

Cato Policy Report

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Prodding the Court to Protect Property Rights

by Roger Pilon

When Sen. Robert Dole (R-Kans.) and Rep. Gary Condit (D-Calif.) introduced their private property protection bills in the 103rd Congress, the reaction of the environmental community was as predictable as it was appalling. Aimed at codifying Executive Order no. 12630, which President Reagan signed in 1988, the bills create no new property rights. In fact, they take as given the diminished property rights we have today, then simply call upon federal agencies to assess the takings implications of any proposed regulations before those regulations go into effect—to better protect private property rights and avoid compensation

Roger Pilon is director of the Cato Institute's Center for Constitutional Studies. This is a revised version of testimony he delivered on November 3, 1993, before the House Committee on Agriculture, Subcommittee on Department Operations and Nutrition, which held hearings to review H.R. 561, the Private Property Protection Act of 1993. For a fuller discussion of these issues, see Roger Pilon, "Property Rights, Takings, and a Free Society," *Harvard Journal of Law and Public Policy* 6 (1983): 165-95.

drains on the federal treasury. Unfortunately, that deference to the Constitution appears to be more than many can abide.

Commenting for the Senate Committee on Governmental Affairs, the Congressional Research Service noted that the executive order had been "controversial": "Environmental, historic preservation, and labor groups have asserted that the order was designed implicitly to further a conservative, anti-regulatory agenda, while developers, farmers and property rights organizations applaud it as sensitizing federal agencies to the property rights consequences of their actions." Indeed, when the Dole bill was introduced, 45 environmental groups rose to oppose it. Vice President Al Gore wrote the Senate to say that he felt "strongly" that the legislation should not be adopted. And Attorney General Janet Reno objected that "the legislation would create a private right of action [a right to sue to make sure that the attorney general abided by the statute] that would extend beyond that now available under the Fifth Amendment." It is a fitting commentary on the state of

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constitutional respect in this country that so many should stand opposed to a measure that asks simply that federal agencies examine the constitutional implications of their actions before they act.

Strictly speaking, of course, legislation of this kind should be unnecessary in our system since the rights of property owners are guaranteed not simply by statute but by the Constitution itself. Over the course of this century, however, those rights have been increasingly compromised by a growing body of federal, state, and local regulations and by a series of Supreme Court opinions that Justice John Paul Stevens once labeled "open-ended and standardless," reflecting reasoning that Justice Antonin Scalia more recently called "essentially ad hoc." Although the Court has lately begun to rethink its takings jurisprudence, that rethinking has a way to go before it can be called principled.

In the meantime, this private property legislation is a step in the right direction—one step in an evolutionary process, the end of which should be the full restoration of our constitutional guarantees regarding property. If that process

(Cont. on p. 10)



After Cato's conference "The Politics and Law of Term Limits," held on December 1 in the F. A. Hayek Auditorium, David Boaz interviews George Will for Cato's new weekly TV show "Cato Forum" on National Empowerment Television.

Rights and Responsibilities

Editorial



the equal rights of others.

A journalist asked me recently what I thought of a proposal of self-styled communitarians to "suspend for a while the minting of new rights." How many ways, I thought, does that get it wrong? Communitarians seem to see rights as little boxes; when you have too many, the room gets full. In my view, we have only one right—or an infinite number. The one fundamental human right is the right to live your life as you choose so long as you don't infringe on

But that one right has infinite implications. As James Wilson, a signer of the Constitution, said in response to a proposal that a bill of rights be added to the Constitution: "Enumerate all the rights of man! I am sure, sirs, that no gentleman in the late Convention would have attempted such a thing." After all, a person has a right to wear a hat—or not; to marry, or not; to grow beans, or apples; or to open a haberdashery. It is impossible to enumerate a priori all the rights we have; we usually go to the trouble of identifying them only when someone proposes to limit one or another. Treating rights as tangible claims that must be limited in number gets the whole concept wrong.

Every right carries with it a correlative responsibility. My right to speak freely implies your responsibility not to censor me. Your right to private property implies my responsibility not to steal it, or to force you to use it in the way I demand. In short, the protection of my rights entails my respecting the rights of others. So why do I feel uncomfortable when I hear communitarians talk about "rights and responsibilities"? The problem is that there are three senses of the term "responsibility," which are frequently confused.

First, there are the responsibilities noted above, the obligations that correlate with other people's rights.

Second, there are the "responsibilities" that some would insist that we assume as a prerequisite to exercising our rights. This sense, frequently found in communitarian writings, echoes the *ancien régime* approach, the notion of rights as privileges that we retain only so long as we use them responsibly. That idea degrades the American tradition of individualism. It implies that we have our rights only so long as someone—the government, in practice—approves of the way we use them. In fact, as the Declaration of Independence tells us, humans have rights before they enter into governments, which are created for the very purpose of protecting those rights.

Conservatives as well as communitarians sometimes fall into that way of thinking. Our friend Stuart Butler of the Heritage Foundation defends government-mandated health insurance on the ground that "freedom also implies responsibility." But if the government can require us to act in the way it deems responsible by buying health insurance, what kind of freedom do we have?

People rarely try to take our rights when they think we are

using them responsibly. No one tries to censor popular, mainstream speech; it is obscene or radical speech that is frequently threatened. We must defend even the irresponsible use of rights because they're rights and not privileges. Governments never begin by taking away the rights of average citizens and taxpayers. But by establishing legal precedents through attacks on the rights of despised groups, governments lay the groundwork for the narrowing of everyone's rights.

Third, there are the moral responsibilities that we have outside the realm of rights. It is frequently charged—famously by communitarian philosopher Mary Ann Glendon—that "the language of rights is morally incomplete." Of course it is; rights pertain only to a certain domain of morality, a narrow domain in fact, not to all of morality. Rights establish certain minimal standards for our treatment of each other: we must not kill, rape, rob, or otherwise initiate force against each other. That leaves a great many options to be dealt with by other theories of morality. But that fact doesn't mean that the idea of rights is invalid or incomplete in the domain where it applies; it just means that most of the decisions we make every day involve choices that are only broadly circumscribed by the obligation to respect each other's rights.

Libertarians are often charged with ignoring or even rejecting moral responsibilities. There may be some truth to the first charge. Libertarians obviously spend most of their time defending liberty and thus criticizing government. They leave it to others to explore moral obligations and exhort people to assume them. Why is that? I see two reasons. First, there is the question of specialization. We do not demand of the AIDS researcher, Why aren't you searching for a cure for cancer as well? With government as big as it is, libertarians find the task of limiting its size thoroughly time-consuming. Second, libertarians have noticed that too many nonlibertarians want to legally enforce every moral virtue. As Bill Niskanen puts it, welfare-state liberals fail to distinguish between a virtue and a requirement, while contemporary conservatives fail to distinguish between a sin and a crime. (The unique contribution of communitarians to the current debate may be that they make both of those grievous errors.)

When libertarians omit moral values from their social analysis, however, they are ignoring the lessons taught by all their intellectual mentors. Adam Smith wrote *The Theory of Moral Sentiments*. F. A. Hayek stressed the importance of morals and tradition. Ayn Rand set out a fairly strict code of personal ethics. Thomas Szasz's work challenges the reductionists and behaviorists with a commitment to the old ideas of good and bad, right and wrong, and responsibility for one's choices. Charles Murray emphasizes the value and indeed the necessity of community and responsibility. Libertarians should do more to make clear the role of moral responsibility in their philosophy. However, they will rightly continue to emphasize that government can undermine the values necessary for a free society—honesty, self-reliance, reason, thrift, education, tolerance, discipline, property, contract, and family—but it cannot instill them.

