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Property Rights and Bioregionalism

by Patricia Adams

Utter the words "property rights" in Canada today and you are likely to hear a chorus of protest from the old-guard left, the progressive movement, and those fighting for social justice. Defenders of property rights are usually thought to be the moneyed class, capitalists, and those who are hell bent on destroying the environment.

I want to present a different view of property rights. It is a view that comes from the Third World—from environmentalists, indigenous rights activists, and grassroots groups. Those Third World citizens have a view of property rights that I think is profound and enlightening, and I predict it will revolutionize political structures that determine how Third World environments are treated.

That revolution is not taking place in just the Third World. It is happening

Patricia Adams is executive director of Probe International, a Toronto-based environmental group, and the author of a recent Cato Institute Policy Analysis on the World Bank's shaky finances.

here, too. The principles and methods espoused by the Third World's citizens in their attempts to protect their property rights are strikingly similar to those espoused by bioregionalists.

Let me explain with a few real-life examples involving international institutions for which we as taxpayers are responsible—the World Bank and the Canadian International Development Agency.

In India the World Bank has funded the Sardar Sarovar dam on the Narmada River—one of the largest of a series of some 3,000 dams to be built on that river over the next quarter century. The Sardar Sarovar dam, which is almost completed, will flood tens of thousands of acres of valuable forests and farmland and force up to 240,000 people from their land. Neither the World Bank nor the Indian government is quite sure where to put those people: suitable replacement land has not yet been found.

So hated is the project that massive demonstrations have become routine in

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the Narmada River valley. Thousands of villagers have begun what they call "a long march" from one end of the river to the other. The police and military have been brought in to break up demonstrations, journalists are not allowed into the area, community leaders have been jailed, and warrants for the arrest of others have been issued. The place has become a virtual war zone. People along the river have even formed what they call "drowning pacts." In the ultimate act of civil disobedience, people are committed to drowning themselves when the water levels start rising.

At issue in the Narmada River valley is land. The people just do not want to move. They want their property rights to their land, their water, their forests—in short to their ecosystem—respected.

Their desperate drowning pacts are unsurprising. Most of the people who will lose their land are tribal people. Their expertise—what to plant, how to cultivate, and when to harvest—is completely bound up in a particular ecology and determined by the seasons, the soil, and the vegetation they know. Their vast legacy of unrecorded knowledge about their environment, and how to survive in it, becomes almost useless in another.

That is why eminent American anthropologist Thayer Scudder, who has studied the effects of forced resettlements in many Third World countries, says,



Burton Yale Pines, vice chairman and chief operating officer of National Empowerment, and Cato Institute president Edward H. Crane cohost NET's live Sunday-morning show, "Dateline: Washington," broadcast over both NET and Liberty Media's new tv! cable channel.

(Cont. on p. 12)

The Death of Politics?

President's Message



In 1969 the late Karl Hess wrote a classic essay on the future of America entitled "The Death of Politics." That it was somewhat ahead of its time is evidenced by the fact that it appeared in *Playboy* rather than a public affairs magazine. Hess, one of the most astute political observers of our time, was convinced that the evidence of the failure of the political approach to solving societal ills had become so overwhelming as to absolutely confirm the theoretical

case for civil society over political society. "Power and authority, as substitutes for performance and rational thought, are the specters that haunt the world today," he wrote. "They are the ghosts of awed and superstitious yesterdays."

But if the Establishment was bemused by Karl Hess's audacity more than two decades ago, it isn't laughing now. It seems clear that Americans have lost patience with and confidence in government to a degree we haven't witnessed since—well, the Boston Tea Party comes to mind. And this mood shouldn't be interpreted as evidence of a renewed enthusiasm for the Republican party, although the GOP will likely be its immediate beneficiary, due in part to its professed ideology but more substantially to the fact that it possesses fewer incumbents than the Democrats.

The evidence that was clear to Hess has continued to accumulate, and now it's becoming clear to the vast majority of Americans. In fact, the growing sophistication about the limits of political society is a worldwide phenomenon. Voters in nations around the globe are turning out long-established parties in favor of political forces offering more open societies with less burdensome governments. Silvio Berlusconi in Italy and Vaclav Klaus in the Czech Republic have much more ambitious programs for rolling back the state than did either Margaret Thatcher or Ronald Reagan.

In the United States intense disenchantment with government manifested itself in the 20 million votes that Ross Perot garnered in 1992. The Perot candidacy was made possible only by virtue of the Supreme Court ruling that struck down the expenditure limits contained in the Federal Election Campaign Act. It upheld, however, the contribution limitations that have played a major role in preventing voter frustration with the political status quo from vaporizing one or both of the two major parties by now.

The term limitation movement is a powerful result of the pent-up voter energy that the FECA has created. It is, in effect, circumventing the traditional paths to political change, and the change it promises to bring about is going to be much more than cosmetic. A citizen legislature—one domi-

nated by individuals who prefer life in the productive private sector—will be able to address the true "gridlock" in Congress, namely, the vast inventory of current laws on the books that are doing serious, ongoing damage to our society. Those laws have both liberal and conservative sponsors. Under the regime of seniority for professional politicians, the first thing a freshman member of Congress learns is never to presume to attempt the repeal or downsizing of an existing law. There are few orphans in that vast inventory.

With a citizen legislature that dynamic changes. People won't consider themselves "lawmakers" but true representatives. They will bring their own perspective, a product of living in the real world, to bear on issues of national policy. And that is reason for the special interests and those who live off of government largesse to have real concern.

This is not some blip in public attitudes. This is the beginning of a sea change in American governance. A recent Gallup Poll showed that an astounding 54 percent of Americans want to make Social Security voluntary. More and more people—across racial and political lines—believe welfare does more harm than good. As John Stossel demonstrated on a recent ABC television special, people are simply fed up with the politically correct "victimization" syndrome.

Environmental movement claims are increasingly being viewed by the public as inspired more by egalitarian ideology than genuine concern for the environment. The movement to constitutionally limit spending at the federal and state levels has renewed energy. More and more people are taking seriously the idea of eliminating the income tax and radically downsizing the role that government plays in our lives. People are simply no longer buying the endless rationales put forth by politicians who claim that if only we'd give them even more of our hard-earned money, they could really solve our problems.

I was recently on the PBS television program "Think Tank," and one of the other guests, Norman Ornstein of the American Enterprise Institute, made a revealing statement. "Term limits," he said, "are a manifestation of America's self-hatred." To him and others who judge the success of Congress on the basis of how many major pieces of legislation get passed, the stirrings outside the Beltway are inexplicable. If Americans don't like Congress, they must not like themselves, for Congress is America.

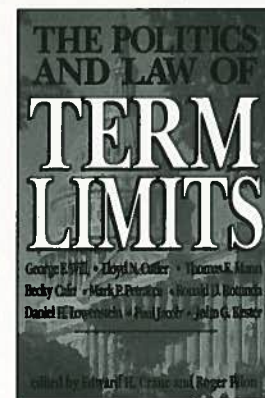
But of course it is not. Congress was meant to play a very limited political role in protecting the rights to life, liberty, and property of those who lived in the vastly larger civil society. The cultural roots of self-responsibility and volunteerism run deep in America. By the tens of millions, Americans are returning to them. Karl Hess would have understood.

— Edward H. Crane

George Will, Lloyd Cutler Disagree

Constitutionality of Term Limits Debated in New Book

The practicality and constitutionality of term limits are vigorously debated in a new book from the Cato Institute. *The Politics and Law of Term Limits*, edited by Edward H. Crane, president of the Cato Institute, and Roger Pilon, director of Cato's Center for Constitutional Studies, is the definitive guide to the hottest political issue in recent years. Voters in 16 states have already limited the terms of their members of Congress. Eight more states have the question on the ballot this November. The terms of state legislators



and other officials have been limited in 16 states and hundreds of counties and cities, including New York and Los Angeles. In late November the Supreme Court will hear oral argument in *U.S. Term Limits v. Thornton*, a case challenging the constitutionality of the Arkansas term-limit initiative.

Contributors to *The Politics and Law of Term Limits* include top names from the worlds of constitutional law, political science, and grassroots organizing: presidential adviser Lloyd N. Cutler; U.S. Term Limits executive director Paul Jacob; League of Women Voters president Becky Cain; attorney John Kester, who will argue the constitutionality of term limits before the Supreme Court this fall; constitutional law authority Ronald D.

