THE FREEMAN

IDEAS ON LIBERTY

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The Johnstown Flood

This year marks the 100th anniversary of the great flood that inundated Johnstown, Pennsylvania, on May 31, 1889, killing 2,209 people. Donald Dale Jackson, writing in the May 1989 issue of *Smithsonian,* describes the relief efforts:

"At a time when federal disaster relief didn't exist, Johnstown's recovery was achieved through one of the greatest private charity campaigns ever mounted. The American Red Cross, only recently founded, won renown as a national disaster relief agency for its work in Johnstown. . . .

"By . . . June 2, railroad crews had repaired the tracks connecting Johnstown to Pittsburgh, 55 miles west. By then the press and the initial detachment of relief workers were in town, Americans were starting the read the first shrill dispatches from Johnstown and a cavalcade of help was on the way. . . .

"The exhaustive press coverage stimulated a rush of private benevolence that eventually threatened to overwhelm Flood City. Food, clothing, medicine and other provisions began arriving immediately. Morticians came—Johnstown's first call for help requested coffins and undertakers. Demolition expert 'Dynamite Bill' Flinn and his 900-man crew cleared the wreckage at the stone bridge. At its peak the army of relief workers totaled about 7,000. They carted off debris, distributed food, erected temporary housing and occasionally made a heartening discovery—a parrot named Bob was found alive in the wreck of one house, complaining that it had had 'a devil of a time.' "

On Speculators

Manias such as the Tulipmania, the South Sea Bubble, the Mississippi Bubble, the Gold Panic of 1866, the stock market crashes, and violent swings in the value of the dollar are frequently cited as examples of occasions when speculators contributed to instability and imbalance. But who could do the job better?

Selected government officials might want to see a different outcome. But their track record of setting prices is invariably one of famines, end-

less shortages of what people want, and gluts of dull, low-quality products. The bureaucrats have little incentive to improve or innovate.

When speculators are wrong, however, they are punished severely for their mistakes by losses. Over time, the large speculators would tend to be those who were most prescient in their calculations. Through competition, the energies and talents of numerous speculators — all inspired by their selfish desire to profit — are channeled into the public good.

— VICTOR NIEDERHOFFER

Control or Economic Law?

Shortly before he died, the noted Austrian economist, Eugen von Boehm-Bawerk (1851-1914), wrote a brilliant article, "Control or Economic Law?" He carefully dissected market operations, analyzing the effect of coercive outside interferences. Government intervention doesn't suspend the Law of Price, he concluded; it merely alters the conditions under which it operates.

By changing the available alternatives, government coercion affects individual choices. Production plans must be revised, and purchasing decisions have to be altered. Nevertheless, the Law of Price continues to prevail: The price of every good traded still falls somewhere between the top price a potential buyer is willing to pay and the bottom price at which a potential seller is willing to sell.

Today's market prices are affected by countless government regulations, taxes, and subsidies. Yet when trades take place in spite of these interventions, the prices agreed upon by seller and buyer still comply with the Law of Price; they still reflect the respective values of buyer and seller.

In Brazil, where inflation is rampant and controls have been placed on the prices of many items, eggs, among other products, have disappeared from the shops. But enterprising street peddlers now offer eggs at about twice the controlled price, $2 per dozen. Although illegal and exorbitant in the eyes of the Brazilian price controllers, this price serves consumers and conforms with the Law of Price. It is above the peddlers' minimum acceptable price and below the maximum price the buyers are willing to pay.

When our government started requiring seat belts and pollution control devices on automobiles, the manufacturers' asking prices rose. Of course, potential buyers weren't pleased by the increase. Some dropped out of the market, settled for used cars, or turned to other means of transportation. But the Law of Price still prevailed. Although fewer cars were sold at the higher prices, and fewer consumers were served, those higher prices were still below the top prices the actual buyers were willing to pay.

In India, government approval and licenses are needed to operate most sizeable businesses. Large manufacturers must spend a great deal of time lobbying in New Delhi, which increases their costs and compels them to raise their asking prices. These higher asking prices, in turn, cause some potential buyers to drop out of the market.

However, one Indian soap manufacturer has avoided the need for licensing and has benefited from tax breaks available to small firms. He manufactures on a small scale with hand labor at several locations and economizes on packaging. His price falls below the maximum price that many potential buyers on the Indian market are willing to pay, and he has become India's largest detergent maker.

There is no denying that government interventions affect market prices. If coercion raises costs, producers must ask higher prices. Fewer items will be sold, and fewer consumers will be served. Yet although today's mongrel prices are blends of market forces and government coercion, they do nothing to refute the Law of Price. The prices at which goods and services are exchanged are always above the bottom prices of the sellers and below the top prices of the buyers. Economic law prevails.

— BETTINA BIEN GREAVES

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Gray Markets and Greased Pigs

by John Hood

Hailing a taxi in Boston can be tricky. It helps to be pushy, even rude. Tight city regulation of taxicabs has kept their number at 1,525 since 1934. Because government has prevented supply from rising to meet growing demand, there's an artificial taxi shortage.

But the story doesn't end there. Business travelers and tourists can still find transportation in Boston. Hotels, such as the Bostonian Hotel downtown, have begun operating their own limousines to take guests to airports, eateries, or other destinations around town. "I could not in good conscience sit there in the hotel watching guests stand on the street for 30 minutes to get to an airport that is five minutes away," Tim Kirwan, manager of the Bostonian, told *The Washington Post.*

Markets are resilient. Try as they might, government and the special interests they protect (in this case, the cab companies) can't completely suppress the forces of competition. By limiting one particular choice, they only direct enterprising people toward others. The result is either a black market, in which completely illegal transactions occur, or what might be called a "gray" market, in which firms substitute legal options for banned ones—either with the tacit acceptance of authorities or without their knowledge—thus defeating the intent of regulation.

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Gray markets exist in many areas, such as zoning regulation (where business- or residential-only labels are routinely circumvented), but are perhaps most visible in the transportation field. In New York, for example, about 15,000 "gypsy cabs" operate in poor, minority communities, mainly in Queens, Brooklyn, and the Bronx. Strict regulation for half a century has limited the number of cabs in New York to 11,787. Consequently, over 600 "black car" livery companies have sprung up to bridge the gap between demand and legal supply.

Such companies are supposed to cater only to phoned-in customers, but many drivers take off their livery license plates (designed to help taxi commission inspectors spot them) and cruise the streets as "gypsies." These cabs do business not only because of the general taxi scarcity throughout the city, but also because some yellow cabs won't venture into unsafe areas to pick up minority customers.

Phone-in livery services are becoming a competitive force in many cities that regulate the number of taxicabs, such as Chicago and Atlanta. While not really illegal, they do circumvent the intent of regulations by giving taxis a run for their money.

Another form of competition—jitneys—has sprung up in Pittsburgh and Los Angeles. A jitney is a station wagon or small van that makes better use of miles traveled by carrying more than one passenger at a time. They were prevalent across the country in the early 1900s,

but threatened transit and cab companies succeeded in outlawing them in most cities.

Their illegal status doesn't hinder them much. In Pittsburgh, for instance, jitneys dominate the transport market: if the jitneys cut prices, the legal taxis do, too. And like New York's gypsy cabs, jitneys provide service to neighborhoods shunned by the regular taxi fleets.

Of course, though governments may not be able to eliminate certain products or services from a market, they can make them more expensive. A "gypsy" ride in New York can sometimes cost two or three times what the same trip would cost in a yellow cab. Cab owners in Atlanta were even able to get a price floor codified in law: $50 a trip for limousines and $40 a trip for corporate cars, about three times what each would cost in a free market. (Jitneys, though, can sometimes offer lower prices than taxis, because they can carry more than one passenger at a time.)

Like alcohol and drug prices during times of prohibition, prices for illegal services rise because of increased risks to providers and lack of consumer information. Established interests count on the higher prices to reduce their competition, if they can't get outright bans enacted and enforced. Even so, services that circumvent regulations — like New York's gypsy cabs — flourish. Consumers are willing to pay more to get the services regulated monopolies won't provide.

The artificially higher prices, though, do mean a loss of efficiency in the market. Consumers still buy more in goods and services from regulated industries, like the taxi companies, than they would if competition were freer.

Black and gray markets may seem a bit unseemly and corrupting, but they actually make up a large and crucial segment of our mixed economy. In some Third World countries they produce most of the goods and services, including food and other essentials. In such countries, government power is employed not only excessively but arbitrarily to favor political cronies. Enemies are taxed into bankruptcy, while valuable assets and capital are seized for "the good of the state." This creates so much uncertainty that businesses either leave (if possible) or go underground.

It may appear that the state, able to drive a business underground with its power to tax and regulate, exerts great control over the country's economic life. But that misses the point—that there is always an underground, even in totalitarian societies like the Soviet Union, to which embattled businesses may flee.

A Losing Battle

Government is fighting a losing battle when it grapples with the discipline of the market. There's no real mystery about why this is so. Free enterprise is not some fragile, delicate experiment in constant need of protection. It does not have to be imposed or fostered. It is, in short, the natural order of things.

Coercive government, on the other hand, needs constant attention and tinkering. Consider how difficult it is for government to maximize its revenues. As supply-siders have shown, hiking tax rates won't always increase revenues because, among other factors, higher-income taxpayers lose their incentive to work and invest. Any increase in tax rates, in fact, sets off a market reaction that can actually reduce tax revenues. Witness, for example, the current controversy over capital gains taxes. The same principle applies to regulation. There is no shortage of ways to compete with a regulated monopoly, but there's only a limited number of ways government can restrict competition. Insulate an industry from competition, and the resulting price increases and drops in service encourage consumers to substitute other products or services. And rest assured—firms will pop up to provide them. Frustrated regulators must feel like they're chasing a greased pig.

Government action can't eliminate market forces; it can only distort them. Sure, government's attempt to tax or regulate producers out of existence has disastrous side effects. But they are, indeed, only side effects. The goal—to drive "illegal" competition out of the marketplace—is rarely achieved. Government just can't catch the pig. □

Crime and Consequences

by Robert James Bidinotto

Summary of Part I: The exploding crime rate of recent decades coincided, ironically, with (1) massive growth in government programs, intended to eradicate alleged "causes" of crime, and (2) sweeping changes in the criminal justice and corrections systems, intended to supplant punishment with inmate "rehabilitation." These supposed "reforms" actually increased incentives for criminal irresponsibility. The result: more crimes than ever go unpunished.

The reforms were implemented by an "Excuse-Making Industry" of social scientists. Their deterministic theories "explained" criminality by blaming it on social, psychological, and biological forces that they claimed were outside the criminal's control. It was shown that criminal acts are based on free-will choices of individuals: the criminal is both morally and legally responsible. But this is not the premise upon which today's criminal justice system operates.

Part II: The Criminal Justice System

The criminal justice system's failure to provide justice was inevitable, given the deterministic premises of its modern architects. Criminologists Wilson and Herrnstein explained, "The modern liberal position on criminal justice is rehabilitative, not retributive, because the offender is believed to have been driven to his crimes, rather than to have committed them freely and intentionally. . . ."[1]

Some "reformers" have even made their antipathy toward traditional conceptions of justice explicit. Here, two of them express acute discomfort with the classical symbol, Justitia —the familiar courtroom figure, robed and blindfolded, holding her scales and sword:

"Though excellently symbolizing impartial, even-handed, and effective justice generally, Justitia is ill-equipped to meet our current demands from penal sentences. . . . From her left hand she should drop the scales and put in its place the case history, the symbol of the full psychological, sociological, and criminological investigation of the individual criminal. Her right hand will find very little use for a sword in the modern penal system. . . . Around her knees she would be well advised to gather the adolescent social sciences. . . . Finally, it is essential that she remove that anachronistic bandage from her eyes and look about at the developments in society generally. . . ."[2] A new kind of justice —"social justice" or "distributive justice"—was to replace the "anachronistic," Justitian sort. Since men were helpless playthings of circumstances, and since circumstances impinged upon men unequally, it was the moral duty of government to intervene and redress the resulting "injustices." Government, according to Excuse-Makers such as John Rawls, was not to be society's impartial umpire, but rather its meddling therapist.

This outlook, largely a legacy of Rousseau's

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view of human nature, [3] spawned the redistributionist welfare state. "If you are bright, accomplished, famous, well-off, virtuous —you're just lucky, you had nothing to do with it, you didn't deserve any of it. Likewise, if you are stupid, lazy, corrupt, poor, mediocre, even criminal—you can't help that, either. Therefore, 'distributive justice' requires that the government level the playing field."[4]

It also led logically to "a culture of instinctive 'sympathy for the devil,' " as one historian put it, "a feeling that criminals in this society are as much victims as victimizers, as much sinned *against* as sinners—if not more so."[5]

Hence the Excuse-Maker's curious double standard toward crime: "sympathy for the devil," and simultaneous indifference toward crime victims. If no one can help being what he is, then the (usually) "lucky" and "privileged" middle-class crime victim merits only marginal concern. However, the "unlucky" and "underprivileged" criminal is a chronic victim of circumstance, and deserves our full sympathy and compassion. The logic of determinism, then, requires an *inversion* of traditional justice.

This has produced several major social consequences, all mutually reinforcing.

The criminal justice system began supplanting punishment with leniency and "rehabilitation." As early as 1949, the U.S. Supreme Court stated that retribution was "no longer the dominant objective of the criminal law," and was to be replaced by "reformation and rehabilitation."[6] Soon, police were also handcuffed by new court rulings favoring criminal suspects who, even if convicted, were quickly recycled into society. Meanwhile, redistributionist social spending programs abounded, punishing productivity, thrift, honesty, independence, *responsibility*—while rewarding idleness, profligacy, chiseling, parasitism, *irresponsibility*.[7] To make matters worse, such programs also diverted badly needed funds from the criminal justice system.

Today's justice system is an afterthought in governmental spending priorities. According to the American Bar Association, "The entire criminal justice system is starved for resources. Less than 3% of all government spending in the United States went to support all civil and criminal justice activities in fiscal 1985. This compares with 20.8% for social insurance payments, 18.3% for national defense and international relations, and 10.9% for interest on debt. Less than 1% of all government spending went into operation of the Nation's correctional system (including jails, prisons, probation, and parole)."[8]

Thanks chiefly to the Excuse-Making Industry, police are underfunded and undermanned to face the ever-mounting crime wave; court dockets are flooded with impossible caseloads; jails and prisons are filled to overflowing. This puts pressure on the entire system to incarcerate as few criminals as possible, and to release them as quickly as possible. Thus, the Excuse-Making Industry has undermined the system both morally and practically.