David Boaz
—David Boaz

"Cato Forum" on National Empowerment Television

Cato Launches Weekly TV Show on Cable, Satellite

The Cato Institute has launched its first television venture with "Cato Forum," a lively, provocative look at national and international issues from a market-liberal perspective. The program is broadcast Thursday at 10:00 p.m. on the National Empowerment Television network. Hosted by Cato president Edward H. Crane, "Cato Forum," featuring prominent guests from the worlds of politics, public policy, and the arts, is a significant step in publicizing the work of the Institute.

Crane said: "Cato is committed to moving into the electronic age. We realize that most Americans get their news and information from the electronic media, and we're determined to be a part of that process. This is a great opportunity for us



Michael Tanner and Edward H. Crane prepare for the second edition of "Cato Forum."

to learn about making our ideas more accessible without sacrificing our commitment to high standards of research and presentation."

"Cato Forum" will deal with such key

public policy issues as taxes and spending, health care, regulation, the environment, education, civil liberties, the First Amendment, drug prohibition, and the risks of military intervention abroad in the post-Cold War era. Excerpts from speeches delivered at Cato Institute conferences by leading policymakers and authors will be featured as well as in-studio interviews and viewer call-ins.

One regular feature is the "Free Forum," a freewheeling discussion group hosted by Cato's executive vice president David Boaz with vigorous debaters from across the political spectrum—liberals, conservatives, and libertarians. Other features include "Environmental Update," "Budget Report," and book reviews.

"Cato Forum" debuted December 9 with Ed Crane and Paul Jacob of U.S. Term Limits discussing the term-limits movement; film from Cato's December 1 conference on "The Politics and Law of Term Limits" was also shown. George F. Will's remarks at that conference were the highlight of the December 23 show.

NET is a satellite network found on Hughes Satellite Galaxy 7, Transponder 20 vertical. It is also carried by cable and low-power TV systems, including some in New York, Georgia, California, Virginia, and Oregon.

As does the policy work of the Institute, "Cato Forum" will challenge the sacred cows of both right and left and maintain a firm commitment to personal and economic freedom.



National Empowerment Television is a 24-hour television channel with state-of-the-art technology.

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Kors Decries Political Correctness

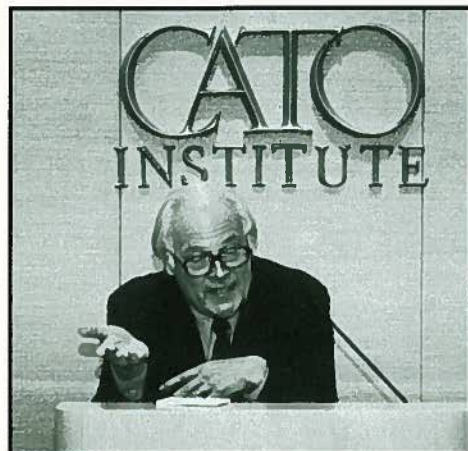
McCain Calls for Withdrawal from Somalia at Forum

Cato Events

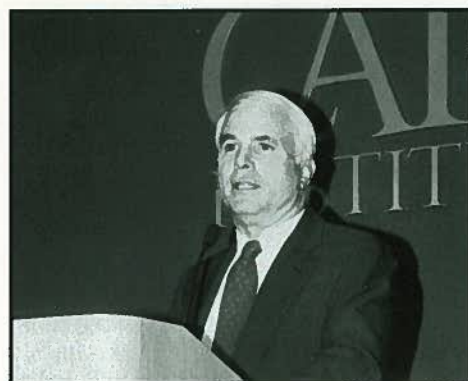
October 20: The ups and downs of property rights in American courts were the subject of a Book Forum with Dennis J. Coyle, assistant professor of politics at the Catholic University of America and author of *Property Rights and the Constitution: Shaping Society through Land Use Regulation*. Coyle called property rights a key protection against oppressive government. Professor Steven Eagle of George Mason University commented that Coyle's thesis would profit from a theoretical derivation of the right to property.

October 21: Sen. John McCain (R-Ariz.) indicted the Clinton administration's conduct of foreign policy at a Policy Forum entitled "Somalia: Time to Bring U.S. Troops Home?" McCain said that the initial humanitarian effort in Somalia was incorrectly changed into a nation-building military mission that is unrelated to the national interest.

October 26: "Looking for Trouble? Expanding NATO into Central and Eastern Europe" was the subject of debate at a Policy Forum. Jeffrey Simon, senior fellow at the National Defense University, called for gradual involvement of the East European nations and former Soviet republics in the alliance. Charles William Maynes, editor of *Foreign Policy* and a former State Department official, cited the many prob-



Richard Cornuelle calls for freeing the nonprofit sector from government control.



Sen. John McCain criticizes the Clinton administration's policy in Somalia at a Cato Policy Forum.

lems that expansion would raise, especially the question of whether Russia should be included.

November 10: Richard Cornuelle spoke at a Book Forum honoring the reissue of his classic, *Reclaiming the American Dream*, first published 30 years ago. He said society's nonprofit sector must free itself from government control and called for more research on the extent, cost-effectiveness, and constitutional standing of that sector.

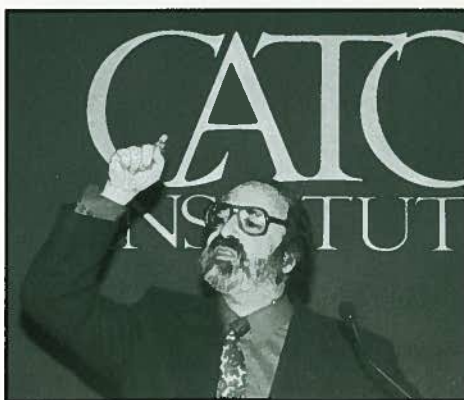
November 15-16: **The Shadow Securities and Exchange Commission**, cosponsored by Cato, held its fourth annual meeting. The watchdog group discussed the SEC's Market 2000 study of the structure of U.S. equity markets and the Financial Accounting Standards Board's proposal on proper treatment of stock options granted as executive compensation. Cato cosponsors the Shadow SEC with the Bradley Policy Research Center of the University of Rochester's William E. Simon Graduate School of Business. The commissioners are Chairman Charles C. Cox, former acting chairman of the SEC; Nobel laureate Merton H. Miller; and Professors Ronald J. Gilson, Hans R. Stoll, and Gregg Jarrell.

November 17: Professor Alan Kors of the University of Pennsylvania, a critic of campus speech codes, examined "Double Standards and Academic Freedom" at a Policy Forum. He criticized the hypocrisy of former student advocates of free speech on campus who have become faculty advocates of politi-

cal correctness and now demand respect for only certain privileged groups. Kors said that the cause of the 1990s is the "emancipation of students."

