these improvements might enervate the supporters of the League, though its objectives were far from achieved. So he persuaded his friends to change gear. Until 1844, it seemed impossible to obtain MPs from the counties because one had to own rural property to be an elector. On closer inspection of the electoral law, Cobden discovered an obscure amendment called the Chandon clause, which granted the right to be an elector to any person owning a property yielding an annual revenue of at least 40 shillings. The aristocracy had used this clause in 1841 to register a number of its minions on electoral lists. Nothing prevented the manufacturing and trading classes from doing the same.

Cobden submitted his plan to the League council in December 1844. The deadline for registration on the electoral lists was Jan. 31, 1845. In ten weeks, Cobden organized no less than 35 meetings in the Northern counties of England in order to encourage suitable people to become electors.

Meanwhile, the support of the League from various corners was steadily increasing, and, with it, the means at their disposal. To illustrate the magnitude of their effort, let me quote figures from the annual report for the year 1844 presented on Jan. 22, 1845, by Mr. Hickin, secretary of the League, in front of 10,000 people. First of all, here is the

income statement. (I have made an attempt to evaluate the sums in present day dollars. It is, I agree, a very bold and fragile estimate. 1£ (1840) = \$84 (2000).

Revenues	£ 86,009	(\$7,224,000)
Expenses	£ 59,333	(\$4,984,000)
Balance	£ 26,676	(\$2,240,000)

More than 200 meetings were held in England or Scotland, to mention only those attended by official representatives of the League.

Two million pamphlets and 20,000 copies of each issue of the League's weekly journal were distributed.

The offices of the League received a huge number of letters, and sent about 300,000!

The League professors opened courses in 36 counties out of 40. Everywhere, and most particularly in agricultural counties, demand for professors largely exceeded supply.

England was divided into 13 electoral districts. Agents well versed into the knowledge and practice of law were

On May 26, 1846, Parliament passed a law instituting unilateral freedom of exchange. The law lasted for 85 years, during which the United Kingdom enjoyed a brilliant period of freedom and prosperity.

assigned to each district to supervise the preparation of the electoral lists and if necessary, obtain their rectification by judgment.

This operation was carried out in 160 boroughs. Up to then, free-traders had outnumbered the monopolists in 112 boroughs, resulting in a fair chance of a free-trade candidate being elected in many of these.

It was only recently that the League had directed its attention to the electoral lists of the counties. Within a few days, the balance in favor of the free traders increased by 1750 in North Lancaster, 500 in South Lancaster, and 500 in Middlesex.

Every year, Charles Villiers, an MP from the League, had proposed a motion to Parliament in favor of the repeal of all protectionist laws. It had always been defeated, but the majority against the repeal decreased year after year: 303 in 1842, 256 in 1843, 206 in 1844, 132 in 1845. Peel started to prepare the minds of the MPs for a gradual repeal, but he came up against both the great landlords, and the free traders who wanted a complete and immediate repeal.

In 1846, a terrible famine struck Ireland, because heavy rains had rotted the potato crop, the staple diet of the Irish people. Bread was too expensive to replace potatoes. In December, Peel decided to apply an emergency reduction in the duty on grain through government decrees, but he lost the support of his own cabinet and had to resign.

The queen called upon the leader of the Whigs, but he was unable to form a cabinet. So, she asked Peel to come back and form a new cabinet. He did it with Tories individually favorable to the repeal. He then proposed to parliament a more radical measure abolishing the Corn Law.

After numerous debates and some to-and-fro with the House of Lords — which proved to be more open to freedom of exchange than expected — Parliament put an end to protectionism. On May 26, 1846, the law instituting *unilateral* freedom of exchange was passed by a majority including, besides representatives of the League, Whigs, Tories, and Irish representatives. The law lasted for 85 years, during which the United Kingdom enjoyed a brilliant period of freedom and prosperity known as the Victorian Era. We should call it instead the Free Trade Era.

The Tory party, however, was irreparably divided. On that same evening, Peel lost a vote of confidence on his Irish policy. He had to resign. Before leaving, he paid tribute to Cobden in his last parliamentary speech, saying:

The merit of these measures, I declare it to the honorable members of the opposition as well as to ourselves, this merit does not belong to any party. There arose between parties a coalition which, helped by the government, led to the final success. But the name that should, and certainly will be, attached to these measures, is that of a man, driven by the most disinterested and the purest motive, who, with tireless energy, appealing to public reason, demonstrated their necessity with an eloquence all the more admirable as it was simple and without affectation, it is the name of Richard Cobden.

Sir, I now close the observations which it has been my duty to address to the House, thanking them sincerely for the favour with which they have listened to me in performing this last act of my official career. Within a few hours, probably, that power which I have held for a period of five years will be surrendered into the hands of another — without repining — without complaint on my part — with a more lively recollection of the support and confidence I have received during several years, than of the opposition which during a recent period I have encountered.

In relinquishing power, I shall leave a name, severely censured I fear by many who, on public grounds, deeply regret the severance of party ties — deeply regret that severance, not from interested or personal motives, but from the firm conviction that fidelity to party engagements — the existence and maintenance of a great party — constitutes a powerful instrument of government: I shall surrender power severely censured also, by others who, from no interested motive, adhere to the principle of protection, considering the maintenance of it to be essential to the welfare and interests of the country: I shall leave a name execrated by every monopolist who, from less honorable motives, clamors for protection because it conduces to his own individual benefit; but it may be that I shall leave a name sometimes remembered with expressions of good will in the abodes of those whose lot it is to labour, and to earn their daily bread by the sweat of their brow, when they shall recruit their exhausted strength with abundant and untaxed food, the sweeter because it is no longer leavened by a sense of injustice.

Sir Robert Peel left public life that same evening. He died four years later in a riding accident.

The League dissolved itself on July 22, 1846.

A ceremony commemorating the passage of the law took place on Jan. 25, 1848. It was attended by 3000 people. Another was celebrated on Feb. 1, 1849.

Richard Cobden was exhausted and ruined when the

continued on page 53

Reviews

The Skeptic: A Life of H.L. Mencken, by Terry Teachout. HarperCollins, 2002, 410 pages.

A Politically Correct H. L. Mencken

R. W. Bradford

H.L. Mencken once said that he had it on the authority of a prominent publisher that books about Abraham Lincoln always make money, no matter how bad they are. The publication of Terry Teachout's *The Skeptic: A Life of H.L. Mencken* brings the number of biographies and memoirs about Mencken to 21, which means that a book about Mencken has been published, on average, once every 3.67 years since Mencken celebrated his 45th birthday in 1925. The longest gap between publications was eleven years, but some decades have seen as many as four. I wonder: have biographies of Mencken become "sure things"?

Mencken was arguably the most prominent and influential American libertarian of the 20th century. Part of the reason why Mencken's life is so frequently chronicled is simply that it was a very interesting life: he was both America's leading literary critic and its leading political pundit, and he chronicled nearly half a century of American life. But the more important part, I think, is that Mencken wrote with a style that is simultaneously outrageous and delightful. Since biographies of writers invariably include substantial quotations from their sub-

jects, biographies of Mencken are almost certain to be read with pleasure.

Another reason why the flow of Mencken biographies has lasted so long after his death is that Mencken arranged his affairs so that important biographical information would be made available to scholars at various intervals, some as long as 35 years after his death.

Nothing new has come out since 1991, however, and Teachout's biography is the second to be able to exploit all of Mencken's papers and memoirs. It is unquestionably superior to the first such biography, Fred Hobson's *Mencken: A Life*. In many ways it is the best of all the biographies despite an egregious and mysterious flaw.

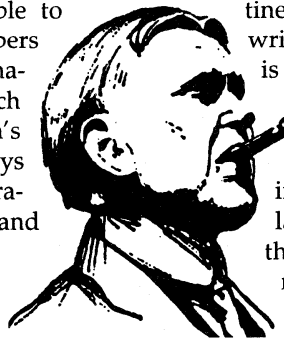
I'll discuss the flaw a little later in this essay. Right now, I want to admit that I wasn't looking forward to reading *The Skeptic* with great anticipation. For one thing, while I've read a good deal of Teachout's magazine writing and have found it quite serviceable, I've never been particularly enthusiastic about it. For another, having read virtually everything written by Mencken that is reasonably available, including all his books and all his writing for *The American Mercury*, as well as eight or

ten of the biographies and all six of the memoirs of his life, I wasn't convinced that I'd learn very much from Teachout that I didn't already know.

What's impressive about *The Skeptic* is that Teachout does a very good job of explaining Mencken's life and career in the context of the times in which he lived. Teachout even manages not to be outraged or addled by Mencken's hostility to Franklin D. Roosevelt and America's involvement in World War II, subjects that rou-

tinely outrage and addle other writers. For me, the best thing is that Teachout does a fine job of putting Mencken's literary criticism in context, thereby rendering it intelligible to people who lack professional training in the subject. The major weakness of my own understanding of Mencken is my limited familiarity

with American literature between 1900 and 1940. I never have been able to appreciate his literary criticism fully. Oh, I'd read some Howells, Lewis, Conrad, Shaw, and a little Dreiser, but none of Gene Stratton Porter or Harold Bell Wright. Teachout's discussion of Mencken's criticism, and of many of the novelists that Mencken criticized, may not be comprehensive or scholarly, but it provides enough



information to give me a feel for the reasons why Mencken regarded these authors in the way he did.

