

# Liberty

March 1999

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Bill Clinton:  
The Uncommon  
Criminal

# Without Rights

*John Robey on America's  
Deconstitutionalized Zone*

*where the War on Drugs  
trumps the Constitution.*

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*by Eric D. Dixon & R. W. Bradford*

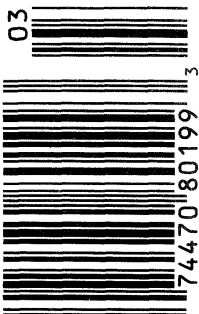
## Y2K: Excuse for Military Takeover?

*by Declan McCullagh & Solveig Singleton*

## Zimbabwe: A Snake Eats Its Tail

*by Len Brewster*

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"[Edward] Abbey's monkey wrenchers roamed the Southwest as Nature's avengers, pulling up survey stakes, disabling bulldozers, blowing up bridges, dreaming and plotting that glorious day when the Glen Canyon Dam is blasted to smithereens, to that big public works project in the sky"

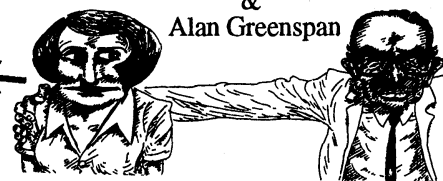
**Novelist, Naturalist, Anarchist**  
by Bill Kauffman

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In Washington, D.C., panhandlers outside the Capitol are a despised lot. But inside, groveling for your tax dollars is respectable. *Randal O'Toole* analyzes some of the wonderful proposals that Northwestern environmentalists want to spend billions on. Good news for researchers, ecosystem restorationists, forest sociologists, and others who live on the public dole!

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*executive editor*

Terrence Campbell  
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*senior editors*

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Brien Bartels

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Thomas S. Szasz

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*contributing editors*

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*copy editor*

John Bergstrom

S.H. Chambers

Rex F. May  
*cartoonists/illustrators*

Eric D. Dixon

Jonathan Ellis

Martin M. Solomon  
*assistant editors*

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# Letters

## The Ides of April

In Alan Bock's Reflection ("Miss Cegenation, 1792") in the January issue, he suggests "a movement to make Jefferson's birthday, April 13, a national holiday."

I have two comments. First, I don't agree with the idea of "national holidays." I don't think it should be the business of the government to declare them. (The Constitution doesn't support the idea, either.)

Second, such a holiday would be sullied by the well-known federal celebration that occurs just two days after. If we establish Jefferson's birthday as a holiday we ought to disestablish the other one.

And, of course, the agency to which the day is dedicated.

Kenneth Howard Fleischer  
Los Angeles, Calif.

## The Bureaucratic Juggernaut

The situation described in "Don't bank on your privacy" (Reflections, January) is almost certainly worse than Bill Bradford thinks. By the time it hits the Federal Register, a regulatory "proposal" really isn't just a proposal — it is a bureaucratic pronouncement with enormous inertia. No substantive change is likely through mere public opinion.

In this case, it appears clearly to be encroaching on congressional prerogatives, i.e., law-making, and perhaps even constitutional issues, rather than rule-making.

Involve the Congress if you want to derail this arrogant incursion into our private lives.

Don F. Hanlen  
Benton City, Wash.

## Zoned Triple-X

I am always pleased to see articles exposing the anti-freedom stance of anti-porn feminists, and Wendy McElroy's review of *In Harm's Way* (February) more than filled the bill.

However, the cases of sexual repres-

sion by government are far more common than those revealed in either McElroy's actual review or her recounting of the MacKinnon/Dworkin legislative attempts in Minneapolis, Indianapolis, Cambridge and Los Angeles.

McElroy surely knows that the "revisionist history" practiced by Dworkin and MacKinnon is their (and their movement's) stock-in-trade. While McElroy's and others' testimony was excised from the "uncensored" report of the Los Angeles hearings, at least McElroy actually got to appear and say her piece before the commissioners. The "MacDworkinites" have apparently learned from that sort of encounter, as they now refuse to appear on talk shows or in any sort of debate with pro-porn feminists or anyone who challenges their censorious opinions. Hosts of such events are then called upon to choose which single view they will present, and the free speech side often loses out — as does the concept of open and honest debate.

However, outright censorship is no longer the preferred method by which various city councils, uneasy about adult material and always wary of community pressure, try to stop its sale to consenting adults.

In the case of *Renton v. Playtime Theaters*, the Supreme Court ruled that while adult material had the protection of the First Amendment, communities had the power to regulate such sale by means of "time, place and manner" restrictions. This effectively threw open the doors for religious fanatics and other sexually-repressed and misinformed citizens to attempt to rid their communities of sexually-explicit material by means of zoning its purveyors to slums, industrial areas and even swamps, as evidenced by the recent New York City ordinances.

Over the past year, hundreds of these zoning ordinances have been proposed and many have been enacted, all of them

based on bogus "adverse secondary effects" studies that are trotted before legislators and commissioners who have little ability to question them knowledgeably. Arguments involving First Amendment rights are generally given little attention if they are not dismissed outright, especially when drowned in pleas to "save the children." There are no credible studies which suggest that children are harmed in any way by seeing sexually-explicit material, but many legislators claim that their "common sense" tells them the harm exists, so they need no recourse to science or psychology.

That's why we were heartened recently to hear that a three-judge panel in Wilmington, Delaware ruled, in the Playboy Channel's suit against Section 505 of the Communications Decency Act of 1996, that there is "no clinical evidence linking child viewing of pornography to psychological harms."

We can only hope that other judicial bodies take the Third Circuit's dictum to heart.

Mark Kernes  
Van Nuys, Calif.

## Devil With a PACT

I was very impressed by Thomas Szasz's "Facing Up To Coercion," (January) which lambasted psychiatry. I am a survivor of psychiatric treatment and saw many instances of forced treatment while I was institutionalized.

It is important to realize that what happened to Shirley Allen happens to thousands of Americans every year; most are not able to defend themselves. Psychiatry is increasingly encroaching on civil rights by pushing the Program for Assertive Community Treatment, known as PACT, which would employ people to drive around and forcibly drug people labeled as having a "mental illness" in their own homes, while also trying to expand their ability to treat people involuntarily from "danger to self or others" (which is itself a violation of due process) to "reasonable likelihood of decompensation," which could pretty much envelope the entire population.

With "Oppositional Defiant

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Disorder" listed as a mental "illness" in the DSM-IV (the current diagnostic book for the American Psychiatric Association), we may all end up locked in the asylum and injected with our Soma if we refuse to accept this brave new world.

David James  
Eugene, Ore.

### Gang Daft A-Gley

I am not exactly sure why R.W. Bradford, like Republicans, has become a fan of loosely applied sexual harassment laws. Bill Clinton is a sleaze, we all know. But I am not certain that his relationship with a groupie (as opposed to a string of coercive advances like Bob Packwood's dalliances) is sexual harassment, except by the most generous and dangerous definition of that term. Turnabout is fair play, I guess, but does that mean that if a president sometime in the future goes to a prostitute we should enthusiastically support the prosecution of prostitution as gang rape just because Andrea Dworkin may get a law passed somewhere that defines prostitution as gang rape?

John Patton  
Boca Raton, Fla.

*Bradford responds:* I oppose sexual harassment laws, a fact I have made plain in these pages (for example, in "Sex and Status," November 1998). But I do not see how opposition to sexual harassment laws implies support for perjury in lawsuits in which a person claims damage consequent to a sexual assault.

### A Node for Freud

I think Jane Shaw may be selling Sigmund Freud a bit short in "Freud Slips" (Reflections, February). She suggests that Freud's theories and their vast cultural and other effects were the result of nothing more than unfounded speculation. But in her final sentence, she relents a bit, conceding that Freud's ideas should be treated as "creative and bold insights, but not as science."

It seems to me that there is much human behavior, some of it self-destructive, whose motivation is a mystery even to the actors themselves, and which can be plausibly explained by reference to an "unconscious" mind. With continuing advances in understanding the workings of the brain, perhaps some day the physical locus for the "id" and the "superego" will yet be discovered,

making at least some of Freud's ideas testable after all.

David J. Slate  
Chicago, Ill.

### The Cycle of Abuse

In her story of leaving her abusive husband ("Breaking Free," January). Kimberly Ayn Ryan's whines that others don't defend her even as she voluntarily returns to a deadly situation. The woman is addicted to helplessness and self pity, reinforced by warped logic.

She is uncomprehending and dismissive when help is offered: the policeman who doesn't arrest her husband at the bar, presumably because he hasn't broken any laws there, hands her a card telling her to call it for help. She asks, "What was I supposed to do with a business card?" Well, duh, lady, call the number!

She glosses over her lemming-like magnetism to her abusive husband in self-pitying, rhetorical questions. When she goes to call the number on the card,

*continued on page 61*

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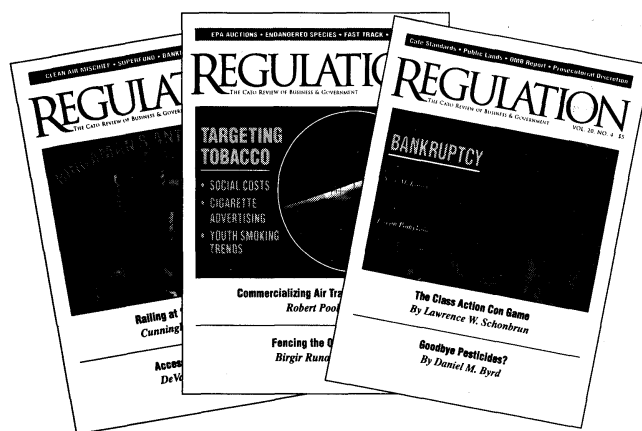
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# Reflections

**Browntown** — Jerry Brown, apostle of the “era of limits” back in the 1970s, assumed office as mayor of Oakland with a Reaganesque “morning-in-the-East-Bay” speech promising “a renaissance, a revitalization of what it means to be in a democratic society” to the beleaguered and despised twisted sister of San Francisco. Ishmael Reed was part of the swearing-in, with a “poem” called “Let Oakland be a City of Civility” featuring lines like “Let those who are packing AK-47s and Uzis move on to another town” and “Let the good times roll.” Maybe Mayor Moonbeam will prove me wrong, but a better poet than Reed, Gertrude Stein, had choice words for Oakland (“there’s no there there”), and her dismissal makes a pretty good working prediction of the Brown era. —AB

**The latest “Trial of the Century”** — While pundits of all stripes inundate Americans with warnings that the Fate of the Republic is at stake in the “Trial of the Century,” Americans might do well to look elsewhere. In actual fact, there’s no more at stake in this trial than in the last “Trial of the Century,” the trial of O.J. Simpson for the murder of his wife and her friend. And if the senators bow to the polls rather than the evidence and acquit the Scumball-in-Chief, no more real harm will be done than was done when the Los Angeles jury acquitted O.J. A miscarriage of justice, surely. But not much of one, and not one that is likely to have much effect on Americans.

Ironically, in another courtroom, another trial is taking place that could very well do great harm to Americans: the Clinton administration, at the behest of campaign donors who find competition with Microsoft too trying, is doing its damndest to find Microsoft guilty of violating some idiotic and arcane antitrust law. A Microsoft conviction could very well augur a whole new era of regulation for America’s most important, most viable, and most unregulated industry. —RWB

**Blueprint for tyranny** — When 229 people died in the Swiss Air crash at Peggy’s Cove, Nova Scotia, the Royal Canadian Mounted Police compared DNA samples from the victims with those of their family members as an aid in making identifications. Now the RCMP recommends that all flight crews be required to provide DNA samples — along with fingerprints — before being allowed to board a plane. It would make identifying their corpses so much easier. In other words, the Mounties hope to keep files of DNA samples on people who are neither accused nor suspected of committing a crime. Who next? Frequent fliers?

The RCMP have long sought the right to take DNA samples from suspects, but they have been thwarted by pesky privacy arguments. If they are permitted to obtain samples from innocent people, how much protection can “suspicious” ones expect? —WM

**Albania on my mind** — Looking for a new scene? Perhaps you want to change your government to

what it might have resembled in the near past. Or perhaps you’ve just always harbored a secret desire to be a citizen of Albania.

Now’s your chance. *Investor’s Business Daily* reports that nearly 100,000 blank Albanian passports were looted from government buildings in that ungovernable country during riots last year. Interpol is supposedly worried that these passports will become *laissez passer* for international terrorists. I’m thinking of picking one up myself in case I need to pass myself off as a political refugee in the near future. And it would be a great conversation piece: “That’s right, pal. I live in America but my second home is Albania, where we say ‘You hurt my feelings’ by killing every male member of your family. Watch your mouth, punk.” —BB

**The .08 percent solution** — If you listen to Bill Clinton, you may wonder just where the hell it is you live. That’s because The Great Micro-Manager excels at breathing life into trouble where trouble doesn’t exist. In Clinton’s world, gun fights on school playgrounds break out daily. Frothing junkies loiter on every street corner in America. Right-wing “hate groups” conduct weapons training in New York City’s sewer system. There’s a crumbling school in every community, and the town drunk, police-chief, school superintendent, and 63 percent of the town’s housewives are infected with HIV.

Bill’s weekly radio address on December 26 was more of the same rubbish. Bill claims “The sight of a car weaving through traffic is an all too familiar and frightening one for many Americans.” His solution is simple: Congress should require the states to lower the blood alcohol limit for drunken driving to a minuscule 0.08 percent. He backs his proposal with a Department of Health and Human Services study that found 28 percent of the nation’s drivers in 1996 blasted out of driveways and parking lots within two hours of using an unspecified amount of drugs or alcohol.

If there ever wasn’t a time for lowering the blood alcohol limit, this is it. Alcohol-related deaths on the roads are at an all-time low. But Bill’s in a tight spot right now, and he’s doing what he does best: using an emotional subject for political gain.

A police officer once assured me that most drinkers drive fine at .08 — no worse he said than the millions of elderly and soon-to-be elderly baby boomers who daily make a mockery of driving. While the rest of us grudgingly eat our steak dinners without the companionship of a cocktail and a fine glass of wine, Bill will be flying high on Air Force One. And you can bet that he won’t give a damn that our dining experiences weren’t as enjoyable as they could otherwise have been. —JE

**Atlas Thatched** — I usually devote about five minutes of my main speech at Jim Blanchard’s Annual New Orleans Investment Conference to savaging one or more of the featured speakers (James Carville and Mary Matalin,

"Bud" McFarlane, Jack Kemp, Richard Lugar, Colin Powell and Dick Cheney have been among the whipping boys in recent years). My object is not so much to amuse myself or the audience, but to deflate these hypocrites, who come to the conference posing as defenders of personal liberty and free markets (because they know that's what the audience wants to hear) but are really thorough statisticians.

The featured speaker at this year's conference was Margaret Thatcher, ex-Prime Minister of Britain, reputedly responsible for the free-market reforms in that country during the '80s. I didn't say anything about her in my speech because she's an elderly lady, she did far more good than harm, and, unlike the vast majority of those in politics, I suspect she's basically a decent human being.

But her speech, although delivered with style and wit, was a disappointment. Playing to the audience, she alleged that she'd just read "all 800 pages" of Rand's *Atlas Shrugged*, with enthusiasm and agreement. Unfortunately, it must have been an abridged edition, because mine has 1,084. From there she immediately launched into a discussion of cloning (Dolly the sheep, etc.), where her point was that sometimes "society just has to decide what's right and wrong in business and scientific research" (not her exact words, because my notes are rough, but almost). This demonstrated that Thatcher couldn't have even read the Classics Illustrated version of the book, or else didn't even vaguely understand it, since the whole point of *Atlas* was exactly the opposite. —DC

### *Praise the Lord and pass the doughnuts*

— When the image of Jesus appeared on the side wall of a Tim Horton's — the Canadian equivalent of Dunkin' Donuts — hordes of people flocked to the shop in Nova Scotia to buy their coffee at the same place that the Savior hung out. Although business was booming, the company decided to investigate further. A change of light bulbs . . . and the image disappeared. Pilgrimages ceased.

Who says capitalists are only interested in money? —WM

**Your weapons please** — The latest Canadian firearm-control legislation went into force on December 1, 1998. One of the interesting — probably intended but still unnoticed — side effects of the gun registration provision is that individuals who, as required by law, register even only one hunting weapon will "need to advise their Chief Firearms Officer (CFO) of any address change within 30 days of the change."

In Québec alone, 450,000 hunters, or close to 10 percent of the adult population, will be required to notify the police when they move. In this Province, it is the Sûreté du Québec (provincial police) who will enforce these new federal controls. Their big "Chief Firearms Officer" wrote to tens of thousands of Quebecers holding the old firearms acquisition authorizations (called "Firearms Acquisition Certificates" in Newspeak) to inform them of this new act of tyranny.

I personally replied to his letter expressing my satisfaction that, at last, the people will be put in their proper place. Now that

criminals will be as disarmed and submissive as honest citizens, I added, we will certainly be able to disarm the police.

In support of "my" Chief Firearms Officer's propaganda, and to reassure him that history was on his side, I also quoted him the famous 1785 Virginia law: "No slaves shall keep any arms whatever, nor pass, unless with written orders from his master or employer, or in his company, with arms from one place to another." —PL

**The kindness of regulators** — Currently, investment advisors are regulated — quite heavily — by the Securities & Exchange Commission. Now the National Association of Securities Dealers (NASD), a quasi-governmental body that regulates brokers, wants to jump in on the act on the theory that it could provide more effective regulation.

As president of an investment advisory firm, I do not welcome additional regulation, particularly from a body known throughout the industry for its high-handed manners. (*Bloomberg News* calls the NASD "overzealous" and "bullies.") So I wrote to the NASD, protesting its scheme to expand its empire and suggesting that its stated goal of obtaining "parity of regulation" between brokers and advisors could be achieved as readily by *reducing* regulation of brokers as by increasing regulation of advisors.

You can imagine how this went down. In one telling sentence, intended no doubt to be conciliatory, the NASD executive vice president betrayed the arrogance of government regulators. "We recognize the importance of permitting financial service firms like yours to serve their customers."

How kind! Here is a government bureaucrat who currently has no jurisdiction whatsoever over me, conceding that I should be permitted to continue in business!

—guest reflection by Adrian Day

**Why Johnny won't vote** — Pundits used the last election to complain once again about the failure of Americans to take seriously their responsibility to vote. Indeed, given the growing power of government over our lives and fortune, one would expect more people to brandish ballots. But this expectation overlooks the practical attitude most Americans take toward politics.

People are realistic and recognize that their knowledge and participation in politics makes little impact on their lives. Thus, while they are increasingly well informed about their private lives (investment options, internet options, tourist opportunities) they are rationally ignorant about matters political. Some 40 percent know the names of neither of their federal senators — but to most people does it really matter whether their senator's name is Milkulski (D-MD) or Murkowski (R-AK)? People are rational: they devote time to learn about things that will affect their lives, and politics isn't one of them.

Thus, when either think tanks or businesses seek to educate the American public, they're missing the boat. In politics, people aren't stupid because they're stupid — they're stupid because they're smart. And, if we seek to make them smart, we're being stupid! Until and unless government shrinks

### Liberty's Editors *Reflect*

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JOJ	J. Orlin Grabbe
PL	Pierre Lemieux
WM	Wendy McElroy
JSS	Jane S. Shaw
FS	Fred L. Smith, Jr.
MMS	Martin M. Solomon
CS	Clark Stooksbury



in scale and moves closer to the people, voting levels will continue to decline. People aren't stupid — even if their leaders are. —FS

**The whims of war** — One aspect of the impeachment-week symbolic bombing of Iraq — symbolic in that it seems to have had little impact on the correlation of forces in the area though it had a more than symbolic impact on certain Iraqis and lightened taxpayers' wallets by a ton of dollars — has hardly been reported at all. Desert Fox marked one of the first, if not the very first, U.S. military strikes without so much as a thread of justification as a defensive action.

I'm not so naive as to imagine that the constitutional provision giving Congress and only Congress the power to declare war applies any longer in our Brave New World Order. Sure, the provision was placed there explicitly to prevent a president from spending the taxpayers' money and risking the lives of military personnel in useless and cavalier military actions like Clinton's. But the provision has been shredded over the years, by the undeclared war in Korea, the undeclared war in Vietnam, and countless undeclared wars and military actions since then. The Constitution remains unamended, but this provision has been effectively repealed.

Even when Congress tried to take back some of the powers presidents had ceded to the presidency by passing the War Powers Act after Watergate, it implicitly granted the president more power to undertake military hostility than the

framers of the constitution had imagined possible. Under the law, the president has to report to Congress within a certain number of days of launching a military strike, and theoretically to get its permission to proceed. And even those provisions are routinely ignored.

Until very recently, however, American policy makers

took care to cast military activities as necessary defensive measures rather than as acts of aggression. The coalition that fought the Gulf War wasn't assembled, and perhaps couldn't have been assembled, until Saddam Hussein invaded Kuwait. Most of the military actions in Bosnia were at least portrayed as responses to aggression by Serb forces. Spinmeisters even justified last August's Monicagate Missiles as a response to the terrorist bombings of U.S. embassies in Africa.

Not all the pleas of reluctant military actions undertaken in response to naked aggression stand up to scrutiny. Some — see the Gulf of Tonkin resolution in Vietnam — were clearly meant to orchestrate events to create a fig-leaf of defensive response. But at least our nation's leaders tried to create the appearance of a defensive response to aggression because policy makers, however devoted to realpolitik, knew that Americans don't want their nation undertaking military action simply on a whim, or to punish somebody considered potentially dangerous.

For whatever reason, that final restraint — of needing to appear judicious and defensive rather than aggressive for fear of stirring up negative public opinion — has gradually disappeared during the Clinton years. Last February, when Monica I was raging, President Clinton stood ready to launch missiles not because Saddam had done anything to his neighbors — yet — or taken any aggressive action, but because (to put it in a deliberately provocative way) Hussein had defended his nation's tattered sense of sovereignty against incursion

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by minions of the New World Order.

President Clinton threatened to launch an attack on the same thin pretext in November, then did it in December. The attack marks an important turning point in the evolution of the United States into an explicitly imperialistic power — one that doesn't need the pretext of real or pretended aggres-

sion to "give the wogs a whiff o' the grape," but feels fully justified in attacking other countries because their leaders have failed to acknowledge our suzerainty. Or just because.

Others have noted that by launching the attack without even the courtesy of pro forma consultation with our "allies," the United States has set in motion forces that will come back to bite us — especially if, as appears likely, Russia decides it's time to rebuild its military and seize Great Power status in opposition to the United States. Even sadder, we have become a power that feels free to attack anybody anywhere in the world without even pretending the action is really defensive in nature. The American soul died a little that week.

—AB

**Tilting at windbags** — Rep. Dennis Hastert, now the Speaker of the House (if he survives in the job long enough for this to see print), is not really from a district in Illinois, as the major media erroneously report. Actually, he is the Speaker of the Mournful Countenance, the Congress Man from La Mancha. Hum a few bars of "The Impossible Dream" as you read excerpts from the stories of his ascension.

*To dream . . . the impossible dream*

"I think the most important thing that we have to do is to restore the faith of the American people in the U.S. Congress, and the faith of the American people that American government works," Hastert said in his first formal news conference since being tabbed as the next speaker," Reuters reported.

*To fight . . . the unbeatable foe*

Hastert is elsewhere described as one of the Christian Coalition's favorite legislators, for his votes on abortion issues.

*To try . . . when your arms are too weary*

Hastert's colleagues say he is a "behind the scenes" legislator, who has "sponsored several anti-tax measures over the years."

*To run . . . where the brave dare not go!*

Hastert said Congress would consider plans for Social Security reform, long known as the "third rail" of American politics. "We've made a social contract with the seniors and the future seniors of this country that we need to make sure that they have a sound and safe and secure future," Hastert is quoted as saying by Reuters.

So this guy is trying "to reach the unreachable star." So what? There are so many politicians whose fortunes would be improved by obeying the precepts of naively idealistic show tunes. Ex-Speaker-elect Bob Livingston, for example, could have learned from the verse that exhorts one *To love . . . pure and chaste from afar*.

—BB

## Lies, damn lies, and recovered memory

— Benjamin Wilkomirski's *Fragments* recounts his experiences as a 3- or 4-year-old Latvian Jew in the Majdanek death camp and another unnamed camp. He had no direct memory of the events, but wrote the book after undergoing interdisciplinary therapy which supposedly unlocked repressed memories. It was published in Germany by a reputable firm and two years later, in the U.S. by Random House.

Now we learn that the book may be completely fictional. Evidence exists that Wilkomirski was born in Switzerland, not Latvia, as documented by his Swiss birth certificate; that

he is not Jewish, since his ex-wife and his girlfriend said he was not circumcised; that his parents were not Jewish, since Swiss records indicate his mother was an unmarried Swiss gentile, and he was adopted by a Swiss gentile family; and that he probably wasn't in a death camp at all, since has no prison tattoo. (The only prisoners not tattooed were children experimented on, who rarely survived.)

Despite these problems, the publishers still market the book as nonfiction, since the author insists he wrote the truth.

Even more troubling is the support Wilkomirski receives from some Jewish organizations. In 1997, the Jewish Book Council gave the National Jewish Book Award to *Fragments*. The U.S. Holocaust Memorial Museum sent Wilkomirski on a six-city fundraising tour last fall. These groups still back the author.

But they stand on very shaky ground here. Their error gives Holocaust deniers ammunition. And revisionists are perfectly willing to use it. Revisionist author David Irving has already argued that if Wilkomirski lied about his experience, and these organizations back him up, then the entire Holocaust is a fraud.

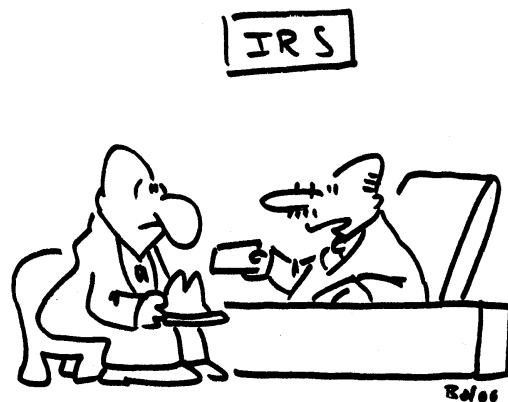
Of course, Irving's logic is fallacious. But the fact remains that if Wilkomirski's story is indeed false, these groups are insulting all who survived the Holocaust. They went through a hellish experience and he falsely claims to share their pain.

—MMS

**Pinochet happens** — In the February 1999 *Liberty*, John Cobin and Karen Araujo defended General Augusto Pinochet as the equivalent of the U.S. founding fathers, but their case falters on their cramped analysis of the Chilean situation. One would never glean from their work that a foreign power, the United States established a policy of ruining the Chilean economy once Salvador Allende was elected president.

The CIA was planning to undermine the Allende regime before it came to power. President Nixon wanted Chile's economy "squeezed until it screamed." The Nixon administration granted immediate recognition of Pinochet's rule and provided economic assistance to Chile after the coup in 1973. These facts undermine the writers' pretense that Chile's difficulties arose because of Allende and his Cuban and Soviet handlers.

Cobin and Araujo exculpate most of the killings carried



"Here's your refund — don't let it go to your head."

out by the Pinochet regime as being directed against members of the armed left. But they fail to explain why attempts to seize power by armed leftists were any less legitimate than Pinochet's U.S.-backed coup in 1973. They state that, "[i]n the tense early period of the military regime it was not uncommon for civilians falsely to accuse individuals of being armed leftists in order to settle private scores." But is this a defense? It sounds as if Pinochet and his henchmen were engaging in reckless acts of violence with little regard for whom they killed.

They also ignore the murders committed by the Pinochet regime outside of Chile. In 1976, a car bomb exploded in Washington, D.C., killing former Chilean U.S. ambassador Orlando Letelier and Ronni Moffat, a U.S. citizen. Chilean assassins also carbombed Gen. Carlos Prats, Pinochet's predecessor as Army chief of staff, in Buenos Aires and gunned down an exiled socialist political leader in Italy. These killings may fall under the rubric of "freedom fighting" of the sort that George Washington might have engaged in, but they sound more like power consolidation akin to Michael Corleone's tactics.

I am no supporter of the Spanish attempts to bring Pinochet to justice. I can't imagine that Spain or any other country's moral house is so well ordered that it can afford the time and effort needed to cleanse the moral failings of other countries. And there are plenty of other current and former heads of state (Fidel Castro, George Bush) who are as, or more, deserving of criminal sanction.

Pinochet's reforms (accompanied by a cessation of hostilities by the U.S.) appear to have led to an economic renaissance in Chile, and this should count in his favor. But the free market isn't everything. Libertarians who spring to the defense of the former Chilean dictator should ask themselves if they seriously want to support capitalism at the expense of freedom.

—CS

**"The name's Bond. Elvis Bond."** — What is it with these mildly outlaw entertainers who have a desire to be cops — or recognized as cops? Most people know something about the bizarre story of Elvis, who was already a pretty serious drug addict by then, wangling his way into the White House during the Nixon administration, chatting with old Tricky Dick about the evils of drugs and the Beatles (who had disbanded by that time) and coming away with an official badge for the Drug Enforcement Administration, or whatever Orwellian name they called it back then. Those who don't live in wonderful Orange County might not know that photos of Elvis and Nixon together are now one of the most popular items in the Nixon Library.

Now comes news that Ol' Blue Eyes, Francis Albert himself, volunteered to work undercover for the FBI in 1950 — the same year, according to the just-released FBI files from which this tidbit comes, that a confidential informant told the FBI that Sinatra smuggled a million bucks in cash into Italy for Lucky Luciano. According to the files, the offer to work undercover was an offer the FBI could and did refuse.

Is it just a desire to live on the edge by people who have achieved a level of success — and perhaps boredom — such that they feel invulnerable? Whatever it is, it's weird. And it's something that should be corrected. I suspect we won't have a free society until we've taken back the culture to the

point that no popular entertainer would think about seeking identification with or connection with any government entity — especially dreck like public-service-announcement TV ad nannyism — for fear of tarnishing him/herself in the eyes of fans.

