

# Cato Policy Report

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## Public Mass Transportation and the Private Sector

by Ralph L. Stanley

For years, mass transportation has been considered an integral part of American urban life, and few would dispute that. But while mayors and other political leaders may call it indispensable, mass transit has never achieved the ridership or financial stability expected of it. For years, transit has operated in an artificial, noncompetitive environment that stifles innovation and thwarts productivity. Mass transit, if it is not only to survive, but thrive, in the 21st century, must have a hefty injection of competition and private-sector creativity.

In the late 1950s and early 1960s, urban mass transportation appeared to be on its way out. The "automobile age" had arrived, with its inexpensive gasoline, new interstate highways, greater affluence, and homes in the suburbs. At that time, private operators provided the bulk of urban mass transportation. But, operating in a highly regulated environment, they were unable to adapt to their communities' changing transportation needs and rapidly went out of business.

Ralph L. Stanley is administrator of the Urban Mass Transportation Administration.

Then the federal government stepped in. In 1964, Congress created the Urban Mass Transportation Administration (UMTA) to help local governments buy out the failing private transit companies. This move addressed the immediate problem and, over the years, helped the industry by modernizing

**"The encouraging examples of private-sector mass transit are clarions of a new era: 'the age of the entrepreneur' in urban mass transportation."**

transit facilities, building almost 400 miles of rail and providing thousands of new buses and rail cars. In 1974, Congress added operating assistance to the federal program, billing it as a "stop gap" measure. But the program quickly evolved from a rescue effort into a permanent component of American

mass-transit funding. Cities began to regard extensive federal subsidies for everything from day-to-day operating expenses to elaborate underground rail networks as their entitlement.

Since the program began, urban mass transportation has operated by and large as an expensive government monopoly. Federal taxpayers have already poured more than \$43 billion into local bus and subway systems and will contribute another \$3.6 billion this year alone. In spite of this huge investment, not to mention massive local and state contributions, there is little indication that public transportation serves communities any more efficiently now than before the federal program began. Today, transit serves only 3 percent of the urban transportation market. And because transit has not diverted significant numbers of auto users, it has also done very little to reduce traffic congestion or improve air quality in cities.

Nor is the bulk of public transportation adapting well to communities' changing needs. Traditional arterial transit, for example, is inappropriate for the increasing flow of commuters traveling to suburban, rather than center-city, businesses, and simply adding

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## Political Causes of Business Cycles Are Focus of Monetary Conference

The political factors that create business cycles were the focus of discussion at the Cato Institute's fourth annual monetary conference, "Money, Politics, and the Business Cycle," held in Washington in January.

Many of the scholars at the conference pointed out that the Federal Reserve Board keeps its plans secret in order to make it more difficult to hold the Fed accountable for its decisions

and results. Many echoed Milton Friedman's observation that few institutions have as bad a record and as good a reputation as the Fed.

David Meiselman of Virginia Polytechnic Institute presented new data to support his contention that Federal Reserve policy generally follows the wishes of incumbent presidents. Richard Wagner of Florida State University argued that continued support for cen-

(Cont. on p. 6)



## Further Budget Cuts Needed

For the Chinese, 1986 is the year of the tiger. For Congress, it is the year of the budget. Shortly before the November election, Congress must either reduce federal spending, increase taxes, or repudiate the Gramm-Rudman-Hollings procedure for reducing the deficit. A political scientist has observed that this procedure takes all the fun out of being a congressman. Fine! For years, both the president and Congress have increased spending for some favored groups, reduced taxes for others, and blamed each other for the deficit. This year, they must earn their pay or lose our trust. The outcome of this process will be important to the future of our republic.



A federal appeals court has recently ruled that one small provision of the Gramm-Rudman-Hollings law is unconstitutional, a ruling that is likely to be affirmed by the Supreme Court. The remainder of the law, however, is still binding. The only way Congress can avoid reducing the deficit, short of a recession or a war, is to vote against a joint resolution to trigger a reduction in spending or to vote for a repeal of the law. Any member of Congress who supports either of these actions deserves defeat in November.

For those people, most of whom reside inside the Washington Beltway, who believe that the current budget is a finely crafted expression of the nation's priorities, Gramm-Rudman is a bad law. For the rest of us, who believe that almost all federal programs should be reduced, it is a great opportunity to reduce the growth of federal spending and the debt.

The president's budget for fiscal year 1987 is the place to start. Most importantly, the president has again rejected any tax increase. The budget proposes to meet the deficit targets for each year through 1991 by a combination of program terminations or reductions, asset sales, and increased user fees. Each of these proposals deserves support, but more spending cuts will probably be necessary to meet the deficit targets. The budget, which proposes a \$34 billion increase in budget authority for defense, may have underestimated defense outlays by up to \$15 billion. And the administration's economic forecasts may again be optimistic.

More cuts should be considered in addition to those proposed by the president:

§ Congress could limit the increase in defense budget authority to \$20 billion, a 3 percent real increase consistent with our NATO commitment. The recent Packard report should provide the focus for a thorough review of defense management. And, at some time, we should review more substantial issues, such as officer structure, military pensions, and the maintenance of as many as 450,000 troops abroad. The temptation to reimpose a draft for budget reasons should be rigorously opposed.

§ Some other increases proposed by the president also merit careful review. The most conspicuous are \$3.7 billion for government pay increases; a \$1.5 billion increase for foreign affairs; additional funds for the projected space station, a hypersonic aircraft, and, probably, a replacement for the Challenger space shuttle; additional funds for water-resource projects; and \$1.3 billion more for the Postal Service.

§ All of us have our own lists of federal programs that should be terminated. One program on my list is the community-development block grant, a pork-barrel program for governors and mayors for which more than \$3 billion is proposed in 1987. If anyone is interested, I have a much longer list.

Some additional advice for getting through the year of the budget without a deadlock: The president and the Senate should put tax reform on the back burner for a year or two until the major budget issues are resolved. Consideration of a tax bill this year would require a thorough overhaul of the tax bill approved in the House, would divert the attention of Congress, and could be the vehicle for a tax increase. Although I am usually more comfortable when Congress is out of town, Congress should forgo some of its extended recesses this year to address the budget. And it would also be useful if the Great Communicator forcefully and consistently articulated the importance of reducing federal spending, in the interests of both our economy and our liberties.

*William A. Niskanen*

—William A. Niskanen

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## Cato Co-sponsors Conference on Baby Boom Generation's Retirement

The Cato Institute will co-sponsor the conference "Tomorrow's Elderly: Planning for the Baby Boom Generation's Retirement," to be held in Washington on April 10 and 11.

The conference is directed by Americans for Generational Equity, a non-profit organization formed to educate the public about the financial burdens imposed on the baby-boom generation by deficit spending, a precarious Social Security system, and other programs that benefit current voters at the expense of future taxpayers. AGE is chaired by Sen. David Durenberger (R-Minn.), and its president is Paul Hewitt.

The retirement conference is also co-sponsored by the National Federation for Independent Business.

Speakers at the conference will include Health and Human Services secretary Otis Bowen, Rep. Jim Jones (D-Okla.), Rep. John E. Porter (R-Ill.), and Rep. J. J. Pickle (D-Tex.). Cato adjunct scholar Peter J. Ferrara will discuss the rates of return available to baby-boom retirees under Social Security on a panel that will also include former Social Security chief actuary A. Haeworth Robertson, Brookings Institution economist Henry Aaron, and John Rother of the American Association of Retired Persons. John Goodman, president of the National Center for Policy Analysis, will discuss Health IRAs, a Medicare privatization plan recently proposed in a Cato Policy Analysis study.

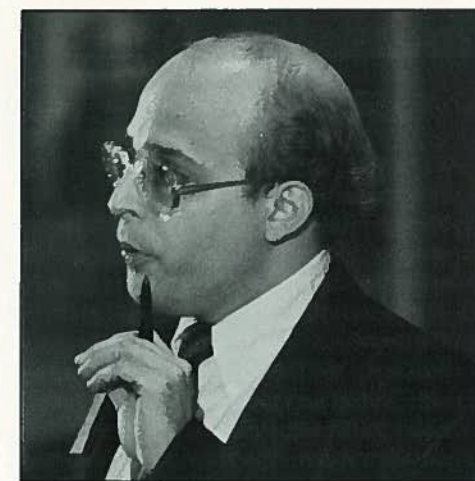
The conference is designed to focus public attention on the problems posed by the retirement of the largest generation in American history. Panelists will discuss the strength of Social Security and Medicare, the role of the private sector in retirement, and what generations owe to each other.

