

201005 OBITER DICTA: LATE JANUARY 2010
Steven Alan Samson

Sunday, January 24

[http://townhall.com/columnists/GeorgeWill/2010/01/24/mandate to moderate?page=full&comments=true](http://townhall.com/columnists/GeorgeWill/2010/01/24/mandate%20to%20moderate?page=full&comments=true)

George Will reflects on the curse (for the Obama Administration) of the filibuster-proof sixty-seat Democratic majority. When it came to the "serial purchases" of 60th votes for the health care package, the Administration went from Huey Long's "every man a king" to "every Democrat can be an extortionist." But, after all, such purchases are the essence of what Bastiat called "legal plunder." On the way to making it universal, a lot of it will continue to be used to prime the congressional pump and buy off various constituencies.

<http://pajamasmedia.com/rogerkimball/2009/03/26/planned-economy-or-planned-destruction-or-plus-ca-change/>

Along with at least one cartoon other I have seen, this Chicago Tribune cartoon from the early New Deal has been getting a lot of circulation. I hope someone can find a better print. The *Chicago Tribune* under Col. Robert McCormick went from Progressivism to a very tough-minded anti-New Deal editorial stance. In the lower left corner, of course, Trotsky is depicted as drawing up a revolutionary plan that is really a good summary of what became the New Left's Cloward/Piven strategy of the 1960s. Such is the power of a utopian idea that its time comes around again and again. As the old Shaker hymn puts it:

"To turn, turn will be our delight,
Till by turning, turning we come round right."

<http://www.chicagotribune.com/news/chi-classic-cartoons-gallery,0,4707428.cartoongallery?index=chi-three-pillars-cartoon>

Here is another cartoon by Casey Orr on pulling down the three pillars of the New Deal. Our new Administration seems to have a slogan of its own: Big Deal or Bust!

Monday 25

<http://www.telegraph.co.uk/news/worldnews/europe/7066898/Britains-working-time-directive-opt-out-under-threat.html>

The EU is throwing everything it can at Britain, just as I expect the Democrats to continue throwing everything at the Republicans here. BTW, the Heritage Foundation's 2010 Index of Economic Freedom index rates France as being far below the norm for Europe. But this should not be surprising. France will pull the rest down to the least common denominator. *Dirigisme* within the EU now has a new set of teeth.

<http://www.washingtonpost.com/wp-dyn/content/article/2010/01/24/AR2010012402379.html>

Bad news for Chavez is better news for the rest of the hemisphere.

Tuesday 26

http://townhall.com/columnists/PhyllisSchlafly/2010/01/26/the_real_loser_in_the_massachusetts_election?page=full&comments=true

Phyllis Schlafly details the degradation of the Democratic dogma (as Henry Adams called it) through the intellectual hegemony of a radical feminist ideology over the party's leadership. Although the Democrats may be throwing Martha Coakley under the bus, the fault lies not in the polls but in themselves. A century ago D. H. Lawrence contended that modern times were producing "cocksure women and hen-sure men." Today it appears that hardheaded feminists are producing a softheaded political class.

It would be the supreme irony if, in the end, the addle-pated political minions of radical feminist and socialist ideologues should prepare the way for a triumph of radical Islam. Perhaps a future historian will be inspired to chronicle the progress of feminism into its opposite: *From "Burn the Bra" to "Don the Burqa" in Six Decades or Less.*

<http://townhall.com/columnists/CalThomas/2010/01/26/personhood>

Cal Thomas remarks on the irony of treating corporations as persons whose civil rights the Supreme Court is bound to respect while unborn babies were demoted to nonperson status. So say the spiritual descendants of Roger Taney, who said in the Dred Scott Case that African-Americans "had no rights which the white man was bound to respect."

What is nearly as remarkable is that critics of the Supreme Court's latest decision fail to address the chief practical benefit of forming a corporate person: that its constituents enjoy the privilege of limited liability. Practically speaking, when the corporate person commits a crime, its members are protected from the full legal consequences that would beset the members of a mere partnership. It also means that the burden of debt may be shifted to the public purse, especially if a corporation is deemed "too big to fail." We invite the "corporate irresponsibility" about which we complain.

The problem is not so much with the Supreme Court's effort to protect First Amendment rights as in extending them to the front men for organizations that are designed to inhabit tax loopholes and who are not discouraged from behaving irresponsibly when they have little practical accountability to their members. This whole arrangement, which has turned elections into contests between corporate gladiators, is so well-established and seemingly inevitable that it is taken for granted. In today's partisan context, "creative thinking" is about how best to evade the law in order to get your placemen on the game board.

