

# Cato Policy Report

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## Oil Protectionism: The New Threat

by Robert Bradley, Jr.

In the last year an increase in the tariff on imported oil has emerged as a major political issue. Severe profitability problems for not only inefficient but state-of-the-art U.S. refineries, concurrent with sharply increased gasoline imports, have inspired numerous independent refiners to seek substantial gasoline tariff increases over amounts last set in the 1950s.

Overshadowing protectionist sentiment within the industry, however, has been a drive in Congress to enact new taxes to close record federal budget deficits. Rationalized as necessary to promote conservation, reduce import vulnerability, and reduce trade deficits, tariffs on crude oil and refined products at \$5 per barrel and higher have been proposed, not coincidentally, by oil-state congressmen. To backers such as Sens. Lloyd Bentsen (D-Tex.), David Boren (D-Okla.), Robert Dole (R-Kans.), and Gary Hart (D-Colo.), there is a union of purpose in aiding a powerful constituency and increasing federal revenue toward spending levels.

Although no oil-tariff proposals have

Robert Bradley, Jr., is the author of *Oil, Gas, and Government: The U.S. Experience, forthcoming from the Cato Institute.*

reached a vote, Senate Budget Committee chairman Pete Domenici (R-N. Mex.) recently tried to push through a \$5-per-barrel tariff on oil imports to raise \$25 billion as part of a three-year, \$338 billion revenue plan. President Reagan's rejection of new taxes deflated

**"An oil tariff is bad energy policy, bad defense policy, and bad budget policy."**

this oil-tariff trial balloon, but with organized industry pressure for protectionism and ongoing deficit problems, sizable oil tariffs are a continual threat to U.S. consumers, importing and marketing interests, and the world petroleum market.

### Oil Protectionism in Retrospect

A detour into the history of oil protectionism is necessary to emphasize two important points. First, oil tariffs are not new. Second, protectionism has always put politics and special interests first and the general welfare last.

The modern era of protectionism began when the effect of falling prices and prorated output in Texas and Oklahoma was exacerbated by a 47 percent rise in oil imports between 1927 and 1930. State proration programs, limiting crude oil production to a price-stabilizing "market demand," were closely aligned with major company preferences, and growing imports came from foreign drilling by many of the same companies.

Squeezed between proration and imports, independent producers in the Independent Petroleum Association of America (IPAA) went by the trainload to Washington to seek import protection. The result was the Revenue Act of 1932, in which comprehensive tariffs were placed on crude oil and oil products. Legislators welcomed new revenue to apply to then-record federal budget deficits, the major oil corporations acquiesced to win necessary support for state proration programs, and the independents welcomed crude-oil tariffs of 21¢/barrel and refined-product tariffs of over \$1/barrel to increase domestic crude prices struggling to stay over \$1/barrel. Tariffs and an oil quota the next year cut oil im-

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## Cato Publishes Friedman, Hayek in Russian-Language Book

Cato has just published an important new book in Russian entitled *Friedman and Hayek on Freedom*. This work, the second in Cato's foreign book series, is a collection of essays by Nobel laureates Milton Friedman and F.A. Hayek.

The authors examine the justifications for political and economic freedom, while pointing out the immorality and inefficiencies of socialist economies.

The articles include "Who, Whom" from Hayek's classic *The Road to Serfdom* as well as Milton Friedman's "The Relation between Economic Freedom and Political Freedom" from *Capitalism and Freedom*. Also included in the volume are two chapters from Milton and Rose Friedman's book *Free to Choose*: "The Power of the Market" and "Created Equal."

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## Congress Leaves, and the Republic Is Safe

August in Washington brings mixed blessings. After a flurry of last-minute budgeting, selective moral posturing about South Africa, and xenophobic outbursts about the trade deficit, Congress recessed until September. A month during which Congress may do no new mischief is only partial compensation for the knowledge that it will soon return.



I may be too harsh. There is, after all, plenty of blame to spread around. President Reagan proposed another large increase in the defense budget against the advice of most of his cabinet and has not yet vetoed one regular appropriations bill. Congress, on the other hand, actually approved a first budget resolution for fiscal year 1986 with total outlays slightly lower than proposed by the president. Most important, Congress reduced the proposed defense budget to a sustainable path.

For most other programs, however, Congress continued to avoid the hard choices. Of the dozen or so programs the president had proposed to terminate, Congress agreed to end only the general-revenue-sharing program. Federal spending for items other than defense and interest payments was reduced only a few percent relative to the baseline projections. Congress continued to protect most of the social-programs pork barrel, with no consideration of whether these programs provide any benefits to the average taxpayer.

Moreover, the first budget resolution is only the first step in the congressional budget process. Congress has yet to approve the authorizing and appropriations bills necessary to implement the budget resolution and may later approve some supplemental appropriations. On the same day that the first resolution for FY 1986 was approved, for example, Congress also approved a \$13 billion supplemental appropriation for FY 1985. In prior years, the first resolution has not been an effective limit on total spending; actual federal outlays have averaged about 4 percent higher than approved in the first resolution. If that pattern continues, total FY 1986 outlays would exceed \$1 trillion and the deficit would continue to exceed \$200 billion.

After six months of deliberation, two and a half months behind schedule, Congress completed the easy part of the budget process and, in a chorus of tired recrimination, left town. If Congress is serious about budget restraint, and

that is not yet clear, the leaders of both parties must monitor the actions of the authorizing and appropriations committees to avoid their undermining the budget resolution.

If President Reagan is serious about budget restraint, and that is not yet clear, he must veto appropriations bills or any continuing resolution that would increase total spending. He must also direct Secretary Weinberger to prepare the next defense budget based on the budget resolutions.

As a matter of pure budget arithmetic, the alternative to effective budget restraint now is some combination of larger budget cuts or substantial tax increases in the future. President Reagan has correctly resisted any general tax increase. For this policy to be sustained, however, both the administration and Congress must act on a recognition that the battle of the budget has only just begun.

Among the side benefits of a continued focus on the budget would be that Congress would be too busy to address the numerous new proposals for trade restraint and tax "reform." A reduction of federal spending and the budget deficit would be the most desirable way to reduce the trade deficit anyway. The numerous trade proposals, by contrast, would reduce both imports and exports with little effect on the trade deficit.

As for tax reform, that is one of those ideas that most people favor until they look at the specifics. The major tax proposals now being considered would only slightly reduce effective marginal tax rates on family income and would increase tax rates on income from business investment.

Current conditions, unfortunately, do not permit a substantial reform of our tax system. We cannot afford a reduction in tax revenues until spending is reduced substantially. And political attitudes would not appear to permit a reduction in the progressivity of the individual income tax or the taxation of investment income, at least until some great communicator makes a case for such changes.

More on the two issues of trade restraint and tax reform later, as they develop. In the meantime, as long as Washington acts like the capital of a banana republic, we deserve the corresponding humidity.

*William A. Niskanen*  
—William A. Niskanen

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**CATO**  
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## Ferrara Criticizes Social Security on 50th Anniversary

Cato's new book *Social Security: Prospects for Real Reform* received quite a bit of media attention around August 15, the 50th anniversary of the Social Security system. Amid all the celebrations of Social Security's "success," editor Peter Ferrara patiently pointed out that the system faces major long-term problems and is no longer the good deal it was for an earlier generation.

Ferrara debated former health, education, and welfare secretary Wilbur Cohen on "CBS Morning News," and his comments were excerpted on the "CBS Evening News" and CBS Radio. Ferrara was featured in two segments on Cable News Network and in a half-hour interview on C-SPAN. He appeared on network-affiliate news programs in New York and Washington and on "CBS Nightwatch." Taking some of the burden off Ferrara, Cato president Ed Crane did a separate interview on C-SPAN, and vice president David Boaz was interviewed on CBS Radio.

Ferrara drew plenty of print-media coverage as well—from the *Los Angeles Times* and *California Business* to the

### Cato News

*Journal of Commerce* and the *Economist*. In a Sunday *Washington Post* book review, Robert Kuttner lamented that "Social Security's liberal defenders



Peter Ferrara explains his Super-IRA proposal to columnist James Jackson Kilpatrick after a Cato lunch.

are playing an uncharacteristically reactive role, while the libertarians are proposing the bold initiatives." Columnist James J. Kilpatrick had a different view: "Now and then a book comes along, so rich in sound ideas well presented, that one wants to shout its merits from the housetops."

