

# Liberty

September 1998

Vol. 12, No. 1

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If Assault  
Weapons are Evil,  
Why Do Cops  
Want Them?

## Free Viagra!

*by Ross Levatter, M.D.*

## Will Y2K Destroy the U.S. Government?

*by Declan McCullagh*

## Censoring Ayn Rand

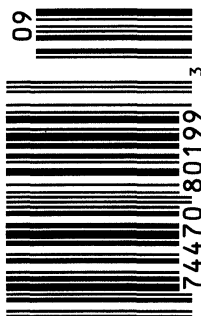
*by Chris Matthew Sciabarra*

## Die, the Beloved Country: Inside South Africa Today

*by Jim Peron*

Also: R. W. Bradford on the importance of Barry Goldwater, Dylan Carp on the emergence of Clarence Thomas, Brian Doherty on anarchists in Washington, D.C., Pierre Lemieux on why voting is such a gamble... plus other articles, reviews & humor

"Extremism in defense of Liberty is no vice." —Barry Goldwater, 1909–1998



# Ayn Rand

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# Inside Liberty

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# Letters

## Disgust Gets You Nowhere

If cynicism bred freedom, I would share Alan Bock's pleasure in seeing Bill Clinton degrade the office of the president (Reflections, July). But the connection isn't at all obvious. On the contrary, most of Europe is contemptuous of its political class, with no detriment to the state's power or reach. Disgust is enervating.

John C. Boland  
Baltimore, Md.

## O Holy Lobbyist

Bill Kauffman (Reflections, July) may not share any of Gary Bauer's deep religious convictions, and may thus see Gary as a tempting rhetorical punching bag. But as a longtime co-worker and friend, I am willing to testify that for genuineness of belief, moral probity, and sincerity in a business (national politics) conspicuously lacking in all three.

The heathen may rage in Elba, but in this case the rage is sorely misplaced.

John McClaghry  
Kirby, Vt.

## Amen Brother!

Bill Kauffman apparently knows the New Testament as well as he knows Gary Bauer. "Pharisee" is as apt as one can be to describe the man.

As a Christian, I am embarrassed for those self-appointed moral leaders who "strain at a gnat, and swallow a camel." They would incarcerate and punish their neighbors for petty vices, while condoning and patronizing redistribution — as if the Bible doesn't mention "covetousness" and "theft." What a bunch of pious hypocrites — "Pharisee" is perfect!

Grant W. Kuhns  
Carlsbad, Calif.

## What's round on the ends and high on taxes?

I just read "Clip joint" by Loren Lomasky (Reflections, July). I've also had an interesting experience with

Ohio's curious tax laws.

In 1988, while I was a resident of Alabama, I had my last name on my wife's mailbox in suburban Cleveland in case something arrived addressed to me there. This was my only presence in Ohio at the time. I got a letter from the Cleveland Regional Income Tax Authority — addressed only to "Wingo" which was all that was on the mailbox — asking who I was and why I was not filing Ohio state and municipal (!) income taxes. Naturally I wrote and explained that at that time I had no income originating in Ohio — but how did they find out?? Either the postman reported the name on the mailbox to the Ohio tax authorities, or they have somebody who goes out and reads (by implication) every mailbox in the State. Either way it was a little disturbing.

Several years later, I left Ohio for a number of reasons, not the least of which was the taxes. I followed *Liberty's* advice and voted with my feet. Now I am a resident of Texas, where they still haven't thought of state income tax (let alone municipal), although they do tend to pass local tax issues for sports arenas so millionaires can play football. Not as much snow, either.

Bill Wingo  
Farmers Branch, Texas

## I am Shocked! Shocked!

R.W. Bradford's Reflection on the Republicans in July *Liberty* was somewhat shocking to this LP libertarian.

A supposedly libertarian editor, writing in an explicitly libertarian publication, has the gall to claim Republicans have done something to advance liberty? How refreshing!

Too many of my fellow LP members practice that specialized form of tribalism known as knee-jerk partisanship. How does one do that, without relegating liberty to a subordinate ranking?

Might that be a negative consequence, when fundraising appeals and membership drives become more impor-

tant than actually electing anybody? The LP's national Mission Statement was recently stripped of any and all mention of candidates and elections. (I'm not making this up.) And we do know that demonizing the opposition is an effective way to scare big bucks from contributors — because the older parties have taught us how to do that.

Perhaps there's something in the air: The Libertarian Party of Washington's newsletter, which I edit, includes an elected Republican as a contributing editor. He's a party member, an unabashed libertarian, and goes out of his way to personally help individual LP libertarians. He also chairs the powerful House Finance Committee. He's my Statehouse Correspondent. Sometimes, not very often, he embarrasses us. And sometimes, also not very often, we embarrass him. But we never abandon our shared dream.

Another libertarian, this one a former long-time party member, sits on our state's Supreme Court. That doesn't count, among the tribalists, because it's "only" a nonpartisan office. When "our" Justice campaigns, he addresses any and all partisan gatherings that will have him. Even Democrats. Here in Washington state, we understand. Most of us anyhow.

I guess it boils down to a choice. Do we care most about advancing individual liberty? Or, when it happens, do we care most who gets the credit?

Mike Hihn  
Seattle, Wash.

## Israel and Liberty

I am astonished by Alan Bock's defense of Israel ("Israel at 50," July). Zionism combines the worst points of nineteenth-century Eastern European ethnic nationalism and nineteenth-century colonialism, sugar-coating it with a sickly-sweet appeal to the currently-fashionable idea that "victimization" excuses any actions whatsoever taken by the "victim."

It is repeatedly urged that, unlike those horrible Ay-rab regimes, Israel is a democracy. Yes — and so was Mississippi in 1960, for the right sort of

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people. Even if it is a democracy, this is not the be-all and end-all; after all, almost all pirate ships in the "Golden Age of Piracy" were run on democratic, egalitarian lines, and this is not seen as an excuse for piracy. In any case, would the supporters of Israel be happier if, say, Syria were a democracy? If that were the case, the Syrian government could deploy its best units with no concern about being toppled in a coup, and the major Syrian parties could compete with slogans about how if they were elected, they would really punish Israel: "Vote Syrian Democratic — and give Israel a kick in the nuts! No, vote Syrian Republican — and give Israel a boot to the head!" Somehow, I can't see the Israelis being very happy about that situation.

The things that stick in my throat the most about this situation, though, is that merely by being an American citizen, I am forced to take sides in a foreign conflict of no conceivable interest to me personally, and, to add insult to injury, I am forced onto the side I would not choose if obliged to do so. Israel's dependency on the United States for subsidies and favors is equalled only by its ingratitude to its benefactors (the USS Liberty incident, the Jonathan Pollard espionage case, and endless demands for more aid), its hypocrisy (to say the least, denouncing Arab terrorists while electing former Irgunists to high office is not quite consistent, if one wishes to be seen as opposing terrorism in general), its repression of non-Jewish citizens and residents with Catch-22 laws and plain old brutality, and its chronic financial mismanagement.

If I thought Israel were somehow or other necessary to the safety of the United States, or worth its keep in other ways, I could swallow all of this. But instead, I am convinced that had it never been established (perhaps those great humanitarians, the post-World-War-Two Allied politicians, could have helped refugee Jews go to the United States or Australia, as many of them would have preferred) we would all be a lot better off. Its mere existence discredits democracy among many Arabs in the same way that the imposition of the Weimar Republic did among a whole generation of Germans, and our open support of Israel, right, wrong or indifferent, makes claims on our part to be proper mediators in the Middle East as transparently false as claims of immi-

nent victory in Vietnam were. Would you trust someone to judge a claim between you and a neighbor who was that neighbor's best friend and subsidized him?

Eric Oppen  
Iowa Falls, Iowa

### Maybe We Could Call It "Randsylvania"

Harry Browne writes that libertarians' "immediate task is merely to show voters how they personally would bene-

fit from making government substantially smaller than it is now." ("Long odds," July). He apparently believes that there is only one way that I, or any other libertarian, can improve things is to work within the framework of majority-rule democracy. Certainly that is the way taught by government school teachers. But libertarians need not put all their eggs in the majority-rule basket.

We might, for example, try to organize a venture to launch a new Hong Kong with our own style of govern-

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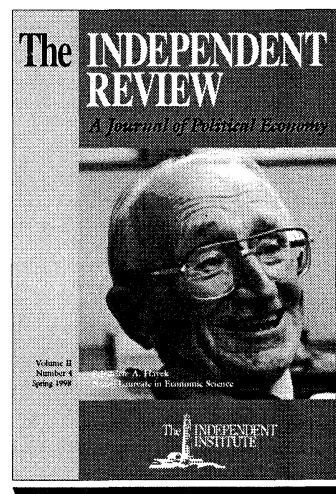
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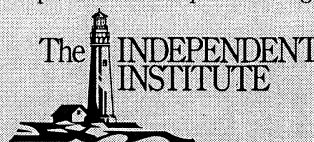
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ment. There are plenty of third-world countries that would gladly offer a Hong-Kong style lease for presently underpopulated terrain if the price were right. This way could be easier than Mr. Browne's majority-rule way because it does not require the conversion of one more statist.

Of course, there would be difficulties. We would have to assemble sufficient resources. We haven't done this yet because we do not possess a clear enough vision of how a free society could exist and defend itself in today's world. So I suggest we build our own understanding of how a free nation could work.

When Mr. Browne has run for public office five more times he will have caught up with me, in his attempts to use that particular way to advance liberty. Perhaps by then he will learn to argue that "government doesn't work" even in provision of the most vital service: protection from government.

Richard O. Hammer  
Hillsborough, N.C.

## The Worst of Y2K

I have been a mainframe computer programmer for over twelve years, and I disagree with Scott Olmsted's interpretation of the magnitude of the "Millennium bug" problem ("The Whys of Y2K," July). I believe that he has taken a fair number of basically correct

observations and then strung them together as if they were absolutes, in the sense that everybody is a sitting duck with no power to improve his or her own situation. I offer the following opinions based on my experience:

1. Not exactly my area of expertise, but I think military data processing is in big trouble, chiefly due to the proliferation of dead programming languages;

2. Private industry, on the whole, will have fewer problems than government;

3. Companies and other entities truly interested in averting disaster will thoroughly test, and, if necessary, replace any machinery that is hard-wired with the problem;

4. As for mainframe software, most data processing professionals will end up putting in many extra and/or odd hours fixing problems that crop up beginning in earnest in 1999; various types of patches will be made making the already convoluted program code that much more so, but those patches, in conjunction with successful Y2K projects (no "magic bullets"), will by and large save the day;

5. Top-notch data processing shops will scrub incoming data, thus substantially mitigating the "domino-effect" problem (at least I don't think the private sector needs to worry too much; they don't need government data nearly as much as the government needs theirs);

6. There's not much anybody can do to prevent panicky people from panicking, but I suspect that there are some savvy investors and speculators out there ready to make a killing, and this will provide a counterbalancing effect in securities markets.

In summary, my view is that the worst danger would be for governments (especially federal governments) to overreact and exacerbate the issue. Uncle Sam in particular has already caused enough harm with public education, immigration caps, independent contractor tax-code discrimination, and the like, not to mention the generally accepted view that government systems are in worse shape than their private sector counterparts. Of course, getting Joe Sixpack to recognize it after the media finishes squawking is another matter . . .

Larry W. Goulart  
Philadelphia, Pa.

## Population Update

On page 59 of the July 1998 *Liberty*, a book review states that half of the people ever born are alive today. This is a persistent myth; the actual fraction is about 5.5 percent. See:

<http://members.bellatlantic.net/~bjmcg/story2peplelived.html>

Larry Ruane  
Parker, Colo.

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# Reflections

**Socialist syllogism** — Social Security is an entitlement. Medicare is an entitlement. But you have *no* entitlement to a single penny of your own income! —SS&DP

**Flipping the national bird** — Have you ever seen sea gulls attack a bald eagle? Have you ever wondered where these avian idlers come up with the gall to push around our national symbol?

Actually the sea gull would make a fine symbol of American government, or at least the people who comprise American government:

They seem to serve no purpose, but we sure have a hell of a lot of them.

They afflict us with their loud squawking and squabbling.

Ecological impacts, such as landfills, garbage dumps, litter and fish kills, are matters of great concern to them.

Most of the time they just kind of drift around in the heights, seemingly indifferent to lesser beings, until they suddenly unload all over an innocent below them.

Ben Franklin proposed the wild turkey as a symbol of our nation, but the bald eagle won out. I wonder: Wouldn't having a sea gull as the national bird provide some truth in advertising? —BB

**Deal of the millennium** — In today's mail I received another newsletter solicitation from one of America's foremost proponents of the idea that all computers will implode on January 1, 2000, the banks will fail, stocks will crash, chaos will result, all communications will be severed — and the only way to protect yourself is to find a home in a very remote area, stock it with a supply of food, and be prepared to go without any trappings of civilization for at least a year. I looked at the calendar and realized that all this is less than 18 months away. Then I looked back at the solicitation and noticed that I can get the best deal by taking a two-year subscription. —HB

**Slick history** — When President Clinton was in China, he gave an interesting answer to a question posed to him at a press conference.

The question was the usual one about China's future. I'll paraphrase it slightly; it was something like, "When will China get with it?" To which Clinton responded at some length, in his usual gaseous way. He declared that China absolutely certainly would indeed get with it sometime, but that *you have to remember* — this is one of the president's most frequent rhetorical feints, his normal lead-in to something that nobody else would ever imagine saying, let alone *remember* to say — you have to remember, he said, that America took years and years and years to get out of the Great Depression, but the American economy wasn't as "sophisticated" as China's, nor had America so "sophisticated" an understanding of the economy, so it took us longer than it

will probably take China.

I'm summarizing here. I'm leaving out the eye-rolling and the lip-biting. That was basically his response.

From which we learn two things:

1. Clinton, the leader of the Democratic Party, knows enough about history to understand the falsity of his party's claim to historical legitimacy and economic wizardry — i.e., the claim that within a few short years the Democratic Party pulled the U.S. out of the Great Depression.

2. Clinton, the leader of the free world, knows so little about history as to believe that China's economy is more sophisticated than the American economy of the 1930s.

This is a fascinating revelation of history as it exists in the mind of a person who is trying his best to shape it. —SC

**Minor detail** — On his tour of Africa, President Clinton handed out \$20 million grants the way John D. Rockefeller used to hand out shiny new dimes. Every time an adorable tike was presented to him, the president would pat the child's head and then search his suit pockets until he came up with a brand-new social program. The difference, of course, is that Rockefeller handed out his own money. —DB

**Brains on drugs** — Anyone who knows just how destructive illegal drugs are can find out in the June 10 *Wall Street Journal*. The editors went ballistic at the publication of a protest against the drug war that was signed by 500 prominent people. Rather than addressing the merits of the argument, the *Journal's* editors went after the brave individuals who were willing to be identified with an unpopular cause, calling them "a diverse crew of leftists and self-deluded realists and libertarian economists who believe in backward-sloping demand curves." They mean, among others, Milton Friedman, Ira Glasser, and Charles Murray. A weird crew, indeed.

"It occurs to us to suggest that the future of the debate would profit," the editors opined, "if all of these people stated publicly whether they themselves use any of these drugs recreationally." What they intended by this is not entirely clear. Just what does it mean for a "debate" to "profit"? It's the sort of thing that college grads say when they're stoned. And what could conceivably be added to our understanding of the issue if we knew whether certain prominent advocates of ending the drug war use drugs themselves?

I can come up with only two reasons for the *Journal's* strange curiosity. Maybe the editors just prefer to attack the character of those with whom they disagree than to attack their logic: it's easier, after all. Or maybe they want to intimidate prominent people who have used illegal drugs into keeping silent. (Since the use of illegal drugs is illegal, former Secretary of State George Schultz or Milton Friedman would be confessing to a felony if he were actually a drug user and complied with the *Journal's* request.)

Milton Friedman responded with a letter to the editor, denying the contemptible slander that he (or any other) libertarian economist believes in "backward sloping demand curves" and pointing out that prohibition of drugs is immoral. He also allayed the *Journal's* curiosity about his own possible drug usage: "As for myself, I have not [used illegal drugs] during the past 85-plus years. But I make no guarantees for the future."

The nearest it could come to an actual argument is this:

It still strikes us as a hard sell to families who've bankrupted themselves trying to bring a son or daughter out of heroin hell. Or parents battling to make sure their children aren't among those down at the local high school or middle school using marijuana.

This is precisely the sort of pseudo-argument that the *Journal* abominates on other subjects. Can you imagine the *Journal's* editors writing something like this:

Free trade strikes us as a hard sell to families who've bankrupted themselves trying to find a job after they've been forced into unemployment hell by cheap imports. Or parents battling to make sure their children aren't among those down at the factory who cannot keep a job because the factory cannot compete with a more efficient producer in another country.

In their final paragraph, the *Journal's* editors admitted that the War on Drugs has led to "political corruption, economic distortion, crime, AIDS and other social ills." To this list must be added massive waste of tax dollars, the grotesque injustice of imprisoning millions of people guilty of no crime worse than voluntary commerce, and the unfathomable suffering of those denied drugs as treatment for horrible disease. Now, regrettably, the list must include the sad fact that the War on Drugs inspires otherwise sensible people like the editors of *The Wall Street Journal* to lose all semblance of rationality.

—RWB

### **Smoke, smoke, smoke that cigarette! —**

Even people who defend the right to smoke often say that smoking is irrational. Why? Because it increases your chance of getting lung cancer? Hamburgers increase your chance of having a heart attack. Driving a motorcycle increases your chance of being killed in an accident. Even riding in a car is a risk. Life is full of risks. We decide which ones we will take on the basis of the benefits as we perceive them, combined with the risks as we perceive them. No two people will perceive these benefits and risks in the same way. An act one person considers irrational may be a source of great pleasure to another — something so tasty that it makes life worth living. The whole concept of a free society is based on the assumption that no one can decide what others should want. Using the word "irrational" is merely a way of looking down one's nose at others.

—HB

**For the children** — Explaining why cigarette taxes should be raised, Sen. John McCain wrote in *The Wall Street Journal* that "an increase in the price of cigarettes would discourage smoking among the young." A few paragraphs later, he bemoaned the fact that the tobacco industry "will pass on every

penny of the judgments, settlements and legal fees to their consumers," raising the price of cigarettes by at least \$1.10 a pack. I wonder: is it really the children he's looking out for? Or government coffers?

—JE

**The biggest tent of all** — The terms "pro-choice" and "pro-life" should be eliminated from any libertarian's vocabulary. They give the wrong impression of what we believe.

If you say you're "pro-choice," half the population is likely to assume you're a liberal who likes Affirmative Action, big government, and a whole range of other liberal stands.

When you say you're "pro-life," the other half of the population probably assumes you're a conservative who likes to legislate morality, wants to put prayer in government schools, and has all sorts of other dandy ideas to run their lives.

Abortion is a sensitive issue on which reasonable people can differ. We achieve nothing when we use a sloganized term to assert a position — acting as though one's position were self-evident and any different position were unreasonable.

Some people believe a fetus is a human being who is entitled to the same right to life that will apply after he's born. Other people see the fetus as less than human, at least for the first months after conception, and believe that women have a right to decide for themselves whether to carry it to birth.

We aren't going to change either group by spouting contrary slogans at them. This will only identify us as opponents to be disregarded on other issues.

In my view, an uncompromising libertarian position on abortion doesn't have to offend anyone. Whatever we believe abortion is, we know one thing: government doesn't work, and it is as incapable of eliminating abortions as it is of eliminating immorality or bad habits. Noting that the government's War on Poverty has institutionalized poverty and the War on Drugs has expanded drug use, we can assume that a War on Abortion would lead within five years to men having abortions.

Proposing to keep the government out of the abortion issue allows us to offer hope to either side of the debate.

To one side we say: we will not let the government impose its way upon you.

To the other side we say: if you want to reduce abortions, there are much better ways than by depending on the government — because government will only disappoint you.

Every day you spend trying to get the government to do something to reduce abortions is a day wasted, a day that could have been spent doing something effective about abortion — such as working for less-restrictive adoption laws, encouraging private educational efforts to show young women the alternatives to abortion, repealing the income tax so that parents can afford to spend time teaching their children the values that will minimize teenage pregnancies.

We should never define libertarian positions in terms coined by liberals or conservatives — nor as some variant of their

### **Liberty's Editors Reflect**

BB	Brien Bartels
DB	David Boaz
RWB	R.W. Bradford
HB	Harry Browne
DC	Doug Casey
SHC	S.H. Chambers
SC	Stephen Cox
JE	Jonathan Ellis
DP	Durk Pearson
JSS	Jane S. Shaw
SS	Sandy Shaw



positions. We are not "pro-choice" or "pro-life;" we are pro-liberty. We are not fiscally conservative and socially liberal. We are libertarians, who believe in individual liberty and personal responsibility on all issues at all times. You can depend on us to treat government as the problem, not the solution.

—HB

### *Spontaneous wisdom, spontaneous folly —*

I spent the Fourth of July weekend as every good American should spend it: reading American history.

What interested me on this occasion were the debates that occurred among the framers of the Constitution. Americans like to think of the Constitution as an intricate and mighty plan, cunningly designed by the best minds of a generation. Well, that's true, in a sense. But it wasn't a plan that was just devised and imposed by a few people who knew exactly what they were doing. It was an achievement of "spontaneous order" (to use the favorite phrase of libertarian economists), an order that was undecreed by anyone, that evolved in ways quite unanticipated by any of the evolvers.

From the start of the Constitutional Convention in May 1787 until its end four months later, the only notion that survived unchanged was the idea that the United States would have some kind of legislature. No original scheme or proposal of any of the delegates came close to identifying the bicameral Congress that ultimately emerged. Something similar could be said, with more emphasis, about every other feature of the Constitution.

Indeed, it is marvelous to see how wrong even the best minds could be. Benjamin Franklin thought that there should be no Senate. Gouverneur Morris thought that the Senate should have even more power than it acquired, especially over money bills. So much for checks and balances, in either case. Several of the framers worked out ways for the Atlantic states to discriminate against the new states to be formed in the West, in order to keep power in their own hands. By a conclusive vote of 8 states to 2, the Convention decided that the executive should be elected by the legislature. Later it changed its mind. James Madison was one of several delegates who urged that the national legislature should be able to veto all state laws "which shall seem to them improper." At the very end of the Convention, Madison topped even this by proposing a mad scheme for a national university, sponsored by Congress.

In the spontaneous order of a market economy, there is always more knowledge and judgment in the whole body of the participants than there is in any individual mind. Yet knowledge can be used effectively only when individual minds are free to compete with one another, to advance their own interests and to question other's judgments. That is the way in which knowledge and order developed in the Constitutional Convention, which

was a battleground of freely competing interests and views.

It is significant that the Convention almost immediately privatized itself. The Convention had been told by the existing Congress that its duty was to revise the Articles of Confederation, not to write a new document. It decided to disobey, and from then on it became a body of private individuals, free from governmental control. They were free also from social control: the Convention decided to act in strict secrecy, making no attempt to consult its constituents, much less to poll them.

But the concept of a spontaneous order — an order successfully institutionalized at Philadelphia in 1787 — is not the answer to every question. To put this in another way, a spontaneous order can be a cause for grief as well as joy.

George Washington made this point, although he was not intending to, when he conceded the imperfect nature of the Constitution and said of himself and the other framers, "I do not think we are more inspired, have more wisdom, or possess more virtue than those who come after us." To see just how wrong he was about that, picture to yourself the members of a modern Constitutional Convention.

Let's see, who are the modern wizards, who are the people so respected for wisdom and knowledge by important interests in contemporary society that they could be chosen as delegates? Well, how about Newt Gingrich, Trent Lott, Jack Kemp, Pat Buchanan? On the other side of the aisle, perhaps . . . Jesse Jackson, Barney Frank, Hillary Clinton, Teddy Kennedy. To fill Franklin's niche as scientist and inventor . . . Bill Gates, surely. General Powell would inevitably sit in for General Washington. And in the roles of Madison and Hamilton, we would have that great authority on constitutional law, Alan Dershowitz, and that equally great authority, Johnnie Cochran.

Now, even if these people succeeded in cutting themselves off from both government and society — which they would never want to do, since most of them live by means of political and social power, and could live on nothing else — even if they allowed themselves to participate in the evolution of a spontaneous order, what would that order look like? What would result from their clash of views? What great document would be written?

This is something too ghastly to be imagined.

Indeed, what modern people have done to the work of the original framers is a sufficiently gruesome demonstration of the

principle that a spontaneous evolution of ideas is only as good as the ideas that went into it — in this case, the foolish and wicked assumptions that have grown in the Petri dish of American legal and political interests into constitutional "law" and "interpretation."

Here's an historian of two generations back, recording the wild talk of people who opposed ratification of the



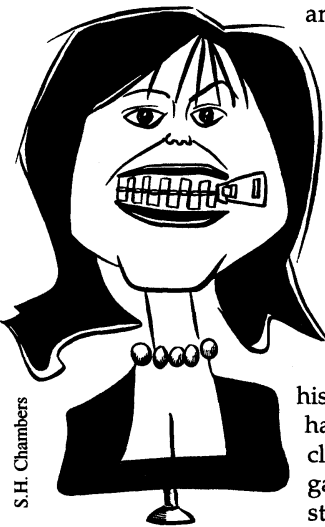
## Constitution:

The central government, as the debate went on, was magnified into a monstrous overshadowing force, outside and above any given state, which would be free to dominate, tax, and enslave a helpless people. There was a widespread fear that the federal district ten miles square which was to be the seat of the projected government would develop into something malign and alien.

Imagine that! But who do you suppose is to blame for it — George Washington, who modestly opined that we would probably be as wise and virtuous as he was? I don't think so.

—SC

**Capitalist dope** — Steve Forbes celebrated the Fourth of July at a picnic for a conservative radio station, out in the boondocks of Washington State. I



am ambivalent about his political program. Yes, he's got a wonderful economic plan. But there's something unsettling about seeing Forbes in person. He gapes, his chin tucked into his neck, resulting in his famous "Special Olympics smile." Yet he somehow manages an Etonian appearance that evokes Ghosts of Preppie Republicans Past. In fact, he looks Bushian, right down to his lunging gestures made to shake hands with sheriff's deputies and clap the backs of children. His gaffes are Bushian as well. His stump speech attacked the tax code, which is how, he said, "power is sent to Washington. . . . that's Washington D.C., the bad Washington, not the good Washington."

Forbes's line on drugs is perhaps his most infuriating right-wing deviationism. Here is a man who has arguably the best understanding and most sincere belief in the workings of the free market of any Republican presidential candidate of this century. Yet, when he speaks about drugs, he doesn't mention the black market effects of prohibition. He talks about the evil intrinsic in drugs themselves. The evil in the Devil's Weed is matched only by the depravity of those who partake in it. Laws must be passed and punishments inflicted. Moral disapprobation, parental supervision, and stern words from the doctor are not enough for him. Nothing will exorcise the evil of drugs but a law overriding every traditional constitutional safeguard Americans enjoy. So we get civil forfeiture. And drug tests. And troops engaged in drug interdiction.

We've already suffered through a 30-year crime wave stifled only recently at tremendous cost in human and economic terms. I would like to think that if Americans understood economics, we would have discarded drug prohibition long ago. That we have not suggests Americans also lack empathy.

Take the agony of Colombia, for example. Colombia recently elected a president, after an election season from

hell. Candidates were eliminated by bombs and bullets rather than primary ballots. Right wing paramilitaries shot it out with government troops who also shot it out with drug-lord funded guerrillas. Is this what Forbes wants?

Candidate Forbes couldn't have gotten a hearing in Colombia. Forbes's mantra of "hope, growth and opportunity" wouldn't get very far in this new equatorial Algeria, covered not with sand but with coke.

Some say that Forbes's drug stand is meant to impress and reassure the cultural conservatives he needs to win the nomination in 2000. He's not really ignorant, cruel, or in the pay of foreign narco-terrorists (the three major reasons that politicians support the drug war). He's just cuddling up to the nutty right wing, in order to get the nomination.

That would fly with me if only he weren't so willing to put his money where his gaping maw is. Forbes's last intrusion into Washington (the *good* Washington) was to aid the wrong side in a ballot for a medical marijuana initiative. His money and his goofy grin helped put off for another year the legal, humane use of marijuana by cancer patients. That's fine, Steve. Dying people who are suffering great pain seldom vote in the primaries anyway. And neither do Colombians.

—BB

## Responsibility and the state

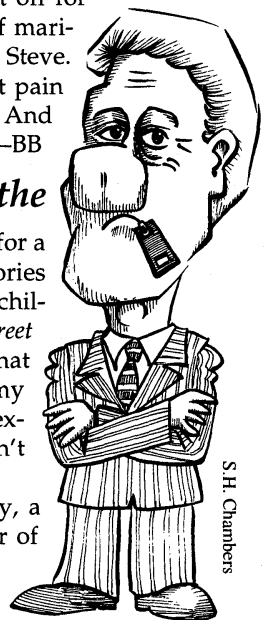
— Because they are painful for a mother to read, I usually avoid stories about neglected, abused, or disabled children. But an article in *The Wall Street Journal* caught my eye. When I read that the author's experience "has driven my wife and me into the arms of an unexpected ally: the government," I couldn't ignore it.

It was an op-ed by Paul Podolsky, a Dow-Jones reporter, who is the father of a mildly autistic child. His April 2, 1998, article was a defense of government programs for disabled children.

This is a hard case. If there is any example of a situation where there is a natural tendency to say, yes, let the government do it, surely it is the case of innocent children who need expensive help.

So I had to think about this article. And here are some of my thoughts. First, I don't criticize people simply because they take advantage of government largesse that is readily available. I cringe at the thought of well-off and able-bodied friends accepting unemployment compensation, but I generally accept the fact that there is no immorality in receiving what's available. I expect to receive Social Security. I do not think that we must all be as high-minded as Rose Wilder Lane and reject it.

I think that parents should feel okay about obtaining special services for their children (who might be having speech impediments or some other disability) through the public school system. For whatever reason, the public schools seem to have funding for such things, and parents, who, after all, pay taxes, should be able to accept these, even if they send their children to private school. Heck, I am sending my son to public school next year (for lack of a strong alternative). So



why does Mr. Podolsky's essay bother me?

My problem is that we should separate personal decisions from public policy. Let me tell you more about Mr. Podolsky's situation. He points out that, given his son's relatively mild case of autism, the child primarily needs active but continual intervention. When Alex starts a repetitive action such as opening and closing a door (something that autistic children tend to do), someone needs to intervene and redirect his attention.

This Mr. Podolsky is willing to do when he's around. But, he notes, "when my wife and I are at work, then who takes over?"

Well, the government, of course! If you and your wife are otherwise occupied, and the rest of your family is not around, and you can't afford or aren't willing to pay wages to someone from outside, then, of course, the government takes over. Whether this is a responsible decision is another question, especially by parents who apparently have the funds or the insurance and the knowledge to take their son to a physician who is "a leading researcher and author in the field" of autism.

To me, it is at least puzzling why one of them doesn't quit work and stay home with the child, especially since this demanding intervention is supposedly needed for only a few years. But, instead, as Mr. Podolsky states it, "New York City and state, with minimal help from the federal government, pick up the tab for a team of therapists and aides who implement a comprehensive program aimed at drawing our child out and improving his interactions."

My purpose is not to criticize the Podolskys for their personal choice. I don't know the details of their situation. I don't have an autistic child, but I know what a pleasure it is to go to work each day, and I wouldn't want to give up all the latter, even for the sake of the former. But I also know that in a society of free and responsible individuals, circumstances force one to make decisions that one would rather not make.

What I disagree with is Mr. Podolsky's use of his situation to argue that such government aid is a good thing. He suggests that if the government investment in Alex enables Alex to become a train conductor (say) rather than someone who "winds up in an institution," the government's investment is a good one.

But that supposes that there are only two alternatives. It supposes that this son of intelligent, educated, and capable parents would end up in an institution if the government didn't help out. I don't think this is the case. In the past, when we didn't have today's government programs, people bore more responsibilities. Today, increasingly, we can avoid responsibilities, and the temptation to shift them to others is extremely attractive. But there is a cost. Bit by bit, we also give up our freedoms, and become ever more dependent on the government. —JSS

**Satanic devices?** — Are semi-automatic firearms evil devices created solely for murdering a lot of innocent people at once? The Denver Police Department doesn't think so; the Department, like many others in the United States, has begun equipping its officers with AR-15 semi-automatic rifles. The police emphasize that the rifles are accurate, and that officers are taught to use the rifles to end a dangerous

situation with just a single shot.

But if you believe President Clinton and the rest of the anti-gun movement, the Denver Police Department and its colleagues around the nation have gone nuts. Several weeks ago, President Clinton made his bureaucrats ban the import

**Off the wire** — How many slants can you put on a news story? Let's experiment with one genre that is thoroughly slantable: international trade and finance. In this case, the U.S. Treasury's move, June 17, to buy yen in staggering quantities, in order to hold up the value of the currency.

Here's how the Associated Press handled the story:

WASHINGTON — Concerned about the spread of the Asian financial crisis, the Clinton administration took extraordinary steps to prop up the Japanese yen Wednesday and, in the process, touched off a rally on Wall Street.

"It's had an effect," said a smiling Treasury Secretary Robert Rubin, as the U.S. stock market soared in reaction to the administration's decision to buy yen. After plummeting 207 points Monday amid news of a Japanese recession, the Dow Jones industrial average gained 164 points Wednesday.

That's pretty much the standard line in the American media, I think. But suppose it had been handled like this:

WASHINGTON — Concerned about possibility of a renewed and reformed Japan Inc., the Clinton administration bought yen in world markets, in order to prop up the overvalued currency.

"It's had an effect," said a beaming Treasury Secretary Robert Rubin, as forecasts for Japanese exports were issued. The overvalued yen will make Japanese goods less competitive and continue the recession of the export-oriented economy. It also takes pressure off Japanese politicians, who otherwise would have been expected to loosen economic controls and break up incestuous government and banking cartels.

