

# Liberty

March 2003

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What's So  
Great About  
America?

## Bush's New Plot Against Your Freedom

*by Chip Pitts*

## The New Face of Witchcraft

*by Stephen Cox*

## The Goodness of Fossil Fuel

*by David Ramsay Steele*

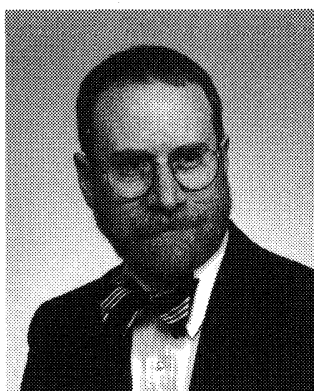
## The Trouble With Trade

*by Bruce Ramsey*

Also: *Timothy Sandefur* discovers why postmodernists can't stand the drama of Tom Stoppard, *R. W. Bradford* defends himself against a strange new McCarthyite, *Brink Lindsey* defends himself against charges of Apostasy. . . plus other articles, reviews & humor.



*"Liberty is the sovereignty of the individual."— Josiah Warren*



## What Dionne Warwick Reveals about the Drug War by Sheldon Richman

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

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

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

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

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

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

incredulity.

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

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

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

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# Inside Liberty

March 2003

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## Letters

### Conservatives and War

Gene Healy's analysis of the U.S.-Iraq confrontation ("Iraq," January) is the best I have read. Careful, well-reasoned articles, such as Healy's, are what make *Liberty* the best libertarian journal of opinion, and one of the best journals of opinion available.

I find it of interest that similar arguments against the proposed war with Iraq are found in Patrick Buchanan's *American Conservative*.

In each publication, there have appeared careful and convincing arguments against this war. It is unfortunate that all the other conservative journals of opinion are beating the war drums, ignoring their own previous arguments against such ventures, and, in the case of the *National Review*, forgetting their once great admiration for the just war doctrine.

Henry S. Heatherly  
Lafayette, La.

### License to Kill

Gene Healy argues, "The modest, liberty-securing goals of early American foreign policy were expressed succinctly in the Gadsden Flag: 'Don't tread on me.'" He fears the "Bush Doctrine" and believes it to be a threat to American safety and freedom. As he characterizes it, a war against Iraq amounts to one of two things:

1) "Don't get strong enough to be able to tread on me."

2) "You may perhaps be thinking about treading on me, somewhere down the road, and you're also treading on your own people, so I'll tread on you."

Since I am one of the "fellow travelers" who is "unreasonable" enough to think killing a murderous, power-mad dictator and the implementation of a representational government in Iraq actually would decrease the ability of al Qaeda to recruit new members and would lead to positive changes in the region, I would like to note a few of my disagreements with Mr. Healy.

1) "Early American foreign policy" was designed for a militarily weak and physically isolated land. Now, the United States is the sole superpower and technology has made it feasible for a handful of well-financed fanatics to do catastrophic harm. Maybe it is time for a new policy.

2) Given that the moral goal of good government is to secure liberty, how can it accomplish this under constant terrorist threat? If we are unwilling ever to play global policeman, even against criminal masterminds like Saddam, who has successfully rooted out every vestige of justice from his slave plantation, then we must be willing to live in a police state. We face that alternative.

3) The Bush administration will not be "treading on" Saddam. This man invaded his neighbors and treated his "own people" as if they were his own property. This man pays the families of Palestinians who blow themselves up in suicidal attacks against Israeli civilians. This man sees himself as the rightful ruler of the Arab world, as surely as Hitler saw himself as the rightful ruler of Europe and Stalin saw himself as the rightful ruler of the U.S.S.R. This man undoubtedly is envious of bin Laden, who made such a mighty strike against the Western Juggernaut, and it is willfully naive to think he does not wish to top it.

Jamie Lambert  
Denton, Tex.

### The Good Side of Noam Chomsky

Despite the fact that Noam Chomsky calls himself a "classical liberal," he deserves to be taken to task for his anti-capitalist views. That's why I appreciated Barry Loberfeld's article ("The Coercive Anarchism of Noam Chomsky," February). For what it's worth, I also disagree with Chomsky's well-known views about the innateness of grammar. All that said, I count myself as a Chomsky fan.

Chomsky has done a tremendous

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job publicizing the evils of U.S. foreign policy, and the responsibility of the mainstream media in not revealing those evils. From the U.S. support of a right-wing dictatorship in Chile, to its complicity in the Indonesian invasion of East Timor, to its continued collaboration with Israel's oppression of the Palestinians, Chomsky brings to light important issues the mainstream media ignores.

I can imagine some libertarians saying that the oppressive regimes the U.S. government supports at least are better than the socialist alternatives. I think there is room for legitimate disagreement amongst libertarians on this issue. But what we *should* agree upon is that any financial contribution one gives to a foreign political organization should be voluntary, not coerced via taxation. This is all the more important when the U.S. government uses the money it takes from us to support dictatorships oppressing innocent people. It is fortunate for libertarians that Chomsky's astute foreign policy analyses, for the most part, are kept separate from his anarcho-syndicalist views.

Bradley Monton  
Lexington, Ky.

### One Cheer for John Rawls

While I did not expect my libertarian brethren to shed many tears at the passing of John Rawls, I was a bit surprised at the passion of Professor Narveson's condemnation in his "Autopsy" (February), and I believe his slightly overworked state has created some errors in his perspective.

Professor Narveson mentions "social contract" theories that depend on actual agreement as if these presented no philosophical or practical problems. Of course, there never has been an actual unanimous social contract among all persons. More importantly, a person looking to reach such an agreement would face the moral question of what terms he could reasonably ask for. One can view Rawls' Veil of Ignorance as a mechanism for answering that question, whether or not one accepts Rawls' specific answer. Rawls made clear that the "social contract" was a conceptual

## From the Editor . . .

The War on Terror goes on, though it's difficult to see how any reasonable person looking at how the "war" is conducted could believe that its target is terror. There has not been a single terrorist attack since the infamous suicide bombing of Sept. 11, 2001. The U.S. has conquered the country in which the leader of the terrorists was living, and our armed forces are now occupying that country and keeping a puppet government in power. Meanwhile, the terrorist leader remains at large, most likely still in that country.

President Bush has identified three other countries — none of which has any connection with the terrorist attack or with each other — as the "Axis of Evil," and is preparing to invade, conquer, and occupy one of them. Bush figures that so long as there are hardly any American casualties in these wars of conquest, Americans will support them. And that has seemed to be the case.

At home, American liberties are being curtailed, and no one seems upset. Plans are under way to require Americans to file detailed travel plans before leaving the country, and the only mention in the press I've seen of this ominous development was a story in a local paper noting that travelers on the local ferry boat will be exempt from the regulations. I heard on television that the Super Bowl would have more than 2,000 armed military and police and the area around it would be closed to cars and planes.

The Bush administration has hired Iran-Contra convict John Poindexter to develop a computerized system that would create and maintain incredibly detailed portfolios on all Americans. And I do mean detailed: it would include everywhere you take your cell phone, every purchase you make other than with cash, every book you buy or borrow from a library, every website you browse, every phone call you make, every email you send, every place you visit that has a security camera . . .

A New Zealand woman was held for questioning by the INS when it was discovered she'd years earlier overstayed her visa, thoroughly searched (including her private parts), and refused entry, all as the "normal way of business." These stories — and hundreds of other stories about traditional liberties being taken away by the government — have hardly been reported in the press and very few Americans are upset by either the fact that none of these developments can possibly protect us from terrorists or that every one of them increases government power and reduces American freedom.

Most Americans go about their business, figuring that such outrages are either necessary for their safety or are imposed on other people, not them. As long as they aren't interfered with too much, their jobs are paying well, and they can enjoy their sports and entertainment, there's no reason to get upset.

This is, of course, the way ordinary people in Germany reacted to Hitler. When the Allies defeated Hitler and showed Germans film of Hitler's death camps, the people expressed surprise and horror. "We didn't know that was going on," they said.

This is the biggest story in America today, and while other media ignore it, *Liberty* is doing its best to cry alarm. Our lead feature "Totalitarian Information Awareness," is an exposé of the Bush-Poindexter plan to keep incredibly detailed dossiers on all of us. (Other outrages are detailed in "Reflections.")

But there's more to life than the War on Terror and the concomitant Americans' surrender of their personal liberty. The very best defender of Lincoln and the war against the Confederacy, Timothy Sandefur, confronts his critics. (Next month, Joe Sobran will vindicate the South.) Brink Lindsay, whose limited support for Bush's foreign policy has encouraged some to excommunicate him from the company of those who love liberty, looks at the case against him. David Ramsay Steele looks at the weird environment of the future. And your editor responds to a weird McCarthy-like attack.

In our lead review, Steve Cox takes a look at witches and ghosts and the people who believe in them. But we don't stray too far from the real world: other reviews look at globalism, socialism, conservatism and contemporary drama.

As usual, we begin with letters from our readers and, of course, our editors' "Reflections" on what's going on in the world.

R. W. Bradford

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device to give moral guidance, not an actual state of affairs, and, in so doing, did more to rehabilitate social contract theory than any other philosopher of the 20th century.

Further, although I am no supporter of Rawls' Second Principle, it is wrong to suggest it calls for strict equality. I think most libertarians believe social institutions that allow differential rewards according to effort or skill would result in the production of greater total wealth than if rewards were strictly equal. Rawls' Second Principle is based on the idea that the smallest share can be made larger than an equal share would have been if such differential rewards were permitted. Indeed, libertarians argue that the poor are better off under a free market system than any other. Thus, Rawls' Difference Principle is, in fact, whatever Rawls' intention, a call for *laissez faire*.

Finally, one could make a good argument that, behind the Veil of Ignorance, a person would choose not the maximin rule, but the rule of maximizing utility. Indeed, Rawls has to work hard to avoid this conclusion, given the origins of the Veil of Ignorance in prior work by John Harsanyi, a Nobel Prize winning economist. Of course, many contemporary philosophers, libertarian or otherwise, and including Professor Narveson, have condemned utilitarianism for its insufficient theoretical grounding in individual rights. Nevertheless, utilitarian arguments, at least insofar as they support economic reasoning, historically have had great practical effect in advancing liberty, as chronicled, for example, in the article by Jacques de Guenin, also in your February issue.

Though many (if not most) libertarians would prefer to eschew any contact with utilitarianism, I think the cause of liberty is important enough that we should acknowledge the value of a metaphor by the philosopher Charles Pierce: "It is better to have an agreement that is like a rope made from many strands rather than a chain of single links."

Gordon G. Sollars  
Kinnelon, N.J.

*Narveson responds:* Mr. Sollars appears to find my short piece on Rawls full of "passion," and he evidently thinks this has led me astray. I would point out that much of the article summarizes an

extensive analysis in an article of mine published back in 1976, so if it's "passion" that's supposed to have stimulated my reflections, it's hardly the passion brought on by his recent demise. (It is, though, in part, irritation at the huge impression Rawls has made among people who appear not to have followed this argument carefully.)

I would also mention to him that, in another article, "Rawls and Utilitarianism," I do indeed point out that, contrary to Rawls' oft-reiterated complaints about utilitarianism, it looks as though utilitarianism is nevertheless where his apparatus would take him, on one reasonable interpretation of how the Veil of Ignorance is supposed to work.

As regards the social contract, the talk of "actual agreement" is misleading, since it makes it sound as though the social contract is a sort of World Meeting; this, of course, does not and cannot happen, any more than anyone can actually be behind a Veil of Ignorance. Both devices are, of course, hypothetical, even figurative. But they may be different figures. The Veil says that you reason morally only if you take the point of view of nobody in particular. But social contract says that there is reason for us all to agree — to agree in the light of what we *actually are*, not from a perspective that we cannot, in fact, have.

Several writers have argued, as do I, that Rawls has a problem in that, if there is a marked disparity between what you would agree to if you were nobody and what you would do if you are somebody, how could it be rational to prefer the Veil result to the real-world result?

The social contract view, on the other hand, argues that agreement can happen only if it is genuinely to the advantage of all parties, and such agreement is often extremely helpful in the real world, and that what we call the Principles of Morals have just that status. A Rawlsian construction doesn't solve that problem, but begs the question.

When Mr. Sollars says that it is an "error" to suppose that the Difference Principle leads to strict equality, he repeats what thousands of readers have also wanted to say. Unfortunately, merely asserting things like that is not effective without making the required argument. And Mr. Sollars produces, as

*continued on page 36*

# Reflections

**Eight years is a long time** — As we went to press on Jan. 28, President George W. Bush used his State of the Union address to tell Americans that there were a few new things the federal government should start taking care of. Like providing prescription drugs for all Americans over 65. Like providing “treatment” for users of recreational drugs. Like providing medication to people in Africa and the Caribbean who are afflicted with AIDS. Like doing research on a hydrogen-powered automobile, so that we can move air pollution from where people drive to remote areas where we can put energy-guzzling hydrogen plants. Like providing vaccines and treatments for diseases that are responsible for dozens of deaths a year.

I’ll leave a full analysis of the costs of Bush’s new programs to think-tank wonks who have more time on their hands and more stomach for this kind of work. But I quickly added up the amount of increased spending that the president specifically mentioned in his speech: the total comes to \$17,601,050,000. This on top of all the increased military spending he has promised so we can conquer and occupy Iraq.

In his State of the Union address eight years ago, left-liberal Democrat President Bill Clinton famously declared, “The era of Big Government is over.” Today, a conservative Republican told Americans, in effect, “The Era of Big Government is back.” — R. W. Bradford

**Another triumph for Prohibition!** — The latest *Monitoring the Future* survey on teen drug use noted, as the *New York Times* reported, “One of the biggest declines occurred in smoking, with the proportion of teenagers who said they ever had smoked cigarettes falling by 4 or 5 percentage points compared with 2001 in each of three grades — eighth, tenth, and twelfth.”

Let’s see, how many adult tobacco users had to be arrested to produce those results (not counting smugglers trying to take advantage of tax differentials between states)? Wait! You mean total prohibition might not be the key to reducing teen drug use?

Incidentally, the reduction in teen marijuana use, after a year of heavy propaganda and law enforcement, was much smaller than that for tobacco, within the statistical margin of error. Heroin use remained unchanged. — Alan W. Bock

**Paging Mr. Occam** — According to a University of Michigan psychologist working for the Institute of Social Research, tobacco use among teenagers is down to the lowest point in thirty years and government anti-smoking efforts are credited for this success. Perhaps that credit is due.

Or maybe the government crackdown on stores that sell to minors, the federal sting operations against tobacco vendors, and the recent assaults on privacy passed in the name of Homeland Security, have made it a little more uncomfort-

able for children to tell the truth about their cigarette use on an official-looking survey. — Tim Slagle

**Finding truth in a strange place** — Neil Cavuto, financial reporter, Jan. 7, 2003: “The rich are not the problem. The government is.”

Thank God, I have lived to see this on TV. Now if the rich contributors to political movements would only start to believe it. — Stephen Cox

**Optimistic note** — The tactic of the “general strike” to shut down a country was developed by radical socialist theorists, known as “syndicalists,” early in the last century. Now, oil company executives are using it against a putatively socialist president in Venezuela. Maybe what goes around really does come around. — Alan W. Bock

**Taxing Molly Ivins’ intellect** — Upset with President Bush’s tax cut plan, columnist Molly Ivins warns that America’s more well-to-do taxpayers might go out and do something unproductive if the government seizes a smaller portion of their incomes.

“There’s no guarantee,” Ivins writes, “that rich people will do anything economically productive with more money.” Of course, there also is “no guarantee” the government will do anything “economically productive” with the money if there isn’t a tax cut, and “no guarantee” anything “economically productive” will happen if the government redistributes the money to those who haven’t earned it.

Since we’re talking about people spending their own incomes, not welfare checks, one could well argue that it’s none of Ms. Ivins’ business whether the money is spent on something “economically productive.” Furthermore, “the rich” in America have a long record of spending in a manner that makes all of us more “economically productive.”

Simply stated, annual per capita income in the United States isn’t 150 times higher than in Zaire because we have 150 times more natural resources per capita, or because we work 150 times harder, or because we’re 150 times smarter or stronger. More than anything, American productivity and income is corollary of the ratio of capital to labor — the level of capital risk-taking individuals have invested per employee in plants, equipment, and technology.

Sounding like she’s overdosed on the Marxist idea that we’d all be better off without savers, investors, and entrepreneurs, Ivins sees red when it comes to Bush’s call to end the double taxation of dividends. This reform would deliver a boost to the stock market and strengthen America’s ability to compete with other developed nations. Of the world’s 30 developed nations, only three — the U.S., Ireland, and Switzerland — impose a double tax on corporate income. And Ireland and Switzerland have radically lower corporate tax rates, giving the U.S. corporations by far the heaviest tax burdens.

Says Ivins: "One reason dividends should be taxed is because the people who get them don't work for the money. In the old days, people who lived off their investments were known as 'coupon clippers' and generally were despised as non-working parasites." According to Karl Marx, the abhorrent bourgeoisie made their money off the labor of the proletariat. Or, as Ivins updates it and applies it to those who receive dividends, "They're making money off other people's labor." Left unsaid is the fact that workers are making money, by way of higher productivity, off other people's risk-taking and investing.

From Stalin's Gulag to Mao's Great Leap Forward, from Ho to Fidel to Pol Pot, the big story of the 20th century is that some people weren't satisfied with merely applying a double tax on those who were "despised as non-working parasites." For the true believers, the real haters, a massive genocide was required on the road to a parasite-free dreamland. "The Christian imagines the better future of the human species in the image of heavenly joy," wrote Moses Hess in his *A Communist Confession of Faith* (1846), "We, on the other hand, will have this heaven on Earth."

By the time it was over, the purification drive for an egalitarian utopia claimed 100 million victims, a slaughter Martin Malia, Professor of History Emeritus at the University of California, describes as "the most colossal case of political carnage in history."

In 1995, with Republicans in control of both chambers of Congress for the first time since 1952, a proposal was on the table for a cut in the tax on capital gains. Wrote Ivins:

You don't even have to read all the economic studies that show that cutting capital gains doesn't improve investment — just remember back to the 1980s. What did all the newly rich do with their gelt? They paid for gold-plated bathroom fixtures and then used the rest to buy other companies that then bought other companies that then bought other companies, leaving the whole corporate structure riddled with debt. Billions of dollars were spent, but not one additional widget was produced by anybody.

Well, she's way off track. Lots more widgets were produced after the Reagan tax cuts in the 1980s. The unemployment rate, 9.7% in 1982, fell to 5.5% in 1988, the lowest rate in 16 years. Per capita after-tax income in real terms, i.e., adjusted for inflation, rose by 19% in the 1980s — nearly double the rate of the 1970s — and the real income of households in every quintile group increased every year from 1983

through 1990. The annual level of investment spending, in real dollars, jumped by 76% in the 1980s and consumer spending nearly doubled, rising in inflation-adjusted dollars from \$1.8 trillion in 1980 to \$3.4 trillion in 1988.

And it wasn't all spending by the super-rich on gold-plated faucets. In the bottom fifth of income earners, real household income increased by 12% in the 1980s, reversing a 17% slide between 1979 and 1983. The nation's poverty population, after growing by 7 million in the 1970s, dropped by 4 million in the 1980s.

And so, here we go again. We're not all in this together, say the class warriors. The rich, warns Ivins, can't be trusted to spend their own money in a way that's "economically productive." The record shows she's wrong.

— Ralph R. Reiland

**City of smoke** — Where I now live, it's just about impossible to smoke in public. Only a few refuges remain: certain bars with seating outdoors, cigar clubs, the San Diego zoo. It's not like the good old days. If you watch old black and white movies, you know that all of America was a great

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*As I write, thousands of puritanical, non-smoking Americans happily sip their espressos surrounded by smokers.*

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place to smoke. I especially enjoy scenes that take place in theatres full of men in fedoras smoking cigars.

France is still the land of *gauloises* and *gitanes* — the land of smoke-filled rooms. The French love to smoke. Paris is hated and loved for its smoky cafes. Most American expatriates in France complain about the smoke for a year, then they get used to it and never give it another thought. As I write, thousands of puritanical, non-smoking Americans happily sip their espressos surrounded by smokers. In America, they would be outraged and would insist that they could not tolerate the smoke. In France, they have no choice. They adapt. They become polite and honest about smoking.

Many French people have a formal way of smoking through a long meal: one before, one between courses, one with coffee (always served after dessert, never with dessert), and one or more with cordials.

The French language has delightful expressions to describe smoking. For example, to talk with a cigarette dangling from your lips is to "*parler la cloppé au bec*," literally, to "speak butt-in-beak." One may substitute just about any verb. You might *bosser* (to hump, as in to work) or *baiser* (to hump, as in to screw) or, more likely, since the enactment of the mandatory 35-hour workweek, *glander* (to do nothing, in a guilty, lower-class, urban version of *la dolce far niente*) à *la cloppé au bec*.

Could all of this smoky culture be blown away by legislative hot air?

In January of 1991, the French government passed a law requiring cafes, restaurants, and bars to create and enforce non-smoking areas and to post prominent signs indicating



"No big deal — just another media frenzy."



smoking and non-smoking areas.

I lived in Paris at the time. For weeks, television news broadcasts dedicated several minutes a day to the topic. Journalists interviewed restaurateurs and men in the street, smokers, and non-smokers. In the French bank where I worked, there was a lot of talk about the new law. Would the police enforce it? Would the cafes respect it? Was it a good idea?

At first, the law had little effect and barely was enforced. Nevertheless, the authorities promised progressive enforcement.

Meanwhile, I moved back to California. Time passed. Last year I took a short trip to Provence. I was curious to see how the anti-smoking campaign was going.

Smoking in bars, restaurants, and cafes continued unchanged. Some places had signs for non-smoking areas. The patrons always ignored the signs and second-hand smoke often obscured them. One cafe had an illegally tiny sign, with tiny letters, in a tiny corner of the room. It read, "*Ceci est la zone non-fumeur*," or "Here's the non-smoking area." A couple of bars posted a sign — apparently a mass-produced insult to the anti-smoking law — that said simply, "*Bar Fumeur*," or "Smoking Bar." Finally, I saw the most sensible of all signs, "*Si la fumée vous dérange, sortez*." "If the smoke bothers you, leave." — Michael Christian

### ***Still smokin' after all these laws*** —

Sympathetic though I might be to attempts to eradicate behaviors I dislike, I also know these attempts are doomed to fail. Mayor Ed Koch once joked that advising homosexuals to refuse gay sex is like telling the ocean to stop rolling, creating in my mind an ultimate image of vain activity.

Though his attempts to legislate the end of smoking are not likely to be any more successful, our current mayor, fresh from great corporate success in the English-language investment info biz, believes he can do it. I doubt it.

One New York City domain particularly resistant to this attempted coercion is immigrant enclaves. Only a few days after the law went into effect, I went to my favorite Greek tavern for music and dance. Out front is a signed photograph from the previous mayor, Rudolph Giuliani, who is known to enjoy a good cigar (as well as for prosecuting other people's sins). Well, in a ground-floor space no greater than 1,500 square feet, perhaps half of the fifty patrons were smoking. So was the proprietor who addresses his audience only in Greek. Some people were smoking cigars! My first thought was that perhaps these revelers didn't know enough English to read newspapers. Then I remembered that Greek-language weeklies are published in New York. The cops could have made one helluva bust here if they wanted to, but they didn't, and I suspect they won't. Not the least reason is that too many cops smoke.

Attempts to make illegal anything people desperately want produce not only unintended deleterious effects but also unanticipated business opportunities. Ban by law the selling of alcohol and one result is the organized crime we associate with historic Prohibition. Prevent Americans from owning gold and entrepreneurs will sell gold coins. Ban abortion, I once conjectured, and the beneficiaries would be rogue doctors, those experienced at delivering illegal ser-

vices, and those in the incarceration industry, none of whom merit anyone's support. The beneficiaries of Giuliani's elimination of the sex industry from precincts west of Times Square have been real estate interests in Queens and Jersey City (who don't pay NYC taxes).

When Mayor Bloomberg raised the taxes on cigarettes purchased in New York City (now retailing around \$7.50 per pack), the first beneficiaries were entrepreneurs offering to sell cartons by mail. They must be doing well if the prominent ads I see, particularly in print media, are any indication of their success. The losers include New York retailers of newspapers, most of them South Asian immigrants, whose profitable sideline in the weed is declining. Take-out restaurants should benefit from Bloomberg's crusade more than storefronts, as those desiring to conclude dinner with a smoke will prefer to eat at home. My bet is that law-abiding smokers will do things not yet predictable, but the effect of which will be to undermine the purported purpose of the law, even as some imaginative entrepreneurs, *de facto* libertarians, will exploit the state-created economic opportunity.

— Richard Kostelanetz

***USA: travel at your own risk*** — Under new regulations proposed by President Bush, anytime you want to leave the U.S., you will have to tell the government where you're going, what you're planning to do, and how long you're planning to do it. This sort of intrusion on personal privacy was imposed on Russians while Russia was in the grip of a communist dictator, but it is unprecedented in America or any other free society. The fact that they are now being seriously proposed, and without any vigorous public objection, argues a truly disturbing degree of meekness in the populace.

Travel restrictions can be brutal and senseless. Consider what happened to Maggie Anderson, a citizen of New Zealand who is married to an American. Anderson is a 51-year-old former flight attendant who has visited the U.S. hundreds of times. She and her American husband visit their U.S. relatives every summer. But last August when she tried to enter the country, immigration officials discovered that, on a visit in 1998, she had overstayed her visa by eight days.

She was held for questioning, which involved being handcuffed and, according to the Associated Press, "made to spread her legs for a rubber-glove search." After 33 hours of such abuse, she was sent back to New Zealand. "It was emotional rape," she said.

If you think this is an isolated example of a hyper-zealous bureaucrat, think again. The San Jose *Mercury-News*, which broke the story, reported that "Immigration and Naturalization Service officials say what happened to Anderson happens dozens of times every day at major international airports. No travel violation, INS officials say, is too minor after Sept. 11."

Immigration officials are just doing their job. That's what the Nazis who were gassing Jews said in their defense at their trials in Nuremberg at the end of World War II.

This isn't something that happened to some young Arab who could plausibly be considered a threat. This is what happened to a middle-aged, middle-class woman from a friendly, non-Arab country, married to an American, who

happened to violate a minor travel regulation. Is anyone safe anymore? — R. W. Bradford

### *Anti-Semitism, imagined and real* —

Nothing annoys Jewish me more than the reading of past writers in search of purported expressions of "anti-Semitism," which allegedly has been found in the work of H.L. Mencken, T.S. Eliot, and e e cummings, among others. Forget about it. Many people said and wrote similar things at the time. What was more important than what they wrote is what they (and other people) did.

Mencken published Jews; his designated successor as editor at the *American Mercury* was Charles Angoff, who later edited anthologies of Jewish-American literature. One of Ezra Pound's favorite younger writers was Louis Zukofsky.

I suspect the point of publicizing such utterances from the past is scaring the currently prominent away from saying anything similar today. As a writer, I have a visceral reluctance to censor anything — written or said.

