

# THE FREEMAN

IDEAS ON LIBERTY

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## PERSPECTIVE

### Toward Jeffersonian Self-Government

My idealistic and distinctly unpragmatic stance toward social policy is to say that local control, the voluntary coming together of neighbors, and responsibility for one's own life are good things for everyone, not just the middle class, that they are the basis for the pursuit of happiness—that the way to help the underclass live satisfying lives is to make them responsible for their own lives and responsible for the life of their community. I also suggest that the way to tap the assets of the able and the affluent is to pull down the bureaucracies of social service professionals that now shield them from personal responsibility. It does not seem to me far-fetched that, deprived of the ability to pay social service professionals to do it for him, the average American in the late twentieth century would take his own steps, in his own neighborhood and reaching across to poor neighborhoods, to keep his fellow human beings from starving in the street, to keep children from growing up neglected, to keep communities from being ravaged by crime and drugs. It does not even seem far-fetched that these steps would be more effective than the current system in reducing the incidence of discrete problems such as malnutrition, child neglect, and homelessness, even as it was spectacularly more effective in achieving the larger goal of enabling people to live satisfying lives.

This is a radical approach indeed in an age when social democracy along the Western European model seems to be enjoying a global ascendancy. But having spent the last few decades testing the limits of social policy, why not reconsider the potential of a solution that was once as American as apple pie: Jeffersonian self-government?

—CHARLES MURRAY, writing  
in *Critical Review*

### Land of Opportunity

Over the years, thousands of refugees came to this country from Southeast Asia, Eastern Europe, the Soviet Union, and Latin America. They were certainly not prototypes of success. In fact, they were often personal failures—they came here with no money, no assets, and no contacts. They usually

started out in menial jobs. Yet once in America, they worked hard, got ahead, and their sons and daughters rose to the top of their class at some of America's best universities. It is a thrilling experience to watch the mechanisms of freedom and opportunity transform the lives of these previous "failures," and to realize that their success enriches the American culture just as surely as it enriches the American economy.

—KENNETH Y. TOMLINSON, writing in the December 1991 issue of *Imprimis*

## Economic Strikers

Permitting unions and their members to suppress the competition of other workers is not right. Indeed it is both economically and morally vicious—as vicious as it would be to allow white workers to block the access of blacks to employment opportunities, another thing that unions have been known to do. . . .

Freedom is the foundation of morality and the *sine qua non* of well-being. Preventing employers from offering and workers from accepting jobs abandoned by strikers, often for no good reason at all, makes no socially acceptable sense. It is the kind of thinking that has made America's unionized industries uncompetitive in world markets, the country's unemployment rolls grow, and its businessmen invest elsewhere. It doesn't do union members any good, either. So who benefits?

—SYLVESTER PETRO, writing in the August 5, 1991, *Wall Street Journal*

## Rent Control

Though few people know it, rent control is not one of the original laws of nature. New York City apartments have been subject to control for only 48 years. From Peter Minuit until 1943, tenants and landlords negotiated leases without government interference, except for a spell during and after World War I. Without artificially low rents, people had no incentive to cling to one dwelling; they moved freely, and empty apartments abounded.

—from an editorial in the August 13, 1991, *New York Times*

## Fair Trade vs. Free Trade

All trade barriers rest upon the moral premise that it is fairer for the U.S. government to effectively force an American citizen to buy from an American company than to allow him to voluntarily make a purchase from a foreign company. U.S. trade policy assumes that the moral difference between an American company and a foreign company is greater than the difference between coercion and voluntary agreement. The choice of fair trade vs. free trade is largely: When is coercion fairer than voluntary agreement?

—JAMES BOVARD  
*The Fair Trade Fraud*

## "Animal Rights"

Animals should be treated in a humane and ethical manner, but we should not forget that most major advances in human and veterinary medicine would have been nearly impossible without animal testing.

In 1879, Robert Koch demonstrated the relationship between bacteria and disease by studying anthrax in sheep and cattle.

In 1922, Frederick Banting and Charles Best, working with dogs, discovered a method of extracting insulin from the pancreas of an animal to treat humans suffering from diabetes.

In 1954, Jonas Salk used monkeys to develop the polio vaccine.

In 1967, Christiaan Barnard tested heart transplant techniques on dogs and other animals before performing the procedure on humans.

It is unthinkable that such major medical progress could have been thwarted by those who claim that "a rat is a pig is a dog is a boy." Yet today we stand on the threshold of restricting animal research and, hence, greatly diminishing progress in areas including cancer chemotherapy, hypertension, atherosclerosis and Alzheimer's disease.

—ELIZABETH M. WHELAN, writing in the September 1991 issue of *Private Practice*

# The Mythology of State Spending

by John Hood

In 1991, 30 states facing budget deficits raised income, sales, excise, and other taxes a total of \$17 billion, with more tax increases promised for 1992 and beyond.

Most commentators blamed Federal aid cuts and the tax revolts of the 1980s, which supposedly left the states unprepared for the 1990-91 recession. But rather than simply suffering the *effects* of a slower national economy, many state and local governments, by raising taxes and squandering resources, were a primary *cause* of slow growth.

According to Stephen Moore of the Cato Institute, state spending increased at an annual rate of 8.5 percent from 1982 to 1989—twice the inflation rate. Meanwhile, per capita state taxes almost doubled from 1980 to 1989, and “Tax Freedom Day”—computed by the Tax Foundation to identify when Americans effectively stop working to pay their Federal, state, and local taxes and start working for themselves—fell on May 8 in 1991, the latest date ever. State employment rose by 19 percent in the 1980s, while the general population grew by only 9 percent. Federal aid to states and localities, after dipping in the early 1980s, increased by an inflation-adjusted 20 percent in the late 1980s. From 1989 to 1991, state spending rose at an average annual rate of 7.6 percent, 2.7 percent above the inflation rate.

*John Hood is publications and research director of the John Locke Foundation in Raleigh, North Carolina, and a columnist for Spectator (N.C.) magazine.*

Most of these facts are well-known by state budget officials and policy analysts, but conflict with mythologies promulgated by the news media.

For the past two years, I have worked for a state think tank in Raleigh, North Carolina, that has been engaged in budget debates. I’ve observed the cozy relationship between reporters and public employee unions, teacher unions, and oft-quoted university “experts” on public policy. I have come to believe that the facts about state budgets don’t make it into most news stories and commentaries because of the composition of news sources and interest groups in state capitals.

It isn’t a nefarious process, but one of necessity: Reporters rely on advocates to generate story ideas, provide information and quotes about public issues, and to set the agenda for public debate. Much more so than in Washington, where a legion of reporters covers the federal government, and citizens’ lobbies and think tanks point out wasteful spending, representatives of state employees, contractors, and consultants dominate the news-gathering process in state capitals.

A recent example in North Carolina demonstrates how budget myths are created. During the 1991 legislative session, the North Carolina Association of Educators was growing nervous about the prospect of not receiving pay raises promised in previous sessions. Indeed, early in the session, public educators warned that the state’s largest budget deficit in many years would result in edu-

cation cuts, though as it turned out the cuts were minimal. Major newspapers ran stories extolling the achievements of particular teachers or decrying the state's low test scores and graduation rates.

Meanwhile, our office provided the news media with statistics showing a tremendous increase in public education administration (from 75 teachers for every administrator in the 1970s to 50 teachers for every administrator now) and in non-teaching personnel (from two teachers for every non-teacher in the 1960s to one teacher for every non-teacher now). In addition, we showed that the average salary of the state's teachers was closer to the national average for teachers than North Carolina's private sector wage was to the national private sector wage. In other words, compared with other workers in the state, teachers were fairly well off. We also identified a massive increase in state employment during the past two decades.

State media organizations paid little attention to these figures, although outside media such as *National Review* and *The Economist* reported them in stories on state fiscal woes. Instead, reporters continued to do stories without statistics or other hard facts and which focused on quotes from union lobbyists and their legislative allies. It worked. Rather than cut significantly into non-teacher positions or other government waste, the North Carolina legislature enacted the largest tax increase in the state's history.

Even if more press attention had been focused on numbers and fiscal trends, the result might have been the same. That's because the policy-makers who raise taxes and create government programs are beholden to teacher unions, public employee unions, and industry lobbies with an interest in state contracts. These groups provide political contributions and campaign volunteers. They hire lobbyists to haunt the halls of state legislatures, providing "information" and in some cases virtually writing the legislation that will protect their industry or their members. They host dinners, breakfasts, teas, parties, receptions, and other events to foster contacts and provide venues for deal-making. They manipulate media coverage by holding rallies and "marching on the legislature," although the ability to mobilize a couple hundred people doesn't really suggest public support or even newsworthiness.

These groups have been largely successful during the past decade in promoting their agenda: Public employee unions are the only healthy segment of the American labor movement. Andrew Bates of *The New Republic* reports that these unions added 1.2 million new members during the 1980s, a 30 percent increase, and that state employee salaries nationwide increased by 59 percent from 1980 through 1987, while private salaries rose 35 percent. Benefits also expanded rapidly, with retirement and health plan costs becoming the fastest growing category of state spending.

## Ignoring the Appeal of Facts and Figures

In classic public choice style, those with an interest in government programs and higher taxes to pay for them exercise inordinate influence in state capitals and, to some extent, in city halls. The average citizen, whose interests lie in smaller government and lower taxes, often cannot meaningfully influence the process. The continued growth of state think tanks and taxpayer associations will help offset some of the advantages pro-government lobbies have, but no one should expect rapid change. In most state capitals, relationships between reporters and sources are chummy and take a while to develop. Also, legislators and other policy-makers have an interest in information and analysis, but an even greater one in political contributions—so the appeal of facts and figures isn't overwhelming.

Still, recent elections show that voters across the country are angry about taxes, dissatisfied with the way their governments are being run, and disgusted with waste and political scandal. To translate these feelings into specific opposition to programs, advocates of limited government and free markets have to be savvy, timely, and effective purveyors of information about the history of government taxing and spending in their states and the potential impact on economic growth. It may take a while for the message to crystalize, but it is crucial that it do so. The immensity of state and local tax increases during the past two years will translate into significant economic costs. A repetition of the 1991 state budget debacle could wreak irreparable harm on the incomes and livelihoods of American families. □

# Kafka's Bureaucratic Nightmares

by Jack Matthews

**D**uring telephone conversations my abstracted vision sometimes idles over a very small, signed Marc Chagall print on our wall. This print is the familiar one which shows a bride and groom drifting eerily off the ground, with one side of them cast in relief against a vast white chicken, the size of a bed with clean sheets. But that's not the extent of Chagall's dream inventory, for it includes such bizarre objects as the head of a goat, the top part of a cello, elusively designed angels, and the head of a man wearing the billed cap of a 1920s streetcar conductor as he reads from a book.

These pleasantly colorful and expressive images of Chagall's Jewish mysticism naturally bring to mind the darker, less colorful (if deeper, in the way of textual dimensions) images evoked by Franz Kafka, a writer who helped define the modernist obsession with deconstruction and angst. Indeed, Kafka's nightmarish stories and novels occupy so unique a place in our sensibility that the word "Kafkaesque" is used and understood by people everywhere, even if they have never actually read anything he wrote.

But the truth is that many people *have* read his work. His story "The Metamorphosis" and his novel, *The Trial*, remain standard assignments in college literature courses. The former is especially memorable for its opening sentence, which informs us that one morning a man named Gregor

Samsa awoke to discover that he had been transformed into a gigantic cockroach. What follows this nightmarish transformation is quite logical, in its way—a fact which renders everything as unsettlingly terrible as it is ridiculous.

It is not surprising that "The Metamorphosis" has become a classic of surrealism, giving a powerfully symbolic expression to an individual despair and uncertainty we have come to think of as uniquely *ours*—something poor Chaucer or Shakespeare or Dickens could not have understood. Kafka's unforgettable images of dislocation seem to epitomize both the madness of the modern world and his own desperate neurosis—conditions hardly unrelated. The critic Philip Rahv wrote: "That Kafka is among the most neurotic of literary artists goes without saying. It accounts, mainly, for the felt menace of his fantastic symbolism and for his drastic departure from the well-defined norms of the literary imagination."<sup>1</sup>

But Rahv goes on to say that such a formulation is not conclusive, for "Kafka is something more than a neurotic artist, he is also an artist of neurosis, that is to say, he succeeds in objectifying through imaginative means the states of mind typical of neurosis and hence in incorporating his private world into the public world we all live in." Farther down the same page, he adds, "Neurosis may be the occasion, but literature is the consequence."<sup>2</sup>

This is all true, and it is all worth saying. But what it neglects to say, and what is often ignored in critical commentaries upon the work of a writer whose visions have come to typify the darkest sort of existential despair, is the *focus* of so much irrationality and terror—for the "felt menace of

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*Jack Matthews' new play, An Interview With the Sphinx, published by The Dramatic Publishing Company, will also come out this spring in a special signed limited edition with The Logan Elm Press in Columbus, Ohio. His story, "The Branch Office in Prague" (Dirty Tricks, Johns Hopkins) is based upon Kafka's "The Metamorphosis."*

his fantastic symbolism," that Rahv saw in Kafka's work, is typically focused upon some aspect of modern bureaucracy and its proliferation, along with its teratological outgrowth, the bureaucratic mind.

## The Bureaucratic Mind

Monstrous in its hold upon us, the bureaucratic mind is sustained by the self-perpetuating mechanics of government and the claptrap of its own rhetoric. Marxist critics, in all their exotic colorations, have always taken, and will naturally continue to take, great care to avoid such an uncomfortable truth, for Marxists of all sorts (like the social insects generally) possess the bureaucratic mind and need political structure to provide them with security and self-definition. If Marxism is a substitute for religion, bureaucracy is its theology.

Obviously Kafka's woeful parables are not about Marxism, as such; if they were, his work would be no more than the narrowest sort of propaganda and it would be hard to explain its continuing relevance today among readers of various ideological faiths. The object of his chronic dismay is something far more prevalent and insidious: at the heart of his obsessive and horrifying narratives is an unfathomable bureaucracy, one that has emerged through a combination of inertia, default, and the institution of political power, perpetuating itself by feeding upon the rights of the people it was ostensibly designed to serve.

Consider one of his most famous short stories, "In the Penal Colony." It begins with an Officer proudly showing an Explorer (neither is given a name) a vast and intricate machine built for the administration of justice—specifically, the punishment of malefactors. Operating somewhat like a gigantic tattooing device, the machine is about to be used on a soldier convicted of insolence and sleeping on duty. This prisoner is so stupid, however, he seems hardly aware of the nature and significance of his crimes.

"Does he understand his sentence?" the Explorer asks.

"No," the Officer answers. "He'll learn it on his body."<sup>3</sup>

And, indeed, that is how it works: The machine will imprint the "sentence" on his body, and justice will be served. This fantastic device

was invented by The Old Commandant, now dead; indeed, we are told that the organization of the whole penal colony is his work.<sup>4</sup> No wonder his memory is held in such reverence and awe.

But it is the Officer who occupies the center of Kafka's odd parable. He identifies the machine as the very principle of order in the world as he knows it, a world limited to the Penal Colony itself. Here is a man who craves some version of moral certainty in his actions; but for him, this must be a certainty that is conferred from without—which means it is programmed, and therefore not moral at all.

