the Reform Party is largely centered over the issue of property. But then he said that we agree that we don't want this issue decided by the national media or by national politicians. And that, I thought, was a very profound comment. The things we disagree on do not necessarily have to be decided at the macro level. We can work out our own arrangements, we can have our own debates, and that's a lot healthier.

On his own micro level, Smith enjoys life in Washington, D.C.—not the official Washington of lobbyists and lawmakers, but the pleasant backwater below it: "this has been a wonderful city for me. It's been a wonderful place to raise kids. . . . It's got a nice pleasant pace to it, as long as you're not striving to get too much power or striving to make too much money." And if you are? "One of the things I notice about people in power in Washington is how rootless many of them are. It's been said that they're the sort of people that when they're in a room by themselves, there's no one there."

"One of the things I do these days," he tells me,

> is talk to groups of younger activists. And one of the things missing today is the idea that seemed normal to me, as a child of the existential period and a product of a Quaker education, that you have to make choices, whether the times are good or bad. . . . I was talking in a bookstore in Maine, and a guy who was about 30 came up to me afterwards. He said to me, "I came in late to your talk, and I heard you talking about choice. And I assumed you were talking about abortion. You know, you really ought to be careful using that word, because people might misunderstand you."

I interject: "And you said, 'No, I was talking about school vouchers.'"

He laughs, politely, then returns to his story. "But that really set me off thinking. And I realized, choice for young people is a choice of consumption, a choice of association; the idea that it is a constant moral activity is not very strong. . . . Matthew Arnold talked about living in two worlds, one dead and the other not able to be born. That's the sort of sense you have of this time."

*Jesse Walker writes from Washington, D.C.*

## GOVERNMENT

# Territorial Bliss

*by Joseph E. Fallon*

One consequence of the Cold War has gone unnoticed. Before the Berlin Wall fell and the Soviet Union collapsed, the United States had already ceased to exist. To fight the Cold War and in the name of national security, Washington had destroyed the political structure created by the U.S. Constitution—the well-defined union of states, which regardless of territorial size, population, or date of admission, possessed equal powers—and replaced it with an ambiguous political system composed of 50 states and a hierarchy of eight ethnic/race-based territories.

Historically, a territory was a temporary political status granted to land administered by the federal government as long as the population was too small and scattered to govern as a state. Under the Northwest Ordinance of 1787, states were to be carved out of existing territories and admitted to the union on the basis of political equality with the original 13 states. This occurred with the Northwest Territory, Southwest Territory, Louisiana Territory, Oregon Territory, and the Mexican Cession.

Since territorial status was temporary, those which did not become states became independent countries or were transferred, in whole or part, to a foreign power. Examples of the former are Cuba in 1903 and the Philippines in 1946. Examples of the latter are the northwest portion of the Louisiana Territory (1818), the northeast portion of Maine (1842), the northern half of the Oregon Territory (1846), and a third of the Alaskan panhandle (1903)—all of which were transferred to the United Kingdom; Okinawa, which was transferred to Japan (1972); and the Panama Canal and Canal Zone Territory, which were transferred to Panama (1978, to be completed by 1999).

Beginning with the establishment of the "Commonwealth" of Puerto Rico in 1952, all this changed. Citing the "doctrine of incorporation" (a theory promulgated by the U.S. Supreme Court between 1901 and 1922, according to which the U.S. Constitution does not fully apply to a territory until it is "incorporated" into the union) and Article IV, Section 3 of the U.S. Constitution ("Congress shall have all power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"), Congress radically altered the political structure created by the Constitution. Unlike states, territories became *de facto* ethnic-based polities that exercise political powers denied to the states.

In descending order of official status, these territories consist of: three "free associations" (the Federated States of Micronesia and the Marshall Islands, both established in 1986, and Palau, established in 1993), two "commonwealths" (Puerto Rico, established in 1952, and the Northern Marianas, established in 1986), two "organized" territories whose structure of government was created by congressional legislation known as an organic act (Guam, established in 1950, and the U.S. Virgin Islands, established in 1936, revised in 1954), and one "unorganized" territory whose structure of government was created through local legislation (American Samoa, established in 1960).

"Free association" is officially recognized by the United Nations as an alternative to independence for a trust territory, and this status allows the local population the maximum degree of self-government while insuring that the former administrative power continues to finance and defend that territory. This status could only be conferred upon the Federated States of Micronesia, the Marshall Islands, and Palau because they are the successor states to the United Nations Strategic Trust Territory of the Pacific Islands, which the United States administered from 1947 to 1993.

