

Liberty

January 2006

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by Bettina Bien Greaves

I Vote Against Liberty

by Jane S. Shaw

The Craft of Ayn Rand

by Stephen Cox

Liberty in the Dark Ages

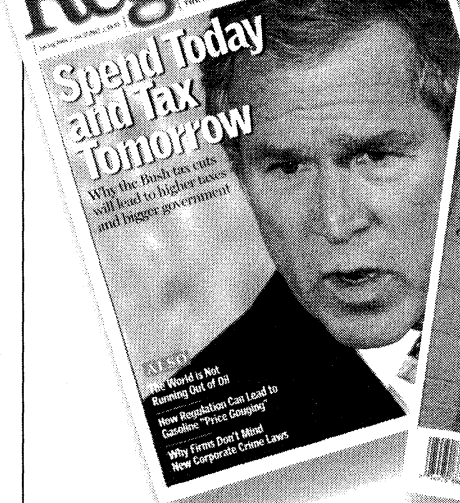
by Dave Kopel

Also: *Bruce Ramsey* defends the Constitution (what's left of it), *Jeff Riggensbach* looks at the "Old Right" critics of the New Deal, *Richard Kostelanetz* remembers the signs that said "No Jews" . . . plus other articles, reviews & humor.

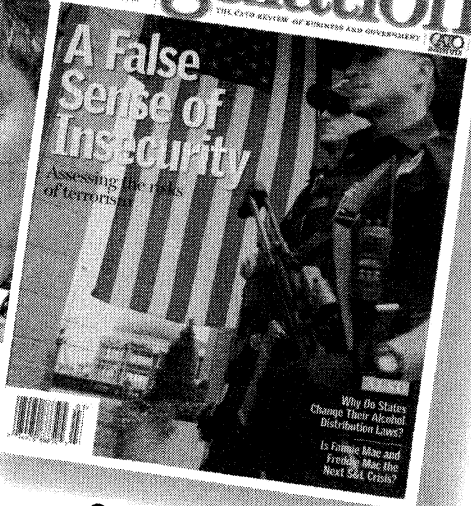


"I tell ye true: Liberty is the best of all things." — William Wallace

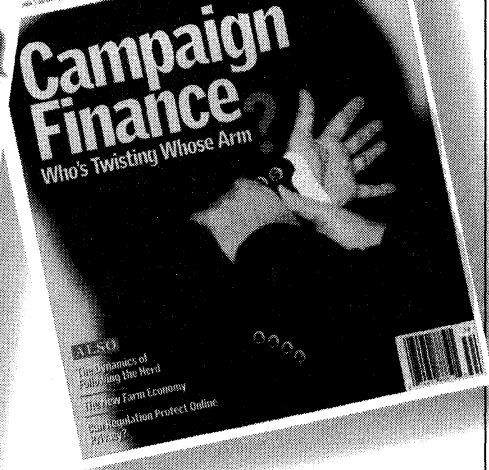
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Letters

Pedal Power

Has Randal O'Toole ("Riding Out the Storm," November) ever heard of Houston? Or Rita? Or the 100 mile traffic jam? Can the automobile really evacuate a whole city? Sure, it might work when only part of the population uses it.

But what if the stranded New Orleans masses had bicycles?

For some years now, group rides have regularly attracted dozens of Chicago bike riders who average 5 mph near downtown neighborhoods. Ten hours of riding, thus, should get one out of a disaster zone. No gas is necessary. Bicycle campers generally carry 30 or more pounds of gear. This is much more efficient use of the roads than automobiles.

There has been considerable hue and cry about the neglect of poor blacks in New Orleans, with speculation that the powers-that-be would have been more concerned about whites. That speculation, however, is speculation.

If you want something done right, do it yourself.

William F. Wendt, Jr.
Chicago, Ill.

Aztecs Only, Please

In "Historians' Triumphs" (December) Stephen Cox mentions specialists apparently unacquainted with fundamental works in their own field. It seems to me his discussion of Brundage's "Empire of the Inca" suffers the same lacuna — failing to mention what I understand to be the definitive English-language work in the field, William Prescott's "History of the Conquest of Peru" (1847). In addition,

Cox's statement about "the Incas, with their hideous cults of human sacrifice and their unrestrained delight in war and torture" is simply wrong. That characterization is proper for the Aztecs but not the Incas. Garcilasso de la Vega denies any such practice ("Comentarios Reales," ca. 1610) and while absolute denial is excessively reticent (both suttee and the sacrifice of personal attendants at the funeral of nobility are reported), Prescott notes "sacrifices were few, both in number and magnitude" (op. cit., chapter III). Even Prescott's estimate may too modest (cf. Juan de Sarmiento, "Relacion de la sucession y gobierno de las Yngas . . ." ca. 1550) by modern Western standards, but in any case the Peruvians neither practiced a "cult" of human sacrifice nor delighted in war more than, say, Europeans of the time.

Since I seem to be citing early Spanish authors, I append the observation that Jane Shaw's discussion of Betty Meggers' views in "Europeans at the Gates" (December), and Meggers herself, might have benefited from a familiarity with fr. Gaspar de Carboxal [Carvajal], "Relacion del descubrimiento del famoso rio grande . . ." ca. 1560.

Leon Elliott
Culpeper, Va.

Stephen Cox responds: I appreciate Mr. Elliott's concern with my own work, and the Incas, who are a great deal more interesting than people usually assume. I do think that much has been learned since Prescott's classic but hardly "definitive" work of 1847(!), and I

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Letters to the Editor

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Reflections

The Madness of King Dubya — Sometime around the end of the 19th or the beginning of the 20th century, nations began to have identity crises, like the individuals who compose them. And in the spirit of democracy, whole countries went mad the way a few kings once did. The United States is no doubt lucky that only our King George and his chief counselors, not the whole country, are at the moment delusional.

— Eric Kenning

Let's call the whole thing off — Judge Stephen Reinhardt writes in a letter to the editor in the November Harper's: "There is indeed a constitutional philosophy that is preferable to minimalism or fundamentalism: it's called liberalism." I'm surprised at this blatant admission of an activist judicial philosophy, even from a judge on the notorious 9th Circuit.

Originalism has become a euphemism for crypto-fascism, and "living document" liberalism for rejection of the most important constitutional principles. I'm not sure a real originalist and a real liberal would judge cases differently, nor that we'd any longer recognize either, if one actually made it to the bench.

— Patrick Quealy

"We've got Noah Webster on line 1." — On Nov. 12th, Maureen Dowd was interviewed by Larry King on CNN. Asked about Judith Miller of the Times, and her role in the lead-up to war in Iraq, Dowd said the problem was that "Miller was too credible." This struck me as an odd claim, as if the writings of one reporter should so overwhelm the nation in their authenticity and authority as to make the push for war inevitable. Dowd went on to explain (and I paraphrase), "Miller should know that for an investigative reporter, getting the press quotes from the White House is the beginning of the job, not the end."

Which raises a question: shouldn't a famous columnist for the New York Times know the difference between "credible" and "credulous"?

— Ross Levatter

Fair-weather insurance — The moral hazards that contributed to the destruction of New Orleans and other parts of the Southeast were even greater than we thought. We all knew that the National Flood Insurance Program spurred unsafe development, especially in coastal areas, but the Washington Post reported that the states were perhaps even

more profligate. The state governments themselves, including Louisiana, have their own insurance companies that insure high-risk areas, including coastal barrier islands, at less than actuarially sound costs. (These insurers are now adding surcharges because the hurricanes overwhelmed them.) According to the Post, state-backed insurers have covered over \$400 billion worth of property through 1.9 million policies. (Federal flood insurance covers \$764 billion, with 4.7 million policies.) Texas covers single-family homes worth as much as \$1.5 million — making the federal government look like a piker with its \$250,000 limit on structures. Oh, how did these state-backed insurance companies get their start? With a federal law in 1968 that allowed states to create companies to provide fire insurance in inner cities.

— Jane S. Shaw



Live from the Improv, it's Jimmy Carter —

Imagine an America in which prayer was part of the daily ritual in public schools. Imagine an America in which most of those schools celebrated Easter, and virtually all of them celebrated Christmas, with songs and pageants. Imagine an America in which abortion and homosexual behavior were illegal almost everywhere, an America in

which even liberal politicians routinely invoked the Christian God, and "Pray for Peace" was a common postal cancellation. Imagine an America in which divorce disqualified candidates for high public office.

That's the America in which I grew up, not many years ago. In the Michigan grade school that I attended, teachers led their students in saying grace over lunch, and the day's activities often began with the Lord's Prayer. Students were assembled two or three times a year to be instructed in Christian doctrine by a minister from the Rural Bible Mission. The great political issue was whether a Roman Catholic was qualified to be president.

That's the America that was known to me, and millions, but has been completely forgotten by modern liberals — at least on the evidence recently presented by their current ideological champion, former President Jimmy Carter.

Carter has been on TV a lot lately, plugging his new book, an opus breathlessly entitled "Our Endangered Values: America's Moral Crisis." The crisis, according to him, has resulted from the attempt of fundamentalist Christians to destroy "our sacred value," the "wall of separation between

church and state" — such an attempt, he says, as was never before witnessed in our great nation.

The first question that occurred to me when I heard these extraordinary assertions was the one that occurs to me whenever I run into somebody who actually takes the New York Times seriously: "Hasn't this guy ever been on the west side of the Hudson?" But of course Carter has. He's from Georgia — and he's an evangelical Christian, to boot. And he's a great deal older than I am. He was actually born during Prohibition, a national experience that ought to provide some inkling about what can happen when churches really interact with the state.

So what can account for his seemingly hallucinatory statements about the old America?

That's what I wondered, until it occurred to me that the former statesman must be indulging a rich, though hitherto well concealed vein of humor.

His claim is that fundamentalists are objectionable because they are "always certain that they are right," and that they therefore continually misinterpret reality. Now, what could constitute a greater, more willful misinterpretation of reality than the contention that America formerly had a wall of separation between religion and politics? Just consider the most faithful supporters of Carter's own political projects, African-American fundamentalists and the white religious left. Have they ever separated religion from politics? And is there any person in the country who is more habitually certain that he is right — no matter what — than Jimmy Carter?

My conclusion is that Carter is now atoning for his many and grievous sins of self-righteousness with a gargantuan act of self-parody, a show in which he pretends to blame other people for the stupidities in which he himself has inveterately

engaged. I, for one, regard this as one of the funniest acts of our time.

— Stephen Cox

I walk the line — To show my opposition to Washington's new smoking ban, I plan on doubling my tobacco consumption: now I will smoke two clove cigarettes each month instead of one. According to the public service announcements running before the vote, this is the same as me spraying twice as many people in the face with pesticide, or cornering twice as many Bambi-eyed waitresses and exhaling directly down their tracheas.

Today I'm smoking while standing on the dashed yellow line in the middle of Water Street, in front of Liberty's stately office building. The street is about 60 feet wide, so I can take maybe two steps towards either sidewalk before I have to extinguish my cigarette, lest some business owner risk a \$250 fine on my behalf. See, Washington voters weren't content just to close loopholes for bars, restaurants, and bowling alleys left open by an earlier Clean Indoor Air bill; no, they dreaded the possibility of little groups of smokers congregating outside, socializing, making friends — groups that have become so chic in other smoking-ban jurisdictions (California, New York City, even Ireland) that some take up smoking just to gain admittance. Thus the referendum specified that no one could smoke within 25 feet of a door, window, or vent — basically, within a 25-foot buffer zone around the entire building.

Supporters of the ban (and that's nearly everyone; there was no organized opposition) helpfully pointed out that businesses can petition city councils for an exemption — not from the ban itself, but from the 25-foot zone. Some cities in eastern Washington may prove more lenient, but I have no doubts that every town west of the Cascades will exact a high price from bars to let their patrons smoke outside: remodeling for disability compliance, or retrofitting for the historical council — or just old-fashioned palm-greasing.

The sun is setting over the Olympic Mountains. A few weeks ago, I would have headed straight for the deck at the local pub, to enjoy nature's beauty with Kentucky bourbon in one hand and Carolina tobacco in the other. Today, I grind my cigarette into the asphalt, and get out of the road.

— Andrew Ferguson

Tooth, nail, and justice — At one end of Terminal C in the Minneapolis airport there is a large mural of the African veldt, with a running antelope and cheetah. After a moment's reflection, one notices an anomaly: the antelope is running behind the cheetah. And then one notices the statement at the bottom of the mural: "Under the Rule of Law All Are Equal."

I first noticed this mural when I saw a mother explaining it to her young boy. "Before," she told him, "the wild cat would chase the antelope, but now the antelope is chasing the cat."

I submit that this little tableau, this passing of information from one generation to the next, catches much of what Americans now believe about the law, and why libertarian thought has lost the battle of ideas.

What does the rule of law provide? Equality? No, it provides payback for past grievances. Once blacks were enslaved. Now they deserve affirmative action. Once women could be violated by their husbands with impunity. Now

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they can barely be cross-examined in court when they accuse someone of rape. Once cheetahs chased antelopes. Now antelopes get to chase cheetahs. The idea they might be running together as equals never even occurred to the woman, who no doubt wants the best for her child, while providing him with an understanding of the rule of law more suitable to Hobbes' state of nature, where life is nasty, brutish, and short.

— Ross Levatter

Padding the numbers — The U.S. government recently placed a new quota on imports of cheap hand-sewn brassieres from China. As a result, Chinese brassiere makers are trying to develop more expensive brassieres, since those are given preferential treatment under U.S. law. In Baguiling, China, there is a bra lab devoted to developing new techniques. Hong Kong's Polytechnic University has started issuing degrees in bra studies. As seamless molded bras that can be smoothly worn under T-shirts have soared in popularity, Chinese bra makers have begun experimenting with new designs. They have developed new techniques for creating a shape-retaining bra cup, and also for fusing together the many components needed to make a seamless bra by using high temperatures to mold sheets of synthetic fibers into wafer-thin shells. And they have even experimented with ways to help make American women more seductive: by providing more cleavage; or by adding sealed packets filled with air (which proved too prone to leaks and punctures), oil pads (too expensive and heavy), or a filling, as yet untested, made from a kind of fiberfill such as is used to line winter parkas.

All this in the attempt to satisfy American women and offer them bras that they will like better than those now available in the United States. In doing this, makers of brassieres are doing no more than producers have done for centuries in the attempt to provide domestic consumers with cheaper, better, or cheaper and better, products than could be made at home. In Adam Smith's time, British manufacturers of woollens outsourced the production of wool to Australia and British ship builders outsourced the construction of masts to the American colonies. When cobblers around the world

could no longer compete, shoe production was outsourced to factories in cities, across the seas, or in Brazil or China. The production of many items — oil, rubber, coffee, bananas, textiles, shoes, cameras, furniture, brassieres, automobiles, computers, steel — is now outsourced. Outsourcing is constantly shifting with demand and with fluctuations in domestic production costs as compared to production costs overseas. U.S. government taxes, regulations, restrictions, and tariffs have played a major role in increasing U.S. production costs, which leads to increased outsourcing — to the point that even the research and production of high quality bras has been outsourced, too.

— Bettina Bien Greaves

Sticking with the status quo — On November 8, California suffered a disaster worse than any eight-point earthquake. Voters spurned Governor Schwarzenegger's attempts to limit the power of the modern liberal forces that are bankrupting the state.

One of Schwarzenegger's proposals attempted to restrict public employee unions from using dues for political contributions; another attempted to keep teachers (hence, members of teachers' unions) from receiving the equivalent of tenure after only two years' work. Others tried to cap state spending and fairly reapportion the hideously gerrymandered legislature (virtually none of California's districts is competitive, and the legislature is controlled by Democrats). These measures lost, respectively, by margins of 6%, 10%, 24%, and 18%.

Why? Union advertising successfully portrayed them as measures designed to "hurt schools" and "children" and hand over control of politics to the arbitrary power of judges (the governor proposed that retired judges handle reapportionment). The latter claim was a bizarre one to be made by modern California liberals, than whom no one is more litigious or more supportive of judicial intervention; nevertheless, it was made and it was taken seriously.

A more attractive reason for Schwarzenegger's defeat is people's distrust of activist government. I know it's stupid, but many voters seem to have viewed his efforts with the same suspicion with which they viewed other political

News You May Have Missed

Santa Seeks WMDs

NORTH POLE — In response to Denmark's announcement in October 2004 that it was exploring the possibility of claiming the North Pole as part of Greenland, which has been Danish territory since 1814, Santa Claus reportedly has spent the last year mobilizing his elves and buying military equipment, including long-range reindeer and armored sleighs, on the international black market. He may be trying to develop snowballs with rocks in them and other weapons of mass destruction.

The Danish foreign ministry said that any invasion of the area by the Danish army would be a "cakewalk or at least a Danish pastry walk," but Canada, which put in its own legal claim for the North Pole in the late 1950s, believes that it might not be so simple. "We couldn't get around a baffling strategic problem," said a Canadian Ministry of Defence official in Ottawa, "which was that even if our troops finally succeeded in reaching and occupying the North Pole, further maneuvers or probes in any direction

would mean heading due south, which could be interpreted as a retreat." However, he admitted that the Danes have a major advantage in any confrontation with Santa and his estimated 27 divisions of elves. "The Danes have the option of releasing canisters of paralyzing Kierkegaardian angst behind Santa's lines, which will make short work of his reserves of merriness, while all we had to throw at him was the temporarily incapacitating complete works of Robert W. Service."

— Eric Kenning

attempts to change things. Every statewide proposition failed, including modern liberal proposals to involve the state in the prescription drug business (No: 58% and 61%), a proposal to reregulate electric service providers (No: 66%), and a proposal to mandate parental notification before minors' abortions (No: 53%).

What happened in California may also be part of the same wave of conservatism, in the sense of a desire to keep things the same, no matter what, that was visible in Ohio's simultaneous defeat of radical Democrats' attempts to create a more Democrat-friendly electoral system, and in Washington's failure to roll back a 9 1/2 cent gas tax increase.

In politics like California, which are dominated by modern liberal interests and institutions, conservatism of this kind is almost as disastrous as radical attacks on individual rights. It means that expropriation of taxpayers' property and its diversion from useful to useless (indeed, destructive) purposes will continue on a massive scale, and as the normal way of doing business. The power of unions may be fading;

the economics of government intervention may be discredited intellectually; the terrible effects of state schools and unionized teaching may be evident to all (though uninterpreted by some); but it now appears that California will need another political spasm like the sudden shudder that cast out the last modern liberal governor and replaced him with the German gymnast before anything like sanity is restored to the land of nut-bearing trees.

— Stephen Cox

Bonfire vivants — My local paper tells me in glaring black headlines that "Violence in France is slowing." Good news — I read on. I find that this is not the opinion of some crepes suzette loving Francophile. There's real data — minus the slant — as one expects in the pages of a decent paper. Only 374 cars were torched last night compared to 502 the night before. Furthermore, last week 1,400 cars were cremated! A cheery graph of descending violence. Happy days are here again! Soon Gallic skies will be blue and smoke free.

Then I read that not a Saturday night goes by in this per-

Word Watch

by Stephen Cox

Every year I train ten or fifteen teaching assistants, and I enjoy doing it. One of the things I especially enjoy is taking them through the logic of grading papers. But there are some things that they have a really hard time believing about my advice.

One of them is the idea that good writers don't need to sound like the "Encyclopedia Britannica." If your high school teacher told you never to use the first-person pronoun, or never to start a sentence with "And" or "But," or never to shorten "cannot" to "can't," that teacher was just purveying superstition. "I," "and," and "but" are words like other words, and like other words, they can be overused. But there's no reason to avoid them, or to avoid putting them at the start of sentences. And if you allow yourself to use contractions, you have one more way of giving interesting changes to your tone. I say all that to my teaching assistants. Then I look at their work on student papers, and I see that they're still telling people to "avoid the use of 'I'," "avoid 'and' and 'but' at start of sentences!", and above all, "avoid contractions!!!" No reason — just avoid 'em. The result is that a student who would otherwise say, simply and naturally, "It's clear that Aeneas isn't responsible for all of Dido's problems," ends up saying, as if he were an Oxford professor shouting down an opponent, "It is clear that Aeneas is not responsible . . ."

This is false formality, something so rife in our society that cops describe their prisoners as "the gentlemen who are alleged to have been ancillary to this crime."

One way to narrow your tonal options is to aim at the maximum degree of formality, whether the situation demands it or not. The other way, of course, is to cultivate a false informality. This is something that Americans have been having trouble with ever since they started telling themselves how democratic they

were. It's been bad since President Jackson's day, and now it's getting worse.

I think about this when the phone rings, because it's usually a person who says something like, "Hi, is this Steve? Hi, this is Cheryl! How you doin' today Steve? Listen, Steve, I'm calling from down here at the Acme Roof and Tile Company. Steve, did you know we got a real great special goin' on down here . . ."

Naturally, that's where I hang up. There's something galling about the pretense that somebody who's never met you and wouldn't care to do so, even on a bet, is actually an intimate friend of yours. It's especially galling when he or she is doing a sell job.

It reminds me of Woody Guthrie.

I'm not a big fan of "Woody's" music. Part of the reason is that he was a communist. I know that his political affiliation should have nothing to do with an aesthetic judgment of his work, but communism does make me want to find something pretty big and pretty good to compensate for it in a feller's work. In Guthrie's case, there isn't much. His tunes are good, but sometimes they're not his own tunes. His lyrics vary a lot in quality. In "Pretty Boy Floyd," he's a master of the aphoristic style: "Some will rob you with a six-gun, / Some with a fountain pen." But "This Land Is Your Land" is just a mess. "From California to the New York Island" is about as slipshod as you can get. And what do you think of the original verses: "Was a high wall there that tried to stop me; / A sign was painted said: Private Property"? That's as bad as bad can be.

