

Restoring the Lost Constitution

by Randy E. Barnett

On May 21, 1972, Laszlo Toth, a 33-year-old Australian geologist, slipped into St. Peter's Basilica in Rome. As the crowd attending the Whitsunday Mass waited for the pope's blessing, Toth dashed past the guards, vaulted a marble balustrade, and attacked Michelangelo's Pietà with a sledgehammer, shouting "I am Jesus Christ!" With 15 blows, he removed the Virgin's arm at the elbow, knocked off a chunk of her nose, and chipped one of her eyelids.

Now suppose that, instead of attacking the Pietà, a madman managed to evade security in the National Archives in Washington to attack the original Constitution of the United States on display there. Using a knife, he managed to cut out of the precious parchments whole passages, such as the enumerated powers of Article I, sec. 10—including the Commerce Clause and the Necessary and Proper Clause—and, were they in the original document, the Ninth and Tenth Amendments and the Privileges or Immunities Clause of the Fourteenth Amendment. The nation would surely be appalled by that heinous act.

Yet since the early years of the Republic, the justices of the Supreme Court have accomplished what no madman ever could: redact the Constitution by excising important parts of what it says, thereby expanding federal and state power.

The Supreme Court Cuts Holes in the Text

Just 30 years after ratification, the Marshall Court weakened both the Necessary and Proper Clause and the Commerce

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Federal Reserve chairman Alan Greenspan and Czech president Václav Klaus talk before Greenspan's keynote address to Cato's 21st annual Monetary Conference on November 20.

Clause. The Necessary and Proper Clause says that Congress shall have the power "to make all laws which shall be necessary and proper for carrying into Execution" the powers specified in the Constitution. In 1819, writing for the Court in *McCulloch v. Maryland*, Chief Justice John Marshall equated the term "necessary" with mere "convenience," thereby converting a matter of constitutional principle into one of legislative policy and effectively removing this textual constraint on legislation from the purview of judicial review.

The Commerce Clause grants Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." In 1824, in *Gibbons v. Ogden*, after affirming that the "enumeration presupposes something not enumerated; and that something . . . must be the exclusively internal commerce of a State," Marshall then proceeded to broaden the powers of Congress beyond commerce between state and state to include as well any commerce that "concerns more states than one."

Continued on page 15

In This Issue



Charles Murray on *Human Accomplishment*, p. 5

Boaz on bipartisan big government	2
"The Future of the Euro"	3
Postal privatization debated	4
Greenspan, Klaus, and Griswold on international trade and economics	8
Studies on Social Security, tax competition, educational freedom, national security	12
New book: <i>You Can't Say That!</i>	14
Meet us in Moscow, San Francisco, and Quebec	17
<i>Mugged by the State</i>	18
New research: foreign aid and growth	18
Cato pushes D.C. school choice	19
Milton Friedman Prize Dinner May 6	19

Bipartisan Big Government in Washington



Conservatives used to believe that the U.S. Constitution set up a government of strictly limited powers. It was supposed to protect us from foreign threats and deliver the mail, leaving other matters to the several states or to the private sector—individuals, families, churches, charities, and businesses.

That's what lots of voters assumed they were getting when they voted for George W. Bush. Bush campaigned across the country telling voters, "My opponent trusts government; I trust you."

But federal spending has increased by 23.7 percent since Bush took office. There are more non-defense-related federal employees than ever before. Education has been further federalized in the No Child Left Behind Act. Bush pulled out all the stops to get Congress to create the biggest new entitlement program—prescription drug coverage for Medicare—in 40 years. He's proposed an energy bill that Jerry Taylor describes as "a smorgasbord of handouts and subsidies for virtually every energy lobby in Washington."

And then of course there's John Ashcroft's USA PATRIOT Act and the unprecedented expansion of federal law enforcement and surveillance powers. The Bush administration is pushing secret subpoenas, secret searches, secret arrests, and secret trials. American citizens are being held without access to a lawyer, and without access to an impartial, civilian judge.

It's not just President Bush, of course. A Republican Congress passed all of these spending bills and the PATRIOT Act. The chairman of the Republican National Committee tells journalists that "fiscal responsibility" means increasing the federal budget "at a slower rate of growth" than the Democrats—though spending is rising faster under Bush than under Clinton. The Senate Republican Conference boasts that federal spending on education has increased eight times as fast under "Bush and the Republicans" as it did when Democrats controlled the federal government.

