

The Hoover Dam on the Colorado River is one of the government's many water projects. Without market pricing, the government must build ever more of them to balance supply and demand.

need, as noted by Hanke in his review, for a more stimulating, popularly oriented discussion of these matters that might be more widely read, Anderson's new book does take an important step in showing how privatizing water resources could alleviate a potential water crisis.

Anderson begins by quoting government projections that forecast an impending water crisis in many areas of the country, particularly in the West. My own review of many of these same studies suggests that we are many years away from all but isolated water shortfalls, even if present policies continue. However, this is a minor criticism.

The real problem is not that we will be unable to take showers in a few years but that present policies waste billions of dollars in misallocated resources and necessitate the construction of ever more water projects. This is because, as Anderson points out, current policies keep water prices below "market-clearing" levels. In a market, the price of water would rise until the quantity demanded at such-and-such a price equaled the quantity that suppliers would sell at the price. But in the nonmarket of governments' water policies, the only way to balance supply and demand is to build more water projects to increase supply.

Most readers of REASON probably know that the federal and state governments subsidize water production in the West, keeping the price low, at taxpayers' expense. Perhaps less well

THE BOOK CASE

known is that there used to be a body of laws in the West (referred to as the Appropriation Doctrine), which established a system of private rights to water. The rights were clearly defined, enforceable, and transferable, thus facilitating a market for water. Unique to the West, this system was developed by pioneers facing a relative scarcity of water. Anderson provides an excellent discussion of the system's evolution and how it differed from the Riparian Doctrine followed in the eastern United States.

Since some people never seem to know when they have a good thing going, however, the courts and politicians started tinkering with the Appropriation Doctrine. According to Anderson, people argued against a fairly pure system of private rights to water for several reasons.

First, they feared that one company could come to control the price of water in an area. Anderson finds no empirical basis for this claim and suggests that individuals could tap groundwater resources or form associations to impose a bilateral monopoly to overcome this potential threat.

Second, some argued that private markets would be unable to provide the necessary funds for large projects. This constraint, Anderson contends, would be unlikely to occur if a project looked profitable.

But the biggest objection to private markets is the problem that economists have dubbed "externalities." More on this later.

Anderson points to four basic restrictions on private water rights that have contributed to the present-day misallocation of water resources. The first is the requirement that unless water is applied to a beneficial use (such as agriculture), the right to a prescribed quantity of water will be lost. This not only encourages wasteful overuse but also keeps water prices low for prescribed beneficial uses. Water may be more valuable, say, in a coal slurry pipeline, but unless this is designated as a beneficial use, the right cannot be transferred. The second restriction is preferential use, which dictates a pecking order of uses (for example, manufacturing over agriculture) having little to do with economic value. Third, there are restrictions preventing transfers of water away from the water source so that water that is not consumed will replenish the ground source. Finally, federal reclamation projects restrict transfers of water and how water is used.

The most interesting chapters of *Water Crisis* address how to privatize instream flows (water flowing in streams, rivers, etc.) and how to resolve the "common pool" problem associated with groundwater resources. Both chapters consider the sticky issue of externalities.

Many people suggest that in a free-market setting, with instream flows privately owned, amenity or recreational uses of water would be given short shrift. Yet private, environmentally oriented groups such as the Nature Conservancy and Ducks Unlimited devote private resources to preserve these uses, which are threatened under the present system of political determination of water uses. Anderson points out that in Great Britain, instream flows have been privately owned for centuries.

Groundwater presents a classic common-pool problem, where many users have unchecked access to a depletable resource. When no rights are established, there is an incentive to pump faster than one's neighbor, which raises pumping costs and induces accelerated use to avoid even higher pumping costs tomorrow. Anderson lays out an excellent system for assigning property rights to groundwater supplies. Rights would be transferable to maximize efficiency and to induce the owners to consider the opportunity costs of using water.

Although *Water Crisis* may not divert the potential reader from other activities on a Saturday night, it is highly recommended reading. Perhaps Anderson still will meet Steve Hanke's challenge to write a popular book on the subject that everyone, even politicians and bureaucrats, will enjoy enough to grasp the insights of the new resource economics applied to water.

