

THE FREEMAN

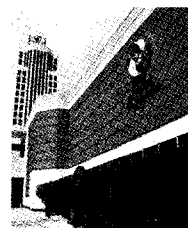
IDEAS ON LIBERTY

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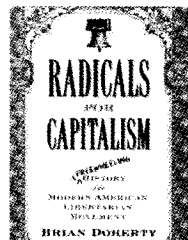
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Perspective

Are the Voters Qualified to Pick a President?

The big political buzz is over whether John McCain, Hillary Clinton, and Barack Obama are qualified to be president. The voters are expected to decide, but are they qualified to do that?

How would voters know who is up to this job? They might try to make a judgment on the basis of character. But that won't get them far since most of what they know about the candidates' characters is the result of the theatrics we call campaigning. Voters get their impressions through the careful efforts of image consultants and media experts who make liberal use of focus groups.

Considering that political platforms consist of unkeepable promises, no candidate should score high in the character category anyway.

But character isn't the only criterion people use. Competence is another one. Here the theory of representative government really runs into trouble. A president today is expected to "run the economy." How would voters know if a candidate—any candidate—is competent to do that? Does being a senator, governor, successful business person, or an effective campaigner demonstrate one's capacity to manage a \$15 trillion economy?

To answer that question, the voters would have to know something about economics. Uh-oh.

Most voters know nothing about how markets work—or even *that* they work—and how government tends to sabotage them. As I've noted before, Bryan Caplan's book, *The Myth of the Rational Voter*, well documents the widespread ignorance about economic principles. Public-opinion surveys unfailingly demonstrate that most people believe, as articles of faith, that 1) profitable market exchange is a zero-sum activity (one person's gain is another person's loss), 2) foreigners bearing goods and services are threats, 3) job preservation is good and job destruction bad, and 4) bad economic news counts more than good economic news. The inconsequential nature of a single vote and the costlessness of casting a feel-good vote guarantee that most individuals will have no incentive to examine their economic biases before voting.

Here's the problem for democratic theory: If most people hold these demonstrably incorrect views, how can they be qualified to elect a president? They have no way to sort destructive or impossible promises from reasonable ones.

As long as presidents have the power to meddle in the economy (which means meddle with *us*) and are expected to do so, voters ignorant of economics are unlikely to make good decisions. Incompetent voters assure incompetent candidates and officeholders.

Most of the promises candidates make are about economic matters. Two candidates today promise to obstruct trade across the Mexican and Canadian borders because consumers' freedom to accept the best offer allegedly has eliminated manufacturing jobs in Ohio. (The candidates of course are not candid enough to blame consumer freedom, but that's what they mean.)

If voters don't understand markets, economic incentives, and the perverse dynamics of government interference, how can they judge those promises?

The answer is they can't. Enthusiasts of representative democracy typically assume the existence of informed voters. But being truly informed means more than regularly watching the news, reading a newspaper, and browsing the candidates' websites. It requires more than "caring." Being informed means understanding basic economics—grasping, for starters, the contents of Henry Hazlitt's *Economics in One Lesson*, Leonard Read's "I, Pencil," and Frédéric Bastiat's "What Is Seen and What Is Unseen."

In other words, a truly informed person must understand that *no one* can be qualified to be president because no one can do what a president is expected and empowered to do.

Until that sort of informed person predominates, I will shudder at "get out the vote" campaigns.

Local-government efforts at revitalizing downtowns have been astounding—if their goal was to create commercial ghost towns. J. H. Huebert reports on an all-too-common urban phenomenon.

The free market can be counted on to penalize

firms that prefer rigid bureaucratic management to entrepreneurial dynamism. But what happens when government intervention tilts the field in favor of bureaucracy? Kevin Carson looks at the consequences of the mixed economy and what might have been.

States are beginning to outlaw payday-lending businesses. Do the bans protect the poor from predatory lending or merely deprive them of one of the few options they have left? George Leef isn't surprised by the results.

The lust for power has been present in every age, even during the American founding and early years of the republic. Joseph Stromberg has some overlooked facts about a romanticized age.

In this era of pervasive government, it's good to be reminded that people working outside the political realm can do some amazing things. James Payne has one such reminder.

Civil contempt of court is a charge that few people give any thought to. But as Wendy McElroy reports, it's responsible for the revival of the debtors' prison in America.

Why are the opponents of free markets so much better at making their case *visually* than libertarians are? Joseph Packer has a wake-up call for the freedom movement.

The conventional wisdom says countries import, reluctantly, so they can export. That's ridiculous, says Norman Van Cott.

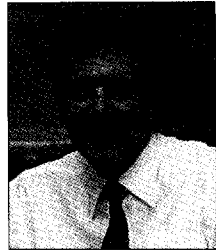
Our columnists have brewed up the following: Richard Ebeling revisits the postwar German "economic miracle." Donald Boudreaux explains why he won't vote. Stephen Davies looks at the role of migration in history. John Stossel says no president can manage an economy. David Henderson shows how markets minimize irrational discrimination. And Gene Callahan, reading the claim that we will have to lower our living standards to help the poor countries, ripostes, "It Just Ain't So!"

Our dogged reviewers scrutinize books on globalization, the modern libertarian movement, guns in America, and Europe's economic history.

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The German Economic Miracle and the “Social Market Economy”

BY RICHARD M. EBELING



This summer marks the 60th anniversary of the beginning of the post-World War II German “economic miracle.” When the war ended in Europe in 1945, Germany was in a shambles. Its major cities had been destroyed either from Allied bombing or urban combat. Millions of its citizens had died in the war, and millions more were turned into empty-handed refugees. Food was almost non-existent, and starvation gripped most of the population.

The Nazis had imposed a comprehensive system of economic controls on prices, wages, and production. They had turned to the printing press to finance a good part of the costs of war, resulting in a “repressed inflation” under the stranglehold of the price regulations. The increasingly scarce goods were rationed or simply disappeared from the stores. By the time Germany surrendered in May 1945, the National Socialist version of the planned economy, and above all the war, had brought Germany to a state of social and economic collapse.

Now the country was under the joint occupation of the four Allied Great Powers: the United States, Soviet Union, Great Britain, and France.

In the Soviet zone, factories not destroyed in the war were dismantled and shipped back to the Soviet Union. Soviet soldiers terrorized the population, and Stalin proceeded to impose a communist political structure.

In the American and British zones Soviet-style brutality was rarely practiced, but the German population was viewed as “the enemy” to whom excessive sympathy and generosity were not to be shown. Moreover,

the Nazi system of price and production controls was kept in place.

A small band of German free-market advocates had survived the war. A leading figure in this group was Walter Eucken, who was a professor at the University of Freiberg. While restricted in what they could say publicly under the Nazi regime, Eucken and his colleagues had maintained a network among themselves with the goal of sharing ideas for establishing a market-oriented economy in the post-Hitler era that they all impatiently awaited. While intellectually isolated from other free-market economists outside Germany, they remained inspired in their thinking by classical liberals like Ludwig von Mises and Wilhelm Röpke, whose writings they read and clandestinely shared.

One of Eucken’s protégés was an economist named Ludwig Erhard. He was appointed economics minister in the American zone in Bavaria in 1946. For two years he used this position as a platform to advocate market reforms. In radio broadcasts he frequently exhorted the German people to accept that they had brought their current tragic circumstances on themselves and only hard work, savings, and self-responsibility could restore their prosperity and gain them a new place among the civilized nations of the world.

In 1948 the British and American zones were combined into one administrative unit, with Erhard as



German Reichstag building covered in graffiti from Soviet soldiers
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director of economics. In June he instituted a major currency reform to restore monetary stability and to end the inflationary after-effects from the Nazi period. Not only was a new currency put in place, but it was done through a process of reducing the money supply. In June 1948 Germans in the Western zone could exchange ten of the old marks for one new mark.

Shortly after this, Erhard introduced the other essential element of any successful economic-reform project: abolition of the price and production controls. On a Sunday, while all the Allied occupation authorities were out of their offices, Erhard announced on the radio that the next morning virtually all price controls would be abolished. General Lucius Clay, commander of American forces in Germany, called Erhard into his office and said, "Herr Erhard, my advisers tell me you're making a terrible mistake." Erhard replied, "Don't listen to them, General. My advisers tell me the same thing."

Recovery Begins

Hoarded goods in short supply suddenly came out of their hiding places now that they could be sold at market-based prices. In the second half of 1948 industrial production increased 46 percent from its June level. And a year later, at the end of 1949, that production was 81 percent above what it had been when the reforms had been implemented in the middle of 1948. After an initial spike in prices when the controls were abolished, by the end of 1950 the greater industrial and agricultural output that was offered on a more open market significantly reduced the cost of living. Germany's economic-recovery path assured that well into the 1960s its rate of growth in output and productivity would place it far ahead of virtually all the other countries of western Europe, including those, like Great Britain, that had been victors in the war.

The reforms brought about this economic miracle because they eliminated the worst institutional features of what had been Nazi central planning. But West Germany was not transformed into a real free-market society. Its intellectual architects, including Walter Eucken, Wilhelm Röpke, and Ludwig Erhard were advocates of a "middle way" between a truly free market and social-planning. They believed that a large welfare state, the

"social market economy," was necessary and desirable to assure social harmony. They supported government regulation of the size and composition of large enterprises. They supported urban and rural planning. And they introduced the system of "co-determination," under which all large enterprises and corporations were legally required to have trade-union representatives included in the decision-making bodies of businesses.

Thus from the start the institutional order in postwar Germany was one that opened the door to special-interest-group politics, compulsory income redistribution, union-power blackmail over business, and a general culture of political paternalism.

The real nature of this system was insightfully explained by Mises:

[T]he supporters of the most recent variety of interventionism, the German "soziale Marktwirtschaft" [social market economy], stress that they consider the market economy to be the best possible and most desirable system of society's economic organization. . . . [But] it is necessary, they say, that the state interfere with the market phenomena whenever and wherever the "free play of the economic forces" results in conditions that appear as "socially" undesirable. . . . If it is in the jurisdiction of the government to decide whether or not definite conditions of the economy justify its intervention, no sphere of operation is left to the market. . . . That means the market is free as long as it does precisely what the government wants it to do.

Sixty years after these German reformers introduced the "social market economy," it is clear that they were only planting the seeds of new forms of government control and corruption. The market is either free or it is under the regulation of the government. Either individuals are free persons who may peacefully go about their lives and associate with others through voluntary exchange, or they are pawns on a political chessboard, open to manipulation and control whenever their actions do not follow what those in power demand.

There is no third way.



Consumption Must Be Curtailed to Sustain the Human Race? It Just Ain't So!

BY GENE CALLAHAN

Jared Diamond, in a January 2 op-ed in the *New York Times*, argues for a political solution to what he sees as a looming “consumption crisis” facing humanity. He notes that the current consumption of many resources, such as oil and metals, is roughly 32 times higher in the developed than in the developing world and that, given the earth’s finite stock of these substances, developing countries will be unable to fulfill their desire to live First World lifestyles. He proposes mandating reduced consumption in wealthier nations, so that the poor may consume a fair share of these limited resources.

Those concerned with individual liberty are likely to resist Diamond’s program because of its coercive nature. But that objection may prove inadequate: many people may believe our situation is so dire that we need to sacrifice freedom to ensure the survival of our species. However, I will argue that Diamond’s case fails even on its own terms.

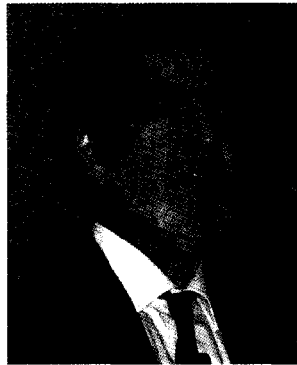
Diamond contends, “Now we realize that [a rising population] matters only insofar as people consume and produce. . . . [Many commentators find a big problem in the] populations of countries like Kenya . . . growing rapidly . . . but it’s not a burden on the whole world, because Kenyans consume so little.”

However, the residents of countries like Kenya generate problems out of proportion to their consumption levels. Their relative poverty means that they burn dirty but cheap fuels, that they cultivate much more land than their First World counterparts to produce equivalent output, and that they devote little of their income to activities like creating wildlife preserves.

Diamond continues, “People in the third world are aware of this difference in per capita consumption. . . . When they believe their chances of catching up to be hopeless, they sometimes . . . become terrorists, or tolerate or support terrorists.” So why not allow the poor every chance to catch up by promoting economic freedom? Then their improving living standards will give them hope for the future and lessen the tendency for them to embrace nihilism.

To support his case, Diamond cites China: “Among the developing countries that are seeking to increase per capita consumption rates at home, China stands out. . . . The world is already running out of resources, and it will do so even sooner if China achieves American-level consumption rates.”

Here, Diamond has embraced a hoary economic fallacy. What counts as a “resource” is an economic question, not a material given. Things become resources when acting man conceives of how he can employ them to further his ends. The history of economic development is one of creating greater value out of the same quantity of physical inputs. Whereas in 1970 “it took [Americans] 15,000 BTU to produce \$1 of GDP . . . [by] 2003, this had fallen to 9,500 BTU, a decline of nearly 37 percent,” writes Richard H. Mattoon, a senior economist at the Federal Reserve Bank of Chicago. Similarly, “since 1950 . . . 200 million acres of U.S. farmland have been retired,” despite the growth in America’s population, says Jerry Taylor of the Cato Institute.



Jared Diamond
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Indeed, the nascent field of nanotechnology already offers much more efficient use of raw materials, as well as holding out the possibility that the contents of garbage dumps or sewage plants efficiently could be transformed into valued consumption goods. (For examples, see <http://tinyurl.com/32bm4v>.) And progress in space travel will make available physical resources from beyond the earth. "Available resources" are constrained by human ingenuity, not by fixed physical endowments.

Diamond writes, "Per capita consumption rates in China are still . . . below ours, but let's suppose they rise to our level. . . . Oil consumption would increase by 106 percent and . . . metal consumption by 94 percent." But as China becomes more prosperous, its increasing demand for productive inputs and the consequent rise in their prices will spur entrepreneurs to employ those inputs more efficiently and to find alternatives to scarce commodities.

Diamond chastises those who advocate freedom as the best solution to poverty, saying, "[W]e . . . promise developing countries that if they will . . . institute honest government and a free-market economy—they, too, will be able to enjoy a first-world lifestyle. This promise is impossible, a cruel hoax. . . ."

I suggest we humbly admit to having no idea what kind of lifestyle our descendants may achieve. Think of Stone Age Jared Diamond berating optimists for suggesting that one day, most humans might be able to live to the venerable age of 50 or 60 reached by only a lucky few in his time.

Diamond advocates a future "in which all countries converge on consumption rates considerably below the current highest levels [since] willingly or not, [Americans] shall soon have lower consumption rates, because our present rates are unsustainable."

That conclusion assumes that raising living standards requires ever more use of the same resources employed today. However, Stone Age consumption of mammoth tusks and inhabitable caves was clearly unsustain-

able given a population growing from 100,000 to 6,000,000,000. Fortunately, there was no need to increase consumption of those products in step with our increased numbers.

To support his case, Diamond notes that "Most of the world's fisheries are still operated non-sustainably . . . even though we know how to manage them in such a way as to preserve the environment and the fish supply."

But why are current fishing enterprises exploiting these resources so profligately? Private owners of limited resource pools have an incentive to use them responsibly, not extracting so much for current income that tomorrow's income goes to zero. Notice that there is no crisis of sheep, chickens, or corn being harvested "non-sustainably." But when the stock of a resource is unowned, then every producer is motivated to grab as much of that common pool as soon as possible, since other producers will be doing the same.