The term "commonwealth" as applied to a U.S. territory, however, is devoid of any legal meaning. In the *Examining Board* v. *Flores de Otero* (1976), the U.S. Supreme Court acknowledged that the commonwealth status of Puerto Rico "occupies a relationship with the United

States that has no parallel in our history." Congress was more direct. In its 1976 report, "The Covenant to Establish a Commonwealth of the Northern Mariana Islands," the Senate bluntly stated: "The term 'commonwealth' is not a word describing any single kind of political relationship or status." What this means in real terms is that, despite the differences in the scope of the political powers exercised by American Samoa, Guam, the Federated States of Micronesia, the Marshall Islands, the Northern Marianas, Palau, Puerto Rico, and the U.S. Virgin Islands, each possesses powers greater than the states.

The most important power Congress has awarded the territories is local control over immigration, a power denied to the states since 1875, when the federal government established direct regulation over immigration. Recognizing that immigration can have an adverse impact on the demographics of a land, Congress has given American Samoa, the Federated States of Micronesia, the Marshall Islands, the Northern Marianas, and Palau the right to control immigration to their territories so those islanders can preserve their ethnic, racial, and cultural identities.

When this power was abused, it only highlighted the superior political position enjoyed by the territories. In the Northern Marianas, local control over immigration has been exploited by an alliance of businesses and politicians to inundate the archipelago with Third World laborers, principally Chinese and Filipinos. As a result, Third World immigrants (usually working for less than minimum wage) now constitute 90 percent of the private labor force, while the unemployment rate for the native-born exceeds 14 percent.

Expressing concern over the adverse economic impact that Third World immigration is having on the local population, the Clinton administration has proposed that Congress abolish the Northern Marianas' right to control immigration to its islands, thus returning that power to Washington. Although Third World immigration to the 50 states is depressing the wages of native-born workers by $133 billion a year, displacing over two million native-born workers annually, and contributing to an unemployment rate for blacks that is twice the national average, this adverse economic impact elicits no such concern from the Clinton administration.

Congress has also permitted territories to enact land alienation laws—i.e., to place race-based restrictions on the ownership of land. In order to own land in the Federated States of Micronesia, the Marshall Islands, or Palau, one must be a citizen of that particular "republic," which, in effect, means one must belong to a specific ethnic group. One must meet a prescribed definition of island "descent" to own any land in the Northern Marianas and most land in American Samoa. Such racial restrictions on land ownership violate the equal protection clause and the privileges and immunities clause of the 14th Amendment, and the just compensation clause of the Fifth Amendment. Moreover, Congress grants the Federated States of Micronesia, the Marshall Islands, and Palau their own separate citizenship.

Congress also allows all eight territories separate representation in international organizations. American Samoa belongs to six international organizations; Guam, 14; the Federated States of Micronesia, 16; the Marshall Islands, 14; the Northern Marianas, nine; Palau, 12; Puerto Rico, 14; and the U.S. Virgin Islands, seven. For example, the Federated States of Micronesia, the Marshall Islands, and Palau are members of the United Nations; American Samoa, Guam, and the Northern Marianas have membership in the South Pacific Commission; Puerto Rico has membership and the U.S. Virgin Islands has observer status in the Caribbean Economic Community; and all eight territories are members of the International Olympic Committee. Such attributes of sovereignty are denied to the states.

Congress even permits the Northern Marianas to violate proportional representation in its legislature. The islands of Rota, Tinian, and Saipan are provided equal representation despite the fact that the population of Saipan is six times greater than the other two islands combined. Therefore, there is one Senator for 4,500 residents on Saipan, 400 residents on Rota, and 250 residents on Tinian. This violates the equal protection clause of the 14th and 15th Amendments. It also violates the U.S. Supreme Court decision in *Reynolds* v. *Sims* (1964), which ruled that both chambers of a bicameral legislature must be apportioned on the basis of population; otherwise, an individual's vote has been "in a substantial fashion diluted." The Court expressly declared "historical, economic, or other groups' interests, or area alone, do not justify deviation from the equal-proportion principle."

Congress permits American Samoa to limit membership in the upper chamber of its legislature to village chiefs (*matai*) chosen according to Samoan customs. This violates the privileges and immunities clause of the 14th Amendment by restricting the Senate to the Samoan nobility.

Finally, Congress permits American Samoa, Guam, Puerto Rico, the U.S. Virgin Islands, and even the District of Columbia to have delegates to the U.S. House of Representatives who can vote in its subcommittees, full committees, and caucuses. This practice violates the 14th Amendment. The votes of the citizens of the 50 states are "in a substantial fashion diluted" because the voting power of their elected representatives in the respective committees and caucuses has been adulterated. Although the delegates from these five "territories" do not vote on bills before the full House, by voting in the subcommittees, full committees, and caucuses they help determine what bills actually make it to the floor of the full House for such a vote.