On the other hand, the suburban golf club that uninvited me from a function a half-century ago was anti-Semitic. The Ivy League university that had a semi-secret quota on Jewish applicants four decades ago was reflecting anti-Semitism. When the National Endowment for the Arts funded remarkably few proposals with Jewish content during the 1980s, it was, in my opinion, anti-Semitic, though the private excuse of the officials there was that Jewish charities should support Jewish-American art. (In fact, the best work was supported in Germany, where cultural benefactors liked to mock Ronald Reagan and, by extension, America.) Was the Jewish writer Irving Howe anti-Semitic when he boasted of helping to terminate the professional careers of only Jewish writers — first, communists, then younger Jewish writers — whom he regarded as unacceptably radical?

Previously, in these pages, I mocked the current Bush administration for having only one visible Jew, Ari Fleischer, in its top echelon, albeit in the highly visible position of chief flack. This last fact illustrates to me that the battle of inclusion is not yet won.

— Richard Kostelanetz

### *No accounting for media accounting* —

Leaving aside the merits or demerits of President Bush's tax-cut proposal, the discussion in the media during the first few days following its unveiling revealed so many fallacious assumptions and incomplete evaluations it's not that easy to try to unpack them.

"The huge Bush tax cut," we are told, "will cost \$670 billion." Why does letting those who earn money keep more of it rather than letting the government take it amount to a "cost"?

The phrase "will keep \$670 billion out of the hands of greedy predatory parasites" seems more accurate to me, but I won't insist on it. How about "will transfer \$670 billion from the government to taxpayers"? That would be more neutral. And more accurate.

By the way, that's \$670 billion over ten years.

Why is it necessary to use the ten-year figure and never mention that the annual figure — \$67 billion — in a budget of \$1.94 trillion amounts to about 3.5%? Could it be because a proposal "costing" 3.5% doesn't sound huge and dramatic enough?

Then, there's the question of whether that \$670 billion will in fact be the amount by which federal revenues are reduced.

In the first place, projections over ten years almost always are wrong no matter how conscientious the assumptions and calculations. In the second place, the \$670 billion projection is based on a static model, rather than a more useful dynamic model, of taxpayer behavior. Static modeling assumes people will not change their behavior if their tax bills or their circumstances change.

Back in 1997, for example, a static-model analysis predicted that cutting the capital gains tax rate from 28 to 20% would lead to a federal revenue loss of \$50 billion over five years. In fact, federal revenue from capital gains taxes increased by \$100 billion.

In reality, the only thing that can be said with certainty about the plan is that it will *not* lead to a \$670 billion reduction in government revenues over ten years. — Alan W. Bock

*Even the lakes are dry* — Bootlegger County, Mississippi: where the weekend is as dry as a sandpile in a Saudi Arabian backyard. But next door is Chugalug County, Tennessee, awash in beer, wine, and more heavily fortified spirits. (I jazzed up the names so they don't put me in jail.) It's as though heaven and hell are next-door neighbors without the wide world in-between. Freedom on one side, storm troopers on the other.

Now the boundary between the two counties is not marked by a guardhouse or border guards like you see in those newsreels of the early '40s. The only way you know you've left the desert of Mississippi for the lush, watery swamps of Tennessee is the sight of the "Sportsman's Single Stop" on your right. It's a filling station, as my generation describes it, and it sits a couple hundred yards from the Tennessee side of the border. It's more than a plain ole filling station. You can fuel yourself as well as your car.

Because they sell beer. Cold golden beer. Draft, can, or bottle. You can sip an eight-ounce plastic cup of brew (\$1) right there in the store while you're admiring the yellow, red, and green fluorescent plastic worms. Or, you can get yourself a two-gallon plastic containerful to go. Some people claim they even deliver the golden merchandise. All this is very strange to a septuagenarian beer drinker, who marvels at the legal restrictions on quenching your thirst with a malt-flavored beverage in these Southern United States.

We spend a lot of summer weekends in Tishomingo County. And, since the great white way of Broadway, the museums and libraries of Manhattan, the art galleries of Paris, and even the gambling casinos of Tunica are not across the street, I drive five miles down the road to the Sportsman's Single Stop when I need entertainment. "Single Stop" says it all. They've got bait, beer, bologna sandwiches, and gas for the boat. All under one roof.

"How come?" I ask one of the clerks behind the counter. "What's going on here?"

"Well, most of them Mississippi folks is bootleggers and they keep on voting dry," says my Tennessee counterman. A wide grin goes with this political analysis. "The bootleggers need the work, dontcha see."

Yeah, I've heard that one before. It's the streetwise answer 95 percent of the time. Sometimes it includes the

local sheriff. Big deal. Like you and me, a pro-dry guy only gets one vote — or five or six if he's got a big family. Still, there's got to be more thirsty carpenters than bootleggers and sheriffs with large families. You'd think the bootlegger/sheriff block would be outvoted.

The clerks at the Single Stop, when they're not filling up two-gallon plastic containers of beer and singing "Rocky Top," like to talk about "the raid." It happened last year. Like chicken-eating turkey buzzards, federal and state lawmen swooped down on the nearby Tishomingo County marina (on the "wrong" side of the line) while it was full of docked boats and opened bottles of firewater.

There's a whole social class of weird, land-loving mariners who buy boats that never see open water. These boats are floating saloons. Their occupants like to wear sailor hats and drink beer in a deck chair. In this case, we're talking Tishomingo County boats on a Tishomingo County lake. And, in Mississippi, by mandate of the legislature, even lakes are dry and so are the boats that float on their surfaces.

Unfortunately for the sailors, these boats weren't. The turkey buzzards arrested so many boozy admirals they had to haul them off to court in a bus. All this happened not 500 yards from the Tennessee filling station that'll let you sip on the premises, carry it out in cases, or as some say, deliver it to your front door. I bet, if they knew how, they'd like to link every kitchen sink faucet in Tennessee to their Bud Light spigot — kinda like a PC tapping into the Internet. Go figure.

— Ted Roberts

***All cannon fodder is created equal*** — I have been a libertarian for many years, and there are still some moments when I remember why I am one.

I experienced one of those moments on New Year's Eve, when I watched Brit Hume's show on the Fox News Network. Brit wasn't there that night, or things might have turned out differently, but his panelists Morton Kondracke and Fred Barnes were there as usual. Both are conservatives — or, in the case of Kondracke, as close as you can come to it. Both welcomed the opportunity to respond to the recent suggestion by Charles Rangel, Harlem's congressman-for-life, that conscription be reinstituted in the United States. If the Bushites want to fight a war, Rangel said, let those who support them face the draft, or see their sons have to face it.

Maybe then they'd think twice about going to war.

The suggestion was ironic, but it reminded me of the days when liberals like Rangel wanted "selective service" to become "universal military training," so that the draft would somehow be rendered "fair." Teddy Kennedy was the apostle of that religion. But Richard Nixon, a Republican president who, for once, was following the lead of libertarian advisors, just went and abolished the whole darn thing, and the draft was no longer available for social engineering.

It was Nixon's most truly conservative act. No conservative should be attracted to conscription. Conscription was, and always will be, the favorite agency of the aggressor state. In peacetime, it regiments and indoctrinates the populace; in

wartime, it encourages tactics of the most expensive kind, the kind that (witness Vietnam) depend not on the advanced technology that always gives the advantage to a capitalist, and therefore to a free, country, but on conscript soldiers deployed as cannon fodder. Then, having sent "our boys" into battle, the state can turn to the populace and pressure it for still



more active support of its policies, both foreign and domestic, so that the welfare of the citizen soldiers will not be threatened.

Sixty years ago, Isabel Paterson, who was present at the start of the modern conservative and libertarian movements, provided conclusive justification of the principle of an all-volunteer army in her book *The God of the Machine*; twelve years ago the principle was fully vindicated by the victory of the American professional army in the Gulf War; one year ago the principle was revindicated by the victory of the same army in Afghanistan, an army fighting with the express purpose of minimizing cannon fodder. The principle was justified in every way that a conservative should value. Knowing this, I confidently expected Kondracke and Barnes to wail in opposition to the draft.

They didn't. Instead, both of them immediately and enthusiastically endorsed it. Barnes was ridiculously explicit: we need the draft, he said, *not* because we need more soldiers, but because we need more "fairness" and "community" (such as we had during the Vietnam War!). As viewed by the two conservative sages, conscription is social engineering's great success story, providing invaluable lessons in democracy and togetherness. Just think: everybody gets the

same haircut! Besides, being drafted introduces you to people whom you otherwise would never encounter (because, of course, you wouldn't *want* to encounter them). In short, Kondracke and Barnes endorsed the most extreme and vulgar nonsense of the modern liberals.

So it was then that I remembered why I'm a libertarian. It's because everybody else is crazy.

No, really. They are.

— Stephen Cox

## ***Ambivalence makes strange bedfellows***

— Oregon allows supporters and opponents of ballot measures, for a fee of \$500, to present their cases in a pamphlet distributed to all voters before the election. Such a pamphlet was distributed before the Jan. 28 election on whether to raise income taxes "temporarily" to help the state overcome its deficit. In addition to statements from the usual suspects — teachers' unions, tax opponents, etc. — this pamphlet features statements from Alternatives to Growth Oregon (AGO), the state's outspoken no-growth environmental group.

Curiously, AGO submitted statements both in favor of and opposed to the tax increase. On the pro side, AGO says tax increases are good because they discourage people from moving to Oregon. On the con side, AGO says that tax increases are bad because some of them subsidize growth.

AGO's preference seems to be high taxes that are spent as inefficiently as possible. We can laugh at AGO's naivete, but we also can see the group's ambivalence as an opportunity.

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## ***Curiously, Alternatives to Growth Oregon came out both for and against the tax increase.***

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The no-growth movement attracts many people because they don't like subsidies. We don't like subsidies either. If we cultivate this part of their platform, we can gain a powerful ally. If we focus on the part of the platform we don't like, we risk gaining a powerful opponent.

— Randal O'Toole

***Register guns, not Muslims!*** — January 10, 2003 was the deadline for people from thirteen predominantly Arab or Muslim countries to register with the U.S. government under a new system for tracking foreign nationals. In a statement regarding this immigrant registration, the American Civil Liberties Union said, "These registration schemes are not making us any safer. They do nothing but damage our reputation as a freedom-loving society . . ."

This is the same organization that proclaims: "The ACLU . . . believes that the Second Amendment does not confer an unlimited right upon individuals to own guns or other weapons nor does it prohibit reasonable regulation of gun ownership, such as licensing and registration."

One has to wonder what the ACLU would do if, as the immigrants stepped off the boats, the NRA handed them free firearms. Would the ACLU then be for or against registration?

— Chris Henderson

***Murder rate fizzles*** — The Committee to Protect Journalists reports that 19 journalists worldwide were killed during 2002, most of them in direct reprisal for their investigative work. Few of the killers have been brought to justice. The countries where journalists are most at risk are Russia and Colombia, in each of which three journalists died in the line of duty. In fact, this marks a decrease in journalist on-the-job mortality rates: 37 were killed in 2001. I know not everybody will consider this a healthy trend, but pardon me for special pleading if I do.

— Alan W. Bock

***Champion of whom?*** — Curious to me is the current interest within the political arena over which party is more concerned with minorities. For decades, the Democratic Party has claimed to champion minorities, while by their very name, they promise to represent the will of the majority.

— Tim Slagle

***Winning isn't the only thing*** — Jesse Jackson still is preaching racism, which as a sermon topic pays a lot better than love, forgiveness, and all that old stuff about the other cheek. This time the Pope of Prejudice, along with the Black Coaches Association, is blaming racist America for the lack of black college football coaches. The BCA wants 20 percent of the coaches' chairs to be filled with black hindquarters within three years.

The BCA publicly has threatened to urge stellar black athletes to turn away from schools that "lack diversity." That's hatespeak for "white coaches."

A waste of breath! Black athletes are too smart to reject Penn State, Alabama, and USC for Southwest Central U, and thereby miss an opportunity for NFL riches. Also, it's warming that white alumni don't reply in kind and deny their contributions to big-time college football and basketball programs that lack player diversity: not many whites on the field these days.

There's even more noise about coaches in the NFL. Sportswriters love to display their racial loving kindness on this issue. (Wonder what percentage of sportswriters are black?) It's all a conspiracy, they tell us. Why do they see white racism concerning coaches and not black racism in the selection of players? Why does one disproportion trouble them but not the other? How do you explain a whopping 75 percent predominance of black players?

Easy. It is not a conspiracy. Blacks are better athletes. If you wanna win the football game, odds are you'll select a black DB. Coaches, owners, and general managers wanna win. There is no NFL executive so mean, so low down, so hateful of minorities that he won't play Ricky Williams over his slower, smaller white counterpart and clasp him with a tight interracial hug when he scores. The execs want to win!

If the Grand Klagon of the KKK coached the New York Jets, you'd see the same black player imbalance. So, why doesn't the same logic apply to the hiring of coaches?

— Ted Roberts

***Conquest by demography*** — Military conquest has immense long-term consequences, especially when followed by political conquest. Cultural conquest can be greater yet, even though it's completely non-violent. America is often accused of "cultural imperialism" by the chattering



classes. Well, I understand the resentment of the intellectuals, but McDonald's has never tried to subjugate the natives. And even if the U.S. Marines did, there's never been a conspiracy to insinuate ad-bearing T-shirts, baseball caps, and Hollywood movies into the farthest reaches of the planet. It happened because everybody (except the intellectuals, of course) actively reached out for those things. American culture has overwhelmed the rest of the world.

The definitive type of conquest is demographic because it can't be undone. What can people do if millions of people from a different culture enter their country, or a region of their country? Do they simply abandon their country to them? You can't get rid of them short of doing what has come to be called "ethnic cleansing." Ethnic cleansing is

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*The definitive type of conquest is demographic because it can't be undone. What can people do if millions of people from a different culture enter their country?*

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mankind's most time-honored solution to dealing with this intractable problem.

In earlier times, the most certain way to deal with the outsiders you couldn't use as slaves was simply to kill them. It made some sense in a world where resources were looked on as a zero-sum game, where the fewer people there were to share with, the better off you were. That, and it made no sense to keep around the friends and relatives of people you killed, because they might resent it and return the favor with extreme prejudice. What Hitler did to the Jews was actually no different from what conquerors have always done with people who didn't accommodate themselves to the newest world order. Hitler is viewed as a special devil not because his actions were so unusual, or even because they were an unwelcome anachronism in modern, more humane times. They were condemned because he zeroed in on particular ethnic groups, unlike Marxist-oriented despots like Stalin, Mao, or Pol Pot, who killed absolutely anybody, based on belief alone.

In pre-industrial times, conquered minority people who kept their own customs and resisted integration were likely to be ethnically cleansed. Fortunately, in modern, secular, urban, capitalistic societies they are, or should be, a non-problem. Today's society makes it easy for people to associate (or not) with whom they wish, intermarry, and even open restaurants with strange cuisines to profit from outsiders. That's why ethnic cleansing will be less of a problem as the world becomes richer.

Genghis Khan (1167–1227), and Tamerlane (1336–1405), were notorious for ethnic cleansing. The Mongolians conquered the Chinese militarily and then politically; but under Mongolian rule, the Chinese conquered the Mongolians demographically. The Chinese didn't cleanse an area, they submerged it in humanity. The Chinese conquest of Tibet in 1950 wasn't very nice, but it was completely unexceptional. What made it different from most conquests, as well as per-

manent and irretrievable, is that Beijing caused millions of ethnic Han to populate Tibet. And they're never going home, because most of Tibet's residents are now Han who have been born there, and they substantially outnumber the Tibetans. The same process is now happening in Xinjiang.

"Mongolia" used to be one place, until the mid-1600s, when the distinction between "Inner" (which is today just a province of China) and "Outer" (which is the independent country we're discussing) was first made. The Mongolians have attempted to regain the lost territory, but when you're dealing with demographic immersion, resistance is futile unless you're both incredibly powerful and incredibly ruthless.

This is a situation the U.S. will have to face. Today, there are a half-dozen states (prominently including California and Texas) where people of European ethnicity will soon be in a minority. There is every reason why that trend is likely to accelerate; within most people's lifetimes, Hispanics will be majorities. Personally, I have no problem with this. From a strictly historical perspective, you can see it as the Hispanics retaking territory that was originally theirs; Anglos only really started laying claim to the southwest in the 1830s, well within the lifetimes of two long-lived individuals.

Of course, I see all these arguments about "our" land as spurious and ridiculous to start with; the land belongs to the individuals who own it, and their race is irrelevant. But I realize that's not the way most people see it, so there will likely be problems as Hispanics demographically capture large portions of the United States. I actually expect we'll see an "Inner" and an "Outer" Texas; Americans will get to feel like the Mongols.

People seem genetically programmed to prefer people of their own ethnic and genetic background to those of another ethnic and genetic background. The more genes we share with people, the more we are likely to treat them as brothers. The fewer genes we share, the more likely we are to treat them as "others." That's why we treat apes (with whom we share around 98% of our genes) better than horses, horses better than fish, and fish better than nematodes (with whom we share about 50% of our genes) because the greater the genetic difference, the less human (or like ourselves) they are. So, looked at from a strictly biological point of view, the "open door" policy of Western countries, welcoming mas-



"I don't have to look — I'd *know* if I had an elephant back there!"

sive immigration of different races, would seem to be asking for trouble.

— Douglas Casey

**The lesson of monk** — The TV show “Monk” features a virtuoso detective, Adrian Monk (Tony Shalhoub), who solves crimes while struggling with his own obsessive-compulsive disorder, a problem which has led to his suspension from active police work. He tries to get reinstated, and is turned down because he cannot be relied on to carry out all the duties of a police officer, such as responding appropriately to gunfire.

If police departments were commercial companies, there would be no problem. This quirky individual with a knack for solving crimes would be hired as a consultant on a fancy salary and relieved of the distraction of routine police duties. That might still be the most efficient choice, even after he recovers from his emotional problems, which, we are implausibly informed, will occur when he solves his wife’s murder (I only hope we’re not going to be expected to swallow the story that he did the killing himself and has repressed the memory.)

Someone who can see clues that everyone else misses doesn’t need to carry a gun, make arrests, or write reports. But since police departments are operated as bureaucratized, tradition-bound, quasi-military collectives, this manifestly rational solution is out of the question. *Monk’s* moral is clear: privatize the police.

— David Ramsay Steele

**The romance of the queue** — When you enter my post office, you know you have entered a clockless zone where time is dead. Like gambling casinos, opium dens, and supermarkets, the Postal Service ignores the sunlit world outside.

Even windows are absent. Heaven forbid you should see the sun traverse the sky as you wait in line. You realize that time is mortally wounded the minute you catch that interminable line facing the counter. It moves like a green slug on your patio pavement. There is so little progress that it has segmented into clumps of four or five customers, in conversational or gin rummy groups. Vendors sell popcorn and folding chairs.

I tell my endearing but unattached daughter to drop the Internet and pick up her pen. Write some letters, go to the post office, meet your beau in line — not online. There is plenty of time to listen to detailed bios of suiters. More beau-

tiful friendships have been made in post office lobbies than in neighborhood bars. It’s cheaper, too. Even better, this federal facility is an effective screening device for feminine seekers of law-abiding companions, either for a few weeks — or eternity. Mailers, on average, have a cleaner legal record than barflies. And, they hold better jobs with richer pension benefits, since they’re not laying out \$7.50 a pop for Jack Daniels Black. Drop by one day and check it out. Bring a package so you won’t look like an imposter. — Ted Roberts

**Just desserts** — In the early 1800s, the British were seizing American ships bound for French ports, and occasionally conscripting Americans born in Britain. And they weren’t preventing traders in Canada from selling guns to Indians, who sometimes killed Americans. President James Madison wanted a declaration of war.

But many, perhaps most, Americans felt these were trivial reasons to go to war. If you didn’t want your ship confiscated by the British, you shouldn’t trade with France, with whom the English were at war. Some merchant’s indiscretion shouldn’t drag everybody into a war. Westward moving colonists had many virtues, but respect for the property rights of the Indians who already lived there wasn’t among them. The British in Canada were trading guns for the Indians’ furs as the influx of American colonists was destroying the fur trade; not surprisingly, the Indians wanted to defend themselves.

Madison managed to get Congress to declare war, but he couldn’t get them to raise taxes to pay for it. Madison then tried to recruit 50,000 citizens to invade and conquer Canada, but succeeded only in garnering an army of 5,000, which was roundly defeated but only after they burned the Parliament buildings in Toronto. It was mainly in retribution that the British burned the White House the next year. Their expeditionary force, however, was noted for its good manners, and, in fact, they did their best to avoid damage to private property.

As the British closed in on the city, many Americans correctly attributed the pointless war to Madison. One young lady gained fame for stopping her carriage in front of the White House, loosening her very long tresses, and saying, “I pray that I may have the privilege of parting with this hair, in order to make a noose for Mr. Madison.” If someone intimidated feeling like that today, she’d be arrested, and charged with any number of crimes. In the War of 1812, Dolley Madison actually feared that those opposing the war might lynch her husband.

Dolley had to leave most of her personal possessions in the White House before it was burned simply because she couldn’t round up enough carriages to carry them away; there was a shortage in D.C., since all her neighbors were doing the same thing.

Isn’t it charming that, in those days, the perpetrator of a deed could expect to suffer its consequences directly? In today’s national security state, high government officials have legions of servants to whisk them to safety, and spare them even an inconvenience in the process. Perversely, they are the ones least likely to suffer any adverse consequences of their actions. And, of course, a declaration of war is unneeded, and funding can always be found from some-



“Six purple hearts? — You must really be accident prone!”

where in the Defense Department's \$396 billion budget.

— Douglas Casey

### ***Karl and Sandra and Adam and Hugh—***

What a strange enclave is the few square miles called Hollywood. A beachhead of doubters on the western shores of capitalism, specializing in risk taking; practitioners of hard-core capitalism.

So why are they throwing eggs and rotten fruit at Adam Smith instead of kneeling at his shrine? Why is it they just can't stop dissing the system? It's guilt! "And low self esteem!" answer the psychoanalysts. It's a variation of the old Groucho joke: any club that admits me is not worth joining. Or, any system that pays me millions to mimic reality has gotta be faulty.

Take Hollywood's recent morality play, *Two Weeks Notice*: a two-hour manifesto on central planning disguised as a romantic romp. It employs a lavishly paid Hugh Grant and Sandra Bullock. Comedy — I was expecting and I got some. Leftist politics — I was not expecting but I got a lot of that, too.

Sandra's character, Lucy, is an activist well-equipped with physical feminine adornments. She lights the room with charm instead of revolutionary torches. She's bright; a Harvard Law School grad. Lucy the Lawyer flames with passion. Her creator — God or Karl Marx — put her on earth to improve a sick system that produces men of business who erect large condos for profit — that's George's (Hugh Grant) specialty.

Evidently, one of Lucy's Harvard courses taught her the art of lying down in rubbly streets blocking the path of cranes swinging lead balls against trembling antique buildings — buildings that block condollian progress. Because that's where we find her in Scene One. There's Lucy in the street, on her back, applying her education. And still hectoring, lecturing. Her passion rivals that of Genesis. You'd think that George is planning the Tower of Babel, not a simple multiple dwelling in Brooklyn.

George is a rich, dumb, and greedy real estate tycoon with a winsome smile that even Lucy's dull dialectic can't erase. He's a devil with dimples who wants to put up a high-rise edifice to house the homeless; but only those who can lay out half a mil for 1,600 square feet.

The scriptwriters give Lucy buckets of honeyed words to buttress her cause, loosely defined as a diatribe against the globalization of Brooklyn. (Lucy the Lawyer would love the low-profile architectural splendor of Pyongyang!) Poor Hugh just listens and dimples up his face. He gets not one word to explain that providing shelter for humanity, even to those east of Beverly Hills, is a laudable enterprise.

Can you believe it, this malevolent blocker of sunlight to pale Brooklyn kids wants to build dwellings and serendipitously increase the supply of residences, thereby reducing rents. What nerve — why shouldn't the state build and cheaply rent a groundhugging sprawl of shrunken condos? (Try this question on your North Korean friends.)

Plot? Not much except he wants to build his sun-blocking, soot-spewing Tower of Babel on the site of the homey community center: a landmark edifice splashed with sunshine and the smiles of children. This antique structure,

like the tootsie center in your candy sucker, is the sweet ideological heart of the film.

You get the idea.

— Ted Roberts

***Individual rights need not apply*** — The so-(and badly-)called "collective right" interpretation of the Second Amendment has been given a second wind by the recent *The Second Amendment in Law and History: Historians and Constitutional Scholars on the Right to Bear Arms*, edited by Carl T. Bogus. It is a concerted response to the many thinkers of the past few years who have been championing the "individual right" theory. I will leave it to those targeted writers to fire back in their own defense. However, there is one passage that I cannot resist taking aim at myself.

University of Tulsa College of Law professor Paul Finkelman addresses (p. 142) the argument that the "people" who have a right "to keep and bear arms" in the Second Amendment are the same "people" — that is, private individuals — who have rights in the First, Fourth, and Ninth Amendments. His counterargument: consider, for example, the term "people" in the First Amendment — "Congress shall make no law . . . prohibiting . . . the right of the people peaceably to assemble." If it is hard to construe the word "people" in the Fourth Amendment to be anything but a reference to individuals, it is equally difficult to construe the term in the First Amendment as anything but a collective right. Clearly, the idea of the people assembling contemplates a large number of people and not a single person assembling.

Meaning what? That an "assembly," like a "well regulated Militia," is a government-controlled unit of select persons? That we can assemble only with whom, when, and why as determined by the legislature? Extending this, does it mean people may join together to form a church, but no one individual has a right to his personal religious convictions?

The right of assembly is the right of the individual — each and every individual ("the people") — to assemble with those who'll have him. The problem comes from the notion that a "collective" is something other than a collection of individuals, and it really gets bad when we are told that "the people" means the state. For the integrity of the debate, let us

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acknowledge that those, who believe that the Second Amendment grants a right to average citizens, are advocating a "civil rights" interpretation, while those, who contend that the mentioned right belongs only to the state governments, are advocating what cannot be called anything but the "states' rights" theory.

— Barry Loberfeld

**Ignorance is bliss** — A front-page feature in *The National Law Journal* reported that courts are "wrestling" with the "major problem" of Internet-savvy jurors who are accessing information specifically withheld from them by judges. Yes, these self-informed jurors are wreaking havoc on the justice system.

Judge Michael Wilkinson, a Maricopa County Superior Court judge in Phoenix, recently declared a mistrial after a juror went on the Internet and learned an accused child molester, if convicted, faced a minimum sentence of 17 years in prison. She thought that was excessive. Presumably, the judge only found out about this because the juror talked about the minimum sentence with other jurors.

In some cases, jurors are looking up legal and medical terms and judging cases on their own understanding of the facts instead of relying solely upon the lawyers' courtroom presentations.

In a widely publicized Conway, S.C. case, a woman was accused of killing her fetus because she used crack cocaine during her pregnancy. A mistrial was declared last year because two of the jurors had looked up medical information (presumably about the effect(s), if any, of crack cocaine on a fetus). The woman was convicted in a second trial.