Political Will

Diamond recommends reliance on "political will" to enforce a command-and-control regime of conservation. Even if he has no concern for the loss of personal freedom

his program entails, I suggest that he is betting on the wrong horse in this race. A conservation "solution" that relies on coercing individuals to ignore their self-interest is inherently "non-sustainable": any time the "political will" enforcing it wavers, it is likely to fail. Governments, always in need of the support or at least the acquiescence of their citizens, in times of crisis are quite likely to opt for the reckless exploitation of some resource over the threat of widespread unrest or rebellion. Preserving our natural heritage for the benefit of future generations is a laudable aim, but our best hope for realizing it is to create institutions aligning wise stewardship of the environment with individuals' desire to improve their own lives, rather than fantasizing that everyone can be united perpetually behind some central planner's bucolic vision.



I suggest we humbly admit to having no idea what kind of lifestyle our descendants may achieve.

Downtown Revitalization: City Governments Versus Consumers

BY J. H. HUEBERT

What a thrill to visit cities that have “revitalized” their downtown areas! From the empty streets to the government offices to the abandoned retail spaces—what’s not to like?

Well, everything, of course.

Not only are such areas unsightly and useless, they often come at the expense of millions of taxpayer dollars and eminent-domain coercion.

There’s nothing wrong with feeling a bit nostalgic for when everyone worked and shopped in a bustling downtown—although I happen to enjoy today’s so-called “sprawl,” especially as I think about how it demonstrates how well the market serves consumers with an ever-increasing variety of goods at ever-lower prices. But in any event, fuzzy feelings about downtown areas apparently aren’t very important to most people who do have them, because those people don’t put their money where their mouths are. They choose to live, work, and shop in outlying neighborhoods instead.

Voting, however, offers such people an opportunity to act on their emotions at virtually no personal cost. Thus we get government-sponsored “revitalize downtown” efforts in cities all across America that fail again and again.

My city of Columbus, Ohio, tried its own ridiculous plan along these lines about 20 years ago, when it built a downtown mall called the “City Center.” It opened in 1989 to much fanfare, filled with stores intended to

lure suburbanites and others from all over the state.

And it did. For a very short time crowds indeed came. Politicians were quick to take credit for this putative victory—declaring “mission accomplished” like George W. Bush in Iraq within days of the mall’s opening—while the media praised them for having “the courage to ignore the criticism and continue with the project.”

An early manager of the mall declared it “almost competition-proof,” bringing to mind certain claims about the “unsinkable” *Titanic*. A visitor in those first days breathlessly told a newspaper reporter that the mall’s “novelty will never wear off.”

Now, though, the mall is just about empty. Entrepreneurs saw opportunities soon after it opened to put malls where people actually wanted them, in the suburbs circling the city, and that is where everyone goes—including city-dwellers like me.

There are no more “anchor” stores in the City Center. The mall’s third floor—once home to only the most upscale stores—in

recent years housed a public school in a former Henri Bendel space, and now even *that’s* closed. The second floor—with a Sunglass Hut and nothing else—is thriving by comparison.



The City Center
Photo by J. H. Huebert

J. H. Huebert (jhhuebert@jhhuebert.com) is an attorney and a former FEE intern.

The ground floor is mostly empty, too, but it does have a food court of sorts, plus such attractions as a dollar store, stores offering what one might charitably call “urban fashions,” and a tattoo parlor.

It’s fitting that a government mall would have nothing inside it, because government produces nothing. It is empty on the inside and ugly on the outside, with almost no glass or windows, but rather just a big brick lump where once there were houses and businesses, before the government bulldozer came.

The total cost to taxpayers to put up this now-abandoned monstrosity? More than \$72 million—plus ample eminent-domain compulsion to destroy what little old-fashioned life and color the area used to possess.

One More Attempt

But never fear. Mayor Michael Coleman has come up with a solution. The city has decided to simply take the mall back from the private-public partnership that had been in charge of it, and *this time* the government will get it right.

But although the names of the politicians may have changed since 1989, the economic reality never will. Government planners lack the incentive and ability to accurately forecast what consumers want. They are driven by political considerations and, at best, by what they *wish* people would do. In contrast, entrepreneurs in a free market have an incentive to determine what consumers really want and provide it, because they put their own cash—not taxpayers’ money—on the line.

So-called public-private partnerships do not and cannot resolve this problem because in such cases (as with my local empty mall), the market is distorted. Businesses respond to government-created incentives, not consumer preferences.

It’s fitting that a government mall would have nothing inside it, because government produces nothing.


Some might try to rebut this by pointing to government-subsidized projects that appear to have succeeded. But these prove nothing. Undoubtedly, many such cases involve businesses getting government help to do something they would have done anyway, and thus amount to little more than a gift from hard-working taxpayers to politically connected business owners.

The only way to determine what consumers want in the former mall space is to sell the land and the building to the highest private-sector bidder with no strings attached.

Does that mean a flourishing mall or some new attraction will take the place of the government disaster and have everyone flocking downtown? *No.* Plenty of private buildings in downtown areas struggle with high vacancies and will continue to do so. Indeed, sometimes the most efficient thing for an entrepreneur to do is to leave a building empty until a time when it can be put to a higher and better use than present conditions allow. All we can say for certain is that private hands are by their nature more likely than political hands to succeed

in determining what people really want most.

That idea may frustrate politicians who imagine themselves capable of wishing a specific vision of a downtown into existence and of making people want something they have demonstrated again and again they do not want. But there is no fairy godmother to wave her magic wand for city politicians and their economically illiterate gaggle of planners.

The reality is that mayors and council members may nominally rule their cities, but the dead mall at the heart of Columbus, Ohio—like so many other “downtown revitalization” projects—stands as a monument to their impotence, and to the fact that in the *free* market, the consumer is king. 

Hierarchy or the Market

BY KEVIN CARSON

In an article in last June's *Freeman*, I applied some ideas from the socialist-calculation debate to the private corporation and examined the extent to which it is an island of calculational chaos in the market economy. I'd like to expand that line of analysis now and apply some common free-market insights on knowledge and incentives to the operation of the corporate hierarchy.

F. A. Hayek, in "The Use of Knowledge in Society," used distributed, or idiosyncratic, knowledge—the unique situational knowledge possessed by each individual—as an argument against state central planning.

Milton Friedman's dictum about "other people's money" is well known. People are more careful and efficient in spending their own than other people's money, and likewise in spending money on themselves more so than in spending money on other people.

A third insight is that people act most efficiently when they completely internalize the positive and negative results of their actions.

The corporate hierarchy violates all of these principles in a manner quite similar to the bureaucracy of a socialist state. Those at the top make decisions concerning a production process about which they likely know as little as did, say, the chief of an old Soviet industrial ministry.

The employees of a corporation, from the CEO down to the worker on the shop floor, are spending

other people's money, or using other people's resources, for other people. Its managers, as Adam Smith observed 200 years ago, are "managers rather of other people's money than of their own."

By its nature, the corporation substitutes administrative incentives for what Oliver Williamson called the "high powered incentives" of the market: effort and productivity are separated from reward. As Ronald Coase observed some 70 years ago,

If a workman moves from department Y to department X, he does not go because of a change in relative prices, but because he is ordered to do so. . . .

It can, I think, be assumed that the distinguishing mark of the firm is the supersession of the price mechanism.

So why is all this the case? Why does the corporation systematically abandon the basic knowledge and agency benefits of a free market, and rely on the same kinds of central planning and bureaucratic incentives

that free-market advocates rightly attack on the part of the state? Why does the corporation function, internally, as an island of nonmarket operations?

A classic essay by C. L. Dickinson, "Free Men for Better Job Performance," was reprinted in the same issue as my article. Dickinson described the harmful

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effects of the managerial revolution and the bureaucratic style of corporate governance. He quoted Douglas McGregor (*The Human Side of Enterprise*): “Many managers agree that the effectiveness of their organizations would be at least doubled if they could discover how to tap the unrealized potential present in their human resources.”

Unfortunately, the structural preconditions of the present system rule out, from the start, an organization which can tap that potential. The system starts from the legacy of a historical process (called “primitive accumulation” by radical historians of various stripes) by which the land was stolen on a large scale from the peasantry in the early modern period. The process included the enclosure of open fields, the legal nullification of copyhold and other traditional tenure rights, and the Parliamentary Enclosures of common land.

As Murray Rothbard observed, whenever we witness a majority of peasants paying rent to a small class of “owners” for access to the land they cultivate, it’s a safe guess the cultivators are the rightful owners and the landlords’ “property rights” are some sort of feudal legal fiction stemming from conquest or privilege. The effect of the assorted “land reforms” of the early modern era was to transform the landed oligarchy’s “property” in feudal legal fiction into a modern freehold right and reduce the rightful owners to at-will tenancy. The result of these expropriations was to drive the majority of peasants off the land, deprive them of independent access to the means of production and subsistence, and force them into the wage-labor market—at the same time as their former property was consolidated into the hands of the plutocracy.

As the industrial revolution developed in England, further accumulation of wealth by the owning classes was fostered by state-enforced unequal exchange, the result of coercive state restrictions on the free movement, free association, and freedom to bargain of the

laboring classes. These included the Laws of Settlement (a sort of internal passport system restricting the movement of labor in search of better wages) and the Combination Laws.

Subsidizing Centralization

The state’s entry barriers, like licensing and capitalization requirements for banks, reduce competition in the supply of credit and drive up its price; enforcement of artificial titles to vacant and unimproved land has a similar effect. As a result, labor’s independent access to capital is limited; workers must sell their labor in a buyer’s market; and workers tend to compete for jobs rather than jobs for workers.

State subsidies to economic centralization and capital accumulation also artificially increase the capital-intensiveness of production and thereby the capitalization of the dominant firm. The effect of such entry barriers is to reduce the number of employers competing for labor, while increasing the difficulty for small property owners to pool their capital and create competing enterprise.

The cumulative legacy of these past acts of state-assisted robbery, and ongoing state-enforced unequal exchange, determines the basic structural foundations of the present-day economy. These include enormous

concentrations of wealth in a few hands, the absentee ownership of capital by large-scale investors, and a hired labor force with no property in the means of production it works.

Necessarily, therefore, the absentee owners must resort to the expedients of hierarchy and top-down authority to elicit effort from a workforce with no rational interest in *maximizing* its own productivity. Oliver Williamson’s concept of “satisficing” is relevant here. Workers have an interest in maintaining just enough productivity to keep their jobs and increasing it enough to earn whatever limited administrative rewards

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are available, but no rational interest in maximizing it per se, because any additional increase in productivity beyond the minimum will likely be appropriated by management.

Hierarchy necessarily results in the divorce of effort from reward, and of productive knowledge from authority. Each rung of authority interferes in the efforts of those who know more about what they're doing; each rung of authority receives only information filtered from below based on what it wants to hear; and each rung of authority is accountable only to those higher up the chain of command who are even more unaccountable and out of touch with reality. The hierarchy, in short, is a textbook illustration of the zero-sum situation that results from substituting power for market relations.

The obvious solution, the worker cooperative, would—by uniting knowledge with authority and reward with effort—slice through the overwhelming majority of the hierarchical corporation's knowledge and agency problems, like a sword through the Gordian knot. The distributed knowledge of those engaged in production would be applied directly to the production process on their own authority, without the intervention of suggestion boxes and "quality improvement committees." The problem of socially engineering the wages and benefits system so as to "encourage people to work" would disappear; the elimination of privilege and unearned income, and the receipt by labor of its full product, would tie reward directly to effort.

But this solution is ruled out by the system's structural starting assumptions: concentrated wealth and absentee ownership. So the hierarchical corporation is adopted as a sort of Rube Goldberg expedient, the most rational means available given fundamentally irrational presuppositions.

Market Outside, Planning Inside

The corporate hierarchy also interferes with efficiency in another way: by substituting planning for market relations. Internally the corporation replaces market exchange with central planning. The simulated prices used by its internal accounting system, necessarily, are largely fictitious. Even when they use outside market prices as a proxy, the conditions under which those outside prices are set do not match the relations of supply and demand within the corporation. But more often, internal transfer prices are assigned to goods for which there is no outside market, like intermediate goods unique to a firm; in that case, the prices are based on cost-plus markup. As Seymour Melman has observed in the case of Pentagon contractors (*The Permanent War Economy*), cost-plus pricing creates perverse incentives to maximize, rather than minimize, costs.

The ideal, in terms of efficiency, is the allocation of goods entirely by a genuine price mechanism, with a minimum of vertical integration. Insofar as the production process involves a series of discrete, severable steps, the best way of avoiding information and incentive problems may be to relate the separate steps to one another by contract—especially if each step, organized under a separate firm, takes the internal form of a worker cooperative.

Each step, although a black box to those outside, is from an inside perspective ideally suited to aggregating all relevant information for consideration by a single group of decision-makers. In a self-managed enterprise, the same elected management that considers the relative prices of different productive inputs, and the price of the finished product, is also experienced in the actual production process in which the inputs are used. They are most qualified, of all people, to decide both the relative priority by which productive inputs ought to be economized, and the most effective technical methods

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of organizing production in order to economize those inputs (that is, combining Mises's "entrepreneurial" and "technical" functions without the intermediation of several layers of pointy-haired bosses).

Just as important, unlike a production unit within a corporate hierarchy, the production workers within an independent producers' co-op fully internalize all the costs and benefits of their production decisions. Unlike the case within a corporate hierarchy, there is no conflict of interests resulting from the decision-making by managers who stand to reap the benefits of increased productivity while workers suffer only the increased burden of speedups and downsizing. For a self-managed production unit, any decision concerning production methods will be a tradeoff of costs and benefits, all of which are fully internalized by the decision-makers.

From an outside perspective, on the other hand, contracting firms are able to make a virtue of necessity in treating a particular stage of production—organized as a separate firm—as a black box. The outside contractor and the internal corporate hierarchy, equally, are ignorant of goings-on inside the black box. The difference is that an outside contractor, unlike the apparatchiks in a corporate hierarchy, has no *need* to know what's happening in the internal production process, and no *power* to interfere with what he doesn't understand. So long as the inputs (likely in money terms) are specified by contract and the outputs are verifiable and enforceable, what goes on inside the box isn't the contractor's problem.

If the ideal contract is Ian R. MacNeil's "sharp ins by clear agreement, sharp outs by clear performance," then it is far simpler and less costly to simply monitor the contractually specified "ins" and "outs" going across firm boundaries than to monitor the internal use of inputs within the production process. The contracting party has no need to worry about the internal efficiency of the production process because it has effec-

tively *outsourced* the responsibility for decisions on how best to organize production to those *engaged* in production. And the other firm, if cooperatively owned by self-managed workers, is uniquely qualified to organize production most efficiently given the specified ins and outs. Both the authority to organize production, and the productivity benefits from doing so in the most efficient manner, have been internalized by those who have the most direct knowledge of the production process.

But—again—the state's intervention in the market raises almost insurmountable barriers to this form of organization. The state artificially promotes hierarchy at the expense of markets by subsidizing the input costs of

The state artificially promotes hierarchy at the expense of markets by subsidizing the input costs of large-scale enterprise and by protecting large corporations against the competitive ill effects of inefficiency.

large-scale enterprise and by protecting large corporations against the competitive ill effects of inefficiency. It subsidizes long-distance transportation and thus artificially inflates market and firm size. Its differential tax advantages for corporate debt and capital depreciation (or more accurately, its differential tax penalties on those not engaged in such activities) encourage mergers, acquisitions, and excessively capital-intensive forms of production with high entry costs. Its cartelizing regulations, in addition, limit competition in product features and quality. Thus the boundary between hierarchy and market is artificially shifted so that the dominant firms are far larger, more hierarchical, and more vertically integrated than

they would be in a free market.

The state's so-called "intellectual property" laws, especially, are a powerful force for cartelization. Many oligopoly industries were created by controlling patents (for example, AT&T was based on the Bell patent system) or exchanging them (GE and Westinghouse). Patents also enable corporations to restrict the supply of replacement parts for their goods and thus render artificially expensive the choice to repair an old car or appliance as an alternative to buying a new one. This facilitates a business model based on

planned obsolescence, large production runs, and “push” distribution.