There remains one very serious problem. Time and time again, Teachout calls Mencken an anti-Semite. According to the index, Teachout mentions "Jews" or "anti-Semitism" on a total of 44 pages. That's the same number of pages that mention the *Baltimore Sun*, where Mencken worked for nearly a half-century. George Jean Nathan, with whom Mencken co-edited both *The Smart Set* and *The American Mercury*, is mentioned on but 47 pages.

From reading *The Skeptic*, one might almost think that Mencken was more concerned with Jews than with his closest literary partner or the newspaper for which he worked (and on whose board of directors he served). Indeed, one might think that Mencken had practically made a career of thinking about Jews.

The notion that Mencken was an anti-Semite gained notoriety in 1990, with the publication of his diary. That book included a couple of brief passages that could be interpreted as anti-Semitic. The editor declared Mencken an anti-Semite, and the publisher made rather a big deal of it, presumably in hopes of increasing the book's sales at the expense of the author's reputation.

Against the notion that Mencken was anti-Semitic stood the evidence of his entire life: most of his closest friends were Jews, he expressed sympathy for Jewish settlement in Palestine, he advocated that the United States accept German Jewish refugees from Hitler's pogrom. There was also the testimony of the people who knew him. To me, the case that Mencken was an anti-Semite remained very thin, but I do not think the issue was resolved.

Now comes Teachout and, in his case for Mencken's anti-Semitism I detect something missing: an argument. Although he repeatedly calls Mencken an anti-Semite, he never actually argues that he is. In lieu of an argument, he offers us the testimony of others to the same effect and quotes several passages from Mencken that contain pungent opinions about Jews,

many of them not favorable, and a lot about the history of the charge that Mencken was anti-Semitic. He tells us, "It is not his anti-Semitism for which he will be remembered — but that he was an anti-Semite cannot now reasonably be denied." He tells us that Joseph Epstein believes that "It is, alas, impossible any longer to let Mencken off the hook on the charge of anti-Semitism." And somehow, I am pretty

Mencken wrote with a style that is simultaneously outrageous and delightful. Since biographies of writers invariably include substantial quotations from their subjects, biographies of Mencken are almost certain to be read with pleasure.

certain, Teachout expects us to be convinced by this thin gruel of expert testimony and unconvincing evidence.

This is strange. Normally, when an author makes a controversial charge, he offers some crucial defense of it. If you want to argue that someone is an anti-Semite, you explain what you mean by "anti-Semite" then you show evidence that the person meets your definition. Teachout does none of this.

The closest he comes is the two specimens of argument from authority already mentioned — unless one considers the passages from Mencken that Teachout considers such powerful *prima facie* evidence of anti-Semitism that they needn't even be so characterized. I have gone through the book and examined every passage from Mencken that Teachout quotes and everything Teachout wrote that conceivably could be construed to support his charge. Here is a list of such sentiments as might be considered hostile to Jews. Teachout's writing, including his quotations from Mencken, are in italics. My comments are in Roman type.

• Long after they [Mencken and his long-time friend and colleague George Jean Nathan] parted company, he

[Mencken] would make his own pen portrait of his dapper ex-friend, this one etched with a rusty nail: "A slight fellow, of less than average height, he is intensely self-conscious about his physique, and is at great pains to avoid being seen with women who are not smaller than he is. If they are known by sight to all the Jews and whores who hang about the theatres and nightclubs, so much the better, for though he has denied, in recent years, that he is a Jew himself, a typically Jewish inferiority complex is in him, and it gives him great satisfaction to have some eminent (or even only notorious) fair one under his arm." (p. 88)

Mencken indicates that he believes there exists such a thing as a "typically Jewish inferiority complex." Is this anti-Semitic? I don't see that it's any more anti-Semitic to say this than it is anti-American to say that a person has "a typically American credulity," or anti-German to say that he has "a typically Teutonic tendency toward authoritarianism."

• "I had little if any prejudice against Jews myself," he wrote in *My Life as Author and Editor*, "and in fact spent a great deal of my leisure in their company, but they were rare in the publishing business and rather resented by the Goyim, and there was little indication that they would ever be successful. . . . [I]t also seemed to me, in the early days of our acquaintance, that [Knopf] showed a certain amount of the obnoxious tactlessness of his race." But as Mencken got to know Knopf better, he changed his mind about the young publisher. (137)

At the worst, this demonstrates that, in the early part of the 20th century, Mencken believed Jews to be obnoxiously tactless, but that this belief was insufficient to keep him from making close friends of them. Knopf became one of Mencken's close Jewish friends. Is this proof of anti-Semitism?

• Mencken wrote: "The Jews of Detroit, outraged by the anti-Semitic nonsense printed by Henry Ford in his *Dearborn Independent*, have had an ordinance passed barring that curious journal from the news-stands. . . . I am certainly not anti-Semitic and never read Ford's paper, but I carry away from the Detroit episode a suspicion that he must have mingled some truth with his libels, else the

yells would have been less raucous. No sane man objects to palpable lies about him; what he objects to is damaging facts. Perhaps if I read Ford I'd dismiss his case as without merit, and so, maybe, would every other fair man — but the Jews, with singular fatuity, now seem to be doing their best to make it impossible for me and other men to read and gag at him. (165)

In sum, Mencken believed that when people tried to suppress opinions through censorship, they might be trying to hide something. Is this evidence of anti-Semitism?

• Praising the Bible for its "lush and lovely poetry," he remarks that it is "astounding" that the Jews should have been responsible for "nearly all of it" since they could be "very plausibly" described as "the most unpleasant race ever heard of." Nor did he let it go at that. In a passage full of faint echoes of Nietzsche, he went on to explain: "As commonly encountered, they lack many of the qualities that mark the civilized man: courage, dignity, incorruptibility, ease, confidence. They have vanity without pride, voluptuousness without taste, and learning without wisdom. Their fortitude, such as it is, is wasted upon puerile objects and their charity is mainly only a form of display. Yet these same Jews, from time immemorial, have been the chief dreamers of the human race, and beyond all comparison its

favorable ("the chief dreamers of the human race, and beyond all comparison its greatest poets") and some unfavorable ("vanity without pride, voluptuousness without taste"). These are certainly odd and idiosyncratic generalizations, but are they evidence of anti-Semitism?

• [Mencken wrote that] "The disadvantage of the Jew is that, to simple men, he always seems a kind of foreigner. . . . Thus he is an easy mark for demagogues when the common people are uneasy, and it is useful to find a goat." (270)

This is plainly an opinion about non-Jews, and a very unflattering opinion. Is this evidence of anti-Semitism?

• [Mencken wrote that] "On the one hand, it [the Jewish settlement in Palestine] is being planted intelligently and shows every sign of developing in a healthy manner. But on the other hand there are the Arabs — and across the Jordan is a vast reservoir of them, all hungry, all full of enlightened self-interest. Let some catastrophe in world politics take the British cops away, and the Jews who now fatten on so many lovely farms will have to fight desperately for their property and their lives." (271)

Here, surely, Mencken expresses sympathy with Jews.

• In letters to his Jewish friends, he [Mencken] explained that "the uproar being made by the Jews in this country is doing them far more harm than good," inflaming anti-Semites in Germany and America alike. "A very definite anti-Semitic movement is gathering force behind the door, and whenever a convenient opportunity offers it will bust out," he told Benjamin De Casseres, one of the Mercury's Jewish contributors. "At that time you may trust me to mount the battlements and holler for the Chosen." (277)

Here he plainly expresses support for Jews against anti-Semites.

• [Regarding the anti-Semitic activities in Germany, in 1938:] "It is to be hoped," he wrote, "that the poor Jews now being robbed and mauled in Germany will not take too seriously the plans of various foreign politicians to rescue them. Those

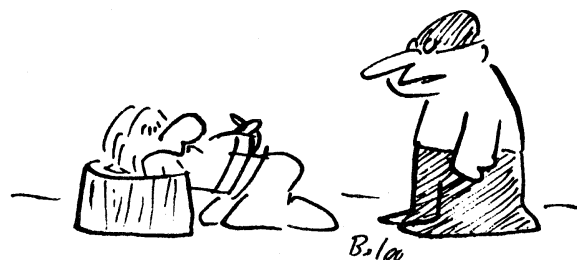
plans, in all cases, smell pungently of national politics, and in not a few cases they are obviously fraudulent." Dismissing as "next door to murder" the English plan to resettle German Jews in Tanganyika and British Guiana, he pointed out with gleeful precision that the White House was doing no better, since FDR had stated that he had "no intention of proposing a relaxation of the immigra-

If we mean by "anti-Semite" one who holds unfavorable opinions about Jews, then Mencken certainly was anti-Semitic.

tion laws" that prevented most Jews from emigrating to the United States. "Such gross and disgusting peck-sniffery," Mencken said, "is precisely what one might expect from the right hon. Gentleman, and I only hope the American Jews who have swallowed so much of his other buncombe will not be fetched by it." The only way to help Jewish refugees, he added, was "to find places for them in a country in which they can really live. Why shouldn't the United States take in a couple of hundred thousand of them, or even all of them?"

