

The Constitutional Duties of Congress

by Edward H. Crane and David Boaz

The electoral controversy in Florida has brought into focus some fundamental issues facing our constitutional republic. Within two days after the election, Senator-elect Hillary Rodham Clinton and others had called for abolition of the Electoral College. A more partisan observer might snipe that those critics had not been very vocal a few days before the election, when it looked like George W. Bush might win the national popular vote but lose the electoral vote. But we take Senator Clinton and her allies at their word. They genuinely believe that the Electoral College is a relic of our federalist past not well suited for our modern national democracy.

We disagree.

The battle over the Electoral College encapsulates a fundamental issue that the nation must debate: Will we remain a federal constitutional republic with a government of limited powers or continue our drift toward a centralized, national plebiscitary democracy with an essentially unconstrained national government?

The Electoral College reflects several compromises made by the members of the Constitutional Convention in 1787. It is by no means a perfect electoral system, but it has several essential strengths. It reminds us that the United States is a federal republic, not merely a unitary nation-state. It encourages political parties and candidates to pay attention to all parts of the country, not just a few population centers. It reflects our intention to be a constitutional republic under representative government, not a direct democracy.

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Federal Reserve chairman Alan Greenspan told the Cato Institute's 18th Annual Monetary Conference that economists should remain humble when examining the effects of the new economy on monetary policy. Story, p. 3.

Those who want the national government to run everything from our health care system to our local schools are quite consistent in wanting to replace the Electoral College. A national government unlimited in size and scope, committed to feeling the pain of every voter and responding to every whim of every voting bloc, should quite reasonably be selected by a single national electorate in a single national plebiscite.

By the same token, the case for the Electoral College is a central part of the case for a constitutional republic. Those who appreciate that the Constitution establishes a government of delegated, enumerated, and thus limited powers; those who believe that most political decisions should be made in the states and communities; those who believe in liberty and federalism—what Thomas Jefferson called the “principles of ’76”—understand that the Electoral College is a key element of our federalist system.

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Paul Begala and the Boston Tea Party



In December I was asked to give a speech on the 227th anniversary of one of the most stirring events in American history, the Boston Tea Party. We all learned about it in grade school and high school, and it's a great story, with the patriots dressing up like Indians and dumping the tea in the harbor.

But do our children learn *why* the American patriots dumped the tea in the harbor? Were they just vandals?

A lot of people say that the Americans were paranoid—the Tea Act actually made tea cheaper, so what were they complaining about? A new book by a distinguished professor, which has gotten gushing reviews, says that “anti-government” paranoia is rampant among Americans. The book is *A Necessary Evil: A History of American Distrust of Government* by Garry Wills of Northwestern University (discussed in *Cato Policy Report*, July–August 2000). Wills just doesn't understand why Americans from Sam Adams to U.S. Term Limits fear the concentration of power. More power in government, after all, he thinks, could feed the hungry, clothe the naked, house the homeless, maybe even cause the lion to lie down with the lamb.

In fact, the American patriots were not paranoid. They had good reason to be skeptical about power and its abuse, based on first principles and history. Their principles told them that the British government had no *right* to tax the colonies, even at a lower rate. And their reading of history told them that power is always a threat to liberty and must always be watched closely. Watching the British government's actions, they became suspicious that they were seeing, as the Declaration of Independence put it three years later, “a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states.” They saw what was happening in the East Indies, with a government-sanctioned monopoly on trade, and they didn't want that in America.

They had read their John Locke, who told them to fear power because you just don't know what people—even good people—will do when they get it. That's not paranoia. And after the experience of the 20th century, it should be common sense. Thanks to the courage of the Sons of Liberty and other Americans, we live in a generally free, peaceful, and prosperous society, so most Americans are pretty complacent about government power. But just consider some of the recent ways our government has displayed the same tendencies that worried Thomas Jefferson and the Sons of Liberty:

- OSHA has claimed the power to regulate the workspaces in our homes.
- The FBI has set up a new system to wiretap all our e-mail. At

least they're honest enough to call it Carnivore.

- We arrest a million people a year in a futile attempt to “win the war on drugs.”
- Governments at all levels are trying to force our kids into failing public schools for more hours, more days, and more years.
- The Justice Department is trying to steal half the company Bill Gates built.
- The government is projecting a \$5 trillion surplus, and most of our elected officials don't think we should return any of it to the people who created the wealth and paid the taxes.
- And what the Clinton administration has done to the Constitution and the rule of law would fill a book, which the Cato Institute recently published (*The Rule of Law in the Wake of Clinton*, edited by Roger Pilon).

One of the things the Clinton administration perfected was the habit of ruling by decree—just the sort of thing that Locke warned about and the Sons of Liberty feared—only now we have gentler terms like “executive order.” Whenever the president can't persuade our elected representatives to give him the laws he wants, he acts like one of the kings of old and just issues an executive order. Interior Secretary Bruce Babbitt blithely told the Associated Press, “Here we are, having achieved 80 percent of what was sought in legislation, by administrative rule.” Here's how Clinton politico Paul Begala described President Clinton's use of executive orders:

“Stroke of the pen, law of the land. Kinda cool.”

That's why the patriots threw the tea in the harbor, so that Americans would never be subject to such arbitrary power.

We need Sons and Daughters of Liberty today in America. We need them in the schools, and in the media, and in every workplace. We need them on the Internet and sometimes on the picket lines. We need them to make sure officeholders never forget what it's like to live under the laws and pay the taxes, and we need them to run for office themselves. We even need a few of them in Washington, in the belly of the beast.

That's where the Cato Institute comes in. Our new *Cato Handbook for Congress* offers 64 chapters of advice to members of Congress. It will also serve as a citizens' handbook on important policy issues. The books, studies, and public appearances of our scholars reveal to all the failure of many federal programs and the alternatives that are consistent with our Constitution and common sense.

Throwing tea in the harbor got the attention of the English king and Parliament, but more important, it got the attention of other Americans. We see Cato's mission, to “increase the understanding of public policies based on the principles of limited government, free markets, individual liberty, and peace,” as the 21st-century equivalent.

“The Clinton administration perfected the habit of ruling by decree.”

—David Boaz

How should the new economy affect the Fed?

Greenspan Keynotes Monetary Conference

For the past two decades, central bankers have largely been successful at subduing the inflationary pressures that threatened to upend market-oriented economic systems a generation ago,” said Alan Greenspan, chairman of the Federal Reserve Board, in the keynote address to an overflow crowd at the Cato Institute’s 18th Annual Monetary Conference on October 19. Cosponsored by *The Economist*, the conference considered “Monetary Policy in the New Economy.”

Greenspan said that economists should remain humble when examining the effects of the new economy on monetary policy. “We are observing some remarkable structural advances in our economy. Central

bankers have learned much about their implications. But it will be essential for this learning process to continue if we are to recognize and respond effectively to the inevitable surprises placed in our path by a constantly evolving and highly dynamic economy.”

Robert D. McTeer advised the Fed to avoid worrying about whether the economy is growing too fast or the unemployment rate is too low. “Policy should be based on measured inflation and market-based indicators of inflation,” said McTeer, president and CEO of the Federal Reserve Bank of Dallas. Lawrence Kudlow echoed that point, saying that the Fed ought to focus on data from the forward-looking capital markets, not on backward-looking government data that are generated by outdated calculation methods. “For the Fed to achieve the long-run goal of price stability, it needs to use market price indicators, not economic statistics,” said Kudlow, chief U.S. economist for ING Barings. “The new economy makes the Fed’s job of running the economy easier, if only the Fed will let it.”

Several panelists discussed what the Fed should do next. James Gwartney, chief economist at the Joint Economic Committee, said that we need to focus on what the Fed cannot do—expand the economy—as well as what it can and should try to do—main-



Dallas Fed president Robert D. McTeer Jr. tells monetary conference attendees that the central bank should look at capital markets, not outdated data, in making decisions.

tain a stable price level and keep the inflation rate low and highly predictable. William A. Niskanen, chairman of the Cato Institute, advised the Fed to avoid trying to offset the high demand growth of the past two years. “Instead, the Federal Reserve should try to establish a new 5.5 percent demand growth path based on the current level of demand. This will require some monetary restraint or it may already be happening,” Niskanen said.

Scott F. Grannis, chief economist at Western Asset Management Co., said that the Fed should stop focusing on growth. “I wish they would do as Larry Kudlow says, take the Phillips Curve out behind the barn and kill it with an axe.”

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Alan Greenspan gave his most detailed comments on rising oil prices at Cato’s 18th Annual Monetary Conference in October.

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Magazine editors debate politics

Citizen-Legislators Honored at Term Limits Event

◆ **October 4:** Since 1984 U.S. companies have been allowed a 15 percent tax break on exports through offshore affiliates called Foreign Sales Corporations. A World Trade Organization dispute panel ruling that the FSC tax scheme amounted to a trade subsidy was discussed at a Cato Policy Forum, “Will the FSC Dispute Ignite a Transatlantic Trade War?” Rep. Phil English (R-Pa.) said that a bill revising the FSC statute would put pressure on the EU to honor its trade commitments, help avoid retaliation from the EU, and lower taxes on exports. John Richardson, EU Commission delegate in Washington, argued that the FSC legislation before Congress is in violation of GATT obligations. Gary Hufbauer of the Institute for International Economics and Willard Berry of the European-American Business Council also discussed EU concerns.

◆ **October 5:** Instead of “saving” Social Security, increased economic growth might actually add to Social Security’s financial woes, argued Cato Social Security analyst Andrew Biggs at a Cato Policy Forum, “Social Security: Is It ‘A Crisis That Doesn’t Exist?’” Dean Baker, coauthor of *Social Security: The Phony Crisis* argued that Social Security will be fundamentally sound for at least 75 years. Eugene Steuerle, senior fellow at the Urban Institute, explained that built-in indexing forces the government and taxpayers to automatically invest increasing amounts of money in the Social Security program. Richard Jackson, senior adviser to the Concord Coalition, added

that it is important to index Social Security benefits to longevity.

◆ **October 6:** “U.S. restrictions and taxes on offshore money frequently backfire,” said global investor Adrian Day at a Cato Institute Policy Forum, “Global Money, Sovereignty, and Privacy.” Day, editor of *Adrian Day’s Global Analyst*, said that the International Counter-Money Laundering Act places undue regulatory burdens on bankers, damages relations with other countries, and frequently forces more money into the underground economy. Bradley Jansen, legislative director for banking and monetary affairs for Rep. Ron Paul (R-Tex.), said the measure resembles the failed “know your customer” rule that would have violated the right to privacy of law-abiding citizens and undermined public trust in the financial system. Muhammad Abdul Ghaffar, Bahrain’s ambassador to the United States, said that nation-states must reach a consensus on how to eliminate money laundering without disrupting the global economic system. Bill Tucker, formerly of the Federal Bureau of Investigation, argued that there must be stricter regulation of money laundering and a program to deny visas to international criminals.

◆ **October 12:** The editors of three leading political magazines discussed culture and politics at a Cato Policy Forum, “The 2000 Election and the Politics of the Future.” Peter Beinart of the *New Republic* argued that Al Gore was making a mistake in not being more negative about George W. Bush.

Nick Gillespie of *Reason* observed that the proliferation of choices has resulted in Americans losing interest in partisan politics. Richard Lowry of *National Review* argued that conservatives need to focus on defending private property rights, self-government, and traditional notions of masculinity.

◆ **October 16:** Author James Bovard took the crowd at a Cato Book Forum on an unsentimental journey through the Clinton years. At *Feeling Your Pain: The Explosion and Abuse of Government Power in the Clinton-Gore Years*, Bovard, associate policy analyst at Cato, criticized the AmeriCorps program, the administration’s actions in Waco, and the ongoing war on drugs. Timothy Noah of *Slate* magazine commented.

◆ **October 17:** The Cato Institute and U.S. Term Limits cohosted a reception, “Keeping Their Promise: Honoring Seven Citizen Legislators,” for House members who kept their promise to limit their tenure in office. At the going-away bash held at the Cato Institute, Cato president Ed Crane and Paul Jacob of U.S. Term Limits presented biographies of George Washington and commemorative plaques to Rep. Charles Canady (R-Fla.), Rep. Tom Coburn (R-Okla.), Rep. Matt Salmon (R-Ariz.), and Rep. Mark Sanford (R-S.C.).

◆ **October 17:** A more restrained security strategy would allow the United States to substantially downsize military spending, said Ted Galen Carpenter at a Cato Policy Forum, “The Defense Debate: Raise the Anchor or Lower the Ship?” Carpenter, vice president for defense and foreign policy at Cato, advocated “strategic independence.” James Schlesinger, former secretary of defense and energy and director of Central Intelligence, said that Washington needs to significantly boost defense spending or scale back its “ambitious” foreign policy. Kim Holmes of the Heritage Foundation said the policy of “humanitarian intervention” has led to an overcommitment of military forces.

◆ **October 19:** Alan Greenspan, chairman of the Federal Reserve Board, headlined a distinguished panel of speakers at the Cato

Former secretary of defense James Schlesinger says that the United States must either raise defense spending or cut back on foreign commitments.



Venture capitalist and Cato Board member Ted Forstmann discusses “five myths of public education” at Cato’s New York City Seminar on November 17.



(Counter-clockwise) Editors Peter Beinart of the *New Republic*, Richard Lowry of *National Review*, and Nick Gillespie of *Reason* debate the politics of the future at an October 12 forum.

Ruth Y. Goldway of the Postal Rate Commission says that privatization would produce better postal service at a November 1 Book Forum for *Mail @ the Millennium*.



Institute’s 18th Annual Monetary Conference, “Monetary Policy in the New Economy.” (See story on page 3.)

◆**October 26:** The quota on softwood lumber has increased the price of lumber and homes, said Michael Carliner of the National Association of Home Builders at a Cato Policy Forum, “Nailing the Homeowner? Assessing the Impact of Trade Restrictions on Softwood Lumber.” Christopher Boesen of the National American Indian Housing Council, Scott Cameron of CHEP USA, Inc., and Dave Modi of Georgia Pacific debated the issue.

◆**October 30:** At a Cato Institute Book Forum, *New Century, New Deal: How to Turn Your Wages into Wealth through Social Security Choice*, Wade Dokken, chairman of American Skandia and a life-long Democrat, pointed out that other countries are moving to private pension programs without the rancor prevalent in American discussions of the issue.

◆**November 1:** Ruth Y. Goldway of the Postal Rate Commission said that the revolution in technology has made changes to the U.S. Postal Service necessary, at a Cato Book Forum celebrating the release of the Cato

book, *Mail @ the Millennium: Will the Postal Service Go Private?* Bernard Unger of the U.S. General Accounting Office doubted that the USPS’s rate hike would help improve its financial situation. Rick Merritt of PostalWatch explained that the USPS’s vast regulatory authority has allowed it to place obstacles in front of its competitors.

◆**November 2:** Jonathan Clarke, research fellow at Cato, awarded the Clinton-Gore administration a grade of “D” at a Cato Policy Forum, “Eight Years of Clinton-Gore Foreign Policy: A Passing Grade?” Clarke said the Clinton administration wasted its “once-in-a-generation opportunity” after the fall of the Soviet Union to craft a sensible foreign policy. Michael O’Hanlon of the Brookings Institution awarded the administration a “B,” arguing that, with the exception of the Middle East, foreign policy alliances are better today than they were in 1993.

◆**November 9–10:** Leading Internet and entertainment entrepreneurs and venture capitalists gathered in Reston, Virginia, for the Cato Institute’s 4th Annual Technology and Society Conference, “The New Entertainment Era: The Convergence of Technology & Entertainment.” (See page 14.)

