

Property Rights and Thought Police

Two recent speakers at Cato Institute Book Forums were Alan Charles Kors, coauthor with Harvey Silverglate of *The Shadow University: The Betrayal of Liberty on America's Campuses*, and Tom Bethell, author of *The Noblest Triumph: Property and Prosperity through the Ages*. Excerpts from their remarks follow.

Tom Bethell: I started working on *The Noblest Triumph* with the belief that the institution of private property was one of the most important institutions of Western culture and that it had been neglected. Therefore, it had the potential, it seemed to me, to explain quite a lot of things. One of the things that obviously needed explaining was the very unequal economic development around the world. If you read the treatises of the development economists after World War II, unequal development was absolutely not anticipated; economic theory suggested that the real sources of economic growth were capital and technology, and those are easily transported around the world. Thus there was no reason why growth shouldn't happen everywhere. But it didn't work out that way. What had been omitted? It seems likely that the real problem was that the developing countries did not enjoy the legal and political institutions that we tend to take for granted in the West.

It might seem obvious to say that to get economic development right you have to first get the legal system right. There are four reasons, I think, why that was not really obvious to a lot of people in policy positions. To some extent, it may still be controversial today. But I think it is rapidly moving from being controversial to being conventional wisdom—to the point where people are saying, “Well, we always said that.”

First, there was the communist experience. Boris Yeltsin, just after the collapse of the Soviet Union, was asked about communism, and he said that he thought the “communist experiment” should have been tried on a smaller scale in a smaller country, not on such a vast scale in such a large country. I thought it was very interesting that he referred to it as an experiment, because, in a way, that's what it was. But while it was actually unfolding, it was as though there was a taboo on the discussion of the need

for property. In the late 1950s, amazingly enough, Allen Dulles and the Central Intelligence Agency were putting out figures purportedly showing that the economic growth rate in the Soviet Union was twice what it was in the United States. Paul Samuelson's textbook, starting with the 1967 edition and going right on up to the mid-1980s, had a chart in it showing economic growth in the Soviet Union starting from a lower level than in the United States but rising more steeply. Eventually, 20 years into the future, the economy of the Soviet Union would be larger than that of the United States. The dates were altered in each new edition. The chart was finally removed from the 1989 edition, but even then Samuelson was still talking about



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how planned economies had achieved great growth rates. One thing that made it hard to accept that private property was necessary was that obviously they didn't have private property in the Soviet Union, which was supposedly growing rapidly. That was the whole idea of communism: to abolish private property.

Second, if you go back to the time of Adam Smith and *The Wealth of Nations*, there's actually very little discussion of the legal and political requirements for the economic theories that he is discussing. Smith basically takes private property for granted. At the time there was a taboo on criticizing private property. The “sanctity of private property” was no idle phrase. So Smith did

not think it necessary to say much about private property. And when he did, he rarely used the phrase “private property.” In his time, people just talked about “property” because there was not thought to be any workable alternative to it, as indeed there is not, really. All through the classical economists there is very little discussion of what the legal foundations were for their theories.

Alfred Marshall, in *The Principles of Economics* published in 1890, says at one point that the need for private property goes no deeper than human nature. An amazing remark. Marshall and others in the 19th century thought that human nature was changing. Marshall thought that it had already changed rapidly in the past 50 years. He was under the influence of the ideas of evolution and progress.

Third, in Marx, you have a kind of reversal, the idea that economic relations are the infrastructure and political and legal relations are the superstructure. In other words, the economy drives law, instead of law being antecedent to the economy. That idea has been extremely influential, more so in a way than Marx's direct attack on private property in the *Communist Manifesto*, which always looked ideological, whereas the whole notion of infrastructure and superstructure seemed to be science. The influence (between economy and law) runs both ways, of course, but the basic thing is that the legal structure has to be correct.

Fourth, many market economists including, I think, F. A. Hayek and Armen Alchian believed that there was something called efficiency, that the abstract force of efficiency would drive the law to more and more resemble British common law, and that property would become more and more secure.