Subverting the Quest for Truth

Since the premise of the Excuse-Makers is that "the criminal is a social victim," they see Constitutional rights *not* as a shield to protect the innocent from predators, but as a buffer between a "victimized" criminal class and the "injustice" of punishment. Byzantine procedural formalities, purportedly to guarantee the "rights" of the accused, now take precedence over the quest for simple truth and justice.

Confessions: The Miranda Decision[9]

On June 13, 1966, by a 5-4 decision, the United States Supreme Court rendered its now-famous *Miranda* v. *Arizona* decision. Supposedly based on the Fifth Amendment to the U.S. Constitution, which states that "No person . . . shall be compelled in any criminal case to be a witness against himself," Miranda twisted these simple words beyond recognition.

The Court held that even *voluntary, uncoerced* confessions by a suspect in police custody would no longer be admissible as evidence, unless the police first warned him that (1) he had the right to remain silent, (2) anything he said might be used against him in court, (3) he had the immediate right to a lawyer, and (4) he could get a free lawyer if he couldn't afford one. The suspect then had to

expressly waive those rights before any questioning could proceed. Should police make the slightest omission or error in this ritual, any evidence they get can be thrown out, and the suspect can "walk."

In this single decision, four veteran criminals, convicted after voluntarily confessing to separate crimes, had their convictions overturned. The first was a three-time convict who admitted to a robbery after being identified by two victims. The second forged stolen checks from a purse-snatching in which the victim was killed. The third, a veteran bank robber, confessed after being told of his rights, but didn't *explicitly* waive them first. The fourth, arrested for kidnapping and rape, was identified by his victim, and later confessed "with full knowledge of my legal rights, understanding that any statement I make may be used against me." He hadn't, however, been formally advised of his right to have a lawyer present.

Even though these confessions weren't "involuntary in traditional terms," wrote Chief Justice Earl Warren for the majority, "in none of these cases did the officers undertake to afford the appropriate safeguards . . . to insure that the statements were truly the product of a free choice."

By what convoluted reasoning could such voluntary admissions be construed to be coerced? According to the Court's majority opinion, "In each of the cases, the defendant was thrust into an *unfamiliar atmosphere* and run through *menacing* police interrogation procedures. The *potentiality* for compulsion is forcefully apparent, for example . . . where the *indigent Mexican defendant* was a seriously disturbed individual with pronounced sexual fantasies [author's note: the man had been judged mentally competent to stand trial], and [where] the defendant was an *indigent Los Angeles Negro* who had dropped out of school in the sixth grade." [Emphasis added]

This is the deterministic language of the Excuse-Maker, brimming with thinly veiled editorials about poverty and racism, regarding even a *confessed criminal* as a helpless pawn of social pressures. (By contrast, the rape victim was coldly described as "the complaining witness.")

As for the remark about "menacing police interrogation procedures," the Court admitted that, "To be sure, the records do not evince overt physical coercion or patent psychological ploys." So, what was coercive? Dissenting Justice Byron White angrily noted, " . . . in the Court's view in-custody interrogation is *inherently* coercive. . . . " [Emphasis added] Observe the deterministic premise: we must assume that the suspect had little or no free will, and that his confession was thus involuntary, unless police somehow proved otherwise.

Often a suspect, feeling guilty or anxious, wants to unburden himself. Thanks to *Miranda*, at that point police are obliged to buck up his flagging courage and nagging conscience with repeated reassurances about his right *not* to cooperate. Justice John Harlan, another *Miranda* dissenter, protested that "the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim, in short, is toward 'voluntariness' in a utopian sense. . . . One is entitled to feel astonished that the Constitution can be read to produce this result."

Furthermore—as the Court noted in subsequent cases—*Miranda* not only prohibited direct questioning without the suspect's prior permission, but also banned even indirect comments between police officers in his presence which were "reasonably likely to elicit an incriminating response." Any oblique police "appeal to . . . 'decency and honor' " in the suspect, charged Justice Thurgood Marshall, was "a classic interrogation technique." This is a perfectly logical outgrowth of the determinist premise. Since the suspect is presumed to be powerless in the face of his emotions, any appeal to these omnipotent emotions is itself "coercive." Thus, the Excuse-Makers construe the Constitution as protecting a criminal *even from his own guilty conscience.*

Miranda dissenter Justice White warned at the time, "In some unknown number of cases, the Court's rule will return a killer, a rapist or other criminal to the streets . . . to repeat his crime whenever it pleases him." That, of course, is precisely what has happened.

In late 1968, the suspected murderer of a missing ten-year-old girl was warned five separate times of his *Miranda* rights, and remained

silent. Later, on a drive with the police, one officer remarked that the girl's parents would be relieved if they could find her body, and give her a "good Christian burial." The suspect, feeling guilty, then offered to lead them to the child's body, and was later convicted of murder. But the Supreme Court—again by a slim 5-4 vote—ruled that the policeman's statement amounted to unwanted interrogation, and that the case had to be retried. (Thanks to this ruling, the case was not resolved for over 15 years.)[10]

In California, a man beat a college co-ed to death. Read his *Miranda* rights, including his right to have a lawyer present, he waived them all and confessed. Yet a California appeals court threw out his conviction, because when arrested he hadn't been allowed to consult *his mother.*[11]

In Pennsylvania, a man who admitted clubbing to death his mother, sister, and grandmother was set free, because the arresting officer told him that anything he said could be used "for or against" him. The court ruled that the word "for" made the confession inadmissible.[12]

In Texas, a girl was shot dead after agreeing to testify in a drug case. The suspect refused a lawyer, but was assigned one anyway. Read his *Miranda* rights, he again refused a lawyer. He chose to plea bargain, signed a detailed confession, and took police to the murder site. Despite this, a judge, citing Supreme Court decisions, threw out his confession—*because no lawyer had been present.*[13]

The cost of such procedural utopianism is incalculable: it lies not just in convictions dismissed and overturned, but in confessions never made. Forty percent of murder convictions depend upon voluntary confessions by the perpetrator.[14] It is crucial, then, that police be allowed to ask questions without first begging the suspect's permission and encouraging his resistance. Yet *Miranda* equates "questions" with "coercion."

A reconstituted Supreme Court returned partly to its senses in 1984. Its *Quarles* decision exempted police from having to give *Miranda* warnings in situations where there was an immediate danger to the public, and found that confessions obtained under such circumstances could stand in court.[15] But *Miranda* itself remains, an infamous legal legacy of the Excuse-Making Industry, and a major impediment to the pursuit of truth.

Evidence: Exclusionary Rules

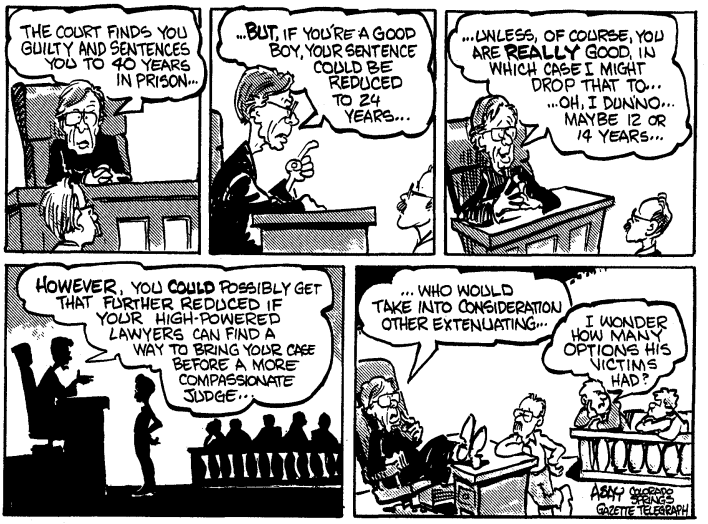
Not only may confessions be excluded from criminal proceedings: so may any other sort of evidence.

The Fourth Amendment requires that only on "probable cause" may search warrants be issued, specifying the place to be searched, and the evidence sought. However, until 1914, even evidence illegally seized could be used in a criminal trial. That year, the Supreme Court ruled otherwise, and in 1961 (*Mapp* v. *Ohio*) extended the Federal exclusionary rule to the states.[16]

The consequences have been appalling. The Bureau of Justice Statistics and National Institute of Justice estimated in 1983 that up to 55,000 serious criminal cases are dropped annually, thanks to the exclusionary rule. These released criminals are free to prey on innocents again: half of those set loose on exclusionary-rule grounds have been rearrested within two years.[17]

In 1964, a 14-year-old girl was brutally murdered in New Hampshire. Finding the bullet had come from a rifle of the prime suspect, police went to the state attorney general who, under then-existing law, was authorized to issue search warrants. With this warrant, they found further incriminating evidence, and the suspect was tried and convicted. Seven years later, however, the U.S. Supreme Court reversed his conviction, on grounds that the attorney general, as a prosecutor, was not a neutral judicial party. Since his search warrant was invalid, the incriminating evidence from the search had to be thrown out, too. Here, police "erred" due to good-faith obedience to existing law; but—as Supreme Court Justice Benjamin Cardozo had once noted—"The criminal is to go free because the constable has blundered."[18]

As in the case of *Miranda* confessions, the Supreme Court, in 1984, finally allowed some "good-faith" exceptions to search-and-seizure exclusionary rules. But that did not prevent it



from allowing the guilty to escape in other cases.

A bullet fired through the floor of a squalid Phoenix apartment struck a man below. Entering the suspect's apartment, investigating officers found three weapons, a stocking mask, and two sets of expensive stereo equipment. Common sense warranted suspicion, and an officer lifted a turntable to get the serial number. Routine checking confirmed that these were, indeed, stolen items, and they were seized as evidence.

However, Arizona courts ruled that, though police had the right to enter when responding to the shooting, they did not have the right to seize the stereos, *since these were unrelated to the gunfire.* Had their serial numbers been in plain view, the evidence would have been admissible; but *touching* them violated the suspect's Fourth Amendment rights. In 1987, the Supreme Court upheld this decision by a 6-3 vote.[19]

Justice Hugo Black once wrote that such decisions seemed "calculated to make many good people believe our Court actually enjoys frustrating justice by unnecessarily turning professional criminals loose to prey upon society with impunity." He had a point.[20] After all, the purpose of the courts is to determine truth and administer *justice.* That can't happen if *facts* —however obtained—are selectively excluded from fact-finding proceedings. Yet because the Excuse-Making Industry regards those "driven" to crime as victims, matters of truth and justice are subordinated to a complex procedural etiquette whose alleged purpose is to "level the playing field." The substantive *ends* of the justice system must be sacrificed to new procedural *means* —means to a new *egalitarian* end.

In this light, exclusionary rules and the *Miranda* decision may be viewed as having the same purpose as "affirmative action" rules: to tip the balance scales of "social justice" on behalf of a class of presumed social victims. And, if the *facts* of a given case interfere with that agenda, every effort must be made to *exclude* them from the courtroom.

Subverting the Quest for Justice

Bail and Release on Recognizance

At his arrest or his initial appearance on charges, a suspect may be released on his own recognizance or on bail (assuming charges aren't dismissed outright). In many jurisdictions, a judge can deny bail if a suspect has a criminal record, or seems to pose a danger to the community. In the rest, he can hold the suspect without bail only if there is substantial doubt he'll return for trial. But due to overcrowded cells—and the protests of Excuse-Making "civil liberties" attorneys—many

judges try to minimize the number of criminals held for trial in jail. This often means absurdly dangerous leniency.

Consider a typical case, that of career criminal Philip J. DiCarlo. Wanted on numerous felony warrants in Massachusetts, he was arrested on separate charges in Florida, but freed on only $2,626 bail. He finally surrendered to Massachusetts authorities. In exchange for a guilty plea, DiCarlo bargained 15 felony burglary charges down to only 8 counts, and got a sentence allowing parole eligibility after only two years. Despite being warned of the man's 20-year adult criminal record, the judge then postponed the imposition of the sentence, and freed DiCarlo on his own recognizance *so that he could be with his family* for the holidays. Showing more common sense than the judge, DiCarlo promptly skipped town.[21]

Other bail incidents are no laughing matter. Despite convictions for two murders, two armed robberies, and an assault, Jerold Green of Philadelphia was nonetheless released on bail while appealing the second homicide verdict. After losing his appeal, Green didn't bother reporting to prison. Instead, while being hunted, he committed a third murder.[22]

Or take the case of Steven Judy, imprisoned after three violent crimes involving kidnapping and stabbing during the 1970s. Paroled, he soon committed another robbery—yet was still granted bail. While free, he murdered an Indiana woman and her three children.[23]

Such incidents aren't rare. The U.S. Justice Department reports thirty-five percent of those with serious criminal records, and who are freed on bail, either violate their release conditions, fail to reappear for trial, or are arrested for new crimes during the bail period. And this statistic includes only *known* violations.[24]

Excuse-Making "civil libertarians" argue that the rights of suspects to be freed on bail may be denied based only on "speculation" about their criminal tendencies.[25] But as the examples and statistics show, the danger of releasing career criminals is no matter of mere speculation. Career felons should *never* be released on recognizance, or bail. Bail is *not* a fundamental human right, or an end in itself: it's a means to an end. Like the right to vote, it's only a contextual, *procedural* right, whose purpose is to secure the *substantive* rights of life, liberty, and property.

Everything said about excluding evidence and confessions applies equally here. To defend bail for proven predators as some fundamental right is to subordinate the system's *ends* to its *means*. Judging a man by his past record is both wise and just; and a chronic criminal can claim no "right" to be judged otherwise. This point, however, is lost on those who hold the deterministic, "criminal-as-victim" premise.

