THE FREEMAN

IDEAS ON LIBERTY

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IDEAS ON LIBERTY

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PERSPECTIVE

The Founding Fathers & "Equality"

What is "equality"? What did the Founding Fathers mean by the phrase "all men are created equal"?

Any inquiry into the meaning of equality must include an examination of the Declaration of Independence. The Declaration begins with an appeal to "the laws of Nature and of Nature's God," and maintains that the proposition "all men are created equal" is a self-evident truth. Furthermore, all men are endowed by their Creator with certain inalienable rights, among them "Life, Liberty and the pursuit of Happiness."

What the Founding Fathers meant by equality is this: All men share a common human *nature*. The assertion that all men are created equal means that all persons are the *same* in *some* respect; it does not mean that all men are identical, or equally talented, wise, prudent, intelligent, or virtuous; rather, it means that all persons *possess* the inherent capacity to reason.

In his fine work *Religion and Capitalism: Allies, Not Enemies*, Edmund Opitz explains that "the writers of our Declaration believed it axiomatic that 'all men are created equal.' They did not say '*are* equal' or '*born* equal,' which would deny the obvious; they said '*created* equal.' Equality before the law appeared to follow from this premise—the idea of one law for all men because all men are one in their essential humanness."

—HAVEN BRADFORD GOW

National Debt

I place economy among the first and important virtues, and public debt as the greatest of dangers. To preserve our independence, we must not let our rulers load us with perpetual debt. We must make our choice between economy and liberty or profusion and servitude. If we can prevent the government from wasting the labors of the people under the pretense of caring for them, they will be happy.

—THOMAS JEFFERSON

Good Intentions

Good intention will always be pleaded for every assumption of power. . . . It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.

—DANIEL WEBSTER

Private Property

Property is surely a right of mankind as really as liberty . . . . The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.

—JOHN ADAMS

Self-Deification

People frequently call socialism a religion. It is indeed the religion of self-deification. The State and Government of which the planners speak, the People of the nationalists, the Society of the Marxians and the Humanity of Comte's positivism are names for the gods of the new religions. But all these idols are merely aliases for the individual reformer's own will. In ascribing to his idol all those attributes which the theologians ascribe to God, the inflated Ego glorifies itself. It is infinitely good, omnipotent, omnipresent, omniscient, eternal. It is the only perfect being in this imperfect world.

—LUDWIG VON MISES

Letter to the Editor

In your November 1992 edition of *The Freeman*, John Hood represented that the State of Wyoming has only five or six occupational licensing and regulatory boards, regulating only professions like doctors, lawyers, and dentists. Unfortunately, that is not the case.

Wyoming currently has 27 licensing and regulatory boards to protect the public from the evils of unregulated professional geologists and unlicensed hunting guides, for example. Several other threats to the public, such as dance hall operators, are licensed and governed by the board of county commissioners in each county.

Sincerely,

Clinton D. Beaver
Attorney-at-Law
Cheyenne, Wyoming

Protecting Life, Liberty, and Property

If the way we currently conduct the "war on drugs" means that agents will be gunning down innocent civilians in their own houses, perhaps it is time for a change in the laws regarding property confiscation.

The proper way to raise revenue is not through police-state tactics but only through the consent of the governed, by means of democratically passed laws. Government officials at all levels need to remember that under the American Constitution, the government exists to protect our God-given rights of life, liberty, and property, not to deprive innocent civilians of all three.

—K. L. BILLINGSLEY

Editor's note: *For more on this subject, see Jarret Wollstein's "The Government's War on Property," pp. 244–252, and Bruce Benson's "Highway Robbery," pp. 253–255. Additional commentary by K. L. Billingsley appears on pp. 247 and 249.*

THE FREEMAN
IDEAS ON LIBERTY

THE GOVERNMENT'S WAR ON PROPERTY

by Jarret B. Wollstein

"A police dog scratched at your luggage, so we're confiscating your life savings and you'll never get it back." In 1989, police stopped 49-year-old Ethel Hylton at Houston's Hobby Airport and told her she was under arrest because a drug dog had scratched at her luggage. Agents searched her bags and strip-searched her, but they found no drugs. They did find $39,110 in cash, money she had received from an insurance settlement and her life savings, accumulated by working as a hotel housekeeper and hospital janitor for more than 20 years. Ethel Hylton completely documented where she got the money and was never charged with a crime. The police kept her money anyway. Nearly four years later, she is still trying to get her money back.

Ethel Hylton is just one of a large and growing list of Americans—now numbering in the hundreds of thousands—who have been victimized by civil asset forfeiture. Under civil forfeiture, everything you own can be legally taken away from you without indictment, trial, or conviction. Suspicion of offenses which, if proven, might result in a $200 fine or probation, are being used to justify seizure of tens or hundreds of thousands of dollars' worth of property. Thousands of innocent Americans are losing their cars, homes, bank accounts, and businesses, based upon the claims of unidentified "informants" that illegal transactions took place on their property. Here are a few examples:

Thirty-year-old Ken Brown owned and operated Chemco, a small pool and gardening chemical supply company in Albuquerque, New Mexico. A few months after he opened his doors in 1986, agents of the Drug Enforcement Administration (DEA) stopped by and told him to "get out of the chemical business." A year later Ken found out why: His chief competitor in Albuquerque had an arrangement with the DEA, and neither the DEA nor the competitor wanted any competition. When Ken refused to close his doors in 1987, harassment from the DEA began and got steadily worse. First his UPS packages were opened and inspected. Then his deliveries were seized, his drivers were searched, and his suppliers were threatened. Next his house was searched by armed DEA agents. They found nothing. On November 19, 1991, the DEA arrested his manager and padlocked the doors to Chemco. The IRS was also brought in to investigate the company. The DEA charged Chemco with selling chemicals that *could be used* to manufacture drugs. On May 8, 1992, the DEA seized Ken Brown's house and cars, and told him to sign an agreement to pay rent to the U.S. Marshals or "hit the street with my wife and eight-year-old son."

Jarret B. Wollstein is a director of the International Society for Individual Liberty and the author of 300 published articles.

In May 1992 the DEA made Ken Brown an offer: "give us Chemco and we will give you all your personal belongings back." Ken Brown refused and is still fighting.

Dr. Jonathan Wright operated the Takoma Medical Clinic in Kent, Washington. On May 6, 1992, nearly two dozen armed police and Food and Drug Administration (FDA) agents broke down his clinic's door and pointed their weapons at him and his 15-person staff, mostly women. For the next 14 hours, the staff was held at gunpoint while the FDA ransacked the clinic. Neither Dr. Wright nor any of his employees was ever charged with a crime. That didn't stop the police and FDA from seizing Dr. Wright's books, laboratory equipment, supplies, patient records, reference books, and computers. The raid was part of a national FDA crackdown on nutritional therapists.

Willie Jones owned a small landscaping service in Nashville, Tennessee. When he paid cash for an airline ticket at Nashville Metro Airport on February 27, 1991, the ticket agent acted strangely, and said she would have to check in back what to do with the cash. The ticket agent returned and gave Mr. Jones his ticket. Ten minutes later, drug agents stopped and searched him. They found $9,600 in cash, which Jones was going to use to buy plants for his business. Jones explained he pays in cash "because that's the way the growers want it." That didn't stop the DEA from taking his money. Jones was not charged with any crime. But the government took all of his operating cash, and nearly put him out of business.

Legal rights and protections that Americans have cherished for hundreds of years have been increasingly violated during the last two decades. Most of what you learned in school about your legal rights and protections is no longer true. A combination of rising crime, the growing power of government, and increasing concern about drugs has done tremendous damage to the Bill of Rights and our heritage of liberty. Few Americans realize how grave and how ominous that damage has been. Today the government has the power legally to seize your bank account, your house, or your business, without trial, hearing, or indictment. Everything you have worked for and accumulated over a lifetime can now be taken away from you at the whim of authorities. Black or white, rich or poor, we are all potential victims. And unless the laws are changed, there is very little you can legally do to protect your property.

Civil Asset Forfeiture

The seeds of social disaster were planted in 1970 when Congress enacted the federal Racketeering and Corrupt Influence (RICO) statutes (greatly expanded in 1984). Although the rhetoric supporting RICO focused upon defeating "organized crime," the actual "crimes" targeted by RICO were rather vague. To be cited under RICO, all a person or firm need be suspected of are two instances of mail, wire, or securities fraud. "Fraud" is so broadly defined by RICO that the law covers virtually any offense involving mail, telephone, or stocks. Far from being limited to going after organized crime, RICO is now invoked in minor business cases, landlord-tenant disputes, anti-abortion protests, and even divorce cases.

Two aspects of RICO make it a particularly grave threat to civil liberties and justice: First, RICO effectively extended the jurisdiction of the federal government to nearly every conceivable property offense committed by anyone, anywhere in the United States. Second, RICO undermined our entire system of justice by giving the government the power to freeze or seize *all* of an individual's or company's assets based upon mere *suspicion* that an offense had occurred. No business can survive if its assets are frozen. A business that can't pay its bills and operating expenses is a bankrupt business. Because RICO sanctions are so potentially devastating, the guilt or innocence of a business under investigation by government agents becomes immaterial. The mere threat of RICO sanctions is sufficient to force even the largest company to plead guilty and make a deal.

RICO was only the first of many statutes passed in the last 20 years enabling govern-

ment agencies to seize property without indictment, trial, or conviction for any offense. The war on drugs and fear over growing crime have given us hundreds of new state, federal, and local laws, vastly expanding the government's power to seize and forfeit property. Because most new seizure laws are civil rather than criminal, the government does not even have to charge the owners of property with a crime before making seizures. Even if you are charged with a crime and acquitted, everything you own can still be seized and forfeited. When your property is civilly forfeited, you have no right to a court-appointed attorney, no right to confront your accusers, no presumption of innocence, and no protection from double jeopardy. Even the Constitutional right to trial by jury is frequently denied in civil forfeiture cases.

In 1974 the Supreme Court issued a landmark civil seizure decision in *Calero-Toledo* v. *Pearson Yacht Leasing Co.* In 1973 a $20,000 yacht owned by the Pearson Yacht Leasing Co. was seized by and forfeited to the Customs Service in Puerto Rico. It seems that a group renting the yacht from Pearson used it to transport marijuana totally without Pearson's knowledge or consent. There was no judicial hearing prior to the seizure, nor was Pearson given any advance notice of the seizure.

In court, the U.S. authorities admitted that Pearson was neither involved in nor aware of any illegal activity on board the yacht while it was being rented. Still the Supreme Court held 8–1 that the yacht could be seized and forfeited anyway because the owner had not proven that he had done "all that reasonably could be expected to prevent the proscribed use of his property." The Court did not specify what Pearson would have had to do to protect his property from seizure because of activities of parties over whom he had no control. Should Pearson have searched his customer's suitcases or stationed a detective on board while his boat was being rented? Such procedures obviously would not be tolerated by anyone renting a yacht. Yet in the absence of such police-state tactics, Pearson's yacht was fair game for seizure.

Civil asset forfeiture is based upon the medieval doctrine that when property is involved in a crime, the property becomes "guilty," and can be "arrested" and forfeited, regardless of the guilt or innocence of the property's owners. Under civil asset forfeiture, property—not an individual—is charged with an offense. The modern power of civil asset forfeiture in the United States dates back to the Civil War, when the Supreme Court affirmed the civil seizure of rebel property. In 1921 civil forfeiture was extended to violations of alcohol prohibition. During the 1980s, forfeiture was extended to drug trafficking and possession, and a host of other crimes, through the Comprehensive Crime Control Act of 1984, the Drug Abuse Act of 1986, and other laws. The power of civil asset forfeiture is being extended to virtually all misdemeanors and felonies.

Kathy and Mark Schrama of New Jersey can tell you just how destructive and uncontrolled government's seizure power now is. The police arrested the Schramas just a few weeks before Christmas 1990 at their home in New Jersey. Kathy was charged with taking a few UPS packages from neighbors' porches. Mark was charged with receiving stolen goods. They had never been previously convicted of any crime. If found guilty in criminal court, they could expect to pay a small fine and possibly receive probation. But the day after they were arrested, before there was any indictment or trial, before even a seizure warrant was issued, their house, cars, and possessions were all seized by New Jersey police. For the alleged theft of $500 worth of packages, over $150,000 in property was seized from Kathy and Mark Schrama, virtually everything they owned. The police even took their clothes, prescription medicines, eyeglasses, and Christmas presents for their 10-year-old son.

For anyone's home, car or business to be seized in America today, all government agents have to show is that they have "probable cause" to suspect that the property "might have been" involved in an

Last October 2, a drug task force composed of Los Angeles police, sheriff's deputies, DEA men, National Park personnel, and National Guard troops burst into the home of Donald Scott and shot him dead. The agents said they had come looking for marijuana but found none. The raiders' real motive was different.

The federal government had been attempting to acquire Scott's 200-acre ranch as part of its expansion plans for the Santa Monica Mountains National Recreation Area. But Scott, wealthy heir to a European chemical fortune, refused to sell. Then some officials decided to make an offer Scott could not refuse.

After the raid and killing, Scott's lawyer Nick Gutsue charged that the motive for the raid was to seize the ranch under federal forfeiture laws, which allow property to be confiscated even before a defendant is convicted. Police vigorously denied the charges, which many considered outlandish, until now.

On March 30, Ventura County District Attorney Michael Bradbury released a report which said that the drug investigators were motivated "at least in part, by a desire to seize and forfeit the ranch for the federal government." The raiders used an invalid search warrant based on false and misleading information. In fact, shortly before the raid, Border Patrol agents (how many federal agencies are needed on such a project?) twice searched the property for marijuana and found none. It turns out that Scott was staunchly anti-drug and regularly combed his property for plants which others may have placed there.

—K. L. Billingsley

offense. Totally innocent third parties are being dispossessed:

• In December 1988, Detroit police raided a grocery store to make a drug arrest, but failed to find any drugs. After police dogs reacted to three $1 bills in the cash register, the police seized the entire contents of the cash register and a store safe, totalling $4,384. According to a seven-year study by Toxicology Consultants, Inc., "An average of 96 percent of all the bills we analyzed from 11 cities tested positive for cocaine." If a drug residue is all that is necessary for police to seize cash, most currency in the U.S. could be seized tomorrow.

• In December 1983, Mary and Carl Shelden learned through a local newspaper article that a house on which they held a second mortgage in Moraga, California, had been seized. The Sheldens had been forced to sell the house a few years earlier when Carl broke his back and was forced to retire. The man to whom they had sold their house had been charged with running a prostitution ring. When the house was seized it was valued at $325,000, and most of the equity was held by the Sheldens. Income from the house and Mary's job as a secretary was their only source of support. The person the Sheldens sold their house to ran several legitimate businesses and the Sheldens had no reason to suspect he was involved in any criminal activity.

Seizure of their house for the alleged crimes of another person began a 10-year ordeal for the Sheldens. While in the government's "care," the Sheldens' house was nearly destroyed by water damage and vandalism. The Sheldens discovered they couldn't foreclose against the federal government, and they had to go to court repeatedly to get authorities to keep up the mortgage payments. As a result of the continual battles with the U.S. government and fear of destitution, Mary was treated for depression and their 10-year-old daughter developed a borderline ulcer.

The Sheldens were lucky. They found a good attorney and were willing to fight. They eventually got their house back—after it was nearly destroyed from neglect and

water damage, and after they had incurred tens of thousands of dollars in legal fees.

No One Is Immune

During the last 20 years, civil asset forfeiture has evolved from a hook to snare organized crime to a broad net, trapping more and more middle-class Americans. Every Wednesday, *USA Today* newspaper publishes a list of Drug Enforcement Administration seizures. The vast majority of the items seized are not the luxury possessions of drug kingpins, but the modest possessions of ordinary Americans: small bank accounts, inexpensive cars, and modest homes.

