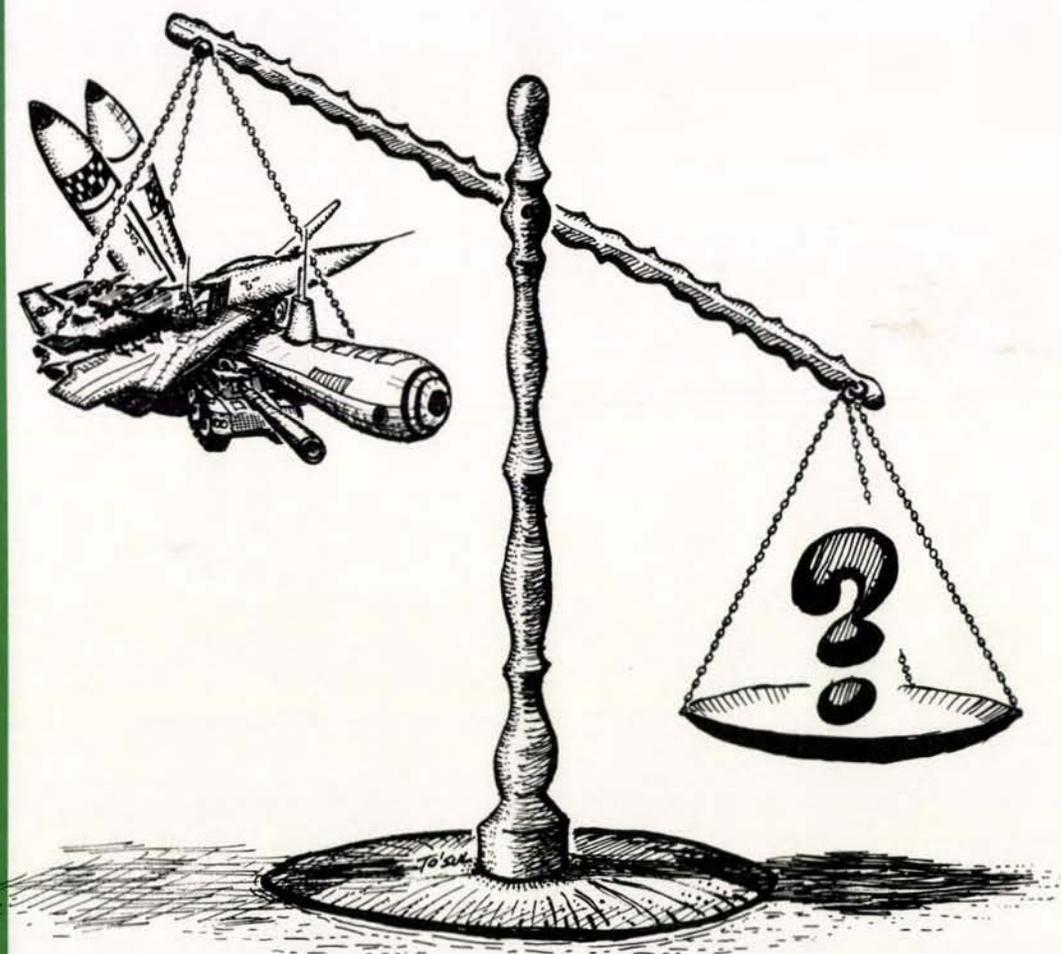


July 1985

RIPON FORUM

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**Rethinking How We
Wage War**

Conversation with Jeane Kirkpatrick

War and Remembrances of War

Selecting a Supreme Court

Lessons from Vietnam

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Editor's Column

The rethinking of U.S. military intervention was central to the observance this spring of the respective endings of World War II and the Vietnam conflict. More recently, such thinking has been uppermost in the minds of many Americans as they watched their fellow citizens taken hostage by Middle Eastern terrorists. In encountering both guerrilla skirmishes and terrorist attacks, many not only wonder what should be done, but what can be done?

These questions are the aim of a Forum editorial, as well as an essay by Ripon chairman Jim Leach. While Congressman Leach addresses the issue of renewed military aid to Southeast Asia, former United States Ambassador to the United Nations Jeane Kirkpatrick speaks of the difficulties of promoting liberty and equality abroad. In fact, Kirkpatrick says, the ability to promote those two values is hindered by internal domestic factors.

On the American domestic scene, an analysis of the Urban Development Action Grant program is presented, as is a proposed list of candidates for the United States Supreme Court. The latter is based upon criteria established by a Ripon advisory board, and reflect its wish that the judiciary not be politicized but remain a body of independent judgment.

—Bill McKenzie

Memo

TO: The Editors

RE: Tax Reform

The April *Ripon Forum* article "Purifying the Tax Code" overlooked an essential problem: the taxation of Social Security. When many of us started to earn a living, it became mandatory to contribute to the Social Security system. However, we were told that these benefits would not be taxed. Now the federal government taxes one-half of Social Security retirement benefits for single individuals earning over \$25,000 and married couples earning over \$30,000.

Through your publication, I hope that you can inform the president and the Congress that the vast majority of American citizens believe that such a tax is unfair. In fact, while not a pollster, a personal survey of over 50 people in my community revealed that 85 percent of the respondents were opposed to this kind of taxation. My data might not be final, but there is a strong message to be heard: Social Security retirement benefits should not be taxed!

Sincerely,

George A. Hart
Huntingdon, Pennsylvania

Profiles and Perspectives Profiles and Perspectives

Profiles and Perspectives

A Conversation with Jeane Kirkpatrick

Upon retiring this year from her duties as the United States ambassador to the United Nations, Jeane J. Kirkpatrick resumed her position as a senior fellow at the American Enterprise Institute and as Leavey professor of government at Georgetown University. Her life, however, has been anything but quiet. A lifelong Democrat, Kirkpatrick joined the Republican Party this spring and immediately triggered off speculation that she will seek higher office in 1988. Although she steadfastly denies her political interests, Kirkpatrick has appeared at numerous GOP events and, in the words of The New Republic, become a "wild success as a National Republican figure." Part of that success is due to a keen political awareness and a disarming sense of humor, both of which she demonstrates in this interview with Forum editor Bill McKenzie. While she speaks at length about a number of foreign issues, such as the limits placed upon effecting change in another nation, she also argues that the United States need not judge itself by utopian standards, but rather by realistic measures. This is necessary, she says, if we are to maintain our sense of purpose and increase our national self-esteem.

Ripon Forum: Upon entering his role as negotiator in the Paris peace talks during the early 1970s, U.S. diplomat David Bruce said, "Diplomacy is not a system of moral philosophy. When you get down to negotiation with either hostile or friendly powers you are out of the moral sphere and in the tactical implementation of policy." What is your reaction to this statement? Is it true?

Kirkpatrick: As stated, no. I don't think politics is ever out of the moral sphere. It is a moral activity and I believe very deeply that principle should always guide one's ends. Yet there is also a tactical dimension to politics. There's no such thing as a good policy which is not pragmatic or not tactically sophisticated and effective. That doesn't mean, however, that the negotiation is beyond or has departed from the moral sphere. It simply means that while moral considerations guide one's framing of ends, tactical considerations guide one's negotiations. Now, I don't think tactics are ever value-free either. One has to choose tactics that are consistent with one's principles, which means that one would avoid lies and deceit in a negotiation.



"Politics is a moral activity . . . principle should always guide one's ends . . . [but] there's no such thing as a good policy which is not pragmatic . . ."

Ripon Forum: Let me throw out two other "morals," if you will—liberty and equality. Peruvian author Mario Vargas Llosa, who recently spent a month in Nicaragua for *The New York Times*, says that "Tragically, liberty and equality are harsh antagonists . . . Real progress depends on achieving a tense equilibrium between the two ideals." Are liberty and equality harsh antagonists?

Kirkpatrick: I don't think so. Almost all successful policy involves balancing multiple values. I really believe that liberty and equality are complementary—our history demonstrates that to be the case. Democracy, for example, has a very high regard for equality: equality under the law, equality and suffrage, and equal access to office.

“The importance of equality in the classical liberal tradition is often missed . . .”

The pursuit of egalitarian goals is in many ways an aspect of the classical liberal tradition. In fact, the importance of equality in the classical liberal tradition is often missed, and I don't know why, because it is very clear that political equality is one of the preconditions of democratic politics and liberal politics. Moreover, it is also clear that one doesn't find freedom in democratic systems and equality in communist systems. What one finds in communist systems is extreme inequality, which Orwell caricatured in *Animal Farm* where some animals were more equal than others.

An excess of any principle in politics ends up negating itself. Any political principle driven to its extreme is absurd, and that's true for liberty as well as for equality.

Ripon Forum: How do you achieve an equilibrium?

Kirkpatrick: That is always the challenge of policy; the equilibrium is dynamic. But I think equilibrium is maintained by jealously guarding the most basic equalities of civil life: political equality and political liberty. If both are jealously guarded, then the result is a dynamic equilibrium and a continued respect for both principles.

I also don't think it is true, for example, that democratic systems produce political goods and Marxist systems produce economic goods. The truth is that Marxist systems are very bad producers of economic goods and well-being. What one usually finds in contemporary societies is that those who have the most freedom have the most goods. And that's not only true of the older, industrialized societies. It's also true of newer societies.

Ripon Forum: In a much heralded 1979 article in *Commentary* you wrote of the Shah of Iran and Nicaragua's Somoza, “neither sought to reform society in the light of any abstract ideas of social justice or political virtue.” How can progress be made toward achieving a balance between liberty and equality when we support people who are not dedicated to some degree of social justice?

“. . . it doesn't make any sense to speak about a global dynamic equilibrium between liberty and equality. It's only meaningful within a political system.”

Kirkpatrick: I didn't say they weren't dedicated to social justice. I think they had some sort of traditional notion of social justice, not mine or yours, but I think they had it. My statement in the article was that those individuals didn't seek to reform society in terms of some abstract notion of social justice. What they tried to do was to preserve society as it existed. I was talking about the difference between the traditional autocrat—whose

goal is to maintain a status quo—and the revolutionary autocrat—whose goal is to transform a status quo.

But it doesn't make any sense to speak about a global dynamic equilibrium between equality and liberty. It's only meaningful within a political system. The attributes of relations among nations may be many, but I can't imagine how equality and liberty would apply to relations among nations. For example, through our international relations we cannot achieve liberty and equality in the Soviet Union or liberty and equality in Zimbabwe or liberty and equality in Chile. You have to be governing to do that.

Ripon Forum: If liberty and equality cannot be achieved, what should be our international aims?

Kirkpatrick: Relations between governments have lots of different dimensions. There is the promotion of trade and travel, for instance. And there is the desire to achieve peace, to achieve wealth, to achieve security through relations with other countries.

Ripon Forum: Is it a liberal misconception, then, to worry about liberty and equality?

Kirkpatrick: I think it is an eccentric use of the language to speak of liberty and equality among nations. Liberty and equality are relational terms. One is free in relation to something else. England is equal to France in population or wealth, or England is free in relation to Spain to reject its tomatoes. That's the way those words normally are used.

Ripon Forum: But can't countries be pushed towards liberty and equality? Take the standard example of South Africa. Aren't there certain levers, most of them economic, that can be pulled to move South Africa towards liberty and equality?

“The capacity to affect another society is less than the capacity of a country to affect its own society.”

Kirkpatrick: The amount of leverage that one can have depends on the relationship between two countries. The United States has more leverage with some countries than with others. Whether we should use it is a prudential matter and there is a limit to it. The capacity of a country to affect another society is less than the capacity of a country to affect its own society. There is also a conflict between imposing one's values on another society and respecting the principle of non-intervention in the internal affairs of other sovereign states.

Then there is a risk of failure, of producing a worse consequence than already exists. In Poland, for example, strong economic sanctions *might* bring down the Jaruselski government which *might* be replaced by something worse. That's what I argued about Nicaragua. In 1979 I wrote that the U.S. should not bring down the Somoza government when the only alternative was the Sandinista government. The latter, I said, would be less susceptible to liberalization, more repressive and more likely to destabilize its neighbors. Judgments have to be made in each specific case about what might be accomplished at what kind of risk and price.

Ripon Forum: Let me restate my argument. How do you liberalize an autocrat?

Kirkpatrick: Well, let me say that every democracy in the world, except maybe the United States, has evolved through a process of liberalization. The classic example is Britain. Generally speaking, autocracies are not liberalized from the outside; they are liberalized from within. That's the classic experience of

democracies today. The only contrary example is the British Empire where the British first established imperial rule, then imposed a pattern of government, and eventually withdrew independently or through military defeat. You might say that in Puerto Rico and the Philippines the United States tried a British model of imposing patterns of democratic government.