Plea Bargaining

In Nevada, a man killed his girlfriend by forcing a large quantity of bourbon down her throat. A good case could have been made for premeditated murder, or at least second-degree homicide. But, in a plea bargain deal, the court allowed the defendant to plead guilty to a reduced charge of *involuntary manslaughter*. In exchange, he received a mere three-year sentence, and was released after only 22 months.[26]

In a 1981 courtroom deal, a Massachusetts man pled guilty to a charge of raping a female jogger. In return, he was sentenced to 10 years at Concord Reformatory, a sentence which meant a minimum of only *one year* to be actually served. But by the terms of his plea bargain arrangement, he spent only *three days* in jail before being transferred to a halfway house. That surely taught him an encouraging lesson about the justice system. In 1984, he was arrested for burglary and another rape—and became the prime suspect in seven other attacks on women.[27]

Or consider the young Wisconsin man who confessed to three armed robberies of savings and loan companies. A plea bargain deal placed this dangerous, repeat felon on probation for his full sentence, sending him instead to a "work release" program at the Milwaukee House of Correction. While serving this "sentence," he was driven around town by social workers, allegedly to find a job. Instead, he brazenly robbed two more savings and loan branches. Four days after being released from the program, he robbed yet another.[28]

These are but a few examples of the thousands of sentencing outrages occurring daily throughout the nation. *If* a criminal is finally arrested after a string of offenses, and *if* the prosecutor decides to accept the case, and *if* police evidence isn't thrown out on "exclusionary rule" grounds—then the criminal's next way to evade justice is to "cop a plea." Today, 80 to 90 percent of all convictions stem from pre-trial guilty pleas, invariably to reduced charges, negotiated between prosecutors and defense attorneys, and rubber-stamped by judges.[29]

Such cynical maneuvers allow criminals to evade the full penalties of their crimes by receiving reduced punishment or probation; permit lazy prosecutors to enhance their political careers by boasting of high "conviction rates"; let defense attorneys quickly handle a large number of clients (and collect a large number of fees) without ever having to prepare for trial; and (allegedly) help harried judges quickly clear clogged court calendars and jammed jails. It's the triumph of expediency over justice. Everyone leaves the courtroom smiling—except for the crime victims, who, ignored in the proceedings, look on in shocked disbelief and rage, realizing that they have just been mugged again.[30]

As Wisconsin Circuit Court Judge Ralph Adam Fine observes, plea bargaining is essentially a bribe to the defendant, a "payoff for a guilty plea,"[31] to entice him not to bother everyone with a trial. As a reward, a rape charge may be reduced (usually without the victim's knowledge or consent) to mere "assault and battery"; and multiple crimes (say, breaking-and-entering, assault, and robbery) may be combined into a single charge (e.g.,"assault"). Once the deceit starts, there's no end to it—as in the routine courtroom trick called "swallowing the gun," i.e., reducing an armed-robbery charge to unarmed robbery, by simply *ignoring* the use of a gun in the crime.[32] Finally, even the sentences meted out for the remaining reduced charges are usually softened. Multiple sentences often are allowed to be served concurrently, rather than consecutively, letting the criminal pay only once for several offenses; or, with the complicity of a prosecutor, a "first offender" (i.e., one whose carefully edited record is presented to seem innocuous) may "walk" on a suspended sentence and probation.

The flip side is that the defendant is often made to understand that, should he plead innocent and lose in court, the prosecutor and judge will punish him with *harsher* sentences than he would have gotten if he had "gone along." In this way, even innocent people are sometimes bullied into a guilty plea, and are denied their day in court.

Plea bargaining falsifies the defendant's true criminal record. In the case of the innocent defendant, it gives him the taint of a conviction he doesn't deserve. In the (far more usual) case of a guilty defendant, it makes him look less menacing than he really is, and more worthy of further "breaks" from the next judge he sees.

This, of course, is a clear incentive to criminality. "Should we be surprised," asked former Chief Justice Warren E. Burger, "if the word gets around . . . that you can commit two or three crimes for the price of only one?"[33] The U.S. National Advisory Commission on Criminal Justice Standards and Goals concluded in 1973 that "plea bargaining results in leniency that reduces the deterrent impact of the law." Today, it's also a ruse by which judges and lawyers skirt the tough sentencing requirements of new mandatory sentencing laws for repeat offenders. Prosecutors don't bother telling the judge about a repeat offender's prior record, and the judge doesn't ask. Or, charges are simply reduced in advance, to compensate for the harsher penalties mandated by the actual offense.[34]

In 1971, the U.S. Supreme Court put its imprimatur on this cynical practice, calling plea bargaining "an essential component of the administration of justice. . . . If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities." The practice, echoes the American Bar Association, "saves time and conserves resources which can be applied to other pending cases."[35]

But that is nonsense. In 1975, the state of Alaska's attorney general ordered an end to all plea bargaining. Other jurisdictions, such as New Orleans and Pontiac, Michigan, have also

rejected it. They all found that there was no sudden tidal wave of "not guilty" pleas, requiring a trial and swamping the system. In fact, as the National Institute of Justice discovered in a 1980 investigation of the Alaska experiment, "Guilty pleas continued to flow in at nearly undiminished rates. Most defendants pled guilty even when the state offered them nothing in exchange for their cooperation." Contrary to expectations, cases were actually processed *more rapidly* in each major jurisdiction, and sentences were more severe. As one prosecutor put it, "I was spending probably one third of my time arguing with defense attorneys. Now we have a smarter use of our time."[36]

The key was for prosecutors to screen cases carefully *before* defendants were charged. Faced with air-tight cases against them, guilty defendants simply threw in the towel and pled guilty, anyway. In addition, ending plea bargaining put responsibility back into every level of the system: police did better investigating; prosecutors and lawyers began preparing their cases better; lazy judges were compelled to spend more time in court and control their calendars more efficiently. Most importantly, *justice* was served—and criminals began to realize that they could not continue their arrogant manipulation of a paper-tiger court system.

Tough prosecution and sentencing does *not* clog the court system: *it deters crime from occurring in the first place.* Since repeat offenders commit most of the crime, careful case screening and "no-deals" prosecution tend to incapacitate a greater percentage of this group for longer periods—and thus actually *reduce* caseloads in the long run.

That's the practical side. But more basic is the moral issue: Should the victims of these criminals expect anything less from our system of justice? And should the Excuse-Making Industry be allowed to thwart justice by corrupting the system?

Competency Hearings and Insanity Defenses

The hijacker of a New Orleans bus was found incompetent to stand trial, thanks to psychiatric testimony. Instead of incarceration, he was released. Fifteen months later, he was back in court—for dismembering his roommate.

A former Connecticut policeman killed his wife, but, due to "expert" psychiatric testimony, was acquitted of murder charges on the ground of insanity. He spent only three months under psychiatric treatment. Five years later, he was arrested once more—for killing his second wife.[37]

But for irony worthy of Hitchcock, the tale of serial killer Edward Kemper can't be topped. After shooting both his grandparents as a teenager, Kemper spent the next four years in a mental hospital. In 1969, he was returned to the California Youth Authority, whose "experts" disputed the court psychiatrist's diagnosis and paroled him to his mother. Later, Kemper was examined by two parole psychiatrists, who recommended that his juvenile records be sealed to let him live a "normal" adult life. One of them wrote: "I see no psychiatric reason to consider him to be a danger to himself or any other member of society." Yet at that very moment, out in their parking lot, in the trunk of Kemper's car, was the corpse of his third female murder victim that year.

Due to their "expertise," there would soon be five more.[38]

These cases graphically demonstrate that psychiatry cannot really judge the sanity of criminal defendants, let alone predict their future danger to society. Yet psychiatrists play a major role in the criminal justice system. They testify concerning a defendant's "state of mind" at the time of his crime; judge whether he can grasp the charges against him and assist in his own legal defense; decide (if he's committed to a mental hospital) when he's "cured" and "safe" to return to society. By their "expert" testimony in competency hearings, and in "insanity" and "diminished capacity" defenses, they frequently help dangerous criminals escape the wheels of justice.

Criminals found "insane" spend, on average, far less time in custody than do those sent to prison for the same offenses. In New York from 1965-1976, those acquitted of murder by reason of insanity, and subsequently released from mental hospitals, spent an average of less

than a year and a half in custody. (One murderer spent just *one day* in a hospital.) Similarly, New Jersey murderers found insane were released, on average, in just two years. In Florida, those released from mental hospitals following first-degree murder acquittals spent fewer than three years in psychiatric custody; by contrast, those convicted and sent to prison spent nearly ten years in confinement. Meanwhile, other studies have found that over a third of released criminal patients are rearrested.[39]

Stories of how clever criminals manipulate psychiatrists are legendary. In *Two of a Kind* —a brilliant, harrowing account of the "Hillside Strangler" case—author Darcy O'Brien shows how cold-blooded serial killer Ken Bianchi fooled three prominent psychiatrists by feigning a "multiple personality" disorder. Had he been successful, he would have been sent to a mental hospital instead of prison, staged a miraculous "recovery," and soon have been released to prey again on young women. But even after a hypnosis expert proved that Bianchi had faked his hypnosis sessions and multiple personalities, the psychiatrists (though not the judge) remained stubbornly convinced that their "insanity" diagnoses had been correct.[40]

Perhaps the most egregious case is that of Thomas Vanda. In 1971, he murdered a 15-year-old girl, but was found "not guilty by reason of insanity" and sent to a mental institution. Released only nine months later, Vanda was soon arrested for the stabbing death of a 25-year-old woman. While in custody, he wrote another jailed murder suspect, advising him how to fake insanity. Vanda told him to offer bizarre interpretations of the famous Rorschach "inkblot test," to feign "hearing voices" that "told you to do your crime," and to "act crazy in front of the staff." A Chicago psychiatrist had already judged Vanda legally insane for the second murder. Shown Vanda's letter, he *still* insisted he had no cause to alter his finding.[41]

After psychiatrist Stanton Samenow and an associate studied dozens of people acquitted under the insanity defense, they concluded that most of them "aren't crazy at all. . . . They were rational, purposeful and deliberate in what they did. But they were very astute at conning the system, the courts, the psychiatrists and the hospital into believing that they were mentally ill, thereby beating the charge."[42]

Samenow, who has spent years studying criminals first-hand, also dismisses the idea that even the perpetrators of ghastly crimes operate under an "irresistible impulse" or compulsion. "What is habitual is not necessarily compulsive and beyond one's control," he warns. "Behind the appearance of uncontrollable impulse lies the stark reality of the offender's *calculating* and proficient method of operating. . . . From my clinical observations, I have concluded that 'kleptomaniacs' and 'pyromaniacs' are simply people who enjoy stealing or setting fires." (As another observer put it, a crime may be sickening, but not necessarily "sick.")[43]

Samenow also cites the example of "Son of Sam" serial killer David Berkowitz. After capture, Berkowitz claimed that demons were talking to him through a dog, and had ordered him to kill. Later, he acknowledged he'd been faking insanity. "There were no real demons, no talking dogs, no satanic henchmen. I made it all up via my wild imagination so as to find some form of justification for my criminal acts against society."[44]

Several courtroom outrages, however, have prompted a new look at the validity of psychiatric involvement in the legal system. One was the infamous diminished capacity, "Twinkie" defense of Dan White, who shot San Francisco's mayor and a city superintendent in 1978. Despite abundant evidence of premeditation,[45] the jury accepted psychiatric testimony that (among other excuses) White's mental control was impaired because of eating junk food. They found him guilty only of involuntary manslaughter. The other major outrage was the murder acquittal of would-be presidential assassin John Hinckley "by reason of insanity." This led to a reform of Federal law. Before then, prosecutors had to *prove the defendant sane*; now, the defense must prove him insane.

But even this doesn't get to the heart of the matter. Psychiatrist Lee Coleman warns that "psychiatrists do not have the tools that society

thinks they have. They have no special way of predicting who will commit a criminal act or of determining when a criminal is cured of antisocial tendencies. They have no tests to determine a person's innermost thoughts, even though the courts assume they do." He argues that "psychiatry should be stripped of its state-given powers," by banning psychiatric testimony in legal proceedings, as well as abolishing the "insanity" and "diminished capacity" defenses.[46]

This does *not* mean that judges and juries would be spared the legal task of determining *criminal intent*; only that "in determining what, if any, criminal intent was present, and in deciding punishment, [they] need no help from psychiatrists. . . . A decision on intent should be based on the factual evidence surrounding the crime." A defense attorney would still be free to argue that the defendant was in an impaired mental state during his crime. But evidence would be limited to fact-based testimony of witnesses, citing the defendant's bizarre or irrational statements and behavior.[47] It would *not* include fanciful theoretical speculations by Excuse-Making "experts," using ink blots and word-association "tests" to decipher the alleged impact of junk food or an over-possessive mother on the defendant's presumed mental state.

This is a common-sense approach to putting objectivity and responsibility back into criminal proceedings.

Probation and Parole

Parole is the release of a convict, under periodic supervision, after he has served only a portion of his sentence. Probation is the conditional release of an individual found guilty of a crime, as an alternative to incarceration, also usually under periodic supervision. Both are used routinely, and both are progeny of the Excuse-Making Industry.

As one criminology text puts it: "Parole can be considered as an extension of the *rehabilitative (and now, reintegrative) program of the prison*. . . . If prisons are, in fact, to be concerned with modifying criminal behavior so that the offender can eventually be reintegrated into society, parole is also supposed to provide the supervision and assistance that makes successful reintegration possible." [Emphasis in original][48]

A measure of that "success" lies in the dismally high rates of inmate recidivism (i.e., percentages of inmates who commit subsequent crimes after release). A Rand Corporation study found that about half of those sentenced to probation in California were convicted of another crime within three years.[49] And "success rates for probation," concede its backers, "are generally considerably higher than for parole."[50] The Bureau of Justice Statistics released a 1985 study showing that 42 percent of inmates arriving at state prisons were on parole or probation for an earlier conviction at their time of arrival. Twenty-eight percent of these would still have been in prison for the earlier offense, had they served out the maximum term to which they were sentenced.[51] This means, of course, that thousands of people were needlessly subjected to robbery, assault, even murder, through the early parole and probation releases of convicted felons.

One example symbolizes them all. Larry Gene Bell had been involved in abnormal sexual incidents since he was a child. In 1975, at age 26, he tried to force a young housewife into his car at knifepoint. Bell plea bargained a deal to avoid prison by undergoing psychiatric treatment. He quit after two visits. Five months later, Bell tried to force a co-ed into his car at gunpoint. A psychiatrist recommended mental hospitalization, but Bell got a five-year prison sentence instead. However, after just 21 months, Bell was released on parole.

Later, on probation, he terrorized a little girl and her mother with obscene phone calls. Result: another plea bargain, and more probation, with orders to see a psychiatrist. He again stopped treatment after a short time. The climax came in 1985, when Bell kidnapped, sexually assaulted, then murdered two young girls. He's now linked to the case of another missing woman, and suspected in the deaths of three more.[52]

Here we see many tools of the Excuse-Making Industry in action: plea bargaining, psychiatric defenses, early parole, suspended sentences, and probation. And we see the terrible price such policies regularly exact.[53]

The ideological origins of parole and probation are obvious. There are also pragmatic, cynical considerations motivating their proponents.

Probation is the routine sentence for any first offender, often regardless of the severity of the crime. As in the example above, it's frequently "imposed" even in subsequent offenses. The reason? To free up overcrowded jail and prison cells. In 1985, for example, there were 503,300 state prison inmates and 255,000 Federal prisoners. In the same year, there were 277,400 people out on parole, and a whopping 1,870,100 on probation.[54]

There is an equally cynical reason for parole—namely, control of inmates. Parole is the handmaiden of "indeterminate sentencing" —sentences of indefinite length, with only the maximum specified. As the previously cited criminology text notes, the main reason underlying the development of parole in America was "shortened imprisonment as a reward for good conduct."[55] By holding out the carrot of an early release, and poising the stick of a full sentence over the inmate's head, prison authorities suppress inmate violence. In short, rather than risk the safety of the guards (and the warden's job) in prison uprisings, the prison bureaucrats prefer to risk the lives and property of the public with early releases.