In July 1991, the *Pittsburgh Press* completed "Presumed Guilty," a 10-month investigation of 25,000 seizures made throughout the United States by the DEA. They interviewed 1,500 prosecutors, defense lawyers, policemen, federal agents, and victims. They found that seizures are taking place throughout America; that many innocent people are losing their cases, cars, and homes; and that 80 percent of the people whose assets are seized are never even charged with a crime.

An April 1990 *Washington Post* report demonstrates the extent of asset forfeiture. According to the *Post*, in 1990 the U.S. Marshal's office had an inventory of over $1.4 billion in seized assets, including over 30,000 cars, boats, homes, and businesses. Asset forfeiture has increased from $27 million in 1985 to over $644 million seized in 1991. In 1992 seizures topped $1 billion. That's an increase of over 3,700 percent in less than seven years!

Financially strapped federal, state, and local government agencies are increasingly turning to the seizure of property as a source of revenue. Agencies making seizures can keep what they take, giving them a tremendous incentive to expand seizures. Allegations of offenses that, if proven in court, might result in a $200 fine, are being used to justify civil seizure of tens or even hundreds of thousands of dollars' worth of property from ordinary, hard-working citizens.

Today *anyone* can become a victim of civil asset forfeiture:

• In Washington, D.C., Portland, Oregon, and many other cities, police have started seizing cars of men accused of soliciting for prostitution. The cars are subject to forfeiture even if the men are acquitted of the charge. The arresting officers are frequently policewomen dressed to look like streetwalkers.

• In 1990 in California under Operation Green Merchant, dozens of legitimate agricultural supply houses and mail order businesses were seized because the DEA claimed they might have unwittingly sold supplies to marijuana growers. Both the DEA and California courts considered the merchants' lack of control over how their grow lights and fertilizer might be used irrelevant.

• A new offense which can trigger total confiscation of your assets is the crime of "structuring." The Money Laundering Control Act of 1986 requires that banks send the IRS a Currency Transaction Report of all cash transactions (deposits or withdrawals) of $10,000 or more. Section 5324 of the Money Laundering Control Act defines *structuring* as any action a person takes to avoid filling out a Currency Transaction Report. Penalties for violating this act include a mandatory five-year prison term, a $250,000 fine, and forfeiture of any funds involved. If you withdraw $10,000 from your own bank account *in three withdrawals* (rather than a single $10,000 withdrawal) you could be charged with structuring.

Financial analyst Mark Nestmann tells this story in his book *How to Achieve Personal and Financial Privacy in a Public Age*:

> In 1991, a 65-year-old Alabama physician had his life savings seized by the IRS because of alleged structuring in his bank account. Having experienced the Great Depression, the doctor kept his money deposited in several different banks . . . .
>
> A long-time friend opened a bank nearby, and the doctor consolidated his life savings there. . . . a creative U.S.

Last year heavily armed men burst into a house in Oakdale, California and pinned 64-year-old retired ranch foreman William Hauselmann to the floor, bruising his back and cutting his face. They also held his 61-year-old wife, Marian, at gunpoint on the bathroom floor while they ransacked the place. "It was like they were on drugs," Hauselmann said.

Which was odd, because these were not criminals but Stanislaus County drug agents. They were acting on a tip that proved "180 degrees wrong," according to one officer. At least in this case no one was seriously hurt, as in another incident in Poway, California.

Last August 25, on a raid planned by the U.S. Customs service, a heavily armed DEA squad raided the house of Donald L. Carlson. Without announcing who they were, the agents began battering on Carlson's door. This roused Carlson from sleep and, thinking he was being robbed, he armed himself.

The agents smashed through the door and lobbed a concussion grenade. There was an exchange of fire. The agents hit Carlson three times. One bullet shattered his femoral vein, another hit him in the arm, and another entered his lung. The victim spent six weeks in intensive care, hooked to a ventilator. Carlson suffered permanent paralysis of the diaphragm. He will also lose some lung functions, and will suffer chronic pain and circulatory problems.

The agents found no drugs in the house, which was no surprise. Carlson is a vice-president of Anacomp, a Fortune 500 micrographics company. He has no criminal record and neighbors describe him as a "totally conservative" family man. The agents had been acting on the tip of a discredited informant known only as "Ron." According to federal sources, Ron had been kicked out of an anti-drug operation called Operation Alliance because his reports lacked truthfulness.

After the shooting, neighbors heard one agent tell the others: "Now get the story straight. He shot first." Carlson and his attorney have alleged a conspiracy to cover up the botched raid and filed suit for damages.

Criminals who kill and steal are often convicted and sometimes even executed. But government gunmen operate under a cloak of immunity. D.A. Bradbury said he didn't have enough evidence to charge anyone in Donald Scott's death. Likewise, no one has been charged for the shooting of Donald Carlson. Both cases were much more serious than the police beating of Rodney King.

—K. L. Billingsley

Attorney used Section 5324 to seize the entire account. The doctor, now a pauper, still faces five years' imprisonment.

Guilty Until Proven Innocent

What are your rights if your property is seized? The thinnest veneer of due process has been preserved by the courts in cases of civil asset forfeiture.

Unlike criminal cases, in which you are presumed innocent until proven guilty beyond a reasonable doubt, under civil asset forfeiture, justice is inverted. You are presumed guilty and you must *prove your innocence* before you can hope to reclaim your property. To take your property away from you temporarily, through legal *seizure*, a government agency merely has to claim that there is "probable cause" to suspect that you or the property were involved in an offense. To avoid seizure becoming permanent, legally sanctioned *forfeiture*, you have to be prepared to take on and prevail against the full power and resources of state and/or federal government.

What constitutes "probable cause" for seizure? Just about anything. Evidence ac-

cepted by courts as probable cause for seizure include: A car present in an area of "known drug trafficking"; suspicion of soliciting a prostitute; being accused by neighbors of stealing a UPS package; purchasing plant grow lights through the mail; a discussion about purchasing drugs overheard by government agents; employing a person who uses drugs; being among the first people to leave a plane; being among the last people to leave a plane; walking fast in a train station; walking slowly in a train station; a tip from an anonymous informant. In short, all "probable cause" means today is that some government agent has some reason to suspect you of violating some law—or they just want to get you. By current legal standards, virtually any property in America could be seized.

Even comparatively good state asset forfeiture laws provide little protection. If you live in a state where the laws don't permit seizure of homes without trial (such as New Hampshire), state agents can request that federal authorities *adopt* your case and—for a percentage of the take—seize your property under broader federal laws. This has the added advantage for the seizing authority of forcing you to fight the full legal and financial resources of the federal government, rather than "merely" the resources of a local or state agency.

Once your property is seized, all of the rules and procedures are slanted in the government's favor. Seizing authorities have an unspecified period of time to notify you that your property is subject to forfeiture. Typically notice is sent out six months after property is seized. Once notice of forfeiture is mailed, you have usually 20 to 30 days to reply (in California, you have only eight days!). Notice is sent to your last known address, which is a neat trick if your house has just been seized and you have been evicted. For one reason or another, many victims of seizure never receive any notice. This is unfortunate, because failure to challenge a forfeiture notice within 20 to 30 days of its being mailed results in immediate and generally uncontestable forfeiture.

If you do receive notice that your property is about to be forfeited, you are usually given two options to challenge: You can request an administrative hearing before the forfeiting agency or you can post bond and demand a trial.

The administrative petition "option" is basically a sham. According to District of Columbia attorney Brenda Grantland, government agencies seizing property, like the DEA, FDA, and police, never grant an administrative hearing and virtually never find for the victim. Once they take your property, they intend to keep it. If you make the mistake of requesting an administrative hearing, you generally have no further procedural rights, and your property will be gone forever.

What about the trial option? To get a trial you usually have to post a bond equal to 10 percent of the value of the seized property. This "fee" is used to finance the government's legal expenses in fighting your lawsuit to get your property back. Where can you get the money once the government has seized your house and bank account? If you can't beg or borrow the money, you have again probably reached a dead end, resulting in permanent forfeiture of your property.

To go to trial effectively against a government agency you must also be prepared to spend $10,000 to $100,000 in legal fees. The Supreme Court has ruled that in civil cases you have no right to a publicly financed, court-appointed attorney. All legal expenses come out of your own pocket, and can't be recovered even if you win in court.

You have another major problem if you want to hire an attorney: If the government alleges that the money you use to pay your attorney was derived from illegal activity, the attorney's fee is also subject to seizure, either before or after trial. Again the government need prove nothing to seize your attorney's fee. Few attorneys work for free. Consequently, if the government doesn't want you to have the counsel of your choice, authorities need merely hint that they may confiscate your attorney's fee, and it will become nearly impossible for you to obtain legal representation.

If you do manage to go to trial, you will

discover that you have been placed in the position of being required to prove a negative: namely, that your property was never involved in any illegal activity. The Supreme Court has ruled that once authorities have shown "probable cause" to seize your property, you have the burden of proving the property's "innocence." To establish your property's innocence, the courts will demand that you prove that all of the income you ever earned to pay for the property was legally acquired; that all taxes due have been paid; that neither you nor any members of your family ever engaged in any illegal activities on your property "with your knowledge or consent"; and so on. Failure or inability to provide any of the information demanded by the court is usually regarded as proof of your property's guilt. What if your business records have also been seized along with the rest of your property? The seizing agency may or may not return your records to you in time for you to meet legal deadlines to stop forfeiture of your property.

The very absurdity of the forfeiture laws makes it difficult to win in court. The government does not have to show the seizure was reasonable, but merely that it was "not inconsistent" with existing laws. When you contest a civil seizure you find yourself in a distorted Alice-in-Wonderland world where logic and justice have no force.

Should you demand a jury trial to contest seizure, the presiding judge has the power to declare that there is insufficient cause to hold a trial, and issue a motion for summary forfeiture of your property. Should you actually get a jury trial and the jury appears sympathetic to you, the judge can summarily decide that no "issues of fact" are involved in your case, dismiss the jury, and issue a directed verdict for your property to be forfeited. Even if you win a jury trial, the forfeiting agency can still appeal, since in a civil forfeiture case double jeopardy doesn't apply. So you can be forced to spend $10,000 to $100,000 each for trial after trial, until you give up or are impoverished.

Judy Osburn, whose California ranch was "arrested" on September 20, 1988, and who went through two trials to get her property back, summarizes the "justice" you can expect if your property is forfeited by the government, in her 1991 book *Spectre of Forfeiture*:

> Most of the protections afforded by the Constitution to individuals do not apply in civil forfeiture suits. The Fifth Amendment's due process requirement of "innocent until proven guilty" is reversed. Under most civil forfeiture statutes, upon the government's showing of probable cause to initiate proceedings, the property is presumed guilty until the owner proves its innocence. Because it is not a criminal proceeding protection from double jeopardy and cruel and unusual punishment are side stepped along with the defendant's right to counsel. An incarcerated owner does not necessarily have the right to be present at the forfeiture proceeding. And the right to a jury trial is automatically waived without notice unless demand is made within the specified time. If the property was seized on navigable waters there is no right to trial by jury.

The End of Justice

If civil asset forfeiture continues to spread, it will mean the end of justice in America. Already government agencies and police are beginning to concentrate their activities on cases where there are appreciable assets available for seizure. Police, DEA, and FBI *forfeiture squads* are being created. Government agents can even take a three-and-one-half day course offered by the Jefferson Institute on how to maximize asset forfeitures. Indeed, why should law enforcement agents engage in expensive and dangerous activities like apprehending murderers, thieves, and rapists, when seizing the property of ordinary, defenseless citizens is so much safer and more profitable?

Laws already on the books are just a preview of worse to come. Enhanced asset forfeiture laws are now pending before Congress and in most states. The 1991 Omnibus Crime Act—already passed by Congress, but vetoed by George Bush for being "too

soft" on crime—increases the time government agencies have to return *improperly* seized property from six months to six-and-one-half *years* after final court proceedings. California State Assembly Bill 1705 allows the seizure of restaurants, bars, ranches, hotels, and apartment buildings if a single person claims that illegal drugs were ever used or sold on the premises "with the knowledge or consent" of an owner or manager. This bill, already passed by one house of the California legislature, even permits the police to create a secret list of property to be seized once the law goes into effect in 1998. Then all listed property can be seized, in a rapid government sweep.

Another indication of the spread of asset forfeiture is expanding use of the "relation back" doctrine. This is a bizarre legal doctrine which asserts that any property used to commit a crime really belongs to the government *from the moment* an offense was committed, even if the property involved was never seized and the "crime" was not detected until many years later. Under the "relation back" doctrine, not only is "guilty property" subject to forfeiture, but any income or profits earned from the property is also subject to forfeiture, from the time the property was "guilty" of the crime.

Here's how the "relation back" doctrine works: Suppose that in 1994 the Department of Housing and Urban Development (HUD) claims that in 1988 you allowed illegal drug use in an apartment building you owned. Under "relation back," HUD could not only seize your apartment building, but it could further demand you forfeit any apartment rent you received between your offense in 1988 and the present. Not only would you end up impoverished, but HUD could also put a lien on all of your future earnings and possessions, effectively making you an indentured servant to the state for the rest of your life. Under the "relation back" doctrine, even stockholders' shares and dividends could be seized based upon allegations that the parent company committed an offense. The National Association of Attorneys General says the "relation back" doctrine has "great promise" for the future of law enforcement in America.

There Is Some Reason for Hope

As appalling as the present situation is, there is *some* reason for hope.

In the fall of 1992, Representative John Conyers of Michigan held Congressional hearings on civil asset forfeiture. After the hearings, he pledged to oppose the more outrageous elements of forfeiture.

In February 1993, the Supreme Court rejected the Department of Justice's position that the government could *confiscate the assets of innocent people* if some of the money used to purchase the asset came (in whole or part) from illegal activities. The Supreme Court has also agreed to hear several cases challenging forfeiture.

In California, an anti-forfeiture coalition led by FEAR (Forfeiture Endangers American Rights) successfully prevented two new draconian asset forfeiture bills from passing.

More and more organizations are now fighting asset confiscation, including FEAR, the International Society for Individual Liberty (ISIL), Stop Forfeiture of Children's Homes, the Drug Policy Foundation, and the Criminal Justice Policy Foundation.

If civil asset forfeiture is not stopped, it will mean the end of justice in America, the end of liberty, the end of America as we know it. □

THE FREEMAN
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HIGHWAY ROBBERY

by Bruce Benson

In 1863, Henry Plummer was sheriff of the gold camp at Bannock, Montana. He also organized a gang of about 100 "road agents" who stole from miners and travelers; his deputies were horse thieves, stagecoach robbers, and murderers. Citizens could do something about highway robbery by their sheriff in 1863, however. Since Plummer was breaking the law, a vigilante committee arrested, tried, and hanged him in short order, along with 21 members of his gang, banished several others from the area, and frightened off most of the rest.

Today, the sheriff of Volusia County, Florida, also leads an organized band of "road agents" who confiscate cash from travelers on Interstate 95. His road agents are called the "drug squad" and they have seized an average of $5,000 per day from motorists during the 41 months preceding June 1992: over $8 million dollars since 1989. But Floridians cannot do anything about this highway robbery, because it is perfectly legal under the state's asset seizure law.

Such highway robbery is being "justified" as part of a "war on drugs." Actually, however, most Volusia County seizures involve southbound rather than northbound travelers, suggesting that the drug squad is more interested in seizing money than in stopping the flow of drugs. In fact, no criminal charges were filed in over 75 percent of the County's seizure cases. But more significantly, a substantial amount of money has been stolen from innocent victims. In order to get their money back, these people must undertake an expensive civil trial to *prove their innocence*, something most decide they cannot afford to do.