Or this?

WASHINGTON — Worried about further shake-ups in the highly regulated Japanese banking system, the Clinton administration drove up the price of the yen, allowing current bank managers to forestall bankruptcy long enough to receive their pensions.

"It's had an effect," said a jolly Treasury Secretary Robert Rubin, as reports of all night binge sake celebrations in the offices of Japan's fatally debt-laden banks filtered back into Washington.

Or even this?

WASHINGTON — Currency speculators cheered as the Clinton administration bought up yen today, in a move that will prolong Japan's recession, stall serious reform of its incestuous industrial cartels, and keep Japanese exports uncompetitive.

"It's had an effect," said a smiling Clem Pillaging of Looting & Pillaging Unlimited. Pillaging went long on the yen just hours before the decision to prop up the flagging currency was announced. Pillaging told reporters to contact him again after Japan's next currency crisis. His current plans include purchase of the U.S. Virgin Islands.

—Brien Bartels

of 58 types of semi-automatic rifles because "You do not need an Uzi to go deer hunting and you do not need an AK-47 to go skeet shooting."

But Clinton's comment makes no sense. He might as well have banned swimsuits by claiming "Nobody needs swimsuits to go mountain climbing." Of course, you can't hunt deer with an Uzi. Uzis are pistols, and therefore can't be used for deer hunting. They're under-powered. The AK-47 is a Communist machine gun, and (despite what the president thinks) can hardly be found in the United States, outside of firearms museums. If the president ever went skeet shooting, he would discover that the sport requires a shotgun; you can't shoot skeet with a rifle of any type, including an AK-47.

The guns that Clinton banned are semi-automatic rifles that fire no faster than common hunting rifles, but which are made by foreign manufacturers, and which are cosmetically different from American-made guns. Supposedly, the guns are banned because they're not suited for "sporting purposes," and the Gun Control Act of 1968 allows the federal government to prohibit the import of "non-sporting weapons." But sports had nothing to do with it. The White House has publicly stated its plans to ban as many guns as possible. The gun-banner-in-Chief knows as much about the shooting sports as he does about medieval Arabic poetry.

In the same vein of ignorance as President Clinton, Dr. Jerome Kassirer (Editor-in-Chief of the *New England Journal of Medicine*) recently demanded a ban of all semi-automatic firearms. He asserts that the guns "are worse than useless" and that "[t]hey are of no value for hunting, and their use for target practice seems dispensable."

In fact, many semi-automatic rifles (such as the Marlin Camp Carbine, or the Valmet Hunter) are designed specifically for hunting, and almost all semi-automatic rifles (except for a few very heavy models) are used for hunting.

What about firearms ownership for the protection of innocent lives? That's why the Denver Police Department is acquiring AR-15s.

Dr. Kassirer wants to "eliminate semi-automatic firearms from private homes" because "[t]hey are certainly not needed for protection against crime." But Dr. Kassirer doesn't show us what it is about semi-automatics that makes

them bad for home protection. Truth is, semiautomatic pistols such as the Colt .45 (which Kassirer would ban) are often preferred for home defense, because they are reliable and easy to learn to use.

Dr. Kassirer, however, doesn't think firearms can be used for defense: "It is also time to lay to rest the myth that keeping firearms in the home protects people against personal injury." What Dr. Kassirer considers a "myth" is the work of Dr. Gary Kleck, an award-winning criminologist and author of *Point Blank: Guns and Violence in America* and *Targeting Guns: Firearms and Their Control*. Kleck's in-depth polling found that guns are used by Americans for protection against crime more than two million times a year — usually without a shot being fired.

Kleck's research is confirmed by twelve other studies, including a recent one by the federal government's National Institute of Justice. One of most eminent criminologists in the United States, Dr. Marvin E. Wolfgang evaluated Kleck's research: "I hate guns — ugly, nasty, instruments designed to kill people. Can it be true that about two million instances occur each year in which a gun was used as a defensive measure against crime? It is hard to believe. Yet, it is hard to challenge the data collected." He concluded, "I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology."

In any case, even if Kleck's figures are too high, the estimate preferred by Kleck's critics still show that there are at least 60,000 annual defensive firearms uses — hardly an insignificant amount of crime prevented and lives saved.

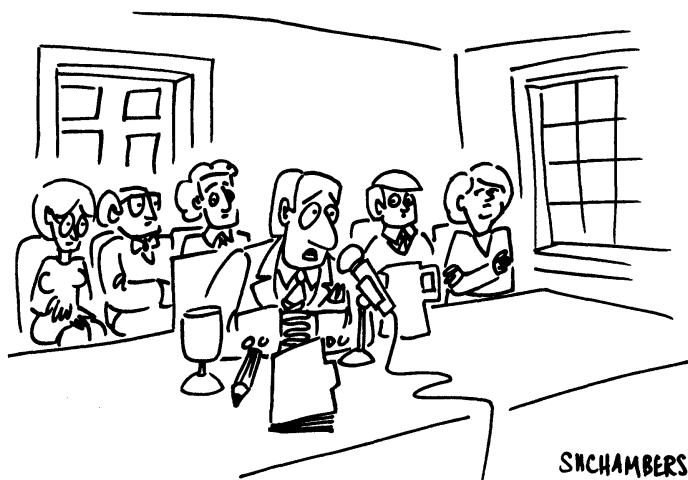
More recently, University of Chicago professor John R. Lott, Jr., conducted the most statistically sophisticated study ever regarding crime. Analyzing 15 years' worth of data from every county in the United States, Professor Lott accounted for changes in demographics, in arrest rates, and dozens of other variables. His conclusion, reported in his new book *More Guns, Less Crime*: allowing good citizens to carry handguns (including semi-automatics, which comprise over half of all new handguns) for protection reduces the violent crime rate by 6 to 8 percent.

The Denver Police Department and the scholars agree: firearms, including semi-automatic firearms, play an important role in the protection of innocent life.

—guest reflection by Diane Nicholl & David Kopel

**Henry and me** — A year ago in these pages, I predicted that American troops would soon be embroiled in a Vietnam-style war between the two Serb factions in Bosnia. It turns out that I was wrong. On the other hand, I take comfort in the fact that no less a geo-political wizard than Henry Kissinger made the same "It's Vietnam, let's pull out" *faux pas* at about the same time that I did.

On the third hand, there were ten years of maneuvering and incremental escalation of U.S. involvement between the Geneva Accords that divided Vietnam, and the Gulf of Tonkin incident that ignited the American War in Vietnam. We've had only four years since the Dayton Accords divided Bosnia. President Clinton hasn't given any indication that American involvement in the former Yugoslavia will cease anytime soon. His brain trust throws around the word "indefinite" when describing our commitment there. The First Annual USAF Kosovo Air Show and Tactical Fighter



"There is a pimple growing on the presidency."



Fly-by in June shows how seriously the Clinton administration takes these things.

Don't count Henry and me out yet.

—BB

## ***Lies, Damn Lies and The New Republic***

— In a startling confession, the editors of *The New Republic* reported in their June 1 issue that they had discovered “to moral certainty” that one of their associate editors had made up an entire article, and probably parts of others as well.

After providing a few details — they had been tipped off by “journalists at *Forbes Digital Tool*, who contacted us to indicate that they had been unable to confirm any of the facts in the piece” — they turned their attention to making excuses.

They have always taken “precautions” against error, they explained, but “fact-checking systems are designed to defend against the errors and mistakes even good professionals sometimes make—not against the systematic and intentional deceptions of . . .” blah, blah, blah. “But, once we had a reasonable basis to suspect that such falsehoods might have been published, we immediately investigated. . .”

This statement is simply false. For a long time, the editors of *TNR* had a reasonable basis to suspect that their star associate editor was making up stories. And I'm not just speaking of his propensity to fabricate absurd names for characters in his stories.

In its March 31, 1997 issue, *TNR* published a story by the same individual that purported to be a first-hand report on the activities of a group of young people at a convention of the Conservative Political Action Committee. Among other things, he reports them having sex in a public bathroom, drinking heavily, smoking dope, snorting cocaine, engaging in group sex, and playing a cruel and “repellant” trick on an unattractive woman whom one of them picked up in a bar.

At least two readers provided the editors with good reason to doubt the story's accuracy. (To be precise, *TNR* published two letters to the editor that charged fabrication; it may have received others.) Both were written by credible witnesses: Joe Galli was the National Chairman of the College Republicans, and David A. Keene was the Chairman of the American Conservative Union, which had sponsored the convention.

Galli characterized the article as “filled with fairy stories,” and Keene characterized the author as “quite a fiction writer, but not much of a reporter.” Both explained that they had attended the convention and had seen none of the bizarre activity witnessed by *TNR*'s star reporter. More tellingly, both pointed out errors in the article. The first error was less than mortal: some people's names were misspelled. The other was serious: the article described a group of young conservatives as drunk as skunks and lugubriously noted “The mini-bar is open and empty little bottles of booze are scattered on the carpet” — when the hotel identified in the article had no mini-bars. The reporter responded that this was “a quibble that hardly supports his accusation,” adding:

But it's wrong anyway. While the Omni Shoreham is too old to have them installed in most rooms, mini-refrigerators are available to all guests by calling the front desk. The hotel's management says it is a common request, and housekeeping occasionally leaves the portable units in the rooms

after the guest has checked out.

Let's see if I get this right. The young conservatives had requested that the hotel send a mini-refrigerator up to their room. And the young men had gone out and purchased a number of liquor in mini-bottles, and proceeded to drink them. Oh, wait a minute. Elsewhere, the article claimed they had a bathtub full of ice and beer, so they probably wouldn't have gone to the trouble of ordering a mini-refrigerator from the front desk. So apparently a previous guest had ordered it, and housekeeping had forgotten to remove it.

Faced with charges from at least two credible eyewitnesses and the reporter's preposterous explanation of how he came to see a mini-bar in a room without a mini-bar, what did the ever-vigilant editors of *The New Republic* do? Did they find in this episode “a reasonable basis to suspect” that their colleague was just making stuff up?

Nope. They accepted his pathetic explanation entirely and published it as part of a response that proceeded to challenge the credibility of the accusers, Keene and Galli. Keene, it appeared, was old, and Galli was a speaker at the convention. For good measure, *TNR* ran another letter, which praised the article as evidence of the “lack of a conservative Republican agenda”!

So it took another year and another 20 or 30 partially fabricated stories for *The New Republic* to discover that there was “a reasonable basis to suspect” that their colleague was faking it.

—RWB

***The city or the state*** — In the last ten years, I've had the following conversation, in one form or another, at least a dozen times.

“Where are you from?”

“Washington.”

“The city or the state?”

About twenty years ago, “Washington” meant the state. “Washington, D.C.” meant the city. “Washington State” meant the university in the town of Pullman, Washington. It has a fine school of veterinary medicine.

Today, “Washington” usually means the city, while the state is most often called “Washington State.” Where this leaves the university, I don't know.

This switching around of names is not the product of my fevered imagination or failing memory. You can look it up. Consider this excerpt from a dusty high school textbook:

Warsaw Pact, 786 (map)

Washington, 8-9 (map), 296 (map), 445 (map), 452

See also Oregon Territory

Washington, Booker T., 397, 414, 414-418

Washington, D.C., 8-9 (map), 224, 225, 226, 227, 236-237, 239, 359, 422-423, 475-476, 477, 622, 623, 646-647, 736

Weisberger, Bernard A., *The Impact of Our Past, A History of the United States*, Second Edition, Webster Division, McGraw-Hill Book Company, New York, 1976, pg. 831.

Not exactly a Nexus search, but you get the idea: The change is real. But what caused it? The origin of a linguistic mutation is often murky, but this one was almost certainly caused by the growth of three things: (1) the federal government, (2) the number of people who talk about that government for a living, and (3) the amount of time each of those people spends in front of a microphone.

*continued on page 15*

# The GOP & Freedom

**Two Bronx cheers for the GOP** — In a July Reflection, Bill Bradford wrote that “The Republican revolution . . . has advanced liberty significantly. Those who advocate liberty — including partisans of the Libertarian Party — should have the honesty to acknowledge that simple fact.”

In support of this thesis, Bradford claims that “. . . if the Democrats had retained control of both houses of Congress, some form of Clinton’s proposed government takeover of the health care industry would have been enacted.” But some form of it *has* been enacted — by the Republican Congress. First there was the Kassenbaum-Kennedy bill, and then the Hatch-Kennedy bill — both implementing controversial areas of the Clinton health plan. Bradford also neglected to mention that it was the Democratic Congress that voted down the Clinton plan in 1994.

Another supposed GOP triumph — the repeal of mandatory seat belts and helmets — was nothing more than the kind of thing that Democratic Congresses also routinely pass. *Any* Congress is going to pass a bill or two that reduces the power of some part of the federal government in some small way. This, after all, gives Congressmen something to take to the voters at election time, some small demonstration of their supposed commitment to smaller government.

Bradford also praises the “beneficial results” of the GOP hearings on Waco and Ruby Ridge. He cites the ensuing confrontations in Texas and Montana, in which federal officials “actually negotiated with miscreants rather than shooting them or burning them alive.” This implies that federal police forces had never negotiated with suspects before, which of course isn’t true. Waco and Ruby Ridge were highly publicized events, but they were neither unique nor typical. Before Waco ever happened, there had been both calm confrontations as well as brutal ones. Whether the hearings have changed the system in any way is highly questionable — and won’t be known for sure until time allows them to fade into obscurity. And since the federal government retains the unconstitutional power to investigate such matters as gun ownership, child abuse, and so forth, any confrontation has the potential to get out of hand.

The IRS hearings — another of the benefits Bradford supposes to have resulted from the GOP’s dominance of Congress — achieved absolutely nothing. The hearings were typical show trials designed to prove to the voters that their representatives are duly concerned about their problems. Such hearings aren’t new; they’re held every few years, complete with virtually the same kind of horror stories aired this year by the Republicans. There have been at least two previous “Taxpayer Bill of Rights” — in 1988 and 1996. The shifting of “the burden of proof from the taxpayer to the IRS” applies only to court cases — and very few tax disputes actually go to court, because it’s too expensive for most people to fight an IRS claim. If you think the burden of proof has really shifted away from you, just tell the next IRS agent you encounter that you don’t have to prove anything about your claimed expenses or income. We’ll send you care packages in prison.

As I’ve pointed out before, you can’t finance a \$1.7 trillion government without an aggressive, take-no-prisoners collection agency, and every Congressman — Republican or Democratic — knows that. And so no one is going to drive a stake through the cold heart of the IRS — not so long as we have any kind of income tax. If things were actually made easier for the taxpayer, less money would be collected because taxpayers would no longer fear the IRS. The politicians have two choices: either (1) let the IRS run roughshod over us, or (2) give up big government. Which do you think they’ll choose?

Finally, Bradford’s claim that the Republican victory “has advanced liberty significantly” is not just an overstatement, it’s a misstatement. If it had advanced liberty even insignificantly, there would have had to be a net decrease in overall government cost and control. There isn’t. Not only has the cost of government not decreased, its growth has *accelerated*. And even if the apparent pullbacks in government power that Bradford cited weren’t illusions, they would be outweighed by new intrusions in other areas.

Even large numbers of rank-and-file Republicans are fed up with the Republican Congress. So why should “those who advocate liberty — including partisans of the Libertarian Party — . . . have the honesty to acknowledge” that Republicans have “advanced liberty significantly”? It doesn’t take a partisan of the Libertarian Party to recognize that Republican politicians are more interested in retaining power than they are in advancing liberty. —Harry Browne

**Credit when credit is due** — I think Harry’s response to my reflection raises an important issue. But before discussing it, I want to respond briefly to his specific criticisms of what I wrote.

1) Virtually any form of government-funded health care can be construed as a “form of Clinton’s proposed government takeover of the health-care industry.” Nevertheless, the measures that Harry denounces — terrible as they may be — fall far short of the *complete* takeover of health care and the virtual outlawing of private medicine that the Clintons proposed.

Harry adds that the measure was defeated by a Democratic Congress, not by the GOP. Does he seriously think that without strenuous Republican opposition, that Congress would have tabled the measure in the summer of 1994? And does he imagine that if the Democrats had won a respectable majority in the 1994 elections, that the measure would not have been resuscitated?

2) I never said that the removal of seat belt laws and helmet laws was a “GOP triumph.” In fact, I described these changes as “minor, but still significant.”

3) Harry addresses only one of the “beneficial results” of Congressional hearings on Waco and Ruby Ridge: my claim that there was a connection between the embarrassing publicity generated by the televised hearings and the fact that federal police did not repeat their murderous behavior in otherwise similar confrontations with political dissidents. Harry dismisses that contention by observing that there were some less-violent confrontations before Waco. He’s right, but what has this to do with my point?

Somehow, he believes my claim that police have subsequently “negotiated with miscreants rather than

shooting them or burning them alive" implies "that federal police forces had never negotiated with suspects before." I cannot find even a trace of any such implication.

The "beneficial result" of the hearings that I discussed but Harry didn't mention is the fact that "they put on record the misdeeds of federal law enforcement agencies and the efforts to cover up those misdeeds." I remain convinced that getting sworn testimony from government agents that proved them to be cold-blooded killers of innocent people is a worthwhile achievement—even when it is accomplished by people who are not radical libertarians.

4) In his final assault on my modest claim that the Republicans have done some good, Harry dismisses the notion that the IRS reform was in any way meaningful. His reason is that one of the reforms—shifting the burden of proof from the taxpayer to the government—"applies only to court cases," of which there are "very few . . . because it's too expensive for most people to fight an IRS claim." He's right, there are very few court cases, but I don't think his explanation of this phenomenon is accurate. The main reason why taxpayers have been reluctant to go to court is they knew the deck has been stacked against them. Shifting the burden of proof to the accuser will have two very good effects: (1) it will make the IRS less aggressive in their enforcement; and (2) it will give the taxpayer who does go to court a much easier time defending himself.

Harry sagely observes that no tax reform is going to "drive a stake through the cold heart of the IRS." Right again! But he is countering an argument I never made. No reform ever has a *radical* impact. If an action has a radical impact, it is by definition *not a reform*. It is a *radical* change. And yes, I would prefer a really radical change in the direction of greater liberty to mere reforms. That doesn't mean that if a reform enhances liberty, I regard it as worthless. In Dryden's words, I take the goods the gods provide me.

The question of whether libertarians should advocate radical changes or gradual reforms is interesting. I can see a lot of logic on both sides, and I'd love to see a debate on the subject. But the issue here is whether reforming the IRS increases liberty. Obviously, it increases liberty.

Harry concludes by suggesting that the only way to see whether liberty is increasing is to see whether there has been "a net decrease in overall government cost and control." I think he's onto something here, but I don't find it easy to make the needed measurements. Sure, we can measure tax receipts or spending levels, and maybe even normalize them against population or GDP or something. But how do we quantify such invasions of liberty as laws requiring us to wear seat belts or prohibiting us from building sheds in our backyards?

I don't think liberty is a simple, easily measurable thing. I think liberty is rather amorphous. It sometimes grows in one direction while shrinking in another. Repeal of prohibition in 1933 increased our liberty to drink alcoholic beverages; meanwhile Congress was enacting laws that restricted our liberty in a million other ways.

The Republicans have done many things to increase our liberty. They prevented a complete government takeover of the health care industry, though have failed to stop the growth of government in the health care area generally. They got rid of some federally-mandated restrictions on our freedom while driving motor vehicles, though they didn't get rid of all federally-mandated restrictions. They intimidated certain very invasive law enforcement agencies in their practice of murdering innocent people, at least, for the time being.

They have not brought us all the way to a libertarian utopia. But they have made a few steps in the right direction. —R. W. Bradford

Here's what probably happened: Journalists repeated the local shorthand for what was once known nationally as "Washington, D.C." so many times that the distant and insignificant state that once laid claim to the name "Washington" had to be saddled with the clarifying "State" lest confusion set in. (For the record, this ignominy is suffered by only one other state: New York.) Just as O.J. Simpson became O.J. and Elvis Presley became Elvis, so Washington, D.C., became Washington. Both infamy and fame can shorten a name.

At this juncture, the discerning reader may well ask, "So what?"

I was born in Washington. The city or the state? Seattle, since you ask. In Swedish Hospital, to be precise. And, simply put, I want the name of my state back. The odds that I will get my way on this point are precisely zero in fourteen thousand. I am comfortable with those odds because it is a noble, if pointless, fight and the consequences of defeat should prove bearable. Victory, on the other hand, would symbolically end the era of big government. Which beats rhetorically.

Look. Washington, D.C., takes a good-sized chunk of my money every year and spends much of it in ways that I consider to be either wasteful or destructive. Washington, D.C. even nibbles away at my freedom, regulation by petty regulation. I can find it in my heart to forgive these wrongs because I can see the good intentions lurking behind the misguided profligacy and glassy-eyed megalomania. But for Washington, D.C. to steal the very name of the place of my birth? This I do not forgive. This shall not stand.

Then again, maybe it will. When the feds square off against a single state, who'd bet on the state?

The answer, of course, is to fight dirty, to use linguistic rabbit punches and low blows. To those who would join the struggle, I suggest the following tactics:

1. Always use "Washington" to mean the state and "Washington, D.C." to mean the city, even when it is awkward. (For example: "The nation's Capitol is in Washington, D.C., the nation's capital, but the capitol of Washington is in its capital, Olympia.")

2. If you say you're from Washington and are asked, "The city or the state?", fix the questioner with a flinty western gaze and drawl, "Where in the heck is Washington City, stranger?"

3. Every time someone says something like, "We're planning a trip to Washington State," look puzzled and say, "To Pullman?" —SHC

**Philip Carret, RIP** — Philip Carret, a founding father of the U. S. mutual fund industry, passed on to that great securities market in the sky in early June, at the age of 101. He was an active value investor, going into the office until almost the day he shed his mortal coil. More interesting to

me is the fact he was a libertarian who described himself as an anarchist. This was bold assertion for someone in the investment field, where security is treasured above all else. Carret was an exemplary anarchist, showing the public that the philosophy has no relation to men skulking around in black capes carrying bombs with lit fuses. —DC

**The importance of Barry Goldwater —**  
You had to be there to understand the crucial role that Barry Goldwater played in reviving the idea of liberty.

It was the early 1960s. The Great Depression and World War II had virtually wiped out the remnants of the American libertarian tradition — a tradition that had already been in decline for a century or more. Individual liberty was simply not a factor worthy of discussion. No one questioned whether the state should grow, whether liberty should shrink, whether more regulation was good, whether government should control everything.

Free markets had failed during the 1920s, and there was no point going back and trying them again. America was behind the rest of the world in the race to aggrandize state power, and they had told the politicians that America had better catch up. If she didn't go the way of Sweden, she would likely end up going the way of Russia — which, according to "evidence," was on the point of catching up to us both militarily and economically.

The war between state and liberty was over. And liberty had lost. The current battle was between totalitarianism and quasi-totalitarianism.

But Barry Goldwater never adjusted to that environment. He tried to change it.

After a mediocre college career (some biographers say he flunked out after his freshman year, others say he left voluntarily), Goldwater went to work in his family's department store. He accepted the Republican nomination for the U.S. Senate in 1952 because no one else wanted it. His opponent was a popular senate majority leader, and Arizona was the solidest Democratic state outside the Deep South. Goldwater was known, if he was known at all, as a photographer fascinated by the beauties of the Arizona desert.

Eisenhower carried Arizona by a landslide, and his coat-tails were just long enough to carry Goldwater into the Senate. During his first term, he distinguished himself as an anti-communist and a critic of government's campaign to bestow power on labor unions. As the 1960 election approached, conservatives considered him a possible alternative to the distrusted Richard Nixon.

A small boom occurred, and during that boom Goldwater (with the help of a ghostwriter) wrote *The Conscience of a Conservative*. It was published by Victor Publishing of Shephardsville, Kentucky, which is about as far away as you can get from the centers of mass media. It was a very unlikely best seller, but it found the anti-government nerve that still existed in America, and by the end of 1960, it had sold over 100,000 copies.

The book began with an attack on people who compromise with statism (people like Goldwater's Republican colleagues in the Senate), then announced Goldwater's own theme:

Thus for the American Conservative, there is no difficulty in identifying the day's overriding political challenge: it is to

preserve and extend freedom. As he surveys the various attitudes and institutions and laws that currently prevail in America, many questions will occur to him, but the Conservative's first concern will always be: *Are we maximizing freedom?*

I remember the first time I read those words. I was a 13-year-old whose political views consisted mostly of wondering why the government figured it could control people's lives. I couldn't understand why the government should keep out imports from other countries, or why it should take as much as 90% of a person's income in taxes, or why it should do most of the million other things it did. I knew that other people didn't think like this — or appear to, anyway. Other people seemed happy to fit in, to accept the common beliefs. They didn't seem to have the anti-government nerve. But I did, and Goldwater hit it.

He wrote that the United States needed a new kind of politician, a person who would seek public office without making the usual promise that the government would solve even more of the people's problems than it purported to be solving now. Such a politician would go before the people with this amazing statement:

I have little interest in streamlining government or in making it more efficient, for I mean to reduce its size. I do not undertake to promote welfare, for I propose to extend freedom. My aim is not to pass laws, but to cancel old ones. . . I will not attempt to discover whether legislation is 'needed' before I have first determined whether it is constitutionally permissible. And if I should later be attacked for neglecting my constituents' 'interests,' I shall reply that I was informed that their main interest is liberty and that in that cause I am doing the very best I can.

As I type these words, they bring tears to my eyes. There is poetry in them, and power; there is the great vision of human beings living without constraint, seeking happiness and prosperity for themselves and those they love by pursuing goals that they have set themselves, not goals established for them by politicians or bureaucrats or "intellectuals" or teachers. (Remember, I was a junior high school inmate at the time.) Goldwater challenged young Americans to light the dreary world into which we were born with the torch of liberty.

The remainder of his book was not radical, at least by the standards of today's libertarianism. Even as a 13-year-old, I could see that he had failed to carry the logic of his convictions very far. He argued against federal aid to education, but not against state education. He decried the progressive income tax, but not the institution of taxation itself.

But young people throughout America saw the logic of what he said more clearly than he did. His radical vision inspired and even intoxicated us. Goldwater was not nominated for president in 1960, but he was in 1964; and by then, thousands of young libertarians (though we didn't yet call ourselves libertarians) had joined his crusade.

Some of us read Ayn Rand and got caught up in her radical philosophy. Others subscribed to the *Freeman* and the *New Individualist Review* and learned about the practical side of free markets. As we worked with other Goldwater supporters, we began to realize that for many of them, freedom was not the first item on the agenda. We gradually began to think of ourselves not as slightly weird conservatives, but as

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# Y2K & the Feds

by Declan McCullagh

While Senators worry about private computers crashing at the dawn of the new millennium, the real threat is to the government's gigantic mainframes.

**Q**uick: What do you think of when someone mentions the Year 2000 computer glitch? If you're like most of us, you might picture geeks hunched over monochrome terminals. Breath-taking computer crashes. Whopping mainframe problems at the IRS. Maybe even blackouts.

But U.S. Marines patrolling city streets?

That's what Sen. Robert Bennett has been talking about recently. And since Bennett is head of the Senate's Year 2000 committee and banking subcommittee, folks are starting to listen. In a June hearing, the Utah Republican asked what plans the Pentagon has "in the event of a Y2K-induced breakdown of community services that might call for martial law." Deputy Secretary of Defense John Hamre replied carefully, but none too reassuringly, "We've got fundamental issues to deal with that go beyond just the Year 2000 contingency planning. And I think you're right to bring that up."

Proposals brought up at other hearings are nearly as alarming. It seems that the closer we get to January 1, 2000, the more likely politicians are to take bone-headed ideas seriously. It's telling that they're already describing Y2K as a national crisis — and, hey, "crises" have a nasty habit of ending with abridged freedoms when the dust settles. It's probably time to start worrying not just about computer snafus, but dangerous new laws and regulations.

Consider the Securities and Exchange Commission's demand that companies reveal their Y2K plans and timetables. Sound reasonable? At first blush, perhaps. But additional reporting rules are as likely to delay useful work as encourage it. When programmer-hours become increasingly precious, why waste time filling out a blizzard of paperwork

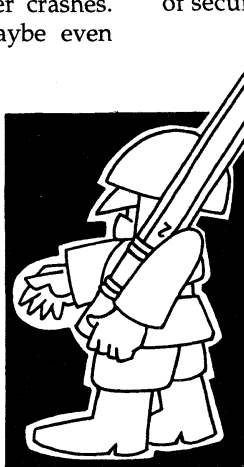
demanding by a host of different government agencies? Vague assurances (there is no standard way to calculate Y2K-readiness) might even lull the public into a false sense of security.

Besides, market forces may do the job, without government intervention. Moody's has cautioned firms that unless they can show they're Y2K-OK, their credit ratings will suffer.

So will your pocketbook, if David Eddy has anything to say about it. Eddy, president of a software marketing firm, asked the Senate Small Business Committee to start a "Y2K service corps." Apparently envisioning Newer Deal camps where would-be programmers struggle to learn arcane languages that in truth take years to master, Eddy invited the government to provide "start-up funds to create a training program for Y2K workers." Harris Miller, president of the Information Technology Association of America, asked the same Senate panel for a national public service advertising campaign, tax breaks for companies done with repairs by July 1, 1999, low-interest government

loans to pay for Y2K fixes, and a Year 2000 "small business corps" that could roam the country in search of companies in distress. (Not-so-coincidentally, the Y2K-repair firms that are members of ITAA stand to make a bundle from these round-about subsidies.) "Other countries, including Hong Kong and Taiwan, have created national productivity centers," argued Miller, so why not the U.S.?

Those "national productivity centers" might be populated by conscripted programmers. Joel Willemssen, director of the General Accounting Office's civil agencies information systems, has been quoted as saying that the government may need to draft programmers to "find or hold people in critical government jobs, at least for two years." Willemssen didn't say how productive the draftees would be — particularly after



S. H. Chambers

abandoning plush corporate jobs for government salaries.

### Don't Sue Me: Liability Limitations

Nobody knows for sure what will happen when computer clocks touch 1-1-00, but one thing seems certain: Anyone with a problem will try to blame it on someone else. At least that's what doomsayers have been saying, with one estimate predicting Y2K-related litigation topping \$1 trillion in the U.S. alone.

It should be no surprise, then, that liability limits are becoming more popular, though so far no proposal has succeeded for one very simple reason: Nobody wants to be sued, but everybody wants to be able to sue everyone else. High tech firms this spring lobbied for a liability cap in the

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*In a June hearing, Sen. Robert Bennett asked what plans the Pentagon has "in the event of a Y2K-induced breakdown of community services that might call for martial law."*

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California legislature, but were defeated before the bill left committee. Clinton, on July 14, proposed a "good Samaritan" law to limit liability if firms disclose their readiness.

One reasonable argument for limits goes like this: Our civil liability system is spinning so far out of whack that a bigger-than-asbestos, trillion-dollar hit might well send it into orbit. "In a rational world it's hard to justify liability caps. It's somewhat less hard to justify them in this world because liability does not always track harm," says David Post, a law professor at Temple University.

Still, any restrictions on liability would infringe on property rights and might conflict with the Fifth Amendment's prohibition on uncompensated takings. "If someone sells a product for some particular purpose, why should they after the fact have their liability limited — especially on this one particular issue — after someone may have bought the product or hired the firm?" asks Randall Holcombe, an economics professor at Florida State University.

And it's unlikely that a liability curb would affect all industries neutrally. What's more realistic is legislation that would redistribute Y2K harm in a way that helps special interests, not economic efficiency. Recently health care lobbyists asked a House committee for such curbs. The National Association for Manufacturers wants one too, its lawyers say. Yet granting liability caps would provide a particularly perverse incentive: With reduced worries, companies might stop working as diligently on Y2K repairs.

It doesn't help that one of the best-known Y2K experts is Ed Yardeni, chief economist for Deutsche Bank Securities. Yardeni is a sincere enough fellow who spends much of his time demanding aggressive government action. "Let's at least get from corporations what the government is providing," he said in June when pressing for more disclosure requirements. Yardeni also wants the government to order businesses to send home "nonessential employees" in January 2000. Another Yardeni scheme: Declaring war on miscreant computers. "The Y2K Alliance," he writes, "could

use the expertise of military personnel who should be involved because they have the necessary training and experience for marshaling and mobilizing resources."

### Have The Feds Made Y2k Worse?

One thing Yardeni and others miss is the government's Y2K problem. Guess what? Government computers won't make it. Bureaucrats don't have the same fix-or-go-out-of-business market incentives to update their systems. They also don't have the same legal incentives: state governments have already begun to immunize themselves from Y2K lawsuits.

Much more than the private sector, the Feds have proven themselves singularly inept at Y2K repairs. Since last fall, the IRS repeatedly has upped estimates of its Y2K costs, from \$250 million to \$850 million to more than \$1 billion. It fell behind its own deadline of having 66 of its 127 most vital systems fixed by January 1998, and still hasn't finished deciding which minicomputers, file servers and PCs need debugging. Social Security, Medicare, Medicaid and veterans' benefits checks come from the Treasury Department's Financial Management Service, a little-known agency through which almost all the government's payments and collections flow. It's in poor shape. As of March, FMS hadn't finished even the preliminary step of deciding which systems needed to be repaired.

Cypherpunk Jim Burnes compares Y2K to a virus that preys on bureaucracy: "Seeing that Y2K feeds on centralization, perhaps Y2K is a type of disease that all oversized central bureaucracies fall prey to. Is it a centralization virus? The ultimate example of software rot? Sure, Y2K can occur in relatively decentralized entities, but the effects are not widespread."

What is spreading quickly are attempts by Republicans to wield Y2K against Al Gore — a campaign that means Y2K decisions are being made in an increasingly partisan atmosphere. The House GOP leadership is now publishing a Y2K newsletter; the inaugural issue blames the White House for not sounding the alarm. "Mr. Vice President, you're the

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*Nobody knows for sure what will happen when computer clocks touch 1-1-00, but one thing seems certain: Anyone with a problem will try to blame it on someone else.*

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administration's technology point man," asked Republican hopeful Steve Forbes at a conference in June. "What have you been doing for the past five years?"

