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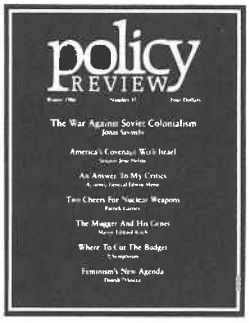

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POWER TO THE PEOPLE

A Conservative Vision for Welfare

STUART M. BUTLER

Lyndon Johnson's War on Poverty has been on the defensive in recent years. Programs such as food stamps, Medicaid, and Aid to Families with Dependent Children have come under increasing criticism, and were threatened by proposed funding cutbacks during the early part of the Reagan Administration. But more important, the architects and supporters of the Great Society are suffering from a severe crisis of confidence. In his recent television documentary, "The Vanishing Black Family," Johnson's press secretary Bill Moyers voiced the concern of many liberals that the welfare state may have contributed to the destructive sense of total dependency that pervades many black communities. Anguished articles in journals like *The New Republic* discuss potential solutions to poverty, such as workfare, that were anathema to liberals less than 10 years ago. Indeed, the angry response of most liberals to Charles Murray's *Losing Ground* was a sign that he had touched a raw nerve—the idea that the War on Poverty might, on balance, actually have aggravated the trend of poverty in the United States.

Yet the basic structure of the Great Society is still firmly intact. Despite the Stockman axe, virtually no program has been eliminated and most are still enjoying healthy growth. To be sure, many reforms instituted during the Reagan Administration have improved the targeting of federal efforts, enabling more money to reach those genuinely in need. And both responsibilities and discretion for implementing a number of programs have been shifted in some degree to the states. But the system as such has not changed significantly. As *The Wall Street Journal* headlined an October 21, 1985, article reviewing 20 years of the Great Society, "Reagan's Record: Welfare Statism Is Intact." Food stamps still exist, Head Start and other federal education programs flourish, Medicaid and Medicare continue to grow. Indeed, Ronald Reagan has just abandoned two decades of criticism of Medicare and embraced a proposal to expand the health program without any ceiling on the federal commitment. Conservatives and liberals still fight on Johnson's playing field, and they are merely battling between the 45-yard lines.

Why have conservatives been unable to shift the terms of the debate, despite the clear failure of the Great Society to achieve its primary goal, the eradication of poverty in America? At the risk of some overgeneralization, it is because we have failed to do two things. First, we have pointed to the ineffectiveness of the welfare system, but we have not explained in clear terms why the Great Society welfare state could not, and will not ever, succeed in eliminating poverty. Endless talk of welfare queens, eliminating fraud and cheats, and the folly of throwing money at problems may make good rhetoric, but it is not an explanation. At the end of the day, such talk only convinces moderate and liberal Americans that conservatives really do not care about the poor. It does not explain why the good intentions of the Great Society were not enough.

The second failure of conservatives has been that we have not painted a clear picture of what we would put in the place of today's welfare state. Johnson discussed in detail his vision of America, and it captured people's imagination. By contrast, Ronald Reagan has presented no such vision of welfare. We know what he thinks of taxes and government spending, of space defenses and of the Russians. The Reagan Doctrine may be fuzzy at the edges after Iran, but it is an idea ordinary Americans can grasp and support. But what of welfare? What of society's obligations to the poor and the role of government in discharging those obligations? Other than vague appeals to philanthropy and spongy phrases such as "public-private partnerships," there is virtual silence. It took Reagan five years even to create a task force to study welfare. Is it any wonder that most Americans, who continue to express the belief that government has some responsibility for welfare, prefer to retain Johnson's deficient welfare state than trust conservatives to replace it with the unknown?

Thus, if conservatives are ever to capture the initiative in the debate on welfare, and have the opportunity to institute policies that will achieve Johnson's unmet goal of victory over poverty, we must concentrate on our failure both to explain why the road from the 1960s has led us nowhere, and to chart out a new course.

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Failings of the Welfare State

There are many deficiencies in the welfare system. Liberals would admit that, of course, saying that it is true of any program that is born in the chaos of American democracy. But three of these deficiencies go much deeper than the normal legislative birthmarks. They are structural and they have made it impossible for the War on Poverty to be won.

The first of these is that the current system, established by Johnson, sees welfare as only a one-way obligation. The underlying philosophy is that we should help the poor, and that by virtue of being poor, those Americans who are impoverished have an automatic right to expect a certain level of assistance from the rest of society. This is in stark contrast to the traditional view of welfare as a mutual obligation, in which the duty of society to help those in need was balanced by a reciprocal duty of the beneficiary to use that aid, at least in part, to end his or her state of dependence. In a misplaced effort to protect dignity and alleged rights, the modern notion of "entitlement" places no such obligation on the beneficiary. This has led to laws that permit able-bodied Americans to choose not to support themselves and requires other Americans to work to support them.

The community action agencies of the Great Society gave power to service providers, not to the poor people themselves.

Most important, the one-sided view of obligation has in many poor communities created an ethos which effectively imprisons the poor. When a young man can "earn" more on welfare than from an entry-level job, his neighbor can be forgiven for thinking of himself as a sucker. And when assistance is generous to help those who are unable to improve their situation, but benefits are rapidly withdrawn when progress is made, dependency is encouraged. With the best of intentions, the Great Society told poor Americans that it was dignified to be on welfare and that they were entitled to it. The result was an acceptance of dependency by the poor themselves, making escape from poverty impossible for millions of Americans.

The second structural deficiency of the welfare system is that it is highly centralized, reflecting the assumption of its architects that a unified system with national programs will deal with poverty more effectively than "fragmented" local or state efforts. To the poverty warriors of the 1960s, this seemed quite obvious. Indeed, given the disgraceful conduct of many southern states, it was difficult for any reasonable person to make the case that the interests of, say, poor black Americans would be better protected by Atlanta, Richmond, or Montgomery than by Washington.

But centralization has its price. Most Americans recognize that a centralized economy will consistently be outperformed by a decentralized economy. Decentralization allows adjustment for local factors, and it encourages innovation and healthy experimentation. By contrast, centralization breeds inflexibility and inhibits economic growth. But fewer Americans seem to recognize that a centralized welfare system exhibits similar traits. To be manageable, national welfare programs must have eligibility criteria and assistance packages that are as simple and universal as possible. But that requirement makes it difficult to deal with the circumstances of an individual or community. So welfare becomes a rigid set of rules and entitlements, not a flexible response to the needs of an individual. And centralization makes it harder to find better approaches. The less opportunity there is for local discretion, the less chance there is for fresh ideas to be given a trial.

The third problem concerns power. The architects of the Great Society maintained that programs could be adapted to individual and local circumstances, and Americans assured proper access to help when they needed it, if the poor were given the opportunity directly to influence policy. They assumed the best vehicles for such empowerment were political in nature. The Community Action Program in particular was designed to enable poor communities to coordinate poverty programs. With the exception of food stamps, a voucher program, the Johnson White House shunned the idea of empowering poor Americans in the direct economic sense of enabling them to make choices between alternative suppliers of services, like middle class American consumers. They were given the right to influence through acceptable representatives, not the right to choose for themselves.

Power to the Bureaucrat

The result of this decision was the empowerment of suppliers of services to the poor, and political activists representing the poor, rather than the poor themselves. The community action agencies created under the Great Society were to ensure "maximum feasible participation" by the poor, not control by them. And in practice such political vehicles were tailor-made for well-funded lobbies established by professional social welfare organizations. Individual social workers or teachers, of course, more often than not have the interests of their clients or students in mind. But the political process does not tend to be sensitive to individuals; it listens to the representatives of organized blocs. The result, says neighborhood scholar Robert Woodson, has been the empowerment not of the poor but of a "social welfare-poverty complex" aimed primarily at securing federal funding for service providers. Thus low-income parents do not have the decisive influence on education for the poor that teachers do. Recipients of welfare services do not determine what services they should receive and from whom; it is social workers who make those choices. In a political process highly sensitive to pressure from organized groups, the shape of welfare policy increasingly has come to reflect the interests of suppliers of welfare services, not the consumers.

That is why we have public high schools in America where the children cannot read and yet the teachers never have to face competency tests; it is why we have squalid public housing projects and welfare hotels with prosperous

managers; and it is why many adoption services incarcerate children in institutions, drawing thousands of dollars each year in management fees, rather than place a child with a family and lose their government grant.

These three characteristics of the modern American welfare state—a one-sided notion of obligation, centralization, and a power structure favoring service providers over service consumers—make it impossible for the system to tackle dependency, to improve and be flexible, or to be efficient and attuned to the needs of the poor. In this sense the poor are indeed victimized by "the system," as many liberals claim: it is just that liberals have been pointing their fingers at the wrong system.

An alternative, conservative system of welfare must be built on a far sturdier foundation. One cornerstone of this foundation must be a sound moral basis of welfare; a clear idea, in other words, of the degree and nature of society's obligations. Another must be a hard-headed view of the nature of Washington politics. Idealism must be tempered by realism. At another corner must be a strategy to link welfare to steps taken by a beneficiary to improve his or her condition. And finally there must be a check on spending; welfare should not simply be a money machine.

This foundation for a conservative approach to welfare suggests a set of principles which would lead to a very different system from that created in the 1960s.

The Idea of Mutual Obligation

One mark of a civilized society is that individuals feel a moral obligation to help their neighbors in distress. No matter what their political persuasion, few would disagree. But whereas liberals tend to see this as a social obligation, with government as the appropriate vehicle for discharging much of that responsibility, conservatives instead see it as individual in nature. According to the conservative view, residents of a poor community are not freed of their obligation simply because there are richer people nearby. To the extent that they can help their neighbors, they should do so. More affluent individuals should feel compelled to provide assistance to the less fortunate, but that does not mean they are the only ones who should be called upon.

This sense of obligation, moreover, is a two-way street. An individual receiving help also has an obligation to use that assistance to improve his situation, to the extent that is possible. Thus it is reasonable to insist on some constructive action, such as training or work, as a condition for help. In this sense conservatives believe there is no simple entitlement to welfare.

That has led most conservatives, and an increasing number of liberals, to endorse the concept of workfare, arguing that performing work in exchange for benefits drives home the point that welfare is not, one might say, to be considered a free lunch. But conservatives should be cautious about the born-again liberal embrace of workfare. When 49 out of 50 governors can agree to a workfare proposal, as they did in February, it is wise to look more closely at what they were signing. In fact to many liberals "workfare" seems to mean little more that a useful term to persuade the Reagan Administration to abandon its federalism policy and instead pour federal dollars into education, job training, and day care. Not surprisingly, the workfare consensus among the governors was predicated upon $2 billion in new money being wrung out of Washington. No doubt there should be greater efforts to improve education and training, but that is a separate issue to workfare. Workfare means insisting that recipients of welfare perform whatever work they can. Conservatives should beware of workfare imitations.

The poor are victimized by "the system," as many liberals claim: it is just that liberals have been pointing their fingers at the wrong system.

A welfare system also should not permit individuals to shirk their responsibilities to their dependents. When a teen-aged boy fathers a child and then refuses to provide for it, or is unable to do so for lack of a job, he should not be able to expect society to take care of his child. We may feel obligated to help the innocent child, but we have every right to force the parents to provide as much assistance as they can. If the father is employed, tough child support laws should extract payment. If he has no job, then he should be required to perform public-sector work in return for aid to his children. If he refuses to do that, he should be jailed.

Parents, Take Charge

Similarly, it is time to revive the traditional idea that parents are responsible for the actions of their children. Recently, the state of Wisconsin enacted legislation requiring the parents of any teen-ager who in turn becomes a parent to contribute towards any welfare assistance provided by the state. Despite charges of unfairness from many grandparents, the law reaffirms the fundamental principle that it is the family that should have the first responsibility for its members. Help from society as a whole should not be the first resort.

Society also is under no obligation to support self-destructive behavior. If approached on the street for money by a homeless alcoholic, most Americans would probably hand over some loose change out of embarrassment. But it could hardly be said that they should feel a duty to finance drinking binges that will only aggravate his problems. The most effective form of assistance would not be that desired by the alcoholic: indeed it would probably be bitterly resented by him.

Similarly, our concern for an innocent child should not lead us to accept that a poor, unmarried teen-aged mother has the right to live at our expense in whatever circumstances she desires. The simple fact is that when welfare enables such a mother to move away from her family and set up an "independent" household, she is almost certainly condemning herself and her child to permanent unemployment and welfare dependency. The mother has no right to expect society to foot the bill for her desire to live away

from home. On the contrary, society has the right to link its assistance to that mother with requirements as to the lifestyle of the mother—because the primary obligation is to the child.

Conservatives need to be cautious about this principle, however. The provider of support does not have carte blanche to micromanage the life of the beneficiary. Not only would that be an unreasonable interference, but in many instances it would not lead to better results. Both liberals and conservatives need to realize that middle-class philanthropists and government officials are often far less aware of what is in the interests of the poor than are the poor themselves. So while we should not see welfare as unrestricted support for whatever lifestyle the beneficiary might choose, we must also be prepared to concede that, just because a person needs our help, it does not mean that we are necessarily a better judge of his or her best interests.

When a teen-aged boy fathers a child he should be expected to supply child support. If he has no job, then he should be required to perform public-sector work in return for aid to his children. If he refuses to do that, he should be jailed.

The Importance of Decentralization

The second key ingredient of a conservative welfare system is decentralization. This element is important for three reasons. In the first place, the principle that individuals should take first responsibility for other family members and neighbors implies that the initiative for welfare action should come at the local level, through families, churches, associations, and other bodies. Sociologists Peter Berger and Richard Neuhaus have described such institutions as "mediating structures" which act as a critically important bridge between the individual and the larger society. The fundamental structure, of course, is the family, and it is family members who should feel the strongest obligation to help another in need. Beyond the family, neighbors in a community should take first responsibility for the welfare needs of an individual. Then just as neighbor should feel an obligation to help neighbor, so neighborhood should help neighborhood. Like a pyramid, successively higher levels of society, through both private and public institutions, should provide backing for the efforts of lower levels.

This view of community, incidentally, is very different from that enshrined in the Great Society. An explicit goal of Johnson was to create a "national" community in which the poor could become an integral part of the nation and all Americans would feel obligation to each other, via government. Yet this romantic version of community has proved to be hollow in practice. The fact is that Americans may hold hands across the nation now and again to raise money for the needy, but these cases of national togetherness tend to be fleeting. To the great majority of Americans, community is an intensely local concept, and that is a strength that can be built upon. But to try to elicit among Americans the same feelings of commitment to some vague idea of a national community, as Johnson strove to do, is an almost impossible task.

Experience indicates that mediating structures are highly effective in addressing needs and problems. In particular, the traditional family is a bulwark against poverty. The scourge of child poverty is concentrated in single-parent families, not two-parent families. And welfare policies that accept, or even encourage, the single-parent status of low-income families merely exacerbate poverty in America.

Local institutions tend to have the flexibility and knowledge of circumstances, if not always the means, to deal with local needs. This general observation does not exclude poor neighborhoods. Indeed, as the dramatic successes of many neighborhood organizations make clear, local initiatives often are the only approaches that show results in the most difficult situations. But if a welfare system is founded on local strategies, it is going to differ from place to place. A "national" system cannot, therefore, have the same rules and benefits all over the country. It may pursue an agreed set of goals, but it will and should be a patchwork of many differing strategies.

In addition, decentralization and diversity are needed if we are continuously to improve policy. The liberal goal of a unified welfare system might bring some areas closer to the median, but it can only do so by reducing the opportunity for experimentation that comes with diversity. Diversity does not mean that every experiment will succeed, of course, but it limits the extent of a failure and increases the chances of finding effective new approaches that then can be incorporated widely.

The New South

Yet pure decentralization is not sufficent. The driving force behind the Great Society was the plain fact that certain states and communities either could not or would not address the welfare needs of their residents. The southern states were especially delinquent on both counts. Yet the South has changed. Twenty years ago, officials in Selma, Alabama, beat peaceful civil rights marchers with clubs; today the city celebrates Martin Luther King's birthday as a holiday. And the states as institutions have changed considerably over the last two decades, as conservative advocates of decentralization point out. As rather fewer conservatives admit, of course, this is in large part because of voting rules and civil rights legislation generally opposed by conservatives during the 1960s. Initiatives and innovation now tend to come from states, even southern states, which are far more democratic and better managed than in Johnson's time.

Nevertheless, it is still not possible to depend on all

states and communities to live up to their obligations, nor can we assume that all local and state governments have the means to give necessary support to communities. So conservatives have to accept that decentralization must be balanced by broad national standards for welfare policy. These objectives cannot be deduced from first principles, as some conservatives believe. Rather, they are a reflection of a national consensus regarding what are deemed to be the necessities of life. That consensus shifts over time. For instance, polls suggest that most Americans today feel that everyone should have access to standards of housing, nutrition, and medical care which would have seemed very generous a century ago—and to most foreigners today. On the other hand, Americans still retain their traditional view that society's obligations to the able-bodied during hard times are very different from its responsibilities to children or the handicapped and infirm. As an individual, a conservative may or may not agree with the current consensus; as a policymaker, he must accept that it is the benchmark for a set of national welfare goals. On the other hand, it should be remembered that goals can be in conflict. Americans tend to be generous when asked what government should spend on social programs, yet at the same time wish to see lower taxes and smaller deficits. We need to strike a balance between such goals. In so doing, we need to beware cocktail-circuit conservatives such as George Will, who never saw a social welfare program he did not like, who try to tell us that all policy contradictions should be resolved in favor of a growth in the paternalist state.

Clearly the quest for decentralization combined with national welfare goals presents a dilemma for conservatives. How can we have national goals without crushing state and local initiatives? But how can you have decentralization without unacceptable gaps?

The solution may be to reinterpret the whole concept of a federal "safety net." Currently this notion implies that

Why have conservatives been unable to shift the terms of the welfare debate, despite the clear failure of the Great Society to achieve its primary goal of eradicating poverty?

Americans should have access to a set of programs, provided directly or indirectly by the federal government. An alternative would be to establish a system of basic programs intended to reach broad goals, but with funding and management responsibilities assigned to each level of government. This would be a safety net in the sense that it would apply if states did not request that another strategy be undertaken. For the reasons mentioned earlier, it is unlikely that such a boilerplate system would be the best fit in many cases. So states would be permitted to apply for waivers from this "standard" intergovernmental program, so that they could seek to achieve the same goals with another approach providing that no additional federal money was required.

Giving vouchers instead of in-kind services turns poor people into powerful consumers and forces service providers to pay close attention to the choices of the poor, less to lobbying for contracts.

This technique has already been used with some success in the case of Medicaid. States are required to provide access to health care for eligible individuals, but if they feel they can meet the requirements with a creative and less expensive way of delivering care, they can apply to the federal government for a waiver from the usual federal rules. Many have done so since the waiver system was first instituted in 1982. This has led to a wave of innovation, such as the use of physician "case managers," who must agree to all treatment decisions for an individual and whose fees are linked to the savings achieved.

Economic Empowerment for the Poor

An efficient yet sensitive welfare system will never be achieved until a mechanism can be found to break the lockhold of professional service providers, who have a direct interest in maximizing expenditure rather than solving problems. In a conservative welfare system, this would be achieved by taking the rallying cry of the 1960s—"empowerment"—and giving it real meaning. The Great Society saw empowerment as a political instrument to obtain welfare rights. In practice the strategy gave power to service organizations and spokesmen for the poor, not the poor themselves. But in a conservative system, the balance of power could be shifted to the poor themselves by creative uses of privatization.

Giving vouchers instead of in-kind services, for instance, turns poor people into powerful consumers and forces service providers to pay close attention to the choices of the poor, less to lobbying for contracts. Cashing out all programs and giving that to the poor would also have that effect, of course, and some conservatives support that position. But that could lead to a violation of the principle that society should not be expected to pay for self-destructive actions. Vouchers are a half-way position. They require the recipient to use assistance for broad purposes, such as food, housing, or remedial education, but they give the recipient wide choice in deciding who shall provide them with what services. Thus vouchers recognize that consumer choice in an open market is likely to achieve the best services at the lowest cost, but also that poor people need financial support to become consumers. Thus,

whereas the Great Society approach was to organize the poor in an effort to make sure that money flowed down to the right places—only to have it diverted in many instances—the conservative voucher strategy is a "trickle up" approach which gives direct financial power to the poor.

The extreme opposition to vouchers from most service provider organizations, such as the teacher unions, indicates just how potent they could be in reducing the power of those organizations, which has proved to be a major flaw of the current welfare system. Another effective technique would be to encourage governments at all levels to contract with the poor themselves to provide services in a community. That would uphold the principle that neighbors should help neighbors, and it has proved to be remarkably successful in terms of efficiency and effectiveness. The growing public housing tenant management movement, for instance, has brought about dramatic improvements in many projects, while cutting maintenance costs and welfare expenditures. It achieves results because the tenant managers have a direct interest in good services and, more important, in tackling the social problems that lead to trouble in projects.

The conservative voucher strategy is a "trickle up" approach which gives direct financial power to the poor.

National Goals and State Experiments

These principles and strategies translate into a reform agenda for welfare which has simple themes, like the Great Society, but does not contain the inherent flaws of Johnson's system. At its core would be a reformulation of the role of federalism in attacking welfare. Essentially the system would have three components.

First, there would be national goals for welfare assistance, based on the consensus of society. In many instances, these goals would be the preambles of legislation already in place, such as access to reasonable housing or education of a certain standard. But these would not be goals measured in cash. To do so would ignore both local differences and the fact that there is very little connection between effective welfare policy and the amount spent on welfare.

Secondly, states would effectively be required to meet these broad goals through mandates attached to federal grants. This would cause no small amount of heartburn to most conservatives, who long have opposed federal mandates as interference in state affairs. Nevertheless, if we are to be sure that all states will abide by national objectives, there must be a certain amount of coercive power held in reserve by the federal government. If conservatives are not willing to accept this, with its attendant risks, it is difficult to see how it will ever be possible to persuade the American people to decentralize welfare policy.

The total level of federal support to states would be reduced significantly, on the principle that it is states, not the federal government, which have the primary governmental responsibility to ensure that adequate assistance is available to those in need. Thus the federal "safety net" responsibility would change from a funding to a regulatory function. Combined with this "build down" in general welfare support to the states would be a recognition that the appropriate federal funding role would be to transfer resources from richer states to poorer states, rather than from richer to poorer households within each state.

The net effect of this step would thus be to establish national welfare goals to protect needy individuals, to shift the funding and management responsibility functions to the states, and to establish the federal government as a financial safety net for states rather than individuals.

Thirdly, states would be permitted to apply for waivers from the national mandates. These waivers would allow the states to pursue welfare goals in an alternative manner from that specified in the mandates. The waivers would be granted on two sets of criteria. The first would apply to statewide approaches. The state would be granted a waiver if its proposal appeared to be at least as effective as the existing approach, and if they incorporated strategies to strengthen the family and stimulate other mediating structures, such as by wider use of vouchers and similar steps to empower low-income Americans. A formal binding contract between the federal and state government would be required in return for the waiver. In the second case, waivers would be granted for more radical welfare experiments on a limited scale and duration. These small-scale experiments would be intended to push the frontiers of welfare policy, to test controversial ideas that might have wider application if successful.

Conservative Great Society

This system would mark a significant change in the direction of American welfare policy. It would move the responsibility for welfare down the federal pyramid, and it would reactivate family and community as agents to attack poverty. And it would begin to tackle dependency by reestablishing the principle of mutual obligation. But it would also incorporate another central principle of conservatism—the idea of gradual, trial-and-error change. The Great Society was set firmly in place by a president who was confident he had found the answer. He was wrong. If we are sensible, conservatives must also admit that although we may be confident about the general principles and strategies needed to combat poverty, nobody can say with certainty what the tactics should be. That is why decentralized experimentation is so critical for eventual success. And that is why a "conservative Great Society," with dozens of new programs and requirements reflecting a confident belief that all the answers are known, is a contradiction in terms. ☎

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Landmarks of Constitutional Interpretation

Seven Lessons in the Rule of Law for Justice Brennan

Charles J. Cooper and Nelson Lund

In a speech to a large audience in New York City, a senior official of the United States Department of Justice said this of the Supreme Court:

> Let us squarely face the fact that today we have two Constitutions. One was drawn and adopted by our forefathers as an instrument of statesmanship and as a general guide to the distribution of powers and the organization of government. . . . The second Constitution is the one adopted from year to year by the judges in their decisions. . . . The due process clause has been the chief means by which the judges have written a new Constitution and imposed it upon the American people.

Criticism such as this is often heard from Attorney General Edwin Meese, and it is regularly scorned in law reviews, editorial pages, and fundraising letters. But the speech from which this passage was excerpted is not by Meese. It was delivered 50 years ago, in March 1937, by Assistant Attorney General Robert H. Jackson, one of the New Deal's foremost legal strategists. He was speaking in defense of President Roosevelt's court-packing plan, which he described as "a moderate and simple plan to recondition the Supreme Court."

"Powerful interests," according to Jackson, "whose causes are lost in election or in Congress, make the Supreme Court their wailing wall," and thus defeat public policy on issues like collective bargaining, wage and hour limitations, unemployment insurance, antitrust measures, and a host of other social and economic reforms. Focusing his criticism on the "substantive due process" theories under which the Supreme Court had turned laissez-faire economics into a constitutional guarantee, Jackson charged that the rules invoked by the Court were rooted not in the Constitution, but in "the reactionary personal views of individual Supreme Court justices." He challenged conservatives to think beyond the moment, "to consider whether their own interests have not been injured by the over-zeal of the Supreme Court in times past and whether far-sighted conservatism does not require some reform within the present constitution."

Roosevelt's court-packing plan failed, but the Supreme Court was "reconditioned" nonetheless. So well, in fact, that four years later Jackson, by then an Associate Justice of the Supreme Court, wrote: "At the moment the Supreme Court is . . . the most liberal of any court of last resort in the land." He was quick to caution, however, that the dispute over the meaning of the Constitution had not been settled:

> The struggle has produced no permanent reconciliation between the principles of representative government and the opposing principle of judicial authority. . . . Another generation may find itself fighting what is essentially the same conflict that we, under Roosevelt, . . . fought before them.

Switched Sides

Now, a half-century later, a new generation of Americans is indeed locked in a similar conflict over the Constitution, even as they celebrate its bicentennial. The parties, however, have switched sides. Conservatives have come to see the evils of judicial activism, though one may suspect that they have been persuaded less by the reasoning of Robert Jackson than by opinions from the likes of Earl Warren and William O. Douglas. Liberals in turn have become the Supreme Court's champions, having grown to regard it over the last 30 years (as Jackson said of conservatives) "as their little House of Lords, as their protection from and veto over the Commons."

The focus of the debate has also changed. Throughout most of our history, no dissent was heard from the view that the Constitution should be interpreted to mean what it was originally intended to mean. All agreed that the

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intentions of those who wrote and ratified the Constitution were to govern its interpretation, although arguments abounded as to what those intentions were. Today, however, the central issue is no longer what certain expansively worded provisions of the Constitution were intended to mean, but whether such provisions have any discernible meaning at all, or if they do, whether that meaning should be applied to contemporary problems. Many admirers of the Supreme Court's landmark constitutional decisions under Chief Justices Warren and Burger not only agree that the constitutional rules applied by the majority in many of those cases were based upon the Justices' personal perceptions of "evolving standards of morality," "deeply embedded cultural values," or some such formless slogan, but they also defend the practice of using such platitudes whenever the Constitution itself will not yield the desired result.

Proponents of this extra-legal view of the role of the judiciary have come to dominate the faculties of the nation's law schools and political science departments, where strange but ephemeral fads have never been unusual. In October 1985, however, the professors were openly joined by no less an authority than the senior member of the Supreme Court itself—Justice William J. Brennan, Jr.—who publicly denounced traditional constitutional interpretation. Attacking this tradition as"arrogance cloaked as humility," Justice Brennan ridiculed those who "pretend that from our vantage we can gauge accurately the intent of the Framers on application of principle to specific, contemporary questions." Further:

> [T]he ultimate question must be, what do the words of the text mean in our time. For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be their measure to the vision of our time.

And what is "their measure to the vision of our time"? Nothing less concrete than "the ideal of libertarian dignity protected through law."

Brennan's Revolution

With or without Justice Brennan's endorsement, this theory should be seen for what it is: a novel and revolutionary departure from the most fundamental principles of our legal tradition. The American Republic was founded upon the political truths that the purpose of government is to secure certain unalienable rights and that a government's just powers are derived from the consent of the governed. The Constitution contains the terms under which the American people have consented to be governed; it therefore must have an enduring meaning, not one that changes all by itself in order to reflect "evolving standards of morality" or some "ideal of libertarian dignity" discerned by the judges, legislators, or bureaucrats of the day. Only because it has a discernible and lasting meaning can we claim that the Constitution is our fundamental law, rather than a license for the will to power of each new generation of federal officials. That is why James Madison gave an early warning against departing from a jurisprudence of original intent:

> I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no security for a consistent and stable, more than for a faithful exercise of its powers.

As Madison knew, and as anyone else can easily discover by reading the Constitution, the amendment procedure specified in Article V was designed to be the mechanism for accommodating "changing circumstances" and "evolving standards of morality." Whatever merit one might find in a proposal to give the judiciary, or some other branch of government, the power to amend the Constitution, no such constitutional provision has been adopted. Article V permits amendments to be made only on the authority of the people through a specified ratification process, not on the authority of the legislature or the executive branch, and certainly not on that of an unaccountable Supreme Court. Unauthorized amendments, masquerading as constitutional "interpretation," may be patiently tolerated by the people for so long as the evil is sufferable. Such sufferance, however, does not imply consent, and the reluctance of the people to right themselves, by abolishing the forms of government to which they are accustomed, should not be confused with an endorsement of any theory that diminishes the Constitution's status as law.

Justice Brennan's theory should be seen for what it is: a revolutionary departure from the most fundamental principles of our legal tradition.

Thus, the task of the judge, or any other responsible government official, is in every case to answer this question: By what rule of law have the people consented to be governed? In a case involving a question of statutory construction, one looks for the rule of law established by the legislature. In constitutional cases, one must determine both the statutory rule of law established by the legislature and the rule of law by which the people have consented to be governed in the Constitution—and that means simply to compare, as Alexander Hamilton put it, "the intention of the people to the intention of their agents."

Roberts' Rebuttal

The classic formulation of this function was provided by Justice Owen Roberts in 1936: "[W]hen an act of Congress is appropriately challenged in the courts as not conforming

to the constitutional mandate the judicial branch of the Government has only one duty—to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former." Today's judicial activists often ridicule this formulation as simplistic, but Justice Roberts essentially was repeating what had been said by such giants as Alexander Hamilton (in *The Federalist)* and Chief Justice John Marshall (in *Marbury v. Madison).*

Neither Madison, Hamilton, Marshall nor Roberts ever pretended that the task of interpretation is always as simple to carry out as it is to describe in principle. To the contrary, they well knew that it can be arduous. Chief Justice Marshall: "Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived." The sources from which aid can be derived in constitutional cases, as in statutory cases, are the law's text, its structure, and when necessary and helpful, its history. In most important cases, an honest attempt to grapple with these sources presents enough puzzles and tedium to challenge the intellectual faculties of the most gifted interpreter. And certainly this task requires more genuine judgment than does staring into the middle distance in search of the "ideal of libertarian dignity."

An honest attempt to grapple with the Constitution's text, its structure, and its history will challenge the faculties of the most gifted interpreter.

But while the process of discerning the intended meaning of a constitutional provision is not mechanical or altogether predictable, neither is it unconstrained. The interpreter, in his every act, must act *in good faith.* This minimal standard requires only that the interpreter actually believe that his interpretation is consonant with the intended meaning of the law he is applying. Professor William Van Alstyne has put it bluntly: "The first obligation of judges of the Supreme Court is merely 'not to lie,' *i.e.,* not to misstate what they do not in fact believe actually to be authorized, allowed, or provided . . . by the Constitution of the United States."

The requirement of good faith in constitutional interpretation permits a wide latitude for honest disagreement, but it is all too confining for today's advocates of judicial activism. As Professor Van Alstyne points out, a survey of the cases makes it hard to avoid the conclusion that some Justices believe that the best interests of the nation at times require that the Constitution knowingly be ignored or evaded by the Court. And indeed, some individual decisions suggest that whole majorities have sometimes been at least temporarily seduced by this view.

Constitutional Whimsy

Roe v. Wade, which fabricated a constitutional right to be free from most state regulations concerning abortion, is probably the most famous decision compelling this sad conclusion, but it is not alone. Others include: *Reynolds v. Sims,* in which the Court concluded that there was something "archaic and outdated," and therefore unconstitutional, about state legislative districts being drawn, as many always had been, on geographic principles similar to those used for the United States Senate; *Shapiro v. Thompson,* in which one-year residency requirements for welfare benefits were struck down as unconstitutional infringements on the right to travel; and *Garcia v. San Antonio Metropolitan Transit Authority,* where the Court found the Tenth Amendment unenforceable and concluded that the states were henceforth to have no judicial recourse against federal intrusions on their constitutional rights.

As some Supreme Court Justices have themselves suggested in various dissenting opinions, these decisions simply cannot be justified as good faith attempts to find and apply the rules of law by which the people consented in the Constitution to be governed. Thus, today's judicial activists are driven to shelter such cases, and to prepare the way for cases yet to come, with the theoretical assertion that the true rule of law established by the Constitution is unknowable and that those who seek after it are arrogant and disingenuous.

The emerging theory of a Constitution composed of quasi-philosophic slogans stands in marked contrast to our older and sounder tradition of constitutional law. This article will seek to demonstrate that it is not impossible, now or ever, to interpret the Constitution through a good faith effort to understand its original and enduring meaning. The demonstration will be conducted, not at the level of abstract theory, but through concrete examples drawn from among the best of our constitutional heritage. That heritage, which comes down to us from all branches of government (not just the judiciary), offers the most vivid confirmation of Robert Jackson's expectation that a return to the Constitution "drawn and adopted by our forefathers" is still possible and is always worth pursuing.

The *Decision of 1789* on Presidential Removal Power
(United States House of Representatives)

Who decides whether a law is constitutional? Almost everyone today would answer immediately, "The courts do." Indeed, this habit has become so ingrained that any public official who publicly disagrees with a Supreme Court decision, or even suggests that an unsettled constitutional question should be addressed otherwise than by extrapolation from previous judicial decisions, risks being charged with undermining the rule of law.

The blurring of the distinction between the rule of law and the rule of judges has led to an atrophy in Congress of the sense and the skills of constitutional interpretation. When a constitutional issue is raised in Congress, it is often only by someone who, opposed to the bill on policy grounds, has sent a staffer looking for additional ammunition to support his attack; and all too often his opponents

will remind him that Congress' job is to pass good laws, leaving to the courts the task of deciding whether those laws are constitutional.

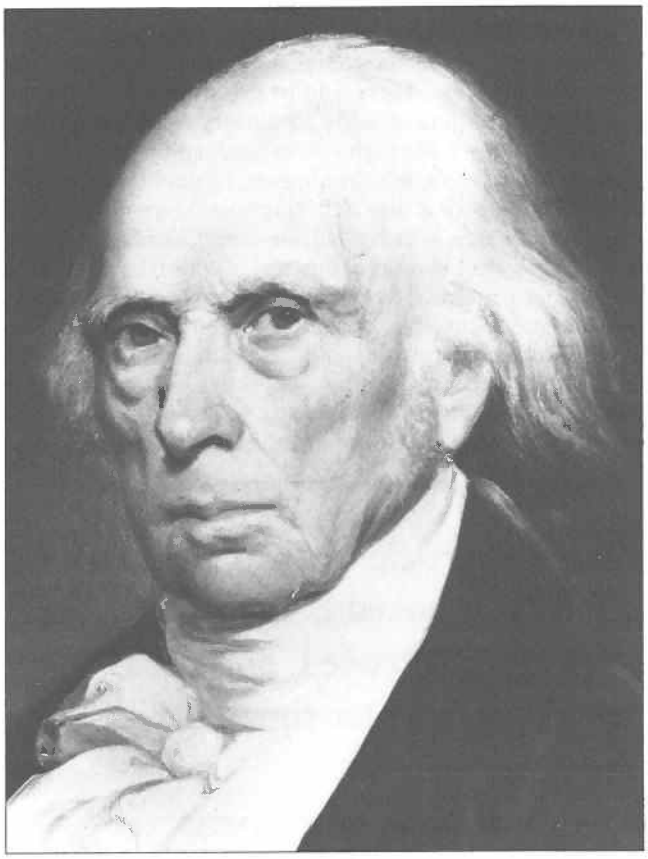
The bad habits we see today began to take root fairly early in our history. But there have been interesting exceptions, one of which occurred in the very first session of the First Congress, while the legislature was considering a bill to establish the institution that we now know as the Department of State. The original bill provided that the head of the Department was "to be removable from office by the President of the United States," which seemed to imply that the power of removal lay with Congress to confer or withhold. This gave rise to a very extended congressional debate, in which the legislators grappled with the Constitution's silence as to who has the authority to determine when officials in the executive branch may be dismissed.

Tie Breaking Vote

The Senate debates were held in secret (though we know that Vice President Adams had to cast a tie-breaking vote), but the recorded proceedings in the House of Representatives display a remarkably thoughtful, complete, and nonpartisan discussion of the issue. Interestingly, two Members urged that Congress should leave constitutional questions to the courts; Elbridge Gerry (whose name inspired the word "gerrymander"), even used the modern term "constitutional umpires" to refer to the judges. At least 15 of the 27 members who spoke during the debates specifically rejected this position, often giving eloquent expression to their belief that they were duty bound to treat their initial decision with the seriousness it would warrant if they knew that the decision would also be final. As we will see, the seriousness with which they deliberated was rewarded by a strong influence on subsequent events.

The substantive question was made difficult primarily by the Constitution's peculiar appointment process, under which high executive branch officials are nominated by the President and subject to confirmation by the Senate. Does that imply that they must be removed in the same way, through the concurrence of the President and the Senate? Or should they be treated like judges (who are also nominated by the President and confirmed by the Senate), and thus removable only through the impeachment process? Perhaps the nature of the appointment process means that it has no implications at all for removal, and that Congress is free to determine what means of removal is appropriate for each office that it creates. Or, finally, does the Constitution's silence leave the power to dismiss subordinates within the "executive power" expressly vested in the President by Article II?

Each of these positions had its advocates in the debate, and each was supported by some reasonable arguments. In the end, the House amended the bill to provide a temporary substitute for the department head "whenever the said principal officer shall be removed from office by the President of the United States." This clearly ratified the view that the power of removal lies within the scope of the President's inherent executive powers. The Senate passed the bill in this form, and President Washington signed it into law. As it happened, the winning position had been championed in the House by Representative James Madison of Virginia, whose arguments, over the long course of debate, had two main foundations.



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Madison: Original Intent Theorist

Separation of Powers

First, the Senate's power to participate in the appointment of executive branch officials should be strictly construed, and not extended by analogy, because the separation of powers among the three branches is among the most basic constitutional principles. The Constitution deviates from this principle only in a few limited instances, and those deviations are properly regarded as special cases that needed to be expressly provided for in the document itself: because the power to dismiss subordinates is a natural executive function, it must lie with the holder of the executive power unless expressly lodged with someone else.

Madison recurred to the principle of the separation of powers in answering the argument that because Congress creates and defines the office, it must have an implied power to determine the nature of the officeholder's tenure. Acknowledging that the argument has a surface plausibility, Madison repeatedly returned to the basic distinction between legislative functions (*e.g.*, creating offices) and executive functions (*e.g.*, choosing and supervising officeholders). This basic distinction was assumed in the Constitution's use of the terms "executive power" and "legislative powers"; the document gives no hint of an intent to authorize implied deviations from the fundamental policy of lodging the two kinds of power in two different branches.

Second, Madison's conclusion was reinforced by the constitutional provision charging the President to "take Care that the Laws be faithfully executed." Because the President could not possibly administer all the laws himself, he must act through his subordinates; without the power to dismiss these subordinates, he could not truly be responsible for what they did. This point helps illuminate a crucial difference, which Madison emphasized, between a Senate veto over appointments and a veto over removals: the former may serve to keep unfit people out of office (an important benefit), but the latter can at best be used to keep particular fit people in office (a much less critical and legitimate concern.) Further, when the Senate rejects a presidential nominee, the President remains free to choose another from the large pool of potential candidates; but if he is prevented from removing a subordinate, he is saddled with that particular person, which can be a much more onerous obstacle in carrying out his duties.

"Lay the article of the Constitution which is invoked beside the statute which is challenged, and decide whether the latter squares with the former."

—Justice Owen Roberts

Madison Prevails

Madison's position prevailed, though the question was difficult enough to allow good arguments to be made for several different views. For present purposes, it is less important to focus on who was right than on how Congress made its decision and what difference it made.

The *Decision of 1789* did not settle the question of the President's removal power once and for all. In subsequent decades, Congress and the President sparred repeatedly over the issue, reaching various compromises at various times. Although the Supreme Court discussed the question in a number of opinions beginning as early as 1803, it was not until the case of *Myers v. United States*, in 1926, that the Court attempted a definitive resolution of the issue.

The *Myers* opinion was written by Chief Justice Taft, himself a former President, and it concluded—largely on the basis of Madison's arguments—that the removal of executive branch officials is an inherently executive function. Courts frequently examine legislative precedents, especially those from early Congresses, for aid in trying to ascertain the original intent underlying ambiguous constitutional provisions. Chief Justice Taft's opinion was nonetheless extraordinary. He used the analysis developed in the First Congress as the linchpin of the Court's decision, and he appeared to give the actual congressional decision almost dispositive interpretive weight. This is a fitting tribute to the extremely careful and thorough manner in which the House had explored a question to which there was not an easily apparent answer.

If the First Congress had focused less intelligent attention on the constitutional question of removal authority, would the *Myers* case have come out differently? No one can confidently give an affirmative answer. What we can be sure of, however, is that the 1789 debate can still serve as a model for the responsible legislative exercise of constitutional judgment. Courts constantly articulate, and often indulge, what they call a "presumption in favor of the constitutionality of Acts of Congress." If the kind of conscientious constitutional analysis displayed by the First Congress had become the rule rather than the exception, that presumption would be used less frequently to confirm constitutional error, and would deserve to be indulged as often as it is articulated.

The Virginia Report of 1799 *(James Madison)*

Today we remember James Madison mostly as the Father of the Constitution. It is thus worth reminding ourselves that not long after his child was adopted by the country, a number of measures enacted by the national government seemed to threaten the very tyranny about which the Antifederalists had warned, and about which Madison himself had been so eloquently reassuring in the *Federalist Papers*.

The worst of these measures were the infamous Alien and Sedition Acts. The country seemed to be moving toward war with France, and the Adams Administration was extremely concerned both about actual subversion by French agents and more generally about the subversive potential of ideas that had flowed out of the French Revolution. Many Federalists came to believe that the irresponsibility of their domestic political opponents was serving to heighten the danger from abroad. Although the Federalists were not quite united on the issue (John Marshall, for example, publicly opposed his party's position), Congress passed the Alien Act, which gave the President power to deport any aliens he considered dangerous, and the Sedition Act, which made it a crime to write or utter anything that would tend to bring officials of the federal government into disrepute. The first of these statutes was never formally invoked, but the Sedition Act was used vigorously, and exclusively, against the Republican press.

The full Supreme Court never took a case involving the constitutionality of these statutes. But the lower courts (including three of the seven Supreme Court Justices, sitting on circuit duty) held that the Sedition Act was justified by an implied congressional power and that the First Amendment prohibited only prior restraints on the press.

Secret Resistance

Working in secrecy, Thomas Jefferson and James Madison drafted two resolutions of protest, which were adopted by the Virginia and Kentucky legislatures and circulated among the states in 1798. Seven Northern states adopted counter-manifestos condemning the protest the next year. Madison then entered the Virginia legislature,

where he drafted a lengthy committee report defending the Virginia Resolution against the Northern criticism. In early 1800, the Virginia legislature adopted and published his report.

