January 1998 Vol. 48, No. 1

THE FREEMAN

IDEAS ON LIBERTY

FEATURES

COLUMNS

DEPARTMENTS

THE FREEMAN
IDEAS ON LIBERTY

Published by
The Foundation for Economic Education
Irvington-on-Hudson, NY 10533
Phone (914) 591–7230 FAX (914) 591–8910
E-mail: freeman@westnet.com
FEE Home Page: http://www.fee.org

The Freeman is the monthly publication of The Foundation for Economic Education, Inc., Irvington-on-Hudson, NY 10533. FEE, established in 1946 by Leonard E. Read, is a non-political, educational champion of private property, the free market, and limited government. FEE is classified as a 26 USC 501(c)(3) tax-exempt organization.

The costs of Foundation projects and services are met through donations, which are invited in any amount. Donors of $30.00 or more receive a subscription to *The Freeman*. For foreign delivery, a donation of $45.00 a year is suggested to cover mailing costs. Student subscriptions are $10.00 for the nine-month academic year; $5.00 per semester. Additional copies of this issue of *The Freeman* are $3.00 each.

Bound volumes of *The Freeman* are available from The Foundation for calendar years 1972 to date. *The Freeman* is available in microform from University Microfilms, 300 N. Zeeb Rd., Ann Arbor, MI 48106.

PERSPECTIVE

Ring in the New!

The new year reminds us that the turn of the millennium approaches. (That is true whether you celebrate the occasion in 2000 or 2001.) Let's not forget that it is also the end of the century that Paul Johnson dubbed the century of politics. Will it be succeeded by the century of liberty? Developments are mixed. There seems to be a new appreciation of the wonders of the free market and a wider understanding of the flaws of government control of peaceful activity.

Still, with all that, I don't yet sense that the freedom philosophy is about to be embraced in substantial measure. People don't yet seem willing to give up subsidies and other benefits from government. They don't even show curiosity over whether the amount they pay for everyone else's benefits outweighs whatever they receive. I wonder if most people realize how pervasive government is.

What this means is that we who cherish liberty have our work cut out for us. It may seem daunting. But the consequences for us and for our children make the effort worth the candle.

* * *

Campaign-finance abuse has been much in the news of late. Typically, when we think of big donors to political campaigns, we conjure up an image of someone delivering a contribution to a candidate or political party in the hope that a favored subsidy, regulation, or trade restriction will be approved. In these pages, Fred McChesney of Cornell University takes a fresh look at the matter and comes up with a fascinating twist. You might not look at the activities of Congress in the same way again.

The year 1998 marks the centenary of the birth of FEE founder Leonard E. Read (making it appropriate, perhaps, to start the century of liberty two years early). Our yearlong Read retrospective begins with a 1956 selection that celebrates social cooperation and the division of labor.

What can economics tell us about the law as it applies to personal relationships? David Laband and John Sophocleus of Auburn University think it can tell us plenty. They look at two

recent law cases involving engagement and marriage, and come up with some interesting, maybe controversial, results.

Advocates of the freedom philosophy no doubt are uneasy with the federal government's attempts to maneuver the tobacco industry into an "agreement" that would, among other things, provide lots of money for the treasury. Robert Levy provides the details that support that uneasiness. As he shows, the process is an assault on the rule of law and the Constitution. Everyone should be worried by the eventual outcome and the precedent it establishes.

Peter Samuel, editor of the newsletter *Toll Roads*, is an indefatigable researcher and writer on the subject of the privatization of roads. His article in this issue ranges widely—from history to politics to economics—in his exploration of the question: can we have roads if the government doesn't build or run them?

Nothing is more twisted out of shape in the United States than medical insurance. Because of the perverse incentives created by government intervention, people use medical insurance in ways they would never use it in a free market. Imagine buying an auto-insurance policy that covers replacement headlights and oil filters. It might sound nice—until you saw the premium. At that point, you would undoubtedly decide that the policy is not worthwhile. As Ross Levatter and Rebecca Geshelin explain herein, medical insurance makes no sense for predictable events. But government has manipulated the law to make it appear as though it is sensible. The authors apply this insight to pregnancy benefits.

Henry Ford was one of America's great pioneering entrepreneurs. Last month, philosopher Loren Lomasky explained how the automobile has liberated the individual by making mobility more feasible than it was in the pre-automobile days. It follows, then, that Henry Ford was one of the great liberators in history. The details of his life and business philosophy are fascinating and inspiring. And they are well told in these pages by Burton Folsom, who has distinguished himself as an engaging biographer of American entrepreneurs.

Hong Kong is now part of China, of course, and China is not exactly the world's most prominent exponent of democracy. The public-opinion molders have been wringing their hands over the dim prospects for democracy in the prosperous former British colony. John Wenders of the University of Idaho puts the matter in perspective by pointing out that Hong Kong got rich without democracy.

Charles Baird of California State University at Hayward is an economist who keeps a sharp eye on labor unions. He reports that it may soon be possible for unions to establish themselves in a company without even a secret-ballot vote by the workers. Is this a last-ditch attempt by the fading union movement to forestall the inevitable?

If you ask college students what freedom is, you are likely to get an assortment of curious answers. Russell Madden of Mt. Mercy College reports the results he got with his students.

Does individualism conflict with communities? The communitarians say yes. But Edward Younkins of Wheeling Jesuit University says no. On the contrary, he thinks individual liberty makes for the best kind of community. People unfamiliar with the freedom philosophy may find that paradoxical, but this article will sort it out.

Also in this issue: a full complement of book reviews and provocative contributions from our regular columnists: Larry Reed on privatization, Doug Bandow on the politics of "global warming," and Mark Skousen on bull markets.

—SHELDON RICHMAN

THE FREEMAN
IDEAS ON LIBERTY

High Plains Drifters: Politicians' Lucrative Protection Racket

by Fred S. McChesney

> "Politicians are interested in people. Not that this is always a virtue. Fleas are interested in dogs."
> —P. J. O'ROURKE

The idea that politicians sell special favors to special interests is no longer new, although it still makes news. Throughout 1997, newspapers and television reported daily on John Huang, various Asian connections, and a suspicion (at the least) that the large sums greasing politicians' hands were purchasing favors. Thus, allegedly, was American foreign-trade policy distorted and, according to Senator Fred Thompson, the 1996 election influenced. Dispensing the goodies is a bipartisan effort, of course. The support for ethanol subsidies by Bob Dole and Newt Gingrich indicated to many that the 1994 Republican conquest of Congress was unlikely to change much over time.

In the popular rendition of politicians' taking "special-interest" money, it is the private party who initiates the game and the politician who accedes. Besides, it's all part of a process protected by the First Amendment. The money may be spent for "access" to politicians, but it is protected speech. The Supreme Court has said so. If, after hearing the special interests' side of the story, the politician agrees to preferential trade treatment for some group, it is all part of a political process laid out by the Constitution. And of course, the Founding Fathers understood that this was an inevitable cost of democracy: not laudable, but nonetheless tolerated. So goes the orthodox journalistic account.

Social scientists studying politics also tend to work with models in which private interests purchase special treatment from politicians. In the now-orthodox version of the "economic theory of regulation," popularized (if not pioneered) by George Stigler, would-be private beneficiaries demand government favors and politicians supply them. Thus, the market for political favors is like a private market, with consumer sovereignty in full operation. The standard phrase "campaign *contributions*" bespeaks the perceived process: special interests enter the market with money to exchange and politicians respond.

One can understand why both journalists and economists nearly always view political transactions in this way. For the media, the story fits their preferred view of the world, in which government would operate for the public interest but for the corrupting influence of private interlopers. Thus, but for that pesky First Amend-

Fred McChesney teaches at Cornell Law School and is the author of Money for Nothing: Politicians, Rent Extraction and Political Extortion *(Harvard University Press, 1997).*

In the extortion racket, citizens are made to pay, not for special favors from Uncle Sugar, but to protect private wealth that they have earned the old-fashioned way, outside the political process.

ment, the solution would be just to drum out private access to government whenever money is involved. (So-called public-interest groups that can deliver services rather than money—unions, the American Association of Retired Persons, and so forth—would have untrammeled access, however.)

For economists, government-influenced markets are treated as just a subset of markets more generally. The essence of private market behavior is exchange, a process that leaves both parties better off, increasing societal wealth overall. For lawyers, the process is similar: the perceived special-interest deal is just another species of contract. Both sides provide something of use to the other (money for services), again leaving both sides better off from the transaction.

But is this perception the only explanation of what goes on when private parties pay politicians? When Vice President Gore sits in the White House with his Democratic National Committee credit card, making dozens of calls to prospective "contributors," is he dangling the prospect of special favors in return? Or might there be something else going on?

Cooperation or Exploitation?

Consider that contract is not the only basis on which parties interact in society. While contracts are mutually beneficial, things like theft and murder—also involving interaction between individuals—leave one side better off but the other worse off. Behavior, in other words, may be either cooperative or exploitative. Individuals seek voluntary bilateral transfers (contracts); they also guard against the possibility of involuntary unilateral transfers (theft).

Exploitative behavior need not involve stealth, as typifies theft. Take blackmail, where Person A agrees to forbear from some perfectly legal action in exchange for payment from Person B. For example, A may know of B's extramarital affair and threaten to reveal it to B's spouse and the rest of the world (as A is perfectly free to do), but agrees not to tattle in exchange for money. Superficially, the transaction resembles a contract, but there is a crucial difference. Commercial contracts between A and B would leave both better off than they were before A came on the scene. But B agrees to a blackmail deal to avoid being made worse off by A's intrusion. When Bill Cosby contracts with a production company or television network, he gains; had he acceded to the demands of his alleged daughter, he would have been paying protection money to avoid her attempts to make him worse off. Had model Elle Macpherson agreed to the alleged demands for money in exchange for a promise not to post nude photos of her on the Internet, she likewise would have been paying to avoid being made worse off, not to gain.

So, too, with politicians. They may well take payments to make private parties better off, such as providing tariffs or subsidies. Occasionally, these payments cross the legal line and are actionable as bribery. Prosecutions are few and far between. They largely target not the true substance of the transaction—payment for special favors—but some failure to follow the prescribed legal methods of payment for the favors. Campaign-spending laws provide the blueprint for perfectly legal bribery.

But a politician has an alternative for raising money: selling protection. He can agree *not* to do something that otherwise he says he would

do, something that would reduce the wealth of the potential donor. The most obvious burden that can be threatened is a tax, but there are any number of others that a politician can propose and then withdraw for a price. A private citizen will be just as willing to pay for a special favor worth $1 million as he will to avoid a $1 million tax. (This assumes constant marginal utility of wealth; with declining marginal utility of wealth, a citizen will pay more to avoid the $1 million loss than for the $1 million gain.)

This, then, is the essence of the political protection racket. Superficially, selling special favors and selling protection do look the same: payment is made to the politician in both cases. But in the extortion racket, citizens are made to pay, not for special favors from Uncle Sugar, but to protect private wealth that they have earned the old-fashioned way, outside the political process.

Milking, Juicing, and Fetching

One observes this sort of protection being sold routinely, at all levels of government. Legislative extortion is commonly practiced through so-called "milker bills," to use a term popular in California. A bill is drafted and submitted, not because there is any legitimate need for it, but because it threatens some private person or group that predictably will pay to have the bill withdrawn. "Juice bills" is another term for those legislative proposals intended to squeeze private interests for cash.

In Illinois, the name "fetcher bill" is apparently the more common designation for legislative proposals intended purely as shakedowns of monied interests. Even in Washington, D.C., Illinois politicians play the fetching game adeptly:

> Rep. Jim Leach quietly introduced a bill a few days ago aimed at reducing speculation in financial futures. Barely 24 hours later, the Iowa Republican learned that Chicago commodity traders were gunning to kill his proposal. Rep. Leach said one Illinois lawmaker told him the bill was shaping up as a classic "fetcher bill," a term used in that state's Legislature to describe a measure likely to "fetch" campaign contributions for its opponents. Sure enough, one of the first to defend the traders was Democratic Rep. Cardiss Collins of Illinois, recipient of $24,500 from futures industry political committees. She called on colleagues in the Illinois delegation to beat back the Leach bill and watch out for similar legislation. ("Chicago Futures Industry to Fend Off Attack, Rallies Lawmakers Who Received PAC Funds," *Wall Street Journal*, Nov. 12, 1987, p. 64)

While sale of special favors and sale of protection may look the same to outsiders, those milked or squeezed, of course, know the difference. Political scientist Larry Sabato reports that to political action committee directors, invitations to purchase tickets to congressional receptions "are nothing but blackmail." Some time ago, the *Wall Street Journal* reported that "House Republican leaders are sending a vaguely threatening message to business political action committees: Give us more, or we may do something rash."

Mud Farming and Political Extortion

In responding to politicians' minatory messages, private parties are actually paying "money for nothing," in the words of the song. The money is "contributed" in exchange for politicians' doing nothing, when legally they could do something. The practice resembles the "mud farming" described in William Faulkner's *The Reivers*. Mud farming was a simple but lucrative rural extortion scam. By night, farmers plowed up and then hosed down stretches of the dirt roads out in the country. By day, after cars sank into the nocturnally produced mud, the victimized drivers had a choice: abandon the cars or hire a mud farmer and his animals to pull the vehicles out.

The mud farming analogy brings out one important feature of political extortion. The money paid to politicians to avoid their taking an even bigger bite is not simply a monetary transfer. There are real costs associated with the protection racket akin to the time lost and the labor expended in extracting cars from the mud. The time and money spent on executives' visiting politicians, on lobbyists' work on behalf of

Clint Eastwood, the high plains drifter, selling protection to Lago is no different from Joe Politician selling protection, except that Eastwood wants to annihilate the town and utterly impoverish its denizens.

clients, and so forth are all time and money not devoted to the production of widgets. Perhaps more important, the possibility of wealth being legislatively expropriated creates a disincentive to invest in the first place (or an incentive to invest in less valuable activities that are easier to shield from political threats). Each extortion episode thus leaves society poorer for the time lost and resources diverted from more productive endeavors.

Selling Protection

That the protection racket is costly is a point made, very apocalyptically, in the Clint Eastwood western *High Plains Drifter*. Eastwood rides into Lago, a mining town that is about to be attacked by three killers just released from prison. Lago's corrupt city fathers had hired the men to kill the town's honest marshal, then trumped up other charges to put the killers in jail. They return for revenge. Eastwood himself has come to wreak vengeance on Lago for the marshal's death. Unaware of Eastwood's agenda, the townspeople implore him to protect them from the killers; Eastwood agrees, on condition that they do everything he says and give him everything he demands. Making himself mayor and sheriff, Eastwood gradually reveals his plan: fending off the killers, but only by destroying practically everything in Lago in the process. He rides out in the end, leaving the town "saved" but a smoking ruin.

Eastwood, the high plains drifter, selling protection to Lago is no different from Joe Politician selling protection, except that Eastwood wants to annihilate the town and utterly impoverish its denizens. For the politician, total devastation would not be possible politically nor desirable pecuniarily. If politicians could take everything, individuals would have no incentive to invest in creating assets in the first place, meaning there would be nothing to protect in the future and so no future protection racket.

The politician's maximizing strategy, then, is to take just enough to benefit himself at the moment while leaving sufficient incentive for private parties to generate new wealth—which then will need political protection. The extortion game is analytically identical to a dictator's nationalization of assets invested by foreign firms. Citizens of the more developed countries regard the expropriations of foreign despots as exotic, sometimes even laughable, antics indigenous to the "Third World." But what difference is there really between an American company paying hundreds of thousands of dollars in soft money to the Democratic or Republican National Committee in return for tax exemptions and that same company acceding to having a factory or other assets nationalized abroad in return for being allowed to continue doing business there?

It is true that shakedowns practiced by American politicians may differ in the complexity, camouflage, and rhetoric surrounding their threats and ultimate exactions. Compare the extortion game as played in state legislatures or in Washington with the schemes of Brazil's President Fernando Collor de Mello, who, as reported in the *New York Times Magazine*, ran "an extortion and influence-peddling system" so successful that it amounted to "an assault upon the state."

Previously, as a local mayor, Collor sold tax relief worth $100 million to sugar-cane firms in exchange for $20 million paid to him personally. As president, however, it is estimated that he raked in several times that amount, much of it again in selling protection. For example, Collor froze all bank deposits over $1,200 for 18 months as a supposedly anti-inflation measure. Again to quote the *Times Magazine*, "The pro-

gram was a colossal failure, producing suicides, heart attacks, a 4 percent plunge in economic activity—and barely a dent in inflation." To Brazilians, the measure might have seemed just an unfortunate but well-intended mistake—until they learned that President Collor was selling companies the right to unfreeze their accounts for a 10 percent commission.

Crass as extortion in Brazil was, readers may not find it all that much different from American politicians broadcasting their message, "Give us more, or we may do something rash." Take the current spectacle of politicians milking the tobacco companies. Common Cause recently labeled the millions of dollars that tobacco firms have passed to politicians in 1997 (primarily to Republicans) "astounding." But exactly why is it so surprising? Newspaper accounts ascribe the "donations" to the industry's desire to improve its image—as if the public viewed giving money to politicians as something praiseworthy. The real reason is much simpler and (one would think) more obvious. As the pols have demonstrated, they now have the power to crush cigarette firms if they choose to exercise it. But for a price, Washington's high plains drifters have agreed to forbear from total destruction of tobacco. Not surprisingly, state politicians are racing to strap on their six-shooters and threaten tobacco firms, too. When tobacco antes up—as it surely will, because it must—it won't be to improve its image.

The tobacco wars illustrate a point noted earlier: politicians will threaten and take what they can, but it is not in their interest—whatever they might threaten—to kill the goose laying the gold. That's the good news. The bad news is that the politicians will certainly be back as new eggs are laid.

Opening the Tax Window

For those who find such a view too cynical, consider the sorry muddle that our tax system has become. Scarcely a year passes without at least discussion in Congress and the White House of tax "reform" or "simplification." Yet, as politicians open the tax window annually, no true reform and certainly no simplification result—*au contraire*. The public seems bemused: why does each round of change only increase the number of special breaks and add new forms to the April 15 ordeal? Answer: it's all part of this year's round of extortion. The names of those purchasing protection from the taxman change—the 1986 tax "reform" legislation featured a "Gallo amendment" and a "Marriott amendment," while the 1997 legislation included an "Amway amendment" in return for that firm's reported so-called contributions of over $1 million. But the rules of tax "reform" remain the same.

Of course, the political threats must be credible. If private individuals think a threat is just a bluff, they have no incentive to pay. Thus, politicians may sometimes be forced actually to legislate; as Gordon Tullock puts it, "politicians may sometimes have to enact legislation extracting private rents from owners who do not pay up, just as the Cosa Nostra occasionally burns down the buildings of those who fail to pay its protection levies." If payment ultimately is forthcoming, politicians can always repeal the legislation.

Threats can be credible (and politically attractive) only if they are constitutionally protected. Private extortion is illegal. However, there is no law against the political extortion discussed here: legislators themselves get to define what constitutes extortion, and obviously have chosen not to outlaw what they do. (True, when political shakedowns come to light, they occasionally prove embarrassing enough to force a legislator to resign.)

Constitutions exist precisely to establish rules to protect the citizenry against such political depredations. Were there constitutional obstacles to profiting from the sorts of threats that elicit private payments, those threats would be made less often, since victims would always have the counter-option of seeking refunds through constitutional litigation.

But the state and federal constitutions have provided little shield against the political protection racket. The Founding Fathers themselves seem not to have worried as much about politicians extorting from the voters as they did about factions of private citizens using government to take from other factions. The level of constitutional protection against legislative expropriation of basic contract and property

rights has steadily diminished since the late nineteenth century. As noted earlier, the very right to "contribute" to politicians has been held constitutionally protected. As government regulation pushes into more and more areas, the scope for selling political protection expands apace. In effect, as courts have retreated from affording constitutional protection against threats of legislative takings, potential private victims have found it necessary to use their own self-help remedies, paying off politicians rather than endure even more dire regulation (including taxation).

Consider, for example, environmental regulation, an area of state and federal activity virtually unknown even a generation ago. The search for sites to dump toxic wastes, the wish to exclude certain land (woods, wetlands) from private development, and other environmental issues have created opportunities for politicians who can influence such decisions to harvest big contributions.

This leads to a perhaps unexpected conclusion. In a second-best world where government has already been allowed to grow large, toleration of the political extortion racket is actually desirable. If the politicians cannot be paid off to abstain from imposing costs on private parties, those costs will be imposed. Where government has too much power, then, the political protection racket can actually lighten the burden.

"All right," one might say, "we should reduce or eliminate government's ability credibly to threaten private individuals with pecuniary or other loss." True enough, perhaps, but this position effectively boils down to reducing the size of the state, of reducing its power to do almost everything it currently does. In particular, it would mean an end to most taxation and programs to transfer wealth, the essence of modern politics. However desirable, any such reduction amounts to arresting a trend in government growth that has been gaining momentum for over a century. If that engine cannot be stopped and thrown into reverse, those of us along for the ride must sometimes resign ourselves to protecting our well-being with our own wallets. □

Bettina Bien Greaves Co-Winner of Thomas S. Szasz Award

With great pleasure, we acknowledge that Bettina Bien Greaves, long-time resident scholar at the Foundation for Economic Education and contributing editor of *The Freeman*, has been awarded the seventh annual Thomas S. Szasz Award for Outstanding Contributions to Civil Liberties. The award, given annually by the Center for Independent Thought, which, among other things, operates Laissez Faire Books, selected Bettina for her "lifetime achievement" in the cause of liberty. The award was established to honor the work of Thomas Szasz, the leading critic of the abuse of civil liberties in the name of medicine. David Kopel and Paul Blackman, authors of *No More Wacos: What's Wrong With Federal Law Enforcement and How to Fix It*, were also recipients of the award. Past winners include Richard Epstein, Karl Hess, and James Bovard. Congratulations, Bettina!

White Magic

by Leonard E. Read

Editor's Note: *To mark the 100th anniversary of the birth of FEE founding president Leonard E. Read (1898–1983),* The Freeman *will publish a classic Read essay each month under the series heading "Anything That's Peaceful."*

This month's selection, excerpted from the January 1956 issue of The Freeman, *extols the good "magic" peacefully wrought by free people and free markets.*

Each person tends to satisfy his desires along the lines of least resistance. Those who really believe outright thievery or spoliation (political plunder) to be immoral are thereby bound to reject such so-called easy means to their ends. Why? They recognize that any injustice done others will backfire. To condone injustice is to endorse an evil principle—as applicable to oneself as to others—and such a system adds to the difficulty of all.

