

Liberty

October 2001

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The New Boston Tea Party

Corruption in Ecotopia

by William E. Merritt

Ayn Rand for Dummies

by Timothy Sandefur

Reparations vs. Justice

by Edward Feser

The Civil War: A War Over Money?

by Donald W. Miller Jr.

Kissinger on Trial

by Stephen Berry

Also: *Clark Stooksbury* looks at the myth of the Greatest Generation's wartime leader, *R. W. Bradford* encounters an old friend in a back alley, the DEA goes on trial . . . plus other articles, reviews, and humor.



"Liberty is generally born in stormy weather." —Tocqueville

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I fought in court and buried that good-old-boy network.

I vindicated my right to earn an honest living.

I am IJ.

Reverend Nathaniel Craigmiles
Chattanooga, Tennessee

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Letters

Will the Real Barbara Walters Please Shut Up?

My heartfelt thanks for printing Timothy Sandefur's piece on that great American TV news-show matchup, John Stossel vs. Babs the Fossil (*Reflections*, August). As a fan of his work, I grit my teeth at the end of each of Stossel's segments, mentally preparing myself for the oncoming spike in my blood pressure as Barbara Walters shakes her head and burbles out some argument that was already addressed in the segment itself, then rolls her eyes and cuts to commercial before Stossel can respond. I am thankful that she was not somehow involved in his "Tampering with Nature" special that aired recently. I fully expected that at the end, after an intelligent and refreshing look at environmentalism, Walters would pop on screen to tell us how not recycling our used toilet paper makes baby seals cry. Throttle her, choke her with Maria Shriver's hair extensions, anything, just please make her shut up!

Martha Stallman
Houston, Tex.

The Passing of a Media Gold Mine

Kudos to Stephen Cox for his review of *Shadows of a Princess* (August). He hit the nail on the head with his comments about Saint Diana and her posturing. One thing he missed, though, was the cold-blooded, deliberate way the news barons of Britain whipped up the mob against the royal family after Diana's death, when it was still widely believed that the paparazzi were responsible for the accident. This particular aspect of the whole death-of-Diana thing stuck in my throat then, and I've seen no reason to change my opinion since. Love them or hate them, the royals deserved to be left alone at that time, if only because they had two children on their hands who had just lost a mother they loved.

Queen Elizabeth has been criticized

repeatedly for (allegedly) putting her royal role ahead of her role as a wife, mother, and grandmother, but when she didn't do this, the news-ghouls were all over her for not being in London. The press screamed that the royals should be "with their people," as though Scotland was once again a separate country, instead of being just as much a part of the United Kingdom as Buckingham Palace itself. I've never thought much of the British press, and their uncritical Diana-worship cemented my dislike for them. Their behavior would have made the Founding Fathers seriously reconsider the whole free-press thing. The way they covered Diana made the way the American press sucked up to the Kennedys look moderate and reasonable — if Diana had been caught in an orgy at the Hellfire Club, they'd have spun it to make it look like a harmless charity function for raising money for orphaned, land-mine victims.

Eric Oppen
Iowa Falls, Iowa

The Case for a Double Standard

While I cannot disagree with Timothy Sandefur (*Reflections*, September), I think he misses a critical point. Of course I would forcibly restrain a friend from committing suicide if, in my judgment, he was acting irrationally or out of impulse. I would also be personally responsible for my actions and my friend would be entitled to compensation for my actions if he desired it. Government is a special case. Government is not liable and is not held accountable. The principles under which government operates are different than those for an individual. Government actions cannot be evaluated in the same way.

The issues and morality of individual and government action, while not entirely separate and distinct, are different and must be evaluated that way. The rules of government are a subset of those for individuals. The problem with

statists of all sorts is that they believe just the opposite, that the rules for individuals are a subset of those for government.

Edwin J. Pole
Hillsboro, Ore.

Civil Morality

James R. Edwards claims (*Letters*, September) that "sexual morality [is] every bit as essential to civilized society as honesty, civility, limited government, and private property."

Honesty's importance to civilized society is incorporated into laws against fraud. Civility is the basis for laws against assault. Limited government is the basis for the Bill of Rights. Private property is defended by laws against theft.

Thus by use of analogy the argument presented gives sexual morality a public component. Such an analogy could then be used as a basis to put sodomy, birth control, homosexuality, prostitution, and any other consensual practice that Comstocks don't like on a par with fraud, assault, government violations of the Bill of Rights, and theft.

Charles Kluepfel
Bloomfield, N.J.

The Libertarian Disgrace

Thank you for your hard work in the effort to uncover the scandal within the Libertarian Party ("Browne 2000: Where the Money Went," September). I know this has been hard for you. Harry Browne was an editor of *Liberty* and Harry and R. W. Bradford were personal friends. I am sure that this story provided more than its share of sadness. However, the truth must come out.

Now the party can begin to solve this problem which has festered its corruption within party circles for many years. No longer is it just speculation that something bad was happening within the Libertarian Party — we now know it is true. Along the way all of us relearned the lesson of Acton: that power does corrupt!

While Chairman Lark and the rest of the LNC would like this scandal to go away, the silence of the arrogant perpetrators can only mean that there is more to it. Mr. Lark and the LNC have a duty to pursue this matter, even if it means court action, if for no other reason than to protect those not involved. Browne, Willis, and their colleagues have deceived us. Their current silence may

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Michael Cloud

Libertarian for U.S. Senate • Massachusetts

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Michael Cloud vs. John Kerry.

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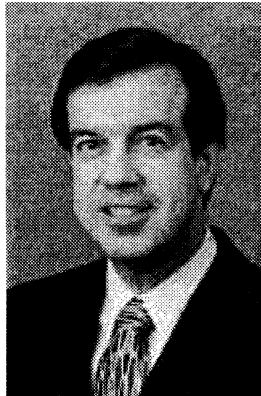
Democrat John Kerry always votes Big Government.

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Michael Cloud

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be deafening, but their prior actions spoke louder than words. They have destroyed our innocence and in the process nearly crushed our idealism. Browne and his minions have sullied our party for too long. It is now time to rid ourselves of them.

LeRoy Lloyd
Bowling Green, Ohio

Too Easy on Browne

Before the end of July 2000, Browne's campaign manager Perry Willis was claiming on LibertyWire, the campaign's e-mail newsletter, that the Browne campaign (HB2000) and the Libertarian National Committee (LNC) had already spent \$62,390 buying airtime for TV ads. But the FEC reports filed by both HB2000 and the LNC show just \$16,936 was spent, all by HB2000. That's a credibility gap of \$45,454, or a whopping 268%.

Before mid-August, Willis was claiming on LibertyWire that combined HB2000/LNC spending for TV ads was \$131,750. The actual number was less than \$49,000; Willis exaggerated by \$83,000, far more than 100%.

September was HB2000's big month to buy TV advertising. FEC reports show a total of \$43,248, including identical \$6,624 purchases on the Discovery Channel September 21 and 27. According to the FEC reports, the LNC apparently did not buy any TV ad time for Browne's campaign in September.

So far, the LNC had spent only the \$20,000 in August. However, by September 19, Willis had told LibertyWire recipients of the LNC's \$113,000 in spending for TV ads. Remember, FEC reports filed by the LNC show no TV ad time purchases in September.

HB2000 made its last TV ad time purchases by mid-October, \$27,496 for the month, announced on LibertyWire on the 18th, and that amount is listed for the 17th in HB2000's report to the FEC. This brought the total post-nomination spending by HB2000 to buy TV time to \$99,430. (One week later, and two weeks prior to the election, Perry Willis started using LibertyWire e-mails to solicit donations to file the FEC lawsuit, first announced in March 2000, more than seven months earlier. At this writing, August 17, 2001, the lawsuit has yet to be filed.)

The LNC then started buying TV air-

time for the Browne campaign, spending \$2,900 on October 23, \$29,561 on the 24th, \$20,740 on the 27th, \$29,546 on the 30th; plus \$14,722 on November 2, for a total of \$97,469 in the final two weeks before the election.

So, HB2000 press secretary Jim Babka may loosely be considered correct in telling *Liberty* that HB2000 spent \$120,000 on TV ads, if one adds \$24,000 of pre-nomination payments to Firm Multimedia to the \$99,430 post-nomination payments.

However, Willis' tales of amounts spent to purchase TV ad time by both HB2000 and the LNC are wildly exaggerated, claiming more than double the amounts later reported to the FEC. This goes far, far beyond the realm of an occasional typo, a bit of portraying the world through rose-colored glasses or even a campaign manager's wishful thinking.

Bradford and Browne are old friends. Perhaps this is why he and Merritt were so easy on Browne and his campaign.

Ken Sturzenacker
Allentown, Pa.

Another Scandal, Yawn

It seems to me the reason we don't want LP staffers working on a particular candidate's campaign is the same reason we don't allow a state-sponsored religion. That is, if everyone at LP National Committee is openly working on Browne's campaign, then no one else is likely to run, feeling that the party has already endorsed Browne.

If that's the point of the rule, how can that rule be violated (in spirit) by Willis "secretly" working for Harry? Isn't that like George Bush "secretly" endorsing Buddhism? Would anyone really care? If Willis "secretly conspired" to assist Browne as alleged, doesn't the secrecy itself undermine the seriousness of the conflict?

Secondly, it's alleged there was "cor-

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We invite readers to comment on articles that have appeared in the pages of *Liberty*. We reserve the right to edit for length and clarity. All letters are assumed to be intended for publication unless otherwise stated. Succinct, typewritten letters are preferred. Please include your phone number so that we can verify your identity.

Send letters to: Liberty, P.O. Box 1181, Port Townsend, WA 98368. Or use the Internet: letterstoeditor@libertysoft.com.

Reflections

The Bard of Little Rock — Bill Clinton got a \$10 million advance for his "thorough and candid telling of his life." Who says crime doesn't pay? — Alan Bock

In space no one can hear you scream — Los Angeles has officially staked a claim on its assumption of being the center of the universe. Because Hughes aircraft owns eight satellites and also is based in El Segundo, Los Angeles County feels that property taxes should be assessed on them, even though they are stationed 22,300 miles above the equator.

Just as forensic scientists can pinpoint the time of death of a victim by the development of maggots on the decomposing corpse, I think you can chart the development of a frontier by noticing when the tax assessors show up.

— Tim Slagle

If dog, rabbit

— Almost all medium-sized or larger papers feel an obligation to buy one or the other of these light magazine supplements. Even newspapers that produce their own, much weightier Sunday magazines — like the *San Francisco Chronicle* — still provide a national supplement like *USA Weekend* or *Parade*.

Articles in both tend to be short and superficial, with an emphasis on the inner thoughts of celebrities, and both magazines feature large display ads for nose-hair trimmers and the like.

So it's understandable that these magazines fly beneath the cultural radar of people who think about politics. But ignoring these middle-to-lowbrow magazines is a mistake, because they have an enormous readership. Just as *Reader's Digest* is more politically important than *The Nation*, even though *The Nation* is more prestigious among people with graduate degrees, *Parade* and *USA Weekend* have a political impact too huge to ignore.

So I was startled one weekend to see the *USA Weekend* cover story asking, "What if Einstein had ADD?" Well, "he didn't," a smaller text on the magazine cover admits. The cover picture is a shot of an actor impersonating Einstein. Behind the actor is a chalkboard full of mathematical equa-

tions. The big equation is " $E = \dots c^2$." Apparently Einstein's close brush with Attention Deficit Disorder has prevented him from realizing that "m" is needed to complete the equation.

A smaller equation nearby features " $mc^2 + E_0$ " divided by the square root of " $i + v^2$." Here we see the tragedy of a genius with ADD, as Einstein foolishly mixes his great insight about matter and energy with terms from electricity and elementary Newtonian physics.

Inside, the ADD article is an autobiographical piece by an Idaho writer who actually has ADD. Judging by the picture and the text, she suffers from a milder case than the Einstein impersonator does. We never actually learn what might have happened if Einstein had had ADD — other than the cover photo's implication that he would have been a mathematical ninny.

So who cares? Well, *USA Weekend's* silly cover illustrates how deeply the magazine feels compelled to warn its readers about ADD. You can expect to hear soon about the need for federal subsidies to "do something" about ADD.

The *USA Weekend* cover also points the way to more great covers in the future. What if

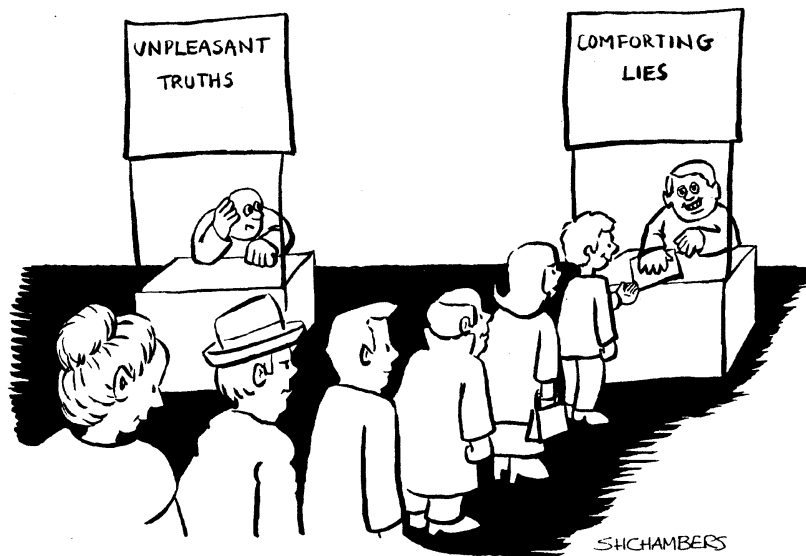
Moses were Catholic? What if Stalin had Tourette's syndrome? What if George Washington were a lesbian? What if Daniel Webster stuttered? What if *Liberty* were a preppy clothing catalog?

— Dave Kopel

McCain the Magnificent — Having attacked the First Amendment with his bill to regulate political speech and the Second Amendment with his campaign against the nonexistent gun-show loophole, word has it that Sen. John McCain is going for the hat trick: He plans to introduce legislation requiring Americans to quarter troops in their houses in times of peace.

— Sheldon Richman

This bomb's for you! — The trouble with the Second Amendment is that traditional weapons kill people. Modern media brings the horror of war right into our living rooms, and public sentiment always goes to those injured. Timothy McVeigh would have found a more sympathetic



jury of public opinion had no one been killed. Had he targeted a building where tax returns were stored, and destroyed it without a single casualty, he would have been a national hero.

According to the September 2001 *Popular Mechanics*, an electromagnetic pulse bomb can be built with 1940s technology for under \$400. This would be a weapon that destroys electronics and magnetically recorded information with no injuries to humans and buildings. With face scanning technology the new rage of law enforcement, cameras going up on every street corner, doctors required to submit medical information into a national database, and various federal law enforcement agencies watching every e-mail on the Internet; I would suggest that the security of a free state requires a Patriot's Manhattan Project focused on building up a private EMP arsenal.

Oops, I submitted this one to *Liberty* via e-mail. Goodbye, everybody.

— Tim Slagle

The function of an idiot-identifier — In my *Dictionary of the Avant-Gardes*, I suggested that certain prominent artists and writers generate work so dubious, so fake, that they function within the professional world to mark their admirers as idiots.

When I first introduced this epithet I was thinking of a "sculptor" who produced pieces with words, sometimes inscribed large on walls, later put in liquid crystal displays. Her use of language was undistinguished; the thoughts she expressed in her words were pious pap; her style reflected obvious antecedents, if not outright plagiarism. It was not for nothing that her work subsequently disappeared from common view. (Don't credit me with influence, though I think others eventually understood what earlier occurred to me.)

Though Martha Stewart is obviously an attractive and smart woman, she functions also as an idiot-identifier; it is hard to believe that any intelligent person takes her seriously about "living." Her social function is allowing people who are not so smart to voluntarily identify themselves. Truman Capote, initially a minor novelist, became an idiot-identifier after the publication of *In Cold Blood* (1964); and if certain biographers are to be

You are invited to the most rewarding

"Speaking of

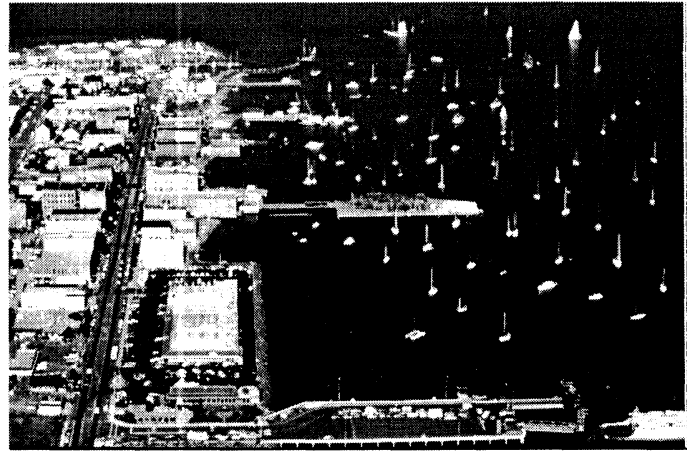
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Tim Slagle — stand-up comedian and expounder of libertarian ideals

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Jeff Rigenbach — award-winning writer and author of *In Praise of Decadence*

William Merritt — senior fellow at the Burr Institute and author of *Where the Rivers Ran Backwards*

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believed, the quality of his new admirers had a deleterious effort upon his own spirits. Can anyone who has actually read Joseph Brodsky's poems in English think well of anyone praising them? They are so insufficient that, lacking critical reputation or professional influence, their only real purpose is identifying idiots.

I think less of the "editors" at any local radio or television station that airs the Rev. Al Sharpton, not because I disagree with him but because he is essentially a fake as both a social critic and purported spokesman. Though the economist Robert Reich expresses attractive sentiments, would any of us regard someone ranking him or, say, John Kenneth Galbraith among the world's greatest economists, let alone a major economic mind, as more than dumb?

Scarcely alone in observing this I-I insight, I notice that the academic operator Stanley Fish once declared, "As far as I'm concerned, any positive reference to [Jurgen] Habermas in the course of an argument is enough to invalidate it." Curiously, I've always had a similar prejudice toward positive references to Professor Stanley Fish. My suggestion in my dictionary was that such people had an important implicit social function, as every profession needed an idiot-identifier if it were to be truly a profession. The lawyer Roy Cohn, neither honest nor law-abiding, had a similar usefulness for the legal profession, not only in his lifetime, when he was often feared, but afterwards, when there was nothing to be feared in dismissing him.

In a funny way, *The New York Times* itself becomes an idiot-identifier when someone cites it as their principal authority for cultural judgments, not just because its editors are too responsive to publicity machinery but because the *Times* often cites prominent idiot-identifiers for pseudo-expertise. Some idiot-identifiers can be instructively insidious. Consider a novelist-critic whose work consistently falls short of what is claimed for it, initially by her publishers and then by certain journalists susceptible to excess publicity. Whenever I come across an interview or review praising this person, my first suspicion is that the writer isn't very bright, and that judgment affects my choices whenever I come across that interviewer/reviewer's name again.

The effects of idiot-identification scarcely end there. I regard dubiously institutions granting her awards or hiring her to perform. Nothing but nothing deflated a new, self-important cultural foundation more in my eyes than its giving a monster grant to her. I put aside a new cultural encyclopedia when it had an entry on her. When the work of a certain academic sociologist was recommended to me, I

vaguely recalled his association with this novelist-critic and thus concluded, no doubt insufficiently, that this sociologist must be an idiot. In this case, my memory influenced a cultural decision, perhaps involuntarily. I doubt if the sociologist, secure in a university name-chair, knows how his earlier association jeopardized his own image with some readers outside academia and perhaps undermined as well the reputation of his institution. Hearing this sociologist characterized as a flagrant "name-dropper," I realized how such people inevitably open themselves to the negative effects of prominent idiot-identifiers. What's subtle and thus worthy of more exploration is how idiot-identifiers can deflate self-assured cultural powerhouses without the latter really knowing how profoundly they've been hit. Ironically, since idiot-identification measures non-influence, historians are less equipped than critics to measure negative effects. That's why those vacuums wouldn't even rate a mention in someone's biography.

— Richard Kostelanetz

Don't tread on me! — The *London Times* reports that George and Laura Bush refused to bow or curtsy when they met with the queen. First daughter Barbara, who joined the trip at the last minute — probably when she heard about the lower drinking age in the U.K. — showed up at the palace in a denim jacket.

The British may be shocked at such insubordination, but all I can say is, "Good for them." The royal family got accustomed to the Clintons slobbering all over them; but 225 years ago, a lot of good men gave their lives so that we could face the royal family without averting our eyes. That's the kind of foreign relations I like to see, a president who doesn't pay royalty any more respect than he would to Mickey Mouse and Goofy, on a diplomatic junket to Disneyland.

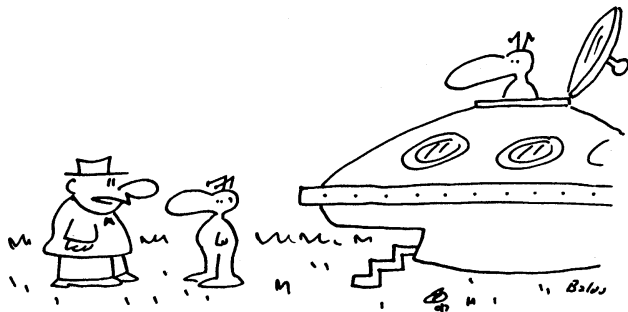
— Tim Slagle

The Beloved Leader's heroic journey — The recent visit by North Korean Beloved Leader Kim Jong Il to Moscow was filled with nostalgic Stalinesque touches, with a few early Woody Allen movie scenes thrown in for good measure. Kim is apparently leery of newfangled flying machines, so he made the trek to Moscow by train with an entourage that included 21 armored cars and took nine days to travel through the Siberian vastness. Apparently for security reasons, the train missed scheduled stops and took secretive routes. Russia hasn't seen those kinds of security precautions for more than a decade. Moscow authorities did their best to make the time-traveling commie warlord feel at home, laying on old-style goose-stepping parades and a wreath-laying ceremony at Lenin's tomb. "We had to take into account the quaint mentality of North Korean representatives," a Russian official told one newspaper. "Their mentality is much quainter than the mentality of Soviet people not even 15, but maybe 40 years ago."

Remember when communism was the wave of the future?

— Alan Bock

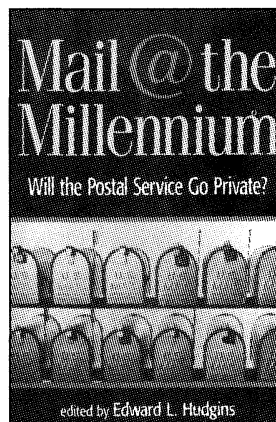
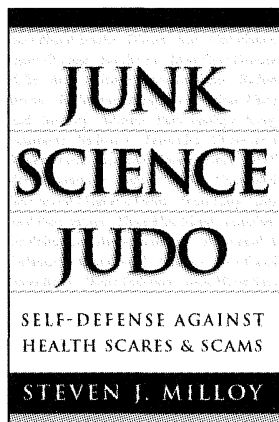
Signore Ponzi, I have Sen. Cantwell on line one — Sen. Maria Cantwell recently warned an audience of fawning reporters that allowing Social Security to be privatized could have dire consequences for Americans.



"If I were you, I'd scam before Pat Buchanan shows up."

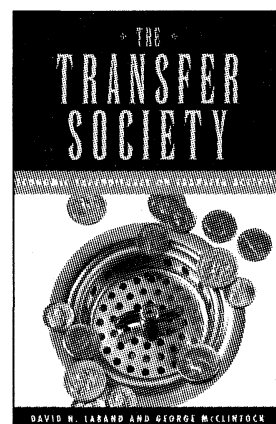
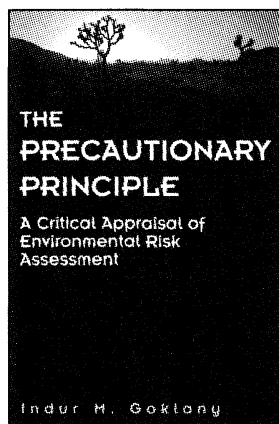
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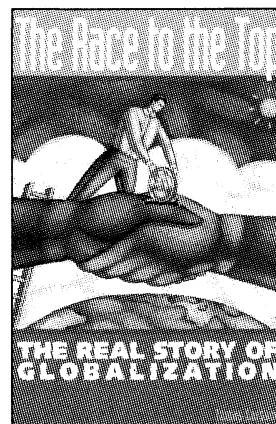
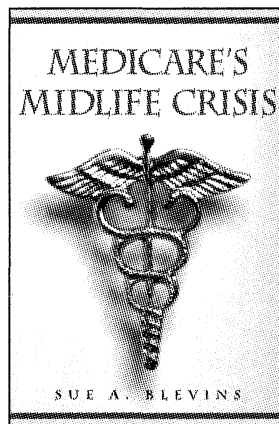
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Perhaps she was speaking from her own experience. Cantwell had a disproportionate amount of Internet stocks in her portfolio against which she borrowed 10 million real dollars to finance her Senate campaign. When the bubble burst, she was left worse than penniless as her collateral had evaporated. Her paltry \$250,000 Senate salary is incapable of paying the interest on the debts she incurred in acquiring said salary.

Throughout the Social Security debate, senators and representatives tell us that only they are wise enough to manage our retirement funds. It is refreshing to hear someone admit that we cannot be trusted with our own money because we might be as stupid as Maria Cantwell. — Tim Slagle

All the freedom you can afford — It is a question that constantly nags at me: Does the typical American have more or less liberty than in the past? Have the many claims that we are losing our liberty, "that we are on the road to serfdom," proven to be correct?

Certainly, the noose has tightened in many ways. We have identity cards that weren't around until the 1930s, we have widespread taxation, we have a federal government that knows few bounds in legislating rules affecting competition, health, safety, environmental protection, political

For a responsible and energetic person, the opportunities seem limitless. This prosperity overwhelms many deprivations of liberty.

finance — you name it — and local governments that interfere with how you paint your house and where you build your home.

Yet this picture ignores an important element, America's prosperity. The wealth of a 21st-century American is mind-boggling in comparison to any other time in history. Americans are mobile. Jobs go begging. Wages are high. For a responsible and energetic person, the opportunities seem limitless. In my view, this prosperity overwhelms many deprivations of liberty.

For example, I dislike the public school system and many things that go with it: the petty bureaucracy, the wasted effort, the uniformity. With prosperity, however, I can send my child to a private school. The government has long attempted to limit my ability to watch the television I want, but I can pay for cable and satellite television. I have new options for recreation because I can travel almost anywhere by air. The system of taxation and pork-barrel spending dismays me, but prosperity allows me to have money left for the things I want. In many ways, we can get around restrictions on our actions through wealth.

I am not even talking about wealth as measured by American standards today. I'm referring to relatively modest amounts of money. Most Americans are rich by the standards of history and the rest of the world: I personally have been "rich" ever since I received my first paycheck (around \$56 every two weeks, after taxes). Since the room I rented cost \$35 per month, my finances were as satisfactory as Mr. Micawber's on a good day, who observed: "Annual income

twenty pounds, annual expenditure nineteen six, result happiness." The wealth of young people today is typically no less.

Libertarians may not like this line of argument. For one, its corollary is that people who don't have money don't have freedom, and thus it may lend credence to the view that people should have positive rights to material goods. I don't agree with this, and I don't think we have to go there. What I am saying is that to neglect the enormous purchasing power of Americans may be to overstate restrictions on our freedom.

Another possible criticism is economists' argument that people's needs are never satisfied, so, although wealth may overwhelm some restrictions on freedom, using it that way means that it can't be used for other things that people want. True. The world is far from perfect. But thanks to that wealth, we are freer than we would be. I'd like that to be included in assessments of liberty. — Jane S. Shaw

Duh NA — Whatever your opinion of the debate over stem-cell research, the one thing that debate has demonstrated, with embarrassing repetition, is the degree of scientific illiteracy among Americans — who nevertheless feel themselves able to make decisions on what fields of scientific inquiry to prohibit or permit. A little over 40% of Americans believe that dinosaurs and man cohabited on earth; and something like a majority think evolution — perhaps the greatest scientific discovery ever — is a myth.

I recall a conversation I had some months ago with a gentleman, in every other way a respectable citizen, who attempted to explain to me that evolution was impossible, because, after all, it would have required such a remarkable coincidence. How so? I asked. Well, he answered, evolution presumed that a man evolved out of the mud one day, and that on that same day, a woman evolved out of the mud, and that the two were able to meet and mate and thereby propagate the human species. As H.L. Mencken once put it, this is the sort of nonsense a boy of 10 would — or ought to — laugh at. Yet this respectable, politically active gentleman was willing vehemently to support the cause of such ignorance. And of course the politicians are even more ignorant.