Madison's 1799 committee report is best known for its discussion of the "nullification" question, *i.e.* whether or to what extent individual states have a right to defy the authority of the federal government when they believe that it has exceeded its constitutional bounds. Whether Madison's analysis of the relation between constitutionalism and the right of revolution was correct and prudently expressed has always been a vexed question. But he was surely right to stress that whatever the scope may be of the states' authority to correct a constitutionally errant federal government, a state assembly's protest against perceived transgressions is perfectly appropriate. Indeed, as Madison pointed out, state legislatures have express authority to originate amendments to the Constitution, which implies that they have a right—perhaps a duty—to monitor and help correct any excesses that the federal government may commit.

Madison's attack on the constitutionality of the Sedition Act was divided into two main parts. He began, as every analysis of the constitutionality of a federal statute should begin, by asking whether Congress had been granted authority to legislate on the subject at hand. Since no such authority appears on the face of the Constitution, defenders of the legislation had sought to find it implied. They argued first that the whole "common or unwritten law," which had originated in English judicial decisions and had been further developed in various directions by the individual states, had somehow been incorporated into the federal Constitution.

Appeal to History

Although he regarded this proposition as astonishing, Madison undertook a detailed historical survey as well as a textual analysis of certain technical common law terminology used in the Constitution. As Madison showed, there was no compelling, or even plausible, reason to think that the Framers had silently turned the vast, and in theory comprehensive, English legal tradition into federal law. Equally important, there was every reason to think that they had not. The whole genius of the Constitution, as reflected in its history and text, was to substitute a written constitution and a government of expressly limited legislative powers for the traditional English alternative.

Madison reinforced his analysis of the limited nature of the federal power when he undertook to refute a series of arguments that were somewhat less farfetched. These arguments were based on some of the more general language in the Constitution: the Preamble, the clause empowering Congress to collect taxes and "to pay the Debts and provide for the common Defence and general Welfare," and the clause allowing for such laws as are "necessary and proper" to suppress insurrections. Once again, Madison demonstrated that to read these constitutional provisions to allow anything like the Sedition Act would render the Constitution's specific enumeration of federal powers quite illusory: "It must be wholly immaterial whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means of carrying into execution limited powers."

In the second section of his analysis, Madison turned to the First Amendment, which provides that "Congress shall make no law . . . abridging the freedom of speech or of the press." For Madison, this argument merely supplemented his main point, which was simply that the original Constitution had not granted Congress power to regulate subversive speech. Madison, in fact, had initially opposed the

Who decides whether a law is constitutional? The debates of 1789 illustrate that Congress, too, has a responsibility to exercise constitutional judgment.

inclusion of a Bill of Rights in the Constitution because he feared that it would lead people into the mistaken impression that the federal government was free to exercise any power not denied to them in such a list.

British vs. American Systems

Madison's earlier fears about the potentially misleading nature of a Bill of Rights were to some extent borne out by the defenders of the Sedition Act. They argued that the "freedom of the press" referred to in the First Amendment itself implicitly authorized the Congress to regulate the press in any way not forbidden by the common law. Knowing that the plain words of the document are never quite sufficient to refute this kind of argument, Madison entered into a detailed comparison between the British and American political systems and between various related constitutional provisions. This analysis, together with an equally detailed legislative history of the First Amendment itself, demonstrated that the Framers did not intend their unqualified language as a shorthand reference to the highly qualified English law. There was thus no basis for rejecting the obvious and strict construction of the words of the First Amendment's ban on federal interference with the press: it constitutes "a positive denial to Congress of any power whatever on the subject."

Because Madison regarded his First Amendment argument as supplementing and confirming his principal argument about the generally limited nature of the federal government, he hardly needed to address the contention (so commonplace today) that an "absolutist" reading of the First Amendment would leave us defenseless against a genuinely subversive or dangerous press. In a spirit of completeness, however, he did mention what everyone already knew, that the state governments retained full authority to control the press along with their general responsibility for protecting the lives, liberty, and property of their citizens.

In 1799, Madison had two main reasons for thinking that the Sedition Act was a particularly dangerous usurpa-

tion of authority by the federal government. First, he was convinced that the free circulation of opinion about public officers is an indispensable ingredient of representative self-government. More immediately, he thought that the Sedition Act was designed to affect the outcome of the elections of 1800, in which, of course, he was an interested party. Both of these were legitimate policy concerns, both were given ample attention in the Report, and Madison undoubtedly had both high and low political motives for the urgency and energy with which he attacked the Sedition Act.

What is most striking in his writing, however, is how little his immediate political concerns distorted or even visibly affected his constitutional analysis, which was carefully segregated from the sections of the Report devoted to other issues. Madison maintained throughout that the Virginia legislature ought to formulate and express its considered view of the meaning of the federal Constitution in relation to a particular question then before the country. Madison himself gave that legislature the words for a political manifesto whose constitutional analysis could have been adopted without embarrassment by any court charged with deciding a case under the Sedition Act.

Marbury v. Madison—1803
(Chief Justice John Marshall)

The story behind this decision, and the importance of its legacy, are familiar to every educated American. In the eleventh hour of the outgoing Federalist Administration, William Marbury's commission as justice of the peace was signed by John Marshall, who was then both Secretary of State and Chief Justice of the Supreme Court. The commission, however, was not delivered. When the Republicans came into office, Marbury asked the Supreme Court to order the new Secretary of State, James Madison, to make delivery. Speaking through Chief Justice Marshall, the Court stated that the commission was valid, that a court could compel the Secretary of State to deliver it, and that the Judiciary Act of 1789 authorized the Supreme Court to take original jurisdiction over the case.

Then, apparently having decided that Marbury was entitled to all that he had asked for, the Court turned around and held that the statutory provision giving the Supreme Court original jurisdiction was unconstitutional. The action was dismissed, leaving Marbury without his commission and leaving the Court in the neat position of having asserted a significant judicial power over the Executive Branch without having had to test that power by exercising it.

The Court's assertion of the power to declare unconstitutional an Act of Congress is, of course, why the case is remembered. The Court's claim that it could compel the Secretary of State to fulfill his legal duty was part of a discussion of the merits of the controversy, a discussion that was unnecessary and without immediate effect in light of the court's holding that it lacked jurisdiction to decide the case. The exercise of judicial review, however, was real, and it was more perilous for being real. Though this was not the first time that the Court had declined to apply an Act of Congress, it had previously done so only when the statute conflicted with a supervening constitutional amendment. In *Marbury,* by contrast, the Court declared that Congress had acted inconsistently with the Constitution when it passed the law in question, and that the Court would therefore refuse to enforce the offending provision.

Who's the Boss?

If there was any danger that Congress would respond by showing the Court who was boss—and there may well have been such a danger—Marshall did everything he could to reduce it. First, by refusing to accept jurisdiction, the Court was, in a sense, only denying Congress the power to confer additional power on the Court. It is not in the nature of legislators to consider such a power among their most jealously guarded prerogatives. Second, and more interesting, Congress probably never intended to do what Marshall said it lacked the power to do. The section of the Judiciary Act at issue in the case apparently was designed either to confer appellate jurisdiction on the Supreme Court or to allow the Court to issue an appropriate writ when jurisdiction existed on other grounds, neither of which would have offended the Constitution. Only by a strained interpretation was Chief Justice Marshall able to find that the statutory provision sought to confer original jurisdiction—and only through this construction was he able to find something to declare unconstitutional.

Marbury, of course, is not remembered for the oddities we have pointed out, but rather as the seminal explanation of the Court's power of judicial review over federal legislation. Like all truly great Supreme Court decisions, *Marbury* has endured because of the cogency of its argument and the force of its reasoning on later judges and citizens.

To justify and properly define the power of judicial review over federal statutes was no small task, though Marshall's job was made easier by Alexander Hamilton's having already sketched the argument in *The Federalist.* The first obstacle was that the Constitution is quite silent on the Court's responsibility when faced with a federal statute that conflicts with the Constitution. Though Marshall sought to draw inferences from several constitutional provisions dealing with other matters, those inferences were neither necessary nor particularly compelling. Marshall's principal and strongest contention was that the absence of judicial review would render the Constitution self-contradictory. To deny judicial review

> would declare, that if the legislature shall do what is expressly forbidden [by the Constitution], such act, notwithstanding the express prohibition, is in reality effectual. It would give to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

This is the critical affirmative argument for Marshall's conclusion that the Constitution authorizes a meaningful check on Congress' exceeding its limited powers: without such a check, Congress, rather than the Constitution, would be supreme, and we would live under a government of men rather than laws. This argument, while irrefutable,

is not quite complete, for it does not explain why the check must take the form of judicial review. Marshall completed the explanation in this way:

> It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case, conformable to the law, disregarding the constitution; or conformable to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case: this is of the very essence of judicial duty. If then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

This argument sustains judicial review, but it also implies significant limits on that power. Marshall's contention is that the Court should refuse to apply an Act of Congress when, and only when, it is *forced* to do so, *i.e.* only when confronted with a real, particular case in which the statute cannot be applied without contravening the Constitution. This implies that the Court should not issue advisory opinions, and that statutes should be construed consistently with the Constitution if possible. Though Marshall may well have transgressed both these implied limitations in *Marbury* itself, the greater importance of the opinion lies in having established the principle from which the limitations follow. The Court has since violated both limits many times, but the limits continue almost always to be honored in word, and very often in fact.

Marbury's Critics

Though it has rarely been noticed, the severest criticisms of *Marbury* in terms of judicial restraint have come from those who are opposed to the doctrine of original intent. Alexander Bickel, for example, criticized Marshall's opinion by arguing that because "the authority to determine the meaning and application of a written constitution is nowhere defined or even mentioned in the document itself," the power of judicial review cannot be "found" in the Constitution, but must be "placed" there.

The trick in this argument, of course, is that it erects a straw man for the sole purpose of knocking him down. In contrast to the caricature so energetically promoted by the partisans of an omnipotent judiciary, no responsible originalist asserts that nothing can be inferred from the document or that it should be given only the most wooden, literal reading. Many important constitutional questions are not answered on the face of the document, and interpretation is therefore absolutely necessary. But there remains a distinction between interpretation and rewriting. As Chief Justice Marshall was well aware, no written constitution can spell out detailed answers to all the questions that will arise. But that does not imply that the document was intended to leave judges free to make it up as they go along. Above all, we should beware of Bickel's own dreamy prescription, according to which Supreme Court Justices should meditate on history, philosophy, and poetry in order to "extract 'fundamental presuppositions' from their deepest selves . . . from the evolving morality of our tradition."

As an example of judicial restraint, *Marbury* is worthy of praise because the Court declined to read into the Constitution any broader grant of implied judicial power than was compelled by its origins and purpose. Nothing in the opinion contradicts the text of the Constitution, or the history of its framing and ratification. If the same could be said of every landmark Supreme Court opinion, the legacy of *Marbury* would be even more valuable than it is.

Presidential Veto Statement—1854
(Franklin Pierce)

Beginning in the early days of the Republic, Congress' desire to promote various public works projects gave rise to a difficult and recurrent contitutional question. The Constitution contains no provision expressly authorizing the federal government to undertake or finance such activities, and efforts to find implied authority require quite a bit of interpretive stretching and straining.

The *Marbury* case is worthy of praise because the Court declined to read into the Constitution any more implied power than was compelled by its origin and purpose.

In the natural legislative enthusiasm for doing good, even our early Congresses allowed their constitutional judgment to be affected. Presidents Madison and Monroe, forced to veto well-meaning bills that appropriated federal money for building roads and canals, expressed their regret at having to block the projects, which they thought would have benefited the nation; both Presidents encouraged Congress to begin the process of amending the Constitution to remove the obstacle. Similar incidents occurred during the Jackson, Tyler, and Polk Administrations. Although an occasional questionable bill got through, early presidents established a fairly consistent policy of principled constitutional opposition to federally financed internal improvement schemes.

Pierce's Bleeding Heart

In 1854, President Pierce was presented with a bill "making a grant of public lands to the several States for the benefit of indigent insane persons." The President withheld his approval from this bill, and he delivered an exceptionally careful and detailed veto message explaining why he was "compelled to resist the deep sympathies of [his]

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President Pierce: Powers not listed as federal must accrue to states and individuals.

own heart in favor of the humane purpose sought to be accomplished."

Pierce began his message by describing the particulars of the bill, which would have given a total of 10 million acres of federal land to the various states on condition that each state use the income from the land (or the interest on the money realized by selling the land) as a permanent source of funding for the care of the indigent insane. As Pierce noted, the principle underlying the bill could be used to transfer to the federal government the duty of caring for every species of human infirmity, from poverty to sickness to every form of dependency. These tasks had always been discharged by state and local governments and by private charity. Did the Constitution authorize the federal government to take these functions over for itself?

Pierce began by pointing to the Tenth Amendment, which declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Noting that there is no express constitutional authorization for such eleemosynary activities as those contemplated by the bill before him, Pierce turned to a series of arguments by which their proponents had sought to find an implied power in the Constitution.

Article I gives Congress power "to lay and collect taxes, duties, imports, and excises, to pay debts, and provide for the common defense and general welfare of the United States." It had been contended that this clause allowed Congress to appropriate money for any project that would promote the general welfare, even if the project were outside the detailed list of congressional powers enumerated later in the same section of Article I. Pierce responded, quite correctly, that if this interpretation were accepted, "all the rest of the Constitution, consisting of carefully enumerated, and cautiously guarded grants of specific powers, would have been useless, if not delusive." Almost as important for our purposes, Pierce supplemented this powerful argument with a reference to the proceedings at the Federal Convention (which had recently been published for the first time), with specific citations to the *Federalist Papers,* and with quotations from Presidents Jefferson and Jackson.

Narrow Federal Power

After explaining why he thought the Framers were wise to insist on confining the federal government to a narrow compass and on leaving the states in possession of almost all their powers of internal governance, Pierce presented a careful textual and historical argument refuting the proposition that a land grant for eleemosynary purposes was constitutionally distinguishable from a straightforward appropriation from the Treasury. Finally, Pierce discussed a number of previously enacted federal statutes that appeared to establish precedents for the bill before him. Some of these precedents he found distinguishable on the ground that Congress was not engaged in charitable endeavors but was acting as a prudent landowner would (*e.g.,* laws setting aside one-sixteenth of certain territorial lands for the support of education were devices for encouraging the settlement and development of the territories by industrious and intelligent pioneers). Other precedents he characterized simply as mistakes that should "serve rather as a warning than as an inducement to tread in the same path."

Throughout his veto message, President Pierce displayed a deep and thoughtful concern for the long-term effects that such appealing and apparently innocuous projects as the one before him could have on the delicate balance between the state and federal sovereignties. Well aware of the infinite ingenuity of lawyers, Pierce acknowledged that the words of the Constitution can always be stretched and twisted so as to allow a supposedly defined federal authority to coincide with the latest dictates of the congressional heart. And, with a prescience that has been richly confirmed by subsequent events, Pierce warned that once Congress was allowed into the business of charitable appropriations, there could hardly be a principled reason to leave any responsibility at all to the states: "The power will have been deliberately assumed [by the federal government], the general obligation will, by this act, have been acknowledged, and the question of means and expediency will alone be left for consideration."

Whose Philanthropy?

Freely conceding that charity is indeed a properly public concern, Pierce was acutely conscious of the natural, though short-sighted, human tendency to regard a powerful central government as the most effective instrument for solving every public problem. He sought to combat this error with the tools of a true constitutional lawyer: careful analysis of the Constitution's text, its legislative history, and the historically ascertainable principles that caused and justified its adoption.

Only a few years after the Pierce Administration, the American experiment in limited federal government was to be tested by a much greater crisis, in which certain states presumed to retain more authority than the Constitution allowed them. The nation survived that crisis, but all three branches of the federal government eventually succumbed to the same centripetal forces that President Pierce so rightly feared. If there is any hope of restoring the proper constitutional status of the states, Franklin Pierce's veto message on the little bill for the indigent insane can help us, and our presidents, to recover the interpretive tools for the job.

Scott v. Sandford—1857
(Justice Benjamin R. Curtis, dissenting)

The complicated facts in the infamous *Dred Scott* case were viewed by the Court essentially as follows. Scott originally was a slave held in Missouri. His master took him first to Illinois, then to the Upper Louisiana Territory, where slavery had been outlawed by the Missouri Compromise of 1820, and then to Missouri. The master sold Scott to a citizen of New York, who attempted to take possession of Scott in Missouri. Claiming to be a citizen of Missouri, Scott sued for his freedom; he asserted that the federal courts had jurisdiction under the provision allowing them to hear suits between citizens of different states.

Chief Justice Taney's opinion for the Court concluded that no free black could be a citizen of the United States under the Constitution. In what appears to have been an alternative holding, Taney argued that Scott remained a slave because the Missouri Compromise had unconstitutionally attempted to outlaw slavery in the Upper Louisiana Territory.

Taney's insensitivity to the horror of slavery, which was not well disguised in his opinion, has drawn rich and deserved censure. To whatever extent the *Dred Scott* decision helped to cause the great civil conflict that almost destroyed the nation, it is of course simply indefensible as an act of judicial politics; and it has been frequently and thoroughly criticized on this ground. As the first case since *Marbury* in which the Court held an Act of Congress unconstitutional, the case has sometimes been used to condemn the practice of judicial review itself.

In the modern obsession with viewing courts as political actors, however, it often has been forgotten that Chief Justice Taney's opinion was built on exactly the kind of loose, disingenuous, and result-oriented constitutional "interpretation" that today's judicial activists rush to defend. Had the Court simply gone about the task of constitutional interpretation in good faith, the case would have been decided differently and correctly, no matter what the racial, sectional, or political prejudices of the Justices may have been.

Taney's Dishonesty

The flaws in Taney's constitutional analysis cannot be excused as honest error, for they were revealed in a dissenting opinion that relentlessly demolished every one of Taney's arguments and showed that Dred Scott was entitled to a trial on the merits of his claim. This dissent, by Justice Curtis, is a masterpiece of constitutional interpretation that deserves to be studied and emulated by any judge committed to the rule of law.

Taney began by provisionally assuming that Scott was a free black under the law. The question then was whether the mere fact of African descent was sufficient to disqualify a man from American citizenship, and therefore to leave him without access to the federal courts. Taney contended that it was, and he relied for support primarily on Congress' express power to establish uniform rules of naturalization. This power, said Taney, was designed to prevent one state from naturalizing undesirable persons, who could then migrate to other states and enjoy the constitutionally guaranteed privileges and immunities of citizenship. Blacks, according to Taney, had universally been regarded as "unfit to associate with the white race," were citizens of no state at the time of the Founding, and were the most conspicuous source of the danger against which the Congress' naturalization power was meant to guard. From this analysis, the conclusion ineluctably followed: whatever legal status a state might give to free blacks within its own borders, no state possessed the power to make a black person a citizen for purposes of the *federal* Constitution.

President Pierce noted that the principle underlying the 1854 bill could be used to transfer to the federal government the duty of caring for every species of human infirmity—tasks previously discharged by the states and private charities.

While this argument is not implausible on its face, Taney tipped his hand by ignoring the congressional power over naturalization when he turned later to the question of Congress' power to outlaw slavery in the territories. More important, Justice Curtis showed in considerable detail that Taney's apparently common sense assumption about the intent behind the Naturalization Clause was unfounded. First, he produced abundant historical evidence demonstrating that free blacks had indeed been treated as citizens in several states at the time of the Founding; and he proved, through a careful textual and historical analysis, that all such citizens had to have been considered citizens for purposes of the federal Constitution.

Curtis Fires Back

In answer to Taney's plausible suggestion that the Framers could not have intended to force the Southern states to let black migrants from the free states come in to vote and

exercise all the other incidents of freedom, Curtis responded that citizenship by itself did not imply equal civil rights: if that were true, the numerous laws withholding political rights from women would imply that women were not citizens. The South (and indeed all the states) undoubtedly retained the right to discriminate against blacks under their own laws, but this in no way required the other states to relinquish their citizens' right to the privileges and immunities of national citizenship. Among those privileges and immunities was the right of access to the federal courts, which Curtis showed were open under the Constitution to every native-born person who was free under the law of the state where he resided. Criteria of color or ancestry were read into the Constitution by Roger Taney, for they could not be drawn out of the document either by fair or necessary inference or by compelling historical evidence. Curtis' dissent stands as one of the earliest and most vivid refutations of the theory that because a judge believes something *should* be in the Constitution, it *is* in the Constitution.

Taney's opinion in *Dred Scott* was built on exactly the kind of loose, disingenuous, result-oriented jurisprudence that today's judicial activists rush to defend.

Recall, however, that Taney had only provisionally assumed that Scott was a free black. If he were still a slave, he certainly would not be entitled to sue in federal court, for he would be no citizen at all. In this Taney was surely correct, and it was this that led him to consider the validity of the Missouri Compromise. As Taney pointed out, the Court had previously decided a case under which Scott's sojourn in Illinois was not sufficient to remove him from slavery. If Scott had been freed, therefore, it could only have been through the federal law that outlawed slavery in the Upper Louisiana Territory.

Taney began by asking, quite properly, whether Congress had the constitutional authority to outlaw slavery in the territories. Scott, however, had an answer: the Constitution expressly empowered Congress "to dispose of and make all needful rules and regulations respecting the territory or other property of the United States." On its face, this is certainly broad enough to allow an anti-slavery regulation, but Taney cleverly found a way to get around the language. He contended, on the basis of a weak (though not completely indefensible) textual and historical argument, that this provision applied only to territory that the government already owned at the time the Constitution was adopted. The power to govern the newly acquired territories, he said, was incidental to the power to admit new states and could only be exercised to the extent necessary to prepare those territories for admission to statehood. Claiming that the right of property in slaves was "distinctly and expressly affirmed in the Constitution," Taney concluded that the only power Congress could have over slavery in the territories was to uphold the property rights of slave holders, rights that were protected by the Due Process Clause of the Fifth Amendment. As Taney candidly noted, this was really a duty as well as a power, and he hinted that if Congress failed to perform that duty, the Court would.

Taney's Illogic

As Curtis pointed out, there was something very peculiar about disregarding a constitutional provision that was applicable on its face, while finding an essentially similar power lurking in the implications of a different clause. Taney failed to explain why the implied power over the new territories should be narrower than the explicit power over the old territories; his argument accomplished little more than to obscure the fact that the Court was reaching out to take for itself the question of how slavery should be treated in the territories.

As Curtis saw, this was quite a remarkable project that the Court had undertaken. First, Taney was simply wrong to assert that the Constitution "distinctly and expressly" affirmed anything at all about slavery, for neither that word nor any of its cognates appears in the document. This is worth emphasizing, for the real basis of Taney's conclusion was the Fifth Amendment's ban on the federal government's depriving any person of "life, liberty, or property, without due process of law." Curtis argued, on the basis of abundant historical evidence, that property rights in slaves were a peculiar legal device based solely on particular positive laws, which varied considerably in their terms from place to place. The Due Process Clause of the federal Constitution had analogues in all the state constitutions, and had never been thought applicable to a case like this. Indeed, if Taney was right, the Northwest Ordinance (as reenacted in 1789) was unconstitutional, and so were numerous slave-trading laws, including some that had been enacted by the slave states themselves.

How, Curtis asked, could this constitutional right to own slaves have remained hidden in the Due Process Clause—unnoticed by Congress, the slave states themselves, or anyone else—for over 60 years? Taney gave no answer to this or to any of Curtis' other devastating criticisms. One can only conclude that the Fifth Amendment's Due Process Clause protected a right of property in slaves simply because the Supreme Court thought that Congress had unfairly discriminated against slave owners. This same reasoning, ironically made applicable to the states by one of the so-called Civil War Amendments, would later be used to create "constitutional rights" to work more than 60 hours per week and to procure abortions.

Justice Curtis understood the wages of judicial arrogance and dishonesty:

> Political reasons have not the requisite certainty to afford rules of juridical interpretation. They are different in different men. They are different in the same men at different times. And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is

abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean.

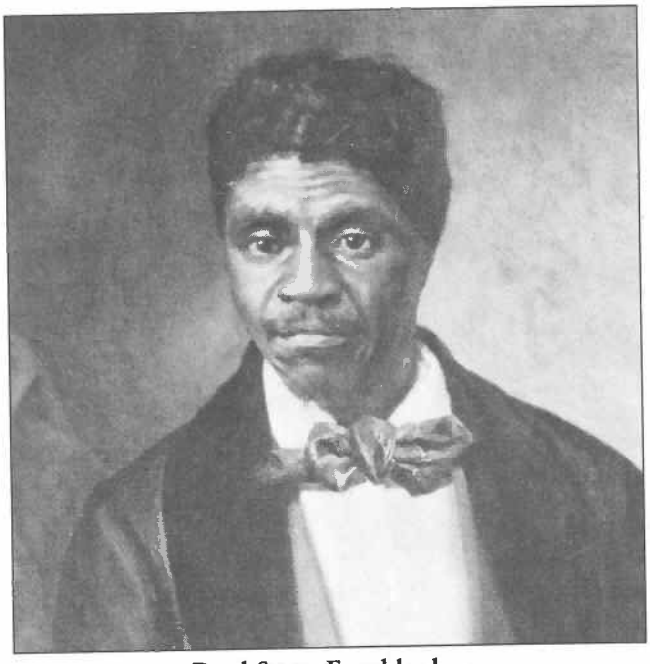
Just as Justice Curtis suggested, the Taney Court's misreading of the Constitution lasted only "for the time being," but it was corrected only at a terrible cost. Some of the similarly egregious misinterpretations to which the Court has subjected our own generation are also sure to be corrected. We have yet to see, however, what the full price of their correction will be.

Erie Railroad Co. v. Tompkins—1938
(Justice Louis Brandeis)

As with many landmark decisions, the particular controversy from which this case arose was of little interest to anyone but the litigants. Mr. Tompkins had been walking along the Erie's tracks near Hughestown, Pennsylvania when a train came by; the door on one car had apparently been left unlatched and had swung open so that it projected out from the side of the train; the door struck Tompkins, leaving him with a routine personal injury suit. As a citizen of Pennsylvania, he chose to sue the railroad, a New York corporation, in federal court. Although ordinary tort cases must usually be heard in a state court, Tompkins had a right to make this choice because of "diversity jurisdiction," which opens the federal courts to almost any suit if it happens to arise between citizens of different states.

The decisive issue in the case was a purely legal one. Under the Judiciary Act of 1789, federal courts were required to apply state law in diversity cases of this kind. In 1842, however, the Supreme Court had ruled that "state law" included only written statutory law and certain functional equivalents. This case, known as *Swift v. Tyson,* specifically stated that decisions of the state supreme courts were not "law" for purposes of the Judiciary Act; this left the federal courts free to adopt their own rules of decision "upon general reasoning and legal analogies" when the state had not adopted a contrary written statute. In lawyers' terminology, this meant substituting federal common law (*i.e.,* rules of decision developed in the course of judicial decisions) for the common law of the individual states.

Relying on this well-established Supreme Court precedent, Tompkins argued that Pennsylvania had no statute affecting his case and urged the federal court to adopt a rule, based on general principles of tort law, that would allow a jury to decide whether the railroad's negligence had caused his injury. The Erie Railroad contended that the Pennsylvania Supreme Court had established a contrary rule under which Tompkins was to be treated as a trespasser who was legally barred from recovering for his injuries even if the railroad had been negligent in leaving the boxcar door unlatched. The federal trial court, as well as the intermediate court of appeals, properly adhered to *Swift v. Tyson,* and Tompkins prevailed. The United States Supreme Court reviewed the case, overruled *Swift v. Tyson,* and stated that henceforth the decisions of the state courts were to be treated as "law" for purposes of the Judiciary Act.



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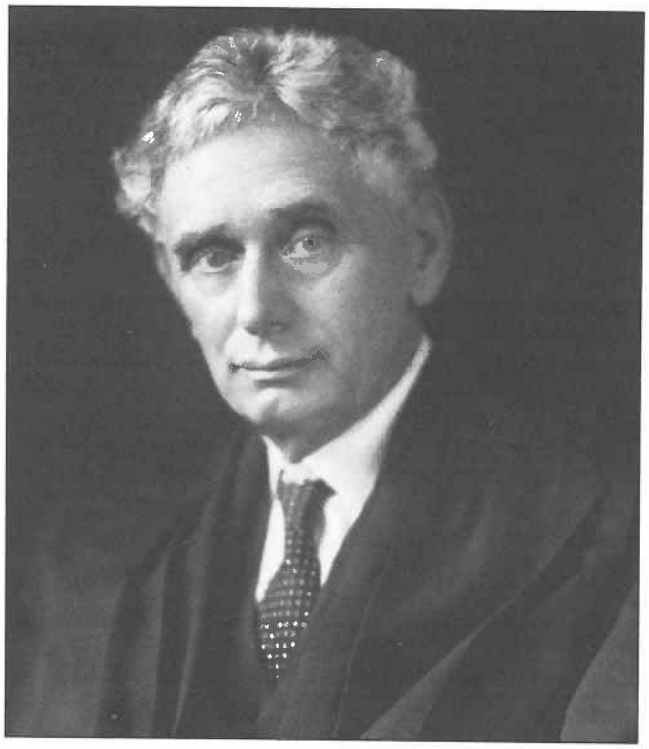
Dred Scott: Freed by law, enslaved by judicial activism.

Toppling Precedent

For our purposes here, the *Erie* decision is important primarily because it radically realigned the relations between the state and federal courts, and in so doing upset a hundred years of the Supreme Court's own precedents.

As Justice Brandeis pointed out, the doctrine of *Swift v. Tyson* appeared in a technical sense to be merely an interpretation of the Judiciary Act of 1789. Although recent scholarship had disclosed new evidence suggesting that the *Swift* interpretation was wrong, such a discovery would probably not by itself have led the Court to alter its own settled precedents. Congress had been well aware of the *Swift* doctrine, for bills to abrogate its holding had repeatedly been introduced. These bills were stimulated by the manifest failure of *Swift* to accomplish its intended purpose (promoting uniformity in commercial law) and by the injustice that often resulted from a plaintiff's being able to choose a federal or state court depending on which one employed rules of law more favorable to his case. None of the bills aimed at correcting these problems, however, had been enacted. When Congress has acquiesced for a long period in a questionable judicial construction of a statute, the courts have traditionally been reluctant to alter that construction themselves.

Justice Brandeis, however, perceived a much deeper problem with the *Swift* decision than the question of whether it properly construed the meaning of "state law" in the Judiciary Act: Where did the federal courts get the authority to create a substitute for the state common law that *Swift* had forbidden them to apply? His answer, in refreshing contrast to the imperious attitude that federal



Justice Brandeis: Precedent must be obeyed—but only when it is faithful to the Constitution.

courts so often display towards the states and their courts, was that no such authority existed:

> Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.

This passage makes four interrelated points. First, and most important, the states are masters of their own law, with the freedom to determine whether that law is to be created by their legislatures or their courts. Second, the Constitution empowers Congress to displace state law only with overriding federal statutes enacted within the constitutional limits of congressional legislative authority. Third, the doctrine of *Swift v. Tyson* indirectly but effectively permitted the constitutional limits on the federal legislative power to be transgressed by a backdoor maneuver; thus, the federal courts had taken to themselves a vast lawmaking power whose nature was barely concealed by the legal fiction that they were applying an already-existing "federal general common law." Fourth, such a maneuver would be unconstitutional whether done by the federal courts or by Congress itself.

The *Erie* decision reestablished the proper and original relation between the state and federal courts, seen in the light of the correct relation between the state and federal governments as a whole. As the late Judge Henry Friendly put it: "[F]ederal courts must follow state decisions on matters of substantive law appropriately cognizable by the states whereas state courts must follow federal decisions on subjects within national legislative power where Congress has so directed." As Judge Friendly pointed out, this arrangement is "so beautifully simple, and so simply beautiful," that it is something of a wonder that the misguided doctrine of *Swift v. Tyson* could have been maintained for so long.

But when one surveys the history of the Supreme Court jurisprudence, and especially that of our own generation, one can also wonder at the rare combination of modesty and boldness that led Justice Brandeis to overturn a hundred years of unconstitutional precedent. A small but telling sign of Justice Brandeis' wisdom emerged when he pointed out the long congressional acquiescence in the *Swift* doctrine, while declining to hold the relevant portion of the Judiciary Act unconstitutional. The opinion makes it clear that *if* Congress enacted a statute doing what *Swift* had read that Act to do, the Supreme Court would be compelled to strike it down. But for what was actually done, Brandeis put the blame squarely where it belonged: in interpreting and applying the Judiciary Act, "this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several States." Were modern Justices more willing to acknowledge and correct similar judicial transgressions, we would see a much less yawning chasm between the Constitution and the judge-made constitutional law with which it has much too often been replaced.

Wallace v. Jaffree—1985
(Justice William H. Rehnquist, dissenting)

When it began, this case had all the marks of a routine skirmish in the ongoing war over the politically sensitive issue of prayer in the public schools. In 1962, the Supreme Court had outlawed state-composed school prayers on the ground that they constituted an impermissible "establishment of religion" within the meaning of the First Amendment. In 1981, the State of Alabama had enacted a statute that authorized (without requiring) public school teachers to begin the day with "a period of silence not to exceed one minute in duration . . . for meditation or voluntary prayer." Inevitably, the statute was challenged; the narrow question in the case appeared to turn on whether the Alabama legislature, by hinting that it would approve of students' silently praying at the beginning of the school day, had violated the Court's rules against encouraging religion.

The case became notorious when the presiding federal district judge had the impertinence to undertake his own investigation of the Constitution and its original intent. The judge concluded that the Supreme Court's jurisprudence was erroneous, and he upheld the Alabama statute. The court of appeals reversed his decision, and the Supreme Court majority began its own review by expressing astonishment that its prior decisions had been brought into question. Ignoring the crucial distinction between a lower court's failing to apply binding Supreme Court precedent (a

matter in which the district judge had certainly erred) and a lower court's reasoned criticism of such precedent (which is both healthy and fairly commonplace), Justice Stevens' majority opinion responded to the critique with little more than a string of quotations from the Court's earlier cases. This procedure might have been justified if those quotations, or any Supreme Court opinion, contained answers to the district judge's arguments. But they do not.

The Court's modern jurisprudence of the Religion Clauses is built on two main premises: that the First Amendment, which by its terms limits only Congress, applies to the states by virtue of its "incorporation" into the Fourteenth Amendment in 1925; and that the Establishment Clause was intended, contrary to the manifest tenor of its language, to erect "a wall of separation between church and State." The district judge had attacked both of these propositions. Leaving aside the question of the validity of applying the First Amendment to the states, Justice William Rehnquist undertook a detailed review of the second premise.

Thank You, Jefferson

As Rehnquist noted, the "wall of separation" theory was based solely on a comment in a thank-you note written by Thomas Jefferson fourteen years after the First Amendment was sent to the states for ratification. Jefferson's letters, of course, are a peculiar place to look for evidence of the intent behind the First Amendment, since he was not even in the United States during the time it was considered and adopted. In any case, Jefferson's note did not even purport to constitute such evidence, but only to state what he perceived the effect of the Religion Clauses to be. Jefferson's offhand remark, however, was adopted as gospel by the Supreme Court in 1947, and was never subjected to analysis or verification. Justice Stevens' majority opinion continued a long tradition of dodging the issue: acknowledging that the current doctrine conflicted with the interpretation of the First Amendment universally accepted "at one time," he blandly explained the shift by saying that "the underlying principle [had subsequently] been examined in the crucible of litigation." A more candid formulation would have been: "This Court has changed the meaning of the Constitution."

Observing that the Supreme Court had never bothered to investigate the truly relevant historical sources, primarily the congressional debates surrounding the drafting of the Amendment's language, Justice Rehnquist showed that a thorough reading of the sources irrefutably demonstrated that Jefferson's casual interpretation was quite wrong. The congressional debates over the wording of the Religion Clauses, together with other legislation adopted by that same First Congress and the unanimous judgment of the early constitutional commentators, unambiguously disclose that the purpose of the Establishment Clause was, as its wording suggests, to prevent the establishment of an official national religion like the Church of England. As Rehnquist made clear, the broadest reading of the Clause consistent with its language and history would prohibit the government from discriminating in favor of one religious denomination or sect over others. *Nothing,* however, in the Establishment Clause "requires government to be strictly neutral between religion and irreligion, nor does that Clause prohibit Congress or the States from pursuing legitimate secular ends through nondiscriminatory sectarian means."

Avoiding Excessive Entanglement

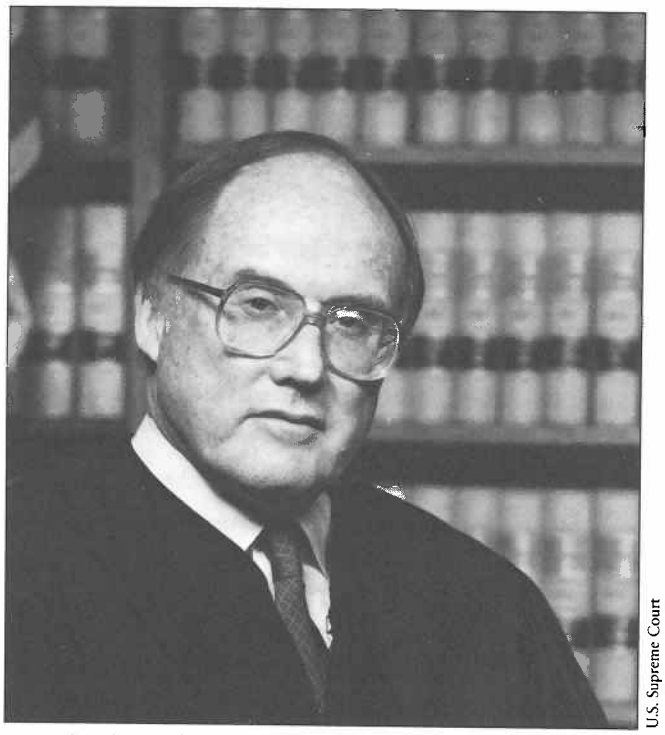
In addition to being wrong, the Court's jurisprudence has proved unworkable. Current Establishment Clause doctrine prohibits governmental action if it has either a religious purpose or effect, or causes "excessive entanglement"' between government and religion. As Rehnquist pointed out, the first test could be applied consistently in either of two possible ways. It could be applied to uphold statutes for which there is evidence of any secular purpose. Alternatively, it could be applied to invalidate statutes for which there is evidence of any religious purpose. The Court, however, has chosen neither of these approaches, engaging instead in a mercurial series of ad hoc guesses about the dominant intent of various legislatures at various times.

The "wall of separation" phrase derives from an offhand comment in a thank-you written by Thomas Jefferson, yet in 1947 the Supreme Court adopted it as gospel.

In applying the second test—*i.e.* "excessive entanglement"—the Court has been absolutely dizzying in its unpredictability. Justice Rehnquist reviewed a long series of truly meaningless distinctions that the Court has invented in its efforts to apply this test. Two examples will serve to give the flavor of the jurisprudence. A state may lend parochial school children geography textbooks that contain maps of the United States, but may not lend maps of the United States for use in a parochial school's geography class. Similarly, states are permitted to provide transportation for students going to religious schools, but are forbidden to pay for transportation from the parochial school to a public zoo or natural history museum for a field trip.

These examples are not atypical, and they vividly confirm Justice Rehnquist's conclusion:

> The greatest injury of the "wall" notion is its mischievous diversion of judges from the actual intentions of the drafters of the Bill of Rights. The "crucible of litigation" [relied on by Justice Stevens] is well adapted to adjudicating factual disputes on the basis of testimony presented in court, but no amount of repetition of historical errors in judicial opinions can make the errors true. The "wall of separation between church and State" is a metaphor based on bad history, a metaphor which has proven useless as a guide to judging. It should be frankly and explicitly abandoned.



U.S. Supreme Court

Justice Rehnquist: The Constitution forbids a mandatory state religion, not voluntary school prayer.

The analysis summarized here is so powerful and well documented that we can be cautiously optimistic in hoping that the constraints of good faith will in time cause the Court to replace its current doctrine with a sounder alternative, one more closely resembling the rule of law consented to by the people. Whether that doctrine is altered by a reconstituted Supreme Court (as occurred in *Erie Railroad v. Tompkins)* or through a more drastic event (such as a constitutional amendment), Justice Rehnquist's scholarly and lawyerly dissent will continue to rank among the great exercises in constitutional interpretation. Most important, perhaps, the opinion stands as a concrete reminder that real judges can still reach through the mists and vapors of modern constitutional "law" to revive the Constitution itself as the supreme law of the land. As such, Justice Rehnquist's opinion has implications that far transcend the undoubtedly important First Amendment issue with which it was immediately concerned.

No More Nihilism

Our survey of a few examples of the American tradition of interpreting our fundamental law should help to expose the poverty of contemporary judicial activism, which sometimes borders on constitutional nihilism. More important, however, it should serve as a reminder that to criticize the strange things that are done today in the name of the Constitution is not mere nay-saying or political opportunism. Rather, it is to acknowledge that Robert Jackson was right some 50 years ago when he warned the conservatives of his day that result-oriented jurisprudence would inevitably come back to haunt their cause. His wisdom and foresight, together with an appreciation of our true constitutional heritage, should invite us to struggle again for the principles of representative government against the opposing principle of judicial authority.

TRICK OR TREATY

Excuses for Soviet Treaty Violations

REPRESENTATIVE HENRY HYDE

Until recently, it was accepted as a basic tenet of common sense that arms control treaties were desirable only if they were faithfully observed. One would think, therefore, that the Reagan Administration's decision to abandon the SALT II offensive arms treaty would meet with widespread approval, or at least indifference. After all, SALT II was never ratified by the U.S. Senate because it was considered defective. At the beginning of 1984 and 1985, the Reagan Administration revealed serious Soviet violations of the treaty, which continue despite American protests. These incidents of noncompliance are part of a broad pattern of Soviet violations of postwar arms control treaties. Nine violations have been cited, spanning the SALT I Treaty, the ABM Treaty, SALT II, the Limited Test Ban Treaty, the Biological and Toxin Weapons Convention, the Geneva Protocol and the Helsinki Final Act. There is a similar number of other possible or probable violations. In short, Soviet integrity in upholding arms agreements has been soiled, to the point where Moscow cannot be trusted now or in the near future.

Nevertheless, there has gathered a storm of Congressional resistance to the decison that we will no longer be bound by SALT II. I am sorry to observe my colleague, Representative Lee Hamilton, help lead the onslaught, both in debate on the House floor and in an article published in the July/August issue of *Arms Control Today.* Hamilton is the outgoing chairman of the House Permanent Select Committee on Intelligence and a leading member of the House Foreign Affairs Committee. He is respected for his calm, reasoned manner and is prominent among those shaping the future agenda of the Democratic Party on defense issues. Yet Hamilton echoes the mindset of the worst elements of the American left when he attempts to exonerate the Soviet Union of charges of treaty violations, and to imply that Ronald Reagan is inventing excuses to "discard an arms control agreement."

Two patterns immediately emerge from Hamilton's article. First, he seems much more sympathetic to the Soviet line of argument than to that of the Reagan Administration. Typically, he starts with the President's position, rebuts it with the Soviet position, then finally announces his own view that the Soviet objections are at least strong enough to render the whole business confusing and ambiguous. Hamilton gives much more space to Soviet objections than to Administration assertions. Yet he never takes President Reagan at his word, always careful to use terms such as "alleged Soviet noncompliance." He does not summarize the Soviet argument with such skeptical legalese.

This is peculiar, not just because Hamilton is an American and President Reagan is America's elected leader and therefore worthy of greater trust than America's longtime foe, but also because the Administration has been extremely careful and forthcoming in this very sensitive area of treaty violations. Copious information has been provided to congressional committees, including, of course, the one on which Hamilton sits. This information covers relevant treaty language and possible interpretations, the negotiating record, factual evidence, and discussions with the Soviets on each issue. Information at higher classification levels was provided at congressional request. Indeed, most of it was accepted without question even by Congressional liberals—until the President announced his intention actually to do something about Soviet behavior.

It is also relevant to note that the Administration has not been hasty to accuse the Soviet Union: where proof of Soviet violations is not conclusive, where a violation is "probable" or "possible," the Administration has settled for ambiguity and not pressed the issue. On two points of contention the Administration has agreed to accept the Soviet version of events, concluding that the Soviets are not violating the treaty in those areas. By contrast, Soviet behavior has been characterized by bellicose threats, refusal to provide information, demands that the U.S. reveal its intelligence sources, and a lack of cooperation.