These persons with their moral scruples have not, however, cut themselves off from their daily bread but, on the contrary, have found that strict adherence to justice and good morals is the easiest way to satisfy basic needs. They have come upon one of the most remarkable material phenomena in all history, a veritable white magic: *Simply leave everybody free to act creatively and in no way inhibit their exchanges!* They have found this to be the line of least resistance, the manner of satisfying their desires with the most economical use of their own energies. They have discovered an intelligence.

Example: A 1955 dishwasher! Not one person on earth possesses enough knowledge to make one, yet we possess them by the millions. If this isn't magic, what then can magic be?

To fully appreciate the efficacy of white magic in the economic area, one needs but turn the clock back to the beginning of the century, cast oneself in that period, and pose several simple questions:

1. Given a description of the performance and style of a 1955 car, how would I go about making it a reality?

2. What if someone were to give me the commission of developing a gadget that would carry the human voice in a fraction of a second over the face of the earth? Could I deliver?

3. Suppose travelers of the future were to say, "Build a winged thing that will transport more than 100 passengers from Seattle to Washington, D.C., in less than four hours." Could I meet the challenge?

4. A voice from the 1950s speaks: "We are the airlines of the world. Figure out how a man on the ground can identify our planes in the air—through darkness, fog, rain, sleet, snow—speak to their pilots ten or twenty miles away, tell them precisely where they are, and guide them to a runway with a tolerance of ten feet." What would I answer?

5. Families in millions of homes ask, "Can you perfect an instrument that will permit us in our living rooms to witness a presidential inau-

Leonard Read was born on a farm in Michigan. At 19, his formal education was interrupted by his entry into World War I as an airplane mechanic with the American Expeditionary Forces. After the war, he sold insurance, worked as a cashier, then opened his own produce business. In 1927, he began a career in Chamber of Commerce work as a secretary of one of the country's smallest Chambers. He was later manager of the Western Division of the Chamber of Commerce of the United States for ten years. In 1939, he became general manager of the world's largest Chamber in Los Angeles. His work there won him the executive vice-presidency of the National Industrial Conference Board. He left the NICB in 1946 to organize FEE.

As a tribute to Mr. Read in the September 1988 issue of The Freeman *stated, "It is difficult to measure the full influence of Leonard Read. He wrote more than two dozen books and hundreds of articles, delivered over a thousand lectures, and changed more lives than any of us ever will realize. In trying to assess his personal impact, perhaps it is best to say that Leonard Read taught us what is important. Principles are important. Moral philosophy is important. And, as he showed by the example of his own life, courage and an abiding faith in one's convictions are important."*

guration or a football game or a stage performance while it is going on?"

6. Can the human voice be amplified by power from the sun? How are we to minimize the ravages of pneumonia? Can clothing be made from sand?

The questions could be endless. And the answers by any one person, in 1900, or at any later time, would have been substantially the same, "I do not know. I cannot deliver. This that you ask is beyond my power."

The Magic of Freedom

No one of the above accomplishments, all commonplace today, resulted from the ingenuity of any single person. All of these and numberless similar advances came about in a better climate of freedom than existed elsewhere—and they came as if by magic. The telephone is a good example of this miracle. Pick up the receiver and instantly there flow to one's services the creative energies of Alexander Graham Bell, of tens of thousands of scientists, engineers, metallurgists, technicians, linemen, operators, miners, woodsmen, and countless others—creative energies flowing and exchanging through space and time to the waving of one's own wand—that one may communicate with whomever one pleases across the nation in a matter of seconds!

Why does this qualify as white magic? Because of the unimaginable results that flow from leaving all others free to act creatively as they please and to exchange their insights or their thoughts or their products with whomever they choose. This market process of reciprocity and mutuality affords each person a vested interest in seeing that others are unmolested and unhandicapped, that no one minds anyone else's business, and that society's legal apparatus is confined to the inhibition of destructive energies.

White magic? I, for instance, devote myself to writing and talking. Yet, I am able to

exchange my services for food, shelter, heat, clothing, transportation, literature—a daily and miraculous abundance that could not be produced by me in thousands of years. Imagine one person, doing so little, yet being able to obtain in willing exchange the services of millions of people! White magic literally serves as a means to higher ends by freeing me from the arduous confinement of wholly waiting on myself.

The alchemist's dream of turning lead to gold? It is as nothing. So far has this white magic advanced that the production of diamonds synthetically scarcely received a press notice.

It has long been known that any general upgrading of ideas and insights—things of the intellect and spirit—requires freedom of thought and expression, freedom to create and to exchange. Apply the same principle to goods and services: Presto! As much abundance as is possible for any given society. □

THE FREEMAN
IDEAS ON LIBERTY

Economics, Law, and Personal Relationships

by David N. Laband and John P. Sophocleus

Two recent, headline-making judicial decisions in civil cases offer striking reminders about why judges, juries, and legislators would benefit from instruction in basic economic principles. The decisions rendered in these cases involving personal relationship law turn economic (that is, common) sense on its head and are inconsistent with legal treatment of virtually identical circumstances under contract law.

In the first case, a young Texas man broke off his engagement to his fiancée, demanding that she return the engagement ring he had given her. When she refused, he sued. The judge ordered that she return the ring. It's possible that the judge's ruling in this case was colored by a personal engagement experience that went awry. Nonetheless, we cannot help wondering whether the judge who issued this ruling has ever sold a house.

The deposit, or earnest money, that the prospective home buyer offers to the seller when a contract is written serves as the buyer's pledge of good faith. Earnest money is the would-be buyer's pledge (in this case a formal contractual obligation) that he will work actively to fulfill the terms of the contract and bring the proposed sale to a successful conclusion. If the putative buyer backs out of the contract for reasons that are not within the control of the seller, the seller can legally claim the earnest money. We all know and appreciate the reason why this is so: unless specific provisions of the agreed-upon contract permit the seller to continue to market the property, it is understood by both parties that the seller will suspend such efforts and also work actively to conclude the sale.

In the absence of this legally binding pledge, moral hazard problems would make it much more difficult to buy and sell real estate. The person who had contracted to purchase a house would have no financial incentive to honor the contract, other than the fact that he hadn't found another property more to his liking. Indeed, the hope of finding such a property might induce the prospective buyer to continue searching. If he found a property he liked more, he could walk away from the contract without penalty at any time prior to formal execution of the contract.

By the same token, the behavior of sellers also would be different. Knowing that the putative buyer might not honor the contract, the seller would have every incentive to continue to show the property to other prospective buyers. In the (normally unlikely) event that he could find another buyer willing to pay more than the first one, he would break the contract with the first and write one with the second. To forestall this possibility, which might indeed be damaging to the first buyer (who may have valued the property more than the contracted-for price), he induces the seller to stop looking for other buyers, by compensating him (via earnest money) for the implied costs that result from removing the house from the market. The seller, in turn, is protected from buyer oppor-

David Laband is a professor of economics at Auburn University, Auburn, Alabama. John Sophocleus is an instructor in Auburn's economics department.

tunism by demanding sufficient earnest money to satisfy him, at the margin, in the event the buyer finds something better. Earnest money does not insure that real estate contracts are never broken. But it does imply that such contracts are only broken on good cause—that is, when the value to the prospective buyer of breaking the contract exceeds the lost earnest money. This market mechanism provides a remedy for contracts broken through bad faith, without the parties seeking resolution through the courts.

The Marriage Market

Earnest money contributes to efficient transacting in real estate markets. Engagement rings contribute to efficient relationship formation in what Nobel laureate Gary Becker refers to as the marriage market. The giver of such a ring pledges, explicitly or implicitly, to work toward achievement of a marriage between himself and his fiancée. By taking herself out of the general marriage market, the recipient of the ring puts herself at risk. Specifically, she risks that while she is off the market, so to speak, she will miss meeting someone else with whom she might have enjoyed a happy and fulfilling relationship. By accepting her fiancé's ring, she gives up valuable opportunity, secure in the knowledge that if her fiancé dumps her, the value of the ring will compensate her for the costs implied by those lost opportunities.

Analytically, the fiancé's pledge of good faith (purpose, incentives, and impact on behavior) is identical to that of a prospective house buyer. The judge's recent decision with regard to the former is not only inconsistent with well-established contract law governing the latter, but also raises the costs of contracting between young people interested in developing long-term relationships with one another. We can only assume that if the prospective buyer of the judge's house had backed out at the last minute, he would have been happy to return all of the earnest money pledged when the contract of sale first was written. It is precisely because individuals are *not* happy about returning earnest money that such money typically is held by a neutral third party.

Who's Responsible for Seduction?

The second case, which was covered in major newspapers and several network television talk shows, centered on a married couple and the "other woman." The husband's affair led him to divorce his wife of 17 years and marry that other woman, who now, of course, is "the" woman. The other woman did not fall in love with the husband with specific intent to injure his wife. Nonetheless, the wife sued the *interloper* under a North Carolina law that can hold outsiders responsible for breaking up marriages. (The statute in question, which deals with alienation of affection, was abolished by the North Carolina Court of Appeals in 1985, but the state Supreme Court overturned that ruling.) A jury found that the other woman had seduced the husband away from his wife, and it awarded the jilted spouse $500,000 in compensatory damages and $500,000 in punitive damages.

This situation also has a marketplace analogy with well-developed contract law that makes economic sense. By way of illustration, consider what happens when Wal-Mart opens a new store. Via the heady allure of lower prices and a wide array of merchandise, Wal-Mart "seduces" customers away from the local Sears, which has been in operation for 30 years. The competition provided by Wal-Mart is welcomed by all of the local shoppers because they know that their lives will improve through lower prices, enhanced operating hours by *both* stores, a wider selection of merchandise, and so on. The owners of Sears likely will be unhappy at the prospect of losing customers, but they do not have legal recourse to collect damages from the "other company."

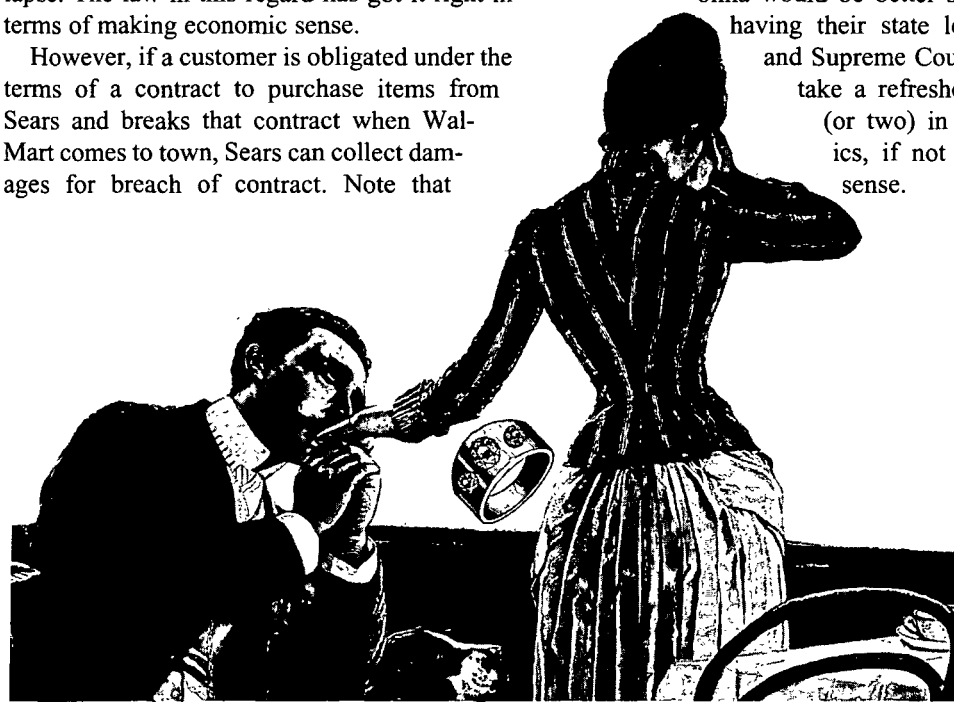
In the language of legal and economics scholars, Wal-Mart has imposed a "negative externality" on Sears. That is, actions undertaken by Wal-Mart have made Sears worse off, even though there may have been no specific intent on the part of Wal-Mart management to do so. Their aim was to provide products that the public at large finds desirable, at prices that induce prospective customers to become paying customers. Legally, the fact that Sears is injured in this process is incidental, not deliberate. Negligence law does not apply either. Firms are not required to consider

the possible adverse consequences of their actions for their competitors when setting prices or determining operating hours, the friendliness and appearance of their sales staff, the types and quality of merchandise carried, and so on.

There are hundreds of thousands of "other companies" in the business world. They "seduce" customers away from their competitors. It is this continuous process of widespread, intense seduction of consumers that forces firms that want to survive (either by forming long-term relationships with specific customers or by continuously attracting new customers) to constantly improve the quality of the goods and services they offer. The well-being of hundreds of millions of individuals, both in the United States and elsewhere in the world, is enhanced by these competitive seductions. Whether they actually induce individuals to walk away from a longstanding relationship or not is immaterial in this regard because consumers will benefit from improved quality and service from all firms, including ones they have patronized for years. Thankfully, these ubiquitous tempters and temptresses cannot be sued for building better mousetraps. If they could be, the capitalistic system that has made America the economic juggernaut of the twentieth century would collapse. The law in this regard has got it right in terms of making economic sense.

However, if a customer is obligated under the terms of a contract to purchase items from Sears and breaks that contract when Wal-Mart comes to town, Sears can collect damages for breach of contract. Note that Sears's legal remedy is tied to the contractual breach—it can collect from the customers, not from Wal-Mart. If the courts did not enforce such a contract, it is uncertain whether Sears would have agreed even to locate in the town, as its financial well-being may hinge on fulfillment of long-term sales agreements with customers.

Similarly, the jilted wife in North Carolina should have been able to sue her ex-husband for breach of their marital contract. If the courts did not recognize and enforce the husband's obligations to his wife, she arguably would be much less likely to have agreed to marry him in the first place. Fortunately, the adultery laws on the books in most states have this one right too. If the courts are not willing to support market mechanisms that facilitate development of long-term personal relationships, individuals will change their behavior, entering such relationships with greater trepidation and, accordingly, with increased use of formal legal provisions to hedge against entering a bad relationship. Such contracts would, for a variety of reasons, be very costly to write and enforce (not to mention unromantic), thereby increasing business for North Carolina lawyers and judges. This incentive notwithstanding, the people of North Carolina would be better served by having their state legislators and Supreme Court jutices take a refresher course (or two) in economics, if not common sense. □



THE FREEMAN
IDEAS ON LIBERTY

The Tobacco Deal: Myths and Misconceptions

by Robert A. Levy

The deal being forced on tobacco companies, whether it is the original negotiated agreement or one amended according to President Clinton's liking, is manifestly unconstitutional and nothing less than an attack on the rule of law.

In the original "Proposed Resolution," negotiated by a coterie of state attorneys general, plaintiffs' lawyers, and public health advocates, the industry agreed to disgorge $370 billion in monetary damages to various parties, pay additional penalties if specified reductions in youth smoking do not occur, submit to Food and Drug Administration regulation of nicotine, cease all vending-machine sales of tobacco products, and rein in certain marketing practices allegedly targeted at children. In return, tobacco companies would be immune from punitive damages for their past conduct and from new class action lawsuits. Individuals could still sue, subject to a cap on compensatory damages. The settlement, if approved, would wipe out claims by more than three dozen state and local governments for Medicaid reimbursement.

In September, President Clinton weighed in with his version of the sweeping tobacco settlement. Clinton embraced parts of the deal but repudiated others. Specifically, the president wants the FDA to have more or less plenary regulatory authority over tobacco products. He also wants tougher restrictions on advertising, greater disclosure of secret industry documents, and a stiffer price tag than the industry had bargained for. Instead of $370 billion in tax-deductible payments—estimated to cause the price of a pack of cigarettes to rise by about 62 cents—Clinton proposed a $1.50 per-pack increase over ten years. Part of the increase would arise from unspecified *nondeductible* payments by the industry; the rest would depend on penalties for not meeting targeted reductions in youth smoking. As to big tobacco's partial immunity from litigation, the president was uncharacteristically silent, apparently content to leave such legally and politically sensitive details to Congress.

Obviously overlooked in the president's evaluation is this troublesome complication: The deal in the making—either the "Proposed Resolution" or Clinton's adaptation—is unconstitutional. Indeed, no legislation in recent memory transgresses so many fundamental constitutional principles. Most important, the settlement expunges the industry's right to due process, about which more in a moment. Further, it punishes tobacco companies by legislative fiat despite the constitutional prohibition on bills of attainder. It abridges the industry's First Amendment rights of free speech, impermissibly obstructs litigants seeking redress through the courts, takes the property of cigarette vending-machine companies without just compensation, and delegates unprecedented legislative authority to the FDA. Moreover, the settlement intercedes in product liability cases that have

Robert Levy is senior fellow in constitutional studies at the Cato Institute and author of the Cato Policy Analysis, "Tobacco Medicaid Litigation: Snuffing Out the Rule of Law."

long been the prerogative of state government, thus exercising power beyond that enumerated in the Constitution and flouting our system of dual sovereignty.

Those are just a few of the problems. Meanwhile, the public seems blissfully unaware of the pernicious effects should the proposed settlement be approved. So here is a wake-up call. Perhaps it will dispel some of the myths and misconceptions surrounding the insidious deal with which the administration and Congress will be tinkering.

Myth #1: We can ignore the constitutional infirmities if the industry consents to them.

The argument goes like this: If tobacco companies voluntarily enter into an agreement after extensive negotiations, why shouldn't we respect their decision? We shouldn't for two reasons: First, the settlement purports to bind parties who did not participate in the negotiations. Second, there can be no real consent at the point of a gun.

For starters, the proposed settlement affects future litigants, who had no representatives at the bargaining table. When parties are injured, the tort system permits them to seek recovery from those who caused the injury. While legislatures can alter the rules at the margin (for example, they can eliminate punitive damages), they cannot cut into the irreducible core that is our due-process right. The cumulative effect of immunities conferred by this settlement—no class actions, no punitive damages for past acts, a limit on compensatory damages—goes too far. By foreclosing adequate legal remedies, those restrictions have the practical effect of denying access to the courts.

Also without representation at the negotiations were vending machine operators, whose sales of tobacco products are precluded by the settlement; some nonparticipating tobacco companies; and, of course, yet-to-be-formed companies, which must either agree to the settlement or place substantial sums in escrow for 35 years to ensure that they will be able to pay damages if awarded against them. That "choice" raises obvious due-process concerns. Moreover, Congress is simply not authorized to compel private companies to escrow funds for satisfaction of potential judgments arising out of state tort law. Any such statutory requirement makes a mockery of the principles of federalism and limited national government.

With respect to those tobacco companies that did participate in the settlement, their involvement and signatures by no means equate to consent. Either such companies could join the settlement or they could mount an expensive, time-consuming, and ultimately futile challenge to nearly 40 Medicaid recovery suits, litigated under a perverted system of law that effectively foreclosed every line of defense. Here's how that choice came about.

Over four decades, after thousands of claims, smokers had not collected one dollar of damages for a smoking-related illness. Juries understood—even if state attorneys general today do not—that we are free to use whatever legal products we wish, but if we assume the risk we must bear the consequences. As juries were reaffirming that basic rule of law—known as the "assumption-of-risk" doctrine—state Medicaid programs were coming under intense financial pressure. Of course, states were entitled to sue the tobacco companies for recovery of Medicaid outlays supposedly traceable to smoking; but the states bore the same burden of proof as the injured smoker and they were subject to the same defenses including assumption of risk. Unwilling to raise taxes and unable to prevail in court, the states came up with a creative solution: they simply eliminated assumption-of-risk as a defense in Medicaid recovery suits and, for good measure, applied the new rule retroactively so that it would affect cigarette sales made decades earlier.

While they were at it, to head off any possibility of an adverse jury verdict, the states abolished the requirement for proof of individual causation. Instead of demonstrating that a particular claimant's illness was caused by his smoking, all the states had to produce were aggregate statistics showing that certain injuries were more prevalent among smokers than nonsmokers. Tobacco companies, under the new regimen, would thus have to pay for treating burn victims who fell asleep with a lit cigarette, cancer victims who never smoked, and even

Medicaid recipients who defrauded the system and weren't injured at all. Astonishingly, the states didn't have to furnish any corroborating evidence, just statistics.

What could possibly justify this abuse of power? Incredibly, the states contend that they are entitled to abrogate the assumption-of-risk defense and disregard proof of causation because, after all, the state as plaintiff never smoked. Imagine, analogously, that you are exceeding the speed limit by five miles per hour and hit another car driven by a Medicaid recipient; he is driving 80 miles per hour, intoxicated, and hurtles through a red light. When the state Medicaid program sues you for negligence, you properly respond that the other driver was 99 percent at fault. The state counters that the Medicaid recipient's behavior is irrelevant; the state doesn't drink, nor does it drive. Such arrant nonsense—the exact equivalent of "the state never smoked"—is unworthy of serious consideration.

Naturally, the states laughed off the charge that the new law wiped out the industry's defenses. One of Florida's lawyers said, for example, "It doesn't mean that the tobacco industry is defenseless. They [sic] can show that the state has unclean hands, that the state has participated in the activity somehow."[1] Yes, "unclean hands" is a legitimate defense; but when the industry pointed to Florida's continued support for federal tobacco programs, its $825 million pension investment in tobacco stocks, and its manufacture of cigarettes for sale to local jurisdictions and distribution to state prisoners, Florida attorneys filed a motion to suppress the evidence, and the state judge granted the motion.[2] So much for the unclean hands defense.

Faced with insurmountable legal hurdles in dozens of Medicaid suits patterned after Florida's, the industry decided to negotiate. Was the settlement consensual? Ask yourself why an industry would agree to fork over $370 billion, subject itself to FDA regulation, overhaul its advertising, eliminate vending-machine sales, and pay large penalties if targeted reductions in youth smoking were not realized—all in return for partial immunity from litigation that had not cost a single dollar of damages in 40 years. To call this settlement consensual is consummate doublespeak.

Myth #2: Tobacco is a special case. No other industries are at risk.

