William Rehnquist could barely disguise his disgust:

> The Court holds that New York may not use its police power to legislate in the interests of its concept of the public morality as it pertains to minors . . . There comes a point when endless and ill-considered extension of principles originally formulated in quite different cases produces such an indefensible result that no logic chopping can possibly make the fallacy of the result more obvious.

Nor was this all. Whatever remained of judicial support for the commitment to the marriage contract disappeared in *Moore* v. *East Cleveland* (1977). "A couple and their dependent children" said the *Moore* majority, are merely an "arbitrary boundary—the boundary of the nuclear family." By weakening the culture, the Court fueled the expensive and counterproductive programs of the Great Society.

In its primary sense, "promiscuity" means the disposition to give in to "all our impulses" whether good or bad. It is a reversal of the civilizing process and, since surrendering to impulse cannot be confined to sexuality, has consequences on a number of levels. To many a kid, adults notorious for breaking the Sixth Commandment, whether parents or presidents, are just self-absorbed adults notorious for breaking Commandments.

How else could today's problem of so many kids without role models have developed? The murderous outbursts by children, unlike anything known in prior times, and the remorselessness of youthful predators, are manifestations of a promiscuity which has advanced to the next stage.

To understand the Court's role in derailing our culture, consider the arguments of those who contend that the interpretation of text should be approached from the point of view of the reader, rather than that of the authors. "Some interpretative perspective," says Duke University Professor Stanley Fish, inventor of the reader-response theory of interpretation, "will always rule by virtue of having won out over its competitors."

In some applications, Professor Fish's observation may not be wrong. In construing the message of revelational or poetical text—cases where the author is deemed a mere conduit for thoughts inspired by a higher power—large aggregations of various faithful have long claimed the right to approach it from their own vantage point. But the way in which a whole society approaches the interpretation of a constitution, expressing as it does the conclusions of a convention of delegates, must be different. Yet Justice Harlan recognized no difference. What mattered in interpreting constitutional provisions, he said in *Poe*, was "not their text . . . not the statement itself."

Surely, Justice Harlan was wrong.

A written constitution does not cease to be a memorandum of what the people consented to, merely because time has passed. Nor are justices released from their oaths to uphold this compact, merely because the founding generation is dead. Ours is a living constitution because it applies to new situations that are within the contemplation of its clear provisions and because it can always be updated with amendments. But it is not a living document in the sense that some provisions "grow," while others "whither," according to the whim of the current Court.

Can the judicial veto, a power which the delegates in Philadelphia in 1787 pointedly refused to create, be safely ignored, since recently the Court has seemed a bit more respectful of democratic decision-making? I think not.

On issues of policy, experience has shown that the breadth of the legislative hall provides far greater wisdom—and far less risk of locking us into a foolish position—than the narrowness of the courtroom.

As long as the judicial veto is not repudiated, there is a temptation to use it. As Justice Black warned in *Adamson* v. *California*:

> [This] formula . . . has been used in the past, and can be used in the future, to license this court . . . to roam at large in the broad expanses of policy and morals . . . a responsibility which the constitution entrusts to the legislative representatives of the people.

If, as I believe, bad judgment, not bad faith, is the culprit, it should be possible to reclaim the Constitution's limits on judicial review simply by adding a couple of definitions to the Constitution:

> Liberty, as used in this Constitution, means liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people.
>
> The test for what is arbitrary or purposeless in the review of such a law is not whether the Judiciary approves the law, but whether a reasonable legislature could have believed that it tended, from any point of view or in any degree, to promote the people's health, safety, morals, or welfare.

With these additions, we would restore the legislature as the policy-making department of government and help convince the American people that the votes that they cast for their elected representatives are not futile.

George Ward is the chief assistant prosecuting attorney for Wayne County, Michigan. This article is drawn from his forthcoming book, Liberty and Law: The Culture, the Court, and the Consent of the Governed.

Legislative Tyranny in Massachusetts

by Eugene Narrett

"A dog's obeyed in office," and the power of the welfare state to grab your money, property, health, and—through "no-fault" divorce—your children, too, is already bad enough. Now it is getting worse, via the usurpation of punitive court prerogatives by bureaucrats whose sole purpose is "revenue enhancement" and the growth of the state. The case in point here is Massachusetts, where social-service "providers" and "caregivers" increasingly assume the task of fleecing and/or jailing taxpaying citizens.

Armed with legal immunity, bureaucrats are winning the right to fine, incarcerate, hospitalize, and drug people at whim, subsidizing these depredations with tax and insurance monies. Take, for example, section 12, as it is commonly known, a Massachusetts statute. Enacted in 1970, section 12 enables a psychiatrist to have a citizen incarcerated for ten days if the doctor believes that "serious harm" might otherwise ensue. This standard may be variously defined or merely indicated by check marks on a

pink form.