When Bush proposed a sequel to the PATRIOT Act this fall, a Capitol Hill Republican told the *New York Times*: "This is the president talking. We have to be as supportive as we can of the president." That's not the attitude James Madison expected members of Congress to have toward the president. Former Rep. Bob Barr says that Republicans voted for the McCain-Feingold campaign finance regulation bill because, they said, "The Supreme Court will never uphold this law." That's not the attitude Madison expected members of Congress to have toward the Supreme Court—or the Constitution. And of course, their cowardly strategy backfired with disastrous results.

And it's not just Republicans. Big government is indeed bipartisan in Washington these days. Bush spends 24 percent more than Clinton, and Democrats call him a miser. Some day maybe Repub-

licans will learn that they can't win that argument no matter how much they spend. Democrats are digging in their heels against reform of entitlement programs and demanding an even bigger prescription drug benefit. Democrats have just about given up on free trade, something that even Bill Clinton was pretty solid on.

Democratic presidential candidates rail against the war in Iraq, but they then call for sending U.S. troops to Liberia. All of the senators running for president, along with Dick Gephardt, voted to give the president a blank check to wage the war. And none of them voted against the \$87 billion in additional funding for operations in Iraq. They claim to defend civil liberties, but all of them voted for the PATRIOT Act—without actually reading it any more than the Republicans did.

Could it be that both the Democrats and the Republicans are just reflecting what the voters want? I don't think so.

When they're given a chance to vote, Americans don't like big government. Last November, 45 percent of the voters in the most liberal state in the Union, Ted Kennedy's Massachusetts, voted to abolish the state income tax. In January of this year, Oregon's liberal electorate voted 55-45 to reject a proposed tax increase, thereby instructing the legislature to cut spending. (And when the legislature defied the vote and raised taxes anyway, voters started circulating petitions to overturn the tax hike.) In September, Alabama voters rejected Gov. Bob Riley's \$1.2 billion tax hike by 2 to 1. California voters tossed out big-spending Gov. Gray Davis, and 62 percent of them voted for candidates who promised not to raise taxes to close the state's deficit.

No, the problem is that we have a permanent ruling class in Washington that feels largely impervious to elections. House members boast a 98 percent reelection rate. It used to be that the

voters in a congressional district chose a representative to Congress; now members of Congress choose voters for their district. Gerrymandering, campaign finance restrictions, and other election rules make it hard for outsiders to break through.

That's why we need term limits and a more open, dynamic campaign finance system. It's also why we need committed, principled leadership on behalf of limited government—ideally from Congress and the president, but failing that, from citizens groups, taxpayer groups, and think tanks. Right now, because we don't have any national leadership for limited government—there's no Barry Goldwater or Ronald Reagan in today's Republican Party—we need that kind of outside leadership more than ever. And that's what we're focusing on at Cato—books, newspaper columns, Capitol Hill briefings, television appearances, and more—to try to get across the message that America would benefit from less government . . . and that Americans want less government.

—David Boaz

“When they’re given a chance to vote, Americans don’t like big government.”

21st annual Monetary Conference: "The Future of the Euro"

Greenspan Warns of "Creeping Protectionism"

Alan Greenspan, the usually inscrutable Federal Reserve chairman, issued a clear rebuke to the Bush administration in his keynote address at Cato's 21st annual Monetary Conference. Greenspan concluded a speech on the Euro-American trade deficit by warning that "it is imperative that creeping protectionism be thwarted and reversed." That remark was widely interpreted in the national press as an unusually sharp criticism of the Bush administration's trade policies.

The conference, "The Future of the Euro," was co-sponsored with the *Economist*. Opinions about the euro, and the European Union more generally, were decidedly mixed. Czech Republic president Václav Klaus warned that the bureaucracy in Brussels threatens to smother East European economies like his own as they enter the euro area. Why, then, does he support Czech membership in the EU? Unfortunately, he said, countries like his own will be unable to prosper economically without access to EU markets. And unlike existing EU members, the new wave of entrants is being forced to participate in the euro as the price of access to the common market.