—AB

**Taking away your privacy** — The Wassenaar Arrangement was an agreement between 33 countries (including the U.S.) reached in July 1996 with the intent of controlling exports of conventional weapons and sensitive dual-use technologies. The notion was we would all get together and agree not to sell guns to the Indians or other terrorists who are not members of our club. Wassenaar's latest bid for world peace was taken this past December when the 33 nations mutually agreed to limit export of that deadliest of munitions: strong cryptography. "They've plugged a loophole," chortled Ambassador David Aaron, the President's Special Envoy for Cryptology.

This latest attack on privacy by the Clinton Administration was justified on the basis of "creating a level playing field" — namely by getting other governments to censor foreign publishers of cryptography software in the same way that the U.S. government already censors U.S. publishers. This represents an ominous development. It is currently the case that if nations restrict domestic sales of strong cryptography, such software is nevertheless available from foreign sources. The latest decision by the Wassenaar group is an attempt to cut off the availability of strong cryptography (greater than 56 or 64 bits for symmetric keys) from abroad. This will then make it easier for governments to restrict the use of strong cryptography domestically.

Luckily the decision requires implementing legislation in each participating country. But the December decision shows that the U.S. government intention to control cryptography has not altered, despite the abandonment of the "clipper chip" and "key escrow" initiatives. And it is also another indication, evident from the beginning, that the Clinton Administration's noisy promotion of the "information superhighway" simply represents an underlying attempt to control it. Information is power, and the government wants yours.

—JOG

**Sport Utility Villians** — The latest attack on light trucks (sport utility vehicles, pickups, and vans) is the



"Don't let it get you down. Rome wasn't burnt in a day!"

claim that the vehicles ride too high, so their headlights shine in the rearview mirrors of the cars in front of them, making it difficult for those motorists to see. This criticism seems dubious, but, in any case, it is just another phase in the campaign against vehicles such as Explorers, Navigators, and Suburbans, known as SUVs.

Over the past year or so, a rash of newspaper articles, inspired by Keith Bradsher of *The New York Times*, have labeled SUVs and other light trucks as killers on the highway because they are about 1000 pounds heavier than the typical car. SUVs are also routinely charged with gas-guzzling and polluting.

What the newspapers rarely report is the reason for the prominence of light trucks — government regulation. Economist Daniel Benjamin has pointed out that much of the rise of SUVs is due to the CAFE (Corporate Average Fuel Economy) standards, enacted over 20 years ago to require greater fuel efficiency.

To meet the standards, auto manufacturers downsized their cars — to the point where they offered little protection in crashes. Economists Robert Crandall and John Graham calculated that, for every model year, several thousand people die on the highways directly as a result of the CAFE regulations.

Enter the SUV. The fuel standards for light trucks were not as strict. Manufacturers weren't under the same pressure to make them small, light, and low-powered. So, worried about safety and tired of wimpy, cramped cars, average Americans began buying SUVs. In 1975, light trucks represented 21 percent of all new-vehicle purchases; the most recent figure is over 50 percent.

But reporters turn this history around and call the SUVs the culprits. To me, this is crazy. Rather, the rise of the SUVs is a sign that people are not like sheep; they do not stand in line waiting to be shorn. If they can afford it, they will stop buying small flimsy cars and drive something roomier and safer.

The people most annoyed by the rise of the SUV are that elite group of opinion-makers who have been conducting a war against automobiles, trying to get people out of them and into mass transit. These people don't like cars, but they especially don't like big, convenient cars. They don't like the big families that like big cars. And they don't like anybody

criticizing federal regulation.

One group that does like all this, however, is American automakers. Not only did they succeed in keeping the fuel economy standards loose for these vehicles, but for years the vehicles were protected by a 25 percent tariff, ten times the tariff on cars. Today, only the pickups have the high import tax, but foreign competitors have yet to catch up, and the Big Three are making lots of money on SUVs. According to a report in the *Detroit Free Press*, each Silverado pickup earns Chevrolet \$8000 in profit.

Once again, government regulation rewards businesses and makes life difficult, indeed dangerous, for poor people. And the opinion-makers who blithely promote regulation haven't got a clue. —JSS

**Marriage flaws** — I recently went to the wedding of a good friend's daughter. I offered to bring a gift-certificate for a pre-nuptial agreement drawn by a good attorney, but this was viewed as cynical and inconsistent with the happy, festive atmosphere of the occasion. The whole affair set me to thinking: their joyous experience may be right out of the storybooks, but the American way of marriage remains a problem.

The ongoing concern about the high divorce rate, illegitimate children, and homosexual marriages has stimulated much debate over family life, much of which focuses on what the government can do to repair things. Some have pro-

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*Right now we have one-size-fits-all marriages. Louisiana says two sizes are better. I say let everyone choose their own size: get the State out of the marriage business altogether.*

---

posed cutting taxes to relieve the high tax burdens that force both parents to work. Others suggest making it more difficult to get a divorce, or requiring more intensive pre-marital counselling to offset the romantic view of marriage that always prevails among our youth.

Recently Louisiana took a step in this direction by offering couples two kinds of marriages. The first, already in place, allows quick and easy marriages and divorces. The second, called a Covenant Marriage, requires premarital counselling and is regarded as a life commitment, dissolvable only for physical or sexual abuse, adultery or abandonment, a separation of two years, or one spouse's conviction of a felony crime.

Right now we have one-size-fits-all marriages. Louisiana says two sizes are better. Recognizing wide pluralism, I say let everyone choose their own size. I suggest a more radical approach: get the State out of the marriage business altogether by letting people negotiate whatever sort of marriage contract they want.

Right now, people typically fall in love (or bed), get a marriage license, have some cleric or bureaucrat mumble some words over them, attend a happy and lavish reception, go on a honeymoon, and then face reality. Reality is the

*continued on page 32*



"It's working! — Now, as soon as they have *all* their troops in the Middle East . . ."



# It's Time to Move on With Our Lies

by Stephen Cox

Bill Clinton's  
Spin Machine  
produces excuses  
as efficiently and  
prolifically as a  
hive of bees  
making honey.  
Herewith a  
primer of its  
work.

The ancients invented terms for argumentative fallacies: "ad hominem," "reductio ad absurdum," "post hoc ergo propter hoc." Now, the great Defense of the Clinton Movement allows us to update the list of fallacies.

Here is a small sampling of techniques from the Clinton School of Logic and Rhetoric, with some of their useful applications:

*The Hypothetical Admission; or, Now You See It, Now You Don't.* Faced with incontrovertible evidence, just "admit" what your opponent claims, and switch the subject: "If the President really did commit perjury, we still have to deal with the problems of Medicare, daycare, and highway beautification." If your opponent responds by saying, "I'm happy to hear you finally admit that the president may have committed perjury," get angry and accuse him of switching the subject.

*I Think It's Time to Move On With Our Lives.* An even faster way of changing the subject. Best used in situations in which your opponent has definitively demonstrated the emptiness and stupidity of all your arguments against him. Heard most often from Democrats, criminals about to be sentenced, and people who are trying to welsh on debts.

*The Least of All Criminals.* "If the president really did commit perjury, it's nothing worse than what every other president has done. In fact, it's better. In fact, it's great." Don't worry; if you want to use this fallacy, you need to know nothing whatever about the history of the American presidency.

*What's Past Is Epilogue.* Assume that what has happened in the past is always final — but choose your past with care; e.g., "We can't remove the president; after all, he won the last election." Don't get hung up on any "useless" moments in the past (e.g., "The president went on TV and lied like a rug"), even if those moments keep on happening ("and he's never stopped lying").

*Hate the Sin but Love the Sinner.* Maintain that Clinton isn't a liar; he just tells lies. View his Congressional partisans, not as ranting demagogues, but as people who just talk like ranting demagogues. Make sure you don't apply this treatment to the Republicans.

*Webster's Tenth International.* Invent some ridiculous definition of a common word (e.g., "sex," "perjury," "obstruction"), a definition that of course no one else ever heard of; then repeat it as if it were now commonly accepted: "As we know, not everyone regards those acts as sexual in nature." If you say things like this with a straight face, many people will assume that you actually know more than they do, even about sex.

*Osmosis.* With the aid of this fallacy, "facts" can really travel. You can start by

observing that one of the president's millions of opponents gave a speech to an allegedly racist group; seconds later, you can insist, as if this were a self-evident proposition, that "this whole impeachment thing is just a racist campaign to remove the president." Works like a charm with both the timid and the politically correct — and that's a lot of people.

*Occupational Innocence; or, Hi Ho, Hi Ho, It's Off to Work He Goes.* Here the assumption is that anyone who has a job should never be accused of crime. He should be allowed to do this job, no matter what (other) villainies he perpetrates. The ultimate occupational security, available only to Democrats who are former Rhodes Scholars.

*Relationships Have Only One Side; or, The New Geometry.* "The Republicans are partisans, because they voted to impeach the president. The Democrats are not partisans, because they voted not to impeach him." "She had sex with him, but he didn't have sex with her." "I have heard the sound of one hand clapping."

*The Pretense of Innocence.* Just do it; just pretend. "I can't remember whether I was alone with her." "I haven't seen any evidence that the president lied."

*The Kenneth Starr Defense.* "The president may be guilty, but Kenneth Starr is 'really' guilty, because he found out about the president's guilt." This defense can work in almost any judicial situation; it worked splendidly in the O.J. Simpson trial.

*All in a Good Cause.* Assume that "what" a person does should be judged entirely on the basis of "why" he did it. Thus: Clinton was right to lie, because he wanted to keep his sex life secret (also to kill a lawsuit, but you don't need to bring that up). By the same token, the Republicans are wrong to tell the truth, because they want to remove Clinton from office.

*The Lit-Crit Gambit.* Every arguer his own literary critic. "This crisis isn't about perjury; it's about sex." "This crisis isn't about what the president did; it's about the

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*"The Republicans are partisans, because they voted to impeach the president. The Democrats are not partisans, because they voted not to impeach him." "She had sex with him, but he didn't have sex with her." "I have heard the sound of one hand clapping."*

---

Republicans' virulent hatred of God and truth and decency." There are a million stories in the naked city, and you can choose whatever one you like.

*Truth Is Porn; Porn, Truth.* That Is All Ye Know, and All Ye Need to Know. Why should the right wing have a monopoly on prudishness? You, too, can be a prude. Just turn up your nose at the "appallingly frank" nature of the Starr report and maintain that children will be corrupted by reading it. (Pretend that any children can read.) Argue that the president should be acquitted before tiny tots can have their innocence destroyed by frank disclosures of his deeds. By applying this principle, we will ensure that only nice crimes come to trial — a great relief for our overcrowded courts.

*Well, So What?* A perfect way to finish those tiresome losing arguments, and crown them with success. By saying these three little words, you will immediately reduce all opponents to impotent rage — and they can't do a thing about it! You have *won* your case. Ha, ha, ha! *Whatever, Dude!* An argumentative technique that is much in use by the American people. □

## Impeach Michael Jordan!

by Alan Bock

While pundits are atwitter over the pending Senate impeachment trial of President Clinton, ordinary Americans seem a lot more interested in the end of the National Basketball Association lockout. And most sports writers assure us that the whole NBA affair has been greeted mostly with yawns, even among diehard sports fans.

When one form of entertainment is denied us, we can usually find another. In the absence of millionaires in skivvies playing roundball on TV, some sports fans have not only found solace in college hoops, football and hockey, but some have even gotten outside or spent more time with their families. A few are even rumored to have read a book, though most would deny it fiercely.

Americans have a lot of choices as to how to spend time and attention; indeed, most of us complain of too many demands on our time and the difficulty of juggling our varied responsibilities and interests. And right now, few seem to be riveted to the ongoing soap opera in Washington. That could change if the trial is televised and continues for a while, but right now most Americans see it more as a source of wry jokes than of serious concern.

Don't look for lamentations here. The fact — all right, the hypothesis — that most Americans don't care much one way or another about what is being billed as the gravest constitutional/political event/crisis in our political system in more than a hundred years could be viewed as a sign of health in the society at large. It suggests that most Americans view political power struggles as of dubious relevance to their own lives. And with certain caveats that's not a bad sign.

I know, I know. All the polls show that varying but large majorities of Americans don't want to see President Clinton removed from office and the news stories are full of tales of Republicans agonizing over whether the voters will rise up and punish them if they are so bold (or foolish) as to do so. But I don't detect much intensity on the issue outside the Beltway — well, maybe among the Hollywood and academic/cultural left.

The stock market has been chugging along throughout the whole process, even setting record highs. Yes, it has fallen on a few days, but the best evidence I can find suggests that it's been in response to economic and investment-related developments, not to the impeachment "crisis." People have been shopping, taking care of business, spending time with their families, paying some attention to the news but mostly treating the high political drama as background noise.

There have been a couple of well-publicized anti-impeachment rallies or "speakouts" (several of which have

produced some deliciously absurd quotes) in New York and Washington. But none of them have produced huge crowds of angry ordinary citizens. Most of the intensity at the grass-roots level seems to be on the pro-impeachment side.

Letters to the *Orange County (Calif.) Register* (the paper I work for) on the topic — which have generally expressed heavily pro-impeachment sentiment but which we've never claimed represented the public at large — have actually subsided lately.

In short, I have little reason to doubt that the polls showing support for Clinton and opposition to impeachment are accurate, but I doubt there's much enthusiasm or passion in those feelings. I suspect a fairly substantial but still small (in percentage terms) number of Americans very much want to see Clinton ousted, and a fairly substantial but probably even smaller number really hate the idea of an ouster, while the vast majority aren't for removal if asked but are essentially indifferent.

That could change, of course, and probably will as the trial picks up steam and publicity. But a vast majority of Americans could care less about what the pundits consider the gravest challenge to the political system in a quarter-century or so. They're more interested in work, church, their children's performance in school, the weather, whether Aunt Agatha will come to visit, or sports than in politics. I view that as a sign of social health. □

## Clinton's Sticky Wicket

by Loren E. Lomasky

Circumstance and United Airlines brought me to Australia in time for the climax of the cricket season: the biennial series against the English team known for reasons familiar to every schoolchild of both countries as the "Ashes." But although my arrival fitted the cricket schedule, that was not the visit's purpose. Indeed, I must confess that despite conspicuous and extended effort on my part I still have still not fully accommodated myself to this other sport of bat and ball. Perhaps I never shall. There may be something in the American temperament that impedes falling in love with a game that takes five days to play and that not infrequently ends as a draw because the teams fail to complete their required two innings during that allotted span. And however much we appreciate our McGwires or Sosas, we would not wish to see them step into the batter's box in the morning, break for lunch, and continue to smack the ball past silly mid on through mid-afternoon tea.

No, cricket is not, could not be a preferred American pastime. And yet this American was altogether delighted to find himself immersed in that sport as an alternative to one with rules far less comprehensible and players not nearly so adroit: impeachment of the president of the United States. My complaint is first of all aesthetic. Could anyone have predicted that this impeachment would be so remarkably *dull*? In asking that question I do not mean to disparage the proclivities of those who are following every bounce of the prosecutorial ball from the grand jury to the White House and on

up to Capitol Hill. But theirs is an esoteric enthusiasm, akin to collecting vintage bottle caps, conducting medieval jousts or classifying beetles. It is not pitched toward popular tastes. I do not, of course, mean to deny that there are piquant morsels to be extracted from the Clinton Follies. How could there not be in a scandal which, whatever its legal and political "outcroppings," is grounded first and foremost on sexual misfeasance?

We welcome Monica Lewinsky as a worthy successor to other notorious femmes of fact and fiction. She combines youth with fleshy ripeness, vulnerability with a vixen's bite in a manner that elicits craving from some, sympathy from others, attentiveness all around. Her entry into public view has filled the lacuna in tabloids and titillation TV that has been our dreary lot since the demise of Princess Diana. Unlike that regal forerunner she is not larger than life, but neither (unlike, for example, 6-year-old beauty queens) is she smaller; and in an era of celebrities of remarkably diminished stature that suffices to secure full marks for entertainment value. Educational value as well: Thanks to Miss Lewinsky we are now a nation that grasps the subtleties of the distinction between oral sex and phone sex. So the Clinton exposé has not been without its uses.

However, once one ventures beyond the Lewinsky affair, the impeachment particulars become as arid as Australia's Red Center. Those blessed with a tolerably good memory remember Whitewater, but the number of individuals who understand its ramifications is smaller than those conversant with the General Theory of Relativity. Worse than that, not only is it unfathomable, it's a bore. Hardly more gripping is the overblown furor concerning Mr. Clinton's alleged perjury episodes. No one doubts that in his Paula Jones deposition and in subsequent testimony delivered to the Starr inquisitors he turned and twisted the truth like a limbo dancer sneaking under subway turnstiles, but if this counts as high crimes and misdemeanors, then so too does jaywalking or neglecting to recycle one's old newspapers. Imagine a man who is prone to dissemble concerning dalliances with women not his wife! This certainly sets Mr. Clinton apart from . . . well, there must be someone from whom he is set apart, else the Republicans would be entirely without candidates for the Speakership of the House.

Not only is Mr. Clinton's behavior comprehensible, it has for the most part been honorable. No gentleman would willingly reveal to a trolling prosecutor prurient details from which he had considerably shielded his own family. That is

### *Diminuendo*

With his blatant lying, his womanizing, his rental of the White House bedrooms, and his cynical political manipulations, Bill Clinton diminished the presidency. Amazingly, however, he also seems to have diminished impeachment: It's business as usual at the White House and no one seems to mind. In contrast, Richard Nixon had some respect for the office and, rather than tarnish it further, he resigned. Bill Clinton makes Richard Nixon look good.

—Jane S. Shaw

not to maintain that his testimony was gracefully conducted or revealed the president as an exemplar of traditional moral virtues. But who supposed otherwise? The American public first elected the man in the glare of glossy Gennifer Flowers centerfolds and re-elected him in the wake of a sea of bimbo eruptions. We knew what we were getting then, and nothing that has emerged from the media winks and nudges has fundamentally altered that perception. Is it any wonder, then, that polls reveal the president's popularity unaffected if not indeed enhanced by the impeachment proceedings? If this is the best his enemies can come up with to toss at him, we can almost hear John (and, significantly, Jane) Q. Public saying, then he's OK by me!

It is altogether easy to imagine a case against the president being far, far worse than it in fact is. For example, if hamfisted intervention in the economy had ravaged national prosperity, then Mr. Clinton could be indicted for failure to fulfill his constitutional responsibility to promote the general welfare. But these intrusions, to the discomfiture of the Democratic mainstream, have been blessedly minimal, and during the preceding six years America has enjoyed consistently energetic growth and ever-diminishing unemployment in an inflation-free environment. No, I do not claim that Mr. Clinton deserves positive credit for this achievement. It is, though, demonstrable that his policies have not been misconceived enough to disable the capacity of our markets to generate wealth. Many other White House occupants have done worse.

Similarly, if Mr. Clinton had led us into a morass of deadly foreign entanglements, then the legitimacy of his presidential tenure would be impugned. Instead the president has been laudably irresolute in striking out at foes. He fired off just enough cruise missiles emphatically to express national displeasure with the antics of Saddam Hussein and various freelance terrorists, but then he pulled back. As a result of such prudent practice of *bellus interruptus* we have experienced during his incumbency a virtually uninterrupted reign of peace and security. Finally, had he emulated Mr. Nixon's orchestration of a coverup that potentially threatened the underpinnings of republican institutions, in the process contorting himself into an ever more oppositional stance toward the legislature, judiciary and the citi-

zenry, then we would have cause to steel ourselves for a performance of Watergate. But there is no "Nixonian" malice in the Clinton temperament, only a boyish eagerness to garner approval and the perks of position. If Mr. Clinton had an Enemies List he wouldn't know what to do with it.

The Starr report reveals a president who is no hero, even less a saint, but it cannot be gainsaid that he has provided the American public everything it might reasonably have hoped for — and better. We are a nation for whom the slogan "What you see is what you get" elicits approval. No wonder, then, that the president's popularity rides high.

Congressional Republicans profess themselves shocked and outraged by Mr. Clinton's conduct, hearkening back nostalgically to the more elevated moral tone of the preceding administration. From this estimation I emphatically dissociate myself. Mr. Clinton may have done poorly by the truth in narrating the tale of his various sexual entanglements, but this is a bagatelle. Infinitely more portentous was Mr. Bush's promise to the American public of no new taxes. "Read my lips" he invited as an indicator of the irrevocability of his pledge and then he gave way like a rotted plank unable to bear even a modest weight. The same man took the country to war under the implausible characterization of Saddam Hussein as worse than Hitler, and then he compounded implausibility with duplicity by abruptly calling off hostilities so as to allow the alleged hyper-Hitler to continue with his killing of Kurds and mischief making for a new millennium. For these offenses did Mr. Bush merit impeachment? I believe that he did, but of course it never came to that. Instead it fell to the American public to determine on election day whether his tenure in office was to continue. They chose instead to award that plum to Mr. Clinton. And so their verdict quite clearly remains. An attempt to countermand it via a congressional coup manifests grossly deficient appreciation for the rules under which the game of democratic self-governance is to be played. The Clinton impeachment is unwise, klutzy, a bore; it simply isn't cricket. □

## NOW, Hear This!

by Alan Bock

### Constitutional Comeback

One irony of the recent debate over impeachment has been the surprising rediscovery of the Constitution. Republicans see it as mandating up/down votes on impeachment — permitting no wimp-out censure vote. Democrats parse the words of the Founding Fathers seeking evidence that perjury does not rise to the level of "high crimes and misdemeanors." A lot of hypocrisy here but still a pleasant trend — the realization that politics should not be purely pragmatic (even if in practice it almost always is) is valuable. And recall that hypocrisy is the tribute that vice pays virtue. We may well be on the road to understanding that polls and democratic support are not the only values in a free society. —Fred L. Smith, Jr.

President Clinton, still in the running for consideration as the most skilled modern practitioner of the darker political arts, seems likely to survive a Senate trial. Whether he does or not, debate will continue as to the nature of his legacy — whether it will be revival of the Democratic Party, reform of Social Security, the nobility of a survivor of impeachment or permanent obloquy at having it descend upon him.

In the process of living yet another day or week, however, Mr. Clinton has left not only enemies but putative allies slain by the roadside. One of the more fascinating casualties has been the destruction of organized feminism, or at least of that brand of feminism embodied in establishment-approved outfits like the National Organization for Women (NOW).

When the dust settles, Mr. Clinton's enduring legacy may be that he helped to plant in the culture the notion that sex outside of marriage is no big deal — and maybe it's not even



sex — so long as there's no evidence that the woman derived any enjoyment from the act. So long as the woman involved is in the passive, subservient position of merely "servicing" the male and the male does nothing to stimulate her or give her pleasure, Mr. Clinton and his lawyers seemed prepared to argue, it might not even be a sexual act.

And the forces of organized, official feminism, after flirting briefly with the idea of expressing outrage at the shamelessly exploitative exploits of perhaps the most open cad to occupy public office, went along, like the frail, submissive, dependent little women of Victorian stereotype. They tried to put on a brave front. "We will not be silenced by disingenuous grandstanding on this important issue at this moment for immediate political gain," wrote Kathy Rodgers of the NOW Legal Defense and Education Fund back in October, "while behind this smokescreen opponents of women's rights are actively cutting out the right to choice, and refusing to deal with child care, pay equity, violence against women and campaign finance reform."

The first message is that we poor helpless women are virtually powerless to deal with the malignant right-wing forces that seek to outlaw abortion and consign us to domestic slavery without our big, brave protector in the White House. Never mind the gains made during decades of consciousness-raising, writing, organizing, fund-raising and lobbying. The entire enterprise is at risk unless the big lovable lug stays in the White House. Not that the lug has given them much more than a couple of vetoes. He's just so lovable and — well, studly.

The second message is that the agenda — some of it arguably related to the concerns of real women and some of it, like campaign reform, with no gender specificity at all — has

### ***Reinventing Government, part II***

Before she fades into Donna Rice-land, let us give Monica Lewinsky her due. She, and not that bloodless son of a strip-mining fraud Al Gore, should have been in charge of Clinton's "Reinventing Government" initiative.

In footnote 314 of The Starr Report, Monica recalled Clinton's offer of a cushy sinecure — "Anything you want" — after the 1996 election. Now, an old-style, ward-heeling, pre-Clinton Democrat might have settled for something unimaginative and so very 20th century: say, assistant secretary of labor. But not our New Democrat Monica. In paradigm-smashing style, she proposed a new post: "Assistant to the President for Blow Jobs." That's thinking out of the box!

Alas, the scandal-mongers have ended Monica's career in public service. Nevertheless, her proposal remains sound. To give the position cachet, why not create a Department of Blow Jobs? Given the inevitable end-of-term cabinet shuffling, may I suggest that the First Secretary of Blow Jobs be either Madeleine Albright or Janet Reno? Iraqi children, religious dissenters, and the Bill of Rights would be forever grateful. And unless he is so far gone in turpitude as to disgust the Marquis de Sade, our president might stay zipped up for the duration.

—Bill Kauffman

### ***Parsing Partisanship***

We've heard it a thousand times: the effort to impeach the president is "too partisan," presumably because of the evil Republicans who are "out to get the president."

There is a way, of course, to measure partisanship: by counting the votes of the members of Congress. How many Republicans followed their party's pro-impeachment line? And how many Democrats followed their party's defend-the-president line?

In the vote in the House on December 19, 97.6 percent of Democrats followed their party's line, voting against all four articles of impeachment, and 63.2 percent of Republicans followed their party's line. In other words, more than one Republican in three broke party ranks, while only one Democrat in every 41 did the same.

Seems to me that if partisanship is a problem, it's the partisanship of the president's defenders.

—R. W. Bradford

become infinitely more important than the secondary issue of how real, live women are treated by real, live men. The Eternal Adolescent is a classic user of people and of women especially. At the moment that he speaks words of mutual respect he might actually believe them. But his actions belie those words repeatedly. The word "hypocrite" hardly begins to cover it.

When actions are so divergent from ideals and the purported keepers of the ideals ignore the disconnect repeatedly and stubbornly, eventually you start wondering just how sincerely the ideals are held. And that seems to have happened to "official" feminism. The original ideals connected to equal treatment, personal dignity, not discouraging girls who want to be athletes or mathematicians, smashing the glass ceiling and maybe having husbands change diapers and help with the housework — all these have been subsumed into a strictly political agenda, and one tied to the existence and growth of agencies and departments within government bureaucracies.

It's difficult for anyone who lives and works in the nation's capital and is even vaguely aware of politics not to absorb the mindset that what is really significant in the world is what happens in D.C., that the prizes valued by political players are the most valuable prizes of all. That the semi-official women's lobbies have absorbed the mindset is hardly surprising.

The fact that they consciously, even eagerly, put aside the ideals that (let us assume) impelled them to become involved in the first place — most conspicuously the absolutely minimal ideal that a woman should be treated like a human being with dignity and rights rather than a toy, plaything or receptacle for the pleasure of others — is more troubling. It suggests that they have surrendered completely to the political style and forgotten about — nay, callously tossed overboard — the people the political agenda was supposed to serve.

What that should mean is that NOWers and all the other professional feminists who bent over backwards to defend or apologize for Clinton should have utterly no credibility, hav-

ing been exposed as utter hypocrites with no fellow-feeling for women treated shabbily by a sexual predator. It will be interesting to see if the media understand this, or if they come panting after NOW and nobody else the next time they need a quote on a "women's" issue. □

## God Bless Us, Every One

*by Stephen Cox*

It was a sad Christmas season.

Oh yes, the sun still shone, the little winter birds still cavorted in the trees, and joyful bells still sounded from the Methodist church. The banks were still open; cars still traveled the highway; the television stations continued their useful work.

Yet there was a deadness in the air. People trudged slowly down the streets, hunching themselves against some cold psychic wind. Liquor stores closed early for lack of business. On the internet, chat rooms shut down. People sat alone in the darkness, staring at their lifeless hands. There was no joy in Mudville. The incomprehensible had happened: the president of the United States had been impeached. Our long national nightmare had reached its final, terrifying phase...

Well, no. It wasn't exactly like that. I rose early on a bright Saturday morning in December and watched the voting in the House of Representatives. The president was impeached on two out of four counts. That was mildly entertaining, and I imagine that some other people found it entertaining, too. Then I strolled down to the 7-Eleven for a bearclaw and a cup of joe. There I found the usual hyperactive Saturday morning crowd, gassing up, guzzling drinks (can't wait to pay, gotta slurp 'em now), buying lotto tickets, reading but not buying papers. "Merry Christmas!" said the checkout guy, as cheerily as Ebenezer Scrooge after his big conversion. "Merry Christmas!" I replied. Nobody seemed to care that the president had been disgraced and the government cast into the slough of despond.

And I believe, in fact, that few people would care, or even particularly notice, if our president just happened, some bright Saturday morning, to be abducted by a flying saucer. Even Hillary would probably breathe a sigh of relief, so hateful is her role of sidekick, so persistent is her illusion that the voters love her for herself alone. Forty or 50 of the most egregious White House hacks (a.k.a. "attorneys" and "counselors") would suddenly be out of a job, but most of the species would be retained: President Gore would need all the hacks he could get.

It's possible that I myself would feel worse about Clinton's disappearance from the public scene than any of his supporters would. There are certain things about their boss that I would miss very much. In my view, if you're going to have a ninny as President, you may as well have a completely discredited one. In that role, Clinton has performed pretty well, all things considered.

So... so much for the grand theory of National Agony and Paralysis that the media and the college professors have been preaching these past hundred years — a hundred years

in which they have tried to make the United States sit in sackcloth and ashes over the impeachment of Andrew Johnson. Not one pundit in a thousand has a clue about what Johnson did to get himself impeached, or whether it was a good idea for him to have done that. No matter: the prospect of "shutting down the government" must be considered "agonizing."

