

# Cato Policy Report

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## The Proliferation of Petty Dictatorships

by James Bovard

The Fifth Amendment to the U.S. Constitution states, "No person shall be . . . deprived of life, liberty, or property, without due process of law." Thomas Jefferson wrote in 1787, "A bill of rights is what the people are entitled to against every government on earth." Unfortunately, the Bill of Rights—the most important treaty between the government and the citizenry—is often shown as little respect by federal courts as were the early treaties between the federal government and Indian tribes. The federal government is obliged to respect its promises to the citizens, unless it is convenient to renege on those promises.

In its day-to-day operation, the federal government is increasingly a pseudo-benevolent dictatorship. The Supreme Court declared in 1971 in *California v. Byers*: "The sweep of modern governmental regulation . . . could of course be thought to present a significant threat to

James Bovard, an associate policy analyst at the Cato Institute, is the author most recently of *Lost Rights: The Destruction of American Liberty* (St. Martin's, 1994).

the values considered to underpin the Fifth Amendment. . . . As uncertain as the constitutional mandate derived from this portion of the Bill of Rights may be, it is the task of this Court continually to seek that line of accommodation which will render this provision relevant to contemporary conditions." Thus, the Supreme Court almost explicitly defined its job as accommodating the growth of government, rather than upholding the rights of the citizens.

In recent decades the due process clause has been largely swept aside in citizens' dealings with federal regulators, inspectors, enforcers, and tax collectors. While courts have created new due process rights for welfare recipients, disruptive school children, and criminal defendants, the rights of farmers, homeowners, parents, and businessmen have been shredded. We have seen marginal development in due process mechanisms and a vast proliferation of government agencies with the power to trample due process. The modern idea of due process appears to be to permit citizens to exhaust their life savings fighting court battles

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against heavy-handed government agencies.

The trademark of modern political thinking is faith in discretionary power wielded by benevolent politicians and administrators—in letting government employees treat private citizens as they think best. Whereas in previous eras the citizen worried only about the sheriff and the tax collector, he must now often face the power and authority of the zoners, the wage regulators, the compulsory preservationists, the equal-opportunity enforcers, the import-price controllers, the occupational licensers, and others. We have a vast administrative state and minimal control over the administrators.

The federal judiciary has created an overwhelming presumption of legality of the actions of federal agencies, thus approving more and more governmental acts that once would have been considered outrageous, illegal, or unconstitutional. The sheer volume of federal action—of laws, regulations, consent decrees, and memos with the force of law—makes effective judicial and congressional oversight of federal agencies nearly impossible. The larger government has grown, the less controlled it has become.

We have had extensive government in the past, but never has it been so unconstrained by guiding principles, the

(Cont. on p. 10)



Roger Pilon, director of Cato's Center for Constitutional Studies, introduces Justice Clarence Thomas to Cato senior editor Sheldon Richman as Thomas arrives for a Roundtable Luncheon with Cato senior policy staff.

# Don't Federalize Criminal Law!

## Chairman's Message



On November 19 the Senate passed a major crime bill that would substantially federalize American criminal law. The vote was 95 to 4, a triumph of posturing over deliberation. One wonders whether many members of the Senate either have read the 960-page bill or have any residual loyalty to the Constitution.

The bill would greatly broaden the scope of federal criminal law by a combination of muscle

and money. Most crimes involving a firearm or by a member of a street gang would become federal crimes, on the basis of an outrageous interpretation of the power to regulate foreign and interstate commerce. States would have the opportunity to assign state prisoners to 1 of 10 or more new federal prisons on condition that the states adopt sentencing rules consistent with federal law. Those provisions would directly or indirectly broaden federal criminal law to almost all violent crimes plus a range of offenses including child abuse, drugs, firearms, and sexual abuse.

Other provisions of this bill are also a threat to common sense or our civil liberties. Four crimes short of murder would be capital offenses: treason, espionage, attempted assassination of the president, and major drug traffic offenses. Many other crimes would be federal capital offenses if an accomplice committed a murder. The "three strikes; you're in for life" provision would include many nonviolent crimes, including drug possession, threats, and the destruction of property. Mandatory minimum sentences would be established for several firearm and drug offenses. Those provisions would substantially reduce any marginal deterrent to more violent crimes, including murder, and would increase the arbitrariness of sentences.

Federal politicians should be able to express their concern about crime without voting for such bad legislation. Crime is a serious problem and is a major concern of those who live in the inner cities. Aggregate reported crime rates are now about five times the 1960 rates but, interestingly, about the same as in 1980. Again, crime is a serious problem, but one wonders why it has only recently become a focus of federal politics. Whatever the level of concern about crime, however, there are several reasons why we should not federalize American criminal law:

- The Constitution provides no explicit authority for a general federal criminal code. Most of the federal criminal code has been limited to violations of federal authority and crimes against federal officials or on federal property, leaving to the states the authority to develop a more general criminal code.
- Crime is a nationwide problem but does not require

national solutions. More police or higher sentences in California, for example, may reduce crime rates in California but not in New York. Moreover, to the extent that criminals are mobile, tougher enforcement in California may increase the crime rates in other states. That suggests that state and local governments may spend *too much* on police and corrections, with the expectation that some criminals will move to other jurisdictions. There is no apparent basis for federal grants to increase the number of police and prison spaces, since state and local governments seem to have more than adequate resources and incentives to provide those government services.

- Finally, our understanding about what works is shockingly limited. It is difficult to demonstrate that more police and prison space reduce the reported crime rates, and evidence on the effects of different modes of policing and sentencing is even more limited. One implication of such uncertainty is that the federal government should encourage *experimentation* with different approaches to crime control, not a general increase in expenditures for police and corrections or a harmonization of sentencing rules.

The Senate crime bill addresses a serious problem that should be addressed by the state governments. This bill, unfortunately, reflects a more general pattern in which Congress approves sweeping legislation with only casual regard for the Constitution, with the excuse that the courts will sort out the constitutional issues. That problem is compounded by the general reluctance of the Supreme Court over the past 60 years to challenge Congress on constitutional grounds. The consequence has been an erosion of the Constitution, the federal structure of our political system, and our civil liberties. The federal government need not, should not, address every important problem of American life. That should be a sufficient basis for voting against this bill when it returns from the conference committee.

*William A. Niskanen*  
—William A. Niskanen

Weicker, Florio Flunk Again

# Cato Issues Second Report on Governors' Fiscal Policy

The Cato Institute's biennial "Fiscal Policy Report Card on America's Governors: 1994" (Policy Analysis no. 203) gave A's to three governors and F's to five for their taxing and spending records. The report card, compiled by Cato's director of fiscal policy studies Stephen Moore and research assistant Dean Stansel was released as the National Governors' Association met in Washington. The study examines the fiscal performance of 47 of the nation's governors. Grades A through F were computed for the governors on the basis of 14 measures of how well they have controlled spending and restrained taxes and their overall fiscal policy.

Governors receiving A's are L. Douglas Wilder of Virginia (whose term ended in January), Stephen Merrill of New Hampshire, and Kirk Fordice of Mississippi. The five governors who receive F's are Lowell Weicker of

Connecticut, James Florio of New Jersey, John Waihee of Hawaii, James Hunt of North Carolina, and Thomas Carper of Delaware. Other prominent governors and their grades are William Weld of Massachusetts, B; Tommy Thompson of Wisconsin, B; John Engler of Michigan, B; Lawton Chiles of Florida, B; Roy Romer of Colorado, B; Mario Cuomo of New York, C; Jim Edgar of Illinois, C; Ann Richards of Texas, D; and Pete Wilson of California, D.