Not reinventing government — at least the Y2K-important portions. Antitrust laws continue to thwart companies' plans to collaborate with competitors on Y2K fixes. The Clinton administration has not yet reassured skittish corporate attorneys (who want a guarantee in writing) that they won't be prosecuted. "We will be asking the Justice Department and the FTC for that kind of waiver," Jerry Jasinoski, president of the National Association of Manufacturers, said in late June.

Immigration quotas aren't helping either. High-tech firms

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# Beltway Libertarians

*by Brian Doherty*

Things were pretty well orchestrated when the Libertarian Party met in Washington, D.C. But as usual, there were a few people throwing dead cats.

The 1998 National Libertarian Party Convention, held in Washington D.C. over Fourth of July weekend, was Business As Usual. David Bergland, former LP presidential candidate, vice presidential candidate, and national chair, whose party activities date back almost to its beginning, is once again national chair. He handily defeated his strongest opponent, Gene Cisewski, taking 58 percent of the vote on the first ballot. Cisewski had plenty of supporters at the convention — his raw vote total was 241 — but few saw the chair election results as a make-or-break issue. There will be no angry walkouts from the Libertarian Party in the aftermath of this convention.

Cisewski, best known in LP circles as head of a PAC that raises funds for local and state campaigns, criticized recent party management for not doing enough to support its local and state grassroots. Overemphasis on presidential elections is pointless, he argued, until more local elections are won, and the real work to do is that done by state and local parties. Exactly, said Bergland supporters. The National Chair cannot manage state and local campaigns; his job is to run the national office and provide support for the national campaign. And what are the grass roots if not new members? With Bergland's support for the LP's Project Archimedes to bring in 200,000 members by 2000, he was the *real* grassroots candidate.

Continuity was the theme of the chair race. Bergland intended to keep the current national staff, and the current national staff intended to stay under Bergland. In a debate between the candidates, Bergland said that all staffers at the national office had agreed to stay on if he were elected. When Cisewski was asked that same question, he replied that two of the seven had agreed to remain at least through the transition. The Bergland spin doctors took this as evidence that if Cisewski were elected, he would "fire five of the staff immediately and the other two after he'd found replacements," as a prominent Bergland supporter put it. Cisewski supporters believed that the national staff was

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threatening to resign as a group if Bergland were not elected, except for the two who would stay on briefly until Cisewski could find replacements.

It was very plain that a vote for Bergland was clearly a vote for the party to continue on largely as it has of late. Concern for continuity, coupled with the Bergland camp's heavy electioneering, might have changed the minds of many who considered Cisewski at first. One Florida delegate told me he was surprised at how many votes his state gave Bergland, since his informal pre-convention canvassing showed wide support for Cisewski.

Many of Cisewski's supporters expressed a desire to see him win out of a generalized term-limits sort of electoral nihilism; it's good to shake up the Powers That Be once in a while. This sort of thinking has led to shakeups at past LP conventions. It didn't this year.

Other National Officer positions saw candidate victories on voice vote with no significant opposition; past NatCom treasurer Hugh Butler was elected vice-chair and Mark Tuniewicz treasurer. Only the secretary race generated any drama. Coming into the convention, Steve Givot expected easy election. But Waco author and activist Carol Moore launched a last-minute campaign because she thought Givot-driven proposals to change the LP platform gutted the party's principles. She objected to taking out the words "Bureau of Alcohol Tobacco and Firearms" and the replacement of this particular target with the wider language of "We support the abolition of the agencies created to enforce" all laws relating to the "manufacturing, possession, or use of firearms, ammunition, or weapons of any sort." Moore

argued that this would have "gutted the hardcore and detailed defense of the right to bear arms." Her candidacy, and a sizable support for "None of the Above," stretched out the voting until Givot beat None of the Above on the third ballot in the waning hours of Sunday morning's final business session.

Convention business was conducted in the downtown D.C. Convention Center, with some luncheons, banquets, and speeches given across the street in the Renaissance Hotel. From a technical conventioning standpoint, the event was thoroughly professional, exhibiting no noticeable problems (except for really bad filet mignon at the Saturday night banquet, but bad banquet food is hardly news). An audio and video feed in the exhibitors' room allowed conventioners to follow floor business meetings without having to sit in the main hall and hold their tongues. In all, the

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*The keynote address of longtime LP fundraiser Michael Cloud was met with a loud heckler booing his name and shouting "bullshit" at some of his pronouncements.*

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convention attracted about 800 people, of whom around 700 were delegates. A set of other rooms was available for a rich selection of presentations and panels, which mostly had the usual very light attendance.

Speakers included Charles Murray, David Boaz, talk-show host Larry Elder, pot rebel and author Peter McWilliams, and Congress of Racial Equality leader Roy Innis, who raised cheers by announcing his intention to run for mayor of New York on an LP ticket. Some of the speeches were aired live on C-SPAN, and others were taped for later broadcast. The LP toll-free phone number was plugged frequently; during the next ten days, the party reported that between the toll-free number and its internet site, it had received about 3,500 inquiries.

The exhibitor hall displayed a telling cross-section of LP-member interests: various drug-law reform groups, libertarian booksellers, U.S. Term Limits, Forfeiture Endangers Americans Rights, Fully Informed Jury Amendment, secessionists, *The Spotlight*, libertarian think tanks from Reason to Heartland. However, the room was less than half the size of an exhibitor hall in special interest conventions like, say, for science fiction or comic books, and some booths were unmanned much of the time.

The business sessions and votes on platforms, bylaws, and officers are the technical reasons to hold these huge, expensive events; but the attendees probably come to them because of the ample opportunities for conviviality among far-flung LPers and interested watchers. The LP and its doings (as well, of course, as the antics of Our Enemy The State) provide ample grist for the humor mill. Discussion, prompted by the Body Shop progressive soap chain's carry-out bag slogan "If you think education is expensive, try ignorance" prompted one female delegate from California to encourage the creation of a "If you think education is expensive, try paying taxes" bumper sticker.

A marquee for the local women's professional basketball team the Mystics brought out the inevitable Ayn Rand jokes. "Zis is the most evil and impotent basketball team in the league. Zey cannot win. To shoot requires the utmost focused and rigorous use of the faculty of reason, vich zey have rejected. No matter who is on the sidelines, zere head coach is Immanuel Kant. There is only one fundamental choice in the universe: To shoot or dribble. And only one entity to make it: The basketball player. Ze Mystics are anti-reason, which means they are anti-man, which means they are anti-free throw, which means they are anti-life. . . ."

The Bergland machine is also the Browne machine, the conventional wisdom went. Certainly, this is the fear of Bumper Hornberger, leader of the Future of Freedom Foundation, a probable candidate for the LP's 2000 presidential nomination, and a very popular libertarian speaker. (One Florida delegate came all the way to Washington because she had been inspired by a Hornberger speech.) Hornberger's rhetorical strategy stresses no compromise in promoting the cause of liberty, and he gave his convention speech on a topic of some growing controversy, even among libertarians: open borders. With the C-SPAN cameras and a national audience in mind, he gave about 5 minutes of his speech in Spanish, plugging the LP's 800 number. Alas, C-SPAN did not air the speech.

C-SPAN was, however, airing the keynote address of longtime LP fundraiser Michael Cloud, which was met with a loud heckler booing his name and shouting "bullshit" during the introduction. The heckler, Pennsylvania delegate Richard Schwarz, carried around the convention a huge pile of Federal Election Committee filings that he claimed supported his contention that Cloud as a professional fundraiser has a disappointingly low percentage of money raised going to campaigns as opposed to supporting fundraising costs — that in essence he does more for himself than he does for the party. The delegate complained to the national headquarters that Cloud was both too unknown outside the party and too controversial within it — he had raised hackles in 1992 when

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*Dasbach's young daughter was hanging around the soda machines, expressing her eagerness for Bergland to win so that her Dad "will get a good job and we can move to D.C.!"*

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he went from managing Andre Marrou's presidential campaign to lobbying the NatCom to relieve Marrou of the nomination — to be a good keynote. He says he was told, "If you don't like him, come and boo." So he did.

Earlier this year, Hornberger proposed a bylaw change to prohibit the use of the national LP office, national committee resources or members in the support of specific candidates for the LP's presidential nomination. With Bergland, whose wife Sharon Ayres was Browne's campaign manager, as national chair, he's worried. Asked about the national chair race, Hornberger cagily announced, "I'm neutral — and I want whoever becomes national chair to be neutral to me in

*continued on page 22*

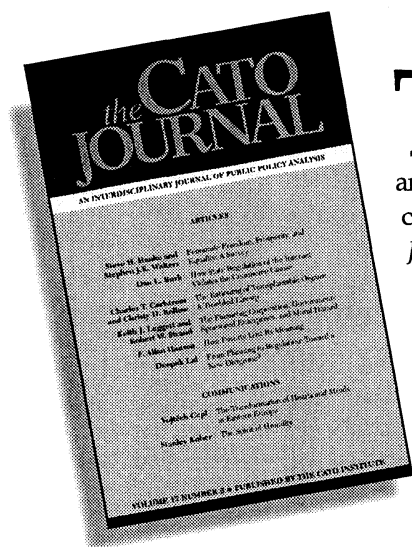


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my race for the presidential nomination." Given Bergland's ties to Browne and Cisewski's lack of same — Cisewski was critical of Browne's campaign in an interview with *Liberty* — this was an indirect endorsement of Cisewski.

National LP office staffer Nick Dunbar, when asked his opinion on the bylaw vote to create a CEO position, which failed, recounted at length the various positions he's held with the party, all the states he's walked with ballot-access petition clipboards in hand, then concluded with, "I am held to a directive that as a member of the national staff I am not permitted to have an opinion about these issues. I intend to obey that directive to the letter. Thus, I cannot answer your question." Implied in his tone was some disagreement with this directive, to say the least.

The business meetings, which some more long-time convention goers have learned largely to avoid, were LP parliamentarianism in agonizing action. The occasional torture of libertarians run amok with parliamentary procedure, where any ten truculent members can force a head count vote.

There were proposals to change the party platform: to excise its support for the right to abortion, to add opposition to the death penalty, and to return to an explicit children's rights position. But as usual, in the crush of agonizingly slow parliamentary maneuvering, these never even came to a vote.

The endless debate over proposed platform changes (which led to less than half of the proposed 25 platform changes from the Platform Committee coming to a floor vote) were mocked in an elaborate fantasy of a call to change the font of the platform. "I move for Helvetica. A sans serif font shows our forward-looking principles . . ." "No. That's too California. I insist on Times Roman. People are used to it from their daily newspapers, they are comfortable with it, it makes us indistinguishable from any other platform they might read and thus more comfortable with us . . ." And of course dozens of delegates would need to step to a microphone to express their support, or not, for whatever font pro-

posal was on the table, with a plug for their pet cause as a lagniappe.

One hoary Libertarian tradition came under assault: the line in the party's statement of principles saying that the LP stands against "the cult of the omnipotent state." Kook language, some complained, and many agreed. The biggest argument against the language was that it is hard for candidates on a local level to explain it to would-be voters. Of course, nothing requires the party's statement of principles to be used in local campaign literature, and as one supporter of the language said, he's never found any evidence beyond scattered anecdotes that this statement represents a real problem for the LP — certainly not enough of one to call forth all the energy and heated debate the proposal to get rid of it has. The proposed change had ample support, but the original language survived. This came as no surprise, since changing it requires support from 7/8 of all delegates, a virtual impossibility in a group as contentious as libertarians. Even getting that many delegates to the floor at a single time to vote seems well-nigh impossible.

The Bergland-Browne forces proposed a bylaw to create a new national officer to be called CEO — which was intended for outgoing National Chair Steve Dasbach. This was defeated, but during the vote-count for chair, Dasbach's young daughter was hanging around the soda machines, expressing her eagerness for Bergland to win so that her Dad "will get a good job and we can move to D.C.!" Right after business at the convention ended Dasbach was named National Director and previous National Director Ron Crickenberger went back to his old job as political director.

So Dasbach's daughter got her way, and the LP will continue on its path to the promised land of 200,000-plus members in 2000 with continuity in management. Will it get there? As keynote speaker Michael Cloud said, "If you always do what you've always done, then you'll always get what you've always got." □

## McCullagh, "Y2K & the Feds," *continued from page 18*

complain that current restrictions on immigrants create a labor shortage that leaves 350,000 jobs open each year — some of which are Y2K-repair positions. Then there's an arcane portion of the tax code, Rule 1706, that makes it risky for firms to hire independent contractors. If you hire a consultant and the IRS later decides he should have been an employee, you'll get slammed with hefty fines. And contractors are responsible for a huge portion of Y2K fixes.

Retired Intel engineer Tim May argues that increased recordkeeping requirements such as pollution controls, Superfund tracking, and emissions standards exacerbate Y2K problems. Regulations require programmers to include "report-writing and compliance-checking code into the control software," he says. "Next thing one knows, a fairly straightforward engineering control problem is larded up with dates, fiscal years, reporting periods, and other such Y2K-interacting stuff."

It's tempting to hope that the Y2K phenomenon brings with it new respect for private sector solutions (and hey, eliminating a couple federal agencies isn't a bad start either).

So far, though, the trend is in the other direction. Sen. Christopher Dodd (D-Conn) says: "You can't ask the government to solve this problem." No, but you can certainly rely on the Feds to make it worse. □



"Not on my tree you don't!"

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## Epistle

# Dear Bill

*by Paul Rako*

*The president's  
motorcycling buddy  
offers some advice  
and asks for a small  
favor.*

Dear Bill:

Well Bill, I just want to say hi, and see how you're doing and give you an update on my activities, but I wouldn't be bothering you if there wasn't an important Executive Decision we need made pretty darn quick right out here in Sunnyvale, California.

Before I get into the Executive Decision, I want to let you know what's going on out here in the Western part of the good old US of A because I'm sure the President wants to keep his fingers on the pulse of this great country of ours. Coincidentally enough, this letter got started just like the last one, with me riding my Harley around town enjoying the sights.

We had the first nice day out here in a month of Sundays and I was just having a blast with the wind in my face most of last Sunday. Well, I get back to my shop and see that there is a phone message for me on my answering machine. I play the message and it's my buddy Preacher. You remember Preacher, he's the ex-Marine, Vietnam vet who rides the same Sportster he bought brand new in 1969 with his combat and hardship pay. Well Preacher's clutch had gone out and it was a miracle he got the bike all the way back from Jan's house without ever having to stop even once. He said the traffic lights just kept changing his way but we all think it has more to do with Preacher being such a righteous dude that you just know the lights are gonna change for him.

Well anyway, Preacher left a message for me because he thought I might have an extra set of them three little rods that go in the mainshaft that operates the dry clutch setup (which Preacher is running wet with that Barnett kevlar plate deal). Well I go through all my clutch and tranny boxes and sure enough, I do have two of the rods. These babies are as tricky as that flywheel end play I told you about. They gotta be case hardened just right — Fast Freddy used some plain steel rods in his Sporty and they just kinda melted and welded up and ruined the mainshaft which at \$140 a pop ain't chicken feed. Not to mention having to tear the bike down and stuff.

So I get the two rods in my pocket and jam over to Preacher's house but Preacher ain't there so I figure maybe he's at Nigel's house. But before I even get to Nigel's I see New Zealand Larry cruising towards me on his yellow Springer Softail. Like every New Zealander I have ever met, Larry is a fine fellow and a really righteous dude. He got his left foot hacked off in an industrial accident and that doesn't even slow him down one little bit. He handles that Softail as good or better then I handle my Sportster. Well, it turns out that Larry was just coming from Nigel's where he sometimes stays on weekends when he's down visiting from Reno where his new job is.

After a little middle-of-the-intersection discussion concerning the shortcomings of the Bendix drive in the Nippondenso starter motor Harley uses, he mentions that Preacher was looking for me. Now I want to make clear that the defective mechanism was a Bendix type drive but it wasn't made by the Bendix Division of the Allied Signal Corporation here in the US of A. It was the Nippondenso implementation of the Bendix invention that was no good. Guess what? It's a case hardening thing again, some coincidence huh? It just goes to show you that just because it's made in Japan doesn't mean it's any good. My buddy Russell up in Portland had the same Nippondenso Bendix fail on his Harley Road King and, get this, it happened at the Honda dealer where he was checking out that new Valkyrie. Believe me, there's nothing worse

then having to get two Honda mechanics to push start you out of the Honda dealership on a brand new Harley. And this was just one of the problems Russell had until he finally traded the darn thing in and got one of them oil head boxer BMWs, the 1100RT model. Which just goes to show you that that just because it's made in the US of A doesn't mean it's any good.

Anyway, like I was saying, Larry tipped me off that Preacher sure enough was over at Nigel's house which was really no big deal because I was going over to Nigel's anyway. So sure enough, I get over to Nigel's and see that not only is Preacher there, but so is Wham and Nigel's lovely wife June. Not only that, but then Ray showed up on his Springer Softail. Ray's a really cool dude who happens to have a top secret job at the "Blue Cube" which as President I'm sure you know about because the "Blue Cube" is the ultra-top secret military installation here in Sunnyvale that controls all the spy satellites and stuff. (I don't want to say anything more because, no disrespect to your staff and all, but you never know where there might be some commie spy or terrorist or stuff, and you'll see why it's a coincidence that Ray was there because it involves the Executive Decision we need you to make.)

So before I bring up the important Executive Decision we need made, I wanted to give you a heads up on this whole Monica thing. Now Bill, I know this whole thing is being rubbed in the ground and I can assure you that I am horrified by the whole thought of a Special Prosecutor whose whole reason for living is to cause the President or some other government official grief. I'm over at Nigel's house and this whole Monica thing comes up and Bill, this is what I want to tell you because I think you'll be glad to know: Nobody seems to give a hoot, other than the entertainment value, which Bill, I think you are man enough to admit, this thing has a LOT of entertainment value. Of course, nobody I know seems to care about what goes on in Washington anyway. The weird thing is that the women seem less concerned then the men and I would have thought the gals would really be up in arms over this one.

Most of the guys are more concerned with the effect on Hillary and I gotta tell you Bill, that's what I worry about. I admire Hillary being all Yale educated and easy to look at to boot. Everybody just kind of agreed that it's Hillary that should be laying down the law on this one and not Ken Starr

and not the media and not any of us, so Bill, just give Hillary our best and tell her we are all behind her on this one, one way or another.

Speaking of the entertainment value of this thing, Nigel ran into the house and got one of them supermarket tabloid newspapers and showed me this two page full color spread with pictures of just the lips of all the girls that are talking trash about you. Talk about bimbo eruptions, Bill, this is a damn bimbo fragmentation grenade.

I guess what I wanted to say most on this whole thing is that what happened with June and Preacher makes me so proud to be an American. Now I don't know if June was playing devil's advocate on this or not, but she pipes up with: "What's good for the goose is what's good for the gander." Then Preacher the Marine stops, looks at June and smiles and says: "I agree, geese and ganders should all be treated equally." Then Nigel looks at me and smiles and says: "She doesn't say that about this gander!" and we all knew something really cool had happened because it looks like the liberal vision you talked about in your letter to me has really come to pass and it makes me feel really good about America knowing that tolerance, diversity and equal rights are really important to people and like Rodney King said, "Can't we all just get along?"

Well Bill, I know your real busy with important matters of State and stuff so I want to get right to the crux of the biscuit. Now this is real important and I can understand if you were skimming the early part of this letter but now I need you to read very carefully because this is a really important Executive Decision we need you to make. Me and Preacher and Wham and Nigel and Ray were in the garage that we converted to a sorta clubhouse and we were playing pool and downing cold ones and listening to the Blues and who should come in but New Jersey Darrin and his beautiful girlfriend Lori. Well, Darrin wasn't kidding around. As he walked in the garage he said: "Nigel, I'm in trouble man, I'm in some real trouble."

Well Bill, we all know that trouble has a way of finding Darrin like a camel has a way of finding water. It turns out to all of our amazement that Darrin is in the reserves and he just got called up to go kill Iraqis in the Middle East. Now Darrin is such a happy-go-lucky guy none of us could believe that he was responsible enough to not only enlist, but to not get court-martialed in the mean time. It turns out Darrin has been on reserve for eight years and this is so coincidental it is almost funny because when you sent your letter to me, the guys were joking about "Greetings from the President" and getting drafted and stuff and sure enough, a few months later, one of our own is getting called up.

Now Darrin seems to be a little mixed up on this whole thing and so am I, to tell you the truth. One minute Darrin would be all gung ho saying: "I'll go, just gimme a gun, I'll kill em all!" which had me calling Darrin "Our one man Mi Lai" but I think he just didn't want to seem unpatriotic and stuff because Darrin is really one of the nicest most fun guys you'd ever want to meet. But the next minute Darrin would look all down in the dumps and you could see this whole thing was bothering him.

What has us the most worried, and I think you can really empathize with this Bill, is that Darrin really loves the ladies.

Today is the first  
day of... oh, no!  
- Run for your life!



Baleo

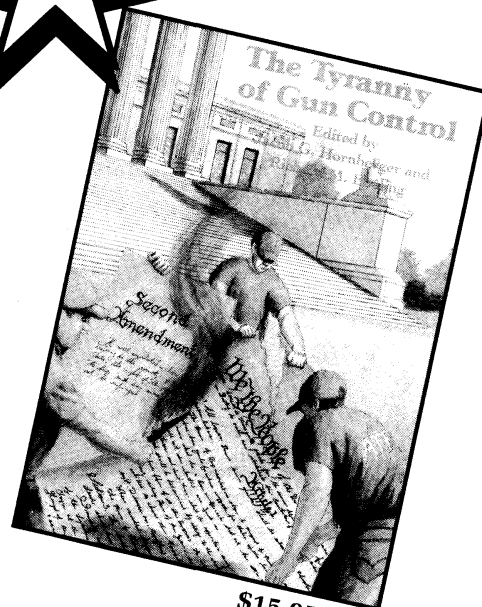
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Now Bill, I really love the ladies too but the thing about you and Darrin is that the ladies really love you guys back. Sending Darrin to Saudi Arabia with all them rules and veils and such is like putting out a fire with gasoline and hairspray. We're really worried that if Darrin goes to Saudi Arabia he'll come back missing some very important body parts and it won't be the combat because we know that this war ain't gonna be like Vietnam where they were shooting back. Nope, I told Darrin that messing with the ladies gets Trial By Saudi Arabian Law and that just is not good news for a happy-go-lucky guy from New Jersey. I gotta confess this whole Middle East thing has me more than a little confused. In your last letter to me, you talked about the liberal vision and how the right wing was threatening our American values and stuff.

Now Bill, I will admit to being a little out of touch since I sold my TV 15 years ago, but as I remember it, wasn't it the right wing that wanted to go bomb everybody? I mean, bombing for oil, well that's just one way at looking at that Vietnam thing isn't it? And if I remember right, you came down on the right side of that one, even protesting and trying to keep us from getting involved in other people's business. I thought that's what liberalism is all about, I mean, that's why nobody cares about this Monica thing. So Bill as your advisor I need you to tip me off as to what the heck is going on. Did something happen in the Eighties, because when I hear the conservatives don't want to go to war, well Bill, that just blows me away. I mean, did everybody just switch sides one day? Was there some kinda ceremony or a notice in the newspaper or something I missed where all of a sudden all the liberals became bomb-crazy hawks and the conservatives became mellowed-out flower-power doves?

Bill, like I said in my last letter, it's hard enough keeping track of whose doing what to whom way over in Washington DC. If you guys start switching around on your policies like this nobody is going to know who or what to believe in. Now I've gotta apologize because I see I've been going on a tangent and stuff and I really do want to get to this Executive Decision, but I just gotta tell you that we are all really worried about this war thing. And not just about Darrin getting castrated or court-martialed.

Them crazy Iraqis — not the nice ones you meet working here in California who are really good people — them crazy Iraqis are liable to start doing terrorism if we keep bombing their women and children and stuff and I'm sure you don't want to see little Chad and Melissa doubled up laying on the ground puking blood when some crazy Iraqis (not the nice ones, of course) takes two kilograms of anthrax spores and spray it out of a rental Piper Cub and kill a million people not to mention June and Nigel's beautiful children.

So anyway I really do want to get to this Executive Decision thing but I felt I should fill you in on some background on Darrin and stuff because that's what the Executive Decision is all about. You see Bill, Darrin just got the letter Saturday. It tells him to go to some fort in Oklahoma at the end of May. The deal is that Darrin's been carrying this little card in his wallet this whole time that shows his eight year reserve thing is up at the beginning of May. Now Ray, the guy with the black Springer Softail who works at the ultra-top secret "Blue Cube" where they control

all the spy satellites and stuff says: "No problem, they're calling you up after your release date so you don't have to go." Then Wham, this other Marine you might remember from my first letter says: "No, if he's activated one day before his release date he has to go for the full action." And then we started arguing about whether it was the letter he got yesterday that activates him or the fact that he has to show up in Oklahoma at the end of May that activates him, which is after his release date.

So the Executive Decision we need you to make is this: Is Darrin activated by receiving the letter, which seems pretty Mickey Mouse to me, no offense to Walt Disney or anything but you know yourself the post office is a government operation and who knows when the dang letter will arrive and it seems pretty unfair to me because one guy would get a letter right away and have to go kill Iraqi women and children and then another guy wouldn't get his letter until after his release date because some guy at the post office goes postal with an assault weapon in Duluth and gets all the deliveries all fouled up and maybe they even throw a military letter out because they got blood all over it and they don't want to look bad to the public and stuff.

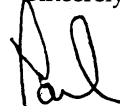
On the other hand if it's showing up in Oklahoma that is Darrin's activation, well then we'll just jot off a little note to one of your Generals that they got Darrin by mistake because they can't activate him after his release date and that the President of The United States has made an Executive Decision and stuff and I'm sure the Generals will clear things up right away because the one thing good about that last war in the Middle East is that it showed what great generals we've got in this country and no offense to Mr. Gore or anything, but I think that Colin Powell guy would whip the snot out of Mr. Gore for President (I'm sorry but I can't remember the Vice President's first name).

So anyway there you have it in a nutshell.

Well Bill, that's about all we have got to say from California today. We will all be looking for that Executive Decision and I trust you will get right on it since as you can imagine Darrin and we are on pins and needles about the whole thing although if he has to go kill Iraqi women and children there's gonna be one heck of a going-away party and don't tell Darrin I asked because he's the last guy on earth to snivel or ask for special treatment, but if you do send him to kill Iraqi women and children could you send him to a fort in New Jersey instead of Oklahoma since I'm sure his family are just as concerned as we are about his coming home OK and I'm sure they would like a chance to see him before you go send him to kill Iraqis.

Well like before Mr. President, we are all behind you 100% so there is no need to look back.

Sincerely,



Paul Rako  
U.S. Citizen

Editor's Note: Within days of receiving this letter, President Clinton decided against military intervention in Iraq, so Darrin was not sent to kill Iraqi women and children.

# Out of Scalia's Shadow

by Dylan Carp

Clarence Thomas emerges as one of America's great Supreme Court justices.

The winning attorney in a case before the Supreme Court said of Justice Clarence Thomas's dissent in the case that it was "almost as though he is a robot being jerked by Justice Scalia."

A highly regarded Court watcher has written in *The New Republic*, "As Thomas gains intellectual confidence, perhaps he will transcend his ghost-written imitations of Scalia in the same way that he abandoned his ghost-written speeches about natural law. But when Justice Thomas does feel ready to express his own beliefs, it is hard to imagine what he will say."<sup>1</sup>

Some of Thomas's supporters have, of course, questioned this unflattering appraisal. As Laura Ingraham and Stephen Smith, both former law clerks of Thomas, have written in response to such criticism, "Are we to expect judges to vote against their conscience out of a concern that they will be portrayed as blindly voting with this or that bloc? Certainly it is true that Scalia and Thomas share the same general judicial philosophy. However, it is also true . . . that they have often disagreed in the application of these principles."<sup>2</sup>

Anyone who examines the opinions of Justices Thomas and Scalia must conclude that Ingraham and Smith are correct. Thomas has distinguished himself from Scalia in two related ways. First, in interpreting the Constitution, Thomas looks more to original understanding, whereas Scalia focuses on history and tradition. Second, Thomas is more willing to adopt new (or previously discarded) judicial doctrines, whereas Scalia is content to follow judicial precedent.

In the first category is the lodestar for Thomas and Scalia watchers, the 1995 case *McIntyre v. Ohio Bd. of Elections*. This remains the only case in which one justice directly criticized the other. The central issue in *McIntyre* was whether a state law banning the distribution of anonymous campaign literature violated the First Amendment.

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The Court held that it did. The majority reasoned that because anonymous publications have "played an important role in the progress of mankind," and because anonymity is sometimes the only refuge for dissidents, anonymous political speech must be protected by the Amendment.

Thomas wrote a solo concurrence in which he criticized the Court for failing to seek the original understanding of the Free Speech Clause: "Whether great works of literature by Voltaire or George Eliot have been published anonymously should be irrelevant to our analysis, because it sheds no light on what the phrases 'free speech' or 'free press' meant to the people who drafted and ratified the First Amendment." In seeking that meaning, Thomas relied most on three pieces of evidence. First, he noted that *The Federalist Papers*, essays written by three of the nation's Founders, were published anonymously in connection with the debate over whether the colonies would ratify the new Constitution. Second, he noted that many newspapers of the time were owned by prominent supporters of the Constitution, and that those papers published anonymous political articles after they were harshly criticized for refusing at first to do so. Finally, he noted that the colonists widely supported a jury's refusal to convict the printer John Peter Zenger when he was tried for seditious libel in 1735 for refusing to reveal the anonymous authors of published attacks of the Crown governor of New York. Based on this evidence, Thomas concluded that the Free Speech Clause was originally understood as protecting anonymous political leafleting.

Scalia disagreed. He argued first that although Thomas

was correct in seeking the original understanding of the Clause, Thomas interpreted the historical evidence incorrectly and came to the wrong conclusion. He wrote that "the sum total of the historical evidence marshalled by [Thomas] for the principle of constitutional entitlement to anonymous electioneering is partisan claims in the debate on ratification (which was almost like an election) that a viewpoint-based restriction on anonymity by newspaper editors violates freedom of speech." This evidence, for Scalia, was insufficient to warrant striking down the law.

Instead, Scalia argued that since many states have long had laws banning anonymous political leafleting, it is highly unlikely that the First Amendment prohibits such laws. "Principles of liberty fundamental enough to have been embodied within constitutional guarantees are not readily

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*In many areas of the law Justice Thomas marks the front line of originalist jurisprudence.*

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erased from the Nation's consciousness. A governmental practice that has become general throughout the United States, and particularly one that has the validation of long, accepted usage, bears a strong presumption of constitutionality." Scalia noted that the challenged law was enacted in 1915, the earliest such law had been adopted by Massachusetts in 1890, and at the time of the lawsuit every state except California had a similar law:

Preferring the views of the English utilitarian philosopher John Stuart Mill to the considered judgment of the American people's elected representatives from coast to coast, the Court discovers a hitherto unknown right-to-be-unknown while engaging in electoral politics. I dissent from this imposition of free-speech imperatives that are demonstrably not those of the American people today, and that there is inadequate reason to believe were those of the society that begat the First Amendment or the Fourteenth.

Perhaps it is easy to read too much into Thomas's and Scalia's disagreement in this one case. However, I think the disagreement has important implications when viewed in the context of the originalist/anti-originalist debate. For example, perhaps the ultimate weapon the anti-originalists have is *Brown v. Board of Education*. Their devastating syllogism goes something like this: by the year 1954, segregation had existed for generations; originalists defer to tradition when interpreting the Constitution; therefore, originalists would have dissented in *Brown*; but only a bad person would have dissented in *Brown*; therefore, originalists are bad people. In *McIntyre*, Thomas showed that he is willing to reverse tradition if he thinks the Constitution's original meaning requires.

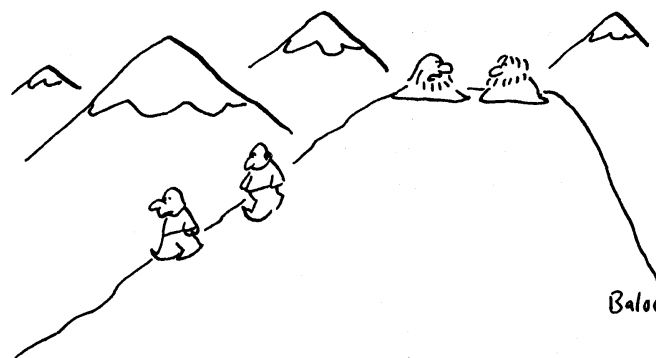
Thomas's writings on the Equal Protection Clause show a similar outlook. In a 1995 case, *Missouri v. Jenkins*, Thomas wrote that he would have voted with the *Brown* Court to invalidate segregation based on the original intent of the Framers of the Fourteenth Amendment, even though there was a long tradition of segregation. (In his concurrence, Thomas became the first Justice ever to criticize the reasoning of the *Brown* decision in a published opinion, arguing that the Court should not have

relied on social science research indicating that segregation harmed black students' ability to learn.

As for Scalia, he did write in *Adarand v. Peña* (1996), that "In the eyes of government, we are just one race here. It is American." However, in that case he voted to outlaw affirmative action, a practice which has existed only since the mid-1960s; he has not explicitly indicated in any published opinion that he would have joined the *Brown* majority in rejecting the more ingrained tradition of segregation. (This is not to say that Scalia would have dissented in *Brown* — perhaps his views on colorblindness would have led him to reverse tradition.)