December 1: "The Politics and Law of Term Limits" was the theme of a conference held in the F. A. Hayek Auditorium. The keynote address was given by syndicated columnist George F. Will. Panels on the politics and constitutionality of state-passed congressional term limits featured Paul Jacob, executive director of U.S. Term Limits; Becky Cain, president of the League of Women Voters; Mark P. Petracca of the University of California, Irvine; Thomas E. Mann of the Brookings Institution; attorneys Lloyd N. Cutler and John G. Kester; Daniel H. Lowenstein of the University of California, Los Angeles; and Ronald D. Rotunda of the University of Illinois.

December 6: The Institute cosponsored a conference on "Ethical and Policy Issues in Health Care Reform: Alternative Visions" with Harvard Medical School and Beth Israel Hospital of Boston. The conference, which was held at the hospital, featured Richard Epstein of the University of Chicago Law School; Marcia Angell of the *New England Journal of Medicine*; John Goodman of the National Center for Policy Analysis; Troyen Brennan, Ezekiel Emanuel, and Rashi Fein of Harvard Medical School; Loren Lomasky of Bowling Green State University; and Roger Pilon, director of Cato's Center for Constitutional Studies. ■



Alan Kors of the University of Pennsylvania decries political correctness on campus.

"Telecompetition" Is Coming

Let Private Companies Build the Information Highway, Book Says

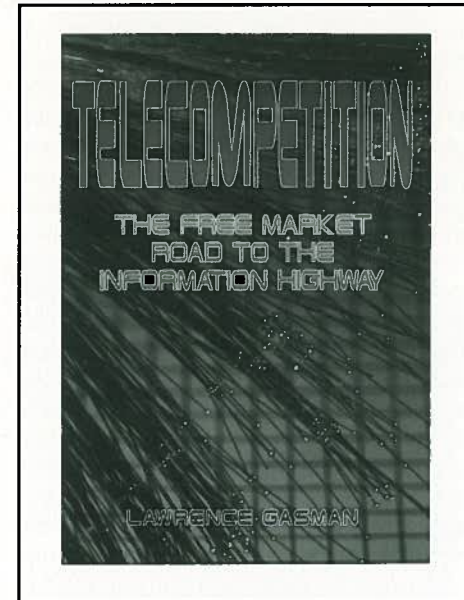
A new book from the Cato Institute calls for sweeping deregulation of telecommunications to give the American people access to the cornucopia of information and entertainment that government policies threaten to bottle up. In *Telecompetition: The Free Market Road to the Information Highway*, communications analyst Lawrence Gasman argues that the best way to gain the benefits of new information technology is not to build a government-backed "communications superhighway" but to follow a policy of free markets, deregulation, property rights, and protection of First Amendment freedoms. The most important role for government is to protect property rights, then stand back and watch as new technologies break through the boundaries of old regulations, Gasman writes.

Gasman's book is a badly needed look at and answer to current developments. The Clinton administration is considering spending billions of taxpayers' dollars to build an "information superhighway" that private companies are champing at the bit to build at no cost to taxpayers. Meanwhile, cable and telephone companies are both protected from competition and forbidden to enter new markets.

Gasman discusses such key issues as deregulating the Baby Bells, spectrum auctions, First Amendment rights for broadcasters, and the national data highway. *Telecompetition* shows that bureaucrats have neither the knowledge nor the incentive to intelligently guide the information revolution.

Today's information revolution is driven by three smaller revolutions in micro-electronic, digital, and optical technology. The microelectronic revolution, based first on the transistor and then the micro-processor, has given us word processors, programmable VCRs, "featureful" home telephones, and personal computers, all of which have moved computing power away from a technical elite and closer to the average citizen. The digital revolution allows information in any form—even graphics and sound—to be processed by machines. And the fiber-optic revolution means that much more information can be transmitted simultaneously.

Together, those technological changes



are erasing the boundaries that have separated voice, video, text, and data communications. Technological changes are making regulatory policy as obsolete as dial telephones and vacuum tubes. Regulations have been based on the outmoded notions of natural monopoly, spectrum scarcity, and captive audiences—none of which seem very compelling in the modern era of telecompetition.

With the regulatory stranglehold on telecommunications actually tightening in some ways—such as the 1992 Cable Act—even as the free market struggles to bring modern technology to all our homes and offices, *Telecompetition* is a valuable argument for individual liberty and free markets.

Lawrence Gasman is president of Communications Industry Researchers, Inc.

Author Peter W. Huber says that "Lawrence Gasman's broad-ranging vision of a deregulated, broadband telecommunications market will be realized sooner than many expect. 'Telecompetition' is coming. Gasman's provocative, readable book will help to speed its arrival."

Telecompetition is available from Cato Institute Books for \$22.95 cloth, \$12.95 paper. Call 1-800-767-1241 toll-free between noon and 9 p.m. eastern time. ■

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Putting Investment Tax Credits in Perspective

by Richard F. Adair

Before taking office, President Clinton advocated an investment tax credit on the purchase of equipment. The proposal has since been shelved, at least temporarily. In the midst of the current preoccupation with the budget deficit and the proferring of massive tax increases, undoubtedly the administration would consider it impolitic to mix its message with targeted tax breaks for selected interests. Still, investment tax credits historically have commanded strong bipartisan support, and they lend themselves readily to the populist rubric of job creation. So it is reasonable to assume that investment tax credits in some form soon will find their way back onto the national agenda.

The president and his advisers usually mention tax credits as necessary for American competitiveness, a generally healthy though somewhat ambiguous purpose. Occasionally, they hint at discouraging plants from moving abroad, a goal with ominous protectionist overtones. And given the predilection of the president's advisers for industrial policy (whether or not they choose to call it that), there is a strong possibility that the administration will propose a set of investment tax credits as part of an overall tax policy designed to control the flow of capital in the private sector. Tax credits, like subsidies, can be a powerful political tool.

When the government rewards a business monetarily for engaging in a particular activity, there is a resulting redistribution of wealth. When the reward takes the form of a subsidy, the redistribution is more obvious than when it takes the form of a credit against a company's tax bill. Either way, the short-term consequences are zero sum. The funds given or credited to a manufacturer could have been spent on a government program that will now require additional revenue, or they could have been returned to the taxpayers in the form of a tax cut. So the manufacturer wins and the taxpayer loses. In the long run, the net economic benefit or loss may be determined only by comparing the return on the tax credit with the

Richard F. Adair is a lawyer and policy analyst in Boston.

returns that would have been realized had the money been spent elsewhere—a speculative determination.

When a business decides to spend money, the intent is to maximize the return on investment. If government does nothing to influence that decision, there is no guarantee that resources will always be allocated most efficiently, but those best able to project the value of their investments are the most successful, so the tendency of the free market is to optimize allocation of resources. When government imposes a tax credit on an otherwise free market, it disrupts the optimizing tendency, reducing the value of future production. Of course, we do not have a strictly free market to begin with. Government taxing and spending already affect investment decisions, and in that context, an investment tax credit is not an entirely bad idea.

The Investment Tax Penalty

The American tax system penalizes investment in plant and equipment as well as other capital assets. Current expenses of a business are fully deductible from gross income, and the cost of equipment is deducted over the period of its useful life as its value depreciates. That *seems* fair enough. However, tax depreciation schedules put capital investments at a disadvantage relative to current expenses because those schedules fail to account for the diminished present value of a future tax deduction.