Long after this stem-cell conflict has cooled, we will be left with the problem that a great many Americans have no idea how DNA even works, yet propose to make rules for those who do. Scientific illiteracy is probably the most dangerous social ill in America, particularly because nobody is ringing the "Decline Of The West" alarm the way they do over the public's ignorance of the great books or the lessons of history. But then, that's no surprise. The people who ring such alarms are generally the same conservatives who have an innate dislike for science, with its acidic reason and refusal to appeal to authority. — Timothy Sandefur

Miss Cleo, am I getting overbilled in risky relationships? — Once again, the government has moved in to protect us from "fake psychics." Access Resource Services, purveyor of Miss Cleo, finds itself embroiled in a suit from the Missouri attorney general.

ARS has been accused of overbilling clients. I think charging anything for a "psychic reading" is tantamount to overbilling, but I am quite happy to let the market have the last

word. If Miss Cleo has been charging too much for advice, you have the freedom to find another source. There is never a scarcity of people willing to give you a piece of their mind, and most of them charge little or nothing.

According to the attorney general, charges from Miss Cleo were even showing up on the phone bills of deceased clients. I would suggest that perhaps there is a tradition of surviving family members getting free long distance calls in that short window between death and having the phone turned off, but there may be a better explanation. Perhaps dead people have to contact the spirit world to make reservations.

— Tim Slagle

Staying behind the curve — For the past few weeks, the news media have been full of reports and discussions of lines of cells, i.e., cells reproduced from embryonic stem cells for use in medical research. Lines of cells have been around since 1981, when scientists learned that lines of cells from early mouse embryos could be reintroduced into embryos to generate an animal with cells from both the host embryo and the cell line.

The Libertarian Party had an opportunity to be years ahead of the curve on this important political issue. But it didn't take it. And the reason it didn't, I confess, is me.

Here's how it happened.

One day in 1989, Murray Rothbard called me. He had a favor to ask: Would I serve on the Libertarian Party's platform committee at its convention in Philadelphia? It seemed there was a movement afoot to eliminate the pro-abortion plank from the platform, and Murray added, "I know you are hard core on this issue." I thought it might be an interesting experience, so I agreed. He said he'd arrange it, and that Bill Evers and Kathleen Richman would be heading the pro-abortion efforts there, so I should report to them.

I arrived at the meeting late, having taken a train from New York where I had had a speaking engagement and it quickly became evident that Evers and Richman had come to the meeting very well prepared. At the first break, Evers introduced himself, explained why he had treated me rudely during the meeting (he hadn't realized who I was), and handed me a stack of papers he and Richman had prepared with proposed changes to the platform that he and Richman had prepared. He also told me that the plan on abortion (my reason for being there) was to focus on other issues, ignore abortion until it was brought up by the anti-abortionists, and hope they didn't have enough votes to change the platform.

I chatted with other members of the committee during breaks and came to think that although members were tiring of Evers' and Richman's endless proposals, there were more than enough pro-abortion votes to beat back any challenge. Figuring that the best defense is a good offense, I suggested to Evers that we propose to make the platform even stronger on the issue of choice. He told me that it was a bad idea and we should stick to the game plan.

I counted the votes again and concluded that the votes were there, so I proposed making the party's support for the right to abortion a separate plank to appear early in the platform and to make its language even more forceful. Evers glared at me a bit, but the measure passed easily.

As the final day of the meeting wore on, Evers or Richman introduced a proposal for the LP to take a firm

stand on the property rights of lines of cells. No one on the committee but them had any idea what a line of cells was. After they explained the issue to us dummies, I made a short but obnoxious speech against the LP's taking a stand on the issue. Sure, I said, we favor property rights; we say so elsewhere in the platform. But why litter our platform with stands on issues that not one person in a thousand has ever heard of?

It was late, committee members were tired, and they voted down the measure. And the LP lost an opportunity to be ahead of the curve. If I hadn't ridiculed the idea, LP spokespersons would be publishing op-eds and appearing on talk radio about the importance of private ownership of lines of cells. *Mea culpa. Mea culpa maxima.*

And what happened to the new, improved pro-abortion plank we'd proposed? The chairman (oops, I mean chairperson) of the platform committee, Steve Givot, was against the measure, and when he presented the proposed changes to

The Libertarian Party had an opportunity to be years ahead of the curve on this important political issue. But it didn't take it. And the reason it didn't, I confess, is me.

the convention, he put abortion last on the agenda. After leading several hours of debate on other issues, time was running out, and he proposed the convention reject all those not yet introduced. The delegates, anxious to get on to the weighty matter of re-electing party chair Dave Walter, went along by acclamation. The party's support for abortion survived, but hadn't been strengthened.

— R. W. Bradford

More children are seriously injured reading The Weekly Reader than reading Hustler —

Scientific American Online recently reported that "more children are seriously injured on playgrounds than in traffic." Well — good! I mean, wouldn't it be awful if it was the other way around? This story only proves that parents are careful not to let their children play in traffic! Another thing it proves is that it's not the (already meaningless) statistic that matters, but how you phrase it. For instance, this one is true: "The leading cause of death in the workplace is murder." Why, dear God! That must mean murder is rampant across the nation! And we've seen all those post office shootings, right? It must be an everyday occurrence! Well . . . no. It's just that we've managed to make the workplace so safe that the only way to die at work today is if someone does it to you on purpose. "The third leading cause of death among teenagers is suicide." Something has to be the "leading cause of death." But when it's phrased in such terms, the result is to perpetuate the crisis mentality which motivates irresponsible knee-jerk legislative "solutions." In fact, only a few days after the *Scientific American* report, the Consumer Product Safety Commission issued a report concluding that "backyards [are] more dangerous than public playgrounds." And the language used by the

Canadian newspaper which reported on the study gives one pause: "There are safety standards for playground equipment," the article read, "but they are only mandatory for public areas." Anyone who recalls last year's attempt by the Occupational Health and Safety Administration to enforce workplace "ergonomic" standards on home offices should be able to see where that is leading.

— Timothy Sandefur

Welcome to the monkey house — Peter Vetique, a New Yorker, went to the Bronx Zoo in August, stripped down to his boxer shorts, and leaped into the gorilla cage. A quick zoo attendant kept the gorillas away while Vetique, protesting that he "want[ed] to be at one with the monkeys," was dragged away by police. He is going to be given a psychiatric examination.

I protest. No psychological examination was given to Julia "Butterfly" Hill, an environmentalist activist who lived in a tree for two years to protest the logging industry. Nobody ordered Donna Rawlinson MacLean to see a shrink when she filed a patent on "herself" to protest the evil capitalists who completed the human genome project. The activists at PETA are now even encouraging people to feed vegetarian meals to their dogs and cats. "Vegetarian or vegan dogs and cats enjoy their food and good health," reads an article on their Web site, "and a vegetarian diet for your companion animal is ethically consistent with animal rights philosophy." PETA especially recommends "soy milk, tomato sauce, avocado, melon or garbanzo beans." But none of them have been subjected to psychological evaluations. This is unequal treatment, to say the least.

— Timothy Sandefur

A different kind of child care — A new law in South Carolina purports to be about education standards for day care workers. So why does it expand the requirement that photo developers report to the police film that seems to involve "children" under 18 in what seem to be sexual postures? Why does it contain a requirement that private computer technicians must tell the police if they find child pornography when servicing machines?

— Wendy McElroy

Globocop — Former FBI director Louis Freeh, who seems to have gotten out of the bureau just in time to miss the fallout from his disastrous years at the helm, still considers the expansion of the bureau overseas as his lasting legacy. It's true that he was aggressive in this mission: 19 of the 44 FBI overseas offices were opened during the last five years. But while FBI-nauts brag on convicting a few African

embassy bombers, the contribution of the FBI to international comity and crime control is negligible at best and negative at worst. The expansion sends the rest of the world

the message that the United States considers the entire world its crime-control domain and that it doesn't trust the benighted folk in colonial outposts like Europe and Russia to handle crime problems. Not that the governments in most other countries are all that great at real crime control, but the FBI is hardly in a position to assert superiority.

— Alan Bock

A vast libertarian conspiracy — Liberal paranoia about the growth of the conservative and libertarian movements is getting more and more severe. It began with Hillary Clinton's "vast right wing conspiracy" blather, and Bill's grudging — and, needless to say, insincere — statement to the country that the era of big government was over. All the nonsense about "extremism" among the bland 104th Congress, all the talk of old people being reduced to eating dog food, showed the hysteria growing louder and louder. The various accusations of "disenfranchisement," or of Bush "stealing the election" have become background noise while liberal law professors claim that "conservatism now dominates the law."

Most recently, Rep. Robert Matsui (D-Calif.) identified the Cato Institute as the real behind-the-scenes puppet master. "This is really the Cato Institute that is behind this," he said, "and some individual groups on Wall Street that are funding the Cato Institute." And now in a review of a new book on Barry Goldwater, *Atlantic Monthly* writer John Beatty claims that "the libertarian economics with which the GOP pulled in the shy white backlash voter is now the conventional wisdom."

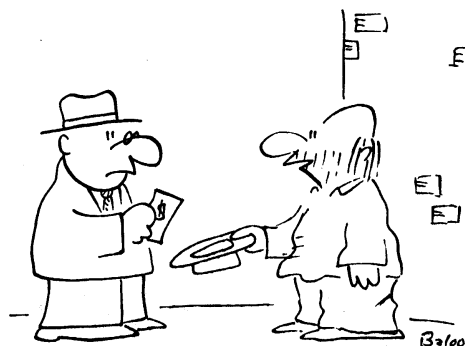
It would be so nice if the Republican party were really what left-liberals say. According to Beatty, "the goal [of conservatism] is to remove the federal government from the economy, to put ordinary Americans back where they were in 1929: un-championed, naked to the whetstone of the market." The old term for this, of course, was "freedom."

"The message the conservative movement has for Americans," Beatty says, is "You're on your own." One might observe that this was precisely the message of the American Revolution, as well. In his old age, Jefferson wrote that the real message of the Revolution was that "here every one may have land to labor for himself if he chuses; or, preferring the exercise of any other industry, may exact for it such compensation as not only to afford a comfortable subsistence, but wherewith to provide for a cessation from labor in old age."

But what's so sad is that Beatty and his ilk say this about an administration that has placated leftist teacher's unions by abandoning vouchers, appeased the steel industry by threatening other countries with protectionist tariffs, given in on judicial appointments, and accepted price caps for energy. Reading about Republicans in the newspapers, and then seeing them in reality, one gets the same feeling as when ordering a steak at Sizzler. I didn't want this puny thing, I want the big one in the picture!

— Timothy Sandefur

Be all that you shouldn't be — So there's yet another allegation of rape by a U.S. serviceman in Okinawa. Isn't it time to get our troops out of there? The contribution of American troops on Okinawa to genuine national security interests of the United States is undetectable and their pres-

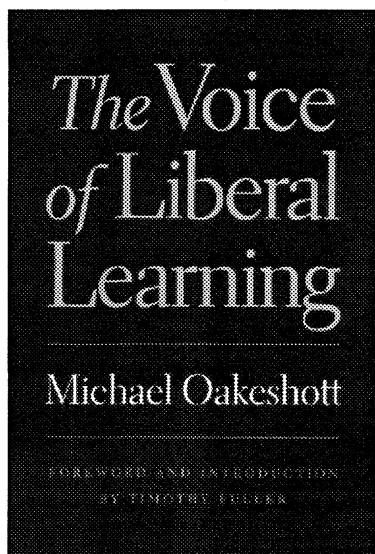


"I'll need a little more than that, sir — I plan to go to Starbucks's."

Oakeshott's "Voice" Advocates 'Adventures in Human Self-Understanding'

*"When British political philosopher Michael Oakeshott died in 1990,
the world lost one of its greatest defenders of liberty."*

—Robert A. Peterson, *The Freeman*



The Voice of Liberal Learning

By Michael Oakeshott

Foreword and Introduction by Timothy Fuller

By 1989, when Michael Oakeshott's *Voice of Liberal Learning* was first published by Yale University Press, books that held a negative view of education in the United States, such as Allan Bloom's *The Closing of the American Mind* and E.D. Hirsch's *Cultural Literacy*, had garnered a remarkable amount of attention. There have been countless lamentations about the state of schooling in America in recent years, and there have been countless recommendations toward what is invariably called "educational reform."

To those weary and wary of the cacophony about what's wrong with education in America and what ought to be done about it, Oakeshott's voice beckons. As usual, his approach to the subject is subtle, comprehensive, and radical—in the sense of summoning readers to the root of the matter. That root, Oakeshott believed, is the very nature of learning itself and, concomitantly, the

means (as distinct from the method) by which the life of learning is discovered, cultivated, and pursued. As Oakeshott has written, "This, then, is what we are concerned with: adventures in human self-understanding. Not the bare protestation that a human being is a self-conscious, reflective intelligence and that he does not live by bread alone, but the actual enquiries, utterances, and actions in which human beings have expressed their understanding of the human condition. This is the stuff of what has come to be called a 'liberal' education—'liberal' because it is liberated from the distracting business of satisfying contingent wants."

Liberty Fund's new edition of *The Voice of Liberal Learning* includes a foreword by Timothy Fuller that reiterates the timelessness of Oakeshott's reflections amid the continuing clamor that characterizes discourse about liberal education.

Michael Oakeshott (1901–1990) was Professor of Political Science at the London School of Economics and a Fellow of Gonville and Caius College, Cambridge. He was the author of many other works, including *Rationalism in Politics and Other Essays*, *On History and Other Essays*, and *Hobbes on Civil Association*.

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ence is a constant source of friction with the Japanese.

— Alan Bock

Arrogance in the summits, ignorance on the street

— The “anti-globalization” protesters who assembled in Genoa to protest the leaders of the world’s industrialized nations meeting at their G8 summit may have accomplished one thing. According to the London *Daily Telegraph*, the decision to hold a scaled-down meeting next year in a fairly isolated resort in Alberta rather than Canada’s capital of Ottawa was made in part to discourage demonstrators.

There are pluses and minuses in such an outcome. British Prime Minister Tony Blair, according to the *Telegraph*, was “visibly angered” that anarchist protesters had “hijacked” the summit. Disrupting meetings of democratically elected leaders, Mr. Blair says, is “to stand the whole principle of democracy on its head.”

Really? Each of the leaders was elected in his own country, but that election was hardly a blanket endorsement of participation in the floating crap game of international forums that is the “international community.” International summit meetings can easily devolve into meeting for the sake of meeting (and feeling important) rather than for anything substantive. And a sneaking suspicion that when political leaders get together the agenda is more likely to be about enhancing their own power than disinterested concern for the poor is more likely to be justified than not.

That said, much of the visible opposition to “globalization” as expressed on the streets when leaders get together is misplaced, confused, or both. Increasing globalization, in the sense of increased international trade, commerce and contact made possible by improvements in technology, transportation and communication, is as close to inevitable as anything can be. The question is whether it will be controlled by international bureaucrats with little accountability or built from the bottom up through trade and other voluntary activities.

Protesters whose hostility to what they view as international capitalism includes opposition to trade as such have picked the wrong target. Trade liberates. Control by unaccountable, unelected international bureaucrats does the opposite.

— Alan Bock

Career opportunity for the aesthetically challenged

— I know most mainstream journalists are liberals, and — no matter what they say — that affects the

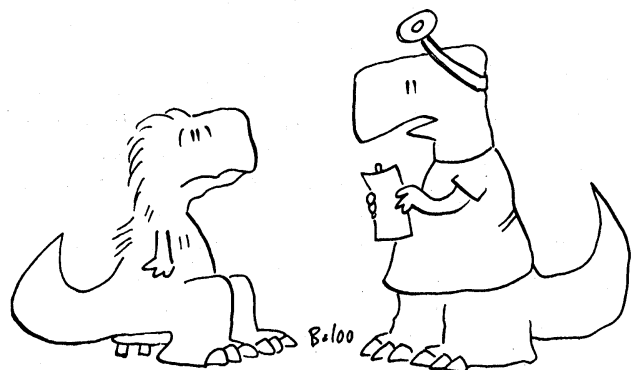
content of the newspapers we read. But at least the elite journalists are good at what they do; they can report and write, and if more libertarians and conservatives could report and write, more of them would get hired by the elite media. (That’s not to say that there’s no bias in elite media hiring, just that not many conservatives and libertarians develop the interest and skills to apply for such jobs.) But what about the cartoonists? Political cartoonists can shape the way we look at politicians and political issues. Boss Tweed was reported to have said of Thomas Nast, “Stop them damn pictures. I don’t care so much what the papers write about me! My constituents can’t read. But damn it, they can see pictures!” Garry Trudeau of “*Doonesbury*” is one of the most effective liberal propagandists around, and he’s effective because he’s funny. But look at some of his colleagues. The *Washington Post* has been running “Herblock” since 1946 (he started drawing cartoons at the *Chicago Daily News* in 1929), and he hasn’t been clever or funny for years. His idea of wit is a big fat plutocrat sneering at a starving child holding out a bowl labeled “human needs.” Maybe that was provocative in 1929, but in 2001? Meanwhile, many alternative papers, including Washington’s *City Paper*, run a weekly cartoon called “Tom the Dancing Bug.” It’s a ham-handed attack on “free-market” and conservative ideas every week. But it’s not very funny, and the art is only average. (Don’t take my word for it; check out www.tomthedancingbug.com. And why .com? Wouldn’t it be less crass to be .org?) It’s not just that I don’t like his ideas; the similar cartoon “This Modern World by Tom Tomorrow” that runs in *Salon* is often humorous. But how did Ruben Bolling get a job doing “Tom the Dancing Bug”? Maybe it’s media bias, or maybe the alternative papers are just desperate for timely commentary in cartoon form. So if any *Liberty* readers would like to express their dogmatic ideas in a few brief panels of clumsy art, consider becoming a political cartoonist. Apparently the competition’s not too stiff.

— David Boaz

When right-wing oligarchs attack — On Aug. 3, Mary Anastasia O’Grady reported in *The Wall Street Journal* that the American ambassador to Guatemala had circulated a memo to other Latin American ambassadors denouncing a hitherto obscure economist and his university. Manuel Ayau and the Francisco Marroquin University, Ambassador Prudence Bushnell advised, were “against democracy.” As evidence, she quoted Harvard University scholar Lawrence Harrison’s characterization of Ayau as “an archetypical, far-right, libertarian Latin American oligarch.”

He was right about one point. Prof. Ayau is a libertarian. He supports free trade and radically lower taxes and opposes income redistribution and government regulation. But how does this make him a “typical, far-right oligarch”? In the context of Latin America, “far-right” means supporting a powerful state church and military, neither of which Ayau does. An “oligarch” is a member of a powerful ruling class that runs a country for its own end. If Prof. Ayau were a “typical oligarch,” presumably Guatemala would be run along the libertarian lines that Ayau advocates.

All this is interesting enough. But not as interesting as a letter to the editor the *Journal* published a few days later. The good Prof. Harrison explained the logic of characterizing Prof. Ayau as a “typical, far-right oligarch.”



“I’m afraid you’ve got a rampant new disease called ‘hair.’”

First, Prof. Harrison observes that most Guatemalans are very poor, yet Prof. Ayau "asserts that most Guatemalans 'bear their poverty with patience and in peace.'" Hmm. So Prof. Harrison of Vineyard Haven, Mass., knows more about what most Guatemalans believe than does Prof. Ayau, who lives in Guatemala City. Even so, this is a disagreement about a fact, not a belief, right-wing, libertarian, or otherwise. Obviously, it does not support Prof. Harrison's claim.

Second, Prof. Harrison observes that Guatemala is "a country with an extremely low tax burden," yet Prof. Ayau "calls for a reduction of income and corporate taxes." A quick search of the Internet reveals that Guatemala has a corporate income tax rate of 25%, which is lower than the U.S. corporate rate. But it's also higher than the corporate rate of Hong Kong, Hungary and even the socialist paradise of Vietnam. But whether Guatemala's taxes are relatively high or relatively low doesn't seem very relevant to the issue at hand, namely whether Prof. Ayau is a "typical far-right oligarch." The fact remains that if calling for tax reductions makes one a "typical far-right oligarch," then Prof. Ayau has a lot of company, including President Bush, Steve Forbes, and virtually the entire Republican party.

Prof. Harrison's third reason for characterizing Prof. Ayau as a "typical far-right oligarch" is that "in the face of high rates of illiteracy [in Guatemala]," he believes that "unfortunately, the notion prevails that government education is the best way to educate the people." Again, the professor from Harvard denounces Prof. Ayau on their disagreement over a factual matter. Prof. Harrison does not explain why, if government education is better than private education, he chose to accept a position at Harvard, known all over the world for its scholarship, rather than, say, the Western Montana College at Dillon, Mont., known all over Montana for producing excellent high school football coaches.

This is the sum of Prof. Harrison's defense of his odious characterization of Prof. Ayau. But it's not the end of his letter. He goes on to say:

I find Mr. Ayau's repeated references to "freedom" unsettling, particularly when he says, "I am one who believes that, since the principal function of government is to protect people's freedom, it follows that it is proper to use the coercive powers of government to maintain freedom." The implication is that people who dissent from the ideas of Hayek and von Mises had better watch out.

Hmm. Harvard may have a reputation for scholarship. But it certainly doesn't deserve any reputation it might have for logic, if we are to take Prof. Harrison as typical of that institution's thinking.

— R. W. Bradford

Coulda, shoulda, woulda — A few months ago, in the city of San Francisco, two bad, bad dogs, appropriately named Hera and Bane, attacked and killed a young woman named Diane Whipple. No one could have guessed that such an atrocious event would result in anything like comedy, but it has.

First, you need to understand that ever since O.J. Simpson was acquitted in his criminal trial for murder, no homicide in the United States has ever failed to go into extra innings. There must always be a civil as well as a criminal trial. After the death of Diane Whipple, both the dogs and

their "caretakers" were arrested. (The dogs were allegedly owned by two prison inmates, which is another story . . .) But that wasn't enough. A wrongful death suit was filed by Ms. Whipple's mother and by Ms. Whipple's lesbian partner, Sharon Smith. Smith's suit, however, was in danger of being squelched, because she was not a "family member."

And this is where the thing gets really strange. A San Francisco judge has now ruled that her suit may go forward, because she was unfairly burdened by California's prohibition of same-sex marriages, and because the equal protection provisions of the California constitution forbid the exclusion of same-sex couples from benefits available to other couples, including the right to sue when someone's dog has, by killing one of them, "deprived [the other] of companionship." As a senior counsel for the gay and lesbian Lambda Legal Defense and Education Fund puts it, the "constitutional problems" arose because "if Sharon Smith would have been Steve Smith, this couple would have been married."

This is interesting — and not because of anything having

Ever since O.J. Simpson was acquitted in his criminal trial for murder, no homicide in the United States has ever failed to go into extra innings.

to do with gay marriage. Whether you think that state-sanctioned marriage should be open to gay people or not, whether you think that gay people have a right to get married or not, whether you think that the right to same-sex marriage is implied by the California constitution or not — all this is beside the point. What's interesting, and richly amusing, is the spectacle of jurists and litigants maintaining, in effect, that legal decisions ought to be made, not on the basis of what people actually did in some situation, but on what people would have done if the situation — if they themselves, in fact — had been entirely different: "this couple would have been

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married." And to sound that extra, oddly satisfying note of black humor, what we're talking about here is an attempt to ground legal decisions on an action that "would have" been taken by someone who cannot say for herself whether she "would have" taken it or not, since she now happens, very unfortunately, to be dead.

It makes sense to argue — indeed, I would make this argument myself — that people have a right to grow and smoke marijuana. It might even make sense for someone to argue that the right to grow and smoke marijuana is somehow implicit in some article of the Constitution somewhere. But to argue that the family of Joe Smith, now deceased, has a right to sue for damages because he was unfairly denied the income that he would have gotten if marijuana had been legal and he had been allowed to cultivate it, which he would have wanted to do — that's where the hilarious world of legal fantasy begins.

If this new line of reasoning catches on, we're all in for a lot of laughs. We can expect to see plenty of news like this:

SAN FRANCISCO — Final arguments were made today in the complex series of civil suits surrounding the Alexandra Whitehall estate. Whitehall, 43, died in her lavish Nob Hill condominium last July, willing her entire estate to Huey, Dewey, and Louie, her beloved hamsters.

Among the parties contesting Whitehall's will is a former suitor, David P. Barker, also of San Francisco. Barker has testified that Whitehall and he were "very much in love and would have been married, if it hadn't been for my wife and the laws against polygamy." His attorneys argue that the anti-polygamy statute is contrary to the equal protection provisions of both the California and the United States constitutions, because the statute "plainly discriminates against persons who wish to marry and are forbidden to do so, simply because they are already married." Absent the anti-polygamy statute, the attorneys contend, Barker and Whitehall would have been married, and she would have left him her property.

In another suit, lawyers for Dement's Chicken Run, an exercise salon that Whitehall visited a number of times during the 1990s, maintain that if tax deductions were not unconstitutionally provided for contributions to churches, her annual contributions to the Unitarian Church would have gone to the salon instead. Shaun Dement, proprietor of the salon, testified that Whitehall once told him, "I get a lot more inspiration out of coming here than I ever get from that old church of mine." Dement is suing the estate for uncollected potential donations of \$3 million.

Meanwhile, lawyers for the California State Democratic Central Committee are arguing that had it not been for the unconstitutional limits now imposed on contributions to certain categories of political organizations, Whitehall, a lifelong Democrat, would have left the bulk of her estate to various so-called soft money funds administered by the Democratic Party. They are suing for \$20 million, as are lawyers for the University of Michigan, who have presented evidence that Whitehall told telephone solicitors for the university's endowment fund that she owed the university approximately that much. "U of M made me what I am," she reportedly said. "And someday, I'm definitely going to pay it back." The fact that she died without mentioning the university in her will is attributed by U of M lawyers to Chronic Willmaker's Inability Syndrome (CWIS), a condition that, according to expert testimony, is brought on by distress over the unfairly complicated legal terminology typically encountered in making a will. "If the government had not confused Mrs. Whitehall," contended

Sandra A. McAfee, chief legal counsel for the university, "she would definitely have given us all her money."

Attorneys for the hamsters have vigorously defended the animals' right to inherit, while pressing their own \$50 million wrongful death suit against the United States government. Their central argument is that the federal government's unconstitutional interference with the sale of amphetamines resulted in Whitehall's early death and their clients' consequent loss of her "aid, succor, and companionship." "Were it not for these unconstitutional enactments," Dustin C. Brown, lead counsel for the estate, argued on Friday, "Ms. Whitehall would easily have been able to control the obesity that claimed her life. \$50 million is a small sum, when one considers the enormous position that she occupied in the plaintiffs' lives."

Final resolution of the lawsuits is anticipated in approximately 35 years.

— Stephen Cox

Ideologically correct pets — Shame on Tim Slagle's attack on cats, among his September *Reflections*. Cats are the only true libertarian animals. A dog, like a Democrat, is always eager to please, to lick the boots of any tyrant who tosses him food; and, like a Republican, a dog can serve as a comfortably sycophantic servant, the traditional "Man's Best Friend" evoking thoughts of Lassie and the days of black and white. But a cat is free; no amount of appeasement or intimidation can force a cat's affection. It is freely given only when deserved. What better symbol of freedom than a cat?

Unilateralism, multilateralism, and isolationism — The Bush administration has come under sporadic criticism for what some critics call "unilateralism" and that some go so far as to deem "isolationism." President Bush has said that the United States will withdraw from the Kyoto global warming treaty and will not participate in the latest protocol revision of a germ-warfare treaty. Although he has consulted with and tried to explain his position to European and Russian leaders, the president has made it clear that he plans to move toward building a missile defense system whether European leaders approve or not.

Few critics are as waspish as Senate Majority Leader Tom Daschle, who accused President Bush of "fostering isolationism" in the midst of the president's recent European trip, then apologized for his timing but insisted Bush has a "dictatorial approach" in foreign relations.

The United States would be better off consulting with and sometimes yielding to traditional allies, especially the Europeans, rather than going it alone, many say. The arrogant unilateralist "we're the sole superpower and we can do what we like" attitude will eventually come back to haunt the United States when it wants cooperation on issues it deems important.

Is unilateralism really isolationism?

In international relations, the classic theory is that in a world of nation-states each nation, large or small, is equally sovereign in its own territory and equally endowed with the right to make its own decisions about foreign relations. When a country makes decisions about foreign policy on its own and carries them out, it is said to be acting unilaterally. When it chooses to act in concert with other members of a treaty organization like NATO, signatories to a special-purpose treaty (e.g., ballistic missile or land mine control), the mem-

Welfare-State Morality

by Jacob G. Hornberger



As a compassionate conservative, President Bush wants to give federal aid to faith-based organizations.