A second familiar pattern is initially to downplay violations, then, when confronted with very strong evidence to the contrary, to back down and acknowledge difficulties, but to insist that no firm judgments of a violation can be reached; finally, it is declared that, even assuming there are legal violations, these would have little military significance anyway.

Again, this is bizarre because when the agreements were signed, many of the clauses since violated were declared by

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treaty supporters to be of the greatest significance. They were heralded as major restraints on the Soviets, and it was predicted that the Soviets would be forced to alter their planning and behavior. As a result, we would achieve greater security than if there were an unconstrained arms race. Now, however, when the Soviets ignore such provisions, we hear that the putative violations are militarily trivial.

Let us see these factors at work in the three issues specifically tackled within Hamilton's article: the Krasnoyarsk radar, the SS-25 missile, and encryption of missile telemetry.

The Krasnoyarsk Radar

The Anti-Ballistic Missile (ABM) Treaty, signed in 1972, allows only a limited ABM defense at one site in both the U.S. and the Soviet Union and is expressly designed to preclude the building of a widespread "territorial" defense. Since large ABM radars normally are essential components of an ABM system, the treaty forbids their construction outside the permitted area.

It can be difficult to distinguish ABM radars from radars designed to give early warning of a missile attack, however. In an attempt to reduce the incentives and possibilities for cheating in this regard, the treaty stipulated that early warning radars may be located only along the periphery of the national territory and that they must be oriented outward. Location at the periphery would maximize their early warning capability, and some believed it would make the radars more vulnerable to attack at the outset of war, before they could be used for ABM purposes. Outward orientation would decrease their ability to track incoming missiles at the end of their flight, predict where they were aimed, and provide "battle management" capability to direct ABM interception before the missiles hit their targets.

Near the Siberian city of Krasnoyarsk, the Soviet Union is completing construction of a large phased-array radar. It is about 450 miles from the nearest border to the south. Moreover, it does not face toward that border, but instead points to the northeast border about 2,800 miles away. Thus it provides coverage over a large portion of the eastern USSR.

Arms control experts, even stern critics of the Reagan Administration, agree that this is a clear Soviet violation. In testimony before the House Foreign Affairs Committee on October 25, 1985, Gerard Smith and Ralph Earle, chief U.S. negotiators of SALT I and SALT II, respectively, said it was a violation. John Rhinelander, U.S. Legal Adviser to the SALT I delegation, said Krasnoyarsk was a "blatant" violation which "cannot be defended" and "it has got to go." Nonetheless, the Soviet Union continues construction despite U.S. objections.

When the Soviets were first confronted with proof of Krasnoyarsk, they had no arguments whatever with which to defend themselves. They were like the little boy caught with his hand in the cookie jar. After a prolonged wait, we were informed that Krasnoyarsk is not an early warning radar at all, but rather a radar for space tracking and intelligence. The Soviets also denied that it is intended for use as part of a nationwide ABM system. Lee Hamilton cites both these claims and then concludes that the treaty "spells out no clear criteria for distinguishing" between different radars and "we are faced with some ambiguity as to how these radars are to be verified."

One wishes the critics would be as charitable and open-minded in evaluating the Reagan Administration's planned "broad interpretation" of the treaty's restrictions on unconventional strategic defense.

Arms control experts have investigated every possible use of the Krasnoyarsk radar. They have concluded that the utility of this multi-million dollar installation for space tracking is negligible.

The Soviet claim that Krasnoyarsk is primarily for space-tracking is not supportable. Arms control experts have investigated every possible use of the radar. They have concluded that the utility of this multi-million dollar installation for space tracking is negligible. Furthermore, that capability is almost totally duplicative of other existing Soviet capabilities. Hamilton and his staff have access to extensive studies documenting these points.

Finally realizing that this violation is irrefutable, those pleading the Soviet defense recently have shifted track. Many liberals are adopting a Soviet counterclaim that U.S. plans to modernize early warning radars at Thule, Greenland and Fylingdales, England are violations of the SALT treaty. The implication is that both sides have equal and opposite violations so they should cancel each other. We should merely negotiate clarifications to allegedly ambiguous treaty language, to avert future problems.

But in its plan for Thule and Fylingdales, the U.S. has adhered to both the spirit and the letter of the ABM Treaty. Their location *beyond* the periphery of the United States is consistent with the treaty's logic in attempting to distinguish between early warning and ABM radars. They provide an even longer early warning time than if they were located at the U.S. border. Their forward location also decreases terminal tracking capability and some would argue it leaves them more exposed to attack. Even more important, Thule and Fylingdales were existing sites when the ABM Treaty was signed, and those sites were "grandfathered" under the treaty.

Critics argue that planned upgrades essentially will yield new rather than modernized radars, which cannot be "grandfathered." But the U.S. radars are not useful for ABM purposes which, after all, is the intended effect of the ABM Treaty's radar limitation. Moreover, their ABM utility is far inferior to that of many Soviet radars.

When the ABM Treaty was signed, the U.S. formally appended its written concerns that existing Soviet Hen House radars had ABM capability. Subsequently the Sovi-

ets began and completed a major upgrade of these radars which augmented that capability still further. Planned Thule and Fylingdales upgrades will be much inferior to these upgraded Hen Houses in their target handling capability.

Now the USSR is building an additional ring of "Pechora class" radars, which are far more useful for a territorial ABM than even the upgraded Hen Houses. In important ABM indices, they are on an order of magnitude superior to the old U.S. Safeguard radar, which was explicitly designed in the late 1960s and early 1970s for deployment with an ABM system. The Krasnoyarsk radar is but one of this ring, distinguished by its clearly illegal siting in the interior of the country.

SS-25 throw-weight is roughly *double* that of the SS-13, whereas only a 5 percent difference is permitted.

What's sauce for the goose is sauce for the gander. If critics claim Fylingdales and Thule are illegal, devotees of logic must wait expectantly for them to declare that two rings of the Soviet Hen House and Pechora radars—well over a dozen installations—also are illegal. But don't hold your breath.

When one considers the timing of the original Soviet charges, it becomes obvious in any case that the substantive arguments are merely a ploy. Since the late 1970s, the USSR has been fully aware of U.S. plans to upgrade Thule and Fylingdales—plans initiated by the Carter Administration. The USSR did not protest the legality of proposed work until after the U.S. discovered the Krasnoyarsk radar in 1983 and accused the Soviets of a treaty violation.

Given the implausibility of the various atempts to exculpate the Soviets for building the Krasnoyarsk radar, the last-ditch excuse has been to dismiss Soviet behavior as a "technical" violation with no military significance. However, even the Senate Foreign Relations Committee recognized the importance of the radar clause in its 1972 report recommending treaty ratification, when it observed that such radars are the foundation for a nationwide ABM system.

Deputy Director of Central Intelligence Robert Gates stated in a November, 1986 speech that illegal construction of the Krasnoyarsk radar is one of many indications that the Soviets have been making extensive preparations for a territorial ABM. Other indicators include possible or probable violation of four other ABM Treaty clauses. The cumulative evidence is "more significant and more ominous than any one activity." The Soviets, he said, "are laying the foundation that will give them the option of a relatively rapidly deployable ABM system—a system that, despite deficiencies, would give the Soviets a significant unilateral advantage both politically and in time of war."

Coupling a unilateral capability for defense against nuclear attack with the offensive potential they are amassing, partly through violations of SALT II, the Soviets might feel confident of destroying a large portion of American missiles in a first strike and then eliminating a considerable fraction of our ragged retaliatory strike. The credibility of the U.S. deterrent, i.e. the U.S. threat of nuclear retaliation if the West is attacked, would be diminished severely.

The SS-25 Missile

SALT II permitted each side to test and deploy only one "new" missile, although they could "modernize" existing missiles within certain strict limitations. The U.S. MX and the Soviet SS-24 are both permitted under the treaty. The Soviets claim that the mobile SS-25 is also permitted, contending that it is merely a modernization of the old SS-13. After examining information collected during its test flights, however, the U.S. decided that the SS-25 is in fact a new missile because its throw-weight is far greater than the 5 percent growth permitted under treaty clauses governing modernized missiles. Furthermore, the U.S. stated that even if the SS-25 were considered a modernized missile, it would violate a different clause of the treaty stipulating that its warhead weight must comprise at least 50 percent of the missile's entire throw-weight. The purpose of this provision is to limit warhead proliferation on existing missiles. The Soviets ignored these objections, completed flight testing and are now in the process of deploying the SS-25.

Throw-weight limits are essential to meaningful arms control.Throw-weight is the total payload that a missile can launch into a ballistic trajectory over long distances. Attempts to curb large Soviet throw-weight advantages have been central to U.S. arms control efforts since SALT I was negotiated more than 15 years ago. Increases in throw-weight allow the missile to carry more warheads or larger warheads. If a missile is tested with throw-weight greater than required to carry the warheads released during flight tests, it is possible that missiles actually deployed in the field could carry more or heavier warheads than observed in the flight test, or that these could be added at a later date to "sneak out" of treaty limits or to "break out" of them rather quickly.

The Soviet Union is manipulating figures to inflate the warhead portion of SS-25 throw-weight and thus reduce the likelihood that we could prove a violation of the provision governing the warhead/throw-weight ratio.

Total throw-weight is comprised of the warhead and the "bus" or post-boost vehicle, if the missile has the latter. These separate from the final booster stage and are launched into a ballistic trajectory. Later, the "bus" releases a single SS-25 warhead. Both the SS-25 bus and the warhead carry telemetry devices which relay information on flight progress or problems. The weight of both "packages" normally is included in throw-weight calculations. But the Soviets claim the weight of the telemetry devices on the warhead should be counted, while those on the bus should not be. It is argued that the telemetry instruments could be removed in deployed missiles and the treaty did not specifically list them as part of the bus throw-weight.

In reply, the U.S. cites both the treaty language and

considerable negotiating records showing that the entire bus weight should be counted. Telemetry instruments were not singled out for specific inclusion, but neither were the myriad other devices carried on board. Moreover, if telemetry weight were not counted for the bus, it obviously should not be counted as part of the warhead weight either. But the Soviets need this obviously strained interpretation to make the warhead portion of total throw-weight appear greater, perhaps over 50 percent as required.

Besides fudging the ratio violation, this interpretation also would facilitate Soviet claims on the more important issue of whether total SS-25 throw-weight is within 5 percent of the SS-13's throw-weight by insisting that the weight of a booster guidance package and alleged penetration aids be added to it. Conversely, they have sought to minimize SS-25 throw-weight by arbitrarily dropping bus telemetry weight. Supporters back Soviet claims regarding SS-13 throw-weight calculations by alleging that we have insufficient information on this older missile, whose initial flight testing occurred during a less sophisticated era of intelligence collection.

Even if we obligingly skewed our calculations to Soviet advantage, the burden of justifying the USSR's behavior is one of herculean proportions. Several high U.S. officials have stated that according to normal calculations, SS-25 throw-weight is roughly *double* that of the SS-13, whereas only a 5 percent difference is permitted. Before this astounding fact, the minutiae and contorted manipulations of technical formulae and legal phraseology fade into insignificance. Nonetheless, we shall consider them briefly if only to show the extent to which intellectual honesty is sacrificed in order to protect the USSR's reputation.

To allege that there is a "loophole" permitting Soviet claims that selected telemetry instruments are not part of throw-weight is to render intended treaty throw-weight limitations both meaningless and unverifiable. If the Soviets remove telemetry instruments or other items from the payload, they may be able to replace them with something of approximately equal weight—e.g., an additional or heavier warhead. The intent of these SALT II limitations was to prevent that opportunity, so such an interpretation would violate the object and purpose of the limitation and render it ineffective. It makes little difference whether the Soviets are lofting a warhead or 200 pounds of Hershey's kisses. Both should be counted as part of throw-weight.

A second consideration is that to arrive at any revised calculation of throw-weight, one would have to calculate the weight of specified individual components on the bus, not just the total weight of the bus and all it carries. In this case we would have to know how much the telemetry package weighed, so we could subtract that weight from the total for the bus. The Soviets could play games by claiming that other alleged items should not be counted either, and we might have no way of authenticating their existence, much less calculating their weight. Obviously this path leads very quickly to limitless potential for abuse, intelligence nightmares and the death of verification.

Indeed, this is exactly the sort of logic pursued in attempting to swell SS-13 throw-weight calculations. It is claimed that perhaps the Soviet missile in question dispenses penetration aids as well as a warhead. But penetration aids are intended to be seen by radar, for their purpose is either to interfere with radar's ability to see the warhead or to appear on radar as additional warheads. If they can't be observed during SS-13 flight tests, they obviously do not constitute penetration aids. If they can be observed, rest assured that we already have included them in throw-weight calculations. Yet critics continue to imagine there are unseen, untold penetration aids—the flying saucers of the compliance world. Nor can the alleged U.S. blindness be attributed to inadequate information on the SS-13 because it was deployed so long ago. Deployed Soviet missiles are flight-tested periodically to ensure that they remain in good operating condition, and the U.S conducted a painstaking review of all information collected previously.

Limitations on throw-weight are important because increases in throw-weight allow the missile to carry more warheads or larger warheads.

The Soviets and their supporters claim SS-13 throw-weight should be increased by adding the (unstipulated) weight of a guidance package from the third-stage booster, in addition to the weight of the imaginary penetration aids. Unlike the SS-25, the SS-13 does not have a "bus" to carry its warhead when the third-stage booster drops off (indeed, this is why SS-13 throw-weight is so much smaller). Before the warhead is released, the missile is directed by this third-stage guidance package.

However, the guidance package has no physical connection with the warhead and does not subsequently direct it or continue with it. Moreover, the treaty and negotiating record clearly established that, in the case of a single-warhead missile lacking a bus, throw-weight would not include the final-stage booster or any of its components. Specifically, the Soviets themselves repeatedly stated that the final stage guidance package, essential to every missile without a bus, was to be excluded from throw-weight.

Treaty language clearly states that a booster stage does not count in throw-weight, whereas a bus does. Clarifications were made precisely to preclude attempts to claim that the guidance package effectively served as a bus, and thus should be counted in throw-weight as in the case of a bus.

It is a tribute to the thoroughness of the Administration's review process that all the above arguments were anticipated at the outset and examined exhaustively. They were then properly rejected.

But not by Hamilton, who reproduces them in his article at considerable length. He concludes: "The Salt II treaty provisions that define a new ICBM are complicated and at times ambiguous." He proclaims the whole issue a "tough call" because "the treaty is not as clear as we would like."

If we accepted such arguments, arms control would become a game of imaginative nomenclature and nothing else. Those advocating these treaty interpretations render agreements unenforceable against the Soviet Union but self-enforced by the United States. After demanding in the late 1970s that SALT II be verifiable, and while continuing to give lip service to the need for verifiable future treaties,

On a slim thread woven of legal obfuscations and benign assumptions Lee Hamilton would hang our national security.

they concoct novel treaty interpretations which would render critical SALT II clauses unverifiable shams. Restrictions previously deemed of high significance are now dismissed as inconsequential—in other words, worth overlooking—all in the service of defending Soviet conduct.

Encrypting Telemetry

SALT II prohibits the encoding of missile test information where it "impedes verification of compliance with the provisions of the treaty." A treaty only makes sense if adherence to it can be checked, so efforts to confuse and obstruct the other side's verification measures are illegal.

The Soviet Union is encrypting increasingly large portions of missile test signals to make them unreadable by anyone else. But Lee Hamilton is unconvinced that this constitutes a legal violation, because the treaty permitted encryption of signals not used for verification of its clauses. He maintains: "What we have is not an open and shut case of Soviet noncompliance. Instead, it is a case where treaty language is not as precise as it should be."

The USSR has denied that it is hiding any signals related to verification and has asked the U.S. to state precisely which signals that it must analyze. It has not, however, promised to respond by providing that data. We have rejected their request in order to protect intelligence sources and methods. Yet Hamilton seems sympathetic to the Soviet claim. "We do not want to indicate to the Soviets what our intelligence capabilities are. But in refusing their request, we deny them the information they say they need to comply with the terms of the treaty." He suggests "resolving the issue through the procedures set forth in the treaty" and laments, once again, "obvious ambiguities in the language."

Congressman Hamilton also questions whether the U.S. actually needs the information being denied: "One must question the Administration's assessment that encryption impedes our verification of SALT II when the President simultaneously charges the Soviets with other violations of the treaty, such as the SS-25."

As with the SS-25 violation, however, Soviet encryption practices are so egregious that we could virtually conclude there is a violation without the need for detailed discussion. Michael Mobbs, assistant director at the Arms Control and Disarmament Agency, has testified that Soviet encryption of some missile tests has been "almost 100 percent effective." When encryption is virtually total, how can Soviet claims of innocence be believed? One could argue that treaty language leaves a "gray area," but this looks black and white.

It is not as if encryption practices are an exception to general Soviet behavior or might be explained as an oversight. They are merely one part of the long-term Soviet "maskirovka" program of denial and deception. Withholding information about Soviet strategic forces has been a high priority of the maskirovka program, partly because the Soviet leadership reportedly was horrified when it discovered how much the U.S. knew about its defense systems during SALT I negotiations.

Yet Mr. Hamilton seems willing to accept the Soviet pretense of naive innocence. He says "we deny them the information they say they need to comply with the terms of the treaty," simply repeating the Soviet line without subjecting it to any critical scrutiny. He tends to assume that because Soviet counterclaims exist, the whole business is rendered incomprehensible.

Mr. Hamilton thinks he scores a point when claiming that obviously we don't need the denied telemetry if without it we can still charge the Soviets with violations. This is a false argument for reasons which should be clear to anyone familiar with Soviet encryption practices and the intelligence process, or who, like Hamilton, have borne responsibility for the intelligence budget.

After all, the treaty does not forbid encryption which "makes impossible" any verification. It outlaws any encryption which "impedes" verification. To impede means "to make more difficult" or to "hinder." No one with even a rudimentary knowledge of the intelligence problems involved would claim that Soviet encryption practices have not made U.S. verification efforts more difficult. But so reflexive are the excuses for Soviet conduct that the English language is being rewritten.

It is true that we may be able to discover a violation by some method besides telemetry or other treaty-sanctioned "national technical means" of verification. But the treaty did not envision that we should have to rely on fortuitous collection or to develop exotic new means of intelligence collection and analysis. Rather, the very purpose of the clauses in question was to guarantee a regular and dependable means to establish compliance. Those who excuse the Soviets from their obligations on grounds that we may be able to get the information some other way, or spend a fortune to try to develop new intelligence techniques, are standing the treaty on its head.

Both to protect sources and to counter attempts at deception, it is always desirable to have more than one method to monitor a treaty clause. On politically sensitive issues such as treaty compliance, redundant sources become even more important because the standards of evidence are pushed much higher than normal—many would say much higher than reasonable. Mr. Hamilton is the best example of this need, even though he tries to argue both sides of the issue. He claims we don't have enough evi-

dence that the SS-25 is a violation, yet he implicitly defends Soviet telemetry encryption on grounds that we can prove a violation without telemetry. That's called having your cake and eating it too.

Our ability to prove some violations despite Soviet obstructionism should arouse concern that there are others we have not discovered or proven, where the Soviets have been successful in illegally denying information. More attention ought to be focused on the fact that while nine violations have been declared, in an equal number of cases we have suspicions which we have been unable to resolve. That does not sound to me like a very good batting average. And it doesn't tally those activities which may have been covered up completely.

Some excuse illegal Soviet concealment and deception as the product of historical paranoia and a rather mindless national obsession with secrecy. But the less gullible are unsurprised that these actions accompany increasingly frequent, blatant and militarily significant treaty violations. The Soviets are denying us intelligence for a reason—they have things to hide. But those such as Mr. Hamilton instead would expand still further our traditional magnanimity on compliance issues. The more brazen the Soviet behavior, the more timid the recommended response. On a slim thread woven of legal obfuscations and benign assumptions they would hang our national security.

Breaking Faith

These issues—the Krasnoyarsk radar, the new SS-25 missile and telemetry encryption—are only three of about 18 possible or proven treaty violations, seven concerning Salt II. But the controversy surrounding them typifies the approach taken by those who defend the Soviets on other counts. These are also among the most militarily significant violations, although the little-noticed Soviet development of biological warfare capability is more ominous still, and eventually could in itself threaten the West's survivability. The total picture should be sufficiently alarming to undermine faith not just in SALT II, but also in arms control generally, as a primary means to ensure our security. It can only be inattention to the facts, or a powerful desire not to be influenced by them, that propels Lee Hamilton and others to speak of Soviet violations and their significance in such dismissive tones.

THE LESSONS OF AFGHANISTAN

Bipartisan Support for Freedom Fighters Pays Off

MICHAEL JOHNS

The time has come to stop talking about the lessons of Vietnam, and to start talking about the lessons of Afghanistan. Those lessons are, first, that Soviet Communism is evil; and, second, that consistent and generous support to freedom fighters resisting Soviet imperialism can serve both the moral and the geopolitical interests of the free world, even when the freedom fighters have little chance of total victory.

The Soviet reign of terror in Afghanistan is a stark reminder that the Soviet Union is still fundamentally Stalinist in its contempt for life and in its imperial ambitions. Soviet occupation troops have set afire caves filled with hundreds of frightened villagers, they have employed chemical and biological weapons outlawed by international arms control agreements, they have deliberately blown the hands off children by distributing bombs that look like toys, and they have abducted ten-year-olds from their parents and sent them to the Soviet Union for training as spies and for indoctrination in Marxist-Leninist principles. One million Afghans have perished as a result of Soviet depopulation tactics, and five million have fled their nation, creating the world's largest refugee population. Not since Pol Pot's Cambodia have such heinous atrocities been inflicted on one people and one land.

Yet despite Afghanistan's seven-year occupation by 120,000 Soviet troops armed with the best in Soviet military hardware, a formidable national resistance movement, the mujahideen, has succeeded in denying the Soviets total control of their country. Last year, Mikhail Gorbachev labeled Afghanistan a "bleeding wound," and while his hints of removing troops in the "nearest future" cannot be taken at face value, it is clear that the occupation of Afghanistan has wounded the Soviet Union politically, economically, and militarily. Had the Soviets known in 1979 what they know today, it is much less likely they would have invaded; and they would probably think twice about invading another Moslem land.

A Stinger a Day

The achievements of the mujahideen are a testament to the virtues of unequivocal bipartisan support for anti-Communist resistance groups. The U.S. Congress has waffled on support for the Nicaraguan contras, Angola's UNITA, and Mozambique's RENAMO forces, all of whose chances for a military victory are considerably greater than those of the mujahideen. Yet aiding the Afghan resistance has been almost universally supported by Congress. In 1986 alone, the United States committed $470 million to the mujahideen. Support is also coming from Britain, Saudi Arabia and China.

Within the last year, the mujahideen have received approximately 150 shoulder-fired Stinger anti-aircraft weapons from the United States. These weapons have changed the war dramatically. For years, a lack of effective air defense allowed Soviet aircraft such as the Mi-24 to assault the mujahideen almost at will. Today the Soviets still control the airspace in Afghanistan, but the mujahideen are using the Stingers effectively to defend their strongholds from air attacks. Last December, for instance, the State Department reported that Stinger missiles shot down, on average, one Soviet aircraft per day. Out of respect for the missile, Soviet jets and helicopters no longer linger over attack areas, but make quick entries and exits. The presence of Stingers has also forced the Soviets to release bombs from higher altitudes, with a resulting loss in accuracy. And as Soviet AN-26 troop transport planes take off, Soviet helicopters now circle overhead dropping red and orange flares to provide a distracting target for the heat-seeking Stingers.

Western journalists now report that, because of mujahideen-fired Stingers, the Soviets have been forced to alter their entire flight plans in Afghanistan. Soviet planes taking off from Kabul now gain altitude for 35 minutes in a spiraling pattern before finally turning east toward Jalalabad in order to keep the aircraft over the relatively well-secured area of Kabul before they pass over guerrilla strongholds in the surrounding mountains. All of these positive developments are strategic victories for the mujahideen and a direct result of increased levels of support for their cause.

Moscow's Migraine

Total victory for the mujahideen, that is, the recreation of an independent Afghanistan, is unlikely even if the Sovi-

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If we support these men, why not the Nicaraguan rebels?

ets withdraw their troops. Since Afghanistan's Communist coup of 1978, the Soviet strategy has consistently been to maintain a pro-Soviet regime in Kabul at all costs. In 1979, the Soviets' invasion accompanied their murder of Hafizollah Amin, a doctrinaire Marxist-Leninist whom they feared was losing control of the country to the mujahideen. Last year they replaced their puppet Babrak Karmal with Najibullah or "Najib the Bull," whose expertise in secret police intimidation and control tactics they hope will keep Afghanistan firmly in the Soviet orbit without the need for Soviet occupation troops. It took the Soviets more than a decade to pacify the Central Asian Basmachi revolts of the 1920s and 1930s. They appear prepared to do what is necessary to maintain control in Afghanistan, though they would evidently prefer to do this without their own troops.

Nevertheless, the aid to Afghan freedom fighters must be counted as a significant partial victory for the free world. The occupation of Afghanistan has tied up some 120,000 Soviet troops including many of their highly trained "Spetsnaz" forces. Some 400,000 of the Soviets' two million troops have served in the "limited contingent" in Afghanistan; 20,000 have lost their lives fighting the mujahideen there. The result has been devastating to Red Army morale; Soviet draftees are balking at service in Afghanistan despite the incentives of quick advancement they are offered. As one recruit told Nicholas Daniloff of *U.S. News and World Report:* "We all know how the Minsk division was wiped out. In our barracks, we figure the chances of being killed [in Afghanistan] are one in four." A totalitarian state that controls its media can absorb such losses without much damage. The real cost of Afghanistan has been economic and political.

The Soviets have partially financed the occupation of Afghanistan by extracting billions of dollars of natural gas. However, most estimates place the Soviet cost of the occupation of Afghanistan between $3 billion and $12 billion per year. Providing supplies to the mujahideen, especially Stingers, has proven to be a particularly cost-effective way of combatting Soviet power. Each Stinger costs $75,000. Each Soviet Mi-24 it downs (and there is a success rate of approximately 70 percent) costs $8 million. For every dollar the mujahideen have raised, the Soviets have had to spend approximately 10 times more to counteract it. That is money that cannot be spent supporting the war on democracy elsewhere in the world.

Afghanistan has emerged as the Soviets' greatest political burden of the 1980s. While the Soviets are fortunate to operate in a world that is, for the most part, oblivious to their covert and indirect atrocities, their actions in Afghanistan have been too openly barbarous to remain unnoticed or uncriticized. Their illegal occupation has evoked outrage in Western capitals, in the United Nations, and in most of the Arab world. Together with Vietnam, Soviet behavior in Afghanistan is perhaps the leading obstacle to a rapprochement between the Soviet Union and China. In most of the world, the simple utterance of the word "Afghanistan" is almost immediately equated with an indictment of the Soviet Union and international Communism.

The political fallout from Afghanistan may also be beginning to cause problems for the Soviets in their own territory. The Moslem communities of the Soviet Union are growing rapidly, and by the turn of the century may account for one-third of the total population. In February, the Associated Press reported that the mujahideen have been crossing the border into Soviet territory to plant

Cockburn, Where Is Thy Sting?

Those Stinger anti-aircraft missiles that are proving so effective in Afghanistan (and Angola) are knocking out more than Soviet helicopters and MIGs from the sky. They are also shooting down the arguments of Pentagon critics who say American high-tech weapons are too complicated to work on real-life battlefields.

Richard Weintraub reported in the *Washington Post* (January 27, 1987) that the Afghan mujahideen had downed "90 to 100 Soviet or Afghan government aircraft" with the portable, shoulder-fired Stinger, a successor to the Redeye that incorporates recent advances in infrared sensor technology.

David B. Ottaway reported (*Washington Post*, February 8, 1987) that after training courses of six to eight weeks, Afghan guerrillas "were averaging seven to eight hits for every 10 Stingers fired." According to Ottaway, Jonas Savimbi's troops have been scoring similar successes in Angola.

On February 10, Gary Lee of the *Washington Post* reported that Western diplomats in Moscow were estimating a loss of aircraft at "the rate of one a day after the Stingers were introduced into the rebels' arsenals."

Yet only six months before, the technology-bashing crowd of Pentagon critics unleashed a blitz of articles saying that Stingers were too complicated for their intended users, and so badly designed that they couldn't work.

Martin Binkin of the Brookings Institution, writing in the *Los Angeles Times* (July 1, 1986), cited the Stinger as an example of a "trend toward more complicated, less reliable and more difficult-to-maintain equipment." He argued that firing the missile required reasoning skills and hand-eye coordination beyond the ability of most soldiers, and that it was designed so that only 2 percent of all Army soldiers are tall enough to use it safely. There was "good reason," he suggested, "to be skeptical about its capabilities . . . in the hands of Third World forces."

Wayne King and Warren Weaver, Jr., in the *New York Times* (August 3, 1986) called the Stinger "too complicated for the caliber of soldier" assigned to firing it; he referred to "18 complex" preparatory steps, a figure also cited by Binkin and by Molly Moore in a *Washington Post* article, "U.S. Troops Find Weapons Too Complex."

Wayne Biddle in *Discovery* reported that "the concentration of hydrogen chloride emitted by the firing of the missile is 20 times greater than Occupational Safety and Health Administration standards."

And Andrew Cockburn in "The Stinger Is No Stinger" (*New York Times*, July 22, 1986), complained that Stinger's two-pound warhead was too "puny" to inflict much damage on targets. He argued, furthermore, that "a humid climate, such as that of Nicaragua, will play merry hell with the Stinger's delicate electronic innards"—a prediction that will surprise the Cuban pilots who have seen their comrades downed in Angola.

Like all weapons, the Stinger has its drawbacks, and some of the criticisms mentioned in these articles may have been justified. But as experience on the battlefield has shown, these limitations can be overcome and are trivial when compared with the weapon's phenomenal performance.

Next time Andrew Cockburn, Molly Moore, Martin Binkin and other strident critics of Pentagon technology try to discredit a U.S. weapon system and, by inference, the ability of our government to provide for the nation's defense, look at their track record. The people who write about weapons systems should be held as accountable as the people who build and use them.

ROBERT ANDREWS

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mines on roads used by Soviet border patrols and to distribute Moslem literature and tapes. One of the Soviets' greatest long-term worries is that explosive Moslem nationalism could spread to Soviet Central Asia and lead to organized rebellion against the Kremlin.

The Soviets have also had to suffer the embarrassment of well-publicized Soviet defections. Last October, an Afghan pilot, Mohammed Daoud, flew a Soviet Mi-21 to a Pakistani airbase and requested political asylum. It did not stop there. Daoud then expressed his desire to join the mujahideen and fight for the liberation of his homeland. Some Afghan and Soviet soldiers who cannot stomach the violence they are inflicting on the Afghan population or who disagree with the occupation of the country attempt to enter the U.S. embassy in Kabul to request political asylum. The Soviets usually respond by surrounding the embassy and cutting off external power and electricity until the soldier is released. In response to the growing number of successful and attempted defections, the Soviets have tightened draft regulations, and increased the punishments for evaders. Soviet soldiers who attempt to desert the Red Army are returned to the Soviet Union and are presumed to be executed.

Against All Odds

The ability of the mujahideen to hold their own against an invading superpower is a remarkable tale of courage and commitment in the face of an evil totalitarian occupation.

Reuters/Bettmann Newsphotos

Raising the price of Soviet aggression

Unfortunately, other resistance movements around the world have not benefited from such unswerving levels of American commitment. Without outside moral support and materiel, large and popular resistance movements in Angola, Mozambique, Laos, Vietnam, Suriname, Cambodia, and especially Nicaragua, have had trouble establishing a viable military opposition to their respective tyrannies.

This is especially regrettable because the opportunities for victory are so much greater in Nicaragua, Angola, and Mozambique than they are in Afghanistan. Were the Nicaraguan contras, for example, to receive the massive and consistent levels of foreign support given the mujahideen, there is little doubt that they too could control their countryside and perhaps even some of the cities.

The mujahideen receive nearly universal support from both American political parties, even though there is little likelihood that if they came to power they would establish a democratic government respectful of civil liberties. Human rights groups do not testify in Congress on massacres committed by the mujahideen; nor, for all the moral outrage over arms sold to Iran, does Congress devote much attention to links between the Afghan resistance and Khomeini. The human rights record of the contras, by contrast, is examined under a microscope, even though they are much more influenced by Western democratic values than are the mujahideen.

The apparent reason for this double standard is that Americans see in Afghanistan the presence of thousands of Soviet troops and clear evidence of an illegal occupation. What they fail to see is that Nicaragua—with its illegitimate Marxist-Leninist junta, its Soviet advisors, suspension of basic civil rights and liberties, and unpopular allegiances to Moscow and Havana—is also under foreign occupation. While there may not be 120,000 Soviet troops on Nicaraguan soil, there easily could be if the Soviets decided that was in their strategic interests.

Furthermore, the geopolitical importance of Nicaragua to the United States surpasses that of Afghanistan. This is not to diminish the need for continued and even increased levels of support for the mujahideen, but to suggest that the consolidation of a Leninist dictatorship in Nicaragua will be the most damaging setback to our national security and international credibility since the rise of Fidel Castro provided a Soviet beachhead in Cuba. With support from Moscow and Havana, the Sandinistas would be free to intensify their support for Marxist revolution throughout Latin America and the Caribbean. This would result not only in the endangerment of Latin America's fragile democracies, but also in the diversion of America's political attention from other areas of the world.

Not since Pol Pot's Cambodia have such heinous atrocities been inflicted on one people and one land.

In Nicaragua, the Soviets are supplying the Sandinista dictatorship with $500 million worth of modern Soviet military hardware every year. Meanwhile, the United States debates, and delays, on its moral and strategic obligation to the contras. Afghanistan has proven that, with consistent and substantial levels of support, the forces of resistance can make headway in their battle for self-determination. The time has come for these lessons to be applied elsewhere in the world and for America to assume her role as the leader in the world's march for freedom.

THE LEGACY OF LEO STRAUSS

Is America the Good Society that the Ancient Philosophers Sought?

DINESH D'SOUZA

It is thought that justice is equality, and so it is, but not for all persons, only for those that are equal.

—Aristotle, *Politics*

In the bicentennial year of the American Constitution, it is time for serious men and women to come to terms with Leo Strauss, the political philosopher whose writings stand in lonely and vehement opposition to much of the accepted wisdom of our day. Over the past few decades, Strauss and his band of students have powerfully challenged contemporary doctrines of moral relativism and its political corollary—the idea that there are no fundamental differences between democratic governments and totalitarian regimes. Invoking the teachings of the classics, especially Plato and Aristotle, they have upheld the existence of "natural right," of standards in nature by which we can judge men and governments. The Straussians have employed the philosophy of natural right to defend liberal democracy and moral values against their adversaries both foreign and indigenous. The students of Leo Strauss comprise an intellectual community, a school of thought, that can, without exaggeration, be described as the most rigorous conservative force in political theory, with increasing influence on public policy.

Leo Strauss was born on September 20, 1899 in Germany. Raised by orthodox Jewish parents, he studied at the universities of Hamburg, Marburg and Freiburg. In 1932, he left Germany to live and study in Cambridge and Paris. Faced with the growth of anti-Semitism in Europe, corresponding with the rise of the Nazis, Strauss in 1938 migrated to the United States. He taught at the New School for Social Research in New York until 1949, and then at the University of Chicago until 1968. He also taught briefly at Claremont Men's College in California and Saint John's College in Maryland, before his death in 1973. He lived the life of an academic, notable for its inaction, intensely bookish, "a life in which the only real events were thoughts," says Strauss student Allan Bloom.

Yet this unassuming bespectacled man left an indelible mark on students who would go on to distinguish themselves in the American academy—such men as Harvey Mansfield at Harvard, Bloom and Joseph Cropsey at the University of Chicago, Werner Dannhauser at Cornell, Harry Jaffa at Claremont McKenna College, and Walter Berns at Georgetown University. "We all believed in watered-down teachings derived from Marx, Freud and Hobbes," Dannhauser says. "Strauss caused us to realize that we were the prisoners of our opinions by showing us the larger horizons beyond them." For many Straussians this was not only intellectual, but also political, liberation; they have flung themselves into the defense of America's shores and America's values. Prominent Straussians include: Paul Wolfowitz, former assistant secretary of state, now a U.S. ambassador; Gary McDowell, associate director of the Department of Justice; William Kristol, chief of staff for Education Secretary William Bennett; and Carnes Lord, director of security at the National Center for Public Policy. Speechwriters for Chief Justice William Rehnquist and Defense Secretary Weinberger identify themselves as Straussians. Jack Kemp and Lewis Lehrman are politicians of the right who derive their Straussian perspective from Strauss protege Harry Jaffa. The Straussian fingerprint can also be detected in the political commentary of George Will, and of neoconservatives such as Irving Kristol.

Esoteric Thinker

Strauss is widely regarded as a conservative thinker, but he did not consider himself in this way. He was a political philosopher, and most of his thought operated in the rarified intellectual ionosphere above practical policy. His books, such as *The Argument and Action of Plato's Laws* and *Socrates and Aristophanes,* and his essays on Xenophon, Maimonides, Locke and Hobbes, are all dense and erudite, demanding unflagging concentration and intimacy with the original texts. Strauss and the Straussians have recovered numerous latent insights in these works, sometimes through a so-called esoteric reading which contrasts apparent meaning with actual meaning. Although Straussian esoteric criticism has been much criticized and parodied, it definitely has encouraged a close reading of classic works, taking them on their own terms, with microscopic attention to detail. Strauss insisted that ancient philosophers be understood "as they understood themselves," not

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simply as products of their environment.

Strauss and his students have helped recover a varied and opulent tradition of classical philosophy stretching back to Socrates, a tradition responsible for much of what Matthew Arnold termed "the best that has been thought and said." By demonstrating that our ancestors understood the crucial principles underlying the dilemmas we face today, anticipating modern criticisms and supplying powerful and controversial answers, Strauss forces serious people who live in the present to come to terms with the past as they prepare for the future.

But Strauss prized the thought of the ancients not because it was old but because it was true. He refused to genuflect before the icons of the past. Rather, Strauss attempted to rescue the past from what Lovejoy called the "pathos of time," in which Plato and Aristotle are regarded as undisputed titans precisely because their controversial ideas have receded into invisibility and extinction—they no longer provoke and threaten us. Strauss paid the ancients the highest compliment they could ask for: he took them seriously, and wrestled with their arguments not as curious reflections of the Weltanschauung of Greece in the 5th century before Christ, but as arguments with a claim to timeless validity.

Drawing by Alex Höfter

Leo Strauss, Defender of Democracy

Mindless Tradition

Strauss' best known work is *Natural Right and History,* published in the early 1950s in Europe and America. In it, Strauss identifies pre-philosophic life with mindless attachment to tradition and authority. Strauss sees Socrates inaugurating philosophy by challenging the "primeval identification of the good with the ancestral." Strauss argues that the pre-philosophic approach—embodied, for example in Homer and Hesiod—is vulnerable because it has no basis for distinguishing between good traditons and bad traditions. Furthermore, its frequent appeal to revelation poses the problem of different people having different epiphanies, or different oracles giving contradictory advice; how are people to arbitrate the disputes which inevitably arise over whose theology is to prevail?

Starting with Socrates and continuing with Aristotle, Strauss discovered a classical tradition of "natural right," which for the ancients provided the basis for the differentiation between right and wrong, and also between legitimate and illegitimate political systems. Strauss' exegesis of classical texts shows the ancients perennially asserting an all-important distinction between what is natural and what is conventional. Social interaction is natural, for instance, because it arises out of man's very nature. Social prestige, however, is conventional, because it arises out of the customs of society. The ancients generally identified the good with actions that were "in accordance with nature," and believed that conventions and traditions were legitimate insofar as they reinforced natural right, or the natural order of the universe.

Natural right did not go unquestioned in the old days, as Strauss well knew. According to Heraclitus, man's idea of justice is entirely conventional: "Men have made the supposition that some things are just and others are unjust." This is also the position of Thrasymachus the Sophist in Plato's *Republic,* who claims that "justice or right is simply what is in the interest of the stronger party." Epicurus' position was that the good is identical with the pleasurable. These men are the predecessors of many modern schools of thought which deny standards of right and wrong in nature and, perceiving morality to be an artifice of those who stand to gain by it, reject it in favor of an unrestrained pursuit of pleasure and power. It is against this modern relativism and hedonism—accepted, in diluted form, by a large number—that Strauss threw his intellectual weight.

Strauss maintained that although the ancients foresaw problems with identifying rights in nature through human reason, generally they accepted the existence of natural right; their arguments tended to be over the content of that right. For example, both Plato and Aristotle agreed that "happiness is the activity of the soul in accordance with virtue," as Aristotle stated in his *Ethics.* Both believed that states, and individuals, should make truth and justice the goal of their existence. Both believed that freedom was not an end in itself, but only a means to virtue; curtailment of freedom is justified when it subverts the ends it is supposed to achieve. Both placed sensual pleasure relatively low in the hierarchy of human aspirations, although Plato was more severe on the appetites than was Aristotle. Unlike Plato, Aristotle felt that justice is not an abstract entity; rather, justice emerges from a prudent consideration of a particular situation. Strauss agreed with this, and took pains to distinguish this Aristotelian view of natural right from the Thomistic conception of natural law as a set of immutable precepts ordained by the supernatural.

Hobbes' Revolt

Strauss identified a radical break with the classical approach to natural right in modern philosophy. It began with Machiavelli, whose *Prince* refuses to distinguish between legitimate and illegitimate regimes, proffering its counsel to virtuous princes and malevolent tyrants alike.

But the most systematic denial of the natural right tradition embodied in ancient philosophy comes from Thomas Hobbes, whose view of man's natural condition as nasty, brutish and short gave rise to a single ethic—what is good for man is simply that which preserves him from violent death and guarantees him as much pleasure as is consonant with peace and self-preservation.

The Straussians have employed the philosophy of natural right to defend liberal democracy and moral values against their adversaries both foreign and indigenous.

Then Strauss turned to John Locke, the grand old sage whose ideas powerfully influenced the American founders. Locke, with his lofty appeals to Hooker and the Bible, appears to reject Hobbes; but Strauss found Locke's rhetorical prudence disguising his true pedigree. In fact, Locke's social contract theory presumes Hobbes' view that society is a conventional device to secure man's life and personal pleasure. Strauss was not against pleasure; he accepted the Aristotelian eudaemonist view—the purpose of life is happiness. Yet Strauss did not admire the tireless promotion of self-interest exalted by Locke because he believed that it would not achieve its goal. It was not an attempt to live according to nature, but to escape from nature, what Strauss termed "the joyless quest for joy."

Against this modern view, Strauss held up the ancient argument that society is a natural institution which men enter into because "man is by nature a political animal," as Aristotle maintains in his *Politics*. Thus, the purpose of society is not to help man avoid his nature but rather to help him realize it. Strauss concludes: "Man's society does not proceed from a calculation of the pleasures which he expects from association, but he derives pleasure from association because he is by nature social."

It is the legitimacy of human association in a city or *polis* that makes it possible to talk about just and unjust regimes. Plato and Aristotle believed that, in the best regime, the wisest men would rule. But in practice, both men knew, wisdom would have to be vindicated by popular consent; otherwise, the wise would have to rule by force, and this would transform good regimes into hated tyrannies. For Strauss, the closest thing we have today to the ancient *polis* is constitutional democracy.

Aristotle Lives

Strauss was greatly attracted to the American regime because of its closeness to the moderation and lawfulness of Aristotle's favored "mixed regime," a combination of elements of aristocracy and democracy. In America, all questions are subordinated to popular consent, and yet through the Senate, the judiciary and protracted procedures of constitutional amendment, the American system includes ballast against the winds of popular opinion, and allows wisdom to emerge—sometimes through popular prejudice, sometimes despite it. The fundamental appeal of America for Strauss and Straussians is not that it secures the most material progress for the most people; rather, it is that it resembles the ancient city, combining the exhilaration of liberty with a call to higher standards, to wisdom and to virtue.