In another trial, a juror came to the jury room carrying several pages she had copied from *The Physician's Desk Reference*, as well as the book itself. The bailiff saw and quickly seized the excessively informative book and that juror was replaced. Another juror admitted she had looked up medical terms on the Internet, but she was not replaced

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*What does the professor mean? That an "assembly," like a "well regulated Militia," is a government-controlled unit of select persons? That we can assemble only with whom, when, and why as determined by the legislature?*

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— there were no more alternate jurors. Besides, she must have appeared benign relative to somebody who would bring a hard copy of medical information into the jury room.

Recently, a federal judge in Philadelphia ruled against a mistrial, even though a juror admitted he researched a defendant's financial condition on the Internet before he and his fellow jurors awarded him \$2 million.

The *Journal* reports the chair of the criminal litigation section of the American Bar Association, Laura A. Miller, as saying jurors' cyberspace research clearly is misconduct and judges need to be even more specific than in the past about what information jurors can and cannot access.

Right. Judges should tell people, even more specifically,

what they can and cannot look up on their own computers in the privacy of their own homes.

— Sandy Shaw

**The guns of Thomas Jefferson** — Did you celebrate January 1 as something besides New Year's Day? Among those who did were Americans United for Separation of Church and State, the ACLU, the Baptist Joint Committee on Public Affairs, and the Council for Secular Humanism.

The occasion? Why, it was the anniversary of President Thomas Jefferson's letter to the Danbury Baptist Association. That document is famous for Jefferson's construing of the First Amendment's religious clauses as "building a wall of separation between Church and State." This broad and generous reading by a Founding Father is seen as a support by those who advocate the notion that the First Amendment goes far beyond its actual language.

One cannot help but wonder whether those who embrace the advocacy groups mentioned above believe the Second Amendment may well have its own "Danbury letter" in Jefferson's 1787 correspondence to William S. Smith. The Sage of Monticello wrote: "And what country can preserve its liberties, if the rulers are not warned from time to time that this people preserve the spirit of resistance? Let them take up arms. The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants." There you have it. Every point of the so-called "insurrectionist" theory of the Second Amendment is present and accounted for: private citizens have a natural right to keep and bear arms as a check on the rise of tyranny.

So why in the Danbury letter considered indispensable to our understanding of the First Amendment, while the Smith letter is dismissed as irrelevant to our understanding of the Second? Why don't our "civil libertarians" speak of the Second Amendment's right to "take up arms"? Is or isn't Jefferson the Rosetta stone of our inalienable rights and their codification in the Constitution? Or has he become, much like that Constitution, suitable only when he serves our ends?

— Barry Loberfeld

**A new enlightenment?** — A recent project here at Revolution HQ (a.k.a. my home) involved ripping out fluorescent light fixtures and replacing them with incandescent halogens. I have to wonder why anyone would want fluorescent lighting in an American home. The warm glow of an incandescent bulb is much more pleasing to the senses and recalls the warm, comforting glow of the night light many of us once had in our bedrooms to chase away childhood monsters.

Perhaps the difference in the feel of the two types of lighting can be traced to our primitive ancestors. The slow burning of a thin metal wire inside a glass envelope causes incandescence. That produces heat and light similar to the hot coals our ancestors sat around to ward off cold and predators. I can understand why Edison stayed up the entire night staring at his first light bulb.

Fluorescence, on the other hand, is caused by a high voltage electrical discharge, much like the lightning that made our ancestors tremble in fear, hide in caves, and pray to the gods for deliverance. It is really suitable only for penal institutions. The cold blue seems to bring out every blemish and



vein, and it burns the eyes like a chlorine swimming pool. The harsh light actually is blinking sixty times per second and its persistent hum tortures the eardrum. Fluorescents are preferred only for their efficiency, as they use less than one-third the energy of an incandescent lamp. I suspect a good portion of communist Eastern Europe was illuminated with fluorescent lighting.

Because of the energy savings from fluorescent bulbs, and pressure from environmentalists' lobbies, many "progressive" cities have passed laws forbidding the use of incandescent bulbs in commercial locations. Some of these towns are dark and dreary for most of the winter and the lack of incandescent lighting contributes to the melancholy feel of that season in such places. I have visited towns where you cannot find a single incandescent bulb in any hotel or restaurant. I would not be surprised to learn those areas have elevated suicide rates.

— Tim Slagle

### *Coffee for the goose, marijuana for the gander*

Dutch researchers say drinking coffee — seven cups a day — cuts the risk of Type 2 diabetes by 50 percent. The study is not yet confirmed, but if it is, do you suppose it will stop neo-Puritans from trying to get us to drink less coffee? I suspect that their urge to govern what others ingest is almost completely independent of reliable information on documentable harm. Otherwise, marijuana would be legal and tobacco would be banned.

— Alan W. Bock

**Endangered word list** — The government compiles lists of endangered plant and animal species and passes laws to protect them. The reason, at least the ostensible reason, is that, at some future date, these species (or non-species, such as "the northern spotted owl") may be crucial to human happiness. Even the lowly snail darter may wind up curing cancer.

However that may be, it's evident that plants and animals aren't the only things that deserve protection. Endangered words should be protected, too.

Now, I don't mean every word. Some words are born to die. No cancer will ever be cured by "rear" (as in "corn is raised; children are reared"). Nobody should leap into the river to save the grammar-book elaborations of that strange word "shall." But there are many locutions, such as the ones I am about to list, that are well worth rescuing.

Some of them are worth it because they identify concepts

that should not be lost. Others are worth it simply for the color and spirit that they add to life. Some are formal, others are highly informal, but each is a resource that people should not be without. And the great thing about words is this: you don't need a government program to protect them. All you have to do is — use them!

So here goes. I've made a few notes, but I suspect that you'll see for yourself why the words I mention deserve to be saved.



SHCHAMBERS

1. Words endangered because their habitat has been degraded by neighboring words. Consider:

uninterested (harassed by disinterested)  
 ingenuous (in flight from ingenious)  
 leave, and get off (threatened by exit and deplane)  
 fewer (preyed upon by less)  
 sensuous (overwhelmed by sensual)  
 number, as in "I have a large number of ideas" (flattened by amount)  
 favorable and unfavorable (ravaged by positive and negative)

2. Words that are hurting simply because their plurals do not end in "s." Unfair? You betcha. And it's up to you to do something about it. Amaze your colleagues by telling them that the latest spreadsheet lacks a datum. Then act on a broad front. Protect all minority singulars and plurals:

datum-data

graffito-graffiti

phenomenon-phenomena

criterion-criteria

medium-media

alumnus-alumni-alumna-alumnae (yes, there are four of them — isn't that great?)

aluminum-alumina (sorry, just kidding)

3. Strong verbs. These words have been endangered ever since English came up with the weak and lazy -ed suffix, which was originally supposed to provide for the naturalization of foreign verbs. Now almost every verb has been "naturalized" in that way. But we can save what remains of our old-growth verbs. Why would anyone prefer to say, "She thrived on the publicity," when he can say, "She throve on the publicity?" and, "She has thriven on the publicity"? Keep these verbs in your prayers:

strive-strove-striven

shine-shone-shone

wake-woke-woken

dive-dove- (ugh!) dived  
 cling-clung-clung  
 heave-hove-hove  
 spit-spat-spat  
 shit-shat-shat

4. Verbs in complicated relationships. A friend notes that verbal complexity has become unfashionable: "I will have seen that movie by tomorrow night" — say that to people, and they'll look at you as if you were a freak." Another friend laments that the subjunctive has long been on the trail of tears. Such problems can be addressed only by determined attempts to reintroduce complexity. Be brave enough to eschew "I'm not rich enough to be in that club" for "Were I rich, I would already have been asked if I should like to become a member."

5. Fighting words. John Kenneth Galbraith once discussed "the affluent society." He might have done better to discuss "the nice society." In modern America, even the poor tend strongly to be rather *nice*. But niceness now endangers many venerable terms of abuse:

busybody  
 blowhard  
 uppity  
 persnickety  
 puddinhead  
 skunk  
 weasel  
 scamp  
 cretin  
 moron  
 illiterate  
 gauche  
 priggish  
 lunatic  
 unhinged  
 knave  
 goon  
 goof  
 drivell  
 drool

If you have a *mean streak* (and who doesn't?), you can go on and on with this.

6. Loving Words. The Nice Society is one in which people hesitate to get carried away, even with praise. So we are in danger of losing

super  
 swell  
 tops  
 boss (as adjective, of course)  
 sight for sore eyes



"Freeze!"

glorious  
 heroic  
 gallant

chivalrous (when's the last time someone complimented you on a chivalrous action?)

gentlemanly

lovely

pristine

virginal

and almost all other decidedly favorable terms except "awesome," which now means something like "OK".

7. Interjections. The world becomes a poorer place whenever a colorful interjection goes extinct. Please practice sensitivity toward:

gosh!

golly!

say!

holy mackerel!

holy moly! (note the classical allusion)

hallelujah!

well, I declare!

well, I'll be a monkey's uncle!

in a pig's eye!

8. Others. Many expressions, while endangered, escape public concern because, like Basque or certain other weird little linguistic phenomena, they are not readily classifiable. But just because the following words have no Societies for the Protection Of doesn't mean that they shouldn't be protected:

tarry

long time, no see

every Tom, Dick, and Harry (although, as Carolina Beroza suggests, this should probably be updated to "every Brandon, Hunter, and Josh")

athwart

by dint of

puttin on the dog

puttin on airs

suppose (used as Edward G. Robinson uses it in *Double Indemnity*: "Now, suppose you go downstairs . . .")

thither, and its offspring thitherto

pooh-bah

pooh-pooh

grammar school

Besides using endangered expressions from time to time, you may want to adopt a particular expression as a personal companion and pet.

I must warn you, however, that some expressions now up for adoption are wild creatures that have been abandoned by people who thought they could handle them but were eventually forced to give them up. You will probably remember the incident, a few years ago, in which "niggardly" slipped off its leash and terrorized Washington, D.C. "Sticks" and "hillbillies" often cause problems for farm folk; the adjectival use of "discriminating" has proven difficult to maintain in urban areas; and "crippled people," "bums," and "swamps" (synonym for "wetlands") are outlawed within 1000 yards of most colleges and universities.

Still, these unfortunate expressions need your help. And all they really want from you is . . . lip service. — Stephen Cox

# Totalitarian Information Awareness

*by Joe W. (Chip) Pitts III*

The nightmare world of George Orwell isn't just fiction anymore, thanks to a new program from George Bush and an old Iran-Contra convict.

Unbeknownst to most Americans, their liberty is being consumed by the triad of counter-terrorism programs enacted since Sept. 11: the Patriot Act\*, last fall's Homeland Security Act, and finally the "Total Information Awareness" initiative conceived and run by former Iran-Contra felon John Poindexter.†

Total Information Awareness (TIA) starts from the recognition that our daily lives are monitored more than ever before. But while most of us find this at least vaguely objectionable, TIA sees in this an opportunity to capture terrorists. After all, those who visit Times Square in New York, or Piccadilly Circus in London, are on camera hundreds of times per visit; even in less concentrated environments, it's now routine that shopping malls, convenience stores, banks, ATM machines, airports, restaurants and other merchants, and their parking lots capture us as we carry out the transactions that constitute the business of life. Our phone calls are made on mobile networks that include location-monitoring technologies pinpointing where we are at any given time. Palm Pilots, other PDAs, or laptops may inform us of the nearest Starbucks location, but also tell the network where we are and what we want, from the news we read to the books we order online. Satellites hover overhead, communicating constantly with GPS sensors in our cars, trucks, boats, and handheld devices, viewing details as minute as the license plates on our vehicles, as highway toll tags authorize our passage and record our comings and goings. Cable tele-

vision companies monitor and record our pay-per-view transactions. Travel agencies and our own Internet bookings track our preferences and meanderings. Doctors, hospitals, universities, and insurance companies increasingly rely on networked, digitized medical records. Credit and debit card terminals at grocery and video stores, gas stations, and hotels note where and when we make our purchases, and the digital signals sent along the financial networks determine whether we'll be allowed to proceed with the purchases, or execute our stock trades, or not. The IRS and other government agencies both monitor increasing amounts of such elec-

\*Considered in these pages in May, 2002.

†While his conviction on five felonies (e.g. obstructing justice, destruction of documents, lying to Congress) was later overturned on the technicality that it relied in part on his own immunized testimony, the facts remain that he masterminded the illegal sale of arms to Iran to fund assistance to the Nicaraguan Contras. Both the Iranians and the Contras were considered by our government and human rights groups to be guilty of terrorist acts. So Poindexter — who funded terrorists and provided misinformation about it — is now in charge of using information to fight terrorism. America — what a country!

tronic records, and create new records about us and with us, as we pay our taxes, appear in court, or apply for driver's licenses, passports, visas, or other government benefits using electronic means.

TIA would gather up and link all these datapoints and streams — whether emails, phone calls, instant messages, video or audio broadcasts, records of gun purchases, car rentals, or charitable contributions — into hundreds of millions of virtual dossiers on each of us, then “mine” that data for patterns resembling the patterns of terrorist activity coming from other datastreams. In this way, TIA hopes to detect and “preempt” terrorist activity.

If you're not familiar with “data mining,” think for example of Internet search engine Google — but on steroids — or perhaps the way those credit card companies sometimes call you because they think they've detected a pattern of fraud in your transaction data (and recall how often they're wrong!). Well, TIA will be the same sort of effort, but orders of magnitude broader.

While the many depredations of liberty over the past year and a half often have been described as “Orwellian,” the appellation fits none as aptly as Poindexter's baby. TIA threatens to suck the oxygen from liberty's flame in a way unprecedented in the history of our republic. Even George Orwell, who invented “Big Brother” in his novel 1984, would be shocked at the pervasiveness and ruthlessness of the intrusion that Poindexter is trying to implement.

Poindexter has now removed the logo that graced the TIA website ([www.darpa.mil/iao/](http://www.darpa.mil/iao/)) during the first year or so of its existence: the creepy, Masonic, all-seeing eye within a Pyramid, like that on the back of a dollar bill, but emitting a ray of light (or a death beam?) spanning the globe, and accompanied by the slogan “*Scientia Est Potentia*” (“Knowledge Is Power”). (The prior logo may still be viewed at [www.computerbytesman.com/tia/index.htm](http://www.computerbytesman.com/tia/index.htm).) But the ominous connotations of those images linger despite the website's hasty cleansing.

### The “Patriot” Act

The infamous “Patriot Act” gutted at least half — the most important half — of the Bill of Rights. The all-important First Amendment's guarantees of free expression and assem-

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*The Total Information Awareness program would gather up all the information publicly or privately recorded — including emails, phone calls, instant messages, video or audio broadcasts, records of gun purchases, car rentals, and charitable contributions — into dossiers on every American.*

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bly were undercut by allowing an unprecedented degree of government intrusion. Librarians and bookstores are now supposed to turn over information on our reading habits, undoubtedly chilling free thought and breaking down the foundation of free inquiry that undergirds the ability to

question and dissent from government actions. The Fourth Amendment's guarantee of freedom in our homes and personal effects from unreasonable searches was seriously undercut by allowing electronic surveillance (without our knowledge) of our home computers, emails, and Internet surfing habits, and “sneak and peak” search warrants authorizing searches of our houses without our being told.

The Fifth Amendment's guarantee of due process and the right to confront witnesses against you means little if immigrants and even American citizens (like Jose Padilla or Yaser Esam Hamdi) can be indefinitely held without charge, access to lawyers, or a judicial hearing, trial, or review of any kind simply by virtue of the government labeling them “terrorists” or “enemy combatants.” The Sixth Amendment's right to a speedy public trial apparently applies no longer. Even the Eighth Amendment's guarantee against cruel and unusual punishment seems to be held in little esteem, if certain reports of beatings and solitary confinement of detainees

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*Even George Orwell, who invented “Big Brother” in his novel 1984, would be shocked at the pervasiveness and ruthlessness of the intrusion that Poindexter is trying to implement.*

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without access to family or health care, and other reports of detainees transferred to face torture in places like Pakistan and Egypt can be believed. While we can be thankful that torture was openly discussed only briefly as a legitimate policy tool, our government's new insensitivity to the delicacies of interrogation methods strongly suggests that it cares far more about ends than means, and about so-called results more than liberties. The Patriot Act sets the stage for intense government focus on the activities of innocent people and misdirects governmental resources from appropriate focus on actual terrorist activities. At least in the Patriot Act some homage was paid to continued weak oversight through the persistence of judicial warrant requirements in some instances (although the process of forum shopping to find a friendly judge renders this more a formal than a truly substantive protection). Since that time, however, a special federal appeals court decision has obliterated most of what was left of the wall between intelligence and law enforcement. TIA's technological approach risks bypassing such protections completely.

### The Homeland Security Act

It's ironic, to say the least, that a conservative president putatively committed to limited government has brought into being the most massive new bureaucracy since the various military services were brought into the Department of Defense fifty years ago. The new Homeland Security Act, totaling about 500 pages, consolidates 22 federal agencies and about 170,000 employees, including the Secret Service, the Immigration & Naturalization Service, the Border Patrol, and the Coast Guard. Note that the two agencies most impli-



cated in the intelligence failures preceding Sept. 11, the CIA and FBI, are not included in the agency. Though this is perhaps for very good reason (especially the desirability of separating the different functions of these powerful agencies from the also powerful new mega-agency), it is inexplicable that the CIA and FBI remain essentially unaccountable for their failures.

The biggest reorganization of government in the past fifty years may or may not eventually enhance homeland security, but it certainly doesn't augur well for preserving liberty. Thanks to some strong voices including outgoing Congressman Dick Army (R-Tex.) — now a consultant with the ACLU, along with his former colleague Bob Barr (R-Ga.) — there are a couple of exceptions to this. The law says that it doesn't authorize either a national identity card, or Attorney General John Ashcroft's previously planned program to turn neighbors, utility repairpersons, the cable guy, the postman, and citizens in general into a "Terrorist Information and Prevention System" (TIPS). This latter was a particularly appalling idea, reminiscent of communist and fascist neighborhood cells reporting on neighbors, reminiscent of Pavlik Morozov, the celebrated 14-year-old Soviet martyr who was honored for being a good party member and turning in his family to authorities.

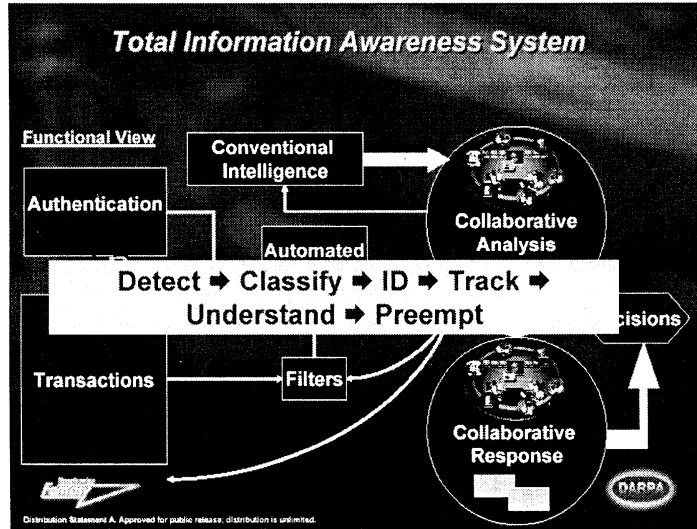
Alas, the rest of the Homeland Security Act rides roughshod over liberty instead of protecting it. The TIA program contemplates even greater intrusion than the rejected identification card and TIPS programs. The new law creates a "Homeland Security Advanced Research Projects Agency" (HSARPA), modeled after the Defense Advanced Research Projects Agency (DARPA), which created the Internet.\* HSARPA is funded at the not inconsiderable taxpayer expense of \$500 million annually, and, like DARPA, it will "promote revolutionary changes" in technologies to protect the homeland. What was a separate bill approved by the House of Representatives last summer, the Cyber Security Enhancement Act, was added at the last minute to the Homeland Security Act. It expands the ability of law enforcement authorities to monitor email or telephone conversations without first obtaining a court order. It also grants Internet Service Providers (ISPs), like AOL, Yahoo, or Earthlink, greater room to release information to *any* governmental authorities if, in their eyes, there's a "good faith belief" that there is an "immediate threat to a national security interest." These liberalizations further loosen the "emergency" exception that had already been provided in the Patriot Act, by removing the requirements that the disclosure be based on a "reasonable belief" and be connected with an "immediate danger of death or physical injury." It places the ISP in the position of distinguishing between evi-

dence of a real threat and (supposedly protected) free speech, with a likely chilling effect on the latter.

Finally, the Homeland Security Act also takes further steps along the road to a more secret government, by expanding the grounds on which TIA or other government activities can be classified, and reducing the scope of access to information about governmental decision-making through the Freedom of Information Act.

### The TIA Toolbox

If the Patriot Act sets forth the ideology and plans for a newly intrusive state, and the Homeland Security Act builds the framework, Total Information Awareness may be seen as providing the tools to make it all work.



TIA, moreover, threatens to be just as ineffective an overreaction to legitimate concerns over prior intelligence failures as the Homeland Security Department. But, while the Homeland Security Department's counterproductive effects are likely to be mainly in the short-run (as culture clashes, lack of system interoperability, and fighting for position diverts officials from vital tasks), TIA is likely to have lasting harmful effects unless modified. TIA remains within

DARPA at present, at the vanguard of its attempt to incubate "revolutionary" counter-terrorist technologies. According to DARPA's own documents posted on the Electronic Privacy Information Center website<sup>†</sup>, TIA is funded at \$240 million through fiscal year 2003 (despite Defense Department Undersecretary Pete Aldridge's statements on November 20 that the amount was only \$10 million per year).

Of course, technology is neutral, with any technology capable of good or bad applications by the user. Some of the voice recognition, automatic translation, and other TIA technologies being developed, like the Internet, have applications that would be socially desirable both in the fight against terrorism and in other private sector uses. For example, the "Babylon" project envisions, on a small and more selective scale, something like the "universal translator" familiar to Star Trek fans: an earpiece combined with a battle-hardened Palm Pilot-like device allowing two-way natural language translation for soldiers in the field, beginning with "low-population, high-terrorist-risk" languages. Given the special difficulty of detecting and quickly responding to and reducing casualties from bioterrorism, the Bio-Surveillance project's work on early detectors, ranging from medical data to "animal sentinels" (operating on the "canary

\*Sorry, Al.

†[www.epic.org/privacy/profiling/tia/budget.html](http://www.epic.org/privacy/profiling/tia/budget.html)

in a coal mine" principle) is also most welcome. The "Genoa" project to facilitate sharing and analysis of data, already legally available, also sounds prudent and helpful, since the failure to predict and stop 9/11 mainly resulted from the government's failure to do just this.

But, as with any technology, placing it in the hands of an untrustworthy or malevolent operator (e.g. Poindexter) raises concerns. A program going by the acronym "EARS" (Effective, Affordable, Reusable Speech-to-Text) aims at more powerful automatic transcription, allowing the government to transcribe more effectively large quantities of audio information — overheard conversations, radio broadcasts, or telephone intercepts — into easily absorbed written text. Another program would automatically extract, summarize, and translate critical information from large quantities of foreign language speech. Still another program, on "Evidence Extraction & Link Discovery," will automatically search Web pages, text messages, phone calls, email, and other data sources, to identify patterns between people that could reveal terrorist activity. "Genoa II" will facilitate "human-machine decision collaboration" to solve complex problems more quickly and reliably. The Human-ID-at-a-Distance program will use cameras and biometric identifiers (e.g. recognizing you by your face, gait, and/or iris, using visible or infrared means) to automatically spot terrorists from afar. (DARPA had also considered but withdrew under pressure a plan to tag all Web communications with biometric identifiers ("eDNA")).

At TIA's core is the "Genysis" project to create the "mother-of-all-databases." The appeal of "anything, anytime, anyplace" knowledge sounds empowering when it's the common vision (as it is) of software, media, and communications companies, relating to individual productivity, control, and effectiveness. The feelings it inspires when inverted to empower government *against* individuals are not quite the same. God-like omniscience in the hands of a perfect God may be a fine thing, but in the hands of imperfect humans running already-powerful governments, the prospects of

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*The Genysis database would allow the government to plumb all sorts of public and private information, from all the transactions you engage in, your observed actions, the noises you make, and, yes, even the thoughts you think.*

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such additional power are truly frightening in ways that the American public and lawmakers don't yet appreciate. The long-term harm could be even more serious than the national identification card and the TIPS informant programs outlawed in the Homeland Security Act.

There has never before been an effort to analyze data on the scale contemplated by Poindexter's initiative. "Genysis" aims to develop an "ultra-large, all source, omni-media, virtually centralized, information repository database." DARPA is loathe to suggest it would be anything like the puny com-

mercial "databases" of today's world. (The TIA website says they use the term "database" merely "for lack of a more descriptive term.") The contemplated database would seem to aim at a near infinite capacity, for input of as much data as possible about everyone. A "key metric" described in documents on DARPA's website\* is "the amount of total information that is potentially covered." (Great fodder for "Saturday Night Live" and other comedians, but George Orwell might warn you to stifle the laugh.) In case you had any doubt, we're talking the BIGGEST DAMN DATABASE IN THE HISTORY OF THE UNIVERSE. Oracle's Larry Ellison must be filling swimming pools with saliva, drooling over this (now there's a pretty image for you).

This database ("for lack of a more descriptive term") would allow the government to plumb all sorts of public and private information, from all the transactions you engage in, your observed actions, the noises you make, and, yes, even the thoughts you think, to enable the government to rapidly "detect, classify, ID, track, understand, and preempt" terrorists. This would naturally include the manifestations of your thoughts in the email or mail you send, other text you write, books you check out, or websites you surf, but there actually have been and remain government programs to read your thoughts, ranging from the Defense Department's famous psychic weapons detection programs to "non-invasive neuro-electric sensors" being considered for use in aviation security. You may think I'm kidding, but check out [www.epic.org/privacy/airtravel/foia/foia1.html](http://www.epic.org/privacy/airtravel/foia/foia1.html). They plan to use XML (Extensible Markup Language) or successor languages to facilitate interoperability between all these diverse databases.

Among the disparate databases to be connected (from the TIA website) are financial, educational, travel, medical, veterinary, transportation, housing, government, and communications databases. These will be complemented by "novel methods of populating the database from existing sources" (this already sounds a bit kinky) as well as creation of "innovative new sources." (Blockbuster soft-porn video rental records?) Again, you may think I'm joking, but I'm not: some of the al Qaeda operatives were apparently into porn, and we know that several visited a strip club before 9/11; this database would attempt to extrapolate from the conjunction of such facts with, for example, immigration entry from Saudi Arabia, telephone calls to Afghanistan, and purchases of guns or religious books, to identify terrorists.