He is, in short, a perfect bureaucrat, and longs for the good old days. "When the Old Commandant was alive," he tells the Explorer in a nostalgic moment, "the colony was filled with his adherents: In some measure I still possess his strength of conviction, but nothing of his power." Then, pointing to the machine, he asks rhetorically, "Are we to allow such a creation as this—the work of a lifetime—to perish?"<sup>5</sup> Finally, in an extreme of dramatic irony that verges upon comic melodrama, the Officer himself is killed by the machine as it brutally continues to edify his corpse.

## The Ordeal of Joseph K.

This theme of bureaucratic madness permeates most of what Kafka wrote, but its presence is nowhere more obvious than in his novel, *The Trial*. The title has two levels of meaning, referring literally to some ominous legal action to which the protagonist, Joseph K., is told he will soon be subjected, and figuratively to the "trial" of chronic anxiety he is forced to endure while he awaits his trial—an anxiety that begins the instant he learns that he is accused of some unspecified crime—a crime that is terrifying and destructive precisely to the extent it is left undefined. This could well represent a tyrannical conscience or superego,<sup>6</sup> of course; but it is also an image of the dehumanizing atmosphere created by the moral irresponsibility of bureaucracies.

Condemned to meander in a state of dreamlike vagueness from place to place, never able to forget that he has been charged with some sort of terrible though unnamed crime, Joseph K. suffers in ways that strike us as distinctly modern. In the ancient world, exile was often viewed as worse



THE BETTMANN ARCHIVE

**Franz Kafka (1883-1924)**

than death, for it meant much more than the loss of what we today would term “civil rights”; it meant an existential alienation so terrible that death was to be preferred.

While Joseph K. is not exiled from the world he knows, something even stranger and more horrible happens: *Exile is brought to him*, as it were, magically transforming all that was known and familiar. Joseph K.’s exile has been dropped upon him like some great net from which he will never escape, sensing only that behind that net there looms a great and shadowy bureaucracy—an entity as remote and powerful and incomprehensible as the “Castle” of Kafka’s second most famous novel. In his diary Kafka wrote, “A cage went in search of a bird.”

The central action of *The Trial* is Joseph K.’s painful struggle in trying to learn exactly where he stands with regard to the law, specifically, and the world, generally. In a way, his behavior, like that of Gregor Samsa in “The Metamorphosis,” is itself quite normal; it is the circumstance of his sudden fate that is abnormal. Near the novel’s end, Joseph K. consults a painter named Titorelli, who tells him there are three possible outcomes

to his struggle: definitive acquittal, ostensible acquittal, and indefinite postponement. Hearing this, Joseph K. buys three paintings from Titorelli, one for each outcome, one might think, completing a pattern of symmetry that seems as oddly significant as most of what happens to him . . . but it turns out that it is finally as meaningless, for this transaction has nothing to do with the ramble-scramble evidence of some mysterious bureaucracy controlling every aspect of his life, functioning in some vast, ominous, shadowy realm just beyond the reach of his imagination.

Eventually, Joseph K. is killed, ending the trial of his existence before that other ghostly trial for an unnamed crime can take place—assuming that it ever would. Like most of Kafka’s narratives, this novel is dotted with strangely comic episodes; but the comedy does not provide release from the oppressive atmosphere of an irrational but omnipotent bureaucracy. In this, Kafka’s nightmare world is far different from that wonderfully crazy print by Marc Chagall I gaze upon when I talk over the phone . . . for in Chagall’s world, there is not only confusion, there is also joy; there is not only the threat of nightmare in the surrealistic superimposition of a bridal couple upon the flank of a vast white chicken, there is the grace of flight, freedom, . . . and color.

This is a far different realm from that reflected in Kafka’s black and white parables, where instead of buoyancy, there is only the heavy slogging of nightmarish struggle; and instead of joy, there is only the chugging of political machinery, mindlessly controlling everything—signifying a bureaucracy that has severed all connection with human need. Itself devoid of selfhood, this bureaucracy nevertheless creates scenarios in which selves become increasingly irrelevant—hardly more than feckless dreams flickering on and off in the crepuscular shadow of machines that mean nothing in themselves, but paradoxically in *meaning* that nothing, intend that nothing and no one else should ever mean anything, or have meaning . . . or deviate in any way from the absolute meaninglessness of their tyrannical power. □

1. Introduction to the Modern Library edition of *Selected Short Stories of Franz Kafka* (New York, 1952), p. ix.

2. *Op. cit.*

3. *Op. cit.*, p. 96.

4. *Ibid.*, p. 92.

5. *Ibid.*, p. 108.

6. For interesting though obvious reasons, Kafka’s work is rich in Freudian motifs.



# The Search for a Souvenir Spoon

by Dwight R. Lee

**M**y mother collects souvenir spoons, and I have found that airports are the easiest place to buy them. However, when I recently flew into Sheremetevo, Moscow's international airport, one of the first things I noticed after clearing customs was the lack of shops. The traveler who wants a convenient souvenir is out of luck.

Finding no souvenir spoons at the airport, I assumed they would be available at my downtown hotel. I was wrong. There was only one small shop in the hotel, containing little more than *matrioshka* dolls, lacquered boxes, and a few fur hats. Even if souvenir spoons had been available, buying one wouldn't have been easy. The shop was rarely open, and then attended by a clerk more interested in reading her paper than taking my money.

A short walk to GUM, Russia's largest department store, also was unproductive. There were no advertisements or fancy displays aimed at enticing customers to spend their money. Of course, I was prepared to buy a souvenir spoon without such inducements, but despite a seemingly endless succession of shops, I found none. Indeed, little merchandise of any kind could be seen. The long lines of women (few shoppers were men) obscured whatever merchandise was available. Figuring that these women weren't queuing up for souvenir spoons, I didn't join them.

Near my hotel I came across some street ven-

dors who, recognizing me as an American, were eager to sell me souvenirs—provided I paid U.S. dollars. Unfortunately, their selection was limited. Deciding that a Red Army battle helmet or a cheap T-shirt proclaiming the wearer to be a KGB agent would not make a flattering addition to my mother's wardrobe, I continued my search for a souvenir spoon.

I was able to be philosophical about my search by considering the plight of Russian citizens, who depend on those with little interest in their money for everything they want to buy. The long lines of shoppers waiting for surly service and pitiful products are only the most obvious examples of the lack of commercial attention that Americans have the luxury of complaining about.

We Americans, in fact, take a lot for granted. When it rains, we turn on our windshield wipers with the same ease that we turn the dial of our radio to avoid a commercial. Russians lucky enough to have a car, especially one with a radio, don't have to worry about commercials. But when it starts raining, many drivers must stop their cars, take their wiper blades from the glove compartment, climb out into the pouring rain, and attach them so they can continue their trip. Finding someone willing to sell wiper blades is a serious challenge for motorists, so wiper blades left on the windshield of one car are likely to find their way into the glove compartment of another.

We Americans are accustomed to bright lights.

*Dwight R. Lee is the Ramsey Professor of Economics at the University of Georgia, Athens.*

Almost nothing is brightly lit in Russian stores, restaurants, hotels, and offices. There are generally plenty of light bulbs, but most of them are burned out. In many cases these burned-out bulbs were brought in by employees and substituted for those that work. This is a tempting way for citizens to replace their burned-out bulbs at home, since buying working light bulbs is only slightly easier than buying a souvenir spoon.

If Russians were surrounded by people eager for their money, then, like Americans, they would be surrounded by light bulbs, wiper blades, and souvenir spoons, not to mention thousands of other products they do without. The desire for money motivates the production of goods, and the availability of goods, in turn, creates the desire for money. Bringing the Russian economy into the reinforcing cycle of productive activity and the aggressive pursuit of money requires freedom,

including the freedom to own, sell, and profit from private property.

## The Uses of Freedom

The Russians' quest for freedom—economic as well as political—is fueling the revolution that is sweeping aside obstacles such as the Communist Party and the forced union of the Soviet republics. As the citizens of what has been the Soviet Union secure their freedom, they will begin using it in a variety of ways to improve their lives. One of those ways will be to develop increasingly creative means to sell goods and services.

Some day soon I hope the Russian people will be fortunate enough to benefit from the "crass commercialism" Americans love to complain about. Then I will be able to buy my mother a souvenir spoon at the airport or hotel in Moscow. □

## 1991-92 Essay Contest Winners

### "The Market and Mother Nature:

### Responses of a Free Society to Environmental Concerns"

sponsored by The Foundation for Economic Education

#### COLLEGE DIVISION

**First Prize (\$1500):** Brian L. DeSpain, Southwest Missouri State University, "Markets and Environments: Stewardship of Liberty, Property and Nature"

**Second Prize (\$1000):** Ramesh Ponnuru, Princeton University, "The Environment: A Freedom Agenda"

**Third Prize (\$500):** Zachary Shriver, Amherst College, "Privatization: An Economic Imperative"

#### HIGH SCHOOL DIVISION

**First Prize (\$1500 Scholarship):** Carl E. Bruce, Pilgrim Christian Academy (home school), Wichita, Kansas, "Environmentalism: Leading Mankind Down the Garden Path"

**Second Prize (\$1000 Scholarship):** Wendy Dale Shalit, Whitefish Bay (Wisconsin) High School, "The Weapon of Property Rights"

**Third Prize (\$500 Scholarship):** Robert A. Parkins, Shawnee Mission (Kansas) East High School, "Preservation and Privatization"

# Looking for a Strong Man After the Revolution

by Doug Reardon

**T**aras and Ilya were doing a very bad thing. So awful, in fact, was the deed the two young men were doing on the train to Kiev that, should the police have found them out, Taras and Ilya could have gone to prison for a long time.

They had bought cigarettes for two rubles a pack in St. Petersburg and were going to sell them for five rubles a pack in Kiev.

"I could go five years to prison, five years for this!" Ilya exclaimed later in the smugglers' flat while unpacking the rucksacks, suitcase, and cloth bag crammed with dozens of cartons of rather toxic-looking unfiltered cigarettes made in Bulgaria.

"I am a criminal!" Taras chimed in with his partner, both singing the hymn of wronged victims of a bad system.

A system that makes supplying legal products a criminal offense obviously is in need of reform. That 73 years and untold human suffering were required to make apparent the failure of Communism in the Soviet Union is a profound tragedy. Yet as the republics of the former union move toward building a more sensible society, old habits of state dependency may be as vexing as loosening the chains of government.

In many instances, if government simply removes itself from people's lives, people will gladly get on with putting society on a more sensi-

ble footing. For example, Taras and Ilya were black marketeers because the government did not allow a free market to exist.

The cigarettes Ilya and Taras smuggle are not particularly good, but queues are eye-poppingly long outside state-controlled tobacco shops in Kiev. If the state didn't have a monopoly on tobacco and set its price, the price of cigarettes might rise and the supply of cigarettes would increase until there was a satisfactory equilibrium.

This is exactly the type of free-market price reform Russian President Boris Yeltsin has pledged for the Russian republic. But other republics so far haven't followed suit.

However, withdrawing the heavy hand of government, which touches even the most picayune details of life, does not mean that many people will accept the absence of Big Brother. Patterns set by centuries of authoritarian rule seem little changed since the smashing of the highly centralized Soviet state. The desire for a powerful government to dictate life remains widely held in Russia, Ukraine, and elsewhere.

Despite the "Second Russian Revolution," life flows along the same old path at the sprawling state farm surrounding Bortnichi, a village about 20 miles, through pine forest and across rich, black soil, from the Dnieper River and Ukraine's capital, Kiev.

Sunlight haloed the milkmaid's angelic face, soft

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THE BETTMAN ARCHIVE

*Since 1547, when Ivan the Terrible created a state where virtually all reins of power were held by his hand, Russia's economic development has been dictated from central control rather than individual effort.*

and fair, her hair wrapped in a simple white scarf, as she seemed poised to part her lips in a soothing lullaby . . . instead came steel. "There should be a hard hand, a fist!" hammered Tamara Checko, a mother of five who tends milk cows and fattens calves at the farm. "People should be forced to work!"

Down the dirt road from the milkmaid's home, Ivan Momot, a 76-year-old retiree, was spreading ash fertilizer with a rake over the rectangle of earth where he cultivates cucumbers, red beets, and pumpkins. With a dash of his rake, Momot set a billy goat bleating away from a stalk of corn, and grumped that someone needed to take control of things. "Someone broke into my root cellar!" he exclaimed. "Crime is increasing everywhere, even in our village."

Such faith in authoritarian measures to combat rising crime and economic difficulties is heard around the globe. Unlike the United States, Russia and Ukraine don't have centuries of constitutional government and firmly established legal precedents to protect the individual against excesses of the state. Not only does this tendency

toward authoritarianism pose serious problems for democracy, it also hinders economic reforms in the former Soviet bloc.

## The Need for Personal Initiative

The reforms most experts believe are needed to pull Russia and the other republics out of their current economic morass require personal initiative. But after centuries of being told what to do by the state, many people naturally look to the government for instruction. Many hesitate to strike out on their own.

"Nobody even thinks about working independently," said Klavdiya Kharchenko, a soil expert, who has worked in the state farm's greenhouse for 26 years. After a moment's reflection in front of the greenhouse with its tattered plastic sheets flapping madly in the wind over its battered and broken wooden frame, she acknowledged the place could be better run. For example, this season they'd botched the tomato crop by experimenting with four strains, only one of which thrived.

In fact, Kharchenko said, running a shipshape

greenhouse privately "would be very lucrative." Nonetheless, she went on, "Conditions aren't ripe for that."

For centuries, people have learned that conditions aren't ripe until the government tells them they are ripe. In 1547, Ivan the Terrible adopted the title Czar and created a state where virtually all reins of power were held by his hands. Since then, Russia's economic development has been dictated from the center rather than growing spontaneously by individual effort. In 1712, Peter the Great thought up a plan for the Russian economy, then simply decreed that the industries in his scheme be created and trade be developed with the West.

Even the last attempt in the U.S.S.R. to stimulate farming through privatization, during the 1920s famine, was steered from the center. Ironically that attempt, the New Economic Policy, was made by the Communists, but was brutally smashed after a few good years by Stalin, who shipped thousands of the small private farmers to death camps.

Throughout Soviet citizens' lives, the state set wages and controlled prices. So people are in the habit of expecting the state to take care of them.

Free market reforms will be politically difficult because they mean increasing many prices. At the same time, the government must hold the lid on printing money to avoid hyperinflation.

A conversation with Maria Fotan, a 27-year-old mother of five from a Carpathian mountain village, illustrated the tremendous difficulty facing reformers. Fotan was in Moscow ("It's very exciting!") on her annual trip to sell the baskets she weaves. "Prices are very high. It's very bad now," she said. "We don't know how we're going to feed our family."

What if capitalism means prices will increase even more?

"That means we must have more payment from the government," she replied simply. If not, "Then we're going to demonstrate. We'll get rid of them."

Reliance on the state and a desire for authoritarian rule surface repeatedly in conversations with Ukrainian and Russian citizens.

## The Roots Run Deep

Even though the Communist Party's absolute power largely was broken by recent events, its roots snaked deep. "Party people used to watch our work

and give instructions. They interfered," said Kharchenko, the greenhouse worker. "But now there's no more party oversight and propaganda."

