

COMMONWEAL



Anna Mveck-Wodecki

The Revolution in Waco

by Egon Richard Tausch

Torching the Constitution

A hundred years from now historians, if they are still permitted to research and write, will argue about when the United States started down the slippery slope to totalitarianism. Many Southern historians believe it began with the erosion of the U.S. Constitution occasioned by President Lincoln's disregard of that document and by the Reconstruction Era. Some historians point to the massive powers assumed by the federal government during the Progressive Era. Others might date the slide to FDR's "New Deal" or LBJ's "Great Society" programs. A few might even highlight Chief Justice John Marshall and his doctrine of judicial review. In truth, the path returning the United States to constitutional government was visible and could have been taken at any time after these periods, either by a conscientious government or by an American public sufficiently outraged.

But when a government uses massive physical force against its people, illegally and unconstitutionally, the power of the public and the extent of its outrage is

tested. It is either found ultimately victorious over tyranny—as after the Boston Massacre and the Alamo—or intimidated, confused, and indifferent, as is rapidly becoming the case in the aftermath of the Waco Massacre. When the latter occurs, the future of a republic becomes predictably tragic.

What are the national and local purveyors of public knowledge doing in what they call their "quest for answers" about the events near Waco, Texas? They are demanding investigations as to whether David Koresh knew of the raid in advance, whether the ATF knew of his knowledge, and what tactical flaws ultimately resulted in the deaths of dozens of men, women, and children. The federal government, knowing that these are not the right questions, is dutifully complying, by limiting its investigations to these areas and by repeating, day after day, that the ATF attack was "an attempt to serve a warrant."

What are the known facts, what questions should be investigated and by whom, and what are the implications of the Waco Massacre for the policies, present and future, of our Republic? On February 28, 1993, approximately 150 people, armed with automatic weapons, grenades, and ladders, invaded and attacked a complex of buildings near Waco, Texas, which was inhabited by a religious group. The attackers killed at least five of the inhabitants, and the defenders killed four of the attackers.

Let's start with the uncontested facts. What was the justification for the initial assault, if any? We have been told that the attackers were part of the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) and were attempting to serve a warrant on a member or members of the religious group. This is a very important allegation, on which *any* justification of *any* of the subsequent events depends.

Was there an attempt, however botched, to serve a warrant at all? Initially we were told by the government spokesman that the warrant was "sealed," but that the allegations in the affidavit involved possession of illegal weapons. When it was discovered that several persons in the complex, including David Koresh, had dealers' permits for

those same weapons, issued by the self-same ATF, the story changed.

Now, we were informed, the affidavit concerned alleged child abuse. When the release of dozens of children from the complex, their meticulous medical examinations, and their extensive interrogation by the feds revealed no signs of abuse, and when it was pointed out that the ATF never had any jurisdiction over abuse cases anyway, the government spokesman announced that the *real* intention of the raid was to prevent mass suicide. The government spokesman next changed the focus to the four dead agents and the supposed nuttiness of Branch-Davidians in general. Finally, after the slaughter, the warrant and affidavit were opened. Geraldo Rivera's grand opening of "Al Capone's Secret Vault" could not have been a greater anticlimax.

The 15-page, single-spaced affidavit, signed by ATF agent Davy Aguilera, is a mess, though it covers two years of investigation. At least half of it deals with how the affiant disagrees with Koresh's theology. It dwells for paragraphs on a nervous UPS deliveryman who feared that he had actually delivered weapons. The ATF affiant says he called the licensing department of the ATF and discovered that Koresh was not licensed to deal in firearms. (This was proven false, two days after the raid.)

The rest of the affidavit concerns third- or fourth-hand hearsay (once through two translators) about how Koresh *might* be able to convert his legal AR 15's and legal AK 47's into illegal automatic weapons, *if* he had the skills and equipment. The only expert witness is quoted as saying that everything Koresh had is used for legal, as well as illegal, purposes by gun owners (the affiant called this a "loophole in the law"). No one quoted in the affidavit had ever seen an automatic weapon in the complex—not even the ATF agent, Rodriguez, who lived there undercover as a Koreshian.