For all the advantages of corporations -- their economies of scale, global reach, luxuriant variety -- the logic of wholesale centralization they encourage is to crush out individuality and degrade customer service at the retail level. The end result is an erosion of practical, political, and ethical accountability. In

light of the decades-long political polarization of Washington politics, we would do well to meditate on Revelation 18. Are we prepared to drink from the cup of wrath? Our plunge into the invitingly dark waters of "identitarianism" - feminism, nationalism, socialism, libertinism, collectivism, totalitarianism - is a "return of the repressed," a regression into paganism. Here be dragons.

http://townhall.com/columnists/WThomasSmithJr/2010/01/25/rita_cosby_tells_story_of_her_father%e2%80%99s_wartime_service_in_the_polish_resistance?page=full&comments=true

Lest we forget: Here is a piece on the Medal of Honor convention in South Carolina.

Open Europe has sent out the following items (among several others) in today's daily press release. Contrary to the satirical title of Sinclair Lewis's novel imagining a fascist American future: *It Can Happen Here*. Perhaps the best tonic for the British public would be to have their Government prosecuted in the European Court of Justice before it is too late to do anything about this developing storm system, politically speaking. As Bob Dylan put it: "You don't need a weatherman to tell which way the wind blows."

Mats Persson: The last thing Europe needs is one-size-fits-all labour market rules

Writing in *The Parliament* magazine, Open Europe Director Mats Persson looks at the Spanish EU Presidency and argues, "[Spanish PM] Zapatero has vowed to revive the EU's 'social agenda' by turning the bloc into a 'factor of rights'. This is worrying. Decent and fair working conditions are essential but the last thing Europe needs right now is byzantine, one-size-fits-all labour market rules that fail to recognise the EU's diverse social models and country-specific circumstances."

[The Parliament OE research: Spanish EU Presidency](#)

Church leaders defeat Government over Equality Bill

The Government suffered an embarrassing defeat in the Lords yesterday over amendments to its controversial Equality Bill, the *Telegraph* and *Mail* report. The amendments, if adopted, would have meant religious groups could not discriminate on the grounds of sexuality or gender in employment. The amendments would have brought the UK into line with existing EU legislation, but were thrown out by peers in a vote by 216 to 178. The Equality Bill attempts to consolidate existing UK anti-discrimination legislation but, controversially, proposes changes to the rights of religious groups, who have been exempt from such regulations.

The *Telegraph* quotes Baroness O'Cathain, who led opposition to the amendments, saying: "This is the state trying to tell people who they can and can't employ". John Sentamu, the Archbishop of York, added to the argument, "Where are the court rulings that have shown that the law is defective? If it ain't broke, why fix it?"

The defeat now leaves the UK at odds with the EU Equal Treatment Directive and, according to Keith Porteous Wood, Executive Director of the National Secular Society, "It is now quite likely the Government will be prosecuted in the European Court of Justice."

[Telegraph Conservative Home Mail](#)

<http://blog.atimes.net/?p=1337>

The financial system appears to be rigged to make a buck by passing the buck. As usual in this Ponzi game of musical chairs, the taxpayer is left holding the bag. We the People should apply the "holder in due course" rule to all this bad debt, which we now own, by firing those who rigged the game and then start reclaiming the largesse that our unjust stewards have plundered. Real privatization based on genuine private ownership and political decentralization would be a good start in the right direction.

<http://www.forbes.com/forbes/2010/0208/opinions-law-constitution-courts-ideas-opinions.html>

"Are Class Action Lawsuits Unconstitutional?" Good question. Once again we must ask: Who, whom? Have the tactical advantages enjoyed by the beneficiaries of the limited liability regime created complications that lead to a proliferation of class action lawsuits? Regulations and lawsuits continually ratchet up the costs and risks of doing business, thus distorting markets and weakening their ability to correct. The danger is that all issues will be settled by whomever has the deepest pockets. Hence the perennial outcry against the political role played by corporations, which are creatures of the state.

Does the state tend to tip the scales of justice to one side when the privileges and subsidies it establishes shift the risks to another side? The clamor for justice from all sides leads to burgeoning regulation and litigation. The resulting pendulum swings illustrates Bergson's law of twofold frenzy. For example, the fellow servant rule of the 1830s tended to favor employers. Worker's compensation early in the twentieth century created an elaborate system of insurance that mechanically reapportioned the risks at the cost of a rather heartless measure of actuarial abstractions.