Nor does the restructuring of the United States end here. There is the demand that Puerto Rico be given statehood—but a statehood with privileges. The current Resident Commissioner of Puerto Rico to the U.S. House of Representatives (and a former governor of the island), Carlos Romero-Barceló, advocates Puerto Rican statehood not on the basis of U.S. patriotism but on the bene-

fits of the welfare state. As he explained in *Statehood is for the Poor* (1978):

> If it were a state, Puerto Rico would be absolutely assured of enormous amounts of federal money—money the island needs in order to come to grips with its many problems. . . . Puerto Rico's per capita contribution to the federal treasury, were we a state, would come to less than that of any other state in the Union. At the same time, the per capita benefits we'd reap from federal aid programs would be greater than those of any other state in the Union. On top of all this, we'd also have seven or eight Puerto Ricans serving as full voting members of Congress, working up in Washington at all times to help draft and pass new and improved social welfare legislation.

This would be an unprecedented kind of statehood. As Romero-Barceló maintained then and now: "Yes, we want statehood, but neither our language nor our culture is negotiable."

The bill on Puerto Rican statehood recently passed by the U.S. House of Representatives, H.R. 856, does not mandate English as the official language of the new state—as was previously required for Arizona, Louisiana, New Mexico, and Oklahoma under the terms of their respective Enabling and Admission Acts. Should H.R. 856 become law, Congress will not possess the legal authority to require Puerto Rico to conduct any of its governmental activities in English. As the American Law Division of the Congressional Research Service wrote in October 1997: "Under existing precedents, its seems highly unlikely that Congress could under its legislative powers and acting only through a statute mandate that a State conducts its official affairs using a language of Congress' choosing." In other words, such flawed legislation as H.R. 856 would not only violate established congressional procedure, it would make the United States a *de facto* bilingual country. Puerto Rico would become for the United States what Quebec is for Canada.

Some proponents of statehood for Puerto Rico are even demanding that the island retain the powers over immigration and land alienation currently permitted to other territories. Still others openly proclaim their dedication to restructuring the United States into a federation of "nations." As lawyer, editor, and political activist Luis R. Dávila-Colón wrote in *The Supranational Union: An Evolving Model of Statehood for Twenty-First Century America*:

> The future admission of its overseas territories and the District of Columbia, as equal members of the Union, would lay the groundwork for a stronger Union and, perhaps in time, for the sharing of the American system of government with nations which may want to share *our* dreams, progress and democratic values. The notion that we have a living Constitution which adapts to the realities of a changing world, suggests to this writer, that the concept of "We The People . . ." may one day include as fully sovereign states, Black, Hispanic, Pacific, poor and not so poor Nations and societies, all willing to share a common Federal government.

Translation: The United States should become a colony of the Third World. Every country and dependency desirous of having unlimited access to the U.S. Treasury should be able to "join" the United States. And to facilitate the admittance of such new "states," the United States should abolish its language and culture, citizenship and laws, and be politically restructured into a "United Nations."

This "futurist" idea of a "supranational union" is as old as the Babylonian Empire. It has been revived many times throughout the 20th century—only to fail. Czechoslovakia, Ethiopia, Pakistan, Yugoslavia, and the Soviet Union have all disintegrated; Bosnia, Burma, China, India, Indonesia, Iran, Iraq, Sri Lanka, Sudan, and Turkey are only held together by armed force; and Canada and Belgium are peacefully careening toward electoral dissolution. Yet Congress is determined that the United States repeat this failed "experiment" and to that end has politically restructured the Union into a contradictory mix of polities, powers, and hierarchies.

In *The Federalist*, John Jay wrote: "It has often given me pleasure to observe, that Independent America was not composed of detached and distant territories, but that one connected, fertile, wide spreading country was the portion of our western sons of liberty." Two centuries later, these words no longer apply.

*Joseph E. Fallon writes from Rye, New York. This article is excerpted from the monograph, "Deconstructing America: Immigration, Nationality and Statehood," published by the Council for Social and Economic Studies.*

## GUNS

# Gun Sense and Sensibility

*by Dave Kopel*

When Senator Robert Kennedy was assassinated 30 years ago with a cheap imported handgun, I was among the many Americans who believed that America's "gun culture" was out of control. To me, it seemed obvious that all guns should be banned. At the least, a psychiatric test ought to be required for anybody who wanted to own a gun. Yet 30 years after a gunman deprived America of the chance to elect Robert Kennedy instead of the criminal Richard Nixon, I am writing my first gun rights column for *Chronicles*. And I feel especially comfortable writing about gun rights in "a magazine of American culture" because I've come to believe that gun ownership represents some of the very best of American culture. How did I get here from there?

In the coming months, I'll discuss not only the practical importance of firearms ownership—such as the public safety benefits of guns in the right hands—but I'll also examine the cultural aspects of guns in America: why some people love guns, and why others loathe them.

Regarding the latter group, some people believe, including many of the supporters of Sarah Brady's Handgun Control, Inc., that the use of force by anyone who is not a government employee is immoral. As Mrs. Brady states, "To me, the only reason for guns in civilian hands is for sporting purposes." James Brady agrees: asked by *Parade* magazine if private possession of handguns were defensible, he replied, "For target shooting, that's okay. Get a license and go to the