“Intellectual property” also artificially promotes hierarchy even in industries where the minimum level of capitalization has ceased to be an effective barrier to self-employment. One of the original justifications for corporate hierarchy was that the enormous scale of even the minimum capitalization, in entertainment and information, was an entry barrier: To start a newspaper, radio station, movie studio, publishing house, or record company required, at minimum, an outlay of several hundred thousand dollars. As a necessary result, media and entertainment were concentrated in the control of a few gatekeeper corporations.

Revolutionary Change


But as Yochai Benker observed in *The Wealth of Networks*, the digital revolution has reduced the cost of the basic item of capital equipment—the personal computer—to under a thousand dollars. And supplemental equipment and software for very high-quality desktop publishing, sound editing, podcasting, and so on can be had for a few thousand more. The ability to replicate digital information on the Internet, at zero marginal cost, renders the corporate dinosaurs’ marketing operations obsolete.

The gatekeepers’ only remaining basis for power is the state’s “intellectual property” monopolies—which explains why Microsoft, the RIAA, and MPAA have pursued such draconian copyright legislation to protect themselves from market competition. The intrusive

DRM (digital rights management) used by Microsoft and the entertainment companies, and the legal penalties for circumventing it, in effect outlaw precisely what computers are made for: the replication and exchange of digital information. Without copyright and patent monopolies, peer production by self-employed information and entertainment workers would likely be the norm in software, music, and publishing. (It’s probably

no coincidence, by the way, that industries dependent on such “intellectual property” monopolies are the main profitable sectors in the global economy. It’s a case of artificial “comparative advantage,” created by state-erected barriers to the diffusion of knowledge and technique. The most profitable industries are those whose profits amount to rents or tolls for access to artificial property.)

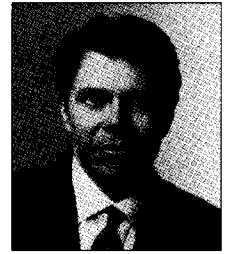
The problem is not hierarchy in itself, but government policies that make it artificially prevalent. No doubt some large-scale production would exist in a free market, and likewise some wage employment and

absentee ownership. But in a free market the predominant scale of production would likely be far smaller, and self-employment and cooperative ownership more widespread, than at present. Entrepreneurial profit would replace permanent rents from artificial property and other forms of privilege. Had the industrial revolution taken place in a genuine free market rather than a society characterized by state-backed robbery and privilege, our economy today would probably be far closer to the vision of Lewis Mumford than that of Joseph Schumpeter and Alfred Chandler. 

“Intellectual property” also artificially promotes hierarchy even in industries where the minimum level of capitalization has ceased to be an effective barrier to self-employment.

I Won't Vote!

BY DONALD J. BOUDREAU



I don't vote. Whenever I reveal my steadfast insistence on not voting, most people look at me as if I just admitted to slaughtering my dogs for dinner. Maybe it's not illegal, say those looks, but it sure as heck is unseemly and irresponsible.

Fancying myself to be a morally upright person, I obviously don't believe that not voting is in any way immoral or otherwise undesirable. Here's why.

First—and least interestingly—my vote will never determine the outcome of a political election. The chances that my voting for candidate Smith rather than voting for candidate Jones (or rather than not voting at all) will assure that Smith wins the election are practically zero. Put differently, from *my* perspective, the outcome of any election will be what it will be no matter what I do or don't do at a polling place on election day. Because my time is valuable, I never vote; I instead spend my time on activities whose outcomes I am more likely to affect.

Some people insist that non-voting is “selfish.” Perhaps. But note that I'm not the only person to benefit from my refusal to spend my time pointlessly. By not voting, I have more time to prepare for the classes I teach, or more time to write articles that (I hope) at least some people enjoy reading, or more time to spend helping my son with his homework or just enjoying time with my family. Because my refusal to vote changes nothing, the cost to others of my not voting is zero. But the cost of my voting to others (my students, my colleagues, my adoring reading public, my family) is real. So by not voting, I make at

least some people better off while making no one worse off.

(By the way, whenever I'm asked “Well, what would you do if *everyone* refused to vote?” I answer, “Then I'll vote!”)

The second reason I refuse to vote is that, unlike choices made in private markets, choosing among candidates is excessively imprecise. Here's what I mean. If you see a shopper in a supermarket fill her grocery cart

with three bottles of chardonnay, one chicken, one leg of lamb, six rolls of paper towels, two dozen diapers, and a bag of dog food, you can be pretty certain that she wants each of those items *and does not now want any of the many other items for sale in the supermarket*. The situation is very different in political elections. If you see the same woman vote for candidate Smith, you cannot legitimately conclude that she wants all of the positions taken by Smith. Perhaps this voter voted for Smith despite Smith's promise to raise taxes.

While I almost always prefer one candidate to others, I cannot bring myself to vote for my preferred candidate because doing so is too likely to be misread as an endorsement of some policies that I oppose.

A Package Deal

I have never encountered a candidate with a serious chance of winning elective office who did not take positions on many major issues that I find to be unwise or immoral. So while I almost always prefer one candidate to others, I cannot bring myself to vote for my preferred candidate because doing so is too likely to be misread as an endorsement of some policies that I

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oppose. And this misreading is more likely if my preferred candidate wins the election!

My third reason for not voting is that voting registers only each voter's *order* of preferences and not that voter's *intensity* of preferences. Unlike in private markets where I can refuse to buy a good or service if I judge its price to be too high—and then decide to buy that same product if its price falls—in elections each voter merely gets to say which candidate he prefers above all who are on the ballot. If I vote for Smith rather than Jones, this means only that I prefer Smith to Jones. My vote for Smith reveals nothing about how much I prefer Smith to Jones.

Because intensity of preferences is every bit as much a part of human likes and dislikes as is the order of preferences—and because in most choices in our lives we have at least some ability to express the intensity as well as the order—voting allows each of us to make only half-choices. The process simply gives no opportunity for any voter to express how *much* he prefers Smith to Jones.

Legitimate Process?

My fourth reason for not voting is that I disapprove of the political process and want no part of it. Of course, government wants part of me and my wealth; practically speaking, there is little I can do to prevent being harassed and shaken down by the state. If I vote, though, I give some legitimacy to the process. If my candidate wins, then what moral right do I have to complain about his pursuing policies that he said during the campaign he'd pursue but which I find deplorable? Even if my candidate loses, I implicitly agree—by voting—that the process of selecting people

Even if my candidate loses, I implicitly agree—by voting—that the process of selecting people to exercise power over me is legitimate.

to exercise power over me is legitimate. So if I vote I have much weaker grounds for complaining than I have if I don't vote.

I'm frankly saddened by the number of people who tell me that if I don't vote I have no right to complain about government. This familiar refrain is nonsense. My rights—as recognized, of course, by the signers of the Declaration of Independence—exist because I am a human being. These rights are not created by government. Because I am a human being who respects the rights of all other persons, my rights should be respected even (or especially!) if I don't participate in politics. Particularly today, with governments at all levels recognizing few constitutional restraints—that is, with government itself barely even pretending to play by the rules—why should any peaceful person be obliged to vote in order to retain his natural rights to life, liberty, and property?

Finally, even the practical justification for voting—that it lets your “voice be heard”—is wrong. Forget that no one vote will ever swing an election. Forget that it matters not one whit if your preferred candidate wins (or loses) by 34,767 votes instead of by 34,766 votes. The relevant fact is that there are countless better ways to get your voice heard.

Writing this column is one way that I get my voice heard. Casting a vote is not the only way to get your voice heard politically, and, more importantly, politics is not the only venue in which our voices should be heard. Denizens of a free society ought never be fooled into thinking that the only relevant way to be heard in that society is by yanking levers every few years in voting booths.



Banning Payday Loans Deprives Low-Income People of Options

BY GEORGE LEEF

In 2006 North Carolina joined a growing list of states that ban “payday lending.” Payday loans are small, short-term loans made to workers to provide them with cash until their next paychecks. This kind of borrowing is costly, reflecting both the substantial risk of nonpayment and high overhead costs of dealing with many little transactions. I wouldn’t borrow money that way, but there is enough demand for such loans to support thousands of payday-lending stores across the nation. They make several million loans each year.

But no longer in North Carolina.

Pointing to the high cost of payday borrowing, a coalition of groups claiming to represent the poor stampeded the North Carolina General Assembly into putting all the payday-lenders out of business. The reason I’m writing about this now is that the North Carolina Office of the Commissioner of Banks recently felt the need to justify the ban with the release of a study purporting to demonstrate that the politicians did the right thing. How do they know? Because payday lending “is not missed.” The preposterous lack of logic in this whole exercise cannot pass without comment.

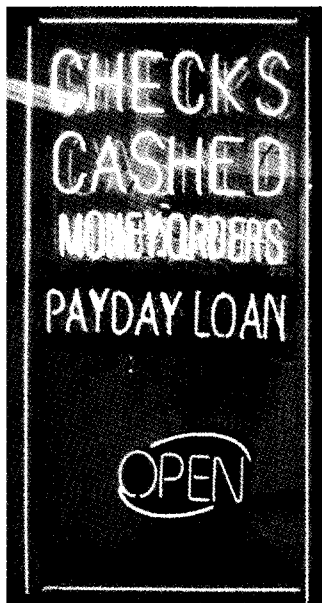
Before we look at the defense that has been given for this Nanny State dictate, we should consider what I call Sowell’s Axiom: You can’t make people better off by taking options away from them. (It’s named for the economist Thomas Sowell, one of whose books drove this point home to me many years ago.)

An individual will act to further his self-interest, and

in doing so, will choose the course of action that is most likely to succeed. Sometimes a person faces difficult circumstances and has to choose the option that’s least bad. But that doesn’t change the analysis. If he’s out of money and needs cash until his next paycheck, he will have to consider various unpleasant alternatives and choose the best one.

Obtaining money through a payday loan works like this: The borrower, after proving to the lender that he is employed and has sufficient income, writes a check to the lender postdated to his next payday for some amount, say, \$300. The lender gives him a smaller amount of cash, say, \$260. The lender then cashes the check on its due date. That is obviously a very high annual rate of interest if you consider the \$40 fee as an interest charge. A payday loan is not an attractive option—unless all your others are worse. No one would do it unless every other course of action looked even costlier.

Nevertheless, the North Carolinians who worked to abolish payday lending are eager to say they did no harm. A group called the UNC Center for Community Capital conducted a telephone survey of 400 low- and middle-income families in the state about how they deal with financial shortfalls. Only 159 reported having had financial troubles they couldn’t meet out of their regular income. From this small number of responses, the people doing the study concluded that “Payday lending



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is not missed.” That’s because, based on the telephone surveys, “almost nine out of ten said payday lending was a ‘bad thing’ and “twice as many respondents said the absence of payday lending has had a positive effect on their household than said it has had a negative effect.”

There you have it. Most people said payday lending was “bad” and few miss it now that it has been banned. That certainly proves that the state did the right thing in getting rid of it. Or does it?

Completely forgotten in the rush to justify the ban are the people who said they think they *are* worse off for not having this option anymore. Yes, they were a minority of the respondents, but that is no reason to conclude that “payday lending is not missed.” An accurate conclusion would instead be, “Payday lending is missed by some people.”

Maybe the silliness of this approach will be apparent if we consider a hypothetical case that parallels it.

Imagine that a group of people in New York hates opera. They regard it as too costly and time consuming, and a bad moral influence. Using their political connections, they succeed in getting the city government to ban live opera productions. Out goes the Met, the Civic Opera, and any other companies.

A year later this group commissions a survey asking 400 New Yorkers if they miss having opera in the city. Since most people don’t care about or even dislike opera, the results come in showing that the overwhelming majority of New Yorkers agree “Opera is not missed.” Would that justify taking opera away from the, say, 5 percent who said they would like to have had the option of going?

My point is that the views of the people who don’t patronize a business or art form shouldn’t count for anything. The people who don’t like opera are free not to go, and the people who think payday lending is “bad” are free to avoid it. As long as anyone wants to attend an opera or needs a payday loan, the government has no business forcibly depriving them of those choices.

Returning to the North Carolina study, people were

also asked how they respond when they have a money shortage. The results showed that people coped in various ways, including paying bills late, dipping into savings, borrowing from family or friends, using a credit card to get cash, or merely doing without things. Jumping on that information, North Carolina’s deputy commissioner of banks, Mark Pearce, said in the November 14, 2007, *Raleigh News & Observer*, “Working people don’t miss payday lending. They have a lot of financial options and they use them.”

We can only wonder why it doesn’t occur to Pearce that having *one more* option might be good. What if someone has already exhausted all possible money sources and faces serious consequences from either paying late (suppose the next missed payment means the power gets turned off) or doing without (you’ve got to

have some car repairs so you can get to work)? A payday loan might be the best option left.

In an August 2006 paper on the payday-lending business (“Payday Lending and Public Policy: What Elected Officials Should Know”), Professor Thomas Lehman of Indiana Wesleyan University found that this kind of lending fills a market niche and concluded, “Preventing or limiting the use of payday loan services only encourages borrowers to seek

out and utilize less attractive alternatives . . . that put the borrower in an even weaker financial position.”

A November 2007 study by two economists with the Federal Reserve Bank of New York (“Payday Holiday: How Households Fare after Payday Credit Bans”) came to the same conclusion. Authors Donald Morgan and Michael Strain found that a ban on payday lending results in increased credit problems for consumers. They wrote, “Payday credit is preferable to substitutes such as the bounced-check ‘protection’ sold by credit unions and banks or loans from pawnshops.”

So I maintain that Sowell’s Axiom holds. When government takes away options, it is bound to make some people worse off. Instead of acting like Big Nanny, government should stick to enforcing laws against coercion and fraud.

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Savoring “Three Cups of Tea”: An Essay on the Future of Politics

BY JAMES L. PAYNE

How can we make the world a better place? Truly this has been the \$64,000 question of the modern age, and politicians and ideologists have bloodied the twentieth century clamoring against each other to offer the world their answer.

Yet strangely, these disputing politicians and ideologists have all shared a basic premise. They have assumed that *government* is the agency that should be used to save the world.

This faith in government is deeply puzzling. Governments have started absurd and terrible wars. Governments have slaughtered scores of millions of their own peoples. In domestic affairs—regulation of the savings-and-loan industry, mortgage lending, hurricane disaster relief, agriculture, college loans, public housing, medical care, to name a few—government has stumbled into embarrassing mega-scandals. One would think that this record of catastrophe and bungling should have made people hesitant to look to government for solutions.

Another thing that should make people skeptical about government is its unseemly *modus operandi*. Government is not a high-minded institution that approaches the world in a spirit of gentle persuasion and self-sacrifice. Its officials don't lead by setting an inspiring example. Government relies on laws and on taxation, tools that are based on force, on threats to throw you in jail, or seize your property, or kill you. One would have supposed that idealists, who look askance at the use of force in

other contexts, should have turned their backs on this crude approach.

Yet, for the most part, they haven't. Generation after weary generation, well-meaning social reformers have taken their petitions to government, convinced, as the world in general is convinced, that government is the agency we must use to make the world a better place. When, one wonders, will this fixation fade?

Well, perhaps it is today starting to fade—in the

quiet, unnoticed way a great cultural change begins. The straw in the wind is the warm reception given by book clubs and college campuses to an unusual book, *Three Cups of Tea: One Man's Mission to Promote Peace. . . One School at a Time*. It recounts how mountain climber Greg Mortenson became a social reformer. Returning from a failed effort to scale the peak K2, Mortenson lost his way and was taken in by Pakistani villagers, who nursed him back to health. One day he saw the children of the village trying to learn school lessons, sitting on a patch of open ground, with no teacher, no books, and writing by scratching with sticks in the dirt. It tore his

heart. Mortenson promised the villagers to come back and build a school for them. To make coauthor David Relin's gracefully written long story short, Mortenson eventually did return, built the school, and founded a charity that has gone on to build some 60 more.