If the tobacco industry were the only victim, that would be bad enough; but the unhappy prospect is for yet more incursions by a paternalistic state with a boundless appetite for social engineering. Lamentably, American governments at all levels seem to have abandoned the principles of free choice and personal responsibility in favor of regulatory mandates and absolution for the consequences of our acts. And because we have socialized so many activities, like the provision of medical services, we should not be surprised when the government monitors our diet, exercise, recreation, and other lifestyle choices. Having created a system in which each of us has an incentive toward irresponsible behavior—paid for by the rest—the state then steps in to prohibit the behavior it has encouraged.

Mired in regulations, laws, taxes, and litigation, we look to Congress to extricate us from the mess that it helped create. Yet if Congress approves the ill-advised tobacco settlement, it will exacerbate the problem. Politicians from both the left and right will attack products deemed by them, our moral overseers, to be bad for us. There will be no shortage of candidates as the do-gooders take aim at the food industry, for example—from chocolate to sugar, dairy products, red meat, and French fries. Obesity, which causes 300,000 deaths each year from heart attacks and strokes, will be the new shibboleth; but it won't be the last. There's still coffee, motorcycles, sporting equipment; the list is endless.

Is that merely paranoia? You be the judge. Vice President Gore at a press conference this past July ventured that there is a "link between exposing children to massive levels of violence on television and violent behavior." He asserted that the link is "just as well established" as the "link between tobacco smoking and lung cancer." Then he prompted, "So how do we act on that?" And William J. Bennett, in a *New York Times* op-ed dated July 29, 1997, predicted: "If the liquor industry does not start acting in a more socially responsible way, it may soon find itself held in the same kind of esteem in which the tobacco companies are now held. The alco-

hol industry can act now. Or it can deny reality and pay later."

Those threats must not be taken lightly. The hallmark of a free nation is whether it safeguards the rights of its least popular citizens. When it comes to tobacco, we have failed that test. We have tapped the industry's deep pockets in order to reward states that retroactively imposed new and unimagined laws on a feckless and friendless defendant. Today it may be tobacco; tomorrow none of us will be secure.

Myth #3: The administration and Congress should impose tougher sanctions.

The provisions of the tobacco settlement as originally drafted are misconceived, unworkable, and counterproductive. But if Congress adopts the Clinton version or, still worse, the draconian recommendations of antismoking zealots like former FDA commissioner David A. Kessler and former Surgeon General C. Everett Koop, the outcome will be even more destructive. Koop and Kessler want tougher FDA regulation, stiffer penalties imposed on the industry if the nation doesn't meet targeted declines in youth smoking, huge increases in cigarette taxes, tighter rules on smoking in public and work places, and export controls on industry access to foreign markets. That's all—just prohibition, without the label, and without the precursor to prohibition, which, as you will recall in the case of alcohol, was an amendment to the Constitution. Kessler and Koop object especially to a provision requiring the FDA to show that its regulations will not spawn black-market transactions. No wonder they regard that provision as a material limitation on the agency's powers. FDA restrictions on nicotine content, coupled with inflated retail prices to pay for the settlement, will lead ineluctably to a pervasive black market.

We never seem to learn. California, Maryland, Michigan, and New York hike their cigarette taxes and the result is rampant smuggling—not just from low-tax neighboring states, but from military bases, Indian reservations, even exports to Mexico that are smuggled back into the United States.[3] After Canada raised its excise tax, smuggled cigarettes accounted for an estimated 30 to 50 percent of consumption; so Canada was forced to lower the tax to keep smuggled cigarettes away from children.[4] It doesn't take a rocket scientist, an FDA commissioner, or a surgeon general to know that the proposed tobacco settlement will inevitably foment illegal dealings dominated by criminal gangs hooking underage smokers on an adulterated product freed of all constraints on quality and price that competitive markets usually afford.

If the health imperative is to reduce smoking among teenagers, we have the requisite tools at our disposal. The sale of cigarettes to youngsters is illegal in every state. Those laws must be vigorously enforced. Retailers who violate the law must be prosecuted. Proof-of-age requirements are appropriate if administered objectively and reasonably. Vending-machine sales should be prohibited in areas like arcades and schools where children are the principal clientele. And minors—who are often held responsible as adults when charged with a serious crime—should at least be subject to parental notification and moderate punitive measures when caught smoking or attempting to acquire cigarettes.

Myth #4: The industry and its customers owe the public for health costs due to smoking.

At the outset, one must ask why tobacco companies should be responsible for antismoking campaigns and programs to help smokers break their habit. After all, cigarettes are legal; and the choice to smoke is freely made. Claims that some consumers are hopelessly addicted, having relied on fraudulent information and deceptive advertising, not only strain credulity but require proof. Equally objectionable, the industry will be required to finance health care for uninsured children. By what possible logic can that problem be laid at the doorstep of the tobacco companies? Selling tobacco to children is illegal; but no one has shown that the tobacco companies have broken that law. To hold a single industry financially liable because some families are unable or unwilling to insure their

offspring is no more than a bald transfer of wealth from a disfavored to a favored group.

Even if tobacco companies were held accountable for all smoking-related public health costs—including publicly funded medical care, group life insurance, sick leave, nursing home care, and lost payroll taxes—the excise tax on cigarettes generates revenue to the government in excess of those costs. Thus, if any wealth transfer is justified, it would be from those smokers who are covered by Medicare and Medicaid to those smokers who are not. The typical smoker, who is not on public assistance, has paid his share of public health costs, and then some. By contrast, the nonsmoking taxpayer, presumably the financial beneficiary of the tobacco settlement, has not been burdened and should not, therefore, be rewarded.

The first comprehensive analysis of the social cost of smoking was published in the *Journal of the American Medical Association* in 1989 by a team of researchers from the RAND Corporation.[5] The RAND study established the framework for subsequent research, setting forth two key principles. First, if a smoker does not die from a smoking-related illness, he will die from something else. Accordingly, the relevant social cost is not the entire amount spent on his illness, but the difference between the amount spent and the amount that would otherwise have been spent if he had not smoked. Second, premature death from smoking can produce long-term financial *benefits* in the form of lower retirement costs and reduced nursing home care. Those benefits are an offset to outlays for medical care, sick leave, and group life insurance.

Researchers at RAND concluded that the public health cost of a pack of cigarettes in 1986 dollars was 15 cents. The Congressional Research Service updated that estimate to 33 cents, in 1993 dollars.[6] Smokers were then paying an average of 53 cents per pack in excise taxes—60 percent more than the costs they were imposing. In a separate study, Duke University economist W. Kip Viscusi reworked the RAND data and found that medical care, sick leave, and group life insurance cost approximately 51 cents per pack[7]—still lower than the excise tax, even without offseting for retirement and nursing home savings. With all expenditures *and* savings factored in, the total external cost per pack, according to Viscusi, was 25.3 cents—less than half of the prevailing 53-cent tax.

Thus, when it comes to reimbursing the public treasury for health costs associated with tobacco, the essential premise of the settlement is wrongheaded. Any fair-minded assessment of the public burden must take into account, first, the excise tax receipts that already compensate for smoking-related health costs and, second, the costs that the public would otherwise have incurred if the smoker had not smoked. Quite simply, tobacco companies and their customers have more than paid their way. Indeed, federal and state governments have benefited handsomely from excise tax collections, and therein lies one reason they have been unwilling to make cigarettes illegal.

Myth #5: A legislated settlement is the only way to resolve this serious problem.

Disputes between private parties must not be resolved by legislative fiat. The settlement emerged after secret negotiations involving defendants with the boot of government resting on their necks, state attorneys general who seek to replenish their Medicaid coffers without imposing unpopular tax increases, and advocacy groups that have subordinated the rule of law to their professed health concerns. Our courts, not our legislatures, are constituted for the resolution of such disputes. They are the proper forum to adjudicate the one legitimate argument for holding a tobacco company liable notwithstanding a consumer's decision to smoke: a smoker is not free to choose if he relies on fraudulent advertising or if he is addicted as a minor and unable to quit once he is capable of appreciating the risks.

Weighing against that argument, however, is evidence that 46 million people have quit smoking. Moreover, as tobacco critic Richard Kluger concedes: "Whether one categorizes smoking as a . . . vice, a dependency, or an addiction, it was commonly known—and had been for decades—to be hard to stop once begun. Nor could anyone say for certain how much of a daily dose served to induce addiction; tolerance differed from person to person." Kluger concludes that there is no

basis to "claim that the cigarette makers had massively imposed an intentionally addicting product on an innocent public that had little knowledge or choice in the matter."[8]

The hazards of tobacco were well-documented as long as 400 years ago. Indeed, throughout this century incessant warnings have emanated from thousands of health publications, medical professionals, and government entities. By the 1920s, 14 states had actually prohibited cigarettes. Printed health warnings appeared on every pack of cigarettes lawfully sold in the United States for the past 30 years. To be unaware of the danger of tobacco is to have been hopelessly oblivious.

In any event, those are the claims and counterclaims that should be resolved in court. Our adversarial system—including evidence, trial, and jury verdict—must be permitted to function. Smokers, insurance companies, and the industry should fight it out, applying traditional principles of tort law. State Medicaid systems may sue like any other insurer; but they are subject to the assumption-of-risk defense and they must prove case-by-case causation and damages. If a plaintiff can show that he was defrauded, unaware of the risks, and addicted by the industry's deception, then he should prevail. But the rules must be objective and evenhanded—the same rules that are applied against any other defendant.

As for Congress, if it truly wants to discourage tobacco consumption, it can start by eliminating the industry's subsidies. There can be no rational explanation why the Department of Agriculture expends tax dollars in promoting an activity that the FDA is attempting to inhibit. Despite that unassailable proposition, we are treated to the spectacle of Dan Glickman, secretary of agriculture, announcing to the applause of North Carolina tobacco farmers—two months after the parties signed the "Proposed Resolution"—that "[o]ur support for the tobacco program is as strong as ever."[9]

Regarding tobacco and its dangers, the private sector is capable of gathering and disseminating the requisite information. Then, based on that information, we can each decide whether to purchase a particular product. The controlling principle is the one laid down by former Senator George McGovern, who lost his daughter to alcoholism and thus knows firsthand what can transpire when a risky product is abused. Senator McGovern points to "those who would deny others the choice to eat meat, wear fur, drink coffee or simply eat extra-large portions of food." He cautions that "the choices we make may be foolish or self-destructive [but] there is still the overriding principle that we cannot allow the micromanaging of each other's lives. . . . [W]hen we no longer allow those choices, both civility and common sense will have been diminished."[10] □

1. Richard Scruggs, remarks to the Federalist Society, National Conference on Civil Justice and the Litigation Process, September 12, 1996, transcript, p. 188.

2. Stephen Rothman, "Tobacco Industry Defense Move Curbed by Fla. Judge," Reuters, February 3, 1997.

3. Dwight R. Lee, *Will Government's Crusade Against Tobacco Work?* (St. Louis: Center for the Study of American Business, Washington University, 1997), pp. 2–4.

4. Ibid., p. 4.

5. William G. Manning, et al., "The Taxes of Sin: Do Smokers and Drinkers Pay Their Way?" *Journal of the American Medical Association*, March 17, 1989, p. 1604.

6. Jane G. Gravelle and Dennis Zimmerman, *Cigarette Taxes to Fund Health Care Reform: An Economic Analysis* (Washington, D.C.: Congressional Research Service, 1994).

7. W. Kip Viscusi, "Cigarette Taxation and the Social Consequences of Smoking," in James Poterba, ed., *Tax Policy and the Economy* (Cambridge, Mass.: MIT Press, vol. 9, 1995), Table 5.

8. Richard Kluger, *Ashes to Ashes: America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris* (New York: Alfred A. Knopf, 1996), p. 760.

9. "Washington Assures N.C. Tobacco Farmers," Reuters, August 27, 1997.

10. George McGovern, "Whose Life Is It?" *New York Times*, August 14, 1997, p. A35.

Food for Thought

It may seem strange at first, but one of the great virtues of anything "private" is also an obstacle to making its case to a skeptical public. That virtue is this: if it's private, it will be held to a higher standard than its "public" counterpart.

Indeed, a favorite ploy of statists is to judge a private activity, institution, or proposal against some imagined ideal, which makes it automatically defective by comparison every time. It often doesn't matter how superior the private sector is over the public sector; if what's private comes with any warts at all, the statist usually says, "Obviously we can't do that, so let's stick with government"—even if *it* is a wart hog.

Should first-class letter mail delivery be privatized? The statist objects by suggesting that if private carriers handled the mail, the cost would rise and some people wouldn't get their mail at all. So we keep the government post office, which delivers ever-higher costs more reliably than it delivers the mail itself.

Should education be handled in the marketplace, rather than by government? The statist warns that if education were privatized, some people might get rich while some children fell through the cracks. So we keep the education status quo, wherein teacher union leaders rake in six-figure salaries as millions of children, at great expense, go uneducated. Given the fact that literacy among black slaves in the antebellum south was 50 percent at a time when it was a criminal offense to educate blacks, one has to wonder if we'd actually be better off in our inner cities today if we closed down the public schools and made education illegal.

This mentality translates into an untenable situation when it dominates public debate: it means we end up tolerating the awful to avoid the better-but-less-than-perfect. To seize the high ground, we must be equipped to explain vividly the shortcomings of government action.

No better example comes to mind than one in which I was recently and personally involved. I was arguing before a large audience that if one is not yet sold on privatizing the schools, then at least privatizing certain aspects, like food service, could save the taxpayers some money and improve the quality. But to the approval of many nodding heads, the first questioner revealed the bias I've described above: "If private firms take charge of the food, the children will be at risk. Private companies are interested only in profit and they really don't care about the kids. To make money, they'll cut corners and who knows what they would end up serving for lunch. Keep our cafeterias public, not private, because government has only the kids' best interests in mind."

That objection sounds plausible only until you look at the real world. The fact is that while problems have arisen in both public and private cafeterias, private ones usually have stronger incentives to prevent them from occurring in the first place and to fix them quickly when they do happen. I drove home the point with a poignant story.

Lawrence W. Reed, economist and author, is president of the Mackinac Center for Public Policy, a free-market research and educational organization headquartered in Midland, Michigan.

If you think public cafeterias are safer, I said, you didn't see a revealing story in the *Detroit News* on October 17, 1996. Headlined "Many School Cafeterias Unclean: Health Inspectors Find Mice, Bad Food At Area Sites," the article revealed that inspectors "found mice and water bugs scurrying in kitchens, rotten food, half-cooked hamburgers and cafeteria employees who couldn't wash their hands because sinks were inaccessible. . . ."

Eight out of ten public school cafeterias in Metro Detroit were found to be in violation of one or more critical health regulations, putting many children at risk for food-borne illnesses. Two hundred public schools—all in the Detroit area—were cited for at least six critical violations when inspectors made a sweep of the schools. Cockroaches, flies, spoiled food, and staphylococcus bacteria were common.

Incredibly, a survey by the *Detroit News* over a three-year period found that "Hundreds of children have fallen ill from bad school food" while many others "are believed to get sick in ways that go unreported."

The problem is not peculiar to Detroit's public schools. The same article points out that schools in New York City (and by inference, those in other big cities as well) are plagued with similar problems. Edward Stancik, a New York Special Commissioner who investigated the schools, had this to say: "School officials don't seem to get it. Kids are getting sick, workers are untrained, food is uneatable."

By contrast, nearby schools with privatized cafeterias look pretty good. The city of Hamtramck, which is completely surrounded by the city of Detroit, has "one of the cleanest cafeterias" in the area. It's managed by the Marriott Corporation, which inspects the food service facilities it manages on a monthly basis and requires workers to take a food-handling class. Cafeterias run by the Detroit public schools are inspected only once a year and typically require only the managers (not food service workers) to be trained in safe handling of food.

Nationwide, an industry estimate puts the number of privatized public school cafeterias at approximately 10 percent of all districts, excluding small rural districts. That means that the great majority of public-school cafeterias are not privatized—representing a huge potential market for firms able to offer lower costs and improved service, and a potentially safer environment for children. What on earth makes anyone think that government restaurants are better than private ones?

Private food-service companies are usually very successful at what they do because they know they can lose the business quickly if they turn in a poor performance. And, in many places, they feel the competition from nearby fast-food restaurants that attract students in the higher grades. Says Paul Kelly, business manager for the Pocono Mountain School Board in Sweetwater, Pennsylvania, "Companies can offer more resources. You get the clout and economies of scale in purchasing. You get research and insights into products such as milk and biodegradable materials." Those are the facts I shared, in so many words, with my audience. If my reading of the consensus at the end of the meeting is accurate, I think it worked.

That was one small battle in a great big war of ideas that the advocates for free markets are waging every day of the week. It made me appreciate an important fact: winning the war requires that we not let the other side get away with judging free markets against perfection while they judge their own deficient prescriptions against mere good intentions. □

THE FREEMAN
IDEAS ON LIBERTY

Roads Without the State

by Peter Samuel

Can there be roads if the government doesn't build them? The first roads were probably not even made by humans but by animals. Herds of buffalo, deer, and other grass foragers pushed aside the shrubs and trampled down the grass to make tracks for their mass migrations—tracks that humans exploited.

Many of the first manmade improvements to those tracks were made by the military because the deployment of armies depended heavily on reliable supplies. There's a saying among military logisticians that soldiers fight on their stomachs, so in order to keep those stomachs filled, armies needed wheeled carts to bring in the supplies of grain, meat, and other provisions to sustain the bodily energy and the morale of the soldiers. Military engineers were among the first road and bridge builders. Because the state depended on the military for its survival, it has always been interested in roads.

At the same time, roads have always been a vital part of peaceful trade and commerce, and have served the movement of people in search of new opportunities. So a tension has always existed over the role of the state in assuring good roads. They have always served state and private purposes.

Roads have varied from the apparently haphazard and irrational in organization to the almost mindlessly regular. George Washington complained in his diary that New England's roads were "amazingly crooked," but noted quickly that this was designed "to suit the convenience of everyman's fields." People built local roads to suit their own purposes, making things difficult for distant travelers. Washington, a great traveler in his first profession as a surveyor and then as an officer in the war against the French, wrote acerbically that the circuitousness of local roads made finding one's way difficult because "the directions you receive from people are blind and ignorant."[1]

In Washington's time it was regarded as an act of enlightenment to have the military engineers lay out a new town according to a rectangular grid—thus the layout of central Philadelphia, old town Alexandria, Washington, D.C. (with diagonals added), and Manhattan north of the Dutch Wall Street area. Among the quite mindless applications of the grid, consider hilly San Francisco!

Such "grid" road networks were laid down by rulers going back to ancient Egypt and Assyria, though the design is normally attributed to Hippodamus, the Greek follower of mathematician Pythagoras, for its application in the building of the town of Miletus following its sacking by the Persians in 440 BC. The grid Hippodamus laid down in Miletus was extolled as a triumph of "reason" over the "wanton riot of nature,"[2] and "Milesian" road plans became widely applied in the classical world, especially by the Romans in their new towns, but also as far away as China.

Washington was not the only early American founder to take an enormous personal interest in roads. At Thomas Jefferson's initiative, the 1785 Land Ordinance Act specified that on land

Peter Samuel is editor and publisher of Toll Roads, *a monthly newsletter.*

in the territories beyond the original 13 states, farmers were required to deed 33-foot strips on either side of all the boundaries to provide 66-foot rights of way for roads, this being the estimated width needed for a horse and wagon team to execute what we now call a U-turn. The road geometry mandated by the act, which was reinforced in the Homestead Act of 1862, was an instrument of social and economic engineering in that it set a pattern for farm size and land subdivision over vast tracts of the west. It is easily visible today to passengers looking down on states like Iowa and Kansas from an airplane window.

Roads for Safety and Sanitation

Besides serving the ruler's military needs, roads were also seen as lines of demarcation for property and as safety and sanitation devices. They provided safety, it was hoped, by being wide enough to confine fire to a single city block. Sanitation was advanced by the roads' functioning as gutters for the drainage of waste water. That was perhaps the first "utility" associated with streets, followed by water, gas, electricity, and now telecommunications. The state was involved to adjudicate rights and responsibilities with respect to vehicular safety, trash disposal, and common rights of passage. Many roads were indeed commons in the sense that they were wide enough for livestock to graze and feed a bit while resting on a journey.

It was another kind of utility, the postal service, that enshrined in the Constitution the interest of the U.S. government in roads. Article I, Section 8, Clause 7, gives the Congress the power "To establish Post Offices and post Roads." Post roads were not defined, but in support of the postal service the Founding Fathers apparently gave the federal government broad powers over almost any roads in theory.

It is one thing to be granted a power, another to raise the funds to exercise it. From the earliest days of the republic there have been arguments about the fairest and best method to finance roads. Before the introduction of the spark-ignition engine early in this century, there was no feasible way of collecting a fuel tax. A fuel tax is feasible when the fuel used is manufactured at a small number of major refineries or distributed from major points. The taxman can track the fuel under those circumstances. But before petroleum, road vehicles depended on horse and ox power, and their "fuel" consisted of hay, oats, and other feed that was so highly dispersed, no tax system could possibly track them.

Involuntary Servitude

The most common early method of getting roads built was the corvée—a decree of the local court ordering all able-bodied men in an area to report with pick and shovel for a couple of days of local roadwork. The well-heeled were able to pay for substitutes to fill in for them. As trade developed further west, the attitude toward corvée changed because local people didn't see why they should engage in forced road labor on behalf of distant interests. It was one thing to band together with immediate friends and neighbors for mutual benefit. But it was quite another matter to labor for the benefit of through traffic—commercial carriers or travelers from far away. Whenever the corvée was stretched to road improvements that benefited outsiders, it broke down.

Three alternatives were available to corvée-maintained roads, alternatives that remain today: state-funded roads, nationally planned and funded roads, and private turnpikes. With this last alternative, investor-financed corporations would build and maintain a road based on user tolls. (The turnpike was literally the light-pike, or spear-like barrier, that was turned by the toll collector to let traffic pass.)

At the center of American transportation politics has been debate over how far each of these three models should be used. There have always been those favoring national planning and finance of roads. In 1808, at the request of the U.S. Senate, Treasury Secretary Albert Gallatin produced a national plan for highways and canals. He proposed federal construction of roads from the Atlantic-coast cities to Detroit, St. Louis, and New Orleans. In one passage of the report he asserted that public subsidies of this kind would increase national income by the full amount of any expenditure. A road, like any other investment, can only be assessed on its

likely revenues and costs, not on its general nature. But then public officials and bureaucrats, risking the money of others, have always been cavalier in such pronouncements. Gallatin's economic nonsense is repeated by enthusiasts for transportation subsidies to this day.

