

THE

Libertarian Forum

Joseph R. Peden, Publisher

Murray N. Rothbard, Editor

VOLUME X NUMBER 9

SEPTEMBER, 1977

US-ISSN0047-4517

The Bakke Case

Everybody and his brother is getting into the act on the Bakke case. No less than 146 special-interest groups have filed 58 *amicus curiae* briefs to the Supreme Court which is now pondering Bakke—the largest number of such briefs in Supreme Court history. Generally, leftists are “anti-Bakke” while conservatives are “pro-Bakke”, with liberals split down the middle depending on whether they are black or other “minority” (see Devil’s Glossary below)-oriented (anti-Bakke) or Jewish oriented (pro-Bakke.) “Ethnics” (also see Glossary) are sturdily pro-Bakke.

Briefly, Allan Bakke applied for admission to medical school at the University of California, Davis, but was denied admission because of slots allotted to members of “minority” groups who were admittedly less qualified. If the 14th Amendment requires that governmental bodies be “race-blind” and not discriminate for or against particular races or groups, and if for that reason segregation laws were struck down by the Supreme Court, it is hard to see how the left, which wants government discrimination on behalf of “minorities”, can have a constitutional leg to stand on. Indeed, the left is shivering in its boots on Bakke, since the special slots for minorities in this case seems to be particularly glaring in its unconstitutionality. They are hoping against hope that Bakke is decided very narrowly by the Supreme Court. For a broad, consistent decision for Bakke would strike down all of the affirmative action edicts and pressures of government that have been so dear to the hearts of the left over the past two decades. (For an anguished cry by a leftist that the Court construe Bakke narrowly, see Nat Hentoff, “Which Side Are You On?” *Village Voice*, Oct. 17, 1977.)

The argument of the left that “affirmative action” does not imply “reverse discrimination” or “racial quotas” is simply silly and puerile. Suppose one investigates the problem and finds that only 3% of physicians are members of Race X, which has 20% of the population. To say that action must be taken (clearly by lowering standards for admission) to bring Race X up to its quotal 20% must automatically push other races and ethnic groups down, and must discriminate against individuals of such groups on grounds that they do not belong to the “right” race or group. Furthermore, pushing up one group to its presumably deserved quota of the population, means that other groups, who are “represented” more numerous than their quotal norm, must of necessity be pushed down to that norm. We are back, then to the notorious governmental discriminatory quota systems of the Central Europe of the 1930’s. Is that what we are supposed to be doing in the name of humanism and progress?

Turning from the Constitution to more specifically libertarian concerns, where should libertarians stand on the Bakke case? It should be clear, from many points of view, that we should be solidly pro-Bakke. Libertarians are individualists, and believe that candidates for employment or admission to schools or whatever should be judged strictly on the individuals’ own merits or demerits. Libertarians believe that government should have no role in coercing private institutions on who to hire, promote, or admit, and therefore we must stand foursquare against the mammoth affirmative action program that government has been pushing for many years. And libertarians believe that governmental institutions, such as schools, where they (unfortunately) exist, should not

be able to discriminate for or against one or another group of taxpayers. On all these grounds, libertarians should be firmly pro-Bakke and opposed to affirmative action. With this caveat: that a private firm or college should be able to discriminate or not on any criterion (rational or irrational) that it wishes, without being coerced by government. If Firm A or College X, for some reason, wants to hire or admit only Masons or blonde-haired Albanians, it should have the right to do so. The Bakke case, of course, deals with a governmental medical school.

The peculiar reparations argument of the left deserves some further scrutiny. Professing to be uncomfortable with quota systems, the proponents declare that they are needed temporarily to compensate for the disadvantages (say of slavery) which the racial group’s ancestors may have suffered a century or more ago. (This, of course, refers to the blacks, a major constituent of “minorities”—see Glossary—but how it could apply to the various groups of “Latinos, none of whose ancestors had been enslaved, passeth understanding.)

The flaws in this argument should be glaringly obvious. Why shouldn’t Ukrainians or Poles be compensated for the “disadvantage” of their ancestors having suffered under serfdom—and for a longer period than the blacks had been enslaved? If the reply be that Americans hadn’t enserfed the Poles whereas they had enslaved blacks, we come to an unsupportable theory of collective guilt. For, in the first place, what about Poles, Ukrainians, Italians, etc., whose ancestors came to this country well after the Civil War and who therefore can’t be stained with any sort of retrospective racial guilt for slavery? Why should they be disadvantaged now? The logic of the leftist case is to place some sort of disability—be it maximum quota or special tax—on descendants of WASPS whose ancestors lived here at the time. Apart from the grotesquerie of this position, how can we place such a burden when the particular ancestor might have been an abolitionist? And even if we could identify current descendants from an authentic slave trader or holder, by what principle can we justify placing collective guilt unto the umpteenth generation, with the sins of the fathers visited upon the sons and daughters? Hobbling a contemporary WASP or Polish-American, furthermore, will in no way right injustice meted out to a black of a century or two ago. This will be particularly clear if we adjure the monstrosity of collective guilts and merits.

Finally, the left has never come up with an answer on how long this compensatory affirmative-and-negative action is supposed to go on before we can all get back to individual merit. How long are we supposed to be punished for the sins of other people’s fathers? The left can offer no criterion for a judgment, because there is no criterion available, no way that it can rationally say, OK, enough is enough.

No, it is we who must say enough is enough, and the time is now.

The Devil’s Glossary

“Minorities”. A code word for blacks and Latinos (Chicanos and Puerto Ricans.) Even though there are lots

(Continued On Page 8)

Higher Education: The View of Insiders

by Justus D. Doenecke

A Review Essay

John R. Thelin, *The Cultivation of Ivy: A Saga of the College in America*. Cambridge, Mass.: Schenkman, 1976.

Simon O'Toole, *Confessions of an American Scholar*. Minneapolis: University of Minnesota Press, 1970.

Hazard Adams, *The Academic Tribes*. New York: Liveright, 1976.

Walter Kaufmann, *The Future of the Humanities*. New York: Reader's Digest Press, 1977.

How long has it been since anyone, any single one of us, has read an author who celebrates American higher education?

Indeed can we find one serious alumnus from one serious college who can boast that the education his alma mater is offering today is superior to the one gained ten, twenty—even thirty years ago?