The Cato Institute's sponsorship of this conference is an outgrowth of its extensive work on Social Security and baby-boom issues. The Institute has published three major books analyzing the weaknesses of Social Security and proposing the Super IRA privatization plan, and it held a two-day conference on Social Security in 1983. Through

### Cato News

such efforts as its 1985 conference on political trends and the forthcoming book *Left, Right, and Babyboom: America's New Politics*, Cato has also taken the lead in examining the impact of the baby boom on the American future.

For more information on the conference, contact Americans for Generational Equity at 202/546-3131.



Peter Ferrara will speak on the Super IRA alternative to Social Security at retirement conference sponsored by Americans for Generational Equity and co-sponsored by Cato.

## Withdraw from ANZUS, But Make It an Amicable Divorce, Study Says

The United States should take immediate action to withdraw from ANZUS, the military alliance linking us to Australia and New Zealand, writes Ted Galen Carpenter in a new Cato study. American policymakers should make it clear to New Zealand that we will no longer be that nation's military insurance policy, but they should fake care to ensure that this strategic divorce be an amicable one.

Carpenter outlines the events proceeding from the New Zealand Labour party's 1984 victory and the subsequent proclamation of the country as a "nuclear-free zone," a policy soon to be ratified by parliament. Prime Minister David Lange made New Zealand ports off-limits to American warships unless he was assured the ships were neither nuclear-powered nor nuclear-armed, an assurance the United States always refuses to give. After a U.S. ship was turned away from a New Zealand port, the United States responded with punitive measures.

"ANZUS is no longer viable," Carpenter writes, "because the strategic interests of the three signatories are fundamentally incompatible." The underlying goal of the Lange government is "to convert ANZUS into a long-term insurance policy on which New Zealand

land would have to pay few premiums and for which it would have to assume even fewer risks." It wants to be defended by, but not directly linked with, the United States.

Meanwhile, the United States wants to ensure that other allies do not imitate New Zealand by making clear the costs of such independence. A few more such moves by allies could cause "America's elaborate system of alliances to unravel."

Carpenter, however, argues that "ANZUS is part of an obsolete security strategy. . . an alliance in search of a purpose." The same problem confronts other American alliances, including NATO, and American policymakers should "use this opportunity to reassess the republic's role" in those military associations. We should withdraw from ANZUS, but we should make it clear that Australia and New Zealand remain friends of the United States. We should particularly avoid punitive trade sanctions, which are inconsistent with our goal of a liberal international economic order and which would undermine the Lange government's dramatic free-market policies.

Carpenter's paper, "Pursuing a Strategic Divorce: The U.S. and the ANZUS Alliance," is part of the Cato Institute's Policy Analysis series.



## State Department Demurs

## Bartlett Argues that Trade Sanctions Don't Work

Bruce Bartlett, senior fellow at the Heritage Foundation, debated Emil Castro of the State Department at a February 6 Policy Forum on the value of trade sanctions as a foreign policy instrument.

Bartlett, author of the recent Cato study "What's Wrong with Trade Sanctions," summarized the case against trade sanctions this way: "They don't work." He explained that the "penalized" nation often becomes more independent and therefore better able to pursue its objectionable practices. Since the United States seldom has a monopoly on the goods it sells, other nations are more than happy to take over its market share. This realignment in trading patterns worsens the U.S. trade deficit, and it does nothing to prompt the offending nation to change its policies. Finally, Bartlett pointed out that America's proclivity for trade sanctions forces other nations to regard us as an unreliable trading partner, leading to a loss of future business.

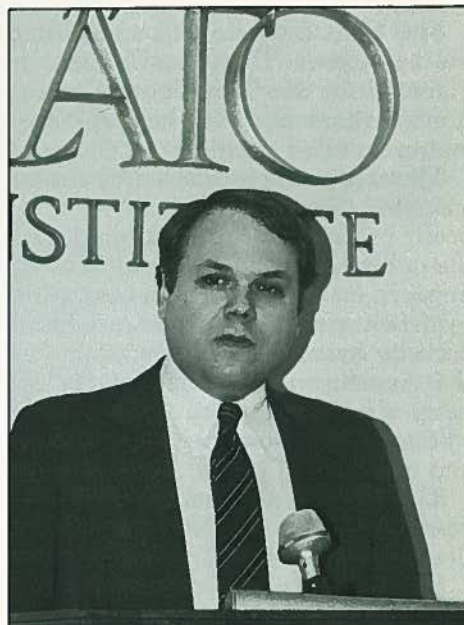
In the 1800s, commerce was more divorced from politics. Today, both Japan and our European allies retain this distinction, trading with all nations but maintaining diplomatic relations only with some. Bartlett cited the fact that despite the harsh rhetoric and the imposition of sanctions on Nicaragua, the United States has yet to sever diplomatic relations with that country. Thus sanctions are perceived as a half-hearted attempt to appear strong domestically, with little impact abroad.

One step toward reform would be to revoke the president's power to impose sanctions without the ratification of Congress, which would create a period of consultation to determine if the measures are worthwhile and give our allies time to consider our action prior to its adoption. This last point is essential because action taken without the support of our allies is guaranteed to be a failure.

Emil Castro, chief of the Trade and Foreign Policy Controls Division at the State Department, replied that the United States does not impose sanctions

"lightly" and that each case is assessed in terms of our foreign policy objectives. He maintained that effectiveness in prompting a foreign government to change is not the only criterion for evaluating such a decision. A symbolic action can be sufficient "if that is the statement we want to make." European allies and Japan are more reluctant to impose sanctions because their economies depend on trade to a much larger extent.

Bartlett responded that breaking diplomatic relations "is a strong symbolic action" and that this action should be the first step taken. Trade sanctions have historically been a prelude to war; to impose them frequently is "taking a warlike action in a frivolous manner." Furthermore, by worsening the trade deficit, sanctions force those sectors of the U.S. economy that are dependent on international trade to carry an unfair share of the burden for U.S. policy. ■



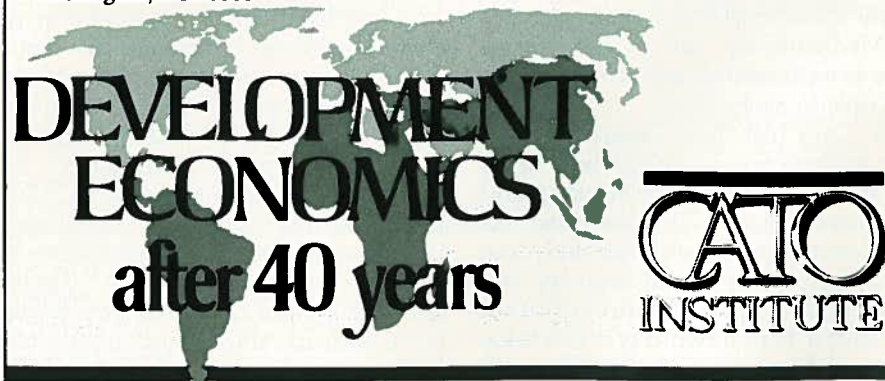
Bruce Bartlett, senior fellow at the Heritage Foundation, discusses why trade sanctions don't work at a Cato Policy Forum.

#### A CATO INSTITUTE CONFERENCE IN HONOR OF P.T. BAUER May 1, 1986 • Capital Hilton • Washington, D.C.

P.T. Bauer has long been an outspoken critic of conventional development economics. At this conference, he will discuss "The Unacceptable Face of Reality," and his long-time collaborator Basil Yamey will deliver a banquet address in Bauer's honor.

Other speakers include Mancur Olson, Deepak Lal, Alvin Rabushka, Jonathan Kwitny, Keith Marsden, George B. N. Ayittey, Peter Kilby, Gabriel Roth, Julian Simon, Donald N. McCloskey, Alan Rufus Waters, Sir Alan Walters, and Karl Brunner.