In all his media appearances Ferrara reiterated his basic point: While Social Security was a good deal for earlier generations (including today's retirees), it is an increasingly bad deal for today's young workers, who can expect returns of 1 percent or less on their Social Security "investments." Young workers could receive far more if they put the same amount into a private retirement plan, and Ferrara's Super IRA plan would allow them to do that while guaranteeing the benefits of today's elderly.

*Social Security: Prospects for Real Reform*, containing essays by Paul Craig Roberts, A. Haeworth Robertson, Norman B. Ture, and Stuart Butler in addition to Ferrara, is available from the Cato Institute for \$20 in cloth and \$8.95 in paperback.

## Currency Reform Proposed for Latin America

The devastating effects of inflation on Latin American economies and potential solutions to the problem were the focus of a Policy Forum featuring Swiss economist Peter Bernholz.

Bernholz, whose research includes over 25 studies, argued that inflation

leads to undervaluation of currencies, helping exporters and raising the relative prices of imports. Unfortunately, this under-valuation leads to an inflationary spiral "not welcome to democratic governments that depend on the support of urban voters and their unions.

"Rising prices tend to increase the public-sector deficit, since revenues come in only after some delay and may not be sufficiently indexed, while expenditures increase immediately. As a result, pressure to finance the growing deficits by printing money also rises, but the rate at which the money supply expands continues to lag behind the rate of inflation. In short, inflation seems to take on a life of its own, no longer dependent on the growth of the money stock."

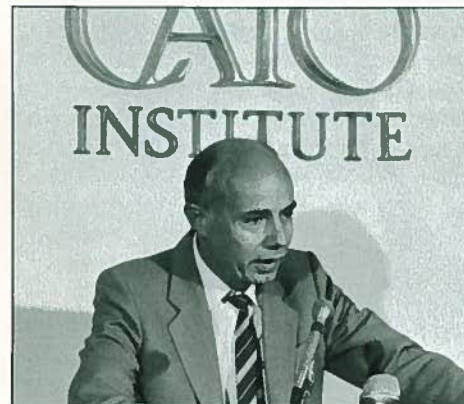
The only real solution, Bernholz concluded, is currency reform: "But whether these countries are politically

ready for this solution is doubtful because the last phase of hyperinflation—where nearly everybody loses—has not yet been reached. On the other hand, without such reform, I cannot see how the new democratic systems of these countries can persist."

Professor Martin Paldam of the University of Aarhus, Denmark, and the World Bank, commented on Bernholz's speech. Paldam questioned whether it is sufficient to make institutional changes on the monetary front alone.

Governments, argued Paldam, have two alternatives. The first is to treat the symptoms of inflation through wage, price, and exchange controls. The other is to force deep monetary reforms, which are very difficult to make and are often not successful.

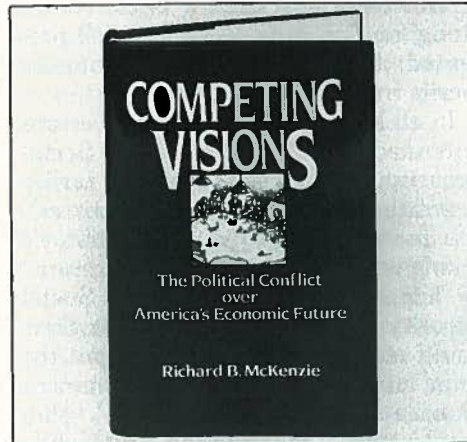
"I wish I could say there was a simple cure," concluded Paldam, "but I'm afraid the time is not right for these simple solutions."



Peter Bernholz of the University of Basle in Switzerland discusses Latin American inflation at Cato Policy Forum.

## McKenzie Book Criticizes Protectionism, Planning

"Anyone who is infatuated with industrial policy, or who believes America is deindustrializing, or who thinks protectionism is the holy grail should



read this book—the sooner the better!"

So says Federal Trade Commission chairman James C. Miller III about *Competing Visions: The Political Conflict over America's Economic Future* by Richard B. McKenzie.

In this comprehensive study, McKenzie takes on all the proposals for new restrictions on our economic system and refutes them: America is not deindustrializing. Plant-closing laws and import restrictions would not protect American jobs. And national industrial policy would not make American companies more competitive internationally.

McKenzie sets forth two "competing visions of America's economic future." The proponents of one vision "have an abiding faith in the ability of Washington planners and regulators to rise above politics to 'pick winners' and to 'ease the pain of losers' solely with an eye toward enhancing societal welfare. . . . They remain convinced that policy outcomes can be improved through greater reliance on centralized democratic and bureaucratic decision-making processes." Adherents of the other vision believe that "giving government greater power to pick winners and, in the process, also pick losers would serve only to divert scarce entrepreneurial talents from productive market activity to non-productive and counterproductive political activity."

*Competing Visions* is in many ways a response to such books as *The Next*

*American Frontier* by Robert Reich, *The Deindustrialization of America* by Barry Bluestone and Bennett Harrison, and *The Zero-Sum Society* by Lester Thurow.

McKenzie bases his arguments on solid economic analysis of such critical issues as central planning, capital taxation, worker rights to their jobs, international trade, and business subsidies. But his analysis is backed up with solid empirical evidence on deindustrialization, the record of the Reconstruction Finance Corporation, plant-closing laws, and import restrictions.

In his final chapter, "An Alternative Vision of Our Economic Future," McKenzie describes an economy of freedom and opportunity, where jobs are created and productivity increased by entrepreneurs, and where decisions are guided by consumer preferences, not by political pull. He sets forth an agenda for economic change that would rely more on market processes and less on government intervention.

McKenzie is a professor of economics at Clemson University, currently serving as John M. Olin Visiting Professor of American Business at the Center for the Study of American Business at Washington University of St. Louis. An adjunct scholar of the Cato Institute, he directed the Heritage Foundation's research program on national industrial policy during 1983 and 1984. He is the author of several books, including *Fugitive Industry: The Eco-*



Deputy Secretary of Energy Danny Boggs discusses U.S. energy policy at a Cato policy luncheon as Arnold Moore of the American Petroleum Institute and Bev Blackwood of Exxon listen.

*nomics and Politics of Deindustrialization* and *Bound to Be Free*, and editor of *Plant Closings: Public or Private Choices?* published by the Cato Institute.

Stuart Butler, director of domestic policy studies at the Heritage Foundation, writes, "National industrial policy is an idea that seems impervious to all logic and all evidence. A comprehensive and devastating rebuttal has long been required to bury the notion once and for all. Richard McKenzie's excellent book is exactly what is needed to do that job."

*Competing Visions*, 209 pages plus index, is available from the Cato Institute for \$20.00 in cloth and \$8.95 in paperback.



Linda Chavez, deputy assistant to the president for public liaison, discusses the Reagan administration's second-term agenda at a Cato lunch as William Niskanen listens.

## Ford Foundation Gives Cato Grant

The Cato Institute has been invited by the Ford Foundation to participate in a conference on the future of social-welfare policy. Cato chairman William A. Niskanen will prepare a paper to be presented at the conference.

At the conference, part of the Ford Foundation's Project on Social Welfare Policy and the American Future, leading welfare analysts will explore social-welfare reform alternatives. The papers will consider such questions as the nature of the U.S. welfare-state problem, basic concepts of individual responsibility and the role of government, the criteria for judging social-welfare policy, and specific welfare programs.

The Cato Institute has been a pioneer in developing new perspectives on social-welfare policy, particularly through its work on Social Security and retirement policy.

Other papers will be given by scholars from five other major research centers: Sean Sullivan and Terry Hartle of the American Enterprise Institute, Gary Burtless of the Brookings Institution, Stuart Butler and Anna Kondratas of the Heritage Foundation, David Racine of the American Public Welfare Association, and Barbara Ehrenreich and Frances Fox Piven of the Institute for Policy Studies.



Norman Ornstein of the American Enterprise Institute and Paul Weber of the University of Louisville talk at a reception after their Policy Forum on calling a constitutional convention to balance the budget.

## Constitutional Convention Debated

The recent controversy surrounding a possible balanced-budget amendment has pushed the issue of a constitutional convention to the forefront of public policy debate. At a Cato Policy Forum political scientist Paul Weber discussed whether a constitutional convention is a safe political option.

Weber said that one of the primary objections to a convention is "the assumption that unsettled law is unsafe law." There is concern that a "runaway" convention could endanger such provisions as the Bill of Rights.