This little-known Sun column was exhumed in the eighties when the posthumous publication of Mencken's diaries led to renewed accusations that he was an anti-Semite. "Help for the Jews" was offered as proof to the contrary, though those who quoted from it almost always neglected to mention the last two paragraphs:

I am here speaking, of course, of German Jews, and of German Jews only. . . . The question of the Eastern Jews remains, and it should be faced candidly.



"There'll be a short delay while they find me a left-handed ax."

Teachout even manages not to be outraged or addled by Mencken's hostility to Franklin D. Roosevelt and America's involvement in World War II, subjects that routinely outrage and addle other writers.

greatest poets. . . . All this, of course, may prove either one of two things: that the Jews, in their heyday, were actually superior to all the great peoples who disdained them, or that poetry is only a minor art. My private inclination is to embrace the latter hypothesis, but I do not pause to argue the point." (247-8)

Here Mencken expresses a variety of generalizations about Jews, some

Many German Jews dislike them, and were trying to get them out of Germany before the present universal disasters came down. There is a faction of them that tends to be troublesome wherever they settle, and there is apparently ground for the general belief that in this country they incline toward the more infantile kinds of radicalism.

Fortunately, they are not numerous in German Jewry. The really large accumulations of them are in Poland and Rumania. It would be obviously impossible, even if it were prudent, for the United States to take them all in. But there is still plenty of room for them, and in a land where there is no prejudice against them, and their opportunities are immensely better than in Tanganyika or Guiana, or even Palestine. That land is Russia.

Having made so outrageously cynical a suggestion, Mencken affected to be dismayed when the *Sun* received "floods of letters of protest and abuse" from Jews who declined to go along with his solution to the problem of Eastern Jewry. He then decided that since nothing he wrote short of "the most preposterous flattery" would satisfy the Jews, he would write no more about them, "no matter how poignant their sufferings." (287-8)

It may be "cynical" to suggest that the U. S. admit only German Jews, and

Something is missing in Teachout's case for Mencken's anti-Semitism: an argument.

that Eastern European Jews might better find a home in Russia, but is it anti-Semitic? Only if one denies that German Jews are Jews. After all, to be "anti-Semitic" presumably means to be against *all* Jews because they are Jews. The fact that Mencken opposes admitting millions of Jews to the U. S. while supporting the expedited admission of hundreds of thousands of Jews tends to support the idea that he disliked Eastern European Jews, but it undermines any suggestion of anti-Semitism. Contrast Roosevelt's refusal to expedite the admission of any Jews.

• [Mencken wrote:] "The sharp, unyielding separateness of the Jews, based

on their assertive racial egoism, marks them off as strangers everywhere. . . . The chief whooping for what is called racial tolerance comes from the Jews, who are the most intolerant people on earth. In the United States, as in all countries that they inhabit, they interpret tolerance to mean only an active support of their own special interests. . . . I hate to have to ask a man what he is — Jew or Christian, German or Englishman, European or Asiatic. There are so few persons in the world who are really worth knowing that it is wasteful and absurd to sort them into categories. But the average Jew leaves one no alternative. He is Jewish before he is a man, and presses the fact home with relentless lack of tact. This habit, I suspect, is one of the chief causes of Jewish unpopularity, even among those who are not rationally to be called anti-Semitic."

Mencken may have felt that he was "not rationally to be called anti-Semitic," but few who are fully acquainted with all the available evidence are likely to agree with him, though by the looser standards of his own time and place he might well have been acquitted of the charge. He was, after all, no Nazi — but he was willing to leave the Nazis to their own malevolent devices rather than see the United States go to war with Germany. He loathed Adolf Hitler — but no more than he loathed FDR. He thought America should open its doors to Jewish refugees — but only if they were his kind of Jews. He sympathized with their distress — but thought they had brought it on themselves. Perhaps most telling is the language he used to criticize Jewish friends such as Philip Goodman, who decided that they could no longer keep silent about the plight of the Jews under Hitler: Their crime, he said, was to have "turned Jewish on me." (289-90)

What a curious melange this is. First, Teachout quotes Mencken expressing a severe hostility to racial prejudice, but adding that the fact that so many Jews insist on being thought of first as Jews rather than as individuals makes it harder for some people to remember this. Is this evidence of anti-Semitism?

Then Teachout assures us that "few who are fully acquainted with all the available evidence" think that Mencken was not anti-Semitic. This, of course, is simply an argument from

authority — a request that we accept on faith the conclusions of people who have seen "all the evidence," including evidence that is uncheckable, since it is available only to those permitted to see all Mencken's papers, including the portions of his diary and his two journalistic memoirs that his heirs, the Enoch Pratt Free Library, have chosen not to make public. It seems Teachout expects us to accept the existence and character of evidence that he does not permit us to see.

Finally, Teachout identifies as convincing evidence of Mencken's anti-Semitism "the language he used to criticize Jewish friends," whose "crime," Mencken said, was to have "turned Jewish on me." But Mencken wasn't accusing his friends of a "crime." The actual passage from Mencken's memoirs is this: "Goodman and I became friends almost immediately, and remained so until the shattering impact of Hitler made him turn Jewish on me."* The emphasis on Hitler, and the background of Mencken's long-standing isolationism, help to clarify his meaning. Mencken's reaction is similar to that of his contemporary Rose Wilder Lane, who broke with Isaac Don Levine, a close Jewish friend, when the impact of World War II caused him to forsake the isolationism they had shared. The relationship could not survive the understandable difference in views. This is not anti-Semitism. In the same way, Mencken is saying that, understandably, Hitler's deeds "made" his friend discover that his Jewish identity was more important to him than his relationship with Mencken.

• He [Mencken] broke his silence . . . , taking . . . advantage of the occasion to sum up what he saw as the consequences of World War II: . . . "the Jews have been cuchred out of . . . Palestine . . ." (308)

Here Mencken jumps to the wrong conclusion — Britain ultimately did support Jewish settlement of Palestine and even the expulsion of non-Jews from that territory. But is this evidence of anti-Semitism? Or of sympathy with

*Teachout's source note misidentifies the source of this quotation and fails to inform the reader that it is part of a much longer sentence about how his friendship with Goldman began in 1918.

Palestinian Jews? Pretty obviously the latter.

• In 1955, shortly before his death, and seven years after a third stroke had virtually destroyed his ability to speak, write, or read, his secretary discovered among his papers the manuscript for a book, consisting of a collection of miscellaneous notes of varying lengths, which was eventually published as *Minority Report*. Mencken somehow managed to decide which of

Mencken described his fellow Germans in Baltimore as "ignoramuses of the petty trading class." Surely this is a harsher characterization than what Teachout finds offensively anti-Semitic. Should we conclude that Mencken was an anti-German bigot?

the notes to publish. Teachout offers no explanation of how a man who could hardly speak and could not read at all was able to take on such a task. Among the notes that Mencken cut was one that read: "The Germans, taken together, practice hardness and have a considerable talent for it, but individually they are mainly sentimentalists. Something of the same sort is true of most other nations, including the Jews. It reveals itself in the fact that every one, as the saying goes, has a pet Jew. The explanation here is that the average educated Jew tends to be an endurable enough fellow, despite his obvious failings, whereas Jewry as an organized body is almost unqualifiedly unpleasant."

Mencken begins with an opinion about "most nations," including the Jews — an opinion that is hard to view as hostile or even very unflattering. Then he finds the average educated Jew "to be endurable." This sounds hostile, though when one considers how many people Mencken found to be endurable, it might better be considered a compliment. Then he expresses an unfavorable opinion about the "organized body" of Jewry, an evaluation he made of just about

every "organized body" he ever encountered. In the context of his normal literary conduct, is there anything here that is anti-Semitic?

Of Americans, Mencken wrote: "No other known man, indeed, is so violently the blowhard, save it be his English kinsman. In this fact lies the first cause of the ridiculous figure he commonly cuts in the eyes of other people: he brags and blusters so incessantly that, if he actually had the combined virtues of Socrates, the Cid, and the Twelve Apostles, he would still go beyond the facts, and so appear a mere Bombastes Furioso. . . . Braggadocio, in the 100% American — 'we won the war,' 'it is our duty to lead the world,' and so on — is probably no more than a protective mechanism erected to conceal an inescapable sense of inferiority." This is less flattering, I think, than what Teachout finds "anti-Semitic" in what he said of Jews. Should Mencken be denounced as an "anti-American"?

