

Overextending the Criminal Law

by Erik Luna

Nothing is certain, Ben Franklin once said, but death and taxes. Had he lived during our time, Franklin might have added a few other certainties—and almost assuredly among them would have been the concept of “crime.” By this, I am not referring to the rate of violence and unlawful deprivations of property or privacy in the United States, which ebbs and flows from year to year and decade to decade, often coinciding with dips in the economy or spikes in the number of young males in the general population. Instead, it is the troubling phenomenon of continually adding new crimes or more severe punishments to the penal code, criminalizing, recriminalizing, and overcriminalizing all forms of conduct, much of it innocuous, to the point of erasing the line between tolerable and unacceptable behavior.

Where once the criminal law might have stood as a well-understood and indisputable statement of shared norms in American society, now there is only a bloated compendium that looks very much like the dreaded federal tax code. The end results can be downright ugly: a soccer mom thrown in jail in a small Texas town for failing to wear a seatbelt; a 12-year-old girl arrested and handcuffed for eating french fries in a Metro station in Washington, DC; and defendants serving 25-year to life sentences in California prisons for, among other things, pilfering a slice of pizza.

These incidents may seem like outliers, the exceptions rather than the rule. And to be sure, every U.S. jurisdiction has on its books a set of crimes and punishments that are incontrovertible, involving acts and attendant mental states that must be proscribed in order to constitute a just society—murder, rape, robbery, arson, and the

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Former Costa Rican president Miguel Angel Rodríguez talks with the famous Peruvian novelist and former presidential candidate Mario Vargas Llosa at “A Modern Vision for Latin America,” a Sept. 30 conference sponsored by the International Foundation for Liberty and hosted by Cato. See p. 19.

like. But beyond those so-called common law crimes is a seemingly endless list of behaviors that, at a minimum, do not seem well suited for the penal code and at times appear to fall within a zone of personal liberty that should be outside the state’s coercive powers. Moreover, the sheer number of idiosyncratic laws and the scope of discretionary enforcement might give reason to wonder whether the exceptions have become the rule.

Some crimes barely pass the laugh test. New Mexico makes it a misdemeanor to claim that a product contains honey unless it is made of “pure honey produced by honeybees.” Florida criminalizes the display of deformed animals and the peddling of untested sparklers, as well as the mutilation of the Confederate flag for “crass or commercial purposes.” Pretending to be a member of the clergy is a misdemeanor in Alabama, and Kentucky bans the use of reptiles during religious services. Maine prohibits the catching of crustaceans with anything but “conventional lobster traps,”

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The Rise and Fall of the GOP



Following an editorial board meeting this summer with newly appointed National Republican Committee chairman Ed Gillespie, the *Manchester Union Leader* editorialized that Gillespie “said in no uncertain terms that the days of Reaganesque Republican railings against the expansion of the federal government are over. . . . Today the Republican Party stands for giving the American people whatever the latest polls say they want. . . . The people want expanded entitlement

programs and a federal government that attends to their every desire, no matter how frivolous? Then that’s what the Republican Party wants, too.”

Hmmm. Seems we’ve come a long way since the days of Ronald Reagan—not to mention Barry Goldwater. The decline of federalism and limited government in America accelerated in 1936 when FDR threatened to pack the Supreme Court if it didn’t turn a blind eye to blatantly unconstitutional legislation. Goldwater was the first GOP candidate for president to challenge that lamentable development and promise to return America to its heritage of liberty.

And Barry Goldwater was reaching America with his message. Many people forget that Goldwater was just a few points behind his good friend Jack Kennedy in the last poll taken prior to Kennedy’s assassination. Goldwater subsequently said that the moment he learned of Kennedy’s death he knew that he, Goldwater, would never be president. The American people were not about to, in effect, endorse an assassination by throwing out the incumbent party. True, Goldwater was demonized in 1964, but the depth of his defeat had less to do with that than it did with the assassination of President Kennedy (and nothing to do with Lyndon Johnson).

All of which tended to mask the resurgence of the Republican Party, which, thanks to the Goldwater campaign, had become a party of ideas with a coherent philosophy of limited government. Even the regrettable election of Richard Nixon (whose “philosophy” consisted of “screw my enemies”) twice to the presidency did not stop the growing philosophical sophistication of the GOP. Ronald Reagan’s memorable speech in support of Goldwater led directly to his election as governor of California in 1966 and then to the presidency in 1980. Reagan campaigned in a very Goldwateresque fashion. Government was a danger to our liberties and had grown far too large and intrusive. We should eliminate the Departments of Education and Energy because education and energy are not federal responsi-

bilities. Americans overwhelmingly endorsed that approach—just over two decades ago.

Things started to go downhill for the GOP philosophically speaking with the decision of the Reagan forces in 1984 to run a “Morning in America” campaign, long on beautiful scenery and short on ideas. Whether because of the Gipper’s declining health or gutless advisers, the campaign missed an incredible opportunity to capitalize on an enormously popular president by laying out specific programs to shrink the federal government. Reagan got his landslide, but no mandate. Reagan and his advisers compounded the uninspired second term by effectively turning over the presidency to George Bush, a man with few or no political principles. The first thing Bush did was empty the federal government of virtually all Reagan appointees.

The late 1980s and the 1990s also saw the rise of supply-side economics, which further undercut the GOP’s philosophical approach to governance. Don’t worry about all the nasty arguments about the proper role of government, the supply-siders argued. Just cut marginal tax rates and the economy will be spurred on to grow faster than government, thereby shrinking

government as a percentage of GDP. Tax cuts were and are a good idea, to be sure, but it was wrong to pretend the hard work of promoting limited government could be ignored. Republicans, with a few notable exceptions, stopped talking about less government.

The vacuous campaigns of George Bush and Bob Dole then gave us eight years of the political triangulation of Bill Clinton. The philosophical collapse of the GOP came with the 2000 campaign of George W. Bush, who ran without calling for a single spending cut, much less the elimination of programs, agencies, or

departments. Worse, neoconservatives moved to fill the philosophical vacuum created by the supply-siders. The neocons openly support big government and consider FDR to have been a great president. They are the intellectuals who came up with the “faith-based initiative” and like to frame the political debate as one between people who want religion in the political square and the secularists who don’t. The neocons are the ones who pushed Bush to call for greater federal government involvement in K-12 education than any president in American history.

And now the neocons are calling for American Empire. We have, indeed, come a long way from Reagan and Goldwater.

“Reagan campaigned in a very Goldwateresque fashion. Government was a danger to our liberties.”

—Edward H. Crane

“Glamorous young pro-capitalist”—Washington Post

Norberg Challenges Anti-Globalizers

In the debate over globalization, the pro-capitalism side has often suffered from a charisma gap. Although advocates of free markets have mustered strong arguments and reams of statistics, they have tended to be aging economists or corporate CEOs. Economists and CEOs are certainly more credible in academic and policy circles than the hip twenty-somethings of the anti-globalization movement, but they have made it possible for their opponents to caricature the pro-market position as the self-interested sophistry of stuffy plutocrats.

In 2001 a new champion of liberty emerged from Sweden, long known as the home of the socialistic “third way.” Johan Norberg, a scholar at the Swedish think tank Timbro and a twenty-something himself, penned *In Defense of Global Capitalism*, a Swedish tome laying out the case for free trade and free markets. The book was a success in Europe, but the initial English translation received limited attention in the United States. Seeing an opportunity, the Cato Institute obtained rights to publish an updated and Americanized version of the book in the United States.

In Defense of Global Capitalism is burst-

ing with evidence of globalization’s good effects. There are dozens of charts and graphs showing correlations between economic liberty and various measures of human advancement. The pattern that emerges is clear and compelling: economic freedom not only makes us richer, but it also allows us to live longer, healthier, more comfortable lives. And it does not, as many critics claim, lead to rising inequality. On the contrary, Norberg finds that if one divides the world’s nations into fifths on the basis of their level of economic freedom, the most regimented economies are the most unequal.

Norberg also challenges the contention that wealthy countries have grown rich at the expense of poorer nations. The poor nations remain poor because they have failed to adopt the capitalist institutions that made developed nations rich, he says. Indeed, not all poor nations are stagnating. Nations that have adopted free-market policies, such as South Korea, Taiwan, and Chile, have experienced impressive growth rates and are rapidly approaching Western levels of affluence. On the other hand, the economies of nations in the Middle East and Africa that have kept their

markets closed and their economies rigid have stagnated and are falling further behind.

Few people dispute that globalization is good

for the wealthy, but Norberg makes a forceful case that globalization is an even bigger windfall for the world’s disadvantaged. More choice and competition are a welcome improvement to the quality of life for Western consumers, but they are a matter of life or death for those still trapped in poverty.

In Defense of Global Capitalism is available in paperback for \$12.95 and in hardcover for \$22.95. It can be purchased in bookstores, at www.catostore.org, or by calling 800-767-1241.



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Szasz, Hentoff, Novak discuss new books

Perils of Empire, Benefits of Liberty

◆**August 4:** “Empire” has long been a dirty word in intellectual circles. But at a Cato Hill Briefing, “The Perils of Empire: Foreign Policy for a Free Republic,” Chris Preble noted signs that the term is becoming respectable. Interventionists on both the left and the right have conceded that the sprawling American military establishment has begun to resemble an empire. Some have even embraced the term, arguing that, unlike past empires, the American empire will promote individual rights and democracy rather than national interests. Preble agreed that America’s military commitments do resemble an empire and contended that that is far from being a good thing. Empires are expensive in both lives and treasure, he pointed out, and even



the best-intentioned imperial policies are likely to engender hostility and suspicion in other nations.

◆**August 8:** Although much attention has been focused on federal court decisions protecting such rights as free speech and sexual privacy, people tend to overlook the role of state courts in protecting individual rights. Many state constitutions contain broader protections of individual rights than the national Bill of Rights, and in some cases state courts have struck down laws under their own constitutions that would have passed constitutional muster at the federal level. Washington State Supreme Court Justice Richard B. Sanders, a strong advocate of limiting the powers of government through state courts, often casts the dissenting vote in cases involving the power of the Washington State government. In a Policy Forum, “Do State Constitutions Still Protect Liberty?” Justice Sanders surveyed the mixed record of state courts in protecting liberty and criticized decisions in which state courts fail to uphold constitutional limits on government power and constitutional guarantees of individual rights.