Do class action lawsuits ultimately serve the interests of the state - more jobs, more control -- as does the privilege of limited liability?

http://www.hoeyfarina.com/HFD5/ST272_newsletter.htm

Wednesday 27

One of my students forwarded the following letter about human trafficking, a practice that includes what is known as restavec or restavek slavery in Haiti. Since he encouraged me to share it, I have reproduced most of it below:

"Sadly, 15 children have gone missing at a Hospital in Haiti. I want to take the time to educate you all a little on human trafficking. It happens every day. The movie, Taken, is a great representation of how everything is played out to successfully traffic an individual, which is terrifying.

"The link <http://www.humantrafficking.org/organizations/448> is a great resource for connecting you to NGO's and Governmental Organizations that counter this insane occupation.

"1 to 2 million people are trafficked world wide every year. In the scale of organized crime, human trafficking ranks third behind drugs and arms smuggling.

(Asia Development Bank, Combating Trafficking of Woman and Children in South Asia)

"Most people find themselves trafficked after naively leaving their village to go to a city or leaving their country with the goal to survive and earn money for their families. For many, mostly woman and children, end up in the hands of human traffickers. (Asia Development Bank, Combating Trafficking of Women and Children in South Asia)

"The UN definition of trafficking in persons is:

"1. The recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons: by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:

2. Placing or holding such person(s), whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lives at the time of the original act described in 1." (Asia Development Bank, Combating Trafficking of Woman and Children in South Asia)

"Trafficking includes, but is not limited to as seen in the U.S.:

Message Parlors

Forced Labor

Sex Trade

Strip Clubs

Escort Services

Pornography

Child Labor/exploitation

domestic/factory workers

"This story was from today [January 22] about 4 hours ago:

Children going missing from Haiti hospitals: UNICEF

(AFP) - 2 hours ago

Children are going missing from hospitals in Haiti, raising fears that the youngsters are being trafficked for adoption abroad in the wake of the January 12 earthquake, the UN Children's Fund (UNICEF) said.

"We have documented let's say around 15 cases of children disappearing from hospitals and not with their own family at the time," said UNICEF adviser Jean Luc Legrand.

"UNICEF has been working in Haiti for many years and we knew the problem with the trade of children in Haiti which existed before, and unfortunately many of these trade networks have links with the international adoption 'market'," Legrand said.

<<http://www.humantrafficking.org/organizations/448>>

. . . .

<http://www.timesonline.co.uk/tol/news/environment/article7004936.ece>

As evidence of a cover-up emerges, fallout over the stolen e-mails at East Anglia University continues. Despite rules established by the Freedom of Information Act, outside scientists were denied access to raw data from the Climate Research Unit. The Information Commissioner's Office is considering whether to recommend revising the law so that prosecution in such cases can be initiated after the current six month limit.

http://townhall.com/columnists/TonyBlankley/2010/01/27/repeal_the_17th_amendment?page=full&comments=true

I share the author's sentiment -- repeal the 17th Amendment -- but I also wonder whether such an idea could ever develop political legs. Still, Tony Blankley is right when he concludes: "Only by changing the architecture of power will we change the shape and exercise of power." Yes, but those words also apply to many other parts of a Constitution that we continue to squander.

Thursday 28

http://www.realclearpolitics.com/articles/2010/01/27/republican_response_transcript_2009_obama_state_of_the_union_100078.html

Our new governor, Bob McDonnell, gave a well-crafted Republican response to the State of the Union address last night. If Republicans wish to lead they must clearly articulate specific ways to begin dismantling large portions of a bureaucracy that has been our greatest growth industry since the federal "alphabet soup" agencies began to proliferate during the early New Deal. At the end of the 1930s the Third New Deal reorganized the civil service system into a virtual political machine.

"Three score and ten years of this beneficent state are quite enough. Long before our vast regulatory empire becomes as moribund as the Soviet Union, which did not survive to celebrate its seventy-fifth birthday, we must redirect our energies into more productive channels and remove the federal shackles from health, education, welfare, commerce, agriculture, and energy. We must stop subsidizing, and thus stop imposing controls on, all sectors of the economy and society.