He described his fellow German-Americans in Baltimore as "ignoramuses of the petty trading class." Surely this is a harsher characterization than what Teachout finds offensively anti-Semitic. Should we conclude that Mencken was an anti-German bigot?

• Teachout quotes a "private conversation" that Charles Angoff claims he had with Mencken some 23 years earlier, in which Mencken expresses a sentiment that " . . . Hitler is a jackass. But he isn't altogether crazy in what he says about the Jews . . . " (337). Teachout also reports that Mencken's friends believed the recollection, and Angoff's entire book, to be, well, inauthentic. He quotes Alfred Knopf as saying, "The laws of libel forbid my saying what I think of [Angoff's book], but you can get the idea from Churchill's references to Mussolini in his wartime speeches." Teachout dismisses this, saying that he thinks that " . . . even after allowing for malice and exaggeration, much of Angoff's book is plausible enough . . . " Teachout's view to the contrary, Angoff's claimed verbatim memory of a 23-year-old conversation is hearsay evidence of the crudest sort; I can't see why we should give it more than passing consideration.

• Charles Fetcher, who edited Mencken's diary for publication, thought Mencken was an anti-Semite (339). Having read Fetcher's conclusion, though not the evidence in the case, a considerable number of writers who were unfamiliar with Mencken also decided he was an anti-Semite. A great many other people, including those who knew Mencken well, disagreed. Joseph Epstein, the distinguished essayist, was among those who dismissed the charge. Five years later, he changed his mind, though Teachout does not tell us why (339–40).



That's it: the entire case that Mencken was an anti-Semite. It remains, to put it mildly, far from obvious. What is obvious is that Mencken said some pungent and unflattering things about Jews, as he did about all races and cultures, including his own. Where, now, does the argument stand?

In the wake of World War II, and Adolf Hitler's attempt to kill all

Against the notion that Mencken was anti-Semitic stood the evidence of his entire life: most of his closest friends were Jews, he expressed sympathy for Jewish settlement in Palestine, he advocated that the United States accept German Jewish refugees from Hitler's pogrom.

European Jews, anti-Semitism has become an especially serious charge, a charge that should not, I think, be made lightly. I am tempted to speculate about why Teachout makes it without providing any real argument. If there is more definite evidence among Mencken's private papers and the unpublished portions of his diary and memoirs, why won't Teachout tell us what that evidence is? Why be content with such weak evidence as he has advanced?

I can concoct several hypotheses. Teachout wanted his book to be controversial in order to increase its sales, so he included this conclusion despite

the lack of any convincing evidence. Or Teachout's editors thought the evidence was not very interesting, and cut it from the book. Or Teachout, for some reason unknown to his readers, wanted to keep the evidence secret.

These are only a few of the possible explanations. They may be unlikely. But we have no way to know.

The question of whether Mencken was anti-Semitic depends, of course, on what one means by "anti-Semitic." If we mean by "anti-Semite" one who holds unfavorable opinions about Jews, then Mencken certainly was anti-Semitic. But by that definition, anyone who ever has an unfavorable opinion about any group of people can be regarded as anti- that group. Is everyone who thinks that Italians tend to be bad drivers or the English to be poor chefs to be tarred with the same brush? I doubt that a single person of any community or cultural group does not harbor at least a few unfavorable opinions of his peers. Should we describe Billy Graham as "anti-Christian" because he has observed that many Christians are hypocrites? Or George Steinbrenner as "anti-Yankee" because he once characterized the players on the team he owns as "lazy"?

Today, to be sure, when intelligent people use the term "anti-Semite" they do not mean to cast so wide a net. In the aftermath of Hitler, we think of someone as an anti-Semite if he harbors a genuine hatred of Jews merely because they are Jews, and if he wants to do them grave harm (usually because he harbors some preposterous conspiratorial fantasy about them). This accounts for the incendiary character of the term, which is invariably used as an epithet of a particularly vile nature.

Mencken bore no hatred for Jews merely because they were Jews, and he sought to do them no harm. He opposed efforts to discriminate against them. He advocated making an exception to U.S. law to admit hundreds of thousands of persecuted Jews to the United States. He had numerous long friendships with Jews. Teachout himself provides powerful testimony of Mencken's absence of anti-Semitism.

There are a couple of other annoy-

ing problems in *The Skeptic*. For some reason, the book's preface, prologue, and first two chapters lack chapter headings at the top of the page, while its final eight chapters, source notes, bibliography, epilogue, and index do not. The source notes are strangely elliptical, identifying material only by chapter, thus making it a chore to track down the source of any particular quotation. The sources of some quotations are never identified at all. Given these flaws, which appear to be evidence of sloppiness at some stage of the editorial process, it is almost surprising that the book's bibliography is good and its index comprehensive.

So, where does this book stand among Mencken's biographies? It depends on what you're looking for. If you want a feel for Mencken as a writer and thinker, the best biography remains William Manchester's *Disturber of the Peace* (1950), which is also the most fun to read of any Mencken biography. If you want an account of Mencken's life, Carl Bode's *Mencken* (1969) is your best bet. If you want an account of Mencken's life and career with a good accounting of their historic context, but unfortunately weighted down with frequent and unsupported assertions of Mencken's anti-Semitism, Teachout's book is a fine choice. □

Liberty for Women: Freedom and Feminism in the Twenty-first Century, by Wendy McElroy, ed. Ivan R. Dee, 2002. 353 pages.

Freedom, Not Protection

Bettina Bien Greaves

Wendy McElroy knows a lot about the struggle of women to remove legal obstacles to their freedom. She is a libertarian, an individualist feminist (ifeminist), and has written extensively on the history of women's struggle for rights, as well as on such provocative subjects as sex, rape, prostitution, birth control, abortion, and pornography. In *Freedom and Feminism*, she has assembled a number of carefully chosen papers by authors from widely varied backgrounds, ranging from law professors and economists to a former call girl and a midwife. Each contributor discusses how best to enhance and protect the freedom and rights of women.

Women were legally discriminated

against for centuries. For all practical purposes, however, they now enjoy equality under law — at least in the United States. They may own property, make contracts, vote, and engage in almost any peaceful pursuit they wish. Yet radical feminists of the so-called "women's movement" and the National Organization for Women (NOW) are not satisfied. They view men and women as enemies, members of "separate and politically antagonistic classes" (p. 14). When radical feminists notice unequal social and economic outcomes, they refuse even to consider whether they could be the product of natural differences between the sexes in interests, goals, and approaches to life and work. Rather, they blame inequality of opportunity and push for government coercion and privileges to even the score for

women in the workplace, in academia, and in society. McElroy and her fellow ifeminists see things differently. "Ifeminism . . . champions free-market solutions rather than governmental ones. . . . [I]t also defends every choice between consenting adults . . ." (19). Women are self-responsible individuals, neither entitled to nor in need of special protection or privileges of any kind, but simply equality under law. "[A]ll human beings have a right to the protection of their persons and property" (5). And this right to protection against aggression imposes an obligation to respect the equal right of others.

Anti-discrimination regulation gained momentum in the United States with the 1963 Equal Pay Act and the 1964 Civil Rights Act. As Richard Epstein points out, the prohibition against sexual discrimination was added to the Civil Rights Act, almost as a joke, by "Southern senators determined to show the absurdity of prohibiting private discrimination on the

policy 'explicitly discriminates against women on the basis of their sex' . . ." (140). The Court, as Ellen Frankel Paul observed, "rather cavalierly, placed employers in a Catch-22 situation where they were damned by the anti-discrimination law if they restrict fertile women from jobs that expose them to hazardous chemicals or possibly damned by the tort law if they do permit women to work around dangerous substances and their fetuses are harmed." (142-143).

The contributors to *Liberty for Women* show how various anti-discrimination laws intended to benefit women have had the opposite effect. According to Paul, determining women's salaries on the basis of comparable worth, as some have recommended, would increase the cost of hiring women, make them less competitive on the market, and reduce their desirability as workers. Economist Jennifer Roback points out that if women's wages were artificially inflated, employers would tend to substitute capital for labor. Comparable worth "exaggerates all the problems the women's movement has been trying to change" (210). When it comes to affirmative action, "using a quota system rather than merit to allocate jobs . . . drives a wedge between individual worth and economic success" (184). Paul says that laws to cope with charges of sexual harassment and discrimination on the job lead to prejudice against hiring women out of fear of frivolous and costly lawsuits. She favors the tort approach, under which the employer would only be liable if the victim suffered "economic detriment and/or extreme emotional distress" and the employer knew about the abuse but failed to stop it. (201-202)

The most thought-provoking chapters in this collection are those dealing with prostitution, midwifery, and new reproductive technologies. McElroy recognizes that new reproductive technologies raise "vexing ethical questions" and "serious questions about individual rights and contract law" (268). In her view, the objections of the radical feminists to the "new reproductive technologies" stem from their generally anti-science and anti-

patriarchal positions (271). But the principle of women's contractual rights is still pertinent. "The new reproductive technologies, like effective contraception and access to legal abortion, seem to provide women with the 'choice' central to virtually all brands of feminism" (268). The radical feminist's position "is not simply a rejection of bad choices. It amounts to

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satisfied. They view men and
women as enemies, members of
"separate and politically ant-
agonistic classes."*

basis of race" (34). But its consequences have been no joke.