To listen to administrators, and to read the promotional blurbs, one would think the opposite. One sees on every hand a veritable galaxy of new research libraries, open-ended seminars, sophisticated computers, dorms designed to bring faculty and students together, and chamber orchestras. One can find in the catalogs such pedagogical "innovations" as pass-fail courses that relieve anxieties over grades, contractual registration which permits total self-direction for the student (and which permits him to pass three courses while dropping four), independent study periods (in which an entire institution practically adjourns for a month and a half) when all pursue knowledge without inhibition. Add student-taught courses, free-floating, do-it-yourself majors, three year B.A. programs, and off-campus study groups that range from Hoboken to Nepal, and old Siwash U. is suddenly turned into a microcosm of Plato's Republic. The very title of one journal of higher education, *Change*, celebrates the innovative mood; change, as they said in 1066 and *All That*, is "a good thing."

Coupled with all this comes a bit more informality. Faculties are at times addressed by their first names and listed in nebulous pamphlets called "human resource guides." Students enter baccalaureate orals with wine and cheese. It is all, as one Mormon apologist would say, "a marvelous work and a wonder."

Yet, despite the richness in our facilities and the freedom offered in planning courses of study, higher education is in sorry shape indeed, so sorry that many doubt whether it can survive with integrity. The problems go far beyond unbalanced budgets and low endowments. We are admitting students who cannot write clearly and coherently, who have never read a play of Shakespeare or an essay of Emerson, who cannot place the century in which Oliver Cromwell lived, who are unable to identify Ho Chi Minh, and who have not mastered sufficient math to complete a college course in the natural sciences. We listen daily to students who, when unable to express a simple thought articulately, nod their heads and mutter, "You know... You know..." We read senior theses by students who have never submitted a paper in college and hence know not the meaning of a paragraph. We assume, falsely in most cases, that a seventeen year old, just out of high school, is able to plan an academic program free of all requirements. We deplore the "impersonality" of objective tests, find the giving of blue book exams "oppressive," scoff at deadlines, and pass an embarrassingly large number of students in order to keep enrollments high.

True, Aristotle once said that "All men by nature desire to know," but now we can only wonder. Joseph Butler, Bishop of Durham and one of the greatest minds England produced, observed that the majority are more apt at passing things through their minds than at thinking about them. But today we have reached the point where some collegiate minds have very little, if anything, even passing through.¹

In our despair, we seldom realize that, for American higher education, there was never a golden age. Essayist Albert Jay Nock, whom the ignorant would call a snob, noted that no one of informed opinion was ever well-satisfied with our educational system. In 1926 philosopher Everett Dean Martin observed that our schools had all too often become agents of propaganda. "It is much easier," he wrote, "to appeal to authority than to experiment, to command assent than to awaken curiosity, to tell the

student what he must believe than to wait for the maturing of his judgment." In 1941 columnist Walter Lippmann deplored the fact that modern education had abandoned all efforts to transmit the religious and classical culture of the West. Rather than training the student to "look upon himself as an inviolable person because he is made in the image of God," it had "reduced reason to the role of servant of man's appetites." In 1948 the British novelist Dorothy L. Sayers called for returning to the type of learning embodied in the medieval Trivium,—that is, to grammar, dialectic, and rhetoric. "We have lost the tools of learning," she said, "the axe and the wedge, the hammer and the saw, the chisel and the plane that were so adoptable to all tasks."²

Even the much-vaunted heritage of the Ivy League is based on myth, a point stressed in the revealing book by John R. Thelin. Thelin points out that there was little unity among Ivy schools until the 1920's, when the concept of a distinctive group was formulated by two obscure researchers.³ Sportswriter Stanley Woodward of the *New York Herald Tribune* first used the term "Ivy League" in the thirties, although not all the constituent schools then played each other and although a genuine athletic league was not organized until 1954.

Most people today do not know that the Ivy League is still an athletic—not an educational—organization. Though Thelin does not mention it, Woodward denied that the term necessarily connoted either excellence or academic purity. Some varieties of ivy, he said, were poisonous, other potted.⁴ Indeed, the prestige and affluence we associate with the Ivys would have amazed people a century ago. In the 1890's, for example, Harvard Law and Dartmouth's medical school were havens for "jocks," while Yale stressed "muscular Christianity" over academic achievement.

Blame for our current plight is placed in many places: the ever present-and-perennial TV set, accused of anesthetizing two generations of the nation's young; indulgent parents (and teachers) trying to recover their youth by totally identifying with children; progressive education, which reaches such absurdities that a student may go through high school without taking one examination.

Some of the problems, of course, lie in university governance. No one really has complete power to do anything. In the past few years, the power of the formal governing body, the trustees, has shrunk markedly, with its role in private institutions often relegated to writing checks. University presidents are seldom chosen for their educational vision—John William Ward of Amherst stands out as an almost lone exception—but rather because of their fund-raising talents. If a skilled president can, at some time, impose his will on the faculty, he must use such power sparingly, for he has little control over faculty selection or course content. Academic power deteriorates from the administrator's first act, for any decision involving money and staffing is bound to offend someone. Some of the current breed of administrators attempt to adjust by adopting the qualities of an "o.k. guy"—accomplished perhaps by playing the clarinet, dressing in jeans, and using an earthy student argot when talking to undergraduates.

The State acts increasingly destructively in such matters. It realizes that "he who pays the piper calls the tune," and some of the notes bellowing forth are ruinous indeed. Under the guise of "affirmative action" and "open admissions," it imposes reverse discrimination and institutionalizes mediocrity. Some private institutions welcomed supplemental federal funds in the 1960's, undoubtedly hoping for a second lease on life. If today they have second thoughts, it is too late and significant autonomy has often disappeared.

One cannot blame the State for everything. The faculty too must share the responsibility, for it is given direct charge of the curriculum. Hence it is not surprising that three of the books under consideration deal primarily with its role.

O'Toole's *Confessions* is the most cynical, although the indictment is telling enough to forewarn every graduate student in English. O'Toole is a pseudonym for a well-published professor of English (and a leading scholar on the obscure poet Ian McPherson) who has taught at a variety

(Continued On Page 3)

Higher Education —

(Continued From Page 2)

of schools—black and white, public and private, red brick and Ivy League.

The author began his undergraduate studies with the highest of ideals. "Wide-eyed youngster," he calls himself, for he was a college student who genuinely liked literature. Two years in the service, a year of teaching, and a half-year of manual labor paved the way for graduate study. Here he met his first real disillusionment, as he faced the pedantry of "the morose, dull, and empty-headed men who cut Spenser, Pope, Coleridge, and many others down to their own size." The college classroom soon convinced O'Toole that Oscar Wilde was correct when he said: "Education is an admirable thing, but it is well to remember from time to time that nothing that is worthwhile can be taught."

