Rise of the Eurocrats

On the unjust empowerment of European Union document police.

We trust that most of our readers will remember the Fourth Ammendment to the Constitution of the United States:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Protection against unreasonable searches and seizures is a bedrock of democratic society. That protection is now under serious assault in Europe.

In a sobering story published in The Wall Street Journal on March 1, we learned that European Union anti-trust investigators may conduct dawn raids, without a search warrant, to look for incriminating evidence. EU antitrust agents, the story reported, can walk without warning into any company doing business in the fifteen-nation union to look for whatever they think might be proof of illegal activity. Then they can use the evidence to levy fines as steep as 10 percent of a company’s world-wide revenue.

There is no judicial review before what is known as a dawn raid and no statute prescribing when the raids should be conducted. In fact, judges do not have the authority to question, or even see, the justification for a raid. The only approval needed is from the EU's antitrust chief, Mario Monti, who usually bases his decision on whether the haul of evidence will likely be big enough to justify the time and expense.

It is bad enough—we find it frankly intolerable—that the EU document police should be empowered to conduct arbitrary searches of places of business and levy enormous fines. (Volkswagen, for example, was fined $78 million in 2000.) But Mr. Monti is not content with the present scope of his powers. As the story in the Journal explained, investigations are currently limited to searching corporate offices for evidence of price fixing and abuse of market power. Mr. Monti wants far more sweeping powers. He wants, for example, to be able to raid executives' homes at will. He also wants to be able to interrogate employees, without guaranteeing them the right to a lawyer or the right to remain silent.
We are astonished that this development has not sparked angry protests across Europe. Who, after all, are these document police? Today, they are empowered to swoop down on your place of business without a moment's notice and rifle through your files and personal effects. Tomorrow that power may well extend to your home. Who are these avengers? They are unelected bureaucrats, accountable to no one but themselves. They meet in secret. They issue unappealable diktats. They are enemies of democracy and freedom. Why are they tolerated?

Discussing this story with an English friend, we were struck by his observation that Europe at the beginning of 2002 is roughly in the same place on the road to totalitarianism that Europe was in 1930. It is worth stressing that a totalitarian government need not be a nasty government. It is, however, an arbitrary and undemocratic government. Communism and fascism were nasty as well as arbitrary. The EU, in its current configuration, is merely arrogant and intrusive. It has, as yet, no jackbooted shock troopers. But it does possess a multitude of regulation-issuing bureaucrats and, increasingly, squads of lawyers and investigators with police power. Where will it stop? We wonder. In Lewis Carroll’s *Through the Looking-Glass*, the nonsense poem *The Walrus and the Carpenter* tells the story of how the title characters entice a flock of naïve young oysters from their beds for a lovely stroll along the beach. At first the oysters are reticent. But then, ignoring the warnings of their elders, they start to emerge:

And thick and fast they came at last,

And more, and more, and more®
All hopping through the frothy waves,

And scrambling to the shore.

Of course, it ends badly for the oysters, who find that the Walrus and the Carpenter had brought them out so far/ And made them trot so quick® only to make a lunch of them.

“O Oysters,” said the Carpenter,

®You’ve had a pleasant run!
Shall we be trotting home again®

But answer came there none®
And this was scarcely odd, because

They®d eaten every one.

It was while we were contemplating Mr. Monti and his document police that this poem occurred
to us. It seemed strangely apposite. In the section of his biography of Winston Churchill dealing with the years leading up to World War II, William Manchester also quotes the “The Walrus and the Carpenter.” Heedless of Churchill’s warnings about the threat of Hitler, Neville Chamberlain and many other well-intentioned people looked the other way, manufactured excuses, and waved documents that they said promised “peace in our time”:

“Now, if you’re ready, Oysters dear,

We can begin to feed.

But not on us! the Oysters cried,

Turning a little blue.

After such kindness, that would be

A dismal thing to do.

It was, alas, too late for them, but perhaps their fellows back home learned a lesson. Have we?