I was shocked to learn that the U.S. Supreme Court cited the 1978 Pregnancy Discrimination Act, in conjunction with the Civil Rights Act, to override the constitutionally guaranteed right of contract. Johnson Controls, a manufacturer of batteries, had sought to protect, by contractual agreement, the potential offspring of its women employees from exposure to dangerous chemicals by restricting the jobs available to fertile women. The Court overrode the right of contract by finding "obvious bias in Johnson Controls' policy; men, but not women, were given a choice about whether they wished to risk their reproductive health for a job exposing them to high levels of lead, thus the

a denial of women's ability to choose anything at all" (274). "The most dramatic expression of radical feminists' contempt for individual choice is their passionate rejection of surrogate motherhood" (275). "The feminist rejection of surrogacy, then, is just another assault both on women's right to make 'wrong' choices and on the free market, which is the arena of her choices" (277). "The true issue surrounding the new reproductive technologies remains 'a woman's body, a woman's right'" (278).

Prostitution is dealt with from two radically different viewpoints — that of a law professor and that of a prostitutes' rights activist and former call girl. According to University of Chicago professor of law and economics Martha C. Nussbaum, "what seems right [with respect to prostitution] is to use law to protect the bodily safety of prostitutes from assault, to protect their rights to their incomes against



"Well, you *can't* grow up to be Prime Minister."

the extortionate behavior of pimps, to protect poor women in developing countries from forced trafficking and fraudulent offers, and to guarantee their full civil rights in the countries where they end up — to make them, in general, equals under the law, both civil and criminal.” (109) “[W]here the woman’s entry into prostitution is caused by some type of conduct that would otherwise be criminal: kidnapp-

ing, assault, drugging, rape, statutory rape, blackmail, or fraud . . . the law should take a hand in punishing her coercer” (110). However, we should realize that “there is nothing per se wrong with taking money for the use of one’s body. That is the way most of us live and the formal recognition of that fact through contract is usually a good thing for people, protecting their security and their employment condi-

tions” (112).

Prostitutes’ rights activist and former call girl Norma Jean Almodovar maintains that no voluntary activity among consenting adults should be criminal. “So long as the sex is consensual it should not matter to anyone outside the relationship how many times the sexual activity occurs, or with how many sexual partners, or for whatever mutually agreed upon price. If mutual agreement is not present in any relationship, there already exists an abundance of applicable laws specifically relating to coercion” (76).

Prostitution is a business, a service industry. It should be run as a business, subject only to the same kinds of business laws and regulations as other businesses.

Decriminalization would allow this to happen. It would repeal all existing criminal codes from noncoercive adult commercial sex activity, and related areas, such as management and personal relationships. It would involve no new legislation to deal with prostitution per se, because there are already plenty of laws which cover problems such as fraud, force, theft, negligence, and collusion. Those laws could be enforced against anyone who violated them, just as they are now, when force or fraud is used in any other profession. (86–7)

Community midwife Faith Gibson presents a fascinating history of midwifery from 1899 to 1999, documenting the contributions of midwives to the safety of childbearing women and their babies, and the medical profession’s attempt to develop obstetrics as a medical specialty by eliminating, or at least suppressing, the practice of midwifery. Midwifery has been defined as the “illegal practice of medicine” (307), subjected to special regulations and educational requirements, and at times declared illegal (310). Gibson maintains that it is the “childbearing woman’s right to choose among all the ‘safe’ options” (321) in childbirth, including midwifery.

It isn’t possible to cover all the issues of special interest to women discussed in this volume by McElroy and her ifeminist associates. Suffice it to say that they approach them from a point of view that differs from that of NOW’s radical feminists. They stress,

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Websites

The slaughter and slavery of the weak and helpless is incompatible with liberty. Support compassion over cruelty — check out www.liberty4all.org.

in Joan Kennedy Taylor's words, "[woman's] economic self-sufficiency, psychological independence, and 'realistic attitudes toward female competence, achievement, and potential'" (279). They recommend solutions based on markets, not on government coercion. Cathy Young sees increasing "support for the view that an individual's non-coercive sexual behavior is no one else's business" (202). Camille Paglia, self-styled "equity feminist," considers anti-pornography legislation "inherently infantilizing" (28). Because an inordinate number of women become victims of crime and violence, ifeminists argue that they should have the right to armed self-defense; their freedom to own guns should not be restricted (231-57).

Liberty for Women is an important book. It points out that "all human beings have the same interest in life, liberty, and the pursuit of happiness. All human beings share the same natural rights just as they share a basic biology" (18). Yet there are some issues that hold special interest to women. With respect to them, the con-

Liberty for Women is an important book. It points out that "all human beings have the same interest in life, liberty, and the pursuit of happiness."

tributors to *Liberty for Women* agree with University of Chicago law professor Richard Epstein that to protect women's rights and freedom of opportunity, one need only remove legal restrictions and allow everyone, men and women alike, the freedom to enter into contracts, "the capacity to move about freely . . . also the capacity to better oneself through voluntary transactions." The simple removal of legal restrictions will open up opportunities to women everywhere and "enhance the vitality of the social system as a whole." As editor McElroy says, she considers "voluntary cooperation as the proper basis of society" and "defends every choice between consenting adults" (19). □

Total Freedom: Toward a Dialectical Libertarianism, by Chris Matthew Sciabarra. The Pennsylvania State University Press, 2000, 467 pages.

The Dialectics of Liberty

Ari Armstrong

Polls conducted by *Liberty* magazine suggest that libertarians are increasingly moving away from a "moralistic" conception of libertarianism, and toward a consequentialist one. Along with Jeffrey Friedman of *Critical Review*, Chris Matthew Sciabarra may best represent this shift. The tendency is fully evident in *Total Freedom*, the third in Sciabarra's series on dialectical libertarianism.

What is "consequentialism"? Many conflate the term with social "utilitarianism." Others assume that it implies pragmatism. But consequentialism is simply the theory that actions are good (or bad) in terms of the results they yield. Actions are not good in and of themselves. Libertarianism is a good political philosophy because it results in the kind of society that is most beneficial to human life. This need not imply a "greatest good for the greatest number" calculation; consequentialism can just as well hold the individual human life as its moral standard. Thus, Ayn Rand's consequentialism takes an egoist turn, and her Objectivist theory of rights depends on the theory that respecting others' rights is the best way to further one's own life.

Consequentialists need not be pragmatists. A pragmatist tries to weigh each decision based on the costs and benefits of the moment. Libertarianism implies that correctly formulated principles are essential to true practicality. The end of a prosperous, harmonious society does not justify tyrannical or rights-violating means, precisely because such means are incapable of

attaining that end.

To be consequentialists, libertarians must, first, make sure their means actually attain their ends and, second, identify how important the ends are. It's not acceptable to pull some limited end out of a broader moral context and evaluate the means only in reference to that limited end. For example, the relatively limited end of "advancing the cause" does not justify fraud, even if the cause is right, because fraud harms more fundamental values such as property rights and honesty in human relationships, all of them necessary to the ultimate value of human well-being.

In *Total Freedom*, Sciabarra criticizes all reductionist approaches and favors a richer, more inclusive libertarianism. As in his previous work (*Ayn Rand: The Russian Radical*), Sciabarra loads his title with meaning. To quote from his introduction, his book:

stresses the necessity of context, the "totality" of systemic and dynamic connections among social problems (hence, "total") that beckon toward fundamentally libertarian solutions (hence, "freedom"). (1)

The "dialectical" libertarianism that he has in mind is not Marxist or Hegelian but a much more commonsensical stressing of the relationships that need to be traced among all considerations bearing on freedom. He is not aiming "to validate libertarianism in any of its manifestations" (14, emphasis in original) but to focus on methodology. He notes at the outset that his "dialectical approach is . . . opposed to the abstract notion of 'total freedom' advocated by libertarians who have isolated their ideal from the context on

which it depends" (2).

Sciabarra immediately establishes the possibility that a contextualized, dialectical conception of freedom may produce quite different results from what certain influential libertarians, such as Murray Rothbard, had in mind. If libertarianism is understood roughly to mean "less state power," then Rothbard's conception of radical libertarianism as the complete absence of the state (to be replaced by market institutions) finds its challenge in Sciabarra's work. Indeed, Sciabarra argues that Rothbard's project ultimately fails, paradoxically, because it is not radical enough, when "radicalism" is properly understood in a dialectical light. (Of course, Rothbard's failure to substantiate "anarcho-capitalist" theory does not imply that the theory is false, as Sciabarra [14] recognizes.)