But if his rationale was faulty, there was a case for improved roads, and Gallatin's plans caught the imagination of congressmen. The Congress passed a bill to charter a special bank to raise $13 million over 20 years for Gallatin's national roads. The bill was vetoed in 1817 by President James Madison, who argued it infringed states rights. In so doing he averted national planning of highways for a while. A federally subsidized National Road between Cumberland, Maryland, and Wheeling, West Virginia (now US-40), had been built in the 1810s but the federal government did not have the money for its maintenance. Again there was contention. The Congress in 1822 passed a bill to impose tolls for maintenance of this Cumberland-Wheeling road. Again a president, this time James Monroe, intervened, vetoing the bill as unconstitutional. The issue of responsibility for roads was so big that it became an early test of the whole structure of the U.S. Constitution and produced some of the first presidential vetoes.

In a pattern that survives to this day, the Cumberland-Wheeling National Road was maintained by the states, with the amount of federal support varying from year to year, depending on the vagaries of political machinations in Washington, D.C. In general, government funding for roads was so poor in the age of horse power that turnpike corporations were the major mechanism for improving and maintaining roads. Some of them were what would now be called "public-private partnerships." The government provided charters and some subsidies or capital contributions. There was plenty of innovative financing; for instance, landowners subscribed to stock on condition that the toll road serviced their property.

Turnpikes as Investment Opportunities

Straight investor money was garnered too. In the early days of the republic, such turnpikes provided the main basis of intercity transportation. This was a major business. By some estimates, half the corporations formed in the first half of the last century were tollway companies. At least 10,000 miles of private toll roads were built in the first 60 years of the republic.[3]

The toll road was often the subject of controversy, political pressure, and changing rules. But it was a central economic institution and a major public utility in late eighteenth- and early nineteenth-century America. Local merchants, landowners, and farmers financed several thousand turnpikes in the northeast, and smaller numbers elsewhere—evidence of which remains in the name "pike" found on many now "free" roads. Investors knew that political interventions to cap toll rates, exempt classes of people from tolls by law, or improve competitive free roads could ruin a turnpike. So subscription to the stock was often made on other than strictly investment grounds. Some invested because they saw it as a civic duty or were subject to peer pressure. Some stock buyers wanted to influence the route of the turnpike to their own benefit. For example, the records of the Brandonville Turnpike Company in Virginia show that on June 6, 1847, one E. Brooke pledged $75 for stock "if it [the proposed turnpike] goes within ten yards in front of my house."[4]

A small minority of the turnpikes gave their investors a good return on their capital. Other pikes were badly managed or simply ill-conceived, and failed. And competing technology—the steam railroad—came along to supplant the gravel-and-dirt pikes at least for long-haul transportation from about 1850 onward. With respect to animal-drawn vehicles, the turnpikes' grand era was 1780 to 1840. Some lasted to late in the new century; others went into decline or were taken over by local authorities. In most cases, the localities inherited from the turnpikes much improved roadways and bridges that would never have been built otherwise.

The Automobile Era

In the early years of the automobile, the gasoline tax was seen as a sensible user fee for roads. The federal Department of Agriculture gained

support for "lifting farmers out of the mud" with a program of tax-financed rural roads. In the 1920s a Federal Bureau of Public Roads was established. It successfully pushed the notion that a nationally planned network of roads was needed and that only government funding would ensure that this could be developed.[5] The modern motorway, or freeway, especially suited to tolling because of its limited access and egress points, was not implemented until the 1930s. That coincided with the Great Depression's (erroneous) discrediting of capitalism and its celebration of the state, as seen in the New Deal's government activism.

Government dominated highway building. In New York City, Robert Moses, the great city-government activist, pressed tax money into a system of expressways to supplement the early parkways (essentially low-speed freeways in a park-like setting). The parkways drew on the inspired park designs of Frederick Law Olmsted. Lake Shore Drive in downtown Chicago, which opened to traffic in 1933, is described as the first "superhighway" that discarded the pastoral setting of the parkway for the unapologetic utilitarianism of a mass automobile movement system. The year 1937 brought the first proposal for a metropolitan-wide network of freeways (though described then with the British term "motorway") in Los Angeles, an idea promoted by a city engineer and the Automobile Club of Southern California. The first freeways in Los Angeles were built from 1938 to 1940—the Arroyo Seco (later renamed the Pasadena Freeway) and a one-mile piece of the Hollywood freeway. Their funding was a patchwork of government money, including cash from the federal Works Progress Administration, city funds, and the first gas taxes, which were imposed by local governments. The next L.A. freeways were funded by the feds under the National Strategic System of Roads umbrella, ensuring priority in allocations of administered supplies of steel and cement.

The first auto-era roads to be tolled—by the state highway department—were Connecticut's Merritt and Wilbur Cross Parkways in 1937. Various state turnpike authorities were being formed in the war years, following the example of the Pennsylvania Turnpike, which opened its first toll motorway in 1940, using the right of way and works of "Vanderbilt's Folly"—an uncompleted set of tunnels and embankments from the abandoned New York Central's south Pennsylvania railroad. The idea for the Pennsylvania Turnpike, the first of the big cross-state turnpikes, was credited to a lobbyist, William Sutherland of the Pennsylvania Motor Truck Association and Victor Lequoc, an employee of the State Planning Agency, whose role was to garner the maximum anti-depression money by coming up with projects that would impress the federal government.[6] These government-owned corporations pioneered the earliest sections of the interstate highway system and financed some 2,100 miles of tolled freeways between 1940 and 1956, when the Federal-Aid Highway Act introduced a gasoline tax to finance a highway trust fund out of which the U.S. government would fund 90 percent of the cost of new interstate freeways. That act grandfathered the existing toll roads into the interstate system, meaning that they got convenient connections with the new untolled freeways plus nice federal interstate shield signs.

The act, however, banned any new tolls on interstates. In one of the most spectacular misuses of economic modeling, the U.S. Bureau of Public Roads purported to analyze the feasibility of toll financing and estimated that only 172 miles out of an initial 14,336-mile interstate system could be supported by tolls! Defense and economic arguments were advanced for the gas-tax–financed system, which built about 36,000 miles of freeway in the next 20 years. Some 2,500 miles of new toll roads were built by state turnpike authorities during this period, either extensions of pre-existing toll roads or, as in Florida, Oklahoma, and Kentucky, freeways that local politicians could not get put on the interstate map and funded by the feds. The tolled mileage peaked in 1975 at 4,400 miles. From the late 1960s de-tolling became common. Toll plazas were nuisances, the site of stops and queuing that seemed an anomaly on an otherwise high-speed highway. So it was generally popular for politicians to promise to get rid of the tolls. Moreover, the states could get federal grants for reconstruction and improvement of the grandfathered toll roads only by de-tolling them.

By 1990 there were 42,000 miles of non-toll interstate freeways, 9,500 miles of state-financed non-toll freeways, and 4,100 miles of turnpike.[7] This decade has seen few new interstate freeways and about 300 miles more of state and local government-built turnpike, including the first major toll roads in California. And since 1995 two investor-financed highway projects have been built, totaling 24 miles—the Dulles Greenway in Loudoun County, Virginia, and 91-Express in Orange County, California.

The Market Alternative

Given our history of state dominance of highways this century, we have huge vested interests in its continuance: state highway bureaucracies, an industry of contractors and consultants with connections to those bureaucracies, and legislators for whom highway pork projects are part of the political medium of exchange. Two arguments are deployed that buttress the statist status quo for tax-financed highways—that taxes are the most practical and most fair way to pay for roads. Both are widely believed, but dubious. On fairness, it is said to be more burdensome for the worker earning $30,000 or the welfare mom on $15,000 to pay a $2 toll than it is for a rich person making over $100,000. That is true, of course. Any expense is less burdensome to the rich than to the poor, which is a major reason that people work. The inexorable logic of the tolls-are-unfair argument is that prices for goods and services generally are unfair, which leads to a case for socializing everything and distributing goods through the state according to some godly judgment of "need." But in the real world, where capitalism and markets have been found a rather practical way of getting people to work on behalf of one another via exchanges of goods and services, prices are central.

Indeed, the lack of pricing and markets for highway services is at the root of many of our highway problems. There is a constant moan from people about the lack of money for roads, a complaint you never hear in respect of building new electric generating plants, telephone lines, computer factories, car plants, or pig farms. Because those products sell for a price, their producers are able to raise money by going out into the capital markets with estimates of the profits they may be able to generate through their proposed investment. So if highways were priced with tolls, the highway service providers could raise capital for good toll highway projects based on the prospective stream of future revenues.

Such bottom-line-oriented managers are likely to run their highways much better than civil servants working in state agencies. The civil servant, whose funding comes from the legislature, will be helped by the poor condition of the roads. Roads in disrepair will draw attention to the supposedly dire need of the state agency for more money in the next budget. The worse the condition, and the more aggravating the traffic jams, the more likely state managers are to gain political support for generous funding. No reason to schedule repaving at night, or to quickly move the overturned tractor trailer, or do life-cycle cost analysis of more robust initial construction versus maintenance or rebuild. No one ever calculates returns on capital at a state highway administration or sees the adverse results on their income of causing traffic jams.

The second argument against tolls is that they are costly and cumbersome to collect. But compared to what? Taxes are also costly to collect. The tax agencies employ vast staffs and impose large costs on taxpayers. The various "highway user" taxes imposed on fuels are a huge object of evasion. Gasoline used on farms or boats, for example, is tax-exempt. So is diesel fuel used in construction or shipping or as heating fuel. Thus, from organized crime down to small struggling gas stations and tanker drivers, people heavily exploit the profit to be gained from classifying fuels as tax-exempt, then quietly selling them for transportation use as tax-paid.

Moreover, the politicians for so long have diverted money from the so-called highway trust fund to nontransport purposes that most citizens understandably resist proposals for higher gas taxes. They doubt that they get highway value for the gas tax. Tolls are often the politically practical only way to get needed new highways financed and built.

Toll collection via the traditional toll plaza is, of course, usually cumbersome and costly. But advances in radio and imaging allow new roads to levy tolls on the fly. Most existing toll roads are being retrofitted so that motorists with transponders (a battery-powered radio device the size of a cigarette pack) can drive through toll plazas and pay by mail or credit card without stopping. The first toll roads are now operating without any plaza at all—the investor-built 91 Express in California and 407 Express Toll Route in Toronto. Motorists using 407-ETR acquire a toll transponder, allowing the system to identify their accounts on entry and again on exit, compute their mileage, apply the appropriate time-of-day toll, and debit their accounts. If a motorist doesn't have a transponder, the license plate is photographed, and a toll bill arrives each month in the mail.

With these technologies, the cost of toll collection can be cheaper than tax collection, and the hassle of paying on the road is ended. Some raise "Big Brother" concerns, but they apply equally to requirements for Social Security numbers, vehicle license plates, and drivers licenses. Concerns can be mitigated by anonymous transponder accounts, independently verified and routine purging of toll data, and the argument, "If you really are concerned that information about your movements are in a toll computer, then don't use the toll road."

Market Practices

The new automated toll roads are bringing market practices into highway service, for example by charging higher tolls at peak than at off-peak times. They do that because they make more revenue that way. The time savings from using a free-flowing toll road are much greater in rush hours than nonrush hours, so motorists are prepared to pay more then. Variable pricing makes business sense, too. Highways can operate much more efficiently if they can persuade some motorists to defer their trips to times when there is spare capacity, or to use mass transit or car pools. Variable tolls are thus a powerful tool for increasing transport productivity. They can be used to prevent backups and all the resultant frustration, pollution, energy use, wasted time, and accidents that accompany unpriced or fixed-price roads.

Asked recently to devise a method to manage smooth efficient traffic flows on high occupancy vehicle lanes under construction on State Route 91 in the western portion of Orange County, California, consultants said, "variable tolls." It is the way commodity markets work, the way we get our food, our housing, and most other things. The idea is old and tried and proven. New technology allows it to be implemented on highways, lifting the heavy hand of statism from motorists at last. If a case ever existed for state provision of roads, it exists no longer.

A variety of methods are available to reduce the role of the state in the provision of roads:

- The various state and local government-owned turnpikes, toll bridges, and tunnels can simply be sold off to the highest bidders. There are about 100 of these, and they collect about $5 billion annually in tolls and are probably worth $20 billion to $30 billion.
- The maintenance of highways is increasingly being privatized, just as construction of highways has always been based on competitive contract. But government can get out of the road business by reducing gas taxes and calling for proposals from business for funding roads. Eight states already have mechanisms in place for investor-financed companies to build new roads as toll projects, and a number of projects are under way. The advantages of this are that investors rather than taxpayers take the risks.
- Existing nontoll highways can be either sold off by the states or franchised to business in return for the rights to levy tolls, sell off utility rights-of-way, and run service and refreshment concessions. Users of the toll roads should be exempted from gas taxes and other state charges that would otherwise have gone to the upkeep of the roads. With commercial ownership and management, highway service will be more responsive to motorist needs than state "pork" roads.

It is possible to bring some of the benefits of the marketplace by introducing tolls while

maintaining state ownership. That is what the Germans plan for their autobahn system, and it seems to be the major British approach. But full privatization would transfer ownership to investors and allow the assets to be traded, introducing the additional market discipline of competition in both consumer and capital markets. By allowing takeovers, consolidations, and spin-offs of highway assets, the markets would ensure that highways are managed for the best return on capital—the dynamic that gives us our food, our fuels, our housing, our electric power, and all the rest of what goes into our standard of living. □

1. M. G. Lay, *Ways of the World: A History of the World's Roads and of the Vehicles that Used Them* (New Brunswick, N.J.: Rutgers University Press, 1992), p. 11.
2. Ibid., p. 13.
3. José Gomez-Ibañez and John R. Meyer, "Private Toll Roads in the United States," Report for the U.S. Department of Transportation, Harvard University, 1991, p. 2.
4. Robert Flemming Hunter, "The Turnpike Movement in Virginia, 1816–1860," Ph.D. thesis, Columbia University, New York, 1957, p. 33.
5. Bruce E. Seely, *Building the American Highway System: Engineers as Policymakers* (Philadelphia: Temple University Press, 1987).
6. Dan Cupper, *The Pennsylvania Turnpike: A History* (Lebanon, Pa.: Applied Arts Publishers, 1990), p. 7.
7. Gomez-Ibañez and Meyer, p. 7.

Other Sources

This article draws heavily on the work of the bicentennial celebration book *America's Highways 1776 to 1976: A History of the Federal-Aid Program* (no author named), U.S. Department of Transportation, U.S. Government Printing Office, Washington, D.C., 1976. It also relies on the work of Daniel B. Klein, Santa Clara University, California, the premier economic historian of nineteenth-century turnpikes. See "The Voluntary Provision of Public Goods? The Turnpike Companies of Early America," *Economic Inquiry*, Western Economic Association International, October 1990, pp. 788–812, and Daniel B. Klein and John Majewski, "Economy, Community and Law: The Turnpike Movement in New York, 1797–1845," *Law and Society Review*, Vol. 26 No. 3, 1992, pp. 469–512. Also useful is Robert Flemming Hunter, "The Turnpike Movement in Virginia, 1816–1860," Ph.D. thesis in political science, Columbia University, New York, 1957. And on the first turnpike in the automobile era the authoritative work is Dan Cupper, *The Pennsylvania Turnpike: A History*, (available at Turnpike rest areas, and from Applied Arts Publishers, P.O. Box 479, Lebanon, PA 17042).

THE FREEMAN
IDEAS ON LIBERTY

Who Pays the Price for Motherhood?

by Ross Levatter and Rebecca Geshelin

Congress, with President Clinton's approval, recently mandated that health maintenance organizations (HMOs) permit women giving birth to stay at least two days in the hospital. Many physicians applaud the mandate. But mandates, even for praiseworthy actions, have pernicious effects.

No HMO opposes patients staying an extra day—even an extra month—as long as they pay for the service. So what is really at issue is the provision of extra services at no additional cost, a condition with which physicians have become intimately familiar in the last decade. Such services won't be uncompensated for long. HMOs, forced to provide additional services, will simply raise rates. Since all HMOs face the same mandate, competition won't keep the prices down. Everybody will end up paying more so pregnant women can obtain a benefit they can pay for themselves if they really want it.

But don't women *need* two days in the hospital after delivering a child? The answer, of course, is: not all of them. Some women still bear children at home. Mandating a minimum not required by all women makes no sense.

That mandate pales, however, beside the more pervasive subsidy granted to pregnant women in general, a subsidy that grossly distorts the health-insurance market. We are referring to mandates for pregnancy coverage in employer-purchased health insurance, an essentially middle-class phenomenon. (Government-provided health care for the poor, including prenatal care, is not discussed in this article.) The fact is that routine pregnancy should not be an insurable event at all.

The Role of Insurance

Insurance aims to keep certain unforeseen disasters—from fires to auto accidents to devastating disease—from financially ruining the insured. The goal is not to prepay for planned events; that's what savings accounts are for. Paying for services like pregnancy and birthing through insurance leads to the twin problems of adverse selection (those who purchase the insurance are those most likely to be planning a pregnancy) and moral hazard (purchasing insurance increases, at the margin, the likelihood a pregnancy will occur). The fact that pregnancy is a desired and elective state guarantees adverse selection. Mandates, which limit adverse selection by extending the coverage to more people, magnify moral hazard.

University of Chicago law professor Richard Epstein made these points in *Forbidden Grounds* (Harvard University Press, 1992), "Normally pregnancy is regarded as a voluntary and welcome event, easily distinguished from any disability for which insurance is usually sought and extended. Because pregnancy is desired, and because women largely control whether and when to become pregnant, the evident moral haz-

Ross Levatter, M.D., is a physician who writes often on economic and political issues; Rebecca Geshelin is a financial director with an applied economics background. *The authors thank David Dorn for providing details of the appropriate federal laws and regulations.*

ard makes pregnancy a poor candidate for any form of insurance." Epstein also makes the indelicate though economically correct point that "women are more likely to choose to become pregnant if they can receive disability payments for an outcome they regard as beneficial."

Despite these perverse outcomes, Congress passed the Pregnancy Discrimination Act in October 1978 (amended under the Civil Rights Act of 1991), requiring employers with 15 or more employees to include pregnancy coverage in any offered health insurance benefits. Consider the perverse incentives this creates. Employers, of course, don't have to provide health insurance. Insurance versus higher cash income is a routine tradeoff employers and employees bargain over. Given the uneven tax treatment of the two types of compensation (employer-purchased health insurance is paid with pre-tax dollars while employee-purchased health insurance is paid with post-tax dollars), employees tend to prefer health insurance over additional salary at the margin, while the employer is relatively indifferent.

That tax treatment distorts the market. The market is then further distorted by the Pregnancy Discrimination Act (PDA). If provided at all, group health insurance must be purchased for everyone in the group; all employees are eligible by law. The PDA, by mandating that pregnancy must be covered if health insurance is offered, raises costs dramatically, shifting employers away from offering coverage if they are unable to lower cash wages.

All mandates, obviously, increase costs. But why does pregnancy coverage increase them so dramatically? Because pregnancy is not a random event (as disease is). Since pregnancy is common and doctors know their payments are covered by insurance, costs skyrocket. Epstein's adverse selection and moral hazard principles apply.

From a business point of view, there may be something even worse than a dramatic increase in costs: an unpredictable increase. Since pregnancy is not a random event, statistical predictions don't apply. Calculating business costs associated with health insurance becomes more a matter of reading entrails than actuarial tables. In such circumstances, employers do not remain indifferent to the choice between wage increases and additional health benefits.

Harm to Low-Income People

As health-insurance costs rise, those at the bottom of the employment ladder are frozen out. An employer can ask an employee to choose between a $60,000 salary or a $50,000 salary plus $10,000 of health insurance. An employer cannot ask an employee to choose between a $15,000 salary and a $5,000 salary plus $10,000 of health insurance.

Although mandated pregnancy coverage is probably the government's most expensive health mandate, it is by no means the only one. Scores of mandated coverage items permeate the federal and state regulations, grossly distorting negotiations between employee and employer, and between doctor and patient.

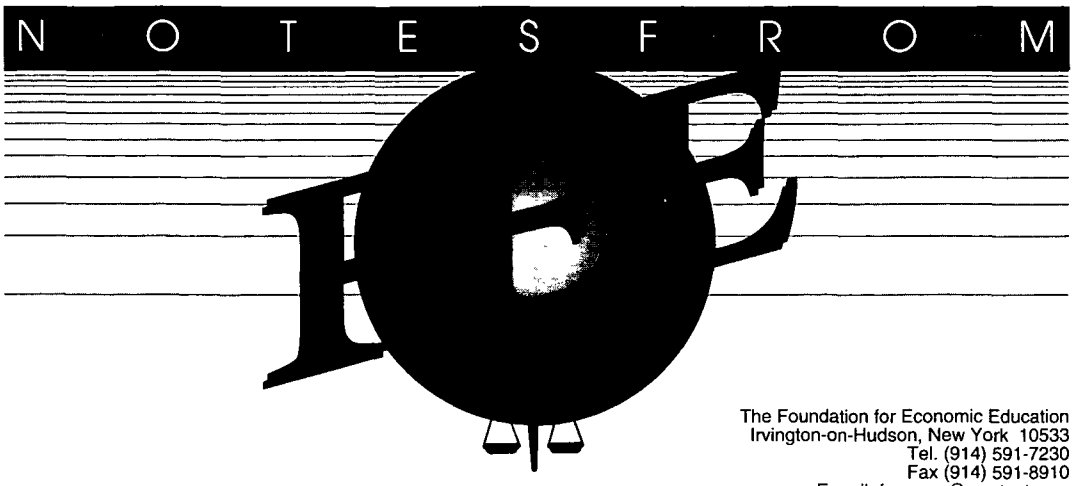
Over the last decade, employers have tried several approaches to circumvent insurance mandates. Some dropped coverage altogether, paid their employees more, and urged them to purchase insurance on their own. (Many employees didn't, of course.) Some large companies have self-insured, which often eliminates the legal mandates. Self-insurance, however, is typically more costly and less efficient than purchasing insurance from companies that specialize in providing it. So government mandates push people to forgo the benefits of the division of labor.

