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IDEAS ON LIBERTY

Taking Money Back

Free Market Economists: 400 Years Ago

The Ethics of War

The Attack on Grassroots Liberty

SEPTEMBER 1995

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Taking Money Back: Part I

Money Is Different from All Other Commodities

SEPTEMBER 01, 1995 by Murray N. Rothbard

Money is a crucial command post of any economy, and therefore of any society. Society rests upon a network of voluntary exchanges, also known as the "free-market economy"; these exchanges imply a division of labor in society, in which producers of eggs, nails, horses, lumber, and immaterial services such as teaching, medical care, and concerts, exchange their goods for the goods of others. At each step of the way, every participant in exchange benefits immeasurably, for if everyone were forced to be self-sufficient, those few who managed to survive would be reduced to a pitiful standard of living.

Direct exchange of goods and services, also known as "barter," is hopelessly unproductive beyond the most primitive level, and indeed every "primitive" tribe soon found its way to the discovery of the tremendous benefits of arriving, on the market, at one particularly marketable commodity, one in general demand, to use as a "medium" of "indirect exchange." If a particular commodity is in widespread use as a medium in a society, then that general medium of exchange is called "money."

The money-commodity becomes one term in every single one of the innumerable exchanges in the market economy. I sell my services as a teacher for money; I use that money to buy groceries, typewriters, or travel accommodations; and these producers in turn use the money to pay their workers, to buy equipment and inventory, and pay rent for their buildings. Hence the ever-present temptation for one or more groups to seize control of the vital money-supply function.

Many useful goods have been chosen as moneys in human societies. Salt in Africa, sugar in the Caribbean, fish in colonial New England, tobacco in the colonial Chesapeake Bay region, cowrie shells, iron hoes,

and many other commodities have been used as moneys. Not only do these moneys serve as media of exchange; they enable individuals and business firms to engage in the "calculation" necessary to any advanced economy. Moneys are traded and reckoned in terms of a currency unit, almost always units of weight. Tobacco, for example, was reckoned in pound weights. Prices of other goods and services could be figured in terms of pounds of tobacco; a certain horse might be worth 80 pounds on the market. A business firm could then calculate its profit or loss for the previous month; it could figure that its income for the past month was 1,000 pounds and its expenditures 800 pounds, netting it a 200 pound profit.

Gold or Government Paper

Throughout history, two commodities have been able to outcompete all other goods and be chosen on the market as money; two precious metals, gold and silver (with copper coming in when one of the other precious metals was not available). Gold and silver abounded in what we can call "moneyable" qualities, qualities that rendered them superior to all other commodities. They are in rare enough supply that their value will be stable, and of high value per unit weight; hence pieces of gold or silver will be easily portable, and usable in day-to-day transactions; they are rare enough too, so that there is little likelihood of sudden discoveries or increases in supply. They are durable so that they can last virtually forever, and so they provide a sage "store of value" for the future. And gold and silver are divisible, so that they can be divided into small pieces without losing their value; unlike diamonds, for example, they are homogeneous, so that one ounce of gold will be of equal value to any other.

The universal and ancient use of gold and silver as moneys was pointed out by the first great monetary theorist, the eminent fourteenth-century French scholastic Jean Buridan, and then in all discussions of money down to money and banking textbooks until the Western governments abolished the gold standard in the early 1930s. Franklin D. Roosevelt joined in this deed by taking the United States off gold in 1933.

There is no aspect of the free-market economy that has suffered more scorn and contempt from "modern" economists, whether frankly statist Keynesians or allegedly "free market" Chicagoites, than has gold. Gold, not long ago hailed as the basic staple and groundwork of any sound monetary system, is now regularly denounced as a "fetish" or, as in the case of Keynes, as a "barbarous relic." Well, gold is indeed a "relic" of barbarism

in one sense; no "barbarian" worth his salt would ever have accepted the phony paper and bank credit that we modern sophisticates have been bamboozled into using as money.

But "gold bugs" are not fetishists; we don't fit the standard image of misers running their fingers through their hoard of gold coins while cackling in sinister fashion. The great thing about gold is that it, and only it, is money supplied by the free market, by the people at work. For the stark choice before us always is: gold (or silver), or government. Gold is market money, a commodity which must be supplied by being dug out of the ground and then processed; but government, on the contrary, supplies virtually costless paper money or bank checks out of thin air.

We know, in the first place, that all government operation is wasteful, inefficient, and serves the bureaucrat rather than the consumer. Would we prefer to have shoes produced by competitive private firms on the free market, or by a giant monopoly of the federal government? The function of supplying money could be handled no better by government. But the situation in money is far worse than for shoes or any other commodity. If the government produces shoes, at least they might be worn, even though they might be high-priced, fit badly, and not satisfy consumer wants.

Money is different from all other commodities: other things being equal, more shoes, or more discoveries of oil or copper benefit society, since they help alleviate natural scarcity. But once a commodity is established as a money on the market, no more money at all is needed. Since the only use of money is for exchange and reckoning, more dollars or pounds or marks in circulation cannot confer a social benefit: they will simply dilute the exchange value of every existing dollar or pound or mark. So it is a great boon that gold or silver are scarce and are costly to increase in supply.

But if government manages to establish paper tickets or bank credit as money, as equivalent to gold grams or ounces, then the government, as dominant money-supplier, becomes free to create money costlessly and at will. As a result, this "inflation" of the money supply destroys the value of the dollar or pound, drives up prices, cripples economic calculation, and hobbles and seriously damages the workings of the market economy.

The natural tendency of government, once in charge of money, is to inflate and to destroy the value of the currency. To understand this truth, we must examine the nature of government and of the creation of money.

Throughout history, governments have been chronically short of revenue. The reason should be clear: unlike you and I, governments do not produce useful goods and services which they can sell on the market; governments, rather than producing and selling services, live parasitically off the market and off society. Unlike every other person and institution in society, government obtains its revenue from coercion, from taxation. In older and saner times, indeed, the King was able to obtain sufficient revenue from the products of his own private lands and forests, as well as through highway tolls. For the State to achieve regularized, peacetime taxation was a struggle of centuries. And even after taxation was established, the kings realized that they could not easily impose new taxes or higher rates on old levies; if they did so, revolution was very apt to break out.

Controlling the Money Supply

If taxation is permanently short of the style of expenditures desired by the State, how can it make up the difference? By getting control of the money supply, or, to put it bluntly, by counterfeiting. On the market economy, we can only obtain good money by selling a good or service in exchange for gold, or by receiving a gift; the only other way to get money is to engage in the costly process of digging gold out of the ground. The counterfeiter, on the other hand, is a thief who attempts to profit by forgery, e.g., by painting a piece of brass to look like a gold coin. If his counterfeit is detected immediately, he does no real harm, but to the extent his counterfeit goes undetected, the counterfeiter is able to steal not only from the producers whose goods he buys. For the counterfeiter, by introducing fake money into the economy, is able to steal from everyone by robbing every person of the value of his currency. By diluting the value of each ounce or dollar of genuine money, the counterfeiter's theft is more sinister and more truly subversive than that of the highwayman; for he robs everyone in society, and the robbery is stealthy and hidden, so that the cause-and-effect relation is camouflaged.

Recently, we saw the scare headline: "Iranian Government Tries to Destroy U.S. Economy by Counterfeiting $100 Bills." Whether the ayatollahs had such grandiose goals in mind is dubious; counterfeiters don't need a grand rationale for grabbing resources by printing money. But all counterfeiting is indeed subversive and destructive, as well as inflationary.

But in that case, what are we to say when the government seizes control of the money supply, abolishes gold as money, and establishes its own

printed tickets as the only money? In other words, what are we to say when the government becomes the legalized, monopoly counterfeiter?

Not only has the counterfeit been detected, but the Grand Counterfeiter, in the United States the Federal Reserve System, instead of being reviled as a massive thief and destroyer, is hailed and celebrated as the wise manipulator and governor of our "macroeconomy," the agency on which we rely for keeping us out of recessions and inflations, and which we count on to determine interest rates, capital prices, and employment. Instead of being habitually pelted with tomatoes and rotten eggs, the Chairman of the Federal Reserve Board, whoever he may be, whether the imposing Paul Volcker or the owlish Alan Greenspan, is universally hailed as Mr. Indispensable to the economic and financial system.

Indeed, the best way to penetrate the mysteries of the modern monetary and banking system is to realize that the government and its central bank act precisely as would a Grand Counterfeiter, with very similar social and economic effects. Many years ago, the *New Yorker* magazine, in the days when its cartoons were still funny, published a cartoon of a group of counterfeiters looking eagerly at their printing press as the first $10 bill came rolling off the press. "Boy," said one of the team, "retail spending in the neighborhood is sure in for a shot in the arm."

And it was. As the counterfeiters print new money, spending goes up on whatever the counterfeiters wish to purchase: personal retail goods for themselves, as well as loans and other "general welfare" purposes in the case of the government. But the resulting "prosperity" is phony; all that happens is that more money bids away existing resources, so that prices rise. Furthermore, the counterfeiters and the early recipients of the new money bid away resources from the poor suckers who are down at the end of the line to receive the new money, or who never even receive it at all. New money injected into the economy has an inevitable ripple effect; early receivers of the new money spend more and bid up prices, while later receivers or those on fixed incomes find the prices of the goods they must buy unaccountably rising, while their own incomes lag behind or remain the same. Monetary inflation, in other words, not only raises prices and destroys the value of the currency unit; it also acts as a giant system of expropriation of the late receivers by the counterfeiters themselves and by the other early receivers. Monetary expansion is a massive scheme of hidden redistribution.

When the government is the counterfeiter, the counterfeiting process not only can be "detected"; it proclaims itself openly as monetary statesmanship for the public weal. Monetary expansion then becomes a giant scheme of hidden taxation, the tax falling on fixed income groups, on those groups remote from government spending and subsidy, and on thrifty savers who are naive enough and trusting enough to hold on to their money, to have faith in the value of the currency.

Spending and going into debt are encouraged; thrift and hard work discouraged and penalized. Not only that: the groups that benefit are the special interest groups who are politically close to the government and can exert pressure to have the new money spent on them so that their incomes can rise faster than the price inflation. Government contractors, politically connected businesses, unions, and other pressure groups will benefit at the expense of the unaware and unorganized public.

Free Market Economists: 400 Years Ago

Tracing the True Origins of Pro-Market Thinking

SEPTEMBER 01, 1995 by Llewellyn H. Rockwell Jr

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Students of free enterprise usually trace the origins of pro-market thinking to Scottish professor Adam Smith (1723-90). This tendency to see Smith as the fountainhead of economics is reinforced among Americans because his famed book *An Inquiry into the Nature and the Causes of the Wealth of Nations* was published the year of American independence from Britain.

There is much that this view of intellectual history overlooks. The real founders of economic science actually wrote hundreds of years before Smith. They were not economists as such, but moral theologians, trained in the tradition of St. Thomas Aquinas, and they came to be known collectively as the Late Scholastics. These men, most of whom taught in Spain, were at least as pro-free-market as the Scottish tradition came to be much later. Plus, their theoretical foundation was even more solid: they anticipated the theories of value and price of the "marginalists" of late-nineteenth-century Austria.[1]

If Italian city-states began the Renaissance of the fifteenth century, Spain and Portugal explored the new world in the sixteenth, and emerged as centers of commerce and enterprise. Intellectually, Spanish universities spawned a revival of the great Scholastic project: drawing on ancient and Christian traditions to investigate and expand all the sciences, including economics, on the firm ground of logic and natural law.

Because natural law and reason are universal ideas, the Scholastic project was to search for universal laws that govern the way the world works. And though economics was not considered a separate discipline,

these scholars were led to economic reasoning as a way of explaining the world around them. They searched for regularities in the social order and brought Catholic standards of justice to bear on them.

Francisco de Vitoria

The University of Salamanca was the center of Scholastic learning in sixteenth-century Spain. The first of the moral theologians to research, write, and teach there was Francisco de Vitoria (1485-1546). Under his guidance, the university offered an extraordinary 70 professorial chairs. As with other great mentors in history, most of Vitoria's published work comes to us in the form of notes taken by his students.

In Vitoria's work on economics, he argued that the just price is the price that has been arrived at by common agreement among producers and consumers. That is, when a price is set by the interplay of supply and demand, it is a just price. So it is with international trade. Governments should not interfere with the prices and relations established between traders across borders. Vitoria's lectures on Spanish-Indian trade—originally published in 1542 and again in 1917 by the Carnegie Endowment—argued that government intervention with trade violates the Golden Rule.

Yet Vitoria's greatest contribution was producing gifted and prolific students. They went on to explore almost all aspects, moral and theoretical, of economic science. For a century, these thinkers formed a mighty force for free enterprise and economic logic. They regarded the price of goods and services as a consequence of the actions of traders. Prices vary depending on the circumstance, depending on the value that individuals place on goods. That value in turn depends on two factors: the goods' availability and their use. The price of goods and services are a result of the operation of these forces. Prices are not fixed by nature, or determined by the costs of production; prices are a result of the common estimation of men.

Martín de Azpilcueta Navarrus

One student was Martín de Azpilcueta Navarrus (1493-1586), a Dominican monk, the most prominent canon lawyer of his day, and eventually the adviser to three successive popes. Using reasoning, Navarrus was the first economic thinker to state clearly and unequivocally that government price-fixing is a mistake. When goods are plentiful, there is no need for a maximum-set price; when they are not, price control does more harm than good. In a manual on moral theology (1556), Navarrus pointed

out that it is not a sin to sell goods at higher than the official price when it is agreed to among all parties.

Navarrus was also the first to fully state that the quantity of money is a main influence in determining its purchasing power. “Other things being equal,” he wrote, “in countries where there is a great scarcity of money, all other saleable goods, and even the hands and labor of men, are given for less money than where it is abundant.”

For a currency to settle at its correct price in terms of other currencies, it is traded at a profit, an activity which was controversial among some theorists on moral grounds. But Navarrus argued that it was not against the natural law to trade currencies. This was not the primary purpose of money, but “it is nonetheless an important secondary use.” He made an analogy with another market good. The purpose of shoes, he said, is to protect our feet, but that doesn’t mean they shouldn’t be traded at a profit. In his view, it would be a terrible mistake to shut down foreign exchange markets, as some people were urging. The result “would be to plunge the realm into poverty.”

Diego de Covarrubias y Leiva

The greatest student of Navarrus’s was Diego de Covarrubias y Leiva (1512-1577), considered the best jurist in Spain since Vitoria. The emperor made him chancellor of Castile, and he eventually became the bishop of Segovia. His book *Variarum* (1554) was the clearest explanation on the source of economic value to date. “The value of an article,” he said, “does not depend on its essential nature but on the estimation of men, even if that estimation is foolish.” It seems like such a simple point, but it was missed by economists for centuries until the Austrian School rediscovered this “subjective theory of value” and incorporated it into microeconomics.

Like all these Spanish theorists, Covarrubias believed that individual owners of property had inviolable rights to that property. One of many controversies of the time was whether plants that produce medicines ought to belong to the community. Those who said they should pointed out that the medicine is not a result of any human labor or skill. But Covarrubias said everything that grows on a plot of land should belong to the owner of the land. That owner is even entitled to withhold valuable medicines from the market, and it is a violation of the natural law to force him to sell.

Luis de Molina

Another great economist in the Vitoria-line of thinkers was Luis de Molina (1535-1601), among the first of the Jesuits to think about theoretical economic topics. Though devoted to the Salamancan School and its achievement, Molina taught in Portugal at the University of Coimbra. He was the author of a five-volume treatise *De Justitia et Jure* (1593 and following). His contributions to law, economics, and sociology were enormous, and his treatise went through several editions.

Among all the pro-free-market thinkers of his generation, Molina was most consistent in his view of economic value. Like the other Late Scholastics, he agreed that goods are not valued "according to their nobility or perfection" but according "to their ability to serve human utility." But he provided this compelling example. Rats, according to their nature, are more "noble" (higher up the hierarchy of Creation) than wheat. But rats "are not esteemed or appreciated by men" because "they are of no utility whatsoever."

The use-value of a particular good is not fixed between people or with the passage of time. It changes according to individual valuations and availability. This theory also explains peculiar aspects of luxury goods. For example, why would a pearl, "which can only be used to decorate," be more expensive than grain, wine, meat, or horses? It appears that all these things are more useful than a pearl, and they are certainly more "noble." As Molina explained, valuation is done by individuals, and "we can conclude that the just price for a pearl depends on the fact that some men wanted to grant it value as an object of decoration."

A similar paradox that befuddled the classical economists was the diamond-water paradox. Why should water, which is more useful, be lower in price than diamonds? Following Scholastic logic, it is due to individual valuations and their interplay with scarcity. The failure to understand this point led Adam Smith, among others, off in the wrong direction.

But Molina understood the crucial importance of free-floating prices and their relationship to enterprise. Partly this was due to his extensive travels and interviews with merchants of all sorts. "When a good is sold in a certain region or place at a certain price," he observed, so long as it is "without fraud or monopoly or any foul play," then "that price should be held as a rule and measure to judge the just price of said good in that region or place." If the government tries to set a price that is higher or lower, then, it would be unjust. Molina was also the first to show why it is that retail

prices are higher than wholesale prices: consumers buy in smaller quantities and are willing to pay more for incremental units.

The most sophisticated writings of Molina concerned money and credit. Like Navarrus before him, he understood the relationship of money to prices, and knew that inflation resulted from a higher money supply. “Just as the abundance of goods causes prices to fall,” he wrote—specifying that this assumes the quantity of money and number of merchants remain the same—so too does an “abundance of money” cause prices to rise—specifying that quantity of goods and number of merchants remain the same. He even went further to point out how wages, income, and even dowries eventually rise in the same proportion to which the money supply increases.

He used this framework to push out the accepted bounds of charging interest, or “usury,” a major sticking point for most economists of this period. He argued that it should be permissible to charge interest on any loan involving an investment of capital, even when the return doesn’t materialize.

Molina’s defense of private property rested on the belief that property is secured in the commandment, “thou shalt not steal.” But he went beyond his contemporaries by making strong practical arguments as well. When property is held in common, he said, it won’t be taken care of and people will fight to consume it. Far from promoting the public good, when property is not divided, the strong people in the group will take advantage of the weak by monopolizing and consuming all resources.

Like Aristotle, Molina also thought that common ownership of property would guarantee the end of liberality and charity. But he went further to argue that “alms should be given from private goods and not from the common ones.”

In most writings on ethics and sin today, different standards apply to government than to individuals. But not in the writings of Molina. He argued that the king can, as king, commit a variety of mortal sins. For example, if the king grants a monopoly privilege to some, he violates the consumers’ right to buy from the cheapest seller. Molina concluded that those who benefit are required by moral law to offset the damages they cause.

Vitoria, Navarrus, Covarrubias, and Molina were four of the most important among more than a dozen extraordinary thinkers who had solved

difficult economic problems long before the classical period. Trained in the Thomist tradition, they used logic to understand the world around them, and looked for institutions that would promote prosperity and the common good. It is hardly surprising, then, that many of the Late Scholastics were passionate defenders of the free market.

The members of the School of Salamanca would not have been fooled by the fallacies that dominate modern economic theory and policy today. If only our modern understanding could once again arrive at that high road paved for us more than 400 years ago. []

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1. The scholar who rediscovered the Late Scholastics was Raymond de Roover (1904-1972). For years, they had been ridiculed and sloughed off, and even called pre-socialists in their thought. Karl Marx was the "last of the Schoolmen," wrote R. H. Tawney. But de Roover demonstrated that almost all the conventional wisdom was wrong (*Business, Banking, and Economic Thought*, edited by Julius Kirchner [Chicago: University of Chicago Press, 1974]).

Joseph Schumpeter gave the Late Scholastics a huge boost with his posthumously published 1954 book, *History of Economic Analysis* (New York: Oxford University Press). "It is they," he wrote, "who come nearer than does any other group to having been the `founders' of scientific economics." About the same time there appeared a book of readings put together by Marjorie Grice-Hutchinson (*The School of Salamanca* [Oxford: Clarendon Press, 1952]). A full-scale interpretive work appeared later (*Early Economic Thought in Spain, 1177-1740* [London: Allen & Unwin, 1975]).

In our own time, Alejandro Chafuen (*Christians for Freedom [San Francisco: Ignatius Press, 1986]) linked the Late Scholastics closely with the Austrian School. In the fullest and most important treatment to date, Murray N. Rothbard's An Austrian Perspective on the History of Economic Thought (London: Edward Elgar, 1995) presents the extraordinarily wide range of Late Scholastic thought, and offers an explanation for the widespread misinterpretation of the School of Salamanca, plus an overarching framework of the intersection between economics and religion from St. Thomas through the mid-nineteenth century.*

The Ethics of War: Hiroshima and Nagasaki After 50 Years

Was the Atomic Bomb Necessary to End World War II?

SEPTEMBER 01, 1995 by Gregory Pavlik

Mr. Pavlik is director of The Freeman Op-Ed Program at The Foundation for Economic Education. He is editor of Forgotten Lessons: Selected Essays of John T. Flynn*, to be published by FEE next month.*

The first use of an atomic bomb in warfare took place on August 6, 1945. The weapon was dropped on the Japanese city of Hiroshima by the U.S. bomber *Enola Gay*, instantaneously destroying four square miles in the middle of the population center. The blast killed 66,000 men, women, and children, and injured an additional 69,000. A full 67 percent of Hiroshima's buildings, transportation systems, and urban structures were destroyed.

The next (and only other) atomic bomb to be dropped in warfare was detonated over the Japanese city of Nagasaki three days later. That blast killed 39,000 civilians and injured another 25,000; 40 percent of the city was destroyed or unrepairable. The Japanese government surrendered to the U.S. government on August 10, 1945.

Since the last "good war," a debate has ensued over the moral legitimacy of the use of nuclear weapons, particularly against civilians. The critics hold that it is a crime to incinerate civilians en masse; defenders commonly claim that the bombing was necessary to bring the war to a close, thereby saving countless American lives.

Most of those who make this claim do so in earnest. The problem is that this defense is both historically false, and taken to its logical conclusion, extremely dangerous.

But a discussion of the bombing of Hiroshima and Nagasaki cannot proceed without an overview of the imperialist motives for Japanese military aggression, which reflected the age-old drive for power through

military intimidation and conquest. The Japanese desired a series of conquests, to constitute the Greater East Asian Co-Prosperity sphere. This involved, most importantly, penetration into Korea, Manchuria, China, French Indochina, Malaya, and Burma.

What was clearly not their goal was a prolonged conflict with the United States or any of the other Allied Powers. After establishing their Asian imperium and a defensive perimeter, the Japanese expected to reach a negotiated peace.

It should be clear that the attack on the American military base at Pearl Harbor was not a part of the long-term planning of the Japanese government. Indeed, conservatives and isolationists have long held the view that the Roosevelt administration provoked the Japanese into their aggressive stance as a back door to war in Europe.

Consider the facts leading up to the attack: Roosevelt had made a commitment to Churchill that the United States would enter into the Asian conflict if the British were attacked; the United States was shipping munitions to both Russia and Great Britain; Roosevelt had placed an embargo on oil and metals against Japan; and in the most egregious example, had sent the "unofficial" Flying Tigers to attack the Japanese in China in 1941. All were violations of U.S. neutrality and acts of belligerency.

Vocal critics on the Old Right—such as John T. Flynn and Harry Elmer Barnes—held that the Roosevelt administration was aware of the attack in advance, both from decoded transmissions and intelligence reports. The weight of history has ironed out the appearance of radicalism from the latter contention. Whatever the truth of the Pearl Harbor affair, an extended war with the United States was not a desire of the Japanese.

Japanese Objectives

Apologists for the bombing of Hiroshima and Nagasaki need to consider the overall thrust of the Japanese objectives. These objectives do not square with the notion that Japan was intractably set into a policy of mortal combat with the Americans. Not that the Japanese were not willing to fight—they did so for four bloody and grueling years. Yet the oft-repeated claim that the Japanese were willing to sacrifice every last individual before ending the war is nonsense.

In reality, the Japanese were willing to end hostilities with the United States as quickly as they began. Startlingly neglected is the January 1945

offer of the Japanese government to surrender. As the eminent English jurist Frederick J.P. Veale pointed out in *Advance to Barbarism*,

"Belatedly it has been discovered that seven months before it [the atomic bomb] was dropped, in January 1945, President Roosevelt received via General MacArthur's headquarters an offer by the Japanese Government to surrender on terms virtually identical to those accepted by the United States after the dropping of the bomb: In July 1945, as we know, Roosevelt's successor, President Truman, discussed with Stalin at Bebelsburg the Japanese offer to surrender."

Clearly, then, the bomb did not have to be dropped to save the lives of American soldiers. The war in the Pacific could have ended prior to the European conflict. One suspects that the conflagration's extension beyond the confines of necessity had more to do with the politics of war than military strategy. The fact that consultation with Stalin played a key role in the decision tends to implicate both what historian William L. Neumann pointed to as "the historic ambitions of Russia in Asia" and "the expansionist element in Stalinist Communism."

The Japanese offer to surrender came at a time when surrender made sense. Consider the strange apology for the bombing offered by the historian Robert R. Smith, the logic of which may escape even the most alert reader:

"Allied air, surface, and submarine operations had cut the home islands from all sources of raw materials. The effective and close blockade of the Allies established around the home islands would ultimately have made it impossible for the Japanese to supply their military and civilian components with even the bare essentials of life. An early surrender was inevitable, probably even without the impetus supplied by the atomic blasts. It was better for both the Allies and the Japanese the end came when it did."

Even if the Japanese had showed no signs of surrender and had remained obstinate in belligerency, the notion that the most human carnage possible must be inflicted on the civilians of an enemy government to force a surrender and minimize the losses of one's own troops is perverse. Consider the consequences of adopting a policy of total war. Logically, if you expect an enemy to pursue this strategy, you will do everything in your power to do the same before the enemy has the opportunity to annihilate you.