In *The Law*, Frederic Bastiat referred to the tendency of legal plunder to mature into a system of universal plunder. If anything, this trend has picked up pace since the end of the Cold War and the dawn of a new millennium. All that the Democrats seem to offer is a place at the table for everyone to devour a rapidly shrinking soufflé. More and more experts tell us that the robust economy of bygone days is now a thing of the past. If we accept the Democrats' vision of a less productive and shrinking working population bearing an unproductive and growing bureaucracy on its back, it will become a self-fulfilling prophecy. But as Charles Krauthammer has noted: "Decline is a choice."

Pericles, who launched the New Deal of ancient Athens with other people's money, is reported to have told his fellow citizens: "Your empire is now like a tyranny: it may have been wrong to take it, but it is certainly dangerous to let it go."

Down through history there have been many leaders like our current president who refused to be deterred from their "best laid plans" by the realities of budgetary limits. Pericles raided the Delian treasury to built monuments to his folly. Within a generation Athens had suffered military defeat and the glory that was Greece exited the historical stage. This president, along with many of his predecessors, seems determined to stay the course, but continued deficit spending can only lead to bankruptcy. Unrestrained cupidity first makes tyrants, then paupers, of us all.

Bankruptcy is upon us. Californians are now leaving their State of Penury in droves. Their Progressive California dreaming has become an insolvent nightmare. Unless we Americans are equally prepared to vote with our feet, we must take a collective stand against the exponential growth of a voracious political machine while we have the liberty to cast off its unequal yoke. We must cease being enthralled by promises, promises. We must redirect our priorities. As Solomon put it: "In all ways acknowledge him, and he shall direct thy paths" (Ps. 3:6).

<http://pajamasmedia.com/blog/just-how-leftist-has-the-democratic-party-become/?print=1>

Andy Wickersham returns to a study of congressional voting patterns published by *National Review* in 1996. Citing positions endorsed by the Americans for Democratic Action (a third-generation successor to the old Fabian-inspired Intercollegiate Socialist Society), the authors showed how far to the left Democratic members of Congress had moved between 1974 and 1995. Wickersham also notes that, by comparison with positions taken by the American Conservative Union, the voting patterns of so-called "blue dog" Democrats closely resemble those of their more avowedly liberal colleagues.

The handwriting is appearing on the wall. In coming months more Democrats are likely to race for higher ground before the next electoral wave can sweep them out of office. A surge through the Tidal Basin - a tempest in a Tea Party cup - might help clean out our Augean stables.

<http://pajamasmedia.com/michaelledeen/2010/01/27/the-pundits-join-the-revolution/?print=1>

Speaking of a surge: More commentators are now willing to publicly endorse the popular surge against the Iranian regime - while in official Washington there seldom is heard an encouraging word!

http://townhall.com/columnists/RossMackenzie/2010/01/28/quotables_by_coolidge,_eastwood,_tiger,_obama,_bush,_buffett,_etc?page=full&comments=true

I am passing along a grab bag of quotations. Some reveal a great deal about the authors' character. Calvin Coolidge is his usual plain-spoken self. Which of Coolidge's successors display more than a passing acquaintance with humility?

Open Europe Director Mats Persson is quoted in the *Express* saying, "MEPs already receive more than enough cash so there's no justification for this increase. If they want to be taken seriously by European taxpayers they have to cut back on their lavish habits, particularly as people continue to feel the pinch of the recession." Open Europe's Stephen Booth is quoted in

the *Telegraph* and by *The Parliament* saying, "The EU institutions are so out of touch with ordinary citizens that the prevailing culture in Brussels seems to be 'who cares, it's only taxpayers' money".

[Express](#) [Express: Leader](#) [Telegraph](#) [The Parliament](#) [Times](#) [OE blog](#)

Throughout the western world there is a growing populist reaction against political classes that are perceived as remote and out of touch with the people. In fact, many are perceived as hostile to ordinary people in the way the French Decadent poets were with their *épater le bourgeois* (shock the middle classes) attitude.

After I left Michigan, my former congressman, Guy Vander Jagt, a star of the Republican party and the keynote speaker at the 1980 Republican national convention, was defeated in the primary in 1992 by Peter Hoekstra, who campaigned against Vander Jagt for being out of touch. Hoekstra remains in Congress to this day. During that same campaign season, several prominent Democrats retired, which helped set the stage for the Republican takeover in 1994.

The growing anger of the electorate on both sides of the Atlantic should be heeded with care. Martha Coakley especially, but also Jon Corzine, who failed to fasten his seatbelt, were both perceived by ordinary voters as elitists and thus duly defeated by popular insurgencies. Given the trend lines, we should reflect on what history shows with regard to similarly out of touch ruling classes, such as the Bourbons prior to the French Revolution approached and later the restored Bourbons prior to the Revolution of 1830.

