

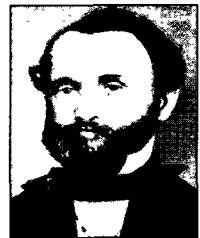
IDEAS ON LIBERTY

August 2000

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*Pony Express Founder
William Russell*

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PERSPECTIVE

Getting It Right

Ideas on Liberty has a place—"It Just Ain't So!"—to take editorialists and op-ed writers to task for their economic fallacies. We don't have a place to praise them when they get it right. Since they don't do it often, that's usually not a problem. But on rare occasions, someone does and it should be recognized.

On May 5, a member of the *Washington Post's* editorial page staff, Sebastian Mallaby, wrote a column about trade with China. Beginning with the title, it was extraordinary: "Imports Are Good for You." When was the last time you saw someone—even a free trader—write that in a publication for general readers?

Mallaby is worth quoting:

The trade debate on China is about human rights, the rule of law, Taiwan, religious freedom, nuclear proliferation, communism; it is about almost anything, in other words, except trade principles. Even those who champion China's accession to the World Trade Organization would not be caught dead citing the idea of comparative advantage, or reminding Americans that imports from China benefit them.

Charlene Barshefsky, the U.S. trade representative, boasts loudly about the exports that her deal will foster. But imports? She's proud that the agreement creates myriad ways to block them.

Mallaby goes on to point out that a pending trade bill for Africa and the Caribbean mocks liberalization by attaching protectionist conditions. The Caribbean countries may not export clothes to the United States duty-free unless they are made from American cloth. The Africans are obliged to prevent their apparel exports from growing too quickly, whatever that means. Mallaby notes that "the case for imports has been neglected for so long that most people have forgotten it." And yet, Mallaby reports, free trade in clothing would save families \$700 a year, not to mention help those poor regions get richer. Curious, isn't it,



how those who make careers of rhetorically bleeding for the poor always have reasons for blocking free trade.

As Mallaby concludes:

The idea that you are hurt by foreign imports should be as easily dismissed as the notion that you are hurt by your local food store. Sure, you buy groceries from the store, and the store never reciprocates by buying anything from you. But that doesn't mean you would be helped if the store were hit with a large tax—which is what tariffs amount to.

Hear, hear!

* * *

Any society that pays athletes more than it pays teachers has something wrong with it. How many times have you heard that one? Would you believe that the exact opposite is true? William Anderson makes the case.

A pleasant walk through a park shouldn't be disturbed by government propaganda. Alas, Andrew Morriss's was, and he wasn't a bit happy about it.

The revolutionary ideas that fueled the founding of the American republic were not of recent vintage. Indeed, as Jim Peron shows, they dated back thousands of years.

News flash: Government steps in to save consumers from the coming diabolical butter monopoly. Unfortunately, as Raymond Keating explains, this is no spoof.

State universities recently got the go-ahead from the U.S. Supreme Court to charge students mandatory fees that finance campus political groups. Bad ruling, writes George Leef.

Childhood asthma is on the increase, some-

thing the Environmental Protection Agency is intent on exploiting in order to impose its regulatory agenda. The trouble is, writes Ben Lieberman, the EPA's case is a tissue of contradictions.

The economics profession applies Adam Smith's "invisible hand" imagery to itself, assuming that society prospers as economists prosper. Daniel Klein has his doubts.

Is resistance to political authority ever justified? America's intellectual ancestors thought so, though they are out of fashion in more ways than one. James Bovard looks at a controversial subject.

Despite the news media's take, corporate "downsizing" is not a permanent catastrophe for people who lose their jobs. It never was—not even when it happened to the Pony Express. Larry Schweikart tells the tale.

Can a society conduct a war against drug users and remain free? Lance Lamberton shows why in myriad ways the answer must be no.

Our columnists have come up with an assortment of provocations: Donald Boudreaux ponders freedom of association. Lawrence Reed cuts through the fog on gun control. Doug Bandow describes his visit to Cambodia. Dwight Lee adds a caveat to his discussion of marginal value. Mark Skousen contemplates private production of public goods. Charles Baird envisions OSHA at home. And Andrew Biggs tells those who think stock-market fluctuations upset the case for getting rid of Social Security, "It Just Ain't So!"

Books on great Austrian economists, the free-trade debate, globalization, the service economy, the Internet, and the observations of Walter Williams get the attention of this month's reviewers.

—SHELDON RICHMAN

Thoughts on Freedom

by Donald J. Boudreaux



Freedom of Association

Imagine being awakened one morning by a loud knocking on your door. You stumble downstairs and find your neighbor standing before you with a friendly smile across his face and a frightening rifle across his shoulder. Behind him you see your yard surrounded by a newly built barbed-wire fence.

"Hi!" he says. "You're gonna *love* me! I've decided to protect you from undesirable visitors. You can come and go as you please, but don't worry: I'll screen your visitors for you."

You can't believe your ears. "This is a bizarre dream," you think to yourself. You rub your eyes only to find your neighbor, his gun, and his fence still before you.

"What are you talking about?!" You're too flummoxed to think clearly.

"Look, neighbor," comes the reply. "You and your family are decent folks who want to associate only with other decent folks, right? Well, I have an uncanny ability to distinguish desirable people from undesirables. I'm doing you the favor of ensuring that only desirable people are permitted onto your property."

Gaining your senses, you answer carefully: "Listen, I don't know what kind of mind-altering substance you're on, but take yourself, your gun, and your fence from here immediately. I'm quite capable on my own to determine whom I do and do not associate with. I don't need or appreciate you pre-screening for me the people whom I allow onto my property. So *scram*, you buffoon! And mind your own business."

No doubt the details of your own conversation with such an officious neighbor would differ from the fictional conversation above. But surely the substance would convey the same message. You wouldn't tolerate someone else exercising the authority to screen the people you associate with.

Or would you? If you support restrictions on immigration you *do* tolerate such an exercise of authority by others to screen the people with whom you associate on your own property. Make no mistake: while immigration restrictions are couched in rhetoric suggesting that they limit only the freedom of foreigners, such restrictions limit your ability, as an American, to choose the people with whom you associate.

Suppose, for example, that you wish to hire someone to mow your lawn. Several Americans offer their services to you. You might find one of these offers attractive. But not everyone who wants to offer his or her services to you can do so. Many people who might otherwise offer to mow your lawn are excluded from the United States by armed guards standing ready to shoot them if they try to get into this country—and to shoot you if you insist on continuing to associate with persons deemed by the state to be unfit to associate with you.

Those who oppose freedom of association might respond by making light of commercial relationships. "Surely," they might retort, "government prescreening of workers and others with whom Americans might have commercial relationships doesn't offend an ideal so lofty as freedom of association."

Donald Boudreaux is president of FEE.

Such a retort is devious.

First, immigration restrictions reduce the freedom of each American to choose not only those with whom he deals commercially, but also those with whom he interacts in more personal ways. For example, an American who wants to live in the United States with his foreign wife must first navigate a labyrinth of time-consuming bureaucracy before securing Washington's permission for the wife to remain in this country. More generally, anyone kept out of the United States by immigration restrictions never becomes part of the pool of people from which an American may choose his colleagues, friends, and intimates.

Second, freedom to associate with people commercially is as fundamental as is freedom to associate in more intimate ways. Indeed, the vast bulk of our associations aren't with loved ones and close friends but with people whom we encounter only fleetingly. The waitress who brings my lunch, the technician who upgrades my computer, the physician who cares for my son, the jeweler who repairs my watch, the cabbie who drives me home. . . . I regularly associate with these and countless other people.

These associations are peaceful and mutually beneficial. Our lives are enriched when opportunities to associate with all people of our choosing are unrestricted. By obstructing our ability to associate freely, immigration restrictions make our lives less rich and fulfilling.

What opportunities do immigration restrictions deny us? No doubt, we all are denied opportunities not only to strike better commercial deals, but also opportunities to associate with people who would otherwise become dear friends or loving intimates.

As with all who excuse government coercion, proponents of immigration restrictions prophesy any number of ill-effects growing from open immigration. Most of these objections—for example, that immigration makes workers as a group worse off—are unfounded. But the few objections that have some superficial merit turn out to have just that—merit that is only superficial.

For example, it is superficially valid to question the merits of open immigration given our government's current generosity with welfare handouts. The argument is that we shouldn't permit so many immigrants into America because they are likely to swell the welfare rolls.

But why focus on immigration? The problem is our own welfare state. Abolish it.

A common response to this call to abolish the welfare state is that such a call is politically naïve. As desirable as ridding ourselves of the welfare state might be, politically we're stuck with it.

Perhaps. But if so, it surely is no argument for restricting immigration. A less drastic fix than restricting immigration is available to deal with this problem: open up immigration to any foreigner who agrees never to receive government welfare payments based on low income.

More fundamentally, the very reason offered for why it's naïve to believe that the welfare state will be abolished is a compelling reason to support open immigration. The welfare state is entrenched because it has created its own politically powerful clientele. That's one of the grave dangers of government programs: they self-perpetuate despite being socially harmful.

Immigration restrictions are the same. Powerful interest groups (such as labor unions and the Immigration and Naturalization Service's employees) benefit from the perpetuation and expansion of immigration restrictions. If ever the opportunity arises to loosen these restrictions, it should be grasped quickly and firmly.

It's dangerous to use the existence of one abuse of government power to justify another abuse of government power. Never give government additional power as a means of reducing its power. To do so is to travel along the road to serfdom—and, in the case of immigration restrictions, to cede to the state the frightful power to select those with whom we may associate. No free people ought ever do such a thing. □

Private Investment Is More Risky than Social Security?

It Just Ain't So!

The week ending April 14 witnessed a 6 percent drop in the Dow Jones Industrials Index, while the NASDAQ fell a precipitous 26 percent. The markets are sure to bounce back, but could the lasting victim be the movement to privatize Social Security? Opponents of privatization, which would let workers invest in personal retirement accounts holding stocks and bonds, hope so. They were filled with glee at the recent market volatility.

William Raspberry, columnist for the *Washington Post*, typified this view, saying that the “wild fluctuation of stock prices should have cooled the ardor of those free-enterprisers who want to privatize Social Security.” Raspberry acknowledges that, over time, the stock market always trends upward. “But suppose the market dropped 500 points (or that your portfolio lost a comparable amount of its value) and stayed down—not forever, of course, but for, say, half a year after your retirement. You might find yourself longing for the good old days when your Social Security payment was guaranteed by the government.”

Okay, let's suppose the market did drop 500 points. In fact, let's assume that the Dow dropped 5,000 points, half its current value, on the very day a worker retired. How would a worker, currently 40 years old and earning \$25,000 annually, fare under personal retirement accounts as compared to Social Security?

When he retires, that worker can expect to receive Social Security benefits worth approximately \$1,100 per month in today's money, assuming full benefits can be paid. Of course, after 2015, when benefits owed exceed payroll taxes collected, full benefits cannot be paid

unless taxes are increased or other spending is cut. But let's assume that the extra money needed to cover Social Security's long-term unfunded liability—all \$20 trillion of it (in 2000 dollars)—is donated by a generous benefactor and that full benefits can be paid without increasing taxes a penny.

Now let's assume that the same worker invested the retirement portion of his payroll taxes (10.6 percent of wages up to \$76,200) in stocks and earned the same returns that the market has produced since 1802: 7 percent annually in real terms. If he worked 45 years, he would retire with \$838,000 in his account.

Assuming he remained fully invested in the Dow index until retirement, a drop of 5,000 points would cut his account balance in half. In addition, let's suppose that workers do not have the option to wait out a market downturn or to withdraw funds from their account over time. They are required to annuitize their personal accounts on the day they retire, whether the market is a bull or a bear.

Despite all this, even if the market dropped by 5000 points, cutting his savings in half, the worker's account balance would still be enough to purchase a joint-and-survivor annuity paying over \$2,700 monthly, almost two-and-a-half times what Social Security would pay. In fact, it would take a market crash of over 80 percent—substantially greater than that of October 1929—for a personal retirement account to pay less than what Social Security promises (but cannot pay).

Historical Average

Moreover, this example assumes that the market returns only the historical average before its crash. History shows that most large market declines are preceded by equally large market advances. In this case, the account balance would likely be even higher.

In addition, we also assume that the worker remains 100 percent invested in equities until the day he retires. Had he practiced life-cycle

investing, in which he would move to less volatile investments such as corporate or government bonds as he neared retirement, his exposure to a sudden market decline would be greatly diminished.

Critics of Social Security privatization are correct that the stock market is volatile over the short term. In their best single year stocks gained 66 percent in value, while losing 40 percent in their worst. But investing for retirement is about the long term. Over 30 years, stocks' best average annual return was 10.6 percent in real terms, while their worst performance was a 2.6 percent annual profit. In other words, if you held a balanced portfolio of stocks over 30 years you never lost money.

The same cannot be said for "safe" government bonds, which lost money in the post-war period as inflation ate away at their value. Nor can it be said for Social Security, which in the future will pay many workers a negative rate of return. As Wharton School professor Jeremy Siegel has shown, despite their daily ups and downs, over long holding periods stocks actually have smaller variations in returns (are less "risky") than corporate or government bonds.

Even after hearing all this, some may still prefer not to invest in stocks. Guess what? To beat Social Security, they don't even have to. The bipartisan 1994-1996 Advisory Council on Social Security estimated that even if Social Security could pay full benefits forever without raising taxes, a typical 27-year-old single worker would receive an annual return of just 1.7 percent. Even investing only in ultra-safe inflation-indexed Treasury bonds, currently paying 3.9 percent annually, would double that worker's retirement income. Plus, workers would have a true legal guarantee of repayment, which Social Security does not provide. Investing in higher-yielding stocks and corporate bonds, ordinary workers could save enough to leave large inheritances to their heirs.

No one except day traders likes market volatility. But it would take a pretty large market drop, larger even than the crash preceding the Great Depression, to make Social Security a better deal than personal retirement accounts. □

—ANDREW G. BIGGS
Cato Institute

Next Month's *Ideas on Liberty*:

Our September issue features

"The Colonial Origins of American Liberty,"

"Economists Against the FDA,"

"A Light Goes Out in New Zealand,"

and much, much more.

Don't miss it!

In Praise of Athletes' High Salaries

by William L. Anderson

While teaching in public schools many years ago, I found that almost all teachers believed they were underpaid and underappreciated. Things probably have not changed. My colleagues expressed their sentiments by hanging a newspaper editorial on a bulletin board in the teachers' lounge that condemned the high salaries of professional athletes.

"Americans do not value education," the editorial opined, citing as proof the fact that "a mediocre halfback in the NFL" was paid more than three times the average teacher's salary. The statement had its desired effect, judging from my colleagues' responses to the disgruntled editorial writer.

The message was clear: Americans have their priorities wrong. If they truly valued education more than professional sports, teachers would be paid more than professional athletes. People recoil at the high salaries players receive, salaries that seem to be out of kilter with what the rest of us earn. In an extreme example, Michael Jordan was paid \$36 million to play his last season with the Chicago Bulls of the National Basketball Association. Even most medical doctors fail to earn such a sum during their entire working lives. That athletes are much better paid is *prima facie* evidence that people in this country have no appreciation for what is really

important. Thus the state should force the right values on us.

Even while more and more Americans attend professional athletic events, the athletes and their sports are under greater attack. Furthermore, the off-field behavior of many athletes—including the commission of serious crimes in some well-publicized cases—allegedly demonstrates that we should not be paying great sums of money to people who are not proper role models for our children.

Some of the details of the editorial are true. In fact, the gap between the average salaries for teachers and professional athletes in the last two decades has grown considerably. Yet, incredible as it may sound to the average person, this is a positive sign. Far from being an indication that people are worse off, the explosive growth in the salaries of professional athletes, as well as the overall surge of professional sports, demonstrates that individuals—including teachers—have become more prosperous.

Such a statement flies in the face of conventional understanding. After all, macroeconomic statistics like the consumer price index allegedly tell us that real incomes have fallen for the past three decades. Not only is it difficult to argue against such numbers, but for those of us who believe in limited government, there is also a dark satisfaction gained by showing that living standards are down as government intervention in the economy has increased.

William Anderson is an assistant professor of economics at North Greenville College in Tigerville, South Carolina.

The Power of Economic Analysis

The praxeological tools of economic analysis,* however, are much more powerful than numbers created by the U.S. Department of Labor, and while we would like to be arguing that the expansion of the state in recent years has meant an absolute decline in living standards, perhaps there is another case to be made. We should be telling the world that free-market capitalism has succeeded *despite* the ubiquitous intrusions of government.

To understand how the increases in the salaries of professional athletes demonstrate that all of us are better off, we turn to an old issue: the diamond-water paradox. In *The Wealth of Nations*, Adam Smith asked why a diamond could fetch much more money in the marketplace than could water, despite the fact that water was much more necessary for human existence.

The solution to the paradox came from the “marginalists” of the mid and late nineteenth century, including Carl Menger of Austria, William Stanley Jevons of England, and Jules Dupuit of France. Value, they astutely pointed out, is determined by the usefulness of the marginal available unit of the item in question, or *marginal utility*. An individual imputes value to a particular *unit* of water, not to the overall characteristics of water itself.

Because water is plentiful and diamonds are scarce relative to water, in normal cases a unit of water will not be valued as highly as a diamond. However, if someone were wandering in the desert, dying of thirst, he might very well be willing to trade a beautifully cut diamond for a canteen full of water!

Diminishing Utility

Take a desert traveler who stumbles on an oasis. He pulls a bucket of water from a well and drinks to quench his thirst. After he has drunk to his fill, he uses the next bucket of water to fill his canteens, while the bucket after that goes to watering his pack animals. Each successive bucket is applied to lower valued uses.

We next apply this example to one's income. Assume that Joe is a teacher and is paid once a month. His first payments go to those things that are most essential to his well-being: rent (or house payment) and food, along with other bills that must be paid immediately. In other words, Joe applies his income in an ordinal fashion, going from his highest valued to his lowest valued priorities. It is only after those things that are essential to him receive payment that he can apply his leftover income to less important things like entertainment, eating out, and the like. The vast majority of people will spend their incomes as Joe does.

This brings us to spending on education versus spending on professional sports. If the editorial writer is correct, the majority of Americans not only rank spending on tickets for professional sports events ahead of spending on education for themselves and their children, but also likely will spend more dollars on athletics than education.

Even without resorting to a bevy of statistics, one can surmise that the conditions required to make the editorialist's statement true simply do not exist. Take public education, for example. The budgets of most state governments devote more than 50 percent of their funding to education. If one includes the added expenditures for private education, the numbers become enormous.

According to the *1999 Statistical Abstracts of the United States*, total expenditures in 1995 on private and public education at all levels was \$532.4 billion. In contrast, Americans spent \$57.2 billion on movies (including video rentals) and \$13.1 billion on commercial sports (including horseracing).

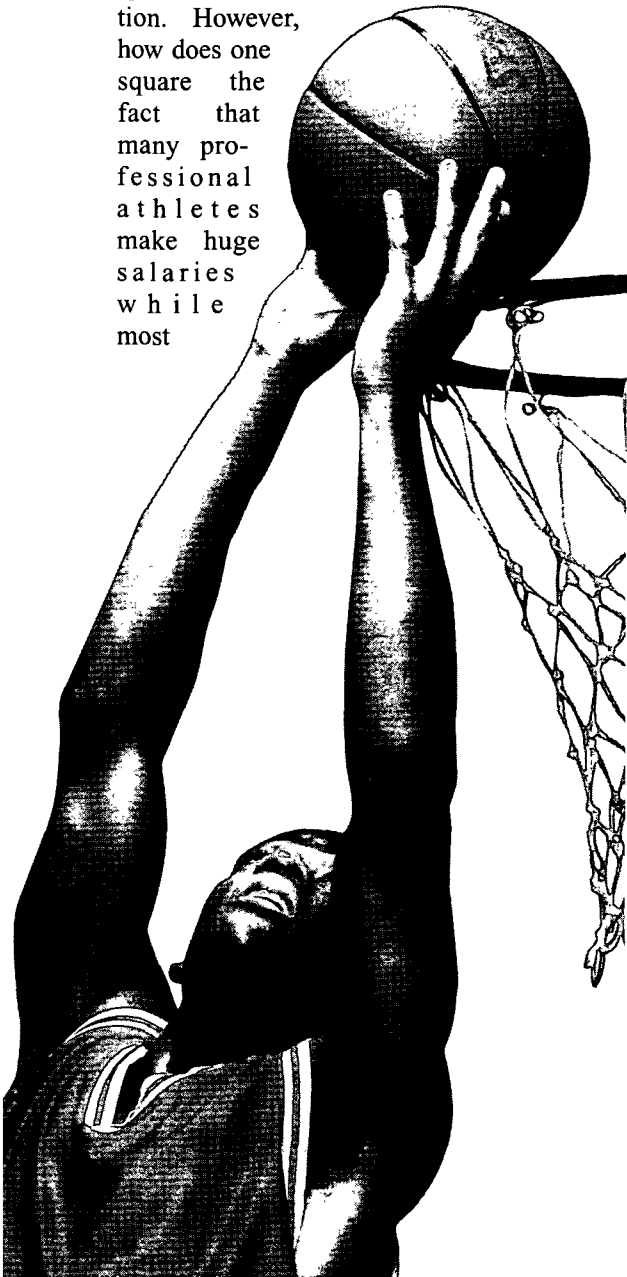
What's more, Americans on average spent approximately 10.7 percent of their 1995 income on education. This was not a radical departure: the share of income spent on education in 1980 was 10.1 percent. Comparing education payments to expenditures on other things, one finds that people spent more only on food (\$690.5 billion), housing (\$688.2 billion), and medical care (\$766.2 billion).