R. Bruce Den Uyl is a specialist in natural-resource policy.

Double Jeopardy

Judgment in Berlin

By Herbert J. Stern
New York: Universe Books
384 pp. \$15.95

Reviewed by Henry Mark Holzer

On the quiet morning of August 30, 1978, amidst the then-silent ghosts of Hitler's Germany, a small Polish airliner made an unscheduled stop at

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by Ted Nicholas

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THE BOOK CASE

West Berlin's nearly deserted Tempelhof Airport. According to the riveting John Le Carré-like opening of *Judgment in Berlin*, by Judge Herbert J. Stern: "Hans Detlef Alexander Tiede, a resident of East Berlin, holding his arms raised with his fingers showing 'V' for victory, came through the hatch. He grinned at the American[s]... and threw his pistol to one of the colonels. 'Welcome to free Berlin,' said a colonel with a smile. A beautiful blonde woman, holding the hand of a twelve-year-old girl, stepped into the doorway. The other colonel roundly kissed her, as she and her daughter alighted from the plane. Eight of the other passengers immediately defected to the West. It was, obviously, another daring act of piracy by desperate East Berliners to win their freedom. But this one would be treated very differently from any other."

Just how differently this escape from communism would be treated—by supposedly free governments—is simply unimaginable until one reads *Judgment in Berlin*. The woman, Ingrid Ruske, and her young child would be held incommu-

nicado for more than two months. When relentless interrogation would fail to produce a "confession," she would be tricked and coerced into making a statement against her interest. Although a prosecutor would be appointed hastily, she and Tiede would be denied counsel for months. The prosecutor would tell the judge not only that the "hijackers" had no right to a jury trial but also that they had no rights at all—except those that might be granted merely as a dispensation by the political and military authorities. In the months to come, those authorities would, more than once, tell the judge how to rule. And in the end, they would try to veto any decision not to their liking.

Were these the machinations of the Soviet Union, East Germany, or Poland, from which Tiede, Ruske, and her daughter had escaped? Was this an example of the practices of the Federal Republic of Germany or of West Berlin, whose continental legal systems are vastly different from our own?

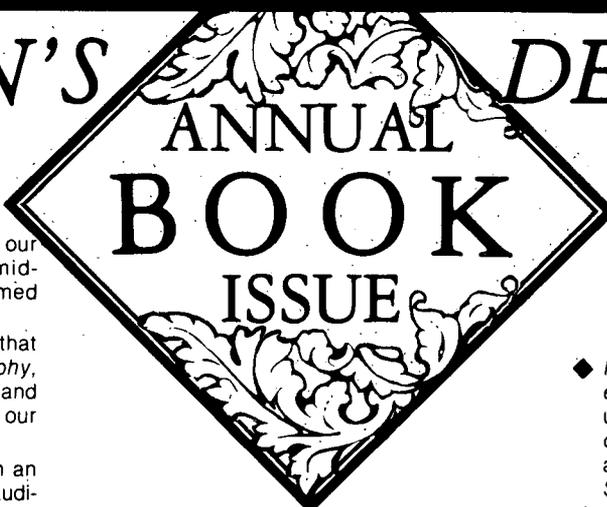
No, indeed. Unbelievably, they were the policies and conduct of the US

government, expressed and carried out publicly and without apology by representatives of the State Department, the Department of Justice, and the American military. Our government, in what had been the capital of Hitler's rights-less society, had decided that the three defectors had to be sacrificed to political considerations.

When the refugees stepped off the Polish airliner in the American sector of West Berlin, they walked into one of the most anomalous political jurisdictions in the free world. The complex legal-political status of West Berlin is not easy to explain (although Stern succeeds admirably). It is enough to know that in order to protect this free city deep in the heart of communist East Germany from the Soviets, and to preserve the rights of West Berliners and others who venture there, the post-World War II "occupation" by the United States, France, and Britain still exists. So although German civil institutions do function in West Berlin, in both a practical and symbolic sense they are subordinate to allied military commanders.

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THE BOOK CASE

The West German constitution presents a further complication: It recognizes all East Germans as West German citizens, with the right to defect from communism. Yet at the time of the Tiede-Ruske escape, the Bonn government—as well as the United States—was a party to international conventions requiring all airplane hijackers to be either extradited or prosecuted.

Because the West German government wished to do neither, it passed the buck to the United States. Using the "occupied" status of West Berlin as the pretext, the West Germans prevailed on us to convene an American "occupation court" in the American sector—a court that would apply West German law.

