



**DICK ARMEÝ**

Regrets . . . he's had a few . . . on the NCLB

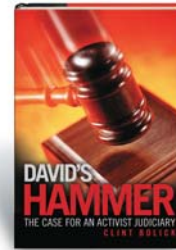
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**KATHERINE BAICKER**

White House economist backs health care reform

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**DAVID'S HAMMER**

The upside of judicial activism

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May/June 2007

# Policy Report

Vol. XXIX No. 3

## How Prosperity Made Us More Libertarian

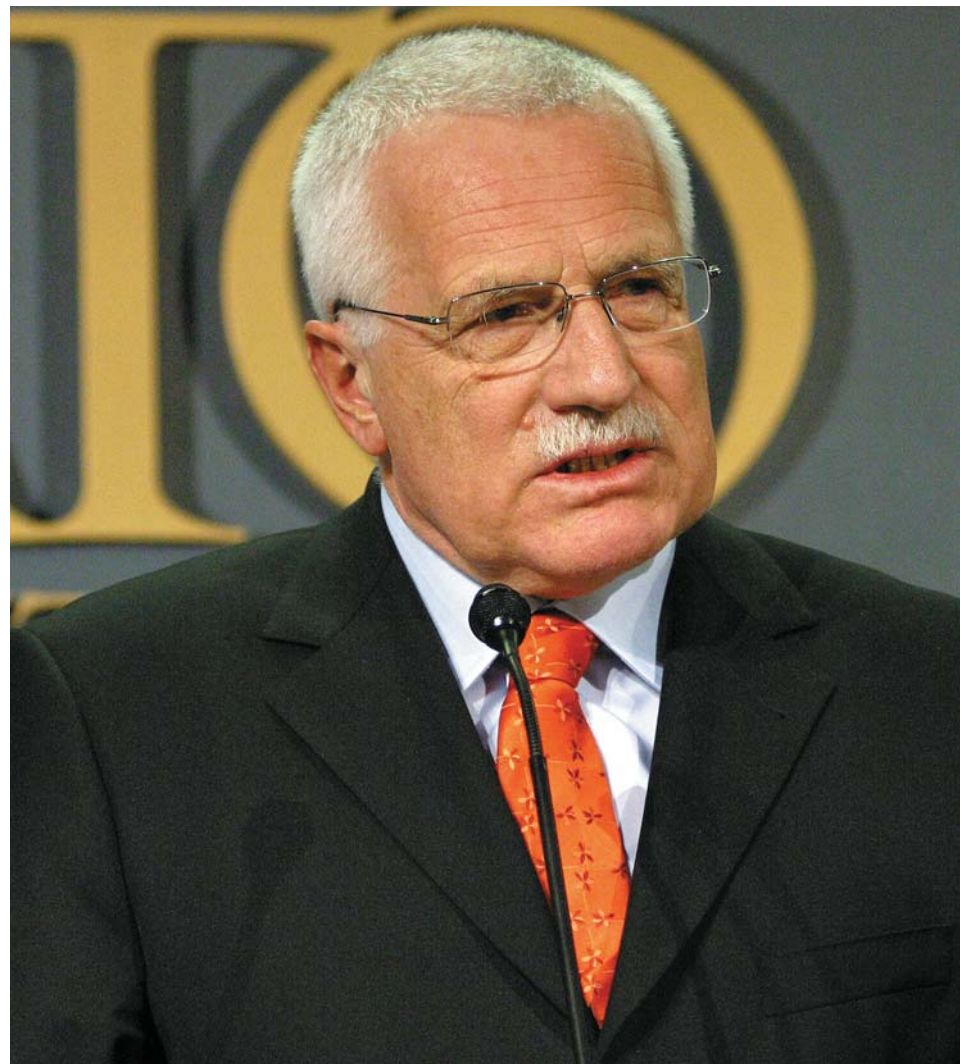
BY BRINK LINDSEY

In the years after World War II, America crossed a great historical threshold. In all prior civilizations and social orders, the vast bulk of humanity had been preoccupied with responding to basic material needs. Postwar America, however, was different. An extensive and highly complex division of labor unleashed immense productive powers far beyond anything in prior human experience. As a result, the age-old bonds of scarcity were broken. Concern with physical survival and security was now banished to the periphery of social life.

In the six decades since the end of World War II, Americans have been busy exploring the new environs of mass affluence. Those decades have witnessed both exhilarating discoveries and tragic errors, as well as a great deal of blind groping and simple muddling through. The story of postwar America is thus the story of adaptation to new social realities.

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BRINK LINDSEY is vice president for research at the Cato Institute and author of *The Age of Abundance: How Prosperity Transformed America's Politics and Culture*, just published by Collins.



Václav Klaus, president of the Czech Republic, delivered an address at the Cato Institute on March 9. Klaus's speech can be viewed at [www.cato.org](http://www.cato.org), and many of his earlier speeches are collected in a Cato Institute book, *Renaissance: The Rebirth of Liberty in the Heart of Europe*. **MORE ON PAGE 4**



BY EDWARD H. CRANE

## President's Message Three Cheers for Libertarianism

**A**s I survey the political landscape, infested with teeth-bared liberals and conservatives, all trying to get their hands on the levers of government power, I think it's great to be a libertarian. Live and let live. Tolerance. A respect for the dignity of the individual. As the pioneering modern libertarian Leonard Read put it: Anything that's peaceful. Government is not peaceful; it is inherently coercive.

The Cato Institute has distributed four million copies of the Declaration of Independence, for which we are quite proud. In the Declaration the Founders spoke of "self-evident" truths, among which are the rights to "Life, Liberty, and the Pursuit of Happiness." To protect those rights, they said, governments are instituted. One of the myths about libertarians is that we are anti-government. We are not. We are, however, like the Founders, very much aware of the dangers and limitations of government not limited in terms of power and responsibilities. Which is why the Constitution enumerates what few powers the federal government possesses, or is supposed to possess, in America.

My favorite Charles Murray book is *In Pursuit: Of Happiness and Good Government*. In it he goes to great lengths to make the case that only strictly limited government can be considered good government. The natural response of mankind when confronted with a social pathology, he says, is to solve it. The response of government is to service it. To live a fulfilling life—to be happy—requires that one be in control of one's life. That's what the Founders were saying: Life is important and people should be able to pursue their dreams, interests, and ambitions. And that requires liberty.

Of course the American ship of state has sailed a bit off that course by now. But a majority of the American people, I believe, are still imbued with a respect for the dignity of the individual and a love of liberty. The growing ranks of Independents in politics today are a function of two things: Republicans and Democrats. If we use the Democratic debate as a proxy for liberal thinking on domestic issues, that thinking consists of demanding socialized medicine (it worked so well in Canada that last year the Supreme Court there opened their system up to private competition); soaking the rich (after all, the top 1 percent of earners pays only 35 percent of all income taxes); and stalling our economy over truly hysterical claims about global warming. Bob Kuttner and Paul Krugman are two of their leading public intellectuals. Enough said.

As for the woeful GOP, it's been taken over by neocons, social conservatives, theocons, and just plain cowardly incumbents (although fewer of those these days). The self-appointed "godfather" of neoconservatism, Irving Kristol, is openly disdainful of the intellectual giant of the 20th century, the great freedom philosopher F. A. Hayek. Kristol worships the memory of Franklin Roosevelt and embraces the concept of big government. The leading GOP public intellectuals are people like Bill Kristol (Irving's son) and David Brooks, both of whom beat the drums for the Iraq war disaster. Brooks recently called for the federal government to enlist clergy, economists, and psychologists to figure out how to help stressed-out families. Social conservatives are obsessed, not with limited government, but with gay marriage and flag burning. Theocons blamed 9-11 on gays and pornography. Do you really want to be in a party that celebrates Pat Robertson?

What both the left and the right overlook is our Founders' wisdom about the limits and dangers of government. Do we really want the people who took three days to realize Katrina was a disaster fixing stressed-out families? Do we really want the people who planned the aftermath of the Iraq war setting up space stations on the moon? Do we really want the people who created \$40 trillion of unfunded liabilities in Social Security and Medicare in charge of our health care? Faceless bureaucrats, power-lusting politicians, and people spending other people's money are a recipe for disaster.

But fear not, for there is hope. My colleague Brink Lindsey's remarkable new book, *The Age of Abundance*, makes a compelling case that the social, political, and business dynamic of the second half of the 20th century created a broad libertarian consensus in America that is socially tolerant and at the same time appreciative of market capitalism. (I'd add that the war in Iraq confirms the libertarian preference for humility in foreign affairs.) This is underscored by a poll we commissioned by Zogby that asked the question, "Would you describe yourself as fiscally conservative, socially liberal, also known as libertarian?" to which 44 percent of Americans replied in the affirmative.