◆**November 15:** The causes and consequences of trade deficits and the conclusions of the Trade Deficit Review Commission were discussed at a Cato Policy Forum, “What Should the Next President Do about the Record U.S. Trade Deficit?” Murray Weidenbaum, chairman of the commission, stressed the benefits that imports provide consumers and producers. Robert Z. Lawrence, a member of the Council of Economic Advisers, said that the deficit is due largely to investments driving the economy. Dan Griswold, associate director of Cato’s Center for Trade Policy Studies, said that imports don’t destroy jobs; job creation fuels imports. Ernest Preeg of the Manufacturers Alliance argued that national action is needed to reverse the “chronic” trade deficit.

◆**November 17:** The Cato Institute hosted a City Seminar in New York, “Cato Perspectives on Policy: 2001.” The featured speakers included luncheon speaker P. J. O’Rourke, H. L. Mencken Research Fellow at Cato; keynote speaker Theodore J. Forstmann, Cato Institute board member and senior partner at Forstmann Little & Company; and Cato’s Ed Crane, Michael Tanner, and Jerry Taylor. ■

New Technology and Intellectual Property

The Cato Institute's Fourth Annual Technology and Society Conference, "The New Entertainment Era: The Convergence of Technology & Entertainment," was held in Reston, Virginia, November 9–10, 2000. Among the speakers were Christie Hefner, chairman of Playboy Enterprises; Michael L. Robertson, chairman and CEO of MP3.com; and Tyler Cowen, professor of economics at George Mason University, a Cato Institute adjunct scholar, and author of *In Praise of Commercial Culture*. Excerpts from their remarks follow.

Christie Hefner: It has been said that a brand name is like a theme park and your product is the souvenir. If the brand is really good, then it isn't just the identifiable logo of a product. It is an attitude, a point of view, something that people identify with. Some people have argued that even some of the most successful brands today, Coca-Cola and Levi's, will ultimately die if they remain captive to a single product.

When my father started *Playboy* in 1953, he certainly didn't envision building an empire, but he had some very good instincts about things that would turn out to be very important in terms of ultimately creating a brand. And one of those was the idea of a magazine representing not just a package of entertainment but a lifestyle promoted and personified by Hef himself—the Playboy mansion and Black Bunny plane.

Many of the best magazines were started by entrepreneurial founders who had a passion for their ideas. Magazines have always been a very personal form of mass communication. But *Playboy* also understood early on that if the magazine could represent a lifestyle, then the magazine's title and symbol could represent a consumer brand. And from almost the beginning, the company experimented with the idea of *Playboy* products, clubs, and TV shows.

More important than the translation of the magazine into a brand, which no other magazine has ever done, was what we did in the 1980s when I took over the company. We decided that the most leverageable asset of our company was not its publishing expertise but our brand and that our growth would not come by launching

or acquiring other magazines, as many others had done. Instead, we looked at what was happening in technology with the multiplying of channels and the spread of the VCR. We realized that brands would have greater value than ever before in the electronic media because people would look for brands they could identify with. And so we decided to leverage not our publishing capabilities but our brand into television in the 1980s.

In retrospect, that seems like a fairly obvious opportunity, but I would point out that today there is a hugely popular music TV network, but it's not called Rolling Stone—it's called MTV. There is a hugely popular sports network, but it's not called Sports Illustrated—it's called ESPN. And there is a hugely popular news network, but it is not called Time—it's called CNN. That was an important lesson when we moved onto the online world. A lot of magazine companies thought they could just put their magazines online.

So we differentiated *Playboy* TV from *Playboy* magazine. We could not be as comprehensive online. When you buy the magazine you can read the Jesse Ventura interview that moment or look at the Playmate of the Month. But if you turn on *Playboy* TV, you can't exercise that same choice. So we actually compressed the brand and said *Playboy* TV will be quality sexy entertainment all the time.

The second decision we made was that, unlike reading, watching television is principally a social experience. So, instead of creating content that was for men only, we created quality sexy content that couples could watch together. Today three-quarters of *Playboy* Television's viewers are couples.

When we started to think about *Playboy* online in the early 1990s, we were sure it wasn't going to look just like the magazine or the TV channel. One of the best differences was that we didn't have to edit for space or time—the consumer would be the editor. Magazine editors and television producers have space or time restrictions. In the world of online, consumers make their



After her luncheon address at the Fourth Annual Technology and Society Conference, Christie Hefner talks with entrepreneur Leo Hindery, Cato's David Boaz, and First Amendment lawyer Robert Corn-Revere.

own choices. We could also be more timely online. We asked readers which person from "Survivor" they would like to see in the magazine. We published an excerpt of the Unabomber trial online three months before we could get it into the magazine. So we tried to shift our thinking from a monthly magazine schedule to a daily publication schedule.

The ultimate challenge is, "How do you make money online?" You have to start by attracting people who want to spend time on the site. Therefore, it's very hard, I think, for sites that exist principally to meet very important but limited needs for information, like the weather or stock quotes, to actually build a business model. But if you've got a lifestyle and entertainment site where people are spending a lot of time, it gives you a chance to monetize that traffic. And that led us to one of the important principles that we started with: we wouldn't be dependent on a single revenue stream.

So we have reconfigured the company, from one in which the magazine was at the heart to one in which the brand is at the heart. The magazine is a very important reflection of the lifestyle and brand and a very important beachhead in countries around the world. But it is, in fact, one of the legs of the stool of the world of *Playboy*, along with television and online. We believe this is the biggest opportunity our company has ever had. We don't pretend to be able to see around every corner, but we're confident that we are going to continue to be able to build a business that

“We have to use the power of technology to provide different kinds of ratings and filterings that parents can choose from for their home.”

intersects with the other assets of the company while actually expanding both the audience and the definition of what Play-boy is, both here and around the world.

One concern we have is government attempts to censor. I'm a skeptic about the government's ability to be the source of standards and then act as the one to restrict access. But I'm a fan of labeling information that lets parents make choices. I don't think there's any one filtering system or rating system that is going to work for everybody. Some parents might like to know what sites the Christian Coalition feels are appropriate, and other parents might prefer to know what sites *Parents* magazine thinks are appropriate. We have to use the power of technology to provide different kinds of ratings and filterings that parents can choose from for their home and also recognize that technology has outpaced the ability of governments, whether they like it or not, to control what information citizens have access to.

We should get past the notion that the role of government is to restrict content and move to the notion that government can encourage technology to enable adults (particularly parents) to make their own choices about material that comes into their homes through both the TV screen and the computer. I am hoping that over some period of time the technological realities that keep governments, from Beijing to Washington, from being able to control information will win out. We can then focus on developing and marketing the best possible array of standards and rating systems and filtering programs so that individual parents can make informed choices.

Michael Robertson: MP3.com's battle with the large record companies is several classics—David and Goliath, consumers versus big business, innovation versus old economy—all wrapped into one fascinating story.

We started off as a site that gave artists, any artist in the world, an opportunity to distribute music online. Recording artists today have extremely limited options. If they don't sign with a major record label, they simply cannot get access to the retail shelves or radio. That isn't good for artists or consumers.

So we came up with a way for any band in the world to put its music on our Web site. We provide everything: the bandwidth, the storage, the Web sites. We add more than 200 bands every day. Unlike the record industry, which owns the rights to the music, we said: “Artists, come and use our site. You're free to go at any time. We're not going to lock you into a seven-year contract, which is about the industry norm. I'm not going to own the rights to your music.”

One way to think about what we're doing is to think about the food industry and what the refrigerator did for the selling of food. It radically changed the way that food was sold and how much you bought and what foods you could eat. Likewise with music. People can access their music from any device connected to the Internet.



Michael Robertson: “Copyright law today simply doesn't recognize the new uses of content.”

Just as a refrigerator doesn't replace the need to buy food, our technology was not designed to replace the need to buy music. And this is why it's so ironic to be in the state that we're in now, to be challenged and sued by the major record labels when we built a system that actually encourages people to buy more music, just as a refrigerator encourages you to buy more food.

There are two technologies that allow this to happen. One is called “Beam-it.” You download it and the first time you download it you put in your user name and password. We bought about a million dollars worth of CDs, and for each CD we created a sort of DNA sequence. When you

put Beam-it in your CD-ROM drive, the software reads the sound wave, creating a small DNA signature. Instead of sending all the music to us, it sends a small DNA signature up to us.

