

Zoning Revolutionary

"I've been interested in the law from an early age," says Bernie Siegan. Though he was twice elected to school office, these early successes did not distract him from a legal career devoted largely to *undoing* the doings of politicians.

He went to college on the G.I. Bill. "After I was in the army for three years during World War II," he says, "I don't consider that a subsidy at all."

After graduating from the University of Chicago Law School in 1949, Siegan went to work for a law firm. Three years later he formed a partnership with a classmate from law school, dealing largely with real estate law and zoning. It was hands-on experience in an area he would later research and write about.

By 1968, Siegan had become a research fellow in law and economics at the University of Chicago Law School. His research project: the city of Houston, unusual among America's major cities in having no zoning laws. Siegan found little of the disaster theorized by zoning proponents, such as glue factories setting up shop next to houses. And the explanation wasn't difficult to come by: separation of incompatible uses of land was the natural consequence of the economies businesses could realize by locating along transportation arteries and near their suppliers and industrial customers.

In addition to such market forces, Siegan found in Houston the widespread use of private restrictive covenants—agreements among landowners, generally tailored to particular neighborhoods, governing the uses to which their land may be put. Compared with zoning, he noted in his study, these factors determine land use in a more civilized and efficient manner. Zoning contributes to housing shortages and holds down commercial development; it adds paperwork and years and political shenanigans to land-use changes; and, ominously, it is used to exclude "undesirables."

Siegan published the resulting study in 1970 in the *Journal of Law and Economics*, which journal, Siegan notes, "has had enormous influence in the academic world, which in turn has in-



Bernard H. Siegan

fluenced politics in the direction of deregulation." Then in 1972 Siegan put the word out further with his book *Land Use Without Zoning*.

In 1971, Siegan's law partner moved to California "to get away from the cold weather." Siegan held out for two more winters, then in 1973 moved to the University of San Diego Law School. "I had practiced law for 23 years," he explains, "and I wanted to teach."

His teaching spans an interesting decade. Law professors, he observes, "are much more knowledgeable and concerned about economics than 10 years ago." In laws schools, "respect and admiration for government programs has lessened substantially." And that bodes well, he notes, for freedom, since most legislators begin as lawyers.

For five years in the mid-1970s, Siegan wrote a weekly syndicated column for the Freedom newspaper chain. A collection of these columns, larded with additional material on law and economics, formed the basis of his 1976 book, *Other People's Property*.

Siegan has done more than just teach and write about the free market. Several communities have invited him to speak when zoning changes have been considered. In one case, he helped persuade legislators to allow the issue to be settled by a referendum. Zoning more often than not loses when put to a popular vote, notes Siegan. His studies indicate that more-affluent people tend to vote *for* zoning and poorer people *against* it.

Recently, Siegan served on the Presi-

dent's Commission on Housing, chairing the committee on regulations. Many members of the commission, which issued its report in 1982, were of similar mind to Siegan. It is, he observes, a refreshing change from 20 years earlier, when "I would speak to the Department of Housing and Urban Development or other agencies, and they were hostile to free enterprise."

Siegan is now a member of the President's Commission on the Bicentennial of the Constitution. It is an appropriate honor. His influential 1981 book, *Economic Liberties and the Constitution*, has helped to revive the ideas of economic rights and, in legal scholars' lingo, "substantive due process."

From the late 1800s until 1936, explains Siegan, the due process clauses of the 5th and 14th Amendments were taken to protect liberties not specifically mentioned in the Constitution. Since then, however, judges have abdicated their role in protecting citizens from the usurpations of legislators bent on regulating one economic activity after another.

Siegan is currently finishing a book tentatively titled "The Supreme Court's Constitution." "The Court," he contends, "makes its decisions based on three things: the words of the Constitution, the presumed intent of the framers, and whatever the court thinks is desirable. From the beginning, the Court has made the Constitution out to be what it wanted it to be. Judges were as subjective in 1800 as 1986. These are human beings making decisions about enormously important areas. Their attitudes are different now, but the subjectivity is still there."

Although "one of the major objectives of the framers was protecting economic and property rights," he argues, "that intent is no longer being honored by the US Supreme Court." If that changes—if the Emperor troubles himself with a fig leaf at least—it will be in no small part because Bernie Siegan not only said the Emperor has no clothes but proved it.