Neither parole nor probation are justifiable, practically or morally. They are a demonstrable failure in reducing inmate recidivism. They undermine the deterrent impact of the law on criminals, while demoralizing crime victims with their outrageous leniency. Most important, they jeopardize public safety. Like the "inmate reintegration" programs to be discussed in the next installment, they amount to playing Russian Roulette with innocent human lives. □

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30. Fine offers an excellent summary of the plea bargaining "charade" in chapters 2-5.
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Private Property: In Need of Historic Preservation

by Lee Ownby

Almost everyone is saddened by the demolition of an old, historic building. But sometimes an old structure becomes the focus of a heated conflict between preservationists and those who wish to exercise their property rights. What is frightening in such a case is that many people fail to appreciate the importance of private property. This was clearly evident in my community when various groups were galvanized toward saving the Baker-Peters House, an antebellum home that had served as a popular restaurant.

The restaurant owners possessed a leasehold interest in the real estate coupled with an option to buy. They were under financial pressure to sell their interest rather than continue operating a restaurant in that location. Their realtors negotiated a deal with a national oil company to buy them out and construct a gas station—requiring the demolition of the old house and removal of two trees believed to be 200 years old. The major historical event that warranted the preservation of the old house—outside of its pre-Civil War architecture—was that it was where its owner, a doctor, had been killed by Union soldiers.

When the prospective sale was discovered, the public outcry was immediate; both the restaurant owners and the oil company were castigated for proposing a use contrary to the public will. Outraged citizens asked: Why wasn't there a municipal department charged with alerting the public any time a dwelling such as this was endangered? How could our public officials have failed to protect this important landmark from corporate greed? Letters to the editor, television interviews, and editorials were overwhelmingly uniform in their virulent condemnation of the consummation of a private contract. Very few spoke in defense of the property owners' right to dispose of their interest under terms acceptable to them.

Several proposals were put forward to preserve the landmark. The oil company could donate the house and land in its natural state and register it as an historic site. The company could rearrange its construction plans so as to avoid destroying the house and the trees. A third idea was to relocate the house on the same land or an adjoining tract, with the oil company providing most of the money for the move. Other suggestions included legislation restricting the property as an historical zone, and/or having the owners renounce their property interest and capital investment for the

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The Baker-Peters House LEE OWNBY

public benefit. Finally, the city passed an ordinance requiring a permit prior to the destruction of any old trees within 150 feet of an antebellum home.

Many sincere people believed that the various proposals offered rational courses of action. They denounced the desire to make a profit or suggested that any action other than preservation was a submission to the vice of greed. Most, however, saw no inconsistency in their hope to earn a profit when they sold their own homes.

The efforts to stop the demolition of the old house are a symptom of a growing problem—cultural or historical illiteracy. The goal of preserving historic landmarks is admirable, but the preservation shouldn't be at the expense of values which permitted the creation of an historic site in the first place.

The actions taken and suggested in this instance resembled those of a lynch mob from our not-too-distant past—ordinarily associated with the rather immediate denial of someone's civil rights without due process of law. The Fifth Amendment prohibits the taking of private property for public use without compensation. A disturbing aspect of this affair was the complete absence of this concept from any public discussion of the event. Many suggestions focused on what the oil company and/or the property owners could contribute for the public benefit. People just couldn't seem to grasp the idea of paying a market price to enjoy an aesthetic benefit.

It is ironic that this landmark—built in an era when most economic liberties were defended by law—today was defended by those who don't seem to recognize the importance of such liberties. In today's cultural environment, the elevation to virtue or the devolution to vice became synonymous with being for or against preservation of the house. That the issue was considered on these terms suggests that some of the values embodied in our Constitution have suffered serious erosion and are in desperate need of historical restoration. □

Private Preservation of Wildlife: A Visit to the South African Lowveld

by Nancy Seijas and Frank Vorhies

It is their three-inch eyelashes that give giraffes their sleepy, serene look. Giraffes blink slowly, their lashes sweeping gracefully down, and then gently back up. Out in the bush of South Africa, this is a common sight. In an area called the lowveld, giraffes stroll right across the road, with a languid, swaying stride that seems utterly relaxed.

Watching the giraffes go by in South Africa, it is dangerously easy to forget about apartheid and the ongoing struggle South Africa faces. Only for a moment, that is. The reality of apartheid cannot be ignored, but there are other aspects of this turbulent country. And there are valuable lessons to be learned.

South Africa's conservation of wildlife teaches one of these lessons. In South Africa, conservation is treated more or less as a business, in which government and the private sector compete. Kruger National Park, a game reserve the size of New Jersey, is owned and run by the South African government. Right on its border is a consortium of 20 smaller game parks, all privately owned. They receive no government funding, and are subject to no specific wildlife regulations.

South Africa is a country, one must remember, where the sphere of central government is even more vast than it is in the United States. Such broad political control has been the source of violent conflict for decades. In the case of wildlife conservation, depoliticization is clearly the solution for South Africa. Privately owned game reserves in South Africa are a model for private sector management of public goods.

These 20 private reserves in the lowveld are part of South Africa's eastern Transvaal region. Together, they comprise what is known as the SabiSand Wildtuin ("tuin" means "park" in Afrikaans). Among the individual owners, there is competition and sometimes animosity. But there is also order and respect. The parks are separate, but together; they are unified by the rules of their voluntary consortium, and by their reverence for the bush, the patchy foliated land of the lowveld. The bush may be the owners' livelihood, but it is also their love.

Back in the 1920s, big game like lion, rhino, and elephant roamed freely across the cattle ranches of the Transvaal Consolidated Lands, another ranch next door called Toulon, and an open stretch of land which was the original Sabi Game Reserve. At that point, the reserve was unoccupied. The Sabi and Sand Rivers ran through it, as did a train line called the Selati Railway. In 1927, a big-game hunter named W. A. Campbell bought several farms near the Sand River. For hunters like Campbell, buying up game-filled land was the only way to secure their sport. If they did not take the land, they knew that sooner or later the government would, for agriculture or for preservation.

More and more hunters began to follow suit, and hunting and cattle ranching became the principal occupations in this part of the eastern Transvaal. But by 1934, cattle ranching had

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fallen into decline; the manager of Transvaal Consolidated Lands died in 1932, and Toulon had closed down. The trend in the area was moving closer and closer toward wildlife preservation, but the big-game hunters still owned a great deal of the land.

The Transvaal Land Owners' Association

By the late 1930s, the hunters were looking for some way to cooperate formally, and to keep an eye on the unoccupied land in the area. To this end, they formed the Transvaal Land Owners' Association. When the TLOA started, there were eight member-owners, including the old Transvaal Consolidated Lands. They elected a ranger to preside over the association, and paid membership dues. Those dues financed projects like fences and efforts to combat disease among the animals.

When South African Railways fenced in the Selati line in the 1930s, animals began to get caught in the wire and break through. Consequently, the TLOA removed the fence. When hoof-and-mouth disease broke out in the area a little later on, the association cooperated again to eradicate it. At one point, the TLOA had to shoot 1,100 cattle in a single day.

In 1950, the landowners made their last step toward a completely private ownership scheme. They liquidated the TLOA, and created the SabiSand Wildtuin, or SSWT. Campbell became its first president, and served for 12 years until he died in 1962.

Campbell's death marked the end of an era. The image of the "great white hunter" is a caricature in South Africa now, a stereotype that many owners at SabiSand dislike and mock. Some hunting still goes on, but it is very limited. Its primary purpose is to finance the maintenance of the parks, through the sale of selected big game and the meat from more common species. The rules of the day have changed, from hunting wild animals to protecting them.

Here is the paradox of the SabiSand Wildtuin: it was born of the self-interest of hunters—white men who killed wild animals for sport and who had the money to buy a place to do so. Self-interest is still the motivating force behind the game parks today, but the nature of that interest has changed. Today, the SabiSand park owners want to provide a safe environment for the animals that roam there, and to make money by doing it. Now, it is protection of the animals that serves the owners' interests.

In the past, protecting those interests meant openly opposing apartheid. In 1940, the South African government placed two of the farms in the area under the Bantu Trust Act, the legislation that created homelands for South African blacks. By the 1960s, about one-third of the SSWT was considered "released area" under Bantu Act legislation. This meant that the central government could seize the land at its discretion to create "reserves" for black people. In 1963, the SSWT Executive Committee secured a verbal agreement from the Minister of Bantu Administration that their land would not be confiscated.

Now, the SSWT is relatively free from central government controls. There is a 75-mile fence separating the consortium from Kruger Park, so the SSWT cannot "benefit" from animals that would migrate across the borders of Kruger. There are no internal fences between the individual reserves. The wildebeest, warthog, impala, waterbuck, and kudu roam freely over 265 square miles of open land.

Notten's Bush Camp

Within this vast tract of land, individuals have separate homesteads. One of those homesteads is Notten's Bush Camp. It is owned by Dedrick and Gillian Notten—"Bambi" and Gilly to those who visit the camp. Visitors come to Notten's to experience life in the bush, for a price, of course. The Nottens' 2,000-acre "backyard" is their business.

The Nottens' land has been in Bambi's family for 20 years. A little over two years ago, Bambi left his job as a builder in Johannesburg, and the Nottens moved to the lowveld permanently. Their two sons are now in boarding schools, and visit the bush every other weekend.

Missing her boys is Gilly's only complaint about the move. She would love to have them live at home, but there is no school to which they could commute. And with a full-time fam-

Off on a run at Notten's Bush Camp.

ily, Bambi and Gilly couldn't run Notten's Bush Camp in the way they do.

The Nottens' guests do not just visit a game reserve. They enter Bambi and Gilly's home; they get to know the Nottens and their life. They watch their hosts experience the same wonder and joy at the wild animals of the bush, as if the Nottens themselves were first-time visitors. When Gilly tells stories of Johannesburg on the veranda, glancing over her shoulder at the land stretching out behind her, she just smiles. "The bush," she says, and pauses. That's her full answer to why she moved to the lowveld. "The simple life of the bush."

A typical day in that life starts at about 5 A.M., with tea and coffee in the "boma." The boma is a tall, maybe eight-foot circular wall, made of tied bamboo and reeds. It encloses a small area where the Nottens cook for their visitors, with a shallow pit in the center for hot embers, and a stone-and-mortar barbecue off to one side. There is no electricity at the camp, and only a small kitchen, so the boma sees a lot of use. Gilly and Bambi have a small boma of their own, attached to their private cottage.

After tea, Bambi takes the guests out for a "game run." Not only do the Nottens run their business out of their home, but Bambi drives their guests around the reserve in his car. It is a big green open-air Land-Rover, which Bambi occasionally takes on the highway to Johannesburg. It seats eight—that is all the Nottens will accommodate at their camp at one time. They are unique in this respect. The neighboring parks, like MalaMala and Londolozi, are much more "booming" businesses, with lavish hotel accommodations, fleets of Land-Rovers, and higher per-day prices.

A game run with Bambi is simply a drive through the bush, occasionally on the dirt roads and paths through the Nottens' land. Much of the time, Bambi just drives through the wilderness. With no fences, there is nothing "protecting" the visitors but their particularly human sound, look, and smell. However, that is no protection from a lion, an elephant, or—especially—a hippopotamus. If the lion is king of the jungle, the hippo is the grouch; it has a nasty disposition, and tourists have much more to fear from a disgruntled hippo than any other animal in the bush, lion included.

On all game runs, Bambi carries two things: a gun and a golf putter. The former, for protection; the latter, he says, just for walking. One suspects, however, that it is the other way around. To hear Bambi talk of the animals of the bush, and to see him identify the tiniest bird in the farthest tree, it is difficult to imag-

ine that reaching for his gun would be his reflex reaction to danger. Of course, Bambi would shoot an oncoming hippo, or lion, or rhinoceros if he were sure it was endangering the lives of his visitors. But after spending just a day or so with Bambi, one can't help thinking he just might reach for the putter first, and the gun second.

The Nottens are a unique couple. Bambi is not at all what his nickname would imply to Americans. He is a tall, burly man, with shaggy dark hair and a booming voice. Golf putter in hand, he strides through the bush, describing in detail the plants, the sounds, and the smells. One night, he spent 20 minutes studying a spider ensnaring a moth in her web, and giving blow-by-blow commentary to the visitors.

Gilly is equally fascinated with the bush. She will drive into the bush by herself, for peace and serenity among wild animals. Gillian Notten is the only woman in all the 20 private reserves who will venture into the bush alone, and take guests out herself.

Occasionally on the game runs, the Nottens will run into other Land-Rovers from neighboring reserves. The larger reserves in the consortium send out rovers to spot a pride of lions or family of cheetahs, and then radio back their location to the camp. If there are cheetahs in the area, MalaMala and Londolozi are sure to know.

According to Bambi, it is not often that three or four Land-Rovers pull up to the same spot, as quietly as four Land-Rovers can, to stare at a family of leopards or a herd of zebra. But when they do, it is a little disconcerting to a foreigner. All the drivers and passengers in the rovers are white, and there is always one black man riding on the hood or sitting in a high back seat. That man is the "tracker." In most cases, he comes from the eastern Transvaal, from the homeland Gazankulu or the area of Bushbok Ridge. He knows the bush, and can navigate through it easily and swiftly. He knows the marks different animals leave in the foliage, and he can spot tiny pinpoints of red or green light—the eyes of a civet, an impala, or a mongoose—in the pitch dark of night.

The relationship between Bambi and Joseph Matebula, the Nottens' tracker, is one of employer-and-employee, and of white-and-black-friends in an apartheid state. Joseph speaks little English, and Bambi does not speak Shangaan, Joseph's native language. They communicate in a language called Fana Ka Lo.

Fana Ka Lo

Fana Ka Lo is a source of controversy for many black South Africans. It is the mining language—the language invented so that white mine owners could communicate with black workers. Joseph worked in the mines for one month. Bambi translates when Joseph talks of the mines, or what he calls, in English, "the hole." The stories Joseph has from just one month are frightening, and he tells them with loathing in his eyes, and in the tone of his Fana Ka Lo.