But now we know the truth. Whether Clinton is convicted or not — and he richly deserves to be convicted — we've at least found out that we're not dependent on a vibrant presidency for our own vibrant mental health. □

## An American Comedy

*by R. W. Bradford*

Politics is drama only when politicians are threatening us. The rest of the time it is comedy. When Bill Clinton was threatening a government takeover of the nation's healthcare system, politics was drama, though that was sometimes hard to remember when Hillary was attacking all critics of the program as paid lackeys of Big Medicine. On those occasion, she seemed like a standup comedian, though not a very funny one.

But when Bill stands in the well of the Senate, facing charges of perjury and obstruction of justice, that is comedy. And that's why the Clinton presidency delights me so: aside from the president's brief foray into medical totalitarianism, he has been about as funny as anyone could hope a president to be, certainly more amusing than Episcopal vestryman George Bush, ham-headed actor Ronald Reagan, Baptist elder Jimmy Carter, bumbling dork Richard Nixon — and on the whole, a lot less dangerous.

From the day Matt Drudge published the story of Monica Lewinsky — which Clinton and his army of spin doctors managed to keep under wraps for what, three days, after their perjurious testimony in the Paula Jones case? — Clinton has offered more laughs than Jerry Seinfeld, whose popular sitcom was eclipsed by Clinton's.

Consider the solemnity of both the partisans of the president and his critics. For the first time in memory, Democrats are worried about the Constitution. "Impeaching the president for mere perjury about sex," they say over and over, "does not rise above the Constitutional bar for impeachment." Yet the concern for subtle nuances of the Constitution — nuances so subtle that I cannot espy them — disappears when the president unleashes a few billion dollars worth of missiles and bombs against Iraq, in obvious violation of Article 1, Section 8 of the Constitution, which gives Congress, not the president, the power to declare war. What can be funnier?

Well, what about the GOP's solemn profession that a president who lies ought to be tossed from office? Where were these guys when Ronald Reagan lied about his Byzantine deal to provide arms to Nicaragua, an explicitly illegal action?

And then there's the comedy of the jurymen. One day, Sen. Gorton of Washington solemnly says that he takes his duties as a juror in the case of the president very seriously;

he will remain impartial and say nothing about the matter. The next day, he is proposing that the Senate negotiate a deal with the president to save the latter embarrassment of a trial and the former the problem of angry constituents who might turn against him no matter how he votes.

And the comedy of the prosecutors.: One hundred Democratic Congressmen vote for a measure to censure the president for perjury and obstruction of justice; less than an hour later they attend a pep rally with him.

To those who take the promises of politicians seriously and believe that statecraft is, well, statecraft, these are matters for grave concern. They bellow and holler their concern for the future of the republic, worry about declining respect for the institution of the presidency, of the Congress, of government itself. *The Economist*, for example, which has put itself firmly in the middle of the road by calling for his resignation and for "a quick trial that would probably end in acquittal . . . to get America back to work," believes

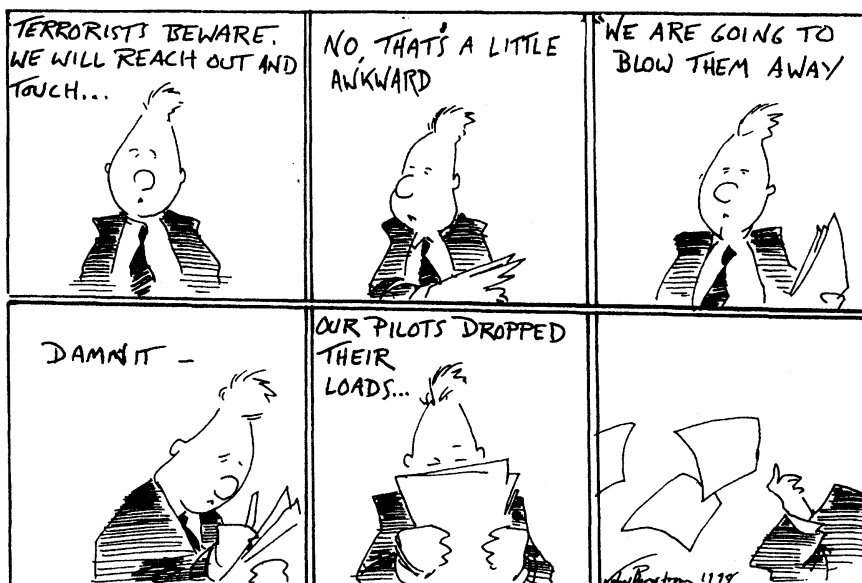
Clinton's ordeal is causing country to "drift along in a state of neglect." Its august editors opine that "Everyone wants this horror — and horror is not to strong a word — to end," and go on to list a litany of disasters it has engendered (America has failed to take the lead in various "crises," "the presidency is weakened," etc).

But for those of us who believe that government, at least our government, is an elaborate con game, all this is hilarious. And what most pundits see as catastrophes, we see as

progress: the weakening of the presidency, the decline in prestige of Congress, the pre-occupation with impeachment rather than dealing with America's "problems."

When the president's "ordeal" began, I was tempted to think that it would be wonderful for more reasons than the titers it stimulated: surely getting caught in open perjury about something as absurd as being found with his pecker in a dim-witted young intern's mouth would keep him too busy to return to his usual mischief. "No time for another Waco," he seemed to say, "I have to save my presidency!" So he closets up with his most intimate advisors, and emerges with another

attack those amazing prudes who believe perjurers should not occupy the White House; he feeds an exposé to a friendly journalist about the sexual activity (a quarter century ago) of a septuagenarian Republican critic, plans another media event designed to prove that he is "presidential." Silly. Comic. Entertaining, in a mild sort of way. And the net effect is salubrious: with both the Republicans and



Democrats engaged in battle over this trivial episode, neither are up to much mischief.

That was my theory, anyway, until August 17, when Clinton fired a couple hundred million-dollar high-tech missiles at an aspirin factory in the Sudan and an empty campsite in Afghanistan. Suddenly, he was killing people simply to distract Americans from his second perjurious episode, this time before a federal grand jury.

But still, I cannot help but enjoy the comedy. □

**The final strike** — That he had sex with a woman not his wife: I don't care; I'm not married to him. That she was only 21: I don't care. She was of age, and by several years; she was a university graduate, and she had done it before, and with a married man. Indeed, by her own account, she started it. She knew what she was doing.

That he lied to cover it up: I don't care. What they did was not a criminal act. A betrayal of his wedding vows, yes — but not a criminal act. Hillary's business — but not my business.

That he lied to the American people: So what? His dalliances were none of their business. If he had said anything substantially other than, "I did not have sex with *that woman*, Monica Lewinsky," people would have known instantly that he had. And they didn't need to know.

That he lied under oath: I don't care about that, either. Sex is the most private thing there is. If it is not a criminal

act, it's not any litigant's business. People have a right to lie about it. I don't know whether I'd want that elevated into a principle of law, but if I were on the jury, it's what I'd rule. If you ask people about consensual sex, you'll get lies. Put them under oath, and you'll get lies under oath.

So don't ask.

Bill Clinton should not have been impeached for lying about sex, or lying to the American people about sex or lying under oath about sex. What he should have been impeached for is attacking a foreign country with bombs and missiles, without a declaration of war by Congress, in a patently obvious ploy to undermine the investigation against him. He did this not once, but twice, in the attacks on the Sudan and Afghanistan and later, on Iraq.

He should be removed from office for abuse of power — for killing people in a foreign country in an attempt to save his job.

—Bruce Ramsey

# Bombs Away and Peace on Earth

*by David Hackworth*

President Clinton is making the world safe for bloated  
Pentagon budgets.

**A**nother Christmas. Another war. Another December in which American troops stand tall on dangerous ground. Since Pearl Harbor, that Day of Infamy on December 7, 1941, there has been no Peace On Earth and not much Good Will Toward Men.

America has been at war for 57 years. Before the cannons of World War II had cooled, the Soviet Union, a key Ally against Nazi Germany, became our enemy.

The Cold War was cold only some of the time. When it got hot it resulted in the slaughter of millions of people unlucky enough to get caught up in its 45 years of mayhem.

Americans did part of the dying. They fought Red attacks in Europe in the mid-1940s, in Korea in the '50s, in Indochina in the '60s and '70s, and Latin America and Africa in the '70s and '80s. The Cold War was America's longest and most costly war by the time the Iron Curtain crashed down in 1990. But the fall of communism has not brought peace. New world disorder has replaced the cold war, and the dying and the sacrifice continue.

Christmas of 1990 saw thousands of our soldiers deployed to the Persian Gulf to put down the mad dog Saddam Hussein. And what a magnificent job they did. But George Bush blinked and the dog survived to bark and bite again.

This latest violent round with Saddam makes even less military sense than many of the shoot-outs of wars past.

Yes, the world witnessed another high tech display to the tune of about four billion American taxpayer bucks. But when the final million-dollar missile flashed across the sky, nothing had been accomplished other than testing smart bombs for future wars and sharpening the profit margin of American arms manufacturers. Meanwhile, American oil companies still buy 40 percent of Iraqi crude oil. And Saddam's still out there, as defiant as ever, giving besieged Bill and the U.S.A. the bird.

Sure, buildings got blown up, but analysts don't have a clue what was inside of all that Iraqi rubble. Not much, I'd

bet, since Clinton's latest military folly was hardly a surprise. Saddam not only had months to hide his much hyped arsenal, he also could predict the fireworks were about to start when the TV networks began setting up their cameras on Baghdad's highest buildings just before the strike. Believe it — anything critical that wasn't already stashed, got moved in a hurry.

There are nine principles of war — mass, maneuver, objective, offensive, surprise, security, simplicity, economy of force, and unity of command. Break these rules and defeat stands in the wings. Clinton's most recent military farce violated more principles than it observed. It's almost as if our military chiefs chose to ignore the rules of war.

Perhaps too this war was not about taking Saddam out. Perhaps there were other motives. Some are calling it another Wag the Dog. But I suspect Clinton's bad military judgment came about because he feared being perceived as a commander-in-chief paralyzed by the impeachment process.

But why didn't his military chiefs sound off over that fact that our forces were once again being placed in harm's way on yet another mission impossible?

Could it be that the lure of big-paying defense jobs that normally follow high-ranking Pentagon service kept them silent?

What was the rush to take Saddam out the week before the most sacred Muslim and Christian religious holidays when there wasn't enough time or force to do the job? And why wasn't this operation executed last November, as the generals recommended, when forces were in position and ready and there was enough time to do a real job rather than this spectacular but ineffective pinprick?

Six decades of seeing and studying war has taught me that war's a racket. And the almost 200,000 soldiers who spent Christmas sitting in cockpits, foxholes, and manning ships at sea around the globe — defending countries that often want to be left alone — are innocent victims of the racketeers. They deserve better. □



# The Deconstitutionalized Zone

by John S. Robey

Your rights evaporate as you approach the Mexican border —  
you have entered the *Deconstitutionalized Zone*.

Zeke Hernandez was tending his goats in Redford, Texas. He had his .22-caliber rifle along, a gift from his grandfather. It was over 50 years old, but still good enough to scare away predators and maybe plunk a few cans. Nearby, hidden in the vegetation, was a patrol of U.S. Marines. They were looking for drug smugglers at the invitation of the Border Patrol. They saw Zeke Hernandez fire his antique rifle.

One of the camouflage-clad Marines fired his M-16 rifle at Zeke Hernandez. The boy lay bleeding on the dry earth for 20 minutes before the troops moved in to see what had happened. They called for help, but it was too late. The 18-year-old goat herder was dead.

Esequiel "Zeke" Hernandez, Jr., was the first U.S. civilian killed by the U.S. military since the shooting at Kent State in 1970. His crime? Living in the Deconstitutionalized Zone, the area along the U.S.-Mexico border where the courts have declared the U.S. Constitution null and void, better to fight the War on Drugs. Like other residents of the Deconstitutionalized Zone, Zeke Hernandez didn't enjoy the rights guaranteed by the Constitution. Law enforcement officials, ranging from local and state police to a variety of federal agencies to armed forces, trained in warfare but with hardly any training in law enforcement, need not respect constitutional guarantees of rights to privacy, to property, or — as the family of Zeke Hernandez learned — even the right not to be killed by the armed forces.

How could this happen in America, a country with a long tradition of legal protection of individual rights and of prohibiting the military from involvement in internal affairs?

In the wake of military abuse of civilians during the Civil War, Congress passed the Posse Comitatus Act, making it illegal for the military to carry out domestic police functions. For more than a century, the military limited its actions to fighting the military forces of other countries.

But in 1982, the Posse Comitatus Act was amended so that the president could use military forces in a limited fash-

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ion to assist civilian law enforcement agencies. In 1986, President Reagan signed a National Security Decision Directive that proclaimed drug trafficking a threat to national security, and directed the Department of Defense to participate in the War on Drugs.

Many in the military questioned the wisdom of taking on this responsibility. Marine General Stephen Olmstead, testifying before Congress, declared: "[o]ne of [the United States'] greatest strengths is that the military is responsive to civilian authority and that we do not allow the Army, Navy, Marines or the Air Force to be a police force. History is replete with countries that allowed that to happen. Disaster is the result."

Secretary of Defense Caspar Weinberger agreed: "[C]alling for the use of the government's full military resources to put a stop to the drug trade makes for hot, exciting rhetoric. But responding to those calls . . . would make for terrible national security policy, poor politics, and guaranteed failure in the campaign against drugs."

High-level protests notwithstanding, President Reagan launched "Operation Alliance" by executive order to coordinate the efforts of the various law enforcement agencies, with the military playing a supporting role. Over the years, that "supportive role" has expanded dramatically. In 1982, the military was allocated \$5 million to help fight the war on drugs. By 1999, the treasure chest has ballooned to \$809 million.

In 1990, the federal government designated a 150-mile-wide corridor on both sides of the border as a "high-intensity

drug-trafficking area." The Customs Service granted all Border Patrol agents and some 600 state and local civilian law enforcement officials the authority to enforce laws regarding contraband. This enabled these agencies to conduct warrantless border searches, as if they were at the border. The Deconstitutionalized Zone was created.

People who live in the Zone, which extends from the border to the Border Patrol's secondary checkpoints approximately 150 miles from the border, live by a different set of rules. On the theory that drug trafficking threatens our country's "national security," the courts allow abuses of civil lib-

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*In 1976, the high court held that the Border Patrol acted lawfully when it subjected some people to intense searches at secondary checkpoints far from the border*

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erties to occur that they do not tolerate in the rest of the United States.

Aliens — mostly Latin Americans — are being incarcerated at a large detention center in Bayview, Texas. Dogs now prowl through the post offices sniffing our mail, and the press again finds its access to relevant information blocked. Government agents prowl privately owned property along the border without warrants or warnings.

And when they shoot an innocent American citizen like Zeke Hernandez, it isn't murder: three months after the incident, a grand jury found the Marine who had fired the lethal shot innocent of any wrongdoing. Among the jurors: the assistant chief of the Border Patrol, a wife of a Border Patrol agent, a Border Patrol retiree, and two Customs officials — a roster that caused some to question the panel's impartiality.

People who live along the border can be pulled over and subjected to random warrantless searches. The Supreme Court has for many years maintained that search warrants are not required for border crossings (i.e., the "border exception"). In a 1976 case, *United States v. Martinez-Fuerte*, the high court held that the Border Patrol acted lawfully when it subjected some people to intense searches at secondary checkpoints far from the border — even if those searches were based on the "apparent Mexican ancestry" of the suspect.

Police roadblocks along the border are routine. While one officer requests the driver's license, another walks a drug-sniffing dog around the vehicle. The police can conduct this search without probable cause. The courts have also upheld warrantless aerial surveillance of private property, so helicopters now hover over our homes looking for illegal plants or suspicious activity.

If a DEA agent searches someone in the Brownsville Airport and finds that he's carrying \$5,000 cash, the law permits the agent to confiscate that money. To recover his money, the individual must hire an attorney (who may very well charge him more than the money that is taken from him) to represent him in the forfeiture proceeding filed by the government. In court, he has to prove he did not obtain the money illegally. Because this is a civil case, the jury deliv-

ers a verdict by a majority vote rather than the unanimous vote required under criminal law. And the government can prevail if it establishes a "preponderance of the evidence" rather than proof "beyond a reasonable doubt."

Latinos have long been subjected to abuses from police and border patrol agents in the United States. Many lack citizenship and are cheated by unscrupulous individuals who take advantage of their vulnerability. Today in South Texas, we are in the midst of "Operation Rio Grande." The number of Border Patrol agents has catapulted from 3,400 in 1993 to 7,700 as of August, 1998. This deployment of agents — along with the use of motion sensors, heat detectors, helicopters, night lighting, and new fencing and walls — has driven large numbers of illegal immigrants further into the desert. The drought and intense heat during the summer of 1998 resulted in the deaths of over 100 of these Hispanic people. The Immigration Monitoring Project, conducted by the American Friends Committee, found 971 human-rights abuses had occurred along the border from 1989 to 1991. "The victims' ethnic or nationality background fell overwhelmingly in the diverse Latino category. . . ."

In 1998, the Border Patrol inaugurated "Operation White Line" as an adjunct to "Operation Rio Grande." It gives the Border Patrol and the police the power to search vehicles "carrying anyone that looks Mexican." The Director of

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*In 1986, President Reagan signed a National Security Decision Directive that proclaimed drug trafficking a threat to national security, and directed the Department of Defense to participate in the War on Drugs.*

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Proyecto Libertad, Rogelio Nunez, complained that "[t]he Mexican immigrant has now become criminalized."

### The Front Lines

The Defense Authorization Act of 1991 further escalated the military's involvement in the War on Drugs. It authorizes training and deployment of military patrols in the air and on the ground along the borders of the United States. The military is now constructing roads, erecting lighting, and building fencing and helicopter landing pads to add muscle to beef up domestic law enforcement efforts. The military also provides training for domestic and foreign law-enforcement personnel. Timothy J. Dunn, in *The Militarization of the U.S.-Mexico Border*, cuts to the heart of the matter when he asks "[w]hen does military 'aid' or 'support' to civilian law enforcement officials become de facto military law enforcement activity?"

The Defense Department's creation of Joint Task Force 6 (JTF-6) in 1989 at Fort Bliss in El Paso ratcheted up the anti-drug campaign still further. JTF-6 established a permanent presence of regular Army and Marine troops. JTF-6 maintains only a small number of permanent administrative and planning personnel: operational troops are rotated in and out of El Paso on a temporary-duty basis. That's because this

task force was not created to push pencils, but to push up the stakes in the war on drugs.

And push they have. Dunn found that the JTF-6 conducted 384 operational missions between 1990 and 1992 and that "... a conservative estimate would be that some 500 troops could have been deployed in anti-drug operations in the border region at any one time, and a high estimate would put the figure at some 3,000 troops."

The troops operate under "rules of engagement" that permit them to shoot to kill if they consider themselves endangered. Zeke Hernandez was not the first, and will not be the last, casualty of this war.

After Zeke's death, retired Marine Maj. Gen. John T. Coyne wrote a blistering internal report. He found that the unit on patrol during the Hernandez killing had not been adequately trained for armed operations with civilians. The report pointed the finger at "systemic failures at every level of command."

Coyne's report documented eight shooting incidents by JTF-6 units between 1993 and 1997. Just four days before the Hernandez shooting, troops exchanged fire with some recreational shooters, described by the military as "very hostile." The report also disclosed that JTF-6 units are conducting secret military operations in our national parks. Reason: some marijuana had been found growing in the parks.

## The Terror of the War

The War on Drugs is America's longest war. It has produced a great many casualties. In 1996 alone, 500,000 young people were arrested for possession of marijuana. Before this decade ends, the government will have spent about \$150 billion of taxpayers' money in its futile effort.

We have more to fear from the policies we have unleashed than we do from illegal drugs. Our forebears bestowed upon us the gift of a government committed to democratic ideals. They intended that we protect that system and hand it down to our children. To corrupt federalism, to deny the democratic process, and to undo the hard-won rights that protect property, privacy and due process would result in catastrophic losses, especially here on the border.

In the Deconstitutionalized Zone, the war is most intense. Here, we live in fear of the government. Here we have no right to privacy. Here we are searched without warrants, with no more probable cause than the color of our skin. Here our sons can be killed — legally murdered — by U.S. soldiers.

The loss of life and the waste of precious resources are tragedies in and of themselves. If we factor in the corrosive effect on our federal system of government, the unraveling of our civil liberties, the misuse of the armed forces, and the willingness of the Drug Czar to subvert the democratic process regarding medi-

nal marijuana in western states, it leads to an inevitable conclusion: The costs of the war exceed any conceivable benefits that we have gained or can hope to gain.

Perhaps treating drug abuse as a medical rather than a criminal problem might result in fewer losses for society. We will have illegal drugs in the United States with or without a change in policy. The question is not will we have drugs, but who will control the distribution of drugs, the government or the cartels? We can pass all the repressive laws we want, but short of turning the United States into an authoritarian

*People who live in the Zone, which extends from the border to the Border Patrol's secondary checkpoints approximately 150 miles from the border, live by a different set of rules.*

regime, they are not going to solve our dilemma. In Texas, we can't even keep drugs out of Huntsville Penitentiary, much less out of the country.

Maybe Ethan Nadelmann's "harm reduction" ideas are worthy of further exploration. Harm reduction suggests that we should pursue the course of action that causes the least harm to society. Yes, drugs can be harmful. The war on drugs is also harmful. Most proponents of the harm reduction model do not advocate drug legalization. Rather, they

*continued on page 46*

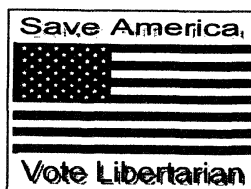
## Liber+Tees

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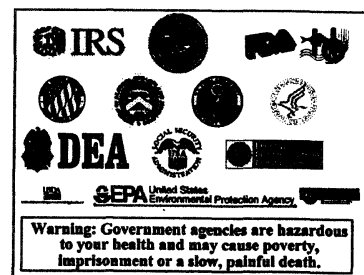


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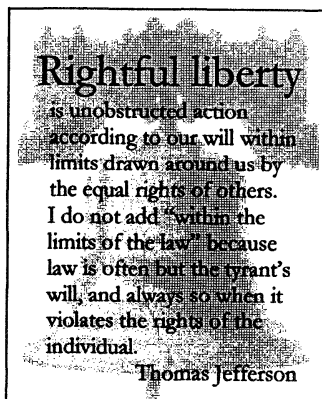


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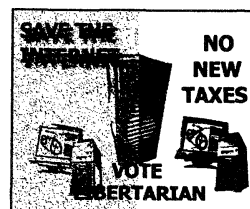


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# Fighting Over Ayn Rand's Papers

by Eric D. Dixon

*Collectors of Ayn Rand material were thrilled when they learned that an incredible group of nearly 5,000 Ayn Rand manuscript pages, from the holdings of Robert Hessen and Barbara Branden, would be sold at auction.*

*But before the sale could take place, there was a problem: Rand heir Leonard Peikoff claimed that he was the rightful owner of the manuscripts.*

The manuscripts offered at the Butterfield & Butterfield sale belonged to Barbara Branden, one of Rand's closest friends until their break in 1968, and Robert Hessen, who had been Rand's secretary from 1959 to 1961 and her friend until their break in 1980.

Leonard Peikoff, Rand's heir, categorically denied that Rand would have given Branden and Hessen so many pages of manuscript, and demanded that they provide proof of ownership. Through his attorney he wrote Branden and Hessen stating that various factors "strongly suggest that you cannot establish valid title to all of the materials which you intend to offer at Auction." He threatened to take legal action, as well as to notify the auction house that Branden and Hessen lacked title.

Peikoff claimed that Ayn Rand's "lifelong policy, expressed repeatedly to witnesses, was to retain in her own permanent possession all documents related to her own writing." If Rand did in fact *have* such a policy, she didn't follow it very closely. Among the manuscript pages she gave as gifts to friends was the thirty original pages of *Atlas Shrugged* given to Barbara Branden, which Peikoff later admitted was a legitimate gift. That Rand felt comfortable giving away pages from the original copy of her masterwork suggests that she would have been willing to give away original pages from rough drafts of lesser works even more readily. In addition to his own statement, Hessen provided testimony of others who were told by Rand that she was giving her rough drafts to him.

Branden and Hessen rejected Peikoff's demands for proof and retained the services of Henry Mark Holzer, Rand's former attorney, to counter Peikoff's claim. They also organized a defense fund to prepare for the threatened legal challenge, which they dubbed the Objectivist-Libertarian Defense Fund Opposing Peikoff (OLDFOF, get it?). In addition, they set up a website ([www.oldfop.org](http://www.oldfop.org)) where they posted various documents, including statements from Branden and Hessen that explained how they each acquired their gifts, as well as sworn affidavits from Holzer and his wife Erika that they personally witnessed one of Rand's deliveries of manuscripts to Hessen.

Faced with Branden's and Hessen's refusal to knuckle under, Peikoff offered to negotiate. They wanted to make copies of the manuscript pages so they would be available to all scholars, not the few that Peikoff deemed suitable (allowing only Peikoff-approved scholars access to Rand's papers is standard operating procedure at the Ayn Rand Institute).

Although Branden and Hessen owned the physical copies of the works being sold, Peikoff, as Rand's heir, owns the copyrights. And he wanted copies of the manuscripts for his Institute, but could not duplicate the pages without cooperation of the owners of the physical copies.

So they settled. Hessen and Branden agreed that "Peikoff or his designee" may make a copy of all the materials in exchange for their being allowed to make one copy "for personal use or scholarly or academic purposes." Also, Branden and Hessen agreed not to sell their copies in the future, "a condition that they willingly accepted, because they knew that Rand would have wanted it that way," according to an open letter from Holzer.

On the morning of the auction, days after the conflict was settled, Peikoff issued a statement declaring that Branden "has furnished what I regard as convincing proof that she was given these pages as a special gift by her then close friend, Ayn Rand." Apparently, a special gift does not violate Rand's no-gift policy, according to Peikoff, a one-time teacher of logic, and thus her gifts to Hessen could never have happened.

Curiously, Branden disputes Peikoff's waffling. In a November 23 email to a public discussion forum, she wrote:

Peikoff, in his recent petulant statement, asserted that I proved my claim of ownership to him. I did no such thing. I provided him with not a single word or statement or piece of evidence that my property was indeed my property. By some miracle, he apparently came to what I shall loosely call his senses where I am concerned, although not about Bob Hessen.

Despite Hessen's detailed account and its corroboration by witnesses, Peikoff continued to cast aspersions on Hessen's ownership:

Whereas Hessen claims that she gave him the manuscripts rather than throwing them out, the fact is that she left behind at her death numerous cartons of notes, outlines, and discards from many of the very articles which Hessen claims she gave to him instead of throwing out.

This remark ignores Hessen's explanation that only the first piece he received from Rand was about to be thrown out, and that he asked her for it. Her subsequent gifts, according to Hessen, were marks of affection for Hessen and his late wife, who were frequent contributors to Rand's magazines in a period when Peikoff wrote almost nothing.

Peikoff goes on to note: "Ayn Rand did not give a remotely comparable gift to a single other person throughout her lifetime. As for me, for instance, to whom she left everything, she never while alive offered even one page of manuscript." Rand may not have offered pages to Peikoff, but he received many. He neglects to mention that when he asked Rand for the eight-part manuscript of *Introduction to Objectivist Epistemology*, she gave it to him. As in Hessen's case, Rand was willing to give manuscript pages to a friend on request.

According to Hessen's sworn declaration, Peikoff implies that when he hired Hessen to appraise the value of Rand's

estate after her death in 1982, Hessen stole the manuscripts from a storage area Rand had rented which contained cartons filled with her papers. He alleges that Hessen had "unlimited access" to this area during his appraisal, but Hessen says he only visited the storage space once in March 1982, for 15 minutes, arriving and leaving with Peikoff. Peikoff requested the appraisal in late September 1982. According to Hessen, with the request Peikoff "described the estate's holdings in six broad categories but, significantly, did not even allude to, let alone expressly mention, the 5,000 non-fiction manuscript pages that Ayn had given me over the years."

Hessen submitted his two-page report a few days later, for which he received \$200.

His report contained no mention of examining any manuscripts or visiting the storage facility again. He received no compensation for airfare or New York hotel accommodations, which also suggests that Hessen didn't leave California.

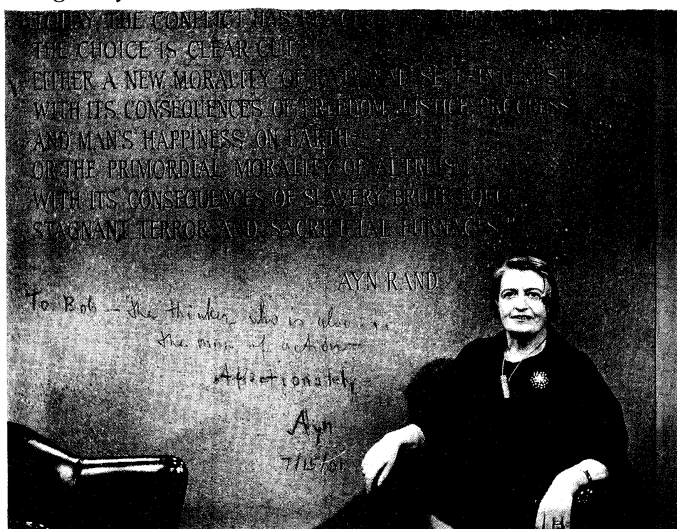
Hessen's declaration contains a series of questions addressed to Peikoff, challenging him to directly accuse Hessen of theft so he could be sued for defamation. Among these is this noteworthy query: "If I had stolen any manuscripts, why would I risk exposure of my misdeed by selling them at

public auction during the lifetime of Peikoff?"

Ignoring the challenge, Peikoff continued to spread innuendo. In his statement, Peikoff said that regardless of the current rules of the legal system, he does not believe Hessen *morally* owned the manuscripts offered at auction, and goes on to state: "There are many words in our language to describe such an individual and the means by which these papers came into his possession. As far as I'm concerned, you may take your pick of them."