Listing education spending has two drawbacks. First, since utility is ordinal and not

*Ludwig von Mises's term for the science of human action is praxeology.

cardinal, the numbers themselves do not measure utility; at best, they are a representation (or proxy). Second, most education expenditures come from taxes, which are not voluntary payments. However, since the critics whom we are answering have insinuated that Americans do not pay enough taxes for education in proportion to what they pay to see athletes, it is appropriate to list tax payments along with voluntary payments for private education.

Therefore, one cannot conclude from these numbers that Americans rank professional sports above education. However, how does one square the fact that many professional athletes make huge salaries while most



People who can qualify to be teachers are relatively more abundant than athletes who can withstand the rigors of professional sports. Furthermore, the professional athlete operates in an arena in which he (or she, as women's professional sports are increasing) can entertain large numbers of people at one time. For example, it is estimated that more than a billion people worldwide see the Super Bowl. The best lecturers may speak before a few hundred listeners, and most teachers teach 25 students or so at a time. Each year more than 40,000 people receive Ph.D.'s in the United States, while perhaps 40 rookies may make it into the NBA.

teachers make about \$40,000 a year? For example, in 1995 the average salary for a major league baseball player was \$1.1 million, while the average pay for a player in the National Basketball Association was \$1.9 million. The average salary for a National Football League player that year was "only" \$714,000.

To most observers, the difference between the salaries for professional athletes and teachers seems to reflect mistaken priorities. However, to an economist this disparity is explained by the law of diminishing marginal utility.

More Teachers than Athletes

People who can qualify to be teachers are relatively more abundant than athletes who can withstand the rigors of professional sports. Furthermore, the professional athlete operates in an arena in which he (or she, as women's professional sports are increasing) can entertain large numbers of people at one time. For example, it is estimated that more than a billion people worldwide see the Super Bowl. The best lecturers may speak before a few hundred listeners, and most teachers teach 25 students or so at a time.

Each year more than 40,000 people receive Ph.D.'s in the United States, while perhaps 40 rookies may make it into the NBA. For the few who do make it into the pros, their expected tenure is short, maybe a few years on average. A teacher, on the other hand, may be able to practice his profession for up to 40 years. Nor do most professional athletes strike it rich. The vast majority work in the obscurity of minor league sports or other relatively low-paid positions, such as a golf professional at a country club. In other words, the multimillionaire athlete is the great exception, not the rule.

If one can get past the feelings of envy regarding the highly paid but often publicly immature athletes, one sees that the only way for the escalation of high salaries to continue is for society as a whole to become wealthier. As noted, individuals generally put spending for sports events far down on their list of priorities.

That being the case, it is obvious that greater sums of money are poured into professional sports because people have increasing amounts of income left over after paying for their highest values. The pattern of sports salaries bears this out.

Babe Ruth made his highly publicized \$80,000 a year in the late 1920s, an astound-

ing salary at that time. However, even accounting for inflation, Ruth's salary today would hardly place him near the top of the baseball payroll. Even as recently as 1985, the average salary for a player in the NBA was just \$325,000. If adjusted for inflation, that figure in constant dollars for 1997 would be \$414,000. Yet, the average NBA salary in 1997 was \$2.1 million.

Unless U.S. society has undergone a sea change in preferences in the last 15 years, the pay increase for NBA players could have come about only because Americans had also gained in real income. Likewise, the proliferation of minor professional sports—like arena football—means that Americans have even more disposable income than before and can afford to pay to see such sports. Otherwise, these teams would drown in red ink and be out of business.

Such analysis most likely will not satisfy those social critics who believe unless government guides our every thought, we will always make bad decisions with our money. If one examines the spending patterns of most people, however, one finds that perhaps the fears that individuals have their priorities in the wrong place are unfounded.

Finally, let's apply the analogy of the canary in the coal mine. Before the invention of technical devices to detect odorless but deadly methane gas in deep mines, miners kept a caged canary nearby. As long as the bird was alive, gas was not present. However, if the bird died, it was a signal to the miners to get out immediately.

Likewise, we find that professional sports acts as a bellwether to our overall well-being. Highly paid athletes and the proliferation of professional teams are a signal that we are all better off. If those salaries begin to fall or large numbers of teams go bankrupt, however, beware: harder times are ahead for all. □

A (Revisionist) Walk in the Park

by Andrew P. Morriss

I was recently in Missoula, Montana, and had a chance to take a walk on a hike and bike trail along the Clark Fork River. Despite having worked on my taxes shortly before leaving for Missoula, I was in a good mood—the air was crisp, there was a light dusting of snow on the mountains surrounding the city, and the sun was coming through the clouds, giving the place the wonderful glow that Montana always seems to have. Maybe it was lack of oxygen from being at a higher elevation than I live at, but I was even thinking that the park was a good example of something local governments did reasonably well. Then I stopped to read a trailside marker.

The first marker I encountered described the scenery but did so while devoting more than a third of its words to the role of government in preserving the view. The second marker wasn't much better. Entitled "The River," it began by noting that "The clear waters of the Clark Fork suffered massive degradation after white settlement began in Western Montana" and went on to explain how "[a]fter environmental awareness emerged in the late 1960s, laws were passed to protect water quality." Three-quarters of the text on this one, nominally about the river itself, was actually about the government and how it supposedly stopped pollution. Even the

trail marker on the "Garden City Islands," several tiny scraps of land in the river, began by explaining not the natural significance of the islands but that the islands were "established as a wildlife education area in 1995 by the City of Missoula and the Five Valleys Land Trust."

Indeed, all the trail markers I read (and I think I read them all) presented a peculiar view of Montana's history. Every one emphasized and aggrandized the role of government. The only place private entities or individuals got much attention was when they donated land for the park or built things one could see from the trail. Even then they usually played second fiddle—the "Built Environment" plaque, for example, did mention buildings built by individuals and businesses, but the theme was the buildings' designation as "National Historic Landmarks."

A History of Private Enterprise

This is all the more surprising because Montana has such an incredible history of private enterprise. The state was first settled by pioneers motivated by a desire for gold. Thousands poured in during the 1860s to gold rush towns like Last Chance Gulch (now the state capital, Helena), Virginia City, and Bannack. Entrepreneurs among them, like Conrad Kohrs, built fortunes by setting up businesses to sell the miners food and other supplies. When the gold ran out, huge copper deposits were found, bringing with them the vast

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empires of the “copper kings,” men like Marcus Daly, who carved entire new towns out of hillsides. Kept in territorial status for over 30 years by Washington politics, government just wasn’t that important to nineteenth-century Montanans’ daily lives. Yet none of the rich history of early entrepreneurship merited a mention on the trailside plaques.

It may not be surprising that I encountered this sort of thing in Missoula. The town is a tiny socialist enclave in the west—local elections are contested not by the Republicans and Democrats but by the Democrats and the “New Party,” one of the few successful chapters of the most recent attempt to build a new nationwide socialist party. Last fall’s election featured a razor-thin victory against a proposed ordinance requiring employers doing business with the government to pay an \$8 an hour “living wage.” Even for Montana, a state where a local newspaper once ran a headline “Montana Branded Land of Kooks,” Missoula is odd.

But it is not just Missoula. History, even of the compressed variety used on roadside and trailside plaques, is far too important to be left to governments. Historical markers and the like can shape our view of the world by telling us what’s important. They may be the only history many people read. The “new” history that sprung up in the 1960s and emphasized the stories of individuals other than generals and presidents may be largely a muddle of politically correct stories of oppressed peoples, but it got one thing right—there’s a heck of a lot more to American history than government.

Still, even my encounter with the trailside plaques couldn’t ruin my mood for long. After all, I was in Montana and walking along a beautiful river on a glorious day. Two other features of the trail helped me out of the dark mood induced by the “history” plaques. First, the trailside maps—far more prominent features than the history plaques and much more likely to be read—featured a startling (for



Missing in Missoula: There’s no tribute to early Montana entrepreneurship along the trail, no mention of people like Marcus Daly (1841–1900), who developed the Anaconda Copper Mines.

Missoula) statement: “Please respect private property.” I’m sure the granola-crunching crowd that runs Missoula just meant that hikers and bikers should stay off people’s lawns, but the phrasing sent a broader message.

My other reason for being optimistic? The most prominent signs along the trail were the stern warnings that the leash law was strictly enforced and carried \$25 fines for violators. I saw at least 25 dogs—running, chasing sticks into the river, walking, and playing catch with their owners. I didn’t see a single leash. Governments can rewrite history, but even in an essentially socialist enclave like Missoula, when they get between people and their dogs, they’re powerless. There’s still hope for liberty! □

**IDEAS
ON LIBERTY**
AUGUST 2000

Guns, Gun Laws, and Liberty



The heart of virtually every citizen of America went out to the family of little Kayla Rolland after a classmate took her life with a .32 caliber revolver on February 29 in Mt. Morris, Michigan. As with the Columbine High School shootings in Colorado last year, we all feel pained and distraught about such senseless violence, and we wonder what has gone wrong and what can be done to prevent any recurrences. In the wake of these tragedies, legislators in every state are taking up the issue of gun control.

The challenge is to express appropriate grief and concern about these things without allowing hyped emotions, rhetorical window-dressing, or futile “quick fixes” to rule the day. Political jockeying to prove who is most outraged by violence must not overwhelm facts, logic, and experience.

One superficial but unfortunately popular reaction to school shootings is summarized this way: “Guns are bad; more laws are good.” The facts are more complicated. Guns are *not* bad when they are not misused, not accessible to people who misuse them, and used harmlessly in sport or recreation; they are good when they thwart crime. Laws are *not* good when they injure the rights, property, or lives of the innocent; when they are ineffective or unenforceable; or when they act as cheap political substitutes for a problem’s real cure.

Proliferation of Laws

Nationwide, according to John R. Lott, Jr., there are more than 20,000 gun-control laws that regulate everything from who can own guns and how they can be bought to where a person can possess or use them. “The biggest problem with gun-control laws,” writes Lott, “is that those who are intent on harming others, and especially those who plan to commit suicide, are the least likely to obey them.”¹

The two students who committed the Columbine murders broke at least 17 state and federal weapons-control laws. The student who shot Kayla Rolland apparently got the revolver he used from the bedroom of a fugitive being sought on drug charges. The boy’s uncle was arrested on an outstanding felony warrant for concealing stolen property. This raises a question that those who push for more gun-control laws need to answer but rarely try: Can we realistically expect criminal suspects who blithely break many laws to somehow obey another gun law?

Does the mere prevalence of guns in American society contribute to gun violence? If statistics matter, the answer is no. A study from the U.S. Centers for Disease Control and Prevention found that firearm-related deaths in the United States dropped 21 percent over the five-year period from 1993 to 1997 and non-fatal firearm-related injuries fell 41 percent. Including all gunshot wounds reported at emergency rooms “whether intentional, accidental, or self-inflicted,” the CDCP study said that gun-related deaths fell from 15.4 per

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100,000 people in 1993 to about 12.1 per 100,000 people in 1997.² Moreover, statistics compiled by the U.S. Justice Department's National Crime Survey reveal that 88 percent of all violent crimes do *not* involve firearms.³

Firearms ownership in America is higher today than at the start of the decade. An estimated 80 million people own upward of 240 million guns. What percentage of them were involved in intentional or accidental deaths in the most recent year for which data are available? Barely one one-hundredth of one percent. Children under five are more likely to drown in water buckets or die in fires that they themselves start with cigarette lighters.⁴

While the misuse of firearms generates publicity, the proper use of them for self-defense rarely does. Americans use firearms for protection more than two million times each year. Ninety-eight percent of the time, they only brandish their weapons or fire warning shots. However, each year gun-wielding citizens kill between 2,000 and 3,000 criminals in self-defense, an astounding three times the number killed by police.⁵ In a recent five-year period, the National Self-Defense Survey found that the number of legal, defensive gun uses was three to four times that of illegal, offensive gun uses—and that civilians using guns in self-defense save a minimum of 240,000 lives annually.⁶

Yet what about the frightening statistic that 13 children die every day from guns? They are not all innocent six-year-olds who would be saved by trigger locks. Eleven of the 13 are 15-to-19-year-olds, and most of them are killed as a result of gang violence.

Concealed Weapons

Violent crime is 81 percent higher in states that do not have concealed-carry laws than in those that do. Robbery is 105 percent higher and murder is 86 percent higher where law-

abiding citizens are denied the right to carry concealed guns. Moreover, the FBI's annual crime figures for all 3,054 counties over a recent 15-year period show that states with the largest increases in gun ownership also had the largest drops in violent crimes.⁷

Evidence is strong, based on data emerging in the last couple of decades, that the one strategy that offers the best hope of curtailing crime and the misuse of guns is swift and strong punishment of violent offenders. It may seem strange to some advocates of more gun-control laws that going after the guilty offers more promise than going after the innocent, but that's what the facts show.

Finally, we must recognize that violence in any form occurs when individuals lack respect for the lives and property of others. Ultimately, anti-gun laws—even the effective ones—deal more with symptoms than they do with causes. We must as individuals address this on the home front as we raise and nurture our children. The values that once were the glue that held us together must be strengthened by home, church, school, and institutions public and private. Parents must be given more freedom to choose the best and safest schools for their children. In short, riding our society of handgun violence requires that we recognize that guns are less the problem than are certain people, certain values, and uncertain laws. □

1. John R. Lott, Jr., "Gun Laws Can Be Dangerous, Too," *Wall Street Journal*, May 12, 1999, p. A-22.

2. "Nonfatal and Fatal Firearm-Related Injuries: United States, 1993-1997," *Morbidity and Mortality Weekly*, November 19, 1999, U.S. Centers for Disease Control and Prevention, Washington, D.C.

3. Morgan O. Reynolds and W. W. Caruth III, "Myths About Gun Control," National Center for Policy Analysis, Dallas, Texas, December 1992.

4. John R. Lott, Jr., "More Guns, Less Crime: Understanding Crime and Gun Control Laws," *American Experiment Quarterly*, Summer 1999, p. 14.

5. Reynolds and Caruth, p. 10.

6. Glenn Otero, "Ten Myths About Gun Control," Golden State Center for Policy Studies, January 6, 1999, p. 8. This report can be seen at <http://www.claremont.org/gsp/gsp60.cfm>.

7. "More Guns = Less Crime," *Investor's Business Daily* editorial, May 8, 1998, p. A-32.

The Declaration of Independence: It's Greek to Me

by Jim Peron

The stirring words of Thomas Jefferson's Declaration of Independence said that all men are endowed with certain inalienable rights. To Jefferson these rights existed before the founding of government and the function of government is "to secure these rights." But he himself said that his ringing words did not express a new idea: "This was the object of the Declaration of Independence. Not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we are compelled to take. Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind."¹

Jefferson was correct. The Resolutions of the Town of Boston (1772) said that all men had natural rights and "Among the Natural Rights of the Colonists are these. First a Right to Life; Secondly to Liberty; Thirdly to Property; together with the Right to support and defend them in the best manner they can." The Virginia Declaration of Rights (1776) proclaimed that "all men . . . have certain inherent rights . . . namely the enjoyment of life

and liberty, with the means of acquiring and possessing property."

The American Revolutionaries talked about natural rights and natural laws. John Dickinson in 1766 argued that rights "are not annexed to us by parchments and seals." Instead, "They are born with us; exist with us; and cannot be taken from us by any human power without taking our lives. In short, they are founded on the immutable maxims of reason and justice."²

Ethan Allen said that "knowledge of nature is the revelation of God . . . acquired through reason."³ As Deists, some of the most prominent of the Founders believed in a divine creator who withdrew from the affairs of man after his act of creation. But the creator devised an orderly universe with natural laws that could be understood by man. Through reason the laws of nature could be discerned, and once natural laws were understood, natural rights automatically followed. Historian Paul Conkin of the University of Wisconsin, in his book *Self-Evident Truths*, described the deistic beliefs of men like Adams, Jefferson, and Madison:

God published all laws necessary for political order in nature, made them available to ordinary human understanding, and placed the needed sanction in the dire consequences of avoidance or disobedience. The appeal of natural rights was to divine authority, the way God willed all things. But this appeal was not slavish; just the

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opposite. Almost every influential political theorist from Locke on had assumed divine benevolence or, in Franklin's terms, that God wanted men to be happy and thus gave them the means of happiness.⁴

This view was widely held by the classical liberals of the Enlightenment. J. Salwyn Schapiro said that these classical liberals "beheld a world governed beneficently by impersonal natural laws."⁵ Schapiro said natural law was an "old idea," but that it was made "the acid test of the legitimacy of the existing order of government and society." In "human affairs, as in those of nature, there existed natural laws that could be discovered by the scientific method of investigation."⁶

Greek Origins

In Western society, Conkin notes, "Natural-law theories originated in Greek philosophy. Plato and Aristotle affirmed not only a formal logical order in the world but an inherent purposefulness in all things. Nature stood for both the order and the purpose. Aristotle's universe was one vast congeries of yearnings, of informed objects moving toward their own perfection and, in a sense, trying to imitate the objects above them in a chain of being stretching to a perfect mind which pulls all things toward it. Man, by his intellect, can grasp the formal truth in objects, can understand the structure of the universe. More importantly he can understand himself, grasp his own nature, which is also to perceive his own highest good."⁷ The natural law of the Greeks and the Founders was one grasped and understood through the use of reason.

This Greek concept of natural law was later grafted onto Western Christian thinking by Thomas Aquinas, but it originated outside theology. Conkin says, "For Aristotle, lawfulness and purpose inhered in a reality that was, itself, eternal and in no sense the product of creative intelligence." The Jesuit philosopher Thomas E. Davitt noted that "If the word 'natural' means anything at all, it refers to the nature of a man, and when used with 'law', 'natural' must refer to an ordering that is manifested in the inclinations of a man's nature

and to nothing else. Hence, taken in itself, there is nothing religious or theological in the 'Natural Law' of Aquinas."⁸ The Protestant jurist Hugo Grotius defended the concept of natural law in his *De Jure Belli ac Pacis*, where he said such natural-law theories "would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God."⁹ For many, the idea of "natural" law was used to distinguish it from "supernatural" law. The former was the product of reason; the latter was the result of faith. Reason required questioning while faith required obedience. Questioning required liberty while obedience required authority alone.

The Catholic Counter-Reformation re-emphasized the Thomistic rediscovery of natural law. The Jesuit Francisco Suárez was the leading publicist of the Counter-Revolution and one of his arguments against Luther, according to J.G. Merquior, was that Luther had "dismissed natural law." Suárez found Luther's "dark view of human sinfulness" incompatible with the idea that a just society could be found on earth. Suárez also found a natural-rights argument useful for Catholics living in areas dominated by Protestantism and argued for a "full return to the natural law perspective."¹⁰ Suárez, however, did not see these rights so much as individualistic but holistic and limited by the social-moral framework of society. He, like Grotius, accepted that "natural law does not proceed from God as a lawgiver, for it is not dependent on God's will."¹¹ According to Merquior, it was Grotius who first used these natural rights views "to build an individualist account of society and that he 'redefined natural law apart from theology.'"¹²

Aquinas and his fellow churchmen of the Counter-Revolution returned to older Greek ideals of philosophy. Karl Popper, in *The Open Society and Its Enemies*, said that "our western civilization comes from the Greeks." This means that the Greeks "began that greatest of all revolutions . . . the transition from the closed to the open society."¹³ The revolution of the Greeks was a revolution of ideas.