It is in the realm of research, however, that O'Toole begins to blow the whistle. He found that the more formal scholarship was brought to a literary work, the less sense he could make out of it. Admitting that PMLA is "utterly dull," he writes amusing exposes of his ventures into editing letters and producing textbooks. (The verb "producing" is chosen deliberately). Nor is "pure" investigation much better. "Short of proving Milton was a Frenchman from Savannah, Georgia," he writes, "I think the American literary scholar can demonstrate anything he wants to."

Little wonder that from O'Toole's vantage point, American higher education is a low-grade farce." We can count the bitter and dreary years of our own lives, but help to push through the new Ph.D. program at our small college. We know that nine-tenths of our colleagues cannot read five lines of Shakespeare with half the expression of an English schoolboy, and yet it is fine to think of all those folios and quartos at the Folger Library. We dream of leaving our dreadful university, and never imagine that Swarthmore, Claremont, and Harvard are just as dreadful" (p. 107).

O'Toole's solution is Nockean: "less education instead of more, less education in the interest of more civilization." (Nock was more exclusive, writing that "relatively very few are educable, very few indeed.") O'Toole would radically revise graduate study in English, limiting requirements to the completion of two major papers (one of which would serve as the dissertation) and a single exam stressing literature and not criticism. Anyone hired by an institution would be slated to become a permanent member of the staff, that is "barring insanity, wickedness, or desire to move on." Promotion would be automatic, normally depending on age.

Such a remedy might be naive, even whimsical; but he has a point. Some of the most conservative of our faculty realize that tenure competition can be vicious, particularly when several people are competing for a single slot. Also graduate education can be pedantic, particularly if a seminar is restricted to the professor's current research.

The Academic Tribes is more subdued, but it still has a strong bite. In fact, because it is less shrill, its critique is stronger. Adams too is a respected English professor who also served a hitch as administrator at the Irvine campus of the University of California. He confronts academe as a novice anthropologist writing up his first field notes on the aborigines.

Adams knows the rules of the game all too well. Hence he realizes that the fundamental allegiance of the faculty member is to the smallest unit to which he can belong, which is usually the department; at the very outset, the professor possesses the most parochial of loyalties. Therefore, if a dean has no broad intellectual perspective on which to base his decisions, he is subject to cannibalization. In addition, debates over requirements rapidly deteriorate from the level of educational principle to the level of expediency, for any such principle is only good as long as it does not interfere with a departmental program. "To debate an intellectual issue," writes Adams, "might well lead actually to arguing against one's own shorter-term budgetary interests—an appalling prospect to any dean or chairman." An iron law of specialization, apparent even on some small campuses, encourages social sciences to deny social responsibility, humanities departments to act in unhumanistic fashion, and natural sciences to behave most unscientifically. W. H. Auden's recommendation—"Thou shalt not sit/With statisticians nor commit/A social science"—has one fervent follower, a man who found that coping with federal bureaucracies would be enough to turn him into a right-wing Republican.

Some of Adam's most telling points need more emphasis. Massive student participation on faculty committees is silly, for undergraduates are wasting precious learning time on matters that do not contribute to serious education. Some students have spent the bulk of their college experience in much work, imitating those professors who find committee tasks their major academic involvement.

We could all listen to Edward Kirkland, the prominent economic historian and the epitome of a New England gentleman, who said that professors who ignore research become—for practical purposes—one of the undergraduates. We still have individuals who have taught their whole career without writing as much as one book review, others who volunteer—without training—to teach the bulk of their work outside their discipline. Faculty members have long offered a series of excuses for abandoning the academic quest, ranging from superior "teaching" to becoming a "generalist"; thusly do both boredom and laziness become effectively hidden. Some fifteen years ago, an historian boasted to me that he had read no revisionist (or any other kind of history) in a decade: "Did you ever think," he said as his eyes peered through the cherry glass, "that with each revision we are getting farther from the truth?"

Adams finds current jeremiads against "publish-or-perish" shrill. "A faculty of committed research scholars and creative artists is my ideal of the most desirable university. I have yet to hear," he continues, "of a better way to see that an academic institution is intellectually alive than to assume that such activities go on." (p. 142).

The distinguished economic historian Jack Hexter has some particularly telling points along this line. In an essay reprinted in his *Doing History* (1971), Hexter makes short work of those who compare "gifted teaching" with "grinding out research." He noted the abundance

(Continued On Page 4)

Lysander Spooner was the only constitutional lawyer
in history to evolve into an Individualist Anarchist
and now you can read

LYSANDER SPOONER'S Essay on "VICES ARE NOT CRIMES"

"A Vindication of Moral Liberty"

published anonymously in 1875
and not included in
"Collected Works of Lysander Spooner"

**NOW AVAILABLE FOR
THE FIRST TIME IN OVER
100 YEARS!**

Introduction by Murray Rothbard
Forward by Carl Watner
plus Benjamin Tucker's essay
"Our Nestor Taken From Us"

\$2.95
softcover

order from

TANSTAAFL

P.O. Box 257, Cupertino, CA 95014

Direct Inquiries to Janice Allen

Higher Education —

(Continued From Page 3)

of researchers who teach ably in the classroom. More importantly he defines the teaching role to include the sharing of one's research via print. Conversely, he describes the classroom sage, enthralling to us as undergraduates, whom we later discover to be "a pretentious faker or a mere clown—*vox et praeterea nihil*." He then goes on to tell of "colleagues who published nothing, not because of their devotion to teaching, but because of their wholehearted dedication to birdwatching, to billiards, to Old Overholt, to squalid in-fighting on the lower rungs of academic politics, or simply to providing their backsides with facilities for acquiring an appropriate middle-aged spread." Where lies the culprit for propounding the "dedicated teacher" canard. In "the shady academic demimonde inhabited by educationalists whose dim view of research and scholarship is doubtless an undistorted reflection of the quality of their own professional efforts along those lines" (pp. 89-90).