The report card quickly garnered publicity for the Institute. Moore and Stansel were interviewed on nine radio programs shortly after release of the study. It was discussed on C-SPAN and on National Public Radio's "Morning Edition." Gov. Terry Branstad of Iowa called Moore personally to discuss his C.

On January 31 Moore summarized the findings in a *Wall Street Journal* editorial-page article, "Governors' Dilemma: Budgets Out of Control." The *Journal* also mentioned Merrill's A and Weicker's F on the front page on February 16. In the first weeks after its release, the study was reported on in newspapers in Texas, Colorado, Virginia, North Carolina, New Hampshire, and Tennessee. The *Denver Post* quoted Romer as saying he was pleased with his B. "Fiscally, I've always been a conservative," he said. "I'm not surprised . . . but I'm pleased by it." The article also noted that the study warned that Romer "of late has been acting like a traditional tax-



Virginia governor Doug Wilder speaks about fiscal policy at a 1992 Cato forum.

and-spend liberal."

The *Charlotte Observer* blasted Cato for the F it gave North Carolina governor Hunt. "Hunt's Bogus F," blared the headline over the lead editorial on February 11. "The Cato Institute's report card on the governor's 'fiscal policy' would be funny if it weren't serious." The editorial stated that getting an F from Cato is "like getting an 'F' in department from Charles Barkley. You have to wonder if the grader knows anything about the subject." The newspaper then attempted to undermine the Moore-Stansel study. "There is a fundamental problem with Cato's report card," said the *Observer*. "It is that the Cato Institute starts with the principle that it's bad for a state to tax its people and spend their money, and the more a state taxes its people and spends their money, the worse it is—regardless of how the money is spent."



Wisconsin governor Tommy Thompson speaks at a Cato Policy Forum on state fiscal policies.

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## Do Drugs and Guns Cause Crime?

## Bukovsky, Simon, Thompson, Armev Speak at Cato

## Cato Events

**December 9:** Former Soviet dissident Vladimir Bukovsky spoke about current political conditions in Russia during a **Roundtable Luncheon** with the Cato policy staff and journalists. Bukovsky expressed pessimism about Russian president Boris Yeltsin, the new constitution, and the prospects for free-market and democratic reform.

**December 13:** Supreme Court Justice Clarence Thomas joined the Cato policy staff for a **Roundtable Luncheon**. The lively, off-the-record discussion covered property rights, criminal procedure, and the role of the judiciary in a limited government.

**December 15:** A Policy Forum explored the probable impact on innovation of President Clinton's proposal to impose price controls on new drugs and biotechnologies. Entitled "**Bad Medicine: Price Controls and the Future of Breakthrough Medicine**," the forum featured Robert Goldberg, senior fellow, Gordon Public Policy Center at Brandeis University; Henri A. Termeer, president and CEO of Genzyme Corporation; and Cato chairman William A. Niskanen. The speakers agreed that the promise of lower drug prices today is not worth the risk of fewer medicines tomorrow.

**December 15:** The battle over "political correctness" at American universities was highlighted when Cato hosted a screening of the PBS film "Campus Culture Wars," five stories about freedom-of-speech controversies from around the country. A panel discussion followed with the film's producer-director, Michael Pack; Lynne Cheney of the American Enterprise Institute; Drew Weaver, editor in chief of the *Diamondback*, the University of Maryland's independent student daily; and Peggy Sanday, professor of anthropology at the University of Pennsylvania.

**January 11:** Robert Poole, president of the Reason Foundation, spoke on "**The Worldwide Privatization Revolution**" at a Policy Forum. Poole outlined the vari-



At a Cato seminar on the balanced-budget amendment, chief sponsor Sen. Paul Simon points to a chart as William Niskanen listens.

ous forms of privatization—from asset sales to vouchers—and discussed its progress in several regions of the world.

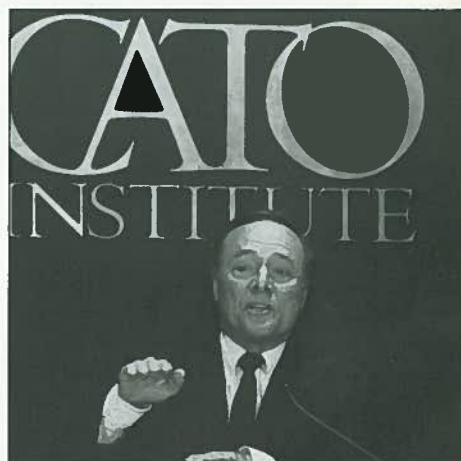
**January 18:** A Policy Forum assessed "**The North Korean Nuclear Crisis and Its Implications**." Cato senior fellow and syndicated columnist Doug Bandow and William J. Taylor, Jr., of the Center for Strategic and International Studies warned against action that could provoke a disastrous war and said that diplomacy has shown signs of working. Frank Gaffney of the Center for Security Policy said that, because of the threat of general nuclear proliferation, the United States must be firm with North Korea even if firmness risks war.

**January 21:** A "New Perspectives for the Nineties" city seminar was held in Dallas. The keynote speaker was David Lucas, founder of the Coalition for Property Rights. Luncheon speaker Rep. Dick Armev (R-Tex.) decried the Clinton health plan and predicted that Congress will not pass it.

**January 25:** Richard McKenzie spoke about the performance of the economy during the Reagan years at a Book Forum for his new book, *What Went Right in the 1980s* (Pacific Research Institute). McKenzie said that although not everything was perfect in that much-maligned decade, the economy grew dramatically, most segments of society

got richer, and charitable giving increased markedly.

**January 27:** Representatives of the National Rifle Association and the American Civil Liberties Union talked about the causes of crime at a Policy Forum on "**Drugs and Gun Prohibition: Creating Criminals, Disarming Victims**." Richard E. Gardiner, legislative counsel at the NRA, said that gun-control laws create victims by turning peaceful people into criminal defendants and by making citizens vulnerable to violent crime. Gene Guerrero, field director and legislative representative of the ACLU, said the war on drugs fills



Rep. Bill Archer, sponsor of a medical savings account bill, speaks at a Cato seminar at which the abridged edition of *Patient Power* was released.

prisons with nonviolent offenders, contributes to violent crime, and squanders scarce judicial resources.

**February 1:** Govs. Kirk Fordice of Mississippi and Tommy G. Thompson of Wisconsin spoke on "**Supply-Side Lessons from the States**" at a Policy Forum. The governors described their experiences in reversing their states' profligate, high-tax policies and creating a climate conducive to economic growth.

**February 2:** A Policy Forum entitled "**Below-Cost Timber Sales: Time to Cut Our Economic Losses?**" examined the government's management of federally held forests. Donald Leal, senior research associate at the Political Economy Research Center, argued that most so-called below-cost timber sales are economically justifiable and that the costs of federal land management are excessive. He called for privatization of the lands. Jeff Olson of the Wilderness Society opposed privatization on the ground that the marketplace would not account for the noneconomic value of the forests.



Former Soviet dissident Vladimir Bukovsky (left) discusses the Yeltsin era at a Cato luncheon.

**February 3:** Author Lawrence Gasman said that only a completely free market can deliver the dramatic benefits of the telecommunications revolution. At a Book Forum honoring publication of *Telecompetition: The Free Market Road to the Information Highway*, Gasman, president of Communications Industry Researchers, Inc., called on the Clinton administration to deregulate the local telephone companies, sell the electromagnetic spectrum, and institute full First Amendment protection for the electronic media.