Barbara Ward, in her *Faith and Freedom*, writes that the "Greek philosophers were the

first people to think systematically about these problems of knowledge—of the knower and the known—and it led them to their belief in the supremacy of reason.”¹⁴ For the Greeks, “order in man’s knowledge called for a comparable order in external reality. A rational mind could hardly make sense of an irrational universe.” This meant that the external world was one which contained rational laws that could be discovered by reason. This did more than change how man perceived “facts of nature” or science; it also changed how man related to man.¹⁵

Ward says “this sense of rationality and law permeated all Greek thinking” and “lies at the basis of Greek political thought.” Prior to the Greeks, “government had been arbitrary.” These “archaic societies . . . developed from primitive religion and magic”; “government was universally despotic, a private matter for king or priest, arbitrary, unpredictable.”¹⁶ But “despotism was anathema to the Greeks” because it “denies objective and intelligible law. The whim of an autocrat of whatever kind exposes a man to irrational and unpredictable hazards.” “Only if government conforms to law . . . can the citizen be said to be free.”¹⁷

Founders Well Versed

Ward says that America’s Founders were directly influenced by this Greek view: “The country gentlemen of Virginia were versed in the classical tradition and derived from it their sense of law. Some of the leading spirits in the drafting of the Declaration of Independence were keen students of the idea of natural law, which was in part a harking back to the ancient tradition of the Greeks, to the idea of dike—eternal law—lying at the foundation of the universe.”¹⁸

F.A. Hayek, in *The Constitution of Liberty*, traces the very concept of the rule of law to the Greeks as well. But such should be expected. If the Greeks advocated natural law they would also advocate the rule of such law. This is what Aristotle meant when he said “it is more proper that the law should govern than any of the citizens.” Hayek said that Aristotle “condemns the kind of government in which

‘the people govern and not the law’ and in which ‘everything is determined by majority vote and not by law.’”¹⁹ Hayek went to great lengths, especially in his three-volume *Law, Legislation, and Liberty* to distinguish between law and legislation. Law, in the Greek sense, is natural and like other facts of nature is discovered, while legislation is merely imposed. Hayek said that all schools of natural law agree on “the existence of rules which are not of the deliberate making of any lawgiver.”²⁰ It was to this concept that the Founders appealed in their Declaration of Independence. They felt that the British government had violated such natural laws and thus the laws of nature justified their revolution.

Jefferson was right. The radical ideas of the Declaration of Independence were not new. They were widely held by the best minds of the Enlightenment, and before them by men such as Thomas Aquinas. Indeed, the American Revolution, based on natural rights and natural laws, was a revolution begun thousands of years earlier by the great Greek thinkers in the tiny city of Athens. □

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2. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press, 1967), p. 77.

3. Ethan Allen, *Reason the Only Oracle of Man* (Bennington, Vt.: Hasswell & Russell, 1784), p. 30.

4. Paul Conkin, *Self-Evident Truths* (Bloomington, Ind.: Indiana University Press, 1974), p. 121.

5. J. Salwyn Schapiro, *Liberalism: Its Meaning and History* (Princeton, N.J.: D. Van Nostrand Company, 1958), p. 17.

6. *Ibid.*

7. Conkin, p. 77.

8. Thomas E. Davitt, “St. Thomas Aquinas and Natural Law,” in Arthur L. Harding, ed., *Origins of the Natural Law Tradition* (Dallas: Southern Methodist University Press, 1954), p. 39.

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10. J.G. Merquior, *Liberalism: Old and New* (Boston: Twayne Publishers, 1991), p. 20.

11. Quoted in A.P. d’Entreves, *Natural Law* (London: Hutchinson University Library, 1951), p. 71.

12. Merquior.

13. Karl Popper, *The Open Society and Its Enemies*, vol. 1 (London: George Routledge & Sons, Ltd., 1945), pp. 151, 153.

14. Barbara Ward, *Faith and Freedom: A Study of Western Society* (London: Hamish Hamilton, 1954), p. 38.

15. *Ibid.*, p. 39.

16. *Ibid.*, p. 40.

17. *Ibid.*, p. 41.

18. *Ibid.*, p. 139.

19. F.A. Hayek, *The Constitution of Liberty* (London: Routledge & Kegan Paul, 1960), p. 165.

20. *Ibid.*, p. 237.

The Butter Monopoly?

by Raymond J. Keating

Can butter lovers in the greater Philadelphia and New York City metropolitan areas spread a little easier knowing that the federal government is looking out for them?

Antitrust regulators are on guard against the tiniest of price increases that might result from a proposed merger in the butter industry. The U.S. Department of Justice (DOJ) filed a civil antitrust lawsuit March 31 against the merger of Dairy Farmers of America, Inc., and SODIAAL North American Corporation. Dairy Farmers of America sells Breakstone's butter, while SODIAAL makes Keller's and Hotel Bar.

The DOJ direly warned: "If the merger were allowed to proceed, Dairy Farmers of America, Inc., and one other supplier would control almost 100 percent of branded butter sales in these markets."

As a consumer in the New York metropolitan area, I launched my own butter investigation by visiting the two supermarkets in my hometown. As it turns out, the local butter market is quite robust and competitive. King Kullen offered 18 different brands of butter, margarine, and spreads, while Waldbaum's pushed the number up to 19. Checking many of the labels, there were at least nine different manufacturers. For good measure, coupons and sales abounded.

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So what's the problem? For one thing, the Justice Department has arbitrarily decided to narrow the relevant market. The government's complaint refers to "branded butter." According to these antitrust connoisseurs, there is a significant difference between "branded butter" (like Keller's, Hotel Bar, Breakstone's, and Land O'Lakes) and "private label butter" (or "butter marketed under a label owned or controlled by the retailer"). According to the government, "Retail consumers of branded butter consider it to be a product better than private label butter." Continuing, the DOJ claims that "a small but significant increase in the price of branded butter will not cause a sufficient number of consumers of branded butter to substitute private label butter or other products to make such a price increase unprofitable."

The government's sensitive palate also breaks branded stick butter and branded whipped butter into separate markets. It obviously follows that if private label butter cannot substitute for branded butter, then margarine or other spreads are out of the question as well in the government's view.

Consumers Won't Switch

So the DOJ is concerned about a possible "small but significant" price increase in certain brands of butter in two metropolitan areas because it believes that some consumers might not switch to another brand. The complaint states: "Due to local consumer prefer-

ences for specific brands, retailers and other consumers would not substitute brands of butter promoted and sold outside the greater Philadelphia and New York metropolitan areas, and are likely to pay higher prices as a result of the proposed acquisition." The government also assumes that other suppliers would not react to a price increase. In summary, the government is saying that consumers are stupid and the butter market has stopped working in the Philadelphia and New York City regions.

In reality, of course, there are no looming threats of monopoly or dire market power in the Philadelphia and New York butter markets. Several butter choices and close substitutes are available, and that will continue to be the case when the merger between the Dairy Farmers of America and SODIAAL goes ahead.

And most critically, there are no legal barriers to entering the butter market. That's really all that matters.

It also needs to be remembered that government lawyers and bureaucrats do not have a clue if the price of so-called branded butter will actually rise or fall due to a merger; nor do they know how other market players will react. These regulators are just speculating.

In this case, the government's speculation ended with a May 18 consent decree prohibiting coordination or the sharing of "competitively sensitive information" regarding branded butter between Dairy Farmers of America (merged with SODIAAL) and its competitor Land O'Lakes. In addition, according to the Justice Department's press release, the consent decree "prohibits Dairy Farmers of

America from agreeing directly or indirectly to charge Dairy Farmers of America's newly created butter subsidiary, Butter LLC, discriminatory prices for cream, milk or butter." So we have a rather ridiculous ending to a preposterous government antitrust action.

Antitrust laws and enforcement are plagued by many faults. In this case and others, such as the Microsoft action, the definition of the relevant market can be manipulated far too easily to fit the political view of regulators. For antitrust purposes, drawing distinctions between branded versus private-label butter, stick versus whipped, and butter versus margarine and other spreads is as preposterous from an economics standpoint as excluding Apple computers from the PC marketplace, as the government did in the Microsoft case.

That antitrust law instructs government lawyers and bureaucrats to speculate on the future of particular industries and the economy in general is equally ridiculous. The Clayton Act, for example, prohibits the acquisition of stock or assets "where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

As illustrated by the government's butter case, regulators can't even grasp the current status of industry and the economy, never mind figuring out the future. Empowering antitrust enforcers to predict and effectively manipulate the future of U.S. industry is grossly misguided. It's time to get rid of the antitrust laws, rein in the government, and leave it to consumers to decide who wins and who loses in the marketplace. □



Visiting the Killing Fields

PHNOM PENH, CAMBODIA—The white monument juts up 40 feet or so, dominating the surrounding fields and trees. From a distance it looks like it could commemorate most anything—a military victory, important statesman, or historical event. But this monument is different. It is filled with skulls.

On April 17, 1975, Phnom Penh fell to the Khmer Rouge. As in Vietnam, an American-backed regime—corrupt, undemocratic, leaderless—collapsed in the face of determined nationalistic communists. In Vietnam the result was repression and poverty. In Cambodia it was slaughter.

The Khmer Rouge, led by Brother Number One, or Pol Pot, summarily executed leaders of the old regime, emptied the cities, forced everyone into communes, and launched social engineering on a vast scale. Before being ousted by a Vietnamese invasion less than four years later, the Khmer Rouge had killed as many as two million people, an astonishing one-quarter of the population.

The number numbs. Hitler, Stalin, and Mao each murdered more people. But none managed to slaughter one-quarter of his nation's population.

Pol Pot's reign of terror filled the country. Some regions, particularly Ratanakiri province, the home base of the Khmer Rouge, suffered less than others. But four in ten residents of Phnom Penh are thought to have died.

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Yet mass murder seems more a statistic than a tragedy. A thousand, a million. What do such numbers mean without individual victims?

Those victims are evident at Choeung Ek, known simply as the Killing Fields. Fifteen kilometers outside of Phnom Penh—down a country road, past shacks and homes, next to a school—are the grounds in which some 20,000 people were buried.

Only 86 of 129 mass graves have been excavated. The 86 have yielded 8,985 victims, whose skulls and bones are stored in the 17-level monument. Atop the large holes are signs listing the number of bodies—450 in one about 20 feet long by ten wide, for instance. “Many holes, same, same,” explained my guide.

But there's more. Stub your toe on the path in between holes and you're not likely to find stones. It is more likely the tip of a leg bone or a jaw poking through the dirt.

The Khmer Rouge didn't just murder. They did so as painfully as possible, using axes, poles, hammers, and knives. Babies were simply swung against a tree. No one was immune from revolutionary “justice.”

However, Choeung Ek was the end, not the beginning. Most of those buried here started in Phnom Penh, at Tuol Sleng prison.

Tuol Sleng sits in an area scarcely bigger than a football field and began life as a high school. But in May 1976 the Khmer Rouge established Security Office 21, or S-21. Its purpose was to expose and exterminate enemies of the regime.

Photos of the Living

Choeung Ek brutally overwhelms through its pile of skulls. Tuol Sleng is even more powerful. It features photos of the living as well as of the dead.

The Khmer Rouge were nothing if not meticulous. They kept arrest and execution records and filed confessions; they also numbered and photographed incoming prisoners, often in profile as well as in front.

It is the images of the living that haunt. Men and women. Boys and girls. Babies. The photos line the walls. Four roomfuls. Faces of people. Once alive. Now dead.

A few look defiant, smoldering hatred evident in their eyes. Others look bewildered. Many radiate fear, eyes wide at the fate they knew to be before them. One seemed to be crying, almost begging for his life.

But most look dead. Their hearts beat, blood flowed, and nerves transmitted pain, but their eyes were lifeless. Empty. Their humanity had been wrung out of them and casually tossed aside.

One picture is particularly unnerving. A man sporting the number 162 sits with a vacant stare. He knows only too well that his life will soon be over.

Tuol Sleng was, first and foremost, an interrogation center. Khmer Rouge interrogation meant torture. And torture often meant death.

Tools on Display

The tools are all on display. The metal bed frames and wooden slab to which inmates were shackled, then beaten. The metal and wooden tubs in which people were drowned. The high bar from which inmates were dangled. The boxes that housed the scorpions that were set on prisoners. The electrical wires with which shocks were administered. And the clubs, axes, hammers, shovels, and knives used to punish and kill.

Although death was the ultimate end, the Khmer Rouge thoughtfully strung barbed wire around the cellblocks to prevent prisoners from committing suicide. You would die, but only when the party thought the time was right.

And that time was only after you confessed. As Martin Stuard-Fox and Bunheang Ung explain in their book, *Murderous Revolution*, enemies "were never simply arrested and shot: authorities had first to obtain confessions which would justify their arrest, and thus confirm the omniscience and justice of Angkar [the Communist Party] in arresting them."

If there was any justice at Tuol Sleng, it was that Khmer Rouge cadre were among the victims. This revolution, like so many revolutions before it, consumed its own.

These memorials in Phnom Penh reflect only the small tip of a pervasive system of murder. Reports French scholar Henri Locard, "From 17th April, the entire country was to become in a way one big prison."

There were three waves of imprisonments and murders. The first was directed against almost anyone associated with the fallen Lon Nol regime. In general, the victims were murdered outside of any formal prison.

The second bout of repression began in the latter part of 1975 and was directed against the same classes of people, including professionals and civil servants. Many of these victims had either been denounced by enemies or prisoners, or had revealed incriminating details of their pasts when writing their autobiographies for the new rulers. These arrests coincided with establishment of a national prison network.

The final round of brutality began in 1976 and, explains Locard, "swept through all classes of the new society," including "the Khmer Rouge cadres and military personnel themselves. All categories of the revolutionary society were soon engulfed in the maelstrom of repression as the regime was getting more and more deranged and saw 'enemies,' khmang, everywhere." Even at the information and foreign ministries in Phnom Penh.

But most of Cambodia's dead, at Choeung Ek and elsewhere, were innocent—the victims of totalitarian egalitarianism, in which life means nothing and the collective means everything. Alas, the world is full of monuments to incredible evil cloaked with the rhetoric of humanity. Few are more moving than Cambodia's Killing Fields. □

Mandatory Student Fees and Freedom of Speech

by George C. Leef

On March 22 the U.S. Supreme Court ruled, in *Southworth v. University of Wisconsin Board of Regents*, that requiring students to pay fees to support campus groups, a common practice at many colleges and universities, is not unconstitutional. The Court has spoken—but did it speak wisely? Let's consider the case and the issues it raises.

Scott H. Southworth is a student at the University of Wisconsin in Madison. A self-described conservative Christian, he objected to the university's use of mandatory student fees to fund campus groups that he found offensive. Relying on Supreme Court precedents in union settings, where the Court has ruled that dissenters from the union's political stances cannot be compelled to pay for them through mandatory dues and fees, Southworth argued that his First Amendment right to refrain from subsidizing the speech of others had been violated. Although the fee was only \$330, Southworth maintained on principle that he should not be required to help finance even one cent of the budget for the many statist campus groups for which Wisconsin is famous.

Persuaded by Southworth's analogy to the union dues cases, the trial court invalidated the university's mandatory fee scheme. The university appealed to the Seventh Circuit Court of Appeals and there suffered a severe

rebuttal. The Seventh Circuit rejected Wisconsin's proposed refund mechanism for objecting students and trounced its argument that subsidizing an array of student groups was a vital part of a university's educational mission.

The university appealed to the U.S. Supreme Court. In a 9–0 decision, the Supreme Court reversed the lower courts. Justice Anthony Kennedy's opinion gave Wisconsin nearly all that it had hoped for.

First, the Court distinguished the case from union-dues cases by arguing that while speech that is outside the ambit of the union's core function is not “germane” to it and not a chargeable expense, all speech is “germane” to a university's “mission” to foster “dynamic discussions of philosophical, religious, scientific, social, and political subjects.” Therefore, ruled the Court, if a university chooses to impose mandatory fees to “facilitate a wide range of speech,” it may do so.

The Court added a qualification, however. The university must be “viewpoint neutral” with respect to the subsidies it dispenses. Justice Kennedy failed to explain precisely what “viewpoint neutrality” requires, but what apparently he has in mind is that there cannot be an unwritten rule that “only leftists need apply.” There will certainly be future litigation over the “viewpoint neutrality” issue. Will Behemoth State U. be able to say that it is “viewpoint neutral” if it gives some money to College Republicans, lots to a bevy of statist organizations, but nothing to (just to make

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something up) the Lysander Spooner Campus Association? Will a token conservative or free-market presence suffice to satisfy the Court that the university's policy is "viewpoint neutral"? By saying "yes, but . . ." to mandatory student activity fees, the Court has opened up the federal courts to a tremendous wave of new litigation.

The part of Wisconsin's program that the Court questioned in this regard was its student referendum method of funding or defunding campus groups. Decisions to give money or not are usually made by the student government, but those decisions can be overridden by student referendum. The Court was troubled by the possibility that putting financial support for possibly unpopular groups to majority vote would be inconsistent with its "viewpoint neutrality" requirement, and for that reason remanded the case for further proceedings.

Does *Southworth* Make Sense?

The Court acknowledges that there is a First Amendment problem when students are compelled to subsidize "speech which some students find objectionable and offensive to their personal beliefs." (This is a constitutional matter only with tax-supported institutions.) The freedom not to have to give financial support to speech with which one disagrees (which is usually more a matter of action than writing or speaking) has been one of the Court's consistent principles since the famous union dissident cases beginning with *Abod v. Detroit Board of Education* (1977). In *Southworth*, however, the Court takes the relaxed view that the First Amendment rights of students are "sufficiently protected" as long as the mandatory fees are allocated in accordance with its vague "viewpoint neutral" standard.

The Court's position is indefensible.

Put yourself in the shoes of Mr. Southworth. You object to the fact that some of your money is being directed to student organizations that attempt to influence public opinion and policy in ways that you find repulsive. The Court says you must put up with it provided that the university retains a veneer of

neutrality in its subsidy decisions. The Court says in effect: You may legitimately be forced to pay for the propagation of ideas you abhor because there is some chance that money will also be given to organizations you like. Does that make you feel better? Are you no longer aggrieved because "your side," as viewed by some jurists, was not completely shut out in the rumble for money?

No. The harm you feel is not alleviated at all by the determination that the people who controlled the purse strings were "fair" or "unbiased." Your right not to support speech and action to which you object is not redeemed by the fact that people who disagree with you are or might also be displeased over some of the funding decisions. Two wrongs don't make a right whether we are talking about kids on a playground or the Constitution.

The Court's notion that First Amendment rights are not infringed as long as some ostensibly "fair" procedure is involved is a novel and frightful idea. Maybe it won't metastasize, but if it were to, would state or federal attempts to suppress free speech then be approved as long as the suppression were directed at dissidents "from both sides"? The fact that not one member of the Court wrote to question the thesis that constitutional rights are "protected" by "viewpoint neutral" procedures is unsettling.

Justice Kennedy also makes much of the university's "mission" to "foster vibrant campus debate among students." But why do universities have any such "mission"? Vibrant debate is something that frequently occurs on a college campus, an inevitable consequence of bringing together a large number of intelligent people. Debate is a good thing. But it does not follow that universities have a "mission" to foster it, any more than they have a mission to foster conviviality, physical fitness, or any other good thing that could come from the human interactions on a university campus.

If universities have a mission, it is to provide educational services for those who desire them. Some students may be interested in vibrant debate on socioeconomic issues, but others just want to learn their accounting,

chemistry, economics, and so forth with as few distractions as possible. That is what they pay for. Of course, it would be unconstitutional for a state university to take steps to suppress speech, but it does not follow that they have an obligation to subsidize it.

The Court's "vibrant debate" is available, almost instantly if desired, on university campuses without the need for any subsidy from the pockets of uninterested students. Students who desire free expression and interchange of ideas can log onto the Internet, turn on a radio or television, open a newspaper or magazine, or personally attend any of the numerous meetings, lectures, symposia, rallies, and such that swirl around campuses. In the absence of university subsidies, campus organizations such as Madison's Lesbian, Gay, Bisexual and Transgender Campus Center could still exist, but would have to subsist on funds voluntarily given to them without forcing students like Scott Southworth to help finance them.

Uninterested in Debate

And that observation leads to another: While the Court wraps the warm cloak of "speech" and "debate" around the campus organizations favored with distributions of the mandatory fee money, many of them are not the least bit interested in education, speech, and the marketplace of ideas. If a university were to invite Justice Clarence Thomas to give a talk on the importance of federalism, for example, his appearance would be protested and quite possibly disrupted by some of the same campus organizations that the Court says help to bring about "vibrant debate." Intervention in the natural order always has unintended consequences; the effort to promote speech and debate by scattering money to an assortment of organizations that have no qualms about receiving funds taken by force is no exception.

The Court erected one more line of defense for its decision: that student tuition helps to pay for the salaries and classes of many professors who espouse ideas that some students find repugnant. It is too bad that students (and taxpayers) have to in any measure support the propagation of ideas they don't believe. The

only solution to that problem is to separate education from the power to tax. With government out of the picture (and it is worth noting that there were nongovernmental universities long before governments pushed their way into the education business), there would be no state action and therefore no constitutional problem.