I wrote in these pages last year<sup>†</sup> that the administration's "preemption" approaches at home and abroad reminded me of the science fiction writer Philip K. Dick's dystopian visions, rendered on the silver screen in such memorable movies as *Bladerunner*, *Total Recall*, and most recently, the Tom Cruise-Steven Spielberg collaboration, *Minority Report*. One of the TIA programs — "Wargaming the Asymmetric Environment" — really sounds like the Pre-Crime Unit in that last movie: it would aim to "predict and act against" terrorists based on models of past behavior in their political, cultural, or ideological environment. In other words, mere

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\*[www.darpa.mil/iao/index.htm](http://www.darpa.mil/iao/index.htm)

† "A Glimpse Ahead," September 2002

suspicion of possible future terrorist activity based on past activities, including guilt-by-association, could result in present preemptive action. Again, while the specific preemptive methods used aren't tied to the technology and haven't been announced, one can imagine that, in the case of serious terrorist threats, the force used could be extreme. Not that we don't need strong actions against true terrorists: we do. But our Constitution and Bill of Rights are intended to ensure that innocent people are not wrongly harassed and

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*Hitler routinely used the innocently created government records of the countries he invaded to determine and eliminate groups and political opponents he didn't like.*

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ensnared in the fight against criminals and terrorists. As Marc Rotenberg, Executive Director of the Electronic Privacy Information Center recently told *Business Week*: "TIA is not likely to be an effective way to prohibit future terrorist acts, but it will have an enormous impact on the government's ability to monitor things not related to terrorism."

Even if TIA's basic projects are feasible (and substantial technical challenges persist, as further discussed below), you're right to ask yourself whether the benefits from such unprecedented government surveillance would outweigh the costs. The only thing scarier than the current TIA plans, which are unlikely to work, is if the government comes up with ways to make TIA work. For, once that occurs, the proliferation of lost liberties will continue, as pressures build for TIA to be turned to other purposes perceived as benign, like fighting crime, collecting taxes, or protecting the rich from the poor. In the meantime, by encouraging excessive faith in technology and overconfident complacency, it's highly likely that this "ultimate system" will result in even more massive intelligence and security failures than those occurring in connection with Sept. 11.

### **"Trust Us"**

TIA is supposed to be merely a research and development project, and in a recent Defense Department briefing, Undersecretary Aldridge stated that the project won't use real-life data. The website and related documents, however, emphasize developing "useable tools" and "leave-behind prototypes" that can be "stress-tested in operationally relevant environments," and both the website and subsequent reports make clear that various agencies actually have and are testing TIA technology in the field, with real data. As the *New York Times* reported, "a prototype is already in place and has been used in tests by military intelligence organizations."

The program architects say that they will try to "create privacy filters, 'aliasing' methods, and automated data expunging agents to protect the privacy of U.S. citizens, and those not involved with foreign terrorists." The idea would be that data can only be viewed in an "anonymous" fashion unless a certain individual's activity merits closer scrutiny, at

which time that individual could be "unmasked." Undersecretary Aldridge says "we're designing this system to ensure complete anonymity of uninvolved citizens." But note the unintended irony in his answer to a reporter's question at his briefing last fall:

Q: I'm sorry, I don't understand one piece of this. Is this entire program based on totally fabricated data? In other words, it's all hypothetical?

Aldridge: There's some real data that we use, but it's normal data that's available legally. The privacy issues, those will be fabricated stuff.

Perhaps it was a normal slip of the tongue rather than a Freudian slip, but ordinary people will take little comfort that "the privacy issues . . . will be fabricated stuff," or that proven liar Poindexter is responsible for assuring that such protections are built in to the system. After all, he and Ollie North got into trouble in the first place because they failed in their attempt to delete all copies of 5,000 Iran-Contra emails.

In addition to dispensing comfort that the system design will ensure privacy (though, of course, any system can be hacked by someone, if only the system designers), we're told we can rely on the Ombudsman within the TIA office (who works for Poindexter) or the Chief Privacy Officer or Civil Liberties Officer within the new Homeland Security Department (who works for Tom Ridge in an agency whose mission is security, not privacy or liberty).

Here's Aldridge again:

Q: Every time they use a telephone, that call enters the database. And if it is voice recognition, for example, then that enters the database, hypothetically, right?

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*Many people agree with Sun Microsystems CEO Scott McNealy: "You have zero privacy. Get over it."*

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Aldridge: Hypothetically, yes.

Q: How is this not domestic spying? I don't understand this. You have these vast databases that you're looking for patterns in. Ordinary Americans, who aren't of Middle East origin, are just typical, ordinary Americans, their transactions are going to be perused.

Aldridge: Okay . . . Once that technology is transported over to the law enforcement agency . . . [w]e'll have to operate under the same legal conditions as we do today that protects individuals' privacy when this is operated by the law enforcement agency.

So the final bastion that Poindexter and his colleagues point to are the privacy laws in this country — as if the protections offered by those privacy laws were in fact extensive and effective, as if they weren't already substantially eroded in the past year and a half by the Patriot Act then the Homeland Security Act, as if businesses will routinely litigate or stand up to heavy government pressure in the name of security to disclose our information, and as if such laws aren't likely to be even further eviscerated when the next terrorist attack happens (as it surely will). Again, I'm not as much a fan of "Saturday Night Live" as I was in its early

days, but if they haven't already done a sketch on such a cruel joke, they should. The sad reality is that U.S. privacy laws have never been very strong, and have recently been weakened considerably. Consequently, some businesses will insist on a government subpoena before complying with government requests for data, but many businesses will roll

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*The idea of a constant swarm of nanobots constantly monitoring our actions raises serious questions about technologies concentrating even more centralized power within the Leviathan.*

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over in the face of "national security" requests from "the government," and all will be struggling to define the limits of their rights and responsibilities in the current environment.

If the privacy law argument doesn't reassure you, Poindexter, et al. have another one up their sleeve. Invoking the mantle of technology's "neutrality," they assure us that it's not the technology as much as the *use* of the technology that needs oversight and monitoring. And, they say, effective oversight, e.g. by the agencies using it or by intelligence and armed services committees of Congress, would be more than adequate to protect our lives and liberties. But oversight by one of the agencies using the technology, especially in an administration with as much a penchant for secrecy as this one — which has clamped down on freedom of information act laws and continues to litigate issues such as disclosure of the documents showing Enron's influence on our energy policy — will not be adequate. Neither history nor human nature afford much comfort on this score. One need not invoke Lord Acton's dictum that power corrupts to recall that the history of data records used by defense and intelligence services in this and other countries is replete with instances of records manufactured for innocent purposes, then being warped to nefarious ends by government officials. Hitler routinely used government records in the countries he invaded to determine and eliminate groups and political opponents he didn't like. J. Edgar Hoover, in this country, notoriously abused surveillance and information nominally obtained for national security purposes to persecute communists, suspected communists, anti-war activists, or merely political opponents like Martin Luther King — all despite theoretical oversight from other branches of government. Attorney General John Ashcroft, Presidential spokesman Ari Fleischer, and others in the administration have already suggested that those who disagree with them are aiding and abetting the terrorists.

Undersecretary Aldridge is quick to point out that Poindexter was merely the father and current director of the TIA project, whose "enthusiasm" for the idea "is why we developed and started to fund it." For a hint of Poindexter's enthusiasm, take a look at the logo from his slide presentation describing TIA (see page 25).

Aldridge says that Poindexter would not (necessarily) be

the one using these tools. But even if that's true, and who knows whether it will be or not, how many other Poindexters, or Nixons for that matter, might be empowered?

In fact, throughout history, government is responsible for more atrocities and abuses of liberty than any private group. The bottom line is that oversight has never adequately prevented such abuses, especially when there is a real climate of fear insulating government privacy invaders from criticism. As we all know, once technological capabilities exist to ignore or undo safeguards, the temptation to use the technology's full power can be overwhelming. With Poindexter's proven mentality of "the end justifies the means," why would anyone trust him to put adequate protections in place?

While no one would question these technologies applied only to terrorists, the problem is that they're premised on probing all sorts of mainly innocent data transactions, using automated computer algorithms to pick out what seem to be patterns of terrorist activity (but could just as readily be, and would almost always be, completely innocent interactions and relationships).

Unfortunately, many in the establishment seem to agree with the quote attributed to Sun Microsystems CEO Scott McNealy: "You have zero privacy. Get over it." For example, the recent, well-intentioned Markle Foundation report\*, constructed by luminaries including many with whom I've worked and otherwise respect, seems to have largely caved in on the substance of privacy issues, while paying rhetorical homage to the need to respect privacy and liberty. The report, in several places, praises the initiatives and approach of Poindexter's office, and proposes guidelines for accessing public and private databases that rely on a standard of mere "relevance" to terrorism in the eyes of government officials, whose discretion we're again supposed to trust, and seems to assume without question that even private databases must

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*Humans are notoriously complex animals, and unlike most consumers, terrorists know how to adapt, to fit in and hide by behaving like innocent individuals.*

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be open to government searches. This would make McNealy's statement, which was really an overstatement at the time, a reality. At least the Markle report must also be given credit for other language preferring narrower approaches using existing information (e.g. watch lists) to fishing expeditions aimed at gathering as much new data as possible.

### **"We Are Experiencing Technical Difficulties"**

The technical challenges involved with TIA, especially the Genysis centerpiece, are immense. They stem mainly from the sheer ambition of the project and size of the

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\*[www.markletaskforce.org](http://www.markletaskforce.org)

planned virtual database, which compounds the impact of the data quality and interoperability challenges that even ordinary data mining efforts face. There will, of course, be more errors as the quantity of data input from the U.S. and around the world is drastically expanded. Not only could real terrorist activity be harder to detect (the old needle in a haystack problem suddenly becoming one of a needle in an ocean of constantly flowing data); with that much more data flowing through the system, there will likely be many more "false positives" (innocent people erroneously labeled terrorists). To the extent that law enforcement depends in part on legitimacy and cooperation from the population, such a result could not only be of dubious value, but actively counterproductive.

As an example of the sorts of errors that could occur, consider more deeply those credit card fraud detection programs. If you're like me, and travel a lot, you've probably received what seem to be ceaseless calls — "your card was just used in Moscow, a day after it was used in Amarillo" — which, at least in my experience, have never once accurately predicted fraud. This is because the programs rely on automatic analysis of patterns of activity, and are actually pretty rigid. Since some credit card thieves travel around, businesspeople like me are "false positives" and have to put up with all the calls. The system never seems to learn about and adapt to my own patterns, even though I'm a good customer.

In addition to expected errors resulting from the automated systems doing what they're supposed to do, unexpected problems will result from inevitable human error, misuse, and abuse of the information. Recent examples coming to mind include White House Political Director Karl Rove's lost slides providing instructions on how to exploit the war for political gain, or the Navy's loss of a dozen computers containing classified information. These accidents caused embarrassments and are real security breaches. In addition to technical mistakes from the errors in data quality plaguing databases of all kinds — e.g. misspelled names, outdated addresses, unintended variations in formats for data entry — there are common human errors stemming from incorrect interpretations of the data. An example of this is the number of completely innocent people that have missed funerals or pressing business when they've been prevented from flying, because they happen to have names that are similar to those names on the government's controversial "no-fly" list. That list itself illustrates still another example of human error: it has overreached to include not only known terrorists, but also peace activists and some who are guilty of nothing more than dissent against government policies. This, in turn, goes to a core problem with governmental infringements on privacy: they present you out of context, often without any ability to rebut the government position with

more accurate, rich details of your own life. We become who the machines, and the government agents interpreting their output, say we are.

In November of last year, an un-manned CIA Predator robotic probe "took out" six suspected al Qaeda members in Yemen, including a U.S. citizen. No evidence was produced, and it is unlikely any ever will be, that confirms any ties between these individuals and al Qaeda, which was one reason some critics classify this as an extra-judicial assassination rather than a targeted killing, legal in wartime. Certainly, the lack of due process raises concerns, as execution is more serious than detention without trial or mere surveillance. This is especially so since the same approach could easily be used within the United States as well as abroad (recall how the military was deployed to assist with the recent sniper attacks in Washington, D.C.). Unmanned flying vehicles like the Predator are shrinking all the time, and reportedly are already being considered for use in the U.S. to help with border patrol and search for suspects. DARPA has already funded programs for nanotechnology "bots" which at insect-size (and approaching molecular size) can individually or in "swarms" monitor and wirelessly communicate about activities, or, in the future, even



come together to use collective intelligence to deploy a weapon against foes. (Check out science fiction writer Michael Crichton's new novel, *Prey*, which, like most of his work, is based on sound science projected a few years into the future.) Needless to say, the idea of a constant swarm of nanobots joining the increasingly ubiquitous net of audio and visual sensors, GPS location devices, and wireless networks constantly monitoring our actions raises serious questions about technologies concentrating even more centralized power within the Leviathan. The ultimate nightmare would be automated detection technologies hooking up with automated "preemption" technologies to have the war of machines against humans that's at the heart of "The Matrix" films and many other science fiction scenarios.

I expect that some people, upon learning of my concerns, will accuse me of being a Luddite. But the charge has no basis. I've always been an "early adopter" of technologies, am a gadget freak, and have invested in and helped to lead several startup companies based on the sort of pattern recognition, voice recognition, and database and data-mining technologies sought by TIA. These technologies, which include advanced computing methods like artificial intelligence, neural networks, genetic algorithms, and evolutionary computing, can substitute for or provide invaluable software add-ons to the old massive supercomputers or "big iron" previously used to analyze reams of complex data and predict outcomes. My experiences with such technologies has taught me their huge potential in limited contexts, mainly related to such areas as consumer marketing, retail-

ing, and financial services. I'm familiar with behavioral modeling in these contexts, and the power of real-time, dynamic pattern recognition operating on large, complex, non-linear data sets to enhance event prediction and decision optimization (yes, we really talk like this). Frankly, the documents on the TIA website read like a bad dot-com business plan for the anti-terrorist boom times, strikingly similar to the many actual dot-com business plans I've had the pleasure of reading and quite a few in which I regret to say that I invested. (I hope Congress and American taxpayers do not make the same mistake.)

But I'm also acutely aware of the limits to and hype associated with some of these technologies and approaches, and the many flaws in assuming that the technologies can be transplanted wholesale to other contexts and expected to be used effectively against terrorism, for example. Poindexter's response would be that the very nature of the "revolutionary" technologies pursued by TIA and DARPA is to transcend these limits. Maybe . . . but could it be at the cost of ultimately fomenting another American revolution? The challenges of using technology to predict human behavior are toughest of all — even when the humans aren't terrorists trying to outsmart you.

Humans are notoriously complex animals, and unlike most consumers, terrorists know how to and can be expected to adapt, to fit in and hide by behaving like innocent individuals. But while terrorists will continue to do so, the 99.9% of innocent individuals won't evade the system so readily. Pentagon spokeswoman Jan Walker says that "People have to move and plan before committing a terrorist act. Our hypothesis is their planning process has a signature." Poindexter similarly argues that terrorists leave "fingerprints" that TIA aims to detect. The problem is that this

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*We certainly had quite a bit of information prior to the September 11 attacks themselves that, properly shared and analyzed, could have tipped off authorities to the planned attack.*

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fundamental assumption, which underlies the entire TIA project, may simply be untrue. The U.S. experience with terrorism, particularly "global terrorism" of the sort represented by al Qaeda, remains very thin — probably too thin to provide a meaningful model.

### **A Better Way**

After the appalling intelligence failures leading up to Sept. 11, the government clearly needs to do a much better job with the information and resources it has. And certainly the government should not be encumbered by outdated computer systems that don't allow them to perform their essential and legitimate functions. It's far from clear, however, that they need the expanded powers granted them in the Patriot Act and Homeland Security Act, let alone the TIA project. The absence of those powers wasn't the reason for

the intelligence failures, and granting the powers endangers the liberties we are supposed to be defending in this "war on terror."

It would have been far preferable to have already had a thorough and independent investigation of "what went wrong" prior to taking all the draconian measures taken, and certainly would have been more conducive to pinpointing and addressing the actual problems. Instead, the Congressional hearings on the matter were delayed and truncated, and the independent investigative commission

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*Given that the intelligence agencies already receive much more data than they know what to do with, will the solution really be found in dramatically increasing the inflows of that data?*

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belatedly established is likely to be no more than another self-justificatory, "feel-good" measure offering merely the illusion that something meaningful is being done.

Intelligence agencies proved themselves grossly incompetent, as they have in other contexts, like evaluating Soviet Union strength or Saddam Hussein's nuclear capabilities.

We certainly had quite a bit of information prior to the September 11 attacks themselves that, properly shared and analyzed, could have tipped off authorities to the planned attack. This included information from the CIA (never transmitted to the FBI) about two of the hijackers who had attended U.S. flight school (Khalid al-Midhar and Nawaf al-Hazmi) and entered the U.S. in early 2001; the FBI's July, 2001 "Phoenix Memo" warning that bin Laden's agents might be training in U.S. flight schools; the Minneapolis FBI's August investigation of Zaccarias Moussaoui for suspicious flight school activities, which was never connected to the previous bits of information; and two Arab language intercepts of al Qaeda transmissions by the National Security Agency from the day before the attacks, indicating "tomorrow" to be "zero day" and the day "the match begins," which were not translated until September 12 due to the paucity of Arabic language translators in U.S. intelligence. Republican Senator Arlen Specter of Pennsylvania, a former prosecutor, has said that in his professional judgment this was not merely a job of "connecting the dots," but a "virtual blueprint" for the attacks that was more than sufficient for the intelligence agencies to have spotted the plot.

Improving the sharing of relevant data between intelligence agencies, and improving their abilities to "mine for gold" in the vast storehouses of data already collected, could clearly have dramatic payoffs in preventing terrorist attacks by focusing on *important, quality* data. But vastly expanding the *scope* of data collected to more broadly encompass the activities of innocent Americans or foreigners is a very different thing, worrying even Newt Gingrich, not to mention others from across the political spectrum. Given that the intelligence agencies already receive much more data than they know what to do with (already exceeding *each day* all



the printed pages in the entire Library of Congress), will the solution really be found in dramatically increasing the inflows of that data? This will gather in what everyone acknowledges will be 99.99% irrelevant "noise" instead of the focused "signals" of actual terrorist plots, and is unlikely to help combat terrorism. Rather than exponentially increasing the problem by having TIA looking at the whole universe of all activity by all innocent people, why not focus on terrorists, starting with those on the watch list, i.e. those whose behavior makes them true suspects? Since we know that several of the hijackers were on the terrorist watch list but entered the country nonetheless, isn't it a much more urgent priority to correct the human and technology problems that resulted in such obvious snafus? A more targeted approach would both be more effective in combating terrorism, as well as more protective of our liberties, particularly in this climate of expanding executive discretion and diminishing legislative and judicial protections for those liberties.

### **Citizen, vs. Government Awareness, Needed**

The mind reels at the many ironies in TIA being pushed by the Bush administration, which, as nominally conservative, supposedly believes in limited government, private enterprise, and market-tested solutions. Instead of limited government, TIA is the most intrusive government surveillance project in world history. Instead of supporting the privacy and trust that underlies e-commerce, and the magic worked by private enterprise, TIA would obliterate those values and slap the invisible hand that's feeding it and all (or most) of us. Instead of market-tested solutions, TIA chooses to impose radically intrusive, top-down technological solutions assuming that government planners know best, spending reams of taxpayer dollars to create a deceptive and vicious cycle that legitimates those technologies without evidence and stifles dissent and meaningful discussion and pursuit of more effective approaches. Does it not occur to Bush or the government planners that America's distinctive values, dynamism, and very identity might be gravely harmed by these moves toward a society of such constant surveillance and control?

In a time of such great fear some strong security measures are inevitable, divorced though they might be from genuine security needs or measures that would truly enhance security. But once enacted, they tend to stay. Their impact on culture is often not appreciated. The U.S. is distinguished by our love of individual liberty. To thoughtlessly sweep away that liberty in an illusory quest for more security is to undermine, in fundamental respects, who we are. And this special American identity and culture will hardly be the last, or the only, social cost. One can easily foresee a world in which off-hand comments about religion or politics are detected and lead to your being hauled in for interrogation by Ashcroft or his successors. Or a world in which you're forced to smile at home or work because if you don't, the sensors (and censors) will pinpoint you as a malcontent who doesn't adequately appreciate this great country of ours. George's World. (Bush or Orwell? The difference is fading.)

Why haven't more Americans protested these violations of our fundamental freedoms? Part of the reason is simple ignorance: in a climate where even the lawmakers passing these bills admittedly don't read them before they become

law, it is tough to expect average citizens to care much. An abstract notion like "privacy" may seem expendable when compared to the alleged tangible anti-terrorism benefits we derive from giving it up. But this underestimates the importance of privacy, which means in practice the autonomy and freedom from government interference that runs throughout all the most important provisions of the Bill of Rights. Part of the reason is also fear, as an extraordinary sense of new vulnerability seems to justify and even demand extraordinary actions. And part of the reason is a pervasive but misplaced confidence that these violations happen only to "others" and that we are not all at risk. Yet without the procedural protec-

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*Does it not occur to Bush or the government planners that America's distinctive values, dynamism, and very identity might be gravely harmed by these moves toward a society of such constant surveillance and control?*

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tions in the Bill of Rights to serve as a check on the quality of decision-making, any of us could easily be wrongly accused without any way to defend ourselves. If history teaches us anything, it teaches that infringements on the liberties of the few quickly become infringements on the liberties of the many. As Justice William O. Douglas said: "We in this country . . . early made the choice — that the dignity and privacy of the individual were worth more to society than an all-powerful police." Whatever technologies or approaches the government adopts should be strenuously tested in light of our values and liberties.

Despite all the 20th-century rhetoric about "totalitarianism," sheer geographic size combined with technological limitations and the complexity of unpredictable human behavior to frustrate the worst ambitions of petty tyrants, though plenty of horrors happened along the way. 21st-century technology, however, for the first time offers a way to transcend the previous physical limits on surveillance by means of the already ubiquitous and ever-expanding electronic networks monitoring our public and private activities, and the new capabilities TIA is pursuing (like voice recognition, biometric identification, automatic translation, and data management) that allow gleaning much more knowledge from that surveillance information. Linking together and mining these data sources on which we depend to communicate, do business, relax, and interact, would make "totalitarian information awareness" a real possibility. It's clear that in the current climate it's not safe to rely on any one branch of government to guard our most basic liberties, but that, as always, strong dissent and citizen action, protest, and vigorous lobbying, is the best defense. Otherwise, like the characters in Orwell's *1984*, soon we won't know whether we're watching our televisions, computers, or even the fair blue sky or the artificial lights at night — or whether they're watching and listening to us. □

# Am I a Libertarian?

*by Brink Lindsey*

Two very different libertarianisms jostle uneasily together under a common label. Though they generate broadly similar answers to many current policy questions, they are sometimes as different as Mises and Rand.

Am I a libertarian? I call myself one, but some people hotly deny that I have a right to do so. Which raises the question: what's in this particular name? Who deserves the "libertarian" label, or who deserves to be stuck with it?

My libertarian credentials would appear to be fairly solid. I work at the Cato Institute, which is generally acknowledged to be the leading libertarian think tank in the country. And I'm a contributing editor of *Reason*, the country's most-read magazine of libertarian opinion. Yet I'm sometimes told by self-described libertarians that I'm not a member of good standing in their club, and, some days at least, I tend to believe them. What gives?

The people who contend that I don't deserve to call myself a libertarian argue that some of my political views are un-libertarian. Specifically, I support military action against Iraq, a position that has put me at odds with many (though by no means all) of my fellow libertarians, including the foreign policy scholars at the Cato Institute. And the disagreement goes beyond Iraq: although I am by no means a knee-jerk interventionist, I do believe that sometimes the projection of American military power abroad is necessary to safeguard American lives and advance American national interests.

Meanwhile, on the domestic policy front, I hold a range of views that many self-described libertarians consider to be, for lack of a better word, heretical. I support some types of health, safety, and environmental regulation, as well as tax-funded spending programs to aid the needy, educate the young, and ease the burden of economic dislocation. That is not to say that I support anything like today's regulatory and

welfare state; on the contrary, I favor a dramatic retrenchment in government spending and controls. But I do not believe that the "minimal state," much less anarchy, is the desirable end point of reform.

If some libertarians are uncomfortable with me in their movement, let me say that the feeling is mutual. When I describe myself as a libertarian, I usually hasten to add some kind of qualification. For example, I'll say that I'm a 'small-I' libertarian, meaning that I disavow any affiliation with the Libertarian Party, which I consider to be an embarrassment. Even beyond the matter of the political party, the fact that so many self-described libertarians are hard-core ideologues makes me ill at ease when using the I-word to identify myself. Dogmatism, rigid orthodoxies, "excommunication" of "heretics," the narcissism of small differences, these are the vices to which ideologues of all stripes are prone, and in my mind they have precisely zero to do with the true spirit of liberty. What place do I have or want to have in a movement in which such vices seem to be fairly widespread?

But here's my problem, and the problem for all the anarcho-Savonarolas who want to read me out of libertarianism: if I'm not a libertarian, what am I?

Am I a conservative? Let's see; I support the legalization of drugs and prostitution, abortion on demand in the first trimester, and the use of early-stage embryos in scientific research. I think that a flag-burning amendment and the res-

toration of prayer to public schools are dumb ideas. I don't subscribe to any organized religion. And I'd argue that much of the social and cultural ferment of the 1960s was positive. You think the conservatives will have me?

Am I a liberal? Calling myself a liberal in early 21st-century America doesn't make much sense. I support a flat tax, full Social Security privatization, and school vouchers. I can call myself a free-market liberal, and I sometimes do, but that still doesn't clear up the confusion. After all, I'm for capital punishment, and I oppose racial preferences. I favor restrictions on abortion after the first trimester, and an outright ban on late-term procedures. And I find bobo prejudice against red-state America to be insufferable. Who will under-

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*There's no need to worry in our day and age about giving away the store to the collectivists. They run the store already.*

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stand what I mean when I call myself a liberal? (Yes, I've tried "classical liberal," but most people don't have the slightest idea what that means, and furthermore, the term suggests a backward-looking nostalgia for some mythical golden age that strikes me as both bad marketing and out of sync with what liberty is all about.)

## Two Libertarianisms

The root of the problem is that there are two very different libertarianisms jostling uneasily together under a common label. Call the first one radical or utopian, and the second pragmatic or reformist. Though they tend to generate broadly similar answers to many current policy questions, their philosophical underpinnings are miles apart.

The radical libertarian vision starts with an abstract ideal: a polity in which government's sole function is to protect individual rights to life, liberty, and property. A "true" libertarian, in this view, is someone who upholds this ideal as the *summum bonum*. True libertarians may get their hands dirty in the real world and advocate incremental reforms, and they may even be coy about their long-term hopes, but when pressed they must declare their allegiance to the ideal. Any deviation from the ideal, any support for any extension of government's proper role beyond rights protection, is seen as impure and compromised. Such deviations represent concessions to statism; they "open the door" to relentless and limitless expansion of Leviathan.