The affidavit cites some fourth-hand hearsay about the possibility of child molestation (but no mention of anyone who had witnessed any abuse). All that one child-protective agent could report after her thorough investigation inside the complex was that one eight-year-old boy

said he wished he could grow up so that he could have a gun. Apparently, Koresh gave investigators who came to the compound a complete and peaceful tour and willingly answered questions.

The affidavit also misquotes the law so that it appears that materials which *could* form explosives (found in any large kitchen and all garden stores) are illegal. They are not, unless the *intent* to make a bomb is there, which is the *only thing the complaint or warrant alleges*, although no support for such intent is given in the affidavit. Moreover, according to the affidavit, all of Koresh's suppliers had been investigated, only to find that what they had, and had sent to Davidians, was legal and untouchable by the ATF (another "loophole in the law").

The most damning evidence in the affidavit was that Koresh "stated he thought gun-control laws were ludicrous," that he "believed in the right to bear arms but that the U.S. Government was going to take away that right," and that he showed the undercover investigator a videotape made by others which "portrayed the ATF as an agency who violated the rights of gun owners by threats and lies" (a portrayal that now appears to be a gross understatement). The conclusion of the affidavit was that Koresh lived in a "secret environment," and that it is "my experience that persons who acquire firearms, firearm parts, and explosive materials" live in such environments.

But, however stupid the affidavit and bungled the attempt, the ATF "was only trying to serve a warrant," right? Wrong. Ignoring the uncontested facts that local authorities had served warrants on Koresh before and had called him in for questioning with no problem, and that Koresh came into town regularly and peaceably for supplies, all of which was reported to the ATF by local authorities, the ATF continued to prepare for what could only appear to be a first-strike, all-out assault on the complex.

The following account of the events of the first fatal day is compiled from affidavits and televised statements of Davidian survivors, ATF members, local authorities, and media witnesses. On the morning of February 28, an ATF helicopter circled the complex and fired into the communal dining room, killing one Davidian at breakfast. Almost simultaneously, the ATF agents jumped out of their tarp-covered trucks in front of the complex and fired repeatedly at

the front of the thin-walled buildings, through the windows, and at every Davidian in sight. Other ATF agents used their ladders to climb on the roof and throw grenades. *No one* approached the door. There was no ATF sound truck or bullhorn announcing a warrant, not to mention a simple cellular phone call to the complex. David Koresh came out of the front door and, unarmed, shouted "Stop! Stop!" and waved his hands over his head. He was then wounded twice. An elderly Davidian tried to drag him away but was killed, as were other exposed members elsewhere.

Koresh and other Davidians called 911 for help from the authorities. They talked to Sheriff Lynch of McLennan County, who in turn tried to contact the ATF by both radio and telephone to stop the shooting. The ATF radio operator failed to respond. The ATF telephone went unanswered. (According to the House subcommittee investigating the massacre, the tape of the frantic 911 phone call was edited, and critical parts of it were erased, apparently while it was in the possession of the FBI. Fortunately, the original is still in the possession of the local authorities.) At some time during this commotion the Davidians returned fire, killing four invaders and wounding 16. The ATF then withdrew and laid siege. This entire sequence of events is what the contemptible TV movie about the ordeal described as an "ambush" by Koresh.

Let's clarify the events for the slower members of the media: there was *no* attempt by the ATF to serve a warrant, just an illegal and bloody attack on American citizens. Texas law, as well as federal law, gives no protection to members of a law-enforcement agency, in or out of uniform, when, without having witnessed a felony in progress and not in "hot pursuit" of a fugitive, and without attempting to serve a warrant or placing anyone under arrest, they fire on a citizen who offers no direct threat. The victim has every *legal* right to return fire. Any deaths that occur in this exchange are laid at the door of the attacker.