For him and for Bambi, though, Fana Ka Lo does not seem to be the "language of oppression," as it is deemed in much of South Africa. They are friends. One morning, Bambi was looking for lion, discussing the tracks in the sand with Joseph, and asking what he thought were the chances of a sighting. Suddenly Joseph hopped off the rover and Bambi drove away. The visitors were stunned; surely, he couldn't have left Joseph to be preyed upon by lion . . . or could he? One of the guests raised a timid question, and Bambi glanced over his huge, broad shoulder and bellowed, "Ah, I've had enough of him. Leave him!" He stepped on the gas. Silence from the guests. Suddenly, Bambi burst out laughing. Joseph knows exactly what he is doing in the bush, Bambi explained. They were closer to the camp than anyone in the back of the rover could tell, and Joseph strolled in a minute or so after Bambi parked.

That was the end of a morning game run. Typically, then, activity grinds to a halt. As the heat begins to blaze in the eastern Transvaal, the animals in the bush head for shade, and most tourists begin to wilt. Another game run begins at about 4:30, and Bambi and Gilly load up a cooler to take along. Bambi's favorite rule is "first mammal, first beer." He'll bend it for those who prefer wine.

There are rules, however, that Bambi and Gilly cannot and will not bend. Those are the

intricate system of property rights that have evolved throughout the 20 private reserves. If Londolozi radios that there are cheetahs on the Nottens' land, only those who have negotiated driving rights with Bambi and Gilly may drive over to see. Owners of adjacent lands have made individual agreements as to who may drive where and when. Some borders are open, and some are not; MalaMala, for example, tends to keep to itself. It all depends on the preference of the owner, and those preferences are respected.

Who Owns the Animals?

Animal rights are a different story. Who owns the animals? Bambi replies with a question: "Well, who owns us?" The answer is that no one actually owns the inhabitants of the bush. There is a type of property right to big game: at any given time, owners have a property right to whatever animals happen to be on their land at that moment. They can sell or trade animals they "own" in this fashion, to zoos, perhaps, or other parks. Bambi traded one rhino, for example, for 20 tsessabe (a tsessabe, pronounced "chessabee," is a species of large buck, with curving, ridged horns).

It is not in an owner's interest to sell off animals extensively. The animals are the owner's livelihood, but only if they are healthy and thriving in a natural environment. That is what tourists want to see for themselves, and that is what people like Bambi and Gilly want to see for the animals. Ideally for each owner, the best natural environment falls within his or her own borders.

Once an animal crosses a border, someone else has a property right to it. More important, people will go to that reserve to see it. When a family of cheetah moved onto the Nottens' land, Bambi's guests wanted to go see them on foot. Surprisingly, animals are more frightened of human footsteps than the sound of a land rover. An engine makes a regular, low din, which animals get used to and "block out." Footsteps are irregular, easily recognizable, and much more menacing to hear. Bambi knew that footsteps might scare away the cheetah, and move them off his land. He anguished for a moment, then said, "All right. Let's go."

The result of this private property system is competition in creating the best habitat for the game. Periodically, Bambi and Gilly clear out patches of bush, or create a new water hole. They regulate the environment to suit the animals they want to attract. Yet, it is absolutely forbidden for owners to feed the animals, or even to set up salt licks. "Unfair" competition between owners is not the problem. Setting up salt licks and putting out extra food is "artificial," unnatural. It is unfair to the animals.

The feeding rule can be broken only if the owners agree that it is in the best interest of the animals involved. A few years ago, for example, a female cheetah severely wounded her foot in a poacher's trap. She was a mother of five cubs, who could not fend for themselves were she to die. The world would lose six members of an endangered species, and the SSWT would lose six of its main attractions. The owners decided to shoot reedbuck for the mother to eat. Bambi shot one, and the owners at Londolozi shot a few more. As soon as the mother was able to hunt again for herself, they stopped.

Are there any disadvantages to this system of private ownership? Of course, there are. The first is the ever-present possibility of "cheating" on the consortium arrangement. Individual owners can transgress driving rights. However, they are out driving in the bush every day, sometimes all day. They can "catch" each other easily. Owners also can shoot any animal they choose, even an endangered species, way out in the deep bush where no one can hear. According to Bambi, American tourists pay up to $10,000 to shoot rhinos. "It makes me sick, honestly, it makes me really sick," Gilly says.

There is simply no way to guarantee this will not happen in the SSWT. But, it doesn't happen very often. The kinds of people who go into this "business," on the whole, are people like Bambi and Gilly who love the bush, and respect the animals as their "neighbors."

The owners do engage, however, in a practice called "culling," which means cutting down the size of a herd that is overcrowding the bush. An overpopulated species endangers the ecological system the owners strive to balance. Only three species are culled: impala,

rhinoceros, and cape buffalo. All of them are "grazers," Bambi explains. They feed on the foliage of the land. The SSWT Executive Committee gives each owner a number to cull over the period of a year. They either keep the meat for themselves, or sell it at a reasonable rate to Gazankulu, or butchers in Bushbok Ridge.

The whole idea of culling gives Bambi no trouble, for he feels it is in the best interest of all. According to Gilly, the only problems start when the number of animals they are told to cull seems exceptionally high. The SSWT can accommodate 150 rhino, but there are roughly 120 in the area now. Last year they culled 10, but this year the number was 15. The number to cull is decided by the SSWT group, so if Bambi and Gilly disapprove, they must garner support from other members to influence the Committee's decision.

The other disadvantage of this private game reserve system is that it is more expensive to visit than Kruger Park, which is run by the state. There are all levels of hotel and camping accommodations at Kruger which add to its basic price, but the simple entry fee for a car is about $7.50. In Kruger, tourists drive their own cars along paved roads through the bush. Passengers may not get out of their vehicles, and they must exit the game area by sundown. At parks like MalaMala and Londolozi, the fee per day is $300 and above. At Nottens it is only $50 per person per night, including accommodations and Gilly's excellent cooking. There are four one-room cottages at Notten's Bush Camp, and they are immaculate. The lack of electricity is hardly noticeable, at least while one is sitting by the light of the fire in the boma sipping wine, and then gazing at the Southern Cross for a few minutes before going to bed.

All the cooking and cleaning is done for the guests by Bambi, Gilly, and their small staff. Guests must bring their own alcohol if they so choose, but the Nottens serve champagne and orange juice at breakfast. A three-day weekend of this—and of riding and walking in the bush among zebra, lion, cheetah, and kudu—will cost roughly $150.

Those who want a trip to the bush at the lowest cost possible go to Kruger Park for a day. Accommodations and meals are options and cost extra. The entry fee alone is what costs so little. At the private parks, visitors must take the "package deal" of all the services and accommodations that go with the initial price. The Nottens do charge a lower price if their guests choose to bring and cook their own food, but they may discontinue that option. Gilly finds it is more work for her when guests try to use her kitchen and cookware, than to do it all herself.

At Notten's Bush Camp, though, one can get close enough to a cheetah to hear her purr, and to see a bramble caught in the silky fur of her cub's underbelly. Guests may walk through the bush, or ride in an open Land-Rover at all hours of the day or night. One cannot do that at Kruger; the night curfew is a strict rule, and at no time may anyone get out of his or her car.

At Notten's Bush Camp, there are no pavement and no fence. The environment for the animals is more natural. Bambi's family has preserved it for 20 years, when they could have sold it for a massive profit.

Very few people expect that private individuals would be socially responsible enough to conserve wildlife voluntarily, especially with the loving care of people like Gilly and Bambi Notten. In the bush, the line between the Nottens' social responsibility and personal, self-interested desire is blurred. After getting to know the Nottens a little, which guests invariably do in the intimate, friendly setting they provide, it seems as if no such line exists.

Deep in the bush in the eastern Transvaal, far away from the turmoil emanating from Pretoria, politics seems immaterial. To be sure, there is conflict. There is also cooperation. The private game reserves have problems, but they also have solutions. So unlike the rest of the country, it almost feels as if there is no central government. The people and the wild animals in the bush don't seem to need one. □

A Tale of Two Revolutions

by Robert A. Peterson

The year 1989 marks the 200th anniversary of the French Revolution. To celebrate, the French government is throwing its biggest party in at least 100 years, to last all year. In the United States, an American Committee on the French Revolution has been set up to coordinate programs on this side of the Atlantic, emphasizing the theme, "France and America: Partners in Liberty."

But were the French and American Revolutions really similar? On the surface, there were parallels. Yet over the past two centuries, many observers have likened the American Revolution to the bloodless Glorious Revolution of 1688, while the French Revolution has been considered the forerunner of the many modern violent revolutions that have ended in totalitarianism. As the Russian naturalist, author, and soldier Prince Petr Kropotkin put it, "What we learn from the study of the Great [French] Revolution is that it was the source of all the present communist, anarchist, and socialist conceptions."[1]

It is because the French Revolution ended so violently that many Frenchmen are troubled about celebrating its 200th anniversary. French author Leon Daudet has written: "Commemorate the French Revolution? That's like celebrating the day you got scarlet fever." An Anti-89 Movement has even begun to sell mementos reminding today's Frenchmen of the excesses of the Revolution, including Royalist black armbands and calendars that mock the sacred dates of the French Revolution.

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The French should indeed be uneasy about their Revolution, for whereas the American Revolution brought forth a relatively free economy and limited government, the French Revolution brought forth first anarchy, then dictatorship.

Eighteenth-century France was the largest and most populous country in western Europe. Blessed with rich soil, natural resources, and a long and varied coastline, France was Europe's greatest power and the dominant culture on the continent. Unfortunately, like all the other countries of 18th-century Europe, France was saddled with the economic philosophy of mercantilism. By discouraging free trade with other countries, mercantilism kept the economies of the European nation-states in the doldrums, and their people in poverty.

Nevertheless, in 1774, King Louis XVI made a decision that could have prevented the French Revolution by breathing new life into the French economy: he appointed Physiocrat Robert Turgot as Controller General of Finance. The Physiocrats were a small band of followers of the French physician François Quesnay, whose economic prescriptions included reduced taxes, less regulation, the elimination of government-granted monopolies and internal tolls and tariffs—ideas that found their rallying cry in the famous slogan, "laissez-faire, laissez-passer."

The Physiocrats exerted a profound influence on Adam Smith, who had spent time in France in the 1760s and whose classic *The Wealth of Nations* embodied the Physiocratic attack on mercantilism and argued that nations

get rich by practicing free trade.[2] Of Smith, Turgot, and the Physiocrats, the great French statesman and author Frederic Bastiat (1801-1850) wrote: "The basis of their whole economic system may be truly said to lie in the principle of self-interest. . . . The only function of government according to this doctrine is to protect life, liberty, and property."[3]

Embracing the principle of free trade not just as a temporary expedient, but as a philosophy, Turgot got the king to sign an edict in January 1776 that abolished the monopolies and special privileges of the guilds, corporations, and trading companies. He also abolished the forced labor of the peasants on the roads, the hated *corvée*. He then dedicated himself to breaking down the internal tariffs within France. By limiting government expense, he was able to cut the budget by 60 million livres and reduce the interest on the national debt from 8.7 million livres to 3 million livres.

Had Turgot been allowed to pursue his policies of free trade and less government intervention, France might very well have become Europe's first "common market" and avoided violent revolution. A rising tide would have lifted all ships. Unfortunately for France and the cause of freedom, resistance from the Court and special interests proved too powerful, and Turgot was removed from office in 1776. "The dismissal of this great man," wrote Voltaire, "crushes me. . . . Since that fatal day, I have not followed anything . . . and am waiting patiently for someone to cut our throats."[4] Turgot's successors, following a mercantilist policy of government intervention, only made the French economy worse. In a desperate move to find money in the face of an uproar across the country and to re-establish harmony, Louis XVI agreed to convene the Estates-General for May 1789. Meanwhile, the king's new finance minister, Jacques Necker, a Swiss financial expert, delayed the effects of mercantilism by importing large amounts of grain.

On May 5, the Estates-General convened at Versailles. By June 17, the Third Estate had proclaimed itself the National Assembly. Three days later, the delegates took the famous Tennis Court Oath, vowing not to disband until France had a new constitution.

But the real French Revolution began not at Versailles but on the streets of Paris. On July 14, a Parisian mob attacked the old fortress known as the Bastille, liberating, as one pundit put it, "two fools, four forgers and a debaucher." The Bastille was no longer being used as a political prison, and Louis XVI had even made plans to destroy it. That made little difference to the mob, who were actually looking for weapons.

Promising the guards safe conduct if they surrendered, the leaders of the mob broke their word and hacked them to death. It would be the first of many broken promises. Soon the heads, torsos, and hands of the Bastille's former guardians were bobbing along the street on pikes. "In all," as historian Otto Scott put it, "a glorious victory of unarmed citizens over the forces of tyranny, or so the newspapers and history later said."[5] The French Revolution had begun.

Despite the bloodshed at the Bastille and the riots in Paris, there was some clear-headed thinking. Mirabeau wanted to keep the Crown but restrain it. "We need a government like England's," he said.[6] But the French not only hated things English, they even began to despise their own cultural heritage—the good as well as the bad. On October 5, the Assembly adopted the Declaration of the Rights of Man and the Citizen—a good document all right, but only if it were followed.

Twenty-eight days later, the Assembly showed they had no intention of doing so: all church property in France was confiscated by the government. It was the wrong way to go about creating a free society. Certainly the Church was responsible for some abuses, but seeking to build a free society by undermining property rights is like cutting down trees to grow a forest. Such confiscation only sets a precedent for further violation of property rights, which in turn violates individual rights—the very rights of man and the citizen the new government was so loudly proclaiming. By confiscating church property—no matter how justified—France's Revolutionary leaders showed that they weren't interested in a true free society, only in one created in the image of their own philosophers. As Bastiat later pointed out, they were among the modern world's first social engineers.

Soon France began to descend into an abyss in which it would remain for the next 25 years. In towns where royalist mayors were still popular, bands of men invaded town halls and killed city magistrates. Thousands of people sold their homes and fled the country, taking with them precious skills and human capital. François Babeuf, the first modern communist, created a Society of Equals dedicated to the abolition of private property and the destruction of all those who held property. The king's guards were eventually captured and killed. The Marquis de Sade, from whom we get the term sadism, was released from prison. The Paris Commune took over control of Paris.

Fiat Money Inflation

The actions of the government were even more radical than those of the people at large. In order to meet the continuing economic crisis, the Assembly resorted to paper money—the infamous assignats, backed ostensibly by the confiscated church property. Although most of the delegates were aware of the dangers of paper money, it was thought that if the government issued only a small amount—and that backed up by the confiscated property—the assignats would not create the kind of economic disaster that had accompanied the use of paper money in the past.

