

# Cato Policy Report

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## The Preconditions for Eastern Europe's Economic Recovery

by John G. Greenwood

During the past few years academics and political observers have frequently discussed two alternative models for the reform of communist societies. The first model, pursued by President Mikhail Gorbachev in the Soviet Union, starts with political reforms and follows on with economic reforms. That pattern is now being repeated across much of Eastern Europe, although Hungary, which has experimented with some degree of economic liberty over the past 20 years, is an exception. The second model, best represented by China, starts with economic reform and moves to political reform only later. However, in the case of China the political reform movement was snuffed out abruptly on June 4, 1989, by the massacre in Tiananmen Square and the subsequent campaign of repression.

Those two models are naturally somewhat simplistic. Economic freedom is only one component of a broader concept of freedom that in-

cludes political freedom. There is also in practice much overlap between the two areas of freedom. For example, a country that accorded its citizens both political and economic freedom would presumably permit an individual to buy or sell a copy of a book by either Mao Zedong or Milton Friedman. It is hard to envisage a situation in which it would be permissible to buy copies of such books without also being allowed to advocate the ideas contained in them. Therefore, economic freedom is probably not feasible without some degree of political freedom.

Conversely, the overthrow of communist regimes in Eastern Europe and the emergence of greater political freedom suggest that there will be growing pressures for economic reforms (i.e., greater economic freedom stemming from political freedom). To date that hypothesis is largely untested, although five years of glasnost in Russia does not appear to have achieved very much perestroika (economic restructuring). It is therefore quite likely that there will be considerable opposition from vested

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At a Cato press luncheon, Edward H. Crane, Roger Pilon, and James A. Dorn listen as Martin Lee, former member of the Hong Kong Basic Law Drafting Committee, discusses the difficulty of creating democratic institutions before the 1997 Chinese takeover of Hong Kong.

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interest groups to extensive economic reforms in other parts of Eastern Europe. Also, political freedom alone is not enough to ensure economic success. On one level, political freedom implies the ability to participate in the democratic process of selecting government representatives. On another level, political freedom implies the existence of a whole range of civil liberties such as freedom of speech, freedom of association, and the protection of private property rights under the rule of law. For example, Hong Kong has never enjoyed democracy, yet under British administration its people have enjoyed a high degree of civil liberties and private property rights, which have enabled the economy to grow at an astounding rate for over four decades.

These initial observations suggest that the introduction of democracy may in fact be the easy part of reform in Eastern Europe. To judge from the record of Hong Kong and other successful economies, economic prosperity is

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## Free Trade, Limited Government, and Secession

### Editorial



**M**ultinational states and empire-states are tottering around the world. The Soviet colonies have suddenly seized their independence, and now the internal empire is coming apart. Lithuania has declared its independence, Estonia and Latvia are on the verge of doing so, the Central Asian republics are restive, and even Russia itself may be finding imperialism a burden rather than a benefit. Meanwhile, North American newspa-

pers are full of dire predictions that the Quebecois really mean it this time and are going to secede from Canada, and the countries of Central Europe, out from under the boot of Stalinist oppression, are beginning to wonder just *how* they got their present boundaries.

Perhaps the centuries-long era of the nation-state is coming to an end. In separate studies, Richard McKenzie and George Gilder have recently pointed out that governments are losing their ability to tax and regulate. Because value is increasingly found inside the human mind rather than in natural resources or huge factories, capital can more easily flee repressive regimes.

One of the most important lessons of America's economic success is the value of broadening the geographic area in which trade is free. Smaller countries such as Hong Kong and Switzerland have prospered by keeping their borders open to trade, and Europe is struggling toward that goal with its 1992 process.

If national borders are not used for the mercantilist purpose of regulating trade, how important are they? We live increasingly in a world of international culture, united more and more by a global language. Border guards and strong central governments are fighting a rear-guard action, trying to maintain their control over land and people.

Another lesson of the American experience is the value of federalism and a strictly limited central government. Switzerland may be an even better example. Although it has only about 7 million people, Switzerland has three major language groups and people with distinctly different cultures. It has solved the problem of cultural conflict with a very decentralized political system—20 cantons and 6 half-cantons, responsible for most public affairs, and a weak central government that handles foreign affairs, money creation, and enforcement of a bill of rights.

In their book *After Apartheid: The Solution for South Africa*, Frances Kendall and Leon Louw propose a similar model for South Africa: 150 or so virtually autonomous cantons and a federal government whose activities would be restricted to foreign affairs, national defense, currency issue, major infrastructure, and the enforcement of a bill of

rights. They argue that such a system would be the best way to guarantee individual rights for all South Africans and that competition among the cantons would help to limit economically destructive legislation. It might also be a good solution for the rest of Africa, which is still suffering much ethnic strife because of the absurd "national" borders left behind by the colonial powers.

One of the key insights offered by the Swiss system is that cultural conflicts can be minimized when they don't become political conflicts. Thus the more of life that is kept in the private sphere or at the local level, the less need there is for cultural groups to go to war over religion, education, language, and so on. The American Founders were the first to recognize the value of separation of church and state; since the state didn't impose one religion on everyone, it wasn't important for religious groups to fight for control of the state. A free market serves the same function: by limiting the number of decisions made in the public sector, it reduces the need for groups to vie for political control.

Separation of education and state could be just as beneficial as separation of church and state. Ethnic Hungarians in Romania, for instance, could choose to send their children to Hungarian-language schools. Much Catholic resentment in Northern Ireland stems from having to send children to state schools in which they must say Anglican prayers.

Similar constitutional arrangements might reduce other cultural and social conflicts. The *intifada* might never have arisen on the West Bank if the Palestinians living there had had self-government, their own schools, and the right to engage freely in commerce. And certainly religious freedom, privatization of schools, and an absence of economic regulation would help to avoid the potential ethnic conflicts in Central Europe.

People around the world are coming to understand the benefits of limited government and devolution of power. Even in faraway Azerbaijan, a young liberal recently reported, "My friends and I have been thinking, couldn't we solve the conflict between Armenians and Azerbaijanis not by moving the borders but by making them unimportant—by abolishing internal passports and allowing property ownership and the right to work on both sides of the border?"

Classical liberals need not fear the breakup of nation-states, large or small. Large political units should be given no automatic preference. Secession should be favored where a clear popular consensus exists in the seceding territory and the newly independent country will respect minority rights. And most important, limited constitutional government, free trade, free markets, protection of individual rights, and devolution of power reduce social conflict and make questions of national borders and secession much less urgent.

*David Boaz*  
—David Boaz

### American Taxpayers Deserve Peace Dividend

## Global Changes Demand New U.S. Defense Strategy

**B**y terminating obsolete alliances and adopting a policy of "strategic independence," the United States can reduce its military budget by more than 60 percent within five years, concludes a new study from the Cato Institute. The resulting peace dividend would produce a dramatic increase in economic growth if it were returned to the American people in the form of lower tax rates.

In the security strategy portion of the study, Cato director of foreign policy studies Ted Galen Carpenter and foreign policy analyst Rosemary Fiscarelli argue that the increasing capabilities of other nations in the international community and the decline of the Soviet threat, among other factors, make it possible to defend vital American security interests with a military force of 905,000 active-duty personnel instead of the current force of more than 2 million. America should spend "every dollar needed to defend the nation's security, but a wide array of global commitments and an excessively large military establishment to fulfill them are anachronistic status symbols we should not desire and cannot afford."

At the end of a five-year transition period, "the defense budget could be set at approximately \$120 billion (in constant 1991 dollars) and still protect U.S. security interests. That figure is in sharp contrast with the Bush administration's projected 1995 military budget authorization of \$284.5 billion."

The resultant savings of about \$165 billion by 1996 would allow a cut in income tax rates from 15 and 28 per-

cent to 12 and 22 percent, as Cato president Edward H. Crane proposes in his introduction to the study. According to an econometric analysis by Fiscal Associates, Inc., such a tax and spending reduction would increase employment by 2.4 million and GNP by \$200 billion in 1995.



Cato foreign policy analyst Rosemary Fiscarelli and director of foreign policy studies Ted Galen Carpenter are authors of a just released study calling for a 60 percent reduction in the U.S. military budget.