It would be too much to assert that Strauss was antagonistic to capitalism. Straussian Harvey Mansfield asserts that Strauss would echo "at least one, probably two cheers for capitalism." He understood that capitalism gives philosophers the freedom they need, and he was not indifferent to material comfort. Yet the premise of capitalism, as stated by Adam Smith, is self-interest. Strauss understood self-interest as a fact of life but he did not find it admirable. To Strauss it represented the lower rungs of humanity—appetite as opposed to reason.

Strauss admired the old virtues that capitalism produced—the experience of risk, which Aristotle considered part of the virtue of courage; ample provision for the family of the entrepreneur, the happy result of productive activity—but he found these to be incidental to capitalism, not its animating force. Strauss' students say he did not spend time attacking capitalism because he understood there was no better alternative. He abhorred socialism on Aristotelian grounds—it is unnatural levelling; its equal distribution of rewards is unjust because talents and industry are unequally shared; it is motivated, even more so than capitalism, by greed and envy.

Strauss devoted most of his writing to the defense of moral principles of right and wrong. He believed that understanding these principles, and acting on them, is the highest vocation of a human being. This is, of course, exactly the point of view of the ancient tradition. Socrates, condemned to death, could easily have escaped to another country and thus vindicated Hobbes. "But the real difficulty is not to escape death," Socrates says in Plato's *Apology*. "The real difficulty is to escape from doing wrong." Strauss admired Socrates' judgment in facing up to the sentence of his jury, thus asserting the primacy of the law over the erring individual, and of moral action over personal self-interest.

He saw two powerful contemporary enemies of classical natural right in the Western intellectual establishment: the first was positivism, the second historicism. The premise of positivism was the so-called "fact-value dichotomy" made famous by Max Weber: science, including social science, would hereafter focus all its attention on facts, because only facts constituted true knowledge; values would be consigned to the private sphere because they were inherently subjective. Strauss subjects Weber to such devastating criticism that it is embarrassing to continue to assert the fact-value distinction after reading *Natural Right and History*. Most important, Strauss shows that "Weber's thesis necessarily leads to nihilism."

Why? Because if all values are entirely subjective this means that "no solution is morally superior to the other," as Strauss puts it, and therefore "the decision has to be transferred from the tribunal of ethics to that of convenience or expediency." In other words, it leads to the view of the ancient sophists that there is no such thing as justice or truth—it is might that makes right. According to modern social science, Strauss says, our natural human sense of right and wrong must be artificially suppressed for the purpose of feigning scientific objectivity. "Every preference, however evil, base or insane has to be judged before the tribunal of reason to be as legitimate as any other preference." For Strauss this is both false and pretentious.

Of what use, Strauss rhetorically asks, is a social science that can speak of concentration camps without speaking of cruelty? In avoiding value judgments, where reason cries out that such judgments be asserted, is not the truth sacrificed to procedure? How can one give an accurate account of the morally turbulent world of politics, or the morally turbulent creature called man, without making certain value judgments? Strauss attacked the premise of modern science not because he opposed knowledge of facts but because he believed that knowledge of moral truths was also possible.

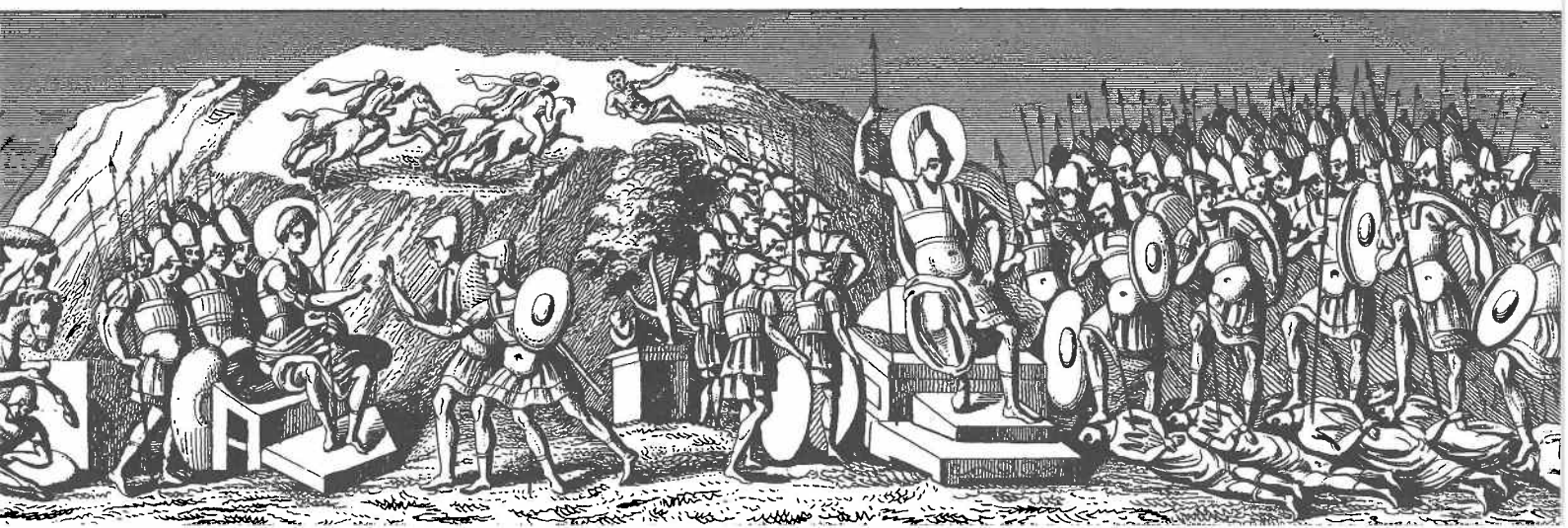
The Historicist Fallacy

In addition to the threat from science, Strauss found opposition to the idea of moral truths in an unusual quarter: conservatives writing in the name of "history." Historicism, Strauss argues, emerged in response to the French Revolution and the natural right doctrines it articulated, such as liberty, equality, fraternity. Taking a cue from Rousseau, the revolutionaries argued against the claims of the *ancien regime* by appealing to something even older—to man's natural state. Rousseau maintained that man was carefree and happy as a noble savage; it was society that turned him into a being corrupt, neurotic, effeminate. Historicists, Strauss says, blamed the violent cataclysm of the revolution on abstract principles of right and wrong.

Strauss found opposition to the idea of moral truths in an unusual quarter: conservatives writing in the name of "history."

Rather than examine the content of those principles, and contrast the ancient view of natural right with that of Rousseau, many conservatives abandoned universal truth altogether, believing that "universal principles necessarily have a revolutionary, disturbing, unsettling effect . . . because they force man to judge the established order, what is actual here and now, in the light of the natural or rational order, and what is actual here and now is more likely than not to fall short."

What historicists like Hegel, Nietzsche and Burke argued, therefore, was that abstract truths were meaningless; truths could only be apprehended through history. For Hegel this meant a process of successively resolving the contradictons of history. Nietzsche's was an irrational historicism—for him it mattered little what choices people



made; it was the fact of choice, the brutal assertion of will, that gave meaning to the inchoate universe. The Straussian hostility to Burke comes from his apparent indifference to absolutes; Burke, after all, claims in his *Reflections* that "Circumstances give in reality to every political principle its distinguishing color and discriminating effect." Strauss accused Burke of "paving the way" for the historicist school by implying that individuals do not make history; history makes individuals. Straussians charge Burke upholds not natural but conventional right.

Strauss was greatly attached to the American regime because of its closeness to the moderation and lawfulness of Aristotle's "mixed regime."

This may be a somewhat stretched reading of Burke, however. When Burke decried the French Revolution—"everything seems out of nature in this strange chaos of levity and ferocity"—he does not seem to appeal to custom but to natural law. His point was that the rights of the *philosophes* are unnatural, fabricated rights. Burke's formula for incremental reform may be less a denial of absolutes than the application of the classical virtue of prudence in human affairs.

Strauss argued that although historicism arose in reaction to modern natural rights, it only succeeded in further radicalizing man's understanding of truth. Perhaps the most destructive form of historicism in our day is Marxism. With a little help from Engels, Marx ransacked Hegel to discover immutable laws of history which he then applied to the bourgeoisie and proletariat. Their conflict, Marx predicted, would lead to a new synthesis—the Communist state. Marx's specific historical predictions have been comically discredited, but Marxist states continue to invoke the doctrine of "historical progress" to justify making life miserable for the people. If progress toward utopia is inevitable, after all, then sacrifices imposed on citizens *en route* are necessarily legitimate. Philosophically, the consequences of historicism are nihilism, Strauss shows, but politically they usually tend to be totalitarianism. Witness not just the Soviet Union as an expresson of Marxist historicism, but also Nazi Germany as a realization of some of Nietzsche's *volk* historicist ideals and of the historicist vision of Martin Heidegger.

Liberalism, Strauss argues, adopts the values of positivism and historicism, not consciously, but at the level of cliche. This is best seen in slogans and formulations that have become commonplace in our time: "You can't legislate morality." "You're trying to turn back the clock." "How can you believe that? This is 1987?" The way liberals typically apply historicism is as follows: first, they decide what political program they favor; second, they identify inevitable historical movement toward that program; third, they maintain that since things are headed in that direction anyway we might as well make the transition as painless as possible; fourth and finally, they label anyone who opposes their preferences—which are, by now, historical laws—regressive, dogmatic and worthy of derision and contempt. This pattern of reasoning is very familiar with respect to liberal views on sex education, welfare programs, arms control, and a host of other items. It is safe to say that any Straussian would regard as absurd the notion that laws should be amoral or immoral, or the belief that inexorable rules of history are in the process of vindicating the liberal worldview.

The Warring Tribe

Strauss' students have taken up various strands in his thinking and gone on to develop them into hybrid philosophies of their own. This has generated a rich corpus of work. But it is also a varied collection, resulting from differences of approach and emphasis. Unfortunately, of late, deep fissures have developed among Strauss' best students which have permanently fractured a once-cohesive community. For the outsider it is poignant to watch the Straussian parting of the ways, this intellectual and even personal diaspora. Somehow it seems unworthy of these men. Yet the fights are not of the character of the argument between the louse and the flea, made famous by Samuel Johnson. The issues over which the Straussians divide are issues of paramount importance, issues which go to the heart of what it means to be an American. To be drawn into the vortex of the Straussian debate is to witness intellectual jousting of a very high order, mingled with some shrewish name-calling and entertaining demagoguery, to depart confounded and amazed, changed, if not for the better, at least somewhat for the wiser.

Central to the internecine Straussian conflict is Harry Jaffa, the *enfant terrible* of the clan. Jaffa is now professor of political philosophy at Claremont McKenna College and its graduate school. His most famous book is *Crisis of the House Divided*, an analysis of the Lincoln-Douglas debates. Douglas made the case for popular sovereignty—for states deciding for themselves whether they would permit slavery or not. As strong advocates of decentralization and state power, many conservative thinkers and legislators, then and today, agree with Douglas.

Lincoln, however, invoked the "all men are created equal" clause of the Declaration of Independence to argue that self-government presumes a moral and legal equality among men. If all men are equal and blacks are men, then blacks must be included in popular government. Lincoln claims—and Jaffa agrees—that it does not make sense to use a doctrine of popular sovereignty to prevent a whole class of men from voting and enjoying their fundamental rights. How can a state's right to choose deprive individuals within those states of a right to choose? The range of acceptable choices for states does not include the prerogative to put some men in chains.

In writing his book, Jaffa says he was struck by the recognition that the issue between Lincoln and Douglas was "in substance, and very nearly in form" identical with the issue between Socrates and Thrasymachus. Douglas

wanted popular sovereignty; but that amounts to nothing more than the right of the many, of the strong, to assert their will over the weak—the position of the sophist of Athens. If popular choice is to be just, if the American regime is to be a good regime, Jaffa believes that it must be defended according to a criterion of morality that is independent of choice. Freedom and democracy are all very good, but they are mere procedures; the real question is what kind of society free men want for themselves. Is America a regime which defines choice while being indifferent to the content of the choices being made—the position of Nietzsche—or is it a regime whose freedom provides individuals with the best opportunity to seek the virtuous and the good—the position of Socrates?

Harry Jaffa has devoted his life to vindicating the American system of the charge that it is a radically modern regime, in which natural right is systematically denied, in which virtue is perennially subordinated to procedure. He has gone about this in a curious way, by attacking the other Straussians, his former friends. Jaffa has criticized, in succession, Martin Diamond, Walter Berns, Thomas Pangle, Irving Kristol, and George Will, to name a few. He has perhaps inflated the importance of his mission by comparing himself to Socrates as a self-avowed pest who indefatigably pursues the truth—provoking the retort from Walter Berns that "It is an error of logic to conclude that because Socrates was a pest, all pests are Socrates." Thomas Pangle, professor of political science at the University of Toronto, concluded one bitter exchange with Jaffa by lamenting "his fierce and wounded sense of self-importance." Pangle noted further that Jaffa was once a great writer and teacher but now "seems incapable of arguing issues in moral and political theory without labeling his opponents and their views immoral."

Marxist Tactics?

No doubt the debate among Straussians has become too truculent and *ad hominem.* In some respects, it resembles the shrill and hair-splitting arguments among various species of Marxists. Leo Strauss himself cautioned against "the danger of pursuing a Socratic goal with the means, and the temper, of Thrasymachus." Yet Harry Jaffa is convinced that the resolution of the argument will settle the very philosophical basis for American conservatism. For him and his students, it is an argument over whether America is a country worth the unswerving allegiance of its citizens, or whether America is base and flawed in its origin, worth, at best, a tepid attachment.

The reason America is fundamentally good, according to Jaffa, is that the founders were statesmen who applied the classical virtues of prudence and courage to devise a regime that embodied, as far as possible, the natural right tradition of the ancients. Jaffa sees the Declaration of Independence as epitomizing the founders' assertion of a universal principle of political justice, namely equality. By allowing slavery, the founders had to compromise on this principle in order to set up the union, Jaffa concedes, but Lincoln's achievement was to "separate the principles of the founders from their concessions." The Declaration established the rule on which America was founded, as Lincoln argued, so that the enforcement might follow as soon as it was feasible. Thus the expansion of the franchise

to include blacks and women is not a betrayal of the founding fathers, but a consummation of their ideas.

Jaffa's principle of equality should not be understood as condoning egalitarian or socialist outcomes. On the contrary, Jaffa argues that equality of opportunity is essential to justify inequality of results. Without equal opportunity, the legitimacy of the entire contest is called into question, and outcomes can rightly be labeled unfair. But when the rules are fair, then natural differences of talent, skill, and perseverance can assert themselves. Given the way in which the modern state and modern rhetoric contrast liberty and equality, it is somewhat surprising for Jaffa's new readers to discover that he uses the two terms as synonyms. Further, Jaffa shows that the founding fathers regarded liberty and equality as two sides of the same coin, with equality among men providing the basis for self-government and for the rights of freedom.

The issues over which the Straussians divide are issues of paramount importance, issues which go to the heart of what it means to be an American.

America the Beautiful

Most of the other Straussians disagree with Jaffa; they do not believe that they can give as unqualified an endorsement of America. Perhaps the first expression of this was given by Martin Diamond in an influential 1959 article in the *American Political Science Review.* Diamond closely analyzed the 10th paper of *The Federalist,* understanding Madison's remarks on faction to mean he did not believe that, in a free society, the motives of self-interest on the part of Americans could be improved—thus they would have to be neutralized by being set against each other. According to Diamond, the principle of arbitrating between base motives, as opposed to improving man, was enshrined in *The Federalist* and the document it defended and expounded, the Constitution. Later, Diamond's reasoning would be echoed by George Will in *Statecraft as Soulcraft,* where he indicts Madison for failing to develop any notion of the "common good." Will pessimistically concludes that America has been "ill founded" and that many of our contemporary problems are not a break with the American tradition but its logical consequence. Modernity is simply working itself out.

Walter Berns, in his book *In Defense of Liberal Democracy,* argues that because the American founders based their vision on John Locke, and Locke in his heart accepted the Hobbesian premise, therefore "Hobbes is the founder of self-government in the modern sense." Madison and Jefferson, Berns maintains, "were persuaded that only by surrendering natural right . . . could there be peace." So the framers judiciously consigned morality and religion to the private domain. "The animosities of moral factions would be replaced by the competition of economic interest" in the new American regime. "Men would have to be persuaded to pursue material ends above or before spiritual ones." America is the "institutionalization of this modern project" and, on its shores henceforth, in Berns' ringing phrase, "Acquisition will be a substitute for morality." It should be emphasized that Berns is not in favor of any of this; indeed his book celebrates liberal democracy *despite* American modernity.

But what, then, is to be the basis for American patriotism? Berns argues that loyalty to America is justified not so much because this is a good regime, in the ancient sense, but because it is the least bad alternative in the modern world. Berns quotes Strauss as frequently rebutting criticisms of America by insisting, "But the alternative is Stalin." According to Berns, Strauss understood "that the real issue in the world is the issue of the United States versus the Soviet Union, or freedom versus totalitarianism."

Thomas Pangle, in a recent essay in *National Review,* argues that the question of patriotism cannot merely be settled in references to alternatives. It is not merely enough to oppose other systems; one must have a positive reason for preferring one's own. Pangle concedes America's Lockean origin. "We are asked to love our country while at the same time . . . cultivating an awareness that our country may not be the best, certainly not the best conceivable, political order." Because America is radically modern with no sense of continuity or tradition—its founding was a deliberate break with the old order—therefore patriotism cannot be based on filial piety or love of an ancestral past. It has to be based on ideas, in particular, on the American idea. That idea, for Pangle, is open inquiry. "The questioning of America . . . is at the very core of what it means to be patriotic."

Pink Patriotism

This meets with a roar of disapproval from Jaffa and his students, who consider patriotism of this stripe to be a bloodless and weak-kneed patriotism not worth the name. Jaffa says the American founders understood both freedom and virtue to be the project of the new nation. Did not Jefferson, after all, frequently cite Aristotle and Cicero? Did not Hamilton, Madison and Jay write *The Federalist* under the pseudonym Publius—echoing Plubius Valerius of the Roman Republic? Does not *The Federalist* appeal to Solon and Lycurgus, who drafted the Athenian and Spartan constitutions? Jaffa concedes to Berns that John Locke undoubtedly had a strong influence on the founders as well, but he insists that the founders did not understand Locke as Strauss understood him. Rather, they read Locke as continuous with the tradition of the Greeks and Christian divines. "Locke wrote of the relationship of God and man in a perfectly traditional way, and it was in this sense that he was understood" by Madison and Jefferson. "In affirming that all men are *created* equal," Jaffa says, "the founders expressed their conviction that human freedom depends on the recognition of an order that man himself does not create."

While self-interest is strongly suggested as the moving

principle of America by Madison in the 10th book of *The Federalist*, Jaffa colleague Charles Kesler at Claremont McKenna College argues that "A close look at *The Federalist* shows a rhetorical movement from the more democratic, and sometimes almost Machiavellian, discussion of union in the early part to the more aristocratic account of the Constitution in the later numbers." Jaffa and his students see America as more than a conglomeration of warring factions; they believe the founding embodies a strong natural right tradition which has been subsequently abandoned. They accuse Berns and Pangle of seeing contemporary developments as a mere logical unfolding of the founding principles, with Hobbes' and Locke's false conception of natural rights leading to the absurd contemporary equation of all wants with entitlements: the "right to education," "right to sexual fulfillment," and so on.

Take That, Irving

Jaffa also has an argument to raise with Irving Kristol, who prefers to read the American Revolution as a renunciation of utopian ideals, a prudent enterprise based mostly on the way that people wanted to live their lives. "To perceive the true purpose of the American Revolution, it is wise to ignore some of the more grandiloquent declamations of the moment," Kristol maintains in *Reflections of a Neoconservative*. Jaffa maintains that, on such grounds, the American Revolution would be totally unjustified, and so would the Civil War. The only possible rationale for initiating such bloody cataclysms, in Jaffa's view, is an attachment to eternal principles of right and wrong. Revolutions can be carried out pragmatically, but they cannot have pragmatism as their *raison d'etre*. Jaffa also has a longstanding dispute with traditionalist scholar M. E. Bradford of the University of Dallas over a similar issue. Bradford condemns Lincoln's "utopianism" and "millenarianism" which foist abstract principles upon the social fabric and thus rend it asunder. Jaffa responds that unless our lives and our regimes are founded on true principles we deserve to be rent asunder.

It seems fairly clear that, in his zeal to defend the American founding, Jaffa exaggerates the degree to which Jefferson and Madison carried the same baton as Plato and Aristotle. The natural right banner behind which Jaffa's troops proudly march, the Declaration of Independence, hardly sounds like a product of ancient Greece or Rome. Its rhetoric is that of modern philosophy, not of ancient philosophy. Equality is Jaffa's *sine qua non* of natural right, but Plato and Aristotle found the notion that all men are created equal dubious, at least in any politically relevant sense. "The deliberative faculty in the soul is not present at all in a slave, in a female it is present but undeveloped, and in a child present but ineffective," observed Aristotle.

Yet it is hard to argue with Jaffa about the need for firm principles on which to ground our understanding, and appreciation, of our country. Strauss himself did not seem to share the ambivalent patriotism of some of his students. He was fiercely pro-American in the style of millions of emigres and refugees who have found protection in this country from the tentacles of totalitarianism. In his introduction to *Thoughts on Machiavelli*, Strauss wrote that the United States is "the only country in the world founded in explicit opposition to Machiavelli's principles." Even today, it is perhaps the only nation that discusses foreign policy largely in terms of moral principles, not in terms of a self-promoting *realpolitik*. It was Jaffa's hardy patriotism that inspired him to work for Barry Goldwater's presidential campaign in 1964 when he composed for Goldwater the famous lines, "Extremism in defense of liberty is no vice. Moderation in pursuit of justice is no virtue."

Given the way in which the modern state and modern rhetoric contrast liberty and equality, it is somewhat surprising for Jaffa's new readers to discover that he uses the two terms as synonyms.

So, Who's Right?

The problem remains, however, as to which of the Straussians correctly understand American origins. Perhaps Harvey Mansfield comes closest to the truth about America when he argues that it is "not based on virtue but depends on virtue." As long as self-interest and the pursuit of private gain are complemented by churches and an abiding sense of public morality, then America can survive the worst onslaught of modernity, and resist the dangerous doctrines which devoured Germany, Italy, and Austria during the 1930s and 1940s, and which persist in the Soviet Union and its satellites today. The real question about this country, though, is whether its institutions of virtue, so prevalent during Tocqueville's day, are still strong. The erosion of church attendance and the decline of the family suggest that they are not. But the recent resurgence of religion, best seen in the rise of the evangelical and fundamentalist communities, may mean the picture is not so bleak after all. It is perhaps no accident that neoconservatives taught by Strauss show a deep respect for, while keeping their distance from, the Christian Right.

The Straussian perspective fills an important niche within conservatism. It is at once democratic and distrustful of pure democracy, idealistic in its belief that proper social arrangements can improve people, yet anti-utopian in its recognition that the ideal regime is not the same thing as the best practical regime. The loyalty of the Straussians is neither to class nor church nor abstract principles of individual freedom, but to ancient standards of right and wrong and to political systems that make it possible for men to fulfill their nature by choosing the good. ☎

CLASSROOM STRUGGLE

The Free-Market Takeover of Economics Textbooks

THOMAS J. DILORENZO

In 1948, when Paul Samuelson published the first edition of *Economics: An Introductory Analysis*, John Kenneth Galbraith forecast "that the next generation would learn its economics from this work." Well, at least one Galbraithian hypothesis has been confirmed. For more than three decades, Samuelson's was the most widely used textbook in introductory economics courses. Now in its 12th edition, the text has sold over three million copies in more than 20 languages.

The students who learned their economics from Samuelson imbibed a Keynesian faith in the manipulation of the economy through adjustments in aggregate demand, as well as the interventionist doctrine that the private sector is inherently unstable and monopolistic, with government regulation necessary to keep the free enterprise system viable. As Samuelson stated in his 1955 edition, "The private economy is . . . like a machine without an effective steering wheel or governor. . . . [Government] policy tries to introduce such a governor or thermostatic device."

Since the early 1970s, however, it has become increasingly likely that economics students will learn a different lesson. A new generation of textbook writers has challenged the liberal Keynesianism of Samuelson and his disciples, drawing instead on free-market, monetarist, and public choice theory. These writers describe the market system as more stable and less monopolistic than Samuelson does; they are less optimistic about the ability of government intervention to make things better rather than worse; they explain the well-documented dangers of expansionary monetary and fiscal policy; they are much more skeptical of deficit spending than Samuelson; and they caution that high taxes may have detrimental supply-side effects.

Together the new free-market writers account for more than half of the roughly two million introductory economics textbooks sold every year. A Samuelson offshoot, by Campbell McConnell of the University of Nebraska, takes about 12 to 15 percent of the market and is the industry's current best-seller. But two of McConnell's three closest competitors are free-market texts: *Economics: Private and Public Choice* by James Gwartney of Florida State University and Richard Stroup of Montana State University, and *Economics* by Edwin G. Dolan of George Mason University. Other prominent free-market textwriters include: Armen Alchian and William Allen (UCLA); Ryan Amacher and Holly Ulbrich (Clemson University); Robert B. Ekelund, Jr. (Auburn University) and Robert D. Tollison (George Mason); Paul Heyne (University of Washington, Seattle); Richard McKenzie (Clemson); Roger LeRoy Miller (University of Miami); and Roy J. Ruffin and Paul R. Gregory (University of Houston). It is a sign of the shift in economic thinking that Samuelson's 12th edition, coauthored by William Nordhaus, is struggling to remain even among the top 10 textbooks.

Samuelson's Biases

Samuelson made no effort to hide the political bias of his textbook. Our "capitalistic system," he wrote in his 1955 edition, "may depart from what is considered a social optimum in three main ways: through improper distribution of income, through monopoly, and through fluctuations in employment." No such imperfections hampered the public sector, however. "It is the present writer's belief, as exemplified throughout the book, that all these evils can be ameliorated by appropriate [government] policies."

It is almost laughable today to read the panglossian view of government intervention in Samuelson's early editions. His 1955 edition told students that "All the . . . powers of the government's Treasury Department are used to keep financial panics from developing and to stem them when they do." The Federal Reserve Board, he asserted, "is directly responsible to Congress; and whenever any conflict arises between its making a profit and the public interest, it acts according to the public interest without question." According to his 1967 edition, "The Federal Reserve Banks have for their sole purpose the promotion of the public interest. . . . The Central Bank pursues a generally stabilizing . . . policy."

Samuelson frequently pointed to instability in private markets, but rarely conceded the possibility that government intervention might make economic instability even worse. Macroeconomic stabilization policy was unequivocally desirable, since "by means of appropriately reinforc-

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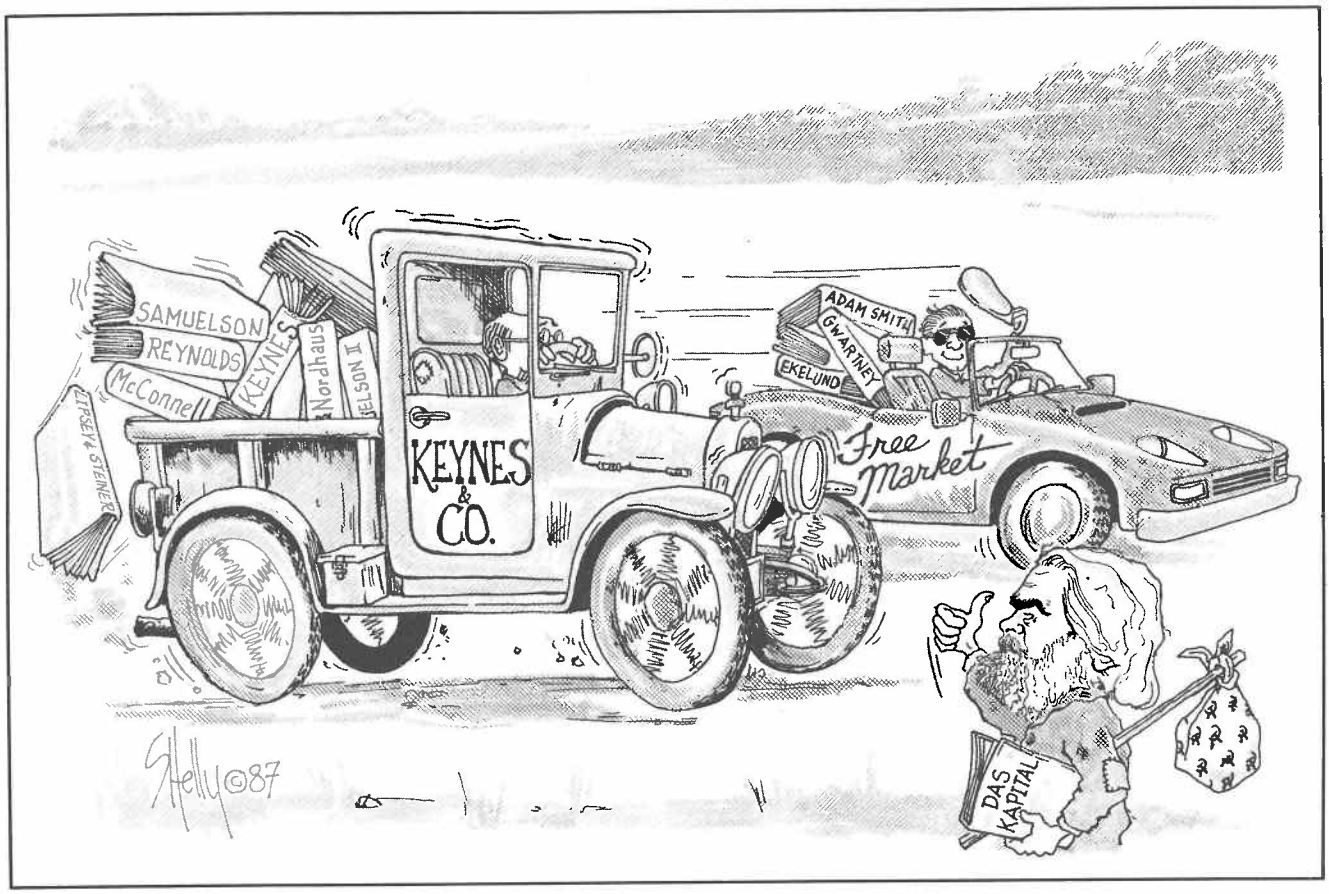


Drawing by Shelly Fishman

ing monetary and fiscal policies, our mixed-enterprise system can avoid the excesses of boom and slump and can look forward to healthy progressive growth" (1967).

Merely stating noble objectives was sufficient reason for praising government intervention: "The Employment Act of 1946 represents an important innovation in our republic, affirming the responsibility of the government for employment opportunities and setting up executive and congressional machinery for policy action." Those who disagreed—"a sizable body of conservative opinion"—were futilely swimming against the tides of history: "With nations all over the world moving increasingly toward a planned state, and with the American electorate showing an unwillingness to turn the hour hand back toward laissez faire, [conservatives] naturally tend to be rather despondent" (1967).

Samuelson's textbooks repeatedly stressed the "imperfections" of competition in most American industries, and faulted the free enterprise system for "the widespread presence of monopoly elements." His analysis reflected the standard economic approach to the study of markets in the 1950s and 1960s, in which the economists' model of perfect competition was held out as an ideal norm for all industries. In a "perfectly" competitive industry, there are many firms; entry is free; information is costless and all market participants know everything they need to know; capital mobility is costless; products are all identical; every firm charges the same price, which equals marginal cost; and no producer can have any influence on his price.

From the perspective of the perfect competition model, nearly every industry exercises some degree of market power and should therefore, in Samuelson's judgment, submit to "democratic controls." The model's assumption of perfect information rules out the need for advertising; the product homogeneity assumption leads to the conclusion that product differentiation and research and development spending are monopolistic. According to Samuelson's 1967 edition, "only potatoes, tobacco, wheat, and cotton come within our . . . definition of perfect competition."

By contrast, Samuelson virtually ignored the pervasive phenomenon of *government-sanctioned* monopoly through licensing, franchises, grandfather clauses, regulation, taxation, antitrust harassment, government ownership of productive facilities, procurement policy, and restrictions on advertising. The only examples he offered of such state-sponsored monopoly were "a few utilities."

Countercyclical Fiscal Policy

Comparing the private economy to "a machine without an effective steering wheel," Samuelson taught that countercyclical fiscal policy could provide the economy with the proper guidance and stability it needs:

> When private investment shoots up too high, it seems natural to ask that the government should try to compensate by curtailing public investment and expenditure and increasing its tax collections. On the other hand, when private investment and consumption go off into a slump, the government is then to compensate by stepping up its previously postponed

expenditures and by reducing its tax collections. According to the countercyclical view, the government budget need not be in balance in each and every month or year; on the contrary, during inflationary times, the budget should show a surplus of tax receipts over expenditures so that the public debt can be reduced. But when bad times come, then the budget should show a deficit of taxes over expenditures, with the public debt returning to its previous level. Only over the whole business cycle need the budget be in balance. (1955)

Students are now exposed to the idea that the roots of monopoly are more likely to be found in the legislature than in abstract ideas of "imperfect competition."

Samuelson offered no supporting evidence for his confidence that fiscal fine-tuning of the economy would be successful. Instead, he drew *theoretical* diagrams explaining the "stabilizing effect of countercyclical finance, in contrast to . . . how national income would fluctuate if the budget were balanced in each . . . year" (1955). Other leading textbook writers of the 1950s and 1960s—Campbell R. McConnell, Lloyd G. Reynolds, Richard Lipsey and Peter Steiner—shared this faith in countercyclical budgeting. The most prominent dissenter from the deliberate creation of budget deficits was James Buchanan, who argued in *Public Principles of Public Debt* (1958) that deficit spending imposed a burden on future generations, depleted the nation's capital stock, and would be inflationary if the debt is monetized. Such views were dismissed by McConnell as the residue of "awe, ignorance, and . . . fear."

Samuelson's Laffer Curve

Along with other Keynesian textwriters, Samuelson helped undermine the traditional belief that saving was virtuous and essential to prosperity by fueling private investment. They maintained that oversaving (and, consequently, underspending) had caused the Great Depression and that saving was harmful to economic growth as long as there was less than full employment. "Never again," wrote Samuelson, "can people be urged . . . to save more in order to restore prosperity" (1955). Samuelson favored taxation of interest income that would deter saving, much as cigarette and liquor taxes discouraged smoking and drinking. And, Samuelson asked, "What becomes of the argument that wealthy people are needed to provide saving? We see it go into reverse" (1955). The "paradox of thrift" was invoked on behalf of a progressive income tax system.

Samuelson acknowledged that fiscal policy could have important supply-side effects. There were "some costs" to progressive tax rates "because of taxation effects upon incentives, risk taking, effort, and productivity" (1967). Discussing the Kennedy tax cuts of 1962, he even provided his own version of the Laffer Curve: "To the extent that a tax cut succeeds in stimulating business, our . . . tax system will collect extra revenues out of the higher income levels. Hence, a tax cut may in the long run imply little (or even no) loss in federal revenues, and hence no substantial increase in the long-run public debt."

This passage was relegated to a chapter appendix in Samuelson's 1967 edition, demonstrating that the principles of supply-side economics have long been standard knowledge among economists, but were simply given little emphasis in textbooks.

Samuelson likewise devoted little attention to monetary policy, regarding it as "at best a supplement to . . . fiscal policy" (1955). Changes in the money supply, he argued, have only weak influences on interest rates and investment spending, and "in practice monetary policy may not have such strong effects on income" (1955). Samuelson's early editions totally dismissed the quantity theory of money.

Unemployment, not inflation, was the chief concern of Samuelson's text and others of the day, and little effort was made to develop links between money and prices. This perhaps explains why Samuelson and others were so optimistic about deficit spending. If monetary policy was impotent, monetization of the debt was not likely to be inflationary.

The Sleeping Giants of Free-Market Economics

During the Keynesian Camelot of the early 1960s, there emerged the first free-market alternative to the interventionist bias found in Samuelson's text. *University Economics: Elements of Inquiry,* by Armen Alchian and William Allen, first appeared in 1964 and is now in its third edition. The Alchian-Allen text never came close to Samuelson's in sales figures, but its influence is possibly as great because it helped to form the thinking of the current generation of free-market textbook writers who *have* captured a large share of the market. Alchian and Allen's text was treasured by many free-market economists; but since parts of it were too advanced for introductory students it was not widely adopted. Thus, for a time there was no free-market text that was as well done as Alchian and Allen's and also accessible to a wide audience. The new free-market texts fill this gap.

In contrast to Samuelson, Alchian and Allen endeavored to explain how real-world markets actually operate rather than merely to evaluate markets by the theoretical model of perfect competition. To point out that markets are not perfect, they wrote, "is to say nothing useful, since everything we do reflects a lack of perfect knowledge." Instead, they sought to explain how markets deal with problems of imperfect information, transaction costs, and attenuated property rights. This led to a more favorable view of markets since markets deal with such problems better than any alternative institutions.

An example of Alchian's and Allen's real-world analysis is their discussion of advertising. In perfect competition there is no need for advertising because "everybody knows everything." This is why advertising has long been suspected by many economists as a means of monopolization

that should be restricted by government control. But Alchian and Allen taught that in a world of imperfect information, advertising often serves the useful purpose of facilitating comparison shopping, thereby strengthening competitive pressures. "Imagine trying to shop in a community with no signs proclaiming one's business, with no directories of locations of firms, and with no idea where sellers are located." In fact, it is legislative bans on advertising—usually lobbied for by well-established firms not wanting to compete with newcomers—that are monopolizing.

Alchian and Allen similarly stressed the importance of middlemen, wholesalers, retailers, warehousers, salespeople, and other marketing and finance specialists. These people have one thing in common: they specialize in providing consumers with information which helps reduce the costs of exchange. For example, a real estate agent earns his or her fee by becoming an expert on housing prices and characteristics and the preferences of housing consumers. They save their clients time and money in return for their fee. The absence of "perfect information" about such matters is not evidence of "market failure" but a reason why middlemen serve a useful purpose.

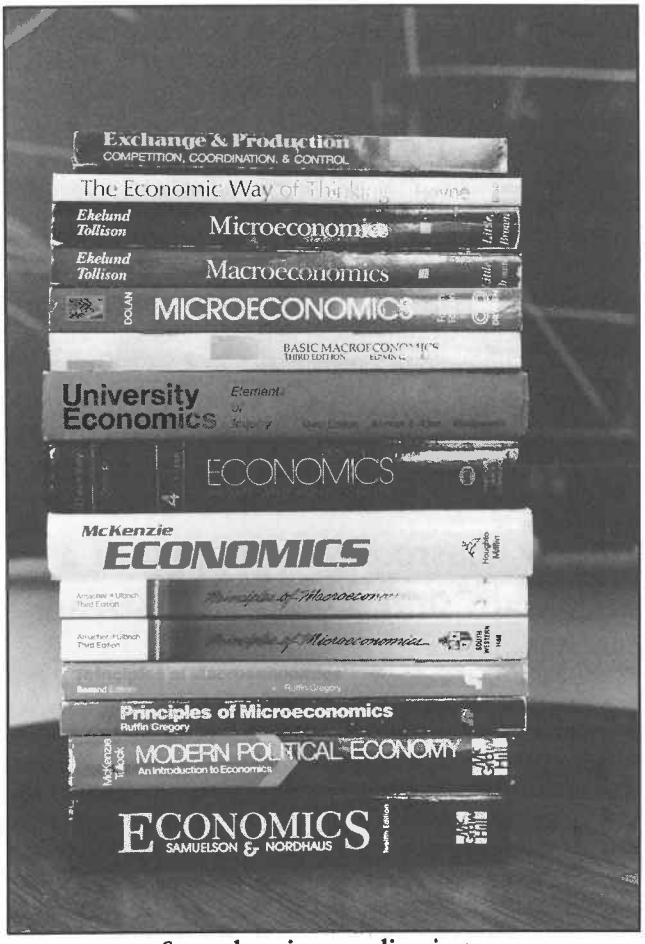
A third example of the Alchian-Allen market approach is its analysis of the separation of ownership from control in corporations, which sometimes causes the interests of management to diverge from those of stockholders. Samuelson saw this as yet another market failure that should and could be corrected by government regulation. Alchian and Allen, by contrast, emphasized the strengths of the market for corporate control, the use of takeovers and mergers to place checks on managerial behavior. It may be costly for shareholders to police the behavior of managers, but "The . . . shareholder . . . has a saleable right in the [firm's] capital value. . . . The relatively lower price of shares of inefficiently managed corporations serves as an inducement to replace the current managers with more efficient ones."

Alchian and Allen strongly emphasized another subject ignored by Samuelson—the role of property rights in the economy:

> If property rights in goods are weak, ill defined, or vague, the reallocation of goods [through market exchange] is likely to be guided by "biased" exchange offers and bids. . . . Who would offer as much for a coat, if he thought it was very likely to be stolen from him?

Market inefficiencies, Alchian and Allen argued, are often not a matter of market failure, but legal failure—the failure to enforce private property rights. Examples of such failures and the importance of well-enforced property rights in rectifying them are numerous: Commonly owned salmon fisheries are overfished, but not private salmon streams; people litter in public parks but not in their own yards; homeowners take better care of their property than renters or the occupants of public housing; national forests are carelessly logged and overharvested.

Alchian and Allen also analyzed how governments actually allocate resources, as opposed to how they ideally "should" make decisions. They thus taught a more realistic



Samuelson is struggling just to remain in the top ten.

view of government intervention than did Samuelson. They elaborated on the many instances of government-sanctioned or -created monopoly. They taught that "competition . . . is not unique to the free-enterprise, private property system. [It] exists in every social system . . . [and] is the result of scarcity. . . . It is the result of conflicts of interest imposed by the physical world and by the nature of man." The recognition of this fact had important public policy implications. It was no longer sufficient to point to "market failure" in calling for government intervention in the economy; one had to raise questions as well about how government went about making decisions. In many cases, Alchian and Allen taught, government allocation decisions would be determined by political power rather than by the "public interest."

The Seattle Slew

Much of the extraordinary influence of the Alchian-Allen textbook is due to its adoption by a group of economics professors at the University of Washington in Seattle. During the late 1960s and 1970s, Professors Douglass C. North, Yoram Barzel, Steven Cheung, Robert Higgs, Roger LeRoy Miller, Paul Heyne, and others required their doctoral students to master Alchian and Allen before advancing to comprehensive exams. Many of these students and professors went on to write successful textbooks in

the Alchian-Allen vein. James Gwartney and Richard Stroup are both Washington graduates; their text, *Economics: Private and Public Choice,* is among the most widely used. Roger Miller has written over 30 textbooks on subjects ranging from money and banking to economic history. Paul Heyne patterned *The Economic Way of Thinking* directly after Alchian's and Allen's approach. North and Miller published *The Economics of Public Issues* in 1972. This introductory "supplementary text" has sold over 600,000 copies and spawned an entire industry composed of similar products such as *The New World of Economics* by Richard McKenzie and Gordon Tullock, and *The Economics of Public Policy* by Edwin Dolan and John Goodman.

The spread of free-market ideas into college classrooms is the sign of a rightward shift among mainstream economists.

The newly dominant free-market texts follow the Alchian-Allen lead in resisting the call for government intervention in the face of alleged market "imperfections." Gwartney and Stroup, for example, stress the importance of property rights, teaching that private owners have more incentives to conserve for the future, and that with property rights, a negligent owner can be held accountable for damage to others through misuse of property. They describe externality problems as the result of ill-defined and poorly enforced property rights, not as market failure.

In *Economics,* Robert Ekelund and Robert Tollison inform students of both the perfect competition model and the "new view" that "competition is not to be described by a given number of sellers and buyers but rather by a rivalry for profits.... One or two sellers in an industry can be competitive as long as entry and exit in the market are possible." All the new free-market texts refer to this "new learning," much of which has been applied to the many changes in federal antitrust policy in recent years.

Ekelund and Tollison show how corporate takeovers discipline corporate management, and how an absence of ownership rights makes government enterprises less efficient than private businesses. They emphasize the informational value of advertising as opposed to its allegedly monopolizing value, and they argue that product innovation and research and development can enhance welfare even if they grant businesses temporary monopolies. Like most of the free-market textbooks, they argue that monopoly is very difficult to achieve in the free enterprise system without government-sanctioned entry barriers.