"That assumption is valid only if the institutions and procedures that are necessary for settling law are not in place and are not functioning," Weber noted. "And that is not the case in our country at this time. Congress, the courts, state legislatures, and the federal and state bureaucracies deal with unsettled law on an almost daily basis."

The second objection, said Weber, is the contention that "legal constraints are only as valid as the political environment in which they are passed." Weber outlined six stages of the constitutional process—from application to ratification—each with its own constraints and built-in checks and balances.

Norman Ornstein, resident scholar at the American Enterprise Institute and a leading analyst of the American political process, argued that "there is more danger involved here than Weber suggests."

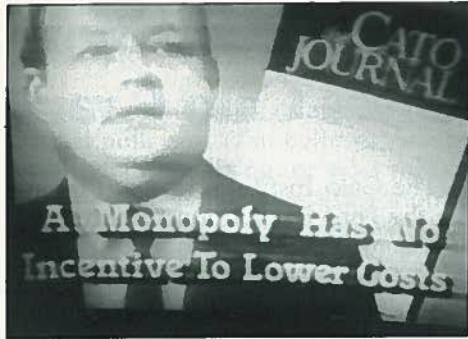
"When I consider the possibility of a constitutional convention, I use another model—the party convention.

To me, the level of interest in delegate selection for a party convention, the level of turnout, the kinds of people who run, and the kinds of people who are selected would likely approximate the corresponding process for a constitutional convention." Thus, according to Ornstein the media and competing interests would not provide the checks and balances that may be needed in a constitutional convention.

Moreover, if amendments are indeed added to the constitution, "it becomes that much easier to have another convention, and another amendment, and another convention after that. And at some point along the way, the danger increases." The very safety that Weber promises could itself be dangerous, Ornstein argued.



Julian Simon, author of *How Do Immigrants Affect Us Economically?* just published by the Cato Institute and other groups, speaks at a congressional briefing on immigration. Following the briefing, Cato hosted a reception in honor of the book.



James C. Miller III and *Cato Journal* on "Good Morning America."

## Miller Urges Postal Reform

Federal Trade Commission chairman James C. Miller III, awaiting confirmation as President Reagan's budget director, calls for an end to the Postal Service's monopoly on first-class mail in the Spring/Summer issue of the *Cato Journal*.

"Private enterprise will get the mail delivered—just as it did in the Old West," Miller writes, noting that "the Pony Express, although often used as a symbol of U.S. mail service, was a creature of private enterprise." Miller argues that competition would spur innovation, price reduction, and improved service.

The article created quite a splash when it appeared. An Associated Press story was widely printed, and ABC News business reporter Stephen Aug featured Miller and the *Journal* on his "Good Morning America" segment. The Postal Service criticized Miller's stand, as did OMB Watch, a lobby for lobbying groups that receive taxpayers' funds.

This issue of the *Cato Journal* also includes a symposium on the political economy of poverty, featuring articles by James Gwartney and Thomas S. McCaleb, Karl Brunner, Victor Canto, and Norman P. Barry. Other contributors include Leland Yeager on natural rights vs. utilitarianism in policy analysis, Stuart Butler on privatization, and Dale Gieringer on the Food and Drug Administration.

The *Cato Journal* is available at \$6.00 per issue or \$15 a year.

## Regulation Reduces Supply, Quality of Day Care

Day-care regulation has done little to ensure the health and safety of children, according to a recent Cato Institute study.

Karen Lehrman and Jana Pace write that "day care has been plagued by the ill-considered directives of well-intentioned bureaucrats. Laws designed to protect the health and safety of children and guarantee responsible care have, in many cases, proved to be counterproductive. By raising the cost of day-care services, would-be providers have been deterred from the business while others have been driven underground," limiting the number of children who can benefit from day care "at a time when the need has never been greater."

Lehrman and Pace discuss a number of detrimental regulations. Nearly every state sets guidelines for staff-child ratios. But according to a report commissioned by the Department of Health, Education, and Welfare, there is only a "slight" correlation between staff-child ratios and the quality of day care. Although this guideline has little effect on the quality of care, it is the greatest barrier to enlarging the supply, as the staff-child ratio determines the bulk of

the day-care providers' costs.

The most detrimental restrictions are local zoning regulations. "Of all local day-care regulations, however," Lehrman and Pace write, "zoning statutes have the least relevance to the quality of care and the safety of the children." Zoning rules often forbid individuals to care for neighborhood children in their homes or restrict the number of children who may be cared for in a home, often to as few as five children.

The authors conclude that it is vital for children to be cared for by competent people in a safe environment. "But this quality of care has been achieved through parental concern, not ineffective and often counterproductive regulations. Without the false sense of security provided by government standards, parents would take more responsibility for the well-being of their children."

Karen Lehrman is managing editor and Jana Pace is associate editor of *Consumers' Research* magazine. Their study, "Day-Care Regulation: Serving Children or Bureaucrats?" is part of the Cato Institute's Policy Analysis series and is available for \$2.00.



Shinya Totsuka, a member of the Japanese House of Representatives, visited Cato recently to discuss international trade issues. Left to right are Katsuro Sakoh of the Heritage Foundation, Ed Crane, Representative Totsuka, and William Niskanen.

## Kinsley Joins "Byline"; Bandow, England Edit Books

Michael Kinsley, editor of the *New Republic*, has joined Cato's radio series "Byline" as a regular commentator. Kinsley, also a former editor of *Harper's*, writes the "TRB" column that appears in the *New Republic* and in many newspapers. "Byline," which presents daily 90-second commentaries on public issues from liberal, conservative, and libertarian perspectives, is now heard on some 170 stations nationwide. Other "Byline" commentators include Nat Hentoff, Don Lambro, Jeff Rigenbach, Nicholas von Hoffman, Tom Bethell, and Sen. William Proxmire.

Cato senior fellow Doug Bandow, a former U.S. representative to the Law of the Sea Conference, recently edited *U.S. Aid to the Developing World: A Free Market Agenda*, published by the Heritage Foundation. The book, which received widespread media coverage, includes essays on humanitarian aid,



Michael Kinsley

security assistance, economic development, and the "myths and realities" of the Marshall Plan.

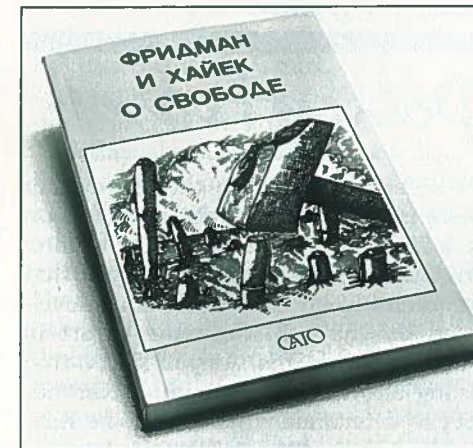
Another book in Heritage's Agenda series, *Banking and Monetary Reform*, was edited and largely written by Cato economist Catherine England. It is an

### Russian (Cont. from p. 1)

The Cato Institute has translated these essays into Russian to provide intellectual ammunition for those enslaved behind the Iron Curtain. The Institute hopes to repeat the success it has had with a book in Polish entitled *Solidarity with Liberty*. That collection of free-market essays boasted such authors as Friedman, Hayek, Ludwig von Mises, Walter Lippman, and Michael Polanyi.

Cato was able to distribute thousands of copies of *Solidarity with Liberty* in Poland. This effort was acknowledged by a lengthy attack in the Polish army publication *Soldier of Freedom*, which charged that the book was a CIA undertaking "printed in recent years by various anti-communist centers in the United States." After listing some of the book's authors, the article proclaimed, "It's not difficult to imagine what all these gentlemen have to say, and bothering your head about it at all is simply a waste of time."

While Polish and Russian authorities might feel that the foreign book project is a waste of time, Cato president Edward Crane believes that there are thousands behind the Iron Curtain who would be deeply impressed by the mes-



sage of liberty. As Crane declares, "In many ways, the foreign book series is our most important project."

The Institute will distribute *Friedman and Hayek on Freedom* to Russian émigrés in the United States and Western Europe, as well as endeavoring to get copies inside the Soviet Union by a variety of means. Assistance with the distribution of the book will be greatly appreciated; financial contributions toward this end are tax-deductible.

Readers who understand Russian, or who have friends or relatives who do, may want to obtain a copy. *Friedman and Hayek on Freedom* is available from the Cato Institute for \$5.95.

excellent overview of such topics as banking deregulation and deposit insurance.