Communist Party members have been banned from conducting political activity and other party business in government-owned enterprises. Those new rules went into effect on the Bortnich farm, three days before Kharchenko spoke.

"The party members have not been kicked out," she said. Why not? "They're the managers."

Elsewhere, the failed putsch and its aftermath seem to have had little effect. "It was just a revolution in Moscow," said Misha Babieva, 38, who comes from a village in the Caucasus Mountains near the Black Sea. "Nothing is changing in the places we live."

Sometimes there is an odd, flailing attempt to fuse divergent desires for democratic reform and for the relative wealth provided by previous Communist regimes.

"From America? Well, excuse me for not shaving, there are no razors in this country," cracked Victor Vakulov, 57, smoking a cigarette from a filter. "I'm against everything that's going on right now in Russia. Even after the war, it was better. Even though Khrushchev was a fool, it was better. When Brezhnev was ruling, it was much better. Because of Gorbachev's rule, we cannot live."

He interrupted his tirade to haggle with an elderly woman trying to buy one of the grizzled ears of corn he was hawking from a wooden crate at a Moscow market.

"The politicians are just chatterboxing and chatterboxing. We need a strong man," he said upon returning. "I'm for the power of the people, but the main thing is for this strong man to be just and to show us what to do. He must be cruel and strong, but no dictatorship. I want the power of the people."

If history played a role in instilling this tendency toward authoritarianism in Soviet life, history also serves to ward off such trends.

"Our young democracy is making a lot of mistakes right now," said Mikhail Smiryagin, a taxi driver in Moscow. "One mistake was to ban the Communist Party. We've already seen this. In 1917, the Bolsheviks banned all the parties."

No, he was not a member of the Communist Party. "It's not a question of whether you're a member of the party, it's a question of your thinking like a democrat." □

# Breathe Deep, America, While Liberty Is in the Air

by Arthur P. Hall, II

*By liberty, I understand the power which every man has over his own actions, and his right to enjoy the fruit of his labor, art, and industry, as far as by it he hurts not the society, or any member of it, by taking from any member, or by hindering him from enjoying what he himself enjoys. The fruits of a man's honest industry are the just rewards of it, ascertained to him by natural and eternal equity, as is his title to use them in a manner which he thinks fit: And thus, with the above limitations, every man is sole lord and arbiter of his own private actions and property—a character of which no man living can divest him but by usurpation, or his own consent.*

—JOHN TRENCHARD, *Cato's Letters*  
No. 62 (January 20, 1721)

**T**alk of liberty and democracy are in the air all around the globe. Not surprisingly, budding democracies are looking to the United States for an understanding of these terms, and ways to codify them into law. Sovietologists frequently remark that the peoples of the former Soviet Union consider the United States to be the moral authority in matters of individual liberty and democracy. However, the state of liberty in America today is not the best example the Soviets could follow—the Founders' liberty is.

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Many political and academic figures in the United States view the present situation as an ideal opportunity to shape events in the former Soviet republics. This unfortunate mentality reveals an arrogance that underlies many U.S. domestic problems (and is inherent in any welfare-state orientation). It presupposes that there are some individuals with enough knowledge to provide society with a sufficient blueprint, economic or otherwise.

Rather than use the Soviet people's economic plight to enact some "grand bargain," the United States should be flattered by its claim to moral authority, and use the opportunity to reflect on the origins and meaning of that authority. The Virginia Declaration of Rights (1776) reminds us, "That no free Government, or the blessing of liberty, can be preserved to any people but . . . by frequent recurrence to fundamental principles."

The Soviet people are starting out much as Americans did after the Revolutionary War. Industrialization aside, economic conditions in the former Soviet republics are not fundamentally different from those Americans experienced after the Revolution. The single major exception is the absence of a Soviet property rights tradition.

## The Pilgrims' Failed Experiment

It is vital to know, however, that the institution of property rights in America was helped along by a failed communist order. The Pilgrims, for the first two years after landing at Plymouth Rock in

1620, lived under a system of communal property. The people, by decree, warehoused all that was produced, and the authorities distributed the stocks of foodstuff according to their discretion. Dismal harvests and two consecutive winters of hunger prompted Governor William Bradford, after much debate, to assign every family a parcel of land, according to the number of family members. Substantial productivity gains resulted. All family members willingly began to work the land, whereas before privatization citizens "would allege weakness and inability."

Bradford described the lesson learned in no uncertain terms:

The experience that was had in this common course and condition, tried sundry years and that amongst godly and sober men, may well evince the vanity of that conceit of Plato's and other ancients applauded by some of later times; that the taking away of property and bringing in community into a commonwealth would make them happy and flourishing; as if they were wiser than God. For this community (so far as it was) was found to breed much confusion and discontent and retard much employment that would have been to their benefit and comfort.<sup>1</sup>

From Bradford's statement and what is known about the development of British America, it can be inferred that the colonists learned to value private property, individuality, and self-sufficiency, and preferred this arrangement to any other. This preference and its institutionalization made America's Revolutionary War different from other revolutions.

Professor George Friedman has offered a striking explanation of the difference between the public attitude following the American Revolution and those following other revolutions.<sup>2</sup> Most revolutionaries seek to change their societies according to some grand design. The American founders, however, "wished neither to construct a new society nor to perfect the old. They sought merely to found a regime that would protect society from its own ambitions, leaving men free to find their own way in the world." The American mentality, says Friedman, is the most important lesson Eastern Europeans (and now the former Soviets) can learn from the United States: "The revolution is over. It is time to go home, fall in love, raise children, make

money, and see the sacred in the banality of everyday life."

Friedman's observation captures the essence of America's original conception of liberty: sovereignty of the individual and the sanctity of property rights. This conception, however, has undergone a dramatic mutation that is disintegrating the foundation of the United States' Constitutional heritage, the heritage that has made America the most prosperous nation in history, a heritage former Communist countries now covet.

It is time to restate and reassert the West's ideal of liberty. Only through a re-examination of the Founders' Constitution can the United States restore the ideals that have made it the leader of the free world.

## Natural Law vs. Positive Liberty

The recent Clarence Thomas Supreme Court confirmation hearings have served as a reminder of just how much this nation's Constitutional concept of liberty has been distorted. Indeed, the original notion seems exactly reversed. For example, I happened to hear Anne Bryant, executive director of the American Association of University Women, state before the Senate Judiciary Committee that the "great principle" upon which this nation was founded is the "inalienable right of *equal opportunity*."<sup>3</sup> Ms. Bryant made herself clear by insisting that the opportunity she spoke of was economic opportunity: She espoused the doctrine of "positive liberty."

Positive liberty confuses freedom with power. It calls for the removal of obstacles that prevent individuals from actualizing their potential. It maintains that individuals should be provided the opportunity (i.e., resources or station) to exercise the maximum control over their lives. Positive liberty provides the rationale for affirmative action and entitlement programs.

However, positive liberty conflicts with the Founders' Constitution. To actualize positive liberty requires the violation of private property rights. Such violation combined with the seemingly widespread acceptance of positive liberty may explain why Clarence Thomas refused to discuss "natural law" during his Supreme Court confirmation hearings. To point out the inconsistency between natural law and affirmative action programs might have endangered his confirmation.

Natural law is the real foundation for the “unalienable rights” listed in the Declaration of Independence: “life, liberty, and the pursuit of happiness.” Equal opportunity is not on the list. Nor is it implied. What *is* implied is the concept of *property*. Happiness, as the Founders conceived it, resulted from the individual independence and self-sufficiency achieved by the accumulation of property.

But property, as the Founders understood the term, was broader than material wealth. James Madison made this point unambiguously:

This term in its particular application means “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.”

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage*.

In the former sense, a man’s land, or merchandise, or money is called his property.

In the latter sense, a man has a property in his opinions and the free communication of them. . . .

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.<sup>4</sup>

The Founders thought that property was the principal object of society. And the protection of property, not the assurance of equal economic opportunity, was the *end* of government.

## The Founders and Equality

The Founders understood “equality” (as in the phrase “all men are created equal”) as being grounded in natural (inalienable) rights. Because an individual’s right to property and its use is inalienable, no other individual, group, or government can infringe upon this right without the individual’s consent. To do so would be a violation of natural law. Therefore, natural law mandates that a governed society have some apparatus whereby all individuals can, independently or through representation, provide or withhold their consent for any government action that may affect their property.

The Founders wanted to construct a government that would prevent the creation or evolu-

tion of an illegitimate ruling class, e.g., a landed aristocracy which held power through blood ties. Legitimacy demanded that individuals gain governmental authority through the merit of their actions and the subsequent consent of their peers.

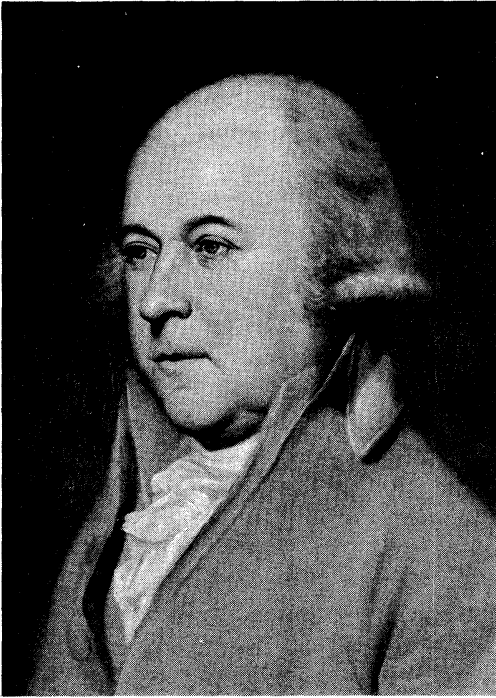
This highlights a fundamental point about the Founders’ thoughts on equality: They never believed that all men have equal ability. John Adams and Thomas Jefferson both acknowledged that “there is a natural aristocracy among men. The grounds of this are virtue and talents.”<sup>5</sup> James Wilson wrote in 1791: “When we say, that all men are equal; we mean not to apply this equality to their virtues, their talents, their dispositions, or their acquirements. In all these respects, there is, and it is fit for the great purpose of society that there should be, great inequality among men. . . . Society supposes mutual dependence: mutual dependence supposes mutual wants: all the social exercises and enjoyments may be reduced to two heads—that of giving, and that of receiving; but these imply different aptitudes to give and to receive.”<sup>6</sup>

The Founders knew that “unequal faculties of acquiring property” would create conflict between the haves and have-nots, or “factions” as James Madison called them. According to Madison’s *Federalist* No. 10, “There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.” The Founders chose the latter course, and believed that the principle of federalism laid out in the Constitution accomplished this goal.

Any attempt to remove the causes of faction would be impracticable. Furthermore, removing these causes through redistribution schemes would require a violation of natural law, usurpation of private property. To the Founders, the concept of positive liberty was a chimera. Correspondence from the House of Representatives of Massachusetts in 1768 stated that “The Utopian schemes of leveling, and a community of goods, are as visionary and impracticable, as those which vest all property in the Crown, are arbitrary, despotic, and in our government unconstitutional.”<sup>7</sup>

The Founders meant to keep redistribution schemes unconstitutional on the Federal level too. In Thomas Jefferson’s words, “To take from one, because it is thought that his own industry





John Adams (1735-1826)

and that of his fathers has acquired too much, in order to spare to others, who, or whose fathers have not exercised equal industry and skill, is to violate arbitrarily the first principle of association, 'the *guarantee* to every one of a free exercise of his industry, and the fruits acquired by it.'"<sup>8</sup> This guarantee to the individual of the free exercise over his property captures the essence of liberty as the Founders understood the term.

## Negative Liberty

Liberty in its natural law context, the way the term is used in the Declaration of Independence and in the preamble of the Constitution, is distinctly "negative." Negative liberty (freedom) is defined as the absence of restraint and constraint imposed upon an individual *by other individuals*. This definition emphasizes the notion of coercion from a force external to the individual.

According to the precepts of natural law, an individual cannot be coerced into employing his property in a way in which he has not given his voluntary consent. The duty of government is to abide by and uphold this law. John Adams said that "The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that

there is not a force of law and public justice to protect it, anarchy and tyranny commence."<sup>9</sup>

The intent of the Framers, based upon experience and trusted institutional arrangements, was to codify Adams' sentiments into a rule of law, and to design a structure of government that would minimize its ability to arbitrarily change this law. The principles laid out in the Declaration of Independence and the Constitution were seen by the founding generation as a cohesive whole.<sup>10</sup> Although few people in the founding generation thought that the Constitution was a perfect document, many believed it to be sound and the best structure of government in history. Jefferson told John Adams that the Constitution and its accompanying Bill of Rights was "competent to render our fellow-citizens the happiest and the securest on whom the sun has ever shone."<sup>11</sup>

Happiness and security, as should be clear, referred explicitly to the sovereignty of the individual and the security of his property. The state exists to assure that no faction—including the *majority*—violates this sovereignty. The Founders' successful codification of individual sovereignty entirely accounts for the strength of America's Constitutional heritage, and the rapid progress of American society, economic and otherwise.

## The Individual, Law, and Progress

The individual is the fundamental source of value in society. This statement forms the foundation of an approach to social science known as methodological individualism. All actions are performed by individuals. Collective wholes are an illusion. "Society" is a term that refers to the spontaneous order created by a multitude of acting individuals. The problem of social science is to understand spontaneous order, but study of the individual is the best method for solving this problem.

This approach follows because methodological individualism is grounded in subjectivism. The theory of subjectivism generally holds that an individual's unique experience is the only foundation for knowledge. The implications of subjective knowledge are profound because the individual's perception dictates how he ranks the value of various opportunities. And the individual's valuation of perceived opportunities motivates his actions.

Individual actions drive a market economy. But decisions made in the market are not limited to

solely economic concerns. There is, as Ludwig von Mises wrote, no clear-cut distinction between "economic" and "non-economic" activities: "Acting man is always concerned both with 'material' and 'ideal' things. He chooses between various alternatives, no matter whether they are to be classified as material or ideal. In the actual scales of value, material and ideal things are jumbled together."<sup>12</sup> The Founders would have agreed and found Mises' statement consistent with Madison's broader definition of property.

The interplay between material and ideal values accounts for civil progress. Such progress is nurtured by the reinforcing effects of civil (negative) liberty and a market economy. But it is the free market that propels society. Any impediment erected by government that prohibits or deters an individual from acting upon his subjective volition—provided this action does not endanger another's property—stifles the market process. And the market is what reinforces civil liberty.

Gouverneur Morris phrased this idea well in 1776: "Now as society is in itself progressive, as commerce gives a mighty spring to that progressive force, as the effects of both joint and separate are to diminish political [the government's] liberty, and as commerce cannot be stationary the society without it [commerce] may. It follows that political liberty must be restrained or commerce prohibited. If a medium be sought it will occasion a contest between the spirit of commerce and that of the government till commerce is ruined or liberty destroyed, perhaps both."<sup>13</sup>

When the Founders drafted the Constitution a few years later, they did not allow for such a "medium." It was intended to favor the sanctity of private property (and therefore commerce) and individual sovereignty (negative liberty). This rule of law promoted a set of choice constraints leading to three phenomena responsible for America's marked progress and prosperity: (1) individual initiative with regard to one's well-being, (2) the safe accumulation of capital, and (3) the active application and diffusion of specialized individual knowledge. The Constitution created the conditions necessary for the pursuit of happiness.