**February 10:** The abridged, paperback

version of *Patient Power*, Cato's free-market alternative to the Clinton health plan, was released at a Policy Forum. Speaking about medical savings accounts, the problems with health maintenance organizations, and employer mandates were Rep. Bill Archer, ranking minority member of the House Ways and Means Committee; Jane Orient of the Association of American Physicians and Surgeons; Greg Scandlen of the Council for Affordable Health Insurance; and Bennie Thayer of the National Association of the Self-Employed.

**February 15:** The wisdom of government recycling programs was debated at a Policy Forum entitled "**Mandatory Recycling: Wasting Resources to Reduce Waste?**" Grant Schaumburg, Jr., of the Mount Lucas Management Corp. and coauthor of a Cato study on the subject, said that experience in New Jersey shows that recycling does not conserve resources or protect the environment. Chaz Miller of the National Solid Waste Management Association agreed that solid-waste disposal should be privatized but predicted that the free market would find recycling worthwhile.

**February 16:** "**The Economic Case for the Balanced-Budget Amendment**" was the topic of a Capitol Hill Policy Briefing sponsored by the Institute. Speaking on behalf of the Simon-Craig balanced-budget amendment were Sen. Paul Simon (D-Ill.), a sponsor of the amendment; Cato chairman William Niskanen; and David Keating, executive vice president of the National Taxpayers Union.



David Lucas, founder of the Coalition for Property Rights, tells a Cato city seminar in Dallas how South Carolina tried to take the value of his property.

## Policy Analysis Studies

204. **Intrastate Trucking: Stronghold of the Regulators** by Cassandra Chrones Moore (February 16, 1994)
203. **A Fiscal Policy Report Card on America's Governors: 1994** by Stephen Moore and Dean Stansel (January 28, 1994)
202. **Wasting Resources to Reduce Waste: Recycling in New Jersey** by Grant W. Schaumburg, Jr., and Katherine T. Doyle (January 26, 1994)
201. **Washington's Dubious Crusade for Hemispheric Democracy** by Ian Vásquez (January 12, 1994)
200. **Taken to the Cleaners: A Case Study of the Overregulation of American Small Business** by Jonathan Adler (December 22, 1993)
198. **NAFTA's Green Accords: Sound and Fury Signifying Little** by Jerry Taylor (November 17, 1993)
197. **Laboratory Failure: States Are No Model for Health Care Reform** by Michael Tanner (September 23, 1993)
196. **Paved with Good Intentions: The Mythical National Infrastructure Crisis** by John A. Tatom (August 12, 1993)
194. **How to Balance the Budget by Reducing Spending** by William A. Niskanen and Stephen Moore (April 22, 1993)
193. **The Economic Impact of Replacing Federal Income Taxes with a Sales Tax** by Laurence J. Kotlikoff (April 15, 1993)
191. **Present at the Re-creation: The Need for a Rebirth of American Foreign Policy** by Jonathan G. Clarke (March 31, 1993)
184. **Health Care Reform: The Good, the Bad, and the Ugly** by Michael Tanner (November 24, 1992)

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## Free Speech and Political Correctness on Campus

### Policy Forum

Questions of free speech, cultural diversity, and "political correctness" continue to rage on campus. A recent Cato Policy Forum featured a discussion of political correctness from several perspectives. The forum began with a showing of "Campus Culture Wars: Five Stories about PC," a documentary shown on many PBS stations in late 1993. Following the film the audience heard from four speakers: Michael Pack, president of Manifold Productions and producer and director of the film; Peggy Sanday, professor of anthropology at the University of Pennsylvania and an adviser to the black women at that campus who complained about being called "water buffalo"; Drew Weaver, editor in chief of the *Diamondback*, the student daily at the University of Maryland; and Lynne Cheney, the W. H. Brady, Jr., Distinguished Fellow at the American Enterprise Institute and former chairman of the National Endowment for the Humanities.

**Michael Pack:** PBS asked us to delete 6 minutes of our 86-minute film, and it took us many months and many arguments to get them to air it at all. I think that it was an act of courage for PBS to carry "Campus Culture Wars: Five Stories about PC." Getting individual stations to air it was a struggle. It aired in most of the country in late September, but numerous calls and articles in the press were needed before WETA in Washington would air it in late December.

I want to make just one observation about the show. There are two aspects to it, which is why we gave it both a title and a subtitle. It is about the culture wars on campus, the conflicts resulting from divergent views on issues involving race, gender, and sexual orientation. And second, it is about attempts, usually on the part of the administration, to come down on one side of those debates and, in the course of doing so, to abridge the First Amendment rights of students. PC is not only a First Amendment question; it's also a cultural issue.

**Peggy Sanday:** I've been told that I was invited here as a kind of plaintiff. I guess

I'm supposed to be the liberal PC academic who is going to stand up and fight for PC. I will not do that. I think the term PC ought to be permanently interred. I think that, for reasons I will state, we ought to forget about the term PC and go on to the other issues that really represent, in my opinion and from my experience, mainstream campus life. First, I want to give you some background on where I stand on PC, and then I want to make a few comments about the film.

First of all, I'd like to tell you that I have been teaching at the University of Pennsylvania for the last 20 years. I have some knowledge of campus life. I have taught at other universities, and I have given lectures at universities all over the



Peggy Sanday: "My struggle is for the civil right of all students to an education without hate speech, without being demeaned."

country. I was the adviser to the young sorority women of the "water buffalo" case at the University of Pennsylvania, and, I might say, I have been teaching women's studies since about 1972, in addition to anthropology. So I would appear to be everything that is criticized in this film. I would like to respond.

In none of my professional capacities do I think of myself as politically correct. I would characterize my position in all cases as open-minded and devoted and dedicated to open expression, not for PC on either side, right or left. And I want to emphasize that both sides act in politically correct fashion. I would characterize my journey and struggle as being for

basic rights, for civil rights. For the civil right of all students to an education without the deterrence of hate speech, without being demeaned. I am for treating individuals with respect and with dignity. I am against all forms of extremism that are expressed on college campuses today. This film shows some of the extremism on both sides, I might say. I believe we need to develop and find a common ground, to show tolerance for one another, to respect one another, to treat one another with dignity at all times, to look for unity in diversity. Above all, to work against intolerance and the misunderstanding that is often amplified by media coverage of PC issues on college campuses and the false reporting that we so often find.

I mention false reporting because, as a key player in the "water buffalo" incident, I have to tell you that the reporting of that incident was extremely false and one-sided. Our position, the position of the young women involved, was mentioned by the press only in passing. The students involved and I were gagged by the media's representation of our position. We were gagged by silence and nonreporting.

Admittedly, all of us are silenced to some degree on issues on which we do not represent the political mainstream. I was silenced on this issue; the conservative side has been silenced on other issues. This movie shows how people were silenced, how people on both sides were degraded and demeaned, and I was terribly offended by some of what I saw people doing to each other. I thought it showed lack of respect, and I cringed in my seat as I watched the way people, on both sides, were treated.

There are some parts of this movie that I find extremely offensive. For example, as a female faculty member, the first woman ever hired by the oldest anthropology department in the United States, I know something about sexual harassment. I know students who have been harassed by professors. I know students who have been harassed by other students. For the filmmakers to use a protest about a reproduction of a Goya painting in a classroom to represent the problem of sexual harassment is to trivi-

alize a very important issue, one that many women have to confront. Furthermore, the incident that grew out of a male student's feeling excluded in a women's studies class demonizes women's studies. I consider myself a feminist. I feel deeply offended at being trivialized and stereotyped. Feminists don't all think alike, as a recent cover story in *Ms.* magazine pointed out. There are a lot of differences that push us apart.