“ . . . every democracy in the world, except maybe the United States, has evolved through a process of liberalization.”

In each of these cases, however, we're talking about a situation in which the government has acted from a position of power in the society. If we're talking about examples of where the policies of one government brought about liberalization and democratization from the outside, without either occupying or defeating the society during a war, I think one can find some examples of where they had marginal effects. The U.S. role in the Dominican Republic had a marginal effect. I say "marginal," because the basic thrust of democracy came from within the Dominican Republic itself and from its own traditions, its political parties and trade unions. I think that's true in El Salvador, too. We've had some marginal effect. Maybe we've also had some marginal effect in Honduras. But in most Latin countries, there is already an indigenous participatory tradition as well as an indigenous autocratic tradition. In that context, we may have some marginal impact.

Ripon Forum: You once criticized the Carter administration for accepting a modernization paradigm which emphasized the movement of historical forces over the role people play. Assuming that models are important for rational thought, what is the Kirkpatrick paradigm?

“I believe in a modernization that is more complex. The relationships among the parts are indeterminate and the policies of governments influence the patterns of modernization.”

Kirkpatrick: Let me first say that I thought the Carter administration accepted a *unilinear* model of modernization in which modernity meant progress. In other words, there was a certain good in modernization itself; it was kind of a deterministic model.

I believe in a modernization that is more complex. The relationships among the parts are indeterminate and the policies of governments influence the process of modernization. My concept of modernization would be like that of, say, Samuel Huntington's, which he explains in *Political Order and Social Change*. The process is indeterminate and policies reflect choices. Change is not necessarily progressive. Both the pathway and the outcome are indeterminate.

Ripon Forum: You would say that on the one hand there exist historical forces and on the other, individuals; and in the middle are policy choices.

Kirkpatrick: I think policy choices have a significant role. I don't mean to say that individuals operate in a completely free environment, because they don't. But individual choices do

indeed make a difference. I would also say that such choices don't always result in a particular kind of political system and a particular kind of economic system. An economy may be modernized at a different rate than other aspects of a society.

Ripon Forum: Your fellow neoconservative, journalist and author Ben Wattenberg, has said that "America is *the* good guy in history." Is this true?

Kirkpatrick: I think we're *a* good guy, sure, and I don't think Ben thinks we're the only good guy. We're a good guy because we are successful . . .

Ripon Forum: Economically?

Kirkpatrick: . . . Yes. We are a society that's successful in producing goods and freedom for most of our people most of the time. I believe in judging us by realistic standards, not by utopian standards. It is not appropriate to judge ourselves by the Sermon on the Mount and everybody else on the curve. If we judge ourselves by the same standards that we judge others, then I would say, internally, we are highly successful. It's not just that we have produced goods and freedom, but also that we have produced a good life for more people than has almost any other society. We have provided freedom from drudgery, freedom from extreme deprivation, and freedom from grinding poverty—while also providing more opportunities for more people, including minorities. That's extraordinarily important.

“I believe in judging us by realistic standards, not by utopian standards.”

If we look at what we do in the world, generally speaking I think we're good citizens. We don't cause wars; we help a lot of people with more development aid than any other country; we have assisted in the preservation of European democracy through two world wars; and we can always be counted on to help in alleviating catastrophes, such as the current famine in the Sahara. All of that are grounds enough for deciding that, generally and historically, the United States is among the guys in the white hats.

Ripon Forum: What, then, is your definition of evil?

Kirkpatrick: The bad guys of the world are those who engage in oppression at home and expansion abroad. They are repressive in their relations with citizens and engage in expansion abroad, which denies other countries independence and self-determination.

Ripon Forum: The speech you delivered last August at the Republican National Convention might be characterized as a "Don't Blame America First" address. You talked of the obsessive guilt that liberals within what is now your former party—the Democratic Party—have about America's role in the world. Do you ever worry that such remarks give credence to a very parochial view of the world, in which America is first?

“It's possible for societies to be parochial or nationalistic, but I think the United States suffers from a deficit of national pride and self-confidence.”

Kirkpatrick: No. It's possible, but I don't worry about it. It's possible for societies to be too parochial or nationalistic, but, to

the contrary, I think the United States suffers from a deficit of national pride and self-confidence. There is a lack of a certain center of gravity. The United States suffers today from a deficit of confidence in its own identity and in the relevance of its experience and its standards.

Ordinary Americans deserve to have a sense of satisfaction about the success of their country and about their part in it. They pay high taxes, and contribute to its success and its altruism. It's a terrible thing to deny people a pride in their country and in their contribution to it. That's one of the real failings of contemporary liberalism, which I don't think has anything to do with the achievement of classical liberal democratic values.

I say this as one who has lived abroad a great deal. I reached this view by observing ordinary Frenchmen and ordinary Italians. They're very pleased with themselves, you know. They have great confidence in their standards and their accomplishments and their contributions. They have pride in their societies, and that civic pride is a very important dimension to democratic societies. It's important to their willingness to make contributions, such as through taxes and military service. Such voluntary contributions are an attribute particularly of democratic societies and successful societies.

Ripon Forum: How do you avoid pride goeth before a fall?

Kirkpatrick: There are a lot of different dangers and I think that is a lesser danger. I probably felt more of your concerns before I lived abroad and knew what other societies were like.

Ripon Forum: You once described yourself as a welfare state conservative. Do you still hold to that view?

Kirkpatrick: The terms may be somewhat ambiguous because I've also been described as a welfare-state liberal. But, yes, I do believe that it is appropriate for governments to provide minimal amounts of well-being for its citizens. In that sense, I think that the welfare state is appropriate.

"I do believe that it is appropriate for governments to provide minimal amounts of well-being for its citizens. In that sense, I think that the welfare state is appropriate."

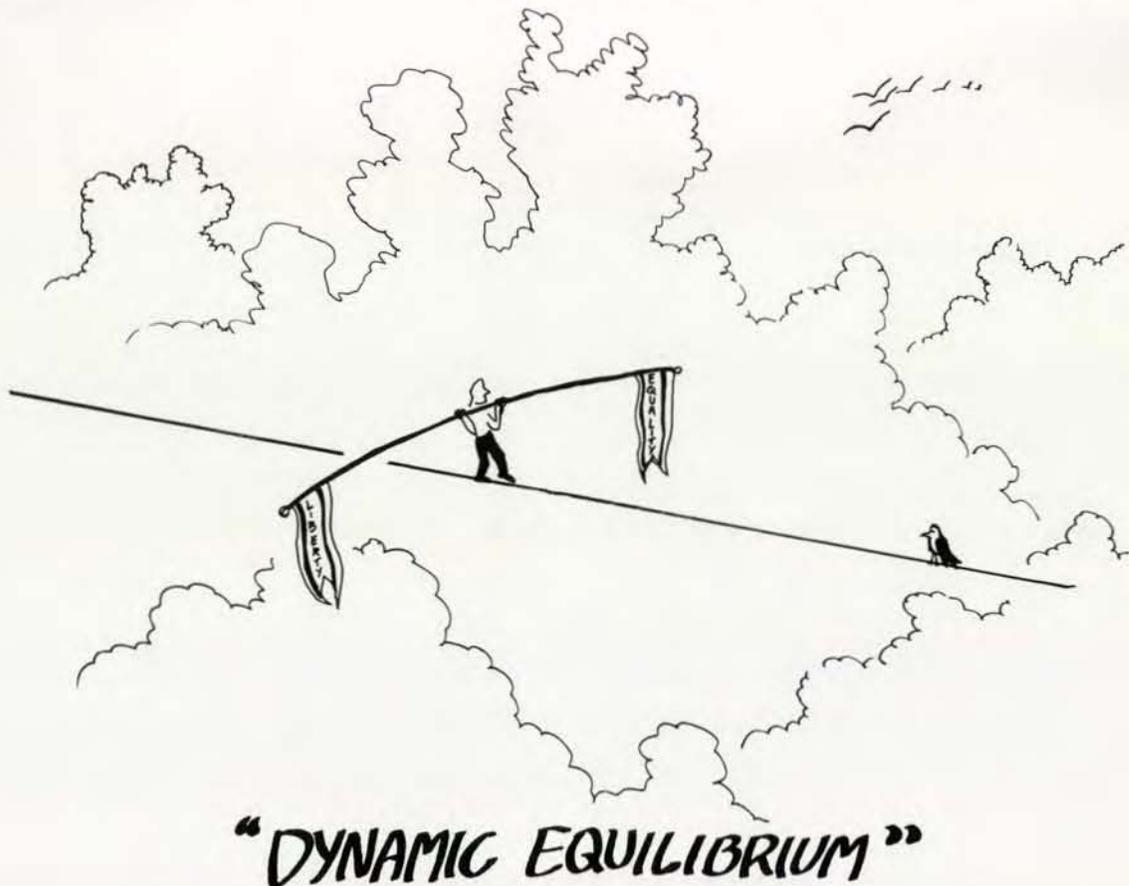
Ripon Forum: While still a Democrat, you wrote in the Republican journal *Commonsense* that many traditional Democrats and independents "doubt that Republicans care enough about the whole, including those who are, for one reason or another, unable to look out for themselves." What sort of vision should the GOP articulate?

Kirkpatrick: Well, first, let me say that in that article I also did say the GOP's record in delivering domestic services was better than its explanations. In office Republicans have acted as though they have a broader concern with human dignity and well being. Those concerns have just been poorly explained, and have appeared inadequately related to a broad vision of the whole.

Domestically, it is important to organize society in order to maximize well-being. This means maintaining certain safety nets. It also means creating opportunities. I think the work of the House Republicans in the Conservative Opportunity Society has been important in this regard. Policies must promote an open society and open political institutions.

Ripon Forum: You've been touted by some as a possible presidential contender for 1988. Let's assume that your worst nightmare has been realized and that you are part of a national ticket. You are now forced to maintain an ungodly schedule and deliver innumerable speeches. What would you emphasize?

Kirkpatrick: I never deal with hypothetical questions. ■



The 92 Group: “Moderate Organization” is Not a Contradictory Term

by Representatives Olympia Snowe and Tom Tauke

Politicians are wont to begin with jokes, and we'll not upset the stereotype. So, here it is:

Q. What do “jumbo shrimp,” “bitter sweet,” and “moderate organization” have in common?

A. They're all oxymorons—phrases made of two or more contradictory terms.

If you're not doubled over with laughter, imagine the joke being delivered to a group of moderate Republicans meeting to discuss organization. The joke didn't exactly bring down the house with them either. But it was appreciated as a succinct and accurate summary of the challenge being confronted by that group of Republicans, who have come to be known as the 92 Group.

Seeking a Direction

The date was December 6, 1984. About 25 members of Congress convened in the Capitol Hill Club to discuss the future of the Republican Party. The question at hand was straightforward: What must be done to establish a Republican majority in the U.S. House, and what role should party moderates play?

“The question at hand was straight-forward: What must be done to establish a Republican majority in the U.S. House, and what role should party moderates play?”

The group sought some serious advice. Rep. Trent Lott, White House aide B. Oglesby, and political strategist Steve Stockmeyer were invited to offer their insights. Both Lott and House Minority Leader Bob Michel were continuously consulted on and advised of the group's intentions throughout the spring.

At the end of the session, a decision was reached. True, moderates tend to be independent, ponderous, cautious—in short, the kind of people who are difficult to organize. But still, these were the very moderates who needed to organize.

“Moderates tend to be independent, ponderous, cautious—in short, the kind of people who are difficult to organize.”

Representatives Olympia Snowe and Tom Tauke serve as co-chairs of the 92 Group.

In fact, the dilemma was seen to illustrate the very key to a Republican majority: the party will grow stronger as the public recognizes the variety of interests and concerns that can be accommodated under the party umbrella.

For moderates, this means coalescing among themselves while working with other Republicans to unite, strengthen and build the party. It means becoming a distinct entity, yet remaining proactive and positive rather than reactive and negative. The group must not be seen as opposing or countering other party elements.

Most—but not all—of those meeting that day committed themselves to band together in order to plan and execute a strategy for influencing policy in the House and broadening the party's organization.

After some contemplation, a name was chosen to reflect a primary goal of the organization—securing a Republican majority in the House by 1992. Thus, the 92 Group was born.

A half-year later, the group is going strong. The membership has grown to 30 publicly-identified members, plus about 15 informally associated members.

“The [92 Group] membership has grown to 30 publicly-identified members, plus about 15 informally associated members.”