Our criminal justice system presumably is based on the premise that someone is innocent until proven guilty, because it is better to err on the side of letting a guilty person go free than to err by punishing someone who is innocent. Florida's asset seizure law has turned this presumption on its head. The sheriff argues that it is better to hurt a few innocent victims than to take a chance on letting a guilty drug trafficker's money through (although the trafficker is usually free to go).

In fact, the sheriff apparently feels that fining innocent victims a few thousand dollars for carrying cash is okay, since money is not returned even when the seizure is challenged, no proof of wrongdoing or criminal record can be found, and the victim presents proof that the money was legitimately earned. Three-fourths of Volusia County's 199 seizures that did not include an arrest were contested. The sheriff employed a forfeiture attorney at $44,000 a year (he moved to private practice in mid-1990, but now is paid $48,000 to consult with the sheriff's department regarding how much to give back) to handle settlement negotiations. Only four people ultimately got their money back, one went to trial but lost and has appealed, and the rest settled for 50 to 90 percent of their money after promising

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not to sue the department. How many were drug traffickers? No one knows, since no charges were filed and no trials occurred, but it is clear that several were innocent victims.

A 21-year-old naval reservist had $3,989 seized in 1990, for instance, and even though he produced Navy pay stubs to show the source of the money, he ultimately settled for the return of $2,989, with 25 percent of that going to his lawyer. In other similar cases the sheriff's department kept $4,750 out of $19,000 (the lawyer got another $1,000), $3,750 out of $31,000 (the attorney got about 25 percent of the $27,250 returned), $4,000 of $19,000 ($1,000 to the attorney), $6,000 out of $36,990 (the attorney's fee was 25 percent of the rest), and $10,000 out of $38,923 (the attorney got one third of the recovery).

Federal Forfeitures

The Volusia County sheriff's department is not the only law enforcement agency that has turned to highway robbery in response to asset seizure laws. Federal forfeitures have taken in $2.4 billion since 1985. The Drug Enforcement Administration seizes millions of dollars at ports, airports, and bus stations; Congress began investigating alleged abuses by the DEA in May of 1992. Whether large portions of the seizures come from criminals or not cannot be determined since many do not involve arrests, and the costs associated with recovering wrongfully seized assets from the federal authorities can run into thousands of dollars. Many other states have laws similar to Florida's, and for those that do not, the Comprehensive Crime Act of 1984 established a system whereby any local police department which cooperated with federal drug enforcement authorities in an investigation would share in the assets confiscated.

The 1984 federal confiscations legislation followed a period of active advocacy by federal, state, and local law enforcement officials who suggested that it would foster cooperation between their agencies and increase the overall effort devoted to drug control and its effectiveness; that is, law enforcement bureaus maintained that they needed to be paid to cooperate, whether the cooperation was in the public interest or not.

It was not until a few years after the effects of the legislation could be seen that strong opposition arose. It became clear that the federal legislation was being used to circumvent state laws and constitutions that prohibited certain forfeitures or limited law enforcement use of seizures. For example, North Carolina's Constitution requires that all proceeds from confiscated assets go to the County School Fund. Law enforcement agencies in those states where state law limited their ability to benefit from confiscations began using the 1984 legislation to circumvent their laws by "routinely" arranging for federal "adoption" of forfeitures, whereupon 80 percent is passed back to the state and local law enforcement agencies, since the federal law mandated that shared forfeitures go exclusively to law enforcement.

Section 6077

As education groups and others affected by this diversion of benefits recognized what was going on, they began to advocate a change in the federal law. They were successful, as the Anti-Drug Abuse Act of 1988 (passed on November 18, 1988) changed the asset forfeitures provision. Section 6077 of the 1988 statute stated that the attorney general must assure that any forfeitures transferred to a state or local law enforcement agency "is not so transferred to circumvent any requirement of State Law that prohibits forfeiture or limits use or disposition of property forfeited to state or local agencies." This provision was designated to go into effect on October 1, 1989, and the Department of Justice interpreted it to mandate an end to all adoptive forfeitures.

State and local law enforcement officials immediately began advocating repeal of Section 6077, of course. Thus, the Subcommittee on Crime heard testimony on April 24, 1989, advocating repeal of Section 6077 from such groups as the International As-

sociation of Chiefs of Police, the Florida Department of Law Enforcement, the North Carolina Department of Crime Control and Public Safety, and the U.S. Attorney General's Office. Perhaps the most impassioned plea for repeal was made by Joseph W. Dean of the North Carolina Department of Crime Control and Public Safety, who both admitted that law enforcement bureaucracies were using the federal law to circumvent the state's constitution and that without the benefits of confiscations going to those bureaus, substantially less effort would be made to control drugs:

> Currently the United States Attorney General, by policy, requires that all shared property be used by the transferee for law enforcement purposes. The conflict between state and federal law [given Section 6077 of the 1988 Act] would prevent the federal government from adopting seizures by state and local agencies.
>
> . . . This provision would have a devastating impact on joint efforts by federal, state and local law enforcement agencies not only in North Carolina but also in other affected states. . . .
>
> Education is any state's biggest business. The education lobby is the most powerful in the state and has taken a position against law enforcement being able to share in seized assets. The irony is that if local and state law enforcement agencies cannot share, the assets will in all likelihood not be seized and forfeited. Thus no one wins but the drug trafficker. . . .
>
> . . . If this financial sharing stops, we will kill the goose that laid the golden egg.

This statement clearly suggests that law enforcement agencies focus resources on enforcement of drug laws because of the financial gains for the agencies arising from forfeitures. Apparently it is not the fact that drugs are illegal which induced the massive post-1984 War on Drugs, but the fact that forfeitures generate benefits for police.

The implication that law enforcement agencies benefit from the discretion arising through forfeitures was also corroborated by other testimony. In fact, a statement by the U.S. Attorney for the Eastern District of North Carolina, in support of repealing Section 6077, actually implied that law enforcement agencies were focusing on confiscations as opposed to criminal convictions: "Drug agents would have much less incentive to follow through on the assets potentially held by drug traffickers, since there would be no reward for such efforts and would concentrate their time and resources on the criminal prosecution." But isn't that what they are supposed to do? Nonetheless, the police lobbies were successful. A repeal of Section 6077, retroactive to October 1, 1991, was hidden in the 1992 Defense Appropriations Bill.

It is time to rethink asset seizure laws. By making victims prove their innocence before their assets are returned, long-standing constitutional protections of due process are being overturned. Assets should not be seized unless an arrest is made and they should not be kept unless a conviction follows. Furthermore, by giving the seizures to the police department that makes them, we are creating incentives for legalized highway robbery. Seizures of assets used in the process of committing a crime or assets purchased with ill-gotten gains may be a good idea. However, if this is the case, then police should willingly make seizures no matter who gets the seized assets, and they should be eager to ensure that innocent victims get their assets back. If seizures are warranted, they should go into the general fund or into a restitution program for crime victims. Then maybe the incentives for police to commit legalized highway robbery would come to an end. □

THE FREEMAN
IDEAS ON LIBERTY

MORALITY IN AMERICA

by Norman S. Ream

Early in the nineteenth century the brilliant French observer Alexis de Tocqueville gave this estimate of America and Americans in his book *Democracy in America*: "There is no country in the world where the Christian religion retains a greater influence over the souls of men than America."

A similar assessment could not be made at the end of the twentieth century. That is not to say that the Christian religion exercises any great influence over the souls of men in any nation today, but the loss of its original influence is certainly as great if not greater in the United States than anywhere else. Substitute the words "morality" or "ethics" for the words "Christian religion" and their influence would still be seriously questionable. One might perhaps even put it this way and not be far from the truth: *There is no country in the world where the Christian religion has lost more of its moral influence over the souls of men than in America.*

The high moral principles of the Christian religion have been corrupted by greed and envy, and greed and envy have caused and been exacerbated by the very programs America's politicians have adopted in a misguided effort to eliminate poverty and inequalities of all kinds. It is impossible to have both liberty and equality, for the attempt to achieve the latter will always destroy the former. When government assures its citizens that they are entitled to be equal it does two things: It levels by pulling down those at the top, and it engenders greed and envy in those at the bottom.

There was once a commonly observed moral philosophy or moral culture in America, but that is no longer true. Today Americans have few generally held convictions concerning good and evil, right and wrong, morality and immorality. In part it is the consequence of our heterogeneous population resulting from the vast numbers of immigrants from countries of different cultures. Those who had been so anxious to come to America and enjoy its blessings have often brought with them philosophies and cultures inimical to those held by earlier settlers. As a consequence they have helped destroy the very blessings they sought. But the descendants of those earlier settlers have abandoned their forebears' beliefs, and this has been a major factor in the waning of Christianity and ethics in America.

The generally held moral principles which once guided human action in America had their roots in the Christian religion as Tocqueville pointed out. One can argue that the Founding Fathers did not always agree in their interpretation of that religion—some were deists—but the great majority of them drew their moral and ethical guidelines from the Ten Commandments and the teachings and example of Jesus of Nazareth. They were of one mind in their conviction that there should be freedom of religion for all.

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Religious Beliefs of the Founders

The most orthodox and ardent believer among the principal figures urging freedom from the constraints of England and King George III was Samuel Adams, who with other Sons of Liberty dumped the tea into Boston Harbor. A stern Calvinist, he believed liberty was dependent on the moral and spiritual principles enunciated in the New Testament. In a letter to John Scollay in 1776 he wrote,

> Revelation assures us that Righteousness exalteth a nation—Communities are dealt with in this world by the wise and just Ruler of the Universe. He rewards or punishes them according to their general character. The diminution of public virtue is usually attended with that of public happiness, and the public liberty will not long survive the total extinction of morals.

At the other extreme, if it can be called extreme, was the deist Thomas Paine, whom Theodore Roosevelt is once said to have referred to as a "filthy little atheist." In 1797, however, Paine started a movement in Paris to combat atheism. He did not believe in revelation nor did he believe the Bible was divinely inspired, but in the *Prospect Papers*, published in 1804 by Elihu Palmer, he wrote: "It is by the exercise of our reason that we are enabled to contemplate God in His works and imitate Him in His way. When we see His care and goodness extended over all His creatures, it teaches us our duty toward each other, while it calls forth our gratitude to Him."

The idea that many if not most of the Founding Fathers were atheists or agnostics is incorrect. Not only were they devoutly religious, but they firmly believed that liberty and justice depended on an observance of the moral and ethical demands of the Christian religion.

Benjamin Franklin wrote to Ezra Stiles in 1790 that "As to Jesus of Nazareth, my opinion of whom you particularly desire, I think the system of morals and His religion, as he left them to us, the best the world ever saw or is likely to see. . . ."

It was Franklin who urged the delegates to the Constitutional Convention to begin the sessions with prayer: "I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth—that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without his aid?"

Our first president, George Washington, rarely spoke of his religious beliefs but on one occasion wrote a letter to the Philadelphia-area clergy in which he stated his conviction that "Religion and morality are the essential pillars of Civil society. . . ." In his Farewell Address he declared, "Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports."

When he took the oath of office in New York, Washington did so with his hand on the Bible and afterward bent down and kissed the book.

Washington's successor in office, John Adams, in an 1810 letter to Benjamin Rush wrote, ". . . religion and virtue are the only foundations, not only of republicanism and of all free government but of social felicity under all governments and in all the combinations of human society."

Alexander Hamilton believed it was man's relationship to God that gave birth to man's natural rights: "The Supreme Being . . . endowed him with rational faculties, by the help of which to discern and pursue such things as were consistent with an inviolable right to personal liberty and personal safety."

Thus did the Founding Fathers state in various ways their firm conviction that a nation desiring individual freedom and national prosperity must be guided by high standards of morality and ethics and that such a moral philosophy could only grow out of a strong religious faith.

The Dissolution of Moral and Ethical Standards

Something has happened to the soul of America and millions of Americans know that what has happened is not good. Even

some politicians recognize it and try to convince the electorate that the answer lies in the political arena. The answer, however, is certainly not to be found there. Politics is merely a reflection of the moral and ethical principles of society at large.

We have been urged over and over again by certain individuals and groups to become a value-free society, and that in large part is what we have become. A recent candidate for high office in Colorado insisted, as have many others, that values should not be taught in the public schools. One is tempted to ask if cheating should be acceptable and whether the purpose of public schools is to dump graduates into the work force with no concern for their character and integrity.

Today, lacking any commonly held moral and ethical principles, the test for government activity is not "is it moral and right?" but "is it politically expedient?" Instead of applying the test of sound morality and sound economic principles, political activity is tested by the reactions and pressures of minority groups. There is little distinction any more between morality and legality. Politically inspired legislation makes something right or wrong merely because it is the law and not because it is in harmony with eternal principles tested by 2,000 years of history. John Quincy Adams voiced the truth held by the Founding Fathers:

> This principle, that a whole nation has a right to do whatever it pleases, cannot in any sense whatever be admitted as true. The eternal and immutable laws of justice and morality are paramount to a legislation. The violations of those laws is certainly within the power of a nation, but is not among the rights of nations.

The late Leonard Read, founder of The Foundation for Economic Education, was fond of saying that "Economics is a branch of moral philosophy." He was right, of course, but he could have gone further. The attempt to separate economics, political activity, or any other field from sound principles of morality is to guarantee failure. No policy or program which fails morally can be ultimately successful. Take for example our huge national debt. It is immoral to foist upon future generations a burden caused by our own profligacy. We are now beginning to see the grave consequences of that immorality. The recent situation in California where employees of the state were being paid in IOU's is but a small foretaste of what will almost certainly happen elsewhere.

The Founding Fathers were strongly in favor of religious freedom for all citizens and wanted no religious test for those seeking federal office. Many of those early statesmen were indeed unorthodox in their religion, but they nevertheless were strongly of the opinion that without belief in a divine Creator and in the basic moral and ethical teachings of Jesus no lasting freedom in America could be achieved. They never rejected God nor lost their respect for religion. Moral man and religious man could not be separated.

As Washington, Adams, and Madison knew, morality springs out of religious faith and a people with little or no Christian theology will have a seriously impaired moral philosophy. That leaves us with an important insight regarding the direction in which America and Americans should go.

The crisis facing America and Americans today is not an economic nor a political one. It is a moral and spiritual crisis. It is a crisis of character which has produced a crisis of behavior. It is a poverty of values caused by a poverty of faith. We remove all value judgments from society and then wonder why we have a generation that is morally confused.

Our society has continually and increasingly dismissed the relevance of religion and as a consequence has for masses of people diminished its importance. If religion is ignored or banned then its components such as the Ten Commandments and the teachings of Jesus are likewise made irrelevant and we arrive at the conclusion that "if there is no God then anything is permissible." It is difficult to believe there are many who will rejoice in such a culmination. □

THE FREEMAN
IDEAS ON LIBERTY

THE FEAR OF INDIVIDUALISM

by Tibor R. Machan

One of America's most important gifts to the world was the political philosophy of individualism. The central tenet of this idea is that every human being is important, especially from the point of view of law and politics, as a sovereign individual, not living by the permission of the government or some master or lord. That is the basic idea underpinning not only the democratic process, the First Amendment of the U.S. Constitution, and the various prohibitions addressed to the government concerning how to treat the citizenry, but the free market economic system as well.

Individualism and Capitalism

The free market system or capitalism is founded on the doctrine that each person has a basic right to private property in his or her labor and what he or she creates and earns freely and honestly. The economic idea of freedom of trade—in labor, skill, goods, services, etc.—rests squarely on individualism. No one is anyone else's master or servant. No involuntary servitude except as punishment for crime is permitted. Thus everyone has the basic right to engage in free trade—as in any other kind of peaceful action, even when his or her particular decision may not be the wisest or even morally exemplary.