I'd like to end by saying that during the 20 years I have been at the University of Pennsylvania, I've never attended mandatory political chapel. There is no such thing at the University of Pennsylvania. I've never been forced to go to a sensitivity training session about anything, nor have any of my students. There are no thought police. I happen to think that after Murray Dolfman apologized for offending black students in his class, the whole thing should have been left alone. Instead, it was beaten into the ground. Sensitivity training may have been proposed as a device to encourage better interracial understanding; however, it was not instituted at the University of Pennsylvania as mandatory.

What I find most exciting for the future of campus life everywhere are two principles Sheldon Hackney promoted while he was president at Penn: open expression and community. To those principles I would add respecting diversity and searching for what unites us as a community. And I hasten to underline the word respect. Basic respect for the human dignity of all, regardless of the differences that separate us, would go a long way to ending the campus wars.

**Drew Weaver:** I think I was asked here today as a representative of today's college campus; because I personally know a lot of people who have earrings in their lips; and because, as editor of a large independent student daily, the *Diamondback* at the University of Maryland, I might have a unique perspective. I also believe that I was asked here today because we on the *Diamondback* may be tiptoeing close to the line of political correctness in dealing with a recent event—the theft of about half of our circulation.

There were over 30 thefts of college newspapers in 1993, according to the Student Press Law Center, which is based here in Washington. The *Diamondback* was, I think, number 31. During the pre-

vious two decades there were, at the most, three newspaper heists a year. On our campus the alleged issue was that the paper was racially insensitive and unfair to the campus black community. Some members of that community feel that the only coverage our paper gives events in their community is negative coverage. There's been some truth to that, and like the rest of the press in the nation, the college press is evolving in terms of its coverage. Copies of the paper were taken, and in their place at many of the distribution points around campus an anonymous group left a flier that said: "Due to its racist nature, the *Diamondback* will not be available. Read a book." The main point of the theft, I believe, was to make a political statement; someone without a voice wanted to be heard. The main issue that's arisen on our editorial page and on campus in the last month has been, Is stealing news-



Lynne Cheney: "I'd like to get rid of the term PC by getting rid of the phenomenon itself."

papers a valid form of political protest? I find it rather ironic and hypocritical to take somebody else's words and throw them in the dumpster and then expect people to listen to you. That's the stance that the newspaper has taken, and we're maintaining it with all the vigor that we can. We hope to be able to show the rest of the press, especially the college press in this country, that there are other ways to make your point than by trampling on the First Amendment.

**Lynne Cheney:** I want to begin by taking issue, not just with Peggy Sanday, but with the *New York Times* on the idea that we should permanently inter the term PC. The *Times* suggested in early

December that the term had gotten to be old hat and was just getting in the way of real issues. I'd like to get rid of the term PC by getting rid of the phenomenon that gave rise to it. The term itself endures because it describes something very real. We do have an attempt now on our campuses to impose orthodoxies on people. That type of behavior has always existed in society, it's always existed to some small degree on our campuses, but now it has become a major problem that can easily be described with the shorthand PC. I think the phenomenon itself needs to disappear, and then the term will.

I'm always surprised to hear from people on campuses, usually people who represent the administration, that the problem is the media. They say that if we just didn't have the media reporting on these things, people wouldn't be exercised about them, and the whole fuss would go away. In fact, one of the primary weapons in the battle against PC has been informing the media, and students have become very wise about doing that.

At the University of Maryland during the Persian Gulf War, some students hung up an American flag, and the administration asked them to please take it down because it might offend someone. Well, the students knew a good story when they saw one, so they immediately went to the media. I think the incident was reported first by the *Washington Post*, and then Charles Krauthammer wrote a column about it. Then the university administration saw the absurdity of its ways, and the flag was allowed to stay.

I don't think it ever hurts to shed more light on a situation, and if that means bringing in the media, fine. I have led a public life, so I know that people do not always quote you correctly. I know that they do not always get the story exactly straight, but nevertheless, more light is always better than less—just as more speech is always better than less speech.

I do agree with Peggy Sanday that what we saw in this film trivializes important issues. When sexual harassment is illustrated by the example of a teacher wanting to take down a masterpiece like Goya's *Naked Maja* because she thinks having it in her classroom is sexual harassment, that does trivialize a very important phenomenon. Sexual harassment is something we ought all to be

*Premium Caps Aren't Price Controls?***White House Attacks Cato on Health Care Criticisms**

The Clinton administration attacked the Cato Institute's opposition to the Clinton health care plan in the White House's daily briefing to thousands of supporters on January 12. The White House charged that "the ultra-conservative Cato Institute is planning to release a misleading letter from economists criticizing the Health Security Act for relying on cost controls."

In fact, Cato did not release the letter, which was coordinated by Wharton School of Business economist John R. Lott, Jr., but Cato chairman William A. Niskanen was the featured speaker at the January 13 press conference at which the list of signers was released.

The White House document claimed that "premium caps are not price controls" and that "our primary strategy for cost containment is private sector competition." However, the letter, signed by more than 500 economists and reprinted in the *Wall Street Journal* on January 14, pointed out that the Clinton plan "sets the fees charged by doctors and hospitals, caps annual spending on health care, limits insurance premiums and imposes price limitations on new and existing drugs."

**Ely Named Adjunct Scholar**

Bert Ely, a widely cited authority on

the American banking and thrift industries, has been named an adjunct scholar of the Cato Institute. Ely, president of Ely & Co. of Alexandria, Virginia, is a frequent contributor to Cato publications and participant at Institute events on banking and financial topics. Because of his credentials, he was frequently interviewed on network news programs during the debate over the S&L bailout. Ely has been a major proponent of changing federal deposit insurance so that the taxpayers are not on the hook for a future bailout.

**Ayittey Wins Mencken Award**

*Africa Betrayed* by George B. N. Ayittey won the Free Press Association's Mencken Award for best book of 1992. Published by the Cato Institute and St. Martin's Press, *Africa Betrayed* is a passionate indictment of political and economic tyranny in black Africa. Ayittey, an economist from Ghana, recalls how the exhilaration that greeted the end of colonial rule was replaced by horror as native African leaders plundered their nations' economies, imprisoned political opponents, suppressed freedom of expression, and blocked economic progress. Ayittey points out that although those leaders rejected capitalism because of its mistaken identification

with colonialism, Africa actually has a tradition of markets and decentralization.

The Free Press Association is an organization of journalists dedicated to freedom of the press. Each year the membership votes on and presents Mencken Awards for several types of publications. Other finalists this year include *Forbidden Grounds: The Case against Employment Discrimination Laws* by Richard Epstein and *The Hacker Crackdown: Law and Disorder on the Electronic Frontier* by Bruce Sterling. ■



Lawrence Gasman discusses the Clinton-Gore technology policies at a Book Forum to celebrate his new Cato book, *Telecompetition: The Free Market Road to the Information Highway*.

process that goes on at colleges and universities, particularly in the humanities, that, in my opinion, brings in only faculty and administrators who are of a mind-

set that is compatible with that of the cadres that are already in place. And so I think that it's very difficult for us to break through. ■

**Correctness** (Cont. from p. 7)

against. Sexual harassment is something that women should not have to endure. For this particular teacher to expand the definition so that it includes teaching in a room with one of Goya's masterpieces on the wall is to expand it beyond all good sense. We are doing the same thing with the idea of racism and with the idea of sexism. We are expanding those ideas so far that we have students who think they have been racially assaulted when a fellow student yells "water buffalo" at them.