It should be noted, though, that both sides have used innuendo to strengthen their positions. Holzer writes in his first response to Peikoff's attorney: "If litigation comes, at long last it will be payback time, and an opportunity for Ms. Branden and Dr. Hessen to expose Peikoff's real motives — which are rooted in personal animosities (some very personal, and extremely embarrassing) which go back decades."

When Rand started giving her rough drafts to Hessen instead of throwing them away, she may not have considered them a valuable gift. Why did she give so many pages to Hessen? Perhaps, as in Peikoff's case, because he asked. It shouldn't be surprising that, on request, an author would give paper to her secretary and friend that she would have otherwise discarded. It also shouldn't be surprising that once she realized others were interested in her handwritten manuscripts, she began to keep boxes of notes and discards for herself while continuing to honor her friend's request for her rough drafts. □



Lot 5888, Photo of Ayn Rand, 8" x 10", inscribed to Bob Hessen. Price realized: \$2,875

# The Selling of Ayn Rand's Papers

by R. W. Bradford

*The auction of Ayn  
Rand manuscripts, rare  
editions, and memora-  
bilia proved to be a land-  
mark sale, establishing  
Rand as one of a very  
small group of literary  
figures whose manu-  
scripts and rare editions  
are most eagerly sought  
by collectors.*

The auction of Ayn Rand papers and various other memorabilia, from the holdings of Barbara Branden and Robert Hessen (with a handful from others' collections), was a major event for collectors of Rand material. The sale included about 4,500 pages of Rand's manuscripts, 19 inscribed books (many of them first editions), other autographed books, plus miscellaneous material ranging from signed publishing contracts to souvenir cigarettes and film posters.

A few pieces of Randiana have been sold at auction over the years, but mostly the material was pretty inconsequential: for example, a few years ago, the Ayn Rand Institute auctioned off two small boxes of pebbles that Rand had picked up along the highway in Colorado while on a cross-country trip. In competitive bidding, Rand's admirers paid hundreds of dollars for the pebbles, leading some to wonder whether Rand's admirers were willing to treat anything she ever touched as religious icons — and leading others to wonder whether there might be a lot of demand for Rand material. But most of what little Rand memorabilia came into the marketplace was sold discreetly in private sales, so no one really knew what to expect.

Manuscript collectors and dealers have a pretty good idea what sort of prices most manuscripts will bring, based on sales records and the bidding at previous auctions. "A short story by Edgar Allen Poe might bring \$5,000," one collector told me, "and a chapter from *Huckleberry Finn* around \$20,000." What about nonfiction essays by well-known novelists? "Usually not much," he said. "Perhaps \$500 or so."

But there had been no previous sales of Rand manuscripts, so whether they would bring prices comparable to writing by literary giants like Twain or Poe remained an open question. There were well-known rumors about the enthusiasm, if not downright fanaticism, of her admirers. And surely the story of the pebbles made the rounds. But no one had any real idea.

The Branden-Hessen sale included a few items that could only be considered souvenirs, though none as silly as the Colorado pebbles. But it also included a huge quantity of Rand's manuscripts. From Barbara Branden came 29 handwritten pages of *Atlas Shrugged* and a few letters and manuscripts of unpublished working papers. As outstanding as Branden's papers were, they were easily eclipsed by those from Robert Hessen's holdings, which included nearly 200 manuscripts, comprising virtually everything Rand wrote after 1961. In addition, the sale included over 50 of Rand's books, nearly all inscribed by the author, and dozens of letters, pamphlets, photographs, audio tapes, and miscellaneous ephemera.

It was, in short, a remarkable sale of Randiana, including an extensive group of manuscripts that will not likely ever again be available at a single sale. Virtually everyone who collects Rand material was either present or was represented by an agent.



## The Sign of the Dollar

The auction was conducted more-or-less in chronological order. The first item to go up for bids was a studio photograph of Rand's family, taken around 1909. It was hammered down at \$1,100. The next was two baby photographs of Rand, which realized \$862.50.\* The third lot was a publicity photo Rand had inscribed to her brother-in-law, which drew \$3,450. The sale was off to an excellent start.

The first item to break the \$10,000 barrier came only a few minutes later, when a letter from Rand to Barbara Branden's mother was hammered down at \$12,000 (or \$13,800 with buyer's fee). Moments later the first of the manuscripts went up for sale: a nine-page draft of an unfinished essay entitled "Consciousness, Purpose & Happiness," which Rand had written in 1955 to help clarify her thoughts in preparation for writing "Galt's Speech" for *Atlas Shrugged*. It sold for \$14,950.

The very next lot was one of the most important: 29 pages from Rand's original manuscript for *Atlas Shrugged*. The pages were mostly non-consecutive, and came from Part II, chapters 2 and 3. Bidding started at \$30,000 and rose quickly in increments of \$5,000 to \$10,000 until the lot was hammered down at \$210,000 (or \$233,000 including the buyer's fee).

While the audience caught its breath, a snapshot of Rand "taken at the completion of *Atlas Shrugged*" was sold for \$3,450, an 8x10 publicity photo inscribed to Branden and her husband sold for \$9,775, and a package with nine "Who is John Galt?" cigarettes, complete with gold dollar signs on each cigarette, sold for \$3,737.50. At more than \$400 each, this may be the highest price ever paid for cigarettes. Then came more ephemera and five different inscribed copies of *Atlas Shrugged*, which realized prices ranging from \$6,325 to \$18,400.

A dust jacket from the 1936 edition of *We The Living*, complete with Rand's notes revising its text for the 1959 edition, sold for \$3,167.50, followed by a single lot including copies of *We The Living* and *The Fountainhead* inscribed to the Blumenthals, which sold for \$4,887.50. Two additional inscribed copies of the 1959 *We The Living* sold at \$2,300 and \$1,955.

Five inscribed copies of *For the New Intellectual* followed, realizing prices ranging from \$1,955 (for a copy inscribed to Barbara Branden's mother) to \$3,162.50 (for copies inscribed to Barbara Branden and to Robert Hessen). After an autographed (but not inscribed) copy of *For the New Intellectual* sold for \$1,840 and an 8x10 photo inscribed to Robert Hessen sold for \$2,875, the auctioneer announced the first of the manuscripts from the Hessen collection.

It was a 61-page manuscript of "America's Persecuted Minority: Big Business," a talk she delivered at Ford Hall Forum in Boston in 1961. When the bidding stopped, it had pulled in a whopping \$48,875, twice the pre-auction estimate. "Art and Sense of Life" then sold for \$18,400, followed by "The Fascist New Frontier," which brought \$57,500.

As those in attendance caught their breath, the publication contract for *The Virtue of Selfishness* (then called *Rational Self-Interest*) was hammered down for \$2,250 (\$2,587.50 with the buyer's fee) and a copy of the scarce hardback edition of *Virtue*, without inscription or autograph, sold for \$402.50. Then the publication contract for *Capitalism, the Unknown Ideal* sold for \$3,450 and two copies (of 700 produced) of a special boxed, hardbound edition of that book sold for \$2,185 and \$2,587.50.

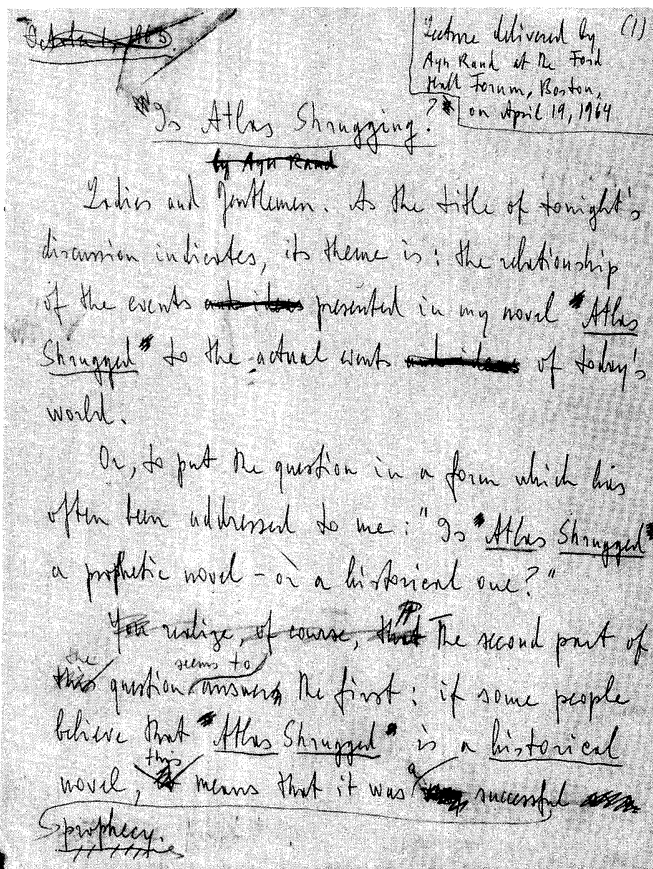
Auction fever was evident as the next items — a postcard and a letter from Rand to her house-sitter — went for \$2,300 and \$1,035 respectively. And then it was time for the first large group of Rand's manuscripts to go up for bids.

The lot consisted of the manuscripts for the entire run of Rand's weekly newspaper col-

umn. The manuscripts for the 26 columns include nearly 300 pages. This was the largest lot of Rand's manuscripts to be offered up to this point. It hauled in \$90,500.

There followed a single sentence in Rand's handwriting intended as copy for the announcement of publication of *The Objectivist*, which sold for \$373.50. And then it was time for the lot that everyone had waited for.

Lot 5901 consisted of 165 manuscripts, including everything Rand wrote for the three publications she edited, *The Objectivist Newsletter* (1962-1965), *The Objectivist* (1966-1971) and *The Ayn Rand Letter* (1971-1976). All told, this lot included 3,940 pages in Rand's handwriting. The material wasn't as exciting as the pages from the *Atlas Shrugged* manuscript. But there was so much of it! Bidding started at \$250,000, and rose in increments of \$10,000 until it reached \$400,000 (with buyer's fee, \$442,500).



From lot 5901, 165 manuscripts, comprising nearly 4,000 pages. Price realized: \$433,000

\* Unless otherwise noted, prices quoted include the "buyer's fee" of 10-15 percent, in addition to the "hammer price."

The following three lots were copies of the Tenth Anniversary Edition of *Atlas Shrugged*, with special binding, slipcase and autograph of Rand. One copy, with an additional inscription to Bea Hessen, sold for \$3,450; the other two sold for \$1,900 and \$2,250. The next two items were

torial comments from Rand.

There were three other manuscripts. An edited excerpt of her essay "The Anti-Industrial Revolution" which had appeared in *The Objectivist* in 1970 netted \$13,800. The second, a 17-page manuscript entitled "Why I Like Stamp Collecting," written in 1971 for publication in *Minkus Stamp Journal*, was offered with a copy of the published version and a copy of *Atlas Shrugged*, inscribed to "Mr. and Mrs. Jack Minkus," publishers of *Minkus Stamp Journal* and in-laws of Robert Hessen. It drew \$3,163, which may have been a bargain, at least in comparison to other items in the sale. The final manuscript was a draft of a speech on tax reform from 1972, in which Rand severely criticized Democratic presidential candidate George McGovern. This nine-page manuscript realized \$13,800.

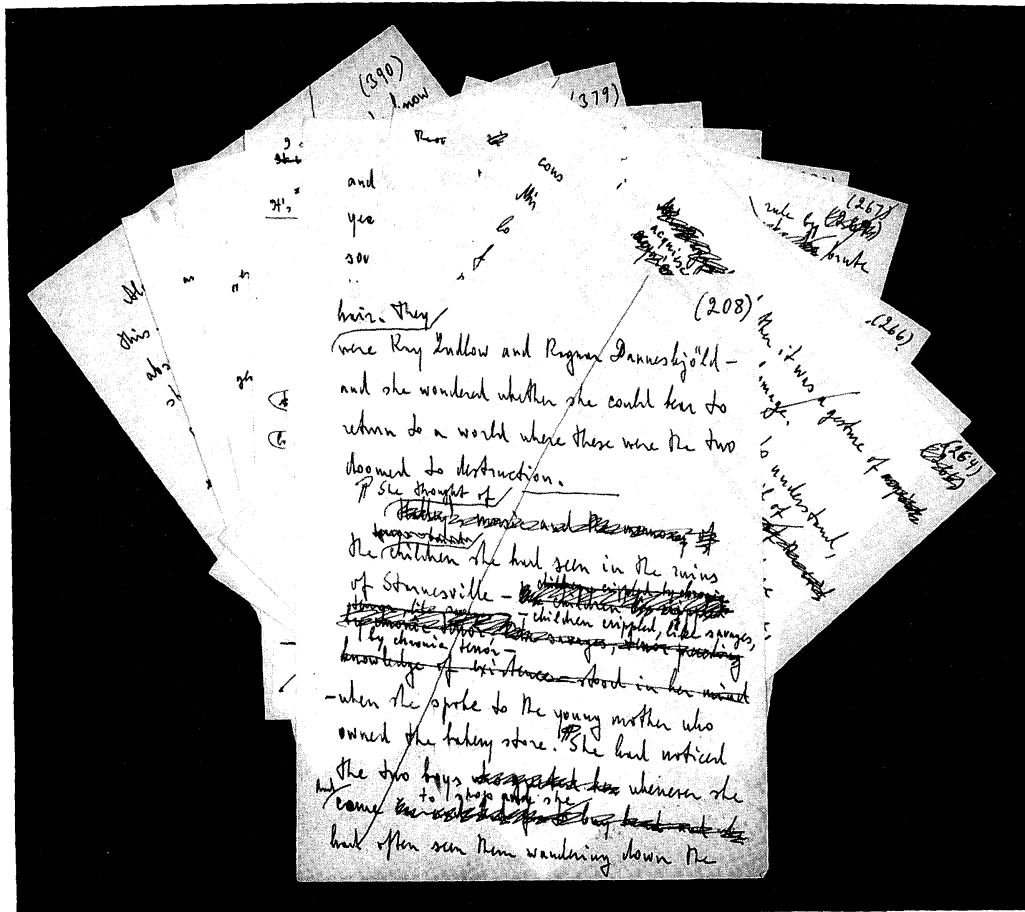
The balance of the sale consisted of miscellaneous documents either signed or annotated by Rand, a handful of her books, uninscribed and unsigned, and three collections of Rand's books, some inscribed or autographed, that were consigned by individuals who were not part of Rand's circle. The final lot consisted of the stopwatch Rand used to time scenes of the Italian film version of *We The Living*, while she worked on editing it for

release in the U.S., along with some posters for the release of the film, which occurred some 6 years after Rand's death. This was the last chance to acquire a Rand relic, and it pulled an impressive \$1,300.

All told, the sale realized a very impressive \$1,178,602.50. Barbara Branden's items fetched \$376,301.25. Robert Hessen's parcels garnered \$724,647.50. Items consigned by others — Daryn Kent-Duncan, Jim Peron, Joan Blumenthal, Henry Holzer, Barbara Efron, Paul Eisen, and Ryan York — sold for a total of \$77,653.75.



When auctioning a collection, conventional wisdom recommends breaking it into small lots, except in cases of extremely inexpensive material. The reason is simple: more people can afford to buy less expensive lots, and the more bidders, the higher the prices will likely climb. So one has to wonder why the sale included two huge lots: the lot of 26 newspaper columns totalling some 283 pages and the lot of all Rand's writing for *The Objectivist Newsletter*, *The Objectivist*, and *The Ayn Rand Letter*, totalling some 3,940 man-



Lot 5868, 29 manuscript pages from *Atlas Shrugged*. Price realized: \$233,000

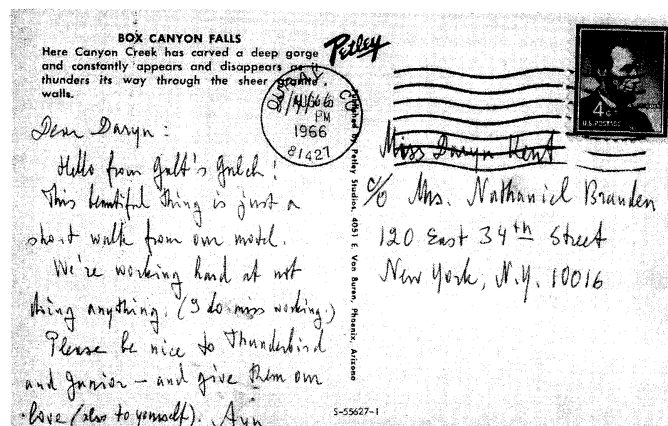
related to the production by NBI Theater of a dramatic version of *The Fountainhead*. The contract between Barbara Branden (who wrote the script) and Rand realized \$2,875; a typewritten copy of the script, initialed by both Rand and Branden, went for \$12,650.

Then came two of the most interesting items in the entire sale: two brief manuscripts in which Rand attempted to deal with the loss of the love of Nathaniel Branden, both written on June 5, 1968, during the period in which Nathaniel would neither renew his sexual relationship with Rand nor explain to her that he had found a new love. The first, three pages of notes entitled "Psycho-Epistemology," sold for \$4,600. The second, "The Moral Authority Premise," running nine pages, sold for \$9,400.

The remainder of the sale consisted mostly of contracts and miscellaneous documents. Among these were the only two items that failed to meet the minimum bid set by the consignors: a contract between Rand and Erika Holzer for an article Holzer had written for *The Objectivist* and a screenplay by Holzer for a courtroom drama with handwritten edi-

uscript pages and 15 typescript pages.\*

Robert Hessen knew well that they would likely realize substantially higher prices if broken into smaller lots. But he insisted on selling them in the two large lots, in hopes that they would find a home at a major research institution,



Lot 5897, Postcard to Daryn Kent, who fed Rand's cats while Rand vacationed. Price realized: \$2,300

either via direct institutional purchase or by route of donation from the purchaser.

The conventional wisdom proved correct in this case. An examination of the auction results suggests that the manuscripts would indeed have sold for substantially higher prices had they been offered as single manuscripts. Seven lots consisted of a single nonfiction manuscript, containing a total of 189 pages. Taken together, these seven manuscripts sold for \$181,125, or an average of \$958 per page. The two huge multiple-manuscript lots contained a total of 187 manuscripts, totalling 4,223 pages. They sold for a total of \$533,000, or an average of \$126 per page.

In fact, there was an almost perfect inverse relationship between lot size and the price per page each lot realized:

Lot	Page Count	Price per page
"Psycho-epistemology"	3	\$1,533
"Pollution"	5	2,760
"The Moral Authority Premise"	9	1,022
"On Tax Reform"	9	1,533
"Consciousness, Purpose and Happiness"	9	1,661
"Art as Sense of Life"	39	472
"The Fascist New Frontier"	54	1,065
"America's Persecuted Minority"	61	801
The Newspaper Columns	283	320
The Obj. Newsletter, The Obj., The AR Letter	3940	112

Did Hessen get the result he had hoped for? The identity of the buyers of the two large lots has not been publicly revealed, but one source told me that they were acquired by one or more dealers who intend to sell them individually to collectors. (One rumor has it that Bill Gates was a buyer. A dealer who often represents Gates was a buyer of some of the material, though not the mega-lot. This speculation was discounted by a dealer familiar with Gates and his *modus*

*operandi*: "Gates always issues a press release when he makes a major acquisition.")

To what extent were the prices realized at the sale the product of genuine collector or scholarly demand, and to what extent were they the result of bidders catching "auction fever," of the sort that gripped buyers at Sotheby's sale of stuff from Jacqueline Kennedy's home in 1996? It's impossible to know, at least until the material starts selling in other auctions. One collector of Rand material, as well as other manuscripts and rare books, told me he thought the prices were ridiculously high. "Twenty-nine pages from *Atlas Shrugged* sold for more than ten times the price of a chapter from *Huck Finn*," he said. "Many of her essays realized thousands of dollars, in some cases a hundred times what essays of other great novelists bring." Not surprisingly, he predicted that when the material acquired at the sale starts showing up at other auctions, its owners will take huge losses, like the losses the buyers of Jackie Kennedy relics now suffer when they resell their treasures.

But one dealer who bid extensively at the auction told me that he thought the stuff went cheap. "The large lots, if broken up, ought to bring around \$10,000 per manuscript if sold at a first-rate auction house in New York or London," he said. The reason that Rand material should be among the most valuable of all literary collectibles? "Ayn Rand has no equivalent," he said. "She has a following among libertarians, financial gurus, all sorts of people." I asked him whether he had been a buyer (or partial buyer) of the two huge lots. He refused to answer.

#### NOTIFICATION

FROM: AYN RAND  
TO: NATHANIEL BRANDEN INSTITUTE INC.  
NBI PRESS INC.  
NBI COMMUNICATIONS INC.  
NBI BOOK SERVICE INC.  
NBI THEATER INC.  
THE FOUNTAINHEAD COMPANY  
DATED: AUGUST 25, 1968  
SUBJECT: USE OF AYN RAND NAME

EFFECTIVE IMMEDIATELY ALL OF THE ABOVENAMED CORPORATIONS ARE TO CEASE USING THE NAME OF AYN RAND IN ANY AND EVERY CONNECTION WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE BUSINESS, TRADE AND ADVERTISING USES PROSCRIBED BY SECTIONS 50 AND 51 OF THE CIVIL RIGHTS LAW AND OTHER STATUTES OF THE STATE OF NEW YORK.

*Ayn Rand*  
AYN RAND

Lot 5909, Notice from Rand to various enterprises of Nathaniel Branden, upon her break with Branden. Price realized: \$2,300.

In the wake of the sale, the market for Rand books, manuscripts and memorabilia seems extremely strong. But only time will tell whether demand is solid at the price levels achieved at the auction. Material from the sale will likely be sold at public auction in the near future. And it's likely other material will also. Rand inscribed a lot of books in her lifetime, and there may be as many as thousands of other manuscript pages somewhere out there. If there are, chances are very good that the prices realized at this sale will attract them to the auction block.

But one thing is certain: there will never be another sale of Rand material like this one. □

\* The figures do not include one lot, whose catalog description did not include any page count.

# Zimbabwe: The Snake Eats Its Tail

*by Len Brewster*

How much government can a small nation stand?

A year ago President Mugabe awarded some veterans of Zimbabwe's "liberation war" a lump sum of 50,000 Zimbabwean dollars plus Z\$2,000 a month for life. The cost of this lurch totals Z\$4.5 billion, about a tenth of the national budget. Predictably, those detained during the war, the widowed and orphaned, and civilians who aided the guerrillas now demand a similar amount. Even Rhodesian Defense Force veterans (who fought against the "liberators") are reminding all that they were promised equal benefits in the Lancaster House peace agreement.

Why the president decided now, 18 years after the war ended, to subsidize just some veterans and not others, or any at all, is a matter of conjecture. The government had already favored the ex-combatants with ten years' Civil Service seniority, medical subsidies and educational benefits; the destitute among them got additional special assistance.

Shortly after this bold stroke, the president nationalized 12 million acres of land from productive commercial farmers. Owners, he announced, will receive only reimbursement for improvements, not for the land itself. And even this, apparently, will be paid only at some point in the future, which means never. This initiative has been covered in confusion since its announcement. Property at first listed for seizure has, because of ministerial influence or local intrigue, been "de-listed," then for the same reasons "re-listed," and the process yet repeated.

The government intends to turn the land over to communal farmers. But the communal farmers will receive no title. The state will own the farms — mule, plow, and hut. Some surveys reveal limited enthusiasm for such a prospect. Yet, made desperate by the economic condition of the country and the government's delay in putting them on the extorted property, people have taken to squatting on some farms whether listed or not.

The government has promised to list more farms. It recently grabbed 841 of them. One of the several Ministers

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Without Portfolio, Joseph Masika, last week vowed that the government will defy any court decisions that might inconvenience the larceny. Mugabe later also promised to ignore the courts on this issue, as he has on others, notably when they ordered the government to compensate victims of police torture.<sup>1</sup>

In justification, Masika and Mugabe have argued that the land was in the first instance seized without compensation by the colonials. As a result, they say, 4,500 ethnic Europeans own half the best farmland in the country, while 11 million black communal farmers attempt to scratch a living from the rest. This theory assumes an unbroken line transmitting liability and virtue from ancestor to contemporary. However, 70 percent of the land now under private cultivation, including all the farms listed, was purchased on the market, not inherited.

This sort of argument — that it is just to restore to blacks land seized by whites a century ago — despite the fact that there is virtually no one alive today who stole the land or from whom the land was stolen — isn't applied very consistently. Bantu speakers first came to this area about 400 A.D. and displaced Khoisan speakers.<sup>2</sup> But Mugabe does not believe that the poor remnants of this group should get the land. Like other colonials, the president seizes land because he has the power to do so. The appeal to justice is demagoguery.

Still later, noticing that rebels were about to depose his friend Laurent Kabila, Mugabe sent 6,000 troops into the Democratic Republic of the Congo (DRC) to help prop him

up. With half a dozen other countries now entangled in the conflict, the war could well expand from regional to continental, linking up with the fighting in Somalia, Sierra Leone, and the Sudan, the lesser ructions in Lesotho, and the re-emerging conflicts in Angola and Ethiopia.

The government keeps the price of intervention secret, but it could not cost much less than the rumored \$30 million a day. Most think, despite official denials, that casualties run in the hundreds. Wondering how the country can afford such an adventure and still require subsidy, the IMF and the World Bank have withheld a hungrily anticipated infusion of about \$8 billion, which might have helped stabilize the Zimbabwe dollar.

Zimbabwe has no common border with the DRC. It has few cultural ties. Their indigenous languages are different,

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*In an economy as small and fragile as Zimbabwe's, these follies carry visible consequences.*

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and the colonial language in the Congo is French, while here it is English. Trade between the two countries is small, though some hope to see an increase. *The Wall Street Journal* pointed out that some ministers and the president himself hold interests in the Congo's mining industry, but they can hardly anticipate much success in a game against such players as the De Beers. Mugabe seeks distraction from domestic woes in the role of regional statesman, which he thinks better answers to his talents. He thus manages to be out of the country about half the time, performing such vital tasks as thanking the Renault Company for tractors, while his ambassador stands by like a potted plant.

An apparent cease-fire was arranged November 18, 1998, in Paris. But the insurgents doing most of the fighting were not included in the negotiations; not surprisingly, they repudiated the result. So the war goes on.

In an economy as small and fragile as Zimbabwe's, these follies carry visible consequences. In the last year the Zimbabwe dollar sunk from 15 zim to one American dollar down to 38 to one. Inflation stands at about 40 percent; unemployment, 60 percent. Zimbabwe's budget deficit equals more than ten percent of GDP. Many with money outside the country are leaving, thus depleting the potential for internal investment. External investment has plummeted thanks to the country's dismal reputation. (Typically, government officials — and the segment of the press they control — react to this by scolding the BBC and CNN for "negative" reporting.)

Zimbabwe's first food riots erupted last spring, and the Zimbabwe Council of Trade Unions has called a number of successful one- to three-day general strikes since. To solve the problem, Mugabe decreed strikes illegal. Prices of basic foodstuffs continue to rise, and the government reinstated price controls. The value of the currency continues to drop.

The state pleads that its interventions stem from previous interventions. But no one forced the government to grant exorbitant subsidies to veterans, though some of the pressure to do so resulted from the high rate of inflation and unem-

ployment — the results of the government's own policy. Similarly, unemployment created the land problem, driving people back to subsistence farming. White-bashing government propaganda excuses failure, contributing to the problem as well. And Kabila did not prevail upon Mugabe to send troops to the DRC by witchcraft. Mugabe wanted prestige and needed a diversion from troubles incurred by his own policies.

Other examples abound. The policy of indigenization (the Zimbabwean equivalent to "affirmative action") has resulted in the proliferation of under-capitalized banks and firms under black ownership. Government officials have borrowed from these banks, not troubling to repay them, and the state has favored "indigenized" construction companies with contracts. The besieged United Merchant Bank has already failed partly as a result of its bad loans, and would have pulled the Zimbabwe Building Society down with it had the state not intervened. Abandoned equipment and half-built structures are strewn across the countryside, the relics of uncompleted projects by "indigenized" construction firms. The government promises to cure the problem by subsidy (with money it does not have) and by increasing emphasis on indigenization.

Large areas of Harare recently went without water because a contractor unable to collect Z\$10,000 due him stopped work on some vital pipelines. But the city council found no difficulty in paying the bills on a \$40 million man-

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*Like other colonials, Mugabe seizes land because he has the power to do so.*

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sion for the mayor nor in providing itself with luxury cars. The minister of local government intervened and got the water turned back on. But Mayor Solomon Tawengwa is a friend of Mugabe, so little has changed. Aren't the people of Harare lucky to have a government to help them out of the problems it has inflicted upon them?

It is tempting to think of the government's tendency to meet its own demand for difficulties as maladaptive, in the evolutionary sense. But this makes sense only if one assumes that the government is in some real sense pursuing the general welfare. Consider for a moment the alternative: that the government pursues not the general welfare but its own survival and the enrichment of those who compose the government. How else does a state like Zimbabwe, presiding over 12 million people and composed of 52 ministries,<sup>3</sup> not only survive, but assure prosperity to its functionaries? What could all those government employees, making up 30 percent of the work force, be doing if not in part inventing problems? How could they remain in office without convincing the public that its everyday problems required the constant attention of those who have a paternal interest in them?

The state and its apologists can always deny the circular flow by appeal to mythical externalities. A remarkable example was the president's claim (while overseas) that Zimbabwe's economic difficulties resulted from drought during the last two agricultural seasons — droughts that few

farmers here noticed at the time.