Nobel laureate James Buchanan argued that given the political imperative for a common currency, the current European Central Bank structure is a good one. Although the best approach would have been a system of competing currencies such as that envisioned by Friedrich Hayek, he said, the ECB structure does grant an admirable level of political independence, insulating the bank from future political pressures towards inflationary policies.

Other conference participants considered the euro's place on the world stage, and most



Nobel laureate James Buchanan is interviewed after his luncheon address to Cato's 21st annual Monetary Conference on constitutional principles for monetary policy.

agreed that while the euro will become more prominent in the coming years, it is unlikely to unseat the dollar as the world's reserve currency. Anna J. Schwartz, co-author with Milton Friedman of the seminal *Monetary History of the United States*, argued that the

Continued on page 14



Cato senior fellow José Piñera talks with Laurence Kotlikoff of Boston University at a panel on pension reform and the euro.

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Christopher Cox, Barney Frank, Jeb Bush, and Byron Dorgan speak

Events on Enron, Cyberspace, Foreign Policy

◆**October 2:** Given that the United States has encouraged other nations to privatize state-run industries in recent decades, the United States Postal Service's continued existence as a government monopoly is jarring. Panelists at the Cato conference "The Future of the U.S. Postal Service" examined the pros and cons of postal service privatization and other reforms. Michael Crew of Rutgers University argued that state ownership of postal services has had almost entirely negative effects and that privatization was needed for the postal service to operate efficiently. Rick Merritt of Postal-Watch argued that the USPS's primary market competitors are those in the advertising business, not telephone companies or

e-mail providers. He emphasized the need for the postal service to transform itself into a leaner, more efficient business. Shane Ham of the Progressive Policy Institute warned that privatization was too radical a step but agreed on the need for greater efficiency. Murray Martin, vice president of Pitney Bowes, pointed out that the USPS is a linchpin for the \$900 billion postal industry and warned that a botched postal reform program would cause major economic damage. Shelley Dreifuss, who directs the Postal Rate Commission's Office of the Consumer Advocate, scolded the USPS for its lack of accountability to its customers and the American taxpayer.

◆**October 3:** Congress must take greater responsibility for the reams of new regulations produced by the federal government each year, argued Cato scholar Clyde Wayne Crews Jr. at a Cato Hill Briefing, "Regulations 'R' U.S.? The State of the Regulatory State." Efforts by the Office of Management and Budget to require accurate accounting of regulatory costs by government agencies help to illuminate the large costs of some regulations and should give Congress firmer ground on which to make regulatory decisions. John D. Graham, administrator of OMB's Office of Information and Regulatory Affairs, explained his agency's new focus on tougher and more transparent evaluations of regulatory costs and benefits. The current Bush administration, he said, has succeeded in producing fewer, more effective regulations than

either the elder Bush or Clinton administrations. David Schoenbrod of the New York Law School echoed Crews in calling for greater legislative responsibility for regulatory decisions and cited the quick congressional action to ensure the passage of the Do Not Call registry as a model.

◆**October 9:** At a Cato City Seminar in Chicago, Andrew Napolitano of Fox News blasted the Bush administration and its PATRIOT Act for undermining America's civil liberties in the name of fighting terrorism. He singled out the case of Jose Padilla—who was designated an "unlawful combatant" by administration officials and is being held without habeas corpus rights or legal representation—as an especially egregious violation of the civil liberties of an American citizen on U.S. soil. Cato's Roger Pilon discussed the steady erosion of constitutionally limited government and blamed both the left and the right for disregarding rights protected by the Constitution. This constitutional corruption has been a major impetus for the judicial confirmation battles now raging in the Senate, he concluded. In addition to discussing the recent CIA leak scandal, columnist Robert Novak criticized the Republican Party for abandoning its limited government principles, which has led to higher spending and a ballooning deficit.

◆**October 15:** In the past few years, the telecommunications industry has nearly collapsed under the weight of a capacity glut and the dot-com crash. Participants at a Liberty, Technology, and Prosperity Seminar in San Francisco conducted a post-mortem. Dorothy Attwood of SBC Communications argued that bad regulation was primarily to blame. AT&T's Robert Quinn countered that the collapse was mainly the result of market forces: excessive investment in new capacity made price drops inevitable. Janice Haber of Optical Fiber Solutions argued that regulation continues to hamper the growth of at least her sector of the industry. Downstream providers, she argued, have been unwilling to buy capacity for fear that heavy government regulation will make it impossible for them



Rep. Barney Frank (D-MA) calls anti-gambling laws an inappropriate restriction on personal freedom at a Cato Forum on online gambling.