So how does dialectical libertarianism work as a methodology? Some reviewers (such as those from the Ayn Rand Institute) have blasted Sciabarra for daring to draw parallels between libertarian heroes such as Rand and the hated Hegel. Maybe that's why Sciabarra begins his history with the chapter, "Aristotle: The Fountainhead," to emphasize the breadth of the dialectical tradition.

As Sciabarra reminds us, Aristotle's strategy is to "start with a review of the theories of other thinkers" (33, quoted). "Aristotle learns from those who came before him in order to transcend their limitations, preserving what is true, discarding what is false" (33). Aristotle attributes a historical dimension to dialectics, noting that "previous labours that have been handed down from others have been advanced bit by bit" (27, quoted). In Aristotle, we find that the "most essential characterization of a dialectical orientation . . . is the emphasis on context in our analysis of any philosophic or social problem" (29). To grasp the context, we must regularly alter our points of view, consider the various ways in which terms may be used (30), and grapple with the issues raised by other theorists.

Sciabarra defines dialectics formally as "an orientation toward contextual analysis of the systemic and dynamic relations of components

within a totality" (173, original in italics). The concept is perhaps most easily understood when distinguished from other common orientations: dualism, monism, atomism, and strict organicism.

A good example of dualism is the Cartesian mind-body dichotomy. A dialectician seeks to understand the relationships and interconnections between mind and body. A monist, on the other hand, would affirm either mind or body at the expense of the other substance. A strict organicist sees all of reality as a single whole in which none of the parts assumes individuality. An atomist sees reality as a random sea of disconnected parts; an atomistic individualist, for example, might

The fact that many people willingly vote for increased state power calls into question Rothbard's conception of the state as strictly coercive.

ignore the importance of human relationships.

The dialectician, however, sees reality as split neither along two metaphysical planes (such as the physical and the spiritual, or the phenomenal and the noumenal), nor into a multiplicity of parts. Dialectics recognizes individuality as well as connections among individuals. People are part of history and cannot view history from a truly external vantage point; similarly, people are part of reality and cannot view reality externally. For the dialectician, people can actively alter history, yet they cannot go outside history to do so. Dialectical radicalism necessarily excludes utopianism.

Sciabarra addresses a criticism by Will Wilkinson, an Objectivist, who suggests that dialectics by Sciabarra's conception may be only a "vacuous but confusing synonym for 'what good thinkers do' or at best, an injunction to keep an eye out for unexpected relations among phenomena" (185, quoted).

In response, Sciabarra argues that although dialectical thinking should be universal, it is not thereby trivial. To provide an analogy: the rules of arith-

metic are universal to the treatment of any mathematics problem, but that's not triviality. Another analogy may be drawn to the scientific method: all scientific inquiries ought to follow proper method, yet both the history of science and modern research are riddled with examples of poor method. The scientific method is indeed "what good scientists do," but sainthood lies in the details.

Sciabarra backs up his claim for the nontriviality of the dialectical method by showing that people — even people closely associated with the dialectical tradition — often stray into error by neglecting dialectics at critical points.

Plato is sometimes considered the father of the dialectical method, but Sciabarra finds it possible to criticize his work as "the stillbirth of a [dialectical] tradition" (21) because he maintains a "dualism of mind and body, and the strict organicism of synoptic divinity" (25). Kant is also a target for reproach: "[f]or all his dialectical insights, Kant suffers from philosophic schizophrenia: despite his grasp of organic unity, he seems to accept a dualistic metaphysic" (57). Hegel, while admittedly difficult to interpret, seems to reify dialectic, a tendency that leads him to posit a kind of ahistorical strict organicism (61–62, 77–8).

Marx, of course, goes badly astray. His exploitation of Hegel's historical dialectic makes him "perilously close to adopting a synoptic standpoint on the sweep of history" (91). While others have criticized Marxists and other socialists for their use of dialectic, Sciabarra criticizes them on the ground that they fail to be consistently dialectical. Marxism is "profoundly undialectical" in that it "presumes a total grasp of history." Marxism entails "godlike planning" that inspires a warning: "Those who attempt to build a road from earth to heaven are more likely to wind up in hell" (5). For Sciabarra, the brutality of 20th-century regimes purported to be socialistic is no accident or coincidence but a product of their undialectical intellectual program.

Sciabarra turns to the dialectical traditions that became the foundation of libertarianism in his section, "Beyond the Atom: The Organic Legacy of Classical Liberalism" (111). Liberalism "has, at its best, shown a profoundly

dialectical regard for the organic, dynamic, and spontaneous structures in human social relations" (111–2). Classical liberals such as Herbert Spencer and Carl Menger defied stereotypes of atomistic thinking. Menger, widely considered the founder of the "Austrian School" of economics, which through Ludwig von Mises informed Rothbard and other important

Sciabarra achieved what he set out to do: reclaim the dialectical tradition from the Marxists, who abused it, and make the case to libertarians that they should adopt a more dialectical point of view.

American libertarians, "recognizes interconnections between economic, social, and political dimensions" and seeks a multi-sided analysis (119). Finally, Sciabarra summarizes the work of Mises, Hayek, and Rand, treating material covered in much greater depth in his previous books. His analysis raises a number of interesting issues.

Sciabarra's analysis points the way to significant corrections to Rothbard's work. For Sciabarra, Rothbard makes too sharp a distinction between market and state. Almost all property was at some point in history acquired unjustly (by libertarian standards). The "true" owners of property are not ever likely to be sorted out, a fact at odds with Rothbard's claim of market voluntarism (212). Along the same lines, if the social system could be converted completely to capitalism, the market would remain heavily influenced by prior state spending and regulations (261). As Sciabarra asks, "Will not the market continue to reproduce the injustices of state-influenced property distributions?" (262) Rothbard tends to view the market as preceding the state, with the latter existing secondarily and parasitically, but another plausible theory claims the state often sets the context for market forces (236, fn. 2). In addition, the fact that many people willingly vote for increased state power calls into question Rothbard's concep-

tion of the state as strictly coercive (221).

While Rothbard was adept at pointing out the spontaneous nature of the market, he initially ignored the fact that the modern state is in large part a spontaneous outgrowth of cultural morality. "[E]ven slavery and the state might be viewed as products of social evolution," Sciabarra notes (349). Rothbard believed, in his earlier years, that a libertarian political system can accommodate nearly any variety of personal ethics. Later on, it is true, Rothbard gained a "deeper appreciation of the cultural preconditions of freedom" (356), though his new "paleoconservative" allies were perhaps unlikely to fulfill his libertarian agenda.

As Sciabarra (215) puts it, "Rothbard argues for a radical separation between personal morality and political ethics." Unfortunately, this leaves open the question of how a libertarian society might be achieved in the first place; it ignores the "here to there" problem. Personal ethics within a culture profoundly influence the

selection of a political system. Rothbard is ultimately "utopian" because he advocates a "deliberately designed code of moral political action abstracted from the historical and cultural context within which it gains specificity" (204).

It is important to step back slightly from such issues, however, and notice that simply because Rothbard holds a dualistic view of market and state, does not mean that a legitimate distinction cannot be drawn between the two. It also remains possible that one could be deemed "good" and the other "evil." To draw a simple analogy, one need not hold a dualistic view of "body" and "cancer" in order to want the cancer cut out or otherwise killed off. A student of Rothbard might overcome his or her teacher's deeply dualistic tendencies and still regard the state as fundamentally parasitic. Sciabarra himself notes that market and state can be viewed as a legitimate distinction, instead of a duality, when he notes that other "thinkers emphasize the distinction of state and market [but] do not necessarily endorse a dual-

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ism between these spheres" (238, emphasis in original). Sciabarra "does not expect to resolve [the] debate" surrounding "anarchist-minarchist tensions" introduced by such thinkers as Rothbard, though he optimistically hopes "that its resolution can emerge from the dialectical framework" that he proposes (208, fn. 38). The "jury is still out" on the issue (341).

In any event, Sciabarra achieved what he set out to do: reclaim the dialectical tradition from the Marxists, who abused it, and make the case to

libertarians that they should adopt a more dialectical point of view. Because he understands the impact of ideas on history, Sciabarra wants to make sure that libertarianism blossoms into a fully dialectical enterprise. Absent a sound dialectical foundation, a libertarian program would be at best ineffectual and at worst harmful. For Sciabarra, who shows an overriding concern for human well-being, a dialectical libertarianism is our best hope for achieving a better, increasingly humane world. □

Authenticity and the Art of the Documentary

Richard Kostelanetz

Lewis Jacobs' unique anthology of criticism and reportage, *The Documentary Tradition* (1971), has a defining phrase attributed to the British filmmaker John Grierson, "the creative treatment of actuality," that makes me wonder about that curious adjective "creative," granting as it does a license not only for slickness and propaganda in film but even for lying and self-delusion. I once saw a string of "documentaries" purportedly about Germany immediately after World War II. What is really documented in these late 1940s films, which are filled with optimism about rebuilding the defeated nation with the aid of the Marshall Plan and thus neglectful of such post-WWII hardships as food rationing, is the Allied mentality at the time. Similarly, what is essentially documented in the more familiar example of Leni Reifenstahl's *Triumph of the Will* (1936) is not Germany in 1935 but the generation of a collective fantasy.

