

**EDITOR**

Peter Van Doren

**MANAGING EDITOR**

Thomas A. Firey

**DESIGN AND LAYOUT**

David Herbeck Design

**CIRCULATION MANAGER**

Alan Peterson

**EDITORIAL ADVISORY BOARD****CHAIRMAN**William A. Niskanen, *Chairman, Cato Institute*David Bradford, *Professor of Economics and Public Affairs, Woodrow Wilson School, Princeton University*Philip Cole, *Professor of Epidemiology, University of Alabama at Birmingham*William A. Fischel, *Professor of Economics, Dartmouth College*H.E. Frech III, *Professor of Economics, University of California, Santa Barbara*Richard L. Gordon, *Professor Emeritus of Mineral Economics, Pennsylvania State University*Robert W. Hahn, *Director, AEI-Brookings Joint Center for Regulatory Studies*Scott E. Harrington, *Professor of Insurance and Finance, University of South Carolina*James J. Heckman, *Henry Schultz Distinguished Service Professor of Economics, University of Chicago*Joseph P. Kalt, *Ford Foundation Professor of International Political Economy, John F. Kennedy School of Government, Harvard University*John R. Lott Jr., *Scholar, American Enterprise Institute*Michael C. Munger, *Professor of Political Science, Duke University*Robert H. Nelson, *Professor of Public Affairs, University of Maryland*Sam Peltzman, *Sears, Roebuck Professor of Economics and Financial Services, University of Chicago*George L. Priest, *John M. Olin Professor of Law and Economics, Yale Law School*Paul H. Rubin, *Samuel Candler Dobbs Professor of Economics and Law, Emory University*Jane S. Shaw, *Senior Associate, Property & Environment Research Center*S. Fred Singer, *President, Science and Environmental Policy Project*Fred Smith Jr., *President, Competitive Enterprise Institute*V. Kerry Smith, *University Distinguished Professor, North Carolina State University*Pablo T. Spiller, *Joe Shoong Professor of International Business, University of California, Berkeley*Richard L. Stroup, *Senior Associate, Property & Environment Research Center, and Professor of Economics, Montana State University*W. Kip Viscusi, *Cogan Professor of Law and Economics, Harvard Law School*Richard Wilson, *Mallinckrodt Professor of Physics, Harvard University*Clifford Winston, *Senior Fellow in Economic Studies, The Brookings Institution*Benjamin Zycher, *Senior Fellow in Economics, Pacific Research Institute***PUBLISHER**Edward H. Crane, *President, Cato Institute*

REGULATION was first published in July 1977 "because the extension of regulation is piecemeal, the sources and targets diverse, the language complex and often opaque, and the volume overwhelming."

REGULATION is devoted to analyzing the implications of government regulatory policy and its effects on our public and private endeavors.

## America's Real Vulnerability to Terrorists

I wish to comment on John Mueller's "A False Sense of Insecurity?" (Fall 2004). With terrorist attacks now a proven reality, it is terrifying to realize just how vulnerable America really is. Just a few drops of the gasoline additive MTBE added to a town's water supply could result in closing down all of the town's water wells. With just a trace of asbestos added to the mineral feedstock that becomes residential housing insulation material, terrorists could bankrupt all the major firms in the entire insulating materials industry. A terrorist could break the bulb on a child's thermometer and dump the mercury into some food being prepared in a cannery, which would result in the destruction and complete loss of hundreds of thousands of cans of food pulled from store shelves by order of government authorities. Terrorists could apply a small amount of forbidden insecticide to random portions of a shipment of fruit or vegetables and the whole shipment or even the entire harvest would be lost when inspectors discovered the traces of contamination. Terrorists could add small amounts of ordinary, but forbidden, chemicals to a landfill, and then launch a lawsuit to have the whole landfill subjected to a Superfund cleanup at a cost of billions to the American people.

America is particularly vulnerable to confrontation with insignificant risks. Small probabilities of disaster imposed on public transportation systems can induce government officials to curtail or so diminish the level of service as to yield results as catastrophic as the wholesale destruction of such facilities. Terrorists could release a member of an endangered species of birds into a great forest just before it is ready for timber harvesting and cut off a major portion of the nation's lumber supply. They could destroy the many efforts and millions of dollars of expenditures preparing for the construction of a power-generating facility by releasing some rare species of minnows into a near-

by creek that the project might affect.