Pragmatic libertarianism, on the other hand, starts with the status quo in all its wretched messiness. Reformists share with their radical confreres a moral commitment to the sanctity of individual rights, and a deep appreciation of the fertility of competition and the limits of centralized control. But reformists apply their principles in a very different way: not as blueprints for an ideal society, but as guides to incremental reform. As to the precise outlines of an ideal society they are agnostic or even indifferent. For them the goal is expanding the real-world frontiers of liberty, not spinning utopias.

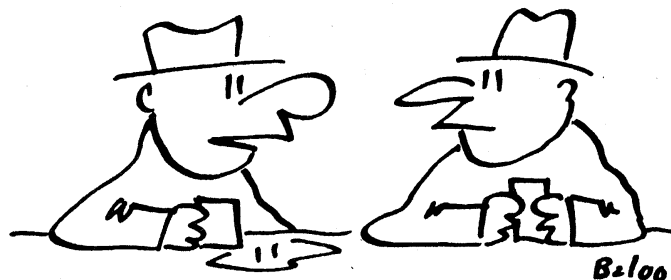
Pragmatists do not measure a person's libertarianism on the basis of doctrinal arcana, by whether he supports fully

privatized roads, for example, or the elimination of compulsory vaccinations even during epidemics, or the repeal of laws against blackmail. That anyone would actually hold such positions, or, worse, use them as litmus tests, strikes the pragmatic libertarian as crankish and bizarre. No, reformist libertarians determine their allies on the basis of the major issues of the day. Does a person support reforming the tax code to shift its focus away from social engineering and toward raising revenue in the least burdensome way possible? Does he support the phase out of pay-as-you-go public pensions? Does he support measures that would subject the public school monopoly to vigorous competition? Does he support a move away from drug prohibitionism? These are issues that matter, and all those who are willing to join in these causes are welcomed as fellow reformers, not scrutinized for hidden heresies.

Pragmatic libertarians do not worry that their acceptance of a broader role for government concedes some vital principle. Radicals charge that anything short of complete ideological consistency creates openings for the statist impulse to take root and then run rampant. It's a concern that might make some sense if we were currently living in a libertarian polity and were worrying about setting dangerous precedents. But, hey, here's a news flash: that libertarian polity is nowhere in sight! There's no need to worry in our day and age about giving away the store to the collectivists; they run the store already, folks, and our job is to convince them to give it back. Appealing to them on the ground of principles that neither they nor the vast majority of the American public share (for example, that the state has no proper role at all in education, or in safeguarding against destitution among the elderly) is not, in my view, the most effective strategy.

## Utopians Get Nowhere

Reformist libertarians eschew utopianism, not because they are less intellectually rigorous than their radical cousins, but because they are more intellectually rigorous. A utopia of pure rights protection, upon careful scrutiny, turns out to be a will-o'-the-wisp. Let's start with examining one niggling little problem: that full-fledged protection of property rights is incompatible with industrial civilization. In the normal common law of property, we are able to enjoin trespassers from coming onto our property, even if their trespass causes us no tangible harm. If I own a 5,000 acre spread, and my neighbor makes a daily practice of stepping onto one far corner of it, I can go to court and get an injunction ordering him to stop it. So if that same neighbor runs a factory that sends effluents into the air over my spread, I should be able to stop that, too. I shouldn't have to prove that it constitutes an



"That's okay, but your best bet is to leave your worries on somebody else's doorstep."

"unreasonable" nuisance; I shouldn't have to prove that it imperils my health; the only thing that should matter is that there is a trespass on my property that I don't like. Which means that all it takes is one property-owning green zealot per aired to shut down the whole economy.

There are many other ways in which property rights are bent to further the public good of economic development. How about the common-law refusal to enforce cartel agreements? A purist regime would enforce those contracts as a matter of course, which would throw all those free-market arguments about how cartels are inherently unstable right out the window. Many humdrum, totally-taken-for-granted laws subordinate rights protection to economic considerations: the restriction of damage awards to compensation for "foreseeable" harm, limited tort liability for corporations, adverse possession, the rule against perpetuities, bankruptcy law, first-to-file title rules, and the protection of good-faith purchasers of negotiable instruments. Straighten out all these little deviations from utopian purity, and kiss the modern industrial economy goodbye. I'm afraid that most radical libertarians simply haven't thought through such issues, or, worse, that they maintain their utopian faith by willful blindness to its many inconvenient complications.

Although a regime of legal protection of individual rights is one of the greatest achievements of civilization, and the surest basis of most of the rest, nonetheless it is not a project that can be pursued with unswerving consistency, at least not with results that would be broadly acceptable. More basically, the project of securing individual rights cannot even be launched without a political decision to embrace certain values at the expense of others. Rights theorists argue that rights ultimately can be justified as compelled by reason, and I have a good deal of sympathy with that argument. But such an argument, even if successful, still leaves unanswered a fundamental question: why be reasonable? Why value a system based on reason over one based on other human values or needs?

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*Dogmatism, rigid orthodoxies, "excommunication" of "heretics," the narcissism of small differences are the vices to which ideologues of all stripes are prone, and they have precisely zero to do with the true spirit of liberty.*

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Clearly there are alternatives: people have been unreasonable throughout most of history. A Wahhabi imam believes unbending adherence to the Shari'a makes for the ideal social order, and reason isn't going to convince him otherwise. Indeed, he believes that unbridled reason is an evil to be combated. Ultimately, then, the case for liberty is an assertion of values: a society in which liberty is the primary political value is a better society than the alternatives, both because liberty is intrinsically valuable and because it is a potent instrument of our other values.

But, if people in society achieve a consensus on the primacy of liberty and then deploy the coercive powers of gov-

ernment to uphold that value, it should not be surprising that they want to assert other values through collective action as well. In my view, therefore, the only intellectually defensible libertarian position is that liberty should be the primary political value, and that other values should supplement rather than supplant the sphere of voluntary activity or civil society. I don't think the position that liberty is or ought to be the exclusive political value is tenable.

Where to draw the line on which subsidiary values can be recognized, and how, is not a question susceptible to principled resolution. There are no analytically sustainable bright lines. Rather, such questions are matters of judgment. It is inevitable that people will disagree on these judgment calls.

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*For the libertarian alternative to really gain ground, it must fashion a message and a program that begins, not with unworkable ideological contraptions, but with the here and now of political reality.*

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But the general principle of liberty as the highest political value is something that unites us all and defines us as libertarians.

### Pragmatism and Modesty

Libertarians of the pragmatic variety are no less fervent than their radical friends in their dedication to liberty. They are, however, much more modest about the nexus between liberty and any abstract ideological formulations. For utopian libertarians, "true" liberty is a kind of Platonic form, an imagined state of affairs that conforms exactly to a specific conception of individual rights. In the pragmatic vision, by contrast, liberty is, at bottom, an actual civilizational achievement that has historical existence and that we enjoy, to a greater or lesser extent, in our daily lives. Abstract principles of individual rights and market competition shed light on real-world liberty and serve as tools to help us protect liberty and, with luck, foster it. But libertarian principles, like all human concepts, are reductions of human experience; they are partial truths, necessarily incomplete. They are maps to guide our action, but we should always remember that the map is not the same thing as the territory it describes. All maps leave things out; all maps have distortions. And so, when we use our libertarian principles, we should satisfy ourselves with plotting the day's journey; it is folly to presume we can know the location of some ultima Thule at the end of all history's travels.

The intellectual modesty of reformist libertarians includes the realization that there is not a "correct" libertarian answer to every contemporary public policy question. All libertarians agree about the importance of property rights, yet they can disagree, and disagree fiercely, about how to define those rights in certain instances (for example, intellectual property) and what to do when workable property rights are impossible to assign (for example, in the case of rights to clean air). And

*continued on page 38*

# Freedom and the Wolves

*by Timothy Sandefur*

"No . . . law denying or impairing the right of property in negro slaves shall be passed."

— Constitution of the  
Confederate States of America,  
Sec. IX cl. 4

*"Though it cost the blood  
of MILLIONS OF  
WHITE MEN, LET IT  
COME. Let justice be  
done, though the heavens  
fall."*

— John Quincy Adams (on  
the possibility of war to free  
the slaves)

Although I am honored by Joseph Sobran's compliment, that I make "a better case" against the Confederacy than Lincoln did, I must decline it. My articles have done little more than reword Lincoln's July 4, 1861 message to Congress.

Unfortunately, Mr. Sobran seems to lose track of the philosophical foundations of federalism. The purpose of federalism is not to protect the rights of states, but the rights of the individuals who make up the states. As Madison asked in *Federalist* 45, "Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States, that particular municipal establishments, might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty?" While Mr. Sobran's answer would appear to be yes — the essential political goal is the protection of state sovereignty — the Constitution's framers answered no.

The idea that America is not a nation was quite popular among the fire-eaters who would later advocate secession. I think James Madison, John Quincy Adams, Frederick Douglass, and others put that argument to rest far better than I ever could, so I will simply refer the reader to their writings for a response. As Madison said, "It seems strange that it should be necessary to disprove this novel and nullifying doctrine. . . . What can be more preposterous than to say that the states as united, are in no respect or degree, a Nation . . . altho' acknowledged to be such by all other Nations & Sovereigns, and maintaining with them, all the international relations, of war & peace, treaties, commerce, &c . . . [?]"

Sobran writes that only as a result of the Civil War do we look upon Maryland or South Carolina as component parts of the federal union, instead of "free and independent states." It is ironic that Mr. Sobran uses this phrase; it comes from the Declaration of Independence, which declared that "these *united* colonies are free and independent states." The states did not declare independence from each other when they declared independence from England; they declared themselves independent as a single political unit, vesting federative power (part of the executive power) in the Continental Congress. The Declaration goes on to explain that "as free and independent states, they have full Power to levy War, conclude Peace,

contract Alliances, establish Commerce, and to do all other Acts and Things which independent states may of right do." But, of course, none of the states did any of these acts upon independence — only the Continental Congress ever did. This is one reason that, in Lincoln's July 4 address, he argued that the union predates the Constitution; that the Declaration (which Jefferson and Madison called the "fundamental act of union of these States") created the union first, and that the states derive their existence from it.

I have not embraced this more Websterian view of the union. Instead, I have taken the Madisonian view that while the Articles of Confederation was a sort of treaty between essentially independent states, the Constitution of 1787 reconstituted the sovereignty of the union and the states. This accounts for the fact that, while the Articles begin "Articles of Confederation and perpetual Union *between the states of . . .*" and immediately remind us that "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled," the 1787 Constitution begins very differently. "We the people of the United States . . . do ordain and establish this Constitution." The Constitution is, as I have explained at length, a union of the people, not of the states. Although I thus differ from Lincoln, I have not discussed hitherto this difference in detail because it is both complicated and irrelevant. Whether or not the Treaty of Paris or the Articles of Confederation recognized the states' independent sovereignty does not change the fact that the

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*The Articles of Confederation was a sort of treaty between essentially independent states. The Constitution of 1787 reconstituted the sovereignty of the union and the states.*

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Constitution of 1787 is a compact between the people of the United States, not a treaty between the states. On this point, Mr. Sobran argues that the Constitution must not prohibit secession because, had the states been presented with that option, they would have refused it. Or, as one reader put it, "I wonder how Sandefur would parse his way around this statement by Shelby Foote: 'If any of the original states ratifying the Constitution had the slightest idea that if they joined this new government they wouldn't be able to leave it again, not one would have joined.'" Of course, the statement requires no parsing — it is the opinion of a 20th century Southern historian, who is not a lawyer or an expert on the Constitution, and who, though old, was not a contemporary of the founding generation. Most importantly, the statement makes the same essential error that all defenders of secession make: it assumes that the "states" ratified the Constitution. They did not do so. The people of the United States ratified the Constitution. The states cannot therefore "leave" the union since they did not "join" it. The Constitution is a government of the people, not a treaty between sovereign states. The people who did ratify the Constitution were presented with precisely that decision — and they did ratify it. It fell to

the generation that followed ratification to argue that, contrary to its plain language, contrary to the *Federalist*, contrary to the explanations in the ratification conventions that the Constitution "will be then a government established by the thirteen States of America, not through the intervention of the Legislatures, but by the people at large . . . [a] distinction . . . [which] is very material" — that the Constitution was not a government after all, and America not a nation; that the states created the federal government and that they were as independent as they had been under the Articles of Confederation.

It is true that the Constitution's proponents did not deny — nor do we yet deny — that it leaves some sovereignty in the states. But the most essential feature of the Constitution is divided sovereignty. The states are sovereign in their own capacities; the federal union is sovereign in its capacity. They are separate entities whose social compacts are separately binding on the citizen — just as the electric company and the water company send a customer different bills. The electric company has no authority to absolve him from paying his water bill; so, too, the states have no authority to absolve him from his allegiance to the federal union. Mr. Sobran does not discuss divided sovereignty, but seems to think that the federal government must be either a treaty between the states, or a total consolidation of them. Justice Bushrod Washington explained divided sovereignty very succinctly: "the general government derives its existence and power from the people, and not from the states, yet each state government derives its powers from the people of that particular state. Their forms of government are different, being derived from different sources; and their laws are different." Or, as Justice Kennedy put it more recently, "The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other. The resulting Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it. . . . [T]he National Government, the mark of its legitimacy, is that it owes its existence to the act of the whole people who created it."

This concept of divided sovereignty accounts for the plural usage of "the United States" coexisting with the singular usage. The states are independent in some respects, as *Federalist* 45 explains. But in other respects, they are not. The union itself is one of these latter respects — no state has the authority to break it because states are not parties to the compact. The compact is between "we the people," not between "we the states," as I have explained at exhausting length.

Sobran appears to have missed my point with regard to the so-called "reservations" of the "right to secede." Several people have argued that if there can be no conditional ratification, then the three states which (Sobran claims) passed such "conditional ratifications" must never have been in the union to begin with. I do not know that anyone, including the most ardent defender of secession, really believes these states did not ratify the Constitution to begin with. If, indeed, these states passed such things, it would have to be the condition which failed. But I deny that what these states passed



were “conditional ratifications.” Let us once again examine the alleged reservation. The only state which passed such a “reservation” and which later seceded was Virginia, whose “reservation” read: “The powers granted under the Constitution being derived from *the People of the United States* may be resumed by *them* whenever the same shall be perverted to their injury or oppression.” Note that this nowhere refers to any power of Virginia to secede, nor to any unconditional right to revolt for any reason the state sees fit. Rather,

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*The states cannot “leave” the union since they did not “join” it. The Constitution is a government of the people, not a treaty between sovereign states.*

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this is simply a restatement of the Declaration’s premise that whenever government “becomes destructive of [life, liberty, and the pursuit of happiness], it is the right of the people to alter or to abolish it” — that is, as an act of self-defense, the people may “resume” the “powers” granted under the Constitution. Since federal powers were not being “perverted to the injury or oppression” of the people of Virginia, their secession cannot be justified as an act of self-defense. Moreover, this “reservation” acknowledges that the Constitution derives its power, not from the states, but from the people of the United States, so that the power to “resume” is left in *their* hands, not Virginia’s.

Thus, when we actually read the documents to which Mr. Sobran refers, we see that they reserved not a “right to secede,” but the right of *revolution*. As I pointed out in my last article, it is the failure to distinguish these two things which causes many libertarians to misunderstand the Civil War. Nobody, not even Lincoln, denied that the right to revolution is a right which people, including Southerners, possess at all times; it is inalienable. It is, however, a right of a certain nature. It can only be exercised in self-defense; otherwise it is not a revolution, but an initiation of force.

What is the difference between a revolution and an act of crime? Not mere force of numbers. According to libertarianism, revolution is self-defense writ large. It is the use of force in defense of individual rights. Crime, on the other hand, is the use of force when one has no right. A robber may not excuse himself for shooting the policeman who tries to arrest him by saying that his was an act of revolution. Libertarianism is thus not inherently opposed to the enforcement of the law — as Locke put it, “the end of law is not to abolish or restrain, but to preserve and enlarge freedom. . . . For who could be free, when every other man’s humor might domineer over him?” A law is just and enforceable when it preserves freedom; but when the law enslaves us, we have the right to break it. This is the difference between the American Revolution (begun after a long train of abuses evinced a design to reduce America under absolute despotism) and a communist revolution, which has as its primary goal the infringement of the rights of others. The former is an act of self-defense; the latter is not. The former is revolution; the latter is crime.

On which side of this spectrum does the Confederacy lie? I have argued that it falls on the latter, because the “right” which the South sought to vindicate was the *right to enslave others without interference from Washington, D.C.* Such a right cannot exist; it is an initiation of force. Any alleged “revolution” to defend that “right” is in reality a form of theft. This is why Lincoln said that we need to be clear about our definition of liberty:

We all declare for liberty; but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others the same word may mean for some men to do as they please with other men, and the product of other men’s labor. Here are two, not only different, but incompatible things, called by the same name — liberty. . . . The shepherd drives the wolf from the sheep’s throat, for which the sheep thanks the shepherd as a liberator, while the wolf denounces him for the same act as the destroyer of liberty, especially as the sheep was a black one. Plainly the sheep and the wolf are not agreed upon a definition of the word liberty; and precisely the same difference prevails to-day among us human creatures, even in the North, and all professing to love liberty. Hence we behold the processes by which thousands are daily passing from under the yoke of bondage, hailed by some as the advance of liberty, and bewailed by others as the destruction of all liberty. . . .

Libertarians simply *must* be on the side of the sheep, and not the wolves.

I do not see the connection between Lincoln and the modern national debt, which is a relic of Progressive, New Deal, Great Society, and Reagan era economic policies. I do not defend the welfare state; what I deny is that the secession of 1861 was either constitutional, or a legitimate act of revolution. Deficits are irrelevant to that question. Of course, war costs money and lives; it is “all hell.” This is why libertarians seek to avoid war. And, as a libertarian, I hardly deny that a child born today is in many ways less free than a child born in 1850 (assuming we’re talking about a rich, white child!). Not only have I never denied that we are in a terrible fix today, but I have gone so far as to say that I think the founders would have considered armed rebellion against the fed-

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eral government *today* as far *more* justified than was the secession of 1861. But that is not the question here. The question here has two steps: 1) Was the secession of 1861 constitutional? I have answered no, because the Constitution is binding on the people, and cannot be abrogated by a state. 2) If the answer is no, then was the secession of 1861 a legitimate act of revolution? Again, I have argued that the answer is no, because revolution can only be justified as an act of self-defense.

Sobran’s other arguments only restate positions I have attacked. He makes no attempt to explain the compacts

clause, the preamble, or the many other parts of the Constitution to which I referred in my articles; he does not refute the passages from the *Federalist* and *Antifederalist Papers*, the speeches in the ratification conventions, or other documents to which I referred, but argues only that the Constitution does not proscribe the alleged "right to secede." And his explanation of the guarantee clause begs the question. My point was that if a state can unilaterally secede, the guarantee clause is a vain and idle enactment. Mr. Sobran's explanation, that the clause binds only those states that have not seceded, is essentially like saying that the law prohibits a person from doing an act, unless he chooses not to obey the

*What is the difference between a revolution and an act of crime? Not mere force of numbers. Revolution is self-defense writ large. It is the use of force in defense of individual rights.*

law, whereupon the law cannot bind him, so his act is not illegal. In other words, "You shall not do this act unless you choose to do it." That logic makes no sense to me.

At this point it may be said, as one reader put it, that I am "thinking like a lawyer." Of course I am; the Constitution is a law. If an electrician were to tell you that a toaster will not work on "flower power," you would not say to him, "You are only thinking like an electrician! Widen the scope of your mind!" We must know what the law is, before we can say what it ought to be.

But then Mr. Sobran shifts his focus to the extremity of Lincoln's war tactics. I have never argued that all of these tactics were justified; I do not believe that I, a century and a half after the fact, can form a clearer judgment on tactics than the people who were, at the time, fighting the war, and I have resisted the impulse to play armchair general. Were I to do so, I am sure I would disagree strongly with many things that Lincoln did in prosecuting the war. I have not mentioned the military draft, for instance, an institution I consider wholly illegitimate on moral, political, legal, and economic grounds — although many people ignore the fact that the Confederacy instituted a military draft, too. That is irrelevant. The question at hand is, was the war *itself* justified?

The Civil War takes us back to first principles, and the first principle of libertarianism is that the state is not inherently legitimate, but derives its legitimacy from the rightful consent of those who create it. This consent is based on the principle that each individual owns himself. William Merritt errs, therefore, when he argues that "people get to throw off real governments for whatever reasons seem real to the people at the time." Libertarianism sees the state, or revolution, as legitimate *only* insofar as they protect the rights of the individual; a nation based, as the Confederacy was, on the premise of inequality and the right to own others, is not a legitimate nation, but a gang of pirates — organized, perhaps; uniformed and obedient to their captain, but pirates nevertheless. And when pirates attack, as the South did at Fort Sumter, it is the job of those who have sworn to support

and defend the Constitution of the United States, to enforce that law. Blood is frequently shed in putting down pirates and freeing their victims. But libertarians have always stood firmly on the proposition that life is not so dear, nor peace so sweet, as to be purchased at the price of chains and slavery.

Mr. Sobran phrases the question by asking whether or not it was legitimate for the federal government to kill people who made war on the Constitution, even to the hundreds of thousands. Likewise, one reader wrote that "[Sandefur's] position seems to be that freeing the slaves trumps everything else — they get more freedom, we get less, but their freedom is more important than ours. . . . [W]hat price would Sandefur have been willing to pay for the immediate abolition of slavery? Apparently, the 600,000 deaths and countless rights violations of the Civil War were not too high a price for him. Would any price have been too high?" To this I have two answers; one rhetorical, one logical.

My first answer to the question, Was it worth 600,000 deaths to free the slaves? is *absolutely yes*. It would have been worth it at twice that price; indeed, it would have been cheap at a thousand times that price. It would have been cheap if the war had lasted until the present day. It would have been cheap at the price of *oceans of blood and mountains of bones*. Thomas Jefferson once said, "Were there but an Adam & an Eve left in every country, & left free, it would be better than as it now is," and I have little sympathy with a libertarianism which does not share that estimation, which does not believe that freedom is more important than life, or which can speak of the freedom of "them" as separate from the freedom of "us." We already know how free "they" were in the antebellum South, with its whipping, raping, and lynching; its fugitive slave laws and its curfews; but how free were "we" in the antebellum South? With its lynch mobs, its censorship of the mail, its *fatwas* against abolitionist writers? How free was a white man who wanted to befriend a black man, or to teach

*Was the secession of 1861 a legitimate act of revolution? The answer is no, because revolution can only be justified as an act of self-defense, never to protect criminal prerogatives.*

him to read, or to marry a black woman? How free would America have been under the blood-drenched slave codes that Southern states wanted the Congress to pass? Americans, cherishing their libertarian founding, have long believed that freedom is sweeter than life, and I dearly hope they go on believing that. To paraphrase Rose Wilder Lane: if this makes me an extremist, then I'm extreme as hell.

Mr. Sobran inserts his final point, asking whether a child today is not enslaved to the state, for rhetorical purposes, to rile the tempers of libertarians who resent the current state of affairs. This doesn't work, since I share that temper. But were I tempted to, I might imagine a world in which the Confederacy had been allowed to leave the union and declare its independence. We might even imagine, though I am not convinced of it, that by 2003, the Confederacy had

abolished slavery. Do we think they would have also abolished Jim Crow, or written the Civil Rights Acts of 1866 and 1964? That they would have abolished the laws against teaching blacks to read? Or legalized the mailing of abolitionist literature? Do we think they would have a black man on their Supreme Court, or a black woman on the Supreme Court of one of their states?

Could we, seeing a little black child on a sidewalk in Atlanta, Georgia, in this Confederate States of America of 2003 — could we congratulate him on enjoying self-government? Or might it be more honest to tell him frankly that, in order to protect the “right” of whites to “govern themselves,” and preserve their “peculiar institutions” from

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*Was it worth 600,000 deaths to free the slaves? Absolutely yes. It would have been worth it at twice that price.*

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federal interference — to protect, that is, the *liberty of the wolves* — the state of Georgia was allowed to leave the union (in violation of the Constitution) and to have a revolution (in violation of the principles of equality which justify revolution) so as to preserve the right of whites to enslave his ancestors, and to maintain the segregation of the races? Might it not be more reasonable, in such an alternate universe, to say to this boy that our nation’s dedication to liberty was less than our dedication to the “right of (the white people of) a state to govern without interference,” that our dedication to equality was limited only to the equality of states, and not the equal right of all to the ownership of themselves? That all our talk of freedom was so much tissue, and all our talk of revolution so much war-whooping? Would it not be more frank to say that our nation was not a nation, but a confederated gang of pirates who justified their thievery by appeals to majority rule, and the right of one man to enslave another without hearing any third man object?

Would it not be right to tear the Declaration of Independence into shreds before his eyes, and tell this little boy that America was never a nation based on the freedom of individuals, but freedom of states — that “the American Revolution was effected, the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States, that particular municipal establishments, might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty?”

So much for rhetoric. “Reason, cold, calculating, unimpassioned reason, must furnish all the materials for our future support and defence.” My second answer, therefore, comes from thinking like a lawyer. I have laid it out at excruciating length already. The Constitution is a compact between the people, not a treaty between the states. A state may therefore not unilaterally secede from it — a fact buttressed by many other clauses in the Constitution, by the explanations in the *Federalist* and *Antifederalist Papers*, by the speeches in the rati-

fication conventions, and by other documentary evidence. Since secession is not constitutional, it must be an act of revolution in order to be justified. It was not, however, an act of revolution in 1861, because the South initiated force, and did so in defense of the ownership of slaves. Since the Constitution is the supreme law of the land, and since the president is constitutionally required to see that the laws be faithfully executed, it fell to Lincoln to enforce the law at point of arms if necessary. Executing the law often requires the taking of lives. When a policeman kills a kidnapper or a murderer, I am saddened at the loss of life, but I do not dispute the legitimacy of the act. So, too, when soldiers attack an organized group of lawbreakers trying to kidnap and murder millions of black human beings, in violation of the supreme law of the land, then I do not dispute the legitimacy of defending the law at point of arms if necessary, whether it be July 4, 1861 or September 11, 2001. “Let us have peace,” said Frederick Douglass, “Yes, let us have peace, but let us have liberty, law, and justice first.” It is awful that the war came. But Lincoln did not initiate force; the South did, and the blame must be laid on them.

My ancestors fought for the Confederacy. Like other descendants of those brave men, I admire their courage and their willingness to die for what they believed in; I hope no reader will interpret my argument as disrespectful of their memory. But, as Douglass — one of “them” — said in 1878, “we must not be asked to say that the South was right in the rebellion, or to say the North was wrong. We must not be asked to put no difference between those who fought for the Union and those who fought against it, or between loyalty and treason. . . . It was a war of ideas . . . between a government based upon the broadest and grandest declaration of human rights the world ever heard or read, and another pretended government, based upon an open, bold, and shocking denial of all rights, except the right of the strongest.” We libertarians all wish the federal government would stop intruding on the powers of the states, or that states would show more resistance to its constant expansion; we wish it would act like what it is — a government of limited and enumerated powers. We wish that the people of today would show as much spirit in resisting government as the Southerners showed in the pursuit of their damned cause. But our enthusiasm for a little rebellion now and then must not mislead us into supporting rebellion for its own sake, or a rebellion which sought to impose the worst deprivations of liberty. Our belief in resistance must not distract us from our primary goal of freedom. □



“The prisons are overflowing, and they’re running out of room to sequester juries.”

usual, no such argument. (Nor, of course, do you defend a writer who argues for P by showing that, in reality, *something like P* is really true.)