Registration is \$150 (\$75 for nonprofit organizations). It includes all lectures, luncheon, reception, and banquet. For additional information, please contact Sandra McCluskey at 202/546-0200. Make check payable to the Cato Institute, 224 Second St., SE, Washington, DC 20003



## Study: Foreign Aid Hurts Third World

Millions of dollars in U.S. foreign aid have not only failed to ameliorate the desperate poverty of Third World nations but have helped perpetuate the ruinous policies responsible for much of that poverty. In a new Cato study, journalist James Bovard describes how our aid programs often do great harm to the very people they are ostensibly designed to help.

For 30 years, the rhetoric of foreign aid has continually stressed the importance of private-sector initiatives in achieving long-run self-sufficiency for developing nations. Nevertheless, most foreign aid is directed not to foreign businessmen but to foreign governments, increasing government power and further politicizing society and the economy.

Bovard cites specific cases in Latin America, Africa, and the Middle East to document the disastrous story of funds wasted on such "white elephant" projects as idle cement plants, near-empty convention centers, and abandoned roads. An AID-sponsored \$250 million land-reform program brought El Salvador a 30 percent decline in coffee production. Despite massive U.S. assistance, Africa has suffered a 20 percent decline in per capita food production since 1960, and per capita income may be lower by the end of the decade than it was in the early 1960s.

The haphazard policy of funding foreign governments has created a "growing phalanx of corrupt, meddling, and overpaid bureaucrats" in recipient countries, enabling civil servants to enjoy an opulent standard of living while much of the rest of the population lacks the bare essentials. "Good intentions," Bovard writes, are no excuse for helping to underwrite an individual's—or a country's—self-destruction.

More than 25 internal government reports from the General Accounting Office and the AID inspector general serve as the basis for Bovard's analysis. His study, "The Continuing Failure of Foreign Aid," is part of the Cato Institute's Policy Analysis series and is available for \$2.00. ■



Thomas J. DiLorenzo (left) and James T. Bennett (center), authors of *Destroying Democracy*, listen to a question at a press luncheon. At right is John Dillin of the *Christian Science Monitor*.

## Destroying Democracy Draws Press, Broadcast Attention

James T. Bennett and Thomas J. DiLorenzo were the featured speakers at a special Policy Forum held by the Cato Institute on January 30 to honor the publication of their book *Destroying Democracy: How Government Funds Partisan Politics*. In a lively discussion, both authors fielded questions from the audience on the extent and ramifications of the tax-funded lobbying the book details.

DiLorenzo began by identifying the particular activities for which it is illegal to use tax dollars. These include lobbying, campaigning, training for protests and demonstrations, and projects aimed at "getting out the vote"—in short, any type of political advocacy. In violation of federal law, such groups as Tom Hayden's Campaign for Economic Democracy, Jesse Jackson's PUSH, and even the National Council of Senior Citizens use government funding to advance their political objectives.

The consequences of this activity were highlighted by DiLorenzo. Returning to James Madison's warning in the *Federalist*, no. 10, about the violence of faction, DiLorenzo observed that "our

government doesn't control faction, it nourishes it with taxpayer money." Democracy is threatened when the government finances partisan groups. According to Bennett, "these groups go to the government because they can't get the funding elsewhere."

On January 22, a number of journalists met for a luncheon with Bennett and DiLorenzo at the Cato offices. Attendees included John Dillin of the *Christian Science Monitor*, Willis Witter and Mark Tapscott of the *Washington Times*, John Barnes of *Evans & Novak*, Martin Wooster of *Harper's*, and Rita Beamish of the *Associated Press*.

*Destroying Democracy* has received favorable reviews in the *New York Times Book Review* and *Kirkus Reviews* and has inspired editorials in the *Boston Herald* and the *Washington Times*.

The authors have also discussed their book on radio talk shows in Washington, Miami, San Francisco, Philadelphia, and Pittsburgh. Bennett appeared on a Financial News Network television program. ■



## Business Cycles (Cont. from p. 1)

tral banking is more likely to be explained by the public choice theory of rent seeking than by the theories of market failure and public goods.

Beryl Sprinkel, chairman of the president's Council of Economic Advisers, claimed that slow, steady growth of the money supply is the key to monetary stability and criticized the Fed for not having followed such a policy recently.

Perhaps the most controversial paper of the conference was presented by Alan Reynolds of Polyconomics. Reynolds argued that the Fed's own interest is to "keep people guessing" about its intentions and that monetary economists and journalists also profit by appearing to be experts on a complex subject. Reynolds dismissed the possibility of a workable quantity rule for monetary policy, a position that was sharply criticized by several monetarists in attendance.

At a luncheon session, Allan H. Meltzer of Carnegie-Mellon University presented evidence of Japan's success with a quantity rule.

Hugh Rockoff of Rutgers University examined historical periods without central banking, concluding, "They do suggest that free banking can be made to work, and that most of the legal restrictions that accompanied these



Newly appointed Federal Reserve governor Manuel Johnson was a major speaker at the Cato Institute's fourth annual monetary conference.

experiments were either unnecessary or were at most second-best solutions to problems created by other regulations."

Among the other conference speakers were newly appointed Federal Reserve governor Manuel H. Johnson; Gottfried Haberler of the American Enterprise Institute and Roger Garrison of Auburn University, who discussed F. A. Hayek's theory of the business cycle; Gerald P.

O'Driscoll, Jr., of the Federal Reserve Bank of Dallas, who examined monetary deregulation and the business cycle; and Leland Yeager of Auburn University, who looked at theories of monetary disequilibrium.

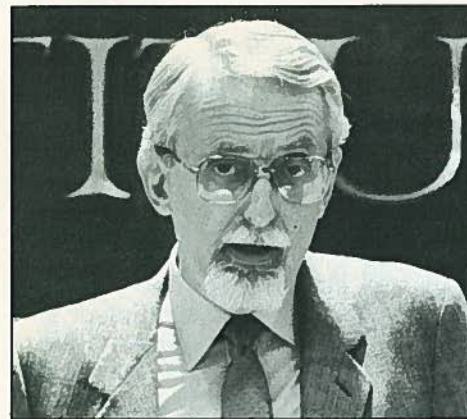
The conference was attended by an overflow crowd. Papers from the conference will be published in the *Cato Journal*.



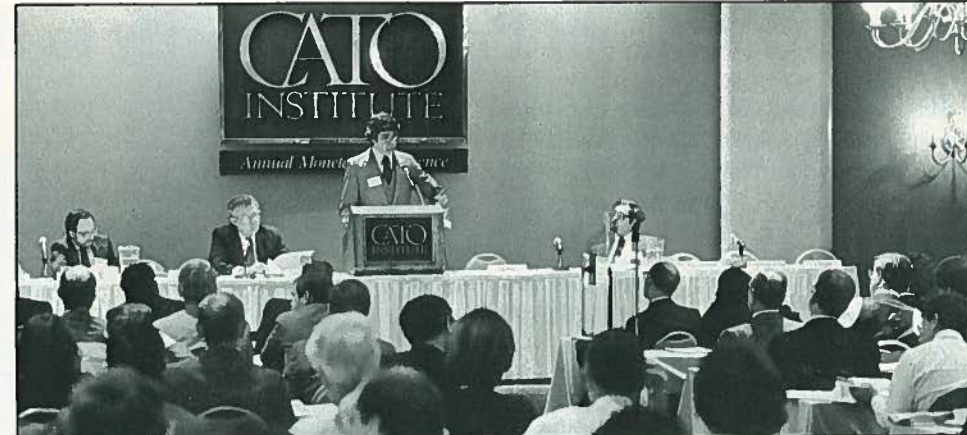
Beryl W. Sprinkel, chairman of the president's Council of Economic Advisers, talks about the performance of the Federal Reserve Board.



Former Citicorp chief economist Leif Olsen discusses his topic, "Is Monetarism Dead?" with conference participants.



Axel Leijonhufvud of UCLA comments on Leland Yeager's paper examining theories of monetary disequilibrium.