“What both the left and the right overlook is our Founders' wisdom about the limits and dangers of government.”

# Cato Scholar and Former Interns Fight to Free Jailed Egyptian Blogger



“We must convince the human being of his individual sanctity, and that nothing surpasses him in importance and standing besides himself,” wrote Abdelkareem Nabil Soliman, or Kareem Amer as the online world knows him, on his blog in September 2006. He made many other posts in 2005 and 2006 that celebrated individual freedom, women’s rights, and secular government and protested fundamentalist Islam and the Egyptian government. Soliman today sits in a jail cell in his native Alexandria, Egypt, for his writings. On February 22, 2007, a judge sentenced him to three years in prison for the crime of insulting Islam and inciting sedition and one year for insulting Egyptian president Hosni Mubarak.

A number of people affiliated with Cato, including senior fellow Tom G. Palmer and numerous current and former interns, have led a worldwide movement to publicize Soliman’s case, embarrass the Egyptian government, and ultimately free him.

The 23-year-old Soliman had been a law student at Al-Azhar University until he was expelled in March 2006 for criticizing the curriculum as contrary to free thought. That year Soliman also met Palmer at a conference, cosponsored by Cato, for bloggers in the Middle East. They stayed in contact through e-mail afterwards, and as a result Palmer was one of the first to hear when Soliman was summoned by the authorities last fall and ultimately detained.

Palmer told Soliman’s story in an op-ed with Raja Kamal of the University of Chicago that appeared in the February 21 *Washington Post*. A week later, the *Post* published an editorial, “Blogger on Ice,” which

drew further attention to Soliman’s case. The editorial blasted Soliman’s jailing as the “latest case in point” in Mubarak’s “relentless repression.”

Soliman also has an online network of friends concerned with individual liberty and human rights who came to his aid, many of whom met him at the Cato conference. Those friends started a website, [freekareem.org](http://freekareem.org), and an online petition.

Several former Cato interns have been active in the group, organizing and attending numerous demonstrations on behalf of Soliman at Egyptian embassies around the world. For example, April 27 saw rallies at embassies from Bucharest to New York, including a Washington, D.C., rally organized by current Cato intern Knud Berthelsen from Norway. Constantino Diaz-Duran, a graduate student at Columbia University and former Cato intern, is the group’s New York coordinator and has written about Soliman in the *Columbia Spectator* and the *New York Post*.

Diaz-Duran and others also administer the Free Kareem Amer! group on the online networking site, [thefacebook.com](http://thefacebook.com). The group has more than 400 members, college students and others, who use it to communicate with each other about future rallies for Kareem.

Andrew Perraut, who began graduate studies at the London School of Economics following his internship at Cato, coordinates Free Kareem events in London. He finds it highly appropriate that so many former Cato interns have been involved. “What other group of interns could instigate a media firestorm and cause an international incident in the name of free speech?” he asks.

## NEWS NOTES

### Johan Norberg Joins Cato Institute as Senior Fellow

The Cato Institute is pleased to announce the addition of **JOHAN NORBERG** as a senior fellow. Norberg is a Swedish writer who focuses on globalization, entrepreneurship, and individual liberty.

Norberg is the author and editor of several books exploring liberal themes, including a history of liberal pioneers in Swedish history. His book *In Defense of Global Capitalism*,



originally published in Swedish in 2001, has been published in more than 20 different countries. The U.S. edition was published by the Cato Institute in 2003.

*In Defense of Global Capitalism* was awarded the Sir Antony Fisher International Memorial Award in 2002, and Norberg received a gold medal from the Friedrich August von Hayek Stiftung in Germany. The book also served as the basis for a television documentary on UK Channel 4 called “Globalization is good.”

His articles and opinion pieces appear regularly in both Swedish and international newspapers, and he is a regular commentator and contributor on television and radio around the world discussing globalization and free trade.

“Johan Norberg is a talented writer and communicator, and a passionate defender of globalization and individual liberty, so we’re delighted he’s decided to affiliate with Cato,” said Cato president Edward Crane. “We’ve worked with Johan on many occasions in the past, including publishing the English-language edition of his book *In Defense of Global Capitalism*, so we’re really excited about making our relationship a formal and ongoing one.”

Prior to joining Cato, Norberg was head of political ideas at Timbro, a Swedish free-market think tank, from 2003 to 2005. He then served as a senior fellow for the Brussels-based Centre for a New Europe during 2006. His most recent book is an analysis of entrepreneurship and innovation titled *När människan skapade världen (When Man Created the World)*. Published in Sweden in 2006, the book is now being translated into English.



Journalists and others surround Czech president Václav Klaus after his address at Cato on March 9. Klaus discussed three challenges to liberty in the current era: continuing attempts to “rule from above” even after the demise of communism; centralization of political control beyond national sovereignty; and an environmentalist ideology rooted in Malthusian pessimism, a misunderstanding of economics, and an uncritical support for state control. His speech can be viewed at the Cato website, and a podcast interview is also available there.



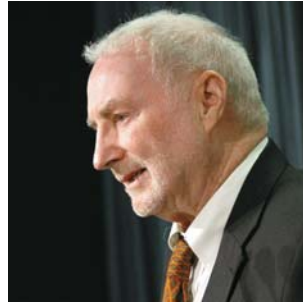
Dan Griswold, director of Cato's Center for Trade Policy Studies, discusses the rising trade deficit and the U.S. economy at a Capitol Hill Briefing on March 12. Both a Free Trade Bulletin released that day and Griswold's Powerpoint presentation from the event are available at [www.cato.org](http://www.cato.org).



Cato addressed the massive increase of the federal government's role in education at a Cato Policy Forum about No Child Left Behind on March 7. Former House majority leader Dick Armey explained why one of his biggest regrets during his time in Congress was his vote for NCLB. Andrew Coulson of Cato's Center for Educational Freedom described the empirical failings of NCLB, and Rep. Pete Hoekstra (R-MI) talked about his bill that would return greater control of our education system to the states.



In the audience on March 22 to hear Brian Doherty (top) discuss his book *Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement* along with E. J. Dionne Jr. of the *Washington Post* were Lee Edwards, who worked on Barry Goldwater's 1964 presidential campaign; Ludwig von Mises student and free-market environmentalist R. J. Smith; Leonard Liggio, whose involvement in the freedom movement goes back to the 1952 Taft campaign and the Mises seminar; Jerome Tuccille, who wrote a book on the early stirrings of libertarianism; Don Ernsberger, a founder of the Society for Individual Liberty in 1969; Cato chairman William Niskanen, president Ed Crane, and executive vice president David Boaz; constitutional scholar Randy Barnett; and draft-registration resister and term-limits activist Paul Jacob. Blogger Rick Sincere wrote, "How rare it is to be able to have lunch with a book's index."



**A** DAY IN THE LIFE OF THE CATO INSTITUTE: On Thursday, February 22, Cato took the message of freedom and limited government to three different cities. At a Cato Book Forum in Washington, historian John Patrick Diggins discussed his new book arguing that Ronald Reagan was one of "three great liberators in American history" for his role in ending the Soviet empire. In Chicago, more than 400 guests heard P. J. O'Rourke talk about his new book *On the Wealth of Nations*. And at the 19th annual Benefactor Summit in Naples, Florida, legal scholar Henry Manne kicked things off with a devastating review of Sarbanes-Oxley and other financial regulations.

**K**atherine Baicker of the president's Council of Economic Advisers argued at a Cato Capitol Hill Briefing on February 2 that extending tax-exempt treatment to everyone, and not just people who buy health insurance through their employer, could expand access to health insurance and make it more affordable.



**FEBRUARY 2:** A Standard Deduction for Health Insurance: Something New under the Sun?

**FEBRUARY 13:** The Silence of the Rational Center: Why American Foreign Policy Is Failing

**FEBRUARY 14:** Playing Monopoly with the Devil: Dollarization and Domestic Currencies in Developing Countries

**FEBRUARY 14:** Federal Budget Outlook

**FEBRUARY 15:** Modern Liberty and the Limits of Government

**FEBRUARY 15:** *Leviathan on the Right: How Big-Government Conservatism Brought Down the Republican Revolution*

**FEBRUARY 14:** Do NGOs Harm Growth in the Developing World?

**FEBRUARY 22:** Ronald Reagan: Fate, Freedom, and the Making of History

**MARCH 7:** NCLB and the Future of Federal Education Policy

**MARCH 9:** A Skeptical Look at Grass-roots Lobbying Disclosure

**MARCH 9:** Facing a Challenge of the Current Era: Environmentalism, with Václav Klaus, President of the Czech Republic

**MARCH 12:** The REAL ID Act: Unfixed by the Regs, Unworkable on Any Time Frame

**MARCH 14:** Escaping the Trap: The Case for Withdrawal from Iraq

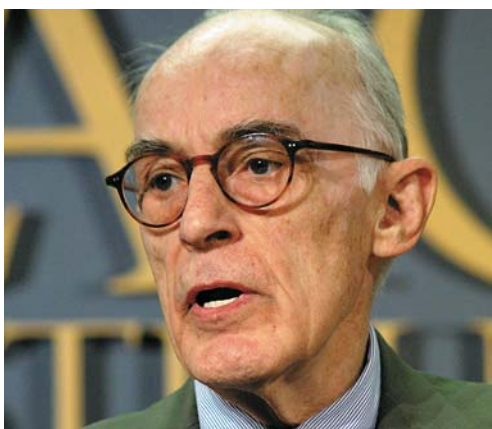
**MARCH 21:** Does the Record Trade Deficit Threaten the U.S. Economy?

**MARCH 22:** D.C. Gun Ban in the Cross Hairs

**MARCH 22:** *Radicals for Capitalism: A Free-wheeling History of the Modern American Libertarian Movement*

**MARCH 27:** The Dangers of Disclosure: The Unintended Consequences of Campaign Regulations for Free Speech and Privacy

**MARCH 29:** What Should Be a Culture of Enterprise in an Age of Globalization?



**O**n March 14, Lieutenant General William Odom (ret.) of the Hudson Institute said that the intractable political situation in Iraq makes withdrawal of American troops the best option.

**S**tefan Halper of Cambridge University discussed his new book, *The Silence of the Rational Center: Why American Foreign Policy Is Failing*, at Cato on February 13; he was joined by Thomas Omestad of *U.S. News & World Report* and Chester A. Crocker of Georgetown University. They agreed that academia’s love of “big ideas” such as “democracy on the march” led many academics to go along with the war in Iraq.



**F**adi Haddadin, editor of Cato’s Arabic-language website, said that Arab culture can be conducive to the values of capitalism and liberty. John D. Mueller of the Ethics and Public Policy Center and Robert Royal of the Faith and Reason Institute were also panelists at this March 29 conference at which the recipients of the 2006 Templeton Enterprise Awards spoke.

*Tanner and Cannon lead health care seminar for state think tanks*

## Tanner Testifies on Health Care in Legislatures

In what may be a legislative record, Michael Tanner, the Cato Institute's director of health and welfare studies, testified before three different legislative committees on the same day. On February 13, Tanner appeared before the Kansas House Committees on Health and Human Services, Insurance and Financial Institutions, and Taxation. He also testified before the House Health Task Force and held separate meetings with House Speaker Melvin Neufeld and aides to Gov. Kathleen Sebelius.

Kansas is one of several states considering Massachusetts-style health care reforms, including increased funding for Medicaid, an individual mandate for the purchase of health insurance, and a managed competition program based on a state-run "connector" for individual and small-group insurance. Only the week before, Ed Haislmaier of the Heritage Foundation had urged legislators to follow the Massachusetts model.

In contrast, Tanner warned that Mass-

achusetts-style reforms were likely to lead to greater government control over the health care system with higher costs, less consumer choice, and the threat of rationed care. Tanner called on legislators to deregulate the health care marketplace by increasing the use of health savings accounts, allowing greater scope of practice for nonphysician professionals, reducing mandated benefits, and allowing consumers to purchase health insurance across state lines.

With some of the most important issues of health care policy being decided at the state level, Cato has stepped up its efforts to educate legislators about the importance of consumer-oriented reform. In addition to his Kansas testimony, Tanner has recently spoken to legislators in Texas and Michigan, and upcoming events are scheduled in Iowa, Oklahoma, and Washington State.

Meanwhile, Michael Cannon, Cato's director of health policy studies, met with legislators in Texas and New Mexico and

attended the California House Republicans' annual retreat.

Tanner and Cannon also led a two-day conference on health care reform for leaders of state-based think tanks. Analysts and officers of think tanks in 25 states gathered in Chicago on March 30–31. Given the different approaches to health care reform being advocated by think tank scholars, the sessions generated spirited discussion of such topics as deregulating medical professionals, medical malpractice, state mandates, and Medicaid reform. The discussion leaders included Arnold Kling, author of *Crisis of Abundance: Rethinking How We Pay for Health Care*; David A. Hyman of the University of Illinois, author of *Medicare Meets Mephistopheles*; and Stephen Moses of the Center for Long-Term Care Reform. A talk on the economics of health care by Cato senior fellow Peter Van Doren drew rave reviews. (*Cato Policy Report* readers can find a video version of the same talk given on Capitol Hill on the Cato Institute website in the events archive for June 2, 2005.)

*Biggs, Dudley get "recess appointments"*

## Bush Names Cato Scholars to Two Jobs

President Bush appointed two scholars affiliated with the Cato Institute to positions in early April. Andrew Biggs, former assistant director of Cato's Project on Social Security Choice, was appointed deputy commissioner of Social Security. He had previously been associate commissioner for retirement policy at the Social Security Administration. At Cato he wrote studies and testified before Congress on Social Security's financial precariousness and the benefits of private accounts.

Susan Dudley, a frequent contributor to *Regulation* magazine, was named administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget. In that capacity she will be the administration's chief regulatory official, with the authority to review

and change regulations issued by major regulatory agencies. Dudley was previously distinguished senior scholar and director of the Regulatory Studies Program at the Mercatus Center; she and her colleagues contribute reports on regulatory activity to each issue of *Regulation*. In the Winter 2004–2005 issue, she reviewed the Bush administration's regulatory record and noted, "OIRA's paradigm appears to be that, rather than rely on market processes, property rights, and individual choice, smarter regulators can devise government solutions to perceived problems." In her new post she will be in a position to change that paradigm.

President Bush used controversial

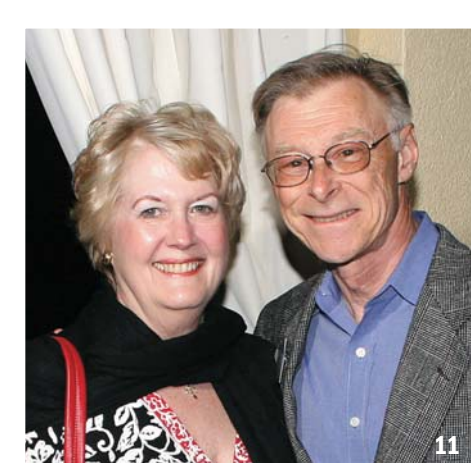
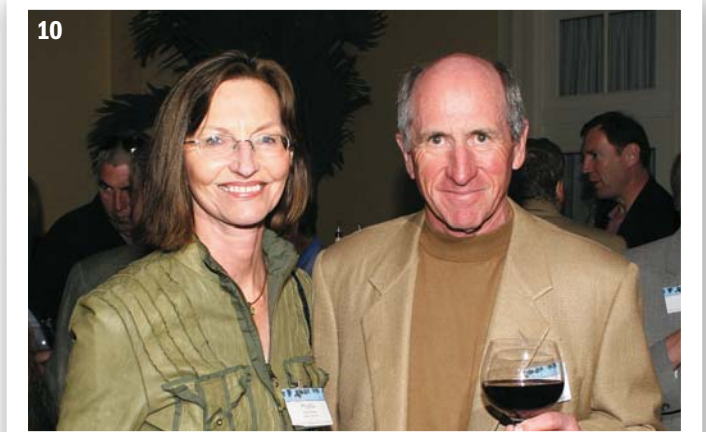


Andrew Biggs addresses President Bush and other panelists at a White House conference on Social Security reform in 2005.

"recess appointments" to appoint both Biggs and Dudley because the Senate was unwilling to vote on their nominations. Their appointments drew a firestorm of criticism from anti-market activists and senators.

More than 100 Cato Institute Benefactors joined Cato staff and guest speakers including P. J. O'Rourke and Ayaan Hirsi Ali at the **19th Annual Benefactor Summit** at the LaPlaya Beach and Golf Resort in Naples, Florida, February 21-25.





1. Cato Club 200 member **Joanne Blokker** and her daughter **Donja Dalquist** enjoy a break next to the beautiful Naples canal. 2. Benefactors **Doug and Celia Webb**. 3. Cato Club 200 member **Joan Carter** asks a question. 4. Cato Club 200 member **Joanne Blokker**, Board member **Lew Randall**, and Cato's **Jerry Taylor** enjoy lunch by the Gulf of Mexico. 5. **Susan and Sheridan Biggs**, Benefactors and parents of controversial former Cato employee Andrew Biggs (see page 7). 6. **David Boaz** pontificates to Benefactor **Laura Holmes Jost**. 7. Cato Club 200 members **Scott and Vanessa Barbee**. 8. **P. J. O'Rourke** (second from left) with Benefactors **Jeff Singer, Ron Hart, Bill Bayne, Walter Riley**, and **Michael Dokupil**. 9. Cato president **Ed Crane** gives the annual State of the Institute address in the shadow of Milton Friedman. 10. Benefactors **Phyllis and Ron Nolan**. 11. Cato Club 200 members **Julie Planck** and **Chuck Albers**. 13. Cato Club 200 member **Frayda Levy** grills a speaker.

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## “Mass affluence did trigger a mirror-image pair of cultural convulsions on the countercultural left and on the traditionalist right.”

*Continued from page 1*

At the heart of this process was a change in the basic orientation of the dominant culture: from a culture of overcoming scarcity to one of expanding and enjoying abundance. From a more rigid and repressed social system geared to achieving prosperity to a looser and more expressive one geared to taking wider advantage of prosperity's possibilities. American capitalism is derided for its superficial banality, yet it has unleashed profound, convulsive social change. Condemned as mindless materialism, it has burst loose a flood tide of spiritual yearning. The civil rights movement and the sexual revolution, environmentalism and feminism, the fitness and health care boom and the opening of the gay closet, the withering of censorship and the rise of a “creative class” of “knowledge workers”—all are the progeny of widespread prosperity.

### Questioning Authority

No one has analyzed the process of cultural reorientation more exhaustively than University of Michigan political scientist Ronald Inglehart, who for decades has been using attitude surveys to track the progress of what he calls “postmodernization.” And his research has examined cultural trends, not only in the United States, but in dozens of other countries as well. The best-documented aspect of postmodernization is a shift from “materialist” to “postmaterialist” values, in which the “emphasis on economic achievement as the top priority is now giving way to an increasing emphasis on the quality of life. In a major part of the world, the disciplined, self-denying, and achievement-oriented norms of industrial society are giving way to an increasingly broad latitude for individual choice of lifestyles and individual self-expression.”

According to Inglehart, the shift toward postmaterialist values is only one part of a broader process. Specifically, the heightened emphasis on subjective well-being as opposed to material security is highly cor-

related with a marked change in attitudes on a host of apparently unrelated issues, from adherence to traditional religion to trust in government to views on sex and sexual orientation. The central thrust of this “Postmodern shift” is a “broad de-emphasis on all forms of authority,” whether political, economic, religious, or familial. Once the quest for personal fulfillment and self-realization becomes a dominant motivation, all cultural constraints that might pose obstacles to that quest come under sustained and furious assault.

Inglehart concurs in the judgment that mass affluence is behind the sweeping cultural changes of recent decades. “This shift in worldview and motivations,” he writes, “springs from the fact that there is a fundamental difference between growing up with an awareness that survival is precarious, and growing up with the feeling that one's survival can be taken for granted.” Once material accumulation is no longer a matter of life and death, its diminished urgency naturally allows other priorities to assert themselves. “This change of direction,” Inglehart concludes, “reflects the principle of diminishing marginal utility.” Meanwhile, material security reduces stress, and thus the appeal of inflexible moral norms. “Individuals under high stress have a need for rigid, predictable rules,” Inglehart observes. “They need to be sure what is going to happen because they are in danger—their margin for error is slender and they need maximum predictability. Postmodernists embody the opposite outlook: raised under conditions of relative security, they can tolerate more ambiguity; they are less likely to need the security of absolute rigid rules that religious sanctions provide.”

The process of cultural adaptation has been anything but smooth. For his part,

Inglehart notes that the “Postmodern shift” is frequently accompanied by an “authoritarian reflex.” “Rapid change leads to severe insecurity, giving rise to a powerful need of predictability. . . .” he writes. “The reaction to change takes the form of a rejection of the new, and a compulsive insistence on the infallibility of old, familiar cultural patterns.” Commenting on the growing prominence of religious fundamentalism in the United States and elsewhere, Inglehart argues that “it is precisely because traditional social and religious norms have been eroding rapidly in these societies during recent decades that people with traditional values (who are still numerous) have been galvanized into unusually active and disruptive forms of behavior, in order to defend their threatened values.”

### Rebellions Left and Right

The juxtaposition of a Postmodern shift and an authoritarian reflex suggests a relationship of Newtonian simplicity: action and reaction, progress and backlash. Here in the United States at least, the reality has been rather more complicated. Here, mass affluence did trigger a mirror-image pair of cultural convulsions: on the countercultural left, a romantic rebellion against order and authority of every description; and on the traditionalist right, an evangelical revival of socially and theologically conservative Protestantism. Both arose around the same time, in the dizzying 1960s. Between them, these two movements have played decisive roles in shaping America's accommodation to mass affluence. But those roles cannot be fairly described as progressive and reactionary, or adaptive and obstructive. The countercultural left combined genuine liberation with dangerously antinomian excess, while the traditionalist right mixed knee-jerk reaction with wise conservation of vital cultural endowments.

The two movements thus offered conflicting half-truths. On the left were

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“Out of the antitheses of the Aquarian awakening and the evangelical revival came the synthesis that is emerging today.”

arrayed those elements of American society most open to the new possibilities of mass affluence and most eager to explore them—in other words, the people at the forefront of the push for civil rights, feminism, and environmentalism, as well as sex, drugs, and rock ‘n’ roll. At the same time, however, many on the left harbored a deep antagonism toward the institutions of capitalism and middle-class life that had created all those glittering new possibilities. On the right, meanwhile, were the stalwart defenders of capitalism and middle-class mores. But included in their number were the people most repelled by and hostile to the social and cultural ferment that capitalism and middle-class mores were producing. One side attacked capitalism while rejoicing in its fruits; the other side celebrated capitalism while denouncing its fruits as poisonous.

Out of the antitheses of the Aquarian awakening and the evangelical revival came the synthesis that is emerging today. At the heart of that synthesis is a new version of middle-class morality—more sober, to be sure, than the wild and crazy days of “if it feels good, do it,” but far removed from old-style bourgeois starchiness or even the genial conformism of the early postwar years. Core commitments to family, work, and country remain strong, but they are tempered by broadminded tolerance of the country’s diversity and a deep humility about telling others how they should live. “Above all moderate in their outlook on the world,” summarized sociologist Alan Wolfe in *One Nation, After All*, “they believe in the importance of living a virtuous life but are reluctant to impose values they understand as virtuous for themselves on others; strong believers in morality, they do not want to be considered moralists.”

Liberal attitudes on race and the role of women in society have now become subjects of overwhelming consensus. Consider interracial dating, once among the most ferociously enforced of taboos. According to a 2003 survey, 77 percent of Americans

agreed with the proposition, “I think it’s all right for blacks and whites to date each other,” up from 48 percent in 1987. Even 59 percent of Southerners agreed—a remarkable transformation. Meanwhile, as of 1998, 82 percent of Americans approved of married women working outside the home—with less than a percentage point of difference between male and female responses.

### Live and Let Live

And while most Americans still reject the notion that homosexuality is normal, they nonetheless are willing to live and let live. Over 50 percent of respondents in a 2001 survey continued to hold that homosexual sex is always wrong, though the figure has declined from more than 70 percent in the early 1970s. Nevertheless, some 9 in 10 Americans endorsed equal job opportunities for gays and lesbians as of 2003; over 60 percent extended that endorsement to include teaching positions in elementary schools. Meanwhile, a 2005 poll found that supporters of gay marriage or civil unions outnumbered opponents, 48 percent to 44 percent.

Progressive attitudes on race and sex have been bolstered by new and strict rules of etiquette. Ethnic jokes, once a staple of American humor, are now considered bad manners or worse. Goatish behavior in the workplace is proscribed by strict rules against sexual harassment. “Homophobia” is zealously guarded against. Although the aversion to giving offense is a creditable one, it has veered all too frequently into killjoy puritanism, as exemplified by the widely noted absurdities of “political correctness.” Overzealous moralism and humorless busybodyness are abiding American temptations; today they are simply being indulged in on behalf of new

causes. Notwithstanding the excesses, the fact that certain forms of casual bigotry are no longer quite so casual must be regarded as a genuine improvement.

These deep bows toward the influence of Aquarius, while highly significant, are nonetheless highly selective. On issues of crime and punishment, for instance, Americans continue to support a hard line. A 2003 survey found that 65 percent of respondents thought the criminal justice system wasn’t tough enough, while 26 percent thought it was about right. Only 6 percent said it was too tough. Capital punishment still enjoys strong support, as 74 percent of those answering a 2005 poll favored the death penalty in cases of murder. Enthusiasm for vigorous law enforcement is matched by a strong belief in the right to self-defense. Asked whether they favored a ban on private ownership of handguns, 63 percent of Americans responding to a 2004 survey said no. Moderate restrictions on gun ownership, however, do command majority support.