In an individualist society the law upholds the idea that everyone is free to choose to associate with others on his or her own terms—whether for economic, artistic, religious, or romantic purposes. Not that all the choices people make will be good. Not that individuals are infallible. Not that they cannot abuse their freedoms. All of that is granted. But none of that justifies making others their masters, however smart those others may be. To quote Abraham Lincoln, "No man is good enough to govern another man, without that other's consent."

But today the political philosophy under the most severe attack in many intellectual circles is individualism. From leftover Marxists to newly emergent communitarians, and all the way to democratic pragmatists—in the fields of political economy, sociology, and philosophy—everyone is badmouthing individualism. It picked up several years ago with the publication of Robert N. Bellah's book *Habits of the Heart, Individualism and Commitment in American Life*, and continues with innumerable related efforts, including the launching of the journal *The Responsive Community* and the publication of a new book by Bellah, *The Good Society*, as well as Amitai Etzioni's just-published *The Spirit of Community*.

These and many other efforts constitute a

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concerted attack against the individual and his rights. Perhaps predictably, the efforts involve gross distortions of what individualism actually is. It is supposed to foster disloyalty to family, friends, and country. It is supposedly hedonistic and instills antisocial sentiments in people. It is allegedly purely materialistic, lacking any spiritual and cultural values.

But such distortion is accomplished by focusing selectively on a very limited area of individualist philosophy, one employed mostly in technical economic analysis and serving merely as a model by which to understand strictly commercial events in free market economies. An exclusively economic conception of the human individual is admittedly barren—it treats everyone as nothing other than a bundle of desires. But this is not very different from the way every science employs models, taking a very simple idea to make sense of a limited area of the world.

Individualism, True versus False

The anti-individualists do not look at individualism as it is developed by social thinkers such as Frank Chodorov, F. A. Hayek, or Ayn Rand, let alone by some of their contemporary students who are developing these ideas and showing how vibrant a political system and culture can be when human beings are understood as individuals. The sheer creative power of human beings should make clear that their individuality is undeniable, crucial to every facet of human living, good or bad. Yet, this essential individuality of every person by no means takes away the vital role various social affiliations play for them; human individuals are social beings.

The kind of community worthy of human life is intimately tied to individualism; such a community, even if the most suitable setting for human living, must be chosen by the individuals who occupy it. If this is subverted by forcing individuals into communities, those involuntary communities will not be genuine communities at all. Individual choice and responsibility are essential to human flourishing.

Indeed, in America, where individualism has flourished more than elsewhere, there are millions of different communities to which individuals belong, often simultaneously, and this is possible because individuals have their right to choose reasonably well protected. Not only do all individuals join a wide array of communities—family, church, profession, clubs, civic associations, and political parties—but there are vastly different approaches to living that also draw around them large segments of the population who join freely, without any coercion and regimentation. But instead of appreciating the robust nature of individualism, including its support for the healthiest form of communitarianism, its opponents are trying to discredit it in any way they can. Why?

Well, some of their motives may be decent enough—some may indeed fear the impact of narrow economic individualism and thus carp against all individualism. But sometimes their motivations cannot be understood as anything else but a hunger for power over other people's lives. Otherwise, why would the critics ignore perfectly sensible versions of individualism and insist on the caricatures? Over and over again they invoke the caricature even when other, well developed versions are available.

Something like this seems to be the best explanation for wishing to destroy the most significant American discovery, namely, the vital contribution of individuality to human culture. Why would such attacks be launched but to reintroduce subjugation, involuntary servitude, and the demeaning of individuals as individuals in favor of some elite?

No doubt those clamoring for power rationalize their actions with the thought of certain worthy goals: They want a cooperative, harmonious, mutually enhancing community. They often believe that individuals as individuals are dangerous but as members of a community they are wonderful. As the Russian author Tatyana Tolstaya observes in a recent issue of *The New Republic*:

Taken individually, in short, everyone is not good. Perhaps this is true, but then how did all these scoundrels manage to constitute a good people? The answer is that "the people" is not "constituted of." According to [collectivists] "the people" is a living organism, not a "mere mechanical conglomeration of disparate individuals." This, of course, is the old, inevitable trick of totalitarian thinking: "the people" is posited as unified and whole in its multiplicity. It is a sphere, a swarm, an anthill, a beehive, a body. And a body should strive for perfection; everything in it should be smooth, sleek, and harmonious. Every organ should have its place and its function: the heart and brain are more important than the nails and the hair, and so on. If your eye tempts you, then tear it out and throw it away; cut off sickly members, curb those limbs that will not obey, and fortify your spirit with abstinence and prayer.

That is why they should be in power: They are the head of the organism, of the community; they know what is good; and they ought to be making the decisions as to who remains part of it and who must be cut off.

Members of society do have different roles; the economists speak convincingly of the benefits of the division of labor. The errors of the collectivists are (1) their presumption that they know better than the individuals involved which members of society are less important, and (2) they have the right to eliminate those members. But individuals are ends in themselves, not animals to be sacrificed on the altar of the collectivist state. □

REQUIRING CITIZENS TO DO EVIL

by Michael Pierone

Does civil disobedience have any place in a lawful society? If so, under what circumstances, and if not, then what is the consequence? Recently the physician-host of a radio program answered a question about using marijuana to treat glaucoma. He told the listener that as a physician it was his responsibility to prescribe effective remedies even though it may violate the law, and so advised the listener to break the law if need be, but to preserve her own health. Should he have kept his silence?

We used to have slavery in this country, and naturally enough as a consequence, we had the Fugitive Slave Act. The intent of this legislation was to return slaves to their owners; harboring fugitive slaves would not be countenanced. Juries in the northern states routinely refused to convict people who by their own admission were quite clearly "guilty" of violating the law. Would it have served justice to convict the violators?

Michael Pierone is New Jersey coordinator of the Fully Informed Jury Association.

Henry David Thoreau

Today, the right to trial by jury is seriously compromised because jurors do not understand that they have the same right to disregard the direction of the judge as jurors who disregarded the judge when ruling on the justice of the Fugitive Slave Act. Unfortunately, judges are instructing jurors that they are to judge only the facts and that they must accept the law as the judge charges it to them.

We have tens of thousands of laws in this country now, some good, some not so good, some poorly applied to individual circumstances. Is it appropriate that the letter of the law be the rule, or should juries attempt to provide justice, rather than law?

A concrete example may be helpful here. As New Jersey coordinator for FIJA, the Fully Informed Jury Association, I have direct experience in civil disobedience. Recently I mailed letters to county prosecutors in New Jersey asking them their opinion as to the legality of passing out brochures to jurors describing their jury nullification powers. An early response from a prosecutor in Morris County was that I would be "tampering" with the jury to inform them of this power. What was FIJA's response? We ignored the prosecutor's advice and handed out the pamphlets anyway. No arrests were made, largely due to the fact that the press was present and that we also passed out a copy of the Governor's Proclamation of Jury Rights Day, in which he describes jury nullification powers. But would it have served justice to heed the prosecutor's warning? There *is* a good reason for jury tampering laws, but here we have a clear instance of misapplication of a good law. Jury tampering occurs when someone uses coercion or incentives to try to alter a juror's verdict. What we were doing was informing the juror that he has a responsibility to use his conscience to arrive at *his own verdict*, rather than allow the judge to force him to rule against his own best judgment. Is it not the judge who is "jury tampering"?

In his essay on civil disobedience, Henry David Thoreau stated:

> Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy *is* worse than the evil. *It* makes it worse. Why is it not more apt to anticipate and provide for reform? Why does it not cherish its wise minority? Why does it cry and resist before it is hurt? Why does it not encourage its citizens to be on the alert to point out its faults, and *do* better than it would have them? Why does it always crucify Christ, and excommunicate Copernicus and Luther, and pronounce Washington and Franklin rebels?

When government creates laws that require citizens to do evil—to return fugitive slaves, to refrain from harboring Jews, to place Japanese-Americans in concentration camps, or to report on their neighbors—will not men of good conscience disobey and endure the consequences? Or is the virtue of obeying the law so overwhelming that we must abandon virtue itself? □

THE FREEMAN
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OUTLAWING COOPERATION

by Charles W. Baird

Believe it or not, federal labor law may make it illegal for labor and management to cooperate with each other in a private nonunion workplace. Since less than 12 percent of private sector workers today belong to unions, labor-management cooperation involving 88 percent of America's private workforce may break the law.

The Problem

Prodded by foreign competition—especially from the Japanese, whose system of labor-management relations is based on cooperation rather than confrontation—American companies in recent years have set up approximately 30,000 employee participation programs designed to improve communication between workers and managers, give employees a voice in decision-making, boost morale, lower costs, and improve productivity, product quality, and customer satisfaction. Sometimes called "quality circles," "labor-management cooperation groups," or "employee involvement teams," these employee participation programs began in the late 1970s and have grown ever since. If American firms and their employees are to succeed and prosper in today's global marketplace, many believe that this new way of doing business must continue to take root and spread throughout the American economy.

But in a decision issued on December 16, 1992, involving a small Indiana electrical parts manufacturer named Electromation, Inc., the National Labor Relations Board (NLRB) ruled that labor unions may use the 1935 National Labor Relations Act (NLRA) to thwart the development of employee participation programs in nonunion firms. In an era of declining union membership, unions are seeking to use the law in this way because they are desperate to enroll new members. Whatever may have been the case in the 1930s, employers today recognize that good labor-management relations are necessary for survival. As a result, a nonunion worker is often just as well off today as a union worker—often better off, in fact, because labor unions, for their survival, frequently promote an expensive "us-versus-them" adversarial mentality among workers. Where good labor-management relations prevail, unions have a hard time gaining a foothold. At bottom, then, the *Electromation* case involves an attempt by the labor union movement to frustrate nonunion labor-management coop-

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eration. If they succeed, workers will have a voice in their workplace only if they unionize.

Indeed, at the August 1991 annual meeting of the American Bar Association, the chairman of a session on labor and employment law observed that the International Association of Machinists and the Union of Electrical Workers seem to "view employee involvement programs as little more than an attempt to increase employer control over the workplace, bind employees to the success of the enterprise, deflect them from interest in their own solidarity, and undermine existing union structures." That view was reflected in a recent statement to the NLRB by Anton Hajjar, an attorney for the American Postal Workers Union: "A timeless evil lurks behind this new, fashionable trend called employee involvement." The timeless evil, apparently, is the "company union."

Company Unions and the NLRA

Before the 1930s, many employers had organized their workers into unions in an effort to deal better with labor-management issues. Many of those so-called company unions—for example, The Industrial Assembly of the Goodyear Tire & Rubber Company—were honest and successful attempts by employers to improve labor-management relations. In 1933, however, Congress enacted the National Industrial Recovery Act (NIRA), Section 7(a) of which compelled employers to allow their employees to join unions if they so wanted. Since the act did not specify that the unions had to be independent of employers, many employers formed in-house company unions, hoping thereby to comply with the law while avoiding having to deal with independent unions. Although these company unions were often called "employee representation committees," some did not represent the interests of employees at all. Instead, they were used by employers as smokescreens, aimed at preventing workers from affiliating with independent unions. The NLRA put an end to all company unions, legitimate and illegitimate alike.

Section 8(a)2 of the NLRA states that it is an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. . . ." What is a labor organization? Section 2(5) of the NLRA says it is "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The term "employee representation committee or plan" was aimed specifically at those company unions whose chief purpose was to frustrate employees who wanted to affiliate with independent unions.

Electromation Background

What does this have to do with Electromation? Actually, nothing at all. Nevertheless, organized labor claims that it does. They seem to believe that any employee participation committee whose employee members are not union members is an illegal company union. To put the issue in an actual setting, let us examine briefly the facts of the *Electromation* case.

At an employee Christmas party on December 23, 1988, John Howard, president of Electromation, which was then a nonunion firm, announced that since 1988 had been a year of substantial losses for the company, annual wage increases would be canceled for 1989, and the existing attendance bonus program would be altered to reduce costs. The party was not completely ruined because Howard then distributed unexpected Christmas bonuses to the employees.

After a holiday break during which the company was shut down, Howard received a petition signed by 68 of the 187 employees who were affected by the Christmas announcements. The petitioners objected to the changes in the attendance bonus program and requested that management con-

sider alternative approaches to its financial problems. Eager to maintain the good will of his employees, and recognizing that engaging employees in dialogue was a more productive form of labor-management relations than authoritarian proclamations from the top, Howard set up a joint labor-management committee to discuss the issues.

The committee consisted of four management people, including Howard, and eight employees selected at random. It met twice, on January 11 and January 18, and discussed several topics of concern to both sides, including attendance, tardiness, sick leave, incentive pay, overtime, wages, and bonuses. At the second meeting the committee members agreed to set up five joint labor-management "action committees," each of which would specialize in an area of concern: absenteeism and other infractions, a no-smoking policy, communications, pay scales for premium positions, and the attendance bonus program.

On January 19 all employees were asked to volunteer for specific committees and the company selected employee members at random from each list of volunteers. No more than six employees could be on any one committee, and no employee could serve on more than one committee. Each committee would have one or two management members, and the employee benefits manager would serve on every committee. The composition of the committees and the eligibility rules were unilaterally set by management. The no-smoking committee was never organized and never met. The four other committees were organized and did meet.

Although employee committee members "talked back and forth" with, and sought advice from, other employees, they were not formal representatives of the other employees. They did not have to get the approval of all the other employees, or even a majority of the other employees, to take a particular stand at the committee meetings. They were merely the means by which management sought to discover the concerns of employees.

The action committees' role was purely advisory. Howard agreed that if the committees came up with workable solutions he would implement them, but there was no union-like collective bargaining in the sense that all sides had to agree before any policy could be implemented.

Electromation's management was serious about supporting the work of the committees. All committee meetings were held on company premises, the company paid the employee members for their attendance, and the company supplied the necessary materials, including telephones. Any disinterested observer would have to conclude that here was a company that appreciated its employees, valued their good will, and honestly sought their advice.

Shortly after the action committees were formed and got underway, however, the Teamsters Union undertook an organizing campaign at Electromation. President Howard and the rest of the management team did not know about this effort to unionize the firm until February 13 when the Teamsters officially requested that Electromation recognize it as the exclusive bargaining agent for the company's non-managerial employees. On February 21 President Howard pulled all management members off the four committees but told the employees they could continue to meet if they wished. The employee members of the Absentee/Infraction and the Communication Network Committees continued to meet. The Pay Progression Committee disbanded. The Attendance Bonus Committee wrote up the proposal they had been working on and then disbanded.

Electromation's action committees were clearly not what the authors of the NLRA understood to be company unions. The company was not trying to thwart an attempt by its employees to become unionized. Indeed, after President Howard became aware of the Teamsters' organizing drive he did all he could to step out of the way. To any disinterested observer, Electromation was a nonunion firm that was trying to undertake cordial, effective labor-management cooperation and comply with the NLRA.

Electromation Legal Dispute

To begin organizing workers in a nonunion firm, a union must first collect signatures of support from at least 30 percent of the workers. After it does so, the union requests recognition from the employer. If the employer balks, the next step is for the NLRB to conduct a certification election among the employees, by secret ballot, to determine whether a majority wants the union to be their exclusive bargaining agent. Such an election was held at Electromation on March 31. The Teamsters lost by a vote of 95 to 82. The Teamsters then filed an unfair labor practice charge against Electromation, alleging that the action committees had been illegal company unions used to prevent the workers from affiliating with a legitimate union.