But the thing that always comes to mind when I consider the problem of false informality is the song he wrote commemorating the *Reuben James*, a U.S. ship sunk by the Germans just after Hitler went to war with Stalin and made it all right for Guthrie to become a patriotic, pro-war guy. The song asks the

fectly well-balanced society without frolicking fire bugs burning up 100 cars. Really? Who knew that? My paper never told me that before. Evidently this is a society where block parties are warm even in November — where Luddites expeditiously communicate via computer about their next target. Who knew, before this recent mania for bonfires, about this quaint French habit: every normal Saturday night in the 'burbs is illuminated by lit-up rioters and lit-up Peugeot's? And I thought they sat at sidewalk cafés, sipped 12-proof white wine, read Balzac, and prayerfully thanked the U.S. for twice saving them from Teutonic expansionism.

— Ted Roberts

The first stage of discovery — It's been a grim fall, with floods, earthquakes, war, and scandal. But there was one satisfying moment: the 2005 Nobel Prize in medicine. The story behind it is a scintillating reminder of the need for humility about knowledge.

Not too long ago, ulcers were considered a psychosomatic

disease. Brought on by stress, they attacked hard-driving middle-aged business executives (mostly men, it seemed) who resembled today's "Type A" personality. Unlike the Type A personality, however, which wins some respect for its dedication to power and control, this kind of executive was considered a bit of a failure. The disease revealed he had a tense life and probably an unhappy marriage.

Doctors thought that stress led to an overproduction of gastric acid, which destroyed the lining of the stomach or intestine, creating a hole or ulcer. Initially, treatment consisted of bland, non-acidic diets, perhaps some psychological therapy. When drugs such as Tagamet, which reduced the stomach's acid production, came on the market, they racked up billions of dollars in sales. They healed the ulcer — but the ulcer often returned.

An Australian pathologist, J. Robin Warren, began to notice that the ulcer biopsies he examined often had some unfamiliar bacteria. In 1982, he brought in a medical intern, Barry Marshall, to identify and culture these bacteria, and

urgent question, "What were their names? / Tell me, What were their names? / Did you have a friend on the good *Reuben James*?"

Well, no; I don't know their names. Like Guthrie's original audience, I never heard of them before. They weren't my "friends," and I won't pretend that they were. They weren't the song writer's friends, either. This is nothing but smarm.

It's the kind of thing that American communists have always emitted. I remember when Gus Hall and Angela Davis were running on the Communist Party ticket, and they were planning some dismal little get-out-the-vote rally in a midwestern city. Their followers plastered the slums with signs reading, "Gus and Angela Are Coming to Town!" It was an attempt to *assume* their way into a welcome — the assumption being that everyone "remembered" good ol' Gus and Angela and would therefore feel obliged to greet them with ecstasy.

In the old days, the copyright on folksy smarm was held by Will Rogers and all those people that Sinclair Lewis used to satirize. But their rights must have expired, because now the conservatives are into it too. Rush Limbaugh never honeys up to his audience in that way (in fact, he satirizes people who do). Neither does Michael Medved. But Sean Hannity is always addressing his callers as "darlin'" and whooping out the first name of every intellectual derelict who dials in, as if he'd spent the past two weeks camping out in the guy's backyard. Meanwhile, Bill O'Reilly has adopted folksiness, and the word "folks," as his personal trademarks. He's on the air five days a week demanding, "Who's lookin' out for the folks? That's all I care about. What's gonna happen to the folks? Who's lookin' out for the folks? I'm lookin' out for the folks — are you lookin' out for the folks?" If any of the people he interviews brings up a topic that O'Reilly doesn't feel like talking about, his response is an abrupt, "The folks don't care about that!" As if any guy in pancake makeup can be regarded as "folks."

Then there's President Bush — who is, perhaps, the worst example of this phenomenon, because he can't even get the smarm right. President Clinton, who was always far too much of a simpering little mama's boy ever to be (intellectually) tongue in groove with "folk" of any kind, could nevertheless tell a folk-

ish story and sort of get it right. But when Bush tries to follow his lead, even the Texas accent can't pull it off.

You remember the inane little story that President Clinton popularized and President Bush couldn't quite manage to tell. You know, "Fool me once, shame on you. Fool me twice, shame on me." Bush got through the first sentence, then collapsed into "You fool me, you cain't git fooled agin." Whatever that means. More recently, the New Orleans disaster has given us many examples of what happens when the wealthy and powerful try to sell themselves in a folkish way. I didn't know there was so much smarm in the world until I saw all those \$300,000 a year reporters waltzing around the French Quarter with their sleeves rolled up and "How you all doin'?" on their lips. But the episode I particularly enjoyed was the send-off that the mayor of New Orleans gave for his chief of police. On September 28, the chief resigned because of his abject incompetence in handling the disaster; and Mayor Ray Nagin, who had appointed him, bade him a public farewell. Nagin's first instinct, which was the right one, was to ladle out the sarcasm: "He leaves the depart-

That was a masterpiece of damning with faint praise, and the mayor should have left it at that.

ment in pretty good shape and with a significant amount of leadership." That was a masterpiece of damning with faint praise, and the mayor should have left it at that. But he couldn't resist the lure of folksiness. Putting on his happy face, he said that he didn't know what the chief would do in retirement, but he hoped that he would *make a lot of money*.

Well, ain't that folksy? And ain't that nice? Too bad about the people in New Orleans who are not in a position to make a lot of money, the folks whom the powers that be have been helping to make a whole lot folksier — if by "folksy" you mean weak and poor.

they discovered a new bacterium (*Helicobacter pylori*). They postulated that this was the cause of the ulcers.

They were right, but it took years to convince the medical establishment, as the media reports about their Nobel Prize emphasize. The New York Times is particularly harsh toward the drug companies (which financed much of the research on ulcers), but physicians, surgeons, and researchers were all skeptical. Most pathologists thought that the acidity of the stomach prevented bacteria from growing. When they saw them through a microscope, they interpreted them as "opportunistic" bacteria, not the cause of the ulcer.

Frustrated at the rejection, Barry Marshall took the dramatic step of drinking a solution made up of *H. pylori*. He then suffered gastritis (a precursor to ulcers) and cured it with antibiotics. But it was not until 1991 that the connection between *H. pylori* and gastritis was made official by the Centers for Disease Control and Prevention.

Today, a two-week course of antibiotics usually wipes out the disease — permanently. (The reason that middle-aged executives get ulcers has more to do with the nature of the bacterium than with their lifestyle. The bacterium infects them as children but doesn't show up until years later.)

Scientific discoveries often take longer than nine years to be accepted, so in the annals of history this chronicle is a short one. Even so, millions of people suffered for years because of the intransigence of the medical establishment. It's a lesson we shouldn't forget.

— Jane S. Shaw

Cell bloc — The Brennan Center for Justice at New York University's School of Law recently filed a lawsuit on

behalf of several civil-rights organizations, claiming that a Florida law which denies ex-felons the right to vote was intended to discriminate against blacks. The Supreme Court refused to hear the case.

The state provided evidence that 70% of Florida's 872,000 ex-felons are white, suggesting that the justice system in Florida is color-blind. Civil rights groups had apparently just assumed that the Florida law is racist. By jumping to that conclusion, they identified the true racists in the debate. Strange that a class action suit could get all the way to the Supreme Court before somebody realized they never did a demographic breakdown of the class they were representing.

I find it equally amusing that Florida Democrats widely support repeal of the law denying felons the right to vote. It is almost an admission that they believe most criminals vote Democratic.

— Tim Slagle

The cruel oppression of prosperity — Like many, I've been intrigued by the proliferation of quality wines from the newer growing areas of the world. So when I saw an interesting Shiraz/Pinotage blend from South Africa at the local store, I decided to try it out. The wine, a 2004 bottling by Goiya, was pleasant — but the label! Goiya, I was told, "means wine in the language of the San people of the Kalahari Desert. The unique subsistence lifestyle of these nomadic bushmen, *now under threat from the modern world*, is the inspiration behind this wine." (Italics added.)

One would certainly hope that the "subsistence lifestyle" of the San (and everyone else, for that matter) would be threatened by modernity. Hunter-gatherer may be a romantic

News You May Have Missed

Search for Missing Veep Continues

WASHINGTON — A "worried" President Bush has filed a missing persons report with police after Dick Cheney failed to show up for work for the 183rd consecutive day. Cheney has not been seen in public since last May, when he told Larry King on CNN that the Iraq insurgency was "in the last throes." There were reports in late August that he was vacationing at his ranch in Wyoming while Bush was at his ranch in Texas, and that it was Cheney, not Bush, who had issued the official statement reassuring New Orleans residents fleeing for their lives that Hurricane Katrina was "in its last throes." But a search of Wyoming turned up nothing, and although a nationwide alert in September resulted in 784,659 sightings at golf courses across the country of persons fitting the description of "a fat, bald, morose, 60-something white guy with glasses," all

of them turned out to be cases of mistaken identity, according to the FBI, which, along with Geraldo Rivera, has been called in on the investigation.

Meanwhile, Virginia and North Carolina state police have been combing the outskirts of the Great Dismal Swamp, which is believed to be the "undisclosed location" where Cheney has spent most of the past four years and where he "fit right in," according to neighbors, many of them large prehistoric reptiles, but so far no clues have been found, although the police did discover what appeared to be someone's throes, but whether they were the vice president's last throes, the Bush administration's last throes, or possibly somebody else's merely intermediate throes could not be determined.

Lewis "Scooter" Libby, the vice president's chief of staff, who is under indictment by federal prosecutors look-

ing into the leak of CIA agent Valerie Plame's name to Robert Novak and other journalists, has admitted leaking Cheney's name to New York Times reporter Judith Miller shortly before he went missing, which has raised suspicions of foul play in the case. During the run-up to the Iraq invasion Miller filed a series of sensational stories, most of them secretly sourced by Libby, raising alarms about Saddam Hussein's possession of large stockpiles of weapons of mass destruction, but shortly afterward the weapons vanished without a trace, and police fear the same thing may have happened to Cheney, especially after Miller admitted that she got the whole story wrong and that the actual weapons of mass destruction all along were "Cheney, Libby, and Judy Miller."

— Eric Kenning

lifestyle, but it's a harsh and unpleasant life. And that point has been made even by such liberal voices as the BBC, whose Brian Leith noted on Radio 4 that "the traditional San life of [his] grandparents was a matter of harsh reality and a struggle to survive."

Does Goiya (a label of Texas-based importer Hemingdale and Hale, which partners with a large South African wine outfit, Westcorp International) seek to perpetuate this heritage of poverty? One hopes not, but in today's "dancing with wolves" culture, it's possible. Too many Americans seem to believe that providing any opportunity for these people to join the modern world, live normal lifespans, and participate in a global economy is cultural imperialism.

Cross-cultural marketing does not always go smoothly and the wording of this label may simply reflect an American marketer seeking to add glamor to a new wine-growing region. Moreover, there are many who believe that the poor of the world are a "unique" resource to be "protected" from the contamination of our modern materialistic world. Still, I hope that the company does redesign its label — or perhaps funds a few scholarships for San students. Some of them, I suspect, would like to be able to afford to drink such wines in the future — and live long enough to do so. — Fred Smith

Bohemian rhapsody — The battle between bourgeois and bohemian was probably the longest-running vaudeville comedy act in Western history, each thwacking the other with rolled-up newspapers for about 150 years, so maybe it's just as well that it's been given the hook. Too many priggish, bloated blowhards denouncing perfectly good artworks and sexual pleasures, and too many bad artists and crackpot theorists denouncing perfectly good middle-class customs like baths and private property, for too long. Still, the vanishing of a bohemian option in life, nicely symbolized by the thousands of identical, franchised Starbucks stores selling overpriced sugar-and-cream confections in the guise of being coffeehouses selling coffee, is worth regretting. Yes, many bohemians were pretentious, dissolute fools and fakes, as were many of their respectable bourgeois counterparts, but if you walk around Greenwich Village in Manhattan, an upscale, casual professional-class neighborhood like all the other upscale, casual professional-class neighborhoods in New York or Boston or Burlington, Vt., or Santa Barbara, Calif., or anywhere, you can't help being haunted by the ghosts of Edna St. Vincent Millay, John Sloan, e.e. cummings, and other free spirits who inhabited it before it became a preserve of investment bankers and corporate lawyers and media celebrities, and you would be similarly haunted in San Francisco's North Beach, London's Soho, the Latin Quarter and Montmartre in Paris, and wherever else rebels and eccentrics used to congregate. At their best, bohemians formed a kind of aristocracy without the manors and manners, an impoverished subterranean elite with something of the same aristocratic frankness of speech, boldness, playfulness, drunkenness, artifice, love of art, and penchant for ceremonial, symbolic dress (as in "the red vest of Gautier" or bohemian black). Bohemias provided an experimental space for art, literature, sexuality, clothes, and food, and some of the successful experiments made their way into conventional society, which became a little less conventional.

In fact, whereas upper-middle-class people once aped the

patrician upper class in dress and demeanor, today they're more likely to be trying to give the impression that they are some sort of artist. This is why Picasso, a consummate bohemian, a prolific, experimental, Mediterranean, life-loving Zorba the Spaniard, is the chief saint in the upper-middle-class religion of art, venerated in our museum-temples and in the holy writ of the New York Times Arts and Leisure section. Dead bohemian artists are sanctified, the most foul-smelling bohemian poets are taught to clean-cut suburban kids in university classes, but bohemia and bohemians themselves have essentially disappeared. The cheap fringe cold-water-flat neighborhoods, the little mom-and-pop Italian restaurants with checkered tablecloths and flickering candles, the seedy bars where struggling young artists and writers gathered to argue and get drunk and fight over women and aesthetics, are no more. Now, in the Village and the other once-bohemian New York neighborhoods that have fallen in succession to the gentrifying onslaught, like SoHo, Tribeca, the East Village, or Williamsburg, a struggling young something-or-other would have to cough up a vast security deposit and prove that he or she is plugged into the corporate-bureaucratic system with income-tax forms and credit checks to get an apartment and work in an office to pay for it, and as a result there are virtually no struggling young artists and writers anymore. Instead we have artists who can't draw but are skilled in public relations and gallery-museum politics, and writers who graduate from writing seminars and workshops, use the connections they have acquired in them to publish something somewhere, and then start teaching their own writing seminars and workshops. They live among other, nearly identical young professionals, computer programmers, pharmaceutical reps, and sports therapists, in neighborhoods where Dylan Thomas once drank and Joe Gould once ranted, unmindful of the raffish ghosts.

— Eric Kenning

It's only lying if you get caught — Republicans probably realize by now that complaining so long and loud about Bill Clinton's fibbing under oath about his relationship with Monica Lewinsky opened a can of vora-



"No offense, but how can you bring us all this stuff without a tax hike?"

cious worms that eat at them now that they are stuck with trying to defend Scooter Libby's apparent lying.

Only those of us who are neither Republican nor Democrat can say that one lie is ultimately as trivial as the other and that those publicizing politicians' lying should be dismissed as strictly partisan. Everyone in authority lies under oath; it only begins with politicians. Lawyers have told me how their colleagues have lied and sometimes how they've lied as well. The assumption that everyone must necessarily tell the whole truth under oath is a lie about lying. Politicians, as well as political critics, have more important problems to confront now.

My expectation is that Libby will cop a plea, if only to disappear from the front pages, and then get a pardon from Dubya in January 2009. By then he will have paid the price for Republican foolishness during the Clinton years.

— Richard Kostelanetz

Exit, frothing — The reports of God's death, written by Nietzsche, Darwin, Marx, and others in the 19th century, were, in Mark Twain's immortal phrase, greatly exaggerated. God may well be done for in the long run — science probably slipped poison into his ambrosia — but it's a slow poison, and he's like one of those ham actors who spend all of Act V staggering, twitching, and convulsing while orating his last lines. The macabre twitching and convulsing, the scenery-chewing apocalyptic melodrama, are technically known as fundamentalism, and there seems to be a pretty good chance that this noisily expiring scene-hogging ham deity will bring the whole damn theater crashing down on our heads. Between the Muslim fundamentalists addicted to absolutist violence and the Jewish and Christian fundamentalists addicted to goading them on, civilization and its pleasures are now in a state of siege. The ancient philosophical sect known as the Epicureans believed that the gods existed, but they were serenely unaware of us, so we weren't obliged to worship them or worry about them, just to seek our own serene happiness. Instead of abolishing the position, let's advertise an opening for that kind of god.

— Eric Kenning

Smoot point — Jude Wanniski, who recently died, will be remembered as the trumpet of supply-side economics on the editorial pages of the Wall Street Journal in the late 1970s and as the author of "The Way the World Works" (1978). What I remember most was an intriguing theory of what caused the Crash of '29.

The standard theory is that it was an unsustainable boom that ran out of gas. Wanniski didn't think so. Indeed, he

started his account of it, printed in the Wall Street Journal of Oct. 28, 1977, by asserting dogmatically that the market is fully priced at all times, because it reflects everyone's expectations of the future. When markets collapse, he asserted, something has changed these expectations — something like political news.

I think the market is "fully priced" only in a tautological sense. But Wanniski thought otherwise and therefore went looking for an outside cause. In a 1988 interview he said he had gotten an idea from Gottfried Haberler that it might have been the Smoot-Hawley Tariff. Wanniski rushed off to the library and cranked in the page for the New York Times, Oct. 24, 1929, which chronicles the events of October 23.

He notes two stories: one about the market and another about the tariff negotiations in the Senate, where an anti-tariff coalition was struggling to hold off the demands for sharply higher import duties.

"On October 23, an hour before the market closes, disaster strikes: The market declines a stunning 21 points after news is out that the anti-tariff coalition has broken apart on the question of carbide rates." The carbide rates themselves are relatively unimportant; the vulnerability of the anti-tariff forces is the key. Yet the remarkable coincidence again goes unremarked in the next day's newspapers.

On Oct. 24, "the anti-tariff forces suffer another setback; casein tariffs are raised 87%." Again, casein is not the issue; it is the political strength of the pro-tariff forces.

This is Black Thursday.

On Friday the market stabilizes, but over the weekend Sen. Smoot predicts the bill will survive, and Sen. Borah, a tariff opponent, says he thinks so too. On Monday the Dow Jones Industrials drop 38 points, and on Black Tuesday, 30 more points, on the highest volume in history. The Crash is on.

Fast-forward to mid-1930. "On June 13, the Senate approves by two votes the measure to increase tariffs on more than 1,000 items and sends the bill to Hoover. On this news, the stock market breaks 14 points to 230, precisely where it was on the bottom on Black Tuesday, October 29."

What is remarkable about Wanniski's account is that he says the cause and effect were not associated at the time. Nobody wrote in the newspaper that the market had crashed because of the success of the pro-tariff forces in the Senate. Wanniski did not develop his theory by interviewing old speculators, or digging through old letters and diaries, but by looking at the New York Times. That is, by simply reading the newspapers, he saw a causal effect that no one at the time reported.

It could not have been something that nobody noticed. For an event in the Senate to cause the Dow Jones Industrial Average to collapse, a whole bunch of people would have had to act, and some other people would have noticed them acting. People would have talked about it. Indeed, thousands did act, people did talk about it, and the episode went down in history — and until Wanniski's book 49 years later, apparently nobody made the connection he did.

All this seems improbable to me.

Wanniski's account might be presented in at least two ways. One is his way, which is that the entire fall was due to these political events, and that the market was as rationally priced at the bottom of the fall as at the top. That is, the reason



"You want a second opinion? — What are you, some kind of paranoid?"

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I Vote Against Liberty

by Jane S. Shaw

Can you accomplish anything in politics — even on the planning board of a small town — without checking your ideals at the door?

Fifteen years ago, Klein Gilhousen, a founder of Qualcomm, was looking for a town that he and his family could live in while he continued to work in San Diego. He sought a university town with an electrical engineering college that was not close to a big city, but had adequate air transportation, and was near good skiing. Bozeman, Mont., was the only place in the country that fit, he says, and he and his family have been here since 1991.

The town may not be famous, but with its proximity to Yellowstone Park, blue-ribbon trout streams, and ski resort, Bozeman has cachet. It is a western “latte town,” to use David Brooks’ label — a small university town in a beautiful setting that attracts affluent urban refugees. (Burlington, Vt., is Brooks’ prototype, but latte towns are scattered across the West.) Bozeman has a population of 30,000 plus about 10,000 students at Montana State University.

Situated on a broad plain and surrounded by mountains, Bozeman appeals to outsiders weary of noise, traffic, crime, and bustle. But Bozeman is no Aspen, partly because billionaires prefer Big Sky, the ski resort about 50 miles south. And because Montana State University is grounded in agriculture and technology (unlike the “dancing school over the hill” — the University of Montana in Missoula), it is slightly more conservative than many college campuses. Although housing prices are rising fast (the median price of a house in 2004 was \$245,000), Bozeman still has some small-town feeling, a family atmosphere, and working-class families. The average per-capita income is \$16,104, compared to \$21,587 nationally.

But Bozeman’s attractiveness means growth, and growth is a political hot potato. Bozeman seesaws from left to right and back. University-affiliated people are mostly on the Left, and many are what we used to call the “granola” Left — peo-

ple romantically involved with the outdoors, suspicious of capitalism in general and of old Montana businesses such as mining and logging in particular. Since I moved here in 1984, new “granolas” have appeared, setting up branch offices for the Wilderness Society, the Sierra Club, and other environmental groups, and even the home office of American Wildlands.

On the other side of the political fence are developers, old-fashioned conservatives, working people, and entrepreneurs (though plenty of Chamber of Commerce types are on the left).^{*} Business booms here, as it does in most latte towns, and many of the businesses are small firms nobody has heard of. Until a decade or so ago, most children of Bozeman families had to search for jobs elsewhere after college, but that seems to have changed.

About nine months ago, I became a member of Bozeman’s planning board, which, typical of small-town planning boards, writes and updates the 20-year plan that is supposed to guide its growth and advises the city commission on whether proposed subdivisions are consistent with the existing plan. Zoning is the province of another commission.