To illustrate, assume that the owners of a manufacturing company have decided that they could sell more than they currently produce, but in order to increase production they will have to spend some money. Two proposals are under consideration: replacing existing production machinery with new equipment that will produce more per man-hour and adding a third shift. Projected sales will not justify doing both, so the owners must decide to do one or the other. They will make their decision on the basis of a calculated return on investment. If their judgment is sound, and if tax considerations do not influence their decision, they will make the most economical choice, leaving unused resources to be employed elsewhere.

But tax considerations do influence their decision. Wages and other expenses paid to support a third shift are deductible when they are incurred. Depreciation expenses are deductible over time. If someone gives up the use of funds for a period of time, it is usually in exchange for interest paid as compensation for lost opportunities to use the funds. That is true even if no inflation is anticipated. For business, that opportunity cost could result in unrealized profits that were not foreseen at the time the funds were committed. That is why financial analysts apply a discount rate, sort of a mirror image of the prevailing interest rate, to calculate future returns in terms of present value. When the owners of our hypothetical business include tax deductions in their calculation of return on investment, the discounting of future depreciation allowances will bias their decision toward a third shift, the cost of which is fully deductible when paid. Limiting total depreciation allowances to the purchase price of a capital asset amounts to a tax penalty on the investment.

From time to time, two gimmicks have been introduced into tax codes to offset the investment penalty. One is accelerated depreciation, which brings the present value of scheduled deductions closer to cost. The other is an investment tax credit, which allows a business to recover some of the cost up front. It would be much more effective and equitable just to add to depreciation schedules the fair market discount rate in effect at the time of the purchase. That solution would completely eliminate the tax penalty on investment and neutralize the tax code's effect on capital investment decisions. It also would prevent government from attempting to use tax policy to manage the economy, which may explain why discounted depreciation schedules have not been implemented. In any case, those schedules could best be implemented at the federal level. As a practical matter, state tax authorities generally abide by federal depreciation schedules. That leaves open the question of whether or not investment tax credits are good economic policy at the state level, given the current federal tax context.

Investment tax credits can have desirable economic effects. They offset the hidden tax penalty on capital investments and thereby influence investment decisions to come closer to the optimum allocation of resources that would be encouraged by a free market. However, an investment tax credit can concurrently achieve undesirable economic consequences if it encourages investment decisions that would not be made in a free market. Therefore, except for correcting for the investment penalty, an investment tax credit should be designed for minimal effect on business investment decisions. For best effect, the credit should apply to all depreciable assets, not just to plant and equipment. The credit also should be permanent so that it will not stimulate "window of opportunity" investments. General and permanent investment tax credits work better than targeted and temporary investment tax credits.

Single-Entry Bookkeeping

Even a general and permanent investment tax credit cannot guarantee the often-promised stimulus for employment. There is a long-standing but fallacious Keynesian doctrine that government can use fiscal policy to stimulate the economy. The doctrine is based implicitly on a sort of single-entry bookkeeping. Any transfer of funds will result directly or indirectly in the creation of specific jobs. Money spent on a government program will employ government workers or private vendors of goods or services used by government. Subsidies or tax credits for specific private activities will employ people engaged in those activities. Even transfer payments to individuals will lead to employment of people who sell things to the recipients of those transfer payments. An across-the-board tax cut creates specific jobs too, by putting money back in the hands of taxpayers. How they choose to spend or invest that money will determine what new jobs will be created. But resources are limited, and any change in taxing or spending by government allocates some of the resources available. So when politicians point with pride to the specific jobs their wise policies have created, the causal relationship between those policies and jobs lost elsewhere is not always apparent, and the jobs that could have been created by an alternative allocation of resources, such as our hypothetical manufacturer's third

shift, remain forever invisible.

The real justification for cutting taxes is economic freedom, not the specious claim of a stimulus to employment. In a marketplace unencumbered by onerous taxes and regulations, return on investment is maximized by providing the greatest value to customers at the lowest cost, not by influencing public policy. Therefore, lower taxes will ultimately result in a wealthier, more productive economy that produces more jobs. In the short run, however, a tax cut or tax credit, like any

"How ironic that some businesses have to bribe government officials in order to move into town while others are being bribed with the taxpayers' money to do the same thing."

other transfer of funds, creates some jobs at the expense of others. The initial net increase, or decrease, in employment is not likely to be significant. Although investment tax credits may sometimes serve as a partial correction for flaws in the tax system, their potential for stimulating employment must be evaluated in the light of jobs likely to be lost as well as jobs likely to be created.

Even the most general and permanent investment tax credits encourage growth in manufacturing industries at the expense of growth in service industries. That happens because of the generally higher ratio of equipment cost to output in manufacturing. Because investment capital is limited, any sweetening of the pot for manufacturing will reduce development of service industries. Therefore, jobs lost in the service sector should be considered as offsetting any gains in manufacturing employment, as should any other jobs the state, or taxpayers, would have generated with the lost

revenues.

However, it is not a foregone conclusion that an investment tax credit will result in more manufacturing jobs. Tooling up to produce something new usually increases net employment in manufacturing, but buying better equipment to manufacture the same product often eliminates jobs. The more capital intensive a business, the less labor intensive. That means the manufacturer either employs fewer workers or increases sales, and when one employer's sales increase, absent a rise in total demand for the product, another employer's sales decrease. Greater productivity and healthy competition are of great economic benefit, but they do not necessarily result in a net increase in manufacturing jobs, nor should they be expected to.

Within the manufacturing sector, more capital investment usually results in more jobs for workers with high skill levels and fewer jobs for unskilled workers or workers whose skills are obsolete. Even if those workers are trainable, or retrainable, there is no sense training them for manufacturing jobs that do not exist. Newer plant and equipment will mean greater output from fewer workers, at least initially. Eventually, new and improved products at lower cost will mean increased demand, but even with optimum progress there is no guarantee that total manufacturing employment will increase. However desirable manufacturing may be, government attempts to stimulate it with fiscal gimmicks may unbalance the economy and starve for cash the service industries that should have picked up the slack in employment. If that happens, the poor will see one more rung removed from the ladder to economic success.

One other claim is made for investment tax credits at the state level, that they will attract manufacturers to locate, or relocate, in the state. Obviously, there is some truth to that claim. State A can attract a company that otherwise would have settled in state B, and state B's loss is state A's gain. Of course, state B will then offer something else of value to another company that otherwise would have located in state A. Pretty soon, lobbyists will be going from state to state behaving like agents for professional athletes. "What'll you give my client to move here? Can you beat state B's latest offer?" How ironic that some businesses have to

(Cont. on p. 8)

Tax Credits (Cont. from p. 7)

bribe government officials in order to move into town while others are being bribed with the taxpayers' money to do the same thing. Yes, an investment tax credit is one factor that might attract new business to a state, but if it becomes part of a bigger game of competition among states, then business profits will come to depend more on successful negotiations with politicians than on productive efficiency. When that happens, both taxpayers and consumers suffer.

The Twin Myths

The political compulsion to bolster manufacturing employment is driven by two myths that have been foisted upon the public by the cheerleaders for "industrial policy." One myth is that fewer manufacturing workers means that "we don't make anything any more." The other myth is that the service sector consists of low-paid hamburger flippers and people who take in laundry. To be sure, many problems beset American manufacturing. Nevertheless, ours is still the most productive economy on earth. The same technological progress that makes us so productive often reduces the number of factory workers needed. (If that is a problem, investment tax credits clearly are not the solution.) But just as the decline in the number of farm workers was more than offset by new jobs in everything from food processing to supermarkets, the decline in the number of factory workers is being more than offset by new jobs in the service sector.