Small teams of handicapped terrorists could go around closing down all the buildings and businesses in America that have not fully complied with the Americans with Disabilities Act. In fact, a wide variety of citizen suits is open to terrorist teams who can bring America to her knees without even breaking the law. Indeed, by a more rigorous upholding of America's laws, terrorists could virtually ruin America. Rather than trying illegally to enter our country, terrorists could simply infiltrate international environmental organizations and contribute money earmarked for suing American companies for whatever environmental regulation violations our zealous fellow citizens can find. Large amounts of money could enter our country for purposes such as lobbying for ruinous provisions in a variety of laws and regulations that aimed at American businesses. They need only watch a few popular movies to find their way to destroying America's manufacturing firms and public utilities. They could readily find organizations through which they might help bankroll efforts such as seen in movies like "A Civil Action" and "Erin Brockovich," and they could help fund great ruinous scientific hoaxes such as the silicone breast implant crisis that bankrupted Dow Corning Corporation.

Thus, I wish to applaud John Mueller for emphasizing that America is extremely vulnerable to terrorist acts because of a collective gullibility. America is a country that collectively responds to risks and harms too often by absurd overreaction. The safety measures that terrorists can provoke will probably prove far more taxing than any actual damage inflicted by terrorist acts. Moreover, terrorists can simply play our own irrational regulatory regime against us and possibly hurt us more than they could with bombs, poisons, or germs.

Impose a few trivial risks on the American people, and our political system will do the rest to multiply the harm through a regulatory response that costs many times the value of whatever actual harm threatens us.

CRAIG S. MARXSEN  
*University of Nebraska at Kearney*

## The Right Answer to Coase's First Question

After reading Larry Lessig's "Coase's First Question" (Fall 2004), I finally understand the argument that the "commons" proponents have been making. A commons for goods such as spectrum and broadband is the same as free trade, and we all know that free trade is a good thing. Q.E.D.

Lessig's article — which is a response to Bruce Owen's very good discussion of "net neutrality" in a property rights context ("Assigning Broadband Rights," Summer 2004) — illustrates the pitfalls of practicing economics without a license. (Owen's article is a short version of the paper he and Greg Rosston presented at The Progress & Freedom Foundation's Net Neutrality conference last year, which will be included in our forthcoming conference volume.)

Citing Coase's famous 1959 *Journal of Law and Economics* article on the Federal Communications Commission, Lessig argues that "proper-Coaseans" first ask the question of whether the resource in question should be the subject of prop-

erty at all, before asking where the property right should reside. That is in contrast to "property-Coaseans" (e.g., Owen), who go straight to the second question.

Clever language aside, Lessig's "proper-Coasian" concept is based on quoting Coase out of context. As Lessig indicates, Coase did write, "All property rights interfere with the ability to use resources. What has to be insured is that the gain from interference more than offsets the harm it produces." But the point he was making was that once property rights are defined, the market can bring about an optimum utilization of those rights. Coase was not suggesting the need to subject every property rights decision to an *ex ante* cost-benefit analysis to determine "whether the resource should be the subject of property at all." That would be a pretty radical notion, indeed.

Lessig's free trade argument comes from a 2002 article on spectrum rights by Yochai Benkler — another apostle of the commons approach — that Lessig also quotes. The argument goes as follows: The right to trade internationally, like spectrum, is a valuable right. If we were to create a set of tradable international trade rights and auction

them off, people might pay a lot of money for them. But we know that this "property system" would interfere with free trade and be inefficient. The same reasoning applies to goods like spectrum and broadband.

Critiquing this argument would be a good question for an undergraduate economics exam. But the central point of the answer is obvious. Creating international trade rights creates an artificial scarcity where no real scarcity exists. That, by definition, is inefficient. In fact, such rights — quotas — have been used to protect domestic industries, with adverse effects on efficiency that are familiar to most economics undergraduates. Spectrum and broadband, on the other hand, really are scarce, which is why they need to be subject to a property-rights regime to be allocated efficiently. Broadband obviously has scarcity value, because it takes lots of real resources — capital and labor — to provide it. We know that spectrum is scarce, at least in the amounts that the government has made available, because it commands very high prices in the market. Q.E.D.

THOMAS M. LENARD

*The Progress & Freedom Foundation*



# “I THOUGHT IT SAID ‘LIMITED’ GOVERNMENT...”

When the Founding Fathers wrote the Constitution, they never dreamed of today's expansive federal government. Whatever happened to a limited state designed to “secure the blessings of liberty”?

For more than 26 years, the Cato Institute has been fighting to restore America's constitutionally limited government and preserve our heritage of individual liberty, free markets, and the rule of law.

Help keep America free. Become a Cato Sponsor today. Visit [www.cato.org](http://www.cato.org) to find out more.

**CATO**  
INSTITUTE