Roger Garrison of Auburn University discusses F. A. Hayek's theory of the business cycle before a packed audience.



Alan Reynolds, vice president of Polyconomics, discusses his controversial conference talk with economic columnist Warren Brookes.



Allan Meltzer of Carnegie-Mellon University talks with conference participants after his luncheon address on Japan's success with a monetary rule.

## Cato Study Says Privatize Bonneville Power

Selling the Bonneville Power Administration in the Pacific Northwest would benefit both federal taxpayers and Northwest energy consumers, according to a new study from the Cato Institute.

Peter D. Cooper writes, "Selling the system's assets would restore the free market to an economic sector that is drowning in the red ink and failed projects of government regulation. . . . Freedom of contract should replace government coercion, leaving special interests to fend for themselves and leaving consumers and utilities free to decide, without the distorting effects and hid-

den costs of government subsidies, what facilities and resources will meet their future energy needs. Only when this freedom is restored will inexpensive and abundant energy return to the Northwest, and, with it, economic prosperity."

Since the publication of the study, the Reagan administration has proposed the privatization of BPA to meet the deficit-reduction targets of the Gramm-Rudman-Hollings act. Cooper notes the impact of Gramm-Rudman but argues that selling BPA would be good energy policy and good fiscal policy even in the absence of the law.

Privatization of BPA would have

several other beneficial results. It would rid taxpayers of the system's debt, estimated at \$9.174 billion for FY 1986, and taxpayers would not be responsible for future debts incurred. Electricity rates would reflect actual supply and demand conditions rather than the effects of BPA subsidies and the costs of the system's boondoggles. Also, special treatment for organized interests would be sharply curtailed.

Cooper's study, "The Bonneville Power Administration: The Worst Mess by a Dam Site," is part of the Cato Institute's Policy Analysis series and is available for \$2.00.



## From Private Property to the State

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 forum featured Richard Epstein, James Parker Hall Professor of Law at the University of Chicago and editor of the *Journal of Legal Studies*, who discussed his recent book *Takings: Private Property and the Power of Eminent Domain* (Harvard University Press). Commenting on Epstein's remarks was Alex Kozinski, former chief judge of the U.S. Claims Court, who has recently been confirmed to a position on the Ninth U.S. Circuit Court of Appeals.

**Richard A. Epstein:** I come to constitutional law as an outsider. My journey began with the study of private law, most particularly the law of property, torts, and contract. In one sense, this journey has been a long one, for the private law concentrates on disputes between two parties: the trespasser and the landowner, the promise breaker and the promise keeper. These disputes, and countless others like them, appear to be separate and distinct, but in truth they are all referred to a single principle: "do not take the property of another."

Yet private property itself is a social conception describing the rights of each individual with respect to external things, rights that are good against the entire world. Once we speak about the protection of property, therefore, we are dealing not only with law but with political and social theory as well.

One key question about property is how rights to it are originally acquired. Once acquisition is understood, the mechanisms of protection through tort and of transfer by contract are relatively easy to understand.

The question of original acquisition quickly leads to a fork in the road. On one side is the view that all property rights are conferred upon individuals by the state, which defines and enforces all rights. The difficulties with this approach become apparent upon asking the next question, who is the state? My definition of the state is not too different from Sartre's definition of hell:

"other people." To allow other people unfettered control over the lives of us all is to invite a conclusion captured by another of my favorite legal theorists, Cole Porter: "anything goes." There is then no escape from the Hobbesian problem, for whoever is powerful enough to be sovereign is not



Richard Epstein: "My definition of the state is not too different from Sartre's definition of hell: 'other people.' We must not allow other people unfettered control over the lives of us all."

### Policy Forum

merely sovereign, but owner of all those persons whose rights he can define and redefine as he sees fit.

In order to avoid that dilemma, it is necessary to secure some other basis for private ownership. In both common law and the liberal political tradition of Locke and Hume, that alternative route is the principle of first possession, which itself has two parts: each person owns himself, and all external things are unowned until some person takes initial possession of them.

Here is a way to move from a world without rights to a world with rights. The correlative duties of noninterference with persons and things owned are thereby established, and governance is now constrained to protect those rights that individuals have always had or have acquired by their own labor. There is now a natural limitation (hence the phrase "natural rights") that the

governors must observe if they are to govern properly.

This naive rule of first possession turns out to have many desirable features. In particular, it has an "imperialistic" quality that allows it to order right and just relationships among all individuals from the beginning of time to the present. It is a formal system, not dissimilar to that developed by physics to deal with the many-body problem: if one defines the initial position, mass, and velocity of a set of particles, one can trace their interactions indefinitely over time. First possession, describing unique rules of acquisition, protection, and transfer, works the same way: once the basis of title is understood, then its pedigree, the chain of title, is secure over time because all permissible moves within the system are well defined.

There is, however, an enormous difference between a system of private rights as defined in a textbook and a system of private rights as enforced in the real world. The great problem with the classical Lockean theory, with its rules of acquisition, protection, and transfer, is that it is vulnerable to destruction by any individual who refuses to play in accordance with the rules of the game. How is it possible to constrain the aggression of those who wish to upset the original balance?

The solution—and it is an imperfect solution—is, to mix literary and philosophical metaphors, a Faustian answer to the Hobbesian problem. Sooner or later the behavior one likes least—the use of force and coercion—must be invoked by some individuals, the founders of the state, to prevent the unlimited use of force by other persons. Recognizing the inherent political instability of a world without government, one creates a monopoly of force to constrain the untrammelled use of force by other individuals.

Once that is done, the problem of political theory is to some extent transformed into a problem of economics: how to ensure that this monopolist—the word should be taken literally—is restricted to a competitive return on his investment in governance. How, in other words, are we (and the pronoun



Cato vice president David Boaz talks with Michael Kinsley, editor of the *New Republic* and a commentator on Cato's "Byline" radio program, at luncheon for Richard Epstein. Other luncheon guests included Tom Bethell of *National Review*, Barry Lynn of the ACLU, and Michael Barone of the *Washington Post*.

is a kind of evasion) going to create a state that does not become a Leviathan that consumes all the benefits produced by a well-functioning system of private rights?

Now the elusive link between private law and constitutionalism comes into focus. The institutions of government must be limited to ensure that the relations between persons set by the law of property, contract, and tort are preserved by the state to the extent possible. The eminent-domain clause, "nor shall private property be taken for public use, without just compensation," and the public-use stipulation should be understood as efforts to so limit the power of government.

In looking at Supreme Court opinions, however, one quickly discovers a different orientation. The property in property courses, the tort in tort courses, and the contract in contract courses bears no relationship to the dominant constitutional visions of property, tort, and contract. The legal structure of the common law, with its explicit premises and determinate relationships, vanishes only to be replaced with a structure that commits vast powers to legislative discretion—the very result so incompatible with limited government. Whenever the justices come to hard issues, they claim either "police power" or "discretion" and sustain the constitutionality of the law before them. By exceptions and degrees the system of

property rights is undone, slowly at first and then with accelerating eagerness and speed.

Now, if the relations generated by the system of private property are as comprehensive as I have suggested, then that system should function as a very powerful limitation upon what legislatures can do. It cannot simply be dismissed by a series of judicial redefinitions of property rights: why would the government pay for the property it takes if it can simply "redefine" the rights of the owner? There is little point in trying to make sense out of a line of Supreme Court decisions that defy rationalization. But the Supreme Court should not be allowed to set the intellectual agenda. As an outsider, I believe it is best to look at the matter as a question of first principle.

The first task is to ask whether it is possible to generalize the system of two-party interactions to handle larger social questions. To begin, one must engage in what I like to call the "demythification of the sovereign." Recalling that the state, like Sartre's hell, is other people, one must ask whether the people benefited by a particular state action could have done directly to the persons whose freedom was restricted what the state was able to do. In other words, where the government acts against an individual, the right question is whether the people whom the government benefits could have

acted in the same way toward the individual if they had been able to coordinate their own behavior. Public law questions are thus disaggregated into private law relationships governed by the complete and determined set of relations inherent in the law of property, contract, and tort.