Not surprisingly, the most-invoked external causes of Zimbabwe's plight are the various alleged cruelties of the market. This is curious, given the government's supposed commitment to its so-called Economic Structural Adjustment Program (ESAP) and its successor the Zimbabwe Program for Economic and Social Transformation (ZIMPREST). The state advertised ESAP as a "... programme of trade liberalization, domestic deregulation and budget deficit reduction. . . ." It started in 1991, but by 1996 the government had failed to accomplish its pledged reforms. Budget deficits throughout this period "exceeded targets" because of a lower than anticipated rate of growth (an average of 0.5 percent, rather than the anticipated 5 percent). Droughts real and imagined contributed to the problem, along with "... continuing parastatal losses and slower than planned civil service reform." ESAP aimed at a fiscal deficit of 5 percent of GDP by 1995.

Instead it totaled 13.5 percent. The state financed through domestic borrowing, which was made more affordable for the state by a 40 percent inflation rate. Brooding and untouched are the 52 ministries, which must make Zimbabwe one of the most overgoverned though worst served countries in the experience of mankind.<sup>4</sup>

ESAP has been more eagerly called a scapegoat than seriously pursued as a reform. One of the government's chief flacks, T.P. Mahoso, writing in the state-controlled *Sunday Mail*, recently argued: "The salesmen of structural adjustment did not present the scheme in the context of worldwide economic depression. They did not tell us that there were a wide variety of ESAP scenarios and the one they were pushing on us was intended to enable the West to recover from the ongoing crisis at our expense (Nov. 1, 1998)."

A week later, the president allowed himself the following strange confession: "Because we failed to read properly the second component of our economic liberalization (determination of prices by the market) we noted that it is just glib talk to make reference to market forces. Where are the forces? They must be established when we talk of market forces" (*Zimbabwe Herald*, Dec. 8, 1998).

Mugabe went on to blame private monopolies for inflationary pressure on basic food commodities — a handy distraction from his own spasms of misjudgment, and a clear indication that he believes a state monopoly would do better.

The location of market forces, which Mugabe finds so elusive, is perhaps less mysterious than that of the worldwide economic depression with which he and Mahoso are obsessed. Even harder to find, at least in Zimbabwe and Africa, is the kind of wealth that would permit a hypothetical rescue of the world from its imaginary catastrophe.

So even the external factors thus invoked seem to be self-generated inventions extending from drought through depression to reified, but absent, market forces. With luck, even these second-order contrivances might enable the state to prosper. The Zimbabwe government has already, as we have seen, reintroduced price controls, which it justifies "in the context of worldwide economic depression" and as an effort to "establish" market forces. We might expect trade barriers to follow, with much the same rationale.

It may be that the objective of that heavy political apparatus that looms over us all is not, as legend has it, in place to solve those problems that people cannot solve for themselves. Rather, it serves to aggravate existing difficulties and create others for its own nourishment. Perhaps the state occasionally, more by accident than design, promotes the greatest happiness for the greatest number. No human contrivance is perfect. □

## Endnotes

- 1 The Catholic Commission For Justice and Peace in Zimbabwe, *Breaking the Silence, Building True Peace: A Report On The Disturbances in Matabeleland and the Midlands 1980-1988* (The Legal Resources Foundation, 1997) esp. pp. 68-9. This is a short account of the torments of Wally Stuttaford, awarded a judgment by the courts, but refused payment by Mugabe on the grounds that it would be "a waste of the nation's money." No doubt irrelevantly, the 52 ministries and the two vice presidents spring to mind.
- 2 The definitive history of early Zimbabwe is David N. Beach, *The Shona and Zimbabwe*, pp. 900-1850 (Gwelo: The Mambo Press, 1980)
- 3 *The Economist* counts 54, and I have heard as low as 50. Fifty-two seems a good compromise.
- 4 Government of Zimbabwe, *ZIMPREST, Program for Economic and Social Transformation 1996-2000* (Harare: Government of Zimbabwe, 1998) pp. 3-17. See also Government of Zimbabwe, *Zimbabwe: A Framework for Economic Reform 1991-1995* (Harare: Government of Zimbabwe, 1991) pp. 4-15.

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## Reflections, continued from page 12

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nitty-gritty of living together and making important, long-term decisions, something not encouraged by the myopic pre-marital process. Most newlywed couples have only the foggiest notion of what they are getting into personally, and no idea of what they are getting into legally.

A lawyer once told me that if couples knew what a marriage contract implied, few would get married. In the absence of a pre-nuptial agreement, the law spells out the terms of that contract and what happens should either, or both, parties want to dissolve it. The average newlywed has no idea about such esoteric issues as community or marital property, sole-and-separate property, the many dimensions of custody and child support, spousal maintenance, etc. Yet all of these are dealt with in detail, and differently, in the law

of each state. When you get married without a specific pre-nuptial agreement, you automatically buy into the common law terms of the marriage contract of the state in which you reside. Common sense argues that before marriage you ought to at least take a look at what you are buying into. But few do.

Agreeing to an explicit marriage contract accomplishes two things. First, and probably most important, it forces a couple to think seriously about marriage and what it entails. Second, like all good contracts, it spells out the obligations of the parties, the duration of the contract, the conditions for renewal, and an agreed-upon set of rules for dissolving the marriage contract should a divorce happen. Whether this

continued on page 46



# The Intelligent Man's Guide to Lying Under Oath

by David Kopel

Sometimes perjury serves a higher truth

Is it ever morally permissible to mislead the government under oath? President Clinton's flagrant lies during the Paula Jones deposition and his grand-jury testimony have led his defenders to claim that it's all right to commit perjury, if the perjury is just about private matters like sex. Are they right?

Presenting misleading testimony under oath may be the moral thing to do under certain limited circumstances. At least that was the stance taken by many victims of religious persecution in England in previous centuries. The decisions they made provide important lessons for contemporary Americans.

During the late 16th century, Anglican forces won control of the English government. They made it a crime for England's small Catholic population to attend Catholic Church, required everyone to go to Church of England services, outlawed Catholic communion, and forbade the entry of any Catholic priest into England, Scotland, or Ireland. The punishment could be as severe as death by public torture.

Despite this totalitarian effort at thought control, many Catholics continued to practice their faith secretly, and the Catholic Church continued to send priests into England. The main smugglers were the Jesuits, and the government's discovery of one of their training manuals for English priests caused a sensation.

*A Treatise of Equivocation* instructed priests going into English territory that, even under oath, they and their flock need not condemn themselves when interrogated by the English authorities. The treatise offered four techniques of equivocation: ambiguity (answering "a priest lyeth not in my house" could mean that the priest hidden in the home did not tell lies); incomplete answers ("I went to his house for dinner," omitting that "I also went to attend a secret mass"); hidden gestures and pronoun references ("I did not see anyone go that way," while pointing the other way with one's finger hidden in a pocket); and the most sensational tech-

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nique: responding to questions both verbally and mentally. According to that treatise, a Catholic could "securely in conscience" provide answers with a "secret meaning reserved in his mind."

If an English government attorney interrogated someone suspected of being a priest named Peter, the attorney might ask "Is your name Peter?" *A Treatise of Equivocation* instructed that the priest could speak the word "No" in response. The priest could then continue, speaking in his own mind but not out loud, "so as I am bound to utter it to you, since you have no lawful jurisdiction over me."

Likewise, if a lay person were asked, "Did you hear mass today?" she might orally answer "No," while noting to herself that she "did not hear it at St. Paul's or such like" — even though she did hear mass in her home.

In late 20th century America, it's easy to see the natural rightness of religious dissidents misleading (but in a sense, not lying to) the minions of an unjust and tyrannical government. Hardly anyone would deny the moral right of a Jew in Nazi Germany (or modern Iran) to give equivocal answers to questions from a government interrogator.

Do the equivocations of the Anglo-Catholics have any lessons for Americans nearly four centuries later? I think they do.

First of all, *A Treatise of Equivocation* never aimed to erase the general moral rule against untruth. Equivocation was for "very limited" circumstances, allowed only in response to government interrogators. Capitalism depends on trust, and nothing in *A Treatise of Equivocation* justifies any type of mis-

leading answers to the many people with whom one voluntarily associates.

According to the treatise, a speaker must "answer directly" if the government interrogator meets five conditions:

- 1) He is a lawful agent of the sovereign.
- 2) He has personal jurisdiction over the person being questioned.
- 3) He limits his questions to topics over which he has legal authority.
- 4) He is enforcing a just law (since "a judge in the execution of an unjust law is no judge").
- 5) He has probable cause for his questions.

President Clinton fails every element of the five-step test: He acknowledges that Judge Starr was lawfully appointed (under a law supported by the president), that Judge Starr has legal jurisdiction over the president, and that the judge was investigating an issue which was specifically authorized by Attorney General Reno. President Clinton does not claim

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*In late 20th century America, it's easy to see the natural rightness of religious dissidents misleading the minions of an unjust and tyrannical government.*

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that the laws against sexual harassment or against perjury are unjust, and there is no dispute that the questions put to him were based on probable cause from evidence previously discovered.

One of the two cases in which *A Treatise on Equivocation* achieved its greatest notoriety was the "Gunpowder Plot" trial, which followed some Catholics' failed attempt on Nov. 5, 1605 (now known as Guy Fawkes Day), to blow up Parliament and King James I, following the King's refusal to relax the late Queen Elizabeth's stringent anti-Catholic laws.

The other sensational equivocation case was the 1613 prosecution of Irish Catholic grand jurors in Dublin. The grand jurors had refused to indict Catholic defendants accused of being "recusants" for failure to attend the Anglican Church. When the grand jurors took their oaths, they made mental reservations about their conscience and religion. When prosecuted for perjury, one juror insisted he made his equivocations "to defend my self against the captious and injurious demands of an unlawful judge." The Irish jurors and the gunpowder plotters were, of course, convicted, and *A Treatise of Equivocation* was introduced as evidence against them by the prosecution.

Today, many people called to jury service in the United States face a moral dilemma similar to that faced by the Irish grand jurors. According to a recent study by the *National Law Journal*, 76 percent of Americans agree that "whatever a judge says the law is, jurors should do what they believe is the right thing." Thus, if a juror feels that a person is being unjustly prosecuted for acting in self-defense, or for committing a victimless crime, the juror should vote to acquit the defendant.

As a matter of legal history, the modern American 76 per-

cent, like their Irish predecessors, are plainly correct. The jury is intended to interpose the conscience of the community between the government and the defendant. America's first Supreme Court Justice, John Jay, and America's second president, attorney John Adams, recognized and applauded the jury's right and duty to vote its conscience.

Unfortunately, for many decades judges who are unfaithful to America's history of jury rights have been falsely telling jurors that they are mere fact-finders, and must accept unequivocally the judge's instructions about the law. As the Fully Informed Jury Association continues to spread the word about jurors' rights, many judges are working harder than ever to exclude informed jurors from hearing cases. During the voir dire process, some judges demand that potential jurors disclose whether they have ever read anything about jurors' rights; any potential juror who does know his rights is automatically "excused."

The state of Colorado recently witnessed a type of prosecution not seen in the United States since 1776. Juror Laura Kriho was criminally prosecuted because she allegedly voted to acquit a drug defendant based on her conscience. (Technically, she was prosecuted because she did not, during voir dire, tell the judge about her own prior drug conviction, which had been expunged from her record. She says she didn't disclose it because no one asked. The real reason for her prosecution was that after she hung the jury, one of her fellow jurors complained to the prosecutor that she had compared drug laws to witch hunts.)

Given the data from the *National Law Journal*, it appears that many jurors equivocate during voir dire. Asked if they know about jurors' rights, they answer "No," and mentally add "I know of no jurors' rights contrary to the Constitution." Asked if they will rigidly follow the judge's instructions on the law, they answer "Yes," and mentally add, "insofar as your instructions are consistent with my rights and duties as a juror."

In contrast to President Clinton, potential jurors who intend to vote their consciences clearly pass the test of *A Treatise of Equivocation*. There is a great moral difference between lying in a civil rights case involving the liar's abuse of governmental power, and equivocating as part of jury service in order to protect someone from abuse of governmental power. □



"Of course you keep hearing Satanic messages!"

# Y2K: Emergency Planning or Planning an Emergency?

*by Declan McCullagh & Solveig Singleton*

Next New Year's Eve may be celebrated with a declaration of martial law.

Jack Straw is looking forward to January 1, 2000, with the type of anticipation reserved for an unusually bloody root canal. As the world toasts the new year, Straw will be preparing for the worst. "As we all must recognise, disasters can strike suddenly, unexpectedly and anywhere," he recently wrote.

The disaster? An outbreak of drunken revelry? Distressing shortages of champagne, perhaps? Nope. He's talking about the famous Year 2000 computer bug, or Y2K.

As the United Kingdom's Home Secretary, Straw is in charge of organizing his government's response to Y2K. His plan: To call out troops to quell disturbances that could be caused by disruptions in electrical power generation and government services.

And he can't leave town. "Jack Straw has been told that, as Home Secretary, he must stay in London during next year's millennium celebrations in case of a serious breakdown in public order or a national emergency," the *London Sunday Times* reported on December 28.

The Brits aren't alone in ginning up an aggressive response to Y2K. The *Ottawa Citizen* in December disclosed that the Canadian government is considering martial law in response to Y2K disruptions. Previously secret government documents the *Citizen* obtained say: "Among the activities that must be done to meet the problems resulting from Y2000 failures is development of relevant emergency orders and regulations required for the invocation of emergency provisions under the Emergencies Act."

In the U.S., Senator Robert Bennett (R-Utah), who heads the Senate's Year 2000 committee, has asked the Pentagon about its plans "in the event of a Y2K-induced breakdown of community services that might call for martial law." And a House subcommittee has recommended that President Clinton consider declaring a Y2K "national emergency."

For the first time since the end of the cold war, a Cabinet task force is concocting emergency disaster responses. "Planning for the war games, tentatively scheduled for June,

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is in its early stages, so officials can't say which Cabinet secretaries will take part, how long the exercises will last or what mock disaster scenarios the leaders will be wrestling with," according to Scripps Howard News Service. Participating Cabinet departments include Defense, Justice, Energy, Health and Human Services, Transportation, and the Federal Emergency Management Agency (FEMA).

FEMA is in charge of the federal Y2K emergency reaction. The agency chairs the emergency services sector working group of the president's Y2K council. By January 15, 1999, FEMA will have updated the Federal Response Plan to take into account Y2K disruptions in services such as electricity or water. FEMA has scheduled regional Y2K training exercises for spring 1999, and will have joint military-civilian forces on alert by late December 1999.

It's a fair bet that mounting Y2K jitters won't slow plans to assign domestic governmental and pseudo-governmental functions to the military. Law enforcement functions top the list, but communications and food distribution are also likely candidates. Canada's plan includes stationing destroyers in port to provide generating power, and the U.S. in the past has used the military to deliver aid after hurricanes and other natural disasters. When machinery fails it can be replaced by manpower, and the military makes a logical source of workers trained to operate under harsh conditions.

In a worst-case scenario of looting and civil unrest, the involvement of the military in some urban areas could extend to martial law, military law, military courts, the suspension of rights of due process and habeas corpus, and sei-

zures of industrial or personal property. True, this possibility seems unlikely — even highly unlikely. But based on public statements and documents released so far, we know it's something the federal government is considering.

Officials may respond to pressure either because they believe the crisis is genuine — or because they think the appearance of activity on their part is necessary to head off panic. Much will depend on the perception of the probability of power outages and infrastructure failures. Sen. Bennett says he's far more optimistic than he was half a year ago.

But the process of planning for and anticipating these events can create pernicious mischief in itself. Once a plan

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*In a worst-case scenario of looting and civil unrest, the involvement of the military in some urban areas could extend to martial law, military law, military courts, the suspension of rights of due process and habeas corpus.*

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and the resources to carry it out are in place, an evil temptation to take action will arise. In times of doubt, officials will err on the side of "order" over "anarchy."

What's clear already is that politicians are doing their level best to prevent panic. "Even if the Y2K problem is solved, the panic side of it can end up hurting us as badly," Sen. Bennett said in December. It's hardly a surprise that Janet Abrams, director of the White House Y2K council, said on December 23 that "one of our priorities for the coming year is the prevention of public overreaction to the Y2K problem."

As awareness of Y2K increases, officials will face increasing pressure to take more aggressive steps. At a December Y2K conference in Washington D.C., a National Guard colonel predicted the governor in his state would be forced to call out the troops because of public outcry.

Reports of shortages caused by stockpiling are likely to fuel concerns. In the bulk-food market, hard-hit by Y2Kers, shipping delays already stretch to over six months. "People's patience is much thinner now than it was four months ago. They're tougher. They're less likely to give us a few more weeks. All in all, I don't have a real pleasant experience with people yelling at me when I come to work in the morning," says Steve Portela, manager of Walton Feed, a bulk-food supplier in Idaho that employs 150 people.

A *USA Today*/National Science Foundation poll recently found 26 percent of Americans say they intend to stockpile food and water. Demand for generators has also spiked. Loren Day, president of China Diesel Imports, spends a good portion of each day puzzling out how to crank out more and more generators to meet a swell of Y2K orders. Shipments of his company's most popular 8,000-watt model now run six months behind. "Orders are up about 1,000 percent since the first of the year," Day said in November. "And the amount of people who will want a generator now is nothing compared to the amount of people who will want a generator later."

Officials' motives in planning military involvement to calm Y2K jitters are, at one level, natural and benign. And, of

course, if power fails and cities erupt in chaos, a National Guard presence may well be the lesser of two evils. (Of course, restrictions on gun ownership are hardly likely to make law-abiding citizens safer.)

But some motives for military involvement would not be as innocuous. With the end of the cold war, it would have made sense for the U.S. military to shrink. Retired Army chief of staff Edward Meyer told a *Washington Post* reporter in 1989 that "the end of the cold war makes it inevitable that the Army will shrink far below the 772,000 on duty today."

It didn't. Supporters of an expansive U.S. military have spent the last decade finding something for it to do. In the 1980s, Congress amended the Posse Comitatus Act of 1878 — which restricts the use of troops to enforce civilian laws — to let the president enlist the military in the War on Drugs. President Reagan in 1986 signed a national security decision directive declaring drug trafficking a threat to the security of the United States.

The framers of the Constitution opposed standing armies in general, and especially their use for any purpose other than defending the country against foreign enemies. It was the arrest of civilians by the British army, quartering of soldiers in private homes, and similarly incendiary tactics that provided the tinder that sparked the American Revolution.

Less than a century later, President Lincoln usurped constitutional authority in well-chronicled ways. His justification: The inherent power of the commander-in-chief and his

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*Y2K might be more like the Civil War than a tornado, leading to a more prolonged and widespread military presence.*

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duty to "take Care that the Laws be faithfully Executed." During the Civil War and Reconstruction, the arrest and trial of civilians by military and civilian courts — and the impotence of civilian courts when the military refused to respect orders of habeas corpus — led to the passage of the Posse Comitatus Act.

Since that time, understanding of the dangers of deploying the military in the domestic arena has diminished. Francis Mullen, administrator of the Drug Enforcement Agency, once casually dismissed civil libertarians' concerns about potential abuses if the military joined law enforcement. "There is sufficient oversight on the part of Congress and others," he told a *Newsweek* reporter, "to deter infringement on individual liberties." A Democratic congressman characterized the Posse Comitatus Act as a "sinful, evil law." Military leaders appear more aware of the danger of deploying forces domestically. Marine Major General Stephen G. Olmstead, deputy assistant secretary of defense for drug policy, warned a Senate subcommittee in 1987 that calling out the military to fight the drug war within the U.S. would be unwise. "One of [America's] greatest strengths is that the military is responsive to civilian authority and that we do not allow the Army, Navy, and the Marines and the Air Force to be a police force. History is replete with countries that allowed that to happen. Disaster is the result."

# Why Not Open Borders?

by Jacob G. Hornberger



Thirty years ago, Democrats and Republicans sent 60,000 men from my generation to their deaths in an undeclared war in Southeast Asia. The rationale? To save people from the horrors of communism.

Apparently communism is not so horrible anymore. Today, if Cuban citizens flee communist tyranny, the biggest danger they face is the United States government's forcible repatriation of Cuban refugees into communist tyranny.

Of course, this is only one of the many ways that Democrats and Republicans abuse and mistreat Hispanics. For decades, they have jailed illegal immigrants for committing the heinous crime of crossing the border in search of work. They also arrest and prosecute American citizens for giving work to illegal immigrants. INS deportation raids on both homes and businesses leave

nothing but tears and anguish in their wake.

Is all this necessary for a nation that takes such great pride in the Statue of Liberty? We Libertarians don't believe so. Why not simply open the borders to both free trade and open immigration? Why shouldn't people be free to travel, trade, visit, and engage in peaceful activity?

"But everyone would come to America." Not likely. It is extremely difficult – financially, emotionally, and culturally – to pull up roots, leave family and friends, and move to a foreign country, especially one in which people speak a different language. That's why many immigrants soon return to their homelands. Those who come and stay are usually the risk-takers – those who are willing to give up security for the chance of improving their lot in life. They should be cherished, not punished, for they bring a vitality that energizes a society. Moreover, the removal of American trade restrictions against other countries – like the embargo against the Cuban people – would increase economic prosperity in those countries, diminishing the economic incentive for people in those countries to migrate.

"They'll take jobs from Americans." On the contrary – immigrants create jobs for Americans! While often displacing Americans in lower-echelon jobs, their consumption of food, housing, cars, electronics, and other goods and services develops higher-echelon jobs for Americans in those sectors.

"They'll go on welfare." Then Congress should prohibit them from doing so and punish any bureaucrat convicted of distributing illegal welfare. There is no constitutional requirement that foreign citizens be entitled to use government to plunder the wealth of American citizens. Anyway, as many Americans have discovered, government welfare is a political drug that destroys the human spirit. Immigrants, like Americans, are better off without it.

"They'll burden government services." Then privatize them. Notice that it's always the public sector – public schools, public hospitals, public roads – that complains about too many customers. When was the last time you heard Microsoft, Sears, Disney, or McDonalds complaining about too many customers?

"They'll pollute our culture." American culture

should be one of freedom – one in which everyone is free to pursue any cultural interest he wishes. After all, it was America's culture of freedom that motivated the French to give us the Statue of Liberty.

Open borders would not only raise the standard of living of both foreigners and Americans, it would also help to restore a sense of morality and civility to American society. How can it be considered moral and civil to forcibly repatriate people into communist tyranny? To incarcerate people for wanting to work? To punish employers for hiring them? How can any of this be reconciled with loving thy neighbor as thyself?

A decade ago, one of the ugliest walls in history was torn down. It is time to tear ours down as well. We don't need governmental barriers that separate families, friends, and businesses. We need *abrazos* and handshakes that bring people together.

Mr. Hornberger is president of The Future of Freedom Foundation in Fairfax, Va., and is co-editor of The Foundation's book, *The Case for Free Trade and Open Immigration*.

## THE FUTURE OF FREEDOM FOUNDATION

11350 Random Hills Road, Suite 800  
Fairfax, VA 22030  
Phone: (703) 934-6101 • Fax: (703) 352-8678  
E-mail: FFFVA@compuserve.com  
www.fff.org



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Use of military procedure by FBI agents proved disastrous at Ruby Ridge. Vicky Weaver was murdered in part because the officers who shot her were governed by military rules of engagement. They allow troops to shoot an enemy on sight — a far cry from the rules controlling domestic law enforcement. At Ruby Ridge the rules of engagement let officers fire at any armed adult, rather than engage in usual threat assessment.

Even though using the military to perform civilian functions is extraordinarily dangerous, the Posse Comitatus Act has gradually been eroded. The Stafford Act of 1984 allows the military to help during natural disasters. After a natural disaster, a governor can ask the president to declare a state of emergency. Once it declares an emergency, FEMA can deploy soldiers on active duty. In August of 1992, the Army was deployed in South Florida to respond to Hurricane Andrew, and a month later on the island of Kauai after Hurricane Iniki.

Since the Posse Comitatus Act remained in effect during this time, soldiers could not enforce the law, arrest or detain civilians, or serve search warrants. In South Florida the soldiers doled out aid to citizens and illegal immigrants alike, no questions asked. Active-duty soldiers were not permitted to provide security at relief centers occupied by civilians.

When it comes to the use of troops to restore order during riots, however, the president can suspend the Posse Comitatus Act at the stroke of a pen. The act doesn't cover soldiers deployed as authorized by the Constitution or exempted from the act by statute.

Defense Department regulations\* outline one of the larger loopholes. It allows the use of soldiers "to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disaster, or calamities seriously endanger life and property and disrupt normal governmental functions."

The reality? The president can deploy troops whenever he feels like it. President Bush did just this in response to the Los Angeles riots. On April 29, 1992, the jury released its verdict in the Rodney King trial. A wave of riots followed. On May 1, 1992, California asked the president for aid; Bush responded with an executive order allowing the secretary of defense to call out the Army.

Most probably, Y2K will disrupt our lives only for a few days or weeks. So is the temporary use of the military to help out worth agonizing over? As with military intervention during a hurricane or riot, most citizens will expect the soldiers to be off the streets sooner rather than later. Civil libertarians shivering in the dark may offer little objection if the troops are called out. Fortunately, the military itself follows a powerful tradition of respect for the Posse Comitatus Act. When called into duty at the Los Angeles riots, the commander of the military forces refused to allow troops to carry out law enforcement functions like transporting prisoners, even though the president suspended the Posse Comitatus Act.

But unlike a hurricane or a riot, Y2K could hit everywhere at the same time. Its impact on machines, the economy, and mass psychology, whether trivial or massive, is

extraordinarily difficult to anticipate. Y2K might be more like the Civil War than a tornado, leading to a more prolonged and widespread military presence.

Many "emergencies" declared by presidential order in past years became permanent. In the 1970s, Congress learned to its dismay that some emergencies, including President Roosevelt's 1933 banking emergency, were still in effect. "The president has the power to seize property, organize and control the means of production, seize commodities, assign military forces abroad, call reserve forces amounting to 2 1/2 million men to duty, institute martial law, seize and control all means of transportation, regulate all private enterprise, restrict travel, and in a plethora of particular ways, control

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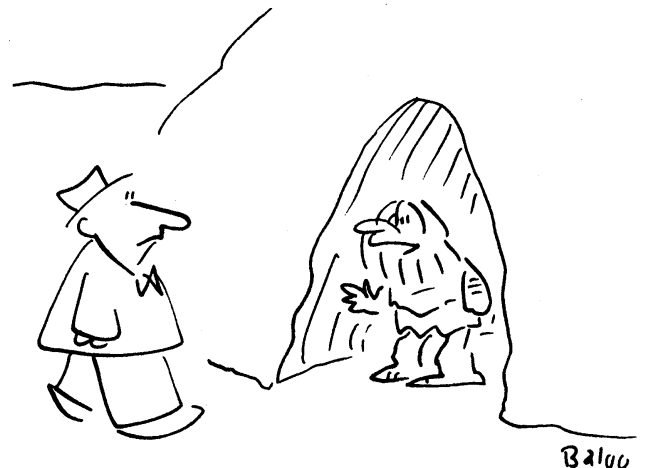
*Vicky Weaver was murdered in part because the officers who shot her were governed by military rules of engagement.*

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the lives of all Americans," Senators Frank Church (D-Idaho) and Charles McC. Mathias (R-Md.) said in a joint statement in 1973. They listed the sheer number of lingering emergencies and noted that "recent history records Hitler seizing control through the use of the emergency powers provisions contained in the laws of the Weimar Republic."

In response, Congress drafted laws to narrow the president's authority in non-wartime situations. Yet three successive Supreme Court rulings eviscerated the International Emergency Economic Powers Act, handing the president nearly unbridled discretion. A perpetual — and infamous — state of emergency enables the president to restrict the export of strong encryption technology, for instance.

The sheer murkiness of the information made public so far makes evaluating the government's plans problematic. Will the federal reaction follow recent disaster-response precedents, or will it include martial law? One thing is clear, though: the government agencies planning Y2K scenarios are making their plans in secret. And that — not the Y2K problem itself — is what we might want to join Jack Straw in worrying about. □



"Psst, mister — are the Eighties over yet?"

\* DoD Directive 3025.12.



# The People Strike Back

*by Paul Armentano*

The anti-drug warriors have a new enemy: democracy.

While the unlikely rise of Jesse Ventura and the fall of Newt Gingrich captured the post-election spotlight, the story with arguably the most significant policy implications went largely unnoticed: an unprecedented rejection of the "War on Drugs" by the American electorate.

Voters in November didn't just voice their opposition to the drug war; they roared. They approved every ballot measure that proposed lessening drug penalties. In Alaska, Arizona, Oregon, Nevada, and Washington, voters passed initiatives enacting legal protections for patients who use medical marijuana under a doctor's supervision. Exit polls in Colorado and the District of Columbia indicate their residents voted similarly, but official results have been impounded. And in Arizona and Oregon, citizens made the most dramatic statements of all. In both states, they rejected much-hyped legislation criminalizing the possession of certain drugs.

Bureaucrats in Washington, D.C., responded with an explosive silence. They weren't so circumspect before the election. The Drug Czar's office coordinated a high-profile campaign against the initiatives — one that enlisted the lip-services of three former presidents, and provided last-minute federal funding for at least one campaign against a drug-reform ballot measure. Now, nothing. Drug Czar Barry McCaffrey spent the days following the election in Hollywood lobbying the entertainment industry. Columnist Mike Gray found little surprising about McCaffrey's hush-hush post-election strategy: "Though he lost every battle in the anti-marijuana campaign, he did manage to keep the war off the front page."

But November's election did more than simply send a message to stubborn politicians. Voters dealt punishing blows to policies espoused by their representatives, illustrating a startling gulf between citizens and their elected officials. For the one-fifth of the American population living in states approving drug-reform proposals, the election

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ushered in legal reforms mandating the decriminalization and, in some cases, legalization of certain drugs — emphatically panning the dog and pony show hawked by politicians.

## **Cheech and Chonged No More**

When California voters legalized medical marijuana in 1996, it thrust the medical marijuana issue into the national spotlight. Before then, the topic was relegated to back-page articles in drug-culture magazines, or subjected to snickers from high-brow pundits searching for excuses to analogize Cheech and Chong. In a single blow, all that changed. The elite *New England Journal of Medicine* endorsed medical marijuana, the nation's largest papers debated it, younger and older voters alike gave the issue the serious consideration it deserved.