These conditions, the general principles of constitutionalism, and their effect on American society were laid out by Supreme Court Justice William Paterson in 1795: "The rights of private property are regulated, protected, and governed

by general, known, and established laws; and decided upon, by general, known, and established tribunals; laws and tribunals not made and created on an instant exigency, on an urgent emergency, to serve a present turn, or the interest of a moment. Their operation and influence are equal and universal; they press alike on all. Hence security and safety, tranquility and peace. One man is not afraid of another, and no man afraid of the legislature."<sup>14</sup>

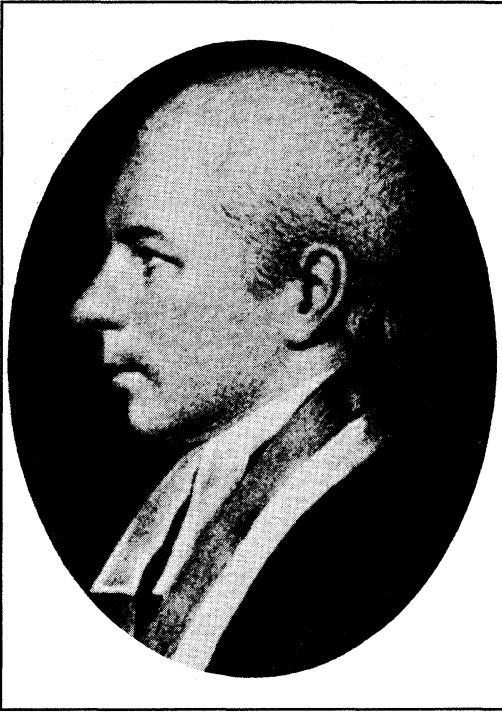
These statements cannot be made with confidence today. The legislative and legal environments have become unpredictable. This situation developed from the anti-rule-of-law intellectual crusade that had entrenched its views in America by the 1920s and 1930s. The driving force behind this crusade was the "public administration movement."<sup>15</sup>

Examination of New Deal-type institutions can best reveal the philosophical foundations of this movement: Followers viewed the notion of "natural law" as obsolete; the discretionary rule of men and the "science" of public administration could provide better civil arrangements. Law was viewed only as what men deemed it to be. The people who waved this banner were largely responsible for institutionalizing the infectious germ of positive liberty in American society.

Affirmative action and entitlement programs are gross symptoms of this infection. Every aspect of these programs violates the principles embodied in the Founders' Constitution. Affirmative action and entitlement programs subordinate individual sovereignty to distinct political factions and arbitrarily redistribute property to these factions.

The set of choice constraints created by the legal enforcement of positive liberty, in the form of affirmative action and entitlement programs, are the antithesis of those that promoted America's progress and prosperity: (1) reliance upon and solicitation of government favors with regard to one's well-being, (2) capital decumulation, and (3) the usurpation of diffused individual knowledge in favor of centralized "designs," which erroneously aggregate the costs and benefits of civil endeavors.

John Adams was prophetic about the consequences of altering the choice constraints built into the Founders' Constitution: "Perhaps, at first, prejudice, habit, shame or fear, principle or religion, would restrain the poor from attacking



William Paterson (1745-1806)

the rich, and the idle from usurping on the industrious; but the time would not be long before courage and enterprise would come, and pretexts be invented by degrees, to countenance the majority in dividing all the property among them, or at least, in sharing it equally with its present possessors. Debts would be abolished first; taxes laid heavy on the rich, and not at all on others; and at last a downright equal division of every thing be demanded, and voted."<sup>16</sup>

Much is said today about the virtue of an "evolving" Constitutional interpretation. But the Founders had a specific intent and a consistent understanding about the "vague" words used in the Constitution. Americans must understand that a constitution represents "the rules of the game." Constitutions are made because government is coercive and cannot be trusted. "The Constitution," in Justice Paterson's words, "is the origin and measure of legislative authority. It says to legislators, thus far ye shall go and no further.

Not a particle of it should be shaken; not a pebble of it should be removed. Innovation is dangerous. One incroachment [*sic*] leads to another; precedent gives birth to precedent; what has been done may be done again; thus radical [fundamental] principles are generally broken in upon, and the constitution eventually destroyed."<sup>17</sup>

If Paterson were alive today he might justly conclude that the series of encroachments he spoke about are in an advanced stage. The infection of positive liberty is running its course in the United States. Private property no longer is treated as sacred by the courts. This state of affairs is eroding our progress in world developments and threatens to impede our future progress. "It is worth remembering in this connection," wrote F. A. Hayek, "that what enables a country to lead in this world-wide development are its economically most advanced classes and that a country that deliberately levels such differences also abdicates its leading position."<sup>18</sup>

So breathe deep, America, while liberty is in the air. Purge yourself of the welfare state's mutated form of liberty. Set a pristine example for the former Soviets' budding democracies. Reassert the Founders' pure conception of liberty, a free society, and the pursuit of happiness. □

1. William Bradford, *Of Plymouth Plantation*, excerpted in Philip B. Kurland and Ralph Lerner, eds., *The Founders' Constitution* (Chicago: University of Chicago Press, 1987), vol. 1, p. 579.

2. George Friedman, "Learning Not to Love Revolution," *The Freeman*, April 1991, pp. 124-27.

3. Live Broadcast on the C-SPAN Television Network, September 20, 1991, at approximately 12:25 P.M. My emphasis.

4. *The Founders' Constitution*, vol. 1, p. 598.

5. *Ibid.*, p. 569. Also see pp. 520-21, 541-43.

6. *Ibid.*, p. 555.

7. *Ibid.*, p. 587.

8. *Ibid.*, p. 573. Also see note 4.

9. *Ibid.*, p. 591. Also see p. 586.

10. Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New York: Vintage Books, 1986), p. 90.

11. *The Founders' Constitution*, vol. 1, p. 570.

12. Ludwig von Mises, "The Individual in Society," in Bettina Bien Greaves, ed., *Economic Freedom and Interventionism* (Irvington, N.Y.: Foundation for Economic Education, 1990), p. 15.

13. *The Founders' Constitution*, vol. 1, p. 588.

14. *Ibid.*, p. 600.

15. Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), p. 244 and ch. 16 in general.

16. *The Founders' Constitution*, vol. 1, p. 591.

17. *Ibid.*, p. 600.

18. Hayek, p. 47.

# Welfare: Fraud on Steroids

by K. L. Billingsley

**F**rom John Kenneth Galbraith and Michael Harrington to Charles Murray and Jack Kemp, gallons of ink have been spilled over the welfare issue. Some consider welfare the benchmark of a society's compassion. Others see it as a social toxin. Every so often, however, a case comes along that explains things better than any book, however freighted with statistics.

According to court documents, internal investigations, and press reports in San Diego County, California, it went this way:

Victoria Aguirre started work in the county's Department of Social Services in 1977. By the mid-1980s she had risen to the rank of supervisor. The work load in the welfare office could not have been too heavy because it certainly afforded Aguirre plenty of time for creative thinking. In the course of her duties in 1986, Aguirre made two fascinating discoveries.

First, the widespread computerization of records made it possible for her to create fake welfare files without supporting paper documentation.

Second, those who receive welfare through Aid to Families with Dependent Children (AFDC) can designate another person to receive their payments. This neat little loophole meant that Aguirre was free to designate anyone she pleased to receive the checks for her phony case files.

Evidently a public-minded, "sharing" sort of person, Aguirre decided to cut in others on her

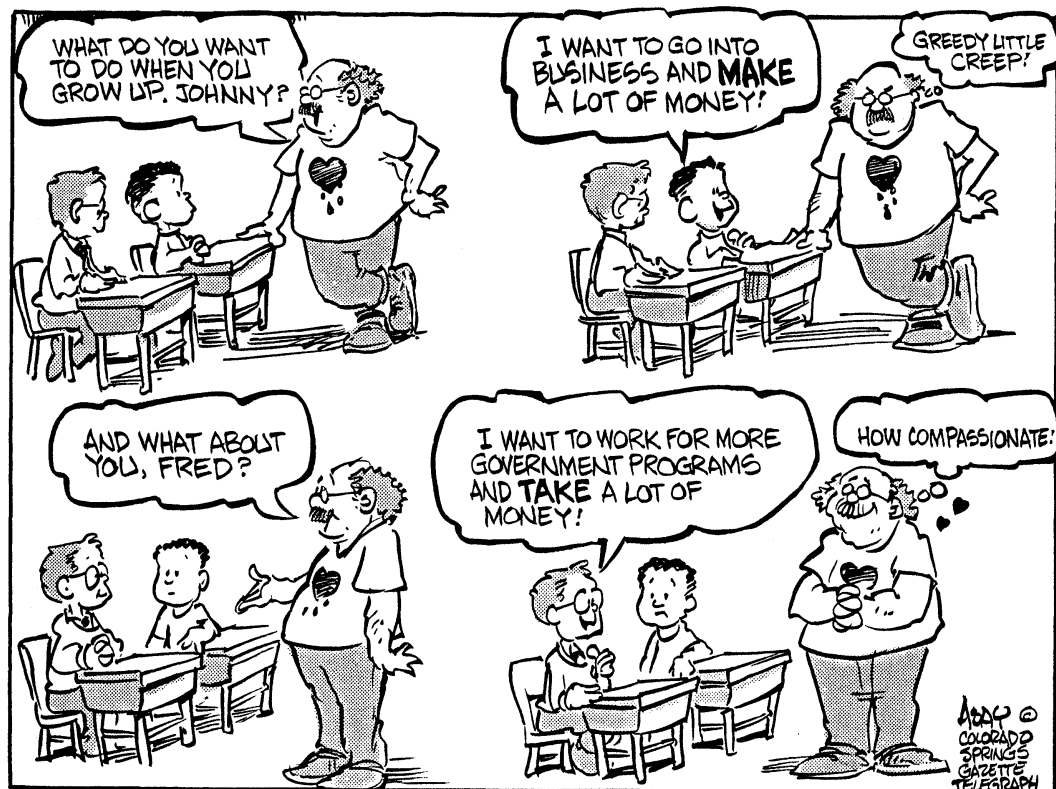
scheme. She worked primarily with Angela Nieto, a "benefits analyst." The pair allegedly designated a host of relatives, friends, and fellow workers as recipients of fraudulent payments. Those on the receiving end would cash the fat government check, then pay two-thirds of the total to Aguirre. Aguirre would then deal Nieto her cut, which court documents peg at one-third.

Aguirre and Nieto showed considerable brilliance in diversifying their assets. In some cases, they evidently invented a fraudulent appeal process and used it to procure retroactive payments. Payments ranged from \$5,080 to \$99,699, not a bad score by any standard. The masterminds carefully tucked away their phantom recipients among 60,000 AFDC cases.

From 1986 to 1990, the two women were on a roll. They are alleged to have pulled in at least \$553,000, with some estimates reaching as high as \$1 million. It was the largest case of welfare fraud in the county's history. The duration of the rip-off reveals the ineptitude of the system design and the sloppiness of local oversight. It wasn't until 1990 that state auditor John Hernandez happened to chance upon one of the phony cases during a random review. Other cases, and criminals, doubtless remain undetected.

Aguirre and Nieto resigned after the revelations, but were not charged until October 30, 1991. If convicted, they face 10 years in prison. Their tidy con game provides a parable for the entire welfare system by raising the question: "Who benefits?"

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Charles Murray, Alan Keyes, Glenn Loury, and others have provided ample evidence that welfare is ultimately a destructive force for its recipients. Liberals such as Daniel Patrick Moynihan and Bill Moyers have charted the damage to the family, an irreplaceable unit. Economist Walter Williams argues that welfare is not only destructive of family, motivation, and self-esteem, but also immoral. By what moral standard, asks Williams, can one person be "entitled" to receive the money of another?

There can be no doubt that welfare, in all its forms, is one of the most wasteful programs in human history. A dollar cannot be sent to Washington, go out on the town, and then pass on unscathed to its intended recipients. According to National Public Radio, of every dollar that goes to the Bureau of Indian Affairs, 89 cents goes to administrative costs. George Roche's *America by*

*the Throat* and William Simon's *A Time for Truth* cite many other startling cases.

Welfare's primary beneficiaries are not the poor, the homeless, or the indigent. They are the endless squads of administering bureaucrats and sponsoring politicians. These fiscal parasites have a stake in the expansion of their welfare constituency.

Aguirre and Nieto did it with computers. Politicians do it with rhetoric and political leverage. It is fraud on steroids. As Joe Sobran notes, in a democracy voters are public officials; welfare programs therefore amount to bribes.

Welfare equates compassion with the "redistribution of wealth." Aguirre and Nieto, like all thieves, were also in the redistribution business. Welfare strains the economy, cheats honest and hardworking citizens, facilitates corruption, and helps wreck the lives of millions. In other words, welfare is ultimately a criminal enterprise. □

# New York's War Against the Vans

by Robert Zimmerman

In 1981, New York City had a transit strike. Only the Staten Island Ferry was running. Al Manti, a fireman living in Brooklyn, decided to help some of his local friends by driving them to the ferry so they could get to work in lower Manhattan. "We did it for fun," says Manti. It worked so well that he decided, once the strike ended, to buy a 15-passenger van and go into business. He contacted city and state agencies, filled out the appropriate forms, and received a license to provide transportation from Brooklyn to Manhattan.

Manti soon received hundreds of phone calls from local residents looking for an alternative to the city's public transit system. "I could've filled 50 vans, and still not met the demand."

Almost as quickly, he began to have problems with city authorities. The city held a special hearing and reduced his license so he could transport commuters only from the Bay Ridge section of western Brooklyn to Manhattan. Then the Metropolitan Transit Authority (MTA) organized a "crackdown on illegal van services." Transit police were assigned full-time to observe Manti's operation. One day he received 97 tickets. Sometimes the police would force Manti's van to the side of the road, and then give him a ticket for illegal parking. His family was put under surveillance. When he began to fear that the police would plant drugs in his vehicle and arrest him, he decided to fight back. He sued the Transit Authority for harassment.

The MTA countersued, claiming that his company was "damaging the agency."<sup>1</sup> For almost 10 years Manti fought the MTA, spending over \$100,000 in legal fees. Instead of letting this beat

him, he expanded his company so he could earn more money to pay his attorneys. "Sometimes," he says, "when I realize that I have spent more time fighting this battle than with my children, I have regrets. Yet I couldn't let the city do this."

From the beginning, Manti went out of his way to obey the law. He obtained a New York State Transportation Department license, followed its rules requiring state inspections three times a year, purchased the expensive insurance demanded by the state, and obtained the proper licenses for himself and his drivers.

After almost 10 years, the courts ruled that the MTA had been harassing Manti. The MTA dropped its case and paid him \$1,000,000 to settle. "If I had had an additional \$100,000 to spend," he says, "I would have taken the case all the way and won a much bigger settlement. I just don't have that kind of money."