The commitment level has remained strong—the best sign of success for a moderate organization. Members have met at least once a week on average, and task forces have met with even greater frequency. Staffers have been welcome to attend meetings, but not as a stand-in for their bosses—members are urged to think and debate all issues on their own. Indeed, no separate 92 Group staff organization has been created or contemplated.

A few relatively minor projects were undertaken shortly after formation, including a letter to President Reagan urging equitable treatment of defense and non-defense programs in his 1986 budget. But the group's real debut on the House floor was a full-scale spectacular—a comprehensive federal budget proposal.

Budget Proposal

When the House began consideration of the 92 Group's budget on May 22, Rep. Carl Pursell rose and told the chamber, “We think it is the only document that should be approved . . . in light of the careful, four and one-half months of budget discussions . . . and the careful analysis of it by CBO (the Congressional Budget Office).”

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Selecting A Supreme Court



Breyer



Ely



Webster



Ruckelshaus



Coleman



Kearse

The fact that five justices of the United States Supreme Court are now over 75 years old has excited conservatives and shaken liberals. The former foresee a chance to shape the direction of the Court into the next century, while the latter fear that substantial progress on such fronts as civil rights will be halted if conservatives are able to appoint new justices. Little has been said, however, as to what criteria should govern the selection of a justice of the United States Supreme Court. The following is our list, as well as six nominees that we believe embody those principles. Some are right of center; others are left of center. Each, however, has demonstrated an independence and integrity in his or her chosen field. While some serve as judges, others are lawyers. One is even a recent Reagan political appointee. Although their background is important insofar as the job demands an understanding of the law and its processes, it is perhaps not as essential as the ability to reason critically and to display a judicious temperament.

Proposed Criteria for the Selection of Justices of the United States Supreme Court

1. The ability to grasp and address issues of major significance in a democratic society with a sense of perspective, detached judgment, and historical continuity.
2. An established reputation for scholarship, analytical excellence, and clarity and precision in writing.

Ripon Society intern William Dailey assisted in the compilation of this article, and a review board of Society members were consulted during the nomination and selection process.

3. A judicious temperament, including an ability to address complex issues with an open mind and with a fair and impartial attitude.

4. Integrity and a reputation therefor.

5. Life-long commitment to the Bill of Rights and subsequent amendments to the Constitution that protect human rights, including:

- an unwavering commitment to civil rights and equal opportunity regardless of race, sex, ethnic origin or religion;

- respect for the role of a free press as a necessary check on the use of official power and an essential part of the democratic process of self-government;

- respect for the individual rights of privacy and freedom from government regulation in areas of individual choice and conscience;

- respect for a balanced criminal justice system that enables efficient administration of law enforcement but protects the rights of individual criminal defendants and ensures their access to a fair judicial system; and

- respect for the separation of church and state and for non-government interference in the free exercise of religion and personal conscience.

6. Respect for and understanding of the free market economic system upon which the strength of our economy rests.

7. A broad understanding of history and an appreciation of the many diverse aspects of our culture.

8. A recognition of the limitations on the role of the judiciary in the American constitutional system, with a demonstrated commitment to judicial restraint and non-interference by the courts, and government generally, in areas not authorized by the Constitution.

Stephen G. Breyer

- born 8/15/38
- graduate of Stanford (A.B.), Oxford (B.A.) and Harvard Law School (L.L.B.)
- federal judge, First Circuit Court of Appeals, 1981-present
- chief counsel, Senate Judiciary Committee, 1979-81
- professor, Harvard Law School, 1967-81
- professor, John F. Kennedy School of Government, 1978-81
- assistant special prosecutor, Watergate prosecution, 1973
- special assistant, U.S. attorney general, 1965-67
- clerk, Justice Arthur Goldberg, 1964-65
- co-author, *Regulation and Its Reform*, 1982, and *The Federal Power Commission and the Regulation of Energy*, 1974

Over the last decade, many legal thinkers have been concerned with the unchecked power of administrative law, which is the body of rulings handed down by government agencies. One of those individuals is Stephen Breyer, who, in his writings and court opinions, has outlined the philosophy that regulatory overkill should be avoided through the use of the "least restrictive alternative" approach. This means that competition and incentives should be used as regulatory tools before reaching for the traditional forms of regulation. In the case of business regulation, for example, Breyer contends that a solution should not only be selected because it is effective but also because it is the least disruptive and least anti-competitive. And instead of broad regulatory reform which governs all industries, Breyer prefers case-by-case reform. Although a more costly and time-consuming approach, this method allows for solutions that are likely to be more tailor-made than would ambiguous legislation. Breyer also is opposed to legislative vetoes, which politicize agencies and provide Congress with greater control.

The Breyer approach to administrative law makes him an appealing candidate. By examining opposing sides and attempting to find a middle ground, his style leaves little room for extremity, which leads to greater balance in the judicial process.

John Hart Ely

- born 12/3/38
- graduate of Princeton and Yale Law School (magna cum laude), Fulbright Scholar to the London School of Economics, 1965-66
- dean, Stanford Law School, 1982-present
- professor, Harvard Law School, 1973-82
- professor, Yale Law School, 1968-73
- general counsel, Dept. of Transportation, 1975-76
- clerk, U.S. Supreme Court Chief Justice Earl Warren, 1964-65
- author, *Democracy and Distrust*, 1980

At age 46, John Hart Ely, the youngest candidate, already has built a sound reputation as a constitutional scholar. For example, in *Democracy and Distrust* Ely writes that the judiciary should mainly be concerned with process and that process should be divided into two types: the provision of "procedural fairness in the resolution of individual disputes" and the equal and fair process necessary for a properly functioning democracy. While the first type deals with criminal prosecution and private lawsuits, the second concerns itself with the power of the Supreme

Court to protect the general public by policing the other branches of government.

On constitutional interpretation, Ely is a moderate. He maintains that the Constitution is neither so rigid and clause-bound as some strict interpretivists claim, nor as limitless to give the judiciary free rein as most judicial activists believe. (However, Ely does support judicial activism when the democratic process has had an unjust result or simply failed to respond.) Although he opposes substantive due process, or court-created rights, Ely does think that the judiciary should police the political and judicial processes looking for inequality created for its own sake. In fact, his view of the judiciary is that it is duty-bound to ensure that the democratic process is not abused and does not abuse minorities.

William H. Webster

- born 3/06/24
- graduate of Amherst College and Washington University Law School
- director, FBI, 1978-present
- federal judge, Eighth Circuit Court of Appeals, 1973-78
- district judge, Missouri District Court, 1971-73
- U.S. attorney, Eastern District of Missouri, 1960-61
- partner, Armstrong, Teasdale, Kramer and Vaughan, 1949-50, 1952-59, 1961-70

During his years as a district and circuit court judge, William Webster acquired a reputation for being an even-handed justice and a practitioner of judicial restraint. According to the *St. Louis University Law Review*, his performance also has been described as better than average by both liberals and conservatives. Moreover, Webster, a lifelong Republican, was on the American Bar Association's list of recommendations for the spot Justice William O. Douglas left vacant.

While Judge Webster supported law enforcement officials when they made harmless errors, he also was willing to remedy an injustice if a defendant's rights were prejudicially violated. For instance, in *Wounded Knee Legal Defense/Offense Committee v. F.B.I.*, Webster was the first circuit court judge to use the Supreme Court ruling in *Bivens v. Six Unknown Named Agents* to imply a constitutional remedy for violation of the Sixth Amendment. While he believes in judicial restraint and letting the political branches of the government legislate, according to the *St. Louis University Law Review* his record shows that he will not hesitate to be a judicial activist to avoid an unjust result. His record on civil rights also was made evident in *Donaldson v. Pillsbury Co.*, a case in which Webster reversed the lower court's dismissal of a claim alleging discriminatory treatment and wrongful discharge on the basis of race and sex. And in *Hardison v. T.W.A.*, he held that the defendant had discriminated on the basis of religion by failing to make reasonable accommodations for a worker's Sabbath observances.

William D. Ruckelshaus

- born 7/24/32
- graduate of Princeton and Harvard Law School
- director, Environmental Protection Agency, 1970-73, 1983-84

- senior vice president, Weyerhaeuser Company, 1975-83
- acting head, FBI, 1973
- deputy U.S. attorney general, 1973
- assistant U.S. attorney general, civil law division, 1969-70
- deputy attorney general, state of Indiana, 1960-65
- attorney, Ruckelshaus, Bobbitt and O'Conner, 1960-68
- author, *Reapportionment—A Continuing Problem*, 1963

William Ruckelshaus inherited a troubled and much maligned Environmental Protection Agency (EPA) in 1982, and in just a short time restored the morale and integrity of that agency. His handling of the situation was of great importance to the Reagan administration, which then faced severe criticism about the ethical violations of some EPA appointees. While neither a judicial scholar nor a judge, Ruckelshaus's flair for independence and integrity also was made evident when, as deputy attorney general, he refused Richard Nixon's infamous October 1973 order to fire Watergate special prosecutor Archibald Cox.

As administrator of EPA, the Indiana native balanced public and industry concerns and pushed for an effective and democratic decision-making process. This was made evident in a Tacoma, Washington case in which arsenic was being produced by a copper smelting plant. On Ruckelshaus's instructions, the local EPA branch held public hearings and listened to every party affected by the decision to produce the pollutant: the company, the employees, the neighbors, the state EPA, the environmentalists, and the local and state governments. While certainly not an original methodology, it demonstrates Ruckelshaus's keen willingness to listen to all parties in a dispute.

In addition to demonstrating his ability to be an effective administrator, a necessary skill in dealing with the current Supreme Court workload, Ruckelshaus also has shown that he is more concerned with an effective solution than a fixed ideology. Such abilities and temperament make him a particularly appealing candidate to deal with the Court's complex social and moral questions.

William T. Coleman, Jr.

- born 7/07/20
- graduate of University of Pennsylvania and Harvard Law School (magna cum laude)
- senior partner, O'Melveny and Myers, Washington, D.C. 1977-present
- secretary of transportation, 1975-77
- counsel, Arms Control Disarmament Agency, 1963-74
- director, IBM, Chase Manhattan Bank, PepsiCo, Pan Am, CIGNA
- trustee, Brookings Institution, Rand Corp., Carnegie Institute
- member, executive committee, Trilateral Commission
- chair, NAACP Legal Defense and Educational Fund
- member, executive committee, Lawyers Committee for Civil Rights Under Law
- partner, Dilworth, Paxson, Kalish, Levy and Coleman, 1952-75
- law clerk, Justice Felix Frankfurter, 1948-49

William T. Coleman, Jr. is a lifelong Republican who has matched a successful corporate and Supreme Court practice with extensive public service. For example, he has built a solid civil rights record through his work with the NAACP and as a

private attorney. In 1954 he helped draft the brief for *Brown v. Board of Education*, the decision which held the "separate but equal" doctrine unconstitutional and opened the way for school desegregation and numerous other civil rights advances. A 1984 *Tulane Law Review* article shows that he also is an ardent advocate of the First Amendment protections of freedom of the press.

Coleman's writings demonstrate that he is a moderate who favors judicial restraint and disciplined opinion writing. For example, in a 1983 *Fordham Law Review* article he argued that the Supreme Court's case overload is eroding the quality of its decision making and affecting the Court's leavening influence on the lower courts. Part of the overload, he says, has been caused by the return of issues only partially dealt with in prior unclear or divided opinions. His suggestion is that such repeat cases be eliminated through a return to "the traditions of judicial restraint, disciplined opinion writing and deferential collegiality." He also proposes to limit the Supreme Court to issues of fundamental national importance. Review would be discretionary except "where a constitutional challenge involves the denial of fundamental human rights in a way that is the cause of national divisiveness." This would reduce the workload and allow the justices to concentrate on serious social and legal questions.

Amalya L. Kears

- born 6/04/37
- graduate of Wellesley College and University of Michigan Law School (cum laude)
- federal judge, Second Circuit Court of Appeals, 1979-present
- Hughes, Hubbard and Reed, partner, 1969-79, associate 1962-69
- professor, New York University School of Law, 1968-69
- board of directors, NAACP Legal Defense and Educational Fund, 1977-79
- board of directors, National Urban League, 1978-79
- member, Lawyers Committee of Civil Rights Under Law

A moderate judicial activist, Amalya Kears has demonstrated a strong belief in the use of legal precedent and judicial restraint. For example, in *Schwabenbauer v. Board of Education*, a case dealing with the use of Title VII in sexual discrimination suits, Kears detailed the use of Title VII in such cases and provided a fair and reasonable interpretation of the Title based upon previous Supreme Court rulings.

