

EDITOR

Thomas Fleming

MANAGING EDITOR

Theodore Pappas

SENIOR EDITOR, BOOKS

Chilton Williamson, Jr.

EDITORIAL ASSISTANT

Christine Haynes

ART DIRECTOR

Anna Mycek-Wodecki

CONTRIBUTING EDITORS

John W. Aldridge, Harold O.J. Brown, Katherine Dalton, Samuel Francis, George Garrett, E. Christian Kopff, Clyde Wilson

CORRESPONDING EDITORS

Janet Scott Barlow, Bill Kauffman, John Shelton Reed, David R. Slavitt

EDITORIAL SECRETARY

Leann Dobbs

PUBLISHER

Allan C. Carlson

PUBLICATION DIRECTOR

Guy C. Reffett

COMPOSITION MANAGER

Anita Fedora

CIRCULATION MANAGER

Rochelle Frank

A publication of The Rockford Institute.  
 Editorial and Advertising Offices:  
 934 North Main Street, Rockford, IL 61103.  
 Editorial Phone: (815) 964-5054.  
 Advertising Phone: (815) 964-5811.  
 Subscription Department: P.O. Box 800,  
 Mount Morris, IL 61054. Call 1-800-877-5459.  
 For information on advertising in *Chronicles*,  
 please call Rochelle Frank at (815) 964-5811.

U.S.A. Newsstand Distribution by Eastern News  
 Distributors, Inc., 1130 Cleveland Road,  
 Sandusky, OH 44870.

Copyright © 1993 by The Rockford Institute.  
 All rights reserved.

*Chronicles* (ISSN 0887-5731) is published  
 monthly for \$24 per year by The Rockford  
 Institute, 934 North Main Street, Rockford,  
 IL 61103-7061. Second-class postage paid  
 at Rockford, IL and additional mailing offices.  
 POSTMASTER: Send address changes to  
*Chronicles*, P.O. Box 800, Mount Morris,  
 IL 61054.

The views expressed in *Chronicles* are the  
 authors' alone and do not necessarily reflect  
 the views of The Rockford Institute or of its  
 directors. Unsolicited manuscripts cannot be  
 returned unless accompanied by a self-addressed  
 stamped envelope.

**Chronicles**  
A MAGAZINE OF AMERICAN CULTURE

Vol. 17, No. 5 May 1993

Printed in the United States of America

On 'Banding'

"Banding" as a successor to race-norming (Cultural Revolutions, January 1993) is even more pernicious than Robert G. Holland suggests. Proponents of banding make it sound benign enough. Rather than pretend we can rate people within 100 gradations, we use fewer grades. Schools frequently use letters "A" through "D" for grading, movie reviewers award up to four stars, and men in singles bars rate women on a scale of one to ten.

What the banders don't want us to know is that they borrow from the grade inflation endemic during the Vietnam War that kept men in school and safe from the draft. In this case they hyper-

inflate grades so that almost any minority test-taker can get a high score. This system was actually used in an examination for police officers in New York City, supposedly to satisfy the state constitution's requirement that the merit system determine civil service eligibility. Prior to this the city had spent over \$100,000 to develop a test that was "culturally unbiased." The results of that test were no more favorable to minorities than the old "biased" variety. One high-ranking civil service official was fired for having testified before the city counsel that even illiterates could pass the test.

—David Kahn  
 New York, NY

CULTURAL REVOLUTIONS

RON BROWN was recently blasted by an organ that is usually quite friendly to Democrats, the *New York Times*. Its editorial page blasted Brown's confirmation hearing for Commerce Secretary as a "bipartisan disgrace," claiming it "amounted to an open declaration that companies with strong Democratic connections reserve the right to continue the attitude of greed that prevails in Washington." The key issue was Brown's and other appointees' business ties to Japanese corporations. Clinton's economic team has the duty to promote American business interests, even though many of its members have made their fortunes doing just the opposite.