One of the oldest English popular sayings from the Middle Ages is a byproduct of the English Peasant Revolt of 1381: "When Adam delved, and Eve span/Who was then a gentleman?" The peasants knew that the division of society into classes had no ultimate basis in creation. As one account puts it: "The peasants felt oppressed and called for the abolition of feudal obligations - serfdom. They wanted freedom from servitude, controlled wages, and unfair taxes."

The complaints should sound familiar. Today's political class, Republican and Democrat alike, is perceived as being divorced from the people they are supposed to represent. The customary see-saw between the two parties is not what the electorate wants. Eventually, an anti-incumbency party is apt to emerge. If Ross Perot had launched such a party in 1992 and not temporarily dropped out of the race, the outcome that November might have been very different. A similar insurgency could turn out very differently the next time.

Friday 29

<http://gatesofvienna.blogspot.com/2010/01/oregons-california-state-of-mind.html#readfurther>

Envy sells. Pass the buck, raise the tax, stick it to the wealthy, and watch all the revenue disappear as taxpayers head for the exits. Once the land of opportunity, California is bleeding people to the tune of nearly 100,000 during the past fiscal year. To top it off, this new tax on wealth is retroactive to the start of last year. Is the Oregon electorate so dim as not to know what *ex post facto* means? Perhaps its cynical authors expect it to be struck down by the Supreme Court.

Saturday 30

http://townhall.com/columnists/CharlesKrauthammer/2010/01/29/soft_on_terror?page=full&comments=true

From the start, many Democrats have wished to treat terrorist acts as crimes rather than as acts of piracy or guerrilla-type operations. Early in our history our leaders dealt with the Barbary Coast pirates both militarily and diplomatically. The Lieber Code from the Civil War period was designed to address both the military and the legal issues entailed by guerrilla attacks. So the issues involved with terrorism are nothing new. Even so, this Administration is predisposed toward extending criminal procedural safeguards to non-citizens. Does it even have a strategy for dealing with exotic attacks like the one in Detroit? The air-pirate Abdulmuttalab had not even reached American soil at the time he was arrested and read his Miranda rights. This is the sort of globaloney that has given the world an International Criminal Court and given EU member states the European Court of Justice. Why has no one seen fit to chastise the federal authorities involved in this incident or publicly disavow the approach they took?

<http://azarmehr.blogspot.com/2010/01/what-i-didnt-know-yesterday.html>

These videos linked to this article report on the trial and execution in Iran of a young man, allegedly a member of an anti-government monarchist group, who was charged either with a) a bombing or b) participating in post-election street protests while he was languishing in prison. His pregnant sister, who was arrested in order to extort a confession from him, miscarried after her release. I reached this site through a link on Michael Ledeen's article, "Iran's Death Spiral Accelerates," at Pajamas Media today. Imprecations against the Iranian regime continue to mount along with the casualties it causes.

<http://www.drroyspencer.com/2009/07/rise-of-the-natural-climate-cycle-deniers/>

The attached discussion of what Roy Spencer calls revisionist climate history reminds me of the earlier idea of climax vegetation, which supposes an equilibrium that might be reached in the absence of human activity: in other words, Eden without Adam and Eve.

<http://www.danielpipes.org/7888/stand-with-geert-wilders>

Here is Daniel Pipes' tribute to Geert Wilders, whom he regards as Europe's most important leader today. Wilders is beset on all sides and needs to be hedged about by prayer. Given the demonization of Wilders by his opponents and a trial that supposed to resume in a few days, Wilders must summon up a degree of statesmanship that is rarely seen today. We often identify principled leaders only after they have directly faced and withstood violent opposition in order to reset the political agenda. We should hope that Wilders acquits himself with dignity and describes a clear way forward.

<http://www.danielpipes.org/7886/lawrence-of-arabia-american-strategist>

A brief discussion of how Gen. Petraeus lifted a few pages from Lawrence of Arabia's recipe book.

Sunday 31

<http://www.brusselsjournal.com/node/4281>

In reference to the forthcoming trial of PVV party leader Geert Wilders, three other European political figures were asked by Diana West to discuss what is at stake. All three believe that freedom of speech is in peril.