A second distinction between the two is Thomas's willingness to go further than Scalia in rejecting settled Court doctrine for new or previously discarded doctrine. Consider the judicial precedent set by *Valentine v. Chrestensen* (1942), in which the Court held that "commercial speech" (advertising), merits less protection than political or artistic speech. The Court reasoned that commercial speech is more durable and less central to the interests of the First Amendment than other types of speech, and that there is an inherent danger that conferring equal status upon commercial speech will erode the protection accorded noncommercial speech, simply by a "leveling process." In *44 Liquormart v. Rhode Island* (1996), Thomas became only the second justice to write that he would afford full protection to commercial speech. He wrote, "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech." In support, Thomas cited an old 1878 Supreme Court case which struck down a federal ban on lottery advertising under the First Amendment, and opined that the Framers' political philosophy equated liberty and property and did not distinguish between commercial and noncommercial speech, as evidenced by a pro-free speech essay by Benjamin Franklin in support of his decision to print an ad for voyages to Barbados.

Scalia, in contrast, wrote that although it may be paternalistic to restrict commercial speech, "it would also be paternalism for us to prevent the people of the States from enacting laws that we consider paternalistic, unless we have good reason to believe that the Constitution itself forbids them. I will take my guidance as to what the Constitution forbids, with regard to a text as indeterminate as the First Amendment's preservation of 'the freedom of speech,' and where the core offense of suppressing particular political



"Don't worry — it isn't very often that we get a rush like that."

ideas is not at issue, from the long accepted practices of the American people." Although many Framers probably viewed commercial speech restrictions with suspicion, "I consider more relevant the state legislative practices prevalent at the time the First Amendment was adopted, since almost all of the States had free-speech constitutional guarantees of their own, whose meaning was not likely to have been different from the federal constitutional provision derived from them." Since the parties did not supply any evidence on that question, Scalia withheld judgment as to the proper degree of commercial speech protection.

## Speech and Money

Since the 1976 case *Buckley v. Valeo*, the Court has held that money spent by political candidates is protected by the First Amendment, but money given to candidates is not. The Court reasoned that a restriction on the former limits the number of issues discussed, the depth of their exploration, and the size of the audience reached; but restrictions on the latter affect only the symbolic expression of support evidenced by a contribution. In *Colorado Republican Federal Campaign Cmte. v. F.E.C.* (1996), Justice Kennedy wrote a plurality opinion arguing that money spent by a candidate's political party on the candidate's behalf is also protected by the First Amendment. Scalia joined that opinion. Thomas, in a solo opinion, wrote that the *Buckley* distinction should be discarded, and that the First Amendment should be held to protect both a candidate's spending and receiving of money. He argued, "Contributions and expenditures both involve core First Amendment expression because they further the discussion of public issues and debate on the qualifications of candidates integral to the operation of the system of government established by our Constitution. When an individual donates money to a candidate or to a partisan organization, he enhances the donee's ability to communicate a message and thereby adds to political debate, just as when that individual communicates the message himself."

## Interstate Commerce Rightly Understood

The Constitution gives Congress the power to "regulate commerce . . . among the several states." This provision, which has come to be called the "Commerce Clause," has been interpreted very broadly — Congress may regulate any activity as long as all similar activities, taken in the aggregate, substantially affect interstate commerce. For example, in the 1942 case *Wickard v. Filburn*, a unanimous Supreme Court permitted the federal government to fine Mr. Filburn for exceeding his wheat quota of 222 bushels, when he harvested 239 additional bushels for his family to consume. The Court reasoned, "[that Filburn's] own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." Many commentators, even the Court itself, have opined that the federal regulation upheld in *Wickard* surely approaches the bounds of the Commerce Clause's scope.

But it wasn't until *United States v. Lopez* in 1995 that the Court for the first time since the mid-30s, held that a federal law exceeded the scope of the Clause. In a 5-4 Rehnquist

opinion joined by Scalia and Thomas, the Court held that the Gun-Free School Zones Act was unconstitutional. The Court reasoned that since gun possession is not an economic activity, and since education is traditionally a concern of the states, the Act exceeded all Commerce Clause precedent.

Thomas, in contrast, wrote a solo concurrence, in which he argued that precedent should be overruled. He wrote that the Court should no longer look to activities in the aggregate, and should probably require that an activity actually be interstate commerce, rather than simply affect or substantially affect interstate commerce, when ruling on whether the Commerce Clause empowers Congress to regulate that activity: "it seems to me that the power to regulate 'commerce' can by no means encompass authority over mere gun possession, any more than it empowers the Federal Government to regulate marriage, littering, or cruelty to animals, throughout the 50 States. Our Constitution quite properly leaves

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*Thomas, in a solo opinion, wrote that the First Amendment should be held to protect both a candidate's spending and receiving of money.*

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such matters to the individual States, notwithstanding these activities' effects on interstate commerce. . . . [Indeed,] under our jurisprudence, if Congress passed an omnibus 'substantially affects interstate commerce' statute, purporting to regulate every aspect of human existence, the Act apparently would be constitutional. Even though particular sections may govern only trivial activities, the statute in the aggregate regulates matters that substantially affect commerce."

## Faalty For Federalism

Since *Bounds v. Smith* (1977), the Court has held that the Constitution requires prison authorities to assist inmates in the preparation and filing of legal papers by providing prisoners with adequate law libraries and legal assistance. In *Lewis v. Casey* (1996), the Court held, in an opinion by Scalia, that Arizona's prison law library system satisfied the *Bounds* requirement. Thomas wrote a solo concurrence, arguing that *Bounds* probably should be overturned. In addition to arguing that *Bounds* had been an improper extension of precedent, Thomas wrote that the right identified there gives too much power to federal courts over state prisons:

The Constitution charges federal judges with deciding cases and controversies, not with running state prisons. Yet, too frequently, federal district courts in the name of the Constitution effect wholesale takeovers of state correctional facilities and run them by judicial decree. This case is a textbook example. Dissatisfied with the quality of the law libraries and the legal assistance at Arizona's correctional institutions, the District Court imposed a statewide decree on the Arizona Department of Corrections, dictating in excruciatingly minute detail a program to assist inmates in the filing of lawsuits — right down to permissible noise levels in library reading rooms. Such gross overreaching by a federal district court simply cannot be tolerated in our federal system. Principles of federalism and separation of

*continued on page 50*

# Die, the Beloved Country

*by Jim Peron*

There's more to the political transformation of South Africa than what they show on CNN.

When a country begins sliding into oblivion it really is the little things that get to you. You wake up in the morning and turn to see what time it is. The clock is off. The electricity is off again. Sometimes for a few minutes, sometimes for a few hours, but it seems to happen more regularly than before.

You pick up the phone at work to make a call. Nothing. Your neighborhood is without telephone service again. You breathe a sigh of relief — at least if all the phones are out, they'll do something relatively soon to fix it. If it's just your own line, it can take days before they'll do anything.

After the power comes on, you turn on the television to watch a favorite program, and hope you get the right sound with the right picture. Sometimes you get the sound of one show with the picture of another. Sometimes it's just the one or the other. Or a radio station instead of the soundtrack. You've read the papers — a large number of the "old" employees have walked out of the broadcasting studios. They couldn't take it anymore. And since television is an arm of the government, their replacements are appointed politically, not because of their experience or ability.

You drive home after going out for dinner. Entire neighborhoods are without street lights. Well, to be more accurate they are without lights that work. And the lights have been out for months. The city has said it won't fix them.

These are the little things in South Africa today. These are the things that annoy. The big things are too frightening even to consider.

## Kafkaburg

For two years I couldn't get a water/electricity/tax bill from the city of Johannesburg. Water and electricity are socialist enterprises here. I didn't have an account number, nor did I know how much to pay. I tried calling the bureaucrats, but no help there: they said they'd get back to me, but they didn't.

On September 25th, they showed up to turn off my elec-

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tricity for failure to pay. The city workers refused to show identification, wouldn't say whose account they were turning off, and wouldn't show any legal authorization to do so. In fact, they told me they didn't have to speak a language I understood (English). I called the police. I have a videotape of these civil servants telling me they aren't obligated to identify themselves, and that if I refused to allow them on the property they had the right to tear down my gate. When I asked one of them for anything that would show them to be city workers, he replied, "This isn't America you know." I know! I know!

I told him, "It's not Nazi Germany, either." He later chastised me for running down "Nazi Germany." "I'm sorry," I said, "I didn't realize you were a Nazi."

I went to the city hall and waited hours for someone to see me. I was finally told to make a plan to pay the account. I was willing. I had R7,000 (7,000 rand) cash on me. But the bureaucrats wouldn't let me pay or make a plan. They had forgotten to transfer the account to my name, you see; it was still in the old owner's name and the bill was going to the wrong address. I was ordered to wait until they changed it over and sent me a statement.

I pay a R700 deposit and go. Two days later they turn on the electricity. Two months later, and still no statement has arrived. I call and call. "I'll call you back," they say. They don't. I keep calling. Finally I get a sour bureaucrat who tells me I'll have to pay R9,000 immediately and the rest over six months. I asked about the year payment plan. That was discontinued in November. "But I wanted to pay in October



and you people wouldn't let me," I protest. "That's your problem," she says.

Back at city hall, I see another woman who spends the entire time screaming at everyone who comes near her. She screams in the phone. She screams at the switchboard for "bothering" her with phone calls. She informs me that it's my obligation to pay my account whether or not the city sends me a statement. It doesn't matter if I don't know the amount owed. It doesn't matter if I don't have an account number to which the money is to be credited. My obligation is to pay an unknown sum into an unknown account, and if I don't get it right they'll turn off my electricity.

I got off relatively easy, though. Today's newspaper told of one man who received an account for R500,000 in water use. The man owns a well and doesn't even use city water. When he went in to talk to the bureaucrats, they were very sympathetic. They told him to pay 50 percent now or have his electricity cut off.

## The Rise of Violence

Recently, I went into a print shop to get some flyers printed. The woman there was quite pleasant and we talked about the short blackout that day. She asked what I was doing in South Africa and told me that she and her family want to flee. Her family originally immigrated from India; like some Indians she was quite dark. Clearly she was not a member of the class "privileged" by apartheid. But what she said surprised me.

"My husband and I decided we were better off under apartheid. Sure now we can live next to white people and ride the same bus. But those things aren't important."

What is important? Not being afraid. Today, the murder rate is ten times greater in South Africa than in the United States. One world atlas reports: "South Africa is the world's

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*CNN doesn't even come close to telling the truth about the decline and death of South Africa.*

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most dangerous country (beside war zones), with 40,000 murders a year." It wasn't this way four years ago, before the ANC took power. But the government says the murders are a "legacy of apartheid."

That's part of the problem. Everything that goes wrong is "a legacy of apartheid." The violence in the rest of Africa is a "legacy of colonialism." It's a legacy that has gone on for almost 40 years. Every time something goes wrong (and that happens constantly), the same litany of excuses are recited. "We inherited this problem from the corrupt apartheid regime."

I lived for thirty-some years in the U.S. and never met anyone who had been shot. I was never near a bank robbery. Never heard of a friend's car being hijacked. Only one person I knew suffered a burglary.

In the last two years many people I know have been burglarized. In fact, burglary is so common that people have stopped talking about it. One of my friends was hit six times

in one year. The last time I saw him I asked what he had done that day. "I got a new TV," he said. "Oh, how generous of you," I replied. He has since left for England.

White farmers in particular are being targeted. Some, like Werner Weber, president of the Agricultural Employers Organization, believe there is an orchestrated campaign to force whites off the land so it can be redistributed. Farm attacks rise almost every year: 92 killed in 1994, 121 in 1995, 109 in 1996 and 140 last year. In some attacks people are murdered but nothing is stolen, indicating that robbery isn't the motive. Farmer Dudley Leitch told an AEO meeting that while the murder rate among South Africans in general is 13 per 100,000, it is 120 per 100,000 for farmers.

A major cellular phone company placed an anti-crime ad in a newspaper saying, "President Mandela — you were in prison. Now we all are." A top official of the bureaucracy

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*In the Johannesburg area alone 700 police officers are facing trials for committing crimes ranging from murder to burglary.*

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that regulates telephones called the company and the ad was withdrawn. I guess it was too rude to state the obvious.

In America, you don't see what's happening. I know; I watch CNN. It doesn't even come close to telling the truth about the decline and death of South Africa. The American media can't tell the truth now — they have invested too much in telling everyone what a saint Mandela is.

Meanwhile, we live in prisons. My house has a set of bars on the outside of the windows and another set inside. I have a Rhodesian ridgeback dog patrolling the yard. I had a big, spiked, remote-controlled gate put in the drive. I can't afford the precautions that others are taking. You now see individual homes with security guards. Walls over eight feet tall are common, with barbed wire or spikes on top. Across the street, my neighbors put an electric fence on the wall — now a commonplace sight. People are armed and have hired private security companies. In the U.S. following all these precautions would be considered paranoid. Here it's average.

## Police Story

On the street where my bookstore is located, a grocery has been robbed a couple of times. So were the post office and bank.

In the last few months, four of my customers have been hijacked by armed gangs, one of them in my parking lot. One was shot through the leg, another was shot at but missed. Another was beaten and spent weeks in the hospital. Well over 3,000 hijackings are reported each year. A family driving to Durban for holiday pulled to the side of the road so the two little boys could get out and take care of business. Several hours later the police found the two children sitting against the bodies of their dead parents; murdered for a car.

The new president of the ANC, Terror Lekota, told the press that the hijackings are the fault of apartheid. He claims the "apartheid regime" gave immunity from prosecution to hijackers in exchange for "intelligence" gathering on the

ANC. Last year, another top government official blamed the spate of hijackings on whites. He said there was no crime wave at all, and that whites were inventing crimes just to collect insurance.

The acting head of the Licensing Department for the Johannesburg area, Gerrie Gerneke, issued a report in July 1997 confirming that the department was in the control of criminal syndicates. He said that half of all cars stolen in the Johannesburg area are "legalized" with new official documents within 30 days of being stolen. He said that cooperation between criminal gangs and union members has made it impossible for senior staff members or security staff to take any action. After Gerneke's report to the government was made, two anonymous letters accused him of being a racist. As a result of these anonymous complaints, Gerneke was suspended for five months. A year later Gerneke says the government has not acted on any of his recommendations to deal with corruption. When a car theft ring was recently exposed, five of the 16 individuals arrested were policemen. The chief investigator said, "We found that policemen were receiving stolen cars and then selling them to their clients."

In 1997 corruption reached such a level that Mandela appointed a Special Investigating Unit to look into the matter. According to Judge Willem Heath, head of the unit, there are currently more than 90,000 cases under investigation. If Heath and his crew manage to resolve one case of corruption per day, including weekends and holidays, it will take about 247 years to clear the current backlog. This doesn't include any new cases that will arise. Heath thinks the cases involve a sum of around 6 billion rand.

In 1997 approximately 2,300 police officers were charged with corruption — just about one every three hours. Almost 500 police officers have appeared in court on charges of working with criminal gangs. In the Johannesburg area alone 700 police officers are facing trials for committing crimes ranging from murder to burglary. And everyone assumes this is only the tip of the iceberg.

Over the last two years, there have been dozens of major highway robberies. In broad daylight gangs of a dozen men armed with AK-47s and other "military" weapons attack security trucks carrying large amounts of cash. These robberies have netted millions for the gangs. Government officials blame security companies, banks, and anyone else they can think of. But some arrests have finally been made, the ringleaders have turned out to be ANC activists. The leaders who were arrested were officials in the so-called "armed wing" of the ANC, Umkhonto weSizwe. One gang leader had been Youth League secretary for the Johannesburg area. A close associate of his, also a gang leader, was arrested but "escaped" from jail. Both were recent guests at the birthday party of Peter Mokaba, Deputy Minister of Environmental Affairs and Tourism. There is evidence that Umkhonto weSizwe activists are not only behind some of the robberies, but that they are working with other armed cadres associated with so-called liberation movements from bordering countries.

In 1997 alone, there were 465 bank robberies. In all about \$40 million was taken. Banks are raising their fees substantially to compensate for the losses.

Crime seems to be the only thing that works in South Africa — the risk of being arrested, tried and convicted is

minuscule. In 1997, only 14.6 percent of murders led to arrest and conviction. Of 52,110 rapes there were only 2,532 convictions — about 6.7 percent. For the 330,093 burglaries there were 15,710 convictions, about 4.8 percent.

Experienced prosecutors have quit their jobs, replaced by novices who owe their positions to affirmative action.

During the 1997 Christmas season, the police and prisons "lost" almost 300 prisoners. In one instance a policeman took two prisoners to a bar for drinks. One of them borrowed his keys and returned to the jail to release 23 other prisoners. At another jail nine prisoners walked out, leaving behind a note: "We are out for Christmas and will be back on January 3." (They didn't come back.) Several prisoners left a police van when guards didn't bother locking it.

In 1995, Sylvester Mofokeng was taken out of his cell for a soccer game. When he was returning to prison, he simply jumped out of the truck and ran through gates that were left unlocked. He was rearrested three months later, but in August 1996 he escaped again. Somehow he obtained a gun from a visitor and used it to force guards to release him.

Josiah Rabotapi is believed to be the leader of an armed robbery syndicate involved in the theft of up to \$14 million in 30 armed robberies. He is also wanted for 16 murders. So far he has been arrested three times and escaped every time. Jan van der Westhuizen, a convicted murderer, has escaped from prison or police custody seven times.

When the police aren't "losing" criminals, they are killing them. A recent government report showed that one person dies every twelve hours either while in police custody or as a result of police action. Two-thirds of these deaths take place during apprehension. According to one report, "an overview of 100 shooting incidents between police and civilians" showed a heavy "imbalance in casualties." David Bruce, a researcher for the Centre for the Study of Violence and Reconciliation said, "In only five of the cases was a policeman hurt, and in one case a policeman was killed."

In the northern suburbs of Johannesburg, citizens are fighting back. In some areas they have put security guards at the entrance to a subdivision. Entrances are closed off with gates to control who comes in and who goes out. Criminals can no longer simply load their cars with stolen goods and speed out when security guards stop them at the gate. These areas have seen dramatic reductions in crime. But the ANC has ordered the gates removed. It claims these efforts force crime away from white areas and are therefore racist.

This is life in South Africa today.

I've lived in South Africa for six years and I've seen a lot of changes. Even a few for the good. But the standard of living has declined. And people's attitudes have changed: hope is gone, replaced by fear, anxiety, even horror. There is a joke going around: Americans have Bill Clinton, Johnny Cash and Bob Hope. South Africans have Nelson Mandela, no cash and no hope.

## The Return of Apartheid

Another popular joke is that Mickey Mouse has a watch with the picture of our Ministers of Finance. In the six years that I have lived here the South African rand has depreciated by 50 percent. In just the last year it has dropped 30 percent.

The government has conducted a massive "jobs" pro-

gram. But since the ANC has taken power the number of jobs has declined, despite sanctions being lifted and increased trade with the rest of the world. The only job increases are in government departments.

South African workers are not particularly productive. But the government has been pushing new labor legislation that continues to drive up the cost of South African labor. No wonder that fewer and fewer South Africans are employed.

The ANC is pushing a new "Equity Employment" bill through Parliament. This bill will force all employers to reserve a number of jobs for blacks. Businesses that don't comply with the mandatory racial quotas face heavy fines. And so apartheid is back — the old laws in new packaging.

Recently, ANC members of Parliament have announced that they intend to introduce legislation applying racial quotas to sports. Specifically, the government wants to control rugby, a sport played traditionally by whites (unlike soccer, which is dominated by blacks). Mandela ordered a commission to investigate racism in the South African Rugby Football Union. SARFU took the issue to court and the court ruled against the commission. ANC officials then proclaimed the judge an unpatriotic racist for requiring Mandela to testify on why the commission was created.

ANC MPs, unable to get control of rugby legally, resorted to intimidation. They announced on the floor of Parliament that unless the leadership of SARFU resigns, ANC members will forcibly close airports to prevent other rugby teams from entering South Africa. Major corporations, all fearful of the ANC, threatened to remove financial support from SARFU unless the ANC got its way. Rugby head Louis Luyt, who

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*During the 1997 Christmas season, the police and prisons "lost" almost 300 prisoners.*

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had defeated an ANC partisan for the job, was forced out by the threats. After Luyt resigned, SARFU apologized to Mandela for making him go to court.

### Communists in Government

The government of South Africa is actually a coalition of three groups. The ruling triple alliance is made up of the Congress of South African Trade Unions (COSATU), the South African Communist Party (SACP), and the African National Congress (ANC), which leads the coalition. The SACP has a lot of influence in COSATU and together they exercise a great deal of control over the ANC. Thabo Mbeki, who just replaced Mandela as leader of the ANC, and is pegged to be president of South Africa when Mandela steps down, was trained in Moscow. His father, Govan, is an old line Marxist and SACP activist. At a recent ANC conference the hard left solidified its control over the ANC by capturing nine of its eleven top positions. Of the ANC's 240 MPs in Parliament, 80 were appointed by the SACP. The ANC and COSATU also used some of their quotas to appoint SACP members to Parliament.

When Chris Hani was assassinated by Janus Waluz, a Polish immigrant, CNN called Hani, "a top ANC official" or

"anti-apartheid activist." But CNN didn't mention that Hani was the head of the Communist Party and that Waluz was a refugee from communism. Instead, the impression was given that Hani was another Martin Luther King.

In the same way, many facts about Mandela and the ANC are never reported by the media. For example, Mandela awarded South Africa's equivalent of the U.S. Presidential Medal of Freedom to Libya's Muammar al-Qaddafi. Mandela has publicly said that Cuba is a model for a free, democratic society that is, in fact, more democratic than the United States. Castro has been here for friendly visits. When U.S. officials complained about Mandela's cozy relationship with dictators, Mandela said that no other

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*When the police aren't "losing" criminals they are killing them. A recent government report showed that one person dies every twelve hours either while in police custody or as a result of police action.*

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nation has the right to interfere in South African affairs — this from the man who supported sanctions against the old government. Curiously, Mandela dropped recognition of Taiwan at the demand of Communist China.

### The ANC's Bill of Wrongs

Gay rights are now enshrined in South Africa's Bill of Rights. Gay publications around the world have praised the ANC for this. But in fact gay sex remains illegal. The government has taken no practical steps to legalize homosexuality. When a gay rights group took the sodomy laws to the Constitutional Court, the government opposed its effort. After a world-wide outcry, the government backed down. It appears the ANC is hoping the courts throw out the law, thereby taking credit for being pro-gay while not being responsible for the change. Yet the South African government continues to deny foreign gay partners of South Africans the right to stay in the country legally. The issue is in court, but the government is opposed to changes in the policy.

The ruling ideology is that "there are no absolute rights," so the ANC put "weasel" clauses into the Bill of Rights. Any right guaranteed by the Constitution can be ignored. For instance, the right to engage in enterprise is absolute — unless infringed "by law." Thus the government can do what it wants since it passes the laws. Other constitutional clauses say rights can be limited by government consistent with the operation of an "open" and "democratic" society. And remember, Mandela considers Cuba democratic.

The bill of rights negotiated by various political parties guaranteed freedom of speech. Repressive censorship laws were relegated to the dustbin. But the ANC has been pulling them back out and wiping them off.

A bill to repeal censorship was introduced in Parliament. It even testified in favor of it. The bill was mediocre but livable. Later, the ANC rewrote it in secret and passed it without making a written version available. The new bill actually

creates a censorship body. All videos and films must be approved by the censorship board before they can be distributed. So-called "x-rated" material can be sold only in licensed adult shops. Anything deemed "hate speech" is illegal. The new "obscenity" standard is that anything "degrading" is illegal. Another victory for clear, concise legal concepts.

Lindiwe Sisulu, deputy minister of home affairs, said the government "tries" to balance free speech with the rights of "society, in reality, however, there can never be an absolute balance." This means "not all speech can be equally protected." Sisulu interprets the new censorship legislation much more strictly than in the past. She claims that "anyone who downloads pornography from the Internet will commit an offense." Note that she has broadened this beyond the act which banned "degrading" pornography, bestiality, child porn, and hate speech. Now she says that any downloaded porn is illegal. Expanding the prior censorship of films and videos, Sisulu says all photos must be classified by the government before distribution. "No person may screen a film or photograph, including on a computer screen, which has not been classified by the Publications Board. This means that anyone placing material on the Internet must have a classification certificate for that material." In other words the government now claims the right to classify — and ban — all photographs before they are distributed to anyone.

Yet the ANC stills finds the bill of rights too restrictive of government. Peter Mokaba recently gave a speech in a black area demanding that all blacks vote for the ANC so it can get two-thirds control of Parliament. He said this would allow it to rewrite the constitution and end all restrictions on government power. ANC secretary general Kgalema Motlanthe said that if the ANC won two-thirds control in the next election, it could govern "unfettered by constraints."

## Supine and Pusillanimous

In the last four years, the nation's largest string of newspapers has lost its independence from the government after being taken over by Irish press baron Tony O'Reilly. O'Reilly's Independent group is cozy with the ANC. An article in *The Times* of London says O'Reilly has been criticized for "his unhealthy close relationship with the ANC government. He began by appointing an advisory board stacked with ANC supporters and has been vocal in his support for all manner of ANC causes and watchwords." Journalists have been unhappy that O'Reilly brought in his biographer, Ivan Fallon, to run the newspapers because Fallon "is disliked for his refusal to stand up to Government attempts to bully the press into uncritical support."

According to *The Times* O'Reilly's newspapers have downplayed scandals within the ANC government. In the Virodene scandal, ANC politicians promoted — and still promote — the so-called AIDS drug. Documents show that the company producing the drug was planning to offer a six percent share of the profits to the ANC. O'Reilly's papers "have played down the whole matter, neglecting to cover key press conferences."

Other newspapers, however, still manage to criticize the government, and the ANC and Mandela don't like it. Mandela constantly attacks the press for being "opposed" to the "transformation." In fact the press, on the whole, was

staunchly critical of apartheid. Still, Mandela says the media, with the exception of television, are racist. In the next few years, legislation directed against the newspapers is almost certain. Mandela's hero, Robert Mugabe of Zimbabwe, wiped out recalcitrant newspapers by simply turning them over to the government.

Television is exempt from Mandela's criticisms because the three main television stations are already controlled by the government. ANC officials run the stations and they are often deathly silent about the problems in South Africa. But they do have time for endless documentaries on Mandela and the ANC, with titles like "Our Heroes." One new news director is a long-time ANC supporter with no broadcasting experience.

Two new mini-series have been produced for the coming season: one is a glowing film about the life of communist Helen Joseph and her fight for the ANC, and the other is about ANC partisan Bishop Tutu. A new television series, funded by the Labour Ministry, is called "Let's Talk." A recent episode showed the workers, all of whom are called "comrades," on strike. The owner of the factory, who for some reason had an American accent, locked out the strikers. But the company management didn't know how to build their own product, houses, and built them upside down! The government and the trade unions seem to believe that entrepreneurs and management are useless, and that all productivity comes from labor.

The South African Broadcasting System's political allegiances are no secret: one station's promotional commercial shows its on-air talent in "rainbow" clothing and marching with colorful flags to triumphant music. Several flags feature the face of Mandela. In another Stalinoid presentation, the television producers' award show included a musical number with the chorus, "Oh, Mandela, we sing praise to you." Not long ago, the son of the former president of the ANC, Oliver Tambo, who hosts an SABC talk show, ran an hour-long special praising media mogul Tony O'Reilly. No doubt the fact that O'Reilly has cuddled up to the ANC had nothing to do with the praise heaped upon him.

## Fascism, South African Style

Civil society is being politicized. Everything must be solidified in the hands of the State and the State must be in the hands of the ANC.

Last year the government nationalized all water resources in South Africa. Under new legislation it will be illegal to dig a well without prior approval from the central government. The ANC attacked critics of the legislation as "racist whites" who want to protect their luxury swimming pools. Meanwhile the new rulers admit they can't find 45 percent of all the water shipped to Johannesburg. Only 55 percent of the water is metered out — the rest simply disappears. But considering that meters are found almost exclusively in white areas, while black areas have unmetered taps, this should be no surprise.

But water is only the camel's nose in the tent. The ANC Minister of Mineral Affairs, Penuell Maduna, called for the nationalization of all minerals, saying that "private ownership of mineral rights is unacceptable to the government." Government spokesmen call private ownership "racist" because not everyone owns mineral rights in a private sys-

tem. Maduna previously floated the idea that the government should also control all oil companies. Under the current system, price competition in petrol is forbidden and all prices are set by the government.

The hospitals in South Africa have become nightmares. Two years ago Mandela announced free medical care for children. The hospitals are now filled with unemployed women and their children. They sit there for hours to have a cough or a runny nose checked.

Dr. Zuma, Minister of Health, seems determined to make health care in South Africa equally bad everywhere. She has conscripted all medical students to be servants. They are to give two years of their lives to the State, to do what the State orders, anywhere the State orders. The legislation doesn't even specify that the service has to be in South Africa. Speculation is that at least some will be assigned to Cuba.

When it was pointed out to Zuma that huge numbers of doctors and medical students are now emigrating, she called them "traitors," and attributed their fleeing to "racism." Wits School of Medicine reported that 45 percent of all students who graduated in the last 35 years have already left the country. A recent survey of the top doctors in South Africa revealed the almost unanimous opinion that Zuma is destroying the nation's health-care system. *The Independent* wrote, "Many doctors said that Zuma's apparent intention to introduce a communist or socialist national health system was stifling private practice and initiative. This, coupled with excessive control and interference, has left doctors despondent." A spokesman for Zuma responded by saying that if the proposals are "seen as socialist, then we will continue to do so and offer no apologies."

The destruction of health care has even affected the food supply. Vaccines that are urgently needed to protect livestock have run out. The only legal source for purchasing the

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*Under the old apartheid regime, government schools in black areas were woefully deficient. When the ANC took over the education system things changed. Now all the schools are woefully deficient.*

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vaccines in South Africa is through the government, and the government labs are empty. Farmers who send in their checks to buy the vaccines have the money returned. The top veterinary scientists are also leaving the country. At the Onderstepoort Research Centre only one of the original six specialists is still there. Onderstepoort, once considered one of the best research centers in the world, is now limping along. Scientists say there is a good chance that mutated viruses will decimate the beef, pork, and lamb industries before new vaccines can be developed. They warn that the public should expect a shortage of meat and milk as a result.

Under the old apartheid regime, government schools in black areas were woefully deficient. When the ANC took over the education system things changed. Now *all* the schools are woefully deficient. — equality has been achieved. But the number of students graduating from high

school has declined under the ANC. Those who do well in school prosper only if they are the right color. The student who passed more courses with distinction than any other student in South Africa can't even get a scholarship. Each application he has made has been rejected because he's the wrong color. He has the best scholastic record in the country but no one cares. It isn't wise to give money to anyone not approved by the ANC.

In the Eastern Cape, near Port Elizabeth, is the impoverished Khwezi Lomso Comprehensive School. The principal

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*The ruling ideology is that "there are no absolute rights," so the ANC put "weasel" clauses into the Bill of Rights. Any right guaranteed by the Constitution can be ignored.*

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is Cecilia Behrent. During her tenure the school has achieved a pass rate of 84 percent, well above the national rate of 47 percent and double that of the provincial pass rate of 42 percent. The teachers' union, in cooperation with the government, has been trying to have a union official replace Behrent, who is white. Her ouster is opposed by almost every one of her 1,100 students, almost all the teachers, and over 700 parents who have signed a petition on her behalf. The government refused to accept the petition.

### Johannesburg Besieged

Johannesburg was a relatively safe and clean city when I moved here. I moved into a racially mixed area in the city center. I left a year later. Today, I won't drive there in broad daylight. The streets are controlled by criminals. Some gangs sit at street corners and rob passing motorists. They break the car window, take what they want, pile it on the curb, and then wait for another car. They don't even run with the stolen goods. They don't need to; no one will arrest them.

Residents of my old neighborhood, Hillbrow, have discovered a new game: take cans of trash and throw them from 15th floor windows at pedestrians. The streets are filthy and reek of urine. Businesses are moving out. The luxury Carleton Hotel held on for awhile but finally gave up the ghost. No one would stay there, so the hotel closed its 200-plus rooms, and now sits empty.

Mayhem reigned on New Year's Eve. In the Hillbrow section of the city, nearly 200 police officers patrolled an area of just a few square blocks — to no apparent effect. Three people were murdered on the streets that evening. Police who tried to stop looters were pelted from the high-rise apartment buildings. Paramedics were attacked when they tried to aid the injured.

So the ANC took action. Johannesburg is a massive city, and the ANC promised to break its management into several regions. "Local control" would then be achieved with four gerrymandered districts. Each district was drawn in the most convoluted way possible, ensuring that each had enough blacks. The ANC knows where its voters live.

The city hired thousands and thousands of new bureau-



crats. In many cases two people did the same job — one black worker with the title and one white worker to do the work. Money was redistributed to the “previously disadvantaged.” While black townships haven’t improved, white areas have declined. Now Johannesburg, once the wealthiest city in Africa, can’t pay its bills, and can’t get bank loans. It went from budget surplus to bankruptcy in just two years. More ANC magic.

This black magic is being worked throughout South Africa. The British-based Chartered Institute of Public Finance and Accountancy recently said that 281 municipalities in South Africa are now technically bankrupt. That’s one out of every three cities in the country.

Public parks are now squatter camps. Broken water mains gush for days before they’re fixed. Pot holes remain unrepaired. The city budget allocates less than \$100,000 for

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### *Gay rights are now enshrined in South Africa’s Bill of Rights. But gay sex remains illegal.*

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street repairs for the entire city! Inefficiency reigns. Under questioning in Parliament, ANC officials admitted that roads in Gauteng have deteriorated under their management. Transport Minister Mac Maharaj admitted that only 37 percent of the roads were in good or very good condition in 1997 where this was true of 80 percent of the roads in 1985.

### **The Political Struggle**

In Johannesburg the opposition party to the ANC is the Democratic Party (DP). Once a leading anti-apartheid party, it is now the only real opposition to the ANC left, and it has become increasingly libertarian. It supports the rights of gay people and free enterprise. It opposes affirmative action and censorship.