But given that we have tax-supported universities, why is it a defense for the *avoidable* institution of mandatory student activity fees to say that there is an *unavoidable* problem with the employment of professors who will from time to time say things that some student or taxpayer will find objectionable? If the First Amendment protects not just our freedom of speech, but also freedom from having to support the speech of others, shouldn't we minimize instances of the latter? Since it is possible to let students opt out of a fee system—exactly what Wisconsin proposed to the Seventh Circuit—why does the Court tolerate the attack on the rights of Mr. Southworth? It shouldn't.

What's a University to Do?

Southworth is not a convincing essay in constitutional law, but the Court has spoken. If a university wants to have a mandatory fee program to subsidize student organizations on campus, it may do so—as long as the funds are distributed in a "viewpoint neutral" manner.

Just because the practice is not constitutionally prohibited, however, does not mean that a university has to do it. For several reasons, the University of Wisconsin and other tax-supported universities should abandon mandatory student fees as a means of subsidizing selected campus groups.

First and foremost, as Jefferson wrote, "it is sinful and tyrannical to compel a man to furnish money for the propagation of ideas he disbelieves in." Whether it is compulsory support for an "established" church (the subject of Jefferson's comment) or compulsory support for a student group devoted to a political or philosophical cause, compulsory funding is inconsistent with individual choice. Universities can demonstrate that they are committed

to the freedom of their students to make their own choices and speak for themselves by stopping the practice of mandatory activity fees.

Second, abandoning the mandatory fees program will spare the university the cost of litigation over its "viewpoint neutrality." There can no more be a definition of or infallible test for "viewpoint neutrality" than there can be one for "pornography." Any allocation of mandatory fees can be challenged as tending to favor some viewpoints over others, and legal challenges are likely. The *Southworth* case was in the courts for nearly four years. What a waste of money!

Third, universities that do not resort to mandatory fees can use that fact as a competitive weapon. These days, institutions of higher learning use almost every imaginable tool to persuade students to enroll at their campuses. To know that there will be no com-

pulsory fees given to any group is not just a monetary savings for a student. It's also a way of saying that the university will respect the student's autonomy. That may make the difference between getting or not getting a student.

Finally, universities would do the world a favor if they ended the mandatory fee policy that encourages students to look to the political methods of taxation and lobbying to accomplish their objectives and instead required them to adopt the marketplace methods of voluntary exchange and peaceful cooperation. We have quite enough of the former as it is without universities teaching students that the way you get things done is through the use of coercion.

It's too long for a bumper sticker, but university administrators would be well advised to "Just Say *No* to Mandatory Fees for Student Organizations!" □

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Exploiting Asthmatic Children

by Ben Lieberman

Childhood asthma is on the rise, and the experts are not sure why. The Environmental Protection Agency blames air pollution, and uses concerns about asthmatic children to justify its aggressive implementation of the Clean Air Act. In contrast, a recent National Academy of Sciences report points to indoor, not outdoor, contaminants as the likely cause. If the National Academy is right, EPA is wasting billions on misdirected solutions to this very real problem.

In 1997, EPA ran into some trouble promoting its tough new ambient air-quality standards for ozone and particulate matter (smog and soot). Even the agency's own Clean Air Scientific Advisory Committee concluded that tightening the already strict existing standards will garner few if any additional public health benefits. With such a weak factual case for action, EPA Administrator Carol Browner switched to emotional arguments, claiming that the new rules would prevent "hundreds of thousands of cases of significantly decreased lung function in children and cases of aggravated asthma."

EPA's asthma-pollution connection is exaggerated. In fact, over the same 25-year span that childhood asthma incidence and mortality has approximately doubled, ambient concentrations of ozone and particulate matter have substantially declined. Sidestepping the evidence, the agency misused the issue to

gain support for its costly new rules, and it worked—at least until a federal court invalidated them two years later. The case is headed to the Supreme Court.

Last year, those same asthmatic children were said to be suffering because of sport utility vehicles. In December, EPA enacted new motor vehicle emissions standards, including far stricter ones for SUVs. During a press conference announcing the rules, President Clinton told a group of Washington, D.C., elementary-school students that "Carol Browner has said to me, you have got to do something to reduce incidents of asthma and other respiratory diseases among young children." According to Vice President Gore, EPA's tightened emissions standards will result in "260,000 fewer asthma attacks in children, and more than 4,000 fewer premature deaths."

Just a month earlier, EPA and the Department of Justice announced the filing of lawsuits against 17 midwestern and southern electric power plants, claiming, among other things, that their emissions carve a childhood asthma path that stretches all the way to the northeast. Attorney General Janet Reno stated that "when children can't breathe because of pollution from a utility plant hundreds of miles away, something must be done." As of May 2000, over 40 such coal-fired facilities have been targeted with lawsuits or administrative actions.

It appears that EPA and its allies will play the childhood asthma card again and again, as

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long as it wins. The issue has even become a part of the presidential race, with Sierra Club television ads blaming the suffering of young asthmatics in Texas on Governor Bush's supposedly weak enforcement of air-quality standards.

Primary Culprit

Obviously, not all of these putative causes of childhood asthma can be as significant as claimed, and it is quite possible that none of them are. Building on a growing body of evidence, "Clearing the Air: Asthma and Indoor Air Exposures," by the National Academy's Institute of Medicine, makes a compelling case that indoor air pollutants, such as insect remains and molds, are the primary culprit. Though the report does not directly compare the relative contributions of indoor and outdoor air, it found "strong, causal evidence linking common indoor substances to the development or worsening of asthma symptoms in susceptible people."

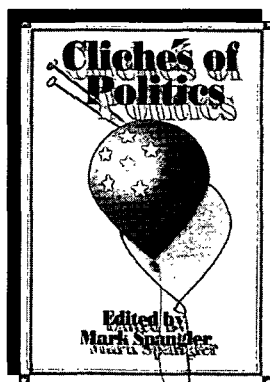
As for why asthma has been on the increase, several other studies have blamed the federal government's policy of promoting tighter, more energy-efficient residences, schools, and other buildings in response to the energy crisis of the 1970s. These efforts may

have had the unintended consequence of trapping more pollutants indoors, including several now implicated as asthma triggers. Unfortunately, the Clinton administration is stepping up its energy efficiency agenda in the name of fighting global warming, seemingly oblivious to the downside of heavily insulated and less well-ventilated homes.

Even EPA's own indoor air experts concede that "indoor levels of many pollutants may be two to five times, and on occasion more than one hundred times, higher than outdoor levels," and that "most people spend as much as 90 percent of their time indoors." Indeed, EPA funded the Institute of Medicine study as well as others implicating indoor air pollution as a health threat. Clearly, the agency is knowingly overstating the public health benefits of many rules targeting outdoor pollutants.

Public concerns about the increase in childhood asthma are entirely justified. Indeed, it is hard to think of anything more important than the health of children. That's why it is so disturbing to see the issue being exploited for bureaucratic gain.

Every dollar spent fighting an overblown asthma threat is a dollar that can't be used to make real progress. Keep that in mind the next time the EPA announces a new measure to "protect" the asthmatic children. □



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Mark Spangler, editor

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It Can't Happen Here?

The magician's most potent power is misdirection: by making his audience think that it should look over there, he's able to get away with some rather simple trickery over here. Using that mundane power, magicians have been able to pull off some amazing feats.

So have people in government. Houdini himself might envy their facility at distracting their victims from the real source of their oppression.

Take the issue of privacy. The current occupant of the White House and his heir apparent have more than once waxed eloquent on the dangers to our privacy in the electronic age from the—*private sector*. In an address last spring, the President promised legislation to protect us from third-party access to our financial and medical information.

Sounds good, until we understand two points:

- We can deal with private violations of our privacy without the help of the federal government, and
- There is no bigger threat to our privacy than the federal government itself!

While the politicians keep us agitated about private companies' compiling and distributing information about us, it is relentlessly building huge networks of databases of personalized information on every man, woman, and child, and subtly moving America toward something that should sicken every son and

daughter of liberty: a national identification card.

In the past six years Congress has passed legislation at the behest of the President to build databases on individuals' health, education, and employment. Those databases, which are to be linked to records held by the states, can easily be cross-referenced thanks to the Social Security number every American citizen has and which every child must have before his parents can claim him as a dependent. Contrary to government promises, that number has become a *de facto* national identifier. The impetus for even private requests for the number is the federal government's voracious appetite for information.

Americans might have been counted on to resist being hogtied and tagged, but the social engineers are clever. Besides misdirection, they are also masters of incrementalism and obfuscation. They know that if they go slow, most people, like the oft-cited frog in the gradually heated water, will never notice the impositions.

Examples of obfuscation abound. If the planners wish to compile a database of our employment histories, they can say it is necessary to prevent illegal immigrants from working, to apprehend "deadbeat dads," to combat welfare fraud, and to upgrade the workforce. If they want medical dossiers on everyone, they can say they are needed to root out fraud, to avert epidemics, and to advance research. If they aspire to amass educational and psychological profiles of our children, they can proclaim their goals to be improvement of schools

and preparation of the future workforce. And if they decide to require banks to report on their customers, of course it is indispensable to stopping money laundering.

There's always a good reason that will shut most people up—assuming they know what's going on at all. They usually don't know because those intrusive little items are buried in innocent-sounding legislation. The mandate to create a "unique health identifier," the key to keeping tabs on each of us medically, was buried in the Health Insurance Portability and Accountability Act of 1996. The provision creating a Directory of New Hires, an electronic collection of personal employment profiles, was packed into the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (It dovetails nicely with the tracking and certification called for in the School to Work Opportunities Act of 1994.) The provision inaugurating the requirement that employers check with the government before hiring anyone was included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (Thanks to Representative Ron Paul and others, a law essentially forcing the states to adopt a federally designed driver's license/ID card was repealed.)

You see the pattern.¹ Many members of Congress often don't know those things are buried in legislation. How can busy private individuals know? Charlotte Twight describes the methods of obfuscation as manipulation of "political transaction costs," that is, making it tougher for people to know what the government is doing and to protest effectively even if they find out. By these methods, government has imposed some rather subversive programs, including Social Security and Medicare. Government's facility at concealing its activities is yet another reason to shed the romance with democracy.

(Here's an irony: Government also raises political transaction costs by tying something people don't like to something they do like; creation of Medicare was tied to an increase in Social Security benefits. When Microsoft tied a browser to Windows it was prosecuted for breaking the law. You decide which kind of tying is more harmful.)

What's Going On?

Why does government want all this information about us? Some social engineers—the planners who fear that society will perish from centrifugal stress without them—may really believe that if they are going to do things for us, they need to know everything about us. That's a good reason to spurn the government's help.

Another motive, in at least some cases, is sheer power lust. Every dictatorship keeps information on its subjects. It's the key to control. Political leaders who want to constrict our sphere of action know that nothing is so useful as personal information. Paul Schwartz has written that the "mandatory disclosure of personal information can have a destructive effect on human independence. . . . Americans no longer know how their personal information will be applied, who will gain access to it, and what decisions will be made with it. The resulting uncertainty increases pressure for conformity. Individuals whose personal data are shared, processed and stored by a mysterious, incalculable bureaucracy will be more likely to act as the government wishes them to behave."²

Whatever the reason, these intrusions diminish our freedom and steal our dignity. No worthwhile objective (medical research, prevention of fraud, and so on) requires that the government force us, our employers, doctors, teachers, and bankers to divulge personal information; compile the data in a central computer; and share it with others without our consent. We should have had enough experience with modern despotism to know what evils can come from the very sort of activities the U.S. government now engages in. What makes anyone so confident that those outrages against liberty can't happen here? ☐

1. For details see Charlotte Twight, "Watching You: Systematic Federal Surveillance of Ordinary Americans," *The Independent Review*, Spring 1999, pp. 165-200; and Claire Wolfe, "A Number, Not a Name," *The Freeman: Ideas on Liberty*, May 1999, pp. 298-303.

2. Quoted in Twight, p. 166.

Economists' Misplaced Faith in an Invisible Hand

by Daniel B. Klein

In academia most economists practice technical crafts. Academic incentives strongly favor such crafts, and economists pursue academic rewards, perhaps with a faith in the applicability of "the invisible hand" to their own "industry." But the crafts are mostly irrelevant to policy issues and contribute little to society.

The invisible hand works well when supply—of, say, shoes—caters to customers who purchase with their own money product for their own use. Competing suppliers prosper by best serving demanders. In academia, however, the demand for academic product comes from journal editors, referees, and university departments. The demand is the expression of *other suppliers*. It is as though shoe demanders were *only* other shoe makers, who demand shoes not for how well they wear but for aesthetic niceties fancied by the guild. Academic economists tend to favor peers whose crafts exalt their own handiwork. In the social sciences and humanities, demand and supply are highly interlocking, circular, and self-legitimizing. The "industry" is more of a craft circle or club. And the club subsists on tax and tuition dollars. The grounds for faith in an invisible hand are rather slight.

Society would gain a great deal if economists became more relevant. Most economists

are wiser about economic policy than the average voter. The public needs their help. And in being relevant, economists would better learn economic judgment and become yet wiser.

Who Makes Public Policy?

In fields such as medicine and chemistry important new decisions are made by trained experts. Even when an active patient makes his own medical decisions, he first obtains knowledge about his particular condition and becomes a narrow sort of expert. Unlike an individual making his own medical decisions, however, we decide public policy collectively. In political economy important decisions are made not by trained experts, but by government officials and voters—the Everyman (which of course includes every woman). Politicians must worry about meeting the approval of voters, the Everyman, *not* economists. Because the Everyman neither expects his vote to make the difference in an election nor anticipates bearing the many hard-to-see drawbacks, he has little incentive to know better about public issues. He often decides rashly, ignorantly, and incompetently.

Not knowing better, the Everyman needs saving from himself. He shoots himself in the foot by building rail transit or government housing, monopolizing letter delivery, subsidizing agriculture, restricting imports or pharmaceuticals, imposing price controls, and imposing licensing restrictions. Foolishness

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may be avoided by economic enlightenment. Well-intentioned policies have drawbacks that economists can skillfully illuminate.

Building rail transit or government housing means creating public-sector operations that serve society poorly and that no one owns or takes a long-term interest in. Government investment also means the displacing of other, probably more useful investment. Imposing a minimum-wage law means stripping unskilled workers of their chief means of competing against higher-skilled workers and machines. Restricting pharmaceuticals in the name of safety means denying patients drugs they need and discouraging drug development and innovation. Imposing occupational licensing means restricting the supply of services, raising the price, and preventing poor people from entering the occupation and getting a foothold on the economic ladder. Were economists to better engage the Everyman and point out such drawbacks, economists would reduce the not-worth-knowing-better problem.

The Everyman is somewhat like the drunk looking for his lost keys under a lamppost because the light is better there. Assisting the Everyman would require only basic economic ideas. Most economists could provide the analysis needed. In doing so, however, they might not show themselves to be exceptionally smart or clever. In fact, the cleverest economists at MIT or Harvard might explain basic principles no better than young graduate students at George Mason University. The economists, though knowing where the keys are, give little assistance.

Theory of What?

Academic economists crave academic rank and prestige, which translate into nice tenured positions, easy grant money, and influence over graduate students and the profession. As in most walks of life, material benefits go hand in hand with ego benefits.

The academic world needs standards for ranking economists and their research. In economics two official genres have evolved and now dominate. One is model building. The model builder writes down a toy economy of

mathematical functions called “consumers,” “producers,” and so on. As in solving a puzzle, the model builder finds the “equilibrium,” which is treated as the conclusion of the story. Of the many particulars of human practices and institutions, only one or two can be modeled at a time. Going by the code word “theory,” model building often makes no serious reference to real world happenings. Dubious work of this kind appears in *Econometrica* and *The Journal of Economic Theory*. Theory of what? one wonders.

The other official genre is statistical significance—an important test of many hypotheses, but one that is rarely placed into a broader body of argument on a policy issue. If the economist does try to make an argument about the real world, the fancy statistics are usually not the persuasive part of the argument. As Ronald Coase, Herbert Stein, Lawrence Summers, and Deirdre McCloskey have pointed out, simpler forms of evidence and reasoning are much more believable and carry the *oomph* of economic persuasiveness. But the simpler forms don’t qualify as impressive performance.

So to gain prestige economists perform for each other rather than enlighten society at large. If an economist writes policy studies or nonacademic articles, his colleagues may disparage such work by calling it “advocacy,” “popularization,” and “nonscience.” In academia, participating in public discourse often counts against you.

Do You Have Faith in Academia?

Not only does society suffer from missed economic instruction, but by removing himself from public discourse the academic economist also misses opportunities to better learn how policy and markets really work. Focusing exclusively on technical schemes, economists have blinded themselves to certain broad realities that do not fit in. In real life, market conditions are highly particular and in flux. Knowledge of moment-by-moment particulars resides only in decentralized form among myriad individuals, each of whom interprets the situation differently. Model building and statistical significance can scarcely appreciate

the implications of a world with divided, disjointed knowledge, because only by assuming uniformity, stasis, and common knowledge does the system of equations become workable. By shutting themselves off from the real economy, economists have lost touch with the basic economic insights of Adam Smith, F.A. Hayek, and Coase. They are in fact worse economists for having preoccupied themselves with the meretricious standards of academic rank.

The failings of universities were discussed long ago by Adam Smith. He said educational institutions subsisting on endowments or state funding tend to lose enthusiasm for the basic instructional needs of the people. University faculty become a self-evaluating body. They indulge one another's neglect of basic teaching and occupy themselves with elegant yet arid learning. Furthermore, their avoidance of "the current opinions of the world" (that is, the policy opinions of the Everyman) shields their own beliefs from challenge. Smith's discussion of universities suggests that in scholastic communities irrelevance and bad judgment go together—a result today more amply demonstrated, in my opinion, in the more leftist (and hence, willy-nilly, more statist) disciplines of the academy. The average economist today is wiser about public policy than the average voter, but that wisdom would be still greater by his engaging in more give-and-take on concrete policy issues.

Club economists complacently affirm status-quo academic institutions. The implicit presumption is that doing well academically is doing good for society—the invisible-hand result. Some prominent free-market economists, such as George Stigler and Sherwin Rosen, have even made the presumption explicit.* But neither they nor any other economist has actually done the economics of his

"industry" to sustain such an invisible-hand faith. Meanwhile, many complacent club economists are ready to dismiss the research esteemed in sociology, political science, or women's studies. But the structure of all the social science "industries" is basically similar, so why would the invisible hand apply to economics but not to the other social sciences? Economists ought to think harder about the economics of economics.

Let's Debate the Issue!

A scholarly community depends on standards for good research, and those needs are relatively well met by equilibrium model building and statistical significance. Those genres have their proper place, and a degree of scholasticism is inevitable and indeed desirable. But there is *too much*. To foster research and teaching that is less paradigmatic and more relevant to policy, economists should relax certain scholastic norms.

As Thomas Mayer argues, in good policy-relevant work the chains of argument are usually made up of links even the strongest of which are not very fancy. Economists might shift their standards of evaluation to the entire chain of policy argument, not just its strongest links. In doing so, they could reduce the Everyman's cost of learning the basics and improve public decisions.

Policy-relevant work is bound to involve greater exercise of judgment. Like scotch, judgment is heady stuff. But one may learn to imbibe more responsibly and to tolerate better the passions of other imbibers. Economists tend to see consensus as the hallmark of science, but in a science like political economy, where the true practitioner is the Everyman, perhaps equal standing should be given to *dialogue*. Economists should make their seminar rooms and professional journals more hospitable to policy debate and outspokenness. They should increase their esteem for basic policy work, and decrease their esteem for the two modes of academic performance currently dominant. □

*George J. Stigler, *The Economist as Preacher and Other Essays* (Chicago: University of Chicago Press, 1982), pp. 34, 67; and *Memoirs of an Unregulated Economist* (New York: Basic Books, 1988), p. 85, 179; and Sherwin Rosen, "Austrian and Neoclassical Economics: Any Gains From Trade?" *Journal of Economic Perspectives*, Fall 1997, pp. 139–52; see p. 151.

The Right of Resistance

by James Bovard

Many politicians talk as if citizens were obliged both to revere and obey their government. But there are few things more dangerous than swallowing the notion that government is entitled to boundless obedience from the people under its power. Throughout history, governments have occasionally overstepped the bounds of their legitimate power. What should be done when government betrays its promises?

John Locke's work *Two Treatises of Government* was written in the 1680s, when Englishmen were chafing under the growing tyranny of the Stuart kings. Locke wrote, "That subjects, or foreigners attempting by force on the properties of any people, may be resisted with force, is agreed on all hands. But that magistrates doing the same thing, may be resisted, hath of late been denied: as if those who had the greatest privileges and advantages by the law, had thereby a power to break those laws, by which alone they were set in a better place than their brethren."