The Bush administration's FY 1991 budget would leave U.S. military spending more than 16 percent higher in real terms than it was in FY 1981, in the immediate aftermath of the Soviet invasion of Afghanistan and the collapse of détente. "Without an entirely new defense strategy," Carpenter and Fis-

carelli write, "there will be no significant peace dividend for the American people to enjoy. Instead, Washington will maintain a vast array of increasingly irrelevant commitments and the forces to fulfill them."

The study proposes eliminating such expensive weapons systems as the MX and Midgetman missiles, the Stealth bomber, the C-17 transport, and the SSN-21 Seawolf submarine and cutting the number of aircraft carrier battle groups from 14 to 6. The Army would be reduced from the current 18 divisions to 2, which would be combined with the Marine Corps to form a new mobile strike force for strictly limited missions. The United States would not maintain expensive tank and heavy infantry divisions for an increasingly improbable prolonged conventional war.

Carpenter and Fiscarelli propose that all U.S. forces be withdrawn from Europe, Japan, and South Korea over the next five years. In all three cases, they say, prosperous U.S. allies are fully capable of creating whatever forces may be needed to defend themselves.

The study proposes a new security policy of strategic independence based on a more rigorous definition of America's vital security interests and a devolution of defense responsibilities to other nations that have ample incentives to counter security threats even without U.S. subsidies. The new strategy would place relatively greater reliance on air and naval power and strategic defense and deemphasize the role of ground forces.

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## Epstein Debates Civil Rights

## Visitors from Hong Kong, Lithuania, Poland at Cato

## Cato Events

**April 3: "The Closing of the Conservative Mind: A Dissenting Opinion on Judge Robert H. Bork."** Harry V. Jaffa, director of the Claremont Institute's Center for the Study of the Natural Law, asserted that Bork has misunderstood and misstated the "original intent" of the U.S. Constitution by placing the rights of an expanding government over those of the individual.

**April 18:** Cato's senior staff members held a roundtable discussion on **Lithuanian independence** in the face of Soviet domination. Leading economists from the Lithuanian Ministry of Economic Affairs, Council of Ministries, and Bank of Commerce and Industry expressed their desire to create a free-market economy.

**April 25: "Setting Limits: Constitutional Control of Government."** Lewis K. Uhler, president of the National Tax Limitation Committee, argued that to control government spending, Americans should call for an amendment to the Constitution requiring a balanced budget. He also called for limiting congressional terms to two for senators and four for representatives. The character of Congress must be changed, Uhler contended, to ensure that legislators lead productive lives outside of Congress and that they abide by the laws they write.



Lewis K. Uhler, president of the National Tax Limitation Committee, signs copies of his book, *Setting Limits: Constitutional Control of Government*, at a Cato Policy Forum at which he discussed limiting congressional terms.



Washington attorney Michael Uhlmann, Cato chairman William A. Niskanen, and federal appeals judge Stephen Williams discuss Harry Jaffa's critique of Robert Bork's constitutional theory at a Cato Policy Forum.

**April 26: "The Roots of Decline in British Education."** British philosopher Antony Flew, a visiting fellow at the Social Philosophy and Policy Center at Bowling Green State University, argued that the revolutionary changes in Britain's educational system are responsible for the declining quality of British education. Flew described how the former system—a combination of selective private schools and nonselective government-run schools—was replaced by a system of comprehensive government schools. He noted that the present British school bureaucracy is loath to evaluate itself or its students.

**April 30:** At a roundtable luncheon **Martin Lee**, legislative councillor and former member of the Hong Kong Basic Law Drafting Committee, to which he was appointed and from which he was removed by the P.R.C., discussed the troubling provisions of the basic law for Hong Kong following the departure of the British in 1997, the creation of democratic institutions before then, and the intransigence of the British.

**May 2: "Capitalism and Pollution."** Tibor Machan, professor of philosophy at Auburn University, argued that the best way to deal with pollution is

"to internalize all negative externalities" through a system of private property rights. Fred Smith of the Competitive Enterprise Institute stressed the need for science and technology rather than emotion and regulation in solving environmental problems.

**May 8:** Book party for *The Politics of Plunder: Misgovernment in Washington* by Cato senior fellow Doug Bandow. The book is a collection of columns and essays on a wide variety of issues, including government waste, interest groups, foreign aid, and farm subsidies.

**May 10:** Cato Institute chairman **William A. Niskanen** discussed how the U.S.-Canada free-trade agreement has benefited workers on both sides of the border in a roundtable luncheon with congressional interns from Canada.

**May 10: "The Last Stage of Socialism."** Vitaly Naishul of the Institute of Economics in Moscow detailed the past and present economic structure of the Soviet Union. Naishul described "the surprising helplessness of a once omnipotent state" and called for free-market reforms in the Soviet economy.

**May 11:** Cato's Center for Constitutional Studies held a debate on the

topic, **"Resolved: A Flag-Burning Statute Is Unconstitutional and a Flag-Burning Amendment Is Un-American."** Morton H. Halperin of the American Civil Liberties Union argued that flag-burning is an act of political protest and thus protected under the First Amendment. Paul D. Kamenar of the Washington Legal Foundation defended flag-burning legislation as necessary to protect citizens from offensive behavior.

**May 15: "Can Trade Retaliation Really Open Japan's Markets?"** Jim Powell, author of *The Gnomes of Tokyo: Why Foreign Investment Is Good for Us*, argued that foreign markets usually become even more closed in response to reciprocity and retaliation. He argued for a U.S. policy of unilateral free trade.

**May 18: Roger Pilon**, director of Cato's Center for Constitutional Studies, discussed German reunification and the future of NATO with East European activists who are interning with members of Congress at a roundtable luncheon.

**May 23: "The Budget Summit: Feeding the Welfare State?"** Paul Craig Roberts of the Center for Strategic and International Studies proposed practical budget cuts to reduce the federal deficit. Alan Keyes of Citizens Against Gov-



Cato president Edward H. Crane talks with Soviet economist Vitaly Naishul about the need for free-market reforms in the Soviet Union.

ernment Waste offered examples, such as closing unnecessary military bases, of how the federal government could end its fiscal mismanagement without tax increases.

**May 23:** In a roundtable discussion, **Yuri Kochev** of the Institute of World Economy and International Relations in Moscow discussed the collapse of the Soviet economy at the hands of central planning and the possibilities of free-market reforms under Gorbachev.



Cato executive vice president David Boaz talks with Susan Liebler, former chairman of the International Trade Commission, and Jim Powell, author of *The Gnomes of Tokyo*, at a Cato Policy Forum. Liebler and Powell are authors of forthcoming Cato studies on the protectionist threat.

**June 6: "New Directions in the Drug War."** Steven Wisotsky, author of *Beyond the War on Drugs: Overcoming a Failed Public Policy*, pointed to the failure of interdiction and to restrictions of civil liberties as results of the drug war. Wisotsky proposed a national commission to look at the problems of drug use and drug prohibition.

**June 7:** Cato's Center for Constitutional Studies sponsored a debate on the topic, **"Resolved: The Civil Rights Act of 1990 Is a Threat to Our Civil Rights."** University of Chicago law professor Richard A. Epstein charged that past and present civil rights legislation has failed to achieve its central purposes, such as improving the economic situation of black Americans, and that freedom of contract would do more than coercive legislation to eliminate irrational discrimination. Antonio J. Califa of the American Civil Liberties Union countered that civil rights legislation is necessary to combat prejudice and "irrationality in the market."

**June 8: "Barriers to Economic Transformation in Poland."** Rafal Krawczyk, associate professor of economics at the Catholic University of Lublin, Poland, criticized Poland's radical reform program for squeezing the nascent private sector far more than the state's heavy industries, which continue to largely determine prices from the top. Sir Alan Walters, former economic adviser to Margaret Thatcher, proposed that the government commence massive privatization of small firms while engaging top-rate professionals to return the large firms to profitability before privatization, as the Thatcher government did with British Steel and British Airways.