It is one thing for a professor to play the role of eccentric, offering both "gut" courses and sheer entertainment in one package. (One professor I knew, for example, had all his students dress for class in bedsheets. "Come on down," he said to a colleague, "We've got the Roman senate gathering this morning." Imagine the whole Colgate forward line as Cicero and Cato the Elder.) It is quite a different thing to scrap formal requirements on the grounds that "coercion" of any kind is wrong. Nock aptly called such behavior "a counsel of desperation." No serious professional school—law, business, medicine—could exist with such a philosophy; yet, for the equally important liberal arts education, we bless such practices as both "innovative" and "good."

At one time, for example, the core program at Colgate made sure that each student was confronted with some of the great heritage of the past. Freshmen read Plato's *Republic*, the Gospel of Mark, Aquinas, Luther, and Kant; sophomores listened to Beethoven, read *Oedipus Rex* and *War and Peace*, and examined works by Rembrandt, Klee, and Picasso. Juniors knew Locke and Tocqueville, while seniors mastered George F. Kennan and Louis Halle. Columbia's course in contemporary civilization was a classic as were Social Sciences I and II at Chicago. Now it is a rare college that requires either Western Civilization or Freshman English. If a student does not know the meaning of an adjective, much less its function, and confuses "two" with "too", well—it is not a matter of concern but an amusing anecdote to pass around during faculty coffee break.

To Adams, the humanities lie at the core of learning. They should be regarded as the mode of study by which we maintain the culture in which we live, "the preservation of those verbal shapes of the past that retain the power to generate anew." He finds the study of language particularly crucial, as the power of the media to manipulate people by manipulating their mother tongue grows daily. Only by insisting that students write throughout their entire academic career, and only by examining such writing critically, can humanistic education be continually provided. The faculty, says Adams, must finally decide whether or not a humanities education is important. If it deems it important, it must devise ways of sustaining it throughout a student's whole college experience.

But is today's academe able to heed such advice? True, the most profound thinkers in the "practical" disciplines—take Ludwig von Mises and F. A. Hayek of the Austrian school of economics—were people of humanistic learning. But the future of formal liberal inquiry is uncertain at best. Without an immediate "payoff," the most ignorant of the bureaucrats find humane studies close to expendable. Terrell H. Bell, U.S. Commissioner of Education in 1975, claimed that the college that devotes itself "totally and unequivocally to the liberal arts today is just kidding itself." He continued, "To send young men and women into today's world armed only with Aristotle, Freud and Hemingway is like sending a lamb into a lion's den." It is, he maintains, "salable skills," those that offer a means of earning a living, that are most important.

Of course, all this can be seen quite differently. Robert A. Goldwin of the American Enterprise Institute likes to tell a story concerning Euclid. One time the great mathematician was explaining the first theorem of geometry, the construction of an equilateral triangle, to a young man. After Euclid had finished his exposition, the youth queried, "But Euclid, what shall I gain by learning such things?"

Euclid might have replied that such knowledge eventually leads to the Pythagorean theorem, and that one could use this theorem to design a

bridge that could withstand the weight of chariots. And it is this theorem that gives you the basis of trigonometry, and one could use it to survey the next real estate speculation. But Euclid did not say this. Rather, he snapped, "Give this man a coin since he must show a profit for everything he learns."

Skills can be salable or unsalable as the economy or technology changes, thereby proving Dewey's adage that "Theory is, in the end, the most practical of all things." Ask any engineer caught in the cutbacks of space technology and forced suddenly to master the act of cab driving. But to learn how to learn—how to think clearly, how to cut beneath the sham and pretense, is particularly essential when, as Goldwin notes, "the foundations of western civilization are being challenged." It is, as he says, "a matter of life and death—and if that seems to say too much, there is certainly a matter of our political liberty, which should be as dear to us as our lives" (emphasis mine).

Our very survival, in other words, depends on the educated person, the person who—as Plato pointed out long, long ago—can "see things as they are," that is see things free of the "shadow worlds" of convention, illusion, irrational authoritarianism, hope of advantage.

If such preachments as Goldwin fail to convince, Walter Kaufmann's book should. The Princeton philosopher communicates with a sense of urgency. Without able teaching of the liberal arts, he says, humanity's chances for survival are about nil.

Kaufmann is a realist. He knows, for example, that it is almost hopeless for young people with a doctorate in the humanities to find a teaching job. On February 4, 1976, the *New York Times* reported that 79,600 doctoral graduates were competing for 15,700 openings. More than four out of five, therefore, would find formal graduate training of relatively little vocational use.

Even worse, the humanities themselves are adrift. Like O'Toole, he notes that much research is trivial and that professors delight in playing intellectual games. Furthermore, the "scholastics," those professors who see themselves as carriers of a sacred tradition, stifle the "visionaries," those alienated folk who develop new paradigms of thought.¹⁰ Since World War II, he says, our faculties have become increasingly scholastic, so much so that genuine Socratic questioning is stifled.

For example, in Kaufmann's own discipline, training is so narrow that most faculty do not feel competent to teach survey courses in ancient philosophy or in the philosophical tradition from Descartes to Kant. In literature, he observes, imagery and diction are taught, not the world-view of the novelist and poet or their trenchant criticisms of their society. In other disciplines as well, professors have come to eschew the study of humanity and the critical examination of our values, faith, and moral motives." He asks if Plato's *Republic*, or any single work by Soren Kierkegaard, be acceptable by any doctoral committee. (Can't one just imagine a "Dear John" letter from a publisher reading: "Dear Mr. Weber. Your manuscript on Protestantism and capitalism, though possessing some genuine insights, lacks the empirical rigor.....")

Kaufmann's favorite horror story concerns the scholar who began his career with a book on the relevance of the Hebrew prophets but who kept on getting juicy grants for the study of Biblical weights and measures. "Not to see the forest for the trees in it became a virtue," he writes, "and the study of a single leaf came to be thought of as superior skill" (p. 36).

It is hardly surprising that Kaufmann calls for a return to requirements and is not afraid to use the noun "discipline" (though he does not go as far as Aristotle who said that all real education involves pain.) Kaufmann thinks that all college students should show some competence in math, in the art of reading and writing simple lucid prose, and in knowing comparative religion. He offers some provocative model syllabi for the last item, including a course based just on Genesis and various myths of creation. Good teaching, he claims, is demanding teaching. While it might be fine to tell children how wonderful their sketches are, or how wise any particular hunch might be, a real teacher knows that even a child will cease getting satisfaction unless he can trace improvement against an objective standard. To be indulgent is always to be popular with the mindless, and now we are coming upon the occasional professor who gives credit for sheer class "participation." (Kaufmann cynically notes that the very faculty who adopt the "hip" student culture and play the "guru" role would be the most likely to become learned technocrats

(Continued On Page 5)

Defending the Defendable

by Gary Greenberg

Walter Block has written a book, *DEFENDING THE UNDEFENDABLE* (Fleet Press). To read the Libertarian Press, one would think the sky is falling. Moralistic Chicken Littles churn out didactic book reviews as the steam from the letters columns leave many a publication limp and clammy.