Enter the FBI. But first a note to readers who are biased by their dislike of the laws or practices of Texas. It is the implied accusation of "stockpiling weapons" that makes the national anchorpersons all a-flutter with indignation against Davidians. Most, if not almost all, Texans own firearms. A large minority, if not a majority, of Texans

have gun collections, meaning a dozen or more firearms: rifles, semi-automatic rifles (so-called assault rifles), shotguns, and pistols. I do myself, as do my neighbors and several friends.

Such ownership is, and always has been, protected by Texas law. Maybe Texas, unlike some states, can read and understand the Second Amendment. The Texas Constitution (officially approved by the United States government) is even more explicit: "Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State." This clause has consistently been interpreted by the Texas Supreme Court to include defense against governmental tyranny and to cover both military and civilian firearms. Stockpiling guns is more common in Texas than collecting stamps, butterflies, or baseball trading cards, all put together. Call this Texas gun-hoarding custom a "macho," "Bubba," or "Redneck" thing. I'm inclined to attribute it to long historical memories.

Texans remember our defense against Santa Anna and later against the Union Army, in the first of which our private "stockpiles" won our independence as a nation and in the second of which our "stockpiles" kept the Northern Army out of Texas until after the war, despite five all-out attempts at invasion. Our private "stockpiles" also helped Texas overthrow the Reconstruction governor long after carpetbag rule had been peaceably lifted in every other Southern state.

Koresh's group probably intended these weapons for self-defense, however many gun shows they had participated in and profited from. Did they have any reason to believe they might someday be illegally attacked? They had been before, by a rival group. This time it was by the federal government. Is that possibility of illegal or unconstitutional attack, rather than the sports of target and skeet shooting, perhaps the reason for the Second Amendment? Of course, Koresh's group was caught embarrassingly short of Howitzers and anti-tank missiles during the final assault.

Enter the FBI, who saw what we saw on TV, who knows the laws, who could have demanded to see the warrant and affidavit and then closed their briefcases and gone home to begin the pretrial investigation of the ATF leaders of the conspiracy. Instead, the FBI themselves laid siege to the Davidian victims and lent their services to the ATF cover-up,

periodically holding silly and self-contradictory press conferences. The only fun part of the show was the spokesman's embarrassing theological blatherings, which were as ignorant, confused, obsessive, and boring as he said Koresh's were, though the spokesman offered them only in the hope of diverting Americans from the real issues.

According to all accounts, commonly reported in newspapers and never contradicted, the FBI was not called in by the local authorities, from whom they never asked permission. They threatened to arrest the local sheriff for interference. They arrested persons for "defaming the ATF"; Sheriff Lynch set them free. The FBI never even asked for a declaration of martial law, which might have given them some sort of legal authority. Then, after weeks of psychological warfare by glaring lights and deafening sound, the FBI attacked and smashed into a complex lit by kerosene lamps and candles, with tanks equipped with long-necked cranes and tear gas. During a windstorm. Surprise—fire engulfed the complex, killing almost everyone in it. Was it mass suicide? Was it killings by Davidian leaders? (Both of these possible endings were glorified in the TV mini-series *Masada*, about the Jews besieged by the Roman Army. And the Jews didn't have to listen to the amplified screeching of Buddhist chants 24 hours a day.) Or was it the kerosene lamps and candles that set off the fire?



What difference does it make?

The entire federal operation, from beginning to end, was illegal, and horribly immoral. It slaughtered almost a hundred people. Not to mention violating nine of the ten amendments in our Bill of Rights. (That must be a record.) All we have by way of explanation is the already discredited FBI spokesman's word that Koresh "talked as though he wanted Armageddon to begin." If that were true, the ATF and FBI were apparently happy to oblige.

The final, and lamest, excuse by the FBI spokesman was that "the Davidians could have surrendered to us anytime they wanted." This reminds me of a rapist-killer I was once appointed as a lawyer to represent, whose defense was that "the slut could have given in to me anytime she wanted." I convinced him to plead guilty.