A documentarian, as distinct from a propagandist, makes his or her production decisions for reasons of authenticity. In a 21-minute film made

about pre-WWII Berlin as represented in the surviving great Jewish cemetery there, Martin Koerber and I stuck to our theme — the cemetery as an evocation of a lost world — thereby eschewing a lot of "creative" moves, some of them quite fashionable in documentary filmmaking. If the cemetery in its current state is our subject and visual archaeology our theme, we decided it would be inauthentic for us to show anything else, even pictures of the place at times past. All the images ever seen on screen come from the cemetery.

For the soundtrack, we recorded the voices of Berliners talking about the cemetery and the world represented there. To show these people now, we felt, would be inauthentic, not only because it would be false to allow them to upstage the cemetery but also because, as these Berliners are talking about themselves at times past, it would be yet more false to show them as they look now.

The talking head is one convention unacceptable to me, whether in documentary films or in televised news. The talking head is not an interesting image in film, but that is not my only, or even my best, reason for avoiding it.

A talking head gives the impression that those on screen were chosen instead of others whose testimony was not as neat or as illustrative of the reporter's or the director's theme. The talking head is so inauthentic, or used so inauthentically, that, remote control in hand, I invariably turn off the television news as soon as one appears.

When an airliner crashed a year ago into the New York City Rockaways, the local television stations presented talking heads, some on the scene itself, others elsewhere, simply because they lacked footage of the fire at its apex. Images of firemen moving their hoses were repeated for a lack of anything better. One difference between Belle Harbor and, say, the World Trade Center is that the latter is a good distance from the normal orbits of local news camerapeople.

I have seen more than one Kristallnacht documentary that by focusing upon talking heads misses the opportunity unique to film to create a kinetic image (in our case, the cemetery as a world) and thus an afterimage. To me, if a purported documentary fails to instill in viewers' heads an afterimage of its subject, it is finally not a film but, simply, an illustrated magazine article.

One further trouble with the convention of the talking head, so popular in film since the advent of television, is that whatever details someone's visage may have become more blatant than subtle, more distracting than revelatory. If the speaker has a malformed face, for instance, that aberration falsely affects the viewer's perception of his or her testimony. A handsome or acceptable face, especially if respectably attired, lends a false authority. As the convention of the talking head comes from television, most "films" employing it are actually aimed for distribution by television. In our time, simply to make a film that looks better on the large screen is to reflect authenticity, or a lack of opportunism, in the use of the medium itself. (It follows that refusing to transfer a film to videotape, or refusing to allow it to be broadcast on television, becomes a sign of filmmaking integrity.) Disappointed in the reportage of the Rockaways crash, I'm eager to see the film (if one is made). □

Gun Laws, from page 32

own and practice with guns.

The *Salina* court quoted a sentence from Joel Bishop's famous legal treatise *Statutory Crimes* that "the keeping and bearing of arms has reference only to war, and possibly also to insurrections." The quote was accurate, but the Kansas court avoided the language surrounding the quote and other writings by Bishop, which made it clear that Bishop thought the right to arms was "declaratory of personal rights," and therefore belonged to individuals, not the state.

Lastly, the Kansas court quoted *Commonwealth v. Murphy*, an 1896 decision which had upheld, against a state constitutional claim, a Massachusetts law (similar to the Illinois law upheld by the U.S. Supreme Court in *Presser*) which banned mass parades with weapons. The Massachusetts court had written: "The right to keep and bear arms for the common defense does not include the right to associate together as a military organization, or to drill and parade with arms in cities or towns, unless authorized so to do by law" (44 N.E. 138 [Mass. 1896]). But the Massachusetts holding that the right to arms does not authorize individuals to behave in a certain manner is not the same as the Kansas holding that there is no individual right at all.

The *Salina* court did not discuss the pre-Civil War history of Kansas, where the disarmament of individual citizens by the proslavery government was denounced nationally as a violation of the Second Amendment by the 1856 national Republican Convention and by Massachusetts radical Republican Charles Sumner, in a fiery speech on the floor of the Senate.

The main basis of the *Salina* holding is the Kansas court's textual analysis of the implications of the Kansas arms right provision and of the Second Amendment. The Second

Amendment was not at issue in the case and was simply analyzed as a guide to textual analysis of the Kansas provision. The court made no attempt to explain why the framers of the Kansas constitution, in the middle of an Article titled "Bill of Rights," suddenly inserted a provision that had nothing to do with rights, but which instead tautologically affirmed a power of the state government: in essence, that the *militia is under the complete power of the state government*.

Decades later, the Kansas Supreme Court moved away from *Salina* by declaring a local gun control ordinance unconstitutional (*Junction City v. Mevis*, 601 P.2d 1145 [Kan. 1979]). By then, however, *Salina's* no-right theory had spread far beyond the boundaries of Kansas. The next case to adopt a no-right theory was *United States v. Adams* (11 F. Supp. 216 [S.D. Fla. 1935]), in which a federal district court stated that the Second Amendment "refers to the militia, a protective force of government; to the collective body and not individual rights." The *Salina* no-rights position was widely adopted by federal district and appellate courts in the last three decades of the 20th century, although the *Salina* case itself was not always acknowledged.

While Attorney General Ashcroft has come under fire for acknowledging that the Second Amendment rights belong to the people, he is simply returning to a position held by United States attorneys general before the administration of Lyndon Johnson. The contrary position, promoted by Johnson's attorneys general, and written into Department of Justice policy by the Nixon administration, is founded on a 1905 Kansas case which is itself utterly lacking in logic or precedent. As courts grapple with Second Amendment issues in the 21st century, we may hope that they reject the fraud that began with *Salina*, and are guided by the spirit of freedom articulated so eloquently in *Nunn v. State*. □

Cobden, from page 40

League finally reached victory in 1846. So the League organized a subscription in his favor which reached the unbelievable sum of 75,000 pounds! (\$6.3 million). The sum was handed to him with great cheers during the last meeting of the league.

This money allowed him to start another campaign of his own. For 14 months, he toured Europe with his wife in order to promote freedom of exchange and peace. In 1849, he submitted to Parliament a law instituting compulsory international arbitration before any conflict, and, in 1851 a general reduction of armaments. Towards the end of the 1850s, he was asked by the government to negotiate a freedom of exchange treaty with France. His opposite number was Michel Chevalier, a ministry of Napoleon III, and a friend and admirer of Bastiat. The treaty was signed by Cobden and Chevalier in 1860.

Cobden died in 1865.

The Lessons of the League

The League's approach included the following tactics:

- It focused on a single goal;

- It propounded the right argumentation
- It conducted a moral, quasi-religious crusade
- It was single-minded in the face of opposition
- It gained the support by the middle class
- It obtained parliamentary representation
- It took advantage of the intelligence and skill of the prime minister

This order is not irrelevant, since it can be expected that if the six first conditions are met, there will always be — sooner or later — enough politicians to espouse the cause. Of crucial importance is the first element: we libertarians are very wonderful people fascinated by a number of questions. But we shall never achieve anything if we do not focus our actions on a single cause. Remember the Rev. Martin Luther King and the abolition of segregation in the busses. From that standpoint, Bill Bradford's idea to concentrate the last Libertarian presidential campaign on the single issue of repelling the drug laws was certainly not a bad one.

Remember the advice of Margaret Mead: "Never doubt that a small group of thoughtful, committed persons can change the world. Indeed, it's the only thing that ever has." □

Maidenhead, England

The Christmas season is not so jolly in Jolly Old England. Reported in the *Daily Telegraph*:

Vicar Lee Rayfield reduced young children to tears and stunned their parents when he said Santa Claus and his reindeer would burn to a crisp while delivering presents at supersonic speed.

U.S.A.

An exciting gift idea for the bibliophile on your list, discovered by the *Seattle Times*:

For a \$35 donation to the William J. Clinton Foundation, supporters will receive a 2002 Clinton Library commemorative ornament.

France

An advance in equality before the law, reported in *The Economist*:

The Winegrowers Association has sued the government over its campaign against drunk driving. The growers claim that it is illegal under French law for safety campaigns to discriminate between products — including those that make you drunk and those that don't.

Berkeley, Calif.

High moral standards of public officials in America's Progressive paradise. From the *San Francisco Chronicle*:

Berkeley mayor Tom Bates is facing prosecution for stealing newspapers that endorsed his opponent the day before the election.

Mountain Home, Ark.

Alarming development in the Land of Opportunity. From *USA Today*:

Arkansas' divorce rate has reached such heights that Gov. Mike Huckabee has declared a "state of marital emergency."

Houston, Tex.