The second technology we came up with is something called “Instant Listening.” Unlike CDNow.com, which should really be called “CD in Four Days.com,” Instant Listening lets you listen to music almost immediately. When a retailer tells us you've bought a CD, we immediately stock your online catalog. You can listen to your music anywhere, anytime.

That's the technology that triggered the largest copyright lawsuit of all time. The record labels argue that we have an unlicensed database of music. Our argument is that we bought those CDs, and furthermore we don't use them unless the consumer already has a copy. So, in fact, we

have two copies that have been purchased and all we're doing is allowing consumers to listen to their own music. And from where we sit that is clearly a fair view that says, “Hey, you bought it—it's yours to listen to.” Imagine that you bought a car and then just as you were leaving the dealership they said, “Oh, by the way, you can drive it only in Virginia.” You'd say, “You're out of your mind.” This is about personal ownership of property.

And so we were sued by the five major record labels (they sell about 85 percent of the music in the United States) a week or so after we came up with this technology. We settled, for a lot of money, with four of the big five. Universal took us to court and they won. We were found guilty not only of copyright violations but of willfully violating copyrights—meaning that we knew it was illegal but continued anyway. We were fined \$25,000 per CD. Per CD!

That pointed out to us some serious problems with today's copyright laws. When you look at the copyright law today it simply doesn't recognize new uses of content. Everything we've done at MP3.com

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For-profit companies shake up education

Terrorism Safeguards Inadequate, Study Says

Many experts agree that the United States is likely to experience a terrorist attack with a weapon of mass destruction, probably within the next decade. In a new Cato Institute study, "Are We Prepared for Terrorism Using Weapons of Mass Destruction?" (Policy Analysis no. 387), Eric R. Taylor argues that the federal government has left America unable to cope with nuclear, biological, and chemical (NBC) attacks. Despite spending tens of billions of dollars annually on preparation programs, the federal government has failed to take advantage of existing emergency management structures and to educate the public about how to react to an attack, argues Taylor, a chemistry professor and former officer in the Nuclear, Biological and Chemical branch of the U.S. Army. Taylor exposes the flaws in the federal Domestic Preparedness Program, which was set up in 1997 and directs various federal agencies in training state and local governments to deal with NBC terrorism. "The concepts and principles of NBC taught to the private first class soldier can be understood by Mr. and Mrs. John Q. Public," Taylor says. But they must be taught in advance. "Any official who thinks he can adequately inform the public during an NBC incident will be preaching to the morgue."

◆For-Profit Education Lessons

In "Edupreneurs: A Survey of For-Profit Education" (Policy Analysis no. 386), former Cato policy analyst Carrie Lips says that the "for-profit education marketplace provides us with a glimpse of what a thriving, competitive market for education might look like if the United States were to open the education sector to the forces of competition." Education companies are finding innovative solutions



Carrie Lips

to today's education problems, but regulation and competition from monopoly public schools are forcing those companies to the margins of the education sys-

tem and making it hard for them to turn a profit, writes Lips. She reviews the rapidly expanding for-profit industry, which constitutes approximately 10 percent of the \$740 billion education market. If regulations are relaxed and a market for education is allowed to flourish, for-profit education will be able to provide needed goods and services unavailable from the government-run education system, Lips says. She concludes that tax cuts and universal tuition tax credits would begin to loosen the government's monopoly on education and allow the natural growth of a vibrant education marketplace.

◆Microsoft's Appealing Appeal

A new Cato Institute study released two weeks before Microsoft filed its brief with the U.S. Court of Appeals predicted that the lower court's decision would be overturned. In "Microsoft's Appealing Case" (Policy Analysis no. 385), legal scholar Robert A. Levy and economist Alan Reynolds write that the original trial, presided over by Judge Thomas Penfield Jackson, was so plagued by procedural irregularities, erroneous fact-finding, unsupportable legal conclusions, and destructive remedies that it will be difficult for the appellate court not to overturn it. On the procedural front, Jackson expanded the scope of the trial to include charges that were not part of the government's initial complaint; conducted the trial on an accelerated timetable that did not allow Microsoft sufficient opportunity to prepare its defense; embraced the government's proposed remedies without any hearing whatsoever; and granted media interviews, during and after the trial, in violation of judicial ethics.



Robert Levy

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◆Lifting Sanctions on Cuba Would Benefit U.S. Interests

A new study from the Cato Institute says U.S. interests would be better served if Washington lifted sanctions the United States has imposed on the island nation for 38 years.

In "A Policy toward Cuba That Serves U.S. Interests" (Policy Analysis no. 384), Philip Peters, vice president of the Lexington Institute and former State Department official in the Reagan and Bush administrations, argues that Cuba's collapse as a U.S. security threat compels Washington to reconsider the embargo. "U.S. policies designed to bring Fidel Castro down have backfired," he writes. "Those policies place Castro in the world political limelight, renew his claim to victimhood, reinforce many of his favorite nationalist arguments, and miss opportunities to influence Cuba's future by blocking free interaction with American society." Peters, who recommends abolishing the entire system of federal licensing of travel to Cuba, concludes that "a new policy that relies less on isolation and more on the magnetism of American society would play to America's strength, and it would serve both nations' interests by building bridges to Cuba's next generation."

◆School Choice Benefits Parents and Children

School choice boosts parental involvement in education, writes educational consultant Philip Vassallo in a new Cato paper, "More Than Grades: How Choice Boosts Parental Involvement and Benefits Children" (Policy Analysis no. 383). Vassallo argues that "the monopolistic practice of directing all public education funding to public schools has created not only a financial stranglehold on the public but a moral vacuum in society by weakening parental authority. Choice frees parents from the shackles of bureaucratic controls and strengthens their capacity to participate in their children's education." Vassallo examines the feedback from parents whose children are in charter schools, have vouchers, or have private tuition scholarships and finds that, "with regard to their children's academic programs, parents who participate in choice programs are at least as involved as, and often more involved than, parents are generally." Not only were school choice parents more likely to work directly with their children on academics, but they also contacted school officials more often, were more likely to attend school events and parent-teacher conferences, and

played a stronger role in the maintenance of the school.

◆A “D” for Clinton’s Foreign Policy

The Clinton administration’s foreign policy has been marked by failed opportunities that will leave the next occupant of the White House with “a series of unnecessarily acute problems,” according to a new Cato Institute study, “A Foreign Policy Report Card on the Clinton-Gore Administration” (Policy Analysis no. 382). Former British diplomat and Cato research fellow in foreign policy studies Jonathan G. Clarke argues that, in a time of global strategic peace and American dominance, it is not sufficient that the Clinton administration avoided a disaster and made progress on secondary issues like Northern Ireland. “The immediate post-Cold War period could and should have been filled with immense creativity,” Clarke says. “Given the number of botched opportunities, the administration’s record merits a grade of D.” Although the Clinton-Gore administration earns praise for its engagement with China, Clarke sees possible repercussions from a failed policy toward Russia. The administration’s drive to expand NATO and build a national missile defense has caused increased Russian isolationism and suspicion, which may lead to a threat to America’s security. The administration also failed to engage India, a rising international power, leaving the incoming administration with a relationship of “no depth or range” to work with. “Even on the claimed successes of Northern Ireland and the Middle East the clinching deal has yet to be sealed,” Clarke says. “But the greatest indictment is one of lost opportunity. The last decade of the 20th century provided the stage for a display of creative energy unseen since 1945. Instead, we were given an alternating diet of overheated rhetoric, inattention, and, if the going got tough, bombs.”

◆Pipeline to Trouble

Washington’s insistence on building an oil pipeline from Baku in Azerbaijan to the Turkish port of Ceyhan is dragging the United States into a political conflict and an economic sinkhole, according to a new Cato Institute study, “The Great Game, Round 2: Washington’s Misguided Support for the

Baku-Ceyhan Oil Pipeline” (Foreign Policy Briefing no. 63). Cato research fellow Stanley Kober shows how President Clinton’s support for this particular pipeline route is causing huge tensions with Russia and Iran. The administration has argued that the pipeline would promote economic and political stability in Central Asia and benefit Turkey, a strategic NATO ally. “When we tell the Russians, in effect, that we believe in market economics except when our strategic interests are more important, what are they supposed to think?” Kober asks. U.S. pipeline preferences may be making Russia nervous, but they also isolate Iran at a time when that country is breaking down the wall of mistrust between itself and the United States. “The pipeline, far from promoting U.S. interests in the region, undermines them. The U.S. government should heed its own rhetoric and let the market determine the pipeline route,” Kober concludes.

