

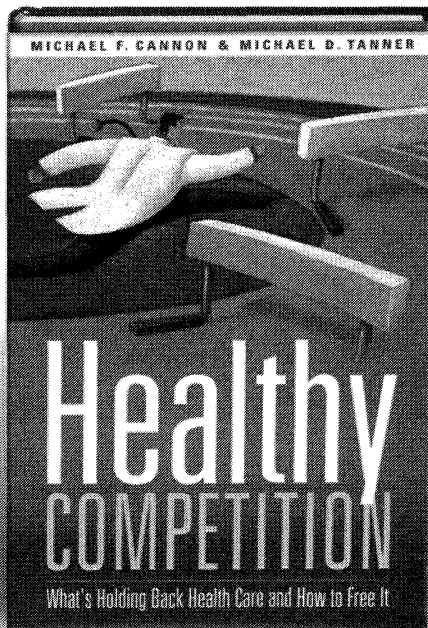
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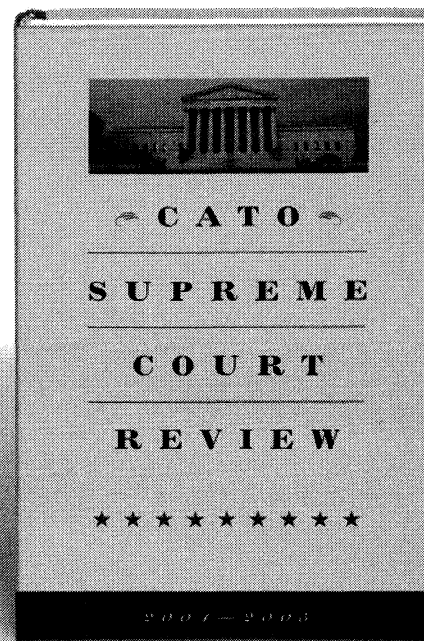
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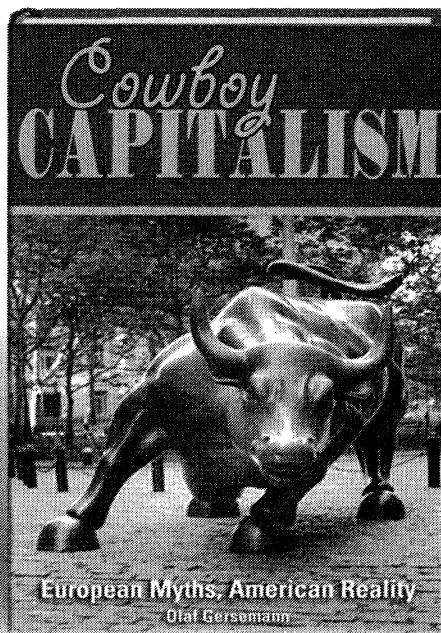


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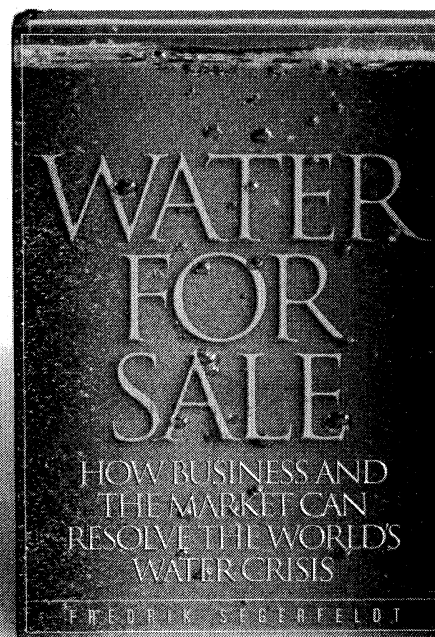
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Letters

Re: Tort

Thomas Crancer makes an interesting point (Letters, September), to the effect that trial lawyers making a profit are simply earning a living like doctors, grocers, and everybody else.

That's fine, as far as it goes. But there's a little more to it than that. After all, the courts are a branch of government, and their awards are enforced by police power. And many lawyers are "officers of the court."

I doubt if a businessman could charge as much as he wanted for his product, and expect the courts and police to back him up. That would be "corporate welfare" with a vengeance!

Charles H. Chandler
Lexington, Mass.

Dynamic Mother

Regarding Jane Shaw's reflection on global warming (October), all these global warming Ph.D.'s and the general public should be aware that the earth's climate is cyclical.

From A.D. 900–1500, earth's northern hemisphere was in a cooling trend. This caused the Norse to abandon Greenland in the 13th century. It seems that around A.D. 1500, Mother Earth began a warming trend. Hudson saw blue- and grey-eyed Eskimos. Our current warming trend could well reverse itself in A.D. 2200.

The good news is that more sun and warmth enable us to grow more food. The bad news is that malaria, which was in the Sacramento Valley as recently as the 1890s, will make a comeback. And now we have Nile

Fever, so we are spraying for mosquitoes.

The Chicken Littles need to learn from history — Mother Earth is dynamic.

Cyril Stevenson
Carmichael, Calif.

Dredful Ignorance

Stephen Cox ("Fruitless Controversies," October) was right on target in demonstrating the futility of argument. (In all my attempts to portray the Bill of Rights as restrictions on Congress — its sole intended purpose — I have yet to gain one convert.)

His example of talk show host Walter Williams' exchange with a caller drew my attention. Williams had maintained that the Constitution is not a 'living document,' and should be interpreted as was intended by the founders.

The caller claimed that the *Dred Scott* decision had abolished slavery by reinterpreting the Constitution "so as to agree with the judges' own opinions." Williams had to inform the caller that *Dred Scott* "was famous for upholding slavery."

That's classic — the blind leading the blind. If ever there was a case that upheld original intent, it was *Dred Scott v. Sandford*. The Court held "that the plaintiff . . . is not a citizen of Missouri in the sense in which that word is used in the Constitution, and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no

continued on page 24

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Reflections

Allahu akbar, indeed — As I write this, one week post-Katrina, it appears the hurricane's death toll may well exceed that of 9/11. It follows that Bush's best political move is to declare war on God.

To pacify his Christian base, he should clarify that it's the Muslim God he's declaring war on. It would help if Bin Laden issued a fatwa stating that if the U.S. doesn't pull out of the Middle East he will continue to send hurricanes against us.

I recommend that Bush, when he declares war on God, use the phrase: "He can run, but he can't hide." This seems a reasonable statement about an entity said to be everywhere at once. The War on God would show Americans that we don't take guff from anyone! Granted, it would be a futile, unwinnable war, amorphous and ambiguous in its objectives, hugely costly . . . but when has that ever stopped the U.S. government?

— Ross Levatter

Autumn of the patriarch

— Back in December 1989, Romanian dictator Nicolae Ceaucescu, or the "Genius of the Carpathians," as one of his many absurd titles and honorifics put it, stood speechless and baffled as his rent-a-crowd suddenly turned against him in the central square of Bucharest, shouting him down. Soon he and his wife and co-dictator Elena were being lifted by helicopter from the roof of a government ministry and trying to escape to Carpathia or some other remote corner of the country before their rebellious army caught up with them, which it did, followed by a kangaroo-court trial and Christmas Day executions.

The approaching end for George W. Bush won't be nearly so operatic. He may be speechless and baffled every chance he gets, but he's no megalomaniac Stalinist dictator, just a faux-folksy Yale frat-boy mediocrity, and if there's a "Genius of the Central Texas Plains," it would be Karl Rove, not Bush. His own carefully screened and purged crowds at campaign stops never turn on him, but the White House press corps has recently worked free of its leash and collar, and started growling, and his public approval ratings have tanked. And in one respect, his regime has developed a striking resemblance to Ceaucescu's.

When the facade comes down, it comes down quickly. The walls of this exceptionally insular, walled, moated, self-

enclosed hall-of-mirrors administration are suddenly crumbling very fast. The facade was one of toughness and competence. Bush and his cronies were not going to be nice and empathetic and tirelessly seductive like talkative, shifty nuance-monger Bill Clinton, but unlike him they would be decisive and professional and as steely and laconic as John Wayne or Gary Cooper.

That description fits almost all of the soldiers who have been sent into a nearly impossible situation in Iraq, but not the fools who sent them there. Yet the hallucinations of Bush and Cheney and their entourage about Iraq, and the criminal incompetence of the Pentagon planners and Paul Bremer during the occupation were only eroding the administration's tough, take-charge facade very slowly. Under the onslaught of Katrina it gave way almost as fast as the levees.

— Eric Kenning

Squall clarification

— In a stunning admission, President Bush insisted he's been misquoted practically since the inception of his political career and has simply been too busy clearing brush on his sprawling Texas ranch to issue the necessary retractions. As it turns out, Bush's seeming untiring

advocacy of "small government" was instead an outline for "squall government," that is, a federal government that leaps into action after torrential downpours, checkbook ablaze. Similarly, what so many had taken to be "get government off our backs" was in fact an assurance that "government's got your back." The president has pledged to work on his elocution to avoid future misconstruences, and hopes nobody's too mad at the apparent confusion. — Norman Ball

Lagging questions — If you watched a lot of TV coverage of the hurricane in New Orleans, you gained a deeper understanding of the meaning of the word "garbage." One of my most memorable experiences was hearing a reporter proclaim that a Mississippi town had been "completely leveled, as you can see" — while the camera panned across a landscape of two-story buildings, all standing upright.

But for me, the smelliest bag of gunk dropped into the can on September 7, on the CBS "Early Show." It was a story about how demoralized the New Orleans police had become because of the federal government's lagging relief efforts.



Although President Bush was not mentioned by name, it was plainly suggested that because of him, "at least 200 officers walked off the job. Hundreds more are missing. Two committed suicide." The show's on-site reporter turned to a police captain to verify the psychological-disaster story. The captain did appear somewhat distressed. He said that he was tired of being shot at all the time. "They [even] tried to take me hostage!" he added.

I naturally expected the reporter to ask, "Who tried to do that? Why? Did you arrest them?" After all, the guy was reporting a major crime, which is presumably still news.

Kindly, gently, someone could have asked just one hurricane survivor, "Did you ever think about moving two or three miles away?"

Indeed, he was reporting a massive crime wave. But no such questions were forthcoming. The reporter merely expressed his sympathy for the cops' low morale.

Now, anybody with a lick of sense, whether he be conservative, libertarian, communist, fascist, modern liberal, or Martian theocrat, knows that a cop is supposed to stay on the job, no matter what, and that cops have a lot more responsi-

bility for protecting the populace than the president ever had or ever should have. The fact that the mainstream media don't know this is final proof that they've lost every lick of sense. It's also very clear, from the kind of questions that the media asked, and didn't ask, that they've lost all conception of how to do their jobs.

There's an old journalists' story about an editor who sends a rookie reporter to cover a society wedding, which is the easiest thing in the world to cover. When the rookie returns to the office, the editor asks for his write-up. "I'm sorry," the rookie says. "I don't have one. There isn't any story."

"Isn't any story!" the editor replies. "Why not?"

"Because there wasn't any wedding."

"Wasn't any wedding? Why?"

"Well, everybody was there in the church and the organist played and the minister started his sermon, and suddenly some guy ran down the aisle and shot the groom dead. So there wasn't any wedding, after all. Sorry, chief."

The mainstream media are like that rookie reporter. As far as they're concerned, there wasn't any story in New Orleans; there was only Sympathy for the Suffering and a long awaited revenge on Bush. Even Fox News kept showing the same dismal footage over and over again — flooded streets, banged-up houses, angry people demanding government aid — never asking the kind of questions that any real reporter would immediately come up with. I have a big file of those questions (probably you do, too).

News You May Have Missed

Feds Say Weather Spoiled Plans

WASHINGTON — Deposed FEMA director Michael D. Brown and other federal officials blamed their poor performance in late August on the weather, which forced delays in implementing emergency bungling procedures. "We had well-prepared contingency plans in place for the whole week leading up to the busy Labor Day weekend, so that if one golf course was too crowded, we could, as an alternative, reach another safely," Brown said, "but we definitely goofed by not checking the weather reports. Everything would have worked out perfectly, not just for me, but for those folks down south, if it hadn't been for the lousy weather."

A high-level Department of Homeland Security official said that he did glance at the weather box on the front page of the Washington Post before heading off for some weekend sailing in Chesapeake Bay on August 26, and, noting that the forecast was for mostly sunny skies and seasonably warm temperatures with light south-

westerly winds, he didn't foresee any problems for either his plans or anyone else's, but he later learned that the forecast was misleading in that it applied only to the mid-Atlantic coast region. "Apparently, given the lack of uniform federal regulations, they have different weather in some parts of the country," he said. "We probably need a new cabinet-level Department of Homeland Weather, Health, Security, Happiness, Luck, and Human Redundancy to address this problem in a deliberate, regulation-encumbered manner, but the fact is that we were right on top of it, or would have been, except that if you were here looking out of the office windows at that time, you couldn't have asked for a nicer day."

President Bush, continuing to voice support for embattled administration officials, said he understood their complaints about the weather since his own carefully planned occupation of Iraq had been all but ruined by the unforeseen contingency of violent resistance. "Weather and foreigners are fickle and

unpredictable, kinda like my mother," the president remarked, apparently alluding to the fact that after Barbara Bush said that displaced victims of Hurricane Katrina were "underprivileged anyway" the National Hurricane Center declared her a dangerous Category 5 snob and predicted she would make landfall in Kennebunkport, Maine, where FEMA officials were already on the ground providing fuel-efficient Priuses to residents who were reluctant to pay \$3.50 a gallon to evacuate in their Lexus SUVs and National Guard troops were patrolling to prevent looting as supplies of caviar and Louis Roederer Cristal champagne were said to be running dangerously low.

Meanwhile, TV evangelist Pat Robertson, in spontaneous remarks made during his "700 Club" cable show, called for the assassination of a tropical depression forming in the Caribbean, just a few hundred miles north of Venezuelan president Hugo Chavez.

— Eric Kenning



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—Patrick Henry, 1776*

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Some of them would start with the observation that people who lived in New Orleans had been taking a conscious risk. Any large hurricane was bound to flood the place. Maybe the risk was worth taking, but what were the factors involved? Kindly, gently, someone could have asked just one hurricane survivor, "As you know, New Orleans has been called 'a bathtub waiting to be filled.' Did you ever think about moving two or three miles away?"

Other questions would be simply factual. If, as we were constantly told, only people who didn't have the means to get out of the city sought shelter in the Superdome, why were there so many cars clogging the inundated streets? And what accounts for the presence of all those able-bodied men and women who immediately started looting?

Speaking of the Superdome, why didn't the city government make arrangements for the refugees to go to higher ground? And once those refugees saw that the government had abandoned them without adequate sanitation, adequate supplies, or adequate police protection, why didn't the responsible people among them band together to provide for their defense, improvise sanitary facilities, and present a list of their needs to reporters, so that a useful message could get out to people who could help?

By the way, how did the reporters get in and out of all those places that normal people allegedly couldn't get out of? If they were so concerned about the suffering survivors, why couldn't they set up communications centers to get faster relief for them? If they were so concerned about the sick and dying, why couldn't they take some of these people out with them?

And what about other kinds of private action? In my many hours of media watching, I never saw anyone call an official of a hotel, church, or corporation to find out what was

happening on the property owned by such outfits, and what they were doing to help. Nor did I hear, even once, the pregnant question, "Do you have insurance?"

I confess that I wasn't expecting to hear any questions about the president's call for over \$50 billion in federal aid to the "hurricane ravaged" but presumably insurance-free zones, despite the fact that this sum amounts to well over \$100,000 for every man, woman, and child in New Orleans. Asking questions about the federal government's responsibility to "help people" is a very obnoxious and obtrusive thing to do. And as we know, the news media would never do anything that wasn't in the best of taste.

— Stephen Cox

The hot dog highway — Why not divert the billions that Congress earmarked for pork in the latest transportation bill to the humanitarian needs of New Orleans and the other areas devastated by Katrina? It's a quixotic idea, but it's appealing. Ronald D. Utt made that suggestion in a September 2nd commentary for the Heritage Foundation. Utt pointed out that \$25 billion is going to be spent on comparatively frivolous uses such as hiking and biking trails, an auto route through a wildlife refuge, and the restoration of a train station — not to mention two highly dubious \$200 million bridges in Alaska, home of House Transportation Committee Chairman Don Young.

Such expenditures were ridiculed for their inappropriateness when they became known, says Utt, but today they "are no laughing matter when their funding could be redirected to begin to rebuild the infrastructure of the Gulf States."

Among the items too numerous for Utt to mention were the \$4 million earmark for a downtown parking garage in my hometown of Bozeman, Mont., and \$1 million plus for Bozeman's yet-to-be built library. Even Montana's seasoned Senator Max Baucus had trouble swallowing the idea that the library's "urban plaza" was transportation, calling the library funding "a little bit of a stretch." He kept it in the bill anyway.

I don't expect this shift of funds to actually happen, but who knows? Americans have shown their generosity with a spontaneous outpouring of funds for Katrina victims — the total collected surpassed \$500 million by early September. It would be wonderful if that same sense of generosity spurred a reconsideration of the transportation bill, which was already an embarrassment to many.

— Jane S. Shaw

Refusing to separate the wheat from the dope — John Roberts is no Clarence Thomas. Indeed, much of the hearings amounted to Democratic senators making sure he is nothing like Justice Thomas. Still there were glimmers of a spirit the inquisitors will not like.

Sen. Ted Kennedy asked him if he agreed with both the holding and the reasoning in *Brown v. Board of Education*, the 1954 case which proclaimed that racially segregated public schools violated the Constitution's promise of "equal protection of the laws." Yes, Roberts said, he did; but the reasoning was important. It wasn't about the effects of segregation. "The genius of the decision was the recognition that the act of separating the students was where the violation was." Equal treatment, not equal results.

Sen. Charles Schumer homed in on *Wickard v. Filburn*, the 1942 case of the farmer who grew more acres of wheat than

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the federal government permitted, and fed the excess wheat to his chickens. The Court ruled that under the power to regulate interstate commerce, the government could penalize Wickard for growing that wheat. That case established the rule that even transactions conducted entirely on one man's property could be regulated if, when thousands of others did those same things, there was an aggregate effect on interstate commerce. It was one of the great holes in the Constitution opened by the New Deal court.

Roberts declined to comment on it.

The senator was unsatisfied. Roberts had said he agreed with other old cases, from *Marbury v. Madison* to *Brown v. Board of Education*, and *Brown* was more recent than *Wickard*. Why not affirm *Wickard*?

Robert's answer: Because of *Gonzales v. Raich*. That was the medical marijuana case, brought by libertarians, decided in June 2005. *Raich* reopened the question of *Wickard*. Instead of wheat for chickens, it was medical marijuana for Angel Raich — but the constitutional issue was the same.

Raich lost her case and the government won, but it was a divided court. Which meant Roberts wouldn't say whether he agreed with it, though he did say he had "no agenda to revisit it."

Not a Clarence Thomas, but better than some. (I hope.)

— Bruce Ramsey

99 bottles of beer on the road — The American automobile industry has paneled itself with the veneer of freedom for decades. The image of a lone car on the open road stirs the hearts of men, and coaxes cash out of their wallets. Men long to slide into the cockpit of a hemi-powered freedom machine, point it toward the horizon, and let the engine wind over the red-line.

Such images are illusory and fleeting, since any new driver pulls out of the car lot directly into a tangle of red tape.

Once on a public street, he is faced with speed limits and a gaggle of road regulations that make "1984" look like David Friedman's anarcho-utopia.

The history of automotive law reads like the birth of totalitarianism. As automobiles proliferated, states required drivers to be identified and photographed, to register their vehicles and insure them. State and national speed limits

You could get loaded and still be able to get home after the bars close, although no faster than a life saving clip of two miles per hour.

were imposed, and the personal cost of insurance rose with traffic infractions; hence fewer people would ever learn the top speed of their vehicles.

Seatbelts and airbags were made mandatory, roadblocks became common. Most cars now have black boxes installed, recording every quick stop, and every acceleration over the speed limit.

Now, Ford Motor Company is experimenting with the Brave New World of automobile fascism. Ford is working on a breathalyzer-seatbelt interlock so that cars will remain immobile unless the driver is buckled in and tests sober.

One can speculate that the interlock will also be tied to the black box, so that any attempt to start a vehicle while intoxicated or exceed the speed limit will be dated, recorded, and possibly used in court in things like child custody cases.

I personally can't see anyone actually ordering a breathalyzer or speed governor option for his vehicle. People that don't drink or speed won't want to pay the additional price;

News You May Have Missed

God Talking to Lawyers

ROME — The Supreme Being is threatening to file a lawsuit for defamation of character if the practice of referring to disasters like Hurricane Katrina as "acts of God" in legal documents and insurance policies isn't halted immediately, according to Pope Benedict XVI, who said he spoke with the "visibly angry" deity last weekend.

In a transcript of the interview made available by sources in the Vatican, God said that Katrina and similar catastrophes were not his fault, because he had long ago delegated day-to-day responsibility for the weather to a large celestial bureaucracy, which, he said, due to overlapping responsibilities and cumbersome regulations along with, he admitted, a certain amount of

cronyism at the top, "occasionally screws up big-time." He added that he had told his college roommate, the Archangel Uriel, who was serving as the director of the Central Weather, Earthquake, and Locust Management Agency, to steer Katrina out somewhere into the mid-Atlantic, but the angel, who was formerly the head of the Arabian Horse Division of the Equine Administration of the Department of Flora and Fauna, "apparently failed to get my message or was just plain asleep at the wheel." By the time he found out that Katrina had barreled into the Gulf Coast it was too late to stop it, but far from being an "act of God," it was, he said, repeating the traditional rundown of the heavenly

hierarchy, an "act of Seraphim, Cherubim, Thrones, Dominions, Powers, Principalities, Archangels, and Angels, folks who usually do one hel-luva good job but in this case, and a few hundred thousand others, obviously didn't know their ass from their elbow."