We meet twice a month, usually to go over plans for sub-

^{*}Bozeman also has two libertarian environmental organizations: PERC, the Property and Environment Research Center, which I work for, and FREE, the Foundation for Research in Economics and the Environment.

dividing property. So far, we have mostly rubber-stamped what the city's planning department (the professionals) have already decided. Then we send on our recommendations to the zoning commission, which sometimes overturns them; I'm not exactly sure why.

I've learned a few things from my experience on the board.

First, development in Bozeman is micromanaged to the n th degree. Developers run what seems like an interminable gauntlet of pre-applications and actual applications, reviewed by both us and the City Commission, and they are allowed to do this only after many hours of dealing with the city's planning department.

They must meet an impressive array of "exactions." A typical development will have very specific requirements for open space, dedicated parkland, trails, and bicycle paths, not to mention setbacks from watercourses and mitigation of "jurisdictional" wetlands. And the developer almost always has to build a road, or at least half a road: the city counts on the property owner on the other side of the road to pay for half, too. This doesn't always work out, especially if the other owner is the county.

Bozeman's Unified Development Ordinance, which codifies its comprehensive plan, is all about smart growth. Written at a time when the "granolas" held sway, the plan promotes high-density housing, urban infill, narrow streets, garages at the back (accessible by alleyways), and front porches. We don't have "mass transit" here, but it's on its way. The plan also specifies future nodes of commercial activity.

Requirements are both comprehensive and detailed. A few years ago a developer of low-cost housing said that he started preparing two housing developments at the same time. The one in Bozeman's suburb, Belgrade, was completed before the foundations were poured for the Bozeman project. Not too long ago, the planning board had to vote on hiding mechanical equipment with vegetation. Doing so was already required; the vote was to decide if the vegetation had to be evergreen or if it could be deciduous. (I was absent when the vote took place and don't know how it turned out.)

Developers mostly smile and agree to whatever they are asked. After all, in return for tolerating bureaucratic demands, builders get high density (at least six units per acre) and the opportunity to sell in a rising market. Some

By the time I voted on affordable housing, I was already an old hand at compromising my principles.

members of the public, however, have become embarrassed by rising housing prices, and a few years ago they successfully pushed for an "affordable housing policy."

The city's affordable housing policy (which economist Robert Nelson likes to call "guilt relief") can be easily summarized: developers must set aside 10% of their subdivided land for smaller-than-normal lots, and the houses on these

"restricted size lots" have to be smaller, too. That's it. That's the plan. (Of course, there are some specifications to the plan: the maximum size lot is 5,000 square feet for a detached home and 3,000 square feet for a townhome. And the house can't take up more than about a third of the lot.)

You don't have to be an economist to realize that small lots in a fast-growing city are likely to be purchased at just slightly lower prices than large lots. Indeed, with many "snowbirds" inhabiting Bozeman, such a lot could easily provide a *pied à terre* for well-off part-time residents. On a per-square-foot basis, these lots may well end up being more expensive than the normal lots. Given the low per-capita income in Bozeman, there is no way these homes are going to be "affordable."

Nevertheless, on the one chance I had to vote on this policy, I supported it. "Guilt relief" has its place if it holds worse options at bay, such as requiring buyers to meet

The downtowners quickly asked the city to adopt an ordinance that excludes any first-floor business other than retail. And I voted for it. I restricted freedom.

income limitations, or putting ceilings on house prices, or putting in place other bureaucratic requirements similar to the rules that emerged from rent control in New York City.

All in all, inflicting a blow against freedom, but taking a big step toward "reasonableness," I voted to keep the plan.

By the time I voted on affordable housing, I was already an old hand at compromising my principles. I had started with Bozeman's downtown. This area, a small section of Main Street and a few cross streets, contains boutiques, restaurants, and bars (including an upscale wine bar). It is busy and successful. A number of the early 20th-century buildings have been restored to their original brick facades; the area is relatively easy to reach; and a tony residential area is nearby.

For years, the Bozeman Downtown Association has had a gentlemen's agreement that the first floors of all buildings within the downtown area would be retail stores. Retail, apparently, does not include real estate agencies. A year or so ago, a real estate agent opened an office on a first floor. Because she was a popular figure (on the symphony board and so forth), she was allowed to operate in peace, especially since she also set up an art gallery along with her business. But the downtowners quickly asked the city to adopt an ordinance that excludes any first-floor business other than retail.

And I voted for it. I restricted freedom. Here's why.

First, I have a unscientific but still strong intuition that downtowns are disproportionately important to their cities. If retail in every building is going to protect the downtown, I'm for it in spite of its bearing on liberty.

And then there is that "being effective" business. Even at the lowest levels of political activity, you have to look "reasonable" and "open." Otherwise you are written off as an

ideologue and (perhaps more importantly) you lose the potential for log-rolling. If I don't support some of their proposals, they won't support mine, and my feeble attempt at log-rolling will be cut off in midstream. I was bothered by some other things that the downtowners were doing (such as inflicting payment for a parking garage on the rest of the

People living in the neighborhood resented having their section of town called "blighted" — perhaps not realizing the financial bonanza that being blighted provides.

city), and I thought I might vote against some of those. So I set myself up for being viewed as "reasonable," with the hope that I might get a little log-rolling going in the future.

It turned out that the downtowners made an end-run around local government and got Montana's congressional delegation to earmark \$4 million in the 2005 federal transportation bill for the parking garage (do you get the connection — parking lots and transportation?) So I never got to raise questions about the parking garage (until it became a national issue, but that's another story). On the other hand, I did have a chance to question other maneuvers of a similar ilk. In fact, my one contribution to liberty was helping spark a discussion about tax increment financing, or TIFs.

A TIF is a method of paying for improvements in a specific geographical area. Once an area is designated as blighted and becomes an urban renewal district (required under state law), all additional property taxes that come in (beyond the existing level) will be set aside for use in that particular area, typically for infrastructure. There is a time limit on the TIF, usually around 15 years.

The Bozeman City Commission has big plans for this method of financing. A few years ago, I thought the downtown TIF district was a great idea. I didn't realize that this new money was, in a sense, being withheld from the rest of

the city's taxpayers. All new tax moneys taken from downtown property (beyond the tax collected annually before the TIF began) is used for the downtown rather than general city purposes. So other city taxpayers have to shoulder a greater share of the citywide burden.

Even so, I don't mind the downtown TIF. It's all the other proposed TIFs that bother me. One is in an old mixed-use neighborhood that has been experiencing a renaissance. Some private developers successfully pushed for designating it as "blighted" so that a TIF district can be created. In fact, they hurried the designation along so that any investment the developer made in 2006 would "count," thus maximizing the amount of taxes that would go into the TIF. The process was so quick that it aroused an angry reaction from people living in the neighborhood. They resented having their section of town called "blighted" — perhaps not realizing the financial bonanza that being blighted provides.

Another street segment is going to become a TIF district. North Seventh Avenue is an entryway to the city that is bordered by dull commercial buildings such as a tire store and a U-Haul outlet, but it also has a few restaurants and casinos. These owners will benefit if a TIF produces revenues that can be used (as some hope) for new lights and sidewalks, to make the street more elegant and inviting. Also in the works are two industrial TIFs ("TIFits"). A city commissioner justifies these on the grounds that Bozeman, unlike most cities, doesn't give big tax breaks or special incentives to new businesses. Just TIFits, he hopes.

Well, this time I drew the line. I raised questions about the TIFs, and ultimately we had a frank discussion about them. I didn't change anything, but I introduced some transparency. And that may be the best thing that this weak-kneed libertarian can do on the planning board.

Indeed, I may not be able to accomplish anything more because I think my tenure on the board is about to end. The political winds are blowing, and the November election will probably eliminate the conservatives' briefly-held majority on the city commission, and they were the ones to appoint me in the first place. My political career is probably going to be a short one.

Well, at least I can get back to being principled. □

Letters, from page 4

suggest that Mr. Elliott acquaint himself with the richness of Brundage's research on the subjects at issue.

Brundage is hard not to enjoy, or to respect.

Democracy vs. Liberty

Re: "Wish in one hand, Shiite in the other" (December): As the prospects for democracy in Iraq remain in doubt, we should remember that freedom is the real goal. Democracy is only a means to that goal, and it isn't necessarily the best means for attaining it. Democracy didn't prevent slavery in America, and the Nazis were the most popular party in

democratic Germany.

A democracy that results in "one man, one vote," undermines the objective of freedom. America's Founders recognized that pure democracy was not the best route to liberty. They advocated a constitutional republic with checks and balances between branches of the national government, and a distribution of power between national and state governments. The idea was to protect liberty by fragmenting power — even at the cost of impeding democracy.

What makes a great country are things like the rule of law, private property, enforcement of contracts, and a fair

judicial system. Instilling acceptance of these principles among Iraqis is what is crucial. We should remember that our goal for the people of Iraq is not so much to let them vote as to let them be free.

Roy Miller
Phoenix, Ariz.

Categorical Correction

I read Mr. Bradford's article on Hurricane Katrina while Hurricane Wilma was smashing my (Fort Lauderdale) garden. I have one

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The Roots of Liberty

by Dave Kopel

Libertarians often believe that liberty is a creation of the modern world — at least the “modern” world that began in 1776. In fact, liberty’s origins are far older. Many of them lie in a historical period that most libertarians heartily despise: the Middle Ages.

The period from the fall of the Western Roman Empire, until approximately the middle of the 11th century, is often known as the Dark Ages. For human liberty, the period was indeed dark. Two changes in political consciousness helped bring an end to the Dark Ages: the growth of feudalism, and the Papal Revolution initiated by Pope Gregory VII.

Submission to Tyranny

The fatalistic tendency of political theorists in the Dark Ages was to view all political power as granted by God and rulers as unaccountable to any human being (although they were accountable to God): rulers were above the law, and everyone else was obliged to obey them. Proper temporal rule seemed of little importance, since the world was going to end in the year 1000, or perhaps in 1033, a thousand years after the death of Jesus.

The king was sacred, and most political theorists in the Dark Ages believed in unlimited submission to government. For example, Archbishop Hincmar of Rheims (approx. 805–881), an important adviser to King Charles the Bald of France, wrote a pair of treatises, *De Divortio* and *De Regis Persona*, distinguishing a king (who assumed power legitimately and who promoted justice) from a tyrant (who did the opposite). Yet even Hincmar argued that tyrants must be obeyed unquestioningly. When Louis the German invaded France in 858, Hincmar remonstrated him with words from the Psalms: “Thou shalt not touch the Lord’s anointed.”

Kings were considered Christ on earth, and during a coronation, the bishop would gird on the king’s sword, a symbol of the king’s role in fighting the Church’s enemies.

Feudalism

The feeble Western Roman Empire had been conquered by barbarians in the 5th century. After the fall of the Roman Empire, some relatively potent states

had arisen, such as Spain under the Visigoths and France under the Carolingian kings. But by the end of the first millennium, Gothic Spain and Charlemagne's France were distant memories. The essential function of government, providing security against attack, was no longer provided by the employees of a king in a distant capital.

Instead, the lord of the nearest castle and a few knights in his service provided security. That castle was the fortress into which the local community could retreat in case of attack. "All politics is local," U.S. House Speaker Tip O'Neill would observe a millennium later, and politics was especially local during the feudal age.

Because churches, monasteries, and convents were frequent targets of barbarian attack, they relied heavily on the local lord and his knights for protection. As a result, the church increasingly came under control of the micro-states.

Under feudalism, all ownership of land was based on reciprocal obligation. The farmer received protection from the lord of the castle, and was obliged to give the lord a share of the farm's produce. The lord in turn held his land in obligation to some greater lord. The lesser lord would pay his "rent" by providing military service (a certain number of knights and other fighters for a certain number of days) when the greater lord mustered his forces. These land-based, reciprocal obligations were passed down from one generation to the next. Eventually, the obligations of "vassalage" ran up to the greatest landholders, who owned their land by feudal grant from the king.

Feudal obligations were created by mutual oaths sworn before God. When kings ascended to the throne, they too took feudal oaths, setting forth their obligations to the governed. Reciprocal obligation was the foundation of civil society.

As Glanvill's famous 1187 treatise on English law explained, when a lord broke his obligations, the vassal was released from feudal service. If a party violated his duties under an oath, and the other party suffered serious harm as a result, the feudal relationship could be dissolved *diffidatio* (withdrawal of faith).

In "The Medieval World," historian Friedrich Heer argues that the *diffidatio* "marked a cardinal point in the political, social, and legal development of Europe. The whole idea of a right of resistance is inherent in this notion of a contract between the governor and the governed, between higher and lower."

Thus, historian R. Van Ceanegm observes in "The Cambridge History of Medieval Political Thought," that modern society is founded on "one element . . . that can be directly traced to feudal origins: the notion that the relation between rulers and citizens is based on a mutual contract, which means that governments have duties as well as rights and that resistance to unlawful rulers who break their contract is legitimate." Reciprocal feudal obligations "were the historic starting point of the limitation of the monarchy and the constitutional form of government, whose fundamental idea is that governments as well as individuals ought to act under the law."

The Gregorian Reformation

In the Dark Ages, there was no separation of church and state, and it was the political class, not the priestly class,

which held ultimate power in the church. Kings were often the head of the national church, and they appointed the bishops. Many bishops controlled vast feudal domains. The church bureaucracy, with a near-monopoly on literacy, formed the backbone of local government in much of the West; so the power to appoint bishops amounted to the power to control the government.

Some bishops married, and their marital alliances solidified their ties to the royal regimes. Kings and their courts often made the final decision on disputes over church law and governance. After the fall of the Western Roman Empire,

Kings were considered Christ on earth, and during a coronation, the bishop would gird on the king's sword, a symbol of the king's role in fighting the Church's enemies.

the papacy frequently had to contend, not always successfully, for independence from the Byzantine Emperor, or from closer rulers. By the end of the first millennium, the Holy Roman Empire ran the papacy. The emperor appointed the pope, and deposed him if he stepped out of line.

The Holy Roman Empire was comprised of most of Germany, much of Italy, and a part of France; the Empire claimed to be the successor state to the Western Roman Empire. The name "Holy Roman Empire" was not used until 1254, but a Germanic state ruling much of Italy was far older, and many historians refer to this German-Italian empire as the "Holy Roman Empire," even when discussing events before 1254.

Beginning in the 11th century, the church began to reassert its independence. In 1059, a papal council declared that the Roman cardinals, not the Holy Roman Emperor, would appoint the pope. "Freedom of the Church" was the slogan. In 1075, Pope St. Gregory VII declared papal supremacy over the church, and further declared the church's independence from secular control. In a series of *Dictatus Papea* (Dictates of the Pope), Pope Gregory went even further, asserting the pope's powers to depose emperors, and to absolve subjects of unjust rulers from their oaths of fealty to the ruler.



"Abdicate? But I still have sick days to use up!"

Gregory VII started the Investiture Controversy when he declared that no layman (not even the emperor) could invest — that is, provide the vestments and the authority of office — a bishop. Unsurprisingly, the monarchs refused to surrender their power of lay investiture. The result was a series of wars pitting the Holy Roman Empire against the papacy and

The Papal Revolution changed the world, promoting an intellectual shift that eventually made possible the American Revolution.

its allies. Pope Gregory VII announced the deposition of Holy Roman Emperor Henry IV, although he did not succeed in forcing Henry off the throne.

In 1122, the Vatican and the Holy Roman Empire reached a compromise at the Concordat of Worms: the Pope would appoint the Italian bishops, and the Holy Roman Emperor would appoint the German ones.

Today in China and Vietnam, a new Investiture Controversy is underway. The Communist governments insist that all Catholic bishops must be approved by the government. The Vatican adamantly refuses. At issue is whether the Catholic Church in China and Vietnam will be a church in service of worldwide Catholic belief, or a church whose primary mission is to support a totalitarian government.

Consequences of the Papal Revolution

Pope Gregory VII's "Papal Revolution" failed in its grand objective of uniting all Christian rulers under the Pope's leadership and control. Yet the Papal Revolution would change the world, helping to promote an intellectual shift that would eventually make possible the American Revolution. In his wonderful book "Law and Revolution: The Formation of the Western Legal Tradition," legal historian Harold Berman summarizes:

The most important consequence of the Papal Revolution was that it introduced into Western history the experience of revolution itself. In contrast to the older view of secular history as a process of decay, there was introduced a dynamic quality, a sense of progress in time, a belief in the reformation of the world. No longer was it assumed that "temporal life" must inevitably deteriorate until the Last Judgment. On the contrary, it was now assumed — for the first time — that progress could be made in this world toward achieving some of the preconditions for salvation in the next.

In addition, the Papal Revolution set off two centuries of conflicts between emperors and popes. The papal propaganda produced what Heer calls "a revolutionary breach of the continuity of European history; the transformation of the popular image of the Christian monarch from a sacred and sacrosanct figure into a diabolical object of execration."

The Rise of Free Cities

During the wars sparked by the Papal Revolution, various cities revolted against the rule of one party or the other. In France and the Netherlands, towns forcibly asserted their

liberties against ruling bishops who were subservient to monarchs; the municipal revolts were typically supported by groups loyal to the papacy. Other towns in Western Europe also demanded their rights, and were given charters, grants, or other recognitions of rights from monarchs. Such rights might include limits on taxation, freedom for serfs who escaped to the town and lived there for a year, freedom of trade, the authority for a town to maintain its own courts and for townspeople not to be tried elsewhere, and freedom from feudal dues. Many of the towns were governed by popular assemblies or by elected councils.

Towns bore responsibility for their own defense, which meant that townsmen had the right to bear arms, and the duty to serve in the town's militia. The Assize of Arms statute enacted by England's Henry II in 1181 required all townsmen to bear arms.

In northern Italy, cities such as Genoa and Venice began seeking autonomy or independence from the Holy Roman Empire. Their most important ally was the papacy, which was seeking to establish its own independence from the Holy Roman Emperor, and to expand its influence in Italy. Papal armies often fought in support of the cities. By the end of the 13th century, much of Italy had shaken off the Holy Roman Empire. Many cities, though, objected when the pope imposed his own temporal rule on them, and urban revolts against papal rule became common.

A New View of Legitimate Government

In the conflicts between popes and monarchs, the intellectuals who took the popes' side argued that a king's obligation is to see that justice is done; if a king fails to do justice, then he is not a legitimate king. Advocates of this view

By the end of the first millennium, the Holy Roman Empire ran the papacy. The emperor appointed the pope, and deposed him if he stepped out of line.

included Peter Damian (1007–1072, a church reformer), Anselm of Lucca (1036–1086, a bishop allied with Gregory VII), Cardinal Humbert (1000–1061, an adviser to the reforming popes), Bernold of Constance (1050–1100, a monk and historian), Cardinal Deusdedit (1040–1100), Bonizo of Sutri (1045–1090, a bishop and noted polemicist), and Honorius Augustodunensis (1080–1156, a prolific and popular author).

Manegold of Lautenbach, a scholar at a monastery destroyed by the German emperor Henry IV, wrote the treatise *Liber Ad Gebehardum* arguing that the Pope had the authority to release subjects from their obedience to a ruler, as Pope Gregory VII had done. Manegold analogized a cruel tyrant to a disobedient swineherd who stole his master's pigs, and who could be removed from his job by the master:

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Japan's Gift to FDR

by Bettina Bien Greaves

Pearl Harbor meant that FDR could send American boys to their graves with a clear conscience.

It was about 9:30 p.m. on the evening of Dec. 6, 1941.¹ Navy Lieutenant Lester R. Schulz, special deputy Communication Watch Officer, assigned that evening to the White House "to receive [a] special message for the President," proceeded to President Roosevelt's study with a locked pouch containing important documents. The president had been entertaining, but as soon as he learned that the courier had arrived, he left his guests to go to his White House study to await this delivery.

As Schulz would later testify, when he entered, the president was sitting at his desk, his friend and close associate, Harry Hopkins, standing nearby. Schulz opened the pouch and handed the President a sheaf of "perhaps 15 typewritten pages" clipped together.

Schulz waited while "[t]he President read the papers." This took "perhaps 10 minutes" during which Hopkins paced slowly back and forth. "Then he [FDR] handed them [the papers] to Mr. Hopkins," who read them and handed them back to the President.

"The President then turned toward Mr. Hopkins and said in substance . . . 'this means war.' Mr. Hopkins agreed, and they discussed then, for perhaps 5 minutes, the situation of the Japanese forces, that is, their deployment." The Japanese had landed in Indochina. Roosevelt and Hopkins speculated as to where the Japanese would move next. Neither mentioned Pearl Harbor. Nor did they give any "indication that tomorrow was necessarily the day." Also, "[t]here was no mention made of sending any further warning or alert."

"[S]ince war was imminent," Hopkins ventured, ". . . the Japanese intended to strike when they were ready, at a moment when all was most opportune for them . . . when their forces were most properly deployed for their advantage. . . . [S]ince war was undoubtedly going to come at the

convenience of the Japanese, it was too bad that we could not strike the first blow and prevent any sort of surprise."

The president nodded. "No, we can't do that. We are a democracy and a peaceful people." Then he raised his voice: "But we have a good record." FDR implied we would have to stand on that record, that "we could not make the first overt move. We would have to wait until it came."

The president went on to tell Hopkins that he had prepared a message for the Japanese Emperor "concerning the presence of Japanese troops in Indochina, in effect requesting their withdrawal." FDR had not followed the usual procedure in sending this cable, he said. Rather than addressing it to Tojo as premier, FDR "made a point of the fact that he had sent it to the Emperor as Chief of State."

The President then tried to phone Admiral Stark, Chief of Naval Operations. Apparently, "the White House operator told the President that Admiral Stark could be reached at the National Theater." FDR feared that if Stark were to be suddenly called out of his box at the theater "he would surely have been seen because of the position which he held and undue alarm might be caused." Besides, he expected he would be able to reach Stark "within perhaps another half an hour." So he let the matter drop. FDR did not then mention "telephoning anybody else." He simply returned the papers to Schulz and Schulz left.