What is it about this book? One quasi-libertarian fellow traveler, triggered by Walter's book, felt compelled to publicly announce his resignation from the Libertarian Movement. A heavy weight libertarian scholar and award winning philosopher, fresh from a ringing speech at the LP National Convention, in which he chided the membership for rejecting a gay candidate just because he could be controversial, is reported to have said in a less public assemblage, that Walter's book was too controversial to permit him to be an LP veep candidate. Anti-Libertarian Party types who think the LP compromises its principles by downplaying unpopular positions, attack the book on the ground that it

brings up unpopular libertarian positions.

This reaction, by the way, is in response to a book that has been warmly received by Hayek, Rothbard, Browne and a host of Libertarian heroes (no joke intended.)

Portions of Walter's book have appeared, prior to its publication, as a series of essays in various libertarian journals. In one of its pre-publication incarnations, *The Blackmailer as Hero*, I wrote a critical response in the Libertarian Forum. The theme of Block's book is that there are many people whose heroism consists of persevering in activities which, though they do not initiate force or fraud against anyone, are in violation of harsh and oppressive laws. Persons at home in this category include pimps, loan sharks, slumlords, blackmailers and male chauvinist pigs.

(Continued On Page 8)

Higher Education

(Continued From Page 4)

once the academic winds changed).

This is not to say that professors are not in a quandary but it is a very different one. Their dissertations are often trivial, yet they insist on recruiting colleagues who share their expertise and enthusiasm for such crucial research fields as the brain of a leech! As with O'Toole, he speaks of faculty members so arrogant that they "patronize authors whom they might more fittingly read on their knees."

Yet if some scholarship is too esoteric, and if some teachers neglect their students, it is not in anyone's interest—student included—for the faculty to halt all research. It is, as Kaufmann notes, often appalling what a professor can get away with saying in class, and it is essential that he receive criticism from other scholars.

To elaborate on such advice can be both banal and pretentious. Perhaps the main task is to see what problems exist and to face up to the fact that we do have these problems. As Nock wrote, "Even when...diagnosis...reveals the case as hopeless in any one circumstance, it affords at least the melancholy satisfaction of knowing just where one stands."¹¹

How to overcome the cynicism of O'Toole and the follies portrayed by Adams and Kaufmann? Genuine commitment, and a recovery of a sense of calling, cannot be inculcated by others, least of all by ringing declarations calling for a return to either "standards" or to the "humanistic tradition." Nock, in the long run (and for Nock this meant over the centuries), was optimistic. Society he said, simply cannot go on living without returning to the Great Tradition of humanistic education. He wrote in 1931, "Whole societies may disallow it and set it at nought, as ours has done; they may try to live by ways of their own, by bread alone, by bread and buncombe, by riches and power, by economic exploitation, by intensive industrialism, quantity-production, by what you please; but in the end they will find, as so many societies have already found, that they must return and seek the regenerative power of the Great Tradition, or lapse into decay and death."¹²

From the vantage point of the 1970's, all seems futile. Yet a few islands of sanity and civility, of questioning and the humane life, can usually be preserved—in a nation, in a region, in an institution. In the past such isolated learning communities as Iona and Monte Cassino, and such isolated scholars as Jerome and Augustine, left the West with a heritage to which it still must respond. If all else fails, an "inner monasticism" and the rigorous tutoring of a handful of serious students must be our task—and it is not without some genuine joy.

NOTES

¹ LeGrand Richards, *A Marvellous Work And A Wonder* (Salt Lake City: Deseret Book Company, 1973).

² The now-neglected anthology, *The Case for Basic Education* (James D. Koerner, ed; Boston: Little Brown, 1959), deplored the curricular erosion in secondary school; the model syllabi within this work present

the student with an education superior to that offered in some universities today. Albert Jay Nock, of course, saw Latin, Greek, and mathematics as the staples of a good secondary education. In college one covered the classics in their mother tongue, math up through the differential calculus, formal logic, and the formation and growth of the English language. A mind so trained, he said, could deal with any problems from the vantage point of centuries. Nock also wrote that "a just care for words, a reasonable precision in nomenclature, is of great help in maintaining one's intellectual integrity," and he questioned the very use of the term "college" and "university" for institutions (including all American ones) that had abdicated teaching of the Great Tradition of the humanities for mere instrumental and vocation training. See *The Theory of Education in the United States* (New York: Harcourt Brace, 1932), pp. 51, 61, 120.

³ Nock, p. 5; Everett Dean Martin, "Liberal Education vs. Propaganda" (orig. 1926; Wichita: Center for Independent Education, 1977), p. 5; Walter Lippmann, "Education vs. Western Civilization" (orig. 1941; Wichita: CIE, 1976); Dorothy L. Sayers, "The Lost Tools of Learning" (orig. 1948; Wichita: CIE, 1977).

⁴ Cornelius Howard Patton and Walter Taylor Field, *Eight O'Clock Chapel* (Boston: Houghton Mifflin, 1927).

⁵ Paul Woodring, *The Higher Learning in America: A Reassessment* (New York: McGraw-Hill, 1968), p. 38.

⁶ Nock, p. 55.

⁷ *Ibid.*, p. 78.

⁸ Core programs, if genuinely interdisciplinary, convey more than a body of information. They teach students how to relate disciplines to each other, thus showing the essential unity of learning. Extended over four years of student life, and most students need a full four years of college, they can draw upon the increasing intellectual maturity expected of upperclassmen. They therefore dispel the silly notion that general education is something to get over with so that one can begin the "real business" of majoring in a specialty. (In some institutions a major is still expected). Faculty can educate each other on things more significant than calendar reform and trade union demands. What historian, for instance, who teaches provocative works in sociology, economics, and political science can fail to have a better understanding of his own subject? See James A. Storing, "A Modern Design for a General and Liberal Education on a College Campus," *Journal of General Education* Vol. 18 (Oct. 1966), 155-162.