Religious leaders object to Bush's plan on the ground that it will lead to governmental interference with religious organizations. The point they make was summarized by the Supreme Court in 1942 in the case of *Wickard v. Filburn*: "It is hardly lack of due process for the government to regulate that which it subsidizes."

Those on the left end of the political spectrum are complaining that federal aid to religious groups would breach the wall of separation between church and state that is guaranteed by the First Amendment.

Unfortunately, Bush and his critics on both the right

and the left are missing a much more fundamental question: Why should government even have the power to take money from one person in order to give it to another?

By its very nature, government consists of laws and regulations that either mandate conduct or prohibit it. The rules are not advisory. They are compulsory, and they are enforced by the state's monopoly on the use of force in society.

If the nature of government is organized force, then the collection and distribution of monies that are ultimately paid to religious organizations is itself based on force. Such being the case, how can force be reconciled with principles of morality and compassion?

Consider for example the U.S. federal income tax, which came into existence in 1916. Despite periodic IRS claims to the contrary, the payment of income taxes is not voluntary. That is, the government does not give people a choice of paying their income taxes

or not. Every citizen is required by law to file an annual report of his income and render payment for the taxes due.

What happens if a citizen refuses? Once the IRS targets him, the process of collection will begin with polite requests, but if the resistance continues, the state will ultimately resort to force. For example, the IRS will file a lien on the person's property and then ask a court to foreclose the lien. Once the foreclosure sale is completed, the court will issue an order commanding the tax resister to surrender possession of the property to the new owner. The order will be enforced by armed law-enforcement officers.

So, who's the moral and compassionate person in all this? The taxpayer? The IRS agent? President Bush? Congress? The welfare official?

The answer is: None of the above. Because in the arena of peaceful behavior, morality and compassion mean nothing when they are the product of force.

They are meaningful only in the context of voluntary, willing choices of individuals.

Equally important, it's only in a climate of individual freedom, not coercion, in the area of peaceful choices, that morality and compassion tend to rise in a society. When government forces people to help their neighbors, conscience atrophies. When people are free to choose whether to help their neighbors or not, conscience is strengthened.

Thus, if people care about morality and compassion, they should not only be opposing Bush's plan to distribute government aid to faith-based organizations. They should also be questioning government aid to anyone.

*Mr. Hornberger is founder and president of The Future of Freedom Foundation (www.fff.org) in Fairfax, Va., which just published **Tethered Citizens: Time to Repeal the Welfare State** by Sheldon Richman.*

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bers of the United Nations, or a group assembled for something like the Persian Gulf War, it is acting multilaterally.

So there is no logical or necessary relationship between unilateralism and isolationism. As Ted Carpenter of the Cato Institute told me, "You could have an entirely imperial, entirely unilateralist policy that would be the antithesis of isolationism." Going it alone (leaving aside the question of whether that's a good idea) does not necessarily mean withdrawing from the rest of the world.

In recent years many analysts have shown a preference for multilateralism, entering into treaties and acting in concert with other countries most of the time. This might be because, as Charles Krauthammer put it in a recent *Weekly Standard* article, many in the American policy elite "saw their mission as seeking a new world harmony by constraining this overwhelming American power within a web of international obligations." Or it might be because they calculate that multilateral action is the best way to achieve American goals. But in practice, however, multilateralism means increasing degrees of governance by international boards, commissions

Most Americans would like to see fewer interventions, bombings and flawed "nation-building" efforts; whether they are done unilaterally or multilaterally is secondary.

and committees that are not elected and not especially accountable to anyone. A trade, environmental, or weapons treaty almost always generates a new agency with broad authority to enforce compliance among signatories and to make decisions when there is disagreement about ambiguous provisions. This is about as far from democratic governance as you can get. Insofar as the model is the European Union bureaucracy in Brussels, most people in that institution view events like a recent vote in Ireland not to join the unitary currency regime as a nuisance or a sign of reactionary obstructionism, but only a temporary setback. The people are supposed to go along with the grand vision espoused by the experts, not tell the experts what to do.

There might be circumstances in which it is worthwhile to give up a bit of sovereignty, a bit of self-rule, a bit of freedom for a worthwhile goal. But one should be clear that multilateral agreements and actions always involve these costs and weigh them carefully.

Focusing on this essentially pragmatic question as if it were a matter of deepest principle draws attention from the more important issue: How extensively does the United States plan to meddle in the affairs of other nations? Most Americans would like to see fewer interventions, bombings and flawed "nation-building" efforts; whether they are done unilaterally or multilaterally is a secondary question.

— Alan Bock

Another missed opportunity? — If the Libertarian Party is ever going to make itself visible on the political landscape, it is going to have to find an issue to convince a significant number of voters to abandon their traditional support of major parties. The issue must be very

compelling and one that major party candidates are afraid to embrace.

For the past several years, I have advocated that the Libertarian Party adopt a strategy of focusing on a single issue in its presidential campaign: ending the War on Drugs. Although polls show that about 33% of Americans favor legalizing drugs, no major party candidate is willing to get near the issue. Among that 33% are surely a fair number of people for whom this is a compelling issue: At the very least, drug users and their families would presumably find this issue to be very, very important.

I've made this argument in speeches at conferences and LP conventions and in an article published in the December 1999 *Liberty*. I bounced it off Harry Browne a few years ago, and he told me that he thought it was a swell idea. In fact, he said, he was thinking of making a television commercial that criticizes the drug war. I tried to explain to him that the idea is not to make drug legalization one of many themes presented to the voter — the LP had been doing that ever since its first election — but to make it the focus of his campaign. I failed to convince him, and he ran his 2000 campaign on exactly the same strategy as his failed 1996 campaign, and got even worse results.

This year the LP is searching for a new strategy, by junketing around the country and holding meetings in airport hotels. I am told that this approach has been talked about at some of these meetings.

All that's good, but the clock is ticking. The approach has no more hope of working than the failed strategies of the past unless it is taken at a time when drug legalization is so far from the mainstream that the major parties abhor it. And no issue with 33% public support is liable to remain abhorrent to politicians for very long.

There are signs that the tide is turning. Canada's government is actually growing its own marijuana for medical purposes. British Columbia has virtually legalized the drug. Even the leader of Canada's most conservative party, the Alliance, has called for legalization.

In this country, the nation's largest serious newsmagazine, *The Economist*, has called for legalization.

When will the LP try this approach? How long will Libertarians continue to waste millions of dollars on the same strategies that have failed time and time again? Will they wait until the Republicans or Democrats adopt legalization?

I hope not. I'd like to see the Libertarians become a relevant part of American politics. Why they don't is beyond me. Even here, where vigorous promotion of their views could win the votes of a significant share of Americans, they refuse to act.

Meanwhile, the progress toward legalization continues. It's a wonderful thing. It's too bad that the Libertarian Party remains a small, insignificant part of the movement.

— R. W. Bradford

Faith-based initiative — The day after news wires reported that Texas mom Andrea Yates drowned her five children, a self-identified God-fearing Christian mother of eight called the Rush Limbaugh show and sobbed that she understood exactly where Andrea Yates was coming from. She said she had almost "crossed the line too," but instead used to just drive down the highway praying that they would

all be wiped out by a trailer truck.

Rush said the lines were "on fire," but he chose not to take anymore calls on the subject. Though few women engage in acts as desperate as Andrea Yates', there are many pressured into leading lives of quiet desperation — five or six unspaced children, and home schooling them to shield them from the world — the ideal state for women advocated by fundamentalist religions.

We have all seen the powers, positive and negative, of religions and cults. Jim Jones' cult in Jonestown coerced its adherents into killing their children and themselves with cyanide-laced Fla-Vor-Aid, and the Heaven's Gate cult members waiting for the Hale Bopp comet were deluded into killing themselves on command. Though the Yates' religious beliefs are still somewhat sketchy, Rusty Yates, Andrea's husband, is an evangelical Christian, 63% of whom believe birth control is immoral. Their home was found full of religious artifacts, and Yates' mother said her daughter and Rusty belonged to "a national cult." Though women can expect to bear twelve to 15 children over the course of their childbearing years if no birth control is used, instead of listening to their bodies or their doctors, some vulnerable women are listening to their husbands or to television evangelicals like Jerry Falwell who pronounce birth control immoral, and the insurance companies who fund it to be guilty of supporting an immoral lifestyle. Echoing the sentiment of anti-choice bumper stickers proclaiming that "Abortion Is Not Health Care," evangelicals

believe that birth control isn't health care either. Tell that to Andrea Yates.

Untold numbers of women may not be healthy enough, physically or emotionally, to participate in the cult of perpetual motherhood put forth by these religions, who, though large and mainstream, have beliefs indistinguishable from cults. The judge in the Yates case has imposed a gag order on family members, so whether these were "faith-based murders" we can't know until the trial. Not that it matters for zombie-like Yates or her dead children, but for the next vulnerable woman who could be overwhelmed by the demands of the broodmare-like life of drudgery and isolation that Yates was coerced into, when you see that nice smiling God-fearing guy who wants you to quit your job, depend on him, submit your will to his, have six kids and join that nice fundamentalist religion, run like hell.

— Sarah McCarthy

RIP: Israel Shahak — Israel Shahak, the classical-liberal human-rights activist in Israel, died recently. It is a great loss. I knew Shahak and admired him greatly. A survivor of the concentration camps with a Ph.D. in chemistry, he became one of the most eloquent Israeli voices on behalf of the rights of Palestinians. Long before a younger generation of Jewish Israeli historians began documenting the brutalization and property-rights violations of the Arab residents of Palestine in 1948 and earlier, Shahak was speaking and writing with powerful understatement. He will be missed.

— Sheldon Richman

Timeline of the Willis-Browne Conspiracy Update & Corrections

Last month, we published a detailed timeline of what is known about how Libertarian Party National Director Perry Willis plotted with the Harry Browne campaign to capture the LP nomination in 1996 and how the conspiracy came untangled earlier this year.

Update

Two important developments have occurred since:

August 16: LP Chair Jim Lark e-mails members of the party's National Committee summarizing what he had discovered in his attempt to investigate. He includes copies of written messages he sent and received and summaries of telephone conversations he had with potential witnesses.

He reports those within the Browne campaign who continue not to respond to his questions. Many other individuals, he reports, responded to his call for information, and while much of what they said or wrote was helpful in that it provided a feel for what was going on within the National Committee and at the LP national office at the time Willis was doing his secret work for Browne in violation of his contract with the LP, none of it was directly relevant.

August 19: John Famularo, who provided the evidence that prompted Willis' confession, responds to Lark's request

for information about how he obtained the evidence. He explains that, contrary to the accusations of Browne staffers, he acquired the information in the course of his duties as the person charged with maintenance of the LP headquarters' computers. He was routinely sent backup files of its computers so that when the computers failed, he could restore the data. He discovered the incriminating files "in the process of deleting files from the backup network system some time in 1998."

He also responds to Lark's request for additional evidence by referring Lark to a Web site (<http://lp2000.com/BCI/timeline.htm>) providing documentary evidence that implicates Harry Browne, Sharon Ayres, David Bergland, Jack Dean, and Michael Cloud in the Willis scandal. (See story on following page.)

Corrections:

Our timeline was comprehensive and accurate enough that LP National Director Steve Dasbach has asked our permission to distribute copies of it to members of the LP National Committee for use in untangling the whole ugly mess. But despite our best effort, three minor errors crept into the timeline of the Willis-Browne conspiracy that we published last month.

First, we reported that in June 1995, Jesse Markowitz and Dean Ahmad brought "Dasbach's attention to the fact that Willis and Winter are not only doing work on behalf of Browne but also using the computers at LP headquarters to do the work." In fact, Markowitz and Ahmad only suggested that Willis and Winter may have been using LP computers to do the work. Dasbach checked and found out that they had. In addition, we quoted from the LNC's official minutes that Dasbach had then "request[ed] that [Willis and Winter] do not do any further work until the matter could be presented to the LNC." Dasbach says that the minutes were not completely accurate: That he had requested that Willis do no further work, but told Winter he could continue because the work he was doing was trivial in nature.

Second, in our entry for December 1995, we identified

Jack Dean as webmaster of the 1996 Browne campaign. In fact, Joe Dehn was the campaign's webmaster. It is not entirely clear what Dean's role was in the campaign; neither he nor others involved in the Browne campaign will respond to our inquiries. The FEC reports for the 1996 campaign list payments to Dean of \$52,597.04 for "consulting."

Third, in our entry for June 19, 2001, we quoted Dasbach as saying that Jim Lark, chairman of the party, "circulated the draft article among several other LNC members at the June 9-10 Strategic Planning meeting [and] suggested some changes to Mr. Winter regarding the article [about the Willis-Browne conspiracy in the *LP News*], all of which were made." Jim Lark informed us that the Strategic Planning meeting actually occurred on June 16-17. Two readers informed us that *LP News* editor Winter and Lark had dis-

Breaking News: Documentary Evidence Implicates Browne, Ayres, Bergland, Dean & Cloud

On Aug. 19, as *Liberty* was going to press, former Libertarian Party Secretary John Famularo published a timeline of events he considered to be relevant to the case, with links to original documents, including 29 documents apparently recovered from Willis' computer.

Several documents demonstrate that Browne himself was working with Willis, so obviously he was aware of Willis' work for his campaign in violation both of LP rules and his contract, as *Liberty* reported last month. Others show that Campaign Chair (and national committee member) Sharon Ayres, former LP Chair David Bergland, and consultants Jack Dean and Michael Cloud were also party to Willis' actions.

There is no evidence indicating that Steve Dasbach was party to the Willis-Browne conspiracy, though there is evidence suggesting his relationship with Willis and the Browne campaign was uncomfortably close. In a letter dated July 19, 1995, Willis advises Dasbach about how Dasbach can protect Willis from mounting evidence that Willis had violated LP conflict of interest rules that was getting into the hands of the national committee.

In addition, there is an agenda for Willis dated June 19, 1995, that strongly suggests that Willis worked on behalf of Browne during his normal work day at LP headquarters, not "on his own time" as has been suggested.

It also presents the first evidence that Willis showed favoritism to Browne in his official capacity as national director prior to Browne's nomination: Famularo reports that in June 1996, Willis directed that Browne donors were to be treated, for membership purposes, as if their donations had been made to the LP itself, thereby inflating membership figures and Browne support within the party. According to Famularo, Willis obtained approval by the party's executive committee, though it is unclear whether members were aware of the significance of what they had approved.

agreed about one change and Winter had suggested his professional judgement was being challenged and threatened to resign, at which point Lark had withdrawn his suggested change.

To check this out, we contacted Dasbach, Winter, and Lark. Dasbach and Lark told us that Lark and Winter had indeed disagreed about where the article should appear in the *LP News*. Winter wanted it to appear on page 4, a very unprominent position in the paper. Lark thought it was important enough that it should appear on page 1. Winter said that he'd do that if Lark insisted but that he would consider it to be a "a vote of no confidence with respect to his professional judgment," though Winter did not, in fact, threaten to resign. In the end, Winter and Lark compromised: The story was moved to a more visible position on page 3 of the paper, and a small box alerting readers to the story was added to page 1.* Our quotation from Dasbach was accurate, but what he said was somewhat misleading.

The LP National Committee is scheduled to receive Chairman Lark's report on his investigation and to discuss what action it should take on Saturday, Aug. 25, at 12:30 p.m.

— the Editors of *Liberty*

* Curiously, Winter was unwilling to answer our inquiry about this matter. "I have no comment on this. Why don't you make up quotes on this like you do on everything else?" We were taken aback for a moment, then asked him if he could tell us of any occasion on which we had made up a quotation. He replied, "No." This seemed to us to be a strange reaction from the LP's "Communications Director," to whom the LP's Web site refers journalists with queries.

The People v. the State of Oregon

by William E. Merritt

Oregon voters amended their constitution to stop the state from stealing their land. But then the state's powerful elite took the case to court. The result: A sordid tale of corruption, bribery, and abuse of power in which the will of the people was subverted and the losing attorney was elevated to a judgeship.

It's been said that if the Bill of Rights were put to a vote of the people, it would be defeated. Last November, the citizens of Oregon had an opportunity to vote on one of the least popular aspects of the Bill of Rights: the final twelve words of the Fifth Amendment that specify "nor shall private property be taken for public use without just compensation."

For those who advocate greater government power, this "takings" clause is a serious problem because when government regulates the use of land, it plainly takes its utility and value; and the "takings" clause requires that the government pay the owner "just compensation." In recent years, as governments have begun to regulate land on a vast scale, the cost of providing that "just compensation" would be huge. So legislators have done what legislators do, and passed regulations on the cheap by ignoring the "takings" clause. And courts have done what courts do and provided elaborate rationales explaining that the Fifth Amendment doesn't mean what it says, in much the same fashion that legislatures ignored the First Amendment's prohibition of regulation of speech in the 19th and early 20th centuries and courts worked up elaborate explanations of the First Amendment not meaning what it plainly says.

So a group of Oregon citizens proposed an amendment to the state constitution that "requires state, local governments pay landowner amount of reduction in market value if law, regulation reduces property value."*

The estimated direct financial impact, as set out in the *Oregon Voters' Pamphlet*, is \$1.6 billion for the state, and \$3.8

* This description is taken from the Official 2000 General Election Online Voters' Guide. The full text of the constitutional amendment is reproduced on page 27.

billion for local governments — every year, if governments want to keep regulating at the same level. Of course, this just means that governments will have to start picking up the tab. The cost is still \$5.4 billion a year, only now it is the land-owners who have to pay.

Oregon voters took advantage of this rare opportunity to protect the Bill of Rights from legislators and the courts. The measure passed comfortably, with about 54% of the votes cast.

This didn't sit well with the politicians in power. Having lost at the ballot box, they did just what you'd expect — they filed a pair of lawsuits challenging its constitutionality. The challenges were brought by the widow of a popular former governor, along with a consortium of local governments and government officials that reads like a lobbyist's private Rolodex of movers and shakers. Because they asked for the same relief from the same defendants, the court combined the challenges into a single case before the trial.

For Christ's Sake

At the time they were brought, these challenges didn't seem like much more than the typical stunts people in power pull when democracy threatens to intrude into their prerogatives. In hindsight, they seem much worse. Once the trial court declared Measure 7 unconstitutional and his side had

won, Thomas M. Christ, the lawyer who challenged Measure 7 in court, was entitled to be paid his attorney's fees by the state. So, he sent in an affidavit setting out the details of just what he'd done. Taken along with rumors that had been circulating through the Oregon legal community about less-than-competent arguments in court, unexplained meetings between the people challenging Measure 7 and those entrusted to defend it, political payoffs, and the anti-ballot-measure bias of the lawyer heading the defense, the entries in Christ's time record suggest something went very wrong in the way the state government handled the challenge to Measure 7.

After carefully reviewing what happened, it is difficult to avoid the conclusion that the governor and various attorneys conspired to have the measure undone in the courts and, when they succeeded, the governor rewarded the deputy attorney general who botched the defense with an appointment to the Oregon Court of Appeals.

Conflict of Interest?

One of the weaknesses of Oregon's initiative system is that the duty to defend ballot measures in court falls primarily upon government officials. So when a ballot measure is enacted that limits the power of government officials, those same government officials are charged with defending the measure in the courts.

This is how Oregon Gov. John Kitzhaber found himself in the curious position of being the lead defendant in a proceeding he wanted to lose. The state is required by law to defend with vigor ballot measures once they have been passed. As chief executive of the state, Kitzhaber was thus required to defend the measure. But as the state's most powerful politician, Kitzhaber had led the campaign to defeat Measure 7, asserting that it would bankrupt the state.

On a Portland radio show, Attorney General Hardy Myers stated that he did not see any ethical problems with

Association's Disciplinary Rule 5-105(A)(1): "An 'actual conflict of interest' exists when the lawyer has a duty to contend for something on behalf of one client that the lawyer has the duty to oppose on behalf of another client."

Actually, after reviewing Christ's time records, the suggestion that the attorney general's office faced a potential conflict of interest seems like a major understatement. Nine days after Measure 7 passed, Gov. Kitzhaber kicked off the very suit in which he was to be named as a defendant by having his staff attorney, Chip Lazenby, call Tom Christ to set up a meeting.

You can see how strange this looks. Defendants don't ordinarily initiate things — especially when they don't yet have any reason to believe they are going to be defendants.

Having lost at the ballot box, the politicians did just what you'd expect — they filed a pair of lawsuits challenging it in court.

In explanation, Lazenby said that he called Christ because the governor needed to know how the Measure 7 challenge was going to be handled in order to begin working on a legislative response.

Although this may explain the initial contact — assuming Lazenby had some way of knowing that a legal challenge was going to be filed and that Christ would be the lawyer filing it — it does not address the purpose of the meeting. At the time, Christ had not begun preparing his case — which meant he couldn't have had anything to tell the governor. And a two-and-a-half-hour meeting does not sound like the kind of formal get-together in which a lawyer lays out his position. What it sounds like is a strategy conference in which the participants take off their jackets, kick back, and work out how to solve a mutual problem.

When the meeting was over, Christ returned to his office and began working on the complaint. Again, this makes it look very much like he, Lazenby, and the governor all participated in deciding how the complaint was to be framed. And once the meeting was over, Christ rushed back to his office filled with fire and vinegar and missionary zeal to prosecute the case.

Three days later, on Nov. 20, Lazenby called Christ a second time — to discuss "TIMING OF SUIT AND VENUE," as Christ's time sheet puts it. Again, this is a highly unusual, if not unheard-of, thing for a plaintiff's attorney to discuss with the defense. Again, this suggests the two were collaborating on a mutually agreeable strategy for handling the challenge to Measure 7.

Fox in a Hen House

Of course, the governor isn't expected to actually show up in court and defend something like Measure 7 himself. In the first place, he wouldn't be very good at it. He's a doctor, after all, not a lawyer. In the second place, he's got a perfectly good attorney general's office to do that for him. In the case of Measure 7, the defense was personally conducted by Deputy Attorney General David Schuman.

It is difficult to avoid the conclusion that the governor and various attorneys conspired to have the measure undone in the courts, and when they succeeded, the governor rewarded the deputy attorney general who botched the defense with an appointment to the Oregon Court of Appeals.

defending Measure 7. When I asked him to walk me through his reasoning, he told me that the Measure 7 scenario is typical of situations in which his office is called upon to defend a ballot measure. Kristen Grainger, spokeswoman for the attorney general's office, elaborated a bit by saying that whatever the governor may personally feel on the matter is irrelevant because "the state is the Department of Justice's only client" and "there is no conflict."

But the governor is the named defendant when a ballot measure is challenged and his presence has to be accounted for. Together, these facts appear to create a conflict of interest for the lawyers at the attorney general's office. Under the Bar

The fact that Schuman personally defended a ballot measure was somewhat unusual. As deputy attorney general, he was responsible for managing, coordinating, and overseeing all the legal work of the department's 200 lawyers. Ordinarily, a court appearance would have been handled by one of the many fine career litigators in his shop. Moreover, Schuman's expertise is not in litigation at all, but in theory. Prior to coming to the attorney general's office, he was an associate professor of law at the University of Oregon. As such, he had well-formed opinions on many legal issues. Among those were his ideas about ballot measures in general. He is on record as opposing the entire initiative process. In 1994, he wrote in the *Temple Law Review* that:

Today the most obvious use of the initiative is to disempower, to marginalize, to create an economic and political elite, be it through term limits which restrict voters' options, workfare programs, anti-homosexual amendments . . .

He used the article to express his belief that the U. S. Supreme Court should outlaw the initiative system entirely on the grounds that it interferes with the "republican form of government" guaranteed by the Constitution. If you are inclined to have thoughts about foxes in henhouses, Schuman is the king fox of our time, let loose among the 750,000 chickens who voted for Measure 7. At the very least, David Schuman doesn't sound like the kind of guy you'd want to defend an initiative from legal attack.

Had Schuman been inclined to bag the defense of Measure 7, the governor had the power to encourage him.

The theory on this one was that, because the state's minions had forgotten to campaign vigorously enough against Measure 7 to defeat it, we citizens didn't really know what we were voting for.

On Nov. 7, 2000, Oregonians didn't just pass Ballot Measure 7. They voted on all sorts of things, including whom they wanted to fill a vacancy on the Oregon Supreme Court. The Supreme Court job went to Judge Paul DeMuniz who had, until then, served on the Court of Appeals. This meant that during the entire time Schuman was conducting his defense of Measure 7, the governor was waiting to fill a vacancy on the Oregon Court of Appeals.

The Best Prosecution Is a Bad Defense

In light of all this, it's interesting to look at how Schuman actually handled the defense. The initial hearing did not concern the constitutionality of Measure 7 but whether plaintiffs should be granted a preliminary injunction to prevent the secretary of state from certifying the votes on Measure 7 and the governor from proclaiming the results. According to Kelly Clark, an experienced Portland trial lawyer, any attorney asking for a preliminary injunction must show the court that his clients (1) will be irreparably harmed if the injunction isn't issued and (2) are likely to prevail at trial on the underlying issue. This means that the arguments defense lawyers

make are equally predictable: that plaintiffs won't be harmed and that they aren't likely to prevail at trial. In the case of the Measure 7 defense, these arguments should have been easy to make.

The irreparable harm argument is as close to a slam dunk as any attorney ever gets. All that will happen — all that could possibly happen under Measure 7 — is that a government body will have to pay somebody some money. Paying people money is what Measure 7 is all about. But, since

Not only did Schuman give away the preliminary injunction, he made it impossible for his office to defend the challenge to the constitutionality of the measure.

injunctions can only be issued to prevent something from happening that *can't* be fixed with money, there simply was no basis to issue one. Past that, it's hard to see how any government body could possibly be damaged by having to obey the Constitution.

The likelihood of prevailing at trial is a closer question. Exactly how far the law controlling the case goes is still up in the air. It may well be that, given favorable rulings at both the appellate level and at the Oregon Supreme Court, plaintiffs would have prevailed. But it may well have been that they wouldn't have, and it's up to plaintiffs to show that they would have. At the very least, this was an obvious — if not mandatory — point for the defense to raise.

So, these being the arguments, how did they fare? It turns out they didn't fare at all because Schuman never raised them.

Not only did he fail to raise the question of irreparable harm, he did the opposite. He briefed the court that, "It cannot be disputed that the implementation of Measure 7 will have immediate, substantial effects in Oregon that will be difficult, if not impossible, to undo. . . . Measure 7 . . . would immediately cause far-reaching and probably irremediable consequences in the State of Oregon." This remarkable statement was treated as a concession by the plaintiff's attorney throughout all subsequent hearings, and was referred to as such by the court.

As to the likelihood of winning at trial, Schuman informed the judge that the plaintiffs had a "moderate to high" chance of prevailing on the merits. This had two immediate and devastating consequences in the case.

The first, of course, is that it handed the preliminary injunction to the plaintiffs. The second was much worse. With the de-fense on record as believing that plaintiffs would prevail at the trial on the unconstitutionality of Measure 7, the attorney general could no longer argue they wouldn't. In other words, not only did Schuman give away the preliminary injunction, he made it impossible for his office to defend the challenge to the constitutionality of the measure.

As Donald Joe Willis, an attorney for a pair of private landowners who tried to join in the defense of Measure 7, said in a petition he later filed with the Oregon Supreme Court, "it is clear from these proceedings that the Attorney

General is not going to provide any substantive defense of Ballot Measure 7..."

When I asked Tom Christ about Schuman's unusual defense, Christ, whose clients had the most to gain if Schuman lost, claimed that it did not make any difference how Schuman defended the preliminary injunction because the fact that the plaintiffs prevailed at trial proved the injunction was proper.

This is an odd argument.

In the first place, it suggests that an attorney is, somehow, relieved of his duty to zealously represent a client as long as he loses the case in the end.

More important, it ignores the obstacle that losing the injunction put in the way of winning the underlying case. Since injunctions deprive real people of real rights, before he issues one, a judge has to satisfy himself that plaintiffs really are likely to win. Then, having issued the injunction, the judge is committed to that view of the case and it's difficult for him to rule defendants right — and himself wrong — later.

There's a third argument Schuman did not raise — and it's important because Judge Lipscomb gave every appearance he would have taken it very seriously. Schuman should have questioned what difference stopping the votes from being certified would have made. Under the Oregon Constitution, ballot measures go into effect 30 days after being passed by the voters. The Constitution doesn't say word one about having to wait around for votes to be certified — which means it's quite possible that Ballot Measure 7 has been in effect for months, and the injunction stopping the votes from being counted didn't mean anything — which would be embarrassing. Something courts try never to do is issue meaningless orders. That kind of thing undermines their authority.