Throughout New York City, both legal and illegal van services have sprouted since the mid-1980s. Earl Simmons, Executive Director of the Jamaican Association of Van Owners/Operators, owns two vans and has operated them since 1987. "I bought a brand new van and started my business to get over the economic crunch," he says. Like most of the drivers, Simmons emigrated from the Caribbean, where private bus ownership is common.

New York's private vans, unlike city-owned buses, don't require exact change and will let passengers off at convenient points. Commuters who use them agree that they provide better service than the public bus lines. Typical comments include: "They're faster." "They're safer." "They're more reliable."<sup>2</sup>

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By 1990 the vans were seriously cutting into the MTA's business, and the agency began another crackdown. In July of that year, the city announced a policy to enforce city regulations and to issue summonses for a wide variety of violations, ranging from driving a van that's not properly registered to improperly picking up and dropping off passengers. Fines ranged from \$50 to \$250.<sup>3</sup>

Transit police were assigned to the areas near bus stops, issuing summonses and preventing vans from picking up passengers. MTA police often issued large numbers of additional summonses as a form of harassment. "Sometimes when they stop your van they would keep you there for a half hour," says Simmons. "Or they would stop your van and issue a *parking* ticket." In the first two days of this crackdown, two drivers were arrested and 60 summonses were issued.<sup>4</sup>

Even though many of the drivers had decided to obtain licenses, this crackdown was aimed at both the legal and illegal drivers. "Regardless of whether you are legal or illegal, you get harassed," says Simmons. "There is a direct attempt by the police department to issue as many moving violations to van operators as they possibly can."

Jeffrey Shernoff, a lawyer representing 14 van owners, points out that in trying to obtain legal licenses, "every one of [these owners] was strenuously opposed by the Transit Authority and all of the public transportation authorities on whose territory they thought [the van drivers] impinged."

According to New York State Transportation Department rules, privately owned vans can only pick up or drop off passengers by pre-arranged appointment, and cannot do so at city bus stops. Vehicles used to transport passengers are to have special licenses and be inspected three times a year. The driver must have a special license and a special insurance policy. A new state law specifies that only New York State insurance companies can issue this policy. Since there are only two New York companies offering this coverage, policies can cost as much as \$8,000 a year.<sup>5</sup>

The MTA is quick to defend its legal monopoly. "[The vans] siphon off our revenue," said Transit spokesman Termaine Garden in 1990, and in 1991 the MTA claimed that the vans diverted over \$30 million a year from the public transportation system. Not surprisingly, the Transport Workers Union is on the side of the MTA, since they see private drivers as competitors. "They are brazen

—grabbing people off the bus routes," says Pete Lynch, an assistant to the president of Local 100 of the Transport Workers Union.

None of this has reduced the use of private vans. In fact, when the city announced its crackdown in July 1990, it estimated there were 1,600 illegal vans. A year later, the city estimated there were more than 2,500. And of the more than \$4 million in fines imposed by the city, \$150,000 had been collected.<sup>6</sup>

Because of police patrols, commuters and van drivers often have to sneak about to avoid detection. "It's like I'm buying drugs to go to work," says Wall Street lawyer George Freehill. And if police pull a van over, they often force the passengers off. Freehill relates one incident: "They stopped us on the FDR Drive, during rush hour, blocking traffic. They gave the driver a ticket for illegally carrying passengers. Then they tried to force the passengers to stay in the van while they weighed it, to give him another ticket for driving an overweight vehicle on the FDR. We all refused, getting out of the van. Then they gave him a ticket anyway for having an overweight vehicle, refusing to let anyone else see the scale. Finally, they forbid us from returning to the van, making all 13 passengers walk along the highway, which has no shoulder or sidewalk, until we could get back on the city streets to find another way to get to work."

Frustrated van drivers feel they are being denied their right to make a living. On October 14, 1991, a policeman issuing tickets in the Kings Plaza section of Brooklyn got into a fight with a van driver. The driver was arrested and his vehicle impounded. Other drivers responded by attacking several city buses, smashing their headlights and windows. In an attempt to free the arrested driver, they parked their vans in front of the police precinct, blocking traffic.<sup>7</sup>

The crackdown on private vans continues. Earl Simmons sums up a lot of New Yorkers' feelings: "If people elect to use these vans, I see nothing illegal about this. That is freedom of choice, that is the American way." □

1. *New York Newsday*, August 21, 1991.

2. *The New York Times*, February 25, 1991.

3. *New York Newsday*, July 24, 1990; *The New York Times*, July 24, 1990.

4. *New York Newsday*, July 31, 1990.

5. Earl Simmons explained to me that if a van driver gets a lot of moving violations, the owner's insurance costs can skyrocket, effectively forcing him out of business.

6. *The Wall Street Journal*, July 24, 1991.

7. *New York Newsday*, October 17, 1991.

# A Tale of Infamy: The Air Associates Strikes of 1941

by Charles W. Baird

**T**he American labor union movement enjoys much more respect than it deserves. The politicians who, in the 1930s and 1940s, empowered and then kowtowed to the movement have never received enough blame. The following true story is an excellent illustration of these propositions.

Shortly before the Japanese attacked Pearl Harbor, Earl Harding wrote a manuscript for *The Saturday Evening Post* describing the violent 1941 Air Associates strikes and the Federal seizure of the firm's facilities. The article, "It Is Happening Here," was scheduled to appear the week following December 7, 1941. In the aftermath of Pearl Harbor, the article was canceled. The galley and other materials were sent to me by Mrs. F. Leroy Hill, widow of the president of Air Associates. I obtained additional information from microfilm records of *The New York Times*.

Air Associates was a private firm with its main plant in Bendix, New Jersey. It manufactured airplane equipment and parts. The company had five branch plants and two warehouses in Lodi and Belleville, New Jersey; Chicago and Rockford, Illinois; Marshall, Missouri; Dallas; and Los Angeles. During 1941 it employed 600 to 800 people in Bendix and 250 to 300 at its other sites. In mid-1941 it was working on \$5 million in War Department contracts. The president of Air Associates was F. Leroy Hill, and its chief legal counsel was Walter Chalaire.

Although the United States was not formally at

war, President Roosevelt had declared a defense emergency. American military goods were being sent to England and the Soviet Union, and the U.S. Army and Navy were gearing up for war.

In March 1941, President Roosevelt created the National Defense Mediation Board (NDMB). It was a tripartite committee of 11 members—four to represent unions, four to represent employers, and three to represent the federal government. This tripartite structure was modeled after Mussolini's plan for running the Italian economy.

The NDMB was charged with the task of trying to settle labor disputes in businesses with defense contracts. Its power was skewed: It could impose its will on employers, but it could only try to persuade union leaders to accept its recommendations. It rarely was able to do the latter. The NDMB collapsed at the end of 1941 in a capitulation to John L. Lewis, president of the United Mine Workers, in his strike in the "captive mines" (coal mines owned by steel firms that used the coal).

The Air Associates story involves two strikes, two apparent settlements, a threatened third strike with an attempted forced settlement, and the final seizure.

## The First Strike

In early June 1941, 12 Air Associates employees formed an organizing committee at the behest of the United Auto Workers-CIO, Aircraft Division (UAW-CIO). The committee met with Leroy Hill on June 17; all voices were recorded. Although the union hadn't collected more than 20 authorizing signatures, the organizing committee asserted that

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it represented a "vast majority" of the 650 employees at the Bendix plant, and demanded that Air Associates immediately recognize the UAW-CIO as exclusive bargaining agent for all non-managerial workers. After brief negotiations, the committee also demanded that Hill consent to a union shop (wherein all employees are required to become union members as a condition of continued employment) and a higher wage scale.

Hill refused instant recognition but did offer to settle the representation question by a certification election supervised by the local office of the National Labor Relations Board (NLRB). This was a major concession because the 1935 National Labor Relations Act (NLRA) did not require a certification election in the absence of a showing by the union that it had collected authorizing signatures from at least 30 percent of the non-managerial employees. The union had not come close to meeting that threshold.

One of the functions of the NLRB in such elections is to determine the appropriate "bargaining unit." That is, it determines who can and who cannot vote in the election.

The NLRB can significantly affect election outcomes by gerrymandering, and it did so in this case. One-third of the non-managerial employees were excluded. The organizing committee tried to identify the pro-union and anti-union workers. (It is legal for unions to do this, but it is "an unfair labor practice" if management does it.) At the behest of its union client, the NLRB then defined the bargaining unit such that a majority of those in it were pro-union. Unit determination had nothing to do with job description. For example, the receiving department was excluded and the shipping department was included. The job descriptions for the two departments were practically identical, but a majority of the shipping department were thought to be pro-union and a majority of the receiving department were thought to be anti-union.

The election took place on July 1. Election campaign rules were then, and still are, rigged in favor of the union. The NLRA permits unions to promise workers all kinds of benefits, but forbids management to make such promises. Moreover, although management is forbidden to contact eligible voters at home or in any other non-public place during campaigns, unions are free to do so.

Many Air Associates employees stated that

intimidation and misrepresentation took place during such union contacts. In the end, the gerrymandering and the biased election rules produced a vote of 206 to 188 in favor of the union. The UAW was certified as the exclusive bargaining agent for all bargaining unit workers—those who voted yes, those who voted no, and those who didn't vote. The next step was for the union and management to begin bargaining on the terms of a first contract.

On July 3 management temporarily laid off 12 workers because of a shortage of aluminum. These were not members of the union organizing committee. The workers were told that the layoff was temporary and that they would be recalled as soon as aluminum was procured. They were recalled in two stages, some on July 16 and the rest on July 21. The union did not protest the layoff when it happened.

Under the National Labor Relations Act, it is an "unfair labor practice" to fire an employee because of union activity. This often provides job security for incompetent workers. During the early years of the NLRA, a common union tactic was to get a few known union sympathizers fired, allege an unfair labor practice, and appeal to the government to prosecute the employer. A union would merely threaten to keep management tied up in costly legal defense procedures until management capitulated. This had happened to Air Associates in 1938 before it moved to New Jersey.

## A New Tactic

During the 1941 defense emergency, unions added a new tactic in disputes involving companies with defense contracts. Early in the year, at North American Aviation Company in Inglewood, California, and at Federal Shipbuilding and Dry Dock Company in Kearny, New Jersey, unions used strikes that allegedly impeded defense production as a pretext for President Roosevelt to seize the plants and assign the War Department to operate them in accordance with union wishes. These two incidents were not ignored by the UAW-CIO at Air Associates.

On July 8 the union proposed a contract that included a union shop. Mindful of the North American Aviation and Federal Shipbuilding precedents, Leroy Hill wanted to avoid a strike and so was willing to bargain immediately. A

UAW-CIO shop committee met with Hill in his office on July 11. Hill, wary of possible allegations of unfair labor practices during bargaining, insisted that the bargaining sessions be recorded. He offered to let the union check the transcripts for accuracy and to post them to keep the workers informed about the progress of bargaining. The union balked. It insisted that bargaining be off the record. Hill turned on the recorder, and the shop committee stalked out of the office and went outside the plant.

Earlier in the day there was a heated verbal dispute between a union organizer and an anti-union worker, and there were rumors that union sympathizers were going to try to blow the quit-work whistle and cut off power in the plant to try to shut it down. To avoid this, management had the steam cut off from the quit-work whistle and had all the ungarded entrances locked.

After lunch, the shop committee returned to the plant through one of the guarded entrances. They asked to go back to Hill's office to resume bargaining. There was a short, recorded meeting wherein, according to Earl Harding, the unionists asserted "that the government had granted them an interest in the business which they were going to protect," and "that the company must prevent other employees from opposing the CIO."

The bargaining seemed to be going nowhere, so the committee left Hill's office and headed back to work. But they assembled near the quit-work whistle and attempted to set it off. When it didn't work, they ran through the plant, turning off power, yelling "strike," and attempting to pull workers away from their machines. At most 50 workers left the plant and began to demonstrate outside. One policeman was sufficient to restore and maintain order.

In the evening of July 11, the union visited employees' homes and urged them to stay away from work the next day, which was a Saturday. Many workers later reported being intimidated during these visits. On July 12 there were about 60 absentees out of approximately 700 workers. The union first claimed that they had been locked out, notwithstanding that management had telegraphed all workers, including those who had demonstrated the day before, that the plant was open and their regular jobs were available.

The plant was routinely closed on Sunday, but on both Saturday and Sunday roofing nails were

scattered over all roads leading to the plant. Employees were threatened with "dire consequences" to themselves, their families, and their homes and cars if they showed up for work on Monday.

When the plant opened on July 14, 150 employees were absent. One hundred called in saying that they were too frightened to come to work. There were only 44 Air Associates employees on the picket line. The CIO called in non-employee unionists to bolster the picket line. Inasmuch as the dispute was obviously not a lockout and the company was willing to continue bargaining on the record, the union needed a pretext for its actions. It seized upon the 12 workers who were temporarily laid off on July 3 and asserted that the layoffs were discriminatory anti-union firings. Between July 3 and July 14 it had made no such claim.

On July 15 approximately 600 pickets, at most 50 of them Air Associates employees, wielded clubs, stones, and other weapons. They stoned cars that tried to enter the premises. They pulled drivers and passengers out of cars and beat many of them. Sheriff William Browne said that his forces were too small to maintain order, but he refused to ask Governor Charles Edison to send in state police. Thus Hill telegraphed Governor Edison to ask for help in maintaining order. The approximately 500 Air Associates workers who were eager to work asked Hill to hire private guards to help the sheriff protect them and their right to work. He did so, and on July 16 private guards escorted willing workers in and out of the plant. The unionists were outraged and threatened to bring 1,000 additional non-employee pickets to "clean up" the guards.

On July 17 over 500 employees assembled in nearby Hasbrouck Heights to go to work in groups. A bus was provided, and, together with several cars, proceeded to the plant in a caravan. Between 1,000 and 1,500 pickets stopped the caravan, broke all the windows on the bus, smashed cars, dragged people out of vehicles, and beat them. Finally, Sheriff Browne joined Hill in requesting assistance from Governor Edison. Moreover, Hill threatened to seek help from the U.S. Army "if law enforcement officials are unwilling or not equipped to act."

It is important to understand that there was no legitimate strike. There had been no refusal to bargain, and neither side had declared a bargaining impasse. The union had claimed discriminato-

ry firings, but some who were allegedly fired were already back at work in spite of the union's picket line. Walter Chalaire, Air Associates' legal counsel, met with representatives of the federal government's Office of Production Management on July 14, 15, and 16, where he reiterated the company's willingness to bargain toward a first contract. He did insist that the bargaining be on the record, but he didn't rule out any topic. It was the union that refused to bargain if a record was kept.

Apparently cowed by Hill's threat to call for the Army, the union ceased its violence on July 18 and 19. Willing workers were at their jobs, undeterred by the few pickets outside the plant. Production resumed to 85 percent of normal. For all of July, production was 90 percent of normal.

However, on July 19 the National Defense Mediation Board got involved. The Department of Labor assigned the NDMB to mediate the Air Associates dispute, and the Board ordered management to appear in Washington on July 22 to begin mediation. Irving Abramson, chairman of the New Jersey CIO Council, demanded that the company shut down until the mediation was complete. On July 20 the union asked President Roosevelt to seize the plant "in the interest of national defense." On July 21, 350 Air Associates employees petitioned the NDMB demanding protection for their right to work and asking for a new election.