If a complaint of an unfair labor practice is accepted by the general counsel of the NLRB, the case is first heard by an administrative law judge (ALJ). On April 5, 1990, the ALJ assigned to the *Electromation* case, George F. McInerny, announced his decision against the company. He set aside the results of the March 31 election and ordered the parties to hold another one. After several months, a second election was held, which the Teamsters won by convincing a majority of workers that, due to the ALJ's decision, the only way they could cooperate with management was through a union. Electromation remains today a unionized firm.

When the ALJ's decision was handed down, prior to the second election, Electromation appealed it to the NLRB. Notwithstanding the outcome of the second election, Electromation continued to press its appeal in order to get a ruling on the labor-management cooperation issues. Before ruling, the NLRB invited the Teamsters, Electromation, the NLRB general counsel, and other interested but not directly involved parties to give testimony on two questions: (1) At what point does an employee committee lose its protection as a communication device and become a labor organization? (2) What conduct of an employer constitutes domination or interference with an employee committee? The NLRB took oral testimony on September 5, 1991. In addition to the three main parties, ten other parties, including the AFL-CIO and the U.S. Chamber of Commerce, gave testimony. The case had become the most hotly contested and widely discussed NLRB case in decades. On December 16, 1992, the NLRB issued its decision upholding the ALJ opinion.

The Board determined that the action committees were "labor organizations" under Section 2(5) of the NLRA because employees were involved in them and they were "dealing with" the employer on matters that unions usually bargain about in unionized companies. The Board found that

> The evidence . . . overwhelmingly demonstrates that the purpose of the Action Committees, indeed their *only* purpose, was to address employees' disaffection concerning conditions of employment through the creation of a bilateral process involving employees and management in order to reach bilateral solutions on the basis of employee-initiated proposals. This is the essence of "dealing with" within the meaning of Section 2(5).

In 1959, in *NLRB* v. *Cabot Carbon Co.*, the U.S. Supreme Court declared that "dealing with" in Section 2(5) is not synonymous with "bargaining with." Therefore, the Board reasoned, the fact that Electromation did not engage in union-style bargaining with the committees did not mean that the committees were not labor organizations. In *Cabot Carbon* the committee in dispute dealt with "grievances," which are mentioned in the Section 2(5) definition of labor organization. In *Electromation* the action committees dealt with attendance bonuses, pay scales, rule infractions, and labor-management communications. The first two issues obviously involve "rates of pay"; the latter two, according to the Board, involve "conditions of work." In truth, it is hard to imagine that an employee participation plan would deal with anything but "conditions of work." Thus, according

to the NLRB, all such plans run up against the proscriptions of Section 8(a)2 since all are labor organizations.

Moreover, since Electromation initiated the committees and set the rules by which they would operate, it was guilty, according to the Board, of "dominating" the labor organizations in violation of Section 8(a)2. Finally, since Electromation provided the meeting places for the committees, supplied materials and telephones, and paid employee committee members for attendance, the Board concluded that it was guilty of "supporting" the labor organizations, again contrary to Section 8(a)2.

The NLRB admitted that there was no evidence that Electromation was acting to counteract the Teamsters' unionization drive. It also acknowledged that there were no grounds for thinking that the company had any anti-union motives for any of its actions or that the employees regarded the committees as union substitutes. But, the Board asserted, those points are irrelevant. Why?

> Section 2(5) literally requires us to inquire into the "purpose" of the employee entity at issue . . . . But "purpose" is different from motive; and the "purpose" to which the statute directs inquiry does not necessarily entail subjective hostility towards unions . . . . If a purpose is to deal with an employer concerning conditions of employment, the Section 2(5) definition has been met regardless of whether the employer has created it, or fostered its creation, in order to avoid unionization or whether employees view that organization as equivalent to a union.

Professor Charles J. Morris, who supported the union side in this case, asserts that "representation" is the key question in determining whether an employee participation plan is a Section 2(5) labor organization. According to Morris, any nonunion worker-management cooperation is all right if each employee speaks for himself, while if a nonunion employee represents other employees on any committee, the committee is automatically a labor organization, subject to the prohibitions of Section 8(a)2. Yet in all but very small firms any practical employee participation plan would have to involve representation. Moreover, in nonunionized settings employers are likely to take the initiative in the formation and administration of such plans. The plans are motivated, after all, by the employer's concern with the bottom line. If accepted, Morris' view dooms virtually all employee participation plans in nonunion firms.

The NLRB tried to avoid condemning all nonunion employee participation plans in its *Electromation* decision. According to the Board, those that focus on improving "quality" and "efficiency" are acceptable, whereas those that deal with subjects about which unions usually bargain are not. Members Devaney and Oviatt wrote separate concurring opinions in which they tried to amplify that distinction. Member Raudabaugh, in his concurring opinion, correctly pointed out that the term "conditions of work" in Section 2(5) precludes any such distinction.

Raudabaugh concurred in the decision because he thinks the law, as written, makes all employee participation plans Section 2(5) labor organizations. The only way around that result, he concluded, would be for Congress to change the law. He noted, however, that it might be possible to uphold an employee participation plan, even though it is a labor organization, by a liberal interpretation of the restrictions in Section 8(a)2. Such was not the case in *Electromation*, according to Raudabaugh, because among other things the company set up the action committees in response to employee complaints; thus, they had to be considered union substitutes. If Electromation had initiated the committees without any employee prodding, "to accomplish its own entrepreneurial interests," Raudabaugh would have upheld them as permissible because they would not be union substitutes.

Polaroid, Too

Electromation is not the only nonunion firm to have faced this problem. On June 19, 1992, the Polaroid Corporation dissolved an

employee participation committee that had been at the center of good labor-management relations in that nonunion firm for 40 years. Polaroid took the action in response to a declaration by the U.S. Department of Labor that the committee was a labor organization under the NLRA. Members of the committee were elected and acted as representatives of employees and, as in the *Electromation* case, the company supported the committee. Polaroid wanted to avoid the difficulties that Electromation was going through. As reported by the Bureau of National Affairs:

> Bill Graney, chairman of the [Polaroid] committee for the past three years, said there was "a lot of anger" among employees that officials in Washington made a decision based "on some archaic laws." The committee could only remain in existence if it were completely independent of management, but "what made this work was that we were all in this together."

Many at Polaroid—management and employees alike—are afraid that unions may see the dissolution of the committee as an opportunity to undertake an organizing campaign. Indeed, because of the *Electromation* decision, nonunion workers everywhere will now be faced with the Hobson's choice confronting Polaroid workers—union representation or no representation at all.

Congress, the Courts, and the Law

Congress could of course change the law that has led to this result. In fact, in June 1991, in response to Judge McInerny's decision, 33 Congressmen introduced a bill called the American Competitiveness Act that would have amended Section 8(a)2 by adding a statement "that nothing [in the NLRA] shall prohibit the formation or operation of quality circles or joint production teams composed of labor and management, with or without the participation of representatives of labor organizations." The bill got nowhere in the 102nd Congress. On January 31, 1992, nine Congressmen, led by Wisconsin Representative Steve Gunderson, submitted a legal brief to the NLRB in which they asked the Board to reverse the ALJ's decision in *Electromation* and uphold the legality of the company's action committees. If the Board did not do so, the Congressmen said, they would lead a new effort in the House to amend the NLRA. On December 21, 1992, in response to the *Electromation* decision, Representative Gunderson announced that he would introduce an amendment to Section 2(5) early in the 103rd Congress. His amendment would change "dealing with" to "collective bargaining with."

Although the Gunderson amendment would probably settle the issue, most observers believe that there is little chance that any such amendment would make it through the 103rd Congress. Now that the NLRB has decided against Electromation, the only hope left for nonunion labor-management cooperation would seem to rest with the federal courts. Thus, on December 28, 1992, Electromation announced that it would appeal the NLRB decision to the Seventh Circuit Court of Appeals.

Electromation doubtless wishes it were in the jurisdiction of the Sixth Circuit Court of Appeals, which has overturned earlier NLRB decisions against employee participation committees. In 1982, for example, that court upheld the legality of a representation committee composed of employees elected by their peers; the committee had communicated employee concerns and suggestions to management on all manner of issues. Similarly, in 1989 the same court upheld the legality of an elected "President's Advisory Committee," which was charged with communicating employee views to management. Unfortunately, other circuit courts, including the Seventh Circuit, have been less hospitable to such arrangements.

The Supreme Court has not taken up the issue since 1959. Today, however, the circumstances and issues in employee participation plan cases are different from those in the 1959 *Cabot Carbon* case. Moreover,

the composition of the Court has changed. It is impossible to predict, therefore, just how the Court will decide *Electromation* if the case reaches it.

At his confirmation hearings to become the new Secretary of Labor, however, Robert Reich was asked about the *Electromation* decision. He avoided any specifics but said that he thought the decision was narrow and should not impair labor-management cooperation. If it does have that effect, Reich said that he "will be seeking legislation" to remedy the situation. We can only wait to see what kind of legislation the Clinton administration will seek.

For its part, Congress is not opposed to all employee participation arrangements. Senator Edward M. Kennedy, for example, promoted the Occupational Safety and Health Reform Act of 1992, which would have forced companies with eleven or more employees, union and nonunion alike, to create joint labor-management health and safety committees. Kennedy plans to reintroduce the bill in the 103rd Congress. And many unions support the bill even though such committees would be no different in principle from the Electromation action committees the unions so bitterly oppose. Indeed, Peggy Taylor, associate director of the AFL-CIO's Department of Legislation, said that such health and safety committees could be on the "cutting edge" of labor-management cooperation. Apparently unions do not want to be seen to be against health and safety so they are willing to give up that turf, at least in nonunion settings, in exchange for monopoly representation privileges on all other matters. In union settings, however, they claim monopoly representation privileges even on matters of health and safety, as we will next see.

The Problem Extends to Unionized Firms

The NLRA can be used to restrict labor-management cooperation even in unionized firms. On December 22, 1989, for example, an ALJ held that the Du Pont Company violated the law at its Deepwater, New Jersey, plant because it instituted, dominated, and supported a "design team" consisting of management and employee members. On January 30, 1990, the NLRB upheld the ALJ. The job of the team was to improve workplace safety, promote innovation, foster better communications, and make the plant more competitive. The union complained that all of this was being done without going through the union. According to the NLRB, cooperation with the union is permitted, but cooperation with workers without union involvement is not.

That was not the end, however, to Du Pont's labor-management cooperation troubles. On May 11, 1992, another ALJ declared that seven more committees at Du Pont's Deepwater plant functioned as illegal company unions. Six of the committees dealt with safety issues while the seventh dealt with employee physical fitness programs. This ALJ affirmed the finding in the earlier case: Where there is a union, labor-management cooperation must be union-management cooperation, even in the operation of voluntary physical fitness programs.

The *Electromation* case, recall, concerned labor-management cooperation in nonunion settings. Putting the unions' positions in the *Electromation* and *Du Pont* cases together, we must conclude that, to them, labor-management cooperation in nonunion settings, except concerning health and safety, is always wrong; and labor-management cooperation in unionized settings must always be union-management cooperation. Quite simply, unions want to have a government-enforced monopoly on speaking for workers. In union settings they demand those monopoly privileges even in the areas of health and safety. In nonunion settings they are apparently willing to allow labor-management cooperation on health and safety issues only, but on nothing else.

A Common Sense Approach

As the NLRB was weighing the *Electromation* case, Edward E. Potter, president of the Employment Policy Foundation, had

urged the Board to take a "common sense" approach. Since the clear intent of the authors of Sections 2(5) and 8(a)2 was to prohibit employers from resisting independent unions by forming sham ones, those provisions should not be used to prohibit anything else, he argued, such as labor-management cooperation that is not based on animosity toward unions. In cases like *Electromation*, Potter continued, the Board should take into account the intent of the employer in forming employee participation committees. If there is no anti-union intent, no violation of the NLRA should be found. Potter further argued that the Board should consider the perceptions of employees who participate in such plans. Employees are not stupid. They know when they are being conned for anti-union purposes. If employees do not feel they are being coerced or exploited for anti-union purposes, Potter concluded, they probably are not. The Electromation, Polaroid, and Du Pont employees involved in such committees were not being victimized by their employers, and they knew it.

Whether the intentions of the authors of a statute ought to be binding on agencies and courts that interpret it is hotly debated in legal circles. Moreover, the intentions of the authors are not always clear. The author of the main *Electromation* decision wrote, for example, that "the legislative history reveals that the provisions outlawing company dominated labor organizations were a critical part of the Wagner Act's purpose of eliminating industrial strife. . . ." He then went on to quote Senator Robert Wagner, the principal author of the act:

> Genuine collective bargaining is the only way to attain equality of bargaining power . . . . The greatest obstacles to collective bargaining are employer-dominated unions, which have multiplied with amazing rapidity since the enactment of [the National Industrial Recovery Act]. Such a union makes a sham of equal bargaining power. . . . [O]nly representatives who are not subservient to the employer with whom they deal can act freely in the interest of employees. For these reasons the very first step toward genuine collective bargaining is the abolition of the employer-dominated union as an agency for dealing with grievances, labor disputes, wages, rates, or hours of employment.

That passage seems to substantiate Potter's view that Sections 2(5) and 8(a)2 were aimed at sham unions used to thwart the desires of employees to unionize, not at labor-management cooperation in nonunion settings. Yet the author of the main *Electromation* decision thought the passage justified the Board's conclusion that the term "labor organization" should be interpreted broadly to include more than just sham unions. In his view, the statute was written broadly to include anything any employer could think of. Ironically, in reading Wagner's intent to prohibit sham unions as entailing a prohibition of *any* nonunion labor-management cooperation, the Board has ensured an adversarial relation between labor and management and so has undermined the larger aim of the act—the elimination of industrial strife.

In his opinion concurring in the judgment, Dennis Devaney took issue with the Board's main decision on the question of legislative intent:

> [T]he definition of "labor organization" [in Section 2(5)] is intended to bring under the purview of Section 8(a)2's strictures the phenomenon of the company-imposed sham bargaining agent, without reference to other types of employer-employee communication with purposes other than bargaining.

Devaney concurred in the judgment against Electromation because, as he read the record, the company did, through the action committees, engage in bargaining on terms and conditions of employment.

Despite the NLRB's sweeping prohibition of nonunion labor-management cooperation, other federal legislation implies that the federal government enthusiastically supports such cooperation in all firms, whether they are unionized or not. Indeed, a Bureau

> When the state degenerates from the defender of personal freedom to the dispenser of special privilege, it carries with it into corruption the once proud and independent voluntary associations. It destroys the healthy, pluralistic society, the society in which multitudes of private and voluntary associations strive in a peaceful and competitive way to improve the positions of their members.
>
> —*Sylvester Petro*, "The Perversion of Pluralism"

of Labor-Management Relations and Cooperation has been created in the U.S. Department of Labor. Its official purpose is "to promote cooperative labor-management efforts and enhance the quality of working life, while improving the productivity and competitiveness of American industry."

Another example is the Malcolm Baldrige National Quality Improvement Act of 1987. Under this law the Department of Commerce gives Malcolm Baldrige National Quality Awards to companies that have devised and implemented outstanding quality management systems based on employee involvement. It is not a little ironic that in its *Electromation* decision the NLRB has come out against nonunion labor-management cooperation and, by implication, that it penalizes many of the very plans that the Malcolm Baldrige Award is designed to honor.

Free Choice?

After the *Electromation* decision came down, the AFL-CIO issued a statement praising the Board for "guaranteeing employees the right to choose their own representatives." That view was echoed by Charles J. Morris:

> Employers who really believe in the right of workers to exercise a free and democratic choice in the selection or rejection of their representative will applaud the board's decision for it upholds the principle of free choice. The Board in Electromation is simply saying as the Act requires, that employees ought not to be coerced in their choice of representation by either a labor union or by their own employer.