The next morning, the Japanese bombed Pearl Harbor, launching the United States into a war that would cost hundreds of thousands of lives.

What information did those papers contain which led Roosevelt to say, "This means war"? And what did Indochina (now Vietnam) have to do with the United States? The United States had been very much concerned ever since September 1939, when Hitler's Germany had invaded Poland, leading England and France to declare war on Germany. It looked to some like a repeat of the 1914-1918

Roosevelt had promised the American people he would not send soldiers into war unless America was attacked first — and he was mere hours away from breaking that promise.

World War and many thought that the United States should join the fight right away. Although most Americans were anti-Nazi and anti-Hitler, they were reluctant to go to war. Besides, a "Neutrality Pact" was in effect.² Even as Roosevelt was signing the "Neutrality Pact," he said, "This nation will remain a neutral nation, but I cannot ask that every American remain neutral in thought as well." Roosevelt, himself, was unneutral in thought and anxious to help the British in whatever way he could. Generally speaking, the American public supported him when he proposed supplying England with whatever she needed — money, planes, tanks, ships, armaments — in order to keep the war from reaching our shores.

As for Japan, she had resigned from the League of Nations in 1935 because of charges against her over the "Manchurian Incident," a suspicious explosion on a Japanese-controlled rail line which the Japanese used as an excuse to extend their occupation of Manchuria. Then on Nov. 15, 1936, Japan had signed the German-Japanese Anti-

Comintern Pact, making an alliance with Germany against their common enemy, Soviet Russia.

Throughout this period, Japan was at war with China. Japan's bombings and atrocities in China were widely reported and criticized. On July 26, 1939, the U.S. announced to Japan that she was terminating her 1911 trade treaty in six months; after Jan. 26, 1940, Japan would have to request special permission to purchase anything from the United States. This was a severe blow, as Japan depended heavily on foreign sources for many products, especially oil. Then on Sept. 17, 1940, Japan signed the Tripartite Pact with Germany and Italy, providing that if any one of the three parties was attacked by a power not then involved in the European war or the Sino-Japanese Conflict, the other two would come to the victim's assistance. Thus, sides were drawn — the Axis (Germany, Italy, and Japan) against the Allies (the United States, Russia, and Great Britain). On July 25, 1941, all Japanese assets in the United States were frozen, bringing to a halt all financial and import or export trade transactions in which Japanese interests were involved.

With practically the entire world at war, the United States expanded its production of ships, planes, tanks, and armaments, and enacted controls and regulations in an attempt to put the country on a war footing. In October 1940, Congress passed the Selective Service Act, subjecting all men aged 20 to 44 to military conscription.

Although most Americans opposed the United States entering the war, President Roosevelt was personally and emotionally British. He was influential in arranging for the United States to supply them with money, ships, planes, tanks, and guns; to establish an Atlantic patrol of U.S. Navy ships to warn the British of German ships and submarines; and to escort British ships to Iceland. U.S. ships fired on some German ships. Yet the Germans refused to respond. Hitler was not looking for a fight with the United States. He told Admiral Erich Raeder, then commander in chief of the German navy: "Weapons are not to be used. Even if American vessels conduct themselves in a definitely unneutral manner. . . . Weapons are to be used only if U.S. ships fire the first shot."³

In April 1941, the Americans, Dutch, and British held secret meetings in Singapore to explore how to respond to Japanese aggression in Southeast Asia. The outcome was an agreement on the part of all three powers that the Japanese should not be allowed to advance west of 100 degrees east longitude or south of 10 degrees north latitude lest it "create a position in which our failure to take active military counter-action would place us at such a disadvantage, that should Japan subsequently attack, that we should then advise our respective Governments to authorize such action."⁴ War plans were developed based on this agreement. This U.S. plan was distributed to American field commanders on July 25, 1941.

The war was not going well for the British; many ships with supplies of munitions and food were being sunk in the Atlantic; and London was being attacked almost nightly by German bombers. In August 1941, Roosevelt and Churchill met at Argentia off the coast of Newfoundland. Churchill was anxious for the United States to enter the war against Hitler. However, Roosevelt resisted Churchill's pleas. Under



"This is interesting — 'Warning: The Surgeon-General is a partisan political appointee.'"

the U.S. Constitution, he said, only Congress could declare war. If he were to propose going to war, Congress would argue for weeks. Therefore, although "I may not declare war, I may make war." And he proceeded to do just that.

By mid-1941, the area of the U.S. naval patrol in the Atlantic had been extended as far east as the Azores. On May 21, a U.S. freighter, the *Robin Moor*, was sunk in the south Atlantic. Axis funds in the United States were frozen and German, Italian, and Danish (the Germans had occupied Denmark since April 9, 1940) ships in U.S. harbors were taken into "protective custody." Roosevelt knew that some of his actions in assisting the British openly and courting war against the Nazis were not constitutional. One of his writers, Robert Sherwood, wrote: "Roosevelt never overlooked the fact that his actions might lead to his immediate or eventual impeachment."⁵

Shortly after Denmark was occupied by the Germans, Greenland asked the United States for protection. In July 1941, the U.S. occupied formerly Danish Iceland, and in August, the United States began escorting merchant ships to Iceland. On September 4, a German submarine released a torpedo near the destroyer *U.S.S. Greer* on her way to Iceland; the *Greer* dropped a depth charge; the sub released a second torpedo; neither sub nor destroyer was hit. But the president was mad! On September 11, he went on radio and issued a "shoot on sight order" to U.S. Navy ships in the Atlantic. "[W]hen you see a rattlesnake poised to strike, you do not wait until he has struck before you crush him. These Nazi submarines and raiders are the rattlesnakes of the Atlantic. . ."

On Sept. 16, the *U.S.S. Kearny*, another U.S. ship en route to Iceland, was hit by a German torpedo; 11 men were killed, 22 wounded; but the *Kearny* managed to limp into Reykjavik. On October 31, the *Reuben James*, also accompanying a convoy, was torpedoed; it split in half and 100 men died; only 45 were saved.

Admiral Royal E. Ingersoll, Assistant Chief of Naval Operations, described the de facto war the United States was conducting in the Atlantic as "not a legal war." But then he half-apologized: "It was more in the nature of irregular. . ."

If FDR were to propose going to war, Congress would argue for weeks. Therefore, since he could not declare war, he made war instead.

In the Atlantic we were doing some things which only a belligerent does. There had been no declaration. We had done a great many things that under international law, as it was understood before the last war, were unneutral. . . . It was apparently to her [Germany's] advantage to have us as a nonbelligerent rather than as a full belligerent."⁶

By the fall of 1941, the situation in the Far East had begun to assume added importance in the eyes of top Washington officials. In an attempt to settle U.S.-Japanese differences —

primarily over trade and Japan's occupation of Indochina — the United States began diplomatic negotiations with Japanese Ambassadors Kichisaburo Nomura and Saburo Kurusu. Roosevelt and Churchill were pressing Japan to end her war with China and stop expanding in the southwestern Pacific.

On November 7 — a full month before the Pearl Harbor attack — Secretary of War Henry L. Stimson reported that FDR took "the first general poll of his Cabinet . . . on the

U.S. ships fired on some German ships. Yet the Germans refused to respond. Hitler was not looking for a fight with the United States.

question of the Far East — whether the people would back us up in case we struck at Japan down there [in southeast Asia]. . . . It was a very interesting talk. . . . He went around the table — first [Secretary of State Cordell] Hull and then myself, and then around the whole number and it was unanimous in feeling the country would support us. [FDR] said that . . . the vote is unanimous, he feeling the same way. The vote would have been much stronger, if the Cabinet had known — and they did not know except in the case of Hull and the President — what the Army was doing with the big bombers [i.e., reinforcing the Philippines] and how ready we [the Army] are to pitch in" in case of an attack on the British or Dutch in southeastern Asia.

At a White House meeting on November 25, FDR raised the subject of Japanese relations. He "brought up the event that we were likely to be attacked [by Japan] perhaps (as soon as) next Monday [December 1], for the Japanese are notorious for making an attack without warning, and the question was what we should do." Secretary of War Stimson stated the dilemma succinctly: "The question was how we should maneuver them into the position of firing the first shot without allowing too much danger to ourselves."

On November 27, Stimson warned the Philippines to expect Japanese aggression in a few days. The war plans issued to Admiral Kimmel in Pearl Harbor advised him to prepare to take the offensive by getting his men and ships ready to launch an attack on the Japanese establishments in the mid-Pacific Marshall Islands.

The next day, November 28, Stimson learned from Army intelligence of a "formidable" expedition of Japanese forces sailing south along the Asiatic coast. Various alternatives were discussed that day at a War Cabinet meeting. All the participants agreed that if the Japanese were permitted to land in the Gulf of Siam, it would place them in a strategic position to strike a severe blow against all three other powers in southeast Asia — the British at Singapore, the Dutch in the Indies, and the Americans in the Philippines. The members of the War Cabinet all agreed that the landing must not be allowed. If the Japanese got into the Kra Isthmus, the British would fight; and if the British fought, we would have to fight. The cabinet realized that if this expedition was

allowed to round the southern point of Indochina, this whole chain of disastrous events would be set in motion.

"We decided, therefore, that we could not just sit still and do nothing," Stimson reported, "After some discussion it was decided that he [FDR] would send such a letter to the Emperor, which would not be made public, and that at the same time he would deliver a special message to Congress reporting on the danger." FDR "asked Hull and Knox and myself [Stimson] to draft such papers. The consensus was 'that rather than strike at the Force as it went by without warning on the one hand, which we didn't think we could do, or sitting still and allowing it to go on, on the other, which we didn't think we could do — that the only thing for us to do was to address it a warning that if it reached a certain place, or a certain line, or a certain point, we should have to fight.'"

Secretary of State Hull sent the president a draft of a proposed message to Congress. After rehashing the history of U.S.-Japanese relations, Hull presented in strong terms the president's view of Japanese aggression: "The supreme question presented to this country along with many other countries by the Hitler-dominated movement of world conquest is that of self-defense. . . . We do not want war with Japan, and Japan does not want war with this country. If, however, war should come, the fault and the responsibility will be those of Japan. The primary cause will have been pursuit by Japan of a policy of aggression."

On December 1, Roosevelt had a long conversation with British Ambassador Lord Halifax, during which he confirmed the U.S. commitment to its agreement with the British and Dutch. In the case of a direct attack on the British or the Dutch, Roosevelt said "we should obviously all be together." But he "wanted to be clear about 'matters that were less plain'. . . . (i) if the Japanese reply to these questions [about where the Japanese troops were going, and if to Indochina, for what purpose] were unsatisfactory, but the reinforcements had not reached Indo-China, (ii) if the reply were unsatisfactory, and the troops had reached Indo-China, (iii) if the Japanese moved against Thailand without attacking the Kra Isthmus [on Thai territory] or if they did no more than enforce concessions from Thailand of a kind 'dangerously

A decrypted Japanese message, promising peace with Russia but war with the U.S., vanished into the naval hierarchy, its significance apparently not recognized.

detrimental to the general position.'" According to Lord Halifax, the president said that the British "could count on American support if we [the British] carried out our move to defend the Kra Isthmus [on Thai territory] in the event of a Japanese attack, though this support might not be forthcoming for a few days. He suggested that we should promise the Thai Government that, if they resisted Japanese attack or

infiltration, we would respect and guarantee for the future their full sovereignty and independence. The president said that the United States Constitution did not allow him to give such a guarantee, but we could be sure that our guarantee would have full American support." Roosevelt's remarks

Roosevelt knew that some of his actions in assisting the British openly and courting war against the Nazis were not constitutional.

were "sufficiently encouraging to enable Halifax to report that in his opinion the United States would support whatever action we [the British] might take in any of the contingencies outlined by the President. We could, in any case, count on American support of any operations in the Kra Isthmus."⁷

Also on December 1, Roosevelt instructed Admiral Hart in Manila to equip three small ships commanded by a U.S. naval officer with sufficient armaments — one small gun and a machine gun — to be classified as "U.S. men of war." The crews could be Filipino. These small ships were to take up specific positions in the path of the Japanese convoy then heading south along the Asiatic coast; their purpose, to report the movements of the Japanese. Admiral Hart was puzzled; the Japanese movements were already known in Manila from aerial reconnaissance. Perhaps the three small ships were intended as bait, as Stimson had suggested on September 25, to induce the Japanese into "firing the first shot without allowing too much danger to ourselves." As it happened, only one of the three ships got into the Japanese convoy's way before December 7; it was spotted, and returned to base.

On the evening of December 3, the President again discussed with Lord Halifax the British plan to resist a Japanese attack on the Kra Isthmus and Thailand, again confirming, and even strengthening, his December 1 pledge. He told Lord Halifax that, "when talking of support, he meant 'armed support,' and that he agreed with the British plan for operations in the Kra Isthmus if the Japanese attacked Thailand." Halifax then wired his government in London that he "was sure that we [the British] could count on 'armed support' if we undertook the [Kra Isthmus] operation."⁸

The situation was heating up. Not only were reports of Japanese activity in the Far East more frequent, but more Japanese messages concerning diplomatic relations and Japanese affairs worldwide were being picked up, decoded, and translated in Washington. And their messages were increasingly urgent. Top Washington officials privy to MAGIC, the intelligence obtained by intercepting Japanese "Purple" coded messages, continued to read and scrutinize them carefully for hints as to what the Japanese were planning.

Among the Japanese intercepts sent from Tokyo in their J-19 code, decoded and translated by our Navy cryptanalysts in Washington on December 3, was a "ships in harbor"

message to the Japanese consul in Hawaii. Tokyo asked that Hawaii report twice a week, instead of irregularly, the locations of U.S. "ships in harbor" at Pearl Harbor. Pearl Harbor officials had never been advised that "ships in harbor" reports were being compiled by the Japanese consul in Hawaii and sent to Tokyo. Nor were they told of this "ships in harbor" intercept.

On December 3, "highly reliable information" was received in Washington that the Japanese diplomatic and consular posts in Hong Kong, Singapore, Batavia, Manila, Washington, and London — all in American, British, or Dutch territory — had been ordered to destroy most of their codes and ciphers and burn all other important confidential and secret documents.

Top Washington officials were increasingly on the alert as conflict with Japan was becoming imminent. They sent instructions to U.S. Naval Attaches in Tokyo, Bangkok, Peiping, and Shanghai, to destroy their codes. And General Sherman Miles, head of the Army's Military Intelligence Division, ordered the U.S. Military Attache at the U.S. embassy in Tokyo to destroy his codes.

When the Japanese could no longer transmit via code over their cryptographic channels, they communicated with their diplomatic offices worldwide by inserting messages, each with a hidden meaning, in ordinary weather reports. On December 4, radioman Ralph T. Briggs at Cheltenham, Md., intercepted a message containing the phrase *Higashi no kaze ame* — "East Wind Rain" in English. The hidden meaning of "East Wind Rain" was: "War with England (including Netherlands East Indies, etc.); war with the U.S.; peace with Russia." Thus Russia was not to be a target of Japanese aggression, but England (Singapore), the Dutch East Indies, and the United States (possibly Manila, Pearl Harbor, or the Canal Zone) would be involved at the start in whatever aggression Japan was planning. This message, with its hidden meaning — "War with the U.S." — written in bold, was hand-delivered to the Director of Naval Communications in Washington. There it vanished, its significance apparently not recognized. At least no hint of this crucial intercept, or its interpretation that an attack on U.S. territory was coming, was ever relayed to any responsible official who would admit receiving it. All trace of its receipt was lost and none was ever found in spite of a thorough search during the many post-Pearl Harbor investigations.

Throughout the weeks and months that U.S. and Japanese diplomats negotiated in Washington, the United States had the advantage of being able to read Japan's very secret "unbreakable" diplomatic code. After first deciphering it in August 1940, American codebreakers and translators eventually became so adept that they often were able to place the translation of a Japanese intercept on Secretary of State Hull's desk before the Japanese ambassadors, to whom it had been addressed, arrived to discuss it. Thus, U.S. officials were able to learn many, though not all, Japanese secrets concerning U.S. trade relations, Japan's obligations to Germany and Italy under the Trilateral Agreement, and Japan's incursion in China and occupation of French Indochina.

Negotiations with the Japanese finally reached an impasse toward the end of November 1941. However, the

Japanese were told by their government to keep up the pretense of negotiating. By this time, top Washington officials were alert for any clues as to what the Japanese were planning. But their attention was not on Pearl Harbor; rather, it was riveted on the massive Japanese convoys in the southwestern Pacific, and the U.S. obligations to the British and Dutch.



FDR had been following U.S. relations with Japan very closely through MAGIC. He realized war was close. He had been particularly impressed by a December 1 Tokyo to Berlin intercept: "[W]ar may suddenly break out between the Anglo-Saxon nations and Japan through some clash of arms . . . quicker than anyone dreams." Another Tokyo to Berlin message intercepted the same day advised Berlin that the United States had "conferred with England, Australia, the Netherlands and China — they did so repeatedly. Therefore, it is clear that the United States is now in collusion with those nations and has decided to regard Japan, along with Germany and Italy, as an enemy."

The papers Lieutenant Schulz delivered to FDR on the evening of December 6, consisted of 13 parts of a 14-part message: Japan's answer to the United States' rejection of

American codebreakers were often able to place the translation of a Japanese intercept on Secretary of State Hull's desk before the Japanese ambassadors, to whom it had been addressed, arrived to discuss it.

the latest Japanese attempt at a compromise. It announced that the Japanese were breaking off negotiations and that U.S.-Japanese relations were de facto ruptured.

Roosevelt appeared confident when he told Hopkins that the United States couldn't "strike the first blow . . . [W]e could not make the first overt move. We would have to wait until it came." After all, under the U.S. Constitution, only Congress could declare war. And, moreover, Roosevelt had pledged to the American people more than once during his 1940 campaign that "We are arming ourselves not for any foreign war. We are arming ourselves not for any purpose of conquest or intervention in foreign disputes. . . . It is for peace that I have labored: and it is for peace that I shall labor all the days of my life" (Oct. 23, 1940); and again, "We will not participate in foreign wars and we will not send our army, naval or air forces to fight in foreign lands outside of the Americas except in case of attack" And yet again, he had stated: "And while I am talking to you mothers and fathers, I give you one more assurance. I have said this before, but I shall say it again and again and again. Your boys are not going to be sent into any foreign wars. They are going into training to form a force so strong that, by its very existence, it will keep the

threat of war from our shores. The purpose of our defense is defense."

In this way, Roosevelt had assured the voters many times that America had provided aid to the British, French, and Chinese purely to help those countries defend themselves against foreign aggression. The grants of money, planes, and weapons; the expansion of the area patrolled by U.S. ships in the Atlantic to keep German and Italian ships away from our shores; the Lend-Lease program; the exchange of old U.S. destroyers to the British for military

Roosevelt never overlooked the fact that his actions might lead to his immediate or eventual impeachment.

bases in this hemisphere; the conscription of young men; the build-up of U.S. plants producing planes, ships, and armaments; the conveying of British ships to Iceland: all were intended to keep America out of the war by strengthening Britain. But Roosevelt must have had some misgivings even as he spoke to Hopkins. He was well aware that the U.S. was committed to help the British and the Dutch by the agreement signed in April 1941. And he knew that five divisions of Japanese troops were heading south in convoys of 30, 40, or 50 ships, and were probably even then rounding the southern tip of Indochina and sailing toward the Kra Isthmus and the Malayan peninsula. Moreover, he had just reassured Lord Halifax that the U.S. would lend the British military support if the Japanese proceeded thus. To keep that promise, he must deploy American forces. But how? The Constitution provided that the Congress, not the president, must declare war.

When Stark got home from the theater later that evening, he found a message instructing him to call the president. FDR must already have arranged for the other members of his "inner circle" to come to the White House that night. In any event, the president's closest advisers gathered together late that night, and into the wee hours of the morning, to discuss the crisis. In attendance were Secretary of State Cordell Hull, Secretary of the Navy Frank Knox, Secretary of War Henry L. Stimson, Army Chief of Staff George C. Marshall, Navy Chief of Staff Harold L. Stark, and Harry Hopkins. They read the 13 parts of Japan's 14-part response to FDR's note of November 26 — which the Japanese considered "an ultimatum" — and were expecting the Japanese to announce a final break-off of all relations with the United States. They thought the Japanese would strike Malaya, the Kra Isthmus, or Thailand, and possibly the Dutch East Indies. The president's men must have discussed how the United States should respond to Japanese aggression thousands of miles from American shores in view of the commitment the U.S. had made to the British. This was the dilemma over which they had agonized for weeks.