Abstractly, maximin entails equality. If there are no restrictions on how maximin applies, then if any item is different in degree from any other, it being a degree of something capable of redistribution, then you literally maximize the minimum by redistributing to equality. That's a matter of elementary mathematics, and there's nothing to argue about there. My argument merely points out that the only conditions Rawls does introduce that are supposed to justify inequality in the face of maximum cannot, on his own terms, succeed in doing that. And the importance of that is the fact that so many readers have supposed that Rawls has, at last, found a genuine middle way between the libertarian free market and out-and-out egalitarianism.

I, of course, fully agree that a market society will, in fact, do better for the poor, but market society denies that the poor actually have a right to that larger share which they will, we think, get in a market arrangement. And that is what is at issue. Rawls and the egalitarians among us think they do, and my point is that Rawls has not shown this.

Mr. Sollars did not attend to the argument. (I refer readers especially to my lengthier exposition which is now available in my book, *Respecting Persons in Theory and Practice*. My article, "Rawls and Utilitarianism" is found in a harder-to-get source: H. Miller and W. Williams, *The Limits of Utilitarianism*.)

### Get Thee Behind Me, Mr. Giuliani

In "A Year at FEE" (February), Mark Skousen analogizes a libertarian's distaste for Rudy Giuliani's ideas to a Christian's distaste for some of Doug Casey's. However, Doug Casey never was in a position to (nor would he, as a libertarian, want to) forbid churches from opening within 500 feet of a school, residence, sex shop, or other church, thereby relegating churches to the far reaches of industrial areas.

While it is commendable Skousen supports the free exchange of ideas, Giuliani would use municipal art funds

(a bad idea to begin with) to favor one set of ideas (say, the Metropolitan Museum of Art) over another set (say, certain exhibits at the Brooklyn Museum), thwarting that exchange.

As for Giuliani's leadership after the attacks of Sept. 11, I wonder how those who worked near the World Trade Center and wanted to memorialize the tragedy with personal photographic records of the destruction felt about it when they were threatened with confiscation of their cameras.

And Ben Stein's non-libertarian ideas? At least Ben Stein is funny.

Charles Kluepfel  
Bloomfield, N.J.

### Giuliani, the Fascist

Mark Skousen relates that the reason for his departure is the Giuliani invitation for the proposed FEE convention. He continues to defend that invitation.

As a "Drug Warrior" and gun foe, Giuliani is responsible for incarcerating thousands. His actions, as prosecutor and mayor, were responsible for numerous deaths and untold ruined lives. I have more respect for Charles Manson.

In this instance, it is not merely someone with a controversial ideology, but someone who has done a significant amount of actual harm. Should I welcome the opportunity to pay to hear Pol Pot or Stalin, because they took interesting actions? Giuliani, and currently, John Ashcroft, show their true Republican colors: economically conservative and socially fascist. Financially rewarding Giuliani for his anti-liberty posture is to encourage others to follow his example — a ridiculous notion.

Jim Kinard  
Lancaster, Ohio

### Giving Gaia Her Due

I've always thought Gaia (who might otherwise have little use for big-brained apes) created human beings to recover her fossil carbon, locked deep in the earth, and recycle it back into the biosphere.

Just kidding. I think.

Paul Bonneau  
Beaverton, Ore.

### The People vs. the States vs. the United States

I read with great interest, yet consid-

erable disappointment, Timothy Sandefur's "Why Secession Was Wrong" (December). While he addresses all the appropriate questions, he deduces erroneous conclusions.

Sandefur contends the people, not the states, not only adopted but also established the Constitution. Therefore, he continues, a magnetic and virtually unbreakable force binds the two. Surprisingly, he fails to acknowledge the powers afforded the states in nearly every aspect of the document.

Consider the following:

1) Publius addressed *The Federalist Papers* to "the people of the state of New York."

2) *Federalist* 39 describes the ubiquitous role of the states in the amendment process as "neither wholly national nor wholly federal."

3) Election laws fall almost entirely under the purview of the states. Governors appoint senators to fill vacancies and authorize special elections. State legislatures create laws regarding ballot access for local, state, and federal offices.

4) States elect the president via the Electoral College. Electors chosen by the people, and by the state legislatures in the formative years of the republic, select a candidate. In fact, electors in some states have no legal obligation to vote for the candidate to whom they pledge themselves. Has Sandefur forgotten Florida in 2000?

The Constitution and the People remain bound together only through the consent of the states. They formed a compact, not a treaty, granting limited authority to a federal government omitted in the Articles of Confederation. In return, they accepted wide-ranging latitude in most government functions.

Apart from direct election of representatives to Congress, the people have virtually no direct participation in government at the federal level. Moreover, the people approved the Constitution only through their respective state delegations. Would not the corollary — a state through its citizens has the right to secede from it — then be true?

For instance, consider recognition of homosexual marriage. Though largely overshadowed by legitimate debates on morality, the Defense of Marriage

*continued on page 52*

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## Parable

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# The Sacred Element

*by David Ramsay Steele*

Burning fossil fuel is the only way to save life as we know it.

Listen children, this story is more than just true. It's true many times over, for the very same sequence of events has happened thousands of times on different worlds.

Once upon a time there was a well-positioned planet endowed with much carbon. And sure enough, on this planet there developed a marvelous array of living organisms. Out of these myriads of species, there emerged, by a succession of lucky accidents, one intelligent animal, with the capacity for building civilization and the indefinite development of knowledge. So far, so good.

As these intelligent animals exulted in their technological and artistic achievements, they little suspected that a terrible, malign force was pitilessly draining away the life's blood from their world. They were living in a shadowy and attenuated time, the darkness of death closing in on the biosphere, the light of life sputtering feebly amid the encircling gloom.

Of course you all know the explanation. For millions of years of evolution, countless living organisms had been dying every day, and some of these dead organisms became trapped deep in the planet's crust, their precious carbon locked out of circulation. Since biomass is fixed by the quantity of available carbon, the continual removal of carbon spells shrinkage and degeneration.

Left to itself, life automatically eliminates the conditions for its own existence, though thankfully it does so quite slowly. Occasional volcanic eruptions do liberate some carbon, but this is a mere trifle compared with the enormous losses inflicted by the formation of peat, coal, and petroleum deposits. Forests are the number one menace to life, for any tree will eventually die, and who can say what will then become of its priceless carbon?

A momentary reprieve came along when some of the intelligent animals began to dig for coal and drill for oil and gas.

They thought only of the profits to be earned by providing their fellow species-members with cheaper fuel, but unbeknownst to themselves, they were benefitting their own population and their biosphere in an entirely different way. By liberating the imprisoned carbon, they helped — though this was no part of their intention — to counteract the insidious shrivelling of the biomass.

But these intelligent animals soon abandoned fossil fuels — while the vast bulk of the lost carbon still lay entombed beneath the planet's surface. Nuclear, solar, and other forms of energy completely superseded oil and coal, when only a minute proportion of the carboniferous deposits had been reclaimed for the benefit of life. The march of death recommenced!

Eventually, however, a few of these intelligent animals — on our world we know them as the Six Prophets — began to preach the novel idea, though to us it is common sense, that carbon must be disinterred from the geological graveyard if life is to fulfill its potential. The holy cult of carbon redemption was born: the saints pledged themselves to donate a sixth of their income to extract coal and oil, solemnly oxidizing these organic minerals in magnificent public rituals and also in millions of humble household shrines.

New coal mines and oil wells were created, far more than in the days of fossil fuels, with the single intention of resurrecting these substances and reclaiming their carbon to sustain the living world. It was soon realized that it was often easier

to pump oxygen down below and burn the deposits where they lay, but millions of tons and barrels were brought to the surface so that the devout could personally witness their reclamation. The liberation of carbon became the biggest of charities, and later (when every individual had become immensely wealthy by primitive standards), the sole charity, the last surviving philanthropic "good cause."

In our world, this all happened a long time ago. The observable benefits have been spectacular, even over just the last 6,000 years. Our climate is more lovely and more temperate. The sky is bluer and the rain finer. The air is filled

*Nuclear, solar, and other forms of energy completely superseded oil and coal, when only a minute proportion of the carboniferous deposits had been reclaimed for the benefit of life. The march of death recommenced!*

with the bright plumage of wondrous new birds. Vegetation springs up everywhere with an eager rapidity that would have astonished our ancestors, the dazzling effulgence of its emerald verdure far outshining the drab coloration of earlier times.

Lindsey, from page 30

while libertarians agree generally about the desirability of market-oriented reform, they can clash over the proper sequencing of incremental reforms. It is often an open question whether one marginal reform, on its own, will actually improve the transmission of market signals or instead only amplify the distortions of market signals created by policies left unreformed.

Pragmatic libertarians also realize that the principles of individual rights and market competition offer little guidance in the realm of foreign affairs. Of course, no libertarian could advocate a policy of conquest and colonial exploitation of conquered peoples. Beyond that, though, libertarian principles offer little guidance. The primary desideratum is the protection of liberty here at home from foreign threats; at the same time, though, libertarians wish for the advance of liberty abroad. How do we accomplish these things? Does self-defense stop at our borders, or does real security sometimes depend on the deployment of forward defenses, or the preemption of incipient threats? Does the active encouragement or protection of liberty abroad stir up threats against us, or does it prevent them from arising or worsening? I do not believe there are any pre-packaged answers to these questions. They must be sorted out, case by case, in the tangle of actual, real-world circumstances.

So, to return to the original question: am I a libertarian? Yes, I am, if you mean a pragmatic, reformist libertarian. If, however, the libertarian label is reserved for radical utopians, then the shoe doesn't fit, thank you very much.

The redemption of carbon has already created a worldly paradise, yet the great work has barely begun. Our machines have sniffed out every ounce of coal, oil, and diamonds for thousands of meters below the surface, they continue to go deeper — and there are vast reserves of limestone, chalk, and marble down there, just waiting to be converted.

We award our most distinguished medals and our most prestigious prizes to those members of our species who redeem lost carbon and restore it to the living world, thereby triumphing over death. And that's why we're going out today, children, for six hours, to watch the ceremonial burning. For today, the Sixth of June, is Carbon Redemption Day, or Life Day, the most glorious holiday in our calendar. The redemption of carbon is a voluntary act, a noble deed of unsullied virtue. No pastime is more strictly righteous. "All religion is folly save only the sacrament of carbon redeemed and life amplified" (Third Prophet, 46:656).

Children, you are now 6 years old, and you may look back on this day as the most momentous of your lives. The torch of life now passes to you. No one can *make* you dedicate your life to burning fossilized mineral compounds. Only you can decide, of your own free will, to undertake that heroic commitment for the benefit of future life on this planet and its many far-flung colonies.

I know that you are good children and that all six of you will do your bit to save the planet. Please don't let me down. Now let's go and have fun watching all that wonderful smoke. A happy Life Day to one and all! □

Unsurprisingly, given my views, I believe that pragmatic, reformist libertarianism represents the most vital and promising expression of the libertarian impulse. First, it accords far better than the radical alternative with the great current of the freedom-loving intellectual tradition. Neither Jefferson, nor Madison, nor Paine, nor Smith, nor Hume, nor Tocqueville, nor Cobden, nor Hayek, nor Friedman advocated the chimera of a minimal state; all saw a broader, if still tightly circumscribed, role for government. Utopianism is not the distillation of the libertarian tradition; it is a caricature of it.

Furthermore, reformist libertarianism offers the best hope for expanding freedom's frontiers in the future. The false alternatives of American liberalism and conservatism create an enormous opportunity for a libertarianism grounded in the real world. Liberals weary of their movement's obeisance to anti-market interests and victims' lobbies, conservatives repelled by their movement's coziness with the religious right, these are the broad constituencies to which reformist libertarians can make their appeal. But for the libertarian alternative to really gain ground, it must fashion a message and a program that begins, not with unworkable ideological contraptions, but with the here and now of political reality. It must lead public opinion in the direction of greater appreciation for the sanctity of rights and the creative power of competition, gently, firmly, patiently, and just a few steps ahead of those whose minds it seeks to change. It must recognize that there is only a path of ongoing reform and adjustment, no final destination of perfection, and that we all have much to learn along the way. □



# Just Whose Institute Is It, Anyway?

by R. W. Bradford

If the powers that be at the Ludwig von Mises Institute don't have a Rothbardian axe to grind, they have a funny way of showing it.

In a curious article published by Lew Rockwell, head of the Ludwig von Mises Institute, J. H. Huebert quotes briefly from a reflection I wrote for the November *Liberty*, and comments thereon:

[P]romoting Mises' thought is only the ostensible purpose of the Mises Institute: anyone who looks carefully at its record quickly concludes that its real mission is to promote the thinking of Murray Rothbard, a student of Mises whose thinking and intellectual agenda was quite different from Mises. . . . As if to underscore its allegiance to Rothbard rather than to Mises, the Institute has recently republished the 1949 edition of Mises' magnum opus, *Human Action*, rather than the subsequent editions prepared by Mises himself. Mises Institute President Lew Rockwell reportedly claims that he believes the 1949 edition to be "more scholarly," but cynics observe that the main substantial differences between it and subsequent editions is that it lacks Mises' criticism of Rothbard.

Each and every assertion in this passage is false. . . . This is an abbreviated version of Mr. Bradford's comments. The unedited version contains even more falsehoods about Mises and Rothbard that are beyond the scope of this article.

One must compliment Huebert on his taste for controversy. He is not claiming merely that I am wrong about some details, but that "each and every assertion in this passage is false."

So let's look at each of the "assertions" I made, with an eye toward evaluating his claim.

Assertion #1:

[P]romoting Mises' thought is only the ostensible purpose of the Mises Institute.

Clearly, the institute exists to promote Mises' thought. The organization is, after all, named for Mises and uses

Mises' family coat-of-arms as its logo. If Huebert doubts this, perhaps he should read the Institute's incorporation documents, which state its purpose to be "to promote the economic theories of Ludwig von Mises through the collection of contributions, awarding of fellowships, and publishing and distribution of his works."

Assertion #2:

. . . anyone who looks carefully at its record quickly concludes that its real mission is to promote the thinking of Murray Rothbard . . .

This is a judgment call. The issue boils down, I think, to the question of where Mises and his disciple Murray Rothbard, whose thinking the Mises Institute also assiduously publicizes, disagree and, whether the institute tends more to support Rothbard's or Mises' views in these areas.

A couple of examples, one theoretical and one practical, come immediately to mind:

(1) natural rights is at the heart of Rothbard's political thinking but is dismissed out of hand by Mises;

(2) Mises defended patents; Rothbard argued that patents were wrong.

Normally, I'd figure this is the sort of thing that people discuss and question rather than simply denounce as false.

Assertion #3:

[Murray Rothbard was] a student of Mises whose thinking and intellectual agenda was quite different from Mises.

Huebert is simply wrong, as he himself admits when he writes:

## Assertion #4:

... the [Mises] Institute has recently republished the 1949 edition of Mises' magnum opus, *Human Action*, rather than the subsequent editions prepared by Mises himself.

Again, Huebert is simply wrong, as, again, he soon admits: "One may or may not think their reasons for reverting to the first edition were good ones ..."

## Assertion #5:

Mises Institute President Lew Rockwell reportedly claims that he believes the 1949 edition to be "more scholarly," ...

For this assertion to be "false," one would have to prove there exist no reports Rockwell claimed he believed the 1949 edition to be "more scholarly." In fact, at least one person has reported Rockwell's opinion to me. (That person is Bettina Bien Greaves.) Huebert himself goes on to state that the first edition is in fact "more scholarly," which certainly doesn't help his case against me very much.

## Assertion #6:

... cynics observe that the main substantial differences between it and subsequent editions is that it lacks Mises' criticism of Rothbard ...

To prove that this, the final "assertion" Huebert claims is "false," is actually true, one need only identify two people who are in some sense cynical about Rockwell and who have observed that the main difference between the editions is that the Mises Institute edition lacks the criticism of Rothbard. This is pretty easy to do. I know several such people myself. Huebert himself acknowledges that such people exist:

... among rumormongers, who are in no way affiliated with the Institute, and who are not privy to its decision-making processes, Mr. Bradford's version is the most frequently repeated: The first edition, these people claim, was chosen because the fourth edition contained new material that conflicted with Rothbard's views on anarcho-capitalism and natural rights.

Curiously the person who originally surmised to me that the first edition "was chosen because the fourth edition contained new material that conflicted with Rothbard's views on

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*One must compliment Huebert on his taste for controversy. He is not claiming merely that I am wrong about some details, but that "each and every assertion" that I made "is false."*

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anarcho-capitalism and natural rights" was undoubtedly not a "rumormonger who is in no way associated with the Mises Institute"; it was Bettina Bien Greaves, an Adjunct Scholar of the Institute.

Huebert does not directly address the question of whether the later editions include substantial material critical of Rothbard. He prefers to explain, as the introduction to the republication explains, the choice was made on these grounds:

(1) later editions omitted passages on German wartime barter policy; (2) later editions omitted some insights on monopoly theory; and (3) later editions add a defense of

conscription that contradicts Mises' own writings of 1919, 1939, 1940, and 1946.

He may be correct, I suppose, in suggesting that the editors found these changes important, but Mises' criticism of Rothbard to be so uninteresting and unimportant that it

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*Huebert reports that the Mises Institute considers Mises' thinking on natural rights to be a "dissenting" view. Dissenting from what? Rothbardian orthodoxy?*

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doesn't merit mention. However, none of this undermines the truth of anything I wrote, since I made no claim at all about the actual motivations of the editors of the new edition.

As to the "even more falsehoods" that Huebert claims to have discovered in the "unedited version" of what I wrote, it's impossible to respond, since he doesn't tell the reader what those "falsehoods" were. Nor is it clear what he means by the "unedited version." My piece was in fact edited prior to publication, but only by staff at *Liberty*, and I seriously doubt that any of them sent a copy of the "unedited version" to Huebert. My guess is that he is being a little sloppy in his writing: what he really means by "unedited version" is the edited and published version from which he quoted, in its complete form, unedited by ... him.

Not willing to halt his attack, even after he's run out of text, he goes on to criticize some arguments I might have made, but did not:

If the Mises Institute is trying to suppress Mises' and other dissenting views on natural rights, they're doing a terrible job.

This is a strange. Huebert reports that the Mises Institute considers Mises' thinking on natural rights to be a "dissenting" view. Dissenting from what? From the thinking of Mises, whose thinking the Institute is designed to promote? Or from the Rothbardian orthodoxy? Doesn't the fact that the Institute discusses these "dissenting" views (i.e., Mises' views) suggest that it is not trying to suppress them? It might. Might it also suggest that the Institute is trying to challenge libertarian philosophers to reconsider Rothbard's view (which they mostly reject) rather than Mises' view (which they mostly accept)?

If the Mises Institute is so interested in suppressing the content of later editions of *Human Action*, it is curious indeed that they would make the entire fourth edition available for free on their web site.

It doesn't seem curious to me that an institute whose purported purpose is to promote Mises' thinking, having done what it was able to do to make the first edition of *Human Action* into the standard edition, and having met considerable criticism for having done so, would continue to make the edition it is trying to suppress available in an inconvenient form to access. *Human Action* is more than 880 pages long, and plowing through it on a computer screen is no easy task.

*continued on page 51*

# Reviews

*The Triumph of the Moon: A History of Modern Pagan Witchcraft*, by Ronald Hutton. Oxford University Press, 2000, 502 pages.

## "Do Their Spells Really Work?"

Stephen Cox

I want to start by talking about ghosts.

Samuel Johnson, one of the Enlightenment's greatest intellectuals and, in his way, one of its greatest skeptics, observed that people in every human society have claimed to see ghosts. On that evidence, he was inclined to credit their existence, though not to credit their existence in every case that he heard about.

Recently I was talking with a friend, an intelligent young man in his twenties. He is a person of conservative disposition — thoughtful, moderate, self-controlled, immune to fanciful ideas. He comes from a conservative, professional family, which educated him in traditions of order and self-discipline. If there's any word you would trust, it's the word of someone like him. And he happened to say to me, casually and as if it had no philosophical implications whatever, that when he was growing up, he lived in a house with ghosts.

It started when he was seven or eight years old. He was walking out of his bedroom when something tapped him "very methodically" on the left shoulder, three times. He didn't feel that there was anything "sinister" going on: "It was trying to get my attention." After that, there were many times when he looked from the kitchen

into the bedroom hallway and saw a human-shaped shadow walking "non-chalantly" from door to door. Sometimes he would hear his father calling him from another room, but when he went to that room, no one was there. His father — who, by the way, refused to believe that any of the other strange things was happening — also heard him calling from rooms that turned out to be empty. The same was true of his mother and sister.

"How long did these things go on?" I asked.

"Till we moved out of the house," he said, "when I was 15. I was afraid that they were focused on me instead of the house. But it stopped as soon as we moved. And I've never experienced anything like that since."

I didn't ask many questions. I was somewhat surprised that I didn't. It wasn't because I found the story too strange to follow up on. To the contrary: it was so simple and straightforward that no questions seemed necessary. He related what happened, not as something that needed to be explained or justified, but as an event of daily life — unusual, to be sure, and far from pleasant, but no more demanding of hard questions than somebody's recollection of coming home to find graffiti on the backyard fence.

At this point, since you're probably sneering at my credulity, I want to assure you that I have read the philo-

sophical literature on belief in supernatural appearances, and that I do know the adolescent-psychology theory of poltergeist phenomena. Well, what my friend encountered wasn't poltergeists, and his experiences stopped, not when he got out of adolescence, but when he moved out of a certain house in Sunnyvale. Also, I don't care what Hume said: if I ever see a ghost, I'll believe in ghosts, and if a trusted friend says that he saw a ghost, I'll be likely to believe that he did. (If you tell me that you saw one, I don't think I'll grant the same degree of credence. I don't know you.) To continue this string of disgraceful admissions: I confess that I don't see why the use of objective reason should begin with a dogmatic exclusion of certain kinds of evidence. And, speaking from a purely aesthetic point of view, I confess that I believe our world would be a great deal poorer if the radical skeptics actually convinced us all that there cannot ever be any truth in such stories as my friend related. The story caused him considerable pain, and I sympathized with him. All the same, it conjured up the kind of shadows that give life its relief and roundedness.

Fortunately or unfortunately, however, there are people who have sought to regularize human contacts with the mysterious and induce them to happen by command. This used to be the province of spiritualism, which

was mostly very phony. The popular movement of the present hour is the neo-pagan religion of "witchcraft." This is the movement that sometimes calls itself Wiccan, and it is the subject of the book under review.

How popular is "popular"? From a website that discusses the appointment of Wiccans as chaplains in state prisons in Wisconsin, I derive the following statement: "Estimates of Wiccans in the U.S. vary greatly, from 200,000 to 5 million." Other sites give numbers of 10 million at the high end and 3 million at the low end. But let's see. Five million would be about one in every 60 Americans. So the next time you're in a Wal-Mart in Kansas City, one out of 60 of the people you see milling about the aisles will be a witch. Doesn't sound very likely to me. But OK, I'll be fair. The next time you're in a coffee shop in San Francisco, two out of three of the customers will be a Wiccan. That will make up for the paucity of witches in the deep midwest.

Sorry. It's less ridiculous to believe in witchcraft than it is to believe that there are five million witches in America. And believing in witchcraft is much more ridiculous than believing in ghosts. After all, ghosts don't appear on order. Either they appear or they don't, and no one knows why. Witchcraft, by contrast, depends on the notion that we can actually get acquainted with supernatural "forces," most of which are hackneyed literary metaphors, like the moon goddess or the personified earth, and use them, perhaps command them, for our benefit.

Evidence is lacking of anyone's ability to do that. And the history that modern witches tell about their movement has equally strong evidentiary problems. The usual story is that ancient Europe worshiped a goddess identified with the moon and a variety of other things, that her worship went underground when Christianity took over, but that it survived — very well, thank you — by handing down its beliefs and practices from one generation of witches to another, until it was rediscovered and popularized in the twentieth century.

This is where our author, Ronald Hutton, comes in. He shows, to any sane person's satisfaction, that there was no pagan witch-religion that survived the coming of Christianity.

Modern paganism was originated by modern people, and very modern people, at that. As Hutton demonstrates in meticulous detail, it's almost all post-World War II. Also wrong is the picture that many people, especially radical feminists, have been delighted to paint of the mass executions of witches during the European past. I say "delighted" with ironic emphasis, because there is something very repulsive about the desire to magnify human suffering in

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*Witchcraft depends on the notion that we can actually get acquainted with supernatural "forces," most of which are hackneyed literary metaphors.*

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order to create imaginary martyrs for one's cause. As Hutton indicates — to my relief, if not to that of the radical feminists — there were far, far fewer victims of witch-hunts than we've been led to suppose. "There was no long-lasting or wide-ranging persecution of witches in early modern Europe . . . Only a tiny percentage of people suspected by their neighbours of witchcraft were executed. . . . [M]ass arrests . . . were concentrated in a few specific places and times during the period 1560–1630, a short span in the whole extent of the medieval and early modern epochs" (p. 379).

Hutton's book is unsurpassed as a scholarly account of modern witchcraft, its origins, motives, and fantasies about itself. It is one of the most penetrating accounts of the invention of any modern religion. Its logic is strong, its array of facts is enormous, its spirit is charitable but never naive; only its proofreading is bad (in fact, damnable). Of special interest is the account it provides of the role that scholars and intellectuals played in fostering false stories about the so-called Old Religion that is supposed to have engendered the modern world of Wicca. People like Robert Graves, Margaret Murray, Marija Gimbutas, and other competent scholars are very largely responsible for the wholly unsupported historical myths that surround neo-paganism. It takes a lot of self-delusion, or something worse,

to make a case for those myths. But scholars made it, and readers bought it.

The market had been prepared by two centuries of literary romanticism, which sometimes equated emotional longing with spiritual truth, and almost two centuries of intellectual crusades against Christianity. Many people, and not just intellectuals, either, turned out to be very willing to believe in any religion except the dominant one, which as an identifiable force in society could be blamed for virtually anything they carried a grudge about. Then, as Hutton says, came the "powerful emotional currents" of the latter half of the 20th century — "a yearning for a reunion with the natural world and one's own imagination, for a spirituality of liberal self-expression and self-actualization, and for a greater parity and partnership between the sexes, especially in religion. . . ." (Women have so large a role in witchcraft that Aleister Crowley, one of the movement's demigods, "declared that he would not himself enter the witch religion because 'he refused to be bossed around by any damn woman'" [218].) Hutton observes that "the 1960s, in particular, witnessed an explosion of articulations of those needs and attempts to realize them." He makes an especially interesting assessment of one type of emotional need: "As the natural world became tamer and tamer, and the recesses of the globe more familiar, so Westerners began, more than ever before, to treat their own minds and souls as wild places, worthy of exploration. The new witchcraft, which united religion and magic, provided for some a particularly exciting way of entering those inner landscapes" (285–86).