However genuine this concern for free choice, the *Electromation* decision hardly respects such a choice. For even if we assume that workers should be prohibited from dealing directly with their employer when a majority among them want to have a union, as the NLRA requires, the Teamsters lost the initial certification election when a majority of the employees voted to handle labor-management issues without a union. The union could not accept that outcome, however, and so filed a complaint. Armed then with the ALJ's broad reading of the NLRA, the union convinced a majority of Electromation's workers that their concerns could be addressed only through a union. Thus was the "free choice" of Electromation's workers—majority and minority alike—respected.

Conclusion

It is impossible to say for all time what the best and most effective forms of labor-management cooperation are, other than to say that that determination should be left to the parties themselves to make. Those forms that seem best today may not be best tomorrow. The discovery of what works, and what works better, is an ongoing process. That process is stifled, however, when labor-management cooperation is forced into the one-size-fits-all strait jacket of NLRA unionism. When that happens, both business and labor pay the price, as history amply demonstrates. The global marketplace cannot be resisted. It is here and growing. If we do not change our ways of doing business to meet this new reality, we will all pay the price. As in so much else, freedom is not only right but efficient as well. It is the foundation for prosperity in our changing world. □

THE FREEMAN
IDEAS ON LIBERTY

STORE SETS

by David Montague

I'm a retail merchandiser. I fight for shelf space in grocery stores.

The business is intensely competitive. I have watched pot-bellied men in their forties get into a fist fight over whose brand should get the better side of the shelf. I've seen a thick-skinned, Army-brat mother of teenagers in tears over a single facing in an insignificant store. The frustration casualties are hard to count, but I know of four heart-attack victims in the past year. Often I work all day only to have a competitor come behind me the next day and reset everything to his advantage.

The arena for our contention is the store set, wherein the various sales reps and merchandisers descend on a store to clean it, pull discontinued items, work in new items, and allocate the shelf space.

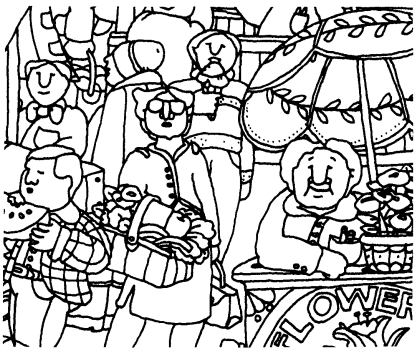
The question of how best to set a category is complicated by several factors—visibility, traffic flow, and so on—but a major consideration is to make the set tamperproof. This means I want to separate any standard-shaped packages from an expansion-minded competitor by putting a package of another shape between us. I want to set my stuff horizontally, in most cases, so it's harder for the other guy to rob me. Most important, I want to be fair. It isn't that I have a generous nature. I want to be fair because I don't want to give my competitor an opening to challenge my set.

I have brands in five categories. If I beat the competition to the store, my first task is to decide which category is the most critical. I try to anticipate which of my competitors may show up, and where their priorities will lie. I make contingency plans in case I guess wrong. I grab the category where I have the most to gain or lose.

At any given set I may have two major competitors and three or four minor competitors. If the competition sends a greenhorn, I'll end up calling all the shots, and he'll end up stocking the shelf. A standard question among competitors who meet as strangers at a set is, "So how long you been with Procter?" Or: "How long have you been with Kimberly?" But the question is asked as a formality, or to confirm the original impression, because it is immediately apparent how long everybody's been around. A veteran paired with a newcomer will always take over the set within a matter of seconds, even without conscious contrivance. The dynamics of cooperation and challenge are subtle, and it takes a while to learn to work the machinery. If the newcomer sticks around for six months, he'll be trouble. He'll consult higher authority to settle minor disputes. He'll fight over trivialities. He's sure he's being taken advantage of; he just doesn't know how. After a year he'll start to get the hang of things. He'll start picking up your stratagems. One morning you'll arrive at an eight-o'clock set at quarter past seven and find him already at work. You'll know then that you have a worthy antagonist.

Despite the cutthroat nature of the business, old competitors work well together. They have learned that it's better to work

The author, who has used a pen name, wishes to remain anonymous.



"Competition is nothing but freedom looked at upside down. In a market where buyers are free to shop around, sellers must outdo each other to get and keep customers. Through competition there is produced the maximum of goods and services that the public wants most."

—Hart Buck

things out between themselves rather than bring in the set supervisor, who may, in irritation, cast a decision to the detriment of both. I often eat lunch with my fiercest competitors, who have bitterly cursed me to my face and vice-versa, and from whom I've had much more training than from my own company. It is a relationship similar to an old contentious marriage, where each partner anticipates the other's argument. The fighting tends to be fast and efficient. Ninety percent of the time we are civil, even friendly, and we generally enjoy each other's company. But we're all ready to play hardball at a moment's notice.

Seen as a game, the store set is a combination of the German card game skat and football. It is like skat because the configuration of allies and enemies is constantly in flux. It is physically demanding because the set starts at seven or eight a.m. and may be more than a hundred miles away. I've left home as early as four-thirty to get to a distant set ahead of competition who lived in that town. The average set takes eight or ten hours, including drive time, but fourteen isn't uncommon. The work is usually light, but at its worst it is grueling and endless. I've had easier days roofing houses.

My accounts are all independents and small chains. There was a time when I could have opted for a more staid job working big chain accounts where decisions are made at a regional level and sections are set by schematic diagrams called planograms. I chose the independents because chaos offers security: I can't be replaced by a robot. The people I work with feel the same way. Better to fight for a living, and to have opportunities for improvisation, than to be at the mercy of paper-pushers.

There is no altruism among us. Regardless of how well disposed we may feel toward one another, there is no charity on the set, only expedient courtesies and temporary alliances. The only reason I don't take the whole shelf for myself is I can't get away with it, and I know if I tried I would lose my credibility with the store owner or set supervisor. My competitors are of the same make, and I expect no different. We have no common cause.

And yet, in our aggregate, it is sharks like us, along with commercial real estate speculators, futures dealers, and other such quasi-parlous types, who ensure that when you go grocery shopping you don't have to drive forty miles to stand in line for hours to buy whatever happens to be on the shelf at an unpredictable price. We are the ones who keep the junk off the shelf, and make sure the best products are in stock. To apotheosize the job to a metaphysical level, we are paid for our recognition of the value of time and space. In those parts of the world where we do not exist, you will find starvation. It is the drive for market share, the drive to maintain and increase shelf space, that is the impetus for continual improvement of the product. □

THE FREEMAN
IDEAS ON LIBERTY

PART OF THE ECONOMY

by Bill Chaitow

Hardly anyone knew his name. Each day, the old man would make his way to the same spot downtown in front of Kress' department store with his aging dog. He would unfold his metal chair, sit down and begin to finger the keys and buttons on his ragged, worn accordion. The tunes were hardly recognizable and they were not played with zest. Often he would sing but his words were mouthed so low and indistinctly that passersby were barely able to recognize the song. Still, enough of them would feed coins into the upturned hat, which sat less than ten inches from the nose of his tired dog, that the performer returned to his "stage" five days a week for many years.

He was the kind of person a child remembers. His eyes were his most memorable feature: oversized, milky blue, each pointing its own direction in a vacuous stare. His heavy body would slightly sway as his music droned. Whether his act was called begging or entertaining was not important. The old man was a fixture downtown and no one would seek to remove him. He was doing what he could to earn a living. In his manner there was an acceptance of his condition, a sense of purpose to his life, and a contentment as he played and sang his way through each day.

There was another man downtown. Everyone knew him as Peanut Joe. Peanut Joe seemed to enjoy his work; he was busy seven days a week, often working into the night. He would wander downtown with his sweater never buttoned straight.

Peanut Joe may not have been fully in his mind because he would often walk out into the middle of a street from a corner as though he were going across. As he would get halfway across, he would abruptly turn around and head back. When he got close to the curb he would stop, stare at it, hop up onto the sidewalk, turn around and proceed to start across again. Often he would repeat this procedure three or four times before he would complete the trip across the street. People would stare at this ritual in amazement. He must have sold enough peanuts to make a living, though, because Peanut Joe was a vendor downtown for at least ten years.

Just a few miles away on a main road leading away from downtown there was an older couple who would sell newspapers each afternoon and evening on the same street corner. The man was energetic. He would stand out there proudly, always clean and neat, wearing his pith helmet and shout out the day's headlines. Very businesslike, he would hustle a paper to any customer who beckoned. His wife was a shy person. She would sit on a crate and hold up a newspaper which mostly hid her kerchief-framed face. Never did she smile and it often looked as if she were peeking from behind the newspaper much as a nosy neighbor would snoop from behind a curtain at people passing by. Those two were a team and they must have sold many papers because they were a part of that street corner for quite a few years.

Bill Chaitow owns a small business and is a free-lance writer.

As a young person, I would often wonder about the purpose of these people. Each of them was easy to disregard. They could be considered by some as a nuisance, possibly even an eyesore. Now that I am grown, I realize that these people each served society and served well. They are not there anymore and there is none to replace them. Because of their absence the city has lost a lot, the state has lost something, and our nation is diminished. Each of these citizens was in business doing what he or she could to provide entertainment or a service to the other citizens. They were a part of the rich fabric of this community. They were proud, productive people who demanded nothing. Each of them went into the workaday world and boldly competed. The old, blind entertainer knew that there were other forms of entertainment available but he also knew that he had his regulars who would come up, stop for a few moments to listen to his tunes and put the price they thought was fair in his upturned hat. Peanut Joe competed with many restaurants, snack stands, and street vendors in the downtown area. He, too, had his regulars who would make it a point to get their daily afternoon or evening snack from him. The old newspaper couple had their regulars also. They were there in good weather and bad. The *Tribune* could always be bought at their corner because they were dependable.

This was over twenty years ago and since those people have vanished, no one has come to take their place. There has to be a reason why. Oh, today there is the donut lady who sells from her neat little stand and there is the flower lady who has a tidy little stand. They are both chipper and as kind as they can be. There is the nice blind man with the snack stand in the courthouse. Comparing the economy then with the economy of today, the prices of today's vendors seem much higher. Although today's small vendors are true entrepreneurs, they do not demonstrate the gutsy, rugged spirit of their earlier counterparts. They are not the same ripe age as the vendors and the performer of long ago. Those old ones are gone. For them it must have been different. They just decided one day that they were going to be in business and the following day they were selling peanuts, newspapers, or playing soft melodies on the accordion. The vendors of today had to get a city or county license. They also had to get formal permission to set up a stand which had to meet certain visual and structural conditions. They have to pay rent. They have to meet many governmental standards. Those pioneers of ages past would never have withstood today's requirements of governmental bureaucracy to free-lance on the streets; they were just hoping to make a living doing what they could do.

Just as it is the government which keeps the able elderly and those of feeble mentality from earning a living as a viable part of the economy today, it is also the government which serves to look after them with Medicare, Medicaid, welfare, and Social Security. Many of these people are tucked away in nursing homes instead of their own homes, away from the public view as though they were a blight on society. They sit in the foyers, halls, and their rooms with one request made of their existence: Don't be a bother. The checks from Uncle Sam roll in to pay for the care and the caretakers do only what is necessary to keep the old and the mentally feeble alive until the next check rolls in.

Something valuable has been lost in this new system. Those who used to serve well now vegetate. Their sense of worth and their contact with the community are gone. Those who used to be served by them are still contributing to the support of their would-be counterparts, but that contribution is now mandatory. As part of the work force, those performers and vendors paid their own way; now those who would have willingly taken their places serving the public on the streets selling and singing are relegated to the status of tax burdens receiving "entitlements."

When one is free to serve others as he or she chooses and earn a living in the process, not only does that individual have great meaning in life but everyone is enriched. When that service disappears because of governmental restriction and regulation, everybody loses. □

THE FREEMAN
IDEAS ON LIBERTY

CONSUMER ETHICS

by A. M. Rogers

Are you a good customer?

People often talk about how a business should treat its customers. But how often do they talk or even think about how customers should treat a business?

Yet, there's no denying that success in doing business is a two-way proposition. It requires more than just the business treating its customers fairly. It also requires customers who treat that business fairly.

The Trusting Salesclerk

Almost everyone has had the experience of standing at the cash register in front of a long line while a salesclerk struggles to find a bar code or price tag. Instead of taking the time to call for a price check, the clerk may turn to the customer and ask, "Do you know what the price is?"

For every customer who shakes his head "no," forcing the salesclerk to call for assistance, there is a customer like Irene, a gray-haired widow, who loves to get into these situations. Though Irene knows the exact price of everything she purchases, she won't tell it to the salesclerk. She'll say "it's $1.98" even when she knows it costs several dollars more. The fact that the salesclerk believes Irene isn't her problem, Irene says, though she'll admit it is one of the few benefits of looking like a nice old lady.

Though stores train their sales staffs on what to do when these situations arise, and the salesclerks are not taught to ask the customer for the price, it still happens. While it's true Irene hasn't committed a criminal act, even if the clerk punches in the price given, she certainly has displayed the intent to defraud the store. She takes advantage of a clerk's earnest attempt to keep the line moving. At the least, she has proved herself not to be a very good customer.

The Salesclerk Who Doesn't Know Math

Despite the sophistication of computerized cash registers, salespeople still make mistakes. They may give too much change or too little, or they may do something even more costly.

Nancy, a math teacher, will never forget the time she was buying clothes for her four children. All of the items were reduced 20 percent from the clearance price. The salesgirl punched in the first item's price, then took 20 percent off. So far so good. Then she entered the price of the second item, subtotaled, and took 20 percent off again. Nancy stood there unable to believe her eyes. Yet, each time the clerk added another item, she subtotaled first before taking 20 percent off. What she was doing, Nancy immediately realized, was taking 20 percent off what she had already discounted. When the final bill was a little over $10, even the salesclerk seemed puzzled. But she just quickly shrugged her doubts aside.

As for Nancy, she paid the bill without saying anything.

A. M. Rogers is an attorney and physicist living in Florida.

She told her husband later that many people wouldn't have even noticed what the clerk was doing wrong. "Why should I be penalized for knowing math?" she argued.

As Nancy sees it, it's the store's responsibility to have a well trained sales staff and, obviously, if a store doesn't, it won't be around long.

But there's another viewpoint to consider.

The store manager argues that the same people who are absolutely furious at a store when they feel they're not being treated fairly will turn around and cheat at the first opportunity.

What, for example, would Nancy have done if the salesclerk had instead charged her much more than she owed instead of less? Wouldn't she have been willing then to share her mathematical knowledge?

Good customers realize that the relationship between a business and its customers is mutually beneficial. Good businesses produce desirable products at reasonable prices.

Good customers appreciate them.

Taking Advantage of a Good Offer

A recent college graduate, Jeffrey, can't afford everything he wants. When he got an offer to receive free issues of a very expensive magazine he liked, he immediately signed up for a subscription. From the very beginning he planned to cancel the subscription as soon as the free issues ran out. And he did. The problem was that the magazine kept coming anyway and, eventually, Jeffrey was billed for a year's subscription. He even got a dunning notice from the publisher when he didn't pay.

It took more than a few months of correspondence to get the whole mess settled. And, in the end, Jeffrey did get quite a few issues of the magazine without paying anything.

Technically, Jeffrey was just taking advantage of a good offer. He wanted the free issues and nothing more. Legally, a person is not required to pay for unsolicited goods. However, the offer was intended to introduce the magazine to people who might actually be interested in subscribing to it and, at the time, Jeffrey wasn't.

Someday, though, Jeffrey may be able to afford that subscription. And when he can, I hope he will subscribe and become one of the magazine's good customers.