Locke showed how the power of a ruler must not be placed on a higher moral plateau than that of any other potential criminal: "Should a Robber break into my House, and with a Dagger at my Throat, make me seal Deeds to convey my Estate to him, would this give him any title? Just such a title by his Sword, has an unjust Conqueror, who force some into Submission. The injury and the

Crime is equal, whether committed by the wearer of a Crown, or some petty villain. The title of the offender, and the number of his Followers make no difference in the Offence, unless it be to aggravate it."

No concept of sovereignty can justify extending government power beyond the bounds of political right. It is absurd to expect governments to descend into barbarism gradually, step by step—as if there were a train schedule to political hell and people could get off at any stop along the way. People forget how quickly the forms of political power can turn civilized behavior into unrestrained pillage and mass violence. Most people strolling the streets of German towns in the late 1920s would never have suspected that, within a few years, the government would launch a policy of genocide. Similarly, someone visiting Moscow in 1913 or Phnom Penh in 1969 would likely not have seen the barbarity just around the bend. Politicians rarely give formal warnings of how they intend to abuse the power they acquire.

Once ideas and principles consecrating unlimited power are accepted, it is only a matter of time until that power is used in ways that shock those who acquiesced to its expansion. As Senator John Taylor observed in 1821, "Tyranny in form is the first step towards tyranny in substance."

Mere Parlor Talk

Discussions of political right are mere parlor talk unless citizens have a right to resist

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tyranny. The New Hampshire Bill of Rights, written in 1784, declared: "The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind." Yet much of the political and academic establishment shudders at even considering the right to resist.*

Any discussion about the right of resistance must begin by recognizing the extent to which government is already the aggressor. As Locke wrote, "There is only one thing which gathers people for sedition, and that is oppression."

History is replete with tyrannical governments that deserved to be destroyed by their victims. At what point can we say that a government has placed itself in a state of war with the citizenry? By what standard or measure can people know when they have a right to forcibly resist illegitimate power? In Bosnia, in Rwanda, or in other areas where mass murders have recently occurred, the citizen obviously may use as much deadly force as necessary to prevent himself and his family from being slaughtered by rampaging government forces or by murderous private mobs acting with government sanction. And in the United States, blacks clearly had a right to peacefully resist segregationist laws in the 1950s and 1960s and had a right to violently resist attacks on them by sheriffs and private citizens.

Unfortunately, there is no lucid standard by which a citizen can know precisely when he must cease obeying. And, regrettably, much of the political establishment, like the Anglican Church in the 1680s, will preach the duty of passive resistance all the way to the entrance of the political slaughterhouse.

Effective Nonviolent Action

Nonviolent action is, in most cases, a far more effective means to curb power than is violent resistance. Killing an oppressive politician usually only generates more sympathy and sanctity for the engine of coercion that he commanded. Many attempted or suc-

cessful assassinations became pretexts to redouble oppression. The first necessity for peaceful reform is for people to realize how much power they have to bring government to its knees. At the height of the Vietnam War protests, fewer than 5 percent of the American public were actively protesting the war, yet those protests psychologically paralyzed the Johnson administration and played a role in the Nixon administration's paranoia of dissent that led to Watergate.

Intelligent, targeted, decisive protests can puncture the sense of legitimacy that cossets both Leviathan's commanders and employees. And once the government's aura of legitimacy is shattered, the "transaction costs" of tyranny skyrocket. Each person who understands his rights and liberties is another barrier against the wrongful expansion of government power. As sixteenth-century French philosopher Etienne de la Boétie observed, "It is the inhabitants themselves who permit, or, rather, bring about their own subjection, since by ceasing to submit they would put an end to their servitude."

In the final analysis, the government's sovereignty is limited by the character strength of its subjects. If the citizens have self-respect and courage—and the means to defend their rights—government abuses will be curbed. Historian Thomas Babington Macaulay, writing in 1832, asserted that the English in the 1500s were "beyond all doubt, a free people. They had not, indeed, the outward show of freedom; but they had the reality. They had not a good constitution—but they had that . . . which, without any constitution, keeps rulers in awe—force, and the spirit to use it."

There may come a time when peaceful resistance becomes futile. As Locke wrote, "Men can never be secure from tyranny, if there be no means to escape it, till they are perfectly under it." In the same way that any citizen has a right to defend himself against a mugger or a murderer, so citizens in general have a right to defend themselves against violent political predators.

As Joyce Lee Malcolm showed in her 1994 book, *To Keep and Bear Arms: The Origins of an Anglo-American Right*, the Second Amendment was based on recognition that

*See James Bovard, "Paranoia about Paranoia in American Politics," *The Freeman: Ideas on Liberty*, August 1999, pp. 27–30.

people had the right to possess the means to resist government tyranny. Discussions on federal gun control measures often focus on whether specific guns serve "sporting purposes." However, if the Founding Fathers had added a clause to the Second Amendment specifying that people will be "permitted to own guns for hunting rabbits," the Constitution would have been overwhelmingly rejected because Americans would have been alerted to how far politicians intended to stretch their power.

The citizen's right to resist government is directly proportionate to the amount of force government uses against the citizen. If the government generally respects the rights of the citizen, then the citizen should give the government the benefit of the doubt when it occasionally errs or exceeds its legitimate power. When abuses do occur, citizens are obliged to seek every peaceful remedy before forcibly resisting.

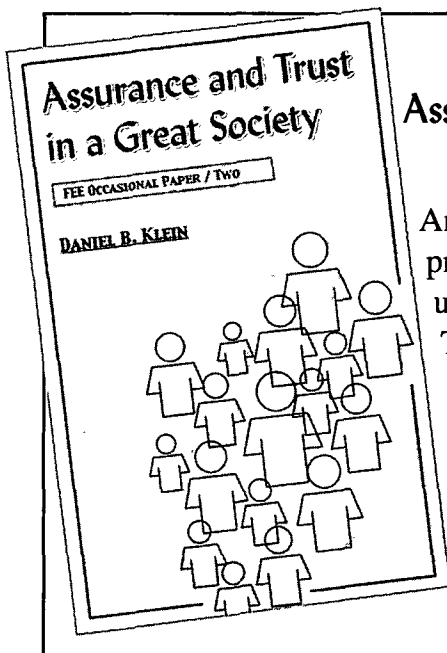
Respecting the Innocent

Regardless of whether Americans consider the federal government illegitimate, attacks that kill innocent people are never justified.

The 1995 bombing of the Oklahoma City federal building was inexcusable, and the people who carried out the bombing deserve death sentences. Citizens have as little right to kill innocent government agents as government agents have to kill peaceful private citizens.

If statists fear popular resistance, perhaps government should violate fewer rights. The militia movement in this country became highly active only after the federal killings at Ruby Ridge, Idaho, and Waco, Texas. The fact that no federal officials have been held legally responsible for the deaths made many people presume, not surprisingly, that the government is out of control and a dire threat to their rights and safety.

Government does not have rights in itself, but only possesses such powers as are necessary to safeguard and uphold the rights of the citizens. The more power that sovereignty supposedly confers on government, the more the doctrine of sovereignty defeats the entire purpose for which government was created. When politicians stretch their power beyond reasonable bounds, it is they, not the citizens resisting political oppression, who destroy the legitimacy of the state. □



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Marriages, Mistresses, and Marginalism



Distinguishing between marginal and total values is crucial to understanding many human activities and decisions. Almost all the decisions we make are made at the margin, but there are exceptions. We are sometimes faced with decisions that force us to compare the total value of one option to the marginal value of another. These decisions can be far more agonizing than decisions made entirely at the margin, which require sacrificing a little bit of one thing to have a little bit more of another.

Consider love and marriage, a topic not commonly thought to be one that economics has much to say about. But decisions that lead to love, marriage, and sometimes divorce always involve choices between competing alternatives, and therefore involve costs and benefits. These costs and benefits are personal and subjective, but so are all costs and benefits. And if people consider the relevant costs and benefits when making relatively trivial decisions, say on whether to acquire or discard a pair of socks, then surely we should expect them to consider the costs and benefits of vital decisions such as getting married or divorced.

Wives and Mistresses

My wife reads these columns, so I want to emphasize that economic analysis allows one to acquire insights into activities without hav-

ing firsthand experience. Also, nothing important would be altered if I reversed the sexes' roles.

After a few years of marriage a husband has had lots of experience with his wife. He has seen her almost every day, most of their time together being spent in rather routine activities. He knows her habits, so most of her behavior is predictable and not very exciting or even particularly interesting. He spends hours with her and never says a word to her or notices her presence, even if the football game is less interesting than the beer commercials. And she experiences him in much the same way, so her responses to him typically lack enthusiasm, which reinforces his own lack of enthusiasm. In other words, before long the husband doesn't find his wife very valuable *at the margin*.

In contrast, the woman he meets at work or on a business trip seems far more interesting. He has not known her long, and likely doesn't see her often, so she is less predictable and more exciting than his wife. Also, he likely sees her in more interesting situations than in a messy kitchen with screaming kids. And if his interest in her is reciprocated, it will probably be with far more eagerness than he has experienced at home in a long time. If she becomes his mistress, with occasional liaisons in romantic settings, he can find himself exhilarated at the thought of the next encounter. His mistress is far more valuable to him than his wife *at the margin*.

The passion of the love affair causes the husband to think about leaving his wife for his

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mistress. But leaving his wife involves a different calculus from comparing the value of a little more time with his wife with that of a little more time with his mistress. A divorce is not a decision made at the margin but one that forces the husband to confront competing total values. Here the advantage can easily shift to the wife. Her marginal value may be small, but her total value can be very large. The husband's relationship with his children, his parents, and many of his friends; his standing in the community; his sense of permanence and place; and his financial prospects are all inextricably connected with his wife and marriage. Plus there is the genuine fondness he likely has for his wife and their shared memories and experiences.

The wife is like water and the mistress like diamonds. Given a marginal choice between the two, the husband readily sacrifices a little time with the wife for a little more with the mistress. But when the choice is between the total value of the wife and the total value of the mistress, the wife wins.

Obviously the analogy of the wife as water and the mistress as diamonds is not perfect. Men do leave their wives. A marriage can fail because the wife (remember, the sexes can be reversed) ceases to provide value both at the margin and in total. But the important distinction between total value and marginal value explains why so many men who are genuinely enthralled by their mistresses give them up rather than sacrifice unexciting marriages.

Hurting Those We Love the Most

As this discussion indicates, there can be a lot of pain in a marriage, even a strong marriage. Obviously in many strong marriages there is little pain, and certainly this is what most of us would consider the ideal. But

there is an old saying that "we hurt the ones we love the most," and marriages (especially strong marriages) are often good examples of this.

We often do things to aggravate and hurt those we love that we would never consider doing to casual acquaintances. The distinction between total and marginal value is important here. Those we love (who provide us with a lot of total value) are generally those who love us (we provide them a lot of total value), so we can impose some marginal costs on them with hurtful comments and behavior without eliminating all the total value they receive from us. If we did the same thing to casual acquaintances at work, for example, our total value to them would quickly become negative and we would find ourselves isolated or worse. Of course, even with loved ones, there are limits to how much pain they will take from you, but the stronger the marriage the more latitude there is. In a weak marriage there will not be much pain, at least for long, since there is little total benefit sacrificed by divorce.

To reinforce the point, consider how much aggravating behavior parents will endure from their children. There is probably no love stronger than that which parents have for their children. And children often take advantage of this love by behaving in ways that inflict tremendous pain on their parents.

I am not recommending that you take advantage of the love people have for you by behaving badly. Far from it. Neither am I arguing that economics gives a complete explanation of the behavior observed in marriages and families. That behavior is influenced by many factors best considered by those trained in other fields. But unless you distinguish between total and marginal effects of behavior, you will leave unopened an important window of understanding on marriage and families. □

Downsizing, 1860s-Style: Lessons from the Pony Express

by Larry Schweikart

No image in the 1990s captured the apparent weaknesses of the capitalist system more than that of mid-level managers “downsized” out of their jobs. Here were successful executives with well-paying jobs and solid retirement prospects suddenly told that they had no place in the company and that they had to go.

Corporations, cognizant that the news would be portrayed negatively (jobs lost and lives ruined rather than new jobs created and customers served), attempted to “spin” the reports by creating such terms as “downsizing” and, more insultingly, “right-sizing.” As the companies expected, newspapers reported each new announcement of corporate cutbacks with almost gleeful tones, to the point of running news about the layoffs in headlines with the most dramatic language. The *New York Times*, for example, in March 1996 ran a seven-part series called “The Downsizing of America,” in which it called laid-off employees “casualties” of “the battlefields of business.”¹ Companies did not merely release individuals—often with generous terms or mutually agreed-on severance packages; instead they “chopped” or “slashed” their workforces, throwing people “onto the street.” One headline trumpeted that Sears “kills” catalog sales, and jobs were routinely described as being “cut,” with the phrase “drastic cuts” used frequently to describe a company’s

attempt to remain competitive. A figure of 43 million lost jobs since 1979 was reported widely, but the most popular single villain, AT&T, received some of the most critical press when it announced that it would eliminate between 36,000 and 40,000 positions in an effort to stay afloat. *Newsweek*, though, probably won the sleazy journalism award by portraying several CEOs on its cover with the title, “Corporate Killers.”

Part of the enthusiasm for the news accounts involved the “victims”—in this case, employees whose productivity no longer matched their cost—because the pink-slipped were overwhelmingly mid-level managers and white-collar executives who had (seemingly) been spared the severe retrenchments during the 1970s and 1980s in the steel, auto, and electronics industries. At that time, the blue-collar workforce had taken it on the chin, and the media had dutifully covered those developments with appropriately somber and glum commentaries. After all (the newsroom reasoning went), the blue-collar guys actually *worked* for a living and thus were deserving of sympathy. But the corporate types? Served ‘em right. Now they knew how the line workers felt.

Belated Compassion

By the second and third wave of white-collar layoffs, however, even the media started to show compassion, relating tales of breadwinners turned out on a moment’s notice and

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of fathers unable to care for their children. The *Times*, for example, opened its series with the story of Steven Holyhausen, who went from a \$52,000-a-year banker to a \$12,000 position as a tourist information officer.

Certainly at no point did much discussion about the actual economics of the equation arise. Seldom did a story begin: "Today, AT&T announced that it would no longer pay 9,000 mid-level managers three times the average American's income for doing a job less efficiently than the Japanese or the Germans." Nor did most stories mention that in the 16 years that the nation lost 43 million jobs, industry *created* 70 million new jobs; or that since 1982 the number of Americans working increased by 32 percent; or that the competitors of AT&T all *added more than 185,000 new positions* since 1978.² Although reporters portrayed the Steven Holyhausens as typical, seldom, if ever, were reporters able to follow any sizeable sample of workers for any substantial length of time after they were fired to determine what happened to them after their downsizing. After all, they had other stories to write. Had they done so, the *Times* reporters might have found that the real evidence painted a much different picture from the one they sketched.

Early reports, especially from Silicon Valley, suggested that the unemployed did not stay that way for long and that most found work within a year at comparable, if not better, salaries. The 11 semiconductor companies that formed the Sematech chip consortium had 17,000 open positions that they could not fill in 1996, while T. J. Rodgers, the CEO of Cypress Semiconductor, found that when he tried to hire those laid off from AT&T, yet another competitor, Cirrus Logic, had beaten him to the punch. But the media, having drained one sympathy well dry, already had moved on to other topics, leaving the public with the notion that "once fired, always fired," ignoring a study by Princeton economist Henry Farber, who found that the percentage of people holding their jobs for ten years or more had not changed between 1973 and 1993.³

The truly astounding fact, though, is that almost every worker at one point or another

has been fired or nearly fired; few workers are so diligent and successful in every undertaking as to be immune from a pink slip. Actor Sylvester Stallone, discussing with talk show host Charlie Rose his pre-*Rocky* employment in a number of positions, observed that he didn't provide value for consumers in any profession other than acting. In writing a book on entrepreneurship in American history, I was struck by how many successful businessmen and women had been fired, or had failed—not once, but often repeatedly—to the point that they were written off for dead, only to make their most important contributions to society. (These sections I have called "Tales from the Crypt.") Well-known American businessmen, from P. T. Barnum to C. W. Post, from Henry Ford to Famous Amos, all experienced bankruptcy, some more than once. Being fired or broke, it turns out, was not only common, it often provided the critical stimulus people needed to achieve greatness.

The Pony Express

Since the concern with unemployed workers and their ability to find new jobs has not interested many scholars until the post-World War II era, the follow-up records on early businesses are somewhat murky. Nevertheless, some rather clear case studies exist to suggest that it is not just a lucky few who survive downsizing, but the large majority, and that many quickly exceed their previous levels of income and standard of living. One such case study is of the Pony Express. Created in January 1860, the Pony Express was the brainchild of William Russell, who had taken advantage of the Postmaster General's dissatisfaction with the existing mail service to organize a company based on the traditions of the Mongol riders in China. He envisioned horsemen covering a 1,966-mile trail from St. Joseph, Missouri, to Sacramento, California, establishing small outposts along the way where riders could change horses and get food and water.

Prior to 1860, mail from the east coast to California, more than 2,000 miles from the nearest major city, had to go by packet steamer to the isthmus of Panama, from which it

was transported overland, then again loaded on a steamer for San Francisco. The journey, while several thousand miles shorter than the six-month trip around Cape Horn, still took more than six weeks under good conditions and could take months if it encountered bad weather or disruptions in Panama. Overland routes to California existed, to be sure, but the two principal routes from Missouri—the Oregon Trail and the Santa Fe Trail—both had severe drawbacks, including terrain and Indians. Making decent speed on the journey led to a number of extraordinary projects, including a joint effort in the 1850s by the U.S. Navy and Army to import dromedary camels to cross the deserts of the southwest with mail. The camels proved ill-adapted to the harsh, rocky soil of the American west, and they tended to frighten mules and horses.

Eventually, two mail routes to California developed. The Butterfield (or Ox-Bow) Route ran from St. Louis through Arkansas, Texas, New Mexico, and Arizona, where it split into two trails heading to Los Angeles or San Francisco. Naturally, that route had the support of the slave states. John Butterfield received the contract for the southern route, which he serviced by constructing a small fleet of stagecoaches that carried eight to 14 people and a large mail trunk. But the fastest stagecoach could make the round trip in 50 days, give or take “turnaround time.” Even in the best of conditions, the trip was dangerous, with Kiowa, Comanche, and Apache threatening every coach.

A second route, the so-called Central Route, ran much further north (and thus was strongly supported by the free-soil groups) and was shorter, but also was closed for several months of the year because of snow. The original concept in 1851 was to have mule pack trains carrying mailbags leave Sacramento for Salt Lake City. There they were to meet up with a second company that had carried the mail from Salt Lake City to Independence, Missouri. The first mail runs from Sacramento, however, met with disaster ranging from Indian attacks to freezing to death. Nevertheless, Major George Chorpenning, who had received the Sacramento-Salt Lake mail contract, almost single-handedly kept the

deliveries going, broadening the pack trains to include heavy wagons protected by armed escorts, which, in turn, drove up prices. In 1859, mail trains were still expensive and slow, burdened with an escort that slowed them down.

Other communications mediums were not yet mature. The telegraph, designed by Samuel F. B. Morse in the 1830s, did not impress anyone enough to obtain strong capital backing until 1843, when Morse and Charles Jackson built a short telegraph line. At that point, perhaps the best thing that could have happened to the telegraph did: the government backed out. Morse and his partners, clueless as to how to market the new technology they owned, sold licenses to the telegraph machinery to private competitors (including Henry Wells in Buffalo). In 1855 Hiram Sibley, who held most of the patents in the west, merged his company with that of Ezra Cornell to form the Western Union Telegraph Company and continued expanding the telegraph lines westward.

Until the telegraph linked the coasts, however, the delays associated with the packet liners and the slow pace of overland travel meant that any urgent message to or from California could not be delivered, well . . . urgently. Demand rose further when silver and gold were discovered in Colorado in 1859, causing a boom in the overland freight business. Several independent companies competed for that lucrative market, but none more effectively than the firm of Majors, Russell, & Company, a Leavenworth and Atchison outfitting business. That company, and its subsequent incarnation as Russell, Majors, and Waddell, handled thousands of tons of goods shipped to the west, employing over 6,000 men to handle the more than 75,000 oxen in the company’s stables.

William Russell had a diverse background, moving from Vermont to Missouri as a teen. In Lexington, Missouri, he started a small shop that specialized in items needed for the fur trade and over time he graduated to engaging in real-estate transactions. During the Mexican War, he shipped military supplies to Santa Fe, becoming so wealthy through those contracts that he could start his own insurance company and open a college for women.

In 1851, he joined a freighting firm in which he made the acquaintance of future business partners Alexander Majors and William B. Waddell.