Several years ago, Lifeline Ambulance Service of Lynn, Massachusetts, had police break down the door of an elderly woman who had been "pink papered." The cops and orderlies dragged her down the steps of her apartment building. Her bladder burst, and she had a heart attack. A jury found the city guilty and awarded a $1.3 million judgment, but in 1996, an appeals court overturned this decision, ruling that the action had not violated the dead woman's Fourth Amendment right to be free of "unreasonable search and seizure" even though there was no warrant. Because the city and company were in compliance with state law, strict construction was briefly back in fashion.

Those involved in issuing, serving, and enacting section 12's are immunized from prosecution if they "act in good faith." Private hospitals, physicians, and psychiatrists who act "under color of state law" also are immune.

Every year, Massachusetts serves about 8,000 section 12's. The ten-day confinement can be increased to 24 days at the direction of the hospital staff before there is any judicial review. (This is in order "to ease the burden on the courts," the legislator who drafted the statute told reporters.) Well before 24 days, people may have been drugged, beaten, intimidated, and may have suffered pain far worse than anything they might otherwise have experienced or even imagined before they began to receive state "care." "There is no burden of proof on psychiatrists" or social workers, commented an expert on mental health law, and the availability of medical insurance helps create "a bias toward incarceration." The increasing number of clients thus served helps the state demonstrate a "crisis" and cajole more taxes to heal "the problem."

The source of Massachusetts' deadly compassion is its lust for money and power. It is gratified fully in the industry of child support. One of the point men for the attack is Mitchell Adams, head of the Massachusetts Department of Revenue (DOR). Early in Governor William Weld's administration, Adams made a media splash by publicly "marrying" his homosexual partner; under his stewardship, the DOR has displayed cutting-edge hostility to fathers.

In September 1998, Senate Bill 2044 was passed into law by the Massachusetts legislature. This statute transfers most power regarding collection of child support to the DOR and allows it to define compliance and set support levels independent of the already draconian state "Guidelines on Child Support," the nation's highest at 33 percent of pre-tax income. (Judges often use their discretion to set the rate even higher.)

As Dr. Ned Holstein pointed out in the Spring 1998 issue of *The Banner, the Massachusetts Newsletter of Fathers and Families*, S2044 lets the DOR initiate review of child-support orders and amend them by formulas that the DOR devises. Any such modification acquires the legal status of a court order, although there is no judicial review. The DOR sets the criteria for determining who is in arrears. (This can be done solely on the basis of a claim by the mother, with no substantiation required.) A defendant must exhaust his "remedies" with DOR before appealing any such modification to the courts. Without judicial hearing or review, the DOR can suspend drivers' licenses, attach retirement or pension funds, and tap bank accounts for health insurance. There also is a mandatory 14-day imprisonment for being in arrears.

The peremptory nature of S2044 mirrors the method of section 12, and there is a further similarity. The statute exempts the state from liability should an accused person ever manage to fight through the bureaucratic thicket and demonstrate that the DOR was in error.

Near the core of this tyranny is greed. While the DOR and "child protective service" cadres boast that S2044 will help children, Holstein notes that most monies collected are absorbed into the general revenues of the commonwealth and serve to balance the budget. The death of the family is the health of the state.

Driving this point home was the unanimous passage in late summer 1998 of Massachusetts House Bill 5621. Changing its name and number frequently to throw citizens off its trail, this statute mandates that parents (read, fathers) accused of abuse will be barred from any unsupervised contact with their children. The trigger can be checked if a judge provides written findings to the contrary, but that is an unusual course in family court. The Massachusetts Supreme Judicial Court ruled that the state already has safeguards against false allegations of abuse, though it failed to identify a single one. Claims that a woman is in fear of future abuse are routinely used in divorce cases to trigger *ex parte* orders that bar fathers from gaining shared or full custody of children. The court and the legislature both rejected requests that the hearings at which these orders are granted be subject to evidentiary standards. As one municipal judge explained, she sees the role of the court as "cracking the denial of the defendants" who dare to assert their innocence.

The picture is clear: Due process and equal protection are disappearing, have already all but disappeared in Massachusetts. The principle of "innocent until proven guilty" has been discarded for citizens and especially for fathers. The state and its officers are beyond the law that, thus, becomes lawlessness. Those who do not wish to be objects of the state will have to assert the principles of justice and natural law or America may yet go further. Indeed, in Oregon and Connecticut bills are being considered mandating Medicaid coverage for assisted suicide. The slide is on.

Eugene Narrett teaches writing at Boston University.

LIBERAL ARTS

THE NEWSPAPER OF RECORD

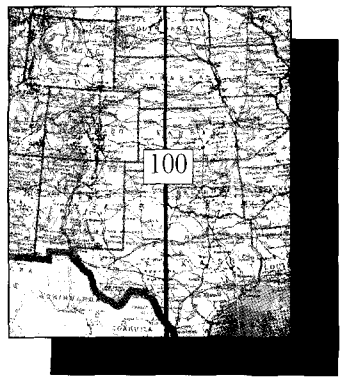
"Col. Muammar al-Qaddafi said Thursday that Libya would have to negotiate certain guarantees before he could feel confident about turning over for trial two suspects . . . Qaddhafi seemed obsessed with fears of U.S. and British trickery. . . . "I am not sure America and the U.K. have good intentions to solve this problem," Qaddafi said in English. . . . Arab diplomats here say that while Gadhafi knows he is now closer to having sanctions lifted than he has been in more than six years, he also knows that he faces some political risk in turning over one of the two men."