Douglass North, who won the Nobel Memorial Prize in Economic Sciences in 1993, argued convincingly that it just simply wasn't true, and that rulers in different countries are in fact quite content to maintain inefficient situations for hundreds of years, and we definitely do see that. The concept of efficiency itself, I think, is quite dubious. To illustrate the point, I want to give just one real-life example, not a lot of law-and-economics examples. Just south of Disneyland there is a 58-acre field that is owned by a Japanese-American who grows strawberries

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and sells them at the gate for a dollar a bag. He has to get up in the middle of the night to turn on windmills if there's any danger of frost. It's hard work with very little remuneration. Michael Eisner invited him to lunch in Disneyland and offered him approximately \$100 million for his land. He refused to sell, saying that he didn't know what he would do with the money. Now the question is this: Is that field right now being used efficiently or not? I asked this question of Gary Becker, and without hesitation he said yes, it's being used efficiently. If you accept that, and I have found no economist who disagrees with Becker, then you have to accept that the notion of efficiency is essentially subordinate to the notion of property. What owners do with their property is by definition efficient. If they just want to let it go to weeds, that is efficient. So, efficiency is sort of an empty idea, but nevertheless it was influential for quite a long time.

So I would say that the rule of law, secure private property, freedom of contract, and enforceability of contracts are all necessary, but they may not be sufficient for economic growth. Law, then, as Hernando DeSoto has said, has been the missing ingredient in our search for economic development.

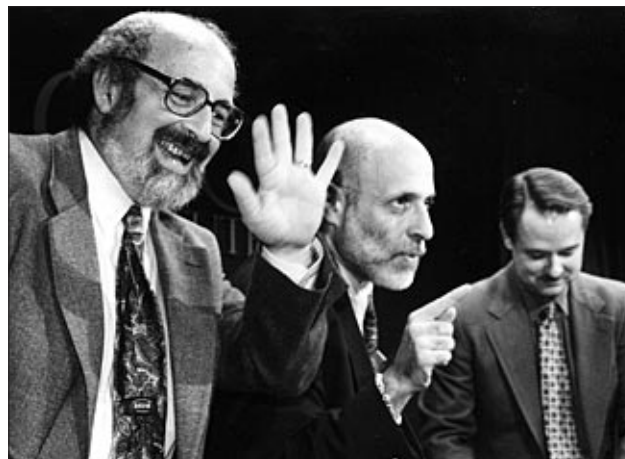
Alan Charles Kors: I believe *The Shadow University* is about important things: core values that truly are threatened at our universities. By the late 1960s students had destroyed most of the in loco parentis functions of American universities—that is, universities standing in the place of parents. In the past 15 years, however, the heirs of the 1960s have changed their motto from “Don't trust anyone over 30” to “Don't trust anyone under 30.” Those heirs of the 1960s now in power have institutionalized their views in the in loco parentis role of universities, and they have made their specific ideological analysis of American society, gender, and oppression the official secular religion of academic life.

According to that view, undergraduates enter universities inadequately aware of the effects of American racism, sexism, and heterosexism on their psyches, behavior, and society. Further, most Americans who are themselves so-called minorities (I hold to the view that each of us in fact is a minority of

one) and most women do not adequately understand the nature and methods of their oppression. They have internalized the very values by which society oppresses them.

Leninists labeled this phenomenon false consciousness. What could workers know about what workers authentically want compared with what intellectuals know? The intellectuals' murderous contempt for those they claimed to love drowned the world in blood.

Today's academics label the phenomenon internalized oppression, and they deduce it from any tendency to reject, resist, or question their view of reality. Although countless courses in the curriculum seek to demystify the nature of American society, that is not



Alan Charles Kors and coauthor Harvey Silvergate continue making points as their Forum ends. Moderator David Boaz packs up.

enough. Too many students remain independent and critical in their thoughts and values. Most minorities reject truly radical politics. Most whites simply do not feel guilty about their birth. Women and men, far from perceiving each other as class enemies, continue to fall in love and occasionally write poetry. Thus, the full weight of administrative authority must be brought to bear on students' extracurricular and private lives, their speech, humor, and thought. The ideologues' contempt for actual students is as boundless as their benevolence toward undergraduates in the abstract.