The Public Choice Revolution

In contrast to the texts of 15 years ago, the new free-market texts draw substantially on the subdiscipline of public choice. This approach, in the words of Milton Friedman, treats "the political system symmetrically with the economic system. Both are regarded as markets in which the outcome is determined by the interaction among persons pursuing their own self-interests ... rather than by the social goals the participants find it advantageous to enunciate." Gwartney and Stroup devote an entire chapter and parts of others to the discussion of government failure. They explain the "rational ignorance" of voters, the power of special interests, the short sightedness of political decision-making with its focus on the next election, the lack of incentives for economic efficiency, the role of logrolling in encouraging the overexpansion of government spending, the political proclivity for deficit spending, and the imprecision in the reflection of consumer preferences that is inherent in the political process.

Students are now exposed to the idea that the roots of monopoly are more likely to be found in the legislature than in abstract ideas of "imperfect competition." The new textbook writers provide example after example of *government-sanctioned* monopoly, with government regulation of industry often resulting from a demand *by the industry* for protection from competition.

Generally reflecting the state of knowledge in economics, the new free-market texts are much less optimistic about the efficacy of countercyclical fiscal policy. One weakness of such fine-tuning that is emphasized is the time lag in government decision-making. Writes Richard McKenzie: "If a fiscal stimulus is passed late in the recovery phase of a recession, it can add to the inflationary pressures that accompany the approach to the peak of a business cycle."

Ekelund and Tollison argue that fiscal policy frequently reflects politicians' interests rather than stabilizing macroeconomic objectives:

> In an attempt to enhance their reelection prospects, incumbent politicians promote expansionary policies prior to election day—tax cuts, increased government spending, and greater money supply growth. These policies have politically popular consequences in the short run: lower unemployment and interest rates along with increased real income.... Immediately after the election, the politicians reverse course. To limit the higher inflation rates that the preelection strategy fosters, they raise taxes and cut spending, and money supply growth is reduced. The result ... is a business cycle whose length is roughly equal to the interval between elections.

The Role of Price Expectations

Some of the new-generation textbooks go even further in arguing against countercyclical fiscal policy. They incorporate theories of adaptive and rational expectations, which teach that activist fiscal (or monetary) policy has no *long-run* effect on the economy other than fueling inflation.

Gwartney and Stroup define the adaptive expectations hypothesis as the assumption that "economic decision-makers base their future expectations on actual outcomes observed during recent periods." This sounds like common sense, but it is a major departure from the past, when

macroeconomists assumed that during periods of expansionary fiscal policy, workers blinded by "money illusion" would be willing to work indefinitely for lower real wages. The adaptive expectations hypothesis suggests that individuals will eventually recognize the true inflation rate and incorporate it into their wage expectations.

The rational expectations hypothesis suggests that expansionary fiscal or monetary policy cannot stimulate output and employment even in the short term. As described by Ekelund and Tollison, this hypothesis assumes that "After a time, individuals begin to understand the workings of the economy. For example, they will learn . . . that increases in monetary expansion . . . [are] followed by inflation, which is followed by higher nominal interest rates. Knowing the basic structure of the . . . economy, individuals will be able to anticipate the most likely outcomes." If this premise is correct, expansionary policies can be effective only if they catch people by surprise. Write Gwartney and Stroup: "The policy implications of rational expectations are clear. . . . Policy should not attempt to fine-tune the economy. Efforts to do so will only contribute to economic uncertainty."

Siding with Supply

Supply-side economics is standard fare in the new free-market texts, which teach that lower marginal tax rates can stimulate work effort, encourage investment in education and training, encourage business investment by increasing the after-tax returns on investment, stimulate saving, and reduce tax evasion. Ekelund and Tollison write that "policies to remove impediments to work, save, and invest have gained fairly broad approval among economists." In contrast with fiscal fine-tuning, write Gwartney and Stroup, "supply-side economics is a long-run strategy, not a countercyclical tool or a quick fix."

The new textbook writers also use supply-side economics to shed light on the apparent ineffectiveness of fiscal policies aimed at redistributing income. The Samuelson generation assumed that income-transfer programs were helping most of the poor simply because that was the announced intention. By contrast, textbook writers such as Gwartney and Stroup stress that because of very high marginal tax rates imposed on the poor, as well as other disincentives, the transfer programs "severely penalized self-improvement efforts of low-income Americans."

The new texts express a concern over the effects of deficits on capital accumulation and economic growth. Edwin Dolan informs students of the Keynesian theory that deficits do not matter because "we owe it to ourselves" but also points to the dangers of deficits: the rising tax burden required to pay off the interest on the public debt, and the risk that "at some point, government borrowing may begin to crowd out the private investment on which future economic growth depends." The new texts also teach the public choice lesson that deficits are a means of winning votes and therefore can be expected to persist regardless of the state of the economy.

In contrast to Samuelson's early editions, the new textbooks stress the central importance of monetary policy. Monetary policy is no longer just a supplement to fiscal policy. Changes in the money supply have been shown to have important and systematic effects on prices, output, and general economic performance. The new texts argue that periods of monetary acceleration have been associated with rapid growth of real GNP (and vice versa), that rapid growth of the money supply is linked to inflation and higher interest rates, and that a major cause of the Great Depression was the 27 percent reduction in the money supply between 1929 and 1933. Even Samuelson has come around on monetarism, writing in his 12th edition (with William Nordhaus): "In the early editions of the book, fiscal policy was top banana. In later editions that emphasis changed to equality. In this edition we've taken a stand that monetary policy is most important."

What Makes Samuelson Run?

Monetary policy is not the only area of economics where Samuelson has changed his tune. His 12th edition now warns students that "we must be alert to *government failure*—situations in which governments cause diseases or make them worse" [emphasis in the original], and also devotes an entire section to public choice theory. Samuelson and Nordhaus step back from their complete endorsement of Keynesianism in earlier editions by admitting that "early Keynesianism has benefited from the rediscovery of money. . . . In their early enthusiasm about the role of fiscal policy, many Keynesians unjustifiably downgraded the role of money." Also, Keynesians are faulted for being "too confident about the predictability of the economy," for a "naive faith in steering the economy into an Eden of economic tranquility," and for being "nonchalant about inflation."

Deficit spending is not defended as arduously as it once was. There is even a discussion of the role of property rights in the context of "the tragedy of the commons," and a recognition that the economic side-effects of government income-transfer programs may be harmful. "Our current welfare system . . . contains major disincentives for the poor. . . . Some believe that this disincentive is so powerful that it creates a cycle of poverty and dependence." Like other contemporary texts, Samuelson's 12th edition offers extended discussions of supply-side economics, rational expectations, political business cycles, and the problem of time lags in the implementation of fiscal and monetary policy. The book still has a strong interventionist tone, but as these examples reveal, it has been softened.

The choice of textbooks by academic economists is a good barometer of current economic thinking. The spread of free-market ideas into college classrooms—and even into Samuelson's textbook—may therefore be seen as a sign of a rightward shift among mainstream economists. The new generation of textbooks will also have a strong effect on popular thinking about economics in the coming generation. Today's students are learning to reject Keynes and much of the interventionism of the 1950s and 1960s, but they may well confirm Keynes' pronouncement that "in the field of economic and political philosophy there are not many who are influenced by new theories after they are 25 or 30 years of age."

Good News For The Fetus

Two Fallacies in the Abortion Debate

Ian Gentles

Many people who favor abortion base their logic on two false premises. The first is that women who want abortions will get them anyway—no law has ever stopped a woman from getting an abortion. The second, which derives from the first, is that since abortion is inevitable, it is better that women have their abortions in safe and legal hospital facilities; otherwise they will have to turn to back-alley abortions, resulting in medical problems and high death rates for mothers. Although both these propositions seem intuitively correct, evidence has accumulated since the legalization of abortion in the United States and abroad which proves them wrong. There may be a case for permitting abortion, but it cannot be based on these two claims any longer.

Let us start with the second claim—that prior to legalization of abortion, women risked horrible medical hazards which often took their lives as well as those of their fetuses. If this were true, then an argument can be made that it is better to permit women to terminate their pregnancies legally; at least the mothers' lives can be saved.

But what are the actual figures on maternal deaths from illegal abortions? Whenever one is dealing with an illegal practice, statistics are understandably difficult to come by. Nevertheless, it is relatively easier to count maternal deaths from illegal abortion than it is to count illegal abortions. That is because the body of a fetus is easily disposed of, while it is not so easy to get rid of the corpse of a full-grown woman. There are obviously many people who would like to keep illegal abortion deaths secret—the abortionist, the victim's family, and the father of the fetus, for example. Yet it is extremely difficult to persuade a doctor (who is most likely not the same doctor who performed the abortion) to fake or lie about the cause of death on a death certificate. Based on this belief, the figures on maternal deaths from illegal abortion, which show a fairly consistent pattern over a number of years, and in a number of industrialized countries, are considered to be reasonably accurate.

Figure 1 shows the number of maternal deaths from illegal abortion for Britain, Canada and the United States. Sources for this data are *Vital Statistics of the United States*, published by the U.S. Department of Health, Education and Welfare; *Causes of Death, Canada*, published by Statistics Canada; and *Statistical Review for England and Wales*, a set of tables published by Her Majesty's Stationery Office in London.

Immediately one sees that the annual number of deaths from illegal abortion for all three countries has been, since 1940, quite small. In Canada, for instance, it was less than 50; in the United States, less than 350. Even if these numbers considerably understate maternal deaths from abortion, we are still dealing with a number that pales in contrast to the image of "thousands, if not hundreds of thousands" of women dying from abortion which has been cultivated in the public imagination by the pro-choice movement.

Fewer Deaths

A second fact emerges from Figure 1 which is even more notable. The number of deaths from illegal abortion for all three countries shows a sharp, almost uninterrupted decline. This decline began almost 30 years before legalization and continues right to the point of legalization. Furthermore, shortly prior to legalization, the actual number of women dying each year from illegal abortions is negligible: 20-25 in the United States, less than five in Britain and in Canada. Again, we can assume some unreported deaths, but even so we cannot avoid the conclusion that abortion mortality had fallen to a very low figure. Whatever the rate at which we assume that the statistics understate the facts, there is no reason to assume that the bias toward underreporting maternal deaths from abortion should change from year to year. Thus, we cannot deny the *pattern* for Britain, Canada and the United States over the years.

Why did abortion deaths decline? A variety of forces were at work, but the leading factor was undoubtedly the discovery of sulfonamides, penicillin, and other antibiotics, whose use became widespread during the 1940s and 1950s. Antibiotics have been the greatest single factor in reducing infection-related mortality during the past 40 years, and therefore must also have contributed to the steep decline in abortion deaths before legalization. Hospitals were now

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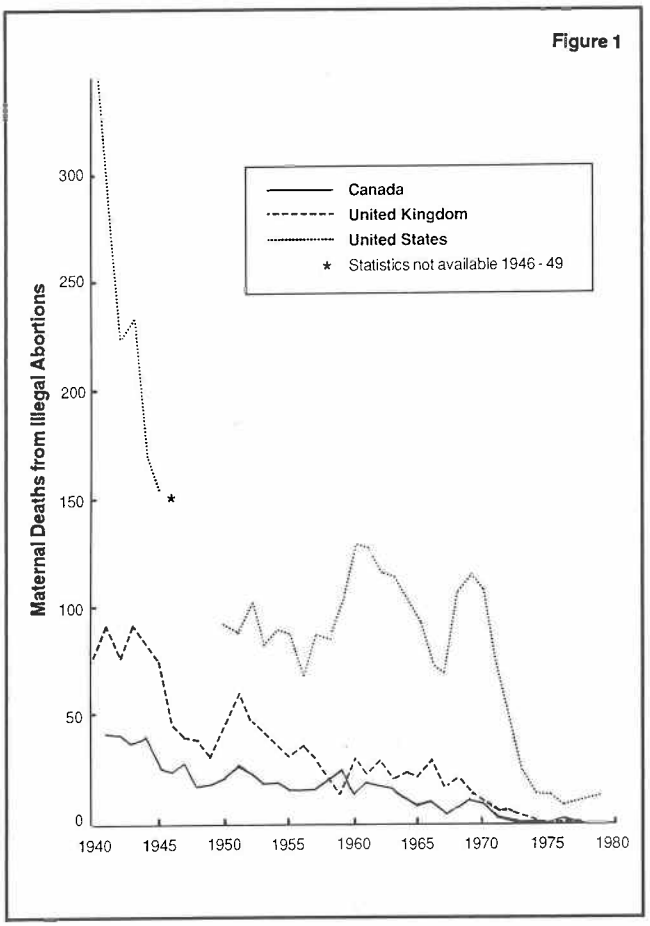


able to save the lives of many women suffering sepsis after an illegal abortion. Criminal abortionists, many of whom were doctors, also became skilled in the use of antibiotics. A secondary factor was the introduction of the contraceptive pill at the beginning of the 1960s. By reducing the number of unwanted pregnancies, the pill may also have reduced temporarily the demand for abortion. Abortion deaths in all three countries would have gone down even faster during the 1940s and 1950s had not these decades also been era of rapid population increase.

Now let us turn to the *rate* of deaths from illegal abortion, in other words, the percentage of women attempting illegal abortion who died as a result of that effort. Here the most comprehensive evidence has been collected by Michael Alderson and published in *International Mortality Statistics*, available from Facts on File, New York, 1981. Alderson estimates the maternal mortality rate from abortion for Britain, Canada and the United States from 1941-1975. He assumes that abortions numbered approximately a million a year in the United States before legalization. This hypothesis turns out to be extremely questionable, but fortunately it does not affect estimates about the *percentage* of women dying from attempted abortion.

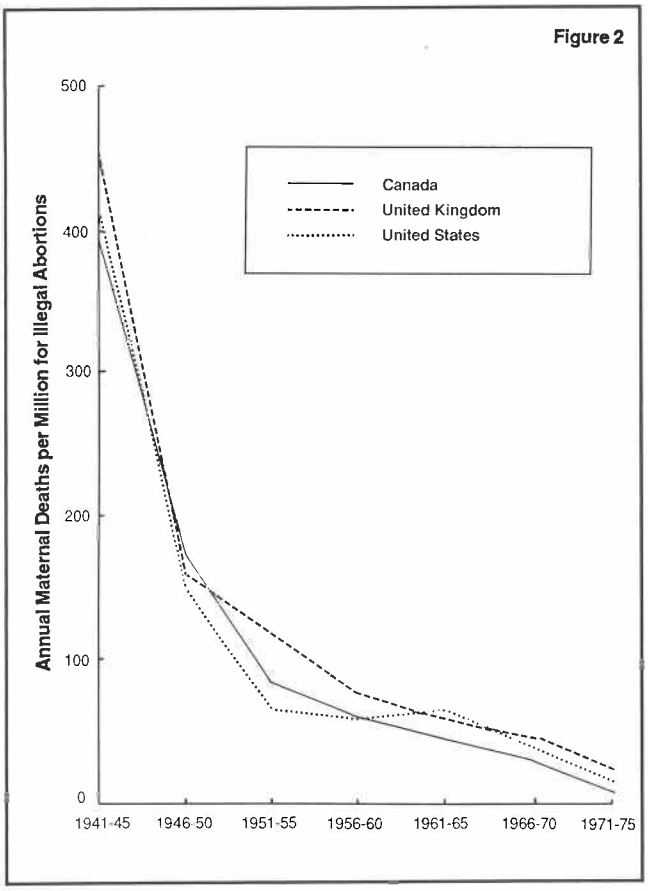
This rate, Alderson shows, sharply declines during the 35 years that he considers. For the U.S. in the early 1940s the rate per million females per year hovered around 400; by the early 1950s it dropped more than threefold to approximately 75, and by the early 1970s almost fortyfold to less than 10. The same pattern endures for the other countries: all of them, by 1970, were losing fewer than 50 women per million attempts at illegal abortion.

Figure 1 and Figure 2 establish patterns that are very significant. It is possible to quibble about the figures but it is hard to deny the general conclusion. Abortion deaths, and the rate of such deaths, plummeted sharply. The notion that large numbers of women sought coat-hanger abortions in which they suffered a very high chance of death is misleading: not that no one attempted such an abortion, but it was hardly the norm. The vast majority of abortions were conducted by doctors trying to make some extra money on the side. These doctors had access to the latest in medical technology and put it to use; certainly they were not eager to cause a patient's death.

Pro-life Dilemma

Thus, an important myth about abortion must collapse in the face of the data. While this is a myth promulgated by the pro-choice movement, it should be emphasized that the facts are not necessarily congenial to the pro-life movement either. Pro-life magazines often argue that abortion is a very risky business with a high risk of maternal death. This is now untrue for legal, as well as illegal, abortions.

There exist even more significant statistics on the actual number of abortions performed before legalization. If we can estimate these numbers, we can contrast them with abortion figures after legalization, proving or disproving the widely accepted claims that "you can't legislate morality," restrictive laws will not significantly alter the incidence of abortion, women who want abortions will get



them anyway, the best the law can do is to acquiesce in what people will do anyway.

Reliable abortion figures prior to *Roe v. Wade* are not available in the United States. But they are available for some other countries, notably Britain and Canada. A similarity in the pattern of the mortality rate of abortions in all three countries, leads to the assumption that figures for the United States are proportional to those of Britain and Canada. In any event, the statistics for those two countries are revealing in themselves.

Abortion was legalized in Canada in 1969. Obviously, statistics prior to legalization are hard to come by and cannot be considered exact. Nevertheless, Canadian researchers have investigated the subject a good deal. Their data which has endured open debate and peer review should at least place us in the ballpark of the facts. Some of the most systematic and authoritative research has been conducted by the Badgley Commission on the Operation of Abortion Law.

Pro-life magazines often argue that abortion is a very risky business with a high risk of maternal death. This is untrue.

The Badgley Commission, through surveys and other methodology, tried to estimate the number of Canadian women who had attempted an abortion by the year 1975. This figure, which applies to all women alive in 1975 who ever attempted an illegal or self-induced abortion, came to 101,157. This, by the way, represents less that 2 percent of the female population of child-bearing age or older. Again, we can inflate this figure to account for under-reporting, but we must also deflate it because we know that self-induced abortion attempts do not always work. If we go with Badgley's figures, we arrive at an annual figure of fewer than 10,000 illegal and self-induced abortions in Canada prior to legalization.

Sixfold Increase

Contrast these numbers with those that emerge after 1969. According to *Statistics Canada*, a government source, the annual number of legal abortions reached a peak of 66,319 in 1982. That is more than a sixfold increase in abortion rates after legalization.

The Canadian experience is repeated in Britain. C.B. Goodhart's study, published in *Population Studies* in 1973, is one of the most authoritative. Goodhart estimates that illegal abortions in Britain ran at about 15,000 to 20,000 a year prior to legalization, after which the number rose sharply, peaking in 1983 at 128,553. Again, this is an increase of at least 600 percent.

What about abortion figures for the United States? The problem, here, has been that the groups collecting the statistics have tended to be aggressively pro-abortion, and their methodologies are demonstrably skewed to buttress their policy recommendations. For example, we know that surveys are not the most reliable source of information when it comes to this subject. Yet the figure most commonly used in the American abortion debate is from a survey of 10,000 women who attended the Margaret Sanger Birth Control Clinic in the late 1920s in New York City. It is questionable whether figures taken from the 1920s apply to the 1930s, 1940s, 1950s, 1960s and early 1970s. It is equally questionable whether New York is a representative state. It is also legitimate to question whether women who frequent the Margaret Sanger Birth Control Clinic represent the majority of American women or even the majority of urban women. The point is that this is a notoriously unreliable study, which is only in circulation because the high figures it came up with fit nicely with pro-choice arguments that a large number of women always have sought abortions and legalization could have little or or no effect on the overall number of abortions.

Bernard Nathanson is a strong pro-life advocate these days, but he once was a prominent advocate of abortion. In fact he is, along with Betty Friedan, one of the original founders of the National Abortion Rights Action League

Estimated numbers of criminal abortions in the U.S.A. if criminal abortion were 3, 5, or 15 times more dangerous than natural pregnancy

	3 times more dangerous	5 times more dangerous	15 times more dangerous
1940	166,476	99,886	33,295
1961	357,049	214,229	71,410
1967	225,000	135,000	45,000

(NARAL). "I knew the figures were totally false," he now says of the extrapolations from the Sanger study, "and I suppose the others did too if they stopped to think of it. But in the 'morality' of our revolution, these were useful figures, widely accepted, so why go out of our way to correct them with honest statistics?"

Counting Illegal Abortions

Perhaps we can discredit the kind of data that Nathanson speaks about, but is there any way to arrive at some credible estimate of the number of abortions in this country prior to *Roe*? Actually, there is such a way. It is a bit circuitous and complex, but it does not rely on simply asking women whether they have had an illegal abortion. Basically, the approach is to extrapolate from the number of maternal deaths due to illegal abortion to the probable number of abortions. For example, if we know that 10 women died from abortion in a given year, and we know that the death rate of women from illegal abortion is 10 in a million, then we can conclude that a million abortions were attempted that year.

Barbara Syska, Thomas Hilgers and Dennis O'Hare, in a penetrating study, *New Perspectives on Human Abortion*, published in 1981, develops an objective model which shows that the American criminal abortion rate can be assumed to be similar to Britain's and Canada's abortion rate. If such a correlation is valid, then we arrive at an approximate figure of 100,000 abortions in the United States per year prior to legalization.

Syska, Hilgers and O'Hare also present a range of figures for the total number of illegal abortions, depending on whether they were considered to be 3, 5, or 10 times more dangerous than natural pregnancy, as Table 1 illustrates. The statistics suggest that illegal abortion in the United States peaked in 1961, and that by 1967, the year abortion began to be legalized, the number of abortions was probably no higher than 135,000. That inference is based on the assumption that undergoing an illegal abortion was five times as dangerous as giving birth. This is a very conservative assumption because in 1967, six years prior to legalization and two decades from the present, medical technology had not advanced to the point where abortion was as safe as natural birth. After the suction machine was invented, abortion became as safe, now slightly safer, as natural birth. But this was not the case until very recently, so the 135,000 figure selected here is most plausible.

But even if the figure was arbitrarily doubled, that would mean only 270,000 abortions. Even if it was multiplied five times—an incredible proposition which requires us to assume that criminal abortion was as safe as natural pregnancy—that would still make 655,000 abortions, less than half the number of abortions being performed each year since legalization.

Abortion Explosion

According the Alan Guttmacher Institute, the research agency for Planned Parenthood, there are now approximately 1.5 million abortions in the United States each year. The number may have peaked in 1980, when 1,553,890 abortions were performed. This means that, using Syska, Hilgers and O'Hare estimates, current abortion rates are anywhere from seven to 30 times greater than they were prior to legalization. This finding is comparable to what we know about Canada and Britain. So a relationship between legalization and the incidence of abortion seems clear.

The claim that women will have abortions no matter what the law says is further undermined by an important recent study pulling together findings from the United States, Sweden and New Zealand. Writing in the *Canadian Medical Association Journal* in 1984, Carlos del Campo concludes that, out of a total of 6,298 women refused a legal abortion between the 1940s and the late 1960s, 70.6 percent carried their pregnancies to term—they had their babies. Only 13.2 percent went ahead and got an abortion, illegally. It is striking that in every country a majority of women chose to complete their pregnancies—the percentage ranges from 58 to 80. A relatively small number of women sought out a clandestine abortionist.

From 1940 to the late 1960s, the number of deaths from illegal abortions showed a sharp, almost uninterrupted decline.

Perhaps legalizing abortion increases its incidence; does it follow that restricting abortion automatically reduces its incidence? The experience of Eastern European countries, which have in the past generation tightened their abortion laws, is quite instructive.

Thomas Frejka, writing in *Population and Development Review* in 1983, finds that more restrictive abortion laws do in fact reduce the number of abortions. The rate varies: for instance, Czechoslovakia experiences only a slight and temporary decline from 1.0 to 0.9 abortions per women per lifetime. But Hungary finds a sharper reduction, from 2.5 to 1.1—a decline which started earlier than the change in the abortion law, apparently the result of increased contraceptive use. Romania experienced a dramatic reduction from 5.6 to 1.9 abortions per lifetime after the law was made more restrictive. These "lifetime" figures obviously correlate with annual figures because they reflect the number of abortions women have had in their lifetime as measured in a given year.

Laws Do Restrict

Among non-communist countries, New Zealand was the first to attempt to change from permissive to restrictive legislation. Until 1976, New Zealand law allowed induced abortion if there was danger to the life or health of the mother. By that year the abortion rate had risen to one for every nine live births. In 1978 a new law came into effect, stipulating that the danger to the mother's life or health must be "serious." The immediate result was a steep plunge in the abortion rate to one for every 14 live births in 1978 and 1979. However, after intense pressure from the

medical profession, the law was again widened, with the result that by 1982 the abortion rate had risen to an all-time high of one out of every 7.5 live births.

In Canada abortion has been legal since 1969 if the mother's life or health was in danger. In many counties this has been interpreted to permit abortion on request. However, a recent study by Statistics Canada of the 10 years' abortion experience between 1975 and 1984 shows that provinces which have begun to administer the law strictly have considerably fewer abortions than other provinces. Prince Edward Island, for example, has had *no* legal abortions since 1983, and Newfoundland has had fewer than 400 a year. Provinces like Ontario and British Columbia, by contrast, have a rate six or seven times that of Newfoundland. Yet the astonishing fact is that the number of women from provinces where the law is now strictly applied, who seek abortions outside their home provinces, is negligible. In 1984, 12 women from Prince Edward Island and 39 from Newfoundland sought legal abortions outside their provinces. We know this because the Canadian government is very meticulous about abortion statistics: it requires Canadian hospitals to collect all kinds of personal and demographic data about women who have legal abortions.

For those who accept the facts, a final question remains. Why does abortion law correlate with the incidence of abortion? Perhaps it is because the vast majority of abortions today are sought out by unmarried teen-aged women and by married women who simply do not want an additional child. It is understandable, perhaps, that these women would prefer legal abortion to the embarrassment and inconvenience of having a baby. On the other hand it is hard to believe that all, or even most, of them would go to the extent of having an illegal abortion, with the medical risks they are warned about, and with the legal penalties they face if discovered. It is the easy availability of abortion which probably causes a number of women who would otherwise settle for a baby to elect for termination of pregnancy instead. Whatever the validity of these speculations, whatever the cause that more women have abortions when they are legal, the fact that this is so cannot be denied. The research confirms the intuitive view that if abortions are made harder to get, fewer women tend to get them.

Law should be based on a recognition of reality. The arguments and expectations that were advanced during the legalization debate in Canada, Britain, and the United States have proven to be very unsound. It is time for a new moral and legal debate that rests on what we now know about abortion and abortion laws. ☎

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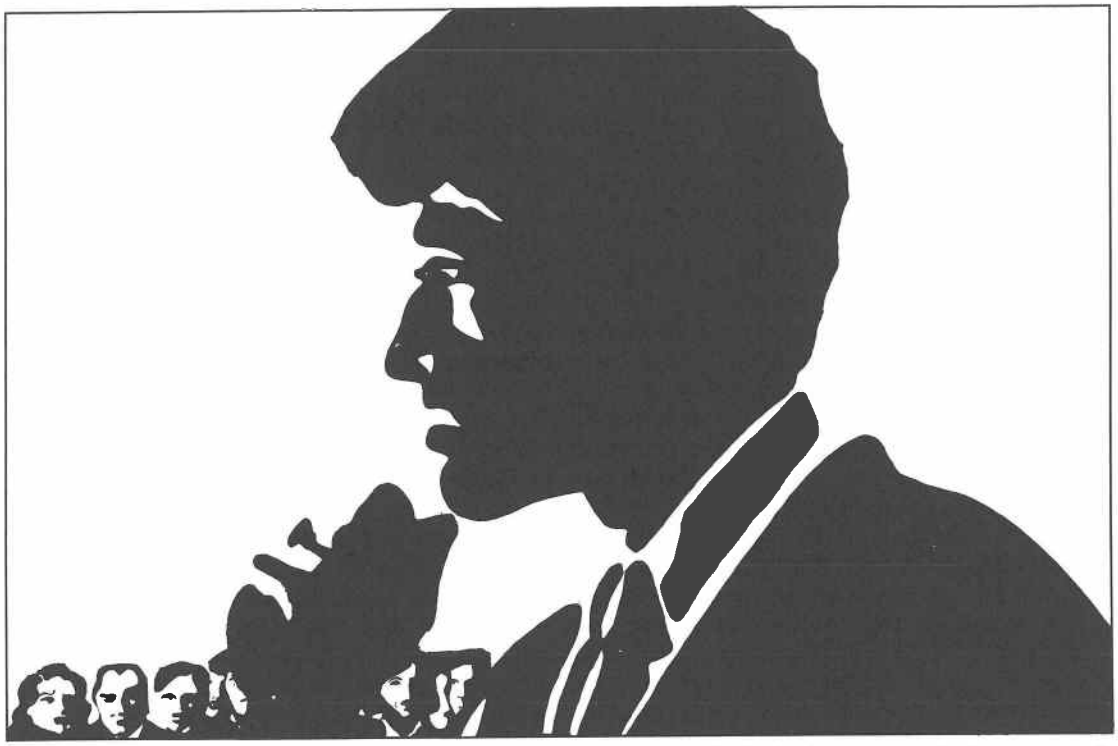

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The Democratic Revolution Spreads to Asia

PAUL A. GIGOT

A staple theme of U.S. political debate in recent years has been the extraordinary rise of democracy in Latin America. Much less has been made of the gradual expansion of political freedom in another part of the world that is just as important to U.S. interests—East and South Asia. From Corazon Aquino's triumph in Manila, to the blossoming of opposition politics in South Korea, Taiwan, and Pakistan, to the consolidation of democracy in Japan and India, most of the region's countries that are aligned with the West are experiencing some form of progress toward political freedom.

This trend is encouraging both for the cause of freedom itself and for America's interests in a stable and prosperous Asia. Greater political freedom is usually linked to greater economic freedom—and to better standards of living. More democratic institutions also offer some hope of longer-term political stability. And the trend demonstrates that a confident America with an assertive foreign policy can assist the cause of freedom even without firing a shot or waving a flag. When Asia's rulers see democracy working well in America, they are less likely to fear it at home. When they believe America stands by them firmly as an ally—even when it is sometimes critical—they are more likely to be politically tolerant at home.

The transfer of power in the Philippines from Ferdinand Marcos to Corazon Aquino is a dramatic confirmation of Jeane Kirkpatrick's observation that pro-Western authoritarian regimes can and often do evolve into freer societies. But if we compare the political situation in particular nations in the late 1970s with the situation today, it is clear that the phenomenon Mrs. Kirkpatrick described is occurring throughout the region. Some snapshots:

South Korea

1979: President Park Chung Hee has installed his hated and repressive Yushin Constitution; his government suppresses dissent and tortures political opponents, and, in a binge of misguided nationalism, skews economic investment to heavy industry. Within months, Park will be assassinated, and a group of young generals will come to power in a coup, jail their opponents, and crush a local uprising at Kwangju.

1987: Those same young generals, led by President Chun Doo Hwan, have tolerated a marked liberalization. The most open elections in a generation, in 1984, brought a large opposition minority into the National Assembly. Opposition leaders Kim Dae Jung and Kim Young Sam are still regularly subject to house arrest, but dissidents are freed from jail, a charge of torture is admitted and investigated, and President Chun repeats his vow to step down in 1988. If Chun does step down, the event would mark the first peaceful transition of power in modern Korean history.

Taiwan

1979: An opposition demonstration, at Kaohsiung, is brutally crushed and dissidents are jailed. The Tangwai, or those in politics "outside the [ruling Kuomintang] party," are harassed and their publications routinely shut down.

1987: Local elections last year, that were, by all accounts, remarkably free, bring to prominence dozens of independent and opposition politicians. Tangwai publications flourish. A scandal involving the murder of the dissident journalist, Henry Liu, is investigated and its perpetrators convicted. Certain kinds of speech are still prohibited, particularly the advocacy of independence for Taiwan. But while the Kuomintang retains a firm grip on power, the party contains a younger generation of leaders who push for expanded freedom.

Thailand

1979: Military coups have become routine. In the worst of them, rioters encouraged by the military attack student demonstrators, murdering dozens in downtown Bangkok. Many of the students flee to the countryside, invigorating a Communist insurgency.

1987: Prem Tinsulanonda, prime minister for seven years, has lasted in power longer than any Thai leader in a generation. Chief of State King Bhumibol, like Spain's King Juan Carlos, uses his enormous popularity to deter any coups. The military retains great political influence, but a

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Reuters/Bettmann Newsphotos

Philippines 1986. South Korea, Taiwan, Thailand, and Pakistan soon.

raucous national assembly and a relatively free press exist as important checks on abuse. The insurgency has all but disappeared.

Pakistan

1979: Rioters, allegedly winked at by President Zia ul-Haq, burn down the U.S. embassy, killing two marines. When military chief of staff Zia deposes Prime Minister Bhutto in 1977, he vows to stay in office only 90 days. Instead, he decides to stay indefinitely, disbanding the electoral process and using military courts to harass opponents. Bhutto is executed on dubious charges of conspiracy to murder.

1987: Zia, noting privately that strongmen cannot last forever, undertakes a gradual liberalization. Newspapers can and do criticize the government, elections for a new assembly are held in which many of Zia's candidates are defeated, and Bhutto's daughter, Benazir, is allowed to return from exile and rally opposition to the government.

Now, neither South Korea nor Taiwan nor Thailand nor Pakistan can yet be considered a full-fledged democracy, at least as measured by the Washington or Westminster models. But the progress toward democracy is significant nonetheless. Most change in the world is incremental, and thankfully so; revolutions rarely turn out as well for the cause of freedom as did last year's events in Manila. The crucial point is that today the average South Korean or Thai can play a demonstrably larger role in electing his national government than he could a decade ago. South Koreans now can walk into a bookstore and buy works by leading opposition politician Kim Young Sam or American politician Gary Hart.

In Japan and India, meanwhile, democratic politics seem more solidified than ever. Postwar Japan has yet to face democracy's acid test—a change of government to the loyal opposition—but that is partly because the opposition Socialists remain utterly irresponsible. The various factions of the ruling Liberal Democratic Party practice a brand of interest group politics that differs from our own, but still cannot stray too far from the concerns of public opinion. When Prime Minister Masayoshi Ohira attempted to impose a value-added tax in the late 1970s, the LDP took a drubbing and the VAT was dropped. Prime Minister Nakasone is now taking his own public beating for his attempts to impose a VAT—despite his party's record landslide last year and despite his offer of offsetting income tax cuts.

For its part, India's democracy well survived Indira Gandhi's authoritarian Emergency in the 1970s. Despite the terrorism of Sikh and other separatists, Rajiv Gandhi's government has retained an impressive respect for democratic processes. Indeed, Rajiv seems to have learned from his mother's mistake of trying to control too much from New Delhi; he has purchased some political stability by granting more autonomy to India's diverse states.

Elsewhere, too, small but often significant movements urge greater political freedom. Many of Hong Kong's Chinese elite are now pressing for direct elections, in order to

create a local democracy that can serve as a buffer against Communist meddling once the British leave the colony in 1997. In Singapore, Prime Minister Lee Kuan Yew still harasses the tiny opposition, but the prosperity resulting from his economic policies has created an educated middle and professional class that understands the importance of consulting people of different views.

South Koreans now can walk into a bookstore and buy works by leading opposition politician Kim Young Sam or American politician Gary Hart.

There are important exceptions to this trend, of course, but they prove the rule by their distinctiveness. Communist Vietnam, its puppet states in Laos and Cambodia, and North Korea are led by benighted tyrants. Communist China's glimmerings of a political opening may have been snuffed out earlier this year. Indonesia nervously approaches the passing of 65-year-old President Suharto and his tight personal and military rule. Malaysia struggles to keep its democracy, in the face of a growing Islamic fundamentalism and the racialist politics of Prime Minister Mahathir.

Asia's Democratic Tradition

The emergence of Asian democracy should put to rest some hoary myths about the Oriental personality, specifically the canard that Asians don't really mind dictators. The theory of "neo-Confucianism"—popular among professors and journalists, and expressed most elegantly by Singapore's Lee Kuan Yew—argues that Asians are not comfortable with Western-style democracy because they have no history of political freedom and no tradition of a loyal opposition. Asians, in this view, are "pragmatists"—unsteeped in the Western ideals of Jefferson or Locke—who prefer to cede the "mandate of heaven" to their supreme ruler so long as he is raising living standards and otherwise ruling well.

It's a nice theory, especially if you're the supreme ruler, but it doesn't hold up well to scrutiny. Oriental history is certainly full of despotism, but then so is Western history. The democracy in Athens may have no perfect Oriental parallel, but it does have a rough counterpart in the Asian tradition of local village rule. The struggle for democracy in its modern form is a recent development in Asia, certainly, but it is not all that much older in many European countries either. (Just ask the Spanish and Germans.) Democracy, moreover, is perfectly consistent with the traditional Asian respect for authority.

In recent decades, most Asian nations have been profoundly influenced by Western notions of freedom and equality. Too often this influence has been for ill—Mao believed in Marx and the Khmer Rouge studied at the Sorbonne. But sometimes it has done enormous good. The Meiji reformers of the 19th century borrowed Western ideas to break Japan's feudal hierarchy, while earlier this century liberal-minded political and economic reformers such as China's Sun Yat-Sen and Pakistan's Ali Jinnah have strongly influenced their country's political cultures.

The mistake is to confuse government legitimacy with political choice. It is sometimes possible to have the first without the second. Many of Asia's unelected authoritarians enjoyed political legitimacy for a time—some because of their great success in raising living standards and others because they were so much better than their predecessors. Taiwan's ruling Kuomintang, a small minority composed mainly of Chinese who fled the Mainland in 1949, has maintained its authority in part by giving local Taiwanese the incentive and opportunity to grow rich. This does not mean, however, that the Taiwanese do not also want the opportunity to have a bigger say in choosing their political leaders. In fact, an expanding Taiwanese middle class is now demanding precisely that opportunity, and the Kuomintang is finding that, in order to retain its legitimacy, it must offer more political choice.

The Indivisibility of Liberty

At the same time, Asia's increasing openness confirms some old-fashioned wisdom about the indivisibility of liberty. It is no accident that the greatest democratization is occurring in Asian countries that allowed, and even encouraged, economic freedom for their citizens.

Economic freedom by itself requires *some* political freedom. Politicians must refrain from confiscating property or from excessive taxation, and that reduces the spoils of power. They must also obey certain economic rules—let the price system work, let production be guided in the main by consumers, keep labor markets flexible. All of these have great consequences for personal freedom. Though they have lacked a Westminster-style democracy, the citizens of Taiwan and Thailand have for the most part been able to live where they want, work where they want, and buy what they want. The Communist countries of Asia by contrast have largely kept firm control over the means of production, with predictable consequences for political freedom.

Economic freedom also leads to prosperity which in turn creates momentum for *further* political change. As incomes have soared over the past three decades, so have popular expectations. In many Asian nations, an emerging middle class wants more than a paycheck. Thousands of young people have gone to school in the United States, and many who return resent governments that are unresponsive or condescending. They may not take to the streets, but they make their views known in important ways. They are spurring debate on issues like pollution controls, investment and consumer choice, and press freedom. In Singapore last year, the Law Society—a mainstream establishment group—risked the government's censure when it argued publicly against a restrictive press law. Asia's leaders know they cannot ignore this influential group of the young and middle-class who want a more open political system.

The progress of Deng Xiaoping's reforms in China also illustrates this relationship between economic and political freedom. Deng was able to loosen government controls on farming and the rural economy without endangering political control by the Communist party. In the last 18 months or so, however, the reform effort has stalled as it has tried to expand into the cities, where it threatens the perquisites of the political class. Giving managers free rein in factories means tossing Party cadres out of jobs. Raising rents and food prices to market levels means ending subsidies for favored city dwellers. And freeing labor markets means robbing Party members of one of their cushiest perks—access to the best jobs, for themselves and their children. The censure of China's political reformers in recent weeks may therefore signal serious trouble for the future of economic reform as well.

The Benefits of Political Choice

Asia's political opening may yield two substantial benefits, both for Asians themselves and for U.S. interests. The first is the promise of greater political stability. Asia's brand of authoritarianism has been remarkably stable over the short and medium term. In many countries, however, there has been no credible succession procedure for moving from one regime to another, with the result that political transitions are frequently tumultuous and fraught with peril. South Korea has not had a single peaceful transition in the postwar era. Its last change of power took almost a year to consolidate, brought tanks into the streets and a brutal military crackdown, and helped to push the economy into a tailspin that slashed GNP by 5 percent in a single year.

Even last year's tumult in the Philippines was as much a battle for succession as for democracy. In his 20 years of rule, Ferdinand Marcos had destroyed the old political institutions, but he offered nothing as legitimate or credible to take their place. No one knew what would happen when the ailing strongman finally left the scene. In the event, the Filipinos were both brave and lucky; Iranians were not so fortunate when the Shah tottered after more than 20 years of stable rule. More democratic politics hold out the hope both for more government legitimacy and more stable transitions.

Indeed, the issues of stability and succession seem to be on the mind of Asian leaders themselves. Pakistan's Zia tells visitors that he could not help but learn something from the Shah's demise. Korea's Chun and his supporters tell everyone that Chun considers it a matter of national pride for him to step down in 1988—a symbol of his country's new political maturity. And the Kuomintang in Taiwan have already said that the successor to President Chiang Ching-kuo will not be another descendent of the Chiang family; he may even be a native Taiwanese. Understood in this sense, the political opening in each of these countries amounts to enlightened self-interest.

A second benefit of greater political choice may be a check on some of the interventionist excesses of Asian governments. Asian governments have lived by the laws of the market far better than most developing nations, and, indeed, apologists for Asian dictatorships often insist that democracy is bad for economic growth and free markets. Western nations cannot make the hard economic choices, they say, because democracies engage in self-destructive debate and must create welfare states to pay off political interests. Singapore's leaders, for instance, constantly stress our failure to pass a balanced budget as a sign of democratic paralysis. Authoritarians, so the argument goes, can make the trains run on time.

In my observation, however, the *opposite* is more nearly true in Asia. With the exception of Hong Kong, the region's authoritarian regimes are hardly the pristine models of unfettered capitalism that their supporters sometimes imagine. Because they lack political legitimacy, authoritarians often attempt to buy their legitimacy by using state power to grant economic favors. Unless they are especially wise or virtuous, their intervention can bring an economy to ruin.

Many of Hong Kong's Chinese elite are now pressing for direct elections, in order to create a local democracy that can serve as a buffer against Communist meddling once the British leave the colony in 1997.

Marcos' "crony capitalism" was well known, but there are many other examples. Thailand's generals bought support in populous and influential Bangkok by keeping urban rice prices low; in the process, they imposed a tax on millions of rice farmers, slowing growth in the countryside and aiding the Communists. In Indonesia, President Suharto has kept his country from growing rich by distorting investment and imposing tariffs and monopolies—all under the guise of "economic nationalism" but in truth to buy support from the military and from business and government elites.

Even when authoritarians have made mostly sound choices, their political needs can cause trouble. In Korea, for example, economic growth is President Chun's main claim to legitimacy, so he cannot let it flag. That means he cannot do much to reduce the economic distortions built up during the rule of Park Chung Hee, for example, by ending subsidies for exports and reducing the economic dominance of large companies. The result is that South Korea continues to suffer from an unhealthy collection of economic power, a dangerous dependence on exports, and needless sacrifices by Korean consumers. In Taiwan, too, billions of dollars have been wasted on steel plants and other heavy industry designed to please nationalists in the military. In Thailand, some 70 state-owned businesses drain the economy but survive in part because they are satrapies for retired generals.

Democracy has its own problems with special interests, but because they are subject to public scrutiny they are

usually less pernicious than the interests that authoritarians need to accommodate. By giving Asian leaders more popular legitimacy, democracy would make it easier for them to challenge entrenched interests and expand economic freedom.

The Role of the United States

Though the advance of Asian liberty is primarily due to political pressures from Asians, U.S. policies have played an important role. Over the past 30 years, when the U.S. has asserted itself and its ideals with confidence and power, political and economic freedoms have expanded in Asia. But when the U.S. has appeared to lack the political will or ability to play an assertive role, freedom has often backtracked.