Although he apparently never went across the Great Plains himself, Russell was a natural promoter who immediately perceived opportunities. It made him the perfect partner for Majors, who had worked oxen and supervised bull-whackers all his life. Majors had lived on the trail, riding the routes personally each year to inspect the conditions of the animals and men. A staunch Presbyterian (Russell was a practicing Baptist), Majors demanded of his employees that they sign a pledge promising not to use profanity, get drunk, gamble, or treat animals badly. That pledge soon gained Majors a reputation for integrity that brought him business no advertising could produce. He provided balance to the bureaucratic genius of Russell, who, after organizing the operations, went east to represent the company in the major urban areas.

Division of Labor

Russell and Majors benefited from the talents of yet a third partner, William B. Waddell, a Virginian who had moved several times before settling in Lexington. Waddell also had been a merchant tailoring his business to settlers moving to the plains, and like Russell he eventually founded an insurance company as a spinoff of his freight firm. In January 1855 Waddell merged with Majors and Russell, forming a substantial freight operation. A natural division of labor ensued: while Russell operated best in the high-brow, polished environs of the eastern seaboard and Majors belonged in the saddle heading west, Waddell worked well in the middle, handling the local finances and the office work in Missouri and Kansas.

It was Russell who remained the visionary of the group. He saw the potential for competing with Butterfield over the Central Route, using mule-driven coaches traveling from Leavenworth through Denver, then on to Salt Lake City and California. But Russell really had his eye on the mail contract, which he acquired with his partners when they

bought the bankrupt J. M. Hockaday & Company in 1859. The new company name, submitted to the Kansas Territorial Legislature, was the Central Overland California & Pike's Peak Express Company. In Russell's mind, the business had one immediate objective: prove it was superior to Butterfield's stages. "I was compelled," he later wrote, "to build a worldwide reputation, even at considerable expense."⁴

Defeating the Butterfield stagecoach line would require achieving faster mail delivery than the Central Route coaches and wagons yet had attained. Ironically, few people want to credit Russell with the idea for the Pony Express that he founded. Yet Secretary of War John B. Floyd recalled that Russell mentioned the idea of having relays of single fast riders carry mail as early as 1858. At any rate, in 1859 Russell and John Scudder had corresponded regarding a plan to carry mail from Sacramento to St. Joseph, Missouri, in 12 days. Perhaps more significant, Russell committed to running a mail express from St. Joseph to Sacramento *before* he had guarantees that he would not be competing with Chorpensing, whose contract remained in force until May 1860.

Actual organization of the Express was complicated by the interlocking activities of the various Russell, Majors, and Waddell companies. In January 1860, the founders created the Central Overland California & Pike's Peak Express Company for the specific purpose of competing with the Butterfield Overland Mail Company. Three months later, the owners had signed a contract to establish a headquarters in St. Joseph, and to start a line of stagecoaches running from that city to Denver on a weekly basis. They also announced their intention to run a "Pony Express" from Wathena, Kansas, to Sacramento, California, as soon as the railroad lines reached Wathena. St. Joseph citizens gave the company several lots in town and furnished a building for the Express, in essence paving the way for the Central Overland California & Pike's Peak Express Company to engage in railway express. Technically, however, the freight firm of Russell, Majors, and Waddell financed the Pony

Express, establishing stations, purchasing supplies, and acquiring horses and riders.

Attracting capable horsemen who were willing to risk death daily might have seemed daunting, but the Pony Express published ads that almost dared riders to join: "Wanted—young, skinny, wiry fellows, not over 18. Must be expert riders, willing to risk death daily. Orphans preferred. Wages \$25 a week." Riders were expected to cover a route between two stations, resting every 75 to 100 miles at a "home station," then start back. The round trip required a rider to change his horse six to eight times. As suggested by the schedule for the first run, a rider was expected to make Fort Kearny, Nebraska, in 34 hours; and the mail would reach San Francisco after a total riding time of 240 hours. No excuse was tolerated, and the company motto was "The Mail Must Go Through."

Consequently, the company had to choose its riders well, as they constituted the lifeblood of the operation. Division supervisors actually selected the riders for their regions. Obviously, horsemanship was essential, and a slight build was preferred. Younger riders received the nod over older ones, while Majors and Russell insisted that the boys have good moral character. Each received a Bible after signing Majors's required oath. Almost all hailed from Missouri, Kansas, or Nebraska and had lived on the plains their entire lives. A few had even driven stagecoaches. The Utah regions predominantly drew Mormon riders, who had a special advantage of being associated with Brigham Young's congenial treatment of his Utah, Ute, and Shoshone neighbors for many years. For risking their lives and suffering from saddle sores, the riders received \$50 a month, plus room and board—a high salary for the period. Russell himself only took home \$150 a month, and a division supervisor, \$90. Initially, riders carried rifles and a small horn to announce their coming at each station, but they soon abandoned the rifles (as either redundant or inconvenient, as well as heavy) and the horns as unnecessary. A station manager could hear the approaching horses and riders.

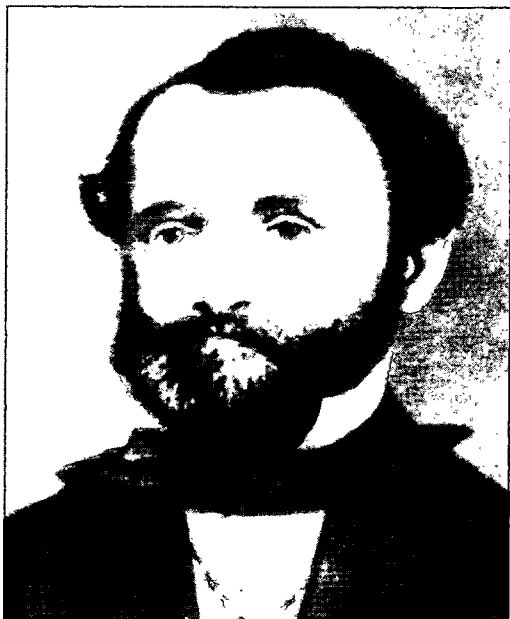
If the riders were the blood of the system, the five division superintendents were the

brains. Each of the superintendents knew the territory well—some having worked for railroads or stage companies—and 119 separate stations were established over the 1,966-mile route. (At the time, that represented one of the longest overland roads in the world and was clearly surpassed only by Butterfield's southern route.) Superintendents had only 65 days to hire riders, purchase horses and supplies, and stock their stations. While that constituted a challenge for some, many found that they could "piggyback" Pony Express outposts on existing stage or railroad facilities. A single station's region, such as that running from Carson City, Nevada, to Sacramento, could employ 20 men as riders or packers, require over 200 horses and mules, and use hundreds of saddles and blankets. The Express purchased 500 of the best horses in the west for the actual delivery runs, with each horse costing between \$150 and \$200. A horse had to average just over 12 miles per hour on the road, which posed a challenge for even the finest horses in the country, but relay stations ensured that horses were well rested between their runs. Those purchasing the horses put a premium on speed, because out-riding Indians offered a much better chance of survival than out-fighting them.

Each outfitted horse bore a special Pony Express saddle with a mail pouch called a *mochila*, which resembled a large blanket with two large covered pouches on each side. The *mochila* had holes for the saddle horn and cantle; it was slipped over the saddle and held in place by the rider: a station master could sweep it off and throw it on a new mount in a matter of seconds. Indeed, the process of switching horses and pulling the *mochila* off as the rider swung his leg over the tired mount, then hopped onto the fresh horse became so intricate that most riders never touched the ground; and toward the end of the Express's days, a *mochila* could make the run from St. Joseph to Sacramento and never cease moving.

First Rider

On April 3, 1860, a brief celebration was held in St. Joseph, and at least ten riders,



William Hepburn Russell (1812–1872)

nominated to take the first mail pouch out, met to learn that Johnson William Richardson would be the first Pony Express rider. He chafed at the delays caused by the speeches and celebrations, having already been indoctrinated with the notion that “The Mail Must Go Through.” At 7:15 in the morning, Richardson took to the saddle, and the Pony Express started its operations. Meanwhile, later that day, James Randall initiated the western end of the Express, leaving San Francisco with a mail pouch. His journey was much different from Richardson’s, for his first act was to ride to the waterfront to take the mail to the steamer *Antelope*, which delivered it to Sacramento. There another rider in true Pony Express fashion hustled off for Placerville, which he made in four hours—ahead of schedule. East of Salt Lake City, eastbound and westbound riders crossed on Sunday, April 8, 1860, technically confirming Russell’s vision of a mail route covered by swift horsemen. On April 13, church bells and cheering crowds met . . . Johnson William Richardson, who made his return run to St. Joseph with the 85 letters sent ten days earlier from San Francisco. After that, it was all routine.

When the final riders crossed in October

1861, the company had “held the spotlight of public interest and acclaim,” having made 300 runs each way and covered a total of 616,000 miles carrying almost 35,000 pieces of mail. But suddenly telegraph wires linked the coasts and the Express was made obsolete instantaneously. Although the transcontinental railroad wouldn’t provide a way to deliver physical pieces of correspondence rapidly for nearly another decade, the telegraph essentially killed the Pony Express. Dozens of riders awoke to find themselves out of work, unneeded as mail carriers. Yet the total number of jobs in the economy created by the new delivery systems grew exponentially, as workers had to place poles, string wire, run the telegraph offices, lay track, design and build telegraphs and locomotives, and serve as engineers and conductors on trains.

The Pony Express represented a classic example of a business made obsolete by technology. The losses in a single line of work—Pony Express riders—represented a 100 percent downsizing. But were they helpless victims turned out by a greedy corporation? Hardly. Raymond and Mary Settle have traced the history of most of the Pony Express riders in their masterful group biography, *Saddles and Spurs*. The Settles discovered that the riders’ stories are inspiring as much for what they accomplished after they were laid off from their riding exploits. Don Rising, for example, carried dispatches at the battlefield for the Union Army in the Civil War, gaining promotions to assistant wagon master. He eventually moved to New Mexico, where he started a mercantile and hotel business. Harry Roff became an insurance salesman who received promotion after promotion to become the Pacific manager of the Home Insurance Company. William Page, Elijah Maxfield, “Happy Tom” Ranahan, Robert “Pony Bob” Haslam, and many others stayed in the general occupation of driving stages or scouting; others (including John Frye, who, along with Johnson Richardson, was one of the first to ride the circuit) found work on ranches and in rodeos and circuses; still others, such as Martin Hogan, found themselves in demand by the railroads. Of the numerous riders that the Settles had information about,

all found employment at levels above that provided by the Pony Express—with one exception, a hermit who retreated to a wilderness location. In short, the death of the Pony Express did not make a pauper out of anyone, and the downsizing that occurred only reflected the lower costs of faster transmission of information in other ways.

Meanwhile, gigantic new businesses, employing far larger numbers of people, arose to take their place. Western Union, the most successful of the new telegraph companies, emerged from the Civil War as a colossus—the largest nonrailroad corporation in America, with a \$40 million capitalization. It controlled virtually all the telegraphy in the nation, but also engaged in the production of electrical equipment and had scores of electricians and mechanics working in its labs. As for physical freight, Wells Fargo stepped into the void with its famous stagecoach lines. The new rivals to the Pony Express had it beat, either in terms of speed (Western Union) or delivery capacity (Wells Fargo). As exciting as was the image of a lone, daring Pony Express rider desperately lashing his horse to deliver the mail on time compared to the dullness of the relentless click of the telegraph or the steady, almost painful bounce of the stage-

coach on its iron springs, the plain fact was that dull and steady also meant reliability, lower cost, and higher efficiency.

Certainly a difference of perceptions separated the “downsized” workers of the 1800s and the 1990s; reporters, viewing events from a late twentieth-century prism, might assume that someone who loses a job will become a member of a permanent “underclass,” though the evidence does not generally support such an argument. A more plausible criticism—but one that also stems somewhat from a misperception—is that Americans have come to expect a single lifetime career. In fact, studies have shown that many, if not most, American workers have several careers during their lives, and more important, the majority of younger workers fully expect such to be the case. History provides voices for those who choose to listen. Based on the experience of the Pony Express, they are the voices of success and triumph. □

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Inspired? Shocked? Delighted? Alarmed? Let us know.



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The Drug War's Assault on Liberty

by Lance Lamberton

In determining the proper boundaries of government action consistent with a free society, it is instructive to explore whether drug prohibition is an appropriate response to actions that are clearly self-destructive to some. Following from concern over the harmful effects of drugs, the prevailing view is that government has a responsibility to protect its citizens from that harm through prohibition. Yet that position runs directly counter to the foundation and maintenance of a free society. Indeed, in today's context, drug prohibition represents one of the single greatest threats to our liberties.

Foremost to understanding the threat prohibition poses to liberty is a proper understanding of rights. According to the Declaration of Independence, we are endowed "with certain inalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." The underlying assumption is that one's life is one's own. Thus the choices a person makes with his own life properly belong to him.

This principle is not hard to embrace. The idea that the individual owns his own life is accepted almost implicitly, especially in countries with a tradition of free thought and institutions, such as the United States. Yet it is a principle readily abandoned when it comes to

drugs. Underlying the idea that government, and not the individual, has the right to determine what one may or may not ingest is the assumption that government, and not the individual, has ultimate authority over, and ownership of, life itself. Taken to its logical conclusion, this principle leads to slavery.

This does not mean government has no right to restrict and prohibit harmful behavior. But it must do so only to enhance and protect freedom of action. The old axiom that "my freedom to swing my arms ends where your nose begins" applies here. The essential point is that the individual has the right to do whatever he wants with his own life, since he has a property in that life, provided that he does not interfere with the same freedom of another.

With drug prohibition, the government attempts to coerce citizens into abstaining from something it deems harmful. This, in essence, is criminal behavior elevated to the status of law because it involves the initiation of force, or threat of force, against a class of citizens (illicit drug users) who are engaged in voluntary, non-coercive behavior. Moreover, the policy is doomed to failure as witnessed by the daily news reports on the government's drug war, which clearly show that the government will *never* be able to stop individuals from taking drugs short of imposing an Orwellian 1984 level of surveillance on its citizens. And judging from the ready availability of drugs in prison, even that is unlikely to work.

The bottom line is that "criminal" action implies a victim, where force, or the threat of

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it, is imposed *on another*. However, what the individual freely does to himself—such as taking drugs—does not constitute the imposition of force, and is therefore not a crime. On the contrary, it is the prosecution of the drug war that is the crime.

Some Pragmatic Considerations

The devastating impact of the drug war on society, along with its inevitable failure, is a consequence of its protagonists' failure to recognize a salient fact of human nature—namely, there will always be some individuals strongly driven to take drugs because they provide pleasure or block pain, and no legal sanctions, no matter how severe, will prevent that. Furthermore, the more draconian the drug enforcement the more draconian the consequences by every measure imaginable, from diminished civil liberty to increased violent crime.

Criminal activity normally involves no more than a small fraction of any given population. Yet when laws are dramatically at variance with the legitimate exercise of freedom, wide-scale disobedience is often the result. Such was the case with alcohol prohibition, conscription during the War Between the States and the Vietnam War, civil disobedience during America's civil rights movement, and general disregard for the national 55-mph speed limit.

Prohibition also fails to acknowledge the power of markets. By making a desired substance illegal, prohibition increases profitability by making the substance scarcer and more risky to handle. In the pursuit of self-interest, and in light of the enormous profits earned from the illicit drug trade, there will always be a plentiful supply of risk-takers willing to run the gamut of government interdiction efforts to meet the demand for drugs. Ironically, the scarcer drugs become because of prohibition, the more profitable they become for dealers and the greater the incentive to sell them.

Thus it is profit, and the pleasure derived from taking drugs, that thwarts the increasingly militant calls for an "all out" drug war. Not surprisingly, when government attempts to deny basic individual sovereignty, it must

intrude with reckless abandon on other rights to enforce its objectives. Protection from unreasonable search and seizure, as guaranteed by the Fourth Amendment to the Constitution, is a prime target for the drug warriors. Calls for universal drug testing are beginning to surface, regardless of any concern for probable cause. Former New York Mayor Ed Koch and others have even called for shooting down planes merely suspected of carrying drugs.

Tragically, the war on drugs, allegedly being prosecuted to protect human life, has instead claimed many innocent lives. Take, for example, those caught in the cross-fire between warring gangs of drug dealers fighting over turf, or trigger-happy drug-enforcement agents who raid the wrong homes and accidentally kill residents defending their families against violent assault. Additional fatalities in the drug war include deaths attributed to drug overdoses or poisoned drugs owing to the adulteration and unknown potency of drugs traded on the illicit market. The war on drugs has also become a significant factor in the spread of AIDS; almost 7,000 intravenous drug users a year have died of AIDS from sharing needles.¹

Despite this tragic loss of life, prohibitionists claim that legalization will result in a dramatic increase in use, thereby dwarfing the number of fatalities directly attributable to prohibition. However, considering that 80 percent of deaths from ingestion of heroin and cocaine is caused by their adulteration on the black market,² leaving 20 percent who die as a result of factors that would exist after legalization, it would require a 400 percent increase in use to equal the current death toll. This is unlikely; at the end of alcohol prohibition, estimates of increased consumption have ranged from zero to 250 percent.³

On the contrary, it could be argued that consumption of hard drugs such as heroin and cocaine would actually decline with legalization, especially among vulnerable youth in the inner cities. This is because tens of thousands of hard-core users would no longer be pushing drugs to non-users in order to make money to support their own habits, a common and well-known practice throughout the drug

culture. When we look at how alcohol is marketed and distributed, we can see how legalization will put the neighborhood "pusher" out of business.

In addition to the death toll coming from prohibition, the costs related to drug enforcement are staggering. Since President Reagan launched his much-heralded "war" in the early 1980s, the United States has spent nearly \$300 billion to stem the flow, with indirect costs put at \$67 billion annually as government continues to beef up the budgets of law enforcement agencies and the military to prosecute the drug war.⁴

The courts are so overwhelmed with drug cases that the administration of justice is being hampered to an intolerable degree. For example, in 1998 more than 400,000 Americans serving prison terms (one in four imprisoned) were doing so for drug offenses, up from 50,000, or one in ten, in 1980.⁵

Prohibition also has the unfortunate consequence of corrupting law enforcement agents lured by the easy availability of huge sums of tax-free income in return for their cooperation in the drug trade. According to reporters Jack Nelson and Ronald J. Ostrow, "Law enforcement corruption, sparked mostly by illegal drugs, has become so rampant that the number of federal, state and local officials in federal prisons has multiplied five times in four years, from 107 in 1994 to 548 in 1998."⁶

On the civil liberties front, the drug war has led to the property of non-drug users being confiscated without due process. In operations labeled "zero-tolerance," leased boats are searched (sometimes without satisfying the legal standard of probable cause) and then seized from their owners when even minute quantities of drugs are found onboard. Indeed, fully 80 percent of total asset seizures related to the drug war occur without a criminal charge being filed.⁷

Another casualty in the war on drugs is legitimate scientific research with drugs such as LSD and MDMA. In addition, marijuana has been almost universally prohibited for use as a treatment for glaucoma, which leads to blindness, and for ameliorating the severe side effects of chemotherapy.

Denial of Individual Responsibility

Inherent in the prohibitionist position is the failure to recognize individual responsibility and autonomy as operating principles for an efficacious life. While taking drugs involves the freedom to engage in what may be self-destructive behavior, it also, and more importantly, involves the principle of allowing for life-enhancing activity. The freedom to fail is also the freedom to succeed, and vice versa. Ultimately, only the individual can determine what is in his best interest. While that is not a fail-safe mechanism, the alternative is tyranny. Drug prohibitionists embrace that alternative by presuming to know what is best for others, and in the pursuit of their vision of the good life they are willing to impose that vision on others by force.

To counter the argument for individual responsibility, prohibitionists claim that drugs necessarily hurt others and society at large. Discounting the preponderance of evidence that prohibition imposes a much greater cost on society than legalization ever could, the fact remains that even for those who use drugs in a life-threatening way, it is *their lives* that they threaten. Society, and even loved ones, do not have a property right in the life of the drug abuser. To assume otherwise is collectivism, pure and simple.

If prohibitionists were interested in consistency, their line of reasoning would take them down a path I doubt many of them would want to follow. Would they propose banning tobacco or alcohol consumption because of potentially harmful effects? How about high cholesterol foods? With heart disease being the single greatest killer of Americans today, are prohibitionists prepared to follow their own logic and ban bacon and eggs? And what about high-risk occupations and activities such as stunt-car driving, hang gliding, and motorcycling?

Assuming you could successfully ban such activities and substances, what would be the implications for the role that risk-taking plays in enhancing the enjoyment of life? While most people avoid risk in the realm of health or physical activity, others are drawn to it

because it enriches their lives. The very essence of individuality implies that different people have different requirements in achieving happiness.

