

The Larger Meaning of the Grand Jury Report
September 26, 2004
by James Ostrowski

There are a thousand hacking at the branches of evil to one who is striking at the root.

~ Henry David Thoreau

Government is not reason; it is not eloquent; it is force. Like fire, it is a dangerous servant and a fearful master.

~George Washington

Power to the persons.

~anonymous

Introduction

Earlier this year, I published a book that exposed the corrupt and self-serving local political machine in terms that some readers surely thought were excessive or exaggerated:

I reached the conclusion that the machine was a cohesive group of people working toward the goal of increasing their own power and wealth at the expense of everyone else in the community.

The [1970s] no-show job scandal is a useful symbol which

captures the essence of machine politics: get as much money as

possible for the least amount of productive work.

The patronage system reveals the intellectual and moral bankruptcy of electoral politics today. If the prime actors in the process are those primarily motivated by their own economic welfare, as opposed to the general good, their nefarious goals will tend to be achieved at the expense of more public-spirited citizens who will always be outnumbered and outspent. And so it goes.

Timing is everything, though, and in short order, my analysis has been corroborated by the recent grand jury report about corruption and mismanagement in Erie County Government. Read it and weep. But don't say I didn't tell you so. There is nothing in the report that wasn't presaged in my book. Big government is corrupt, dishonest, inefficient, and self-serving. (On the federal level, it's also violent and dangerous.) In *Political Class Dismissed*, this message is delivered in 347 terse pages. No trees are wasted as in, say, Bill Clinton's long and rambling new book.

When the scandal first broke, the Republican County Executive was in the midst of a re-election campaign. The District Attorney chose to impanel a special grand jury to study the matter, guaranteeing, as was noted at the time, that the matter would remain secret until well after the

election was over. (A regular grand jury could have issued indictments before the election.) The incumbent County Executive was re-elected. The Democratic District Attorney then received the support of the County Executive's Republican Party for his own re-election this year, guaranteeing that he would face no serious contest. Can I prove there was a quid pro quo? No.

The grand jury's description of the sordid events is accurate as far as it goes. Could the grand jury have gone further? Grand juries are, unfortunately, tightly controlled by the District Attorney. This District Attorney has not been known for his aggressive prosecution of high-profile or politically-connected figures. The assistant district attorney he assigned to this case once declined to prosecute a public figure for election law violations because such prosecution might have benefited his political enemies. Say what?

This is typical for the local prosecutorial class: they serve their masters well and rarely if ever go after the higher-ups. In sharp contrast, this District Attorney has not hesitated to charge innocent people with crimes when those alleged crimes consist of accusing public figures of corruption. He has prosecuted (my client) Richard Kern so many times so frivolously that the United States Court of Appeals ordered a hearing to determine whether he had prosecuted Kern in bad faith. The trial judge, incredibly, found no bad faith.

Even if twelve bogus prosecutions in a row is not bad faith, what is currently going on in Buffalo City Court at Frank Clark's direction, definitely is bad faith or worse. Dick Kern is being prosecuted for what is essentially the obsolete crime of criminal libel for doing a running commentary—by fax—of Buffalo's corrupt political class. Kern was further charged with violating an order that turned out to be bogus—written by a court clerk without authorization by the court. Nevertheless, Frank Clark initially refused to withdraw the charge even after the judge admitted it was not her order.

Can Government be Reformed?

I fundamentally disagree with the grand jury's belief that government can be reformed.¹ Sure, government can be reformed on paper, but my point is that, in the long run, the reforms will fail to cure what is wrong with government. What is wrong with government is its government-ness. Government is a coercive monopoly and all of its failures and deficiencies arise out of this primordial and inescapable fact. No reform of government can alter its status as a coercive monopoly. Thus, no reform can "strike at the root" in Thoreau's wonderful metaphor.

¹ The grand jury recommends that in the future county employees and officials abide by the law, apparently forgetting that the reason the grand jury was convened is that these employees and officials had already failed to do so.

As a coercive monopoly, government gets its money by threatening to imprison those who don't pay up. Your consent is not required as the geniuses who thought up this system believed that individuals are too stupid to decide what to spend their money on, but are smart enough to elect those who are smart enough. As I explain in my new book, once that tax dollar leaves your pocket, you lose any significant control over how it is spent. That's the whole point of taxation: you lose control over the money. So the continual surprise and shock of taxpayers about how

poorly their money is spent, is, upon reflection, quite absurd. Once you accept the (uncivilized) premise that society requires some people to use force, including the implicit threat of deadly force, to extract funds from other people, you have thereby guaranteed that a whole class of people— net taxpayers, will be perpetually dissatisfied with how their money is spent. Duh, if they were going to spend your money the way you wanted, why would they have to get you to pay up by threatening to throw you into a dungeon if you don't?