The northern suburbs are now staunch DP territory. And they are in a tax revolt. The government responds by sending in armed goons to terrorize elderly couples. The ANC isn’t happy. My area is the one area where the ANC doesn’t have a clear majority. It can’t institute one party rule here, so it intimidates, punishes, and withdraws basic city services.

To counter the opposition, the ANC now plans to make the entire Johannesburg area a “mega city.” No more regions. The DP areas will be swamped “democratically” by ANC supporters, allowing the ANC to continue to steal from DP voters and give to ANC bureaucrats.

Critics of the mega city were, of course, branded “racists”. (Today, that term has lost all meaning in South Africa. In fact, if you’re not labeled a “racist” one time or another, you’re simply not a decent human being.) Various community groups asked for a referendum. The ANC said that was undemocratic, and wouldn’t have it.

Local DP politician Frances Kendall called for a private referendum. Hundreds of voting booths were established throughout the city. The ANC ordered its supporters not to vote. In black areas voting booths were harassed and intimidated into closing. Then the ANC said the vote didn’t count

because there weren’t enough voting booths in black areas. Just under 100,000 people voted. The vote was overwhelmingly against the “mega city”. The ANC said it didn’t care and would ignore it. After all the poll only expressed the views of racists.

When the ANC won power, the election was declared “free and fair” by European Community observers. One observer admitted to a Federal Party official that the election would be declared corrupt if judged by European standards, “but this is Africa.” For instance, more voters voted than existed. A recent census showed the population at under 39 million, not 44 million as previously claimed. Since more than half the population consists of children, there can’t be more than 19 million voters in the country. Yet more than 19 million cast ballots. No one seems to care that the ANC was elected with millions of fraudulent votes.

I was receiving hourly vote tallies by fax from the Independent Electoral Commission. I remember my amazement when I noticed that the vote total for the Federal Party was higher at 6 p.m. than at 7 p.m. Votes were disappearing. Vote counting went on for days when suddenly it stopped. For two days no results were released. IEC officials met with political party officials behind closed doors before the final results were negotiated and announced.

For the last several years the ANC has done everything possible to manipulate the voting system to increase its totals. First, it proposed that the voting age be reduced to 14 years since the overwhelming majority of youths are black. Public ridicule has quashed this proposal for the time being. Next, the ANC tried to change the laws so that non-citizens could vote provided they were from “neighboring,” i.e. black, countries. Because most white non-citizens are from England, Canada, the United States, etc. the white vote wouldn’t have increased. Opposition parties managed to kill this proposal as well.

Instead, the ANC achieved the same goal through the back door. The vast majority of “illegal” immigrants in South Africa are blacks from neighboring countries. The ANC granted them immediate citizenship. Meanwhile, “legal” immigrants, who are mainly whites from Western countries, find it increasingly difficult to stay in South Africa. Permanent residency for “legal” immigrants has become more difficult to receive, and the cost of simply applying has increased from less than \$100 to over \$1,400.

The National Party (NP), once South Africa’s dominant party, is fast losing support. It has never really opposed the ANC on anything, and it has made numerous backroom deals with the ANC to retain privileges for its leaders. The job of standing up to the ANC is filled by the “liberal” Democratic Party.

The DP has contested by-elections recently in several NP strongholds. In each case the DP handily beat the NP candidate. White voters no longer trust the NP, and with good reason. In the most recent local election the DP garnered 90 percent of the votes. Just before the election a top NP official said this seat was the NP’s “safest” in the country. But the ANC is launching a counter-offensive.

DP activists, many of whom were arrested for denouncing apartheid, are now branded racists by the ANC. ANC media mouthpieces refer to the “liberal racists” of the DP. ANC officials call liberals “bigots” and use the term

*continued on page 38*

# Sex and Subsidy

by Ross Levatter

Who is going to pay for those little pills?

Consider your typical middle-American male preparing for a night out on the town with his sweetheart. He might take her to the movies (\$7.00 per person), buy her some candy and popcorn at the refreshment counter (another \$7.00 for large containers), take her to a club later for dinner and dancing (\$50 meal for two plus \$10 cover charge for the band). Perhaps he was even thoughtful enough to buy her some flowers (\$25). Later, they end up at his place; he opens up a nice bottle of wine (\$23), and soon, they move to the bedroom. He pops a Viagra pill (\$8.75 each), and his performance has her swooning. Yet he feels cheated, because he had to buy the pill himself, since his insurance didn't cover it. How dare they, he thinks, deny him vital medicine?

The common refrain about the new wonder drug is this sweet melody of subsidy. The American male is upset that his insurance company might be putting limits on the number of Viagra pills it pays for each month. "How dare they limit health care?"

Limit health care? Can anyone take that seriously?

If legislation forcing Viagra coverage is pushed down the throats of the insurance companies (to mix metaphors), what will the economic consequences be?

1) The cost of insurance will increase. Any mandate will increase costs. A mandate for a drug in extremely high demand, that can be used practically *ad libitum*, will be exceptionally costly.

2) The insurance companies will begin to compile data on their client's intimate sexual habits, such as frequency of intercourse. They will try to minimize costs by arguing they should pay only for the average libido.

3) Since the insurance companies will typically pay only for medically-related problems, there will be a large increase in claims of impotence. This might require testing. The tests themselves add costs to insurance. The near future might not, in addition, be the best time to attempt a visit to a urologist. They'll be too busy.

4) Requiring insurance to cover the cost of Viagra passes

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on the costs of Viagra to insured Americans as a whole. This means non-Viagra users must subsidize Viagra users. This amounts to a shift of money from women to men, from young to old, from black to white (since blacks have a higher fecundity rate). In all cases, this amounts to a shift of resources from poorer groups to richer groups. Just why insurance companies should be forced to act as middlemen in shifting money away from poor young black women to rich old white men is not clear. Why is it a good idea to legislatively mandate that money be taken from his cleaning lady so that Ted Kennedy can avoid paying for Viagra himself? Doesn't Ted Kennedy's cleaning lady have enough problems already?

5) Viagra, of course, is not the only technique available for stiffening the resolve of flagging males. Prostitutes have known for centuries how to ameliorate this problem, many with a higher rate of success than Viagra. Should health insurance companies pay for their services, too? This is not as far-fetched as it seems. Iconoclastic psychiatrist Thomas Szasz, in his book *Sex By Prescription*, points out that *de facto* prostitutes, known as sexual surrogates, already bill health insurance for the services they provide (hands-on work with men suffering psychogenic impotence).

But perhaps I treat the subject too lightly. Isn't the line between medical treatment and personal enhancement more difficult to draw than I make out?

Should health insurance covering women discovered to have breast cancer pay only for the mastectomy but not for the reconstructive breast surgery? Should a company covering a young man with extensive facial trauma simply cover the costs of making him healthy but ignore the facial reconstruction surgery needed to make him whole? If they have to

pay for those sorts of improvements (really just a return to baseline), why shouldn't they have to pay for medication to correct male impotence, especially when it's secondary to organic illness (like diabetes), which just returns a man to the baseline of his healthy youth?

This sort of question is exactly the consequence of thinking of medical coverage in political rather than economic terms, in terms of mandated rights rather than voluntary purchases. Politicizing the health care market leads to viewing insurance coverage as mandated and fixed for everyone; otherwise some would have "more rights" than others.

This problem only arises if the government creates a legal mandate forcing all health insurance coverage to pay for Viagra (or any other medicine). Then you end up paying whether you use Viagra or not.

The situation is quite different if insurers offer it as an option.

Those who want additional coverage — for Viagra, or sexual surrogates, for that matter — will pay for it. It is fairly simple to calculate the cost of such coverage, and insurance that covers it will cost more. You buy more, receive more, pay more. I buy less, receive less, and pay less. We're both satisfied, as long as what's at issue is viewed as personal choice. Even if one's health insurance is a group purchase,

through one's employer, the economic rules still apply. Businesses receive competitive feedback about the mix of benefits and salary employees want; as more health insurance coverage is added, the cost of the benefits package increases and salaries tend to drop (relative to where they might have been). If the additional benefits are worth it to the marginal employee (the employee at the margin, deciding whether to stay or leave), great. If not, employers will vary their mix to achieve a more desired response.

There are two fundamental principles of justice in America. One is that people should not be prohibited from pursuing their pleasures, their pursuit of happiness. The other is that no one should be forced to pay for another person's pleasure.

Bill Clinton's America resembles ancient Rome, and not merely in the debauchery of its leaders. Modern America is succumbing to bread and circuses offered by government to distract us from the continuing erosions of our political rights. Bread, to nourish us, takes the form of entitlements, through government, to goods and services, from food stamps to discount housing. Circuses, to amuse us, take the form of ever changing political scandals. A political mandate for free Viagra provides both bread and circuses — an entitlement by which we could amuse ourselves. □

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### Jim Peron, "Die, the Beloved Country," *continued from page 36*

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"conservative liberals" to denigrate ANC critics. Party officials regularly give speeches denouncing critics as being "unpatriotic." And recently they have started claiming that whites are preventing its programs from succeeding.

Mandela openly denounces the DP as racist. His objective is to sideline the DP. Of all the opposition parties — outside the Inkatha Freedom Party, which is strictly Zulu-based — only the DP has a hope of attracting black support. It must be destroyed if a one-party ANC state is to be constructed.

What happens depends largely on how the rest of the world views South Africa. If there is sufficient criticism and publicity, the would-be ANC dictators will back down. They

have before and will again. But the ANC is whittling away at the rule of law and the world isn't saying very much. The ANC won't ban its opposition outright — at least not in the immediate future. Total government control of all the media isn't in the cards yet either — but the newspapers will be attacked in the guise of promoting "diversity." But there is a hope. International pressure and continued support for the DP may at least hold things off.

But the odds are against it. South Africa will most likely walk the road to misery, corruption, despair and destruction. Give it time. It won't be any different here than in the rest of Africa. □

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### Reflections, "The Importance of Barry Goldwater," *continued from page 16*

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something neither weird nor conservative. We began to call ourselves libertarians, a word passed down from older eras of dissent and now restated with force and distinctness. When the GOP convened in San Francisco to nominate Goldwater, we had our own publication, *Liberal Innovator*, the first publication that was libertarian in the contemporary sense.

Goldwater was buried in a landslide of lies and then in a landslide of votes. He experienced the most crushing presidential defeat ever. Besides the Deep South (where his principled opposition to civil rights legislation was popular), he managed to carry just one state, his own.

But the line of thinking he had started could not be ended by the mere loss of an election. In early 1965, I convinced fellow members of my chapter of Young Americans for Freedom (the youth army of the Goldwaterites) to disaffiliate themselves from that national conservative organization, and

to rewrite their statement of beliefs so as to begin with the words: "We, as young libertarians, believe . . ." That fall, I went off to college, and convinced the members of another YAF chapter to withdraw and rewrite their statement of beliefs. Before long, I learned that I was not the only person doing this: across the country, young libertarians were setting out on their own. Small libertarian magazines, with names like *Idea Catalyst*, *Eleutherian Forum*, and *Freedom's Way*, sprouted like desert flowers after a rain.

With the possible exception of Ayn Rand, Barry Goldwater was the most important inspiration for the young libertarian movement. He played a crucial role for those of us who lived through those early, heady days of the libertarian movement. So don't be surprised when some middle-aged libertarian like me gets misty eyed when he thinks of Barry Goldwater. As I say, you had to be there.

—R. W. Bradford

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## Testimony

# I Believe in Miracles

*by Harry Browne*

One man's faith in the free market is only strengthened by the coming of the Millennium and the prophecies of disaster.

When the computer 2000 (Y2K) problem caught the public's attention a year or so ago, it seemed to be a mundane problem — like trash disposal — the kind of problem that many companies would need to deal with. What was interesting about it was it had been puffed up by a few people who make their living writing about the apocalypse *du jour*. But it is shaping up as an issue that illustrates the free market's superiority over government in responding to problems.

As you most likely know by now, in the 1960s and 1970s computer programs that dealt with date information conserved computer memory by treating years as two-digit numbers. The year 1965, for example, would be stored as "65." Of course, such programs couldn't distinguish the year 1900 from the year 2000. But that distinction didn't seem very important at the time. But as the millennium approaches, the inability of computers to differ 1900 from 2000 is a very big problem.

The most dire expectations assume that there are too many large, old programs still in use for the problem to be solved in time — and that a few outdated computer systems will be sufficient to infect the data of other computers and cause them to crash, bringing on general chaos. Banks will close, stock markets will collapse, airplanes will fall out of the sky, elevators will crash at midnight on December 31, 1999, and on and on.

I've spent a good deal of time looking into the Y2K problem, and I've written several articles criticizing the apocalyptic visions. Two of them appeared as *Liberty Reflections* (November 1997 and May 1998), and I won't go over the same ground again here. Instead, I will examine a more basic and eternal point that the Y2K controversy illustrates — that so many people who give lip service to the superiority of the free market don't really understand it.

In *Liberty's* July issue, an author wrote:

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Is Y2K somehow a failure of the market? Yes, I think so. The market is self-correcting, not all-seeing. . . . Harry Browne seems to have allowed his confidence in free markets to blind him to the facts about Y2K and he asks you to stick your head in the sand with him. Ignore the Y2K problem at your own peril.<sup>1</sup>

He never really explained why Y2K was a failure of the market. And I won't try to read his mind. But let's look at what this problem might teach us about the market.

### Voluntary & Coercive Acts

Individuals act in one of two ways: either voluntarily, choosing among the alternatives available to them — or under compulsion.

The free market is the result of all voluntary actions of individuals pursuing their own interest — whether that interest is, at the moment, the pursuit of money, ego-satisfaction, entertainment, charity, or something else.

Although government isn't the only agency of compulsion, it is the dominant player in that "industry." Government is big, and every government activity forces someone to do something he doesn't want to do, prevents him from doing something he does want to do, or forces him to pay for something he wouldn't buy on his own. Every government program is backed up finally by men with guns.

If I were to say the market has failed, what would I

mean? I can think of only two possibilities:

1. People acting voluntarily didn't use the limited resources available in the way I wanted them to. They made different choices from those I would have made with their resources.

2. Coercion could have made more resources available or used them differently.

## Overruling Choice

Politicians use the first meaning frequently.

According to them, the Family Leave Act (requiring employers to provide time off for employees to cope with births and other family events) was necessary because the market failed to provide family leave as a universal fringe benefit. But why hadn't it? Because, however much employers have available to spend to compensate their employees,

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*Many people who give lip service to the superiority of the free market don't really understand it.*

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they want to spend it in ways they think will keep their employees happy to work there. And they believed their employees preferred such benefits as group health insurance, long vacations, or even higher take-home pay — rather than family leave. By forcing family leave on companies, the politicians denied the employees what they wanted most.

The market hadn't failed the employees; it had failed only the politicians.

Today it's implied that the market is failing because health insurance companies aren't reimbursing customers for Viagra — even though doing so would run up the cost of health insurance for those who don't use that drug. So it's probably only a matter of time until some level of government mandates that health insurance must cover Viagra — because "the market failed" to do so.

In the same way, some people see the Y2K problem as a failure of the market because businessmen haven't responded voluntarily to the warnings of Armageddon in the way the Doomsayers think they should. To the Doomsayers, it is a failure of the market that companies with limited resources, high taxes to pay, regulators to ward off, employees to care for, customers to please, and problems climaxing in 1998 and 1999 didn't focus exclusively on Y2K the moment the issue surfaced.

## Utopia on Earth

The second meaning of the phrase "the market has failed" is the assumption — usually unstated — that coercion could have made more resources available at any moment in time, or put them to better use. In other words, a utopian solution was possible, but the market was incapable of employing it. Coercion could have made the best of all possible worlds a reality. Because this idea is so patently false, the assumption is usually implied in a vague way — but it's there nonetheless.

By this line of reasoning, it is a failure of the market if the residents of a town aren't fully prepared at all times for hurricanes, tornadoes, earthquakes, thunderstorms, and every other conceivable natural disaster — as though some government program could have provided such protection.

Or it was a failure of the market that Henry Ford's factories weren't air conditioned, and lacked vending machines, TVs, and microwaves in their employee lounges. Or that Indonesia's factories today don't provide the same luxurious comfort found in the Department of Labor headquarters in Washington. Or that somehow it was a failure of the market that computer memory wasn't cheap and plentiful in the 1960s.

But do we really believe that government coercion can add to our resources or employ them more efficiently? Or increase technological knowledge at any point in history? Could government have mandated the invention of air conditioning? Could government have developed computers faster than the free market did? If so, I hope someone will explain how that process works.

The phrase "failure of the market" implies that the Y2K problem is something government could fix if only Al Gore were in charge of it. But I haven't heard of any government policy that could head off the Doomsday problems. In fact, the one thing on which people on all sides of this argument seem to agree is that, whatever happens in private industry, there's virtually no chance the government will be prepared.

Even politicians who lie awake nights thinking up ways to run our lives have made no suggestions — other than to demand that companies file reports on their progress in handling Y2K problems.

So what solution has the market failed to adopt? If the market were perfect or all-seeing, what would it have done to solve the Y2K problem a long time ago? And since the market isn't perfect, what additional resources would be available if the government had taken charge of the situation?

I doubt that anyone can provide satisfactory answers to any of those questions.

## Miracles Do Happen

What I've said so far accepts the Doomsayers' underlying assumption — that disaster looms just ahead, whether or not the market should have been able to avoid it. But in fact that assumption is almost entirely wrong.

Even as the market's antithesis — government with the Grand Guru of Technology, Al Gore, at its disposal — stands immobilized and headed for real trouble, the market is solving the problem.

The reason some people expect certain disaster is that they have little faith in the market — even if they claim to prefer freedom to government. And because they lack faith, they don't expect miracles.\*

The Y2K Doomsday folks don't believe something is possible unless *they* know how to do it — unless they can imagine the process by which it will be accomplished. In this

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\* Technically, the word *miracle* refers to an event that violates natural law. But in everyday usage, it often describes events that contradict what one knows about the world. And that's the way I'm using it here.



they unwittingly assume they're omniscient — the possessor of all the world's knowledge.

But, of course, there is godzillions of times as much information in the world as you or I or anyone else possesses. People smarter than we are, people with more knowledge about a particular subject than we have, people whose incentive to get a particular thing done is greater than ours, people who are more ambitious than we are — they are the people who will set to work to solve a particular problem. The solution doesn't depend upon you or me.

Thus miracles happen every day — as insolvable problems get solved, as impossible products come to market, as miraculous new ways to achieve what we want are discovered by the few individuals who are most astute in providing these particular miracles.

Why do these miracles happen? Because people with talents and skills different from ours put their minds to work making something happen — in order to get something for themselves in the process. The secret of the market's success is the way it motivates and rewards those who can solve problems, those who can respond to unsatisfied needs and desires, those who can do what you or I can't imagine.

That's why influenza is no longer a killer disease — and why the market produced a polio vaccine before the government did.

That's why your car is many times safer than cars of 50 years ago (thanks to much safer tires, tinted glass, safety glass, dual mirrors, power steering, power brakes, computer monitoring, and a host of other improvements), even as government roads are virtually the same as they were a half-century ago.

That's why we have fax machines, cellular phones, satellite dishes, and cable TV. Forty years ago most people would have thought these devices were fantasies. Even people with technological knowledge could offer intelligent reasons that these devices couldn't be developed so soon — if ever.

That's why computer programs perform miracles on your screen that couldn't be imagined 40 years ago, and why com-

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*Why do free-market miracles happen? Because people with talents and skills different from ours put their minds to work making something happen.*

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puting power costs less than 1 percent of what it did 15 years ago. Twenty years ago no one in computing could foresee the miracle that you can buy a \$1,000 computer today that's comparable to the million-dollar super-computers of two decades ago.

## **Miracles Are Already Happening**

If you heard about the Y2K problem a year or so ago, think back to what you were told at the time.

The Doomsayers said that *no one* will be ready in time, the cost is too great, the problem is too complicated to be solved, there aren't enough programmers, COBOL is archaic and indecipherable, and on and on.

And yet there are now hundreds of products on the market helping companies take care of the problem — much faster and at a much lower cost than almost anyone thought possible a year ago. You probably haven't heard of ConveRT/2000, CA-Fix/2000, Revolve, Vantage YR 2000, Restore 2000, Milligration, or any of the other products companies are using to locate and fix all the date problems in their computer programs.

But why should you have heard of them? No one makes money telling you the market is solving the problem — unless he's selling one of these solutions and sees you as a

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*Who knows what product will hit the market this November or next January or April — and make it possible for most of the unready companies to get ready in time?*

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prospective customer. And, most likely, if you don't have a large business with old mainframe computers, you aren't a prospect because you never had a problem to begin with.

There's nothing spectacular in reporting how banks, Visa, MasterCard, and many insurance companies have already finished their conversions — or are within a few months of doing so. Nor is there a reason for anyone to inform you that the conversion costs are actually a small fraction of the sensational estimates made a year ago.

The market has produced Y2K miracles already.

## **The Future**

Okay, so some companies have managed to solve the problem. But we're told that time is running out for all the others.

Once again, the only realistic attitude is to expect more miracles. Why should we think that progress stopped at 9 o'clock this morning?

As we get closer to January 2000, the situation will become more urgent for those who still have a problem. Why should ambitious computer programmers and entrepreneurs ignore the opportunities offered by this urgency?

Big problems inspire big solutions because they generate big payoffs.

Who knows what product will hit the market this November or next January or April — and make it possible for most of the unready companies to get ready in time? Who knows what temporary fix will be offered next summer — just in time to help the laggards keep operating for another year or two while they switch over to new programs?

Everything I know about the world tells me to expect most Y2K problems outside of government to be solved in time. *There is too much at stake for them not to be solved.* Why should any business executive want his company to fail? And why should anyone with the talent and knowledge to solve the remaining problems miss the opportunity to benefit from them?

Of course, the Doomsayers tell us it doesn't matter how urgent the problem; there's no way it can be solved. But

what they mean is that *they* don't know how to solve it.

## The Government

For government, the chance of success is much slimmer — for precisely the same reason the market's chance is so great.

People will try very hard to solve the problem only if they can profit personally — and government employees don't have such an incentive. And if your computing firm discovered a solution, would you take your plan to General Motors — where you might get an OK and a check in 3 days? Or would you take it to the government, where your plan could be bottled up in committee for two years — and even after approval would be implemented not by you but by a company in China that helped Bill Clinton's 1996 campaign?

Miracles don't come to the government, only to those in the marketplace.

But what about companies that rely on the government — such as banks whose checks are cleared by the Federal Reserve System or airlines that rely on the FAA to coordinate takeoffs, landings, and flight patterns?

If in mid-1999 it seems likely that these government agencies won't be able to function in January 2000, will company managers say, "Oh well, I guess we'll have to go out of business"? I doubt it.

There already are private check-clearing agencies, and we can expect banks to use them or develop a better system if they have to. The airlines will find someone with up-to-date computers to handle their flight patterns. And companies in other government-dependent industries will react in a similar way, as necessary.

(Most of the other disaster forecasts, such as elevators or medical devices failing, are based on misunderstandings of how these things work. These products either don't depend on knowing the right date to function as usual or they don't crash if the date is wrong.)

Do I know for sure that everything is going to turn out perfectly?

Of course not. I don't know that the stock market won't crash tomorrow or rise 500 points. I don't know that a large, well-respected company won't suddenly fail for reasons I couldn't have guessed. I can't even guarantee that some poli-

tician won't suddenly go straight tomorrow.

But everything I know about the world tells me that the vast majority of Y2K problems outside government will be solved in time. Too many people possessing too much talent and knowledge want it to be solved. No business executive is going to go down without a fight, and no one who could save him is going to miss the chance to profit.

## Faith

One of the foremost Y2K Doomsayers has written about me:

He does admit that banks may have a problem. Exactly what kind of problem, he doesn't say. "And as 1999 proceeds, if it appears that private companies (such as banks) are vulnerable to the government's inability to fix its own computers, I expect the companies to find ways of insulating themselves from the government's inefficiency."

I see. There are "ways of insulating a company from the government's inefficiency," i.e., the possible bankruptcy of all banks, worldwide. What these techniques are, no one is saying. He offers no evidence of their existence. But he assures us that they exist today or will be discovered in the nick of time. This is his statement of faith. Harry Browne is a deeply religious man.

He is a devotee of the religion of libertarianism. Its call to worship begins with these words: "Here, O Israel, the Lord thy god is one god, and this god is the unhampered free market."<sup>2</sup>

If you strip out the purple prose, he actually has described my thinking quite accurately.

Do I have faith in the unhampered free market? Of course I do. Why shouldn't I? All my life I've seen the free market solve problems, create wondrous new products, produce miracles I never could have imagined. Why shouldn't I have faith that there are more miraculous products, events, and phenomena ahead — even if I don't know how to produce them.

## What's at Stake

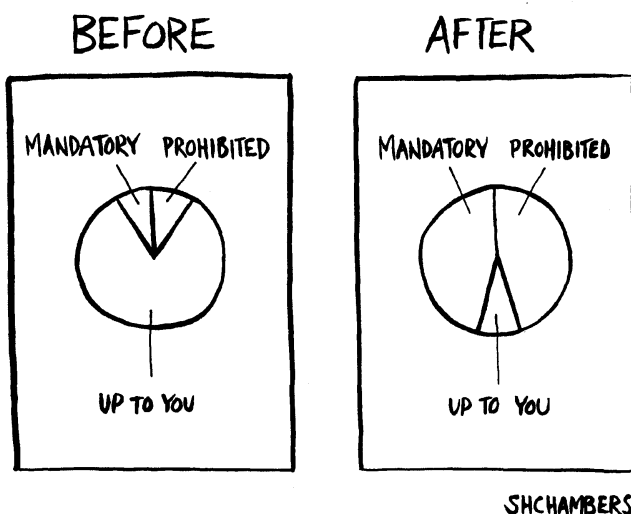
Ideally, Y2K will demonstrate the stark difference between the ability of the market and the impotence of the government in solving problems. If it does, it will provide an important case history that can be presented whenever anyone dares to suggest the government can do something better than the market.

But that may not be the way this story ends. Instead, grandstanding politicians may impose their own "solutions" on private companies. If the companies survive in spite of that, the politicians will take the credit. If the interference causes the companies to fail, the market will take the blame.

A second danger is that government will use this "crisis" to begin regulating the computer industry. One reason the Y2K problem is solvable is that the computer industry is the freest in America — allowing the market to work its miracles. For the politicians, the Y2K affair may succeed where the Microsoft investigation could fail — in giving government the power to prevent new hardware and software from coming to market until a Federal Computing Agency certifies that a product is safe, effective, beneficial, and non-monopolistic.

And a third danger is that the Doomsayers may provoke

*continued on page 70*



# The Voting Gamble

*by Pierre Lemieux*

The ballot box and the roulette wheel have more in common than you might think.

Politics in a democracy often seems a game of numbers — vote counts, vote totals, and voter turn-out. But what are the odds that a given voter will make a difference? And what do these odds mean for the foundation of democracy?

If you participate in a three-member committee, and each of the two other members' votes among two alternatives at random, the probability that you will influence the outcome of the vote is 50 percent, for such is the probability that there would be a tie without your vote. This is the same as the probability of getting one head and one tail when flipping two coins. If there are four committee members besides you, the probability of your vote deciding the result drops to 37.5 percent, i.e., the probability of getting two heads or two tails when flipping four coins.

These probabilities are quite easy to calculate with probability theory and combinatorial analysis. With a small number of voters, one can even figure them out by listing all the possible outcomes and taking the proportion of favorable ones. Obviously, a single voter's influence diminishes as the total number of voters increases. What is the impact of an individual vote in the context of state elections or referenda with large numbers of voters and more complicated institutional setups?

The impact of an individual vote, and similarly the influence of an individual voter, can be thought of as the likelihood that it will produce a result significantly different than what would obtain if the person casting this vote did not vote. Increasing by one vote the score of an alternative that already gets millions of votes and wins by a wide margin is not significant.

Compare this with the consumer who buys a dozen tomatoes. The significant result of this action is that he will now have twelve more tomatoes to eat. His purchase does exert an infinitesimal impact on tomato prices, but it is so insignificant that he will not take it into account. Altruists don't buy fewer tomatoes thinking that this reduces the diet cost of the poor.

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But an individual voter will not get anything unless his vote switches the majority one way or another. He will not get one millionth of his expected subsidy if he increases by such proportion the losing party's score. Nor will he get a larger subsidy if his preferred party would have won anyway without his vote. Voting is like buying tomatoes and not getting any — unless 50 percent plus one also buy tomatoes.

In most cases, an individual voter will have no impact; in rare cases, his vote will break up a tie and swing the majority. Consequently, it is natural to consider the voter's influence in probabilistic terms, i.e., as the probability of his causing a different alternative to be adopted as the result of his vote.

### The Meaning of Chance

In probability theory, an event that occurs with certainty has a probability of one; an impossible event, a probability of zero. The higher the probability between 0 and 1, the more likely is the event to happen. To say that a coin has a probability of .5 (or 50 percent) of falling on tail means that if one throws a coin a large number of times, one would expect to get 50 percent tails.

What exactly is chance? Do random events really exist, or is everything determined in the universe? For believers in universal determinism, like Pierre-Simon de Laplace (1749–1827), chance is only a label for our ignorance of causes. Given all the physical information about the roulette table, the throwing mechanism and the environment, it would in principle be possible to calculate exactly in which slot the ball will stop. In this perspective, we use probabilities only because, in practice, we cannot measure everything. We study some events *as if* they were random. Probability theory is only a methodological trick to deal with our ignorance.

This approach has been undermined by Heisenberg's Uncertainty Principle, which puts some unreducible randomness in the very heart of matter. More recently, it has also been contradicted, in a different way, by chaos theory, which reconciles determinism and unpredictability. Moreover, man's free will introduces non-determinism into the world. Chance may very well be an inescapable feature of the universe.

Another way chance drives a wedge in determinism lies in the meeting of independent causal series (although one may still ask why these series met). A carpenter working on the roof accidentally drops his hammer on the sidewalk. An IRS bureaucrat who has never audited this carpenter just happens to walk in this street for the first time of his life, and gets the hammer on the head.

We now have some keys to interpret what we mean when we model electors as voting randomly. On the one hand, probabilistic modeling can be conceived as a mere methodological device to study deterministic voter's choice, of which we do not know all the circumstances. On the other hand, perhaps there is some essential randomness in voting: the chance that a voter's decision will affect the outcome of any election is so slim and the issues the voter faces are so complex that voters actually vote just as if they were flipping coins or throwing dice. We may also say that a voter's choice is the product of independent causal series, or is related to his free will. A related interpretation is that voters have subjective preferences and change their minds, and we use probabilities to estimate the likelihood of preference changes.

### Quantifying the Gamble

Consider again the simplest case, i.e., each voter choosing between two alternatives or political parties with probabilities of 50 percent. It can be easily calculated (with Mathematica, for example) that the probability of a tie and, consequently, the probability of an additional voter's influence is only 0.008 with 10,000 voters, and drops to 0.00008 (eight chances out of 100,000) with 100,000,000 voters.

There might be a certain number of committed voters, hard-core "Democrats" or "Republicans," whose probability of voting for their preferred party is close to 1. Let's then relax our assumption that all voters vote as if flipping a coin, and assume that 90 percent of the 100,000,000 voters are hard-core partisans. The pool of voters deciding the election is then 10,000,000, and the probability of a tie is 0.0025 — 25 chances out of 10,000, or one out of 400.

These calculations assume that the number of voters is always even, for if it is odd, the marginal individual's vote could only, at best, create a tie if he voted for the otherwise losing side. With a 50–50 probability that the number of voters will turn out to be even, the probability of an individual impact is only half the values given above. Yet, one chance out of 800 still looks like a good bet — much better than the one chance in a few million of winning the lottery jackpot.

The picture changes dramatically when we drop the assumption of an equal (50–50) probability that a voter will choose one of two alternatives. With asymmetric probabilities, i.e., one party having a head start, an individual voter's influence is much smaller and decreases more rapidly to

infinitesimal values. Take our previous example: 100,000,000 voters, of which 90,000,000 are hard-core voters, half for one side, half for the other. Out of the remaining 10,000,000 voters, the probability that any one will vote for party A is, say, 0.501 — and, of course, 0.499 that he will vote for B. In this case, the probability that one individual vote will change the election result is  $5 \times 10^{-13}$ , i.e., five chances out of 10 trillion. If the asymmetric probabilities are a bit more skewed, let's say 0.54 than an uncommitted voter will vote for A (and 0.46 that he will give his vote to B), then the probability that one individual vote will change the election result is  $2 \times 10^{-13946}$ , i.e., two chances out of ten followed by 13,945 zeros.

Such probabilities are infinitesimal. Compare them with the total number of elementary particles in the universe, which physicists estimate to be no more than  $10^{10}$ . Proudhon was right: "the universal franchise is a real lottery."

Counterintuitively and interestingly enough, creating many (smaller) electoral districts or ridings does not improve the weight of an individual vote. Intuition might suggest that creating two ridings where there was none would improve the voter's influence, but a little (messier) statistical analysis shows this intuition to be misleading. What apparently happens is that the higher probability of a tie within a smaller riding never completely compensates for the lower probability of a tie among more numerous ridings.

### Gambling on More Than Two Horses

What happens to the impact of an individual vote with more than two challengers? This problem is much more complex analytically and is related to the so-called "classical occupancy problem": if a certain number of balls fall randomly into a certain number of cells, what is the probability that two cells will receive a equal number of balls, and that no other cell will get more? Apparently no closed-form solutions have been found for this problem, so simulations have to be made or analytical estimations devised.

Simulations of many elections (say, 1,000) with large numbers of voters (say, 10,000,000) require much more computing power than the typical PC can marshal. The more limited runs I made seem to confirm the intuition that a voter's influence increases with the number of alternatives, as long as probabilities do not differ among parties. To get an feel for this conclusion, consider the extreme case where each voter except one has formed his own political party: then, one single partyless voter will decide the result with a probability of one. Of course, the more equally popular are any number of political parties, the lower will be the winner's popular vote.