The dividing lines between sectors are blurred. Many service jobs are being created within manufacturing concerns. Increased productivity means less of the value of goods is contributed by direct labor and more by finance, promotion, distribution, inventory control, cost accounting, communications, transportation, and the like. As a result, more products are available to more people at greater convenience than ever before. Greater productivity also means there is more money to spend on leisure, entertainment, travel, home improvement, or whatever. While some service jobs pay less than manufacturing jobs used to pay, others pay a great deal more. The proliferation of low-paying jobs per-

formed primarily by teenagers, retirees, and employees who work part-time and "mother's hours" in fast food restaurants skews the average deceptively. Those jobs could not exist without a larger working population to be served. In the better paying service jobs, knowledge is becoming the ticket to success. If that leaves large numbers of people behind, the fault is with the educational system, not the changing job market. Tragic as the loss of obsolete manufacturing jobs may be to those who held them, a shift of employment to the service sector is a sign, not of economic weakness, but of progress.

Free-Market Fiscal Policy

Investment tax credits may be good for the economy if they are implemented as part of a long-term policy of correcting economic distortions caused by a faulty tax code. On the other hand, if they are implemented as part of a misguided "industrial policy"—an attempt to restore the manufacturing jobs of a bygone era—the intended result is neither achievable nor desirable. At the federal level, there are far more effective policies available to neutralize the tax code and encourage market-driven investment. Initiatives by state governments are much more limited in potential, partly because of the desirability of uniform accounting standards and partly because the state tax structure is much less significant to business investment decisions than is the federal. In the long run, states can undoubtedly have greater success in encouraging new business by lowering income, sales, corporate, and property taxes than by instituting invest-

ment tax credits. But the form of a tax change is not as important as the strategy behind it. Constantly tinkering with the tax code in an attempt to fine-tune the economy only encourages investors to make quick profits by taking advantage of mercurial tax breaks in an environment in which it does not pay to give thought to the day after tomorrow. Instead, tax policy should seek to have a minimal influence on when, where, and how financial resources are invested.

Finally, the total tax take should be lowered; the level of taxes cannot be divorced from the level of government spending. The public sector, however good its intentions, cannot hope to duplicate the drive toward optimum allocation of resources that is inherent in a free market. Therefore, the greater the share of our resources left in the private sector, the more prosperous our society will be. We hear much about the pain of budget cuts and how they fall disproportionately on the poor. But government spending *always* entails opportunity costs that ultimately fall even more disproportionately on the poor. Perhaps understanding that will ease our consciences. Over the long run, lower and less discriminatory taxes would free the economy to produce greater prosperity and more jobs.

Investment tax credits can help, but only in the awkward, imprecise way of patching up a bad system. They should never be considered a tool for government economic tinkering. They may help offset the tax penalty on capital investment, but as a quick stimulus to employment, investment tax credits will always be a failure. ■

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*George Will Keynotes Conference***Panelists Debate Wisdom, Legality of Term Limits**

Top advocates and opponents of congressional term limits crossed swords December 1 at a Cato Institute conference on "The Politics and Law of Term Limits." A capacity crowd gathered in the F. A. Hayek Auditorium to hear activists, lawyers, and academics debate whether limiting congressional terms makes political sense and whether it is consistent with the U.S. Constitution. Syndicated columnist George F. Will gave the keynote address. Once an opponent of term limits, Will said that the reform would curtail Congress's hypersensitivity to interest-group politics and enable members to be more deliberative. He also said that term limits would shift the balance of power from the presidency to the Congress, where the framers of the Constitution placed it.

In the opening panel on politics, Paul Jacob, executive director of U.S. Term Limits, emphasized that the American people overwhelmingly favor limiting congressional terms, not because of sheer frustration, but because they "think it is sound public policy." Mark P. Petracca of the University of California, Irvine, noted that rotation in office is an idea that has been associated with republican government since Aristotle. He also rebutted the claim that term limits would squander valuable experience, arguing that they would open the political process to people with worthwhile experience in areas other than politics.

On the opposing side, Becky Cain, president of the League of Women Voters, argued that term limits is a simplistic



Becky Cain of the League of Women Voters and Thomas Mann of the Brookings Institution make the case against term limits at Cato's December 1 conference.

reform that fails to distinguish between good and bad legislators. "We already have term limits," she said. "They are called elections." Thomas E. Mann of the Brookings Institution said that proponents of term limits have failed to make a solid case that changing the rules would bring good results. Term limits, he said, would not solve the problems identified by those who favor them.

On the constitutional issue, attorney Lloyd N. Cutler noted that the framers rejected term limits, although they had been in the Articles of Confederation, and that the Supreme Court has definitively ruled that the Constitution specifies the

qualifications for Congress. Daniel H. Lowenstein of the University of California, Los Angeles, argued that term limits would violate freedom of association and equal protection, which are guaranteed by the Constitution, by keeping people off the ballot merely because they had served the specified number of terms.

John G. Kester, attorney for U.S. Term Limits, responded that the term-limits initiatives that have been passed are actually ballot-access rules and that the Supreme Court has said that states can make such rules. Ronald D. Rotunda of the University of Illinois said that the Constitution sets minimum, not exclusive, qualifications in its age, citizenship, and state residency requirements. He said that if states were not allowed to add qualifications, many long-standing practices would have to be voided, such as the drawing of congressional districts, which are not mentioned in the Constitution. Much of the argument among the lawyers was over how narrowly or broadly Supreme Court cases should be interpreted.

Roger Pilon, director of Cato's Center for Constitutional Studies, concluded the conference by noting that the term-limits controversy, now pending in the courts, will soon affirm Alexis de Tocqueville's observation, "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." ■



Former White House counsel Lloyd Cutler argues that state-imposed term limits are unconstitutional.



Paul Jacob of U.S. Term Limits listens as political scientist Mark Petracca traces the roots of term limitation to Aristotle and the American Founders.

Property Rights (Cont. from p. 1)

does in fact continue, we will be joining the movement that is taking hold around the world today toward recognizing the fundamental place and importance of property rights in any society that calls itself free. If Boris Yeltsin can at last take the first steps toward securing property rights in Russia, as he did in late October, should the United States Congress, which itself emerged from a struggle to secure our rights to property, be any less concerned to return us to our own roots as a nation?

The Rise and Fall of Property Rights

To appreciate the significance of this legislation, it may be useful to review very briefly some of the historical and theoretical issues that surround it. The legislation has been introduced, of course, because property owners across this land are increasingly dismayed over restrictions that governments are placing on their ability to use and enjoy their property—seemingly in violation of the plain words of the Constitution. Yet this state of affairs did not arise out of nothing. It has a history and a rationale that deserve our scrutiny.

Perhaps no one has put the right to property more succinctly than the principal author of our Constitution, James Madison, who wrote in 1792 that “as a man is said to have a right to his property, he may be equally said to have a property in his rights.” Pointing clearly to the intimate connection between rights and property, Madison was simply reflecting the common understanding of his time, which found its own roots in Roman law, in the Magna Carta, in English common law, and in the works of writers ranging from Bracton to Coke, Blackstone, Locke, and many others. Because of his profound influence on our founding generation, in fact, John Locke can be said to have been the philosophical father of the American Revolution, and of the Declaration of Independence in particular. Indeed, it was Locke who showed that all rights could usefully be reduced to property: “Lives, Liberties and Estates, which I call by the general Name, *Property*.” Thus, if rights are property, violations of rights

are takings of that property—whether lives, liberties, or estates.