Free Refills and All-You-Can-Eat Buffets

A retired couple, Jean and Bill order only one cup of coffee when the refills are free. It might appear that just one of them is a coffee drinker. Rather, they are coffee sharers. They also do things such as having one of them order the all-you-can-eat salad bar while the other one orders a regular entree. Then they share the entree, which is perfectly legal, and they share the all-you-can-eat salad bar, which isn't legal.

Restaurants know these things happen. Some of them put up signs on their buffets: "Don't cheat." They may even have the people working in the dining room keep watch. It's true you may get away with it. But if you like a restaurant enough to eat there, why not pay for what you eat? A good customer realizes that when a restaurant advertises an all-you-can-eat buffet the "you" is singular.

The Price of Admission

Everyone knows that a store sets an item's price without regard for who is purchasing the item. A rich person pays the same as a poor person. And no one would tolerate a store that changed its prices at will.

Yet, how about people who change the ages of their children according to how much they want to pay?

Leslie is a mother of two children who believes she is an exceptionally honest person. But when it comes to giving the ages of her children at a ticket counter, she can lie as quickly as a con artist. If it's cheaper for her ten-year-old to be eight, then suddenly he's "tall for his age."

It's the very nature of doing business that allows her to do this. No business can afford

to demand that its customers first produce birth certificates or other documentation. It would drive customers away. And, even if some customers take advantage of a business' easygoing ways, and even if this is taken into account as part of the cost of doing business, good customers won't.

Dress for the Occasion

Gloria takes great pride in not appearing in the same party dress twice. She enjoys making a grand entrance and having everyone turn to look at her. But those glances might not be so admiring if it were known how Gloria manages to appear in a different stunning dress every time.

Gloria tells people she's a smart shopper. What she doesn't tell them is that she picks out the dress of choice just a few days before the scheduled party or event. And then after she has worn it and garnered her share of appreciative looks, she returns it to the store for a full refund. "My husband didn't like it," she lies. Since most stores have extremely liberal return policies, in which returned items can even have the sales tags removed, a customer can get away with this. But a good customer wouldn't.

The Outlet Store

Maureen just bought a house and she wants to replace the kitchen stove. It's a customized stove, which she had to order from the catalogue of a major department store. When she is finally notified that the stove has arrived, she suddenly cancels her order. Did she not want the stove anymore? Not exactly. Maureen is hoping her canceled order will arrive at the store's nearby outlet store where she can then purchase it at a substantial discount.

Many major department stores have outlet stores where regular items are sold at big savings. Sometimes the items are irregulars or returned goods. Often they include furniture, appliances, stereos, and television sets all crammed into a hodge-podge section of the outlet. People who shop outlet stores generally understand it is a hit or miss operation. At least, that's what it's supposed to be.

If the store finds enough people who behave like Maureen, it may begin to require a non-refundable deposit before ordering certain merchandise. And this would only penalize those persons who order and then cancel merchandise because of circumstances outside their control.

Taking Supplies Home

Many fast-food restaurants give their customers access to a variety of valuable items. Customers can help themselves to napkins, straws, ketchup, plastic spoons, and other supplies. If a customer doesn't use everything he takes, he is encouraged to take the unused supplies home. It is wasteful just to toss leftover napkins and unopened ketchup containers into the trash can.

But it's another matter for customers to take extra items with the intent of using them at home. Helping yourself to a wad of napkins or straws so you don't have to purchase them at the store is not part of the service fast-food restaurants are providing. That's the business of supermarkets. Good customers know the difference.

What does it take to be a good customer? In short, good will.

Good will means a customer treats the business honestly and fairly even when he doesn't have to. Good business policies and good consumer protection against fraud are necessary, but not enough to cover all the possible situations arising between a business and its customers.

It takes good will to fill in the cracks.

It takes good will to make both good businesses and good customers. □

"Therefore, whatever you want men to do
to you, do also to them. . . ."
Matthew 7:12

THE FREEMAN
IDEAS ON LIBERTY

KOSHER COPS

by Jacob Sullum

When presented with packaged food, my 5-year-old niece will carefully examine the wrapper, box, or label, looking for the symbol that assures her it's OK to eat: a *U* inside a circle, which certifies that the food has been prepared according to Jewish dietary laws, under the supervision of the Union of Orthodox Jewish Congregations of America. She will not accept a mere *K*, which represents the manufacturer's unverified statement that the product is kosher.

You might think that if a preschooler is capable of making such distinctions, so is the average adult, observant Jew. But some people don't want to take any chances. For decades regulators in 20 states have inspected businesses selling ostensibly kosher food to make sure they follow the laws of *kashrut*—which, among other things, forbid certain categories of food, require the separation of meat and milk, and specify procedures for slaughtering and preparing meat.

State *kashrut* supervision has recently come under attack in the courts. Last year the New Jersey Supreme Court overturned that state's *kashrut* regulations as an unconstitutional establishment of religion. In Maryland, a hot-dog vendor has brought a similar challenge against a Baltimore ordinance, and the case is pending in federal court.

Both cases hinge on subtle and complicated analyses of what constitutes a secular legislative purpose, an advancement of religion, or an excessive entanglement with religion. But they also raise a question that the courts have not been asked to decide: Is there any area at all where consumers can be expected to look out for their own interests? State intervention in the kosher-food market illustrates a regulatory mindset that has become disturbingly common in the United States. This mindset insists that barbers must be licensed to protect consumers from bad haircuts; that every bottle of beer, wine, and liquor must alert drinkers that "consumption of alcoholic beverages impairs your ability to drive a car or operate machinery"; and that food companies must not be allowed to announce that their products contain "no cholesterol," lest consumers be misled into believing that a diet consisting exclusively of margarine and vegetable oil is healthy.

While the absurdity of these measures may be readily apparent, state *kashrut* supervision is less obviously unnecessary. After all, when a merchant or restaurateur represents that a produce or meal is kosher, he is making an assertion that may be crucially important to the buyer. Moreover, the assertion cannot be readily verified by examining the food itself. Chicken that has been slaughtered according to Jewish law is indistinguishable from ordinary chicken. A cake that has been baked with vegetable shortening looks the same as a cake that has been baked with lard. Yet kosher food (especially meat) often commands a higher price than non-kosher food. Like a jeweler

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who convinces customers that his fake diamonds are the real thing, a business that could get away with passing non-kosher food off as kosher would stand to make a tidy profit.

Indeed, defenders of state *kashrut* supervision have argued that it is simply a way of enforcing laws against consumer fraud. For example, Nathan Lewin, an attorney with the National Jewish Commission on Law and Public Affairs, told *The Washington Post*: "If the state doesn't regulate, consumers will have no assurance that a food is really kosher. . . . Consumers may be at the mercy of unscrupulous vendors who will sell non-kosher food as kosher. Someone who cares so little about the laws of *kashrut* could sell a product that contains pork and say it's kosher, and there will be no one around to stop that."

Even if you know next to nothing about kosher food, you might wonder how observant Jews managed to get by for thousands of years without the assistance of agencies such as New Jersey's Bureau of Kosher Enforcement. And if you're familiar with the dining and shopping habits of Jews who keep kosher, you will recognize that Lewin, like the "unscrupulous vendors" he describes, is guilty of misrepresentation. He neglects to mention that the very conditions that invite fraud in the kosher-food industry have led to an elaborate private system of consumer protection.

Private *Kashrut* Supervision

As my niece could tell you, Jews rely upon certification by religious authorities to determine whether something is kosher. There are more than 100 *kashrut* supervision services worldwide, plus publications, such as *Kashrus Magazine*, devoted to covering developments that might concern a Jew who observes the dietary laws. In addition to organizations such as the Orthodox Union, individuals often serve as *kashrut* supervisors, or *mashgichim*. (These are often rabbis, but they need not be; anyone with the proper training can do the job.)

In Los Angeles, where I live, two local organizations and several independent *mashgichim* certify bakeries, butcher shops, and restaurants. Supervision generally involves a full-time employee trained in the laws of *kashrut*, supplemented by outside inspectors who make surprise visits on a regular basis. If you want to know whether a business has supervision, you can ask to see its certificate, which is usually on display.

Obviously, this system works only if consumers can safely assume that such certificates are genuine. As the New Jersey Supreme Court observed: "Just as the State may bar promotion of products as having been tested by a certain testing laboratory when they have not been so tested, and just as the State may bar promotion of products as having been endorsed by a certain consumer magazine when they have not been so endorsed, so may the State bar promotion of products as having been prepared under the supervision of a particular rabbi or group of rabbis when they have not been so prepared." Protecting citizens from such fraud is a legitimate function of the state.

Even with a prohibition on fraud, the system of private supervision is not perfect. It relies, to a considerable degree, on trust. Consumers trust the *mashgichim*, and the *mashgichim*, to some extent, trust business owners. This trust is based largely on shared religious values. But both *mashgichim* and the businesses they supervise have to worry about maintaining their reputations in the face of competition, which is not true of state inspectors. An establishment that has been known to mislead its customers will not stay in business long, and a *mashgiach* who is known for corruption or carelessness can no longer practice his occupation.

At first glance, the New Jersey and Maryland cases seem to suggest a need for state supervision. In the New Jersey case, a rabbi working for the state cited Ran-Dav's County Kosher in Roseland for several violations of *kashrut* rules, including failure to devein calves' tongues and storage of non-kosher chicken in the same freezer with kosher chicken. But County Kosher is also under the private supervision of another

Orthodox rabbi, who insists that the state inspector is mistaken. Rather than a case of fraud that would have gone undetected without state regulation, this seems to be a case of honest disagreement between two *mashgichim*. In the final analysis, the consumer must decide whether County Kosher's supervisor can be trusted. This is the kind of decision that observant Jews must make all the time, often after consulting with their own rabbis (who may in turn ask an organization such as the Orthodox Union).

In the Maryland case, a rabbi from Baltimore's Bureau of Kosher Food and Meat Control cited hot-dog vendor George Barghout for selling kosher frankfurters after cooking them on the same rotisserie as non-kosher frankfurters. Yet if this was his practice Barghout could not possibly have obtained a certificate of *kashrut* from a reputable *mashgiach*. Passers-by who were serious about keeping kosher would not have taken the vendor's word that the hot dogs were kosher; they would have insisted upon verification. In this case and in general, government *kashrut* supervision protects only the lenient or lackadaisical.

The Washington Post reported that the New Jersey Supreme Court's decision "may mean consumers determined to keep kosher may have to do a lot more homework themselves on the products they buy." In fact, observant Jews in New Jersey and elsewhere will continue to do what they have always done: look for the mark or certificate showing that a product or establishment passes muster with a religious authority they trust. This is really not a major obstacle, especially since kosher-food consumers tend to be highly motivated.

A Special-Interest Plea

In the end, the arguments for state *kashrut* supervision boil down to a special-interest plea: Some kosher-food consumers would like the government to subsidize their search and transaction costs. They may feel that the added assurance of state regulation allows them to be a little less careful. Or they may simply get a psychological benefit from knowing that private *mashgichim* are backed up by government inspectors. "I would want the support of the state," says Rabbi Nissim Davidi, administrator of *kashrut* supervision with the Rabbinical Council of California. At the same time, he admits that he's never had any contact with California's kosher-food regulators, and he's not sure exactly what they do.

You might think that state *kashrut* supervision would long ago have attracted the attention of anti-Semites. But the ACLU, anxious to maintain the separation of church and state, seems to worry about it a lot more than the American Nazi Party does. On the other hand, anti-Semitic propaganda has for years railed against what hate groups call "the kosher tax." This is the alleged increase in price that results when a food company pays for private *kashrut* supervision, so that its products can display a mark of certification. According to the hate literature, the Jews are mysteriously able to impose this price hike on manufacturers and consumers. For those who don't buy Jewish-conspiracy theories, a more plausible explanation is that the companies have calculated that the extra business generated by *kashrut* certification more than makes up for the cost of supervision. (Hence no price increase is necessary.)

Ironically, it's this private, voluntary, market-driven process that attracts the attention of anti-Semites. So far, they seem oblivious to state *kashrut* supervision, which actually is a public subsidy, albeit a drop in the ocean of special-interest benefits doled out by government. I won't tell them if you won't. □

THE FREEMAN
IDEAS ON LIBERTY

THE ROLE OF BRANDS IN CONSUMER MARKETS

by William G. Stuart

One criticism of the modern consumer democracy is the plethora of brands and products. Self-appointed consumer advocates compare brand-name products to generic products and determine that the difference in performance does not justify the price. Their conclusion: The brands represent a colossal waste of resources in packaging identity, promotion, and advertising.

These critics fail entirely in understanding the vital roles that brands serve in the modern, consumer-driven economy. Consumers continue to purchase branded products not out of misguided or manipulated habits, but rather because the brand name provides them with two attributes critical to their mission as consumers: product information and consumer protection.

Brands as Sources of Information

Imagine a consumer who wants to purchase an automobile in a market in which automobiles do not have brand names. There is no Taurus, no Cutlass Ciera, no Acura. Instead, her options are among a lot full of automobiles that have no manufacturer identity or brand names. She seeks information to aid her in making her purchase. Some of the information she can gather quickly; she can, for example, look at the various cars on the lot and determine which vehicles meet her preferences for size, style, and color.

Most of the other information, though, she cannot gather by sight alone. How reliable will the vehicle be over time? To answer this question, she must hire a mechanic to inspect the vehicle to determine how mechanically sound it is. The mechanic's summary will tell her how sound the car is today, but he can only guess as he projects how it will perform over time—after all, he has no industry reports about the long-run performance of specific automobile brands.

Our consumer cannot gauge other aspects of vehicle performance, such as quality of the ride over varying road surfaces and fuel consumption, without experiencing the car firsthand. Thus, she must take an extended road test (perhaps three or four hundred miles) to estimate fuel economy and experience vehicular performance in different driving conditions.

The decision that she ultimately makes will be more of an art than a science. She simply will have inadequate qualitative and little quantitative information on which to base her choice. She may make a good choice, but that outcome will be more a matter of luck than of a solid conclusion based on sufficient evidence.

By contrast, let us shift to the current world, one in which vehicles are branded and positioned to appeal to a certain market

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segment. As our consumer ponders the decision to replace her car, she begins to notice print and television advertising of automobile brands. As she assesses her needs, she is able to exclude many brands and models from consideration and focus on a few alternatives. Advertising, far from being the manipulative tool that its critics claim, actually transmits important information to her. Advertising places the vehicle in a context (an economy car, a passenger van, and a four-wheel drive vehicle are positioned very differently in advertising) and exposes the consumer to important information about the car (fuel economy, handling, special features).

Her next step may be to review literature in the popular press, including consumer magazines, to determine how the vehicle performs, how it holds up over time and how economical it is to operate. She can find qualitative information (such as the impressions of professional test drivers) and quantitative information (statistical surveys of repair histories and fuel economy) of that brand. This information is statistically accurate but impersonal. She may then choose to speak with a mechanic who services the brand and survey several friends who drive this vehicle brand to obtain their more personal testimonials.

All of these information avenues are available to her because the vehicles are branded. If there were no brands, nobody could compile information accurately. Consumer surveys would be impossible, since there would be no way to distinguish one automobile from another. A mechanic would have no way of distinguishing his impressions of one vehicle from another. And it would be difficult to determine whether a friend or neighbor has the same vehicle as a potential buyer, since it would be difficult to distinguish among cars.

The larger the dollar amount and the more complicated the product, the more important the role that information plays. A consumer purchasing rolled oats, for example, is far less interested in information than is a car buyer. Beyond the basic question of whether the oats are free from contaminants, the purchase is not complicated; a mistake results in a small monetary loss or less enjoyment than anticipated. In contrast, a poor decision about a computer, automobile, house, or business results in greater degrees of consumer discomfort or pain.