Incidentally, in a city like Waco, which is almost totally Southern Baptist, what is a "cult"? Jehovah's Witnesses? Methodists? Roman Catholics (led by a Pope with more spiritual power than Koresh ever aspired to)? My family is Anglican Catholic, a tiny denomination given to Elizabethan English, male priests, and hats on ladies in church. We require the ritualistic consumption of an addictive drug (communion sherry). We even engage in "cannibalism" (the Body and Blood of Christ). Are we a cult? Koresh, in his public statements before being censored and reinterpreted by the FBI, clearly stated that he was "the Christ, just as every one of us is the Christ, anointed by the Father." Does this mean that liberal churchmen like Episcopal Bishop Spong of New Jersey, who periodically echo this kind of meaningless bilge, all have Messiah complexes? Perhaps a "cult" is just any religious group that one disapproves of.

Also, did all of this begin because the ATF barely survived abolition under Reagan? Its appropriations, after all, were currently under review, and it hadn't had a good shootout since Al Capone. When James Higgins, the head of the ATF, appeared and testified before a congressional committee a few days after the raid, it was *not*, as most people assumed, to answer for Waco. The hearing had long been scheduled to investigate the usefulness of and appropriations for his Special Operations branch. Were the timing of the raid and unnecessary violence (and advance notice to the media) just political ploys

staged to preserve Higgins' power and funding? Did almost a hundred Americans die for this? The *Houston Chronicle* recently obtained a tape of a conversation between Koresh and ATF negotiator Jim Cavanaugh a few hours after the initial raid, indicating again that Koresh wouldn't have resisted had the ATF agents given him a chance. "It would have been better if you just called me up or talked to me," Koresh said. "Then you all could have come in and done your work." Instead there is a bloody gunfight. Perhaps a tame service of warrant and quiet investigation by one or two agents wouldn't have served Higgins' purpose, especially if no illegal weapons were found.

As to who should investigate the Waco Massacre, I nominate the International Red Cross. They proved, in the midst of World War II, that our Soviet allies, and not the Germans, were responsible for the Katyn Forest Massacre of 10,000 Polish officers. The Treasury Department, Justice Department, and Congress will be as useless investigating Waco as the Soviet Secret Police were to the Katyn investigation.

The Treasury Department has already announced that its "fair and impartial" investigation of Waco is nearly completed and that it was undertaken with no preconceived notions, bias, or prejudices. Then way down in the last paragraph of the newspaper accounts of the announcement is a postscript by the Treasury spokesman: the investigation was conducted as a memorial to the four innocent, murdered ATF agents, who were only trying to serve a warrant. So much for impartiality.

At the very time of the Waco Massacre, several Los Angeles police officers were undergoing their (double jeopardy) trial for merely roughing up (not killing) Rodney King, a man seen committing a misdemeanor, caught in "hot pursuit," and possessing a long criminal record. Surely trials of the ATF and FBI leaders, including at least Higgins and Janet Reno, that resulted in swift justice and stiff Nuremberg-like sentences could help return us to constitutional government. Perhaps this is the only way for the public to understand that the federal government is dangerously out of control and that the Constitution of the United States is now a dead letter.

Egon Richard Tausch practices constitutional law in San Antonio, Texas.

Jobs, Politics, and Immigration

by Virginia D. Abernethy

Unemployment and underemployment are trends becoming more noticeable as the 20th century draws to a close. Eighteen million new jobs were created in the United States during the expansionary 1980's, but, ominously, structural unemployment—the seeming base level in our economy—was still redefined upward from 4.5 percent to 5.5 percent of the work force. Worse, new job creation fell far from this pace in the early 90's and remained sluggish even as the production of goods and services grew. All the while, the category of “discouraged worker,” describing those who have ceased looking for work, rises uncounted. The root cause of these developments is, arguably, a rapidly growing population. More people means more workers. Some few contend that this bodes well for America in the long run. But there is room for doubt.

First, review some characteristics of labor. It is a factor of production; labor productivity puts an upper limit on the wage that can be paid without igniting inflation. In other respects labor is a commodity; wages, or the price paid for labor, respond to the law of supply and demand. Wages usually rise in a strong economy. The trigger is unemployment falling to near its structural level, which allows labor to command, as well as demand, higher wages.