I have to tell you that the religious behavior of the witches whom Hutton studies doesn't look much like an invasion of the "wild." It looks more like an invasion of Toys 'R' Us. His contemporary witches are nice, fairly normal people. Their standards of what counts for evidence may be deplorably low, but so are most people's. They don't have sex on the altar, they don't worship anything that they regard as satanic, and their spells and chants are aimed at doing good, not harm. They appear to spend most of their time celebrating "nature" and imagining that they themselves are one with Her. They are a mildly creative addition to the world's

vast collection of spiritual self-expressions. But it's sad: they were in quest of something "wild," and look where they ended up. It is always curious to see how little is required to satisfy the soul.

Two other things are worth noting. One is the ironic fact that the followers of a contemporary religion of nature should demand that it be rooted in the practices of the distant past. Most of the originators of modern witchcraft convinced themselves that it had been around since the dawn of time and that it must therefore have a rich and literal history, even if they had to make one up. Certain intellectual leaders of the movement now hesitate over such claims about the beginnings of the Craft, while continuing to revel in the long and supposedly illustrious career of the religious category that includes it, paganism. Yes, it's true; some people did use to worship the moon. What that proves is another issue.

And it's strange that certain exponents of witchcraft, especially feminists, imagine that it is something revolutionary, while also imagining that it originated in the prehistoric past — when, as we know, all the world was lapped in peace, under the benevolent reign of the Great Goddess. Many founders of modern witchcraft were political conservatives, sighing for the good old days before industrial capitalism; nowadays, leaders and followers are pretty firmly allied with the left, but the longing for a sanction from the past has never left them — perhaps because they sense that the spiritual foundations which they themselves have laid are too feeble to bear much weight.

This leads to the second of the things worth noting. Hutton says that the "most disturbing recurrent experience" connected with his research has been the response of the people he meets "in social situations . . . middle-class people of high education and professional ability" who are, in "overwhelming majority," atheists, agnostics, or nominal Christians. These people operate on the premise that there is no such thing as a supernatural phenomenon, not even a ghost. But when Hutton tells them that he does research on practitioners of witchcraft, "far and away the most frequent question which they ask . . . is, again and again, 'Do their spells really work?'" (271).

Hutton finds this disturbing because he's afraid that if people entertain the possibility that witchcraft works, they will begin to persecute witches for working evil. This seems farfetched, until one recalls how much heat was generated, a few years ago, by stories spread in this country by vicious or demented people who suddenly happened to "remember" that they had been brought up in witch covens that routinely conducted human sacrifice.

From another point of view, however, the question posed by Hutton's ostensibly nonbelieving friends offers a wry confirmation of the saying of one of Robert Browning's characters, who remarked that antireligious people may have as much trouble fighting off doubts as religious people have:

Just when we are safest, there's a  
sunset-touch,  
A fancy from a flower-bell, some  
one's death,  
A chorus-ending from Euripides —  
And that's enough for fifty hopes  
and fears  
As old and new at once as nature's

self,  
To rap and knock and enter in our  
soul,  
Take hands and dance there, a fantastic ring,  
Round the ancient idol, on his base  
again —  
The grand Perhaps!

And it must be said: compared with Hutton's friends, the Wiccans

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*When Hutton tells them that he does research on practitioners of witchcraft, "far and away the most frequent question which they ask is, again and again, 'Do their spells really work?'"*

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don't come off badly in the intellectual department. There are a lot of silly things inside their heads, but at least they know what's in there. □

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*World on Fire*, by Amy Chua. Doubleday, 2002, 304 pages.

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## *The Trouble with Trade*

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Bruce Ramsey

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In *World on Fire*, Amy Chua, a young professor at Yale Law School, argues that capitalism and democracy, the twin ideals of foreign policy, are often undone in countries with a market-dominant minority — a distinct group better at business than any other group. Think of the Chinese in Indonesia and Burma; the Lebanese in West Africa; the Indians in Fiji and East Africa; the English in Zimbabwe and South Africa; or the Jews in Russia.

Chua comes from a "third-tier" family of Filipino-Chinese tycoons, the owners of a plastics conglomerate in

Manila. The family has vacation homes, servants, and "safe deposit boxes full of gold bars, each one roughly the size of a Snickers bar." Chua's aunt sent her one of these goodies before the aunt was hacked to death by the chauffeur. The aunt was Filipino Chinese, the chauffeur native Filipino.

The Chinese are not loved by the native Filipinos, the Indonesian *pribumis*, the Malaysian *bumiputras*, the Tibetans, or Burmese. These folks will often privately admit that the Chinese are more enterprising. A Tibetan guide once told me that if he had 100 yuan (about \$12) he would drink it up with his friends, whereas a Chinese would put it in the bank and invest it in his

business. He respected the Chinese for that. But he also resented the Chinese for being in his country, for keeping to themselves and showing by little things that they thought themselves superior (which they do).

What does all that have to do with the market? When clotted and crusted markets are opened up to commerce, it is groups like the overseas Chinese who are in a position to make the most of it. They already know business and they have connections abroad. As they build wealth in these markets, however, they often build resentment as well. It does not particularly matter that minority investment causes everyone's wages to go up. After 30 years of Suharto capitalism, the Indonesian *kampong* of 1995 was much improved over the *kampong* of 1965. The average Indonesian had better food and medicine, and many had televisions. But that did not protect the Indonesian Chinese from being burnt out.

A riot is not democracy, but balloting may express the same urges. Ask the resentful majority what it wants, and it may want to get even. Chua argues that this happens more often than Americans know. We assume that the nationalizations in the mid-20th century — oil and railroads in Mexico, for example — were ideologi-

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*In no country did pure capitalism and pure democracy exist at the same time. But those two things are what America is offering for export: the simple, stripped-down models.*

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cal. In China and Cuba they were. But often it is ideological cover for the dispossession of a minority — in Mexico's case, the *gringos*.

All this might lead up to an argument for some kind of insular socialism, but it does not. Chua is in favor of the things she criticizes. But she argues that markets and democracy evolved in the West over a long period. The franchise was at first lim-

ited to property owners, and expanded slowly; and even with universal adult voting, majorities are restricted by law. Capitalism, in turn, evolved from *laissez faire* to the welfare state. In no country, she says, did pure capitalism and pure democracy exist at the same time. But those two things, she says, are what America is offering for export: the simple, stripped-down models.

A libertarian will argue that what Chua thinks of as a *laissez-faire* system (what's going on in Russia, for example) is not the genuine article. Fine; adjust the definitions. A country that has evolved a relatively pure capitalism will have institutions — courts, fraternal societies, insurance companies, savings banks, unions — to make the system work the way people want it. The institutions will have evolved with the economic system, and the economists who justify the economic system may not think about them. But they are there; and if capitalism is dropped from dirigibles ready-made into a non-capitalist society, those institutions will not be in place. Neither will the habits of mind that make capitalism work. These institutions and habits may be developed, but some groups will deploy them faster than others.

It is the same with democracy. America doesn't have pure democracy and never has. The libertarian will be less defensive of that, because the democracy he advocates (if he advocates it at all) is strictly limited by constitutional law. But such a system cannot be dropped from the sky, either. Unless people have a clear idea of the meanings of their constitutions, and have the will to defend those meanings, the constitutions won't matter.

Chua reminds us that while we may define a free society in a kind of recipe — "simple rules for a complex world" — key ingredients are often left out of the mix.

For the market-dominant minorities, this book is a warning: to be clanish is to court danger. It is wise to intermarry and assimilate, if you can. The Chinese assimilated in Thailand in a way they did not in Malaysia. It was easier in Thailand, because the Thais

are ethnically and religiously closer to Chinese — there is no revulsion over eating pork, for example — and partly because the Thai government promoted assimilation. As a result, the Chinese in Thailand are politically more secure and accepted than the Chinese elsewhere in Southeast Asia. But Thailand is not the usual case.

Nor is America. It is not realistic to ask every country to become an unlimited melting pot, because most countries don't want it.

The last third of Chua's book is an attempt to analyze Israel and America

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*Chua reminds us that while we may define a free society in a kind of recipe — "simple rules for a complex world" — key ingredients are often left out of the mix.*

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as "market-dominant minorities" in the Middle East and the world, respectively. It's an analogy, and it is stretching her argument.

The book ends on a weak and unconvincing appeal for foreign aid. She admits that redistribution of wealth will do nothing to alter the division of talents, and says that it has been proven that education alone will not do much. She mentions Hernando De Soto's campaign to create property rights for the poor, and endorses it, but says that will not be enough; government-to-government aid is needed. She reaches this position by a process of elimination, and does not argue for it, which is pathetic. It would have been much more honest to admit that she doesn't have an answer.

The strength of this book is in its clear and colorful outlining of the problem. It is a reminder not to take those rankings of capitalism and economic freedom from Heritage and Cato too seriously. What they measure is important — but there are other factors, unmeasured, that may get between an enterpriser and his bars of gold. □



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*What's So Great About America*, by Dinesh D'Souza. Regnery, 2002, 218 pages.

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# America's Virtues

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Jane S. Shaw

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The title of this book can be read as a sneering question, "What's so great about America?" Or it can be the label for a straightforward list of what is, indeed, great about America. Dinesh D'Souza wants us to reflect on both possibilities.

My guess is that he started writing this book well before the September 11 attacks, but the attacks give the book its focus. "Why They Hate Us" is the title of his first chapter, and for those of us who are still trying to figure out why, his perspective is helpful. D'Souza's book is not as deep as Bernard Lewis' *The Middle East* or Samuel P. Huntington's *Clash of Civilizations* — and his conclusions may be wrong — but it offers insight.

As a prominent conservative, D'Souza is juggling several tasks. He wants to clarify why America (that is, the United States) is worth admiring and to defend it against its critics. And not only its Islamic critics: he also wants to defend America against its leftist elites, with whom he has done battle ever since he was an outspoken writer for the peppery campus newspaper, the *Dartmouth Review*. But he also wants to convince fellow conservatives that America does indeed have excesses — and attempt to explain why — while still arguing that America's freedom, rather than its excesses, explains the terrorists' hatred. He also wants to justify the war against terrorists.

D'Souza builds his arguments with personal vignettes that compare his family traditions in India with his life in the United States (he is now a U.S. citizen) and with pithy statements such as, "It is a great mistake for

Americans to believe that their country is hated because it is misunderstood. It is hated because it is understood only too well" (p. 184). D'Souza observes that America has shown the world that it is possible to have freedom and prosperity. Immigrants flock to America for both. "The moral triumph of America is that it has extended the benefits of comfort and affluence, traditionally enjoyed by very few, to a large segment of society," he writes (78). To D'Souza, Islam is in decline, not America. He argues that "the Islamic fundamentalists don't just object to the excesses of American liberty: they object to liberty itself" (184).

In spite of his admiration of America, D'Souza is bothered by the deterioration of its traditional values, revealed by the high divorce rate, widespread illegitimacy, and the "barbarism and weirdness of many teenagers" (136), among other things. "Life in the United States is characterized by a peculiar restlessness and angst, even in the midst of prosperity," he contends (136–7). Part of his goal is to explain why.

He argues that the cause is not capitalism, not technology, but the ghost of Jean-Jacques Rousseau and his cult of the "true self" (145). D'Souza argues that a search for "authenticity" of self has replaced the previously sturdy element of American history, the religious conviction that there is a "moral order in the universe that is separate from us and that makes claims on us" (147) (he cites Augustine as the source of this idea). Confidence in this order has collapsed, and has been replaced by the search for self-fulfillment, often in bizarre ways.

So, like many conservatives, D'Souza identifies the 1960s as the time when everything fell apart,

although (somewhat subtly) he doesn't blame the 1960s generation directly. Rather, he blames the parents' generation (the World War II-era "greatest generation") because "it failed to replicate itself" (152). In any case, the shift to Rousseau has turned the American tradition of liberty into a pursuit of "radical freedom, largely to the exclusion of the question of what that freedom is for." He contends that "the great conservative challenge is to bring this issue back to the forefront" (160).

Well, I think he may be right, though I may have been taken in by D'Souza's talents as a writer. Although a slim book, *What's So Great About America* is wide-ranging in scope, quoting Pericles, Rousseau, America's founders, and Islamic writers such as Ibn Khaldun. The writing is agreeable to the point of glibness, and its chief selling point may be its inspirational nature. I read the book some months ago, but when I returned to it to review it, I couldn't at first remember why I liked it or even much of what it was about. This suggests that, as a writer, D'Souza has an effect similar to

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*The search for "authenticity" of self has replaced the sturdy religious conviction that there is a "moral order in the universe that is separate from us and that makes claims on us."*

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fund-raising letters. These letters draw in their targeted readers by touching their ideological "hot buttons" and confirming their prejudices. That may be what happened to me.

Taking a sterner position, then, I will raise the possibility that D'Souza's conviction that America's adversaries can be overcome may be in error. D'Souza appears to reflect the "universal civilization" strain of today's strategic global thinking, as discussed by Samuel P. Huntington in *The Clash of Civilizations*. This view of global struggles sees the values developed over the history of the West — capitalism, freedom, individualism — as triumph-

ing over other civilizations. Eventually, this way of thinking goes, everyone will adopt the culture of the West because it is superior. But Huntington sees this as a Western pretension — mere “ideology” — that is doomed to failure. The West is just one civilization like any other; it has its val-

ues and it will have its day.

I’m a neophyte in these matters. I do like the combination of sensitivity and triumph that Dinesh D’Souza conveys in *What’s So Great About America*, but maybe that means I’m a conservative, or gullible, or both. On the other hand, America really is great, isn’t it? □

*Tom Stoppard: A Life*, by Ira Nadel. Palgrave, 2002, 621 pages.

# Art and Life Well Played

Timothy Sandefur

Tom Stoppard is best known to American audiences as the man who put the Oscar in *Shakespeare in Love*. He is among the cleverest dramatists working today, but he writes for the stage, an art form with which few Americans have any connection today, and his intensely intellectual style further limits his appeal. As Ira Nadel writes, “Stoppard is too smart, and his public is put off, if not offended, by his show of knowledge.” One would think, then, that Stoppard would be automatically dear to the intellectual class, among whom obscurity and inaccessibility are necessary credentials for greatness. Yet in recent years, Stoppard has been pilloried by many of those intellectuals as being overly conservative, if not reactionary.

It might be astonishing to imagine that a man can be called reactionary when his plays include such avant-garde tricks as *The Real Inspector Howard*, the characters of which include a pair of critics who come out of the audience to criticize the play, or *Cahoot’s Macbeth*, which includes lines like:

*Easy*: — evidently knick-knacks quarantine only if bacteriologic waistcoats crumble pipe — snuffle than postbox but shazam!!! Even plat-

forms — dandy avuncular Donald Duck nevertheless minty magazines!

*Macbeth*: Eh?

That Stoppard, whose work appears at first as impenetrable as the aphasia usually sponsored by NEA grants, has come to be regarded as conservative, reveals a very important division in modern thought.

Much of 20th-century art, influenced by relativity and the misunderstanding of it, was motivated by a profound skepticism toward the ability of the human mind to understand anything objectively. Where art once strove for an immaculate presentation of the actual objects of perception, it now attempted to catch the often fleeting moments of experience. This manifested itself especially in a rejection of old artistic forms. Impressionism — whether in painting as with Monet, or in literature as with Conrad — abandoned the idea of a God’s-eye view of nature, and tried to capture the process of perception instead. The rules of classicism seemed like yesterday’s dogma, if not outright oppression.

Skepticism toward knowledge which past generations had once taken for granted was to be expected, of course, at a time when philosophy was declaring God dead. As Stoppard wrote in his play *Jumpers*, “The truths

that have been taken on trust, they’ve never had edges before.” But over the century, that skepticism transformed gradually into cynicism. Modern thought began by doubting what had once been assumed, and ended by rejecting the very possibility of knowledge; likewise, modern art started by rejecting classical artistic forms, and ended by abandoning the very idea of artistic standards. Under the influence, particularly, of Marxism, philosophers came to believe that not only economic and social institutions, but even thought itself, was the product of class and environment. Logic itself was only one “means of knowing,” or even part of a diabolical conspiracy to perpetuate the social control of elites — setting up the rules of the epistemological game, as it were, in order to ensure that the elites would win. Such cynicism was embraced by leading Nazi philosophers, who distinguished between “German science” and “Jewish science,” but it is today extremely popular among postmodernists, who distinguish between “male” and “female” epistemologies, and to whom all that we know is merely a vast illusion, called the “metanarrative,” which determines how we behave, think, feel, buy, and sell. Reality cannot be understood — probably, it does not exist — it is only a story to be told. (Hence the joke: one postmodernist says to another, “I’m a deconstructionist,” and the other replies, “No you’re not; you’re just saying that.”) Postmodernism thus places its heaviest emphasis on the study of language and literature, and the postmodernist’s highest praise for a work of art is to call it “subversive.” As Stoppard puts it in *Rosencrantz and Guildenstern Are Dead*,

*Ros*: What are you playing at?

*Guild*: Words, words. They’re all we have to go on.

Fittingly enough, Nadel’s book picks up this theme. As he notes in the introduction, Stoppard is highly skeptical of the value of biography, even though many of his plays are, in some sense, biographical. Because biographies give the reader a false sense of thoroughness, the reader can often be misled into unfounded assumptions about the subject. But Nadel seems to concede too much to this notion that biography is largely in the eye of the

reader. True, biographers frequently blow small facts out of proportion, and miss bigger issues — and in Stoppard's case, the situation is further complicated by the fact that he knew little of his own family background until very recently, when he learned the details of his Czechoslovakian Jewish roots. On one hand, this enabled Stoppard to create his own personality free of powerful ethnic or traditional influences. But, on the other hand, this makes it difficult for Nadel to develop themes from Stoppard's life. He compensates by piling on more facts, so that, while one appreciates the scattered sparks, one often ends without much light — a reaction common among Stoppard's own audiences, who often leave the theater both amused and confused. But, while it's true that the biographer's job isn't to produce the Definitive Work, it's also not to merely compile facts for readers to draw their own conclusions; rather, it is to present the author's own honest interpretation, as one piece in an open-ended analytical process. Nadel's writing is very readable, but he sits a little too close to the screen.

Stoppard's belief that biography is chiefly done by readers echoes one of the themes of postmodernism, which sees the audience as the source of all literary meaning. Postmodern obses-

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*Stoppard's subversion comes from a skeptical rejection of preconceptions, not a cynical rejection of any possibility of knowing.*

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sion with "narratives" rejects the notion that those narratives can correspond to anything actually true; instead, it sees them as instruments in a society-wide power struggle. Michel Foucault writes that "there is a battle for 'truth,' or at least 'around truth,' — it being understood once again that by truth I do not mean 'the ensemble of truths which are to be discovered and accepted,' but rather 'the ensemble of rules according to which the true and the false are separated and specific effects of power are attached to the

true,' it being understood also that it's not a matter of a battle 'on behalf' of truth, but a battle about the status of truth and the economic and political role it plays." Postmodernism is therefore a modern form of cynicism, and its greatest enemy, naturally, is the philosophical legacy of the Enlightenment, which explicitly embraced the idea that there are "laws of Nature and of Nature's God," in science as well as politics — laws which the human mind can comprehend through reason, and use to its benefit. The postmodernist rejection of this legacy is the primary crisis of leftist intellectuals at the dawn of the 21st century, because it puts the left against progress, and on the same side as conservative reactionaries like Robert Bork or Leon Kass. Hence, the almost panicked tone among the older generation of liberal scientists, who went to graduate school because they wanted to help humanity, but whose labs are now being firebombed by environmentalist college students who claim to represent the *real* left.

Stoppard is in the same position as these scientists. In fact, scientists are often great admirers of Stoppard, whose plays have featured intriguing references to mathematics, quantum theory, and the life of Galileo. As Nadel writes, "Science, specifically mathematics, becomes the means of classifying and explaining the actions of an apparently arbitrary and illogical system . . . a . . . role it will increasingly play in Stoppard's later work. . . . In [Stoppard's play] *The Invention of Love*, Housman confidently declares that 'textual criticism is a science whose subject is literature, as botany is the science of flowers and zoology of animals and geology of rocks.'"

Stoppard's plays are "subversive" in that they are often obscure and filled with astonishingly witty writing; his talent for puns which hit below the belt is at least equal to Shakespeare's. One of my favorites, from *Rosencrantz and Guildenstern Are Dead*:

Guil: Well, then — one of the Greek [plays] perhaps? You're familiar with the tragedies of antiquity, are you — ? Maidens aspiring to godheads —

Ros: And vice-versa —

But Stoppard's subversion comes

from a skeptical rejection of preconceptions, not a cynical rejection of any possibility of knowing. Skepticism, at bottom, is the opposite of cynicism: the skeptic demands proof; the cynic denies that proof exists. Skepticism — a profoundly Enlightenment virtue — is predicated on the assumption that some kind of knowledge can exist and can be valuable. In Nadel's words, "The future may be disorder, but it doesn't prevent us from seeking ways to predict it." Stoppard's genius at

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*Stoppard studied modern philosophy, characteristically concluding "I read it with great enjoyment. It was really very stimulating as well as absurd."*

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wordplay, which often makes his plays into sustained philosophical dialogues (a literary form very popular in the Enlightenment) is not, like so much postmodernist literature, primarily aimed at blowing up leftist political bugbears like science, capitalism, and Antonin Scalia — but instead, at actual discovery of some kind. He is investigating, not merely interrogating.

Cynics, by contrast, reject discovery as impossible, and investigation as a kind of rape. The result, ironically enough, is that the real cynic ends up being utterly gullible. The dumbest "mark" of the con man cannot tell the difference between the genuine article and the counterfeit, but the cynic denies that distinction outright. All truths, for him, are foolishness. Hence the word "cynic," which derives from the Greek word for "dog," and was first applied to their kind in the declining days of Athens, when the original cynics wandered the streets naked, drinking out of pig-troughs. Very subversive, that.

Terry Teachout recently commented that "there are two modernisms, one deeply conservative and tradition-based, the other profoundly radical and antinomian." Stoppard, though not exactly dogmatic about tradition, is actually in the former camp

— a skeptic, not a cynic. This accounts for his excellent knowledge of science and literature, in which he is largely self-educated. (Works like *Shakespeare in Love* or *Rosencrantz and Guildenstern Are Dead* are amusing enough in themselves, but if one knows enough Shakespeare, the cross-references open up new levels of comic wealth.) Likewise, in researching *Jumpers*, Stoppard studied modern philosophy,

characteristically concluding "I read it with great enjoyment. It was really very stimulating as well as absurd." And, more importantly, it explains Stoppard's belief in artistic integrity. "No, no," says a character in *Artist Descending A Staircase*, "each one is vital and every moment counts — what other reason is there for trying to work well and live well and choose well?"

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### Wanted

Desperately seeking a copy of "Children of Liberty" by Dr. Bob Sheckler. Will beg, borrow or buy! [thattaway00@hotmail.com](mailto:thattaway00@hotmail.com).

The postmodernists were initially drawn to Stoppard because they imagined that his rejection of classical forms was their kind of subversion. But Stoppard does not reject all rules. In fact, he understands that rules of some sort are absolutely essential to creativity. One advantage of classical artistic rules was that they made it relatively easy to tell good work from bad: one can quickly spot a mistake in a line of iambic pentameter. But the criteria of modern poetry are far more complicated. Still, they must exist. The constraints of verse force a writer to be more creative; like a bottleneck, they increase the pressure to find the *mot juste*. Without such criteria, though, the writer need not search through his thesaurus for a two-syllable word that means what he's looking for, because a three or four syllable word will work just fine. The result is work that is "close enough," rather than precise.

So, while the postmodernist is correct that the formal rules of poetry or drama are artificial constraints, he is wrong to reject them entirely. Even if they are artificial, they are an essential means of forcing the writer to discipline himself, with the result that poetry comes out as "heightened speech" — speech chosen carefully. The problem is that in postmodernism's rush to greater and greater degrees of toleration, and its increasingly cynical rejection of judgment, it has abandoned the idea of constraints, which are essential to the creation of art. Once we abandon all rules as arbitrary, we end up being unable to distinguish between a block of uncarved stone and Michelangelo's "Moses." Relaxing or changing the rules does not destroy art — we can make beautiful art with rules which seem extremely lax by comparison — jazz, for instance, or the poetry of Walt Whitman. But abandoning rules entirely eradicates the distinction between art and noise.

His belief in art got Stoppard in trouble with the intelligentsia in 2001, when he denounced the pseudo-prestigious Turner Prize, a British artistic award for avant-garde work, routinely awarded to those who think they have evolved beyond the need for rules. In 2001, the Turner was given to Martin Creed, whose display consisted

of an empty room with the lights flickering on and off. In 1999, one of the leading competitors was Tracey Emin's "Unmade Bed," which was just what it sounds like — a pile of rumpled bedding and dirty underwear. "The term artist," Stoppard told the Royal Academy of Arts Annual Dinner, "isn't intelligible to me if it doesn't entail making. . . . From there it is but a hop, skip, and a jump to Tracey's knickers." As Nadel writes,

Tracing conceptual art back to [Marcel] Duchamp, whom he approved for making a valid attack on prevailing cultural values, Stoppard contrasted Duchamp's work with that of the conceptualists and installation artists who were the new orthodoxy only because they were hailed by the art establishment. Their protests against society had lost value because their art was self-contradictory. The audience was stunned. . . . A pandemic of criticism rained down as Stoppard's opponents at last had proof of his conservative, reactionary, and bourgeois taste. . . . The artists Gilbert and George were cornered and asked if they had ever met Stoppard. They replied that they once went to one of his plays "but we didn't last long — there were too many words."

Stoppard's plays have much that is absurd, or surreal, and he has said that "a play in the theater is an equation which is continuously changing and most of the variables are specific to the performance." But his modern fascina-

work reveals a deep respect for the fact that creativity is made possible by rules, and this makes him nothing if not a craftsman. It is entirely under-

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*Once we abandon all rules as arbitrary, we end up being unable to distinguish between a block of uncarved stone and Michelangelo's Moses.*

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standable that he would be revolted by today's Dadaists, for whom all art is affectation. That this can be considered reactionary is as sad a commentary on the state of our culture as the existence

of the Turner Prize itself.

There is a second irony about cynicism: despite the unutterable silliness of their credo and behavior — despite the fact that they are unable to distinguish between Michelangelo and an unmade bed — cynics take themselves with absolute seriousness, even while everyone else is laughing at them. But Stoppard always tries to amuse, at least. "The 'role of the theatre' is much debated (by almost nobody, of course)," he writes, "but the thing defines itself first and foremost as recreation. This seems satisfactory." His plays often leave audiences laughing — with a curious frown soon to follow. They will doubtless continue to do so for many years to come. □

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*Selected Writings of Eduard Bernstein, 1900–1921*, by Eduard Bernstein. Amherst: Humanities Press/Humanity Books, 1996, 194 + viii pages.