Mediation began on July 22. On the next day, the NDMB recommended a three-part solution. First, all workers were to be allowed to return immediately without discrimination. Hill already had made this offer. Second, all questions involving back pay were to be submitted to an arbitrator. Third, negotiations toward a first contract were to begin immediately. If agreement were not reached by August 9, the contract would be set by binding arbitration.

On July 27 Leroy Hill accepted all the Board's recommendations except for binding arbitration on the first contract. On July 28 the NDMB issued a statement that Hill's response was a "substantial acceptance" of the Board's recommendations. On July 29 picketing ceased and all Air Associates employees went back to work. The first apparent settlement had been reached. However, Loren J. Houser, UAW-CIO Eastern Regional Director, demanded that Hill ultimately submit to binding arbitration.

## The Second Strike

Bargaining sessions under the auspices of the NDMB took place on July 30-31, and August 1, 4, 5, 7, and 8 at the Hotel Pennsylvania in New York City. Anthony Grimaldi, a member of the original union organizing committee and now leader of the UAW-CIO local at Air Associates, was the chief union spokesman. Leroy Hill and Walter Chalaire spoke for the company. The union demanded a union shop, mandatory dues checkoff, a grievance system that prohibited workers from working out even small misunderstandings directly with supervisors, and binding interest and rights arbitration. The company agreed to accept binding arbitration if the union would accept binding arbitration on the questions of compensation for union-caused property damages during the first strike and the legitimacy of the July 1 certification election.

On August 8 a formal impasse was declared. Harry P. Shulman, a Yale University law professor, was appointed arbitrator, and he undertook an investigation of the dispute toward the end of recommending the terms for the first contract. Both sides were notified that the Shulman report would be made available before the NDMB made its final recommendations.

On September 19 the union voted to authorize a strike if the Shulman report, the NDMB, or Air Associates didn't give in to its demands. No date for the strike was set. On September 30, before the Shulman report was made public, the strike was called.

We don't know for sure why the union did this. Chances were that Shulman would have made recommendations that the union would have liked, and the NDMB would have backed them up. My own conjecture is that by this time the union was resolved to bring about a War Department seizure of the company. Whatever Shulman and the NDMB would recommend would not be as favorable as the unions at North American Aviation and Federal Shipbuilding had won by plant seizure.

There were approximately 400 pickets on the morning of September 30. At most only 70 of them were Air Associates employees. At least 180 employees called in to explain they were absent due to intimidation. Rocks were thrown, and police, workers, and strikers were injured. Hill immediately advertised for replacement workers.

The advertisement brought in 2,500 applications, and all striking workers were replaced. Production at the Bendix plant increased to record levels.

In 1938 the U.S. Supreme Court, in *NLRB v. Mackay Radio and Telegraph Company* (304 US 333), upheld the right of employers to hire permanent replacements for strikers in economic strikes. An economic strike is one called for any reason other than illegal acts by the employer. Air Associates had committed no illegal acts which caused the September 30 strike. Indeed, it was, in accordance with the law, waiting for an NDMB recommendation when it was struck. Hill was clearly within his rights to hire the replacement workers and to consider the jobs vacated by the strikers to be filled.

Frank P. Graham, chairman of the NDMB, summoned Hill and Chalaire to Washington, and between October 6-8 Hill and Chalaire negotiated with the Board to try to find a reasonable settlement. The NDMB, however, following the now-available Shulman recommendations, insisted that Hill sign a contract that gave the union all it wanted. Most important, the NDMB demanded that Air Associates put all striking workers back in their regular jobs even if that meant firing replacement workers. According to Earl Harding, Hill and Chalaire were told that a contract acceptable to the union must be signed "whether the company agreed or not . . . and the Mediation Board proceeded to frame one itself."

Hill and Chalaire left Washington without an agreement, and on October 10 the NDMB announced its final recommendations—complete capitulation to the union, including immediate reinstatement of all strikers. In its official statement the Board said that it "feels obliged to observe that this company has not exhibited toward either the certified union or the NDMB that attitude of cooperation to which the public is entitled on the part of a company whose operations are essential to the defense of the nation." (*The New York Times*, October 11, 1941)

It is important to note that defense production had not been impeded by the September 30 strike. The replacement workers were more productive than the strikers. As to cooperation, in a last ditch attempt to settle the dispute, Hill agreed to all the union's demands except for a union shop, and he agreed to place strikers on a preferential re-hire list and reinstate all of them within 30 days. He

continued to refuse to fire replacement workers to make room for returning strikers. The NDMB stated that this amounted to a "rejection" of its recommendations.

On October 11 the NDMB declared that the case was out of its hands, and threatened to turn it over to the executive branch of government. This was code for recommending War Department seizure. On October 18 the NDMB appealed to the Air Associates board of directors to force Hill to capitulate. The directors refused. On the same day the UAW threatened mass picketing of Air Associates by 21 union locals and also threatened to shut down all aircraft plants in the eastern United States unless Hill acquiesced.

On October 17 Sheriff Browne declared that only 45 pickets would be allowed at the Bendix plant, and that only striking Air Associates employees would be allowed to picket. Only 25 pickets showed up, and the plant continued normal operations.

The next day the union called for 250,000 pickets to assemble at Bendix and gave Hill until October 20 to yield or face the consequences. The NDMB asserted that the union would be able to assemble at least 20,000 to shut the plant down. Sheriff Browne made plans to deputize World War I veterans to maintain the peace.

On October 19 Leroy Hill issued a public statement:

Now it remains to be seen whether the Defense Mediation Board is out to get production or universal compulsory unionization. If it pursues its recent policies it can, of course, force the company to capitulate to the private army of 8,000 or more pickets which the CIO proposes to mobilize to close the plant unless its terms of unconditional surrender are met. Or the Defense Mediation Board can call on the State of New Jersey, and if need be, the Federal Government to protect the right to work of the 800 employees who fully man the plant and have it in full production. If we are let alone and if our employees are protected in their right to work, our defense production will mount steadily and the strikers who want to work can be re-employed long before the thirty days expire. (*The New York Times*, October 20, 1941)

On October 21 the *Times*, in an editorial entitled "One Way Compulsion," referred to the

North American Aviation, Federal Shipbuilding, and Air Associates cases and declared, "The conclusion is inescapable that the Government has deserted its true function as an impartial arbiter and become more and more frankly partial to 'labor.'"

On October 22 the union announced that there would be mass picketing the next day. Hill issued a bulletin to all employees warning them of potential violence and explaining that the police had requested that no one try to enter the plant until the police had cleared the roads. He requested that all willing workers assemble at the Bergen County Court House in Hackensack, check in for work, and wait until the police said it was safe to try to enter the plant.

On October 23, 2,000 pickets tried to shut down the plant. Sheriff Browne declared that because he was unable to guarantee the safety of the workers he would cooperate with the *union* to keep workers away from the plant. Some workers sneaked in through a rear entrance. The workers who had assembled at the court house sent a telegram to President Roosevelt asserting that "Lawless CIO picketing is keeping us from work. Do your duty and protect our constitutional right to work." (*The New York Times*, October 24, 1941)

When the sheriff discovered the unguarded rear entrance, he shut it, leaving some workers blocked in the plant. The next morning the sheriff asked the *union* for permission to allow the workers in the plant to send out for food. Anthony Grimaldi, the local union boss, acquiesced, but when the messenger returned with the food, pickets refused to allow him into the plant. The police protested, but, according to Earl Harding, Grimaldi exclaimed: "Who the hell is running this show? I'll say who'll go in and who won't go in." The food delivery was never made.

Hill and non-striking workers sent a telegram to Governor Edison requesting assistance from the state police. Edison responded by sending a telegraph to Air Associates wherein he blamed *Hill* for all the trouble. He recommended that Hill resign as president and that the New Jersey Chamber of Commerce nominate a successor. The Chamber demurred, stating that the governor had no right to determine who should be president of a private company. The *Times* editorial of October 21 was right. Government had "deserted its true function as arbiter." The state

government, at least, had become an agent for the union.

Meanwhile, in the evening of October 24, Hill and Chalaire held a six-hour meeting in Washington with Robert Patterson, Undersecretary of War, and William S. Knudsen, Director of the Office of Production Management. In that meeting Hill gave even more ground. He agreed to place the 50 to 60 remaining strikers immediately on the payroll. That is, the strikers would be paid their normal wages even if they didn't work while waiting to be reinstated. Hill repeated his promise that all of them would be back at work within 30 days.

The next day *The New York Times* ran a front-page story with the headline "Strike Is Settled at Air Associates: Plant Officials Accept NDMB Formula After 6-hour Talk With Knudsen, Patterson." According to the *Times*, Patterson and Knudsen "expressed their appreciation of the company's cooperative attitude and request all returning employees to cooperate with the management in order that full production can be maintained in the interest of national defense." The second apparent settlement had been reached.

## The Threatened Third Strike and Forced Reinstatement

On October 27 the union threatened to call for a general strike throughout the eastern United States unless Hill agreed to immediately reinstate all strikers to their regular jobs even if some replacement workers had to be fired. The union's alleged reason for this new threat was that although the 50 to 60 strikers were being paid full-time at their normal wage rates while they were waiting to be reinstated, they weren't being paid overtime. Replacement workers were getting overtime pay. Justice, therefore, required immediate reinstatement.

In my judgment this was a smoke screen. The union didn't want a settlement. It wanted a seizure. It realized that the dispute had to be kept going to get President Roosevelt to seize the company.

As *The New York Times* editorialized on November 25, "[W]hile it has been demonstrated—as the cases of the Federal Shipbuilding Company and Air Associates so vividly illustrate—that no employer may reject a Mediation Board 'recommendation' without being immediately cracked

down upon, it has also been demonstrated that if a labor union leader does not like the board's decision the Administration will get him another board."

The captive mines strike later proved the *Times* was right. On November 15 John L. Lewis initiated the strike. He wanted a union shop in the captive mines, as he already had in the commercial mines. The NDMB recommended a settlement that did not include a union shop, whereupon President Roosevelt dismissed the NDMB from the dispute and appointed an arbitration panel which, on December 7, gave Lewis all he wanted. The Air Associates union had good reason to expect that Roosevelt would give it much more than it could get from negotiating with Leroy Hill.

On October 28 Richard T. Frankenstein, National Director for the Aircraft Division of the UAW-CIO, threatened to use his "economic strength" to shut down all UAW work in New England, New York, New Jersey, and Pennsylvania unless Hill gave in to the union's demand for immediate reinstatement. Frankenstein explained, "We are not interested in any back door agreements of Mr. Patterson or Mr. Knudsen." (*The New York Times*, October 29, 1941)

Walter Chalaire explained his view of the new strike threat in the same *Times* article: "If the call for the general strike is met, there is a real question of 'who is the government.' We had wasted day after day with the Mediation Board. Its principal concern in our case was not defense production but promotion of compulsory unionism. We found a different atmosphere in the office of Undersecretary of War Patterson. In that conference we soon reached an agreement. Naturally the CIO wants to throw the controversy back to the Mediation Board."

On October 29 President Roosevelt repudiated the Patterson-Knudsen agreement and ordered Hill to reinstate the strikers immediately. The War Department issued a statement:

The Undersecretary of War announced today that the War Department was sending a representative to the plant of Air Associates at Bendix, New Jersey to supervise the reinstatement of the strikers there. . . . The War Department expects that . . . the strikers will . . . be immediately placed in the jobs which they formerly held, regardless of the fact that new

employees have been hired by the company to fill such jobs. New employees displaced from the jobs which they presently occupy as a result of the foregoing reinstatement of the strikers may be given other jobs if the company so desires, or the company may make such other disposition of such new employees as it sees fit. (*The New York Times*, October 30, 1941)

So much for equal protection under the law. All workers are equal, but some are more equal than others. Frankenstein called the Patterson-Knudsen agreement a "thing of the forgotten past" and left to "exchange felicitations" with President Roosevelt at the White House.

On October 30 Anthony Grimaldi looked over the shoulders of Colonel Roy M. Jones and Major Peter Beasley as they supervised the forced reinstatement of the strikers. Hill was ordered to stay in his office and out of the way. The chain of command was embarrassingly obvious, but the non-strikers would have none of it. W. C. Morton, a spokesman for the non-strikers said, "If these men are returned to work and the men on the machines are displaced by strikers everyone in this plant will walk out, not with the idea of going on strike, but for the purpose of a demonstration." (*The New York Times*, October 31, 1941)

And so they did. The non-strikers undertook a 30 minute work stoppage and two separate one hour sit-down demonstrations. There was some physical violence. A striker confronted a non-striker with a lead pipe, and several other non-strikers grabbed the striker and punched him.

The forced reinstatement settlement had failed. Late at night on October 30 President Roosevelt, certainly with the concurrence, and probably at the urging, of his White House guest, Richard T. Frankenstein, ordered the War Department to seize the Bendix plant of Air Associates.

## The Seizure

On October 31, 2,100 to 2,500 fully armed troops took over the Bendix plant. Colonel Roy M. Jones was ostensibly in charge, and he declared that the Army had "reopened" the plant. Actually it never had been closed except on October 24 when Sheriff Browne helped the union close it. President Hill and Executive Vice President Harold I. Crow were ordered off the

premises. Union leader Anthony Grimaldi was allowed to stay.

Only Air Associates' Bendix plant was involved in the dispute, so Hill naturally assumed he was still in charge of all the branch operations. He was wrong. On November 5 the Army seized the seven branch plants. The excuse given was that the branch operations had to be coordinated with the Bendix plant. Colonel Jones claimed, "The Army is in here to get out production and until the labor situation is cleaned up, Hill and the others are not in the picture at all." (*The New York Times*, November 6, 1941)

It got worse: On November 18 the War Department instructed the board of directors of Air Associates to fire President Hill. Undersecretary Patterson, who had helped produce the Patterson-Knudsen agreement on October 14, said, "We will return the company to private management just as soon as we figure that they have a management there that will not have labor problems." (*The New York Times*, November 20, 1941) In other words, a management that would take its orders from Anthony Grimaldi.

The board of directors was instructed to submit all names of potential successors of Hill to the War Department for its approval. On November 26, with the permission of the War Department, the Air Associates Board elected Frederic G. Coburn, then chairman of the board of McLellan stores, president of Air Associates.

To add insult to injury, on November 26 the War Department tried to depict Leroy Hill as an incompetent businessman by asserting, "On taking possession the Army found that the company did not have the means to meet maturing obligations to banks and to trade creditors." The government advanced \$500,000 to the company, and a spokesman said: "When it agreed to extend financial aid to the company the War Department took the same measures that any bank would take under similar circumstances. It insisted that the company give assurance of satisfactory management and continued production." (*The New York Times*, November 27, 1941)

However, as Hill explained, \$500,000 was the standard down payment the War Department made on new contracts. He had been expecting it.

Moreover, since the company's inventory had been seized and its ordinary customer receipts had been impounded by the War Department, it was no surprise that banks and trade creditors were complaining about the lack of payments since the end of October.