God added that he is considering a temporary suspension of all weather deliveries until the problems are fixed, but added that this, too, would inflict a certain amount of suffering, since people wouldn't have a clue about how to dress for no weather whatsoever, and tens of thousands of forecasters and CNN correspondents would be thrown out of work.

— Eric Kenning

and those that do drink or speed won't want the hassle. So why is Ford even bothering to experiment with this technology? A quick visit to the Mothers Against Drunk Driving website will show you that the Mothers are now very involved with legislation requiring breathalyzer interlocks. Perhaps Ford is only anticipating future legislation, and a day when these things will be required on all vehicles.

An innovation I might agree with would be an incremental breathalyzer tied into the speed governor, in exchange for immunity from all DUI legislation. That way, the drunker you get, the slower the car goes. You could get loaded and still be able to get home after the bars close, although no faster than a life saving clip of two miles per hour.

When the history of the rise and fall of liberty in America is written, the first battlefield where freedom was lost will probably be recognized as the interior of the American automobile.

— Tim Slagle

Stop the clap — Living in New York, I take advantage of the proximity of Broadway as often as I can. One

trend is driving me nuts, however: the tendency of tourists to offer a standing ovation at the end of every play, rendering the gesture virtually meaningless. Invariably it begins down front, in the half-price gallery. (The TKTS booth in Times Square generally sells seats in the first two or three rows and the outer edges of the theater, so it's easy to spot the tourists. Hint: if this really were a first-run, standing-ovation-worthy play, you wouldn't be buying tickets for it at the half-price booth!) Overcome with joy at the performance, two or three of them pop up like wombats in an arcade game, clapping and beaming at the actors as though they alone can communicate approval to the cast. Feeling a bit awkward now, the standers look expectantly at the people seated around them, as though these idlers aren't doing their part. Dutifully, they stand too. Now the people seated in the rows behind the standers can't see the curtain calls, so they heave themselves out of their seats as well. Within moments the entire audience is on its feet, standing on tiptoes and craning necks to see the actors and the encore that often follows the curtain calls. I do

Word Watch

by Stephen Cox

As I've said before, this column is grateful for whatever help it can get. I am therefore happy to acknowledge the assistance of Laura Ingraham, who on her August 24 radio broadcast replied to a caller in a way that has long been advocated here.

The caller's heart was in the right place: he was a libertarian who wanted to attack the anti-drug laws. "What an individual does in the privacy of their own home," he declared, "is nobody's business but their own." True, but . . . golly, what kind of grammar is that? Ingraham immediately detected the problem. "He means 'his own home,'" she declared, thus becoming the only figure in the American media to show any acquaintance whatever with the structure of our language.

The most basic rule of language is parallelism. In English, you can't get more basic than the parallel between singular and singular, plural and plural. "An individual" is manifestly singular; "their" is manifestly plural: the two never belong together. For "his" you may substitute "her" or "his or her"; those expressions are also singular. But not to honor the principle of parallelism is merely to advertise your ignorance and lack of taste. Unfortunately, such advertisements appear all day long on radio and television — though not (here I make a low bow) on Laura Ingraham's show.

Yet the logical structure of language involves more than singulars mating with singulars. It involves choosing words that mate with their intended significance. The test comes when we try to picture what meaning (if any) our words literally project. If you say, "My love is a red, red rose," I can picture a rose and picture your girlfriend or boyfriend and understand that you believe that this friend is as beautiful as the plant. You may be mistaken; your love may actually be more like a weed, but that's an aesthetic rather than a linguistic problem.

If, though, you decide to write, "Growing beside the road, I

thought of my love when I saw that rose," the communication is not quite so clear. Sure, most people will understand what you're trying to say: you were going down the road and you saw a rose, and it reminded you of someone you like. But that's not what you literally said. You literally said that you ("I") were somehow "growing beside the road," when you saw a rose, et cetera. (You don't picture the sentence that way? Then what does "growing" modify? The closest available candidate is "I.") I don't think that's the impression you wanted to create.

Rules of grammar and usage — in this case, the rule against what is called a dangling modifier ("growing beside the road") — are meant to keep wrecks like that from happening. But you don't need to know all the rules. What you need is common sense and an interest in picturing what words really say.

Often the results are ludicrous. A certain city in America (all right, it's my hometown) contains a park that features an enormous artificial waterfall. For many years this object was called "The Cascades." Now, for some reason, it's called "Cascades Falls." I guess that nobody looked in the dictionary under "cascade." The word means "falls." So what the new name literally means is "the Falls of the Falls." Visualize that, if you can.

In northern Indiana, where people are perpetually worried about whether they should be on Central time and agree with Chicago, or on Eastern time and agree with Michigan, a person who runs a golf course recently told a TV reporter, "I just think when you're doing business with somebody, he ought to be on your same time zone." When you try to visualize that, you will see that "your" and "same" are two words competing for a single job. A businessman who's in "your" zone is already in the "same" zone. And vice versa. No, it doesn't make any difference whether it's Standard or Daylight Savings Time.

Now here's a verbal trip that goes way beyond simple redun-

it too, because the idiots are blocking my view. But it drives me crazy!

Are standing ovations ever warranted? Of course. I remember my emotions compelling me to rise from my seat as the cast sang, "Who will be strong and stand with me?" at the end of "Les Misérables" when it opened 20 years ago. But a standing ovation should occur only when one is truly overcome by the performance, and it certainly shouldn't be theater-wide. The sight of 20 joyous, weeping standers scattered throughout the theater would mean more to the cast than an entire theater full of lemmings, standing and beating time to the music (another pet peeve of mine — applaud, don't clap along!)

— Jo Ann Skousen

Cooperative profligacy — When Gale Norton became Interior Secretary, she and assistant secretary Lynn Scarlett coined the term "cooperative conservation." To their credit, they began to divert money from government land acquisition to "cooperative conservation" projects.

dancy. A village nestled on the flowing breast of Michigan has signs at its borders proclaiming: "City Limit Ends." Well, if the city limit has reached its end, then the city no longer has any limits, has it? Then all is possible! We urban dwellers are free, free at last. Free as God made us. Free to dance in the fields, free to watch the cornflowers bud and the constellations bloom above the endless, furrowed, fecund earth.

Regrettably, that's not what the sign is supposed to mean. The Smallville Department of Metes and Bounds didn't intend to liberate mankind. It just wanted to say, "Here's where the sewer system stops." But, strangely, it said something very different. Why? How? How could it fail at such a simple task?

I'm not sure I know the answer to that. Maybe it has something to do with the bureaucrat's natural tendency to multiply terms, his fear that one word won't be enough to make people pay attention. Thus "Limit" begot "End(s)," which means the same thing as "Limit," right? Yes, and that's the problem.

However that may be, I do know that such expressions violate an essential rule of language: say what you mean, for God's sake! Don't make the rest of us try to visualize your meaning, and come up with something laughable, then try to guess what you *probably* meant, and end up writing tirades like this. And again, even when some general meaning can be gathered from the things you say, you should remember to pay respect to the idea that language is related to logic.

The other day I was told that my favorite childhood TV show, "Spin and Marty," is about to be released on DVD, and that I can "pre-order" the precious object now. (Listen, the first season of that show is really the best. It has the Dostoevskian overtones that the other seasons notably lack.) But what does it mean to "pre-order"? Once you've pre-ordered, do you have to place a real order later on? No, because you've already placed your "order." But that was a "pre-order." So what does it mean to "pre-order"? We can keep going around like this, without ever finding an end to its limits.

The most serious events in life can be rendered absurd by someone's failure to visualize the literal meaning of his solemn words. I am thinking of a headline in the London Times about the young Brazilian who was slain during the panic that fol-

Somehow, given Norton's and Scarlett's libertarian credentials, I thought their initiative was going to emphasize the importance of the private sector in conservation. But having attended the White House Conference on Cooperative Conservation (held in St. Louis in August), I conclude that nothing of the sort has happened. "Cooperative" refers to relationships between federal officials and local groups, including landowners. These cooperative relationships depend on federal funds.

The Department of Agriculture, in particular, has lots of money to throw around (and USDA bureaucrats were well represented at the conference). The conference featured programs in which millions of dollars are persuading farmers to do such things as build riparian fences in Pennsylvania; plant vegetation along the Chesapeake Bay and the Delaware and Catskill watersheds; plant trees, grass, and shrubs in Missouri; and restore native grasses in Nebraska. This is "cooperative conservation."

Later, I found that the USDA's conservation expenditures

lowed this summer's attempted subway bombings in London. The headline read: "Police Shoot Dead Suspect." Sorry, you don't need to shoot 'em after they're dead.

Then there were the devastating assaults on language unleashed by the hurricane in New Orleans. Much of the destruction could have been averted if leaders of the speech community had just been watching the relationship between words and meanings. But no, not an interview went by without somebody talking about how disaster relief was "just ramping up," "took too long to ramp up," "wasn't ramped up fast enough," or (thank God for loading docks) was "fully ramped up now." OK, picture a "ramp." Now picture "relief." Picture "relief" being "ramped." Good luck.

Meanwhile, African-American activists made a feckless attempt to restore linguistic order by objecting to the use of the word "refugee," which, they insisted, means "non-citizen." They preferred the term "internally displaced person." Fine. Picture a "refugee." What appears in this mental image, I believe, is someone who is trying to find a refuge. It's as simple as that.

You may be mistaken; your love may actually be more like a weed, but that's an aesthetic rather than a linguistic problem.

Citizenship never gets into the picture. Now visualize a "person" who's "internally displaced." That could mean a lot of things, most of them bizarre and unpleasant, and distinctly unfair to the people concerned.

In some instances, however, one wishes that badly chosen words really did describe reality. An AFP headline said that "Legendary Pianist Fats Domino" was "Rescued from New Orleans Flood." Many other headlines referred to New Orleans as a "Legendary City." I wish that all those headlines were true. "Legendary" means "mythical," "unreal." Would that only legendary cities were ever destroyed by wind and water, and only legendary people ever needed to be rescued.

for fiscal 2004, including the \$1.8 billion for the Conservation Reserve Program (CRP), added up to nearly \$3 billion a year. When this program originated in 1985, it came endorsed by environmentalists. Its goal was to stop "sodbusting" and thus protect marginal, erodible land that was being misused for crops. The USDA would pay farmers to stop farming that land.

But the program was largely ineffectual for conservation. Farmers who got the most CRP funds were those who cultivated the most "marginal, erodible" land, which could then be set aside. Those who had practiced good conservation practices lost out because they weren't cultivating erodible land. Furthermore, the farmers didn't have to do anything except set aside land, so they just grew grass — and during droughts cattle grazed on it anyway.

So new programs evolved — all costing money. According to Agriculture Secretary Mike Johanns, in addition to \$1.8 billion in CRP funds in fiscal 2004, there were the following conservation expenditures: nearly \$720 million for the Environmental Quality Incentives Program (mostly to help livestock owners improve soil, air, and water quality), \$35 million for the Conservation Security Program (a broad-based conservation enhancement program — what distinguishes it from others isn't clear), \$90 million on the Farm and Ranch Lands Protection Program (to fund conservation easements), \$56 million for the Grassland Reserve Program (which pays for protecting and restoring grasslands), nearly \$75 million for the Wetlands Reserve Program (paying farmers to restore

and protect wetlands), more than \$27 million for the Wildlife Habitat Incentives Program, and \$10 million for Agricultural Management Assistance (which goes to farmers for "incorporating conservation into their farming operations").

These programs may not be all bad (and don't forget — other federal departments have their projects as well). My point is that these are subsidies, and I don't like them being called "cooperative" conservation. — Jane S. Shaw

Always a lawsuit. Always! — Wal-Mart is everything the activist Left hates — aggressive union-breakers, staunch free-traders, conservative and vaguely Christian corporate capitalists — in one convenient big box. Visit a left-leaning town where Wal-Mart is attempting to set up a store, and you'd think Auschwitz was moving in next door.

The activists have laid down a number of speed bumps — zoning restrictions, labor disputes, a class action sexual harassment lawsuit — but nothing they've done has slowed Wal-Mart down. Even worse: Wal-Mart scored a PR coup by upstaging the government after the hurricane, shipping emergency aid while FEMA was still claiming that getting trucks to the Gulf Coast was impossible. Activists didn't make many friends by claiming, after hundreds of lives had been saved, that Wal-Mart should have done even more.

Thus a recent lawsuit filed in California Supreme Court carries with it a whiff of Armageddon; perhaps the last chance to fight Wal-Mart globally instead of locally. Backed by plaintiffs from four continents, the suit claims that Wal-Mart "workers" were forced to work unpaid overtime, below minimum wage, with no time off for holidays. Why the scare quotes? Because none of the plaintiffs are actually employed by Wal-Mart; most work in sweatshop factories in Bangladesh, in Swaziland, in Nicaragua (the remainder of the plaintiffs are California business owners claiming that Wal-Mart is engaging in "unfair competition," i.e., selling merchandise at lower prices, providing better service, or both).

For all the talk of Wal-Mart exploiting workers in developing nations, the most egregious exploitation here is that of the workers by the union lawyers supposedly representing their interests. Wal-Mart propagated a Supplier Standards Agreement in order to improve the lot of sweatshop employees; if the retailer hadn't set up these standards, if company executives had said "Screw the poor," then the company couldn't have been sued. What kind of message does this lawsuit send?

If I were a Wal-Mart exec, I would point to this case every time activists start hectoring me about being a "good corporate citizen." I would realize that no amount of concessions will ever be enough to satisfy the activists; in fact, any

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concessions I make will be taken as signs of weakness. I would, above all, stop paying any attention to whiny waspish protesters who, no matter what I do, will never spend a dime in any of my stores.

— Andrew Ferguson

Getting thin up top — Steve Connor, the Science Editor of the U.K.-based *Independent*, claims in his Sept. 16 column that scientists are convinced that “the northern hemisphere may have crossed a critical [global warming] threshold beyond which the climate may never recover.” The cause for his alarm is a decline of sea ice in the Arctic, which “has reached its lowest monthly point . . . in hundreds and possibly thousands of years.” Connor explains that since open sea reflects less sunlight than does sea ice, more heat is retained, and a vicious circle of ever-escalating temperatures begins.

Passive microwave data on Arctic sea ice coverage goes back less than 30 years. Less accurate data from other sources goes back longer, but amounts only to another drop in the bucket. Concluding solely from this data that “the climate may never recover” would be roughly analogous to a 40-year-old deciding that since he is hungrier than he has been at any time in the previous twelve seconds, he “may starve to death.” However, we also have the albedo effect (the aforementioned greater heat retention resulting from reduced reflectivity) to consider. Here too, getting from the facts to Connor’s conclusion is problematic. Arctic sea ice coverage typically varies from around 3 million to about 6 million square miles over the course of each year, while Antarctic coverage typically varies from around 1.5 million to about 7 million square miles each year. The Antarctic’s decrease in albedo is greater both in absolute and in relative terms, but there is no runaway effect observed or expected.

Connor doesn’t mention any reasons for the observed trend of declining Arctic sea ice coverage. Acknowledging that there are reasons other than anthropogenic global warming — such as the cyclical Arctic Oscillation — would undercut the urgency of his alarm.

— Mark Rand

New Orleans in the Rockies — There is some beautiful and inexpensive land in western Montana. Avalanches occasionally roar through, sweeping away homes nestled against picturesque ridges. Still, it’s safer than New Orleans. Here’s a proposal: allow folks flooded out by Katrina to use their federal hurricane funds to build homes there. This option would apply only to lots with a lower disaster probability than land in New Orleans, thus saving the federal government money over time. If these new homes were taken by avalanches, the victims would qualify for disaster relief funds, as before.

Okay, this proposal to build in avalanche-prone areas is silly, but it is less foolish than rebuilding New Orleans. Again and again, experts predicted the devastation a storm such as Katrina would bring. Hurricanes are not anomalies, but normal events driven by differentials between air and water temperatures in the Caribbean and Gulf. Hurricanes are thought to follow 25-year intensity patterns, swinging between periods of infrequent, low-grade storms, and intervals of fierce, raging monsters. The present high-intensity cycle began in 1995: 15 more years to go.

Much of New Orleans lies below sea level. Based on current and projected rates of land subsidence, coastal geologists at the University of New Orleans have concluded that New

Orleans will likely be on the verge of destruction by this time next century, thanks to the fact that the city is sinking at a rate of three feet every hundred years. Two thousand square miles of wetlands — a natural buffer against hurricanes —

New Orleans will likely be on the verge of destruction by this time next century, thanks to the fact that the city is sinking at a rate of three feet every hundred years.

have disappeared since 1935. Levees often fail, because heightened riverbanks increase the rate at which sediment is deposited in channels. Risks are going up.

In 1985, the federal government evacuated Times Beach, Mo., because it was an irreversibly unsafe place to live; scientists make the same arguments about New Orleans. Giving folks incentives to return and rebuild in a sinking Gulf coastal area, already below sea level, is grossly irresponsible. While many argue that abandoning New Orleans is unthinkable from a cultural, historical, and political standpoint, the realities of hydrology, geology, and meteorology are unassailable.

— Jennifer Mygatt

Shamefully unremarkable — Here is a story of politics that I found in “Luke G. Williams, American Entrepreneur,” the autobiography of a Spokane, Wash. businessman.

Williams, who died in 2004, was a founder of American Sign & Indicator, the company that popularized the digital time-and-temperature sign once common on banks. Williams was a conservative Republican. In 1962 he was eastern Washington chairman for Dick Christensen, the (failed) Republican challenger to Sen. Warren Magnuson, and was Washington state chairman for Barry Goldwater’s presidential campaign in 1964.

After Lyndon Johnson’s victory, Congress considered a highway beautification bill favored by his wife, Lady Bird. One part of the bill as proposed would have banned elec-



“The following movie has been politically-corrected for television.”

tronic signs of the kind made by American Sign & Indicator if visible from a highway. Williams believed it would put his company out of business. The Democrats had a majority and there was little doubt that the bill would pass. To save his company, which had 900 employees, Williams went to Washington, D.C., to get the bill changed.

The person in charge of the bill was Sen. Magnuson.

"I was pretty sure Magnuson would remember me," Williams recounts in his autobiography, published in 2002 by Trade Mark Press, Spokane. "I had no choice but to go back to Washington, D.C., hat in hand, and lobby the man I had almost unseated."

Williams was sweating. To his surprise, Magnuson "wanted to hear all about my problem." What did Williams need? To have time-and-temperature and public-information signs exempted. Magnuson had it done. There was no condition. But Williams writes, "I'm sure that he felt that if he did me a favor I would be less active in anti-Magnuson politics in the future — which I was."

Fifteen years later, during the 1970s, came another bill to outlaw electric signs, this time to save energy. The man to see in Washington, D.C., was the state's other Democratic senator, Henry Jackson. Williams saw him. As Magnuson had done, Jackson had time-and-temperature signs written out of the bill. This time there was a quid pro quo: that Williams stop his repeated efforts to bankroll challengers to Rep. Tom Foley, the Democrat who represented Spokane in the House — and who later became Speaker.

According to Williams' memoir, Jackson said: "Luke, I want one thing from you. Please get off Tom Foley's case."

"From that day forward," Williams writes, "I never contributed to another campaign against Tom Foley." (Foley would fall in the Republican sweep of 1994, and the district is solidly Republican now, held by Rep. Cathy McMorris.)

Williams puts these stories into his autobiography as if they had no moral import — on him, on the politicians concerned, or for the political system. He is recounting an interesting life, and these were interesting things, so he puts them in.

— Bruce Ramsey

Non-lethal is in the eye of the beholder

— Large cities have become accustomed to riots after local sports teams triumph in big games. So it was that Boston police prepared for the worst after the Red Sox beat their arch-rivals, the New York Yankees, to win the American League pennant last year. As the celebrants filled the streets, the cops yelled at them; when a few fans yelled back, the police reached for pepper spray and tear gas. Victoria

Snelgrove, an Emerson College student, had the misfortune of being in range of a cop with a pepper pellet gun and an itchy trigger finger: he shot her in the eye socket, killing her.

In May, an independent investigation found that the police department was guilty of gross negligence, faulting them for "poor planning and training, a breakdown of command discipline and inadequate research before purchasing the air-powered pellet guns for crowd control." Additionally, the panel found that, of the three officers that fired into the crowd containing the student, only one was certified to use pellet guns. Disciplinary charges against the three are pending, but many commentators expect them to be dropped or soft-pedaled, just like recent criminal charges have been.

Crowd control is a necessary duty for metropolitan police forces to undertake: they should be there to protect property, both public and private. It requires a combination of diplomacy, discipline, and analytical reasoning that can take years of training to acquire. What it doesn't require are shock troops

eager for combat, armed with "non-lethal" weapons that they use indiscriminately on crowds they've provoked. Hopefully, whichever city is blessed with a champion baseball team this October will also be blessed with a well-trained, respectful police force that will let its people celebrate in peace.