The most interesting, and analytically difficult, case is when you have many parties and asymmetric probabilities for individual voting. Prof. Fred Huffer, a statistician at Florida State University, has devised an ingenious (and complex) formula for the case where the probabilities favoring the two main contending parties are substantially higher than for the other parties. Whether the presence of multiple parties increases or decreases the probability of a voter's influence depends on the actual probabilities but, in most realistic cases, this probability remains infinitesimal. For example, if the respective probabilities that any (uncommitted) voter will vote for any one of four political parties are 0.38, 0.37, 0.2 and 0.05, and if we have 10,000,000 uncommi-

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ted voters, Huffer's estimates give  $4 \times 10^{-294}$  for the probability of an individual voter's influence.

### Why Do People Vote?

A rational individual will not vote in order to exert an influence on the result, for the same reason that he will not produce one more tomato to push down tomato prices. Why, then, do 50 percent, 60 percent or 70 percent of the electors take the trouble to go and vote? True, voting does not take much time if one votes blind — i.e., if one does not spend time studying the issues — but then, it does not produce any noticeable effect either.

One type of motivation is that the act of voting itself gives satisfaction ("utility" in economic terms) to the voter; or, what is the same, his abstention brings him disutility. Depending on individual preferences, there are many ways in which voting can be rewarding. Some individuals like to

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*Voting is like buying tomatoes and not getting any — unless 50 percent plus one also buy tomatoes.*

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gamble: they buy lottery tickets and vote. Some enjoy the feeling of participation in a crowd, as when they applaud their favorite team at the stadium, even if individual hand clapping does not raise the noise level more than one vote contributes to an electoral victory. Some people like to express their opinions, and elections provide a cheap way to do this. Moreover, given the democratic mystique and state propaganda, you might suffer from disapprobation if he is known not to have performed his "civic duty."

The common rationale for voting — that one votes because democracy would crumble if no one voted — does not stand, strictly speaking. The abstention of one individual exerts no perceptible influence on the system, especially if one declines to vote without fanfare or if one falsely claims to have voted. Of course, many non-voters may have an influence, but the individual decides only for himself, and his decision will have no significant impact on the number of non-voters. It is true that an individual with some influence in public debates can marshal more than one vote, but this nothing to do with the decision of "John Doe" to throw one vote that has only a tiny chance of achieving any result. If you can persuade many people to boycott tomatoes, you may end up influencing their prices; but you will have no noticeable influence if you secretly buy one less tomato.

One way to see the inconsistency between infinitesimal influence and the argument "If everybody does it . . ." is to reconsider the impact of the non-voter. Those who do not vote increase the influence of anyone who does: non-voters render a service to voters. Consequently, an altruist might be expected to refrain from voting to help his human brothers increase their political influence. "I don't vote because if all rich men like me voted, there wouldn't be any political influence left to the poor." The problem with the argument is obvious: What's the use of an action that has no impact on the result to be achieved? From the point of view of the indi-

vidual, any service he renders either by voting or abstaining is infinitesimal. Both the individual voter and the individual non-voter make insignificant gestures.

We are back to reasons of personal utility for voting: gambling, the pleasure of the crowd, or the expression of one's opinion.

### The Moral Element

Or are we? Not exactly. A rational individual may choose to make insignificant gestures for moral reasons. We do this all the time — when, for example, we give a quarter to a beggar, or refrain from throwing an empty pack of cigarettes on the highway, or open the door for a woman. Indeed, morality is the only way to construe the argument "If everybody does it . . ." Infinitesimal gestures are gauged not by their consequences but by their intrinsic moral value.

As far as voting is concerned, I may do it despite its having no impact, simply because I believe that morality requires that everybody does it. Whether one interprets his moral duty in terms of a Kantian universalization principle or in terms of some other ethical theory, the moral sentiment is a constituent part of the human mind and human action. And reinterpreting moral motivation in terms of personal interest ("I feel good") does not change the fact that people make inconsequential actions for the sake of doing what's right to do.

People, then, may choose to vote — and certainly often do — out of a sense of moral, or civic, duty. Whether the underlying moral theory is mistaken or not is another matter. Indeed, it is mistaken when an individual believes that his vote contributes to some dangerous notion of "social welfare." But one must not discard the idea that some moral duty is involved in maintaining a social order based on liberty, whether it means contributing to private charity in an anarcho-capitalist society or voting in a minimal state con-

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*A rational individual will not vote in order to exert an influence on the result, for the same reason that he will not produce one more tomato to push down tomato prices. Why, then, do 50 percent, 60 percent or 70 percent of the electors take the trouble to go and vote?*

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text. Voting may be a moral duty if it contributes, however infinitesimally, to affirming individual liberty.

Of course, the argument cuts both ways. One's moral (or "civic") duty may also require one to abstain from voting when there is no morally acceptable alternative on the ballot. Indeed, low voter turnout may partly reflect people's sense that "something is rotten in the state of Denmark." I, for one, do believe my moral duty is to abstain when state elections are totally rigged against liberty — or when voting requires one to register on a permanent voters' list. Non-voting is then a way to express a moral censure of the system, even if it contributes only infinitesimally to changing it.

Leaving all values to be decided by voting was bound to generate, at best a stupid gamble, at worst a perilous game for liberty. □



# Private Government: The Solution?

*by Spencer MacCallum*

Are homeowners' associations protectors of liberty? Or are they invaders from the state?

Until I read Robert H. Nelson's "Privatizing the neighborhood" (Reflections, March), I never thought I would see an outright defense of collectivism in the pages of *Liberty*. Nelson recommends legislation that would permit a majority of voters in an inner city neighborhood to force all property owners in the neighborhood to belong to a "homeowners association." The association would be given wide powers to regulate life style and use of property in the neighborhood and to enforce its rules without being subject to due process or any of the protections ordinarily afforded citizens by state or federal constitutions against excesses of local government.

The arbitrary rule of homeowners associations in condominiums and planned unit developments (PUDs) is already notorious. Attempts at oversight by higher levels of government are resisted by classical liberals as attacks on private property and contract, inasmuch as associations thus far have been the outgrowth of free contractual arrangements. Their concern is valid.

The tragedy is that it is one horn of a dilemma. For the associations are running roughshod over what many residents have assumed is their right to enjoy their property pretty much as they saw fit. Residents are finding that enjoyment severely and often arbitrarily curtailed. Here is a case of the innocent but ill-advised use of free contract leading to the destruction of our historic rights of private property. Either way, intervention or no intervention, we lose.

Nelson would replicate this pattern, which grew up as an aspect of new subdivision development, throughout our cities' older, built-up neighborhoods. He proposes that a vote by a large majority — 90 percent — be required to impose the plan on a neighborhood. But that number is wholly arbitrary.

Once the principle is accepted by the lawmakers as "something good" for the residents, the requirement of such a large majority will be seen as an obstacle to "the plan" and be quickly pared down. A perfect parallel is the income tax, originally sold to the voting constituency as something that would always be a very small, "unobjectionable" percentage.

But that's a detail. Nelson's objective is to see imposed on American neighborhoods generally the pattern of "collective private ownership" that we have in "common interest developments," or "CIDs" — the inclusive term for condominiums and planned unit developments. But what is "collective ownership" — also known as "common ownership?" These are virtually meaningless terms. Other than designating that all but a defined group may be excluded from an area, what they really mean is dispensing with ownership within that area. Terms in general use to describe the ensuing arrangements within the area, where private property is dispensed with, are "communism" or "collectivism."

If these experiments in collectivism were voluntary, it would be one thing. But a series of court decisions going back many years have granted to homeowner associations many of the powers of municipal governments without the constitutional restraints that municipal governments have to answer to. Homeowner associations have gone far beyond their original mandate of enforcing the restrictive covenants in the deeds. They are now able to make and enforce rules of their own making, without regard for due process. They can be as arbitrary as they wish in the enforcement of those rules. They are empowered to exact fines in any amount for non-compliance and, in the event of nonpayment, to place a lien upon and sell the delinquent resident's home. The resident can appeal to the courts, but in an overwhelming number of

cases, the courts have found for the association because, by construction of the courts, it is held to be a private organization acting under the terms of a contract voluntarily — even if ill-advisedly — entered into by the the resident.

The question arises as to how voluntarily the resident entered into his contract when purchasing his home. Since most new housing construction takes place in CIDs (60 percent in metropolitan areas nationwide, according to the Community Associations Institute, and higher in southern California), prospective home buyers haven't many alternatives.

Nelson points to the rapid spread of CIDs as evidence that they are what people want. The consumer is king, he says in effect, and consumers are demanding "collective private ownership." The truth is that this collectivism has been put over on the American public by a combination of large

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*Collectivism has been put over on the American public by a combination of large corporate developers in strong alliance with the United States government.*

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corporate developers in strong alliance with the United States government. It is not a pattern that has emerged in the free market in response to voluntary consumer preferences. The federal government has heavily promoted CIDs in response to the wishes of large corporate interests who find them profitable to build. This is a sorry story, replete with oftentimes stark racial and ethnic exclusionism, running back many decades. One of the best histories of their development is Evan McKenzie's *Privatopia* (Yale University Press, 1994), winner of the 1995 American Political Science Association prize for the best book on urban politics.

The role of the federal government in imposing this pattern of collectivism in American housing involved more than merely subsidy and promotion; its regulatory power was indispensable. The FHA in 1964, for example, made mandatory homeowner associations in new developments a requirement for federal mortgage insurance. McKenzie notes that had it not been for the role of the federal government, the suburbs would not have developed as they did. The fed backed the large corporate subdivider/builders in open areas outside the cities to the detriment of the built-up areas, which were deprived of construction financing — one of the reasons for the deplorable condition of many inner cities.

The collectivization of residential real estate in the United States began innocently enough after the turn of the century when the first large subdivider builders innovated restrictive covenants in the deeds as a means of keeping up the value of their inventory of land until the last lots were sold. The restrictions were an immediate sensation in the market because of the appeal of exclusiveness. But once the developer left, it was difficult for

neighbors to police the covenants; so the developers began, through provisions in the deeds, to establish mandatory homeowner associations, and, in an unprecedented departure from Anglo-American land law, these were given standing in the courts. A strong alliance evolved between the large subdivider/builders and the government, and the rest of the story unrolled as a logical progression. No one ever gave thought to the quality of life in these developments. The developers' interest was not long-term; once he had sold his last lot, any further opportunity for him was gone and so was he. It was enough for him that he create a salable product. The form and bylaws of the homeowner associations were standardized at an early date and propagated without change because they met government requirements. American homeowners never had the benefit of improvements that competition and experimentation might have brought.

This collectivization of our residential real estate has not worked smoothly, and there is no prospect that it will improve. We're damned if we do and damned if we don't. If legislatures, responding to consumer dissatisfaction, attempt to regulate homeowner associations, that constitutes an attack upon and circumscription of the freedom of contract. If they do not, then the freedom to enjoy one's private property that Americans have long claimed as their birthright is at risk. This "Catch 22" has come about because people did not look ahead sufficiently to the implications and consequences of the kinds of contracts they were experimenting with. We have here a case not of people selling themselves into slavery or even of voting themselves into slavery, but of ill-advisedly contracting themselves into slavery.

Far from representing "privatization of government," CIDs are a social pathology. In the more fortunate cases good local leadership goes far toward compensating for the structural deficiency, but in the common run of cases neighbor is pitted against neighbor and litigation is rampant. CIDs represent a serious social dilemma that Americans have walked into unawares, victims of many decades of political opportunism on the part of the FHA and the housing industry. The answer is anything but clear. But what is clear is that the quality of community life in America will not be served by attempting through legislation to propagate this collectivist model throughout our older neighborhoods nationwide. □

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## Response

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# Costly Liberty?

*by Robert H. Nelson*

**I**n my original Reflection, I noted that new residential neighborhoods in the United States are increasingly being governed privately. The latest figures from the Community Associations Institute find that 42 million Americans are now living in condominiums, homeowner associations or other collective private ownerships. The number of homes in neighborhood associations in the United States has risen by 40

percent just since 1990.

All this is upsetting to Spencer MacCallum. His comments are really more about "the social pathology" of collective private governance, rather than the proposal I made.

MacCallum is the distinguished author of a leading early study of large-scale residential development, *The Art of Community*. He favors comprehensive neighborhood development of a different sort: the commercial shopping center mode. Residential development should take the form of single owner leasing units to tenants. MacCallum does not trust neighborhood associations because they subject their residents to rent seeking and other vagaries of a local political process, even if it is one that is privately created and managed.

For MacCallum, neighborhood associations are a great paradox. He recognizes their strong claims to legitimacy, based on their private status and the voluntary entry of residents. However, he also understands — correctly — that private neighborhood associations are for many practical purposes a form of local government. The small municipality and the neighborhood association both regulate local land use and provide common services. The similarities are greater than the differences. Hence the paradox — people voluntarily subject themselves to the many coercive dictates of a local government, even if, as in this case, privately organized.

MacCallum tries to escape this paradox by suggesting that big government has somehow deceived or forced people to enter neighborhood associations. His analysis here is unpersuasive. What happened was this: the federal govern-

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*MacCallum seems to be joining forces with the collectivists who are always seeking to tell other people how to run their lives.*

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ment simply extended to collective private ownerships the same programs that it had already made available to land use developments with strictly individual ownership of property. FHA insurance, for example, was not available to condominium owners until 1961. Extending FHA insurance to condominiums did not force people to live in them; it simply equalized the mortgage insurance status of traditional individual home ownership and ownership of a condominium unit.

The FHA did promote homeowners associations in the years after World War II. However, this was a practical real estate calculation. FHA wanted to be sure that the value of its mortgages was protected by some means of enforcing neighborhood covenants and otherwise assuring the maintenance of neighborhood quality.

Curiously, MacCallum does not mention the most important government interference in the housing market. Tax law gives major advantages to individual home ownership over renting. This has worked strongly against MacCallum's preferred solution, single ownership and management of a whole land use development with individual occupants rent-

ing their units. Only this form of clear "residual claimant," MacCallum thinks, will yield effective development management. Whether MacCallum is correct in that regard or not, I would wholeheartedly agree with the need to equalize the tax status of ownership and renting.

MacCallum's suggestion that people are voluntarily "contracting themselves into slavery" is not worthy of his respect for individual rights and responsibilities. The massive shift to collective private ownership of housing in recent years has occurred for two main reasons.

First, many Americans rather obviously want to live in a neighborhood where there is tight control over the uses of

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*Home owners turn to collective ownership arrangements because the local association can do a better job than a municipal government of cleaning streets, picking up the garbage, running common recreational facilities, and other tasks.*

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nearby properties. They are willing to give up the freedom to use their own property in order to gain control over the uses of other neighborhood properties. Nuisance regulation is too crude a device to serve the aesthetic purposes sought by neighborhood residents. Hence, neighborhoods turn to private regulation to achieve the comprehensive maintenance of the "nice" environment and other neighborhood features they desire.

It may not appeal to MacCallum, but it obviously does to many other people. MacCallum seems to be joining forces with the collectivists who are always seeking to tell other people how to run their lives. That is the underlying philosophy of Evan McKenzie's criticisms of collective ownership in *Privatopia*, a book to which MacCallum makes favorable reference.

Second, neighborhood associations represent the most important form of privatization of government functions occurring today in the United States. Home owners turn to collective ownership arrangements because the local association can do a better job than a municipal government of cleaning streets, picking up the garbage, running common recreational facilities, and other tasks.

It is an age-old philosophical conundrum: *can a true believer in liberty ever conceivably agree to sell away or otherwise give up some of his or her liberty?* MacCallum seems to want to protect us from our own folly in this regard. I would agree with him if we were talking about literally selling ourselves into slavery. But when an individual purchases a home in a neighborhood association, he no more sells himself into slavery than he does when he becomes an employee. There is ample evidence that most people are happy with their choice; they like the security and protection of environmental quality that they obtain. Local association boards have their governance problems but no one ever said that local democracy would be painless. The developers who turn to collective ownership arrangements are simply responding to the clear signal of the marketplace.

The main purpose of my original piece was to suggest that the multiple advantages of private associations be extended into inner-city areas. These areas in fact have a much greater need to protect and maintain environmental quality. Inner-city residents often fear for their lives because they have no collective control over entry into the neighborhood. They also share the desire to live in aesthetically pleasing surroundings but lack the institutional mechanisms of the suburbs to achieve this end.

My proposal is to let the property owners in an existing neighborhood vote on whether they would like to join together to form a private neighborhood association. Because unanimous consent is virtually impossible to obtain among a hundred or more parties, I would be willing to establish the new private neighborhood on the basis of a supermajority vote such as 90 percent.

MacCallum is correct in observing that this would subject the outvoted property owners (as many as 10 percent) to government coercion. It is a price that may be worth it as part of a larger goal of the privatization of local government.

Depending on the geography of a neighborhood, it may also be possible to leave out the minority who oppose a neighborhood association. The neighborhood could offer to pay fair market value to any property owner wishing to leave.

Finally, my proposal does not seek to substitute collective control for full individual liberty. The present reality in most neighborhoods is zoning control by city government. I seek to create the possibility of substituting private regulation by the residents of the immediate neighborhood for the distant zoning actions of the current municipality. That is a worthy goal in the overall pursuit of liberty. □

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## Dylan Carp, "Out of Scalia's Shadow," continued from page 29

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powers dictate that exclusive responsibility for administering state prisons resides with the State and its officials.

### The Amendment That Dare Not Speak Its Name

In *United States v. Printz* (1997), Thomas again agreed with Scalia argument, but added a twist of his own. In this case, the Court held 5-4 that the background check provisions of the Brady Act were unconstitutional because Federalism prohibits the federal government from forcing state officers to implement a federal law.

Thomas argued that the Brady law also possibly violated the Second Amendment, becoming, so far as I have been able to discover, the only Justice to write favorably of the right to bear arms in a published opinion. In stark contrast to the First Amendment, upon which entire treatises are based, the Second Amendment has been cited in only a handful of cases. This is mostly the result of the *U.S. v. Miller* (1939), which held that a sawed-off shotgun was not protected by the Amendment because its possession is not reasonably related to a well-regulated militia.

On the rare occasions it is mentioned, *Miller* has generally been read as merely a sanction of the states' right to support militias, not as protection of the individual right to bear arms. In *Printz*, Thomas agreed that the Brady Act violates Federalism, significantly adding that the Act may also violate the Second Amendment, and arguing that the Court should not read *Miller* as standing for the proposition that there is no individual right to bear arms. He wrote:

The Constitution, in addition to delegating certain enumerated powers to Congress, places whole areas outside the reach of Congress' regulatory authority. The First Amendment, for example, is fittingly celebrated for preventing Congress from 'prohibiting the free exercise' of religion or 'abridging the freedom of speech.' The Second Amendment similarly appears to contain an express limitation on the government's authority. [If] the Second Amendment is read to confer a personal right to "keep and bear arms," a colorable argument exists that the Federal Government's regulatory scheme, at least as it pertains to the purely intrastate sale or possession of firearms, runs

afoul of that Amendment's protections. . . . Perhaps, at some future date, this Court will have the opportunity to determine whether Justice Story was correct when he wrote that the right to bear arms "has justly been considered, as the palladium of the liberties of a republic."

### A Man Alone

It is true that Thomas has followed Scalia's lead in some areas. For example, Thomas has joined all of Scalia's major opinions regarding substantive due process, the area of the law concerning abortion, contraception, assisted suicide, and other "privacy" issues. Because the cases where he has concurred with Scalia are arguably the most controversial and most heavily reported, this may be one reason why Thomas is widely perceived as a Scalia clone. But in areas such as the First and Second Amendments, Federalism, and the Equal Protection Clause, Thomas has shown that he is significantly more comfortable than any other Justice, including Justice Scalia, in rejecting both tradition and judicial precedent in the search for the original understanding of the Constitution. Perhaps his relative youth — at age 50, he is the Court's youngest member by ten years — leads him to feel that he has less stake in the status quo than his brethren. Whatever the reason, in many areas of the law Justice Thomas, and not Justice Scalia, marks the front line of originalist jurisprudence. □

### Notes:

1. Jeff Rosen, "The Real Clarence Thomas: An Erratic Conservative Activist in Strict Constructionist's Clothing," *Los Angeles Daily Journal*, v105, n182, Sept. 17, 1992, p6, col3.
2. "The War Against Clarence Thomas: Two of His Former Law Clerks Ask: Will the Unfair Attacks Ever Stop?" *The Washington Post*, Nov. 6, 1994, C-2.



# Reviews

*Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age*, by Paul Kens. University Press of Kansas, 1997.

## Earl Warren in a White Hat

David Friedman

Three questions:

1. What president increased the number of justices on the Supreme Court in order to ensure support for his policies?

2. What justice successfully reinterpreted the Constitution to incorporate his views of the proper role of government?

3. Whose side was he on?

The answers:

1. FDR proposed to pack the court; Abraham Lincoln did it. In 1863, the Republican congress created a tenth seat, to which Lincoln named Stephen Field, then Chief Justice of the California Supreme Court. In 1869, the number of Justices was reduced back to nine.

2. During Field's thirty-five years on the Supreme Court, he argued, mostly in minority opinions, for strict limits on the ability of governments to regulate and redistribute — to establish monopolies, set prices, impose special taxes on disfavored industries. By the end of his term his position had finally become the majority view — and remained so for the next forty years, until overthrown during the New Deal. When Justice Holmes, in his famous dissent in *Lochner v. New York*, complained that the majority was reading Herbert

Spencer's *Social Statics* into the Constitution, it was Stephen Field, six years dead, whom he was attacking. Compared to Field, Earl Warren was a bit player.

3. Ours.

Field's career began during the gold rush. As a state legislator he sponsored a bill giving official recognition to the customary law of the mining camps. As a judge on the California Supreme Court, he played a prominent and controversial role in the complicated litigation associated with Mexican land grants. His opinions were variously interpreted as support for private property (of people claiming under the land grants), opposition to private property (of people who had settled on land to which other people had a dubious claim based on a land grant), and support for wealthy and powerful friends, such as John Fremont — who managed to get the boundaries of his grant legally redefined so as to annex territory where other people had discovered, and were mining, gold. Field's appointment to the U.S. Supreme Court shifted his attention from from disputed land claims to government power — and the problem of how to limit it.

After the Civil War, Missouri, like many other states, passed laws making a loyalty oath, affirming that one had neither fought for nor supported the Confederacy, a requirement for public

office or any of a variety of professions — including the profession of clergyman. A Catholic priest refused the oath, continued to minister his faith, was fined, and appealed, eventually to the Supreme Court. To a modern eye the case seems a simple issue of freedom of religion. But prior to the 14th Amendment the bill of rights constrained only the Federal government. States were free to violate freedom of religion if they wanted to — indeed, in the early years, some states had established churches.

Article I, Section 10 of the Constitution, however, forbids states from passing ex post facto laws or bills of attainder. Missouri argued that requiring a loyalty oath was merely a regulation, and that states were entitled to regulate professions as they pleased. Justice Field disagreed; writing for a narrow majority, he held that to deprive a man of his profession was a punishment. Since it was a punishment for acts committed before the oath was imposed it was an ex post facto law; since it was a punishment imposed without trial it was a bill of attainder. Hence it was unconstitutional. The case provides an early example of Field's efforts to limit government powers by

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*Compared to Field, Earl Warren was a bit player.*

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arguing — contrary to then existing law — that government regulation was presumptively a violation of individual rights.

In 1869, the City of New Orleans designated a particular location for a public slaughterhouse, assigned the right to run it to a single firm, and required all butchers to move their operations to that location, renting space at a preset price. Some refused. When the case reached the Supreme Court, the majority held that the city, which claimed the butchers created a

public health problem in their existing locations, had the right to establish a monopoly in order to regulate the business for the general good.

Field dissented. The 14th Amendment, which by this time had been passed, held that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." In Field's view, one of those privileges and immunities was the right to practice one's trade. While no constitutional provision banned government monopolies, "yet the whole theory of a free government is opposed to such grants." He thus interpreted the 14th Amendment as giving the court license to invalidate state laws for violating natural rights — whether or not the rights in question appeared anywhere in the Constitution.

Field's belief in the right to practice a trade had its limits, however. In *Bradwell v. Illinois*, he joined the majority in support of the right of a state to refuse to admit a highly qualified woman to the practice of law, arguing that "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."

In *Munn v. Illinois* (1877), Field again dissented from the majority — this time on the subject of state price control. The Court voted 7-2 that Illinois had the right to set maximum prices for Chicago grain elevators, arguing on the basis of multiple precedents that the government was entitled to regulate businesses "affected with a public interest."

Field conceded the principle but argued that it applied only to businesses operating with special privileges from the government. The Chicago

grain elevators were private firms. For the state to be free to regulate their prices would be inconsistent with the 14th Amendment's requirement that no state should deprive any person of life, liberty, or property, without due process of law. "If this be sound law, if there be no protection, either in the principles upon which our republican government is founded, or in the prohibitions of the Constitution, against such invasion of private rights, all property and all business in the State are held at the mercy of a majority of its legislators." Field was more than willing to oppose government created monopoly — in the earlier slaughterhouse cases or in a later case that invalidated an Illinois grant of almost the entire submerged lakefront of Chicago to the Illinois Central railroad. But regulation of private firms was a different matter.

Field conceded that some regulation was constitutional. In his view, the police power of the state applied to "whatever affects the peace, good order, morals, and health of the community" — but no more. It was the role of the Supreme Court to decide whether or not state regulation was really aimed only at those ends. He had no objection to regulations restricting or forbidding the sale of alcoholic beverages, a proposal obviously aimed at the peace, morals and health of the community. But he cast a more skeptical eye on economic regulation. While his position fell short of full fledged libertarianism in principle, it came close in practice, since his interpretation of the police power applied mainly to what we would now call externalities — cases where one person's actions imposed costs on others.

Field lost on *Munn*, as on the *Slaughterhouse Cases* (1883) — but not entirely. The court adopted a broader position than his on what the state could regulate but accepted, under the name of substantive due process, the principle that the 14th Amendment imposed limits on state regulation of private property. A journey of a thousand

miles begins with a single step.

*Powell v. Pennsylvania* (1888) dealt with a state ban on the manufacture and sale of margarine — justified as a public health measure but obviously intended for the benefit of the Pennsylvania dairy industry. Justice Harlan, writing for the majority, defended judicial deference to the judgment of the legislature: "If all that can be said of this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine as an article of food, their appeal must be to the legislature, or to the ballot-box, not to the judiciary."

Field took a less restricted view of his role. "Who will have the temerity to say that these constitutional principles are not violated by an enactment which absolutely prohibits an important branch of industry for the sole reason that it competes with another, and may reduce the price of an article of food for the human race?" He agreed that the legislators had the right to pass regulations to protect the public health — but it was for the court to decide if that was what they were really doing. Field wanted to subject the legislation to what would now be called "strict scrutiny" — the approach a modern court would reject if the legislature was merely using economic regulation to buy votes but adopt if it suspected that the hidden purpose might be racial discrimination.

Oddly enough, the modern doctrine also stems from a dairy case. In *United States v. Carolene Products* (1938), the Court again accepted a public health justification for legislation aimed at protecting the dairy industry from the perils of competition — holding that "regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless . . . it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators." In a famous footnote, Justice Stone added that "prejudice against discrete and insular minorities may be a special condition, . . . which may call for a correspondingly more searching judicial inquiry."

Through most of Field's career, his views were shared by only a minority of the justices. In the 1890s, when



"They're only animal crackers — it's not like I was eating real meat!"



David Brewer, his nephew and ally, joined the court, the tide began to turn. In 1898, three months after Field had finally been forced by old age and failing memory to resign, the Court in *Smyth v. Ames* held that the due process and equal protection clauses of the 14th Amendment applied to the regulation of railroads by the state, and that it was up to the court to decide whether the regulations deprived the railroad of its property without due process of law. Field died a few months later.

His most famous victory was posthumous. In *Lochner v. New York* (1905), the court reversed *Powell*, with Harlan this time in the minority. The majority opinion, overthrowing a state law limiting the hours of bakers, held that "The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. . . . The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate." The decision remained good law until the New Deal.

Generations of legal scholars have attacked *Lochner* as a symbol of the

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*In his dissent to Lochner, Oliver Wendell Holmes accused the majority of reading the views of Herbert Spencer into the Constitution.*

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Court's support for laissez-faire. Recent scholarship suggests that the real purpose of the law that the court overthrew was to give bakeries with enough employees to assign multiple shifts to the successive processes involved in making a single batch of bread an advantage over their smaller competitors. If you want to annoy law professors, get yourself a button reading "*Lochner v. New York* was rightly decided."

In his dissent to *Lochner*, Oliver Wendell Holmes accused the majority of reading the views of Herbert Spencer into the Constitution. While Field and his allies were influenced by writers such as Spencer and Adam Smith, their position was more directly derived

from an American political philosophy — Jacksonian democracy. Andrew Jackson and his supporters believed that the chief threat to America was wealth derived from special privilege—and that the best defence against that threat was to keep government small and decentralized. In opposing a monopoly slaughterhouse in New Orleans, price control on grain elevators in Chicago, or special taxes on California railroads, Field was, as he saw it, consistently following through on his Jacksonian roots.

Oddly enough, his opponents also considered themselves Jacksonians. In their view, while government might have been the problem in Jackson's day, the problem of the late 19th century was power and privilege due to private wealth, large corporations, and private monopoly. Consistent application of Jacksonian principles as they saw them implied using the power of government to regulate corporations for the public good. It is an argument many of us are familiar with. What actually happened when the government attempted to regulate "for the public good" turned out to be more consistent with Field's views — and Jackson's — than with theirs.

My source for most of what I know about Field is Paul Kens's recent biography. One peculiarity of the book is that while its author does an admirably fair-minded job of presenting Field as a principled man working for what he believed in, he cannot wholly conceal his suspicion that what Field believed in was wrong, that he really was misapplying the solutions of the first half of the 19th century to the problems of the second half.

One reason for that opinion may be that Kens knows more about political philosophy and legal history than about economics. He is, for example, willing to accept without question the claim that the Chicago grain elevators — fifteen elevators owned by nine firms, with no legal control over entry to the industry — could properly be described as a monopoly with a stranglehold over the port of Chicago. And on railroad regulation, he not only sides with the regulators, he entirely misses the argument on the other side. Consider, for one example, Kens' response to the perceptive comment by Charles Crocker of the Central Pacific

that "You can get any man to be unfriendly with a railroad after it is built."

Kens explains the change in attitudes towards the railroad after it was built as due to people discovering too late its disruptive effect on their local communities. If that was all that was happening, one would suppose that at some point communities without a railroad would have noticed what was happening elsewhere and stopped

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*The fact that Stephen Field had been born too late to participate in the Constitutional convention was an accident of history that he was happy to correct.*

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moving heaven and earth to persuade the railroad to come through town. It didn't happen.

Crocker was making a point about economics, not sociology. Before a line was built, local communities had to offer the railroad good terms to get it to come. Once track was laid, it was a sunk cost — the railroad would keep operating at any price that more than covered operating costs. That created an opportunity for expropriation through rate regulation, special taxes, and the like. California railroads defended themselves by investing not only in rails but in politicians. Justice Field helped out by ruling against special tax rules that applied only to railroads.

Field lived a long, interesting, and controversial life, much of which, including two unsuccessful bids for the Democratic nomination for president, I have omitted. His biography reveals a strong minded man fighting passionately for his beliefs — with complete confidence that, in any controversy, he was right and the other side was wrong.

Field's career poses a problem for conservative critics of the Warren court — should they be for or against him? Like Warren, he was a judicial activist, more than willing to overrule the decisions of elected legislators. Like Warren, he interpreted the Constitution broadly to get the results he wanted;

Field's doctrines of freedom of contract and substantive due process are no more to be found in the literal words of the document than the penumbra of privacy under which the Warren Court legalized contraception and abortion. The fact that Stephen Field had been born too late to participate in the Constitutional convention was an acci-

dent of history that he was happy to correct, given the opportunities provided by considerable abilities, patience, and thirty-five years on the Supreme Court. While he did not, indeed could not, carry his revisions as far as many of us would like, they were, on the whole, in the right direction. □

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***Unrugged Individualism: The Selfish Basis of Benevolence*, by David Kelley. Institute for Objectivist Studies, 1996, 65 pages.**

***Generosity: Virtue in Civil Society*, by Tibor R. Machan. Cato Institute, 1998, 107 + xii pages.**

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# At the Altar of Ego

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Timothy Virkkala

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"Words are weapons," wrote George Santayana, "and it is dangerous in speculation, as in politics, to borrow them from the arsenal of the enemy." Ayn Rand disagreed. She gloried in raiding her enemy's arsenal, seizing his vocabulary — particularly his pejoratives — and made a Herculean effort to turn those weapons against him.

Some of those words, such as Marx's "capitalism," no longer stink from their previous use. And many of her arguments have gained important ground. But one set of stolen weapons has proved double-edged, cutting those who wield them: I speak of "egoism" and "selfishness."

Rand certainly got attention by using these two words in a favorable way, and she got some enthusiastic converts, too. But, like previous egoists Max Stirner and Friedrich Nietzsche, she also sowed confusion, and reaped a whirlwind.

The chief problem with doctrines of egoism is all the baggage carried from normal discourse. *By definition* selfishness is bad; *Webster's Ninth New Collegiate Dictionary* defines "selfish" as

"concerned excessively or exclusively with oneself: seeking or concentrating on one's own advantage, pleasure, or well-being without regard for others." To recast selfishness as an unconditional virtue entails a denial that a concern with oneself can be excessive and a demonstration that seeking one's own interests without regard for others' interests is in itself a good thing.

Not surprisingly, doctrines of "ethical egoism" rarely do this. Egoists instead attack common notions of "selflessness" and "altruism," often in their most simple-minded forms, and then proceed to redefine "selfishness" in light of their critique of altruism. This quirky dialectic confuses most people — including, from what I can tell, some of the egoists themselves. The confusion wreaks havoc on many levels, from the lofty heights of written rhetoric to the dark depths of divided souls.