There are other intractable and insoluble problems with the coercive monopoly of government. First, since it's a monopoly, as we used to say in South Buffalo, "If you don't like it, lump it." You simply have no choice but to put up with whatever shenanigans, machinations and horrors the government is perpetrating at any given moment because they are the only game in town; they have no competitors.

Competition and choice explain why the free market has allowed the human race to rise up from hunting-gathering, subsistence farming and cave-dwelling to the incredible standard of living available to many today. The lack of competition and choice, however, explains why, throughout history and continuing, governments have been able to get away with everything from mass murder to the legalized graft and corruption of the local political machine.

The final problem with government is intimately related to the first two, but deserves special mention. Why can't government officials act responsibly, you ask? I answer that question explicitly in my new book. The rocket scientists who created this system gave the politicians and the bureaucrats power over us, because we are "too stupid to make our own decisions." As I write in the book:

Statists assure us that irresponsible people will act responsibly. That is, state officials, who are given power over us, and who therefore are not responsible to us, will act responsibly. All logic and experience tell us this is false, and thus utopian.

The only route to stamping out ruthless, corrupt and self-serving machine politics is radical libertarianism. Sometimes the truth is so simple that we miss it. Eliminate the economic goodies the state can dispense and you end patronage politics. There is no other way.

Evidence that confirms my thesis fell into my lap. I picked up the local left-wing alternative paper, Alt Press, Sept. 19, 2002. There I found numerous criticisms of the incumbent County Executive for filling government jobs not with the public good in mind, but solely to enhance the power of his political machine. A later column in the same paper accused the Mayor of Buffalo of using HUD funds for political patronage (February 27, 2003). The analysis of the article is correct as far as it goes:

Despite the fact that Buffalo received [over one billion dollars]. . . there is little to show for it.

[HUD money] has long been considered

fuel for political patronage jobs. . . . The City

of Buffalo topped the list of local municipalities

when it came to the percentage of [HUD money—51 percent] tied up by ‘soft costs’ [patronage].

..

When we look at the agencies in question, however, we see some of the sacred cows of the left: the county hospital, the local community college and public housing. Since, at the behest of the left, such services as medical care, education and lowincome housing have been taken out of the market and “protected” from the harsh calculus of profit and loss and the rigors of competition, the political bosses are free to dump their soldiers there without fear of the consequences. They will in no real sense be held responsible for these consequences precisely because they hold power over the victims, the taxpayers. They have the power to force the taxpayers to pay for public hospitals and schools, regardless of how poorly they perform. Liberalism begets the machine. Be careful what you wish for; you just might get it. As Mencken said, “Democracy is the theory that the common people know what they want and deserve to get it good and hard.”

Let me spell this point out as directly as I can for the benefit of my liberal friends. Liberals support public hospitals and such because they believe that private persons acting in the free market are not responsible enough to provide for their own medical care and therefore they should not have control over or responsibility for medical care. Their funds have to be taxed, taken from them and removed from their control. It is this very transfer of control over funds from private persons to the government that is the cause of the misuse of those funds they frequently complain about. Since they have ended our control over these funds, we can no longer prevent their use for purposes and projects we oppose, for example, enhancing the machine’s power. In sum, liberals have created the very problems they now decry. If the taxpayers’ funds now earmarked for public hospitals were returned to the taxpayers’ pockets, it would be metaphysically impossible for politicians to misuse them.

Since the problem with government is its government-ness, the only solution to the problem of government corruption and incompetence, or any other problem with government, is to reduce the size, scope or power of government. Government cannot misuse funds that remain in our pockets and government cannot abuse powers it was never given in the first place.

The founders, particularly Jefferson, knew this well. We moderns are largely ignorant of this truth, even after witnessing numerous government atrocities that the founders could never have imagined. They tried to shrink government and, taking dead aim at government’s monopoly power, they created ingenious mechanisms which diffused that power among the people. These included juries that could override judges’ views on the law, militias instead of standing armies and the related right of the people to bear arms. They also tried to divide government power among levels and branches of government. This latter tactic admittedly failed when Lee surrendered in 1865, ushering in the era of federal supremacy and presidential supremacy that plagues us to this day. That the founders’ experiment in federalism and the separation of powers

utterly failed to halt the growth of big government is still more proof that government cannot be reformed. The greatest reformers in history failed to tame it!