It is also possible to expand the scope of this process from simple A-and-B situations to more complex social issues. Begin with the simplest case, in which the state takes someone's land for, say, a post office. Here, of course, we have a taking for which compensation is required. All the burden is placed upon a single individual, while the benefits are widely distributed to those who use the post office or benefit from its operation.

From this simple case we can examine takings along two separate dimensions. First, we can change the number of individuals who own the land in question; it could be owned jointly by two or more persons. Is it possible to say that the government's action ceases to be a taking because it is a taking from many instead of one? The answer clearly seems to be no: a taking is not transmuted into something else simply because many persons, rather than only one, have been deprived of their rights.

Second, we can change the amount of property taken from each person. Suppose that the owner has ten acres of land, only four of which are taken by the state. This partial taking should still be regarded as a taking, for the taking of some property is far different from the taking of none at all. There is simply no radical discontinuity in the nature of the government action as the fraction taken of a person's property shrinks. The more the state takes, the more the state must pay—a clean linear relationship. This relationship survives no matter how the state takes its part of the whole. It can take a future interest, a life estate, an easement, a covenant, or a lien. If someone can figure out a way to carve out some limited interest in property, then the government can figure out a way to take it. Nonetheless, no matter how subtle the government's scheme of social control, the obligation of compensation remains.

Putting these two dimensions together has profound theoretical conse-

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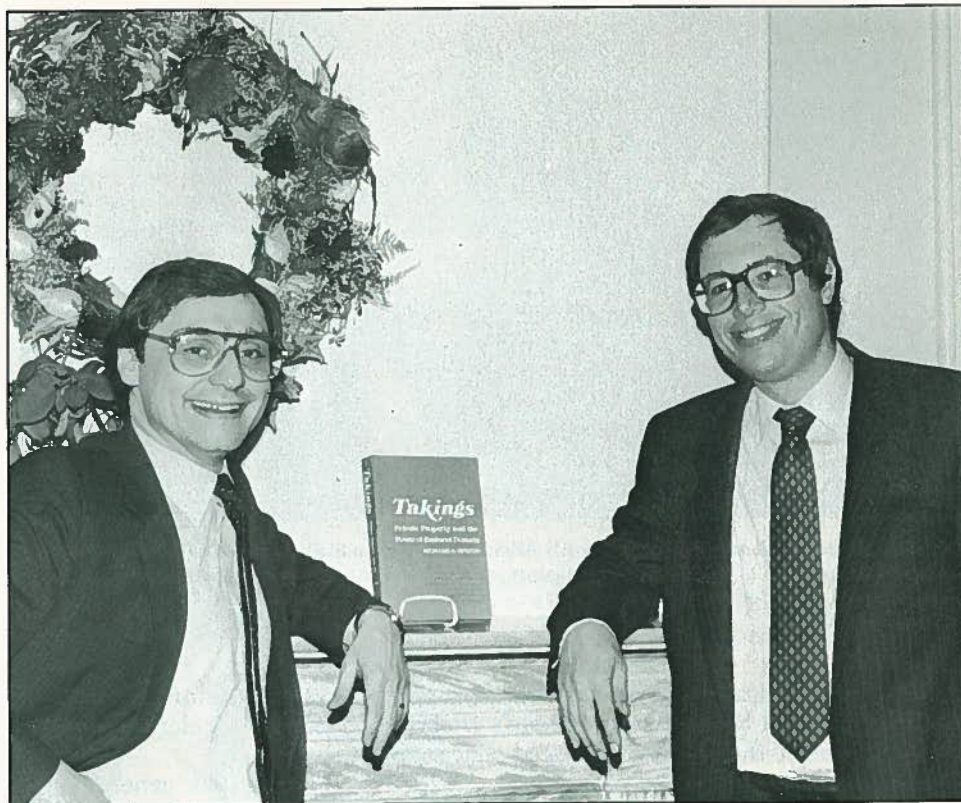


## Private Property (Cont. from p. 9)

quences: the number of individuals from whom things are taken increases, and the fraction of property taken from each is reduced. At no point is there any break between the taking of property and the doing of something else. All of a sudden we find that we are talking about vast forms of government behavior. In my *Takings* book I discuss three such forms at great length: modification of liability rules, taxes, and regulation. One could add a fourth, inflation (or deflation). In each case, the government takes a little bit from a lot of people, but its conduct is still covered by the eminent-domain clause. The government cannot say, "we're not taking your land, we're merely regulating its use"; it cannot say, "we're not taking your property, we're only imposing a lien on it for nonpayment of taxes." The theory of limited government thus finds powerful expression in the eminent-domain clause, for it requires virtually every government action to be justified in order to be constitutional. In principle, the specter of arbitrary power has been checked.

All this is a far cry from the received doctrine of the Supreme Court, which resists the effort to bring general theory to the takings clause. Instead, the Court and most modern theorists have tried in vain to limit the scope of the clause to some obvious forms of government abuse. The Court is normally not prepared to limit the constitutional concept of a taking to the occupation of land or the complete destruction of improvements, but it does not recognize the force of the argument that there is no discrete point marking a categorical distinction between takings by government and other, innocuous, government activities. It will say that taking is one thing and regulations another, or that taking is one thing and taxation another, and so on. However, it will not enshrine the "distinction" in a categorical rule since it remains wholly unable to define the (nonexistent) boundary between takings and government actions that do not go "too far."

The major blunder of the present law is that it aims for a premature truncation of the takings issue that is utterly inconsistent with the fabric of private



U.S. Circuit Judge Alex Kozinski and University of Chicago law professor Richard Epstein examine a copy of Epstein's new book, *Takings*, after Cato Policy Forum.

rights endorsed by the Constitution. Once the inquiry is expanded, however, it is important to look at the flip side of the issue: the distribution of government benefits over the full range of government takings. The post-office example is no longer so simple because it is necessary to examine the benefits conferred, not only upon the landowner but upon those persons whose wealth was taxed to acquire the site for the post office. Certainly, if there is a comprehensive account of a taking, there must be an equally comprehensive account of what serves as compensation for it.

I therefore spend an enormous amount of effort in my *Takings* book examining the patterns of "implicit in-kind compensation" that are attributable to various types of taxes and regulations. Here the central point is that many, but by no means all, general regulations embody within themselves the necessary compensation for the persons whose property is taken. More specifically, the greater the number of persons whose property is taken and the smaller the fraction taken from each,

the greater the likelihood that the taking will be constitutional even if no explicit cash compensation is provided.

The critical inquiry thus becomes, how can one measure the tradeoff between, say, the benefits provided and the taxes collected? In some instances, direct measurement is possible, by looking at the value of someone's stock of wealth before and after the government action. When land is taken for a post office, we know that the prior owner suffers a very great loss even if he shares the benefit of the post office with his fellow citizens. Cash compensation is designed to leave him at least as well off as before and to provide him with a share in the overall social gain. Technically speaking, that means this transaction will create (or in practice only approach) a Pareto-superior world by the payment of compensation from the public at large to the original owner. Both will be better off than before, and in the same proportion.

But what should be done when direct measurement of the change in everyone's wealth by government action fails? Which is most often the case with

comprehensive government programs. Here there are three types of tests, or proxies, that can be used.

The first involves the standard economic theory of the common pool, which has been well developed in modern economics and has been intuitively understood for a long time. When property rights are well defined among individuals, the risk of overexploitation of resources is reduced. Taking common-pool resources and converting them into private resources will normally be constitutional. Taking well-defined resources and throwing them into the common pool will normally not be. We can be confident that the latter sort of legislation will generate overall wealth losses, which means that someone will be shortchanged by the political process. Much modern zoning legislation and collective bargaining under the labor statutes are illustrations of this point.

The second test when direct measurement fails—and here I am a conventional constitutional lawyer—is motive. The intuition behind the motive test is simple: if people say they are stealing, believe them. Now, to be sure, in any serious system of constitutional law, people will try to cover their tracks; but in Washington today, where there are no serious constitutional restraints, they are not so careful.

Look at the windfall profits tax. Does this tax provide any return benefits for the oil companies comparable with the benefits of pooling? The legislative history makes it clear that it does not, as the revenues are to be used to fund old-age homes or mass transit. This redistributive motive is quite sufficient to damn the tax. The tax is a taking for which it is highly unlikely that any return benefit is provided.