Over time, those fundamental insights, derived from the theory of natural rights, found their way into the basic law of our land—the Constitution and the Bill of Rights. The Fifth and Fourteenth Amendments, for example, prohibit government from depriving individuals of life, liberty, or property without due process of law. And the Fifth Amendment, later applied against the states through the Fourteenth Amendment, prohibits government from taking private property for public use without just compensation. The Constitution, then, does not prohibit government from taking private property: the power of

“The Court’s understanding of ‘property’ in takings law is inconsistent with the definition of ‘property’ that every first-year law student learns.”

eminent domain is what the Fifth Amendment’s takings clause implicitly authorizes. What it prohibits is taking property without compensating the owner for the property taken, without making the owner whole.

Known in the 17th and 18th centuries as “the despotic power,” eminent domain was so called because no individual, whether in a state of nature or in civil society, could ever legitimately exercise such a power, however noble his motives. Nevertheless, when we constituted ourselves we gave government that power, not because it was inherently legitimate but because without it certain public ends might be difficult to achieve efficiently because of high transaction costs. As a mark of the inherent illegitimacy of the power, however, and as a brake on its excessive use

and on the expansion of government generally, we insisted that those whose property would be taken under the power be justly compensated. After all, no individual should be made to bear a disproportionate share of the cost of the public’s appetite, especially when his involvement in the transaction is involuntary to begin with. Moreover, the public’s appetite would be boundless if its indulgence cost the public nothing.

When the power of eminent domain has been used to condemn outright a piece of property—to build a road or a public school, for example—courts have had little difficulty applying the Fifth Amendment’s takings clause to award compensation to the owner. With the rise of the regulatory state over the course of this century, however, courts have been presented with so-called regulatory takings—cases in which governments have taken the uses that go with a piece of property, leaving the underlying estate in the hands of the owner. Sometimes the regulations are so restrictive that the estate that remains is worthless, yet the property “itself” has not been taken, it is argued, and so no compensation is owing under the Fifth Amendment’s compensation requirement.

From Ad Hoc to Principled Jurisprudence

Faced with such cases, the Supreme Court has fashioned a takings jurisprudence that simply will not withstand serious scrutiny, yet it is the jurisprudence with which we try to live today. In a nutshell, recognizing that regulatory takings can be every bit as destructive to the interests of an owner as outright condemnations, the Court has said, in effect, that if a regulation takes the entire value of a holding—as in the recent case of *Lucas v. South Carolina Coastal Council*—the government entity responsible for the regulation must compensate the owner just as if the underlying estate had been condemned. It is appalling that there are those who believe that the Court’s holding on this is “too deferential” to the individual. Yet the Court has captured not even the letter, much less the spirit, of the takings clause.

Indeed, in *Lucas* the Court itself recognized that with regulatory takings the situations in which “government has deprived a landowner of all economical-

ly beneficial uses” are “relatively rare.” Far more often a regulation will have taken 25, 50, 75, even 95 percent of the value of a holding. Yet under the Supreme Court’s current jurisprudence, the owner may get nothing—to which the Court has said, in shocking indifference to the plain meaning of the Constitution, “Takings law is full of these ‘all-or-nothing’ situations.”

Plainly, where the Court has gone wrong is in its implicit definition of “property.” Equating “property” with the underlying estate alone—absent its uses—the Court has said in essence that only when regulation reduces the value of that estate to zero does a taking occur. That definition, however, is inconsistent with the Court’s understanding of “property” in other contexts, with private divisions of property through contracts, wills, trusts, and other legal instruments—indeed, with the definition of “property” that every first-year law student learns, virtually from the first day. “Property,” as Madison, Locke, and almost every other commentator on the subject has seen, includes not simply the underlying estate but all the uses that go with it, all the uses that give that estate value. Take one of those “sticks” in that “bundle of sticks” and you have taken something that *belongs* to the owner of the estate. That is what Madison meant when he spoke of our having a property in our rights.

But the Court has gone wrong in another way as well. For to understand the takings clause it is not enough simply to clarify the definition of “property.” In addition, the eminent domain power, which is what the clause is about, must be related to the police power—that cardinal mark of sovereignty. Acting under the police power—to secure rights—governments may legitimately condemn uses—may even condemn the underlying estate—and no compensation is due the owner. Plainly, if the police power is construed broadly, it can swallow the compensation requirement of the takings clause. That is precisely what has happened over the course of this century.

To properly apply the takings clause, therefore, the police power and the eminent domain power must be related in a principled and consistent way. To do that, however, we must go to the roots of the police power, which Locke—and rea-

son—tells us are in the executive power that each of us has in the state of nature, the power to enforce our own rights. That is the *ground* of the power. But that ground also sets the *bounds* of the power, for no one may enforce rights he does not have—or yield up to the state any such power to be exercised on his behalf.

When properly derived and drawn, then, the relation between the police power and the power of eminent domain is simple and straightforward. Government, as the Declaration of Independence tells us, is instituted to secure our rights: that much it may do under the police power. Acting under that power, government may condemn or take a use that is inconsistent with the

“When government seeks to secure various ‘public goods’ by condemning otherwise legitimate uses of property, it must pay for those goods, just like any private citizen.”

rights of others—as when it orders the abatement of a nuisance—and no compensation is owing to the individual whose use is taken, for he had no right to engage in that activity in the first place. Thus, a significant range of environmental and safety regulations can be justified under the police power, simply from a consideration for the rights of others.

But when government goes further, when it seeks to secure various “public goods”—from lovely views, to below-market rents, to the preservation of everything from historic sites to countless flora and fauna—and to do so by condemning otherwise *legitimate* uses, it must act under the power of eminent

domain. It must *pay* for those goods, just as any private citizen would have to pay for them. Unlike private citizens, government under our Constitution can get what it wants through condemnation. Given that “despotic power,” for government to condemn the legitimately held property of its citizens and then *not* pay for what it has taken simply adds insult to injury. It is the very mark of illegitimate government.

Unfortunately, all too much of that illegitimacy is with us today. And it will not disappear until the Court comes to grips with its 70-odd years of “essentially ad hoc” regulatory takings jurisprudence. What this private property legislation can do, then, is prod the Court in the right direction by bringing to the surface—for all to see, including potential plaintiffs—at least some of the costs of the all-but-endless federal regulations that restrict property owners over the length and breadth of this land. Today, those costs fall silently on the backs of individual owners, who too often are in no position to litigate to recover them. But that silence is coming to an end. As the regulatory burden in this country continues to grow—as it must, given that most regulations today are “free” to those who benefit from them—owners will become ever more vocal. They will increase their volume until the Court finally gets it right, until the Court returns us to the true foundations of our Republic. If legislation will hasten that process by focusing light on the problem, it is to be welcomed. ■



Roger Pilon testifies on property rights before a House Agriculture subcommittee in November.