Regionalization of Incompetence and Corruption?

With the steady decline of Greater Buffalo being obvious to all for many years, the power elite needed a public relations gimmick to con the people into thinking that something was being done about it. This gimmick was regionalization, also known as metropolitan government, regionalism, or consolidation. All would be well if we just got rid of all the little local governments and combined them all into one big county government. Now that county government has been exposed as corrupt and incompetent, I wonder what gimmick they will think of next.

I feel for the Buffalo Niagara Partnership and the rest of the power elite who invested so much time, money, energy, and credibility in Giambra and regionalization. Their dream is now gone with the grand jury report. Centralizing power merely increases the opportunities for abusing that power, as this scandal shows.

The truth is, though, it was a canard all along. For the details, see “Regionalization is Exactly Wrong.” This was written in response to Kevin Gaughan’s new proposal for metropolitan government.

I have included three other recent essays about the local political scene: “Recall Giambra’s Promises,” “Kaleiding With Judicial Ethics,” and “Big Tim and Me.” The first exposes Joel Giambra as a power-hungry faux reformer. The second explains Buffalo’s sordid judicial politics. Lastly, I review Tim Russert’s new book which has some odd parallels to my own. To his credit, Russert implicitly understood in his youth what I did not. In those days, I was a reform liberal Democrat. So far as I can tell, Russert skipped right over that naïve phase and unhesitatingly joined the Democratic political machine. The rest is his-story.

I close with an essay about 9/11, but one which also speaks to what is wrong with Erie County Government: “The Final Victim of 9/11: the Myth of Government Competence.”

Summary and Conclusion

We have to get over our “modern” notion that government can be reformed and return to the founders’ classical notion that government is a monster to be caged in. We know, however, by virtue of historical knowledge they necessarily lacked, that the founders were wrong about how to do that. Federalism and the separation of powers have not contained the beast.

Lincoln destroyed federalism. (See, “The Lincoln Myth Dies Hard,” in Political Class Dismissed.) Separation of powers failed among other reasons because these days all offices in all branches of government are filled by the same political machines. The parties do disagree on occasion, but they have more in common with each other than they do with the rest of us. There is really only one party, the Power Party, which has numerous different factions, including the Republican Party and the various factions of the Democratic Party. The Power Party’s platform

is the power of its principals over the people. Most its factional disputes focus on who gets to exercise power over what and whom.

Within levels of government, the executive branch usually dominates because of the logic of patronage politics: the executives control more jobs and contracts and other goodies. History shows that the political class uses its power to continually expand government.

The founders were also wrong in thinking that we could give the government the power to tax because its purposes were limited to keeping the peace and defending the country and taxes would remain low. They naively thought that citizens could exercise control over spending through the political process. They were wrong. Modern political science tells us, as I explain in my book, that politics will always be dominated by those who have the greatest financial stake in the outcome of elections: the political class.

Cognizant that government is a beast to be tamed and that the founders' means failed, we need to modify their vision for our own times in two critical ways. First, since "the power to tax involves the power to destroy,"² we need to destroy the power to tax! Fund a much smaller government with user fees and voluntary contributions. If the people don't want to pay, the politicians will have to like it or lump it! Welcome to the real world.

Second, we need to radically decentralize power. Devolve decision-making to the level of organic communities where people are bound together by social and economic bonds that will deter the impulse to cast votes based solely on which politicians will steal the most money from net taxpayers and give it to them. People will be much less likely to vote on the basis of a greed calculus if they know their victims will be their former classmate who got that medical practice by working hard for twenty years, or the hard-working businessman who lives down the street who became a success by working 15-hour days while others were on vacation or watching television.

Let's bring government down to the community level where it can be watched and controlled. And let communities decide if they wish to join forces with other communities or secede from them. Secession is the ultimate check on big government that allows exploited communities to escape from larger governmental units that have been hijacked by corrupt

2 *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819).

political machines. Far from being a crackpot 19th Century doctrine, secession turns out to be a sophisticated modern theory vindicated by a large body of contemporary scholarship.

Radical idea? Yes, as radical today as when the great Jefferson explained on July 4, 1776 why each "free and independent state" was seceding from Great Britain.

So, ax the taxes, decentralize power, and respect freedom of political association. This proudly radical agenda will not only cure what is wrong with County Government but will allow Greater Buffalo to leap ahead of all competitors in mankind's age-old and worldwide race to establish a truly rational, civilized and peaceful form of government.