Two environmental cases also reveal Judge Kears's sense of judicial balance. In *Sierra Club v. SCM Corp.* she employed a very traditional definition of standing (who may bring a suit) to dismiss the Sierra Club's complaint. However, in *Sierra Club v. U.S. Army Corps of Engineers* she ruled in favor of the Sierra Club by holding that the Army Corps of Engineers had unreasonably relied on an inadequate environmental impact study and thus had violated the proper procedure as legislated by Congress.

Perhaps her ruling in the latter case best demonstrates her commitment to judicial reasonableness. "The courts," she wrote, "are not charged with general guardianship against all potential mischief in the complicated tasks of government." Yet she also added that there are many specific instances in which judicial action is required to ensure proper use and interpretation of statutes by governmental agencies.

92 group from page 7

The budget was on time and its savings verified as real and accurate by CBO, only because the 92 Group set out in January to construct a comprehensive package, and to do so not in reaction to administration or Democratic proposals, but in response to the need for a balanced and non-ideological approach to deficit reduction.

A budget task force was created, and it was charged with reaching a minimum of \$50 billion in budget savings by scrutinizing the entire federal budget and omitting no sacred cows. Also, it was charged to cut the deficit without raising taxes. The jumping-off point for the task force was a freeze on federal spending in fiscal year 1986.

Members felt strongly that a comprehensive freeze was essential if their colleagues and constituents were even to consider a 92 Group budget. No \$1 trillion budget could be 100% acceptable to all members, but the 92 Group felt that a fair sharing of the burden across the spectrum of government programs would ameliorate concern over individual program cuts.

Freezing federal spending, however, only yielded about \$32 billion out of the \$50 billion in required savings. Task force members then began the arduous search for the additional \$18 billion in savings. Through a series of 13 full meetings and numerous informal consultations, the task force slowly crept its way across each budget function and the panoply of programs within the functions. Our debates and discussions were quite candid and sometimes heated—but enormously productive.

No issue generated as much discussion as did Social Security cost-of-living-adjustments (COLAs), with 92 Group members's concerns mirroring those of the entire Congress. Task force members decided that Social Security benefits should not be affected in the package. Social Security was too crucial an issue in its own right to become enmeshed in the fight to cut spending, and all members should be given the opportunity to address their concerns over it separately on the floor.

By late April, the task force had assembled \$19 billion in reductions and terminations in 75 programs government-wide, from Community Development Block Grants (CDBG) and Urban Development Action Grants (UDAG) to uranium enrichment and crop insurance subsidies. The assembled package—now dubbed the “Blueprint for Balance”—then had to undergo its first serious test: Congressional Budget Office review. Its numbers were to be “crunched,” to be analyzed for their accuracy.

After final corrections and checks were made, CBO's analysis verified that the 92 Group budget achieved \$51 billion in savings for FY '96, \$263 billion over three years. Of the five budgets that the House would eventually consider, including the Budget Committee's, it would be the only budget in the House to be verified by CBO.

Armed with these figures, on the week of May 13, the 92 Group members signed off on the final product, and it was presented to the House at a Rayburn Room press conference in the Capitol on May 16.

“. . . despite the [budget] defeat, the 92 Group had established a credible voice for centrist House Republicans.”

In the end, the proposal was not adopted by our colleagues in the House. (Perhaps our group's primary goal—control of the

House—is somewhat at cross purposes with the Democratic leadership!) It did, however, garner twice the number of votes as did the conservative alternative offered by Rep. William Dan-nemeyer. By the end of the day, despite the defeat, the 92 Group had established a credible voice for centrist House Republicans.

This description, however, begs an obvious question: “What have you done lately?”

The Future

The 92 Group is beginning to address a variety of economic and developmental issues that touch at the core of our constituencies—and the constituencies needed to create a GOP majority by 1992.

With talented, active members, and a few state legislatures on our side, we'll achieve that goal, and with it consign “Republican majority” to the scrapheap of outdated oxymorons. ■

92 Group Statement of Principles

The 92 Group is composed of members of the House of Representatives who are committed to expanding the legislative influence of all Republican members and to reversing thirty consecutive years of minority status within the House. We seek to develop a vision for the future, and to create and promote new legislative ideas by utilizing the talents and influence of our membership and working with those who may share similar beliefs.

The membership is committed to fostering traditional Republican values and emphasizing the party's historic belief in the creative ability, energy and initiative of every American citizen; promoting continued economic growth through the free enterprise system; and recognizing the value of carefully drawn and selectively applied federal programs to achieve specific social and economic goals.

The ability of the Republican Party to respond to a rapidly changing domestic and international scene absolutely requires participation by all Republicans in the discussion and development of ideas and programs. Our unchanging goal is to seek consensus within the party and to develop pragmatic legislative alternatives.

Participation in the 92 Group is undertaken with the knowledge that the group will not formally endorse any legislative proposal but will facilitate specific legislative efforts designed to build a Republican majority. The organization will assist in the coordination of research and communication among those members who seek to influence policy within the Republican Party and to obtain the support of Democratic colleagues.

The 92 Group has a continuing role and responsibility in the development of both short and long-term political, as well as legislative, strategies. We will attract and encourage candidates who share similar beliefs and goals and will provide them with resources to support their campaigns.

The 92 Group can best serve the Republican Party and the country by seeking consensus and by building coalitions. Only in this fashion can we accomplish the task of attaining a Republican majority in the House of Representatives and across the nation.

Editorial:

War and Remembrances of War

May 6 was a cool night this spring, and in New York City thousands of people gathered along the southern end of the East River to commemorate the ten year anniversary of the end of the Vietnam War and to dedicate that city's Vietnam Veterans Memorial. Songs from the 1960s filled the air and fireworks exploded overhead as veterans and civilians alike danced and embraced, each group appearing to be filled with the emotion that only music from a particular time and place can evoke. The Beatles. Simon and Garfunkel. Jefferson Airplane. How many times had each of us heard their songs? But in the minds of those dressed in green fatigues and army boots that night, what memories did they awaken? Perhaps touching and dancing become the only way to soften such recollections, as if acting out the etchings in one's mind of an uncertain time is the surest way to realize release and reconciliation.

Dance and song accompanied the end of the Second World War, too, and just a few blocks away from the Vietnam Veterans Memorial a grand celebration took place almost forty years before—on May 7, 1945, V-E Day. *The New York Times* recently ran a photo of that celebration, and in it thousands of people were shown jammed together at the corners of Wall and Nassau Streets in lower Manhattan, jubilantly dancing and playfully hanging from the nearby statue of General George Washington.

Divergent Strategies

Unfortunately, we know more than six blocks and forty years mark the end of those two wars. The manner in which they were fought, and their respective moralities, provide an almost unbridgeable gap. The only thing that can be compared is their differences. For example, Hoang Anh Tuan, a Viet Cong general, now his country's vice minister for foreign affairs, recently told former *Newsweek* editor William Broyles, a Vietnam vet, "It came to us that the way to fight the American was to grab him by his belt, to get so close that your artillery and airpower were useless."

"The manner in which World War II and the Vietnam War were fought, and their respective moralities, provide an almost unbridgeable gap. The only thing that can be compared is their differences."

Perhaps that remark best reflects the difference between those two wars. While face-to-face, village-to-village combat did occur in World War II, it was the great firepower of the Allies that finally drove the Axis into submission. Of that blast, defense expert Larry Smith says: "Wars of attrition worked in the past because of our phenomenal industrial base. There was always time. The seas kept us separate. We could get the 'arsenal of democracy' running." War by attrition has been said to be reliable, functionally simple, and analytically predictable. Objectives are set, and if the arsenal is ready, the aims are met.

"While face-to-face, village-to-village combat did occur in World War II, it was the great firepower of the Allies that finally drove the Axis into submission."

In Vietnam, of course, that was not the case. As James Fallows writes in his book *National Defense*: "The outcome of the war of attrition in Vietnam was anything but what its managers had predicted." Those guiding the American involvement in the war relied on a strategy of being able to wear down the opposition by sheer strength.

". . . in Vietnam that strategy made us look like a muscle-bound heavyweight stalking a nimble lightweight."

While that worked well in World War II, unfortunately in Vietnam it made us look like a muscle-bound heavyweight stalking a nimble lightweight. The Viet Cong, for example, used their feet for mobility, and led us into corners where a knockout punch of artillery and airpower became impossible. They succeeded in pulling us in by the belt, and forced us to fight the war on their terms. Not only were we unsuccessful in doing that, we also compounded the situation by measuring our efforts by a standard that applies to war by attrition but not to guerrilla encounters: body counts. By tolling up the number of dead, we attempted to quantify the war and make logical predictions based upon mathematical presuppositions. If X had 5,000 soldiers, we thought, then to win Y must knock out 5,000 soldiers.

The problem was that there was no causal relationship between the numbers. As in many guerrilla encounters, other factors, such as an inordinately large Vietnamese population, jungle heat, and unfamiliar terrain, interfered to give the war little predictability. And it is the lack of predictability that does not fit so well into a strategy of attrition.

Guerrilla Encounters

Central America provides another example of the difference between conventional warfare—where shell power is important—and guerrilla warfare—where conflict becomes a pesky game of chess. In Nicaragua, for instance, armed rebels strike bridges. Government militiamen retaliate against armed rebels. Both retreat into dense terrain. Morning breaks; more armed rebels come down from the hills. Additional stockades are blown away. Nicaraguan soldiers fire back at armed rebels, chase is given back into the jungle. Evening comes; the competing forces retire. The next day, or maybe even a few days later, the process starts again. It occurs repeatedly.

“Central America provides another example of the difference between conventional warfare—where shell power is important—and guerrilla warfare—where conflict becomes a pesky game of chess.”

The point of this strategy, much like the aim of war by attrition, is to wear down one's opposition. It is done, however, by elusiveness, not strength. And the result is often different from that of war by attrition. In Vietnam, for example, the end was stalemate, not victorious liberation. Said former Viet Cong general Tuan recently to an American observer, “Listen, we didn't have to defeat you the way the Allies beat the Nazis. We only wanted you to withdraw so that we could settle our own affairs. That was our goal, and we achieved it.”

Conflict in such situations also becomes a contest between dubious partners. The Vietnamese villagers who were our friends by day became our adversaries by night. They collected valuable information about our troops and reported it to Viet Cong leaders. “The people, the Viet Cong, and our regular forces were inseparable,” said Hoang. “If you had a temporary success against one, the other would take up the battle.” To some degree, the same phenomenon holds true in Nicaragua. Peruvian author Mario Vargas Llosa returned recently from Nicaragua and wrote that many CIA-backed “contras,” whom President Reagan calls “freedom fighters,” “have only a vague idea of what they are fighting for. Some think they are fighting Yankee imperialism.”

Improving the U.S. Response

Does this mean, then, that whenever our strategic interests lead us into guerrilla encounters, that we must avoid them? No, not necessarily. It does mean, however, that as guerrilla encounters become more prevalent we must rethink our military strategies and the types of resources that will be most applicable. Since 1981, for example, the United States has been engaged in a major military buildup. While this escalation has had considerable bipartisan support, it still rests upon the concept of war by attrition.

“Does this mean that whenever our strategic interests lead us into guerrilla encounters, that we must avoid them? No, not necessarily. It does mean, however, that we must rethink our military strategies and the types of resources that will be most applicable.”

Massive B-1 bombers and not-so-agile M-X missiles, for example, are central to the renovation. While any superpower's military must contain large-scale powerful weapons, are they really the most effective for the struggles that are being waged today? Do they allow for the maneuverability and flexibility that some argue is necessary for guerrilla combat? Fallows, for example, says: “In weaponry and equipment, [maneuverability] places a premium on simple, reliable, flexible tools that can be produced quickly, whose functions can be adapted rapidly in response to changing tactics, and that do not depend for their effectiveness on narrowly defined, fixed circumstances.”

Is there room also in our military strategy for the deception, surprise, and confusion that some military reformists claim is necessary in non-conventional settings to stay one step ahead of the enemy and to attack him at his weakest point, rather than head-on? Consider the manner in which colonial forces fought in the Revolutionary War, Fallows says. While the British dressed in red and marched in straight lines, the Americans wore buckskin and hid behind trees.