On November 30, 502 out of 800 Air Associates employees petitioned President Roosevelt to reinstate Hill. According to the petition: "[The] takeover was a capitulation to the dictates of selfish labor union leaders against the wishes of 85% of the Air Associates employees. We further believe the stipulation of the government that the former management be replaced as a condition for the return of the property to its rightful owners is an act of governmental coercion threatening the destruction of free enterprise." (*The New York Times*, December 1, 1941)

On December 26 President Coburn signed a contract with the UAW that included a union shop and everything else Anthony Grimaldi demanded. Only 250 out of 800 employees participated in the contract ratification vote. They all voted yes. On December 29 the War Department turned Air Associates back over to its board of directors and President Coburn.

## Postscript

F. Leroy Hill moved to Rockford, Illinois, in 1942. There he founded the Aircraft Standard Parts Company and Aero Screw Company, both of which supplied parts for military aircraft during World War II. After the war he formed Hill Machine Company, which later became Hill-Rockford Company, a manufacturer of assembly machinery. He became a member of the Mont Pelerin Society. Although he retired in 1975, he remained an energetic defender of the right of every person to work free of compulsory unionism. He died from a heart attack at his summer home at Francess town, New Hampshire, on July 7, 1981.

After the war Air Associates specialized in electronics. In 1957 company headquarters were moved to St. Petersburg, Florida, and its name was changed to Electronic Communications. It became the ECI Division of E-Systems, a subsidiary of NCR, in 1976. □

# Tony Trivisano's American Dream

by Frederick C. Crawford

**T**ony Trivisano came from a rocky farm in Italy somewhere south of Rome. How or when he got to America, I do not know. I first met Tony when I returned from the office one day and found him standing in the driveway behind the garage. He was a shabby-looking person, about five feet seven or eight, thin. He looked hungry.

"I mow your lawn," he said as I approached him. I didn't comprehend his broken English. I asked him his name. "Tony Trivisano." I asked him what he wanted. "I mow your lawn."

Then I caught on. He wanted a job. I told Tony that the Depression was on. It was then about 1930 or '31. These were difficult days. I told him I had to mow my own lawn; I couldn't afford a gardener.

"I mow your lawn," he said.

I said, "Tony, I'm sorry, but I don't think we can work anything out."

"I mow your lawn," he said again, then turned and walked away.

That evening I felt very unhappy and mean. A person in need had appeared to me. Where was my compassion? I was sorry that I had turned him away. The next day, when I returned late from work, I was amazed to find that our lawn had been mowed, the garden had been weeded, and the walks had been raked. Things looked very neat. I asked my wife what happened.

"A strange man came today, got the lawn mower out of the garage, and proceeded to work

on the yard," she said. "I thought you had made some arrangements for a gardener."

I told her of my experience the night before. We thought it strange. The next two days were busy. We were trying to rebuild our business and bring some of our workers back to the plants. I got home late. But on a Friday, returning a little early, I saw Tony turning away. I called him. I complimented him on the work he had done.

"I mow your lawn," he said.

Being an old softie, I worked out some kind of small weekly pay, which I thought would be enough to help him get along. He turned and walked down the driveway without a word. For the next few weeks we were busy, but each day Tony appeared, cleaned up the yard, and took care of all the little chores. My wife said he was very helpful whenever there were any heavy objects to lift or special things to fix about the place. She was delighted to have him.

Summer passed into fall, and cold winds were arriving. One day as I returned, Tony was there in his place behind the garage. I asked him what I could do for him.

"Mr. Craw, snow pretty soon," he said. "When winter come, you give me job shoveling snow at the factory."

Well, what do you do with a fellow like that? What do you do with such persistence and hope? Of course, I relented, and Tony got his job at the factory.

The months passed. I asked the company's labor department for a report on Tony. They reported that he was a very good worker. Some time went by. Again, one day I found Tony at the

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*Mr. Crawford, honorary chairman of TRW Inc., is a former member of the Board of Trustees of FEE. This article is reprinted from the fall 1991 issue of Cleveland Enterprise. Copyright © 1991, Cleveland Enterprise.*



meeting place behind the garage when I returned from the office.

"What can I do for you, Tony?"

"I want to be 'prentice," Tony said.

I didn't catch on at first, and then I realized he was asking if he could become an apprentice. We have a pretty good apprentice school. We trained laborers in various skills that were needed. I doubted whether Tony had the capacity to read blueprints and micrometers and do precision work. However, how can you turn down such persistence? Of course, Tony got his apprenticeship.

He gave up some of his pay, took less money, and became an apprentice. Months and months later, I got a report from the shop that he had graduated from the apprentice school, a skilled grinder. He had learned to read the millionths of an inch on the micrometer. He had learned to handle his machine. He had learned to true the grinding wheel with an instrument set with a diamond. He was on his way. My wife and I were delighted. We felt that this would be the end of the story.

Again, the months passed, perhaps a year or two years, and once again, I found Tony in his usual waiting place after I returned from work. We had a nice visit. We talked about the grinding and his work, and then I asked him what he wanted.

"Mr. Craw," he said, "I like a buy a house."

"Why, Tony, how can you possibly buy a house? You haven't got your debts paid."

"I like a buy a house. Lots of opportune."

That puzzled me. Finally, I realized that he had found many opportunities to buy a house. I didn't quite picture it. When I looked into it, I learned that on the edge of town, where the area was deteriorating, he had found a house that was a complete wreck, marked to be torn down. This was the house he wanted to buy. There was a "For Sale" sign on the property that gave the name of the bank to which it had defaulted.

Well, I called on a banker friend, and I said, "Do you ever loan money on character?"

"No," he said. "We can't afford to. No sale."

"Now, wait a minute, Mr. Banker," I said. "Here is a hard-working man, a man of character. I can vouch for that. He's got a good job. Now, you're not getting a damn thing from your lot. It will stay there for years. Here is a man who at least will pay you interest. Why don't you try it?"

Reluctantly, he agreed to write up a mortgage

and give Tony the house with no down payment. Tony was thrilled. From then on, it was interesting to see that any odds and ends around our place—a broken screen, a bit of hardware, boards from packing, anything left over from the maintenance of our home—Tony would gather and ask my wife if he might take home. That went on, I suppose, for something close to two years or more.

Then one day Tony appeared again. We had a little talk together, and I said, "What is it this time, Tony?"

He said, "Mr. Craw, I like a pay 4 percent like the big boys. They make me pay 6 percent."

Now, at the time, in the post-Depression period, interest rates were settled at about 4 percent standard, but because Tony's loan was one without collateral, they were soaking him for 6 percent. I dropped in on my banker friend and said, "Why don't you give this fellow half a break? Why are you sticking him with 6 percent?"

"Well, his loan was no good."

"How do you know? Send an appraiser out and check up again." The appraiser went out and brought back a report that Tony's property was worth \$4,000. Now Tony had a good loan, a 50 percent loan, and he got his 4 percent interest.

## The Next Step Up

Again, time passed. War was threatening. Late one afternoon as I returned, I found Tony in the familiar meeting spot. "What can I do for you?" I said. Tony seemed to stand a little straighter. He was heavier. He had a look of confidence.

"Mr. Craw, I sell my house!"

"Tony, you sold your house? What did you get for it?"

"I got \$8,000," he said with pride.

I was amazed. "But, Tony, how are you going to live without a house?"

"Mr. Craw, I buy a farm."

Well, this was all coming pretty fast for me, but we sat down, and we talked at length. I learned that Tony had sent for his wife and son and daughter back in Italy. They had arrived. The children were in school. His wife was making their house homey. He had hunted around the edge of town and found a small, abandoned farm with a small but suitable house and a shed, and he had moved onto his farm. He told me that to own a farm was his dream, that he loved the tomatoes and the pep-

pers and all the things that are so important in the Italian diet. I was astonished.

The next time that I saw Tony was at the company picnic. He was there with his wife and children and was having a wonderful time. I could see that he had many warm friends among the factory workers. What surprised me was that Tony was wearing my favorite salt-and-pepper, well-worn weekend sports suit. It fitted him perfectly.

"Tony, where did you get that suit?"

He said, "Your wife gave it to me five years ago." I had never missed it.

Some time later, Tony arrived on a Sunday afternoon, neatly dressed. He had another Italian man with him. He told me that he had sent to the town of his birth and persuaded his childhood friend to come to America. Tony was sponsoring him. With a hint of a twinkle in his eye, he told me about how, when they approached the little farm that he now operated, his friend stood there in amazement and said, "Tony, you are a millionaire!" Tony was filled with great pride.

The years went by. War was on. We were very busy with our war-production work. I had no time to think of Tony, although my wife had become very fond of him. Then one day, a message came from the company's labor department. Tony had not reported for work. An investigation showed he had passed away. We all felt sorry, but we were proud of his accomplishments.

I asked our people to check on his family and see that everything was properly handled. The report came back. They found the farm was green with vegetables; the little house was well, liveable, and homey. There was a tractor in the yard and a good automobile. Tony didn't owe one red cent. The son and daughter had been educated and were at work, and things were left in perfect shape.

After Tony passed away, I exceedingly regretted that I had not spent more time with him, that I had not at least driven out to visit his little farm and seen his wife and his family and his boyhood friend settled and enjoying the American way of life. I thought more and more about Tony's career. He

grew in stature in my mind. Finally, he appeared tall and proud, standing with the greatest industrialists who had ever lived in America.

They had all reached their success by the same route and by the same values and principles. Each one had to show vision, perseverance, determination, self-control, optimism, hope, self-respect, and above all, integrity. Tony's affairs were tiny; the great industrialists' affairs were giant. But after all, the figures were exactly the same. The only difference was where you put the decimal point.

Tony did not begin on the bottom rung of the ladder. Tony began in the basement. All he had were 24 precious hours a day. He knew that he must waste none of them, unlike so many of us who waste time today. He knew instinctively that time was the secret of success. His instinct also told him that time was the secret of wealth, that if he was ever to enjoy material comforts, it would be through the wise use of time.

What is wealth? Wealth is anything a human being can use: money in the bank, a house, a pair of shoes. How is wealth produced? A very simple process. If you take one hour of time and you make something useful, you have added to wealth. Now, there are two ways to do this. One is by hand, a slow and tedious process. The other way is by accumulating vast amounts of capital, and by that method, great amounts of wealth can be produced quickly.

Tony knew that his precious 24 hours a day were the secret of success, just as the violinist knows he must endure countless hours of practice, the athlete, many muscle-numbing hours of training, the doctor, years of constant study. Tony knew that time would bring him success, albeit slowly.

Tony came to America seeking the American Dream. He did not find the American Dream; he created the American Dream for himself. Every American with 24 hours of precious time can create his or her own American Dream, if he or she will only learn what Tony instinctively knew: Time is the secret of success. Time is the secret of wealth. □

## On Moving the World

WHAT YOU are is what the world is. What you become is what the world will become.

—VERN HANSEN  
Los Gatos, California

IDEAS  
ON  
LIBERTY



# How Many Laws Are Enough?

by James L. Payne

**I**n the debate surrounding the Thomas-Hill episode in the Senate Judiciary Committee, there was one point on which participants seemed to agree, namely that "sexual harassment in the workplace is an extremely serious matter." Senators from left to right lined up to chant this litany, voicing their support for legislation that regulates such conduct. Only the facts were in dispute: Did Supreme Court nominee Clarence Thomas use sexually explicit language in the workplace in an attempt to pressure an employee into a sexual relationship?

Now that the excitement is over, perhaps it's time to examine the premise of that debate. Should we consider sexual harassment "an extremely serious matter," a matter so serious that we should regulate it by law?

It's important to remember what, in the final analysis, legal regulation is. It means that we are prepared to use force against the person who is the object of the regulation. It's easy to overlook this point because government actions seem so innocent in their initial stages. Usually they start with a letter or document ordering the person to appear at a hearing or trial, or pay a fine. But lurking behind this document is the threat of force. If the person chooses to disregard it, then G-men or state troopers with guns will eventually come to his home. If he ignores them or locks his door, the officers are authorized to use force against him. They may smash his door down; they may seize him and drag him away. If he attempts

to defend himself, still more force will be used. In the process, the citizen may be injured or even killed.

When is it right for the state to use force in this way? The traditional answer is that when the individual has initiated force, as in a robbery, rape, or murder, then the use of force is justified, both to restrain him and to deter others from doing the same thing. When the state acts in this defensive way, it plays a force-reducing role, lowering the sum total of violence in the world.

By this test, sexual harassment in the workplace should not be legally regulated because it is not an initiation of force. The woman (or man) who suffers it is not physically attacked. Sexual harassment is not rape. It can be disagreeable, of course. It can even mean that the employee has to resign the job, just as she (or he) would have to resign a job which paid too little. An unfortunate situation, yes, but not a violent one.

What's wrong, people will ask, with bringing it under government regulation? At first glance, it seems a simple way to fix the problem. But consider the long-run consequences. When policymakers start to treat nonviolent activities as crimes, government forsakes its role as peacemaker. It becomes a violence-initiator, drawing its guns against peaceful citizens whose behavior it views as unsatisfactory. Now it is adding to the sum total of violence in the world. Furthermore, it sets a bad example. It is encouraging the angry, the unsocialized, and the deranged to imitate its practice of initiating the use of force as a problem-solving method.

Sadly, modern legislators have not understood this connection. For generations, they have attempted to correct nonviolent situations by resorting to coercive regulation. From barber shops to schools, from hospitals to farms: The list of do's and don'ts officially backed by guns has grown to staggering proportions.

Can the law enforcement system stand this ever-increasing load? In the past 20 years, the number of people that federal, state, and local governments have put in prison has more than tripled. Jails are so overcrowded that robbers and rapists are placed on parole. Surely it's time to concentrate on controlling violent misbehavior. Lawmakers shouldn't further burden the criminal justice system by making it handle unfortunate but non-violent problems. □

*James L. Payne, a political scientist, is the author of The Culture of Spending: Why Congress Lives Beyond Our Means.*

# Edmund Burke

by John Chamberlain

**E**dmund Burke is a name that was once well-known to Americans. He never visited America, but he could be counted on to oppose King George III and his ministers in their efforts to tax the colonies without a by-your-leave. He opposed the Stamp Act, and he would have taken part in the Boston Tea Party if he had been anywhere in the American Northeast. His speech on conciliation was once read in hundreds of American schools. It was dropped when the teaching of history was abandoned in favor of that vague thing called social studies.

Two books are available to help revive the name of Burke. One, just published by Peter J. Stanlis, is titled *Edmund Burke: The Enlightenment and Revolution* (Transaction Publishers, New Brunswick, N.J., 259 pages, \$34.95 cloth). The older book, by Alice P. Miller, is *Edmund Burke and His World* (published some years ago by the now defunct Devin-Adair Company, Greenwich, Conn., 232 pages, \$12.95). Each book comes with a foreword by Russell Kirk, a one-man clique who gives more words to Stanlis than to Mrs. Miller.

Burke, a graduate of Trinity College in Dublin, was the son of a Protestant father and a Catholic mother. He believed that politics was more of an art than a science. Prudence was a big word in his vocabulary. This meant that he could follow his friends of the so-called Enlightenment just so far. He believed that the "moral natural law" had been violated by the British in both America and Ireland, and by the East India Company in India. He was for rescinding the charter of the East India Company because it was a political entity in the "disguise of a merchant."