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## Marx Reconstituted

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David Ramsay Steele

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In the final decade of the nineteenth century, it became just impossible to remain an orthodox Marxist. The doctrine of Marx, as formulated in *The Manifesto of the Communist Party* (1848), greatly elaborated and somewhat revised in subsequent writings, and codified by Engels in *Anti-Dühring* (1878) could no longer be maintained by anyone, because they were living in a world which, according to Marx's theory, could not exist.

At this time, in the nation with the world's second largest industrial economy, the German Social Democratic Party was rapidly gaining ground. It was soon to become the biggest political party in the history of the world up to that date, and was to remain the biggest party in Germany until the rise of Hitler. Its acknowledged intellectual leaders, headed by Karl Kautsky, "the Pope of Marxism," were solidly

Marxist and treated the works of Marx and Engels as Holy Writ, quoting from them piously and endlessly.

The German Social Democrats were the most prestigious socialist party in the worldwide socialist movement, the Second International. Almost all Marxists everywhere respected Kautsky, Bebel, Wilhelm Liebknecht, and the other German socialist leaders above any living expositors of Marxism. The Social Democrats had the support of most of the German working class. Socialist parties, mainly led by Marxists, were also gaining electoral support across the rest of Europe. This naturally confirmed Marx's prediction that socialism would arrive first in the most industrially advanced countries. Occasional puzzlement was expressed at the anomalous situation of the United States, culminating in Werner Sombart's book, *Why Is There No Socialism in the United States?* (1906)

The Social Democrats, like most Marxist organizations, had two sets of

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*Stoppard's genius at word-play is not, like so much post-modernist literature, aimed at blowing up leftist bugbears like science, capitalism, and Antonin Scalia — but instead at actual discovery.*

---

tion with process has not misled him into completely rejecting substance. On the contrary, his literary cleverness is beyond compare; he produces plays filled with brilliantly multilayered meanings and levels of complexity. The amount of labor that goes into his

objectives or demands, a 'revolutionary' program conforming to Marxist views of the imminent termination of capitalism, and a program of reforms, or immediately practical measures (such as public housing and occupational health and safety regulations) to be implemented within capitalism, and indeed, requiring for their success the continued existence of capitalism. Workers supported the Party primarily because of its 'immediate' demands, but at first this caused few qualms among ideologues, since they believed that capitalism was, objectively and independently of anyone's will, moving towards socialist revolution. The growing fear of some Marxists that 'reformism' was a threat was itself a recognition that capitalism was proving perversely resilient: if it were true that capitalism necessarily had to lead to socialism, then reformism could hardly be a serious obstacle.

In the 1890s one of the leading Marxists, Eduard Bernstein, a trusted friend of the late Marx and Engels, began to write articles arguing that Marxism had to be 'revised' to take account of the actual evolution of capitalism. By this time, some adaptation of Marx had already taken place. His labor-vouchers had been abandoned, for example, and most leading Marxists had reluctantly accepted some necessity for markets and money to survive for generations after the socialist revolution.

In 1899 Bernstein produced his book, *The Presuppositions of Socialism and the Tasks of Social Democracy* (best known in English as *Evolutionary Socialism*). Bernstein's 'Revisionism' attracted a storm of invective, and some blistering but inadequate intellectual criticism. He was often threatened with expulsion from the Party, but eventually left of his own accord. Somewhat ironically, he and the now-defrocked Kautsky both joined the breakaway Independent Socialist Party, because of their opposition to the First World War, which the overwhelming majority of Social Democrats, along with most Marxist intellectuals, patriotically supported.

After the war, Bernstein rejoined the Social Democrats and his Revisionism became gradually more acceptable (though the Party did not formally abandon the Marxist commitment to class struggle until 1959). European

socialist parties, including those like the British Labour Party which were never Marxist, are all Bernsteinians now, though they have gone further in accepting a role for the market and discrediting government interventions than Bernstein would have dreamed of.

Bernstein's 1899 book has been familiar to Anglophones since 1909, and has led many intellectuals, such as Sidney Hook, on their first steps away from Marxism. Bernstein's numerous later writings, a few of which are collected here, have been unavailable. They show Bernstein honing and adapting his theses, meeting the torrents of criticism and wild abuse with calmly reasoned arguments.

Capitalism, said Bernstein, was not developing in the way that the traditional Marxists were claiming. Engels, for example, had declared: "Marx has never based his communistic demands

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*Bernstein questioned  
Marx's reasons for supposing  
that capitalism would break  
down or that it would ever  
spontaneously cease to  
advance in technology and  
output.*

---

on this [the exploitation of the workers], but on the necessary collapse of the capitalist mode of production which is being daily more nearly brought to pass before our eyes."

Bernstein questioned Marx's reasons for supposing that capitalism would break down or that it would ever spontaneously cease to advance in technology and output. He questioned the assumption that the class struggle between employers and workers would wax ever more intense. He questioned the necessity for capitalism to destroy itself via the emergence of cartels and other monopolies. He questioned the assumption that "the magnates of capital" were becoming absolutely or relatively fewer.

He argued that Marx had identified possible tendencies which were real, but which could in practice be overwhelmed by countervailing forces Marx had neglected. Thus, Bernstein showed

from statistics that the rise of big corporations did not mean concentration of wealth ownership, because these corporations actually had numerous small and medium shareholders. The capitalists, as a class, were not shrinking, but growing. "Their number increases both relatively and absolutely." (But Bernstein did wrongly think that the number of active entrepreneurs was decreasing.) The middle classes were not disappearing as Marx had expected, but growing. The class of wage-workers, the proletariat, upon whom all hopes for socialism were staked, was not becoming more homogeneous and united, as predicted, but more variegated, more differentiated, more divided into separate groups with little in common. It was presumably with mixed feelings that Bernstein, a staunch internationalist, also noted that the workers were not losing their attachment to their nation.

Bernstein went on to point out that the appearance and growth of huge enterprises did not imply the disappearance of small and medium enterprises. These were not just remnants of the past, but were constantly regenerated by novel developments. He questioned whether the state was up to the practical administrative job of taking over all these thousands of enterprises and operating them as a single organization. He denied that economic crises must get worse, and suggested that they might become milder.

The later essays in this collection show Bernstein's survival as a Social Democratic theorist and his partial vindication. A 1905 essay is called "From Someone Pronounced Dead." By the 1920s it was Kautsky's Marxism which was buried. Along with Kautsky and all the old Marxist leaders, Bernstein pointed out the horrific, reactionary, and anti-Marxian character of Leninism, though he was later to mention that the Marx he had known did possess "a Bolshevik streak."

As always happens when an ideology is waning, its proponents began to deny that it had ever held some of the positions formerly advocated. Kautsky, for instance, was to deny that Marxism had ever believed in the spontaneous breakdown or collapse of capitalism. As Steger points out, the later Bernstein did not merely repeat the ideas of his 1899 book, but developed new and quite subtle criticisms of orthodox



Marxism, such as his careful analysis of the phrase "scientific socialism." In his identification of capitalist trends, Bernstein was usually right on the money. Probably his most serious error was to over-rate the viability of cooperatives.

Bernstein always remained fundamentally Marxist in outlook. He went on revising the ideas of Marx and Engels, as they had done, though with more boldness and better statistics. He continued to accept the materialist conception of history and the theory of surplus-value (Marx's two great discoveries, according to Engels' funeral address). Bernstein retained such typical erroneous socialist notions as that a major part of retail trade is unproductive and parasitic. While arguing that economic crises would probably not get worse, he leaned heavily on the influence of collusive activity among capitalists, in cartels and trusts, to curtail such crises. His program for the future was a muddled blend of specific reforms governed by the ideal of "democracy," which he confused with liberty.

Defending the principle that socialistic coercion raises the sum total of liberty, Bernstein maintained that legislation limiting hours of work is "actually a fixing of a minimum of freedom, a prohibition to sell freedom longer than for a certain number of hours daily, and, in principle, therefore, stands on the same ground as the prohibition agreed to by all liberals against selling oneself into personal slavery" (*Evolutionary Socialism* [Schocken, 1961] p. 150; see *Selected Writings*, pp. 182-83). If I choose to sell my labor for twelve hours a day, given that I can in fact walk off the job whenever I feel like it, my liberty is not being extended but restricted if I am compelled to stop at ten hours. Bernstein did not quite realize that capitalism automatically generates indefinitely rising productivity and therefore ever shorter hours of work, and that legislation endeavoring to speed up this process by limiting the working day merely penalizes the poorest workers, who may feel they actually need the money they could have gotten in those two criminalized hours.

Freakishly, for a Marxist intellectual, Eduard Bernstein came from a proletarian background. He died on December 18th, 1932. Had he lived a little longer, there would have been at least three adequate reasons (anti-war activist,

Social Democrat, and Jew) for his disappearance into Hitler's camps. Bernstein was a gentlemanly intellectual of integrity and charm, who patiently and courageously chipped away at an ossified orthodoxy from within. He played a peculiar role in creating today's world, and in retrospect appears as a vastly more important Marxist writer than Lenin, Trotsky, or Mao.

Steger himself hopes that revisiting Bernstein will help rebuild a new, non-Marxist socialism, "as an ethical protest against the systemic injustices perpetuated by capitalism" (p. 25). Leftist intellectuals like Steger have learned all that Bernstein could teach them; one final, remarkable fact is still waiting to drop into its slot: there is no future in anticapitalism. □

## Notes on Contributors

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

Alan W. Bock is a senior columnist for the *Orange County Register* and the author of *Waiting to Inhale: The Politics of Medical Marijuana*.

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

Doug Casey is an investment writer and polo player.

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Michael Christian is a recovering lawyer living in San Diego.

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

Chris Henderson is a writer living in Avon, Ind.

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Brink Lindsey is a senior fellow at the Cato Institute and the director of its Center for Trade Policy Studies.

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Joe W. (Chip) Pitts III is a Dallas-based international attorney and businessman.

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Ralph R. Reiland is the B. Kenneth Simon professor of free enterprise at Robert Morris University, and a Pittsburgh restaurateur.

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

Timothy Sandefur is a College of Public Interest Law Fellow at the Pacific Legal Foundation.

Jane Shaw is a senior associate of the Political Economy Research Center in Bozeman, Mont.

Sandy Shaw is a research scientist, best-selling author, and rabble rouser.

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

David Ramsay Steele is the author of *From Marx to Mises*.

### Bradford, from page 40

Yet if the perceived problem is, in fact, the lack of an organization that treats Mises' ideas as a "closed system" not to be improved upon, then Mr. Bradford is correct: the Mises Institute is doing nothing to fill that void.

This is, of course, an obvious "straw man" argument. So far as I know, no one argues that we need an organization "that treats Mises' ideas as a 'closed system' not to be improved upon." Why Huebert would suggest this, I have no idea. Perhaps it is to defend the Institute against the

charges of many scholars (including some who receive financial support from it), who are inclined to opine, in private conversation, that the Mises Institute is inclined toward treating its Rothbardian system as more or less closed — as a system of thought to be advocated and promoted rather than something to be investigated or criticized.

So what does Huebert serve up? A claim that I made six "false" statements in the two paragraphs he quotes from a reflection. Five of these he admits are true. And he provides powerful evidence in support of the other one. □

Admendment several years back should have failed precisely because it exemplifies a matter reserved to the states. Should a state be compelled to recognize, and thereby assess equal value to, a law of which its people disapprove?

Conversely, southern states abused this authority from Reconstruction through the 1960s, prompting the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. An argument even exists — articulated most eloquently, and defended most sincerely by Barry Goldwater — to oppose those measures on federalist principles.

State constitutions expand liberty, provided they do not encroach upon constitutional guidelines. Laws regarding open primaries, libel, licensing and registration of motor vehicles, tax policies, and term limits, among many others, are devised by and for the people of a particular state. Sandefur overlooks this indispensable point.

Whether the Confederacy would have failed remains a separate question, as is the morality of its policies. The states, however, devised the Constitution and provided themselves with the right to withdraw from United States.

Michael Lavin  
Olive Branch, Miss.

### The Nut Behind the Wheel

I guess I find the claim that SUVs ("The Case for SUV Bashing," *Reflections*, February) are less safe because of the danger of roll-overs to be kind of suspect. I'm not saying the books have been cooked. Since I never have examined the studies, for all I know they may be as accurate as the gun-related child death totals that include teenage gang violence. It's the fact that rolling a vehicle over, while easier to do in more top-heavy vehicles, may say a lot more about how people drive the vehicle than how badly designed the it is.

Perhaps if people were more aware of the roll-over danger (and the simple method of avoiding it), we could reduce the incidence and save more lives. Unfortunately, it's hard to find a

motivated group interested in such education. Manufacturers don't want to remind customers of negatives related to their products. And people who dislike SUVs are not interested in helping others drive them more safely . . . they want others to make more sensible choices (i.e., more in line with what they choose). As a result, the headline for any story based on roll-over dangers will not be "SUV Drivers Need To Take Additional Care in Cornering." It will be "SUVs are not safer than smaller, lighter cars."

I agree with Jeff Rigenbach that government meddling in car design played a large role in creating the market for SUVs. I also agree that overly exuberant defenses of SUVs and Microsoft products are likely the result of "the enemy of my enemy is my friend" gut reactions. I also think he demonstrates the insidious power of the "enemy of my enemy" response by so readily adopting the position of SUV foes: that increased roll-over danger means that SUVs are inherently less safe from the point of view of the individual driver.

I think SUV roll-over statistics are like those that indicate antilock brakes have encouraged a significant group of people to drive more dangerously in unfavorable road conditions: a cause for education about safer use of antilock brakes, not an argument for keeping them out of your cars altogether.

Matt Magri  
Milford, N.H.

### The Politics of Science

Wendy McElroy skirts a fine line on the supposed politicization of the hard sciences ("Exploring the hermeneutics of . . .," *Reflections*, January). For one thing, she erroneously reports that the French brothers Bogdanov initially claimed to have perpetrated a reverse Alan Sokal hoax on theoretical physics. The pair expressed complete sincerity to me and other science writers who investigated the story. Other researchers apparently started the hoax rumor. Of course, the source of the claim doesn't alter mainstream physicists' inability to parse the papers in question. However, the agnostics

quoted in news reports generally were those who had the most face to lose. Outside experts were more uniformly critical.

Problems may exist in the systems for Ph.D. granting and paper acceptance in physics. But to say the politics of state-funded research per se has castrated the hard sciences is unreasonable. State funding conceivably could foster a pro-government bias (which is irrelevant in this instance) and, possibly, a glut or disproportionate balance of researchers.

For example, string theorists, whose intellectual forebears built the Bomb, outnumber those pursuing other approaches to so-called quantum gravity by roughly ten to one overall. (Coincidentally or not, string theorists sometimes are accused of herd mentality.) In contrast, Canada's Perimeter Institute for Theoretical Physics, endowed by technology entrepreneur Mike Lazardis, is more evenly split.

Nevertheless, it's easy to take the argument for no authority too far. Some libertarians tend to shrug off uncomfortable scientific results. Climate researchers, to pick a pointed example, seem to have come to a strong consensus that human action has contributed to global warming trends. By dismissing state-funded research, we libertarians come off as ideologues rather than the thoughtful people we usually are.

J. R. Minkle  
Brooklyn, N.Y.

### The State vs. Justice

Proponents of crime suppression must weigh the need to protect lives and property against the risk of convicting the innocent and allowing overzealous police and prosecutors to tear up the Constitution. In suggesting the Libertarian Party adopt crime suppression as its breakthrough issue, Frank Ricciardone ("Libertarians and Crime," *Reflections*, January) ignored that the fear of crime already has tipped the scales in favor of the police state.

Crime is already at historically low levels. Just how much more pervasive and intrusive would the police pres-

ence have to be in order to reduce murders by another ten percent? What about robberies? Burglaries? Would it require cameras on every corner?

Sergeant Ricciardone suggested the Libertarian advocacy of freedom through crime suppression would include altering the law enforcement agenda away from enforcing the drug laws. But is this realistic? As the rates of crime against persons and property drop, preventing each additional crime becomes more difficult. Meanwhile, victimless crimes, which continue in societies despite crackdowns, become relatively easier to pursue.

No one is in favor of crime. I, and nearly every one of your readers, have been the victim of a crime at some point. However, at least in Texas, fear of crime has turned the justice system into a giant conviction and incarceration machine.

In Harris County, 20 of the 22 judges in local felony courts previously worked in the District Attorney's office (from "Death Fair" by Michael Hall, *Texas Monthly*, December 2002). The media has given much attention to the poor quality of the public defenders assigned in death penalty cases. Your readers can imagine the sort assigned for the trials and appeals of those accused of lesser crimes. If an out-matched and underpaid defense attorney improperly objects to misconduct by the prosecutor or judge, the right to appeal that point is lost. Meanwhile, the appellate rules require that even intentional violations of the rules by the prosecution be disregarded unless they *directly* violate the limited protections listed in the Constitution.

Studies repeatedly have shown that jurors expect the accused to prove his innocence and hold it against him if he does not testify in his defense. No wonder the Harris County D.A. is adamantly against cameras revealing what goes on during deliberations!

In addition, at the end of the appellate process, when a habeas corpus application is supposed to permit challenging incompetent attorneys, police perjury, and bogus evidence, the state provides no attorney for a non-death row prisoner. The prosecutor composes "suggested findings." In most cases, the trial judge, a former prosecu-

tor, signs these findings, unchanged, and the state's highest court (100% Republican) accepts them without a written opinion (a 3" x 5" postcard is sent). Federal courts *must* accept the findings as true under the 1996 AEDPA signed by Bill Clinton.

Texas is an extreme example (I hope). However, I submit that, throughout the nation, a citizen charged with a crime faces a nearly impossible battle against this tax-funded machine.

I, too, am dismayed that libertarians often are silent on the issue of crime. Libertarians should be the first to decry the excesses always found when citizens hand unchecked power to government agents after fear strikes the populace.

Thomas Giesberg  
Rosharon, Tex.

### Vox Populi, Vox Dei

In his January 2003 book review, "Judging the Court," Timothy Sandefur wrote of the fact that the "Supreme Court has looked the other way and allowed the legislative and executive branches to construct a massive governmental edifice totally alien to the Constitution on which it allegedly rests."

He seems to have meant by this that the Supreme Court should have prevented popular extensions of the federal government like the Food and Drug Administration, the Social Security Administration, and Medicare.

It is possible for the Supreme Court to make a decision that 60 percent of the American people disapprove of, as long as most do not disapprove vigorously. It is not possible for the Supreme Court to make a decision that 70 percent of the people disapprove of, and make it stick.

Nevertheless, I reread the U. S. Constitution. I found nothing that would forbid the establishment of a powerful and expensive government, if that is what most of the voters want. Because most of the voters did want such a government during the last century, that is what we have.

I did find Article I, Section 8 (1). It reads: "The Congress shall have Power To lay and collect Taxes, Duties,

Imposts, and Excises, to pay the Debts and provide for the common Defence and *general Welfare* of the United States" (emphasis added). That rather clearly reads like the authorization of the welfare state.

John Engelman  
Walnut Creek, Calif.

### Kopel Soft on Gun Rights

Dave Kopel's article entitled "Guns in the Dock" (February) failed to do justice to the Second Amendment movement! He failed to mention the language from the concurring opinion by Justice Hugo L. Black in *Duncan v. Louisiana*, 391 U.S. (1968), wherein Black quotes the words of the legislators regarding the individual right to keep and bear arms. He also failed to mention the language of Justice Harlan in *Moore v. East Cleveland*, 431 U.S. (1977) and the strong language of the 5th Circuit decision last year in *U.S. v. Emerson*.

Mr. Kopel failed to mention the problem posed in the recent decision by the United States Supreme Court in *U.S. v. Bean*, wherein convicted felons must go through the Bureau of Alcohol, Tobacco, and Firearms (BATF) to obtain a restoration of their civil right to purchase a firearm — even if Congress refuses to fund the BATF to process the applications — without any mention of whether any constitutional amendment is implicated in arms bearing.

As a member of Jews for the Preservation of Firearms Ownership, I implore all readers to learn the lessons from history: every genocide of the 20th century began with gun control laws. Adolph Hitler killed more people who were not Jewish than who were.

I believe the government uses drug laws partly to disqualify firearm ownership. Do you question whether genocide cannot and is not happening right here in the United States of America?

This is why I only vote for Libertarian Party and Green Party candidates. I ask people to disregard the judges' lies that the jury must follow the judges' instruction of law, even if the jury disagrees with the law. You get what you vote for!

Richard Paul Zuckerman  
Metuchen, N.J.

### *Bristol, Conn.*

Law enforcement maintains its sense of propriety, noted in *USA Today*:

Government Acquisitions LLC is offering five new police vehicles to the city at a cost of \$1 a year for three years in exchange for ad space on the cars. Chief John DiVenere said he wants to see what the ads would look like before making a decision. He said ads for beer, cigarettes, or guns wouldn't be accepted.

### *Havana, Cuba*

Fidel Castro on duty and love, from an open letter to the Cuban people, quoted in the *Seattle Post-Intelligencer*:

"It was my duty to protect my beloved left leg," he wrote. "With it, I have practiced many sports, including soccer, have run in races, jumped, swam, climbed mountains. . . ."

"It had never betrayed me," the Cuban leader wrote of his left leg. "I couldn't betray it now."

### *West Midlands, U.K.*

A remarkable advance in educational psychology, from a dispatch from the BBC:

Teachers at a primary school have been told not to mark children's work in red ink because it encourages a "negative approach."

In future, pupils will see their mistakes struck through with a green pen.

### *Chicago, Ill.*

Dispatch from the War on Drugs, reported by the *Chicago Sun-Times*:

Chicago police arrested José Galvan, 43, and his co-worker, Juan Luna, 21, and charged them with felony drug charges for possession of more than \$650,000 worth of marijuana. Galvan and Luna claimed that the cargo in their pickup truck was hay for a Roman Catholic Church nativity scene.

Prosecutors dropped felony drug charges after crime lab tests discovered that the marijuana in question was actually hay, said Jerry Lawrence, spokesman for the Cook County state attorney's office. But the two remained incarcerated at Cook County Jail so federal immigration officials could check to see whether they were in the country legally.

### *Youngstown, Ohio*

Enlightened judicial decision, from the hometown of James Traficant, reported by the *Houston Voice*:

On December 18, the Seventh Ohio District Court of Appeals in Youngstown, Ohio, ruled that it is constitutionally permissible for police to hide video cameras in public toilets.

### *Kingdom of Saudi Arabia*

Curious news item reported by the prestigious *New York Times*:

About 85 percent of Saudi women are wearing the wrong size bra.

### *Washington, D. C.*

From a press release from the United States Postal Service:

The U.S. Postal Service reports that about 99.9% of its postal tubs, each bearing the official warning, "WARNING: Maximum penalty for theft or misuse of postal property \$1,000 fine and three years imprisonment (18USC 1707.)", have been stolen. The Postal Service believes many are being used as "footstools."

### *Seattle*

Seattle Police Department to liberalize parking ticket policy. From the *Seattle Times*:

On Dec. 9, a police officer ticketed John Seth for accidentally leaving his automobile lights on after leaving his parked car, telling him "Merry Christmas," as she handed him the ticket. The officer explained, "We can cite for it, so we do."

Lt. Steven Paulsen decided against pressing charges, "It's bad P.R. . . . My decision was, 'Hey, let's get rid of it.' . . . I mean, why ding someone, especially around Christmas?"

The officer had seen on the ticket form a violation listed as "Lights, parked vehicle," and concluded that it was illegal for a parked car to have its lights on. It was eventually discovered that it referred to a law requiring vehicles to have "lights that work properly."

### *Panama City, Fla.*

The latest in upscale living in the Sunshine State, from a dispatch in the *Wall St. Journal*:

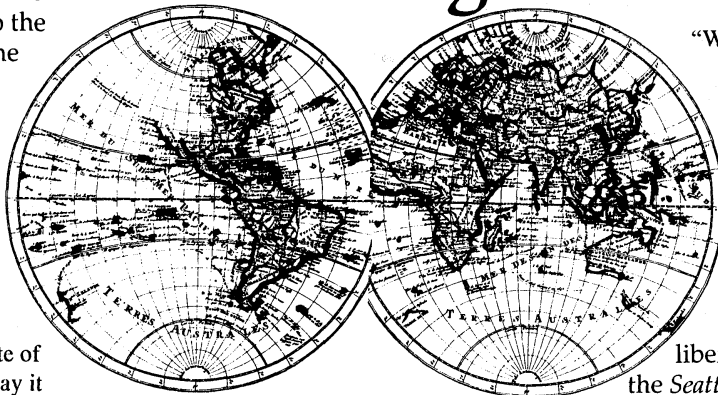
At WaterColor, a housing development featuring new \$1,000,000 homes, 15,000 bales of pine needles are brought in and strewn about to hide the sand and "provide a backwoods feel." In addition, tree branches are "carefully strewn along trails" so that "it looks like they just fell out of a tree," said head gardener Snookie Parrish.

### *Union, N.J.*

Proof of the vitality of the American free-market system, from a report in the *Seattle Post-Intelligencer*:

At "The Evidence Store" in Union City, N.J., lawyers who specialize in personal injury suits can purchase detailed replicas of injured legs, jaws, knees, eyes, spines, wrists, pelvises, and other body parts to impress jurors with the pain felt by their clients.

## *Terra Incognita*



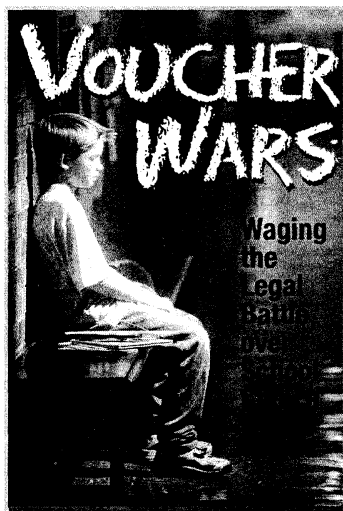
Special thanks to Russell Garrard, James Ogg and Owen Hatteras for contributions to Terra Incognita.

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



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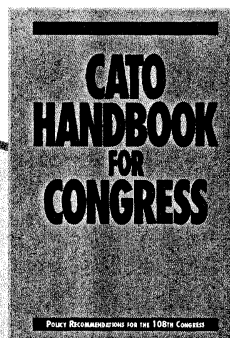
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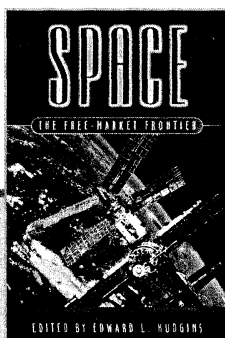
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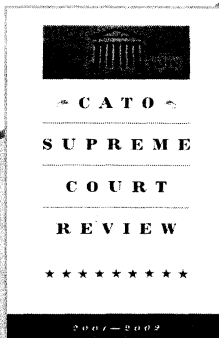
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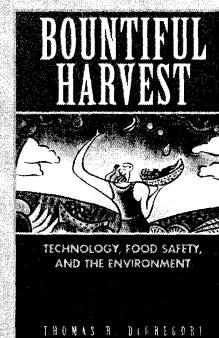
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