It's a step beyond the Cold War policy appropriately referred to as Mutually Assured Destruction. These doctrines place their backers alongside such military strategists as Ghengis Khan, Attila the Hun, and the Assyrian King Tigleth Pileser who delighted in the erection of pyramids of human skulls. To adopt this justification for the bombing is to ask any putative future enemy to assume we mean to destroy him and to alert him to the necessity of killing as many American civilians as is possible before we do the same to him.

Indeed, by this logic, the United States should have dropped nuclear weapons in the heart of Christendom to bring Germany to her knees as quickly as possible, a prospect that any civilized person must contemplate with horror. Yet, this was how many of the scientists working on the bomb, including Albert Einstein, hoped the American government would use it.

The Canons of Warfare

Many opponents of the use of the bomb point to the canons of civilized warfare in Europe, developed over 1,500 years. Again, Veale explains: "the fundamental principle of this code was that hostilities between civilized people must be limited to the armed forces engaged," and in his book he lists a splendid array of examples of European leaders holding to these principles, even at the price of victory.

In fact, the professional conduct of European soldiers was such that in 1814 Marshal Davout was reproached sternly and threatened with a "war crime trial" for his ugly treatment of the residents of Hamburg before his surrender—not by the Prussians, but by his own people. He was charged with having "rendered the name of Frenchman odious."

The crucial flaw in relying on the European military codes as an attack on the bombing of the Japanese is implicit in the explanation provided by Veale. By "civilized people," the European codes referred only to Europeans. That is, the rules and restrictions of civilized warfare applied only to so-called "secondary" wars, or intra-European wars, and not to "primary" wars that involved the clash of European and non-European powers. In the latter case, the limitations on aggression against civilians literally had no bearing on the conduct of the belligerents.

A number of cases that have a special bearing on our subject come to mind. The Japanese city of Kagoshima was destroyed by the British Navy under Admiral Kuper in 1863 for the sole purpose of winning trade concessions. So the rules of conduct in war only extended so far. Nor was

America shy about using military aggression against the Japanese. The United States had a long history of belligerent tactics against Japan, starting with the "gunboat diplomacy" of Commodore Perry in 1854. U.S. ships were also involved in the destruction of the city of Shimonoseki in 1864, an operation essentially directed in the interests of British imperialism.

In 1908, President Theodore Roosevelt was not above sending the United States fleet to the very shores of Japan. This type of militaristic diplomacy formed the basis of the foreign policy of Franklin Roosevelt, who was also a committed Sinophile. Much of the administration's early naval build-ups and movements in the Pacific, starting as early as 1934, were aimed at intimidation of the Japanese. Roosevelt's policy rested on Western and U.S. precedent.

In fact, it seems plausible at first glance to argue that by the centuries-old standards of European civilized conduct in war, the bombing of Japan was an acceptable method of battle. (Incidentally, the use of atomic weapons against Germany was not and could never be.) For obvious reasons, contemporary defenders of the bombing are loath to broach this defense, as it smacks of the twentieth-century heresy of racism. But there is also a caveat to this argument.

However much the doctrine of the sanctity of noncombatant life was limited in practice, there existed a long tradition in European ethics that held that the killing of noncombatants was morally offensive and wrong. Christianity, the faith of the West, is a religion imbued with a limited universalism in content, derived from the belief that Christ died on the cross for all men. Hence, the moral teachings of the Christian faith regarding the sanctity of human life can reasonably be understood to have been intended to apply universally.

Saint Augustine, Huguccio, and Grotius

Saint Augustine held that taking the life of a noncombatant was murder. Even before Christianity had begun its penetration into the Northern lands of Europe, fundamental teachings regarding the conduct of war were being developed. Nor did these doctrines change with the development of Catholic teaching throughout Europe and the emergence of Thomistic Scholasticism. As early as the twelfth century, Huguccio, a professor at Bologna, had revised the patristic teachings regarding natural law in his Summa of 1188. There he developed the notion that private property was a

natural right, not subject to the interference of private persons or the state, under normal conditions.

This fundamentally libertarian teaching laid the groundwork for the ethical considerations of the rights of noncombatants in war. Indeed, the early twentieth-century international agreements regarding the rules of war were an outgrowth of this doctrine, based largely on the natural law analysis of the Dutch Scholastic Hugo Grotius. In fact, the work of Grotius is foundational to understanding both the Hague and Geneva Conventions.

Grotius identified four fundamental precepts of natural law, from which he developed his theory of international law. They were: (1) no person or body of persons, including the state, may legitimately initiate violence against another person or body of persons; (2) no person or body of persons may seize the property of another; (3) both persons and bodies of persons are bound by contracts or treaties that they might enter into; (4) no person or body of persons may commit a crime.

These libertarian postulates were extremely influential. Through practice and judicial development, nuances and adaptations were made in the rules of conduct. However, they were derived from Christian teachings that were meant to apply universally.

Critics of the bombing have made a strong moral case against the action. This is why the defenders of the bombing use strongly moralistic terms themselves. One of the results is possibly the most bizarre and obviously wrong.

Most veterans and defenders of the bombing of Hiroshima and Nagasaki claim that whatever the reasons for the bombing and its support, racism was not among them. This is simply not true. The U.S. War Department and related agencies that specialized in producing hate propaganda and lies developed specifically racialist attacks on the Japanese.

Propaganda films, shown to theaters across the country, whipped Americans into war hysteria with films attacking the Japanese with their "grinning yellow faces." American movie audiences were encouraged to cheer as they watched images of the "upstart yellow dwarfs" meeting their timely ends. The government played on and encouraged prejudice and specifically racial animosity against the Japanese. To be fair, the Japanese held—and still hold—similar views of Americans, views not discouraged by their government.

The most revealing aspect of this latter point is not that racism was involved in drumming up the war spirit, but rather that the truth of the matter has been so thoroughly obscured.

Oddly enough, many apologists are conservatives, who should be the first to recognize that the essence of government is its monopoly on violence. This is a paramount consideration in their analysis of the role of the government in domestic affairs. Consistency demands that conservatives begin to apply their principles across the board—to foreign policy as well as domestic policy. The alternative is the road we now travel, and it leads to total war and the total state.

The Attack on Grassroots Liberty

The Intended Protector of Constitutional Government Has Aided Its Demise

SEPTEMBER 01, 1995 by William J. Watkins Jr.

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Since the framing of the Constitution there has been a great debate surrounding the role of the federal judiciary. Jeffersonians from the agrarian South saw the federal courts as mechanisms for consolidation and thus dangerous to liberty, whereas the Northern commercial and manufacturing interests saw the courts as their partners in national economic integration.

Though Hamilton described the federal judiciary as the weakest of the national government's three branches "with no influence over either the sword or purse, no direction of either the strength or the wealth of society . . . ," history has told a different story. What was to be the protector of constitutional government has played the critical role in its demise.

Nevertheless many respected scholars have called for an expanded role for the federal judiciary in securing individual liberty.[1] Such proponents of "principled judicial activism" often use the Ninth Amendment (which declares that the people retain other rights than those enumerated in the Constitution), or the privileges and immunities and due process clauses of the 14th Amendment to support their positions. Rather than interpreting the text of the Constitution strictly, they rely on natural rights or similar doctrines for a broad interpretation. For example, Stephen Macedo writes, "The Constitution is better read in terms of the aspirations set out in the preamble. . . ." than in terms of original intentions.[2]

The design of such an approach is the protection of individual liberty against the tyranny of local majorities that regulate "almost every aspect of personal behavior."[3] But rather than furthering the cause of liberty, an

expansion of the judiciary's role inevitably leads to greater governmental consolidation, which has been liberty's greatest enemy.

An example of the consolidationist leanings of those who profess to be friends of liberty can be found by examining their critique of a landmark Supreme Court decision. In *Lochner v. New York* the Court struck down New York's regulation of the number of hours bakery employees were permitted to work. The Court declared: "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment."[4]

Rather than simply examining the classes of governmental power in question, the Court examined the consequences of the use of the police power (the power of the state to provide for the public's health, safety, and morals) and found the regulation to have "no reasonable foundation." Though the Constitution does not speak to liberty of contract, by using the 14th Amendment the Court was able to strike down what once would have been considered a normal exercise of a state's police power.

In his dissent, Justice Oliver Wendell Holmes censured the majority for deciding the case "upon an economic theory which a large part of the country does not entertain." Where there is no specific prohibition in the Constitution, Holmes asserted that the majority has the right to "embody their opinions in law."[5]

The proponents of judicial activism in defense of individual liberty accuse Holmes of ignoring "a number of . . . substantive clauses . . . from the takings, to the contracts, to the privileges and immunities, to the due process of law clauses . . . which would have given additional weight to this substantive understanding"[6] that led the majority to strike down New York's maximum hour regulation. "Substantive understanding," of course, refers to substantive due process. Substantive due process is defined as "an irreducible sum of rights . . . vested in the individual with which government could not arbitrarily interfere."[7]

At first blush, most friends of the private property order would agree that *Lochner* was correctly decided, applaud the Court's substantive understanding of the Constitution, and chide Holmes for his dissent. However, rather than protect or expand individual liberty, *Lochner* and the reasoning behind it actually diminish liberty.

It must be remembered that the Framers created a limited national government that was only to defend the states against foreign invaders and

internal convulsions, and regulate interstate and foreign commerce. If one thing was learned from British rule it was the dangers of centralized power. In the Declaration of Independence one of the central complaints of the colonists was that the King had abolished "our most valuable Laws" and had suspended "our own Legislatures." The colonials placed such a high value on local self-government that they were willing to war against the mighty British Empire.

Though the 14th Amendment, which was ratified in 1868, did alter the federal system to a degree, it did not make the Constitution and the history behind the document a blank letter, as many of our modern judicial activists would allege. No doubt many radical Republicans did see the amendment as an embodiment of the vague intricacies of natural rights,[8] but many of their contemporaries saw things otherwise. For instance in the *Slaughterhouse Cases* (1873) the Supreme Court declared that the purpose of the Amendment was not "to destroy the main features of our general system. . . . [O]ur statesmen have still believed that the existence of the States with powers for domestic and local government . . . was essential to the perfect working of our complex form of government. . . ."[9]

In light of the historical context of the Union and the dangers of centralized power, Holmes, in upholding New York's regulation, was actually acting as more of a friend to liberty than the other justices who struck down New York's regulation. Holmes' understanding of liberty was in line with a traditional American understanding—the right of a corporate body to make its own laws.

Certainly Holmes would agree that there are subjects on which a majority ought not be permitted to legislate. But those subjects are and should be made explicit in state and national constitutions. Were natural rights or mere constitutional aspirations to be the guides, then the meaning of the Constitution would rest on the fancy of the federal courts' interpretations of the vague "penumbras and emanations" of the document.

In reality, what the proponents of judicial activism and substantive understanding support is a return to the days when the King exercised a negative over all of the legislation emanating from the colonial legislatures. They would replace George III with but another unelected official—a judge.

One of the greatest critics of such a role for the courts was the great jurist Learned Hand. Of such an activist judiciary Hand wrote: "For myself it would be most irksome to be ruled by a bevy of Platonic Guardians, even

if I knew how to choose them, which I assuredly do not. If they were in charge I should miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs."[10]

A branch of the national government that acts as a Council of Revision for all state legislation goes against the grain of American tradition. Moreover, it is dangerous insofar as it consolidates power in Washington. "When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power," warned Jefferson, "it will . . . become as venal and oppressive as the government from which we are separated." Liberty at the price of consolidation is not liberty at all, but rather centralized tyranny.

By calling for heightened activity of the federal judiciary in protecting individual rights, proponents of judicial activism promote the eradication of local self-government and thus the diminution of liberty. Under a substantive understanding of the Constitution rather than strict construction, no line can be drawn to stop the courts from acting as unrestrained national legislatures at the expense of the states and localities.

Though decisions such as *Lochner* are appealing, one must be cognizant of the fact that no matter what those who have good intentions say, any decision that consolidates power in the national government is an attack on the foundation of self-government and liberty. []

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1. See, for example, Stephen Macedo, *The New Right v. The Constitution* (Washington, D.C.: The Cato Institute, 1986), chapters V, VI, VII; Bernard H. Siegan, *The Supreme Court's Constitution* (New Brunswick N.J.: Transaction, Inc., 1987); Clint Bolick, *Grassroots Tyranny* (Washington, D.C.: The Cato Institute, 1993).
2. Macedo, *op. cit*., p. 58.
3. Bolick, *op. cit*., p. 8.
4. *Lochner v. New York*, 198 U.S. 45 (1905).
5. *Ibid*. at 75.
6. Roger Pilon, "On the Foundations of Economic Liberty," *The Freeman*, September 1988, p. 344.
7. Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), p. 232.
8. For a history of the 14th Amendment's natural rights linkage, see Bernard H. Siegan, *op. cit*., chapter 3.

9. *Slaughterhouse Cases*, 16 Wallace 36 (1873).

10. Learned Hand, *The Bill of Rights: The Oliver Wendell Holmes Lectures* (Cambridge: Harvard University Press, 1958), p. 73.

The Crusade for Politically Correct Consumption

Neo-Puritanism Is Running Amok

SEPTEMBER 01, 1995 by Thomas J. DiLorenzo

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Neo-puritanism seems to be running amok in the United States. The federal excise tax on alcohol was doubled in 1991; many states have sharply increased tax rates on tobacco products and have enacted myriad smoking bans; the *Washington Post* reports a growing movement to ban the wearing of perfume in the workplace; and the *New York Times* recently promoted the idea of imposing new "sin taxes" on high-fat foods. In the past year, "reports" issued by various Washington-based, neo-puritanical political activists have condemned hot dogs, Chinese, Italian, and Mexican food, beer, steak, milk(!), and even golf courses (too many lawn chemicals).

The various nonprofit organizations that are promoting politically correct consumption, such as the American Cancer Society (ACS), the American Heart Association (AHA), the American Lung Association (ALA), and the Center for Science in the Public Interest, all describe themselves as "public interest" advocates. Despite their altruistic rhetoric, however, these organizations benefit financially from their attack on smoking, drinking, and general consumer enjoyment. They typically lobby for "sin taxes" that earmark revenues *to them* so that they can continue to hector the public into adopting "politically-correct" lifestyles. There is much evidence, moreover, that the expenditure of these funds has done nothing to improve public health, and may even have been harmful to it in some cases. A case in point is California's tobacco tax.

California's Tobacco Tax Pork Barrel

California voters passed a referendum in 1988 (Proposition 99) that increased the state's cigarette tax by 25 cents a pack and earmarked the funds for anti-smoking education in schools and communities, hospital and

physician treatment of indigent patients, research on tobacco-related diseases, and "environmental concerns." The last category was apparently established to buy the political support of environmental groups. Over $500 million per year was initially raised from the tax.

The way in which the new tax was promoted—as a constitutional amendment—illustrates that the main priority was always to create a revenue source for neo-puritanical political activists, not to deter smoking.

A lobbyist for the California Medical Association, for example, proclaimed that "the principal reason for the tax is not to raise money. The principal reason is to stop smoking." And, "if a tax were imposed and it raised nothing, we would be delighted—that would mean nobody would be buying cigarettes."[1] The facts, however, present a very different picture.

The proposed cigarette tax increase could have been approved by the California legislature if the coalition's only objective was to reduce the incidence of smoking by raising the price of cigarettes—a straightforward application of the economic law of demand. There was a "problem" however, in that in 1979 California voters passed Proposition 4, a constitutional amendment that limited state spending. If the state were to reach its spending limit, then tax revenues from cigarette taxes *would have to be refunded* to smokers in particular and to the public in general. The ACS, ALA, AHA, and the California Medical Association would get nothing, even though the tax's supposedly salutary effects on cigarette consumption, which the coalition claimed were its only concern, would still prevail.

The coalition could not countenance such an outcome, so it pushed for a statewide referendum, Proposition 99, that would add another constitutional amendment. This strategy was necessary, according to state assemblyman Lloyd Connely, the coalition's legislation "connection," because of "the so-called Gann spending limit passed by voters in 1979." Without a constitutional amendment, "the legislature could be forced to refund the tax if the state reaches its spending limit."[2] Thus, the main objective of the coalition was *to capture the revenue from the cigarette tax*, not to discourage smoking.

A Pork Barrel for Neo-Puritans

Proposition 99 created a giant pork barrel for a vast network of public-health bureaucrats, public schools, and nonprofit political activists under the umbrella group, "Americans for Nonsmokers' Rights" (ANR) whose

spokesman, Glenn Barr, has stated his goal as to "force [smokers] to do the right thing for themselves."[3]

The law has showered the public schools and local chapters of the American Cancer Society, American Lung Association, and American Heart Association with more than $150 million ostensibly to teach children to be nonsmokers. But in reality much of the money has simply been squandered on student "gift" programs that give away backpacks, gift certificates, movie tickets, compact discs, radios, sports equipment, and even lottery tickets as "rewards" for a promise to quit smoking.[4]

Some school districts used the funds for pool parties, carnivals, trips to Yosemite National Park, and to sponsor "outrageous stunt" contests that award prizes to whoever performs the weirdest feat to shock a loved one into stopping smoking. Past winners include a girl who consumed an entire can of Mighty Dog dog food.

Since no serious effort is made to verify whether students have taken up smoking or not, the program is simply a giant giveaway of tax dollars and another make-work program for nonprofit sector "activists," government health department bureaucrats, and public school administrators. A survey by the California Department of Health Services failed to detect any decline in adolescent smoking, and some health researchers believe the program may actually have *increased* teenage smoking by making it such an official taboo.[5] A state-funded evaluation of the anti-smoking education efforts by University of California professor John P. Pierce concluded that they had "no effect on tobacco use."[6]

Proposition 99 forbids the use of tax funds "to promote partisan politics or candidates" or "to promote the passage of any law." But the tax-funded political activists have blatantly flouted this law from the beginning by lobbying for hundreds of anti-smoking ordinances. For example, Contra Costa County published minutes from a public meeting in which it promised to "play a crucial role in mobilizing community support" for a proposed ordinance.[7] Sacramento County sent out flyers urging voters to pass an anti-smoking ordinance, and government employees from Butte County spent work time lobbying for an ordinance there.[8] Government officials and political activists have gotten away with violating the laws prohibiting tax-funded politics by claiming that the funds are used for "education," not politics.

Most of the "research" funded by Proposition 99 is so useless that even the legislative sponsor of the law, state assemblyman Philip Isenberg, demanded a reallocation of funds away from research and toward indigent and prenatal care in 1994. He became skeptical of the value of "research" on how quickly one's teeth turn yellow from smoking or "discovering" that teenage "troublemakers" tend to smoke.[9] Some of the research money is used for political intelligence gathering and "doesn't deserve to be classified as research," according to former California Assembly Speaker Willie Brown. Brown was referring to the more than $4 million in grants given to University of California at San Francisco Professor Stanton Glantz for his work "tracking tobacco industry activities in California," which Brown says is what politicians do to each other when running for re-election and has nothing to do with disease research.

The California state assembly defunded Glantz and diverted the money (and other "research" money) to indigent care, prenatal care for poor women, and medical care for people with inherited diseases. Under the umbrella of Americans for Nonsmokers' Rights, of which he is president, Glantz then sued California for devoting too much money to medical care for indigents and too little for his political spying operation.

In addition to suing the California legislature because of his apparent belief that his research grants from the state should be considered an entitlement, Glantz applied for and received federal grants for his "research." According to Freedom of Information Act information received by the author, the National Cancer Institute (NCI) awarded Glantz $223,214 in 1994, the first installment on a three-year grant.

NCI is using taxpayers' funds to pay Glantz to spy on both the producers and consumers of cigarettes. Among the items listed on his proposed research agenda:

- Collecting data on campaign contributions by the tobacco industry since 1975;
- Studying "the role of coalition politics" in passing tobacco excise taxes so that more taxes can be passed in other states;
- Producing "how to lobby" manuals for other neo-puritanical political activists;
- Conducting "opposition research" and spying on various "smokers' rights" groups that have sprung up.

"Preliminary research" has revealed that these groups seem to rely on arguments related to freedom, individual rights, liberty, the U.S. Constitution, and the paternalistic nature of government. They also seem to encourage tolerance, respect for others, peaceful coexistence, and good will toward others, according to Glantz's grant application.

One purpose of Glantz's tax-funded research is to try to discredit all these principles and to construct counterarguments, utilizing his "extensive database of media contacts," which he says includes all the major television networks.

Glantz and other anti-smoking zealots from California have already proven that they care little for civil liberties in their crusade for politically correct behavior. For example, they used taxpayers' money in California to pay (other people's) children to conduct "sting" operations against convenience store owners, an activity condemned by local police as "vigilantism." The teenagers were paid to try to buy cigarettes to "spotlight" the illegal sale of cigarettes to minors. When the practice was criticized by law enforcement officials, the activists justified the "sting" operation by saying, "a lot of people [other activists, presumably] agree with what we're doing."[10] What a lesson to be teaching children: the ends justify the means as long as "a lot" of people agree with them.

Coercion and Elitism

Federal, state and local governments have funded an entire industry of anti-smoking crusaders, but smoking is just the first target of these neo-puritans. As ANR vice-president Julia Carol told the *Washington Post*, if tobacco disappeared, they'd "simply move on to other causes."[11]

The neo-puritan movement is composed of elitists who seek to use the coercive powers of the state to express their pet peeves and to force others into politically correct consumption patterns. In the case of smoking, all the restrictions, bans, and taxes are justified on two basic grounds: so-called second-hand smoke is a health hazard; and smoking imposes a financial burden on the rest of society by increasing health care costs. Both rationales are bogus.

There is no scientific evidence that second-hand smoke causes cancer, period. And researchers at the Rand Corporation and elsewhere have pointed out that the costs that smokers may impose on others is more than counterbalanced by the taxes they pay and by the fact that, because they have a higher chance of dying earlier because of cancer or heart disease,

they require lower pension and Social Security benefits.[12] Smokers subsidize the rest of society.

But there is more than economics at stake, as nineteenth-century writer Lysander Spooner showed in *Vices Are Not Crimes*.[13] On the matter of criminalizing such activities as taking a puff on a cigarette in one's own private office, which is now illegal in Maryland and a number of other states, Spooner pointed out that "it is a maxim of the law that there can be no crime without a criminal intent; that is, without the intent to invade the person or property of another. But no one ever practices a vice with any such criminal intent. He practices his vice for his own happiness solely, and not from any malice toward others."

Thus, the criminalization of the pet peeves of neo-puritanical elitists turns one of the most important maxims of the law on its head. Unless we make this very important distinction between vices and crimes, moreover, then "there can be on earth no such thing as individual right, liberty, or property." For every human being has his or her vices. And "if government is to take cognizance of any of these vices, and punish them as crimes, then, to be consistent, it must take cognizance of all, and punish all, impartially." The consequence would be that "everybody would be in prison for his or her vices," whether they be "gluttony, drunkenness, prostitution, gambling, prize-fighting, tobacco-chewing, smoking, and snuffing, opium-eating, corset-wearing, idleness, waste of property, avarice, hypocrisy, etc., etc."

Ludwig von Mises added, some 70 years later, that once government determines man's consumption, the question becomes, "why limit the government's benevolent providence to the protection of the individual body only?" Why not prevent us, Mises continued, from "reading bad books and seeing bad plays, from looking at bad paintings and statues and from hearing bad music?" If one abolishes one's freedom to consume, Mises concluded, then one takes all freedoms away. "The nave advocates of government interference with consumption delude themselves when they neglect what they disdainfully call the philosophical aspect of the problem. They unwittingly support the cause of censorship, inquisition, religious intolerance, and the persecution of dissenters."[14] []

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Legislation and Law in a Free Society

Legislation-Based Systems Have Pernicious Effects

SEPTEMBER 01, 1995 by N. Stephan Kinsella

Libertarians and classical liberals have long sought to explain what sorts of laws we should have in a free society. But we have often neglected the study of what sort of legal system is appropriate for developing a proper body of law.

Historically, in the common law of England, Roman law, and the Law Merchant, law was formed in large part in thousands of judicial decisions. In these so-called "decentralized law-finding systems," the law evolved as judges, arbitrators, or other jurists discovered legal principles applicable to specific factual situations, building upon legal principles previously discovered, and statutes, or centralized law, played a relatively minor role. Today, however, statutes passed by the legislature are becoming the primary source of law, and law tends to be thought of as being identical to legislation. Yet legislation-based systems cannot be expected to develop law compatible with a free society.

Certainty, which includes clarity of and stability in the law, is necessary so that we are able to plan for the future. Often it is thought that certainty will be increased when the law is written and enunciated by a legislature, for example in the civil codes of modern civil-law systems.

As the late Italian legal theorist Bruno Leoni pointed out, however, there is much more certainty in a decentralized legal system than in a centralized, legislation-based system. When the legislature has the ability to change the law from day to day, we can never be sure what rules will apply tomorrow. By contrast, judicial decisions are much less able to reduce legal certainty than is legislation.

This is because the position of common-law or decentralized judges is fundamentally different from that of legislators in three respects. First,

judges can only make decisions when asked to do so by the parties concerned. Second, the judge's decision is less far-reaching than legislation because it primarily affects the parties to the dispute, and only occasionally affects third parties or others with no connection to the parties involved. Third, a judge's discretion is limited by the necessity of referring to similar precedents. Legal certainty is thus more attainable in a relatively decentralized law-finding system like the common law, Roman law, or customary law, than in centralized law-making systems where legislation is the primary source of law.

Negative Effects of Uncertainty

Legislation tends to interfere with agreements that courts would otherwise have enforced and thereby makes parties to contracts less certain that the contract will ultimately be enforced. Thus, individuals tend to rely less on contracts, leading them to develop costly alternatives such as structuring companies, transactions, or production processes differently than they otherwise would have.