Rotunda; law professor Daniel H. Lowenstein; and Thomas E. Mann, director of the Governmental Studies Program at the Brookings Institution. Syndicated columnist George Will provides an introduction, as do Crane and Pilon.

"It is no overstatement to say," write Crane and Pilon, "that the term-limits movement—a national, grassroots effort to limit the terms of elected officials at all levels of government—is emerging as one of the most important developments in this nation in a very long time. . . . Term limits speaks in fundamental ways to the question of how we will govern ourselves. Although the political establishment has often been slow, for understandable reasons, to acknowledge the movement, it can be ignored no longer."

"Term limits," adds Will, "have come to remedy what ails government."

Arguing for the political wisdom of term limits are Jacob and Petracca, who say that term limits would end the careerism that undermines representative government. They are opposed by Cain and Mann, who counter that the real problems cited by advocates of term limits would not be solved by such limits. Kester and Rotunda set forth their cases for the constitutionality of term limits; they point out that the Constitution does

not prohibit the states from limiting terms and in fact empowers the states to regulate the "time, place, and manner" of elections. Cutler and Lowenstein rebut that argument by noting that since the Constitution specifies qualifications for members of Congress, the states cannot enact more onerous standards.

The book received enthusiastic pre-publication praise. Constitutional authority Floyd Abrams said that "as the desirability and constitutionality of term limits become increasing central, the need for a volume that sets forth both sides—all sides—of the debate becomes all the more pressing. *The Politics and Law of Term Limits* does just that. Here, in one place, are powerful arguments pro and con rooted in history, philosophy, politics, and law. The book is an indispensable collection of diverse views on one of the most intellectually challenging and pragmatically significant issues of our time."

Governor William F. Weld of Massachusetts said, "This is a mind-expanding treatment of a fascinating public policy issue. You feel as though you're watching a fifteen-round fight where both combatants are knocked to the canvas, but somebody's eventually going to win."

Pete du Pont of the National Center for Policy Analysis called it the "best discussion of an issue whose time has clearly come."

The Politics and Law of Term Limits is \$19.95 cloth, \$10.95 paper. It can be ordered by calling 1-800-767-1241. ■

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Wayne Angell, John Stossel Speak in New York

Laffer Says a New Tax Revolt Is Brewing in the States

Cato Events

August 8: "The Great Tax Revolt of 1994" was the subject of a Policy Forum with economist Arthur Laffer, expositor of the curve that bears his name; Grover Norquist, president of Americans for Tax Reform; and Joel Fox, president of the Howard Jarvis Taxpayers Association. Laffer compared 1994 to 1978, the year Californians passed the Proposition 13 property-tax cut, which ushered in a period of tax revolt that culminated in the 1981 tax-rate cuts under President Ronald Reagan. Norquist reported on the trend in the states toward using the initiative and referendum to require legislative supermajorities or the approval of the voters to raise taxes. Fox gave a history of Proposition 13 and its results and called for public referenda on tax increases.

August 11: David Frum, author of *Dead Right* (Basic Books), lamented at a Book Forum that conservatives have given up the fight against big government and have thereby jeopardized their efforts to revitalize bourgeois virtues.

August 15: Americans need to rediscover the individualist values of reason, purpose, and self-esteem, said David Kelley, executive director of the Institute for Objectivist Studies, at a Policy Forum on "The Politics of Virtue: Individualist and Communitarian Perspectives." Communitarian theorist Amitai Etzioni said that individual virtue is not enough and called for efforts to reinvigorate the community.

August 19: Sebastian Edwards, chief economist for the Latin American and Caribbean region at the World Bank, assessed the successes and setbacks of Latin American reform efforts at a Roundtable Luncheon with Cato staff members and guests.

August 22: A "New Perspectives for the Nineties" seminar was held in Newport Beach, California. Radio talk show host Larry Elder gave the keynote



Economist Arthur Laffer tells a Cato Policy Forum audience that a new tax revolt is brewing outside the Beltway.

address. Rep. Christopher Cox (R-Calif.) was the luncheon speaker. Other speakers were Edward H. Crane; Roger Pilon, director of Cato's Center for Constitutional Studies; and Michael Tanner, director of health and welfare studies.

August 25: Former Virginia governor L. Douglas Wilder, then an independent candidate for the U.S. Senate, spoke on "Federal Fiscal Responsibility: The Virginia Model" at a Policy Forum. He described how he used budget cutting to bring Virginia's fiscal chaos under control during his term as governor.

August 26: A Policy Forum titled "The UN Confab in Cairo: Population Con-

trol in the Dock" examined the politics and economics of the International Conference on Population and Development. Cato adjunct scholar Julian Simon of the University of Maryland argued that, contrary to the predictions of the doomsayers, the long-term trend is toward longer, healthier lives; more abundant resources; and other improvements in the material condition of humanity. Cato senior editor Sheldon Richman said that population control programs, even if couched in the rhetoric of women's empowerment, are a form of cultural imperialism that victimizes women in the developing world.

September 1: "Requiring Good Deeds: Back to School and Service" was the topic of a Policy Forum on the increasingly common requirement that students perform community service in order to graduate from public high schools. Scott Bullock, staff attorney with the Institute for Justice, which represents two students in law suits against their school districts, argued that such requirements are unethical and violate the U.S. Constitution's Thirteenth Amendment ban on involuntary servitude. Sandy Horwitt, director of the Citizens Participation Project for People for the American Way, said that the programs teach students the value of public service.

CATO INSTITUTE CALENDAR

Entitlement Reform: Touching the Third Rail

Washington • Cato Institute • January 24, 1995

Speakers include William Niskanen, Peter Ferrara, and Martha McSteen.

Arab-Israeli Peace: Prosperity or Politics?

New York • Waldorf-Astoria • January 26, 1995

Speakers include Alvin Rabushka, Hisham Awartani, Yakir Plessner, and Karim Nashashibi.

Seventh Annual Benefactor Summit

Tucson • Loews Ventana Canyon • February 9-12, 1995

Speakers include William F. Weld, William Kristol, Theodore Forstmann, and Edward H. Crane.

New Horizons in Electric Power Deregulation

Cosponsored with the Institute for Energy Research

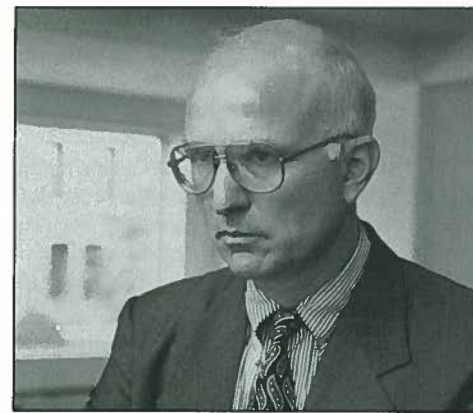
Washington • Mayflower Hotel • March 2, 1995

Speakers include David Fessler, Robert Poole, Jerry Ellig, Robert L. Bradley, Jr., and Stephen Littlechild.

September 13: Bill Emmott, editor of the *Economist*, discussed a wide range of political and economic issues with members of the Cato policy staff at a Roundtable Luncheon.

September 14: "U.S. Defense Spending: Extravagant or Inadequate?" was debated at a Policy Forum featuring former Defense Department officials Lawrence J. Korb, senior fellow at the Brookings Institution, and Richard Perle, resident scholar at the American Enterprise Institute. Korb said the defense budget is too high as a result of domestic politics and bad planning. Perle cautioned that it is better to err on the side of overinvestment in the nation's security.

September 20: A "New Perspectives for the Nineties" seminar was held in New York City with Wayne Angell, chief economist at Bear Stearns & Company, as the keynote speaker and John Stossel of the ABC News program "20/20" as the luncheon speaker. Angell spoke on "The Prospects for Economic Growth under Clintonom-



Former assistant defense secretary Lawrence Korb argued that the military budget is too high at a Cato Policy Forum.

ics." Stossel's speech, "Are We Scaring Ourselves to Death?" looked at how people are made to fear things that statistically pose little risk. Also speaking were Cato's Edward H. Crane, Michael Tanner, and Stephen Moore.

September 21: "Cuban Conundrum: Time to Lift the Embargo?" was the subject of a Policy Forum with two members of President Reagan's National Security Council, Roger Fontaine and



Cato Institute president Edward H. Crane joined Cato's newest Board member, Theodore Forstmann of the New York investment banking firm of Forstmann, Little, at the company's annual retreat in Aspen, Colorado, last September.

José Sorzano. Fontaine said that ending the embargo would remove Fidel Castro's last excuse for the failure of Cuban communism. Sorzano countered that opening trade with Cuba would probably be followed by calls for foreign aid.

September 26: The Institute hosted a reception to honor the publication of *Guns, Crime and Freedom* by Wayne LaPierre. LaPierre, chief executive officer of the National Rifle Association, spoke about the importance to other freedoms of the right to bear arms. Alfred Regnery of Regnery Publishing Company, publisher of the book, and Cato chairman William A. Niskanen also spoke.

September 29: Cato senior fellow Doug Bandow spoke about the theme of his new book, *The Politics of Envy: Statism as Theology*, at a Book Forum. Bandow said that much of what motivates people to favor government regulation is the desire to deprive others of what they have earned.

October 3: "Cutting through the Smoke: The Science and Politics of Tobacco" was the

subject of a Cato seminar. Speaking on the risk posed by secondhand smoke, the economic and social calculus of tobacco smoke, and cigarettes and civil liberties were Gary Huber of the University of Texas Health Center, Steven Bayard of the Environmental Protection Agency, economist Jane Gravelle of the Congressional Research Service, Jacob Sullum of *National Review*, Cato senior editor Sheldon Richman, Robert Peck of the American Civil Liberties Union, and Cato Institute chairman William Niskanen. The seminar was televised nationally on C-SPAN.

October 5: Gerd Habermann, author of *The Welfare State: The History of the Wrong Way*, talked about his activities with a pro-free-market organization of entrepreneurs in Germany at a Roundtable Discussion with Cato policy staff.

October 5: Publication of the Cato book *The Politics and Law of Term Limits* was celebrated at a Book Forum. Presentations were made by coeditors Edward H. Crane and Roger Pilon and contributors Paul Jacob, executive director of U.S. Term Limits; John G. Kester, who is representing U.S. Term Limits before the Supreme Court; and Thomas E. Mann of the Brookings Institution. Also speaking was attorney Louis R. Cohen of the firm Wilmer, Cutler & Pickering, which has filed an amicus brief on behalf of opponents of term limits. ■



Former Virginia governor L. Douglas Wilder is interviewed outside the Cato Institute before his address on fiscal responsibility in Richmond and Washington.

Do Smokers Have Rights?

The Science and Politics of Tobacco

Policy Forum

On October 3, the Cato Institute's F. A. Hayek Auditorium was the setting for a seminar, "Cutting through the Smoke: The Science and Politics of Tobacco." Among the speakers were Jane Gravelle, an economist with the Congressional Research Service; Jacob Sullum, articles editor of *National Review*; Sheldon Richman, senior editor at the Cato Institute; and moderator William A. Niskanen, chairman of the Cato Institute.

Jane Gravelle: After the Clinton administration proposed a fairly substantial increase in the cigarette tax as a way of funding health care reform, my colleague Dennis Zimmerman and I wrote a paper entitled "Cigarette Taxes to Fund Health Care Reform and Economic Analysis."* The part of the paper I'd like to talk about is the justifications for increasing the cigarette tax. I'm an economist, so I start with the presumptions that people have subjective preferences about what they like to do and how they spend their money and that, in general, we want to allow people to enjoy their lifetime resources in accord with those preferences. We would intervene in those decisions only under certain kinds of circumstances that we try to delineate and measure.

The first one of those circumstances is the possibility of "spillover effects" from smoking—not primarily second-hand smoke but another kind of potential spillover effect, which is the financial spillover costs from smoking that are incurred because we have social and medical insurance systems that charge uniform premiums and don't differentiate those premiums according to whether or not you smoke. We wanted to try to measure the magnitude of the spillover effects and then compare them with the existing level of cigarette taxes to determine whether an increase in cigarette taxes is justified.

We were surprised to find that there was really only one study that did that

kind of analysis in a conceptually appropriate framework that could give a measure of the efficient level of the cigarette tax. When you buy a pack of cigarettes, you pay the price of the cigarettes. You also assume some implicit costs that you know about—if you are aware of the health effects of smoking. But there might be another part of the cost that you don't pay, the cost that smokers impose on other people. That is the kind of cost that we were trying to examine. When we looked at the study, done by health economist Ray



Jane Gravelle: "The cigarette tax is already higher than the financial spillover costs from smoking."

Manning and several associates (funded by the RAND Corporation), we found that the spillover effect per pack of cigarettes was 33 cents. At the time, the sum of federal, state, and local cigarette taxes was about 50 cents per pack. So the cigarette tax was already higher than the spillover cost.

Let me briefly mention some of the components of the spillover cost. The first were the increased health care costs of smokers, which are incurred earlier in life than are those of nonsmokers, that accounted for about 49 cents per pack. There was also another 1 cent per pack for the excess sick-leave cost of smokers relative to nonsmokers. There were 7 cents for excess life-insurance premiums, 3 cents for fire-insurance premiums, and about 12 cents in Social Security and Medicare taxes lost because of premature death.

However, there were also offsetting

savings, mainly because smokers die earlier. The medical cost is actually a net of the cost of smoking-related deaths less the illnesses smokers do not get later in life because they die earlier. There is also a savings of 6 cents per pack in nursing home cost and 33 cents per pack in reduced Social Security benefits.

The Center for Disease Control released an estimate that the health-related costs of smoking sum to \$50 billion a year, and someone at CDC took that \$50 billion and came up with a cost of \$2.06 per pack of cigarettes. Then people asked, "Why do they say \$2.06 and you say 33 cents?" I can use that to explain how important it is to think about this cost in the right conceptual terms. Fifty billion dollars a year is not the increase in medical costs due to smoking. That's true only if the alternative to dying from a smoking-related disease is perfect health and eternal life. The \$50 billion should have netted out of it, if you're actually asking how much smoking adds to medical bills, the costs that we aren't paying for people who die before they get other diseases. That sounds very crass and cold-hearted, but if you're looking at costs, that's the way you have to do it.

On the question of policy responses, we can talk about either taxes or regulation. As is the case for taxes, the case for regulation is dubious because—while you do need some sort of regulatory decision about exposure when you've got a monopoly provision of goods and services—if you have a large economy with many options for jobs and restaurants and bars, you can make a case that private businesses and individuals can make their own decisions.

There is another issue that we discussed in the paper that would be a justification for an additional cigarette tax, and that is—depending on the term you prefer—helping individuals help themselves, government paternalism, or intervening to prevent problems of asymmetric information. You might argue that we need a tax if people really aren't seeing the health costs, but the evidence suggests that most individuals actually overestimate the risk of smok-

ing. They think that smoking is more likely to kill them than it really is. That is not surprising, because people have a tendency to exaggerate in their own minds highly publicized risks for which they have no referent. A case in point is the risk that passive smoking may cause lung cancer. You hear that passive smoking might increase your risk 20 percent, 50 percent, 70 percent, but what you don't know is that lung cancer among nonsmoking individuals is a very, very rare disease. So you can have a big percentage increase, and it's still a very small risk.

Jacob Sullum: A few years ago when I was working on a story about the anti-smoking movement for *Reason* magazine, I interviewed Scott Ballin, chairman of the Coalition on Smoking or Health. I raised the question of why people smoke. "There is no positive aspect to it," he assured me. "The product has no potential benefits." Not everyone concurs with that assessment; in a recent column in *Vanity Fair*, for example, Christopher Hitchens wrote that "cigarettes improve my short-term concentration, aid my digestion, make me a finer writer and a better dinner companion, and in several other ways prolong my life."

There seems to be substantial disagreement here, which illustrates two of the main problems with the cost/benefit analysis of smoking. How do we decide which costs and benefits to consider, and how do we measure them? Basic economics would tell us that smokers do, in fact, benefit from smoking. We know that, because they spend money to buy cigarettes and continue to smoke despite the health hazards involved. Of course, this conclusion assumes that smokers are both well informed and rational. Anti-smoking activists don't think they are. The activists cannot fathom how a well-informed, rational individual could voluntarily choose to smoke. Surely smokers don't realize how dangerous their behavior is. And if they do, surely they are pharmacologically compelled to smoke. But it does not appear that smokers are the nicotine slaves that the anti-smoking activists make them out to be.

In his book *Smoking: Making the Risky*

Decision, economist W. Kip Viscusi reports that smokers are well aware of the risks associated with smoking; in fact, they tend to overestimate them. Furthermore, smokers are more apt to take risks in other areas of life than are nonsmokers. That indicates that the decision to smoke is just one aspect of a general attitude toward risk, not an aberration caused by the addictive properties of nicotine.

I think the issue of addiction in general has been overblown, and not just with respect to cigarettes. To say that someone is addicted to cigarettes simply means that there are significant costs



Jacob Sullum: "The forgone pleasure of smokers does not count in the EPA's cost/benefit analysis used to justify increased cigarette taxes."

involved in quitting. But as Viscusi notes, people make many decisions in life, including decisions about education, employment, marriage, and children, that are hard to reverse. That does not mean that those decisions are irrational. And to say that change is difficult is not to say that it's impossible. About as many Americans have quit smoking as continue to smoke. About 95 percent of them quit without formal treatment. Furthermore, about a quarter of the adult population continues to smoke despite the availability of nicotine gum and patches. That fact alone suggests that there's something more to smoking than chemical dependence.

At the risk of seeming naive, let me suggest that the something else is simply this: smokers like to smoke. Whether they like it for the reasons Christopher Hitchens cites or for entirely

different reasons, they get something out of smoking aside from an increased risk of lung cancer, heart disease, and emphysema. The Environmental Protection Agency's recent analysis of the costs and benefits of the Smoke-Free Environment Act, which would ban smoking in almost all nonresidential buildings, concedes that point. "Since people smoke despite the risks and costs," the report says, "one would presume that—provided those people are rational, fully knowledgeable, and able to accurately assess the consequences of smoking, including potential addiction—the benefits of smoking to them outweigh the risks and costs." Yet those benefits do not show up on the EPA's ledger. When they're doing their cost/benefit analysis of the nationwide smoking ban, they explicitly do not consider the forgone pleasure of smokers.

Admittedly, the benefits would be hard to measure; but without taking into account the reasons for which people smoke to begin with, how can you possibly pretend to analyze the net effect of smoking restrictions? The EPA also excludes from its analysis the inconvenience imposed on smokers who would have to go outside for a cigarette, the forgone pleasure of smokers who would eat out less often if smoking in restaurants were banned, and the loss to businesses whose employees would periodically leave the workplace for cigarette breaks. In fact, as far as the EPA is concerned, the cost of the nationwide smoking ban would be limited to enforcement and the construction of a few smoking lounges. In that cost/benefit analysis, smokers do not count.

Smokers also do not count in some of the cost/benefit analyses that are used to justify increased cigarette taxes. One of the obvious effects of cigarette taxes is to increase the price of cigarettes. When the price of cigarettes goes up, a certain number of smokers will cut back and a certain number will quit. Is that good or bad? The answer depends on how you look at it. If you focus on the health care costs associated with smoking, you will conclude that a reduction in smoking saves money. But if you focus on smokers' desires, you will recognize that an increase in the cigarette tax means that some people will forgo

*The views presented here do not necessarily reflect those of the Congressional Research Service.

Tobacco (Cont. from p. 7)

pleasure that they would otherwise have enjoyed. That is a simplified model; we're looking at only two factors—forgone pleasure and health care savings. But one of the important things to consider in weighing those two factors is, who is paying health care costs to begin with? If you had a situation in which smokers were paying the total bill for their health care out of pocket, then presumably smokers would be taking into account those costs when they chose to smoke and there really would be no issue of spillover cost.

More common is the situation in which smokers are insured by private carriers. Some insurers may charge smokers a higher premium; some may not, especially if it's group insurance provided by an employer. If smokers have to pay a higher premium, then I would argue, again, that the odds of incurring higher medical costs have already been taken into account and there really is no spillover effect. Furthermore, even if smokers are not charged more, I don't think there is any argument for government intervention, because the parties to the transaction—the insurers, the employers, the smokers—have all voluntarily agreed on the way they're going to handle medical costs. An insurer can choose to charge smokers more. (There has been some movement to prevent insurers from discriminating on that basis. I think that's a big mistake.)

A major problem is that the government pays some people's medical bills, so the costs of medical care do not figure into a person's decision to smoke. Anti-smoking activists argue that because it provides public health insurance, the government is justified in taxing cigarettes or using other measures to discourage smoking. Since the government picks up the tab, it should be able to regulate behavior that generates the expense. If you follow the debates over motorcycle helmet laws or seat-belt laws or drug prohibition, you know that that sort of rationale is used for all kinds of things. It doesn't take more than a moment's reflection to see the totalitarian implications of that argu-

ment. If the government may regulate risky behavior to avoid future outlays under public health insurance, there is no end to the controls it may impose. I'm sure each and every one of you engages in behavior that could be thought to raise your risk of getting various kinds of diseases or injuries. And I'm sure that you wouldn't want to see your behavior either banned or taxed prohibitively.

The real problem here is not risky behavior per se but the decision to subsidize it with taxpayers' money. That's what people really should be resisting. Here is a drug addict, a smoker, a sky diver, a bungee jumper who has been injured or developed a disease because of behavior that she voluntarily engaged in. Why should we have to pick up the tab? If people are genuinely upset about that, they should campaign to get rid of the public health insurance programs that subsidize risky behavior.

Consider another example: anti-smoking activists cite studies that find that smokers miss more days at work than nonsmokers and that smokers increase maintenance costs by dropping ashes and leaving smoke everywhere. The crucial point is that employers are free to take both factors into account when they make personnel decisions. If the costs are high enough, some employers may refuse to hire smokers, or they may pay them less or give them lower benefits. There is no reason to believe that the government is in a better position to assess those costs than are individual employers. The same point, by the way, applies to employer-provided health insurance. If employers believe that smokers will draw more on that benefit, they may rationally choose not to hire smokers or to make them pay more of their premiums.

Many people would argue that secondhand smoke is different because others are forced to breathe it. Just as the government regulates the pollution that comes out of a factory's smokestack or a car's tailpipe, it should regulate the pollution that comes from the end of a cigarette. That analogy is fundamentally flawed. Unlike air pollution, secondhand smoke on private property is not imposed on people against their will. If you choose to eat

in a restaurant, fly on an airplane, or work in an office where smoking is permitted, you thereby consent to exposure to secondhand smoke. You may not like it—you may even worry that it will increase your risk of getting lung cancer—but you have implicitly decided that the annoyance and the possible risks are outweighed by the benefits of eating in a particular restaurant, flying in a particular airplane, or working in a particular office.

If, on the other hand, you refuse to enter any enclosed space in which smoking is allowed, you send a signal to airlines, restaurateurs, and employers. If there are enough people like you, some businesses will ban smoking, and other businesses will segregate smokers from nonsmokers or work out some kind of better ventilation system. Decisions about smoking rules should be left to the millions of private property owners. Do we really want the government to dictate the conditions of employment and of other contracts, or should those arrangements be left to individuals?

We all lose something if we allow the government to penalize people for unfashionable habits. Personally, I don't perceive enough of a benefit from smoking to make it worth the risk. But I'm sure a lot of people, including many smokers, would have difficulty understanding why I enjoy bungee jumping. I'm not asking that other people share my tastes; I'm only asking that they tolerate them. And toleration is another casualty of the crusade against smoking.

Sheldon Richman: I am offended by people in government who think that it's their job to use television and the print media to tell me not to smoke. I have read the Constitution, and I cannot find authorization for government to hector us and pester us on issues of private conduct.

It's not as if people don't know that smoking entails some health risks. The term "coffin nail" was coined in the 19th century. People know that smoking carries risks. Those risks are not news to anyone, so I really can't see a case for government's hectoring us about it. I'm especially offended that

kids are hounded in school from a very young age to take pledges that they won't smoke, to go home and bug their parents about smoking, and to report their parents' smoking and drinking habits to the social welfare agents who go to schools to talk to the kids. Government paternalism permeates society more than nicotine does, and it's much more toxic, much more pernicious.

When we talk about regulating smoking, or most other behavior, we are talking about rights and liberty and people's ability to conduct their lives the way they wish. In my view, civil liberties are always resolvable into property rights. All violations of civil liberties violate someone's right to use and dispose of his property. I'm starting with the most basic property—yourself, your person, your body, and your personal resources—and then going on to the external things that you justly acquire. Free speech violations, for example, interfere with the right to use one's communications resources, starting with the mind and the larynx. Bona fide violations of privacy interfere with the use of one's home, or papers, or place of business. Thus, civil liberties are property rights. Government smoking regulations, by their very nature, therefore, violate civil liberties and property rights. All such regulations dictate what people may do with their property.

Now I want to say something about the word "public." The equivocation over the word is inexcusable and, I think, intentional in many cases. The Capitol is a public building, but the Cato Institute building is also a public building, in a sense, and a restaurant is a public building, in the sense that the public is able to come into it. A private home, however, is not "open to the public." But, obviously, the Capitol and a restaurant are not public in the same way. So I suggest that we use three terms for the three kinds of property we're going to be discussing: "government property," for property that's ultimately funded and maintained by the taxpayers; "commercial property," for property that's open to the public; and "private property," for homes. My remarks are going to be about commercial and private property.

Let's look at some violations of freedom of speech or the First Amendment in the name of making America smoke free. We've had since about 1970 or 1971 a ban on television and radio advertising, a clear violation of freedom of speech. In Baltimore, there's a proposal to restrict youth-oriented, whatever that is, billboard advertising of cigarettes. A clear violation of freedom of speech. Why is that not being immediately laughed out of court? It's compulsion.

In California and Massachusetts there are laws that require that cigarette taxes be used to fund anti-tobacco mes-



Sheldon Richman: "All violations of civil liberties violate someone's right to use and dispose of his property."

sages. The taxes sometimes go to non-profit organizations that lobby for more restrictions. That is not so much a violation of free speech as it is an example of forced speech. People are being forced to finance speech with which they don't agree and that they may not wish to hear broadcast.

We are faced with an ever-growing list of infringements of our rights. The Occupational Safety and Health Administration is proposing a rule to ban smoking in all workplaces. Washington has become the first state to ban smoking in commercial and state buildings. In Maryland the regulator of occupational safety and licensing has imposed a workplace smoking ban that is currently being held up in the courts. Los Angeles has banned smoking in outdoor cafes which, it seems to me, is overkill. And Rep. Henry Waxman (D-

Calif.) has introduced the Smoke-Free Environment Act in Congress to compel owners of nonresidential buildings that are open to the public and regularly frequented by more than 10 people to ban smoking or restrict it to a separately ventilated room.

I would like to look ahead slightly. It seems to me that the nonresidential criterion is surely only a temporary distinction and that if we get a ban on smoking in workplaces, it won't be long before we begin to see regulation, perhaps creeping, of the home. Why not? Repairmen come into people's homes. Don't those workers have a right to be in a smoke-free environment? And what about children? They are more vulnerable than adults. The issue has already come up in custody cases, and John Banzhaf, head of Action on Smoking and Health, has said, "The same protection as in custody battles will eventually be extended to children in ongoing marriages through child neglect proceedings."

Our rights of association and contract are being violated as well. All-smoking flights are banned; in other words, the government won't even allow airlines to have designated flights for smokers, or set up an all-smoking airline. Now, let me point out a violation of freedom of contract on the other side. We're seeing actions against employers who want to discriminate against smokers, either refusing to hire smokers or requiring, as a condition of employment, that employees not smoke, even in their own homes. Smokers and the tobacco companies don't like that, but it is perfectly within the rights of an employer to specify terms of employment. I don't think I'd like to work under those conditions—but the employer has the right to lay down that condition. Such bans have been passed, I think, in 28 states and the District of Columbia. Smokers have even gotten some protection from the Americans with Disabilities Act, because nicotine is being claimed to be addictive, and, therefore, smoking is a disability.

The Food and Drug Administration is considering regulating nicotine as a drug, which presumably will mean limits on nicotine content. That is a violation of freedom of contract between

Tobacco (Cont. from p. 9)

tobacco companies and customers. It's also an extension of the drug war and will have the predictable results. When we argue against drug prohibition, we like to say that people don't shoot each other over cigarettes; that happens only in the black market. Well, if the FDA gets its way, people will be shooting each other over cigarettes, the illegal high-nicotine cigarettes that you will have to buy on the street.

The bottom line in all these cases is that the government presumes to dictate the terms of association between adults. I'd like to point out that the validity of the alleged hazard of secondhand smoke is irrelevant to what I've been saying; even if secondhand smoke does present a health risk, that does not justify the regulations. The official in Maryland who presumed to ban smoking said that if nerve gas were wafting through a restaurant, it would certainly be appropriate for the government to protect people. Obviously, that's a very bad comparison. When you walk into a restaurant and take your first whiff of cigarette smoke, you are perfectly capable of leaving. Try that in a room full of nerve gas. Competition for customers and for employees may induce private no-smoking rules or less severe regulations, but that's a separate issue, having nothing to do with civil liberties except that it's within the rights of an employer to set such rules. The key point here is that there's no right to be on someone else's property on terms other than those set by the property owner. That's really the bottom line.

In his book *Cigarettes Are Sublime*, Richard Klein said that life means choosing your poisons. I think that was a fancy way of saying that life is risk, that risk is inherent in life. It follows from that maxim that the rules we've been discussing interfere with a fundamental right and civil liberty, namely, the right to choose your own poison. In 1990 the Tobacco Free America Coalition, consisting of the American Cancer Society, the American Heart Association, and the American Lung Association, published its "Blueprint for Success: Countdown 2000, 10 Years to a

Tobacco-Free America." It was not a blueprint for a campaign of persuasion; no, it called for enactment of legislation to make America smoke free by the year 2000. All of that stands on the flimsy foundation of what the EPA itself calls "the a priori hypothesis that a positive association exists between exposure to environmental tobacco smoke and lung cancer."

Liberty is under assault. I am not a cigarette smoker, most people are not smokers, but it is perilous for us to ignore this assault merely because it is aimed at someone else. Let's not have to say years from now, "When they



William Niskanen: "Courtesy, contract, consent, accommodation, and tolerance are the best guides to the rules for interaction between smokers and nonsmokers."

came for the smokers, I didn't speak out because I wasn't a smoker." How long before something you do is singled out by the health fascists? The cigarette may be an unfortunate symbol of today's struggle for freedom in the United States of America, but those of us who value liberty over security, and even over health, must now rally round it.

William Niskanen: The interaction of smokers and nonsmokers creates a real social problem. Some members of each group are offended by the behavior of some members of the other group. Many smokers are offended by the attempts of others to control their behavior. Many nonsmokers are offended by secondhand tobacco smoke.

The basis for what is now traditional tobacco policy may be described as secu-

lar puritanism. Tobacco is not a new target of puritanism. At various times over the past several centuries, smokers have been subject to much more severe sanctions. What is new is that the present puritanism is supported by the secular left rather than the religious right. Contemporary secular puritans use a different public rationale and a different political coalition to promote favored policies.

The important question is whether this problem should be sorted out by social rules or by law. And I think that the real issue is not whether exposure to secondhand tobacco smoke somehow increases the probability of health problems for nonsmokers.

There would be a better case for regulation if a brief, casual exposure to secondhand smoke created severe health problems. But no one has made that claim. All of the studies that have been done are based on sustained exposure over long periods of time, within the home or within the workplace, or somewhere else.

When the per incident health risks are small, health does not trump all other dimensions of a sustained relationship. People make their choices about sustained relationships—within a workplace, within a family, within a commercial context—on the basis of a variety of considerations of which health is but one. And when the per incident health risks are small, the case for regulation disappears. If a brief, casual exposure to nerve gas can kill you, there's reason and presumption in favor of regulation. But that is not the case with tobacco smoke; nor is it the case for much of the behavior that we try to regulate.

May I conclude that courtesy, contract, consent, accommodation, and tolerance are the best guides to the rules for interaction between smokers and nonsmokers. No one has a universal right to smoke anywhere. Similarly, I contend, no one has a universal right to deny other people the opportunity to smoke. The best rule, I suggest, is that the owners of each physical space are the only people who have the right to set the smoking rules in that space.

Owners have the best incentives to set workable rules—interactions with employees, with consumers, with mar-

(Cont. on p. 14)

Regulation Looks at Workers Comp, Cal-EPA, Litigation

An Autopsy of California's Regulatory Suicide

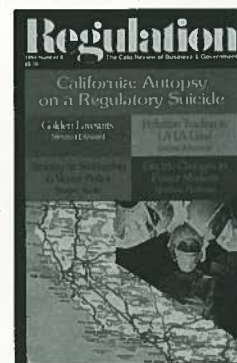
From 1989 to 1992 a third of the nation's job losses occurred in California. The severity of California's recession has been blamed on the North American Free Trade Agreement, illegal immigrants, and violent criminals. But the contributors to the latest issue of *Regulation* (1994, no. 3) say that the main problem with California's economy is burdensome regulations. Senior editor Edward L. Hudgins sums it up: "Just as New York has become a paradigm of what not to do with tax policy, California should be the model of which regulatory policies to avoid."

Rep. Edward Royce (R-Calif.) assails the state's regulations that allow workers to be compensated for on-the-job stress and have caused claims to skyrocket. Royce draws attention to a joint report prepared by Californians for Compensation Reform, the California Chamber of Commerce, and the California Manufacturers' Association that finds that "workers' compensation benefits . . . are routinely paid to workers facing the stress of disciplinary investigations into their misconduct; to workers with marital problems aggravated by job stresses . . . to workers distressed by boring and repetitive work." Royce cites the case of Ocean Specialty Manufacturing of Chatsworth, which was forced to pay \$17,000 to minimum-wage workers for stress-related trauma they supposedly incurred while packing boxes. Although some reforms have been made, Royce writes that much more needs to be done.

In "Strangled in the Crib," journalists Joseph Farah and Michael Antonucci take an "entrepreneur's eye view" of California's regulatory debacle. They find that state regulatory bodies such as Cal-EPA, Cal-OSHA, and the South Coast Air Quality Management District have stifled job creation in the Golden State. Exhausted by trying to hack their way through the state's regulatory thicket, many entrepreneurs take their capital, jobs, and creative ideas elsewhere. Farah and Antonucci cite the

case of Rohr Industries, which found the approval process for opening a new plant so trying that it gave up and moved to Arkansas. The permit, which would have cost \$750,000 in California, cost only \$750 in Arkansas.

Stephen Hayward, editorial director of San Francisco's Pacific Research Institute, identifies predatory litigation as a major source of California's economic afflictions. In "Golden Lawsuits in the Golden State," Hayward charges that permissive liability rules have led to an explosion of frivolous lawsuits. According to Hay-



ward, California has become "the land of socialized fault," where a criminal who falls through a skylight while burglarizing a building can collect \$250,000 from the building's owner. Writes Hayward, "The [California legal] system itself arms those who would prey on businesses as surely as would the criminal justice system if it handed out guns and burglary tools rather than prison sentences."

Rodney Smith, a professor of economics at Claremont McKenna College, thinks there are dry times ahead for Californians. In his article "Sinking or Swimming in Water Policy?" he makes a powerful case that the California Department of Water Resources has significantly overestimated future water yields. Smith advocates junking the archaic system governing water allocation and replacing it with a free market.

James L. Johnston argues that tradable emissions permits, long hailed as a market-based solution to environmental problems, may be nothing more than a "myopic example of Gorbachevian market planning." In his article, "Pollution Trading in La La Land," Johnston analyzes Southern California's Regional Clean Air Incentives Market (RECLAIM) program and finds it deeply flawed. He points out that RECLAIM pollution credits are explicitly denied property-rights status and are subject at any time to arbitrary negation by the regulatory authorities. For that reason, trading of RECLAIM credits has been light. RECLAIM in its current incarnation is

no solution, insists Johnston; it is instead "a poorly designed system that gives market trading a bad name."

On a more positive note, Competitive Enterprise Institute policy analyst Matthew C. Hoffman praises California for its enlightened approach to electricity regulation in "The Future of Electricity Provision." Last April the California Public Utilities Commission began laying the groundwork for competitive provision of electricity. Hoffman predicts lower prices and heightened efficiency as a result of that policy. ■

Policy Analysis Studies

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- 217. **Federal Ecosystem Management: A "Train Wreck" in the Making** by Allen K. Fitzsimmons (October 26, 1994)
- 216. **Kids, Guns, and the Commerce Clause: Is the Court Ready for Constitutional Government?** by Glenn Harlan Reynolds (October 10, 1994)
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Property Rights (Cont. from p. 1)

"It's about the worst thing you can do to a people—to force them to move—next to killing them."

That may seem overly dramatic to us. While we well-off Americans and Canadians can imagine the anger and the sorrow of having our homes expropriated and our communities destroyed, few of us would take it to the point of suicide. But for many of the people in the Third World, expropriation and destruction of their bioregion is a matter of life and death. Their land is their means of subsistence. Taking their land from them is the equivalent of taking from us not only our land and our homes but also our bank accounts, our investments, our education, our professions, and our social security systems.

Little wonder that, for millions of Third World people, secure access to their bioregions takes on such dramatic proportions. The Narmada conflict stems from a long-standing view of the Indian government—and of most governments—that it has the right to trade off the environmental interests and security of some citizens for the supposed benefit of others.

But the Narmada conflict also stems from the World Bank's disrespect for the property rights of Third World citizens, a disrespect deeply embedded in the bank's policy guidelines, its economic analyses, and its mindset about development. As David Hopper, a former senior vice-president in charge of policy, planning and research at the World Bank, once explained, "You can't have development without somebody getting hurt for the benefits that are going to accrue." Underlying that attitude, which pervades the World Bank, is a belief that development creates winners and losers. The role of government—and the bank—is to decide who will win and who will lose, to strike a balance.

The World Bank Dams China

To give you an idea of just how many losers the World Bank is prepared to create in pursuit of purported benefits, consider the Three Gorges dam on the Yangtze River in China.

Back in 1986 the Canadian International

Development Agency financed a \$14-million feasibility study for the Three Gorges dam, and the World Bank supervised the study to ensure its soundness. The Canadian engineers who carried it out recommended that the dam be built at a height that would displace three-quarters of a million people—more than the entire population of Washington, D.C. The benefits of doing so outweighed the costs, they claimed.

When we at Probe International heard of the engineers' conclusion, we were stunned. So we thought we had better have a look at the calculations. We applied through the Canadian Access to Information Act for a copy of the Three Gorges Feasibility Study, and eventually we got it, despite the engineers' efforts to keep it secret. I might say here that the Canadian government hoped that the Three Gorges Feasibility Study would

"For many of the people in the Third World, expropriation and destruction of their bioregion is a matter of life and death."

lead to "hundreds of millions of dollars' worth of business for Canada." As for the engineering firms—which included SNC-Lavalin, Acres, Hydro-Quebec International, and British Columbia Hydro International—well, it was pretty obvious that they expected lucrative contracts if the dam were built.

Once we had the feasibility study, we contacted nine colleagues from around the world—an engineer, an economist, a chemical limnologist, and other experts—and we asked them to go through the feasibility study carefully and write a critique of it. Their findings were published in the book *Damming the Three Gorges: What Dam-Builders Don't Want You to Know*. What they found was

shocking.

The feasibility study was inconsistent, systematically biased, inaccurate, and incomplete. For example, the project would make economic sense only if 500,000 people were left in the active flood storage area around the perimeter of the reservoir, where they, of course, would be flooded. As for the submerged spillway bays—27 in all and each one with the average flow of the Missouri River—the engineers were confident they could design, construct, and operate them, even though their size would be "well beyond proven world experience." When it came to predicting the dam's flood benefits—its main purpose—the engineers had to guess because the data were not available for a proper hydrodynamic analysis.

The expected costs and benefits of that development scheme, as it turns out, were based on unsubstantiated engineering and compromised economics, not on the values that the winners and losers would arrive at under a regime in which the property rights of the victims were upheld. By declaring open season on the property of individuals and communities in the name of ill-defined and unprovable development benefits, governments and governmental institutions—such as the Chinese government, the World Bank, and CIDA—severed the development process from the values of the citizenry that would otherwise shape it.

On April 3, 1992, China's National People's Congress approved the Three Gorges dam, so high that it will now displace 1.3 million people. According to a leaked Chinese government security document, the resettlement operation, which has already forcibly moved 100,000 people, is "spawning outrage among resettlers." The authors (public security cadres) recommend that that opposition be dealt with by a "swifter and heavier punishment policy."

Property Rights Empower People

Ah, some readers may be thinking, if only India and China had environmental assessment procedures to allow the affected public to participate in crucial decisions, everything would be fine. I'm afraid not. Here's why.

Environmental assessment procedures tend to entrench the rights of the

wrong people—governments, regulators, international institutions, and environmental assessment boards—to make decisions to destroy other people's environments. As long as final decisions are made by proponents or third parties, not by the individuals and communities who will pay the environmental price, the decisionmaking system is corruptible by the political interests of decisionmakers. Local interests and those of future generations are almost certain to be sacrificed to "national interests" or to some abstract and specious "greater interest." A decisionmaking system is inherently illegitimate and failure prone when the rights of victims are subordinated to the rights of proponents.

We have discovered by participating in environmental assessment hearings that it is relatively painless for proponents of destructive endeavors—often government bodies—to go through an environmental review and then to proceed with the project much as they had originally intended, because at the end of the day, the decision is theirs. Environmental assessments thus become a cruel charade at the expense of the victims who are forced to plead but are not allowed to decide.