<http://www.gregmortenson.com>

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This bestseller is recommended reading at schools across the country, including Montana State, South Dakota State, the University of North Carolina, Carroll College, San Diego State, and Vanderbilt. “It’s just an inspiring story,” said Greg Young, Montana State’s vice provost for undergraduate education. “The implied message is our students could serve the world, change the world, using this as an example.”

The Voluntary Way

What Young didn’t add, because provosts aren’t permitted to contradict the *Zeitgeist* so directly, is that Mortenson’s example squarely contradicts the assumption that government is the way to change the world. Mortenson built his schools through his own dedication, and by inspiring others to donate funds voluntarily. That he succeeded with a ridiculously tiny budget (his first school cost \$12,000) throws into relief the failings of governments with their jillions of tax dollars. In Pakistan, the villages had no schools because the government had failed to live up to its promise to provide them. In Afghanistan, where Mortenson also built schools, the U.S. government makes promises, but the money vanishes into bureaucratic rat holes.


Mortenson’s experience goes beyond demonstrating that voluntarism is more efficient than government. He shows that it is the humane and sensitive method as well. Because he can’t force people to do anything, Mortenson relies on persuasion and his own example of sacrifice and commitment. He meets with locals, listens to their opinions and advice, and tries to learn from them, a personal approach vital in these days of global misunderstanding and tension. The U.S. government, operating in the sweeping, arrogant way governments act, has provoked suspicion and hostility in Muslim communities around the world. Mortenson, following the sensitive, voluntary approach, builds bridges of genuine understanding between cultures.

For example, a local cleric issued a *fatwa* against Mortenson, arguing that it was un-Islamic to educate girls, as Mortenson was proposing to do. To counter him, Mortenson didn’t get on his high horse and rant. He asked for guidance from his local mentors. They

advised him to let friendly clerics submit the issue to the Supreme Council of Ayatollahs in Qom, Iran. Agents of the Council visited the schools and interviewed locals about Mortenson’s morals and character. Eventually, the Council issued its judgment: “Our Holy Koran tells us all children should receive education, including our daughters and sisters. Your [Mortenson’s] noble work follows the highest principles of Islam, to tend to the poor and the sick. . . . We direct all clerics in Pakistan not to interfere with your noble intentions. You have our permission, blessings, and prayers.”

Remember, this high praise came from fundamentalist Iranian clerics, a group not disposed to view Americans kindly. Can one imagine a U.S. government agency working so delicately and thus inspiring genuine trust and cross-cultural good will? Episodes like this go far in persuading the reader that Mortenson’s sincere voluntary action is promoting tolerance in a way government never could.

More than a century ago, the bestseller sweeping campuses and book clubs was Edward Bellamy’s *Looking Backward*, a utopian novella that had the federal government in charge of every aspect of economic production and distribution. This management would be so flawless, said Bellamy, that “No man any more has any care for the morrow, either for himself or his children, for the nation guarantees the nurture, education, and comfortable maintenance of every citizen from the cradle to the grave.” Don’t laugh: this book postulating a wise, selfless, unbiased, efficient, prompt, and honest federal government sold millions of copies, and “Bellamy Clubs” were formed all across the country to bring this vision, called “nationalism,” into reality.

Perhaps Mortenson’s book will today inspire youngsters to consider a different “ism,” voluntarism, as the way to make the world a better place. On one level, Mortenson is far ahead of Bellamy. Bellamy’s book was fiction, and his image of government as a wonderful problem-solver was not based on the actual performance of any government. Mortenson’s picture of voluntarism’s glowing success comes from a step-by-step demonstration in the real world. 

Health-Care Cons

BY SHELDON RICHMAN



Economist Joan Robinson (1903–1983) wrote, “The purpose of studying economics is not to acquire a set of readymade answers to economic questions, but to learn how to avoid being deceived by economists.”

A better reason to study economics is to avoid being deceived by *politicians*; they are the far greater threat to life, liberty, and the pursuit of happiness. When you consider that the typical political campaign is little more than a series of confidence games, understanding basic economics is a matter of survival. Without such an understanding one is an easy mark.

Case in point: How would one see through the flimflam served up as health-care policy without a working knowledge of economic principles? When politicians promise “universal and affordable” medical care and insurance, how else are we to know that those promises can’t be kept. Indeed, attempting to keep them would gravely damage our medical care (even more), our prosperity, our liberty.

What we call medical care/insurance is a bundle of goods and services that have to be produced. They aren’t found superabundant in nature. Production of those things entails real opportunity costs in terms of resources (labor, intellectual capital, machinery, and more, which could be used in alternative ways. The people engaged in this production are (so far) free to do other things if they choose. They can’t be compelled to practice medicine, run hospitals, invent medicines, or offer insurance policies. This sobering thought should be kept in mind when analyzing politicians’ plans for medical “reform.” Any proposal that would drive medical service providers and resources into other lines of work could hardly be said to be in the general interest.

However, one group *can* be compelled to participate in a government plan: the American people in their dual capacities as taxpayers and consumers of medical services. This is the key to any political “solution.” That’s why Hillary Clinton insists against Barack Obama that any program must be mandatory. Given the premises both candidates share, Clinton has logic on her side. Without compulsion, any government program must fail even on its own terms. You might think that’s a good argument *against* government programs, but politicians and most other people

don’t believe physical force perpetrated by government is objectionable. Go figure.

Candidates who promise universal and affordable medical care don’t really believe they can lower the true costs of the relevant goods and services. Instead, their plans contain methods, overt and covert, to shift some people’s expenses to others. The overall price tag won’t shrink—indeed, it can be expected to grow—but the money price to selected individuals would diminish. (Nonmonetary costs, such as waiting

times, would increase.)

The problem for those who promise universal and affordable health care is that medically we are not all created equal. Because of genetics and lifestyle, some people are more likely to get sick than others, and some people are already sick. This upsets the politicians’ plans, and they must do something about it. Clinton declares, “I want to stop the health-insurance companies from discriminating against people because they’re sick.”

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One doesn't know whether to laugh or cry at a statement like that. Is it ignorance, stupidity, or demagoguery? Real insurance lets people hedge against financial ruin by pooling their risk of misfortune with others. For reasons that shouldn't need explaining, people who present a low risk for whatever is being insured against would reasonably be charged less for coverage than people who present a high risk. For one thing, low-risk customers would be unwilling to pay premiums that overstated their perceived risk. I recall reading that the fire-insurance company founded by Benjamin Franklin set premiums according to how fire-resistant a building was. Was that a reasonable or outrageous thing to do?

The depth of the lack of understanding about insurance is on stark display whenever someone demands that the terms of coverage for a sick person be the same as those for a healthy person. Risk grows out of uncertainty. But if someone is already sick, there is no uncertainty about his need for medical care. "Insurance" in this case would not be real insurance but rather a subsidy provided by others or prepayment for future expenses.

The Real Story

To be actuarially sound, insurance must discriminate on the basis of risk. If the government bars insurers from such price-discrimination, they really wouldn't be in the insurance business at all. It would be more accurate to call their activity a forced subsidy. We should at least call a thing what it is.

Where would the Clinton principle of nondiscrimination lead if the government seriously enforced it? If an "insurer" is allowed to charge only one price regardless of risk, it would have to set the price high in order to be able to cover the riskiest customers. But that would not honor the politicians' promise of affordable coverage. Moreover, young, healthy people would opt out, preferring to spend their money otherwise or to save it in order to self-insure. So the government could not let this stand. To "fix" things, it would compel everyone to participate and force the taxpayers to subsidize low-income people.

Even with subsidies the politicians wouldn't let insurers charge market prices for long because this would anger voters and break the budget. So inevitably, the Clinton principle must lead to price controls.

We know what price ceilings bring: shortages. Why would a company that cannot charge enough to cover its costs and earn a competitive profit continue in business? Thus the principle of nondiscrimination combined with price controls would inevitably dry up the supply of private "insurance." At that point, the politicians would declare that the "free market" failed and that government must step in to be the sole health insurer. Then government could have full control over who gets what kind of medical attention. It would be in the triage business, a terrifying prospect for sure. It would also dictate prices to doctors, hospitals, and drug

companies, speeding up the exodus from that profession and those industries. As supply withered and demand inflated (because of the illusion of low prices), government would impose more and more draconian controls.

There's a lesson here. When the government seeks to enforce a counterfeit right—such as the "right" to medical care—no expansion of freedom results. Instead, *government power* expands—to everyone's detriment.

When the government seeks to enforce a counterfeit right—such as the "right" to medical care—no expansion of freedom results.

One way for politicians really to keep their promise of lower medical costs would be to uncover all the ways the government artificially raises costs today. It does this in a variety of ways: restricting supply through licensing and patents, boosting demand by lowering the apparent price of services, promoting third-party payment for even expected routine services, raising drug-research expenses, imposing coverage mandates on insurers, forbidding interstate competition in insurance, and on and on.

But politicians don't talk about those things. They presumably wouldn't get credit merely for repealing destructive interventions and letting the competitive free market provide universal affordable medical care—as it has provided so many other things universally and affordably.



Slick Construction Under the Articles of Confederation

BY JOSEPH R. STROMBERG

Writing lately on the Fourth Amendment, Professor Thomas Y. Davies decries the “originalism” practiced by certain Supreme Court justices and sundry legal commentators. On historical-hermeneutic grounds, he faults face-value originalism for missing “the shared, implicit assumptions that informed the public meaning” on which a given constitutional provision rested. Underlying the Fourth Amendment were common-law rules about arrest, which later Americans managed to forget entirely. This amnesia set in somewhere in the early nineteenth century. Accordingly, recovering the amendment’s meaning becomes difficult, if not quite impossible. Long ago, Americans simply *understood* the underlying rules, which were more detailed—and more favorable to our liberties—than today’s Justice Department “rules of engagement,” or shooting licenses, which seem to owe more to military “law” than to common law.

If originalism entails the problem Davies raises, it also has at least one more. Original intent, meaning, or understanding is inevitably multiple. John L. O’Sullivan, former editor of the *Democratic Review*, noticed this in 1862. The Constitution, he wrote, was America’s “ark of the covenant,” but “no man could ever exactly say what the Constitution was.” Its “elastic generalities of phrase” hid the deep divide “between the ‘Consolidation’ and the ‘State Rights’ parties in the Convention. . . .” Constitutional interpretation had been “*twofold from the outset . . . Hamiltonian and Jeffersonian, or indeed*

Constitutional interpretation had been “*twofold from the outset . . . Hamiltonian and Jeffersonian, or indeed Northern and Southern.*”

Northern and Southern.” There was “not one . . . universally recognised Constitution, but two, widely different, and indeed conflicting” (my italics).

But what of our first constitution, the Articles of Confederation? For a time, they suited most of the people and the states. On the other hand, a vocal group in Congress was violently unhappy over the Articles’ failure to establish effective federal (national) power.

Joseph Jones of Virginia, newly arrived in mid-1780, complained, “This Body never had or at least in few instances have exercised powers adequate to the purposes of war. . . .” Charles Thomson lamented in 1784, “A government without a visible head must appear a strange phenomenon to European politicians. . . .”

With new members, a dangerous optical malady often set in—“Continental Vision.” Writing to James Madison on February 20, 1784, Thomas Jefferson described the process: “[Young statesmen learn to] see the affairs of the Confederacy from a high ground; they learn the importance of the Union & befriend federal measures when they return.” Continental vision and “insufficient” power: Here was a dilemma, one that American nationalists—James Wilson, Madison, Alexander Hamilton, Robert Morris, and many others—determined to resolve. In their view, the country needed a mercantilist political economy, a standing

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army, public debt, and effective central taxation—things structurally and systematically interrelated. Nationalists wanted central power, as much of it as possible. Under the Confederation they made some interesting attempts to get it. We may begin with war powers.

Invoking vague war powers, early American nationalists urged that Congress *ought* to have certain powers and, therefore, did or “must” have them, neatly getting an “is” from an “ought.” Big on assertion, Congress spent the war complaining of its lack of real power, including power to tax. Yet mysteriously, Americans defeated Britain without anyone’s giving Congress many powers it craved or claimed. What actually happened?

Acting Without Authority

In practice, Congress coordinated revolutionary activity in the 13 incipient states and conducted diplomatic activity in their (plural) name. In so doing, Congress constantly recommended specific actions to the states, relying on them to carry the measures out. Before ratification of the Articles (1781), Congress often undertook measures for which it could show no obvious authority whatsoever, including the debt it created, its adoption of a European-style code of military “justice” for the Continental Army, and its creation of that army itself. Congress could only appeal to the wartime emergency, iron necessity, “public safety,” and the like. Under the Articles, nationalists complained endlessly of the powers Congress had “lost” with ratification. They referred of course to earlier congressional *claims* of inherent power—those being “proven” by the fact that Americans in their states had been good enough to cooperate. The price of following Congress’s advice and recommendations was to be told later that one had followed *orders* and obeyed *commands*.

American historians largely agree with the original claimants. Legal historian Edward S. Corwin was a case in point. Congress had, he admits, “no real governing power.” The states, on Congress’s recommendations,

seized property, repressed Tories, suspended habeas corpus, and undertook “measure after measure that entrenched upon the normal life of the community drastically.” Regrouping, he concludes: “The fact, however, that this legislation came from the state legislatures whereas the war power was *attributed* to the United States in the Continental Congress served to obscure the fact that the former was *really an outgrowth* of the latter” (my italics).

This calls to mind the paradox, which I have noted previously (“On Misplaced Concreteness in Social Theory,” *The Freeman*, May 2006), whereby actual successful social action tends to be denounced as a dreadful evil or social problem. In the case at hand,

cooperation serves to allocate authority away from those who acted. Whether that authority really entailed a spectral “war power” need not detain us. Whatever that last abstraction did for Congress from 1776 to 1781, and even under the Articles, 1781–1783, it did very little for it after 1783 without the war. Nationalists saw this problem coming. Late in the war, Gouverneur Morris hoped for “a Continuance of the War, which will convince people of the necessity of Obedience to common Counsels. . . .”

In the hunt for added congressional powers, nationalists employed deductions from International Law and pleaded Machiavellian necessities and moments. According to Merrill Jensen, they sought “to establish precedents [from which] they could argue the *sovereignty* of Congress” (my italics). Jensen stresses the interest of certain land companies in having their titles confirmed by the higher “government,” as well as the public creditors’ desire to have depreciated paper claims redeemed at somewhere near face value.

Hamilton hoped Congress would simply *assert* “undefined Powers” and see what they got away with. They should “*assume* Congress had once had such powers” (my italics). Boldness was needed to build a governing coalition of army, public creditors, and other nationalists. Madison was more indirect. In a Report to Congress in March 1781, he, James Duane, and James

In the hunt for added congressional powers, nationalists employed deductions from International Law and pleaded Machiavellian necessities and moments.

Varnum asserted a “*general and implied power*. . . to carry into effect all the Articles of the said Confederation against any of the States” but could find “no determinate and particular provision” (my italics). They therefore urged amendment of the Articles so that Congress could “employ the force of the United States” against states failing to meet funding requisitions.

After Rhode Island rejected an amendment to create a federal impost, Hamilton, Madison, and Thomas FitzSimons drew up a lengthy Congressional Reply in December 1782, calling the impost “a measure of necessity.” Congress, they urged, had “an indefinite power of prescribing the quantity of money to be raised.” This brought the impost “within *the spirit* of the Confederation” (my italics). Further, Congress, “empowered to borrow money,” had power “by implication, to concert the means necessary to accomplish that end.” Arguing against Rhode Island’s position, Robert Morris—federal financial czar—wrote on October 24, 1782, “[I]f a thing be neither wrong nor forbidden it must be admissible [and] if complied with, will by that very compliance become constitutional.” Now, mere acquiescence was “consent,” and consent bred legality. Meanwhile, having thought the thing over, other states had “rescinded” their earlier approval of the impost amendment.