— Andrew Ferguson

Fact into fiction —

In reading Peter Irons' new book, "War Powers" — a generally fair account about the capture of the war power by the U.S. presidency — I came across two suspect quotations. Each bolstered Irons' leftist view of American business.

The first was the famous statement attributed to Charles E. Wilson of General Motors:

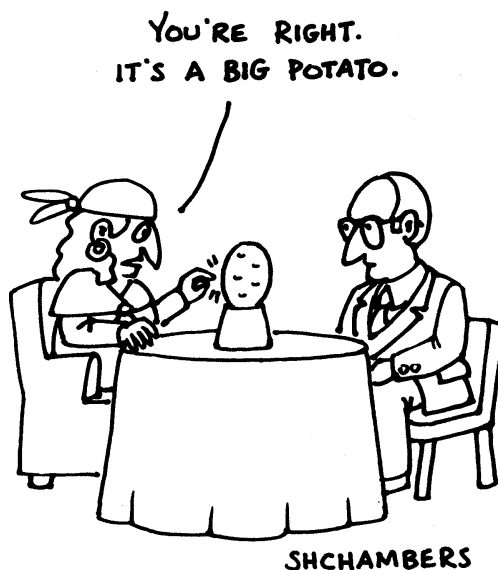
"What's good for General

Motors is good for the country." Wilson spoke Jan. 15, 1953, to a congressional hearing on his appointment as Secretary of Defense. A congressman asked Wilson if he could make a decision that benefited the country but that hurt General Motors. Wilson said:

"Yes, sir. I could. I cannot conceive of one because I thought for years what was good for our country was good for General Motors, and vice versa. The difference did not exist."

Fifty years later, that is still being misquoted, though it has been exposed in a number of books (I used John Steele Gordon's "Business of America") and can easily be checked on the Internet. Irons, who is professor emeritus at the University of California, San Diego, may have a technical defense here: he says in his book only that Wilson "became famous" for the statement. Still he implies that Wilson said it.

continued on page 34



Who's Really at Fault

by R.W. Bradford

If insanity is repeating a mistake and expecting different results,
Americans' response to Katrina is insane.

The most bizarre thing about Hurricane Katrina is the public's reaction. Look what happened.

New Orleans was founded in 1718 on the bank of the Mississippi, about 100 miles from the river's mouth. The east bank is high at that point, so it seemed relatively safe, but the very next year, New Orleans suffered its first flood. During the next century and a half, it experienced the ups and downs typical of a port city in a tropical hurricane zone: occasional floods, followed by rebuilding. But like most cities in the New World, it suffered more from fire than from flood. During this period it suffered even more from military invasion and occupation than from fire and flood combined, and more still from tropical disease.

About a century and a quarter ago, federal, state, and local governments began to take charge of safety matters. They drained swamps and built and maintained levees, allowing the city's population to grow substantially. This growth was not willy-nilly: the city had adopted tight zoning and land use regulation. By the mid-20th century, state and local authorities, with the help of huge amounts of money from the federal government, extended and improved the flood management system, and New Orleans was touted as one of the safest and healthiest cities in the world.

So just how could Hurricane Katrina wreak \$200 billion in damage and kill hundreds — possibly thousands — of human beings? How did it become, as we have heard over and over on television, "The Worst Natural Disaster in U.S. History"?

It happened because people gave too much responsibility to government. It is no overstatement to say that the Katrina disaster is purely the fault of the government, at local, state, and federal levels.

Nearly all the damage resulted from flooding in areas

that are below sea level. Homes and businesses were built in these preposterously dangerous locations because government programs drained these areas and planners decided to build there.

These locations could have been made reasonably safe by building levees high enough to protect against the storm surge from Class 4 hurricanes (hurricanes with winds over 130 mph). On average, between 10 and 18 Class 4 hurricanes occur each year in the Caribbean and the Gulf. It was obvious, even to government officials, that this was a very dangerous situation. So Congress appropriated money to build up the levees. And the local authorities spent it on other projects. (Last year, for example, they spent \$2 million building a computerized musical fountain by the levee board's headquarters.) And the homes were built at government direction in areas that even the government realized would inevitably flood on a grand scale.

How did the perpetrators of this almost unfathomably vast disaster react to it?

Perhaps it should come as no surprise that government didn't do much of anything until days after the inevitable floods happened, the hundreds (or thousands) of people died, the billions of dollars worth of damage occurred. The politicians responded at first by ignoring the whole mess, then by blaming each other, and then by making grandstand-

ing proposals to give government even more resources and power to deal with the problem. In some ways, government suppressed relief: for days, the governor of Louisiana refused to allow the Red Cross into the stricken area.

It was weeks before the Bush administration responded more than perfunctorily, and then its response was . . . throw huge amounts of money at the problem. Republicans in Washington say that they expect to spend \$200 billion to

It is no overstatement to say that the Katrina disaster is purely the fault of government, at the local, state, and federal levels.

undo the damage. That amounts to \$400,000 for every man, woman, and child in New Orleans. Yes, I know: a lot of damage occurred elsewhere on the Gulf Coast. But remember: a third of New Orleans wasn't flooded, most residents of the Big Easy who were flooded had left the city before the flood, and many had flood insurance.

But what's most interesting about this whole sorry mess is the reaction of the American people. Virtually nobody put any blame on the government for the flooding, even though damage would have been almost trivial if government had acted in anything like a prudent fashion during the century prior to the flood.

Instead, people — especially media and politicians — blamed the government for failing to respond quickly enough and with enough money. On one level, this makes a certain amount of sense: after all, government did fail to provide any meaningful help, and even retarded private efforts.

But think about it for a minute: why on earth should you expect the perpetrator of such a disaster to provide timely and meaningful relief? Did the survivors of Stalin, Mao, or Hitler expect those dictators to provide them relief after their friends and family had been massacred?

Of course, George Bush is not Joseph Stalin: no one in America acted with malice of the sort perpetrated by Stalin, Hitler, et al. His sins were sins of omission and simple incompetence. George Bush didn't appoint Michael Brown to head the Federal Emergency Management Administration because he wanted more people to die and more homes to be damaged. No. It just seemed like the chances of a major disaster in his remaining time in office were pretty remote, and there were political reasons to reward Brown with a sinecure. The local authorities didn't squander their appropriated millions to build the levees a few feet higher because they wanted people to die (and adding a few feet to the levees was all that was needed to prevent the flood). No. They figured that the chances of a major flood during the next few years were remote, and that the snazzy computerized musical fountain at their headquarters was something that could benefit them now. Dealing with the levee problem could wait.

But this is all the more reason not to expect government to offer meaningful relief in a timely fashion, or to expect it to respond by any means other than smothering an already afflicted area in tax dollars.

Like a horse that is led from a burning barn, then heads back to the barn as soon as it is turned loose, Americans are hard to fathom when they start thinking about disasters. How can you explain the self-destructive behavior of the American public? The explanation, I suspect, can be found in the displacement of traditional other-worldly religion with the secular religion of state worship. A hurricane is no longer

A hurricane is no longer perceived as an "act of God." It is now seen as an act of government.

perceived as an "act of God." It is now seen as an act of government. That's why Bush's approval rating fell when Katrina hit. That's why so many people believe, in the absence of evidence, that his refusal to sign the Kyoto Accords, which would dramatically affect U.S. energy usage and have a substantially unfavorable effect on our prosperity, somehow makes hurricanes more frequent and worse.

And that's why people expect government to solve the problem of natural disasters. On earlier occasions, government was hardly involved even when the disasters were much worse, such as the hurricane that killed 10,000 residents of Galveston, Tex. in 1900, or the fire that destroyed central Chicago in 1871, or the flood that descended on Johnstown, Penn., in 1889, or the earthquakes centered in New Madrid, Mo., in 1811 and 1812 — the worst quakes ever recorded on this continent . . . but in this modern age of progress and rationality, people's faith in the state is so strong that even the manifest failure of government to respond to the breaching of levees has not undermined it.

What is needed, obviously, is a crisis of faith. But there is little or no evidence of any such storm on the horizon. □



"Sir, Meet the Press wants to interview you about gas prices, Face the Nation wants to discuss Iraq, and Bloopers wants to do a segment on FEMA."

Crisis and Liberty

In 2002, the Times-Picayune forecast what a Category 4 hurricane would do to New Orleans:

A major hurricane could decimate the region, but flooding from even a moderate storm could kill thousands. . . . New Orleans has hurricane levees that create a bowl with the bottom dipping lower than the bottom of Lake Pontchartrain. . . . [T]he levees would trap any water that gets inside, by breach, overtopping or torrential downpour. . . . The estimated 200,000 or more people left behind in an evacuation will be struggling to survive. Some will be housed at the Superdome, the designated shelter for people too sick or infirm to leave the city . . . but many will simply be on their own, in homes or looking for high ground. Thousands will drown while trapped in homes or cars by rising water. Others will be washed away or crushed by debris. Survivors will end up trapped on roofs, in buildings or on high ground surrounded by water, with no means of escape and little food or fresh water, perhaps for several days.

That was three years ago. Last summer, FEMA and the Louisiana State University Hurricane Center, joined by state and local officials, simulated a "Hurricane Pam" in which the levees broke. In the simulation thousands of people drowned. Despite all the warnings and all the test runs, the actual event found government officials trying to shift blame rather than supplies, and save their careers rather than citizens' lives.

As the flood waters from the breach were still rising in New Orleans and government authorities were responding by blaming each other, several libertarian and classical liberal scholars discussed the situation by email. What follows is a transcript of the unmoderated discussion, lightly edited by Liberty Senior Editor Jane S. Shaw.



Max Borders: We have seen a terrible fiddling-while-Rome-burns phenomenon occur while federal, state, and local officials argue over who's responsible. This, to my mind, is at least a failure of any principle of subsidiarity (if it is not typical of government failure more broadly). Such a principle should apply on all issues, but particularly in the case of disasters. It says: deal with problems on the most local feasible level. Since, in this case, a local government would be partially or wholly crippled in terms of resources, services, logistics, and infrastructure, we can say this should have been the responsibility of the state of Louisiana by default.

The role of the state of Louisiana in this case might have been to coordinate — in some very limited way — the

activities of the many who care. It would *not* have been any good to have a clusterfuck of good ol' boys trapping each other with bass boats, but it sure would have helped if, say, the state National Guard had a plan to keep order, direct such boat- and car-traffic, and use (or requisition) resources for disseminating the aid. After all, why should the feds have any idea about what to do about a hurricane in which the floodwaters wouldn't go away? It certainly shouldn't be their responsibility even if they did. But Louisiana sure

New Orleans' infrastructure and civil order was destroyed. Chaos followed. Spontaneous order can't do its business until basic civil order is restored.

as hell should have known what to do about New Orleans, especially since it has always been common wisdom that anything over a Category 3 would swamp the city.

One might argue that if FEMA is going to exist, it might exist merely to provide emergency resources where they're needed by the state and local governments. Many have claimed that the bureaucratic process of requisitioning funds and human resources for the aid was a nightmare in this case. But should we really be surprised at this? Something's got to change in that whole process.

Ultimately, the best role for the government in such cases (if there is to be one) is to help coordinate the activities of a robust civil society, but not manage it. You've got to have rough 'n' ready rules and makeshift institutions that can handle whatever generosity people are prepared to throw at these kinds of disasters. Designating someone as "in charge" is the first order of business. At that point, whoever is in charge should be given the emergency authority to delegate responsibility quickly. In other words, spontaneous ordering forces can't work without a basic institutional substrate. New Orleans' infrastructure and civil order was destroyed. Chaos followed. Spontaneous order can't do its business until basic civil order is restored.

One thing that has truly disturbed me in all of this has been the attitude by everyone in this case — even the poor citizens — of "Why isn't anybody doing anything?" I have a feeling that 50 years of living on the welfare state has made many New Orleans folks completely dependent —

in mind, body, and spirit — on authorities. We have not seen as much of the ingenuity and whatever is the best in people that can be brought out in disasters. Instead we have seen whining and fingerpointing. We're starting to hear cries of "racism." And that's just a shame. One thing is clear: Most people in America have voted away their sense of responsibility for their fellow man . . . all the way to D.C. Civil society was crowded out in this case, as it has been in other cases. Our knee-jerk dependence on the gov-

Fifty years of living on the welfare state has made many New Orleans folks completely dependent — in mind, body, and spirit — on authorities.

ernment for everything has shown its weak stitching this week. But again: we can do better as a society if we get the government out; or at least give it an appropriate role as facilitator.

Fred L. Smith, Jr.: The Federal Emergency Management Agency and the fatalism of Louisiana created a serious moral hazard problem. Why wasn't an appeal made such as: "All individuals with boats or four-wheel-drive vehicles are urged to come to New Orleans and take people out of harm's way"? No, FEMA wanted to block entry "until things were safe." That process certainly delayed that criterion being satisfied.

As I contact more people in the area I learn that many people did take responsibility for themselves and sometimes others. One stayed with friends in the Faubourg Marigny area (which is near the river and therefore dry). He said that there were some crazies with guns (mostly drug addicts desperately seeking a fix — another problem with our drug laws) but mostly they broke into drug stores and hospitals (they weren't interested in money; the black market had broken down too).

Most people — white and black — were fairly cordial and helpful to one another. Finally he and his friend decided that things weren't going to improve soon so they got their car (actually the car of a friend who'd already evacuated) and drove out of the city toward the Highway 90 bridge — the only road out of the city. They ran into a police roadblock and found they were on the road to Baton Rouge. They got there, saw some friends, and ended up at the plantation resort where their friend was housed. Not quite the total chaos that the four-block radius of the city shown on CNN, suggesting that logistical routes into the city did exist throughout this period.

Also, the mayor apparently did try to persuade everyone to evacuate. I am told that he sent the municipal buses with bullhorns throughout almost all neighborhoods pleading with everyone to come. People just wouldn't leave, I am told. Indeed, in one case, after the flooding, some people still elected to stay in their homes, worried

about looting. The breakdown of law and order did encourage too many people to stay in place. Had martial law been called before the storm, perhaps people would have had more confidence that their possessions would survive — if the city did.

Not everyone in Louisiana is fatalistic. The problem appears to be that the "people in charge" — FEMA and the Department of Homeland Security — adopted the Alexander Haig hysteria approach: we're in charge and we know what we're doing — everybody stay away! Rather than seeking to encourage everyone to help, the progressive view (let the experts handle it) seems to have permeated every relief group. Send money, not people — well, yes, not amateurs, but there are plenty of highly trained emergency workers at every volunteer fire and emergency response team in America. Thousands of trucks and boats could have been called for. I think that eventually people came anyway, but the FEMA team didn't say "Look, we're overwhelmed — can everyone who can help get in here and help? Please!"

The Bush administration's tendency to defend its own ("Brownie, you're doing a great job!") is not helpful. I've been willing to give Bush slack on Iraq — a mess but what can one expect when one is seeking to reverse decades of inattention? But the attitude of the Bush team — "we're doing fine," which has created many problems vis-a-vis the war — was replicated almost exactly in this case. Americans are much less likely to cut him slack on this domestic disaster. And the disbelief in what the administration is saying, which has certainly grown with its response to Katrina, is going to create real problems in maintaining support for Iraq efforts.

The response of FEMA has been disastrous. Who exactly is to blame is not clear, but the boss is responsible and what harm would be done in firing (or asking for the resignations of) Chertoff and Brown? They should, of course, have already resigned and then offered to serve till the crisis had calmed. That might have partially redeemed them — far better than the "everything is going fine" atti-

Had martial law been called before the storm, perhaps people would have had more confidence that their possessions would survive — if the city did.

tude of their perpetual press conferences. (I'm with Mayor Nagin: no more press conferences!) Perhaps the better voices in the Republican party will force some accountability on these aberrant agencies. I've listened to several of their press conferences — these guys are worse at explaining themselves than American businessmen!

Borders: What I meant by having "someone in charge" is

only that there must be folks there to coordinate and facilitate large scale aid efforts in an organized way. I suppose the default entity in this case is the government (not that I'm rah rah government, of course). Spontaneous ordering forces — by definition — can only take hold when people rally together block by block and say "What are we going to do about this?" But when they're cut off from the outside by rotten water and looters, it's going to be tougher to start that process.

And with the breakdown of law and order, you have a breakdown in the institutional rules. The function of the government in such a case should be to restore the basics of the institutions designed to facilitate transaction and cooperation and to re-open public channels of access.

Complex systems theory, for example, says you can only have complex transitions when you have simple underlying rules that enable the overall system to self-organize (and adapt). Likewise, when a system experiences total breakdown, it may have to go through a brief stage of reformulating the rules, as it were, which (paradoxically) can require some hierarchical power.

Networked systems work better when there are a series of diverse ends, like that found in an economy. But hierarchy can work when there is a single, monolithic end like "getting aid into New Orleans" and figuring out who is responsible for what. Having "someone in charge" does not mean having a sovereign authority, but having someone who can temporarily remedy coordination problems and reinstitute basic rules. And we as human beings are evolved to respond well to that kind of leadership. That's why I think Fred is right when he said martial law should have been instituted before it was. Sounds very statist, I know. But it's a temporary statism of pragmatics, I guess.

FEMA's abysmal response proves that they, like the Food and Drug Administration and the Environmental Protection Agency, should be reduced to a third party information-gathering and training agency, not a governing or responding entity (if it should be kept around at all).

Smith: The problem with hierarchy is that it has to respond and be reasonably competent — a burden that FEMA and DHS failed to manage. I'm hearing more and more stories of calls to FEMA offering to provide transportation, boats, etc. — only to be told, "We've got it under control." A hierarchic structure that fails to deliver is more disastrous than one that is absent — clearly leaving it to spontaneous order. Spontaneous order is easier when one is individualistic (my friends did get out of New Orleans; those who stayed got out later) and response is easier when one is qualified and has some reserves (economic and psychological). Still, the attitudes of "Throw me something, mista," "Good things come by luck," "Bad things can't be avoided," are destructive. The feds screwed up — big surprise. But why were Louisianans and others so willing to wait for government to get their acts together?

Yes, some simple acts — declaring martial law — calling for everyone to do anything they could to help get the people out of New Orleans — stopping their commandeering

of buses and other devices — honoring the acts of those who were seeking to solve a piece of the problem — these would have been better. The seizure of the buses hired by the hotels to get their guests to safety was questionable. In principle, government might have made better use of them; in practice, they seemed to have been used only to ship people to the concentration facilities where no provision had been made for food, for water, for security.

A rational society has its individualist, hierarchical, and egalitarian elements — and, in a world where not all problems can be solved, it will also have its fatalistic elements. The challenge is to attain a reasonable balance, to ensure that each value provides its contribution where it best can.

The egalitarian elites will use this to push for an expansion of the paternalistic state; we should push for decentralization, for the elimination of these inept hierarchic response agencies.

The neocons pushed for hierarchy: America needed a more consistent, reliable response to terrorist and other disasters. The effect, at least to date, has been to weaken the resiliency of America. The egalitarian elites will use this to push for an expansion of the paternalistic state; we should push for decentralization, for the elimination of these inept hierarchic response agencies.

Thomas Tanton: The main problem with hierarchies is they are static. Those who are responsive and competent at one moment in time or under one set of circumstances may not be responsive or competent at another time. There is not an inherent conflict between "individualist" and "hierarchical" as termed by Fred's taxonomy (which I kind of like) since the strong, smart, competent, articulate individual in a given situation will generally rise to become the "natural leader" for the hierarchically inclined. Universal health care? Why not universal survival training?

Brian Mannix: The organizing institution exists; it is called the Incident Command System (ICS). Originally developed for fighting wildfires, it is now in use for a tremendous range of incidents by volunteers, police agencies, the military, and others.

ICS is informal but highly structured, and it starts when the first ICS-trained person arrives on the scene. With the consent of the legal authority — whoever that might be — that person offers to organize the responding resources. Initially the Incident Commander wears seven hats, but rapidly delegates tasks as others arrive on the scene. (And then they break out real hats, with titles on them, so they can tell who is doing what.)

It is awesome to watch the system when it is working. Once I arrived early at an incident where a child was lost in the woods in a rural Virginia county. The local sheriff

had two deputies, and not a clue what to do. A pretty blonde 19-year-old girl from a nearby college offered to take charge, and you can imagine his response. But the Virginia Department of Emergency Services told him over the phone to just do it, and he did.

Over the course of the day, hundreds of people (and several trained dogs) arrived to help. By late afternoon there were four field divisions, each with its own headquarters in neighboring valleys, plus an air traffic control center (a converted school bus bristling with antennas) directing helicopters and Civil Air Patrol fixed-wing aircraft, and various other ancillary services. Trained people handled family counseling and debriefing, press relations, personnel, etc. Local chain restaurants, such as McDonald's, were commandeered with a call to their national HQ, which compensated the local franchisee.

The sheriff just sat and watched in awe, and only felt the urge to intervene when dozens of scary-looking armed civilians in camouflage showed up. But the Incident Commander explained to him that they were the "survivalists" who monitor radio traffic and always show up at such incidents. They would be put to work — and kept out of the woods — and eventually would get bored and leave.

ICS works very well with fires, search and rescue, and other situations where law enforcement is a relatively minor component of the response. It breaks down when agencies get turf-conscious, or when politicians intervene

disaster declaration. So it is not surprising that FEMA was not there to evacuate before Katrina, nor that it was not there in the immediate aftermath.

