primer on the Ninth Amendment that should be essential reading for lawyers, constitutional history buffs, and students of liberty.

Randy Barnett's introduction begins by exploring two legal philosophies of Constitutional rights: the rights-powers conception—the currently dominant approach—and the power-constraint conception. Using the rights-powers conception, rights are found to exist only where the appropriate powers of government leave off. The power-constraint conception, on the other hand, views rights as one of the two methods used in the Constitution to limit the powers of government, the other method being the document's structural safeguards.

After explaining the error in the rights-powers conception, Professor Barnett explores three practical approaches to the Ninth Amendment and rights theory to fulfill the role they were given by the Founding Fathers.

The crucial question faced by each of the authors in this volume is: Precisely which rights are retained by the people and merit protection by the Federal courts? The answers vary. Bennett Patterson would allow Ninth Amendment interpretation to be an extremely dynamic force in protecting individual rights. Patterson believes our perception of rights to be constantly evolving. Accordingly, the rights retained by the people are forever being refined and distilled. The Ninth Amendment is necessary protection for these newly evolved rights. The Founders had no way to describe rights which they were incapable of recognizing but which they somehow instinctively knew existed.

Berger is greatly concerned with the effect of a dynamic Ninth Amendment on the separation of powers. As a result, his analysis is largely pragmatic. If courts could use the Ninth Amendment to enforce anything that suited their current whim, they would be usurping the role of the legislature and violate the Constitutional separation of powers.

Several other authors would answer this argument by formalizing in some fashion the process of judicial interpretation. If the courts stayed within the formalized interpretative framework, they would be constrained from usurping the proper role of the legislature.

Russell Caplan would impose a severe restraint on courts interpreting the Amendment. Caplan would allow the courts to use the Ninth Amendment to protect only those rights which were recognized by the various states at the time of ratification. This interpretation would keep the Amendment from being a dynamic element of constitutional interpretation such as the other open-ended provisions included in the Constitution. Caplan's argument is based on his historical study of the Amendment.

Mindful of Berger's concerns, Calvin Massey would impose a four-part test on the courts before a right could be enforced to overturn legislation. First, the court must find some textual foundation in the Constitution "however implicit or attenuated." Second, the right should have some historical roots in the laws of the nation, the states, colonies, or the common law. Third, the right should be consistent with theories of natural law. Finally, the right should be broadly recognized by contemporary society as "inextricably connected with the inherent dignity of the individual." Massey's four-part interpretative analysis would result in a dynamic Ninth Amendment.

The Rights Retained by the People is in certain parts not an easy book to read. It is, however, a fascinating read for the history it contains, the lively debate it charts, and the important conclusions some of its authors reach. □

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HEAD TO HEAD: THE COMING ECONOMIC BATTLE AMONG JAPAN, EUROPE AND AMERICA

by Lester Thurow

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Reviewed by William H. Peterson

1980, 1984, 1988, 1992. Right on schedule, industrial policy arises from the grave as a specter haunting the election. In April, for example, *The New York Times Magazine* published "Facing Up To Industrial Policy" by liberal syndicated economist Robert Kuttner.

Mr. Kuttner takes the Reagan and Bush Administrations to task for supposedly avoiding industrial policy and relying on free markets. (Would that were the case!) With a swipe at Adam Smith, he writes that in the 1980s and early '90s Smith's "invisible hand acted more like a sleight of hand, and major American industries began to crumble under an onslaught of cheap, high-quality imports." He quotes, approvingly, the statement by onetime presidential candidate Paul Tsongas that Adam Smith is woefully out-of-date: "Adam Smith was a marvelous man, but he wouldn't know a superconductor or memory chip if he tripped over one."

Now comes Lester Thurow with yet another plug for industrial policy and still one more swipe at Adam Smith. Commenting on America during the Reagan and Bush administrations in his latest and well-written, scholarly looking work teeming with 487 citations, Dr. Thurow, Dean of MIT's Sloan School of Management and author of such previous plugs for industrial policy as *The Zero-Sum Solution,* writes: "Too often, Adam Smith's 'invisible hand' became the hand of a pickpocket. Free unfettered markets had a habit of discovering very profitable but nonproductive activities."

To buttress his case against laissez faire policies, so clearly predatory in nature, Dean Thurow holds that unfettered capitalism betrays its tendency to drift into either monopoly or financial instability. For proof he points to the Dutch tulip mania, the South Sea Bubble, numerous nineteenth-century financial panics, the "robber barons" of yesteryear (neatly done in by the farsighted Sherman Antitrust Act of 1890), the 1929 stock market crash and ensuing Great Depression (brilliantly fixed up by the New Deal!).

No proof is provided for all these bald assertions and misperceptions. Monopoly is confused with bigness and fewness and is unrelated to freedom of entry. No allowance is made for the burden of heavy American government overhead including regulatory costs and the cost of defending Japan and Germany for almost five decades. Austrian or public choice business cycle theory and central bank proclivities toward credit expansion and debt monetization are ignored. Indeed, the entire counterproductive boomerang effect of government interventionism, such as government bank deposit insurance leading straight to the S & L crisis, gets short shrift. This is Lester Thurow's article of faith: The state is our planner; we shall not want.