As long as rights are not properly identified, enshrined in law, and enforced, the balancing act between winners and losers will be prone to serious miscalculations. If losers in the development process are inevitable, as the World Bank seems to believe, then the winners never have to compensate the losers. Indeed, there is no limit to the number of losers that an unaccountable decisionmaking system can create, as the Three Gorges dam illustrates so tragically.

The best insurance against careless decisionmaking is to empower those who have to live with the environmental consequences of a decision, who have the most information about how their environment works and the most incentive to protect it for future generations. It means putting legal bite behind the universal NIMBY—or Not in My Back Yard—instinct.

That means a radical decentralization of decisionmaking. Decisions will often be based on ecosystems, or property as Third World activists call it—on land,

air, water, and forest systems.

"Progress" vs. Tradition in Thailand

In much of the Third World decentralized decisionmaking does not have to be invented; it already exists. Take Thailand, for example. Before the World Bank and other international institutions came bringing "development," the millions of villagers who lived along northern Thailand's swiftly flowing rivers understood that they depended upon one another. Each community needed its river to irrigate its crops, water its animals, and provide for its members' personal needs. To ensure that everyone got clean water,

"The Narmada conflict stems from the World Bank's disrespect for the property rights of Third World citizens."

communities negotiated rules governing who received how much water and when, and they implemented those rules through adjustable weirs made of bamboo and teak poles. By adding or removing poles, by raising or lowering the weirs' height, by scouring the river and irrigation beds, they rationed water to all users with uncanny precision.

Land-use practices along the river were everybody's business because they affected rates of erosion, and thus contamination of the river and irrigation systems. Upland forests, vital to bringing the rains each season and controlling runoff, could not be cut without permission. Upkeep of the 1,000-year-old *muang faai* water management system, as it is still called, was proportional to landholding. Taxes to maintain the system were paid in the form of labor.

The principle that everyone receive enough water to survive—an ancient version of the modern-day "social safety net"—was paramount. In dry years those with the most distant plots would receive

water first; rice, a subsistence crop, had precedence over cash crops.

Out of that shared sense of dependence came a political structure that provided what would be called "due process" by modern legal theory: elected irrigation committees, guided by a duty to preserve the river for existing and future generations, had formal responsibility for monitoring water distribution and administering weir and channel maintenance. Theft of water and unauthorized cutting of forests were punishable by fines that, because they had a social stigma attached to them, were never treated as a mere cost of doing business.

Muang faai—which survives in much of Thailand—amounts to a system of property rights in which rights and responsibilities have been finely tuned over the centuries to maintain equity, protect the environment, and promote prosperity. Though hardly idyllic, frequently conflict-ridden, and constantly adapting through trial and error and discussion, the system was accountable and worked well to protect those who lived along the river, and the river itself.

Then came progress. Thai government officials, armed with foreign money, concrete, and plans for a Green Revolution, started arriving in the 1950s to replace the old-fashioned bamboo weirs with concrete barrages. Those who depended upon the river could no longer regulate it along its path. A giant dam and reservoir upstream, under the control of the Royal Irrigation Department in Bangkok, would control the flow.

As the riverine communities of Thailand lost control over their environment, their economy began to fail. Traditional crops, found in ecological niches along the river valley and dependent upon timely irrigation, could no longer be grown by the riverine farmers. Even the new varieties of seed were risky. Unknown and unknowable government authorities could simply not be trusted to provide water at the right time.

Nor could they be trusted to manage the rest of the bioregion accountably. Remote government officials began dispensing contracts to dam rivers and log watersheds. The once law-abiding riverine communities, witnessing the government's arbitrary licensing of logging,

Property Rights (Cont. from p. 13)

soon took to logging the forests themselves. As the complex, locally regulated property-rights regime disintegrated, so too did the economy and the environment: with deforestation, silt clogged the rivers and irrigation canals, reducing them to sludge in the dry season and causing them to flood in the rainy seasons. With water so uncertain, many farmers simply gave up growing crops.

What had once been a river ecology, use of which was regulated for common purposes, became a lawless commons to exploit—in the name of progress.

Property Rights in the First World

Canada is not that much different from Thailand. My colleagues in Probe have often argued to Canada's logging industry, mining industry, nuclear industry, and oil and the gas industry that better property rights would protect the citizens' land, air, water, and forests. How do those industries, which have come to expect to exercise the power to expropriate and pollute with impunity, react? Like Chicken Little.

"Grandmothers would hold us hostage before letting us drill on their land," said the oil industry.

"We'll never get anything done," said the gas industry. "When we want to lay a pipeline through native lands we have to operate on their schedule, and they have their own concept of time."

"People have too many property rights as it is," mining executives have been known to moan. "People complain about everything. They complain about noise and about debris from our blasting operations landing on their property."

Chicken Little said the sky would fall. Those executives say we will all have to go back to the cave.

What utter nonsense! If the rights of the losers and the responsibilities of the winners are enforced, I have confidence that the ingenuity of engineers and the drive of entrepreneurs will serve to meet the needs and desires of society's members without doing so at the expense of each other and each other's environment.

Whether you are a farmer from India or Elmira, from a river community in northern Thailand or northern Ontario, a resident of Toronto or Shanghai, or a member of the Cree or Pehuenche First Nation, you want to decide what risks to take with your environment. You want your land rights recognized; you want your right to a clean, safe, and sustainable environment recognized; and you want the necessary legal and political tools to

defend those rights.

Fairly and finely tuned property-rights regimes should incorporate environmental costs, and the values that individuals and communities place on their environment, into economic transactions by giving potential victims the legal power to make environmental destroyers pay or go away. Ultimately, a good property-rights regime would decentralize power so decisions would reflect the prudence and knowledge of individuals and communities, and the complexity of the bioregions we are all trying to save. ■

Tobacco (Cont. from p. 10)

riage partners, and with children or whomever. There is also no reason why the rules should be the same in all spaces. This approach necessarily involves some bargaining within the family, within the firm, within clubs, within the groups of shops in the same mall. But decentralization of the choice of smoking rules will lead to a much higher level of total consent than any government regulation that presumably reflects the preferences of the majority of the larger body of people.

The most important role for government in this approach is one that it has not performed well, and that is to provide succinct, unbiased information to guide decentralized choices among alternative rules. Let's try to sort out the rules for smoking in this way before some different majority tries to use the government to control more important matters such as chocolate, french fries, skiing, and sex. ■

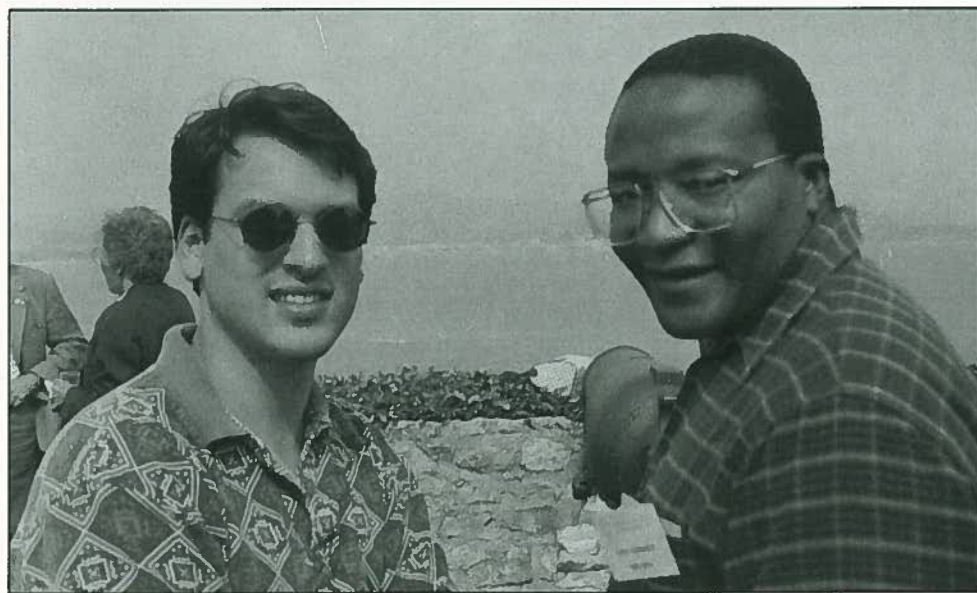
Defending Civil Society

Ed Crane's much-talked-about speech to the Chautauqua Institution, now available on audiotape.