Republican members of the committee might have grilled Brown to strengthen the ethical standards of the new administration or to at least score partisan points. But they didn't. The Reagan and Bush administrations had been shot through with the same kind of foreign connections. Though the two parties may not be able to agree on the color of the sky, their leaders all know the color of the money that saturates the capital.

This is not the first time American

leaders have been under heavy foreign influence. During the Revolutionary War, the Continental Congress was under the thumb of the French ambassador. The Chevalier de la Luzerne supplemented his persuasive skills with lavish parties, gifts, and loans. Congress was mesmerized into granting France the right to negotiate the peace terms with England. As the eminent diplomatic historian Samuel Flagg Bemis put it, "Never in history had one people more trustingly or innocently submitted its fate to the disposal of a foreign power." Congress did not realize that America's ally was willing to sacrifice the United States for its own interests.

Had negotiators John Adams and John Jay not suspected the danger and ignored their instructions from Congress, the French might have gotten away with penning the United States behind the Allegheny Mountains. Instead, Adams and Jay focused on the country's needs, took matters into their own hands, and thus gained a line on the Mississippi River, opening the entire continent to eventual American expansion. Theirs was one of the greatest triumphs of American diplomacy,

though today they would probably be targets of a special prosecutor.

Economics, according to the followers of classical liberalism, is not supposed to be part of the high politics of international relations like territory or alliances. The doctrine of "free trade" forms the basis of their lack of concern for the role of foreign money in American society, a blind spot they maintain even when the money is directly linked to politics and national policymaking. Yet the original classical liberal economists were writing at the dawn of the Industrial Revolution and could not see its implications. However, it might have occurred to them that this was a development that would greatly accelerate trends already apparent from the commercial and military revolutions of the 16th and 17th centuries. Of those liberals who did see this trend, the response was not that of visionaries, but rather of reactionaries, harking back to a premodern era already two centuries past when religious and dynastic concerns dominated high politics and economics were too underdeveloped to have much bearing on events. They hoped economics could continue to be isolated from other concerns. Their intellectual heirs still drag these dead notions around, displaying a tenacity for irrelevance unmatched except perhaps among the Marxists.

While economic issues per se have not caused many wars, the strength of national economies has made the difference between victory and defeat in those major conflicts that have determined the balance of power in the world. Thus wise statesmen have never been able to ignore the economic trends that could undermine the ability of their nation to control its own fate. Unfortunately, statesmen are at a premium in a system that so lavishly rewards political opportunists.

America's Founding Fathers counted more than their share of statesmen among them. They learned that allies may have common enemies, but not common goals. The same holds true with regard to Japan today. It should not be surprising that new challenges can come from old allies. Though the Soviet Union presented a grave military threat, communism was never a serious rival to capitalism. Only another capitalist power can pose an economic threat.

The Japanese are strongly nationalis-

tic. They have had to struggle for everything they have. Japan was "opened" by American warships, and its people were thrown into world affairs as the industrial West carved a sphere of influence in Asia. Japan's leaders converted their land from potential prey to Great Power predator in record time. As the noted scholar of Asian philosophies Tom Cleary has written, "There is no practical way to overlook the military rule and martial culture that have dominated Japan for many centuries, virtually up to the present day." The basic symbol of the sword may now mean computer chips rather than battleships, but the desire for victory has not diminished.

"The way of the warrior" came to Japan from ancient China. At the end of the Ming Dynasty an unknown author distilled the essence of this philosophy in a set of mnemonic phrases known as *The Thirty-Six Stratagems*. Several pertain to the current situation and are taken from Cleary's 1992 book *The Japanese Art of War: Understanding the Culture of Strategy*.

"Hide a sword in a smile. You ingratiate yourself with enemies, inducing them to trust you. When you have their confidence, you can move against them in secret." Alliances can be used to cover subversion.

"Let them climb the roof, then take away the ladder. You maneuver enemies into a point of no return by baiting them with what look like advantages and opportunities." Tokyo has used the sophistry of "free trade" well in this regard, playing on the shortsightedness of Americans to penetrate deeply into key industries. Our continued trade and budget deficits merely strengthen the leverage of Japanese financiers.

