AMERICAN DEMOCRACY AND THE PUBLIC GOOD

STEVEN KELMAN

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MEET AN ACTIVIST IN CONSTITUTIONAL LAW: ROGER PILON

Roger Pilon directs the Center for Constitutional Studies at the Cato Institute, a Washington think tank dedicated to promoting individual liberty, market economics, and limited government. Founded in San Francisco in 1977, the Institute moved to Washington in 1981, moving again in 1993 into a new Washington head quarters, complete with auditorium and conference facilities. With a staff of about 45, the Institute works with adjunct scholars from around the world to produce books, studies, and a weekly television show, and to conduct conferences and forums, all on a wide range of public policy issues.

Pilon, with help from his assistant and student interns who come to the Institute for short stays, draw upon this network of scholars to develop the constitutional and legal underpinnings of the Institute's work. He and his assistant write, commission, and edit books, articles, and opinion columns; organize and participate in conferences and forums; give speeches, interviews on radio and television, and congressional testimony; and consult with political and legal leaders both here and abroad.

Born in Vermont, Pilon grew up near Galway, New York, a rural upstate town of fewer than 150 people, where he ran a trap line for fur pelts, worked as a milkman, and organized his school's first rock 'n' roll band. He has had an "unexpected career," he says. After high school he entered Syracuse University as an engineering major, only to finish the year in music. Not sure what he wanted to do with his life, he dropped out of college. During the next seven years he had "a wonderful odyssey of discovery," he says, as a salesman (aluminum siding, insurance, and cigars), a professional musician (rock 'n' roll), a ski bum, a professional gambler (the horses), and an avid reader, mostly in philosophy. In the late 1960s he returned to college at Columbia

What was it like to make the transition from being a professor to working in government?
It wasn't easy. Even in the more senior posts there's a lot of bureaucracy. For me, it was a move from independent thought about the big issues to often narrow and structured work on policies and programs of limited interest and even less public utility. State and Justice were better than OPM. Still, if your aim is to limit government, as mine was, the executive branch is not the best place to do it from. By 1988, with the prospect of a "good government" Bush administration, I was ready to return to the world of ideas.

What constitutional changes do you and the Cato Institute advocate?
We advocate changes not so much in the Constitution as in the way many scholars and officials—especially Supreme Court justices—have come to understand the Constitution. After all, despite the immense growth of government over the 20th century at all levels, the Constitution remains a document of delegated, enumerated, and thus limited powers. How then do you explain this growth in government? The answer, once you study the theory and history of the matter, is really quite simple: Encouraged by Progressive Era theories of "good government," the political branches pushed for ever-greater public control of life in general, and economic life in particular, and the Court, which Madison thought would be "the bulwark of our liberties," eventually caved, inventing rationales for government power that are nowhere in the Constitution.

What we advocate, then, is a revitalization of the doctrine of enumerated powers—as reflected in the Tenth Amendment—and a return of power

University, majoring in philosophy and graduating with honors in 1971, during which time he supported himself as a New York cab driver.

Pilon went on to the University of Chicago, where he earned an M.A. and a Ph.D. in philosophy, supporting himself as a salesman for the Great Books and *Encyclopaedia Britannica*. At Chicago he refined the libertarian views he had developed over the previous decade (Milton Friedman was on his dissertation committee); met his future wife (also a philosopher); and was elected, with his wife, as an alternate delegate to the 1976 Republican National Convention. With a tight academic market before them in 1977, Pilon and his wife taught philosophy at California State University at Sonoma and then law and philosophy, respectively, at Emory University. In 1979 he was named a National Fellow at Stanford's Hoover Institution. In 1980, the newly named head of the Office of Personnel Management, Donald Devine, a University of Maryland political science professor Pilon had met at academic and political conferences, invited Pilon to join the Reagan administration. From 1981 to 1988 Pilon held five senior posts in the Reagan administration (at OPM, the State Department, and the Department of Justice); earned a J.D. at night from the George Washington University School of Law; and continued to speak and write on a wide range of moral, political, and legal issues. At the conclusion of the Reagan administration he joined the Cato Institute to establish the Center for Constitutional Studies.

to the states and, even more, to the people. In connection with this, we also urge, among other things, greater protection for property rights and economic liberty; an end to those redistributive and regulatory programs that are not grounded in the Constitution; an end to the mindless "War on Drugs" and the forfeiture practices that accompany it; greater protection against search and seizure and other police practices; and, to encourage more representative government, term limits on elected officials.

What are the best parts of your job? The worst parts?
My job nicely combines the world of ideas and the world of action. Philosophers may be closer to the world of thought, and lawyers to the world of action, but this job puts those worlds together. I love it! Probably the worst part of the job is editing: Too many writers, including academics, do not write (or think) clearly.

Why should someone interested in politics or government spend time on abstract constitutional issues rather than on specific policies?
The Constitution is the fundamental law of the land. Together with the Higher Law that stands behind it, it contains the principles upon which we constituted ourselves as a people and have governed ourselves, more or less, as a nation. If those who are interested in pursuing specific public policies want their policies to be consistent with our founding principles, they will need to understand those principles. Indeed, the modern failure of policy to conform to constitutional principle, when not from lack of will, arises precisely from such a lack of understanding.