So what is FEMA's role? Tom Schelling once explained why fire departments are publicly, rather than privately, funded. Once you have a fire department and trained firefighters, they are not going to stand around while someone's house burns down, even if that person did not pay his bill. Nor would anyone really want them to. That makes firefighting effectively a public good (i.e., nonexclusive, and usually nonrivalrous, given the amount of time firefighters spend waiting for the next fire).

Planning for, and responding to, local emergencies is a job for local agencies. If a locality suffers a natural disaster that overwhelms its resources, however, the rest of the nation is going to help. And while private charity can do a lot, there is some reason to expect the federal government to play a major role, at least where police and military resources are required. But even if you don't think it's needed, Congress is going to pass a relief bill. Wild horses could not stop them.

In fact, FEMA is not funded like an ordinary agency. Despite the fact that they can forecast X number of disasters each year, their budget does not include funding for those. The majority of the agency's funding takes the form of appropriations passed in response to particular disasters. The typical FEMA employee is attached to one declared disaster; when that declaration is closed out, he must find another disaster (which usually means relocating) or he is out of a job. Congress much prefers to fund the agency a disaster at a time.

Historically, much of the debate about FEMA's performance has been about whether it (1) writes checks too slowly, or (2) writes checks too quickly — and inaccurately. There has not been much criticism of its ability to anticipate disasters and offer advice, which they are actually pretty good at. People just don't listen to their advice. Millions of people are living in the wrong places. What can you do about it? Not much.

To some degree, because of its funding, FEMA resembles the Corps of Engineers. Both agencies are dominated by regional directors who are not known to the public but who work closely with congressional delegations to get their "slice of the pie." Yes, disasters are like pork.

So it is a flawed agency, with some good people in it doing some good, even heroic, work.

How to prevent future fiascos? I don't know. When California gets hit with the "big one" after a week of steady rain, it will be worse than New Orleans. In addition to the earthquake damage, all those golden hills and lovely canyons will turn to liquid. Hundreds of thousands will die; millions will be homeless. There will be no way to reach them. But . . . it probably won't happen. So bid up the real estate.

When it comes to natural disasters, people are not very risk-averse. But they do not want to bear the consequences alone. We all want to help, of course, but then moral hazard makes people even less risk-averse. The result is that

When California gets hit with the "big one" after a week of steady rain, it will be worse than New Orleans. All those golden hills and lovely canyons will turn to liquid.

in unhelpful ways. Of course, like any organization, spontaneous or not, it can also just be overwhelmed. I think Katrina falls into that category.

Jane Shaw: It seems to me that it's fairly typical for emergency rescue operations to move by fits and starts, and there are often recriminations that too little was done, too late. Naturally, this tragedy was so overwhelming that recriminations are going to be particularly bitter.

At the same time, it's not as though there was no warning! Surely some plan was in place before Katrina arrived. Did that plan just not operate? I do wonder "Where was FEMA?" although that kind of a plea is just the opposite of what a libertarian should ask.

Mannix: I've done a lot of work with FEMA (prior to its being swallowed by DHS), and it is widely misunderstood — remember the X-Files? FEMA is not set up as a first responder agency, nor is it really set up as a planning agency. In fact, FEMA does not even have jurisdiction until the governor requests, and the president grants, a

Hurricane Katrina

we don't have a practical way to avoid even the disasters that we can see coming a mile away.

Randal O'Toole: I don't buy Schelling's argument about the need for public fire departments. There are private fire departments that are funded by individual subscription. If you don't pay and your house catches on fire, they will

Louisiana has nearly 8,000 school buses. Roughly 1,500 would have been enough to evacuate everyone in New Orleans — but no one appears to have made an effort to coordinate such an evacuation.

come and make sure that the fire does not spread to any house that does pay them. They will not stop your house from burning down.

I agree with your earlier posting — that the Incident Command System could have helped out in this case. Katrina would be classified a "Type I incident" and only people certified to work on Type I incidents would be put in charge. Somehow, I don't think people who are used to marshalling thousands of firefighters to fight fires that are half a million acres in size would be overwhelmed by Katrina. I am inquiring elsewhere to see if FEMA or other agencies used ICS in this case, and if so, why it didn't work. I'll let you know if I get any answers.

On the broader failure, the administration did far more, far faster, for the victims of last year's Florida hurricanes than it did for Katrina. Furthermore, Wired points out that just last year FEMA and 40 other agencies conducted a five-day simulation dealing with an imaginary hurricane that would have done about as much damage as Katrina. After the simulation, FEMA's regional director claimed, "We made great progress this week in our preparedness efforts."

Anyone could look at the census data and see that a third of New Orleans residents lacked an automobile and would need buses or some other means of evacuation. Apparently, no one at FEMA looked at that data. People in New Orleans were told to go to certain locations to be picked up by buses, but the buses never showed up.

According to the School Bus Information Council, Louisiana has nearly 8,000 school buses. Roughly 1,500 would have been enough to evacuate everyone in New Orleans who didn't have a car on Sunday before Katrina struck. But no one appears to have made an effort to coordinate such an evacuation.

On "Meet the Press" (Sept. 4), Director of Homeland Security Michael Chertoff claimed he didn't worry about New Orleans because he read in the newspaper on Tuesday morning that "New Orleans dodged the bullet." According to Senator Landrieu, FEMA is ignoring or turning away offers of help from other agencies and private

parties. She claims that Bush came to New Orleans for a photo op and stood on a breached levee with all kinds of reconstruction work taking place in the background. When she returned the next day, all but one piece of equipment was gone.

All this puts people of all political persuasions in a quandary. Advocates of big government can see that it doesn't work — or it only works when it is politically expedient for top officials to see that it is working (as in pre-election Florida). Advocates of small government can argue that big government isn't working, but it isn't absolutely clear that New Orleans would be any better off relying on local government (notoriously corrupt) and private charity (which is overwhelmed).

I have seen liberals suggest on their blogs that they may not contribute to Katrina relief efforts because they want to show that private charity is inadequate. The same or similar blogs hint that the administration's failure is part of some right-wing conspiracy to prove government doesn't work.

No matter what your political persuasion, it is clear that the Bush administration dropped the ball. This huge Homeland Security department is a joke. As the Wonkette blog said, if they relied on the newspapers to tell them that New Orleans dodged the bullet, it is a "good thing they aren't looking for WMDs or terrorists or anything like that."

Tanton: Be very careful when taking data from websites that may have an agenda, left-wing, right-wing or simply whacked out. I am not sure which is true, but other websites have claimed that buses roamed the streets before the hurricane, but most of the population chose not to evacuate, due either to fear of post-hurricane looting or because they felt safe staying where they were, having survived earlier storms.

O'Toole: We will have to see which is true with respect to the buses. But fear of looting or complacency about the storm can't explain why people without cars stayed when people with cars left. If buses were available, I suggest that the reasons people didn't use them had more to do with

Fear of looting or complacency about the storm can't explain why people without cars stayed when people with cars left.

uncertainties about mass transit: there are too many different origins and destinations. People want to take belongings and pets that might not be allowed on buses. If you drive your car somewhere, you can drive it back. If you take a bus, who says the bus will take you back? For these and other reasons, buses are simply too uncertain.

That is why I argue for an individual response, i.e., make sure that everyone has access to an auto and let them

evacuate on their own. Regardless of who is at fault for what happened to the people who were left in New Orleans, it is clear that auto ownership meant the difference between safety and disaster. (See "Riding Out The Storm," p. 23)

Smith: Sorting out the wheat from the chaff in this murky situation is very difficult. I've heard that Mayor Nagin did send the municipal buses throughout the city with bullhorns asking people to please come. Whether this is true, I don't know, nor do I know whether the plan was simply to dump them at the Superdome or send them out of town. One problem is that before the fact there didn't seem to be

The disbelief in what the administration is saying, which has certainly grown with its response to Katrina, is going to create real problems in maintaining support for Iraq efforts.

any place to send them. But, once the situation materialized, then there were places. It would seem that these could be arranged ahead of time even though final destinations would still require the outpouring of compassion associated with the disaster.

Also, I've heard that FEMA blocked voluntary efforts (Red Cross and others), but some have said it was the city or state.

Owen McShane: Randal's comments contribute to a larger debate that has been developing prior to Katrina. In a recent issue of Prospect an analyst suggested we need to rethink urban development on the grounds that some form of terrorism is an ongoing threat. Prior to the current wave of Muslim activities other groups had been using urban terrorism, and these will no doubt continue. He suggests that we should probably avoid high-density infrastructure and especially tunnels, which have been attractive to all manner of terrorists. (Think the gassing of the tube in Japan.)

The last U.S. Census notes that the focus of population growth is now in the micropolises — towns of 25,000 to 50,000, not the big cities any more. Is this yet another example of the wisdom of crowds?

Smith: More generally, corporate America began to move out of big cities to suburban "campuses" long before 9/11. The growth of suburbia makes it harder to kill lots of people.

New Orleans had a massive "mass transit system." People were poor, but having a car was less necessary with a subsidized transit system. And, of course, "mass" transit systems are far more vulnerable than cars generally.

Note that the nature of government is to help people in place, not people. So we find it hard to disperse government facilities (Washington remains a major federal center — and target). We can't close military bases even though the nature of the threat has changed massively. And, of course, Amtrak survives through Republican and Democratic administrations while always being seen as non-sustainable. Sigh — one could get depressed.

Over a longer time horizon, I'm particularly interested in how a river basin might be managed in a voluntary world. The closest analogy I can envision is a watershed management district which seeks basin-wide policies that allow maximum value in low-vulnerability periods but adds restrictions as vulnerabilities (droughts, for example) occur. Would sections of the river be used for flood dispersal with development there being restricted to flood-tolerant activities — agriculture, warehousing, recreational homes on high pilings? Would alternative flooding areas, prioritized for damage minimization, exist with the areas being sequentially flooded depending on the severity of the threat?

We realize the risks that the channelization of the Mississippi has created — a steady decline in the buffering capacity of wetlands. But what would a classical liberal world have done about flooding, the need to maintain navigation access? We would not have created the National Flood Insurance Program, but what might a private-sector insurance sector have permitted? Would rational insurance ever have been offered, given the "soak the rich" Robin Hood attitudes of Louisianans?

Much of New Orleans has survived, but much has not. The population of New Orleans will certainly be less in the future than it is now — and this is likely to be true also for the greater New Orleans area. There has been a diaspora of historic proportions and many of these people will never return (very unusual in New Orleans, which along with West Virginia has one of the greatest locational loyalties in the world). Like the Jews' dispersal from Spain in the 15th century and then again in the 1930s, the world will gain much in the form of art, music, and food. And the city and state will have the opportunity to rebuild not only their structures but also their institutions. Can the uniqueness of New Orleans be reborn freed of its fatalistic flaws? Only time will tell. □



Riding Out the Storm

by Randal O'Toole

New Orleans is a model for smart growth: high population density, low rates of auto ownership, and exorbitant investments in rail transit. This proved to be its downfall.

Those who fervently wish for car-free cities should take a closer look at New Orleans. The tragedy of New Orleans wasn't primarily caused by racism or government incompetence, though both played a role. The real cause is automobility — or more precisely, the lack of it.

"The white people got out," declared the Sept. 4 New York Times. But, as the article in the Times makes clear, the people who got out were those with automobiles. Those who stayed, regardless of color, were those who lacked autos.

What made New Orleans more vulnerable to catastrophe than most U.S. cities is its low rate of auto ownership. According to the 2000 census, nearly a third of New Orleans households do not own an automobile. This compares to less than 10% nationwide. There are significant differences by race: 35% of black households do not own an auto, but only 15% of white households. But in the end, it was auto ownership, not race, that meant the difference between safety and disaster.

"The evacuation plan was really based on people driving out," a Louisiana State University professor told the Times. On Saturday and Sunday, August 27 and 28, when it appeared likely that Hurricane Katrina would strike New Orleans, people who could drive away simply got in their cars and fled. The people who didn't have cars were left behind.

Critics of autos love the term "auto dependent." But Katrina proved that the automobile is a liberator. It is those who don't own autos who are dependent — dependent on the competence of government officials, dependent on charity, dependent on complex and sometimes uncaring institutions.

As shown in the table to the right, the number of people

killed by hurricanes in the U.S. steadily declined during the 20th century. Economists commonly attribute such declines to increasing wealth. Wealth differences are also credited with the large number of disaster-related deaths in developing nations vs. developed nations. But what makes wealthier societies less vulnerable to natural disaster? There are several factors, but the most important is mobility.

Number of Deaths Caused by Hurricanes in the U.S.

1900–1919	10,000
1920–1939	3,751
1940–1959	1,119
1960–1979	453
1980–1999	57

Source: Atlantic Oceanographic and Meteorological Laboratory. Number for 1900–1919 is estimated, as the exact death toll from the 1900 Galveston hurricane is unknown.

People with access to autos can leave an area before it is flooded or hit with hurricanes, tornadoes, or other storms. When earthquakes or storms strike too suddenly to allow prior evacuation, people with autos can move away from areas that lack food, potable water, and other essentials.

Commentators have legitimately criticized the Federal Emergency Management Agency and other government agencies for failing to foresee the need for evacuation, failing to secure enough buses or other means of evacuation, and

failing to get those buses to people who needed to be evacuated. But people who owned autos didn't need to rely on the competence of government planners to be safe from Katrina and the subsequent flooding. They were able to save themselves by driving away. Most found refuge with friends or in

Critics of autos love the term "auto dependent." But Katrina proved that those who don't own autos are dependent on the competence of government officials.

hotels many miles from the devastation. Meanwhile, those who didn't have autos were forced into crime-ridden high-density refugee camps such as the Superdome and New Orleans Convention Center.

Rather than help low-income people achieve greater mobility, New Orleans transportation planners decided years ago that their highest priority was to provide tourists heavily subsidized streetcar rides.

- In the late 1980s and '90s, New Orleans spent at least \$15 million converting an abandoned rail line into the 1.5-mile Riverfront Streetcar line.
- In 2004, New Orleans opened the 3.6-mile Canal Street streetcar line at a cost of nearly \$150 million.
- New Orleans was planning to spend another \$120 million on a Desire Street streetcar line.

These tourist lines do nothing to help any local residents except for those who happen to own property along the line. The city was not deterred even by its own analysis, which showed that each new rider on the Desire Line would cost taxpayers more than \$20.

About 26,000 low-income families in New Orleans don't own a car. If all the money spent on New Orleans streetcars from 1985 to the present had been spent instead on helping low-income families buy cars, the city would have had more than \$6,000 for each such family, enough to buy good used cars for all of them. Add the money the city wanted to spend

on the Desire line and you have enough to buy a brand-new car for every single autoless low-income family — not a Lexus or BMW, certainly, but a functional source of transportation that would have allowed them to escape disaster.

While I don't think that buying low-income families brand-new cars is the best use of our limited transportation resources, it would produce far greater benefits than building rail transit. Studies have found that unskilled workers who have a car are much more likely to have a job and will earn far more than workers who must depend on transit. That is why numerous social service agencies have begun programs aimed at helping low-income families acquire their first car or maintain an existing one.

Yet when I point out the comparative benefits of providing mobility to low-income people vs. building rail transit lines to suburban areas that already enjoy a high degree of mobility, rail advocates often respond, "We can't let poor people have cars. It would cause too much congestion." Yes, as the Soviet Union discovered, poverty is one way to prevent congestion (see <http://ti.org/vaupdate53.html>).

New Orleans is in many ways a model for smart growth: high population density, low rates of auto ownership, and exorbitant investments in rail transit. This proved to be its

If the money spent on New Orleans streetcars had been spent instead on helping low-income families buy cars, the city would have had more than \$6,000 for each such family, enough to buy good used cars for all of them.

downfall. While the city was vulnerable from being built below sea level, many cities above sea level have proven equally vulnerable to storms and flooding. In the end, the people of New Orleans suffered primarily because so many lived without autos, thus making them overly dependent on the competence of government planners. □

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judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction."

Chief Justice Taney expressed the court's sympathy for "this unfortunate race" but declined "to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether

inadmissible in any tribunal called on to interpret it." The High Court adhered to that intent and dismissed the case for lack of jurisdiction — not to uphold slavery.

Clearly, neither Williams nor his caller had read the *Dred Scott* decision or the U.S. Constitution. Even if Dred Scott had been a citizen, the High Court would still have had no jurisdiction to hear his case. Article III, Section 2 limits the jurisdiction of federal courts to specific types of cases. The 11th

Amendment removed two of them: "any suit . . . commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Stated more simply, federal courts have never had judicial power to hear cases between a State and its own citizens where no federal law is in question — and all slavery laws were state laws.

James Harrold, Sr.
Springdale, Ark.

The Rehnquist Legacy

by Timothy Sandefur

The Chief Justice rests in peace. His legacy rests in pieces.

William H. Rehnquist served as Chief Justice of the United States for almost 20 years, after having already served 14 years as an Associate Justice. Appointed by Richard Nixon, Rehnquist's 33 years on the Court rivals the records set by William Douglas (36 years), Stephen Field (34), and John Marshall, who served 34 years as Chief Justice.

He succeeded Warren Burger, who had failed, as Chief Justice, to bring a sense of unity or even collegiality to the judges, if Woodward and Armstrong's "Brethren" is to be believed. During the Burger years, judges on the extreme left, such as Douglas, Thurgood Marshall, and William Brennan, were frequently unable to find common ground with their conservative colleagues. These years saw some of the most controversial decisions of the Court, and the most heated confrontations among its personnel. Perhaps the lowest point came in 1973, when Douglas, ignoring the decisions of his colleagues, enjoined the bombing of Cambodia, forcing Marshall to reverse him. Burger's inability to maintain discipline among the Justices was also evident in media leaks from the Court and the large number of individual opinions issued during his tenure. Appointing Rehnquist, an already-sitting member of the Court, to be Chief, was thought to ease these tensions.

But as with much else, Rehnquist's success in this regard would be easy to exaggerate. We cannot know for sure what goes on in the secretive Court building, but the morale-boosters that Rehnquist instituted — such as requiring the Justices to shake hands before every conference meeting — have not cooled the philosophical disputes, let alone the rhetorical battles, that go on there. Ten years ago, Justice Scalia concluded an opinion by writing that "the Court must be living in another world. Day by day, case by case, it is busy

designing a Constitution for a country I do not recognize." Just this year, Justice Thomas likewise declared that "something has gone seriously awry with this Court's interpretation of the Constitution." Justices Scalia and Souter have even accused each other of writing cases like *Dred Scott*. Some of these decisions have drawn applause and laughter for their piercing wit; Scalia's were even recently published in book form, and many of them are quite correct. But the heated tone reveals that the Court's members disagree on some of the most fundamental issues of constitutionalism.

This is a serious problem because a constitution is written for people of fundamentally shared views. Although people in a political society will always differ on particulars, no society can long exist without a core of deeply shared principles, which make the differences small by contrast. But the world of American constitutional law is profoundly divided over first principles. When Tocqueville wrote that "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question," he was hinting at the way that political disputes tend to overflow their constitutional boundaries. The distances between advocates of policies can widen until they become differences over fundamentals, and, finally, tear apart the deepest of political foundations. This process is going on now in the United States, at a slow pace — a sort of "creeping inflation"

of political philosophy. The symptoms are to be found everywhere: in talk of a "culture war"; in the angry disputes over judicial nominations; in Professor Laurence Tribe's recent decision not to publish the second volume of his Constitutional Law treatise, because, as he explained, "conflict over basic constitutional premises is today at a fever pitch"; and in the belligerent tone of Supreme Court opinions. Rehnquist was unable to douse that fire. Perhaps the best symbol of this came in *Bush v. Gore*, which was issued as a "*per curiam*" opinion — meaning "by the Court"; a designation routinely used to avoid pinning a decision on a particular Justice, and to put a united face on the Court — but which was nevertheless accompanied by dissents from Stevens, Souter, Ginsburg, and Breyer, and a concurrence by Rehnquist himself. The polite face of the "*per curiam*" designation was completely ineffective in disguising the obvious party lines.

The depth of the Court's fractures can also be seen in three areas of law that are generally considered the prototypical examples of Rehnquist's influence. It was a logical move for President Reagan to name him Chief Justice in 1986, because he had long established himself as an opponent of federal aggrandizement. As early as 1976 he had argued the then-moribund position that the Commerce Clause is not a blank check for congressional power. This view became the theme for those wishing to encapsulate Rehnquist's judicial philosophy: the "federalist revival," which promised to actually enforce the Constitution's limits on the federal government, and allow states greater leeway, gained not only popular support, but even some actual legal muscle, culminating in *United States v. Lopez* (1995) and *United States v. Morrison* (2000). These cases, both written by Rehnquist, held that Congress could only use its power to "regulate commerce . . . between the several states" when the activity in question was actually commercial in some way. Before then, the Court had allowed Congress to do absolutely anything under this Clause, on the theory that absolutely everything has some effect on commerce between the states.