Cato visiting fellow R. T. McNamar, deputy Treasury secretary in the Reagan administration, talks with Tom Morgan of George Washington University Law School during a Cato Forum, "Where Were the Lawyers in Enron?"

to make a profit. *Business 2.0*'s Om Malik pointed to the fraudulent and deceptive practices of telecom companies as a major cause of the meltdown. Stanford's Bruce Owen offered a historic perspective, arguing that regulatory micromangement has long been a hindrance to technological development in the telecom sector.

◆**October 17:** The demise of U.S. industry at the hands of East Asian competitors is greatly exaggerated, reported Cato trade scholar Dan Griswold at a Cato Hill Briefing, "Are We Exporting Our Jobs to India and China?" For example, although Chinese companies are offering stiff competition to some American industries, he said, Americans only imported \$125 billion in Chinese goods in 2002, a tiny fraction of the \$10 trillion U.S. economy. U.S. foreign direct investment (FDI) in China is similarly paltry, amounting to \$1.5 billion, about a tenth of U.S. FDI in Europe. Most importantly, he said, China is an important market for many U.S. products. Attempts to protect U.S. industries from foreign competition would likely harm lucrative export markets in the process. Harris Miller, president of the Information Technology Association of America, pointed out that the United States enjoys an impressive \$7.9 billion trade surplus with the rest of the world in the information technology (IT) industry. Any attempts to "protect" American jobs in this sector are likely to jeopardize the jobs supported by that surplus. To ensure that America's IT sector remains competitive, Miller proposed more research and development, more trade liberalization, better tax policies, and greater risk-taking on the part of the industry. Above all, he said, policymakers must avoid starting a trade war that could jeopardize many high-paying jobs.

◆**October 21:** At Cato's seventh annual technology and society conference, "Who Rules the Net? Debating Internet Jurisdiction and Governance," Rep. Christopher Cox (R-CA) argued that the global reach of the Internet poses a welcome threat to the ability of authoritarian regimes to control their citizens and touted American efforts to help citizens in repressive regimes

Rep. Chris Cox (R-CA) discusses how to protect the Internet from intrusive regulation at Cato's annual Technology and Society Conference on October 21.



Cato adjunct scholar David Post explores the need for new Internet governance rules as communication becomes more global.



get Internet access. Tim Wu of the University of Virginia Law School argued that the Internet is not undermining governments in the ways that early proponents had predicted. People's physical bodies and property give governments leverage with which to control their citizens' online behavior, he noted. David Post of Temple University Law School argued that the availability of low-cost global communication means that border crossing is no longer a marginal activity, and new jurisdictional principles may be needed. Michael Greve of the American Enterprise Institute argued that clear jurisdictional rules are crucial to a liberal order, to prevent the most restrictive regimes from setting the de facto standards for the entire Internet.

◆**October 23:** Rep. Barney Frank (D-MA) blasted liberal critics of gambling at a Policy Forum, "Online Gambling: Lessons from the Internet and Bookmaking," and argued that their fundamental objection often amounted to little more than the perception that gambling is "tacky." Policy should not be made on the basis of such simplistic aesthetic judgments, he said. Raymond Sauer of Clemson University showed

how lotteries were historically used as a way of raising capital. Indeed, said Robin Hanson of George Mason University, many useful financial instruments were hampered in their formative years by running afoul of gambling laws. We should be careful, he warned, not to stifle today's financial innovations in the same way. Koleman Strumpf of the University of North Carolina, a visiting fellow at Cato, presented empirical research on sports bookies and argued that, given the size and sophistication of offline gambling operations, online gambling is likely to remain a bit player regardless of any laws Congress might pass.