"To capture the brigands, capture their kind. When confronted with a massive opposition, you take aim at its central leadership." This can certainly be seen in Washington, where Japan's financial net has been thrown wide to ensnare as much of the American political establishment as possible. Since the United States is inherently stronger, Tokyo must prevent a concerted American effort to regain global predominance.

The Japanese have contributed large sums to politicians and policy groups that promote "free trade" ideology, just as the old Soviet Union gave money to American communists. The only difference is that Japan wants others to be-

lieve in an ideology it rejects for itself. Otherwise, it's the same old story. When foreigners dump money into the policymaking process, it is to promote their interests, not ours.

—William R. Hawkins

**NAFTA**—the North American Free Trade Agreement—is not unlike the notorious star chamber, where the king and counsellors of medieval England secretly meted out justice without concern for precedent. If Congress approves NAFTA, George Bush's proudest diplomatic achievement, Americans can expect a heavy dose of star-chamber-style justice in the 21st century.

For the average citizen, NAFTA is a formidable document. It extends some two thousand pages and reads with all the elegance of a mortgage contract. Behind the cumbersome sentences and passive verbs lie revolutionary concepts cloaked in innocuous words. At first glance, Article 20 (relating to dispute-settlement procedures) appears a harmless monument to the drafting skills of disciplined international lawyers. But a closer reading reveals the mischievous fingerprints of incremental internationalists, the modern-day gnomes of Switzerland who sit around Geneva drafting codes for the New World Economic Order. Indeed, the spirit of Geneva runs rampant at the U.S. Trade Representative's Office in Washington. To write NAFTA, the gnomes of USTR drew heavily on dispute-resolution proposals advanced in the Uruguay Round deliberations of the General Agreement on Tariffs and Trade. Eager to rationalize and harmonize international trading practices, they have done the legal equivalent of reinventing the wheel. They have revived the medieval star chamber.

Instead of relying on an independent and impartial judicial system based on established law, NAFTA's Article 20 gives extraordinary latitude to ad hoc dispute-settlement panels. NAFTA panels have authority to conduct hearings away from the glare of public opinion. Hearings, deliberations, and reports will all remain confidential, except to governments. Indeed, final panel reports need not be published. The five-member panels are not composed of experienced and independent justices insulated from popular passions and politics, like United States courts. Instead, the

panelists are appointees, selected from a roster of lawyers and trade experts, for temporary assignment. Most of them are individuals beholden to governments and special interests for future employment.

Nor does precedent bind their decisions. Mexican and American law have different origins. The former reflects the Napoleonic imprint of statutes; the latter, the English Common Law. Thus, there is no common body of law, except for the agreement, and Article 20 makes no reference to national precedents. The panels are thereby free to write and shape international trade law as their free spirits direct.

If the miserable experience of dispute-settlement panels in the Free Trade Agreement with Canada is any indicator, the panels will not hesitate to improvise and interpret the law as they choose. A similar United States-Canada panel recently demonstrated the extraordinary power of such bodies when it reinterpreted American countervailing duty law and reversed a Department of Commerce decision in a case involving swine imports from Canada. Had the case gone to the United States Court of International Trade, not the binational panel, it would have been subjected to a narrower standard of review, with the court examining only whether the Department of Commerce had acted reasonably in applying the law.

Americans should not dismiss NAFTA panels as toothless tigers in the fictional jungle of international commercial law. For they may soon prevail over domestic courts and encroach on the authority of Congress and individual states. They may reapportion sovereignty between states and the federal government, upset the separation of powers among the three branches of federal government, and subordinate the independent federal judiciary to the law of NAFTA. Once a NAFTA panel submits its finding, governments party to the dispute must resolve the conflict either by removing measures not conforming to NAFTA or by paying compensation.

Article 20, in particular, has far-reaching implications for the 50 states. Traditionally, as a result of the Tenth Amendment and its “commerce clause,” states have regulated banks and insurance companies and set standards for licensing services and professionals.