The third test is that of disproportionate impact. When everyone is burdened equally by a taking, there is little political incentive to harm others through government action. Very simply, if the only way I can make you worse off is to make me worse off, then I won't do it. Self-interest is a powerful restraint on misbehavior. If the actual, not merely formal, distribution of benefits of a government action is parallel across the class of affected individuals, then the statute should generally be sustained even though it is *prima facie* a taking.

This rule saves very broad statutory variations on common-law rules: statutes of limitation, statutes of fraud, and recordation statutes, and it allows a lot of the traditional common-law debates over principles of liability (e.g., the choice between negligence and strict liability) to continue without constitutional supervision. Given the disproportionate-impact test, the necessary incentives for political self-correction are there. When a general statute affects all people negatively, then legislators have strong incentives to change it.



Alex Kozinski: "Legislatures examine proposed laws for their economic effects; the courts examine whether the regulations are constitutionally proper."

The test of disproportionate impact can be applied to large questions of social policy. We all understand that a world of positive taxation is not a world of perfect liberty. Yet it need not be a world of untrammelled government discretion, either. The flat tax is one distillation of the disproportionate-impact test, limiting the power of Congress to generate what it euphemistically describes as "implicit wealth transfers" and what I call wholesale confiscation. The disproportionate-impact test constrains the power to tax so that it is less likely to become the power to destroy.

It therefore becomes possible to avoid the horns of an ancient dilemma: taxes need not be condemned, as they are by Robert Nozick, simply because they are coercive; yet they need not take whatever form that happens to suit the dominant legislative coalition. A flat tax places everyone in the same boat and imposes important constraints on government power without any need to develop a direct constitutional limitation on the total amount of expenditures. Without such a principle, tax

reform will likely degenerate into a series of searches for special baubles on the Christmas tree. The great power of a theory of private property and eminent domain is that it offers a way to prevent that degeneration, by offering a comprehensive theory of individual relations that extends from the first acquisition of property on an isolated beach to the coordinated activities of a modern political state.

**Alex Kozinski:** I work at a different point on the spectrum than Professor Epstein in the task of developing the law. I handle cases for a living, and that denies me the latitude that one has in writing theoretical works. But a judge does occasionally get important cases with interesting constitutional dimensions. Unlike theoreticians, however, he is constrained by precedents—and what's more important, by a higher court that knows very well how to reverse lower-court decisions. A judge can thus make only incremental changes in the interpretation of the law. What is important is that these changes go in the right direction.

I fully agree with Professor Epstein that the system he proposes, whether one adopts it fully or not, does require judges to get involved more substantively in the review of economic regulation. When judges over the last 30 or 40 years shied away from a substantive review of economic regulations by citing those two magic words, "deferential" or "discretion," they were not performing their full constitutional responsibility.

We've been taught for years that such review was simply outside the judicial province, but I don't find the objections made to it very persuasive. One objection is that judges are not equipped to make constitutional judgments on economic matters and therefore should leave them to the legislature. Well, judges make close constitutional judgments in the area of the First and Fourth Amendments: freedom of the press, freedom of religion, search and seizure. They also make important judgments in such cases as antitrust and difficult commercial cases.

A second objection is that legislatures are better equipped than judges to consider economic implications. But judges and legislatures evaluate economic regulation differently: legislatures examine proposed laws for their economic ef-

(Cont. on p. 13)



## Transportation (Cont. from p. 1)

more fixed routes does not solve the problem. By 1980, mass transportation accounted for only 6.4 percent of all work trips nationwide—down from 9 percent in 1970.

Whatever its initial benefit, the availability of federal assistance has clearly driven up mass-transportation costs. For one thing, federal capital funding has made throwing away old transit vehicles and purchasing new ones more economical than maintaining them past a certain age. Operating subsidies have allowed transit management to maintain unrealistically low fares, pay exorbitant wages and benefits, and extend conventional routes where ridership is sparse. As a result, in the 1970–83 period, transit operating costs increased almost twice as fast as inflation—from \$2 billion to almost \$10 billion nationwide. Moreover, the bulk of the operating subsidies has benefited not the low-income user, as intended, but the more affluent, long-distance rider and the highly paid transit worker.

Another problem is that a number of cities want UMTA money to begin the construction of new rail systems, regardless of whether they have the necessary local resources to complete and operate them. They assume, without real justification, that UMTA will step in and help cover these future costs.

In short, public transportation's problems have come full circle, but with one major difference: 20 years ago, private transit operators were going out of business; today, the federal government—and, ultimately, the taxpayer—bears the cost of unproductive transit decisions. Clearly, creating a public monopoly did not end the transit industry's woes; it deferred and exacerbated them. Though transit's focus shifted from the private to the public sector, the industry has been operating in a destructively noncompetitive environment. If public transportation is ever to serve the public as it was intended, that environment must change dramatically.

Fortunately, the environment is beginning to change through renewed private-sector involvement. In a number of communities, public operators are contracting out selected routes to private firms and, according to Roger

Teal of the University of California at Irvine, saving 20–60 percent in operating costs. The private operators provide various types of service: demand-responsive (dial-a-ride), elderly and handicapped, commuter, and even fixed-route. Some examples:

§ Around Los Angeles, 14 private, unsubsidized bus companies carry 5,000 riders a day over 132 routes.

§ In New York City, private commuter buses carry about 40,000 passengers a day to Manhattan from Long Island, northern New Jersey, and Staten Island.

**"Since the program began, urban mass transportation has operated by and large as an expensive government monopoly."**

§ The Dallas Area Rapid Transit District (DART) contracts with a private company, Trailways, for suburban bus services and with Ryder Trucks for bus maintenance.

§ Chicago's MTA, an association of private transportation providers, operates more than 8,000 vehicles throughout the six-county region of northern Illinois.

§ The Tidewater Transit authority in southern Virginia has discontinued its less productive bus lines in favor of a privately provided fixed-route van service, reducing its per-passenger subsidy by up to 64 percent.

§ By substituting privately run, demand-responsive services for its Sunday fixed-route operation, Phoenix Transit claims savings of \$700,000 a year.

Businesses are also becoming more involved in planning and financing public urban-transportation systems. For example:

§ In such cities as Los Angeles, Denver, Hartford, Houston, Atlanta, and Dallas, local business communities—through chambers of commerce and other organizations—are assuming a greater role in regional transportation management and planning.

§ Hughes Aircraft Corporation in El Segundo, California, operates a mini-transit system over nine regular routes for its 25,000 employees. Hughes contracts with a private bus company for these services, at about half the bus-per-day cost of the Los Angeles public transit operator.

§ A group of business leaders in Pittsburgh have begun planning a privately funded "people mover" over the Allegheny River.

§ In the San Francisco Bay area, Pacific Bell funds an express bus service between a BART subway station and the company's main facility in San Ramón.

§ Private investors in the Washington, D.C., area are proposing to plan, design, construct, and operate an unsubsidized rail service to Dulles International Airport.

These and other examples underscore the value of bringing private-sector competition to the transit market. But as encouraging as these experiences are, they represent only a beginning. Many public transit agencies still view the trend toward greater privatization with suspicion, even hostility, and they need to understand that UMTA's goal is neither to abandon nor to destroy mass-transit systems. The goal, rather, is the best possible service to a community at the lowest possible cost to taxpayers.

Even with greater privatization and competition, public agencies will have an important role to play. Because transit is considered a public service, local agencies will continue to be ultimately responsible for it. They will undoubtedly continue to be the brokers and coordinators of local transportation services and in many cases will compete for those services. Both Dallas and Minneapolis are already moving in this direction, with very positive results.

At the same time, if a private operator is willing and able to provide unsubsidized service or to provide good service less expensively than the public agency, it must be allowed to do so. Moreover, private operators should be involved, early on, in local planning decisions that affect them. In October 1984, UMTA issued a formal policy to this effect.

UMTA has also proposed legislation that would require public transit authorities to competitively bid at least a

portion of their services. This proposal could save hundreds of millions of dollars in federal operating assistance as well as open a potential \$5 billion market to private enterprise.

As a public service and an industry, mass transit has reached a turning point. The many encouraging examples nationwide are clarions of a new era: "the age of the entrepreneur" in urban mass transportation. The private sector, in cooperation with local government, holds the key to the best urban mobility at a reasonable cost, and America's cities deserve no less. ■

## Private Property (Cont. from p. 11)

fects; the courts examine whether regulations are constitutionally proper.

Judge Scalia made the suggestion at the 1984 Cato symposium that judges might come up with strange economic rights, such as the right of every worker to just and favorable remuneration. I don't find that a great threat. For one thing, judges have only a negative power—they can strike things down. Judicial decisions rarely have the character of positive economic enactments. In any case, judges have exercised substantive review in other areas of the law, and the republic hasn't fallen. If it turns out that economic judgments made by the judiciary are sufficiently unpopular, then there is a political mechanism for doing away with the constitutional provision that allowed those judgments to be made.

**Richard A. Epstein:** Judge Kozinski rightly notes that one salient feature of my system is the heavy burden it places upon judges, and he rightly asks who or what constrains the judges. The problem is of no mean difficulty because judges are not simply umpires outside the political system; they are, in some measure at least, participants. One must therefore beware of giving them too much power. In principle, that is best achieved by diversifying legal control in order to handle both legislative and judicial abuse. If people are risk averse, then a diffusion of power is not unlike the purchase of a mutual fund: diversification avoids the risk of putting all our faith in a single branch of government.

I also believe that there are powerful

checks upon the judiciary. One is a strict and rigorous theory of constitutional interpretation. Modern sentiments tend to dismiss this possibility, but I believe that my own strong positions on eminent domain are all consistent with very exacting demands for textual loyalty. Judges who constantly seek to square their results with the constitutional text will not be perfect, but they will surely be better than those who never try.

A second check on the power of the courts, at least as regards eminent domain, is that their remedial powers are limited. Judges can invalidate legislation or require compensation. They cannot initiate widespread reforms or set the appropriate levels of taxation.

In closing, I should note that my theories will not be politically salable if 99 percent of the public is opposed to them. But one should beware of conceding too much power to the public consensus so early in the debate. Not too long ago, there was a powerful consensus that separate-but-equal was constitutional to the point that segregated schools and antisegregation statutes

were regarded as clearly constitutional. The power of normative argument helped change all that, and it could happen again. It is one thing to be wrong on the merits. We all accept that risk when we enter into the treacherous waters of constitutional and political debate. It is quite another to treat the present political consensus as resting on foundations of granite. One cannot take present consensus as the last word in any intellectual debate.

It may be asked, can argument make a difference? Well, in a sense it already has. Recently, the federal government finally broke with state governments over the scope of the eminent-domain clause on the question of interim takings in the land-use context. It is very welcome to see that the Justice Department is beginning to take the eminent-domain clause seriously as a charter of individual rights. It is most welcome to see the break in the longstanding alliance between it and state and local governments on land-use issues. In a real sense, these practical changes are the outgrowth of an intellectual debate I hope will intensify over time. ■

**"Politicians who ignore this book do so at their own peril."**

—Rep. Jack Kemp

**A**re baby boomers liberal, conservative, or something else? How will they change the political system? Is the liberal-conservative spectrum still meaningful? These questions and more are considered in this pathbreaking book by Lee Atwater, Michael Barone, David Boaz, Pat Caddell, Edward H. Crane, William Schneider, Rep. Vin Weber, Rep. Tim Wirth, and other leading political analysts. **\$6.95, 119 pp.**

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**LEFT, RIGHT  
&  
BABY BOOM**

America's New Politics

Lee Atwater Michael Barone  
Timothy S. Clark Pat Caddell  
Edward H. Crane  
William Schneider Rep. Vin Weber  
Rep. Tim Wirth

edited by David Boaz



## Haberler's Cogent Examination of Stagflation

**The Problem of Stagflation: Reflections of the Microfoundations of Macroeconomic Theory and Policy**, by Gottfried Haberler (Washington: American Enterprise Institute, 1985), 76 pp., \$4.95.

**The Politics of Inflation and Economic Stagnation**, ed. Leon N. Lindberg and Charles S. Maier (Washington: Brookings Institution, 1985), 612 pp., \$38.95/\$18.95.

Without a doubt, stagflation has become the macroeconomic issue of the 1970s and 1980s. It has toppled Keynesianism in the arena of economic theory and left Keynesian prescriptions with a tarnished reputation. Books on stagflation have therefore become a "growth industry," often at the expense of quality. The two books surveyed here, however, are a valuable contribution to the literature.

Haberler's *The Problem of Stagflation* is inspired by a mixture of traditional monetarism and a belief that macroeconomic health is ultimately rooted in microeconomic efficiency. Haberler blames systematic increases in the money supply for the price inflations that the Western world has experienced in the 20th century. His concomitant policy prescription is tight money and tight fiscal policy in order to bring aggregate demand under control.

This prescription, however, is the weak spot in Haberler's argument. The problems of defining, measuring, and controlling the money supply remain to be solved. Such problems have led many economists to conclude that traditional monetarist recipes are inadequate for controlling inflation. Unfortunately, the author does not discuss these problems.

For Haberler, microeconomic efficiency depends on flexible prices determined in free markets. The biggest problem in this arena, he argues, is the special legal privileges that have been awarded to labor unions in many countries. Haberler urges repeal of these privileges, economic deregulation, free trade, and a more rational system of taxation. A convincing case is made that each of these measures would pro-

mote long-term growth and microeconomic efficiency and hinder stagflation from recurring in the future.

The book also contains brief critiques of alternative points of view, such as rational-expectations theories, incomes policies, and reindustrialization planning.

The second book under review, *The Politics of Inflation and Economic Stagnation*, is less useful. Perhaps its most serious weakness is that many of the contributors, who include political scientists, historians, and sociologists as well as economists, ignore Haberler's

### Policy Report Reviews

dictum that inflation is primarily a monetary phenomenon and cannot exist in the absence of significant increases of the supply of money. Instead, they emphasize "party or national rivalries, the history of class relations, or the differing roles of national governments as economic factors."

Conversely, the most valuable essays are those that do, to varying degrees, admit that inflation is a monetary phenomenon and then present a theory of central-bank or government behavior. Of particular note is John T. Wooley's "Central Banks and Inflation," which attempts to determine the conditions under which central banks possess independence and analyzes the forces that shape central-bank behavior.

Such an analysis could form an important challenge to monetarism: if central banks are not autonomous (and can never be autonomous), then monetarist money-growth rules may be inherently flawed and unpracticable. Even if the central bank did have the ability to control the money supply—a highly debatable assumption—it may not have the will to do so; and this absence of will cannot simply be legislated away by passage of a constitutional amendment.

In sum, Haberler's *The Problem of Stagflation* is a succinct, entertaining, and economically sound analysis of many of the economic troubles experienced in the West in the last 15 years. The author presents an excellent discussion of the causes of stagflation but fails to suggest any adequate remedies in the macroeconomic sphere. *The Politics of Inflation and Economic Stagnation*, while highly uneven, does contain a number of thought-provoking essays that would make it a welcome addition to one's library.

**Essays in Contemporary Problems: The Economy in Deficit**, ed. Phillip Cagan (Washington: American Enterprise Institute, 1985), 336 pp., \$20.95/\$9.95.

The last several years of economic policymaking and the resultant economic response have puzzled economists of all theoretical and political persuasions. In spite of a massive ballooning of the deficit, we have observed falling interest rates, healthy private-sector investment activity, and an alleviation of many Third World debt problems. And nearly all economists agree that such factors as cuts in capital-income taxation and falling oil prices explain our recent economic history only in part.

Observers also agree that an examination of our record budget deficits is crucial for understanding the behavior of the economy. *Essays in Contemporary Problems* offers a comprehensive and highly useful discussion of the deficit issue. Among the topics that are scrutinized are the source of the deficit, projected future deficits under different revenue and economic-growth assumptions, the role of state and local government budgets, the crowding out of private investment, the role of international capital markets and capital inflow from abroad, the effect of deficits on LDC debt problems, the possibility of using flat-rate taxation to diminish the deficit, and public choice perspectives on the deficit.

