

were for purposes not within these enumerated powers. Thus 70 percent of all taxes collected for that year are unconstitutional.

The suit also debunks the myth that Congress has power under the Commerce Clause to tax in order to fund programs not otherwise within the enumerated powers, such as many of today's social welfare programs. To the Framers, "commerce among the states" meant *trade among* the states, not manufacturing, mining, agriculture, retailing, or other activities *within* states—activities that all *precede* trade *among* the states. As Professor Richard Epstein of the University of Chicago Law School has shown, it makes no sense textually to say that "commerce" means manufacturing, agriculture, or any other activity that precedes trade:

One should assume that the word commerce . . . bears the same meaning with respect to each of its objects. . . . What possible sense does it make as a matter of ordinary English to say that Congress can regulate 'manufacturing with foreign nations, or with Indian tribes' or for that matter 'manufacturing among the several states'?

Only if "trade" is substituted for "commerce" does the Commerce Clause make sense: "Congress shall have power . . . to regulate trade with foreign nations and trade among the states, and trade with Indian tribes."

The tax refund suit got a big boost from a recent decision of the Supreme Court. About ten days after the suit was filed, the Court declared in *United States v. Lopez* that there actually are limits on the commerce power. Perhaps the most important statement in the case came in Justice Clarence Thomas's concurrence, where he complained, "The [Commerce Clause] power we have accorded Congress has swallowed Article One, Section 8."

Justice Holmes once said, "Great cases, like hard cases, make bad law." The tax refund case is at once both a great and a hard case. It is a great case not just because the amount of money in question is astronomical, higher than any other in legal history, and because it involves a question common to all federal taxpayers, but because it seeks to reverse more than 60 years of federally mandated social engineering and to revitalize

the simple, founding principle that the government has no more power than that specifically given it in the Constitution.

Douglass H. Bartley is a tax lawyer in Milwaukee. Contributions toward defraying the expenses of this suit are welcome (757 North Broadway, Suite 500, Milwaukee, Wisconsin, 53202), as is help from interested counsel.

L I T E R A T U R E

Kiddy Lit for the 90's

by Herb London

Children's books used to relate tales of heroes and villains. They presented a Manichaeian world in which good triumphed over evil. Children might be scared, but they were assured that the forces of light could easily be distinguished from the forces of evil. Well, that scenario of yesteryear has been replaced by a very different condition today.

The 1994 Newberry medal for the "best" children's book went to Lois Lowry for *The Giver*. This is a tale about a hypothetical community in which issues of suicide, euthanasia, and mental telepathy are emphasized. Characters in this novel reside in a controlled community with narrowly defined roles of birthmothers, caretakers, nurturers, laborers, and givers. The government determines the number of children per family. In the House of the Old, leaders decide when a person is to be released (read: put to death). At the Ceremony of Release, there is a toast, and a goodbye speech given by the person released. When twins are born, only one is allowed to live. Invariably, the smaller twin is "released" with a lethal injection. On one occasion, a 12-year-old objects to the practice, but he is mollified by a Giver who points out that her daughter asked to be released ten years earlier and was given a syringe to inject herself.

In one California school system, several parents complained about the use of this book in an elementary school, charging that it was insensitive to the value of life. These parents were told that "public education may not be the best choice for them." I agree. What conceivable benefit is there for youngsters in a book of this kind? Are ten-year-olds prepared to make judgments about euthanasia?

Clearly, what once inspired, now inflames. What was once the axial standard for moral behavior in Horatio Alger, *Toodles, The Little Engine That Could*, has been converted into amorality. After all, teachers and librarians now ask whether, in this complicated world, we even have a *right* to tell children how to conduct themselves.

My reply is that you have a right and an *obligation* to do so. Teachers have an obligation to select books that provide a moral basis for good behavior. Homer is a better guide for the future than Ms. Lowry, and no matter what the rationalizers say, virtue must be cultivated. The good must defend itself not merely against the bad, but against the indifferent, the complacent, and the relative.

If the myths in our culture are derived merely from the pragmatic, then "anything goes" is the lyric for social discourse. Children cannot be expected to make philosophical judgments without a grounding in what is right and what is wrong, what is good and what is bad. To assume, as contemporary pedagogues do, that students can arrive at sensible judgments through the exchange of opinions about controversial issues is wrongheaded. Critical-mindedness does not occur in a vacuum. Students must have a knowledge of morality in order to make moral decisions.

Unfortunately, the democratic idea that the free exchange of opinion will inevitably yield truth is betrayed by a different reality. The free exchange of *intelligent* opinion may lead inexorably to truth, but *only* if the opinions have value. In our era, we have debased this notion with a belief in all opinions and a reliance on the pedagogical idea that any controversial notion should be the subject of class discussion. Is it any wonder Johnny can't read, Mary can't add, and neither can distinguish between right and wrong?

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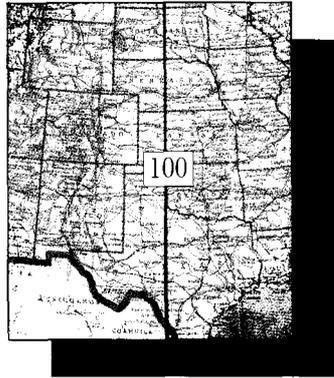
The Hundredth Meridian

by Chilton Williamson, Jr.