Another pernicious effect of the increased uncertainty in legislation-based systems is the increase of overall time preference. Individuals invariably demonstrate a preference for earlier goods over later goods, all things being equal. When time preferences are lower, individuals are more willing to forgo immediate benefits such as consumption, and invest their time and capital in more indirect (i.e., more roundabout, lengthier) production processes, which yield more and/or better goods for consumption or for further production. Any artificial raising of the general time preference rate thus tends to impoverish society by pushing us away from production and long-term investments. Yet increased uncertainty, which is brought about by a legislation-based system, causes an increase in time preference rates because if the future is less certain, it is relatively less valuable compared to the present.

In addition to materially impoverishing society, higher time preference rates also lead to increased crime. As a person becomes more present-oriented, immediate (criminal) gratifications become relatively more attractive, and future, uncertain punishment becomes less of a deterrent.

Central Planning and Economic Calculation

Ludwig von Mises showed that, without a decentralized private property system, the free market prices which are essential in economic calculation cannot be generated. As Leoni has explained, Mises' criticism of

socialism also applies to a legislature attempting to "centrally plan" the laws of a society. The impossibility of socialism is only a special case of the general inability of central planners to collect and assimilate information widely dispersed in society. The widely dispersed, decentralized character of knowledge and information in society simply makes it too difficult for centralized legislators to rationally plan the laws of society.

Legislators' inescapable ignorance also makes them less able to truly represent the general will of the populace and likely to be influenced by special interests. Because of their ignorance, they have no reliable guide for knowing what statutes to enact, which makes them more likely to be influenced by lobbyists and special interest groups. This leads to statutes that benefit a select few at the expense of others and, in the long run, at the expense of all of society.

Decentralized law-finding systems like the common law, on the other hand, are analogous to free markets in that a natural order, unplanned by government decrees, arises in both. Additionally, as pointed out by Richard Epstein, because alteration of legislation and regulation is likely to have more of a payoff for lobbyists than convincing a judge to change common-law type rules, judges are also less likely to be the target of special interests than are legislators.

The Proliferation of Laws

Because of the systematic ignorance that legislators face, legislation often disrupts the delicate economic, legal, and social order of society, leading to unintended consequences. And invariably, because of government propaganda combined with public ignorance and apathy, the inevitable failures of legislation are blamed, not on interventionist government, but on freedom and unregulated human conduct, leading to even more meddlesome legislation.

Such a continual outpouring of artificial laws has many insidious effects. As special interest groups become successful, others become necessary for self-defense, and soon a legal war of all against all begins to emerge. Thus we are led into conflict rather than cooperation. Additionally, when so many laws exist, and with such arcane, vague, complex language as is common today, it becomes impossible for each citizen to avoid being a law-breaker—especially given the perverse rule that "ignorance of the law is no excuse." Almost everyone has violated a tax law, securities regulation, "racketeering" law, gun law, alcohol law, customs regulation, or at least

traffic ordinance. But when we are all lawbreakers the law is discredited and, what is worse, the government can selectively and arbitrarily enforce whatever law is convenient against any "trouble-maker."

Furthermore, as another Italian theorist, Giovanni Sartori, has pointed out, when legislation is thought of as the primary source of law, citizens become more accustomed to following orders, and thus become more docile, servile, and less independent. Once people lose their rebellious spirit, it is easier and more likely for the government to become tyrannical.

Because of the danger of legislation, several constitutional safeguards should accompany its exercise. Supermajority and referendum requirements are one way to limit the legislature. Another way would be for all legislation to be constitutionally limited to replacing the opinion of a given court decision with a new decision. Then, if a given case or line of cases were issued that had particularly egregious reasoning or results, the legislature could rewrite the unfortunate opinion in better form, and enact this into law, as if the court had first issued the rewritten decision. The rewritten opinion would then assume the status of a judicial precedent, at least for that court.

This limit on the legislature's ability would prevent it from enacting huge legislative schemes like the Americans with Disabilities Act out of whole cloth. To the extent the legislated "substitute opinion" strayed from the facts of the particular case, it would be merely *dicta*, of no binding force.

Sunset provisions that automatically repeal legislation unless re-enacted after a given number of years are also useful. Another prophylactic measure would be an absolute right to jury trials in *all* cases, civil or criminal, so that government could not escape the jury requirement by calling truly criminal sanctions "civil." This should be combined with a requirement that the jury be made aware of their right to judge the *law's* validity as well as the defendant's liability or guilt.

The Role of Commentators and Codes

Law codes are essential in the development, systematization, and promulgation of law. Modern civil codes of civil-law systems are one example of very impressive and useful codifications that developed under the largely decentralized Roman law system. However, the dangers of legislation also counsel that legal codifications not be *legislated*. There is no reason that law codes cannot be privately written. Indeed, Blackstone's

Commentaries on the Law of England was private and very successful in codifying the law, and we today have successful, private treatises such as the *Restatements* of the law. Law codes would be far more rational and systematic, and shorter, if they did not have to take an unwieldy and interfering body of legislation into account; if they could focus primarily on common-law developments.

Both private and statutory codification of existing case law can make mistakes. But if the code is private, judges can ignore the lapses in the codifier's reasoning. This has the extra benefit of giving an incentive to private codifiers not to engage in dishonest reasoning or meddlesome social planning. If a codifier wants his work to be used and acknowledged, he will attempt to accurately describe the existing body of law when he organizes and presents it, and will likely be explicit when recommending that judges adopt certain changes in future decisions.

Both the Roman law and common law have been corrupted into today's inferior legislation-dominated systems. The primacy of legislation should be abandoned, and we should return to a system of judge-found law. Scholars who codify naturally-evolved law have a vital function to serve, but they should not ask for the governmental imprimatur on their scholarly efforts.

Of course, the form of a legal system does not guarantee that just laws will be adopted. We must always be vigilant and urge that individual freedom be respected, whether by legislator or judge.

Mergers and Acquisitions: Why Greed is Good

Corporate Restructurings Help Markets Function Smoothly

SEPTEMBER 01, 1995 by Peter G. Klein

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In 1989 the New York investment banking firm of Kohlberg Kravis Roberts & Co. (KKR) shocked the corporate world by acquiring RJR-Nabisco, the food and cigarette giant ranking nineteenth on the Fortune 500 with $17 billion of annual sales. The final purchase price—an unheard-of $24.7 billion—was (and remains) the largest sum ever paid by one firm to buy out another. What's more, KKR financed the acquisition through debt, by issuing high-risk, high-yield bonds. Highly visible "leveraged buy-outs" (LBOs) such as this one became the defining feature of the takeover wave of the 1980s. Suddenly, everyone was talking about LBOs, divestitures, repurchases, free cash flows, and other formerly exotic activities. Takeover specialists like Michael Milken and Ivan Boesky became regulars on the nightly news. Accompanying the unprecedented volume of takeover activity during this period was a new "official" name: the "Decade of Greed."

Pundits and politicians, and even some professors, charged that these corporate restructurings did little but shuffle assets on paper, lining the pockets of clever financiers at the expense of workers and the average shareholder. The critics invented a new, colorful language to describe the proceedings: takeover specialists were "raiders"; high-yield bonds became "junk bonds"; tender offers resisted by incumbent management were deemed "hostile takeovers." Popular books like Bryan Burrough and John Helyar's *Barbarians at the Gate* (on the RJR-Nabisco deal) and James Stewart's *Den of Thieves* became best sellers.

In Oliver Stone's *Wall Street*, the financier Gordon Gecko (played by Michael Douglas) summarizes the ethical philosophy of the raiders with the

famous words: “Greed is good.” This, we are told, was the spirit of the times. And the bigger the deal, the harder the criticism. The RJR buy-out is the one “people regard as the most symptomatic of the excesses on Wall Street,” according to one more sober account. It was “the culmination of a process that had gone badly out of control.”[1]

Not surprisingly, the truth about mergers and acquisitions is very different from what is portrayed in these accounts. Takeovers, LBOs, and other reorganizations are simply changes in the ownership of assets. As such, they serve an important social purpose; indeed, they are essential to the smooth operation of a market economy. When productive assets are privately owned and traded, these assets will tend to move toward their highest valued uses. Changes in the ownership of corporations, then, are just part of the market process of adjusting the structure of production to meet consumer wants. Resources are shifted from owners whose stewardship is poor to those the market believes can do a better job.

Corporate takeovers are an important part of this process. When a firm wants to expand, it can either increase its existing operations or acquire another firm. It will choose the latter if it believes it can buy and redeploy the assets of an existing firm more cheaply than it can purchase new capital equipment.

In this sense, a merger or takeover is a response to a valuation discrepancy: acquisition occurs when the value of an existing firm’s assets is greater to an outside party than to its current owners. This difference in valuation may be because the buying firm believes its management or a new management team it installs can operate the target firm more effectively than the target firm’s incumbent management. Hence we can also think of mergers as a kind of monitoring institution: takeover, or the threat thereof, serves to discipline managers. If they fail to maintain the market value of the firm, new owners will quickly arrive and replace them.

The Disciplinary Role of Takeovers

Since Adolph Berle and Gardiner Means published their 1932 book *The Modern Corporation and Private Property*, critics of the corporation have increasingly maintained that because the large modern firm is run not by its owners (the shareholders) but by salaried managers, these firms will not be run efficiently. Shareholders want the firm to maximize its profits, but the managers dislike hard work and prefer other things, like executive perks, prestige, paid vacations, and similar rewards. Because of this “separation of

ownership and control"—what economists now call a *principal-agent problem*—managers will pursue their own goals at the expense of profits. Since the average stockholder owns few shares in any given firm, no owner will have sufficient incentive to engage in (costly) monitoring of these managers or to take action to replace them. The Berle-Means thesis implies that advanced market economies must be inefficient, even by the market's own standard of profit maximization.

Henry Manne, then a young law professor and now Dean of the Law School at George Mason University, addressed the Berle-Means thesis in a seminal 1965 article, "Mergers and the Market for Corporate Control."[2] Manne argued that managerial discretion will be limited as long as there exists an active market for control of corporations. When managers pursue their own goals at the expense of profit maximization, the share price of the firm falls. This invites takeover and subsequent replacement of incumbent management. Hence while managers may indeed hold considerable autonomy over the day-to-day operations of the firm, the stock market places strict limits on their behavior.[3]

Interestingly, the Austrian economist Ludwig von Mises had expressed the same basic insight sixteen years earlier, in his great work *Human Action*.[4] In a passage distinguishing what Mises calls "profit management" from "bureaucratic management," he pointed out that despite the importance of the salaried manager in modern business life, the shareholders make the ultimate decisions about allocating resources to the firm in their decisions to buy and sell stock:

[The Berle-Means] doctrine disregards entirely the role that the capital and money market, the stock and bond exchange, which a pertinent idiom simply calls the "market," plays in the direction of corporate business. . . . The changes in the prices of common and preferred stock and of corporate bonds are the means applied by the capitalists for the supreme control of the flow of capital. The price structure as determined by the speculations on the capital and money markets and on the big commodity exchanges not only decides how much capital is available for the conduct of each corporation's business; it creates a state of affairs to which the managers must adjust their operations in detail.[5]

Mises does not identify the takeover mechanism per se as a means for capitalists to exercise control—takeovers were less popular before the late 1950s, when the tender offer began to replace the more cumbersome proxy

contest as the acquisition method of choice—but his point is clear. The heart of a market system is not the consumer-goods market, the labor market, or even the market for managers. Instead, it is the *capital market*, where entrepreneurial judgments are exercised and decisions carried out.

Are Mergers Efficient?

Mergers and acquisitions, like other business practices that do not conform to textbook models of "perfect competition," have long been viewed with suspicion by antitrust and regulatory authorities. The problem is that the notion of perfect competition is a hugely inappropriate guide to public policy. In the real world of uncertainty, error, and constant change, "efficiency" means nothing other than directing resources toward higher-valued uses. This can only be measured by the successes and failures of firms as determined by the market. What is good for the firm, then, is good for the consumer. Any merger that is not known to be a response to legal restrictions or incentives must be assumed to create value.

At the same time, several studies have found a sharp divergence between market participants' pre-merger expectations about the post-merger performance of merging firms, and the firms' actual performance rates. David Ravenscraft and F. M. Scherer's (1987) large-scale study of manufacturing firms, for example, found that while the share prices of merging firms did on average rise with the announcement of the proposed restructuring, post-merger profit rates were unimpressive. Indeed, they find that nearly one-third of all acquisitions during the 1960s and 1970s were eventually divested.[6] Ravenscraft and Scherer conclude that mergers typically promote managerial "empire building" rather than efficiency, and they support increased restrictions on takeover activity. Michael Jensen, founder of the *Journal of Financial Economics*, suggests changes in the tax code to favor dividends and share repurchases over direct reinvestment, thus limiting managers' ability to channel "free cash flow" into unproductive acquisitions.[7]

Public Policy and the Stock Market

But the fact that some mergers—indeed, many mergers, takeovers, and reorganizations—turn out to be unprofitable does not imply "market failure" or prescribe any policy response. Errors will always be made in a world of uncertainty. Even the financial markets, which aggregate the collective wisdom of the entrepreneurs, capitalists, and speculators who are the very basis of a market economy, will sometimes make the wrong

judgment on a particular business transaction. Sometimes the market will reward, in advance, a proposed restructuring that has no efficiency rationale. But this is due not to capital market failure, but to imperfect knowledge. Final judgments about success and failure can be made only after the fact, as the market process plays itself out.[8]

Certainly, there is no reason to believe that courts or regulatory authorities can make better judgments than the financial markets. The decisions of courts and government agencies will in fact tend to be far worse: unlike market participants, judges and bureaucrats pursue a variety of private agendas, unrelated to the desires of market participants. Furthermore, the market is quick to penalize error as it is discovered; no hearings, committees, or fact-finding commissions are required. In short, that business often fails is surprising only to those committed to textbook models of competition in which the very notion of "failure" is defined away. Such models are surely no guide to public policy. []

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1. Sarah Bartlett, *The Money Machine* (New York: Wagner Books, 1991), p. 237.

2. Henry G. Manne, "Mergers and the Market for Corporate Control," *Journal of Political Economy* 73 (April 1965), pp. 110-20.

3. There are other mechanisms to limit managers' discretionary activities, such as the market for managers itself. On this see Eugene F. Fama, "Agency Problems and the Theory of the Firm," *Journal of Political Economy* 88 (April 1980), pp. 288-307. This article, along with Manne's and several other important papers on this topic, are collected in Louis Putterman, ed., *The Economic Nature of the Firm: A Reader* (Cambridge: Cambridge University Press, 1986).

4. Ludwig von Mises, *Human Action: A Treatise on Economics* (New Haven, Conn.: Yale University Press, 1949; third revised edition, Chicago: Henry Regnery, 1966).

5. *Ibid*., pp. 306-07.

6. David Ravenscraft and F. M. Scherer, *Mergers, Sell-Offs, and Economic Efficiency* (Washington, D.C.: Brookings Institution, 1987).

7. Michael C. Jensen, "Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers," *American Economic Review* 76 (May 1986), pp. 323-29.

8. Paradoxically, some critics also charge that unregulated financial markets engage in too *few* takeovers, due to a "free-rider" problem associated with tender offers. Even when an acquiring firm makes an attractive offer to the target firm's shareholders, asking them to "tender" their shares for a substantial premium over the current share price, some shareholders will refuse to sell their shares, anticipating further share price increases accompanying a bidding war. These critics conclude that regulation, not the takeover market, should be used to discipline incumbent managers.

The Minimum Wage's Dirty Little Secret

The Minimum Wage Hurts Those It Pretends to Help

SEPTEMBER 01, 1995 by David Laband

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The current administration and their pals in the Congress only too obviously think that boosting the minimum wage by 90 cents per hour over the next two years is good politics (if bad economics). They are demonstrably wrong. This battle plan for "helping" lower-income Americans in the class warfare that dominates a partisan retro-1960s mindset is in reality a blueprint for failure and worse. The inevitable results of an increase in the minimum wage will be to further disadvantage the least-skilled, lowest-paid workers in America and increase employment and earnings among the most-skilled, well-paid workers.

Let's start with the obvious: an increase in the minimum wage is not going to directly help many of the least-skilled workers. Only 4 percent of hourly workers in America currently earn minimum wage. These individuals bring few, if any, skills to the workplace; they acquire job skills via on-the-job training provided by their employers. In the face of a 21 percent increase in their unit labor cost, some employers of unskilled labor will react by unhiring these individuals. No doubt, the individuals who do not get fired will appreciate the political effort as their nominal wages will increase. However, the unfortunate ones who end up in the ranks of the unemployed may feel differently.

While this disemployment effect among unskilled labor of increases in the minimum wage is widely recognized among economists, what is not so apparent is that the employability of these workers has been diminished, by virtue of reduced opportunities to develop job skills. It is harder to get a *second job* based on skills developed on one's first job, if one doesn't get a

first job. This surely will result in an increased *duration* of unemployment among unskilled workers.

The redistributive effects among unskilled workers of an increase in the minimum wage are, in the aggregate, trivial in comparison to the redistributive effects among more-skilled workers and providers of capital. Consider the reaction of an individual who has been working for several months or years and who has developed job skills that an employer finds valuable enough to justify paying him $5.15 per hour. After the proposed increases are fully in place, this individual will be paid the same as someone with no job skills. From his perspective, there appears to have been no differential reward to acquiring his job skills. Upset about this, he petitions his employer (or his union petitions the employer) to raise his wages. In so doing, of course, another round of wage increase requests by workers earning $6.00 per hour will be touched off, and so on. In a nutshell, an increase in the minimum wage incites a ratcheting up of wages that affects millions of workers earning more than minimum wage.

There are three principal effects of this general increase in wage compensation:

1. Employers will tend to reduce non-wage compensation in an effort to minimize their overall production costs. That is, employer-provided benefits are a casualty of increases in the minimum wage.

2. As labor costs (generally) rise, producers will hire less labor and more capital. There is no worse time for labor generally (and unskilled labor specifically) to contemplate an increase in the minimum wage than when technological advances are reducing the cost of capital. The high cost of middle-management labor combined with rapid reductions in the cost of computer-processed information was the driving force behind the corporate restructuring of the late 1980s and early 1990s that put hundreds of thousands of white-collar workers in the unemployment lines.

3. Although it may appear that ratcheted-up wages benefit lower-wage employees, the appearance is deceptive. In the long run, less-skilled workers are disproportionately harmed by artificially induced increases in wages. An example illustrates the argument.

Suppose the minimum wage rises from $4.25 per hour to $5.15 per hour (a slightly more than 21 percent increase). Assume that the increase does not trigger offsetting cuts in employer-provided benefits and that wages “ratchet-up” the labor force in an amount exactly equal to the

increase in the minimum wage. That is, workers who used to earn $9.00 per hour before the increased minimum wage earn $9.90 per hour after the minimum wage has officially been raised; those who earned $18.00 per hour before earn $18.90 after, and so on.

From the standpoint of employers, a 90-cent per hour increase in wages represents a proportionately larger increase in labor costs of unskilled or low-skilled workers than of high-skilled workers. The increase from $9.00 per hour to $9.90 represents a 10 percent increase in labor costs; the increase from $18.00 per hour to $18.90 per hour reflects a 5 percent increase in labor costs. If the productivity of labor has not changed at all (and none of the discussion of the benefits of raising the minimum wage even touches on the subject of productivity), employers have every incentive to substitute more productive, higher-wage labor for less productive, lower-wage labor.

Both the substitution of lower-cost capital for higher-cost labor and the substitution of higher-skilled labor for lower-skilled labor seriously mitigate any purported benefits of a hike in the minimum wage. With respect to the substitution of capital for labor, there is both a direct effect on labor markets and a resulting indirect effect. As firms increasingly use machines in their production processes, the production and management of the new technology require an increasingly skilled labor force. This drives employers on the margin to favor highly educated and skilled workers over less well-educated, less-skilled workers, since the former are *more productive* than the latter.

Separately, the differential (proportionate) cost impact of a hike in the minimum wage causes employers to favor highly-educated and skilled workers over less well-educated, less-skilled workers; the former are *less costly* than the latter. Both tendencies add fuel to the job-market emphasis on highly-educated, highly-skilled labor, to the *detriment* of the uneducated, unskilled component of the labor market (i.e., the very component liberal politicians and theorists profess so much compassion for, so much so that they claim this compassion *defines* the difference between them and their conservative counterparts).

Put bluntly, the politically sponsored increases in the minimum wage are partly responsible for the much-ballyhooed increasing income inequality in America, which politicians then claim demands corrective action. This is a case of medicine causing a disease that politicians then

seek to cure with more of the same medicine. A better course of treatment would be to fire the doctors.

It's Time to Privatize Unemployment Insurance

Insurance and Savings Decisions Should Be Personal

SEPTEMBER 01, 1995 by David Honigman, George C. Leef

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Our present unemployment insurance system was established during the New Deal and was certainly a child of its times. The extremely high levels of unemployment during the Depression provided the justification for a governmental takeover of what had previously been a matter of private initiative, namely income maintenance during unemployment. As with many other issues, the assumption at the time was that only the coercive power of the government could solve the problem. Rather than allowing individuals to make the best arrangements for maintaining a stream of income during unemployment, either through their own actions or through voluntary, cooperative efforts, the federal government mandated that the states set up centrally administered programs to provide relief to those out of work.

This approach was very much in keeping with the collectivist philosophy of the era. Unfortunately, it has saddled us with a system that prevents workers from customizing income-security plans for their needs. It is a system rife with inequitable cross-subsidies between workers, and it is inimical to the nation's economic health. Of all the federal mandates that Congress could repeal, this one should be near the top of the list.

How the System Works

The Social Security Act compels the states to establish unemployment insurance systems. They are given considerable latitude in setting tax rates, benefit levels, eligibility criteria, and so on, but all must follow the same basic design. Employers pay a payroll tax, a certain percentage of each

employee's taxable wage base. In Michigan, for example, employers can pay anywhere from 10 percent to 0.5 percent of a taxable wage base of $9,500. Tax rates vary widely because they are based to a considerable degree on each firm's "experience rating," which means the extent to which it has laid workers off and caused benefits to be paid. Even in highly experience-rated systems, however, benefits paid seldom match exactly with employer taxes.

Workers who become unemployed may qualify to receive benefits. To qualify, a worker must have earned at least a certain threshold amount, a means of limiting the system to those workers who have a fairly regular attachment to the labor force. An eligible claimant receives, usually after an administrative delay of several weeks, a check that usually replaces about half of his pre-tax earnings while employed, up to a given maximum. The unemployed worker must certify each week to the administering agency that he is able to and actively seeking work. Ordinarily, the maximum period of time for which benefits are paid is 26 weeks.

Many unemployed people do not, however, qualify for benefits. Those who quit their jobs, were fired for good cause, or did not have enough earnings, to give some common reasons, cannot collect.

The Inequities of the System

Whenever the government levies a tax on business, it creates a problem of tax incidence. That is, who actually bears the burden of the tax? Business taxes are borne by people in their capacities as workers, consumers, and stockholders. Who actually pays the payroll taxes that fund the unemployment insurance system? Mainly, the workers do. Unemployment insurance taxes represent part of the employee's total compensation package. What employers are willing to offer in wages and other benefits is reduced by the cost of benefits that the government has mandated. If the addition of a worker to the payroll will cost the company $500 in unemployment insurance taxes, that worker will be paid approximately $500 less in cash or other benefits.

Just as the employer's "contribution" to FICA really comes at the expense of the employee, so is it with unemployment insurance taxes. Although commonly thought of as a free benefit to workers, the system is in reality a means of allocating their income in a way dictated by the state. Because the system is involuntary, however, workers are deprived of the chance to evaluate the benefits of participation in relation to its costs.

For some workers, the unemployment insurance system is a bad deal. There are many who experience little or no unemployment during their careers, yet they pay—in the form of forgone wages or benefits—throughout their working lives for something they may not want or need. For other workers, the system is a good deal. Workers who experience frequent periods of unemployment may receive benefits significantly in excess of their costs. As we mentioned above, experience rating is imperfect, and this means that workers who don't make much or any use of the system are forced to subsidize those who use it frequently.

This is not necessarily a case of the wealthy subsidizing the poor. Some of those who frequently draw unemployment benefits are high-wage, relatively wealthy workers; some of those who are in stable employment and never collect are low-wage workers. The reverse is also true. The system capriciously redistributes income from stable-employment workers to unstable-employment workers. There is no justification for this coerced redistribution.

The Economic Damage Done by the Unemployment Insurance System

By providing American workers with a safety net in the event of unemployment, albeit one with several holes, the unemployment insurance system discourages that time-honored means of dealing with the possibility of loss of income—saving. People save less than they otherwise would since they believe that the unemployment system will be there to support them in time of need. If people made provisions for the possibility of unemployment by saving, there would be a greater supply of loanable funds, thus tending to lower interest rates and stimulate capital investments. Conversely, the funds accumulated in the system are "invested" by the Treasury in U.S. government debt obligations, which does little—to put it mildly—to help the economy grow.

Not only does the present system discourage saving, it also leads to inefficient use of resources. It does so in several ways. First, it allows employers in businesses characterized by frequent periods of unemployment to externalize some of their labor costs. Seasonal firms, for example, would have to pay their workers more if it weren't for the fact that the unemployment insurance system subsidizes their operations. Because of this subsidy, we get more seasonal employment than is optimal.

Second, since the system relies on a third-party payor for its benefits, it leads to greater costs than if that third party could be avoided. That is especially true where the third party is a government bureaucracy. We have an extensive unemployment insurance administrative and dispute-resolving bureaucracy. If we moved to a system that avoided much of the third-party involvement, we would save resources for more productive things.