Rehnquist opened *Lopez* with the startling declaration: "We start with first principles. The Constitution creates a Federal Government of enumerated powers." For the next ten years, these words would lead libertarians and conservatives to hope that Congress might be forced to respect its limits. That hope grew brighter when, in *Morrison*, Rehnquist

Like most judges today, Rehnquist regarded rights as privileges granted to citizens by the state.

explained that such limits were necessary because "the Constitution requires a distinction between what is truly national and what is truly local. . . . Indeed, we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its

victims." But in the years to follow, the Court failed to apply, or even to consider, these principles in any broader scope. In *SWANCC v. Army Corps of Engineers* and *Jones v. United States*, the Justices dodged the questions, and in the years since, they have simply closed their eyes, refusing to take case after case involving federal environmental and criminal laws that are obviously none of Congress' business. Finally, in 2005, Rehnquist's 30-year crusade against the blank-check theory of the Commerce Clause was blasted into splinters in *Raich v. Gonzales*. Abandoned by such allies as Scalia and Anthony Kennedy, Rehnquist watched from the dissenting bench as the Court declared Congress' commerce power to be virtually limitless once again: the federal government may regulate even the most local activities if it can possibly imagine — even without evidence — that, "taken in the aggregate, [the activity would] substantially affect interstate commerce." The "federalist revival" was over.

Along with the federalist revival was the apparent revival of interest in property rights. In such cases as *Nollan v. California Coastal Commission*, *Lucas v. South Carolina Coastal*

Rehnquist's inability to understand individual rights led him to focus on institutional arrangements rather than substantive outcomes.

Commission, *Dolan v. Tigard*, and *First English Evangelical Lutheran Church v. Los Angeles*, the Rehnquist Court halted what had seemed an unstoppable trend of buck-passing with regard to the Fifth Amendment's guarantee that property owners must receive compensation when their property is taken by government. These and other cases held that, sometimes, when the government takes away the value of a piece of property through its regulations, the authorities must pay for that taking.

But, as with the federalist revival, Rehnquist would live long enough to see these cases disintegrate. In *Tahoe Sierra Preservation Council v. Tahoe Regional Planning Agency* (2002), the Court held that a supposedly "temporary" moratorium on all construction in the Lake Tahoe area — which had lasted for more than two decades and continues today — was not a taking of property at all, despite the Court's previous decisions that taking the whole value of a piece of property requires compensation (*Lucas*), and that temporary takings also require compensation (*First English*). Writing for the majority, Justice Stevens explained that this outcome was necessary because applying the just compensation requirement in a principled way "would undoubtedly require changes in numerous practices that have long been considered permissible. . . . A rule that required compensation for every delay in the use of property would render routine government processes prohibitively expensive." In other words, the Fifth Amendment does not apply, because government can't afford to pay for all the things it takes. Finally, in a series of cases in his final term, Rehnquist watched the Court

erase the "public use" limitation on eminent domain, deprive property owners of their day in federal court, and deal a serious blow to the regulatory takings precedents.

The third area of the law which is commonly seen as a product of Rehnquist's leadership fared somewhat better. Along with limiting the Commerce Clause, the Rehnquist Court placed much heavier emphasis on the "sovereign

political institutions of a different form? It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever has any other value than as it may be fitted for the attainment of this object. . . . [A]s far as the sovereignty of the States cannot be reconciled to the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter.

For Rehnquist, it appears, states came first, individuals second, and the federal government third — not a hierarchy the Constitution's authors would have endorsed.

immunity" of the states — forbidding Congress from writing laws that allow citizens to sue their own state governments. Since Congress had frequently expanded its reach on the cheap by simply ordering states to do certain things, and then allowing private citizens to sue those states that did not comply, the sovereign immunity cases were also an element of the "new federalism." But these cases suffered from some significant weaknesses, not the least of which was the fact that they have not a shred of constitutional foundation. The 11th Amendment forbids citizens of one state from suing another state in the federal courts; it says nothing about citizens suing their own states. What's more, sovereign immunity as often as not ends up harming the individual rights of citizens rather than protecting them. As Robert Levy concludes, "by enlarging the scope of the Eleventh Amendment beyond any conceivable reading of its text, our courts have allowed a common law doctrine to trump the laws duly enacted by the federal legislature. . . . Consequently, the common law rights of state government will supersede the statutory rights of individuals. That astonishing — some might say, 'un-American,' — development flies in the face of the Supremacy Clause."

The Rehnquist Court's heavy emphasis on textualism lost credibility in these cases, but its claim to respect the views of the framers suffered even more. The Constitution's authors understood that federalism is not an end in itself, nor is the "dignity" of states. Rather, federalism — particularly after the Civil War — is an instrument for protecting individual rights, and is legitimate only to the degree that it does so. As James Madison wrote in "The Federalist":

Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States, that particular municipal establishments, might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty? We have heard of the impious doctrine in the Old World, that the people were made for kings, not kings for the people. Is the same doctrine to be revived in the New, in another shape — that the solid happiness of the people is to be sacrificed to the views of

What misled the Rehnquist Court into ignoring these principles, and reaching beyond the Constitution's plain language? The answer is to be found in one of Rehnquist's greatest weaknesses as a judge: his ambivalence toward individual rights. Like most judges today, Rehnquist regarded rights as privileges granted to citizens by the state. "If such a society adopts a constitution and incorporates in that constitution safeguards for individual liberty," Rehnquist wrote in the *Texas Law Review* in 1976, "these safeguards indeed do take on a generalized moral rightness or goodness . . . neither because of any intrinsic worth nor because of any unique origins in someone's idea of natural justice but instead simply because they have been incorporated in a constitution by the people." This startling eulogy to legal positivism led Harry Jaffa, in his book "Original Intent," to conclude that "the Framers of our Constitution clearly and wisely believed that there must be a lawfulness antecedent to positive law for positive law itself to be lawful. When Justice Rehnquist says that constitutions do not have any ground in any 'idea of natural justice,' he is repudiating the Framers, and John Marshall who followed them." This is plain from a speech Rehnquist gave at the University of Virginia on the 250th anniversary of Thomas Jefferson's birth. In a speech full of praise for Alexander Hamilton, John Marshall, and other anti-Jeffersonians, Rehnquist had almost nothing to say of the animating mind of American liberty. Rather, he claimed

In one of the worst-reasoned decisions in Supreme Court history, Rehnquist held that the Miranda warnings had somehow become part of the Constitution because they are repeated on TV cop shows.

that "the permanence of Jefferson resided not in his specific theories or acts of government, but in his democratic faith," even though Jefferson's greatest "theory" was that liberty, and not democracy, was the goal of politics. "Each era," Rehnquist went on, "finds its own meaning from Thomas Jefferson" — equivocal praise indeed from a man who all his life scorned the theory of a "living Constitution."

Rehnquist's inability to understand individual rights naturally led him to focus on institutional arrangements rather than substantive outcomes; on process rather than on results. This was a refreshing change from a jurisprudence which

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The Greatest Generalization

by Clark Stooksbury

Those who fail to misinterpret history are doomed to lose public support.

An old adage says that generals always fight the last war. Pundits and politicians have the luxury of refighting any previous war they wish. For left-wing critics of the war in Iraq — Ted Kennedy comes to mind — every war is Vietnam. For supporters of the war, the preferred template is World War II.

At first glance, the Second World War is an example of moral clarity. It provides for supporters of the current war — especially when viewed through a gauzy, Brokawized lens — an example of clear-cut national unity in service to a stark battle between good and evil. Back in the day, they remember, there was no carping from the liberal media about casualties or recruiting shortfalls.

A Thomas Sowell column from August 2003 provides a perfect example. “Here we are, five months after the war in Iraq began, and we haven’t yet solved all of that country’s problems. . . . Apparently a significant section of the American media either thought that we would or is simply piling on the Bush administration, in hopes of bringing back the Democrats in 2004. . . . Where were we five months after Pearl Harbor, compared to where we are today in Iraq? . . . We had no real victories in all that time.” He repeated the WWII nostalgia theme in a column from June 2005 and complained, “[i]f American troops kill a hundred terrorists in battle and lose ten of their own men doing it, the only headline will be: Ten More Americans Killed in Iraq Today.”

This might be credible, I suppose, if the president had made a dignified Oval Office address on May 1, 2003. Instead, on that day the President performed the modern equivalent of the surrender ceremony on the deck of the *Missouri*, when he made a tailhook landing on the *USS Abraham Lincoln* to give a victory speech. The president did not say that the war was completely over in that speech. He

made a point of saying that “[w]e have difficult work to do in Iraq. We’re bringing order to parts of that country that remain dangerous. We’re pursuing and finding leaders of the old regime, who will be held to account for their crimes. We’ve begun the search for hidden chemical and biological weapons and already know of hundreds of sites that will be investigated.”

However, the speech referred to the war in the past tense. The president thanked “the members of our coalition who *joined* in a noble cause,” and who “*shared* in the hardships of war” (emphasis added). More importantly, the totality of the circumstances surrounding the speech conveyed a sense of final victory. The phrase about having difficult work ahead in Iraq could not possibly compete with footage of the president strutting around in a flight suit or a giant banner proclaiming “Mission Accomplished.”

Sowell noted how little the United States had accomplished five months after Pearl Harbor. The president’s triumphal *Abraham Lincoln* speech occurred barely five weeks after the war in Iraq began. Forcing it into the World War II template, the speech was the equivalent of FDR declaring victory even before the April 1942 Doolittle raid on Tokyo. After the carrier speech and the numerous other turning points (capture of Saddam, the January election) that were supposedly blows to the terrorist insurgency, it is no sur-

prise that the media consider continued casualties to be news.

A Sowell column from January 2003 — before the war started — used World War II for an entirely different rhetorical purpose. In that column he treated the forthcoming invasion of Iraq as comparable to Great Britain taking care of Hitler in the mid-1930s, before he got out of hand. “Back in the 1930s, Germany’s military forces were limited. . . . Like Saddam Hussein today, Hitler at first pretended to go along

Sowell compared the first five months of Gulf War II to the first five months of World War II, even though he previously argued that the United States could avoid the larger war by invading Iraq.

with these restrictions. . . . The real question was whether Prime Minister Stanley Baldwin wanted to be the one to break the bad news to the British public or whether he would keep quiet, get re-elected, and pass the problem on to his successors — as Bill Clinton would do in a later era. Baldwin did a Clinton. . . . Hitler began openly violating the restrictions put on Germany, one at a time, allowing him to gauge what reaction there would be. . . . Each violation that he got away with led him to try another. . . . The opportunity to stop him . . . passed. Those who wanted ‘clear proof’ now had it. In just a few years, they would have even clearer proof when the Nazis invaded France and subjugated it in just six weeks — and then began bombing London, night after night.”

In essence, Sowell argued in January 2003 that invading Iraq would be like England invading Germany in 1936 and averting World War II before the threat from Hitler became too great. By August, Sowell had compared the first five months of Gulf War II to the first five months of World War II; even though he previously argued that the United States could avoid the larger war by invading Iraq.

Victor Davis Hanson, a classicist and regular contributor to National Review Online, is another pro-war commentator who compares Gulf War II to World War II, though for a different purpose. Hanson notes that the Allied effort was a disaster after another: “In the short period between June and August 1944, military historians can adduce hundreds of examples of American amateurism, failed intelligence, incompetent logistics, and strategic blundering, but not enough of such errors to nullify the central truth of the Normandy invasion. A free people and its amazing citizen army liberated France and went on in less than a year to destroy veteran Nazi forces in the West, and to occupy Germany to end the war. Good historians, then, keep such larger issues in mind, even as they second-guess and quibble with the tactical and strategic pulse of the battlefield.”

Hanson is correct that there will always be blunders in the war room and on the battlefield, but the stark differences between 1944 and 2004 should be evident to someone with

his expertise. While the United States and its allies were preparing to conduct the greatest amphibious invasion in world history, they were also marching up the Italian boot, engaging in a two-pronged island-hopping campaign in the Pacific, and fighting the Japanese in Southeast Asia. Donald Rumsfeld has considerably less on his plate than the war planners of the 1940s.

A Hanson article from the Feb. 14, 2005 issue of National Review makes similar arguments about American military blunders in World War II and even offers a revisionist case against the success of the Allied cause. “But at least there was clear-cut strategic success? Oh? The war started to keep Eastern Europe free of Nazis and ended up ensuring that it was enslaved by Stalinists. Poland was neither free in 1940 nor in 1946. . . . We put Nazis on trials for war crimes even as we invited their scientists to our shores to match their counterparts in the Soviet Union who were building even more lethal weapons to destroy us . . .”

It is easy to see why Thomas Sowell, Victor Davis Hanson, and others (a few minutes with Google will turn up plenty) force the Iraq War into an ill-fitting WWII template. For all the death, destruction, and dubious results, the Allies vanquished two of the most dangerous regimes of modern times and midwived prosperous and peaceful countries in Germany and Japan.

Adolf Hitler particularly stands out, both as a figure of pure evil and as a menace on an epic scale. The Fuehrer’s armies swept Europe from Paris to Moscow and from the Norwegian tundra to the North African desert. His U-boats and pocket battleships menaced Allied shipping from the North Sea to the Indian Ocean.

But Saddam Hussein was no Hitler, and the Republican Guard and Fedayeen Saddam were not the SS. If the emptiness of Saddam’s “threat” wasn’t obvious when his armies caved almost instantly in two wars with the United States, it

The greatest amphibious invasion in world history, a march up Italy’s boot, a two-pronged island-hopping campaign in the Pacific: Donald Rumsfeld has considerably less on his plate than the war planners of the 1940s.

should have been by the time he chose a humiliating capture and an almost certain execution instead of putting a Lugar in his mouth.

More importantly, the war we are currently in is entirely different from the Second World War. In one of his columns Sowell makes a superficially enticing argument that illustrates why. “The frivolous demands made on our military . . . that they tiptoe around mosques from which people are shooting at them betray an irresponsibility made worse by ingratitude toward men who have put their lives on the line to protect us.”

American soldiers must tiptoe around mosques because they are not at war with most Iraqis. Since the military is act-

ing in concert with the new government of Iraq, ostensibly on behalf of its people, it must take into account Iraqi and hence Muslim sensibilities. If Muslims are finicky about having armed infidels barge into their mosques, then that is a burden that our military must bear. More precisely, that is a

Any number of previous conflicts serve as better parallels: the French in Algeria, the Israelis in Lebanon, and the Marine Corps in Beirut come to mind.

burden that the Bush administration and its neocon allies in the media have thrust upon the backs of the Army and Marine Corps.

During World War II the rules were completely different. The Allies leveled entire German and Japanese cities in pursuit of the unconditional surrender of the Axis countries. Our B-17s and B-29s no doubt destroyed numerous houses of worship. It was total war on a scale never seen before or since. However, when the Axis regimes were destroyed, the war was over. In Iraq the regime collapsed almost instantly, but at that point, the war was just beginning.

Any number of previous conflicts serve as better paral-

els: the French in Algeria, the Israelis in Lebanon, and the Marine Corps in Beirut come to mind. The British occupied Iraq after World War I and dealt with numerous uprisings by the natives. They used poison gas, and Sir Arthur "Bomber" Harris (title and nickname courtesy of his role in World War II) used the youthful Royal Air Force to control the population with a small occupying force.

Although Winston Churchill and T.E. Lawrence (of Arabia) advocated the use of gas, British tactics were harsh enough that Air Commodore Lionel Charlton resigned in 1924 when, as the *Guardian* reported in 2003, "he visited a hospital after . . . [a conventional air] raid and faced armless and legless civilian victims."

Sowell, Hanson, and others would be on firmer ground if they compared the present-day war in Iraq to these previous Western occupations and wars. They could plausibly argue that the British were a lot tougher in Iraq than we are today.

The problem is that Western powers have not been very successful occupying Islamic countries. The RAF bombed Iraqi insurgents throughout the 1920s and the British left Iraq to the rule of King Faisal in 1932; but they failed to turn it into a real country. The king said shortly before his death in 1933, "There is still no Iraqi people, but unimaginable masses of human beings devoid of any patriotic ideas, imbued with religious traditions and absurdities, connected by no common tie, giving ear to evil, prone to anarchy, and perpetually ready to rise against any government whatsoever." □

Rehnquist, from page 27

had often tortured its reasoning to fit predetermined outcomes. But it also often meant perpetuating the wrongs of past courts, as with his dissent in *West Lynn Creamery v. Healy*, in which he emphasized his agreement with New Deal-era cases that savaged economic freedom. In that case, Massachusetts enacted a discriminatory tax on milk sold to in-state retailers by out-of-state wholesalers; the proceeds of the tax were then given to the domestic dairies. Although the Constitution's Commerce Clause was specifically intended to bar states from engaging in this sort of protectionism, Rehnquist, joined only by Justice Harry Blackmun, argued that the Clause should not apply. In the process, he endorsed the extreme pro-regulation views of Justice Louis Brandeis, who argued in a famous dissent that states can act as "laboratories" trying legislative experiments on their human subjects, even when such experiments violate the right to earn a living. For Rehnquist, it appears, states came first, individuals second, and the federal government third — not a hierarchy the Constitution's authors would have endorsed. His caricature of the free market in *Healy* as "messianic insistence on a grim sink-or-swim policy of laissez-faire economics" was of a piece with his endorsement of *United States v. Leon* (holding that the police may search homes even on the basis of invalid warrants, so long as the officer executing the warrant sincerely believes that it is valid) or *Atwater v. Lago Vista* (holding that the police may arrest a person, and drag her away in handcuffs, for not wearing a seat belt).

Throughout his career, Rehnquist derided the *Miranda* requirements as "legislating from the bench," and with good

reason. Yet at the last minute, in the 2000 case of *Dickerson v. United States*, he blinked, and in one of the worst-reasoned decisions in Supreme Court history, held that the *Miranda* warnings had somehow become part of the Constitution because they are repeated on TV cop shows. His attitude toward free speech was similarly weak; in *Texas v. Johnson* he concluded that the 1st Amendment does not apply to flag burning because it "convey[s] nothing that [can] not have been conveyed . . . just as forcefully in a dozen different ways," and because "the government is simply recognizing as a fact the profound regard for the American flag created by [American] history when it enacts statutes prohibiting the disrespectful public burning of the flag." Evidently, such "profound regard" can trump the free speech rights of angry dissenters.

Lacking any serious understanding of individual rights, no "revival" of long dormant constitutional theories could have hoped to succeed. Nor could William Rehnquist's legacy as Chief Justice of the United States hope to be anything but mixed. American constitutional law is caught in a bind between those who believe that individuals derive their significance and their rights from the permissions of the majority, and those who believe that people have certain inalienable rights which government exists to respect. Every year, that division becomes wider. Despite the many positive advances made during his tenure, Chief Justice Rehnquist's attempt to stop this breach — if he even really made one — failed. Whether anyone at all can succeed is the question on which the nation's future depends. □

Referendum Runaround

by Bruce Ramsey

In Washington, politicians have discovered a way to sidestep the annoying “will of the people.”

In 1912 the people of Washington voted to amend their constitution to include the initiative and referendum, which were seen then as tools of the populists. The first measure offered to the people, in 1914, was a proposal to ban liquor. Other regulations have been offered to voters, including one this year to ban cigarettes in all restaurants and bars. But populism comes in many flavors, and in the recent history of Washington it has been associated with limiting government more than with extending its reach.

Along with a gaggle of other western states, Washington entered the union in 1889, and it adopted a constitution usually described as “populist” and is, in many ways, libertarian. It is interpreted by the courts to forbid a state income tax, making Washington the only Democratic-leaning “blue” state with no direct levy on personal or corporate earnings. The constitution explicitly acknowledges an individual right to bear arms. It explicitly forbids the taking of private property for private use: though Costco is based in Washington, and sometimes benefits from cities that assemble property through eminent domain, it cannot do that in its home state.

More relevant to our story, the Washington constitution forbids special laws, meaning laws granting special favors to individuals or companies. It forbids giving government money to a private corporation or individual except in support of the “poor and infirm.” It forbids the state lending credit to private enterprise or setting up a tax for private purposes.

Like the U.S. Constitution, which is also pretty libertarian, it has had some strategic holes punched in it, most recently in the 1990s by proponents of a baseball stadium.

Safeco Field is a fine stadium. The beer is strong, the grass is real, and the structure has a great lid that rolls into

place to shut out the gray and misty rain. Seattle people love their stadium, though it cost much more than the \$400 million-plus dollars that was authorized for its construction.

The Seattle Mariners played their first two decades of baseball in the Kingdome, a great concrete dome owned and operated by King County. The Kingdome also was home to professional football games, the Home Show, truck pulls, rock concerts, Billy Graham revivals, and strike-authorization meetings of Aerospace Machinists Local 751. The stadium worked, but for the big-money business of professional baseball, it did not generate enough cash. To support the salaries the team was paying players like Ken Griffey and Randy Johnson, and to justify the \$100 million or so the Nintendo group had paid for the franchise, the team needed to control its own stadium — but didn’t want to pay for it. In 1995 the Mariners made a pitch to the county, which asked voters to approve an increase in the sales tax to subsidize a new ballpark.

The populist Left hated this idea: precious public dollars were being spent on baseball, a brainless sport of big hairy men, instead of on daycare, preschool, and services for the poor. The populist Right hated it because it was another big government project. Both called it “corporate welfare.” Organized labor, which would get a lock on the construction work through a “project labor agreement,” loved it. So did

the newspapers, who sell lots of papers to baseball fans. The Establishment was for it.

The vote in heavily Democratic King County was close, but the "no" coalition won, 246,500 to 245,418.

The Mariners said they were leaving town if the Legislature didn't reverse the decision, and they were not interested in waiting for another election. The reaction of Seattle's establishment, including the editorial pages of the Seattle Times and the Seattle Post-Intelligencer, was to claim

The demand for a baseball stadium, Justice Sanders observed, was not necessary for the public peace, health, or safety "in any sense other than Orwellian."

that voters had not said "no tax-funded stadium"; their "no" vote really meant, "no sales-tax-funded stadium." The governor, a liberal Democrat backed by labor, called a special session of the legislature, which chose a different set of taxes, and voted to build the stadium without asking the voters again.