Senior fellow Earl C. Ravenal participated in a debate on U.S. defense strategy with Hoover Institution senior research fellow William R. Van Cleave. The exchange was printed in the first issue of the *American Defense Annual*, published by the Mershon Center of Ohio State University and Lexington Books. Ravenal is also the author of "Europe Without America: The Erosion of NATO" in the Summer issue of *Foreign Affairs*.

Cato president Ed Crane spoke on American and Japanese trade barriers to the Japan Trade Center in New York. Crane also appeared on radio and television shows in several major cities to discuss the proposals in *Beyond the Status Quo*, and he debated former Carter administration domestic advisor Stuart Eizenstat on abolishing the departments of energy and education on the "MacNeil-Lehrer Newshour."

*Cato Journal* editor James A. Dorn participated in two European conferences. At the 12th Interlaken Conference, organized by Karl Brunner, he delivered a paper entitled "Resolving the Efficiency-Equity Problem: A Rights-Based Approach." At the International Seminar on the New Institutional Economics, he commented on a paper by Gerald Scully and Daniel Slottje, "Industrial Policy and the Nature of the Firm."

Cato vice president David Boaz spoke on "The Politics of the Baby Boom" to the annual meeting of the Republican State Chairmen's Association. Speaking on the same panel was Stuart A. Lilie, coauthor of *Beyond Liberal and Conservative*. Boaz also discussed baby-boom politics on the national cable television show "Ask Washington."

*Beyond Liberal and Conservative*, by Stuart Lilie and William Maddox, has been named a finalist for the Mencken Award, given to the best book of the year on individual liberty. Other nominees include *Endless Enemies* by Jonathan Kwitny, *Losing Ground* by Charles Murray, and *Cities and the Wealth of Nations* by Jane Jacobs.

## What's the Problem, Pornography or Censorship?

Every month the Cato Institute sponsors a Policy Forum at its Washington headquarters where distinguished analysts present their views to an audience drawn from government, the public policy community, and the media. A recent forum featured a debate between Henry Hudson, commonwealth's attorney of Arlington County, Virginia, and chairman of the Attorney General's Commission on Pornography, and Barry Lynn, legislative counsel for the American Civil Liberties Union.

**Henry Hudson:** As the chairman of the National Study Commission, I am here at a disadvantage. Since I have not yet heard the evidence our commission intends to have presented, I'm really not in a position to state any conclusions about what we might find. I can't fashion a cure until I determine whether or not there is a problem.

The Attorney General's Commission on Pornography was inspired by President Reagan's comments at the signing of the Child Protection Act of 1984. The president indicated that he felt that pornography in 1984 was far more sexually explicit and more violent than it had been in previous years. Attorney General Meese shares that view. In conformity with that, he commissioned myself and 10 others to study the pornography problem. There are a number of subissues that we are going to consider.

First of all, we are going to determine whether or not pornography is more violent today than it has been in the last 14 years. We are going to determine whether or not its nature has changed—whether or not it is more sexually explicit in 1985. In addition, we will look at the behavioral effects of pornography. Does pornography have a definite, scientifically defined effect on human behavior? What effect does child pornography have on children as well as people that may be predisposed to use child pornography? Does modern technology and the increased accessibility of pornography have an impact on our society? We will also review the production of pornography and its method of distribution. We're charged also with the responsibility of deter-

mining whether or not organized crime has any connections with pornography.

Contrary to what you may have heard, our commission is not charged with designing a national standard for definition of pornography. I think every one of the commissioners agrees that the definition in *Miller v. California* is



Henry Hudson: "An environment must be created that is healthy for the child, in accordance with the values we have instilled in our society over the years."

### Policy Forum

an acceptable one. To the extent that there is criticism that our commission is going to be trespassing on First Amendment rights, I will tell you that we intend to utilize the standard developed by the U.S. Supreme Court in *Miller v. California*. As you know, that ruling allows each individual community to determine what offends its standards in accordance with state law.

There are a lot of clear-cut divisions between our viewpoint and the viewpoint of Mr. Lynn. The viewpoint of the ACLU is that the First Amendment has no bounds of prescription on pornography—any portrayal of sexual activity ought to be lawful. I believe that some type of reasonable restriction is necessary, as has been recognized by the Supreme Court in the *Roth* case. There must be a line drawn separating what is and what is not a criminal display of sexual activity. We support one of Mr. Lynn's basic notions, that in a democratic society today, there ought to be a free and open expression of ideas. What concerns me and other

members of the commission is whether or not the publication of literature or movies depicting a woman bound, gagged, and chained, and being flogged to the point of bloodshed, or a six-year-old engaged in sodomy with an adult, expresses an idea.

**Barry Lynn:** There is a war on pornography going on in the United States today. In Los Angeles, producers of adult films are being charged under pandering laws under the theory that the women in their films are being paid to have sex and not to act. The federal government has just brought its first dial-a-porn indictment against the people who provided the service of a one-minute erotic taped telephone message broadcast out of New York, as well as indictments against the women who made that tape. That suit was filed in Salt Lake City, Utah, which I'm sure was just a random venue chosen out of a hat.

Just two months ago for the first time, the FBI started to close down businesses dealing in X-rated videotapes. In a series of 24 coordinated raids, FBI agents in Memphis, Tennessee, went into stores to rent such cinematic classics as *1001 Erotic Nights*, to say nothing of *Casino of Lust*, and returned bleary-eyed with the tapes and a search warrant to go through the stores to find out whether there might be records in those stores of interstate transportation of obscene material.

Just last October, the Customs Service convinced the Postal Service to undertake a little experiment. They diverted mailbags from certain Scandinavian countries away from the normal port of entry of New York City to Wilmington, North Carolina. The 1930 Import Act forbids importation of obscene materials, and it has been held to mean that the alleged obscenity is to be measured by the community standards of the port of entry. Customs officials apparently thought that the nation would be served by allowing nothing to pass the borders of the United States that was unacceptable in Jesse Helms's backyard. The Postal Service went along with this experiment for about two weeks, then decided it in fact delayed the mail to do so, and ended the

experiment, although customs officials want that process of mail opening in North Carolina to continue.

All this is being done right now with a variety of federal and local laws and statutes. We have over 30 anti-obscenity provisions, including one that makes it unlawful to have an obscene picture on a cigarette package. We have all of these laws without any need for a new commission—yet here we have the Department of Justice shelling out half a million dollars to the commission.

According to the commission's charter, it is designed to make specific recommendations concerning more effective ways in which the spread of pornography could be contained. I believe I am justified in fearing that we will see proposals for a wide new array of legal initiatives to curtail the right of Americans to see and read what they choose. For the ACLU, one of the very bedrock principles of this country is its unfailing commitment to the full and free open expression of ideas. It means that some very reprehensible ideas are expressed and that some very unattractive means to express them are going to be used. Nevertheless, whether material appeals to one's highest ideals or basest instincts, and whether it does so through rational discourse or very emotionally charged images, the First Amendment guarantees that it be allowed to take its place in the universe of debate. The First Amendment does not guarantee that we'll locate the truth, but any time it is diminished, it is far less likely that the truth—about religion, politics, or sex—will be able to prevail.

I don't think there is any substitute in our system for the competition of ideas. Those people who find the image of women portrayed in some pornography to be a grotesque caricature, those who find the message of casual sex in pornography to be highly offensive to their moral standards, have every right and responsibility to critique the use of the material and to urge that it not be used or viewed by anyone. But if they fail to succeed in convincing people not to read this material, they should not ask government to impose their viewing standards on all of us.

The 1970 Commission on Pornography urged the repeal of most existing laws to regulate adult access to this



Sociologist Amitai Etzioni talks with Cato vice president David Boaz after forum on pornography and censorship.

material. Unfortunately, Supreme Court decisions since 1970 have continued to carve out exceptions to the First Amendment in regard to sexually oriented material. In the guise of creating standards for obscenity, the Court has in fact legitimized the "moral mob rule" where citizens who are offended by what their neighbors might be looking at are able to use the judicial system to suppress those offending ideas. The fundamental point with which we begin is that censorship has now been justified by the Supreme Court. It has been sanctioned by no reason other than the intolerance of the majority.

Today, the suppression theories and the proposed mechanisms are endless. Paul Weyrich's Free Congress Research and Education Foundation issued a report recently that said pornography should be curtailed because, among other things, it hurts marriages. The theory seems to be that both men and women who look at pornography see attractive people doing interesting things. They then look at the people they are sleeping with and get dissatisfied and then divorced. The solution: "Pornography is treason against the American family. Treason has no First Amendment rights." Senator Tribble of Virginia wants computer hackers prevented from writing dirty fantasies on their computer screens. Senator Denton of Alabama wants distribution of any profane words or indecent pictures on cable television to lead to fines and two years in federal prison. Some radical feminists want pornography defined as the graphic, sexually explicit subordination of women, to be actionable under civil rights laws.

All of these constructs, old and new,

can be construed by reasonable people to cover vast amounts of literature, art, and popular culture in today's society. That is the essence of a chilling effect—that persons will not write or publish or sell because they do not want to risk some particularly sensitive or zealous individual deciding that their products are covered by some broad statutory language. Self-censorship in this way can have as drastic an effect on the free flow of ideas as direct government censorship through prior restraint.

Much present and proposed regulation of this material rests on the premise, which I think Mr. Hudson has adopted, that sexually explicit material contains no ideas; it's just some kind of emotional stimulus, which is not given any protections under the First Amendment. That's a dangerous and wholly false assumption. Sexually explicit material usually communicates that the activity depicted is pleasurable and appropriate. Put very bluntly, it asserts that it is good and healthy for persons to engage in sex with many people in many places and many positions. I would hope that there would be a profound moral debate about the legitimacy of that as a philosophy. It may also communicate a more sinister message, as some feminists have noted, that women should gain pleasure solely from being subordinate to men. But to say that this issue and construct, which has held sway in Eastern and Western cultures since the beginning of human history, is not an idea protected under the First Amendment is to do a great disservice to the very concept of political speech.

The attorney general has suggested that there were more sexually explicit

(Cont. on p. 10)

## Pornography (Cont. from p. 9)

materials available through technologies like video recorders and cable. This development has several important ramifications. First, these devices allow you to do in the privacy of your home what you used to be able to do only publicly in "adult book stores." Consequently, it should be even clearer that constitutional rights will be infringed when restrictions on availability occur. Even if the government has an interest in how people "publicly entertain themselves," something that Meese has asserted, it should have absolutely no interest in the private activities that occur behind America's closed doors.

What, if anything, can be done about pornography? The only thing that can and should be done is that those who find some or all of it to be rotten speech should try to displace it with quality speech. Where women are portrayed in a demeaning fashion in pornography or in dishwashing commercials, the public can demand and get alternative and affirmative images. But when anti-pornography advocates come to Mr. Hudson's commission bearing new weapons of suppression, I get very nervous. Censorship in the hands of the state quickly becomes an unstoppable impulse. Majoritarian tyranny—in the name of morality or feminism or paternalism—is a repudiation of the liberty of self-affirmation that is the very cornerstone of American freedom.

**Hudson:** I want to make sure what Mr. Lynn is saying is understood. What he is saying is that he does not believe there should be any restrictions whatsoever on any form of literature or any form of publications. Not only would no type of publication be controlled, but he sees nothing wrong with child pornography. It should be freely distributed anywhere in society. He's saying that it is up to the parent to control pornography. In other words, if your child encounters someone on the street who gives him a piece of pornography, that should be the problem of the parent.

We can only go so far in our society today. An environment must be created that is healthy for the child and assists in raising children in accordance with the values we have instilled in our soci-

ety over the years. If we could show that 99 percent of the violent rapists in society today became so through their ideas from pornography, Mr. Lynn would still reject the controlling of pornography.



**Barry Lynn:** "Whether material appeals to one's highest ideals or basest instincts, the First Amendment guarantees that it be allowed to take its place in the universe of debate."

When Townsend Hoopes of the Association of American Publishers testified before the commission, Commissioner Levin, who is the editor of *Woman's Day* magazine, specifically asked him whether or not the present definition of pornography has had a chilling effect on writers and publishers today. His answer was no.

Mr. Lynn also complains that the "moral mob rule" should not govern here. But the majority has always been the group whose wishes fashion laws. The majority rule that imposes some restrictions on certain types of offensive publications is the same majority rule that doesn't allow a person to raise hogs or drive 100 m.p.h. in a residential neighborhood or to sell drugs. The same type of consensus of society that governs in every other aspect has an effect on what type of literature is to be distributed in our society. It's based on what morals we want in society today. But in reviewing the issues, the pornography commission will not only review the evidence and the law, but we will use common sense.

**Lynn:** Democracy means one thing to Mr. Hudson; it apparently means something different to me. Majority rule? Is that what democracy is all about? Not quite. That might be what it is about without the Bill of Rights. But with the Bill of Rights it is absolutely clear that you do not take a plebiscite on individ-

ual liberties. The majority does have some rights, and the First Amendment exists to moderate the otherwise unstoppable impulse of the majority to get its way in matters of sex, politics, religion, and everything else.

I predict that one year from now, this commission appointed by the attorney general will indeed have found some basis to connect pornography with certain adverse impact and behavior. Mr. Hudson and a majority of the members of this commission will indeed be calling for new laws to suppress sexually oriented material. That's the purpose of this commission. I don't mean to demean everyone who is sitting on the commission. But the law-enforcement emphasis of this commission makes it clear that there is a train marked censorship, it has left the station, and Mr. Hudson is the engineer.

**Judith Reisman, Project on Research on Playboy, Penthouse, and Hustler:** Didn't the ACLU present the argument before the New York Court of Appeals in defense of the use of children in the creation of sexual imagery?

**Lynn:** The *Ferber* case, in our view, had to do with the First Amendment rights of distribution of the material. It in no way suggests that the ACLU supports the sexual abuse of children or that it endorses it. It is very clear that the sexual abuse of children can be criminalized. The abuse of children has no First Amendment protection. Literature and pictures may have some, although the Supreme Court says essentially that governments can do anything they want to stop child pornography.

**Reisman:** Do you agree with that?

**Lynn:** No, we don't agree with that. I'm just trying to suggest that even though the Supreme Court has essentially allowed it to be outlawed, and Congress and virtually every state has passed legislation, nevertheless the level of child abuse in this country has continued to rise. There is something at issue here beyond pictures.

**Trish Butler, National Organization for Women:** Mr. Lynn, you say you are often in the position of defending unpopular ideas. Aren't you really presenting a brief for the status quo? With our focus on the First Amendment, we may be overlooking the Fourteenth Amendment position on discrimination. Do you speak for the majority

who use pornography against the victims of pornography?

**Lynn:** It is not accurate to say that most people utilize or read pornography. Surveys, flawed as they might be, suggest that most people are able to go through most or all of their lives without using it. I'm not sure if I'm defending the majority view or the minority view.

The other important part of your question is the possibility that we are forgetting the victims—the people who are discriminated against on the basis of sex. I know that this is the position taken by some, but not all, members of NOW, as well as some others in the feminist community. I don't think there is any evidence to suggest that pornography plays a central role in sex discrimination in our society. Unless you happen to work in the Adam and Eve bookstore, you are not exposed to graphic, sexually explicit images for more than a tiny fraction of your life. Instead, you see demeaning images of women in commercials, in television programming, on record albums. It doesn't even make empirical sense to suggest that the central role in sex discrimination is played by pornography. That's simply an untested, unverified, and, I think, irrational assumption upon which to base the suppression of sexually oriented material.

**Jeff Dollinger, Office of Rep. Claude Pepper:** Mr. Hudson, if you're looking to abridge our First Amendment rights on free speech and expression, is this where it stops? Or is this just setting precedent for further abridging of First Amendment rights?

**Hudson:** I don't think that the formation of this commission portends any great restrictions on First Amendment rights. We're going to utilize the standards that have already been set by the U.S. Supreme Court and determine whether or not, given those standards, the type of literature that it proscribes has an effect on society today—whether it is a behavioral effect or in terms of organized crime being involved. I don't think that your fear that our commission may be trespassing on First Amendment rights is well taken.

**Drew Clark, Heritage Foundation:** Mr. Hudson, do you really mean that all things should be democratic decisions, that the majority always gets its way?

If enough people in the country, at a given time, think all Japanese Americans are war criminals and should be put in concentration camps, is that justified? If so, what need do you see for the Constitution and the Supreme Court, which, after all, are in the business of restricting the scope of democratic decision making?

**Hudson:** I don't know that I subscribe to everything that you've concluded in your question. The examples I gave demonstrate that in every community there are certain standards of living that are created. Whether these standards are zoning restrictions, criminal restrictions, or restrictions on uses of property, they basically flow from the will of the majority. Again, I agree with Mr. Lynn's comment that my examples would have to observe the Bill of Rights and the other constitutional rights. But there are certain standards of behavior that are set by the will of the majority, and I think the regulation of certain materials distributed in our society is an example of that.

Let me make one other comment. Mr. Lynn indicated that he thought community standards ought to apply only to the confines of one's household. That may be fine—but what do you do about the shop down on the corner, or the films being shown in theaters? The commission is dealing with commercial sexual activity—more than just being confined to what people do in the privacy of their own homes. Mr. Lynn keeps trying to indicate that this commission is trying to set the moral standards of people's private activities in their own homes. We're more interested in the commercial market than what someone does in the privacy of his own residence.

**Lynn:** That sounds very good. But let's just look briefly at your own law enforcement career. I think it's safe to say that you have—I'm sure in your words—"cleaned up" Arlington County. Among other things, you have made it impossible for people to rent an X-rated videotape anywhere in Arlington County. You are quite proud of that. It seems to me that if you're not interested in what's going on in the privacy of someone's home, then you ought to take absolutely no interest in the fact that video stores are renting little black and brown boxes with tape inside that have

no visible image to anyone unless you happen to have a VCR hooked up to your television set and can watch it. That is the essence of the kind of private conduct that you should be, under your theory, uninterested in.

Even if you are interested in commercial sex, I would point out that in 99.9 percent of the streets in this country, you cannot see one explicit sexual image. None. The bookstores have blackened windows so that no one can see inside. The theater has clearly marked what type of movie it is showing, and if you don't want to see it, you simply don't go in. We all have to tolerate some things that offend us. But we shouldn't try to regulate them just because our neighbors have some different, or dirtier, thoughts than we might have.

**Robert Becker, Reporters Committee for Freedom of the Press:** You have talked about contemporary community standards in the Supreme Court's decision and the fact that you intend to use that decision as a guiding light. But if the charter of your commission is to create law or suggest new law, aren't you trying to impose a national, rather than a community, standard on society?

**Hudson:** I don't believe so because what I would think the commission would do if we find that there is a national problem would be to address the methods of production and distribution. After all, pornography itself is something that is controlled by local laws. The only area where we could control pornography federally would be in its transfer from state to state. As far as defining what is and what is not pornography—that is something that is left to the states and not something our commission would be recommending to the attorney general.

**Becker:** If the attorney general asks for laws regulating interstate commerce in pornography, isn't that going to require some standard for what is pornography, and a national standard if it's a federal law regulating commerce all over the country?

**Hudson:** I don't believe so. In analyzing legal issues, it must be determined whether or not the material offends state law. If it does, a federal remedy is applied. It's the same type of thing used in federal statutes that rely on the violation of state law to be implemented.

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

ports in 1933 to half their level in 1930.

With major oil-state proration programs achieving the desired result of output and price stabilization by 1936, and with World War II petroleum regulation reversing market conditions toward scarcity and shortage, oil-tariff reductions to friendly countries occurred in 1939 (Venezuela), 1943 (Mexico), 1947 (General Agreement on Tariffs and Trade, or GATT), 1950 (Mexico), and 1952 (Venezuela).

In 1948, the United States became a net oil importer for the first time since 1922, and a year later the independent-producer lobby argued for the first time on national-security grounds for import barriers. A 1954 ruling that domestic watchmakers merited protection from their Swiss counterparts on national-security grounds led IPAA general counsel Russell Brown, "quick to see the advantage," to "hitch the IPAA's star to 'national security.' Indeed, lobbyists for coal and practically every other domestic industry rushed to Washington to get on the 'national security' bandwagon."<sup>1</sup>

In 1954, with imports increasing and proration allowables decreasing—two phenomena that were clearly intertwined—standby authority to restrict oil imports became law, and a voluntary oil quota was begun. In 1957, a formalized voluntary program was put into effect in response to widespread violation of the voluntary quotas.

With proration allowables reaching all-time lows and imports reaching all-time highs, the IPAA and coal interests persuaded President Eisenhower in March 1959 to employ his discretionary authority to freeze imports at current levels and, in some cases, roll imports back. Several bureaucracies were established to run this Mandatory Oil Import Program (MOIP), and scarcely a month had passed before the first of many major amendments was added to it that would, cumulatively, thoroughly politicize the program.<sup>2</sup> With import prices rising above regulated domestic prices, President Nixon replaced the MOIP with license-fee tariffs in 1973, which were increased by President Ford in 1975. Record tariffs in place of quotas were not promoted

as a protectionist measure; on the contrary, tariffs served as a conservation tax and anti-import tax within a broad program of national energy planning. (Ironically, the refinery entitlements program, whereby refiners with low-priced [domestic] crude wrote monthly checks to refiners with high-priced [foreign] crude, acted as a reverse tariff to cancel import fees and encourage importation at high prices.)

Looming shortages that only imports could alleviate, given price and allocation regulation, led President Carter to abolish tariffs in April 1979, introducing free trade in petroleum im-

### "Protectionism has always put politics first and the general welfare last."

ports for the first time since early 1932. Within a year, however, longstanding tariffs pursuant to the GATT were reactivated and are presently in force. Active tariffs per barrel are shown below.

Oil Type	Most-Favored Nation	Communist Nation
Crude (above 25°)	5.25¢	\$2.10
Crude (below 25°)	10.50¢	\$2.10
Kerosene/naphtha	10.50¢	\$ .21
Lubricating oil	80.00¢	\$1.60
Gasoline/jet fuel	52.50¢	\$1.05

Attempts by the Carter and Reagan administrations to enact stiff oil-import levies in 1980 and 1982 were rebuffed by congressmen unfavorable to higher energy prices. Industry support for those measures ranged from lukewarm to negative; not even the IPAA could endorse them, given the proclivity of federal authorities to expand oil-import taxes to domestic oil for "conservation" reasons.

#### The Current Debate: Refiners vs. Marketers

In late 1983 and 1984, the independent refiners found themselves losing money on every barrel of crude refined, while the majors at least had upstream profits to offset their own downstream losses. Fearing that their persistent

losses could lead to bankruptcy and shutdowns, virtually the entire independent sector mobilized to form the Independent Refiners Coalition (IRC) in late 1984, with a \$2 million fund for seeking political relief from cheap gasoline imports. Large independents, such as Ashland, Diamond Shamrock, Tosco, and Coastal, joined smaller independents represented by the American Independent Refiners Association to seek gasoline tariffs of 6¢/gallon or higher to stabilize the level of gasoline imports, which have doubled since 1973–82 to reach 6 percent of domestic consumption. Of the majors, only Texaco has vocally protested the level of gasoline imports, but for public-relations reasons it has not advocated higher tariffs.

The debate over gasoline tariffs has not been a one-sided industry affair. The IRC has been countered by major refiners (with the exception of Texaco), two independent refiners in the National Petroleum Refiners Association, independent importing interests, and, most importantly, independent marketers.

In April 1985, the Society of Independent Gasoline Marketers of America, the Independent Gasoline Marketers Council, the Empire State Petroleum Association, the New England Fuel Institute, and the Independent Fuel Terminal Operators Association banded together to form the Marketers Coalition Against Import Restrictions. To independent marketers, cheap gasoline imports represent a long-awaited opportunity to neutralize the majors' advantage of integration.<sup>3</sup>

#### The Bogey of National Security

To garner support for gasoline tariffs, independent refiners have resurrected the national-security argument, which currently runs as follows:<sup>4</sup> Since 1981, over 100 refiners, representing 15 percent of national capacity, have closed down. While many of these refineries were inefficient creatures of regulation, a "second wave" retrenchment of efficient refiners has occurred since 1983 in conjunction with doubled gasoline imports. With threatened closings and increased gasoline imports expected in the future, national refining capacity could fall below the "national security" level of approximately 14 million barrels per day. What OPEC was able to do

in the 1970s with crude oil, OPEC and other for-export refining centers will be able to do with oil products. An effective U.S. response to product cutoffs cannot depend on the Strategic Petroleum Reserve, which contains unrefined oil, or on new refining capacity, which takes years to construct; it must depend on rendering the present refining capacity adequate to meet U.S. consumption. Finally, the IRC points out that many vulnerable independent refineries are geographically dispersed, supplying military installations with the specialized petroleum products they require. The implication is that fewer and more distantly located refiners are less reliable and efficient than the present configuration.

The national-security argument for oil protectionism has always been very weak. The events that inspired this argument—the oil shortages during World War II and the crude-oil embargoes of 1973–74 and 1979—have been misinterpreted to draw the wrong lessons. The moral of these shortages is not that the United States ought to have maximum internal production and be energy independent; it is that price controls, allocation controls, and general energy planning make difficult situations much worse than free-market processes would permit. *Less, not more*, intervention promotes national security.

In the 1980s, the national-security argument has become even more questionable. The world petroleum market has become increasingly diversified geographically with the decline of OPEC in power and market share. With the proliferation of spot markets and oil-trading networks in the last decade, the market has become so complex and interrelated that it is a serious question whether nation-to-nation embargoes can work. Whereas in the 1970s spot-market oil made up less than 5 percent of supply, today it comprises over 40 percent. Artificial, political constraints on oil distribution can only increase profit opportunities for those willing to circumvent such constraints. To make their case, protectionists must not only assume another oil embargo, they must assume many embargoes and an absence of new profit-maximizing trading patterns.

But gasoline imports currently com-

prise only 6 percent of domestic consumption. As of March 1985, almost 30 countries exported oil to the United States. Listed according to trade volume, they were: Rumania, Italy, the Netherlands, Canada, Venezuela, the United Kingdom, Saudi Arabia, Turkey, Brazil, West Germany, India, China, and over a dozen others. This is not the stuff of doomsday. Neither the low level of imports nor the diverse composition of the suppliers is cause for alarm, nor would greater amounts from these suppliers and others be. One could just as well favor more imports on national-security grounds to *drain American*

### "The world petroleum market has become increasingly diversified geographically with the decline of OPEC in power and market share."

*oil last, not first*, which at one time was an official government position.

The IRC asserts that national security requires virtually all of current operating capacity. The 14-million-barrels-per-day figure covers the entire refining status quo, even the most inefficient members. The "second wave" of refinery closings has affected not only efficient plants, but many undersized and unsophisticated plants as well. Of 26 recent closings, 14 involved refineries that lacked any downstream capacity to make gasoline, and only 3 produced more than 50,000 barrels per day.<sup>5</sup> Another crucial reason for the refinery shakeout is reduced oil consumption. The United States consumes approximately 3 percent less oil now than in 1981, and with the decline continuing—the second quarter of 1985 showed a 1.8 percent decline from a year earlier—even more refineries may close.

As of January 1, 1985, the Department of Energy estimated operable crude-oil distillation capacity at 15.6 million barrels per day, with operating

capacity of 14.6 million barrels per day.<sup>6</sup> Combined with 1.5 million barrels per day of natural-gas liquids and surplus natural gas that can displace fuel oil at the flip of a switch in major industrial markets, the national-security threshold would indeed seem to be much lower than the IRC suggests.

The exercise of calculating a national-security refining optimum is problematic. Forecasting demand is difficult, and forecasting demand per price is more so. Other difficult forecasts must be made of friendly foreign refining capacity, new import arrangements, and inventory buildups and drawdowns. Short of omniscience, protectionists who have assumed the role of sideline central planners must give way to the forces of supply and demand to discover the right quantity and configurations of refinery capacity.

In other words, *there can be no national-security refining optimum outside of free-market entrepreneurial activity*. In a market, demand will find supply at a price; and inventory depletions, inter-fuel substitution, conservation, and other short-run measures will stem the tide until long-run adjustments, such as new technology and new refinery capacity, take place. The oil scares of World War II and the 1970s need not be relived if market processes are allowed free reign.

The status-quo argument that dispersed, military-related refineries are essential to national security is a case in point. The purpose—and achievement—of an unhampered market is to satisfy demand at least cost. If more efficient distant refiners can outcompete less efficient nearby refiners despite higher transportation costs, then so be it; the military will continue to get the supplies it needs, and at a lower cost.

#### The Bogey of Unfair Competition

Coupled with the national-security argument is the complaint that U.S. refineries must compete against refineries subsidized by foreign governments and in a protectionist international market where gasoline is exported to the United States at an artificially low price. Foreign government-integrated entities, the argument goes, can simply discount crude-oil costs to stay "profitable," while U.S. independents must

(Cont. on p. 15)

## Should American Business Leave South Africa?

**Disinvestment: Is It Legal? Is It Moral? Is It Productive?** by John Langbein, Roy Schotland, and Albert Blaustein (Washington: National Legal Center for the Public Interest, 1985), 109 pp., \$5.00.

**The Politics of Sentiment: Churches and Foreign Investment in South Africa**, by Richard E. Sincere, Jr. (Washington: Ethics and Public Policy Center, 1984), 164 pp., \$9.00.

The possibility of American economic disengagement from South Africa has become one of the most controversial issues in both foreign policy and trade policy. U.S. investment in South Africa is considerable. It has increased 50-fold since 1961 and was estimated at \$2.3 billion in 1982. Outstanding loans constitute about \$3.6 billion, and U.S. investors hold about \$8 billion of shares in South African firms. The value of American exports to South Africa is well over \$2 billion.

Many critics of apartheid have argued that American economic involvement in South Africa offers economic and moral support to an illegitimate regime. Economic disengagement is often suggested as a means of withdrawing "moral sanction" and weakening the South African government.

Critics of disengagement argue that levying economic sanctions against South Africa constitutes a double standard, since very few advocates of disengagement object to American trade with such oppressive regimes as the Soviet Union and many Third World nations. In addition, disengagement would result in a "fire sale" of American assets and windfall profits for other South African investors, many of which would exert a far less liberal influence than American corporations. Widespread black opposition to American disengagement is another element in this argument.

The two books under consideration provide an excellent summary of the political, economic, moral, and legal issues surrounding various forms of economic disengagement.

The first volume, *Disinvestment*, presents a number of viewpoints on the constitutionality of state divestiture

laws, the role of university investment, and the potential effects of divestiture on private pension funds.

*The Politics of Sentiment* takes a strong stand against divestiture, emphasizing the liberalizing effects of international trade and the benefits accruing to blacks in South Africa through job creation and higher wages. The book also examines the role of the churches inside and outside South Africa in combatting apartheid. While praising the moral feeling that animates the opposition of many churches to apartheid, the author is quite critical of the political means they suggest for effecting change.

Sincere quotes Lucy Mvubelo, general secretary of South Africa's largest

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black union: "Real progress is being made in labor relations and conditions of all (repeat all) South African workers. Disinvestment would sabotage such progress and inflict untold hardship and misery on the population as a whole."

Both of these books are recommended, the first for its able summary and analysis of issues related to economic disengagement, and the second for its analysis of the liberalizing effects of trade and commerce.

**Clamor at the Gates: The New American Immigration**, by Nathan Glazer (San Francisco: Institute for Contemporary Studies, 1985), 337 pp., \$25.95/\$10.95.

Immigration reform has rarely evoked the level of debate and emotion that it has in the past few years. The controversies emanating from the Simpson-Mazzoli bill in 1984, as well as from measures currently in Congress, will keep the political sparks flying.

Nathan Glazer, professor of education and sociology at Harvard, has compiled 14 important and thought-provoking essays by scholars and poli-

ticians concerned with immigration policy. For anyone interested in following the debate or in simply learning about immigration and its impact on U.S. economy and culture, *Clamor at the Gates* is a very helpful reference.

One of the most valuable contributions of the book is its delineation in several chapters of a Hispanic perspective on illegal immigration and the possible political ramifications of that sentiment. Equally important are the essays that focus on the economic development of immigrant groups in the United States. Thomas Muller of the Urban Institute dispels several myths about the presumed negative economic consequences of immigration on domestic workers. His essay is full of pertinent economic data from the recent Urban Institute study that analyzed the effects of Mexican immigrants on the local economy of southern California.

Ivan Light, professor of sociology at UCLA, and Peter Rose, director of the American Studies Diploma Program at Smith College, discuss the experiences of Asian immigrants.

Many readers will question the basic assumptions of the last chapter, which focuses on immigration law and community. The author outlines the importance of immigration in creating a national community consistent with a particular set of values and attitudes. Immigration policy is seen here as an important tool for selecting those people "suitable" for citizenship.

*Clamor at the Gates* also suffers from several disappointing omissions. The effects of possible reforms on illegal and legal immigrants are not discussed at length. In particular, the objection raised by Hispanic groups against employer sanctions—that they would result in discrimination against dark-skinned workers, whether citizens or not—are registered but not discussed adequately. Yet this objection was responsible in part for killing the Simpson-Mazzoli bill in conference in 1984.