Two years later, voters elsewhere in the West and in the District of Columbia joined the fray. Medical marijuana measures passed by larger margins than in 1996. And the sentiment favoring it has mushroomed. Polls taken nationwide now show that two-thirds of Americans support amending federal law to allow doctors to prescribe marijuana to patients. This support extends beyond party lines and age groups. The genie is out of the bottle, and he's not going back in.

Here's a look at the results of marijuana initiatives in the 1998 elections:

## **"This Works"**

Fifty-eight percent of Alaskan voters approved Measure

8, which allows patients to possess up to one ounce of marijuana or cultivate three mature plants for medical use. Weeks before the election, the Alaska Nurses Association (ANA) boldly passed a resolution endorsing the initiative. The resolution stated that marijuana "had a wide margin of safety for use under medical supervision," and is effective in reducing nausea, stimulating appetite, controlling spasticity, treating glaucoma, and controlling seizures. The ANA's endorsement swayed public opinion to favor the initiative, and effectively quashed the opposition's claim that the issue was only a ruse for legitimating non-medical use of marijuana. "Our position as nurses is that we listen to what the patients tell us, and patients tell us this works," says ANA spokeswoman Ileen Self.

Alaska's measure encourages patients to enroll in a confidential registry to qualify for a state identification card indicating they may legally possess medical marijuana. Those who do not register, or who choose to possess or cultivate larger amounts of marijuana than specified by initiative guidelines, may still raise the affirmative defense of medical necessity against any state criminal charges. The proposal becomes law early this spring when the lieutenant governor certifies the election results.

Since state law limits the legislature's ability to significantly alter voter-approved initiatives, proponents consider it unlikely that state officials will mount any serious challenges to the law.

## Who Needs the FDA?

Arizona voters reaffirmed a medical marijuana initiative passed two years ago, and rejected a legislative requirement banning physicians from prescribing marijuana until the Food and Drug Administration approves the drug. Arizona's law allows physicians to prescribe marijuana to patients who have a second doctor's concurring opinion. However, because the law conflicts with federal law prohibiting doctors from prescribing any Schedule I drug, including marijuana, it remains uncertain whether this will benefit seriously ill patients.

Arizona joins Virginia, Connecticut, Vermont, and New Hampshire as states that authorize prescribed marijuana. However, doctors in these states rarely do so because there are no legal sources for the drug. Furthermore, physicians who prescribe marijuana face federal sanctions, including prosecution and revocation of their federal licenses to prescribe drugs.

At least one federal court has ruled that the First Amendment allows doctors to legally recommend marijuana to a patient. It is likely that some Arizona physicians may "recommend" marijuana to patients under the new law, but not actually prescribe the drug. Patients with such "recommendations" would arguably have new legal protections from state prosecution.

## Does the Count Count?

According to Colorado exit polls, voters in that state strongly favored legal access to medical marijuana. However, officials from the secretary of state's office announced days before the election that petitioners failed to gather the necessary number of signatures to qualify the initiative for the ballot. State officials made similar claims

months earlier, but a Colorado judge ordered that the initiative appear on the November ballot after finding the officials made repeated and glaring errors in counting signatures.

Following the last-minute announcement from Secretary of State Vikki Buckley's office, political challenger Ric Bainter, along with dozens of Buckley's former temp workers, told reporters the office never completed the signature count. Petitioners have launched a legal challenge claiming Buckley improperly dismissed more than 4,000 valid signatures. A Colorado judge will examine the secretary of state's final count to determine whether any errors were made. If so, the judge will order the measure placed on the ballot in 2000.

## Voo-Doo Legislation

Voters in Washington, D.C., seemingly approved legislation legalizing the possession and use of marijuana under a physician's supervision. However, District officials have yet to count the votes. They say that a federal budget amendment spearheaded by Rep. Bob Barr (R-Ga.) forbids them from spending money on any initiative that minimizes marijuana penalties. Officials believe that spending the \$1.64 necessary to certify the results will violate the federal law. Exit polls conducted on election night indicate that nearly 70 percent of District voters approved the measure.

Lawyers for the American Civil Liberties Union challenge the constitutionality of Barr's amendment. "Congress wants

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*The overwhelming support for decriminalization in Oregon surprised advocates on both sides of the issue.*

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to prohibit any initiative that would reduce the penalties for marijuana, but allow any initiative that would increase those penalties [in the District]," says Arthur Spitzer, legal director for the National Capital Branch of the ACLU. "That is like saying voters can vote for Republicans, but not for Democrats."

The Department of Justice (DOJ), which agreed to represent Congress, wants the case dismissed. Papers filed by the DOJ called Congress's decision on I-59 "sensible." On December 18, U.S. District Judge Richard W. Roberts heard arguments from ACLU and District officials demanding the public release and ratification of the November 3 vote. Attorneys for the Justice Department countered that Congress has legal authority to bar the District from enacting laws they disapprove of. As of press time, Judge Roberts had not ruled on the case, but will likely do so in the near future. If he orders city officials to certify the I-59 vote, Congress then has 30 days to accept or veto the measure.

Congressman Barr, who remains steadfast in support of the D.C. ban, defended his measure to the media by asking: "Is there any legitimate speculation to think, given Marion Barry's history and the liberal leanings of D.C. voters, that they [would] decide to fight drugs?" Barr later added, "The

majority of the taxpayers who provide these dollars [for D.C.'s budget] are opposed to efforts to legalize [medical marijuana]," conveniently ignoring the results of votes in the states where Congress can't rig an election.

## Trying Again in Nevada

Nevadans approved phase one of a proposal to amend the state's constitution to allow patients to use marijuana legally upon the advice of a physician. The proposal also orders the legislature to "authoriz[e] appropriate methods for supply" of medical marijuana, and to provide for a confidential registry of patients allowed to use marijuana for medical purposes. It does not specify how much marijuana patients may legally possess or cultivate at one time.

Nevada law requires voters to re-approve medical marijuana again in the year 2000 before the measure can officially become law. Dan Hart, who spearheaded the initiative, predicts a second vote will yield similar results: "While this state is conservative, it's also very protective of individual rights," he says. "And this is about an individual who is ill having the right to use medication that helps with the symptoms of a disease."

Nevada politicians and law enforcement officials, including Gov. Bob Miller and Attorney General Frankie Sue Del Papa, remain opposed to the medical marijuana measure and will likely continue their campaign attacking it. Del Papa alleges that federal prohibition trumps any state legal protections the measure may grant if re-approved by voters in 2000. She told the Associated Press she will not enforce the measure without federal approval.

## The Feds Will "Have to Sue"

Oregon Attorney General Hardy Myers released guidelines in December alerting officers not to arrest or seize marijuana from patients complying with the state's new medical marijuana law. The guidelines recommend that police ask patients for the name of their diagnosing physician or for documentation from a doctor showing that marijuana might be therapeutically beneficial. They caution officers against destroying marijuana plants or seizing cultivation equipment from anyone who may be protected under the law. Police chief Rob Elkins of Molalla, who helped draft the guidelines, told *The Oregonian* that officers would return marijuana to patients later deemed in compliance with the law. Oregon's medical marijuana law took effect December 3.

Like Alaska's measure, Oregon's Initiative 67 allows patients with state permits to possess medical marijuana, and provides a legal defense for non-registered patients. The state Health Division will issue registration cards to patients and their caregivers after May 1. Reformers note that police may work with health officials to speed up the registration process.

To dissuade federal intervention, Americans for Medical Rights (AMR) encouraged states to adopt the permit-system model. "If the federal government wants to intervene and block the enforcement of these initiatives, it will have to sue and take legal action against the states," says Bill Zimmerman, who heads AMR, which backed many of 1998's initiatives.

Dave Fratello, spokesman for AMR, says that Oregon law

allows legislators to modify voter-approved initiatives, and considers political opposition possible. He called the 1999 legislature a "hostile environment" for medical marijuana, and warned that the spring session could be a "dangerous time" for the new law. Fratello says proponents are prepared to lobby against any legislative attempts to override Measure 67.

## What About That \$200,000?

Nearly 60 percent of Washington voters approved Initiative 692, allowing patients to legally possess up to a 60-day supply of medical marijuana. Reformers patterned the measure after an unsuccessful 1998 state senate bill that

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*Americans are not willing to undertake a free-market approach to drugs. But neither are they willing to accept the eroding civil liberties and human casualties that present policies impose.*

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sought to exempt patients using marijuana under the supervision of their physician from state criminal penalties.

Initiative 692 passed despite the best efforts of its chief opponent, Lt. Gov. Brad Owen. Months before the election, Owen's office received approximately \$200,000 in federal money from the Office of National Drug Policy to fund a statewide anti-drug campaign focusing on the alleged dangers of marijuana. Owen argued that the timing of the grant was a coincidence, and not related to his lobbying efforts against I-692. Federal law prohibits officials from using federal funds to influence the outcome of an initiative.

Washington's new law took effect December 3. While reformers expect most police and prosecutors to abide by the law, legal skirmishes could break out over what amount of marijuana constitutes a 60-day supply. Initiative sponsor Dr. Rob Killian says he will work with other doctors and the law enforcement community to educate them on how to best enforce the new law. "We're planning to work with the Washington State Medical Association and with sheriffs and police chiefs to do seminars at their next meetings so we can teach them the difference between medical and recreational use," he says.

AMR's Fratello labeled Washington's legislature as "relatively friendly." He says reformers do not anticipate any serious political opposition to the new law. He also notes that Senator Jeanne Kohl (D-Seattle), an outspoken proponent for medical marijuana, now occupies a leadership role in the legislature and would likely work to stave off any serious political challenge.

## "We'll Keep Winning More States"

Medical marijuana's clean sweep in the '98 polls heralds a pervasive shift in the public's attitude toward marijuana. Clearly, most Americans distinguish between medical and recreational use of marijuana. Most politicians, however, refuse to acknowledge any such distinction. It is also clear that voters' own experiences have shaped their views on the benefits of medical marijuana. Politicians and law enforce-

ment officials, who have vehemently protested reform of pot laws, have failed to sway the public. Voters now tend to reject ineffective, ideologically based policies for compassionate alternatives.

Speaking at the National Organization for the Reform of Marijuana Laws (NORML) 1998 national conference, Dr. Ethan Nadelmann of the Lindesmith Center policy institute asserted: "The medical marijuana issue is not a stepping stone to legalization. It is about one of the most fundamental injustices of the drug war." Evidently, American voters

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*Medical marijuana's clean sweep in the '98 polls heralds a pervasive shift in the public's attitude toward marijuana.*

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agree, and appear ready to do away with those injustices state by state, one vote at a time.

"We'll implement these initiatives . . . and we'll keep winning more states until national policy is changed," Bill Zimmerman declared shortly after the '98 election. "We are . . . at a point where your right to medicine is determined by where you live — that must change. . . . If the federal government doesn't . . . change its attitude, we're fully prepared to go to the rest of America with this issue." Zimmerman and other advocates will probably have to, and, if these trends continue, they will probably succeed. After decades of banging their heads against a brick wall in Washington, D.C., medical marijuana proponents have finally found a forum: the ballot box.

Voters in Arizona and Oregon confronted the heart of drug prohibition itself. In both instances, voters soundly rejected policies passed by their legislatures increasing penalties for certain drug-possession offenses. Their bold actions signified a solid rejection of our nation's chief anti-drug mantra: "Do drugs, do time."

### Arizona Votes Yes — Again

In Arizona, voters ousted a 1997 legislative measure gutting Proposition 200's provision on penalties for non-violent drug offenders. By voting "no" on Proposition 301, 52 percent of Arizonans mandated that all non-violent drug offenders shall be eligible for probation and drug treatment until their third offense. The courts cannot sentence these offenders to prison.

It marked the second time in two years that Arizona voters opted for treatment over jail for non-violent drug offenders. The measure solidifies public sentiment distinguishing between violent and non-violent drug users, and mandates legal distinctions for them.

Retaliating for the 1997 legislature's decision to override their earlier initiative, voters approved a measure restricting politicians' power to thwart the electoral will.

The new law requires a 75 percent majority of the state legislature to overturn any voter initiative. This hurdle, along with the departure of anti-drug zealot and former Gov. Fife Symington, will likely dampen legislators' enthusiasm for rebuffing the Arizona electorate. Michael Walz, an attor-

ney from Phoenix who specializes in drug cases, says that few legislators have stepped forward to protest the new measure. However, Walz speculates that some drug possession defendants may still receive jail time "as a condition of probation" despite the new law.

### In Oregon, Vote Is "Sacred"

Voters in Oregon voted 2 to 1 in November to reject a proposal that sought to impose criminal penalties for simple possession of marijuana. In doing so, the voters retained a 1973 state law decriminalizing minor marijuana offenses.

State Rep. Ben Westlund (R-Bend), who co-authored the marijuana recriminalization bill, said before the election that he would not reintroduce similar legislation if voters defeated his measure. "If the voters speak to an issue, I consider that next to sacred," he says. Another consideration: Democrats who opposed recriminalization in the months prior to the vote will fight any attempts by Republicans to take up the issue again this year.

The overwhelming support for decriminalization in Oregon surprised advocates on both sides of the issue. But it would have been more surprising had the electorate voted the other way. After all, Measure 57 asked voters to upset the status quo and repudiate a policy considered successful in the courts of public opinion for more than 25 years. And not just in Oregon. Nine other states have decriminalized minor marijuana offenses, and not one has taken steps to reinstate

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*The election demonstrates that Americans now reject the absurd dichotomy that we either maintain the status quo or embrace outright legalization.*

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criminal sanctions. Oregon's resounding vote may very well catalyze a long-overdue national debate over marijuana policies responsible for the arrest of over half a million Americans each year.

### Politicians, Beware

Voter sentiment in Arizona and Oregon shows that public support for "tough on drug" policies is waning. Anti-drug rhetoric that once scored political points has lost its luster and will almost surely tarnish further. Most importantly, the election demonstrates that Americans now reject the absurd dichotomy that we either maintain the status quo or embrace outright legalization. As with other issues, most Americans prefer a third, more moderate approach: one that tempers drug-war excesses and frames the debate with other public-health issues. Americans are not willing to undertake a free-market approach to drugs. But neither are they willing to accept the eroding civil liberties and human casualties that present policies impose. The 1998 initiatives may well serve as a model for future drug policies. Such efforts may even provide politicians a face-saving way out of the drug-war maze. That is, if politicians are paying attention, and if they care to listen. Those who fail to recognize this trend risk slipping into the political abyss. □

# The Rise of the New Libertarianism

by R. W. Bradford

Why are libertarians abandoning the obligation-based libertarianism of Rand and Rothbard and embracing the consequentialist libertarianism of Friedman, Hayek and Mises?

To be a libertarian is to believe that human liberty is a good thing — that it ought to be maximized and the power of government greatly reduced. But why do libertarians believe that liberty is a good thing? What's so good about liberty?

Virtually all libertarians agree that people can better flourish if they are free, that they will be more prosperous and happier when secure in their persons, property and liberty. For some libertarians, this is justification enough. They're for liberty because liberty is good for people. The libertarianism they advocate is *consequentialist*.

But for other libertarians, the fact that liberty helps people flourish and increase their happiness is not enough. They believe that liberty springs from objective morality. In particular, they believe that it is always wrong for one person to initiate the use of force against another. People who violate this moral imperative are doing wrong and ought to be condemned morally. Governments — or at least all those governments with which we are familiar — violate this moral law and ought to be condemned. For this sort of libertarian, liberty is not merely an expeditious social arrangement. It is a social arrangement entailed by an objective morality. This type of libertarianism is *moralistic*.

This is not to say that consequentialist libertarians are not moral; in fact, most consequentialists agree that it is wrong to initiate force. Where they part company from the moralist libertarian is that they see non-aggression as a general moral principle, one with profound and positive consequences, but *not* as a moral imperative from which all social and political thought can be derived.

Formulated by best-selling novelist Ayn Rand and appropriated and expanded by Murray Rothbard, moralistic libertarianism was largely responsible for the modern resurgence of libertarian thinking that began in the 1960s. But during the past few years, moralistic libertarianism has gradually but substantially declined, while consequentialist libertarianism

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has seen a corresponding increase.

This decline is evident when one compares the survey of libertarian opinion this magazine conducted in 1998 to that it conducted a decade earlier. Libertarian support for positions entailed by the non-aggression imperative dropped substantially, while support for positions coherent with the consequentialist approach increased. The perceived influence of Rand and Rothbard dropped significantly, while the influence of leading proponents of the consequentialist position — Ludwig von Mises, Milton Friedman and F.A. Hayek — increased. Most telling of all, disagreement with the non-aggression imperative rose from 10 to 50 percent.

As one who has occasionally criticized moralistic libertarianism<sup>1</sup>, I'd naturally like to credit its decline to the sorts of arguments that I have made. But the criticisms of its derivation and examination of some of its more absurd implications and its seemingly unsolvable problems, whether from me or from others, has played at most a secondary role in its decline in popularity.<sup>2</sup>

For one thing, respondents to our survey attributed relatively little influence to me or to David Friedman, the other critic of this sort of thinking whose name was included in our survey. David Friedman scored 1.91 in our 1988 survey and 1.88 in our 1998 survey. Readers of the 1988 survey were not asked to evaluate my influence, but the 1998 survey gave me a score of 1.90 — pretty much in the middle of the pack.

For another thing, most of what *Liberty* has published on this subject — from Friedman, me and others — appeared in

the distant past, between 1987 and 1989. It seems safe to say that a substantial portion of respondents were not readers of *Liberty* at that time. (*Liberty's* circulation has more than tripled since that period, and there has been considerable turnover among long-term subscribers.)

But the most important reason, I believe, is not intellectual at all. It is a practical one: the kind of libertarianism that grows out of the non-aggression imperative tends to promote dogmas and declamations, rather than dialogue. And dialogue is commonly necessary to change people's minds. For this reason, libertarianism deduced from the non-

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*The non-aggression imperative is a sort of trump card. In almost any political discussion, whatever cards are on the table make no difference — the non-aggression imperative wins the trick.*

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aggression imperative does poorly in the intellectual arena. In fact, it is usually counterproductive, and libertarians are finding that out.

Moralistic libertarianism offers a pretty easy answer to just about any kind of policy question. If a government policy involves the initiation of force, it's bad. If it doesn't, it's permissible. For the moralistic libertarian, the non-aggression imperative is a sort of trump card. In almost any political discussion, whatever cards are on the table make no difference — the non-aggression imperative wins the trick.

Invoking the non-aggression imperative in argument with other libertarians very often wins arguments with those who agree with it. But unfortunately, as those of us who have cited it in discussion with non-libertarians are well aware, a lot of people find it unconvincing. I understate: when we cite the non-aggression imperative in a discussion of a political issue, a lot of people just shake their heads and walk away thinking we're nuts.

There are a lot of reasons why our friends and neighbors don't respond favorably when we start talking the language of natural rights or the non-aggression imperative. Some of these reasons are psychological: some people fear independence and get comfort from the notion that others will take care of them. Some people have a vested interest in the state: the IRS agent or the police officer or the welfare recipient has a strong interest in the coercive state and isn't very fertile ground for arguing the non-aggression imperative.

But most of our friends and neighbors are not net recipients of government largesse. Why don't they respond favorably to our arguments about rights and non-aggression?

One hypothesis immediately comes to mind: they are intellectually lazy. They are reluctant to think very hard about hard questions of this sort, we tell ourselves. Either that, we think, or they're just plain stupid. The more intellectual among us is liable to state this sort of explanation in a more high falutin way: he might say something like the intel-

lectual atmosphere in the country is bad, people are deeply ingrained with anti-libertarian values because they've suffered through the public schools, etc.

I think there's another reason that libertarian rights theory isn't very convincing: it's not very sound. I think our friends and neighbors see through us and our arguments in ways that we don't. Many see our argument as a complicated word game, as mumbo-jumbo, as superstitious. I do not suggest that our friends and neighbors critically examine every jot and tittle of the argument for the non-aggression imperative. But I do believe that many of them are dubious about any kind of argument that seems so arcane and abstruse.

While most people accept non-aggression as a general moral principle, they are simply astonished at the extremes to which libertarians take it. They believe that when non-aggression becomes a categorical imperative, it leads to positions that they think are just plain crazy. "Would you privatize the police?" they ask. "Or do away with the courts? Or with publicly-owned streets and roads?" In response, we usually begin to defend our radical policy prescriptions as eminently practical. But most often, they walk away shaking their heads in disbelief, or (if they are friends) figure that our political beliefs are an eccentricity they must tolerate if they want to keep our friendship.

To the moralistic libertarian, the non-aggression imperative plays more or less the same role that the Bible plays for a

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fundamentalist Christian. Just as the fundamentalist finds the answer to every important question about life within the pages of the Bible, so the moralistic libertarian finds answers to nearly every social and political issue within the non-aggression imperative.

And just as the fundamentalist finds it impossible to have fruitful dialogue with those who do not accept the literal inerrancy of the Bible, so the moralistic libertarian finds it impossible to have fruitful dialogue with those who do not accept the non-aggression principle as an absolute moral imperative.

And like the fundamentalist, the moralistic libertarian finds himself carrying on serious dialogues only with others who share his faith. Just as the fundamentalist's discussion with non-believers is pretty much limited to trying to convince them of the literal inerrancy of the Bible (and thus to accept Jesus Christ as their personal savior), so the moralistic libertarian's discussions with non-believers is pretty much limited to trying to convince them that the non-aggression imperative is a proven and indisputable truth. Even the terminology overlaps: moralistic libertarians frequently speak about when and how they were "converted" and how many others they have "converted."

In sum, invoking the non-aggression imperative in politi-



cal dialogue is a dead end: unless the person we are speaking to agrees with it when the discussion begins, the dialogue simply ends.

But libertarians mostly want to move society toward freedom, or, at the very least, to impede the growing power of the state and the simultaneous decline of liberty. If invoking the non-aggression imperative fails to convince and, worse, ends dialogue altogether, then perhaps we should try another approach.

The other approach, not surprisingly, is consequentialism. If you cannot convince others to accept a somewhat peculiar moral law in one swallow — absurd implications and all — then perhaps you can convince them that the world would be a better place if a few more aspects of life were regulated by it, that is, if we had more liberty.

Consider how a moralist and a consequentialist argue against minimum wages. The moralist says something like, "Minimum wage laws threaten to imprison or fine anyone who purchases labor below a certain price. This threat constitutes an initiation of force, and it is wrong for government to initiate force, just as it is wrong for an ordinary person to initiate force . . ."

As I've already noted, just about anyone who isn't a moralistic libertarian will find this line of thinking unconvincing. "But," most people will respond, "why should businessmen be able to pay a wage so low that it won't support a family?" If the libertarian sticks to his invocation of the non-aggression imperative, most people will figure that they have no common ground for further discussion: the moralistic libertarian has pretty well reduced the entire discussion to a single proposition that seems crazy, at least when considered conclusive on any policy question.

The consequentialist takes a very different approach. He argues something like this: "The purpose of a minimum wage law is to raise the wages of people near the bottom of the wage scale. But the effect of minimum wage law is quite different: while it may raise the wages of a few low-paid people, it will raise the cost of hiring low-skilled people to a level at which many business owners will either no longer be able to operate profitably, and thus go out of business, or will replace the low-skilled employee with a piece of automated equipment. The net effect is to increase unemployment among the marginally skilled. Is that what you really want to do?"

This argument, in more elaborate form, may or may not convince the non-libertarian. But whether it does or not, it engages him intellectually. The non-libertarian might respond, "Well, I once worked at a McDonald's when the minimum wage was raised, and all that happened was that everyone, including me, got a raise. No one was laid off. So I think you're wrong." The critic of minimum wage then might respond, "Well, in some cases, the job-destroying effect of minimum wage occurs only at the margin. In certain cases, the employer can afford to pay the higher wages. But even in these cases, he has incentives to automate . . ."

The process, I suggest, is a subtle one. It's not as if suddenly a light goes off in a person's mind one day while he is arguing from the non-aggression imperative. As I noted above, the moralist libertarian is just as convinced of the ben-

eficial results of liberty as the consequentialist. He just doesn't find the consequences as compelling as the non-aggression imperative.

So over time, the libertarian enamored with the non-aggression axiom gradually throws in consequentialist arguments more and more frequently. And he prefers the results. No longer do friends and acquaintances shake their heads and walk away when he states an opinion. They may still find him annoying, they may find his argument vexing, they may still support the growth of power and oppose liberty. But at least they can engage in sensible discussion with him.

Consider for a moment the work of the Cato Institute, the largest and most influential libertarian think tank. Cato

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*To the moralistic libertarian, the non-aggression imperative plays more or less the same role that the Bible plays for a fundamentalist Christian.*

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seems to hold the moralist persuasion: it formerly employed Murray Rothbard and has lately cosponsored several events with the neo-Randian Institute for Objectivist Studies. In *Libertarianism: A Primer* David Boaz, Cato's executive vice president, described the non-aggression imperative as "a central principle of libertarianism" and seems to come close to reading out of the libertarian movement those who disagree with it (74, 82-3).

Yet when Cato engages in its primary endeavor — analyzing policy proposals — moralistic arguments are conspicuous by their absence. I just grabbed my 25 Cato Policy Reports off the shelf in my library. Only one of them paid the slightest attention to morality, "The Moral Case for Social Security Privatization," by Daniel Shapiro. Even here, Shapiro didn't really argue morality, at least not libertarian morality. Instead, he argued that privatization is defensible "from virtually every perspective in political philosophy," including egalitarianism, welfare theory, communitarianism and any argument framed "in terms of community."

To be sure, the consequentialist approach isn't a magic bullet. It doesn't convince all comers. But some of those who hear the consequentialist arguments react favorably. Gradually, the moralist libertarian begins to think more and more like a consequentialist. Meanwhile, he recalls the problems in the derivation of the non-aggression imperative, its seemingly absurd consequences, its unresolved (and seemingly unresolvable) issues, and his belief in the moralist position begins to decline.

This occurs more often among those whose occupations involve one-on-one communication with others. Scholars, newspaper reporters, policy analysts, and others engaged in real-world dialogue with non-libertarians tend to discover more quickly the futility of invoking moralist libertarian thinking. I daresay few moralist libertarians spend much time engaged in real-world politics before they begin to use consequentialist arguments. Anyone who's tried canvassing

their neighborhood spreading the good word of Murray Rothbard quickly has enough doors slammed in his face to convince him to try another approach, or to abandon his endeavor.

It's an evolutionary process driven by incentives. Moralistic libertarianism may appeal to a small number of

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*The consequentialist approach brings fewer spectacular conversions, but day in and day out it brings better results: few slammed doors, fewer closed minds, more dialogue, more real progress.*

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individuals looking for a simple rationale to defend their beliefs, and even sometimes results in spectacular "conversions" of an almost religious nature.

The consequentialist approach brings fewer spectacular conversions, but day in and day out it brings better results: few slammed doors, fewer closed minds, more dialogue, more real progress.

In an important sense, the moralist and the consequentialist are speaking different languages. The moralist speaks a language that is foreign to most people, while the consequentialist speaks the language of ordinary human beings. So while the moralist fails, the consequentialist succeeds.

Some libertarians who accept the non-aggression impera-

tive begin to speak two different languages: when speaking with others within their faith, they speak the language of inalienable rights and the non-aggression imperative, but when speaking with those outside their movement, they speak the language of consequentialism. Many shift effortlessly from one vernacular to the other.

But libertarians are part of a long rationalist tradition, and many are not very happy about maintaining the dissonance that results from trying to hold both positions. The incentives for consequentialism continue to grow stronger, as the mainstream proves more tolerant of libertarian notions and even moves toward libertarianism.

That's why vastly more libertarians reject the non-aggression imperative today than ten years ago. And that is why this trend is likely to continue. □

## Notes:

1. See, for example, "The Two Libertarianisms," *Liberty*, May 1988, written under the pseudonym "Ethan O. Waters."
2. Among its problematic implications: in a whole host of situations, it requires its adherents to refrain from initiating force that would save their lives or the lives of their loved ones at negligible cost to those against whom the force is initiated. Among its seemingly insoluble problems: the threshold of force (if one shoves a knife through the ribs of another, it is plainly force; but what if one touches another with a feather, or exhales a molecule of nitrogen that touches another?), and the origin of property (if one accepts the Lockean theory of "mixing one's labor with the soil," there is a plain implication that land that remains unmixed with labor, i.e. wilderness, cannot be owned at all). And worse still, non-aggression is quite consistent, under certain circumstances, with totalitarianism (cf. "The Apostasy of Robert Nozick," *Liberty*, September/October 1987).

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## Reflections, continued from page 32

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would make divorces less litigious and emotionally draining is problematic, but at least there would be fewer surprises.

The way things now stand, the State insinuates itself in the marriage contract by setting up standards for both starting and dissolving a marriage. A marriage contract is an agreement between consenting, competent adults. Beyond that, the government has no interest in the arrangement. Further, by letting such adults enter into marriage without explicitly being aware of the common law implications of that contract, the State is a party to fraud and discourages personal responsibility. In most instances, contracts are enforceable only if both sides fully recognize all of the terms and implications beforehand. Yet the State presently allows most marriage contracts to proceed without these safeguards.

It's time to abandon our romanticized notion of marriage, at least so far as it leads people to enter into contracts whose terms they do not understand, and to view pre-nuptial agreements as a wet blanket on romance. We live in a society where half of all marriages fail. If knowledge of what a marriage contract entails causes a relationship to fall apart, then it must have been pretty fragile to begin with. Better to have the divorce before the wedding.

—guest reflection by John T. Wenders

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## "America's Deconstitutionalized Zone,"

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by John Robie, continued from page 23

advocate pursuing a combination of policies based on science and common sense that reduces the harm done to society.

If what we have tried is not working, is it not folly to continue down the same path? Drugs are more plentiful and stronger now than they were before the war began. The Dutch have set an example we would do well to consider: a policy that allows people to smoke marijuana in coffee houses. Survey research shows that only 7.2 percent of the kids between the ages of 12 and 15 have experimented with pot in the Netherlands. That compares with a 13.5 percent rate in the United States.

