

A clunker of an environmental policy

Bad science, Republican opportunism and neoliberal environmental regulation are now massing forces for merciless assault on that heart muscle of American civilization, the old car or clunker.

The White House, against the deadline of a primary in the auto-producing state of Michigan, has formulated a plan whereby companies that buy old cars and then junk them could get "pollution credits." Under this wondrous regulatory procedure, recently given a ringing endorsement by Los Angeles' powerful South Coast Air Quality Management District, a polluting oil refinery could also buy a credit from another company needing less than its allocation and show a corresponding reduction on its books. Meanwhile children across the street from the polluting refinery would continue to show high levels of toxic chemicals in their lungs.

The scheme claims a double benefit. Consumers would turn in their polluting clunkers, getting anywhere from \$700 to \$1,000 from companies needing the credits. New car sales would be given a boost. In 1990 Unocal, a Los Angeles oil company, bought and scrapped 8,376 pre-1971 cars, paying \$700 each for them, in a bid to shift attention away from oil companies and toward the clunkers.

It's awe-inspiring to find so many bad ideas mustered under one roof, starting with the fact that auto thieves will now have a cash incentive to prey on poor persons' old Plymouths, Fords or Chevys, as well as rich persons' Mercedes and BMWs. I doubt whether companies receiving the clunkers

ASHES & DIAMONDS

By Alexander Cockburn

will be looking too hard at the paperwork.

The central fact is that the abused clunker may well be generating less pollution in today's urban environment than the late-model automobile, equipped with its catalytic converter. I say this as a collector and driver of old cars (ranging in antiquity from a 1957 Plymouth station wagon to a 1967 Chrysler 300, with Imperials, Valiants, Newports and a Dodge filling in the intervening nine years) who has long chafed under ignorant lectures about my supposed environmental irresponsibility.

The story begins more than 20 years ago, in the policy battles preceding the passage of the Clean Air Act. At that point the environmental policymakers and their scientific advisers were looking at two principle classes of compounds fueling the smog process: oxides of nitrogen and hydrocarbons in vapor form.

The bureaucrats decided that it would be easier to control hydrocarbons as emitted in vapors of various solvents including benzene, kerosene, gasoline, and also the partially burned fuel in automobile exhaust. Regulation would be a matter of controlling

nozzles at the gas pumps, adding catalysts to burn unused fuel, controlling vapors in cleaning establishments, and so forth.

This option seemed simpler than anything more than a minimal assault on oxides of nitrogen, generated by combustion of fuels such as coal, gas, kerosene and crude oil, and controlled by lowering the temperature of combustion. Simpler, maybe, but wrong. As a recent study sponsored by the National Academy of Sciences shows, two decades' worth of stringent regulatory effort on hydrocarbons has yielded very little in the reduction of air pollution, certainly nothing like the progress predicted in the original models.

One consequence of that faulty model was the modern car equipped with its catalytic converter. The converter is installed to further oxidize the hydrocarbons in the raw exhaust fuel. Remnants of this fuel are burned with the help of the platinum catalyst (which explains why the converter gets so hot).

But the converter also acts as a catalyst on sulfur, a component of all gasoline. In the combustion process in the engine's

cylinders, this sulfur is rendered into sulfur dioxide which, in turn, as it crosses the platinum in the catalytic converter, becomes sulfur trioxide which, with the addition of water (another consequence of gasoline combustion), becomes sulfuric acid. All cars equipped with catalytic converters are miniature sulfuric-acid factories.

One of the classic families of toxic compounds in smog is comprised of sulfates. Release sulfuric acid into urban air laden with metal particles and you produce metallic sulfates, many of which are toxic.

So, though the supposedly virtuous modern car, equipped with its catalytic converter, may be producing less hydrocarbons *in toto* than my old car, the hydrocarbons that it is releasing are more reactive, as can be sensed by sniffing a modern car's exhaust, which is far more irritating to the nose.

Though there is no doubt that 20 years of environmental regulation has reduced hydrocarbons, no one has yet demonstrated that in consequence the air is less toxic. Indeed the catalytic converters may have engendered greater toxicity, as early tests on rats—sedulously ignored—suggested. Bureaucratized science bred bad air, which clunker-napping and the pollution credits promise to render even fouler.