At Stimson's request, Hull and Knox worked on statements presenting the rationale for going to war against Japan without waiting — as the U.S. commanders in the field had

been directed to wait — for the Japanese to commit the first overt act. Hull's statement began: "The Japanese Government, dominated by the military fireeaters, is deliberately proceeding on an increasingly broad front to carry out its long proclaimed purposes to acquire military control over one-half of the world with nearly one-half of its population. This inevitably means Japanese control of islands, continents, and seas from the Indies back near Hawaii, and that all of the conquered people would be governed militarily, politically, economically, socially, and morally by the worst possible military despotism with barbaric, inhuman, and semi-slavery methods such as Japan has notoriously been inflicting on the people of China and Hitler on the peoples of some 15 conquered nations of Europe. . . . [I]t is manifest that control of the South Sea area by Japan is the key to the control of the entire Pacific area, and therefore defense of life and commerce and other invaluable rights and interests in the Pacific area must be commenced with the South Sea area. . . . This at once places at stake everything that is precious and worth while. Self-defense, therefore, is the key point for the preservation of each and all of our civilized institutions."⁹

Knox wrote: "1. We are tied up inextricably with the British in the present world situation. 2. The fall of Singapore and the loss to England of Malaya will automatically not only wreck her far eastern position but jeopardize her entire effort. 3. If the British lose their position the Dutch are almost certain to lose theirs. 4. If both the British and the Dutch lose their position we are almost certain to be next, being then practically Japanese surrounded. 5. If the above be accepted, then any serious threat to the British or the Dutch is a serious threat to the United States; or it might be stated any threat to any one of the three of us is a threat to all of us. We should therefore be ready jointly to act together and if such understanding has not already been reached, it should be reached immediately. Otherwise we may fall individually one at a time (or somebody may be left out on a limb). 6. I think the Japanese should be told that a movement in a direction that

The three small ships may have been intended as bait, to induce the Japanese into "firing the first shot without allowing too much danger to ourselves."

threatens the United States will be met by force. The president will want to reserve to himself just how to define this."¹⁰



On the morning of December 7, President Roosevelt received part 14 of Japan's reply to the U.S. "ultimatum," as well as the "One P.M. Message," intercepted early that morning, advising her ambassadors to deliver to Hull the 14-part reply to the U.S. "ultimatum" at precisely 1 p.m. Washington time. According to FDR's personal physician, Dr. Ross T. McIntire, who was with FDR from 10 a.m. to noon that day,

FDR did not think that, even given "the madness of Japan's military masters," they would risk war with the United States. McIntire wrote later that FDR thought "that they [the Japanese] would take advantage of Great Britain's extremity and strike at Singapore or some other point in the Far East, but an attack on any American possession did not enter his [FDR's] thought."

State Department writer Stanley K. Hornbeck had just finished a new draft of a speech, drawing on the suggestions made by Hull, Stimson, and Knox, which FDR planned to deliver to Congress on December 8 or 9 if he did not receive a satisfactory reply to his letter of last appeal to Emperor Hirohito. On the morning of December 7, FDR continued work on that speech.¹¹ He would review the historical background of U.S.-Japanese relations; remind Congress of the United States' respect for basic principles, and for "the sovereign rights of the countries of the Far East"; point out that in 1908, 1921, and 1929, Japan and the United States had exchanged notes and signed treaties, and declared support for "the independence and integrity of China," for maintaining "the existing status quo in that region," and for "the principle of equal opportunity for the commerce and industry of all nations throughout China." But he would remind his listeners that the U.S.-Japanese relationship had deteriorated after 1931. In that year, the Japanese army had begun a policy of aggression by seizing Manchuria. In July 1937 she had "embarked upon large-scale military operations against China," killing many American citizens; sinking American vessels; bombing American hospitals, churches, and schools; destroying American property and businesses; and interfering with American trade.

The proposed speech then went on to detail Japan's transgressions. "In flat defiance of its covenants Japan has invaded and sought to overthrow the Government of China. Step by step its armed forces . . . have invaded and taken possession of Indochina. Today they are openly threatening an extension of this conquest into the territory of Thailand . . . where they would directly menace, to the North, the Burma Road, China's lifeline, and to the South, the port and Straits of Singapore. . . . While all this is going on, Japan has bound herself to Germany and Italy by a treaty. . . . Simply stated, what we are confronted with in the Far East is a repetition of the strategy pursued by Hitler in Europe . . . a steady expansion of power and control over neighboring peoples by a carefully planned and executed progressive infiltration, penetration and encirclement."

The United States recognized Japan's legitimate interest in seeking access to resources and to trade for the sake of her large population, but objected to Japanese aggression and conquest in southeastern Asia. "The southwestern Pacific and the Asiatic mainland are important to our economy; but they may be even more important to our military position. . . . [T]he United States is necessarily linked with Great Britain and with the vital units of the British Commonwealth, as well as with China, and a number of other countries. Were Japan established in Singapore or the Netherlands Indies, or were she to dominate China, the lines of communication between the United States, China and other peace-loving nations would be cut."

In the speech the President would remind Congress that the United States and Japan had been negotiating in Washington for eight months in the hope of reaching some peaceful solution. "In our negotiations, we have kept in close contact with the Governments of Great Britain, Australia, the Netherlands Indies, and China. . . . [W]e have had the moral support of these nations. We also have been given assurance of their material and military support if there comes resort to force. . . .

"We have recognized, and have offered to defend, Japan's legitimate desire to provide her country with the means of peaceful and prosperous life. In return for this we have asked that Japan abandon the practice of aggression and conquest which sets up a continuing and growing military threat to the United States, and continuing and growing disturbance of those world conditions which alone make possible the peaceful life of the United States. This Japan has

FDR thought that the Japanese would strike at some point in the Far East, but an attack on any American possession did not enter his mind.

declined to do. . . . Though professing a desire merely to establish access to economic resources permitting her to live, she has in fact seized territory for the purpose of ruling it — a rule of merciless sorrow matched only by that of Hitlerized Germany. . . .

"The fundamental issue between this country and Japan is not materially different from the issue prevailing between this country and Nazi Germany. The issue is drawn between peoples demanding to be masters over slave peoples, and to maintain and expand that system indefinitely by force, as against those countries who desire the independence of nations, the freedom of peoples, and the working out of



"Take one of these diet pills every time you regain consciousness."

cooperation in economic arrangements by which all can live. . . .

"Within the past few days large additional contingents of troops have been moved into Indo-China and preparations have been made for further conquest. The question is thus immediately presented whether the United States is to stand by while Japan goes forward with this program of lawless conquest — a conquest which disregards law, treaties, the rights and interests of others, and which brushes aside all considerations of humanity and morality. . . . The whole world is presented with the issue whether Germany, Italy and Japan are to conquer and rule the earth or are to be dissuaded or prevented, by whatever processes may be necessary, from pursuit of policies of conquest. . . .

"Japan's policy of conquest and exploitation which is now being carried out in China has already utterly destroyed . . . the peaceful and profitable commercial relations which the United States had previously enjoyed there. . . . This Japanese procedure of conquest and exploitation is encircling the Philippine Islands. It threatens the commerce of those Islands and endangers their physical safety. . . . If the Japanese should carry out their now threatened attacks upon

When Roosevelt heard of the Japanese attack on Pearl Harbor, he was surprised. But he was also relieved — at least until he learned the extent of the disaster.

and were to succeed in conquering the regions which they are menacing in the southwestern Pacific, our commerce with the Netherlands East Indies and Malaya would be at their mercy and probably be cut off. . . . Further extension of Japanese aggression in the Pacific area menaces seriously the effort which free countries in Europe and in Asia are making to defend themselves against Hitlerism. We are pledged to aid those countries. Trade routes important to Great Britain and to China and to Russia would be threatened, as would the obtaining by those countries of articles essential to continued resistance. . . .

"We cannot permit, and still less can we support, the fulfillment by Japan of the aims of a militant leadership which has disregarded law, violated treaties, impaired rights,

destroyed property and lives of our nationals, inflicted horrible sufferings upon people who are our friends, interfered with our trade, ruined the legitimate business of many of our nationals, compelled us to make huge expenditures for defensive armament, made threats against us, put and kept many of our people in a constant state of anxiety, and, in general, made Japan a menace to our security and to the cause of peace, of freedom and of justice."

FDR's proposed address to Congress concluded: "As commander in chief, I have given appropriate orders to our forces in the Far East."



On Sunday, Dec. 7, 1941, Japanese planes attacked Pearl Harbor. Administration officials found it difficult to believe the news of the Japanese attack when it first reached Washington. Hull thought it must have meant Manila. But Stark knew it meant Pearl Harbor; he knew the phrase "This is not a drill" heralded a real attack, not a practice.

When Roosevelt heard of the attack, he was surprised, but several witnesses reported that he actually seemed relieved at the news — at least until he learned the extent of the disaster. Secretary of Labor Frances Perkins said "that night . . . in spite of the terrible blow . . . he had nevertheless a much calmer air. As we went out [of that evening's White House meeting, Postmaster General] Frank Walker said to me, 'I think the boss really feels more relief than he has had for weeks.'" In Perkins' oral history: "His surprise was not as great as the surprise of the rest of us." And Eleanor Roosevelt wrote: "In spite of his anxiety Franklin was in a way more serene than he had appeared in a long time. I think it was steadying to know finally that the die was cast. . . . [Pearl Harbor] was far from the shock it proved to the country in general. We had been expecting something of the sort for a long time."

If the President had delivered the speech he intended to give Congress on December 8 or 9, he would have been violating his pledge to the American people; he would have been sending U.S. boys to fight in a foreign war even though the United States had not been attacked; he would have been sending them to defend territory thousands of miles from our shores — the Isthmus of Kra and Singapore in Malay, and the Dutch East Indies in the Indian Ocean.

Germany's declaration of war on the United States on December 11, and the blitz-warfare by the Japanese during the first few weeks, ensured that the American people would support the war. And so it happened that hundreds of thousands of Americans died thousands of miles from their homes, in a war the president had secretly pursued, while publicly promising to avoid.

The Japanese attack on Pearl Harbor made war inevitable. But the attack was not Roosevelt's reason for going to war. It was his excuse. □

NOTES

1. The dates mentioned in this article are all a matter of public record. Unless otherwise indicated, the direct quotations are all taken from the hearings and reports of the several

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investigations into the Pearl Harbor attack, as published by the U.S. Congress (1946, 39 vol.).

2. In 1935, Congress had passed the "Neutrality Act of 1935," instigated largely out of U.S. sympathy for China in her struggle with Japan. As Roosevelt signed it on Aug. 31, 1935, he explained it was intended as an expression of "the fixed desire of the Government and the people of the United States to avoid any action which might involve us in war." This 1935 Act prohibited the trade in arms or implements of war with any country involved in a war. Then in 1939, Congress repealed the 1935 Neutrality Act and replaced it with the "Neutrality Act of 1939." This new Neutrality Act permitted military supplies to be sold to belligerent nations, if they were paid for in cash and if they were not transported in U.S. vessels. This "cash and carry" provision enabled the United States to sell weapons to good nations and refuse to sell them to bad nations. The 1939 Neutrality Act was further revised in November 1941, to permit armed U.S. merchant ships to enter war zones.

3. Remarks delivered at the Fuehrer Conference, May 22, 1941. As quoted in Patrick Abbazia, "Mr. Roosevelt's Navy:

The Private War of the U.S. Atlantic Fleet, 1939-1942." (Naval Institute Press, 1975), p. 176.

4. Quoted from the ADB report, reprinted in the Joint Congressional Committee hearings, part 15, p. 1564.

5. Robert Sherwood. "Roosevelt and Hopkins," (Harper and Brothers Publishers, 1948), p. 274.

6. Joint Congressional Committee hearings, part 9, pp. 4246, 4249.

7. Llewellyn Woodward, "British Foreign Policy in the Second World War." Her Majesty's Stationery Office, 1962, pp. 186-187.

8. Ibid., p. 187.

9. Hull's "proposed statement" reprinted in Joint Congressional Committee hearings, part 11, pp. 5439-5440.

10. Knox's "suggestion" reprinted in Joint Congressional Committee hearings, part 11, pp. 5440-5441.

11. Mimeographed, drafted, signed, and pencil-dated Dec. 5, 1941, by Special Assistant to the Secretary of State and Advisor on Political Relations, Stanley K. Hornbeck. National Archives, Civilian Records Branch, Record Group 59, Entry 398, Box 3, Location 250/46/04/01.

Letters, from page 15

correction: Category (not Class) Four hurricanes (Saffir-Simpson Scale) are fortunately rare.

A storm is named when it becomes a tropical storm, one step below a Cat One hurricane. So far this year, we've had 22 named storms. Wilma was the 21st named storm — they skip several letters of the alphabet, so after Wilma they named the next storm Alpha. (There's one trying to form as I write this; if it achieves tropical storm status, it will be called Beta.)

According to the National Hurricane Center, during the period 1991-2004, a total of 21 hurricanes made landfall in the U.S., and of those only eight were Cat Three and above. Only one was Cat Four, and none were Cat Five.

The government — and the dependence fostered over many years — is to blame for much of the suffering in Louisiana and elsewhere. And there was no doubt that a Cat Four or Five storm would eventually hit New Orleans. While it should have been obvious that danger existed, it's not nearly as likely as Mr. Bradford asserts — the big storms just aren't as frequent as he describes.

Lou Villadsen
Fort Lauderdale, Fla.

Plank in Thine Eye?

Stephen Cox likes to nitpick others' speech. But can his own writing stand

the test? Let's review some topics he addressed in Word Watch (November).

1) "Say what you mean, for God's sake." Here Cox references a divinity, to aggrandize his trivial goals. Or is he using a common expression that doesn't mean what it says?

2) "Pre-order" is obviously short for "prerelease order." Why the confusion?

3) Cox observes that "legendary" means "mythical," "unreal." So what? Many actual people are literally legends in their own time. Elvis' life has been mythologized in people's imaginations — alongside Robin Hood, King Arthur, and Bill Clinton, the most unreal president in memory.

Kevin Sterns
San Jose, Calif.

Unconstitutional Referenda

Bruce Ramsey's essay "Referendum Runaround," (November) gives me the opportunity to make a point I have considered for some time now.

The "referendum" or "ballot initiative" is wrong, and could be interpreted as unconstitutional.

Article IV, Section 4 of the U.S. Constitution, reads (in part): "The United States shall guarantee to every state in this Union a Republican Form of Government." A "republic" is the form of government where representatives administer the government on behalf of the people. Indeed, Article I,

Section 1 reads (in part): "All legislative Powers herein granted shall be vested in a Congress of the United States." The clear meaning here seems to have been lost.

As I see it, when the country was formed, the citizens ceded all legislative power to their representatives in the various levels of government. The people only elect the representatives, democratically. If an issue is more than a private matter it should be settled by the elected representatives of the people, not by popular vote.

This is about insulation of the minority from the whim of the majority, an important theme in the history of our country. The fact that a ballot initiative could be used to promote a "good cause" is no kind of proof that it is proper for a rational society. The ballot initiative turns the citizens into legislators when that is not their proper role. The ballot initiative serves as a distraction from the corruption of government. It gives a false hope to the people. How can a court declare the results of a referendum "unconstitutional"? There are many ways of looking at this issue which make ballot initiatives morally wrong.

When I witness references to our "democracy" my heart saddens because I know the intention behind that usage.

Rodney Choate
Alexandria, La.

The Anti-Semitism of My Youth

by Richard Kostelanetz

Colleges, golf courses, government agencies: it wasn't that long ago that their gates were open only to a select many.

Born in 1940, I can remember only four episodes. The first occurred around 1956 when I was disinvited from some trivial affair at the Scarsdale Golf Club. My recollection is that my teenage girlfriend, who was half-Jewish by ancestry, had gotten invited, and she in turn invited me. That prompted a cancellation. Such disinvitations were not uncommon at the time.

When I got married, a few years later, we had to do the reception at my wife's parents' house, rather than the local Plainfield (NJ) country club, which didn't admit Jews. These restrictions ended, as the Scarsdale Golf Club, short of members a decade later, had to admit those previously proscribed, while Plainfield is now, I'm told, mostly African-American. One result of this episode is that to this day I still prefer public recreation facilities to private, in addition to finding any organizations restricting membership to be unseemly.

The second occurred when I applied to college. Some of the more distinguished universities had quotas that were hidden, but still known, limiting the percentage of Jews, as could best be determined in advance, to 10% of an incoming class. I have been told reliably that such quotas disappeared during the 1960s. One result of Ivy League anti-Semitism was that the best students were disproportionately Jewish, implicitly contributing to philo-Semitic mythology, while the universities in retrospect look modishly dumb. The effect on my mind has been a continuing preference for absolutely level playing fields, not only in sports, which is to say a distaste for dis/advantageous quotas of any kind in part

because they customarily "demonstrate" a truth they are designed to deny.

A third episode happened at the National Endowment for the Arts during the mid-1980s. I applied for support for two projects with Jewish content, both of which drew upon art already completed with German funds — a book about the greatest Jewish cemetery in Berlin, about which I'd previously made several films, and a mechanical opera based upon an electro-acoustic composition *Kaddish* that had been commissioned and broadcast by Westdeutscher Rundfunk. Neither received support from the NEA, to my disappointment.

I became alarmed when I read the NEA's Annual Reports for those years and discovered that though many recipients had all kinds of minority-monikers, very few had versions of "Jewish" in their name or their projects — as few as only one a year. Jacob Neusner, at the time on the NEA's National Council (a trustee), remembers, "I also cannot recall any advocacy or warm support for a project because it bore a distinctively Jewish character, and there was plenty of ethnic and racial and gender advocacy in play. In other words,

there was pressure to support a Hispanic or feminist or African-American person or project by reason of the ethnic or gender or racial origin or focus, and never, ever, a Jewish person or project." Proposals for Jewish projects, such as mine, must have been cut off at an earlier pass, so to speak, long before they were ever presented to the Council whose

One result of Ivy League anti-Semitism was that the best students were disproportionately Jewish, implicitly contributing to philo-Semitic mythology.

members in that period included Harvey Lichtenstein of the Brooklyn Academy of Music, Joseph Epstein of The American Scholar, and New York state senator Roy Goodman, all apparently asleep on their thrones.

Though I wrote an exposé of this neglect at the time, anti-anti-Semitism in the 1980s focused more on blathering by black Muslims and similarly marginal people. My exposé appeared in an obscure place, getting no further attention, and was then reprinted in a collection of my essays, "Crimes of Culture" (1995). In an otherwise sympathetic review, one writer identified it as the book's least persuasive piece, to my disappointment.

When I mentioned this NEA scandal several years later to someone operating a private foundation to support Jewish culture, he recalled conversations at the time with NEA officials who said that they expected prominent Jewish foundations to support Jewish art. (Little did these NEA wise guys know that much of the best Jewish art of the past decades was, like my own, funded entirely in Germany; but that's another story.) As a result of this episode, I ceased producing Jewish art, making me a victim not of censorship as such but, in truth, the effects of anti-Semitic discrimination.

In the fourth episode, I was a victim of Jewish anti-Semitism, which is always the most dangerous, because gentiles don't find it objectionable. In 1965, I published in Hudson Review an essay about minority-monikers in American literature, explaining that writers identifying themselves as Southerners had lost the center literary stage to a new group identifying themselves as Jews. Obvious in retrospect, my analysis was perceived as controversial at the time. My bias then, elaborated since, was that artistic categories based on anything other than formal characteristics — that includes geography as well as ethnicity — had no validity in serious criticism.

What I didn't know at the time was that some Jewish writers had dubbed my piece anti-Semitic, which was an opportunism typical at the time, and characterized me as a self-hating Jew, which would have come as a surprise to anyone who actually knew me. My writing had already appeared in patently Jewish magazines which continued to publish me; I attended synagogue and later produced the Jewish art mentioned above. (The lesson here is that those considering themselves Professionally Challenged, especially

if anxious and insecure, can make up anything they want to advance their vulgar interests. Indeed, precisely in hysterical deceit do those Professionally Challenged mark themselves.)

Contracts and contacts with publishers were cancelled, often at their expense, because of machinations occurring behind my back. In his sweeping complaint about younger writers in his much-reprinted 1967 essay on "The New York Intellectuals," a critic named Irving Howe, a generation older than I, identified only one emerging writer by name, me, albeit only in a footnote typically misrepresenting me vulgarly. Whereas my essay had no appreciable effect on the fortunes of the Jewish-American writers, most of whom were and are quite prosperous, the losses to me were probably greater than I knew then and either I or my biographer can know now (as some conspirators and co-conspirators have passed).

The question to consider is whether I would have been treated differently had I not been Jewish — whether they jeopardized me because I was Jewish. If so, then these Jewish literary operatives must be considered anti-Semitic. As a result, my ability to survive professionally was impaired, not because of gentiles in the episodes mentioned before but because of disrespectful Jews.

In an elaboration of "Militant Minorities," which became the opening chapters of my book "The End of Intelligent Writing" (1974), I observed that some of these same writers had conspired — yes, breathed together — to deprive Communist Jewish writers, mostly older, of a livelihood, not only because the oldsters were anti-Communists but because they had to establish themselves as Kings of the Jewish Hill, so to speak. Having vanquished those foes, they turned their guns upon younger Jewish writers (apart from their direct

As a result of this episode, I ceased producing Jewish art, making me a victim not of censorship as such but, in truth, the effects of anti-Semitic discrimination.

proteges), likewise to buttress professional success and accompanying privileges. I was just another bunny in a continuing hunt whose earlier non-Communist targets included Allen Ginsberg and other Jewish independent radicals — note Ginsberg, rather than Kerouac, whose love for Jews was limited. Picking on me, rather than a gentile, implicitly flattered me, as well as allowing me to flatter myself, as I am doing here.

Tactically, this opportunistic Jewish anti-Semitism was ultimately a mistake, as the movement represented by its publicists terminated with writers born around 1933 (Susan Sontag, Philip Roth). The truth then, as in decades before, is that history always buries short-sightedly anti-Semitic Jews.

Fortunately, unlike too many earlier victims of Jewish anti-Semitism, I survived long enough to write about ignominy. □

The Roots of Liberty, from page 18

[I]f the king ceases to govern the kingdom, and begins to act as a tyrant, to destroy justice, to overthrow peace, and to break his faith, the man who has taken the oath is free from it, and the people are entitled to depose the king and to set up another, inasmuch as he has broken the principle upon which their mutual obligation depended.

Compare Manegold's views with the American Declaration of Independence:

That to secure these rights, Governments are instituted among Men . . . That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government . . .

Manegold and Thomas Jefferson both claimed that rulers are contractually bound to protect the public good. Rulers who violate their duty thereby ceased to function as rulers; they might be removed, and replaced with others.

Monarchy had been desacralized. A tyrannical king was no longer "the Lord's anointed." Rather, he was nothing more than an employee who could be fired by his employers, the people.