⁹ For Goldwin's writing, see "The Future of Liberal Education," *Educational Record* (1976), 111-115, and such unpublished speeches as "Address at a Celebration of the New, New College," February 2, 1975; "Commencement Address to New College of the University of South Florida," June 11, 1977; and "Commencement Address to Virginia Wesleyan College," May 21, 1977. The quotations from Bell and Goldwin and the Euclid story are from the 1975 address.

¹⁰ Kaufmann tries not to stack the deck: he admits that "many visionaries have fixed ideas that are not particularly fruitful; and many scholastics are by no means unimaginative drudges but perform tasks that are badly needed." See *Future*, p. 8.

¹¹ Nock, p. 4.

¹² *Ibid.*, p. 157. □

Toward a Libertarian Theory of Abortion

by Walter Block

There are, perhaps, more serious problems than abortion facing our society. But there are none which raise such grave philosophical problems—nor which so greatly threaten to tear our society apart.

In all other cases—war, inflation, unemployment, nuclear proliferation, pollution—we all agree at least to the extent of opposing the threat. There may be little agreement as to the best means of eliminating the danger, or of the proper trade off between one evil and another, but at least there is no support for the menace itself. Where are the proponents of war, sickness, disaster?

The situation with respect to abortion is different. Here, two groups are arrayed against each other, with irreconcilable positions on ends, not just means. Each takes an explicitly ethical stand and holds the other guilty of severe criminality.

On one hand are those who would legalize abortion, on the ground that women have the right to control what grows in their bodies. On the other hand are the anti-abortionists, who consider the practice to be first degree, premeditated murder. One would have to go back to the days of the pro and anti-slavery moments in the first half of the 19th century to find a public issue even remotely as vexing. And we all know the result of that controversy. It therefore behooves us to search mightily for ways to reconcile these seemingly irreconcilable positions.

What is the best way to approach the bewildering maze of arguments in which the philosophical controversy is shrouded? The answer is: from a perspective which is consistently based on human rights, justice and liberty—the libertarian philosophy. In what is to follow, then, I intend to state the fundamental axiom of libertarianism, set forth several obvious facts about abortion, and deduce from these few premises the libertarian theory of abortion.

The basic libertarian postulate is that it is improper to threaten or commit violence against a person or his property, unless he himself is an initiator of such violence. In other words, one may legitimately use force only defensively, or in retaliation, but not otherwise. Human rights to one's own person, and to one's own property (property rights) are sacrosanct. They are, or rather ought to be, free from any and all interference.

Bearing these basic postulates in mind, let us consider the following points:

1. The foetus is a human life.

The foetus is alive. If cut, it bleeds. If bludgeoned it dies. If left unmoled, it takes in oxygen, imbibes food, defecates, urinates, and performs all other bodily functions. It satisfies every existing criteria for "life".

And surely, the foetus is human. Well, it's not a chipmunk, or a raccoon or a giraffe, is it? What else could it be if not human? The conclusion is clear: the foetus is an alive human being. Killing a foetus is therefore murder.

What of the position, held by many pro-abortionists, that the foetus is a potential, but not an actual, human being? This is a view easier to state than to defend. If it is claimed that something is a potential x, as opposed to an actual x, it must be shown why, and in what way, the thing is not an x now. This the proponents of the position have not done. Indeed they cannot.

Is the foetus only a potential human being because it is helpless and unconscious? But then sick or comatose adults could not be considered human beings either. Is the foetus only a potential human being because it is small, frail and weak? But then midgets could not be considered human beings either. Is it because the foetus is a "parasite" completely dependent on its "host" for sustenance? But the same can be said for many hospital patients, who are obviously alive. Is it because the foetus is inside, and completely dependent upon an "artificial" (what could be more natural) environment? Then what of all the people who could not exist outside and apart from oxygen tents, kidney machine hook-ups, etc?

And what about premature babies and hemophiliac children who cannot live outside of their especially constructed environments?

No. The foetus is not a potential human being, it's an actual one. This goes for the foetus right before birth, six months before, three months before, three weeks before, and, if cognizance be taken of logic, the foetus is human life, a human being, immediately after fertilization, in the two cell stage of development!! (before this, of course, there is no human life; there are only two separate cells, the egg and the sperm. This is why contraception is not equivalent to killing a human being).

2. The foetus which issues from rape has the same rights as any other foetus.

In discussions about abortion exceptions are commonly made for rape cases. Thus, it is claimed that when pregnancy takes place as the result of forced intercourse, abortion is justified.

This line of argument entirely misconstrues the problem. The question of abortion is entirely one of settling the seemingly conflicting rights between the mother and the foetus. The father is entirely irrelevant! It does not matter one whit how the baby was conceived, voluntarily or involuntarily: every foetus, no matter how created, is a living human being.

There is no rational or humane way to distinguish between them, allowing some to live and others to be killed. The foetus conceived in rape is as human or as alive as any other foetus.

Logic, then, compels us to conclude that it has as many (or as few) rights as any other. A correct view of abortion must consider the rights of all foetuses as equal.

3. The foetus may be a trespasser.

Suppose a Karen Anne Quinlan suddenly materializes in someone's living room comatose and helpless. All the "authorities" are called but no one is willing to take her away. What rights, duties, obligations, responsibilities fall upon the host?

In the libertarian view, the host has no positive obligations to come to her aid. Now it may be nice, it may be "the only decent thing to do", but the host is not duty bound to provide sustenance. This is, because, in the libertarian philosophy, each person is sovereign, owing nothing not voluntarily agreed to (except, of course, for the obligation not to initiate violence, which applies to each of us whether or not we have consented).

This might seem excessively cruel. After all, Ms. Quinlan is in need of help. Nevertheless the host has no obligation to help her. If anything, the host should be the least liable member of society; for he has already made a contribution: his house has sheltered her and is continuing to do so while a decision is being made about what to do with her; no one else has contributed anything (except perhaps griping that the owner of the house should continue to support her.) Suppose the comatose person clings to life for decades. Would the host have to feed and care for her until she dies a natural death? Suppose he can't afford the expense. Is he a criminal? No. However important human life is in the libertarian world view, no one may be incarcerated for failing to come to the aid of the helpless. One may only be jailed for attacking innocent people.