◆**October 28:** Noted social scientist Charles Murray of the American Enterprise Institute set for himself the rather ambitious goal of studying human achievement in the arts and sciences for most of recorded history. The result of that effort is a panoramic book that brings the tools of the social sciences to bear on a question that had previously been the province of right-brain thinkers: what is it about a society that encourages or stifles human achievement? At a Book Forum for his latest book, *Human*

Continued on page 6

EVENTS *Continued from page 5*

Accomplishment: The Pursuit of Excellence in the Arts and Sciences, 800 B.C. to 1950, Murray argued that Europe in the last 600 years has produced a quantity of scientific and artistic achievements that dwarfs that of any other region of the world or period of history. Murray argued that several factors contribute to the level of human achievement, including an ethos of purpose and individual autonomy and a cultural appreciation for “transcendental goods,” such as truth, beauty, and the good.

◆ **October 29:** Cato hosted a Roundtable Luncheon for Gov. **Jeb Bush** (R-FL), who discussed his education policy agenda and school choice. Participants included Robert Novak, Alan Murray, Tucker Carlson, Tony Blankley, and Cato’s David Salisbury.

◆ **October 29 and 30:** On the first leg of a two-city Texas tour, Cato president Ed Crane hosted a **Cato City Seminar** in Dallas. In his keynote address, Crane related the long and sordid history of Republican failures to rein in government taxes and spending. Although some candidates—such as Ronald Reagan in 1980—talked a good line about cutting government, he said, Republicans have consistently failed to deliver on their pledges. Worse, recent Republican candidates such as President

Bush have abandoned even the pretense of cutting government. In the luncheon address, Robert D. McTeer, president of the Dallas Fed, emphasized the importance of a stable monetary policy and free trade. Crane, McTeer, and the other speakers reprised their speeches at a Cato City Seminar in Houston the following day.

◆ **October 31:** Many Americans have been outraged in recent years that their prescription drug prices have soared while consumers in other industrialized countries have received steep discounts on the same drugs. Sen. Byron L. Dorgan (D-ND), a leading proponent of allowing the reimportation of prescription drugs to control costs, joined Cato’s Roger Pilon to discuss the benefits of free trade in pharmaceuticals at a Hill Briefing, “**Drug Reimportation: Time for a Free Market?**” Dorgan dismissed fears about safety problems with imported drugs, pointing out that the regulatory processes in Canada and Western Europe are substantially similar to those in the United States. Pilon agreed and stressed that the United States was unfairly bearing the entire world’s financial burden for drug research and development. The likely effect of allowing reimportation, he argued, would be to increase pressure on other nations to relax price controls and share the burden of funding R&D more evenly across the world’s rich nations.

◆ **October 31:** Lawyers in large corporations can sometimes face difficult ethical dilemmas when they discover that a client has engaged in fraudulent or illegal activities. On the one hand, an attorney has an ethical duty to act as the advocate for the client and might feel pressure to help the client cover up wrongdoing. On the other hand, the lawyer has an obligation to both the law and the company’s shareholders not to participate in illegal or fraudulent activity. A panel of legal scholars and practicing lawyers considered the recent regulatory changes in this area at a Cato Policy Forum, “**Where Were the Lawyers in Enron?**” Richard Painter of the University of Illinois Law School stressed the distinction between “reporting up” to a corporation’s board of directors and “report-

ing out” to regulatory agencies and the general public, saying that recent regulatory changes go too far in mandating the latter type of reporting. Tom Morgan of George Washington University Law School argued that pre-Enron rules already required many types of disclosure and warned that more regulation is likely to drive up compliance costs without increasing accountability. Attorney Stanley Keller warned that the lack of trust between attorneys and corporate clients likely to arise from overly aggressive reporting requirements could hamper lawyers’ ability to give effective counsel.

◆ **November 3:** The United States needs to rethink its global security strategy, said Robert J. Art at a Cato Book Forum for his work *A Grand Strategy for America*. Art, a professor of international relations at Brandeis University, suggested that the United States should base its policies on a range of “fundamental interests” that range from protecting the homeland to preventing genocide and protecting the environment and should adopt a policy of “selective engagement” to safeguard those interests. Cato’s Ted Galen Carpenter contended that Art’s “selective engagement” is far less selective than it could be and argued that a U.S. commitment to preventing genocide, if followed consistently, could commit the United States to constant military intervention around the world. Carpenter offered an alternative policy of “strategic independence,” in which the United States reduced its military profile in the world and acted as a “balancer of last resort” only if regional conflicts threatened to rage out of control.