But did the US government undertake the case in order to see that justice was done? Were the rights of the defendants to be fully protected in accordance with an American-style trial on the merits? Or did the State Department merely want a political forum in order to satisfy international treaties and foreign pressures? Was it out to get a quickie nonjury-style inquiry, a prompt conviction, a compromise sentence tough enough to appease the communists but not so tough as to enrage the West Germans?

In answering these questions, *Judgment in Berlin* chronologically traverses the nine months of events from the August 1978 hijacking to the case's conclusion in May 1979. In between, we come to know the refugees and the motives and events leading to their dramatic grab for freedom aboard a Polish airliner.

We learn how the US District Court for (the American Sector of West) Berlin was established by the State Department, how a "law and order" federal district judge from New Jersey—Stern—was chosen to preside, and how a US attorney for Berlin and a Justice Department trial prosecutor were selected. We are privy to the judge's appointment of eminent trial counsel, Judah Best and Bernard Hellring. We listen with the judge as he ponders the charges (hijacking, taking a hostage, depriving persons of their liberty, doing bodily harm to another, possessing an unlicensed firearm) and the possible defenses under West German law (justification and excuse, choice of evils).

We are incredulous as American prosecutors make inconceivable arguments: The US Constitution does not apply in the US District Court for Berlin; no one in the American sector of West Berlin—soldiers, dependents, government em-

ployees, Germans, or tourists (including Americans)—possesses any rights other than those granted by the Department of State; the judge is not an objective dispenser of justice but a mere government flunky.

And dimly we hear echoes of the same ideas from a Berlin of decades past. We realize, with the judge, that "somehow, beyond their comprehension, [the defendants] had inadvertently generated forces that were about to do battle over issues and principles that had nothing directly to do with them."

We watch as the judge tries to persuade the government to abandon its position. And when he fails, we applaud his ruling. We are fascinated at how a West Berlin jury is obtained and are appalled at how an American military witness for the prosecution bends the truth.

We choke with emotion as defendant Tiede rejects a deal that, at worst, would net him a few months in jail, in favor of a trial that could get him years—because he believed in his innocence and because he had just witnessed the unimaginable scene of an American judge standing up to his government by suppressing Ruske's unconstitutionally obtained statement. We are caught up in the dramatic testimony of the defecting passengers. We see defense counsel Best and Hellring fighting for their clients with passion and eloquence.

We hear about other successful escapes from behind the Wall—and about unsuccessful ones. We read, awestruck, the summations. Prosecutors deny the defendant's right to break free as he did. Hellring, tearing at our hearts and consciences, tells the West Berlin jurors that "there comes a time for those of us who are blessed to have a moment in our lives when we can strike for freedom, one small stroke which can be heard around the world. This is such a moment for me and it is such a moment for you."

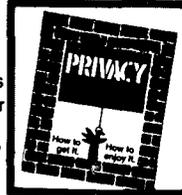
We hear the charge: burden of proof, justification and excuse, choice of evils, freedom and communism, the Wall. We await the verdict, drained. And greet it with surprise.

We experience all this—and more—in Stern's beautifully written, clearly organized, and highly dramatic *Judgment in Berlin*. The book contains great irony, agonizing introspection, personal heroism and national pride, fiction-like drama and real-life consequences. Included are hard choices, clever tactics, cruel dilemmas, legal puzzles, political contradic-

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tions, blatant compromises, and cherished principles.

But *Judgment in Berlin* is still more. It is, in essence, the story of a moral stand. It is the story of how and why Stern said no to his own government's arrogant attempt to railroad two desperate and vulnerable people, refugees from beyond the Wall.

Somewhere in his book the author observes that a judge's sacred duty is to do justice. *Judgment in Berlin* is a shining and eloquent example of how Stern—alone in a distant land, armed only with his black robe, its moral authority, and the American Constitution—discharged that duty.

Henry Mark Holzer is associate dean of Brooklyn Law School and the author of Sweet Land of Liberty? The Supreme Court and Individual Rights. This review is reprinted from Legal Times of New York.