It would take centuries for the feudal and papal principle of contractual government to achieve its greatest fruition in the American Revolution. The Founders knew that their new nation's religious philosophy had historical roots that were three millennia old — when in the Exodus, the false god-king Pharaoh was defeated by the true God, who is the only

king. The Americans also knew the great debt they owed to the religious philosophies of 16th and 17th century Western European Protestant dissidents.

The Founders may not have known — but we should always remember — that those great Protestant writers, such as John Locke and Algernon Sidney, were building on a foundation of Catholic theology constructed during the Papal Revolution.

Not long after winning independence, the United States of America revamped the British favorite "God Save the King." The new words reflected the triumph of freedom-loving Christian writers and fighters from Manegold onward:

Our fathers' God, to thee
Author of liberty,
To thee we sing.
Long may our land be bright
With freedom's holy light;
Protect us by thy might,
Great God our king.

As we fight for liberty at the beginning of the third millennium, we should acknowledge our own debts to the great men of the early second millennium — the men who overturned the false teaching that evil governments exercise authority from God, and who began recovering the principles of liberty and self-government which had been lost since the destruction of the Roman Republic. □

Reflections, from page 12

for the entire move in the market was missed by everyone at the time. Another way to present it is to assume that the market was already overbought, that it was ready to fall, and that the Senate action triggered something that was going to happen anyway. That is a more modest claim, and more plausible.

The Wanniski theory has other problems. Foreign trade was a relatively small part of the U.S. economy then: 4–5% of output, something like that. It was smaller than today. If it fell in half, the GDP would drop maybe 2–3%. That's too small to be the entire explanation for the Great Crash. Also, in hindsight (and all this is in hindsight) the event that deepened the Great Depression was the financial crisis in Europe in mid-1931. This had to do with debts and war reparations, and the links of currencies to gold. Trade was peripheral to it.

If you ask people today the cause of the Great Depression, many will point to the Smoot-Hawley Tariff, not to foreign debt, reparations and gold payments. The modern explanation emerges from a modern political point of view about trade. I share that point of view, and so the explanation is politically friendly. But that does not mean it is true.

I'll believe Wanniski's theory — the modest version — when the historians verify it. Until then, put me down as intrigued, and agnostic.

— Bruce Ramsey

Joan Kennedy Taylor, R.I.P. — Joan Kennedy Taylor devoted 50 years to the cause of freedom and constitutional government, a devotion that ended only with her death from cancer on October 29. She was 78.

Joan was probably best known as an advocate of individualist feminism. Her book "Reclaiming the Mainstream: Individualist Feminism Rediscovered" remains, twelve years after its publication, the best book available on feminism and freedom. She also wrote "What to Do When You Don't Want to Call the Cops: A Non-Adversarial Approach to Sexual Harassment," a great example of her long interest in solving social problems without resort to the force of government. From organizing a women's group in Stockbridge, Massachusetts, in 1970 to her long service as a volunteer officer with the Association of Libertarian Feminists and Feminists for Free Expression, she spent much of her efforts on legal equality for women.

Her most important contribution may have stayed behind the scenes. In 1982 she saw a short report by Charles Murray on the failure of welfare programs. She asked him to expand it into a book, found a publisher, and edited the manuscript. It was Joan's entrepreneurial insight and editorial feedback that helped produce "Losing Ground: American Social Policy, 1950–1980," which transformed the debate over welfare, helped lead to welfare reform in 1996, and launched the career of one of the most important public intellectuals of the past two decades.

Joan Kennedy Taylor was born in 1926 to the actress Mary Kennedy and the noted composer Deems Taylor. As a young editorial assistant at Knopf, she read an advance copy of

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Reviews

"Ayn Rand: My Fiction-Writing Teacher," by Erika Holzer. Madison Press, 2005, 300 pages.

The Craft of Ayn Rand

Stephen Cox

Ayn Rand (1905–1982) was her generation's largest influence on libertarian thought. She was also a powerful novelist and a king-sized American personality. During this, Rand's centennial year, many of her friends and acquaintances have been communicating their memories of her. I think it's especially fitting that Erika Holzer, herself a novelist (*"Double Crossing,"* 1983, and *"Eye for an Eye,"* 1994), has contributed a memoir of Rand as a writing teacher. To tell the truth, I am on record as one of the many people who urged Holzer to do it.

It is very rare for an author to write at length about her literary methods, and rarer still for an author to write at length about what she learned from a contemporary. Someone once pointed out that writers tend to rebel against their "parents," while revering their "grandparents." Thus, modernist writers scorned the Victorians and did their best to resurrect the poets of the Enlightenment and the baroque period. The Victorians were still around when the modernists were growing up, and they were tired of listening to those overbearing parents; but writers from earlier generations

posed no competitive threat. They could be used as examples for almost any precept.

As for writers' explaining their methods, forget it. Most prefer not to dispel the authorial mystique. Some, of course, are simply incapable of explaining what they do. A person who is good at creating plot and evoking character isn't necessarily any good at writing expository prose. But a perusal of authors' private correspondence will show you how good they can be at explaining how other authors went wrong, even while disclaiming, in public, any interest in literary analysis. "Let the work speak for itself," they say, cloaking with a half-truth their refusal to reveal trade secrets.

The half of the idea that's true is the notion that a work of art can hardly be improved by someone's explanation of how it was created. Either Monticello is a successful adaptation of Roman monumental architecture to American domestic use, or it isn't. No dissertation about what Jefferson thought he was doing when he decided to make a three-story plantation house look like a one-story temple will change the aesthetic effect of his decision.

The half of the "let-the-work-speak-for-itself" idea that isn't true is the

implication that there's nothing to be learned by studying how an art object is created. That's just silly. If you follow "America the Beautiful" through its various revisions, you will see how much better it is to conclude the "Pilgrims" stanza in this way —

America, America!
God mend thine every flaw.
Confirm thy soul in self-control,
Thy liberty in law

than in this way —

America, America!
God shed his grace on thee,
Till paths be wrought through
wilds of thought
By pilgrim foot and knee.

Studying the revisions, you may also see the reason why version A is superior to version B. A literary image needs to be visualizable. It's a lot easier to imagine the Deity mending flaws and confirming souls than it is to imagine feet and knees working their way through thickets of thoughts. Even when one accepts "knee" as a probable symbol for prayer, it's still hard to see what's going on with these symbols. The verbal bolts don't fit the verbal nuts.

The job of a literary craftsman is to find problems like this, and fix them.

Every good writer is such a craftsman; and occasionally — very occasionally — a craftsman will let you visit her workshop.

That's what Holzer lets you do, and that's what Rand let her do. Rand was an eccentric writer in many ways, but she was always a very thoughtful one. She could account for every word she used, and explain with great lucidity why she wanted to use it. When she went wrong, she went wrong for a reason. I like the epigraph that Holzer takes from Sophocles: "The reasonable thing is to learn from those who can teach." It mirrors the common sense that lies — often unnoticed by readers and followers — at the basis of most of Rand's literary ideas and practices.

Always a lively writer, Rand was also an exceedingly lively advice giver. Taking a look at Holzer's fledgling fiction, Rand saw a reference to faces "explod[ing] in panic." Well, what would you say about that? Many people would sense that there was something wrong but not be able to explain what it was. Perhaps they would make a vague reference to "melodrama" or tell the aspiring writer to "tone it down a little." Rand took a more instructive approach: "Make your metaphors real, Erika. . . . A good way to put your metaphors to the test is to try them out in front of a mirror." Holzer took her mentor's advice, went to a mirror, and made her face look like it was "exploding." Then she "exploded in laughter" (27). Now, that's good teaching.

Holzer came from a family of lawyers, and became one herself. A story provocatively entitled "The Secret

Room," written at the age of 12, did not seem to presage a literary career. But an interest in Rand's ideas led to an invitation to meet with her, and

Rand could account for every word she used, and explain with great lucidity why she wanted to use it. When she went wrong, she went wrong for a reason.

Holzer took along the tell-tale evidence of her interest in a new career — her early, practice works in fiction writing. Rand at the time was an enormous best-seller and the demanding leader of an intellectual coterie. One would have expected her to turn Holzer away with some remark about coming back when you've finished a book. Instead, she took the time to teach her.

Much of her advice was about the psychological processes that are most closely related to writing. She didn't make vague remarks about authors' "inspiration"; she gave specific insights into processes that people can actually control. You've been told that you should "write what you know." You should write stories about your profession, for example. Well, that might result in a lot of accurate surface detail, she said, but there's something more important than surface detail.

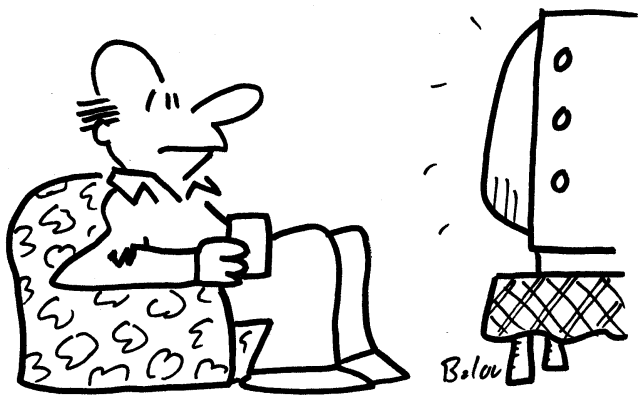
Why don't you stop worrying about what you "know" and identify what makes your "blood boil" (31)? Discover and exploit your real motivation.

Rand showed the same common sense in commenting on the famous "writer's block," from which, as we know, she herself sometimes suffered severely. She didn't call for 20 sessions

with a psychiatrist, or for a voyage to Tahiti. "More than likely," she said, you can't write because "you don't know all you need to know about a given character or a piece of the action" (72). Find out more — but "don't overdo it. It's a common mistake by the neophyte . . . to read everything ever written on whatever relates to his subject" (77). What she advocated wasn't "research" but imaginative meditations on the meanings, motivations, settings, and implications of one's plot and characters. Writers' problems can be fixed by writers' work — not by a research library, a psychiatrist's couch, or a moralist's lectures.

It's a remarkable fact that the modern libertarian movement was largely initiated by creative writers, literary critics, and essayists, by such people as Isabel Paterson, Rose Wilder Lane, John Chamberlain, Albert Jay Nock, and Rand herself. If you told any of those people that literature is interesting principally because of its "ideas," particularly its "political ideas," you would soon be having a very bad day. The best word you'd hear would be "philistine." But that's exactly what a lot of libertarians are. They are people whose moral concern with political ideas reduces their literary responses to merely political ones. That's why they read so little real literature. Conrad? Yeats? Eliot (either of the two)? Not interested. But the latest work of pulp fiction, with some libertarian ideas thrown in? Hey, this is a classic!

Rand — often unfairly accused of writing propaganda novels — shuddered at the thought that any of her ideological friends would write such stuff. Propaganda fiction, she said, was "all facade and no structure," by which she meant, no aesthetic structure, nothing to which one can respond on a deeper level than, "I agree with this" (39–40). Holzer, taking up Rand's theme, sensibly suggests that aspiring writers ask themselves, "Am I really impassioned about my story or am I just hung up on spreading the Word and enlightening the masses" (40). That's good advice. Rand went even farther. Referring to her own philosophy, Objectivism, she told her followers, "Don't censor yourself by Objectivist morality" (40). Her advice



"In a five-to-four decision today, the Supreme Court went on vacation."

was seldom heeded, though it deserved to be.

But Holzer got the point. She got it so well that she became a fine Randian teacher herself, as this book shows. It's all summed up in one of her comments: "I have always believed that writers are made, not born. That fiction writing, in particular, starts out as a craft. That if you work at it hard enough and long enough, you can turn it into an art" (51).

Holzer isn't saying that anybody can be a good novelist. She is drawing attention to an idea that goes back to Aristotle's theories, and beyond them, to Homer's *Odyssey*: the idea that art is craftsmanship, or it is nothing. Her book shows the joy that both she and Rand found in thinking through the problems of craft — a rare pleasure,

Referring to her own philosophy, Objectivism, she told her followers, "Don't censor yourself by Objectivist morality." Her advice was seldom heeded, though it deserved to be.

both in regard to its intensity and in regard to most people's ignorance of the fact that it can ever be a pleasure at all. The good thing is that you don't need to be a writer to feel that pleasure. All you need is some aesthetic and intellectual curiosity.

Holzer rounds out her book with text and discussion of two fine short stories of her own, "Eyewitness," first published in this journal in 1988, and "The House on Hester Street." The latter story, which illustrates the transformation of real situations into imaginative art, enables Holzer, explaining how it came to be, to evoke a salient picture of her mother, whose life "may have been conventionally small-town, but who played the role of co-conspirator to her daughter's romantic notion that life was — could always be — a grand adventure" (235). Holzer's book shows that an appreciation for artistic craft can be a tremendously important part of that adventure. □

"Right Turn: John T. Flynn and the Transformation of American Liberalism," by John E. Moser. New York University Press, 2005, 277 pages.

The Mighty Flynn

Jeff Rikkenbach

John T. Flynn (1882–1964) was a pugnacious little man (John Moser reports that he stood well under six feet and that "his adult weight was around 140 pounds"), a stereotypical feisty Irishman, with the Irishman's proverbial gift of gab and blarney (9). He "had a hot temper," Moser tells us, and was both "quick to take umbrage at personal slights and seldom prepared to submit to authority." Moreover, "[h]e could hold a grudge for years" (5). It was not infrequent for those observing him in argument to become "alarmed by the sight of his red face and bulging veins." But any observer who expressed concern for Flynn's health at such times would quickly discover that remarks about high blood pressure "served only to make him angrier" (6).

Still, there was that undeniable gift of gab and blarney. Moser acknowledges that "[t]he name of John T. Flynn might be unfamiliar today, but it would have been readily recognizable to any American who followed public affairs from the late 1920s through the 1950s. As a newspaper columnist, freelance magazine writer, best-selling author, and widely recognized expert on economics, finance, politics, and foreign affairs, his words were read by millions" (1). Indeed, as Moser says, "Flynn was an extremely prolific author, having to his credit no fewer than nineteen books and thousands of articles. In addition to his weekly column in the *New Republic* [Other People's Money], which he had for nearly ten years, he also wrote for

much of his career a daily newspaper column, one that eventually appeared in all the papers of the Scripps-Howard chain. On top of that, on and off during the 1930s and early 1940s and consistently in the late 1940s and 1950s, he had a weekly radio program" (5).

That weekly 15-minute program, "Behind the Headlines," was a big success. In the end, it "brought Flynn's words to a much larger audience than ever before." By "the end of 1949," Moser tells us, "the program was being carried on fifty-six stations, including all forty-five affiliates of the Mutual Network" (174). "By the autumn of 1952, Flynn was being heard on 362 stations," and "[h]e gleefully reported that it took 'a corps of clerks' just to go through his fan mail, one hundred to five hundred pieces of which arrived each day" (189).

And what sort of message was it that Flynn delivered with such passion to his vast audience? Opposition to the New Deal was a big part of it, certainly, followed by opposition to U.S. involvement in World War II and opposition to U.S. participation in the Cold War — these were Flynn's major themes for 30 years. And the New Deal was a liberal program, right? And it was liberal Democrats under the leadership of Franklin Roosevelt and, later, Harry Truman, that involved the

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United States in both World War II and the Cold War, right? And the opposition to all this came from conservatives, conservative Republicans, right? So Flynn must have been a conservative, right?

Not so fast, there. "To the end of his life," Moser writes, Flynn "never referred to himself as anything but a

Flynn was a liberal — a man of the Left — and he remained one for his entire career. It was the American political climate that changed, not he.

liberal — but in the words of Michele Flynn Stenehjelm, he was a 'liberal betrayed.' Flynn claimed that it was the American political climate that changed during his lifetime, not he. Indeed, he believed that the very term *liberal* had been hijacked; as he wrote to New Deal lawyer Jerome Frank in 1940, 'I see the standard of liberalism that I have followed all my life flying over a group of causes which, as a liberal along with all liberals, I have abhorred all my life'" (3).

In his view of this issue, Flynn was entirely correct. He *was* a liberal — a man of the Left — and he remained one for his entire career. It was "the American political climate that changed," not he. Specifically, what changed was the way most people used certain words to describe political positions and stances — words like *liberal* and *conservative* and *Left* and *Right*. And the result was that Flynn, who had been known far and wide as a liberal and a man of the Left in the '20s and early '30s, ended his career as an important opinion leader on what most contemporary observers of American politics considered the far Right — and all without having changed any of his opinions.

Or, at least, so Flynn claimed. Moser raises some legitimate objections to Flynn's contention that his political opinions remained fully consistent throughout his career, and I intend to return to these objections in due time.

For now, though, consider another datum — the striking number of parallel cases it is possible to find in the cultural and intellectual world of the '30s, '40s, and '50s. For Flynn was far from the only journalist with a national audience who began as a "liberal" and ended as a "conservative" without the need of changing any opinions. There were others.

There was H.L. Mencken, syndicated newspaper columnist and editor of *The Smart Set* and *The American Mercury*. There was Albert Jay Nock, editor of *The Freeman* and regular contributor to *The American Mercury*, the *Atlantic Monthly*, and *Harper's*. There was Gareth Garrett of the *Saturday Evening Post*. There was Isabel Paterson of the *New York Herald Tribune*. There was Henry Hazlitt of *The American Mercury*, the *New York Times*, and *Newsweek*. There was Felix Morley of the *Baltimore Sun* and the *Washington Post*. There was Rose Wilder Lane, a very prolific freelancer, with articles in *Harper's*, the *Ladies Home Journal*, the *Saturday Evening Post*, and *Woman's Day*, and a steady stream of books, including the individualist classic "The Discovery of Freedom," in the nation's bookstores. All these writers were accepted members of the "Left" before 1933. Yet, without changing any of their fundamental views, all of them, over the next decade, came to be thought of as exemplars of the political "Right."

Today, in fact, for some of the intellectual historians and journalists who write about them, they are members of something called the "Old Right." "The Old Right," declares Internet pundit Justin Raimondo in his 1993 book "Reclaiming the American Right," "was that loose grouping of intellectuals, writers, publicists, and politicians who vocally opposed the New Deal and bitterly resisted U.S. entry into World War II." Raimondo regards John T. Flynn as the "master polemicist of the Old Right" and lists Garrett, Mencken, Nock, Lane, Paterson, Frank Chodorov, Louis Bromfield, Colonel Robert McCormick of the *Chicago Tribune*, and Senator Robert Taft among its other leading lights (52, 98).

"The intellectual leaders of this old Right of World War II and the immediate aftermath," Murray Rothbard wrote in 1964, "were then and remain today

almost unknown among the larger body of American intellectuals: Albert Jay Nock, Rose Wilder Lane, Isabel Paterson, Frank Chodorov, Gareth Garrett."¹ Eight years later, Rothbard supplied a somewhat longer list: Nock, H.L. Mencken, Oswald Garrison Villard of the *Nation*, Francis Neilson of *The Freeman*, historian and Scripps-Howard newspaper columnist Harry Elmer Barnes, and John T. Flynn.²

"It almost takes a great effort of the will," Rothbard wrote in 1964, "to recall the principles and Objectives of the old Right, so different is the current Right-wing today. The stress, as we have noted, was on individual liberty in all its aspects as against state power: on freedom of speech and action, on economic liberty, on voluntary relations as opposed to coercion, on a peaceful foreign policy. The great threat to that liberty was state power, in its invasion of personal freedom and private property and in its burgeoning military despotism. Philosophically, the major emphasis was on the natural rights of man, arrived at by an investigation through reason of the laws of

At first, American liberals hewed closely enough to their individualist values to shake off any temptation they might have felt to adopt the socialist line.

man's nature. Historically, the intellectual heroes of the old Right were such libertarians as John Locke, the Levellers, Jefferson, Paine, Thoreau, Cobden, Spencer, and Bastiat." In essence, "this libertarian Right based itself on eighteenth and nineteenth century liberalism, and began systematically to extend that doctrine even further."³

But if the leaders of this "Old Right" were extending the doctrine of liberalism even further, they must have been liberals, right? That's what Flynn thought. Moser summarizes one of his mid-1934 *New Republic* columns as follows: "Liberals, he wrote, had to face facts — the president had posed as one

of them, but all they could really expect from him were 'sweet words with no meaning behind them'" (47). Four years later, when the "United States had taken the first steps on the path to war," the thing that "amazed Flynn the most," he acknowledged in another piece for the New Republic, "was that this was all taking place under 'a Democratic administration supposedly in the possession of its liberal wing'" (61). Two years after that, in the late summer of 1940, in a bewildered lament to Bruce Bliven, his editor at The New Republic, Flynn plaintively characterized himself as "a liberal writer who is saying now the same thing he said five years ago and ten years ago, who is opposed to third terms for presidents, to war-mongering and militarism and conscription and corrupt political machines and vast public debt. . . . I held these views before Roosevelt was president and I have now lost my liberal credentials because I do not agree with the New York Times, the Herald-Tribune, [Secretary of War] Mr. Harry Stimson, Mr. Franklin Roosevelt and Wendell Willkie about the war" (107-108).

Flynn's dismay is easy to understand. Opposition to state power had originally defined liberalism, while maintenance of established systems of power had long been associated with conservatism.

Eighteenth-century liberals, as Rothbard contended, managed to achieve "at least partial victories for individual liberty, laissez-faire, separation of church and state, and international peace," through "a series of cataclysmic revolutions . . . the English Revolutions of the 17th century, the American Revolution, and the French Revolution."⁴ It was, in fact, during the French Revolution, in the Legislative Assembly in the fall of 1791, that the terms *Right* and *Left* were first used in a political sense. As Will and Ariel Durant tell the story in "The Age of Napoleon," when the assembly convened, the "substantial minority dedicated to preserving the monarchy . . . occupied the right section of the hall, and thereby gave a name to conservatives everywhere." The liberals "sat at the left on an elevated section called the Mountain; soon they were named Montagnards.