**June 12: "What We Don't Know about Addiction Is Hurting Us."** Stanton Peele, author of *Diseasing of America: Addiction Treatment Out of Control*, criticized current perceptions of treatment and addiction. Peele argued that society has traded common sense and research for hysteria and hype, pointing out that tobacco is socially acceptable even though it is more addictive than cocaine or heroin. False perceptions, he concluded, have led to the failure of treatment programs for both middle-class and inner-city addicts.



## Would a Flag-Burning Amendment Be Un-American?

### Policy Forum

The Cato Institute regularly sponsors a Policy Forum at its Washington headquarters, where distinguished analysts present their views to an audience drawn from government, the media, and the public policy community. A recent Center for Constitutional Studies forum featured a debate on the topic, "Resolved: A Flag-Burning Statute Is Unconstitutional, and a Flag-Burning Amendment Is Un-American." Arguing the affirmative was Morton H. Halperin, Washington director of the American Civil Liberties Union. Arguing the negative was Paul D. Kamenar, executive legal director of the Washington Legal Foundation.

**Morton H. Halperin:** I was tempted to stand up today and say that if you do not understand why the federal statute banning the desecration of the flag is unconstitutional and why a constitutional amendment to that effect would be un-American, there's really nothing that I can say to explain it to you. But under the theory that nobody is permanently beyond redemption, let me try. It is certainly the case that the outer limits of the First Amendment are subject to debate. We've had cases about begging in the subways, about topless dancing, about commercial speech. But there can be no doubt that at the core of the First Amendment is the right of political expression—the right to make your political views known—and that right extends not only to speech but to all forms of political expression.

I doubt that anybody would deny, at least at this point, that the First Amendment protects not only speech but other forms of expression and that political expression is the core of what is protected. Nor can anybody doubt that those who burn the flag are sending a political message. And if that is the case, I have to ask, how can one possibly think that the state can put people in prison for expressing their political views?

In the Supreme Court briefs, there are two arguments for the constitutionality of anti-flag-burning statutes.

One is that flag-burning fits under the "time, place, and manner" exceptions to the First Amendment, and the second is that the flag is unique.

For the state to prevail with the time, place, and manner argument, there not only has to be a time, place, or manner regulation—which I doubt the anti-flag-burning statutes are—but second, and most important, there has to be a compelling state interest that is advanced by the regulation and that is unrelated to the state's dislike of the content of the political message. It is absolutely clear that dislike of flag-

think those cases were wrongly decided, but they were clearly different because they had to do with the states' need to enforce regulatory schemes. Therefore the argument really comes down to what, in all honesty, proponents of anti-flag-burning legislation or amendment really believe—the flag is an exception to the First Amendment because there is something inherently different about it.

The other exceptions to the First Amendment that the Supreme Court has created—obscenity, fighting words, and so on—all require making a judg-



Roger Pilon, director of Cato's Center for Constitutional Studies, is flanked by Paul D. Kamenar, executive legal director of the Washington Legal Foundation, and Morton H. Halperin, Washington director of the American Civil Liberties Union, who debated the constitutionality of laws prohibiting flag-burning at a Cato Policy Forum. The debate, just days before the Supreme Court heard the case, was widely covered by the broadcast media.

burning on the part of Congress and the Texas or any other legislature has to do with the symbolism of the flag and with the message being expressed by those who burn it. There is just, I think, no way to get around that.

There is no way to articulate, and nobody has articulated, a state interest here that does not have to do with expressing views about political issues. There's no concern about safety, about health, about intruding into the private space of other people, about enforcement of a government regulatory scheme. Some may point out that the courts have permitted the states to regulate what may be put into mailboxes and prohibit the burning of draft cards. I

ment (which again I disagree with) that no content is being expressed. That has to be the finding because obscenity that has a political purpose is protected. Therefore all the previously created exceptions have involved the Court's saying that certain types of expression are not protected by the First Amendment. But in the case of flag-burning we are dealing with core expression, and it is not possible to make such a finding. Therefore the argument comes down to this: if a form of political expression is repugnant enough to a large enough percentage of the American population, they have the right to say that you cannot express your views in that way.

In other words, what the proponents of the statute and the amendment are saying is that I can express my political views any way I want to, with whatever intensity and symbolism I want to, as long as I don't offend some magic percentage of the American population enough to cause them to say that they do not want to tolerate and therefore will not tolerate my particular form of political expression. To be constitutionally protected, speech must be political, but it must not outrage large numbers of people.

Now, if that is not the principle, then I would ask what would distinguish a flag-burning constitutional amendment from, say, an amendment that says that you cannot destroy a Torah. There is a significant segment of Americans—Orthodox Jews—who believe that burning even your own Torah is a terrible act that should be prohibited. If they were in the majority in this country, they would want to prohibit Torah-burning. Their intensity of feeling, I assure you, is as great as that of those who don't like to see flags burned. The only difference is that they are not a majority of the population of this country. What about cross-burning? What about Nazis goose-stepping in uniform and shouting "Heil Hitler"? Can one really say to survivors of the Holocaust that a Nazi salute is less repugnant than the burning of a flag? I would be very offended were somebody to burn the Bill of Rights. But should our constitutional standard be outrage? Should I have merely to move enough of you to anger to legitimize amending the Constitution to ban desecration of a copy of the Bill of Rights or the flag?

I would say that if there is anything that can properly be called un-American, and I think one should be very careful about that term, it is precisely the notion that under our system of freedom of expression, if enough of us don't like the way you express your political views, we can stop you. If the idea of freedom of expression in this country means anything, it means exactly the opposite. The fact that somebody else is outraged by your form of expression does not restrict your right to communicate your meaning, and you must be protected in that right. In this case as in all other cases of speech that someone doesn't like, the remedy is

not suppression of that speech but more speech, speech criticizing the offensive speech. Anything else, in my view, is dangerous to our liberty and, yes, un-American.

**Paul D. Kamenar:** Just a few days before the Supreme Court ruled last year that burning the American flag was constitutional, a World War II Navy veteran in New Mexico was found guilty of violating a town anti-noise ordinance because his American flag flapped too loudly. He went to the ACLU, who refused to represent him. I flew down there and got the conviction overturned. I am sorry that the ACLU was not there representing the man who wanted to fly that flag—and I am unhappy to learn that when one of your members presented your national office with a flag, which you did not have, it was rejected because there was already enough decoration in the office. I find it a little ironic that the American Civil Liberties Union does not have an American flag.

With the Supreme Court ruling that flag-burning is constitutional and a New Mexico court initially ruling that flying a flag is illegal, we can see that our courts have gone astray over the last 20 or so years. Let me put the First Amendment in perspective. The First Amendment is obviously one of the most important, if not the most important, amendments to our Constitution. But it is not absolute. To quote from *New York v. Ferber* (1982): "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problems. These include the lewd and obscene, the profane, the libelous, and the insulting or fighting words, those which by their very utterance inflict injury or tend to incite an imminent breach of the peace." I guess that since the recent decision by the Second Circuit we could add that panhandling is not protected by the First Amendment, unless of course you are burning an American flag while you are panhandling.

To me, burning the American flag is not really speech, it's conduct. It's violent conduct; indeed it's inflammatory conduct, both literally and figuratively. Restrictions on that kind of conduct

are not directed at what a person believes or is trying to express. Rather, as Justice Stevens said in his dissenting opinion in *Texas v. Johnson* (1989), the law is content neutral. It punishes everyone for desecrating the flag, regardless of the desecrator's message.

The Court, in my opinion, confused the communicative impact of outrageous conduct with the impact of the political message conveyed by that conduct. I dare say that the public is not particularly upset that Gregory Johnson hates the American government's policies. What they are upset about is the fact that he violently destroyed a symbol that's revered by almost all the American people as our symbol of national unity. The visual and emotional

(Cont. on p. 8)



Robert J. Smith has joined Cato as director of environmental studies and environmental editor of *Regulation*. One of the best known scholars of free-market environmentalism, Smith has been a consultant to the Council on Environmental Quality and the Department of the Interior. He is an active member of the Audubon Society.



Julie Riggs has joined the Cato Institute as conference director. She previously worked at the Close-Up Foundation as a senior program instructor and at the Heritage Foundation.