A fair reading of the transcript of the preliminary-injunction hearing shows Judge Lipscomb fairly crying out to

In the end, as he almost had to do in the circumstances, Judge Lipscomb ruled Measure 7 unconstitutional. A few weeks later, Gov. Kitzhaber appointed David Schuman to the vacant seat on the Oregon Court of Appeals.

the deputy attorney general to raise this argument. Time after time he asks about the propriety of issuing an injunction. Time after time David Schuman fails to suggest there is a problem. At the conclusion of the hearing, Judge Lipscomb is still concerned about this question and refuses to give any indication of how he plans to rule on the injunction. Instead, he tells the lawyers he will issue a ruling six days later.

Shady Deals

The day after the hearing — five days before the lawyers had any way to know how Judge Lipscomb would rule — Christ made the strangest entry of all in his time records: "TELEPHONE CALL FROM STATE'S ATTORNEY RE FORM OF PROPOSED ORDER GRANTING MOTION

(TWO CALLS)."

Forms of proposed orders are what lawyers present a judge once the judge rules in their favor. You cannot write a proposed order in advance when you cannot predict the terms of a ruling. Yet Christ, *and his counterpart in the attorney general's office*, discussed this very thing almost a week before Judge Lipscomb ruled on the motion.

To reiterate: It looks very much as if someone at the A.G.'s office called Christ to discuss what to put in the order granting the motion the attorney general was supposed to

You'd think after something like this Oregon would be flooded with federal prosecutors, local district attorneys trying to make names for themselves, and Dan Rather in his tailored, Great-White-Hunter khakis. But none has shown up, yet.

oppose — at a time neither could have known what the order would be. At the very least, both sides were so confident the judge would rule in favor of the plaintiffs — and that they knew the exact terms of that ruling — that they were already collaborating on the language of the order. This course of action seems absolutely inexplicable to anybody familiar with the way hearings are conducted.

In the end, as he almost had to do in the circumstances, Judge Lipscomb ruled Measure 7 unconstitutional. A few weeks later, Gov. Kitzhaber appointed David Schuman to the vacant seat on the Oregon Court of Appeals.

Now you'd think after something like this Oregon would be flooded with federal prosecutors, local district attorneys trying to make names for themselves, and Dan Rather in his tailored, Great-White-Hunter khakis. But none of these characters has shown up, yet. The reason is pretty clear. This is a scandal that threatens the people sitting on the lid. And they have been piling on harder and harder to keep their goings-on away from public notice. And they've done it pretty well, so far.

Until the second week of July, the only thing to come out of this whole, sorry swindle was a complaint for unethical conduct filed with the Oregon State Bar against Chip Lazenby, Tom Christ, and David Schuman. The governor is immune to bar complaints for the same reason he would never personally defend a ballot measure in court. He's a doctor, not a lawyer.

Still, he seems to take the charges seriously enough to trot out the usual dismissive slander politicians always trot out when they are found with their hands under somebody else's wife's skirt. As Chip Lazenby explained to me, the whole bar-complaint issue is nothing more than "one of those cynical political smears that makes it so hard for people of good will to govern these days." The part Lazenby did not explain to me was why the man who filed the bar complaint, Bob Swift — a lawyer of almost 40 years standing and a registered Democrat — would want to make it hard for good people of his own party to govern.

None of us outsiders can tell at this point what all of this means. To me, there's so much quacking and waddling and snuffling of bills through the water that there's got to be a duck around, somewhere. But I don't know for sure. And I won't know until somebody finds out what was discussed in the private meeting between Christ, Lazenby, and the governor. And what was really going on in Schuman's office when the defense was going down? None of us are going to have a handle on that until somebody comes in armed with a subpoena and the will to use it.

The Bar Association can get subpoenas for just this sort of thing. But, so far, they haven't shown much will. Which, when you think about it, is just what you'd expect from such an establishment operation.

A Compromising Solution

Meanwhile, the state legislature has swung into ponderous, comical motion in a way that only a state could aspire to. The first thing they did was to try to work out a legislative "compromise" to the Measure 7 "mess." The theory on this one was that, because the state's minions had forgotten to campaign vigorously enough against Measure 7 to defeat it, we citizens didn't really know what we were voting for. To protect us from the consequences of our ignorance, the legislature proposed to work out a "compromise" for us.

What nobody has explained is, in a situation where the voters have spoken, what is there to compromise? More to the point, who are the voters supposed to compromise with? Who is on the other side with other interests that the voters have to take into consideration? It used to be we had to compromise with those inbred Georges and their gaggle of powdered-wig fops who tried to call our shots from London — until the better angels of our nature rose up and got rid of them. Still, one supposes, present-day government people think the voters ought to compromise with the government itself to get what they want. Anybody who believes that . . . well, I've got a left-over gulag I can let you into for cheap.

The second way the legislature tried to deal with the problem was to try to slip by, on the closing day of the session, an obviously pre-arranged deal to make it much harder to get initiatives on the ballot in the first place.

Both of these snatch-backs would have been a lot scarier if it hadn't been a bunch of legislators doing the snatching. But one of the glories of our system is that legislators run the legislature, and, being legislators, they're too busy meddling to get anything done on time. In this case they became so distracted over whether Oregonians should be able to sell chickens to ruffians in other places who enjoy cockfighting, that they lost track of time and the session expired. Now with the doors to the capitol slammed shut, the rest of us are reasonably safe in our persons and property for another year and a half.

This may mean that by the time they come back into session in January of 2003, President Bush's new federal prosecutor will have come into office, Dan Rather will be sniffing around the state capitol building, Oregon will have a new governor, the new governor will have a new staff attorney, the attorney general will have a new deputy, the Court of Appeals will have a suddenly vacated seat for the new governor to fill and, under minimum sentencing guidelines, the federal corrections system will have four new residents for a

very long time to come, the rest of the government will confess their sins and retire to monasteries, and sweet reason will descend upon the land.

One can always hope.

Appendix: Text of Measure 7

Be it enacted by the People of the State of Oregon: the Constitution of the State of Oregon is amended by adding the following subsections to Section 18 of Article I:

(a) If the state, a political subdivision of the state, or a local government passes or enforces a regulation that restricts the use of private real property, and the restriction has the effect of reducing the value of a property upon which the restriction is imposed; the property owner shall be paid just compensation equal to the reduction in the fair market value of the property.

(b) For purposes of this section, adoption or enforcement of historically and commonly recognized nuisance laws shall not be deemed to have caused a reduction in the value of a property. The phrase "historically and commonly recognized nuisance laws" shall be narrowly construed in favor of a finding that just compensation is required under this section.

(c) A regulating entity may impose, to the minimum extent required, a regulation to implement a requirement of federal law without payment of compensation under this section. Nothing in this 2000 Amendment shall require compensation due to a government regulation prohibiting the use of a property for the purpose of selling pornography, performing nude dancing, selling alcoholic beverages or other controlled substances, or operating a casino or gaming parlor.

(d) Compensation shall be due the property owner if the regulation was adopted, first enforced or applied after the current owner of the property became the owner, and continues to apply to the property 90 days after the owner applies for compensation under this section.

(e) Definitions: For purposes of this section, "regulation" shall include any law, rule, ordinance, resolution, goal, or other enforceable enactment of government; "real property" shall include any structure built or sited on the property, aggregate and other removable minerals, and any forest product or other crop grown on the property; "reduction in the fair market value" shall mean the difference in the fair market value of the property before and after application of the regulation, and shall include the net cost to the landowner of an affirmative obligation to protect, provide, or preserve wildlife habitat, natural areas, wetlands, ecosystems, scenery, open space, historical, archaeological or cultural resources, or low income housing; and "just compensation" shall include, if a claim for compensation is denied or not fully paid within 90 days of filing, reasonable attorney fees and expenses necessary to collect the compensation.

(f) If any phrase, clause, or part of this section is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and parts shall remain in full force and effect.

Injustice Compounded

by Edward Feser

Today arguments for reparations look a lot like “the mirage of social justice” exposed by Hayek a generation ago. And from the looks of things, it may take just as long for it to die out.

Conservative activist David Horowitz has gained notoriety in recent months for his campaign against “reparations” for slavery. The claim of reparations advocates is that the United States government owes black Americans trillions of dollars for the slavery of their ancestors. Horowitz responded to this claim in an advertisement he placed, or attempted to place, in college newspapers around the country, “Ten Reasons Why Reparations for Slavery Is a Bad Idea — And Racist Too.” Some of his arguments are that white Americans alone were not responsible for slavery — there were also Arabs, black Africans, and even some black Americans who traded in slaves; that the racial preferences and trillions of dollars in transfer payments that came in the wake of the Great Society already constitute all the reparations anyone could reasonably demand; and that the movement for reparations can only serve to inflame racial tensions and foster a self-destructive mentality of victimization among blacks.*

Horowitz’s campaign has been controversial — at least among campus radicals and a few civil rights leaders — but it should not have been. His arguments are compelling. If anything, they do not go far enough; Horowitz has made a powerful case, but he has not exposed just how incoherent and dangerous the reparationist position is. The demand for reparations is a demand for social justice, and its inherent theoretical and practical problems can best be understood in light of F.A. Hayek’s classic critique *The Mirage of Social Justice*. The notion of reparations might seem to some to be an extension of current redistributive policies; even a couple of conservatives, Charles Krauthammer and Jonah Goldberg, have toyed with the idea of a one-time reparations payment. But Hayekian considerations show reparationism to be

utterly totalitarian in its implications.

To understand how this is so, we can begin by briefly summarizing Hayek’s analysis of social justice. Hayek contended that the very idea of social justice is meaningless. First, the notion that the distribution of wealth in a market economy is either just or unjust presupposes that there is some agency that determines that distribution. But justice and injustice are attributes of individual conduct, the overall distribution of wealth is determined by these market forces, not by the government and certainly not by society. The overall distribution of wealth, however equal or unequal, is neither just nor unjust, and there are no grounds of justice for redistributing incomes to fit some desired pattern.

Second, even if wealth distribution could be just or unjust, government could not possibly redistribute wealth according to some principle of justice. There are no agreed upon criteria of social justice, nor is there any way for government to acquire the knowledge of individual circumstances that such distribution would entail.

Finally, any attempt by government to realize social justice will inevitably become totalitarian. For outcomes to be plausibly attributable to its actions, the state will have to increase its control over the economy; and since these interventions will lead to unsatisfactory results, there will be an inclination for the state to increase its control even further. The lack of agreement on criteria of justice will require the state to impose some criteria on all citizens, and the difficulty of acquiring knowledge about individual circumstances will

*The full text of the ad, and Horowitz’s essays on the subject of reparations, are available on-line at www.frontpagemag.com.

require it to probe further and further into citizens' lives. And since individuals are unequal in talents, abilities, and motivation, they will have to be treated unequally for the results of their actions to be fitted into the desired pattern of distribution. The result of all this will be a progressive deterioration of the rule of law and a degeneration of politics into a war of special interests vying to game the system in their favor.

Such, in a nutshell, is Hayek's account of the problems inherent in social justice. Every one of these problems would also afflict a scheme for making reparations for slavery. Consider first that, unlike in the cases of reparations paid to victims of the Nazi genocide and to Japanese-Americans interned during World War II, there is no single agency responsible for slavery. While the U.S. government did protect the "property rights" of slaveholders, its role in slavery was largely passive. American slavery was the fault of innumerable individual slave traders, slaveholders, and the like. This fact is obscured by reparations advocates, who typically speak, as Randall Robinson does in the subtitle of his book *The Debt: What America Owes to Blacks*, in muddled abstractions. It makes no sense to speak of America either owing or not owing blacks (or anyone else) anything; what we ought to speak of is what particular slaveholders owed particular slaves (or what the descendants of those slaveholders owe the descendants of those slaves). Horowitz and others have made the point that there are whites whose ancestors had nothing to do with slavery and blacks whose ancestors came to America after the end of slavery. But the correct way to think about these matters is not in terms of a subset of whites collectively owing something to a subset of blacks, but in terms of what individual whites owe to individual blacks. Central to the cause of reparations is a dangerously collectivist conception of responsibility, one at odds with a free society. Reparationists use abstractions like "white America,"

If Smith is a slaveholder and Jones his slave, it is fairly easy to determine who owes what to whom. But after nearly a century and a half have passed since Smith wronged Jones, it is not at all clear that there's anyone left who owes anything to anyone else.

"black America," and "victims of slavery" as if they were quasi-personal entities who owe or are owed something, but this merely obfuscates the real nature of the individual offenses at issue.

The next problem with reparations is that it is impossible to determine which whites owe what to which blacks. If Smith is a slaveholder and Jones his slave, it is fairly easy to determine who owes what to whom. But after nearly a century and a half have passed since Smith wronged Jones, it is not at all clear that there's anyone left who owes anything to anyone else. Smith may have many descendants, and those descendants might have profited from his ill-gotten gains; but then, those descendants are also descended from many other ancestors who had nothing to do with the enslavement

of anyone, and those other ancestors also passed on certain gains. So which part of a living individual's wealth was won by an ancestor's slaves? It is impossible to tell. It is also impossible to tell how different the lot of Jones' descendants would be had Jones not been enslaved. For their lots also depend on what benefits or harms they accrued from having been descended from others who were not enslaved by

Reparations would clearly require the state to take resources from entirely innocent citizens and give them to others who are not, by any reasonable standard, entitled to them is not "roughly just" but thoroughly and blatantly unjust.

Smith, and it depends on their own actions and other present circumstances that have nothing to do with what Smith did to Jones. So, which portion of Jones' descendants' present situations are attributable to Jones' having been enslaved by Smith? Settling such questions is necessary to make a claim against Smith's descendants. Just asserting that a living person is descended from a slave won't suffice, we need to know who owes him how much. And the problem is only compounded by the fact that there are many blacks who have prospered even though they had slaves as ancestors, and that there are many others whose forebears were victims of Hitler, Stalin, Mao, Pol Pot, or Castro yet whose current situations are as good as those of other persons whose ancestors were more fortunate. The connection between a person's present situation and the suffering of his ancestors is by no means clear.

So we have another Hayekian problem with reparations: Just as government cannot have the knowledge to apply a principle of just distribution, neither can it have the knowledge to determine who pays reparations, how much they pay, and to whom. And this brings us to the last and most serious Hayekian problem with any reparations scheme, which is that carrying it out can only be done in a way that is contrary to the rule of law. Since there is no way to determine how much each individual owes to whom, government would have to determine who pays reparations and who receives them on purely political grounds. It would mean imposing onto the entire citizenry the sort of intimidation and extortion that was pioneered by certain civil rights leaders against hapless corporations whose board members they accused of boorish language or of failure to fill racial quotas.

Nor is it likely that reparations would end at a one-time payment, however large. Among the justifications given for reparations is that the African-American population has high rates of such social pathologies as illegitimacy and incarceration and that these are lingering effects of slavery. This sort of consideration would likely provide the main basis for determining of the amount of reparations to be paid, so as long as those pathologies continue there would be precedent for further reparations.

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An Encounter with Harry Browne

by R. W. Bradford

The Libertarian Party's two-time presidential nominee meets an old friend and political ally, who has lately been less supportive of his political efforts.

Early this spring, I was invited to speak at this summer's Eris Society meeting. The topic of my talk, as I understood it, was "The State of the Libertarian Movement." The Eris Society is an informal group of entrepreneurs, investors, scientists and writers that meets every year in Aspen in early August. I've only missed a couple Eris Society meetings since 1983, and have spoken at them several times, so naturally I accepted and began making an outline and notes for my talk.

A couple of months later, the conference organizers sent out a flyer on the conference, which I didn't bother to read. It listed the topic of my talk as "Why the Libertarian Party Should Be Allowed to Fail." But one person who did read it was, apparently, Harry Browne. In any event, he called the conference organizer and asked to be given an opportunity to speak on "A Huge, Untapped Market for Liberty," which, I would eventually discover, was not really his topic.

Another person who read it was my friend Tim Peterson, an Eris regular. A week before the conference, he called and informed me that he had forwarded the schedule to LP headquarters, where, he said, it was decided that someone should be dispatched to the meeting to counter what I might say. It was suggested that Browne could take care of anything I might say, but party leadership concluded that Browne's agenda might not be their own, so someone else should be dispatched. There followed some you-do-it-no-you-do-it discussion, in which first National Chair Jim Lark would go, then Political Director Ron Crickenberger, and finally National Director Steve Dasbach.

You might think I'd be flattered by all this: the idea that party leadership thought that both the party's chief executive and its presidential nominee were needed to counter what I might say. But my reaction was shock and surprise: So far as I knew, I was speaking on the state of the libertarian movement, not on the LP at all. And I do not believe that the "Libertarian Party Should Be Allowed to Fail." I have been a loyal party activist for 29 years and I am not about to abandon it now.

I protested to the conference organizers; they changed the topic of my talk. But as I drove to Colorado, I got to thinking. My fellow Erisians were coming to Aspen expecting me to criticize the LP, and the LP had taken that to be so serious a threat that it had spent substantial resources to dispatch Dasbach to counter me, even after Browne had apparently invited himself for the same reason.

It occurred to me that while I could not in good conscience speak on "Why the Libertarian Party Should Be Allowed to Fail," I could speak on "Why the LP Should Be Allowed to Succeed." So I began to rework my notes so my talk would focus on this subject.

All three talks on the LP were scheduled for the morning of the final day of the conference, so I had time to prepare for my new topic. I also had time to have dinner with Harry and other friends on Friday night.

I Have My Say

At 10:45 the next morning, I gave my talk. After briefly explaining the chain of events that led me to speak on the Libertarian Party, I stated my thesis: The reason that the LP had never succeeded as a political party is that it had never tried to be an effective political party. "During its 30 years the LP has never really tried to be an effective political party," I said. "Real political parties focus on winning elections and implementing policy. They learn which strategies, which tactics, and which tools actually win votes." The LP has done none of these things and has learned nothing about how to accomplish them. The only skills it has developed are how to raise money from libertarians and how to hire firms

to collect the signatures needed to get the party on the ballot. The LP is overwhelmingly oriented toward fundraising. Even the analyses of election returns it offers are really fundraisers. Both the Browne campaign and the LP itself have blamed their abysmal showings by citing the "why-waste-your-vote" argument, without offering any evidence that this explanation holds water. In fact, three different empirical analyses of the 2000 election and one of the 1996 election undermine this widespread, though comforting, belief. By blaming their failure on voters rather than on anything they did or failed to do, they make it easier to continue to raise funds.

I digressed about how the Browne campaign in 1996 had spent only \$8,840.50 to purchase advertising, according to its reports to the Federal Election Commission, and how a care-

According to its reports to the FEC, the 1996 Browne campaign did not spend a single cent buying television time (its entire expenditure of \$8,840.50 went for radio advertising).

ful examination of the FEC reports for the 2000 Browne campaign revealed it had spent less than \$120,000 to buy ads, despite its repeated claims to the contrary, a fact confirmed by his press secretary. I pointed out that even if LP expenditures were included, the campaign had spent only a bit less than \$360,000, or about 6% of their total funds, to purchase advertising.

I recapitulated how the party's much-heralded Project Archimedes, ostensibly designed to recruit 200,000 new members, could not possibly have achieved its stated goal, and that party leadership had to have been aware of it. Archimedes was misrepresented by the party leaders — even to members of the LNC — to maximize fundraising.

I concluded that the party needed to refocus its goals. It needed to discover what issues win votes, what techniques win votes, and what strategies win votes. It had to do market testing and serious analysis of election returns. It needed to focus on its stated goal.

I suggested that the LP was well on its way to becoming a church rather than a political party, that its principal activities were fundraising, supporting a well-paid bureaucracy, and providing a place where libertarians can meet their fellows and bemoan the sinful state of the world. I closed with a very few words about the Willis-Browne conspiracy that is currently embroiling the party.

Harry Strikes Back

Harry Browne was up next. He opened, like the professionally trained public speaker that he is, with the usual after-dinner-speech jokes intended to loosen up an audience. But he quickly got on to his real subject, which turned out not to be "A Huge, Untapped Market for Liberty," but rather "What Was Wrong With What Bill Bradford Said," with a leavening of passages from his standard stump speech.

Leaving aside the stump-speech portions, he addressed five issues:

The unimportance of actually trying to get votes. "I thought we were going to get a million votes," he admitted, "and I wanted to get a million votes. I thought we were going to beat Pat Buchanan and I wanted to beat Pat Buchanan because he had about 50 times the press coverage that we had and yet we were running neck-and-neck with him in the polls throughout the entire campaign and I really thought that come election day more Buchanan supporters would give in and vote for Bush at the last minute than Browne supporters or Libertarian voters might do. It didn't turn out that way. We almost beat Buchanan, came close but didn't do it, and we were far short of the million votes that I had hoped and wanted to get.

"But I also realized that to a certain extent these goals were a case of personal vanity," he added, "I wanted to achieve those things. I wanted to be able to say that we had done that. But it wouldn't have made a difference to the future of the country if either one of those goals had been reached. . . . It's important to realize, contrary to what Bill said, that the number of votes you get at the national level is really meaningless. We are not going to win the presidency under the present system. And if we are not going to win the presidency, then we have to realize that the number of votes at the presidential level is not going to be the object. Not the next time, the time after that, not until the system itself changes. Most people don't realize what a third party is up against. We are faced with a two-party system."

The amount his campaign had spent on advertising. "We spent far more on advertising than Bill let on," he said. "But the advertising was not that important because we knew from the outset that we weren't going to be able to do as much advertising as we wanted to do. . . . All that's important is 'are you happy with the campaign?' You're not happy with the campaign? Fine. That's your opinion. Other people are happy with the campaign the way it was run and those people are satisfied."

The desirability of establishing a libertarian church. "It is so much better to deal with libertarians than non-libertarians."

Archimedes was misrepresented by party leaders — even to members of the LNC — to maximize fundraising.

Wouldn't you rather do business, for instance, with [here he listed several individuals in the audience], than with, say, George Soros or David Rockefeller, no matter how successful they seem to be? Wouldn't you rather have as friends people like [here he listed some other people in the audience] rather than most of the people who live on your block? Wouldn't you rather be at a gathering like this rather than at the Rotary Club or the Chamber of Commerce or whatever it is? Really. We take it for granted to a certain extent, but the fact of the matter is, life is easier in these circumstances because we don't have to explain ourselves. We don't have to cope with the most mundane ideas about life because the people we're around, the people we're dealing with, look at life

somewhat realistically, as we do. I don't mean by that that every libertarian is a paragon of virtue or that every libertarian is an intelligent, really exciting person to be with. No, there are some even sleazy people that go around bearing the label of 'libertarian.'

"The fact of the matter is that your chances are far greater of meeting the kind of people you want to be with when you're among libertarians," he observed. "Bill Bradford spoke of the libertarian church very deprecatingly, if there is such a word. I would speak of it very enthusiastically. I'm glad to belong to this church. If you've got somebody in the hospital you want me to visit, just ask. But really, it is that church aspect of the libertarian movement that is such a wonderful part about it."

His new foundation was a good idea. "Its mission will be to produce libertarian television ads and run them on national television . . . ads showing people that it doesn't have to be this way, that there is a better way to live. We will run ads on the gun issue, for instance, showing people that guns save lives far more than they cost lives. Ads on the drug issue showing that while drugs can ruin a family, drug laws can ruin a nation. We'll run ads on various kinds of issues, one at a time. Clusters of ads that deal with a single particular issue. It's a very exciting project to me because of the fact that we are not going to be running these ads on CNN and FOX News channel, we are going to be running these ads, we hope, eventually on ESPN, MTV, Ally McBeal, Seinfeld reruns, places like this, where people are not hardened in their views but sitting on the couch watching this and their

I really didn't want to confront my old friend, especially when he is embroiled in a nasty scandal. But I was a bit annoyed that he had called me a liar.

mind may be far, far more open to a better life that might be available to them."

The possibility he might teach some courses. "I'm considering the possibility of starting some courses that will explain libertarian ideas. Not just from a political standpoint but how libertarian ideas can help you to be more successful in life, how libertarian ideas can help you to show people how their self-interest might be furthered by what you want."

Time for Questions

Then he called for questions. I really didn't want to confront my old friend, especially when he is embroiled in a nasty scandal. But I was a bit annoyed that he had, in effect, called me a liar. I raised my hand. When he called on me, I commented briefly on what he'd said about a libertarian church. "My objection wasn't to there being a libertarian church," I pointed out, "it was to there being a libertarian church that presents itself as a political party."

Then I went on to more important business. "You said that you spent far more for advertising than I let on. I have [here on my computer] a complete list of all the checks that your campaign wrote, the dates, the stated purposes. I interviewed your press spokesman extensively on this subject. If

anyone wants to look at it, including you, right now I invite you to do so. I've got the data. You've got an assertion."

He responded: "I understand that, Bill," he said. "And I understand also all the things that you have written, all the things that you have imagined, all the things that you have invented, all the things that you have decided must be the way it is even though you have no ability to know those things and I understand that any time you make a statement that somebody calls you on you say 'Well, I didn't mean it literally' and I also understand that you have these unimpeachable anonymous sources that so often provide you things and I also understand that you want to be the William Randolph Hearst of the libertarian movement, stirring up controversy wherever possible and perhaps starting another Spanish-American War if you're fortunate enough."

I challenged him to produce so much as "a scintilla of evidence" to support any one of these charges, reiterating that "If you've got any evidence for any of those statements, present it to me."

He didn't produce any evidence on any of the accusations he had just made, but he promised to produce evidence against some other alleged wrongdoing on my part. "On my Web site in another couple of weeks I will have a report on the articles that you wrote last year about the Libertarian Party, about the campaign and so on, pointing out numerous errors that you made in reporting all of these issues." He went on to describe how he'd sent me an e-mail challenging some of what I'd said and that I hadn't responded to it. I allowed that, yes, he'd sent me e-mails complaining about coverage of his campaign in *Liberty's* pages — he even called one of his ghostwriters a liar for his reporting on the 1998 LP convention — and that I'd be happy to discuss any such claims in public but that I didn't think responding point-by-point to his comments in private e-mails had much point.

Then I tried to get to a more important point: his claim that he had spent more on advertising than his press secretary or his reports to the FEC claim. "You didn't offer any evidence for your assertions," I said. "I mean it's not enough to say that 'you shouldn't look at the numbers.' The numbers matter. The facts matter. The evidence matters."

"The numbers matter to you," he said. "And you are entitled to your own opinion about them. But you're not entitled to your own set of facts."

"Well," I responded, "are the statements that your campaign made to the FEC [Federal Election Commission] true or false?"

"Those statements are true, but they are meaningless in many ways. The FEC asked for reports in a certain way and you file those reports and after the '96 campaign the FEC complained, I believe, about some of the ways that we had provided information. So in 2000 we provided it in a way that we thought the FEC would be satisfied with. But the important thing in all of this is that *it is not a question of how we spend our money*. . . All that's important is 'are you happy with the campaign?'"

Then he got a little defensive. "We gave more financial information," he went on. "We gave more activity information on our hopes, our dreams, our goals, our successes, our failures than any presidential campaign in the history of the party. We provided all of this information. I had a daily journal that people could read. 18,000 people on the Internet

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were able to access this information and get it from us all the time."

I pointed out that my other source of information was his own press spokesman . . . but it was quickly becoming plain that the audience did not want us to go on endlessly, so I didn't pursue matters further.

A Conflict of Visions

Even so, I found what Browne had said to be, well, unsettling. His belief that votes don't matter and that the party and its campaigns should focus only on fundraising and recruit-

I challenged him to produce so much as "a scintilla of evidence" to support any one of his charges against me. Harry responded that he'd have something up on his Web site "in a couple of weeks."

ment of members seems to me a good way for party professionals to earn very good livings, but a very poor way to influence politics. Since December 1996, using Browne's approach, party membership has grown at a rate of 6.19% per year. At this rate, to reach its goal of 200,000 members, so it will be able to raise the \$50 million Browne figures is needed to run a competitive race, the LP will be able to be competitive for the presidential race in 2036 — except for the fact that by then the U.S. population will have presumably grown considerably, making the total membership needed to be competitive even higher.

What's troubling about this strategy, which has also been advocated by past Party Chair David Bergland and, with a few caveats, by National Director Dasbach, is not that it takes so long. If we could be confident that it would work, many libertarians (including me) would be happy to pursue it. The problem is that it requires all the resources of the Libertarian Party for another 35 years. That means 35 years of LP activists and members donating an average of \$150 per year to the party, 35 years of running presidential campaigns without trying to get votes, 35 years of devoting all our political resources to a plan that has no real assurance of success.