The Voluntary Alternative

What if we allowed workers and employers to handle provisions for unemployment as they think best? How would they react?

Workers differ greatly as to their expectations on the probability of unemployment and the harm it would do them. There is an enormous range from those who are sure that they are set for life in their current employment to those who are rarely sure where the next paycheck will come from. Those in the former category might rationally decide that they don't want to give up anything in order to have a measure of income security in the event of unemployment. Those in the latter category would, in contrast, regard income security as a high priority.

Whatever their degree of concern over the possibility of unemployment, there are two ways for workers to shield themselves against it. One is saving; the other is risk-pooling (insurance).

Saving is the time-honored means of providing security against the possibility of unemployment or other adverse occurrence. What if we allowed people to set up Individual Unemployment Accounts (IUAs) analogous to IRAs? The individual would decide how much, if anything, to deposit (or have withheld from his paycheck) into the account each pay period. Taxes would be deferred until such time as funds were withdrawn. During periods of unemployment, the worker would decide how much to withdraw from the account. If there were funds in the account at the time the worker retired, he could treat it as an IRA. Given the popularity of IRAs, especially when they were fully tax-deductible, it seems likely that IUAs would catch on very quickly.

We are not fond of the tendency to encourage people to set up savings accounts for particular purposes (retirement accounts, medical savings accounts, our proposed unemployment accounts, etc.). It would be better to repeal the tax code's bias against saving and just let people save without having to pigeonhole the money. But short of that, IUAs would have several major advantages over the status quo.

First, there would be no involuntary redistribution of income among workers. With each individual saving for himself, the risk of unemployment would no longer be socialized. True, some might be improvident, but that is hardly an adequate reason to force some to subsidize others.

Second, people would have the maximum incentive to find new work after becoming unemployed, since withdrawals from IUAs would be withdrawals of personal wealth. Not all unemployed workers are as diligent as possible when it comes to finding new work now, since the checks come from the government and stop once employment has been re-established. That is, unemployment insurance subsidizes unemployment, and therefore increases its incidence.

Third, the existing bureaucracy would be unnecessary. With IUAs, the decision-making would be individual rather than bureaucratic.

Fourth, as we have already said, an increase in saving would be economically beneficial for the United States.

Risk-pooling is the other means by which people can protect themselves against calamities. People enter into insurance contracts when they choose to pool the risk of losses due to auto accidents, fire, ill-health, and so forth. Could there be a private insurance market for unemployment insurance? In the early years of this century, there were several attempts by major insurance companies to write unemployment insurance, but each time they were thwarted by state insurance regulators who claimed that unemployment was inherently uninsurable. Of course, once the government mandated that everyone have its unemployment coverage, all thoughts of private insurance disappeared.

We see no reason why voluntary risk-pooling for certain types of unemployment could not work. (It is not possible to insure against being fired for cause, since that is within the individual's will.) People already can insure that their mortgage payments will be made if they should lose their jobs. If the government got out of the unemployment insurance business, private alternatives would swiftly emerge, almost certainly giving workers more flexibility than the current system does.

Workers who had not built up sufficient funds in an IUA to feel that they had enough of a cushion would probably want to buy unemployment insurance, either individually or as an employer-provided benefit. How much insurance to have should be left up to the individual. How much to save should be left up to the individual. We have no idea what combination

of insurance and/or saving would be best for people and neither does the government. That's why it should be left to personal decision.

If we could privatize unemployment insurance, what would we do with the money currently in the trust funds? Given our anal-sis that these taxes are borne by workers, the proper answer is that the money should be returned to them. Michigan's trust fund is now approximately $1 billion. Although it would certainly not be easy to divide this amount up among current and retired workers based on how much they "paid" into the system, it would not be impossible.

Conclusion

The collectivist approach to unemployment insurance is an anachronism. Abandoning the old system and replacing it with freedom of choice and individual contract would not only be more efficient economically, but would also be consistent with the fundamental American belief that people should be masters of their own lives, not pawns to be moved about at the will of others.

Our conviction is that we would develop a system for unemployment compensation that is both fairer and more beneficial to the economy if we stopped relying on coercion and went back to relying on voluntary cooperation.

Strike Out? Blame Fast Food

Grocery Chains Are Losing the Competition for Food Sales

SEPTEMBER 01, 1995 by Francois Melese

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Thirty-two thousand members of the United Food and Commercial Workers (UFCW) Union recently walked off their jobs. Mostly made up of employees from the two largest grocery chains in Northern California—Lucky and Safeway—the union had an ambitious goal: to preserve current wages and benefits. While UFCW members walked the picket lines, competing chains (like Nob Hill and Albertsons) were delighted. Union sympathizers and intimidated customers alike flooded their stores. Business was great. Management was mindful, however, that as consolation for a no-strike clause in their clerks' contracts, many non-striking clerks would automatically secure concessions granted unionized employees. While the union won this battle, saving members' wages and benefits, it may have lost the war. This and similar unions across the country are likely to strike out in the future, and fast food is partly to blame.

What few realize is that the threat to wages and benefits comes from a radical restructuring in the market for groceries. Top management was late in spotting and responding to two important trends: increased competition from discount and specialty food stores, and the relentless growth of fast-food outlets. To make up for lost time, management needs concessions from union members to better position their stores. Meanwhile, the UFCW is understandably upset with any news that threatens members' wages and benefits.

It is useful to begin with the awkward position of top management. While some chains suffer from slumping market shares and share prices,

they all admit to having some of the finest workers in the industry. So what happened?

The fact is that until recently Lucky and Safeway had a lock on the grocery business in Northern California. In many cases they were the only game in town. Historically, Lucky and Safeway derived their success at the expense of small grocery stores. Taking advantage of economies of scale, large grocery chains offered increased selection and lower prices than small grocers. Squeezing out "mom-and-pop" operations, Lucky and Safeway came to dominate the market.

The fast-food industry started much the same way as did traditional grocery chains. Fast-food chains opened outlets in towns across the country, offering standardized products, consistent service, convenience, and low prices. Customers literally ate it up, and shareholders were thrilled. Local "mom-and-pop" diners were no match. The economies of scale enjoyed by the chain restaurants put many locals out of business.

Today the fast-food business is "mature." It is intensely competitive, so that anyone with labor costs higher than anyone else has to cut other costs, offer a superior product or service, or go out of business. A similar future lies ahead for grocery chains.

Squeezed by Competition

Traditional grocery chains like Lucky and Safeway are caught in a competitive squeeze. On one side is increased competition from innovative warehouse and discount chains (such as PRICE/COSTCO), and on the other side, competition from specialty and convenience stores (such as Trader Joe's and 7-11).

In exchange for bulk purchases and do-it-yourself service, warehouse stores offer great food at great prices. Meanwhile, in a busy world with little time for shopping, convenience stores charge somewhat higher prices for convenience. But just as important is the onslaught of the fast-food industry.

Increasingly, grocery stores compete with the likes of Burger King, Wendy's, Domino's, Jack-in-the-Box, McDonald's, Subway, and Taco Bell. The competition is on two levels, and it is intense. The first level is a competition for food sales; the second, a competition for workers. The grocery chains are losing the first battle at the same time they are winning the second.

Let's start with the competition for food sales. The more fast food people eat, the fewer groceries they buy. Moreover, the groceries they do

buy are increasingly purchased at competing discount warehouses or convenience stores. Worse yet, large fast-food chains typically have their own distribution networks, and consequently do not depend on traditional grocery stores.

The problem of increased competition leaves any business with only three choices: improve the product, lower costs, or go out of business. The UFCW strike was a result of top management opting for lower costs. This brings us from competition for food sales to the competition for workers.

Whereas grocery chains are losing the competition for food sales, they are winning the competition for workers. But is it any wonder? Union pay at Lucky and Safeway stores ranges anywhere from $6.75 per hour for "baggers" to well over three times the minimum wage ($16.75 per hour) for "checkers." Since the companies provide dental coverage, pay 80 percent of medical premiums, and are generous with drug prescriptions (not to mention pension benefits), the effective wage is higher.

So what do baggers and checkers do for this attractive wage-benefits package? Checkers work the register, and baggers bag groceries. In some cases, baggers also take groceries to your car. The job requirements include the ability to: (1) work a cash register, (2) bag groceries. It helps to interact well with customers and to be a team player.

This suggests grocery clerks have more in common with fast-food workers than they do legal secretaries, medical technicians, or other skilled workers who in many cases earn less than the average wage of a unionized grocery clerk.

In fact, at fast-food restaurants like McDonald's and Burger King, "courtesy clerks" work the register and cook, and in other fast food establishments like Domino's Pizza, they also deliver food. The job requirements include the ability to: (1) work a cash register, (2) keep track of orders, and (3) cook. It helps to interact well with customers and to be a team player.

On the surface, grocery clerks and fast-food clerks have a lot in common. In fact, one might expect fast-food wages to be higher to compensate for less favorable working conditions. So how are fast-food workers compensated? They make anywhere from the minimum wage ($4.25 per hour) to $8 per hour, with no benefits. So where does that leave union workers? Today's success may result in tomorrow's job losses. Failing to cut labor costs, management is forced to turn to labor-saving

devices, downsizing the workforce through attrition. This shrinks union membership and, along with it, their bargaining power. Time is not on their side.

Are there any winners? Of course. The big winners are consumers. Due to increased competition, grocery prices have remained remarkably constant in real terms. Meanwhile, fast-food prices have fallen (in real terms) to the point it is not significantly more expensive to eat out than to shop and prepare food.

Is There a Right to Work?

Fundamental Confusion About the Meaning of the Word "Right" Is Dangerous

SEPTEMBER 01, 1995 by Gary North

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Back in the 1950s and 1960s, one of the most popular phrases among conservative Americans was "the right to work." It was a code phrase for "anti-labor union laws." This was recognized by both friends and foes of trade unionism. Labor union executive Gus Tyler wrote in 1967: "In almost every case, such laws are intended to bridle unbridled unions."[1]

From the point of view of political persuasion through rhetoric, the phrase was a success. By 1956, 18 states had passed right-to-work laws. Only one—Louisiana—had voted to repeal.[2] But over the next decade, the right-to-work movement stalled. In 1968, a total of 19 states had such laws.[3] But in 1968, the labor union movement in the United States peaked. The move from manufacturing to services, and the greater growth of new business formation in right-to-work-law states, have driven down the percentage of workers who belong to unions from 23 percent in 1968[4] to 16 percent in 1993,[5] and a high percentage of these are government white-collar employees.

One problem with a catchy phrase, especially one adopted in the service of a good cause, is that it will be believed as a stand-alone statement. People will accept it, as we say, on face value. This was a problem with "the right to work" from the beginning. The phrase was powerful because it announced what seemed to be a high moral principle. That was the intention of its promoters, who recognized that it is easier to promote a cause when that cause appears to be positioned on high moral ground.

The problem is, the phrase produced a great deal of confusion in the minds of those who employed it as a political weapon. Coming in the name of what they perceived as a higher morality, they announced a principle that, if taken literally, would undermine the moral foundation of the free market economy which they sought to defend. This is always the risk of political slogans. In their very effectiveness in changing people's minds or reinforcing opinions, they produce unintended consequences that run counter to the goals of their promoters.

Rival Interpretations

For over a century, there have been two rival applications of the phrase. It was coined by the French utopian socialist, Charles Fourier, in 1808. The slogan became popular among trade union organizers in the nineteenth century. For the socialists, the phrase meant the right to a job. Horace Greeley, the American newspaper owner and disciple of Fourier, in 1846 called for the "right to Labor—that is, to constant Employment with a just and full Recompense. . . ."[6] Eugene V. Debs, the early twentieth-century American labor-union organizer, insisted: "Every man has an inalienable right to work."[7] This interpretation was common down to the early 1950s.

A rival view began as early as 1870. Critics of the unions called attention to the fact that by excluding some men from membership, unions removed the right to work from those excluded.[8] This interpretation has become the dominant one in the United States since the early 1950s.

So, there has been confusion over the meaning of "work" or "labor." This confusion still exists. But there has been another confusion: the meaning of the word "right." This is the more fundamental confusion—and the more dangerous.

What Is a Right?

"I have my rights!" This announcement is a statement of principle. But what does it mean?

A right is a claim of judicial immunity. A person is granted—by someone—immunity from prosecution by the civil government whenever he commits certain specified acts. These acts are conventionally termed *rights*, but in fact it is the grant of immunity from prosecution which constitutes the right. Such a grant of immunity is a grant of privilege.

If this grant of privilege originates with civil government, then civil government may subsequently decide to revoke it. This threat was what motivated Thomas Jefferson to write his immortal words in the Declaration

of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

God, as the Creator, was identified the source of these rights, which the typesetter printed as “unalienable.” Jefferson’s original manuscript said “inalienable.” Either way, the meaning is clear: no one may lawfully surrender these rights. This is what “inalienable” means: not subject to transfer. This was an important assertion, given the influence in the eighteenth century of theories of social contract, which grounded all civil government in an ancient transfer of sovereignty from individuals to the civil government. Jefferson was arguing that whatever it was that men gave up in that original (hypothetical) transfer of sovereignty, certain rights were not transferred, for they are inalienable. The State is therefore not the source of these immunities. The Creator granted these immunities to all men, who cannot legally surrender them. The American Civil War to a great extent was the product of a moral and political debate over whether Jefferson’s theory of inalienable rights had any legal authority in American Constitutional law, and whether it should be applied to the institution of chattel slavery.

The State, not being the source of these rights, cannot lawfully infringe on them. But the British Parliament had so infringed, which is why Jefferson announced the right of the colonies to remove themselves from the jurisdiction of the British Crown. The State cannot revoke by law those rights—inalienable legal immunities—which the State has not initiated. A grant of privilege from God is therefore a grant of privilege against its infringement by the State.

What this argument pointed to was a hierarchy. A sovereign Creator God has established certain immunities from State action around men’s persons and lives. His sovereignty cannot lawfully be infringed on by other men or their political agents. Jefferson was arguing for the right of armed resistance by the colonial governments. Local units of civil government possessed the authority under God, and therefore the responsibility, to defend these immunities from encroachment by the more distant Parliament. These local governments had operated under the authority of the British government—specifically, the King. But because these local units of government were coming to the defense of men’s inalienable rights,

Jefferson was arguing, they now occupied the moral high ground. They, not the British Parliament, were now judicially sovereign in the colonies. They were defending God's grant of privilege, which took precedence over the British Parliament's false claim of absolute sovereignty.

A similar perspective undergirded the first ten amendments to the U.S. Constitution, called the Bill of Rights. These amendments limited the actions of the federal government. That is, they placed judicial immunities from Federal interference around individuals and local state governments. But there was an important difference between the Bill of Rights and the Declaration of Independence. The Bill of Rights operated under the sovereignty of the People, who the Preamble to the Constitution identified as the source of sovereignty. The problem, judicially speaking, was that sovereignty had been transferred from the Declaration's God the Creator to the Constitution's collective We the People. The People can always change their minds through their representatives—as it has turned out, five sovereign judges on the U.S. Supreme Court.

The debate over men's rights has been a debate over five related issues: (1) the sovereign source of specified rights; (2) the lawful representative agent in the defense of these rights; (3) the specification of any boundaries or limits on these rights; (4) the legitimate sanctions that can be imposed to defend these rights; (5) the appropriate application of these rights to specific cases in a changing world.

So, when a person announces, "I have my rights," he is announcing his judicial immunity from civil action. The trouble is, he may believe he is announcing more than this.

Property Rights

When a man announces his right to work, what is he really asserting? Is he announcing that he has a legal immunity from the State to take raw materials belonging to him and shape them? If so, then he is announcing a crucial right, which we call a property right. The person who owns property has rights to use it in specific ways. This was the claim by the vineyard's owner in Jesus' parable of the wages: "Is it not lawful for me to do what I will with mine own?" (Matthew 20:15a).

A person who claims such a right is also implicitly announcing his right to property in his own person. He is saying that he can do what he wants with that which belongs to him. What belongs to him is his own labor. He is

allowed to take his labor, his time, and his material goods and shape them as he pleases.

The example of the gardener is appropriate. He owns the land and the seeds. He plants the seeds, digs up the weeds, and does whatever else is biologically necessary to produce a crop. The crop may or may not grow. If it does, he can lawfully eat the crop, give the crop away, or let it sit in the earth and rot. His right to the crop means that the civil government has no legal claim to the fruits of his labor. Neither does his neighbor.

But can he sell the crop? Here is where the question of rights gets so confusing. When we ask, "Can he sell the crop?" we are asking two separate questions: (1) Can he lawfully offer the crop for sale? (2) Can he lawfully demand that someone else buy it? When people insist on their "right to sell," they must be very clear in their own minds which interpretation they are putting on this phrase.

My Right to Say No

A man comes to me with an offer. Will I buy the output of his garden? I probably will ask a series of questions, such as whether he has harvested it yet, when did he harvest it, where has he kept the crop since he harvested it, will he deliver it to my door, and that most crucial of economic questions: at what price?

Inherent in the other man's claim of a right to sell is my equally valid right to refuse to buy. There should be no compulsion on either side of the transaction.

What is spoken of as a right to sell or a right to buy must be carefully qualified. The right to buy, like the right to sell, is better understood as the *right to make an offer*. It is not that I have a right to buy or sell. What I have is a right to *offer* to buy or sell.

This may sound like quibbling over details. It is not quibbling; it is the heart of the matter. What the owner of an asset has a right to do is to make a bid to exchange it for some other asset. No one has any legal obligation to listen to his bid. No one has to accept it or reject it. No one has to allow the person into his home or office to make the bid. The sign on the outside of many businesses, "No Solicitors," is a valid sign—as valid as the sign, "Help Wanted."

Ironically, we sometimes see both signs at the same business establishment. Yet a person offering to sell his labor services surely is soliciting. He is asking for money in exchange for his labor. But business

owners initiate the "Help Wanted" solicitation, so those who respond are not seen as solicitors. A solicitor is seen as someone from outside the business who initiates an offer to sell a service or product for money.

What of the sign that says, "We reserve the right to refuse service to anyone"? That used to be a legally posted sign in American businesses. A series of civil rights acts have made such signs illegal. By opening for business, the business owner loses his right to refuse a transaction at the posted price. The State has granted the buyer a right to buy—not the right to make an offer, but the right to complete the transaction. The seller is not allowed to place an exclusion clause on the offer: "Not available to the following types of people. . . ."

Similarly, recent legislation governing the "Help Wanted" sign has created a legal obligation for the employer to consider every applicant. The employer must be able to prove in court that he has not discriminated against some prospective job applicant on the basis of race, religion, sexual life style, or even intelligence. He can be sued under the law—many laws, in fact—for refusing to hire someone. He can be sued for giving a job to someone without advertising the existence of the job in a public place. "No Irish need apply" signs used to be seen in the windows of Boston businesses in 1850—and for all I know, in 1950. No longer is such a sign legal. The right to work has been extended to members of all groups.

This brings us back to the original question: Is there a right to work? That is, has a grant of immunity from prosecution been established by a higher authority? If so, what is this immunity?

The Employment Act of 1946

One of the results of what is known as the Keynesian revolution in economic thought is the widespread acceptance of the idea that a national government has the ability to create legal and economic conditions that will lead to full employment. "Full employment" is not actually defined as full employment, but something—unspecified—approaching full employment. Because the government supposedly can establish policies that will produce high employment, academics and politicians believe that it has a moral obligation to do so. In 1946, Congress passed and President Truman signed the Employment Act of 1946. This law is still in force. It directs the President of the United States to "promote maximum employment, production, and purchasing power."

The defenders of the free market economy argued long before John Maynard Keynes that the civil government does possess the ability to create conditions favorable to the full employment of resources, including human labor. These conditions are explicitly judicial. They include the following: enforcing in the courts the terms of voluntary contracts and exchange, prosecuting fraud and violence, refusing to fix prices or the terms of exchange by law, keeping taxes low, and refusing to debase the monetary unit.

Keynes disagreed with these means but not the goal. He argued in 1936 that these judicial conditions do not always produce full employment. On the contrary, he said, they can and have led to permanent unemployment. He called for increased government spending during times of unemployment, spending above the revenues brought in by taxes, i.e., deficit spending. He called for an expansion of the money supply to clear the market of unsold goods, especially labor. In short, he called for the creation of the modern welfare-warfare State. So have most of the leading intellectuals and politicians since World War II.

The right to work is seen as an innate right for all mankind. This right is today defined as the right to receive a living wage. The Keynesian sees the worker's right to be employed as central to the operation of the economy. When workers offer their labor services, there should be someone ready to hire them, Keynesians insist. If there is not, then there must be some defect in the operation of the economy. They insist that it is the State's moral and legal responsibility to seek out the causes of unemployment. The free market has in some way failed; it must be made to work properly. "Working properly" is defined by the Keynesian as "providing employment for all those who seek employment."

The right to work has been interpreted as a right to something, namely employment. It is seen as the right of the prospective employee to have his offer to work accepted by someone. The right to work is not seen as a prospective employee's legal immunity from State coercion in making an offer to sell his services. It is surely not seen as the right of a prospective employer to refuse to accept this offer.

The Rights of Man: United Nations

The General Assembly of the United Nations Organization, better known as the UN, on December 10, 1948, passed the Universal Declaration of Human Rights. The preamble echoes the words of Jefferson—though not

his typesetter—in asserting the existence of "inalienable rights of all members of the human family. . . ." Again, paraphrasing Jefferson, Article 3 announces: "Everyone has the right to life, liberty, and the security of person." The document does not comment on the source of these inalienable rights, nor on the proper agency of enforcement, nor on the appropriate sanctions for the defense of these universal rights.

Article 23 is the important one for the purposes of this study. It has four sections. It invokes the right to work; then it explains what this right means.

> 1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment.
>
> 2. Everyone, without any discrimination, has the right to equal pay for equal work.
>
> 3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
>
> 4. Everyone has the right to form and to join trade unions for the protection of his interests.

The right to work also implies the right not to work and still get paid. Article 24 announces: "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."[9]

We see here the traditional socialist application of the phrase. The right to work is understood as the right to a job, and not just a job: a job that provides an undefined but comfortable standard of living.

The Right to Exclude

In a world of scarce economic resources, exclusion is inevitable. In a world of scarcity, at zero price there is greater demand for some resources than supply of them. Someone must be therefore excluded from legal access to these scarce resources. More to the point, someone must be given the legal authority to exclude others from using a scarce resource. Exclusion is an inevitable concept. It is never a question of "exclusion vs. no exclusion." It is always a question of who gets excluded by whom, on what terms, and enforced by whom.

First, if a worker's contract has run out, and he decides to ask for more money or better working conditions from his employer, should he be subject to civil prosecution? Not if he has a right to make an offer to work.

Second, a presently unemployed worker seeks employment. Should he have the right to make an offer to an employer to exclude from employment a present worker who has no contract protecting him? That is, should he be allowed to make an offer to work, and thereby to exclude someone else, without threat of civil sanctions? If there is a right to offer to work, the answer is yes.

Third, does the employer have the right to refuse the offer without threat of civil prosecution? He does if the right to work is defined as the right to make an offer. The employer, in deciding which offer to reject, has the right to counter-offer, including the right to refuse to hire any workers at all.

The right to make an offer is inescapably the right to exclude. So is the right to refuse the offer. The worker—a seller of labor services in exchange for money—comes to an employer and says: "Hire me." This means: "Do not hire some other worker in this position." The would-be worker initiates an offer to the employer: "Exclude my competitor from this job."

The employer—a seller of money in exchange for labor services—may choose to turn down the offer. He may hire another worker. Perhaps the second worker makes the employer an even better offer. The employer excludes the would-be worker who made the initial offer to exclude.

The right to work is the right to make an offer to exclude a competitor without threat of civil prosecution. This right does not protect the person making the offer from exclusion by the employer. It merely protects him from civil prosecution for making an offer to exclude.

The modern State has repeatedly adopted the socialists' definition of the right to work. This was especially true prior to the 1950s in the United States, and is still the case in much of Western Europe. When applied to labor unions, this law recognizes the right of a group of workers to organize together and exclude other workers from making an offer to exclude. But this right is not merely immunity from State action; it is also a grant of privilege against economic retaliation by the employer. It is more than a right; it is a grant of economic privilege enforceable in a civil court. Members of the union are allowed to make the following offer to an employer: "Hire us at wages we will accept. If you refuse, we will not work for you, and we will call in the civil authorities to impose sanctions against you if you hire replacements."

This version of the right to work has become a right to a specific job. The workers who previously organized under the laws governing labor unions are said to have a right to exclude other offer-makers from the jobs they have abandoned. The employer has only two options: shut down operations until the union capitulates and its members return to work, or offer terms of employment that the union's representatives will accept. The right to exclude has shifted from the right of a worker to make an offer to exclude another worker, and the right of an employer to accept either or neither of the two offers, to the right of a group of workers to exclude their competitors from the work place. If an employer challenges this right by hiring non-union members to fill those jobs, the civil government imposes negative sanctions on him. The State has revoked his grant of immunity from State action—his right—to make his offers.

The original definition of the right to work—the right to make an offer to work in exchange for income—has become its opposite: the prohibition of employers from accepting certain offers to work. The right of the employer to exclude one worker and hire another had been the legal basis of the right of any prospective worker to make an offer: "Hire me; fire him." These rights of exclusion are correlative. If the employer has no right to exclude existing workers, the presently unemployed worker has only a limited right to work. In the name of the right to work, as defined by the United Nations, this system of correlative rights has been abolished, and a system very nearly its opposite has been substituted in its place.

Competition as Exclusion

What is not readily understood by most people is the nature of competition in an economy marked by a division of labor. Competition is always an offer to exclude. Every offer to sell is necessarily an offer to the buyer not to buy something else. Inclusion mandates exclusion in a world of scarce resources.