Nationalist aspirations for revenue did not lessen with time. In a speech on January 28, 1783, Madison found “general revenue” to be “within the *spirit* of the Confederation.” Hamilton agreed, but un-bagged the cat by saying, “[I]t was expedient to introduce the influence of officers deriving their emolument from . . . Congress” (my italics). Madison often suggested naval blockades of offending states. He seems also to have spotted an implied power to coerce the states, even without an amendment. (Thirty years later, as president, Madison tried to coerce Britain and France with an embargo, but got the War of 1812 instead.) Even Governor George Clinton of New York spied an implied

“Power of compelling the several States to their Duty and thereby enabling the Confederacy to expel the common Enemy.”

But Congress could not *make* the states ratify an amendment for a modest impost, much less one for their own coercion or blockade. For now, big notions drawn from Machiavelli, Vattel, and Pufendorf were of no avail. They did serve, however, in building both nationalist ideology and a theory of the union, and they yet serve historians who want philosophical foundations for the practical—even cynical—system the nationalists put over a few years later.

Another possible way out was the treaty power duly inscribed in the ninth Article of Confederation. In a centralizing mood, Jefferson himself, writing to James Monroe from Paris on June 17, 1785, advocated using the treaty power “to take the commerce of the states out of the hands of the states” and give it to Congress, which under the Articles had “no original and inherent power” over the subject. But Jefferson did not try to find implied powers in the Articles, nor did he deduce powers from some congressional sovereignty that “necessarily” arose under international law.

The treaty-power dodge reappeared much later, fueling the Old Right’s Bricker Amendment movement of the early 1950s. Senator John Bricker (R-Ohio) and his supporters wanted to keep Congress and the president from aggrandizing themselves under the vaguely worded treaty clause of the present constitution. They meant for their amendment, which failed in the Senate by one vote in February 1954, to meet the problem.

Utilizing Public Debt

Nationalists focused more and more on the public debt. Congress quit issuing credit money in late 1779. Thereafter, as Madison wrote to Jefferson on May 6, 1780, Congress became “as dependent on the States as the King of England is on the Parliament.” National-

Jefferson did not try to find implied powers in the Articles, nor did he deduce powers from some congressional sovereignty that “necessarily” arose under international law.

ists saw this situation as completely improper. And so, Lance Banning observes, they “proposed to use the national debt to create a single nation—or at least an integrated national elite—where none existed in 1783.”

E. James Ferguson writes, “The Union was a league of states rather than a national system because Congress lacked the power of taxation. This was not an oversight.” Further, the federal debt itself was “inconsistent” with such a union. Jack N. Rakove adds, “Congress lacked the effective power or, once the Articles were ratified, the constitutional right either to levy taxes on its own authority, or to compel the states to obey its recommendations. It is certainly true that the states would never have ratified the Articles had they contained such provisions. . . .”

Nationalists feared the states would pay off the debt. Like the English Whigs in 1649, they *needed* the debt as the “cement” of union, as Hamilton called it. The debt was needed, in Rakove’s words, “to justify endowing Congress with independent revenues.” If revenue were found, public creditors and the underpaid officer class would rally to the cause of national power. All these advocates well understood the inflationary potential of consolidated public debt in the hands of fractional-reserve bankers. The economy would boom under their own profitable management.

Nationalists conducted an unrestrained campaign against the Confederation’s limits on power. “Water would not boil” due to the Articles. More important, nationalists discovered The People. Within doors, Federalists habitually denounced the people as a great rabble, the source of danger, wild enthusiasms, paper money, and attacks on property. Now they hastened to embrace John Locke’s empty marker of popular sovereignty to justify a takeover in the name of the people. Then they hustled the people off stage so the new machine “could go of itself.”

Social-Contract Theory

Anyone who reads Madison’s enormous journal of the Constitutional Convention will find the delegates

arguing a mass of undigested social-contract theory big enough to sicken a hog. Here is an economical explanation: ambitious men with political, economic, and ideological motives wanted a central government with vague (therefore large) powers. They had, doubtlessly, a certain kind of public spirit. The system they created unfolded its inherent defects over time. To provide cover for their more specific goals—power, profit, prosperity, fisheries, security for slavery, land grabbing, glory, fame, good government—the framers issued great clouds of political “science” and theory that have confused Americans ever since. Madison was the outstanding mystifier, but there were others. Nationalists artfully decried the *governments* of the states while championing the Sovereign People, neatly dodging the question of

who the people were and whether there were 13 peoples or one.

The constitutional deed and its defending rationales do not seem much grander than the origins of many other states. But as Jesse Lienesch has written, the founders succeeded in presenting themselves as demigods who saved the nation. It is a point of American orthodoxy to believe them. Charles Beard and J. Allen Smith, seconded by Albert

Jay Nock, got much flak for recognizing that the Federalists had mixed motives and self-serving goals.

To win ratification, American nationalists, rechristened as “Federalists,” sold the new Constitution as a document involving “limited” and “enumerated” powers. On this reading, any power not obviously granted was *not granted* and the new outfit would not have it. Having cornered themselves verbally, Federalists showed *their* original understanding in the first Congress by enacting all manner of laws directly in conflict with their assurances to the ratifying conventions. Senator William Maclay of Pennsylvania especially noted the Judiciary Act, Hamilton’s funding system, economic coercion to force Rhode Island to ratify the Constitution, the War Department, a standing army—and federal consolidation generally. (See *Maclay’s Journal* at <http://tinyurl.com/3ch2nm>.) Seeing this, the Federalists’ opponents, with a *different*

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original understanding, argued for theirs as “Republicans” led by Jefferson, John Taylor, and others. They meant to hold the former promising parties to their pledges. Historian Garry Wills affirms that the ratifiers *were* somewhat swindled, but holds this to be a universal blessing that makes modern American governance possible.


And for all their high-minded talk about The People, popular consent, and so on, nationalists did not rule out violence. Benjamin Rush wrote Richard Price on June 2, 1787, that, if needed, “force will not be wanting,” since the wealthy and military classes wanted a new government. As Jensen writes, “It was *power*, not powers, that they wanted.”

Could the nationalizers have gotten their way by ingeniously stretching the Articles? One possible way would have been to filch the states’ powers and reassemble them into a collective power. Nationalists might have contended that a majority of congressional delegations—each delegation embodying, *fully and immediately*, its state’s separate sovereign powers—could, in concert, do any old thing, *outside the Articles*, that came to mind. Similar ideas had yielded results before the Articles came into force in 1781.

The nationalists were not the sort to be denied power. They might have made interesting inroads by discovering “indefinite” or “implied” powers, or by invoking the Articles’ “spirit.” Patiently accumulating “precedents,” they could cash them in, down the road, as grounded on powers that had always “been there.” But nationalists were not as patient as, say, the Supreme Court.

And certain structural advantages still remained to the states and the people(s). Their key advantage involved taxation. Congress had to *ask* the states for its money. It still seems a good arrangement.

Here our sub-theme—originalism—returns. It appears that *original* contestants *contested* many constitutional “meanings” at the very beginning. On this view,

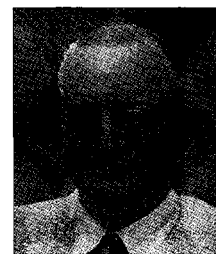
any simple originalism means clinging to original mistakes. The framers’ opinions were certainly original; how or whether they dictate *to us* today through the ether is another matter. 

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Migration, Markets, and Governments

BY STEPHEN DAVIES



One of the hottest political topics today on both sides of the Atlantic is immigration. What, though, do we mean by this and what light does history cast on our present concerns and anxieties?

Migration, the movement and resettlement of people, is one of the universals of history. In some periods it happens on a relatively small scale, while at other times there are large-scale movements with significant effects. Sometimes entire tribes or ethnic groups move as single entities. This is a frequent feature of the history of Africa for example and can also be observed in many parts of Eurasia during the Late Antique period between roughly 250 AD and the eighth century.

The other form that migration takes, which has become the norm in most of the world since the Middle Ages, is individualistic. Here individuals or families move from one part of the world to another.

A lot of literature is concerned with what motivates people and households to migrate. There is a longstanding debate over whether it is “push” factors (the desire to get away from unpleasant conditions) or “pull” ones (the desire to move to a place with better conditions) that should be emphasized. Recent work suggests that although in reality most cases involve a mixture of both, “pull” is commonly more important than “push.”

Another feature identified by recent research is “chain migration,” in which the individuals who initially migrate are then followed by relatives and people from their own immediate place of origin. This explains why most migration is not random or uniform but tends to be from one specific place to another equally specific place, with the reasons for the original move-

ment by the “pathfinder” often personal and idiosyncratic. The central point, however, is the individuality and personal nature of the decisions that both constitute and drive the process of migration.

Today there is a tendency to see the extent and level of migration as unprecedented. This is not true. In this, as in other respects, we are only starting to approach the situation of the late-nineteenth and early-twentieth centuries. At that time the plethora of border controls that we now have to deal with was hardly even imagined. In Europe in 1900 only two states required a passport for entry, the Russian and Ottoman Empires. This was regarded as a sign of their backwardness—the

long-term trend in most parts of the world for the previous 200 years had been for controls on movement to fade away or be abolished.

The scale of migration in the nineteenth century was massive both absolutely and proportionally. Between 1815 and 1914, more than 20 million people emigrated from the United Kingdom. To put this into context, the overall net increase of

British population between 1801 and 1911 was 26.5 million. (Thirteen of the 20 million went to the United States.) Britain was not alone in this. No fewer than 5.5 million Italians emigrated between 1900 and 1910, mostly to the United States and Argentina. In Sweden 20 percent of the total population emigrated between 1860 and 1910. Nor was movement on this scale confined to Europe; there were enormous movements within Africa and parts of Asia, such as China and India, not to mention the Russian Empire, while the United States saw the steady movement of population out to the west.

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Migration, the movement and resettlement of people, is one of the universals of history.


The last few examples and the American case in particular highlight two central points that need to be made about migration in the modern world. The first is that since 1800 the significant migration has been not so much from one part of the world to another as from the countryside to the city. To move from rural Sicily or the Ukraine to Milan or Kiev was as dramatic a move in many ways as from either location to New York.

The other point is that what matters is movement per se, not movement that happens to cross a geopolitical border. In terms of its impact, both on the individuals involved and in the aggregate on the places of origin and reception, there is no fundamental difference between movement within the boundaries of a state and movement that crosses over those boundaries. To take a more recent example, the United States was profoundly changed by the massive movement from south to north that took place between 1920 and 1960 (with a lull during the Depression), a migration contained entirely within the boundaries of one nation-state. In Britain large migration from England into South Wales between 1890 and 1920 completely transformed the recipient society. Among other things it made Welsh a clear minority language as compared to English. Many large cities in Scotland and the north of England were deeply affected by the inward movement of large numbers of Irish from the 1840s onwards.

Thus it is not really a question of whether immigration (or indeed emigration) should be controlled, but whether the movement of people beyond their immediate locality should be regulated. If the concern is that the unintended outcome of many individual decisions to move will be changes in society and ways of life, these are as likely to arise when the movement is within a state as when it is over the borders of a state.

Many pre-modern regimes recognized this. Thus the Chinese state for much of its history had a system of internal controls that (at least in theory) restricted movement within the empire. In medieval times there were legal restrictions on the freedom of movement for most of the lower orders of society. Opposition to immigration because of social and cultural effects is a species of the wider genus of opposition to change in general, just as protectionism and restraints on trade and exchange are partly driven by the fear of the changes brought about by free economic choices of individuals.

Individuals and families make many decisions over such matters as what to buy, what kind of work to do, and where to live. In the aggregate these personal decisions produce large-scale unintended outcomes that are often discomfiting to many. The question is whether should we accept these outcomes and trust human interaction and ingenuity expressed through personal actions and cooperation to deal with any problems, or whether should we use political power and accept the position that collective choices should trump individual ones.

If we adopt the second position we should recognize that what drives it is, above all, the desire, in the words of Hilaire Belloc, to “always keep ahold of nurse, for fear of getting something worse.” If we are tempted to do so, there is something else to consider. British commentators have engaged in much hand-wringing over how the recent influx of migrants from Eastern Europe is putting a huge strain on schools, public housing, social-welfare departments, the police, and public transport. These all have one thing in common: They are provided by the state. There are no anguished complaints from grocery stores, restaurants, or private landlords. They have adapted, started to provide new services and products, and gained from the influx of new skills. We should note this contrast and learn from it. 

Opposition to immigration because of social and cultural effects is a species of the wider genus of opposition to change in general.

The Return of Debtors' Prison?

BY WENDY MCELROY

H. Beatty Chadwick, a former corporate lawyer, has been imprisoned in a Pennsylvania county jail for over 13 years even though he has never been arrested, criminally accused, or tried. Chadwick is imprisoned on contempt-of-court charges that sprang from a contentious divorce. His case dramatizes a continuing debate over the use and misuse of civil-contempt imprisonment.

Many people view contempt of civil court as an uncommon and relatively benign sanction that is flexed only to enforce court orders or respect for the court. If the sanction is seen to have bite, it is usually in connection with high-profile cases in which journalists refuse to reveal their sources and so are imprisoned until they relent or it is clear that further imprisonment will not compel compliance.

In reality such imprisonment seems to be commonplace and it can devastate lives. Arguably, the most common form of civil imprisonment is for nonpayment of child support. When a “deadbeat” parent is jailed for nonpayment by a family-court judge, the actual charge is contempt of civil court. How many “deadbeats” are imprisoned each year is unknown because family courts are not required to maintain such records and rarely do so. This means that family-court judges act with less transparency and less accountability than those in other venues do. Moreover, there is no national database of “deadbeat” parents incarcerated each year. In short, there is an amazing lack of data on such impris-

onment, with estimates ranging from tens of thousands to hundreds of thousands.

What is contempt of court? The United States has two basic types of contempt: criminal and civil. Contempt of court has been called the “Proteus” of the legal system because Proteus was the Greek sea god who could change his shape at will. In short, contempt of court can assume many forms due to three factors: the judge is often the sole evaluator of when contempt has occurred; federal law differs from state laws, which

often vary from each other; and criminal contempt is remedied differently from its civil parallel.

Nevertheless, all contempt charges share certain characteristics. In its most basic form, contempt of court is a ruling through which a judge sanctions a deliberate act or omission to act that he or she considers to be disobedient, obstructive, or disrespectful to the court. The ruling is the sternest remedy a judge can impose on “bad behavior,” such as refusing to obey a court order or uttering obscenities in court. Punishment can be imposed on

anyone within the court, including attorneys, parties to a lawsuit or criminal action, witnesses, and spectators.

This article focuses on civil contempt on a state level and analyzes criminal contempt only by way of contrast. In theory a key difference is that criminal charges are

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more serious than civil ones and often involve the loss of liberty. Thus criminal defendants have protections of due process that civil defendants do not enjoy. In some cases, however, civil contempt involves imprisonment against which the offender, or contemnor, has no legal protection or recourse except eventual compliance.

What are some of the other key differences between civil and criminal contempt?

In both, contempt can be either direct or indirect. Direct contempt is committed in the presence of a presiding judge; for example, interrupting the judge. Indirect contempt is committed outside the presence of the presiding judge, for example, neglecting to pay court-ordered child support.

In civil court, once the direct contemnor has been advised of the contempt, a fine and/or imprisonment may be imposed immediately. The imprisonment is generally for a few days but can span months. The contemnor has no legal right to an attorney or a trial or any defense. The judge's ruling cannot be appealed. In indirect civil contempt, the contemnor is entitled to notice and a hearing at which to present evidence and rebuttal. Then, at the sole discretion of the judge, the contemnor may be imprisoned until compliance is compelled. With noncompliant contemnors, imprisonment usually ends when the judge concludes that continuation is ineffective. If the judge does not reach that conclusion, it is possible for the imprisonment to be indefinite.

By contrast, in direct or indirect criminal contempt, the contemnor retains the rights of due process. The sentence, which is meant to punish rather than to compel compliance, is of a set length.