Browne's claims about advertising trouble me also, and not just because he expects party supporters to accept his view that the figures his campaign provided to the FEC under penalty of perjury are not, in his belief, accurate — and that we cannot trust the figures that his own press secretary provides. Television is the one way that has been proven to get votes. The 1996 Browne campaign spent not a single cent buying television time (it spent its entire \$8,840.50 on radio time). And the 2000 Browne campaign spent less than \$120,000 on buying time. If the LP is trying to win votes — which it must do if it is ever to become a force in American politics — it has to spend more than trivial sums on television advertising.

In the original business plan for this magazine, I suggested that one of the topics we'd like to discuss in our pages is the creation of a libertarian church. Doing so has a lot going for it. Churches have extraordinary latitude in how they spend their tax-exempt dollars, and Americans are gen-

erally favorably disposed toward churches. This contrasts with the situation of political parties, which are severely restricted in how they can spend the money they raise, and donations to which are not tax-deductible.

But Browne went further, coming preciously close to saying that libertarians should try to deal exclusively with other libertarians. This seems to me to be a mistake, for many reasons. Unlike Browne, I spent a good many years as a businessman, and I did a great deal of business with non-libertarians. I cannot say that they were in general any less honorable or pleasant to deal with than libertarians have been. Further, if we are going to deal mostly or exclusively with libertarians, we are likely to become rather culturally isolated. Certainly, doing outreach would be much more difficult.

And of course there is the question of whether we want to accept one critical characteristic of religions: their reliance on faith. Most libertarians, whether they are religious or not, believe that their political beliefs are rationally derived. It is not a coincidence that the two leading libertarian magazines are called *Reason* and *Liberty*. There has been a tendency of some libertarian intellectuals and leaders to behave like they are running a cult and to require that their followers accept every jot and tittle of their beliefs, sometimes on faith, and excommunicate those who do not. I'm speaking of Ayn Rand and Murray Rothbard, but there are signs of this elsewhere. Indeed, I saw some of those signs in Browne's talk: He expected listeners to believe his mere assertion that his campaign had spent more to purchase advertising than I had reported without offering the slightest evidence, and to ignore the hard evidence that I had presented.

So while I appreciate the potential advantages of a church, I am not too crazy about its reliance on faith and the inclination of religious leaders to treat their followers like flocks of sheep who must agree on faith with their assertions even in the face of evidence to the contrary — or face excommunication.

And his new business, the American Liberty Foundation? Well, it sounds nice in theory. But based on how Browne

If we could be confident that Harry's approach would work, many libertarians (including me) would be happy to pursue it. The problem is that it requires all the resources of the Libertarian Party for another 35 years.

spent the \$4 million he raised for his political campaign, I would be reluctant to support it.

His plan to teach some courses in libertarianism intrigued me, especially his course on "how libertarian ideas can help you to show people how their self-interest might be furthered by what you want." My life would be easier if I could convince others it was in their self-interest to pursue my self-interest. Right now, I want my lawn mowed. But it's hot and I would rather spend the afternoon lounging around my house reading a detective novel. If I take Harry's course, maybe I can convince my neighbor that his self-interest might be furthered by mowing my lawn for me. □

Learning from the 2000 Defeat

by Michael New

What helped, what hurt, and what just didn't matter when it comes to the Browne 2000 campaign vote totals?

In the months following the 2000 presidential election, Libertarian Party observers put forth a variety of hypotheses that attempted to explain LP presidential nominee Harry Browne's disappointing performance. The prevailing consensus among the LP's own spinmeisters is that the closeness of the 2000 presidential election hurt Browne because it motivated potential Browne supporters to vote for a major party candidate instead. R.W. Bradford and Andrew Chamberlain in *Liberty* have challenged this view, arguing that the decline in Browne's vote total was no greater in close states than it was in states where one of the two major party nominees had substantial or even commanding leads going into the election. Others have argued in *Liberty* that the strong third party candidacy of Ralph Nader attracted many voters who were anti-drug war, anti-defense buildup or simply anti-establishment — voters who otherwise would have supported Browne and the Libertarians.

This debate, in my judgment, stands to benefit from more analytical rigor. A regression analysis allows us to test some of these competing hypotheses simultaneously. Additionally, it provides further insight into why Harry Browne's 2000 campaign failed so badly. I decided to take on this task and collected the relevant data for the 1996 and 2000 presidential elections. My regression equation and results are as follows:

The dependent variable is:

Liberty Change: The change in vote share between 1996 and 2000 for Libertarian presidential nominee Harry Browne (for each state).

The independent variables are:

Close: States where the margin of victory at the presidential level was less than five percentage points were scored a one, other states scored a zero.

No Ballot: States where Harry Browne did not appear on

the ballot in 2000 were scored a one (Arizona), other states scored a zero.

GOP Change: The change in vote share between 1996 and 2000 for the Republican Party's presidential nominee for each state.

Green Change: The change in vote share between 1996 and 2000 for the Green Party's presidential nominee for each state.

Reform Change: The change in vote share between 1996 and 2000 for the Reform Party's presidential nominee for each state.

Table 1

<i>Close</i>	-.07229
<i>No Ballot</i>	-.93643*
<i>Reform Change</i>	.02773*
<i>GOP Change</i>	.01327*
<i>Green Change</i>	-.01303
<i>(Constant)</i>	.05810

Interpreting the Results

Analyzing the regression results gives us some insight into what happened to the Harry Browne campaign in 2000:

- In states where the presidential election was close, Harry Browne's vote share decreased by an average of

* Indicates statistical significance

0.072% between 1996 and 2000.

- For each 1% change in the Reform Party vote between 1996 and 2000, Harry Browne's vote share changed by .027% in the same direction.

- For each 1% change in the Republican Party vote between 1996 and 2000, Harry Browne's vote share changed by .013% in the same direction.

- For each 1% change in the Green Party vote between 1996 and 2000, Harry Browne's vote share changed by .013% in the opposite direction.

The Reform Party Surprise

The most surprising finding from this analysis is that the coefficient for the Reform Party is both positive and statistically significant. This means that in states where the Reform

Harry Browne's decline in vote share between 1996 and 2000 was the greatest in states where the Reform Party showed the greatest decline.

Party lost votes between 1996 and 2000, Harry Browne also did poorly. Harry Browne's decline in vote share between 1996 and 2000 was the greatest in states where the Reform Party showed the greatest decline.

This was contrary to my expectations. It seemed that Browne might actually have a chance to increase his vote share in states where Ross Perot did well. Many people who voted for Perot in 1996 demonstrated that they were unsatisfied with the alternatives offered by the two major parties. Since the Reform Party ended up nominating an unpopular candidate — Pat Buchanan — in 2000 it seemed plausible that many former Perot supporters might be willing to consider voting for another third party candidate, possibly even a Libertarian.

However, the numbers do not lie. A simple correlation (excluding Arizona) shows that Harry Browne's decline in vote share from 1996 to 2000 positively correlates with the Reform Party's decline in vote share over the same election cycle. The correlation coefficient is a relatively small 0.23, but it does approach conventional levels of statistical significance. This means that although the impact of the Reform Party wasn't decisive, it was real nonetheless.

There are a few reasons why Browne could have fared so poorly in Perot's strongest states. For instance, it is possible that the major parties, realizing that Buchanan would be an

unacceptable alternative to many former Perot voters, stepped up their campaign efforts in states where Perot did well, making it more difficult for the LP to

get its message through.

However, it seems to me that most people who voted for Perot in 1996 fall into one of three groups:

- 1) Moderate to conservative voters who would ordinarily vote Republican, but sought an alternative in 1996 because of Bob Dole's anemic campaign.

- 2) Disaffected voters who sought an alternative, any alternative, as a vehicle to express their dissatisfaction with the two major parties.

- 3) Reform Party partisans.

Looking at the first group of Perot voters, it is clear that in 2000, Republican presidential nominee George W. Bush was a stronger candidate than Bob Dole was in 1996 and overall the Republicans ran a stronger campaign in 2000 than they did in 1996. This might have persuaded some of the Perot voters who fell into the first group to vote Republican in 2000. Indeed, Republican gains at the presidential level in 2000 correlate strongly with the Reform Party losses, indicating that Bush likely received a number of votes from people who voted for Perot in 1996.

Perot voters who fell into the second group were likely to be disenchanted with both of the major party presidential candidates in 2000 as they were in 1996. However, in 2000 the most visible third party candidate was not Ross Perot, but Green Party presidential nominee Ralph Nader. Consequently, it seemed likely that many of these former Perot voters would express their disenchantment with Bush and Gore by voting for Nader. There is statistical evidence to support this, as the Reform Party's decrease in vote share between

The closeness of the 2000 presidential election was not as detrimental as Browne campaign spinmeisters have argued.

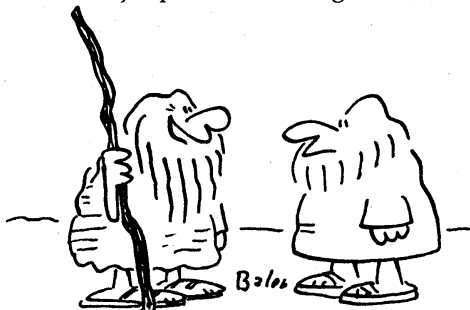
1996 and 2000 correlates positively with the Green Party's increase in vote share during the same time span. This indicates that Nader's vote share increased most in states where the Reform Party's decline in vote share was the greatest.

Finally, some people who voted for Perot in 1996 are Reform Party partisans who chose to stay the course in 2000 and vote for Buchanan. Indeed, the correlation between Perot's vote share in 1996 and Buchanan's vote share in 2000 is over 0.6 which is again statistically significant.

From this we can conclude that Perot's supporters in 1996 largely split their votes among Bush, Nader, and Buchanan, and all but ignored Harry Browne in this election. Still, the fact that Browne's vote share declined in these states as much as it did is surprising. It is possible that increased turnout in these states in 2000 might have reduced Browne's vote share. It is also conceivable that the states that were the most eager to support third party candidates in 1996 might have been less willing to do so in 2000. Finally, as I mentioned earlier, if the major parties stepped up their campaign efforts in these states, that might have been detrimental to Browne as well.

The Republican Factor

Another surprising result comes from the influence of the



"For years I cried out in the wilderness, and then CNN offered me a contract."

GOP on Harry Browne's vote totals. Looking at the regression results, we see that the coefficient for *GOP Change* is positive and statistically significant. This tells us that Harry Browne's performance in 2000 was best in states where Republicans made the greatest gains between 1996 and 2000. This is again surprising. If Republicans were taking away votes from Libertarians, we would expect Harry Browne to do poorly where Republican vote shares increased. However, that is not the case. A simple correlation shows that increases in Republican vote share between 1996 and 2000 correlate positively with increases in Libertarian vote share during the same time period. Additionally, Table 2 shows that for seven of the eight states where the Libertarian Party's vote share increased between 1996 and 2000, the Republican Party's gain in vote share exceeded the national average.

Table 2
Gains in Vote Share 1996–2000

State	Libertarian Party	Republican Party
1) Georgia	.62	7.66
2) Virginia	.18	7.27
3) North Carolina	.13	7.29
4) Oklahoma	.08	12.05
5) South Dakota	.07	13.81
6) Iowa	.06	8.30
7) Idaho	.02	14.99
8) Alabama	.01	6.35
Overall Republican Vote Share Increase		7.19

Indeed, it seems plausible that the same factors that are motivating people to vote for Republicans are also, to a lesser extent, motivating people to support Libertarians. Now, considering only this past election, it is not clear what these underlying factors are. It is possible that in states where people became most disenchanted with the status quo, the Democratic Party, or government intrusions in general, lots of people voted Republican, as well as a smaller number who voted Libertarian.

Other Variables

The other variables in this model are either negligibly small or aren't statistically significant. Obviously, Harry Browne's inability to get on the ballot in Arizona in 2000 hurt his performance in that state. Additionally, the coefficient for the variable *Close* is negative, but isn't statistically significant. This point was well documented by Bradford and Chamberlain in past issues of *Liberty*, so I won't discuss it further here.

Finally, the coefficient for *Green Change* is negative but not statistically significant, indicating that the performance of the Green Party had little impact on Browne's vote totals.

What Are the Lessons?

The statistical analysis I have done suggests that Browne did poorly in states where Perot performed well in 1996; and to a lesser extent, states where Ralph Nader made the greatest gains. Conversely, the regression shows that Browne did well in states where Republicans made the greatest gains between 1996 and 2000.

At the same time, this statistical analysis was less successful in explaining why Browne's vote share declined in many states and improved in very few. For instance, I have yet to

identify an intuitively appealing reason as to why Browne's vote share fell so dramatically in Perot's best states in 1996.

Yet from this analysis one can reasonably assert that:

- The Libertarian Party would benefit from being America's most visible third party because they would gain a lion's share of the protest votes.
- The Libertarian Party would benefit from increased disenchantment with the status quo.
- The Libertarian Party would benefit from more skeptical attitudes toward the state in general.

Unfortunately, one could have arrived at these conclusions without running a regression analysis on election data. Even worse, these objectives are by and large out of the control of Libertarian Party officials and activists.

In closing I will add that these regression results should

Harry Browne's performance in 2000 was best in states where Republicans made the greatest gains between 1996 and 2000.

hardly be considered the last word on Harry Browne's performance in 2000. A close examination of survey data would add a great deal of strength to this analysis. Additionally, there were a number of factors that might have affected the Libertarian Party's vote share that I was unable to properly consider. It is possible that extensive campaigning in certain regions of the country may have influenced Browne's vote totals. Likewise it is possible that in some states, Browne may have benefited from strong Libertarian campaign efforts at the local and state level. However, I lacked the data to properly analyze these factors. □

Glossary

Regression analysis: A statistical technique used to describe relationships among two or more variables. Regression involves calibrating a mathematical equation to fit data on inputs and outputs. This equation is then used to predict the value of one variable on the basis of other variables.

Independent variable: The "input" variables in a regression equation. Independent variables are assumed to have some impact on the "dependent" variable.

Dependent variable: The "output" variable in a regression equation. The dependent variable is assumed to be influenced by the "independent" variables.

Statistical significance: A way of measuring whether statistical relationships between variables are likely to be real, or are due to chance. A statistically significant variable is one that has a systematic, measurable impact on the model's output variable. Variables that are not statistically significant may have an impact, but it can't be distinguished from normal randomness.

Correlation coefficient: A measure of the strength of the relationship between two variables. Correlation coefficients (denoted "r") range between -1 and +1, with r = 0 denoting no relationship. Variables with strong positive relationships will have an "r" close to +1, while those with strong negative relationships will have an "r" close to -1.

Bay State Tea Party

by Carla Howell

Fomenting tax revolt for fun and political profit. And you are invited to participate!

Massachusetts has been a high-tax, high-regulation state for so long that locals have taken to calling it "Taxachusetts." Ballot initiatives here are likely to favor things like \$20 minimum wages, bans on SUVs, or prohibitions on dog racing.

But all that may be about to change.

In July, the Committee for Small Government, a group of local libertarian activists that Michael Cloud and I formed, filed a ballot initiative for the November, 2002 election to repeal the Massachusetts income tax. And since we get to name our initiative, we're calling it the Small Government Act.

Currently, income tax rates are five percent on wages, five percent on passive income (interest and dividends), and zero to twelve percent on capital gains (depending on how long assets are held).

If the Small Government Act wins, those rates will be cut, respectively, to zero, zero, and zero. After the last tax is collected for fiscal year 2003, no one will be required to pay a single dollar in state income tax.

Ending the state income tax not only allows us to keep some \$9 billion of our own money each year, it deprives the ever-whining Massachusetts state legislature of that money — money they use to take away our guns, foster illiteracy, ruin our health care, increase poverty and dependency, and generally trample our rights.

As bold as it is, our tax cut still leaves the state budget bigger than Gov. Dukakis left it in 1990. Ending the income tax would drop the state's operating budget to about \$14 billion (down from about \$23 billion as of fiscal year 2001). Remaining revenues come from general sales tax, selective sales tax, corporate tax, license tax, and other sources.

On this same 2002 ballot will likely be my name as candidate for governor, an LP candidate for the U.S. Senate, and other Libertarian statewide, congressional, and legislative candidates. If there were ever a year for a tax-cutter to go to the polls in Massachusetts, 2002 is the year.

New Tax on the Block

The Small Government Act is one of the largest percentage slashes in government and taxation proposed in the United States since the end of World War II. Why are we attempting it through an initiative?

Since most legislators cannot bear to see state revenues decrease, legislative tax cuts are almost nonexistent and are never meaningful. Until we get Libertarians elected, the only way we'll get a meaningful tax cut is if we put it on the ballot ourselves through the initiative process.

Initiative petitions are placed on the ballot by the people. But many are initiated by advocates of big government, who use them to increase taxation, increase spending, and government regulation. And many of these tax cut initiatives only attempt to slow government by cutting a small tax or fee. Even when they succeed, state budgets still go up.

Most of these "tax cuts" are so small they are offset by rising incomes, rising sales tax revenues, rising local property taxes, complicated tax formulas that cut deductions, and a continuous flow of new and increased fees and taxes on everything under the sun. Government always gets a bigger

take — which is the reason Democrats and Republicans sometimes support a “tax cut.”

The Reagan “tax cut” of the 1980s is a prime example. It cut income tax rates, but overall tax revenues went up anyway because incomes were rising and some deductions were eliminated. Most people don’t realize that Bill Bradley co-sponsored Reagan’s bill. His reason? To increase tax revenues!

The George W. Bush “tax cut” is another example. It will expand federal tax revenues by hundreds of billions of dollars. One of the ways it offsets lower rates is by greatly expanding the number of taxpayers subject to the Alternative Minimum Tax, which currently applies to only 1.5 million Americans. When the Bush plan phases in, 35 million of us will be paying higher taxes because of Bush’s massive expansion of the Alternative Minimum Tax.

In contrast, the Small Government Act is so big it will demand that the state take less of our money. It is specifically aimed at forcing the legislature to shrink government.

There’s yet another benefit if the Small Government Act wins: it cuts hidden welfare. The Massachusetts Department of Revenue, like the IRS, has become a welfare agency. Repealing income taxes means repealing tax credits — like the ones our Republican Gov. Jane Swift is trying to increase. Ending tax credits means removing a major source of welfare.

Bolder Is Better

Some argue that the Small Government Act is too aggressive to pass. But a bold initiative is much more attractive than a timid initiative. Boldness works because it offers huge, immediate benefits to voters. No more state income tax! This is exciting for voters who are usually lulled into apathy by complicated, boring proposals that hardly make any difference to their lives.

A bold initiative gives meaning to politics and gives voters a reason to get involved. It mobilizes the disenfranchised voter who thinks government is too big but who never had a compelling reason to go to the polls. Hundreds of thousands may vote for the first time in their lives. Some of them will get involved and become activists.

By aggressively marketing small government, we take control of the agenda. We change the debate from “big-government option A vs. big-government option B” to “big government vs. small government.” This way, we can build support, get people to take our views seriously, and set the stage for libertarianism to emerge as a major force in American politics.

Friends of big government attack timid tax cuts just as shrilly as bold ones. The teachers’ unions cry “apocalypse” and demonize even the most timid, most modest tax cut. We gain nothing by being timid.

Some argue that a modest tax cut is more likely to win. But campaigns for modest tax cuts cost as much as bolder initiatives, and usually end up increasing government revenues, spending, and abuse. Therefore, we lose nothing by being bold.

Getting Over the Hurdles

Getting an initiative petition on the ballot is no small feat. Here are the steps we must take:

1. We draft an initiative that passes legal muster.

Libertarian attorneys Peter Kuntz, Ed McCormick, and Hugh High, along with a research team headed by Andy LaRocco, worked for months to navigate the Massachusetts General Law, the state constitution, and the labyrinthine Massachusetts budget to arrive at our final initiative.

With guidance from Michael Cloud, manager of my Senate campaign against Ted Kennedy in 2000, and several leaders of past Massachusetts tax cut initiatives, our team crafted initiatives that have the best chance of being legally qualified. Several drafts authored by Peter Kuntz were submitted and discussed at length with the attorney general’s office to get a preliminary assessment as to whether they will certify our petitions.

2. We submit the final petition to the attorney general by Aug. 1, 2001.

3. Attorney General Tom Reilly reviews petitions and certifies those that he believes abide by the laws governing ini-

Many tax cut initiatives only attempt to slow government by cutting a small tax or fee. Even when they succeed, state budgets still go up.

tiatives. He issues a ruling around Labor Day. We must respond to legal questions that arise during his review.

4. If the Small Government Act is certified, we gather 57,101 certified petition signatures from mid-September to mid-November. These can be disqualified for a number of reasons. For example, the Supreme Court of Massachusetts ruled that a mere coffee stain would invalidate an entire sheet of petition signatures. Therefore, we will aim to collect over 100,000 raw signatures to ensure we clear 57,101 with enough extra to sustain a challenge.

5. If sufficient signatures are certified, the legislature must take a vote on whether to enact the initiative into law by May of 2002.

6. If the legislature votes against the Small Government Act (we expect a whopping zero “yes” votes from Democrats and Republicans in the state legislature), then another 9,517 certified signatures must be gathered during May and June of 2002.

7. Opponents can then challenge our initiative in court. Challengers can argue that our initiative is flawed and violates the constitution or other legal requirements or they can challenge the validity of petition signatures. If they do, the Supreme Court of Massachusetts will issue a ruling sometime next year, probably in the summer of 2002.

8. Finally, after we stave off challenges, the Small Government Act will appear on the ballot in November.

If our initiative wins, the income tax will be repealed as soon as the then-current fiscal year ends on July 1, 2003. By April 2004, Massachusetts income earners will have filed their last state tax return.

The state constitution gives the legislature the power to repeal an initiative, but it is considered very bad form. They are hard-pressed to conform to the will of the people

directed by ballot initiatives. They will likely be forced to comply — while they yell and scream that their beloved big government is being starved.

Plan B: Sales Tax Repeal

Although we've worked vigorously to ensure that our initiative will qualify, we have no guarantee that it will survive either our attorney general Tom Reilly or court challenges. The advice we received from the attorney general's office, while very helpful, is non-binding. He could strike down the Small Government Act even though his office gave us initial indication that it would be certified.

For this reason, it is common practice for initiative committees to submit more than one initiative to better ensure that at least one will survive the attorney general's certification.

So, in addition to the income tax repeal initiative, our Committee for Small Government submitted Plan B: a second initiative called the Small Government Act to Repeal the Sales Tax.

While the sales tax accounts for only about \$4 billion in state revenues, it is still far bolder than most initiatives, and it will still force spending cuts. (At the time of this writing, a third bold tax cut initiative is being considered as well for submission by the Aug. 1 deadline.)

If more than one initiative is certified, we will petition for the income tax repeal or whichever one would result in the boldest tax cuts.

Who's For and Against?

Since the *Boston Globe* and Boston-area TV stations are likely to be hostile to our cause, we plan to raise enough money to run TV and radio ads. We'll sell the big benefits of ending the income tax:

- The average taxpayer saves over \$2,000 every year.
- No more filing state income tax! Save time and keep the state out of your personal finances.
- If you need to sell stock, you no longer need to move out of Massachusetts to avoid capital gains.
- If you're living on annuity income, you don't have to move away from your grandchildren to another state to avoid paying the five percent passive income tax.

Because elected Republicans tend to vote unanimously in favor of raising government budgets each year, we expect

Massachusetts' teachers' unions will spend millions more opposing us.

both the legislature and Republican Gov. Jane Swift, who is expected to run for re-election, will oppose this bold tax cut initiative.

Republican and Democrat policies in this state are virtually indistinguishable. Both vote for and support big government and high taxes. Both will claim that the Small Government Act goes way too far.

Everyone who loves big government will hate our tax cut: beneficiaries of the Big Dig construction project in downtown Boston, beneficiaries of the latest convention and stadium welfare, Gov. Jane Swift's tax credit welfare recipients,

government agencies, social workers — and especially the teachers' unions.

Massachusetts' teachers' unions spent several million dollars opposing last year's modest initiative to cut the income tax rate (5.85% down to 5% phased in over a three-year period). They will spend millions more opposing us. Their attacks will publicize the Small Government Act and mobilize our supporters even more.

Some people will take our side simply because the teachers' union opposes it. By making the right enemies, we make

The Small Government Act is so big it will demand that the state take less of our money. It is specifically aimed at forcing the legislature to shrink government.

the right friends. For this reason, we look forward to being viciously attacked.

How Likely Is a Win?

We don't know, but we have some clues.

During the past 20 years, there have been a host of tax cut initiatives on the ballot in Massachusetts. The lowest vote that any received was 39%, and the most successful got 72%. These were all modest tax cuts, so some of these voters may shy away from an outright tax repeal.

On the other hand, we may get a pleasant surprise. Voters may turn out in record numbers because they finally have something to vote for that offers a huge, direct benefit. We hope the excitement will catch on and we'll mobilize a huge corps of volunteers to help publicize and rally for our initiative.

Big government supporters may turn out in higher numbers to oppose it, but they also may sit it out since Democrat voter turnout plummets in non-presidential election years.

If the Small Government Act wins, it will be the shot heard 'round the world! We will turn Massachusetts politics on its head.

But what if we lose?

Even if We Fail, We Succeed

Even a vote total as low as 20% in favor of repeal would signify an enormous vote of confidence for dramatic cuts. It would shatter the claims of big government advocates who'd like us to believe that a bold, libertarian agenda is supported by only a small, single-digit percentage of the population.

When we give voters a choice to end the income tax in 2002, it will be just the beginning. People will start to get used to the idea of making government small. We'll open minds. Voters who aren't ready for dramatic cuts in 2002 might be ready for bold initiatives and candidates in 2004 or perhaps 2006. We set the stage for bigger and bigger vote totals in Massachusetts every year.

With myself as the Libertarian gubernatorial candidate and other Libertarians rallying for the Small Government Act, we'll establish ourselves as serious tax-cutters and advocates of small government. Any hope that Republicans can or will make government small will be buried once and for all.

It will become clear that the Libertarian Party is the only party willing to offer meaningful tax cuts.

Our initiative serves as an important prototype. By investing in this bold experiment, we are creating huge upward potential for growth — much like an entrepreneur creates the possibility of a Microsoft. We may tap into a large expanse of bold tax-cutters willing to go to the polls and vote.

If we get a healthy vote total, we could inspire copycat initiatives across America — just as California's Proposition 13 did for property tax cuts in 1978, and later initiatives did for term limits and medical marijuana.

Twenty-four states allow initiatives. Imagine the potential of a bold tax cut movement catching on in every one of them.

How to Succeed

During our 1998 and 2000 campaigns, we developed the knowledge and expertise needed to navigate the difficult petitioning and filing requirements in Massachusetts. These vital skills will help us stay on track.

There's a nonpartisan majority in Massachusetts. More than 50% of registered voters are not affiliated with any party. Many of these independent voters, coupled with untold numbers who may register for the first time, could vote for repeal.

Massachusetts' gun owners lean libertarian and strongly oppose big government and high taxes. As libertarians, we

love gun rights and gun owners love us. Many of them will support the Small Government Act.

We'll do polling to ensure our message is effective and to monitor our progress. If we hit 20%–40% in the polls, the Small Government Act could draw national attention and heighten excitement even more.

Massachusetts has one of the strongest Libertarian parties in the country. Our 2000 Carla Howell for U.S. Senate campaign won 308,860 votes and activated over 726 volunteers. We expect to mobilize thousands in 2002.

Over the years I've built strong ties to the state's activists, coalitions, and media. On June 29, I was a guest on *Fox News*' "O'Reilly Factor" talking about the Big Dig. As spokeswoman for our initiative, I will campaign for it all over Massachusetts.

Michael Cloud, our fund-raiser, has raised over \$6 million for Libertarian campaigns. In the small state of Massachusetts, where it's easier and cheaper to reach voters than in large states, we'll be able to spend over \$1 million to buy advertising on Boston's CBS, ABC, and NBC stations and reach virtually every voter.

Ballot initiatives in Massachusetts have no contribution limits. Donors can donate as much as they want. Companies can donate as well. This makes a bold tax cut petition less difficult to fund.

We look forward to an exciting year as we unveil the Small Government Act and rally for the benefits of small government. □

"Injustice," from page 29

All of this would clearly require the government to treat citizens unequally, applying different rules to different groups. For the state to take resources from entirely innocent citizens and give them to others who are not, by any reasonable standard, entitled to them is not "roughly just" but thoroughly and blatantly unjust.

Also, in granting reparations only to the descendants of African slaves, the government would be affording special benefits to blacks that it affords to no one else. Although African-Americans, as a group, are the only citizens most of whose recent ancestors were slaves, they are not the only citizens whose ancestors suffered grave injustices, injustices whose repercussions echo down the generations. Two centuries ago Smith took Jones as a slave, which was unjust; but across town, Johnson swindled Miller out of his inheritance and never paid for his crime. This too was an injustice, one that undoubtedly had severe consequences for Miller's descendants — so shouldn't government also require that reparations be paid to Miller's descendants, and to the descendants of everyone, black or white, whose forebears have ever suffered debilitating injustices? Slavery was a unique horror in American history, but why are the injustices suffered by black ancestors more worthy of government action than those suffered by white ancestors?