Drug prohibitionists, however, will claim that illicit drugs can never have any other effect than to debilitate and destroy. Yet even among the most dangerous drugs, "addiction" is far from guaranteed. Dosage has everything to do with a drug's potentially harmful affects, and if doses are low enough, and taken infrequently enough, no long-term or short-term ill effects will result.

Besides, the critical point, which cannot be emphasized enough, is that ownership of one's life entitles one to do with it what one chooses, even if that choice leads to self-destruction.

The Roots of War

In light of the futility in waging the war on drugs, what leads the government to pursue it and most Americans to support it? Part of the answer lies in the coercive nature of government itself. If war, as Randolph Bourne stated, is "the health of the state," then the American government is on a very healthy diet.

Since government is predicated on the use of force, it oft-times sees its reason for being in exercising it. If this power is used to protect rights, it is a benevolent force. But the temptation to abuse that power is sometimes irresistible. While the line between using government force in retaliation against initiators and being the initiator itself is a clear one, it is a line easily crossed.

There is also a need on the part of government to fight an enemy, take on a menace, and be the paternalistic guardian of the people. Indeed, if officeholders do not have the commodity of fear and the specter of menace to incite people to rally around them for support, they risk, in a democracy, repudiation at the polls from bored and fickle voters, and in a dictatorship, the violent overthrow of the government.

Hollywood and the media have certainly done their parts in feeding the current frenzy. Grisly news reports on the drug war and its victims boost ratings and provide ample grist

for sensationalized TV specials and movies. This in turn creates the popular illusion that it is the drugs themselves that cause the violence and crimes associated with them, rather than their prohibition. Yet we have only to look back to the era of alcohol prohibition to identify the real source of drug-related violence. In the ten years following the end of alcohol prohibition, the murder rate from assault by firearms went down from a prohibition high of 16 per 100,000 of population in 1933 to less than nine per 100,000 by 1943.⁸

America's drug war is also a manifestation of the historical pendulum swinging toward social conservatism. Operating in cycles that run on the order of 20 years, America is reacting to the social excesses of the 1960s. Sexual mores have become more restrictive, drinking is less socially acceptable, and smokers' rights have become severely circumscribed.

Indeed, the current trend—popular among both conservatives and "liberals"—is to place under cultural and political assault activities that give pleasure and hold the potential for harm. The "safety at any cost" approach toward regulating consumer choices, championed by environmental and consumer activists such as Ralph Nader, is but one variant of the kind of government paternalism now in vogue.

America's puritanical heritage, while dramatically at variance with its heritage of political liberty, has endured as well as it has owing to the lure of messianic perfectionism. Few countries in the West are as "blessed" as the United States with the number and intensity of moral crusaders determined to use government to impose their moral values on others by force.

This puritanical impulse is enjoying a major resurgence in the United States. Historically, America has been a magnet for cultural extremes, ranging from the free love communes of the sixties to the abstinent Shaker communities of the early nineteenth century. In the history of the Western world, no other country embarked on the bizarre path of alcohol prohibition, despite alcohol's deep historical, cultural, and economic roots.

The U.S. Constitution and Bill of Rights have held America's crusading impulse in

check. Nevertheless, it persists, ebbing and flowing as circumstance and public opinion dictate.

Another factor fueling the drug war is an undeniable increase in drug use, a trend that started in the sixties. Yet can the increase in any way correlate with the hysteria that has overtaken America in the decades that followed? Indeed, deaths attributed to drug use are but a small percentage of deaths related to alcohol and tobacco. And despite hyperbolic claims by politicians and the media over the threat that drugs pose to our society and culture, the economy continues to grow, life expectancies continue to increase, technological advances continue unabated, and Americans in all walks of life continue to build lives of meaning and value, both for themselves and their families.

The most tragic consequences related to drug use persist in America's inner cities. Yet here it is government paternalism that is the culprit, leading people without hope into lives of drug dependency. As the debilitating effects of welfare dependency strangle motivation and opportunity, the seductive lure of drug profits or the temporary relief that drugs bring provides a market for drugs that otherwise would not exist.

Where Do We Go from Here?

Predicting the future is always a risky business, but when it comes to determining what path Americans will choose concerning drug policy, both history and a proper understanding of human nature give us some guideposts.

People eventually tire of moral crusades. No matter how lofty or seemingly righteous, there comes a time when people's energy and direction must go elsewhere. For example, the

wave of progressive reform that began at the end of the nineteenth century eventually burned itself out, to be replaced by the relative social liberalism of the roaring twenties. The strident anti-communism of the McCarthy era in the fifties gave way to the New Left that engulfed America's universities in the sixties.

But the real undoing of the drug war will be the eventual realization that government cannot alter human nature and that society is no longer willing to pay the price required, in money, social disruption, and reduced liberty, to prosecute this war. In the past decade especially, many prominent voices have been raised against prohibition, and no doubt many others will join them in the near future. Moreover, prohibitionists are finding themselves compelled to respond in public to the growing call for legalization to an extent that would have been unheard of ten years ago.

Yet until the current level of support for prohibition burns itself out, vigilance and the courage to speak out are required if we are to avoid the permanent establishment of new forms of government intrusion into our personal lives. That is the real threat facing us today. □

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**IDEAS
ON LIBERTY**

AUGUST 2000

If You Build It—Privately —They Will Come



“Government provides certain indispensable public services without which community life would be unthinkable and which by their nature cannot appropriately be left to private enterprise.”

—PAUL A. SAMUELSON

If you take a course in public finance, you will invariably encounter the “public goods” argument for government: Some services simply can’t be produced sufficiently by the private sector, such as schools, courts, prisons, roads, welfare, and lighthouses.

The lighthouse example has been highlighted as a classic public good in Paul Samuelson’s famous textbook since 1964. “Its beam helps everyone in sight. A businessman could not build it for a profit, since he cannot claim a price for each user.”¹

Really? Chicago economist Ronald H. Coase revealed that numerous lighthouses in England were built and owned by private individuals and companies prior to the nineteenth century. They earned profits by charging tolls on ships docking at nearby ports. The Trinity House was a prime example of a privately owned operation granted a charter in 1514 to operate lighthouses and charge ships a toll for their use.

Samuelson went on to recommend that lighthouses be financed out of general rev-

enues. According to Coase, such a financing system has never been tried in Britain: “the service [at Trinity House] continued to be financed by tolls levied on ships.”²

What’s even more amazing, Coase wrote his trailblazing article in 1974, but Samuelson continued to use the lighthouse as an ideal public good only the government could supply. After I publicly chided Samuelson for his failure to acknowledge Coase’s revelation,³ Samuelson finally admitted the existence of private lighthouses “in an earlier age,” in a footnote in the 16th edition of his textbook, but insisted that private lighthouses still encountered a “free rider” problem.⁴

Private Solutions for Public Services

The lighthouse isn’t the only example of a public good that can be provided for by private enterprise. A privately run toll road operates in southern California. Wackenhut Corrections manages state prisons. Catholic schools provide a better education than public schools. The Mormon church offers a better welfare plan than the USDA food stamp program. Habitat for Humanity builds houses for responsible poor people.

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And now, for the first time in 38 years, there is a privately built major league baseball stadium—Pacific Bell Park, new home of the San Francisco Giants. After Bay area voters rejected four separate ballot initiatives to raise government funds to replace the windy and poorly attended Candlestick Park, Peter Magowan, a Safeway and Merrill Lynch heir, teamed with local investors, to buy the club and, with the help of a \$155 million Chase Securities loan, built the new stadium for \$345 million. The owners also got huge sponsorships from Pacific Bell, Safeway, Coca-Cola, and Charles Schwab.

So far the private ballpark has been a super success, selling a league-leading 30,000 season tickets for the 41,000-seat stadium. The team's 81 home games are nearly sold out. Other team owners, whose stadiums are heavily subsidized, were skeptical, but a dozen team owners have visited the new operation to study what they've done. They include George Steinbrenner, who is considering a \$1 billion new Yankee stadium.⁵

Economists Attack Public Financing

Perhaps private funding of major league sports facilities has been influenced by two recent in-depth studies by professional economists attacking publicly subsidized sports arenas. In *Major League Losers*, Mark Rosentraub of Indiana University (and a big sports fan) studied stadium financing in five cities and meticulously demonstrated that pro sports produce very few jobs with little ripple effects in the community, take away business for suburban entertainment and food venues,

and often leave municipalities with huge losses.⁶

A Brookings Institution study came to similar conclusions. After reviewing major sports facilities in seven cities, Roger G. Noll (Stanford) and Andrew Zimbalist (Smith College) found they were not a source of local economic growth and employment, and the net subsidy exceeded the financial benefit to the community.⁷

These empirical studies confirm a long-standing sound principle of public finance: Beneficiaries should pay for the services they use. In my free-market textbook I call this "The Principle of Accountability," also known as the "benefit principle." It's amazing how often politicians violate this basic concept. For example, John Henry, a commodities trader worth \$300 million and owner of the Marlins baseball team, is pushing through the Florida state legislature a bill to tax cruise-ship passengers to help fund a new Miami ballpark. (Fortunately, Governor Jeb Bush just vetoed the bill.)

Please, will someone send Mr. Henry a copy of my free-market textbook, *Economic Logic*? ☐

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Mark Skousen's *Economic Logic*

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BOOKS

15 Great Austrian Economists

edited with introduction by
Randall C. Holcombe

Ludwig von Mises Institute • 1999 • 258 pages
• \$15.95

Reviewed by Robert Batemarco

Great economists come in many varieties. There are path-breakers, who forge new analytical tools; there are synthesizers, who discern principles capable of explaining disparate phenomena; and there are debunkers, who root out error, strangling it in its own contradictions so that truth may flourish. Most of those designated great by their inclusion in *15 Great Austrian Economists* did all three.

In this volume, editor Randall Holcombe, professor of economics at Florida State University, has assembled 14 economists of no small stature themselves to discuss these great ones. Among the most prominent contributors are Murray Rothbard, Israel Kirzner, Roger Garrison, Joseph Salerno, and Hans-Hermann Hoppe. They cover over 400 years of "Austrian" economics, from the mid-sixteenth century to the closing years of the twentieth.

That early starting date demonstrates that the ideas today labeled "Austrian" did not emerge from Carl Menger's fecund mind out of nothing. Thus, the first five chapters feature pre-Mengerian writers who made use of such quintessentially Austrian themes as subjective value, entrepreneurship, time preference, and the ability of markets to coordinate plans to explain economic phenomena. They include Juan de Mariana, Richard Cantillon, A.R.J. Turgot, J.B. Say, and Frederic Bastiat.

Mariana, a Spanish Jesuit in the scholastic tradition, is probably the least well known. The chapter dealing with his contributions actually covers a number of Spanish scholastics. The reader will learn that their serving as sources of ideas for Menger was no accident, given the close relations between Spain and

Austria resulting from their having once been part of the same Hapsburg Empire.

The authors of these essays are steeped in the history of economics, not just the Austrian school. Salerno's piece on Carl Menger, for example, provides a fine description of the strengths and weaknesses of classical economics, a necessity in demonstrating what was so distinctive about Menger's opus. In Menger we see all three aforementioned hallmarks of greatness. The path-breaking analytical tool for which he is perhaps best known is subjective marginal utility. In addition, his theory of imputation and his distinction between goods of higher and lower orders were to become building blocks for Austrian capital theory. Furthermore, Menger constructed an original value and price theory that not only linked consumer and producer behavior in ways classical economics never was able to, but also demolished the intellectual foundations of the labor theory of value. I'd say that qualifies for greatness.

Yet this book is not titled *15 Great Economists*, but rather *15 Great Austrian Economists*. No comprehending reader could come away from these pages without a clear picture of what constitutes Austrian economics. The praxeological method, that is, the use of logical deduction from indisputable axioms, is shared by every economist profiled in these pages. Not far behind is the recognition of the role subjective value plays in economic activity. Thus the classification of Phillip Wicksteed and W. H. Hutt as Austrians can be justified by their application of subjectivism to cost and labor supply, respectively.

Interestingly, not taking subjectivism seriously enough was a criticism cast in Eugen von Böhm-Bawerk's direction from within the Austrian school. This criticism notwithstanding, Roger Garrison's chapter makes clear that by building on Menger's depiction of the role of time in the production process to create a theory of capital that serves as the foundation of Austrian macroeconomics Böhm-Bawerk secured his position in the pantheon of great Austrian economists.

Fittingly, with the exception of Menger, Ludwig von Mises receives the most extensive treatment of all. Murray Rothbard's essay

describing Mises's achievements relates not only how he integrated monetary and value theory, leading to his business cycle theory and radical critique of socialism, but also how his personal integrity cost him numerous opportunities for academic positions. In addition, it shows how Mises went one step further than his predecessors in political economy, taking their "rather vague commitment to the market economy," and hammering it into "a logical, consistent, and uncompromising adherence to *laissez-faire*."

Mises left us not only a formidable system of economic analysis, but also a number of talented students who built on that system. Two of them, Rothbard and F. A. Hayek, earned places among the 15 great Austrians of this volume. Both made contributions within Austrian economics itself: Hayek in business cycle theory, the role of knowledge, and competition as a discovery procedure, and Rothbard in welfare economics. The essays in this volume also touch on their scholarship beyond the realm of economics: Rothbard's forays into history, using Austrian economic theory as an interpretive framework, and his integration of Austrian economics with libertarian theory to develop a theory of liberty, and Hayek's influential *Road to Serfdom* and works on psychology, philosophy, and politics.

The volume is rounded out with discussions of Frank Fetter, Henry Hazlitt, and Wilhelm Röpke, whose main achievements were clarifying the valuation process for capital goods, providing a blow-by-blow refutation of Keynes's *General Theory*, and exploring the ethical foundations of market economies, respectively.

There is plenty in this slim volume to stimulate interest in Austrian economics and its greatest proponents. It belongs on every economist's bookshelf. □

Robert Batemarco is a vice president of a marketing research firm in New York City and teaches economics at Marymount College in Tarrytown, New York.



Free Trade Versus Protectionism: A Source Book of Essays and Readings by Johannes Overbeek

Edward Elgar • 1999 • 656 pages • \$120.00

Reviewed by James Rolph Edwards

This is a book that operates on several levels and succeeds, to a greater or lesser degree, on all of them. Centrally, it is a history of economic thought in the form of extracts and short essays by the prominent advocates of free trade and protectionism, extending from mercantilist times to the present. Thus the reader is treated to a roughly chronological and fairly complete view of the development of economic thought and understanding of international trade and finance over more than two centuries, as well as the vital points in the free trade/protectionist debate.

Overbeek, professor of economics at the University of the Virgin Islands, divides the book into historical periods and for each one presents writings by the most prominent writers on both sides of the issue. He gives a short history of the periods regarding international trade and the public debate over the issue, and discusses how government policies were affected. He also provides a biography of each author and a summary of his arguments.

In his choice of material, I give Overbeek an A-plus. The most important writers are included, from Thomas Mun through Alexander Hamilton, Friedrich List, Mussolini, John Maynard Keynes, and Robert Reich on the protectionist side, and from David Hume and Adam Smith through John Stuart Mill, Ludwig von Mises, Gottfried Haberler, Melvyn Krauss, and Paul Krugman on the free trade side. Moreover, the extracts Overbeek has selected are all readable by anyone with even a rudimentary familiarity with economics. Abstruse mathematics is thankfully absent. My only criticism is that some of the readings are longer than necessary to make the author's argument, while others seem too short. In an apparent attempt to shorten the book to its still-daunting 656 pages, the writings of some key economists (Henry Hazlitt and Milton Friedman chief among them)

have been left out in favor of summaries by Overbeek.

The book's virtue is that it clearly presents the arguments of both sides on the free trade debate. One cannot read both with any objectivity without seeing that the free traders have by far the stronger arguments. Interestingly, the reader observes that the brilliant breakthroughs occurred early on and that the principles established have never been overthrown. Particularly crucial are Ricardo's demonstration of the principle of comparative advantage and David Hume's demonstration of how monetary flows through international payments imbalances alter exports and imports to bring equilibrium to those balances and generate a natural distribution of specie. Those arguments destroyed the rationales of the mercantilists for trade barriers.

From then on, the case for free trade evolves only in detail and sophistication. The point of production is consumption, not vice versa, and the point of trading internationally is the imports we can thus obtain more cheaply (literally using fewer domestic resources) than if we produced them ourselves. Exports are simply the way we pay for imports. What is more, international trade has little effect on domestic employment, except to allocate labor from less efficient to more efficient uses.

Just as important as the compelling arguments in favor of free trade, the readings also illuminate the sordid history and motives of the protectionists. They never grasp the truly anti-social nature of their project, which is characterized by blind nationalism, chauvinism, and xenophobia. Even otherwise democratic and "liberal" protectionists must be made uneasy when they see their association with dictators and authoritarians of every stripe, all of whom adhere to the same protectionist doctrines they do.

The book contained many surprises for me. I was amazed at the brilliance of Nicholas Gerard Pierson, arguing for free trade in the late nineteenth century, whose work was unknown to me. On the other hand, I was disappointed to read the unwarranted concessions made to protectionism by such eminent free traders as F. W. Taussig, A. C. Pigou, and Lionel Robbins.

The biggest surprise for me was historical. It is common knowledge that the reaction against classical liberalism that eventually generated the totalitarian states and world wars of the twentieth century began in Germany in the nineteenth century. But without Overbeek's book, I would not have known that Friedrich List, the father of German protectionism, lived in the United States and was heavily influenced by American protectionists such as Alexander Hamilton and Daniel Raymond, by whom he became convinced that protectionism had been vital to American economic development. List returned to Germany and spread that erroneous view with great and catastrophic effect. Hamilton has always been my least favorite among the Founders, and now I see that he and his ilk have even more to answer for than I had previously supposed.

There is far more in this book than can be described in a short review. It is costly to be sure, but you definitely get what you pay for. □

James Rolph Edwards is professor of economics at Montana State University.

In Praise of Hard Industries

by Eamonn Fingleton

Houghton-Mifflin • 1999 • 273 pages • \$26.00

Reviewed by George C. Leef

Sometimes you *can* judge a book by its cover. The subtitle of this book reads: Why manufacturing, not the information economy, is the key to future prosperity. That tells me that the author thinks himself capable of central economic planning at the macro level, knowing as he does what economic formula will lead to "prosperity." Then a glance at the back cover clinches it—fulsome praise from some of America's most notorious protectionists, including textile magnate Roger Milliken. Judgment based on the cover: Lousy book. But how bad?

Fingleton, an economic journalist and former editor at *Forbes* (exactly what his domain was at *Forbes* is not disclosed), begins with an extended assault on his *bête noire*, "post-

industrialism.” By that he means the idea that our economy has advanced beyond the industrial era into a new era based on services and information rather than the production of tangible products. Fingleton is bothered by the fact (if indeed it is a fact, for the book is light on evidence) that manufacturing has gone into retreat in the United States and is being eclipsed by upstarts like software engineering.

So what? In the spontaneous order of a market economy, industries rise and fall with the desires of consumers. Competition to earn profits drives people to commit resources where they will do the most economic good. But Fingleton shows no comprehension of the idea of spontaneous order and indeed often heaps scorn on “laissez-faire zealots.” (In one of the silliest passages in the book, he grumbles that the Nobel Prize in economics has so frequently gone to those “laissez-faire zealots” and explains that the Swedish Central Bank, whose members make the choice, are “laissez-faire zealots” themselves. That’s why the brilliance of protectionists, socialists, and other meddlers is overlooked.) He sets out to prove that a “postindustrial” economy is undesirable.

One undesirable aspect is that, allegedly, a “postindustrial” economy does not provide jobs for a wide range of people. As proof, he observes that software engineering is a field only for extremely smart people. Manufacturing, on the other hand, provides job opportunities for people of all levels of aptitude. Therefore, unless we want high unemployment, we need to return to manufacturing. Obviously.

That is typical of Fingleton’s method of propping up straw-man arguments so he can knock them down throughout the book. Despite some overly enthusiastic statements by “postindustrial” theorists, no one has ever suggested that we should have an economy that is comprised only of “postindustrial” sectors. It would make just as much sense to argue that a “classical music economy” would be undesirable because so many people would be unemployed because of their lack of ability to play Bach. It’s easy to fill up pages in beating up on straw men.

The hand-wringing continues with the author’s worries that “we” are losing “our” manufacturing base. (The book, not surprisingly, is loaded with nationalistic language. Fingleton evidently thinks it is all right to trade with “foreigners” for raw materials, but as Keynes said, “Let goods be homespun.”) Suppose for the sake of argument that there was in fact a pronounced shift away from manufacturing in the United States. Businessmen, whether Americans or those foreigners, would soon discover profitable opportunities to earn high profits by investing in the vacant manufacturing sector. Fingleton, however, never deigns to discuss the dynamics of the marketplace, preferring to continually berate the “postindustrial” enthusiasts who keep leading us, Pied Piper-fashion, into the false utopia of postindustrialism.