American undergraduates are victims of a generational swindle of truly epic proportions. A few practices and policies stand out on our campuses. First, so-called diver-

sity and multicultural education. In theory, multiculturalism, built into orientations, residential programming, and all aspects of student life, will invite the celebration, deep study, and appreciation of a diversity of cultures. The so-called multiculturalists, however, most decidedly do not mean celebration, deep study, and appreciation of evangelical, fundamentalist, Protestant culture; of traditionalist, Catholic culture; of black-American Pentecostal culture—or of any assimilationist immigrant cultures or white, rural southern cultures. They also do not mean the serious study of West African Benin culture or of Confucian culture, the understanding of which requires linguistic accomplishment and rigorous inquiry. All they mean,

absurdly, is the appreciation, celebration, and deep study of those radical intellectuals who think exactly the way they do about the nature and causes of oppression, however nonrepresentative those thinkers are of the groups they allegedly represent. Further, the multiculturalists' view of diversity is humanly and morally impoverished. They consider race, gender, and sexuality, but not religion, class, psychological type, taste, or private passions and commitments. In fact, devout religious believers are prob-

ably the most marginalized students on most campuses, often because of their views on sexuality and frequently because of most of their passionate beliefs.

Individuals at universities are welcomed, above all, as members of groups. Which brings me to my second theme, the crime for which this generation truly will have to answer before history, that of officially designated group identities. At the intellectual level, current notions of group identity are crude. Universities speak of white, European, and Eurocentric as a single cultural identity linking those look-alike, think-alike Finns and Sicilians, French atheists and Eastern Orthodox Slavs. At the practical level, the assignment of official group identity by universi-

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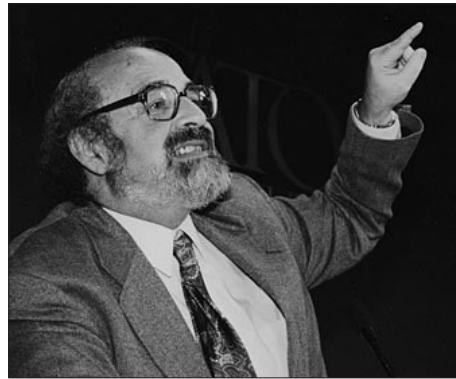
ties has been a dysfunctional approach that has worsened, not bettered, human relations on our campuses. That approach fails to take advantage of the open spirit with which most undergraduates enter higher education. Our campuses under the multiculturalists have become ever more segregated and Balkanized.

At the moral level, the mania of official group identity has entailed a denial of the only authentic meaning of liberation: the right to individuate, free of external coercions and impositions. Authentic liberation is the right of individuals to define themselves religiously, politically, by conscience, and in terms of larger voluntary group affiliations. On almost every campus, however, we have so-called women's centers that operationally distinguish between, on the one hand, “real” women with appropriate radical consciousness and, on the other, “fake” women, who have internalized their oppression. That is a condescending and unconscionable assault upon the sanctity and dignity of the individual.

Which brings me to my third theme: a power of such magnitude needs to demonstrate that it controls the symbolic and judicial environment. Hence the scandal of our speech codes, or more precisely, because no one has the courage to call them that, the “verbal behavior” or “verbal conduct” provisions of our harassment codes. In what should be a national disgrace, given the crucial importance of an education in and freedom to America, universities are the scene of a ferocious assault upon free speech. Almost every college or university restricts the First Amendment rights of its students and faculties, prohibiting the creation of a hostile environment. Many colleges and universities offer the most extraordinary and politically selective variations on that theme. Private universities, of course, being voluntary associations, may adopt whatever rules within the law they choose. That liberty, however, does not give universities the right to commit fraud. They promise academic freedom, but they deliver selective academic oppression. In actual practice, speech codes become intolerably wicked by virtue of their intended and systemic double standards. They represent the

triumph of the Marcusean notion, increasingly mainstream on our campuses, that tolerance and legal equality are repressive agencies and that universities should be at the forefront of reassigning rights unequally in order to redress historical wrongs.

Speech codes deny the dignity and strength of meeting speech that one abhors with further speech expressing reason, evidence, cold contempt, or moral outrage or moral witness. Repressed, prejudice and ignorance



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simply go deeper into people's souls, and no one has the chance to know how people think and to respond in appropriate form. “Sunlight,” as Justice Brandeis observed, “is the best disinfectant.”