### Flag-Burning (Cont. from p. 7)

assault was no less disturbing than the aural assault of sound trucks going through a residential neighborhood at 3:00 a.m., regardless of the message they are playing. In fact, Justice Stevens posited a hypothetical of someone who did not intend to convey any political message or who wanted to convey an opposite message. For example, a patriotic veteran who is upset that people are blasé about patriotism and burns an American flag just to arouse their anger would also be prosecuted under the statute.

Morton describes burning the American flag as core First Amendment speech. But it is not core speech as such speech has been traditionally understood; it doesn't express ideas about how our government is to run. That's the core speech that the First Amendment is all about. Flag-burning, if it can be called speech at all, is at the outer fringes of what one would normally think of as speech. But let's assume that such symbolic speech is somehow core speech.

What are to be the limits on prohibition of offensive conduct? Keep in mind that the Texas law also made it illegal to desecrate a place of worship or burial. If Johnson's act of vandalism was expressive conduct, then I guess a satanic cult that desecrated grave sites to make a statement about traditional religious burial customs would also be protected from prosecution. Many jurisdictions make it a crime to desecrate a place of worship. Thus, vandals who spray-painted a synagogue, not knowing what it really was, could be charged with simple vandalism. However, if they knew what the building was and spray-painted the letters "KKK" or a swastika on it, they might be subject to harsher penalties. The community has the right to declare that kind of desecration deserving of special, enhanced punishment. Yet, according to Morton, if desecraters of a synagogue wanted to make a political statement against Jews, the anti-desecration laws would be unconstitutional.

Where does it stop? Society has laws against public nudity and public sex acts. Someone could say, "I am making a statement by engaging in sex acts in

public because I want to show my displeasure with society's mores." Are those acts protected? Are they core, symbolic speech? I would argue that flag-burning, like sex acts, really is not speech, or if it is, that it can be a prohibited category like libel, profanity, and fighting words.

A related issue is the breach-of-the-peace argument. Precisely because desecration of the flag offends many Americans, the state has an interest in averting any breach of the peace that might be triggered by such offensive and destructive conduct. Again, the people are not upset by the political views that are being "articulated" but by the manner in which a revered symbol is being destroyed. Justice Brennan cavalierly dismissed the breach-of-the-peace concern by saying, "No reasonable onlooker would have regarded Johnson's desecration of the flag as an invitation to engage in fistcuffs." Apparently, Justice Brennan thinks that patriotic Americans who would grab the flag to try to put out the flames are unreasonable people.

The interests that are posited by the government for having a law against flag-burning are well founded and do not run afoul of the First Amendment. There are plenty of other ways that Johnson could have expressed his dissatisfaction. He could have burned the president in effigy, or Uncle Sam, or the Great Seal of the United States, or the Constitution. He could have desecrated anything but the one symbol that society considers sacred enough to save from destruction.

In conclusion, *Texas v. Johnson* was wrongly decided. I hope that the Supreme Court overturns its decision of last year. If the Court upholds its decision and strikes down the Texas law, the only way to correct the problem will be by constitutional amendment. Is that a good idea? I think so. Our Founding Fathers gave us a mechanism for amending the Constitution to suit the needs of the people. We have amended that document four times in response to Supreme Court decisions that the American people did not like. I would think that the proposed amendment would add to the Bill of Rights by giving the people the right to enact laws to protect their cherished national symbol. The First Amendment would

be left intact. Protesters could engage in almost any other kind of symbolic speech they wished. A civilized society must be able to declare that certain things are sacred and to be protected from desecration, such as cemeteries, places of worship, and certainly our nation's flag, a revered and unique symbol.

**Halperin:** Paul is absolutely correct that the logic of my position compels me to say that penalties that are enhanced because the state doesn't like the content of what I spray on a synagogue are unconstitutional. The state cannot punish people for the content of their speech, whether they spray it on a building or put it in writing.

I did not say that it was the protester's belief that was being interfered with; it was the method of expressing that belief. The First Amendment protects equally what I want to say and how I want to say it, unless the state has a compelling interest that is threatened by the form of my expression, which has nothing to do with the state's not liking the content.

Everything you've heard today should make it clear that the objection to the burning of the flag is precisely that Paul does not like, and the majority of American citizens do not like, the message that it sends. Burning the flag undercuts what they consider the unique symbol of the nation. And it is for that reason that flag-burning is different from desecrating graveyards that belong to other people. You could, in fact, build your own grave site and then desecrate it, and the government could not stop you. Indeed, I think freedom of religion is threatened by the logic of the Court's decision in *Texas v. Johnson*, as it is threatened by the decision in the peyote case, which is as fundamental a threat to the First Amendment as is a potential adverse flag-burning decision.

In short, my case begins and ends with the same point: the only interest the state has in banning flag-burning is that it doesn't like the symbolic content; it doesn't like the political message it conveys. Flag-burning is precisely the kind of conduct that the state cannot interfere with. It is not true, and I never said, that I can trump any state law about conduct by simply

saying that I am doing it for political purposes—blaring my radio at 3:00 a.m., say, or walking nude down the street. The state can prohibit such conduct even if I say that it is the way I express my views, but *only* if the reason for its prohibition does not have to do with the content of my speech. In this case, it clearly does, and so the statute is unconstitutional and the amendment un-American.

**Kamenar:** It seems to me that if someone were to walk down the street nude as a political protest and pass out leaflets opposing the stuffy laws against nudity, Morton would have to call that action protected speech.

If someone is being prosecuted for the message he is trying to convey by burning the flag and the state doesn't prosecute someone else who is doing it with a different message, then one might have an equal protection argument—but not a First Amendment argument.

As for Morton's concern about the constitutionality of banning anything that you don't like if you can muster the support of enough people, it seems to me that part of what our Founding Fathers provided in the Constitution was the majoritarian tenet that yes, we need to protect the rights of dissenters, but at some point this is a society not just of individuals but of shared, common national values, and that we can express those values through laws passed by the majority—that's how a democracy works. There are hundreds of constitutional amendments that are thrown into the congressional hopper every year to make this or that unconstitutional, and they never get out of committee because there is no widespread support for them. I am not afraid that my position is going to open up a Pandora's box. If the Court strikes down the federal anti-flag-desecration statute, it is precisely the political process of amending the Constitution that will show what widespread support there is for protecting this symbol—not only by getting Congress to propose the amendment but by getting three-fourths of the states to ratify it. It seems to me that that kind of law is more representative of what the people believe than are all the other laws that are passed by a simple majority. ■

## Schmoke, Friedman, Ostrowski in Book on Drug Prohibition Failures

Twenty-seven leading critics of drug prohibition are represented in *The Crisis of Drug Prohibition*, edited by David Boaz, executive vice president of the Cato Institute.

The critics all agree that some form of decriminalization is needed to counter the major effects of our current drug laws: an increase in street crime, the spread of AIDS, and the destruction of inner-city communities, among others.

Most of the authors in *The Crisis in Drug Prohibition* call for the legalization of drugs to solve those problems. One of the most detailed plans is described by Boaz, who suggests applying "the alcohol model. That is, marijuana, cocaine, and heroin would be sold only in specially licensed stores—perhaps in liquor stores, perhaps in a new kind of drug store."

Baltimore mayor Kurt Schmoke argues that decriminalization would take the profit out of drugs and greatly reduce, if not eliminate, drug-related violence.

Nobel laureate Milton Friedman is disgusted "by the prospect of turning the United States into an armed camp, by the vision of jails filled with casual drug users and of an army of enforcers empowered to invade the civil liberties of citizens on slight evidence."

Charles Murray contends that giving parents educational vouchers and

lifting restrictions on employers and landlords would allow communities to noncoercively avoid drug abusers and dealers, with far better results than the War on Drugs can promise.

Other authors in the book include Princeton University professor Ethan A. Nadelmann; James Ostrowski, president of Citizens Against Prohibition; and journalists Russell Baker, William F. Buckley, Jr., Courtland Milloy, and Mike Royko.