As a consequence of NAFTA, they may soon have to treat Mexicans and Canadians the same as Americans as well as offer them equal opportunities to compete.

Another specific NAFTA provision, Annex 2004, has even more ominous significance. Annex 2004 allows a party to NAFTA to invoke dispute settlement when it believes a measure to be inconsistent with the agreement or an impairment to benefits it could reasonably have expected to accrue. In essence, if Mexico thinks one of the 50 states is doing something to hinder gains it might have anticipated, it can insist on dispute settlement—relying on the caprice of panels. Environmentalists and consumer activists, as well as conservatives, interpret this provision as a usurpation of state rights. Indeed, NAFTA could eliminate experimentation of any kind—liberal or conservative—at local levels in response to complaints from foreign citizens.

From a larger historical perspective, NAFTA is a classic example of how unelected officials can employ treaties and international agreements to modify the United States Constitution without the approval of three-fourths of state legislatures and two-thirds of Congress. Years ago both the Antifederalists and Ohio Senator John Bricker recognized this problem. At the end of the Constitutional Convention of 1787, Virginia delegate George Mason voiced apprehension that the Senate could “sell the whole country by means of Treaties.” (He overlooked presidential complicity.) Mason’s concern acquired real meaning in 1920 when the Supreme Court ruled in *Missouri v. Holland* that a treaty with Great Britain to regulate the flow of migratory birds overrode Tenth Amendment powers reserved to states.

A generation later in 1953, Bricker, a conservative Ohio Republican, placed the issue on the national agenda. He proposed a constitutional amendment declaring that treaties and executive agreements could become effective as internal law only when implemented through legislation valid in the absence of the treaty. Aimed at the excesses of internationalism and the United Nations system, Bricker’s amendment encountered vigorous opposition from President Dwight Eisenhower. Ike feared Bricker’s amendment would undercut presidential authority to conduct

foreign affairs and so impair his efforts in the Cold War.

Forty years after Senator Bricker fought unsuccessfully to protect the states from executive usurpation, external conditions have changed. The Cold War seems over. Now, what John Adams termed the “spirit of Commerce” drives national policy. Policymakers in Washington, responding to the needs of *Fortune* 500 firms, promote access to global markets for goods, services, and investments. To guard against expropriation and other forms of discrimination, they seek binding dispute-settlement mechanisms involving binational panels, not local judiciaries. These incremental internationalists promote harmonization to vitiate parochialism and nationalism.

It is well-known that sauce for the goose is also sauce for the gander. In exchange for due process and impartial decision-making for American companies in Mexico, the diplomatic architects of economic internationalism offer like treatment for Mexicans in the United States. Mexican firms gain “national treatment” and the right to establish banks and insurance companies and to perform a host of services in the United States. Internationalists thereby cavalierly trade off domestic economic interests and constitutional rights to benefit large American investors eager to exploit opportunities in Mexico.

A persuasive case can be made for improving economic cooperation with Mexico. Indeed, without “help” from political leaders a single continental market is emerging of its own volition. NAFTA is not the solution. With its star-chamber-style dispute-settlement panels, NAFTA so mutilates the United States Constitution that a reputable lexicographer might insist on truthful labeling. Call it “SHAFTA.”

—Alfred E. Eckes

**OBITER DICTA:** This month we are happy to report on the publication of a couple of books by *Chronicles* contributors John Shelton Reed and Kit Reed. John Shelton Reed’s *My Tears Spoiled My Aim and Other Reflections on Southern Culture* was recently released by the University of Missouri Press. A professor of sociology at the University of North Carolina, Chapel Hill, Mr. Reed has been a corresponding editor for *Chronicles* for several years. Following on the

heels of his highly successful collection of essays *Whistling Dixie: Dispatches from the South*. Mr. Reed's new book promises to be characteristically entertaining and instructive.

Kit Reed's new collection of short

stories, *Thief of Lives*, was also published by the University of Missouri Press. Her fourth book of short stories, *Thief of Lives* brings together an eclectic mix of Ms. Reed's work, some of which (like "The Garden Club" and "Fourth of

July") first appeared in *Chronicles*. Ms. Reed, who is also the author of 12 novels, was recently commended as "a resourceful and often witty writer" in a review of her new collection for the *New York Times Book Review*.