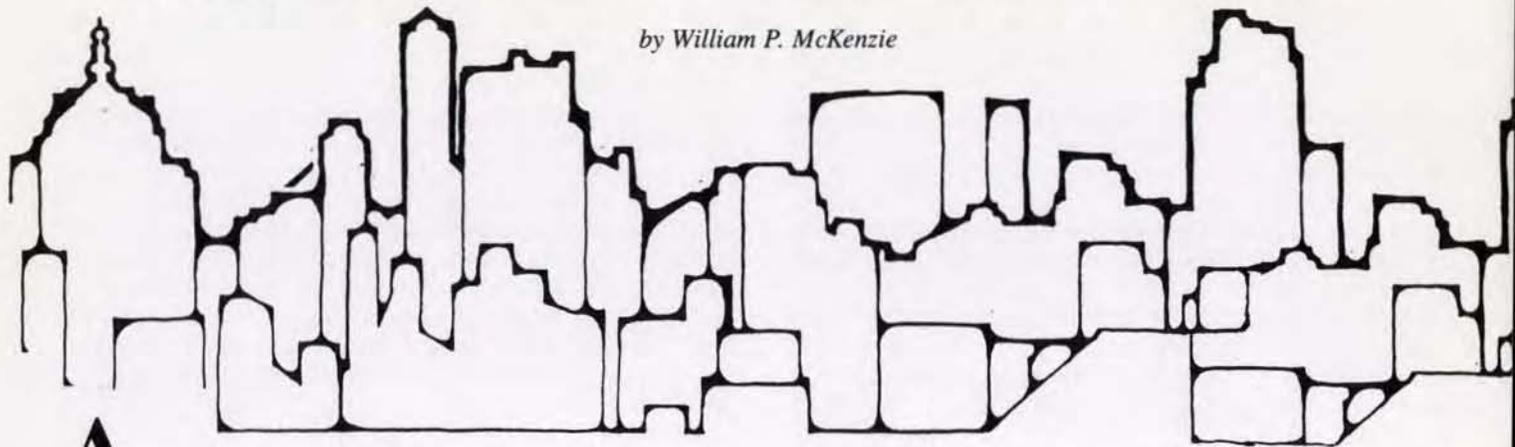
Although American soldiers need not wear buckskin today, it is important to recognize that the nature of conflict has changed. Moreover, it is essential to note that of late the *cause* of conflict has not always been easily distinguishable. Rarely do just causes, like the opposition to Hitler, make themselves known. Even when they do, “the cause” is not always the driving force behind all soldiers. Of his experiences in World War II, former *New York Times* military correspondent Drew Middleton wrote recently, “one seldom heard G.I.'s talking about a crusade for the defeat of Fascism. Instinctively, the soldier knew that until he killed or captured enough of those fellows in the funny helmets across the field or in the village just down the road, there was no way to go home.”

“The desire for survival has been proven to be a strong homing instinct. In war, if that instinct is not matched by an adept strategy, then the whole episode becomes a mismatch.”

The desire for survival has proven to be a strong homing instinct. In war, if that instinct is not matched by an adept strategy, then the whole episode becomes a mismatch. In many respects, that is what the Vietnam War became: a mismatch. The wide gap between the desire for survival and the strategies employed in it only heightened the irrationality that all wars possess. So, too, did the mismatch heighten the inner despair of many American soldiers, and force them to exorcise that darkness in ceremonies like that recently held along New York's East River. Perhaps now it is time for American military strategists, like those in the Army who now are developing maneuverable light infantry divisions, to exorcise their own demons and begin to bridge the gap that separates the end of those two wars. The lives of those lost, as well as the lives of those eligible today for military service, demand it. ■

The Cities That Uncle Sam Built: An Appraisal of the Urban Development Action Grant Program

by William P. McKenzie



Among the first sights one encounters upon exiting the Grove Street train station in Jersey City, New Jersey is the Grace and Hope Mission and its attendant sign, "Jesus is the Light of the World." Adjacent to that, written on an equally dilapidated looking structure, is this advertisement: "Food Stamp Checks Cash Here." Such is the stuff of which inner cities are made, and Jersey City certainly has its share of inner city.

What heightens this sense of urban decay, however, is its backdrop: the twin shiny towers of the World Trade Center which stand just across the Hudson River in lower Manhattan and represent the sophistication, urbanity, and perhaps even progress that Jersey City doesn't. Those towers stare down on Jersey City as a cruel reminder that the city which became the first permanent settlement in New Jersey in 1660, has somehow been left behind.

"Combined with related facilities like convention centers or parking garages, hotels received 24 percent of the \$2.3 billion in UDAG grants awarded from 1978-1982."

But Jersey City, by turning nearly \$53 million in federal funds from the Urban Development Action Grant (UDAG) program into a billion dollars and more of private investment, is now trying to reverse that decline and restore a sense of community that has been lost among its residents, particularly its young. John Minella, a 30ish aide to Gerald McCann, the mayor who was responsible for getting much of the UDAG money into Jersey City but who was defeated this summer in his bid for a third term, claims that this has already begun. Instead of moving to cities with more immediate opportunities, like New York, Minella says that a number of his classmates have chosen to stay in Jersey City. Civic pride evidently is also being restored among those who've left. "People are no longer ashamed to say

they are from Jersey City," Minella said one afternoon after racing a visitor around Jersey City's various public-private developments.

A reaction to this might be, so what? Jersey City is just one ailing city among many. Why focus on it? The reason is this: on May 16, 1985 the United States Senate cut by 20 percent the funding for the program that Jersey City is banking on, and, more critically, decided to eliminate altogether the UDAG program in fiscal year 1987. On May 23, 1985 the House of Representatives also decided to cut UDAG funding by ten percent in fiscal year 1986 (UDAG was budgeted at \$440 million in fiscal year 1985). Although it did not "zero out" the program, during the forthcoming House-Senate budget conference UDAG will again become a prime target for extinction.

The UDAG plan was initiated in 1977 under the Carter administration "to increase jobs and tax revenues in distressed cities and urban counties with grants designed to stimulate private investments in amounts several times larger." The way the program works is that distressed communities apply to the federal government for the grant, and if the grant is awarded, based on such factors as unemployment, population loss, and percentage of older housing stock, the city can then disperse the money to private sources as a subsidy, a low-interest loan, or an outright gift.

Criticisms of UDAGs

Critics of the program, however, claim that most of the projects would have been undertaken without the grant; that when UDAGs do create jobs, they are usually done so at a high cost; that the program is basically a subsidy for downtown developers; and that UDAGs produce little or no private investment and tax revenues. Stuart Butler of the Heritage Foundation has even called the program "an urban slush fund."

In part, these criticisms are true. For example, a 1982 Department of Housing and Urban Development study found that in 13 percent of the 80 UDAG projects examined, part of the project did not depend on the UDAG subsidy. In another eight percent, full substitution of the UDAG funds for private or non-federal public funds occurred. "UDAG funds awarded to projects with

William P. McKenzie is editor of the *Ripon Forum*.

conclusive evidence of either partial or full substitution," the study said, "represent one of every six dollars expended."

HUD's 1982 study also found that for every job UDAG created during its first five years, \$11,570 was spent. While this was considerably less than the cost of creating jobs through the Local Public Works program, the cost-per-job was 62 percent higher than was originally expected. Moreover, a 1984 HUD study claims that only 55 percent of the jobs went to low and moderate income workers. Only 16 percent were for minorities.

Neither is the charge unsubstantiated that downtown developers, particularly hotel chains, benefit quite handsomely from UDAGs. *Forbes* claims that from 1978-1982, the hotel industry collected \$545 million in subsidies, grants, and loans for hotels or related facilities from the UDAG program. "The Hyatt, Hilton, Marriott, Radisson, Sheraton and Holiday Inn chains," the magazine says, "have cashed in on the program." Combined with related facilities like convention centers or parking garages, hotels received 24 percent of the \$2.3 billion in UDAG grants awarded from 1978-1982.

In some cases, UDAG projects also have stimulated little or no private investment. In February 1978, for instance, Corning, New York received a \$1.8 million UDAG grant to improve access roads and storm sewers for a \$16.3 million headquarters building Corning Glass Works wanted to construct. While the grant did stimulate some private investment, according to the General Accounting Office (GAO) it led to only \$50,000 in private investment. Similarly, Cincinnati received a \$6.8 million UDAG grant for an industrial park that was expected to produce \$39.7 million in private investment. Instead, the GAO reports, no private investment was produced.

UDAG Merits

If this is the sum of the UDAG program, then why continue it? To answer that question, look at some more statistics. For example, that 1982 HUD study concluded that UDAGs are "assisting in promoting economic development, private investment, jobs and taxes in places that in the absence of this program, would not have occurred." The figure HUD cites is 64 percent when it claims that "the majority of UDAG projects clearly required the federal grant in order to proceed." Although the average amount of private investment the government hoped to stimulate through UDAGs was originally 6.3 private dollars, HUD public information officer Jack Flynn says that 5.8 private dollars are now being spent for each UDAG dollar. In addition, HUD estimates that in nearly half of the UDAG projects the grant has served as a catalyst for spin-off private investments, such as new construction. About 45 percent of the projects have had off-site effects on existing businesses. Most have been positive, such as increasing the sales volume in stores adjacent to UDAG-supported projects.

Before discounting for unnecessary grants, HUD found that 77 percent of the anticipated employment has actually been realized. Take away the funds for unnecessary projects, it says, and the cost-per-job would be eight percent less. Flynn says that already tighter review procedures have lowered the cost-per-job to \$7,702. The amount of housing delivered through the UDAG program also approximates what HUD anticipated. 75 percent of the units are directly attributable to or dependent upon the UDAG subsidy. 97,858 housing units have been created or rehabilitated, and 38,053 of those are occupied by lower-income individuals.

"One of the most important HUD discoveries is that over half of the development ideas that eventually receive UDAG support were initially conceived in the private sector."

One of the most important HUD discoveries is that over half of the development ideas that eventually receive UDAG support are initially conceived in the private sector. A larger percentage originate "prior to any thought of UDAG." The reason this is significant is that critics love to complain that the UDAG program merely attracts investors to projects in which they otherwise would not have been interested. The program distorts market forces, they say, by diverting private capital away from other projects. If HUD is to be believed, however, this is not the case.

Although mayors have a vested interest in the UDAG program, listen also to what they have to say; after all, who is more responsible for making cities work? For example, Joseph P. Riley, Jr., the mayor of Charleston, South Carolina, a city which has received six UDAG grants totaling nearly \$19 million, claims that UDAGs help stem the "out-migration of people, business and industry" from cities to suburbs. Riley says that UDAGs also result in private investment that otherwise would not have occurred. About the UDAG-aided Charleston Center, which has helped to revive property values and investment in downtown Charleston, Riley claims: "Without substantial public money to build a quality parking garage, restore the streets and sidewalks and replace the utilities underground, no investor would have been willing to build a Charleston Center."

"Charleston's six UDAGs have created 2500 new, permanent private-sector jobs, and nearly \$85 million in private investment."

Because of UDAG, Control Data Corporation has been able to renovate the historic American Tobacco Company building on Charleston's East Side into a "Business and Technology Center." The mayor's office contends that 123 new small businesses are now located in the center, and that 47 percent of those new businesses are minority-owned. 700 new jobs reportedly have been created by the 123 new operations, and through the City Venture Program—an arm of Control Data—602 residents of the economically-depressed East Side have landed jobs throughout Charleston. In sum, Charleston's six UDAGs have created 2500 new, permanent private-sector jobs, and nearly \$85 million in private investment.

Could Charleston have done this on its own? No, says Riley. Public monies have been essential. Cities with a declining tax base, like that of Charleston's during the late 1970s, simply cannot rejuvenate themselves. "It is like telling someone who lost an arm to grow it back," he says. "It has not happened and it will not happen." The mayor claims that neither is this the first time that public money has been used to encourage private investment. Recall the granting of land during the 1800s to citizens who were willing to farm it, he says, and the development of the trans-continental railroad. In each case, federal monies were used to stimulate private investment.

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Berlin: Both Sides Now

by Gregory V. H. Knopp

Last April, from the 26th through the 29th, I joined 12 members of the Ripon Society and 72 other attendees from three nations for Ripon's Third Trans-Atlantic Conference, held this year at the Reichstag in Berlin. Among those present were representatives from the British Conservative Party's Bow Group, West Germany's Konrad Adenauer Stiftung, and, for the first time, a delegation from France's Gaullist Party.

As a participant and occasional organizer of all three Ripon trans-Atlantic conferences, I can vouch that our three day affair in Berlin was among the best organized, certainly the best financed, and arguably the most successful such meeting the Society has helped sponsor.

"The conference panels tended to focus upon the strategic, political, and economic relationships between the United States and the Western European Alliance."