An offer to sell can be an offer to sell goods and services. Because of linguistic convention, we do not usually recognize that an offer to sell money is equally an offer to sell. We say that a worker *earns* his wage. This confuses the analysis. The worker *buys* his wage. He buys money by selling his services. Similarly, the employer is said to *hire* workers. This also confuses the analysis. The employer *buys* the services of workers, moment by moment.

We speak of competition between buyers and sellers. This is incorrect. Competition is between those who are selling the same or similar goods or services. Sellers compete against sellers; buyers compete against buyers.

In trying to sell this article to the editor of *The Freeman,* I am not in competition with the editor of *The Freeman.* I am in competition with all the other authors who are trying to sell their articles to the editor of *The Freeman.* The editor of *The Freeman* is not in competition with authors. He is in competition with all the other buyers of articles that could be written by those authors who might be willing to sell articles to *The Freeman.*

It is in the interests of the editor of *The Freeman* to attract as many authors of *Freeman*-type articles as he can, limited only by his ability to read all the submissions and pay for the ones he accepts. Meanwhile, it is in the interest of the authors to see as many publishers of *Freeman*-type articles as the market will bear, and maybe even more. After all, we authors may be able to sell our articles to magazines that will not survive the competition. The important thing for authors is that the checks cash before market competition does its work.

The authors have a right to work. There is no government agency that should or will impose sanctions against authors, unless they are authors of articles on how to overthrow the government by violence or how to commit crimes. What the authors do not have is a right to have their articles purchased by some publisher. No government agency threatens any publisher with sanctions if the publisher sends back a submitted manuscript, or even throws it away. The right of the publisher to reject a manuscript is correlative to the right of an author to submit it. Any tampering with these correlative rights is a threat to the freedom of authors and publishers.

But there is another threatened participant in this arrangement: the consumer.

Consumer Authority

So far, I have limited this discussion to the rights of workers and employers to exclude. This omission, if not corrected, would threaten our economic understanding.

An author must please an editor, but pleasing an editor is only a means to an end. The editor, unless he has money to pay authors or readers of his publication (preferably both), is irrelevant to the author. The editor is merely an intermediary between the author and readers. The author is interested in gaining readers. He is like an entertainer. As singer-guitarist

Bob Bennett once remarked: "I appreciate an audience. Without an audience, this would be a rehearsal." Without readers, a published article is little more than an unread term paper. Nobody enjoys writing unread term papers.

(Note: this analysis does not apply to articles published in academic journals, which are rarely read by anyone except their editors. In this case, mere publication can result in continued employment or career advancement. This system of sanctions is called "publish or perish," and it rests on a vast system of taxpayer coercion, government licensing of the professions, and industry-wide certification by people whose one major skill is writing what amounts to advanced term papers.)

The consumer is the final agent of free market exclusion. He decides whether or not he wants to buy a product or support a cause with his funds. He imposes sanctions: positive and negative. His money serves both as a carrot and a stick. It is more like a carrot on a stick. The lure of carrot motivates sellers, and the threat of "no sale" serves as a stick applied to the sellers' backsides.

The consumer has the right to refuse to buy. This is the heart of the free market principle of freedom of choice. He has the right to exclude, and he does so daily. Modern advertising techniques are employed by armies of would-be sellers, yet consumers learn to ignore a myriad of daily offers to sell. The consumer may not be a skilled buyer, but he is a highly skilled non-buyer. He may buy something he really does not need, but he excludes from consideration millions of items he does not need.

In a world of scarce economic resources, no individual can afford to buy very much of the world's productivity. If a violation of market liberty compelled him to buy even a tiny fraction of all the things offered to him, he would be bankrupt before the day was over. He would lose his ability to include and exclude. *It is his liberty to refuse to buy that is central to his life as a free man.*

The employer is an economic agent of future consumers. He hires and fires in terms of what he expects consumers to buy on the terms offered. The worker is also the paid economic agent of future consumers. Consumers deal with workers retroactively through employers, but ultimately it is consumers who hire and fire workers. They act through economic representatives, but it is they who act. Paraphrasing Hamlet, the consumer says: "To buy or not to buy; that is the question." His answer

determines who wins and who loses in the world of sellers of goods (employers) and sellers of labor services (workers).

Anything that infringes on the worker's ability to make offers to consumers through employers hampers the liberty of consumers. Equally, anything that infringes on the employer's ability to make offers to consumers through workers hampers the liberty of consumers. *The right to exclude is central to the free market social order.* The worker is given the right to make an offer to an employer to exclude other workers. The employer is given the right to accept or reject such offers from workers. But these two correlative rights are subordinate to the right of consumers to accept or reject offers from sellers. Workers and employers are at the mercy of consumers.

Conclusion

The right to work is ultimately the right to make an offer to consumers. The worker who seeks employment does not make this offer directly. He makes it through his employer.

The consumers rule over the labor market through economic agents. The employer acts as the primary economic agent of consumers. His capital is at risk. His employment decisions can be rewarded or thwarted by consumers. It is his freedom to hire and fire that maintains the authority of consumers over the market for labor.

The right to work as defined by the United Nations is an assault on the authority of consumers over the labor market. The phrase "right to work" is inherently misleading. At best, it focuses attention on the right of each man as a would-be worker to seek employment wherever he will. This definition is not illegitimate, but it is dangerously incomplete. At worst, however, it redefines the employer as the economic agent of the worker.

A free society needs much more than a right to work law. It needs a comprehensive right of free contract: the worker's right, the employer's right, and ultimately the consumer's right to accept or reject offers without any threat of coercion by the civil government. []

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Freedom: An Endangered Species

What Jurisdiction Does the Federal Government Have Over Private Lands?

SEPTEMBER 01, 1995 by Robert Greenslade

Mr. Greenslade lives in Walnut Creek, California.

The recent complaint filed against Taiwanese immigrant Taung Ming-Lin and his corporation Wang Lin, Inc., for alleged violations of the federal Endangered Species Act is another example of the federal government usurping its powers.

Ming-Lin's company is charged, in a complaint filed by the U.S. Fish and Wildlife Service, with killing several Tipton Kangaroo rats and destroying the habitat of two other endangered species. Mr. Ming-Lin's crime was plowing 723 acres of scrub land owned by his company in Kern County, California, 150 miles north of Los Angeles.

Does the federal government have the constitutional authority to enforce the Act on private land located within a state?

To understand the answer to the question, it is first necessary to understand the limitations of government powers. The federal government derives all legislative power from the Constitution. All powers not specifically enumerated are reserved to the states or the people. This principle was succinctly stated by the framers, in their writings, particularly in *The Federalist.*

In *The Federalist*, number 14, James Madison spoke of the limited power of the federal government: "In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects. . . ."

Madison also distinguished the limited powers of the federal government with those reserved to the states. It is important to note that the

powers of the federal government related primarily to external (foreign) affairs:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the State. (number 45)

Put quite simply, the federal government was empowered primarily to deal with foreign affairs while the States would concern themselves with domestic affairs.

Thomas Jefferson made this point in 1824:

> With respect to our State and federal governments, I do not think their relations (are) correctly understood by foreigners, (or Americans, for that matter.) They generally suppose the former subordinate to the latter, but this is not the case. They are coordinate departments of one simple and integral whole. To the State governments are reserved all legislation and administration in affairs which concern their own citizens only; and to the federal government is given whatever concerns foreigners or citizens of other States, these functions alone being made federal. The one is domestic, the other the foreign branch of the same government; neither having control over the other, but within its own department.

In *The Federalist*, number 83, Alexander Hamilton stated that Congress was not granted general legislative powers:

> The plan of the convention declares that the power of Congress, or in other words of the *national legislature*, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general legislative authority was intended.

The question as to whether the federal government should have power over land located within a state was before the Constitutional Convention of 1787. It was proposed to grant Congress exclusive legislative authority over what is now the District of Columbia, and like authority “over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.” The first part of the provision was agreed to and a short debate ensued concerning the second: MR. GERRY contended that this power might be made use of to enslave any particular state by buying

up its territory, and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government. MR. KING thought himself the provision unnecessary, the power being already involved; but would have to insert, after the word "purchased," the words, "by the consent of the legislature of the state." This would certainly make the power safe.

Agreement with this change was unanimous and would become Clause 17 of Article I, Section 8 of the federal Constitution.

The debates in the Constitutional Convention illuminate the framers' fear of the federal government usurping power. There appears to be no question that the consent requirement of Clause 17 was added to prohibit the federal government from destroying the sovereignty of the states. Clause 17 is one of the checks and balances incorporated in the constitution to keep the federal government within the bounds of its delegated powers.

The Endangered Species Act was passed by Congress in 1973. As in the case of Mr. Ming-Lin, the federal government is enforcing this law throughout the United States without regard for the prohibition of Clause 17. The Senate Report on the Act in 1973 acknowledged the limited jurisdiction of the federal government: "For the first time, the knowing taking of an endangered animal in violation of the law is a criminal offense *where the federal government has retained management power.*" (emphasis added)

In 1988 there was an amendment to the Act to afford greater protection to plants. A Senate report again acknowledges the federal government's limited jurisdiction: "Currently, anyone who captures, kills or harms a listed animal commits a violation of the Act for which substantial criminal and civil penalties may be imposed. However, it is not unlawful to pick, dig up, cut or destroy a listed plant *unless the act is committed on federal land*. Even on Federal land, however, there is no violation unless the plant is removed *from the area of federal jurisdiction.*" (emphasis added)

In 1956 Congress prepared a report entitled *Jurisdiction Over Federal Areas within the States*. The report contained an in-depth legal analysis of federal jurisdiction over land located within a state. The authors of the report reached the following conclusion based on clause 17 and decisions by the U.S. Supreme Court: "It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to

the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, . . .”

The lawbreaker, in other words, is not Mr. Ming-Lin. It is the federal governent. []

What Free Trade Really Means

America Must Reject the False Dilemma of Managed Versus Regulated Trade

SEPTEMBER 01, 1995 by Jeffrey Herbener

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Governments were threatening trade wars with retaliatory tariffs and quotas, belligerents suffered currency devaluations and balance of payments deficits, and everyone threatened legal action. The United States and Japan in 1995? No, this situation described the relationship between the states in 1780.

Prior to ratification of the Constitution, states had their own development policies. Some, like Virginia, tried to stimulate their existing agricultural cash crops; others, like Connecticut, tried to stimulate industrial development at the expense of agriculture. Each state had its own paper currency which appreciated or depreciated against those of other states, increasing uncertainty and therefore inhibiting interstate trade. Large and unequal government debt existed from state to state. Some, like Rhode Island, inflated it away and suffered a boom-bust cycle; others, like Massachusetts, raised taxes to pay it, squelching economic activity and spawning open rebellion.

Delegates from the states sent to Constitutional Convention in 1787 put high priority on solving these problems of interstate trade. That's why the U.S. Constitution authorizes Congress "to coin money" and forbids the states from printing or coining money; it forbids the states from erecting trade barriers and authorizes Congress "to regulate commerce with foreign nations and among the several states."

By allowing the market to broaden, the integration of state economies had immense benefits. A uniform money removed the inefficiency of

bartering different monies and the uncertainty of currency fluctuations. Elimination of trade barriers allowed the division of labor to develop unimpeded, thereby greatly increasing productivity by an efficient allocation of factors of production.

A dairy farmer in Pennsylvania could obtain a cigar more cheaply from a tobacco farmer in Virginia than by growing his own at the sacrifice of dairy products. Likewise a textile operator in New England could obtain milk more cheaply from the Pennsylvania dairy farmer than on his own efforts at the sacrifice of clothing.

Only on a free market where production is determined by consumer preferences can those preferences be satisfied to the greatest extent. Dairy farmers, tobacco farmers, textile operators, and all individuals not only obtain the highest quality products at the lowest prices but receive the greatest income for the use of their factors in producing goods according to comparative advantage.

The Role of Government

All that government need do to foster wealth creation is protect private property and contract. By enforcing a legal code requiring restitution by criminals to property owners for theft, fraud, and other violations, government is using its power to foster trade.

When using its power to violate property and contract, however, government is managing trade. Domestically, such a policy is called regulation; internationally, it is called mercantilism. Or it was, until recently, when apologists have taken to calling it “free trade.” Both NAFTA and the Uruguay round of GATT were widely but mistakenly called free-trade agreements.

Similarly, the ink was barely dry on the Constitution when the Hamiltonians began to embody their view that centralizing, i.e., monopolizing, power over money and both interstate and international trade in the national government should be the fountainhead of a system of domestic regulation and international mercantilism.

Instead of adopting either a gold or a silver standard as a free market would, Congress opted for the Hamilton-Jefferson bimetallic standard, an unworkable hybrid that vacillates between gold and silver. Worse yet, the

legality of banking with fractional reserve notes and the imposition of the Hamiltonian central bank were accepted.

Later, as Civil War emergency measures, the national government issued fiat paper money, forced its acceptance with legal tender laws, and established a federal regulatory system for banks in the National Banking System. This halfway-house to total national government control over money and banking was completed with the Federal Reserve System, which has given us the chronic inflation and business cycles of the twentieth century.

A False Dilemma

Whether or not the full exercise of national power over money in the Fed has been better than the devolution of that power in the states is an open question. But the dilemma the Founders saw is false. The way of escaping the detrimental consequences of power centralized in the national government or decentralized in the states is to choose the free market. To argue that such power cannot be denied to government is to surrender to despotism. The concept of limited government necessarily implies that valuable powers can be denied to government.

In monetary affairs this means government protection of, and absence of intervention into, private property and contract in money production. Entrepreneurs left to their own devices, within a system of private property protection, will best satisfy consumers with a pure gold standard—money as gold coin and notes and deposits 100 percent backed by gold. Such a system provides the benefits of uniform money without the drawbacks of arbitrary inflation.

The benefits of eliminating state-erected barriers to trade were increasingly offset by the Hamiltonian policy, enunciated in 1791 in his "Report on Manufactures," of mercantilism and regulations. In it he called for tariffs, quotas, prohibitions, inspections, regulations on foreign imports and prohibitions of agricultural exportation, and subsidies for domestic manufacturing to encourage domestic industrial development.

Acceptance of Hamilton's pro-industrial, anti-agricultural, anti-British foreign policy led to a series of international trade barriers, like the Embargo Act and the Non-Intercourse Act, that culminated in protectionist measures. Beginning with the tariff of 1816 these measures mushroomed

into the Tariff of Abominations in 1828 that galvanized the agricultural South against the industrial North. South Carolina led the way in nullifying the Tariff Acts of 1828 and 1832, and threatening secession if the national government trumped its hand.

Having their agricultural economy disabled for the benefit of manufacturing interests was a primary grievance the Southern states used to justify secession from the Union. The national government's war effort was used as reason for a vast expansion in national government power, and victory provided the excuse to consolidate it at the expense of the power of the states. It is doubtful that delegates from Southern states who signed the Constitution in 1787 granting limited powers to the national government could have imagined in their worst nightmares what their creation would eventually do to their states.

Since Reconstruction, this power has been used increasingly to regulate economic activity. The late-nineteenth century saw passage and enforcement of antitrust laws and regulatory agencies such as the Interstate Commerce Commission. The Progressive Era extended the regulatory framework, as did World War I. New Deal legislation, war powers during World War II, civil rights laws, and Great Society programs; all of them furthered the march of the Leviathan state.

Whether or not the full exercise of national power over the economy has been better than the devolution of that power in the states is often hotly debated. But it too poses a false dilemma. America need not accept either centralized regulatory power in a national government nor decentralized regulatory power in the states. The free market, based on protection of private property, will secure the blessings of liberty without government regulation of any kind, from any source.

The lessons from American history for deciding current foreign economic policy are clear. American prosperity depends on enacting a policy of free trade at home and abroad. Just as the states are forbidden to manage interstate commerce, the national government should be forbidden to manage international commerce. Then the advantages of the division of labor could be extended to Pennsylvanians and Virginians not just between themselves, but with Germans and Japanese as well.

Americans could have their standards of living raised by purchasing less expensive, higher quality Japanese cars, expanding the production of

export goods where they have comparative advantage and surrendering the production of goods where they do not have comparative advantage.

Far from being detrimental, giving up tasks where one has a comparative disadvantage to move into those where one has comparative advantage raises income. A Pennsylvania farmer who now devotes his land to growing tobacco will increase his income by shifting to dairy farming. Just as he has no worry about being an "unemployed tobacco farmer," auto producers have no unemployment worries provided they are willing, like the rest of us, to accept employment in areas of their comparative advantage.

The transition of employing factors in different production activity is a normal, necessary part of any system that satisfies changing consumer preferences. In fact, the difficulty of transformation of production out of autos and into other activity exists only because past mercantilist policies have artificially built up domestic auto production. Because of this, any move to free trade would entail a large, rapid re-allocation; but if free trade had always prevailed, the re-allocation would have been smooth and gradual.

If Americans choose a political solution to the current international economic problems, they will face a disastrous dilemma. Maintaining the status quo forces America into the same role as one of the original 13 states in the late eighteenth century. We will continue to suffer the ills of managed trade: trade wars, balance of payments deficits, currency devaluations, and stagnating standards of living. Accepting the logic of centralizing political power, as with the GATT-created World Trade Organization, will lead to international regulation. Supranational institutions will come to command the economies of different countries in the way that the national government came to command the economies of the various states.

We must heed the lesson that so many Americans have paid so dearly in liberty and prosperity for us to learn. America must reject the false dilemma of managed versus regulated trade and choose free trade. That means that government at all levels must step aside and allow markets to work.

H. L. Mencken, America's Wittiest Defender of Liberty

Mencken Was America's Foremost Newspaperman and Literary Critic

SEPTEMBER 01, 1995 by Jim Powell

During the first half of the twentieth century, H. L. Mencken was the most outspoken defender of liberty in America. He spent thousands of dollars challenging restrictions on freedom of the press. He boldly denounced President Woodrow Wilson for whipping up patriotic fervor to enter World War I, which cost his job as a newspaper columnist. Mencken denounced Franklin Delano Roosevelt for amassing dangerous political power and for maneuvering to enter World War II, and he again lost his newspaper job. Moreover, the President ridiculed him by name.

"The government I live under has been my enemy all my active life," Mencken declared. "When it has not been engaged in silencing me it has been engaged in robbing me. So far as I can recall I have never had any contact with it that was not an outrage on my dignity and an attack on my security."

Though intensely controversial, Mencken earned respect as America's foremost newspaperman and literary critic. He produced an estimated ten million words: some 30 books, contributions to 20 more books and thousands of newspaper columns. He wrote some 100,000 letters, or between 60 and 125 per working day. He hunted-and-pecked every word with his two forefingers—for years, he used a little Corona typewriter about the size of a cigar box.

Mencken had interesting things to say about politics, literature, food, health, religion, sports, and much more. No one knew more about our American language. Influential pundits of the past like Walter Lippmann are long forgotten, but people still read Mencken's work. During the past

decade, publishers have issued almost a dozen books about him or by him. Biographer William Nolte reports that Mencken ranks among the most frequently quoted American authors.

Certainly Mencken was among the wittiest. For example: "Puritanism —the haunting fear that someone, somewhere may be happy. . . . Democracy is the theory that the common people know what they want, and deserve to get it good and hard. . . . The New Deal began, like the Salvation Army, by promising to save humanity. It ended, again like the Salvation Army, by running flophouses and disturbing the peace."

Mencken stood about five feet, eight inches tall and weighed around 175 pounds. He parted his slick brown hair in the middle. He liked to chew on a cigar. He dressed with a pair of suspenders and a rumpled suit. According to one chronicler, Mencken at his best looked "like a plumber got up for church."

Publisher Alfred Knopf had this to say about Mencken, a close friend for more than 40 years: "His public side was visible to everyone: tough, cynical, amusing, and exasperating by turns. The private man was something else again: sentimental, generous, and unwavering—sometimes almost blind—in his devotion to people of whom he felt fond . . . the most charming manners conceivable, manners I was to discover he always displayed in talking with women . . . he spent a fantastic amount of his time getting friends to and from doctors' waiting rooms and hospitals, comforting them and keeping them company there."

Mencken inspired friends of freedom. He helped cheer up stylish individualist author Albert Jay Nock, a frequent contributor to Mencken's magazine the *American Mercury*, during Nock's declining years. Mencken's stalwart individualism awed young Ayn Rand who, in 1934, called him "one whom I admire as the greatest representative of a philosophy to which I want to dedicate my whole life."

Henry Louis Mencken was born September 12, 1880, in Baltimore. His father, August Mencken, owned a cigar factory. His mother, Anna Abhau Mencken, like her husband, was a child of German immigrants. In 1883, the family moved to a three-story, red brick row house at 1524 Hollins Street. Here, except during his five-year marriage, Mencken lived for the rest of his life.

Mencken was a voracious reader from the get-go. At age nine, he discovered Mark Twain's *Huckleberry Finn*, which opened his eyes to

rugged individualism and literary pleasures. This was, as he put it, "probably the most stupendous event in my whole life." He was thrilled: "what a man that Mark Twain was! How he stood above and apart from the world, like Rabelais come to life again, observing the human comedy, chuckling over the eternal fraudulence of man! What a sharp eye he had for the bogus, in religion, politics, art, literature, patriotism, virtue. . . . And seeing all this, he laughed at them, but not often with malice."

Mencken finished high school when he was 15 and went right to work in his father's cigar factory, but he hated it. Within a few days after his father died of kidney failure in January 1899, Mencken tried his hand as a newspaperman. The first story he ever sold, to the *Baltimore Herald*, was about a stolen horse. By June that year, he was a full-time reporter earning $7 a week. Mencken proved to be unusually resourceful and industrious. He rose to become drama critic, editor of the Sunday paper, and city editor of the morning paper.

Early on, Mencken displayed a tremendous zest for life. In 1904, for example, he began a little musical group which became known as the "Saturday Night Club." Almost every week for 46 years, as many as a dozen friends got together around 8:00 PM. Mencken played the piano with great enthusiasm. Other participants played the violin, cello, flute, oboe, drums, French horn, and piano. They most often played for a couple hours in a violin-maker's shop and afterwards went to the Hotel Rennert for beer. During the 13 years of Prohibition, they took turns hosting festivities in their homes. They enjoyed chamber music, marches, waltzes, and operatic melodies. Mencken loved German romantics, Beethoven above all.

The *Baltimore Sun*

The *Baltimore Herald* went out of business in 1906, and Mencken landed at the newspaper where he would write for more than 40 years. One observer remarked: "The staid old *Baltimore Sun* has got itself a real Whangdoodle." The *Baltimore Evening Sun* was launched in 1910, and Mencken served as editor. From 1911 to 1915, he wrote a daily "Free Lance" column which covered politics, education, music, whatever interested him. He edited the adjacent letters-to-the editor columns, and whenever a nasty letter came in attacking one of his columns, he made sure it was printed—he recognized that people enjoyed reading abuse.

There was abuse aplenty as people reacted to his bombastic writing style. He ridiculed hypocritical politicians, clergymen, and social reformers.

For example, Mencken called Fundamentalist do-gooder William Jennings Bryan "the most sedulous flycatcher in American history . . . a charlatan, a mountebank, a zany without shame or dignity." He was accused of anti-Semitism because he gratuitously referred to so many people as "Jews." Yet he didn't criticize Jews as much as others. He described Anglo-Saxons as "a wretchedly dirty, shiftless, stupid and rascally people . . . anthropoids."

Mencken lashed out at President Woodrow Wilson for maneuvering America into World War I. He insisted that the British government shared responsibility for the horrifying conflict, and he attacked the moral pretensions of British officials who pursued a naval blockade punishing innocent people as well as combatants in Germany. Mencken discontinued his column because of wartime hysteria.

Meanwhile, he had established himself as a literary critic. Since 1908, he had reviewed books for *Smart Set*, a monthly literary magazine. He and drama critic George Jean Nathan were named editors in 1914. Mencken relentlessly attacked puritanical standards and hailed authors like Theodore Dreiser, Sherwood Anderson, and F. Scott Fitzgerald.

Mencken turned increasingly to writing books—he had written eight on music, literature, and philosophy by 1919. That year marked the debut of his most enduring work. It arose from his passion for American speech which evolved spontaneously into something more dynamic than the English of England. No government planned it: the American language became more expressive as ordinary people went about their daily business, now and then contributing new words. The first edition of *The American Language* soon sold out, and Mencken began work on the second of four editions. "All I ask," he wrote his publisher Alfred Knopf, "is that you make *The American Language* good and thick. It is my secret ambition to be the author of a book weighing at least five pounds."

In 1920, with World War I a bad memory, the *Baltimore Sun* asked Mencken to resume writing a column for $50 a week. Thus began his memorable "Monday" articles which appeared weekly for the next 18 years. About two-thirds of them dealt with politics.

The *American Mercury*

By 1923, Mencken decided he wanted a national forum for his political views. He resigned from the *Smart Set*, and with backing from Knopf he and Nathan launched the monthly *American Mercury*. The first issue, bearing a distinctive pea-green cover, appeared in January 1924. Nathan

soon disagreed about which direction the magazine should go, and he resigned. Mencken offered feisty commentary plus writing by many of America's most distinguished authors. There were articles by philosophical anarchist Emma Goldman and birth-control advocate Margaret Sanger. Also, such black authors as W.E.B. Dubois, Langston Hughes, James Weldon Johnson, and George Schuyler. Circulation grew for four years, peaking around 84,000 in 1928.

Although Mencken wasn't known as a political philosopher, he made clear his commitment to individual liberty. "Every government," he wrote, "is a scoundrel. In its relations with other governments it resorts to frauds and barbarities that were prohibited to private men by the Common Law of civilization so long ago as the reign of Hammurabi, and in its dealings with its own people it not only steals and wastes their property and plays a brutal and witness game with their natural rights, but regularly gambles with their very lives. Wars are seldom caused by spontaneous hatreds between people, for peoples in general are too ignorant of one another to have grievances and too indifferent to what goes on beyond their borders to plan conquests. They must be urged to the slaughter by politicians who know how to alarm them."