The dangers of drunk walking, reported on *ABC13 Eyewitness News*:

A rush-hour accident brought traffic to a halt on the Southwest Freeway. Around 4:30 Tuesday afternoon, a man was struck by a black Chevy truck. The driver stopped to render aid to the victim. Police say the man who was hit was running across the freeway chasing after a partially empty can of beer.

Fort Worth, Tex.

Perils of the technological age, reported in the *Associated Press*:

Businessman and former pastor James Andrew Smith was charged with possessing child pornography after a photo of a nude boy appeared during a computer slide presentation he gave at work. Smith blamed the image on a computer virus.

Liverpool, England

Advance in law enforcement, from a dispatch in the *Liverpool Echo*:

A life-size cutout of police officer Teresa O'Brien stands in at the police contact point in the Tesco's store in Cables Retail Park in Prescott, Merseyside.

Tesco usually sees at least one shoplifter a day, but in the seven days the cutout has "patrolled" the store, no shoplifting offenses have been reported.

Chattanooga, Tenn.

The state of free debate at the University of Tennessee, as explained by the *University Echo*:

Though the University of Tennessee-Chattanooga does not have a required section for free speech, the assembly policy on campus requires that recognized organizations fill out a reservation form, and Student Development will grant final approval.

Demonstrations are allowed inside of assigned meeting rooms, stadium facilities or nearby residential or academic buildings on campus.

Valparaiso, Chile

The fatal weakness of an innovative marketing technique is exposed by *La Cuarta*:

A 35-year-old ice cream man is in jail awaiting charges after he sold chocolate ice cream laced with cocaine paste to an off-duty policeman.

Ann Arbor, Mich.

A victory for civil liberties, reported in the *Oakland Press*:

A U.S. District Court judge has ruled that the Waterford School District violated a student's free speech and due process rights when it suspended him for posting "intimidation and threats" on the website "Satan's Web Page."

"One would think most intelligent adults would realize this was satire, given that the website was allegedly written by Satan," Richard Landau, the student's attorney, told the court.

Sacramento, Calif.

Eco-scam, reported in the *L.A. Times*:

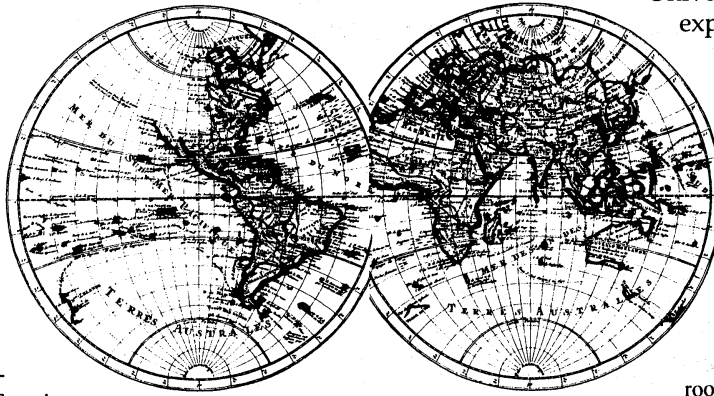
After a yearlong investigation, law enforcement officers have arrested 14 people accused of defrauding the state's recycling program of millions of dollars by hauling bottles and cans from Mexico and neighboring states and redeeming them in Los Angeles.

New York

Advance in the science of public health, reported by the *New York Post*:

The New York City Health Department is warning doctors they could face malpractice suits if they don't push patients to kick the smoking habit.

Terra Incognita



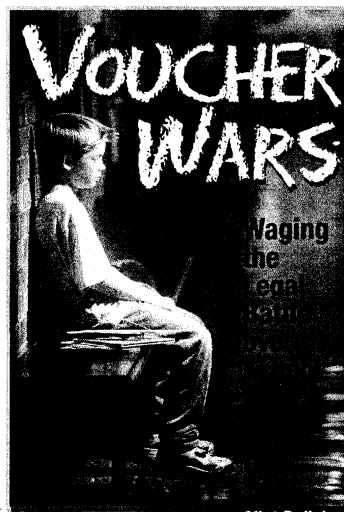
Special thanks to Russell Garrard, James Ogg, and William J. Clinton for contributions to *Terra Incognita*.

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



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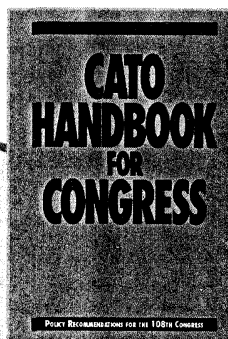
Voucher Wars: Waging the Legal Battle over School Choice

Clint Bolick

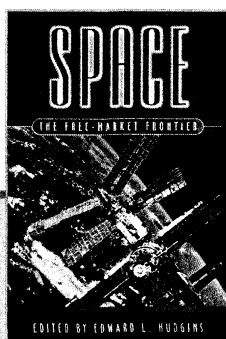
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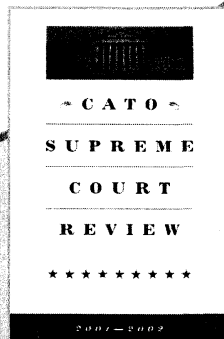
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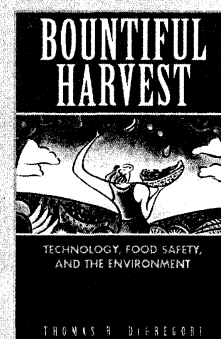
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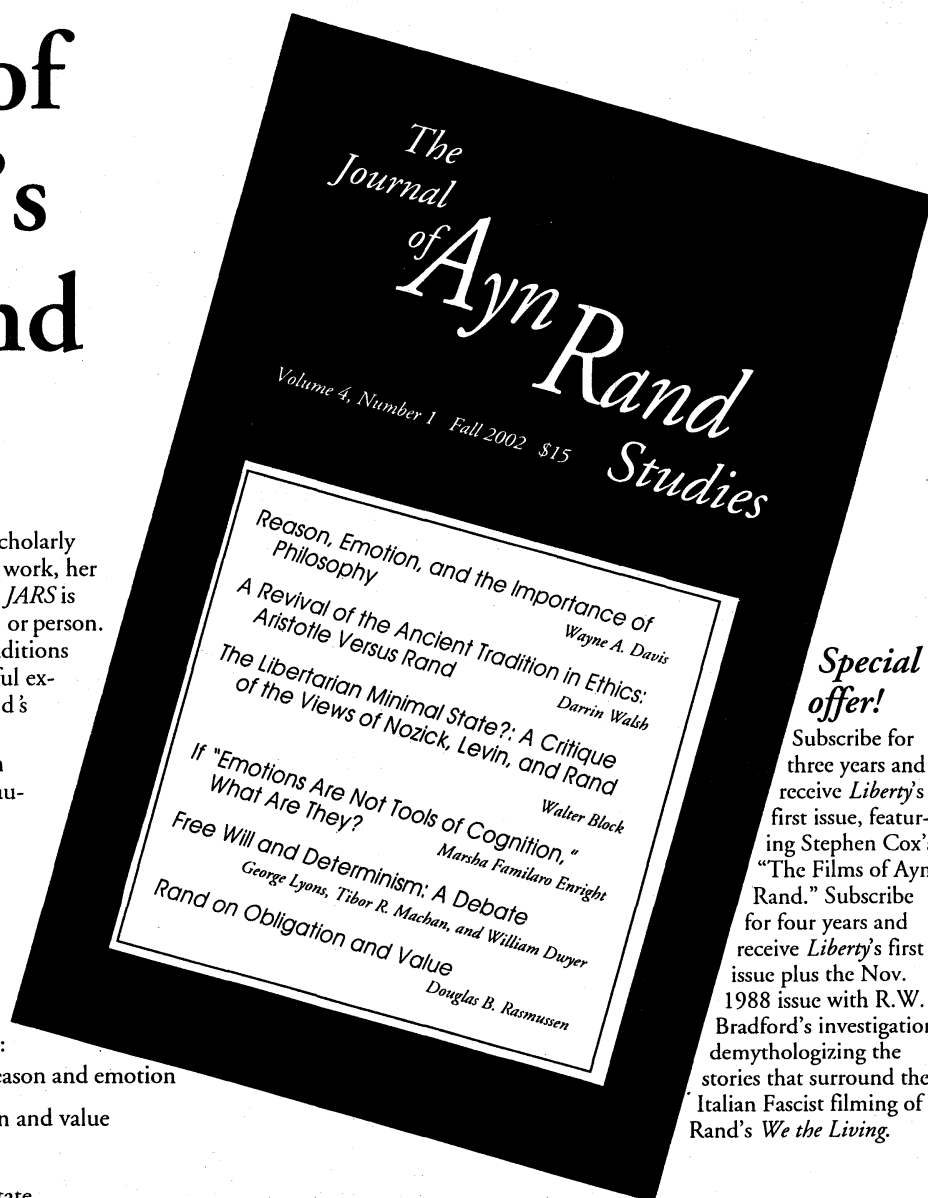
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