Thurow warns us: Our choice today is between producer economics (good) and consumer economics (bad), between communitarian capitalism (good) and individualistic capitalism (bad), between Germany's "Das Volk" and Japan's "Japan Inc." (good) and the narrow-minded "I" of America (doubly bad). As humorist Dave Barry would say, I'm not making this up.

All this raises the question: Just what is industrial policy? It is of course today's euphemism for government planning, i.e., more precisely, for what the French call indicative planning or *dirigisme*, for what I call soft socialism. Dean Thurow argues we must mount "an aggressive American effort" to counter Japanese and German national strategies "with American strategies" [read *planning*]. By design these strategies, while ill-defined here and subject to administrative change, would arm government bureaucrats with coercive powers and subvert shareholder and entrepreneurial rights. So goodbye to entrepreneurial insights and breakthroughs. Thurow, mesmerized by supposed Japanese and German planning proficiency, believes that Americans must fight fire with fire!

Instead of seeing government as the cause of our economic ills today, Dean Thurow blithely jettisons supposedly planless entrepreneurial capitalism, our great comparative advantage in international competition, and pleads for still greater government intervention in the economy. He excoriates takeover battles and corporate raiders, the "financial Vikings." He would have shareholders hold their stock for five years before they qualify for full voting rights. Government and selected industrialists or their minions, fortified with joint government and corporate funding, would pick—i.e., subsidize—the "winners" in the global competition of tomorrow.

He thereby fails to see the fallacy of plan versus no plan, to see what Mises and Hayek long ago pointed out. Free markets mean decentralized planning by many persons—private uncoerced planning that, thanks to the price system and economic calculation, works for economic growth and human betterment the world over, wherever it is tried.

Despite vaunted German proficiency, *The New York Times* of May 26, 1992, reports that West

German manufacturers are increasingly setting up new production plants abroad and that their location of choice is the United States. German executives complain about being saddled with "some uniquely national disadvantages, such as the world's highest rate of corporate taxation and the highest industrial labor costs." Thus does South Carolina land a new BMW assembly plant.

This lesson, the lessons of the demise of Eurocommunism, of what made America great in the first place, is lost on Lester Thurow. He forgets that subsidies and state planning deplete savings and tax capital markets; that as planners distort our free market system in myriad ways, government-administered prices don't clear the market and economies stall. His scheme, moreover, undermines individual liberty. Commenting on the Thatcher and Reagan administrations, he proclaims: "Empirical experimentation revealed that a return to ancient Anglo-Saxon virtues is not the answer."

Head to Head is at once bad politics and sorry economics. □

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CAPITAL FOR PROFIT: THE TRIUMPH OF RICARDIAN POLITICAL ECONOMY OVER MARX AND THE NEOCLASSICAL
by Paul Fabra

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Reviewed by Raymond J. Keating

Paul Fabra, an economics columnist for the French newspaper *Le Monde,* has written an interesting, recently translated book addressing the various shortcomings of both Marxist and neoclassical economics. His advocacy of classical economics in its Ricardian manifestation as the answer to these problems is even more intriguing. One might correctly refer to Mr. Fabra as a "serious" supply-side economist.

Fabra deals with fundamental economic issues in *Capital for Profit.* He manages to redress various errors about David Ricardo's economic theories which have been perpetuated by both Marxist and neoclassical economists. Fabra advocates supplanting subjective value theory with an objective, labor-based theory which focuses primarily on production costs rather than wants or desires. He also clarifies the definition of capital, and, most importantly, argues that profit must be at the center of economic theory, rather than merely treated as a residual. In addition, the author attempts to explore the boundaries of the marketplace.

In fact, there is much to agree and disagree with in *Capital for Profit.* Perhaps that reflects the book's strongest point, i.e., that Fabra requires the reader to reassess many long held economic doctrines. And whether in the end one accepts or rejects the many arguments articulated by Fabra, the reader will come away with a richer understanding of how the economy works.

A few of Fabra's thought-provoking statements are worth noting in this review, with the caveat, however, that his entire thesis be read in order to be fully appreciated:

Fabra rebuffs the so-called Ricardian "iron law of wages," which states that "wages will always be brought down to the subsistence level," by citing Ricardo's own work, and concludes that "nothing could be more alien to Ricardian thought than the idea that the worker is condemned to a subsistence wage."

On the definition of capital, Fabra clearly sees merit in the classical view: "The most significant definition is again to be found in Ricardo: 'Capital is that part of the wealth of a country which is employed in production, and consists of food, clothing, tools, raw materials, machinery, etc. necessary to give effect to labour.'" The author later addresses the "conflict" between labor and capital: "On the one hand, [the classical system of thought] too recognizes that the introduction of machinery (fixed capital) must necessarily put an end to certain jobs. On the other, the general definition it gives of capital—all commodities employed in production and necessary to give effect to labor —induces it to assert that the more capital grows, the more the demand for labor will increase."

In reference to neoclassical theory, Fabra wonders: "The very fact that profit can be alternatively included or excluded [i.e., from marginal product] shows how vague the theory is on a point that is, after all, fundamental."

The pre-eminence of supply over demand, contrary to Leon Walras' views, is asserted by Fabra: