

Studies on free trade, sanctions, IMF failures

Founders Are the Best Guide on Impeachment

Clearing up many misconceptions and myths surrounding the impeachment process, a new study from the Cato Institute's Center for Constitutional Studies provides guidance to the original constitutional debates, the textual provisions of the Constitution, past impeachments, and modern academic scholarship. In "Impeachment: A Constitutional Primer" (Policy Analysis no. 318), Jason Vicente, a law clerk at the Massachusetts Superior Court, notes that "the Framers of the Constitution considered the impeachment mechanism so crucial that it emerged at the very beginning of the constitutional convention." Its use, however, has been quite limited. The House of Representatives has impeached 15 individuals (one president, 12 judges, a senator, and a cabinet member). The Senate has convicted 7 of those 15. Although scholars debate the range of possible impeachable offenses, Vicente observes that most agree that if an offense is indictable, it is also impeachable. "There is a fundamental inconsistency between a president's oath to faithfully execute the law and his having committed offenses indictable under that law."

◆Protecting the Military's Invisible Sacred Cows

In "The Quadrennial Defense Review: Reiterating the Tired Status Quo" (Policy Analysis no. 317), David Isenberg argues that the United States is spending more than necessary on defense. He cites a major review of Pentagon strategy and force structure that "epitomized status quo thinking." Isenberg, an analyst at a private firm that advises the U.S. government on national security issues, says that the latest Quadrennial Defense Review's "biggest sacred cow was the Pentagon's insistence on the existence of a robust 'threat,' despite all the evidence to the contrary. Today, and for the foreseeable future, the international security environment will remain benign. Spending at Cold War levels in a benign international environment is a waste of taxpayer dollars."

◆Halting Union Extortion

Critics of union violence aren't paranoid. A 1973 Supreme Court decision effectively made union violence and extortion almost impossible to prosecute, leading to an



Michael Tanner, director of health and welfare studies, welcomes Greg Scandlen (left) to Cato as a fellow in health policy.

epidemic of union violence, according to David Kendrick, program director at the National Institute for Labor Relations Research. In "Freedom from Union Violence" (Policy Analysis no. 316), Kendrick traces the history of labor law and union violence during the 20th century, beginning with the infamous 1905 murder of a former Idaho governor by union mineworkers who felt betrayed when he called in federal troops during a strike. The Supreme Court's 1973 ruling in *United States v. Emons* upheld a lower court ruling that three electrical union members indicted for sabotaging a substation and other violence had done nothing illegal because they were pursuing "legitimate" union objectives. The result, Kendrick says, is that "since 1975, at least 181 Americans have died as a result of union violence. There have also been more than 5,600 assaults, kidnappings, and threats—almost all committed by striking union militants." Yet "barely 3 percent of the violent incidents recorded in the National Institute for Labor Relations Research's data file have led to convictions," and thus, "thousands of acts of union violence have gone unpunished." Kendrick says that "legislation such as the Freedom from Union Violence Act may be the only way" to deal with the problem.

◆A Gentleman's C for Governors

"A Fiscal Report Card on America's Governors: 1998" (Policy Analysis no. 315) by Cato's director of fiscal policy studies Stephen Moore and policy analyst Dean

Stansel shows that "since 1996 state spending has grown roughly 50 percent faster than federal expenditures." The result is that only two governors, William Janklow of South Dakota and John Rowland of Connecticut, received the grade of A on Cato's fourth biennial fiscal report card. Moore and Stansel note that bloated budgets are now being promoted even by Republican governors who came into office in 1994 and 1995 advo-

cating a tax-cutting agenda. Those governors with the most fiscally conservative records—the tax and budget cutters—receive the highest grades. Those who have increased spending and taxes the most receive the lowest grades. Seventeen governors received grades of B, 19 grades of C, 5 grades of D, and 3 (John Kitzhaber of Oregon, Lawton Chiles of Florida, and Mel Carnahan of Missouri) grades of F.

◆U.S. Out of Japan

The presence of 27,000 American military personnel on the Japanese island of Okinawa should be phased out, writes Cato senior fellow Doug Bandow. In "Okinawa: Liberating Washington's East Asian Military Colony" (Policy Analysis no. 314), Bandow says, "The end of the Cold War and the transformation of the strategic environment of East Asia have eliminated the need to deploy the Third Marine Expeditionary Force and other military units stationed on the island—as well as elsewhere in Japan." Bandow dismisses the various justifications and rationalizations for the old and new deployments. "Proposals for new missions—such as providing support for humanitarian interventions—are merely pretexts to preserve bases that have outlived their usefulness."