Clearly, we need a different approach. As Milton Friedman once wrote to Drug Czar William Bennett: "[t]he path you propose of more police, more jails, use of the military in foreign countries, harsh penalties for drug users, and a whole panoply of repressive measures can only make a bad situation worse. The drug war cannot be won by those tactics without undermining the human liberty and individual freedom that you and I cherish." □

# Game, Set, Match

by Mark Skousen

Friedman and Samuelson square off in the match of the century.

Two famous economists engaged in a gigantic academic struggle between State and Market in the 20th century: MIT's Paul A. Samuelson, the supreme advocate of government interventionism, and Chicago's Milton Friedman, the champion of free-enterprise capitalism.

Both are in the twilight of their careers. Samuelson, now emeritus at MIT, just celebrated the publication of the 50th anniversary commemorative edition of his famous textbook, *Economics*. Friedman, long gone from Chicago and now a research fellow at the Hoover Institution, recently completed with his wife Rose their autobiography, *Two Lucky People*.

Samuelson and Friedman have a lot in common. Their lives have spanned nearly the entire 20th century (Friedman was born in 1912; Samuelson, 1915). Both are secular Jews, math whizzes, prolific writers and brash egotists. Each won the John Bates Clark Award, a prize given to the most promising economist under the age of 40. Each served as president of the American Economic Association, and each received the Nobel Prize in Economic Science. Both attended the University of Chicago in the 1930s.

And both play tennis. Imagine, if you will, an intellectual tennis match between these two titans of economic wisdom. On the court of ideas, these rivals have engaged in a dramatic, prolonged battle in which the momentum has shifted back and forth on its way to a decisive finale. Here's a blow-by-blow account.

## 15—Love: Samuelson Scores First

Samuelson scored the first point decisively for the collectivists when McGraw-Hill published the first edition of *Economics: An Introductory Analysis* in 1948. The "cocky, even brash" (his words) player from MIT smashed a hard first serve, a shot so powerful that Friedman and other free marketers were caught flat-footed. The 33-year-old wunderkind was in his prime, full of fresh, brilliant ideas that filled the audience and the other players with awe-struck admiration.

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They just couldn't get enough of him and his new technique. Every major university, from Harvard to Berkeley, adopted his approach.

His opening shot was the "New Economics" of John Maynard Keynes, the British economist and Samuelson's coach, whose *The General Theory of Employment, Interest, and Money* (1936) overthrew the classical school of Adam Smith. Samuelson was the first textbook writer to formalize Keynes's theory about how an activist government could get us out of a slump. Didn't World War II prove that? Moreover, free-market capitalism was like an automobile "without a steering wheel," prone to "acute and chronic cycles" in unemployment, output, and prices. A laissez-faire economy could be stuck at "unemployment equilibrium" for years, as it was during the decade-long Great Depression.

According to the Keynesians, the classical economists had no explanation for a prolonged slump. During periods of acute unemployment, the classical model (balanced budgets, virtue of thrift, gold standard, laissez-faire government) doesn't work. The "do nothing" policies of the conservatives failed to jump-start the depressed economy. Keynes — and his Thomas Huxley, Samuelson — introduced a new "general" theory of income determination, based on "aggregate demand." New tools of "macro" economics were introduced in the classroom — the multiplier, the propensity to consume, the paradox of thrift, and the Keynesian cross (Samuelson's own creation) — all spelled out in simple language and enticing formulas in Samuelson's first edition.

Behind the wizardry of the New Economics was this driving thesis: When the dark forces of ignorance and "waves of irrational psychology" in the private sector curtail spending, who can step forward and rebuild "aggregate demand"? Only the government, which has the fiscal power to engage in "countercyclical demand management" — a sophisticated term for deficit spending and priming the pump. According to the Keynesian model, in times of unemployed resources and falling aggregate demand, everything goes into reverse: balanced budgets, the gold standard, saving and wage cutting are all counterproductive. The key to recovery is

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*Samuelson and Friedman have a lot in common. Both are secular Jews, math whizzes, prolific writers and brash egotists. Each received the Nobel Prize in Economic Science. And both play tennis.*

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higher consumption, deficit spending, and inflation. About the only thing the classical economists and the Keynesians could agree on was tax cuts; both favored them during a recession.

### Keynes Made Simple

According to Samuelson, the classical model of Adam Smith was a "special" case that applied only in times of full employment. The Keynesian model was a more "general" case, applying whenever unemployment existed. Samuelson suggested that less-than-full-employment existed most of the time.

Keynes's theory and book were complex and unreadable to the general public, but Samuelson wrote in clever, clear prose. His textbook was a phenomenal success, and 90 percent of the economics departments used his textbook by the end of the 1950s (over a million copies had sold by the 1961 edition). As Mark Blaug observes, Samuelson's book "marked the final triumph of Keynesianism."

Why did *Economics* flourish so? Not because Samuelson was an unrepentant socialist. Quite the contrary. His version of Keynesianism was widely considered the salvation of capitalism. (Hence the subtitle of Robert Skidelsky's penetrating biography, *John Maynard Keynes: Economist as Savior, 1920–1937*.) Under the able leadership of an activist big government, the "mixed" capitalist economy could flourish. There was no need for a totalitarian socialist regime, wage and price controls, or other forms of extreme interventionism. With the State's clever manipulation of taxes, spending, interest rates and money, a country could have full employment and the free forces of capitalism could prosper. In short, Keynesianism is a mild form of statism, it calls for control over the macro-economy, but leaves the micro-economy to its own devices. It saved us from the two extremes of *laissez-faire* and Marxism. It was the golden mean of economics.

The first point scored by Samuelson was so dramatic that his opponent looked depressed and overwhelmed. Milton Friedman and the Chicago school of free-market economics that he led were mostly ignored and even belittled by the

profession. Its focus on monetary policy was given short shrift compared with the alleged prowess of fiscal policy. Samuelson himself declared in 1955, "Today few economists regard Federal Reserve monetary policy as a panacea for controlling the business cycle." The leaders of the other school of free-market economics, the Austrians, led by Ludwig von Mises and Friedrich Hayek, fell into relative obscurity, unable to hold full-time positions in any major university. American "Austrians," such as Henry Hazlitt and Murray Rothbard, attacked Keynesian economics, but without effect. At one point, even some conservatives found Keynesianism amenable. Writing in the *National Review* ("Must Conservatives Repudiate Keynes?," June 4, 1960), Ernest van den Haag naively suggested that Keynesian theory was "politically neutral," and did not necessarily support big government.

### 30–Love: Central Planning Works

The second volley was just as powerful as the first, and Samuelson quickly got a 30–love lead.

Data from the Central Intelligence Agency and other government sources revealed that the Soviet Union was achieving extremely high rates of economic growth without the benefits of free markets and private property. Socialist central planning appeared to work better than the chaotic forces of free enterprise. At first, Samuelson was skeptical. He was highly critical of Karl Marx, the father of socialism, and

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*On the court of ideas, these rivals have engaged in a dramatic, prolonged battle in which the momentum has shifted back and forth on its way to a decisive finale.*

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declared the U. S. brand of "mixed-enterprise system" far superior to Soviet central planning. But by the fifth edition (1961), he reversed course and accepted presumed superior growth rates under communism. For the next several editions, his book included a graph showing a narrowing gap in economic standards between the United States and the USSR. The 12th edition (1985) printed a table declaring boldly that between 1928 and 1983, the Soviet Union had grown at a remarkable 4.9 percent annual growth rate, a rate exceeding that of the United States, the United Kingdom, or even Germany and Japan. Samuelson's acceptance of Soviet growth statistics was so blind that by the 13th edition, published in 1989, one year before the collapse of the Berlin Wall and the Soviet economic system, he solemnly declared, "the Soviet economy is proof that, contrary to what many skeptics had earlier believed, a socialist command economy can function and even thrive."

On the court of alternative ideas, the free-marketeers had little to serve in return. Some conservatives even capitulated on Soviet statistics. Henry C. Wallich, a Yale professor and member of the Council of Economic Advisers under Eisenhower, wrote a book, *The Cost of Freedom* (1960), claiming that liberty comes as a cost (lower economic

growth) rather than a benefit. Samuelson endorsed the book.

## 40—Love: The Dominance of Keynesian Economics

By the late 1960s, the collectivists appeared on the verge of complete victory in the academic world. The “New Economics” was tested in 1962 when the Kennedy administration cut taxes and deliberately increased the deficit. It seemed to work; the economy grew rapidly. Samuelson’s *Economics* dominated the classroom and consistently sold more than 300,000 copies a year in the 1960s, its high water mark. It was translated into many languages (by now over 40). Other popular texts, such as Campbell R. McConnell’s *Economics*, were viewed as Samuelson clones. To top it all off, in 1970 Samuelson became the first American economist to win the Nobel Prize in Economics.

It was another ace for Samuelson. Friedman stared in disbelief.

All this time, Friedman worked on his own serve, trying to build up strength to counter Samuelson’s powerful volleys. His many years of research and hard work paid off with the publication of two works: *Capitalism and Freedom* (University of Chicago Press, 1962) and *A Monetary History of the United States, 1867-1960* (Princeton University Press, 1963), co-authored by Anna J. Schwartz. Yet Friedman’s initial response appeared weak in the face of Samuelson’s prowess. It seemed almost an impossible task to overcome the Keynesian juggernaut.

## 40—15: Inflationary Recession and the Collapse of the Keynesian Consensus

Samuelson seemed on the verge of winning the match. Amazingly, however, before the statist could declare total victory on the court of ideas, the free-market opponents rallied back, surprising everyone. They scored a point, and it was a major blow to the statist’s egos.

The dramatic, painful events of the 1970s forced the economics profession to re-evaluate its new dogma of fine tuning the economy and the government’s alleged power to end recession/depression forever. Inflation had promised to bring prosperity, but had produced global distress — commodity shortages, an energy crisis, and sharp downdrafts in the securities markets. The world faced a new phenomenon, an inflationary recession, something the Keynesians had not anticipated in their theory of aggregate demand. It was a world turned upside down. Deficit spending wasn’t a cure-all after all. As James Callaghan, the British prime minister, said in 1977, “We used to think you could spend your way out of a recession. . . . I tell you, in all candor, that that option no longer exists, and that insofar as it ever did exist, it only worked by injecting bigger doses of inflation into the economy followed by higher levels of unemployment as the next step. That is the history of the past 20 years.”

The unexplained events of the 1970s required Samuelson to consider alternative theories. The axis of influence seemed to be shifting from Samuelson and the Cambridge school to Friedman and the Chicago school. Friedman effectively refuted the Keynesian view that the Great Depression was caused by market forces. His monumental *Monetary History* demonstrated that government’s inept Federal Reserve

allowed the money supply to decline by one-third. Government, not free enterprise, caused the Great Depression. By the early 1970s, Friedman’s work could no longer be ignored.

In his ninth edition (1973), Samuelson cited Friedman several times, even recommending his now popular book *Capitalism and Freedom* as a “rigorously logical, careful, often persuasive elucidation of an important point of view.” Samuelson no longer ridiculed monetarism. “Both fiscal and monetary policies matter much,” he declared in 1973. It didn’t hurt that free-market economist F.A. Hayek won the Nobel Prize in 1974, Friedman in 1976.

## 40—30: Thatcher/Reagan and the Supply-side Revolution

The psychological edge of the match had begun to shift to the opposition. The collectivists were faltering, and the free

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marketeers were gaining strength. Friedman scored the next shot and now trailed by only a point.

What brought them back? The election of Margaret Thatcher in Britain and Ronald Reagan in the United States introduced an alternative theory, supply-side economics, heavily influenced by the Chicago school. Keynesian economics had focused solely on “aggregate demand” and had ignored “aggregate supply.” The supply-siders, led by Arthur Laffer, Paul Craig Roberts, and Jude Wanniski, contended that national output could benefit from tax cuts, deregulation, and privatization of inefficient government services. Inflation could be curtailed without recession by reducing monetary growth, government spending and taxes. Under the growing influence of the supply-siders, the profession developed a consensus, creating a new model of aggregate supply and demand (AS-AD). In the 1985 edition, Samuelson, running out of breath, joined forces with his new partner, Yale professor William D. Nordhaus, and introduced AS-AD graphs for the first time.

Samuelson could not ignore other burgeoning schools of free-market economics: the theory of rational expectations from Robert Lucas, Jr. (another Chicago economist), and public choice theory, advocated by James Buchanan and Gordon Tullock. The MIT professor even cited the Austrian economists Ludwig von Mises and Friedrich A. Hayek for their deft criticisms of socialist central planning.

## Deuce! The Collapse of Soviet Communism

The free marketeers came from behind to tie the score when the Berlin Wall fell in late 1989; it became obvious with

the collapse of the Soviet Union that its economic miracle had been a fraud.

Before the collapse of socialism, Samuelson had written that socialist central planning could "function and thrive." In 1992, Samuelson dropped the word "thrive" and put question marks next to the Soviet growth statistics. Late editions identified the Soviet system as "the failed model." Samuelson candidly admits that he and the other textbook Keynesians double-faulted in failing to anticipate the collapse of communism: "In the 1980s and 1990s, country after country threw off the shackles of communism and stifling

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central planning — not because the textbooks convinced them to do so but because they used their own eyes and saw how the market-oriented countries of the West prospered while the command economies of the East collapsed."

### Advantage, Free Market

The game is not over, but the pattern is clear. Friedman had captured the momentum, and quickly scored another decisive point. Advantage, free market, and match point.

Samuelson just released his 50th anniversary (16th) edition of *Economics*, coauthored by Nordhaus. By now, he's reconsidered his position in many areas. He has deleted the paradox of thrift, an anti-saving concept long central to the Keynesian message, replacing it with a two-page segment on the "precipitous decline" in the nation's saving rate, blamed on Social Security, budget deficits, and taxes. Deficit spending, once considered beneficial, now causes "crowding out" of vital investment; and "a large national debt tends to reduce a nation's growth." No one could imagine the world's top Keynesian making such a statement a few decades ago. He now deems fiscal policy "moribund," and declares "Stabilization policy will be performed by Federal Reserve monetary policy." And Adam Smith is cited slightly more often than Keynes!

Friedman was beaming across the net. Clearly Samuelson was giving up the fight.

A new generation of neo-Keynesians seems already to have switched. Greg Mankiw, the young Harvard economist whose new textbook is being hailed as the "next Samuelson," has done something no other textbook writer dared: He puts the classical model ("the real economy in the long run") ahead of the Keynesian model. In a counterrevolutionary way, Mankiw has re-

established the classical model of Adam Smith as the "general" theory and Keynesian economics as the "special" case. His popular textbook leaves out most of the Keynesian apparatus: no consumption function, no Keynesian cross, no propensity to save, no paradox of thrift — and only one small reference to the multiplier! That's quite remarkable for a man who named his dog Keynes.

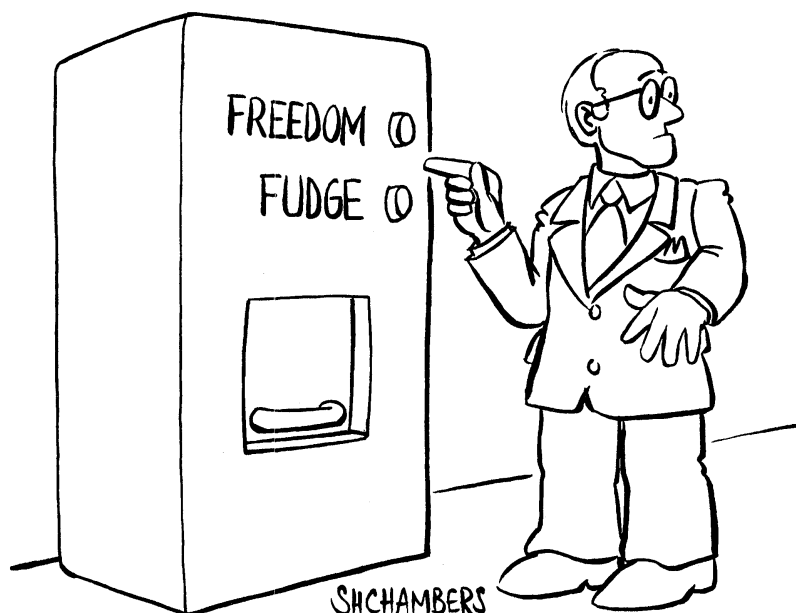
### Samuelson Throws His Racket

The final rounds were frustrating for the old Keynesian. Sensing defeat, Samuelson lashed out at his opponents and the umpire. In the "valediction" of the 50th anniversary edition, Samuelson had harsh words about the new market economy. "Ours is the 'ruthless economy,'" he complains, which creates excessive competitiveness, layoffs, and "growing" inequality. "Old-fashioned loyalty to firm or community counts for little." (Perhaps he should read David Packard's *The HP Way*, or note the growing number of firms offering profit sharing and 401(k) plans.)

But in the court of public opinion and in the political arena, the match is clearly won. The debate in Washington is no longer whether to cut back taxes, but which taxes to cut and how much; not whether to balance the budget, but how soon and by what means; not whether government spending should be limited, but which programs. In Britain, Labor Party prime minister Tony Blair appears more fiscally conservative than Margaret Thatcher. Japan is finally cutting tax rates. And the Asian model of industrial planning is giving way to democratic capitalism.

The late Kenneth Boulding once wrote an essay entitled, "After Samuelson Who Needs Adam Smith?" Now an alternative title comes to mind: "After Adam Smith Who Needs Samuelson?" Even the Nobel Prize committee in Sweden has gotten the message: In the 1990s, over half the prizes in economics have gone to professors at the University of Chicago.

Game, set and match. Friedman won the ultimate prize — the World Open. □





# Reviews

*The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*, by William G. Bowen and Derek Bok. Princeton University Press, 1998, 473 pages.

## Affirmative Deception

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Hal R. Arkes

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"A new study of elite colleges provides striking confirmation of the success of affirmative action . . ." writes the editor of *The New York Times*. "Two eminent American educators have taken a good hard look at affirmative action in college admissions, and their conclusion is that by virtually any reasonable measure, affirmative action works," writes William Raspberry in the *Washington Post*. The study referred to is the book, *The Shape of the River*, by William G. Bowen and Derek Bok.

The authors, former presidents of Princeton and Harvard respectively, present the results of a survey of students who entered any one of 28 selective colleges in the fall of 1951, 1976, or 1989, with primary emphasis on the latter two classes. The survey sought to compare not only the academic performance of blacks and whites, but also their subsequent professional achievement, civic participation, life satisfaction, and retrospective opinion of their undergraduate experience.

What makes this survey particularly significant is that many of the black students in the 1976 and 1989 classes had been admitted to these colleges under affirmative action programs. Hence the

results of the study could provide some important evidence about the hypothesized benefits and dangers of such programs.

Some of the results in *River* were consistent with data long known to social scientists. For example, Bowen and Bok examined the admissions data of students who applied to a subset of five of these 28 colleges in 1989 and found that blacks scored 186 points lower than whites on the combined verbal plus mathematical subtests of the Scholastic Aptitude Test (SAT). Among students in the 1989 cohort, the overall graduation rate from all 28 schools in the sample was 15 percent lower for blacks than for whites. Data such as these are not what prompted newspaper editors and reviewers to discuss this book, however.

The focus of the discussion and the truly newsworthy results are much more positive. For example, the average graduation rate of blacks at these 28 selective colleges was 75 percent, which is much higher than the average for either blacks (40 percent) or whites (59 percent) at colleges nationwide. These data suggest that many of those admitted under affirmative action programs have been able to earn a degree at institutions that are selective and which presumably have the most challenging curricula. Additional survey

results further supported the thesis that affirmative action programs are achieving their goals. Approximately 40 percent of black graduates who entered these 28 selective colleges in 1976 went on to earn advanced degrees. The average annual earned income in 1995 for blacks who matriculated in 1976 was approximately \$85,000 for men and \$65,000 for women. Ninety percent of blacks in the survey were satisfied or very satisfied with their college experience. A large number of these men and women subsequently participated in civic life by leading youth, educational, or community service organizations.

In addition to these tangible benefits, Bowen and Bok point to some intangible, interpersonal benefits of affirmative action policies. In the *River*

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*Many observers have hailed the River survey not merely for confirming the wisdom of affirmative action programs but also for providing much-needed empirical data. However, no one has yet evaluated the Bowen and Bok data.*

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study, almost 90 percent of blacks reported having known two or more white classmates well, and 56 percent of whites reported having known two or more black classmates well. When members of the 1989 cohort were asked to rate their perception of their alma mater's contribution to their ability to work and get along well with people of other races and cultures on a 1 to 5 scale, over 60 percent of both races chose either a 4 or 5 rating — the top two points on the scale.

Bowen and Bok also note that the *River* data counter the "fit" hypothesis proposed by critics of affirmative action. The fit hypothesis holds that affirmative action programs actually

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harm minority students by enticing them to attend schools whose students hold credentials superior to their own. As a result of their poor fit, minority students perform more poorly than they would have performed had they attended a school more congruent with their qualifications. Advocates of the fit hypothesis contend that too many minority students who are capable of obtaining a perfectly acceptable degree at a second-tier institution become sacrificial failures at elite schools where their enrollment serves primarily to enhance the diversity statistics celebrated by those schools' administrators.

Some data presented in the *River* survey would seem to support this hypothesis. For example, the lower graduation rates and grade point averages (GPAs) of black students compared with white students could be symptomatic of a poor match between the lower credentials of black students and those of their white cohorts who comprise the majority of the student body.

However, at least two survey results from Bowen and Bok's study cast doubt on the fit hypothesis. First, the most selective schools graduated a higher proportion of black students than did somewhat less selective schools. The fit hypothesis would predict the opposite, because the fit would be better at the relatively less selective schools than at the most elite schools. Second, black students at the most selective institutions were retrospectively more satisfied with their college experience than were black graduates of the somewhat less selective institutions. Again, the fit hypothesis would predict the opposite, because those who attended the most selective institutions should be most dissatisfied with the poor fit.

Finally, Bowen and Bok present evidence that minimizes one of the putative costs of affirmative action — the number of white applicants rejected in favor of blacks with weaker credentials. The authors examined the data from five selective colleges where detailed admissions data were available from all of their applicants. Had affirmative action not been used at these institutions in 1989, the percentage of black matriculants would have dropped from 7.8 percent to either 2.1

or 3.6 percent, depending on which auxiliary assumptions are made.

However, the overall probability of white student admission would have risen by only 1.5 percentage points (from 25 to 26.5 percent) if all the slots taken by affirmative action beneficiaries had been filled by whites denied admission despite higher test scores. Bowen and Bok conclude that even if affirmative action programs had not been in place, "... nearly as many white applicants — including an appreciable number of valedictorians and other highly talented people — would still have been disappointed" by being rejected at these institutions (p. 36). In other words, affirmative action policies make only a minimal impact on white student admissions, while markedly improving black student admissions.

Bowen and Bok use the analogy of parking spots reserved for handicapped drivers. Scores of frustrated non-handicapped drivers circling the parking lot think they would have gotten the open spots now reserved for handicapped drivers. In fact, only a few could have found space to park in the few designated spaces.

Many observers have hailed the *River* survey not merely for confirming the wisdom of affirmative action pro-

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*By giving the funding to Smith, I have caused Smith to enjoy the success that appears to confirm the wisdom of my funding decision. Had I given the money to Jones, it is entirely possible that Jones would have garnered the prestige, publicity, and opportunities that Smith received.*

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grams but also for providing much-needed empirical data to replace the anecdotes and hyperbole substituting for reasoned discussion. However, no one has yet evaluated the Bowen and Bok data.

## The "Treatment Effect"

Researchers in judgment and decision making often speak of a "treat-

ment effect." Similar to a self-fulfilling prophecy, a treatment effect occurs when a decision causes an outcome that appears to confirm the appropriateness of the decision. Suppose that I work for the National Endowment for the Arts (NEA) and I have to decide which of two young playwrights — Jones or Smith — deserves a prestigious grant. Smith seems somewhat less qualified than Jones. But I decide to give the funding to Smith, based on my feeling that Smith deserves some special consideration.

The results of my decision:

1) Smith produces the play in New York with the money I have provided. Jones does not have the funds to do so. He produces his play at a suburban high school, where he has gone to teach.

2) The arts community knows of Smith's highly prestigious award, so his play receives publicity and critical acclaim. Members of the arts community invite Smith to many events, and Smith takes advantage of subsequent opportunities that arise in connection with the play's success. Meantime, only the parents of his high school students see Jones's first play.

3) The art school Smith and Jones both attended sends them a survey. Smith reports much higher satisfaction with his education than does Jones.

4) As the NEA bureaucrat who awarded the grant to Smith, I congratulate myself on the astute judgment I manifested by giving the funding to the highly successful Smith rather than to the extremely obscure Jones.

To recapitulate, a treatment effect occurs when a decision causes an outcome that appears to confirm the appropriateness of the decision. By giving the funding to Smith, I have caused Smith to enjoy the success that appears to confirm the wisdom of my funding decision. Had I given the money to Jones, it is entirely possible that Jones would have garnered the prestige, publicity, and opportunities that Smith received, and I would have concluded that my choice of Jones was wise.

With this understanding of a treatment effect in mind, let us re-examine the evidence adduced by Bowen and Bok for the success of affirmative action at elite colleges. The initial decision in this case is that of the elite school administrator who decides to admit

minority students whose qualifications are good, but nevertheless lower than those of non-minority students. This initial decision leads to the following results:

1) Although the dropout rate is higher for minority students than for non-minority students, most minority students do graduate with an extremely valuable diploma in hand.

2) With this diploma, minority and non-minority students obtain admission to professional schools and/

or excellent jobs.

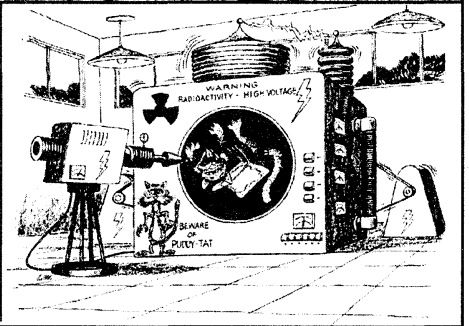
3) Minority student graduates report very high levels of satisfaction with their college experience.

4) High-level administrators of two of these institutions write a book expressing satisfaction with the wisdom of their judgment in admitting minority students.

### So What's the Problem?

At this point the reader may wonder what's wrong with a treatment

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effect if it promotes an outcome that everyone enthusiastically endorses, namely, the success of many minority students. The answer requires consideration of some possible disadvantages of treatment effects.

The first consideration is that the university that chooses the potential enrollee also evaluates that person for several years and eventually decides whether to confer a degree. As shown by research done by Robert Rosenthal and others on the self-fulfilling proph-

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*Affirmative action turns away from college people who did their homework and earned good grades in favor of the less-accomplished. In short, it turns the purpose of grading on its head.*

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ecy, those who deem a person likely to succeed tend to do things to ensure that person's success. Therefore a university's decision to confer a degree upon a student is not a good independent measure of the student's success. A better measure would involve performance on tests such as the bar examination or the medical license examination. Since university personnel evaluate students' course performance but do not grade professional certification examinations, the latter better measure the effects of affirmative action.

An article by Linda Wightman in the April 1997 *New York University Law Review* presents evidence that African-American beneficiaries of affirmative action programs failed the bar exam at about three times the rate of African-American non-beneficiaries (27.14 percent vs. 9.76 percent). A similar analysis on medical student admissions by Davidson and Lewis was reported in the *Journal of the American Medical Association* in October 1997. In comparison with their regularly-admitted counterparts, special admissions medical students were less likely to graduate, receive high grades in their core basic and clinical science courses, or be invited to join the medical honors society. A more independent measure of

their performance is their score on the National Board of Medical Examiners examination. In comparison to their regularly-admitted counterparts, special admissions medical students were less likely to obtain high scores on Parts I and II of that examination and were more likely to repeat it in order to qualify for their medical license. In fact, the special admissions group members were over six times as likely to fail Part I of the exam. The authors point out that the two groups were quite similar in their performance during the completion of their residency training, but the latter measure was based on the decades-old memory of residency program directors who might not have supervised the students in question.

Why do affirmative action beneficiaries not perform very well on these independent measures? Grade inflation is one likely answer. In the 1992-1993 academic year, 90 percent of the grades received by students at Stanford University, a member of Bowen and Bok's most selective group of colleges, consisted of A's and B's. In the fall of 1996 at Duke University, another of the authors' highly selective schools, the average GPA was 3.3, which represents approximately a B+. In view of such circumstances, it is not surprising that so many students do quite well at selective undergraduate institutions.

Another consideration in evaluating the success of affirmative action programs is the relative benefits and costs of a treatment effect at schools of various prestige levels. As Bowen and Bok point out, the benefit of a degree from the most prestigious schools (e.g., Princeton, Yale) in their sample of 28 more than makes up for the cost of a lower GPA obtained by the students who attend those schools rather than State U. A marginally qualified student may struggle to achieve a modest GPA at Prestige U, but future employers and admissions committees apparently put far greater weight on the name of the university than on class rank or GPA. Prestige U has an extremely valuable cachet, whose enormous effect on a student's subsequent income and professional school admittance can offset a suboptimal fit. By dint of the decision to accept the student, the admissions officer at Prestige U encourages a number of students to enroll there and

obtain a valuable degree and many other positive outcomes. Such benefits constitute a net benefit of a treatment effect.

Now consider the effect of affirmative action at a less selective tier of schools. When students who are marginally qualified are accepted at these schools, they earn a lower GPA than they would have earned at State U, and their diploma — if they even get it — has a lesser cachet. The cost of affirmative action for these students — such as a lower GPA — is not offset by the benefit of being awarded a diploma from a prestige university. It is at these schools that Bowen and Bok should have tested the "fit" hypothesis, because such schools provide less subsequent compensation for the poorer fit. If an admissions officer at Moderately Selective U tempts a number of students to enroll there rather than at State U, their lower GPA and possible lower graduation rate would constitute a net cost of a treatment effect.