Many of the authors in this volume have been instrumental in stimulating renewed interest in drug legalization. Boaz's *New York Times* column in March 1988 was the first of the new round of calls for legalization. Schmoke's speech the following month to the U.S. Conference of Mayors made national headlines. Ostrowski's study for the Cato Institute remains the most comprehensive analysis to date of the failure of drug prohibition.

As noted in the preface, popular support for drug legalization rose from 10 percent in 1988 to about 30 percent in early 1990. That change is due in large part to these essays, which have appeared in the pages of *Newsweek*, the *New Republic*, the *New York Times*, the *Washington Post*, and the *Wall Street Journal*.

*The Crisis in Drug Prohibition* is available in paperback for \$8.00 from the Cato Institute. ■

### Peace Dividend (Cont. from p. 3)

According to Carpenter and Fiscarelli, "The United States should abandon the venerable concept of the strategic triad—land-based missiles, submarine-launched ballistic missiles [SLBMs], and long-range bombers—in favor of a strategic dyad—SLBMs and long-range aircraft only." The total strategic arsenal should be reduced to approximately 3,000 warheads from the current level of more than 12,000. In addition, an effective anti-ballistic missile system is an important component of strategic independence.

The study warns that as the size of

U.S. armed forces is reduced, it is essential to avoid the creation of "hollow forces" that lack spare parts and experienced personnel. The post-Vietnam "hollowing out" of forces was a serious mistake.

According to Crane, the peace dividend rightly belongs to the American people and should be returned to them in the form of reduced taxes, not turned over to politicians and bureaucrats who would dissipate it through an endless assortment of domestic spending schemes.

The study, "America's Peace Dividend: Income Tax Reductions from the New Strategic Realities," is available from the Cato Institute for \$7.50. ■



### Eastern Europe (Cont. from p. 1)

built on five fragile foundations:

1. the rule of law,
2. a relatively incorrupt bureaucracy and independent judiciary,
3. predominantly private ownership of property (homes, farms, factories, and so on),
4. free-market prices, and
5. a stable monetary system.

Using that framework one can set up some simple measuring rods against which to monitor progress in Eastern Europe over the next few years.

#### The Rule of Law

The rule of law implies equality of individuals or companies before the law. The legal framework may be based on common law or civil law, or on more feudal concepts such as those on which Japanese law was based during the 19th century, but in all cases it must be clear what the freedoms, rights, and obligations of individuals in the society are. The legal system defines and provides for the protection of those freedoms and for the protection of property rights. Most communist societies virtually abolished the rule of law as we know it in western society and have relied on the arbitrary rule of the Communist party, which has typically shifted its ideological base as one leader followed another. Before World War II, most of the countries of Eastern Europe enjoyed the benefits of a legal system, but with the adoption of communism after the war, the law and respect for it atrophied. If a fundamental revival of liberty and prosperity is to take place in Eastern Europe, the legal systems will have to be rebuilt around such basic concepts as individual liberty and the notion that politicians and governments are not above the law. That task will not be rapidly accomplished.

#### Integrity and Independence

The rule of law also emphasizes the supremacy of *law* rather than that of *men*, which requires a relatively incorrupt bureaucracy and an independent judiciary. Those are implicit in the rule of law, but their existence is so important that it justifies separating them from the rule of law itself. Other agen-

cies charged with law enforcement, such as the police, require similar attributes of independence from the people or party in power and a relatively high level of integrity. Their loyalty must be to the law or to the system itself, not to a particular party or governing group of individuals. Societies that have been successful economically are typically also societies in which every individual is equal before the law and firms have an equal opportunity to secure government contracts through open competition. Where there is discrimination on the basis of ideology or personal contacts, or where there is outright corruption based on the amount an individual is willing to pay under the table, the process of government seldom

**"Legal systems will have to be rebuilt around such basic concepts as individual liberty and the notion that politicians and governments are not above the law."**

works to the advantage of the people as a whole.

Yet in communist societies where the wish of the party was absolute, there was no room for decisions based on objective rules. Party members, bureaucrats, and sometimes judges were above the law. For a telling insight into the relationship between communism and the rule of law, consider the experience of Miklos Vasarhelyi, the only living survivor of the 1958 show trial of Imre Nagy, the deposed Hungarian leader, and nine others. Vasarhelyi had been a member of the first anti-Stalinist study groups in 1953. He became Nagy's press secretary and served a four-year prison term before he was released in 1960. After 12 years as a blue-collar worker he was allowed to resume academic

work. Recently, he summarized the lessons of 40 years of communism: "We saw in 1953 that Stalinist structures could not work. So Nagy started outlining reforms that are a lot like what Gorbachev is trying to do in the Soviet Union today. We didn't know then that you can't reform communism. We didn't know that dictatorship and legality are incompatible."<sup>1</sup>

In the economic arena, too, the absence of the rule of law and state ownership of the means of production effectively eliminated the possibility of free and open competition. The system gave special privileges to particular state enterprises and eliminated the possibility of government contracts being allocated on the nondiscriminatory basis of the best price at tender. The consumer got a bad deal and so did the government. In general terms, communist societies virtually abolished the mechanisms for protecting individual freedoms and property rights and simultaneously destroyed the competitive conditions that stimulate innovation and cost cutting. They substituted instead a powerful machinery for ensuring that the wishes of the Communist party were not countered in any area of activity—political or economic. For Eastern Europe to prosper in the years ahead, it will be necessary to reconstruct the machinery for the maintenance of the rule of law; without it there is a risk of reversion to the rule of party or the rule of men.

The rule of law and the relative incorruptibility of the bureaucracy and the judiciary are the essential mechanisms for the protection of civil liberties and property rights in any society. Without them it is doubtful that a society can expect its brightest talents to emerge.

#### Private Property

Incentives are the key to material progress. Private ownership of property offers the strongest incentive linking work and reward. If the government takes 100 percent of a man's output, what incentive is there for him to work? Moreover, the incentive to maintain assets in working order and to create new wealth derives from people's ability to acquire assets (farms, homes, factories, businesses) by their own labor. Since communist societies generally

abolished private property, incentives for work and innovation were largely destroyed. Three sayings widely repeated in Russia today illustrate that point: About the incentive to work, the Russians often say, "Under communism we pretended to work, and the government pretended to pay us." About the incentive to maintain assets in good condition, they say, "What everybody owns, nobody owns." And, in the same vein, "In a communist system who will get up in the night to tend the sick cow?"

It follows that unless East European economies introduce private property ownership on a large scale, it is highly unlikely that they will achieve any significant reforms in their economic systems. Hungary offers a case study of the problem. Despite 20 years of economic reforms (1969-89), economic growth has averaged a miserable 1.6 percent per year since 1980. State-owned enterprises still dominate the economy, and little real competition has been allowed. In the transportation sector, as in all other sectors of the economy, access to credit and capital equipment by private operators has been so restricted as to prevent any significant competitive threat to Volan and Hungarocamion, the two state-owned enterprises that dominate the trucking business. As Alan Walters concludes, "Perestroika has been largely a sham" (unpublished manuscript, 1989).

#### Market Prices

Free-market pricing is essential for the efficient allocation of resources and to ensure that the income that people (and capital) receive reflects their contribution to society as measured by the market. More fundamentally, prices act as a crucial signaling device conveying information about the relative abundance or scarcity of goods and services, labor and capital, to everyone in the system. That information is so widely dispersed that no one person or central government agency could ever conceivably coordinate it sufficiently to set prices at the levels necessary to produce the right amounts and quality of goods and services.

Yet communist systems by and large abandoned free-market pricing in favor of centralized control. As a result, they have never produced what con-

sumers demanded, and suppliers have never been able to obtain adequate supplies or distribute their output to meet demand. The Swedish economist Anders Aslund reported:

The shortages are so great that people have little motivation to work, even as sloppily as before; enterprises see even less reason to deliver goods to other enterprises. At the same time, few of the previous commands from above—from planners and ministers—are being issued. Those that are issued are frequently disobeyed.

A telling example of this chaotic situation has been the refusal of southern republics to deliver

**"Free-market pricing is essential for the efficient allocation of resources and to ensure that the income that people (and capital) receive reflects their contribution to society."**

fruit and vegetables to the Russian heartland. Trainloads of food have stood rotting on the tracks in Moldavia and Azerbaijan.