The French Revolution also intro-

duced a new wrinkle into liberalism, one that had extraordinarily serious implications some years down the line. The famous slogan of the French revolution — Liberty! Equality! Fraternity! — holds the key to this important new wrinkle. The idea of equality had figured in the earlier American Revolution as well, of course — didn't Thomas Jefferson write in the Declaration of Independence that "all

During the 1932 campaign, Franklin Roosevelt tried to portray himself as a man who stood for small government and fiscal responsibility.

men are created equal"? But to Jefferson and the other American liberals, "equality" meant equality of rights, equality before the law. In France, by contrast, to more than a few of the revolutionaries, it meant much, much more than that. In the eyes of these French liberals, it was, as Ludwig von Mises summarized their view more than a hundred years later, in his book "Liberalism," "not enough to make men equal before the law. In order to make them really equal, one must also allot them the same income. It is not enough to abolish privileges of birth and of rank. One must finish the job and do away with the greatest and most important privilege of all, namely, that which is accorded by private property. Only then will the liberal program be completely realized, and a consistent liberalism thus leads ultimately to socialism, to the abolition of private ownership of the means of production" (29).

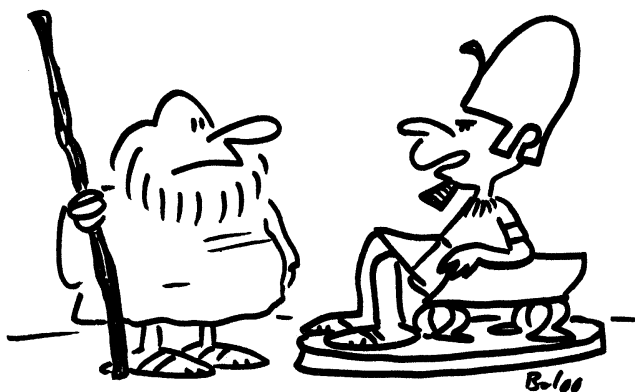
A good many liberals came to believe, as Lavoie says, "that a planning bureau could rationally and democratically control the cultural and economic

development of society for the benefit of all"; as a result, "the ambition of the Left came to be not just the complete equality of rights, as important as that was still thought to be, but the more grandiose ideal of equality of wealth" (218).

The liberals who became ensnared by this vision of a totally egalitarian society did exactly as Mises predicted: they adopted socialism as their new ideal, and what Rothbard called "collectivistic, conservative means" of attaining it.⁵ They proposed to create conditions of freedom by the use of the hierarchical and coercive state.

The socialist apostasy, however partial, proved more popular in Europe than in America — at first. At first, American liberals hewed closely enough to their individualist values to shake off any temptation they might have felt to adopt the socialist line. Even so, as the late Arthur Ekirch contends in his classic work "The Decline of American Liberalism," "[s]ince the time of the American Revolution, the major trend in our history has been in the direction of an ever-greater centralization and concentration of control — politically, economically, and socially. As a part of this drift toward 'state capitalism' or 'socialism,' the liberal values associated with the eighteenth-century Enlightenment — and especially that of individual freedom — have slowly lost their primary importance in American life and thought" (ix).

Alexander Hamilton's program called for a national bank which, after having "received a monopoly of government business," would "provide new capital for the business expansion that Hamilton deemed vital to United



"I spend years inculcating a work ethic in you bums, and now you want me to let your people go?"

States prosperity," that business expansion to be protected from foreign competition by a high tariff wall (46-47). Hamilton — need it be said? — was the first great conservative in American politics. His party, the Federalist party, was the first conservative party, the first right-wing party, in American political history. As Ekirch reminds us, "the Federalists . . . pursued a constantly illiberal course during their twelve years of power" (53).

If the Federalists were the first American conservatives, the Jeffersonians were the first American liber-

Since the time of Lincoln, the Republican party had always stood for top-heavy bureaucracy, strong central government, and hefty hand-outs to big business.

als. In his first inaugural address, Gore Vidal points out, Jefferson called for "a wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuit of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government . . ." "In other words," as Vidal puts it, "no taxes beyond a minimal levy in order to pay for a few judges, a postal service, small executive and legislative bodies."⁶ In other words, the policy prescription of a classical liberal.

The twelve years of Federalist rule — the Washington and Adams administrations — were followed by 40 years of rule by Jefferson's party, the Democratic-Republicans, later the Democrats. Not a few were born, grew to maturity, and produced children of their own without ever knowing of a president or vice president who repre-

sented a different party. By the time the Democrats finally fell from power in the election of 1840, their opposition, the Federalists, had long since withered away and died.

Nineteenth-century American politics was characterized by this conflict between liberal and conservative political principles, embodied in contests between Jeffersonian democrats, on the one hand, and, on the other, Hamiltonian federalists and their successors, the Whigs and Republicans. As historian Clyde Wilson puts it, "Apparently millions continue to harbor the strange delusion that the Republican party is the party of free enterprise. . . . In fact, the party is and always has been the party of state capitalism. That, along with the powers and perks it provides its leaders, is the whole reason for its creation and continued existence. By state capitalism I mean a regime of highly concentrated private ownership, subsidized and protected by government. The Republican party has never, ever opposed any government interference in the free market or any government expenditure except those that might favour labour unions or threaten Big Business."⁷

Rothbard agrees with Clyde Wilson's contention that the GOP was never a liberal party. "The classical liberal party throughout the nineteenth century was not the Republican, but the Democratic party," he wrote in 1980, "which fought for minimal government, free trade, and no special privileges for business."⁸ Steven R. Weisman of The New York Times sees much the same thing when he examines the historical record for the mid-19th century. In his 2002 book "The Great Tax Wars: Lincoln to Wilson — The Fierce Battles over Money and Power that Transformed the Nation," Weisman writes that under Lincoln and the Republican party "the North's economy rested on a kind of state capitalism of trade barriers, government-sponsored railroads, coddling of trusts, suppression of labor and public investment in canals, roads and other infrastructures."

Even as late as the 1920s, the Republican party remained the friend of interventionist government, of which the much maligned Herbert Hoover was known as a leading exponent. During the 1932 campaign,

Franklin Roosevelt tried, for purposes of public relations, to distance himself from this approach to politics. He portrayed himself as a man who stood for small government and fiscal responsibility. His platform called for "[a]n immediate and drastic reduction of governmental expenditures by abolishing useless commissions and offices, consolidating departments and bureaus and eliminating extravagance, to accomplish a saving of not less than 25 percent in the cost of Federal government." It called also for "[m]aintenance of the national credit by a Federal budget annually balanced" and for "[a] sound currency to be maintained at all hazards."

Nor was this platform meant to be taken as empty rhetoric of the sort people today tend to assume is characteristic of virtually all public statements by politicians. No. As Gareth Garrett of the Saturday Evening Post pointed out in 1938, "Mr. Roosevelt pledged himself to be bound by this platform as no President had ever before been bound by a party document. All during the campaign he supported it with words that could not possibly be misunderstood. He said: 'I accuse the present

After the coming of the New Deal, both major parties were conservative parties. For the New Deal variety of "liberalism" was not liberalism at all, but conservatism.

Administration of being the greatest spending Administration in peace time in all American history — one which piled bureau on bureau, commission on commission, and has failed to anticipate the dire needs or reduced earning power of the people. Bureaus and bureaucrats have been retained at the expense of the taxpayer. . . . We are spending altogether too much money for government services which are neither practical nor necessary. In addition to this, we are attempting too many functions and we need a simplification of what the Federal government is giving to the people" (27).



Roosevelt was particularly adamant on the subject of government borrowing. As Flynn recalled years later, in his classic book "The Roosevelt Myth," "Toward the end of the campaign he [Roosevelt] cried: 'Stop the deficits! Stop the deficits!' Then to impress his listeners with his inflexible purpose to deal with this prodigal monster, he said: 'Before any man enters my cabinet he must give me a twofold pledge: Absolute loyalty to the Democratic platform and especially to its economy plank. And complete cooperation with me in looking to economy and reorganization in his department.'"

True, this new Roosevelt's political track record was somewhat worrisome, for, as Flynn noted, "as governor [of New York] he took New York State from the hands of Al Smith with a surplus of \$15,000,000 and left it with a deficit of \$90,000,000" (37). On the other hand, Flynn argued, "[t]here was nothing revolutionary in" what FDR told the voters in the election of 1932. "It was," Flynn wrote, "actually an old-time Democratic platform based upon fairly well-accepted principles of the traditional Democratic party. That party had always denounced the tendency to strong central government, the creation of new bureaus. It had always denounced deficit financing. Its central principle of action was a minimum of government in business" (36).

By contrast, since the time of Lincoln, the Republican party had always stood for strong central government, top-heavy bureaucracy, and hefty handouts to big business. The fact that the voters had evicted a Republican from the White House and elected a Democrat surely meant that American public opinion was leaning in a more liberal direction. Or so many, including John T. Flynn, believed at the time. Of course, Franklin Roosevelt dashed all such liberal hopes within the first hundred days of his administration. Once elected, he tossed the Democratic platform of 1932 into the trash can and proceeded to show the electorate that he could play the conservative game better than any Republican. First he took Herbert Hoover's Hamiltonian policies and enormously expanded them; then, astonishingly, he had the effrontery to describe himself and his stolen program as "liberal."

The New Deal was, as John T. Flynn insisted while it was happening, "a form of conservatism dressed up as liberalism" (Moser 113). The "liberals" who pushed it were actually conservatives. And the members of the "Old Right" who opposed it were actually liberals. In his brief history of "the 'Old Right' Jeffersonians," Sheldon Richman acknowledges this. "That the ['Old Right'] movement was placed on the right or called 'conservative' has to be regarded a quirk of political semantics," he writes. "In a superficial sense it qualified as right-wing because it seemed to be defending the status quo from the state-sponsored egalitarian change of the New Deal. But in a deeper sense, the New Deal actually was a defense of the corporatist status quo threatened by the Great Depression. Thus the Old Right was not truly right-wing, and since that is so, it should not be bothersome that some palpable left-wingers, such as Norman Thomas and Robert La Follette, Jr., seemed at home in the Old Right."⁹

Nor was the political opposition to the New Deal primarily a Republican phenomenon. Many Democratic senators and other luminaries were involved in it.¹⁰ In fact, it was members of the Democratic party, not the Republican party, who mounted the first organized offensive against the New Deal. The first national organization opposed to the New Deal, the American Liberty League, was founded in 1934 by a group of prominent Democrats, including John W. Davis,

the 1924 Democratic presidential candidate and a J.P. Morgan & Company attorney, and Al Smith, former governor of New York and 1928 Democratic presidential candidate.

There were serious opponents of the New Deal in the GOP, too. But, despite Rothbard's preposterous claim

The "Old Right" was a coalition, in which the libertarians and individualists — the true liberals — were not dominant. And many individualists or libertarians forgot their link with liberalism.

that they were "the soul of the [Republican] party," and represented "majority sentiment in the party," the reality was far otherwise. Rothbard seems actually to have believed that the only reason the so-called "Old Right Republicans" perennially "managed to lose the presidential nomination," is that said nomination was "perpetually stolen from them by the Eastern Establishment-Big Banker-Rockefeller wing of the party," which relied on "media clout, as well as hardball banker threats to call in the delegates' loans." He seems actually to have believed that "Senator [Robert A.] Taft [of Ohio] was robbed of the Republican nomination in 1952" in precisely this way — "by a Rockefeller-Morgan Eastern banker

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see *Intellectually Incorrect* at intinc.org

cabal, using their control of respectable 'Republican' media."¹¹ But if the "Eastern Establishment-Big Banker-Rockefeller wing of the party" was so powerful, why was it never able to put its own man, Nelson Rockefeller, in the White House — or even win him the GOP nomination? The fact is that, as Clyde Wilson puts it, the "Old Right"

Life and the passage of time taught Flynn that the use of such conservative means as planning, regulation, and welfare could not achieve the ends he had always desired.

members of the Republican party simply "never had sufficient strength" within the party "to nominate a presidential candidate or prevent very many evils."¹²

The fact is that the coming of the New Deal ended a long era in American political history — an era that had endured for more than a hundred years, an era in which every national election was a contest between a liberal party and a conservative party, both substantial in size and influence. After the coming of the New Deal, both major parties were conservative parties. For the New Deal variety of "liberalism" was not liberalism at all, but conservatism.

Flynn's analysis was correct. The writers and intellectuals who made up

the most visible contingent of the "Old Right" were in no meaningful sense on the Right at all. They were on the Left, where they had always been. They were liberals. The term liberal had been hijacked. The problem was that a great many of the liberals who had been left in the lurch by the Democratic party's sudden more or less official adoption of conservatism in liberal clothing had made the mistake of joining (or, at any rate, supporting) the Republican party — presumably in the belief that the opposition party, whatever its fundamental character, was where they now belonged.

As even Rothbard acknowledges, however, the "Old Right" was a coalition, in which the libertarians and individualists — the true liberals — were not dominant. And as he suggests, many individualists or libertarians forgot their link with liberalism.¹³

Flynn never made this dubious journey. However, as Moser notes, the nature of his liberalism did undergo some alteration over time, despite his claims that his views had never changed in any significant way. In 1932, according to Moser, Flynn wrote that "the doctrine of *laissez-faire* is now the gospel of the reactionary" (204). In 1934, Flynn called for a national minimum wage law, "a 'vast program' of public spending — mainly on construction projects — to relieve unemployment," and "a government-run system of unemployment and old-age insurance" (46). In 1936, Flynn "called for three constitutional amendments: one that would give to the government 'the police power over all economic matters of national importance,' and two others

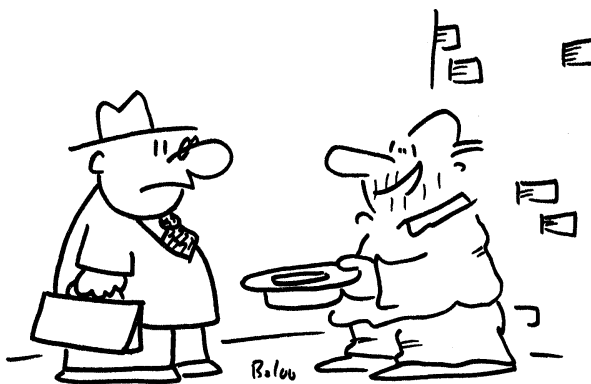
that would free Congress and state legislatures from 'the inhibitions of the due process clause' (90).

Then, in 1948, Flynn "wrote an article in the conservative American Mercury entitled 'What Liberalism Means to Me,' in which he seemed to associate himself, not with the reformist progressi-

vism of his youth but with the very *laissez-faire* doctrine that he had rejected sixteen years earlier. Liberalism, he claimed, once had as its primary purpose the reduction of the power of the state, but in present times, he lamented, the word had been 'captured by certain aggressor philosophers, carried off as so much loot and offered for acceptance to a wholly different clientele.' He praised capitalism for producing 'beyond a doubt the greatest freedom in the world and the greatest abundance.' The 'planned economy,' he concluded, apparently forgetting that he had embraced economic planning in the 1930s, 'has produced before our eyes the most appalling consequences'" (204).

Moser writes that "[i]t is clear that Flynn's views, both on liberalism in general and on specific issues, had changed," despite his claims to the contrary. And this does, indeed seem to be the case. Moser argues that one reason for this change lay in the gradual death of Flynn's faith in what today we would call technocracy. The young Flynn, Moser points out, considered philosophy "empty and futile." More important, in his judgment, was social science, for "experts trained in the social sciences" could identify the "basic facts" of any troublesome social situation. After all, "[e]vils . . . were as easy to identify as any scientific phenomenon," and, once having identified them, experts trained in the social sciences would know precisely what reforms to recommend to solve social problems in a scientific way.

As Flynn grew older, he came more and more to realize that the path to utopia was by no means as simple as he had once believed. Collecting facts scientifically was not sufficient to guarantee the good judgment of the experts who collected them. Moreover, there was the problem that "intellectuals — whom by this time [1954] he had taken to calling 'Eggheads' — were irresistibly drawn to power." In short, Flynn started his career as one of those misguided liberals (the socialists, the progressives) who had come to believe that liberal ends could be achieved by conservative means. Gradually, life and the passage of time taught him that the use of such conservative means as planning, regulation, and welfare could not achieve the ends he had always



"Please, sir — just thirty-one cents more and I can get a lottery ticket!"

desired. Over time, he therefore evolved in a steadily more liberal, steadily more individualist, direction.

Flynn's views on foreign policy never underwent the changes that reshaped his views on domestic policy. As a liberal, he had always favored free trade and peace. As a liberal, he had always opposed war. For, as Arthur Ekirch reminds us, "any war, even one fought over some great moral principle, involves the use of methods essentially illiberal; for the very substance of liberalism — its emphasis on reason, on toleration and respect for individual and minority rights, and on progress by evolution instead of revolution — is bound to suffer in wartime" (116).

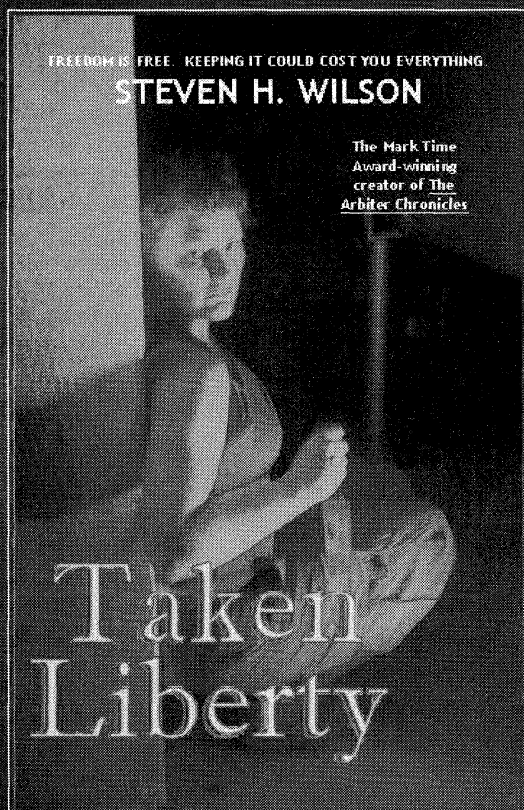
Moser devotes three of his 14 chapters to a detailed discussion of Flynn's role in the America First Committee (AFC), the largest and most powerful antiwar organization in America in the 1930s and early '40s. As chairman of the New York City chapter of the AFC, Flynn oversaw the largest and most powerful chapter of the organization. As Moser reminds us, the New York City chapter "would ultimately have nearly two hundred thousand members, roughly one-quarter of the

national organization's total membership. The chapter eventually employed sixty paid staff members and hundreds of regular volunteers. It sponsored subsidiary chapters in each of the five boroughs, with numerous subchapters under each. There was a Women's Division, a Wall Street Division, a Veterans' Division, and a Labor Division, each with its own office. The chapter also employed a team of writers, directed and supervised personally by Flynn, so that it published more original literature than any other in the nation. It had its own weekly newspaper (the America First Bulletin) and a daily column (the 'Battle Page') that appeared both in the Chicago Tribune and in the New York Daily News, reaching a readership of approximately 2 million" (121).

And all this frenetic activity took place within a very, very narrow time frame. "The New York City chapter formally opened for business," Moser reports, "on January 25, 1941" (120). Within less than a year, its mission was a dead letter. It formally dissolved on July 2, 1942, less than 18 months after its formal opening (149). During the time it was open for business, the New

York City chapter of America First took up a substantial fraction of Flynn's time. Indeed, "[f]rom June through December 1941," Moser writes, "the committee's work absorbed, by his [Flynn's] own admission, 'every minute of my time.' His output as a writer dropped off to almost nothing, not counting AFC press releases." Moreover, "in the eyes of nearly everyone," the AFC "was a right-wing organization." By maintaining such a high profile in the group, Flynn had "finally destroyed whatever reputation he still had as a liberal" (149–150).

And that was precious little. Several months before he decided to become active in the AFC, he had lost his weekly column, "Other People's Money," which had run for nearly eight years in *The New Republic* and was the main venue in which he had originally become famous in the 1930s. His firing from *The New Republic* is an especially interesting incident, both in his life and in the life of American ideas and policies. Moser portrays Flynn's firing as "a turning point of sorts in the writer's career," and tells us that "the impetus" for it "likely came . . . from the magazine's chief financial backer,



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Dorothy Straight. In 1925, Straight had married a wealthy Englishman named Leonard Elmhirst, and while the couple had generally let the editors formulate their own policy, by 1940 they had begun to pressure [Bruce] Bliven [editor-in-chief of *The New Republic* from 1930 to 1953] about the magazine's anti-interventionist slant. Thanks to this pressure Bliven also hired Dorothy's son Willard as chief Washington editor and fired film and music critic Otis Ferguson, "TRB" columnist Jonathan Mitchell (who, like Flynn, was a critic of Roosevelt's foreign policy), and even Edmund Wilson, who had been literary editor since the 1920s. In short, there is considerable substance to Flynn's claim that it was the *New Republic*, and not he, that had changed" (110).

It is interesting to contrast this rather bloodless account with the one written in the early 1950s by Edmund Wilson and published in his book "A Piece of My Mind: Reflections at Sixty." "When our editor-in-chief [Herbert Croly (1869-1930)] died," he wrote, "the paper [*The New Republic*] was run by a group composed of the other editors. The weekly had been handsomely subsidized, first by an idealistic millionaire, then, after his death, by his widow — both personal friends of the editor [Croly]. But this lady now married an Englishman, went permanently to live in England and became a British subject. She had, however, arranged, in New York, a foundation which was to function in her absence, automatically supplying such money as was needed to make up our deficits; and we were given to understand that we were just as free as our late chief had been to publish whatever we pleased. This went well until the second war with Germany, in regard to which the paper's policy was completely isolationist. In the autumn of 1940, the husband of our Anglicized patroness suddenly descended on us, and indignantly denounced this policy."