Because they lack political legitimacy, authoritarians often attempt to buy their legitimacy by using state power to grant economic favors.

Is it only a coincidence that the trend toward authoritarianism increased in Asia in the 1970s, the decade of America's retreat from Vietnam and of "malaise"? Ferdinand Marcos has implied that he felt free to declare martial law in 1972, because Nixon and Kissinger were preoccupied with Vietnam and did not want unrest elsewhere in Southeast Asia. The domino-like collapse of Laos and Cambodia must surely have concentrated the minds of the Thai generals who toppled a democratic government in 1976. And South Korea's Park Chung Hee justified his repressive surge—his Yushin Constitution and his disastrous drive for "self-sufficiency" in heavy industry—as a necessary response to the post-Vietnam Nixon Doctrine. Among other things, that Doctrine committed the U.S. to eventually removing U.S. troops from South Korea.

As the world's most important democracy, our own success becomes democracy's success. This may seem obvious, but the point is constantly driven home to any American living in Asia. When I first arrived to work and travel in Asia, in 1979, I heard few good things about American leadership or the American example. The memory of the collapse in Vietnam, the fall of the dollar, raging inflation, the debacle in Iran—these and other events combined to produce an Asian view of America as a weakened country retreating from its postwar international responsibilities.

This view has changed for the better during the 1980s, as America's own self-confidence and economic vitality have returned. Because they have outward-looking, export-driven economies, most Asian nationals recognize that they have benefited mightily from the post-1982 U.S. recovery. The Reagan Administration's military buildup, especially of the navy, has also reassured many in Asia who have been concerned about expanding Soviet activity. The steady, but not too eager, relationship with China has calmed some earlier fears that the U.S. would go overboard in its enthusiasm.

A watershed for the reassertion of U.S. influence was the transition to democracy in the Philippines. From the day of Benigno Aquino's assassination in 1983, the Reagan Administration set in motion a policy designed to assist a stable transition from the Marcos era, and to avoid a disastrous collapse into anarchy or revolution of the sort that occurred in Nicaragua and Iran. Reagan policy makers resisted the impulse—supported by Representative Stephen Solarz and Senator John Kerry, among others—to work to depose Marcos, because they knew they did not want to start a process that they could not control.

Change had to come from Filipinos themselves, so the U.S. policy was to prepare for that change by trying to build up institutions that could sustain democracy once Marcos was gone—a democratic assembly, political parties, the military—and to encourage reforms that could get the economy moving. In the end, the opposition was able to unite and the February 1986 election gave Mrs. Aquino enough legitimacy to draw top military leaders from the Marcos camp; his political machine, which along the way had lost the Church, the business community, and the middle class, was finally undone. By maintaining influence with Marcos himself, the U.S. was able to play a constructive, and decisive, role in getting him and keeping him out of the country.

A similar challenge has presented itself in South Korea. Here, too, the Reagan Administration has been at pains to be seen as a reliable ally. President Carter's stress on human rights had its advantages, but frankly it did little to expand freedom in Korea. President Park, like President Marcos, mostly ignored Washington's pleading, and, when he took over, President Chun was openly disdainful. President Reagan, on the other hand, made his first overseas trip as President to Seoul and he reasserted the U.S. commitment *not* to withdraw troops from Korea. President Reagan also personally intervened to save the life of Korean politician Kim Dae Jung, by securing his exile to the U.S. and then, later, by insisting to Seoul that he be allowed to return safely to Korea. The political opening has since followed, and the conclusion seems inescapable: By retaining influence and by stressing our commitment as an ally, American encouragement for freedom has had more credibility, and more tangible impact in expanding freedom.

As events continue to unfold in South Korea, the U.S. cannot dictate what form democracy should take or how the various parties should compromise. But it can stress to President Chun and to all Koreans—as it did to all Filipinos—that democratic institutions must continue to develop, and that any political reform will have to be credible to the Korean people if it is going to bring stability. This painstaking, incremental policy may not sit well with some American moralists, but it does seem to help the practical—as opposed to the abstract—cause of freedom. Certainly it is hard to argue with the results so far. ☎

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WALKING OUT ON NATO

British Labour's Threat to Western Defense

STEPHEN HASELER

The NATO defense alliance has survived many threats to its existence during the nearly 40 years it has kept the peace in Europe. Neither the formal withdrawal of France from the alliance, nor Soviet campaigns to "decouple" Europe from the United States, nor allied disputes over Suez and arms control, have prevented NATO from maintaining a powerful deterrent to Soviet aggression in Western Europe.

NATO, however, must now begin preparing for a threat that might well put its future in jeopardy: the strong possibility that Britain will cease to be an important member of the western alliance. To judge from opinion polls, the Labour Party of Neil Kinnock currently stands as much as an even chance of taking power after the election that Conservative Prime Minister Margaret Thatcher will probably call sometime in 1987, although her full term expires in May 1988. And as long as Labour is committed to its present defense platform, a Kinnock victory would throw NATO into disarray, and might even force the alliance to disintegrate.

Until recently, the prospect of a Labour victory was of little concern to Britain's NATO allies. Labour Foreign Secretary Ernest Bevin was one of the alliance's principal architects, and Labour Prime Ministers Clement Attlee, Harold Wilson, and James Callaghan were all strongly committed to Britain's full participation in NATO's nuclear deterrence strategy. The party's trade union base was strongly anti-Soviet. And few in the party during the early postwar years would disagree with Bevin's colorful 1948 statement that "all Communists are unprincipled thugs, wolves in sheep's clothing, and they will do anything at Moscow's bidding."

But beginning in the 1970s, the Labour party was gradually taken over by far-left factions, notably the Trotskyite "Militant" movement which took control of the party apparatus and the municipal governments of Liverpool and Greater London, and now reaches deep into many of the urban centers where Labour derives its principal support. The Militants are Marxists calling for a socialist transformation of society; following Trotsky, they see the United States as a bourgeois imperialist power morally equivalent in evil to the state capitalism of the Soviet Union; in foreign policy their goal is a neutralist, united socialist Europe.

In recent years, following Prime Minister Thatcher's landslide reelection in 1983, the Labour leadership has tried to distance itself from both violent trade unionism and the class-struggle rhetoric of the Militant faction. Unfortunately, the Labour leadership has had no coherent world view of its own, especially not in foreign affairs, and, for the sake of party unity, it has seized on the defense issue in order to keep the Militant faction within Labour ranks. The foreign policy views of the Labour left are still enshrined in official Labour statements, most recently a December 1986 policy document entitled "Modern Britain in a Modern World" that has been endorsed by the party leadership including "moderate" Denis Healey, who would become foreign minister in a Kinnock government. This Labour platform breaks with a consensus that has stretched across the British political spectrum for four decades. If put into effect, it would directly threaten the cohesion of the Atlantic community.

This latest document shows that Labour is still wedded to unilateral nuclear disarmament. To begin with, Labour is committed to scrapping the British independent nuclear deterrent. Immediately upon taking office, the party promises to decommission the country's aging Polaris system (Britain's missile force is stationed on four Polaris submarines, only one of which is at sea at any given time). It will also cancel the Thatcher government's plans to replace Polaris with the Trident submarine system from the U.S.

Eliminating the British deterrent would aggravate many of the current psychological strains within NATO. It would leave the French as the only Europeans with an independent nuclear capability, making much less likely the potential future option of a joint Anglo-French deterrent, and increasing American irritation over Western Europe's inability to pull its own military weight. It would also encourage Britain to adopt the non-nuclear West German neurosis of overdependence on the American nuclear guarantee.

More frightening, and of more immediate relevance to

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NATO than the end of the British bomb, is Labour's solemn promise to take "appropriate steps" to remove the American nuclear presence from its soil and waters. Labour's proposals are quite specific: America would be required to close the cruise missile bases at Molesworth and Greenham Common and to remove nuclear weapons from the F-111 aircraft bases, though the airplanes themselves could stay; they would be denied nuclear submarine facilities at Holy Loch in Scotland; and Britain would no longer be host to NATO's deterrent, and to a major part of the American nuclear umbrella covering Britain—the reason why the American presence was sought, and welcomed, in the first place.

A Labour government would continue to pledge fealty to NATO, of course. But within the councils of NATO, Labour would further weaken the alliance's nuclear deterrent by arguing for an end to the "first use" posture for nuclear weapons (a policy that would only be contemplated during a European conflict that the Soviets were winning), and for the removal of all battlefield, as well as strategic, nuclear weapons from NATO's central front. Labour gives lip service to improving conventional military capabilities, but it fails to call for the increases in defense expenditures that would be necessary.

Britain's Special Role

Although it would be a serious blow, NATO's nuclear forces could probably survive the loss of British bases. The alliance could redeploy its theater nuclear arsenal by stationing more cruise missiles in West Germany, Italy, and Holland. American nuclear submarines could dock and refuel elsewhere in Europe. The F-111's could similarly be based in other airfields.

The real danger of a Labour victory would be the geostrategic dynamics it would set in motion. Britain cannot simply become another Norway—a NATO member that forbids American bases on its territory—as some Labour "moderates" have suggested. Britain has long had a special relationship with both NATO and its principal member, the United States, that cannot be duplicated easily. Britain was a one of the central founders of the alliance. A Briton, Lord Carrington, is presently Secretary General of the NATO Council, and Britain provides the Commander in Chief for one of NATO's operational theaters, CINCHAN.

Britain also plays a central role in formulating NATO strategy. No major decision about nuclear weapons or military doctrine in Europe has been taken without British involvement. The United Kingdom is a member of NATO's inner Nuclear Planning Group, and it provides NATO and Washington with reciprocal facilities for monitoring and surveillance at Chicksands and Fylingdales. It was no accident that the Germans coordinated both their neutron bomb plan and the Euromissile plan initiative with Britain, the only nuclear power in Europe that is within the integrated military NATO system.

In conventional military terms, Britain is pivotal. It is America's forward base for the resupply of NATO forces in the event of an European war. Britain's geographic position would be even more crucial if the Soviets conquered the continental land mass.

Americans and Germans may properly ask whether a Kinnock government would be a reliable ally during a "transition to war" phase in Europe. Britain's special intelligence relationship with the United States might also have to be be examined. Should Labour come to power, the normal, manageable tensions between the U.S. Central

A Kinnock victory would throw NATO into disarray, and might even force the alliance to disintegrate.

Intelligence Agency, Defense Intelligence Agency, and National Security Agency on the one hand, and the British MI5, MI6, and GCHQ on the other, would degenerate into divorce. Washington might understandably want to review British participation in NATO's nuclear network, and would also be well within its rights in withholding NATO planning secrets from Labour ministers. There would be no reason to have a special intelligence relationship with a government in London that does not share even the broad strategic aims of Washington and Bonn.

More important still than these military and security questions are the wider transatlantic political ramifications of Labour's defense posture. Britain's relationship with the United States is primarily historical, cultural, and psychological. Americans still see Britain as their principal and most reliable ally, a perception reinforced by Margaret Thatcher's lone decision to allow American airplanes to bomb Libya from British bases. The American public also perceives Britain as an island of constitutional royal stability and parliamentary government, while the British see Americans as "cousins," certainly when compared with continental European "foreigners."

This closeness, however, can be double-edged. How, for instance, would the American public react if Britain, of all countries, forced the American nuclear bases out of British territory? The American public—represented in this case more precisely in Congress than the White House—would interpret such a move as a rejection of the United States itself, a jolting and surprisingly unfriendly act coming from the most unexpected quarter. The American public would not make fine distinctions between nuclear and conventional bases, or between Britain and other Western European powers. In these circumstances, Congress may move to reduce or completely withdraw American troops from all of Europe. Margaret Thatcher's fear of just such an American reaction was one of the crucial reasons that persuaded her to support the raid on Libya.

Neo-isolationism in regard to Europe is already on the American domestic agenda. For the moment, it seems restricted to the academy, but its propositions seem plausible enough to American ears, and should be taken seriously. Melvyn Krauss, in a recent work dramatically entitled *How Nato Weakens the West*, has set out in detail the

Reuters/Bettmann

The sit-down approach to deterrence

contours of a long-held American case that the West Europeans are "free riders" within NATO because of their lower per capita spending on the common defense; it then goes on to argue that the American-European relationship would be healthier if the U.S. withdrew its troops from Europe.

These academic flurries should not be dismissed as fanciful intellectual conceits. Howard Baker, while Senate majority leader, gave public vent to a private political mood when he said a few years ago of the troop withdrawal issue: "I've thought about taking up the cudgels, but the situation is too serious for that. When [former Senate majority leader Mike] Mansfield was doing it there was virtually no support for that position in the Senate. Were I to do it, I'm afraid it would start a fire I could not put out." In 1984, the Senate narrowly defeated an amendment sponsored by Sam Nunn (now the new chairman of the Armed Services Committee) calling for a partial withdrawal of American troops from Europe unless the Europeans boosted defense expenditures. A British decision to renege on its obligations to NATO could be the torch that ignites the neo-isolationist fire.

There will obviously be some among this "reassessment" group who would welcome a decision by a major European government such as Britain to change abruptly its orientation toward NATO. It would be seen as the unfortunate occasion for a fortunate outcome: the long overdue shake-up for the Europeans that finally gets them to unify and pull their weight.

But American critics of NATO's present structure would not get the orderly reassessment and redeployment of NATO's resources—with Washington and its European allies acting in concert—that they want from such a jolt to the European system. The political dynamic unleashed by British unilateral nuclear disarmament would fracture the whole western world, making at least possible the scenario recently outlined by Michael Elliot of *The Economist*:

> For Europeans this . . . would give the Russians a window of opportunity on the central front. It could also be ironic, since any Europe-without-America would probably have a German hegemony. It would hardly be comforting for Americans either. The dilemma is thus particularly acute. Everyone wants greater European unity; but nobody wants to see it at the cost of adding a third element to a world complicated enough by two.

What is more, a Labour government in Britain would add an ominous new dimension to an already destabilized Western Europe. There is something of the whiff of Salvador Allende about Neil Kinnock and the present Labour party. Though not himself a Marxist, democratic socialist Kinnock would open key government positions to the extreme left. It is by no means fanciful to see Britain under Labour as a Cuba off the continental European coast—a development which would leave the Germans with their rear unprotected, pushing not for hegemony over Europe but instead seeking an accommodation with the Soviet

Union. In these depressing circumstances the French would hunker down, with as much independence of action as they could retain. The Soviets would have achieved their major strategic objective: the neutralization of Europe without firing a shot.

The Stranglehold of the Left

Should Labour come to power, there will be little possibility of any slippage from the party's campaign promises. This is because the Labour "moderates" have allowed the left to maintain a stranglehold on policy decisions.

Under new party rules dating from the late 1970s, the Labour leader is now chosen by the party apparatus rather than by parliamentary representatives as before. Moreover, Labour Members of Parliament can no longer stand for reelection without the approval of local party caucuses. With the left now dominating many of the most important caucuses, it can hold any future Labour administration accountable to its wishes. The resulting slide to the left has been so profound that even Labour's leading "moderate," Denis Healey, has now totally committed himself to unilateral nuclear disarmament—a posture from which he can escape only at the demise of his career.

During the 1970s, Labour moderates then securely in government failed to notice the rumblings underneath them in their own party. They initially turned a blind eye to the Trotskyite capture of Labour's urban organizations, and then, taking the lead from Prime Minister Harold Wilson, they agreed on a strategy of compromise with the Militant left. At party conference after party conference, Labour's leadership failed to stand its ground, to isolate the extremists, or even to denounce them. This route, the leaders argued, would diffuse the crisis. Yet, the opposite happened. By ignoring the threat they simply gave the Militants a legitimacy within the Labour movement which they otherwise would not have possessed.

The rise of the Militant left was also abetted by Britain's economic decline. In 1950, Britain had the highest per capita income of any major nation in Europe; today her per capita income is equal to that of Italy and vastly exceeded by Belgium and Finland, not to mention France and West Germany. Britain's abysmal economic performance has many causes, not least of which was the power that trade unions have exercised in preventing industrial adaptations to changing market conditions—a veto power that Mrs. Thatcher may finally have succeeded in breaking with her victory over the striking mineworkers' union in 1985. But the effect of economic decline was to make class-struggle ideology more attractive among Britain's growing urban underclass—and to discredit the Labour moderates who were in power during periods of relative hardship such as the late 1970s.

Led by Anthony Wedgwood Benn, the left transformed Labour from the party of social democracy to the party of full-blooded socialism. This position is rejected by the majority of Britons, and the Labour party seems unable to capture more than 40 percent of the British popular vote, an insufficient percentage to guarantee Labour an outright majority in the coming election.

The threat to NATO, however, would not be ended if Labour fails to gain a majority in Parliament. A "hung" Parliament, in which the alliance of the center parties (the Social Democratic Party and the Liberals) holds the balance of power, might pose similar dangers. It is no longer clear that the Alliance parties would refuse to enter a coalition with a Labour party committed to unilateral disarmament.

The official defense policy of the Liberal-SDP Alliance is a strange fudge, combining the SDP's emphasis on multilateral disarmament with the growing nuclear pacifism of the Liberals. The Alliance does not, as yet, propose the withdrawal of the American nuclear presence in Britain. But the Liberal Party has gone on record as promising to abandon Britain's own nuclear forces, and the SDP-Liberal Alliance has stopped shy of such an outright commitment only as the result of SDP leader David Owen's promise to resign if such a joint decision is made. Growing numbers of Liberal activists, much to the regret of party leader David Steel, are now taking the Labour position on American nuclear bases. And a powerful faction within the SDP wants peace with the Liberals at any price, even if that means adopting a position of nuclear pacifism.

Eliminating the British deterrent would encourage Britain to adopt the non-nuclear West German neurosis of overdependence on the American nuclear guarantee.

This problem in the center is the great sleeper issue of British politics. Should the SDP-Liberal Alliance hold the Parliamentary balance, there is a strong chance that the Liberals (who would probably have three times as many seats as the SDP) would engineer a break with the SDP and, in a crisis, align themselves with Labour. In fact, a Labour-Liberal compact is the natural alignment in British politics, as is that of the SDP with the Conservatives.

One further aspect of a hung Parliament is worrisome. Should Labour emerge from the election as the largest single party, but without an overall majority, the pressures on Buckingham Palace to dismiss Mrs. Thatcher and send for Mr. Kinnock could be immense. There are too many precedents in Britain's history to allow the Queen to do otherwise. Should this happen, Mr. Kinnock would enter No. 10 Downing Street as minority Prime Minister, but Prime Minister nonetheless. Although he would not be able, or willing, to implement a program while he is denied a majority in Parliament, his mere presence in Downing Street would be a powerful psychological boost for Labour. Kinnock could then wait for the right moment (as did Harold Wilson in 1974) to appeal again to the people in a general election some months later.

His slogan would then be: "Give the Labour government a chance"; and such appeals have worked wonders in the past, particularly because newly-arrived Prime Minis-

ters possess a natural popular appeal, yet possess none of the disadvantages of a political legacy. Also, any early mistakes can be blamed on his not having a majority.

Such speculations about the potential political power of Labour, irrespective of the outcome of the election, are not idle. Those concerned about the long-term future of British politics need to brace themselves for a large Labour representation in the House of Commons whatever the particular outcome of the next election. Labour will then have succeeded in its short-term strategic goal of remaining the major opposition party and will be poised for power the next time around.

The Soviets would have achieved their major strategic objective: the neutralization of Europe without firing a shot.

One of the most forlorn outcomes of the complicated politics of Britain since the launch of the new Social Democratic Party in 1981 is that the parties of the center have failed in their historic objective—to "break the mold" of British two-party politics, and thereby to supplant Labour as the alternative to the Conservatives. Those of us who helped set up the new Social Democratic Party in 1981 were keenly aware that Labour not only threatened the British people with a socialist future, but that should Labour come to power, NATO itself would be jeopardized. The Social Democratic Party was launched with much fanfare, and for a time before the Falklands War in 1982 it seemed that the SDP, in alliance with the Liberals, might actually win an election victory outright. Now it is important to recognize our failure to achieve the objective of realigning the left of British politics, by pushing Labour to the sidelines.

There were several reasons for this, but the most profound was the lack of a populist content to Britain's new party. If the SDP is ever to overtake Labour it needs to represent some of the cultural conservative instincts of the working people—something Mrs. Thatcher can do better than any other British politician. The SDP was constructed on far too narrow a social base, was too fastidiously liberal, too trendy and green to attack this problem. Every one of its leaders had been to Britain's elite Oxbridge system, making most of them utterly incapable of ringing any bells outside gentrified inner city areas where people are more concerned with middle class protest and conservation than with crime and economic recovery. Also, the SDP represented Labour's failed Welfarist policies of the 1960s and 1970s—although lately David Owen has attempted to inject a social market approach.

For the rest of the century it now seems likely that the Labour party will continue to achieve a popular vote of approximately 40 percent. In good years for the party it could rise to the low 40s, and in bad years dip into the high 30s. The British public has consigned Labour to this sizeable laager. The problem, though, is that Labour, given Britain's peculiar electoral system, could win an outright majority in Parliament with either of these electoral outcomes. The job of British political statecraft in the next few years is to ensure that Britain's anti-Labour popular majority secures an equal anti-Labour representation in Parliament. This obviously can be achieved by a change in the British electoral system to proportional representation—on the West German or Israeli model—or by another realignment of the political parties, this time by establishing, after the next general election, an electoral pact between the Conservatives and the SDP.

Yet, the odds for 1987 or 1988 are still with Margaret Thatcher—not least because her party has risen in the polls since the defense issue became salient. Thatcher has one other advantage. Although not particularly liked (unlike Ronald Reagan, she does not inspire affection), she is seen as a remarkable leader deserving of respect and admiration. Consider this recent piece of commentary by former Labour Member of Parliament, Brian Walden:

> As for the Tories, I believe they underestimate the debt they owe Mrs. Thatcher. She may not be popular, but she possesses a most convincing vision of the future. . . . Mrs. Thatcher's great asset is that she is a provincial person who understands the people's yearnings for property, possessions and respectability.

From a NATO point of view, a Thatcher victory, together with the recent reelection of Helmut Kohl in West Germany, will also provide a framework for the allies to strengthen the defense of their common interests before it is too late. ☎

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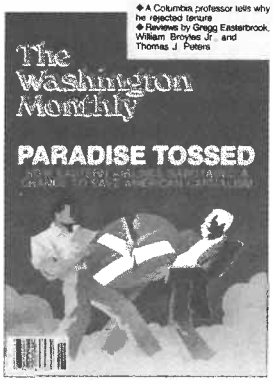

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THE CAMPUS COST EXPLOSION

College Tuitions Are Unnecessarily High

BRUCE M. CARNES

American parents and college students have good reason to be upset by the skyrocketing price of undergraduate education. Since 1980, college costs—tuition, room, and board—have climbed by 57 percent, more than twice the increase in the Consumer Price Index. A survey conducted last December by Opinion Research Corporation found that 82 percent of the public thought that "college costs are rising at a rate that will put college out of reach of most people." And they may well be right. Since 1980, average college costs have risen 80 percent faster than median family income, and nearly 100 percent faster than the income of families with one wage-earner.

On average, a four-year college education now costs more than $25,000. At some elite institutions such as Harvard and Stanford, the bill comes to as much as $70,000. Tuition increases are still running in the neighborhood of 6 percent a year, even though the overall inflation rate has been brought down to under 2 percent. College room and board prices have risen by 51 percent over the last six years, despite the fact that during the same period the Consumer Price Index for food and beverages rose by only 17 percent, and for rents by only 34 percent.

The cost explosion has led some to call for greater government subsidies of tuition payments. Nearly half of the nation's college students now get tuition grants or loans from the federal government; and appropriations for U.S. Department of Education student aid have risen from $5.1 billion in 1980 to $8.2 billion in 1987. The total aid generated by these federal subsidies—including private bank loans backed by government guarantees—has increased by 71 percent during this period to a total of $15.2 billion, outpacing the rise in college costs.

Rather than helping restrain cost increases, however, the growth in federal aid has insulated college administrations from the disciplines of the marketplace and allowed them to continue with inefficient practices that drive up costs. As Chester Atkins, a Democratic congressman from Massachusetts, has said, "[college] administrators have used federal support to avoid the kinds of cost controls that just about every other institution in our society has instituted in the past few years."

There are several reasons why the cost of a college education is rising. One is that education is inherently a labor-intensive enterprise, its effectiveness depending on individual contact between student and teacher. Faculty can grade only so many papers; they can call on and cross-examine only so many students in a classroom discussion. In all but the most rote forms of instruction (as for example in language laboratories), it is therefore difficult to raise student-teacher ratios significantly without sacrificing the quality of learning. Unlike other sectors of the economy where new technology can replace labor or make employees more productive, new educational technology such as computers and video equipment have so far proved to be poor substitutes for professors and have been unable to increase the numbers of students whom professors can effectively teach. On the contrary, technical advances, especially the increasing sophistication of instructional laboratories, have tended to make college more expensive, not less so.

A second reason for the college cost explosion is the rising (and rather inelastic) demand for higher education; colleges are free to raise their tuitions, because the market will bear the increases. A college degree has become accepted as the ticket to a high-paying job, a rewarding career, and the respect of one's peers. Partly because of this, despite predictions that enrollments would decline as a result of a drop in the 18-to-24 age group, college enrollments have increased three years in a row and are near an all-time high. Fall 1986 enrollment was 12.4 million, up one percent over the previous year. More college-aged youth are going to college than ever before (58 percent of the high school graduating class of 1985), as well as increasing numbers of older students.

A third reason for rising costs is the incentive structure of colleges and universities, both private and public: their goal is to maximize revenue, not profit, and therefore they have no incentive to keep costs down. Economist Howard Bowen, in his book *The Costs of Higher Education* (1980), described the economic behavior of colleges and universities this way: 1) Each institution raises all the money it can; 2) Each institution spends all it raises; 3) The cumulative effect is toward ever-increasing expenditures.

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Drawing by Karen Portik

Since 1975, colleges and universities have grown significantly. Enrollments have risen by 21 percent, the number of institutions by 15 percent, and institutional expenditures by 157 percent in current dollars, 26 percent in inflation-adjusted dollars. Endowments have grown by 178 percent, and voluntary and corporate support by 193 percent. Efficiency and economy have not been paramount concerns in this growth environment. As Bowen puts it: "the duty of setting limits thus falls, by default, upon those who provide the money, mostly legislators and students and their families."

Federal aid has lessened still further cost disciplines on the academy. As tuition subsidies have risen over the last 15 years, many of the most glaring inefficiencies have continued and even been aggravated.

Overabundant Overhead

Robert V. Iosue, president of York College in Pennsylvania, wrote recently in the *Wall Street Journal* that "the top-heavy bureaucracy we lament in business and government is alive and flourishing in higher education." The Education Department's Higher Educational General Information Survey (HEGIS) bears this out.

Between 1974-75 and 1984-85, the greatest relative increase in college and university expenditures was for administrative overhead. This category includes admissions, financial aid administration, placement, salaries of academic administrators, and student services. A recent article in *USA Today* described some of the questionable services now being offered to students: a program to help freshmen overcome shyness (at California Polytechnic State Institute), a Roommate Starter Kit for the traumatic hours when roommates first meet (Pennsylvania State University), and memory aids for students who get anxious trying to recall what they've learned (University of Massachusetts).

Administrative overhead also includes recruiting, which has taken on the importance of a religious quest as the supply of traditional college-aged youth has declined. A recent survey by the Educational Testing Service found that college and university marketing budgets have grown by 63 percent since 1980. Even some within the academy have begun to question whether unchecked recruiting best serves the institutions and their students. In a remarkably candid speech last October, American Council on Education president Robert Atwell said: "Recruiting has become expensive and flashy. The cost of attracting students continues to escalate and every dollar spent on recruiting reduces what can be spent on instruction."

Underproductive Faculty

Jacques Barzun has written that in the 1940s, professors were expected to teach five courses a semester, 10 a year. Today, in four-year colleges, professors teach an average of five to six courses a year. One of the great myths of academe is that all professors need a great deal of free time (not to mention summer and spring vacation, Christmas vacation, etc.) in order to conduct research. The truth is that 59 percent of all college faculty have never written a book, and 32 percent have never written so much as a single article.

Even though many faculty are underproductive and there are numerous applicants for every vacancy, faculty salaries are climbing. Over the last 10 years, faculty salaries have kept pace with the increase in the Consumer Price Index. This is far better than the average wage earner's did—his earnings trailed the CPI by 20 percent.

Over the last 10 years, faculty salaries have kept pace with the increase in the Consumer Price Index. This is far better than the average wage earner's did—his earnings trailed the CPI by 20 percent.

Colleges have economized in this area by greatly expanding the ranks of non-tenure track faculty. Many schools found they could have stable budgets *and* higher salaries (for some) by transferring undergraduate teaching classes to part-time, itinerant, low-paid "gypsy" faculty, while giving the raises to a shrinking pool of tenured and tenure-track faculty. For example, from 1977 to 1983, the number of non-tenure track faculty increased by 12 percent while those on tenure track decreased by 15 percent. Now, as many as one-third of all undergraduate courses are taught by these non-tenured faculty. The effects of such practices on the quality of undergraduate instruction are predictably negative.

Income Transfer on Campus

Auto dealers try to maximize their sales income by raising sticker prices and then offering larger or smaller rebates depending on how much they think individual customers will be willing to pay. The same price discrimination strategy has become common in higher education, with a redistributionist twist. Michael O'Keefe, president of the Consortium for the Advancement of Private Higher Education, writes in *Change* magazine (May/June 1986): "At some colleges, institutional student aid (the "discounts") now *exceeds* total expenditures for the educational program. It makes one wonder what business these colleges are in, higher education or income transfer."

The net result is that those who can afford to pay the full sticker price—some only because of federal student aid—subsidize the rest, keeping enrollment up. At many colleges, tuitions could be cut by as much as a quarter to a half if these campus transfer payments were eliminated.

Tuition for undergraduates is also frequently set higher than it need be, in order to subsidize graduate programs. The cost of providing a credit hour at the graduate level tends to be three to six times higher than at the undergraduate level, according to a study by Paul Brinkman of the National Center for Higher Education Management Systems. Yet undergraduates and graduate students are typically charged nearly identical tuitions.

Unnecessary Expansion

The rapid growth in higher education has exacerbated a long-standing tendency toward unnecessary institutional expansion. Too many first-rate four-year colleges have acquired a smattering of graduate programs and turned themselves into third-rate universities. And second-rate universities have tried to become first-rate by adding more graduate programs instead of improving what they already had. The result is always the same: higher costs for the institutions, higher tuitions for the students, and less attention to undergraduate instruction. As Robert Atwell put it: "Academic administrators, chancellors, and presidents too often embrace a single model of excellence and enter the bidding wars for superstar professors, who reward research rather than teaching, and who initiate graduate programs despite the surplus of Ph.D.'s in most fields."

With so many universities attempting to be all things to all people, it is common for neighboring institutions to offer the same specialized graduate programs. In the Dallas area, for example, nine universities offer MBAs, five offer graduate degrees in psychology, and three have graduate programs in speech pathology and audiology.

Among public institutions at least, efforts to curb this educational arms race may be beginning. In Maryland, a commission appointed by the governor has recommended eliminating wasteful duplication of programs in state colleges and universities. Colorado's higher education coordinating agency has recommended that 11 degree programs be discontinued. In Missouri, 67 programs ranging from associate in arts degrees to doctoral programs have been eliminated in the past four years, and 43 other programs have merged. The North Dakota legislature recently combined four state colleges under one jointly administered system.

Despite these examples, however, efficiency does not always carry the day. Northern Illinois University recently started up a new engineering school, at an estimated cost of $65-85 million over the first 10 years, even though there were 1,700 empty places in three other engineering programs within a 65-mile radius.

In a few all too rare cases, private institutions are also waking up to the problem of costly duplication. The Consortium of Universities of the Washington Metropolitan Area, representing 11 public and private institutions, has drawn up a plan to coordinate and eventually to merge all its libraries, improving access for students and faculty while generating substantial savings in purchasing costs.

Increasing federal aid is not the answer to rising college costs. On the contrary, as Secretary of Education William Bennett argued in a speech at Catholic University last year, "Trying to control costs by increasing aid is like the dog chasing its tail around the tree; the faster he runs, the faster the tail runs away."

Student aid does not itself push up college prices but it does facilitate their rise. As Michael O'Keefe put it in *Change*, "the increased availability of loans in recent years . . . feeds the cost spiral. Sizable tuitions become less for-

midable when translated into relatively modest payments per month. The magic of 'buy now, pay later' has come to higher education, making it almost painless to raise costs." When the majority of those costs are passed on to the taxpayer—and three-quarters of all post-secondary student aid now comes from federal programs—raising prices becomes even easier.

Research confirms an indirect relationship between student aid and college costs. In a 1983 survey of 388 colleges (181 private and 207 public) Nathan Dickmeyer of Columbia University concluded that student aid increases are clearly associated with tuition increases as well as with growth in administrative overhead. "The most likely chain of events," he wrote, "is that increases in federal programs make students less resistant to tuition increases."

Anecdotal evidence also confirms the relationship. Last April the *New York Times* reported that officials of a prestigious East Coast university "were awaiting more information on the level of federal support before announcing next year's costs."

Prior to the late 1970s, the connection between federal student aid and tuition increases was weaker. To begin with, most federal aid was available to veterans and children of Social Security beneficiaries, but not to the general public. Since tuition increases hurt the majority of students (and their families), it was harder for colleges and universities to raise their costs and still fill their classrooms. Perhaps more important, most federal aid bore no relation to a student's "need" or to the costs of an institution. Tuition increases would not automatically lead to higher subsidies from the federal government.

But the emergence in the late 1970s of generally available aid that was tied to student "need" dramatically altered the incentives facing colleges and universities. With "need" determined in part by the cost of attending college, colleges found that students would qualify for more aid when tuitions rose. The rapid rise of college costs in the 1980s corresponds with increases in need-based aid, which by 1985-86 accounted for nearly 95 percent of all federal student aid.

The American public, with its nearly limitless faith in higher education, has been remarkably docile in the face of six consecutive years of excessive tuition hikes. But this is beginning to change. Applications to high-quality but moderately-priced public institutions are way up, a sign that price sensitivity is increasingly entering into the enrollment decisions of students and their families. Articles and editorials on rising college costs are increasingly common in major newspapers and national news magazines. The vast reservoir of public good will toward higher education has its limits, and college officials would be well-advised not to presume too much.

Questionable services offered students include a program to help freshmen to overcome shyness, and a Roommate Starter Kit for the traumatic hours when roommates first meet.

Colleges and the national organizations that represent them should take the lead in controlling runaway costs by putting their own houses in order. They should take a serious, critical look at the way in which they do business, with the goal of achieving more efficient administration, more productive faculties, and fairer pricing policies. So far, with only a few exceptions, the higher education community has stubbornly resisted such measures, even refusing to consider the possibility that they may be necessary. If colleges do not set standards for their own cost performance, then external authorities, as Howard Bowen has observed, may have to set the standards for them. At the very least, colleges should take pains to convince a skeptical taxpaying public that what they are offering is worth the price they are asking.

America's Permanent Dependent Class

It's Time to End the Farmer's Dole

Doug Bandow

It was to be the new gilded age of laissez-faire and limited government, but the "Reagan Revolution" died long before the Iran affair was revealed. Nowhere has Ronald Reagan failed more conspicuously than in his attempt to control federal spending: government outlays have jumped $424.6 billion since he was elected, an astounding 71 percent increase.

And no program has been mismanaged more disastrously than the farmers' welfare system. Direct payments to farmers ran $25.8 billion last year, a 545 percent jump over 1981. No sector of the federal budget has grown more.

Nor is that all the money received by rural America. In 1986, the federal government spent another $3.8 billion on crop research, soil conservation, and similar programs. Sugar quotas, peanut quotas, and citrus marketing orders provide billions more dollars to producers through higher prices instead of higher taxes.

At the same time, Uncle Sam has proved to be an incredible bungler as Farmer-In-Chief. Despite direct subsidies of $93.8 billion so far during Reagan's tenure—and at least $21.3 billion more this year—rural America is in disastrous shape.

For instance, the Farm Credit System, a cooperative rural network of 400 banks and associates, recently announced a $1.9 billion loss for 1986, on top of $2.7 billion in red ink the previous year. With farm bankruptcies continuing and almost one-fourth of the System's lending portfolio already foreclosed or impaired, a federal bail-out seems only a matter of time.

Despite several billion in export subsidies—$5 billion in short-term credit, $666 million in crop surpluses, and $500 million in longer-term credit a year—the American farmers' share of international food markets continues to shrink. Last year, food export earnings were down 60.5 percent from 1981. With China having passed the U.S. as a cotton exporter, Thailand now shipping more than twice the volume of rice as America, and Australia threatening the U.S. lead in wheat exports, few observers believe 1987 will be any better.

Finally, there's the simple human hardship of the 2,100 farmers who go out of business every week. Many borrowed heavily to purchase additional land and expand; since then export markets have shrunk, prices have fallen, and land values have plummeted. At least 178,000 of the 670,000 commercial farms are heavily in debt.

For many of the 29 percent of the farmers who own 83 percent of the agricultural debt, the burden has become overwhelming. Two-thirds of them owe more in interest than they earn from their crops. For many, bankruptcy has been the only option.

Bizarre Hybrid

Federal outlays are up, the Farm Credit System is tottering, exports are way down, and farms are failing. Something is obviously wrong. "How can so many farmers go broke if we're spending all this money to help them survive?" asks Senator Patrick Leahy (D-Vermont), chairman of the Senate Agriculture Committee. Unfortunately, it's all too easy to do when the federal government takes charge.

The "farm crisis" is a permanent part of American history. "When the going is good for" the farmer, H.L. Mencken wrote 60 years ago, "he robs the rest of us up to the extreme of our endurance; when the going is bad he comes bawling for help out of the public till."

The basic foundations of Uncle Sam's stint as Farmer-in-Chief are production restrictions and price supports. In fact, the federal government began with a variant of the sort of "supply management" program now being advocated by Senator Tom Harkin (D-Iowa) and Representative Richard Gephardt (D-Missouri). The 1933 Agricultural Adjustment Act set acreage limits for specific crops and paid farmers to reduce the amount of land they planted, in an attempt to push up producer prices. Cash subsidies, principally through "nonrecourse" loans, which allow farmers to forfeit their crops if loan rates exceed market prices, were originally only of secondary importance.

However, farmers continually lobbied to push up support levels—usually pegged to a mythical "parity" figure

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determined by the ratio of prices and costs in the years immediately preceeding World War I—in effect, preferring a cash welfare program to a cartel. Large surpluses naturally resulted. As federal stockpiles increased, the government increasingly attempted to limit what farmers could produce. The Agricultural Act of 1956, for instance, established an "acreage reserve" which paid farmers to let their land lie fallow or to convert it to a particular "conservation" purpose.

But surpluses have persisted as farmers became both more efficient technically and more adept at manipulating federal programs. Frustrated Presidents and Congresses have then responded by tinkering with the support system, turning it into a bizarre hybrid of price props, acreage limits, import restrictions, and export subsidies. The only constant has been the increase in federal spending and the number of Agriculture Department (USDA) bureaucrats per farm—up tenfold since 1929, even as the percentage of the population living on farms has fallen by more than 90 percent.

The five-year bill that President Reagan ultimately signed in December 1985 did include some very modest future reductions in price supports. Then Senate Agriculture Committee Chairman Jesse Helms called the legislation "the beginning of a slow, but decisive, transition to market-oriented farm policy."

Barely two months later, however, agricultural consultant John Schnittker observed that "you can't keep track" of federal farm spending because "it's mounting so fast." In early 1985, Congress has approved a budget resolution setting a three-year $34.5 billion limit on agricultural subsidies. The final Farm Bill, however, was expected to run $50 billion over the same period. But outlays were almost $26 billion last year alone; the Agriculture Department now expects farm spending from 1986 to 1988 to hit at least $70 billion.

The American people are also taking a hit as consumers as well as taxpayers. The milk, peanut, and sugar programs alone hike retail prices by $7 billion a year, estimates Ellen Haas, executive director of Public Voice for Food and Health Policy. The 1985 Farm Bill instituted new production cut-backs; milk, for instance, is expected to eventually cost an extra 10 percent.

Finally, the number of fat federal pay-offs to the rich only seem to increase after passage of the legislation. Archer Daniels Midland, a multi-billiion dollar agricultural processing firm, collected $29.2 million last year to underwrite its gasohol business. One cotton farm took in $20 million. California dairyman Joe Gonsalves will soon receive about $8 million to go out of business; "It's almost like one of those lottery tickets," he says. Crown Prince Hans Adam of Liechtenstein and International Paper Co., partners in the Farms of Texas Co., split federal subsidies of $2.2 million in 1986 for growing rice and other crops. Indeed, last year the largest 4,760 North Dakota farmers together collected more than $1 billion, about $211,000 per farm; Nebraska's biggest 8,260 farmers took home $1.7 billion in federal subsidies, about $200,000 each.

Unfortunately, it is hard to imagine a system that is not permanently biased toward richer, bigger farms. For so long as payments are determined by production, the largest farmers will receive the most money. According to a Joint Economic Committee report released last year, farms with sales in excess of $500,000 annually received 44.2 percent of federal payments; operations with receipts between $250,000 and $500,000 took in another 27 percent. As a result, barely 17 cents of every dollar in federal support goes to those farmers in greatest need.

California Dairyman Joe Gonsalves will soon receive about $8 million to go out of business; "It's almost like one of those lottery tickets," he says.

If nothing else, the 1985 Farm Bill proves that incremental changes will not solve the crisis that is overwhelming rural America and the U.S. budget. For the current programs are such a contradictory, inefficient mishmash that no amount of fine-tuning can put American agriculture on a sound footing or limit taxpayers' liabilities.

Dairy: Milking the Public

Perhaps the most abusive subsidy system is that which enriches America's dairy farmers, whose political clout is legendary. The federal government averages $2 billion a year—the actual figure has ranged between $1.5 billion and $2.6 billion during Reagan's tenure—to buy carlots of milk, butter, and cheese at legislated levels. The current federal support price is $11.60 per hundredweight, about two dollars above the market-clearing level.

Of course, as long as the government offers to buy any amount of dairy products at above-market prices, it will be overwhelmed by sellers. Last year, for instance, the federal government purchased 12.3 billion pounds of milk equivalent; in 1985 Uncle Sam bought 16 billion pounds worth. The result has been warehouses full of cheese, butter, and nonfat dry milk. In 1985, it cost Uncle Sam another $234 million just to process, transport, and store the surplus.

Lowering price supports is the obvious way to stop dairymen from producing mountains of unwanted milk; Congress instead created a multi-billion dollar "termination" program in 1985 to pay dairymen to go out of business.

Thus, after spending more than $14 billion so far this decade to encourage dairymen to produce as much as they want, the government is now forcing taxpayers to contribute $1.1 billion, along with $700 million in producer assessments, to convince those same farmers to retire. The individual "termination" checks range up to $10 million; all told, 144 dairymen are receiving more than $1 million each to quit their farms.

Ironically, this expensive slaughter of more than one million cows has had a devastating impact on the cattle industry. Beef prices fell 10 percent as soon as the termina-

tion program began the middle of last year; the value of producers' cattle inventories dropped by an estimated $2 billion. Complains John Ross, executive vice president of the California Cattlemen's Association, "We got kicked right in the teeth." The beef industry is one of the few agricultural sectors that receives no direct federal support.

Grains: PIKing Our Pockets

Though no more ludicrous than the price props for dairy products, the subsidy system for grain is more complex and more expensive. In 1985, for instance, wheat subsidies alone ran $1.95 billion, more than nine times the cost in 1980.

Three forms of supports operate side-by-side. First, farmers receive "deficiency payments" to cover the difference between the price they receive from selling part of their crops and the "target price" set by the government.

The only serious alternative is to make farmers, like everyone else, operate in a free market.