On the whole, however, the book is an excellent study of immigration and its economic and cultural impact. The essays provide valuable analyses of one of the most complex—and important—issues of the 1980s. ■

### Oil (Cont. from p. 13)

pay the higher market prices and take losses in depressed product markets. This disadvantage, and the environmental costs to which U.S. firms are subject, led Ashland Oil chairman John Hall to state, "While I am a strong believer in free trade, I feel even stronger about fair trade."<sup>7</sup>

Complaints of unfair competition are the refuge of the desperate competitor. Foreign-government subsidization of U.S. gasoline consumers, to whatever extent it may actually occur, is a windfall for U.S. energy users and thus quite the opposite of an oil embargo. If marginal refiners are victimized by foreign largesse, U.S. oil entrepreneurs have only themselves to blame. To earn profits, firms must correctly understand and anticipate the world petroleum market, not just the domestic market. The strategy of foreign oil centers to replace crude exports with product exports in order to gain transportation economies is a natural and long-planned development.

Moreover, it is not clear that crude discounting by foreign refineries constitutes an artificial subsidy. Independents have long accused majors of unfair competition through transfer-pricing flexibility, which is really an attack on the competitive advantages of integration. The extension of this argument to government integration may be flawed as well. It is generally recognized that official OPEC crude-oil prices are higher than market-clearing levels and that aggressive entry into product markets by Saudi Arabia, Kuwait, and other cartel members merely disguises this fact. The exact transfer price from the field to the refinery is ultimately irrelevant; the quantity and price of the resulting products are what matter in the world petroleum market.

#### The Advantages of Free Trade

While the case for protectionism rests on speculative assumptions and arbitrary value judgments, the advantages of free trade are clear. First, consumers get more supply and lower prices. Quality and price, not country of origin, are what consumers care about. In addition, U.S. firms enjoy lower energy

costs and can therefore increase profitability and economic growth to better compete in world markets. Such is the case especially for the petrochemical, automobile, steel, and airline industries.

Second, free trade encourages national security by fostering goodwill and promoting the development and diversification of the world petroleum market. The large number of countries that have exported gasoline to the United States in 1985 offers security against cutoffs by any one or group of countries, and an even larger number would only increase this security.

Third, free trade promotes competition by allowing independent gasoline marketers that buy attractively priced imports to rival low-cost integrated companies. Economic competition with oil majors is far superior to political competition in which independent gasoline marketers obtain dealer-protection laws, divorce/divestiture laws, below-cost laws, and so on against efficient integrated rivals.

Fourth, consumption of foreign oil instead of domestic oil preserves U.S. reserves for a future when they might be more urgently needed—a genuine national-security consideration in favor of free trade.

Fifth, free trade precludes the need for another major regulatory program, replacing political decisions and liability with impersonal market forces. Such spokesmen for protectionism as John Hall of Ashland and Oscar Wyatt of Coastal never mention the politicized Mandatory Oil Import Program—it was based on "national security," a consideration that politics made unrecognizable throughout the 1959–73 period.

#### What Should Be Done?

The argument for free trade does more than merely refute the case for increasing oil tariffs; it points toward the removal of all existing tariffs and toward the establishment of completely free trade for petroleum and petroleum products.

The Alaskan crude-oil export ban should be abolished, not only because Alaskan oil could greatly reduce the Japanese trade deficit, but because it would cheapen U.S. oil imports by introducing more efficient international trading patterns.

The United States should withdraw from the International Energy Agency, a 21-country organization designed to stockpile oil for distribution based on historical use to member countries in the event of an emergency. Since the United States is the main supplier in this egalitarian scheme, participation in the IEA weakens, not strengthens, our national security.

Even if the IRC were to disband—which would be good public policy and good public relations—and oil interests stopped seeking protection from competition, the pursuit of revenue through the political process to reduce budget deficits would remain a threat to free trade in petroleum. As President Reagan has reiterated, runaway government spending, not insufficient revenue, is the problem behind the deficit. The job of Congress is not to increase taxes via oil tariffs; it is to drastically and comprehensively cut spending on federal programs and appease special interests the right way—by tax reduction and regulatory relief.

Only in this way can the budget deficit be redressed and consumers be allowed to benefit from the efficiencies of quality and price that result from an unhampered, competitive market, not only for petroleum products, but every other product as well. An oil tariff, in sum, is bad energy policy, bad defense policy, and bad budget policy. ■

<sup>1</sup>Leonard Fanning, *The Story of the American Petroleum Institute* (New York: World Petroleum Policies, 1959), p. 138.

<sup>2</sup>See Douglas Bohi and Milton Russell, *Limiting Oil Imports* (Baltimore: Johns Hopkins University Press, 1978).

<sup>3</sup>The battle over gasoline tariffs is now threatening to issue in comprehensive tariff barriers on all forms of oil, as a political response to the need to raise revenue to close the federal deficit.

<sup>4</sup>The following is adopted from *Independent Refiners Coalition News*, February 21, 1985; and *Statement of George Jandacek on Behalf of the Independent Refiners Coalition before the Subcommittee on Energy and Agricultural Taxation*, Senate Finance Committee, June 21, 1985.

<sup>5</sup>Optimum refining capacity is considered to be over 100,000 barrels per day.

<sup>6</sup>*Petroleum Supply Annual 1985* 1 (June 1985).

<sup>7</sup>*Oil and Gas Journal*, February 18, 1985, p. 67.



# "To be governed..."

## **Yellow peril, the family, starving children, energy waste . . .**

President Reagan's tax reform plan, Congress was told Wednesday, could mean the end of the American Christmas tree. . . .

It could, [a National Christmas Tree Association spokesman] said, return the United States to the days of having to look outside its own borders for Christmas trees. . . .

The plan, [Keith] Jacob charged, would hurt an industry that "is entirely a family-oriented enterprise." Also victims, he noted, would be numerous youths. . . .

"Another beneficiary of the proposals of the Treasury Department is the Oriental manufacturer of plastic trees which utilize non-renewable petroleum resources."

—United Press International,  
July 31, 1985

## **Protecting an infant industry**

Domestic marijuana farming is rising because federal lawmen have succeeded in slowing marijuana smuggling from Colombia and Jamaica.

—*Wall Street Journal*, Aug. 1, 1985

## **Not fast enough**

The White House, built on a swamp, is sinking at the rate of approximately one inch every 120 years. "At this rate, it should disappear entirely by the year 113,053," notes author George Mair.

—*Washington Times*, July 9, 1985

## **Like the Reagans in 1858**

The Reagan administration considers it a crime to offer sanctuary to Salvadorans, Guatemalans and Haitian refugees because federal officials believe that they flee their countries for economic gain, not political asylum.

—*Washington Post*, Aug. 11, 1985

## **An independent study reported today . . .**

[Thomas] Franks [a lobbyist for vacation-home developers] calls in Jesse Abraham, an economist with Data Resources Inc., Lexington, Mass., to discuss conducting a study on the economic effects of the proposed second-home cap [in Reagan's tax reform proposal]. "What do you think you'll find?" Mr. Franks asks. Mr. Abraham responds, "First of all, I don't have a contract with you or a check from you." After Mr. Franks orders up a check and a contract, Mr. Abraham inquires, "What do you want us to find?"

—*Wall Street Journal*, July 10, 1985

## **Would you believe 2 million?**

Out of the universe of laws, ordinances and statutes ratified in the legislative chambers at all levels of government in the United States, more than 2,000 can safely be described as archaic, ludicrous and strange.

—Dick Hyman in the *New York Times*, June 22, 1985

## **You see, we have this profound philosophical difference**

One option that has gotten lost in the current debate over the 25 percent surcharge is the president's authority under Section 122 of the Trade Act of 1974 to impose an import surcharge of up to 15 percent. . . .

This approach, I would argue, is vastly superior to the Gephardt-Rostenkowski-Bentsen 25 percent surcharge.

—Republican congressional aide  
Steven Hofman in the  
*Washington Post*, Aug. 19, 1985

## **Oh, sure, we've made some mistakes in the past**

Cambodia's communist Khmer Rouge rebels, in a major policy shift, said yesterday they would accept the creation of a "capitalist" government. . . .

Khmer Rouge officials said they envisioned "the regime of Cambodia in the future as a liberal, capitalist regime in economics and a parliamentary regime in politics."

—*Washington Times*, July 16, 1985

## **Bulletin for the Sandinistas**

But [national security affairs adviser Robert C. McFarlane] said that banning U.S. investment in South Africa would "hurt the very people you're trying to help. . . . The president believes it is not up to the United States to prescribe what is right for other people."

—*Washington Post*, Aug. 19, 1985

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