Although the principle is often honored in the breach, Americans in overwhelming numbers recognize the importance of two-parent families. A 1996 survey showed that 86 percent of Americans regarded out-of-wedlock births as a very serious or critical problem; in that same survey, 81 percent said that divorces involving parents with small children are a problem of equal severity. Meanwhile, belief in the work ethic remains strong. According to a 1994 survey, 74 percent of Americans still believe that “if you work hard you can get ahead—reach the goals you set and more.” Along related lines, 66 percent of the participants in Alan Wolfe’s detailed study of middle-class suburbanites endorsed the statement that “the problems of America’s inner cities are largely due to people’s lack of personal responsibility for their own problems.” And though they are more alert to their country’s past and present failings than earlier generations, Americans remain unfailingly patriotic. Some 92 percent of

“What has emerged in the broad center of American public opinion is a kind of implicit libertarian synthesis.”

Wolfe's sample group said that, despite its problems, the United States is still the best place in the world to live.

## Libertarian Synthesis

What has emerged, then, in the broad center of American public opinion is a kind of implicit libertarian synthesis, one which reaffirms the core disciplines that underlie and sustain the modern lifestyle while making much greater allowances for variations within that lifestyle. Though reasonably coherent and sturdy, it remains implicit because it cuts across the ideological lines of left and right that still dominate the definition of cultural and political allegiances and discourse. Lacking affirmative articulation as a mainstream public philosophy in its own right, the libertarian synthesis operates as a largely unspoken *modus vivendi*, a compromise between the overreaching of the left and right's conflicting half-truths.

The implicit libertarian synthesis that today informs the country's cultural and political center developed, not as the successful program of a self-conscious movement, but as the accidental result of the left-right ideological conflict. Unsurprisingly, that synthesis is therefore hardly a model of consistency. Widespread economic illiteracy and lobbying by vested interests weaken public support for rough-and-tumble market competition, especially when the competitors are “too big” (e.g., Microsoft, Wal-Mart, oil companies) or, worse yet, foreigners. The bloated middle-class entitlement programs, Social Security and Medicare, remain highly popular despite (or, perhaps, precisely because of) their fiscal unsustainability. And the quixotic “war on drugs” continues to enjoy broad public backing.

Nevertheless, in its broad outlines at least, centrist public opinion comports reasonably well with the reflexive libertarianism often described as “fiscally conservative, socially liberal.” And contrary to all the recent talk about a highly polarized electorate divided into right-wing “red”

states and left-wing “blue” states, the fact is that a purplish centrism is culturally and politically dominant in America today. According to 2004 survey data, 66 percent of Americans consider themselves either moderate, slightly conservative, or slightly liberal. By contrast, only 21 percent label themselves conservative or extremely conservative, while a mere 13 percent call themselves liberal or extremely liberal. Meanwhile, the divide between red and blue states, while real, is hardly dramatic. Survey data from 2000 showed that self-identified conservatives comprised 31 percent of voters in red states (i.e., states won by Bush in the 2000 election) and 24 percent of voters in blue states (i.e., states won by Gore); liberals constituted 11 percent of red-state voters and 20 percent of blue-state voters.

Nonideological moderation between the left and right's opposing claims thus dwarfs the committed partisanship of either flank. Here is the nub of the matter: America is an exuberantly commercial and intensely competitive society, a fact of which true believers on the left sternly disapprove; it is, simultaneously and not unrelatedly, an exuberantly secular and intensely hedonistic society, to the deep chagrin of true believers on the right. America is the way it is because the vast majority of Americans choose to make it that way, so it should come as no great shock that excessively vigorous condemnation of the contemporary American way of life meets with broad public disfavor. Ideologues, who define themselves by their dissent from America's prevailing cultural synthesis, must temper that dissent in their public pronouncements or face marginalization.

## The Realm of Freedom

None of which is meant to imply that ideological conflict is not real. It is all too real, and all too rancorous. But, in the end,

it has proved inconclusive. Despite their best efforts, both sides have failed to capture the prize of the great unconverted middle. Moreover, in attempting to do so, both sides have made key concessions along the way, so that the very definitions of left and right have shifted toward the cultural center. Today's typical red-state conservative is considerably bluer on race relations, the role of women, and sexual morality than his predecessor of a generation ago. Likewise, the typical blue-state liberal is considerably redder than his predecessor when it comes to the importance of markets to economic growth, the virtues of the two-parent family, and the morality of American geopolitical power.

Alas, ideological categories have not yet caught up with social realities. As a result, the new world we have been creating does not yet appear on the political map. And, therefore, the path of progress through the realm of freedom's vast, alluring, and treacherous landscape remains obscure to our blinkered vision.

For a new political movement to offer a viable alternative to the prevailing ideologies, it would need to start with forthright affirmation of the libertarian cultural synthesis—and equally forthright rejection of the left and right's illiberal baggage. A movement so grounded would probably not yield an explicitly libertarian politics, since it would need to include constituencies that incline toward more activist government. More likely, it would articulate an intellectual common ground shared by small-government conservatives, libertarians, and pro-market liberals.

At present, no viable hybrid of this or any other description exists or even appears to be germinating. For the time being, then, we are stuck with the continuing battle of half-truths. But comparing our situation with that in most other countries, it is difficult to summon up too much self-pity.

*From The Age of Abundance: How Prosperity Transformed America's Politics and Culture by Brink Lindsey. © 2007 by Brink Lindsey. By permission of HarperCollins Publishers.*

# D.C.'s Gun Ban Struck Down in Court, Heads to Supreme Court

**T**hirty-one years ago, the District of Columbia government prohibited residents of the District from possessing handguns. This March, the U.S. District Court of Appeals for the D.C. Circuit ruled in *Parker v. District of Columbia* that the ban violated the Second Amendment. Robert A. Levy, senior fellow in constitutional studies at the Cato Institute, and lead attorney Alan Gura represented the case's six plaintiffs who wished to keep handguns in their homes for self-defense. Levy and Gura appeared at a March 22 Cato Policy Forum to discuss their case and what it means for the future of Second Amendment rights.

**ROBERT A. LEVY:** Today's talk is not only about the Second Amendment, which is a constitutional issue, but also about gun control, which involves both the Constitution and public policy.

Strictly on policy grounds, there is a compelling argument that Americans deserve an opportunity to defend themselves by possessing suitable firearms. But even if the argument were to cut the other way—even if it could be demonstrated, which it most emphatically cannot, that more gun laws lead to less crime—gun laws are not just about policy. They are about the meaning of the Constitution and, in particular, the militia clause of the Second Amendment.

On March 9 the second most important court in the country ruled in *Parker v. District of Columbia* that the Constitution forecloses an outright ban on handguns, as we have in Washington, D.C. That means, if voters decide that such an outright ban is required for public safety, the way to go about it is to change the Constitution. We cannot simply ignore the constitutional provision and act as though the document did not exist.

*Parker* addressed a question that has divided Second Amendment scholars for

decades: does the right to keep and bear arms belong to us as individuals, or does the Constitution merely recognize the collective right of the states to arm the members of their militias?

In 1939 the Supreme Court had a golden opportunity to resolve that question. The case was *United States v. Miller* and the challenged statute required registration of machine guns, sawed-off rifles, sawed-off shotguns, and silencers. Sadly, the Court did little to illuminate, and much to mystify, the meaning of the Second Amendment. The opinion by Justice James Clark McReynolds was riddled with ambiguities. It established no definitive legal principle and offered no useful guidance or analysis to inform any modern Second Amendment deliberation.

Even worse, the Supreme Court provided in the *Miller* case just enough ammunition for appellate courts across the country to reject the individual rights view of the Second Amendment. As a result of the Court's abdication in *Miller*, the law of the land in 47 states, everywhere except Texas, Louisiana, Mississippi, and now Washington, D.C., is that individuals have no redress under the Second Amendment if a

state bans the possession and use of firearms for private—that is, nonmilitia—purposes.

Correctly interpreted, the main clause of the Second Amendment, “the right of the people to keep and bear Arms, shall not be infringed,” is what defines and secures the Second Amendment right. The subordinate clause, “A well-regulated Militia, being necessary to the security of a free State,” helps explain why we have that right.

So membership in a well-regulated militia is a sufficient, but not a necessary, condition of the exercise of our right to keep and bear arms. Imagine if the Second Amendment said, “A well-educated electorate, being necessary to self-governance in a free state, the right of the people to keep and read books, shall not be infringed.”

Surely no one would suggest that only registered voters—that is, members of the electorate—had a right to read. And yet, that is precisely the effect if the Second Amendment is interpreted to apply only to members of a militia. If the Second Amendment meant what the collective-rights advocates suggest, then the text would have read very differently. It would have said, “A well-regulated militia, being necessary to the security of a free state, the right of the states to arm their militias, shall not be infringed.”

But the Second Amendment, like the First, the Fourth, the Ninth, and the Tenth Amendments, explicitly refers to the right of the people. Consider the placement of the Second Amendment within the Bill of Rights, the part of the Constitution that deals exclusively with the rights of individuals. There can be no doubt that First Amendment rights, like speech and religion, belong to us as individuals. Fourth Amendment protections against unreasonable searches are individual rights. And in the context of the Second Amendment, we secure the right of the people by

guaranteeing the right of each person.

Predictably, the Court's focus in the *Miller* case was on the militia clause. Here is the crucial passage from McReynolds's opinion in *Miller*:

In the absence of any evidence tending to show that possession or use of a [sawed-off] shotgun . . . has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.

In other words, said McReynolds, the Second Amendment did not guarantee the defendants a right to transport an unregistered, sawed-off shotgun across state lines. Why? Because the weapon had not been shown to promote the common defense and was not self-evidently a component of ordinary militia equipment.

A proper reading of the Second Amendment should not attempt to link each and every weapon to militia use, except to note that the grand scheme of the amendment was to ensure that persons trained in the use of firearms would be ready for militia service. Because the *Miller* opinion is so murky, it has to be interpreted narrowly, allowing restrictions on weapons such as machine guns and silencers with slight value to law-abiding citizens and high value to criminals.

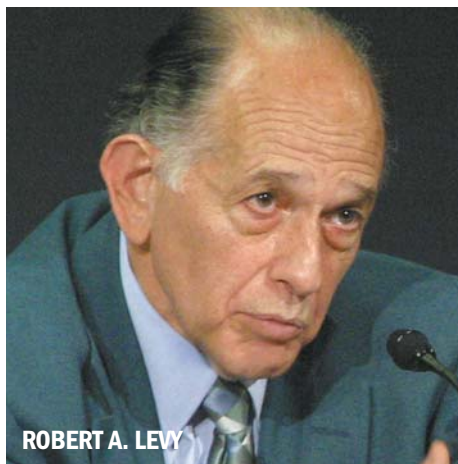
Thus, *Miller* applies to the type of weapon, not to the question whether the Second Amendment protects all individuals, only members of a militia, or just states. Sadly, that is not the manner in which *Miller* has been cited by trial and appellate courts in 10 of 12 judicial circuits, all except the D.C. Circuit and the Fifth Circuit, both of which found that *Miller* upheld neither the individual rights model of the Second Amendment nor the collective rights model.

The plaintiffs in *Parker v. District of Columbia* raised a straightforward constitutional challenge to the city's draconian gun laws. *Parker* was filed by Alan Gura, Clark Neily, Gene Healy, and myself on behalf of six law-abiding D.C. residents who want to

possess functional firearms to defend themselves where they live and sleep.

So *Parker* isn't about machine guns. It's not about assault weapons. The *Parker* litigation is simply about a pistol in the home for self-defense.

Off and on over the years, Washington, D.C., has reclaimed its title as the nation's murder capital. The D.C. government has been totally ineffective at disarming violent criminals. But at the same time, the government has done a superb job of disarming decent and peaceable residents.



ROBERT A. LEVY

“The court held ‘The Second Amendment protects an individual right to keep and bear arms.’”

No handgun can be registered in the District; even pistols that were registered prior to the ban, initiated in 1976, 31 years ago, cannot be carried from room to room in the home without a license, which is never granted.

Furthermore, all firearms in the home, including rifles and shotguns, have to be unloaded and either disassembled or bound by a trigger lock. So, in effect, no one can possess a functional firearm in his or her residence. And the law applies not only to unfit persons like felons or minors or

incompetent people but across the board to ordinary, honest, responsible citizens.

The six plaintiffs in the *Parker* case live in the District, pay their taxes in the District, and obey the laws of the District, but if somebody breaks into their homes, their only remedy is to call 911 and hope that the police arrive in time. That's not good enough. The right to keep and bear arms includes, of course, the right to defend your property and your family and, most of all, your life.

As you now know, Ms. Parker and her five co-plaintiffs did prevail in the D.C. Circuit. Senior Judge Laurence Silberman, joined by Judge Thomas Griffith, over a dissent by Judge Karen Henderson, held, and I quote, “The Second Amendment protects an individual right to keep and bear arms.”

We could not have asked for a more unequivocal and explicit statement. Moreover, the court continued, the activities protected by the Second Amendment “are not limited to militia service, nor is an individual's enjoyment of the right contingent upon his or her continued or intermittent enrollment in the militia.” In fact, said the court, “the right to arms existed prior to the formation of the new government in 1789.”

So for those of us eagerly awaiting a comprehensive and comprehensible Supreme Court statement on the Second Amendment, overturning or, at a minimum, defogging the *Miller* case, the Constitution is on our side.

That does not mean the D.C. government is foreclosed from regulating the use and ownership of firearms. Judge Silberman stated that the protections of the Second Amendment are subject to the same sort of reasonable restrictions that have been recognized as limiting, for example, First Amendment rights. So perhaps, he said, the District could justify things like concealed carry restrictions, registration, proficiency testing, and keeping guns away from felons and minors.

But an across-the-board ban on all handguns in all homes for all residents could not be construed as reasonable under any standard.

Proponents of gun control are not persuaded by those arguments, or even by empirical studies showing that gun control does not work. Nor are they persuaded by the text of the Second Amendment; the history, purpose, and structure of the Constitution; or even the intent of the Framers. In some jurisdictions, the enactment of anti-gun regulations has simply become an article of faith. Regulations persist and even spread in the face of compelling legal and policy arguments for their demise.

Happily, after 31 years, the U.S. Court of Appeals for the District of Columbia Circuit told the D.C. government that it may no longer ignore Second Amendment rights.

**ALAN GURA:** The future of the *Parker* case is as follows: The city has the opportunity to ask for review by the full D.C. Circuit Court of Appeals. There are 10 active judges. They need 6 of those 10, a majority, to vote to rehear the case. If that vote is taken, then they will need a majority of 11 judges, which I believe is still 6 because Judge Silberman, who is the senior judge, would get to participate at the rehearing stage.

Frankly, we do not know how the votes will turn out, but we are fairly confident that even if the D.C. Circuit takes the case, the decision is not going to be materially different as far as the Second Amendment is concerned. There are other aspects of the case that may be subject to en banc review related to standing, but we are not super-concerned about the decision being overturned by the full court. Of course, we are fairly confident and hopeful that the Supreme Court can read the Constitution as well. We are fairly confident that indeed it's only a matter of time until the mandate is issued and those laws become history, as they deserve to be, because they violate the Constitution.

We have had some creative statistical arguments thrown around on the policy side. I was very surprised to see that the chief of police had an opinion piece in the *Washington Post* that essentially said, "If only we were to stop the sale of handguns everywhere else, then they wouldn't come into

the District and wouldn't be used by juveniles to commit crime."

The police chief stated that D.C. arrests of juveniles for homicide had been declining since Maryland and Virginia enacted a gun-rationing ban. That's a very interesting theory. But there is a much better explanation for why arrests for murder have gone down. It's because the police don't solve those cases anymore. The D.C. police's closure rate for homicide has been plummeting.

So we certainly hope that the police department rededicates itself to solving



ALAN GURA

“You cannot have the existence of both a constitutional right and a law that negates it completely.”

crimes and not to advocating the destruction of our neighbors' constitutional rights.

We also had an interesting argument by Professor Chemerinsky of Duke University. He claimed that the right to bear arms can be regulated, and because you can regulate the right, you can basically abolish it completely.

No, that is not the case. You can regulate a right, but the onus is on the government to prove that the regulation meets whatever test you apply. When it comes to enumerated rights, which we call fundamental

rights, it has been the law for a very long time that the test is known as strict scrutiny.

For all you nonlawyers out there, it's a very, very tough test. The presumption is that the law is invalid. The government has to have what is called "a compelling state interest." The law has to be "narrowly tailored" to achieve that particular interest. There has to be "no less restrictive alternative."

Of course, in this case we didn't even get that far, because we had a complete and utter ban on firearms. You certainly cannot have the existence of both a constitutional right and a law that negates it completely.

So there is not really even a need to address what level of review this right has. If the right exists, at a minimum it means that individual law-abiding people can have a functional firearm inside their homes, including a simple, ordinary handgun. We think that that will definitely hold up.

The other thing that has started happening since the decision came down is that I have gotten phone calls from criminal defense attorneys. These guys have trials of the bad guys—bank robbers, drug dealers, those sorts of people—who should not have guns. Of course, they are going to start making Second Amendment arguments in their defense.

This is actually not a new phenomenon. And it's the phenomenon that most concerned us when we took this case. Back in 2002, when this case was being thought of and it was just a twinkle in Bob's eye (actually the notion to file this case originated with Clark Neily and Steve Simpson), the situation was as follows: The criminal defense bar had litigated the Second Amendment very aggressively, and the results were terrible. Almost all of the collective rights cases were cases where, along with the kitchen sink, a drug dealer or a bank robber threw in the Second Amendment. And of course, no one is going to ever win in that kind of situation.