The Woman Behind The Welfare State

**The Diary of Beatrice Webb,
Vol. 2, 1892–1905: "All the
Good Things in Life"**

*Edited by Norman and
Jeanne MacKenzie
Cambridge, Mass.: Belknap/Harvard
University Press
376 pp. \$25.00*

Reviewed by Joan Kennedy Taylor

Beatrice Potter was a brilliant, middle-class beauty with a small private income, who had an agonizing relationship with the Liberal political leader Joseph Chamberlain, whom she loved but would not marry because she disagreed with his political ideals. Instead, she was drawn to the ideas of Sidney Webb, a brilliant, ugly Cockney, who had been one of the founders in 1884 of the Fabian Society, that British intellectual group organized like an exclusive club and dedicated to bringing about socialism without revolution by permeating the existing political establishment instead of confronting it.

The Webbs married in 1892, when *The Diary of Beatrice Webb*, volume 2, begins. They immediately plunged into a working relationship so close that she described it as "almost a joint existence." Their aim was to create a body of information and ideas that could influence whichever politicians were in power at the moment. Together they founded and

nurtured the London School of Economics and wrote monumentally detailed books that promoted socialism. They preferred to call it "collectivism," perceiving this as a term at once more general and less apt to arouse negative reactions in those whom they sought to influence. But they promoted it as the only truly scientific approach to society.

This diary can be looked at in many ways. It is the record of an intellectual woman, childless by choice and determined to devote her life to research, but torn about the importance of motherhood and the emerging movement for women's rights. It is a gossipy record of the lives and thoughts of some of the most interesting and influential writers and politicians of the late Victorian era. And it is the psychological story of the successful struggle of a person who felt profoundly torn between her heart and her head and was determined to mold her life and work into more efficient patterns, just as she wished to mold society.

But precisely because permeation of the existing political establishment was such a spectacular success and the Webbs were to see in their lifetime the introduction of many of the trappings of the welfare state in Britain, it is the political saga that must remain the most important thread of this diary. This volume deals with the ascendancy of the Webbs' influence, from their marriage when she was 34 through the publication and critical success of their first two joint books, *The History of Trade Unionism* and *Industrial Democracy*. We see them move from small meetings with equally obscure comrades to fame and dinner parties with prime ministers, from trying to influence local schools to being unofficial advisers on national policy.

Beatrice Webb held that elite thinkers (like the Fabians) not only would have to discover the principles of efficient administration but would have to impose them from the top down. That was why she wanted to transform British government into the rule of the expert, "to extend the sphere of government by adding to its enormous advantages of wholesale and compulsory management, the advantage of the most skilled entrepreneur." Nor was she slow to notice that really large and efficient entrepreneurs seemed to be no enemies of government regulation. She was authoritarian in many ways: an advocate of church establishment, an opponent of letting women vote, and a supporter of the Liberal imperialists ("They have no

prejudice against our view of social reform, whilst their general attitude toward the Empire as a powerful and self-conscious force is one with which we are in agreement").

On the other hand, she was working at a time when no one foresaw the grey world of the British welfare state, in which the individual disappeared and rights and privileges pertained only to members of groups. Hers was the world of free trade and Social Darwinism, in which Beatrice tried to rid herself of "laissez faire bias" in order to combat "bigoted individualists." As a young woman doing social work in her twenties, it was the family friend Herbert Spencer who was her mentor. In this diary we see Spencer as an old man, querulous and ill, whom she continues to visit not just because of the pull of old ties but because his method is incorporated in all her work. "He taught me to look on all institutions exactly as if they were plants or animals, things that could be observed, classified and explained and the action of which could to some extent be foretold if one knew enough about them."

How had a disciple of the individualist Herbert Spencer become a champion of collectivism? Her criticism of utilitarian ethics and of Spencer's "strangely crude

QUOTABLE QUOTE

The real choice is the choice between all forms of authoritarianism on the one side and, on the other, the dream of a whole and responsible human freedom. The real conflict, in other words, the underlying conflict, is not the struggle between the Kremlin and the West which the press associations report from day to day. The real conflict is the conflict between world reaction, which preaches submission to authority, whether of a state or a man or a party or a church, and world revolution which is still, however the various reactionaries may attempt to confuse the issue, the revolution of the individual, the revolution of the whole man.

Stated in terms of structure, the real alternatives are, at the one pole, a cellular, authoritarian society in which individual human beings may live their lives through the life of the society as a whole, and at the other, a world of individual men, whose relation to each other, in the freedom of their individuality, will create a society in which each can live as himself.

—Archibald MacLeish,
"The Conquest of America,"
The Atlantic, August 1949