In a book arguing that manufacturing has gone into decline, one would expect to read something about the deleterious impact of government policy. Fingleton, however, says nothing about taxes and regulations that hit harder at manufacturing than other sectors. (That’s probably because it’s mainly economists of the “laissez-faire zealot” variety that have pointed this out.) A good argument can be made, for instance, that environmental regulations are much more damaging to manufacturing enterprises than, say, financial services, or that our collectivist labor laws do more harm to manufacturers than to software companies. But Fingleton doesn’t call for changes in or repeal of government interventions. The government isn’t his villain.

Guess what kind of “solutions” our author advocates? Almost exclusively, coercive ones. (One exception—he calls for “relaxation” of antitrust laws, but doesn’t pursue the point in any detail.) Fingleton wants a law that would allow business managers to be “punished personally for laying off workers.” He wants to diminish the attractiveness of careers in the hated “postindustrial” sectors through selective taxation. He wants to boost U.S. savings by imposing high tariffs on foreign goods. It is all dreary stuff, unenlightened by any comprehension of the terrible rent-seeking possibilities that all this new economic intervention would open up.

On second thought, maybe you really can't judge a book by its cover. *In Praise of Hard Industries* turned out to be far worse than I had guessed. □

George Leef is the director of the Pope Center for Higher Education Policy at the John Locke Foundation and book review editor of Ideas on Liberty.

The Lexus and the Olive Tree: Understanding Globalization

by Thomas L. Friedman

Farrar, Straus and Giroux • 1999 • 394 pages
• \$27.50

Reviewed by Robert Lawson

Thomas Friedman has written a very surprising book. Surprising not in what he has written, but in that Thomas Friedman wrote it. Friedman is the foreign affairs columnist for the *New York Times*, and is probably known to readers of *Ideas on Liberty* as a moderately "liberal" establishment journalist. He is certainly not known as a defender of economic liberty. Yet this book presents a compelling story about the prospects for global economic liberty.

The interesting title is chosen as a metaphor for the choice Friedman says today's societies face. They can pursue fancy cars like the Lexus by moving toward free trade, sound accounting, transparency, property rights, and the rule of law. Or they can continue to fight over olive trees through tribalism, nationalism, and isolation. As metaphors go, it's not a bad one. Each choice offers benefits and pitfalls, but if you value freedom and prosperity, your society had better go for the Lexus.

Friedman sees globalization as the One Big Idea of the post-Cold War era. But joining the global village is not easy; it requires a nation to put on what Friedman calls the "Golden Straightjacket." That's private property, low inflation, shrinking government, free trade, deregulation, currency convertibility, reduced corruption, open markets, private pensions, and so on. In short, a libertarian dream.

Once you join the global world, you had better wrap the Golden Straightjacket pretty

tight because if your country is seen to be at all weak on any part of it, you might get a visit from "The Electronic Herd." That's you and me trading everything from T-bills to Russian bonds. When the herd gets spooked—when we worry about Russian inflation for example—the herd can create a major crisis overnight. Friedman is one of the few journalists to actually understand the nature of the Asian/Russian currency crisis. Sure, people like Malaysia's Prime Minister Dr. Mahathir Mohamad can blame it on George Soros or the Jews, but the real enemy was TIAA-CREF, e*trade.com, and Merrill Lynch.

The Electronic Herd can be unfair, even wrong, but to fight it is useless. You either embrace the Herd, and the discipline it mandates, or you'd better get off the range. In this, Friedman is less an advocate for globalization than the deliverer of the bad (or good depending on your perspective) news. His major point is that globalization is here to stay whether you like it or not.

Friedman loves his metaphors, though they sometimes get on one's nerves. One of the more effective chapters is "DOSCapital 6.0." Friedman describes countries as computers. Communist countries were running on a really bad operating system, DOSCapital 0.0 while others have advanced to DOSCapital 1.0 up to 6.0. The more free market your country, the more advanced your operating system. It is interesting to compare his list of countries with one of the economic-freedom indexes now available. Perhaps Taiwan is too high and Thailand too low on his scale, but basically he got it right.

In another interesting chapter, Friedman notes that "No two countries that both have McDonald's have fought a war against each other since each got its McDonald's." This was true when he wrote it, but unfortunately is not true since the United States attacked Serbia. (Interestingly, the McDonald's in Belgrade ran strong pro-Serb promotions during the attacks.) But the larger point is that globalization is likely to lead to more peace—a point free-market advocates have made for decades.

But Friedman does have some problems with his analysis. In a series of chapters he

goes through some of the pitfalls associated with globalization. Some are real; some are imagined. For example, Friedman worries that globalization will increase income inequality. But as a rule, developed countries have more equal income "distributions" than less developed countries.

Friedman also worries that freer markets and prosperity will lead to greater environmental problems. There is a grain of truth to this fear. Developing countries often make short-term sacrifices of environmental quality to achieve economic growth. Nineteenth-century American cities were filthy messes. But over time development will lead to the willingness and ability to pay for a cleaner environment. To his credit, he grudgingly recognizes this and argues that corporations, not corrupt bureaucrats, are the more likely saviors of the environment not corrupt bureaucrats.

As Friedman finishes the book, he offers words of caution about the inevitable backlash against globalization. Indeed, as Virginia Postrel argues in her book, *The Future and Its Enemies*, we do have conflicting visions before us. One is the dynamist world embodied in Friedman's Lexus and the other is the stasist view of his olive tree. Several thousand World Trade Organization protesters in Seattle were a testament to the power of the olive tree. But the good news is that the dynamist view is winning and it is not easy to see how we can turn back.

Robert Lawson is professor of economics at Capital University and co-author (with James Gwartney) of Economic Freedom of the World 2000.

Code and Other Laws of Cyberspace

by Lawrence Lessig

Basic Books • 1999 • 297 pages • \$30.00

Reviewed by Andrew P. Morriss

Lawrence Lessig has written an important but deeply flawed book on the future of the Internet. The book is important because of who Lessig is (Harvard law professor, celebrated member of the "digiterati," and adviser to U.S. District Judge Thomas Penfield Jack-

son) and because of the insights into the Internet that Lessig offers. The book is flawed because Lessig makes some fundamental mistakes about markets and because he does not understand, and so misuses, the concept of spontaneous order.

First, the good stuff: this is an exceptionally readable book, filled with insightful observations. (There are also some minor annoyances, like the constant use of quotation marks around words for no apparent reason.) The book conveys the essentials of the technical areas necessary to its argument in a way that most readers can grasp. Lessig illustrates many of his points with interesting anecdotes. He is a skilled writer and thoughtful analyst of the Internet. He might not be "a James Madison of our time," as the jacket copy touts (quoting Stewart Brand), but he has certainly written a book that anyone concerned with the Internet will want to read. Indeed, since Lessig is such an important figure in the application of the law to the Internet, we are lucky he has written so well—his ideas would be important even if they were badly written.

Much of Lessig's analysis is right. The architecture of computer programs does determine the cost of regulating the conduct that occurs using those programs, and the transmission of information is more susceptible to government control than many early Net enthusiasts believed. We ought to worry about these things more than we do, and with any luck, Lessig's book will prompt a large number of people to do so.

However, the author fails to understand the nature of markets and spontaneous orders. Nowhere is this more evident than in Lessig's repeated and incorrect use of the phrase "invisible hand." He claims that the "invisible hand" will produce an Internet built around technology that enables identification of users. Why? Because corporations demand it, he says. Corporate power will allegedly lead to corporate control and must be balanced by government power. For example, Lessig concludes his discussion of privacy by lamenting that "Individuals may want cyberspace to protect their privacy, but what would push cyberspace to build in the necessary architecture? Not the market. The power of commerce is

not behind any such change. Here, the invisible hand would really be invisible."

Lessig just doesn't get it. Markets don't work by an invisible hand of corporate control guiding production and consumption decisions. As Adam Smith observed, the outcomes from markets make it *appear* as if the markets were guided by an invisible hand. The miracle is that there is stuff I want at a price I can afford at the grocery store down the street. That's amazing—it's something the immense staff of planners in the Soviet Union never managed, even using the visible hand of state control.

Markets work because they are a means of aggregating local knowledge at very low cost. Markets tell me what I need to know about the opportunity cost of using resources and about the tastes and preferences of those I deal with in the market (how much they will pay for what I am selling, for example.) The reason markets work is not that corporations decide what we will buy (remember "new Coke"?). And it is not because powerful people want them to. Markets work because entrepreneurs spot opportunities to get rich.

In Lessig's markets, however, there are no entrepreneurs. No one enters the market for computer code or for goods and services to offer consumers privacy and books at a discount. No one enters the market for anonymous communications. No one sets up a Web site based in the Cayman Islands to process anonymous financial transactions. Considering the record of entrepreneurs in reaping rewards from the Internet, his claim is astonishingly erroneous.

Consumers have gone AWOL in Lessig's world as well. In Lessig's markets, consumers either have been bought off with corporate loyalty programs or lack "real" choices. They are easily bribed to reveal information about themselves and against their interests by frequent flyer programs and the like. Consumers surrender vital information either without realizing it or for a pittance. According to Lessig, they need protection from the greedy corporations seeking information.

What Lessig fails to see is that information about most of us as individuals is not worth very much. Information about a whole bunch

of us, on the other hand, can be worth quite a bit. When entrepreneurs spot opportunities to gather and sell information, a new market is born. In a free market system, the price entrepreneurs pay for individual pieces is irrelevant, so long as people freely agreed to accept the payments.

Like many in academia, and on the left more generally, Lessig is profoundly suspicious of markets. He is willing to concede their ability to produce goods and services, but he doesn't trust the judgments of individuals about what goods and services to buy. Consumers certainly don't seem to be buying nearly as much privacy as Lessig thinks they should, for example. But if individuals make systematic mistakes, mistakes that can be understood by Lessig, then we don't really need markets to coordinate activities—we need Lessig! Perhaps that's why Judge Jackson wanted his counsel in the Microsoft antitrust case. Unfortunately for "Third Way" statisticians like Lessig, people around the world have been rejecting planners' advice across the board.

Despite its insights into the world of computer code and the Internet, the book falls short of its ambitious goals. It does so because the author prefers state control to the spontaneous order of the free market. Nonetheless, the book is important and should be read by those concerned with preserving liberty both in and out of cyberspace. □

Andrew Morriss, a contributing editor of Ideas on Liberty, is associate dean for academic affairs at Case Western Reserve University School of Law in Cleveland.

Our Founders Knew This Well

by Walter E. Williams

Hoover Press • 1999 • 278 pages

• \$18.95 paperback

Reviewed by William H. Peterson

Statist "liberals," take cover. Your sacred Scows are fair game in this hard-hitting work by a witty, insightful, and even radical hunter of wrongheaded conventional wisdom

somehow mesmerizing the mainline media, clergy, Congress, academe, and other purveyors of mulish political correctness.

Did I say Congress? Well, hear the author, professor of economics at George Mason University and nationally syndicated columnist—some of whose recent columns make up this work—on the vexing subject of unconstitutional activity by Congress: “Today, little that Congress does is authorized by our Constitution. Even a casual observer would conclude that Congress has exceeded its authority by a wide margin.”

Walter Williams notes that what Congress may do is bounded by the Constitution, in particular by Article I, Section 8, which details the purposes for which Congress is permitted to tax and spend money. Yet despite the fact that the oath of office taken by each member of Congress specifies upholding that Constitution, some two-thirds of the budget is expended on education, housing, farm and corporate subsidies, Social Security, and various other domestic and foreign welfare programs that lack constitutional sanction.

Those outlays not only lack constitutional authority, says Williams, they run into overt interventionism—improper intrusion into private or nonfederal matters. And virtually all of them incur the law of unintended consequences, making matters worse.

Congress and the Supreme Court take refuge in the “general welfare” clause of Article I. But Williams cites James Madison, the acknowledged architect of the Constitution, as saying: “I cannot undertake to lay my finger on that article in the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents. . . . With respect to the words ‘general welfare,’ I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators.”

Nevertheless, unconstitutional laws and outlays go on. Why? Williams blames Congress; but he also faults the American people

who, though seduced, toast what they perceive to be “free money,” free lunches, free schools, free highways, and so on—as they view Uncle Sam as Santa Claus. Do the recipients of federal largess care that their goodies are ill-gotten? Of course not.

While many of his selections deal with government and that classic oxymoron, political science, Williams also applies his economic scalpel to such matters as race and sex discrimination, health and the environment, lower and higher education, and various international issues.

Take race discrimination. Though he himself came out of a Philadelphia public housing project, Williams holds that most of the social pathology that characterizes the black community today has little to do with discrimination. When he was young, black neighborhoods were safer, had greater family stability, more labor force participation, more upward mobility, and a lot less illegitimacy. Now, after generations of federal programs, those neighborhoods are known for fraudulent education, rampant crime, family breakdown, high illegitimacy—factors surely transcending rank race “discrimination.”

Or consider sex discrimination. Williams wonders about the notion of physical equality between the sexes. He questions the wisdom of women serving as firefighters, police officers, or military combatants, all under reduced performance standards, all in places where physical strength, aggressiveness, and other male characteristics are important. He cites the findings that at Parris Island 45 percent of female Marines couldn’t heave a hand grenade far enough to avoid blowing themselves up and that U.S. Navy Lieutenant Kara Hultgreen, killed in trying to land her F-14 on an aircraft carrier at sea, had been given “preferential” flight training standards. Such double standards not only hurt morale but are, says Williams, “life-threatening.” Point made.

Another point made is that America’s prohibitionists wage a War on Tobacco using official propaganda to dupe the nation into accepting more and more control over what ought to be free choices of a free people. Tobacco firms are hence hit by outrageous

tort liabilities that boomerang against, among others, the smokers themselves, most of whom are in low-income brackets and have to pay for those liabilities with steeper prices for cigarettes.

Curiously, cigarette packages clearly carry a warning from the Surgeon General that smoking is dangerous to health. So Williams asks, in blaming tobacco firms, whatever happened to personal responsibility as a value in America? He provides an apt quotation on personal responsibility from philosopher-lawyer Lysander Spooner: "Each man shall

do, towards every other, all that justice requires him to do; as, for example, that he shall pay his debts, that he shall return borrowed or stolen property to its owner, and that he shall make reparation for any injury he may have done to the person or property of another." Not bad.

All in all, this book adds up to a healthy dose of uncommon common sense. ☐

Dr. Peterson, adjunct scholar at the Heritage Foundation in Washington, is Distinguished Lundy Professor Emeritus of Business Philosophy at Campbell University in North Carolina.

The Market Economy: A Reader

edited by James L. Doti & Dwight R. Lee

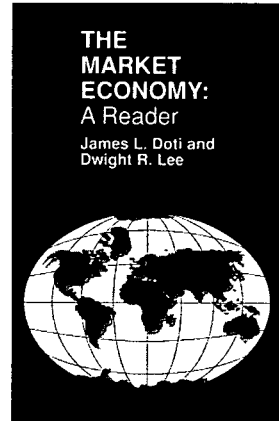
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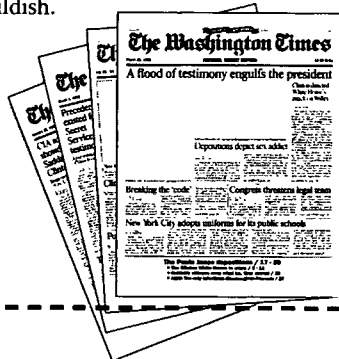


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IDEAS ON LIBERTY

AUGUST 2000

OSHA at Home

About 16 million employees do some work at home for their employers, and that number is growing rapidly. Increasingly sophisticated computers, software, faxes, and modems have made telecommuting a realistic and desirable option for many employers and their workers.

Late last year Richard Fairfax, the Occupational Safety and Health Administration's director of compliance, issued an advisory letter stating that employers are just as responsible for the safety and health of employees who work in their homes as they are for employees who work on company premises. OSHA personnel had been working on this letter for two years. If implemented, the advisory could mean that such employees would be subject to unannounced OSHA inspections of such things as lighting levels, doorway dimensions, bathroom facilities, storage of household chemicals, and of whether desks, chairs, and other equipment were conducive to employee safety.

We have been lulled into accepting many governmental intrusions into our privacy, such as government's annual inspection of our incomes, but it seems we aren't yet ready to be coerced into opening our homes to OSHA. To the chagrin of Mr. Fairfax, his letter caused a maelstrom of protest. On January 4 Secretary of Labor Alexis Herman forced OSHA to retreat for now. Seeing an opportunity for

political gain, Peter Hoekstra, the head of the House subcommittee responsible for oversight of OSHA, scheduled a hearing to publicize this extraordinary blunder.

On February 25 the head of OSHA issued a directive that explicitly exempts "home offices," but not "other home-based worksites," from inspections. Lest you think this is a victory for privacy, remember that bureaucrats always seek to expand their empires and this is merely an agency directive. OSHA bureaucrats are unlikely to discard two years of work merely because the public doesn't agree with them. In their minds they are anointed to lead, not follow, the public. Any agency directive can be modified, interpreted, and reinterpreted to fit the moment.

The directive states, "Employers are responsible in home worksites for hazards caused by materials, equipment, or work processes which the employer provides or requires to be used in an employee's home." Inasmuch as OSHA is currently promulgating an ergonomics rule ostensibly to protect workers against "work-related musculoskeletal disorders" such as carpal tunnel syndrome, it isn't hard to imagine that OSHA could soon classify computers as hazardous equipment. Since computers are central to telecommuting, the "home office" inspection exclusion would inevitably break down.

Senator Robert Wagner, author of the National Labor Relations Act (NLRA), coined the phrase "camel's nose under the tent" to characterize his strategy of expanding government regulation little by little until



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conditions were right to finish the job. Inspection of "other home-based worksites" is OSHA's camel's nose. If people are seduced into accepting this idea, inspections of all home worksites will soon follow. If Representative Hoekstra is serious about keeping OSHA out of homes, he should pursue legislation that keeps OSHA out of all home worksites. At the behest of labor unions President Clinton would veto the bill, but he isn't going to occupy the White House much longer. Besides, it would be refreshing to see Congress take a principled stand on something as basic as privacy at home.

The Unions' Stake

Union officials are delighted at the prospect of OSHA inspections of home worksites because they oppose most telecommuting. This episode has created a cloud of uncertainty concerning employer liability for work-related injuries and health problems at home. In response, fewer employers will permit telecommuting and many of those who already do will do less of it.

Telecommuting is anathema to unions for at least two reasons. First, at-home workers are difficult to organize. NLRA makes it almost impossible for workers to avoid union organizers on employers' premises, but workers are still free to exclude union organizers from their homes. Second, telecommuting is an example of mutually beneficial arrangements between individual workers and employers. Unions depend on the myth that labor and capital are natural class enemies. If more and more workers come to recognize that mutually beneficial deals can be worked out without unions, they may come to doubt that unions are necessary at all.

Labor unions were principal proponents of the original Occupational Safety and Health Act in 1970. They argued that workers needed government protection from workplace fatalities and injuries because greedy capitalists would otherwise sacrifice the well-being of workers on the altar of profits. It didn't matter to them then that workplace fatalities had been steadily declining since 1937 because of improvements in safety technology and

changes in the occupational distribution of workers. Nor does it matter to them now that OSHA has had no measurable effect on that continued decline. To unions OSHA is not about worker safety and health. It is about preventing union-free workplaces from gaining any competitive advantages over union-impaired ones.

Employers have an interest in making work processes and environments safer and healthier for workers. First, employers with good records pay lower workers' compensation premiums than those with poor records. Second, employees are willing to work for less in safe and healthy work environments than in unsafe and unhealthy ones. In 1993 total workers' compensation premiums amounted to \$55 billion and wage premiums received by workers in risky jobs amounted to \$200 billion. Employers are eager to minimize these expenditures while still getting their work done.

Unionized firms are typically impaired in their ability to discover and implement improvements in work processes and environments. It is an unfair labor practice for an employer unilaterally to implement such changes. All work conditions and processes are stipulated in formal contracts. Experimentation is impossible without the consent of union officials, who rarely give it, especially when any workers may feel threatened by changes in the status quo.

Command-and-control regulation stifles entrepreneurial discovery of better ways to do things. Unions count on OSHA to impose workplace regulations on union-free firms that will make it as difficult for them to innovate as it is for union-impaired firms to innovate. If it weren't for OSHA, it is likely that at least some union-free firms would have better worker safety and health records than they do. Without OSHA, the uninterrupted decline in workplace fatalities since 1937 may have accelerated after 1970.

In short, far from allowing OSHA to extend its reach into private homes, Congress ought to abolish the agency. Its official annual budget is now \$348 million, and it imposes billions more in compliance costs throughout the economy. In return it confers zero or negative general benefits. □