The supply situation got so bad in Leningrad that the authorities had to order thousands of railway cars to the city. The result was complete chaos at the railway stations—so that food ended up rotting on the tracks in Leningrad, too.<sup>2</sup>

Some communist countries have experimented with free-market prices without private ownership. That, according to Warren Nutter, is the great delusion of socialism.<sup>3</sup> Without the ability to buy and sell factories, farms, trucks, and machinery, no producer can

adjust the quality or scale of his output in accordance with the needs of the market. As Paul Craig Roberts says, it's no good reforming prices if resources are not free to follow prices.<sup>4</sup> China has attempted a partial reform of prices without permitting private ownership (except on the farms) and ended up with a disastrous dual-track pricing system. With some prices fixed at artificially low levels and others floating freely at more realistic levels, it became a great temptation for bureaucrats and local government officials to appropriate state property—buying in the official market and selling in the free market.

As always, communism bred corruption. According to William Pfaff in the *International Herald Tribune*:

All of the Eastern European economies are vulnerable (to asset stripping, corruption of officials, etc.). Only Hungary has an embryonic stockmarket to facilitate privatisations. Nowhere is there systematic and standardised accounting. The very vocabulary of international accounting is unknown. Crucial privatisation decisions are in the hands of managers and local officials with no experience in how the private economy functions. Reform government leaders are more likely to be journalists or poets than economists.<sup>5</sup>

Similarly, when the Polish Communist party transformed itself into a social-democratic organization, officials at various levels started helping themselves to state property, either appropriating it for themselves or selling off the assets and pocketing the proceeds. Lech Walesa was right to complain: "The illegally acquired property of the former communist party belongs to the whole society. None of the newly created parties has the right to take possession."<sup>6</sup> East European economies will therefore need to privatize on a massive scale and move to free-market prices if they are to achieve major advances in efficiency.

#### Stable Money

Finally, a stable monetary system is essential if long-term investment con-

(Cont. on p. 12)



### Eastern Europe (Cont. from p. 11)

tracts are to be entered into and honored. If the value of money is allowed to depreciate rapidly at unpredictable rates, individuals will seek to protect themselves in any way they can—particularly by removing their wealth from the country or hoarding it in the form of rare coins and jewelry, instead of investing it in productive resources. As East European societies shift from fixed-price regimes to market prices at world levels, all of them will suffer from an enormous, once-for-all shift in the level of prices that will discourage many would-be reformers. (Thus, for example, prices in Poland have risen 540 percent over the past year.) At the same time, their currencies will depreciate sharply as they abandon overvalued, artificially fixed exchange rates and move to more realistic, free-market exchange rates. In addition, if their governments continue to run budget deficits that are financed by the creation of money and credit instead of by borrowing, there is the real possibility of Eastern Europe's sliding down the slippery path followed by Latin American countries (where hyperinflation is endemic) or the path followed by Yugoslavia (where political pressure from six semiautonomous republics has led to credit creation sufficient to generate an annual inflation rate of 530 percent).

### Conclusion

Against the current background of elation and euphoria at the collapse of the totalitarian regimes that have suppressed human dignity and economic progress in Eastern Europe for so long, these assessments may seem rather negative. There is undoubtedly much to hope for, and a huge range of possible outcomes. One possibility is that East Germany and Hungary will introduce East European equivalents of the Chinese Special Economic Zones, along with a legal framework that permits and encourages not only foreign investment but high rates of domestic investment. No doubt foreign aid and foreign investment will be important factors in the early stages of Eastern Europe's economic recovery, but in the long run countries have to depend largely on their own efforts. Even under the Mar-

shall Plan, foreign aid never amounted to more than 3 or 4 percent of the GNPs of the recipient European economies.

To achieve real, self-sustaining progress over a number of years, East European countries will need to foster most if not all of the five essential bases of economic prosperity listed above in order to stimulate sufficient domestic savings to finance investment at 15 to 20 percent of their GNPs. It will be worthwhile in the excitement—and in the inevitable times of disillusionment—to make reference to those five fragile foundations to see whether or not they are being laid. If they are, the upside

**"Political freedom implies the existence of a whole range of civil liberties such as freedom of speech, freedom of association, and the protection of private property rights under the rule of law."**

potential is obviously enormous; if they are not, frustration, disillusion, and even the reversal of the reform movement will be all too probable. ■

### Footnotes

<sup>1</sup>Jim Hoagland, "New Hungary: Patient Victory for Simple Decency," *Washington Post*, January 30, 1990.

<sup>2</sup>Anders Aslund, "Soviet Union: The Economic Impasse Leads Nowhere," *Washington Post*, January 30, 1990.

<sup>3</sup>G. Warren Nutter, "Political Economy & Freedom: A Collection of Essays," Liberty Fund, Indianapolis, 1983.

<sup>4</sup>Paul Craig Roberts, "What's to Be Done in the Soviet Union," *Wall Street Journal*, European edition, June 28, 1989.

<sup>5</sup>William Pfaff, "Bracing for the Carpetbaggers," *International Herald Tribune*, February 3-4, 1990.

<sup>6</sup>Ibid.

## Cato Journal: Disaster Relief Is a Disaster

In the latest issue of the *Cato Journal* (vol. 9, no. 3) James B. Thomson and Walker F. Todd of the Federal Reserve Bank of Cleveland call for a free-market banking system "to allow private individuals to make investment decisions and to reap the rewards while insulating the taxpayer from those individuals' losses." After reviewing the history of the S&L collapse and the regulations left in its wake, the authors conclude that market-oriented reforms are needed to provide the efficiency and stability that are absent in the present system of regulatory taxes and subsidies.

Purdue University economist George Horwich argues that, historically, the response of the federal government to manmade and natural disasters has been counterproductive. Horwich contends that "a decentralized price-directed economy that enjoys a free movement of information, goods, and people is surely better able to anticipate and cope with disasters than one of centralized decisionmaking whose goods and information are produced and transmitted by heavily regulated, protected enterprises."

In another article, Henry N. Goldstein, professor of economics at the University of Oregon, contends that fears about the low net U.S. savings rate and withdrawal of foreign investment funds are unwarranted "so long as the United States pursues policies that provide attractive business and investment opportunities."

In "The Twin-Deficit Illusion," William G. Dewald and Michael Ulan of the U.S. Department of State find "no systematic association between the current-account and budget balances when both are adjusted for inflation and expressed in market-value terms."

This issue also contains articles on public health and public choice, the Sherman Antitrust Act, and employee representation services.

The *Cato Journal* is available from the Cato Institute at \$7.00 an issue or \$21.00 a year. ■

### Niskanen Book Published in Japan

## Cato Is "the High-Beta Think Tank for the Nineties"

"The high-beta think tank for the nineties will be the free-market libertarians at the Cato Institute," according to Lawrence A. Kudlow, chief economist and senior managing director at Bear Stearns Companies, speaking on the nationally syndicated television show "Money Politics" on March 25.

Cato senior fellow Peter J. Ferrara was featured in *Fortune* magazine's 60th anniversary issue, released in March, as one of the world's leading thinkers for the coming decade. Commenting on Social Security, Ferrara said, "Because a leading Democrat like [Sen. Daniel Patrick] Moynihan is suggesting a fundamental change in the system, the possibility of a real debate on Social Security reform has never been greater. That debate will focus on private options as an alternative."

*Fortune* also featured other thinkers who have been associated with Cato as adjunct scholars or conference speakers: *Losing Ground* author Charles Murray; Hernando de Soto, author of *The Other Path*; Manuel H. Johnson, vice chairman of the Federal Reserve Board; Allan Meltzer of Carnegie Mellon University; Michael Jensen of Harvard Business School; Sir Alan Walters; and Cato adjunct scholar Julian L. Simon, author of *The Economic Consequences of Immigration*, recently published by Cato. Simon was also featured in the April 2 issue of *Forbes*, where he asserted that "there is no change we could make that would have even a fraction of the economic benefit that we can get simply by increasing the number of immigrants by 100 percent."