—*from "Qaddafi Says 'Negotiation' Is Needed on Lockerbie Suspects,"* New York Times *(August 28, 1998)*

The Hundredth Meridian

by Chilton Williamson, Jr.

The View From Out Here



There is a story about the man who surprised another man in bed with his wife. "What did you do about it?" his friend demanded. "Hell," replied the fellow in disgust, "the sonofabitch lied his way out of it!"

My inclination, on this 15th day of February 1999, is to take the anecdote as a parable about the government of the United States, William Jefferson Clinton, and the American Republic, in that order; the only problem I can see with this interpretation being that the original story is, to use the words of the President's men over the last few months, "just about sex," while the parable has to do—in a way the 13 House managers would understand—with several millennia of Western political theory. Like most of my journalistic colleagues with whom I'm acquainted, I spent 13 months dismissing people whose first—and often last—question in any conversation was "When is he going to resign?" with a little of the impatience I used to feel when Easterners with an interest in American regional politics sought to discover from me when the Western states were going to secede finally from the Union (as if I'd know!).

I still don't believe that the fate of the United States hangs on Bill Clinton's going or staying, just as I still don't believe in the likelihood of Western secession. But since the constitutional "crisis" (no more acute in itself than a quadrennial national election), I have to admit that the Western landscape—this vast, open, glorious, and gloriously inhospitable spaciousness, this metaphysical opening away to the region of the gods—has new meaning for me in a "civilization" (since termites are allowed to have civilizations, too) in which the constriction of mental space leads to a felt lack of physical space as the end of consciousness approaches, heralding the end of truth. "Why, this is Hell, nor am I out of it," Mephistopheles tells Faust in the play by Marlowe. Does the current economic prosperity *really* convince Americans they've arrived in the Promised Land? There is a terrible story in one of Orwell's essays where a wasp the humane author has snipped in two at the waist as it dines on strawberry jam realizes the terrible thing that has happened to it only when it tries to fly away. If the Lewinskiad has taught me nothing more, it is that the country I was born into and grew up in no longer exists, that an evil facsimile or shadow country has taken its place. In order to be loved, Burke said, our country must be lovely. And more and more, it seems to me, the American land—the shrinking little that has not yet been destroyed in order to "develop" it, that is—is all that remains to be loved of this once glorious America.

Of course, we are told by our government leaders and opinion-makers that Destruction is actually Progress, but a few of us—a remnant which is also shrinking—know better. When words lose their meanings, people lose their freedom, Orwell warned. And Unamuno reminds us that Progress, being the result of the Fall, is *only* the best man can hope for in this life. (But why am I quoting Burke, Orwell, and Unamuno? They aren't taught in the schools anymore, and continuing, adult education—"Education is Forever!"—means that their books are removed from the publishers' warehouses, owing to a cretinous decision some years ago by the IRS, pulped, and rerolled into soiled-looking gray paper marked RECYCLED and used by pollutive utility companies to bill their customers with.) Terrifying as the 20th century was, the 21st promises to be more terrible still.

The impeachment fiasco may have been nothing in itself, while history conceivably will record that Bill Clinton was no more than town trash from a state whose name is rumored to be an old Indian word for trailer park. (Unfairly, perhaps, the Duke and the Dolphin having been natural aristocrats by comparison with much of what proceeds from Arkansas to the District of Columbia nowadays.) If not the proximate cause, the impeachment fiasco amounted certainly to a critical demonstration of the extent to which the mania for diversity has degenerated into demonic divisiveness and a vicious, quite literally insane hatred of the type whose emergence throughout history has consistently preceded political and social catastrophe. I doubt seriously that anyone—in particular, anyone happening to be male, white, of European extraction, Christian, and anti-"progressive"—who listened to the floor debates on the four Articles of Impeachment in the House of Representatives heard the procession of so-called New Democrats (blacks, Hispanics, feminists, secular Jews, a few Muslims probably) to the microphone without perceiving that here was the new America speaking: glowering, ranting, raging, threatening, foaming at the mouth on behalf of the aggravated, aggrieved, indulged, precivilized, barbaric, and unsexed "minorities" that together lack—for the time being, anyway—the majority status to send the rest of us packing to the concentration camps they so evidently believe to be our historically determined and much-deserved end. "All right: we are two nations," John Dos Passos wrote in the 1930's. Two nations—only *two*? Today, we probably amount to about a dozen of them, thanks to imperialism, the global economy, multiculturalism, and the nearly open immigration policies that produced it. Is the country already in a state of civil war, which the cultural war has so often seemed to adumbrate? No, because the nation (it seems quixotic to call the United States a "union" anymore) is divided along fault lines separating class from class, race from race, men from women, and sodomites from heterosexual couples producing and nourishing children created in the image of God—not geographic or regional boundaries. How