A DAY IN THE LIFE OF A CONSTITUTIONAL ACTIVIST

8:15 AM I arrive at the office, take a quick look through the morning papers (*Wall Street Journal*, *The New York Times*, *Washington Post*, *Washington Times*), then meet with my assistant, who has already clipped and copied the important stories for me. We review projects on the agenda—papers I'm writing, a study he's editing, and a forum we're trying to get a commentator for. We've invited Congressman Steve Gunderson to speak next month on the NLRB's Electromation decision; Secretary Robert Reich's office has declined to comment, so we're trying to get someone from the AFL–CIO (to give balance to the debate), but have yet to hear back. I call my contact there again, who assures me she's working on it and will get back with me as soon as her people get back with her. My intern stops in as well, with an update on one of the projects I've asked her to research.

9:15 AM I take a cab to the Capitol Hill Hyatt to give a 9:30 speech to the leadership of the American Jewish Congress on the ideological underpinnings of the new 104th Congress. Before we go on, Bill Kristol (my fellow panelist) and I work out our division of labor. I will go first and do "high theory." He will go second and do "low politics." Bill taught at Harvard's Kennedy School of Government before he joined the Reagan administration. He was Vice President Quayle's chief of staff before he established the Project for the Republican Future, which he now heads. Our remarks are well received by the audience, which is anxious to learn our views about Speaker Gingrich's agenda. My own remarks emphasize the idea of constitutionally relimiting government, drawing upon discussions I have had over the past few days on Capitol Hill on the subject.

11:15 AM Back at the office I find a number of phone messages, which I start to return. One is from the congressional staffer for the Constitution Subcommittee of the House Judiciary Committee, with whom I have been working for the past two weeks on hearings she is putting together on bills on both term limits and property rights. The lineup for the term-limits hearings is now set. (I co-edited a book that came out in the fall entitled *The Politics and Law of Term Limits*, which was based on a conference Cato had held nine months earlier.) She would like me to testify on the property-rights bill, but unfortunately the hearings have just been set for two weeks off, when I'm scheduled to be at Cato's annual Benefactor Summit (for our major supporters) in Arizona. After discussing the matter with Cato's president, I call the staffer back to say that I will testify—and arrive at the summit a day late. I then give her suggestions for other witnesses.

12:45 PM After dictating letters to some of the people I had met after my morning speech (they had asked for more information about my work and the work of the Institute), I eat lunch at my desk, read some of my clips, then take a cab to a TV studio a few blocks away to do a session for Court TV's "Washington Watch" on proposed new property rights legislation. My opponent is John Kostyack, an attorney with the National Wildlife Federation, who agrees with me at the outset that this legislation is not designed to pay polluters not to pollute, then proceeds immediately to charge just that. The exchange is extremely heated—moderator Fred Graham is unable to get a word in during the first half—leading to a charge from Kostyack in the second half that "it's a well-known fact that Cato is an industry-funded think tank." When I invite him to back up his charge with evidence, he declines. (Less than 10 percent of Cato's $4.5 million budget [1993] comes from corporations; the NWF does not reveal what portion of its $90 million budget [1992] comes from corporations.) And even if he were right, I add, the Fifth Amendment does not read: "nor shall private property be taken—except from rich people."

2:00 PM After taping the show I go back to the office to return more calls and look through my mail. One call is from Paul Jacob, executive director of U.S. Term Limits, the group that has been helping the term limits movement around the country. Paul briefs me on the two term-limits bills that will be introduced in the Senate, one by Fred Thompson, calling for a maximum of 6 years in the House, 12 years in the Senate; the other by Hank Brown, leaving it to the states to set the terms. I tell Paul that we have just received the study we commissioned from Professor James Bond of the Seattle Law School, which shows that in calling for 12-year terms for the House, Newt Gingrich was wrong to claim that the Framers wanted the chambers to be equal. We'll have the study out in another week.

3:00 PM With a few more administrative matters out of the way, I'm at last able to get back to the final editing I've got to do on a book we're about to publish by Henry Hyde, now chairman of the House Judiciary Committee, which analyzes American asset forfeiture law and calls for substantial reform of that law. Once I finish the editing I will write a preface for the book.

4:00 PM Unfortunately, the phone does not stop ringing while I'm trying to work. One such call is from a lawyer doing a cover story for the *ABA Journal* on the new Congress, Federalism, and the Tenth Amendment. I discuss a number of issues with him, then tell him about my chapter in Cato's Congressional Handbook, which we'll be releasing at a press conference on Capitol Hill in another 10 days. The chapter is exactly on point with the story he's doing, so he asks me to send him a copy immediately, along with anything else I've written on the subject. I also get a call back from Professor Richard Epstein at the University of Chicago Law School. One of our speakers for the Benefactor Summit has had to cancel at the last minute so I need to ask Richard—who was a great hit at last year's summit—if he could come to the rescue. Unfortunately, his plate is so full that he cannot. We talk about other things as well, including the schedule for the new book of his we'll be copublishing in the spring, with the Harvard University Press, entitled *Simple Rules for a Complex World*.

5:00 PM As the editing of the Hyde book continues, I hear back at last from the AFL-CIO: they have someone who will comment on Congressman Gunderson's remarks at the upcoming forum. We can now draft the invitations and get them out. I also get calls from my 15-year-old daughter—telling me where she's going—and from my 9-year-old son—just "checking in." His day was eventful too, especially his soccer practice, where his play as goalie was "awesome." Fortunately, there is no political event to attend this evening, so as I start to fade toward 6 I call my wife to let her know that I'm on my way to pick her up and head on home. In my briefcase, however, is the Bond study, just in case I find a bit of time to work in the evening.