Many voters were furious. They had voted "no," and the stadium was going to be built anyway.

Under the 1912 amendment, when a Washington law is passed, it takes effect in 90 days unless the people file a petition for referendum. If there are enough signatures, the referendum goes on the ballot, and if it wins a simple majority the law is repealed. The referendum is a valuable weapon for the people against the state. There is a catch, though. Under that 1912 amendment, a referendum may not be filed on "such laws as may be necessary for the immediate preservation of the public peace, health or safety, or support of the state government and its existing public institutions."

And the law creating the Seattle baseball stadium said:

"This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. . . ."

How could a baseball stadium be necessary for any of that? The law made no attempt to justify its claims, and the legislators passed it in a hurry, with visions of smiling, voting, check-writing baseball fans dancing in their heads. When voters filed a referendum, the state sued to keep it off the ballot, and the case went to the Washington Supreme Court.

The Washington Supreme Court is another example of 19th century populism: its justices are elected statewide (and still may accept political contributions without limit). It is a nonpartisan office, so most voters choose the name they heard on the radio, or that their union recommended, or that doesn't sound weird. A man named Johnson, for example, won the seat from an incumbent named Callow. Another justice is named Fairhurst. Another got elected by changing her unattractive name to Faith Ireland. She recently retired and was replaced by a second Johnson — a highly qualified man, but also with that down-home name.

In the baseball-stadium case, the court sided with the state. The baseball stadium was not done for a private purpose, the court said, but for public recreation and economic development. The court tacitly admitted that this would have outraged the constitution-writers of 1889, when it said, "The concept of what is public purpose is not a static concept. Rather, it is a concept that must necessarily evolve and change to meet changing public attitudes."

A living constitution.

The stadium was not a special law granting favors to one company, the court said, because it allowed any county of more than 1 million people to publicly fund a baseball stadium. There happened to be only one county in the state's 39 that had 1 million people, and only one team that wanted a stadium, but there might be another some day.

The stadium was not a gift to private enterprise, according to the court, because it was owned by a public development authority that charged the Mariners rent. It wasn't very much rent; in an economic sense it was hardly different from no rent at all, but it was rent, and the court was not in the business of judging the adequacies of rents.

But what of the emergency clause? This was the biggest constitutional rock to push from the road, and here there were three justices in dissent. But the other six swallowed whatever good sense they ever had and let stand the great baseball emergency of 1995.

The court agreed that a baseball stadium in Seattle was not necessary for the "support of the state government and its existing public institutions," but ruled that it was "necessary for the immediate preservation of the public peace, health, or safety." The court reached this bold conclusion by repeatedly talking about the "emergency clause" and then steering the discussion away from peace, health, or safety to emergencies. And, of course, there had been an emergency: a baseball emergency. There was, said Chief Justice Gerry Alexander, "a clear and present danger that this State's existing major league baseball franchise, the Seattle Mariners, would depart this state if prompt action was not taken. . . ."

A "clear and present danger" — Oliver Wendell Holmes' famous standard for judging whether Eugene Debs had broken the Espionage Act during World War I — is here used to tremble rhetorically over the threat of a baseball team to leave town.

Was the Mariners' threat to skedaddle Seattle really an emergency? That was for the legislature to decide, the court said. In 1995, the legislature had voted on 135 bills with emergency clauses. Over the years, more than 1,000 such laws had been enacted. To start picking apart these emergencies would amount to "intrusive judicial review," the court said.

Well, it was true that a lot of laws had been enacted with emergency clauses, though in the few cases when they had come to court, some had been thrown out. In 1915, in the first case about emergency clauses, the court struck the "emergency" law down. It ruled that the legislature's claim that one of its laws was "necessary for the immediate preservation of the public peace," was "no more binding on this Court than if the Legislature had declared that a certain measure is or is not constitutional." The Court threw out phony emergencies in 1945, 1948, and 1963. But by the 1990s

the bar had been lowered. The Mariner case knocked it to the floor.

Not, however, without protest. In 1995, the people of Washington had elected an independent libertarian, Richard Sanders, to the Court. The bar association, dominated by leftists, had rated him not qualified; the line the day after the election was that Sanders had won because his opponent had the weird name of Pekelis. His supporters pointed out that Sanders was a property-rights man, and won in the rural areas then chafing under the state's new Growth Management Act. He penned a furious dissent. The demand for a baseball stadium, he said, was not necessary for the public peace, health, or safety "in any sense other than Orwellian," and the majority's decision would "virtually eliminate the people's constitutional right to referendum by leaving it to the tender mercies of the Legislature." He was right; that's exactly what it did.

In 1997 the court heard a case from Spokane, the main city of eastern Washington. There the Cowles family owned the daily newspaper, the weekly business newspaper, a network TV station, and a block of downtown property called

The majority's decision, Sanders further noted, "virtually eliminate[d] the people's constitutional right to referendum by leaving it to the tender mercies of the Legislature."

River Park Square. The department stores there had suffered competition from suburban malls, and were in decline. Their owners were willing to invest downtown, but only if they were given a parking garage. A city ordinance was passed allocating the city's federal housing grants for the poor to pay for the garage, and also authorizing parking-garage bonds to be backed by parking-meter revenues all over town. The ordinance said all this was "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions."

A parking-garage emergency. Was that constitutional? Yes, the court said. It was.

Back in Seattle, the Seahawks football team, which had 15 years to go on its lease of the Kingdome, announced it was breaking the lease. The Kingdome was no longer a first-class facility, as the lease promised, because the stands might collapse in an earthquake of magnitude 8 or 9. A lot of things might collapse in a quake of that power, including the public hospitals, which are occupied 24 hours a day. A stadium, which was occupied only a few hours a month, was really not worth replacing. No matter; the football team was leaving — unless, that is, local taxpayers would pay for a stadium to be owned by another public stadium authority. Microsoft billionaire Paul Allen had bought an option on the Seahawks. He offered to keep them in Seattle if the public would chip in on a stadium. Lobbyists went to the legislature, which came up with another law even more specific

than the baseball law. It specified a county with 1 million or more people; a contract with a National Football League or equivalent team; that the owner of the team pay for a statewide election (which team owner Paul Allen had agreed to do); and that the owner be a state resident since 1993 (which Allen was). Unlike the baseball law, the football law was set to expire less than two months after the governor signed it, so there was no chance of squeezing another stadium through it.

Surely that must be a special, therefore unconstitutional, law. In 1999 the Washington Supreme Court heard a lawsuit regarding the law, and once again Richard Sanders wondered in amazed dissent whether Paul Allen's company, Football Northwest, was "by pure coincidence a lonely star in an otherwise empty universe."

Yup. Justice Barbara Madsen accepted the Lonely Star Theory for the court: "This act is not special legislation. The act allows for 'any county' to create a public stadium authority. . . ."

Allen paid for the election, and for the TV ads assuring voters it would cost them nothing, the taxes being levied on tourists. This time, the vote was yes, the second stadium was built, and the Kingdome was dynamited.

The state constitution had suffered serious structural failures, and there was more to come. In 2004, after fretting several years over budgets that squeezed their favorite programs, the Democrats captured both houses of the legislature. Their candidate for governor, Christine Gregoire (who, as state's attorney, had won the baseball case a decade before), was elected after two recounts. In the spring of 2005 the Democrats wanted a 9-cent increase in the gasoline tax. But a spending-cap law, passed by statewide voter initiative in 1993, required that all tax increases have a two-thirds vote in the Legislature, and they didn't have two-thirds.

They could, however, change the two-thirds requirement with a simple majority — much like the U.S. Senate can change the 60% rule on filibusters by a simple majority. The Senate calls that the "nuclear option." I don't know what the

If the people would rather have baseball than the right of referendum, a democratic republic will deliver them baseball and take from them the right of referendum.

Democrats in Olympia called it, but they did it. Their bill included language that having a simple majority vote to raise taxes was "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions."

This language was meant to protect the 9-cent increase, an estate tax, and some other impositions from immediate public referendum. Opponents filed a referendum petition anyway, and the issue went to the Washington Supreme Court. That august body ruled that the change in the tax-cap law that would allow the passage of a 9-cent increase and the

estate tax was "necessary . . . for the support of the state government and its existing public institutions."

Justice Tom Chambers, who had been elected since the baseball and football cases, dissented, arguing that the court had moved "to a near total abdication of its constitutional responsibility to review legislative action."

It had.

Justice Jim Johnson, the newest justice, agreed, arguing that the emergency was phony.

It was. Anyone could see it.

Sanders quoted from Judge Learned Hand: "What do we mean when we say that first of all we seek liberty? I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it."

I am not so sure I agree with this. Having one's rights written in a constitution can be a powerful way to keep them "in the hearts of men and women." It is far, far better to have them written than not — ask the Canadians about living without a 1st Amendment. But it is not enough. Learned Hand was right about that. If the people don't care, if they would rather have baseball than the right of referendum, a

democratic republic will deliver them baseball and take from them the right of referendum.

Voters can win some of the political battles. The saga of the baseball stadium that the voters rejected and the politicians built anyway launched the public career of Tim Eyman, a right-leaning populist. His first venture, in 1998, was a statewide ballot measure, Initiative 200, repealing racial preferences. It passed. Next was a statewide initiative rolling back the car license plate tax to \$30. It passed. The Washington Supreme Court threw it out but the Legislature, intimidated by the voters, passed the rollback anyway. Among legislators, Eyman is now the most vilified man in the state — because he is far more effective at blocking their actions than is the Washington Supreme Court.

He is not alone. Two Seattle talk-show hosts on KVI-AM radio, conservatives John Carlson and Kirby Wilbur, mounted an on-air campaign to collect signatures for an initiative to roll back the gas tax. A referendum was forbidden, but an initiative (which requires twice the number of signatures) was allowed. An initiative needed 240,000 signatures, but to these veteran talk jocks, that was no problem. Their listeners turned in more than 400,000. As I write, their measure, Initiative 912, is on the ballot for November. It is opposed by organized labor, big business, major media, and all right-thinking believers in good government.

It is expected to pass handily. □

Reflections, from page 14

The next was more obscure. To establish the imperialistic bent of American business, Irons writes:

"Even before the United States joined the war, some business leaders described their ultimate goals in blunt terms. Speaking to the Investment Bankers Association of New York in December 1940, Virgil Jordan, president of the National Industrial Conference Board, used these words: 'Whatever the outcome of the war, America has embarked upon a career of imperialism, both in world affairs and in every other aspect of her life.' Carrying out 'our imperial responsibilities' meant the creation of a 'solid base of internal unity and domestic prosperity' following the war."

I had never heard of the speech. I noodled around on the Web and discovered that it is a favorite of some leftist writers. The speech is remarkable. A year before the attack on Pearl Harbor, Jordan was saying:

"Whatever the facts about this war may have been or are now, it must be unmistakably clear to any intelligent person that we are engaged in it. Our government has committed the American community to participation in this war as the economic ally of England, and as her spiritual, if not her political, partner in her struggle with the enemies of the British Empire everywhere in the world, to help prevent, if possible, their destruction of the Empire, and if this should not be possible, to take her place as the heir and residuary legatee or receiver for whatever economic and political assets of the Empire survive her defeat.

"To meet this commitment our government has been, or will be, compelled to assume control of the lives, property, resources, and productive organization of the American

community, and to do so more completely than it anticipated would be necessary in carrying out the program of socialization upon which it was engaged during the six years before the war began.

"In broad and blunt terms, that is what the national defense program really means, and it is in the light of this fundamental fact that all problems of economic policy, as regards business, investment, consumption, labor, and government, must be considered henceforth. Whether this colossal commitment, of which the American community was, and still is, largely unconscious, was a wise one for the future of the American people, is a debatable but now utterly idle question, and I for one am not willing to debate it any more."

This is not advocacy of imperialism; it is diagnosis of it. I am further strengthened in my doubts of Jordan's imperialism by knowing he was a free-marketeer and an associate of free-marketeers. In 1945 Jordan co-authored an essay with Henry Hazlitt called "Freedom in America," and about that time he hired Leonard Read as his executive vice president. And from 1945 to 1950 he hired Garett Garrett to edit his organization's magazine, *American Affairs*. Garrett was a free-marketeer who had opposed entry into both World War I and World War II and in 1952 would go on to write "Rise of Empire," in which he attacked imperialism explicitly.

Certainly there were, and are, businessmen in favor of conquest, and who think that whatever is good for their company is good, period. But let us be careful with our quotations. And those of us with different politics than Irons are just as vulnerable to using a quotation without checking it, merely because we like it so very much. — Bruce Ramsey

Reviews

"Stalin's Folly: The Tragic First Ten Days of World War II on the Eastern Front," by Constantine Pleshakov. Houghton Mifflin, 2005, 334 pages.

Useless Idiots

Stephen Cox

"Once," according to Constantine Pleshakov, Joseph Stalin was guiding some military leaders to his dining room in the Kremlin. Passing the policemen who guarded his quarters, "he suddenly said, 'See how many of them are there? Each time I take this corridor, I think, which one? If this one, he will shoot me in the back, and if it is the one around the corner, he will shoot me up front. Yes, each time I pass them I get these thoughts.' The terrified commanders didn't know what to say and proceeded to the table in silence" (p. 72).

None of the commanders took these thoughts to heart and killed him. Even on the numerous occasions when he hinted that some highly placed official was about to be carted off to be tortured and killed, none of the victims decided that if he was going to die, he might as well take Stalin with him. Even on June 30, 1941, eight days into the Soviet Union's war with Germany, when Hitler's forces were speeding toward Moscow, determined to destroy Stalin's regime, and Stalin himself was holed up in his dacha, "depressed and confused," none of the cut-throats around him thought to liq-

uidate him. Instead, Molotov, Beria, and the rest of them merely paid him a polite visit, hoping to rally their despondent leader — and found him "genuinely surprised and relieved" that they had not arrived to arrest him (219–20).

If you think you understand human motives, Pleshakov's book may suggest that you have something more to learn, or at least to marvel at.

It's true that rebellion against tyranny is so statistically unlikely that audiences of the third act of "King Lear" react with shock when a servant suddenly steps out of the shadows and objects to the injustice proceeding on center stage. It's a daring violation of dramatic probability, a violation for which Shakespeare makes sure to atone: the servant is immediately killed.

It is also true, as Pleshakov explains, that the powerful men who surrounded Stalin had several reasons not to revolt against him. Beria, the head of Stalin's goon squad, knew that he would undoubtedly be the next to go. Others were too "stupid" or "loyal" or "paralyzed by habitual slavishness" to revolt (219–20).

But reasons like that require their own reasons. How do people get too

stupid to protect themselves? How do they develop the habit of slavishness? Why do they stay loyal to a man who has murdered millions of innocent people, a man who is prepared to take their own lives at any time that suits him, a man who, at the moment, is visibly destroying the country by his incompetence as a military leader?

Stalin, as Pleshakov informs us, could never even get the hang of military maps. Paying no attention to "the arcane marks indicating marshes and forests, and the thin blue threads announcing the presence of rivers," he simply commanded his armies to "march from point A to point B in a straight line, following a precise schedule" (77). The results were predictable. It was a miracle that the Soviet Union survived the first ten days of its entrance into World War II. During that week and a half, Soviet armies were swept from the board like pieces of a children's game. Only with the deaths of millions would the tide of war be reversed.

Pleshakov tells the story of the first ten days with assurance and clarity — the assurance provided by a thorough command of the books and archives currently available on his subject, the clarity inspired by a mature intuition

for the relevant fact, the significant episode. For him, the story cannot be reduced to tables of statistics or charts of military movements. It is the story, instead, of the decisions that individual people had to make, day by day, hour by hour, as Hitler's invasion progressed. He follows frontline soldiers as they try to find food, find shelter, find their military units, find out where they themselves are located on a rapidly changing field of battle, a field on which the simplest efforts at self-defense, let alone resistance to the enemy, were paralyzed by the dependence of everyone on the tardy and confused decisions of the commander in chief.

Every kind of nonsense has been talked about Stalin's role in the start of the war that began on June 22, 1941. Pleshakov's research provides convincing evidence that Stalin was just as lost in events as he seemed to be.

In August 1939, Stalin had signed a pact with his former archenemy Adolf Hitler. The pact gave Hitler the confidence he needed to begin a one-front war against Britain and France. It gave Stalin the right to join Hitler in mastering Eastern Europe. For communists and gullible modern liberals, the justification for the Hitler-Stalin pact was the time it supposedly allowed the Soviet Union to mobilize a defense against Nazi attack. According to Pleshakov, however, no defense was organized except a string of fortifications sitting directly on the Soviets' frontier, fortifications that were sitting

ducks for a German invasion. All that Hitler had to do was take point-blank aim at Stalin's planes and soldiers; no backup positions had been provided.

Even when Stalin hinted that some highly placed official was about to be carted off to be tortured and killed, none of the victims decided that if he was going to die, he might as well take Stalin with him.

Up to the last minute, Stalin kept sending a flood of strategic raw materials to his Nazi ally, hoping to appease him.

It is true that, even while agitating for "peace" and damning the Western powers for fighting an "imperialist war" against Hitler, Stalin was planning his own preemptive strike. But the plan merely floated around in his imagination; little was done to implement it. When it became clear that Hitler's armies were organized and ready to attack, Stalin advanced the "schedule" for the start of his own assault from next year to next month, as if the mere act of rescheduling it gave him power. He also "had a number of popular poets taken to the Radio Committee and ordered to compose bellicose anti-Nazi songs" (93).

Hitler's forces moved first. They easily smashed through the armies nesting on Stalin's frontiers, armies that were useless for any purpose other than attack, and insufficiently organized even for that. Stalin's only reasonable option was to withdraw his men to the rear, until they reached some stable line of defense, but he had never created such a line. So he reverted to his default "plan" and

ordered them to attack. It was as if Lee had arrived at Appomattox and ordered a general assault by all Confederate forces east of the Mississippi.

Stalin's failures were more than those of one foolish politician. They were permitted and encouraged by the system that gave him power, a system in which the socialist idea of central management was carried to its logical extreme, the total unification of authority. All large decisions, and many insignificant ones, devolved on Stalin and his cronies. Even the smartest, most ethical statesman could never have known enough to wield such power successfully. The people who functioned well in the system were much less suited to doing anything productive than they were to plotting and scheming and keeping the Leader from discovering any embarrassing facts. A system in which open private initiative is hated and feared is never one that produces efficient communication and responsible command.

Habits of control went hand in hand with incompetence. Stalin and his friends were afraid to send messages by radio, even if the messages were in code: you can't tell who might be listening! So they relied on telegraph, but they didn't bother to conceal the wires. Well, you can't think of everything. On the eve of invasion, German commandos simply crossed the border and snipped the wires, and Stalin was no longer able to contact his armies. "In a matter of hours," almost half a million troops were "taken out of the equation. . . . The Red Army, modeled on a perfect pyramid with an impeccably straight line of command, had turned into something untidy, unpredictable, and unmanageable" (214-15).

The communist system was supposed to derive its legitimacy from its material accomplishments. When these proved illusory it attempted to extract at least a sense of legitimacy from the myths that it circulated as propaganda. One of them was the story of Stalin, the all-knowing leader. Of course, the more sincerely this propaganda was believed, the more wretched were the effects of acting on it. Stalin himself was taken in: "No matter how cynical Stalin was, he had a dangerous habit for a dictator, which was believing his



"I had it all — money, power, prestige — and then I got a snooze alarm!"

own propaganda" (212). Because, for example, his propaganda had exalted the importance of Minsk, the capital of a socialist republic, he allowed his strategy to be distorted by the defense, and later the loss, of a place that was actually of little military significance (212). And it is certain that he believed very sincerely in the propaganda about his own significance.

Fearing that others might not, however, he had spent a decade and a half trying to destroy all sources of resistance among the Soviet military and

It was a miracle that the Soviet Union survived the first ten days of its entrance into World War II. During that week and a half, Soviet armies were swept from the board like pieces of a children's game.

political classes. He admired the will-power of men like General Georgy Zhukov, knowing that he needed strong characters to win his war with Hitler. Yet those strongmen were so impressed by the effects of his purges that they "behaved deferentially and obediently," even in situations in which personal initiative, not deference to authority, was crucial to success (188-89).

We do not ordinarily think of Hitler as someone who cultivated a relaxed management style. But as Pleshakov points out, Hitler's field marshals had much more room for "political independence and strategic ingenuity" than Stalin's generals (123). Effective resistance to Hitler only materialized, Pleshakov argues, when Stalin voluntarily reversed the natural tendency of his regime and allowed his generals to start acting like generals, not errand boys.

Pleshakov makes important contributions to our understanding of Stalin's actions at the crucial point of his career. But the psychological (or, if you will, spiritual) questions about Stalin's movement remain unan-

swered, especially the one implicitly posed by Stalin himself when he wondered which of his guards would assassinate him. Why, after all, didn't somebody do it? Was it simply because his subordinates were so shell-shocked by his persecutions that they submitted to him without a second thought? There were certainly people who plotted to remove the Great Leader, but none of them got as far as the generals who tried to assassinate Hitler in 1944. And there are several circumstances that make obedience to Stalin appear even more mysterious than it looks at first.