Mencken expressed outrage at violence against blacks and as Hitler menaced Europe, Mencken attacked President Roosevelt for refusing to admit Jewish refugees into the United States: "There is only one way to help the fugitives, and that is to find places for them in a country in which they can really live. Why shouldn't the United States take in a couple hundred thousand of them, or even all of them?"

Mencken was adamant that the United States not become entangled in another European war. He believed it would mean further expansion of government power, oppression, debt, and killings without ridding the world of tyranny. Better to keep America as a peaceful sanctuary for liberty:

"I believe that liberty is the only genuinely valuable thing that men have invented," he wrote, "at least in the field of government, in a thousand years. I believe that it is better to be free than to be not free, even when the former is dangerous and the latter safe. I believe that the finest qualities of man can flourish only in free air—that progress made under the shadow of the policeman's club is false progress, and of no permanent value. I believe that any man who takes the liberty of another into his keeping is bound to become a tyrant, and that any man who yields up his liberty, in however

slight the measure, is bound to become a slave." Mencken added: "In any dispute between a citizen and the government, it is my instinct to side with the citizen . . . I am against all efforts to make men virtuous by law."

As for capitalism, Mencken declared that "We owe to it almost everything that passes under the general name of civilization today. The extraordinary progress of the world since the Middle Ages has not been due to the mere expenditure of human energy, nor even to the flights of human genius, for men had worked hard since the remotest times, and some of them had been of surpassing intellect. No, it has been due to the accumulation of capital. That accumulation permitted labor to be organized economically and on a large scale, and thus greatly enhanced its productiveness. It provided the machinery that gradually diminished human drudgery, and liberated the spirit of the worker, who had formerly been almost indistinguishable from a mule. Most of all, it made possible a longer and better preparation for work, so that every art and handicraft greatly widened its scope and range, and multitudes of new and highly complicated crafts came in."

Sara

For a brief period, Mencken faced his ideological battles with a romantic partner. In May 1923, he delivered a talk called "how to catch a husband" at Baltimore's Goucher College and there met a 26-year-old, Alabama-born English teacher named Sara Haardt. He was taken by her good looks, radiant intelligence and passion for literature. She saw a decent, joyous, civilized man. A lifelong bachelor who had lived with his mother until she died in 1925, when he was 45, Mencken was wary of marriage. Apparently Sara's worsening tuberculosis brought him to the altar. After her death on May 31, 1935, Mencken wrote a friend: "When I married Sara, the doctors said she could not live more than three years. Actually, she lived five, so I had two more years of happiness than I had any right to expect."

Sara's death hit him especially hard, because he was already down. With the Great Depression everywhere blamed on capitalism, individualist Mencken seemed like a relic. He had seldom analyzed economic policy, so he wasn't intellectually equipped to explain how the federal government itself had triggered and prolonged the Great Depression—powerful evidence for that case became available only in the 1960s.

Circulation of the *American Mercury* plunged. Mencken resigned as editor by December 1933. He was succeeded by economic journalist Henry

Hazlitt. Three years after Sara died, Mencken's attacks on President Roosevelt's foreign policy cost him his *Baltimore Sun* column. It didn't help that Mencken's devotion to traditional German culture apparently led him to discount ominous news coming out of Hitler's Germany. He was an outcast.

Mencken did much to redeem himself as far as the public was concerned by affirming the joys of private life. He added two massive supplements to *The American Language*, acclaimed as a learned and entertaining masterwork about popular speech. He wrote his charming memoirs which began as a series of *New Yorker* articles, then expanded into a trilogy, *Happy Days* (1940), *Newspaper Days* (1941), and *Heathen Days* (1943). They display a tolerant, enthusiastic view of life. He edited a generous collection of his newspaper articles into a book, *A Mencken Chrestomathy* (1948)—it's still in print.

On November 28, 1948, Mencken went to pick up a manuscript from his secretary's apartment and suffered a stroke. While he regained his physical capabilities, he lost the ability to read, and he had difficulty speaking. Most people forgot about him.

Mencken died in his sleep on Sunday, January 29, 1956. His ashes were buried near his parents and his wife at Loudon Park Cemetery. Mencken's former *American Mercury* compatriot, *Newsweek* columnist Henry Hazlitt, called Mencken "a great liberating force. . . . In his political and economic opinions Mencken was from the beginning, to repeat, neither `radical' nor `conservative,' but libertarian. He championed the freedom and dignity of the individual."

Though Mencken was gone, controversy soon swirled about him again. New collections of his work proved popular. Previously unpublished manuscripts appeared. He was accused of anti-Semitism, and these charges gained a wider hearing with the 1989 publication of his candid diary. Long-time Jewish friends defended him. A succession of biographies focused on different aspects of his life.

Nearly all of Mencken's chroniclers opposed his political views—in particular, his hostility to the New Deal—but they have found him irresistibly appealing. They were drawn to his prodigious enterprise, vast learning, steadfast courage, good cheer, and free spirit. Someday, hopefully more people will appreciate Mencken's vital role in nourishing a love for liberty during some of America's darkest decades.

Just Say No to Farm Subsidies

J. Sterling Morton Was a Principled Free-Market Advocate

SEPTEMBER 01, 1995 by Lawrence W. Reed

Congress is busy tying itself in knots of anguish over the future of federal farm subsidies. Many lawmakers are unwilling to stand up to the farm lobby and do what's right. But exactly 100 years ago, one Secretary of Agriculture had the courage to do just that. His name was J. Sterling Morton, and he served in the second administration of President Grover Cleveland.

With the encouragement of his grandfather and uncle, young Morton devoured the writings of economist Adam Smith and statesman Thomas Jefferson. He became a staunch proponent of their ideas of free markets and limited government by the time he went to college in his home state of Michigan. The notion that no free society could survive if government started redistributing the people's wealth became a life-long guiding principle for Morton. A strong advocate of voluntarism, not more centralized political power, he was the man who originated Arbor Day in 1872 to encourage private citizens to plant trees.

In the late 1890s, when the Democrats were the party of free trade, Morton was three times the Democratic candidate for Governor of Nebraska. In 1892, when Grover Cleveland recaptured the White House for the Democrats, he chose J. Sterling Morton to be his Secretary of Agriculture and gave him a free hand to liberate farming from the federal dole.

Noted economic historian Burton Folsom has written that Morton proved to be as principled a free market advocate as the President who appointed him. "In his four years as Secretary," Folsom observes, "he chopped almost 20 percent from his department's budget. He fired unproductive bureaucrats, starting with a man who held the job of federal

‘rainmaker.’” Then he slashed the travel budget: if farmers wanted to hear a spokesman from Washington, they would have to pay the bill to send him.

“If the Department of Agriculture is to be conducted in the spirit of paternalism, the sooner it is abolished the better for the United States,” Morton declared. Accordingly, he cut farm subsidies wherever the law gave him the authority. He reduced the government’s role in beet sugar production with these words: “Those who raise corn should not be taxed to encourage those who desire to raise beets. The power to tax was never vested in a Government for the purpose of building up one class at the expense of other classes.”

In 1895, Morton ended the free seed program. For 60 years, the government had sent free seed to farmers. But many farmers didn’t even use the seeds; in fact, fewer than one person per thousand even acknowledged receiving them. “Is it a function of government to make gratuitous distribution of any material thing?” Morton asked. He called free seeds a “gratuity, paid for by money raised from all the people, and bestowed upon a few people.”

In a biography of Morton, historian James C. Olson writes:

> Every bill to appropriate money for special purposes was looked upon suspiciously by the Secretary. If it could not run the gamut of rigid laissez faire, if there was the slightest danger that it would extend the functions of the government, if it was paternal in any aspect, the Secretary of Agriculture was against it. When, for example, J. Z. George, Chairman of the Senate Committee on Agriculture and Forestry, asked his opinion on a bill to appropriate money for the extermination of the Russian thistle in the states of the Northwest, Morton asked in return whether it was “the business of the Government of the United States to make appropriations out of which men, women, and boys are to be hired, at wages fixed by law, to exterminate weeds, called Russian thistles, any more than it is the business of that Government to prescribe the manner of plowing, planting, and cultivating cereals, cotton, and tobacco, and to limit the wages to be paid cultivators?”[1]

Those who favored subsidies and business as usual were aghast at Morton. They wrote him vitriolic letters and filled newspapers with their attacks on him. Many urged President Cleveland to fire Morton, but the President was elated with the cost savings his agriculture secretary was achieving. This was the President who had once vetoed a $10,000 appropriation for drought-stricken farmers in Texas by declaring, “ . . . though the people support the government, the government should not support the people.”

Morton himself challenged his critics. He called the pro-subsidy Granger Society a "bunko establishment." He urged a farmer in Iowa to quit "plowing with preambles, planting with resolutions, and gathering by legislative enactment" and get on with the business of an honest day's work. His battles with lobbyists and the millions of dollars he saved became almost legendary in Washington.

When Morton left the nation's capital in 1897, the subsidy crowd slowly returned. Free seeds were again distributed. By the 1930s, the federal government was paying some farmers not to produce at all. By the 1950s, even mohair producers were getting federal handouts. Today billions are doled out to subsidize a wide range of farm commodities, and it seems farmers sometimes produce as much for the government as they do for the market. Many agricultural economists believe that farm subsidy programs actually *increase* instability in the industry because the rules governing them change so often.

The experience of New Zealand is instructive: after that country abolished all farm subsidies in 1986 with a mere eight months' notice, the farm economy improved and output rose. The awful predictions of the subsidy-seekers that disaster would ensue never materialized.

Author Osha Gray Davidson, writing in the January 4, 1993, *New York Times*, termed the U.S. farm subsidy program "hopelessly outdated, exorbitantly expensive and environmentally and socially devastating." Far from "saving the family farmer," they price American produce out of world markets, hurt low income families, and swamp the farmer with endless regulations. "A whopping 73 cents of every farm program dollar," Davidson noted, "ends up in the pockets of 15 percent of the nation's superfarms." In other words, the large and well-off get the biggest checks, while their smaller competitors get a pittance in cash for the strangling controls subsidy brings. Because of these realities, there may be considerably more support for the abolition of subsidies among farmers themselves than is generally believed.

As Congress tries to muster the courage to challenge the government's destructive role in agriculture, its members ought to look to J. Sterling Morton for inspiration. One hundred years ago, he didn't waffle on the issue; he knew what had to be done, and to the extent the law allowed him, he did it with a flourish. []

1. James C. Olson, *J. Sterling Morton: Pioneer Statesman, Founder of Arbor Day* (Lincoln, Nebraska: University of Nebraska Press, 1942), pp. 358-9.

Persuasion or Popularity?

Some Misconceive the Purpose of a Column in a Magazine of Ideas

SEPTEMBER 01, 1995 by Robert James Bidinotto

Mr. Bidinotto is a long-time contributor to Reader's Digest *and* The Freeman, *and a lecturer at FEE seminars.* Criminal Justice? The Legal System Versus Individual Responsibility, *edited by Mr. Bidinotto and published by FEE, is available in a new hardcover edition at $24.95.*

Someone once said that his purpose was to "comfort the afflicted, and afflict the comfortable." That might not precisely describe my own motives as a columnist, but in one respect I sympathize.

Like most writers, I sometimes get letters from readers offended by my views. This is especially true of columns in which I challenge the views of anyone supposedly sharing "our side" of the ideological spectrum. The gist of these correspondents' objections is that, in criticizing alleged allies, I am spreading "disunity" in "the movement."

Such critics misconceive the purpose of a column in a magazine of ideas.

If a writer's primary aim is to entertain and be liked, he will aim to *comfort* his readers—embodying, expressing, and ratifying only what they already believe. He will give voice solely to popular values, standards, and ideas, even if these are in error. In doing so, he will change no minds. But for his efforts, he may achieve much popularity.

However, if a writer's primary aim is persuasion, he must *challenge* his readers—saying new and different things, not just the old and familiar. Persuasion is predicated upon *disagreement*: to persuade means to lead someone away from old and familiar ways of thinking, and to a new and different perspective. In trying to persuade, a writer may achieve little

popularity; after all, no reader likes to be told, "you're wrong." But for his (often thankless) efforts, he may change minds. Perhaps even the world.

The main goal of a magazine of ideas is persuasion—to change minds. It is not the job of any of its writers to comfort readers, but rather to challenge views which he believes to be mistaken, and make his disagreements clear. No, in doing so, he should not be intemperate and nasty; boorishness and bad manners are not badges of independence. But if a writer of ideas leaves all of his readers smiling and nodding all of the time, he has failed. He succeeds only to the extent that he elicits frowns of thoughtful consideration.

Anyone dissatisfied with the *status quo* therefore faces an inescapable choice. To avoid disagreements, he can keep silent, resigning himself to popular fallacies and follies—or he can seek to challenge and change them by voicing his dissent. But if he dares to challenge popular notions, he will necessarily "afflict the comfortable," and must accept the likelihood of being *un*popular—at least for a time.

This is the psychological difference between the individualist and the conformist.

Conformity is the process of avoiding the possibility of offending anyone, by resembling everyone. Conformists do not change others: *they* are the ones who do the changing. Rather than educate, they simulate. The result? The morally repugnant *status quo* remains in place, unchallenged and unchanged.

Years ago, in the January 1984 *Notes from FEE*, I wrote: "Suppose valid ideas are altered to *seem* acceptable by irrational standards. Then the audience, unchallenged, would actually continue to believe in its mistaken perspective. And if valid ideas are altered to *be* compatible with irrational standards, then it is the audience—not the speaker—that has found a new convert."

Regrettably, to gain public support over the years, many on "our side" have been willing to conform—to water down their arguments, compromise their principles, and betray their ideals.

In his recent book, *Dead Right*, David Frum provides ample evidence that sadly, many on "our side" have adopted this latter course of appeasement and betrayal. Many traditional critics of big government have come to realize that opposing popular welfare-state programs is . . . well, *unpopular*. They now grasp that most government "entitlements"—Social

Security, Medicare, public education, college loans, farm subsidies, etc.—go to the *middle class*. So to curry favor and win votes, they have begun to recast their political philosophy to be more appealing to "middle Americans."

". . . [T]he conservative movement was born in revolt against the size, cost, and arrogance of the modern state," Frum writes. "[B]ut . . . as part of the price for its emergence as America's dominant ideology, conservatism has quietly walked away from that founding principle. Instead, all too many conservatives have developed a startling tolerance for the use of government power to reform society along traditionalist lines."

In their pursuit of political influence and office, they now reject the very basis of liberty—individualism—and have abandoned any effort to dismantle the welfare state and to limit government. Forsaking the struggle for *fundamental* change, they instead resign themselves to conformity to the political *status quo*, on grounds that "if ya can't lick 'em, join 'em." As one of their number put it, the "Right" should no longer "dwell on limiting the size of government but rather on the issue of who and what controls government."

But if individual rights is the standard, are such people truly on "our side"? Should the ideas they put forth be immune from our public scrutiny? Should the statist goals they seek be exempt from our public criticism?

The truly great thinkers on "our side" have long understood that a poorly framed and argued case for individual liberty is worse than no case at all. An argument for human freedom that is ungrounded, incoherent, compromised, or riddled with logical inconsistencies is fruitless. Either it will be rejected by intelligent people, or if implemented, will fail in practice.

Certainly, it's a lot more fun evoking smiles rather than provoking frowns—whether from avowed adversaries or alleged allies. But writing for a magazine devoted to discovering the truth about socio-political ideas, my responsibility is to challenge ideas I believe to be in error, to raise objections whenever I believe that good ideas are being undermined or ill served—and to let the chips fall where they may.

We stand at a crucial crossroads in our nation's history. We have a rare, and probably fleeting, opportunity to enact a *fundamental* political change of direction: a change away from governmental encroachments on human freedom, and toward guaranteeing to each person his own inviolate sphere

of sovereignty. We have a unique chance to begin to erect a fire wall between collective might and individual rights.

But we won't do it if we compromise our identity as *individualists*. If, by our silence, we allow politicians allegedly representing "our side" to sell out our freedoms and our future. If we try to maintain a fraudulent and futile "united front" with open and avowed collectivists.

And if, "to tease a smile from some cold face"—as Cyrano put it—we become meek followers instead of bold leaders of public opinion.

Budget Debate, Washington-Style

To Balance the Budget, We Must Rethink the Purpose of Government

SEPTEMBER 01, 1995 by Doug Bandow

Mr. Bandow is a Senior Fellow at the Cato Institute and the author of The Politics of Envy: Statism as Theology (Transaction).

Only in Washington could the task of balancing a budget be perceived as so difficult. It's been 26 years since Uncle Sam ran a positive fiscal balance, and even under the most optimistic budget plan before Congress it will be another seven years before Washington does so again. And that presumes proposed budget cuts, backloaded to occur two presidential, and four congressional, elections away, will actually take effect.

Policymakers offer many explanations as to why balancing income and expenses, which most families do every year, is so hard for government. Our society and its problems are complex. It would be a waste to cancel projects already underway. Cutting spending in one area, say, prenatal health care, would raise costs elsewhere, say Medicaid. Reducing outlays would force states to spend more. A growing portion of the budget is made up of "entitlements" and isn't "controllable." And so on. Excuse-making is big business in D.C.

A far more serious problem with Washington's budget deliberation, however, is the absence of any moral component. Almost all legislators, irrespective of their party, believe that all policy outcomes are philosophically equal. To them, there is no moral difference in voting to spend, say, $10 million to subsidize American beekeepers, underwrite foreign dictators, train local activists to campaign for higher alcohol excise taxes, provide day care for middle-class parents, and to leave the $10 million with the people who earned it. One or another spending proposal may seem a better use of scarce resources or offer greater political

advantage; none is viewed as being wrong in principle, an inappropriate use of political power.

This failure to see any moral issue with the taking of taxpayers' money—something that would be recognized as theft but for the veneer of law—has proved to be the most important fuel for the growth of government over the past century and is proving to be the greatest barrier to restraining government today. The point is, people's wants are infinite. Their desire for subsidies is almost as great. So long as legislators consider tax cuts to be merely one of several alternative uses of government money, rather than recognize government spending as the coercive divestment of earnings to which taxpayers are morally entitled, Congress is unlikely to seriously restrain spending or balance the budget.

Indeed, legislators need a set of clear standards to measure any appropriation or regulation. Such guidelines would help them fulfill their obligation to uphold the Constitution and ward off lobbyists and interest groups seeking special favors. The many possibilities include:

1. The measure must serve the general welfare rather than one or another narrow interest. The original Constitutional notion of the general welfare had real meaning. The concept goes to the proper purpose of government, which is to act when, but only when, coercive, collective action is necessary. Thus, the first question to ask about any expenditure or law is, who benefits? If the answer is a handful of mohair wool producers, a score of major exporting firms, or a few thousand small businesses, then agricultural subsidies, the Export-Import Bank, and the Small Business Administration fail to make even the first cut.

Of course, everyone contends that his or her program ultimately benefits everyone. And that's obviously true in a sense—for instance, in return for a generous government grant I would happily promise to spend every cent, thereby enriching book publishers, antique dealers, and a host of other merchants. But this beneficial effect would have to be measured against the taxes taken from these very same people, as well as everyone else. There may occasionally be some close cases, but not often.

2. The purpose must justify forcing taxpayers to contribute. The mere fact that a measure would serve a fairly broad interest doesn't mean that it warrants mulcting taxpayers. A program to provide everyone with gold-plated bathroom fixtures would, after a fashion, promote the general welfare. But there is not the slightest necessity for the program, as there is

for, say, a defense against foreign foes. As a matter of principle government should not threaten to jail people in order to force them to pay for their neighbors' fancy bathrooms.

This standard would weed out virtually any grant or transfer program that survived the first test. Just peruse the *Government Assistance Almanac* (published by Omnigraphics), an annual listing of available spots at the federal trough. There is, for instance, the Christa McAuliffe Fellowship program, which funds "outstanding teachers to continue their education, to develop innovative programs, to consult with or assist school districts or private school systems, and to engage in other educational activities." Conceivably these fellowships benefit someone beyond the individual recipients. But how can one seriously argue that the gains are important enough to warrant conscripting taxpayers' earnings?

3. The objective must not be achievable through private means. Even if a proposal survives the first two hurdles, that is not enough. Consider social programs such as Meals-on-Wheels and other services for the disabled and elderly. The government's goals are good, but there are manifold private alternatives. Indeed, the federal Meals-on-Wheels was actually patterned after a private initiative; families, churches, associations, and neighborhoods are all better able to meet diverse social needs. Moreover, the sinews of community will be strengthened if private people develop such solutions rather than turn problems over to a distant government bureaucracy.

4. The proposed program must be likely to do more good than harm. The final point is perhaps the most obvious yet most ignored on Capitol Hill: Government should first do no harm. A half century of expansive and expensive government intervention surely has dispelled the notion that government works well. Criticisms of alleged market failure are meaningless if not compared to government failure, given how often thoughtless state interference, through taxes, spending, and regulation, has created and exacerbated social problems.

Consider, for instance, federal antitrust and civil rights laws. Generously assume they meet the first three conditions; they still flunk the fourth. Antitrust law has turned into an utterly perverse, anti-competitive and anti-innovative regulatory miasma that causes far more economic damage than it repairs. Similarly, the civil rights laws have created a racial

spoils system that is inflaming racial passions, moving us further away from the ideal of a color-blind society.

Obviously not many programs (or regulations) would pass all four tests. But that's the point. Today Republican and Democratic legislators alike tend to accept the legitimacy of most any government action. Yet a commitment to liberty and understanding of the usual consequences of state action should cause them to make government the last rather than first resort. And they should resort to it only under circumstances that are compelling both morally and practically. Until lawmakers rethink the whole purpose of government, we aren't likely to see a balanced budget in seven, ten, or even more years.

Freedom for Everyone . . . Except the Immigrant

Forbes's Peter Brimelow Takes an Anti-Immigration Stance

SEPTEMBER 01, 1995 by Mark Skousen

"We cannot continue to admit millions of legal and illegal immigrants if we wish to maintain our standard of living and our national identity."
—Peter Brimelow, author,
Alien Nation

How often have we heard the refrain, "Well, I'm all for the free market except . . ."? It's particularly sad to hear it from Peter Brimelow, an otherwise friend of liberty in high places. Peter is a senior editor of *Forbes* magazine, the most influential business magazine in the nation. He has written eloquently about the bloated federal government and the demise of public education. He even wrote an article in *Forbes* praising Mr. Libertarian, the late Murray Rothbard.

But now Peter Brimelow has joined those who are calling for a drastic curtailment if not entire elimination of new immigrants entering the United States. Peter demands sanctions and even criminal penalties against U.S. employers who hire undocumented workers. He also supports the establishment of a national identity card, which he says "is hardly more an encroachment on personal freedom than the income tax."[1] He recommends another crackdown (Operation Wetback) on illegals by the much-hated Immigration and Naturalization Service (INS), including the use of police attack dogs. Finally, he endorses building a huge barrier along the U.S.-Mexico border, something akin to a Berlin Wall. (How about solving the problem right away by putting up signs along the border, "Trespassers Will Be Shot"?) All these plans, of course, would mean thousands of new federal agents and billions in taxpayer dollars, but no matter. America's "lax" immigration policy is a "disaster," Peter says, and something must be done.

Isn't it amazing how a single issue can lead to so much government intervention?

The Benefits of Immigration

Currently, approximately one million legal immigrants are allowed to enter the U.S. each year (recent legal aliens included, ironically, Peter Brimelow and his wife). Estimates of illegal immigrants run as high as two million a year. Half the world's immigrants come to America. Is this an alarming trend?

Far from a disaster, a liberal immigration policy can be quite beneficial. A cardinal principle of economic liberty is the free movement of goods, capital, and people. As Mises states, "In a world of perfect mobility of capital, labor, and products there prevails a tendency toward an equalization of the material conditions of all countries."[2] Without this freedom, some areas are overpopulated, others are underpopulated. Wage rates and interest rates differ dramatically.

A recent article in the *New York Times*, appropriately published on Independence Day, reflects the dynamics of immigration in the United States: "Dead-End Jobs? Not for These Three. Immigrants Flourish in the McDonald's System."[3] It testifies to the energy and talent immigrants can bring to America.

In January, 1993, the European Community of 12 nations adopted free immigration. Any citizen of the EC can live and work in any other EC country without a work permit. The effect will be a transfer of labor from low-wage countries (Spain, Portugal, Greece) to high-wage countries (Germany, France, England). Who will benefit in the long run? All members of the EC.

The Cuban Miracle

One of the best cases in favor of immigration is the Cuban miracle in Miami, Florida. Here was potentially one of those disasters that Peter Brimelow talks about. In the early 1960s some 200,000 penurious immigrants thronged this stagnant urban community, more than the total black unemployed youths in all America's urban areas at the time. It was the most rapid and overwhelming migration to one American city. Few spoke English and virtually none had jobs or housing. Yet in less than a decade, these Cuban immigrants revived Miami's stagnant inner city and transformed the entire Miami economy. Even with another 125,000 boat people fleeing to Miami in the early 1980s, Dade County continued to have

one of the lowest rates of unemployment in the state of Florida. George Gilder, who has chronicled the Cuban miracle, concludes, “As long as the United States is open to these flows from afar, it is open to its own revival.”[4]

There are many examples in other parts of the world where refugees and immigrants have transformed their new homes. Hong Kong, Taiwan, and Singapore come to mind. Foreign tyranny has led to much economic and social progress in exile.

Don’t get me wrong. Immigration is not without its side effects, well-documented in Peter Brimelow’s book. Burdens on local government’s educational, health, and welfare services can be immense. But free people and free markets can adjust surprisingly well if they are allowed to. Certainly, no one should object to any immigrant who is in good health, has a guaranteed job, and refuses to take welfare.