◆ **November 7:** Cato cosponsored a reception at the Fund for American Studies for **Mart Laar**, former prime minister of Estonia. Laar discussed the policies that made Estonia one of the most successful post-communist societies.

◆ **November 12:** At a Cato Book Forum Dan Verton, author of *Black Ice: The Invisible Threat of Cyberterrorism*, argued that policymakers and IT professionals are ignoring a looming crisis in Internet security.



Former Estonian prime minister **Mart Laar** discusses his country’s reforms with **Roger Ream** of the Fund for American Studies and **Cato’s Marian Tupy** at a reception in Laar’s honor on Nov. 7.

Florida governor Jeb Bush discusses his school reform programs at a Cato luncheon for journalists and school choice advocates on October 29.



Given that the Internet is becoming increasingly intertwined with our everyday lives, he said, Internet security should be treated as a national security issue. George Smith, senior fellow at Globalsecurity.org and coeditor of Vmyths.com, pointed out that many observers have predicted the demise of the Internet at the hands of evil-doers, and that, thus far, such fears have been overblown.

◆ **November 13:** John Newhouse, author of *Imperial America: The Bush Assault on the World Order*, offered a scathing critique of the Bush administration's foreign policy at a Cato Book Forum. The administration, he argued, had a unique opportunity to unite the world behind it in the wake of the September 11 attacks. Instead, he said, the "hard right" policies of the Bush administration have polarized world opinion and turned many of the world's nations against us. Anatol Lieven of the Carnegie Endowment for International Peace was not as harsh in his assessment of the administration's policies, but nevertheless chided it for misleading the American people into believing that the nations of the "axis of evil" were involved in the September 11 attacks. Cato scholar Christopher Preble agreed with many of those criticisms, but emphasized that Bush's unilateralism is the logical continuation of Clinton's interventionist policies, such as the decision to ignore the United Nations during the Kosovo bombings.

◆ **November 14:** In recent months, many people, including Gov. Arnold Schwarzenegger (R-CA) and President Bush, have touted the benefits of hydrogen fuel cells as an alternative to fossil fuels like gasoline and natural gas. At a Cato Book Forum for *Power to the People: How the Coming Energy Revolution Will Transform an Industry, Change Our Lives, and Maybe Even Save the Planet*, Vijay V. Vaitheeswaran of the *Economist* argued that such proposals were designed only to mollify critics of current energy sources without investing the necessary resources to make the technology work. Cato's Jerry Taylor expressed doubt about whether hydrogen technology was feasible, noting that government-sponsored supercars have been



David Boaz displays the *New York Times* profile of Charles Murray at a Book Forum for Murray's new book, *Human Accomplishment*.

a staple of presidential State of the Union speeches since the Nixon administration and so far have failed to produce tangible results.

◆ **November 18:** Cato hosted a Roundtable Luncheon for Will Saletan, chief political correspondent for *Slate* and author of *Bearing Right: How Conservatives Won the Abortion Wars*. Saletan discussed how politicians and activists "frame" issues and how their own framing can sometimes backfire.

◆ **November 20:** Cato's annual monetary conference, "The Future of the Euro," featured such notable speakers as Federal Reserve chairman Alan Greenspan, Nobel laureate James Buchanan, and Václav Klaus, president of the Czech Republic. Greenspan analyzed the impact of the U.S. trade deficit on the U.S.-European relationship and concluded that it need not be a major concern, provided that "creeping protectionism" doesn't harm the world trading system. Panelists examined the euro's role in the world economy, the costs and benefits of euro-area membership, and the possible impact of the looming crisis in the pay-

as-you-go pension system on the European monetary system.

◆ **November 21:** The publication of *A Monetary History of the United States, 1867-1960*, by Milton Friedman and Anna Schwartz in 1963 was a watershed event, firing the opening salvo in a long-running debate over the causes of the Great Depression as well as refocusing the attention of the economics profession on the importance of the money supply to macroeconomic health. At a Cato Book Forum, Schwartz talked about its long-term influence. Economists, she said, have developed a new-found appreciation for the importance of good monetary policy in ensuring a stable currency and preventing severe recessions. William Poole, of the St. Louis Fed, emphasized that policymakers need access to good scholarship in order to make wise policy decisions. Former Fed governor Laurence H. Meyer said that Friedman and Schwartz's scholarship has had a pervasive effect on the background assumptions of the economics profession, as economists of all stripes now take the role of money more seriously than they did prior to their work. ■

Money, Trade, and Investment

Cato Institute scholars frequently address issues of sound money, free trade, and international economics. Among the speakers at our 21st Annual Monetary Conference on November 20 were Alan Greenspan, chairman of the Federal Reserve Board, and Václav Klaus, president of the Czech Republic. Dan Griswold, associate director of Cato's Center for Trade Policy Studies, spoke at a Capitol Hill Briefing on October 17. Excerpts from their remarks follow.