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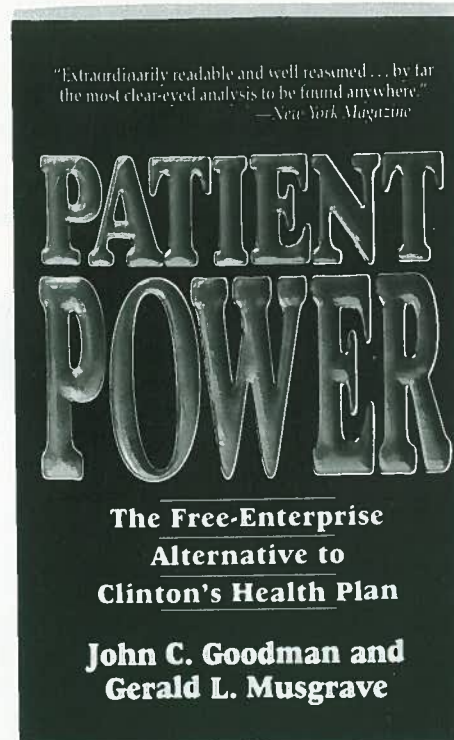
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Did "Pursuit of Happiness" Mean Equal Health Care?

Ideas on Health Care, Ethics Clash at Cato Seminar In Boston Cosponsored with Harvard Medical School

With the debate on health care reform increasingly bogged down in details, the Cato Institute returned to first principles with a forum on "Ethical and Policy Issues in Health Care Reform: Alternative Visions" on December 6 at Beth Israel Hospital in Boston. More than 200 people, mostly members of the medical community, attended. The forum, which was cosponsored by the Harvard Medical School's Division of Medical Ethics and Beth Israel Hospital, presented a dialogue between proponents of two radically different visions of health care reform: those who think that health care is a "fundamental right" and that government should, therefore, control the health care delivery system and those who believe that health care decisions should be made by individual consumers in a competitive marketplace.

The lively and sometimes raucous four-hour forum covered a host of ethical, philosophical, legal, and medical issues. Four speakers delivered prepared remarks: Richard Epstein of the University of Chicago Law School spoke on "Universal and Comprehensive Health Care in an Age of Scarcity"; Marcia Angell, executive editor of the *New England Journal of Medicine*, discussed "Health Care: Commodity or Social Good?"; Ezekiel Emanuel, of the Division of Medical Ethics and a member of Hillary



John Goodman (left) debates medical economics with Rashi Fein of Harvard Medical School.

Clinton's health care task force, defended "Why Health Care Should Be Socially Guaranteed"; and Roger Pilon, director of Cato's Center for Constitutional Studies, took the opposing side.

Commenting on those presentations were Troyen Brennan of Harvard's School of Public Health; John Goodman, president of the National Center for Policy Analysis and coauthor of the Cato book *Patient Power*; Loren Lomasky, professor of philosophy at Bowling Green State University in Ohio; and Rashi Fein, professor of the economics of medicine at Harvard Medical School.

Angell argued that health care is a "social good" rather than a commodity and therefore cannot be properly allocated by the marketplace. She said health care is so important that individual consumers are incapable of making distinctions based on price or quality. "You would sell yourself into slavery if it would save your daughter's life," she told a questioner who asked about the choice between an expensive ambulance ride and driving her daughter to the doctor. However, Epstein pointed out that Angell was vastly oversimplifying the health care decisionmaking process and failing to account for marginal utilities. "You wouldn't sell yourself into slavery," he said, "if a cab ride would suffice."

Emanuel claimed that America's founding principles were based on the idea of creating "a level playing field"

for all Americans. Jefferson's use of the phrase "pursuit of happiness" in the Declaration of Independence, he said, was recognition of government's role in establishing equality. Emanuel contended that because some Americans are born healthy or into wealthy families while others are born poor or with disabilities, government has a fundamental obligation to equalize the health care that they receive.

Pilon vigorously disputed Emanuel's interpretation of Jefferson's philosophy. He pointed out that Jefferson clearly understood that the fundamental rights of individuals were the rights of property and contract. Lomasky argued that the differing values on display were evidence that no uniform system is practical in a diverse society.

Fein contended that people sometimes have to sacrifice their individual rights to the greater good of the community. Pilon pointed out that what Fein was actually arguing was that the community has the right to use people for its own ends. Fein responded that those ends were determined by the democratic process. But Pilon noted that America was never intended to be a pure democracy and that, indeed, the Constitution provides numerous safeguards against majoritarianism.

Excerpts from the forum were broadcast on "Cato Forum" on National Empowerment Television.



Richard Epstein dismisses the Clinton health plan at Cato's conference cosponsored with Harvard Medical School.



Troyen Brennan listens as Marcia Angell of the *New England Journal of Medicine* analyzes health care as a "social good."

NED Accused of Overseas Meddling

NAFTA Won't Boost Regulation, Study Says

Cato Studies

Contrary to the claims of conservative critics, the North American Free Trade Agreement will not toughen domestic environmental law or establish an international body with the power to restrict the sovereign rights of the United States, concludes Jerry Taylor, Cato's director of natural resource studies, in "NAFTA's Green Accords: Sound and Fury Signifying Little" (Policy Analysis no. 198). Taylor compares the charges of the conservative critics of NAFTA with the actual language of both the agreement and the side agreement on environmental cooperation. A careful reading, he says, shows that the fears of such critics as Pat Buchanan and the Competitive Enterprise Institute are groundless. Taylor points out, for example, that the widely cited words "upward harmonization of environmental law" appear nowhere in either document and cites paragraph after paragraph in support of his conclusion that NAFTA will not entail a surrender of American sovereignty.

"Examination of the green accords of NAFTA makes clear that the treaty will have little direct impact on environmental policy," Taylor says. "That does not, however, render the green language of the treaty harmless. It sets a potentially dangerous precedent: only if there is a level environmental playing field can trade between nations be deemed 'fair.' Moreover, it provides for yet another international bureaucracy with the not insubstantial power to publicly campaign for 'greener' national planning." NAFTA is not as good as it could have been, he writes, but "the benefits are substantial. . . . Free traders should accept the political reality and not allow the best, so to speak, to be the enemy of the better."

United States Should Avoid Nuclear Crossfires

Washington's obsession with preventing nuclear proliferation, combined with the doctrine of extended deterrence, threatens to put the United States on the front lines of regional disputes in which one or more of the parties have nuclear

weapons, writes Ted Galen Carpenter, Cato's director of foreign policy studies, in "Staying Out of Potential Nuclear Crossfires" (Policy Analysis no. 199). Carpenter emphasizes that, although extended deterrence may reduce the likelihood of regional conflicts, it also guarantees that the United States will be entangled in any conflict that does erupt. Moreover, shielding nonnuclear clients from unpredictable regional adversaries may prove to be more difficult and dangerous than deterring Soviet aggression was during the Cold War.

Carpenter examines the tense confrontations between the two Koreas, Pakistan and India, and Russia and Ukraine as examples of quarrels that could easily go nuclear. He concludes that, instead of clinging to outdated and probably dangerous policies, U.S. leaders can pursue a number of worthwhile, low-risk initiatives to reduce the chances of nuclear calamity. They can

- further reduce America's own oversized arsenal to help create a less threatening global environment and weaken the argument that other states need nuclear weapons to prevent intimidation by the United States;
- extend the moratorium on U.S. nuclear tests to foster a less confrontational atmosphere;
- encourage the establishment of nuclear-free zones in such regions as South America and Sub-Saharan Africa where no nation currently possesses nuclear weapons or seems on the brink of doing so; and
- in cases in which two or more regional rivals already have arsenals, help those nations to develop reliable command-and-control systems to prevent accidental launches or the theft of weapons by terrorist organizations and assist such adversaries to articulate defensive nuclear doctrines to minimize the chances of miscalculation.