The answer is that it is simply impossible for government to settle accounts between parties long dead. "What's done is done," we say in all cases of this sort — all cases, that is, except for slavery. But there are no rational grounds for making an exception in the case of slavery. If reparations ever

become reality, its essential arbitrariness will, without a doubt, provoke a backlash that would dwarf the racial tensions of the past.

Nor will these new tensions merely be between blacks and whites, but between all racial groups. Any reparations scheme, since it would be funded by general taxation, would be seen by those whose ancestors had nothing to do with slavery as the illegitimate taking of their own resources for the special benefit of blacks. This would make for tensions between these groups and both blacks and other, Anglo-Saxon, whites, especially Southerners, who would be resentful for "putting us all in this fix." Also, the floodgates would then be open for any and all individuals and groups to demand reparations for their own past injustices. This could only be stopped arbitrarily, with one group being allowed to impose its claims on the losing groups. All I can predict about what would come next is that it would be disastrous.

An application of Hayek's insights shows that reparations for slavery would be, not an approximation of justice, but a conceptual muddle and a practical catastrophe. Another political philosopher, Robert Nozick, famously argued that redistributive taxation is on a par with forced labor, a kind of "slavery lite." No one claims that the taxation existing today approaches the evil of the slavery suffered by the ancestors of black Americans. But redistributive taxation for the purposes of funding a bogus reparations scheme would nevertheless be an injustice. And adding that wrong to the wrong of slavery would not result in a right. □

The Economic Roots of the Civil War

by Donald W. Miller Jr.

“Union means so many millions a year lost to the South; secession means the loss of the same millions to the North. The love of money is the root of this, as of many other evils. The quarrel between the North and South is, as it stands, solely a fiscal quarrel.” — Charles Dickens

In the schoolbook account of the American Civil War, Abraham Lincoln rose to the presidency and led the country in a great Civil War against the slaveholding states that had seceded, restoring these states to the Union, and ending slavery. Accordingly, historians rate Abraham Lincoln as one of our greatest presidents.

Well-intentioned, right-thinking people equate anyone who thinks that the South did the right thing by seceding from the Union as secretly approving of slavery. Indeed, such thinking has now reached the point where people from both sides of the political spectrum, notably from the NAACP and Southern Poverty Law Center on the left and the Cato Institute on the right, want to have the Confederate battle flag eradicated from public spaces. These people argue that the Confederate flag is offensive to African-Americans because it commemorates slavery and thus should be prohibited from public display.

In the standard account, the Civil War was an outcome of our Founding Fathers' failure to address the institution of slavery in a republic that proclaimed in its Declaration of Independence that “all men are created equal.” But was it really necessary to wage a four-year war to abolish slavery in the United States, one that ravaged half of the country and destroyed a generation of American men? Only the United States and Haiti freed their slaves by war. Every other country in the New World that had slaves — Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Peru, Uruguay, and Venezuela — freed them peacefully.

The war did enable Lincoln to “save” the Union, but only in a geographic sense. The country ceased being a Union, as it was originally conceived, of separate and sovereign states. Instead, America became a “nation” with a powerful federal

government. Although it freed 4 million slaves into poverty, it did not bring about a new birth of freedom, as Lincoln and historians such as James McPherson and Henry Jaffa say. For the nation as a whole the war did just the opposite: It initiated a process of centralization of government that has substantially restricted liberty and freedom in America, as historians Charles Adams and Jeffrey Rogers Hummel have argued.*

The term “Civil War” is a misnomer. The South did not instigate a rebellion. Thirteen southern states in 1860–61 simply chose to secede from the Union and go their own way, like the 13 colonies did when they seceded from Britain. A more accurate name for the war that took place between the northern and southern American states would be the “War for Southern Independence.” Mainstream historiography presents the victors' view, an account which focuses on the issue of slavery and downplays other considerations.

Britain heralded the end of slavery, in the Western world at least, with its Bill of Abolition, passed in 1807. This bill made the African slave trade (but not slaveholding) illegal. Later that year the United States adopted a similar bill, called the Act to Prohibit the Importation of Slaves, which prohibited bringing slaves into any port in the country. Congress

* Adams in his book, *When in the Course of Human Events: Arguing the Case for Southern Secession* (2000); and Jeffrey Rogers Hummel in his book, *Emancipating Slaves, Enslaving Free Men* (1996).

strengthened this prohibition in 1819 when it decreed the slave trade to be a form of piracy, punishable by death. In 1833, Britain enacted an Emancipation Law, ending slavery throughout the British Empire, and Parliament allocated 20 million pounds to buy slaves' freedom from their owners. This happened peacefully and without any serious slave uprisings or attacks on their former owners, even in Jamaica, where a population of 30,000 whites owned 250,000 slaves.

The rallying call in the North at the beginning of the war was "preserve the Union," not "free the slaves." Although certainly a contentious political issue, in 1861 slavery was not a major public one. Protestant Americans in the North were more concerned about the growing number of Catholic immigrants than they were about slavery. In his first inaugural address, given five weeks before the war began, Lincoln reassured slaveholders that he would continue to enforce the Fugitive Slave Act.

After 17 months of war things were not going well for the North, especially in its closely watched Eastern Theater. In the five great battles that were fought there between July 1861 through Sept. 17, 1862, the changing cast of Union generals failed to win a single victory. The Confederate army won three: First Bull Run (or First Manassas) on July 21, 1861; Seven Days — six major battles fought from June 25 to July 1, 1862, during the Union army's Peninsular Campaign that, in sum, amounted to a strategic Confederate victory when McClellan withdrew his army from the peninsula; and Second Bull Run (or Second Manassas) on Aug. 29–30, 1862. Two battles were indecisive: Seven Pines (or Fair Oaks) on May 31 to June 1, 1862, and Antietam (or Sharpsburg) on Sept. 17, 1862. In the West, Grant took Fort Donelson on Feb. 14, 1862, and captured 14,000 Confederate soldiers. But then he was caught by surprise in the battle of Shiloh on April 6–7, 1862, and lost 13,000 of his 51,000 men. Sickened by the carnage, Northerners did not appreciate at the time that Shiloh was a strategic victory. Then came Antietam on Sept. 17, the bloodiest day in the entire war; the Union army lost more than 12,000 of its 60,000 troops engaged in the battle.

Did saving the Union justify the slaughter of such a large number of young men? The Confederates posed no military threat to the North. Perhaps it would be better to let the southern states go, along with their 4 million slaves. If it was

The rallying call in the North at the beginning of the war was "preserve the Union," not "free the slaves."

going to win, the North needed a more compelling reason to continue the war than to preserve the Union.

Five days after the Battle of Antietam, on Sept. 22, 1862, Abraham Lincoln issued his Emancipation Proclamation.

The Emancipation Proclamation was a "war measure," as Lincoln put it. Foreign correspondents covering the war recognized it as a brilliant propaganda coup. Emancipation would take place only in rebel states not under Union control. The president could not abolish slavery; if not done at the state level, abolition would require a constitutional amendment. Slaveholders and their slaves in Missouri,

Kentucky, Maryland, Delaware, Tennessee, and parts of Virginia and Louisiana occupied by Union troops were exempt from the edict. Slaves in the Confederacy would be "forever free" on Jan. 1, 1863, — 100 days after the Proclamation was issued — but *only if* a state remained in "rebellion" after that date. Rebel states that rejoined the Union and sent elected representatives to Congress before Jan. 1, 1863, could keep their slaves. Such states would no longer be considered in rebellion and so their sovereignty regarding the peculiar institution would be restored. As the *London Spectator* put it, in its Oct. 11, 1862, issue: "The principle [of the Proclamation] is not that a human being cannot justly own another, but that he cannot own him unless he is loyal to the United States."

Regarding slaves in states loyal to the government or occupied by Union troops, Lincoln proposed three constitu-

At the time, only seven states had seceded. But when Lincoln announced his intention to bring these states back into the Union by force, Virginia, North Carolina, Tennessee, and Arkansas seceded and joined the Confederacy.

tional amendments in his December 1862 State of the Union message to Congress. The first was that the slaves not freed by the Emancipation Proclamation be freed gradually over a 37-year period, to be completed by Jan. 1, 1900. The second provided compensation to owners for the loss of their slave property. The third was that the government transport freed blacks, at government expense, out of the country and relocate them to Latin America and Africa. Lincoln wrote that freed blacks need "new homes [to] be found for them, in congenial climes, and with people of their own blood and race." For Lincoln, emancipation and deportation were inseparably connected. Secretary of the Navy Gideon Wells wrote in his diary that Lincoln "thought it essential to provide an asylum for a race which he had emancipated, but which could never be recognized or admitted to be our equals." As historian Leone Bennett Jr. puts it, "It was an article of faith to him [Lincoln] that emancipation and deportation went together like firecrackers and July Fourth, and that you couldn't have one without the other."

Congress refused to consider Lincoln's proposals, which Horace Greeley in the *New York Tribune* labeled whales' tubs of "gradualism, compensation, [and] exportation." None of the Confederate states took the opportunity to rejoin the Union in the 100-day window offered and the war continued for another two years and four months. Eight months later the 13th Amendment was ratified, and slavery ended everywhere in the United States (without gradualism, compensation, or exportation).

Black and white Americans sustained racial and political wounds from the war and the subsequent Reconstruction that proved deep and long-lasting. This was partly because the freed slaves were confined, with little support, to the section of the country that had been devastated by war. Northern abolitionists wanted southern Black slaves to be

freed, but certainly did not want them to move north and live alongside them. Indiana and Illinois, in particular, had laws that barred African-Americans from settling. Healing the wounds was also slowed by the twelve-year military occupation and "Reconstruction" that the South was forced to endure after the war. At a gathering of former confederate soldiers shortly before he died, Robert E. Lee said:

If I had foreseen the use those people designed to make of their victory, there would have been no surrender at Appomattox Courthouse; no sir, not by me. Had I foreseen these results of subjugation, I would have preferred to die at Appomattox with my brave men, my sword in my right hand.

Why were business and political leaders in the North so intent on keeping the southern states in the Union? It was, to paraphrase Charles Dickens, solely a fiscal matter. The principal source of tax revenue for the federal government before

The Emancipation Proclamation was a "war measure," as Lincoln put it. Foreign correspondents covering the war recognized it as a brilliant propaganda coup.

the Civil War was a tariff on imports. There was no income tax, except for one declared unconstitutional shortly after its enactment during the Civil War. Tariffs imposed by the federal government not only accounted for most of the federal budget, they also raised the price of imported goods to a level where the less-efficient manufacturers of the northeast could be competitive. Former Vice President John C. Calhoun put it this way:

The North had adopted a system of revenue and disbursements in which an undue proportion of the burden of taxation has been imposed upon the South, and an undue proportion of its proceeds appropriated to the North . . . the South, as the great exporting portion of the Union, has in reality paid vastly more than her due proportion of the revenue.

In 1861, the *New York Evening Post* editorialized on this point:

That either the revenue from duties must be collected in the ports of the rebel states, or the port must be closed to importations from abroad, is generally admitted. If neither of these things be done, our revenue laws are substantially repealed; the sources which supply our treasury will be dried up; we shall have no money to carry on the government; the nation will become bankrupt before the next crop of corn is ripe. There will be nothing to furnish means of subsistence to the army; nothing to keep our navy afloat; nothing to pay the salaries of public officers; the present order of things must come to a dead stop.

Given the serious financial difficulties the Union would face if the Southern states were a separate republic the *Post* urged the Union to hold on to its custom houses in the Southern ports so that they could continue to collect duty. The *Post* goes on to say that incoming ships to the "rebel states" that try to evade the North's custom houses should be considered as carrying contraband and be intercepted.

Observers in Britain looked beyond the rhetoric of "preserve the Union" and saw what was really at stake. Charles

Dickens' views on the subject were typical:

Union means so many millions a year lost to the South; secession means the loss of the same millions to the North. The love of money is the root of this, as of many other evils. The quarrel between the North and South is, as it stands, solely a fiscal quarrel.

Karl Marx seconded this view:

The war between the North and the South is a tariff war. The war is further, not for any principle, does not touch the question of slavery, and in fact turns on the Northern lust for sovereignty.

The South fought the war for essentially the same reason that the American colonies fought the Revolutionary War. The central grievance of the American colonies in the 18th century was the taxes imposed on them by Britain. Colonists particularly objected to the Stamp Act, which required them to purchase an official British stamp and place it on all legal documents for them to be valid. The colonists also objected to the tariff that Britain placed on sugar and other goods (the Sugar Act).

After the enactment of what was called the "Tariff of Abomination" in 1828, promoted by Henry Clay, the tax on imports ranged between 20–30%. It rose further in March 1861 when Lincoln, at the start of his presidency, signed the Morrill Tariff into law. This tax was far more onerous than the one forced on the American colonies by Britain in the 18th century.

Lincoln coerced the South to fire the first shots when, against the advice of most of his cabinet, he dispatched ships carrying troops and munitions to resupply Fort Sumter, site of the customs house at Charleston. Charleston militia took the bait and bombarded the fort on April 12, 1861. After those first shots were fired, the pro-Union press branded Southern secession an "armed rebellion" and called for Lincoln to suppress it.

Congress was adjourned at the time and for the next three months, Lincoln ignored his constitutional duty to call the legislative branch into session during a time of emergency and assumed dictatorial powers. He shut down more than 300 newspapers that disagreed with his war policy. Although the exact number is not known, Lincoln may well

Emancipation would take place only in rebel states not under Union control.

have arrested and imprisoned more than 20,000 political opponents, Southern sympathizers, and people suspected of being disloyal to the Union and suspended the privilege of habeas corpus, something only Congress in a time of war has the power to do. Lincoln's soldiers arrested civilians without any charges being filed; and, if trials were held at all, they were conducted by military commissions. He permitted Union troops to arrest Baltimore's mayor, chief of police, and a Maryland congressman, along with 31 state legislators. When Supreme Court Chief Justice Roger Taney wrote an opinion that said these actions were unlawful and violated

continued on page 60

The DEA Trials

by Bart Kosko

"The caller had a point. How does it feel to be under investigation?"

"It's a travesty," Eddy Shaw said.

"Scared?" the host said.

"I'm more angry than scared."

"Think someone is trying to make an example of you?"

"Sure they are. I was just doing my job."

"Want to name names?"

"Not on the air."

"Ever think we would legalize drugs? Ever think you could just walk into a liquor store and buy peyote chocolates?"

"Not in a million years. It's crazy."

"We'll be right back for our remaining moments with former DEA Special Agent Eddy Shaw."

The old host of the talk show did not talk to Shaw during the break. The host talked instead to a young female producer with long black hair and a black leather jacket. She told him that Sen. Rawlings would appear on the show the next night only if the host would let Sen. Trueblood appear with him. The two senators from Nevada had just written a bill that would allow adults to buy most medicines without a prescription. She said the senator seemed afraid to go one on one with the president of the American Medical Association. The host rubbed his eyes with his palms and agreed.

Eddy Shaw stared at the host and the girl and hoped they would tell him

how he was doing. They did not seem to care. The host had joked with him and told him to relax before the first eight-minute segment. Now Shaw wondered if they would still pay for his hotel room that night. He would pay for his own taxi back to the hotel. The plane ticket back to LA was what mattered and it sat in the vest pocket of his suit.

Shaw tried not to think how he would find a good lawyer and how he would pay for it. He blocked that with a worst-case thought. His training at Quantico had taught him that. Cut to the end game.

Fuck it. I can dump the house in Culver City and move back in with Dad in Stockton. Fuck the house and fuck the job search and fuck the early pension. I could make payments on the house for a few more months anyway. Forget the house. The house is gone. It's too late to change the title. Maybe let the ex have it. Fuck that too. Bastards can't squeeze child support from a bankrupt.

Who would have thought things would change so fast? First Germany and Colombia legalized small amounts of pot and coke in 1994. Then came the Dutch and the rest of those European scumbags. One day the Democrats go from upping our raid budget to passing "prohibition reform." Reform hell. Just caving into the big tobacco firms and the biotech lobby and listening to those crazy fucking libertarians. First they gave us

mandatory sentencing and now the bastards give us pot parties and designer smart drugs and sex boosters. What kind of man needs a sex booster? I don't need a pill or a wire to get a good nut. That little producer bitch in black would work just fine.

Well shit happens. In the old days they did a lot more than turn a blind eye when we had to plant to make a bust. They were all on our side. Fucking liars. Now they act like they never knew.

And now I'm the fall guy. I'm the bad guy on TV. Bureaucrat bastards. Wonder if it stops with me or starts with me. I should just come out and tell them how many hundreds of plants we all made. See how the agency likes that.

But fuck it. They can never pin this Ringer plant on me. Ringer can't even be sure I was the one who did it.

"Ready?" the host asked Shaw with a fresh smile.

"Yes."

"Good. Watch the clock. We've got only about a minute."

The first cameraman gave them the on-air sign with his ring finger. Shaw tried to look at the host and not the second camera lens.

"We're back for our remaining moments with former DEA Special Agent Eddy Shaw. Eddy. How many drug cases did you work on in your career?"

"Quite a few."

"Over a hundred?"

"Maybe indirectly. I testified at only a few dozen trials."
 "Any complaints against you?"
 "Every agent gets complaints," Shaw said.
 "Ever take a bribe?"
 "Never."
 "Ever plant evidence?"
 "No."
 "Then why you first? Why did the Justice Department suspend your pension?"
 "Who knows? Society needs a scapegoat. DEA agents are easy targets."
 "Think the special grand jury will indict you?"
 "No. Criminal allegations come down to evidence. And here there's no case because there's no evidence."
 "What if the witness worked for the DEA too?"
 "I don't believe it."
 "Ever take drugs during prohibition?"
 "Never. Still don't."
 "Thirty seconds. Eddy. Did you

"No. He tried to sell it to me."
 "You're sure?"
 "Yes."
 "Yet on the videotape we watched you said you had never met Mr. Ringer. Now you don't just say you met Mr. Ringer. You say he tried to sell drugs to you. Which is it? Were you lying then or are you lying now?"
 Eddy glanced at his lawyer at the brown oak table.
 Skinny bastard. That gray suit had to cost twice what I paid for this pinstripe thing. Should never have called that number for lawyer referrals. Could have done just as well as my own lawyer and stayed out of debt. Could have paid a temp who had been a paralegal to make sure I got the right forms and filed them at the right time. Any jerk can pay \$20 and get a copy of the court's "local rules."
 Little fucking weasel. He wants me to twist on this one. Perry Mason would be jumping up right now with a good objection or two. His incentive to win this case ran out with my savings.

He knows I will stiff him on fees. He's a lawyer. Maybe he can beat them out of part of my house. Shit. Imagine them hitting me with asset forfeiture.

"Mr. Shaw. Which is the truth?"

"Answer the question," Judge Kaufmann said.
 "I met hundreds of people in the field when I worked the concerts. I could have met Mr. Ringer. I think I did. I think he tried to sell me something. It's been a few years. I can't be sure."
 "You can't be sure?"
 "No."
 "Yet you worked 14 years for the Drug Enforcement Administration. In that time how many drug dealers did you help convict?"
 "I don't know. It depends on how you count them. Most busts were team jobs."
 "Mr. Shaw. How many busts did you make? How many people did you help convict?"
 "I don't know. Maybe a few over 100."
 "Over 100. Your recall was good

enough to put 100 people in jail or on probation. You were sure then but you are not sure now?"

"That's right," Eddy said.

Eddy tried not to look at the twelve jurors to his left. But he could feel the heat of their stares.

Cocksuckers. They made up their minds six months ago when they saw my first run on "Hard Copy." Now they get five bucks a day to watch trash TV live. Dumb bastards don't even care that they can't take notes or ask questions. Jury is God. Shit. Cash is God. Can't profit from a crime. They all profit from it. The state killed my book deal but they are all making money off this. I bet half the jurors have already cut book deals of their own. This whole fucking trial is a media production. Everyone is just playing out the script. They should pay me for playing the bad guy.

Skullfuck these cocksuckers. I should just stand up now and walk out. Let them grab me and get it over with. Ten years ago when I had not yet grown this gut for cover I would have done something like that. And sure would have taken that fucking lawyer prick with me.

"No more questions," the prosecutor said.

Eddy looked at his lawyer again. The lawyer gave a faint shake of his head. The judge told Eddy to step down. Eddy knew something was wrong when the young prosecutor turned to face the judge to call one of the state's FBI witnesses.

"Your honor. The state now asks to call its last witness. He works as a special agent for the Federal Bureau of Investigation and has agreed to testify. To minimize his exposure the state asks your honor to clear the courtroom of all nonessential personnel."

"The court agrees. Bailiff."

The crowd was largely reporters and drug convicts. They spoke in whispers as they left. Eddy did not turn to watch them leave. He looked down at the notes his lawyer had scrawled on the yellow legal pad and tried to read them to fight down the fear.

Shit. Which one was Special Agent Ronald Sutton? Which FBI fuck in a suit wants to knife me now? They tripped us up enough times before.

Sellout coward. Wants me to plea bargain before he halts the trial to look at the FBI tape. Won't even tell me what they really said back there.

plant the LSD paper on Mark Ringer?"

"No. I don't know the man."

"He says you did."

"Then he's lying."

"Ever meet him?"

"Never."

"A Deadhead fan has turned in an enhanced photo of a Grateful Dead concert with you in it. Have you seen it?"

"What photo?" Eddy Shaw said.

"Look at it. That sure looks like you sitting with Mark Ringer."



"Do you know Mark Ringer?"

"I believe we met at a Grateful Dead concert in the summer of 1994."

"Did you speak with him?"

"I may have. I can't recall."

"Did you smoke hashish with him?"

"No," Eddy Shaw said.

"Did you offer to sell him LSD?"

Bastards would never smoke dope or grow their hair long. That fooled no one. Thought they were too good to hang out with us. They should have stuck with bank robbers. Preppy little shits. A lot of good they get from those fucking college degrees in history and political science and bullshit like that. If they would have left me alone then I would be finishing up my degree now in criminal justice at USC. I will get back in the program and finish it when I get some money. They can't stop that.

The bailiff swore in a thin man in his 40s who wore a crew cut and a dark blue suit. Eddy's lawyer wrote "Have you seen him before?" on the yellow pad. Eddy raised his eyebrows to say "I don't think so" because he did not know. Eddy breathed deeply to try to slow his pounding heart. He knew Justice had watched him but that was through his old office. Eddy tried to catch the FBI agent's eye and place his face.

FBI Special Agent Ronald Sutton did not look at Eddy as he explained his investigation. He looked back and forth at the district-court judge and the state prosecutor. The FBI had run the career data on all DEA agents through the National Security Agency's computers at Fort Meade. Each agent fit each of the hundred of good-guy and bad-guy "profiles" to some fuzzy degree. Eddy had fit some bad profiles enough to put him under active FBI suspicion. The computers ran neural programs based on how brains recognize patterns. They matched patterns well but could not explain themselves. So the FBI had to assign field agents like Sutton to investigate high-risk DEA agents like Eddy.

Sutton thought Eddy and two of his DEA friends might have committed a fraud against the government or a FAG. The FBI tapped their home and office lines and got daily updates on all their credit-card and banking actions. Agent Sutton held a tape in his right hand of portions of phone calls among the three friends. He said the FBI had just declassified this tape and its transcript. The FBI still had much more data that it could not declassify without revealing FBI sources and techniques. The FBI had reopened the FAG investigation when new sources came forth with evidence against

Eddy.

But the worst was which federal judge had approved the Title-III wiretap. Eddy now learned that it had been Judge Richard Kaufmann himself. The Justice Department had now managed to hit a forum-shopping home run by getting Eddy's case before Kaufmann. But he had seen this kind of thing before.

The prosecutor let the agent speak for ten minutes.

Then he asked if the FBI planned to arrest Eddy in the near future. Eddy's lawyer objected but the judge overruled him. Agent Sutton said he could not comment on the details of the case. The court would have to make do with the tape and transcript.

"What's on the tape?" the lawyer wrote to Eddy. Once more Eddy raised his eyebrows to say he did not know. He wanted to say it was bullshit but he could not speak.

Wish the fuck I knew. Stupid fucking lawyer.

Everyone knows a FAG is the common cold of FBI charges. The state might as well pile that one on with its 18 counts of extortion and racketeering and mail fraud. I have seen this a hundred times. Pile on the charges and make the fuck fight the whole stack. Perjury is next. This skinny bastard wants to cut a deal with them. The FBI scares him and he thinks it scares the jury too. But what the fuck do they have on that tape? Sure the fuck hope it's not real agent talk. Has to be John and Chavez. Who knows what those two guys said.

The lawyer then pushed the yellow pad in front of Eddy. It said "Let's talk before the jury hears this." Eddy thought that meant he and the lawyer would talk. So he shook his head yes. He saw his mistake when the lawyer jumped to his feet at Sutton's first pause.

"Your honor?" Eddy's lawyer said as he stood up. "In light of this new testimony and evidence the defense asks for a meeting in chambers."

Judge Kaufmann looked at the

prosecutor before he announced the recess.



Eddy followed his lawyer through the empty courtroom to the judge's chambers. He had waited less than five minutes for the lawyer to meet with the prosecutor and the judge behind the large brown oak doors. Now he had to trust his lawyer again.

Fucking sellout coward. Wants me to plea bargain before he halts the trial to look at the FBI tape. Won't even tell me what they really said back there. Fuck his fees. I can do worse than that.

Who would have thought things would change so fast? First Germany and Colombia legalized small amounts of pot and coke in 1994. Then came the Dutch and the rest of those European scumbags.

When this ends I will file against him at the California Bar.

Eddy walked in the judge's chambers and heard the soft orchestral music that came from a CD player on the judge's desk. He did not know or care that it was a Bruckner symphony. Judge Kaufmann sat behind his neat oak desk with his black robe draped around the back of his black-leather chair. He gave Eddy his full attention. The prosecutor sat at a large mahogany table and marked up the FBI transcript. He did not look up until Eddy stood before him.

"Eddy," the judge said. "Sit down. We are here to try to get this thing over with. Do you want that?"

"Yes," Eddy said as he sat with his lawyer across from the prosecutor.

"Good. Notice the door is closed. So this is all off the record. I want the three of you to speak freely."

"Thanks," the prosecutor said. "Eddy. I don't believe a fucking word you said on the stand. I have only skimmed this FBI transcript but it looks like we can nail you on at least two fresh counts of perjury alone. Remember the U.S. Code? It says each count can get you five years in prison and \$10,000 for the privilege."

"That's bullshit. No one prosecutes

perjury charges any more."

Judge Kaufmann raised his eyebrows.

"Let's wait," Eddy's lawyer said. "My client has come here on good faith."

"He wants to cut a deal," the prosecutor said.

"I didn't say that," the lawyer said. "We just want to explore all the options."

"He wants to cut a deal because he was a corrupt cop and now he knows we have proven that to the jury. This morning I thought we could convict him on at least half of the 18 charges. Now thanks to Special Agent Sutton we can get convictions on more like 15 or 16 of the 20. Eddy. Did you follow that math? You are going away for at least 30 years. Plus what the FBI gives you. Plus restitution fees. Plus the punitive damages you get from the civil suits of Mark Ringer and a dozen other young men and women you ruined. Lose one case and then lose them all."

"I don't have to listen to this," Eddy said.

"You are in no position to issue edicts. You'll listen and you'll do the right thing because you are not as stupid as you are scared."

"Then why waste your time?"

Eddy said. "You think the jury will hang me? Let them."

"I'd love to. I hate crooked cops."

"Fuck you. I saw you before. You prosecuted your share of drug busts. You fucking hypocrite."

"Eddy," the judge said. "Knock it off."

"Sorry," Eddy said to the judge.

"That's right," the prosecutor said. "I prosecute those who break the law. The drug laws changed. The laws you broke have not changed."

"Shit. You played the game like the rest of us. Back then it was always a wink and a nod. You sucked up to us like we were your best fucking friends. Anything to win a case. You lying motherfucker."

"Eddy," the judge said again.

"Sorry. But it's the fucking truth. You guys knew goddamn well that sometimes we had to plant shit to make a bust."

"Really?" the judge said. "I didn't know that."

"Look," the prosecutor said. "Eddy. You're right. I don't need your fucking plea bargain to win this case. We all know that. So I'll tell you why the state will give you a break. It's for the reason you just said. The only thing worse than a bad cop is a lot of bad cops. And we know you know who they are."

