

demonstrates how this emergent populist-nationalism seeks to destroy individuality, pluralism, and democracy and instead champions unity, stability, and authoritarianism.

Tismaneanu's explanation of why collectivism has re-emerged in many post-communist states is worth quoting at length:

The end of communism has left individuals with a sense of loss: even if they hated their cage, it offered at least the advantage of stability and predictability. Like former prisoners, they now have freedoms but do not know exactly what to do with them. Under these circumstances, they are ready to espouse the rhetoric of the tribe with its emphasis on group identity and community values. The neurosis of the transition period, the collective fear of a general collapse, the closing of the historical horizon and the anger at the new economic barons nourish sentiments of revolt, distress, and intolerance. There is need to find scapegoats, to identify those culpable for the ongoing sorrows. The political myth of lost and reconquered ethnic unity serves precisely this purpose: to explain defeats and alienation and reassure the individual that he or she has a place within the *volkisch* community.

In the face of all this, Tismaneanu remains optimistic over the prospects of the liberal intellectual dissidents in the post-communist countries and their continued resistance against collectivist nationalism. The emergence of classical liberal institutions—a market economy, a fully flourishing civil society, and constitutional democracy—remains critically dependent on them.

I highly recommend this book. Those familiar with Ludwig von Mises's *Nation, State, and Economy: Contributions to the Politics and History of Our Time* will find in Tismaneanu's book a fascinating and probing updating to *our* time. □

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Out of Order

by Max Boot

Basic Books • 1998 • 252 pages • \$25.00

Reviewed by George C. Leef

Max Boot is a journalist and editor at the *Wall Street Journal* who has made a name for himself (and a lot of enemies) with his articles exposing the despicable practices of plaintiffs' lawyers who will do almost anything to squeeze money out of "deep pocket" defendants. With *Out of Order*, he turns his considerable writing and reportorial skills toward another facet of our legal system—judges. Once highly respected pillars of the community, the ranks of the black-robed contain, Boot argues, many who have little or no regard for justice. This is a serious problem that has received too little attention. Thus this is a welcome book.

The bad-judge problem has several facets. One that Boot addresses is partisan judges, ones who have an ingrained preference for certain litigants, lawyers, or causes, so that their courtrooms are about as fair as the Stalinist show trials of the 1930s. Plaintiffs' lawyers know who they are and naturally contrive to file suits in their courts. You have probably heard of the multimillion-dollar punitive damage awards in cases where there was truly no harm at all, such as the infamous repainted BMW case in Alabama. But how do these absurd instances of legal plunder ever get to trial at all?

The answer is that some judges—elected with copious amounts of money contributed by lawyers who will have cases before them—are unwilling to serve the interests of justice by dismissing suits that are transparently nothing more than legal extortion. Boot names names and gives the nasty details.

But the harm done by rogues who play favorites is minimal when compared to the harm done by another class of bad judges—those who have aided and abetted in the unconstitutional expansion of power of government. This has mainly been the work of the Supreme Court and the lower federal courts, many of whose members have been chosen

for their philosophy that the Constitution's restraints on governmental power should be "interpreted" in such a way as to give the Congress and President virtual carte blanche. This category includes judges who insist on amending the Constitution through creative interpretations. As an example, Boot cites Justice Ruth Bader Ginsburg—long an advocate of the vague, never ratified "Equal Rights Amendment"—who managed to smuggle it into the Constitution with her opinion in the Virginia Military Institute case.

Yet another facet of the bad-judge problem is the phenomenon of judges who regard themselves as potentates, taking over prison systems, ordering busing schemes, and even decreeing that taxes be raised for their utopian visions. Consider, for example, the Kansas City judge who decided that he was going to "equalize" educational opportunity by ordering an incredibly costly program of inner-city school construction, or the New York judge who ordered the City of Yonkers to build hundreds of units of low-income housing in middle-class neighborhoods. Power always attracts authoritarians. That judges can get away with a lot of tyranny bodes ill for the future.

Given that we have a judicial system infested with judges who are partisan and judges who use their positions to coercively reshape society, what are we to do? Boot discusses several ideas for ameliorating the problem. He suggests, for example, ending the practice of popular election of judges, which has had the unfortunate effect of putting justice up for sale—read his account of a race for the West Virginia Supreme Court. That might help, but it might just as well turn out like so many other attempts to clean up the political system and merely hide the problem.

Assume that judges were chosen through some other political mechanism. The special interest groups that have been getting the judges they want through elections will not give up their quest merely because we enact some reform statute. They will simply concentrate their efforts on influencing the new judicial selection method, perhaps by getting friendly faces appointed to the judicial selection board. Under a "reformed" system, it

may be even harder to identify judges who are puppets of organized labor or the plaintiffs' bar.

The bad-judge problem has the same roots as most of our other problems, which is to say, our over-politicized society. Trying to rein in partisan and Constitution-wrecking judges is, I fear, an exercise in futility as long as so many people see politics as a legitimate way of getting what they want.

But even if there is no easy remedy for the bad-judge problem, we still ought to be cognizant of it. *Out of Order* skillfully assists us. □

George Leef is book review editor of The Freeman.

A History of the American People

by Paul Johnson

HarperCollins Publishers • 1998 • xv + 1,088 pages
• \$35.00

Reviewed by Burton Folsom

The creation of the United States of America is the greatest of all human adventures. No other national story has such tremendous lessons, for the American people and for the rest of mankind." So begins Paul Johnson in his upbeat and first-rate *A History of the American People*.

As a British historian and non-academic, Johnson avoids the pitfalls of so many American historians. Academic historians in particular often impose a double straitjacket on U.S. history: first, that economic issues have been paramount in shaping American politics; and second, that government intervention in the American economy has been necessary and benign. Johnson disputes both of these points.

Johnson gives due attention to economic issues, but he also highlights the crucial role of religion in shaping American history. For example, he takes the Puritans seriously as men of ideas. Later, he analyzes the Great Awakening, the religious fervor of the 1740s. "The Great Awakening," Johnson argues, "was thus the proto-revolutionary event, the formative moment in American history, preceding the political drive for independence