◆Throwing Money at the Pentagon

The Defense Department doesn’t need more money, because the readiness problem is overstated, according to a new Cato Institute study, “A Hollow Debate on Military



Ivan Eland

Readiness” (Foreign Policy Briefing no. 62). Ivan Eland, director of defense policy studies, points out that U.S. forces have bone-crushing dominance over any other military on the planet. “The American military is more potent relative to its potential enemies than were the militaries of any great power in world history,” he says. Although U.S. defense spending exceeds that of the next seven countries combined—and is 19 times greater than the combined spending of Iran, Iraq, Libya, Syria, Sudan, Cuba, and North Korea—the presidential candidates launched a bidding war to see who could throw the most cash at the Pentagon for political gain, according to Eland. Although the military has “experienced shortages of personnel, spare parts, and training, the ‘readiness crisis’ is largely illusory,” he writes. The U.S. military is not woefully under-

funded, as hawks claim, but “woefully over-committed and overprogrammed.” Some areas of unreadiness do exist in the U.S. military, according to Eland, but those are not caused by a lack of defense spending. “Many of the pockets of unreadiness in an otherwise dominant military are caused by furious and far-flung deployments, which rapidly wear out equipment and people and incur significant costs,” he argues. Eland concludes that “no increases in spending would be needed to remedy ‘pockets of unreadiness’ if U.S. commitments overseas were cut back, misallocation of resources by the Pentagon and Congress ceased, and readiness requirements were reduced in a benign post-Cold War threat environment.”

◆Social Security Survival Plans Misguided

Instead of “saving” Social Security, increased economic growth might actually add to Social Security’s financial woes, concludes a new Cato Institute study, “Social Security: Is It ‘A Crisis That Doesn’t Exist?’” (Social Security Paper no. 21). Higher wages would boost the program’s revenues but would also increase the benefits the program must pay out, resulting in higher costs, writes Andrew Biggs, Social Security analyst at Cato. To accept the critics’ argument that faster growth will ensure Social Security’s solvency for 75 years, Biggs says, you have to believe that real wages will grow at 2.9 percent per year—3.7 times faster than during the past 30 years. Faster growth “would be unqualified good news for Social Security, except that workers who pay more taxes into the system are entitled to more benefits from it,” he explains. “Any increase in payroll tax revenues must be counted against corresponding increases in benefit liabilities.” Over the long term, he says, Social Security’s deficits might actually increase, as the Social Security Administration itself has noted. The “crisis deniers,” as Biggs calls them, say faster economic growth undermines the case for letting workers invest a portion of their Social Security taxes in private retirement accounts. But Biggs shows that, even if stock market returns dropped to half their 7.2 percent historical average, private accounts would still outperform Social Security. ■

“This is really about the use of complex copyright laws to thwart innovation. An environment that chills innovation is bad for consumers.”

FORUM *Continued from page 7*

fits within the spirit of copyright law, which says, “Hey, if you bought something you can listen to it.” And the very essence of the technology is good for the industry, which sold \$38 billion worth of albums last year. Our technology encourages them to sell more CDs. It’s good for consumers and retailers.

So we thought that everything we’d designed was clearly within the spirit of the copyright law. The problem is the complexity of the web of copyright laws.

There are much bigger issues here than simply one tiny Internet company with 300 people challenging an entire music industry. This goes much broader than that, and it’s really about the use of complex laws to thwart innovation. We are faced with a penalty of up to \$200 million. No one can prove one penny of damage. In fact, we introduced evidence showing that we’ve sold for the major record labels more than \$200 million worth of CDs.

An environment that chills innovation is bad for consumers. It threatens consumers’ rights to their own property. It threatens innovation. MP3.com, Napster,

and others have been sued unmercifully. Others are unlikely to experiment.

An important question is, Should we use the courts to dictate public policy, thereby thwarting innovation? Digital music is a new industry, and it’s incredibly challenging because we are one small company challenging an established music industry. Today MP3.com stands nearly alone.

Tyler Cowen: Copyrights are there to reward artists for what they have produced. By paying artists we get them to produce more, which makes us all better off. But we also need to step back and realize that copyright is not an absolute moral right; it is not a typical property right because it expires after some period of time. We apply copyright in an arbitrary fashion. Dennis Rodman can copyright the arrangement of tattoos on his body, but someone who does calligraphy or pantomime usually cannot get a copyright. We should think of copyright as something that we apply essentially for utilitarian reasons and as an institution that should adapt to the times.

Let me also say that copyright is a law that is best broken in many cases. Copyright in this regard is like the speed limit. We don’t want everybody strictly obeying it. The people in the music industry are afraid or unwilling to admit this, essentially for legal reasons. By having some people out there breaking copyright, making copies for free, we get more output. There also is pressure on the producers to keep their prices lower and to produce more.

In the past 40 years copyright has been extended 11 times. Copyright law as it exists now is a subsidy to producers, a kind of monopoly grant, and, in economic terms, its length and strength are unjustified. It is now good for the life of the artist plus 70 years. Corporate copyrights last for 95 years. This is simply a subsidy and a monopoly privilege we don’t need.

We’re all familiar with the expression “If it ain’t broke, don’t fix it.” Well, the message of Napster is “if it ain’t fixed, break it.” Copyright law today runs the risk of falling apart at the seams, quite simply because we have large numbers of people who are getting music for free from Napster and not paying people for producing it. ■

In the short run we do not need to be worried. The music industry is relatively healthy and services like Napster actually help it. But we face a long-run danger that the next generation won’t be paying for their music but will simply be getting it for free over a service like Napster.

My sense is that we should be cautiously optimistic about a new world where copyright is relatively weak. In the future we’re likely to have copyright enforcement that is too weak relative to ideal enforcement. But I can imagine that weak copyright enforcement may well be better than copyright enforcement that is too strong. The optimistic scenario is that the record companies will find it to their advantage to team up with companies like Napster. The less-optimistic scenario is that music is distributed over the Internet in a completely decentralized fashion and the record companies get little or nothing. I predict that we will see some version of the optimistic scenario.

This will have mixed results. It will mean that people at the very top of the market, the megastars like Madonna, will earn much less. Most middling stars receive no copyright income; instead copyright income goes to the record companies to cover their deficits and to cover the cost of finding new talent. For this reason, weaker copyright will change the music industry. We would expect more live recordings; studio costs would have to fall; home studios would become more important; less would be spent on marketing entertainment. Companies would spend less money trying to find out who the next stars were going to be. The entire music market would become less formal. Evaluating stars would move into the hands of fans outside of companies. The entire industry would become more decentralized. We probably would have more people being able to make a living from making music, but perhaps most people would be earning less from music than today. So there would be less of a monetary prize, but there would be more diversity: people who entered music because they enjoyed it or because they sought fame would have greater opportunities. I expect that over the long run we will see today’s weakening of copyright as a great blossoming in our cultural history. ■



Wade Dokken, chairman of American Skandia, discusses the need for Social Security privatization at a forum for his new book, *New Century, New Deal: How to Turn Your Wages into Wealth through Social Security Choice*.

“We constrain our government because we know that—when we’re in the majority—we might be tempted to abuse our power.”

CONGRESS *Continued from page 1*

The Will of the People

During the long count in Florida, Vice President Gore’s supporters emphasized the need to divine and implement “the will of the people.” Particularly notable was the statement of William Daley, of the Chicago Daleys, that “if the will of the people is to prevail, Al Gore should be awarded a victory in Florida and be our next president.” No matter what the actual vote count, Daley and his allies said, what was most important was “the will of the people.” If a voter’s intention could be divined, whether or not he or she had actually cast an official vote, then that intention was part of the national will. Of course, the usual way we choose leaders in a republic is to hold an election, at a specified time, according to rules specified in advance. We count the votes of those who were eligible to vote, and registered, and went to the polling place (or obtained an absentee ballot), and filled out the ballot in a specified manner.