Elk Country

As the supernatural world is eternally at work behind events in the natural world, so the world of man-in-nature continues to operate behind the synthetic, abstracted, and unreal world of man-outside-of-nature. For that reason alone, I shall always hunt elk. (Though of course, I really don't need any reason.)

On the afternoon before the start of season, I rode past the busy hunting camps along Fontenelle Creek, among them Kovaches' 25-man Army tent guyed in a stand of tall aspen. Ten or 12 years ago, when I was still learning the country, I had hunted with John and Jim Kovach, riding the mountains all day on sheepherders' horses borrowed from the Taliaferro ranch and returning at night to John's elk-heart stews cooked with milk, potatoes, and sliced onions. Since that time, all but one of the Kovach brothers has moved out of the area, John to Flagstaff, Arizona, where he nearly lost his life when a chainsaw kicked back on him, splintering his rib cage and cutting up his heart like a jigsaw puzzle. Now, alone save for the mare beneath me, I forded the creek at the crossing and ascended the West Bear Trap trail in the smoky light of a dying October afternoon to make camp under the red steps of Indian Ridge, within a stand of limber pine at 9,080 feet. As we approached the site, the mare unprompted stepped from the trail, walked between the trees to the fire ring I had built years before, and halted with her nose against the familiar pine trunk, where I snubbed her short and unloaded the packs. An hour and a quarter of light remained. I raised the tent in the oval clearing, removed the rocks from the ash and added them to the ring, and went in search of wood for a fire. The dead lower boughs of a nearby pine made smears the color of dried blood on the blue twilight of the forest. I gathered several of these brushes and laid them over a handful of twigs in the bottom of the fire pit. They exploded in flame at the touch of a match, and I threw on some larger sticks from the pile that remained from the year before. While the conflagration burned down to coals I removed the cook pots from the



horse packs, and the eating utensils as well. Tonight instead of elk-heart stew there were canned chili and beef stew to choose from. I opened the stew with my camp knife and scraped the contents into the battered, carboned pot. Somewhere in the timbered hole not far from here an old boar bear has his den. I tossed the empty can and the greasy lid with it onto the fire, so as to put temptation beyond him. Finally I took the fifth of Jim Beam from the pack and poured a finger or so of whiskey. It tasted all right, but failed to exhilarate. While I drank, I set the stew pot on the fire and ate a hurried meal while the mare grazed at the end of her picket line. When I finished eating I cleaned the pot with boiling water and a rag, retied the mare to the tree, undressed to my longjohns inside the tent, and got into the sleeping bag. Though it was early still for sleep, today was over. Tomorrow at daybreak I was going to hunt bulls.

The mare stood without stamping through the night. At dawn the air was still, the brooding wilderness hushed. I took a long drink of cold water from a poly bottle and walked away from camp with the rifle at a few minutes before seven, moving carefully through the blue dusk with the morning star over my left shoulder toward the rise of cliff that blocked the final stars. A tired half moon tipped in the western sky signaled another fine Indian summer day, dryer and warmer than preferred for hunting. As the sun rose behind me I glassed the ridge from a polished log before slipping along its rocky base into the trees, where without warning the elk smell jumped at me like a startled overpowering herd from the massed black trunks of the forest. Almost at once I cut fresh sign, the

tracks nearly indistinguishable on the forest floor but the droppings still moist and slick. I bent to finger the pellets and heard a sound like a hammer striking a wooden plank: a rifle shot, miles to the northeast and far below. I listened, but heard no more shooting. Following the game trail for half a mile, I found much sign but no animals, not even in the grassy openings where elk often linger to graze after sunrise. There were plenty of elk in the forest, some of them perhaps observing me as I paused, but approaching them in the timber without tracking snow or another hunter to work with me would be very difficult. The tops of the trees were still in the windless morning. I hunted my way back to camp under a small bombardment of pine cones tossed by the chattering red squirrels that flowed up and down the tree trunks and along the branches, picketed the mare, and built up the fire to boil coffee and plan out the day's hunt. I had just poured a second cup when an orange coat bobbed up from a gulley 100 yards away, and beneath it a large man with a gray beard, wearing an orange coat with a camouflage pattern in it and a rifle over his shoulder. I offered him coffee, which he refused politely. "Where do you get water for your horse?" he asked. I showed him on the map how to find the spring on the west slope of Indian Ridge. "I guess we'll go deeper in then," he said. "I ain't cut any fresh sign this morning. Must be because there ain't no water here. No use huntin' 'em where they ain't at." I nodded sympathetically, but did not mention the sign I had found in the timber. "Where are your horses?" "Oh, just over there." He gestured vaguely at the trees on the other side of the trail, from which I understood that he and his party had tied up only a few hundred yards away. We wished one another luck, and he walked off in the direction he had indicated. He was scarcely out of sight when a volley of shots rang out behind Indian Ridge; it was followed by a pause, then another volley, and finally by spaced but nevertheless sustained shooting. I tossed what was left of the coffee over the coals, seized the rifle from a tree branch, and, leaving the mare to graze on the picket, ran toward the cliff with my orange coat flapping from

JANUARY 1996/49