◆**August 12:** Unlike most Washington politicians, libertarians don’t believe in magic. At least that’s how Cato executive vice president David Boaz characterized libertarianism at a Cato Hill Briefing, “The Libertarian Vision of Life, Liberty, and the

Pursuit of Happiness.” Boaz said that politicians ignore the laws of economics and the lessons of history and assume that the laws they pass will have precisely the effect they intend. Libertarians, in contrast, understand that reality matters and that laws often have unintended consequences. Because laws often backfire, Boaz argued, society is best governed by three simple rules everyone learns in kindergarten: don’t hit people, don’t steal, and keep your promises. Unfortunately, politicians are subject to intense pressures to expand the power of government beyond enforcing those simple rules. Special interests lobby relentlessly for government programs that provide concentrated benefits to small groups at the expense of consumers and taxpayers. The Cato Institute, he said, exists to counter the trend toward ever-expanding government and restore the principle of limited, constitutional government.

◆**August 13:** Discussions of health care often overlook fundamental economic principles that are crucial to understanding the issue, said Peter VanDoren, editor of Cato’s *Regulation* magazine at a Cato Hill Briefing, “The Market for Health Care and Health Insurance: Can the Government Improve It?” In a brief introduction to the economics of the insurance market, VanDoren pointed out that private insurance contracts are risk-management tools, not income-redistribution schemes. Many contemporary political battles over health care, he said, concern attempts to use health insurance markets to subsidize people with predictable health care expenses at the expense of other patients. In addition to creating political controversy, VanDoren argued, such schemes suffer from the problem of *adverse selection*: people who know their costs will be low opt out of the insurance market entirely, causing everyone else’s premiums to rise. The widely cited problem of uninsured young adults, he argued, is due as much to adverse selection as to inability to pay.

◆**September 3:** A conference cosponsored with the International Policy Network, “Sustainable Development: One Year after the World Summit,” considered the world’s progress one year after the United Nations World Sum-



David Schindler of the John Paul II Institute, coeditor with Doug Bandow of *Wealth, Poverty, and Human Destiny*, discusses capitalism and freedom at a Cato Book Forum.

Public health specialist William Bicknell is interviewed after his remarks at Cato’s Sept. 17 Hill Briefing on smallpox and bioterrorism.

mit on Sustainable Development in Johannesburg, South Africa. Leon Louw of South Africa's Free Market Foundation argued that economic growth in the Third World requires only that governments leave their people alone so they can focus on producing wealth instead of evading bureaucrats. The American Enterprise Institute's Indur Goklany stressed that rising wealth produces other socially desirable outcomes, such as better nutrition and lower infant mortality. James Shikwati of the Inter Region Economic Network in Kenya offered firsthand accounts of the misery caused by poverty in underdeveloped countries. Julian Morris of Great Britain's International Policy Network offered some historical examples of economic policies that were not sustainable: the centrally planned USSR, Brazil's state-directed program of import substitution, and the kleptocracies of many African nations. In comparison, he said, Western capitalism is a model of sustainability. Thompson Ayodele of Nigeria's Institute for Public Policy Analysis said that the rule of law is crucial to economic development as well as to social justice. Weak systems of property rights, he said, allow the powerful to expropriate the wealth of the masses. Finally, Barun Mitra, director of the Liberty Institute in India, argued that modern Western production methods are more sustainable than the alternatives because they make efficient use of environmental resources.

◆ **September 4:** Globalization has allowed Johan Norberg to sell his book, *In Defense of Global Capitalism*, to a global audience. But, he said at a Cato Book Forum, he is a product of globalization in an even more basic way: his Swedish ancestors likely would not have survived without the benefits of free trade in the 19th century. Just as an earlier wave of globalization lifted Sweden out of poverty decades ago, he argued, access to the markets of wealthy countries can lift today's developing nations. Unfortunately, he said, the world's wealthy nations have limited market access to many of poor countries' most viable products, particularly agricultural goods and textiles. The *National Journal's* Bruce Stokes presented survey results showing that globalization and capitalism are generally popular but that many people in the most advanced countries blame capitalism for an overly fast-paced, "24/7" lifestyle.

South Carolina governor Mark Sanford and his wife Jenny talk with José Piñera after Sanford gave the closing address at the annual Cato Club 200 Retreat in Charleston, Sept. 11–14.



Cato Club 200 members ride an open streetcar to a dinner at Charleston's Old Exchange.

◆ **September 5:** With the world's trade ministers set to meet in Cancun the following week, four trade experts gathered for a Cato Policy Forum, "The Road from Cancun to Free Trade in Manufactured Goods," focused on the prospects for the upcoming trade round and the relative merits of bilateral, multilateral, and global trade agreements. Ernie Preeg of the Manufacturers Alliance/MAPI argued that trade liberalization produces roughly equal benefits for the developed and developing worlds but that developing countries benefit much more in percentage terms because they have smaller economies. William Lane of Caterpillar stressed the importance of free trade to American manufacturers. Arvind Panagariya of the University of Maryland argued that bilateral trade agreements are harmful because they divert attention from broader agreements, but Cato's Dan Griswold disagreed, saying that negotiators need another option when World Trade Organization negotiations stall.

◆ **September 9:** Although the dot-com boom may be over, the Internet looks poised to rev-

olutionize another industry. Voice-over-IP (VOIP) protocol allows voice communication between any two computers connected to the Internet. As adoption of the technology increases, it will pose serious challenges to the existing regulatory structure and threaten the future revenues of traditional telephone companies. Participants at a Cato Policy Forum, "Will Internet Telephony Bring About a Revolution in Telecom Policy?" debated the regulatory implications of VOIP. Participants included representatives from AT&T and Verizon, federal and state regulators, and an Internet hobbyist who helped pioneer the use of VOIP technology.

◆ **September 10:** After decades of vigorous debate, almost everyone now agrees that capitalism is an efficient economic system, but the morality of capitalism is still controversial. A balanced treatment of the issue can be found in *Wealth, Poverty, and Human Destiny*, a new book edited by Doug Bandow and David Schindler. At a Cato Book Forum,

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Schindler, a professor of fundamental theology at the John Paul II Institute, argued that defining freedom in strictly material terms is a mistake, because true freedom consists of the search for meaning. Capitalism, he says, focuses too much on economic production, to the exclusion of questions of faith. Bandow, a Cato senior fellow, argued that capitalism is an intrinsically amoral system but that it is preferable to the alternatives because it allows individuals maximum liberty to pursue virtue. Michael Novak of the American Enterprise Institute emphasized the natural synergies between Christianity and capitalism, pointing out that the Bible endorses hard work and that capitalism helps us satisfy the Biblical imperative to care for the poor. Cato's Dan Griswold argued that, although relative inequality has increased in some parts of the capitalist world, the far more important point is that everyone—rich and poor alike—is getting wealthier.

◆ **September 12:** The proposal by Sens. John McCain (R-AZ) and Joe Lieberman (D-CT) to limit carbon dioxide emissions is strikingly similar to the Kyoto protocols that the Senate resoundingly defeated, said Cato climatologist Patrick Michaels at a Cato Hill Briefing, “McCain-Lieberman on Global Warming: A Journey to Nowhere.”



Dan Griswold talks with economist Arvind Panagariya at a Cato Policy Forum on the prospects for trade liberalization at the WTO meeting in Cancun.

The proposal would mandate carbon dioxide reductions to 2000 levels by 2010 and to 1990 levels by 2016. Worse, it would require the creation of a new carbon bureaucracy to monitor emissions. This, Michaels argued, could be the opening wedge for even more intrusive monitoring of Americans' economic activities. The McCain-Lieberman proposal would impose considerable costs on the economy, he contended, but have a minuscule effect on future warming rates.

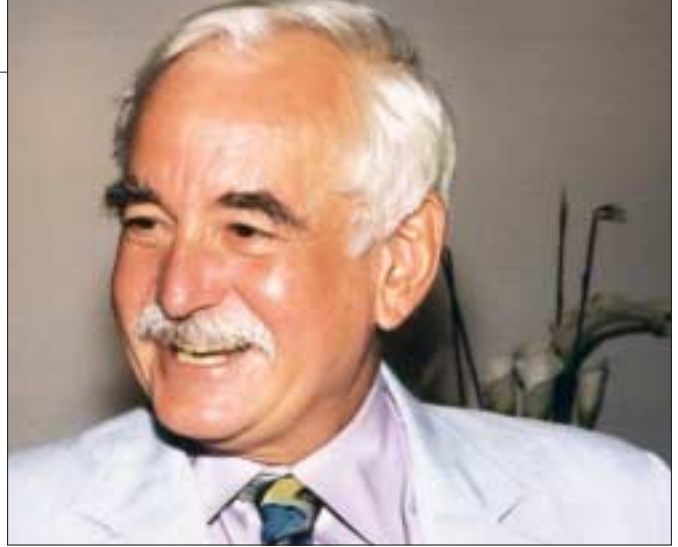
◆ **September 17:** Attendees at Cato's second annual Constitution Day celebration overflowed Cato's Hayek Auditorium to hear speakers, including Commissioner Bradley A. Smith of the Federal Election Commission and former solicitor general Kenneth W. Starr, review the just-concluded October 2002 term and preview the upcoming October 2003 term. The symposium, titled “The Supreme Court: Past and Prologue,” coincided with the release of the 2002–2003 edition of the *Cato Supreme Court Review*. At the conclusion of the symposium, Walter E. Dellinger, acting solicitor general under President Clinton, delivered the B. Kenneth Simon Lecture, “The Indivisibility of Personal and Property Rights: A View from the Founding.”

◆ **September 17:** U.S. preparations for a smallpox bioterrorism attack are woefully deficient, warned two public health experts at a Cato Hill Briefing, “Smallpox and Bioterrorism: The Threat, the Risks, and Why the Vaccination Plan Is Stalled.” William Bicknell of the Boston University School of Public Health warned that the Bush administration's “ring containment” strategy is likely to be inadequate in the face of a well-planned terrorist attack. Furthermore, he said, even the Bush plan is stalled due to exaggerated perceptions of the vaccine's risk and cost and underestimates of the terrorist threat. Kenneth Bloem, former CEO of Stanford University Hospital, blamed institutional inertia, a culture of caution, and a lack of systems orientation in the nation's public health establishment for the delays. Sen. Judd Gregg (R-NH) spoke at the event and expressed his alarm at the lack of preparation.