If for some reason the Supreme Court does not take our case, then it will likely still take whatever Second Amendment case comes next. We believe that the likelihood is that that case will not be as good as

*Continued on page 19*

# Taylor, Van Doren Counter Energy Misconceptions

When the federal government placed price controls on gasoline in the 1970s, it came as no surprise to many economists that what followed were “Out of Gas” signs posted at service stations around the country. Basic economics teaches that price ceilings lead to shortages. But it seems that when it comes to energy policy, politicians don’t remember Economics 101. In the 2006 election, Republican and Democratic candidates proclaimed with equal vigor how they would make the United States independent of foreign oil. In the process they showed a basic misunderstanding of the global nature of the oil market. Cato’s experts on energy policy, senior fellows Jerry Taylor and Peter Van Doren, are never short on material, and much of their public work is dedicated to correcting economic misconceptions.

President Bush in his State of the Union address called for new federal requirements to boost the production of alternative energy. He has followed up with an agreement on ethanol with Brazil. In an op-ed in the *Chicago Sun-Times* in January, Taylor and Van Doren challenged the impression given by the president and many others that ethanol is “the magical elixir that will solve virtually every economic, environmental, and foreign policy problem.” They point out that ethanol has cost about \$2.50 a gallon to produce for quite some time, even with government subsidies of \$6 billion a year. Debating the CEO of Pacific Ethanol live on CNBC, Taylor did not mince words: “This is simply a boondoggle and a gigantic neon-lit example of corporate welfare, and the whole darn thing ought to be shut down.”

The fight against interventionist energy policies is made more difficult when people who traditionally defend free markets and limited government fail to apply their principles. A number of market-oriented economists, including N. Gregory Mankiw, former chairman of the Council of Economic Advisers, have signed on to the “Pigou Club,” which supports higher gasoline and carbon taxes at the federal level.

They assume that only federal taxes can deal with the negative externalities associated with our use of energy, but Van Doren challenged that premise in Cato’s daily podcast on November 28. He argued that, although the externalities incident to driving should be priced accordingly, the economists of the Pigou Club are forgetting that Congress tends to be terrible at determining prices. As economic research



ignored by the Pigou Club shows, when confronted with higher taxes drivers reduce their fuel use, but they do not drive less; they switch to more fuel-efficient cars. Since vehicle miles traveled is what really creates externalities in pollution and traffic congestion, Van Doren said that taxing gas consumption would punish consumers but insignificantly reduce externalities. He pointed out that market-based pricing for roads during peak hours can deal with congestion. Cato also has long promoted remote emissions sensors as a less intrusive and more efficient way of dealing with pollution on the road; it published a pioneering paper on the issue in 1996 by economist Daniel Klein.

Time seems to not be on the side of energy policy alarmism. Predicted disasters fail to materialize, deflating the political impetus behind policy prescriptions. In late 2005 rising gas prices led politicians such as Sens. Byron Dorgan (D-ND) and Christopher Dodd (D-CT) to call for new “windfall profit” taxes on oil companies. Others had a host of ideas from suing OPEC to renewed price controls on gasoline. Taylor explained the foolishness of those proposals in a number of venues,

including a live debate on MSNBC against Rep. Dennis Kucinich (D-OH) and a policy analysis written with Van Doren, “Economic Amnesia: The Case against Oil Price Controls and Windfall Profit Taxes.” Before congressional staffers at a Cato Capitol Hill Briefing in July 2006, Taylor predicted that gas prices would fall as consumers adjusted their habits, just as has happened numerous times before, and that the gas price alarmists would be stuck with egg all over their faces. Indeed, within a few months, talk of windfall profit taxes dried up as gas prices stabilized. Cato’s energy scholars are prepared for the next round of dire predictions and misguided proposals.

## CATO CALENDAR

### CATO UNIVERSITY SUMMER SEMINAR

San Diego • Rancho Bernardo Inn  
July 22–27, 2007

Speakers include Brian Doherty, Glen Whitman, Marcus Cole, David Beito, Tom G. Palmer, and David Boaz.

### 6TH ANNUAL CONSTITUTION DAY CONFERENCE

Washington • Cato Institute  
September 17, 2006

Speakers include Judge Janice Rogers Brown.

### CATO CLUB 200 RETREAT

Laguna Beach, CA • Surf and Sand Resort  
September 27–30, 2007

### POLICY PERSPECTIVES 2007

New York • Waldorf-Astoria  
October 23, 2007

### 25TH ANNUAL MONETARY CONFERENCE

Washington • Cato Institute  
November 14, 2007

Speakers include Ben Bernanke, Eddie Yue, Fred Hu, Anna J. Schwartz, and Arnold Harberger.

### 20TH ANNUAL BENEFACITOR SUMMIT

Las Vegas • Four Seasons  
February 6–10, 2008

## Bolick: Courts Must Protect Freedom

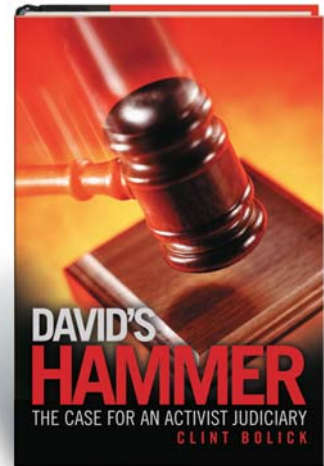
They're "arrogant," "imperious," and "out of control." They perpetuate "lawlessness" and act "without regard for the will of the people." It might be surprising that the targets of that invective are even more commonly called "your Honor." Judicial activism has become a "ubiquitous epithet," in the words of Georgetown University law professor Peter Edelman. Critics on both the right and the left decry as judicial activists judges who rule against the critics' preferred policy platforms. Clint Bolick, a prominent attorney who cofounded the Institute of Justice and has litigated before the Supreme Court, brings a different perspective to this muddled debate. In his new book *David's Hammer: The Case for an Activist Judiciary*, Bolick argues that, although courts that disregard the rule of law present a danger to republican government, the bigger problem occurs when courts do too little.

Bolick, currently director of the Goldwater Institute Center for Constitutional Litigation, argues that courts were designed to play a vital role in preventing tyranny by the legislative and executive branches. Drawing upon history, court decisions, and real-life examples, he demonstrates that courts are the last line of defense for

Americans to use against government's overstepping its constitutional boundaries.

Bolick's examples include the stories of individuals who faced the loss of liberty but found recourse in an active judiciary. Chue Yang emigrated to America as a child and was able to escape the dysfunctional Milwaukee public schools through a voucher program that enabled her to overcome a language barrier and attend Georgetown University. Her success was made possible by Supreme Court decisions that ruled that voucher programs were neutral in regard to the Establishment Clause of the First Amendment. The city government of Mesa, Arizona, attempted to seize Randy Bailey's brake service business in order to make room for the expansion of an Ace Hardware store. The Arizona Court of Appeals overruled previous case law to find that the state constitution actually means it when it says that "private property shall not be taken for private use." Life would be very different today for Yang and Bailey had their respective courts taken more deferential approaches.

Many other stories do not end like Yang's and Bailey's. Bolick describes how judicial deference to the Supreme Court's



ruling in the 1873 *Slaughter-House Cases* creates an uphill battle for ordinary entrepreneurs attempting to fight licensing restrictions that halt new businesses and protect established competitors. Bolick details the sharply varying real-world implications of courts that take their constitutional role seriously and those that do not. He concludes by exploring the untapped potential of state courts to interpret their own constitutions to protect individual liberty and constrain government power.

*David's Hammer* is available at [catostore.org](http://catostore.org) for \$11.95 (paper) and \$19.95 (hardcover).

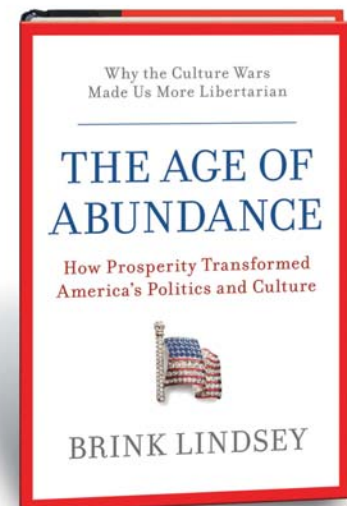
## Lindsey: Freedom and the Culture Wars

Americans enjoy fabulous wealth and great freedom, but that wealth and freedom sometimes interact with our politics in strange ways. On many college campuses in America, one can find students who live comfortable, privileged lives—thanks to their parents' wealth—yet march in anti-globalization rallies and denounce the evils of capitalism. Elsewhere, middle-class Americans vote for politicians who pledge to defend family values and fight the "countercultural agenda"—even as those same Americans make *Desperate Housewives* a top-rated television show.