---

## Principalities & Powers

---

by Samuel Francis

### Gangbusters

In *The Killer Angels*, Michael Saara's novel about the battle of Gettysburg, there is a character named Colonel Arthur Fremantle, a British military observer attached to the Confederate forces. In part a comic figure, Fremantle is perpetually perplexed by Americans in general and Southerners in particular, and he painfully worries himself and others with his seldom-very-acute perceptions. One thing he can't understand is why all the Southerners he meets are always so polite, and when he finally figures it out, he explains his discovery to General Lewis Armistead, who later recounts it to his colleagues. "That Fremantle is kind of funny," says Armistead. "He said that we Southerners were the most polite people he'd ever met, but then he noticed we all of us carry guns all the time, wherever we went, and he figured that maybe that was why."

For once, Colonel Fremantle may have hit upon an important truth, one that pertains not only to the antebellum South but also to human society in general. Armed societies are courteous societies, and many of history's most heavily armed social orders besides the Old South—those of the ancient Greeks, medieval European knights, Japanese Samurai, Renaissance courtiers, and barely literate cowboys on the American frontier—have also been noted for the elaborate rituals of courtesy and chivalry they practiced. The word "chivalry" itself, now a synonym for the old-fashioned style of deportment at which the emancipated strumpets of President Clinton's Cabinet and house-

hold snort, derives from the code of the human battle tanks that rode horseback in the Middle Ages. The reason for the relationship between good weapons and common courtesy ought to be clear. With just about everyone you meet clanking a sword or packing a pistol, you'd better mind your manners, and your manners had better be highly formalized in clearly defined, normative patterns of conduct that leave no doubt about the benevolence of your intentions and the innocence of your behavior.

The converse also appears to be true. The society of late 20th-century America is perhaps the first in human history where most grown men do not routinely bear arms on their persons and boys are not regularly raised from childhood to learn skill in the use of some kind of weapon, either for community or personal defense—club or spear, broadsword or longbow, rifle or Bowie knife. Ours also happens to be one of the rudest and crudest societies in history, having jubilantly swept most of the etiquette of speech, table, dress, hospitality, regard for fairness, deference to authority, and the relations of male and female and child and elder under the fraying and filthy carpet of politically convenient illusions. With little fear of physical reprisal, Americans can be as loud, gross, disrespectful, pushy, and negligent as they please. Yet if more people carried rapiers at their belts or revolvers on their hips, it's a fair bet you'd be able to go to a movie and enjoy the dialogue from the screen without having to endure the small talk, family gossip, and assorted bodily noises that many theater audiences these days regularly emit.

The prospect of a society in which you can put a bullet between the eyes of drivers who grab a parking space for which you've been waiting or meet under the oaks at dawn characters who bray sexual and scatological slang in the hearing of your wife and children in restaurants will no doubt strike most Americans today as brutal, but the fact is that that is precisely how most societies in human history have disciplined themselves. For the most part, of course, bloodshed over such slights did not occur, because the slights themselves did not take place and because most people knew the price they might have to pay for indulging in the ethic of Me First and What's Yours Is Negotiable. Today, discourtesy is commonplace precisely because there is no price to pay for it. Habitual rudeness is too trivial a disruption of the social bond for even the ubiquitous American megastate to notice or control, and if it becomes too unbearable for the dwindling number of Americans who are repelled by it to stomach, they simply avoid locations where they're likely to encounter it. They move to the suburbs, which they perhaps imagine are the last redoubts of safety and civility, places where they won't have to fight to defend themselves or the way of life they prefer and where they can rely on somebody else to fight for them.

But in the last year or so, there have been indications that even that escape fantasy is being denied to Middle Americans as criminals and their close predecessors on the evolutionary tree of incivility, just plain boors, pursue them beyond the city limits. Last summer in suburban Maryland, a woman who was driving her preschool child to a daycare