The final irony is that the politically imposed mandates for pregnancy coverage (and other mandates) are a primary reason that many Americans lack health insurance. They've simply been priced out of the market. You'll recall that First Lady Hillary Clinton deplored that state of affairs and used it to justify her attempted socialization of the health-care market, even though the government mandates were a major factor making insurance so expensive. This is a medical microcosm of Ludwig von Mises's point about the instability of a mixed economy. The logical consequences of one intervention lead either to repeal or a new and more pervasive intervention. We are still suffering from not having learned his lesson.

Against Motherhood?

But how can you be against health insurance for pregnancy? Isn't that like being against

NOTES FROM



The Foundation for Economic Education
Irvington-on-Hudson, New York 10533
Tel. (914) 591-7230
Fax (914) 591-8910
E-mail: freeman@westnet.com

January 1998

Bill Gates, Philanthropist

Let's review the familiar refrains on charitable giving. Social democrats criticize tycoons for not giving more of their wealth to charities. Business people are repeatedly admonished to "give something back." The implication is that commercial profits are *taken* from others, and decency demands that the lucky takers return at least part of their booty to those from whom it was extracted. Bill Gates, in particular, has come under increasing fire for not shoveling a substantially greater share of his $40 billion fortune into nonprofit causes.

In this light, Ted Turner's recently announced gift of $1 billion to the United Nations is widely commended. Among Turner's admitted aims is to shame other moguls into donating more of their wealth to charities.

Free-marketeers, in contrast, point out that profits are the reward for good and creative efforts. Because profits represent only a small portion of entrepreneurs' net additions to society's wealth—and because no business can profit in the market without contributing *at least* as much to society as it earns in profits—market advocates note that there is nothing to give back. Profits obtained in the market are *earned*, never taken.

The free-marketeers are correct. But even many market supporters assert that the greater an entrepreneur's charitable giving, the more admirable is that entrepreneur. The pro-market *Economist*, for example, recently hinted none-too-subtly that Bill Gates is less admirable than is George Soros. The reason is that Soros gives away a much larger share of his wealth to charities than does Gates.

The Economist is wrong to deride Gates.

In fact, if Bill Gates gave away a larger portion of his wealth to charities he would likely *reduce* the welfare of others rather than increase it. (Gates is just one example. Everything said about him here applies to all successful entrepreneurs.)

When discussing Gates's $40 billion fortune, people imagine something like the following: If Gates would spread, say, three-quarters of his wealth around to the poor, to colleges, and to nonprofit foundations, each of these groups would be much better off, while Gates himself would still have a tidy $10 billion in his bank account! Because $10 billion quite adequately provides a lifetime of luxurious living, Gates is inexcusably greedy for not giving away a hefty chunk of his wealth.

The trouble with all of those who imagine this scenario is that they mistakenly assume that Gates consumes his entire fortune. It's true that *if* Gates liquidated all of his portfolio he could gorge himself on tens of billions of dollars worth of consumption goodies. Like most wealthy people, however, he doesn't do that. Contrary

to media insinuations, Gates doesn't have $40 billion in cash or in his checking account. While he may spend several million dollars annually for his own consumption, the vast bulk of his assets is invested in Microsoft stock.

And it's because the vast bulk of his fortune is in Microsoft stock that Gates would likely *harm* society if he were stricken with an acute spasm of generosity and gave away a large bundle of his fortune. Here's why.

Gates is phenomenally good at pleasing consumers—that is, at creating wealth for others. His proficiency at this vital chore is proven by all the recent caterwauling by Microsoft's rivals who are irritated that they must compete against this mighty consumer pleaser. If Gates and Co. were sufficiently inefficient, Netscape, Novell, and other rivals of Microsoft wouldn't howl endlessly to the government and to the press for pity.

What Bill Gates and Microsoft do *uniquely* well is to produce and market computer software. If Gates were to liquidate, say, $30 billion of his stake in Microsoft and give this sum to nonprofit causes, he would take an immense amount of capital out of a firm with a long record of creating wealth. Gates would withdraw $30 billion of assets from what he is proven to do best.

Because Gates could live just as well on $10 billion as on $40 billion, his personal standard of living wouldn't change. But the standard of living of the rest of us would fall. Society would be poorer with $30 billion of assets taken from Microsoft. To see why, ask what would happen to the wealth of the nation if, say, a gifted neurosurgeon liquidated his physical assets—his scalpels, his diagnostic machines, his examining rooms—and gave the resulting monies to the Sierra Club or to United Nations agencies.

Administrators at these agencies would be better off, but society would be poorer because this gifted neurosurgeon stripped himself of the tools he needs to do for others what he is proven to do best.

But isn't it possible that agencies receiving the neurosurgeon's charity will employ this money to produce at least enough wealth to offset the reduction in the supply of neurosurgery?

It is *possible* for nonprofit foundations to use these funds as productively as when they are used for neurosurgery. But this happy outcome is unlikely. Most nonprofit foundations are unable to measure the effectiveness of what they produce. Some nonprofits, no doubt (such as FEE!), produce great bang for the buck. But too many nonprofits—especially those actively seeking greater government intervention—produce either no or negative returns. The reason is that their managers, unlike Bill Gates, face no genuine market test of their effectiveness.

Moreover, too much charitable giving is done for show—to impress the chattering classes with one's devotion to the arts or with one's compassion for the latest *cause célèbre*. The ostensible beneficiaries of such giving ("the poor," "the red-cockaded woodpecker," etc.) are seldom the direct objects of the alms-giver's intentions.

In contrast, *all* business decisions are made to impress consumers—the people who actually stand to benefit from such decisions. When a successful entrepreneur takes monies from his business and gives it to charities, that person removes monies from a proven source of increased well-being and puts it into ventures that typically face no market test.

None of this denies that there are plenty of worthy causes deserving generous financial support. But each giver should choose wisely, avoiding giving to a cause just because it's the movement-of-the-moment. And entrepreneurs certainly ought never feel obligated to "give something back." Successful entrepreneurs have already created great wealth and opportunity for others.

If Bill Gates and other capitalists want to aid charities by reducing their own present *consumption*, that's grand. But I for one hope that entrepreneurs take to heart Gates's sage observation on charitable donations: "giving away money effectively is almost as hard as earning it the first place."

Donald J. Boudreaux
President

JANUARY BOOK SALE

Start the New Year with great savings on selected titles from the FEE catalogue. Hurry! Offer ends January 31, 1998.

FREEMAN CLASSICS				
Private Property and Political Control	173 pages	(P)	$14.95	**sale $7.00**
Public Education and Indoctrination	207 pages	(P)	$14.95	**sale $7.00**
Up from Poverty	207 pages	(P)	$14.95	**sale $7.00**
BOUND VOLUME OF ***THE FREEMAN*, 1995**	808 pages	(H)	$24.95	**sale $15.95**
BOUND VOLUME OF ***THE FREEMAN*, 1996**	855 pages	(H)	$24.95	**sale $19.95**
LORD JOHN E.E.D. ACTON				
The History of Freedom	100 pages	(P)	$7.95	**sale $3.95**
PETER J. BOETTKE, editor				
The Collapse of Development Planning	342 pages	(P)	$21.95	**sale $12.95**
CLARENCE B. CARSON				
Throttling the Railroads	143 pages	(H)	$12.95	**sale $7.95**
RICHARD M. EBELING, editor				
Global Free Trade: Rhetoric or Reality?	173 pages	(P)	$10.95	**sale $4.95**
ERIC W. HAGEN and JAMES J. WORMAN				
An Endless Series of Hobgoblins	161 pages	(P)	$9.95	**sale $6.95**
RUSSELL KIRK				
The Roots of American Order	559 pages	(P)	$14.95	**sale $7.95**
ROBERT LOVE				
How to Start Your Own School	178 pages	(H)	$12.95	**sale $9.95**
J. WILSON MIXON, JR., editor				
Private Means, Public Ends	230 pages	(P)	$14.95	**sale $9.95**
GARY NORTH				
Puritan Economic Experiments	74 pages	(P)	$5.95	**sale $3.95**
HANS F. SENNHOLZ				
Three Economic Commandments	47 pages	(P)	$4.95	**sale $2.95**
MARK SKOUSEN				
The Structure of Production	430 pages	(H)	$29.95	**sale $15.95**
MILLER UPTON				
The Great Society: A Second Opinion	36 pages	(P)	$2.95	**sale $1.00**

Postage & handling: Please add $3 per order of $25 or less; $4 per order of $26-$50; $5 per order of more than $50. Send your order, with accompanying check or money order, to FEE, 30 South Broadway, Irvington-on-Hudson, NY 10533. Visa and MasterCard telephone and fax orders ($10 minimum) are welcomed: (800) 452-3518; fax (914) 591-8910.

Booksellers and others who wish to order in quantity should call Renée Oechsner, at (914) 591-7230.

apple pie? Or motherhood, for that matter? Actually, it's only about being against subsidized motherhood. You can like apple pie but oppose the government's mandating a slice with every restaurant meal.

Mandated health insurance for routine, uncomplicated childbirth (medical complications of pregnancy and childbirth are insurable events) makes no more sense than mandated health insurance for baldness, myopia, or infertility. Like pregnancy, those are not diseases. Like pregnancy, they were until recently viewed as natural situations to which one adapted. Now, like pregnancy, they are conditions that can be improved by medical science. The question is: if medical science is used in that way, who should pay?

Health-insurance mandates increase costs for everyone, making coverage less affordable. That higher cost forces some people out of the health-insurance market. Those remaining are compelled to subsidize other people's cosmetic improvements, visual acuity, fecundity, and pregnancy coverage.

Analogies, of course, are always limited. There are differences between pregnancy and baldness, infertility, and myopia. For example, pregnancy is usually a consciously aimed at state while the others come to us unbidden. In this regard, baldness, infertility, and myopia—unlike pregnancy—resemble diseases. That makes them more like insurable events than pregnancy is. But to some extent and in perhaps subtle ways, the adverse selection and moral hazard problems still obtain.

Obstetricians, focusing on the many benefits of complete prenatal care, might oppose removing the mandate for insurance coverage. No one disputes the benefits. But again, the question is: benefits to whom? Are the beneficiaries clearly identified, and if so why don't they pay for the benefits themselves?

Some claim if people must pay for obstetrical care directly, they will forgo it. This is nonsense. Insurance doesn't routinely pay for cosmetic surgery or corrective-lens surgery or in vitro fertilization; nonetheless, plastic surgeons, ophthalmologists, and fertility specialists make good money offering those services. Like pregnancy, such procedures are largely elective and voluntarily paid for.

Should We Subsidize Children?

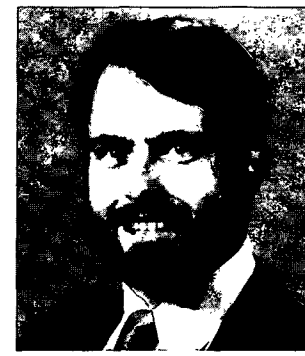
Are the subsidies justified by the importance of children to society? People chose to have children for all of recorded history without requiring subsidies of this sort. They would continue to do so even if the subsidies ended because most people want children. It is unnecessary to subsidize choices people already are prepared to exercise. Moreover, you *can* have too much of a good thing.

Ironically, much of the subsidy that pregnant women receive represents a transfer from one group of women to another. Infertile women, lesbians, and women who simply choose not to bear children suffer lower salaries and diminished job opportunities (both the result of increasing the business costs of hiring women) so other women can have "free" birthing care. That is unjust.

What about women who cannot afford the costs of pregnancy? While no one should be prohibited from having children, neither should anyone be forced to pay so that others can have children. Clearly, the cost of having a child is dwarfed by the cost of raising a child, yet almost no one suggests that those costs should fall on anyone but the parents. Do we really want to support subsidies that encourage prospective parents to have children they cannot afford to raise?

Do these positions sound radical? They actually harken back to the traditional method of medical payment, standard practice as recently as four decades ago. It may also be the practice people will prefer if they move away from employer-provided health insurance and opt for a more economical package consisting of catastrophic insurance and medical savings accounts (MSAs). They will use MSA money to pay for routine prenatal and delivery costs.

Imagine that: actually paying for the costs of delivering our own children rather than using government mandates to thrust an uncompensated burden on others. What a wonderful demonstration of responsibility and independence for our children to witness as they enter the world. □



Global Politics, Political Warming

Five years ago the Clinton administration announced a 50-point plan to curb the emission of so-called greenhouse gases, principally carbon dioxide. Countries spent much of last fall debating a global agreement to cut future emissions below 1990 levels. "The only thing we know for absolute certain is that voluntary programs won't work," contends Jessica Tuchman Mathews, president of the Carnegie Endowment for International Peace.

Actually there's one other thing that we know for certain: activists like Mathews are misusing science in demanding draconian energy restrictions to avert global warming. In fact, there is no consensus among climatologists that uncontrolled, human-induced warming threatens the planet. Or that the kinds of measures being proposed would avert such a danger.

The climate has long been a favorite of apocalyptics. In the 1890s and then again in the 1950s people warned that the planet was warming. But in the 1960s and 1970s arose a different fear: a new ice age.

Publications like *National Geographic* reported shorter growing seasons, summer frosts, and advancing glaciers. *Time* magazine observed that "the atmosphere has been growing gradually cooler for the past three decades. The trend shows no indication of reversing." There were books too, like *The Weather Conspiracy: The Coming of the New Ice Age* and *Ice: The Ultimate Human Catastrophe.*

The latter, written by Fred Hoyle and published in 1981, proclaimed: "It is 12,500 years since the last ice age ended, which means the next one is long overdue. When the ice comes, most of northern America, Britain, and northern Europe will disappear under the glaciers." Since "The right conditions can arise within a single decade," Hoyle advocated warming the oceans.

But, happily, that crisis seems to have passed. And we are back to global warming. The basic theory is that pollutants—so-called greenhouse gases—are accumulating in the atmosphere, holding in the heat and causing the world's temperature to rise. It remains just a theory, however, since climate change is a complex business. For instance, increased emissions may help shield the earth from the effects of the sun's rays; other factors, such as variations in the sun's intensity, also play a role.

Nor is there one right temperature. After all, there was once an Ice Age. And there was even a little ice age running from the 1400s through the 1800s, when temperatures were notably lower. There's no reason to believe that the temperature in 1997, or 1897, or any other particular year is the right one. Indeed, if we could choose, we should choose a warmer climate. Fewer people die because of the cold; less money is spent on energy; growing seasons are longer. Some people would lose, but on net mankind would be better off if temperatures rose moderately. The only real issue, then, is whether the earth faces an

---

Doug Bandow, a nationally syndicated columnist, is a senior fellow at the Cato Institute and the author and editor of several books, including Tripwire: Korea and U.S. Foreign Policy in a Changed World.

uncontrolled, catastrophic increase in average temperatures.

The question is worth asking, but the discussion has become highly political. Six years ago Stephen Schneider, who once warned of a new ice age, told the *Boston Globe* that "it is journalistically irresponsible to present both sides as though it were a question of balance." Despite being a scientist, he admitted: "I don't set very much store by looking at the direct evidence." After all, he stated, "To avert the risk we need to get some broad-based support, to capture public imagination. That, of course, means getting loads of media coverage. So we have to offer up some scary scenarios, make some simplified dramatic statements and little mention of any doubts one might have." So much for genuine scientific discourse. Explained Schneider: "Each of us has to decide what the right balance is between being effective and being honest."

He's not interested in direct evidence because there is no consensus among climatologists about global warming. Past polls have found that most of them do not believe human-induced warming had occurred. Even half of the members of the U.N.-sponsored Intergovernmental Panel on Climate Change (IPCC) doubt that we face a runaway greenhouse effect.

The IPCC's latest report has nevertheless been cited as making the case for global warming. But lead author and climate modeler Benjamin Sanger complains that "it's unfortunate that many people read the media hype before they read the chapter." He cites the report's many caveats: "We say quite clearly that few scientists would say the attribution issue was a done deal."

Caveats are necessary because even Bruce Hamilton, conservation director of the Sierra Club, acknowledges that "If you look at the science, it's all over the map." Disputes begin over data collection and temperature trends. The best evidence suggests far less warming so far this century than predicted by the models; most warming has happened at night, when it is beneficial. Moreover, about half of the warming occurred before 1945, when emissions of supposed greenhouse gases began to climb dramatically. Finally, temperatures have been falling while the climate controversy has been heating up. John Shanahan of the American Legislative Exchange Council points out that "the government's own satellite data and balloon measurements over the last 18 years show a very slight cooling," the opposite of "what the climate models predict should have occurred."

Indeed, to some degree the scaremongering reflects sheer hubris. After all, mankind's impact on the environment remains marginal—just seven billion of the 200 billion tons of carbon dioxide in the atmosphere is the result of human activity. It may be an important seven billion, but it remains a secondary cause.

Thus, there are good reasons to avoid any treaty commitments to regulate the economy into oblivion. The President rejected the environmentalists' most extreme proposals, but activists oppose any compromise. Interior Secretary Bruce Babbitt even denounced American companies as "un-American" for criticizing global warming pseudoscience, and suggested that they be "called to account."

Such firms are defending more than their profits, however. Since the United States is already one of the globe's most efficient energy consumers, massive cutbacks in emissions would mean fewer jobs, less production, and a lower standard of living. A Heritage Foundation study estimates the cost of proposed controls from just 2001 through 2020 to be $3.3 trillion, or about $30,000 per household. It obviously matters whether environmental activists are choosing effectiveness or honesty when making their claims.

The answer is not just to delay the effective date or moderate the controls. There should be no treaty without real consensus both that disaster threatens and that new regulations would avert disaster.

To reach such a consensus, policymakers should treat global warming as a scientific issue. If persuasive evidence indicates the potential for uncontrolled, human-induced warming, then countries should explore less costly control measures—such as reforestation and spreading trace quantities of iron in the oceans.

But Americans must demand facts, not rhetoric. Chicken Littles have long manipulated fears about the climate: the President brought weather forecasters to the White House for indoctrination. Some scientists have also sacri-

ficed their integrity for politics. In *Science* magazine Richard Kerr warns that "Climate modelers have been 'cheating' for so long it's almost become respectable."

Is the sky falling? The burden of proof falls on those demanding the power to levy new taxes and impose new regulations. Unless and until such evidence appears, the American people should remain skeptical of the global warming chorus. □

THE FREEMAN
IDEAS ON LIBERTY

Henry Ford and the Triumph of the Auto Industry

by Burton Folsom

Anyone strolling by 58 Bagley Street in Detroit early in the morning of June 4, 1896, would have seen a strange sight: Henry Ford, ax in hand, was smashing open the brick wall of his rented garage. He had just started his first gas-powered car, and it was too big to fit through the door. Ford would tell the story over and over in the years following—the rain that night, the brief drive down Grand River Avenue to Washington Boulevard, and the seven years it took him to build his "quadricycle."

What was most remarkable, though, was not the event itself—others had already figured out how to build cars and make them run. What was remarkable was that Ford grasped the implications of a horseless carriage and had the vision, perseverance, and ability to make cars for the multitude of Americans. Many experts scoffed at the car. Woodrow Wilson called it the "new symbol of wealth's arrogance." But Ford dreamed of improving its quality, cutting its price, and selling millions of them to average Americans all over the country. Here are five key points to consider about Ford's remarkable venture into making and selling cars.

1. Success for any entrepreneur in the emerging auto industry was not inevitable.

Ford's path to building his car for the multitudes had many curves and hills, not to mention detours and dead ends. "No man of money even thought of it as a commercial possibility," Ford later wrote. This meant problems raising money. His business manager, James Couzens, once said that Ford was thrown out of so many offices in Detroit that one time he just sat on the curb and wept. Even those who were making cars seemed only to want them for racing, and they always tried to get the highest price possible for each one. Thomas Edison and others promoted the idea of electric cars, but Ford believed in the gas-powered internal combustion engine. And he failed twice before he finally started Ford Motor Company in 1903.

Right from the start Ford insisted on quality. "When one of my cars breaks down," Ford wrote, "I am to blame." He searched throughout the world for the best materials he could find at the lowest cost. Once he discovered the French were using vanadium steel—an exceptionally strong metal—in their racing cars. No American seemed to know how to make it, so Ford brought an immigrant to Michigan to build a steel mill and make some for him. "[T]hat is the kind of steel I want for the universal car I am going to build," Ford said. Shortly thereafter, he was using 20 different kinds of steel in his cars—one for strength, one for elasticity, another for durability, and so on.

From 1903 to 1908, Ford made several different cars, including the Model N and Model K, but none satisfied him completely. Customers began to buy his product, however, and

Burton Folsom is senior fellow in economic education with the Mackinac Center for Public Policy in Midland, Michigan. This essay is adapted from his book Empire Builders *(Rhodes and Easton, 1998).*

Ford didn't invent the assembly line, but he adapted it perfectly to car production.

sales jumped from about 1,700 cars in 1904-05 to almost 8,500 in 1906-07. That gave Ford the cash to start buying out many of his partners. By 1906, he had a majority of the stock in Ford Motor Company, and that winter he locked himself in a back room to build his universal car: the Model T.

After more than a year of tinkering, the Model T was ready to sell. It turned out to be the big breakthrough Ford was looking for. It was not luxurious, but it took people from one place to another and did so cheaply and safely. Most early cars cost at least $2,000. Ford priced his first Model Ts at $850.

2. Ford was imaginative and willing to take risks.

With sales on the rise, Ford did something daring: he further slashed the price of a Model T—sometimes so steeply that he risked taking losses. "Our policy is to reduce the price, extend the operations, and improve the article," Ford wrote. "You will notice the reduction of price comes first." He explained, "We have never considered any costs as fixed. Therefore, we first reduced the price to a point where we believe more sales will result." From 1908 to 1913, Ford knocked down the price from $850 to $600, and sales leaped from about 18,000 to 168,000. "Every time I reduce the charge for our car by one dollar, I get a thousand new buyers," Ford rejoiced. Meanwhile, he kept improving his product. "We will rip out anything once we discover a better way," he promised.

One better way was his development of assembly-line production. He didn't invent the assembly line, but he adapted it perfectly to car production. When Ford was selling only ten cars a day he would have a skilled mechanic complete most of each car from start to finish. As sales surged to almost 1,000 per day, that system became impossible. Ford and his staff decided to freeze the design of the Model T. Then they broke down the making of a car into dozens of small tasks. Each worker specialized in one of these tasks, such as attaching the engine to the frame or putting on the steering wheel. Workers stood next to each other beside a long conveyor belt and performed their specialized tasks until, one by one, the Model Ts were complete.