Thus in practice a civil-contempt charge can be far more serious than a criminal one.

Consider H. Beatty Chadwick's 13 years of imprisonment. The facts of his case are straightforward. In 1977 Chadwick married Barbara Jean Crowther. In 1992, she filed for divorce. In 1994 Barbara Chadwick

informed the court her husband had wired \$2.5 million out of the country. The judge ordered him to retrieve the money and place it in a court-controlled account until the divorce was settled. Beatty Chadwick claimed that most of the money had been lost in a foreign business deal gone bad; however, a small fraction of the money showed up in a U.S. bank under his name and the court did not believe his story. In April 1995 Chadwick was imprisoned until the money was produced.

Traditionally, a contempt-of-court sentence continues only as long as there is a reasonable expectation of coercing compliance. Otherwise, the imprisonment becomes a punishment, which is a criminal sanction and beyond the authority of civil courts.

An Affront to Liberty

A 1974 New Jersey Supreme Court case, *Catena v. Seidl*, is often cited regarding this point in civil contempt. "It is abhorrent to our concept of personal freedom that the process of civil contempt can be used to jail a person indefinitely, possibly for life, even though he or she refuses to comply with the court's order. . . . [C]ontinued imprisonment may reach a point where it becomes more punitive than coercive and thereby defeats the purpose of the commitment."

In 2002 U.S. District Court Judge Norma Shapiro ordered Chadwick's release on grounds that continued imprisonment would not compel compliance. That same year, then-Third U.S. Circuit Court of Appeals Judge Samuel Alito overturned Shapiro. He said, "Because the state courts have repeatedly found that Mr. Chadwick has the present ability to comply with the July 1994 state court order, we cannot disturb the state courts' decision that there is no federal constitutional bar to Mr. Chadwick's indefinite confinement for civil contempt so long as he retains the ability to comply with the order requiring him to pay over the money at issue."

"It is abhorrent to our concept of personal freedom that the process of civil contempt can be used to jail a person indefinitely, possibly for life, even though he or she refuses to comply with the court's order."

Thus Alito, now a U.S. Supreme Court justice, asserted the right of a civil court to hold a contemnor in prison in perpetuity. The only question was whether the contemnor has the ability to comply.

In Chadwick's case the ability is far from clear. In 2003 former Pennsylvania Judge A. Leo Sereni oversaw an 18-month investigation in which two accounting firms attempted to track down Chadwick's money. No trace was found beyond what had been identified a decade before. Sereni recommended Chadwick's release, stating, "My God— if he had stolen \$2 million, he would have been out a couple of years ago." (Apparently, the state maximum for that crime is or was a seven-year term.) Chadwick's lawyer has added that his elderly client now suffers from non-Hodgkin's lymphoma and requires "outside" medical attention.

In February 2006 the presiding court held that Sereni had "overstepped his bounds" and Chadwick's incarceration should continue.

Is the Chadwick case an aberration that has slipped through the cracks of an otherwise reasonable system? Or is it an extreme example of a commonplace occurrence that suggests family courts are out of control in the use of contempt imprisonment?

The "legal crack" theory confronts a problem. According to the *Chicago Tribune*, the case has produced "a dozen pleas to the county courts, nine to state appeals courts, nine to the Pennsylvania Supreme Court, six to the nearby federal court, four to the Third Circuit Court of Appeals and two to the U.S. Supreme Court." For an injustice to withstand sustained efforts to remedy it, the "crack" has to be both massive and widespread. A mere aberration should be easier to correct, and higher courts should not affirm it.

Yet if the Chadwick case points to widespread abuse, how should civil contempt be reformed? Or, more fundamentally, should the sanction be abandoned entirely?

An Alternative?

Abandoning civil contempt would not be absurd. After all, that specific power derives from British

common law. Civil law, which is also known as Continental or Romano-Germanic law, is at least as widespread as common law; for example, it is the basis of French Civil Law and the Swiss Civil Code. The fundamental difference between the two systems is that common law derives rules or precedents from specific cases and civil law starts with rules and applies them to specific cases.

For purposes of this article, however, the fundamental difference is that most civil-law countries do not recognize civil imprisonment for contempt. In their book *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, legal scholars John Merryman and Rogelio Perez-Perdomo wrote, "Another fundamental difference between the civil law and common law traditions occurs in enforcement proceedings. Civil law jurisdictions have nothing comparable to the common law notion of civil contempt of court. . . . [I]n the common law a person can be compelled to act or to refrain from acting by the threat of imprisonment or fine for contempt of court—that is, for refusing to obey a court order addressed to him or her as a person. . . . The civil law, by way of contrast, knows no civil contempt of court and tends to operate solely in rem. This

means that regardless of the type of claim one has against another person, the only way one can collect the claim is by obtaining a money judgment."

Much of the world, including most of western Europe, functions without the common-law tradition of civil imprisonment. Thus it is not clear that eliminating the practice would harm North American jurisprudence in any manner.

Indeed, there are good reasons to believe that eliminating the imprisonment would improve justice in North America.

First and foremost, there is the human cost. The misery inflicted by imprisonment is the most obvious human cost. But critics of civil contempt argue that such imprisonment is also violation of constitutional rights that should apply not merely to criminal matters

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but also to civil ones—at least, if punishment involves the deprivation of liberty. These critics refer primarily to the rights of due process that are protected by the Sixth Amendment but also to those within the Fifth and Fourteenth Amendments.

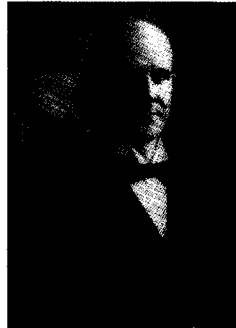
The Sixth Amendment states, “In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . and to have the assistance of counsel.” Although civil contempt is not a criminal prosecution, the line between the two blurs with imprisonment and when the penalty is imposed as a punishment rather than a remedy.

The Fifth Amendment states, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.” One of the traditional measures of whether a crime is “infamous” is the severity of punishment that may be imposed for its violation; the punishment of indefinite imprisonment would seem to make civil contempt an “infamous crime.”

The relevant section of the Fourteenth Amendment reads, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Again, imprisonment seems to require the observation of due process.

Arguably, civil contempt also impinges on First Amendment guarantees of free speech. The need for transparency and accountability within the justice system is a hotly debated issue. A prerequisite of meaningful debate is the ability to criticize the conduct and decisions of judges. As civil-contempt laws read today, however, a person who accuses a judge of misconduct can be found guilty of contempt of court even if he or she is able to prove the truth of the statement.

In theory a judge imposes contempt charges as a last resort and in a manner that respects rights. But when a judge (or any human being) is given absolute and virtually unaccountable power over another, frequent abuse is the predictable result. This is especially true when an act of contempt directly challenges a judge’s authority or constitutes an insult. In short, the judge becomes the injured party; this fact alone should disqualify him or her from rendering a decision on the alleged injury. As Justice Hugo Black stated, “When the responsibilities of lawmaker, prosecutor, judge, jury and disciplinarian are thrust upon a judge he is obviously incapable of holding the scales of justice perfectly fair and true and reflecting impartially on the guilt or innocence of the accused. He truly becomes the judge of his own cause.”



Eugene V. Debs
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Political Abuse

It is not merely the judge who can abuse contempt of court charges; it is also politicians. A famous example of contempt being used politically is the 1895 imprisonment of labor leader Eugene V. Debs. Debs was arrested both for conspiracy and for contempt of court following his prominent role in the Pullman Strike, during which the American Railway Union refused to handle Pullman cars or any cars attached to them, including those carrying U.S. mail. The federal government obtained an injunction against the strike, which it sent in the Army to enforce. On the charge of conspiracy, Debs had a jury trial in which famed civil rights attorney Clarence Darrow defended him; the case was dropped mid-trial. On the charge of contempt, the judge in his sole authority sentenced Debs to six months in prison.

The danger of contempt-of-court charges being abused rises when the case being decided is controversial and open to political pressure.

Can the good of society (or other specific individuals) be balanced against the cost and danger of contempt of court? In civil contempt the “good” is usually defined as “paying up”—for example, child support. It is difficult to understand what “good” is accomplished by imprisoning nonviolent parents who are behind in payments. Although data on the number of “deadbeat”


prisoners is vague and often anecdotal, “deadbeat” dads almost certainly constitute the majority of civil-contempt imprisonments. Often the stated goal is to pry loose hidden money from the parent. But there is no statistical proof or studies to indicate that imprisonment motivates a parent who can pay up to do so. Moreover, society tracks wealth through bank accounts, tax returns, pay stubs, and myriad paper trails; if wealth is not discoverable and attachable, there should be a presumption that it doesn’t exist. The accused should not be guilty until proven innocent.

The possibility that many insolvent “deadbeats” are punished for their poverty has given rise to the accusation that America has reinstated debtors’ prisons. A debtors’ prison is simply a prison for those unable to pay a debt. In 1833 the United States eliminated such institutions at the federal level and most states followed suit, refusing to impose the criminal penalty of imprisonment on insolvent debtors. Currently, the typical wording about debtors’ prisons within state constitutions is, “No person shall be imprisoned for debt in any civil action, or mesne or final process, unless in cases of fraud.” It is still possible, however, to be incarcerated for nonfraudulent debts such as nonpayment of alimony or child support.

Imprisonment for civil contempt is an unnecessary and dangerous exception to the due process to which every individual is entitled both by the Constitution and by natural right. It also involves a confusing, inconstant maze of laws that collapse the traditional distinction between criminal and civil courts. As Justice Black observed, “It would be no overstatement . . . to say that the offense with the most ill-defined and elastic contours in our law is now punished by the harshest procedures known to that law.”

I believe civil-contempt imprisonment is a legal aberration that creates an artificial and arbitrary respect for courts. It also acts as a barrier for the open evaluation and criticism of judges, which is necessary to a healthy transparency within the judicial system.

Civil-contempt imprisonment is far from a benevolent or rarely flexed power. Unless the law is changed or eliminated, Beatty Chadwick will spend the rest of his life in jail without ever being arrested or heard by a jury; tens of thousands—and, arguably, hundreds of thousands—of “deadbeat” parents will be sent to the modern equivalent of debtors’ prison.

The power of a judge to imprison without recourse should be eliminated. 

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The Free Market's Invisibility Problem

BY JOSEPH PACKER

Advocates of liberty face an invisibility problem, first identified by nineteenth-century French libertarian Frédéric Bastiat in the appropriately titled essay “What Is Seen and What Is Not Seen.” Through a simple story, Bastiat exposed the fallacy that later underlay Keynesian economics.

A young boy breaks a shopkeeper's window, initially sparking outrage from the townspeople. When the locals begin to discuss the incident, they conclude that there is a positive side. The glass will need to be replaced, making work for the glazier. The glazier will spend the money he makes on bread. The baker will then spend that money, and so on. The townspeople offer consolation to the victim: “It's an ill wind that blows nobody some good. Such accidents keep industry going. Everybody has to make a living. What would become of the glaziers if no one ever broke a window?”

Wait! Bastiat says. “Your theory stops at *what is seen*. It does not take account of *what is not seen*.” The mistake in their reasoning is that the townspeople do not consider what use the shopkeeper would have put his money to had he not spent it fixing the window. Perhaps the shopkeeper would have purchased a new hat, giving work to the local haberdasher, or placed the money in a bank, which would then lend it as capital for an entrepreneur. The poor reasoning of the townspeople has become known as the broken-window fallacy.

The Persistence of the Fallacy

Critical reflection should make it clear what is lost through the youth's vandalism, and yet the broken-window fallacy seems ever present in our society. Paul Krugman even used it to suggest that the September 11 attacks would boost economic growth because of the costs of reconstruction. (“The driving force behind the economic slowdown has been a plunge in business investment. Now, all of a sudden, we need some new office buildings. As I've already indicated, the destruction isn't big compared with the economy, but rebuilding will generate at least some increase in business spending,” “Reckonings; after the Horror,” *New York Times*, Sept. 14, 2001; <http://tinyurl.com/32h7hy>.)

Bastiat's title clearly identifies what lies behind the persistence of this fallacious reasoning. The importance of visuals for argumentation has only grown since Bastiat's time. Much effort has been expended by libertarians in

making the case for how the market could address any number of potential problems. This is important work, but presenting a brilliantly argued case for libertarianism only means success in a world of completely rational people. If we were living in that world, libertarianism would have prevailed long ago. The charts and graphs (the seemingly lone visual aids) trotted out by economists to make the case for laissez-faire economics are more likely to put audiences to sleep than inspire

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The importance of
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them to action. Defenders of the free market need new visual rhetorical strategies that highlight the human costs of intervention.

Emmanuel Lévinas, a French philosopher who wrote extensively on ethics, rooted the ethical obligation between human beings as one that stems from direct viewing of the human “face.” The case of Jessica McClure seems to confirm Lévinas’s theory. Jessica fell into a well in 1987. Her plight drew massive attention and resources that could have saved countless more lives if put to other uses. The visual image of a child stuck at the bottom of a well created an irrational prioritization of her case. A review of the relevant psychological literature by Paul Slovic, president of Decision Research, offers a more comprehensive confirmation. He found that individuals were more likely to donate money to individuals rather than groups, and smaller groups rather than larger ones. Researchers attribute this to human beings having an easier time empathizing with small groups, combined with smaller groups contributing to a stronger feeling of being able to create actual change. Slovic also found individuals were much more willing to donate money to a cause if a picture of those suffering was available. He concluded his review of the literature by saying that statistics of human suffering have had and will continue to have a terrible track record of promoting action. As Stalin is often alleged to have said, “One death is a tragedy; a million is a statistic.” The innate human desire to prioritize the visual gives a strong rhetorical edge to opponents of the free market.

Modern-day statists seem incredibly adept at commanding the attention of the public. Have you ever noticed how there exists an unending stream of documentaries criticizing the free market? *Roger and Me*, *Wal-Mart: The High Cost of Low Prices*, *This Is What Democracy Looks Like*, and *Sicko* are some of the titles that immediately pop to mind. I can’t remember ever

seeing a libertarian documentary being widely promoted, despite the fact that libertarians make up roughly 13 percent of the American population, according to research by David Boaz and David Kirby.

Is there an American over the age of 25 who does not remember the terrible images from the *Exxon Valdez* oil spill? These images evoke strong anti-corporate feelings even though the company has now spent over \$3 billion to alleviate the environmental impacts and has paid restitution to the affected fishing industry.

Many Americans have been confronted with images of children working in factories; however, they do not see the images of the 5,000 Nepalese girls forced into prostitution because of U.S. trade sanctions against child labor.

How many individuals have seen pictures, much less heard of, the Milwaukee disaster? Over 400 times as much pollution was knowingly dumped in Lake Michigan in 2004 by local governments that understood they would not be held accountable. Americans have been inundated with pictures of melting icecaps, but have they seen pictures of the children starving because of our energy policies? Numerous studies show that government policies pushing ethanol as a solution to global warming act to raise food prices, leaving the world’s poorest to starve. This on top of the fact that most scientists believe the corn ethanol being pushed by the government will have no effect on warming. Many Americans have been confronted with images of children work-

ing in factories; however, they do not see the images of the 5,000 Nepalese girls forced into prostitution because of U.S. trade sanctions against child labor. These facts are not secret, but their lack of visual presence means they are all but invisible to most Americans.


The Effectiveness of Imagery

Imagery is effective, especially when combined with skillful storytelling. If you can honestly tell me that you watched *Roger and Me* without being overcome with deep grief and anguish, then you must have a heart of stone. And recall what images stay with you from *Roger and Me*. Although Michael Moore offers

statistical representations of the economic downturn of Flint, Michigan, it's the images of individuals evicted from their homes that haunt me. It is only by removing myself from the movie and viewing it in the larger context of the positive effects of outsourcing that I can see the flaws in Moore's logic. Unfortunately, I don't think most Americans have the patience or a strong enough background in libertarian thought to be able to take on this task. (I know I didn't until many years after seeing the film.) Libertarians can cry "unfair" and write all the scathing reviews they want, but both history and the relevant scientific data indicate that it will do little good.