One is the fact that, unlike the Hitler regime, Bolshevism had been in crisis from the very start. Its political program regularly produced social and economic disasters so massive and obvious as to drive large sectors of the population to despair. Further, Stalin repeatedly purged the military and the ruling party — unlike Hitler, who indulged in only one big purge, soon after coming to power. When a leading politician or general confronted Hitler, he had to watch his step, but Hitler never went out of his way to make his collaborators fear that they were about to be dragged off to the torture rooms. How does a leader retain hegemony when he leads his political movement into one defeat after another, meanwhile creating conditions exactly the opposite of those that are normally conducive to loyalty? What accounts for the supineness of so many people before such a gross parody of political wisdom?

Pleshakov's answer is this: "Dictatorial regimes can be terribly inefficient. . . . However, they do one thing extremely well: they deprive people of their will. Since the Enlightenment, mainstream Western thinkers have been arguing that an ineffective regime that destroys its people's initiative and brainwashes them instead of educating them will crumble in time of crisis. This may be true in some instances, but it was emphatically not the case in the Soviet Union in June 1941. In Stalin's USSR, state brutality compensated for everything. . . . As long as the dictatorship was able to manipulate its own people, it was efficient and could sustain almost any challenge, despite a faltering economy

and jamming guns" (273).

Now wait. Pleshakov's prime datum in support of the deprivation-of-will argument is the behavior of Konstantin Rokossovsky, a Polish general who was imprisoned and tortured by Stalin, then resurrected for use in World War II, then dispatched to communist Poland to superintend its armed forces. This, one might think, would have given him plenty of motivation both for personal revenge and for rebellion against communism itself. But in 1956, when Polish students began to protest against the communist regime, Rokossovsky distinguished himself by volunteering to crush their rebellion. While other people dithered, as he was proud to say, he acted: "I went up to my office and summoned a tank corps to Warsaw" (273). Is this a man deprived of will? No, it's a man who believes in what he's doing.

Of course, generals and statesmen have opportunities that other people don't. But that's just the point. In 1941, a Soviet peasant or a Soviet soldier had, at best, the choice of deserting to the Germans or continuing to cooperate with his Stalinist bosses. No matter what he did, however, he couldn't

What accounts for the supineness of so many people before such a gross parody of political wisdom?

hope to influence the course of events. Still, millions of people in the way of Hitler's invasion chose the first option. They went over to Hitler — only to discover that he, unlike the communists, didn't even pretend to be fighting for the welfare of Byelorussians, Great Russians, or Ukrainians. So disaffected Soviets selected the second option, wherever it was still open for them.

But some people had more substantial choices. They could leave communism without welcoming fascism. In some cases, they could leave and take Stalin with them, by the simple expedient of assassinating him. If they didn't do so, it wasn't because they were

wholly deprived of will. They retained, in full, their will to believe.

This idea comes through emphatically when one reviews the lives and public utterances of some distinguished advocates of communism. Consider Vyacheslav Molotov, Stalin's foreign minister. In 1940, Stalin

Maintaining loyalty to the communist movement is qualitatively different from maintaining loyalty to the Grand Old Party, no matter what you think of President Bush's spending plans.

removed Molotov's wife, Polina, from the Central Committee; Molotov abstained from voting. In 1949, Stalin brought charges of treason against Polina, claiming that she was a Zionist. Once more, Molotov declined to dissent. Polina was sent to prison, and Molotov continued to collaborate with Stalin as a member of the Presidium of the Central Committee. An interesting situation: imagine Colin Powell continuing to serve as secretary of state, after George Bush packed his wife off to prison for some imaginary political crime. And Molotov loved his wife. She was "beautiful, intelligent, and, the main thing, a genuine Bolshevik, a genuine Soviet person" ("Molotov Remembers," ed. Albert Resis [Chicago: Ivan R. Dee, 1993] 323).

When, in 1953, Stalin finally died, Polina was released. Her husband's reaction, provided in conversations many years later, when Stalinism was no longer in vogue, was this: "Of course, she should have been more fastidious in choosing her acquaintances. . . . A black cat had, as they say, crossed our path. . . . She certainly endured great hardship, but I repeat, she never changed her attitude toward Stalin. She always thought highly of him." It is reported that when one of Polina's relatives criticized Stalin in her presence, she snarled, "Young man, you understand absolutely nothing about either Stalin or his times. If

only you knew the burden he bore in office!" ("Molotov Remembers," 323-24).

Now let's look at the attitude of someone who had every opportunity to jump off the communist ship: Anna Louise Strong, one of America's leading partisans of Stalinism, and later of Maoism. Strong was, from the communist point of view, a believer of unstained integrity. Yet she was arrested and (lucky for her!) deported from Stalinist Russia for non-existent ideological sins. Her response? A continued defense of Stalinism. When Khrushchev finally came along, three years after Stalin's death, and admitted that Stalin had been a monster, Strong nearly lost her mind. "We knew all these things for twenty-five years," she wailed, "and I kept silent for the cause of socialism. What am I supposed to say?" (Tracy B. Strong and Helene Keyssar, "Right in Her Soul: The Life of Anna Louise Strong" [New York: Random House, 1983] 283).

Good question. But, we are told, Strong found consolation "in an epigram from Stalin: 'The logic of events is stronger than the logic of intentions.' It convinced Anna Louise that if her work had in fact furthered the cause of socialism, it did not matter what she had known or believed." (Strong 283) Of course, "the cause of socialism" included such "events" as the starvation, imprisonment, and torture of millions of people, and the miserable impoverishment of hundreds of millions more. But never mind the senselessness, the absurd lack of "logic" of the whole affair. Strong was still, according to the title that her biographers gave their work, "Right in Her Soul." This is not deprivation of will.

How shall we explain the allegiance that many (reputed) intellectuals, in the free and prosperous West as well as the shackled and demoralized East, maintained to Stalin? Isabel Paterson described them as people who had made an investment that they were unwilling to liquidate. They had bought (or at any rate taken a lease on) certain ideas, and rather than lose the franchise or sell at a loss, they kept trying to talk the value up again.

That's a good theory, and it has its uses. There are other good theories, too. One involves the idea of political

"identification." Early in life, people associate themselves with certain political ideas or movements, which they later defend, no matter what, as if any attack on the ideas were an attack on their own identity. I have used this theory to explain Americans' relationship to this country's two major parties. No doubt the identification theory goes a long way toward explaining communist behavior, too. But it won't go all the way. Maintaining loyalty to the communist movement — particularly in circumstances in which its leader has arrested and tortured you, or sent your wife to prison for not being "fastidious" enough in her "acquaintances" — is qualitatively different from maintaining loyalty to the Grand Old Party, no matter what you think of President Bush's spending plans.

When one recalls the loyalty that many Western intellectuals showed to communism, it's important to remember that this stalwart feeling was maintained in the face of not just one discreditable episode, such as the Hitler-Stalin pact, but of hundreds of such episodes. Communism suffered catas-

Communism suffered catastrophic blows to its intellectual prestige throughout its life. No one had to wait until Khrushchev's "revelations" of Stalin's crimes to learn the truth about any of it.

trophic blows to its intellectual prestige throughout its life. No one had to wait until Khrushchev's "revelations" of Stalin's crimes to learn the truth about any of it.

Communist economic ideas, based on the labor theory of value, were announced at precisely the unlucky hour when the theory itself was being conclusively refuted by real economists. Marx's theory of history was also discredited from the start, spurned by everyone who understood historical fact. And communism wasn't slow to exhibit its abhorrent practical effects on human conduct. Nineteenth-

century communists disgraced themselves by a generation of terrorist outrages. When communists came to power in Russia, they immediately gave the lie to all pretensions about democracy and equality. Lenin ruled by war and terror. ("Who was more severe, Lenin or Stalin?" "Lenin, of course . . . I recall how he reproached Stalin for his softness and liberalism" ["Molotov Remembers" 107].) He also confessed the inadequacy of communist economics by legalizing enough capitalist enterprises to save his regime from total collapse. After his death, the farcical conflict between his two would-be successors, Trotsky and Stalin, emphasized the inability of communism to produce a leadership with any respect for justice or truth.

Stalin's crimes are notorious; and they were notorious from the beginning, to everyone who cared to read or think. Stalin reformed agriculture by starving the peasants into submission. He enhanced Soviet public works projects by mobilizing slave labor to construct them. Then came the party purges, the army purges, the pact with Hitler, Soviet atomic espionage, and the destruction of democratic and labor movements in Eastern Europe. In 1956 and 1968, Stalin's successors followed his example by crushing national rebellions in the communist satellites. The latter decades of the century witnessed the erection of the Berlin Wall, the sinister buffoonery of Khrushchev and Castro, the bloody suppression of workers' movements in Novocherkassk and other places, the mass exterminations in Cambodia, the destruction of Tibet, the murder of millions that accompanied the Cultural Revolution in China, and the degeneration of North Korea into primitive psychosis.

Since 1880, no generation of intellectuals has come to consciousness at a time when communist ideas have not already been discredited, both in theory and in practice. Yet European and American intellectuals continued, generation after generation, to take communist ideas seriously. Many of them do so today.

Listen to the late Louis Althusser (1918-1990), a Marxist philosopher who had much to do with shaping the cultural theories now current in

American college classrooms, as he summarizes his final view of the Soviet experiment: "Any public involvement in politics is, of course, forbidden and dangerous, but as far as everything else is concerned, what a splendid life they lead! . . . [I]t is a country where the right to work is guaranteed and, I might add, planned and compulsory." In the USSR, he is pleased to find, "groups of friends" actually "get

No one goes more berserk than an author whose works are censored — unless the author happens to be a communist whose works are censored by communists.

together and sell their services to businesses which have fallen behind. . . . You could not imagine it happening here [in France]" (Louis Althusser, "The Future Lasts a Long Time," ed. Olivier Corpet and Yann Moulrier Boutang, trans. Richard Veasey [London: Chatto & Windus, 1993] 190-91).

Yes, I could; it happens all the time in "bourgeois" society. But by this point, one understands that one is dealing with a person who has absolutely no idea of what the world is like, a person who is determined to believe that capitalism is always fundamentally wrong and communism is always fundamentally right, and who will invent whatever observations he needs to dramatize his beliefs. Even the feeblest intellect can observe and reason better than that, so we can be sure that some kind of egotistic defense mechanism must be involved.

But that can hardly be the sole explanation. If it were, Althusser would not have responded so blandly to Soviet sup-

pression of his own works: "Not surprisingly[!], I found the USSR a philosophical desert. My books had been translated, like all other foreign publications, but they were hidden away in reserve collections in libraries, available only to select specialists who were politically safe" (191). No one goes more berserk than an author whose works are censored — unless the author happens to be a communist whose works are censored by communists. And Althusser is only one of many instances of a fairly common phenomenon among Western communists and fellow-travelers.

What moved people to act in such peculiar ways? It is ordinary to answer, and dismiss, that question with some brief reference to the alleged similarity between communism and other "religious" movements. The idea is plausible. Many adherents of absurd religious dogmas appear completely unaffected when their beliefs are shown to lack any logical or empirical foundation. People in the Hitler movement often acted in the same way. Although Hitler himself objected to being worshiped as a "messiah," that didn't stop his followers from continuing to do so, believing that if anything went wrong in Nazi Germany, the Fuehrer must not have heard about it.

But suppose that a religious cultist actually witnessed the object of his devotion wantonly slaughtering his compatriots. Or suppose that he saw him jailing and killing the worshiper's own family and friends, or threatening to do the same to the worshiper himself. Suppose that the worshiper had



"The big dummy bought a fire, and forgot to ask the salesman how to turn it on!"

labored for years to conceal the frailties of his god from others, twisting facts, inventing outright lies, and otherwise scheming to convince the world that what he knew to be true was actually false. Suppose, in short, that the worshiper knew that his faith in his god was false and hollow. What could explain his continued enthusiasm for the religion itself, an enthusiasm surviving even the god's death and burial (or, in Stalin's case, his being embalmed and put on display in the world's most lugubrious Mystery

The same logical freedom can be used to debate the Hitler-Stalin pact or the Soviet invasion of Hungary or the exegesis of Krazy Kat cartoons.

Spot)? There may be examples of Nazis who behaved like Strong or Rokossovsky or the Molotovs, but I don't know of any. And I can't think of any that I've discovered among the devotees of the many religious cults I have studied. Yet this sort of thing is not at all uncommon on the hard-core left.

I can think of four factors — factors that Pleshakov does not examine — that seem to distinguish communism from other species of political “folly” (to use his well-chosen word). They are: cultural isolationism, theoreticism, the extinction of conscience, and militant self-righteousness.

By “cultural isolationism” I mean the conviction of intellectuals and other supposedly responsible people that communism offered the only explanation that really mattered of the world around them. I don't know whether Chairman Khrushchev or Marshal Zhukov had any more preten-

sions to philosophy than the average Southern Baptist, but it's clear that they never actively investigated any ideology other than communism. The same can be said of Robert Oppenheimer, the famous American physicist. When this ostensibly brilliant thinker decided to interest himself in political events, he went directly to the source of all wisdom: he read Marx's “Capital” and the works of Lenin. That constituted his political and economic education. He later renounced his romance with communism, but he never seems to have explored any other ideology.

Oppenheimer was a Western intellectual with free access to every book in the world. Consider the effect of communist doctrine on a military or political personality in the Soviet Union. If he wanted something to believe in, he might easily assume that the choice was between Marxism and nothing. And Stalin represented himself as the embodiment of Marxism.

He found it a lot easier than you might think. Because of what I am calling the “theoreticism” of the communist movement, anyone with enough self-will can use Marxist thought to justify almost anything he thinks or does. A prominent academic once gave a lecture at the University of California, San Diego, in which he offered a Marxist interpretation of certain events in 19th-century American history. At the end of his talk, someone asked him how his interpretation could possibly be true, considering the fact that some of the effects he mentioned had actually preceded their putative causes. “Well,” he replied, “it's dialectically true.” This astonishing riposte did no visible damage to his authority.

The Marxist way of explaining the world is so theoretical, so distant from any frank survey of the facts, as to transcend all normal checks and limits. Suppose that while passing through the cafeteria line at the Che Guevara Museum of Military Science and Heterosexuality I neglect to banter with the check-out clerk. Clearly, according to the Marxist way of thinking, I am undermining socialist “solidarity,” contributing to the clerk's “alienation,” and, in “objective terms,” launching an “interrogation” of the

labor theory of value. But suppose that I do stop and chat. Then, from the perspective of the same dialectical theory, it is just as clear that I am disrupting the flow of socialist production, indulging a mere “intellectualist” weakness for superficial contact with the working class, and therefore “objectively” contributing “yet more” to the clerk's alienation than I would have if I had never thought of chatting with her. (Don't laugh; I've heard both these applications of Marxist theory, at length.)

The same logical freedom can be used to debate the Hitler-Stalin pact or the Soviet invasion of Hungary or the exegesis of Krazy Kat cartoons. And remember that communist theory is, by definition, “materialist”; its conclusions are regarded as emanations of reality, not as the products (which they are) of an effete intellectual game. People who believe in the reality hypothesis are likely to see every turn of the theoretical wheel as an epiphany of scientific truth, a truth that is all the better for its shiny newness. If they participate, as Stalin did, in the giddy, anything-goes invention of theory, they may soon start to feel like Hindu

There was no independent standard of fact, logic, or common sense to prevent Stalin from expressing his paranoia in any way he chose, or to assure his victims or followers (frequently the same group) that he was wrong.

gods, perpetually inventing new states of being, or like addicts with an endless supply of drugs.

Minds less inclined to theory may fear, with good reason, that the addicts will turn on them the next time the dialectic takes a lurch to the left or right. That is what kept happening with Stalin and his friends. There was no independent standard of fact, logic, or common sense to prevent him from expressing his paranoia in any way he chose, or to assure his victims or fol-

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lowers (frequently the same group) that he was wrong. And of course there was no standard of morality, either.

In personal terms, such a standard is called a conscience, an internal limitation on the individual's ability to construct his values to suit his whims, or even his necessities. Every great religious movement appeals to conscience. Conscience, indeed, has given birth to the worst abuses of religion in its puritan form. But conscience does not appear to have played any role in Stalin's variety of puritanism. What did play a role, and a starring role, was the implacable self-righteousness that has so often been noted by critics of communism — the kind of self-righteousness that allowed communists to do absolutely anything they wanted to do, or felt that they "had" to do, without regretting it later.

Religious people become self-righteous when they believe they are fulfilling a set of moral standards; communists become self-righteous when they conclude — as their political theory invites them to conclude — that there are no moral standards, except the exceedingly malleable ones that they themselves make up. If you want to feel good, just call yourself good; no evidence will confute you.

I said that there was no standard of morality in the Stalinist movement. But there was more than enough "morality" to make it a paradise of self-righteousness. Marxism was not erected on factual or even spiritual conceptions; it was erected on moral

dogmas, and it has always remained inseparable from them. Marxist thinkers may fight over rival definitions of exploitation, imperialism, and colonialism, but they have never doubted that those things were bad. They have killed one another over rival definitions of the working class, social evolution, and the leading role of the communist party, but they have never doubted that those things were good. Yet because their moral judgments cannot be sustained either by a fair appeal to facts or by anything so bourgeois as an individual conscience, communism has always been wrapped in an impenetrable aura of cynicism. Communists have always made a profession of lying, and the bigger the lie, the thicker the swathing of self-righteousness.

Take, for example, a garden-variety communist sympathizer, who was also, quite probably, a member of the Communist Party (but what's the difference, really, when the issue is belief, not party dues?), an American academic named Haakon Chevalier. Today this person is known, if at all, as one of the leftist hangers-on who got Oppenheimer into trouble with the U.S. government. But it's in the memoir he wrote about his friendship with "Opje" that Chevalier's true cultural interest emerges. The book offers a perfect, or perhaps I should say a perfectly typical, display of communist self-righteousness. Describing his early period of communist acculturation, the high Stalin days of 1937–1942, Chevalier writes:

"It was a time of innocence . . . in

the sense that in the face of the manifold and confused manifestations of unresolved social conflicts at home and the gathering war clouds abroad, those of us who had taken a clear political position felt a type of spiritual serenity due, I think, in large part to the fact

Communists have always made a profession of lying, and the bigger the lie, the thicker the swathing of self-righteousness.

that we suffered no conflict between heart and mind, between aspiration and what reason sanctioned. We were animated by a candid faith in the efficacy of reason and persuasion, in the operation of democratic processes and in the ultimate triumph of justice. In a world in which evil forces exerted their cruel sway, we held high the banner of justice, freedom and equality, asserted the sanctity of human rights and proclaimed the cause of peace" (Haakon Chevalier, "Oppenheimer: The Story of a Friendship" [New York: George Braziller, 1965] 19).

So what does one do if one is inspired by "innocence," "reason," "democracy," "human rights," and "peace"? One becomes a supporter of Stalin, of course! — although our author does his best to avoid mentioning that name. As with Alger Hiss or

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the Rosenbergs or the friends of Fidel Castro or a thousand other communist stooges who have paraded beneath the banner of "progressive" politics, communism remains a love that dare not speak its name, because to speak it would be bad for communist propaganda. Chevalier is a writer who can pat himself on the back for supporting demonstrations for "peace" and then, with no transition at all, give himself another pat for supporting the wars of "Loyalist Spain" and Stalinist Russia. It was all "for the alleviation of human suffering" (24-25). Now imagine how many Haakon Chevaliers must have existed in the Soviet Union, where self-righteous personalities could really come into their own. Again, this kind of personality is the antithesis of the will-less, zombie-like people whom, according to Pleshakov, Stalin created.

For contrasting instances from another absolutist regime, one can turn to Pleshakov's earlier book, "The Flight of the Romanovs," written with John Curtis Perry (New York: Basic Books, 1999). Here we read of Grand Duke Nicholas, a cousin of the last tsar. The tsar wanted to make Nicholas a military dictator. Nicholas did not agree. "If he wants to force me to become Dictator," he said, "I shall take this revolver and kill myself in his presence" (95). That's a lot more than anyone in Stalin's court ever promised to do, for any similarly good reason. In 1917, two of the tsar's other relatives, Felix Yusupov and Grand Duke Dmitri, risked their necks to assassinate his depraved advisor, Grigory Rasputin. Felix and Dmitri were a pair of idle playboys, but they showed more political conscience than any of Stalin's high-minded ideologists. Even the last tsar was chock full of conscience; he was always doing things he didn't want to do, because of some moral or religious imperative he felt. His decisions were bad, his system of government was bad, but his culture produced quite a different sort of character from the "genuine Soviet person." Both the communists and the Romanovs were replete with "morality" (and "folly" too), but there was a part of communist morality that never got screwed on. The part was an individual and responsible conscience.

Well, what does all this matter

now? The influence of specifically Stalinist ways of thinking has almost disappeared from the West, and perhaps even from China. Yet a broader, communist-flavored culture remains alive. In many ways it continues to serve as a recipe for the opposition cultures now dominant in many of the West's elite institutions. There is remarkably little difference between the attacks on "bourgeois" individualism and calls for state-determined "social justice" that characterized 1930s agitprop and the stridently anti-individualist, anti-capitalist assumptions that regularly appear in today's learned journals, foundation reports, and action plans of "liberal" lobby groups.

During the 1970s, anti-bourgeois, anti-capitalist, anti-individualist "theory" occupied the commanding heights of social science and humanities departments throughout the West. Since then, this type of theory has, if anything, only strengthened its grip, contributing greatly to the cultural isolationism of teachers and students, not to mention their self-righteousness. And while the vast majority of academics whom I know are punctilious about their private moral obligations, it cannot be for the good of the humane sciences that individual conscience is almost never recognized as a matter worth noticing in "serious" research.