The reasons one could offer were as numerous as the steins of beer consumed that fateful weekend: distinguished and eloquent spokesmen from all four centrist-right groups; extensive conference amenities—including hotel rooms, sumptuous buffets and ornate receptions for all conference participants (courtesy of a generous grant from the Konrad Adenauer Stiftung); sunny, 73 degree weather; and state-of-the-art conference facilities (such as simultaneous three language translation headsets, of the type I previously thought were available only to members of the General Assembly of the United Nations).

The conference also boasted the attendance of some fairly significant political luminaries, including the mayor of Berlin and a score of elected officials from Britain's Parliament, West Germany's Bundestag, France's Parliament, and the European Parliament. The U.S. contingent featured 28 congressional staffers, several federal departmental and government agency heads, and perhaps most notably, former U.S. Senator John Tower, now a key member of the Geneva Arms Talks team. The quality of the panelists, and the depth of their insights, were certainly additional factors for the overall superiority of the conference.

The German Question

This year, the conference panels tended to focus upon the strategic, political, and economic relationships between the United States and the Western European Alliance. As one might expect, questions regarding the future of NATO, detente, and SDI ("Star Wars") dominated most of the discussions, which, while friendly, were lively. Yet at the heart of each panel, one topic kept reoccurring: "the German Question." It obviously was not a question easily forgotten during our stay in Berlin. It

wasn't long before I quickly became aware of the dichotomy of opinions surrounding that sensitive issue—not just between nationalities—but between generations as well.

". . . at the heart of each panel, one topic kept reoccurring: 'The German Question.' . . . It wasn't long before I quickly became aware of the dichotomy of opinions surrounding that sensitive issue—not just between nationalities—but between generations as well."

Because of that atmosphere, the conference allowed me (or should I say forced me) to think of answers and even *questions* in different contexts. For example, I soon felt that I was no longer viewing problems from a strictly American perspective—or for that matter, the perspective of a young, white male professional.

I don't think I was alone. For the most part, the participants in the conference, much like the nations they represented, reached a consensus on the problems. There were, however, certainly differences of opinion as to the solutions. But nearly everyone agreed that the act of discussion itself was significant; perhaps more important than any other potential objective of the conference. Because there was simply no room and precious little time for rigid, dogmatic thinking, and negative, counter-productive arguments, one was compelled to keep an open mind.

Berlin's Reminders

Looking back, however, it strikes me that there was a rather obvious reason for that type of thinking: our location. It is hard to imagine a setting more conducive to reflective thought than that of the Reichstag in Berlin. Once home to the governments of both the Weimar Republic and the Third Reich, it rests less than six feet from the wall which divides Berlin, and the world, into East and West. Diagonally across from the eastern side of the wall is the famed Brandenburg Gate, formerly the entrance to the city, now another reminder of the division that exists between the Western allies and the Eastern bloc. Off to the other side of the Reichstag, along the Spree River and in the shadow of a Soviet guard tower, lie seven graves. They are a simple, yet powerful memorial to freedom, and those courageous individuals who were killed there trying to escape to it.

The Reichstag itself was gutted by fire in the 1930's. Almost certainly the result of Nazi arson, it was ironically the Nazis who benefitted most from the blaze. Through arousing Red suspicions, and ultimately linking the fire to the Communists, the Nazis came to power.

"It is hard to imagine a setting more conducive to reflective thought than that of the Reichstag in Berlin. Once home to the governments of both the Weimar Republic and the Third Reich, it rests less than six feet from the wall which divides Berlin, and the world, into East and West."

Gregory V. H. Knopp is a former political director and acting executive director of the Ripon Society.

After the Second World War, the Reichstag, along with Germany, rose from the ashes. While its exterior was preserved, it underwent vast internal structural changes. (Like so much else about the building and Berlin, one often finds the symbolism hard to miss.) Meetings of the European Parliament, as well as the Trans-Atlantic Conference, are now part of its heritage.

Of course, the ghosts of Hitler and Nazism do not die easily. Those memories continue to haunt the German people, and remain, it seems, a major obstacle to the resolution of many of their problems, particularly the question of German re-unification. It was not too surprising, therefore, that the most talked about but not formally discussed issue during the conference was President Reagan's visit to the Bitburg Cemetery. Throughout our stay in Berlin, and to some extent even now, it remains an issue as divisive as Berlin's Wall.

As one might imagine, the legacy of the Third Reich is not a topic with which most members of the Federal Republic of Germany are comfortable. Without exception, every German I spoke with expressed the view that this is a period they are not proud of and wish to put behind them. At the same time, however, each also voiced the hope that they will someday be judged for their recent accomplishments, not their past mistakes.

Forgiveness, but Not Forgetfulness

Forgiveness can come in many ways. But it is not an act that can be universally defined. Usually it is framed by the unique circumstances involved, and therefore becomes an intensely personal and individual affair. In this particular case, I cannot, and probably will not, ever know just how deep and profound those memories run. I do know, though, that bitterness breeds destructive feelings, not productive ones.

There is an important distinction between forgiveness and *forgetfulness*. The lessons of the Holocaust, like so many humanly inspired tragedies, must never be forgotten. But to deny forgiveness to someone who seeks it seems almost tragic. History teaches us too well that anger produces more anger, violence generates only more violence. Eventually, we will have to accept and appreciate each other's differences if we ever really wish to bridge them.

Those themes—tolerance and respect for reasonable differences of opinion, a willingness to look beyond existing frameworks for solutions, and a desire to look optimistically ahead rather than dwell on the failures of the past—were certainly critical to the success of the conference. It does not require much thought, either, to realize that they are also applicable to whatever success we are to have in the future as people living together. Perhaps the hope we have is that the walls of division and hatred throughout the world can be made as small and narrow as the minds that built them. ■

Editor's note: The *Forum* asked Ripon Society member Greg Knopp to record his impression of the Society's Third Transatlantic Conference, which was held this year in West Germany during the 40th anniversary of the end of World War II.

A SALUTE TO VICE PRESIDENT GEORGE BUSH REPUBLICAN OF THE YEAR

Come join the Ripon Society and its Congressional Advisory Board in honoring Vice President George Bush as its Republican of the Year for 1985. The "Salute to the Vice President" will take place:

Tuesday, July 30, 1985
The Hyatt Regency Hotel
Washington, D.C.

The Mark O. Hatfield Scholarship Fund

Proceeds from the "Salute to the Vice President" will go to the Ripon Society's Mark O. Hatfield Scholarship Fund. This Fund will enable a select number of promising young students from a nationwide arena to further their public policy training while studying and working in the nation's Capitol.

The Ripon Society is a Republican nonprofit, public policy research organization. The Society is not an FEC-regulated political committee and may, therefore, accept corporate, individual or political action committee funds.

All checks should be made payable to: The Ripon Society, 6 Library Court, S.E., Washington, D.C. 20003. With questions, please call (202) 546-1292.

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Opportunities for Dinner Guests

The dinner provides an opportunity for individuals, corporations and associations from across the country to join the members of the Congressional Advisory Board in honoring the 1985 Republican of the Year—Vice President George Bush.

The evening's festivities will begin with a cocktail reception. Afterward, the dinner guests will attend an intimate dinner with the Vice President and Mrs. Bush at the Hyatt Regency Hotel, only one block from the nation's Capitol. Many leading members of the United States House and Senate as well as Cabinet members and White House Officials will be joining us to pay tribute to the Vice President.

During dinner an awards program will take place, and remarks will be made by our very special guest of honor.

Those attending the dinner may reserve individual seats for \$500, or a table for ten for \$5,000. Individuals, corporations, and associations purchasing tables may wish to request a leading public official to be invited as their guest and to be seated at their table.

The Dinner Vice Chair(s) and Dinner Sponsors (those individuals who either purchase or represent organizations that have purchased tables) will be invited to attend a private reception with Vice President and Mrs. Bush before the event. The names of all Dinner Vice Chairmen and Dinner Sponsors will appear in the dinner program. Seating is limited and priority ticketing will be completed on a "first come" basis.

Daytime Congressional Briefing Session

A Congressional briefing is scheduled to take place prior to "The Salute to the Vice President." Beginning at 10 a.m. on July 30th, eight briefings will be conducted by Republican leaders from the House and Senate.

Briefing topics will include such relevant issues as tax reform, international trade, U.S./Soviet relations, and a new civil rights agenda. Guests will also have the opportunity to take part in question and answer periods following each Congressional speaker.

There will be no additional participation fee for those already planning to attend the dinner. Please indicate on the enclosed response card your interest in attending the daytime briefing. Details will be forthcoming.

Weak Claims—Powerful Clients?

The director of the Office of Management and Budget, David Stockman, argues that this logic merely reflects a "weak claim-powerful client" scheme in which mighty clients siphon off federal money for dubious projects. But Jersey City's Gerald McCann agrees, powerful clients *do* receive UDAG money. Yet who else can develop cities? he asks. Development occurs when people "of means" are involved. As his city's director of housing and economic development, Mark Munley, told one reporter, without federal money to pay for street paving, gas and electric lines and water and sewer service developers would not have touched Jersey City's waterfront.

One might call this the "carrot theory," and it isn't indigentous to Jersey City. Says Jim Militello, Buffalo's commissioner of community development: "Without UDAG, I don't know if we can offer the kind of carrots to get those companies to stay." "Those" companies include a number of smaller UDAG-assisted businesses, such as Buffalo's Giora's Macaroni, Abel's Bagels, Westwood Pharmaceuticals and Hoffman Printing. Incentives are important to places like Buffalo and Jersey City because they cannot afford more hemorrhaging. Although McCann was harshly criticized during his June 1985 reelection bid about the rapid pace of Jersey City's development, and perhaps even defeated because of it, he pointedly told the *Jersey Journal* before the election: "We're rushing because the city was dying."

"Incentives are important to places like Buffalo and Jersey City because they cannot afford more hemorrhaging."

Jersey City's rush includes the \$53 million in UDAG money, of which \$40 million came in one installment—the largest UDAG grant ever. The \$40 million will be essential to the \$300 million first phase that New Port City project developers Mel Simon, Sam Lefrak, and Herbert Glimcher have planned for the city's waterfront (the total project is estimated to cost \$2 billion). The UDAG-aided project already has had a ripple effect: New York's reclusive billionaire Daniel Ludwig has plans for a privately-financed, \$700 million, mostly residential development that will go in next to New Port City.

"The federal government will also reap a sizable reward from Jersey City's projects."

Perhaps some of these projects would have been realized without UDAG. But as McCann says, the more than one billion dollars in development that is being planned for Jersey City would not be created as rapidly. And time is something that Jersey City cannot afford to waste. Creating a tax base is essential, and UDAGs are contributing to that. The local tax revenues from the 17-story EverGreen Office Tower alone, which is being built in Jersey City by the EverGreen Shipping Company with the aid of a \$3.8 million UDAG, will be

\$700,000 per year. When compared to the \$27,000 in annual tax revenue the parking lot that formerly occupied the EverGreen site brought Jersey City, the importance of this project should be obvious. The federal government will also reap a sizable reward from Jersey City's projects. McCann estimates that the New Port City project will produce \$180 million in construction wages. Assuming that those wage-earners are in the 20-25 percent tax bracket, \$35 million to \$45 million in tax revenues will be paid to the federal government.

To the charge that all of this is well and good, but isn't there a considerable amount of politicking involved in Jersey City's UDAG projects, McCann replies: what government program doesn't involve politics? Certainly not the defense budget, nor western water projects. So why single out UDAG? It is only funded at \$440 million a year anyway; eliminating it would have little effect on the federal deficit. Charleston's Riley says the same: UDAGs are a lot cheaper than welfare or urban rot, and they "certainly cost the federal government less than the gargantuan scandalous tax code giveaways to the big oil companies."

Intangibles

Didn't Madison say that we were going to be a nation of factions? It appear that he was right. And when it comes time to divvying up the federal budget, those factions—defense contractors, urban developers, social security recipients, et al.—are not going to vanish like blue smoke. Managing the federal budget and its constituents requires the wisdom to know how to balance competing interests.

"What about the intangible human elements that are involved in this program: The sense of pride in one's community; the pulsating hum that occurs when a city is about to rise from the ruins; and the hope in the future that new opportunities bring to young people."