"The bottom line of political philosophy and therefore of politics itself is, Who is going to make decisions about your life, you or somebody else? In a civil society you make the choices about your life. In a political society someone else makes the choices."

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Ian Vásquez, director of Cato's Project on Global Economic Liberty, talks with Siphon Mahamba, a businessman affiliated with the Free Market Foundation of Johannesburg, at the 1994 General Meeting of the Mont Pèlerin Society in France.

Supreme Court Finally Considers Key Issue**Are There Any Constitutional Limits on Federal Powers?****Cato Studies**

A case to come before the U.S. Supreme Court in November gives the nine justices the first opportunity in many decades to rule on fundamental questions about the power of Congress to legislate, according to Glenn Harlan Reynolds, an associate professor at the University of Tennessee College of Law. In "Kids, Guns, and the Commerce Clause: Is the Court Ready for Constitutional Government?" (Policy Analysis no. 216), Reynolds shows that *United States v. Lopez* raises the fundamental issue of whether the U.S. Constitution limits the power of the federal government. In *Lopez* the Fifth Circuit Court of Appeals struck down the 1990 Gun-Free School Zones Act, finding it beyond the power of Congress to enact. Such a finding is all but unheard of in the post-New Deal era. The act prohibited the possession of a gun within a specified distance of a school. At bottom, writes Reynolds, *Lopez* is not about gun control, or even about federal-state relations, but about whether the Court is ready to hold Congress to its constitutional limits.

Reynolds argues that, as written and originally understood, the Constitution limits the federal government primarily by enumerating its powers, which the Tenth Amendment confirms by declaring that those powers not delegated to the federal government are reserved to the states or to the people. For a century and a half, the Supreme Court enforced those restraints. But with the New Deal and Franklin Roosevelt's threat to pack the Court with six additional justices, Reynolds explains, the Court retreated from its traditional role, enabling Congress to indulge an ever-expanding array of powers. Today, under the Court's boundless reading of the Commerce Clause, which gives Congress power to regulate commerce among the states, the doctrine of enumerated powers is all but dead, Reynolds writes. Yet that doctrine was meant by the Framers to be the centerpiece of the Constitution, the principal restraint on federal power.

Reynolds says that the Court should strike down the act, for if the enumerated powers doctrine is in fact dead, other constitutional protections are in jeopardy as well.

World Bank Faces S&L-Style Crisis

As the World Bank celebrates its 50th anniversary this year, its irresponsible lending practices are exposing Western taxpayers to a possible bailout comparable to that of the U.S. savings-and-loan industry. According to Patricia Adams's study, "The World Bank's Finances: An International S&L Crisis" (Policy Analysis no. 215), taxpayers in the industrialized countries are on the hook for \$100 billion. U.S. citizens would be liable for nearly \$30 billion.

The World Bank and Western governments have used various techniques to create the appearance of a fiscally sound institution, writes Adams, executive director of Probe International, a Canadian environmental group. During the debt crisis of the 1980s, for example, borrowing countries paid their old debts through more borrowing from the World Bank. That practice of "round-tripping" money helped bail out many private-sector creditors but worsened the bank's financial position. Loans from rich countries' bilateral aid agencies and from the International Development Association (the World Bank's concessionary loan window) also have helped to keep the World Bank afloat. Even though the bank is now receiving more than it lends, Adams writes, its meager loan-loss provisions and confidential notes suggest that there is ample reason for concern.

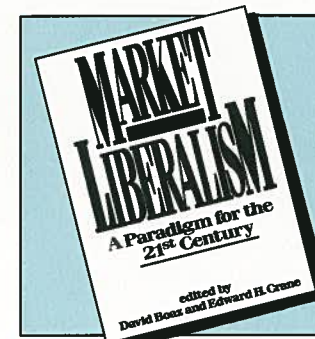
Adams argues that reform will not solve the institution's problems. It

must be shut down, she says. There are at least five ways to do that: dissolution according to the bank's articles of agreement, privatization, selling its assets, swapping bank debts for equity, and unilateral withdrawal by individual countries. Closing the World Bank now would be less damaging than waiting for its collapse, Adams concludes.

Capping State Spending in Missouri

In November 1980 Missouri voters approved the Hancock amendment, a constitutional amendment intended to prevent the Missouri state budget from growing faster than the budgets of Missouri families. Since then the effectiveness of that amendment has been eroded as legislators have discovered ways to evade its restrictions by exempting certain revenues from the cap. Those evasions have cost Missourians \$5 billion in higher taxes. This November's Hancock II amendment, which more precisely defines "total state revenue," would be more difficult for politicians to evade.

In "Missouri's Hancock II Amendment: The Case for Real Reform" (Cato Briefing Paper no. 20), Dean Stansel, a fiscal policy analyst at Cato, reveals the flaws in the arguments of opponents of Hancock II. Using simple arithmetic, Stansel shows that the opposition's scare tactics—claiming that Hancock II will require a \$1-billion tax refund and necessitate massive spending cuts and service disruptions—are inaccurate and misleading. Any reduction in spending that might be necessary to comply with Hancock II would be only about one-eighth the size of the opposition's alarmist predictions, Stansel says. ■

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When it absolutely, positively has to get there

Shoppers Express and the U.S. Postal Service last week announced a new program that would offer same-day delivery services . . . to shop-at-home customers who could place their orders by fax, telephone or personal computer. . . .

"The U.S. Postal Service will provide us with the quality and cost effectiveness unmatched elsewhere," said Elan J. Blutinger, president of Shoppers Express, in a statement.

The press packets ballyhooing the new program arrived on time, too—shipped via Federal Express.

—*Washington Post*, Aug. 1, 1994

Only the little people obey gun control laws

Sen. John D. Rockefeller IV, West Virginia Democrat, says he owns an AR-15 semiautomatic rifle and keeps it in his Washington home. . . .

The AR-15 is classified as a "machine gun" under D.C. law. In other words, it's illegal to possess such a powerful weapon in the nation's capital. . . .

Mr. Rockefeller was busy working on the crime bill yesterday and had no immediate comment.

—*Washington Times*, Aug. 26, 1994

A point-by-point rebuttal would waste everyone's time

Ruth Marcus is an able White House reporter, but her recent op-ed—"The White House Isn't Telling Us the Truth" [Aug. 21]—is unfair and off-base. While I do not

want to engage in a point-by-point response to her bill of particulars, I do want to take issue with her larger theme, that this White House has engaged in a pattern of deliberately deceiving the press. That just isn't so.

—Leon Panetta, letter to the *Washington Post*, Aug. 31, 1994

Wouldn't work in U.S., Bentsen says

The United States, worried about the pace of economic reform in Russia, urged Moscow on Tuesday to take bold action to fight inflation, cut its budget and stabilize the ruble.

—*International Herald Tribune*, Oct. 5, 1994

Laying it on the line

White Men Blamed For Pattern of Bias In U.S. Business

—headline in the *International Herald Tribune*, Sept. 28, 1994

Some suicides have more help than others, eh, Janet?

There have been several mass religious suicides in recent years, the most dramatic being the 1978 Jonestown massacre in Guyana, in which 913 men, women and children died, and the immolation of 86 Branch Davidians in Waco, Texas, last year.

—*International Herald Tribune*, Oct. 6, 1994

More compulsory volunteering

Former D.C. mayor Marion Barry . . . laid out a series of plans for a new Barry

term in office, including: . . .

Persuading nonprofit agencies in the city to hire more D.C. residents, spurred by the threat that they could lose tax exemptions if they do not voluntarily cooperate.

—*Washington Post*, July 1, 1994

First Microsoft, now the Anti-MTV Trust

The Justice Department's antitrust division—hip to the economics of music videos—has begun an inquiry into the plan of five powerful record companies to form a channel to compete with MTV. . . .

MTV has suggested to Justice that the combination of the record companies in Europe is a barrier to MTV doing business overseas, and that Justice should look into the new combination in the United States as well, sources said.

The investigation by Justice is likely to slow the record companies' plans to compete with MTV. "The last thing they need is a Justice Department hurdle," said one source familiar with the plan.

—*Washington Post*, July 22, 1994

I want it all—for free

Q. What should be the focus of health-care reform next year?

A. Karen Gillespie, Washington, Pa.: "It should cover preexisting conditions. I don't think that's a person's fault. They can't help it. I'd like to see some type of a plan where people who are low income have access, but pay for it. I don't want to see my taxes rise to pay for someone's health care.

—*USA Today*, Sept. 29, 1994

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