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By Norman Oder

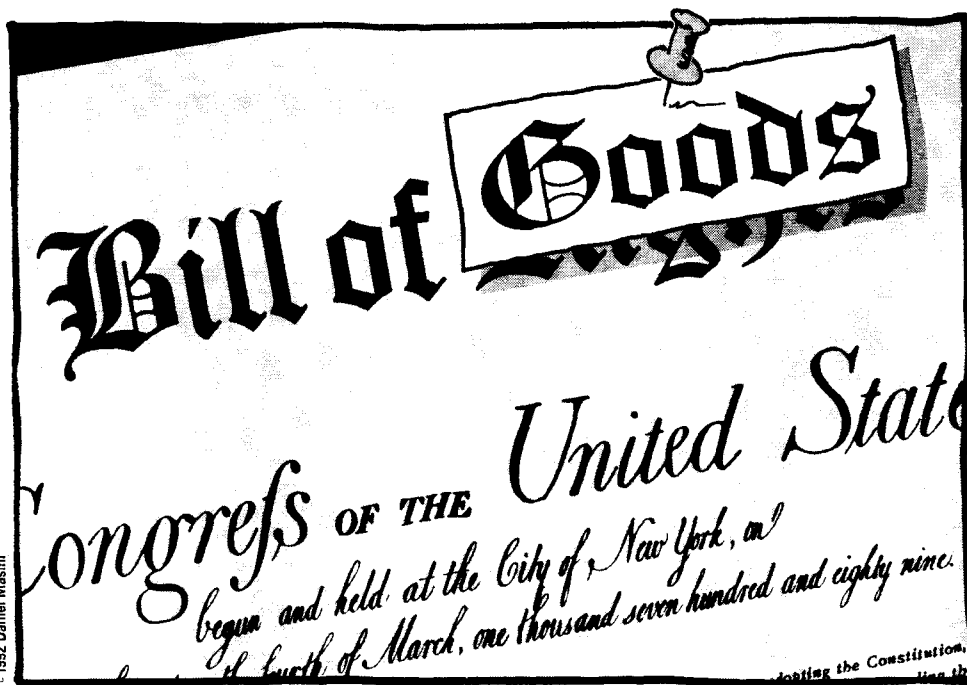
THE 200TH ANNIVERSARY OF OUR BILL of Rights last December occasioned effusive praise from leading liberals such as *New York Times* columnist Anthony Lewis, who wrote that without such constitutional constraints, "I am convinced that the Framers' experiment in self-government would long ago have failed."

At about the same time, Roger Rosenblatt, essayist for the *MacNeil Lehrer NewsHour* and editor-at-large of *Life* magazine, presented his well-reviewed one-man show, *Free Speech in America*, in a New York theater. In his performance, he flitted jocularly from *Huckleberry Finn* to *The Weekly World News* to awkward presidential utterances. "Free speech," he declared several times, "is an instrument of revelation. It allows us to dream." Upon leaving the theater, I couldn't help but overhear Nadine Strossen, the New York University law professor who heads the American Civil Liberties Union, offer Rosenblatt glowing praise.

It might seem churlish to chide such people at a time when the Supreme Court retreats from protecting existing rights, and when liberal values such as free speech are attacked from the left. Still, there is something dismaying about the implicit smugness of good liberals like Lewis and Rosenblatt. Our Bill of Rights is, indeed, a glorious thing, but it has come to coexist with, as author Jonathan Kozol put it, "savage inequalities." Also, our speech may be mostly unfettered by government, but who gets to speak? If nothing else, the maverick presidential candidacy of former California Gov. Jerry Brown makes the point that political discourse is corrupted by money. And, as Yale law Professor Owen Fiss has noted, how valuable is free speech if we don't combat illiteracy?

There seems to be a gap in our constitutional vision, one that comfortable liberals have too often accepted rather than closed. As Stanford law Professor John Hart Ely wrote in his important work on judicial interpretation, *Democracy and Distrust*, "Experience suggests that there will be a systematic bias in judicial choice of fundamental values, unsurprisingly in favor of the values of the upper-middle, professional class from which most lawyers and judges ... are drawn." Thus the court and commentators have enshrined individual rights—expression, association, personal autonomy—as fundamental, Ely noted. "But watch some fundamental rights theorists start edging toward the door when someone mentions jobs, food or housing; those are important, sure, but they aren't *fundamental*," he wrote.

Perhaps we should recognize that our Bill of Rights is 200 years old, forged by men fighting against governmental tyranny, and also consult some more recent documents of fundamental rights, forged by people fighting for an even broader definition of freedom. For example, the United Nations Universal Declaration of Human Rights, promulgated in 1948, endorses the full list of liberal checks on government, but also states, in Article 25, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services..." And this is the weakest of formula-



Tenets of democracy and guaranteed rights

tions that have since entered the language of international human-rights covenants.