I would like to conclude by emphasizing that PC is still here. There was an effort, about a year ago, to declare that it had gone away, but the cadres of people who put it into place remain, and so I suspect it is going to be with us for a very long time. There's a kind of screening

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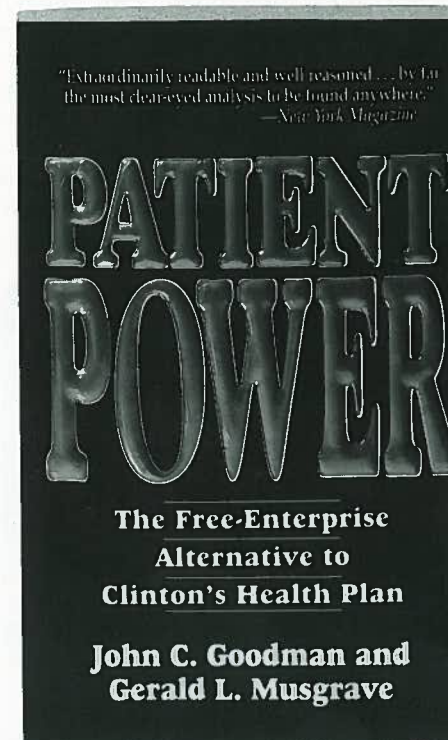
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**Dictatorships** (Cont. from p. 1)

Constitution, or any concept of the rule of law. Not only have government agencies gotten bigger, but they have slipped their constitutional leashes. We have never before had so many government agencies or been so little concerned about arbitrary power. As Kenneth Davis, the nation's preeminent authority on administrative law, wrote in 1982: "Perhaps the most significant twentieth century change in the fundamentals of the legal system has been the tremendous growth of discretionary power. And the prospect is, for better or for worse, that discretionary power will continue to grow."

**A Few Words on an Ancient Superstition**

Early Americans venerated the law and saw it as the key to safeguarding their freedom. Thomas Paine wrote in 1776 that "in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other." In 1780 the Massachusetts Bill of Rights stated as its goal the establishment of a "government of laws and not of men." Americans of the Revolutionary Era glorified the law as a means of restraining government and securing the rights of citizens. In 1944 Nobel laureate Friedrich Hayek defined the rule of law: "Government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers." Hayek later observed, "Because the rule of law means that government must never coerce an individual except in the enforcement of a known rule, it constitutes a limitation on the powers of all government." The rule of law is intended to minimize discretionary power.

The rule of law is a recognition of the government's obligation to the citizenry. Joseph Towers wrote in 1775: "In arbitrary governments, all are equally slaves. . . . A vague and indefinite obedience, to the fluctuating and arbitrary will of any superior, is the most abject and complete slavery." Arbitrary power means subjugation to bureaucratic and political rulers who can exercise their personal will over the people.

Unfortunately, the modern under-

standing of the word "law" is an invitation to the abuse of power. The English jurist Sir William Blackstone declared in 1765 that "law is not a transient order from a superior to or concerning a particular person or thing, but something permanent, uniform, and universal." The U.S. Supreme Court declared in 1907, "'Law' is a statement of the circumstances in which the public force will be brought to bear upon men through the courts." But nowadays laws increasingly exist to bind citizens, not government. Laws are enacted in passing political expediency. A law is simply a reflection of the momentary perception of self-interest of a majority of a legislative body. A law is binding only until enough members of

**"Neither legislators nor bureaucrats now have any sense of the sanctity of law—the idea that law should not be changed simply for momentary political convenience."**

that body find it in their self-interest to repeal or revise it—and not even until then, in the case of retroactive tax laws.

The flood of laws and revisions of laws amounts to perpetually changing the rules of society to the point where the United States degenerates into a Third World condition. Laws are always on the eve of the next sweeping revision, which creates an atmosphere of legal instability. Neither legislators nor bureaucrats now have any sense of the sanctity of law—the idea that law should not be changed simply for momentary political convenience. The more often the law is revised, the more it becomes simply a series of arbitrary political commands that must be obeyed, a grant of unlimited power to government officials. The more often government officials change the rules by

which individuals are to be judged, the more individuals are at the government's mercy.

**Dictatorship on the Farm**

The *New York Times* reported on March 12, 1933, that Secretary of Agriculture Henry Wallace and a group of farm lobbyists were urging President Roosevelt to ask for "farm dictator powers" to solve the farm crisis. Today, more than 60 years later, the secretary of agriculture is still effectively the czar of agriculture. He can, with a sweep of his pen, drive grain prices up or down, spend \$50 million to buy up almost any farm commodity he chooses, change the regulations governing the profitability of a thousand businesses, shower benefits on favored states and congressional districts, cancel a farmer's right to sell his tobacco or peanuts, or give \$29 million in government commodities to a personal acquaintance. For more than half a century, federal farm programs have given federal officials the power to coerce farmers—primarily to drive up food prices.

Under the Agricultural Marketing Agreement Act of 1937, the U.S. Department of Agriculture appoints farmers to government marketing boards that impose "marketing orders." Those boards restrict the sale of specific fruits and vegetables and can severely punish farmers who sell more of their crop than the boards permit. The USDA has granted vast discretionary power to the marketing boards.

Each year the USDA's Almond Board confiscates part of almond growers' crops and pays no compensation. The Almond Board dictates the percentage of each year's California almond harvest that is placed in "reserve," that is, cannot be sold without the government board's permission—even in export markets. Upon the Almond Board's proclamation of the annual "reserve" portion of the harvest, title to those almonds (over 100 million pounds in 1992) automatically, instantly, and fully vests with the Almond Board. The board requires individual farmers to pay to store the board's "reserve" almonds until such time as the board may consider it proper to return ownership of part of the restricted almonds to the farmers. The secretary of agriculture can fine farmers \$1,000 for each day they do not have the reserve almonds stored on their premises. An

Italian company that invested in a California almond farm was fined \$216,000 for shipping its "reserve" almonds to Italy.

The government Almond Board routinely forces farmers to sell "reserve" almonds for a big loss—for use as cattle feed, for example. Almonds for humans sell for \$1.50 a pound, while almonds destined for cattle feed sell for less than \$0.20 a pound. The almond confiscation has cost Cal-Almond and Saulsbury Orchards & Almond Processing over \$2 million each in recent years. (Cal-Almond spent almost half a million dollars storing its "reserve" almonds for the board in 1988-89.) Even though the restrictions cost almond producers millions of dollars in storage and lost profits, a 1991 court brief by the USDA conceded that "it is virtually impossible to ascertain what affect the [restrictions on almond sales] have had upon the open market for almonds."

The USDA's Raisin Administration Committee exercises intricate control over California raisin farmers' operations. The committee prohibited California raisin farmers from selling 147 million pounds of natural seedless raisins (21 percent of their harvest) from the 1991-92 crop year. The restrictions on sales of California raisins have encouraged the growing of raisins in Arizona, where farmers are exempt from federal raisin controls. A smattering of Arizona raisins (less than 1 percent of the California harvest) is transported to California before being exported or shipped domestically. Those token shipments threaten to disrupt the USDA's master plan for California raisins, so it warned in a solemn notice in the *Federal Register* on November 6, 1992, that "all non-California raisins received by [California raisin] handlers . . . [must] be identified, stored separately . . . and kept under surveillance until such raisins [are] disposed of by the handlers." In an era when the Federal Bureau of Investigation fails to prevent terrorists from bombing New York's World Trade Center, the USDA is demanding intensive surveillance of out-of-state raisins.

Though government agricultural boards are empowered to coercively impose "orderly marketing," the USDA has never defined the term. When asked in 1986 what orderly marketing was, USDA assistant secretary for marketing C. W. McMillan admitted: "I have no idea

what that is. I have never heard anyone define orderly marketing." In practice, "orderly markets" has come to mean simply markets controlled by government officials and government boards.

**Impaling Importers and Other National Enemies**

Trade policy has become increasingly arbitrary in the last 20 years. New laws and regulations that give politicians and bureaucrats more power to decree which foreign products Americans may buy have proliferated. Most of the new discretionary authority is a result of so-called fair-trade policies. But when politicians call for fair trade with foreigners, they routinely use a concept of fair-

**"Some customs inspectors appear to have been influenced by the 1970s cult film classic *The Texas Chainsaw Massacre*; they have used chainsaws to 'inspect' imports."**

ness that is diametrically opposed to the word's normal meaning. In exchanges between individuals, in contract law, the test of fairness is the voluntary consent of each party to the bargain, "the free will which constitutes fair exchanges," as Virginia senator John Taylor wrote in 1822. When politicians speak of unfair trade, they mean, not that buyers and sellers do not voluntarily agree, but that U.S. government officials disapprove of the bargains American citizens choose to make. Fair trade, as the term is now used, usually means government intervention to direct, control, or restrict trade. Fair trade has become a political license for arbitrary power over \$500 billion in imports each year—a license for government officials to seize, prohibitively tax, or embargo products that American citi-

zens and companies paid for and often need for their survival. According to the Institute for International Economics, tariffs and restrictions on imports cost American consumers \$70 billion a year, or more than \$1,000 per family.

Fair trade often means that some politician or bureaucrat picks a number out of thin air and imposes it on foreign businesses and American consumers. It means that Mexico was allowed to sell Americans only 35,292 bras in 1989, that Poland was allowed to export only 51,752 pounds of barbed wire to the United States in 1990, and that Haiti is allowed to sell this country only 16,070 tons of sugar a year. Fair trade means permitting each American citizen to consume the equivalent of only one teaspoon of foreign ice cream, two foreign peanuts, and one pound of imported cheese per year.

The U.S. Customs Service maintains a bureaucratic reign of terror against businessmen, pilots, and boaters. Some customs inspectors appear to have been influenced by the 1970s cult film classic *The Texas Chainsaw Massacre*. In Seattle customs inspectors chainsawed an imported cigar store wooden Indian to prove beyond a shadow of a doubt that the Indian did not contain any narcotics. Customs agents also used chainsaws to "inspect" a large container tightly packed with paper products, rubber products, and an antique teakwood elephant. Chainsaws are an attractive, efficient means of inspecting imports, in part because the Customs Service never compensates anyone for damage done during inspections. A 1990 House Ways and Means Committee investigation concluded, "The U.S. Customs Service has little or no incentive to avoid damaging cargo during examinations."

Customs officials have invoked the war on drugs to assume unlimited power over any ship or plane crossing the U.S. border. On April 9, 1989, customs officials "inspected" a sailboat owned by Craig Klein of Jacksonville, Florida, with axes, power drills, and crow bars. By the time the search was completed, the gas tank was ruptured, the engine was ruined, and 15 large holes had been drilled below the water line; the sailboat was worthless. Though no narcotics were found, the Customs Service denied any compensation to the boat owner. A customs agent later phoned Klein at home and threatened his life to try to dis-

(Cont. on p. 12)

**Dictatorships** (Cont. from p. 11)

suade him from complaining to his congressman about the incident.

**The War on Food, Drugs, and Medical Devices**

The Food and Drug Administration has jurisdiction over almost \$1 trillion in product sales each year. The FDA has vast discretion over the food and drugs that Americans can consume—and often life-or-death power over Americans with serious illnesses. The FDA must approve all new drugs and has the de facto power to financially destroy companies that displease FDA officials.

FDA officials seek to maximize fear among regulated companies. A laudatory 1991 *Washington Post* article on FDA commissioner David Kessler concluded, "What he cannot accomplish with ordinary regulation, Kessler hopes to accomplish with fear." (The article also noted that the chairman was called "King Kessler in reference to the almost imperial manner with which he swept into the FDA's top job.") Kenneth R. Feather, head of the FDA's Drug Advertising Surveillance Branch, boasted in early 1991: "We want to say to these companies that you don't know when or how we'll strike. We want to eliminate predictability." That may be an excellent rule of thumb for a Third World junta, but it is a peculiar goal for a high-ranking federal regulator. In advanced societies, clear distinctions are usually made between regulating and terrorizing. The purpose of regulations is to tell people how to comply with federal law. But the FDA apparently prefers to maximize the number of newspaper headlines its crackdowns generate.

Capricious FDA delays are destroying the American medical-device industry. In 1990 the FDA approved 47 new medical devices; in 1992 it approved only 12—more than a 70 percent decrease in annual approvals. A June 1993 congressional report noted that 49 American-made medical devices bogged down in FDA review had already been approved for sale in Europe, Japan, and other countries. The report concluded: "Many of the small companies that populate the industry may be driven out of business altogether by regulatory delays. The process also means that

Americans are denied health-care options that could be safer, more effective or less costly than those on the market today. . . . Doctors and patients in the U.S. face the daunting prospect of either having to travel to a foreign land to have access to the latest medical technology or having to accept a less effective and/or a higher-risk treatment for their illness in the U.S." Eleven thousand American companies produce almost half the world's medical instruments but are being driven out of their home market by federal bureaucrats.

**"The due process clause has been largely swept aside in citizens' dealings with federal regulators, inspectors, enforcers, and tax collectors."**

**"Hazardous," the Tyrant's Plea**

Federal officials routinely show their dedication to the environment by bragging about the number of jail sentences imposed on private citizens and corporate officials. A May 1992 Justice Department press release proclaimed, "The department obtained the highest level of fines ever, a 10 percent increase in environmental criminal convictions from FY 90 and the second highest number of such convictions in history." An October 29, 1992, Justice Department press release hailed a "series of record successes in enforcing the nation's environmental laws," bragging of "a record 191 criminal indictments" and "a record \$163,064,344 in criminal penalties." But while government enforcers are racking up record scores, private citizens are increasingly being wronged and oppressed.

One of the most disruptive and least effective environmental laws is Superfund. Congress enacted the Superfund program (the Comprehensive Environmental Response, Compensation and

Liability Act of 1980) to deal with the problem of abandoned hazardous-waste sites. Since 1980 the Environmental Protection Agency has cast the Superfund net far wider to exert federal control over more types of sites than Congress originally intended. The federal government has spent almost \$10 billion for Superfund and forced private parties to spend as much as another \$80 billion. Yet the program has cleaned up only 160 of the 1,202 most dangerous landfills and chemical dumps identified by the EPA.

The EPA has interpreted the 1980 legislation expansively to allow it to impose practically unlimited liability on tens of thousands of companies and private organizations. To impose responsibility for the cost of the entire cleanup of a polluted area, the EPA need only allege that a company contributed a single item of waste to the site.

The EPA has intentionally disregarded equity and fairness in its prosecution of companies that allegedly contributed hazardous materials to Superfund sites. The agency routinely seeks to force corporations to pay far more for waste-site cleanups than the corporations are responsible for contributing to the sites. EPA administrator Lee Thomas declared in 1985, "The fair share concept is one we have not found viable in trying to settle sites."

A *Washington Post* editorial noted in 1993 that Superfund was "generating intolerable injustices." Superfund in some cases may be degenerating into simple "robbery with an environmental badge." The EPA requires almost no evidence before it imposes potentially bankrupting liabilities on private firms. Bruce Diamond, the EPA's director of waste programs enforcement, conceded that, at some sites, "All you have is an aging truck driver who says, 'I took yellow liquid and I think it was from them.'" At the Rosen Brothers Scrap Yard in New York, the EPA selected the potentially responsible parties largely on the basis of memories of scrap-yard employees about what had happened 20 years before. The EPA notified Formal Ware Rental Services of Tulsa, Oklahoma, that it would be held responsible for the cleanup of a local Superfund site; the only evidence linking the clothing-rental company to the site was the fact that Formal Ware had paid someone \$14 in 1972 to haul trash to the Superfund site.

The EPA fingered a Boy Scout troop as a potentially responsible party to finance the cleanup of a Superfund-designated scrap yard in Minneapolis. In the case of New York's Ludlow Sanitary Landfill, a court ruled that a butcher shop owner was liable because the *glue* on the boxes he threw in his dumpster (and that were later taken to the landfill) contained hazardous materials. Several churches and local schools were identified as potentially responsible parties to finance the cleanup of a Superfund site in Gray, Maine.

The EPA has also made a mockery of due process in its implementation of the Resource Conservation and Recovery Act (RCRA). The RCRA, passed in 1976, regulates the treatment, storage, transport, and disposal of hazardous waste. The EPA has issued over 17,000 pages of regulations and proposed regulations pursuant to the RCRA in the *Federal Register*, and the agency estimates that complying with the act costs businesses and governments an estimated \$30 billion a year. But the more regulations the agency issues, the more incomprehensible the program becomes.

The RCRA requires that companies clean up their factory grounds to "background levels," that is, levels at which chemicals occur naturally in the surrounding environment. But background levels usually have no relation to safeguarding human health. If someone poured a glass of chlorinated tap water onto the ground at an RCRA cleanup site, he could be fined for polluting the environment, according to former EPA general counsel Frank Blake. Yet under the Safe Drinking Water Act, the same person could have a federal permit to discharge heavily polluted waste water directly into a river. The RCRA prohibits the disposal of some chemicals in double-lined landfills, yet the EPA allows the same chemicals to be applied directly to the land as fertilizers. In 1989 the EPA announced that extracted baby teeth were a hazardous waste and prohibited dentists from giving them back to children.

Penalties for infractions of environmental regulations have become extremely punitive. As Leslie Spencer of *Forbes* observed in 1992: "In the past few years Congress has made virtually any infraction of environmental statutes a criminal offense. In the process, it has blurred the

traditional distinction between civil and criminal law." Keith Onsdorff, the former director of the EPA's Office of Criminal Enforcement, also observed in 1992: "A fundamental tenet of this nation's criminal law requires that before an act can constitute a crime, the perpetrator must act with criminal intent. The origins of this principle can be traced back to ancient Greek and Roman law, and the requirement of criminal, or 'evil,' intent was carried forward into eighteenth century English common law. The concept is also firmly rooted in our legal system."

**"The trademark of modern political thinking is faith in discretionary power wielded by benevolent politicians and administrators."**

Yet as Onsdorff noted, the EPA increasingly disregards that requirement in its criminal prosecutions. Corporate officials now face possible jail sentences, even for failure to file routine paperwork or pay permit fees on time. Prosecutors often have vast discretion to prosecute routine environmental violations as felonies or as misdemeanors. Los Angeles deputy district attorney Robert Brodney explained how he decides how to prosecute businessmen for environmental violations: "When the little hairs on the back of your neck stand up, it's a felony. When it just makes you tingle, it's a misdemeanor. If it does nothing to you at all, it's a civil problem." Considering the extreme specificity and complexity of environmental regulations, assessing criminal penalties for violating many of them is the equivalent of imprisoning someone for exceeding the speed limit by one-tenth of a mile per hour.

"Hazardous" has become the contemporary equivalent of what James Madison termed "the tyrant's plea, emergency." "Hazardous" has become a blank check

for unlimited power over regulated producers and individuals. Lawyers Bryan Tabler and Mark Shere observed in 1992: "Today, in the environmental area, we increasingly have a government of memoranda and not of laws. Regulation by memo is unlawful, undemocratic, and in many cases all but unstoppable. . . . A lone [EPA] administrator imposes binding requirements by typing a memorandum." There will certainly be cases in which environmental crimes justify harsh criminal penalties, such as midnight dumping of dangerous waste. But instead of writing good laws, Congress grants federal agencies power to punish almost any behavior that displeases agency officials, especially if the punishment may result in favorable headlines.

**Conclusion**

The Minnesota Supreme Court observed in 1960, "The liberty of the individual, which is rightfully one of the proudest possessions of the American people, is largely a freedom from arbitrary action by those possessed of the power of government." The issue of arbitrary power goes to the heart of the modern debate over the nature of liberty—whether liberty is the result of limits on government coercion or the result of unlimited government power, whether citizens are freer when the government is restrained or when government officials are given carte blanche to do as they please.

Faith in discretionary power means faith in giving government officials the power to punish whom they please—and assuming that that will make America a better society. The proliferation of discretionary power is turning government employees into a ruling class with the power to directly subjugate other Americans.

The paternalistic state adopts arbitrary policies to vigilantly defend the citizen's safety. But the more arbitrary government policies become, the less secure the citizen will be. We have sought to achieve security for the average citizen by vesting government officials with sweeping discretion over how that citizen is treated, employed, promoted, paid, housed, and so forth. Faith in discretionary power is simply faith in the superiority of government employees to private citizens—faith in letting some people coerce other people to follow government officials' will. ■

New Jersey Recycling Plan a Bust

## Intrastate Trucking Regulations Cost U.S. Billions

### Cato Studies

If the new Democrats are serious about continuing economic recovery, they would do well to address the web of state economic regulations that circumscribes the intrastate trucking industry, says Cassandra Chrones Moore, an adjunct scholar of the Competitive Enterprise Institute. In "Intrastate Trucking: Stronghold of the Regulators" (Policy Analysis no. 204), Moore shows how economic regulation inhibits innovation, curtails the expansion of markets, reduces competition, and drives up costs. Removing federal economic controls on trucking brought savings estimated at from \$38 billion to \$56 billion a year, and eliminating state economic regulation of trucking could save American businesses and consumers an additional \$5 billion to \$12 billion a year.

Moore addresses the arguments that small communities would lose service and safety would deteriorate without economic regulation. She cites study after study that finds that, if anything, service to small communities in deregulated states has improved. Likewise for safety, she writes. It is in the self-interest of truckers to operate safe equipment and drive carefully. Attempts to ensure safety through economic regulation are both ineffective and expensive. Moore concludes that it is time for officials at all levels of government to recognize the benefits of deregulation and clear away the regulatory obstacles that raise prices for consumers and guarantee inefficiency.

#### U.S. Efforts to Export Democracy May Backfire

U.S. attempts to export democracy to Latin American and Caribbean nations under the auspices of a strengthened Organization of American States would be both ineffective and imprudent, according to Ian Vásquez, assistant director of Cato's Project on Global Economic Liberty. In "Washington's Dubious Crusade for Hemispheric Democracy" (Policy Analysis no. 201), Vásquez shows that, since the administration of Woodrow Wilson, repeated U.S. attempts to impose democracy on our Latin American neighbors have failed. He warns that a new U.S.-OAS cru-

sade would prove equally futile.