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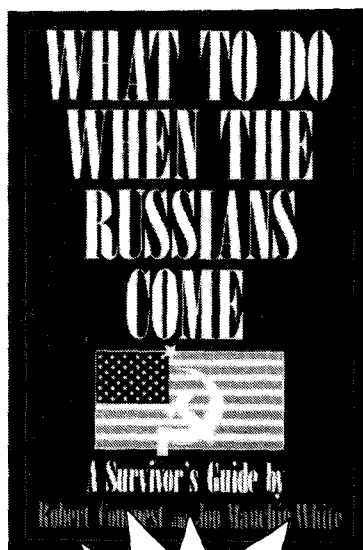
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Communist Comedy

By Christopher McDaniel

For several years now, observers have been telling us that virtually no one behind the Iron Curtain takes socialism seriously anymore. There will always be a few true believers—sad cases for students of pathology—but among politicians, the ideals of Marxism-Leninism are simply exploited as a matter of form, and among the general population socialism is just a bad joke. In East Germany, as in other totalitarian states, the jokes cannot be told on the local equivalent of *The Tonight Show*; instead they constitute a sort of low-brow *samizdat*, an oral underground literature that serves the “dissident-in-the-street.”

Konrad Seyfferth was born and educated (that is, propagandized) in East Germany. In 1961 he fled to the West, but in the past twenty years he has visited the “Democratic Republic” often, and on each trip he has heard the latest jokes making the rounds. Now he has published a collection: *Wer meckert, sitzt: Lachen im realen Sozialismus* (Freiburg: Herderbucherei).

The jokes are concrete evidence of the sometimes bitter, occasionally hilarious, always perceptive criticism of the reality of life in a “workers’ paradise” from the point of view of the workers themselves. The absurdity of life under socialism lends itself to joking—or else madness—for as Seyfferth points out in his introduction, “socialism is the triumph of an idea over common sense” (here and throughout, my translation).

The first bad jokes are questions:

What is that country whose name itself is a lie?

The German Democratic Republic.

And, in this wonderland of freedom,

What do you get for a good idea?

About five years.

And then there’s the story of the man who went to heaven and was astounded to see the nations of the earth represented by clocks showing various times. He asked St. Peter for an explanation.

“When a crime against human rights is committed in any country, the hands on



the clock representing that country move forward one hour.”

“That’s very interesting, but I don’t see a clock for East Germany.”

“Yes, well, we hung that one in the kitchen, as a ventilator.”

As for distinguishing West and East, there’s this:

What’s the difference between a democracy and a people’s democracy?

The same as between a jacket and a straight-jacket.

Only through the most grotesque perversion of language, of course, can countries like East Germany claim to be democracies:

On election day, each voter is given a sealed envelope and told to drop it in the ballot box. When an elderly lady tried to open her envelope, she was challenged by a poll-watcher.

“I just want to see what’s in it,” she said.

“But you can’t,” said the official.

“After all, it’s a secret ballot.”

When first-among-equals Honecker [Communist Party First Secretary] gives one of his optimistic speeches, he says, “Comrades, prosperity and happiness for all socialist peoples lie just on the horizon.”

A representative of the people asks, “Comrade Honecker, what does ‘horizon’ mean?”

“Look it up.”

According to the dictionary, the horizon is a boundary between heaven and earth; it recedes as you approach it.

Of course,

Adam and Eve were the first communists: they had no clothes, little to eat, no real shelter, and yet they believed they lived in paradise.

Socialist idealists apparently are not supposed to be concerned about petty material comforts—like necessities of life. But after a while shortages can become irritating:

When a party functionary gave a speech about the principles of the planned economy, one of the assembled workers kept shouting, “What about toilet paper?”

The functionary ignored him as long as he could and then, losing his temper, shouted, “Lick my ass!”

“That’s fine, Comrade,” replied the worker, “but that’s only a temporary solution.”

Another functionary pledges: “Comrades, after this five-year plan every citizen will have a motorcycle, after the next one a car, and after the next one an airplane.”

Someone asks, “But why would we need airplanes?”

“Stupid question: Just think—you live in Rostock and you hear that toilet paper is available in Eisenach. You simply hop in your airplane, fly to Eisenach, and two hours later you’re home again, without having to stand in line.”

The shortages can confuse sexual relations as well:

A woman goes to a garage and asks to have her car fixed.

“Of course,” says the mechanic—“but only if you give me a night in return.”

The woman reluctantly agrees.

“Fine, then get in line down at the