NED Is a Foreign Policy Loose Cannon

The government-funded but privately run National Endowment for Democracy meddles in the political processes of other countries and sometimes even undermines official U.S. foreign policy,

reports Barbara Conry, a foreign policy analyst at the Institute, in "Loose Cannon: The National Endowment for Democracy" (Foreign Policy Briefing no. 27). Conry documents NED's widely resented interference in elections in Nicaragua, Chile, and Czechoslovakia and reveals how the endowment's activities have actually worked against democratic values in Panama, Costa Rica, and Romania.

Conry goes on to point out that there is gross financial mismanagement at all levels of NED. Studies by the General Accounting Office and the U.S. Information Agency, as well as NED's own internal audits, have uncovered numerous disbursements for first-class air fare, alcoholic beverages, and other perks of political junketing. She concludes that, with the end of the Cold War, NED's existence can no longer, if it ever could, be justified and that Congress should eliminate funding for the endowment.

Regulatory Burdens Hurt Small Business

The red tape with which dry cleaners must contend is typical of the regulatory problems faced by all small businesses, argues Jonathan H. Adler in "Taken to the Cleaners: A Case Study of the Overregulation of American Small Business" (Policy Analysis no. 200). Adler, an environmental policy analyst with the Competitive Enterprise Institute, demonstrates that small businesses suffer disproportionately from overregulation. The dry-cleaning industry—with its mom-and-pop and recent-immigrant proprietors—is particularly vulnerable. By describing the specific plight of that industry, Adler sheds light on the larger problem of regulatory policy's undeclared war against American small business. ■

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Shadow SEC Backs Stock Exchange Competition

Increased stock exchange competition is good, the Shadow Securities and Exchange Commission resolved during its fourth annual conference, held November 15 and 16 in Cato's F. A. Hayek Auditorium. The watchdog group is cosponsored by Cato and the Bradley Policy Research Center of the University of Rochester's William E. Simon Graduate School of Business. The commissioners are Chairman Charles C. Cox, former acting chairman of the SEC; Nobel laureate Merton H. Miller; and Professors Ronald J. Gilson, Hans R.



Hans Stoll of Vanderbilt University makes a point at the Shadow SEC meeting while Nobel laureate Merton Miller listens.

Stoll, and Gregg Jarrell.

The Shadow SEC considered the Financial Accounting Standards Board's proposal on proper treatment of stock options granted as executive compensation as well as competition in stock markets, addressed in the SEC's Market 2000 study of the structure of U.S. equity markets. On the latter issue, the Shadow SEC heard remarks by Joel Hasbrouck of the Stern School of Business at New York University, who was critical of the rise of alternatives to the New York Stock Exchange, and Robert A. Schwartz, also of the Stern School, who stressed the potential benefits. The commissioners passed a resolution criticizing the characterization of "low-cost alternative trading mechanisms" as "fragmentation" and encouraging disclosure of transaction prices. However, they opposed required disclosure of "detailed information concerning internal business practices."

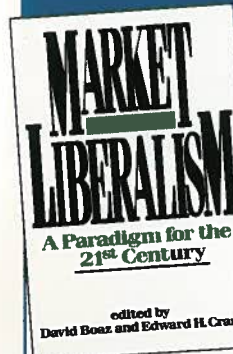
In the matter of stock options, the commission considered whether such options should be treated as expenses, as proposed by the Financial Accounting Standards Board (FASB). Author Graef Crystal and Ross L. Watts of the Simon

School supported the FASB proposal. Attorney Garth Gartrell said such accounting would harm high-tech start-up companies that rely on options to attract and keep key personnel. The commission's resolution backed the FASB proposal but recommended that companies be allowed to report two earnings figures on their income statements—one from which performance-based compensation is excluded (in compliance with the FASB's proposal) and one that includes such compensation. ■



Garth Gartrell listens as Graef Crystal discusses executive compensation at the Shadow SEC meeting in the F. A. Hayek Auditorium.

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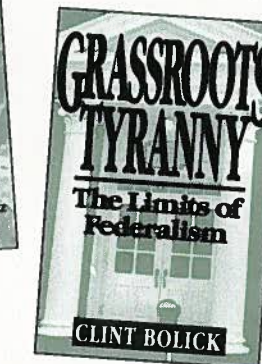
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—*Washington City Paper*, Nov. 26, 1993

With the antecedent of "their" left carefully vague

"Well, it's very interesting," said Sen. Strom Thurmond (R-S.C.) [at the Washington premiere of the movie *Gettysburg*]. "A lot of good acting. But I do not concur that the war was fought for slavery. Slavery was incidental. From the South's standpoint, it was the right to control their own destiny."

—*Washington Post*, Oct. 6, 1993

We're outta control! Next year we might cut another program

House members have gone on a spending-cut rampage this fall, killing the Superconducting Super Collider project.

—*Washington Post*, Oct. 28, 1993

Winning the war on drugs

Federal authorities yesterday charged 17 current and former D.C. Corrections

Department employees with taking bribes and helping to supply a long-flourishing drug trade inside the sprawling Lorton Correctional Complex in Northern Virginia.

—*Washington Post*, Nov. 17, 1993

Would they know it if they saw it?

[Congressional] Conferees Kill Search for Intelligent Life

—headline in the *Washington Post*, Oct. 2, 1993

Titanic is safest ship ever

Health Reform Plan Won't Limit Freedom of Choice

—headline in the *Wall Street Journal*, Oct. 7, 1993

No sir, we won't do it again, sir, just don't hit us again, sir

A group of major manufacturers apologized to President Clinton yesterday for criticizing his health care reform proposal and said it was the best alternative proposed so far.

National Association of Manufacturers President Jerry Jasinowski expressed his regret that his association had "inadvertently failed to be more judicious" in statements Wednesday indicating opposition to the plan.

He expressed regret at the way the group presented its opinion and complimented the White House staff for listening to the group's concerns. . . .

White House spokesman Jeff Eller said

the administration had been disappointed by NAM's statements. "Maybe that message got through to them," he said.

—*Washington Post*, Oct. 22, 1993

I'm shocked, shocked to discover how high taxes are

[In 1985, House Ways and Means Committee chairman Dan Rostenkowski] saw the pay stubs of his daughters, who were airline flight attendants, and he was shocked at how much was withheld in taxes. It just wasn't fair.

—*Washington Post*, Oct. 17, 1993

Clinton brings a new wave of honesty to Washington

When the GAO asked for evidence that White House employees had actually worked the days for which they were being paid, the [White House] legal counsel's response was that the law did not require presidential employees to actually work.

—*Washington Post*, Oct. 23, 1993

So then the president thought, what if we all got our health care from the government?

Medical services at the D.C. jail are deplorable and sometimes dangerous, according to a new court-ordered report, which paints a portrait of a health system in chaos with a filthy, roach-infested infirmary and a staff that often fails to respond promptly to emergencies.

—*Washington Post*, Oct. 22, 1993

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