"You want me to narc," Eddy said.

"Can you guarantee my client will serve no time?" Eddy's lawyer asked.

"Shut the fuck up," Eddy said.

"Listen to him," the prosecutor said. "It's the right question to ask. What's left of your career and your future turns on it. But the answer to it is no. You will taste prison. The only question is how many years."

"I won't talk."

"Eddy. I've read the transcript. You and I know what's on the tape. The three of you made jokes about setting up Mark Ringer."

"That's a fucking lie. Who knows how the FBI doctored those tapes for you."

"You know better than that. The Bureau boys followed all the federal rules of evidence in this plain-vanilla Title-III electronic surveillance. The tapes are solid evidence. And in a few hours I will be having this same talk with at least two of your ex-DEA friends. You know John Monroe and Jose Chavez. Don't you? They'll talk if you won't. And frankly we can offer them a better deal. Don't be the sucker."

The music on the CD player had swelled and ended in an abrupt orchestral chord. Eddy wanted to hear what came next in the Bruckner symphony. Right now it was all that mattered.

"Eddy. Will you testify for the state?"

"Do I have to plead guilty?"

"Of course. That's the first step. You know that."

"What about the witness protection program?" the lawyer asked.

"No chance. Besides. Eddy is a celebrity. Where would he hide? The safest place for him will be prison."

Eddy had felt the brief relief of knowing that it was over. Now that had passed to fear. Eddy saw for the first time what he would now become and how he might even come to die.

This was it. Prison. He was going to fucking prison.

Cocksuckers. They did it at last. And it's my good pal John. John told me about some DEA clown they caught in Mendocino skimming his buy money. The stupid bastard is still in Leavenworth. John should know. Now he'd put me in Leavenworth just to keep his name out of the papers. Spineless son of a bitch. Knew I should never trust him. And that fucking Mexican Chavez. But Jesus. Think what the kids will have to go through in school. Their dad a con and a stool pigeon.

But I have to make the right move now. This cocksucker is right. We can knock off years here in the next few minutes. Someday in a cell that will mean the world. I'll be there because of what we do here now and no one will remember it. Even the kids will grow up to forget me. Wonder if what John heard was true or crap. Wonder if they really put contracts out on cops in prison. They gut you on the field or punk you in the shower. Fucking AIDS gang rape. Maybe I can join one of those gangs for protection. No way. Too many there from drug busts. I'll find a way to deal with it. But fuck. Hate to think I may have had my last good glass of cold Dutch beer or my last piece of pussy.

"Eddy," the prosecutor said. "Will you testify?"

"How many years and where?"

"I don't know where. We'll shoot for a parole option at seven years. That's the best we can do."

"Will I be secure?"

"Eddy. Come on. Did you ever study physics?"

"No."

"Me neither. But I do know there is something in it called the Schrödinger wave equation. It describes how all the matter in the universe flows. They tell me if you look at it right it has a solution: What goes around comes around. You threw a lot of boomerangs when you were on top. Now some of them are still out there spinning in the dark and building momentum. You will have to deal with them."

"Can you guarantee parole in seven years?" the lawyer asked.

"The state will do its best." □

Reviews

The New Dealer's War: FDR and the War Within World War II, by Thomas Fleming. Basic Books, 2001, XII+628 pages.

Country Squire in the War Room

Clark Stooksbury

It would be a gross understatement to call *The New Dealer's War* a revisionist history of World War II. Thomas Fleming has not "revised" the FDR myth, he has entered the Roosevelt Wing of the American Pantheon with a sledgehammer and reduced it to shambles.

FDR's optimistic, jovial demeanor, best exemplified by the smile with the upturned cigarette holder, concealed an arrogant and sometimes vindictive political leader. But a great many Americans, including the family of the young Thomas Fleming, held Roosevelt in high esteem. "Every time I walked into the vestibule of my family home in Jersey City in the 1940s," Fleming writes, "I saw Franklin D. Roosevelt's face on the wall, where many devout Irish-Catholic families hung a portrait of the Sacred Heart of Jesus. FDR was the hero of my youth..."

Franklin Roosevelt's reputation in American history comes from his towering achievements of "saving capitalism" during the 1930s and saving the world in the 1940s. In the 1930s Roosevelt took advantage of the near total destruction of the Republican Party to carry out what Gareth Garrett called a "revolution within the form." But by the late 1930s his act was wearing thin. His attempt to pack the Supreme Court was a disaster. In the

1938 election season, Roosevelt foolishly attempted to purge the Democratic Party of his political opponents. He failed in this effort and the Republicans rebounded strongly that year, almost doubling their numbers in the House of Representatives.

A bigger concern for the president in the late 1930s was how to involve the United States in the brewing European war when public sentiment in the wake of World War I was strongly isolationist. As one Cold War-era historian stated, Americans of the 1930s "wished to evade all responsibility for the world outside their borders." A less tendentious way of stating it is that in the wake of the Great War, Americans were once bit, and twice shy.

Roosevelt had his work cut out for him. He set out preparing war plans and trying to provoke Germany and Japan, instructing the U.S. Navy to commit numerous acts of war against each. On Dec. 4, 1941, the *Chicago Tribune* and *Washington Times-Herald* carried stories about a War Department plan called "Rainbow Five" that would have had 5 million U.S. troops invade Europe by 1943. On the surface, this was a tremendous embarrassment to the Roosevelt administration, but Fleming speculates that FDR was behind publication of the report because he knew that a Japanese attack on the United States was imminent, thanks to U.S. intelligence break-

ing Japanese codes, and believed that leaking the "Rainbow Five" plan might provoke Hitler into declaring war on the United States (Germany had a mutual defense pact with Japan, but was not required to enter any war with the United States that Japan had started).

"Unconditional Surrender" Roosevelt

The meat of Fleming's book is an account of FDR's disastrous conduct in trying to obtain Germany's unconditional surrender. At the Casablanca meeting with Churchill in January of 1943, Roosevelt made reference to "Unconditional Surrender" Grant, and announced that that would be the only terms under which the Allies would cease hostilities with Germany, Italy, and Japan. It was a plan that had a host of critics among the military and diplomatic leadership in the United States and Britain. Gen. Eisenhower thought it would unnecessarily cost lives and make the war much more difficult for the United States; arguing that "if you were given two choices, one to mount a scaffold, the other to charge twenty bayonets, you may as well charge twenty bayonets." Joseph Goebbels, on the other hand, was thrilled. He called it "world historical tomfoolery" and asked, "how can any German, whether he likes it or not, do anything but fight on with all his strength?" Eisenhower and Goebbels used the same logic to come to their conclusions.

One tragic consequence of Roosevelt's policy was that it almost destroyed internal German resistance to the Nazi regime. The timing of his announcement was particularly inauspicious, coming just as the German army was suffering a crucial defeat in Stalingrad, a defeat that might otherwise have led German officers to support a coup against Hitler — but as German resistance leader Adm. Wilhelm Canaris said, "unconditional surrender, no, our generals will not swallow that. Now I cannot see any

solution." Losing the opportunity of working with anti-Hitler elements of the German officer corps apparently did not bother Roosevelt, who squelched one inquiry from Office of Strategic Services head William Donovan by saying that he did not want to negotiate with "these East German Junkers."

As British historians Peter Calvocoressi and Guy Wint wrote in their book *Total War*:

The German conspirators against Hitler were the natural allies of anybody fighting Nazism but they were not . . . allies of a state at war with — or contemplating having to fight Germany. The common ground between the German anti-Nazis and the enemies of the German state was not as large or as open as it seemed to those for whom the struggle was about righteousness rather than territory. . . . The conspirators failed to find outside allies because, besides being anti-Nazi, they were also German.

Why would Roosevelt adopt a policy that had virtually no support out-

side of the Axis leadership? Fleming attributes it in part to his mistaken belief that Gen. Grant demanded and received the unconditional surrender of the Confederacy. What Grant actually received at Appomattox Courthouse was the conditional surrender of the Army of Northern Virginia. Grant got his reputation for insisting on unconditional surrender two years earlier, when he demanded (and got) the unconditional surrender

Why did Roosevelt adopt a policy that had virtually no support outside of the Axis leadership?

of Confederate forces at Fort Donelson.

Fleming also attributes Roosevelt's policy to his experiences from World War I, when he was an assistant Navy secretary under Wilson. In those days anti-German hysteria was so advanced that some states banned teaching German and a prominent Protestant minister advocated sterilizing the entire German army and talked of the United States' "duty of simply exterminating the German people."

Although Roosevelt was unable to see any good in the German people, he had a glowingly positive opinion of Joseph Stalin and the Soviet state, perhaps because of the influence of the many Soviet agents serving in his administration. In any event, FDR repeatedly allowed himself to be manipulated by Stalin, even to the extent of agreeing to force the repatriation of Soviet refugees, whom Stalin promptly transferred to the gulag. Roosevelt also repeatedly ignored emerging evidence that Soviet troops massacred 10,000 Polish officers in the Katyn Forest in 1940. Since it was initially reported by the Nazis, the crime was easy to dismiss. But Roosevelt continued to blame the massacre on the Nazis, even after hearing eyewitness accounts of the Soviet slaughter, and an admission by the head of the Soviet secret police.

Like a novel, *The New Dealer's War* has numerous subplots to accompany the main narrative. It even has comic relief, exploits of two prominent fig-

ures from the 1940s — Vice President Henry Wallace and the 1940 Republican presidential nominee, Wendell Wilkie — perhaps two of the biggest buffoons of the 20th century. Wallace set the tone early in his tenure as veep by closing the saloon that his predecessor, John Nance Garner, had established and replacing it with a gym; announcing his intention to remove "an inch off the waist of every senator whose girth is above 40 and whose age is below 60." Aside from being a laughingstock, Wallace was FDR's moralist-in-chief. Repeatedly, Fleming quotes Wallace promising some sort of global New Deal after the war or denouncing his domestic political opponents as fascists or Nazi sympathizers. Once, during the 1944 campaign, Wallace stated that every vote for Dewey would be "applauded in Berlin." Eventually Wallace proved to be a liability, especially to insiders who knew that Roosevelt was dying, and the Democrats replaced him with Harry Truman to the great disappointment of the remaining New Dealers.

Wendell Wilkie was nearly as bombastic and moralistic. In his contempt for members of his own party and

FDR repeatedly allowed himself to be manipulated by Stalin, even to the extent of agreeing to force the repatriation of Soviet refugees, whom Stalin promptly transferred to the gulag.

repeated pandering to the opposition, he foreshadowed John McCain. He repeatedly denounced isolationism and on one occasion told his Republican audience that, "if you had been half as smart as President Roosevelt, the Republicans would have advocated the legislation that brought the New Deal to power." Not surprisingly, Wilkie was the favorite Republican of *The New York Times*, which proclaimed him to be "head and shoulders" above other potential Republican presidential candidates in 1944. He met his Waterloo in the Wisconsin primary in 1944, finishing

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dead last and getting no delegates. Shortly thereafter, he unexpectedly withdrew from the race with a statement that "castigated both the Republican Party and the citizens of Wisconsin as moral midgets who failed to respond to the great crusade for international peace to which he summoned them."

Franklin Roosevelt was a moralist who, like many crusaders, was capable of ignoring the tremendous evil that accompanied his effort. The most obvious flaw in FDR's moral veneer on the home front was his decision to move 120,000 Japanese-Americans into internment camps — a move Fleming reveals that even J. Edgar Hoover opposed. Fleming reports another racist episode that involved a federal housing project built in Detroit's heavily Polish-American Hamtramck suburb. Twenty percent of the units were set aside for black workers and their families, but when whites protested, the feds caved, setting aside the whole housing project for whites. Fleming writes that, "black Detroit seethed. A federal housing official told presidential assistant Marvin McIntyre that the agency . . . followed local recommendations, even if they clashed head-on with racial equality. McIntyre blandly agreed, telling black protesters that it was important to avoid 'an open fight' lest it interfere with the war effort." Ironically, the housing project, which was later integrated with considerable difficulty, was called the "Sojourner Truth Homes."

The New Dealer's War is a timely contribution to the study of World War II, coming in time for the 60th anniversary of the U.S. entry into World War II. Fleming makes a solid case that FDR was not merely a bad war president, but a disastrous one. He covers the often grotesque details of the unconditional surrender policy, the terror bombings of civilians in Japan and Germany, the attempts by Roosevelt and his allies to demonize political opponents at home and many other facets of America's role in World War II that contradict the "Good War" myth. In doing so, Fleming accomplishes what he calls the "historian's chief task . . . to separate history from memory." □

The Trial of Henry Kissinger, by Christopher Hitchens. Verso, 2001, 159 pages.

The Crimes of Henry Kissinger

Stephen Berry

In the mid-1960s Bertrand Russell and friends decided to set up a war crimes tribunal on the Vietnam War. Russell's original idea of a tribunal of disinterested judges was quickly thrown overboard, and the tribunal limited its interest to allegations of American and South Vietnamese war crimes. Amongst those on the tribunal were Jean-Paul Sartre, Isaac Deutscher, and Simone de Beauvoir, all 24-karat leftists whose anti-American credentials were impeccable. A statement was issued demanding the trial of war criminals Johnson, Rusk, McNamara, and Lodge. The one-sided nature of Russell's tribunal managed to unite in condemnation *The New York Times* and *New Leader* in the United States and *Peace News* and the *Daily Mail* in the United Kingdom.

What the newspapers could see with perfect clarity when confronted by the Russell tribunal is unaccountably lost when the war crimes trials at Nuremberg, Tokyo, and The Hague are examined. People overlook that Russell and his supporters had adhered to the Nuremberg model in its entirety. As with Nuremberg, the judges would be openly biased against the defendants. As with Nuremberg, only one side of the story would be looked at.

The Nuremberg Indictment set the standard. "Crimes Against Peace" had clearly occurred. Yes, we would look at the German invasion of western Poland. No, we would not look at the Soviet march into eastern Poland

which had occurred at the same time. "War Crimes" there had been aplenty.

Yes, unrestricted submarine warfare by the German navy would be scrupulously examined. No, the obliteration of German cities by the Allied air forces was not relevant. "Crimes against Humanity" would be treated in the same way. The mass killing of subject races by the Germans would come under the microscope, but not the Katyn Forest massacre or the dropping of the atomic bomb on Japan.

But you would be wrong if you thought that the obvious double-standards of the original trials had dulled the appetite for these one-sided charades. Slobodan Milosevic has recently found himself in the dock at The Hague, where Western authorities will be looking in detail at alleged Serbian atrocities, while the activities of the drug-peddling KLA will scarcely figure. Ethnic cleansing by the Serbs will be under the spotlight. But the biggest single example of ethnic cleansing in the recent Balkan wars, the expulsion of hundreds of thousands of Serbs from the Krajina region by the Croats, backed by their western allies, will barely merit a mention.

With everyone having fun accusing their enemies of war crimes, it would be churlish to deny the odd journalist his day. Christopher Hitchens proposes to put Henry Kissinger on trial for war crimes. It was always bemusing to an outsider to see the extent to which journalists in the United States wanted to hang Richard Nixon out to dry for doing the sort of things that other U.S. presidents commonly did. Unfortunately, "Tricky Dick" spoils the

party by dying and Henry Kissinger had to be appointed to take over the Nixon mantle.

It has to be said that the case brought by Hitchens against Kissinger is rather weak.

"There exists, within the political class of Washington, D.C., an open secret that is too momentous and too awful to tell" (p. 6), Hitchens warns ominously. Thankfully, Hitchens is

Hitchens charges Kissinger with war crimes here. He is not charging him with failing to be a boy scout.

made of tough stuff and bravely lets the cat out of the bag. During the 1968 presidential campaign, Kissinger, at that time a Democrat, was working for Lyndon Johnson, assisting with the peace talks taking place with the North Vietnamese. According to Hitchens, Kissinger told Nixon that Johnson was contemplating a bombing halt to help the campaign of Nixon's opponent, Hubert Humphrey. Nixon's supporters in turn told the South Vietnamese government that a Nixon government would offer a better deal than any that could be offered by the Democrats. The South Vietnamese promptly withdrew from the Paris talks, damaging the "peace plank" on which the Democrats were contesting the election. Four years later Nixon struck a deal substantially the same as that which was on offer in 1968, but in those intervening years 20,000 Americans and a large number of Vietnamese, Cambodians, and Laotians lost their lives.

There are a number of problems to be faced before we can bring in the guilty verdict on Henry, even if we accept this story. The fact that the deal struck in 1972 was similar to that on offer in 1968 does not prove that Kissinger believed in 1968 that a better deal for the United States could not have been struck later, under Nixon. Kissinger himself has pointed out that of the 20,000 American troops killed in the Nixon period, 12,000 died in the first year of Nixon's administration, before the change of policy could take effect — "clear legacies of the previous

administration." When Nixon entered office, American troop numbers in Vietnam stood at 525,000. By 1972 they had been reduced to 25,000.

Hitchens is shocked at Nixon's "colluding with a foreign power" (12). Goodness gracious, does Hitchens know nothing of history? The House of Stuart sought the help of France in its attempts to recover the British crown. In the Russian civil war, the Whites eagerly sought the help of Western powers in their fight against the Reds. If I were to number all the opposition groups in Third World countries which have solicited the help of the United States since 1945 to overthrow the existing government, I could draw up a list the length of my arm. Why should American politicians thirsting for state power be denied what has been allowed to those in similar straits the world over? At least when Nixon's entourage colluded with the South Vietnamese, it was with a friendly power. Is this the stuff of which war crimes are made?

Hitchens quotes approvingly the claim of Gen. Telford Taylor, a chief prosecutor at Nuremberg, that if the standards of Nuremberg and Tokyo had been applied to the American statesmen and bureaucrats involved with Vietnam policy, "there would be a very strong possibility that they would come to the same end he [General Yamashita] did" (25). In his rush to establish the culpability of Kissinger, Hitchens mentions the trial of Koki Hirota, the Japanese foreign minister between 1933 and 1938. When Hirota heard of the Rape of Nanking by Japanese forces, he demanded and received assurances from the War Ministry that any atrocities would be stopped. The Tokyo tribunal however, found Hirota guilty because he was "derelict in his duty in not insisting before the Cabinet that immediate action be taken to put an end to the atrocities" (29) and duly sentenced him to death. What holds for Hirota, Hitchens maintains, should hold for Kissinger.

But fair-minded people might question the judgement against Hirota. People are fond of group guilt because it makes convictions easier. But is it right? Suppose that a person is the head of a firm and makes it clear that he thinks the law should be obeyed.

Imagine further that some of his workers commit a robbery whilst working for the firm. Would it be fair to hold him responsible for their behavior? I suggest that the robbers and any immediate supervisors who knew about the robbery should be held responsible. Similarly, I believe that the troops in Nanking and their officers should be held responsible, but not those who opposed it or did not know it was taking place.

Hirota had no control over troops in the battle zone and demonstrated that he disapproved of their misbehavior. Kissinger was in the same situation.

And it really would be strange if a representative of the administration which did the most to end the war in Indochina should be put on trial for the horrors that went on there. I would be more inclined to lay the blame on the administrations of Kennedy and Johnson, who both expanded the American presence in Vietnam. One might add that the Kennedy White House mounted a successful coup against the South Vietnamese government in which the president, Ngo Dinh Diem, was killed. One might point out that Lyndon Johnson used a trumped-up naval incident to fool Congress into

Kissinger in government behaved as one might expect a student of Metternich and Bismarck to behave.

passing the Gulf of Tonkin Resolution, thereby widening the war. In the hunting of Henry, Hitchens seems to be missing the real culprits.

Hitchens may be on firmer ground when he considers the American government's behavior toward Chile after 1970. Hitchens seems to subscribe to many of the fairy stories that surround the Allende government. For instance, he stresses the measures the U.S. government took to destabilize the Chilean government (66) but fails to mention a much greater destabilizing influence in Chile — Salvador Allende himself. Perhaps it was the examples of Fidel Castro and Che Guevara that tragically inspired Allende with the notion that

with 36% of the vote he would be able to remake Chile from top to bottom.

But Hitchens' specific charge against Kissinger is that as head of the so-called 40 committee, he was involved in covert action to assassinate the head of the Chilean army, Gen. René Schneider, who was maintaining the traditional refusal of the Chilean military to intervene in the political process. Hitchens claims that machine guns were sent from Washington, D.C. to coup plotters in a diplomatic pouch. Schneider was eventually kidnapped and murdered, though not with the guns from the United States. This is a matter that plainly needs further investigation.

Hitchens also criticizes Kissinger for lack of intervention on a number of occasions:

- Kissinger failed to caution the Greek government which had links with coup plotters in Cyprus in 1974.

- Kissinger did nothing to prevent the Pakistani government's violence in its eastern province (which later broke away to become Bangladesh).

- Kissinger made no attempt to prevent the Indonesian government from invading East Timor in 1975.

I could mention the Cold War *realpolitik* that governed Kissinger's actions here. For instance, Pakistan was his link to China and was important for the subsequent rapprochement — the major foreign policy initiative of Nixon's first administration. But there is no need to analyze in detail what many people consider to be the rather distasteful subject of great power diplomacy. Remember that Kissinger is charged with war crimes here. He is not charged with failing to be a boy scout at every possible opportunity. To fail to carry out a good deed may be reprehensible, but it most definitely is not a crime. People would do well to remember that intervention in the affairs of other countries often produces the opposite results from those desired. Jimmy Carter followed the Hitchens recipe in Iran. But the pressure on the Shah to improve human rights may have weakened his government and paved the way for a theocratic regime and subsequent misery for the Iranian people. If Carter's policy played a part in success of the Mullahs and subsequent human rights abuses far worse than the Shah would

have contemplated, would it make sense to threaten Carter with a war crimes tribunal?

Hitchens also suggests that Kissinger was involved in the attempted assassination of Greek journalist Elais Demetracopoulos, a Washington-based critic of the military junta that ruled Greece in the late 1960s and early 1970s. Hitchens produces a statement saying the journalist had died in prison in Greece, intimating that this is precisely what would

have happened to him had he been foolish enough to return there. It's pretty thin stuff and the link with Kissinger highly tenuous indeed. I might also mention that Demetracopoulos did not return to Greece and did not die in a Greek prison.

Would Henry Kissinger be convicted of war crimes on the basis of Hitchen's charges? The history of war crimes trials shows us that if his enemies were judge and jury — and in

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war crimes trials this usually is the case — the answer would be a resounding yes. But I shall be a little more discriminating. Kissinger in government behaved as one might expect a student of Metternich and Bismarck to behave. He had little taste for Wilsonian idealism but even less for the use of brute force favored by the political gangsters of this world.

Rather cleverer than most perhaps, he pursued those policies which he judged would maintain America as a world power. It's hard to see that someone else in his position would have behaved very differently.

If you think he was a war criminal, you are making a pretty damning statement about the present world order. □

Cato Handbook for Congress: Policy Recommendations for the 107th Congress, edited by Edward H. Crane and David Boaz. Cato Institute, 2001, 680 pages.

Practical Libertarianism

Brian Glazer

Underscoring the debate about the future of libertarian activism is a larger issue: In which direction should libertarians proceed if they're serious about creating an America with more individual liberty and less government? One answer comes from the Cato Institute's latest blueprint for liberty, the *Cato Handbook for Congress*, which provides a wide array of practical political tools for those who want to change government from inside the 107th Congress.

The thinkers at Cato never shrug from claiming the moral high ground, but they differ from most libertarians in their willingness to deal with political realities. Early on in the book, Roger Pilon makes the crucial observation that, "As programs are reduced or eliminated, then, care must be taken to do as little harm as possible" to those who have contractual relationships with the federal government and those who support reform efforts. Not only is this morally justifiable, it's the politically astute thing to say and do.

On that note, Michael Tanner presents suggestions for Social Security reform that would boost everyone's

retirement payouts notwithstanding Sen. Tom Daschle's empty praise of Social Security's performance in 2000 compared to the return on the NASDAQ. Tanner explains Social Security's failure and outlines the benefits of shifting retirement savings to private accounts. But Tanner doesn't ignore practical politics, and allows that individuals could not withdraw their funds before retirement age, that government would "establish regulations on portfolio risk," and there would still be a guaranteed minimum pension benefit. A transition to a private plan would still cost nearly \$7 trillion to fund current recipients, and Tanner suggests that foregoing tax cuts is the best option for funding this commitment. Are other libertarians prepared to deal with that imperfect trade-off and others like it in order to open the doors to radical reform? Doesn't it make sense to trade the present health-care system for medical savings accounts in exchange for a few regulations, or a bloated \$300 billion military for a less-bloated \$185 billion military?

What is so striking throughout the book is the way that it addresses issues ranging from telecommunications and agricultural policy to relations with

Cuba and the drug war with a select few institutional reforms. Indeed, if someone in Congress would lead the charge to make just one institutional change — like mandating term limits or removing the feds from state issues — we might just get the ball rolling in the right direction. Moreover, if members of Congress ever get the courage to actually defend the Constitution, Cato suggests that they will have an opportunity to check the power of the executive and the judiciary branches. Want to reclaim the war power from the executive branch? Cato proposes that Congress either withhold funding for the numerous illegal troop deployments or simply impeach the president on grounds that undeclared wars qualify as high crimes and misdemeanors. Likewise, it is also Congress' duty to clarify the Constitution where the judiciary has failed to do so. Because the courts have failed to develop a principled approach to property rights and regulatory takings, Roger Pilon explains, "Congress needs to enact general legislation on the subject of takings that might help to restore respect for property rights. . . . There is nothing in the Constitution to prevent Congress from exercising the responsibility entailed by the oath of office" when the Supreme Court fails to secure the rights of citizens.

Of course, the *Cato Handbook* is written for members of Congress, so it has as much political strategy as it does philosophy and principle. Make no mistake about it: This book is not aimed at codifying another libertarian utopia; its goal is to foment serious change. There are no articles about the inherent immorality of taxes, or calls for a tax-free America. Instead, there are plans for switching to a flat tax and eventually a national sales tax. The authors of the chapter on tax reform offer up political compromises like a 25% MAXTAX that gives individuals the choice of staying in the current system or switching to a far simpler tax system that limits combined income and payroll taxes to 25% of income. The choice is designed to avoid the ire of those special interests that benefit from the current system.

If you boil the book down to one sentence what you get is: "It's the Constitution, stupid!" Most of its arguments — including the argument for

eliminating the Department of Education and a host of other programs — are constitutional ones. The Department of Education must be razed because there is no constitutional authority for its existence. That is true, and abolishing the Department of Education is also moral, practical, and what's best for families, but in a government primarily consisting of legislators who believe the Constitution is simply another vehicle for dispensing pork and accumulating power, how

The Cato Handbook has no articles about the inherent immorality of taxes, or calls for a tax-free America. Instead, there are plans for switching to a flat tax and eventually a national sales tax.

much weight do constitutional arguments carry? When so few people give the Constitution any authority, these arguments are as useless as a substitute teacher in a middle-school band class. Legislators that actually believe in the Constitution are caught in a vicious circle: To lend more clout to the Constitution, it needs to be invoked more often, yet there's not much political advantage to invoking it when so many people don't recognize it. Although sometimes no other option remains but to eliminate an agency on constitutional grounds, additional political considerations consisting of mutually beneficial approaches would certainly help the cause for downsizing government.

Throughout the *Cato Handbook*, one senses a thirst for old-time politics when one might have stepped into the Capitol and seen congressmen lecturing each other while waving around the Constitution. Today, it's difficult to imagine a debate on the necessity of NASA where someone asks that all-important question: "Does the Constitution allow for its existence?" That's exactly the question that Cato asks most often.

More important are Cato's attempts to inject some new ideas into the woe-ful state of present discourse. Gradual

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All this indicates great potential for the February 2002 elections. But our openly libertarian educational and electoral campaign must be media-intensive, which is costly everywhere, and as libertarians we don't accept government funds. With a strong campaign we have an outside chance of winning the Presidency in 2002. But we certainly will by 2006 if we can elect many Congressmen next year.

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solutions are proposed that would do just that. For example, as a compromise to eliminating the executive branch's numerous regulatory agencies such as the EPA and the FDA, Congress could pass a law requiring that it approve major regulations before they can be implemented. This option has the advantage of promoting debate about the limits of government while effectively limiting the power of regulatory agencies. In the tax realm, Cato argues that Americans should be sent an annual disclosure showing their complete tax burden. Since many of Cato's proposals won't occur without popular support, providing a real-world civics lesson may do a lot to forward their cause.