This is most clear in Ayn Rand's case, where her advocacy of egoism tended to shunt aside consideration of vast empires of human experience (notably sympathetic understanding and compassion) and was conjoined with an ungracious rhetorical style, a perversity of argument allowing no generosity to her enemies.

Even in setting up her basic terms, egoism and altruism, Rand does not play fair. Egoism, according to Rand, is the philosophy of "rational self-interest"; altruism she characterizes as the obligation to sacrifice oneself to other. Note that egoism is defined in terms of one set of ideas (rationality and interest), altruism by another (obligation and sacrifice). But in common parlance, egoism is generally used to mean the practice of sacrificing *others* to *self*. Rand's definition of altruism appropriately opposes *this* concept of egoism.

But when Rand writes of egoism, she is writing about something else. She explicitly opposed sacrificing others to self, and argued strenuously against sacrifice, period. If she were serious about this, one has to wonder why she didn't abandon the term "egoism" entirely, so not to confuse those tempted by the notion that sacrifices are sometimes necessary, even noble. Rand is, after all, a person very concerned about definition, and in other contexts is very careful to define terms univocally. My own suspicion is that she is enamored with the shocked response she hopes to get from her readers. (Rand had great literary flare, which sometimes can work against careful thought.)

By retaining the word "egoism," she condemned herself to perpetual misunderstanding. Her "new concept" was simply to remarry "rational" to "self-interest" and proclaim the marriage both "selfish" and "virtuous." Where does she ever refer to "irrational self-interest"? That is, to what virtually all other human beings mean by "selfishness"? And where does she explore "rational other-interest," which is what others mean by altruism?

Yes, she dealt with a few of the problems of *ego* and *alter*, of self and other. But because her rhetorical strategy stacked the deck against altruism, she robbed herself, her followers, and her opponents of the best terms in which to explore interest, conflict, cooperation, competition, dignity, rationality, flourishing, and peace.

Of course, Rand was too selfish — in the common, pejorative sense — to nurture a project whereby people might work together to solve these problems, to engage in philosophical dialogue for mutual benefit. *She* had the answers, *others* did not.

Just as bad, her redefining egoism and altruism had the unfortunate consequence of denying her opponents the honor of rationality. By characterizing all those sympathetic with altruism as proponents of the duty to self-sacrifice she denied that they had any *rational* interest in others. She thus began by insulting those she disagreed with. Rhetoric that begins in insult rarely ends by convincing one's opponents.

The basic trouble with egoism as an ethical doctrine is that it either a very misleading name for a decent doctrine (the doctrine opposing the sacrificing of *some* for *others*), or a very apt name for a despicable doctrine. Ayn Rand advocated the decent doctrine, but by sticking with a rhetorically loaded term she was led, as if by an invisible hand, to behave despicably.

And so it is that Rand's admirers — as you might guess, I'm not one of them, though I admire some of her admirers — are left with a difficult task: to clean up after her perversities while salvaging something of value in her approach. Of course, her designated "intellectual heir," Leonard Peikoff, and his closest associates, don't see the problem at all, thus proving to

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*The basic trouble with egoism as an ethical doctrine is that it either a very misleading name for a decent doctrine, or a very apt name for a despicable doctrine.*

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be her rhetorical and emotional heirs as well as merely her "intellectual" inheritors. But others, such as David Kelley and Tibor Machan, see that there is at least something wrong with "egoism" as Rand construed it. And so Kelley has written *Unrugged Individualism* and Machan has written *Generosity*. Both attempt to put a more human face on the mask of egoism.

### Benevolence as Stock in Trade

The intended audiences for these two short books could hardly be more different. Machan's book is published by the Cato Institute, and seems written with the thoughtful, general-interest

reader in mind (albeit one with a well-developed taste for academic philosophy). Kelley's essay, on the other hand, is published by his own think tank, and is addressed explicitly to admirers of Rand. Indeed, Kelley's approach is so geared to his Objectivist audience that it would surely put off most non-Randian readers from the get-go (he begins by quoting Rand's fine, quirky novel, *The Fountainhead*).

Nevertheless, Kelley's book, despite its flaws and limitations, is a better introduction to the problems associated with egoism and benevolence, for Kelley's aim is broader than Machan's; he is concerned with *all* "the virtues of benevolence," not just generosity.

The nut of David Kelley's argument is cracked open on page 22:

Benevolence is obviously concerned with our relationships with other people. The values we derive from these relationships are obviously enormous; they touch every aspect of our lives. And they are diverse: they range from the products available at the local supermarket to the emotional rewards of intimacy.

These values, Kelley continues, are obtained chiefly by communication and trade. And though the "utilitarian benefits of knowledge and wealth" are pretty easy to see, Kelley also calls our attention to the "more personal values" we derive "from certain people in our lives."

Each of us has an identity consisting in his goals, his principles and convictions, his character traits, his personality, his interests, his likes and dislikes. As self-conscious beings with a need for self-esteem, one needs to experience one's identity as something real and efficacious in the world. Other people can allow one to experience that identity in a way that is not possible by purely introspective means. In doing so, they provide the value of *visibility* . . . (23)

Kelley expands on this notion of visibility. "A friend, as Aristotle said, is another self, and I see myself in him." Kelley offers the example of the music lover who, in the presence of other music lovers finds enjoyment because the interest in music is "objectified." "I see in others, in their visible excitement and eagerness to discuss the subject, the same feeling that I can otherwise experience only in the privacy of my

own mind." Kelley is on the trail of a subtle psychological event here. Simply by interacting with others, my values, when shared with another, are revealed, thus providing "a concrete experience of those traits I value abstractly in myself."

Kelley also notes that the admiration of success in another will likely inspire us simply because that success can be

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*Rand's admirers are left with a difficult task: to clean up after her perversities while salvaging something of value in her approach.*

---

seen as the flowering of one's own values. The values have borne fruit.

Kelley is onto something here. But he doesn't go far enough. Most of us, I hope, have friends who are something more than mirrors to ourselves. At least, I hope we value our friends as something more than convenient mirrors. The company of a person with "foreign" values can be pleasurable, and indeed important to us. By experiencing another as truly *other*, the ego becomes something more — but, even when it cannot follow, cannot emulate that other, the delight and knowledge of the other need not be seen as a danger, or rendered valueless. Friendship can be something more than narcissism carried on by other means.

Kelley relates the benefits of dealing with others to trade, broadly conceived, and shows that not only is trade just, as Rand argued, but that it rests upon benevolence: "The function of benevolence in the pursuit of our rational self-interest . . . is to create opportunities for trade by treating other people as potential trading partners" (26). He refigures benevolence as "a kind of respect for others, . . . the generalized respect we should have for others as beings capable of virtue and achievement" (30). And he gives a cogent explanation of how benevolence differs from justice:

Objectivism regards two kinds of mental facts as virtues. One is the identification of what exists, the recognition of facts as facts, the commitment to understanding things as they are, objectively. This is the essence of

rationality. The other is the imaginative projection of new ways to exploit the potential of what exists and thus to create things that will serve our purposes. This is the essence of productiveness. The principle of rationality is: "It is." The principle of productiveness is: "What if?" (32)

Kelley argues against the idea that benevolence should temper justice, that mercy should moderate the chief social virtue. He takes pains to ally benevolence with Rand's virtue of "productiveness." And, in service to this cause he says much of value.

The fundamental requirement of productiveness is to support oneself in some form of productive achievement. But productiveness obviously does not cease to be an issue once one has found a job. It is an ongoing commitment to create value in the world, to build, to grow, to expand one's skills and the scale of one's endeavors. In the same way, benevolence does not cease to be an issue once one has formed a trading relationship; it is an ongoing commitment to realize the potential of that relationship. . . . It is an exercise of benevolence to give one's spouse the benefit of the doubt in the midst of an emotional conflict, attributing the better motive rather than the worse. And virtually any relationship has potential beyond the values that we have already derived from it, a potential to which we ought to remain alert. (36)

This is wise counsel, and counsel that has been too long missing from the discourse of Rand's admirers. Tibor Machan offers a similar perspective:

Generosity, as the Greeks saw, is not tantamount to altruism, which means putting others first. To be generous means to extend goodwill toward others because one's own happiness is thereby enhanced, because one lives a fully human life if, among other things, one lives generously. (p. x)

The bugaboo of altruism is still there — to those touched by Rand it may never leave — but the most significant element in this passage is the idea that benevolent actions flow out of a self-regulated life, out of *strength*. And this notion is latent in much of Machan's book, as it was in Rand's writings. Generosity is natural to successful man, and those who succeed in

life naturally help others, and help others generously.

We live in a time when charity has been sapped by the state, and when the responsibility for choosing to marshal one's resources has been severely curtailed. And it is against the prejudices of this age regarding helping others — the prejudices that buttress the chains placed on those who would be generous — that Machan writes. He states his case against the modern redistributive ideology very strongly: "Those who demand that 'generosity,' 'charity,' 'compassion,' or 'kindness' be legally

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*Though Rand and her admirers talk about how "life" makes "values" possible, they quickly switch away from any careful examination of values, and lurch into definitional matters that swallow the subject whole, in big Platonic gulps.*

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secured by coercive governments . . . actually destroy the foundation of those moral virtues, by changing them from virtues into enforceable duties" (53). Coercion has consequences, most importantly of perverting and diminishing the idea of responsibility. Against this onslaught of paternalism Machan pits a reasonable individualism:

[H]uman beings are by nature the sort of living beings whose flourishing requires self-directed, creative rational thought and conduct. They possess the fundamental attributes of the capacity and need for autonomy and moral responsibility. They are indeed social animals, yet their sociality is to be understood as involving critical selections from among alternative social arrangements (at least once they reach adulthood). . . .

[I]ndividualism stresses the fundamentality of human moral agency in the life of every human being. (60)

### Instead of Indifference

But just how important is benevolence?

Kelley is at pains to explicate benev-

olence as a major virtue partly because Rand and her Objectivists have so often been tarred with the brush of egoism as commonly defined, as the selfish sacrifice of others. Because Objectivists have not answered questions like "is benevolence a major or minor virtue?" Kelley believes that

benevolence remains a kind of afterthought, a neglected virtue, in the Objectivist ethics. Such neglect has consequences. It contributes to the perception of Objectivism as a cold and even a cruel doctrine of "rugged" individualism. The critics who accuse Rand of advocating the greedy pursuit of one's own gain at the expense of others are grossly misrepresenting her views. But the misrepresentation sticks because the Objectivist critique of altruism has been much more prominent than the Objectivist defense of benevolence. (3)

This is at once too hard and too easy on both Rand and her followers.

It is too hard in that it offers no context for the Objectivist "critiques" and "defenses": the intellectual climate of the age surely has warranted many critiques of sacrificial ideologies, since sacrifice has indeed such a major part in so many moral and political agendas — but how many defenses of benevolence really seem necessary? Doesn't everyone talk about benevolence these days? Why a *special* defense?

It is too easy in that the misrepresentation of which Kelley speaks is credible because the characterization of predatory egoism, though untrue to Rand's doctrine, was largely true of her argumentative method — the characterization may be wrong but it "feels" right. Further, mightn't the fact that Objectivists have spent little effort to rescue the idea of benevolence from the "taint" of altruism indicate that they aren't very interested in benevolence, and thus "really" selfish in the commonly understood sense?

Be that as it may, the question remains: is benevolence a major, "cardinal" virtue, like Aristotle's justice, or merely a minor one, like Epicurus's cheerfulness?

Kelley defines benevolence as "good will towards others."

It is a positive attitude towards people in general, a desire for their well-being and for peaceful, cooperative relationships with them. It is con-

trasted with hostility, malice, envy, or other forms of malevolence. It includes such traits as kindness, generosity, sympathy, charity, and tolerance as elements. (1-2)

This is a good working definition, though the addition of the phrase "people in general" narrows the meaning too much, and sweeps under the rug the most obvious thing about benevolence and malevolence: that most of us tend to direct our benevolence to some people and skew our malevolence to others. Indeed, this is one of the major indicators of in-group/out-group orientation, the propensity of people to form groups and engage in conflict. One of individualist liberalism's chief projects is the regulation of this very human dynamic. Egoists have little to say on this important subject; they focus on self/other, not us/them. (I suggest that the chief reason to focus on self/other is to break down the perversities associated with us/them.)

Furthermore, Kelley's definition pictures our relevant intentions towards others like this:

Benevolence = Good

Malevolence = Bad

He pays scant attention to the requirements of justice to treat enemies harshly. Also missing — missing totally — is the acknowledgement of another attitude towards others: indifference. Indeed, the diagram should go something more like this:

Benevolence

Indifference

Malevolence

with no across-the-board judgments leveled at any of them. There are bad forms of "treating others positively," as anyone who has suffered a sycophant knows. Indifference is our usual attitude toward the vast hordes of humanity that we pass on the street — even working up a benevolent little smile to every person we pass would become too much of a burden. (Indeed, to be mostly indifferent to most people is one of the blessings of civilization. There is not only a division of labor in an open society, there is a division of caring, too.) And it is appropriate to behave with malice

## FORSAKE THE DIGITALIZED MIND!

Please read Peter Erickson's *The Stance Of Atlas: An Examination Of The Philosophy Of Ayn Rand*. More than a criticism, it answers many of the questions which Rand had unsuccessfully attempted.

Here is what reviewers are saying of this book:

Writes **Dean Turner**, Professor Emeritus in the Philosophy of Education at Northern Colorado University and author of several books on philosophy and science:

Mr. Erickson does not argue against capitalism, nor is he a skeptic of reason. But he does refute several of her key doctrines. He reveals important connections between her philosophy and Lenin's Dialectical Materialism. He surmises that she changed those parts which were inconsistent with laissez faire capitalism and the inviolability of the law of identity, retaining such features as its atheism. He also shows the connection between her thought and Einstein's theory of relativity.

Mr. Erickson argues that Rand inconsistently held a view mid-way between monism and dualism or pluralism. Ayn Rand offered a new theory of the concept based on the idea of similarity. Mr. Erickson shows that significant parts of this theory are fallacious. She believed that her philosophy held the key to the solution of the problem of induction. He not only refutes this belief but shows how the problem was solved in large part by the late John Cook Wilson, Professor of Logic at Oxford University. Mr. Erickson also refutes Rand's attempt to solve the problem of universals; then he provides his answer.

In her theory of ethics, Rand attempted to solve the famous fact-value problem by arguing that the concept "value" is inexplicable in the absence of the concept "life." Mr. Erickson shows that, at most, her theory can account for those ideas dependent on physical survival and minimum mental health; that it cannot account for much of the higher values. Like Nietzsche, Ayn Rand explained the popularity of socialistic solutions based on the assumption of altruism, which she believed to be impossible. Mr. Erickson shows that her failure to understand altruism fully was due to an error in her theory of the concept. The result of her radical inconsistencies is that, despite her exaltation of individualism, she and her followers have ended up trying to institutionalize her philosophy. No deviations allowed!

### Writes The Book Reader:

It's a fictitious cafe but it's alive! With four persons in animated table-top talk. Besides it's raining outside. Perfect for honoring and criticizing Ayn Rand. Erickson has produced an ambitious and penetrating look at *Atlas Shrugged*, the hugely popular book by objectivist philosopher Rand. He probes her philosophy, and answers some problems she, too, addressed. The format is stimulating: a dialogue, much like Plato or Aristotle. With a history professor, a lady lawyer, a pretty millionairess and a philosopher. The reader observes the convivial chat which, says the author, shows the *conflict* of ideas more directly. Erickson eases into high gear slowly, with dalliances about Rand's writing career, politics and competition. Pragmatism, behaviorism, existentialism and Marxism were big. But students hollered 'where's the beef?' Rand offered moral absolutes and a new ethics based on reason. Erickson's cafe thinkers ponder Nietzsche, value and the three virtues perfected in *Atlas Shrugged*: Rationality, Productiveness and Pride. Other discussions of perception, consciousness, time and space. The author accepts Rand's...position on free will. But he disputes her 'universals,' her take on atheism *vis a vis* philosophy. And he unveils a philosophy that is more individualistic: factivity. It comes up in a discussion of Time, Space, Matter and Mind. 'The only thing that {all\*} facts have in common is either that they are, were, will be, or might be.' Philosophy over coffee and tea? Rand would be pleased. And provoked. Join in!

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towards some: those who, by their actions, put themselves at war with peaceful humanity deserve our wrath.

Whether being benevolent is virtuous or not depends a great deal on the mostly self-regarding judgments of the virtue of prudence, and the partially other-regarding judgments of the virtue of justice. In short, it depends on the circumstances.

Perhaps Kelley's case for benevolence should be viewed as one views Epicurus's case for cheerfulness: you simply discover that life is so much better when lived as a mostly cheerful, mostly benevolent person; cheerfulness and benevolence are good, default habits.

But to make the case for benevolence as a cardinal virtue requires a pretty sophisticated understanding of what a virtue is. Kelley, not surprisingly, consults Ayn Rand.

Value, as every Objectivist has quoted umpteen million times, "is that which one acts to gain and/or keep" while "virtue is the act by which one gains and/or keeps it" (*The Virtue of Selfishness*, p. 19). While Rand's definition of value may be a bit sloppy, her definition of virtue is just plain wrong. Virtue is not an act. It is a studied propensity to act in appropriate ways. Aristotle said it was a good habit, a habit likely to yield good effects (happiness, mainly). Aristotle's understanding of habit adds the important element of learned behavior, and the idea that once learned the sense of proportion and balance that virtue entails becomes much easier. (Virtue is like riding a bicycle: once you've mastered it, a lot of complex judgments become second nature and seemingly spontaneous.)

Machan's notion of virtue is closer to Aristotle's than is Rand's, and this is mostly to the good. Whereas Rand emphasized rationality and deliberation, Machan emphasizes the habitual element: "What makes [generosity] an authentic moral virtue is that the decision to give, the sense that giving is the right thing to do, is itself produced not by deliberation but by a cultivated inclination or habit" (46). More interestingly, Machan, much more clearly than Kelley, sees that generosity is, at its core, about "going beyond the call of duty" (11), about giving more than can be required and, in a sense, is deserved.

Kelley approaches the whole subject from a different direction:

In order to achieve our values, we have to take account of certain basic facts about the human condition. That is why we need virtues in the first place: we cannot achieve our ends by magic, whim, or random action; we must take account of facts about human nature, the world in which we act, and the causal relationships between actions and results. A virtue involves recognition of such facts and the commitment to acting in accordance with them. (20)

On the face of it, there is nothing wrong with this. But Kelley, following Rand, descends into the realm of metaphysics to find a foundation for ethics. For instance, from the obvious truth that humans can learn and adapt, Rand distills the notion of a "benevolent universe," where man is suited to the task of living, and where human suffering is "metaphysically unimportant." I feel the need to repeat this: suffering — which is built into the warp and woof of life, and provides one of the most important spurs for human action, and indeed provides the background for the evolution of life — is, for Rand, "metaphysically unimportant"! Kelley's discussion of this wacky notion (his third chapter) is interesting from a pathologist's perspective, but hardly convincing.

The problem with Rand's discussion of "importance" is that it has little to do with how people actually make decisions — that is, it has little to do with how people actually determine what things are important and what are not. Rand consistently ignores the marginalist idea that the key to understanding value is the *small* choices. But Rand was after BIG choices and BIG ideas, and preferred to conceive and bear these BIG ideas in the rarefied airs of metaphysics, not build them out of the raw material of everyday life, that is, upon the actual decisions and problems that people face and solve every day.

Though Rand and her admirers talk about how "life" makes "values" possible, they quickly switch away from any careful examination of values as exhibited in an economy or an ecosystem, and lurch into definitional matters that swallow the subject whole, in big Platonic gulps.

Little of this metaphysical baggage encumbers Machan, who saves himself a world of hurt by refusing to attempt to make generosity (or any other



"virtue of benevolence") a major virtue.

### Rationality and Red Herrings

The Objectivist fixation on "ultimate" matters, rather than on "marginal" or incremental matters, yields the most confusion in the refutation of "altruism."

Rand and Kelley deny that benevolence involves altruism, though this denial is less interesting when one realizes that they are defining altruism as the duty to sacrifice self to others. Kelley argues that "under any plausible understanding of the term, altruism does involve self-sacrifice and is thus incompatible with egoism" (6). He is well aware that most philosophers treat altruism as "any act that is 'other-regarding,' directed to the good of another" (6). And he admits that many of these "altruists" believe that "we may properly act in our own benefit on other occasions."

So, why does this common-sensical balancing act between self and other strike Kelley as wrong? Answer:

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*Most of us, I hope, have friends who are something more than mirrors to ourselves. At least, I hope we value our friends as something more than convenient mirrors.*

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"Insofar as the things we do for others are assumed to be in conflict with our own interest, then they cannot be justified by an ultimate standard that is egoistic" (7). Kelley does not for a moment consider abandoning this notion of "egoism."

Instead, he brings up the issue of conflicts of interest, following Rand's lead. Rand has famously argued "that there are no conflicts of interest among rational men." Less famously, she argued that without "an ultimate goal or end, there can be no lesser goals or means. . . . It is only an ultimate goal, an end in itself, that makes the existence of values possible" (*The Virtue of Selfishness*, p. 17).

Many interests harmonize through cooperation. When cooperation suc-

ceeds repeatedly (as it does so often in an open society) the evolved interests of the would-be antagonists dramatically increase, not infrequently beyond their wildest dreams. The trick is to get people to try peace and cooperation, and the antagonistic interests (implied in common scenarios like "I steal from you, you bully me") vanish as harmonized interests coincide ("I gain by helping you provided you help me").

There are no conflicts of interests between rational men only in the sense that rational men can almost always (usually? sometimes?) find some interests that coincide. But the costs of conceiving of different, *alternative* interests, of accommodating others' wishes, talents, indeed, *very presences*, are strangely swept under the rug in Objectivist analyses of this problem. (They'd save themselves a world of confusion if they'd bother to distinguish among the many meanings of "interest.")

Though Kelley later explains (inadequately) Rand's contention that "the interests of rational people" do not "conflict in any fundamental sense" (8), in the adjacent passage to the above quoted one, he adds a problematic assertion:

A commitment to one's own life and happiness, Rand observed, is a full-time job. Any action not serving that end is at least a mild form of self-sacrifice, a use of our time and effort for things that do not benefit us, or that provide a lesser benefit than we might obtain by other uses of our resources. (7)

This all suggests that each of our "self-interests" is a unitary, closed thing, and that we can calculate the bottom line for every action in terms of an ideal distribution of time and resources.

But this is simply not the case, as anyone who thinks about it for a few minutes quickly realizes. We live our lives with immense amounts of ignorance. We cannot be certain whether this investment in knowledge, or that investment in skill, or some savoring of pleasure, will lead down the road to more happiness or stability or what-have-you. Though we often have good indications of the benefits and costs of our acts, much of our lives proceed on hunch. And with this much apparent indeterminacy, we have no *a priori* grounds to throw out of court any kind of act, "selfless" or otherwise.

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Does an act of kindness to a stranger, one that might take up some of our precious time, *necessarily* lead to the sacrifice of our purity of essence, our self-interest? Despite Rand's "full-time" job assertion, the answer is: apparently not. Kelley lists the many ways it "pays" to be kind to others, and the many good habits that are involved with being benevolent. He even provides a rather lengthy list of benevolent

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*There are bad forms of "treating others positively," as anyone who has suffered a sycophant knows.*

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acts in Rand's own novels, benevolent acts that *seem* to be chiefly other-regarding. He tells us that they make sense "egoistically."

So what's the upshot? A benevolent act — which might distract one from the unavoidable "job" of life — is fine, and makes sense if it feels right as part of a person's partially self-constructed, partially socially-influenced idea of self-interest, and if that "feel" is not betrayed by future setbacks, information, or re-evaluations.

But what Kelley does not acknowledge is the fact that the same goes for chiefly *self-regarding* acts. Should you go to law school? Go into debt? Spend a weekend at the beach? Well, if it feels right when weighed against other opportunities, and the costs aren't too high . . . but Objectivism isn't going to give you the answers, and you may live your whole life without ever getting certainty on the matter.

So what's the point of egoism? It can't tell you which of the obviously self-regarding and other-regarding acts make sense "in an ultimate sense," and seems nothing more than a rhetorical flourish with no more philosophical interest than Polonius's "to thine own self be true."

Say you can choose between going to a movie or giving twenty bucks to an acquaintance hard on his luck. You have a choice between a self-regarding act and an other-regarding act. If you are moved to give the twenty bucks, simply because it pleases you (you like the smile on your friend's face, your

worries about his prospects are somewhat eased, etc.), one could say that self-interest and other-interest has coincided. Kelley finds this a bit problematic, for some reason. He puts the question again: "which end is ultimate? Is the ultimate intended beneficiary of my action myself or the other person?"

Objectivism holds that the agent should be the ultimate intended beneficiary of his own actions, helping others only when their good is a means to his own, or an ingredient in it. . . . Genuine altruism, by contrast, presumably requires that the other person be the ultimate intended beneficiary of at least some actions — that we act for his sake, as an end in itself. And this implies a willingness to act for his sake even if it did *not* serve our interests. (7)

But how does one determine that one is the ultimate beneficiary of an act? Kelley gives me no satisfactory answer to this. It seems to be apparent to him, but it is not apparent to me. Indeed, how can we be anything but the ultimate beneficiaries (or victims) of our acts?

That is, is the "ultimate" beneficiary of an act, according to Rand and Kelley, anything other than the valuer herself? When *isn't* it? Play the game of altruist moralist (A) and egoist moral agent (B):

A tells B that she should place the bulk of her funds in an interest-bearing account, and B responded with a "why?" A's answers would be pretty straight-forward, likely put in the form of a prophecy: B would really appreciate her financial freedom in the future, and would have even more goods available to her, more happiness. Though she might not now be thinking of the future, in the future she will regret it if she hadn't prepared for that future.

The argument here does not merely involve thinking of long-term effects, but imagining future changes in values, and imagining the future person that she will become. It is a very imaginative egoism that, in the imagining, helps create the future ego.

But when A goes beyond concerned advice to push altruistic activity, entreating B to "give all to the poor," this argument for expanded egoism cannot be used. But something like it may be used.

"Think of how they feel, miserable,

hungry, bleak . . . you can help them feel better! There is nothing quite like helping people find hope . . ." Here our altruist engages in eliciting sympathy from our egoist, enticing her empathically to imagine the perspectives of others, and in so doing making *their* values *hers*, simply out of fellow-feeling. In addition, the reward to our egoist is the pleasure in being a part of a process that makes others feel good.

This is a basic part of human nature. The capacity to empathize is used by moralists to persuade people to act in various ways (many, of course, not all to my liking). By empathy and enticement "altruists" daily convince "egoists" to engage in benevolence.

True, sometimes the benevolence is argued for by bluster, too: "It's your duty!" they scream. The subtext here is that you aren't a good person if you don't do as altruists say. The threat is the withdrawal of their approval.

But the fact that altruistic hectoring is offensive has little bearing on the whether B should help C, D, and E. Everybody helps somebody sometimes. Should our level of benevolence be increased? Should our attention to our benevolences be more tightly focused?

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*Following Rand, Kelley descends into the realm of metaphysics to find a foundation for ethics.*

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Should we treat our kindnesses more consciously and less symbolically?

These questions can be answered without recourse to talk of "ultimate standards." Each of us cannot help but be the ultimate bearer of the responsibility to choose. If B decides to devote herself to aiding the poor, and in so doing finds happiness, who would naysay her? If C decides to spend his whole life painting landscapes on eggshells, and in so doing makes a tolerable living and finds much joy, who will complain? The standard of choosing is a question of balance, not a matter of who benefits; one well-balanced life can benefit more than just that single self.

People's moral constitutions differ, and balance is possible with differing levels of involvement with others, from

near zero (in the case of some geniuses), to a near total dedication to others. The extremes are rare, and rarely balanced, but we shouldn't prejudge these possibilities.

### Benevolence in a Free Society

Kelley offers a provocative argument about the problem of "free riders" (those who gain benefits without paying for them), and explores the motives for behaving generously. The most interesting of these motives, to me, is the idea of generosity as flowing from a fullness of soul. "Sometimes we act generously as an expression of our own happiness" (44). This aspect of individualism is not very well understood these days.

Machan also understands this. And, like Kelley, he argues that all virtues must work in tandem: "Generosity, like other virtues, is not by itself a reliable guide to action. It requires other virtues, as well as a kind of moral monitoring . . ." (26). Machan's discussion of the idea of a cardinal virtue is a good contrast to Kelley's explication of Rand's short list:

The best candidate for some general, overriding virtue is what has been called right reason, rationality, or, perhaps, wisdom.

In traditional Christian moral philosophy, the four cardinal virtues are prudence, justice, temperance, and fortitude. In some ways this seems quite right — first one needs to take care of one's life in general, then one needs to be respectful of others' dignity, then one must live in measured ways, and finally one must have the backbone to stick by all these virtues. "Right reason," or "rationality" or "good sense" — prudence in the sense of practical rationality, thinking things through before one acts, whether a long or short time before one takes the action in question — appears to be the most vital of the virtues, since it is the first thing one must have to guide oneself through life with reasonable chances for success as far as one's overall conduct is concerned. Right reason is nothing less than the act of keeping in conceptual mental focus. . . .

Machan also takes greater pains than Kelley to distinguish generosity from charity. Alas, I see no evidence that he understands the Christian concept of love. I am not convinced that charity is, as Machan claims, inextrica-

bly bound to duty. It is quite possible to stretch empathy beyond its normal bounds, and care sincerely, without any shackles of obligation or spurs of threat. Indeed, this may be practiced by anyone willing to learn the discipline. Anthony Burgess called it the "game of love," and it need not be tied to the darker elements of the soul. But then, since this concept of concerned

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*There are no conflicts of interests between rational men only in the sense that rational men can usually find some interests that coincide.*

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love is honored by Christians themselves mostly in the breach, perhaps we can forgive Machan for this.\*

The main thrust of *Generosity* is, of course, social. Machan argues that generosity can only flourish in a free society, by which he means a society with a rule of law and no coerced "charity"; that is, no welfare state.

This is a tall order. Machan's starting point is easy to grasp: "Those who want to prohibit all vices — say, by transforming law enforcement agencies into a kind of massive vice squad — fail to appreciate that if vice is banned, unambiguous virtue becomes impossible: there will be no possibility of crediting people for making right choices" (3). Adding the element of coercion to the distribution of goods from the well off to the less well off robs the honor in the choice to be generous, in the process "demoralizing" society. (53)

But does Machan respond adequately to the common charge that generosity was not enough to help the poor in the past, and would certainly not be enough tomorrow, were the welfare state somehow to whither away? The closest he comes to handling this is his answer to an objection by the author of the classic essay, "Libertarianism Without Foundations":

Contrary to Thomas Nagel . . . it is

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\* Or perhaps the reason Christians often act less charitable than their calling by Jesus would lead one to expect is that their love has historically been balanced by their hates. As William Graham Sumner noted, in-group love feeds off of out-group hate. And, in the gospels, Jesus' antagonism to his enemies sets a stark precedent. For a recent treatment of this, see Elaine Pagels's *The Origin of Satan* (Random House, 1995).]

not "unreasonable to ask" that individuals "be generous, when asked to give voluntarily." Nagel says that leaving generosity to individual initiative "is an excessively demanding moral position because it requires voluntary decisions that are quite difficult to make. Most people will tolerate a universal system of compulsory taxation without feeling entitled to complain, whereas they would feel justified in refusing an appeal that they contribute the same amount voluntarily."

Actually, it is a mistake to think that something is excessively morally demanding "because it requires decisions that are quite difficult to make." Consider that it is quite difficult to make the decision to abstain from hitting someone who has insulted or offended, yet we do require that persons restrain themselves in the heat of anger, however difficult that may be. It is surely no excuse under the law that one's passions were inflamed, at least in most modern systems. . . . [T]here is ample evidence of moral resolve, as when folks keep promises they find a nuisance to honor, or remain faithful when tempted to betray, or embark upon difficult tasks that they would rather avoid. All the vices are tempting, but often enough people resist them. (64)

Curiously, though I find more to agree with in Machan's book than Kelley's, and find it much less irksome, it feels less substantial. And the fault may be in the very manner of presentation that offered me respite from Kelley's in-groupy tone. Machan concentrates much of his attention on arguments raised by philosophers most skeptical of the individualist vision of a society with limited government. This makes for an oddly constructed book — Machan first takes on one author, then another — and though the arguments do add up to something, the positive case is not sustained at the requisite level of intensity. Machan comes off as being defensive.

This manner is least successful in his chapter on the ways the modern welfare state seeks to "channel" and "encourage" generosity. Here a more

straightforward, issues-oriented approach would have worked better. The one policy proposal that Machan addresses in this section (entitled "Blocked Exchanges") is the proposal to ban the selling of blood. Machan can't concentrate on this, however, and gets distracted by numerous philosophical points. If Machan had stuck to the issues themselves, and forgotten Michael Walzer, John Rawls, Kurt Baier and other contemporary philosophers, he might've been able to present a coherent argument about the trade-offs between generously and mercenarily giving blood.

Of course, Machan is not writing policy analysis — though one might've expected him to give it a shot, seeing as the book is published by Cato Institute, the premier libertarian policy factory. Perhaps if he had covered more important issues, such as those concerning scientific research, Medicare, the Food and Drug Administration, this section of his book would have been more persuasive. And some of those persuaded may have been philosophers themselves.

Aside from the basic sweep of his argument, however, Machan provides quite a few interesting observations. For instance, can government be generous? No; not in the way people usually think. Though perhaps there is one way: "The manner in which a government can be generous is by being . . . frugal and setting aside funds for emergencies without having to raise additional or special funds from citizens" (63).

### The Things Most Needful

Both Kelley and Machan leave important things out. Kelley's book

would profit from a wider literary perspective and consideration of other ways of living and thinking about life. One suspects this results from Kelley's choice to direct it almost exclusively to the struggling Objectivist movement. But what Machan left out is worth pondering. I can think of at least two things that would have helped his book immensely.