Consider the decade and a half after World War II. The economy boomed, the labor supply did not expand, wages went up very, very fast, and the consumer market was strong. This was not too inflationary, however, because productivity also rose quickly; industry responded to expensive labor by substituting new technology and automation, which increased productivity. Almost everyone prospered. Most people thought easy times had come to stay and each generation would do better than the one before.

Too soon, the worm turned. A 1987 *Wall Street Journal* article identified a large increase in the supply of labor as the cause of stagnant real wages during the 1970's and 1980's. Baby boomers and women entering the labor force for the first time were depressing wages. When

this temporary bulge was absorbed, the story went, real wages would rise again.

Historical demography supports the point that a tightening labor supply stimulates general prosperity, whereas a growing labor supply damps wages. Ronald Lee at Berkeley, studying 19th-century England, found that a 10 percent rise in the labor supply led to a 22 percent increase in rents (return on land or, broadly, return on capital) and to a 19 percent decline in wages. The picture that emerges is of the polarization of society into rich and poor, based largely on a change in the supply of labor.

Now turn to the labor supply in the United States. Is the general impression that it is growing quickly or slowly? Slowly? To be sure, the baby boomers are just about absorbed into the labor force, as are the middle-aged women who entered it during the 1970's. In 1987, indeed, a labor shortage, particularly among skilled workers, was predicted by the “executive summary” of *Workforce 2000*, released by the Hudson Institute of Indianapolis. The “executive summary” stated that, from 1987 to 2000, white males would account for only 15 percent of new entrants into the labor force. Every CEO in the country heard this number and knew its implication: the traditional source of skilled labor was drying up. The gap would have to be filled by women, minorities, and immigrants.

Almost immediately, however, some people noticed a mistake in the “executive summary.” But the word about a correction never really got out. The true fraction of labor force entrants who are (will be) white and male is nearly 32 percent. The “executive summary” omitted the word “net.” The intended message was 15 percent *more* white males are to enter the labor force than leave it (through attrition and retirement). This means that from 1987 to 2000 the economy and capital investment must grow at least 15 percent to absorb just the extra white males.

Add to this the extra black males and other minorities and the extra females—a very large change because of low female labor force participation in earlier generations—and the number of new jobs has to expand very fast indeed just to keep up with the supply of young American workers. In fact, nearly one million more young Americans enter than older Americans leave the labor force each year.

How well is the country doing with its growing supply of labor? A few sectors hold surprises. One-half of young black men are unemployed, and virtually all of them are in the unskilled sector. The cost of this unemployment (and related alienation) is significant, not only in the taxes and direct private sector money that it takes, say, to rebuild Los Angeles, but also in what it means to the American dream. What happened to integrating most people into mainstream America? And will this staggering unemployment creep upward into the next levels of education and skill? Maybe. Disappointed college graduates report that a bachelor's degree is worth very little in today's job market.

Science magazine reports that several hundred (out of fewer than 1,000) new Ph.D.'s in mathematics in 1991 could not find jobs; they were competing with Chinese students who had sought asylum and professionally established Russian mathematicians. Among the latter, *Science* reports, as many as 300 had sought employment in the United States within the previous two years. As recently as March 1993, 13 percent of mathematicians with Ph.D.'s were unemployed.

Engineers are experiencing the same. The 1990 Immigration Act tripled the number of visas for engineers and scientists. The rationale—the expected skilled labor shortage—is derided as “lies and fraud” by the president of the American Engineering Association (AEA); companies prefer to hire foreign engineers, he states, because they work for lower wages. The AEA is currently petitioning Congress to reconsider the 10 percent of visas set aside for skill-based immigration.

Congress should no doubt reconsider its entire legislative package concerning immigration. It should certainly reconsider the effect of immigration on unskilled Americans. Fully one-quarter of workers with less than a high school education are immigrants; the impact on America's own poor and minorities (including recent immigrants who now make the United States their home) can hardly be overestimated. New econometric studies are at last documenting the job displacement and decline in wages resulting from current immigration. In round numbers, over one million immigrants, refugees, and asylees enter *legally* each year; 90 percent of them have “family reunification”—not