The Swiss politician Morten Messerschmidt got right to the heart of the matter: "What does Mr. Wilders crime consist of? He has made a short film which combines the words of the Koran with horrifying pictures of - among others - women victimized by the rigid sharia-laws. Furthermore he has been advocating that the Koran should be banned - but he has done so in a country where Hitler's 'Mein Kampf' has been banned since the end of the Second World War on the ground that it represents a violent ideology. And so does the Koran. I don't share the view that certain books should be banned; however, I respect Geert Wilder's right to publish his views in the media."

Diana West notes that there has been no appreciable American response to these developments: "Sadly, it remains the case that no US politicians speak with either the candor or understanding of the Islamic threat besetting the West that at least some of their European counterparts do."

In the absence of a politically responsible opposition, the danger is that Islamization may sweep unimpeded into the West's PC political vacuum and the reaction, once it occurs, may lead to civil warfare in places. One of the reactions to this piece, which featured a quotation by Rush Limbaugh, is worth sharing: "You know why there's a Second Amendment? In case the government fails to follow the first one."

All of this underscores something understood by Robert Bolt. In his play, *A Man for All Seasons*, Robert Bolt has Sir Thomas More respond to the kind of attitude that would suspend the law in order to protect against harm. Notwithstanding the protests of Roper, More allowed an agent of the king who had been spying on him to escape. More then remarked to his companion:

More: "And go he should, if he were the Devil himself, until he broke the law!"

Roper: "So, now you give the Devil the benefit of law!"

More: "Yes! What would you do? Cut a great road through the law to get after the Devil?"

Roper: "Yes, I'd cut down every law in England to do that!"

More: "Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down (and you're just the man to do it!), do you really think you could stand

upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!"

http://www.americanthinker.com/2010/01/the_islamic_republic_of_tortur.html

Outrages like those the protestors have been suffering in Iran -- torture, rape, murder -- will come home to roost in the West if it fails to speak out.

http://www.americanthinker.com/2010/01/whats_wrong_with_celebrating_1.html

Like Moses, Tim Tebow could be called "the boy who lived." This piece on the Heisman trophy winner is a good illustration of how vitally important it is to protect our First Amendment freedoms against PC critics who believe only in "freedom for me, not freedom for thee." Whether their target is Geert Wilders, who will stand trial for his film *Fitna* (and his campaign against the Islamization of Europe), or Focus on the Family for taking a stand in defense of life in the womb, dark political forces threaten to crush our liberties. Why? Why else than to spare the tender sensibilities and nagging consciences of those who take refuge in Roger Scruton's "culture of repudiation."

<http://pajamasmedia.com/blog/obamacare-rocks-the-dolt-vote/?print=1>

Judging from the "Rock the Vote" public service announcement linked to this essay, it appears that the sybaritic young Leftists of our "culture of repudiation" are prepared to repudiate sex for the sake of national health care. Bravo for the brave new Lysistrata! May I be the first to second their modest proposal and to confess that their vows of chastity may indeed greatly improve the lot of humanity, not to mention that of the future generations they fail to generate.

<http://pajamasmedia.com/blog/due-process-as-pandoras-box/?print=1>

Clayton Cramer briefly reviews the sad history of our Progressive loss of civil liberty. Any number of old and new works help explain the scope and sheer volume of bad constitutional interpretation. A good overview of some of ways we have short-circuited the Constitution through bad precedents is provided in Forrest McDonald's out-of-print *Constitutional History*, which I used for years in my American constitutional history classes.

An ill-advised and rare reversal of a precedent is the subject of the historian George Bancroft's *A Plea for the Constitution of the United States, Wounded in the House of Its Guardians* (1886). In *Juilliard v. Greenman* (1884), the Court revisited its original constitutional ban on greenbacks in 1869 that it had reversed a year later in *The Legal Tender Cases*. Having failed to provide a firm constitutional basis for its reversal in 1870, the Court in *Juilliard* finally seized upon an even worse solution: the doctrine of resulting powers, which is the intellectual ancestor of *Roe v. Wade* (1973).

John W. Burgess's *Recent Changes in American Constitutional Theory* (1923) warns that unlimited powers to tax and conscript soldiers lead to tyranny. Still over half a century ago, Edward S. Corwin wrote *Total War and the Constitution*, while Thomas James Norton's *Undermining the Constitution*

([http://www.constitution.org/norton/norton .htm](http://www.constitution.org/norton/norton.htm)) and *Losing Liberty Judicially* (<http://www.constitution.org/norton/llj.htm>) similarly took the Progressives to task for the political and judicial delinquency of their day.