Instead they need to take up the tactics long deployed by the statist. Although we have a late start, we also have the enormous advantage of having a much stronger position to advocate. Historically, libertarians have used this great strength against themselves by assuming that truth alone would be enough to win the day. Libertarians must learn a lesson that the marketplace has taught the business community over and over again: having the best product is not enough. This does not mean ending the scholarly work that delves into the nitty-gritty of what a world free of statist policies would look like. Nor does this mean ending the statistical work that so effectively makes the case for free markets. (Both of these things were instrumental in converting me and many others to libertarianism.)

Instead it means recognizing that a comprehensive case is not always as valuable in swaying public opinion as having effective case studies that take visual form. This sad fact has been proven time and time again when isolated incidents of highly visible "market fail-

ure" (Enron, *Exxon Valdez*, and so on) are taken as opportunities to usher in sweeping regulation. Initial forays into visual argumentation by libertarians have already proven largely successful, whether Ron Paul's enormous presence on YouTube or John Stossel's investigative journalism on "20/20." Libertarians need to open a third front that tackles the statist in the visual realm, where they have too long held a dangerous monopoly. 

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Exporting and Importing at the University

BY T. NORMAN VAN COTT

I've been an economics professor at public universities for going on 40 years—the last 30 at Ball State University in Muncie, Indiana. In the parlance of economics, this means I've been a long-time “exporter” of economics knowledge. Those paying my salary—students, parents, and taxpayers—have been “importers.” Students and parents import voluntarily. Taxpayers less than voluntarily.

Considerable effort goes into these exports. Noble and self-sacrificing on my part? Hardly. Rather, economics exports are a means to an end for me, a self-serving end no less. To wit, my exports enable me to buy—that is, *import*—things produced by others. An amazing array of things. Things ranging from life-sustaining necessities to frivolous amenities (including leisure activities). Far more of these things, in fact, than I could ever obtain were I producing them myself. The bottom line is that I export in order to import.

Many of my university colleagues, especially liberal arts/humanities professors, indignantly object to an export-to-import description of their efforts. Not surprising. Universities abound with folks whose avocation, if not part-time occupation, is parading their above-the-economic-fray demeanors. Export in order to import? Mercy, that smacks of commercialism, and we're above that, say these self-styled pillars of economic piety.

If cornered into explaining their motivation, these piety pillars wrap themselves in platitudes such as,

“I do what I do for the joy of watching young minds develop” or “The affirmation that comes from pushing back the frontiers of knowledge is what motivates me.” Export/import terminology only applies to them, they intone, if you label them importers of “joy” and “affirmation.”

While high sounding, such labels are disingenuous, if not stupid. Take away these folks' imported housing, clothing, food, medical care, entertainment, education, along with the countless other things that go into living, and they're ill-housed, ill-clad, and ill-fed—if not dead—professors. Again, the benefits people reap from the marketplace appear when they import things produced by others. Only workaholics see intrinsic value in their exports.

Does this have implications for “national households”? You bet, even though nations are not literal households. A “national household's” economic activity is nothing more than a summary of the actions of its residents, each responding to the incentives he or she faces. The question here is whether the foregoing applies with equal force to export/import activity between members of different “national households.” The answer, again, is: most assuredly. Or as Adam Smith put it in his 1776 classic, *The Wealth of Nations*: “What is prudence in the conduct of every private family, can scarce be folly in that of a great kingdom.”

Universities abound with folks whose avocation, if not part-time occupation, is parading their above-the-economic-fray demeanors.

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What a “national household” exports corresponds to what its citizens give up in order to import things of greater value from their counterparts in other “national households.” U.S. soybean exports to China, for example, represent forsaken animal feed (meat) for Americans. The exports are worth the forgone meat to the extent they make it possible for Americans to buy yet-more-valuable Chinese-produced goods, say, umbrellas. The worst-case scenario for Americans, in fact, would be exporting *without importing*—in the soybean case, less meat and no umbrellas.

Connecting the Dots

Unfortunately, pundits and politicians never connect the dots between personal households, *including their own*, and the “national household.” The result is a business and political culture saturated with advocacy of national workaholic—extolling exports and damning imports. Who hasn’t heard pundit/politician sloganeering about how exports are “good” and imports are “bad?” You know, exports “create” and imports “destroy” jobs? Ditto for imports being “dumped” on Americans or likening imports to “invading foreign armies.” Tracing low-priced imports to “tilted economic playing fields” is another slogan.

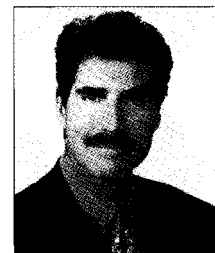
Unfortunately, pundits and politicians never connect the dots between personal households, *including their own*, and the “national household.”

But the quintessential connect-the-dot failure, at least to my thinking, is how the pundit/political class describes international negotiations ostensibly designed to increase international trade. To wit, actions that increase Americans’ access to imports are labeled U.S. negotiating “concessions.” That is, permitting Americans to import more is a bargaining chip to secure comparable foreign “concessions” for U.S. exports. That’s like my reluctantly accepting the housing, food, and clothing that my economics exports make possible. Make sense? Yeah, if you’re a workaholic.

So whom should we believe—pundit/politicians at home or pundit/politicians in the public square? At home these opinion makers export in order to import, while suggesting the “national household” imports in order to export. My fifth-grade teacher used to scold me about my actions speaking so loudly that she couldn’t hear what I was saying. The same applies to pundit/politicians. Look at what they do at home. After all, that’s where their *own* living standards are on the line, a consideration long noted for focusing attention on essentials. Their nostrums for the “national household” are a product of the mental sloth that always ensues when people spend other people’s money for the supposed benefit of someone else. 

Presidents Can't Manage the Economy

BY JOHN STOSSEL



The presidential candidates have been repeatedly asked how they would “manage the economy.” With the exception of Ron Paul, every candidate has accepted the premise that this is something the president of the United States should do.

Or can do.

Nonsense.

Democrats act like the president is national economic manager. Republicans pay lip service to free markets, tax and spending cuts, and less regulation—before proposing big programs to achieve “energy independence,” job training, and a cooler climate.

John McCain says it’s important for government to do something “to sustain our leadership in manufacturing.” Why? Manufacturing jobs are no better for America than other jobs. Some argue that they are worse. How many parents want their children to work in factories rather than offices? Increasing service jobs in medical, financial, and computer sectors while importing manufactured goods doesn’t hurt America. It helps America.

The candidates see the global economy as an arena in which countries compete against one another—an economic Olympiad with winners and losers. Politicians love to promise they will keep America No. 1, as if that matters in a worldwide marketplace.

America as a nation does not compete against China or South Korea or Japan. American companies compete against companies in other countries, but that’s something else. The purpose of production is consumption, and American consumers prosper when foreigners compete successfully with American companies.

The candidates see the global economy as an arena in which countries compete against one another—an economic Olympiad with winners and losers.

Ignorance and Intervention

A president who sees the global economy as a competition among nations will be tempted to intervene on behalf of the “United States” and create “good American jobs.” That’s how governments mess up economies.

McCain says, “It is government’s job to help workers get the education and training they need for the new jobs.” Mike Huckabee (who glories in public-works projects as a job-creation machine) and Barack Obama talk in similar terms.

That hardly shows confidence in the free market, which, if allowed, would train and educate workers just fine. But it shows misplaced confidence in the federal government, which, as journalist Jim Bovard has shown, has an unbelievably bad track record at doing it. The endless list of programs, like the Manpower Development and Training Administration, Comprehensive Employment and Training Act, Job Training Partnership Act, STIP, BEST, YIEPP, YACC, SCSEP, HIRE, etc., wasted billions and “distorted people’s lives and careers by making false promises, leading them to believe that a year or two in this or that program was the key to the future. Federal training programs have tended to place people in low-paying jobs, if trainees got jobs at all.”

Sen. Hillary Clinton told the *New York Times* recently, “I want to get back to the appropriate balance of power between government and the market. You try

John Stossel is co-anchor of ABC News' "20/20" and the author of Myths, Lies, and Downright Stupidity: Get Out the Shovel—Why Everything You Know is Wrong, now in paperback. Copyright 2007 by JFS Productions, Inc. Distributed by Creators Syndicate, Inc.

to find common ground, insofar as possible. But if you really believe you have to manage the economy, you have to stake a lot of your presidency on it.”


Notice that she equates government power and market power. That is absurd. “Power” in a free market means success at creating goods and services that your fellow human beings voluntarily choose to buy. Government power is force: the ability to fine and imprison people.

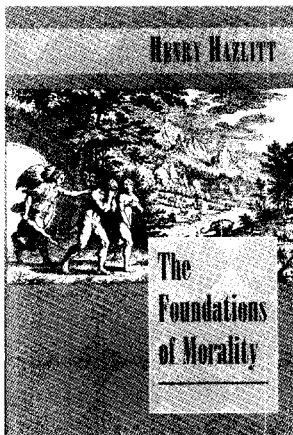
Politicians who talk about managing the economy ignore the fact that, strictly speaking, there is no economy. There are only people producing, buying, and selling goods and services. Keep that in mind, and one realizes that government action more often than not interferes with the productive activities that benefit

everyone. When politicians propose regulations to fix some problem, they should ask if some earlier intervention created the problem and if the new regulations will make things worse. The answer to both questions is usually yes.

The economy is far too complex for any president—no matter how smart—to manage. How can politicians and bureaucrats possibly know what hundreds of millions of individuals know, want, and aspire to? How can government employees fathom what trade-offs to make in a world of scarce resources?

They can't. That's why free people are more prosperous than unfree people.

Presidential candidates should promise to keep their hands off the economy. 



The Foundations of Morality

By Henry Hazlitt

In this impressive work Henry Hazlitt explores the proper foundation of morality, offering a unified theory of laws, morals, and manners. Noted economist Leland Yeager, in his foreword to this edition, says that *The Foundations of Morality* “provides (in my view) the soundest philosophical basis for the humane society that is the ideal of classical liberals.”

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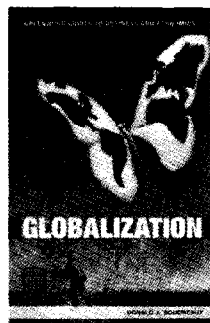
Book Reviews

Globalization

by Donald J. Boudreaux

Greenwood Press • 2008 • 162 pages • \$55.00

Reviewed by Richard M. Ebeling



In the mid-nineteenth century, French classical-liberal economist Frédéric Passy, who would share the first Nobel Peace Prize in 1901, predicted: “Some day all barriers will fall; some day mankind, constantly united by continuous transactions, will form just one workshop, one market, and one family. . . . And this is . . . the grandeur, the truth, the nobility, I might almost say the holiness of the free-trade doctrine; by the prosaic but effective pressure of [material] interest it tends to make justice and harmony prevail in the world.”

Alas, for mankind the triumph of free trade in the nineteenth century did not last. There was soon a counter-revolution against liberty in the forms of socialism, nationalism, and interventionism that led to the return of state planning, government control, and restrictions on international exchange in the twentieth century.

But the disastrous effects from all forms of political and economic collectivism over the last hundred years have brought about a revival of market-oriented ideas that has given a new respectability to free enterprise and free trade. General ignorance of economics and the power of special interests, unfortunately, continue to push the world back to a more protectionist path.

There are some advocates of liberty, however, who are attempting to educate the public about the benefits of free trade. One of these individuals is Donald J. Boudreaux, chairman of the economics department at George Mason University and a former president of FEE. His new book, *Globalization*, is an excellent exposition of the logic and benefits of free trade and an extremely insightful critique of many popular rationales against international trade.

Boudreaux reminds us of the glorious achievements of globalization in the second half of the nineteenth century and the years before World War I, and the damage done by the politics of collectivism in the first half of the twentieth century. While the period after 1945 did not represent a return to free trade, Boudreaux explains that the regime of freer trade that followed World War II greatly enhanced living standards for hundreds of millions around the globe. Since the fall of the Soviet Union and the end of the Cold War, a movement toward market-oriented reforms in former communist countries and the Third World has spread the prosperity that comes from greater economic freedom, raising hundreds of millions more people out of poverty.


In clear and compelling language, Boudreaux describes the advantages of the division of labor and specialization based on comparative advantage. He reminds us that the benefits from trade come not from exports but from the better and less-expensive imports those exports enable people to buy. As a result, he demolishes the fallacies underlying people’s fears about trade deficits.

This leads him into a detailed discussion of the supposed “exceptions” to the case for free trade. Boudreaux points out that while one can make up scenarios that appear to justify protectionism, the alleged exceptions are logically flawed and historically unproven. His examples are “dumping” (the supposed selling of goods in another country below the “cost of production”) and “infant industry” policy (helping a new domestic industry with tariffs until it can compete against foreign rivals).

Boudreaux also responds to those who fear that globalization threatens cultural diversity and national identity. He shows that, in fact, not only does globalization often assist the preservation of cultures, but it also enriches each one by adding contributions from other societies.

Finally, Boudreaux turns to the institutions needed for successful globalization. These include private property, relatively unregulated markets, an impartial rule of law with equal treatment for both citizens and foreign investors, a stable and sound monetary system, and limited government with low taxes. Countries that follow

those rules not only reap benefits from trade but also create a healthy climate of freedom for their own people.

If prosperity through globalization is to continue, we must all know and defend the ideas on which it is based. In *Globalization*, Donald Boudreaux does an excellent job in assisting us. 

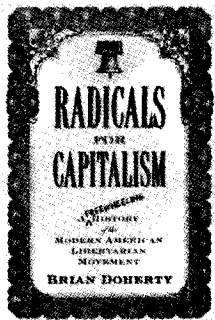
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Radicals For Capitalism: A Freewheeling History of the Modern American Libertarian Movement

by Brian Doherty

Public Affairs • 2007 • 741 pages • \$35.00

Reviewed by Bettina Bien Greaves



Austrian economist Ludwig von Mises said, “He who wants to improve conditions must propagate a new mentality, not merely a new institution.” But propagating a new mentality is not as easy as flipping a switch. It takes time; an idea that starts in the mind of one person must travel to others

by persuasion—talking, teaching, writing, broadcasting, or simply by setting an example. Only if an idea gains general acceptance will it bring social change.

Brian Doherty, a senior editor of *Reason*, has written a “freewheeling” history of the libertarian movement developed in America by “radicals for capitalism” who have tried to “propagate a new mentality.” Doherty reports the activities of many individuals—dedicated and colorful characters all—who, each for his or her own reason, helped promote the libertarian mentality.

Doherty traces the freedom philosophy back to Jefferson and the Founding Fathers, through the philosophers and thinkers of the eighteenth and nineteenth centuries, down to present times. The ideas of Marx and Keynes, the popularity of Franklin Delano Roosevelt, and two world wars overwhelmed the limited-government voices that survived the Depression, effectively silencing opposition to the government. Once the war ended, however, the radicals for capital-

ism who had opposed the New Deal and its Keynesian spending programs began fighting back.

Three books by remarkable women, published while the war was still going on, began to rekindle faith in the old American philosophy and, according to the Cato Institute’s David Boaz, can be credited with having “given birth to the modern libertarian movement.” Doherty devotes a chapter to them—*The God of the Machine* by Isabel Paterson, *The Discovery of Freedom* by Rose Wilder Lane, and *The Fountainhead* by Ayn Rand.