Brands as Consumer Protection

A century ago, branding was in its infancy. At that time, people still made most of the products that they consumed (such as food, soap, and clothes) or purchased them directly from producers who were their friends and neighbors. People had faith in the quality and safety of the products because they knew the people who made them.

As our economy became more specialized—a trend that, as Adam Smith predicted, created an unprecedented degree of wealth—consumers were more removed by both distance and time from producers. The introduction of labor-saving machinery, which increased productivity markedly, also dictated the concentration of producers in a manufacturing area. Thus, the village silversmith or baker or cobbler was replaced by a factory that produced a high quality product at a more competitive price. Consumers valued the potential quality consistency and savings, but they no longer knew the people who made their products. Similarly, as individual consumers became more specialized in their roles as producers, they themselves made even fewer of the products they consumed and relied increasingly on other specialists to meet their material needs.

In a large market, consumers do not care who makes their products. In this sense, the market is the great equalizer, as producers of all races, ethnic origins, religions, and genders unleash their creative energies to meet the needs of consumers. While consumers do not care who makes the products, they care very much how the products perform. They want to know that the product they purchase will meet their expectations.

In this consumer environment, brands play a critical role. When consumers first

started purchasing more food and raising less themselves, they purchased items from a bulk bin. They had no information about what ingredients the products contained, how safe they were, and how they would perform. Branding created the protection that consumers demanded. The brand name signified a level of quality and consistency consumers could trust. Thus, Quaker Oats, Ivory Soap, and Levi's instilled in consumers a degree of confidence that their unbranded competition did not.

Defining Brand Expectations

Brands are effective only when the product delivers a consistent level of quality from product to product. McDonald's delivers the same level of quality regardless of location or time of visit. A consumer may choose not to dine there for a particular meal, but that decision is not a rejection of branding. Rather, it is an informed decision not to consume that expected level of quality on a particular occasion.

Consumer confidence in brands varies with the type of product. Typically, confidence in branded goods—such as automobiles, detergents, movies, and clothing—runs extremely high. After all, standards can be defined and controlled strictly when the product is produced entirely in one central location and can be inspected before being presented to consumers. These brand names deliver the highest level of consumer confidence. The consumer may accept or reject the product; in either case, the decision is made with a clear expectation about the performance or level of quality of the goods.

Confidence in a product that is composed of a combination of both good and service is somewhat reduced because part of the output cannot be controlled in advance. A McDonald's hamburger, bun, lettuce, and tomato can be inspected before they arrive at a particular franchise, but other inputs—the actual cooking and preparation, the attitude of workers, the cleanliness of the facility—are presented live to consumers. The challenge the McDonald's manager faces in making his product the same from day to day and consistent with every other restaurant in the chain is the same challenge that the theater director faces making his live production uniform from show to show and consistent with other presentations of the play elsewhere. The managers who master this challenge reap the spectacular reward of a valuable brand identity, while those who do not perform so well find the brand image tarnished. For every example like McDonald's, which has mastered this challenge, there are many restaurant or lodging chains whose quality is not consistent over time and location and thus whose brand name in consumers' eyes represents a range rather than a fixed point.

Products whose consistency varies from unit to unit have brand names of more limited value to consumers seeking confidence. "Republican," for example, is a brand name about which consumers (voters, contributors, activists) can make some generalizations, but candidates running under the Republican label may have very different perspectives on problems and very different approaches to solving them.

The trend toward branding is expanding. Buoyed by the success of poultry marketers, beef companies and egg producers now are branding their products. More and more produce is wrapped and branded. Similarly, grocery stores that once sold "generic," no-brand products (packed in white packaging with black lettering) are now applying their store name as a brand on more and more "house brands."

These moves, far from being the wasteful, price-raising schemes that critics contend, are a response to needs that consumers in a more complex environment demand: information and consistency. The trend toward branding products, identifying certain characteristics with the brand and striving toward uniform brand quality will continue as long as consumers continue to seek confidence in the purchase decisions that they make. Brands continue to offer self-regulating, informed consumers both the information and level of quality that they demand in the free market. □

THE FREEMAN
IDEAS ON LIBERTY

FRIEDMAN AND NORTH ON VOUCHERS

To the Editor:

Re the article by Gary North in the February 1993 *Freeman* on "Educational Vouchers," may I call the attention of your readers to the following quotation from my wife's and my book *Free to Choose* (pp. 161–163):

> This plan [the voucher plan we propose] would relieve no one of the burden of taxation to pay for schooling. It would simply give parents a wider choice as to the form in which their children get the schooling that the community has obligated itself to provide. The plan would also not affect the present standards imposed on private schools in order for attendance at them to satisfy the compulsory attendance laws.
>
> We regard the voucher plan as a partial solution because it affects neither the financing of schooling nor the compulsory attendance laws....
>
> The compulsory attendance laws are the justification for government control over the standards of private schools. But it is far from clear that there is any justification for the compulsory attendance laws themselves. Our own views on this have changed over time. When we first wrote extensively a quarter of a century ago on this subject, we accepted the need for such laws on the ground that "a stable democratic society is impossible without a minimum degree of literacy and knowledge on the part of most citizens" [*Capitalism and Freedom*, p. 86]. We continue to believe that, but research that has been done in the interim on the history of schooling in the United States, the United Kingdom, and other countries has persuaded us that compulsory attendance at schools is not necessary to achieve that minimum standard of literacy and knowledge. As already noted, such research has shown that schooling was well-nigh universal in the United States before attendance was required. In the United Kingdom, schooling was well-nigh universal before either compulsory attendance or government financing of schooling existed. Like most laws, compulsory attendance laws have costs as well as benefits. We no longer believe the benefits justify the costs.

The danger North raises that a parental choice scheme that made vouchers available for both government and private schools would lead to efforts to control the curriculum of private schools is very real, but it is present now because of compulsory attendance laws. Moreover, in a well-drawn voucher initiative, such as the one that will be on the California ballot at the next general election, provision can be made for avoiding that outcome. To quote from the California Parental Choice Initiative:

> Private schools shall be accorded maximum flexibility to educate their students and shall be free from unnecessary, burdensome, or onerous regulation. No regulation of private schools, scholarship-redeeming or not, beyond that required by this Section and that which applied to private schools on October 1, 1991, shall be issued or enacted, unless approved by a three-fourths vote of the legislature or, alternatively, as to any regulation pertaining to health, safety or land use imposed by any county, city, district, or subdivision of the State, a majority vote of qualified electors within the affected jurisdiction. In any local proceeding challenging such a regulation it shall have the burden of establishing that the regulation: (A) is essential to assure the health, safety, or education of students; (B) does not unduly burden private schools or the parents of students therein; and (C) will not harass, impede, injure, or suppress private schools.

My ultimate objective is precisely the same as Gary North's, but I do not believe that we can get there from here without a transitional measure. That is what the voucher proposal is intended to provide.

—Milton Friedman,
Senior Research Fellow
Hoover Institution, Stanford, California

Dr. North replies:

In his letter, Dr. Friedman cites his 1980 book, *Free to Choose*: "This plan would

relieve no one of the burden of taxation for schooling." This is the heart (and soul) of the problem with vouchers. The problem is not primarily one of economic efficiency; it is a problem far more fundamental: the locus of judicial authority over education. He who pays for schooling is asserting this authority.

Here is the crucial question: Who is responsible before God for the education of children, their parents or the state? I contend that it is the parents. I therefore reject educational vouchers on principle. But more to the point, I reject them even as a transitional tactic, for vouchers will reduce the freedom of sectarian parents to choose by reducing the supply of sellers who will supply sectarian education.

When I wrote the first version of my essay "Educational Vouchers: The Double Tax" in 1976, I had Dr. Friedman's *Capitalism and Freedom* (1962) in hand. That book has become a classic in the literature of free market economics. But it has a flaw. It promotes educational vouchers (chapter 6), while denying the efficiency and the necessity of occupational licensing (chapter 9).

What I argued in my essay is that state-funded vouchers are part of a program of state licensing. For the state to establish mandatory standards of performance in any profession is to proclaim its authority over that profession. Licensing involves the creation of *legal barriers to entry* against those who cannot meet the state's standards and also those who work in terms of rival standards. Similarly, for the state to establish subsidies for any profession is to proclaim its authority over that profession. Subsidies involve the creation of *legal barriers to economic survival* against those who cannot meet the state's standards and also those who work in terms of rival standards. So, I conclude, if there is no legitimate reason to license a profession, there is no legitimate reason for the state to create a voucher system to fund it.

There can be no state subsidies apart from criteria that restrict access to the subsidies; otherwise, there would be greater demand for the "free" money than supply of the "free" money. The state uses regulations to ration access to the "free" money. In Dr. Friedman's proposed system, all parents ("buyers") will have access to the state's "free" money (vouchers). I contend that all schools ("sellers") will not. Those schools that deny the legitimacy of the state's standards will be denied legal access to the money. Why? *Because the money used to subsidize some schools at the expense of others does not belong to the parents; it belongs to the state.*

An educational voucher program enlists the parents as the state's agents in a program of judicial discrimination against those schools that proclaim state-disapproved standards. Vouchers are, in the vernacular, "hush money." Teachers are bribed with tax money to keep silent on certain topics—most notably, the topic of God and his sovereignty over history. . . .

Here is our problem: Modern education rests on the myth of religious neutrality. Modern education asserts: "By means of a religiously neutral methodology, teachers and students can come to an accurate understanding of cause and effect." Any discussion of cause and effect which appeals to God's sovereignty over history is dismissed as "religious," and is thereby barred by the U.S. Supreme Court from any tax-funded classroom. Only a methodology which systematically ignores the question of God has legal access to a tax-funded classroom or educational program. . . .

Thus, it is irrelevant that the language of a California voucher proposal appears to protect the authority of parents to choose any school they desire for their children. The U.S. Supreme Court has determined what curriculum standard must apply in state-funded education: a compelling secular purpose (see *Lemon* v. *Kurtzman* and *Hunt* v. *McNair*, 1971). Parents will be free to choose when they use the state's money, but their choices will be limited to state-approved schools. They will be free to choose only what the state approves.

I learned all this from *Capitalism and Freedom* —excluding chapter 6. □

Books

The Twilight of Sovereignty: How The Information Revolution is Transforming Our World

by Walter B. Wriston

Charles Scribner's Sons • 1992 • 256 pages
$25.00

Reviewed by Perry E. Gresham

This new book by Walter Wriston, *The Twilight of Sovereignty*, is a clear overview of our present predicament. We are in a global market without full realization of its implications. Petrarch and Boccaccio, Lorenzo and the Medici did not know they were in the Renaissance. The name was applied by historians who looked back on a previous time in world events.

Nor did Adam Smith, James Watt, Alessandro Volta, and Thomas Edison think of themselves as the pioneers of the Industrial Revolution. There were great dislocations involved, but they were not understood in perspective. As we look back at those eras, we see the periods as the great transitions which they were, and, we give them names.

Today we are in the cybernetic revolution. Information knows no boundaries. The market is world-wide. Technology has enabled us to perform the same tasks with many fewer people. This means a certain amount of unemployment. It also signals a new demand for entrepreneurs and new skills. Wriston recognizes intelligence and learning to be the most valuable capital of any business or government.

Leonard Read wrote an essay, "I, Pencil," which portrayed the interdependence of our modern market. Wriston does the same thing with automobiles. He shows up the fallacy of our modern mistaken demand for keeping all work, sales, purchases, jobs, and money within our own borders.

No nation can control its own information or its own money. When the market opens in New York it is open to the world at the same time. Information knows no borders. Tokyo, London, Paris, and Berlin are involved in our market as we are in theirs. The market is global.

From his pinnacle of world finance as CEO of Citicorp, Walter Wriston was acutely aware of all of these global factors. His book understands our present predicament, and suggests ways the market can operate if it is free from government domination.

Governments and corporations alike are losing their sovereignty. Wise leaders will recognize this, and there will be a rebirth of individual liberty in a world-wide context. □

Dr. Gresham is President Emeritus of Bethany College and a Trustee Emeritus of The Foundation for Economic Education.

The Coming Economic Earthquake

by Larry Burkett

Moody Press, Chicago, Ill. • 1991 • 230 pages
$15.99

Reviewed by Leonard Gaston

In the last two decades, Keynesian demand management economic theory has come under increasing attack. The most telling salvos have been leveled by economist James Buchanan, whose Nobel prize in 1986 for his critique of applied Keynesian theory set off a storm of protest in liberal academic circles. Paul Craig Roberts, Jude Wanniski, and others have continued to question the wisdom of what had previously been almost unquestioned economic orthodoxy. Nevertheless, Keynesian theory continues to dominate the policy-making of the federal government.

In a book written for the layman, Larry Burkett has reviewed the accomplishments of a growing federal government busily applying demand-centered economic policies (growing federal deficits and debt, increasing use of debt by business and house-

holds, and government regulation gone wrong), and concluded that severe economic troubles lie ahead. He does not set dates, but like an observer sitting on a hill overlooking a large ice-bound river, he simply points out that the ice is piled up in abnormally high and massive ice dams, and that spring is inevitably on its way. It may be early, or it may be late, but as surely as the seasons roll, the ice will eventually break up and flood down the river. Whoever stands in its path may be wiped out.

Keynesian economic policies—with their explicit license for continuing federal deficits and their implicit preference for higher levels of consumption, reduced saving, and a larger role for government in the economy—are one of two things. They are, as mainstream economists have told college economics students since World War II, the means to continued, depression-proof prosperity. Or they are, as others like Mr. Burkett insist, a prescription for disaster.

A review of textbooks written by prominent economists supporting the first position will turn up statements that now inspire less confidence than they did when first written. One author (the Chairman of President John F. Kennedy's Council of Economic Advisers) had no doubts about the desirability of deficit spending when he wrote in his 1960s college text that the country faced the prospect of deficits of choice ("deficits of strength") incurred as necessary to sustain demand, or deficits due to low revenues ("deficits of weakness") incurred because the federal government lacked the will to follow the dictates of Keynesian theory. Another text of the time insisted that the debt was not a real problem, because, although larger year by year, it nevertheless was a smaller fraction of the nation's gross national product. (That was true at the time, but has not been true since 1974.) Still another insisted that the debt should not be a source for worry since ". . . technically there is never any question of the federal government going bankrupt. It can always manufacture money."

That, Mr. Burkett insists, is exactly the point. As the interest on the debt consumes a larger and larger portion of the yearly federal budget, and more money is borrowed each year to pay the interest on what was borrowed in previous years, the temptation will become overwhelming to "monetize" the debt, first a little bit at a time, and then at an increasing rate. The possible result? Chaos, in the manner of post-World War I Germany.

This book traces the path that other governments have followed in reaching the brink and plunging over. It also describes the impact that hyperinflation has on a society. It even takes away the faint hope that those deeply in debt might entertain—that they could pay off their debts in devalued dollars. Mr. Burkett believes that laws would be passed to protect those banks still solvent, indexing all debts to the rate of inflation. Ordinary debtors, many without jobs because of the resulting depression, could then be faced with debts on homes, cars, and other goods many times the amount they initially borrowed.

Is this too gloomy a scenario? Perhaps. But Mr. Burkett builds a solid case for an impending economic earthquake. He also outlines actions that he believes necessary to prevent it (bring federal spending under control and restore fiscal discipline through a line-item veto or other actions). He doubts, as the reader may also, that such steps will be taken by our elected leaders in time to prevent fiscal chaos.

Although readers of this book may or may not agree with the author's religious views, they are likely, in an age when values are something not much talked about, to find the author's emphasis on values thought provoking.

If this book leaves the reader with a concern that Mr. Burkett may be correct, he will find interesting the author's advice for minimizing the personal financial damage that may result from an economic earthquake. □

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