But as had happened again and again through history, the government proved unable to discipline itself. As Andrew Dickson White put it in his *Fiat Money Inflation in France*: "New issues of paper were then clamored for as more drams are demanded by a drunkard. New issues only increased the evil; capitalists were all the more reluctant to embark their money on such a sea of doubt. Workmen of all sorts were more and more thrown out of employment. Issue after issue of currency came; but no relief resulted save a momentary stimulus which aggravated the disease."[7]

Writing from England in 1790, long before the French inflation had done its worst, Edmund Burke saw the danger of fiat currency. According to Burke, issuing assignats was the government's pat answer to any problem: "Is there a debt which presses them? Issue assignats. Are compensations to be made or a maintenance decreed to those whom they have robbed of their free-hold in their office, or expelled from their profession? Assignats. Is a fleet to be fitted out? Assignats. . . . Are the old assignats depreciated at market? What is the remedy? Issue new assignats." The leaders of France, said Burke, were like quack doctors who urged the same remedy for every illness.

Burke saw in the French Revolution not a decrease in the power of the state, but an increase in it: "The establishment of a system of liberty would of course be supposed to give it [France's currency] new strength; and so it would actually have done if a system of liberty had been established." As for the confiscation of property—first that of the Catholic Church then that of anyone accused of being an enemy of the Revolution—Burke said: "Never did a state, in any case, enrich itself by the confiscation of the citizens."[8]

But the issuing of assignats was only the beginning. In the spring of 1792, the first Committee of Public Safety was established, charged with judging and punishing traitors. Soon the streets of Paris began to run with blood, as thousands of people were killed by the guillotine. The following fall, the French government announced that it was prepared to help subject peoples everywhere win their freedom. Thus, instead of peacefully exporting French products and French ideas on liberty, the French began exporting war and revolution . . . hence the saying, "When France sneezes, the whole world catches cold."

As more soldiers were needed to "liberate" the rest of Europe, France instituted history's first universal levy—the ultimate in state control over the lives of its citizens. Meanwhile, for opposing the Revolution, most of the city of Lyons was destroyed. And Lafayette, who at first had embraced the Revolution, was arrested as a traitor.

Stifling Controls

Soon a progressive income tax was passed, prices on grain were fixed, and the death penalty was meted out to those who refused to sell at the government's prices. Every citizen was required to carry an identity card issued by

his local commune, called, in an Orwellian twist of language, Certificates of Good Citizenship. Every house had to post an outside listing of its legal occupants; the Revolutionary Communes had committees that watched everyone in the neighborhood; and special passes were needed to travel from one city to another. The jails were soon filled with more people than they had been under Louis XVI. Eventually, there flooded forth such a torrent of laws that virtually every citizen was technically guilty of crimes against the state. The desire for absolute equality resulted in everyone's being addressed as "citizen," much as the modern-day Communist is referred to as "comrade."

Education was centralized and bureaucratized. The old traditions, dialects, and local allegiances that helped prevent centralization—and thus tyranny—were swept away as the Assembly placed a mathematical grid of departments, cantons, and municipalities on an unsuspecting France. Each department was to be run exactly as its neighbor. Since "differences" were aristocratic, plans were made to erase individual cultures, dialects, and customs. In order to accomplish this, teachers—paid by the state—began to teach a uniform language. Curriculum was controlled totally by the central government. Summing up this program, Saint-Just said, "Children belong to the State," and advocated taking boys from their families at the age of five.[9]

So much of modern statism—with all of its horror and disregard for individualism—began with the French Revolution. The "purge," the "commune," the color red as a symbol of statism, even the political terms Left, Right, and Center came to us from this period. The only thing that ended the carnage—inside France, at least—was "a man on horseback," Napoleon Bonaparte. The French Revolution had brought forth first anarchy, then statism, and finally, dictatorship. Had it not been for the indomitable spirit of the average Frenchman and France's position as the largest country in Western Europe, France might never have recovered.

Now contrast all of this with the American Revolution—more correctly called the War for Independence. The American Revolution was different because, as Irving Kristol has pointed out, it was "a mild and relatively bloodless revolution. A war was fought to be sure, and soldiers died in that war. But . . . there was none of the butchery which we have come to accept as a natural concomitant of revolutionary warfare. . . . There was no 'revolutionary justice'; there was no reign of terror; there were no bloodthirsty proclamations by the Continental Congress."[10]

A "Conservative Revolution"

The American Revolution was essentially a "conservative" movement, fought to conserve the freedoms America had painstakingly developed since the 1620s during the period of British "salutary neglect" — in reality, a period of laissez-faire government as far as the colonies were concerned. Samuel Eliot Morison has pointed out: "[T]he American Revolution was not fought to *obtain* freedom, but to *preserve* the liberties that Americans already had as colonials. Independence was no conscious goal, secretly nurtured in cellar or jungle by bearded conspirators, but a reluctant last resort, to preserve 'life, liberty, and the pursuit of happiness.' "[11]

A sense of restraint pervaded this whole period. In the Boston Tea Party, no one was hurt and no property was damaged save for the tea. One patriot even returned the next day to replace a lock on a sea chest that had been accidentally broken.[12] This was not the work of anarchists who wanted to destroy everything in their way, but of Englishmen who simply wanted a redress of grievances.

After the Boston Massacre, when the British soldiers who had fired upon the crowd were brought to trial, they were defended by American lawyers James Otis and John Adams. In any other "revolution," these men would have been calling for the deaths of the offending soldiers. Instead, they were defending them in court.

When the war finally began, it took over a year for the colonists to declare their independence. During that year, officers in the Continental Army still drank to "God save the King." When independence was finally declared, it was more out of desperation than careful planning, as the colonists sought help

from foreign nations, particularly the French. In the end, it was the French monarchy—not the Revolutionists, as they had not yet come to power—that helped America win its independence.

Through the seven years of the American war, there were no mass executions, no "reigns of terror," no rivers of blood flowing in the streets of America's cities. When a Congressman suggested to George Washington that he raid the countryside around Valley Forge to feed his starving troops, he flatly refused, saying that such an action would put him on the same level as the invaders.

Most revolutions consume those who start them; in France, Marat, Robespierre, and Danton all met violent deaths. But when Washington was offered a virtual dictatorship by some of his officers at Newburgh, New York, he resisted his natural impulse to take command and urged them to support the republican legislative process. Professor Andrew C. McLaughlin has pointed out: "To teach our youth and persuade ourselves that the heroes of the controversy were only those taking part in tea-parties and various acts of violence is to inculcate the belief that liberty and justice rest in the main upon lawless force. And yet as a matter of plain fact, the self-restraint of the colonists is the striking theme; and their success in actually establishing institutions under which we still live was a remarkable achievement. No one telling the truth about the Revolution will attempt to conceal the fact that there was disorder. . . . [yet] we find it marked on the whole by constructive political capacity."[13]

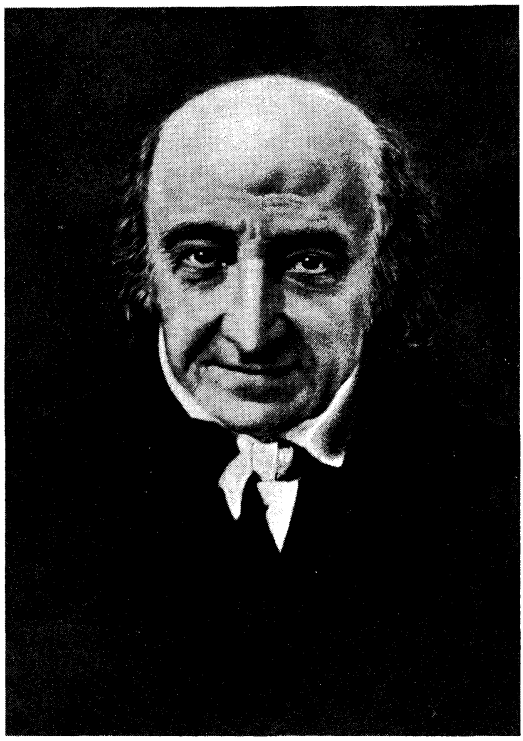
No Assault on Freedom of Religion

In America, unlike France, where religious dissenters were put to death, there was no wholesale assault on freedom of religion. At the Constitutional Convention in 1787, there were devout Congregationalists, Episcopalians, Dutch Reformed, Lutherans, Quakers, Presbyterians, Methodists, and Roman Catholics. Deist Ben Franklin asked for prayer during the Convention, while several months later George Washington spoke at a synagogue. During the Revolution, many members of the Continental Congress attended sermons preached by Presbyterian John Witherspoon, and while Thomas Jefferson worked to separate church and state in Virginia, he personally raised money to help pay the salaries of Anglican ministers who would lose their tax-supported paychecks. In matters of religion, the leaders of America's Revolution agreed to disagree.

Finally, unlike the French Revolution, the American Revolution brought forth what would become one of the world's freest societies. There were, of course, difficulties. During the "critical period" of American history, from 1783 to 1787, the 13 states acted as 13 separate nations, each levying import duties as it pleased. As far as New York was concerned, tariffs could be placed on New Jersey cider, produced across the river, as easily as on West Indian rum. The war had been won, but daily battles in the marketplace were being lost.

The U.S. Constitution changed all that by forbidding states to levy tariffs against one another. The result was, as John Chamberlain put it in his history of American business, "the greatest 'common market' in history."[14] The Constitution also sought to protect property rights, including rights to ideas (patents and copyrights) and beliefs (the First Amendment). For Madison, this was indeed the sole purpose of civil government. In 1792 he wrote: "Government is instituted to protect property of every sort. . . . This being the end of government, that alone is a *just* government which *impartially* secures to every man whatever is his *own*."[15] Alexander Hamilton, the first Secretary of the Treasury, helped restore faith in the public credit with his economic program. It was at his urging that the U.S. dollar was defined in terms of hard money—silver and gold. (At the Constitutional Convention, the delegates were so opposed to fiat paper money that Luther Martin of Maryland complained that they were "filled with paper money dread.")

Hamilton's centralizing tendencies would have been inappropriate at any other time in American history; but in the 1790s, his program helped 13 nations combine to form one United States. Had succeeding Treasury Secretaries continued Hamilton's course of strength-



COURTESY NATIONAL ARCHIVES

Albert Gallatin (1761–1849)

ening the federal government, at the expense of the states, America's economic expansion would have been stillborn.

Fortunately, when Jefferson came to power, he brought with him the Swiss financier and economist Albert Gallatin, who served Jefferson for two terms and Madison for one. Unlike his fellow countryman Necker, whose mercantilist policies only hastened the coming of the French Revolution, Gallatin was committed to limited government and free market economic policies. Setting the tone for his Administration, Jefferson said in his first inaugural address: "Still one thing more, fellow citizens—a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned."

For the next eight years, Jefferson and Gallatin worked to reduce the nation's debt as well as its taxes. The national debt was cut from $83 million to $57 million, and the number of Federal employees was reduced. Despite the restrictions on trade caused by Napoleon's Berlin and Milan decrees, and the British blockade of Europe, American businessmen continued to develop connections around the world. By the end of Jefferson's first term, he was able to ask, "What farmer, what mechanic, what laborer ever sees a tax gatherer in the United States?"[16] By 1810, America was well on its way to becoming the world's greatest economic power. France, meanwhile, still languished under the heavy hand of Napoleon.

In his Report to the House of Representatives that same year, Gallatin summed up the reasons for America's prosperity: "No cause... has perhaps more promoted in every respect the general prosperity of the United States than the absence of those systems of internal restrictions and monopoly which continue to disfigure the state of society in other countries. No law exists here directly or indirectly confining man to a particular occupation or place, or excluding any citizen from any branch he may at any time think proper to pursue. Industry is in every respect perfectly free and unfettered; every species of trade, commerce, art, profession, and manufacture being equally opened to all without requiring any previous regular apprenticeship, admission, or license."[17] The American Revolution was followed by 200 years of economic growth under the same government. By contrast, the French Revolution was followed by political instability, including three revolutions, a directorate, a Reign of Terror, a dictatorship, a restoration of the Bourbon Monarchy, another monarchy, and five republics. Today, socialism has a greater hold in France than it does in America—although America is not far behind. Even though they were close in time, it was the French Revolution that set the pattern for the Russian Revolution and other modern revolutions, not the American.

Bastiat's Opinion

Frederic Bastiat clearly saw the difference between the two. The French Revolution, he argued, was based on the idea of Rousseau that society is contrary to nature, and therefore must be radically changed. Because, according to Rousseau, the "social contract" had been violated early in man's history, it allowed all par-

ties to that contract to return to a state of "natural liberty." In essence, what Rousseau was saying was, "Sweep aside all the restraints of property and society, destroy the existing system. Then you will be free, free to lose yourself in the collective good of mankind, under my care."[18]

The social architects who emerged out of the chaos of the French Revolution included Robespierre and Napoleon. In his analysis of Robespierre, Bastiat said: "Note that when Robespierre demands a dictatorship, it is . . . to make his own moral principles prevail by means of terror. . . . Oh, you wretches! . . . You want to reform everything! Reform yourselves first! This will be enough of a task for you."[19]

In Bastiat's opinion, the French Revolution failed because it repudiated the very principles upon which a free society is based: self-government, property rights, free markets, and limited civil government. The American Revolution, however, brought forth the world's freest society: "Look at the United States," wrote Bastiat. "There is no country in the world where the law confines itself more rigorously to its proper role, which is to guarantee everyone's liberty and property. Accordingly, there is no country in which the social order seems to rest on a more stable foundation. . . . This is how they understand freedom and democracy in the United States. There each citizen is vigilant with a jealous care to remain his own master. It is by virtue of such freedom that the poor hope to emerge from poverty, and that the rich hope to preserve their wealth. And, in fact, as we see, in a very short time this system has brought the Americans to a degree of enterprise, security, wealth, and equality of which the annals of the human race offer no other example. . . . [In America] each person can in full confidence dedicate his capital and his labor to production. He does not have to fear that his plans and calculations will be upset from one instant to another by the legislature."[20]

Bastiat did see two inconsistencies in the American Republic: slavery ("a violation of the rights of a person") and tariffs ("a violation of the right to property"). According to Bastiat, these were the two issues that would divide America if they were not dealt with speedily.