But after November 7, 2000, some observers argued that that system was too constricting and did not reveal the true intent of the voters—or “the vote of all people who attempted to exercise that vote,” as a lawyer argued before the Florida Supreme Court. A group of prominent scholars and thoughtful actors took out an ad in the *New York Times* three days after the election to proclaim that there was “good reason to believe that Vice President Gore has been elected President by a clear constitutional majority of the popular vote and the Electoral College.” But of course there is no such thing as a “constitutional majority of the popular vote.” Vice President Gore himself declared it a “constitutional principle” that “the will of the people should prevail.” Such statements reveal a fundamental ignorance of, or indifference toward, the actual Constitution of the United States.

It would be wrong to see such claims as mere partisan posturing. They represent something more. Fundamentally, they reflect the ideas of the illiberal philosopher Rousseau, who posited a “general will” that was separate from and above the combined wills



Rep. and Mrs. Charles Canady at Cato's October 17 reception, “Keeping Their Promise: Honoring Seven Citizen Legislators,” cohosted with U.S. Term Limits.

of individual citizens, a will that could be divined and implemented by a wise and benevolent legislator.

This philosophy, so alien to the American Founding and heritage, underlies much of contemporary politics. Who, it is asked, can best comprehend the general will? Why, the national government, of course, specifically the one official elected by all the people—the president of the United States. Unlike Congress, it is said, he represents the national interest, not just the parochial interests of states and vested interests. If Congress refuses to do the general will, then presidents increasingly claim the power to rule by decree, through executive orders.

At a practical level, of course, this exaltation of the president’s mandate is unconvincing: both parties are made up of voting blocs and interest groups, and no president is elected without the support of many of those interests. At a deeper level, such an idea is dangerous. It would replace the constitutional safeguards against majoritarianism with a president virtually unconstrained in his ability to do good, as he sees it, for the people. It is odd, to say the least, that those who claim the mantle of liberalism would be so quick to toss aside federalism and constitutionalism, since divided powers protect minorities against the whims of the majority.

We constrain our government precisely because we know that any of us might be the minority in some dispute and also because we know that—when we’re in the major-

ity—we might be tempted to abuse our power. We seek to keep governance close to the people, in the states and communities, partly because local government is more responsive but even more because it gives individuals the chance to leave, to vote with their feet, and to find communities that better reflect their individual needs and preferences. About 50 years ago, the need to confront the problem of racist laws in some states led to an increase in the exercise of power by the federal government. The lingering effects of that struggle discredited “states’ rights” and federalism, and federal power continued to grow beyond its necessary use to guarantee individual rights in the states. With that period behind us, centralizing the government of 270 million people in a distant capital is a tragic reversal of our liberal Founding.

This appeal to the Constitution reflects more than simply a commitment to the acts of the Founding generation, as important as that is. It also reflects an understanding of why the Founders were right to reserve most subjects to state, local, or private endeavor. The Founders feared the concentration of power. They believed that the best way to protect individual freedom and civil society was to limit and divide power. Thus it was much better to have decisions made independently by 13—or 50—states, each able to innovate and to observe and copy successful innovations in other states, than to have one decision made for

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“The first duty of every official is to act within the authority of the Constitution and to ensure that other officials do so as well.”

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the entire country. As the country gets more populous and more complex, and especially as government amasses more power, the advantages of decentralization and divided power become even greater.

The Role of Congress

In all of this, Congress has an important role to play. Too often we assume that only the Supreme Court has the duty to uphold the law and the Constitution. In fact, every person elected or appointed to office takes an oath to “support and defend the Constitution of the United States.” The first duty of every official is to act within the authority of the Constitution and to ensure that other officials do so as well. Recent presidents, most especially President Clinton, have blithely exceeded the powers granted to them under the Constitution. They should be held accountable for those abuses of power. But Congress should be primarily responsible for holding them accountable; thanks to its negligence, Congress bears a significant part of the blame for presidential excesses. To live up to their oath of office, members of Congress should turn their attention to four tasks:

Rein in the President’s War Powers

In affairs of state, no more momentous decision can be made than the decision to go to war. For that reason, in a democratic republic it is essential that that decision be made by the most broadly representative body: the legislature. That is where our Constitution lodges the power to declare war. As James Madison put it, “In no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department.” The Clinton administration espoused a view of executive war-making authority that was as unconditional and unconstrained as that claimed by any president in American history. In fact, presidents from Johnson and Nixon through Bush and Clinton asserted their authority to put American troops in harm’s way without the consent of Congress. To ensure that we remain a constitutional republic, not a presidential

empire, Congress must reclaim its power under the Constitution to make such momentous decisions and its obligation to debate and vote on war measures.

Stop the Abuse of Executive Orders

Lawmaking by the president, through executive orders, is a clear usurpation of both the legislative powers granted to Congress and the powers reserved to the states. The president’s principal duty under the Constitution is to “take care that the laws be faithfully executed”—not to make law, as presidents increasingly have done. As was the case with so many other threats to the rule of law, the problem did not begin with but was exacerbated by the Clinton administration. More so than previous presidents, Clinton often employed executive orders to make law without any citation of specific constitutional or statutory authority. A Clinton political consultant, Paul Begala, explained the attraction of executive orders with his usual color and conciseness: “Stroke of the pen, law of the land. Kind of cool.” A new president, with a divided electorate and a divided Congress, will be tempted to legislate by fiat. He should resist that illegitimate temptation. And no matter what agenda the president seeks to impose by executive order, Congress should stop him. The body to which the Constitution delegates “all legislative powers herein granted” must assert its authority.

Stop Delegating Lawmaking Authority to the Federal Bureaucracy

The Constitution clearly grants to Congress the power to make laws and to the executive branch the power to execute the laws. That separation of powers is a key element of the constitutional design. The Founders feared nothing more than the concentration of powers in one set of hands. But since the 1930s Congress has gotten into the habit of passing broad laws and leaving the details up to administrative agencies. Congress likes to proclaim noble goals, promise good results, and leave it to unelected bureaucrats to deal with the inevitable tradeoffs and costs of such goals. But, as Jerry Taylor and David Schoenbrod have written, “The concern over congressional delegation of power is not simply theoret-

ical and abstract, for delegation does violence, not only to the ideal construct of a free society, but also to the day-to-day practice of democracy itself. Ironically, delegation does not help to secure ‘good government’; it helps to destroy it.” Congress cannot constitutionally delegate its lawmaking authority to any other body, nor should it want to do so. Congress should accept its responsibility for making law and cease delegating legislation to the bureaucracy. By accepting its constitutional responsibility, Congress will have the effect, as intended, of limiting that bureaucracy.

Consider the Constitutionality of Every Proposed Law

Ours is a government of delegated, enumerated, and thus limited powers. If a power is not granted to Congress in the Constitution, then Congress lacks the authority to legislate in that area. For too long we have drifted toward the idea that everything from our retirement insurance to our local schools to our marriage law is a proper subject for federal legislation. In the past six years the Supreme Court has commendably begun to strike down laws that exceed the powers granted to Congress in the Constitution. But members of Congress must not leave it to the Supreme Court to decide whether laws are constitutional. Every member of Congress must live up to his or her oath of office by considering the constitutionality of every proposed law. Before voting for any bill, each member of Congress should ask, “Where in the Constitution is the authority to pass this law?” If the authority cannot be found, members of Congress should not vote for the bill. And then, if the president or federal regulatory officials should attempt to legislate on the matter extraconstitutionally, Congress should strike down the executive order or regulation.

If Congress accepts its responsibility in these matters, then the 2000 election crisis will come to be recognized as the beginning of the renaissance of constitutional government in the United States, rather than as one more sign of its decline.