◆ **September 23:** The proposed constitution for the European Union compares unfavorably with the U.S. Constitution, said speakers at a Cato Policy Forum, “The Future of Liberalism in the European Union.” Helen Szamuely, director of research at the Bruges Group, noted that the proposed constitution attempts to address every possible political issue and characterized the project as the work of old men. Irwin Stelzer, director of economic policy studies at the Hudson Institute, warned that the proposed changes were crafted by Europe's elite and are designed to stifle economic liberty. Cato's own Patrick Basham pointed out that the proposed constitution's length and open-ended nature mean that it places essentially no constraints on expansion of the power of the EU's bureaucracy.

◆ **September 24:** The complex topic of broadband regulation was the focus of “Telecom and Broadband Outlook after the FCC's UNE Triennial Review Decision,” a Cato Policy Forum. Verizon's Tom Tauke emphasized the need for clarity in broadband regulations, warning that the industry will not undertake new capital investment without confidence that its investments will be protected. John Windhausen of the Association for Local Telecommunications Services argued that smaller carriers need access to local loops to compete effectively. Ray Gifford of the Progress & Freedom Foundation criticized the many inconsistencies in the Federal Communication Commission's decision and predicted that it would not survive court scrutiny. Finally, telecom consultant John Malone warned that the industry faces serious challenges from overseas competition and regulatory uncertainty.

◆ **September 25:** Psychiatry is a menace to individual liberty, argued prolific author Thomas Szasz, a pioneering critic of psychiatry, in a Cato Distinguished Lecture, “Libertarian Principles and Psychiatric Practices: Are They Compatible?” The distinguishing characteristic of the psychiatric profession, he said, is its power to incarcerate. Szasz drew parallels between that practice and other forms of coercion such as slavery and the denial of women's rights. Often, he said, such coercion



Washington State Supreme Court Justice Richard B. Sanders discusses the role of state constitutions in protecting liberty at a Cato Policy Forum.

is characterized as taking care of persons not able to care for themselves. Involuntary commitment is closely linked to the insanity defense, he said; the former locks up the innocent, and the latter excuses the actions of the guilty. Neither, he said, is compatible with the principles of a free society.

◆**September 26:** Columnist Nat Hentoff criticized the USA Patriot Act and its aggressive use by the Bush administration at a Cato Book Forum for his book, *The War on the Bill of Rights and the Gathering Resistance*. Fortunately, he said, grassroots efforts to defend civil liberties are emerging around the nation. Three states and 173 cities have passed resolutions criticizing the Patriot Act, he said. Numerous former judges have signed a petition objecting to the unlawful detainment of accused terrorist Jose Padilla. And librarians around the country continue to shred borrowing records for fear that they will be seized by law enforcement agents and used to prosecute individuals for their reading habits. The Heritage Foundation's Paul Rosenzweig commended Hentoff for his vigilance in defending civil liberties but argued that many of the provisions in the Patriot Act are necessary to combat terrorism.

◆**September 29:** A panel of participants in the recent WTO negotiations in Cancun, Mexico, weighed in on the outcome of the talks in a Cato Policy Forum, "Cancun Postmortem: What Next for the WTO?" All agreed that the talks were a failure, but there was disagreement about who was to blame. Assistant U.S. Trade Representative Chris Padilla said that a coalition of developing nations led by Brazil and India was more interested in grandstanding and making unilateral demands on rich countries than in serious negotiation. Procter and Gamble executive R. Scott Miller cited the failure to reach agreement on agricultural issues as a major problem. Columnist Bruce Stokes opined that all sides shared blame, pointing out that many trade ministers lacked the flexibility to make substantive concessions. Cato's Brink Lindsey declared "a pox on 146 countries" but singled out U.S. protectionism in steel and agriculture as a major cause of North-South friction.



CNN Español interviews Ian Vásquez, director of Cato's Project on Global Economic Liberty, on the prospects for a Central American free-trade agreement.

Civil libertarian author Nat Hentoff signs copies of his latest book after a Cato Book Forum on Sept. 26.



◆**September 30:** Cato played host to the International Foundation for Liberty, an organization dedicated to promoting individual liberty in Latin America, at its first conference in the United States, "A Modern Vision for Latin America." Sen. John Sununu (R-NH) kicked off the first panel, stressing the importance of free trade and open markets in promoting a free and prosperous Latin America. Former Costa Rican president Miguel Angel Rodríguez lamented the waning enthusiasm for liberal reforms, despite their success in strengthening democratic institutions and stabilizing prices. Mexican economist Manuel Suárez-Mier was less optimistic, noting the

failure of many Latin American countries to follow through on reforms begun a decade ago. Luis de Guindos, a deputy minister of the economy in Spain, described the liberal reforms that have helped Spain become the freest and most dynamic economy in Western Europe. Cuban columnist Carlos Alberto Montaner said that Latin America's centuries-long history of authoritarian rule has led to the cultural alienation of society from the state. Famed Peruvian author Mario Vargas Llosa stressed the importance of culture and emphasized the need to promote liberal values if the goal of a modern Latin America is to be achieved. ■

What Makes Development Sustainable?

On September 3, the Cato Institute and the International Policy Network cosponsored a conference titled “Sustainable Development: One Year after the World Summit.” Among the speakers were James Shikwati of the Inter Regional Economic Network in Kenya, Julian Morris of the International Policy Network in Great Britain, and Barun Mitra of the Liberty Institute in India. Excerpts from their remarks follow.

James Shikwati: If you visit an average African family you will not find them factoring the government into their day-to-day lives. Everybody wakes up in the morning, goes to the farm, and struggles day in and day out to get food on his plate. And whereas here in America you have health clubs where people check their weight, in Africa people are not sure what they will have for lunch and dinner. In the United States the biggest issue is security, but conflicts in Africa tend to focus on how people can access enough wealth to bring food to their plates. So you can see we are talking about two different worlds.

In Africa 70 percent of the population are engaged in subsistence agriculture. Everybody wants to be a farmer because that is the best way to ensure a steady food supply. And African farmers rely on the climate. They apply little of the knowledge and innovation that help to achieve high agricultural productivity.

We have good friends from the developed countries who have tried to help with some aid. We rely heavily on donor funding. We have economic experts who strategize about how best to get money from the developed world, from the World Bank and the IMF. I am not saying all of them do that, but a lot of time and energy are spent on getting aid instead of helping the 70 percent of the population still locked in agriculture move to higher levels of production.

Third World governments are trying their best to promote sustainable development, but I don't think they are taking the right path out of poverty. And because they have partners that are willing to subsidize their own policies in the name of aid, they have been keeping people poor

for the last 40 years. When you send money to African governments, the few at the top say: “We are developing. We are doing well because we are getting your money.” But the people who are on the ground, who do not even know that money is coming in, remain poor.

We have many internal problems. We do not have property rights or the rule of law. Our governments are intervening in people's lives too much; some Africans are scared even to start a business. But our governments also have to answer to other governments that give them aid, which makes the whole equation a bit difficult to solve.

When talking about sustainable development, I think we should focus on the indi-



James Shikwati: “Aid subsidizes corrupt government officials. It is like a life-support mechanism that helps a dictatorial government to remain in power.”

vidual African. And that is what we have been trying to do in our organization, to encourage people not to look to government to solve their problems, because the government is ignoring the population, which doesn't give it money, and paying attention to those who do—the donor countries.

By ignoring the people, governments are making it difficult for people to be productive and solve their own problems. Let me give you an example. In Kenya we have a city called Kisumu, which has a population of around 1.6 million people. This

city is close to Lake Victoria, the world's second largest freshwater lake. But if you visited this city, you would note that people have taps in their houses but have never seen water running out of those taps, although the lake is a few meters away. People keep sending requests to the government, “We want water,” and the government keeps taking money without delivering water. Yet we have got Kenyans who are trained as engineers, as water experts, who could set up companies and say, “Give me some money and I will provide water.” But instead, our government has asked for donor funding to ensure that water flows from those taps.

Malaria kills tens of thousands of children in Kenya. It is a serious problem in all of Africa. People in Kenya have listened to outside agents, who have promoted bed mosquito nets as the solution to the malaria problem. And now we have a lot of money from the World Bank and elsewhere to ensure that we get bed mosquito nets. But if you have been to an area where there are mosquitoes you know that they do not wait until you are in bed to bite you. Mosquito nets do keep you safe when you are sleeping, but they do not help solve the malaria problem. So, unfortunately, the policy is donor driven; because the money is coming for bed nets, all the experts cheer for bed nets, when they know that bed nets will not solve their problem.

In summary, aid subsidizes corrupt government officials. It is like a life-support mechanism that helps a dictatorial government to remain in power even when people are pushing it to move out. But if we had trade, people would be more productive, because governments don't trade, people trade. And when you are economically empowered as an individual, you can access more information, vote out a government that is not doing what it is supposed to do. But if you keep subsidizing our governments in Africa in the name of aid, and at the same time say that you are helping us, I think that is not safe for Africa.

Julian Morris: In 1987 the Brundtland Commission defined sustainable development as “development that meets the needs of

“It was taken as a given that development required industrialization, and it was supposed that governments could speed this process up by preventing imports of industrial goods.”

the present generation without compromising the ability of future generations to meet their needs.” This seems unobjectionable: How can one argue against development that meets the needs of both the present and future generations? To do so would be facile.

The problem is not the term but the uses to which it has been put. Academics, activists, and governments across the world have used “sustainable development” to justify all manner of more-or-less arbitrary interventions in the economy. Ironically, many of these would, if enacted, likely harm not only the present generation but also future generations. For example, restrictions on the use of fuel—justified on the specious grounds that they will protect future generations from climate change—raise the cost of energy, food, and other goods. Such interventions are not only regressive—hitting the poor hardest—they also slow economic growth, preventing people in the future from living better lives.

In order to examine such absurdities and to offer an alternative more constructive formulation of “sustainable development,” I commissioned a group of experts to address various aspects of the concept. The result is *Sustainable Development: Promoting Progress or Perpetuating Poverty?* (Profile Books, 2002).

One challenge was to identify instances of “unsustainable” development, so that we can learn from those experiences and identify ways of making development more sustainable. Perhaps the most egregious example was the Soviet Union. It will not surprise an audience at the Cato Institute that central planning doesn’t work. But it is instructive to look again at why central planning doesn’t work.