So what should the host do? He is not obligated to care for the stricken person. But neither may he kill her. If other people are willing to accept responsibility for the victim, the host may notify them. If there is an equivalent of the "church steps" or the public meeting place where unwanted were commonly left for people to pick them up, our home owner may carry the victim there. May he tie her to his car, and drag her along the road? Is he allowed to stab her, or slit her throat? No. Even though the victim is dying and may not survive the trip in any case the host may do none of these things, for they are murder, and murder is not permitted under the libertarian code. What he can do, is transport her to the "church steps" or the modern equivalent, in as gentle a manner as

(Continued On Page 7)

Libertarian Theory —

(Continued From Page 6)

possible. He is not required to keep her alive, but he may not kill her.

Notice that our argument is not based in any way on the so-called right to life. The victim has no such right; nor does anyone else. There are rights to liberty, and to the pursuit of happiness, but there is no "right to life" itself. A Robinson Crusoe who has the misfortune to be shipwrecked alone on a desert island, and starves to death there, has not had any of his rights violated. He had no right to life in the first place. If he did, and was accidentally shipwrecked and starved to death, than all the rest of us are guilty of murder. For every right implies an obligation. If anyone has a right to life, then everyone else has an obligation to keep that person, alive. If we do not do so—if he dies, for any reason, including old age—we are guilty of violating his right, i.e., we are guilty of murder.

What does all this have to do with abortion? The foetus, if uninvited and unwelcome, is to the pregnant woman what Karen Ann Quinlan would be to the home-owner: a trespasser. If the home owner and the pregnant woman volunteer themselves as ongoing caretakers and as hosts, then Quinlan and the foetus are treasured guests, but if unwelcome they are both trespassers.

Now many people might accept this characterization when applied to an adult Karen Ann Quinlan. Although unfortunate, she is an unwelcome guest, especially if she just materializes in someone's living room. But the foetus, it will be objected, is different. Let us consider the following criticism: "O.K. I agree. There are no positive obligations incumbent upon people that are not first voluntarily agreed to. There are no rights to life. Fine. But goddammit, didn't the woman who voluntarily engaged in sexual intercourse explicitly, or at least implicitly, agree to bear the child, at least for the term of pregnancy? How can the foetus be a trespasser, for goodness sakes, when the woman invited it into her womb, by voluntarily taking part in the sex act, and knowing that one of the likely effects of such activities is pregnancy?"

This objection will not stand up, for it introduces a double standard that is insupportable, a standard based on considerations extrinsic to the foetus itself. The morality of abortion must be decided on the basis of the nature of the foetus, not on the basis of how it came into being. We have shown that all foetuses are, morally speaking, on the same level. Regardless of the circumstances of their conception, they are all alive and human. Therefore, they have the same rights. Thus a view which claims that a foetus conceived by rape may be killed while a foetus conceived by voluntary sex may not is moral nonsense.

No, we will stand by our position. Since foetuses are dependent on the owner of the womb in which they reside, they derive their status from that owner's attitude toward them. If the owner (mother) does not want them, they are trespassers; it doesn't matter whether or not they were invited in the first place. The woman, like the homeowner, has the final say and is not obliged to provide a long term sanctuary. A guest may be asked to leave. A foetus may be removed.

This does not mean that a person may invite someone out for an airplane ride and then, while 10,000 feet up in the air, say "Oh, by the way, the invitation was for 5 minutes only; and guess what? The 5 minutes are up right . . . now . . . So out you go. Toodle-oo, Cheerio." No, this would be fraud at an almost ludicrous level. On the other hand, a dinner guest has no right to insist upon a nine month visit! Even if voluntary pregnancy is interpreted as an "invitation" to the foetus, the mother is not compelled to stretch out the invitation for the full term.

Moreover, there are grave problems with the view that the women engaging in voluntary sexual intercourse makes an implicit contract (of invitation) with the foetus.

When A (the woman) agrees with B (the man) to an act that produces C (the foetus), this cannot be construed as an agreement with C, who doesn't even exist at the time of the agreement between A and B. A person cannot enter into a contract with someone who doesn't exist. How do we know that the non-existing person, C, agrees to the contract? A person cannot agree to be given birth to!

Abortion then is justified because if the foetus is unwelcome it then becomes a trespasser inside the mother's body. Since slavery is improper, the mother cannot legitimately be made a slave of the foetus and forced to accept its unwelcome trespass within her. Abortion is

justified because continued unwilling pregnancy is a violation of the mother's rights to her own body.

4. The life boat situation.

As a trespasser, the foetus may be removed, or aborted. But, as in the Quinlan case, the trespasser must be removed with as much care and gentleness as possible. It is extremely unfortunate that due to the proper exercise of rights, a death will occur. (Given the state of the medical arts, there is, at present, no known way to abort the foetus, however careful, that will still maintain its life.) The foetus will die. A unique individual HUMAN BEING, a potential Mozart, Einstein or Mises, precious to all mankind, will have died. This is a terrible tragedy, not something to be lightly considered. The death of every human being diminishes us all if only in view of potential contributions gone forever. Nevertheless, the reasoning is clear, and we must follow wherever it takes us.

I suggest that the abortion question gives our society so much trouble because it has not been recognized as a classical "life boat" situation. In cases of this sort, as the name implies, there exist the means to save the lives of only some of the people involved. Thus, we are necessarily faced with unappealing alternatives.

The cases which fit the life-boat model are those in which mother and foetus cannot both survive. To save the mother's life, the foetus must die. To save the foetus, the mother must die. Clearly even if we believe in the "right to life", that belief would not help us decide what to do. For abortion would be as pro-life as non-abortion. Fortunately, the "right to life" argument is an unnecessary as it is unhelpful.

All foetuses, despite the manner in which they were conceived, or the consequences of their existence for their mothers, have identically equal rights and equal status. In all cases,* the foetus is a dependent guest and may be expelled at the discretion of the mother. If the mother's life is threatened, she may abort the foetus. But she may also have an abortion for any other reason which seems compelling to her.

*voluntary, healthy pregnancy, rape-induced pregnancy, medically contra-indicated pregnancy

5. The trespassing foetus should be removed in the gentlest manner possible.

So far, though we started with the seemingly anti-abortion premise that the foetus is HUMAN LIFE, we have come to pro-abortion conclusions. But this is not the end of the matter. We must reverse field once again. Our conclusion may be unwelcome to pro-abortionists and anti-abortionists alike.

If and when medical science devises a method of abortion which does not kill the foetus (this has already come to pass in some limited cases) then it would be murder to abort in any other way. It would be murder, and it would have to be punished as infanticide. One would be no more justified in aborting in a death-causing manner than in slitting the throat of a Karen Ann Quinlan.