Revitalizing Congress

Some observers will scoff at the notion

“For those who go into government to improve the lives of their fellow citizens, the hardest lesson to accept may be that Congress should often do nothing about a problem.”

that Congress will accept our advice to live by the Constitution and put forth a meaningful policy agenda. It's an entrenched, impregnable, and comfortable ruling class, they will say. After the votes were counted in the 2000 election, incumbent House members once again had a 98 percent reelection rate, far above the traditional rate but in keeping with the rate of recent years. For all the bitterness and partisanship, in terms of real change we don't have a Republican Party and a Democratic Party; we have an Incumbent Party. Why should an Incumbent Party with a 98 percent reelection rate want to change anything?

But we have a more hopeful view. We hope that most members of Congress will put the national interest above their personal or partisan interest and act as citizen-legislators of a constitutional republic.

If they do, they will realize that, even in a time of relative peace and prosperity, our nation faces some real problems. Since government causes most of those problems, government can help to cure them. We should begin by recognizing that a 98 percent reelection rate for members of Congress is not healthy for republican government. Members of Congress should not be more secure than members of the former Soviet Central Committee or the Mexican parliament. Term limits would ensure rotation in office, a prime element of representative government. Reform of our campaign finance system would also help. We don't need more restrictive regulations; it was the restrictions of 1974 that sent reelection rates soaring and guaranteed that the only successful outsiders in politics would be multimillionaires. Instead, we need to eliminate contribution limits so that at least some challengers could raise enough money to wage serious campaigns. Self-interested politicians would not consider term limits or liberalized campaign finance rules; citizen-legislators dedicated to representative, constitutional government would.

And as we consider opening up our political system, we should take a hard look at the unresponsiveness of the Incumbent Party. The evidence is in: centralized, command-and-control, one-size-fits-all systems don't work. Businesses are becoming more competitive and responsive; all over the

world, governments are moving toward markets and the rule of law. But here in the home of markets and the rule of law, the Incumbent Party resists the evidence. We know that our monopoly school system doesn't deliver quality education. We know that our pay-as-you-go Social Security system is robbing American workers of a comfortable retirement and an estate to leave to their children. We know that the war on drugs undermines our liberties without stopping drug use or abuse. We know that our tax system is incomprehensible, inefficient, and oppressive. Yet the Incumbent Party is comfortable with the tyranny of the status quo.

Conclusion

For those who go into government to improve the lives of their fellow citizens, the hardest lesson to accept may be that Congress should often do nothing about a problem—such as education, crime, or the cost of prescription drugs. Doing nothing may seem negative. Critics will object, “Do you want the government to just stand there and do nothing while this problem continues?” Sometimes that is exactly what Congress should do. Remember the ancient wisdom imparted to physicians: First, do no harm. And have confidence that free people, left to their own devices, will address issues of concern to them more effectively outside a political environment.

Members of Congress must recognize, understand, and then defend the limited role of the federal government. To repeat, it isn't just the Supreme Court that is enjoined to enforce the Constitution; the president and members of Congress also take an oath to uphold the Constitution, and they should also take care to see that the government's actions are not just prudent but constitutional. We are all tempted from time to time to demand something of government—limits on speech we find offensive, a subsidy for our business, compensation for a failed investment, or whatever. That's why at the constitutional level we are forbidden to use government in that way. There is no higher duty for members of Congress than to remind us of the constitutional limits on government when we forget them. ■

Cato Calendar

Thirteenth Annual Benefactor Summit

Cancun • Ritz-Carlton

February 21–25, 2001

Speakers include Hernando de Soto and Shelby Steele.

James Madison and the Future of Limited Government

Washington • Cato Institute

March 1, 2001

Speakers include Alex Kozinski, James Buchanan, Joyce Malcolm, John Tomasi, and Walter Berns.

Space: The Free-Market Frontier

Washington • Cato Institute

March 15, 2001

Policy Perspectives 2001

San Francisco • Mark Hopkins

Inter-Continental • March 22, 2001

Policy Perspectives 2001

Los Angeles • St. Regis

March 23, 2001

Cato University:

The American Enlightenment

Philadelphia • Ritz-Carlton

March 28–April 1, 2001

Speakers include Alan Charles Kors, Ingrid Merikoski, and Roger Pilon.

Policy Perspectives 2001

New York • Waldorf-Astoria

April 27, 2001

Policy Perspectives 2001

Birmingham • Wynfrey Hotel at

Riverchase Galleria • May 8, 2001

Cato University Summer Seminar

San Diego • Rancho Bernardo Inn

August 4–10, 2001

Money and Markets in the Americas 19th Annual Monetary Conference

Mexico City • Four Seasons Hotel

October 24, 2001

Speakers include Francisco Gil-Díaz, Robert McTeer Jr., Allan Meltzer, and Ricardo Salinas Pliego.

Cato University Weekend Seminar

Montreal • Omni Mont-Royal

October 25–28, 2001

Updated information on Cato events, including Policy Forums and Book Forums not shown here, can be found at www.cato.org/events/calendar.html.

Will technologies outpace regulation?

The New Entertainment Era

Technology has outpaced the abilities of the government to control what citizens will get," said Christie Hefner, CEO of Playboy.com and keynote speaker at Cato's Fourth Annual Technology and Society Conference. Held November 9 and 10 in Reston, Virginia,

George Vradenburg of AOL discusses the changing world of broadband-access politics.



Former representative Tom Tauke, now with Verizon, stresses the need for deregulation of telecommunications markets.

the conference had as its theme "The New Entertainment Era: The Convergence of Technology and Entertainment."

"You can pass whatever law you want in the U.S. and it is not going to stop Americans from accessing sites from outside the U.S.," said Hefner, who said she supports voluntary software filters that permit parents to choose what material their children see online, but she criticized the idea of government-imposed restrictions on adult-oriented content. "I am a skeptic about the government's ability to apply standards, but I am a fan of labeling information that lets parents make that choice," said Hefner, the daughter of *Playboy* founder Hugh Hefner.

Cosponsored by Cato and *Forbes ASAP*, the conference was held for the first time

in Northern Virginia, home to a burgeoning technology community. The conference featured some of the hottest figures from companies in the news because of their successes and their troubles.

Michael Robertson discussed his uphill battle to save his company, MP3.com, which has been hit with suits by all major record labels for violation of copyright laws. Robertson characterized his legal battle as "David versus Goliath, the consumer versus big business, and innovation versus



Stanley Hubbard of Hubbard Broadcasting says that technology doesn't sell itself; it has to appeal to real consumer needs.

the old economy." He argued that "copyright law is unclear in many cases and does not account for changes in technology." He said his company's actions to help boost the market for digital music "fit within the spirit of copyright law." Tyler Cowen, professor of economics at George Mason University and a Cato adjunct scholar, said that copyright law should be viewed not as a moral absolute analogous to property rights but rather as a utilitarian institution that should adapt to changes in culture, technology, and society. "Copyright is a law that is best broken in many cases," said Cowen, who has explored the intersection of commerce and culture in his book *In Praise of Commercial Culture*. "Like a speed limit on a highway, it is not a good idea if everyone drives 55 miles per hour or below. At the margin, we have quite a few people breaking it."

The conference made for some interesting dynamics, as technology veterans like Stanley Hubbard (Hubbard Broadcasting) and Leo Hindery (Global Crossing) exchanged ideas with relative newcomers like Scott Sander (Sightsound) and Scott Draeker (Loki Games). Attendees were treated to the insights of leading venture capitalists including Jeff Walker of Chase Capital and Robert Lessin of WitSoundView. ■

MONETARY CONFERENCE

Continued from page 3

W. Lee Hoskins, senior fellow at the Pacific Research Institute and former president of the Federal Reserve Bank of Cleveland, said it is important to continue separating monetary policy from fiscal policy. "Fiscal policy is basically a political policy. We are being charitable by calling it a policy. What should the Fed be doing? Focusing on price stability. If we don't have too much arrogance as



Lawrence Kudlow

policymakers, we will focus on that, and not try to react to every Asian financial crisis, every oil shock, or euro that collapses on us. We need to focus long-term on price stability." Mickey D. Levy, chief economist at the Bank of America, also warned against mixing monetary and fiscal policies, which he called a "flawed framework." He said that the notion that monetary policy can be changed in response to fiscal policy to achieve a desired outcome is "misguided and potentially destabilizing."