What was the answer for America as well as France? "Be responsible for ourselves," said Bastiat. "Look to the State for nothing beyond law and order. Count on it for no wealth, no enlightenment. No more holding it responsible for our faults, our negligence, our improvidence. Count only on ourselves for our subsistence, our physical, intellectual, and moral progress!"[21]

On the 200th anniversary of the French Revolution, Frenchmen and Americans can truly become partners in liberty by working toward the principles advocated by Bastiat, America's Founding Fathers, and others: limited government, private property, free markets, and free men. □

1. Petr Kropotkin, *The Great French Revolution* (New York: Putnam's Sons, 1909), Introduction.
2. So strong were the connections between the Physiocrats and Adam Smith that, according to the French economists Charles Gide and Charles Rist, "But for the death of Quesnay in 1774—two years before the publication of *The Wealth of Nations*—Smith would have dedicated his masterpiece to him." Later, Frederic Bastiat lumped Smith, Quesnay, and Turgot together as "my guides and masters." Dean Russell, *Frederic Bastiat: Ideas and Influence* (Irvington-on-Hudson, N.Y.: The Foundation for Economic Education, 1969), pp. 58, 19.
3. Russell, p. 20.
4. Peter Gay and R. K. Webb, *Modern Europe to 1815* (New York: Harper and Row, 1973), p. 462.
5. Otto J. Scott, *Robespierre: The Voice of Virtue* (New York: Mason and Lipscomb Publishers, 1974), pp. 59-61.
6. *Ibid.*, p. 54.
7. Andrew Dickson White, *Fiat Money Inflation in France* (Irvington-on-Hudson, New York: The Foundation for Economic Education, 1959), p. 107.
8. Edmund Burke, *Reflections on the Revolution in France* (Indianapolis: The Bobbs-Merrill Co., 1955, originally published in 1790), pp. 275-276, 280.
9. Scott, pp. 223-224.
10. Benjamin Hart, *Faith and Freedom* (Dallas: Lewis and Stanley, 1988), p. 301.
11. Samuel Eliot Morison, *The Oxford History of the American People* (New York: Oxford University Press, 1965), p. 182.
12. Gene Fisher and Glen Chambers, *The Revolution Myth* (Greenville, S.C.: Bob Jones University Press, 1981), p. 18.
13. Andrew C. McLaughlin, *The Foundations of American Constitutionalism* (New York: Fawcett, 1932, 1961), pp. 88-89.
14. John Chamberlain, *The Enterprising Americans: A Business History of the United States* (New York: Harper and Row Publishers, 1974, 1981), p. 37.
15. *Letters and Other Writings of James Madison*, Vol. IV (New York: R. Worthington, 1884), p. 478.
16. James Richardson, ed., *A Compilation of the Messages and Papers of the Presidents*, Vol. 1 (New York: Bureau of National Literature, 1897), p. 367.
17. John M. Blum, et al., *The National Experience*, Part I (New York: Harcourt Brace Jovanovich, 1963, 1981), p. 213.
18. George Charles Roche, *Frederic Bastiat: A Man Alone* (New Rochelle, N.Y.: Arlington House, 1971), pp. 146-147.
19. *Ibid.*, p. 148.
20. *Ibid.*, pp. 205-206, 244.
21. *Ibid.*, p. 164.

Should We Stop Selling Real Estate to Foreigners?

by C. Brandon Crocker

American real estate is being bought by foreigners, and this worries a lot of people. Michael Dukakis made a campaign issue out of the large commercial real estate holdings of the Japanese in Los Angeles and other major U.S. cities. The fears generated by this foreign buying appear to be twofold: first is the concern that our national security and sovereignty are somehow compromised when foreigners own our real estate; second is the belief that foreign ownership of U.S. real estate is harmful to our economy. These qualms, however, are based on misconceptions of what is happening in the real estate market.

The concern over national security and sovereignty is understandable given the nature of real estate. When foreigners own land, people naturally fear that they might gain dangerous control over the production and distribution of resources such as grain, oil, and industrial metals. The cost of amassing enough land to have even a small impact on the supply of such resources, however, is too prohibitive to be practicable for any individual or group acting as an agent of a hostile foreign power. And such ownership wouldn't have an impact on supplies coming in from international markets. Furthermore, all U.S. territory, regardless of the owner's nationality, comes under the full jurisdiction of U.S. law.

If foreign real estate investment isn't compromising our national security, is it hurting us economically? The market for real estate in the United States is relatively free. Therefore, as is true of all free markets, no one is forced to sell something to another party. Transactions are consummated only when all parties feel that it is in their best interest to do so.

This means that when a foreigner buys American commercial real estate, he does so because he believes that the risk-adjusted return (and perhaps some prestige value) is worth the investment. At the same time, the American seller believes that the transaction will make him better off. If, as is usually the case, the seller is an on-going business, this means that the owner believes he can get a better return by putting the sale proceeds into another investment than he can get by holding the particular piece of real estate.

The proceeds from real estate sales do not disappear in some mysterious way. The foreign buyer gains a tangible asset, but the compensation received by the seller goes into creating other assets which the seller believes will have a higher risk-adjusted rate of return. Manufacturing corporations selling off real estate can put the proceeds into research and development or new machinery. Real estate development companies can put the money into new

Mr. Crocker is assistant vice-president for a real estate development and management corporation in San Diego.

projects. Forbidding such transactions on the grounds that the buyer is foreign, therefore, would not merely just keep existing real estate in American hands, but would also *prevent the creation* of other assets in this country.

When foreigners buy American properties, Americans are fully compensated. In fact, contrary to the belief that foreigners are "buying America on the cheap," the prices paid by foreigners (especially the Japanese) for American real estate over the past few years in many cases have been well above the traditional market values, as foreigners have been willing to accept a lower return on their investments than have many Americans.

There is no basis for the fear that foreign real estate holdings threaten our sovereignty. And given that we have a free market in real estate, the charge that foreign purchases harm us economically also has no basis. We cannot be harmed if we freely exchange one asset for another which we view as having a better risk-adjusted rate of return. This simple fact of economics—that deals take place in a free market only when all parties involved believe them to be beneficial—applies to real estate just as it applies to all other assets. □

Readers' Forum

To the Editors:

Nick Elliott, in his fascinating article on the Levelers (May 1989), tells us that their fight against the 17th-century Stuart state was an outgrowth of English individualism, which in turn led to liberalism, which he finds inextricably linked to the Reformation. This is the customary account.

However, as Lord Acton—the great English liberal historian—pointed out, this view obscures the pre-Reformation growth of liberty in England. Writing in 1859, Acton argued that:

"[In England], as elsewhere, the progress of the constitution, which it was the work of the Catholic Ages to build up . . . was interrupted by the attraction which the growth of absolutism abroad excited, and by the Reformation's transferring the ecclesiastical power to the Crown." (*Selected Writings*, Vol. III, p. 33) Acton further noted in 1861: "The Catholic Church had bestowed on the English the great elements of their political prosperity—the charter of their liberties, the fusion of the races, and the abolition of villeinage—that is, personal and general freedom, and national unity. Hence the people were so thoroughly impregnated with Catholicism that the Reformation was imposed on them by foreign troops in spite of an armed resistance; and the imported manufacture of Geneva remained so strange and foreign to them, that no English divine of the sixteenth century enriched it with a single original idea." (*Ibid.*, p. 91)

For too long, it has been the received view in England and America that the Reformation equaled liberty. But in Acton's view, by uniting church and state and freeing rulers from painfully constructed Catholic restraints, Protestantism made possible an absolutism that derailed the long progress that liberty made during the Middle Ages. As further evidence, consider that the Renaissance—a Catholic Counter-Reformation that Luther and Calvin warned about—restarted the progress that ultimately culminated in liberalism.

JEFFREY A. TUCKER
Fairfax, Virginia

Nick Elliott Replies:

The Reformation did not "equal liberty"—far from it. What it did was provide an ideology, as a flag of convenience for those princes and dukes who wanted to challenge the authority of the Catholic empire. It was an unintended consequence that this led to religious anarchy and a more general challenge to authority. Without the Reformation, the Netherlands would probably

not have fought a war of independence, to become the most liberal state in Europe. Nor would England have been touched by the radical liberal ideas of groups such as the Levelers.

It was no accident that many of the principal English liberals have come from a background of Protestant nonconformism: John Lilburne, John Bright, and Herbert Spencer, to name but three. The radical ideas that were to emerge from the Reformation also implied a political code. As John Bright said of the Quakers, "We have no thirty-seven articles to declare that it is lawful for Christian men, at the command of the civil magistrate, to wear weapons and serve in wars."

The most important principle, politically, to emerge from the Reformation was that the individual could communicate with God by himself, subjectively interpreting the Bible for himself, and without the need for a church hierarchy. This principle led in England to popular agitation for freedom of worship, and made the Levelers into a movement with mass support.

The gains for liberty made before the English Reformation hardly compare to the momentous gains made after the Civil War, as the direct result of radical Reformation ideas. The Glorious Revolution of 1688 enshrined religious toleration in law, and established the principle that monarchs must be accountable to parliaments. The Reformation in England led to the rejection of the divine right of kings, by which kings had previously justified their excesses.

The immediate response of the Catholic Church to the Reformation was the inquisition and index—religious purification by burning, and a clampdown on dangerous books. These were retrograde steps for liberalism and liberty. Any link between the Renaissance and liberalism is far from clear, far less clear than that with the Reformation.

NICK ELLIOTT
London, England

To the Editors:

I enjoyed Barbara Sall's "Private Enterprise in Poland" in the May 1989 *Freeman*.

Let me stress, however, that the situation is not as uncertain and tragic as it might appear from Mrs. Sall's presentation. The heavy hand of the state is present everywhere, but it is losing its weight. Most important, however, for the first time in the history of Poland, capitalism now has a political representation. In the June 1989 election, the Union for Realpolitik (of which I am a representative), led by Janusz Korwin-Mikke, promoted free enterprise, privatization, self-responsibility, and individual rights. The Union for Realpolitik openly advocates capitalism—unlike any other organization in Poland.

Furthermore, industrial societies organized in various cities (the most famous being the Krakow Industrial Society, Warsaw Industrial Society, and Old Polish Industrial Society in Kielce) teach entrepreneurship and organize meetings of businessmen and pro-free market intellectuals. I should add that the Krakow Industrial Society, of which I am a member, is not a libertarian organization, as Mrs. Sall wrote, but rather a group of classical liberal intellectuals, mostly readers of Ludwig von Mises. It is led by Miroslaw Dzielski, a very important figure in the Polish pro-capitalist movement, who seek contacts with successful Polish entrepreneurs, mostly through banquets and discussions. Recently the Krakow Industrial Society became more politically active, proposing a free enterprise zone in Krakow, and having Mr. Dzielski participate in a meeting of opposition leaders with Margaret Thatcher during her visit in Poland.

As I mentioned, the heavy hand of the state is still present. The Union for Realpolitik is refused a paper quota (distribution of paper is rationed by the Polish government) and is not allowed to campaign on television. Interestingly enough, Polish pro-capitalists are ignored in the West, most notably by Western media, even though the socialistic Solidarity opposition receives wide coverage. But that is a phenomenon which requires a separate analysis.

KRZYSZTOF OSTASZEWSKI
University of Louisville

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A REVIEWER'S NOTEBOOK

Religious Thought and Economic Society

by John Chamberlain

When Jacob Viner of the University of Chicago and Princeton University died, he left four chapters of an unfinished work called *Religious Thought and Economic Society*. Two scholars, Jacques Melitz and Donald Winch, have pieced together the Viner work for publication by the Duke University Press of Durham, North Carolina (211 pages, $21.95).

What strikes one at once in reading the Viner text is the essential worldliness of the early church fathers. Though they often counseled perfection, they had no illusions about the average man's capacity for martyrdom. Saint Augustine had been a sinner himself. Besides, there was a paradox involved. It was all very well for an occasional individual to sell all he had to feed the poor, but what if everybody were to do the same? Production would cease, and there would soon be nothing to give away. The poor would really be reduced to scratching to keep alive.

So the early Christian fathers, being practical men, counseled sharing. They did not seek to make the sharing compulsory—that would dry up incentives, and there would be less to share. What they wanted was a system that would yield a maximum of voluntary alms.

This naturally opened the doors to capitalist thinkers, though the word "capitalism" was not used. The rich merchant was to be encouraged as the best possible source of alms. In the Renaissance the rich merchant came into his own. The patricians of the Renaissance paid tribute to the excellence of man instead of stressing the degradation resulting from original sin. Says Viner, the merchant class "maintained that the life of virtue was within the reach of the ordinary run of mankind and was a pleasurable one . . . virtue was to be pursued for its own sake or for its benefit to others, independently of its contribution to religious salvation or for its obligatoriness as a religious duty." Material things, sacred and profane art, fine craftsmanship, the embellishment of palaces, churches, and cities were more to be admired than the ascetic life of "passive contemplation or pious resignation."

Thomas Aquinas was against usury, but it is one thing to frown upon charging interest on cash loans and another to condemn selling for credit at a higher price. Since most buyers are unable to pay cash, if wholesalers were to refuse to sell at credit their sales would shrink. Soon there would be no business at all.

Viner devotes many pages to the quarrels in France between "rigorists" and "laxists." But just who were the rigorists and who were the laxists is not always clear. The Jansenists professed to believe in a strict condemnation of usury; the Jesuits did not. But the two opposing schools of thought were equally casuistic about loans to merchants to help them do business.

Since Viner was obviously convinced that capitalist practices were fairly well defined even in the Middle Ages, he tangles with the theory promulgated by Max Weber and R. H. Tawney that it was Calvinism that set the spirit of capitalism going. When Venetians and Genoans began adventuring on the Mediterranean after the Saracen enemies of Christiani-

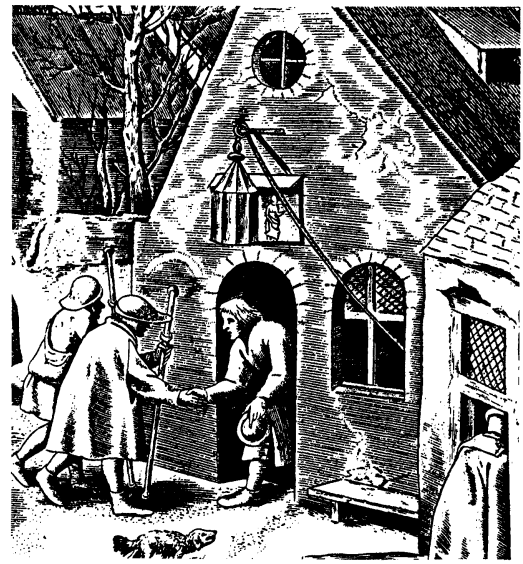
ty had been pushed back, the spirit of trade quickly moved over the passes from Italy to South Germany. Banking was elaborated in South Germany. All of this happened before the time of the Protestant Reformation.