Such positive rights, as any lawyer knows, are not enforceable in the same way as negative checks on government. A judge can't run an entire state budget process. But even negative rights, such as the right to a fair trial, can have a price tag (maintaining a judicial system, providing legal aid), thus blurring some of the distinction, and judges have been known to take over state prison and mental health systems. Yes, it is possible that an emphasis on less-enforceable rights can weaken the protection of negative rights. But, I think, it is far more important to recognize obligations to provide food and shelter as rights, as fundamental to our humanity and, at the least, enshrine them in our human-rights documents, as guides to judicial interpretation and to the congressional agenda.

South Africa: I found it ironic that Anthony Lewis, in his column, breezily observed, "South Africa's new constitution, when it is written, will have one" (a bill of rights). Indeed, most major parties do endorse a bill of rights but differ significantly on its content, and the debate is vigorous. A classic liberal bill of rights is now accepted by the National Party government after years of hostility to a document enshrining individual, rather than racial group, rights. But the African National Congress, the most popular political organization, sees that as a way to help freeze the

economic status quo. Less than a decade ago, some black activists even briefly formed an "Anti-Bill of Rights Committee." The ANC's ambitious draft bill of rights, quoting liberally from established human-rights documents, addresses affirmative action, land reform and other obligations on government, though some fuzzy formulations provoke fears of a hegemonic central state.

This division remains a part of South Africa's political culture, even as the government-affiliated South African Law Commission, issuing two reports on a bill of rights, has pushed establishment thinking further and further toward the left, proposing a bill of rights that will take at least some account of socio-economic rights.

Positive rights: I noticed that acute division when, last September, I visited a conference sponsored by the Institute for Multi-Party Democracy, a South African think tank set up to bring different parties together and instill democratic values. Sitting around a seminar table in a hotel outside the port city of Durban were some 10 young members of the ANC, an equal number from the rival Inkatha Freedom Party, one member of the National Party, plus some speakers and guests.

From the beginning, it was clear there was a fundamental divide regarding the tenets of democracy and a bill of rights. The first speaker was Mervyn Frost, head of the politics department at the University of Natal. Frost, a liberal—which, in the

South African political spectrum, means moderate—praised democracy in all its abstraction. The right to vote was so important, he said, that people would prefer it even if they were worse off materially.

"No," interrupted Louisa Zondo. A young ANC lawyer, Zondo said democracy was meaningless unless it also ensured some measure of material gain.

Democracy, replied Frost, is not about the distribution of goods: "It's not what government does but how decisions are made."

Zondo was undeterred: "We have to have a system that can distribute as well as a system that can check.... I see them [the values of participation and distribution] as not ranking in a distinct hierarchy. I see them as forming a whole."

Said Frost, "People will choose democracy, even if distribution is worse, because in a democratic process you get your dignity recognized."

Zondo replied, essentially, that you can't eat dignity. "I'm not going to live in the squalor of KwaMashu [a township outside Durban] without those conditions being dealt with," she said. "I'd like to call myself a democrat, but it's difficult to do so on the basis you present. I think there's no need to have these trade-offs, that the autonomy of the individual reigns supreme over the other needs of the individual."

South Africa's deprivation, she said, renders the "democracy, as presented by Mervyn, meaningless to a large majority of the people."

Now Zondo's statements may sound Pollyannaish about the powers of government, considering that the correlation between democratic practice and prosperity is not necessarily direct. After all, some juntas have delivered the goods. However, Zondo's argument with Frost shows that, in South Africa (as well as some other developing countries), the notion of rights and democracy is associated with relief of deprivation, not just with checks on tyranny. Forging a governmental structure to navigate that balance, of course, will be tricky.

With its history of exploitation and African protest, leavened by indigenous socialism and an anomalously vigorous Communist Party, South Africa is a testing ground for one notion of democracy. The formerly communist countries of Eastern Europe, running pell-mell to embrace capitalism, are another. As we congratulate ourselves on our Bill of Rights and "the end of history," we should remember that the free market, however efficient, can be a cruel one, if the rights to be protected from government are the only rights we cherish.

Norman Oder, a freelance writer, was a 1989-90 journalism fellow at Yale Law School and visited South Africa twice last year.

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