Concerning one of those programs—UDAG—and its constituencies, David Stockman is in part right: powerful clients *do* benefit. But his assessment of the claim part is just too neat, too ideological. While I wandered through the streets of Jersey City recently, I wondered how Stockman and his cohorts would gauge the surrounding decay. Would the sense of drift that those shiny twin towers in Manhattan bring to this city fit into their ideological framework? Would they recognize the micro-importance of this program, or would that be too much to ask? Perhaps they are right, I thought. Maybe UDAGs should be eliminated; maybe too much abuse exists. But, then again, what about the intangible human elements that are involved in this program: the sense of pride in one's community; the pulsating hum that occurs when a city is about to rise from the ruins; and the hope in the future that new opportunities bring to young people. Do they matter? Can they be factored into the task of balancing a budget? Perhaps Charleston's mayor, Joseph Riley, is the one who is right: decades of knee-jerk pronouncements against federal programs have left us "unable to fairly scrutinize any federal program." That seems to be the case in Washington these days, but not in Jersey City where the harsh realities of life demand a helping hand. ■

The Chairman's Corner: *Lessons from Vietnam*

by Jim Leach

Sometimes governments forget that from small steps big events can unfold. Such occurred twenty years ago in Vietnam when a small decision to commit a modest number of military advisers led to the largest undeclared war in our history. For this reason I have been working with the administration and interested members of Congress to block a recommendation of a House Foreign Affairs subcommittee to initiate a new \$5 million military assistance package to certain resistance forces in Cambodia.

Although Congress and the American public are broadly sympathetic to the goals of the non-Communist resistance movement in Cambodia, there are a number of concerns which ought to be raised before a policy of renewed military involvement in Indochina is re-initiated.

Drawbacks to Indochina Aid

First, while the initial \$5 million funding level may seem a pittance to geo-political strategists, it will only raise unrealistic expectations of a U.S. commitment to provide aid indefinitely into the future and to do so at increasing levels. I do not believe the American taxpayer is prepared to underwrite a new military venture in this region without a well-defined national interest carrying the broadest support of the executive, the Congress, and the American people. If we are not in it for the long haul and

at a funding level that will make a difference, we ought not to even begin to hold out false promise to the courageous people whose lives we are risking.

“ . . . there are a number of concerns which ought to be raised before a policy of renewed military involvement in Indochina is re-initiated.”

Second, the need for U.S. military aid has not been clearly demonstrated to Congress. The non-Communist Cambodian forces have been supplied impressive amounts of arms from countries in the region. Substantially all of their trained personnel have been equipped and sufficient arms have been pledged to permit an increase in troop strength this year. That assistance, however, is dependent on progress by the non-Communists in reorganizing their forces and re-orienting their strategy. In this regard, it should be stressed that weapons requirements of the non-Communist resistance are modest and well within the means of the nations in the region. The major needs of the non-Communist resistance are improvement in leadership, discipline, and training, not weapons.

Third, we ought to know well by now the liabilities of military involvement in land wars in Asia and ought not to head down that road again without a compelling case that such a course of action is in our national interest. Even if the Congress only intends for the U.S. to play a secondary, supportive role, I have great doubt it will turn out that way. U.S. military involve-

Jim Leach is a member of Congress from Iowa and chairman of the Ripon Society.



ment—particularly in such a public way—will inevitably change the character of this regional conflict and, like it or not, transform it into a perceived U.S. military operation.

“The major needs of the non-Communist resistance are improvement in leadership, discipline, and training, not weapons.”

While some countries in the region might prefer to reduce their individual responsibilities by Americanizing the conflict, it is likely that a greater U.S. role may make a negotiated settlement and the withdrawal of Vietnamese troops from Cambodia more—not less—difficult. International support for democratic forces might also be undercut if perceptions of a Vietnam-revisited become projected.

In addition, it is difficult to believe that \$5 million in aid will really make a difference in the ability of the resistance to counter the world's third largest army. But while \$5 million of publicly committed funds is nowhere enough to make much of a dent in the struggle, it is clearly more than enough to taint the operation as a U.S. military re-engagement in Indochina. It is also more than enough to invest the national reputation and military prestige of the United States in an operation over which we have virtually no control. We do not need to give Vietnam an even greater rationalization to continue its occupation of Cambodia. Tragically, there is every likelihood that rather than providing further pressure on the Vietnamese to negotiate, Americanizing the conflict could serve as an invitation for genocide—of the very people with whom we sympathize most. It is time the killing fields of Southeast Asia again produce crops rather than new cemeteries.

Fourth, it is an irony that Congress held hearings this spring on the U.S. experience in Indochina and the lessons we have learned from it. One of the key lessons, I feel, is the difficulty of reversing a course of action when a policy is not working and the pride of politicians becomes at stake. The classic political “slippery slope” is not simply one which is not recognized along the way but one which, despite failed results, causes a domino decision-making effect whereby a small public commitment leads to a larger and larger commitment which may, in final measure, produce an unintended course of action. Pride is the foible of politicians. It should be kept in check whenever possible, the earlier in the decision-making process the better.

Congress's Role

Another lesson of our Vietnam experience is the failure of Congress to act as an effective buffer of restraint on the executive. Oddly, in the case before us today, the tables have been turned. We have no request from the administration to provide funding for military aid to the non-Communist Cambodians and no rationale from the State or Defense Departments as to why such an initiative is in our national interest. Yet Congress is contemplating the initiation of a military aid program with profound philosophical implications. Although one could argue that such initiatives are within the constitutional prerogatives of the Congress, they are largely contrary to historical precedent.

“What Congress is contemplating, with no hearing record to back up our judgment, is U.S. public involvement in an internecine war in a part of the world where recent U.S. intervention has proven ineffective and counter-productive.”

Ironically, in Nicaragua we have today intervention without congressional sanction, whereas in Cambodia tomorrow we may witness intervention without executive approval.

What Congress is contemplating, with no hearing record to back up our judgment, is U.S. public involvement in an internecine war in a part of the world where recent U.S. intervention has proven ineffective and counter-productive. As a broad rule, Congress is better advised to restrain rather than feed the fires of executive discretion. When doubt exists interventionism should be the last recourse. And when interventionism without executive sanction is contemplated, caution should be the first and last word.

Congress has a constitutional responsibility to reflect an independent judgement from the executive but particular caution is advised when Congress is tempted to embark on a more adventurous foreign policy than that advocated by the president. It is not enough to conclude that a cause is right. An assessment must also be made that U.S. involvement advances just goals and that proper constitutional procedures and precedents are followed. In this regard, I am concerned that the subcommittee which has approved military assistance to the Cambodian resistance has issued a formal report calling for a sweeping change in resistance strategy, the movement away from defense of fixed bases to extensive guerrilla warfare in the interior. Based on such a shift in resistance strategy the subcommittee is said to be prepared to provide additional resources in the future.

“It is not enough to conclude that a cause is right. An assessment must also be made that U.S. involvement advances just goals and that proper constitutional procedures and precedents are followed.”

Two questions stand out: can a subcommittee presume constitutionally or practically to commit future Congresses? Does not such a ringing call for sacrifice run the danger of provoking unjustified expectations of support? It may well be that a military strategist would properly recommend an aggressive country-wide guerrilla effort but it is presumptuous for a subcommittee of Congress to encourage a course of action which could lead to extraordinary hardship and countless deaths under circumstances the American public could not do much to alleviate.

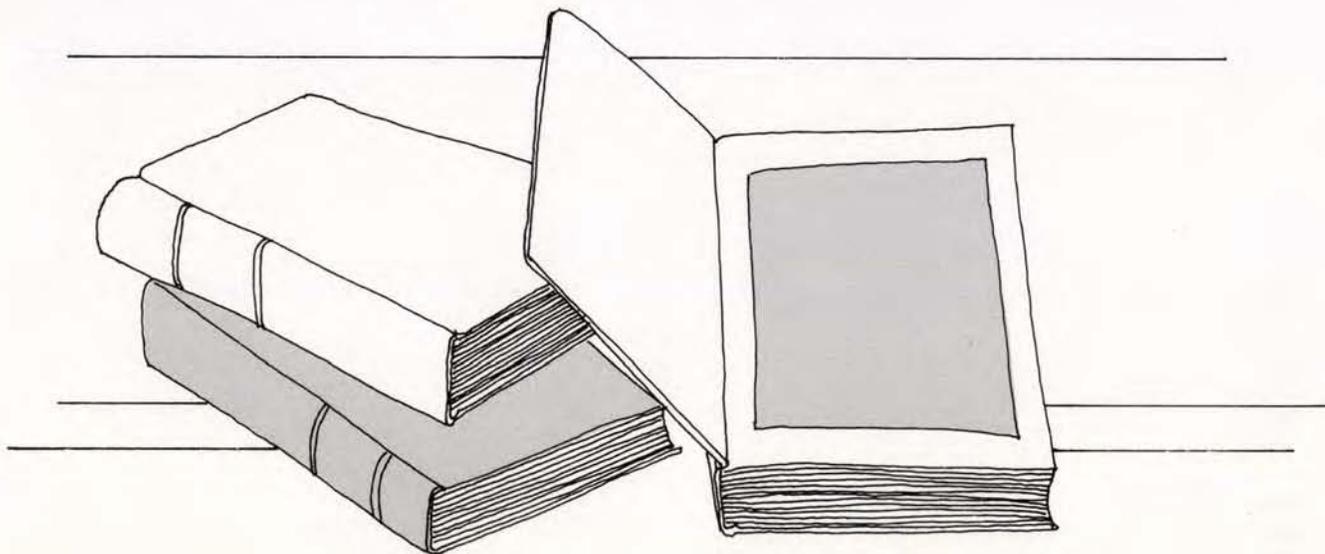
Finally, at the risk of making a partisan observation, I must confess to apprehension that perceived liberals in American politics are too often tempted to endorse policies demonstrating their anti-communist mettle when these same policies look rather unpersuasive when subjected to a non-partisan looking glass. In this regard, the decision to commit troops to Vietnam and support refugee patriots at the Bay of Pigs stand as models of liberal error. I am hopeful the approach proposed today by the majority party in the House is not of a similar dimension. If re-entry into a civil war in Southeast Asia is a glimpse of a post-Reagan foreign policy, I am doubtful the American people would want any part of it. ■

Reviews Reviews Reviews Reviews Reviews Reviews Reviews Reviews

The Rights Industry: Friend or Foe?

by Michael E. Lewyn

Disabling America. • Richard E. Morgan, Basic Books, \$16.95.



We all learned in civics class that the Congress and the president make the laws, and that the unelected judiciary interprets them. The judiciary is legitimate, in the civics-book scheme of things, because it mechanically applies the Constitution. Even now, most people believe that the constitutional system operates in this manner.

The real world, however, is a bit different. A growing number of thoughtful Americans contend that the Constitution is now merely a vehicle for the policy preferences of the Supreme Court. As University of Texas law professor Lino Graglia said recently, "We now have constitutionalism without a Constitution." A good example of this is the 1973 Supreme Court ruling on abortion. Notwithstanding the fact that abortion was hardly a burning issue back in 1787, according to Chief Justice Warren Burger and his fellow justices, the Constitution *requires* its legalization.

Michael E. Lewyn is a law student at the University of Pennsylvania and a frequent contributor to the *Ripon Forum*.

"Why has the judiciary become a super-legislature? Moreover, should the judiciary become a lawmaking body? If so, has it made good policy? In his book *Disabling America*, Richard Morgan, a Bowdoin College government professor, attempts to answer each of these questions."

"Judicial activism," as the judicial rewriting of the Constitution has been graciously termed, has indeed mushroomed over the past thirty years. In some communities, the judiciary has even taken over school systems and other public facilities. But why has the judiciary become a super-legislature? Moreover, should the judiciary become a lawmaking body? If so, has it made good policy? In his book *Disabling America*, Richard Morgan, a Bowdoin College government professor, attempts to answer each of these questions.

Morgan approaches the issue of judicial activism from a political science point of view, and concludes that "studying the

Court in isolation was an inadequate way of defining how civil liberties and civil rights were defined and judicially applied in American society. I came to see the Court as a part, albeit the most important part, of a subsystem of constitutional politics."

The Rights Industry

The second most important part of the subsystem, however, is the book's villain: the "rights industry." Morgan defines this industry as a coalition of leftist academics, "public interest" lawyers, and federal bureaucrats. Examples include the American Civil Liberties Union, the Center for Law and Social Policy, and the Children's Defense Fund. The rights industry's *raison d'être*, Morgan says, is "creating new rights with unreflective enthusiasm."

Not only does this industry operate through litigation, Morgan says, it also accomplishes its purposes through intellectual and moral power. For instance, since the rights industry dominates the major law schools, it also controls the nation's constitutional discourse. And when it is challenged by the general public, it wards off criticism by chanting the mantras of "civil liberties," "the Constitution," and "civil rights." In essence, the federal courts are a "captive agency" of the rights industry, just as the ICC is of truckers or the FCC is of broadcasters.