The influence of elite notions is, of course, impossible to calculate. There's an old joke about a woman who is too sick to go to church one Sunday. When her husband returns from the service, she asks him how it went. "Do you want the good news or the bad news?" he inquires. "Give me the bad news first," she says. "All right," he continues; "the minister preached nothing but heresy." "Good heavens," she exclaims, "what news could be 'good' after that?!" "Well," he replies, "nobody was listening." The same may be true about the post-communist ideas I'm discussing. Yet, as we know, one misbegotten piece of "authoritative" advice can wreck the economy of an African nation.

It is time for intellectuals to be reminded of what the world can become when certain kinds of ideas are acted out by people who really mean business. The story of that world is vig-

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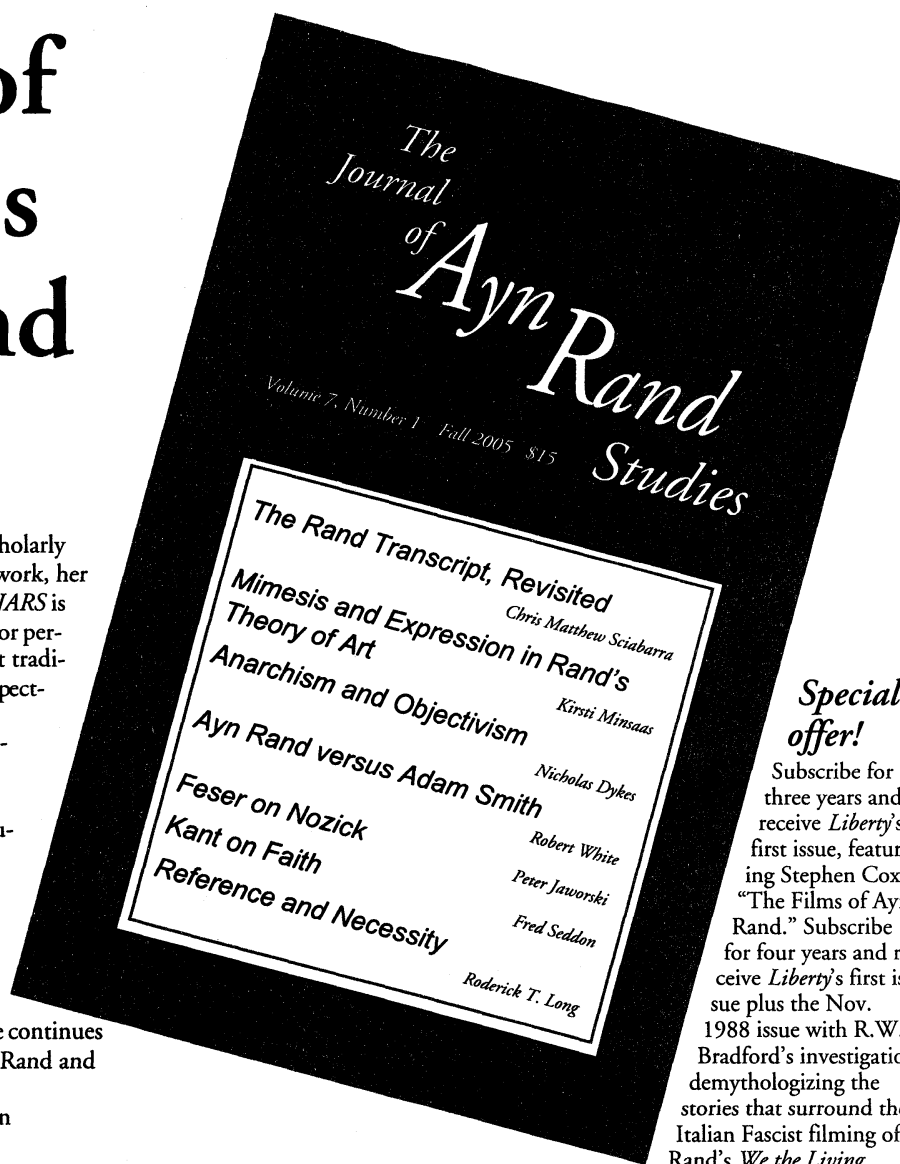
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orously and cogently told in "Stalin's Folly." Mr. Pleshakov's other fine books, "The Flight of the Romanovs" and "Inside the Kremlin's Cold War:

From Stalin to Khrushchev" (Cambridge: Harvard University Press, 1996), provide the story with an appropriate before and after. □

"Vienna and Chicago: Friends or Foes? A Tale of Two Schools of Free-Market Economics," by Mark Skousen. Capital Press, 2005, 306 pages.

The Austro-Chicagoan Empire

Alan Ebenstein

Mark Skousen has established himself as one of the leading libertarian writers born after World War II. In his new book "Vienna and Chicago: Friends or Foes?" Skousen performs pioneering work in comparing and contrasting the two leading schools of free market thought.¹

Skousen's brief work — less than 100,000 words — would provide a good introduction for anyone seeking to learn more about either school. As far as I am aware, it is the only book-length comparison of these two very interesting schools.

"Vienna and Chicago" displays all the features of Skousen's previous work — broad reading, good humor, clear expression, and original research. He provides a summary of the Chicago and Austrian positions on a variety of topics in economic theory, history, and practice. He then states which perspective he thinks superior in each area. Though his heart and roots lie in the Austrian school, his mind and perhaps future lean towards Chicago.

Skousen notes that the Chicago and Austrian schools have much in common. Both "champion the sanctity of private property . . . defend laissez-faire capitalism . . . support free trade

. . . [and] believe in limiting government" (p. 3). With so much agreement with respect to public policy, how much could they differ with respect to theory? According to Skousen, a great deal.

Perhaps the major difference between the two schools is their conflicting interpretations of the Great Depression. Both schools were largely on the same page when the Great Depression started in 1929. Both Ludwig von Mises and Friedrich Hayek wrote that the central insights of the historical Austrian school of Carl Menger, Eugen von Bohm-Bawerk, and Friedrich von Wieser had mostly been absorbed by the mainstream of economic thought by the 1920s.

The historical Austrian school, before the 1920s, was not known for being particularly pro-free market. Rather, as Hayek said: "At that time, we would use the term Austrian school quite irrespective of the political consequences which grew from it. It was the marginal utility analysis which to us was the Austrian school."²

While some, including Milton Friedman, trace a free-market Chicago school to the University of Chicago's 1892 founding and the appointment of James Laurence Laughlin as the head

of the department of political economy, the more conventional view is that the Chicago school began in the 1930s Jacob Viner-Frank Knight era in the Chicago economics department.

Primarily following Hayek, post-1920s Austrian economists have maintained the Depression was mainly a real, as opposed to a monetary, phenomenon. In "Vienna and Chicago," Skousen departs from this perspective, and in so doing he crosses the bridge from Austrian to Chicago economics.

Skousen goes back and forth between Vienna and Chicago throughout. On the one hand, he adopts a largely monetarist explanation of the Depression, and on the other, he continues to maintain the Austrian position that "monetary inflation [expansion] by the central banks artificially distorts the structure of the economy, causing an unsustainable boom that must end in a bust" (37). But Skousen's monetary premises, derived from Friedman's work, should not allow him to maintain the Austrian view of the Great Depression.

Hayek's contemporary perspective on the Great Depression was not correct. He thought the United States Federal Reserve System pursued an expansionary monetary policy in the late 1920s and early 1930s. In fact, the

Skousen goes back and forth between "Vienna and Chicago" throughout. But his monetary premises, derived from Friedman's work, should not allow him to maintain the Austrian view of the Great Depression.

opposite was the case. Starting from wrong empirical premises, Hayek reached wrong theoretical conclusions.

In a chapter on "Macroeconomics, the Great Depression, and the Business Cycle," Skousen departs from Hayek's view, stating the monetarist interpretation of the Great Depression, at least as the Depression got going, as his own. "The evidence seems to support the monetarists' claim that the growth in

the money supply [in the 1920s] was not excessive" (172). He also criticizes Murray Rothbard's inclusion of, for example, the cash surrender value of life insurance policies in the money supply to argue that inflationary monetary policies were practiced in the 1920s, a weakness long observed by Rothbard's critics.

More significantly, Skousen writes: "Was Fed policy sufficiently easy to create a Great Depression following

At this point, the Austrian theory of a trade cycle is in tatters. There was no inflationary boom in the 1920s. There was no expansionary monetary policy in the early 1930s.

the 1929 stock market crash? Here the monetarists have the upper hand: only further deflationary blunders by the Federal Reserve could have turned the 1929–30 recession into the worst economic crisis of the twentieth century" (176). At this point, the Austrian theory of a trade cycle is in tatters. There was no inflationary boom in the 1920s. There was no expansionary monetary policy in the early 1930s.

With respect to method, Skousen is also moving into the Chicago camp. He rejects the non-experiential positions of Mises and, to a lesser extent, Hayek. He goes, indeed, as far as to write: "Probably the most important reason why the Chicago school has been more influential than the Austrian school is because of their sharply differing methodologies" (99). He correctly notes that the Austrian method, notwithstanding their rejection of mathematical formulae in economic theory, is often closer to the "abstract theorizing" (107) of 20th century mathematical economists than the method of either is to Chicago's factual approach.

One of the best features of "Vienna and Chicago" is the extensive personal interviews and correspondence with leading economists of all schools which went into its composition. When Skousen writes that "[a]ccording to

Gary Becker . . . rigorous testing of theories with empirical data is Friedman's most important contribution to technical economics" (62), he adds to our understanding both historically and substantially.

For those familiar with Skousen's past work, it will be of interest to know he no longer supports a gold standard as necessarily the best monetary system: "Even though the Austrians have a better theoretical, historical, and ethical argument in favor of the classic gold standard, the Chicago school offers better pragmatic solutions to monetary problems we currently face. Returning to a gold standard . . . cannot be instituted without creating its own crisis" (154–5).

"The United States of Europe: The New Superpower and the End of American Supremacy," by T.R. Reid. Penguin, 2004, 287 pages.

Enterprise Lives, Barely

Martin Morse Wooster

Look at Europe today and you'll see a continent in economic stagnation. In Germany, Chancellor Gerhard Schroeder has had to call an early election because of his country's dismal record in job creation. France has been mired in double-digit unemployment for a very long time. In Britain, the Tories gained seats on an immigrant-bashing campaign. And across Europe, many voters express their frustration at the polls by voting for neo-fascist or Communist parties.

Given the European Union's dismal economy, it is paradoxical to argue that America adopt the European social-market economy — but that's the premise of T.R. Reid's "United States of Europe." Reid, a reporter for the Washington Post, is an excellent

It should be said in closing that Skousen's presentation in "Vienna and Chicago" is more balanced with respect to Austrian and Chicago views than what is presented here, which emphasizes his Chicago rather than Austrian positions. But that is the point: so dominant has the Chicago perspective become that even those who think or say they do not identify with it (in whole or in part) often look at the world through its eyes. □

Notes

1. In the interest of full disclosure, it should be said this reviewer saw a copy of "Vienna and Chicago" when it was in draft form.
2. Cited in Alan Ebenstein, "Hayek's Journey: The Mind of Friedrich Hayek," (New York: Palgrave Macmillan, 2003), 42.

writer, and his book has a good deal of valuable reporting in it. But Reid's cheerleading for the welfare state leads him to some problematic conclusions.

Reid's premise is that most Americans — say, the sort of people who dutifully depend on the Washington Post or the New York Times to tell them what the world is like — don't know much about European integration, a belief that finds considerable justification. Most American newspapers and weekly news journals do a terrible job surveying the rest of the world. Also, at least until recently, the War on Terror seemed so important that it pushed other important stories to the back pages of the newspapers, or out of them entirely.

Reid is at his best when he writes about social trends. In one chapter, he

discusses "Generation E," the younger generation of Europeans who wander from Helsinki to Madrid, visiting their friends in every member state. Given that English is now every young European's second language, once-formidable language barriers have crumbled.

As a liberal who likes markets, Reid is good at portraying Europe's most dynamic entrepreneurs. Take Austria's Dietrich Mateschitz. In the 1980s, Mateschitz sold toothpaste to Asians. As he traveled throughout Asia, he found that Asians stayed awake late at night by drinking tonics loaded with caffeine and amino acids. Mateschitz bought the European rights to a Thai beverage called "Kating Deng" or "Red Water Buffalo." Mateschitz adapted the name to Red Bull — and created a global market for "energy drinks." Because Mateschitz's company has an English name, few realize

Mateschitz bought the rights to a Thai beverage called "Red Water Buffalo," then changed the name to Red Bull — and created a global market for "energy drinks."

that Red Bull GmbH is actually headquartered in "a breathtaking corner of the Austrian Alps."

"Please do not forget that Europe, too, has its entrepreneurs," Mateschitz tells Reid. They do indeed — though there aren't that many of them. Start a business in Europe, and you run into all sorts of hurdles that Americans don't face — a 48-hour maximum workweek, draconian restrictions on hiring and firing, and, of course, it's much easier to be unemployed in Europe than in America.

Reid points out that Europeans love their welfare states. And why shouldn't they? Of course given the choice, most people would rather get something for free — college tuition, child allowances, health care — than have to pay their bills. And since much of the cost of these "free" services comes from a value-added tax of 20-

25% hidden in the prices they pay for practically everything, most Europeans hardly notice paying it.

And the "protection" offered by the European welfare state comes at a high price. The state offers a cushion for those who fail — and a net for those who rise. High taxes and onerous regulations ensure that it's much harder to be an entrepreneur in Europe than in America — which, in turn, ensures that European economies are far less dynamic than America's.

The European Union, of course, does good as well as harm. By removing trade barriers between member states, the EU has ensured economic growth. EU regulators have also had some success in encouraging privatiza-

tion and competition among entrenched government monopolies. "Loser-pay" rules ensure European trial lawyers are less avaricious than their American counterparts.

Reid reminds Americans that they ought to know more about how the European Union got started and where it's headed. If you know so little about EU history that you think Jean Monnet was a painter, you'll find "The United States of Europe" a useful introduction to such institutions as the European Parliament and the European Court of Justice. More discerning readers will enjoy Reid's lively style and thoughtful anecdotes. But readers should question Reid's hearty endorsement of the welfare state. □

Notes on Contributors

Norman Ball is a Virginia-based writer, musician, and businessman.

Barloo is a *nom de plume* of Rex F. May.

Max Borders is the program director of the Institute for Humane Studies.

R.W. Bradford is publisher of *Liberty*.

Scott Chambers is a cartoonist living in California.

Stephen Cox is a professor of literature at the University of California San Diego and the author of *The Woman and the Dynamo: Isabel Paterson and the Idea of America*.

Alan Ebenstein is author of *Friedrich Hayek: A Biography*.

Andrew Ferguson is managing editor of *Liberty*.

Eric Kenning is a freelance writer living in New York.

Ross Levatter is a physician practicing in Green Bay, Wis.

Brian Mannix is Senior Research Fellow with the Mercatus Center at George Mason University.

Owen McShane is Director of the Centre for Resource Management Studies in New Zealand.

Jennifer Mygatt is a research associate at the Foundation for Research on Economics and the Environment.

Randal O'Toole is senior economist with the Thoreau Institute and author of *The Vanishing Automobile*.

Bruce Ramsey is a journalist in Seattle.

Mark Rand is assistant editor of *Liberty*.

Timothy Sandefur is a staff attorney at the Pacific Legal Foundation.

Jane S. Shaw is a Senior Associate of PERC — The Center for Free Market Environmentalism in Bozeman, Montana.

Jo Ann Skousen is a writer and critic who lives in New York.

Tim Slagle is a stand-up comedian living in Chicago. His website is www.timslagle.com.

Fred L. Smith, Jr., is president of the Competitive Enterprise Institute.

Clark Stooksbury is a freelance writer living in Knoxville, Tennessee.

Thomas Tanton is a Senior Fellow with the Institute for Energy Research.

Martin Morse Wooster is a writer living in Silver Spring, Maryland.

New Orleans

Compassion from *Agape Press*, the news outlet for the American Family Association:

Bill Shanks, pastor of New Covenant Fellowship of New Orleans, sees God's mercy in the aftermath of Katrina. "New Orleans now is abortion free. New Orleans now is Mardi Gras free. New Orleans now is free of the sodomites, the witchcraft workers, false religion — it's free of all of those things now. . . . in His mercy [God] purged all of that stuff out of there."

Jackson, Miss.

Innovation in the actuarial arts, from the *Jackson Clarion-Ledger*:

Mississippi on Thursday sued insurers to force them to pay billions of dollars in flood damage to Mississippi citizens who have home casualty insurance, despite the explicit and detailed exclusion of flood damage from their policies.

To deny coverage to those whose homes were wiped out by the storm surge, but lacked flood insurance, is "taking advantage of people in the most dire straits," said Attorney General Jim Hood, who filed the lawsuit. "We intend to . . . make sure the insurance companies pay all that they owe these people on the coast," he said.

U.S.A.

Preparing children for natural disasters, from the "FEMA for Kidz" website:

Disaster . . . it can happen anywhere,
But we've got a few tips, so you can be prepared
For floods, tornadoes, or even a 'quake,
You've got to be ready — so your heart don't break.
Disaster prep is your responsibility
And mitigation is important to our agency.
People helping people is what we do
And FEMA is there to help see you through
When disaster strikes, we are at our best
But we're ready all the time, 'cause disasters don't rest.

New Orleans

Streamlining disaster management, from the *Wall Street Journal*:

FEMA must abide by post-9/11 security procedures, such as putting air marshals on flights. That meant stranded residents couldn't be evacuated from the New Orleans airport until FEMA had rounded up dozens of Transportation Security Administration screeners and more than 50 federal air marshals.

Special thanks to Russell Garrard, Fletcher Farmer, and Philip Todd for contributions to Terra Incognita.

(Readers are invited to forward news clippings or other items for publication in Terra Incognita, or email to terraincognita@libertyunbound.com.)

Charleston, S.C.

Learning geography on the fly, reported in the *West Virginia Gazette-Mail*:

A South Carolina health official said his colleagues scrambled when FEMA gave only a half-hour notice to prepare for the arrival of a plane carrying as many as 180 evacuees to Charleston. The plane instead landed in Charleston, West Virginia, 400 miles away.

Atlanta

Progress in training for life saving, from a dispatch in the *Salt Lake City Tribune*:

Firefighters dispatched from around the country to the Gulf Coast have been briefed on the latest techniques. Said one Texas firefighter, "We're sitting in here having a sexual-harassment class while there are still [victims] in Louisiana who haven't been contacted yet." The firefighter declined to give his name because FEMA has warned them not to talk to reporters.

New York

Paul Krugman identifies the real problem, from an essay in the *New York Times*:

The federal government's lethal ineptitude . . . was a consequence of ideological hostility to the very idea of using government to serve the public good. For 25 years the right has been denigrating the public sector, telling us that government is always the problem, not the solution. Why should we be surprised that when we needed a government solution, it wasn't forthcoming?

Washington

Lexicographic note, from a report in the *San Jose Mercury*:

Jesse Jackson and other black leaders say the word "refugee" has a criminal connotation and advocate using the more neutral term "evacuees."

"These are American citizens, plus they are the sons and daughters of slaves," said Rep. Diane Watson (D-Calif.). "Calling them refugees coming from a foreign country does not apply to their status. This shows disdain for them. I'm almost calling this a hate crime."

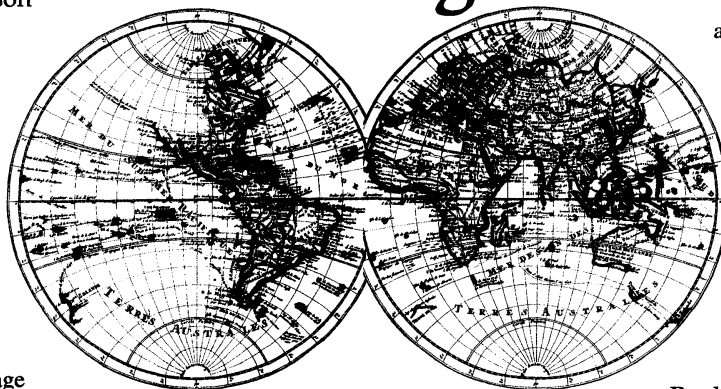
New Orleans

Curious meteorological theory, from Columbia (S.C.) *Christians for Life*:

The image of Hurricane Katrina (reportedly means "pure" in Russian) looked like a fetus (unborn human baby) facing to the left in the womb, in the early weeks of gestation. Even the orange color of the image is reminiscent of a commonly used pro-life picture of early prenatal development.

Louisiana has 10 child-murder-by-abortion centers — FIVE are in New Orleans. God's message: REPENT AMERICA!

Terra Incognita



A black and white photograph showing a woman in the foreground with her hair being braided by another woman. The woman being braided is wearing glasses and looking slightly to the side. The woman braiding her hair is smiling and looking down at her work. The background is blurred, showing other people and what appears to be an outdoor setting.

I wanted to earn an honest living braiding hair.

But the State of Minnesota demanded
I license my hands.

I fought back and untangled their
regulatory mess.

*Lillian Anderson
Minneapolis, Minnesota*

[www. .org](http://www.instituteofjustice.org)

*Institute for Justice
Economic liberty litigation*