In the Soviet Union, successive governments attempted to increase output simply by increasing inputs—the presumption being that by putting more into the system, they would get more out. For a few years this worked—increased inputs led to increased output. But to the surprise of the central planners, that was followed by a flattening and then a decline in output.

The ultimate reason for the failure of the Soviet Union was explained by Ludwig Von Mises in *Socialism*. In a central-

ly planned system, Mises observed, planners have no effective guide as to how best to use factor inputs. In a market system, prices, brands, and other signals enable participants to make rational decisions about which factors to use and provide a stimulus to the development of more efficient production methods. In a centrally planned system, there are no such signals.

In fact, the Soviet government, after a period, did try to use prices. But because none were being generated locally, the planners decided to use the prices in Sears catalogs as a proxy. But of course Sears catalogs don’t necessarily give a realistic indication of what local prices should be in the USSR, so the technique did not work terribly well.



Julian Morris: “One challenge was to identify instances of ‘unsustainable’ development, so that we can learn from those experiences.”

The sad thing is that not only does central planning not work; it actually has horrible adverse consequences. In an attempt to implement central planning more effectively, the communist rulers murdered people who disagreed with their views, sent millions of people to gulags, and in many other ways violated basic freedoms. Worse, millions of people died as a result of the inability of the system to deliver basic necessities.

For people who are concerned about the environment, the Chernobyl disaster is a horrendous instance of what happens when government attempts to control

everything from the center. Another example is the Aral Sea. Beginning in the late 1930s, the Soviet central administration attempted to increase cotton production in the region around the Aral Sea by using water from the rivers that fed it. Although there was an initial rise in production, this was followed by a decline as the water table fell and agricultural land became saline. The sea is now at about one-third its previous level, has a very high salt concentration, and is polluted with all manner of contaminants. The fish, which previously were responsible for an industry employing more than 60,000 people, are mostly gone. And the ecosystems of the sea and surrounding areas have been changed beyond recognition.

A second example of unsustainable development is import-substitution industrialization (ISI), which was promoted very widely after World War II and was implemented aggressively and enthusiastically in Latin America, especially in Brazil. The justifications for ISI policies were two: First, it was taken as a given that development required industrialization. Second, it was supposed that governments could speed this process up by preventing imports of industrial goods—thereby encouraging the development of local industry.

Following the advice of proponents of ISI, Brazil and other Latin American economies put massive restrictions—quotas, tariffs, and outright bans—on imports of industrial goods. As a result, there was a temporary rise in industrial output. This is not surprising: if you restrict the import of goods that people traditionally import, then local production will step in to some extent.

However, the initial cost was a reduction in agricultural output, as productive factors moved into industry and away from agriculture, and a migration of people from the countryside into the cities. After a period of time, industrial output began to level off. The reasons are manifold, but most significant, the output was no longer competitive. Because it was no longer possible to purchase essential productive inputs from abroad, efficiency of outputs was constrained. The costs of inputs rose and

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“Leaders such as Nyerere, Mengistu, Amin, Abacha, and Moi employed various forms of centralized control. The results were corruption, embezzlement, and the entrenchment of the ruling elite.”

POLICY FORUM *Continued from page 9*

so competitors overseas did better.

To save the industries that had been sponsored by import-substitution policies, governments started to subsidize them. To pay for that, they raised taxes on agriculture and monetized government debt through inflation. The net result was hyperinflation, combined with unemployment and negative growth.

In addition to that, there was social chaos. In part, this was a result of the fact that many people had migrated to towns and were now unemployed. If they had been unemployed in the countryside, they would have had their social support networks that had been developed over decades. But the new migrants to towns hadn't developed such networks.

The record of Africa, our third example, is even more depressing than that of Latin America and in many ways similar to the USSR's. Leaders such as Nyerere (Tanzania), Mengistu (Ethiopia), Amin (Uganda), Abacha (Nigeria), Moi (Kenya), and others employed various forms of centralized state control of resources and enterprises, restrictions on property ownership, and restrictions on trade. The results—sometimes intentional, sometimes not—were corruption, embezzlement, and the entrenchment of the ruling elite. Another result was conflict and war. Oppressed minorities—or even majorities—often rose up and tried to capture the power of the state for themselves. Other consequences included slow, zero, or even negative growth and environmental degradation.

What are the lessons for sustainable development from those examples of unsustainable development? The first and most obvious lesson is that governments should not try to plan centrally. They should decentralize economic activity, establish private ownership through clearly defined property rights, and allow people to trade freely both locally and internationally.

The second lesson is that governments should be prevented from engaging in arbitrary or discretionary actions. If you want to prevent corruption, embezzlement, and so on, then ensure that any restrictions imposed on the ownership of property

or the freedom to trade are justified by abstract principles that are, as far as possible, universally accepted. Meanwhile, laws must apply equally to the governing and to the governed.

Barun Mitra: It seems to be a common assumption that sustainability requires reduced consumption. My basic thesis is that it is actually increased consumption that leads to conservation and improving environmental quality. To me, the best illustration of this is the United States, the most industrialized, advanced country in the world. People here enjoy environmental qualities that can hardly be found in the



Barun Mitra: “It is actually increased consumption that leads to conservation and improving environmental quality.”

much more pristine environments of India, Africa, and many other parts of the world.

Why is that so? Do people here consume less, or does the United States do something that makes improvement in quality possible? Julian Simon, who was a friend of Cato and a mentor of mine, would point out that the reason consumption is not the problem is that people who consume don't have only mouths; they also have hands and minds. Therefore, the more you consume, the better incentive you have to improve your efficiencies and, consequently, improve the environment.

Let me give you an example. In India, a typical household spends a larger fraction of its income on energy than does an American household. Although energy consumption in India is a fraction of that in the United States, one reason why poor people in India and elsewhere desperately attempt to conserve energy is to save money—not because they want to conserve for the future but because they need to conserve to survive in the present.

Another example is agriculture. India today has about 1.1 billion people, which is about three times as many as 50 years ago. You might guess from this that India in the 1950s was very sustainable, and yet it wasn't. In fact, until 1950, it is estimated that, on average, every year a million people died of starvation, not because of any particular famine or drought but from “standard” starvation. Starvation and famine were the norm.

It would have seemed in 1950 that to feed its population India would need more land. After all, agriculture depends on land. But as India progressed agriculturally, particularly in the last 15 to 20 years, it became quite obvious from any data that we look at that India does not seem to require as much land.

If we were producing wheat with the technology of the 1950s, to achieve the current level of production, we would require about a third of India's total land mass just for that one crop. In fact, today India uses only 30 percent of that area because of the higher productivity that has come with modern farming practices. And if India could produce wheat at the levels at which some of the most productive countries are currently doing so, the land area under wheat cultivation would perhaps be 50 percent less than it is today, even while maintaining current levels of production.

If you consider all the agricultural crops that India needs to produce to feed itself, the technology of the 1950s and the land mass of India were not sufficient to feed its present population. By the 1970s, when the green revolution technologies were introduced, India's demand for agricultural land had already fallen. In the last 30 years

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“I don’t think anyone in 1950 would have been able to predict that India, with its 1.1 billion population, would not require as much land in 2003 to feed its people as it did in 1950.”

POLICY FORUM *Continued from page 10*

the green revolution has spread to many other parts of India and technology has improved, further reducing land use despite a rising population. Today, India is seeking to export some of its food.

I don’t think anyone in 1950 or even in 1970 would have been able to predict that India, with its 1.1 billion population, would not require as much land in 2003 for agriculture to feed its own people as it did in 1950.

This leads to a very interesting question: What happens when land goes out of agriculture? One of the nonagricultural purposes is conservation of the environment, natural resources, and biodiversity. The lower demand for land for agriculture is what makes conservation possible, not reduced consumption.

That is exactly what you have done in the United States and in many other developed countries. The United States has not given up agriculture. The United States is the world’s largest agricultural producer and exporter. But its demand for agricul-

tural land has fallen dramatically, which is why you have so much land available for nonagricultural purposes, such as forests and wildlife habitat.

The share of India’s gross domestic product coming from agriculture has declined from about 60 percent in 1950 to about 25 percent today, yet the number of people still dependent on land has barely declined from 70-odd percent to 60-odd percent. This is why in poor countries sustainable agriculture, as it is defined in the West, is so unsustainable—it causes poverty.

The government has been most focused on the industrial sector, because that sector is the most visible sign of economic progress. But, as a result, the industrial sector has barely moved in the past 50 years. In terms of its size, it has increased only slightly. In terms of its labor, it has gone from 10 to 15 percent. Which seems to suggest that we might actually bypass the industrial revolution as most of the Western world knew it.

Meanwhile, the service sector in India and many other countries is expanding rapidly, because this is where productivity growth has been the fastest. Incidentally, this has hap-

pened, unlike in the industrial sector, because the government barely recognized the service sector for much of the past 50 years.

This is consistent with the pattern in all countries that have developed. There is no other way to develop economically but to improve and move from one sector to another—primarily to move from agriculture to industry and to services, to move from physical resources to human and intellectual resources. This is the reason the United States tends to be so powerful. A larger labor dependence on agriculture is synonymous with poverty. Increased agricultural production is contributing to environmental improvement rather than the other way around.

We probably have the greatest opportunity of all time today because we have our natural allies, the people at the bottom. A globalized world economy is presenting many unpredictable opportunities. The poor suffered the most when governments sought to control the economy. These are the people who have nothing to lose anymore. To paraphrase Marx, the poor have nothing to lose but their poverty. ■

In the Fall 2003 Issue of *Regulation* . . .

- **William A. Niskanen debates Robert Hahn and Erin Layburn on the value of cost/benefit analysis**
- **Timothy Lynch debates Timothy Sandefur on the legitimacy of plea bargaining**
- **Peter VanDoren examines science and markets in environmental policy**
- **Robert E. Litan, Peter J. Wallison, and R. T. McNamar look at accounting in the post-Enron world**



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Soaring entitlement spending could spur generational war

How Free Trade Combats Terrorism

In “The Trade Front: Combating Terrorism with Open Markets” (Trade Policy Analysis no. 24), Cato scholar Brink Lindsey argues that encouraging trade and economic reform in the Middle East is vital to the long-term peace and security of the region. Among other things, an economically vibrant Middle East would help reduce the pool of restless young men who are susceptible to terrorist recruitment. Lindsey cites Jordan as a model, pointing out that as a result of the U.S. free-trade agreement with Jordan, exports to the United States contributed 4 percent of Jordan’s GDP and employed 40,000 Jordanian workers in 2002. He argues for a two-pronged approach to trade liberalization. First, he urges the adoption of bilateral free-trade agreements between the United States and Middle Eastern nations. Second, he argues that the United States should temporarily and unilaterally reduce its own trade barriers to secure the benefits of free trade while a long-term trade agreement is being negotiated.

◆Free Airtime Proposal Is Harmful . . .

Sen. John McCain (R-AZ) has proposed that broadcasters be required to provide free airtime to candidates as part of the public interest obligation that accompanies Federal Communications Commission licenses. In “Why Subsidize the Soapbox? The McCain Free Airtime Proposal and the Future of Broadcasting” (Policy Analysis no. 480), Cato’s John Samples and Adam Thierer argue that such a requirement is both unnecessary and counterproductive. Samples and Thierer question the conventional wisdom about supposed evils such as rising campaign expenditures and negative advertising, and they contend that the nonparticipation of many Americans in the electoral process is a choice that should be respected.

. . . and Unconstitutional

Not only is Senator McCain’s free airtime proposal bad policy, but according to Laurence H. Winer of the Arizona State University College of Law, it is unconstitutional as well. Such rules, he says in “The Constitutional Case against Free Airtime” (Policy Analysis no. 481), run afoul of the First Amendment, under which the Supreme Court applies strict scrutiny to congressional regu-

lation of political speech. Furthermore, the recent explosion of media outlets on cable television and the Internet, Winer argues, has undermined the scarcity argument for government regulation, because consumers now have no shortage of timely news outlets competing for their attention.

◆Breathing Life into Dead Capital

Adam Smith and other classical economists considered the importance of property rights too obvious to dwell on. Without clearly defined and legally enforced property rights,



Gerald O'Driscoll

they knew, economic planning is nearly impossible. Unfortunately, economists largely lost sight of that fact early in the 20th century, contend Cato senior fellow Gerald P. O'Driscoll Jr. and Lee Hoskins, senior fellow at the Pacific Research Institute. Fortunately, the authors argue in “Property Rights: The Key to Economic Development” (Policy Analysis no. 482), economists studying the economic failures of some developing countries in recent decades have rediscovered the importance of secure private property as a precondition for prosperity. Because private property systems are closely tied to a nation’s history and culture, the authors express skepticism that U.S. foreign policy can encourage the formation of property rights in other countries. But at a minimum, they say, the American government should avoid policies that undermine indigenous property rights systems that already exist in developing nations.

◆An Alliance in Search of a Mission

Given NATO’s stated purpose of containing the Soviet Union, one might have assumed that the Soviet Union’s collapse would lead to the dissolution of the alliance. Yet the opposite has occurred. Since the fall of the Soviet Union, NATO has undergone a “double enlargement”: former Soviet nations in Eastern Europe have been admitted into the alliance, and NATO’s mission has been expanded to encompass military operations in the Balkans and elsewhere. In “Casualties of War: Transatlantic

Relations and the Future of NATO” (Policy Analysis no. 483), Cato visiting fellow Christopher Layne argues that the real purpose of American support for NATO is to ensure continued U.S. hegemony in Europe. Layne warns that U.S. attempts to maintain dominance indefinitely are likely to provoke hostile reactions.

◆Ending the Corporate Income Tax

In “Replacing the Scandal-Plagued Corporate Income Tax with a Cash-Flow Tax” (Policy Analysis no. 484), Chris Edwards points out three major flaws in the corporate income tax. First, high rates encourage companies to relocate overseas or expend resources devising tax-avoidance schemes. Second, the current tax code relies on concepts such as depreciation and capital gains that are difficult to define precisely and therefore make the tax system prone to loopholes. Finally, the corporate income tax code is rife with inconsistencies such as the differential treatment of debt and equity that distorts economic incentives. Edwards offers two alternatives: full repeal of the tax or its replacement with a cash-flow tax.

◆Transatlantic Family Feud

Many observers have concluded that the tense standoff between the United States and the Franco-German core of Europe over Iraq revealed long-simmering cul-



Leon Hadar

tural differences between the two continents. Neo-conservative Americans characterized Europeans as “castrated Euroweenies,” unable to mount an appropriately vigorous response to the Iraqi threat. Many European intellectuals responded by describing Americans as juvenile and trigger-happy. But, argues Leon T. Hadar in “Mending the U.S.-European Rift over the Middle East” (Policy Analysis no. 485), the U.S.-European friction is due less to cultural or ideological differences than to different interests in the Middle East itself. Chaos in the Middle East, Hadar points out, could disrupt Europe’s trade ties, threaten European security, and lead to a flood of refugees into the EU. Hadar advocates

a U.S. policy of constructive disengagement from the region to allow European powers to take a more active role in Middle Eastern affairs.

◆Vouchers: A Win-Win Proposition

Not only would vouchers spur competition and improve the quality of schools, they could save state governments money too, argues Cato scholar David Salisbury in “What



David Salisbury

Does a Voucher Buy? A Closer Look at the Cost of Private Schools” (Policy Analysis no. 486). Across the United States, average per pupil spending on education now exceeds \$9,000 at public schools, Salisbury points out, while average tuition

at private schools is under \$3,500 at the elementary level and about \$6,000 at the secondary level. Therefore, he argues, states could reap significant savings by offering vouchers of \$5,000 per student—high enough to cover most private school tuitions but still substantially lower than public school costs.

◆Buying Better Elections

In the conventional wisdom, the ever-larger sums spent on political campaigns are cause for alarm. Campaign spending, the theory goes, often goes toward negative and misleading television ads that increase the electorate’s confusion and cynicism. In “The Benefits of Campaign Spending” (Briefing Paper no. 84), John J. Coleman of the University of Wisconsin presents evidence from his own research over the course of the past decade that casts doubt on those common assumptions. He finds that in recent election cycles campaign spending generally had no effect on public trust in government or political participation and that, in many cases, campaign spending increases voter knowledge about candidates and issues. In light of those facts, Coleman concludes, restricting campaign spending is likely to harm the quality of political campaigns.

◆Punishing Congressional Profligacy

Attorney Anthony W. Hawks offers a possible solution to ballooning budget deficits

in “The Balanced Budget Veto: A New Mechanism to Limit Federal Spending” (Policy Analysis no. 487). Under Hawks’s proposed constitutional amendment, if federal spending exceeded revenues in a fiscal year, the president would be granted the authority to reduce or veto individual spending items in the following year’s budget. That, Hawks argues, would give Congress an incentive to balance the budget. Congress, he points out, has been consistently unable to impose fiscal discipline on itself via statute, and each of the last four presidents has lamented his inability to veto clearly wasteful spending items in larger spending bills.

◆Corporate Welfare from Argentina to Zambia

Should large corporations such as Citibank and Unocal receive government assistance to finance routine overseas investments? “No” might seem like the obvious answer, yet for more than three decades Congress has renewed the charter of the Overseas Private Investment Corporation, an organization that doles out corporate welfare in the form of financing and insurance to companies doing business abroad. Cato scholar Ian Vásquez and research assistant John Welborn argue in “Reauthorize or Retire the Overseas Private Investment Corporation?” (Foreign Policy Briefing no. 78) that Congress should retire OPIC. Most of the loans go to corporations in a few highly profitable industries, such as oil and gas, financial services, and power—industries that should have no problems securing private financing and insurance for economically viable projects.

◆Battling Bioterrorism

The World Health Organization declared in 1980 that smallpox had been eradicated from the world. Unfortunately, some samples of the virus were never destroyed, and many observers fear that terrorists or rogue nations have obtained samples and could reintroduce the virus. In “Smallpox and Bioterrorism: Why the Plan to Protect the Nation Is Stalled and What to Do” (Briefing Paper no. 85), public health specialist William J. Bicknell and Kenneth D. Bloom, former CEO of Stanford University Hospital, warn that the nation is dangerously unprepared for this threat. The authors blame the risk-averse culture of the

public health community, bureaucratic infighting, and exaggerated perceptions of the risks of smallpox vaccination.

◆Robbing Junior to Pay Grandma

If they aren’t reformed, the pay-as-you-go structure of current entitlement programs will require punitive tax levels in future decades,



Chris Edwards

warn Chris Edwards, director of fiscal policy studies, and research assistant Ted DeHaven. By 2040, the authors predict in “War between the Generations: Federal Spending on the Elderly Set to Explode” (Policy Analysis no. 488),

Social Security, Medicare, and Medicaid will consume 78 percent of Americans’ income if the system hasn’t been reformed. The authors offer detailed proposals to avert this crisis. First, Social Security and Medicare should be reformed to place a greater emphasis on individual savings, so that in the future the elderly will have more of their own resources with which to fund retirement and medical expenses. Second, greater competition should be injected into the health care system by expanding medical savings accounts and the Medicare+Choice program. Finally, because people are living longer and healthier lives, the authors propose raising the retirement age.

◆Fixing Foreign Aid?

Recent years have seen rising enthusiasm for “selective” foreign aid programs, such as President Bush’s Millennium Challenge Account, through which foreign aid is given only to countries with good institutions and policies. In “The New Approach to Foreign Aid: Is the Enthusiasm Warranted?” (Foreign Policy Briefing no. 79), Cato’s Ian Vásquez offers a more skeptical perspective. First, aid might reduce the incentive for countries to pursue more than the minimum reforms needed to obtain it. Second, national security concerns and congressional meddling make it difficult to muster the political will to limit aid to only those countries that meet strict economic criteria. Finally, the continued prevalence of traditional foreign aid means that coun-

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tries have less incentive to implement painful reforms to attract selective aid.

◆ **Mothering Eastern Europe**

If all goes according to plan, 10 new nations, most of them former communist nations of Central and Eastern Europe (CEE), will join the European Union on May 1, 2004.



Marian Tupy

In “EU Enlargement: Costs, Benefits, and Strategies for Central and Eastern Europe” (Policy Analysis no. 489), Marian Tupy cautions that, while access to the common market will be beneficial, other aspects of EU membership threaten the economic

health of the fledgling democracies. For example, the drive to “harmonize” labor and environmental standards across the EU will nullify much of the CEE nations’ competitive advantage in labor-intensive industries and condemn more of their workers to unemployment. Tupy recommends that, once they are part of the union, CEE countries mount a vigorous defense of their economic liberties, jealously guarding their powers to veto EU policies and forming alliances with liberalizing nations to prevent overgenerous welfare rights from being enshrined in the EU constitution.

◆ **Choices for DC Kids**

Private schools in Washington, DC, have nearly 3,000 seats available, says Cato education policy analyst Casey Lartigue in “School



Casey Lartigue

Choice in the District of Columbia: Saving Taxpayers Money, Increasing Opportunities for Children” (Briefing Paper no. 86). Moreover, Lartigue finds that private schools are substantially cheaper than the per pupil spending in the DC public system. While differ-

ent estimates peg public school spending between \$10,000 and \$15,000, private schools in the District have median tuitions of \$4,500 for elementary schools and \$16,000 for sec-

ondary schools. Private suburban schools are even cheaper.

◆ **Stabilizing Iraq’s Currency**

A stable currency is a crucial foundation for any economic policy. In “Monetary Options for Postwar Iraq” (Foreign Policy Briefing no. 80), economists Steve Hanke and Matt Sekerke survey the options facing the Coalition Provisional Authority in Iraq. They argue that an independent central bank with a floating exchange rate, the approach currently favored by the CPA, would be a poor fit for Iraq because it would be impossible to insulate it from political pressures to print money to cover budget deficits for the cash-strapped Iraqi government. Either a currency board or dollarization would offer better prospects for monetary stability than a central bank with a floating exchange rate.

◆ **Out of Afghanistan**

In “At a Crossroads in Afghanistan: Should the United States Be Engaged in Nation Building?” (Foreign Policy Briefing no. 81), analyst Subodh Atal paints a bleak picture of the current situation in Afghanistan. The country is a patchwork of warlord fiefdoms, and the central government has little meaningful control outside Kabul. Having survived an assassination attempt last year, the nominal president of Afghanistan, Hamid Karzai, feels secure only inside his own compound. The warlords engage in frequent clashes, and many are in the pay of foreign governments, Atal says. Those factors make the U.S. nation-building effort unlikely to succeed, he concludes. Furthermore, a prolonged occupation is likely to spark Afghani resentment despite the best efforts of the United States. Atal recommends that U.S. forces focus on rooting out terrorist forces along the Pakistani-Afghan border and otherwise leave the Afghani people free to choose their own form of government.

◆ **Pink Slips for Career Politicians**

The term limits movement scored numerous victories around the country in the early 1990s; limitations were enacted on state legislators in 18 states and in thousands of cities, counties, and towns. Not surprisingly, the vast majority of politicians, their staffs, and lobbyists are against term limits. Many have

launched efforts to repeal those laws. Fortunately, says Cato senior fellow Patrick Basham in “Defining Democracy Down: Explaining the Campaign to Repeal Term Limits” (Policy Analysis no. 490), voters have consistently rejected repeal efforts. But despite repeated setbacks, the political class keeps trying to overturn term limits, Basham says. He examines the controversy over term limits in New York when Mayor Rudy Giuliani was prevented from seeking a third term, the failed effort to water down California’s term limits, and the razor-thin victory of Idaho’s term limits repeal in 2002. ■

Cato Calendar

The Future of the Euro

*21st Annual Monetary Conference
Cosponsored with The Economist
Washington • Renaissance Hotel
November 20, 2003
Speakers include Alan Greenspan.*

16th Annual Benefactor Summit

*Del Mar, Calif. • L’Auberge Del Mar
Resort and Spa
February 25–29, 2004*

A Liberal Agenda for the New Century: A Global Perspective

*Moscow • Marriott Grand
April 8–9, 2004
St. Petersburg • Grand Hotel Europe
April 12, 2004*

Milton Friedman Prize Presentation Dinner

*San Francisco • Ritz-Carlton
May 6, 2004*

Arguing for Liberty: How to Defend Individual Rights and Limited Government

*Cato University
Quebec City • Chateau Frontenac
October 28–31, 2004*

Speakers include Tom G. Palmer, Don Boudreaux, Karol Boudreaux, Monte Solberg, Gene Healy, and David Boaz.

For more information, visit www.cato.org

“Today’s administrative state has created a massive web of laws concerning trade, labor, safety, environmental protection, and so on, often backed by the criminal sanction.”

CRIMINAL LAW *Continued from page 1*

Colorado makes it a misdemeanor to hunt wildlife from an aircraft, and Texas declares it a felony to trip a horse or “seriously overwork” an animal. In turn, California forbids “three card monte” and, as a general rule, cheating at card games, while it’s a crime in Illinois to camp on the side of a public highway or offer a movie for rent without clearly displaying its rating. Add to those gems countless local offenses, such as playing frisbee on Galveston beaches after being warned by a lifeguard, molesting monarch butterflies in Pacific Grove, California, failing to return library books in Salt Lake City, or annoying birds in the parks of Honolulu.

Less comical but certainly more pervasive and consequential are the so-called vice crimes that have exasperated generations of American libertarians. These offenses are marked by the absence of violence or coercion, with parties engaged in voluntary transactions for desired goods or services. This category would include the possession, sale, or use of illegal drugs; acts of prostitution and other commercialized sexual conduct; transactions involving pornography or allegedly obscene materials; and all kinds of gambling activities. Government has also banned behaviors that are related to vice or seen as precursors, for example, the possession of drug paraphernalia such as pipes and spoons and loitering in public places with the apparent intent to sell drugs or turn tricks. Congress has even considered a bill that would make it a federal crime to throw a party where drugs might be used.

Criminalizing Business

Other growth areas for the penal code include regulatory or business-related offenses and crimes involving misrepresentation and the like. Today’s administrative state has created a massive web of laws concerning trade, labor, product and workplace safety, environmental protection, securities regulation, housing, transportation, and so on, often backed by the criminal sanction. Many of the statutes may make a good deal of sense—for example, prohibiting modern iterations on the common law crime of larceny. Others seem a bit silly, such as the infamous federal crimes of removing mattress tags and the unauthorized use of “Smokey Bear” or “Woodsy Owl.”

But many regulatory offenses—filing an inaccurate monitoring report under the Clean Water Act or being in a position of responsibility when an employee violates regulations of the FDA, EPA, SEC, and other acronym agencies—place otherwise honest folks in real jeopardy. As Berkeley law professor Sanford Kadish once noted, some economic crime, such as violations of securities regulations, antitrust statutes, and unfair competition laws, more “closely resembles acceptable aggressive business behavior.” In turn, mail and wire fraud statutes have been expanded to seemingly irrational ends, covering conduct that amounts to little more than breaches of fiduciary duty. In one case, a college professor was convicted of mail fraud for awarding degrees to students who plagiarized others’ work.

Beyond the truly novel are offenses that merely recriminalize or overcriminalize conduct that is already prohibited. Many penal codes contain dozens of provisions covering the same basic crime—assault, theft, sex offenses, arson, and so on—each provision dealing with an allegedly unique scenario but in fact just retreading the same conduct. Politically inspired offenses fall within this category as well, with, for instance, “carjacking” more than well covered by proscriptions on robbery and kidnapping. Penal code machinations have also involved drastic expansions in punishment, most notably the enactment of mandatory minimum sentences for narcotics crimes and anti-recidivist statutes along the lines of “three strikes and you’re out.” And after factoring in various liability-expanding doctrines, such as conspiracy and solicitation, the reach and force of the criminal law and its penalties can be awe inspiring and disconcerting.

None of this is particularly new, as the criminalization phenomenon has been the subject of legal commentary for decades. Legendary figures of academe such as Kadish and Stanford’s Herbert Packer have chronicled the American propensity to use and abuse the criminal sanction, with further refinements by distinguished contemporary scholars like Columbia’s John Coffee and Harvard’s William Stuntz. And yet the phenomenon continues largely unabated: Over the past century, the number of crimes in most state penal codes has at least doubled, and there are now more than 3,000 offenses punishable as federal crimes.

Why the Urge to Criminalize?

Any number of explanations can be offered for America’s drive to criminalize, its appetite for a crime-of-the-month. Part of the rationale likely stems from a slow but certain movement away from common law principles of crime and punishment and toward a larger ambit for the criminal justice system. To simplify a bit, the common law required a convergence of harmful conduct (*actus reus*) and a culpable mental state (*mens rea*). As an example, larceny involved more than just taking someone’s private property—the accused must have known that the object in question belonged to another and intended to deprive him of that property. There were also fairly robust limitations on vicarious liability, whether a homeowner could be criminally culpable for the actions of his drunken visitor, for instance, or the businessman could be liable for the wrongful deeds of his employee. Today, however, criminal responsibility can be doled out without a culpable mental state through the concept of “strict liability,” and corporate managers can be held liable for serious offenses without evidence of personal guilt. An honest and reasonable claim of “I didn’t know” is often deemed irrelevant, despite the mind-boggling number of administrative regulations that carry criminal sanctions. This trend is only exacerbated by the slow disappearance of the line between crime and tort, with conduct that was once actionable only by civil suit now susceptible to criminal prosecution as well, oftentimes at the sole discretion of the relevant law enforcement agency. And in an age of “Enron-itis,” we can only expect further expansions of criminal liability for business managers and corporate executives.

Another explanation can be found in the continuing power of legal moralism and its transformation in popular discourse. Almost all vice crimes stem from religious-based conceptions of good and evil. Drugs, alcohol, gambling, prostitution, adultery, fornication, sodomy, pornography, and other obscenities are banned by the state on the basis of notions of human wickedness and righteousness and, ultimately, the desire to reform society in accord with puritanical or Victorian standards. Some of these crimes have fallen by the wayside with, for example, the end of Prohibition in 1933 and, more recently, a variety of statu-

Continued on page 16

“The sledgehammer of draconian punishment is most disturbing when it is used to coax pleas out of individuals with valid claims of mitigation or even innocence.”

CRIMINAL LAW *Continued from page 15*

tory or constitutional changes on issues of sex and sexuality. But drug crimes continue to be added or augmented in modern penal codes, and some jurisdictions have created new sex- and gambling-related offenses, although not expressly as a result of religious moralizing. Instead, proponents argue that such behaviors cause “harm” not only to the direct participants but to the greater community as well. To see an alleged prostitute or drug dealer on the streets produces a type of social harm sufficient to justify the full force of the criminal justice system, or so it is claimed.

Probably the most powerful explanation for the criminalization phenomenon is the one-way ratchet of law-and-order politics. To put it simply, lawmakers have every reason to add new crimes and punishments, which make great campaign fodder, but no countervailing political interest in cutting the penal code. The benefits of overcriminalization are concentrated on the political class, providing nice sound bites and résumé filler at reelection time, while the costs are either diffuse (but very real, as will be discussed below) or borne by discrete and insular minorities without sway in the political process, such as members of lower socioeconomic classes or those accused of crime. Experience has shown that being tough on crime wins elections, and a sure-fire way to look tough is to add a superfluous carjacking statute or boost the penalty for drug dealers, irrespective of the statute’s normative justification or ultimate effect on society. And once on the books, criminal laws are virtually impossible to rescind (consider, for instance, the continued existence of anti-dueling statutes).

Law enforcement officials also contribute to criminalization binges. As Professor Stuntz has noted, the more crimes on the books, the more conduct prohibited (and prohibited in more ways), and the more punishment for a given crime, the more authority police and prosecutors can exert in the criminal justice system. Imagine that law enforcement is pursuing a crime that is composed of three elements: X, Y, and Z. If Z happens to be difficult to observe on the streets or prove in court, then law enforcement may well want a new crime composed of only two elements, X and Y. In similar fashion, if crime A carries only a fine or a short jail term, criminal defendants

may lack an incentive to enter into plea bargaining with officials. But if a new law adds five years of prison time for crime A, creates a new crime B that covers roughly the same conduct yet carries a 15-year sentence, or establishes a life-imprisonment scheme for repeat offenders, law enforcement now has a blunt instrument that will often leave the accused little choice but to negotiate a guilty plea.

The Costs of Overcriminalization

The costs and consequences of overcriminalization are many and, in many cases, all too obvious—but let me briefly mention a few. To begin with, a bloated penal code and overly broad criminal liability are unhealthy for an adversarial system of criminal justice, where law enforcers are not neutral and detached but instead interested parties actively seeking arrests and convictions. Overcriminalization leads to enormous police discretion to stop pedestrians or motorists using legal pretexts, which serve as cover for discriminatory enforcement based on class, race, or ethnicity. As observed by racial profiling scholar David Harris, no driver could cover more than three blocks without violating some traffic law, thereby providing a pretense for an elongated detention and extensive search. For prosecutors, overcriminalization results in a total imbalance of arms, with severe punishment, often in the form of mandatory minimums or habitual offender statutes, used as leverage in extracting information or guilty pleas. Prosecutorial domination via overcriminalization is bad enough when the underlying offense and attached penalties are dubious to begin with (drug crimes being the paradigmatic case for libertarians like myself). But the sledgehammer of draconian punishment is most disturbing when it is used to coax pleas out of individuals with valid claims of mitigation or even innocence, an unsettling situation that has proven to be all too common.

Overcriminalization also has the potential to squander or misallocate scarce resources, particularly when the underlying offense—a vice crime, for example—causes little direct harm. “One can imagine side effects of the effort to enforce morality by penal law,” Professor Louis Schwartz of the University of Pennsylvania wondered some 40 years ago, “Are police forces, prosecution resources, and

court time being wastefully diverted from the central insecurities of our metropolitan life—robbery, burglary, rape, assault, and governmental corruption?” The answer is the same today as it was then: Resources spent chasing the otherwise innocuous prostitute and panderer, for instance, could be spent instead in pursuit of the real sex criminals—the rapist and the child molester. And, of course, the billions of dollars wasted on the so-called war on drugs would be better spent on a different, much graver battle: the “war on terror” and the pursuit of those who would fly commercial airliners into American skyscrapers, set off bombs in public venues and government buildings, and release biochemical weapons through mail, commerce, or public works.

Most of all, overcriminalization weakens the moral force of the criminal law. By “moral,” I am not referring to big-M Morality, as in the occasionally obnoxious religiosity of the “Moral Majority,” but instead the shared norms of American society as to what should or should not be subject to the single most powerful action any government can take: the deprivation of human liberty or even life itself. That is, after all, what a penal code should be about—a communal decision that certain behaviors, pursuant to certain mental states, are so violent or harmful to their direct victims and society at large as to justify the social reprobation and deprivation of liberty that accompany the adjudication of guilt. When the criminal sanction is used for conduct that is widely viewed as harmless or undeserving of the severest condemnation, the moral force of the penal code is diminished, possibly to the point of near irrelevance among some individuals and groups. It fails to distinguish between the acceptable and the intolerable, between the lawful and the illicit. And it no longer deters *ex ante*, before crime, but only catalogs punishment *ex post*, at trial and at sentencing when the damage has already been done. Unwarranted bans or penalties can fulfill none of the valid goals of the criminal sanction, namely, preventing future harmful conduct and justly punishing individuals for past wrongdoing.

Before another offense or punishment is added to the penal code, we should start asking ourselves, *Is this really necessary or just another crime-of-the-month?* ■

Second Cato Supreme Court Review released

Judges, Scholars Discuss Supreme Court Term

Cato's Center for Constitutional Studies hit another milestone in June when the Supreme Court twice cited the center's amicus brief in its decision in the *Lawrence v. Texas* sodomy case. In his opinion for the Court's majority, Justice Anthony Kennedy drew upon Cato's brief to argue for individual liberty and against the state's morals legislation. Under the direction of Roger Pilon, Cato's vice president for legal affairs, the center submitted amicus briefs in other cases as well, including the University of Michigan affirma-

tion of obstacles to be circumvented rather than as a set of guiding principles. He also noted that the authors of BCRA quite openly crafted the law to help some groups and hurt others, in an effort to build a majority coalition in Congress. That, he said, is precisely the sort of political manipulation the First Amendment was designed to prevent.

Starr considered whether the decision in *Nevada Dept. of Human Resources v. Hibbs*, which upheld the imposition of damages against the state of Nevada under the Family and Med-

written constitution, jurists ought to pay greater attention to it, neither ignoring its limits on government power nor inventing rights not found there. Court precedents since the New Deal, he contends, have eviscerated the framework of limited government and enumerated powers the Framers established.

In the *Review*, Boston University law professor Randy Barnett argues that the *Lawrence* decision is as important for its methodology as for its holding. In effect, the Court established a presumption of liberty not seen since the New



Former acting solicitor general Walter Dellinger III delivers the Simon Lecture, "The Indivisibility of Personal and Property Rights: A View from the Founding," at Cato's second annual Constitution Day; federal judges David Sentelle, Karen Henderson, and J. Harvie Wilkinson III; former solicitor general Kenneth W. Starr discusses the Court's federalism cases.

tive action cases and the challenge to the recently passed Bipartisan Campaign Reform Act.

Again this year, the center celebrated Constitution Day, September 17, with a well-attended conference, "The Supreme Court: Past and Prologue"; with the release of the second edition of the *Cato Supreme Court Review*; and with the second annual B. Kenneth Simon Lecture in Constitutional Thought, given this year by Walter E. Dellinger III, acting solicitor general under President Clinton.

The Constitution Day festivities, marking the day the Constitution was signed 216 years ago, featured FEC commissioner Bradley A. Smith, former solicitor general Kenneth Starr, and federal appellate court judges J. Harvie Wilkinson III and David B. Sentelle. Smith criticized the tendency of BCRA's supporters to treat the Constitution as a collec-

tical Leave Act, represented a reversal of the Court's decade-long trend of pro-federalism decisions. He argued that it did not, noting that the Court cited Congress's power under the Fourteenth Amendment to remedy gender discrimination by the states. That indicates, said Starr, that the decision is an exception to the Court's broader pro-federalism jurisprudence.

In his Simon Lecture, Dellinger argued that the tendency of liberals to disparage property rights while defending civil liberties—like the conservative inclination to do the opposite—is harmful to both kinds of liberty. Last year's Simon Lecture, delivered by Douglas H. Ginsburg, chief judge of the U.S. Court of Appeals for the D.C. Circuit, is the lead article in the new *Cato Supreme Court Review*. In it, Ginsburg argues that because the United States is blessed with a

Deal, leaving the burden on the government to show why liberty should be restricted. In his essay on the Michigan affirmative action cases, Pilon shows how the Court's post-New Deal methodology has led it to undermine legal principles in the name of political policies. To secure racial diversity, the Court said, the state may practice the kind of discrimination the Constitution until now has prohibited.

Other contributors to the *Review* examine the Court's decisions on free speech, state sovereign immunity, copyrights, punitive damages, and more. The concluding essay briefly examines several of the cases on the Court's docket for the 2003 term.

The *Cato Supreme Court Review* is available in paperback for \$15.00. It can be purchased in bookstores, at www.catostore.org, or by calling 800-767-1241. ■

Tanner book goes back to basics on poverty

Is Welfare Reform Working?

In 1996 President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act, popularly known as welfare reform. The act transferred money to the states in the form of block grants and gave them flexibility to try different policies. It ended welfare's status as a federal entitlement and imposed new work requirements and a lifetime limit of five years.

Many observers on the left predicted catastrophe. An Urban Institute study famously predicted that more than a million children would be thrown into poverty. Critics insisted that welfare recipients could never find work and that those thrown off the welfare rolls without jobs



would face homelessness and starvation.

The actual results were dramatic, but not in the way that critics predicted. Faced with stricter eligibility requirements and the prospect of losing benefits entirely after five years, many welfare recipients found work and left the system. By 2000 the welfare rolls nationwide had been cut to half of 1996 levels.

Despite this progress, Cato scholar Michael Tanner argues that we must go further. In his latest book, *The Poverty of Welfare: Helping Others in Civil Society*, he notes that millions of families are still trapped in the system. Millions more remain dependent on supplemental government services, such as Medicaid and food stamps. Ultimately, the goal must be to move everyone off the dole and into productive employment or private charity. This

will reduce tax burdens, but more important, it will eliminate the perverse incentives that lured many welfare recipients into the system in the first place.

Government shouldn't give handouts, Tanner says, but it can help the poor in other ways. It can cut taxes and red tape to spur job creation. To ensure that everyone has the skills he needs to find employment, Tanner says, government can improve school quality by injecting more choice and competition into the system. Finally, Tanner advocates Social Security reform based on personal accounts. The assets in personal accounts would not only ensure a comfortable retirement, he says, but could also be passed on to heirs, beginning a process of intergenerational wealth accumulation that ensures families do not fall back into poverty.