The Best Foreign Policy

Unfortunately, most emigrants leave their homeland not because they want to, but because they have to. If governments were less corrupt and onerous in their economic policies, fewer of their citizens would desire to emigrate. If they adopted free-market reforms (slashing taxes, regulations, inflation, and boondoggles), fewer of their citizens would move to America. Perhaps the greatest foreign assistance America could give to Mexico, China, and other countries whose citizens are moving to America in droves is a copy of Ludwig von Mises’ *Human Action* or a subscription to *The Freeman*. Putting up barriers at our borders is a much more expensive and dangerous alternative.

Jefferson said, “All men are created equal.” They shouldn’t be penalized just because they happened to be born in the wrong place. []

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1. Peter Brimelow, *Alien Nation* (Random House, 1994), p. 260.
2. Ludwig von Mises, *Money, Method and the Market Process* (Kluwer, 1990), p. 141.
3. “Dead End Jobs?” by Barnaby J. Feder, *New York Times*, July 4, 1995, p. 27.
4. George Gilder, *The Spirit of Enterprise* (Simon & Schuster, 1984), p. 111. See also Julian L. Simon, *The Economic Consequences of Immigration* (Basil Blackwell, 1989

A $5 Trillion National Debt

Federal Spending Punishes Private Production and Consumption

SEPTEMBER 01, 1995 by Hans Sennholz

By the time you read these lines the debt of the federal government will have passed the $5 trillion mark. Does it surpass your imagination and ability just to write the number? How many digits does it take? Are you aroused and alarmed about the ever-rising debt? Many Americans are fearful that it will lead to bankruptcy in one form or another.

They are right if we define bankruptcy in the broadest sense: the inability or unwillingness to pay legitimate debt, causing a loss of faith and reputation. In this sense, the federal government went bankrupt on the first day it resorted to inflation. After all, inflation is an insidious policy which allows government to make payment in depreciated dollars. The U.S. government has willfully inflated the dollar ever since the 1930s, has defaulted internationally on its gold-payment obligations, and continues to plunge into domestic and foreign debt without any thought of repayment.

If we view bankruptcy as the condition of being judicially declared bankrupt, the federal government cannot go bankrupt. There is no power on earth that can force the U.S. government to disclose all its properties and distribute them equitably to its creditors. Even if there were such a supreme authority, the American people probably would rise in anger if the authority were to liquidate the vast land holdings and countless office buildings of the U.S. government and hand over the proceeds to foreign and domestic creditors.

There is no thought of voluntarily submitting to bankruptcy proceedings, liquidation, and distribution. Surely, no one expects the habitual spenders in government to vote for a liquidation of government property and its distribution to creditors. “The government can always meet

the debt obligation," they assure us. "It has the power to tax and the right to print money." Indeed, the power to tax may prevent *government* default by placing the debt on the shoulders of taxpayers. But instead of one government defaulting, thousands of *taxpayers* may be forced to default. The number of American bankruptcies precipitated by tax exactions is legion. And the power to print legal-tender money creates the legal right to seize income and wealth from unsuspecting owners of money and monetary claims by debasing the value of money. It confers the legal right to defraud creditors.

The spenders do not see it this way. "We owe it to ourselves" is their favorite motto. If they refer to American ownership of debt, they are mistaken. The federal debt is not held just by U.S. citizens and institutions. Foreign holders are the single largest group of U.S. creditors. The Bank of Japan is by far the largest owner, financing large blocs of U.S. budget and trade deficits and lending vital support to the U.S. dollar.

Even if it were true that "Americans own it," such an attitude completely distorts the situation. It ignores the difference between a creditor and a debtor, between a lender and a borrower. Facing an insolvent debtor, a banker will not take heart from the debtor's reassurance that "we owe it to ourselves." Similarly, the creditor of a U.S. Treasury obligation cannot take comfort from the assurance of the spenders that "we owe it to ourselves."

Are we placing it on the shoulders of our children? The present generation is postponing paying for goods and services and is shifting the cost to the future. In this sense, the $5 trillion national debt becomes a huge pyramid of wealth consumed in the past and payable in the future. But the federal spenders reject such explanations. They see a flow of future income from present spending. There is no net burden shifted to the future, they contend, as long as future income exceeds the interest costs of the debt.

In reality, there is little, if any, future income from present deficit spending. A present entitlement gives rise to loud demands for future entitlements, a current subsidy for future subsidies; it does not raise productivity and earn interest on the expenditures. Even where government invests its funds, the expenditures usually are diluted by waste, corruption, and malinvestment. A public enterprise normally depends for its survival on tax exemption and taxpayer subsidies.

The economic consequences of debt depend on the age of the debt. There is old debt to which the economy has completely adjusted and new

debt to which the economic structure must still adjust. The primary burden of new debt occurs in the present in the form of a reduction in private consumption. The generation that wages a war bears the primary burden. Government expenditures withdraw resources from private production and consumption. World War I withdrew some 25 percent, World War II almost 50 percent. The same is true in the case of peacetime deficit spending. It withdraws economic resources from private production and redirects them toward government consumption. Surely, the redirection differs materially from wartime direction, but the process is the same.

Deficit financing generally involves the consumption of someone's savings. Government enters the credit market and offers IOUs in the form of Treasury bills, notes, and bonds. Massive deficits consume productive capital on a massive scale. As capital lends productivity to labor, the capital consumption instantly reduces labor productivity and output. If the deficit is not promptly corrected by a budget surplus and the capital consumption replaced by capital formation, productivity and output will be reduced forever. It is impossible to fathom the costs of the $5 trillion federal debt in permanent income and wealth.

Government deficits not only consume productive capital but also cause much remaining capital to readjust toward government consumption. As wartime deficits not only consume productive capital but also cause private capital to move into ammunition and armament industries, so does peacetime deficit spending consume productive capital and cause capital to move into the favored industries. Unhampered private production and consumption thus suffer a double punishment and contraction.

Future generations which inherit the debt are wronged in several ways. They come into an economy that is enfeebled and emaciated by capital consumption. The apparatus of production is maladjusted, addicted to political spending, and susceptible to political intrigue and arbitrariness. The whole financial structure is made to rest on the pyramid of federal debt, which makes all finance rather precarious. Worse yet, they must tax themselves to cover the interest on the debt which they did not incur. Failure to bear this burden would have consequences too ominous to contemplate. To expect them to repay our debt is to indulge in airy hopes and golden dreams.

Debts, follies, and crimes are generally mixed together; the federal debt is a $5 trillion mixture.

Hans F. Sennholz

The Other Washington

The Welfare State Is an Idea Whose Time Has Fled

SEPTEMBER 01, 1995 by William H. Peterson

There are two Washingtons. One is in gleaming white, a magnificent sight for the tourist flying into National Airport and catching glimpses of the Capitol Building, White House, Supreme Court Building, Jefferson Memorial, Washington Monument, and so on. The other Washington is one the tourist rarely gets to see. This Washington epitomizes the Welfare State.

To be sure, there's still a seamy side to the glistening Washington, the Shining City on the Hill, even though high officials get duly glorified in Washington's statuary. There they stand: Noble figures in parks, circles, squares, and government buildings in the mode of Greek and Roman temples. Oversized heroic gods in bronze or stone—presidents, speakers, senators in friezes or on pedestals with eyes peering and forefinger raised.

My favorite statue is in white granite, in Mussolini modern. It stands before the Federal Trade Commission Building on Pennsylvania Avenue. The statue is a powerful 12-foot-tall horse representing "Trade" being held back by an equally powerful 10-foot-tall man representing "Government," probably a bureaucrat. The sculptor knew his onions.

To my knowledge, though, there is no statue of a Washington official pocketing an unmarked envelope but there are many of those who have *legally* collected loot in the form of votes or political action committee (PAC) campaign funds for privileging somebody or some group with tax, regulatory, spending, or welfare goodies. Loot-seeking-and-bestowing far outpaces tourism as Washington's leading industry—an industry peopled mostly by thousands of lawyers who lobby for their clients across America.

Yet it is the Welfare State that dominates Washington, that also comes in two forms. The first is the traditional one for the poor. It involves public housing, Aid to Families with Dependent Children, food stamps, Medicaid,

and so forth. The second form is estimated by Washington economist Herbert Stein to be five times bigger, and it includes Social Security, Medicare, and low-cost loans to college students—welfare then for the non-poor including the rich. Welfare for the rich—truth indeed stranger than fiction.

Tax something and you get less of it, subsidize something and you get more of it. D.C., with the highest per capita property and individual income taxes in the land, causes residents and businesses to flee mainly to nearby Maryland and Virginia and lower income, property, and sales taxes. D.C.'s 1991 per capita tax burden comes to $4,037; New York City's, in contrast, $2,190.

So taxes plus high crime and poor schools have driven 200,000 mostly middle-class people out of D.C., cutting the population by 25 percent (from 800,000 to under 600,000), shrinking the tax base accordingly. Currently, the $3.4 billion D.C. budget is short by $722 million for a 42,000 workforce in a maze of bureaucracies and programs that is not only broke, but broken.

But then D.C., with Uncle Sam's big helping hand, richly subsidizes welfare for some 200,000, with 130,000 on Medicaid alone. Thus the welfare cornucopia's bitter fruit: In convicts per capita, murder rate, low SAT math scores, one-parent families, infant mortality, low-birth-weight babies—in other words, in depressing category after depressing category—Washington, the capital of the United States, if not of the world, leads America. At one point, then-D.C. Mayor Sharon Pratt Kelly pleaded with President Clinton to call out the National Guard to patrol Washington's crime-torn streets.

Ideas have consequences. The Welfare State is an idea whose time has long fled but whose misery goes on. Its authors, the distinguished members of Congress, sit atop Capitol Hill whose shadow falls across D.C.'s social dissolution—the other Washington, America's Welfare State in microcosm. A state of utter failure.

—William H. Peterson

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For further information on the statistics cited, see D.C. by the Numbers: A State of Failure *by Thomas N. Edmonds and Raymond J.*

Keating.

The Blessings of Liberty

A free market is out of the question except among a people who prize liberty and know the imperatives of liberty. Liberty is not a one-man term but, like the free market, finds its complete realization in universal practice: every man on earth is born with as much right to his life, his livelihood, his liberty as I. No one can rationally prize liberty for himself without wishing liberty for others.

To realize liberty, to tear ourselves loose from political rigging, to unshackle creative energy, to achieve freedom in transactions, does not, as many contend, require that the individual wait until all others take these steps in unison with him. Implicit in such a council of delay is the taking of no steps by anyone, and this is fatal to liberty. An individual can stand for liberty all by himself; a nation can practice liberty to its own glory and strength though all other states be slave. The blessings of liberty are conferred on all who live by her credo; and basic to liberty is the unrigged market.

—Leonard E. Read 1898-1983
Anything That's Peaceful, 1964

Criminal Justice? The Legal System vs. Individual Responsibility

What Should Be Done to Lower the Crime Rate?

SEPTEMBER 01, 1995 by Joseph Sobran, Robert Bidinotto

Progressives used to talk confidently about "building a new society." Well, here it is. They've built it. We're in it.

The intellectual cornerstone of the New Society was determinism: the belief that human behavior is in principle caused by factors outside the agent's control. Once the psychological and/or socioeconomic "root causes" of undesired behavior—be it crime or capitalism—are found and addressed, that behavior can be methodically, "scientifically" eliminated.

If you weren't mugged over the past week, it's no thanks to this lunatic theory. In all its variants, it has swept post-Christian culture off its feet. The accredited "experts" and "specialists" of the social sciences that guide the criminal justice system have been dedicated to the denial of common sense.

In fact the denial of common sense virtually *defines* the expert, who smiles at the naive assumption that there are "bad" people—people who freely choose to do evil—and that the job of the state is to punish them. The late psychiatrist Karl Menninger spoke of "the crime of punishment" (itself a sternly judgmental phrase). The job of the state is to "rehabilitate" the criminal. On this view, the criminal becomes a kind of innocent, a victim whose crimes indict not himself but "society"; only the desire for retributive justice is condemned as atavistic.

Even our official language expresses the regnant ideology. Hence we now have departments not of penal justice, but of "correction."

The trouble is, nobody gets corrected, and nobody even *thinks* anyone gets corrected, by prisons organized on these enlightened principles. Now that the root causes have been addressed, the crime rate has soared beyond anyone's nightmare of anarchy. Safety from violence is no longer a

common condition of American life, as it was a generation ago; it's a commodity you pay dearly for—in choice real estate, security guards, neighborhood watches, burglar alarms, and whatever weapons the private citizen may still be permitted to possess.

Robert James Bidinotto, who put Willie Horton on the map, as it were, in a 1988 *Reader's Digest* article, has edited a book of essays by highly intelligent but unabashedly unenlightened writers who take the view that the way to lower the crime rate is to put the scare into bad people. Furthermore, these writers don't believe that bad people are badly frightened by the possibility of even a life sentence in a minimum-security facility with all the basic creature comforts and weekend furloughs.

If the essays in *Criminal Justice?* stopped there, the book would be instructive only to those least likely to read it: the mad scientists of what Mr. Bidinotto calls "the Excuse-Making Industry"—sociologists, Marxian economists, psychologists (Freudian and behavioral), biologists, and Ramsey Clark.

Mr. Bidinotto also has a fine short treatment of the philosophical problem with determinism: if the doctrine is true, we can never know it, since reason itself must be an illusion resulting from irrational causes. The idea is radically absurd. Criminal behavior may be encouraged or discouraged by many factors, but it isn't "caused." That is, no stimulus or condition yields a predictable result of the kind summed up in the weary aphorism that "poverty causes crime." Many desperately poor societies have low crime rates. Ours has seen crime rise along with unparalleled prosperity. Mr. Bidinotto suggests that we "consider a heretical thought: not that `poverty causes crime,' but that *criminality causes poverty.*"

If there are no "root causes," there are certainly incentives and disincentives for those for whom criminal options are matters of cold calculation. By one reckoning, only 1.7 percent of all crimes are punished by imprisonment. Not much deterrent there. (Of course enlightened opinion denies that punishment deters violent crime, even as it seeks to criminalize, i.e. deter, with threats of punishment, all sorts of formerly licit *market* activities; and it ascribes "greed" not to armed robbers who shoot clerks, but to businessmen and taxpayers who want to keep more of their own earnings.)

There are many fine essays in the book besides Mr. Bidinotto's four contributions. David Walter, taking a leaf from Bastiat, provocatively

suggests that the welfare state is so morally ambiguous that it encourages private individuals to do what the state itself constantly does: namely, grab others' property. If nothing really belongs to anyone, what's so wrong about theft? Ralph Adam Fine shows how plea bargaining corrupts the justice system, and also argues that the courts, expanding the Miranda principle beyond its original absurdity, have wrongly deprived the police of a legitimate asset: the need of many criminals to confess. Caleb Nelson similarly explores the irrationality of the exclusionary rule. Lee Coleman shows how the insanity defense lends itself to abuses; in fact the book as a whole could start a lively debate over who is crazier, psychiatrists or federal judges, with plenty of evidence for both sides. Other essays devastate such myths as the notion that our prisons house too many petty offenders who shouldn't have been incarcerated in the first place.

Without succumbing to determinism, and agreeing with nearly everything the authors say, I nevertheless think there is a certain "root cause," as it were, of our burgeoning crime rate: the mad ambition of liberalism to "remake society." A society can neither be made nor remade; it can only be maintained, or corrupted and destroyed. The welfare state has disastrously weakened the tribal links and loyalties that make most men behave most of the time; chiefly, the desire for the respect of older men and the fear of disgrace in their eyes. We suffer from a glut of fatherless boys—not only fatherless, but also, so to speak, uncleless—who are more unassimilable than any wave of immigrants. A male mentor who sets a responsible example, and supplies the timely rebuke, can make all the difference to a borderline criminal. Put simply, people need love.

This is not to deny free will or the importance of incentives; on the contrary, millions of American boys, sons of mothers on welfare, lack one of the strongest incentives to good behavior: a real or virtual father who can provide both affection and authority. This is a terrible pity, and it creates problems for everyone. The "experts" seem not to grasp it; the rest of us should. An ounce of prevention is all to the good, and abolishing the welfare state would be more like a *ton* of prevention. I wish the book had said more about this dimension of crime.

Meanwhile, alas, we have to deal with the boys for whom prevention is too late. Toward them severity is the only remedy left to us. They have, after all, chosen to do evil, thereby leaving victims more pitiful than themselves. At that point they are simply bad people. Those who excuse

them share their guilt. In this respect *Criminal Justice?* is consistently sensible and fresh, a damning indictment of a truly criminal system.

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A Second Mencken Chrestomathy

Mencken's Spirit Refuses to Depart

SEPTEMBER 01, 1995 by Sheldon Richman

Despite his persona, H. L. Mencken, the curmudgeonly Sage of Baltimore who ruled American letters as critic and journalist from roughly 1910 to 1933, was actually a very generous man. Although next year will mark the 40th anniversary of his death, in the last six years, Mencken has presented us with four new books. For Mencken fans that is like a stream of gifts from the other world, which of course the agnostic HLM couldn't bring himself to believe in.

In 1989 *The Diary of H. L. Mencken* was published, rekindling the national fascination in the author, an interest that may smolder but never is in danger of being extinguished. Next we got *My Life as Author and Editor*, a memoir of his literary life, then *Thirty-Five Years of Newspaper Work*.

Now we have in hand a *Second Mencken Chrestomathy*. What could be better than a smorgasbord of Mencken's work selected, revised, and annotated by the old man himself? As Terry Teachout explains in his delicious introduction, Mencken in 1947-48 gathered and revised material for an anthology, but prepared much more than could fit in a single volume. The first Chrestomathy was ready for typesetting on November 8, 1948. About two weeks later Mencken suffered a debilitating stroke that stole his ability to read and write until his death in 1956. Although Mencken had hinted that there was a sequel to the Chrestomathy, no one seemed to realize it. After Mencken's death, his papers were stored in Baltimore's Enoch Pratt Free Library where for almost 30 years no one, except a curator in 1963, looked closely at the material. As luck would have it, Teachout, who's writing a biography of HLM, dove into the Mencken's papers in 1992 and discovered that Mencken had done quite a lot of work on the sequel.

Teachout should be awarded a box of Uncle Willie cigars (Mencken's brand) for bringing the book to our shelves.

Here's the enduring question: why after the man has been dead so long does his spirit refuse to depart? Why do we refuse to let it depart? Why do people of such differing outlooks about life and politics find themselves drawn to HLM much as he was drawn to a good Pilsner? I think the answer lies in Mencken's refreshing, call-'em-as-I-see-'em, let-the-chips-fall-where-they-may, like-it-or-lump-it candor. That attitude makes his writing irresistible in a time when bromidic fustian passes for elegance and erudition. Mencken seemed to have two questions constantly in mind: how do things look to me and how can I report my findings to intelligent men who abhor the commonplace? For Mencken, there were two capital offenses—hypocrisy and monotony—in a word, cant.

Mencken of course was a self-styled libertarian. While he distrusted all philosophical systems and did not apply his libertarianism consistently (as Leonard Read would have put it, he "leaked"), Mencken on many occasions declared that what mattered most to him was liberty: "And when I say liberty I mean the thing in its widest imaginable sense—liberty up the extreme limits of the feasible and tolerable." Liberty is what made human life possible. Thus, the greatest threat to "the superior man" was government, the instrument of force and conformity.

As he writes in this volume:

Whenever a state is strong it is intolerant of dissent, when it is strong enough it puts down dissent with relentless violence. Here one state is as bad as another, or, at all events, potentially as bad. The Puritan theocracy of early New England hanged dissenters as gaily as they are now being hanged by the atheistic Union of Soviet Republics; the Prussian, Russian, Austrian, French, and English monarchies were as alert against heresy as the militaristic-capitalistic bloc which now runs Italy or the plutocracy which runs Pennsylvania, California, and Massachusetts. [1927]

Being an enemy of meddlesome government, Mencken naturally was critical of its most consequential product: war. He could see no good coming from America's entry into the two world wars and was thus a relentless critic of Woodrow Wilson and the man he called Roosevelt II. No one was better at pointing out the duplicity of national leaders who professed peace while scheming for American participation in the blood-orgies that were WWI and WWII. "But wars are not made by common folk,

scratching for livings in the heat of the day," he wrote in May 1939, "they are made by demagogues infesting palaces."

Nor was Mencken an enthusiast for public schools. For HLM, real education was "directed toward a capacity to differentiate between fact and appearance" and thus "is and always will be a more or less furtive and illicit thing."

The plain fact [he wrote in 1921] is that education is itself a form of propaganda—a deliberate scheme to outfit the pupil, not with the capacity to weigh ideas, but with a simple appetite for gulping ideas ready-made. The aim is to make "good citizens," which is to say, docile and uninquisitive citizens. . . . Americans in the days when their education stopped with the three R's, were a self-reliant, cynical, liberty-loving and extremely rambunctious people. Today, with pedagogy standardized and school-houses everywhere, they are the herd of sheep (Ovis aries).

One of course could go on quoting HLM all day. You'll enjoy him more by getting the book, picking out a comfortable chair, and dipping into any part of the volume. Savor his tribute to bricklayers and bartenders, his views on the literary and musical giants and pygmies of his time, his piercing of pols and professors, his musings on making a living and the places where one can make it. Mencken's humor and good sense touched every aspect of this inspiring and infuriating world.

"My writings, such as they are," he says on the final page of the book, "have had only one purpose: to attain for H. L. Mencken that feeling of tension relieved and function achieved which a cow enjoys on giving milk. Further than that, I have had no interest in the matter whatsoever. It has never given me any satisfaction to encounter one who said my notions had pleased him. My preference has always been for people with notions of their own."

There it is! That's what I'm talking about. That's the quality that draws so many to H. L. Mencken. And why we'll never tire of him. Sadly, I don't think there's any "new" Mencken material left. We'll have to content ourselves with what we have. It's almost enough to last a lifetime.

The Politics of Envy: Statism as Theology

Bad Policy Drives Out Good Morals

SEPTEMBER 01, 1995 by Doug Bandow, Jeffrey A. Tucker

"Both freedom and virtue are under assault today," writes Doug Bandow in *The Politics of Envy*, an applied integration of social conservatism and economic libertarianism. The root cause is a public theology of state worship. He posits that a conservative social order—intact families secure in communities characterized by low crime and cultural coherence—would be the dominant strain of an American life absent government intrusion. The result of his argument is an old-fashioned, principled case for classical liberalism, applied to a myriad of modern policy problems.

The direct relationship between big government and the decline of personal morality is not predetermined, Bandow argues, but a trend toward one reinforces the other. Men of weak faith turn to government to feed the old but forgotten vice of envy. In this context, envy means taking satisfaction in the financial and moral downfall of others, and acting through government to bring it about. It saps the strength of private initiative and institutions like the church and family, which in turn creates ever more social crises to be "solved" by government.

In this process, bad policy drives out good morals. The welfare state, regulations on enterprise, public schooling, drug prohibitionism, and a panoply of spending programs have overturned rooted cultural mores as well as made us poorer. Thus Bandow suggests this rule for government policy: first do no harm. In nearly every sphere the government has intruded, he shows, it has caused more problems than it has helped.

This is not only true in well-known cases like family policy; it's true in agricultural and housing policy; in the international economic policy of the World Bank; the attempt to use foreign policy to create collective security; in the U.S. attempt to create and sustain a global empire to promote

“democracy.” These policies strengthen the government and its connected interests, which is why they have their defenders, but are they good for society at large? Bandow demands that all forms of redistributionism and intervention be evaluated in moral and practical terms.

The strength of the argument derives largely from Bandow’s willingness to apply his principles so broadly, and not shrink from their conclusions. Thus it is not Bandow’s theory so much as its application which makes this book a compelling and often unpredictable read. He makes a passionate argument against the pro-choice view on abortion, for example, but also against the prohibitionists who oppose a legal market for drugs.

On environmentalism, he asks whether the many greens are engaged in protecting the earth or actually worshiping it. The questions reinforces the book’s theme, because, as he demonstrates, policies designed to “protect the earth” must rely on high levels of coercion. They are not only costly (Bandow reports that the Clean Air Act costs $40 billion annually) but also ineffective. Then he adds this twist. Because environmental ideology is religious at its root, and holds a view of man and nature that is alien to Western faith, people should consider “what spiritual theories they are in effect subsidizing” through environmental policy. If the government can’t subsidize churches, it should also be prohibited from “turning the new wilderness cathedrals into an established religion.”

So it is with national service programs which ultimately assume “that citizens are responsible not to each other, but to the state.” Bandow worries about “voluntary” programs because they “imply a unity of society and state, with work for the latter being equated with service to the former.” As he points out, one third of Americans now volunteer scarce time and energy to charitable projects that involve no remuneration. What national service promotes is service to the state, and this “service” necessarily challenges our loyalties to other institutions that mediate between individuals and government.

Neither does Bandow view the government as an appropriate means of stamping out vice, a type of coercion encouraged more by neoconservatives than by the much-villified Christian Right. As Bandow writes, many conservatives, “despite their verbal support for both traditional values and individual liberty, are as secularized and authoritarian as their liberal counterparts.” One need only think how neoconservatives’ efforts to create

a national curriculum for public schools have backfired. They proposed it just in time for the Clinton administration to fill in the details. The result, as Bandow knew it would be, was an anti-education, multicultural mess.

But Washington's conservatives are slow learners, even slower than its liberals. Somehow they are always holding out hope that this or that program will make the federal government work for them instead of the people across the aisle. This tendency is apparent even in the work of the new Congress (do we really need to expand the military budget?). Yet the problem of government which Bandow identifies is more fundamental: it is in competition with God for our loyalties.