Second, USDA lends money to farmers at a specific "loan rate" and takes their crops as collateral. If, as is usually the case, market prices remain below loan levels—late last year a bushel of corn was selling at $1.75 but had a loan value of $1.84—the farmer abandons his produce and keeps the money. Thus, the federal government regularly accumulates a hefty stockpile of non-dairy crops. Last December, 2.7 billion bushels of wheat, 10.3 billion bushels of corn, and 325 million bushels of oats and barley languished in federal storage.

Third, to help reduce these huge surpluses, Congress has created a "diversion" program. To qualify for cash supports, farmers must take a certain percentage of their land out of production—at least 20 percent for wheat farmers and a minimum of 15 percent for feed grain producers. The 1985 law also authorized USDA to initiate a paid diversion program on top of these minimums.

So last year, right before the congressional elections, the administration announced the government would pay feed grain farmers to cut their acreage another 15 percent. On average, producers are receiving $2 a bushel not to grow anything; Mark Ritchie, an analyst with the Minnesota Department of Agriculture, expects the program to cost between $2 billion and $2.5 billion. Not surprisingly, farmers, who can earn more from idling their land than from planting it, like the program.

Also last year, the government issued about $2 billion worth of "generic payment-in-kind certificates" in place of cash subsidies, in an attempt to further cut production. Farmers could redeem their PIK certificates for crops (from the federal surplus), use the certificates to pay off their government loans, or sell the certificates.

But farmers and grain dealers soon discovered how to manipulate the certificates, which eventually sold for up to 40 percent above their face value. Until last October, when USDA finally changed the program's terms, farmers could take certificates issued in regions where crop prices were high, buy cheaper grain elsewhere, put it under federal loan, and then pay off the loans at a highly discounted rate. Farmers and grain firms pocketed an extra 10, 20, 30, or more cents a bushel. The PIK scam cost taxpayers about $400 million.

Corn producers also benefit from two additional programs. Sugar import quotas have sharply hiked purchases of high-fructose corn syrup. Subsidies for gasohol—produced by mixing gasoline with ethanol alcohol from corn—also increase demand for the grain. Last year alone, USDA gave $53.8 million to gasohol producers, most of the funds going to a handful of large firms.

Uncle Sam enriches the nation's rice farmers in much the same way that he supports the incomes of wheat and corn farmers. The federal government establishes both a loan rate, roughly 85 percent of the five-year average market price, and a target price. Growers who want to collect these subsidies must reduce their acreage by 35 percent; the government also pays rice farmers to cut their planting further.

The rice program is a relatively new one, dating from only 1976. But it has quickly become one of the most expensive agricultural boondoggles, with costs jumping from just $2 million in 1981 to $1 billion in 1986. The loan system guarantees huge federal surpluses—145,540,000 hundredweight of rough rice as of last December.

The case of rice illustrates how federal subsidies have undercut the competitiveness of U.S. agriculture. In 1981, Congress upped the rice loan rate on the assumption that world prices would continue to rise. They did not, so farmers chose to forfeit their crops and pocket the federal loans rather than accept lower prices abroad. The result was the virtually unprecedented increase in federal spending and surplus stockpiles.

Nonrecourse loans and deficiency payments are used to subsidize cotton growers as well. Cotton producers must set aside a quarter of their acreage to be eligible for federal payments. If domestic price support levels make U.S. crops uncompetitive internationally, USDA has authority to lower the repayment level necessary to redeem collateral crops. Thus, farmers can pocket part of the loan and still sell their crops; rice growers, too, can exercise this option.

Outlays for cotton growers have also run wildly out of control. In 1980, expenditures were $172 million; five years later Uncle Sam spent $1.1 billion on the program. Cotton stockpiles, like those for most other crops, are bulging. Moreover, the cotton farmers are still not satisfied with Uncle Sam's generosity; they are lobbying for import quotas.

Sugar's Daddy

If anything illustrates farmers' disproportionate political influence, it is the existence of $100 million in subsidies for the nation's 2,100 professional beekeepers. Though the Senate voted to kill the loan program in 1985, the House insisted on retaining it.

Honey price supports cause the same problems as do

other subsidy programs. Taxpayer costs have skyrocketed, going from approximately $3 million in 1980 to $100 million in 1985; consumers pay roughly 23 cents a pound more than they should for honey. The government had 113 million pounds of surplus honey on hand last December.

Another sweet subsidy for farmers is provided by the sugar program, though its deleterious impact is largely disguised. Congress killed sugar price supports in 1974, but the Reagan Administration revived them in 1981 as part of an ugly political deal for the votes of several southern Democratic congressmen.

The price supports, in the form of nonrecourse loans, are only rarely used, however, for Congress imposed import quotas which raise domestic prices above the loan levels. World prices have fluctuated between three cents and eight cents a pound; the loan rate is 18 cents and domestic prices run about 21 cents.

Thus, while the program's budget costs are relatively small—the government ended up with 400 million pounds of surplus sugar last year, which it sold abroad at a loss of about $56 million—the consumer cost is horrendous, as much as $3 billion in higher prices, all to benefit just 12,000 domestic growers. To maintain the program at no budget cost has required the government to steadily tighten the quotas. Foreign sugar shipments ran about 4.8 million tons in 1981, but will be restricted to barely one million tons this year.

Not surprisingly, sugar demand has fallen as prices have risen. Most soft drink manufacturers, for instance, have shifted to high-fructose corn syrup. As a result, the sugar refining industry is suffering a depression: a half dozen plants have closed, many are operating at reduced capacity, and thousands of employees have been thrown out of work.

Wool price supports run about $100 million annually. Soybean growers are eligible for nonrecourse loans. In 1985 the Senate even voted to subsidize sunflower production—the scheme, rejected by the House, would have paid farmers two cents a pound or $35 an acre, whichever was higher.

Peanut and tobacco producers are eligible for loans, but they operate under domestic allotment and quota systems which restrict the supply to push up prices. Similarly, "marketing orders" are used to control the proportion of oranges, lemons, and other specialty crops that may be sold fresh domestically. Consumers, instead of taxpayers, bear most of these programs' costs.

Finally, USDA spends billions of dollars to benefit all farmers generally. Export promotion, credit assistance, crop research, disaster relief, rural development, and soil conservation all serve as fig leaves to justify huge financial transfers to the agricultural community. The 1985 Farm Bill, for instance, established a Conservation Reserve program whose ostensible purpose is to protect the quality of land. In essence, however, the Conservation Reserve is but another "diversion" program, with the government paying farmers to cut their acreage.

A system this complex has provided politicians with an unending opportunity to tinker at the margins. In January 1982, the administration inaugurated its first Payment-In-Kind program, which was to substitute crop surpluses for direct cash payments. The largest diversion program ever undertaken, PIK was a disaster: production fell only slightly; the government had to buy crops in some regions to meet its commitments; prices rose, making U.S. exports less competitive; sales of agricultural supplies plummeted. A program expected to cost $2.9 billion ended up costing several times more.

However much we may cherish the traditional "family farm," there is no reason to force other Americans to keep farms afloat any more than to save any other uneconomic family business, whether dry cleaners or corner drugstores.

Some Republicans are now promoting "marketing loans," which allow farmers to redeem their crops from federal warehouses by paying as little as half of the amount of the loan they received from the government. They can then sell their crops on the open markets. The proposal would help encourage U.S. crop exports, but would still require taxpayers to make up the potentially significant difference between the market price and loan rates.

Senator Rudy Boschwitz (R-Minnesota) has proposed that farmers' payments be "decoupled" from their production. Doing so would reduce crop surpluses, but what criteria would then be used to distribute Uncle Sam's largesse? If anything, Boschwitz's proposal points out how unjustifiable any farm program is: why do people who happen to grow food have an automatic claim on billions of dollars from their fellow citizens?

The Collectivist Solution

On the Democratic side, Senator Harkin wants the government to take a larger role in American agriculture, "managing" supply to fit demand, rather along the Soviet collectivist model. Under Harkin's proposal, farmers would vote on whether the government should control production. If they agreed—and Harkin would cut back their subsidies if they don't—USDA would set crop quotas and issue marketing certificates. No domestic food company could buy from anyone without a certificate, effectively forcing every American farmer to join the government-enforced cartel and barring any imported food.

Consumer prices would jump as much as $20 billion annually; farm exports would vanish. With lower crop production, rural employment would fall by an estimated 130,000. Moreover, Harkin's proposal would extend state power beyond anything previously imagined in this coun-

try. Millions of farmers would face economic ruin if they refused to join the agricultural cartel or jail if they violated the government's dictates. Big Brother would be the dominant member of rural families.

The only serious alternative to the Harkin approach is to make farmers, like everyone else in America, operate in a free market. Tens of thousands of farmers would go out of business as a consequence, but those who survived would be financially stronger and the U.S. would once again be competitive internationally. Most important, American taxpayers and consumers would no longer be forced to spend billions to keep small numbers of beekeepers and dairymen in their chosen livelihood. Price supports, deficiency payments, nonrecourse loans, quotas, allotments, and the myriad other rural subsidies should all be ended—completely and immediately.

Of course, even some advocates of less federal regulation propose a transition between state-controlled and market-directed agriculture. Republicans on the Joint Economic Committee, for instance, argue that "apart from compassion to those in need and fairness in allowing time to adapt to change, there is the fact that producers of price-supported commodities have been encouraged to ignore market signals." However, it is hard to have much sympathy for those who have lobbied so hard for the very subsidies that have distorted their behavior. It is, frankly, time to consider the interests of taxpayers and consumers first.

A quick aid cutoff, of course, is politically inconceivable. Probably the best hope is a modified version of the proposal offered by Republican presidential hopeful Pete du Pont, who would decouple aid from production and phase out crop supports over a five-year period, cutting payments 20 percent a year. Du Pont's program could be improved by immediately lowering the maximum payment per farmer from $50,000 to $10,000, as has been proposed by the Reagan Administration, and by closing loopholes that allow beneficiaries to subdivide their operations. Such subsidy restrictions also should be imposed on cotton and rice producers, who are currently exempt.

America's Permanent Dependent Class

However much we may cherish the tradition "family farm," there is no reason to force other Americans to keep farms afloat any more than to save any other uneconomic family business, whether dry cleaners or corner drug stores. Just 8 percent of America's full-time farmers produce two-thirds of the nation's food; there is no public interest in subsidizing the many small operations which contribute virtually nothing to the nation's food supply and which generate no net income, even after counting federal subsidies.

Half of U.S. farmers today receive no direct government aid. Livestock operators, poultry farmers, and producers of many fruits, vegetables, and specialty crops operate profitably without federal handouts. Some traditionally subsidized, but struggling, farmers in America's heartland have been prospering by diversifying their crops, avoiding debt, and improving their management skills. Thus, even many small U.S. farmers—who are the most productive in the world—would survive an aid cutoff through selective expansion, careful operations, and increasing non-food income sources.

Government subsidies have become a way of life for too many rural Americans, creating a permanent dependent class. However painful it may be to make those farmers stand on their own, we must do so. The country can no longer afford to continue spending tens of billions of dollars to pay for food that rots in government warehouses. More fundamentally, allowing farmers, whose average net income in 1982 was $25,618, to force taxpayers, with average earnings of $27,391, to pay billions in subsidies is simply legalizing theft. It's time that the congressional majority representing the 97.7 percent of us not working on farms finally told the nation's most insatiable lobby "no."

DEPARTMENT OF DISINFORMATION

BEDTIME FOR BONZO?

ELIZABETH TEMPLE

The de facto end of the Reagan presidency came at the precise moment—noon, November 25—the White House disclosed that proceeds from the arms sale had been laundered and funneled to the contras.

Fred Barnes, *The New Republic,* December 22, 1986

Perhaps the pundits are right this time. Perhaps Ronald Reagan's effectiveness as a president has finally come to an end. With his administration under siege for its handling of the Iran/Contra affair, everyone—from political scientist James David Barber to conservative activist Richard Viguerie—seems to be jumping on the Reagan Farewell Wagon.

But it's worth remembering that Ronald Reagan's political death has been reported many times before, and that ever since the *New York Times* unfavorably compared his acting talents with those of a chimpanzee, the nation's *cognoscenti* have been grossly underestimating Reagan's abilities. For more than 20 years, the "prophets" have predicted the end of the Reagan rise to power. Perhaps they have gotten wiser. But keep in mind all the times they were wrong.

Lights Out

[Universal-International has] come up with a chipper chimpanzee, name of Bonzo. And a good thing too. For without this frisky character, there would have been little comedy in this antic. As is, it is a minor bit of fun yielding a respectable amount of laughs but nothing, actually, over which to wax ecstatic. . . .

Ronald Reagan, as the professor, [and his co-stars] work hard but obviously ineffectively. They haven't a chance since Bonzo makes monkeys of them all.

New York Times, April 6, 1951

Reagan Can't Win

"If the Republican Party can't learn they can't win with a man of Reagan's philosophy, then I don't belong in politics."

George Christopher, Republican gubernatorial candidate, *Los Angeles Times,* June 7, 1966

Brown Can't Lose

"If Reagan were a more plausible candidate, we'd suffer more."

A "confident Brown campaigner," *New York Times,* September 18, 1966

Reagan's High Horse

"I'm tired of this great handsome knight on a white charger who has been created by a political management firm."

George Christopher, *Los Angeles Times,* June 7, 1966

'Citizen Politician'

Brown said that Reagan's jump from film to "citizen politician" reminded him of an airline passenger:

"You're sitting in a big jet. You're ready to taxi out and a nice-looking middle-aged man in a uniform comes up the aisle heading for the controls. You stop him and say you're a little nervous because it's your first flight.

'Mine too,' he says. 'I'm a citizen pilot. But don't worry. I've always had an active interest in aviation.' "

Governor Pat Brown, *Los Angeles Times,* June 17, 1966

That's a Take

"While we were building a dynamic working society in California, he was off making such film epics as *Bedtime for Bonzo* and *Tugboat Annie Sails Again.*

This actor hasn't had so much as three minutes in public service of any kind, nature, or description.

He has been auditioning for governor for more than a year now and has flunked the audition on every score that matters."

Governor Pat Brown, *Los Angleles Times,* October 6, 1966

Inevitably, Hollywood got into the act—on both sides. . . . [S]uch Democrats as Kirk Douglas, Burt Lancaster, Gene Kelly, Dan Blocker and John Forsythe appeared on television and radio, all uttering variations on this theme: "I could play a governor in a movie, but I don't have the ability to be one."

John Wayne, Pat Boone, Chuck Connors, Roy Rogers,

Fess Parker, Fred McMurray got on the airwaves with ads that countered, "Maybe you don't, but Reagan does."

Lee Edwards, *Ronald Reagan: A Poltical Biography*

Fantasy Candidate

Governor Brown belongs at the State Capitol in Sacramento, dealing with the stubborn public problems he knows so well; Mr. Reagan belongs in the studios in Hollywood, gracing the movie and television screens he knows so well. On Nov. 8, Californians will, we trust, understand where reality ends and fantasy begins.

New York Times editorial, October 6, 1966

Naming Names

Reagan is anti-labor, anti-Negro, anti-intellectual, anti-20th Century. We rather suspect Brown will take him. We really can't believe the old bogey of federal government still scares Californians.

The New Republic, May 11, 1966

Buckley Nixes the Gipper

It was December 1966, and Richard Nixon was in the room. Who, someone asked, would the Republican Party consider eligible in 1968? Nixon gave the usual names—and added Ronald Reagan's name. I objected. It strikes me, I said, as inconceivable. "Why?" Nixon asked. "Suppose he makes a very good record as Governor of California." Because, I said, people won't get used to the notion of a former actor being President. People are very stuffy about presidential candidates.

William F. Buckley, Jr., Foreword to Lee Edwards' *Ronald Reagan: A Political Biography*

Of course, Buckley has since changed his mind.

That Ol' Man Reagan . . .

At 11:35 a.m. last Friday in Washington, the last hope of Gov. Reagan ever to become President probably went glimmering.

At that point, Gerald R. Ford automatically succeeded Richard M. Nixon. It meant that Mr. Ford very likely would be the Republican nominee for President in 1976 and Reagan would have to wait until 1980.

By then, he would be 69 and probably too old to be nominated. Or elected.

Richard Bergholz, *Los Angeles Times,* August 13, 1974

. . . He Just Keeps Rollin' Along

The expectation among Reagan's present and former aides is that he will not plunge recklessly into campaigning. Ronald Reagan is no Hubert Humphrey and with his sixty-fifth birthday just before the New Hampshire primary there are some who contend he is beginning to show his age. In fact, his stamina or lack of it has always been a point of contention.

Jules Witcover and Richard M. Cohen, *Esquire,* March 1976

70-Year-Itch

Ronald Reagan is an ignoramus, a conscious and persistent falsifier of fact, a deceiver of the electorate and, one suspects, of himself. All else apart, I at age 73 am entitled to assert that anybody who will turn 70 in early 1981 is too old to be beginning a first term in the presidency. Reagan's California ranch is the proper place for him to take the daytime naps that he craves.

John Osborne, *The New Republic,* June 14, 1980

The Greatest Gift of All

House Speaker Thomas P. O'Neill, an instinctual partisan Democratic warhorse, thinks the Republicans are going to do the Democrats a favor—by nominating Ronald Reagan for President.

"The only man Jimmy Carter could beat is Reagan," the white-maned Speaker said in an interview. "And the only man Teddy Kennedy could beat is Reagan."

"Other than a good-looking face and smooth talk, what does Reagan have?" the 67-year-old Speaker demanded while savoring a good cigar.

Wall Street Journal, April 25, 1980

We Could've Told You So

Reagan, the unbeatable, looks like a myth to me. People have said that before, particularly in 1976, and made fools of themselves. But in 1976, Reagan had an issue, the same one that catapulted Jimmy Carter into the White House: The issue was Washington. Now everyone has that issue and fiscal conservatism, too. Reagan seems to be a nostalgia figure whose time has passed; he looks like the past, he talks about the past. It is hard to imagine America turning to a candidate whose standard pitch is "I told you so!"

Richard Reeves, *Esquire,* May 8, 1979

And They're Off

Too many smart Republicans think it's [Reagan's 1980 presidential candidacy] not going to succeed. "I'm telling," said Eddie Mahe, the party professional who's running Connally's campaign, "no matter how far ahead Reagan starts, he won't make it to the stretch. Period."

Despite his obvious self-serving, I have a warm spot for Mahe's words.

Richard Reeves, *Esquire,* May 8, 1979

Fairlie Ridiculous

To this muddled old man's view of politics will be added the usual stubbornness of old men when they hold the highest office. He will not rule; neither will he resign. He will merely try to reign by substitutes for the royal touch.

Ronald Reagan in his old age does not promise to rule the nation but to sanctify it, and Americans will discover too late that they elected only a shroud from which the image has faded.

Henry Fairlie, *Washington Post,* April 27, 1980

REAGAN IN '80/BUSH IN '81

Seen on a bumper sticker

Duck Soup

We thought about that as we watched the debate last week. If Carter wins he'll be a lame duck president with reduced authority. If Reagan wins he'll face a Democratic Congress, and his age makes him a probable lame duck,

too. Don't despair. America's sailing ship will make port if it has favorable winds. But don't overestimate the powers of the skipper.

The New Republic, November 8, 1980

Maxed Out

It didn't take a genius to predict on Inauguration Day that Reaganism would unravel. The omens were hardly bright for the nostalgic restoration of Reagan's ideology, or for the associated vulnerability and volatility of the electoral coalition subscribing to that ideology or for Reagan's patently contradictory fusion of monetarism and supply-side economics, or for a presidential regime announcing that it would combat the global currents of inflation with maxims out of McGuffey's Reader and Calvin Coolidge.

Kevin Phillips, *New York Review of Books,* May 13, 1982

Second Term? No Way

"The general supposition among Republican leaders now is that Reagan won't be a candidate," says a Republican Congressional leader who confers regularly with the President. "The job is going to grind him down. Nancy will want to leave. And he'll have done all he could reasonably be expected to do."

The New Republic, April 28, 1982

Hold Your Peace

It may be dangerous for the United States if Reagan tries during these next four years to recapture the nation's lost greatness. We may have an economic crash or a war if the effort fails. But the experiment is worth making, if only so that the country will be satisfied once and for all that someone really tried to recreate the (relatively) happy world of 1950. The conservatives now have their shot, and if they fail they can be called upon to hold their peace. If they succeed, and do it safely, they deserve to remain in power for a generation.

There are reasons to think they will not succeed, either substantively or politically.

Morton Kondracke, *The New Republic,* November 15, 1980

Failure of Will

Reagan has had less impact on foreign policy than any other modern president (Ford excepted). More than any modern President, Reagan campaigned against the mentality of the "permanent government" in foreign policy. Yet more than any modern President, he has abandoned foreign policy to the Secretary of State.

George Will, *Newsweek,* June 21, 1982 ☎

INDUSTRIAL HARA KIRI

How Protectionism Destroys Manufacturing Jobs

ARTHUR T. DENZAU

Senators and Congressmen who think that protectionist legislation will preserve their constituents' manufacturing jobs might want to think again. A state-by-state study reveals that protectionism in the steel industry has led to a loss of manufacturing jobs, even in most of those states that produce steel. Studies of protectionism in microchips, textiles, and other industrial products would most likely yield similar results.

In 1984, the Reagan Administration imposed a "voluntary" export restraint on our steel trading partners, which lowered the import share of the U.S. steel market from 26 percent to 22 percent. The tables appearing with this article indicate estimated gains and losses of industrial jobs, both nationally and state-by-state, as a result of this protectionist measure.

According to the study, the export restraint led to a nationwide gain of 16,900 jobs in the steel industry and in steel supplying industries such as chemicals, nonferrous metals, and industrial machinery. This resulted from the increase in market share of American steelmakers and the expanded business for their principal suppliers.

As the cost of steel rose, however, 52,400 jobs were lost in steel-*using* industries, such as metals fabrication (can making, utensils, plumbing supplies, nuts and bolts), motor vehicles, and electrical and non-electrical machinery.

The reason for this job loss is simple: More than 20 times as many Americans work in steel-using industries as in steel manufacturing itself. In 1982, 365,700 people worked in basic steel while over 8.3 million worked in manufacturing industries for which steel was a significant input. This much larger industrial labor force was penalized by the damage done by protectionism to the international competitiveness of American steel users. Rather than saving and increasing the number of American manufacturing jobs, the steel export restraint led to a loss of 35,600 industrial jobs.

The results of the 1984 steel protectionist measure on a state-by-state basis were, for the most part, equally damaging. In California, for instance, the measure brought only 700 new jobs to the basic steel and steel-supplying industries while it resulted in the loss of 4,200 jobs in the steel-using industries.

But while California was the biggest loser from the 1984 steel protectionist measure, few states came out winners. Forty-four states lost manufacturing jobs because of the measure. Ten states lost at least 1,000 jobs (California, Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Texas and Wisconsin). Even Pennsylvania gained little from the measure. In 1982, Pennsylvania had 85,000 people working in basic steel, more than any other state, and it had 411,000 working in firms in steel-using sectors, second only to Texas. The large estimated gain in steelmaking jobs (3,500) was nearly overshadowed by the losses in steel-using firms in the state (2,500). Only five states showed a net gain in manufacturing jobs.

Steel trade protection has also been damaging to many metropolitan industrial areas. In Chicago, Cleveland, Detroit and St. Louis the 1984 protectionist measure resulted in a loss of manufacturing jobs. After taking into account their gains, the net losses for these four metropolitan areas alone totalled 2,800.

This analysis of the steel industry's reaction to the voluntary export restraint of 1984 is based on data from the Department of Commerce's 1979 input-output table for the steel industry and the 1982 Census of Manufactures. For the purpose of this study, those industries selling more than 1 percent of their output to the steel industry were considered steel-supplying industries. Steel-using industries were defined as those industries for which steel represented over 2 percent of costs. These figures were then used to forecast a reduction in output demanded from the industry, and thus the change in employment in that industry.

To obtain employment results for local areas, the employment in each industry in an area is increased or decreased by the relevant national factor. For example, while steel employment nationally is predicted to increase by 4 percent, the steel employment in Alabama (8,300 in 1982) is predicted to increase the same 4 percent, or 320 workers. The effect on a steel-supplying industry such as motor vehicles is determined by multiplying the 4 percent by the share of motor vehicle output sold to steel (1.5 percent). This would result in a gain in motor vehicle output sold and employment of 0.06 percent, or five jobs in the state of Alabama.

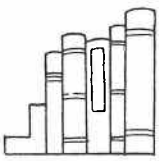
Adding together all the gains in steel and suppliers results in an increase of 380 Alabama jobs. This is then subtracted from the number of jobs lost in the steel-using sector. In the case of Alabama, those losses totalled some 500 manufacturing jobs. Thus, the net effect of the 1984 trade protection for steel on Alabama manufacturing jobs is a loss of 120 jobs.

ARTHUR T. DENZAU *is a research associate with the Center for the Study of American Business at Washington University in St. Louis, Missouri.*

JOBS GAINED OR LOST
AS A RESULT OF THE 1984 STEEL TRADE PROTECTION
(in thousands)

State or Metropolitan Area	*Basic Steel*	*Steel Suppliers*	*Steel Users*	*Net Manufacturing*
UNITED STATES	14.1	2.8	(52.4)	(35.6)
ALABAMA	0.3	0.1	(0.5)	(0.1)
ALASKA	0.0	0.0	0.0	0.0
ARIZONA	0.0	0.0	(0.3)	(0.3)
ARKANSAS	0.0	0.0	(0.3)	(0.3)
CALIFORNIA	0.5	0.2	(4.2)	(3.5)
COLORADO	0.2	0.0	(0.4)	(0.2)
CONNECTICUT	0.1	0.1	(1.2)	(1.0)
DELAWARE	0.1	0.0	0.0	0.0
FLORIDA	0.1	0.0	(0.8)	(0.7)
GEORGIA	0.1	0.0	(0.6)	(0.5)
HAWAII	0.0	0.0	0.0	0.0
IDAHO	0.0	0.0	0.0	0.0
ILLINOIS	1.0	0.2	(3.0)	(1.8)
INDIANA	2.2	0.2	(1.6)	(0.7)
IOWA	0.0	0.0	(0.7)	(0.6)
KANSAS	0.0	0.0	(0.4)	(0.4)
KENTUCKY	0.2	0.1	(0.5)	(0.2)
LOUISIANA	0.1	0.1	(0.4)	(0.3)
MAINE	0.0	0.0	(0.1)	(0.1)
MARYLAND	0.6	0.0	(0.4)	(0.2)
MASSACHUSETTS	0.1	0.1	(1.3)	(1.2)
MICHIGAN	0.7	0.3	(3.5)	(2.5)
MINNESOTA	0.1	0.0	(0.7)	(0.6)
MISSISSIPPI	0.0	0.0	(0.4)	(0.4)
MISSOURI	0.2	0.1	(0.9)	(0.7)
MONTANA	0.0	0.0	0.0	0.0
NEBRASKA	0.0	0.0	(0.2)	(0.2)
NEVADA	0.0	0.0	0.0	0.0
NEW HAMPSHIRE	0.0	0.0	(0.2)	(0.2)
NEW MEXICO	0.0	0.0	(0.1)	0.0
NEW JERSEY	0.1	0.1	(1.3)	(1.0)
NEW YORK	0.4	0.2	(2.0)	(1.4)
NORTH CAROLINA	0.0	0.1	(0.8)	(0.7)
NORTH DAKOTA	0.0	0.0	0.0	0.0
OHIO	2.0	0.3	(3.4)	(1.1)
OKLAHOMA	0.0	0.0	(0.6)	(0.5)
OREGON	0.0	0.0	(0.3)	(0.2)
PENNSYLVANIA	3.3	0.2	(2.5)	(1.0)
RHODE ISLAND	0.0	0.0	(0.3)	(0.2)
SOUTH CAROLINA	0.1	0.1	(0.4)	(0.3)
SOUTH DAKOTA	0.0	0.0	(0.1)	(0.1)
TENNESSEE	0.1	0.1	(0.8)	(0.6)
TEXAS	0.6	0.2	(2.6)	(1.8)
UTAH	0.2	0.0	(0.2)	0.0
VERMONT	0.0	0.0	(0.1)	(0.1)
VIRGINIA	0.0	0.0	(0.6)	(0.5)
WASHINGTON	0.1	0.1	(0.5)	(0.4)
WEST VIRGINIA	0.4	0.0	(0.1)	(0.3)
WISCONSIN	0.1	0.1	(1.5)	(1.3)
WYOMING	0.0	0.0	0.0	0.0
CHICAGO	0.6	0.1	(1.9)	(1.2)
CLEVELAND	0.4	0.1	(0.7)	(0.2)
DETROIT	0.7	0.1	(1.8)	(1.1)
ST. LOUIS	0.3	0.1	(0.6)	(0.2)

Adapted from "Can Trade Protectionism Save Jobs?" CSAB, 1987



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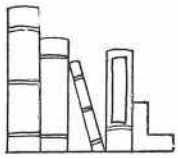

How NATO Strengthens the West

How NATO Weakens the West, *by Melvyn Krauss (Simon and Schuster, $18.95).*

Reviewed by Adam Meyerson

Melvyn Krauss, a professor of economics at New York University, argues in this provocative book that alliance arrangements appropriate in the aftermath of World War II are now outmoded, and that the free world would be strengthened by a phased withdrawal of U.S. ground troops and the U.S. nuclear umbrella from Western Europe, Japan, and South Korea. His thesis closely resembles an argument by Irving Kristol that is gaining currency among neoconservative academics and journalists, though it is still a distinctly minority position in the American foreign policy establishment—conservative as well as liberal.

According to Krauss, NATO and the U.S. commitment to Japan and Korea served Western interests so long as Europe and Japan were recovering from the devastation of World War II and the U.S. maintained unchallenged nuclear superiority over the Soviets. But today, Krauss argues, NATO and America's Asian commitments weaken the West in three main ways.

First, the U.S. nuclear umbrella has encouraged Western Europe and Japan to spend too little on conventional defenses, leaving the world with a low nuclear threshhold. Overreliance on the U.S. nuclear deterrent is particularly dangerous now that the Soviets have gained nuclear parity and in some areas superiority.

Second, NATO-Europe and Japan bear too small a share of the cost of defending their regions. (They respectively spend only 3 to 4 percent and 1 percent of Gross National Product on defense, compared with 6 to 7 percent by the United States and about 15 percent by the Soviet Union.) American taxpayers, especially those in industries beset by foreign competition, are increasingly resentful of the free ride that Western Europe and Japan are enjoying at their expense. Even more harmful, U.S. military resources are dangerously overextended around the globe because the Europeans and Japanese are not paying enough of the freight for their own defense.

Third, overreliance on U.S. protection is destroying European morale, in much the same way that generous welfare payments can debilitate their purported beneficiaries. "Irresponsibility, resentment, and self-hatred are the inevitable consequences of excessive dependence on others," writes Krauss, who sees an emasculated psyche in European and, especially, German neutralism. U.S. troops "reinforce the West German self-image as the inferior partner of the Western alliance by constantly reminding them that they are a defeated nation in which Americans, and other NATO partners, continue to have limited trust."

Pathology of Dependency

Perhaps the most dramatic example of the pathology of dependence, according to Krauss, is the European idea that detente can substitute for defense expenditures as a deterrent to Soviet aggression. "It makes absolutely no sense," Krauss writes, "for the United States to spend billions of dollars to defend Western Europe from the Soviets if the Europeans turn around and use some of that money to subsidize the very enemy from whom they require protection." Yet that, he argues, is exactly what has been encouraged by the present incentive structure of NATO, in which the Europeans try to buy favor with the Soviets by granting subsidies and credits, knowing that they will ultimately be protected by the U.S. stick if their carrot approach fails.

In an earlier book, *Development without Aid,* Krauss observed that Taiwan and South Korea took off economically only after the United States stopped sending them massive economic aid in the early 1960s. So long as the U.S. kept paying their bills, the Taiwanese and South Korean governments were free to follow wasteful economic policies. Only when they had to fend for themselves did the governments adopt the market- and export-based policies that contributed so mightily to their remarkable booms.

It is perhaps this turnaround that gives Krauss faith that the West would be strengthened by a gradual U.S. pullout from Western Europe and Northeast Asia. European and Japanese underinvestment in defense, he argues, is a rational response to the current incentive structure of America's alliances. A phased U.S. pullout, Krauss argues, would provide Western Europe and Japan with the shock therapy they need to provide for their own defense and permit the American military to channel elsewhere the $134 billion he estimates it spends on NATO.

The conventional wisdom, as Krauss is well aware, is exactly the contrary: "If the United States did not assume a major role in defending our European allies, so the argument goes, the Soviets would dominate them either through Finlandization or outright military invasion." His fallback position, in case he is wrong and the Europeans

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are Finlandized after the dissolution of NATO, is the same as Irving Kristol's: good riddance to false allies. "It is far better that the United States stop spending billions of dollars per year for the defense of a region whose allegiance to Western values is shown to be paper thin."

Krauss opposes all alliances, not simply those in Europe and Northeast Asia; indeed, he can think of no circumstances where it is advisable to send U.S. troops. The single most important operational component of the "strategic restraint" he recommends is that "U.S. ground troops not be committed to actual or potential foreign conflicts." The U.S. could provide its friends military equipment, it could share technical and intelligence information, it might even protect sea lanes, but it would not send U.S. troops directly. In effect, Krauss is recommending the strategic posture of the United States from 1940 to December 1941, when the U.S. sent aid to Britain and later the Soviet Union, but let them do the fighting against Hitler.

This strategic posture failed to keep the United States out of World War II. If put into effect today, it runs the risk of abruptly shifting the balance of power in favor of the Soviets, giving them an invitation to overrun the democracies of the West, or at least to cow them into submission.

That is the downside risk. Krauss contends that it is not very probable, but unfortunately he offers little evidence for his view that Europe and Japan would quickly arm themselves and remain in the Western camp after a U.S. pullout from their regions. Appeasement in Europe has a long pedigree, antedating the NATO alliance. No American troops were stationed in Britain when Neville Chamberlain consigned Czechoslovakia to Hitler. And after a U.S. pullout, the Soviets would enjoy greater conventional (and nuclear) superiority in Europe than Hitler enjoyed in 1938-39.

Krauss's answer is that the Europeans of the 1980s are much more vigorous and self-confident than those of the 1930s. The British, French, German, and Italian governments have shown their mettle in their effective crackdowns on domestic terrorism. Paris, in particular, has provided a model of how withdrawal from NATO can lead to rearmament in the service of the West. It is no coincidence, Krauss contends, that "Soviet appeasement is weakest in France, the European country least dependent on the United States for its defense, and strongest in West Germany, the European country most defense-dependent on America."

Krauss is certainly correct that Europe and Japan have the wherewithal to deter Soviet aggression on their own. For all their *Weltschmerz* about the impossibility of raising defense expenditures, the European members of NATO are substantially richer and more populous than the Soviet Union. Both Europe and Japan are far superior to the Soviets in their technical capabilities. "The reason the military imbalance in Europe presently favors the East is not that Western Europe lacks the material resources to compete with the Soviets, but that it lacks the political will to use the ample resources it does have for its own defense."

Unfortunately, we already have an empirical test of what the Europeans might do if America withdrew its defense shield, and it suggests the opposite of Krauss's hypothesis. During the 1970s, as Krauss himself points out, U.S. defense spending dropped sharply and the U.S. nuclear umbrella over Europe became decreasingly credible. If Krauss's analysis is correct, the Europeans should have markedly stepped up their own defense spending. Instead, it remained in the same 3 to 4 percent of GNP range where it had been before. As Krauss suggests, detente was substituted for increases in defense expenditures. There is no reason to expect this pattern to change with an acceleration of the decline in American commitment to Europe.

Furthermore, neutralist parties in Europe, most notably the British Labour Party and the German Social Democratic Party, now win the support of 35 to 45 percent of their countries' voters on platforms that oppose both U.S.

We already have an empirical test of what the Europeans might do if America withdrew its defense shield, and it suggests the opposite of Krauss's hypothesis.

nuclear forces in Europe *and* a buildup of their own countries' militaries. Were NATO to collapse, they would most likely be advocates of Finlandization. Whether Europe would react to an American pullout as Krauss predicts depends in good measure on whether these neutralist parties are strengthened or weakened by the dissolution of NATO. It is a high-stakes question, for which Krauss offers no answer.

Krauss is equally unsatisfying in addressing the risk of a Soviet invasion during the crucial transition period between a U.S. withdrawal and Europe's rearmament. It is at this time that Soviet nuclear and conventional superiority would be most overwhelming. To mitigate the danger, Krauss proposes that the U.S. withdraw in stages, and that we sell or transfer to the Europeans our NATO military assets, including missiles. But ultimately, Krauss has to claim that the Soviets would be deterred from invading by the possibility that the U.S. might retaliate, and by the fear that Eastern Europe would rebel against Soviet control in a continental conflict. Krauss cannot have it both ways: If the Soviets would be deterred from invading during and after a U.S. pullout, then surely the alliance in its present structure must have a reasonably credible deterrent today.

How NATO Strengthens the West

Krauss's powers of economic reasoning similarly elude him in his fallback position—that if Western Europe allows itself to fall into Soviet hands after the dissolution of NATO, then it wasn't worth defending anyway. A Soviet takeover or Finlandization of Western Europe or Japan and South Korea would dangerously shift the balance of power in the Soviets' favor. If the U.S. was paralyzed by the fall of Vietnam—of minimal strategic importance to us,

compared, say, with West Germany or South Korea—imagine how demoralized we would be by the loss of our most important erstwhile alliance partners.

The industrial prowess of Britain, France, Italy and Germany, the $100 billion per year, and three million men under arms that European nations contribute to NATO, would now be neutralized or deployed against us rather than against the Soviets. The central geopolitical goal of American defense strategists since World War I—to prevent the domination of the Eurasian land mass by a single hostile power—would have been destroyed. And though Western Europe may not be as strong today as it ought to be, it is horrifying to imagine how dangerous a fighting force it would be under Soviet control.

Krauss opposes all alliances, not simply those in Europe and Northeast Asia; indeed, he can think of no circumstances where it is advisable to send U.S. troops.

In his eagerness to abandon America's commitments, Krauss also ignores four principal ways that NATO and America's other alliances *strengthen* the West.

1) Alliances with the United States are the best framework for encouraging the German and Japanese militarization that Krauss himself favors. Konrad Adenauer recognized this point in the 1950s: the best way to build the Bundeswehr without frightening the wits out of the French and British was to do so in an alliance dominated by the United States. After three decades of Franco-German cooperation and democratic government in Bonn, it is perhaps not as necessary for the United States to guarantee peace between former enemies in Western Europe. But the absence of a NATO-like alliance in the Pacific has certainly impeded Japanese rearmament. It is inconceivable that South Koreans would accept greater Japanese responsibility for the defense of Korea, as Krauss calls for, unless this were achieved in an alliance framework in which the United States played a strong role. Without a strong alliance with the United States, a rearmed Japan would also arouse security anxieties in China that might well lead to a rapprochement with the Soviet Union.

2) NATO and the U.S. commitment to Northeast Asia have strengthened the West by keeping American troops in a high state of combat-readiness. Krauss is simply wrong when he states that American troops in Europe and Korea serve only a "trip-wire" purpose—to ensure that the United States becomes involved in a European or Korean conflict. Those troops are better prepared to fight than any others in the U.S. armed services, and they therefore greatly strengthen the ability of the West to deter Soviet aggression. The reason they are in Germany and Korea is not simply an act of American charity; it is because those are the front lines against Communist expansionism.

Equally important, NATO provides some consistency to vacillating American foreign policy. The American public seems to alternate between spasms of interventionism and isolationism. NATO has provided some ballast to an American vessel that sometimes loses control as it changes course. This was especially true during the 1970s when Helmut Schmidt and other European leaders helped concentrate Jimmy Carter's mind on the nature of the Soviet threat. U.S. foreign policy, of course, has frequently been hindered by the noncooperation of NATO allies, just as the U.S. undercut the British and French on issues like Suez and decolonization. But differences between the United States and Europe about the best ways of handling contingencies elsewhere in the world would no doubt continue if NATO were dissolved. In any case, European opposition has rarely deterred the U.S. from following its own interests, whether it be in Vietnam or the Yom Kippur War in 1973, or El Salvador and Grenada in the 1980s.

3) NATO and America's other alliances have helped clarify the ideological struggle between freedom and totalitarianism. By taking its stand with other democratic and democratizing nations, the U.S. has strengthened the idea of the free world, as well as the sense of obligation that free peoples should come to each others support. The U.S. has powerfully demonstrated the meaning of freedom simply by the noncoercive way it runs its alliances. This poses short-run complications for the United States that the Soviets do not face in the Warsaw Pact, but just as democratic governments are more secure than dictatorships over the long run because they are forced to win the consent of the governed, so, too, alliances built on voluntary consent can draw on allegiances that empires do not enjoy.

4) NATO has worked. For all the weaknesses in NATO's deterrent, NATO has successfully kept the peace in Europe for 38 years. That is no small accomplishment on a continent that has seen two horrible wars in the space of 20 years, wars into which the United States was inevitably drawn despite its initial intentions of staying neutral. Moreover, under NATO's protective aegis, free institutions have had the opportunity to take root in Germany, Italy, Portugal, Greece and Turkey. World war is much more likely to break out today in areas where there is no NATO-like alliance—for example, the Persian Gulf—than in Europe.

The U.S. troops along Korea's 38th parallel have similarly deterred aggression by one of the world's most rapacious and militaristic regimes. U.S. military protection has enabled South Korea to emerge from abject poverty into one of the economic dynamos of the developing world, and is now providing South Korea's generals with the confidence to open up their political system. Perhaps even more important, from a U.S. strategic interest, the deterrence of North Korean aggression has prevented war in a region where the Soviet Union and China might easily come into a conflict that it would be difficult for America to avoid entering.

NATO's New Strategy

Over the next few years, NATO will have to develop a new strategy. Krauss is correct in asserting that the U.S.

nuclear umbrella over Europe is rapidly losing its credibility in the face of Soviet nuclear advances, especially in precise first-strike nuclear forces that can destroy Western military targets without eliminating total populations. But he is wrong to imply that NATO and SDI are incompatible. U.S. deployment of strategic defenses, with or without the explicit approval of our NATO allies, would strengthen the U.S. nuclear deterrent in NATO and would most likely yield important technological spinoffs for NATO's conventional forces. If U.S. diplomats cannot persuade our European allies of this simple truth, the answer is not to withdraw from NATO but to get a new set of diplomats.

Similarly, it is in the interests of both the United States and of our NATO allies that the United States devote fewer of its defense dollars to the upkeep of heavy armored divisions in continental Europe, and more to airlift and sealift capabilities for mobile forces that could be rapidly deployed to trouble spots around the globe, for example, the Persian Gulf and the Philippines. Such a redeployment, recommended by Zbigniew Brzezinski among others, has already begun to be implemented by the U.S. military. It is necessary partly because European countries, despite their dependence on the Middle East and Persian Gulf for their energy supplies, have almost totally abdicated responsibility for deterring Soviet aggression and Islamic fanaticism in that region.

These changes in strategy will require a more precise division of labor, with Western Europe and Japan taking more responsibility for defending their immediate regions, while the U.S. deploys resources elsewhere to counter an increasingly global Soviet threat. But, provided American leadership is forceful and persuasive, there is no reason why these changes cannot be achieved within our current alliance structure. (And indeed, without a U.S. commitment to the security of Europe, Japan and Korea, it makes little sense to defend the Persian Gulf or even the sea lanes of Southeast Asia.)

Krauss's analysis of NATO's incentive structure offers insights that will be helpful in reformulating Western alliance strategy. But his daredevil proposal that the United States abandon its global defense commitments and retreat to the strategic posture of 1940-41 could well be an invitation for the Soviets to launch World War III.

The Utopian Mind

A Conflict of Visions, *by Thomas Sowell (New York: William Morrow, $15.95)*

Reviewed by Ernest van den Haag

According to Thomas Sowell, there are two kinds of thinkers in the world. The first are the "unconstrained" type who believe that there are few, if any, limits to human nature and human possibility. These are the optimists, to put the best face on it, or the utopians, to put the worst face on it. The second are the "constrained" type who take a more sober and limited view of man's nature and man's potential. These are the realists, to use their own term, or pessimists, to use the term of their critics.