Budapest law professor Jozsef Szajer, a leading Hungarian classical liberal who spoke at Cato in June 1989, defeated minister of state Imre Pozsgay in a race for a seat in the Hungarian parliament. Szajer's party, the Federation of Young Democrats (Fidesz), ran fourth nationally and is closely allied with the larger Alliance of Free Democrats. Szajer's article on constitutional change in Hungary will be published soon by Cato's Center for Constitutional Studies.

The Center's director, Roger Pilon, was in Eastern Europe in March, lecturing to enthusiastic audiences in Bu-

charest, Romania, and Gdansk, Poland. In Bucharest he spoke on the constitutional foundations of freedom and free markets to faculty, students, and guests at the University of Bucharest Law School, the Academy of Economic Studies, and the Polytechnic Institute. In Gdansk he spoke to nearly 200 opposition leaders from 12 countries, including the Soviet Union, and met with officials of the new Polish government charged with moving that country to a market economy.

*Reaganomics*, by Cato chairman William A. Niskanen, was recently published in Japanese to rave reviews. Translated by the Japan Center for Economic Research, the book was published by Nihon Keizai Shimbun, a newspaper and book publisher.

One of Cato's spring interns, Anton Wahlman of Gnarp, Sweden, stayed late in the office every night, working away at the word processor. His efforts paid off on May 9 when three of his articles—



Cato adjunct scholar Julian L. Simon, author of *The Economic Consequences of Immigration*, was featured recently in *Forbes* and *Fortune* magazines. Simon told both publications that increasing immigration would have tremendous economic benefits for the United States.

on the attraction of capitalist countries for immigrants, drug legalization, and the collapse of communism—appeared in Swedish newspapers on the same day. ■

## CATO INSTITUTE CALENDAR

### Transition to Freedom: The New Soviet Challenge

Cosponsored with Academy of People's Economy, Academy of Sciences of the USSR, Central Economic-Mathematical Institute, and Moscow State University  
Moscow • September 10-14, 1990

Speakers will include Gavril Popov, Anatoly Sobchak, Alexei G. Arbatov, Fyodor Burlatsky, Abel Aganbegyan, George Gilder, Roger Pilon, Paul Craig Roberts, William A. Niskanen, Peter Bauer, Charles Murray, Earl Ravenal, Ted Galen Carpenter, and James M. Buchanan.

### The Expanding Criminal Law

Washington, D.C. • November 1990

Speakers will include Gordon Crovitz, Bennett Gershman, and Joel Cohen.

### Third Annual Benefactor Summit

The Boulders • Carefree, Arizona • February 7-10, 1991

Speakers will include Hernando de Soto, Warren Brookes, P. J. O'Rourke, and Milton Friedman.

### Money, Macroeconomics, and Forecasting

Ninth Annual Monetary Conference

Capital Hilton • Washington, D.C. • February 21-22, 1991

Speakers will include Rep. Stephen L. Neal, Bruce Kovner, Jerry L. Jordan, Victor Zarnowitz, Fischer Black, Eduard Bomhoff, Donald McCloskey, Carol Leisenring, Robert J. Barro, and Robert E. Lucas, Jr.

### Making Sense of Safety

Second Annual Regulatory Conference

Madison Hotel • Washington, D.C. • March 21-22, 1991

Speakers will include John Graham, Kip Viscusi, Paul Rubin, Henry Grabowski, Joann Siegel, Lynn Weiner, Lester Lave, and Margaret Maxey.



*Sherman Centennial Noted with Dismay*

## Antitrust Laws Subvert Competition, Reduce Innovation

That the Sherman Antitrust Act has subverted competition and trampled on businesspeople's rights was the view of most of the speakers at "A Century of Antitrust: The Lessons, the Challenges," a Cato Institute conference organized by Catherine England, Cato's director of regulatory studies.

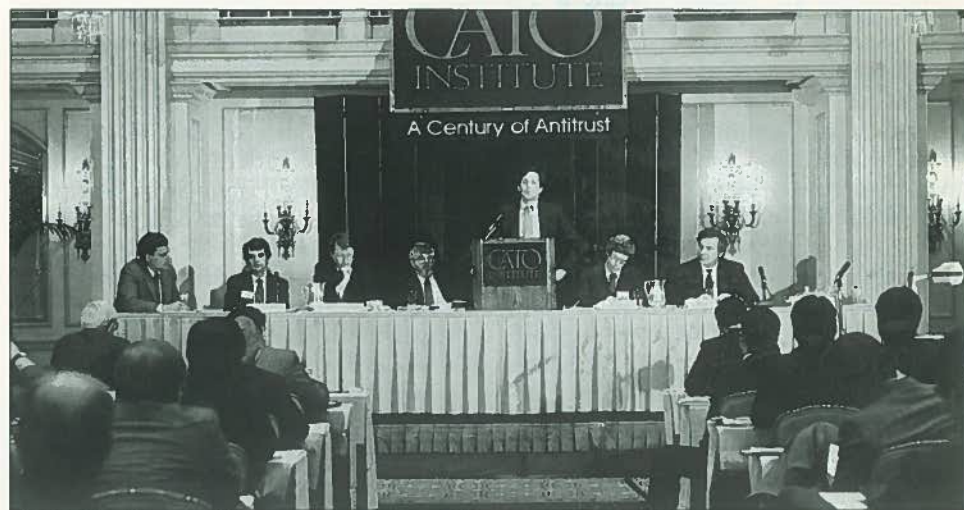
James C. Miller III, chairman of Citizens for a Sound Economy and former chairman of the Federal Trade Commission, asserted that the past decade has witnessed considerable regulatory reform in the wake of "dissemination of research concluding that the imperfections created by government intervention outweigh the imperfections of the marketplace." The movement toward greater reliance on a free-market approach to antitrust enforcement has survived the Reagan administration, Miller argued, because the business community, FTC staffers, federal judges, and academics are all aware of the negative impact of government intervention.

Judge Douglas H. Ginsburg of the U.S. Court of Appeals contended that much antitrust law should be scrapped. However, he cautioned against lumping all antitrust law together and said that protection is needed against price fixing and some types of mergers. Ginsburg argued that to prevent overly complicated antitrust cases, a narrowly written law restricting specific cartel conduct should be passed.

Advocating the complete repeal of all antitrust laws, Cato adjunct scholar



Federal judge Douglas H. Ginsburg's defense of the minimal functions of antitrust law was challenged by some conference participants, who argued that all antitrust enforcement is anti-competitive and inefficient.



Henry Butler of George Mason University Law School discusses the impact of antitrust laws on innovation at Cato's first annual conference on regulatory issues.

Thomas J. DiLorenzo declared that there were no market failures in the late 19th century, when the Sherman Act was passed. Trusts such as the Standard Oil Company were actually able to lower prices and increase output—clearly benefiting consumers. The government has used antitrust law as a cloak under which to create monopolies, and in any case antitrust regulations are a violation of freedom of contract.

Cato adjunct scholar Dominick T. Armentano argued that neoclassical economics underlies many of the errors of antitrust. Departures from "perfect competition" have often been considered market failures, Armentano said, but regulators, the courts, and academics are frequently wrong in their analyses of such concepts as competition, monopoly, and efficiency.

Thomas Jorde and David Teece, both of the University of California at Berkeley, asserted that antitrust enforcement has reduced the ability of U.S. firms to innovate. Antitrust law enforcers are insensitive to the needs of innovation, and cooperation is almost always looked upon as bad, they argued.

Donald Boudreaux of George Mason University argued that the theory of nonprice predation, currently touted by Rep. Tom Campbell (R-Calif.), is mistaken. Markets are better watchdogs than are courts and bureaucrats, Boudreaux contended, because authorities have no way to measure and eval-

uate nonprice competition.

William Kovacic of George Mason University contended that by 1996 as many as 90 percent of federal judges will be Reagan or Bush appointees. That majority, he asserted, could help to reestablish a free-market approach to antitrust. Kovacic also noted that although the staffs of both the FTC and the FCC have declined by 50 percent, state attorneys general are more actively prosecuting antitrust cases.