One is an appreciation of the degrees of self-deception involved in

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*Machan argues that generosity can only flourish in a free society, by which he means a society with a rule of law and no coerced "charity"; that is, no welfare state.*

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the way most people handle questions of virtue and vice. Though Machan recognizes that there are bad forms of generosity, he makes little of how hollow many forms of it are. The Pharisaic posture of so much of the "giving" we see today — and have seen throughout the ages — is a disheartening spectacle that no book on benevolence should ignore. Furthermore, this egotism finds its fullest expression in the political realm, bolstering the case Machan has set out to make. Truly, the "whitened sepulchers" of this age appear most prominently on our TV sets, mouthing words such as "I feel your pain."

The other thing regrettably missing is a feel for the modes of rhetoric. This

becomes noticeable early on, in the brief section in the first chapter on "Generosity as a Pseudovirtue." Here Machan argues against Hume's account of benevolence as borne from sympathy. Machan twists this into an argument about free will, completely missing the most promising avenue opened up by Hume: the notion that morality is a tool that we use to influence our own behavior and that of others. (Reason may be a slave of the passions, as Hume observed, but this does not mean that we do not reasonably use all the tools at our disposal to balance conflicting passions.)

We are daily bombarded by the slings and arrows of contemporary casuistry. Any full assay of the benevolence should give some accounting of how people use language and behavior to maintain all the decencies and pieties of our age. The philosophical status of each method of persuasion would be useful, to say the least.

The clash of the methods of moralizing cuts to the heart of the problem of egoism and altruism. What is key is not that egos must regard their lives as a "standard for action," or as somehow "ultimate," but the extent and the manner to which they (we) can apply "rationality" to deciding how to act. Which offered reasons for action should move us *when*? And which threats and which enticements should be added to our own moral arsenals? The moral philosopher must don the mantle of master of rhetoric.

In any case, the rhetoric of "egoism" remains unpersuasive to most people. I see no evidence that its stock is rising. Its origin as rhetorical trick in an age-old debate has not fit it to thrive, though it will no doubt survive for quite a while.

Unfortunately, this egoism will continue to scuttle many a reader of Ayn Rand away from a proper balancing of ego and alter. And, though used by them to shore up the idea of liberty as a balance among competing persons in society, the worship at the altar of ego is a vain one, and will likely remain an impediment to establishing the justice of personal freedom and individual responsibility. □

Opening quotation from George Santayana, "The Unknowable," Herbert Spencer Lecture, Oxford, 1923.

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*Conquests and Cultures: An International History*, by Thomas Sowell. Basic Books, 1998, 493 pages.

# How and Why Peoples Differ

Jane S. Shaw

People respond to incentives. If you offer more money for a job, you are likely to get more applicants. If young women can obtain enough money to live independently by having babies, some will try to do so.

So I find claims that disregard such incentives to be disconcerting. For example, some people claim that illegitimacy is high among urban African-Americans because of traditions they brought from the rural South. And that the Russians haven't made the transition to market economies because they "aren't very entrepreneurial."

Even so, I have to acknowledge that different groups will react differently to the same situations. Thomas Sowell has persuaded me that incentives and related economic principles are not the full story of human behavior. Sowell is a brilliant, Chicago-trained economist, who has for decades been hammering home the point that other forces affect behavior, and further, that these forces are combined in distinctive patterns in different cultural communities.

*Conquests and Culture*, the latest of Sowell's explorations of cultural differences, concentrates on the interaction of groups through conquest, as his previous book, *Migrations and Culture*, explored interactions of peoples who migrated around the world. In these books Sowell challenges today's prevailing views about group behavior. It is common to claim that any differences in the accomplishments of different groups are due to the effects of "society." It is also popular to view cultures as something quaint to be "celebrated" and "preserved."

Sowell argues that neither view

reflects reality. While humans share many characteristics, the evidence shows that individual cultures are often dramatically different in their traits, habits, goals, standards, and accomplishments and that these characteristics can persist for centuries. Nor are cultures "museum-pieces," says Sowell, but, rather, the "working machinery of everyday life" (ix-x). Cultural differences matter.

Cultures are the collective transmissions of human capital. People with one culture will not necessarily respond to incentives the same way as those of another. For example, when pioneering landowners in Brazil desperately needed laborers, they offered a sharecropping arrangement that would lead to land ownership in a few years. Not many Brazilians took them up on the offer. However, halfway across the world, Japanese migrated to Brazil to accept it. (335)

Cultures are not the same as "ethnic groups" or "races." A single race or even a single ethnic group often encompasses vastly different cultures. An overview of Scottish history makes this clear. (52-63, 72-78)

Scottish highlanders, who lived in the remote mountain areas of Scotland when the Romans conquered Britain, missed the conquest, and therefore lost out on much of its civilizing aspect. While the Britons began the long slow process of developing a complex and productive culture — and overcoming "one of the most catastrophic retrogressions of whole peoples ever seen" (336) — when the Romans departed, Scottish highlanders remained poor and isolated, speaking their own Gaelic dialect, and pursuing primitive agriculture.

Gradually, however, some of these

Scots left the mountains. When the British opened up Ulster County, Ireland, to settlement in 1610, some went there. Later, emigrants from Ulster then went to the United States and settled in Appalachia and Pennsylvania, where they became known as "Scotch-Irish." Yet many of the traits that distinguished them in the old world turned up in the new. Many were poorly educated, sometimes living in filth, and had a tendency toward violence. They were a far cry from the lowland Scots, who settled in the United States later in the nineteenth century. These Scots had long lived in more urban areas, were more involved in commerce, and had received the benefits of "anglicization." Indeed, in the eighteenth century, lowland Scots became world leaders in their intellectual contributions to science, philosophy, and other disciplines.

Sowell notes that "for centuries, sharp differences between the behavior patterns of white Southerners and white Northerners (especially New Englanders) were commented on by contemporary observers of American society and by scholars alike, in terms faithfully mirroring sharp differences seen in Britain between those from the main part of England, on the one hand, and the Irish, the Welsh, the Ulster Scots and the 'borderers' on the other. . . ." (78)

Sowell writes about the Scots as part of the story of the British, one of five groups that make up the volume. In addition to the Britons (conquered by the Romans and later conquerors of others), he discusses Africans (conquered by Europeans, Middle Easterners, and other Africans), Slavs (primarily conquered by Western Europeans but also by Asians), and Western Hemisphere Indians (some of them conquerors in their own hemisphere but later conquered by Europeans).

In an earlier book, Sowell had mentioned the positive impact of the Roman conquest on Britain (Winston Churchill said, "We owe London to Rome." [25]) In part, *Conquests and Cultures* is about that impact, as it is also about the horrors and the human toll of conquest. By and large, however, Sowell emphasizes not so much the conquests themselves as on the cultural interactions and their effects.

Sowell makes clear that rich, complex cultures develop through the interaction of peoples, whether the interaction occurs through conquest, trade, or travel. People borrow what works from other cultures, whether it is tools, customs, products, or ideas. Those groups that stay isolated remain primitive and, not incidentally, are more subject to conquest.

To a large extent, geography sets the stage, determining whether a group will, on balance, be conqueror or conquered. The ability of Western

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*To a large extent, geography sets the stage, determining whether a group will, on balance, be conqueror or conquered.*

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Europeans (after the Middle Ages) to traverse the globe and dominate more primitive cultures all started with Western Europe's geography. Since water transportation was easier than land transportation during most of human history, the most important factors were Europe's many ports, its internal rivers, and its access to oceans.

Sowell introduces each segment of his story with geography. The fundamental problem that kept sub-Saharan Africa backward was its lack of natural harbors on the ocean coasts and in interior rivers. Even where rivers reach the ocean, the ports are filled with sandbars that prevent boats from reaching land. Navigable interior rivers are few, and those that do exist often have internal barriers such as rapids and waterfalls. (Sowell points out that although Africa is the second largest continent, its coastline is shorter than that of any other continent, and that only two percent of its land consists of islands and peninsulas, compared with more than a third of Europe's.)

In a similar way, internal barriers explain the backwardness of Eastern Europe. For Russia, the lack of rivers that reach important bodies of water (such as the Mediterranean Sea) curtailed trade, while for the Balkans, mountains blocked trade and kept the inhabitants isolated, just as similar conditions held back the Irish and the Scots.

The Western Hemisphere had its own unique handicaps. Rivers were ample, but until Europeans arrived, land transportation was largely limited to what humans could carry. The continent lacked draft animals such as horses or oxen needed to transport goods on land (347-348). Another factor, says Sowell, was that the land masses, and thus transportation pathways, of the Western Hemisphere tend to extend from north to south. In contrast, goods in Europe could more easily move east and west. This matters because it is easier for agricultural discoveries and other innovations to spread along the same latitude, where the climate is similar, than along the same longitude, where climate varies dramatically. "Thus rice cultivation could spread across Asia to Europe and ultimately to North America, but bananas could not spread from Central America to Canada," Sowell writes. (253)

Sowell does not hesitate to identify some cultures as superior to others, another politically incorrect stance. But to be primitive early on does not mean that you will be primitive forever. Even though Sowell calls the departure of the Romans a catastrophic "retrogression," it is clear that the British bounced back. In large part, their progress came about because they were receptive to talent from elsewhere. Italian shipbuilders, German miners, and Dutch engineers helped to lay the foundation for the Industrial Revolution. In 1618, Sowell writes, London had 10,000 "skilled foreign workers." And earlier, in medieval England, when few Britons were capable of handling complex finances, "outsiders" (Lombards and Jews) dominated financial markets. The Jews were expelled in the 13th century, and restrictions drove the Lombards from finance in the 14th century. But by that time, British financiers had learned the ropes. (30-31)

One of the most striking things about Sowell is his impartiality. Inured to the horrors of conquests, he describes each side unemotionally, without favoring one or the other. For example, he makes clear that the Spanish conquistadores acted cruelly toward the Incas and Aztecs, but no worse than these people acted toward their own people and those they subjugated.

But Sowell isn't soft on the conquis-

tadores. After all, not only were they sometimes cruel, but they virtually enslaved the Indians, forcing them to work the mines so that the Spanish overlords could send riches back to Europe. The Spanish colonists were primarily armies of men maintaining control of an enslaved population. In contrast, in the northern parts of the New World, Europeans brought women and children and established permanent settlements that were self-supporting.

But was the North American model "better"? Sowell points out that there the conflict between Indians and colonials went on for three hundred years and was often violent. As settlers moved West, they pushed the Indians further and further into marginal areas, eventually forcing them into a socialistic system of reservations, with predictably appalling poverty and waste of human capital.

But Europeans cannot be blamed for the entire sad story of the Indians. Diseases inadvertently carried to the new world by the Europeans racked Indian populations. One estimate is that the Indian population in the United States declined by two-thirds or three-quarters after Europeans arrived. The number of Indians in Mexico

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*The fundamental problem that kept sub-Saharan Africa backward was its lack of natural harbors on the ocean coasts and in interior rivers.*

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declined from an estimated 22 million to 2 million after 1520 (257). This devastation may be the chief reason why the Europeans triumphed in their conquest of natives of the Western Hemisphere.

Sowell is not a pacifist. He argues that only when nation-states became militarily strong were they able to keep their people from being enslaved. More specifically, Great Britain's ascendancy on the seas allowed it to do what no other country had even attempted: to wipe out slavery. During the middle of the 19th century, the British Navy seized and destroyed slave ships, whatever flag they sailed under, even to the



point where ship captains tossed slaves overboard when it looked as though a British ship was going to seize it.

Indeed, if there are any heroes in this book, they are British. Sowell respects them because they stopped the worldwide trade in slaves and because they refused to surrender to Hitler. But he does not romanticize them. His dispassionate observations lead him to point out that, for all the rhetoric we attach to freedom, the idea of freedom developed only after the experience of freedom, which developed slowly and painfully for centuries in Western Europe, allowed it to be something that people could articulate abstractly.

If you have read this far, you are probably a person who likes history. Much of the book consists of simply fascinating historical details and can be appreciated on that level. But the book is important, too, for those of us who champion one institutional framework over another. Sowell has amassed evidence that should keep us cautious about assuming that we know why people act as they do and about predicting how they will respond to policy changes. In his preface, Sowell warns the reader not to expect the “certainties of doctrine or the elegance of abstract theoretical models” (xii). Even so, he gives us a lot to think about. □

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The editor of Ayn Rand's *Journals* censored her writing . . .

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# Bowderlizing Ayn Rand

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Chris Matthew Sciabarra

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The recent publication of *Journals of Ayn Rand* was a major event for Rand scholars. In its pages we see dramatic evidence of Rand's intellectual struggles and maturation. Together with her previously published letters, *Journals* goes a long way toward clarifying many important issues in Objectivism and its place in the history of philosophy.

Like any scholar, I am concerned about the textual integrity, particularly since its editor, David Harriman, admits to grammatical and stylistic line-editing. Harriman assures us that in those cases where he “eliminate[s] words,” he does not affect “the meaning” of Rand's formulations. He calls this a “restrained approach” to editing, in which omitted phrases are indicated “by ellipsis points in square brackets” (xvii).

All this came to mind a while ago when a friend asked whether I'd had access to Rand's journals prior to their publication. I told him that I had not,

and asked him why he thought that I had. He quoted back a passage from my book, *Ayn Rand: The Russian Radical*: “In her journals, Rand dealt critically with the writings of other thinkers, such as Albert Jay Nock, H. L. Mencken, Peter Kropotkin, and José Ortega y Gasset” (106–7). He had found references to Mencken, Kropotkin and Ortega in *Journals*, but none to Nock.

When I wrote my book, Rand's journals has not yet been published, and the Estate of Ayn Rand had not made them available to me. I had relied instead on excerpts from her journals that had been published in *The Objectivist Forum*, *The Intellectual Activist*, and various editions of her novels. And yet, while references to Mencken, Kropotkin, and Ortega y Gasset remain in the recently published *Journals*, my friend could not find the reference to Nock.

I was troubled by this. Could it be that I had mistakenly listed Nock in my own book as among the authors with whom Rand had grappled? I knew from Barbara Branden's biography that

Rand had met Nock, as well as Ruth Alexander, Rose Wilder Lane, Isabel Paterson, and other important intellectuals of the Old Right. Could it be that I'd mistakenly listed Nock in my own book as among the authors with whom Rand had grappled?

So, I went back to my voluminous research notes, and found the reference to Nock in the April 1984 *The Objectivist Forum*, which published her journal entry for January 20, 1947:

*An important point to stress:* blast the fool idea that material production is some sort of low activity, the result of some base “materialistic” impulse — as opposed to the “spiritual realm” (whatever they think *that* is) which consists of some sort of vague, passive contemplation of something or other (the Albert Jay Nock idea). Show them that material production is the result of and comes from the highest and noblest activity of man, from his creative mind, from his independent rational judgment — which is his highest attribute and the sole base of his whole morality. To exercise one's own independent rational judgment is the whole essence of man's morality, his highest action, his sole moral duty and commandment that embraces all his “good” and all his virtues. (1) [italics in text; underlined emphasis mine]

I thought that my friend may have missed this reference in the *Journals*. He'd just checked the index, which probably had overlooked this brief mention. Surely Nock's name would be in the text. I checked out the *Journals*. On pages 549–50, I found the passage:

*An important point to stress:* blast the fool idea that material production is some sort of low activity, the result of a base “materialistic” impulse — as opposed to the “spiritual realm” (whatever they think *that* is) which consists of some sort of vague, passive contemplation of something or other. Show them that material production is the result of and comes from the highest and noblest activity of man, from his creative mind, from his independent rational judgment — which is his highest attribute and the sole base of his morality. To exercise one's own independent rational judgment is the essence of man's morality, his highest action, his sole moral commandment that embraces all his virtues. (1) [italics in text; underlined emphasis mine]

There are several differences between these two versions of the same passage. The editor has changed one word in the first sentence from "a" to "some." In the second sentence, he has dropped the word "whole." In the third and final sentence, the word "whole" disappears for a second time. Also erased are two phrases: "duty and" and "his 'good' and all."

Are these merely stylistic alterations designed to eliminate "wordiness," as editor Harriman explains he has done in his introduction (xvii)? Well, in the first and last sentences, the changing of "a" to "some" and the deletion of "his 'good' and all" doesn't seem to change Rand's meaning, though it's difficult to see why the changes were made.

Dropping the word "whole" in final two sentences makes me uncomfortable. I've devoted a lot of time to examining the presence in Rand's work of dialectical concepts, including the notion of an "organic whole." Rand uses the organic terminology explicitly in her early work and the continuing appearance of the word "whole" in her later notes might be worthy of extended analysis in any given context.

Even more problematic is the deletion the phrase "duty and" in the final sentence. Perhaps the word "duty" is a bit too deontologically close for an

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*The reference to Albert Jay Nock has been dropped completely. Nock has been expunged from the historical record.*

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Objectivist's comfort. Rand, after all, rejects duty-bound morality and assaults Kant's categorical imperatives. All Harriman had to do — as he does in elsewhere in the volume — was to insert an explanatory comments reflecting Rand's mature conception.

The most egregious omission in the *Journals* version of this passage is that the reference to Albert Jay Nock has been dropped completely. Nock has been expunged from the historical record.

Most problematic, however, is that in every instance of Harriman's editing in this passage, he provides no back-

eted ellipsis points to indicate that anything has been altered.

When such editorial changes are not made explicit, when not even ellipsis points are provided to indicate missing text, doubt is cast unnecessarily on the volume's authenticity. Even if this does not impugn the book's overall value to critically-minded readers, it makes the serious Rand scholar question the text's accuracy. These questions are generated not by any inherent distrust of the Estate, but by discrepancies in the same passage pub-

lished in two different sources authorized by the Estate. Which version is accurate? The first? The second? Neither? Officials at the Ayn Rand Institute are busy establishing a research archive, but until independent scholars are able to examine Rand's papers, serious doubts will remain.

In this single three-sentence paragraph, there are six alterations. And at least four are of important to scholars and others who want to understand Rand. How many *other* revisions of the historical record are there? □

## Filmnote

**Kids' Flicks** — I tend to agree with conservatives when they blame Hollywood for undermining traditional values with sexual explicitness, sadistic violence, approval of adultery, and adulation of single motherhood.

Yet when I think about the movies that I have actually seen over the past few years, I get a completely different picture.

Mostly, I attend movies with my son, now ten years old. The movies we see are funny, poignant, moving, and sometimes uplifting. They're usually about sports (often with a bit part by, say, Ken Griffey, Jr., or Shaquille O'Neal) or they feature an actor who became famous on television (Tim Allen or Chevy Chase), and there's often a romantic element (the young protagonist's young single mother finds a husband).

The themes are as old as literature. In *Little Giants*, a bumbling group of preteen misfits form a football team that is led to victory by a parent still remembering the stings of his own sports failures. *Little Big League* shows the young triumphing over bureaucratic and slipshod adults, as a twelve-year-old manages baseball's Minnesota Twins. (How Hollywood pulled this off, I don't know — having Jason Robards play the boy's grandfather and Twins owner helped). *Jungle to Jungle* brings a boy who grew up in an island paradise to Manhattan, where he teaches his work-obsessed father (Tim Allen) some truths about life.

Sometimes these movies become

famous (*Field of Dreams* with Kevin Costner, for example), but most of the directors, I think, sit out the Academy Awards ceremony. And not all these movies work; some, like *Richie Rich* and *First Kid*, are too thin, either in plot or character, to keep our interest.

But others startle you with their artistic risks. *Jack* mingles humor and tragedy in a story about a boy who ages so rapidly that he has a man's body when he is only ten years old. Jack (Robin Williams) manages to engage his schoolmates with his antics before the movie ends with his early death.

This movie was so sad that both my son and I found it difficult to watch, so I cannot rate it as a success. However, a more recent film, *My Giant* does the same thing better: it's a slapstick comedy shot through with tragedy. A fast-talking talent agent (Billy Crystal), down on his luck, wants to make a star out of a young man he discovers in a Romanian monastery. This man (played by Gheorghe Muresan, in real life a Washington Wizards basketball player) is so tall (7' 7") that his parents hid him away years before, fearful that he was under the control of a devil. At 37 years old, he is afraid to go anywhere because he has been stoned and taunted. The agent and the giant change one another's lives, and, before the movie ends, both are reconciled with their families.

When it comes to kids' movies, it looks to me as though Hollywood provides what people are willing to buy. And that's not all bad. —Jane S. Shaw

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Big government isn't doing so well at the box office . . .

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# The New Hollywood

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Harry Browne

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For half a century the entertainment industry has been a fountainhead of socialist messages. The left has been so secure in their dominance of the business that leftists have never bothered to deny the bias.

Now, however, it seems that Hollywood is no longer a one-party state. Not only is collectivism losing its lock on movies and television, but here and there libertarian ideas are beginning to surface.

The most obvious indication of the change is the number of entertainers who have been referring to themselves as libertarians or who have produced libertarian products. The list includes such actors as Clint Eastwood, Kurt Russell, and John Larroquette; humorist Dave Barry; comedians Drew Carey and Dennis Miller; best-selling authors Dean Koontz, Peter McWilliams, and Camille Paglia; magician Penn Jillette; and TV reporter John Stossel. And you may have noticed all the nice things Hugh Downs has been saying on the air about libertarians.

Of course, some of them are more libertarian than others, but how many entertainers even whispered the word "libertarian" ten years ago?

Another hopeful sign is Hollywood's Wednesday Morning Club, organized by David Horowitz. The club attracts as many as 300 executives, actors, and others in the industry to its weekly programs. Although the club was formed to promote conservative Republicanism, libertarians are represented as well. After Kurt Russell made some brief remarks at one meeting, an article in *The Washington Times* quoted TV game-show host Pat Sajak

saying, "I think the fact that Kurt Russell, who's on the A-list, can get up here and talk about being a libertarian, and now people will see he's on the A-list tomorrow and the sky didn't fall." (I'm sure his syntax would have been better if Vanna White had been there to help.)

## The Proof Is in the Output

But the strongest indication of the new trend is the expanding anti-politician, anti-government content in TV shows and movies.

On TV, there's no longer much of the social preaching that used to dominate episodes of *Murphy Brown*, *Grace Under Fire*, and many other shows. Instead, the sitcom producers now seem to be focused on entertaining their customers, rather than raising their consciousness.

Comedians like George Carlin and Bill Maher devote a significant portion of their stand-up routines to skewering politicians and the government in general. Notice, too, that Jay Leno and David Letterman rarely make fun of businessmen, but their routines are dominated by putdowns of politicians of all stripes. These putdowns go far beyond the gentle chiding Bob Hope gave politicians in the old days.

Even the TV series *Seinfeld* includes running jokes about government mailmen who refuse to work on rainy days or take sadistic delight in sending little old ladies to the back of the line at the post office.

The change is even more obvious in today's movies.

There once was a time when all political movies presented a straightforward, black-and-white view: the good liberals fought against the nasty, moneyed conservatives. Typical of

what we had to endure was *The State of the Union* with Spencer Tracy. In his closing speech Tracy told businessmen that national unity was far more important than their petty profits, and he lectured the rest of us on our responsibility to pay the taxes to care for those less fortunate.

Until recently, we were bombarded with movies telling us to save the planet, take care of the homeless, and pay attention to any other cause *du jour*. Such overtly preachy movies have largely disappeared — although some still subject us to messages, subtle and unsubtle, about the filthy rich and the pristine poor, or about corrupt commercialism.

Before the 1990s, the only anti-government fare were paranoid fantasies in which a secret government agency was murdering innocent Americans — to protect some government program that had gone wrong, or just for the fun of it. The plots in most cases were so implausible that few viewers took them seriously. Such movies are still being made, and they've even been joined by *The X-Files* on television. But

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*Hollywood is no longer a one-party state. Here and there libertarian ideas are beginning to surface.*

---

they're no longer the only anti-government entertainment available.

Instead, there's an abundance of movies showing politicians as self-interested souls who couldn't care less about the public interest or the causes they preach publicly. Government is shown as a den of greed, corruption, and cynicism — with every politician looking out only for his own power and purse. Good examples are *Dave* with Kevin Kline, *The Honorable Gentleman* with Eddie Murphy, and *Absolute Power* with Clint Eastwood.

By the end of many of these movies the star gets converted to the statist religion and heroically pushes through Congress a number of reforms — to clean up the environment, help poor children, clear the slums, or whatever. But often the conversion is merely a patriotic ritual that must be endured — like listening to "The Star-Spangled

Banner" before a baseball game. The meat of the movie is the vivid picture painted of the insincere politicians and the profiteering hiding behind government programs. The message is unmistakable: pray for a plague to descend on both houses.

For some reason, political movies have become much more popular in the last few years. Could it be that producers are aware of the widespread public skepticism toward government?

Many of the political movies take place in the White House — and usually draw unflattering portraits of the president and other politicians. In the past three or four years, the president has been played by Alan Alda, Ronnie

Cox, Harrison Ford, James Garner, Gene Hackman, Phil Hartman, Kevin Kline, Jack Lemmon, Jack Nicholson, and Bill Pullman — of just the movies I'm aware of.

(I would love to play a president in a movie. In fact, I'd rather play a president than be one. But since no one's asked me to portray one, I may have to settle for second choice.)

Almost all the political movies are comedies. One notable exception was *Independence Day*. It was supposed to be of the old collectivist school, demonstrating that we could lick the nasty aliens if we all pulled together for the common good. But the clichés were so outrageous that it almost seemed a par-

ody of all the "uplifting" movies of the past era. And the press reported that most audiences cheered when the White House was bombed.

## Cream of the Geste

You've undoubtedly heard a great deal about *Wag the Dog* and *Primary Colors*. But let me tell you about three lesser-known comedies I think are entertaining. Of course, I can't guarantee you'll find them as funny as I did.

The first is *Canadian Bacon* — which begins by showing that the end of the Cold War has closed a number of defense plants — which is supposed to have depressed the economy somewhat.

The president is persuaded by his

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Gay libertarian man — 38, trim, nonsmoker, HIV neg., atheist, law student — seeks friends. Box 190906, San Francisco, CA 94119-0906 or [mfd1960@yahoo.com](mailto:mfd1960@yahoo.com). Photo appreciated.

advisors to find a new enemy to justify boosting the defense budget and re-opening the plants. But since there are no dangerous enemies at hand, one has to be invented. The administration finally chooses Canada, and the politicians build a media campaign to inflame the American people against Canadians. It's hard to miss the similarities to the real-life 1990 media campaign against Iraq. In fact, in the movie the TV anchormen refer to it as "Operation Canadian Bacon — a Line in the Snow."

This leads to a series of jokes playing off the image of Canadians as clean, polite, and crime-free. In one scene, American commandos attempt to provoke the Canadians by sneaking into Ontario and dumping garbage in a park.

In another, three Americans drive to Toronto in a truck spray-painted with obscene anti-Canadian slogans. They're stopped by a Canadian Mountie who politely reminds them that Canadian law requires the obscene slogans to be written in both English and French.

In addition to Alan Alda (who plays the president superbly), the film stars John Candy, Rhea Perlman, and Rip Torn. And there are no sympathetic politicians anywhere in sight.

*Children of the Revolution* is less libertarian, but very funny. This satire on the Soviet Union and home-grown Communists makes fun of causes and politicians, but its anti-government message is a little too subtle to have much impact. But I suspect that libertarians will enjoy it a little more than most people would. F. Murray Abraham is quite funny as Josef Stalin. Judy Davis plays an Australian Communist who gets her wish to go to the Soviet Union and meet the great man. There are moments of extreme silliness mixed with genuine humor. And the movie reveals the secret of how Stalin really died.

The third movie, *The Second Civil War*, is the one I enjoyed most — perhaps because it was so unexpectedly anti-politician. When the government of India drops a nuclear bomb on Pakistan, hundreds of thousands of children become orphans. A charitable organization brings a few thousand of them to America, planning to settle them in Idaho. But the Governor of Idaho (Beau Bridges) is a former liberal

who won election by turning conservative and bashing immigrants. So he announces that he's closing the Idaho border to the rest of the country — keeping the children out.

As in *Canadian Bacon*, the president (Phil Hartman) is an unprincipled weakling at the mercy of his advisors — who persuade him that confronting the Idaho governor will increase the president's popularity. As the plot thickens, the two sides are headed for an armed conflict — with troops massing on both sides of the Idaho-Utah border.

As you consider this storyline, think of the great movies of the past half-century. Think of the potential for the two leading roles — statesmen agonizing over life-and-death decisions, a second American Civil War looming, Americans against Americans, brother against brother, innocent people killed in the crossfire, and the like. Oh, the agony and burdens of responsibility that go with public service!

This storyline is reminiscent of several famous movies.

Remember the heart-breaking choices President Henry Fonda faced in *Fail-Safe* — when, to convince the Soviet Premier that the American bombers heading toward Moscow were ordered to attack accidentally, he orders a nuclear bomb to be dropped on New York. A great statesman trying to bring about the greatest good for the greatest number.

But not in *this* movie. This one sees politicians in a much different light. The Governor can't focus on the crisis because he's too busy trying to reconcile with his mistress — while Mr. President's decisions are based solely on how they'll affect his political image. His public relations expert (James Coburn) outranks the military advisors. Each plan the President considers is weighed for its potential effect on electoral votes.

When it's decided to demand that the Idaho Governor open the border within 72 hours, the President says, "I like the sound of a 72-hour ultimatum; it seems decisive." But the advisors notice that this will conflict with Susan Lucci's farewell episode on the soap opera *All My Children*. So they change it to a 67 and 1/2-hour

ultimatum. And when Sioux Indians get in the way of federal troops at the Idaho border, the President buys them off with a casino license.

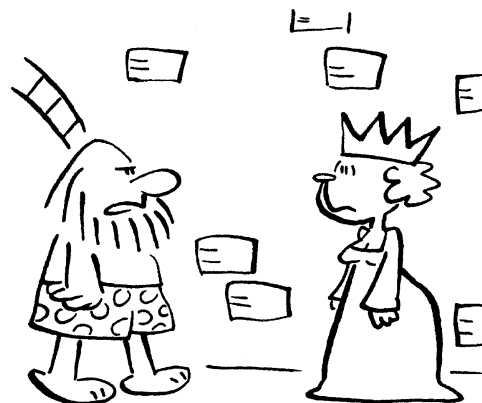
Immigration plays a major part in the story. The Governor of Rhode Island is Chinese, and he sends a battalion of Chinese troops to help Idaho. No one at Los Angeles City Hall, not even the Mayor, speaks English. The President's six speech-writers, who invent a militant quote from Eisenhower appropriate for the crisis, include a Mexican, Asian, Arab, Irishman, Canadian, and Russian. And there's an Alabama Congressman who's a Hindu with a southern accent.

## Happier Days Are Here for Once

We're still a long way from declaring a revolution under way in Hollywood. For example, it's still easy enough to guess the murderer in a TV mystery: just look for the businessman. But there's no question that the entertainment industry is changing. It's no longer obligatory to display one's collectivist credentials in public statements and one's work. And more and more writers, directors, actors, and producers are playing to the anti-government sentiment that pervades the rest of the country.

You can attribute this to any motivation you want — the raw material emanating from political scandals, an improved understanding of reality on the part of entertainers, the sun-spot cycle, whatever. But who cares? It's happening, and it's all to the good.

And if Hollywood people understand that government doesn't work, maybe the press won't be far behind. □



Baloo

"Yes, it's me — Send for the Sheriff of Nottingham immediately!"

# Notes on Contributors

"Baloo" is the alter ego of cartoonist Rex F. May.

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Timothy Virkkala is executive editor of *Liberty*.

"Miracles," continued from page 42

panic runs on banks — even if the banks have fixed their computer problems. Such a panic could be used to justify another great leap forward in government control of our lives — just as the panics of the early 1930s fed the growth of government. This is not a high probability, however, because most likely the solutions will be obvious by the time most people hear about the problems.

But all three dangers are truly unpredictable. We can only hope the Y2K affair doesn't become the impetus for the next radical increase in government power.

## The Market Can Do it — Whatever It Is

The failure to appreciate that the free market produces miracles extends beyond the Y2K problem.

It's the same failure that keeps people from believing roads could be privately owned and be just as convenient and easy to pay for as they are now. (Of course they would be more so, and they would be clean without relying on "Adopt-a-Highway" volunteer programs.) Or that makes them believe that children with poor parents would get no education without government schools. (They already attend private schools in large numbers.)

Or that keeps them from realizing we don't need a government postal service for everyone to be able to send and receive mail. (Years ago people said government had to deliver the mail because private companies would lose money delivering to remote addresses; today Federal Express and UPS deliver to every address in America, but the Postal Service won't.)

Yes, I believe in miracles. Yes, I have faith in the unhampered free market.

Why shouldn't I — when the evidence is everywhere to be seen? □

## Notes

1. "The Whys of Y2K" by Scott Olmstead, *Liberty*, July 1998, page 24.
2. From Gary North's website.

Remember — on the Web, *Liberty* is at:

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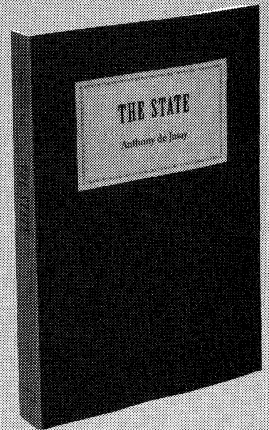
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**Anthony de Jasay** is the author also of *Social Contract*, *Free Ride* (1989) and *Against Politics* (1997).

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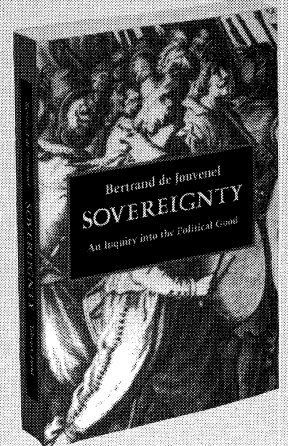
**Bertrand de Jouvenel** (1903-1987) was born in Paris, taught widely, and became a renowned observer of British and American institutions.

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