An understanding of the philosoph-

ical roots of our government and the realities of politics would be useful for libertarians and non-libertarians alike. Libertarians have a way of mixing philosophy and politics that often neglects the utility of each. Philosophy rarely is practical, but even when it is, the IRS is still standing after the buzz wears off. The Cato Institute toes this line courageously, and has published in its *Cato Handbook for Congress* one of the most comprehensive reconciliations of present-day politics and principled philosophy that we have. How successful its efforts will be remains to be seen, although Congress' repeal of OSHA's ergonomic regulations and Bush's nascent discussion of Social Security privatization hint that, maybe, somebody is listening. □

"The World of Atlas Shrugged," narrated by Edward Herrmann and Lynn Redgrave. Two compact discs.

Atlas Plugged

Timothy Sandefur

Introductions to Ayn Rand are a growth industry. First Hollywood took two characteristically tangential looks at her life, in the hagiographic *Ayn Rand: A Sense of Life* and in Showtime's mindlessly sleazy "Passion of Ayn Rand." Then Alan Gotthelf published an officially authorized introduction to her for Penguin Books' series on philosophers, which was promptly de-authorized. (At first, the gang in Marina Del Rey cheered, but then it revoked its cheers in a characteristically public way; Second Renaissance Books is still printing Leonard Peikoff's dissenting review in its catalogue as a disclaimer.) Then Tibor Machan produced a short and decent introduction, followed by a collection of edited Rand bits called *The Ayn Rand Reader*. There are "basic introductions" by Chris Matthew Sciabarra,

George H. Smith, and Nathaniel Branden, and a series of actual CliffsNotes edited by The Ayn Rand Institute's golden boy Andrew Bernstein.

All of this has fueled talk of an Objectivist renaissance (or naissance). There has been a recent boom in scholarly discussion of Rand's work as well. *The Journal of Ayn Rand Studies* is in its fourth issue; books on Rand as a feminist and on her aesthetic theories were recently published, and her name continues to appear in unlikely places — including a postage stamp. In October, she will be featured in a C-SPAN documentary series on American authors.

But how much good do "basic introductions" to Ayn Rand do? As philosophers go, she's extremely accessible. *Atlas Shrugged* has a wealth of meanings, and deserves repeated study and discussion, but it's not exactly *The Critique of Pure Reason* or even *Thus Spake Zarathustra*. One rarely

comes away from Ayn Rand wondering what she means. Objectivism has its complexities, and they have been addressed very ably by a number of authors. My own favorite is Ronald Merrill's *Ideas of Ayn Rand*, which I think remains the best single-volume commentary; it has the drawback, though, that one must read all of Rand's books before reading it.

I distrust "basic introductions"; they're written for people who don't want to take the time to actually read the books they introduce. With a novel the size of *Atlas Shrugged*, such reluctance may be understandable, but CliffsNotes-izing Ayn Rand is not a task I would want to undertake. It is, however, one that the Objectivist Center has undertaken, with the help of Edward Herrmann, who narrates *The World of Atlas Shrugged* on two compact discs. (Herrmann, you will recall, narrated the abridged *Atlas Shrugged* and *The Fountainhead* books on tape.) The timing of the release is meant to allow people to have it readily available when TNT unveils its miniseries version of *Atlas Shrugged*. Being a snobbish reader, I instinctively look down on this kind of soft-pedaling. I suspect much more is to be accomplished by reaching out to those people who are willing and able to read a thick and challenging book. But then again, Rand herself produced many user-friendly philosophical pieces, in her *Los Angeles Times* columns, her screenplays, and *For The New Intellectual*. The writer who once rebuked an editor with "Would you edit the Bible?" has been edited and re-edited many times already.

As introductions go, *The World of Atlas Shrugged* has the advantage of being more convenient as a CD set than a book would have been. But its limited length makes it hard for it to be fair to the book's wealth of subjects. I suspect that most people, upon first encountering *Atlas Shrugged*, are more often piqued by Rand's ethical and political theories than by her consistency of characterization, or the sophistication of her plot and theme styling. Yet the CDs spend a lot of time on these subjects, and not much on politics or ethics. Rand's writing has always appealed primarily to idealistic and intelligent youths, seeking an alternative to the nihilism and dogma

they see around them on a daily basis. They thrill to see the power and majesty of great theoretical systems, and the passion of revolutionary figures who are so different from the workaday people surrounding them. Rand's characters can be inspiring on these grounds, but many kids who read her books in school are probably more interested in learning about capitalism and selfishness than about the benevolent universe premise.

"World" also presents another obstacle to effective contact with young readers: its occasional corniness. The CD begins with a paraphrase of *Atlas'* opening scene, told in an unduly sinister voice, with dramatic music rising in the background, and climaxing with a voice choking out "Who . . . is . . . John . . . Galt" like the last words of a man on the gallows. If I recall that scene correctly from the book, the bum actually tosses off the phrase "Who is

Atlas Shrugged has a wealth of meanings, and deserves repeated study and discussion, but it's not exactly The Critique of Pure Reason or even Thus Spake Zarathustra.

John Galt" with dim resignation. *Atlas* is, after all, supposed to be *shrugging*, not having a coronary. This overdramatization presents an uncomfortable moment for those who take Ayn Rand seriously.

Equally troublesome, though more philosophical, is "World"'s example of "primitive" art. In a comparison of Rand's intellectual heroes to the more physical heroism common in ancient literature, "World" uses the *Odyssey's* hero Odysseus as its example of primitive literature's emphasis on physical strength. But this is to choose precisely the wrong example. Just about any other hero of ancient literature would have worked; the hero of *Beowulf*, for instance, or maybe *The Epic of Gilgamesh*; perhaps even the heroes of *The Iliad* were "mere" epigones of physical strength. But from the first line of the *Odyssey* — which calls

Odysseus "polytropos," the "many turning" — until the very end, the poem consistently emphasizes Odysseus' cleverness and his ability to think through the many challenges facing him. It is one of the great triumphs of ancient Greece that its heroes were intellectuals as well as strongmen. Odysseus has more in common with an Ayn Rand hero than any other character of ancient literature, except perhaps Aeschylus' Prometheus. To view him as little more than an athlete is an embarrassing error.

Notes on Contributors

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David Kopel is the author of *The Samurai, the Mountie, and the Cowboy*.

Bart Kosko is a professor of electrical engineering at USC and author of *Heaven in a Chip*.

Some other aesthetic assertions in "The World of Atlas Shrugged" are a bit questionable as well. Herrmann recites the routine conclusory assertions that Rand was "brilliant" and a "genius" but he also calls her "subtle." I admire Rand a great deal, but I've never noticed her mastery of subtlety.

So much for the drawbacks. On the plus side, "World" is generally good at explaining Rand's ideas simply, and without patronizing the listener. The second CD, much better than the first, is patient at explaining "self-interest

Richard Kostelanetz has entries in *Contemporary Poets*, *Baker's Biographical Dictionary of Musicians*, and the *Merriam-Webster Encyclopedia of Literature*.

Sarah J. McCarthy is co-author of *Mom and Pop vs. the Dreambusters*.

Wendy McElroy is the author of *The Reasonable Woman: A Guide to Intellectual Survival*.

William E. Merritt is a senior fellow at the Burr Institute and lives in Portland, Ore.

Donald Miller is a great-great-grandson of Capt. Louis Thomas Hicks and is a cardiac surgeon in Seattle.

Michael New is a Data Analyst and Research Assistant at the Center for Representative Government at The Cato Institute.

Sheldon Richman is editor of *Ideas on Liberty*.

Timothy Sandefur is a law student at Chapman University in Orange, Calif.

Jane S. Shaw is a senior associate at the Political Economy Research Center.

Tim Slagle is a stand-up comedian living in Chicago whose Web site is www.timslagle.com.

Clark Stooksbury is a freelance writer living in Knoxville, Tenn.

properly understood" and the common misrepresentation of Objectivism as hedonism. And in assessing Rand's characterization, "World" is honest in its discussion of common criticisms of Rand's style. "The more stylized portraits of evil characters in *Atlas Shrugged*," Herrmann says, "don't offer as much psychological variety as those in [Dostoyevsky's] *The Possessed*, or even as much variety as Rand provides in her earlier masterpiece, *The Fountainhead*. That book explored many variations on the theme of psy-

Herrmann calls Rand "subtle." I admire her a great deal, but I've never noticed her mastery of subtlety.

chological dependency. But in *Atlas Shrugged*, what Rand loses in diversity and complexity, she gains in depth and clarity. We get to probe the dominant motives of three major villains . . . down to their very roots." Quite true. "World" adequately confronts the common complaints that Rand's characters are too talkative, or too stark, or too unbelievably idealistic.

I hope that popular analyses such as "World"'s will attract more readers to Ayn Rand's novels. We certainly need them. California is now bleeding its way through an energy crisis that is reminiscent of sequences from *Atlas Shrugged*. The state's attorney general, Bill Lockyer, recently expressed his desire to "personally escort" Kenneth Lay, chairman of the energy company Enron, "to an 8-by-10 cell that he could share with a tattooed dude who says, 'Hi, my name is Spike, honey.'" One has visions at such moments of John Galt being tortured in a dark room. And Gov. Grey Davis is doing his best to sound like James Taggart: "If you're looking for a culprit, I'll give you a culprit," he says. "The culprit is the Federal Energy Regulatory Commission. They've consistently turned a deaf ear to my pleas. . . . So if there is a villain, it is clearly the Federal Energy Regulatory Commission." Mr. Davis, perhaps I could

interest you in some stock in a Mexican copper mine? The state has already gone to court repeatedly to force electric companies to create and sell energy to the state — "You'll do some-

thing, Mr. Rearden!" — and already the blackouts have begun. Come to think of it, perhaps "The World of *Atlas Shrugged*" should come with a free set of batteries for the CD player. □

Booknotes

Down and Out in Key West

— Although my outlook has always been solidly middle-class, there have been times when I pinched every penny and the source of my next meal wasn't always obvious. I thought of my poverty days often while reading Barbara Ehrenreich's, *Nickel and Dimed: On (Not) Getting By in America*, (Metropolitan Books, 2001, 221 pages). Ehrenreich is a feminist and democratic socialist with a Ph.D. in biology. Generally speaking, she is not someone you would expect to find scrubbing floors in Portland, Maine. To investigate the predicament of the unskilled worker in the wake of welfare reform, Ehrenreich waited on tables and cleaned hotel rooms in Key West, worked as a maid and as a dietary aide in Maine and served as a Wal-Mart "associate" in Minneapolis. What she discovered is that it is — no surprise here — extraordinarily difficult to live on \$7 an hour, especially when paying upwards of \$500 a month in rent.

A big part of the modern employee selection process is testing. The personality profiles Ehrenreich took were presented as having no right or wrong answers. But, as she says, "the 'right' answers should be obvious to anyone who has ever encountered the principle of hierarchy and subordination. Do I work well with others? You bet, but never to the point where I would hesitate to inform on them for the slightest infraction. . . ." Wal-Mart almost decided not to hire Ehrenreich because she only "strongly" agreed with the proposition that "rules have to be followed to the letter at all times." Wal-Mart also expects new hires to take a drug test. That Wal-Mart is such an eager partner with Uncle Sam in the drug war should give you pause the next time

you read a "dynamist" paean to its virtues.

Barbara Ehrenreich is a socialist, and she focuses most of her criticism on our capitalist economy and neglects serious issues — such as taxes. When I look at my pay stub, I see that Uncle Sam takes nearly 20% off of the top. I know that I will eventually get most of that back, but that does me little good in the short run, where low-wage workers must live. I know I will never get a cent back on the 8.25% sales tax where I live. Ehrenreich makes no mention of how much is withheld from her paycheck by the feds, or how much each state that she worked in taxed her. But, I found it easy to forgive these minor shortcomings when I was laughing so hard. The words "feminist" and "socialist" are usually synonymous with turgid and humorless. Ehrenreich is a happy exception to this rule.

— Clark Stooksbury

Apocalypse, Again — I hope the re-release of *Apocalypse Now* will encourage people to read the book on which it was partly based, Joseph Conrad's *Heart of Darkness*. Conrad is a remarkable author, who had five books on the Library of America's "top 100 novels of the century." Like Mark Twain, Conrad has fallen on hard times lately, thanks to political correctness.

Like Twain, Conrad's prose style is wholly unique, and it takes a while to become used to it. Out of context, it can sound meaningless and forced, but read as part of a whole, it is incredibly effective at evoking the tension of a jungle hunt. Take this passage from *Heart of Darkness*:

The earth seemed unearthly. We are accustomed to look upon the shackled form of a conquered monster, but there — there you could look at a

thing monstrous and free. It was unearthly, and the men were — No, they were not inhuman. Well, you know, that was the worst of it — this suspicion of their not being inhuman. It would come slowly to one. They howled and leaped, and spun, and made horrid faces; but what thrilled you was just the thought of their humanity — like yours — the thought of your remote kinship with this wild and passionate uproar. Ugly. Yes, it was ugly enough; but if you were man enough you would admit to yourself that there was in you just the faintest trace of a response to the terrible frankness of that noise, a dim suspicion of there being a meaning in it which you — you so remote from the night of first ages — could comprehend.

In reading this, or any paragraph in *Heart of Darkness*, one can practically feel the heat of the Congo atmosphere, or hear the tribal drums in the distance. Conrad's prose is perfectly matched to the tension he seeks to build, slow but constant, like jungle heat. Unfortunately, it's impossible to capture this unique prose on film. *Lord Jim*, which is even better, was turned into a middling film in the mid-sixties only because it allowed itself some freedom from the novel, much like Coppola did in *Apocalypse Now*, only about a half-hour of which has much in common with Conrad's novel.

Unfortunately, as with Twain's *Huckleberry Finn*, Conrad's *Heart of Darkness* has become a target of accusations of racism. African novelist Chinua Achebe among others has denounced Conrad for "celebrating the dehumanization" which occurred in the 19th century Belgian Congo — which serves as the novel's setting. But, as with the accusations against Twain, nothing could be farther from the truth, and anything more than the most superficial reading of the text should make clear that *Heart of Darkness* is an emphatic denunciation of the cruelties Conrad himself witnessed when he traveled in the Congo. The savage way in which Belgium ran the Congo — routinely dismembering the natives to force them to turn over more and more ivory, for instance — serves as an obbligo to the novel's building suspense, climaxing in the famous moment in which Kurtz, the

noble genius whom the main character has been sent up the Congo River to find, quietly whispers on his deathbed, "The horror! The horror!" The entire book is an indictment of colonial rule,

just as *Huckleberry Finn*, with its background of racism among the villagers along the Mississippi River is an indictment of American slavery — and, incidentally, just as Coppola's *Apocalypse*

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Now uses the background of wartime terror to indict the cruelties of Vietnam. As David Denby put it in *Great Books*, Conrad "captured with such devastating force the peculiar hollow triviality of the colonists' ambitions, the self-seeking, the greed, the pettiness, the lies, and evasions. The ambivalence of Conrad is precisely his glory." — Timothy Sandefur

Commies-simps — Okay, here it is: "[I]f we put aside nationalistic fervor, we might dare raise a broad question that Radosh, the zealous patriot, refuses to go near: Why do we seem unable to feel some compassion and extend some understanding toward those who chose, often at enormous personal sacrifice, to give primary allegiance to a country [in this case, Stalin's

Russia] that they believed (however mistakenly, we might feel today) stood, alone among the great nations in the 1930s and '40s, for antiracist, anticolonialist principles (gleeful crowds in the American South were still enjoying the community spectacle of a burnt, lynched black body)?" (This is from Martin Duberman's July 16 *Nation* review of Ronald Radosh's *Commies*.)

I was reading Duberman's review in the wake of Carroll O'Connor's death and so had already imbibed a great deal about the significance of his portrayal of Archie Bunker. Now I ask you: Which should be viewed as the greater evil — America's Archie Bunkers or its Martin Dubermans? Are we to believe that a real-life Archie's armchair pronouncements are a greater wound to the commonwealth

than what Duberman puts into print? Why are the Bunkers terrible bigots and the Dubermans well-meaning idealists? And when it comes down to Archie and Martin, who should take the prize for sheer, outright ignorance and stupidity?

Consider another question. If we put aside idealistic fervor, we might dare raise a broad question that Duberman, the zealous leftist, refuses to go near: Why don't "we" have any compassion or understanding for people who gave their allegiance to a country [in this case, Nazi Germany] that they believed (however mistakenly, we might feel today) stood, alone among the great nations in the 1930s and '40s, for anti-Communist, anti-Stalinist principles?

— Barry Loberfeld

"Civil War," from page 44

the Constitution, Lincoln ignored the ruling.

Lincoln called up an army of 75,000 men to invade the seven Southern states that had seceded and force them back into the Union. By unilaterally recruiting troops, without first calling Congress into session to consider the matter and give its consent, Lincoln made an error in judgment that cost the lives of hundreds of thousands of Americans. At the time, only seven states had seceded. But when Lincoln announced his intention to bring these states back into the

Union by force, four additional states — Virginia, North Carolina, Tennessee, and Arkansas — seceded and joined the Confederacy. Slavery was not the issue. The issue was the very nature of the American union. If the president intended to hold the Union together by force, they wanted out. When these four states seceded and joined the Confederacy rather than send troops to support Lincoln's unconstitutional actions, the Confederacy became much more viable and the war much more horrible.

From the time Lincoln entered politics as a candidate for the state legislature in 1832, he championed a political agenda known as the "American System." First advocated by his idol and mentor, Henry Clay, it was a three-part program of protective tariffs, internal improvements, and centralized banking. This program "tied economic development to strong centralized national authority," as Robert Johannsen puts it in *Lincoln, the South, and Slavery*. Lincoln believed that import tariffs were necessary, at the expense of consumers. The "internal improvements" he advocated were simply subsidies for industry, i.e., corporate welfare. Abraham Lincoln was the first president to give us centralized banking, with paper money not backed by gold.

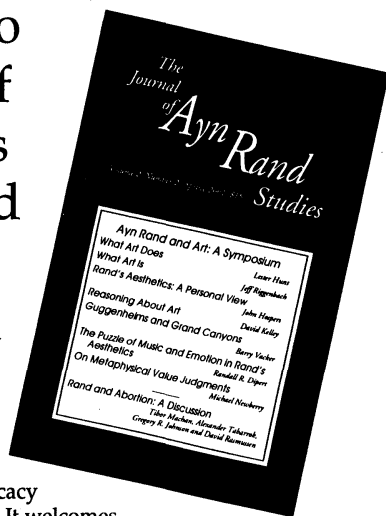
The Constitution of the Confederate States of America forbid protectionist tariffs, outlawed government subsidies to private businesses, and made congressional appropriations subject to approval by a two-thirds majority vote. It enjoined Congress from initiating constitutional amendments, leaving that power to its constituent states; and limited its president to a single six-year term. When the South lost, the stage was set for the United States to become an American Empire ruled by a central authority. In starting his war against the Confederate States, Lincoln was not seeking the "preservation of the Union" in its traditional sense. He sought the preservation of the Northern economy by means of transforming the federal government welfare-warfare-police state. □

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ruption" within the 1996 Browne campaign. But usually corruption has a real point. Like, well . . . a police captain who releases a mafia hit man in exchange for \$50,000. Usually the payoff for corruption is some substantial personal benefit unearned.

What makes this scandal seem trivial is that I haven't yet seen the big "pay-off." What exactly did Browne or Willis get? The presidential nomination of the LP? The right to schlep around the country working small crowds and backwater radio shows after sleepless nights eating crummy food?

Was the payoff a second paying job (for Willis) so he could work two jobs rather than one? What exactly is the big benefit unearned? Until that's publicized, I think a lot of people will continue to respond to all this with a big yawn.

J. Mills
Tacoma, Wash.

Bradford responds: I don't believe that the rationale for the party's rules prohibiting employees from working for people seeking the party's presidential nomination has anything to do with "state-sponsored religion" rationale. I've read the minutes of National Committee meetings and discussed this with many LNC members, and cannot find a hint that anyone accepted this rationale. Nor do I think the "spirit" of the rules is the right way of evaluating what's happened. The rules are explicitly written, and what Willis did was violate both his promise and the rules as they were written.

So why did the party establish its conflict of interest rules?

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I think the LNC quite rightly believes (a) that the LP's nominating process should be open to all on a fair and equitable basis, and that if its paid staff is working for one particular candidate, it would not be; or at minimum it would have a chilling effect on competition; (b) that it is important to avoid even the appearance of favoritism, which is inevitable if the party's boss is working part-time for a candidate for the nomination.

You note that corruption has a "real point . . . [in the form of] some substantial personal benefit unearned" and that you cannot see any such benefits accruing to Browne or Willis here. It seems to me the "personal benefit" each received is substantial and obvious.

The payoff for Willis was that he got \$4,000 for what he did on behalf of the campaign in February 1996, plus whatever he was paid for his campaign efforts in the other five months in which he was violating both the terms of his contract and his public promise. Simple extrapolation suggests he received \$24,000.

Browne got Willis' help obtaining his party's nomination, which involves more than "schlep[ing] around the country working small crowds and backwater radio shows after sleepless nights eating crummy food." Winning the party's nomination is presumably of considerable value, or else so many people wouldn't invest so much to do it. And its value is pretty obvious: It brings fame (which has a cash value, or else why would so many people pay for publicity?) and fundraising opportunities (which also have a cash value), both of which Browne has taken advantage of.

Willis, Dean, Browne, and perhaps others within the LP or Browne's campaign conspired to violate LP rules and the terms of Willis' contract with the LP and to cover up having done so. They did it in order to assure that Browne would win the 1996 LP presidential nomination. In the process, they corrupted the party's nomination process and left many party members disenfranchised. As an LP activist of 29 years, I see this as something more than a "big yawn."

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San Francisco, Calif.

When unions extend a helping hand to the working man, discovered in *The New York Times*:

Rick Davis was arrested after robbing at least nine banks. Davis, who was president of the air-traffic controllers union at the San Francisco airport, has been an employee of the Federal Aviation Administration since 1986. Davis' lawyer said the arrest would end his career. A spokesman for the FAA said, "Mr. Davis still had his job."

Keyes, Okla.

Curious attempt to escape the penitentiary, from *Prison Legal News*:

During a work detail, prisoner Ronald Thomas stole a van and drove it approximately 150 miles before becoming hopelessly lost. He called 911 and asked to be taken back to prison.

Oregon

Protecting the public from excessive exposure to nature, seen at www.oregonlive.com:

A judge has ordered "state wildlife agents to police Sauvie Island's nudist beach to ensure that sunbathers don't stray from the beach's boundaries."

New Zealand

Updating New Zealand's progressive tax code, from *CNSNews.com*:

Officials are evaluating imposition of a "flatulence tax" in response to a warning from the International Energy Agency "to do something about the methane gas produced by some 50 million livestock."

Seattle, Wash.

New frontiers in standardized testing, from a dispatch in *The Seattle Times*:

A recent Washington Assessment of Student Learning test given to 10th-graders featured a math question regarding the order of towns on a highway. The correct answer sounds similar to the name of the state's most infamous child rapist: Mary K. Letourneau. Terry Bergeson, the state's superintendent of public instruction, sent an e-mail to all state high schools ordering them to not have children answer the question and, if they do, for it not to be scored.

Port Townsend, Wash.

The thin blue line that protects us from chaos, reported in the *Port Townsend Leader*:

A man was arrested for Driving Under the Influence of Alcohol after succeeded, after six hours in a grocery store parking lot, in convincing a passerby to blow into his ignition interlock so he could start his car.

Coquitlan, British Columbia

Perils of international travel, reported by the *Vancouver Province*:

Judy and John Taylor rented a car for a vacation to the United States. After they had driven it across the border twice, Mr. Taylor discovered about eight grams of cocaine hidden under the car's center console. The rental company explained that people leave all sorts of things in cars after renting them, and offered the couple another car.

Washington, D.C.

Further evidence that government is a careful steward of resources and a uniquely competent protector of public security, from the *107th Congress Critical Issues Legislative Agenda Survey*:

Among the listings of examples of government waste was a "lost or misplaced surface-to-air missile."

United States

Making crowd control kinder and gentler, as reported by *Wired*:

A new material for riot gear is "protein foam . . . a sludgy brown foam made from whipped hooves, horns, and cartilage that sticks to surfaces and then hardens." It is described as "environmentally safe, but disgusting."

Seattle, Wash.

Political conflict from the Emerald City, reported in *The Seattle Times*:

Officials from the U.S. Department of Agriculture are capturing some of the area's "25,000 Canada geese that have lost the instinct to migrate." The geese are then killed in "euthanasia chambers" in the back of pickup trucks since "no food banks here are accepting urban geese." The officials are opposed by members of the "Goose People," who put on bird masks, honk horns, and stakeout possible areas they think might be next.

United Kingdom

Advance in the science of public safety, from the estimable *Law and Order*:

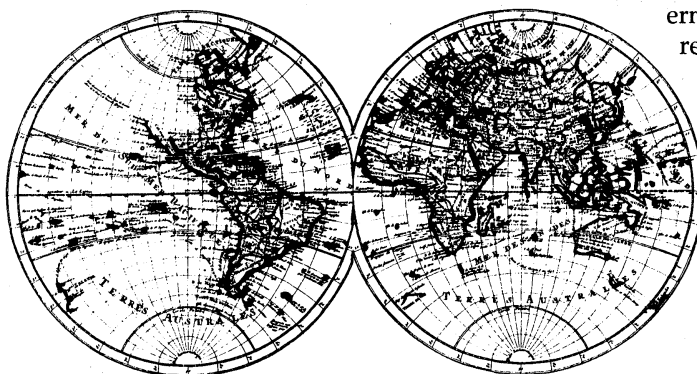
"Strathclyde Police — Scotland's largest police service — said officers would take DNA samples from anybody arrested, even if they were accused of minor offenses. Senior officers said they believed the move would increase crime detection rates by 25%."

Ottawa, Canada

Progressive new service available to citizens of Canada, reported by *Reuters*:

Canada's Ministry of Finance established a new service "to guess what people have trouble understanding," according to Claude Henault, a finance ministry spokesman.

Terra Incognita



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Thanks to Russell Garrard, Mark Villa, Christine Jesinger, and Randal O'Toole for contributions to *Terra Incognita*.

G R E A T E S T

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

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

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

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

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

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

Why the Great Depression Lasted So Long — Robert Higgs explains how government, not free markets, caused the Great Depression; how the New Deal prolonged it, instead of curing it; and why World War II didn't bring the Depression to an end. (audio: A216; video: V216)

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Anarchy Via Encryption — New encryption technologies are going to revolutionize the world by making absolute privacy possible for the very first time. David Friedman explores the encrypted world of the near future. (audio: A116; video: V116)

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Extraordinary Opportunity

There are less than 47 days left to collect over 100,000 raw petition signatures. In the rain. In the cold. In 'Tax-achusetts.'

Volunteers will collect some of the signatures. But trained, professional petitioners are critical to success.

The Committee for Small Government is hiring the best professional petitioners at the best possible pay rates.

The Committee for Small Government is thrifty and frugal. As careful with your money as you are.

The Committee for Small Government needs your donation to hire trained, professional petitioners.

Good News: There are no limits to how much you can donate!

Very Good News: No limits to how much your business can donate!

Great News: **Michael Cloud**, the \$6,000,000 Libertarian Rainmaker, has found **Challenge Grant Donors** to match every dollar you donate.

Every dollar you donate will be doubled.

A personal request from Carla Howell:

"We'll match every dollar you donate.

"Will you donate \$5,000 and put over a half-dozen petitioners on the street? PLUS our Challenge Grant Donors will match your \$5,000 donation, and put another half-dozen petitioners on the street.

"Will you donate \$1,000 for petition processing? PLUS have our Challenge Grant Donors match your \$1,000?

"Will you donate \$500 today to pay for 208 signatures? Our Challenge Grant Donors will match your \$500 and bring in another 208 signatures. Your \$500 donation will make a difference.

"Or \$250. Or \$150. Or \$85. All matched. Every dollar.

"Give us the tools. We'll do the work. Thank you. **Please donate today.**"

The Small Government Act to End the Income Tax

No Limits to how much you can donate!
No Limits to how much your business can donate!

☐ \$5,000 ☐ \$2,500 ☐ \$1,000 ☐ \$750 ☐ \$500
☐ \$250 ☐ \$150 ☐ \$85 ☐ Other: \$ _____

☐ Check: **The Committee for Small Government**

☐ Visa ☐ Mastercard ☐ Discover ☐ AmEx

NAME

CREDIT CARD #

ADDRESS

SIGNATURE

EXPIRATION

CITY

STATE ZIP

OCCUPATION

EMPLOYER

PHONE

EMAIL

Mail to: The Committee for Small Government • 6 Goodman Lane • Wayland, MA 01778 • Note: Massachusetts law requires us to report the name, address, occupation and employer of each individual whose contributions total \$200 or more. Paid for by The Committee for Small Government, R. Dennis Corrigan, Treasurer, Carla Howell, Chair. www.smallgovernmentact.org LM10/01