◆Dangerous Asian Liaisons

President Clinton's changed U.S. policy on Taiwan "combines the worst, most dangerous features of appeasement and firmness," says Ted Galen Carpenter, Cato's

vice president for defense and foreign policy studies. In “Let Taiwan Defend Itself” (Policy Analysis no. 313), Carpenter observes that, during Clinton’s visit to China earlier this year, U.S. officials reportedly gave Chinese leaders “private pledges” that America would cut or downgrade arms exports to Taiwan. At the same time, however, Clinton “also implied that the United States would intervene militarily to defend Taiwan from attack.” Carpenter says that Clinton’s approach leaves Taiwan “highly vulnerable to PRC intimidation or outright military coercion,” yet “if Beijing follows up on that advantageous situation and actually seeks to coerce



Ted Galen Carpenter argues that Taiwan should defend itself without U.S. assistance.

Taiwan,” the United States faces “the risk of a disastrous U.S.-Chinese war.” Carpenter concludes, “The only solution is for the United States to allow increased arms sales to Taiwan, thus enabling the Taiwanese to build a self-sufficient defense and an effective deterrent to coercion by Beijing.”

◆The Rule of Unlegislated Law

“Congress has built up a habit of delegating large chunks of its constitutionally entrusted lawmaking power to federal agencies,” writes Robert A. Anthony, Foundation Professor at George Mason University School of Law. In “Unlegislated Compulsion: How Federal Agency Guidelines Threaten Your Liberty” (Policy Analysis no. 312), Anthony notes that, despite the Administrative Procedure Act of 1946, federal agencies are increasingly issuing “nonlegislative rules” that have a practical binding effect even when agencies ignore requirements in the act for public notice and comment and formal publication of their rules and regulations. Putting forth nonlegislative rules in “guidances or memoranda or interpretations or manuals or bulletins or press releases or policy statements or Dear Colleague letters or enforcement guidelines or models or questions-and-answers or action levels or

staff instructions or advisory opinions” has become the method of choice for the federal bureaucracy. “A bizarre result is that the binding effect of informal documents purporting to interpret regulations can be even stronger than the effect of formal legislative rules.” Anthony concludes, “The courts’ indulgence of unlegislated compulsion against private persons is an anachronism . . . [that] should have no place in today’s system of limited government under the rule of law.”

◆End the IMF and the ESF

The International Monetary Fund and the U.S. Treasury Department’s Exchange Stabilization Fund have evolved into institutions whose “current functions have little to do with their original missions,” says Anna J. Schwartz, research associate at the National Bureau of Economic Research. In “Time to Terminate the ESF and the IMF” (Foreign Policy Briefing no. 48), Schwartz says that “both institutions should be terminated because both are wasteful and unnecessary for resolving currency crises.”

◆Workers of the World Unite—For Social Security Privatization

“The [Social Security] payroll tax is a tax aimed directly at union workers,” Michael Tanner says in “Union Workers Should Support Social Security Privatization” (Cato Briefing Paper no. 39). “The payroll tax is the largest tax most union workers pay. If they had the opportunity to save and invest 12.4 percent of their income—the amount now taken by Social Security—low-wage workers would be able to accumulate substantial nest eggs,” says Tanner, director of health and welfare studies at the Cato Institute, in the briefing released on Labor Day. By opposing privatization of Social Security, “union leaders are sacrificing the best interests of American workers,” Tanner argues. “A privatized Social Security system, in which workers are allowed to divert their

payroll taxes to individually owned, privately invested accounts, similar to individual retirement accounts or 401(k) plans, would provide workers with better and more secure retirement benefits, would give them a greater voice in corporate management and a sense of ownership and participation in the American economy, and would avoid painful tax hikes or an increase in the retirement age.”

◆Unilateral Free Trade

“The rising tide of ‘globalphobia’ in the midst of unrivaled prosperity demonstrates that free traders are doing something wrong,” says Brink Lindsey, director of Cato’s Center for Trade Policy Studies. “Free traders should expand beyond their traditionally exclusive reliance on negotiated liberalization and launch a campaign for the unilateral elimination of specific U.S. trade barriers,” writes Lindsey in “A New Track for U.S. Trade Policy” (Trade Policy Analysis no. 4). His prescription is “a campaign to eliminate U.S. trade barriers unilaterally—that is, regardless of whether other countries make similar reforms.” Lindsey recommends that free traders target antidumping laws, high tariffs, subsidies (sugar, peanut, dairy), and the 1920 Jones Act that requires all merchandise shipped between U.S. ports to be carried on U.S.-owned vessels. “Free traders today are in that happy circumstance when holding to their ideals is the most intensely practical thing they can do,” Lindsey concludes.

◆Unconstitutional Sanctions

According to Boston attorneys David R. Schmahmann and James S. Finch, state and local laws that penalize firms that do business in Burma violate three major constitutional principles. In “State and Local Sanctions Fail Constitutional Test” (Trade Policy Briefing Paper no. 3), Schmahmann and Finch show how the purchasing laws violate federal supremacy in making foreign policy; are inconsistent with the Commerce Clause, which gives Congress the power to regulate commerce with foreign nations; and ignore the Supremacy Clause, which forbids state and local laws that contradict federal law in matters over which the federal government has authority. ■