Contrary to what some of his reviewers have suggested, Sowell does not try to determine or indicate whether the ideologies he considers are right or wrong. Rather, he tries to describe the two visions of human nature and society, and to suggest how they have shaped the outlook of various political philosophers, lawyers and economists. The "unconstrained vision" has inspired Jean-Jacques Rousseau and the Marquis de Condorcet in France, William Godwin in England, and Thomas Paine and Thomas Jefferson in America. The "constrained vision" inspired Thomas Hobbes, Edmund Burke and Adam Smith in Europe, and Oliver Wendell Holmes, George Stigler, Milton Friedman, and Friedrich von Hayek in the United States.

In this scheme, it seems fair to assert that most (but not all) contemporary liberals, including John Kenneth Galbraith, Laurence Tribe and Ronald Dworkin, belong to the "unconstrained" school. They are enthusiastic about the possibility of reshaping human beings, making them reach beyond their limits. The state is often an active partner in this enterprise. Contemporary conservatives, by contrast, are much more realistic about the state's ability to alter human nature or the structure of incentives that propels human beings to pursue their own interests.

This, then, is a very useful framework that Sowell has provided. One can easily quarrel with details. Where is Auguste Comte, a prominent unconstrained visionary? Where are all the French Utopians, such as Fourier, St. Simon and the Italian saints and heretics from St. Francis to Campanella? Indeed, religion is scarcely mentioned in Sowell's book, yet the unconstrained vision surely is religious in origin—owing a great deal to the pre-lapsarian Adam.

Why does Sowell think that Karl Marx is not quite "unconstrained," when in his *Critique of the Gotha Program,* he foresaw an eschatological state, "communism," which would succeed socialism (which would, in turn, "inevitably" succeed capitalism)? In a communist society everyone would "contribute [to society] according to his ability" while receiving "according to his need." The link between work and material incentives would no longer be needed. Once that link was broken, people would continue to toil, out of the goodness of their hearts, deciding where, when, and how, independently of monetary incentives.

How does this differ from British Utopian William Godwin's vision, quoted by Sowell, suggesting that "the hope of reward" and the "fear of punishment" are "inimical to the improvement of the mind"? It is hard to imagine a more sanguine and "unconstrained" assumption about human nature and the requirements of social organization. Marx liked to call "Utopian" his fellow socialists who failed to don the "scientific" garb in which he clothed his own prophetic ideology. Although he thought of himself as a realistic scientist, invoking the laws of history, history

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itself seems to have borne out that he was no less Utopian than the socialists he patronized, only more systematic, verbose and polemical.

The "unconstrained vision," held first by religious chiliasts, and later by secularized ones, such as Marx, arises out of fear and desire, out of an often passionate hope for an ideal world in the future which would constitute a return to the paradise from which our sins expelled us in the past. Peace, equality, love would prevail. All the weaknesses the flesh is heir to would disappear. Reward or punishment—all the things law and markets are concerned with—no longer would be needed.

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Having lost the hope of salvation by divine grace, secularized chiliasts decided that salvation was available to us anyway, here and now, through social reorganization best preceded by revolution. It is not human nature that required social constraints, they contended, but rather the social constraints which deformed an originally good human nature. Man is infinitely perfectible by appropriate social means, which, until everyone has reached the necessary degree of perfection, should be wielded by an elite, a dictatorship, until the state and coercion finally would "wither away." The rationality of this elite would solve all problems and lead to perfection. This is indeed a vision of delusionary dimensions, benevolent in some minds, malign in its effects almost always. This view was widely accepted in the U.S. during the 1960s.

What Sowell, for the sake of neutrality, calls the "constrained vision," actually is neither a vision or constrained. It is an attempt at realistic analysis of how the world works, based on experience, rather than vision. The Federalist Papers, and our Constitution (a document of institutionalized mutual distrust) are good examples of the realistic understanding of the limitations of human nature, which implies the need for government and coercion, but succeeds in limiting both, precisely because the limitations of government are understood as well.

In articulating his interpretation of the two visions, Sowell makes many insightful remarks. He notes the belief of the unconstrained visionaries in the almost infinite plasticity of the human psyche. Sowell notes the irrational faith of Utopians in rationality which is exemplified in their belief that war and crime are irrational pathologies which a rational social system could prevent. He notes that Utopians indeed appear to believe that all problems can be solved and are often willing, in the process, to sacrifice freedom for equality, paying scarce attention to the process and focusing on the expected (actually on the desired) result. Thomas Jefferson expressed this Utopian tendency when he said of the French Revolution: "Rather than it should have failed, I would have seen half the earth desolated."

Some thinkers fit neatly into Sowell's categorization of the vision on which their theories are based. Others are inconsistent. The two typologies have to be strained at times to accommodate thinkers who are visionary on some aspects of life, realistic (or as Sowell has it, "constrained") on others. Still, Sowell's book sheds much light on what inspired different thinkers to come to such different conclusions. Unfortunately, he did not feel that it was within his scope to ponder the psychological and social circumstances which give birth and lead to the acceptance of unconstrained (utopian) and constrained (realistic) visions. Nor did he think a critical evaluation of these visions in general, or as specified by different thinkers, would serve his purpose.

No one, I think, is more capable than Sowell of such a critical evaluation. I should have liked it, though, had Sowell gone beyond the strictly historical and taxonomic task he set himself, to engage in some causal theory and critical analysis. But he wrote the book he wanted to write, succeeding in his purpose and producing something of great heuristic value for his readers. Perhaps I should be grateful for what I was given rather than ask for more. But he certainly whetted my appetite. That is testimony to his clarity, penetration, diligence, and, not least, the appealing vividness of his style.

The Chicago Pioneer

The Essence of Stigler, *edited by Kurt R. Leube and Thomas Gale Moore (Hoover Institution Press, $35.95)*

Reviewed by Edwin S. Mills

Nobel Laureate George Stigler has enriched the world with his scholarship and wit for half a century. Since 1937, he has written on an extraordinary variety of subjects and no one can read his published work without being edified. Many of his most important papers have opened up new areas of research; subsequent papers have spread like fans from his contributions. In addition to many published scholarly and popular papers, Stigler has written numerous books, including a textbook of micro economics that is now in its fourth edition and has informed undergraduates for more than 35 years on ways to think productively about economic issues.

This book of reprints of research and other papers by Stigler, Professor of Economics at the University of Chi-

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cago, was dedicated to the author on the occasion of his 75th birthday. The 23 papers reprinted here illustrate the range of Stigler's contributions, although there is some bias to his nontechnical papers. These papers are extremely well written and most can be read with profit by those with only a minimal knowledge of economics. Stigler's ability to put complex and sophisticated concepts into plain English, without the clutter of artificial jargon and with sparing use of mathematics, should be an inspiration to his younger colleagues.

The editors have divided the papers into five groups: economics, political economics, industrial organization, the history of economic thought, and the wit of George Stigler. Stigler, who is probably best known for his research on industrial organization, wrote about both positive economics—the analysis of firm behavior when firms are large enough to affect each other's profits by their actions—and normative economics—the analysis of governmental attempts to affect firms' behavior through regulation and anti-trust laws. Stigler was the first economist to write extensively about the proposition, now widely accepted, that most government regulatory programs are motivated more by government's desire to help favored groups than to improve general economic efficiency.

Stigler's "The Economics of Information" gave birth to a sub-specialty in economic research which has had applications not only in industrial organization, but also in labor economics, financial market analysis and other specialties. The first essay in the volume, "The Economics of Minimum Wage Legislation," originally published in 1946, is a masterpiece which should be required reading for every member of Congress. I had forgotten that Stigler first suggested a negative income tax, without using that name, as an appropriate government program to raise living standards of the poor, decades before it became part of economists' conventional wisdom.

Stigler's work on political economics helped give birth to positive analysis of government (the application of economists' tools of analysis to government behavior). This subject, too, has flowered, and no reader of scholarly journals can any longer blithely assume that governments are motivated to maximize social welfare.

Stigler's papers on the history of economic thought are utter delight. No other writer on the subject has Stigler's ability to discuss historical contributions with such a fine command of modern analysis and such an ability to go to the essence of each issue, wasting no time on minor issues or subjects of concern only to the readers of the time. His brief essay on the Fabian socialists must be the most incisive paper ever written on that deeply misguided but extraordinarily influential group of thinkers.

There can be no doubt in the mind of any reader of this volume about the strength of Stigler's respect for the social benefits of competition and his skepticism about the social benefits of government intervention in the economic system. The papers in Part Two show these attitudes clearly. "The Intellectual and the Marketplace" analyzes the general disrespect that intellectuals have for private enterprise. "Economic Competition and Political Competition" outlines the basis for Stigler's well-known skepticism about government intervention. "The Goals of Economic Policy" provides a broad analysis of the basic aims of government intervention. His presidential address to the American Economic Association, "The Economist and the State," contains a brilliant analysis of the ways economists influence the making of government policy which should be read by all economists interested in advising governments. "Economic Competition and Political Competition" provides the basis for Stigler's skepticism about government intervention.

The hallmark of Stigler's writing is its integrity. Stigler insists on careful, objective analysis. He possesses a healthy skepticism and is as nearly immune to economists' fads as is humanly possible. Stigler repeatedly urges his fellow economists to test theories againt facts; his respect for free markets is exceeded only by his respect for truth.

I cannot finish this review without some admiring words for Stigler's sardonic sense of humor. Part Five is made up of a small set of Stigler's humorous pieces. They are wonderful. However, his wit comes through in serious papers, as well. "The Economist and the State" begins:

> In 1776 our venerable master [Adam Smith] offered clear and emphatic advice to his countrymen on the proper way to achieve economic prosperity. The advice was of course directed also to his countrymen in the American colonies, although at that very moment we were busily establishing what would now be called a major tax loophole.

Coming Home

No End of a Lesson, *leading articles from* The Times *which appeared under the editorship of Charles Douglas-Home (London: Alliance Publishers for the Institute for European Defence and Strategic Studies, £7.50)*

Reviewed by Joseph P. Duggan

No End of a Lesson will provide many American readers their first access to the writings of Charles Douglas-Home, who served from 1982 until his untimely death in 1985 as editor of the *Times* of London. It is plain from these selections that, among those who have to meet daily newspaper deadlines, Douglas-Home was a writer of unusual philosophical and spiritual depth. He was that rare sort of newspaperman who sought often to remind his readers of "first principles" and "ultimate things."

Douglas-Home had been editor of the *Times* only a month when Argentina invaded the Falklands. The war gave him occasion, in some of his very first editorials, to demonstrate his talent for strategic thinking complemented by a deep moral sense. At the outset of the crisis,

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he observed that deterrence—"a state of mind rather than a state of affairs on the ground or at sea"—had broken down as a defense for the Falklands, and that unless Britain showed the will to retaliate, its deterrent posture no longer would be credible "in Berlin, on the Elbe, in the North Sea, or in the North Atlantic." He praised the government for dispatching the fleet to the South Atlantic, adding, though, that "diplomacy must be given a chance and it is always important in strategy to leave your adversary room to retreat."

When reasonable efforts at diplomatic solutions failed, Douglas-Home did not hesitate to urge that the Royal Navy act to retake the islands. At the same time, though, he cautioned the British public against the "nonsense of burning effigies, irrelevant spite, or public hysteria." Moreover, during the heat of the battle in the South Atlantic, he wrote an ironic, meditative editorial on the "paradox of Christians at war," urging his countrymen to ponder in their minds and hearts the just war teachings propounded by Augustine and Aquinas. "Just war," he wrote, "can only be just if it is caused by injustice—for the greater good of the world as a whole; and if its conduct is conditioned by the doctrine of minimum force."

Douglas-Home showed clarity and commitment, too, in his treatment of issues affecting the freedom, security and unity of the West. Unfashionable as it was, even among some of the conservative politicians in Europe at the time, he stood solidly in support of Ronald Reagan's vision of American leadership in renewing Western strength and self-confidence. He vigorously supported the Strategic Defense Initiative, praising President Reagan for the insight that, in Douglas-Home's words, "existing nuclear strategies cannot indefinitely command the respect, understanding or acceptance of democratic societies." Of Western European skittishness about SDI he wrote: "It is ironic and paradoxical that the age of deterrence has so confused the strategic mentality of many commentators that their reaction to a purely defensive system is to suggest that it increases the danger."

When Ronald Reagan took the bold step to rescue Grenada from the Communists, Charles Douglas-Home applauded. Again he chided Mr. Reagan's West European critics, urging the West "not to feel hang-dog about this rescue, but to develop a coherent and multilateral approach to further rescues." On other occasions, he called for increased understanding in Europe that Central America and the Caribbean were important not simply as America's southern border but as NATO's strategic rear.

Douglas-Home was a perceptive analyst of political pathologies in the democracies. Just following President Reagan's landslide reelection, he noted "a recurring and world-wide attempt" to induce the President to change his policies. This Douglas-Home ascribed to the "pervasive cultural refusal in the Western liberal establishments to recognize and accept the hard simple principles of Mr. Reagan's leadership." Another disorder that he found in many Western minds was the illusion "which equates the exercise of Soviet power and personality with those of the United States leadership"—a way of thinking that leads to the notion that the two countries pose an equal threat to world peace. A penetrating critic of detente, Douglas-Home did not flinch from calling the Soviet Union an evil empire.

Faith in God was integral to Charles Douglas-Home's understanding of man. "It is faith, not reason," he wrote, "which gives an individual the independent standpoint from which to evaluate the external conditions of his life, however adverse they may be." With Solzhenitsyn he agreed that one of the greatest threats to the survival of the West comes from Western man's tendency to ignore his own spiritual life.

Douglas-Home's religious imagination was powerful, even courageous. In an Easter editorial one year, he took on the problem of anti-Semitism in Christian lands, but not in the usual sanitized and secularized terms. He challenged his readers instead to put themselves in direct contact with the Cross and the Person of Christ. "There is a hum of desire," he wrote, "to overcome the unmentionable fact—on both sides—that Jesus was a Jew." Douglas-Home's visionary hope was that "Jesus, the Jew, may become a symbol of some ultimate unity in the quest for truth between Christian and Jew, just as he is between Christian and Christian."

The editorials in *No End of a Lesson* speak eloquently to the leading international issues of our generation as well as to some perennial topics of the human spirit. They make valuable reading for students and practitioners of journalism and politics. They deserve wide attention, especially in America, which Charles Douglas-Home understood and loved so well.

The Enemy Is Us

Platoon, *directed by Oliver Stone*

Reviewed by John V. N. Philip

The new hit movie *Platoon* seems to represent the definitive view of the Vietnam War and to explain the reasons both for our defeat and for our domestic civil strife. People are flocking to it in droves because the word is out that this is the way it really was. But, in fact, it is not. For while the film is extremely moving in the intensity with which it pays tribute to the sacrifices of American GI's, it perpetuates the very myths which reduce the significance of their heroism.

Platoon dramatizes the tragedy which befell our army in Vietnam; unable to decisively engage a largely unseen enemy, our soldiers turned on themselves. This failure to combat the enemy effectively and defeat him was a consequence of multiple failures of leadership which eventually destroyed our army's will to win. The political leaders of the U.S. at the time failed to prepare the American people for the sacrifices necessary for a long-term struggle. The military leaders failed to provide the politicians with a proper accounting of enemy strength and a comprehensive

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strategy for victory. The American public, itself adrift, increasingly ceased to identify with both the war and our own soldiers involved.

The film follows the movements of a platoon of American infantrymen, 'grunts,' patrolling near the Cambodian border from approximately 1967 through February 1968. Writer-director Oliver Stone directs with intensity and effective use of visual metaphor. In rapid fire in the first scenes Stone underscores the overwhelming terror of new recruit Chris Taylor (Charlie Sheen) in his first patrol in "The Nam." Nature itself becomes a malevolent force in league with the enemy against him and his platoon. The roots of the fantastic shrubbery trip him. Insects leach his strength. Snakes cross his ankles when he tries to rest. Even the ground beneath his feet is laced with the enemy's secret tunnels. Only the air is safe. Helicopters and planes deliver the troops, resupply them, rescue the wounded, retrieve the dead, and finally carry those lucky enough to "make it" back to their base camp and eventually the U.S. In the movie's last battle even this final stronghold is overrun as the American commanding officer must call in a strike by U.S. fighter planes to avoid defeat. His forces hold the position after the strike. But the platoon has been decimated.

Out of this chaos Stone creates the harrowing internal moral struggle of the army. The two sergeants, Barnes (Tom Berenger) and Elias (Willem Dafoe), control two sides of a bitterly divided platoon. Barnes leads some of the men, enraged at the killing of a fellow soldier, in a rampage through a farming village which results in the slaughter and rape of innocent civilians. Elias, out of moral outrage, tries to stop him. Yet it is Elias that most of the platoon eventually turns on. For it is Barnes who represents survival—Barnes, who has been shot seven times and lived; Barnes, who, in the eyes of most of the men, can "see them through." When Barnes kills Elias for threatening to report him for his actions in the village, most of the platoon suspect Barnes and acquiesce in their silence to this murder. For these soldiers in Vietnam, the ultimate moral tragedy is that it is necessary to become a Barnes to survive.

Stone uses his story to illuminate other broader and recognized generalities about American involvement in the War. The soldiers fight a largely unseen enemy with little understanding of long-term strategic objectives. Positions for which they are wounded or die are quickly overrun, even as the helicopters lift them away from the battlefield. The command structure is debilitated and ineffective. The young and well-intentioned lieutenant shows disastrous lack of judgment in the field. At one crucial moment he calls for rear artillery fire to repel an ambush and unnecessarily destroys some of his own troops. Black and white tensions fester. Drugs are pervasive in the ranks.

But at the same time the director portrays powerfully and cogently the particular hell of Vietnam, he reinforces a central myth of the war: that the only struggle between good and evil in Vietnam was within the American Army. The struggle with the North Vietnamese (NVA) and Viet Cong (VC) has virtually no moral quotient at all. By extension, the domestic controversy which still rages concerning the American involvement, and of which this film is very much a part, is encapsulated in the same self-involved rationale; the moral struggle concerning an interpretation of Vietnam lies only between conflicting definitions of America's conduct in the War. The director's conclusion appears to be that the only coherent meaning to be drawn from the American experience is personal revelation. As Taylor says in his final monologue, "We did not fight the enemy, we fought ourselves." He resolves in future "to find a goodness and meaning to this life".

At the same time Stone portrays powerfully and cogently the particular hell of Vietnam, he reinforces a central myth of the war: that the only struggle between good and evil was within the American Army.

Further evidence of the film's very partisan position in the ongoing Vietnam debate is the director's complete dismissal of the last 20 years of history. If the policy of containment was ineffectively applied in Vietnam, the tragic history of the region since suggests that many of its precepts were valid. All the dominoes in Southeast Asia did not fall. But it is certainly evident that the American presence in Vietnam blunted the export of revolution to other ASEAN nations and allowed a crucial period of stabilization for many of those countries. In effect, as Henry Kissinger was later to say, the American army in Vietnam "defended the possibilities of freedom." *Platoon* only refers once, and with disdain, to overall American strategy for which, for better or worse, the soldiers in the film are risking their lives. As the heroic Sergeant Elias remarks to Taylor, America will lose because it's time that the U.S., which has been "kicking ass" so long, is itself punished.

More complicated is the misconception reinforced concerning U.S. technological superiority in Vietnam. The American leadership and especially the American public expected this expertise would allow us to prevail. The fact that it did not subtly impugned the fighting ability of the American soldiers on the front lines. It was not sufficiently understood that the technology was only barely able to help even out the tremendous odds against which American soldiers were forced to enter combat. The men in *Platoon* bristle with infrared-scopes, powerful flares and sophisticated rifles. American jets scream overhead. But never mentioned in the script is the corollary implied by the elaborate tunnel complexes the platoon encounters. Since the North Vietnamese regime's unilateral declaration of hostilities in 1959, men, materiel, and political cadres had poured into South Vietnam and neutral Laos and Cambodia. The Americans of *Platoon* seek shelter in foxholes they have built overnight. The enemy attacks from

strongholds they have been constructing for many years. Only in the final battle scene of the film do we see the NVA in large numbers. But, their General Giap, by his own admission, had lost over 500,000 men by 1968, approximately the time portrayed in the film. An equivalent American casualty ratio would have resulted in almost seven million dead GIs. Extrapolating logically from these numbers, it is evident today that the American army was overwhelmingly outnumbered.

Finally, and most disturbingly, the film continues to revive the My Lai incident as a symbol of American degradation. Outrageous and brutal actions committed by Americans against civilians were certainly recorded in Vietnam. The platoon's destruction of a Vietnamese farming village is clearly reminiscent of the My Lai affair and other contemporary news footage of 'search and destroy' missions. But there is only passing mention in Stone's work of the far more numerous and bloody depredations of the NVA and VC against innocent civilians from the first days of their infiltration in 1959. In this film it is only the Americans we see as cruel. In addition, their bloody actions in the village will be covered up despite the protests of Elias. Lieutenant Calley was tried by an American military court for his actions at My Lai.

In effect, *Platoon* purports to tell us how Vietnam was through the eyes of the common soldier. It does indeed tell us the story of what would happen to that soldier in the American Army, or any army, which had lost sight of why it was fighting and killing the enemy. But the director has stripped from the story a breadth of moral and historical perspective. Ultimately, and disappointingly considering its artistic promise, the movie does not offer us the hymn to the sacrifice of American GIs in Vietnam which its author intended. Instead it strengthens some of the misunderstandings which debase their memory. In so doing Oliver Stone brings us not Vietnam as it really was, but only another small part of the story which, standing alone, cannot constitute true understanding. *Deerhunter* and *Apocalypse Now* have presented the Vietnam War in surreal imagery; *Platoon* presents the conflict in narrow and therefore distorted focus. Somewhere beyond lies the epic of American involvement in the Vietnam War and the conflict's place in the broader historical context. But it hasn't been written yet. ☎

LETTERS

James D. Theberge, Lord Kennet, Anne Cohn, Steve Hanke, Ann Wrobleski, John Chettle, Robert Higgs

Contra Realism

Dear Sir:

The article by Timothy Ashby—"The Road to Managua" (Winter 1987)—encapsulates an intriguing thesis: that the contras could overthrow the Sandinista regime in the next two years by the combined action of an expanded contra military force (invigorated by another $100 million in U.S. aid in 1987), a destabilizing popular uprising, and a debilitating power struggle between rival ruling factions.

Ashby deserves our congratulations for his imaginative efforts to ascertain under what set of conditions it might be possible for the contras to collapse Nicaragua's Marxist-Leninist regime. But is this scenario—which discounts the need for U.S. military action in support of the contras—a realistic one? It strikes me as highly improbable.

Suppose the U.S. Congress authorizes the $105 million in aid for the contras requested by the Reagan Administration for fiscal year 1988—which is by no means certain—would this improve the military balance in some decisive way? It might have a chance to do so if the Sandinistas stood still and watched the expanding, better-armed contra forces produce an unfavorable shift in the political-military buildup that will lead to a predictable off-setting Sandinista military escalation and stalemate. As in the past, the Sandinistas will request, and receive, a major inflow of Soviet bloc-supplied arms (as they did in 1986), and they can increase their own armed forces and militia from the current level of about 120,000 to whatever force level—perhaps in the 150,000-200,000 range—that is required to contain the contras. As long as the United States takes no action to halt military supplies from reaching Nicaragua, the Sandinistas can count on the Soviet bloc to sustain the buildup. Unlike the contras—who must suffer the whims of the U.S. Congress—the Sandinista forces have a reliable support network that provides arms, aircraft, training and combat advice. The clandestine introduction of additional Soviet bloc, and especially Cuban, military advisers, and even combat forces (which may have already begun), can also be expected. This has been the historical pattern, and we should not delude ourselves.

Under conditions of a Marxist-Leninist regime, the notion of a "popular uprising" has limited practical relevance. Such regimes have demonstrated, historically, an impressive capacity—brutal repression, admonitory executions, and detention of opposition leaders (undergirded by an extensive army of informers)—for holding tightly to power in the face of massive public repudiation and hostility. Widespread "counter-revolutionary" protests normally are not permitted to take place, and if they do, sooner or later are crushed. In the past, U.S. policy-makers have underestimated the immense repressive resources of Marxist-Leninist regimes. The abortive "popular uprising" that was to accompany the Bay of Pigs landing comes to mind. It is too much to expect that a significant urban resistance movement—comprised of poorly armed, if not defenseless, civilians confronting well-armed and determined military and security forces—is a serious option. The Somoza era analogy is misleading, and the Somoza experience is unlikely to be repeated in "revolutionary" Nicaragua.

The most notable feature of the Sandinista regime is not the "internal contradictions" (which do exist) but the surprising relative cohesion of the collective leadership, in which "some are more equal than others." Personal rivalries and jealousies, political and tactical differences, were present amongst the Sandinista guerrilla leaders even before they seized power. They murdered each other over these differences during the revolutionary drive to power. Despite frequent rumors to the contrary, the evidence indicates that the Sandinista ruling elite—dominated by the Ortega brothers—has been able to overcome centrifugal forces and maintain a rough unity of purpose and action. They recognize the maxim: "Either we hang together or we assuredly will hang separately"—a notion that marvelously concentrates the mind. Furthermore, the Sandinistas' "big brothers"—Cuba and especially the USSR—have enormous leverage to impose unity since the regime, without their military and economic aid, could not last six months.

Sandinista leaders are fully cogni-

zant—and have been from the first days of the revolutionary victory—that the decisive theater of operations against their Marxist-Leninist regime is in the United States, not Nicaragua; that the road to Managua runs through Washington, not the Miskito coast; and that, ultimately, their fate will be decided in the White House and on Capitol Hill. To survive, the Sandinistas know they must prevent the Reagan Administration from taking military action in support of the contras.

They have worked with their sympathizers—in the U.S. Congress, the churches, the media, universities, think tanks—to tie the hands of President Reagan and to make time to do the rest. They expect that American opinion—shaped by the media and reflected in the Congress—will become weary with the funding of the contras; the 1988 Presidential election campaign, which has already begun, will further inhibit the unpopular military option; and another President, hopefully from the Democratic Party, will take office in January 1989. At that time, the revolution can be consolidated, the pretense of pluralism dropped, and the promotion of revolutionary violence against Nicaragua's neighbors—and the rest of Latin America—can begin in earnest, as the 1980's end and the 1990's open.

The Sandinistas are confident that they are winning this struggle, and with it, the war for survival. And, unless recent trends are reversed, who is to say they are not correct in their assessment?

Finally, U.S. policy, we are told, is not to overthrow the Sandinista regime but to use the contras to pressure Managua into negotiating a democratic transition: through free, open and competitive elections. Compelling Marxist-Leninist ideologues to cede power through the electoral process seems a dubious, if not illusory, proposition. It also seems to rule out the Grenada option, which was a rare success, but depended on the application of U.S. military force.

The contra forces are courageously combatting our common enemy, fighting our battle for peace and stability in Central America as well as their own, and deserve far greater U.S. and Western support than they are receiving. The full range of U.S. policy instruments, not merely arms, advice and training—as important as they are—will be required to dislodge this "second Cuba" in the Western Hemisphere.

Our capacity for self-deception is great, indeed, if we believe the contras can free their country, or that Nicaragua can be "democratized," without a more determined U.S. effort to neutralize Sandinista power.

James D. Theberge
Former Ambassador to
Nicaragua
Chairman, National Committee
on Central America

Sandinista Idiosyncracy

Dear Sir:

Let me respond to your compilation of quotations on Nicaragua ["Department of Disinformation—Tributes to Totalitarianism," Winter 1987]. As a member of an all-party (i.e. Conservative, Labour and SDP-Liberal Alliance) group from the British Parliament I observed the Nicaraguan elections of 1984. It was our common view that they were "technically correct" and that the voting system was "extremely well thought out:" it was devised on Swedish advice and carried out with French equipment. And the statement that the system was "a little bit superior to what we do in Britain" may need explanation to an American readership. Nicaragua uses proportional representation, and the composition of the present National Assembly accurately reflects the popular vote. Seven parties stood in the Nicaraguan elections. Britain does not use proportional representation. Since the system we use grew up in and was suited to a two-party country, and has survived into a three-party country, the British House of Commons now reflects the popular vote very inaccurately indeed. My allusion to this state of affairs was well-understood by the British audience. (The U.S., being still a two-party country, does not need proportional representation.)

In our group's report, we dwelled at some length on the defects in the conduct of both the government party and the opposition parties in the run-up to the Nicaraguan elections (as opposed to the voting and counting themselves). These defects would have attracted attention if they had occurred in the United States or Britain, but were quite minor in the context of a third world country emerging from 40 years of dictatorship. They were less than those of the 1985 Guatemala elections.

I am not a supporter of the Sandinistas. Theirs is an idiosyncratic doctrine which could only have grown out of the history of that particular country and the century-long record of unwelcome U.S. intervention there. It is a mistake to suppose that it derives from or forms part of Soviet Communism. On the other hand, Nicaragua is now being pushed by present U.S. policies into the arms of the Soviet Union.

What I support is the observance of international law, including the right of nations such as Nicaragua, Afghanistan, and Namibia, to determine their own destinies.

Lord Kennet
House of Lords
London, England

[Lord Kennet is foreign affairs spokesman for Britain's Social Democratic Party.]

Michael Johns replies:

It is preposterous to compare, as Lord Kennet does, the "technical correctness" of elections in Nicaragua with those in Britain. Whether vote counts were accurate is essentially beside the point. The 1984 elections in Nicaragua were little more than an effort to deceive naive Westerners as to the political orientation of the Sandinistas.

"These will be our elections," Sandinista Defense Minister Humberto Ortega was quoted as saying in *Barricada.* "Remember that they are elections to reinforce power, because the people hold the

power through their vanguard, the Sandinista National Liberation Front and its National Directorate." Sandinista *comandante* Bayardo Arce referred to the elections as bothersome. "What a revolution needs is the power to enforce," the *Miami Herald* quoted Arce as saying. "This power to enforce is precisely what constitutes the defense of the dictatorship of the proletariat—the ability of the class to impose its will using the instruments at hand, without going into formal or bourgeois details. From that point of view, the elections are bothersome to us, as bothersome as are a series of other things." Arce then went on to suggest that Nicaragua would do well to begin "eliminating all this, let's call it facade of pluralism."

Democracy involves much more than counting votes; it is a process that requires freedom of speech and assembly by opposition parties. The Sandinistas used the elections for their own purposes. They never intended to place their own power at stake. Consequently, independent candidates were systematically harassed and denied access to the Nicaraguan media, almost all of which was and is Sandinista-controlled. Sandinista-orchestrated *turbas,* urged on by the Sandinista newspaper, *Barricada,* consistently disrupted opposition gatherings by throwing stones, tearing down rally announcements, and shouting down speakers.

At almost every speaking stop, Arturo Cruz, the *Coordinadora* candidate, would draw thousands of supporters, but they would be attacked by the violent Sandinista *turbas.* On several occasions, Cruz suffered wounds from bottles and stones. Action or protection from such activity was never taken by the Sandinistas, and the *Coordinadora* and the Independent Liberal Party, the only significant non-Marxist parties, dropped out of the election in disgust when it became apparent that the necessary conditions for a free election did not exist. Lord Kennet insults the Nicaraguan people when he suggests that such electoral shams are to be expected in third world countries.

Lord Kennet adds some additional disinformation when he says that the Sandinista regime bears little relation to "Soviet Communism" and that the United States is pushing Nicaragua into the "arms of the Soviet Union." In reality, the Sandinistas, under the guidance of Soviet "advisors" in Managua, have gone about developing a totalitarian society with remarkable similarity to the Soviet Union. For instance, the Sandinistas have used block committees to ensure that Nicaraguans remain loyal to the FSLN; they frequently withhold ration coupons to those not participating in Sandinista functions and intimidate and harass those who associate themselves with the opposition.

The ascension of the Sandinistas is very similar to that of Fidel Castro in the sense that it heavily relied on deceiving naive Westerners as to their Marxist-Leninist orientation. Twenty-seven years after the rise of Fidel Castro, Tad Szulc acknowledges, in his sympathetic biography, *Fidel,* that Castro has been a Marxist-Leninist all along. Will we have to wait another 27 years until these same naive Westerners begin to acknowledge the Sandinistas' Communist orientations? And if we do, what will the consequences be for the Nicaraguan people and, for that matter, the security of Latin America?

Far from pushing Nicaragua into the "arms of the Soviet Union," the United States enthusiastically supported the Sandinista revolution. It was only after the hard-core Marxist-Leninist element of the Sandinista leadership began to establish dominance and pulled Nicaragua into the totalitarian realm that the U.S. Congress voted to support militarily those Nicaraguans seeking to liberate their homeland from Communist domination. Ironically, the U.S. probably delayed too long in their support for the Nicaraguan resistance. Now, in 1987, the Sandinistas appear, thanks to $500 million worth of Soviet military support annually, on the verge of consolidating a totalitarian pro-Soviet dictatorship in Nicaragua.

Is this scenario—which discounts the need for U.S. military action in support of the contras—a realistic one? It strikes me as highly improbable.

James D. Theberge

Lord Kennet suggests that he supports the right of nations to determine their own destinies. This is an admirable viewpoint. He should, thus, look favorably on the Nicaraguan contras who are fighting tirelessly and with little foreign support to establish precisely this goal. The fact that under the Sandinistas more than 350,000 Nicaraguans have fled into exile and the largest armed opposition in Latin America since the Mexican Revolution has organized to liberate their homeland should send a message to people like Lord Kennet: the Nicaraguan Revolution has been betrayed.

I might mention my gratitude to the Institute on Religion and Democracy, the Ethics and Public Policy Center, Cliff Kincaid, and Joshua Muravchik for their assistance in preparing "Tributes to Totalitarianism." Some of the quotes from the article will appear in a forthcoming study by Mr. Muravchik on press coverage of the Sandinistas.

Abusing the Statistics?

Dear Sir:

It is always a concern to me when dubious or outdated numbers and facts are hurled around as if they

were the only truth. Such seems to be the case in Douglas Besharov's article "Suffer the Little Children," (Winter, 1987). The article talks about the plight of children with an air of authority which unfortunately ignores reality.

Mr. Besharov begins his article with the statement "Child abuse deaths are down from 2,000 to 3,000 a year in 1975 to about 1,000 in 1985." No one knows that! There was no actual count of child abuse deaths in 1975. And, in 1985, the number of *reported* child abuse deaths—which misses many deaths not within the CPS system—was around 1,000. So the *true* number of deaths was unquestionably much greater than 1,000. (And interestingly, a study just conducted by the National Committee for Prevention of Child Abuse shows that reported child abuse deaths increased dramatically in 1986!)

Besharov goes on to use a 1979-1980 federal study of the incidence of child abuse to suggest that most child maltreatment doesn't require *emergency* government intervention. (And, by the way, who ever said it did?) This study is not one universally embraced by researchers in the field. Its findings are a reflection of the definitions of child maltreatment used. For example, as Besharov points out, the study shows educational neglect to be 27 percent of the total "incidence" detected. The study's definition of "educational neglect" had to do with the number of days a child was out of school—not whether a child had been harmed. That definition generally does not correspond to legal definitions of child abuse. The inclusion of this broad category skewed all the study findings.

Mr. Besharov cites a 65 percent figure in discussing reports of child abuse and neglect which are unfounded. In a field which changes so dramatically from year to year, this is a number drawn from seemingly ancient history—I believe 1978 (although who knows since he doesn't footnote the source). Recent numbers gathered by the American Humane Association put substantiation rates over 40 percent. And a state by state analysis shows why a national figure must be used with care. Substantiation rates can range from the high teens in some states to over 60 percent in others. According to a study just completed by the National Committee for Prevention of Child Abuse the numbers are, to a large extent, a function of differing policies from one county to another as well as one state to another and differing intake practices of individual workers. They are not exact measures of how many reports of suspected maltreatment are indeed *actual* cases.

Besharov talks of "the 600,000 substantiated cases." What is he referring to? In 1984, presumably two years before this article was written, there were approximately 1.7 million reports of child maltreatment nationwide, suggesting over 714,000 substantiated cases. And the numbers have increased since then.

In sum, it is difficult to get into the substance of what Douglas Besharov is trying to say and ponder its merits when the numbers which surround his pronouncements are so outdated and questionable. I have no doubt that governmental policy can hurt poor children and weaken their families. To understand how and why, let's deal with the best facts we can.

Anne H. Cohn
Executive Director
National Committee for
Prevention of Child Abuse
Chicago, IL

Douglas Besharov replies:

Dr. Cohn's letter makes two important points. First, "government policy can hurt poor children and weaken their families." Second: "To understand how and why," we should use "the best facts we can." Her central criticism is that my article relies on data collected by the federal government, rather than data collected by her organization, a group whose avowed purpose is to increase public concern over the problem of child abuse. To this charge, I plead guilty.

But the larger point should not be lost in the forest of statistical criticism. Not only *can* government policy hurt poor children, but the overwhelming weight of evidence, which, by the way, she does not criticize, proves that, with regard to poor children placed in foster care, it *does*. It is interesting and significant that she does not attempt to deny this underlying reality.

Ancient Wisdom

Dear Sir:

Warren Brookes ("The Tax Capitalization Hypothesis," Winter 1987) begins by telling us that he is "not a trained economist, but rather a journalist specializing in [economics]. . . ." In what follows, Mr. Brookes demonstrates once again that being trained as an economist is neither a necessary nor a sufficient condition for the conduct of first-class economic analysis.

Mr. Brookes also informs us that the term tax capitalization is "surprisingly unknown" to trained economists. Given the manner in which today's economists are trained, this shouldn't be too surprising. However, economists haven't always been unaware of the concept. There is a rich literature on tax capitalization dating back to J.B. Say, one of the original supply-siders, and to the French Physiocrats before. In part, this early literature developed because tax capitalization was an active policy issue. For example, as part of a program to deregulate industry and increase personal freedom, the Grand Duke of Tuscany, Leopold II, instituted the first conscious tax capitalization experiment in 1788.

Mr. Brookes' shows that in 1980, the property tax rate in Boston was 8.27 percent of the fair market value of property, and in 1986, it had fallen to 1.95 percent. Now, suppose that property in Boston yields an annual explicit or implicit income flow of 10 percent of the market value of property. Hence, the property tax rate of 8.2 percent was equivalent to an annual income tax rate of 82.7 percent which was truly confiscatory, and the 1.95 percent property tax rate was equivalent to 19.5 percent income tax rate. With this reduction in tax rates on "income" flows from capital (property), the

Boston boom shouldn't surprise anyone, even those trained in the dismal science.

Steve H. Hanke
Professor of Applied Economics
Johns Hopkins University
Baltimore, MD

Dopey Article

Dear Sir:

Cait Murphy's "High Times in America," (Winter, 1987) is typical of a mindset which has made the struggle against narcotics so difficult. Ms. Murphy is of the opinion that since this is a difficult task with results that are not immediately evident, our task is not worth doing.

I agree with Ms. Murphy that there is no "quick fix" for the drug problem. The President's national strategy encompasses five critical areas: law enforcement, international cooperation, drug abuse prevention, treatment and research. All of these components must be approached simultaneously or they will not work. The drug problem did not develop overnight, nor will it be solved overnight. We are in this for the long haul, and I believe that our collective efforts will bear fruit.

The Bureau of International Narcotics Matters in the Department of State is responsible for coordinating and implementing the overseas portion of our national strategy. In 1987, we have a budget of $118 million to assist other nations in combatting narcotics production and trafficking. A major segment of my budget will be dedicated to the purchase of aircraft and other equipment for use in eradication and interdiction. But another function my bureau performs cannot be measured in budgetary terms. Our diplomatic efforts have had real results, from the Colombian extradition of Carlos Lehder to the U.S. for trial, to the overwhelming international support garnered for a new draft convention on narcotics trafficking. In the past two years, response to the narcotics issue has been "internationalized" as nations have come to realize that the drug problem is global and requires a truly international solution. The old argument that America is to blame for the worldwide production of narcotics has been put to rest as nations have begun to look for ways they can work together, rather than placing blame.

My bureau has just submitted our annual assessment of the worldwide narcotics situation to the Congress. The worldwide drug situation is severe—we have no illusions about this—and narcotics production rose in 1986 because traffickers have redoubled their efforts as countries have begun serious eradication campaigns. In 1981, only two countries were eradicating narcotics crops; today 20 countries are eradicating. Last year, Burma embarked on the world's largest eradication campaign and traffickers in league with insurgents, forced farmers to increase their opium plantings. Jamaican traffickers planted more marijuana this year because more marijuana was eradicated by the Jamaican government. Eradication campaigns are cutting into the capital investments of narcotics traffickers, and they're finally getting the message that we mean business.

There is also increased worldwide demand for drugs which has fueled increases in production. Just as America has to redouble our efforts on drug prevention, so do other nations.

More serious than the tragic health consequences of drug abuse are the tragic consequences that narcotics trafficking and production have on democracies. As Latin America embraces democracy, we see narcotics traffickers in league with guerrillas determined to erode the social institutions these nations have sought to preserve. In Colombia alone, judges, journalists, law enforcement officials and Cabinet ministers have been murdered by traffickers who will not tolerate their opposition. There are very real threats to democracy in Jamaica, Bolivia, Ecuador and Peru as narcotic traffickers seek to undermine cherished principles and destroy those nations' hard-won progress.

We cannot afford to walk away from this struggle. Too many lives have been lost and too many dreams have been denied because of drug abuse. Young Americans, and young people around the world are depending on the progress that all nations make in the fight against narcotics production and trafficking. It is up to us to continue this moral challenge and to help ourselves and other nations stand up to narcotics traffickers. It will be a long battle but one that we can fight—and win.

Ann B. Wrobleski
Assistant Secretary of State
for International Narcotics Matters
Washington, DC

The Indaba Promise

Dear Sir:

William Pascoe's "Indaba We Trust," (Winter 1987) was a thoughtful, elegant, and timely analysis of a serious effort to bring about a multiracial government in the South African Province of Natal. It is a process which, as he rightly points out, has been virtually ignored by the international media. Unfortunately, the way in which the Indaba has been treated by the *New York Times* is all too typical of that neglect. Having failed almost throughout the negotiations to report on what was happening, it reported the rejection of the Indaba by a single minister as if this was definitive, and followed up with an editorial condemning the government yet again for the rejection.

It may be worth pointing out that the whole process leading to the recent successful negotiation occupied eight or nine years, with those who had cherished this vision preparing the ground, arranging for a study by an economist close to the government, arranging then for a Commission under the auspicies of Chief Mangosuthu Buthelezi, and finally involving as many of the potentially interested parties as possible. It was, may one suggest, the antithesis of six-month deadlines and sanctions.

John Chettle
Director
South Africa Foundation
Washington, D.C.

Telephone Poll

Dear Sir:

Your phone rings. You answer, and someone tells you that she would like to ask you some questions about the Constitution of the United States ("The People's Court," Winter 1987). What do you do? If you are like me, you probably hang up. Time is precious, especially for intelligent, knowledgeable, and thoughtful people. Who really responds to polls?

Putting aside that troubling question, I wonder about the results of such a poll: So what? Pollsters can always trigger a bias in responses by the wording of a question; and in this respect the *Policy Review*/ Sindlinger poll on the Constitution seems to me as culpable as most. Even if that induced bias were not present, what exactly is the point? Many polls over the years have found that the typical respondent does not support, for example, the actions protected by the Bill of Rights. Would any thoughtful person wish to overthrow the fundamental freedoms guaranteed by the Constitution just because the "typical" American appears ready to approve such a policy?

Fortunately for all of us in the long term, what is "constitutional" is not decided by poll results. The ideological and political struggles that do determine what shall receive constitutional blessing often produce outcomes that dismay me as much as they displease the masses. But handing over our constitutional fate to the ill-informed and ill-considered notions of those with the time and inclination to respond to telephone interrogation would be the worst of worlds. If my view be "undemocratic," so be it. The Constitution was designed in the beginning to restrain the unruly passions of the masses. Let us hope that it will continue to do so. All studies show that American elites, in general, have a higher respect for individual liberties than the general public does.

Robert Higgs
Professor of Political Economy
Lafayette College
Easton, PA

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policy REVIEW

I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no security for a consistent and stable, more than for a faithful, exercise of its powers.

James Madison quoted by Charles J. Cooper and Nelson Lund in *Landmarks of Constitutional Interpretation*

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