Henri Lepage of Institut Euro 92 reported that, under a new European Economic Community law, all mergers between companies over a certain size must be authorized by a court. Lepage argued that Europe's current love affair with antitrust is rooted in the desire to protect highly regulated countries from more competitive ones. "Saving competition," he asserted, is the newest form of European statism.

Other speakers at the conference included Fred McChesney of Emory University, George Bittlingmayer of the University of California at Davis, James Langenfeld of the FTC, Charles F. Rule of Covington & Burling, Bruce Johnsen of Texas A&M University, Bruce Benson of Florida State University, Henry Butler of George Mason University, Richard Higgins of Capital Economics, and James Gattuso of the FCC.

The papers delivered at the conference will be published in book form in 1991.

## Moscow, Leningrad Mayors Will Highlight Cato's Soviet Conference

The newly elected mayors of Moscow and Leningrad will be among the prominent speakers at the Cato Institute's conference, "Transition to Freedom: The New Soviet Challenge," to be held in Moscow September 10-14.

Moscow mayor Gavriil K. Popov, one of the Soviet Union's most radical free-market economists, will comment on George Mason University economist Don Lavoie's talk, "Glasnost and the Knowledge Problem: Rethinking Economic Democracy." Leningrad mayor Anatoly A. Sobchak, a professor of law at the University of Leningrad, will discuss "Setting the Legal Basis for a Private Market System."

Among the other prominent Soviet speakers will be Abel Aganbegyan, president of the Academy of People's Economy and a top adviser to Soviet president Mikhail Gorbachev; Yuri A. Ossipyan, a member of the Presidential Council of the USSR; and Fyodor M. Burlatsky, a member of the Supreme Soviet.

Speakers from the West will include Nobel laureate James M. Buchanan on the constitutional principles of a free society; author Charles Murray on the pursuit of happiness under capitalism and socialism; former assistant treasury secretary Paul Craig Roberts on Marxism and private property; author George Gilder on the information revolution; and Fred L. Smith, Jr., president of the Competitive Enterprise Institute, on how property rights protect the environment.

The conference will address two major aspects of the "transition to free-

dom"—the transformation of a command economy into a market economy and the progression from a bipolar, superpower-dominated world to an economically integrated world marked by improved international relations. Cato's vice president for academic affairs, James A. Dorn, put together the program for the first part, and Ted Galen Carpenter, director of foreign policy studies, coordinated the second part.

Seweryn Bialer of Columbia University will keynote the second part of the conference, "Beyond the Cold War: Creating a New Soviet-U.S. Relationship." Other speakers will include Cato senior fellow Earl C. Ravenal, Daniel N. Nelson of the Carnegie Endowment for International Peace Foundation, Aleksei G. Arbatov of the Institute of World Economy and International Relations, and Nicolai G. Shmelyov of the Institute for the USA and Canada.

The day before the conference, the Atlas Foundation will conduct an all-day seminar for people who have started or want to start free-market think tanks in the Soviet Union and Eastern Europe.

Cato is sponsoring the conference with the Academy of People's Economy, the Academy of Sciences of the USSR, the Central Economic-Mathematical Institute, and Moscow State University. Participants will include a large number of Soviet economists, students, legislators, and journalists.

For more information about the conference, contact Julie Riggs, Cato's conference director.



Moscow mayor Gavriil Popov, Leningrad mayor Anatoly Sobchak, and Gorbachev adviser Abel Aganbegyan are among the prominent Soviets who will speak at Cato's September conference, "Transition to Freedom: The New Soviet Challenge." U.S. speakers at the Moscow conference will include Nobel laureate James Buchanan, author Charles Murray, and foreign policy analyst Seweryn Bialer.

## Soviet Changes Let U.S. Cut Military Funds

Economic and political changes in Eastern Europe have brought on the virtual disintegration of the Warsaw Pact, thus reducing the Soviet military threat to the West, contends a new study from the Cato Institute. Edward A. Corcoran, a retired U.S. military officer, concludes that since those changes are probably irreversible, NATO forces should be reduced and the U.S. defense posture reassessed.

Corcoran argues that even if Mikhail Gorbachev were to be replaced by a hard-line ruler, "the resources are simply not there to reconstitute the awesome military machine of a few years ago." The study asserts that the military drain on the Soviet economy "has been the basic driver behind perestroika" and that simply "putting a new man at the helm would hardly reverse the underlying economic forces."

During the 1980s, as economic power replaced military might as the "currency of international status and influence," Soviet income growth rates stagnated, the quality of the goods produced for export fell, and industrial productivity was inadequate to meet the civil demand for goods.

To facilitate economic renewal, the Soviets have reduced military spending, adopted a new doctrine of "reasonable sufficiency," and shown "a new readiness to reach arms control agreements."

Unfortunately, those dramatic changes go unrecognized by Washington's defense-planning community that "still approaches the world in terms of the old realities." Soviet military transformation should be met with "fundamental reassessment of the West's strategy and posture," Corcoran charges, and "a basic consideration is the role of the U.S. forces when there is no massive Soviet military presence looming over Western Europe."

"Perestroika and the Soviet Military: Implications for U.S. Policy" is no. 133 in the Cato Institute's Policy Analysis series. It is available from Cato for \$2.00.



# "To be governed..."

## Keeping the criminals off the streets

Montgomery County [Maryland] courts have a reputation for having a... liberal release policy... a reputation that's borne out by this day's bond hearing.... A 27-year-old woman charged with two counts of battery, one count of theft, failure to appear in court—and seven other cases pending—is granted three bonds requiring \$700 cash. A 31-year-old man—accused of a hit and run, driving while intoxicated and driving with a suspended license—is released on \$500 bond.... Only three prisoners out of more than two dozen are refused bond altogether—one man charged with drug possession.

—*Washington Post Magazine*, May 20, 1990

**And they looked from pig to man and from man to pig, but already it was impossible to say which was which**

Since taking power from dictator Anastasio Somoza, Sandinista leaders "have lived a life of luxury, and they continue to live it," said Moises Hassan, a former Sandinista mayor of Managua.

"When the revolution triumphed, the comandantes immediately looked for houses in [expensive neighborhoods]," he said.... "Corruption became generalized."...

[Businessman Jaime] Morales said

his house was occupied on July 19, 1979, the day of the Sandinista triumph, by Daniel Ortega and his companion, Rosario Murillo, and "confiscated illegally" by decree a year later. "I was never a Somocista," he said. "I think the comandante [Ortega] just liked my house."...

But perhaps the most audacious expropriation was carried out by Humberto Ortega, the army commander. He took over a whole subdivision... and built a high wall around it with guard houses....

[Interior Minister Tomas] Borge actually lives inside a fortress-like complex that he had constructed in 1983 on several acres of expropriated land.

—*Washington Post*, Apr. 16, 1990

## At least he understands the nature of taxation

[Defense attorney Gerry] Spence has not so much denied the charges against his client [Imelda Marcos] as tried to explain them away.... The alleged kickbacks from Philippine companies were part of an unofficial "tax."

—*Washington Post*, Apr. 17, 1990

## A little patience, okay, guys?

Freedom Blooms in Romania/Villagers' Spirits Lifted by Tyrant's Fall, but Poverty Persists

—headline in the *Washington Post*, Apr. 28, 1990

## Good news! We're consuming less

The U.S. trade deficit fell sharply to \$6.5 billion in February, the lowest level in more than six years, largely as a result of declines in imports of oil and consumer goods.

—*Washington Post*, Apr. 19, 1990

## Oh, the hell with it

U.S. and Latin American efforts to stop the smuggling of cocaine into the United States have led to an upsurge in the trafficking of heroin.

—*Washington Times*, May 15, 1990

## That's the idea

On a clear day, the blue-uniformed Canadian customs agents here can look across the Niagara River and easily see a steady stream of Ontario-registered vehicles snake their way into the four-level parking garage of the Rainbow Outlet Mall as soon as they get on the United States side of the border....

In the plainest of terms, the Canadians are smugglers, taking advantage of bargain prices in the United States....

Robert Winstanley of the Toronto-based Committee for Fair Shopping said, "It's gotten completely out of hand. People shop across the border like they're going to the neighborhood convenience store."

—*Washington Post*, Apr. 13, 1990

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