The modern state embodies a counter-religion, one which rests on and reinforces immorality and social breakdown. The first step toward restoring both freedom and virtue is to dismantle it. "Should Christians Be Statists?" Bandow asks as the title to one section. The answer—rigorously argued—is no. []

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The Elgar Companion to Austrian Economics

A Collection of Writings by Spokesmen for the Free Market

SEPTEMBER 01, 1995 by Bettina Bien Greaves

Since the days of Aristotle, philosophers and other thinkers have been trying to understand how the world works and how to foster a peaceful, prosperous society. A big stride was made with the publication of Carl Menger's *Principles of Economics* (1871), from which developed the Austrian school of economics. The Austrians explained market operations as the outcome of the actions and choices of individuals and, as a result, advocated free markets and limiting government to the protection of life, property, and individual freedom.

During the early decades of this century, as Marxists and Keynesians came to dominate colleges and universities and their ideas influenced political action, the message of the Austrians was widely ignored. Advocates of the free market were in despair. Yet when the late Ludwig von Mises was asked, in Argentina in 1959, if the situation then was not worse than in ancient Rome, which he had described as a period of price controls and inflation, he had replied, "No, it is not worse." In the age of the Roman emperors, no one disputed the idea that the government had the right to fix prices. But now, Mises said, "we know very well that this is a problem for discussion. All these bad ideas from which we suffer today, which have made our policies so harmful, were developed by academic theorists. . . . What we need is nothing else than to substitute better ideas for bad ideas. . . . Our civilization will and must survive. And it will survive through better ideas than those which now govern most of the world today, and these better ideas will be developed by the rising generation" (*Economic Policy*, pp. 104-105).

In the U.S., a younger generation of Austrians appeared. Peter Boettke, editor of the book under review, considers *The Foundations of Modern*

Austrian Economics (Edwin Dolan, ed., 1976) "the defining work in the resurgence of the Austrian school in the 1970s" (p. 601). Professors of "conservative" or free market leanings became more welcome in academia. Courses in free enterprise, entrepreneurship, and Austrian economics were introduced in some colleges. A standard reference published in 1987, *The New Palgrave* (London: Macmillan Press; New York: Stockton Press) included several articles by and about spokesmen of the Austrian school. Commercial and university publishers in this country and abroad reprinted classic "Austrian" works and published quite a few new works by younger "Austrians." Austrian ideas were more widely discussed and debated.

And now we have *The Elgar Companion to Austrian Economics* edited by Peter J. Boettke. Boettke selected contributors who were basically supportive of three Austrian themes—methodological individualism, subjectivism, and the spontaneous order. He asked each to contribute an original paper on a topic in the field of Austrian economics with which he or she was familiar. Each article was limited to about 2,500 words. In this way, Boettke produced a one-volume reference work of relatively short entries, each with a bibliography of additional sources. It contains 87 papers by 68 economists from 45 different colleges, universities, or institutions in the United States and seven other countries. Not surprisingly the papers are uneven in quality, although their approach is generally Austrian. A list of a few authors and titles will give some idea of the subjects covered.

Part I, "Methodology and Theoretical Concepts in Austrian Economics," includes papers on basic principles such as "Methodological individualism" (Gregory B. Christainsen), "Subjectivism" (Steven Horwitz), "Marginal utility" (Jack High), "Entrepreneurship" (Israel M. Kirzner), and "Efficiency" (Roy E. Cordato).

Part II, "Fields of Research," discusses various topics to be explored further from the Austrian approach—"Capital theory" (Peter Lewin), "Austrian business cycle theory" (Robert J. Batemarco), "Comparative economic systems" (David L. Prychitko), and "International monetary theory" (Joseph T. Salerno).

Part III, "Applied Economics and Public Policy," includes articles on a wide range of subjects from "Utilitarianism" (Leland B. Yeager) and "Interventionism" (Sanford Ikeda), to "The collapse of communism and post-communist reform" (James A. Dorn).

Part IV, "History of Thought and Alternative Schools and Approaches," deals with the historical development of the Austrian School. Samuel Bostaph writes about the *Methodenstreit*, the conflict over methodology between the early Austrians and the German historicists; Peter Rosner about the debate between Bohm-Bawerk and Hilferding, William N. Butos about the Hayek-Keynes macro debate, and Karen I. Vaughn about the socialist calculation debate. Other papers in this section compare various schools of economics and examine fine points that differentiate them from the Austrians.

Boettke, as editor of this anthology was to some extent at the mercy of his contributors and his non-contributors, those invited who didn't submit papers. His "Conclusion" in Part V, "Alternative Paths Forward for Austrian Economics," compensates for some of the gaps. Boettke reviews the ideological shift that led to the resurgence of the Austrian school, discusses current economic journals, and suggests topics that would be fruitful for further exploration by Austrians.

My chief criticism of the book is that it is weak on money and banking, both major strengths of the Austrian school. The Austrian view is that money is neither mysterious nor government-made; it is merely a medium of exchange which evolves on the market. As for banks, Mises explained that their role is essentially twofold—to warehouse the deposits of clients and to lend money. Free banking is simply a system under which such banks are obligated to fulfill their contractual obligations just as must any other business. Yet in the view of many young "Austrians," apparently the chief purpose of banks is to issue currency. (See Schuler, "Free banking is a system of competitive issue of bank-notes and deposits" and Lewin.) However, note issue is not the purpose of banking; it is at best a subsidiary function, a by-product of a bank's warehousing and moneylending activities. And a potentially dangerous activity at that. No bank that issues notes over and above the face value of its reserves can long survive without some government privilege or protection.

Leaving aside this criticism, *The Elgar Companion* should be a valuable reference for students of Austrian economics. A few years ago it would have been impossible to assemble such an extensive stable of Austrian writers. Many were probably still youngsters, some perhaps not even born, when Mises spoke 36 years ago. Yet they have become spokesmen for the free market, non-interventionist teachings of Mises and

his Austrian school colleagues. Mises' trust in the rising generation was well justified.

Speaking Freely

Persons Must Be Free to Express Their Opinions

SEPTEMBER 01, 1995 by Henry Holzer, John Hospers

To be a moral agent, wrote Milton in his *Areopagitica*, a person must be free to choose; and to make moral choices persons must be free to express their opinions. Milton held, writes Calvin Massey in this anthology, "that by tolerating abhorrent and hateful speech, we are able to see more clearly our societal biases and thereby hasten the process by which we purge ourselves of hidden intolerance."

Mill's *On Liberty* (1859) was another classic paean for freedom of speech and discussion. For the truth about a subject to be known, he said, it must be freely and openly discussed without fear of penalty: there should be *no* censorship of ideas by government, especially of those opposed to the State itself. As a utilitarian, Mill believed that concealment of the truth was, in the long run, always counterproductive. Many have argued that Mill was mistaken: that some truths should remain concealed for the public good, particularly in the midst of inflammatory controversy when feelings run high. To take a contemporary example, assume that it is true, as Murray and Herrenstein allege, that the average I.Q. of African-Americans is somewhat lower than that of Caucasians and Asians. Many critics would say that this is not true, but others would say that even if it were true it should not be generally known, since it might have a deleterious effect on the morale of blacks. Mill would undoubtedly have reminded us of the long-term effects of such a policy, as is done eloquently in Millean fashion by Professor Massey:

"The intolerant impulse—banning such racist speech—may have counterproductive long-term results, for it enables the dominant society to tell itself (smugly and falsely) that, collectively, it has no problem: the problem lies wholly with those nasty racists whom we have righteously

muzzled. Thus, the nastiness of racist epithets serves to remind us all that there is a substantive nastiness in our society that we have yet to eradicate. Better that the truth of our condition be painfully revealed to us than that we live in delusion that racial equality has been achieved by virtue of painting over the ugliness. In the honesty of the revelation we may ultimately create more real tolerance and respect for diverse groups than by pretending that silence passes for respect. . . . The dangerous dog of racism is still a biter when muzzled."

There are of course occasions on which speech is prohibited: false advertising, defamation, confiding secrets to enemy nations, and so on. (Whether these are compatible with the words of the First Amendment is still a matter of controversy.) But there is one particularly difficult area, speech that incites to violence or riot. A union agitator walks into a factory filled with angry striking workers, and says "Torch the factory!" (This is Mill's example.) Mill would have him stopped to avoid a riot. This opens up a problematic area in the free-speech controversy; when are words to be considered inciting?

The First Amendment simply says that Congress shall pass no law abridging freedom of speech or of the press; it doesn't add "unless the views expressed are offensive" or "unless the audience is so agitated that they might take action." Taken on its face, this would permit defamation and conspiracy, which the courts have regularly prohibited.

In any case, there are many groups today who would prohibit much more than libel or espionage; they sometimes allege that racial slurs are an *incitement*; usually they want the words banned from public discourse because "they are *false*," or because the *effects* of permitting their dissemination would be counter-productive on utilitarian grounds. (As a rule they *assume* without proof that what they want to censor is false, and devote their energies to describing the ill effects of allowing the speech to occur. But they do not always make the distinction between truth and utility.)

To this end, the authors of this anthology cite many examples of "politically incorrect" speech, especially in academia, for which a student may be penalized, expelled, or subjected to "re-education seminars" Soviet style. There are many examples of this, and many are regularly found in conservative student publications. Here is one example, described in detail in the book. From Van Alstyne's essay we learn that in one university (one

infers from the author's title that it is Duke) a code is enforced by which "no member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual, religious, racial, or other nature reflecting an improper or unreasonable attitude toward others according to the common standards of the university community."

The authors of the essays in this anthology are unanimous in condemning all such procedures. For example, in a brilliant essay Robert Sedler argues that *all* bans on campus speech, however incendiary or hateful, run afoul of the First Amendment. For one thing, the Supreme Court has never recognized any exceptions to the rule that the government cannot regulate expression in such a way as to favor one viewpoint over another: this is the principle of *content neutrality*, and was the basis for the Court's invalidation of bans on flag desecration. For another, the First Amendment "forecloses any justification for a restriction on expression on the ground that the expression is offensive. . . . The government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

When the Duke University committee had crafted their rules of campus behavior, they were apparently satisfied with the result—"except," writes Van Alstyne, "for a small lingering group off in one corner—who thought they caught a slight whiff of diesel fumes, and a slight sound, as of tanks clanking, as in some far-away deserted square" (Tiananmen Square). It was the dread of such an appalling prospect that inspired this collection of essays. It is an extraordinarily fine collection; but will the relevant academicians read it? Will the courts? []

Dr. Hospers is professor emeritus of philosophy at the University of Southern California.

Life After Television: The Coming Transformation of Media and American Life

Computer and Telecommunications Advancements Will Create New Markets

SEPTEMBER 01, 1995 by George Gilder, Raymond J. Keating

In the early 1980s, George Gilder helped to clarify the muddied field of economics with two insightful books—*Wealth and Poverty* and *The Spirit of Enterprise* (both recently updated and reviewed in *The Freeman*). In these landmark works, Gilder managed to wrest economics from the deadening morass into which it had sunk for over a half-century. When practiced by Gilder, economics is no longer the dismal science.

With the publication of *Microcosm* in 1989 and now an updated and much-expanded version of *Life After Television* (originally published in 1990), Gilder has built upon his economic works by offering insights regarding recent and future developments in today's most dynamic industries—computers and telecommunications. Gilder offers a compelling vision of the future, whereby technological advancements enhance individual creativity.

In *Life After Television,* Gilder takes the reader on a technological journey into the microcosm of the computer, across the air on the "spectrum of electromagnetic vibrations," and on beams of light traveling across strands of glass or fiber-optic cables. It is an exciting journey for both the technology expert and for those individuals with an interest in how our economy and our culture will be transformed by the information revolution.

Gilder's contagious enthusiasm regarding great leaps in the fields of computers and telecommunications springs not from the base appeal of couch potatoes passively surfing across 500 channels or of video games available to numb our children's minds. Instead, Gilder declares that individualism will win out over mass culture. The top-down structure of

television, whereby a few executives appeal to the widest, and therefore lowest, common denominator possible, will be overthrown by a bottom-up, consumer- and entrepreneurial-driven revolution.

Gilder sagaciously observes: "A healthy culture reflects not the psychology of crowds but the creativity and inspiration of millions of individuals reaching for higher goals. In place of the broadcast pyramid, a peer network will emerge in which all the terminals will be smart—not mere television sets but interactive video receivers, processors, and transmitters."

He refers to these smart terminals as teleputers. He points out that "the teleputer is an instrument of creative destruction." That is, as with any major invention or innovation, an entrenched and less-efficient system must give way. Such entrenched, special interests, however, do not do so readily, instead trying to stop the critical economic process of creative destruction through government protection against competition. As Gilder notes: "Capitalism may offer the promise of great power and wealth to the very few people who can shape or anticipate the future, but bureaucratic politics provides a rich panoply of weapons to the many more people who want to resist change. Whenever possible, the government and its principalities attempt to frustrate or dispossess innovators."

Gilder understands the dynamic nature of markets, and therefore observes: "American industry, released from its regulatory shackles, could finance a program of fiber to the home without any government aid." The best actions for government to take regarding the telecommunications and computer industries is not some bureaucrat-driven industrial policy; it is deregulation.

Interestingly, while Gilder predicts the death of television under this wave of creative destruction, he makes a compelling case for newspapers spearheading the information revolution. Production and transmission costs will collapse for newspapers as computers and fiber optics replace printing presses. Gilder explains: "The ultimate reason that the newspapers will prevail in the information age is that they are better than anyone else at collecting, editing, filtering, and presenting real information and they are allying with this computer juggernaut to do it. The newspapers are pursuing the fastest-expanding current markets rather than rearview markets. They are targeting adults with real interests and ambitions that generate buying power rather than distracting children from more edifying pursuits."

In the end, the fundamental difference between the television and the personal computer—or soon to be teleputer—can be explained in economic terms. It is the difference between reacting and creating; the difference between demand and supply. As Gilder states: "While TV watchers use their machines to lull themselves and their children into a stupor, PC users exploit their machines to become yet richer and smarter and more productive—and still better to exploit future computer advances. . . . The TV is a consumption product. The PC is a supply-side investment in the coming restoration of the home to a central role in the productive dynamics of capitalism, and the transformation of capitalism into a healing force in the present crisis of home and family, culture and community."

Where other authors see only ways in which computer and telecommunications advancements serve *current* markets, Gilder sees how such developments create *new* markets—impacting the entire economy and culture. *Life After Television* is and will be an exciting adventure.

The State is Rolling Back: Essays in Persuasion

Seldon Makes the Continuing Case for Capitalism

SEPTEMBER 01, 1995 by Arthur Seldon, Charles Hamilton

Arthur Seldon is what Hayek has called a "professional secondhand dealer in ideas." This is actually high praise and well deserved. For Hayek had in mind the intellectual in his role as an "intermediary in the spreading of ideas." In a myriad of ways, Seldon is a model for us all. He is a Founding President of the Institute for Economic Affairs in England. Under his able editorial direction, IEA didn't just focus on a sort of vacuous public policy. Its prodigious output of books and papers (Seldon authored many of them and edited over 350) combined the highest intellectual quality with a deep commitment to the principles of liberty. There is little doubt that the world in which we live *is* different because of the sustained work and dedication of Seldon and men and women like him.

The State is Rolling Back is a sampling of 54 (out of some 230) journalistic pieces he wrote between 1937 and 1990. We are given an intriguing snapshot of a young man committed to classical liberal ideas when it was assumed that the welfare state was inevitable and permanent. The battle of ideas over politics is evident in every article. The more recent articles celebrate the successes of capitalism that would have been difficult to conceive of nearly 50 years earlier.

The majority of the pieces here take us through the slow disintegration of the English welfare state from 1950 through 1992. Economic progress *and* the careful presentation of free-market ideas combined to roll back the state. These are informative controversies here. Seldon's discussions of the perils of the English social insurance and state pension system apply to Social Security. His critique of government funding of education and of the welfare system are very helpful.

And yet, Seldon is very aware of the continuing dangers of statism. He warns advocates of free markets not to become too enamored of what is "politically possible."

One should never forget the principles and moral arguments that make these ideas so compelling and universal. One of the last articles in this book presents a wonderful goal and challenge, "Too Little Government is Better than too Much." (Of Seldon's other work, one is especially important to mention. His 1990 book *Capitalism* is a very good exposition of the theoretical, moral, and practical case for capitalism. It was reviewed in the June 1991 *Freeman*.)

These short articles are also well worth reading as models of how we should make the continuing case for capitalism. They all show an honesty and respect for all ideas. They are, in a word, civilized, following Hayek's injunction to be "mild in manner, strong in argument." They don't just make the case for free markets, but they were, I suspect, convincing to many of their readers. One can't help suspecting that it is the decades-long effort to make continually the case for liberty in the newspapers and magazines of England that had the most sustained—though less remembered—impact on our lives. We need more young writers to make that kind of commitment Seldon made and challenges us to make. []

Mr. Hamilton is a consultant for foundations and is a former editor of The Freeman *at FEE.*

A Moral Basis for Liberty

Entrepreneurs Must Be Other-Regarding

SEPTEMBER 01, 1995 by John Attarian, Robert Sirico

With the Soviet bloc's collapse and the evidence of socialism's appalling failures and human cost, capitalism seems triumphant. Francis Fukuyama even proclaimed the "end of history": ideological conflicts are over; only managerial and technical controversies remain.

For Father Robert Sirico, founder and president of the Acton Institute, this facile optimism is untenable. Pragmatic defenses of liberty are inadequate. "So long as economic liberty—and its requisite institutions of private property, free exchange, capital accumulation, contract enforcement—is not backed by a generally held set of norms by which it can be defended, it cannot be sustained over the long term." In this admirably pithy and lucid monograph, Father Sirico helps remedy that defect.

Why do freedom's foes hold the moral high ground? Father Sirico rightly argues that "Many of the confusions of our age rest on a loss of crucial distinctions": between rights and privileges, between society and government, and between freely chosen action and action enforced by coercion. While exposing the muddle, he restores those lost distinctions. To be inalienable, rights must be grounded in something independent of politics. Bogus new "rights" are actually politically-granted privileges. Similarly, "today the term community is often used to put a humanitarian gloss on what used to be called a political pressure group." Coerced virtue is oxymoronic: "A morality that is not chosen is no morality at all. Only human beings with volition can be said to be moral, and in order to act in a moral way one must have liberty."

Capitalism fosters morality; entrepreneurs must be other-regarding "because the only way to get money peacefully and without charity is to offer something of value in exchange." But Father Sirico's main argument

is that liberty and capitalism are grounded in Judaism, Christianity, and Thomistic natural law.

Seeking "liberty under the law of Yahweh," the ancient Hebrews viewed God, not the state, as the source of justice, which enabled them "to escape tyranny by an appeal to an objective standard of justice against oppression." Christianity "employs the model of the family, not the state, as the ideal human community," with love, not power, as the cement of community life, and religion's view of people as inherently dignified gives them a claim to rights. St. Thomas Aquinas' natural law, drawing on both experience and reason, "establishes the sanctity of the individual as a rational being who can interpret the relationship between the individual and the community in terms of free association and contract." Aquinas' followers elaborated an economics amazingly close to that of the Austrians.

Unfortunately, religious leaders tend to be economic illiterates, hence hostile to wealth producers. Most endorse the welfare state "on the fairly crude premise that Christian charity and coercive wealth transfers are morally identical." This unfortunately discourages charity among the laity. Father Sirico argues instead for the authentic compassion of personal, local-level involvement in helping poor people.

Father Sirico's arguments are important and valid—so much so that he might have done still better to devote himself solely to elaborating his case for liberty, giving his shrewd criticisms of the welfare state and religious leaders economic illiteracy the separate works they deserve.

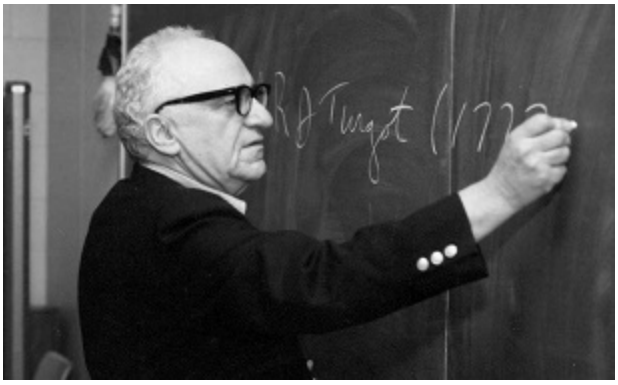
In an appended commentary, Nigel Lawson, Margaret Thatcher's Chancellor of the Exchequer, chides him for evading egalitarianism's hostility to capitalism as creator of an immoral inequality of wealth. True, Father Sirico said little about this, but Lawson's charge that "he virtually sells the pass with a puzzling (and distinctly un-Hayekian) reference to `the demands of justice (classically defined as giving to each his due)"' is unfair. If people contribute unequally to production, giving them their due generates inequality, yet is just.

Journalist William Oddie comments that capitalism and liberty require virtues to endure, but today's global disappearance of values makes their survival problematic. He ends gloomily: "`Where there is no vision, the people perish' (Proverbs 29:18), but where is vision to be found? Father Sirico knows; but will we listen?"

Perhaps not. But those who do choose to redeem the time will find *A Moral Basis for Liberty* valuable.[]

John Attarian is a freelance writer in Ann Arbor, Michigan, with a Ph.D. in economics.

About Murray N. Rothbard



Murray Newton Rothbard (1926-1995) was an American economist of the Austrian School, a revisionist historian, and a political theorist whose writings and personal influence played a seminal role in the development of modern libertarianism.

About Llewellyn H. Rockwell Jr

About Gregory Pavlik

About William J. Watkins Jr.

About Thomas J. DiLorenzo

About N. Stephan Kinsella

About Peter G. Klein

About David Laband

About David Honigman

About George C. Leef

George Leef is the former book review editor of *The Freeman*. He is director of research at the John W. Pope Center for Higher Education Policy.

About Francois Melese

About Gary North

About Robert Greenslade

About Jeffrey Herbener

About Jim Powell

Jim Powell, senior fellow at the Cato Institute, is an expert in the history of liberty. He has lectured in England, Germany, Japan, Argentina and Brazil as well as at Harvard, Stanford and other universities across the United States. He has written for the New York Times, Wall Street Journal, Esquire, Audacity/American Heritage and other publications, and is author of six books.

About Lawrence W. Reed

Lawrence W. ("Larry") Reed became president of FEE in 2008 after serving as chairman of its board of trustees in the 1990s and both writing and speaking for FEE since the late 1970s. Prior to becoming FEE's president, he served for 20 years as president of the Mackinac Center for Public Policy in Midland, Michigan. He also taught economics full-time from 1977 to 1984 at Northwood University in Michigan and chaired its department of economics from 1982 to 1984.

He holds a B.A. in economics from Grove City College (1975) and an M.A. degree in history from Slippery Rock State University (1978), both in Pennsylvania. He holds two honorary doctorates, one from Central Michigan University (public administration, 1993) and Northwood University (laws, 2008).

A champion for liberty, Reed has authored over 1,000 newspaper columns and articles and dozens of articles in magazines and journals in the United States and abroad. His writings have appeared in *The Wall Street Journal, Christian Science Monitor, USA Today, Baltimore Sun, Detroit News* and *Detroit Free Press*, among many others. He has authored or coauthored five books, the most recent ones being *A Republic—If We Can Keep It* and *Striking the Root: Essays on Liberty*. He is frequently interviewed on radio talk shows and has appeared as a guest on numerous television programs, including those anchored by Judge Andrew Napolitano and John Stossel on FOX Business News.

Reed has delivered at least 75 speeches annually in the past 30 years in virtually every state and in dozens of countries from Bulgaria to China to Bolivia. His best-known lectures include "Seven Principles of Sound

Policy" and "Great Myths of the Great Depression," both of which have been translated into more than a dozen languages and distributed worldwide.

His interests in political and economic affairs have taken him as a freelance journalist to 81 countries on six continents. He is a member of the prestigious Mont Pelerin Society and an advisor to numerous organizations around the world. He served for 15 years as a member of the board (and for one term as president) of the State Policy Network. His numerous recognitions include the Champion of Freedom award from the Mackinac Center for Public Policy and the Distinguished Alumni award from Grove City College.

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About Robert James Bidinotto

About Doug Bandow

Doug Bandow is a senior fellow at the Cato Institute and the author of a number of books on economics and politics. He writes regularly on military non-interventionism.

About Mark Skousen

About Hans Sennholz

About William H. Peterson

About Joseph Sobran

About Robert Bidinotto

About Sheldon Richman

Sheldon Richman is the former editor of *The Freeman* and TheFreemanOnline.org, and a contributor to *The Concise Encyclopedia of Economics*. He is the author of *Separating School and State: How to Liberate America's Families*.

About Jeffrey A. Tucker

Jeffrey Tucker is Director of Digital Development for the Foundation for Economic Education. He is also Chief Liberty Officer and founder of Liberty.me, the global liberty community with advanced social and publishing features, executive editor of Laissez Faire Books, research fellow at the Acton Institute, policy adviser of the Heartland Institute, founder of the CryptoCurrency Conference, member of the editorial board of the Molinari Review, an advisor to the blockchain application builder Factom, and author of five books. He has written 150 introductions to books and many thousands of articles appearing in the scholarly and popular press. His new book is *Bit by Bit: How P2P Is Freeing the World*.

About Bettina Bien Greaves

Contributing editor Bettina Bien Greaves was a longtime FEE staff member, resident scholar, and trustee. She attended Ludwig von Mises's New York University seminar for many years and is a translator, editor, and bibliographer of his works.

About Henry Holzer

About John Hospers

About George Gilder

About Raymond J. Keating

About Arthur Seldon

About Charles Hamilton

About John Attarian

About Robert Sirico