They came off the belt every 30 seconds. The assembly line slashed the time needed to complete each car from about 12 1/2 hours to 1 1/2. That enabled Ford to meet the crushing demand for Model Ts—sales were about 78,000 in 1911-12, before the assembly line and over 248,000 in 1913-14, after the assembly line was fully in operation. Naturally, Ford cut the price during this time from $690 to $550, which made it affordable to another layer of middle-class Americans.

One argument against the assembly line was that the work was monotonous. Ford almost conceded this point when he said, "There is not much personal contact—the men do their work and go home." Ford did keep his factories well lighted and ventilated, and he worked hard to prevent accidents on the job. But the work was not challenging. Partly as a result, he (and many other industrial employers) had high rates of turnover and absenteeism. Ford found himself spending $100 to train each new worker, though many stayed only for a month or two and then quit.

Ford's reaction to this problem was dramatic: in 1914 he doubled his minimum wage to five dollars a day and cut daily working hours from nine to eight. The experiment caught the industrial world by surprise. His competitors were startled; his workers were energized. Ford himself was ecstatic. Some of the most talented workers in Detroit lined up by the thousands to apply for jobs with Ford. He couldn't hire as many as he would have liked because turnover and absenteeism almost disappeared overnight.

No one wanted to lose his job. As a result, production surged and profits skyrocketed. Ford happily paid the higher wages and also cut the price of the Model T by over 10 percent in 1914, 1915, and again in 1916. With each cut, more and more of his workers could afford to buy the cars they were making.

Ford was delighted to violate "the custom of paying a man the smallest amount he would take." And yet "[t]here was . . . no charity in any way involved. . . . The payment of five dollars a day for an eight-hour day was one of the finest cost-cutting moves we ever made." Ford was so pleased that in 1922, when Model T sales began to top a million a year, he raised his minimum wage to six dollars a day. Meanwhile, he cut the price to about $300. With all of their manufactured steel, vulcanized rubber, and processed plate glass, Model Ts were selling at about 25 cents a pound—perhaps the best bargain in the industrialized world.

Sales passed one million in 1920, and peaked at almost 1.8 million in 1923. At that time, well over half the cars on the roads were Model Ts, and Ford had become a billionaire. Not only did he put America on wheels, he changed the way businessmen priced their products and paid their workers. He had helped centralize the auto industry in Michigan and secured that state's place in the nation's industrial future. He was an American folk hero and a national celebrity. The mere presence of Henry Ford in a barbershop for a shave was an excuse for scores of locals to press their noses to the glass to get a good look at this man who had changed their world so profoundly.

COURTESY AUTOMOBILE MANUFACTURERS ASSOCIATION

Henry Ford

3. The early auto industry, unlike the railroad business, was usually governed by the free market.

In political and economic philosophy, Ford did not consistently favor laissez faire, but his strong individualism usually put him on the side of the free market. He argued that private enterprise was the way to solve problems in America. "The welfare of the country is squarely up to us as individuals," he said. "That is where it should be and that is where it is safest. Governments can promise something for nothing but they cannot deliver." Ford himself, by contrast, was providing tens of thousands of jobs, all with good wages and only eight-hour days.

Those people often shunned as second-class citizens did well with Ford. Blacks found the color barrier easier to cross at the company, and they were hired by the thousands. Ford also hired handicapped people whenever he could—including bedridden patients who happily screwed nuts and bolts together in mini-assembly lines in their rooms. Ex-convicts often found themselves with clean slates at the Ford Motor Company. Once, when driving to work, he saw a vagrant on the road. Ford eagerly picked him up and gave him a job in the factory. In this case, the man quit after six weeks, but Ford was at least content that he had given the man a chance.

Ford relished the opportunity to compete for buyers in an open market. All he wanted was the freedom to operate as he thought best—to decide whom to hire, what to pay, what kinds of cars to make, and how much to charge. He expected to rise or fall on the basis of his decisions. He rose to the top because he made wise choices. The railroad industry, by contrast, frus-

All Ford wanted was the freedom to operate as he thought best—to decide whom to hire, what to pay, what kinds of cars to make, and how much to charge.

trated Ford because it was strongly regulated by the Interstate Commerce Commission. When he bought the Detroit, Toledo, and Ironton Railroad to bring supplies to his factories at Highland Park and River Rouge, he tried to "reduce our rates and get more business. We made some cuts, but the Interstate Commerce Commission refused to allow them! Under such conditions why discuss the railroads as a business?" Ford would just make cars instead.

The early car industry had no such federal regulations, but it did have monopolists who wanted to use government to stifle competition. George Selden, for example, received a U.S. patent in 1879 for a gas-powered internal combustion engine. Although Selden never made or sold any cars, he argued that those who later did so were violating his patent rights. He sued for royalties and the lower courts upheld his patent. American car makers formed the Association of Licensed Automobile Manufacturers, paid Selden royalties of 1.5 percent per car, and determined who would be allowed to make cars. All American automakers except one joined the association. Always the individualist, Ford refused to join, refused to pay license fees, and refused to let other automakers tell him how to make his cars. He went to court and argued that Selden's patent did not cover the modern internal combustion engines he was using. After long litigation, the courts eventually agreed with Ford. The monopoly was broken in 1910.

After the Selden patent decision, Ford and the other automakers just naturally looked to market forces to solve their business problems. The building of roads and highways, for example, was urgent with the growing number of cars. Car taxes were only a small source of revenue for road building, so Ford made gifts of land and money for that purpose in Michigan. Other private groups built highways, raising millions of dollars from those who had the most to gain from good roads: car manufacturers, tire makers, and cement producers among others. The Dixie Highway, from Detroit to Florida, and the Lincoln Highway, from Indianapolis to San Francisco, are examples of highways largely built and operated by private groups.

4. Success in the auto industry meant satisfying consumer wants.

"It is strange," Ford wrote in 1922, "how just as soon as an article becomes successful, somebody starts to think that it would be more successful if only it were different. There is a tendency to keep monkeying with styles and to spoil a good thing by changing it."

What Ford was ignoring here were the changes in auto technology that had been made after he froze the design of the Model T. By the early 1920s, for example, General Motors cars had automatic starters, hydraulic brakes, and balloon tires. William Knudsen left Ford for General Motors, and under his leadership the Chevrolet began to challenge the Model T. Even with sales slipping, Ford refused to change. His Model T still appealed to the purse, but not so much to the eye, ear, or back. The new Chevrolets were more stylish, less noisy, and more comfortable to ride in. As a Chicago woman wrote Ford, "My bones will not talk agreeably to one another" after a long drive in a Model T. What's more, by 1924 the new Chevrolet had a water-pump cooling system, an oil gauge on the dash, a reliable ignition system, a foot accelerator, and a gas tank in the rear for safety and convenience. And the new Chevys came in all colors. The era of Ford dominance was over.

In 1927, shortly after the 15 millionth Model T rolled off the assembly line, Henry Ford could no longer ignore the complaints from his

dealers and the slump in sales. His response, however, startled everyone: he abruptly shut down his factories, laid off his workers, and went to work on a new car. For the next 18 months, Ford and his staff crafted his next creation—the Model A. The new car was exquisitely made and sold 1.7 million in 1929—which partly vindicated Ford's entrepreneurship. One of his problems, however, was that General Motors was changing models each year to incorporate new technology and cater to fashions in style. Ford's strategy of manufacturing a good car, putting it on the assembly line, and selling it almost unchanged for 15 years no longer appealed to American consumers. Ford, however, was stubborn and slow to change his ways. The sales of the Model A dropped steadily during the early 1930s, and Ford fell permanently behind General Motors in car sales. Even his development of the powerful V-8 engine in 1932 did not win him back most of his old customers.

5. The New Deal was the real undoing of Henry Ford.

A major push for a planned economy came from President Franklin Roosevelt after his election in 1932. He believed that more government was the solution to the Great Depression. One of his proposals was the National Recovery Act (NRA), which required American business to regulate itself through signed codes of behavior that would legally bind all companies within an industry. Competition would be almost completely eliminated. Under most codes, the industries would set production quotas, prices, wages, and work hours. The law also gave labor the right to organize and collectively bargain. As Ford said when the NRA was being prepared, the government "has not any too rosy a record in running itself this far."

As American industrialists rushed to Washington to comply with the NRA, Ford resisted and refused to sign any code. "I do not think that this country is ready to be treated like Russia for a while," Ford wrote in his notebook. "There is a lot of the pioneer spirit here yet." However, General Motors, Chrysler, and the smaller independents eagerly signed the Blue Eagle codes that, under penalty of fine and imprisonment, regulated all aspects of their businesses. Ford was astounded: his colleagues preferred stability and government regulation to competition and free trade. He was especially irritated when Pierre S. du Pont, the former head of General Motors, urged him at a party to sign the code.

As journalist Garet Garrett has written, "But for the Ford Motor Company, it would have to be written that the surrender of American business to government was unanimous, complete, and unconditional." Ford stood almost alone, defying the law, and pronouncing it un-American and unconstitutional. He needed a legal loophole to keep out of jail, and his lawyers found him one: he didn't have to sign the auto industry code, he now argued, as long as he complied with its provisions. This he did with good humor. "The code minimum wage is hardly a good dole," Ford jibed. Later he said of the code, "If we tried to live up to it we would have to live down to it." No government bureaucrats would leaf through his books and tell him how to run his business.

NRA chief Hugh Johnson and President Roosevelt, however, wanted government control as well as compliance. They tried to pressure Ford into signing the code, and when he refused they tried force. Ford would receive no government contracts until he signed—and with the large increase in government agencies during the 1930s, that meant a huge loss of business. When a Ford dealer's bid on 500 trucks for the Civilian Conservation Corps was $169,000 below the next best offer, the government announced it would reject the bid and pay more because Ford refused to sign the auto code. Finally, in May 1935, the Supreme Court struck down the National Industrial Recovery Act, killing the NRA, and Ford again was allowed to compete for any car business he wanted to.

Ford had little time to celebrate—he spent much of the rest of the 1930s and early 1940s trying to escape union organizers. Roosevelt signed the Wagner Act, which allowed unions to organize on terms that put employers at a disadvantage. Eventually, Ford Motor Company would be organized and Ford would lose much of his authority to set wages or working hours.

Roosevelt's New Deal had almost doubled the national budget. Somebody had to pay for the new government programs for farmers, businessmen, veterans, silver miners, youth, the unemployed, and many others. First, Roosevelt hiked the income tax on the rich with a marginal rate of 79 percent (later 91 percent). Next he supported the first federal taxes on cars, tires, and gasoline. Then he promoted the Wealth Tax of 1935, which instituted an inheritance tax of 70 percent on large estates. The first of these taxes was hard on Ford; the second was hard on all car owners; the third made it impossible for Ford to give his company to his only child, Edsel, or to Edsel's children.

The wealth tax captured Ford's attention, if not his wealth. He was 72 years old and refused to turn over two-thirds of his estate to the government. His lawyers advised him that one way out of his tax problems was to set up the Ford Foundation. Gifts to foundations were tax-deductible, so Ford could dump his fortune in the foundation, put Edsel in charge of it, and thereby save $321 million in inheritance taxes and keep his business in the family.

Ford's maneuver preserved family control of Ford Motors, but it took his capital out of investment, froze it in the foundation, and put it, after his death, in the hands of the bureaucratic types he had fought all his life. Raymond Moley, a New Dealer who turned conservative, scoffed at the "projectitis" of the Ford Foundation and its "big and expensive staff of busy people who think up and sort out innumerable projects, to be bestowed with plenty of money upon specially created agencies or upon professors hard pressed to live on their academic salaries." As historian Allan Nevins observed, "In a real sense, Henry Ford's factory, his fortune, his life-work, had been socialized." □

THE FREEMAN
IDEAS ON LIBERTY

Democracy Would Doom Hong Kong

by John T. Wenders

There is an important lesson to be learned from the Hong Kong economic miracle, the destiny of which is now in the hands of China. Too bad most commentators have missed it completely.

The lesson is simple. This small patch of rocky land, devastated by war and Japanese occupation, in a mere 50 years rose to the top of the world's economic heap. Common sense would say that the path it followed should be carefully studied and imitated. Instead what we have is an endless parade of politicians blasting China for not choosing to institute a democratic government after its long-awaited takeover. What these people have missed is that Hong Kong prospered precisely because there was no democracy there.

Hong Kong was ruled from London as a colony. Fortunately, and in contrast to other British colonies like Kenya and India, where socialist policies were followed, Hong Kong had an enlightened administration. It installed a strong legal framework that kept the government out of the economy. That constitution-like framework emphasized private-property rights and freedom of contract much as did the original U.S. Constitution. In short, it drew a clear line between economy and state. And with no democratic political force bent on favoritism and redistribution, the economy was free to prosper, which is exactly what it did.

John Wenders teaches economics at the University of Idaho.

All this was pointed out last April when the Harvard Business School invited a prominent Hong Kong businessman, Philip Tose, to speak. After his speech, Mr. Tose was asked why he thought Hong Kong has prospered and India has languished. Mr. Tose replied, "One word: Democracy."

The faculty, of course, was aghast, and scrambled to disassociate itself from Mr. Tose's questioning of the democracy icon. The dean of the faculty, Kim B. Clark, issued a statement declaring the businessman's remarks as "totally at odds with my own views and those of the Harvard Business School faculty."

That response is typical, not only of Harvard's faculty, where such a view is to be expected, but with both the public at large and politicians in general. Few are willing to even consider the logic of democracy. It has become a slogan that forecloses analysis. Don't freedom and democracy go hand in hand?

Democracy vs. Freedom

The unpopular answer, of course, is no. Freedom and democracy are different. In words attributed to Scottish historian Alexander Tytler: "A democracy cannot exist as a permanent form of government. It can only exist until a majority of voters discover that they can vote themselves largess out of the public treasury." Democracy evolves into kleptocracy. A majority bullying a minority is just as bad as a dictator, communist or otherwise, doing so. Democracy is two coyotes and a lamb voting on what to have for lunch.

That was one of Mr. Tose's points. He noted that India's democratic socialism was largely driven by a big majority that paid no taxes and used the election process to punish those who did. In India, with a population of 900 million, only 12 million pay any taxes, and only 12,000 of those pay above the base rate. There you have representation without taxation.

But in a larger sense, the blind worshiping of democracy misses the real issue. Democracy addresses how affairs in the public sector will be conducted. On the other hand, freedom is concerned with the relationship among people in the private sector. Freedom means that individuals may choose how to interact on a voluntary basis outside the purview of the state. In short, democracy means you have a right to vote in the public sector; freedom means you, alone, have the right to determine the terms of your interactions with others in the private sector.

The proposals for the governance of Hong Kong, as well as reform in eastern Europe, have focused on democracy in the public sector to the neglect of the more important question: how should human activities be divided between the public and private sectors? One can envision a country with an authoritarian, but very small, public sector in which freedom is much greater than in a country with a democratic, but very large, public sector. This is the essence of the difference between Hong Kong and India. The former was governed in an enlightened, even if authoritarian, way; the latter by democratic socialism. Which turned out better is obvious to all but the collectivists who worship democracy.

The Constitutional Solution

The key is a constitution, like the United States once had, that draws a firm line between the public and private sectors, and between democracy and freedom. More importantly, the role of a proper constitution is to protect freedom from democracy and the individual from the majority.

Some freedoms are civil, such as speech, religion, and association. The First Amendment to the U.S. Constitution takes the regulation of speech and press out of the public sector. If left to a democratic political process, free speech would be severely restricted by lawmakers. Invasions of free speech, such as the recent attempt by Congress and President Clinton to regulate the Internet, are constantly being struck down by the courts, and many more are prevented by these precedents. The Constitution protects free speech from democracy.

In the economic sphere, freedom means that individuals have a right to own, buy, and sell property on their own terms in free markets. That is known as the freedom to make contracts. In the past century, there has been everywhere a steady invasion of market activity by the political process. Even in capitalist countries, such as the United States, the public sector has continually expanded. Once economic activity becomes part of the public sector and is addressed by the political process, it immediately becomes subject to capture by those—often a tiny minority—who can effectively manipulate the process to their own ends.

In many ways, that political invasion of the marketplace throttles free speech as well, as witnessed by the successful efforts of the newspaper trade groups, normally staunch defenders of free speech, to prevent competition from telephone companies. The former publisher of my local newspaper once made a pilgrimage to Washington to lobby against allowing telephone companies to sell electronic yellow pages. He also railed against proposed first-class postage increases, arguing that the additional revenues should be instead raised from junk-mail advertisers—one of his competitors for advertising revenues.

Democracy Is Not Economic Reform

Democracy is not touted only for Hong Kong. The popular notion is that the economic collapse of communism in eastern Europe and the old Soviet Union signals the need for democratic reform of the political process. On the contrary, proper reform can only be achieved by removing economic matters from the political process.

Unless the size of the public sectors in those countries are shrunk considerably, little will have changed. The only difference will be that people have the right to vote on how the public sector restricts their freedoms. Similarly, if the new governors of Hong Kong expand the public

sector, even by democratic means, freedom and prosperity will be eroded.

The lessons of the past are clear, if Hong Kong and the former communist countries choose to look. Wherever economies are heavily regulated—eastern Europe, the former Soviet republics, China, North Korea, India, most of Africa and South America—socialist or not, they have been outstripped by their market-oriented counterparts—western Europe, Japan, South Korea, Taiwan, Singapore, Chile, the United States, the Commonwealth nations, and, yes, Hong Kong.

The constitutional bases for a market economy are very simple: property rights must be vested in individuals or voluntary associations of individuals. Those rights, like our freedom of speech and religion, must be well defined and tenaciously defended against encroachment from the public sector. Titles to property and services must be freely transferable and protected by laws based on the freedom to make contracts.

The objection to separating the public and private sectors is that markets do not always work ideally. Yet the same people who thus condemn the marketplace want to scrap it for a politically directed system that is demonstrably worse. Rational choices can only be made by weighing the benefits and costs of alternatives. Only people can know their alternatives, and only people who directly bear the consequences of their choices will weigh them properly. Filtering choices through complex political and bureaucratic processes assures that the alternatives will be neither known nor weighed. Markets are certainly not perfect. They are just better than the alternatives, as events in eastern Europe and elsewhere have shown.

In our own economy the dangers of public encroachments on the private sector are usually encountered more subtly. Here, we have produced a massive public sector by tolerating small encroachments without addressing the larger issue. If nothing else, the history of Hong Kong and eastern Europe (and other countries) should stimulate us to rethink the drift of piecemeal democratic encroachments on our own freedoms.

There is a difference between democracy and freedom. Freedom is not measured by the ability to vote. It is measured by the breadth of those things on which we do not vote. Freedom must be protected from democracy. A good constitution will do that.

Hong Kong has had no constitution. The constraints on the government depended on enlightened administrators appointed from London. But to depend on enlightened men is risky; men can just as easily be collectivist meddlers. What Hong Kong needs is a rule of enlightened law—a constitution—not men, enlightened or otherwise. If China is serious about continuing the economic prosperity of Hong Kong, and possibly even extending it to the mainland, its first order of business should be to draw up a constitution that guarantees private property and the freedom to make contracts, and to turn a deaf ear to those who clamor for democracy. □

THE FREEMAN
IDEAS ON LIBERTY

Elections, Extortion, and Unions

by Charles W. Baird

Suppose Congress passed a law that abolished secret-ballot elections for membership in Congress. Instead, each candidate, and his or her campaign workers, collected signatures of support from voters. The signatures would be solicited face to face from each voter, who could give his or her signature to only one candidate in each election. The winning candidate in any congressional district would be the one who collected signatures from a majority of the district's voters. Would you support such a change in the law? I certainly would not.

After all, in the privacy of a voting booth a citizen can cast an honest vote. No one is watching or applying pressure to sway the vote one way or the other. All the campaigning is over, and the voter is left alone to make a private decision. Unless the voter tells, no one knows what the decision was. In contrast, a person who gathers signatures does so in favor of a specific candidate. The solicitor's job is to persuade the voter to sign, and he knows who does and who does not. An unscrupulous solicitor could retaliate or threaten to do so against a nonsigner. The selection of the winning candidate would not be free. It would be implicitly coercive.

The National Labor Relations Act (NLRA) provides that employers may insist on a secret-ballot election when their employees vote on whether they will be represented by a union in collective bargaining. An employer may agree to recognize a union for collective bargaining on the basis of signatures that union organizers have solicited from workers, but no employer can be forced to do so. When a union tries to organize the workers in a non-union workplace, it must collect the signatures of at least 30 percent of the workers in order to force the employer into a secret-ballot election. However, no amount of signatures, not even 100 percent, can force an employer to recognize a union without a secret-ballot election.

The American union movement is not the American labor movement. In the private sector only 10 percent of the work force is unionized, and that percentage is getting smaller and smaller. By 2000 private-sector unionization will be down to no more than 7 percent—just where it was in 1900. Leo Troy, a labor economist at Rutgers University, calls this the symmetry of history.

John Sweeney, the overwrought president of the AFL-CIO, is aware of his increasing irrelevance in the private sector and is desperate to do something about it. He is striving, for example, to organize the workers in the nursing-home industry by enlisting the aid of well-intentioned, but ill-informed, clergy and journalists to pressure owners of nursing homes to recognize unions on the basis of gathered signatures rather than secret-ballot elections. Some employers have capitulated to the pressure. Thus their employees are forced to accept the representation "services" of unions and even to become forced payers of union dues without ever having the chance to vote on it.

Charles Baird is director of the Smith Center for Private Enterprise Studies at California State University at Hayward.

Worse yet, the AFL-CIO is proposing that Congress change the NLRA to force employers to recognize unions whenever organizers collect the signatures of a majority of workers at any workplace. It claims that elections take too long and that employers have an opportunity to campaign against unionization before the votes are cast. Union leaders assert that employers should have nothing to say about unionization. It should be a matter left between workers and those who solicit their signatures.

Without putting too fine a point on it, unions and their organizers have a reputation for aggression and violence. And that reputation is well deserved, as documented in a huge study of union violence undertaken by researchers at the Wharton School of the University of Pennsylvania. It is reasonable for workers to fear that if they refuse the blandishments of union organizers collecting signatures, they will pay a heavy price. In any other setting, we would call such an arrangement extortion.