While almost all the essays are useful, Gottfried Haberler's "International

Issues Raised by Criticisms of the U.S. Budget Deficits" may be the most insightful. Haberler picks apart the oft-repeated claim that American budget deficits are responsible for Europe's economic problems. He then shows that many of Europe's economic difficulties are attributable to high taxes, stifling regulations, and structural weaknesses in the European economies.

The volume offers a wealth of facts, many leads for future research, and a diversity of opinions. It is probably the single most useful reference source on the deficit available.

**Education on Trial: Strategies for the Future**, ed. William J. Johnston (San Francisco: Institute for Contemporary Studies, 1985), 352 pp., \$22.95/\$12.95.

Education was a topic of considerable controversy well before the National Commission on Excellence in Education issued its 1983 report "A Nation at Risk." The report confirmed fears of the declining quality of education, identifying a "rising tide of mediocrity" that constitutes "a threat to the nation itself." *Education on Trial* compiles proposals by nearly 20 educators, educational theorists, and representatives of business and government for improving the schools.

The contributors tend to agree that educational standards have indeed fallen and that the decline is related to what they see as education's general loss of purpose. The schools have been made laboratories of social and political change, and basic instructional responsibilities have been neglected. The various "excellence movements," such as the California reform program, have correctly shifted the focus of education away from equality and back to excellence. This theme is repeated throughout the anthology.

The trap into which many recent education-reform movements are falling is centralization. In order to ensure high standards for the schools, state legislatures are demanding greater control of programs and curricula. While the immediate goals may be laudable, the resultant concentration of power may prove dangerous when educational fashions shift again.

A significant shortcoming of the book

is its exclusive focus on the current public education system. Consequently, what may be among the most important avenues of reform—tuition tax credits and vouchers—are given only perfunctory attention.

**Education: Assumptions versus History: Collected Papers**, by Thomas Sowell (Stanford: Hoover Institution Press, 1986), 203 pp., \$8.95.

In this collection of previously published papers, which range from scholarly articles to book reviews to congressional testimony, Thomas Sowell examines the disastrous effects of various "innovative" and "socially relevant" education reforms of the 1960s and 1970s on the education of black Americans. He also explores such issues as tuition tax credits, IQ testing, and academic tenure.

Sowell examines outstanding black institutions and finds that neither "innovative" programs nor high expenditures are necessary for a successful education. There is no single formula for success; the only elements common to the outstanding schools Sowell studied were order, discipline, and respect for authority. The schools also tended to recognize individual excellence through academic tracking or ability grouping. All these values are undermined in contemporary public education by the rise of "students' rights," "due process," and egalitarian social values.

Sowell also indicts affirmative action as a cause of deteriorating black educational opportunities, since it places students in schools that are mismatched with their abilities, in which they cannot effectively compete and learn. Minority students who could excel at most colleges and universities are often placed in highly selective institutions, where many of them become frustrated and fail.

Even more tragic, according to Sowell, is the predicament of the ablest black students, who are often not admitted to prestigious universities because admissions officers assume that they have had special educational advantages, that they will be admitted to other institutions anyhow, or that they are not especially "interesting" or "authentic" blacks. If they are admitted, these stu-

dents, who could have succeeded under any standards, are often faced with an educational double standard that will render their accomplishments suspect to prospective employers.

Despite occasional unevenness and repetition, the penetrating and iconoclastic insights displayed in *Education: Assumptions versus History* make the volume highly interesting and worthwhile.

**The Health Policy Agenda: Some Critical Questions**, ed. Marion Ein Lewin (Washington: American Enterprise Institute, 1985), 126 pp., \$16.95/\$8.95.

Policy sensitivity to budget constraints and tradeoffs is continuing to increase, while emotional arguments about "rights" are on the decline. This change is particularly striking in health policy, which is marked by enormous humanitarian concerns and serious efficiency problems. *The Health Policy Agenda*, a collection of seven studies of specific areas in health policy, reflects and addresses this transition.

The underlying theme is that if policy is to be more efficient, policymakers have to be aware of the tradeoffs they face. Topics investigated include financing medical care for the underinsured, changes in federal grants, all-payer rate regulation, new payment systems, changes in physician-hospital relations, and long-term health policy. The volume is an attempt to present the data in order to inform the formulation of policy; few actual policy measures are suggested.

The one general essay, by Alexander Morgan Capron, concerns the ethical basis of health policy. It begins by assuming the existence of a social obligation, via the government, to ensure that everyone has access to an adequate level of health care—a disastrous premise inherited from the 1960s. Yet Capron's well-reasoned argument actually demonstrates the futility of positing that ethical imperative. Such was not his intention, but the realities of health care make his failure to establish it as a social responsibility inevitable.

The other essays are very informative and well presented. This volume will be of great value to the health policy specialist.



# "To be governed..."

## Yes, even that

In the present climate of political assaults on government, there are even cries to reduce greatly the influence of Washington on national events.

—Haynes Johnson in the *Washington Post*, Feb. 2, 1986

## Hollywood sums it up

"All these rich folks are crooks."

—Mr. T on "The A-Team,"  
Jan. 28, 1986

## We'd brag about it

You won't hear anyone on Capitol Hill bragging about it, but before Congress went home for the holidays, lawmakers set a record of sorts: They passed more laws that do less than any similar year since 1977.

Seventy percent of the 189 public laws passed by Congress in 1985 were not substantive.

—*Washington Post*, Dec. 25, 1985

## Of course, they have no choice

Federal Express . . . will haul U.S. mail on four air routes for several weeks. Gus Saul, a Postal Service spokesman, says the planes will carry mostly first-class mail. But he adds that it's "conceivable" that some of the Postal Service's own Express Mail will ride Federal Express planes to their destinations. . . .

"They mail their letters and bills through the Postal Service," he says. "You don't hear anything about that."

—*Wall Street Journal*, Dec. 5, 1985

## We call them wages and salaries

Have we now placed price tags on the worth of a man or woman's livelihood?

—Rep. Howard Coble in the  
*Washington Post*, Jan. 4, 1986

## Free at long last

Gov. Harry Hughes, declaring that the end to Maryland's long savings and loan crisis "is in sight," unveiled a \$320 million plan to free deposits at Old Court Savings & Loan by December 1989.

—*Washington Post*, Jan. 11, 1986

## The rising tide of mediocrity

But [my college newspaper in the 1970s] also fought for things of more lasting importance. When the college tried to abolish dozens of alternative education courses ranging from lesbian history to rock music, we led the student protests.

—Howard Kurtz in the  
*Washington Journalism Review*,  
February 1986

## In loco parentis

By day's end, the [Montgomery County] council had restricted barking by dogs, banned smoking in county offices and required public spas to employ lifeguards.

Lest the public think it was going too far, however, it also passed an ordinance once again allowing dancing after midnight. . . .

The council also established more restrictive "quiet hours."

—*Washington Post*, Jan. 15, 1986

## An offer they can't refuse

[Democratic fundraiser Rep. Tony Coelho tells business lobbyists,] "We're going to be involved in your business, so it doesn't make sense for you not to get involved in our business."

## He wants to club them?

Thinkers on the left are trying to reinterpret socialist ideals. . . . Mr Michael Walzer, an American historian and philosopher, has put forward a notion of "complex equality" that acknowledges people's clubbableness.

—*Economist*, Dec. 21, 1985

## Investors, maybe?

If the Fed [junk-bond regulation proposal] prevails, [Federal Reserve vice chairman Preston] Martin argues that it will be the beginning of "the Fed sitting in judgment of mergers and acquisitions." But if not the Fed, who?

—Hobart Rowen in the *Washington Post*, Jan. 2, 1986

## No kidding

Omar Cabezas, author of "Fire From the Mountain," a memoir of his life as a guerrilla, and "chief of political direction at the ministry of interior for the Sandinista government," . . . has been giving an extended series of press interviews at the coffee shop of the St. Moritz. . . .

He added that his book . . . is a best seller in Nicaragua.

—*Washington Post*, Jan. 15, 1986

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