Doherty identifies five individuals as having played major roles in postwar libertarianism: Mises, the Austrian-born economist who fled war-torn Europe in 1940 after teaching and writing on free-market economics for decades and then continued his work in America; F. A. Hayek, student, friend, and colleague of Mises in Europe and author of *The Road to Serfdom* (1944), which created a sensation by maintaining that socialist economic planning, then popular with most nations, actually leads to fascism and Nazism, the very evils the free countries were fighting; Ayn Rand, a refugee from communist Russia who wrote the dramatic novel *Atlas Shrugged*—which converted a generation of young people into enthusiastic advocates of capitalism and opponents of the altruistic welfare state; Murray Rothbard, son of Jewish immigrants and an ebullient, irrepressible “radical for capitalism” who attracted many enthusiastic young followers who later became serious economists and libertarians; and Milton Friedman, also the son of Jewish immigrants and a brilliant, charismatic intellectual who had substantial political success by pushing for “half steps in the direction of less government.”

The book also covers libertarian organizations. The first organization started after the war dedicated specifically to promoting the freedom philosophy and capitalism was FEE, founded by Leonard Read. As a long-time member of FEE’s staff and a participant in Mises’s New York University seminar, I knew most of the people mentioned in *Radicals for Capitalism* and Doherty interviewed me when researching this book.

The radicals for capitalism Doherty writes about include anarchists, pacifists, atheists, anticommunists, draft resisters, science-fiction writers, academicians, political activists, goldbugs, religiously motivated per-




Leonard Read and Ludwig von Mises at a FEE seminar in the 1950s.
FEE Archives

sons, and even several individuals who tried to establish free-market utopian “libernations” outside the domain of any existing government. Radicals for capitalism also established think tanks, wrote books, published journals, gave lectures, and taught.

Financing for most of these libertarian ventures came from real-life capitalists, entrepreneurs who had acquired wealth in our relatively free-market system. Anti-New Deal businessmen helped FEE get started. Free-market foundations paid Mises’s salary at NYU, provided student scholarships, financed economics seminars, and subsidized many libertarian organizations. Charles and David Koch, whose father raised them with the idea that big government was bad government, donated millions to libertarian causes.

Radicals for capitalism undoubtedly contributed to the climate of libertarian opinion that made it possible for Barry Goldwater to run for president in 1964, and also for Ronald Reagan to run and win the presidency in 1980.

In any free society, ideas are always changing—in ladies’ fashions, lifestyles, the role of government, individual freedom and responsibility, and economic and civil rights. Doherty has written a fascinating history of how radicals for capitalism and their fellow travelers helped to “propagate a new [libertarian] mentality” in this country. 

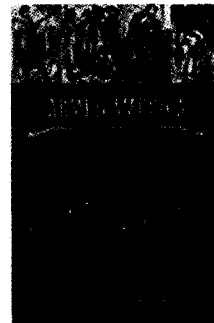
Bettina Greaves (bbgreaves@aol.com) served FEE for more than four decades as a senior staff member, resident scholar, and trustee.

Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie

by Clayton E. Cramer

Thomas Nelson • 2006 • 257 pages • \$26.99

Reviewed by George C. Leef



Clayton Cramer wrote *Armed America* as a rebuttal to former Emory University history professor Michael Bellesiles’s *Arming America: The Origins of a National Gun Culture*. Bellesiles created a furor by purporting to show that, despite everything Americans are taught, firearms played a very small role in the country’s early history. Bellesiles sought to prove that guns of all types had actually been rare in the colonial period and early years of the United States.

Gun-control advocates were overjoyed. The book was given glowing reviews in all the important places and won the illustrious Bancroft Prize awarded by Columbia University. Its many champions swallowed whole Bellesiles’s claims without ever checking his sources. Why bother? The author was a professor at a prestigious university, and besides, the thesis was perfectly suited to the gun-control agenda. Bellesiles’s contention supposedly refuted the arguments of Second Amendment scholars who maintain that the language of the amendment recognizes an *individual* right to keep and bear arms. Opponents of that understanding insisted that the Second Amendment was only intended to secure a *collective* right, namely, the right of governments to arm militias and other official forces. The opponents welcomed Bellesiles’s revisionist history as support for that view.

There was a gigantic flaw in *Arming America*, however. The evidence was largely bogus. Dozens of skeptics scrutinized the book’s documentation, and one scholar after another, including Clayton Cramer, found glaring misquotations and fabrications in the footnotes. When challenged, Bellesiles at first tried to brush off his critics and later took to attacking their supposed

motives. His evasions were unavailing. In time it became clear to all but his most die-hard ideological allies that Bellesiles had written a fraudulent and dishonest book. Columbia revoked his Bancroft Prize, and Oxford University Press announced that it would no longer sell the book.


Despite the mountain of evidence against *Arming America*, there are still people who contend that there were only a few minor problems with it and that its thesis still stands. That's why Cramer wrote his book: to prove beyond question that Bellesiles was wrong and that firearms were in fact widely owned and used in early America. In that effort, Cramer is overwhelmingly successful, and along the way we learn a good deal about guns in our early history.

In the colonies, Cramer demonstrates, it was common for members of the militia (which included nearly all white men) to supply their own guns and ammunition. Furthermore, in the conflicts with the French and Indians in the seventeenth and eighteenth centuries, the soldiers in the militia demonstrated great proficiency with firearms. The widespread ownership and skill in the use of guns during that period are utterly inconsistent with Bellesiles's assertion that firearms were rare.

Another interesting piece of evidence Cramer adduces is the fact that Indians owned guns. If the settlers really had few guns, how did the Indians come to have substantial numbers of them? Here we encounter one of those enlightening pieces of history. Laws against selling firearms to the Indians were in effect in the colonies, but just like modern gun-control laws, they were unenforceable. Moreover, it appears that the colonists actually benefited from Indian ownership of guns. The Indians could more easily procure game that they would then trade to the settlers. Guns in the hands of the supposed enemy turned out not to be a disaster but rather a mutual benefit.

The colonists' ability to fight successfully against the veteran professional British army during the Revolutionary War is again strong evidence that the people weren't strangers to firearms. During the famous British retreat after their sortie to Lexington and Concord, patriot marksmen inflicted heavy casualties on the redcoats. If the people had so few guns, how was that pos-

sible? As Cramer writes, "If every American militiaman was not a crack shot, he was certainly a good enough shot with his fowling-piece, musket, or rifle, to terrorize the finest army in Europe at the time."

Cramer never ventures directly into the debate over the meaning of the Second Amendment, but he doesn't need to. *Armed America* thoroughly refutes the notion that guns were rare and therefore the drafters of the Constitution must have meant to protect only a collective, state-centered right. Hats off to Clayton Cramer for his dogged pursuit of the truth. 

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The European Economy Since 1945: Coordinated Capitalism and Beyond

by Barry Eichengreen
Princeton University Press • 2006 • 504 pages • \$35.00

Reviewed by Waldemar Ingdahl



Some topics might prove too daunting to write about even in tomes. Barry Eichengreen, professor of economics at the University of California, Berkeley, has undertaken a difficult task in this book—an economic history of the whole of Europe, a comparison with the United States, and some considerations for the future. The result is a clear and concise book that shakes up some preconceptions.

Recovering from World War II was not as problematic as many think. Eichengreen contradicts Mancur Olson's view that Europe had to start from scratch and free itself from its historical institutions. He argues that it was precisely this historical continuity that enabled the recovery; just a few years after the war, Europe's production capacity was back at prewar levels, even considering Germany's devastation.

It was not a time of technological breakthroughs, but rather of steady recovery, mobilizing the resources unused during the war and implementing some innovations from the United States. This was possible through the political consensus found in the

corporativist collaboration among government, industry, and unions, with banks ready to provide the corporations that had survived the war with investments from small-time savers.

The lessons learned from the 1930s were that unions had to agree to hold back demands for wage increases and that governments needed to eliminate trade barriers. The European Economic Community (EEC) was born because it was clear that Europe had been falling behind the United States even before the war. The balkanized and closed economies were unable to exploit economies of scale and scope, and were slow to develop mass-production methods. The EEC provided a regional market appropriate to make best use of the new technologies. With the financial assistance and the export markets of the United States, this proved to be a successful strategy.

But corporativist policies started to founder in the 1970s. The OPEC oil crisis was part of the problem, but the main issue, Eichengreen writes, was that the postwar generations had forgotten the lessons of the past. Unions demanded ever-higher wages and militant strikes pressured corporate profits and investments. Governments tried to calm the economy by expanding the already-extensive welfare state, thereby worsening the high rate of inflation.

Meanwhile, most of Eastern Europe, which had been agricultural, was pushed by the Soviet Union into rapid industrialization. But that region was poorly endowed with energy and industrial raw materials, and its industrial output poorly tailored to the needs of the downstream users. Without the proper price mechanism of a market economy, managers sought to minimize plan targets while maximizing planned allocation of resources. Those economies stagnated in the 1960s, either trying autarky or reforming to “market socialism.” Both paths proved fruitless. The socialist systems made it through the ’70s because loans by Western banks delayed their ultimate collapse.

While Europe struggled, the United States asserted itself. Eichengreen places great importance on the

differences in financial institutions. Europe’s banks were geared toward supporting well-established corporations concentrated on producing “more of the same,” while the reliance of American corporations on venture capital favored what Eichengreen calls the “intensive growth” of startups and innovations.

The ’90s proved to be a mixed success for Europe. Liberalization and structural change proved difficult, and rigid labor markets, excessive public spending, and high taxation are still present. But the European Union (EU) was able to weed out some of the worst policies and succeeded in the difficult integration of Eastern Europe.

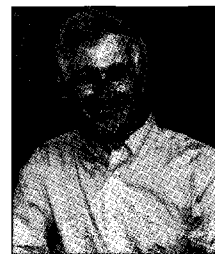
The book’s analysis is on target. The structures and institutions of the European economies were suited to fine-tuning and applying existing technologies. They were tailored for a world with little international competition, not for the close integration and intense competition following globalization. The EU was designed for a half a dozen countries with complementary economic structures in order to achieve limited economic goals: expanding heavy industry, liberalizing trade, deregulating product markets. It was not designed to support 27 member states with widely different economic structures, political cultures, and visions of the future.

Eichengreen foresees that continuing economic integration and technological advancement will make Europe adapt to a more dynamic model. While arguing for some important reforms, he fails to draw the key conclusion—that Europe was successful in its incremental growth not because of but despite its alliance of big government, big business, and big labor. Europe would be wise to follow its own path, but it would be unwise to think that the European path should retain its high degree of corporatism and government economic planning rather than moving toward free markets.

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How Free Markets Break Down Discrimination

BY DAVID R. HENDERSON



One of my favorite lines in the classic movie *The Magnificent Seven* comes when a traveling salesman and his partner offer to pay the local undertaker to haul a dead Indian to boot hill. The undertaker refuses. He'd like to oblige, he explains, but the townsfolk are so prejudiced against burying Indians alongside whites that he can't persuade his driver to haul the body. One of the salesmen says, "He's prejudiced too, huh?" The undertaker replies, "Well, when it comes to a chance of getting his head blown off, he's downright bigoted."

Experience with economic freedom illustrates the opposite point: When it comes to saving their economic lives, even otherwise-prejudiced people are downright tolerant. The reason is that markets make people pay for discriminating unless they're discriminating in favor of the productive. Moreover, governments and government officials rarely bear a cost for, and often benefit from, discriminating against unpopular people, which is why the greatest horror stories of discrimination are about governments.

The insight that markets break down discrimination is not new. Over 200 years ago Voltaire wrote: "Go into the London Stock Exchange . . . and you will see representatives of all nations gathered there for the service of mankind. There the Jew, the Mohammedan, and the Christian deal with each other as if they were of the same religion, and give the name of infidel only to those who go bankrupt."

Voltaire was pointing out that people on the London Stock Exchange wanted so much to make money that they were willing to deal with others who had different religions and cultural backgrounds. This seems

People on the London Stock Exchange wanted so much to make money that they were willing to deal with others who had different religions and cultural backgrounds.

an obvious insight, but apparently it is not. How often have you heard people denounce businessmen for ruthlessly pursuing profits and, in the next breath, castigating those same businessmen for discriminating against a minority group simply because they're a minority? Well, which is it? Are they trying to maximize profits or are they discriminating? It can't be both.

Institutionalized Discrimination

Think about the most notorious examples of racism, and the odds are high that you will think of a government implementing it and private citizens, out of the profit motive, opposing it. Take South Africa's apartheid. Please. The apartheid regime and the "colour bar" that preceded it illustrate both points. From the early 1920s to the early 1990s, the South African government put barriers in the way of employers' hiring black people for the plum jobs, especially, early on, in mining. In other words, the government officially enforced discrimination. Among the strongest opponents of this discrimination and the strongest advocates of tolerance were white employers. They hated that the government prevented them from hiring qualified black people to work in mines and elsewhere. Interestingly also, among the strongest supporters of the colour bar and, later, apartheid were white labor unions.

Indeed, something happened under the colour bar in 1923 that is so striking that the story should be told

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by parents everywhere to their children and talked about incessantly in coffeehouses. It was a strike by members of the powerful white Mine Workers' Union, who were protesting white mine owners' plans to hire less-expensive black workers. The 12-word banner that they proudly carried through the streets read, "Workers of the world unite, and fight for a white South Africa." This Karl-Marx-meets-David-Duke slogan is further evidence of the connection between government power (socialism is the ultimate in government power) and racial discrimination. Interestingly, the union received support for this strike from its allies in the South African Labour Party (SALP), formed in 1908 with the explicit goal of achieving privilege for white workers. The SALP was modeled intentionally on the British Labour Party, an avowedly socialist party.

And if you think something like that would never happen in the United States, then consider the origins of the minimum-wage law. The main proponents of the minimum wage were northern unions that wanted to harm their lower-wage southern competition, many of whom were black. This goal animated unions as recently as the 1950s. At a 1957 hearing on increasing the minimum wage, a northern U.S. Senator who favored the increase stated: "Of course, having on the market a rather large source of cheap labor depresses wages outside of that group, too—the wages of the white worker who has to compete. And when an employer can substitute a colored worker at a lower wage—and there are, as you pointed out, these hundreds of thousands looking for decent work—it affects the whole wage structure of an area, doesn't it?"

Who was the senator? Here's a hint: just four years later he was the President. His name: John F. Kennedy.

Paying for Discrimination

That markets break down discrimination is such an important finding that the economist who first showed it in a rigorous model, Gary Becker, earned the Nobel Prize, in part, for that work. In his book *The Economics of Discrimination*, Becker pointed out that free markets make discriminators pay for discriminating because they give up opportunities to work with productive people. That doesn't mean, he noted, that people in a free market will never discriminate; the most

extreme racists and bigots will often be willing to pay the price for discriminating. But pay they will.

Becker's book pointed out that the wage differential between black and white workers of a given ability and experience level is a measure of the remaining discrimination against black workers; the larger the differential, other things equal, the more discrimination black workers face. This insight has been abused two ways in discrimination lawsuits in the United States. The statistical abuse is to assume that the whole wage differential between blacks and whites is due to discrimination rather than to other factors that the researcher has failed to measure. Yet, as virtually every economist who studies wage data will admit, you can never account for all factors, especially those that you can't observe. You can't know someone's earnings simply by knowing that person's age, experience, union affiliation, and education. Many people are the same age as Bill Gates and are similar in all other respects, but none of them has close to his level of wealth.

The second abuse of Becker's insight is an even more fundamental breach of justice. Workers who feel discriminated against sometimes sue their employers, often seeking compensation. What they fail to recognize is that these employers, who actually hired blacks and other minorities, are helping to eliminate discrimination. To the extent that lower wages are due to discrimination, they are caused by those not hiring people in the discriminated-against group. But haven't we all heard of the minister who blames those present for the low turnout?

It should be noted, though, that the U.S. economy is not free but hampered by many anticompetitive government interventions, such as licensing. Yet competition is the key to minimizing discrimination. Thus those who oppose bigotry could do no better than to work to eliminate all such interventions.

More fundamentally, though, people should be free to discriminate. Freedom includes freedom of association, the freedom to choose whom you work for and whom you hire. Employees are free to discriminate against employers for any reason they wish; employers should have the same freedom. Let's have markets, not governments, punish those who exercise their prejudices.