Shame on those employers who turn their workers over to labor unions without a secret-ballot election. And shame on Congress if it ever capitulates to the unions' demands for signature-based recognition in place of the secret ballot. In 1996 labor unions spent a total of $300 million in financial and in-kind donations, most of which they didn't have to report, supporting politicians they think are sympathetic to their agenda. Will Congress ever sell the right to secret-ballot elections in exchange for campaign donations? I hope not, but Congress has done little to justify anyone's confidence in its common sense. As Will Rogers said, "This country has come to feel the same when Congress is in session as we do when the baby gets hold of a hammer." □

THE FREEMAN
IDEAS ON LIBERTY

One Freedom

by Russell Madden

> "A man was either free or not free. . . . Freedom was indivisible. . . . To talk of 'several freedoms' is to use the language of Europe, not of America; it is an abandonment of the basic principle on which the United States was founded."
>
> —ISABEL PATERSON, *The God of the Machine*

Every semester I have my communications students define three abstract concepts: love, justice, and freedom. Inevitably, it is the discussion of freedom that generates the greatest amount of controversy and disagreement.

Many of the definitions the students offer contain some suggestion that freedom means acting without limits. You can be free, they imply, only if you are able to do whatever you want or desire. Even if "whatever" includes doing violence to other individuals, even killing them? Yes, they say.

These same students then contend that society could not survive without imposing limits on people in the form of laws, rules, and regulations. Since this is the case, they conclude that we cannot truly be free. The whole notion is a pleasant fiction but wholly impractical.

"Freedom From"

Many other students believe that people can only be free when they are free "from" something: hunger, fear, disease, want, or worry. Echoing many of our politicians, this group suggests that since these are undesirable conditions, society should do everything it can to eliminate such unpleasant factors from the lives of citizens. Only when all negative conditions are purged from our culture will people finally be "free."

This approach is, of course, an example of what is called "positive freedom." Such "freedom" requires that individuals be provided the *means* to achieve whatever goals and values they choose to seek. Those who champion this idea usually interpret the words "to promote the general welfare" in the Constitution as justifying the redistribution of wealth from one segment of society to other, less fortunate groups. Here, "need"—however defined—creates a claim on the property of others. One obvious problem with this approach is deciding who will define the degree of "need" that is dire enough to warrant the seizing of one person's property in order to give it to another. Ultimately, this translates into the strongest and most ruthless coalitions—the winners—imposing their will on the losers. As history readily reveals, essential human "needs"—such as health care, food, or shelter—may begin at the subsistence level but gradually rise until nearly every aspect of life becomes a "need" that must be satisfied—not through one's own effort and earned property but through the effort and wealth of someone else.

If a student objects that this notion of freedom infringes on the desire of one class of people—the "haves"—to keep and use their prop-

Russell Madden is a communication instructor at Mt. Mercy College in Cedar Rapids, Iowa.

erty, and favors the desire of the "have-nots," a classmate may reply that the right of one person to be "free" (in the sense of being entitled to his "well-being") is more important than the "freedom" of certain others (in the sense of doing what they choose). In this view, one may, indeed, violate the second type of freedom and impose obligations, but only to a point, that is, as long as the "giver's" well-being is not, in turn, reduced below a certain level. Using force to make people act in preferred ways is permissible in the name of freedom as long as that vague and fluid line of "need" is not crossed.

Other students attempt to avoid this problem by talking about different types of freedom: economic freedom, political freedom, moral freedom. These freedoms are hierarchical in nature, they say: moral freedom trumps political freedom, and political freedom then takes precedence over economic freedom. Thus, acts of moral choice—such as declaring oneself a "conscientious objector" during a war—are most important and deserving of respect. Political freedoms—such as freedom of speech and religion—are broad freedoms that must be protected as much as possible. Economic freedom, however, is viewed as less worthy of recognition, as when a distinction is made between personal or political speech and commercial speech, which can be subject to extensive regulation for the good of others.

Freedom, however, is not a smorgasbord from which one picks and chooses. Freedom is not whatever society agrees that it is. And most particularly, freedom is not some idealistic illusion, unobtainable and irrelevant to one's daily life.

Freedom Indivisible

Freedom is of one piece. It is absolute within its proper context. For those who raise such specious examples as traffic lights "limiting" freedom, it is not the concept of freedom that is lacking but the critic's understanding of when and where such an idea is, in fact, relevant. In a social and political context, freedom "has only one meaning: *the absence of physical coercion*" (Ayn Rand, *Capitalism: The Unknown Ideal*; emphasis in original). Often labeled "negative freedom," this concerns not the ability to do something but rather the situation in which one's actions are not interfered with by the initiation of force by other people, especially the government.

As for traffic lights, the above definition of freedom explains why such signals and the police power behind them do not imply a limiting of one's freedom. If a driver believed "freedom" meant the right to pass through any intersection whenever he desired, he would pose an immediate physical danger to other unsuspecting drivers using those same roadways. But no one has the right—the freedom—to expose other individuals to the risk of physical harm without their permission. Such an action would constitute an "initiation of force" and thus be incompatible with freedom.

To state this from another perspective, a driver has the freedom—the right—to travel the highways without interference from someone deliberately engaging in behavior that poses a real physical threat. The same reasoning also demonstrates why no one has the freedom to "drink and drive." This behavior creates an *objective* danger and is outside the boundary—the relevant social context—defined by the concept of "freedom." Such "anti-freedom" actions are—and correctly should be—prohibited by the government, just as it prohibits more obvious examples of coercion such as murder, assault, and rape.

As long as people are not subject to the initiation of physical force, they are free. One does not trade one freedom for another. My freedom does not conflict with yours. Freedom is not "nice in theory but impossible in practice." It forms the essence of proper social relationships, the foundation of a benevolent society, the only way to establish the foundations of morality. Voluntary action leads to personal confidence, individual well-being, and tolerance of differences. Forced action leads to personal doubt, individual degradation, and exacerbation of resentment, envy, and hatred.

One cannot be "partially free." Freedom in a social context is all or nothing. One is either free or one is not. What *is* possible to discuss in terms of degrees is slavery. Once coercion enters the picture, principles vanish. Our "freedom" today is ours by permission, revocable

whenever one group or another grows strong enough to impose its will on the rest.

An Impossible Mixture

In a very real sense, calling our economic system a "mixed economy," that is, an economy of freedom and controls, is a misnomer. A mixed economy promotes the mirage of an orderly and lawful society but ultimately leads to chaos and conflict. In an essay titled "Doesn't Life Require Compromise?," Ayn Rand noted, "There can be no compromise between freedom and government controls; to accept 'just a few controls' is to surrender the principle of inalienable individual rights and to substitute for it the principle of the government's unlimited, arbitrary power, thus delivering oneself into gradual enslavement." (The essay appears in *The Virtue of Selfishness*.)

One can describe "political," "economic," and "moral" freedoms just as one can describe a person's head or arms or legs. But attempting to separate one segment from another, to pretend one aspect can exist unharmed and in isolation from another, is to do violence to the very concept in question. Politicians may encourage the fiction that they can regulate economic freedom while leaving political freedom intact, but both logic and history prove them wrong.

Freedom is a necessary condition for those who would live a truly human existence, and property rights are how we implement that freedom. One can no more detach the two and still say freedom exists than one could detach a head from its body and say the person still lives.

Americans need to remember that each and every one of us has a right to be free. There is and can never be a right to enslave, not even a little bit. □

THE FREEMAN
IDEAS ON LIBERTY

Individualism and Freedom: Vital Pillars of True Communities

by Edward W. Younkins

Individualism is the view that each person has moral significance and certain rights that are either of divine origin or inherent in human nature. Each individual exists, perceives, experiences, thinks, and acts in and through his own body and therefore from unique points in time and space. It is the individual who has the capacity for original and creative rationality. Individuals can interrelate, but thinking requires a specific, unique thinker. The individualist assumes responsibility for thinking for himself, for acting on his own thought, and for achieving his own happiness.

Freedom is the natural condition of the individual. From birth, each person has the potential to think his own thoughts and control his own energies in his efforts to act according to those thoughts. People can initiate their own purposive action when they are free from man-made restraints—when there is an absence of coercion by other individuals, groups of people, or the government. Freedom is not the ability to get what we desire. Non-manmade obstacles such as lack of ability, intelligence, or resources may result in the failure to attain one's desires. Freedom means the absence of coercive constraints; however, it does not mean the absence of all constraints. It follows that freedom is a necessary, but not a sufficient, condition for happiness.

Individual happiness can be defined as the positive conscious emotional experience that accompanies or derives from the use of one's human potentialities, including one's talents, capabilities, and virtues. The sense of belonging to freely chosen communities is an important constituent of happiness.

Individualism denies that a community or a society has an existence apart from the individuals that constitute it. A community or society is a collection of individuals—it is not a concrete thing or living organism distinct from its members. To use an abstract term such as *community* or *society* is to refer to certain persons sharing particular characteristics and related in specifiable ways. There is no such thing as the general will, collective reason, or group welfare; there are only the will, reason, and welfare of each individual in a group. A community or a society is simply the association of persons for cooperative action. Coordinated group action is a function of the self-directed and self-initiated efforts of each person within the group.

Although the individual is metaphysically primary (and communities are secondary and derivative), communities are important because people need them to reach their potential for happiness. Social bonds are instrumentally valuable for the satisfaction of individuals' non-social desires; affiliation is necessary for flour-

Edward Younkins is professor of accountancy and business administration at Wheeling Jesuit University, Wheeling, West Virginia.

ishing. A free political order, which respects natural rights and allows for individual freedom, best nourishes the formation of voluntary communities through which people choose to live according to their freely chosen common values.

Genuine Communities Are Freely Chosen Communities

Assigning primary emphasis to the individual does not devalue social cooperation. Humans are not only distinct individuals but also social beings. Cooperative action affords possibilities for growth and brings benefits that otherwise would be unattainable by isolated individuals. Man's rationality allows him to cooperate and communicate with others. In a free society, all cooperative social ventures are entered voluntarily. In fact, individualism provides the best theoretical basis for a genuine community that is worthy of human life. Voluntary, mutually beneficial relations among autonomous individuals are essential for the attainment of authentic human communities. The uniqueness and worth of the person is affirmed when membership in a community is freely chosen by the individuals that comprise it.

Individualism and independence liberate interdependence. In the recent bestseller *Seven Habits of Highly Effective People*, Stephen Covey observes that interdependence is a choice that only independent people can make. A positive, principle-centered, value-driven person who organizes and executes his life priorities with integrity is capable of building rich, enduring, and productive relationships with others. True independence of character enables a person to act rather than be acted upon. Independence of character requires him to integrate certain principles (virtues), such as integrity, courage, justice, honesty, and fairness, into his nature. Interdependent people combine their own efforts with the efforts of others to achieve even greater success and happiness. They are self-reliant and capable people who realize that more can be accomplished by working together than by working alone. Interdependent persons choose to share themselves with, learn from, understand, and love others, and therefore have access to the resources and potential of other people.

True Communities Respect the Primacy of Free Persons

Freedom, justice, virtue, dignity, and happiness all must be defined in terms of the individual; however, the pursuit of individual happiness will naturally and almost always occur in communities. People have needs as individuals that cannot be met except through cooperation with others—it is impossible to achieve human fulfillment in isolation. A true community respects free persons. Genuine communities arise when people are free to form voluntary associations to pursue their individual and mutual interests. Inherent in respect for persons is respect for the forms of association they choose for that purpose.

Individuals do not begin in a condition of isolation—to exist is to coexist. Birth, by nature, takes place within families including parents, siblings, grandparents, aunts, uncles, and cousins. Those family members, in turn, have numerous memberships in a variety of communities and voluntary associations. In a free society, individuals tend to belong simultaneously to many different communities. To varying degrees, each person identifies with particular familial, religious, geographic, occupational, professional, employment, ethnic, racial, cultural, social, political, or other communities. These communities are usually, but not necessarily, local and severely limited in size by the number of people with whom an individual can have a personal acquaintance and relationship and share a recognizable common interest. Continuing technological advances in communications and transportation enhance people's ability to select the communities that best meet their needs and aspirations.

Minimal Government Allows True Communities to Flourish

The bonding together of citizens into voluntary communities and associations enables them to remain independent of the state. Life in freely chosen communities is better for the person than life as a dissociated individual in a large nation-state. Skeptics of state power favor the placement of as many intermediate voluntary groups as possible between the state and the individ-

ual—these mediating institutions help individuals realize their objectives more freely and more completely. The principle of subsidiarity holds that the state should restrict its activities to those that individuals and private associations cannot effectively perform. Decisions are most wisely made by individuals and local organizations closest to the pertinent everyday realities, and by the next highest level only when the capabilities of actors at lower levels are exceeded. Subsidiarity allows free individuals to thrive in authentic communities without the intervention of the state.

The purpose of the state is not to help people either materially or spiritually to pursue their visions of happiness—that is the role of individuals, communities, and other voluntary associations. The proper function of the state is no more than to protect people in the pursuit of their own happiness. This simply means preventing interference from others.

Since active governments are inimical to the formation and operation of voluntary communities, the generation of such communities is facilitated by the minimal state—one that operates within the constraints of liberal individualism. Rich and rewarding personal relationships based on voluntary cooperation and mutual assistance abound within minimalist, rights-based systems. The freedom of individuals is a necessary condition for the formation and vitality of true communities. □

Why Are Austrians Unusually Bearish?

"Can capitalism survive. No. I do not think it can. . . . Can socialism work? Of course it can."

—JOSEPH A. SCHUMPETER[1]

When the financial markets went into a tailspin in late October 1997, my doomsday colleagues appeared gleeful. "The bear [market] has begun," predicted Gary North. "It isn't going to end for about 10 years. If things go well." Adrian Day told me that the market was 70 percent overvalued and was delighted to see some air come out of the "bubble." Doug Casey had been forecasting the "Greater Depression" for over a decade. "It could be worse than even I imagine."

Over the years, I've been collecting books written by the perma-bears and the number is so high that I may need another shelf. Samples of bestsellers: Howard Ruff, *How to Prosper During the Coming Bad Years* (1979); Doug Casey, *Crisis Investing: Your Profits and Opportunities in the Coming Great Depression* (1979); Jerome Smith, *The Coming Currency Collapse* (1980); Dr. Ravi Batra, *The Depression of 1990* (1987); James Dale Davidson and Lord William Rees-Mogg, *The Great Reckoning: How the World Will Change in the Depression of the 1990s* (1991); Harry Figgie, Jr., *Bankruptcy 1995: The Coming Collapse of America and How to Stop It* (1992); and Robert Prechter, Jr., *At the Crest of the Tidal Wave: A Forecast for the Great Bear Market* (1995). Harry Browne has written a series of negative titles: *You Can Profit from a Monetary Crisis* (1974), *Why the Best-Laid Investment Plans Usually Go Wrong* (1987), and *The Economic Time Bomb* (1989).

Of course, few of the doomsdayers' dire omens have come true so far, yet their resolve in forecasting new crises is only strengthened.

The Root of Pessimism

What is at the root of this deep-seated pessimism about the global economy? Part of it may be Christian theology, an apocalyptic vision of the future (Matthew 24). But since many of the doomsdayers are not Christians, an alternative source may be the "Austrian" school of economics, some of whose leading figures feared for the future and whose theories suggest financial and monetary trouble down the road.

Joseph Schumpeter, the enfant terrible of the Austrian school, was deeply depressed about the prospects for capitalism and entrepreneurship. He thought big business would destroy individuality and initiative, and socialist central planning would engulf the world.

Many Austrian economists experienced the ravages of war and inflation in the first half of the twentieth century and were pessimistic about the future. Felix Somary, an economist who became a Swiss banker, forecast the 1929 crash, the Great Depression, and World War II, turned decidedly bearish in the mid-1950s, predicting another great depression right before his death.[2]

Dr. Skousen is an economist at Rollins College, Department of Economics, Rollins College, Winter Park, Florida 32789, a Forbes *columnist, and editor of* Forecasts & Strategies. *He is currently working on his own textbook,* Economic Logic.

Ludwig von Mises was incurably gloomy about the future. Peter Drucker, the management guru who grew up in Vienna and had contact with Mises at New York University, expressed dismay about Mises. "He was the most depressing person I ever met," he told me. Mises's despair is clearly noticeable in his searing intellectual memoir, *Notes and Recollections*.[3] Mises was downhearted about many things—the world wars, the rise of socialism and Keynesianism, and his failure to receive a full-time teaching position at a major university.

Lack of Faith in Fiat Money

But pessimism about the future goes beyond world events and personal tragedy. It is also inherent in the theory of Austrian economics—especially with regard to the world monetary system and the theory of business cycles.

Austrians are deeply suspicious of the current fiat money system, which they regard as unstable and prone to crisis. Today's monetary system of unbacked, inflated currencies is at sea without a rudder. Floating (or sinking) exchange rates may postpone, but cannot escape, the day of reckoning. Someday, a monetary, economic, or financial crisis will arise that will cause a run on the dollar, a collapse of the fractional-reserve banking system, and the re-establishment of gold and silver as real money.[4] Not surprisingly, sound-money advocates recommend the accumulation of precious metals as a hedge against such an impending crisis.

The Austrian theory of the business cycle, as developed by Mises and Friedrich A. Hayek, also suggests inherent instability in the financial and economic worlds. An increase in the fiat money supply will not simply raise prices, but will create an imbalance in the structure of the economy, a boom-bust cycle. The economic and financial boom cannot last, but will cause prices and interest rates to rise, which eventually will cause a recession and a collapse in stocks, real estate, and other assets. As Murray Rothbard puts it, "The boom requires a bust."[5]

Recently this Austrian perspective was taken by a well-known bear on Wall Street. James Grant, editor of *Grant's Interest Rate Observer*, editorialized in the October 29, 1997, *New York Times* that "all bull markets are eventually self-limiting" due to inevitable overinvestment. He noted that global bull markets eventually have to crash because of "superabundant" capital investment in the United States and Asia.

The Missing Link

Sometimes I feel like a lone bull among Austrian economists and financial analysts. Why am I optimistic about the global economy and stock prices? While the Austrian bears make a valid point about the inevitable dangers of monetary inflation and a fiat money system, they overlook another key element: free markets lead to long-term economic growth, rising standards of living, and hence bull markets. I raised this issue in the August 1997 issue of *The Freeman*, comparing two graphs of GDP growth over the past century. We can either focus on the short-term fluctuations in GDP, or the long-term trend. Short term, the economy looks volatile and dangerous. Long term, it looks dynamic and progressive.

The stock market can be viewed in the same light. We can constantly focus on the short term and play on the fears of a bear market, or we can take a long-term view. During the twentieth century, bull markets have lasted a lot longer than bear markets, and almost 70 percent of the time stocks were in a bullish mode. Why? Because in spite of wars, recessions, taxes, regulations, and inflation, the U.S. economy has remained largely favorable toward free enterprise.

Yes, crashes and bear markets are inevitable in today's inflationary world, but so are bull markets in today's free-market economy. □

1. Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (Harper & Row, 1942, 1947), pp. 61, 67.

2. Felix Somary, *The Raven of Zurich* (St. Martin's Press, 1986), pp. 293–302.

3. Ludwig von Mises, *Notes and Recollections* (Libertarian Press, 1978).

4. The best summary of this "Austrian" position is Murray N. Rothbard, *What Has Government Done to Our Money?* (Mises Institute, 1990).

5. Murray N. Rothbard, *America's Great Depression*, 4th ed. (Richardson & Snyder, 1983), p. 20. An excellent related booklet is *The Austrian Theory of the Trade Cycle and Other Essays*, ed. by Richard Ebeling with an introduction by Roger Garrison (The Ludwig von Mises Institute, 1996 [1983]).

BOOKS

Is Politics Insoluble?
by Henry Hazlitt
edited by Felix Livingston
The Foundation for Economic Education • 1997 • 143 pages • $14.95 paperback

Reviewed by George C. Leef

When Henry Hazlitt died in 1993 at the age of 98, advocates of liberty lost one of their greatest spokesmen. Rare indeed is the individual who combines a deep, penetrating mind, clear writing, and the will to keep battling against the tide for what he knows to be true. Henry Hazlitt was that rare individual. A vigorous opponent of statism in all its many forms, he left a wealth of brilliant books and essays to those of us who carry on the fight to preserve what freedom remains to us and eventually recover that which has been taken away.

A project that Hazlitt never completed was a book he intended to call *Is Politics Insoluble?* He outlined the book in 1978, and when he donated his library to the Foundation for Economic Education in 1984, Hazlitt wrote that the book was half finished. Felix Livingston has now collected the essays that Hazlitt intended to use as the book's framework and provided an excellent introduction that ties together the principal themes of the work. Even though the essays, written between 1968 and 1980, have all appeared before (many in these pages), we are fortunate to have them together in a book that will help to keep attention focused on the thought of a truly great man.

The ten essays that comprise *Is Politics Insoluble?* revolve around a single question: What is the role of the state? Issues that spin off from this central question include: What is the harm of excessive government? How do libertarians best make their case for a limited state? Can there really be such a thing as "political science"? How strong were John Stuart Mill's numerous exceptions to the laissez-faire principle? How sound was Herbert Spencer's case for strict adherence to laissez faire? The era of big government is still very much upon us, but if enough people read and absorb what Hazlitt has to say in these essays, we might someday be able to accurately say that the era of big government is over.

Each of the essays in *Is Politics Insoluble?* is excellent, but here I can only mention a few.

In the first essay, "Is Politics Insoluble?," Hazlitt asks whether it is conceivable that we could ever come to agreement on the proper role of government in the way that we have settled answers on many questions in the physical sciences. He is doubtful. Politics is a field in which everyone thinks his own opinions are perfectly reasonable, but very few comprehend the long-run consequences of adhering to various politico-economic doctrines. Most importantly, they fail to see that interventions "tend to be indefinitely expanded." As long as most people remain ignorant of sound economic thinking (and Hazlitt's own *Economics in One Lesson* remains the best antidote for economic ignorance), we will be plagued with widespread support for harmful and authoritarian laws.

The third essay, "The Case for the Minimalist State," was written in response to Robert Nozick's 1974 book *Anarchy, State, and Utopia.* The key part of this essay is Hazlitt's criticism of Nozick's reliance on natural law in making the case for a minimal state. Hazlitt argues that the philosophical case is stronger if we adopt a rule-utilitarian framework instead. His essay does not settle the matter, but neither can it be dismissed lightly. It seems to the reviewer that this point is worthy of a good deal more attention.