To believe that the "geist" of capitalism originated in Calvin's Geneva or John Knox's Scotland ignores some palpable geographic facts. As Viner says:

> the prosperity of Holland in the seventeenth century aroused the interest of writers in other countries, and various explanations were offered. Sir William Temple singled out for emphasis the industry and thrift of the Dutch, but attributed most "national customs" to "unseen, or unobserved natural causes or necessities." The only characteristics of this kind which he identified in the Dutch case were poverty in natural resources and density of population. He makes no mention of a religious factor. Some time before 1618, Sir Walter Raleigh singled out Holland, together with the Hanse towns and Denmark, as countries which surpassed England in commerce. He does not mention that all these countries were Protestant . . . . Sir Josiah Child attributed the superiority of the Dutch in trade to a wide range of customs, institutions, and patterns of economic behavior and laws. His only reference to a religious factor is his inclusion of "toleration of different opinions in matters of religion" as contributing to Dutch prosperity by attracting to Holland industrious and rich dissenters from other countries.

There is only an incidental reason to connect religion with the rise of capitalism in anything Sir William Temple and Sir Walter Raleigh or Josiah Child noticed in Holland. What stands out is the fact that the Dutch government was willing to leave people alone. In short, laissez faire.

A better title to the incomplete Viner book would have been *Human Nature and Economic Society.* The church fathers and scholastics quoted by Viner were reasonable men who knew that alms would be forthcoming out of a plenty that would still allow scope for individual pleasure. We are less generous in our understanding of human nature today than was the



PETER BRUEGEL, THE ELDER

case before we began to legislate welfare by compulsion. No compulsion was necessary to provide education in Britain or America in the eighteenth and nineteenth centuries. Schools were built and maintained by churches and private associations. More hospitals were built in England before the days of compulsory health services.

After the common sense of Viner's early chapters about the church fathers, I had looked forward to reading the fourth chapter on Max Weber and the thesis that capitalism had been particularly fostered by the "Puritan ethic." But the chapter is so clogged with unfamiliar names (Bishop Herbert Thorndike, Sir Peter Pett, Robert Robinson, Charles Davenant, C. Weiss, Israel Worsley, to cite a few) that it is almost impossible to follow the tangential arguments. One has to hold fast to the proposition that Weber's thesis applies only to "the ascetic types of Protestantism." Weber's "silent" omission of Geneva (Calvin's city) and Scotland (John Knox's territory) from the list of the "ascetics" was, says Viner, "not inadvertent." The spirit of capitalism was not equally present in all Calvinist countries. Contrariwise, it was often present in Catholic countries. Things depended on human nature acting on local traditions. Neither Weber in Germany nor R. H. Tawney in England had a "lock" on any all-inclusive law. □

TIME AND PUBLIC POLICY
by T. Alexander Smith

University of Tennessee Press, P.O. Box 250, Ithaca, NY 14850
1988 • 299 pages • $29.95 cloth

Reviewed by Israel M. Kirzner

T. Alexander Smith, a professor of political science at the University of Tennessee, has written an impressive book. It is a book that ranges across several social science disciplines, particularly economics, sociology, and politics—but also involves psychology, philosophy, and history. This review is written from the narrow perspective of an "Austrian" economist (whose objectivity is, it must be confessed, perhaps compromised in the book's favor by its author's embrace of the Austrian tradition in economics, and by his general endorsement of free market policies.)

The major thesis of the book can be stated simply. Modern societies, partly as a result of various sociological forces, partly as a result of welfare-state policies and majoritarian "promissory politics," are systematically biased toward the short run: "Our time horizons have changed radically in the modern era." This bias, the author claims, poses a serious danger for society's long run health and viability. Where we *ought* to be pursuing courses of action that recognize the long run benefits of bourgeois values, frugality, thrift, and self-restraint, there in fact are powerful political and social forces that lead us, as voters and as politicians, to place greater emphasis on short run, fleeting, and ephemeral benefits. What is required, Smith maintains, is a pattern of institutional reform that will encourage long range planning, and the willingness to forgo instant gratification for the sake of future goals.

This thesis is developed in eight chapters of well-written prose enriched by a scholarly apparatus modestly concealed in the endnotes, reflecting an extraordinarily wide range of reading and study. Although this reviewer has several quibbles to express as an economist, as a citizen he finds the overall thrust of the book—especially in its development of themes in sociology and politics—highly persuasive and important. Although at least some economic aspects of Smith's argument have been developed before (for example, Henry Hazlitt's classic *Economics in One Lesson* critique of interventionism is based on the idea that the "art of economics consists in looking not merely at the immediate but at the longer effects of any act or policy . . . ."), the book's reinforcement of its economic insights by reference to sociology, and to political institutions, adds up to an innovative and powerful case for the free market and the rule of law.

My quibbles will at first seem minor ones, yet on reflection they turn out to be quite disturbing to the economist. The economist who appreciates the social usefulness of free markets, and also understands the importance of the time profiles of production and consumption, will argue that a key virtue of the market economy is that it stimulates economic growth to reflect, with reasonable faithfulness, *the wishes of the individual market participants*. In other words, the market generates volumes and rates of capital accumulation and depreciation which reflect the time preferences *of the citizens* in their capacities of consumers and potential investors. Smith's position seems, if I read him correctly, to argue for the free market economy because it is likely to generate a time profile of savings, capital-using production, and consumption which is faithful to what (*in Smith's judgment*) is the "correct" allocation between present and future. Smith sees the economy as sliding into a miasma of instant gratification—at a time when it ought to be planning prudently for capital replacement and long term growth.

One would like to think that Smith's view of the "correct" allocation over time expresses what he believes to be the true wishes of the public. Yet certain parts of the book—notably chapter two, where the author notes and deplores the modern abandonment of bourgeois values—suggest that he really does hope for a set of institutions which will not permit citizens to exercise their unhealthily high time preferences. This way of thinking may be eminently defensible from a variety of perspectives, but the economist (who sees the virtue of markets to lie in their respect for *citizens'* preferences, no matter how degenerate and "wrong" they

may be) feels uncomfortable with it.

This discomfort is only deepened by our noticing that Smith, throughout the book, deplores the sacrifice of the future for the present—never recognizing, it would appear, that beyond *some* point, surely, additional provision for the future may be entirely too costly for a present generation. Surely Smith does not wish us to postpone *all* present consumption to the future? Which future? Next year, next century, next millennium? Granted that our present institutions have biased us so strongly in the direction of instant gratification that our immediate social and political agenda may be usefully focused upon urging greater attention to the future. Nonetheless, one would have expected some mention of the free market's capacity to avoid, not only a time profile tilted too much toward the present, but also one tilted too much toward the future. What the Austrian emphasis on time allocation depends on is not so much any admiration for the bourgeois virtues of frugality and thrift *per se*, as an understanding of the need for thrift *in order to achieve preferred future consumption goals.* This aspect of Austrian understanding does not emerge unobscured in Smith's book.

Related to this complaint must be a certain unease which an Austrian economist feels at Smith's lengthy (and generally sound) discussion of Say's Law in chapter seven. One comes away from this chapter with the impression that Smith wishes us to see Say's Law as teaching the primacy of production over consumption, of supply over demand. But our appreciation for the profoundly valid insights embodied in Say's Law should surely *not* (at any rate not for Austrian economists!) take us in *that* direction. To recognize that general overproduction is, in the proper sense, impossible, does not require us to say that "supply is the driving force behind 'demand'"—for Austrians the reverse, properly interpreted, is closer to the truth. Keynes' error was, for Austrians, not his emphasis on demand, but his belief that "aggregate demand" can be deficient in equilibrium. For Austrians an appreciation for the need to save is not based on any virtue of abstinence, but on the desire to *consume*, more extensively, in the future.

Several further related quibbles: Smith has learnt his Austrian economics well, and with a great deal of depth. Yet he appears not to see that much of his thesis does not really depend on Austrian insights. To be sure, his superb third chapter represents classic Austrian and Rothbardian deployment of a Crusoe example to illustrate the meaning and importance of the time profile of production and consumption activities. But one does not have to be an Austrian to appreciate the importance of planning and saving for the future. Certainly one does not have to have a sophisticated Misesian appreciation for the *a priori* quality of positive time preference to accept Smith's thesis. By over-emphasizing the Austrian route by which he apparently arrived at his understanding of the importance of the time dimension, Smith may have unnecessarily limited its potential significance for economists following different approaches. (This Austrian economist mentions this point somewhat diffidently: it must seem loutish to sniff at Smith's appreciation for Austrian economics—so frequently ignored!)

Nor, one may respectfully submit, is the Austrian economist's appreciation for the subtleties and complexities of time quite captured by Smith's treatment of it. Although Smith makes occasional mention of the problems of uncertainty and knowledge introduced by the circumstance that human action occurs in irreversible time, the overall thrust of his book emphasizes only the one dimension: the need to allocate scarce resources between the present and the future. Primordially important though this dimension certainly is, it is a little unfortunate that the book somehow conveys the impression that, by developing its central thesis, the place of time in economic policy has been fully and completely dealt with. For Austrians, surely, far more needs to be discussed and explained, including especially the role of competitive processes, the role of entrepreneurial discovery, and the complications these introduce into propositions concerning the effectiveness of markets.

But these are mere economist's quibbles. The larger picture presented by the book relies heavily on insights concerning sociology and politics which impressed this lay reader greatly. Smith has undoubtedly put his finger on a central weakness of modern political systems.

There can be no question that the future economic and political well-being of society depends significantly on our being able to disentangle ourselves from the web of forces which, as Smith brilliantly shows, distort our focus, mistakenly and tragically, toward the present and immediate future. Smith's book deserves a wide readership and careful thought and discussion. □

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MEMOIRS OF AN UNREGULATED ECONOMIST

by George J. Stigler

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Reviewed by Richard M. Ebeling

Best-selling novels and popular movies never seem to have an economist as the hero. An archaeologist or an architect, an over-the-hill newspaper man, an inebriated detective—all seem to fit the bill. Even the book version of *Death Wish* has an accountant as the protagonist. But an economist? What can be exciting about supply and demand, the quantity theory of money, or the intricacies of public utility regulation? A work of fiction, at least, can exaggerate the truth. But what can one look forward to from an economist's autobiography? Economists are boring, right? Wrong!

George Stigler is a leading member of the Chicago school of economics and the 1982 recipient of the Nobel Memorial Prize in Economic Science. His intellectual autobiography, *Memoirs of an Unregulated Economist*, proves that there is life after Econ 101 and that economics is far from being a dismal science.

In telling his own story, Professor Stigler does a masterful job of weaving in the history of 20th-century American economics. In the late 1940s, many economists and most intellectuals were convinced that large doses of social planning and government intervention were both desirable and the inevitable waves of the future—the only things that would save America from falling back into the abyss of the Great Depression of the 1930s. Forty years later it is socialism and interventionism that are on the defensive, with the market economy and individual liberty once again the rising ideals. To a great extent the radical shift in ideological direction has been due to the Chicago School, and this is the real story in Stigler's book.

Stigler did his graduate work in economics at the University of Chicago in the 1930s. He studied with such leading figures as Frank Knight, Jacob Viner, and Henry Simons. Though they were far from being radical advocates of *laissez-faire*, in the collectivist environment of the New Deal in America and Fascism and Communism in Europe, these economists instilled in their students an appreciation of the price system and a competitive market order. And they warned of what collectivism could mean for the loss of political and civil liberties. Their teaching left its mark on Stigler and others like Milton Friedman. In the 1950s, these influences gelled into the "Chicago School."

Stigler's contributions have been in the area of micro-economics, i.e., the theory of markets and prices. He devoted his energy to the economics of information, the theory of monopoly, and the theory of government regulation. Economists have long worked with an economic model of "perfect competition" in which agents are assumed to possess full and perfect knowledge, and markets are assumed to adjust immediately to any and all changes. This model has been an easy target for critics of capitalism. Stigler demonstrated how markets enable individuals with less than perfect knowledge to search for information about the qualities of goods and the prices at which they may be obtained; he further showed how competitive forces tend to bring supplies and demands into balance through this information-search process.

He also challenged the long-held assumption among many economists that when markets are less than "perfect," monopolistic forces tend to exist all over the economy, with consumer interests sacrificed for the benefit of a few, big, highly concentrated firms and industries. In a series of theoretical and empirical studies, Stigler was able to prove that as long as government doesn't bestow privileges guaranteeing producers protection from competition, the market economy is an inherently rivalrous arena, and one that is very responsive to changing consumer demands.

Finally, Stigler pioneered research in the field of government regulatory policy. The standard view, again, was that certain industries are inherently uncompetitive; therefore, it was believed necessary for government to regulate their pricing and production policies for the public good. Stigler argued that rather than serving the public good, regulatory agencies invariably came under the control of the industries they were to regulate. All the economic incentives were for the regulated companies to devote time and resources to "capture" the agencies, and then use them to limit entry into their market and to set prices favorable to themselves. Stigler demonstrated that when left free from government oversight, these sectors of the economy were usually as open and competitive as any other.

The drama of the tale is in Stigler's telling. He explains the different views and schools of thought; he introduces the reader to the competing personalities and their conflicts over a 50-year period; and most important, he escapes from the abstract language and arguments of the rarefied economics journals. Thus, the general reader can follow the intellectual odyssey in terms that flesh out the theoretical and policy debates of the past several decades. Stigler doesn't limit himself to developments in his own fields of interest. He also describes the evolution of the Chicago School monetary tradition, beginning in the 1930s, through the writings of Milton Friedman, right up to the current theory of Rational Expectations. And he explains the Chicago School's extension of the logic of economics to new areas such as the economics of crime, the family, and race relations.

As a member of a rival school in economics—the Austrian School—the present reviewer is tempted to raise a number of questions and objections to the approach of the Chicago School. While the Chicago economists have emphasized the vigor of competitive forces, they have failed to analyze to any real extent the focal point of that competitive process—the entrepreneur. While they have tried to develop a theory of informational search in the market, they have failed to grapple with the real problem of imperfect knowledge, i.e., how do market agents form expectational judgments when the uncertainty they face cannot be reduced to simple statistical probabilities? And finally, Stigler says that economics can be applied to a wide array of areas and problems because "Economics is the study of purposive behavior involving choice." Yet, the frequent tendency by Chicago economists to reduce all economic phenomena to a purely quantitative dimension often has resulted in many essential human elements of "purposive behavior" being excluded from their analysis.

But these may be considered family squabbles among free market economists. George Stigler, and the Chicago School he has helped to create and nurture, have changed the shape of economics in the United States and increasingly around the world. The economic planners and interventionists are losing the intellectual battle everywhere, and a major portion of the credit belongs to the set of ideas so eloquently described in this book. Ted Turner may not buy the rights to turn it into a cable movie special, but it certainly is a story in which the economist is the hero. □

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