In short order, "[h]e dissolved the old staff of the paper, though the members — to diminish the scandal — were allowed still to haunt the office and to continue in a small way to write till they were able to find other work. The managing editor [Bliven] was kept, at

the price of his reversing his position and writing strongly interventionist leaders [editorials] instead of isolationist ones. Our English patron-in-law took over the direction of the paper and published anonymous leaders, entirely composed by himself, which would have been intensely comic if the situation had not been humiliating — since they purported to express the opinions of the well-known American editors but were actually exclusively occupied with plugging, in British clichés, the official British point of view" (41-42).

This is a policy of which Flynn would have very quickly run afoul. As Moser notes, "Flynn claimed that the British had a mysterious hold not on the minds of ordinary Americans 'but over certain persons who have access to the press, the pulpit and other agencies of propaganda.' He believed that his 'pro-Anglican virus' was strongest in the State Department, which was filled with men who were 'horried at the thought of America's not helping England in a war.' This was a theme to which Flynn would turn again and again in the next few years, and indeed through the rest of his career" (59).

Little wonder, then, that as Edmund Wilson tells the story, the new "English patron-in-law" put a stop "at once to our criticisms of the Roosevelt administration, and a regular political commentator who had frequently disagreed with its policies [Flynn] was summarily dismissed. It was proposed, in an issue of December, 1940, that 'the United States and Great Britain assume responsibility and leadership for the whole world, except for that part of it at present under the heel of the totalitarians. Let these two great repositories of democracy pool their leadership in brains, vision and courage. . . . It is clear that we should extend the utmost aid to Great Britain even if it involves a considerable danger of going to war'" (42-43).

The new English patron-in-law made only one serious mistake in his takeover, according to Wilson. He did not "take account of the shock to the regular readers of the paper, who saw it turn its coat overnight and knew there was something wrong" (43). As for Flynn, Moser notes, "[a]t the end of

1940 he still had a daily newspaper column and articles regularly appearing in *Colliers* and other national magazines, in addition to frequent lecture and radio appearances" (110). Liberal or conservative, Flynn managed to keep busy, right up to two years before his death in 1964 at the age of 81. To the end, he called himself a liberal — and he was right. □

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"The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11," by John Yoo. University of Chicago, 2005. 366 pages.

America Contra Mundum

Bruce Ramsey

John Yoo, professor of law at the University of California, Berkeley, is a pariah of the campus Left. His offense is his support of the denial of P.O.W. status to al Qaeda prisoners. The president, Yoo says, has the constitutional power to interpret treaties. George Washington did it and George W. Bush can do it. Not only did Yoo support Bush's authority to interpret the Geneva Conventions, but from 2001 to 2003, Yoo worked in Bush's Justice Department on the legal theory supporting Bush's assertion of war and treaty powers.

On Sept. 12, 2005, the *Wall Street Journal* profiled the controversial young Korean-American. The lead paragraph has Yoo recommending the use of assassination.

"The Powers of War and Peace" has no cheerleading for regime change by rifle. Nor is there any attempt to exonerate the guards at Abu Ghraib. Yoo is no longer acting as a lawyer telling his belligerent client what the options are; he is offering a serious, detailed argument about the war and treaty powers in the U.S. Constitution. It is not easy reading, but it is well worth the effort.

Yoo was once a clerk to Justice Clarence Thomas, the court's premier originalist, and there is a similarity in how they think. There is much in the book about the British and colonial background to the Constitution, the debates of the framers and ratifiers, and the first questions of treaty rights and war faced by President Washington. There are also many references

to the past ten years, such as the wars in Kosovo, Afghanistan, and Iraq; the Kyoto Treaty; the ABM Treaty; and so on. Unfortunately, there is not much on the two centuries in between.

In constitutional law circles, the *Journal* says, Yoo is considered a "sovereignist." Really, he is a nationalist: he is interested in an interpretation of the Constitution that allows America to do what it wants in the world and to remain independent of the United Nations, the World Court, et al. And while Yoo's theory would allow the U.S. government to be more interventionist and belligerent than most libertarians prefer, they should appreciate the way it keeps America in control of American actions.

Yoo begins with the war power. The Constitution gives Congress the power "to declare war." An earlier draft of the document gave Congress the power "to make war." The Constitution also says, in regard to the states, that they cannot "engage in war" unless under attack, or imminent attack. To declare, to make, to engage in: these are different. Yoo argues that the declaration of war is "fundamentally one of defining legal relationships." That is, if your government has declared war on a certain country, it can confiscate that country's assets and put that country's nationals into internment camps. But the president, as Commander in Chief and possessor of

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the foreign-affairs power, can make war — at least, some bombing and shooting short of total war.

I am uncomfortable with this; it is more permissive than I like. But it is one way to interpret the Constitution's imprecise language, and in fact it is what has been done. Congress has declared war only five times, though in

If the choice is the federal government versus world government, libertarians have to make common cause with the nationalists.

the Vietnam, Gulf, and Iraq wars it authorized war without declaring one. (Yoo thinks these authorizations were not necessary.)

Yoo argues that Congress has control over war in the power of the purse. If Congress opposes a war, it can simply refuse to pay for it. This argument was made by the Federalists in the ratification debates. The Anti-Federalists, he says, "doubted, however, whether Congress would put its funding power to good use." And the Anti-Federalists were right. Yoo does admit that the Federalists "never fully confronted the Anti-Federalist claim that Congress would satisfy the president's military requests as readily as Parliament had cooperated with the king."

That is the problem. The president makes the sales pitch for war, decides

when a sale is made, and sends the soldiers off to fill the contract, leaving Congress with the moral obligation to "support our troops." With another people and another way of thinking, the power of the purse might be enough. With the American people, it isn't.

I am uncomfortable with Yoo's analysis of the war power; there is some gray area in it, and he allocates all the gray to the president. Then I think of early 20th-century justice George Sutherland, one of the most libertarian of the time. In the 1930s he heroically resisted the New Deal, but in the famous *Curtiss-Wright* case he took the same line as Yoo about the foreign-affairs power.

Next, Yoo considers the treaty power. The Constitution says in the Supremacy Clause that treaties are "the Supreme Law of the Land." To many at the time of the framing and ratification, that was a troubling idea, because it seemed to allow domestic law to be created by the president in negotiation with a foreign power, subject only to an after-the-fact approval of two-thirds of the Senate. The Federalists and the Anti-Federalists did not argue much about the war power, but they fought hard over this. The argument ended with the Federalists assuring everyone that treaties were not "self-executing." In order to take effect inside the United States, treaties would require Congress to implement them through legislation, and Congress could decide to ignore them instead.

Well, then, how could treaties still be the law of the land? Look at the context, Yoo says. The Supremacy Clause is in Article VI, which has to do with the relation of the national government to the states. The full statement is this:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the

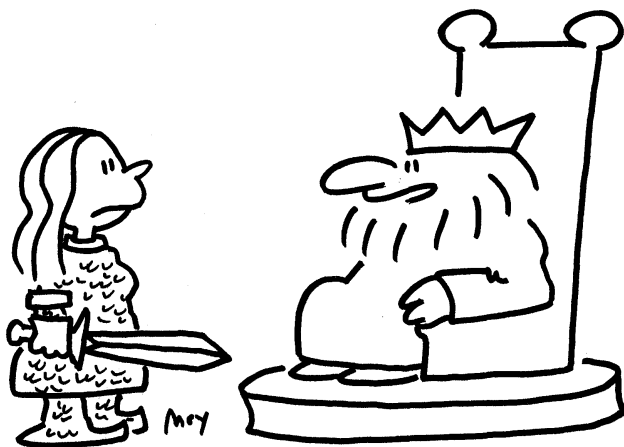
Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

It means, Yoo argues, that a state cannot nullify any part of a treaty. That is clear. It also means that federal law (or the lack of implementing legislation) can effectively nullify a treaty, as can the Constitution. That is not so clear. The text doesn't say that, but Yoo argues that it has to be interpreted that way in order to maintain the balance of powers. Otherwise the treaty acceding to the United Nations might mean that the power to make a non-self-defensive war, such as President Clinton's bombing campaign against Serbia, had been ceded to the U.N. Security Council. Another treaty might mean that Americans could be tried in the International Criminal Court for offenses, and under procedures, not in American law. A treaty might mean that an international agency could decide, without asking Congress and without U.S. warrants, to inspect U.S. chemical plants for evidence of weapons of mass destruction, or that another global bureaucracy could limit how much energy individual Americans could use.

Here is where Yoo's nationalism becomes interesting to libertarians. They have been arguing for decades against the expansion of federal authority, and for the power of the states and, particularly, individuals. But if the choice is the federal government versus world government, the libertarians have to make common cause with the nationalists.

That is a new thing. Libertarians look back at the Constitution as it was before the New Deal, as in Randy Barnett's "Restoring the Lost Constitution." But the biggest issue may not be restoring the Constitution that was, but keeping the one that's left. Hollowed-out as it may seem, today's Constitution is a robust instrument compared with an internationalized world. Look at what has happened to Germany — no more deutschmark! — and the pressures on Britain.

Non-self-execution was once a cause of the Old Right. In the decade after World War II, the United States joined the United Nations, the



"You're a great fighter, Joan, but can you type?"



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—Patrick Henry, 1776*

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International Monetary Fund, the World Bank, and the General Agreement of Tariffs and Trade. President Truman received permission from the United Nations, not Congress, to make war in Korea. The Left was pushing for the self-execution of treaties, starting with the UN Convention on Human Rights. A Supreme Court case from 1920, *Missouri v. Holland*, also seemed to endorse self-execution. It was only about birds, but it was disturbing anyhow. And so Sen. John Bricker (R-Ohio) responded with the Bricker Amendment, a proposed addition to the Constitution that explicitly said treaties were not self-executing. President Eisenhower opposed it, and in 1954 a version of the Bricker Amendment failed, by one vote, to pass with a two-thirds vote of Congress.

Yoo never mentions the Bricker Amendment. But he notes that in current practice, treaties are judged to be non-self-executing. "Self-execution," he writes, "would vest in the executive branch a legislative power broader in scope than Congress's. Non-self-execution, in contrast, harmonizes treaties with constitutional structure and maintains the important distinction between foreign relations and domestic lawmaking."

The Bricker Amendment would also have limited the use of the congressional-executive agreement, which is what the NAFTA and WTO agreements are. The congressional-executive agreement is an ordinary law, passed by a simple majority in both houses of Congress and signed by the president. A treaty is made by the president and ratified by a two-thirds vote of the Senate. The modern congressional-executive agreement was invented during the New Deal to make it easier to get certain agreements through Congress. The New Dealers remembered the Treaty of Versailles, which had been blocked in the Senate.

The legal Left tends to argue that congressional-executive agreements are interchangeable with treaties: any question can be handled under either form. Yoo disagrees. Treaties can be about pretty much anything, but congressional-executive agreements, he argues, have to be about something that lies within Congress' enumerated powers. The most obvious such power, regarding international affairs, is commerce. It

is okay that the NAFTA and WTO agreements were approved by simple majority votes, because they are commercial agreements. A treaty on pollution might be approved that way, because it can be argued that pollution is connected to commerce, but a convention on crime, or police procedures, or human rights, could not. It would have to be done by treaty, and would be non-self-executing.

Yoo comes to an intriguing conclusion. At the end of his book, he compares the push for international law today with the push for federal law during the 1930s. Then the Supreme Court was sticking up for the states, and buckled under a landslide national election endorsing the New Deal and

Franklin Roosevelt's threat to pack the court. The "bloodless constitutional revolution" of 1937 was disruptive, and the extra-legal way it was done still throws "the legitimacy of elements of the New Deal revolution" into doubt.

Something like that could happen again, Yoo says, regarding the push for international law. One side will argue that we take what international law we want, and ignore the rest. The other side will argue for sweeping acceptance. The focus this time will not be the Commerce Clause but the Treaty Clause. In a larger sense the question will be the same: power, what it consists of, who wields it, and how it may be controlled. □

Notes on Contributors

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"The Legend of Zorro," directed by Martin Campbell. Amblin Entertainment, 2005, 129 minutes.

Zzzorro

Jo Ann Skousen

Start with a legendary classic: Zorro. Add an Oscar-winning actress (Catherine Zeta-Jones) and a Latin Romeo known for his wry humor (Antonio Banderas). Top with a legendary executive producer (Steven Spielberg). Mix with four scriptwriters. And what do you get? A perfect example of what has gone wrong with movies this year. Z is for zzzzzzz.

With four writers, it's no wonder "The Legend of Zorro" is a mess. Stories — good stories at least — cannot be written by committee. A story needs a compelling conflict, and characters need believable motivations. That can't happen when four people are throwing their two cents into the pot and trying to compromise on the result. This movie feels like a sequel

pushed by the producers to capitalize on the success of the original, but without any enthusiasm from the original crew. The actors seem to be thinking more about their next meal than their next line. Ted Elliott and Terry Rossio, who wrote the original "Mask of Zorro," are credited with the story, but two newcomers, Roberto Orci and Alex Kurtzman, joined the committee to write the screenplay for this sequel. Their previous credits include such notable projects as "Hercules: Legendary Journeys" and "Xena: Warrior Princess." It shows.

I don't mind suspending my disbelief in order to enjoy an action-adventure flick; in fact, I look forward to heroes leaping across housetops, somersaulting onto waiting horses, and brandishing swords with lightning speed. But this movie is just shockingly

awful. The anachronisms alone are a hoot. Mom and Dad take turns walking junior to school and picking him up afterwards. Elena asks for and receives a quickie divorce — in Catholic California. Over dinner, Elena asks her date where she might find the bathroom to powder her cheeks. A bathroom? This is 1850. It's out back, over a hole in the ground, for heaven's sakes! The movie even presents a clean-shaven Abraham Lincoln signing California's statehood papers — but Lincoln wouldn't become president till 1861; it was Millard Fillmore's pen that brought California into the Union.

With movies costing many millions of dollars to produce and many more to promote, studios this year seem afraid to try anything new. This season has been fraught with sequels, remakes, and TV shows turned into movies. Occasionally an outstanding performance can save a remake — Johnny Depp was brilliant as Willy Wonka this summer — but great new stories are the only sure way to bring Hollywood out of its malaise. I once asked Ben Stein why Hollywood, one of the biggest business centers in the country, always makes business people the bad guys in movies. He suggested the reason is that screenwriters are the poorest paid members of the industry, and their writing reflects their own bias. Perhaps when studios start paying enough to lure great writers to the screen, they will get decent movies. □

Reflections, from page 30

"Atlas Shrugged" in 1955 and wrote a fan letter to Ayn Rand. They became friends, and Joan was part of Rand's New York circle until the 1968 Objectivist crackup. Years later, after Rand's husband Frank O'Connor died, Joan wrote her a sympathy note, noting that her own beloved husband David Dawson had died recently. Rand responded affectionately, bringing to mind Joan's better memories of their relationship.

In 1964 she supported Barry Goldwater for president and helped form the Metropolitan Young Republican Club. The next year she turned its newsletter into the political magazine *Persuasion*, which had a libertarian-Objectivist perspective. It became the first and only political magazine ever endorsed by Ayn Rand. She also tried her hand at writing Broadway musicals, including one titled "North Star," about the Underground Railroad that led escaped slaves to freedom. (Alas, none have been produced.)

In 1977 she traveled west to San Francisco, where a nucleus of libertarian organizations was forming. She joined the brilliant young writer Roy Childs as an editor of *Libertarian Review*. I wish Roy were around to sing her praises today. He told me that she taught him to edit, another great and unsung accomplishment. When that magazine failed, she worked as an editor at the Manhattan Institute — where she discovered and edited Murray and other writers — and at the Foundation for Economic Education. She was a radio commentator for CBS's *Spectrum* and for the Cato Institute's *Byline*, and in the 1990s she wrote her two books on feminism.

When I had to miss a testimonial dinner for her in 2004, I wrote this to her: "I've just been writing a speech about the problems facing the cause of liberty and limited government, and what individuals can do about it. You are an exemplar of the kind of citizen who is essential to the preservation of a free society." From her days with Ayn Rand, to her efforts to get the Young Republicans to stand for principle, to her midwifing of important books, to her own writing for newspapers, radio, and books, she devoted her life to the principles of the Declaration of Independence and the Constitution. Hers was a life well lived.

— David Boaz

Frankfort, Ky.

Protecting the homeland from Bingo-playing terrorists, from the *Cincinnati Enquirer*:

Kentucky has been awarded a \$36,300 Homeland Security grant aimed at keeping terrorists from playing bingo to raise large amounts of cash, said John Holiday, enforcement director at the Office of Charitable Gaming.

Holiday, who applied for the grant, said that to the best of his knowledge, terrorists do not currently profit from charitable gaming in Kentucky. "But the potential there, to me, is just huge. You can earn a lot of money very fast and deal entirely in cash."

Liverpool, England

Mourning with those who mourn, from the *Spectator*:

Well-wishers had laid more than a dozen bunches of flowers, along with cards and teddy bears, in an alleyway where the body of a mystery dead baby was found — before police realised it was only a chicken fetus.

Liverpool police told the community to "stop grieving, it's only a chicken."

Port Townsend, Wash.

A glimpse into the objectives of a modern-day peace movement, from the PTforPeace "cultural statement":

"Knowing we have all internalized the violence, patriarchy, white supremacy, and alienation so prevalent in our society. Knowing that dismantling these systems of oppression involves becoming aware of where they are hiding in our own minds, and that day-to-day patterns of oppression are the glue that holds together systems of oppression. Cultivating gratitude toward the person who points out where we may have internalized oppression without being aware of it."

Caracas, Venezuela

A statesman looks out for his constituency, from the *Guardian International*:

President Hugo Chavez cautioned Venezuelan parents to protect their children from Halloween with a spooky warning that the U.S. tradition is rooted in "terrorism."

"What they have implanted here, which is really a 'gringo' custom, is terrorism," Chavez said. "They disguise children as witches and wizards, that is contrary to our culture."

His comments came after authorities in Caracas seized pumpkins, cardboard skeleton costumes, and other traditional Halloween items inscribed with anti-Chavez messages.

Rome

Mandatory caring, from *Il Messaggero*:

Rome's town council has banned goldfish bowls and made regular dog walks mandatory. The classic spherical fish bowls are banned under a new by-law which also stops fish or other animals being given away as fairground prizes. It comes after a national law was passed to allow jail sentences for people who abandon cats or dogs.

"It's good to do whatever we can for our animals, who in exchange for a little love fill our existence with their attention," said Monica Cirinna, the councilor behind the by-law.

Stockholm, Sweden

The electorate knows what it doesn't want, given good and hard by Swedish daily *The Local*:

When Feminist Initiative was founded six months ago, polls showed that a quarter of voters would consider supporting the party in elections next year because of rising domestic violence against women and higher salaries for men.

Encouraged by early support, the party, led by gender studies professor Tiina Rosenberg, produced a platform calling for the elimination of marriage and the institution of a "man tax" to cover the costs of domestic violence.

In new opinion polls only 1.3% of voters said they would vote for the feminist party. Party co-founder Gudrun Schyman said, "The reason for this campaign against [Rosenberg] is that she's a lesbian. The attacks against her are homophobic."

Lynnwood, Wash.

Novel theory of police ethics, from the *Seattle Times*:

Lynnwood police concede they engaged in "rarely used" tactics, which included officers having prostitutes masturbate them in exchange for cash, during an undercover investigation into a suspected prostitution ring.

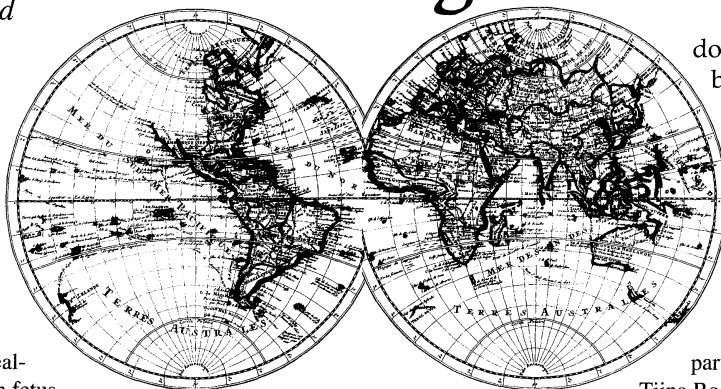
Lynnwood police Cmdr. Paul Watkins said he spent a great deal of time justifying the officers' actions to prosecutors to prove that the officers themselves weren't breaking the law. "The officers didn't cross that line of engaging in intercourse or oral sex," Watkins said. "We have a very ethical police department. This does not violate the ethical standards of our department."

Diyarbakir, Turkey

Two letters that will not be sponsoring "Sesame Street" in Istanbul, from Polish paper *Rzeczpospolita*:

A court fined 20 persons for using the letters Q and W on placards at a Kurdish new year celebration, under a 1928 law banning characters not used in the Turkish alphabet.

Terra Incognita



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

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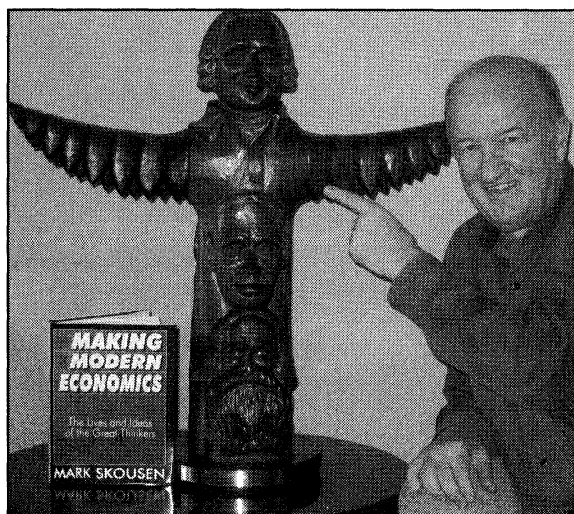
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