In fact, speech codes have created an arena of double standards, of arbitrary partisan enforcement, and of the raw use of power to impose a political agenda. In a nation whose essential soul, and indeed whose minority rights, depends absolutely upon equal justice under law for all individuals, the double standard of speech codes at our universities is teaching the worst possible lesson—that one's freedom should depend upon one's local power. Thus Catholic students are asked to bear the insults of Serrano's “Piss Christ,” a crucifix immersed in the artist's own urine, of obscene feminist portraits of the clergy, of signs reading “Keep Your Rosaries Off Our Ovaries,” in the name of freedom of speech and expression. Has anyone ever been found guilty of harassing a Lutheran or an evangelical? In fact, of course, as anyone who knows universities could tell you, the most

common terms of racial abuse on campuses are not the crude, racial epithets of the Klan, but the hurtful and hateful terms “Uncle Tom,” “Oreo” (black on the outside, white on the inside), and “Banana” (yellow on the outside, white on the inside), directed against blacks or Asians who have chosen to have white friends among the objects of their love and affection. No one, however, has been persecuted for using those hostile terms. You may call any evangelical a “Jesus freak,” any veteran a “baby killer,” any black with white friends an “Uncle Tom,” any anti-feminist a “Barbie doll.” It is an unconscionable hypocrisy.

Fourth and finally, there is the rise of in loco parentis thought reform at our universities. Increasingly, in a process virtually ignored even by critics of political correctness, the people who govern student life—from chief administrators to the organizers of new student orientations to those who select, train, and dictate the behavior of resident advisers in the dormitories—have moved from being service providers to being self-proclaimed progressive social workers whose mission is to bring the benighted children of America into the enlightenment of partisan political awareness. This model violates the freedom, dignity, and autonomy of individual learners and scholars, of free students at free universities. In choosing their residential and student-life thought police and social engineers, universities have hung out “Not Welcome” signs for all those who dissent from their political ideology. No conservatives, libertarians, Republicans, traditional Catholics, or evangelical Christians need apply. They are all excluded from the agenda of “inclusivity.”

Further, hidden behind the veil of confidentiality of campus judicial proceedings, a large number of charges of politically incorrect crimes are adjudicated by settlement and academic plea bargaining. In such settlements, the frightened respondent, as an alternative to potentially crushing penalties, agrees to go through intrusive and partisan sensitivity training in matters of race, gender, or sexual preference—sensitivity training that is nothing less than thought reform, more appropriate to the University of Beijing during the cultural revolution than to the universities of a free society. Students choose universities, above all, for the future value of a degree;

for the quality of learning, inquiry, and social life; and, in the broadest sense, for the discovery that will occur there. They do not choose universities to be their therapists, let alone a political police, selectively enforcing restrictive rules governing voluntary relationships and expression outside the classroom.

We must anathematize every university that, without truth in advertising, seeks groupthink, unequal rights, the invasion of private conscience, and the chilling of debate and expression. Let those universities have the courage, if they truly believe what they say privately to themselves, to put it on page one of their catalogs and their appeals to state legislators: “This university believes that your sons and daughters are the racist, sexist progeny or victims of a racist, sexist, Eurocentric, and oppressive society. In return for tuition and massive taxpayer subsidy, we shall assign rights on a compensatory basis and under-

take by coercion their moral and political enlightenment.” Let the universities have the guts to advertise themselves honestly, and let’s see who pays the bills.

History, for better or for worse, has made us all actors in this context. Our multiculturalism has become the multiculturalism of Bosnia. Half a century after the defeat of Nazism, we distinguish our students by blood and we equate blood with culture.

That will not last. America patiently has subsidized critics who have the utmost contempt for its values of individual identity and individual rights. Indeed, it has entrusted its young to such minds. That is folly, but it is also a tolerance unparalleled in human history. It is, however, an utterly absurd supposition that the victims of partisan codes, intrusions upon conscience, lack of due process, and selective biased enforcement of campus regulations will acquiesce indefinitely to the double standards upon which their cam-

pus legal inequality depends.

Although human patience can be remarkably enduring, no majority in a democratic society will suffer injurious double standards forever. There will be a day of reckoning, but when it comes, where will one find a broad coalition formed around the love of liberty, of due process, and of legal equality? Universities desperately need men and women for all seasons who reject the new academic tyranny, who bear witness to the universalism of legal equality over the crude official divisions of race, gender, and sexuality; of individual liberty and responsibility over the group politics of victimization and entitlement; of the rights of privacy and conscience. Those are the moral values that define us as human beings with dignity, capable of morals, and free. The struggle for that freedom at universities is one of the defining struggles of the age in which we find ourselves, and there are no sidelines. ■