The Poverty of Welfare is available in paperback only for \$15.00. It can be purchased in bookstores, at www.catostore.org, or by calling 800-767-1241.

News Notes

USTR Likes Cato Work on FTAs

After the House of Representatives passed free-trade agreements with Chile and Singapore on July 24, U.S. Trade Representative Robert Zoellick cited Cato's research in hailing the agreements. Zoellick said in a statement, "The free trade agreements approved today by the House are an important part of the Administration's efforts to expand trade globally, regionally, and bilaterally. According to a recent Cato Institute study, taken together as a group, the Chile and Singapore FTAs; the ongoing FTA negotiations with Morocco, Central America (CAFTA), South African Customs Union (SACU), and Australia; and the proposed Bahrain FTA would constitute the 4th largest U.S. export market and the world's 9th largest economy in terms of purchasing power."

Ronald Hamowy has been named Fellow in Social Thought at the Cato Institute. He is professor of history emeritus at the University of Alberta and previously was assistant director of the History of Western Civilization Program at Stanford University (before the days of "Hey, hey, ho, ho, Western Civ has got to go!"). He received his Ph.D. in social thought under F. A. Hayek at the University of Chicago. He is the author of books on the Scottish Enlightenment and on health care and the editor of a book on drug prohibition. Hamowy has long been associated with the Cato Institute. He pub-



Neal McCluskey

lished "The IRS and Civil Liberties" in the first issue of the *Cato Journal* and served briefly as editor of Cato's *Inquiry* magazine. He has written several articles for Cato's forthcoming *Encyclopedia of Libertarianism* and is the editor of the Liberty Press edition of *Cato's Letters*.



K Coleman Strumpf

Neal McCluskey has joined the Cato Institute as an education policy analyst. After graduating from Georgetown University, he served as a lieutenant in the U.S. Army and taught high school for two years. For the past two years he was an analyst at the Center for Education Reform.

K Coleman Strumpf, a professor of economics at the University of North Carolina, is a visiting scholar at the Cato Institute during the 2003–04 academic year. He is doing research on the economics of peer-to-peer file sharing—such as the controversial downloading and sharing of music—and online gambling. He holds a Ph.D. from the Massachusetts Institute of Technology and has published in the *American Economic Review*, the *Journal of Political Economy*, and other academic journals.

Sununu, Vargas Llosa, Pipes are among speakers

Scholars Look at Development, Latin America

It is common for critics of capitalism to decry the gap between the rich and the poor. And in a sense, they are right; they just focus on the wrong gap. Too often, they focus on the gap between rich and poor people in developed countries, ignoring the fact that the poor are usually getting richer along with everyone else in those countries. A far more important wealth gap exists between rich and poor countries. And capitalism's critics are dead wrong about the cause of that poverty: not capitalism but its absence is to blame.

The Cato Institute hosted two conferences on this important subject in September. The first conference, held on September 3 to coincide with the one-year anniversary of the World Summit on Sustainable Development in Johannesburg, South Africa, focused on the connections among economic progress, technology, human development, and the environment. It was cosponsored by the International Policy Network, a London-based free-market educational organization. It featured seven distinguished speakers from six countries on four continents.

Speakers from Kenya, Nigeria, and South Africa gave firsthand accounts of the destruction wrought by kleptocrats. James Shikwati from Kenya pointed out two problems with foreign aid—it often subsidizes corrupt regimes,

and it induces governments to pay more attention to the needs of donors than to those of their own people. Thompson Ayodele of Nigeria highlighted the need for property rights to protect natural resources and stressed the importance of the rule of law for preventing the powerful from becoming corrupt.

The second conference, held on September 30, was sponsored by the International Foundation for Liberty, a coalition of free-market thinkers in the United States, Latin America, and Spain. Cato hosted the conference, the group's first event in Washington, at the invitation of Cato scholar Ian Vásquez, who sits on the organization's board of directors.

Opening speaker Sen. John Sununu (R-NH) hailed the success of the North American Free Trade Agreement in opening Mexico's market and contributing to economic growth in both the United States and Mexico.

Enrique Ghersi from the Peruvian think tank CITEI argued that the rule of law has failed to take hold in Latin America because the law has for centuries been used arbitrarily to serve the interests of those in power. Harvard's Richard Pipes agreed, noting the close link between the rule of law and private property. Russia, he said, historically had neither, and economic stagnation was the result.

Several speakers emphasized the importance



Sen. John Sununu (R-NH) stresses the role of free trade in economic growth at a conference sponsored by the International Foundation for Liberty, held at Cato on Sept. 30.

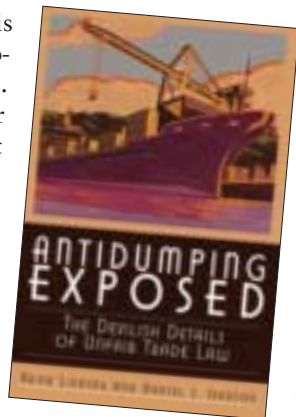
of cultural transformation in Latin America. Too often, said author and IFL president Mario Vargas Llosa, the law has been used as a tool of oppression rather than a check on state power. That has produced a culture of lawlessness that makes market-oriented reforms difficult. Vargas Llosa warned that political reform without cultural change is likely to be precarious.

Video and audio versions of both conferences are available at the Cato website, www.cato.org. To access them, click the "Events" tab and then "Watch or Listen to Archived Events Online." ■

Antidumping: What It Is, How to Fix It

In the strange world of antidumping law, a foreign company that gives American consumers a good deal is often said to be guilty of "dumping" and punished under U.S. antidumping law. The rationale for such laws is largely sophistry, but the rules are so obscure and convoluted that nonspecialists have trouble even understanding how they work, to say nothing of evaluating whether they are necessary or effective.

In *Antidumping Exposed: The Devilish Details of Unfair Trade Law*, Cato scholars Brink Lindsey and Dan Ikenson attempt to untangle this legal thicket. They detail the process



by which antidumping decisions are made and compare it with the rhetoric of "fair trade" and a "level playing field" often used to justify the law. They find that the reality rarely matches the rhetoric, that more often than not antidumping law is used by rent-seeking corporations to impede legitimate competition from foreign rivals.

Antidumping Exposed is not light beach reading. Although the authors do a superb job of making this arcane topic accessible, the book's target audience is likely to

be trade negotiators, corporate lawyers, and policymakers who shape the global trading system. As the authors point out, steadily falling tariff rates have been accompanied by a dramatic rise in nontariff barriers to trade such as frivolous antidumping complaints. As a result, reining in the excesses of antidumping law will become an increasingly important component of trade liberalization in coming years. This book, which concludes with 20 specific reform proposals, will be an invaluable reference for those in the trade trenches around the world who are working for freer trade.

Antidumping Exposed is available in hardcover for \$24.95. It can be purchased in bookstores, at www.catostore.org, or by calling 800-767-1241. ■

◆What’s the weather like on that planet?

Bush and his right-wing Republican coalition that runs the nation are determined to cut back to a bare minimum the federal government that holds us all together. In addition to finishing off the New Deal’s social welfare system and getting rid of the Department of Education, federal regulation has got to go.

—James Ridgeway in the *Village Voice*, Aug. 20–26, 2003

◆He’s got the royal “we” down

Howard Dean, who had planned to run as an insurgent on a shoestring, is adjusting his campaign to befit his new lot in life: the well-funded, emerging front-runner for the Democratic presidential nomination. . . .

“I see ourselves as someone with a big surge, but I don’t think we have cemented our position as the front-runner at this point,” Dean said in an interview. Still, “we’re prepared for all of the attacks we’re going to get.”

—*Washington Post*, Aug. 23, 2003

◆Shhh! Don’t let the voters hear

Alabama Gov. Bob Riley (R)—who for three terms in Congress boasted that he never voted for a tax increase and was elected governor on a promise not to raise taxes—is proposing to raise state taxes by a record \$1.2 billion, eight times the largest previous increase and almost twice what is needed to close a \$675 million budget deficit.

—*Washington Post*, Aug. 17, 2003

Gov. Mark R. Warner (D) . . . has vowed to make tax changes a priority in the coming year but said he will not release detailed proposals until after the Nov. 4 election for all 140 seats in the General Assembly. In a Virginia News Network radio interview last month, Warner said debate on the plan before the election would expose it to a “demagogue, sound-bite approach” by his adversaries.

—*Washington Post*, Aug. 17, 2003

◆Stop the voters before they legislate again

A measure on Denver’s ballot would order city government to “ensure public safety” by adopting and promoting “stress-reducing techniques or programs.”

—*USA Today*, Aug. 13, 2003

Last November, as [California’s] budget problems pushed the deficit over \$15 billion, voters reelected [Gov. Gray] Davis and approved four measures creating a trust fund for emergency homeless shelters, low-income seniors and the mentally ill; funding a comprehensive overhaul of education facilities; financing a new wave of “clean water” bonds; and increasing spending on after-school programs.

The after-school measure, Proposition 49, was backed and financed by [Arnold] Schwarzenegger in his maiden voyage in state politics, resulting in a cost to California taxpayers of \$550 million a year, with no additional resources to fund it, according to Jean Ross, executive director of the California Budget Project, a liberal think tank.

In one day Californians had locked in

additional financial obligations totaling \$40 billion.

—*Washington Post*, Aug. 14, 2003

◆But not exactly humble

In the Eastern Kentucky mountains that Daniel Boone helped carve out for settlement two centuries ago, his name and reputation remain larger than life.

But much to the chagrin of some residents, Boone’s identity is being stripped from the main highway through his adopted homeland so that the name of the local congressman, U.S. Rep. Hal Rogers, can go up.

Rogers, a Republican from Somerset, has represented the 5th District for 23 years and helped obtain the \$13 million in federal funding that allowed the state to eliminate tolls on the road. . . .

Rogers, in a statement from his office yesterday, did not address the public debate about renaming the road.

“It’s a tremendous honor to have this parkway named after me,” he said. “I am humbled.”

—*Louisville Courier-Journal*, Aug. 6, 2003

◆The wisdom and experience that term limits would deprive us of

At the end of World War II we had 40 percent of our workforce in manufacturing. And now we’re down to 10 percent. We’ve got 10 percent of the country working and producing, and we’ve got the other 90 percent talking and eating. That’s all they’re doing.

—Sen. Ernest F. Hollings, statement at the Ernest F. Hollings National Advocacy Center, Aug. 4, 2003

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