Another particularly strong essay is "The Task Confronting Libertarians." Hazlitt laments the fact that relatively few business leaders in the United States are willing to stand up for free markets, either by attacking government intervention themselves or at least by funding the various organizations that are active in doing so. A big part of our task is to convince those who ought to be our allies that our fight is their fight and they should provide more assistance.

Is Politics Insoluble? is chock full of vintage Hazlitt wisdom, a good read for veteran libertarians, newcomers, and anyone else who has an interest in political economy. □

George Leef is president of Patrick Henry Associates: Liberty Consultants, East Lansing, Michigan, and book review editor of The Freeman.

New York by the Numbers: State & City in Perpetual Crisis

by Raymond J. Keating

Madison Books • 997 • 640 pages • $29.95

Reviewed by William H. Peterson

"The power to tax involves the power to destroy."

So U.S. Chief Justice John Marshall presciently declared in *McCulloch v. Maryland* in 1803. And so has much destruction followed, especially since passage of the Sixteenth Amendment, which permitted income taxation, in 1913. Case in point: tax-mad New York.

In New York State:

Economic growth, business formation, and job creation lag behind the nation and have for years.

Average U.S. per capita spending for state and local governments is topped by 52 percent. Only Alaska and the District of Columbia spend more.

Welfare spending tops the national average by 83 percent. Only D.C. spends more per capita.

Medicaid payments per recipient are America's highest.

Per capita state and local debt tops the national average by 70 percent.

In New York City:

There are fewer private-sector jobs than there were in 1958.

There is the highest combined state and city corporate and personal income tax rates in the nation.

Per capita spending tops the large-city average by 120 percent.

Per capita welfare spending tops the large-city average by 270 percent.

Per capita income taxes top the large-city average by almost 1,000 percent.

No wonder Ray Keating, also author of *D.C. by the Numbers: A State of Failure*, subtitles his data-and-graph-filled book on New York's fiscal and regulatory game of Russian roulette "State and City in Perpetual Crisis."

And no wonder publisher and 1996 presidential candidate Steve Forbes says in the foreword that the crisis has led to a pervasive citizen attitude in the city and state of dependency on government in lieu of old-fashioned individual responsibility. Says Forbes: "Incentives matter and freedom works. Understanding this simple lesson would give New York a fighting chance."

The question is, however, do New York's top leaders, all presumably free marketeers, understand the lesson? Unfortunately, no. Witness the attempt in 1997 to undo New York City's perverse rent control scheme, which harks all the way back to World War II. Upshot: city tenants by the busload noisily descended on Albany, their placards attacking "Greedy Landlords" and "Heartless Legislators." Some Big Apple.

So guess what? Republican Governor George Pataki retreated. New York City Republican Mayor Rudolph Giuliani retreated. And New York's pugnacious Republican U.S. Senator Alfonse D'Amato retreated. Three retreaters out of three, or politics wins again.

But Keating understands the lesson well, and in his last chapter lays out a road for New York State's Renaissance—for staff and budget downsizing of the state regulatory bureaucracies, for holding them accountable, for setting term limits for the governor and state legislators (New York City has already made welcome moves in this direction), for improving economic growth and job creation via supply-side tax cuts. He would eliminate the state's capital gains and estate tax, phase out the state's personal income tax, and chop the state corporate income tax in half, from 9 percent to 4.5 percent. Audacious.

Similarly for New York City's Renaissance Road, Keating maps out sharp staff and budget downsizing and tax cuts. He would, for example, eliminate the New York City Department of Cultural Affairs and its budget of some $225 million. He would phase out and progressively privatize the City University of New York to save more than $400 million annually. He would achieve further fat savings by privatizing the city's giant bus and subway system. And Keating would wipe out the city's rent control scheme.

Where there is a will there is a way. Even New York State and New York City have been slowly hitting Renaissance Road while encountering yawning political potholes along the way.

Memo for Messrs. Pataki, Giuliani, and D'Amato: Check out *New York by the Numbers*. Fast. □

William Peterson is a Heritage Foundation adjunct scholar and Distinguished Lundy Professor Emeritus of Business Philosophy at Campbell University in North Carolina.

Unintended Consequences

by John Ross

Accurate Press • 1996 • 861 pages • $28.95

Reviewed by John Hospers

Unintended Consequences by John Ross is an 850-page novel whose central theme is the unintended consequences of seemingly beneficent actions and policies. The author cites historical parallels—the murder of the Austrian heir apparent in Sarajevo in 1914, the Versailles Treaty of 1919—but this work is about the catastrophic consequences of massive government regulation.

Whereas Ayn Rand's novel *Atlas Shrugged* was concerned with what happens when a free economy is strangled by regulation, Ross's novel has somewhat narrower focus, namely the endless petty regulations on the possession of guns and ammunition. Not only is the ownership of guns prohibited in many states even for purposes of self-protection, but if the steel or the wood on a gun is slightly longer or shorter than the regulations permit for just that size and type of gun, the owner is subjected to endless harassment, fines, and jail sentences. The official reason for the Waco raid (which figures prominently in the book) is the failure of the gun owners to pay a $200 gun tax. "One of the political parties," the main character concludes, "is going to have to wake up, smell the coffee, and start restoring and reaffirming all the articles in the Bill of Rights—the Second, Fourth, Fifth, and Tenth Amendments."

The effect of thousands of such regulations, and the ways in which they confer almost unlimited power on the regulators, is described in a series of seemingly unrelated, yet (as it turns out) closely connected, incidents in the novel. The reader is repelled by the account of a mindless bureaucracy with power to ruin careers and imprison innocent victims almost without limit. Like the characters in the book, he will find his anger rising and want to take action. The author's own words can best give a sense of this feeling:

> "The recent policies of raising your taxes, banning your guns, seizing your property, and chilling your freedoms, are the last gasp of an evil monster. That evil monster is socialism, and it is dying. I want to see everyone of you at the funeral."
>
> The applause was thunderous. As Henry watched, his phone rang again. It was Fleming.
>
> "What did you think? There were lots of speakers like that. You'll see more of them on C-span."
>
> "Why hasn't there been any other coverage on local or national news? It looked like there were ten or fifteen thousand people there when they panned the crowd. Haven't seen a word about it in any newspaper."
>
> "Does that really surprise you?" Fleming asked. "Hey, like the guy said, cheer up. Socialism's dying all around the globe. Washington just wants to give it one more try."
>
> "I hope it doesn't kill 'em first," Henry said as he hung up the phone.

The above passage depicts a rally at a gun club, where the estimate of ten thousand people present seems exaggerated. If one were to guess that this book has sold ten thousand copies, that estimate would probably be also an exaggeration: unknown author, obscure publisher, very little publicity. And this would be a pity: the novel is suspenseful, dramatic, and "must" reading for anyone who wants to learn in detail how a free economy deteriorates.

The author himself clearly wishes his novel to be an influence on American life; he writes in his introduction: "Today in America, honest, successful, talented, productive, motivated people are once again being stripped of their freedom and dignity. . . . The conflict has been building for over half a century, and once again warning flags are frantically waving while the instigators rush headlong toward the abyss, and their doom. It is my hope that these people will stop and reverse their course before they

reach the point where such reversal is no longer possible."

I recommend *Unintended Consequences* highly. □

John Hospers is professor emeritus of philosophy at the University of Southern California.

The Big Lie: What Every Baby Boomer Should Know About Social Security and Medicare

by A. Haeworth Robertson

Retirement Policy Institute • 1997 • 137 pages • $24.95

Reviewed by John Attarian

Author A. Haeworth Robertson has fought the good fight for decades. Upon becoming Chief Actuary of the Social Security Administration (SSA) in 1975, he began trying to dispel misunderstandings of Social Security by both the SSA and the public. In 1978, he resigned to pursue his educational effort, which yielded two books, *The Coming Revolution in Social Security* (1981) and *Social Security: What Every Taxpayer Should Know* (1992), more than 100 articles and papers, and over 500 speeches.

But after 20 years of listening to "lies and hypocrisies surrounding the selling of Social Security to the public," Robertson's patience has run out. "I am compelled to speak out as forcefully as possible about one of the greatest frauds ever perpetrated on the American public." Hence this concise, angry, and hard-hitting book for general readers.

Alarmed at Social Security's oncoming financial crisis and the lateness of the hour, he warns that "if we do not take action by the year 2000, it will be too late." After that, revising Social Security will entail profound social and economic turmoil.

He attributes the gross deception of the public to media ignorance and self-preservation among politicians and bureaucrats alike. "Some people have the paternalistic, arrogant attitude that they know what is best for you and that whatever is necessary to achieve *their* goals for what *they* perceive to be best for you is justified." If they must "misrepresent the facts or hide future costs" to secure public consent and "keep those Social Security taxes rolling in," so be it.

Much of *The Big Lie* is a long-overdue demolition job, exploding pernicious myths and grimly telling the truth. Your "contributions" do *not* provide your benefits; they're redistributed to current beneficiaries. Nor are benefits guaranteed. Congress has already reduced benefits several times—for example, raising the normal retirement age from 65 to 67. Without reforms, further cuts are inevitable.

And forget about the "trust funds" supposedly accumulating to pay future benefits. Containing only Treasury debt, the funds, Robertson says bluntly, are "stark naked; there is nothing in them that can be used to pay future benefits." Their only true asset is the government's ability to collect taxes in the future.

Robertson is especially scathing about "the biggest lie of all"—the myth that the current system is affordable and needs only modest tax and benefit changes. Using both SSA's intermediate-cost and high-cost (which he deems more accurate) actuarial assumptions, he shows that provision for financing promised benefits for the Baby Boomers is "grossly inadequate." Under the high-cost projections, balancing income and outgo over the 2010-2060 period will require increasing Social Security taxes 48 percent or cutting benefits 32 percent. Medicare's outlook is even worse.

Want to retire in your early sixties? Forget it.

In all this, Robertson is absolutely right. Changing Social Security, he concludes, is imperative. The only question is, "Do we want a relatively easy rescue now, or do we want a frantic, disorganized and futile rescue at the last minute?"

Robertson offers the Freedom Plan, which acknowledges "some necessary compromises" as we leave a system "with countless outstanding promises and trillions of dollars in liabilities." He would keep the current system through end-1999. Beneficiaries aged 55 and up as of January 1, 2000, would stay in Social Security without change. To recognize the unfunded accrued liability for their benefits, estimated at $14 trillion as of that date, the government would put $14 trillion of Treasury bonds in the trust funds. People under 55 would no longer

participate in Social Security or Medicare, neither paying taxes nor collecting benefits. Instead, they would receive Freedom Bonds equal to their past taxes, plus interest, for Old-Age Insurance and Health Insurance (but not Survivors Insurance or Disability Insurance), deposited in individual Freedom Accounts. They would pay taxes into the system at today's Social Security rates, receiving more Freedom Bonds in exchange. They could also make private investments in their Freedom Accounts, e.g., real estate or securities. Besides retirement, they could use their accounts to buy disability and health insurance. Contributions to the accounts would be deductible from gross income for tax purposes.

While not, alas, phasing Social Security and Medicare out, the Freedom Plan has great merits. In formally acknowledging Social Security's unfunded liability, it is outstandingly honest. The greater freedom of choice, and full income-tax break for the taxes and contributions, are attractive. So is the refreshing straightforwardness, eschewing the extravagant promises of other "reform" plans leaning on "the magic of compound interest." Robertson isn't peddling any snake oil.

When a former chief actuary says the Emperor is naked, it's time to arrest Social Security for public indecency. Every syllable of Robertson's anger is justified. His expertise lends his arguments unassailable credibility. A rousing, readable, and trustworthy humbug-buster, *The Big Lie* belongs on every Baby Boomer's bookshelf. □

John Attarian is a freelance writer in Ann Arbor, Michigan.

The Menace of Multiculturalism

by Alvin J. Schmidt

Praeger Publishers • 1997 • 199 pages + index • $39.95

Reviewed by Steven Yates

In his *The Menace of Multiculturalism*, sociologist Alvin J. Schmidt has produced a powerful critique of multiculturalism and unapologetic defense of an American culture based on free markets, Christianity, natural law, achievement, and the "melting pot." He argues passionately that behind the terms *diversity, tolerance,* and *sensitivity* is a movement now posing a bigger threat to this country from within than Communism ever was from without.

Schmidt distinguishes *multicultural education* from *multiculturalism.* The former consists of education about other cultures, examining their values and practices empirically and non-ideologically. To this Schmidt has no objection. One *should* learn about other cultures. But this is not what multiculturalists want. Multiculturalism is an ideology holding that all cultures, values, and practices are equal. It does not, however, maintain this view consistently. The exception is the culture identified as white, male, heterosexual, Christian, and European-derived, which multiculturalists deride as oppressive and intolerant. Dividing the world into victims and oppressors marks multiculturalism as essentially Marxist in its origins and basic assumptions.

What follows is a *reductio ad absurdum* leaving multiculturalists looking uninformed at best, and hypocritical or even evil at worst. For example, if all cultures are equal, then one must accept as equals to our own those cultures built around extreme xenophobia, genital mutilation, cannibalism, slavery, or human sacrifice. In short, *genuine* multicultural education solidly refutes multiculturalism. This explains the tone of anger mixed with revulsion running through this book. Multiculturalism is not what it pretends to be. Its call for an egalitarianism of cultures and lifestyles masks an intellectually dishonest attack on modern American/Western culture that is divisive and destructive. Thus the necessity of exposing its incursions, particularly into the educational system.

One way multiculturalists have attacked American culture has been to rewrite textbooks. Multiculturalist-approved texts portray non-Western cultures as idyllic while neglecting the achievements of our own. They insinuate that Americans stole from other cultures, e.g., that the Founding Fathers lifted some of the U.S. Constitution from Iroquois law. Multiculturalism thus plays fast and loose with history and anthropology. Afrocentrism, a well-known school of multiculturalism, systematically

mixes up culture, race, and geography, and invents an "African culture" out of whole cloth. Supposedly the West also stole from this culture. The reality is that there are *many* cultures on the African continent.

To protect itself, multiculturalism relies on a level of doublespeak that would have shocked even Orwell. *Diversity* is promoted to advance multiculturalism; it does not extend to *ideas. Tolerance* is advanced; but multiculturalists are resolutely intolerant of Western traditions. *Sensitivity* is promoted—but multiculturalists are anything but sensitive to practicing Christians. Political correctness is the tool multiculturalists use to control public discourse on "rights" movements based on ethnicity, gender, or sexual preference.

Schmidt breaks new ground by noting how Yugoslavia began as a multiculturalist experiment and ended in ethnic cleansing. The lesson is simple: multiculturalism does not work! Multiculturalists nevertheless maintain that ethnic groups need not assimilate into a single American culture and promote policies that hinder assimilation, for example, bilingual education.

Schmidt documents many other cases of multiculturalist attacks on American practices and values, including the war on the traditional family. Schmidt reasserts the importance of Christianity in American culture as well as its enormous contributions to Western civilization.

Can we turn back multiculturalism? A degree of pessimism is understandable. After all, multiculturalism is now the unofficial ideology of most of higher education. Its advocates are in power as the gatekeepers of academe. Moreover, multiculturalists are well represented in federal and state governments, the courts, the media, Hollywood, naïve corporations which hire "diversity" consultants, and even mainstream churches. Hence Schmidt's reference to multiculturalism as a latter-day Trojan Horse, being used by those who hate America to bring it down from within.

Schmidt holds out hope on several fronts, however. The critics of multiculturalism may be a minority without much institutional power, but so were the Founding Fathers. The Constitution endures as an ideal and some multiculturalist initiatives (e.g., campus speech codes) have failed constitutional scrutiny.

Critics of multiculturalism have an uphill struggle just getting attention. Those defending the ideas necessary to preserve freedom are scattered and poorly organized, often subsisting well outside the academic "mainstream" in an environment in which unpopular ideas are easily ignored and lost in the flow of information. Although the publication of books like this one is an encouraging sign that cracks are opening in the multiculturalist edifice, things might have to get worse before they can get better. □

Steven Yates, who teaches management ethics at Southern Wesleyan University, is an adjunct research fellow with the Acton Institute for the Study of Religion and Liberty and the author of Civil Wrongs: What Went Wrong With Affirmative Action *(San Francisco: ICS Press, 1994).*

A Matter of Interpretation: Federal Courts and The Law

by Antonin Scalia

Princeton University Press • 997 • 159 pages • $19.95

Reviewed by Jürgen Skoppek

The fate of our liberties no longer rests in the hands of the voting public, elected legislators, or executive-branch officials. Whatever liberties we are permitted to have in the age of Big Government are determined mainly by a small cadre of often-unelected judges. This powerful elite decides what rights our national and state constitutions provide, which laws are enforceable, and the manner in which government authority can be exercised. How these judges go about their business of deciding what the law says is therefore of extraordinary interest, or at least it should be, to anyone interested in preserving individual liberty.

Hence, we should all be grateful for *A Matter of Interpretation*, the remarkably readable and fascinating new book by Supreme Court Justice Antonin Scalia. Based upon his recent Tanner Lectures at Princeton University, this book provides a lay-reader–friendly glimpse at the complex and arcane world of jurisprudence and the legal art of interpreting statutes and constitu-

tional provisions. In the span of a mere 150 pages, even readers unfamiliar with the twists and turns of the law can gain a better understanding of what motivates the most influential legal scholars currently espousing their views in America.

What makes the book particularly interesting is that it is not a mere recitation of Justice Scalia's legal philosophy, but also a dialogue with other academics who have insights into the question of legal interpretation, including commentary by Professors Mary Ann Glendon (a specialist in comparative law), Gordon S. Wood (a historian of the American eighteenth century), and Amy Gutmann (a professor of politics at Princeton who provides a stimulating introductory setting for the book). Most noteworthy are the contributions of two of the nation's foremost adherents to what might be called the Feel-Good School of Jurisprudence (wherein every jurisprudential analysis is carefully designed to justify the particular result that makes the author feel good about his or her liberal preferences on a given legal issue), Professors Laurence Tribe and Ronald Dworkin.

Justice Scalia has become closely associated with, if not the embodiment of, the principles of "originalism" and "textualism," two quite different methodologies for interpreting the law. What his chief article in the book, "Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Law," makes clear is that these methodologies are not an end in themselves, but merely a means to an end. The motivating goal for employment of these methodologies is judicial restraint. In Justice Scalia's legal universe, the great mortal sin is judicial activism and the aggrandizement of authoritarian power in the hands of a judicial elite. According to him, the problem is the shift from law based upon democratic will and a reliable and steady constitution to law created by all-powerful judges employing their own personal preferences. It is this usurpation of democracy that Justice Scalia wishes to limit by employing his interpretative techniques.

Scalia complains that "So utterly unformed is the American law of statutory interpretation that not only is its methodology unclear, but even its very *objective* is." He argues that one of the key reasons for the penchant of judges to take on legislative powers in the act of legal interpretation is the grounding of American law in the common law tradition. The common law is judge-made law, and even as American law in practice began to be reflected primarily in statutes, judges still approached their practice from a common-law orientation. Justice Scalia points out how, to this day, legal education uses the common law as the foundation for turning students into lawyers. The result, he maintains, is that judges wield all too much influence, thereby doing great damage to the idea of democracy.

As a means to limit this activism by judges, Justice Scalia proposes judicial utilization of two principles, textualism and originalism. What are these approaches to legal interpretation? "Textualism" respects the primacy of the text, focusing squarely on the plain meaning of statutory law and constitutional provisions. It requires the use of basic rules of construction, such as "expression of one is exclusion of the other" (Scalia's example, "If you see a sign that says children under twelve may enter free, you should have no need to ask whether your thirteen-year-old must pay"), or "a word is given meaning by those around it" (for example, "I took the boat out on the bay" gives "bay" a different meaning than "I put the saddle on the bay"). "Originalism," on the other hand, requires an analysis of a legal text on the basis of its original meaning—how the text was understood at the time of its authorship.

In contrast to these methodologies, which the Justice suggests encourage limits on judicial authority, he presents dark images of the enemy. His bêtes noires include use of the supposed "intent of the Legislature" and apparent "legislative history" to interpret statutes, and the viewing of the U.S. Constitution as a flexible "Living Constitution" constantly changing with the needs and desires of society at any given moment. The danger in these approaches, he argues, is that democracy will be replaced with government by a judicial elite and that, once the public catches on, judges will be chosen purely on the basis of political preference, putting even our most cherished individual rights in danger.

Justice Scalia presents his views with charm and clarity. His adversaries, however, also make some strong points. For instance, Scalia's approach can lead to contradiction. After all,

textualism and originalism are often at odds. The former most often produces very tightly interpreted statutes, but permits constitutional phrases like "due process" and "equal protection" to be given extremely broad meaning. Originalism in many respects requires utilization of the very supposed evils (reference to legislative history and legislator understanding) that the former approach abhors. Justice Scalia's article spends little time attempting to resolve this contradiction.

Nor is it always clear exactly what the author's concern is. Is he opposed to an imperial judiciary because it subverts democracy and majority rule? Or is he worried that an imperial judiciary is too ready to succumb to the will of the majority, thereby imperiling basic minority rights? The Justice poses both dangers, at his convenience, even though the two problems are quite incompatible. Justice Scalia advocates judicial restraint, but also seems by implication to be arguing for judicial activism when necessary to strike down legislative efforts that contradict the original understanding of particular constitutional provisions.

Such contradictions have led many champions of individual rights to worry about the true goals of Justice Scalia's jurisprudence. In deciding cases at the Supreme Court, he seems to use his legal principles fairly consistently to justify implementation of the will of legislative majorities or to preserve traditions against contemporary, often "political correctness"–motivated assault. Frequently, Justice Scalia's arguments prefer the result that preserves the way things have been done in the past. Of course, preservation of "the way things used to be" may by definition constitute a certain kind of conservatism, but this gives little comfort to civil libertarians.

The failure of Justice Scalia and the commenting scholars to effectively reconcile these contradictions does not in any way diminish the value of the book. The very fact that these questions are raised in the mind of the reader is of great value. *A Matter of Interpretation* sets the mind aswirl with ideas. It stimulates internal legal and philosophical debate as the reader progresses through its pages. It excites an interest in the law and demonstrates the critical importance of thinking about the role of legal interpretation in the crafting of the way we govern ourselves. It is a book for anyone who cares about the law and its place in our society. □

Jürgen Skoppek is a magistrate on Michigan's Workers' Compensation Appellate Commission and holds a J.D. from Harvard Law School.