Such a misguided endeavor could entangle the United States in open-ended military missions; put Washington in the uncomfortable position of backing "democrats" such as Haiti's Jean-Bertrand Aristide; do more harm than good for the people of the region by imposing destructive economic sanctions; and afford Washington greater opportunities to pursue hidden agendas, such as the war on drugs, that may not coincide with the desires or best interests of the affected nations.

Vásquez concludes that the best ways for Washington to encourage democracy in the Western Hemisphere are to open U.S. markets to the region's goods and to provide an attractive example of a limited constitutional government.

#### Recycling Is a Waste

Before keeping its promise to make recycling mandatory nationwide, the

Clinton administration should examine the experience of New Jersey, write Grant T. Schaumburg, Jr., and Katherine T. Doyle in "Wasting Resources to Reduce Waste: Recycling in New Jersey" (Policy Analysis no. 202).

Schaumburg and Doyle examine New Jersey's experience with mandatory recycling and conclude that recycling neither conserves resources nor helps to protect the environment. They demonstrate that under its mandatory recycling program, New Jersey actually recycles less than 4 percent of total targeted municipal solid wastes. And because the market for recyclables is extremely limited, many communities must pay waste-newspaper processors an average of \$45 per ton and distant landfill operators \$70 or more per ton of waste. A midrange estimate of the total cost of New Jersey's recycling program is \$80 million a year.

Ironically, the recycling process generates enormous amounts of hazardous

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waste, the authors write. Thirteen of the 50 worst sites on the Superfund National Priority List are recycling facilities.

#### European Monetary Reform Ignores Economic Reality

The Maastricht Treaty, which has recently gone into effect in Europe, is a classic example of the fatal conceit of central planners who think that they can impose their will on peoples and markets regardless of economic rationality or even common sense, writes Kevin Dowd in "European Monetary Reform: The Pitfalls of Central Planning" (Foreign Policy Briefing no. 28).

Dowd, a professor of financial economics at the School of Financial Studies and Law at the Sheffield Hallam University in England, says that the treaty was motivated by France's residual fear of Germany. He also points out that the way the treaty was ratified in countries such as Britain and Denmark destroyed whatever legitimacy it might have had. According to Dowd, the treaty undermines the European central bank's "commitment" to price stability by failing to safeguard the bank's independence.

Dowd shows that the European governments could not deceive the financial markets, which delivered a devastating verdict against the treaty by destroying the platform—the Exchange Rate Mechanism—on which European monetary union was to be built. Regardless of what European politicians and bureaucrats may say, without the Exchange Rate Mechanism, he concludes, the Maastricht Treaty is essentially a dead letter.

#### Law of the Sea Treaty Should Be Rejected

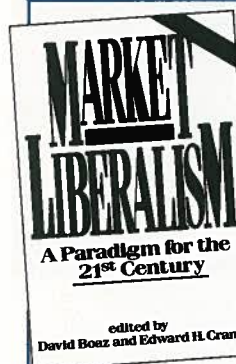
Despite mounting pressure on the Clinton administration to sign the Law of the Sea Treaty, the United States should not do so, says Doug Bandow, a senior fellow of the Institute and deputy representative to the third UN Conference on the Law of the Sea under President Reagan. In "Do Not Endorse the Law of the Sea Treaty" (Foreign Policy Briefing no. 29), Bandow shows that, although much of the treaty is benign or innocuous, the provisions on seabed mining would damage both developing and developed countries.

The treaty's fundamental premise,

Bandow writes, is that all unowned resources on or below the seabed belong to all the people of the world, meaning the United Nations. Among other things, the treaty would limit mineral production, require private entrepreneurs to survey two sites and turn one over gratis to the UN mining authority, and require private firms to transfer their mining technology to the UN mining operation with no effective penalties for improper disclosure or misuse of that technology. It would also require miners to pay the UN \$1.5 million plus royalties, but provide no security in their holdings in return, and require the West to provide interest-free loans and loan guarantees to the UN mining operation.

Bandow points out that commerce and transportation have proceeded unhampered without the treaty and that other mechanisms exist for resolving international disputes. He concludes that instead of endorsing a treaty based on a coercive, collectivist philosophy, the United States should remain aloof and promote a liberal international economic order that will benefit all of the world's peoples. ■

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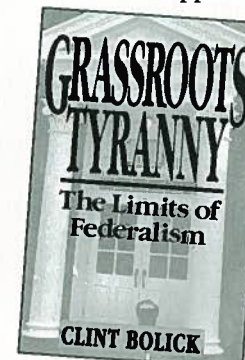
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# "To be governed..."

## **Pumpkin-store tyranny**

Citations were being issued by the Village of East Hampton [New York] for what amounted to the unauthorized exhibition of large orange gourds on the grounds of the gourmet food shop that [Jerry] Della Femina, the flamboyant Manhattan advertising man, operates year-round in the village. And when Mr. Della Femina stuck to his pumpkins, ignoring the summonses, village officials felt they had to take drastic action: They issued a warrant for his arrest. . . .

"I never knew you could go to jail for flowers and pumpkins," Mr. Della Femina said.

Larry Cantwell, the village administrator, responded, "The village takes its code seriously and feels it has no alternative but to enforce it."

—*New York Times*, Dec. 1, 1993

## **As we've already done in the schools and the post office**

If the Clinton health plan becomes law, it will put a new institution into the lives of most Americans: the health alliance, . . . [which] would collect premiums from individuals and employers, enforce Federal rules on the amount of premiums health plans could charge, rate the performance of the plans the way Consumer Reports might and conduct annual open enrollments when people could decide which plan to join for the year to come. . . .

"What we are doing is replacing the

inept, wasteful and ineffective bureaucracy, if you will, of the unfettered marketplace," said Judith Feder, a deputy assistant secretary of Health and Human Services.

—*New York Times*, Dec. 5, 1993

## **What a coincidence**

Bureaucracy and fees are another hindrance [to trade between China and Vietnam], says Zhang Ruwei. . . . Zhang has asked provincial officials [in China] to loosen strict policies, but he has met with little success. "The more backward a place is, the more controlled it is by the government," he says.

—*China Trade Report*, December 1993

## **We have the same trouble understanding U.S. political leaders**

[Vietnamese critics] complained that the draft [political report for a Communist party conference] failed to spell out the party's vision for Vietnam's future, including a definition of what exactly it means to have "a free-market economy with a socialist-orientation under the leadership of the state."

—*Far Eastern Economic Review*, Dec. 2, 1993

## **We can't educate the kids, so we'll try the parents**

[New York City schools chancellor Ramon C.] Cortines said that he was drafting a new condom policy to give parents a right to forbid their children to

receive condoms [in school]. . . . But he said he did not believe such a parental option "is the answer by itself."

"We have to couple that with a very strong parent education program," Mr. Cortines said. "Obviously we are not being very successful in educating students."

—*New York Times*, Dec. 31, 1993

## **Get a clue: PR\_F\_T M\_T\_V\_**

There had not been a mail delivery in our block since Jan. 15, and as it turned out there would not be one until Jan. 21. . . . That meant three working days in which an essential governmental service—defined as essential, by the way, by the government itself—had gone unfulfilled in our block. . . .

One guy, name unknown to me, did his job in near-heroic fashion. Slipping and sliding up and down the sidewalks of my block, he placed a flier for King's Pizza Express on every front doorknob, thereby raising the obvious question: If he could do it, why couldn't the mailman?

—Jonathan Yardley in the *Washington Post*, Jan. 24, 1994

## **And only slightly more than the Bush and Clinton cabinets**

Russian President Boris Yeltsin named a new cabinet today that is significantly less committed to free-market economic reform than the previous one.

—*Washington Post*, Jan. 21, 1994

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