Although Morgan admits the rights industry has accomplished some good, he claims that it views everything as a matter of constitutional right. Therefore, it is incapable of balancing the benefits of an action against its costs. The result is that the rights industry has made governing a more difficult task; hence the term: "disabling America."

Also contributing to the problem, Morgan says, is the rights industry's dominant constitutional theory: "fundamental rights" analysis. In short, fundamental rights analysis allows the judiciary to create whatever rights it deems essential. Yale's Owen Fiss typified this kind of thinking when he urged judges to "do whatever is pure, right, or just."

Interpretivism

But Morgan has an alternative to the rights industry's school of constitutional thought; his brand of analysis is known as "interpretivism." Interpretivists believe that the meaning of the Constitution is to be found in the intent of its framers. Morgan helps us understand this line of reasoning by examining a couple of arguments against it. For instance, opponents of interpretivism claim that it forces the United States to be ruled by "the dead hand of the past." Yet, Morgan says, isn't that the essential idea of the Constitution? Isn't it a basic set of written laws that attempt to provide a sense of continuity? Laws that are meant to change with the shifting tides of social fashion just don't belong in constitutions; they belong in statute books.

"Morgan has an alternative to the rights industry's school of constitutional thought; his brand of analysis is known as 'interpretivism'"

Similarly, while some non-interpretivists argue that it is impossible to determine what the Founding Fathers meant, Morgan contends that such reasoning is just plain wrong. While there are zones of ambiguity in the Constitution, we all know, for in-

stance, that the framers of the 14th Amendment didn't intend it to require a guaranteed annual income.

Key Issues

Although Professor Morgan focuses several chapters on substantive legal areas, perhaps the most interesting is his treatment of church-state relations. The reason is that his constitutional analysis is good, but his policy arguments are flawed. For instance, Morgan believes that private schools are in danger of extinction because the Supreme Court has restricted government subsidies to parochial schools. While he makes a strong case that the doctrine of strict church-state separation is wrong, here he exaggerates the threat to private schools. After all, aren't private schools actually doing a brisk business?

Yet Morgan *is* convincing when he argues that the framers did not intend to erect an insurmountable wall between church and state. For example, he says that even one of the most progressive of church-state separationists—Thomas Jefferson—signed into law an act that provided land grants to churches for "propagating the Gospel among the heathen." Moreover, Morgan contends, that establishment clause violations occur only when the government discriminates between religious sects, such as when it allows for a Christian school prayer. This is different, he says, than when the government discriminates in favor of religion generally, such as through permitting nondenominational prayers.

Morgan also gives considerable treatment to the issue of law enforcement. In his two chapters on that subject, he targets three areas: the Miranda Doctrine, which requires suspects to know their rights before confessing; the Vagueness Doctrine, which strikes down vague laws even if a reasonable person could ascertain their intent; and the Overbreadth Doctrine, which strikes down laws restricting "fighting words" if they might cover other forms of speech. The first doctrine, he says, unduly restricts police interrogation, and the other two restrict the "aggressive" style of law enforcement, which is exemplified by allowing police to restrict behavior like panhandling or brawling before they erupt into serious crimes.

His treatment of these issues is useful because he is more careful to ventilate the arguments in favor of *Miranda* before burying it, and he is more restrained in judging the costs of rights industry doctrine. This is made evident when he claims that clearing away each pro-criminal loophole in criminal procedure would merely produce marginal benefits. But, he adds, "since when . . . are marginal benefits to be scorned?"

"Disabling America is a zesty little polemic. However, it often ignores the benefits of the rights industry and exaggerates their costs."

In sum, *Disabling America* is a zesty little polemic. Its analysis of the rights industry and that industry's subversion of the Constitution is always articulate and at times brilliant. However, since Morgan is so one-sided he often ignores the benefits of the rights industry and wildly exaggerates their costs. Nevertheless, I recommend this book for anyone who is in, or planning to enter, law school. It reveals to the unwary student that the judges' and the law professors's version of the Constitution has little relevance to the actual document—and less to common sense. ■

6 Library Court

State GOP organizations and the Republican National Committee are moving forward with a strategy to recruit and convert members of the Democratic Party. For example, the Maryland GOP recently convinced Howard County Democratic executive Hugh Nichols, a likely gubernatorial candidate, to join the Republican Party. And in Texas, Kent Hance, a 1984 Democratic senatorial contender, and a likely 1986 gubernatorial candidate, joined the GOP in early May. Emphasis also has been placed on recruiting big-name appointees, such as former U.N. Ambassador Jeane Kirkpatrick, until this spring a Democrat, and White House public liaison office director Linda Chavez, also a recent convert to the GOP.

While this strategy is very practical, and will generate much visibility and momentum, it does not mean that the GOP will necessarily become the majority party. Considerable emphasis must also be placed on attracting new constituencies. This point was the subject of an off-the-record discussion at a recent House Wednesday Group conference. Prominent Republican leaders noted that while some new Republicans will be gained by such moves, particularly in the South, the majority of the increase must come from new rank-and-file members. (Keeping those rank-and-file members interested in the party's future will also be difficult, particularly if they are young. Perhaps what is needed is a vision of the future that is broader than the economic vision the GOP has presented) . . .

1986 Races

Although 1986 elections remain 16 months away, many line-ups are already taking shape. For example, in Connecticut GOP Senator Lowell Weicker has already stated that he will not run for governor. This opens the door for bids by a number of GOP activists, including Senate Majority Leader Phillip Robertson, State Senator Julie Belaga and former State Senators Richard Bozzuto and Jerald Labriola . . .

Ripon Congressional Advisory Board (CAB) member Jock McKernan is considering seeking Maine's GOP gubernatorial nomination. Potential GOP opposition is Porter Loughton, former Region I administrator of the Government Services Administration. Likely Democratic contenders are many, but Maine Attorney General Jim Tierney is the best-recognized. Independent Sherry Huber, who ran in the 1982 primary for governor, and former Portland City Manager John Menerio are also considering the race . . .

Since Iowa GOP Senator Chuck Grassley continues to hold his own in the Senate on defense and agricultural issues, it is not likely that he will have a difficult race in 1986. But in the state's Sixth Congressional District, Democratic incumbent Berkeley Bedell might be challenged by Fred Grandy, otherwise known as

"Gopher" on ABC's "Love Boat" series. Ronald Reagan, of course, has demonstrated the power of a movie star who wishes to enter politics . . .

Colorado's GOP senatorial primary, the winner of which will face Democrat Gary Hart, could be a woolly race, with Representative Ken Kramer, State Senator Martha Ezzard, and Attorney General Duane Woodard now entered in the contest . . .

Missouri Congressman Tom Coleman and former Missouri Governor Kit Bond both are vying for the Republican nomination to replace retiring Democratic Senator Thomas Eagleton. Lieutenant Governor Harriet Woods, a senatorial candidate in 1982, will again be a Democratic candidate . . .

A variety of California Republicans are lining up for the state's 1986 senatorial primary, the winner of which will face incumbent Democrat Alan Cranston. Among those indicating an interest or considering a bid are Representatives William Dannemeyer, Bobbie Fiedler and Dan Lungren, and State Senator Ed Davis . . .

Pennsylvania Senator and Ripon CAB member Arlen Specter recently was the subject of a *Washington Post* feature. Specter was depicted as a hard working legislator who had a keen interest in controlling crime. The piece also cited political pundits on both sides of the fence who believe it is unlikely that Specter will have any stiff competition . . .

Former Vermont Governor Richard Snelling, concerned with the growing federal budget deficit, has organized a campaign called "Proposition One" to motivate American voters about the deficit. It also is a good ploy to keep his name recognition high in case he makes a bid for the Senate.

Ripon News

On July 30th, at the Hyatt Regency Hotel in Washington, D.C., the Ripon Society will host its annual Republican of the Year Award Dinner. This year's honored guest will be Vice President George Bush. A portion of the dinner's proceeds will go toward the establishment of the Mark O. Hatfield Scholarship Fund. The Fund is designed to bring promising young people to Washington in order to work on public policy issues.

A congressional briefing is scheduled prior to the "Salute to the Vice President," and it will begin at 10 A.M. on July 30th. Seven briefings will be conducted by GOP House and Senate leaders. Topics will include arms control, tax reform, international trade, civil rights, and party realignment.

No additional charge for the briefings will be incurred for those who have purchased dinner tickets. If interested, please contact the Ripon Society, 6 Library Court SE, Washington, D.C. 20003, (202) 546-1292. ■

Congressional Republicans & The Second American Revolution

Strictly speaking, the president's second term call for a "Second American Revolution" is a rhetorical effort to ennoble the cause of tax reform, though it also brings to mind his larger goal of giving Americans independence from their own government.

But Congress watchers are beginning to note that House & Senate Republicans are demonstrating another kind of independence—one which, depending on your point of view, holds the promise of either empowering or emasculating Republicans in the post-Reagan era.

When viewed together, the 234 Republicans serving in the 99th Congress are neither more or less moderate than Republicans in recent Congresses. In fact, an ideological characterization of freshman Republicans (i.e., New Right, conservative, moderate, liberal) almost mirrors a description of incumbent Republican legislators.

What's different in 1985 is an increasing willingness among congressional Republicans to establish their own image and agenda, separate from the White House. Though it's unclear now how far the move towards independence will go, or what its political consequences will ultimately be, evidence of the phenomenon is unmistakable:

- In January, after the president's 49-state landslide, Senate Republicans elected as majority leader the candidate perceived as most likely to steer an independent course, Robert Dole. Liberal Republican John Chafee was awarded the #3 leadership post.

- Only weeks later, the same Senate—not House Democrats—declared the administration's budget unacceptable and began writing their own budget blueprint for 1986, one built on an across-the-board freeze, including defense spending.

- In late March and April, the number of House Republicans voting against MX funding and aid to the Nicaraguan contras reached the highest level ever. Nine Republican senators opposed contra aid.

- During debate of the fiscal '86 budget plan, 82 or nearly half of all House Republicans, including most of the Republican leadership, voted in favor of a moderate Republican budget developed by the '92 Group. 79 Republicans voted against a spending alternative offered by the Budget Committee's senior Republican, administration-loyalist Delbert Latta.

- In June, 56 Republicans in the House of Representatives expressed impatience with the administration's policy of "constructive engagement" toward South Africa by voting for tougher economic sanctions.

What's it all mean? That question is best answered by asking three related questions.

First, will congressional Republicans remain independent? The answer is yes, at least in the short term. Bullish predictions of party realignment and encouraging public polls all make good headlines, but the best Republican polls are quietly pre-

dicting that Republicans will face tough challenges in the '86 elections.

They cite mixed economic signals and continuing big deficits, a disastrous farm economy and trade imbalance, and the "six year itch" pattern in which the president's own party suffers losses in the congressional elections immediately following a president's reelection (1956, 1974). To avoid these pitfalls, Republicans in jeopardy, particularly those remembering Republican losses in 1982 following unrepeatable legislative victories by the president, will be as independent as they deem necessary to win. Moderates with "safe" seats will enjoy more maneuvering room. Another signal—the National Republican Congressional Committee has reorganized to help GOP candidates build personalized images and localized strategies, rather than relying on a nationalized "conservative" media campaign.

Secondly, are we seeing a resurgence of moderate Republicans in the Congress? It's too early to tell, but our guess is not yet. Note that Senate leader Bob Dole is far more conservative than suggested by his style, and that some of the Senate's newly-found independence comes from conservative Republicans like Al D'Amato, Chuck Grassley (defense spending, agriculture) and Paula Hawkins (social security).

More importantly, note congressional voting ratings compiled by political analyst Alan Baron who rates members of Congress on three scales—economic, social and foreign policy—with a score of 0 being "conservative" and 100 being "liberal." Ratings assigned to three moderate Republican leaders in the House make a point:

	Economic	Social	For. Policy
Ripon Chair			
Jim Leach (IA)	31	54	94
MODRN—PAC Chair			
Bill Green (NY)	47	93	75
92 Group Co-chair			
Olympia Snowe (ME)	71	64	38

Congressional moderates are beginning to counter the vocal conservatism of New Right leaders like Newt Gingrich, but any ability on their part to collectively assert their views is dramatically limited by substantial differences of opinion on key issues.

Thirdly, will greater independence among congressional Republicans help or hurt the Republican Party in future elections? As everyone knows, opinions on this question fall into two categories: those who favor unity at almost any cost (particularly if they're in power at the time) and those who believe that Republicans could survive a bit of diversity. Our guess is: happier days ahead for Ripon Republicans and the GOP. ■