If the life-preserving method cost appreciably more than the life-destroying one, and the mother was unwilling or unable to take on the additional expense, she would have no positive obligation to preserve the foetus' life. But she would have to determine, by reasonable public notice, whether anyone else was willing to put up the necessary funds. If they were, and she refused, she would again be guilty of murder. It is only if no one else was willing to pay the additional amount of money that the baby might legitimately be killed.

If the method could be used only at a certain state of pregnancy, the woman would not be required to maintain the foetus until then. She would have the right to remove the trespassing foetus immediately, just as she does now. Only if the life-saving method could be used at the time the woman wishes to have an abortion, would she be obliged to use it.

This conclusion may present problems for the victims of rape, incest, etc., as well as for women who simply change their minds. The rape victim may see it as particularly onerous to have to give life to the progeny of the hated rapist. But it is not a matter of choice for her! Just as a woman may not properly kill an infant child of a man she has come to hate, so a woman may not properly kill the offspring of a rapist, if there is a technique of abortion that can preserve its life. She would not be obliged to maintain it, of course, but neither would she have the right to kill it, if it could be removed alive. Child of rape, incest, both or neither, the foetus would have its chance to live. □

Defendable — (Continued From Page 5)

For reasons apparently rooted in objectivist aesthetics, Mickey Spillane aside, Walter's greatest sin was to label the above individuals as "heroes". I'm sure Walter doesn't believe the denizens of his Dark Impulse Disneyland are heroes either. But even if he does, so what? Calling these people "heroes" was merely poetic license designed to stimulate the reading and discussion of his work. As a tactic it was certainly successful. It is one of the most talked about books in libertarian circles and reportedly selling well. I daresay that if not for this one gimmick, the book would have burst onto the market with all the obscurity it so richly deserves.

That is not to say that much of what's in the book isn't worth reading. Block is an extremely competent and incisive economist. Though his style is poor his examples are rich. He knows how to get at the nub of a problem and skillfully apply libertarian principles and economic analysis.

Unfortunately, there are important problems with Block's book. The major criticism of his work would have to be his definitions of various characters. Block defines his characters in terms of their nonaggressive characteristics, while blotting out the criminal elements of his subjects. (This isn't true of all the characters, just several of them.)

Consider for example the slumlord. By means of this device Block provides useful analysis of the benefits of low cost—low quality housing. But the term Slumlord would encompass someone who refuses to live up to the terms of a lease requiring heat and hot water. Block would deny that the latter act constitutes a Slumlord action, because it is an initiation of force.

In point of fact, Block fails to deliver on the promise of the title. The book defends the defendable. He does not demonstrate that the slumlord is good, he merely demonstrates that not all landlords should be classified as slumlords. This is an important achievement. Just as Block fails to recognize the negative, the public fails to recognize the positive.

Many of Block's assumptions are also in error and some of his reviewers make equally erroneous assumptions as a response. Consider the section on the right of an employer to pinch his secretary's fanny. Block says it is implicit in the contract that the boss can pinch the fanny. The feminist reviewer, indignant at such a demeaning situation, counters that there is no basis for saying that the boss has such a right. Both are wrong.

The boss has hired an employee. Surely the boss can request the right to pinch his secretary's fanny when he hires her. It might even be an item of negotiation. But in most employment situations, the peripheries of the job definitions are left undefined and handled in an ad hoc manner. In Block's example, there was a failure to have a meeting of the minds. This occurred because neither assumed that the other had a different and incompatible definition of the job. However, at the first pinch the issue will be resolved. Either the boss yields to the secretary's desires or the

secretary has to choose whether to stay or leave. If she stays, pinching is part of the job, if she leaves then her secretarial duties do not include fanny pinching. But there will be no position available to her with this employer because she does not have the requisites required by the employer.

A major objection raised against this book is that it gives libertarianism a bad name. I cannot accept this argument.

In the first place, this book is no *Atlas Shrugged* or *Human Action*. At best, it is only an extremely minor work in the libertarian library. Secondly, amid the huge number of books published by Libertarians, no one book, however bad or inadequate, is going to break the movement. And thirdly, in the improbable event that this book has any kind of substantial recognition outside the libertarian movement it can only help.

Books don't sell well unless people find them interesting. If Block's book is dismissed, it is merely his book that is dismissed, not the movement. To the extent that people reject the ideas in Block's book they are rejecting Libertarianism.

The bottom line of libertarianism must be defined and made available to the curious, and thus, while some would confine his book to the pits, Block has established the bottom line loud and clear. One cannot come away from Block's book without knowing the true implications of libertarian theory. If the great unwashed reject Libertarianism because of Block's book, then they weren't libertarian prospects in the first place and it's a good thing that Walter Block has told them the truth.

Block's book is essentially a litmus test. The movement cannot survive if its mass rejects the essential message of *Defending the Undefendable*. □

Bakke Case — (Continued From Page 1)

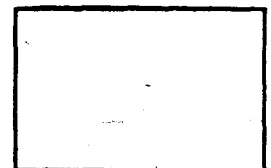
of minorities, and virtually everyone is a member of one (e.g. blond-haired Albanian-Americans), and even though WASPS are minorities too, only blacks and Latinos can achieve this much-coveted status. Sometimes, oddly enough, women are considered "a minority", even though women are actually in the majority. Chinese-Americans, not being poor enough, are not considered to be a "minority". Indeed, they have been officially designated as "whites."

"Ethnics." A code word for any group which believes in the Real Presence, that is various groups of Catholics and Greek and Russian Orthodox. The ethnics are the conservatives' answer to the leftists' favoritism to the minorities.

"Jews". Neither minority nor ethnic, Jews, like Chinese-Americans, have been relegated to the status of "honorary WASPS." □

SUBSCRIBE NOW			
Please enter a subscription for:			
Name	_____		
Street	_____		
City	State	Zip	
_____	_____	_____	
Subscription Is \$8.00 Per Year			
\$15.00 Two Years			
Libertarian Forum Associate Subscription \$15.00 Or More.			
THE LIBERTARIAN FORUM			
Box 341	Madison Square Station		
New York, New York 10010			

The Libertarian Forum
 BOX 341
 MADISON SQUARE STATION
 NEW YORK, NEW YORK 10010



First Class

Published Every Month. Subscription Rates: \$8.00 Per Year; \$15.00 Two Years