Very much a Jeffersonian, Burke approved of

several rebellions—the English Revolution of 1688, the American Revolution, the efforts of the Poles to prevent partitioning, the rebellion of the Corsicans, and the many rebellions of the people of India against the rule of Warren Hastings. But, as a Whig, he was for parliamentary change, not violence.

Burke's colleagues of the Enlightenment erred in their lack of prudential willingness to respect tradition in pursuit of scientific truth. Gradualness was Burke's proposal for change. It was a key element to the moral prudence that should guide economic reforms. In his reflection on the French Revolution, Burke said that "thanks to our sullen resistance to innovation, thanks to the cold sluggishness of our national character, we still bear the stamp of our forefathers." We had been saved, he said, from the violence of the guillotine where the French were not.

Burke's view of the extremist nature of the French Revolution brought him into conflict with Charles James Fox, Richard Brinsley Sheridan, and other Whigs. He said that if Britain took revolutionary France as a model, there would be anarchy in government and atheism in religion. Burke proved to be a good prophet, and in time the Whigs came around to his view.

Burke went to a Quaker school in Ireland called Ballitore. The school, barely mentioned by Stanlis, instilled in Burke practically all the beliefs that guided him through his many years in Parliament. At Ballitore, Burke studied Latin and Greek, wrote poetry with the son of the school proprietor, and passed the entrance exams into Trinity. He debated and did extemporaneous speaking, calling mild attention to some of the defects of the class

system, and went on to London to study law and become a writer. Next came marriage and the long period in which he championed the anti-tax cause of the American colonies. Mrs. Miller adds many homey touches to the running story of Burke's life. His friends included Oliver Goldsmith and Sir Joshua Reynolds. He lost his own son, but found solace in bringing French children displaced by the Revolution to the "nursery" he established at his home in Beaconfield.

Personally, I found the chapters in the Stanlis book very confusing. They are choked with names that are almost immediately forgotten. The Miller book, which establishes a chronological sequence and sticks to it, is much easier to follow. □

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### AUSTRIAN ECONOMICS: PERSPECTIVES ON THE PAST AND PROSPECTS FOR THE FUTURE

edited by Richard M. Ebeling

Hillsdale College Press, Hillsdale, MI 49242 • 1991  
541 pages • \$9.95 paper

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*Reviewed by William H. Peterson*

As the 20th century winds down, two landmark books in the history of economic thought in the past near-100 years seem to have moved Western opinion and policy in a significant way, both positively and negatively. The two books are in a sense juxtaposed and get a big play, directly and indirectly, in this insightful volume 17—the 1990 lectures—of the "Champions of Freedom" Ludwig von Mises Lecture Series. Hillsdale College established this lecture series in 1973, and it has undeniably helped sustain the astounding growth of the Austrian school of economics.

One book is Mises' *Human Action* (1949), a work offering the extraordinary idea of praxeology, the science of human action involving the sovereignty of the individual, the daily, rational, purposeful behavior of men and women who freely advance social cooperation through open markets and private property rights. These principles make *Human Action* a profoundly ethical book, says contributor Hans-Hermann Hoppe of the University of Nevada at Las Vegas: "For is it not natural that every person should own his own body as well as all scarce goods which he puts to use with the help of this body before anyone else

does? Is it not obvious that every owner should have the right to employ these goods as he sees fit so long as in so doing he does not uninvitedly change the physical integrity of another's property?"

The other book is John Maynard Keynes' *General Theory of Employment, Interest and Money* (1936). In this "New Economics," Keynes sought to have central governments macro-manage "aggregate demand" to maintain their economies at "full employment."

In his contributions here editor Richard Ebeling, holder of the Mises chair in economics at Hillsdale College, sees such reasoning as moribund social engineering that disregards the primacy of human action. This disregard allows government macro-managers to push individuals around as if they were but pieces on a chessboard. Here Ebeling invokes Adam Smith's famous chessboard analogy and Hayek's stinging phrase, "the pretense of knowledge." Thus at the highest levels of government, inexorable ignorance of the dynamics of society and the economy leads pretentious macro-managers to the grossest mismanagement of the economy, i.e., of the people.

In his paper, Mark Skousen of Rollins College goes after Keynes for his anti-saving focus. Keynes saw thrift reducing consumer spending, hence decreasing consumer goods output and possibly inducing a downward business spiral.

This anti-saving focus still pops up in leading Keynesian textbooks. For example, William J. Baumol and Alan S. Blinder write in *Economics*: "While savings may pave the road to riches for an individual, if the nation as a whole decides to save more, the results may be a recession and poverty for all."

Such reasoning is shortsighted, indeed "perverse," says Skousen, because it overlooks the role of time preference in the lengthening or "round-aboutness" of the production process, leading in the long run to productivity gains, rising consumer spending, and higher living standards. He also contends that in the short run greater savings push down interest rates, which makes investment more attractive, with resulting higher capital goods demand tending to offset lower consumer goods demand.

If Keynes represents the quintessence of regulation and interventionism in a nominally capi-

talistic economy, contributor Jack High's paper on the theory, history, and doctrine of government regulation offers insights galore from the viewpoint of Austrian economics. High, director of graduate studies in economics at George Mason University, notes, for example, that niche-seeking entrepreneurship, so central in praxeology and free markets, becomes bizarre and counterproductive in a climate of interventionism.

Professor High points to pioneering work by Gabriel Kolko. Historian Kolko demonstrated in his *The Triumph of Conservatism* (1963) that quite a few businessmen in the Progressive Era actively sought government regulation in banking, railroads, and many other industries as a way of subverting competition. In other words, businessmen have been often the leaders, not the unwilling victims, of "regulatory reform."

Mises. Keynes. Who will prevail in the 21st century? Contributors and commentators in this full, rich, and provocative volume are betting on a Misesian revolution. I hope they are right. They deserve to be. □

*Dr. Peterson, Heritage Foundation and Mises Institute adjunct scholar, is the Lundy Professor of Business Philosophy at Campbell University, Buies Creek, North Carolina.*

## **FEMINISM WITHOUT ILLUSIONS: A CRITIQUE OF INDIVIDUALISM**

by Elizabeth Fox-Genovese

University of North Carolina Press, P.O. Box 2288, Chapel Hill, NC 27515-2288 • 1991 • 347 pages • \$24.95 cloth

*Reviewed by Elizabeth Larson*

**B**y claiming that individualism is a documented failure and that modern feminism betrays itself by not acknowledging its dependence on that defunct philosophy, Elizabeth Fox-Genovese's latest contribution to women's studies has raised eyebrows and tempers at many points along the political spectrum.

Although punctuated with criticism of today's mainstream feminists, this book amounts to a sweeping assault on individual liberty. Fox-Genovese blames individualism for all that is wrong with America today—from homelessness and the growing black underclass to pornography and the widening rift between men and women.

Fox-Genovese's version of the "American myth of individualism" goes something like this: Ruthless and rampant, individualism took hold of America with the Industrial Revolution and has been strangling us ever since. Since the marketplace had little time for the traditionally female qualities of nurturing, caring, and community (and since men didn't want to live without those comforts), women were suppressed to keep that corner of society alive: "The American version of the myth of individualism that promised success to those [men] who played by its rules assumed that unpaid female labor and devotion would buttress [male] individuals' efforts in the struggle to cope with the capitalist market." (brackets in original)

Out of that universal oppression, Fox-Genovese continues, arose a sense of sisterhood, which, while it couldn't reverse the injustices women suffered under capitalism, at least let women know they weren't alone in their misery. Then came suffrage, property rights, and the rush to fill jobs left vacant by men leaving for World War II. Women advanced into the men's world, into their offices, their classrooms, and even their locker rooms. Some succeeded; some failed. But those who did succeed (and this Fox-Genovese considers an unfortunate consequence of the women's movement) tended to become more individualistic and to identify themselves in terms of their race or economic class rather than in terms of their sex. The theory of collectivist feminism gave way to the practice of individualism. What came next, Fox-Genovese tells us, was even worse.

The feminist movement of the '60s and '70s with its battle cry "Sisterhood is Powerful!" employed the language of female solidarity without considering the roots of that solidarity. Born as a reaction to capitalism, sisterhood was inextricably tied to the capitalist system; it was the result of women's silent acceptance of the system of "rugged individualism." Feminists today, Fox-Genovese maintains, should realize that implicit in the language of sisterhood is an acceptance of the status quo: the capitalist society.

With the empty language of female solidarity, today's feminists claim to speak for all women, and Fox-Genovese is most interesting when she discusses such problems within the women's movement. In reality, she writes, the movement is made

up mostly of white upper-middle-class women—women who have the financial means and sufficient leisure to over-analyze their successes and failings as, of course, the inevitable consequences of the American patriarchy—so how can they speak as the collective voice of women of all cultures and colors?

That is a legitimate criticism. The majority of *Feminism Without Illusions*, however, is confusing and contradictory; it seems as though Fox-Genovese loses her train of thought between paragraphs. Perhaps she's taken to heart the words of her more radical feminist colleagues who insist that logic and argument cannot be divorced from the patriarchy (and therefore must go).

Fox-Genovese harshly criticizes moderate feminists marching under the banner of "Sisterhood is Powerful!" Her ideas on ethical and legal issues bring to mind women on the fringes of feminist theory, such as Catharine MacKinnon, a law professor at the University of Michigan.

Like MacKinnon, Fox-Genovese argues that the tension between the individual (male) and the community (female) can be resolved only by replacing the patriarchy with a world order based on the virtues of the female community. Ideally, care, bonding, and a system of gender-based justice would replace individual rights and the objective rule of law.

Upon reaching that conclusion, Fox-Genovese immediately retreats, suddenly rhapsodizing about how great America is and lauding the Constitution and the Declaration of Independence. Such contradiction only adds to the general confusion of her prose. Asserting that a gender-based system of justice should replace our traditional rights-based system, while with her next breath lauding America's founding principles (she never explains what she thinks these principles are), indicates both sloppy thinking and confusion about American political philosophy.

"The American version of the myth of individualism" has not brought happiness and material success to all women, Fox-Genovese complains. Well, that's life. American individualism never promised happiness for all; it promised that we would be free to *pursue* happiness. Fox-Genovese needs to sit down with a copy of the Declaration of Independence and study it well. Maybe then she'll understand that the Founders promised not a fair and happy life for all Americans but a society

where individuals would find justice and the freedom to succeed—or to fail. □

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## **THE BIRTH OF THE MODERN: WORLD SOCIETY 1815-1830**

by Paul Johnson

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*Reviewed by Raymond J. Keating*

Few historians have made their subject more compelling than Paul Johnson. In his *Modern Times* (recently updated), Johnson eloquently relayed the story of the 20th century—from the 1920s up to the 1990s—with new insights and a keen historical eye untarnished by the leftist ideology that afflicts many of today's historians. Now, in *The Birth of the Modern*, Johnson has brought his considerable talents to bear on the formative years of 1815-1830.

Johnson describes how, as the Napoleonic Wars came to an end, many of the ideas conceived in the 1770s and 1780s finally were given birth during 1815-1830, laying the foundations of modernity. The numerous and often quite diverse themes that emerged during the rise of the modern era—encompassing economics, politics, science, philosophy, and culture—are exhaustively explored.

One recurrent theme is the great expansion of economic opportunity. The parts of the globe that adopted the free enterprise system—liberating trade, securing property rights, limiting government intrusions in the marketplace, and reducing taxes—witnessed prosperity and stability. According to Johnson, when English entrepreneur Thomas Hulme visited Pittsburgh in 1817 he found the city to be "already a major coal-iron and manufacturing center, crowded with 'skillful and industrious artisans and mechanics from all over the world,' who were paid wages at twice the British level with much lower taxes."

However, Great Britain also provided an amenable growth environment. Johnson points out that one of the reasons behind emigration from Europe was that it was "a painfully overtaxed continent." He continues by noting that the "British were spared internal customs, but they groaned under the income tax. . . . The radicals saw

it not merely as a monstrous burden, but as an 'inquisitorial' intrusion into the privacy of a man's financial affairs. . . . [S]uccess in getting the Commons to abolish the tax on 18 March 1816 by a majority of 238 to 201 dumbfounded the government and was one of the most popular political victories of the decade." Johnson neatly summarizes the British economy: "[C]lever and enterprising men came to the British Isles because of the opportunities provided by its great wealth and, still more, by its free economic climate. The English universities might be comatose and the government indifferent to industry, but the law left the entrepreneur and the self-advancing artisan free to pursue their genius. Moreover, it was the only country with an effective patent system."

Free enterprise and economic growth also were buttressed by the new private-sector movement in international banking led by the Rothschilds, the restoration of the gold standard in Great Britain, and by U.S. Supreme Court Justice John Marshall's role in securing American property rights. Such developments contrast starkly with, for example, the "few markets and a general absence of economic incentive to improve and invest" in Russia, and with the corrupt and flawed systems that were thrust upon Latin America. Though, Johnson also notes some instances of Luddite and union appeasements in Great Britain, which "were portents of her long-term relative decline."

The author weighs the positives and negatives of the Industrial Revolution, and draws a favorable conclusion: "The Industrial Revolution, which first developed its irresistible momentum in the 1780s. . . is often presented as a time of horror for working men. In fact it was the age, above all, in history of matchless opportunities for penniless men with powerful brains and imaginations, and it is astonishing how quickly they came to the fore." In fact, in the early 19th century there was not yet a schism (real or imagined) between the industrial and the aesthetic. At the dawn of the modern, men "saw art and science, industry and nature as a continuum of creation and the quest for knowledge as a common activity, shared by chemists and poets, painters and engineers, inventors and philosophers alike. . . . Men spoke of the 'art of machine making' and those who designed the great engines and structures were often artists, also, in the sense

we understand the word today."

The power and, in Schumpeterian terms, creative destruction of the Industrial Revolution mirrored an overarching aspect of the birth of modernity—its gigantism. Johnson declares, "The modern age was beckoning [man] into the wilderness, to conquer it." And while the Industrial Revolution unleashed creative energy, much darker forces also came to the fore. Johnson identifies the seeds of totalitarianism, instability, and terrorism, including the Napoleonic genesis of secret state police, as well as Hegel's "force of history" and his world-spirit nation with its commensurate "absolute autonomy." As Johnson points out, "So the forces of progress spread rapidly in these years, sometimes like a manumission, sometimes like a plague."

Johnson examines many other aspects of the birth of the modern, including Andrew Jackson's Presidential campaign and its effect on the American political system (e.g., the introduction of the "kitchen cabinet," the use of the political machine, the increased role of the press, and a transfer of power from the elite to the nation's populace), the Treaty of Ghent as "one of the great acts of statesmanship in history," commercialization of music, the role of the artist in society, the beginning of interior decorating and developments in fashion, increased incidents of body snatching (a strange link between great surgeons and gangs of criminals), suicide attempts among the prominent (including "poor Augur, the perpetual secretary of the Académie française, who killed himself in a fit of depression at the triumph of romantic over classical-style literature"), as well as political developments from all major points on the globe.

This is a stunning book in terms of its breadth and depth of knowledge. But it is important for its sober and balanced view of history; for its illustrations that freedom is superior to totalitarianism on both material and moral grounds; and for its recognition that the word "progress" has numerous definitions often quite different from each other. Few will be disappointed with this historical tour de force. □

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