It is important to note that because the number of students in truly elite schools is quite small, the net benefit

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*Special admissions medical students are less likely to graduate, receive high grades in their core basic and clinical science courses, or be invited to join the medical honors society.*

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enjoyed by affirmative action admissions there may be far outweighed by the net cost of the relatively larger number of student casualties in moderately selective but not elite schools.

### Harvard? Must We?

The state universities around the nation enroll a larger number of minorities than do the elite schools. Although the former's graduates may do well compared to those with no college degree, they do not do as well as the graduates of Prestige U on average. Is it therefore essential to attend an elite school in order to do quite well in America?

To answer this question I examined the educational background of CEOs at

the *Fortune* top 100 companies of 1997. I looked up each CEO in the 1998 edition of *Who's Who in Finance and Industry*. Seventeen of the 100 either listed no college or were not listed in *Who's Who*. (I presume that many in the former category received no college degree.) I discarded the data from one CEO who attended a foreign university and a second who attended a college (Trinity) that could have denoted any of a number of institutions. I counted a college if a CEO attended it but failed to graduate because the CEO was accepted there. I then noted each college's selectivity of admissions as classified by *Cass & Birnbaum's Guide to American Colleges* (16th Edition). This guide divides all colleges into five levels of selectivity ranging from the most highly selective to the non-selective.

Of the 81 CEOs included in the final sample, 28 attended schools in the two highest selectivity categories, and 29 attended colleges in the two lowest selectivity categories. Twenty-four attended institutions in the middle selectivity category. I conclude that, although an education at an elite institution may be a valuable ticket to many subsequent positive outcomes, most of those who do very well do not own one of these prestigious tickets.

### Whose Diversity?

Bowen and Bok assert that the purpose of affirmative action programs is not merely to select students who will achieve academic success. Universities want to choose students who make post-graduate contributions throughout their lives by participating in civic, educational, and other organizations whose goal is to enhance society. Bowen and Bok contend that in subsequent contributions of this type, black graduates seem to excel.

Indeed, Bowen and Bok found that among the graduates of the 28 selective colleges and universities in their study, black men exceeded white men in participation in "... community, social service, youth, and elementary or secondary educational organizations" (158). Thus differentially admitting blacks to these colleges and universities would seem to foster civic participation, presumably in the black community. However, in terms of participation in social service, youth, and

educational organizations, both blacks and whites in this sample of elite school graduates rated below the national average. Bowen and Bok are thus in the unusual position of arguing about the importance of admitting people with a devotion to civic duty when, in fact, these universities have not done particularly well in identifying such people.


Bowen and Bok also assert that elite schools should admit minority students

so that members of each race can learn from one another and can learn to live together. Of course, State U has a higher minority enrollment than does Elite U, so it may be easier to learn from persons of different backgrounds at State U. Given the relatively few minority students at Prestige U, affirmative action may be the only way to provide the opportunity to interact with others of a different race at the elite institutions.

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Although Bowen and Bok suggest that diversity is ipso facto good, they clearly favor race-based diversity over diversity based on socio-economic class. They note that class-based affirmative action would not yield enough minority students. The problem is that qualified white students outnumber qualified minority students even in the lowest socio-economic categories.

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*If a goal of "The Shape of the River" is to provide a sufficient justification so that we won't question the logic of affirmative action policies, Bowen and Bok have failed.*

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Bowen and Bok's rejection of affirmative action outreach based on economic status shows that they do not consider socio-economic class to be a marker for diversity. Only race is such a marker. The University of Texas Law School's rejection of Cheryl Hopwood suggests that racial diversification, not diversification per se, is the goal. Ms. Hopwood, the mother of a severely handicapped child, earned a 3.8 GPA while also attending to enormous family obligations. To say the least, she would not have been a typical law school enrollee. So let's be frank: when Bowen and Bok say they favor "diversity," they mean "racial diversity."

Perhaps the most important and universally supported motive for affirmative action is that we as a nation should promote equality of opportunity. Enforcing equality of outcome is not something the authors support: "We agree emphatically with the sentiment expressed by Mamphela Ramphele, vice chancellor of the University of Cape Town in South Africa, when she said: 'Everyone deserves opportunity; no one deserves success'" (283-284).

Whatever their opinion, affirmative action has been applied to outcomes for quite some time. For example, the recent health-education authorization bill requires that nursing schools graduate a certain proportion of minority students. The outcome — graduation — is mandated, not merely the oppor-

tunity to enter nursing school. Perhaps Bowen and Bok are sincere in their hope that affirmative action be applied strictly to opportunities, but this hope is years too late. Affirmative action supporters have discovered that the quickest route to desirable results is to compel equality of outcomes, and outcomes have been written into law.

The motive to enroll and graduate as many qualified minority group members as possible would seem completely unobjectionable if, as Bowen and Bok point out, "nearly as many white applicants" would be denied admission regardless of affirmative action policies. Isn't it justifiable to more than double black enrollment at a subset of selective colleges (from 3 percent to 7 percent) if it costs white applicants only a point or so in their probability of being admitted?

This apparent paradox of gain with no pain can be explained by considering how admissions decisions affect these two important fractions. Since the number of minority students admitted under a "numbers only" policy is quite small, increasing the number of such matriculants by a modest amount greatly boosts

the percentage of minority admissions. For example, if a college that normally admits 60 minority students enrolls 90 instead, it has increased its minority admissions by 50 percent. If the same college normally admits 600 non-minority students, the drop from 600 to 570 amounts to a decrease of only 5 percent. Isn't it worth forsaking 5 percent to gain 50 percent?

Although it is true that 5 percent looks insignificant compared with 50 percent, these numbers differ only because one is comparing groups of different sizes. Moreover, these differences occur only because one is comparing groups rather than individuals. The 30 people who benefit from an affirmative action policy because of their race are precisely equal in number to the 30 who are penalized by the policy because of their race. Only because affirmative action forces one to consider people as interchangeable units within a group do we have the apparent paradox of an "all gain/no pain" preferential treatment policy. To the extent one understands the basis for Bowen and Bok's arithmetic, one may be less likely to agree with their asser-

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## Coming in Liberty

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tion that "nearly as many" non-minority students will be disappointed regardless of affirmative action.

Have Bowen and Bok demonstrated the success of affirmative action policies at the nation's most elite colleges and universities? In one sense they have. By increasing minority student enrollment, the elite colleges will necessarily graduate more minority students than they would otherwise. The undergraduate degrees they obtain will serve as exceptionally valuable tickets to future opportunities in all areas of endeavor. However, the data in *River* fail to alleviate several concerns about affirmative action.

First, on some performance measures, affirmative action beneficiaries do less well than their counterparts who earned degrees without benefit of affirmative action. These include measures of professional performance such as bar and medical examinations.

Second, affirmative action at selective but non-elite universities may do more harm than good by admitting students with marginal qualifications.

Third, when race is endorsed as a justifiable basis for allocating opportunity, the result can easily be allocating outcomes. Bowen and Bok illustrate the confusion between opportunity and outcome. They note that "it is quite likely that many applicants with good but not outstanding scores and B+ averages in high school will have worked more diligently than many other applicants with superior academic records" (277). This suggests that we abandon a long-held belief that children must earn good grades in order to gain admission to college. Affirmative action, however, turns away from college people who did their homework and earned good grades in favor of those who didn't. In short, it turns the purpose of grading on its head. No amount of data in *River* can clarify this line of thinking, but accepting the book's conclusions about affirmative action requires this blurring of the distinction between effort and merit.

In short, if the sole goal of affirmative action policies at elite colleges and universities is to increase the number of minority matriculants, then of course these policies have succeeded. If a goal of *The Shape of the River* is to provide a sufficient justification so that we won't question the logic of affirmative action policies, Bowen and Bok have failed. □

*Pound Cummings: The Correspondence of Ezra Pound and E.E. Cummings*, by Barry Ahearn. University of Michigan Press, 1996.

# Pound Cummings

Richard Kostelanetz

It was my main teacher at college in the late 1950s, S. Foster Damon, who four decades earlier advised his Harvard buddy Estlin Cummings to learn about the poet Ezra Pound, only several years older than they, and thus set in motion the enthusiasm that led to 36 years of correspondence. And what an extraordinary correspondence it is, running in Barry Ahearn's selection over 400 pages in smallish type, and what an extraordinary job the Tulane English professor has done in reproducing the eccentric spelling and spacing characteristic of each man's jottings. For instance, whereas Pound at the typewriter often put extra spaces between words, Cummings frequently eliminated such spaces. To think about the proofreading required here is to have a nightmare.

The first thing to be said about these letters is that many are incomprehensible. Often the reader has no clue of what these two titans might be talking about. Mystery in art assumes depths to be examined and eventually better understood. Obscurity offers nothing beyond itself. To say that both Cummings and Pound courted obscurity in their poems is a commonplace; the news here is that they indulged in it in their writings to each other, as though each were trying to outwit the other at their common game. In his extremely thoughtful introduction, Ahearn quotes the older poet complaining in 1950: "O.K. wot are [underlined twice] you talkin about? This one (yrs 4th inst.) beats me, unless you putt the

wrong le'r in the envelop. addressed to S. Liz."

Ahearn notes that Cummings in turn "was puzzled more often than he would admit, especially by handwritten letters from Pound, where obscurity of reference is often compounded with puzzling penmanship as well as untamed orthography." It is indicative that Pound became more interested in Cummings after the publication of *Eimi*

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*To call Cummings anti-Semitic implicitly flatters more-egregious anti-Semites, who were not in his class intellectually or humanly.*

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(1933), which not only "denounced political and ideological bullying," in Ahearn's phrase, but also represents Cummings' most extended experiment in writing that is frequently obscure. I find this opaque epistolary style to be dated, if only because few poets of my generation correspond in such obscure ways. In those who do, cultivated obscurity is customarily considered an affectation.

Given such obstacles, I found myself often skipping over the letters to get to Ahearn's invariably clear and informative commentaries. This last move on my part is not unusual, as I recently reviewed the Gertrude Stein/Thornton Wilder correspondence to find the editors' commentaries more valuable than the circumspect letters (which were always lucid, unlike

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these). Since Ahearn knows the Poundian tradition well, he offers details unknown to me before — for instance, that the poet's grandfather issued paper money for his employees in the mid-19th century. On the other hand, Ahearn studies Cummings closely enough to note that the younger poet doesn't acknowledge any Pound poems written after 1920 and that the Cummings archive contains only one letter from T.S. Eliot, who never solicited EEC for *Criterion*. Ahearn also identifies the sources behind many of their witty nicknames, particularly for publishers; so that "Bitch and Bugle" is their moniker for Lincoln Kirstein's *Hound and Horn*, "Chimpanzeum" for James Burnham's *The Symposium*, and "Nude Erections" for James Laughlin's *New Directions*. "Hear Oh Shit Oh" is the Japanese Emperor Hirohito.

Since one theme of my *AnOther E. E. Cummings* (1997) is rescuing EEC as an arts critic, I was pleased to find that some of his best writing describes colleagues. This from 1946 encapsulates the poet Kenneth Patchen:

KP is an ample soft larval-looking fellow, sans intellect, goodhearted, a complete pacifist (when the US Government told him to report to his draftboard he, having gone to bed with an arthritic back, replied "come and get me"—& nobody appeared) whose father was a coalminer.

K, according to his wife (in any other epoch, a big square servant girl; who fantastically boosts her husband's genius on all occasions (which is dull) but adores Marion, which is touching) just writes as "it" comes to him, without ever making any corrections. This I believe; also that he superintends the printing of his books—which are full of calligrammatic word- & type-arrangements—down to the most microscopic detail. He told me once, casually, that he'd looked over the verseforms used by (other) poets & decided there (was) "nothing in them for me". So far as I can guess (since I faithfully subscribe to each new book but cannot read it) his ebullitions are without any conscious structure. Perhaps for this reason—assuming, as why not, an Epoch of Ultimate Confusion—they're been compared to a throng of disciples to every great literary creation of past epochs, or almost every anyhow.

A half-century later, this is still classic Patchen criticism. Forever a connoisseur of the literary avant-garde and appreciations of it, Foster Damon would have been pleased.

Ahearn notes in his introduction that both poets descended from "old Anglo-Saxon stock, both were conservative politically (but artistically daring), both were extraordinarily intelligent, and both shared a number of American middle-class prejudices." Those prejudices included anti-Semitism, more virulent in Pound than Cummings, beginning with their use of the offensive and disparaging slang word "kike." That slur was commonly heard at the time, even among cultivated people, but has since disappeared even from colloquial speech. But to suggest that Cummings was worse than most is false. As Ahearn points out, both had close and loyal Jewish friends — what the poet Louis Zukofsky was to Pound, the composer David Diamond was to Cummings.

My own opinion, as a rugged Jew, is that exaggerating the poets' anti-Semitism, as some do, is dangerous on two counts. First, to call Cummings anti-Semitic implicitly flatters more egregious anti-Semites, who were not in his class intellectually or humanly. To quote Ahearn again: "I find statements in letters from the young James Angleton [later of CIA counterintelligence] to Pound more shocking than anything Cummings ever wrote." Pound's looniest anti-Semitism appears not here but in Leonard Doob's edition of his radio speeches of World War II, *"Ezra Pound Speaking"* (Greenwood, 1978). When I received the book, soon after publication, I showed it to a criminal lawyer accustomed to defending deviance but barely familiar with Pound. His appraisal was: "I believe in free speech, but this guy is crazy."

Second, focusing on stray remarks by early 20th century writers bothers me for deflecting attention from the more serious institutional anti-Semitism among the cultivated classes. Most Ivy League universities had quotas on the percentage of Jews admitted in each class (never more than 10 percent); that in 1948 Harry Levin became the first Jew to teach literature at Harvard; that the same year, Lionel Trilling was the first Jewish professor of English at Columbia in decades; that

some prominent book publishers, even in New York, had no Jewish editorial employees into the 1960s. Precisely because such discrimination prevented economic and cultural advancement, it was to my mind far more pernicious than anything ever said or written by

even prominent poets, including Ezra Pound. Blaming them for American anti-Semitism is like blaming Shakespeare, rather than transoceanic shippers and plantation owners, for American slavery and subsequent evils. Dumb, dumb, dumb. □

*The Prince of Egypt*, directed by Eric Darnell & Lawrence Guterman, written by Todd Alcott & Chris Weitz. DreamWorks, 1998.

*Antz*, directed by Brenda Chapman & Steve Hickner, written by Philip LaZebnik. DreamWorks, 1998.

# Let My Creatures Go

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Timothy Virkkala

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The animated feature film *The Prince of Egypt* is a fantasy — it has exotic settings, alien spectacles, strange religions, awesome magic — but for many in the theater I attended, it was not quite viewed as such. To many of these moviegoers, *The Prince of Egypt* was a retelling of a revered story from the book of Exodus, that rarest of rare treats: religion and cinema unsinfully conjoined.

But the tale's centrality to what conservatives like to call "the Judeo-Christian tradition" presented a problem for the filmmakers. Sure, it guaranteed a large holiday turnout. But how does the Bible really play in our secular age? Though the movie's animated look and magical feel place it squarely in the tradition of film fantasy, to be true to the logic of the fantasy the filmmakers would have had to hew closely to the original story, complete with the "primitive," old-time-religion elements that don't fit the expectations of audiences raised on Disney and Hanna-Barbera. Not surprisingly, the filmmakers did not go for the ancient draught.

The most striking result of this failure of nerve is a film almost wholly void of convincing characters. Moses,

Pharaoh, and Aaron should be fascinating to watch. But the current writers have given us a Moses who merely apes angst and passion, a Pharaoh (Ramses) who comes to life only when he channels Yul Brynner, and an Aaron who seems more the Doubting Thomas than the silken-tongued mouthpiece for his brother's message. A few subsidiary characters, especially Seti (Ramses' father, well-spoken by Patrick "Jean Luc" Stewart), sparkle, but appear all too briefly onscreen. Most, such as Miriam (Moses' sister, spoken by Sandra Bullock) and Moses' love interest/wife, spoken by Michelle Pfeiffer, add little to the basic story.

The enduring power of the story can be attributed to the character of Moses' god as much as anything else. In this film, his god's one compelling sequence is the Burning Bush, which seems to capture the essential mystery. It is brilliantly animated and very well written. Val Kilmer, whose performance as Moses is lackluster throughout, resounds, though, in his secondary role as the voice of the Great I Am. But beyond this, the establishing of the character of this unnamed god is much less convincing than in the original text, or even than in Cecil B. DeMille's wonderfully overacted *The Ten Commandments*. In Exodus, the god of

the Israelites "hardens Pharaoh's heart"; in *The Prince of Egypt*, the agency of Pharaoh's opposition is psychologized. This may make it more palatable to a generation raised on psychobabble rather than the Bible, but it not only makes for a less interesting deity, it also undermines the potency of his miracles. There is little to fear in this Lord, little that is awesome other than special effects. With the Lord carefully bowdlerized, he is thus trivialized. Indeed, I was almost surprised that Moses didn't break into a little song along the lines of "My god's better than your god, my god's better than yours; my god's bigger and better and faster than . . ."

Yes, the film is not only a fantasy, but a musical as well. Though the musical score is unexceptionable, the sheer awfulness of the *songs* is downright embarrassing. As I fidgeted in my seat, I tried to imagine its early stages of development, picturing the person who hazarded, in a meeting, that "what the story of Moses and the ancient Israelites has always lacked is a good

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*Since no character is interesting enough to justify the striving for freedom, and since no one says anything very interesting about the idea, the noble theme just sits there.*

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tune from Mariah Carey." Apparently, the person was patted on the back. Hollywood works in mysterious ways indeed.

Good animated musicals are not unheard of, and even musicals with a few bad numbers can be enjoyable to watch. But from the opening scene to the very end of *Prince*, the audience is bombarded with song after odious song. When it should establish a feeling of horror at the mass murder of newborn Hebrews, it instead shows a chase scene accompanied by a choral bit, which turns into a lullaby sung first by the mother of Moses, and then by his sister. Not horror, but banality, marks the genesis. And the lyrics to these dreadful tunes are often laughable, and usually untrue to the story. (The High

Priest of Midian sings "Through Heaven's Eyes," though I am unaware of any notion of an afterlife in ancient Israelite theology, and painfully aware of the filmmakers' desperate attempt to minimize using the word "God.")

Not surprisingly in a film with the legendary line "Let my people go," its theme is freedom. The institution of slavery is spotlighted in the earliest scenes, and the final words of the film extol the ideal, which, by crossing the Red Sea, the children of Israel are said to achieve. But since no character is interesting enough to justify the striving for freedom, and since no one says anything very interesting about the idea, the noble theme just sits there, like the moral point of a grade-school pageant: a piety for the kiddies, but nothing that need exercise the mind of an adult.

Not so with *Antz*. This film, a product of the same production company as *Prince*, but released a few months earlier, is also about freedom. But since freedom's enemy in *Antz* is the industrial collectivism of the anthill and the murderous militarism of its generals, the theme enlivens the film in a way that it cannot in *The Prince of Egypt*.

In *Antz*, a disgruntled, neurotic worker-ant played by Woody Allen — I say "played" and not merely "spoken" because the animated face of Z, Allen's character, seems of a piece with Allen's own face, though much cuter and more endearing — finds himself unhappy in the collectivist order of the ant kingdom. Enter one naughty, impatient princess (Sharon Stone), and one devils, murderous general (Gene Hackman), and the plot throws the lowly Z and the princess together outside the hive, in search of "Insectopia." Through adventures high and low, not only do the two become close (as is meet in every romantic comedy), but learn the horrors of war and realize the opportunities possible when the shackles of tradition are cast aside.

The two are captured by the military, but manage to save the hive from genocide anyway. In the final moments, in triumph, they re-establish the traditional order, with a few modifications. (The film would've been better had it managed a little more cynicism in the ending, but the theme remains freedom, not compromise. Besides, *Antz* is a romance-comedy-adventure,

not a satire.)

And, thankfully, there is no singing; Woody Allen's performance in his *Everybody Says I Love You* (1996) may have given the producers of *Antz* an important hint here.

Both *Antz* and *The Prince of Egypt* are brilliant examples of modern animation. *Antz* was animated with computers, in the style of the pathbreaking *Toy Story* (1995). *Prince* is more traditional, though the beauty and spectacle of many of its scenes are so exemplary that categorizing it unthinkingly with

past animated films may be a bit unjust.

But *Prince* is a failure, and *Antz*, though more humbly conceived, is not. The animal story of *Antz* — a kind of fantasy — remains true to the logic of its conception to the end. Because the makers of *The Prince of Egypt* did not dare to tell the story of Moses, his people, and their god with anything like respect for actual beliefs, the story is all compromise and no conviction, and the great theme, freedom, never comes into its own. □

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she finds her husband crouching in the phone booth, so she runs out in terror. "Where was I to go? Where was the shelter I sought? I gave up and went back home." The shelter wasn't flashing a neon sign across the street from the phone booth, so she goes home with her husband who has, and she knows will again, beat her. Oh, pity her! Victim of the system!

After her husband nearly puts out her eye, a friend calls a shelter; the staff makes her see a doctor, who calls the police, who become her next imagined abusers: "I was afraid he'd arrest me if I wouldn't sign the warrant for my husband's arrest." Right. With no consideration that due process requires a person to be proved guilty, she wants the police to stop her husband when she will not provide evidence against him. Her fear of her husband's retaliation would get my sympathy if she showed any appreciation of the policeman's helplessness to act without support of evidence.

The shelter provides her with a room, food and some counseling for 30 days. Her assessment? "I was numb. What had I expected? Some help I guess. I had not expected to be abandoned in a strange room."

Since her theme is how abusive the shelter is, I have to assume that she tells us the worst, which is: "... pervasive tension among the women. They were afraid of doing something wrong and being forced to leave. . . . The staff tried to help but their energies were consumed with raising funds. . . .", having to make an appointment this Thursday to see the counselor next Thursday, and being accused of not doing her chores by a staffperson who hadn't been informed that she wasn't to be assigned any. To this last uncomfortable incident she reacts, not by asking to be given specific chores, but by having an "anxiety attack," "close to tears," and feeling "the same helpless rage [she] had lived through for the past year." Those are the specifics. With no specifics, she says she experienced "the same sort of put-downs and emotional abuse (as her husband dished out) from a woman at the shelter." If any real abuse happened at the shelter, you can bet she'd describe it.

"I walked away from this abuse also." How brave. Except it's a short stop at a motel and then back to her husband. Choosing her husband over the

*Hal R. Arkes* is a professor of psychology at Ohio University, and is currently on leave at the National Science Foundation.

*Paul Armentano* is publications director for the National Organization for the Reform of Marijuana Laws.

*Brian Bartels* is a reporter in Ellensburg, Washington.

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*David Hackworth* is a retired Army Colonel and author of *Hazardous Duty* and co-author of *About Face* and *Vietnam Primer*.

*Bill Kauffman*'s latest book is *With Good Intentions? Reflections on the Myth of Progress in America*.

*Dave Kopel* is an adjunct professor of law

shelter tells me that her overriding needs are not free lodging and a chance to become independent, but instead, attention and to know her role.

After three months of torturous attention and a near-fatal rape, this woman amazingly chose life over her role as martyr. She packed up and left for good.

Well, I hope it's for good because her logic still savors hopelessness. How easily she lays the blame: "Knowing that I could not get any help from the shelters or the police, I endured his abuse." She suggests that some unnamed social worker type, who in her mind represents all who should protect her, interpreted her husband's abuse as his "masculine side" and told her she should appreciate "a good man." She even believes her husband that the police said, "As long as you are my wife, I can do everything short of killing you, and get away with it." If she refuses to file a complaint, sure.

at New York University School of Law, and Research Director of the Independence Institute, in Colorado.

*Richard Kostelanetz* is a critic and multimedia artist living in New York city.

*Pierre Lemieux* is a visiting professor at the Université du Québec.

*Loren E. Lomasky* is author of *Persons, Rights and the Moral Community*.

*Declan McCullagh* (declan@well.com) is a reporter who lives and works in Washington, DC. He also runs y2kculture.com.

*Wendy McElroy* is the author of *XXX: A Woman's Right to Pornography*, *The Reasonable Woman: A Guide to Intellectual Survival*, and other books and articles.

*Bruce Ramsey* is a business columnist for the *Seattle Post-Intelligencer*.

*John S. Robey* is an associate professor of political science at the University of Texas at Brownsville.

*Jane S. Shaw* is a journalist living in Bozeman, Montana.

*Solveig Singleton* (solveig@cato.org) is a lawyer and director of information studies at the Cato Institute.

*Fred L. Smith, Jr.* is president of the Competitive Enterprise Institute.

*Martin M. Solomon* is an assistant editor at *Liberty*.

*Clark Stooksbury* is assistant publisher of *Liberty*.

*Timothy Virkkala* is executive editor of *Liberty*.

*John T. Wenders* is a professor of economics at the University of Idaho.

Kimberly Ayn Ryan says she is still not convinced that she was not to blame for the abuse she suffered. After hampering police and rejecting a safe shelter, I'll make no effort to ease her mind.

Jeannette Jaquish  
Tucson, Ariz.

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# Terra Incognita

## Williamstown, Ky.

Evidence of the inadequacy of retirement funding for public servants, as reported by Reuters:

The former mayor of this Kentucky town was arrested Tuesday on charges of robbing two banks in Ohio. Robert Jones, 55, was taken into custody at his home by state and local police on warrants issued by Ohio authorities. Jones served as mayor of Williamstown from 1993 until 1997.

## London

Austerity takes hold at the Mother of All Parliaments, from *The New York Times*:

In an effort to slim down the pomp of the grandest occasion on Britain's annual ceremonial calendar, the Silver Stick in Waiting, Maltravers Herald Extraordinary, Blackrod, Portcullis Pursuivant, the Crown Equerry and the Gentleman Usher of the Sword of State were denied their accustomed places at the State Opening of Parliament this year.

## U.S.A.

Hollywood contributes to American technology, as reported by *In Style*:

At a party at Manhattan's Lot 61, Kevin Costner, Ingrid Casares, Naomi Campbell, and Stephen Dorff helped launch a new invention: a combination credit card and magnifying glass, invented by Jack Nicholson.

## Great Britain

Oriental culture gains a foothold in British prisons, as reported by Reuters:

Inmates in Britain's Stafford Prison have found a new use for origami — using paper airplanes to get illegal drugs from outside the jail walls.

In a report on the Midlands prison, inspectors described how they stumbled on a simple but ingenious drugs supply line: prisoners threw darts over the prison wall to waiting dealers who attached their supplies and threw them back. The report said drugs were available throughout the prison, "especially on F Wing which was close to the perimeter wall and from which prisoners threw paper darts over the wall to obtain drugs."

## Salinas, Calif.

The terrible cost of addiction, reported by *The Oregonian* (Portland, Ore.):

Deputy District Attorney Christine Harter asked that Tamara Dee Maldonado be prohibited from possessing Beanie Babies. The toys, Harter said, are like a drug and ought to be treated as such.

Judge Jonathan Price agreed. For the next five years, law enforcement agencies will have the right to search Maldonado's home without a search warrant to determine if she has any Beanie Babies. Maldonado had used pilfered credit card numbers to purchase \$8,000 worth of toys.

## U.S.A.

New research in supply-side economics from Joshua Horowitz of the Educational Fund to End Handgun Violence, as reported by *The New York Times*:

Gun manufacturers "knew or should have known that they were oversupplying the legitimate market, thereby creating a pool of weapons available for the illegitimate market."

## Cuba

Interesting episode in the development of the world's greatest remaining Socialist leader, as reported by the Associated Press:

President Fidel Castro of Cuba apologized to the children of Mexico today for suggesting earlier that many know more about Mickey Mouse than their own national heroes. "I myself learned the value of spinach with Popeye the Sailor Man," Mr. Castro said.

## Washington, D.C.

Novel way of celebrating Valentine's Day in the nation's capital, as announced in a press release from Why Life?:

The second annual National Week of Chastity will take place the week of February 8 - 14, 1999.

"The National Week of Chastity is a reminder to all that chastity is a virtue," said Why Life? director Andrew Daub. "Chastity benefits and promotes family, the dignity of the individual, prevents out-of-wedlock pregnancy and the possibility of disease. Primarily, chastity is lived out of a love for God who commands that we live according to His laws. This means unmarried individuals must practice abstinence and married individuals live a life of fidelity to their spouses. We especially encourage young men and women to commit themselves to chastity and to take part in the National Week of Chastity."

A general invitation is extended to all pro-chastity organizations around the nation to participate during this week, which will begin with a press conference.

## Granville, Ohio

Schools in the Buckeye State get tough on crime, as reported in the *Columbus Dispatch*:

Two Granville High School students were suspended and expelled after one of them mimicked to their instructor and classmates that he was carrying a gun.

Travis Newell and Seth Cox, both sophomores, told administrators they were joking, but school officials weren't amused.

"This kind of behavior will not be tolerated," said acting Superintendent Roger F. Viers.

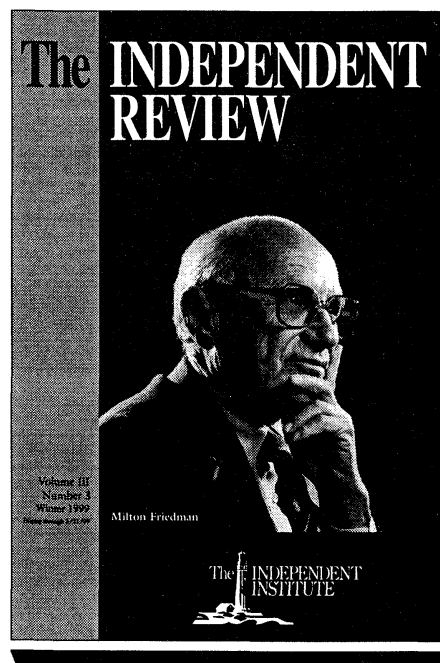
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