The lines that demarcate right and left in American politics—one side rejecting freedom in the economic sphere, the other

in the social sphere—are somewhat contradictory. Over the past half century Americans have taken amazing strides toward freedom in both spheres.

In his new book *The Age of Abundance: How Prosperity Transformed America's Politics and Culture*, published by Collins, Brink Lindsey, vice president for research at Cato, argues that those advances are leading the American people toward a "libertarian synthesis" in which the contradictions between the standard right and left labels and our socially tolerant and economically free culture will be too stark to ignore. He identifies a simple but powerful phenomenon as the root cause: the rise of mass affluence over the last half century. Lives of leisure and prosperity



are now open to anyone in society, not just a select elite.

*Continued on page 18*

# No Easy Options: Time to Leave Iraq

**A**ccording to a 2006 poll, 71 percent of Iraqis want American troops to leave their country, and 61 percent approve of attacks on those troops. Using those and a host of other facts about the dire security situation in Iraq, Ted Galen Carpenter, vice president for foreign policy and defense studies at Cato, paints a sobering picture of just how difficult the U.S. mission in Iraq has become. In “Escaping the Trap: Why the United States Must Leave Iraq” (Policy Analysis no. 588), he explains why each of the proposed solutions to the crisis, including the troop surge, economic reconstruction, and partition, is fraught with dangers and unlikely to undo the damage we’ve already done. Carpenter also argues that predictions of catastrophe if the United States withdraws are overblown; for example, the Iraqi populace’s feeble support for al-Qaeda undercuts the thesis that Iraq would turn into a terrorist home base should the United States leave. He concludes that America must face the reality that sheer willpower cannot overcome the realities of the situation in Iraq and should set a timetable for withdrawal in months, not years.

## Rethinking Microfinance

Microfinance—the provision of financial services such as small loans to the world’s poor—is all the rage among many development experts, especially after microfinance pioneer Muhammad Yunus won the Nobel Peace Prize in 2006. But will microfinance actually spread prosperity? In “A Second Look at Microfinance: The Sequence of Growth and Credit in Economic History” (Development Briefing Paper no. 1), Thomas Dichter, a 40-year veteran of international organizations such as the World Bank and the Peace Corps, finds that the assumption that microfinance will spur entrepreneurial investment does not reflect what actually happens when credit is extended to the poor. The examples of informal credit movements in Britain and elsewhere throughout the 19th and early 20th centuries show, Dichter argues, that loan recipients generally use the money for savings and consumption, not investment or small business development. The people who are pushing microfinance as a cure for the Third World’s ills have it backward, he concludes. Finance does not create economic development; rather, development creates jobs that make ordinary people consumers of financial services.

## AGE OF ABUNDANCE *Continued from page 17*

In the United States, Lindsey writes, “social freedom begat material freedom.” With political institutions more firmly rooted in the classical liberal tradition than elsewhere, America combined stunning advances in science and technology with its entrepreneurial spirit. The resulting economic boom brought a “triumph over scarcity.” The cultural impact of that triumph, he argues, was the formation of right and left ideologies as reactions to new freedoms.

Lindsey looks at the major events of postwar America—the tumult of racial and gender politics, the rise of the counterculture, and the conservative revolution of the 1980s and 1990s—through the lens of mass affluence. *The Age of Abundance* is a sweeping history, but Lindsey does not lose sight of the details in his ambitious approach. From Allen Ginsberg’s “Howl” as a symbol of reaction to rising corporate consumerism, to Jerry Falwell’s formation of the Moral Majority as a symbol of the influence of evangelism, the book’s story is told in the specific words and actions of the individuals who shaped American life.

*The Age of Abundance* can be ordered at [catostore.org](http://catostore.org).

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ours. It will probably be a felony possession or a drug dealer, somebody who is presenting the Second Amendment in an unfavorable light, making an absurd claim that none of us here would ever make, and that is not a good platform for the Court to determine the rights of law-abiding Americans.

Most people in America are law-abiding. Virtually all gun owners are law-abiding. Maybe going shooting together is not something that frequenters of the faculty lounge do too often. But certainly in most of America, guns are a very ordinary and common aspect of life. It is sad, I think,

for that very basic fundamental right to be defined within the lens and context of a criminal proceeding. That is not what should occur. But if our case is not what the Supreme Court takes, that is probably what will occur.

With that in mind, we are somewhat concerned about Congress. There are many well-meaning members of Congress, people who support Second Amendment rights and want to go ahead and repeal the various D.C. gun bans that we have just spent all these years getting the courts to strike down.

If repeal legislation is enacted while the case is still making its way through the courts, the result is that the case will be

dismissed, the opinion will be vacated, it will have no precedential value, and the case will not get to the Supreme Court. Of course, that clears the path for the Supreme Court to take a criminal case, because we all know that Congress is not going to repeal all federal gun control laws and all gun control laws in the District of Columbia.

So we have to work with the members of Congress to make sure that, if they want to express themselves legislatively on the D.C. gun ban, they do so in a way that preserves the issue for litigation and doesn't become self-destructive of not just our case but of the Second Amendment.



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# “To Be Governed...”

## **I'M FOR FREE ENTERPRISE, BUT . . .**

Martin Tobias is one of several local tech millionaires who are now putting their money into alternative energy. There's a similar trend in Silicon Valley. He says biodiesel is now ready to go mainstream. But consumers aren't likely to switch unless prices are competitive with regular diesel. And right now, the price at the pump comes close only because of a generous federal tax subsidy—up to a dollar a gallon.

Tobias says that's only fair, given how entrenched the oil industry is.

“I'm a pretty conservative guy, generally. I've voted Republican my whole entire life. And I'm very skeptical of the government's role in any kind of market. But, in this case, there's no other way to do it but with government support and mandates.”

—*All Things Considered*, NPR, Mar. 20, 2007

## **THE EVER-GROWING WELFARE STATE**

The welfare state is bigger than ever despite a decade of policies designed to wean poor people from public aid. The number of families receiving cash benefits from welfare has plummeted since the government imposed time limits on the payments a decade ago. But other programs for the poor, including Medicaid, food stamps and disability benefits, are bursting with new enrollees. The result, according to an Associated Press analysis: Nearly one in six people rely on some form of public assistance, a larger share than at any time since the

government started measuring two decades ago.

—*Associated Press*, Feb. 26, 2007

## **SOME REPUBLICANS REMEMBER SOME OF THEIR PRINCIPLES**

More than 50 GOP members of the House and Senate—including the House's second-ranking Republican—will introduce legislation today that could severely undercut President Bush's signature domestic achievement, the No Child Left Behind Act, by allowing states to opt out of its testing mandates.

—*Washington Post*, Mar. 15, 2007

## **HOW DUMB DO THEY THINK WE ARE?**

Senate Democrats unveiled a spending blueprint yesterday that envisions a massive expansion of the nation's health-insurance program for children, as well as billions of additional dollars for other domestic priorities such as public education, veterans' health care and local police.

Despite the additional spending, Sen. Kent Conrad (D-N.D.), chairman of the Senate Budget Committee, said the proposal would virtually erase the federal deficit within four years without raising taxes and produce a surplus of \$132 billion by 2012.

—*Washington Post*, Mar. 14, 2007

## **MEET THE NEW BOSS, SAME AS THE OLD BOSS**

Eager to shore up their fragile House and Senate majorities, congressional Democrats have enlisted their commit-

tee chairmen in an early blitz to bring millions of dollars into the party's coffers, culminating in a late-March event featuring House Speaker Nancy Pelosi and 10 of the powerful panel chairs.

In the next 10 days alone, Democratic fundraisers will feature the chairmen of the House's financial services panel and the House and Senate tax-writing committees. Senate Democrats also plan a fundraising reception during a major gathering of Native Americans in the capital Tuesday evening, an event hosted by lobbyists and the political action committee for tribal casinos, including those Jack Abramoff was paid to represent.

—*Washington Post*, Feb. 24, 2007

## **HEALTH AUTHORITARIANS AFRAID PEOPLE WON'T DO AS THEY'RE TOLD**

The big drinks makers now plan to disclose the caffeine content on the product label.

The new information will allow consumers to compare the caffeine content of various soft drinks and comes as beverage companies are introducing new supercharged drinks. . . .

While health groups laud the move toward more labeling, some worry the caffeine disclosure might be used to encourage more caffeine consumption. “It's conceivable that some people will choose higher caffeine soft drinks,” says Michael F. Jacobson, executive director of the Center for Science in the Public Interest, who has lobbied for caffeine labeling by soda companies.

—*Wall Street Journal*, Feb. 27, 2007

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