One major challenge for central bankers will be the continued development of paperless money. Richard Rahn, a Cato adjunct



Bob Gelfond

scholar and president of Novecon Ltd., predicted that "one effect of the decrease in demand for central bank money will be the gradual disappearance of central bank seigniorage revenue." He warned that this "rosy scenario could be undermined by central bankers or treasury officials" who attempt to keep their monopoly and by law enforcement's restrictions on encryption and the war on money laundering.

The conference, broadcast live on the World Wide Web, is available for viewing online along with other Cato programs at www.cato.org/realaudio/audiopages.html. ■

Expanded research on the proper role of Washington in the Internet age

Crews, Thierer Bolster Cato's Tech Program

The Cato Institute has named Wayne Crews as director of technology studies and Adam D. Thierer as director of telecommunications studies. Together they will expand Cato's policy output in the Internet, technology, and telecommunications fields.

"The new economy poses a threat to those who want to preserve the regulatory state," said Edward H. Crane, president of the Cato Institute. "Wayne and Adam will pursue a research agenda that examines the proper role of Washington in the Internet age. Their arrival gives Cato one of the strongest teams in Washington in the field of telecom and tech studies."



Adam Thierer



Wayne Crews

As director of technology studies, Crews will focus on social and economic regulation of the Internet, including open-access regulations, online privacy, copyright issues, and free speech. He will also examine antitrust in the information age and regulation of the technology sector more broadly.

Crews joins Cato after five years at the Competitive Enterprise Institute, where he was director of competition and regulation policy, concentrating on regulatory and antitrust reform, risk and environmental issues, electricity deregulation, and technology. He is the author of the widely cited "Ten Thousand Commandments" report on regulation and editor of *The Antitrust Reader*. He previously worked as a legislative aide to Sen. Phil Gramm (R-Tex.) and as an economist for Citizens for a Sound Economy and the Food and Drug Administration.

As director of telecommunications studies, Thierer will conduct research on how government regulations are hampering the evolution of communications, including telephony, broadcasting, cable, satellite, and the Internet. He will also examine

the broader economic and constitutional aspects of telecommunications policy. Before joining Cato, Thierer spent nine years at the Heritage Foundation researching telecommunications and Internet policy and writing extensively on antitrust issues, electricity deregulation, energy policy, the airline indus-

try, and federalism. He is the author of *The Delicate Balance: Federalism, Interstate Commerce, and Economic Freedom in the Technological Age*. Thierer has also worked at the Adam Smith Institute in London, where he examined reform of the British legal system. ■

News Notes

Cato chairman William A. Niskanen was asked to submit testimony in the case of *Albert Gore et al. v. Katherine Harris et al.*, the vice president's challenge to Florida's certification of Bush electors. Niskanen's statement can be found at www.cato.org, under "White Papers." Niskanen also contributed an article, "Creating Good Jobs and Good Wages," to a new book, *A Working Nation: Workers, Work, and Government in the New Economy*, published by the Russell Sage Foundation.

◆ José Piñera and Ian Vásquez visited Moscow in April 2000, meeting with President Vladimir Putin's economic adviser Andrei Illarionov and other officials. Piñera contributed an optimistic view of the prospects for Russia under Putin, titled "A Chilean Model for Russia," to the September–October 2000 issue of *Foreign Affairs*. Cato's Mencken Research Fellow P. J. O'Rourke offers a less optimistic view in "The Godfather Decade: An Encounter with Post-Soviet Corruption," in the November–December 2000 issue of *Foreign Policy*.

◆ Ted Galen Carpenter edited a special issue of the *Journal of Strategic Studies*, titled *NATO Enters the 21st Century*. The papers in the journal were also published as a book by the same name.

◆ David Boaz contributed a commentary, "The Benefits of Private Regulation," to a book, *Regulation without the State . . . The Debate Continues*, published by the Institute of Economic Affairs in London. Other commentators on an essay by John Blundell and Colin Robinson include Randall Kroszner, a member of the Editorial Board

of the *Cato Journal*, and Yesim Yilmaz, whose Cato Policy Analysis "Private Regulation: A Real Alternative for Regulatory Reform" covered many of the same issues. Boaz also contributed an article titled "The Drug Policy Debate" to the October 2000 special issue of the *Fordham Urban Law Journal*.

◆ *The Revolution in Development Economics*, a 1998 Cato Institute book edited by James A. Dorn, Steve H. Hanke, and Alan A. Walters, has been published in China by the Shanghai People's Publishing House. The book, based on a Cato conference, includes essays on development and economic freedom by Peter Bauer, Julian L. Simon, Deepak Lal, Douglass North, Karl Brunner, Alvin Rabushka, and others. ■



John Blokker

John Blokker, a member of the Cato Institute's Board of Directors, died in December. Blokker was a high-tech entrepreneur in Silicon Valley.

During his tenure on Cato's board, he never missed a board meeting and offered both enthusiasm and valuable advice about the Institute's use of new technologies. Blokker combined great good humor with a fierce commitment to human freedom. He and his wife Joanne were regular participants in Cato's Benefactor Summits and made many friends there.

◆ **Sometimes it seems like government is getting too big**

The Department of Health and Human Services’ Office on Women’s Health [has published a] “Blueprint for Action on Breastfeeding.” . . . In the words of Surgeon General David Satcher, it “establishes a comprehensive breast-feeding policy for the nation.” . . .

The surgeon general’s office had set a goal of increasing to 75 percent the proportion of mothers who breast-feed at least briefly, and of increasing to 50 percent the number who nurse for five to six months.

—Judy Mann in the *Washington Post*, Nov. 24, 2000

◆ **Do they get to stay in the Lincoln Bedroom as often?**

One of the things that I have tried to do is to make people in Watts feel like they had just as big a say in the White House as the friends I have in Beverly Hills. I wanted you to feel that the White House was your house.

—President Clinton in Los Angeles, washingtonpost.com, Nov. 2, 2000

◆ **Al Gore’s dream world**

Pyeongyang lacks the vibrancy one expects in a capital of about 2 million people. Its heavy silence is especially misplaced in Asia, where most big cities

are clogged and chaotic, overtaken by vehicles and their noxious fumes. With little national income to buy fuel, however, North Korea has few cars, and its streets have been largely claimed by pedestrians. Thousands of pedestrians give the place a calm, unhurried pace.

—*Washington Post*, Oct. 24, 2000

Without power, most factories in North Korea have stopped functioning. . . . The only smokestack releasing smoke today was one at the power plant, which foreign residents say was revved up to deliver electricity to subways, apartment buildings, fountains and monument lights so [Secretary of State Madeleine] Albright and her entourage would get a good impression.

—*Washington Post*, Oct. 25, 2000

◆ **Not so fast, because voters don’t get a say in New York**

Now that California has repudiated bilingual education in a statewide referendum, and Arizona is expected to do the same in November, New York, with its large immigrant population, would seem to be another domino likely to tumble. Not so fast.

A City Hall hearing last week—as well as the tentative recommendations of a mayoral task force, and the preliminary findings of a Board of Education subcommit-

tee—made clear that bilingual education, at least in some form, is here to stay for the foreseeable future.

—*New York Times*, Oct. 22, 2000

◆ **Actually, they’re imposed by the Constitution**

Even if you applaud the idea of serious limitations on federal power, you might be wary about having them imposed by the Supreme Court.

—Jeffrey Rosen in the *New York Times*, Oct. 22, 2000

◆ **Stuff happens**

Natural resources are more plentiful [in North Korea] than in South Korea. The economy suffered drastic declines in the 1990s, and a series of natural disasters reduced much of the country to starvation.

—*Washington Post*, Oct. 23, 2000

◆ **He thinks life expectancy was the reason for limiting terms?**

Bill Clinton says he would have been tempted to run for president again if the Constitution would have let him. And, he says, he would have won. . . .

He adds that, as life expectancy rises, there may be a reason to change the 22nd Amendment, which limits presidents to two four-year terms.

—*Washington Post*, Dec. 7, 2000

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