Alan Greenspan: The current account deficit of the United States, essentially net exports of goods and services, has continued to widen over the past couple of years. The external deficit receded modestly during our mild recession of 2001 only to rebound to a record 5 percent of gross domestic product earlier this year. Our persistent current account deficit is a growing concern because it adds to the stock of outstanding external debt that could become increasingly more difficult to finance.

These developments raise the question of whether the record imbalance will benignly defuse, as it largely did after its previous peak of about 3.5 percent of GDP in 1986, or whether the resolution will be more troublesome.

In the 1960s and 1970s, because our trading partners were growing far faster than we were, a trade gap did not surface. When, in the 1980s, the difference in growth rates narrowed while the dollar rose, our trade and the associated current account deficits widened dramatically. By the late 1980s, we had become a net debtor nation, ending seven decades as a net creditor. While most recent data reaffirm our above-average propensity to import, there is evidence to suggest that its magnitude has diminished.

There is no simple measure by which to judge the sustainability of either a string of current account deficits or their consequence: a significant buildup in external claims that need to be serviced. Financing comes from receipts from exports, earnings on assets, and, if available, funds borrowed from foreigners. In the end, it will likely be the reluctance of foreign country residents to accumulate additional debt

and equity claims against U.S. residents that will serve as the restraint on the size of tolerable U.S. imbalances in the global arena.

With the seeming willingness of foreigners to hold progressively greater amounts of cross-border claims against U.S. residents, at what point do net claims (that is, gross claims less gross liabilities) against us become unsustainable and deficits decline? Presumably, a U.S. current account deficit of 5 percent or more of GDP would not have been readily fundable a half a century ago or perhaps even a couple of decades ago. The ability to move that much of world saving to the United States in response to relative rates of return would have been



Alan Greenspan: "The costs of any new protectionist initiatives, in the context of wide current account imbalances, could significantly erode the global economy."

hindered by a far lower degree of international financial intermediation. Endeavoring to transfer the equivalent of 5 percent of U.S. GDP from foreign financial institutions and persons to the United States would presumably have induced changes in the prices of assets that would have proved inhibiting.

There is, for the moment, little evidence of stress in funding U.S. current account deficits. To be sure, the real exchange rate for the dollar has, on balance, declined more than 10 percent broadly and roughly 20 percent against the major foreign cur-

rencies since early 2002. Yet inflation, the typical symptom of a weak currency, appears quiescent. Indeed, inflation premiums embedded in long-term interest rates apparently have fluctuated in a relatively narrow range since early 2002. More generally, the vast savings transfer has occurred without measurable disruption to the balance of international finance. In fact, in recent months credit risk spreads have fallen and equity prices have risen throughout much of the global economy.

To date, the widening to record levels of the U.S. ratio of current account deficit to GDP has been seemingly uneventful. But I have little doubt that, should it continue, at some point in the future adjustments will be set in motion that will eventually slow and presumably reverse the rate of accumulation of net claims on U.S. residents.

The history of such adjustments has been mixed. According to the aforementioned Federal Reserve study of current account corrections in developed countries, although the large majority of episodes were characterized by some significant slowing of economic growth, most economies managed the adjustment without crisis. The institutional strengths of many of these developed economies—the rule of law, transparency, and investor and property protection—likely helped to minimize disruptions associated with current account adjustments. The United Kingdom, however, had significant adjustment difficulties in its early postwar years, as did, more recently, Mexico, Thailand, Korea, Russia, Brazil, and Argentina, to name just a few.

Can market forces incrementally defuse a worrisome buildup in a nation's current account deficit and net external debt before a crisis more abruptly does so? The answer seems to lie with the degree of flexibility in both domestic and international markets. In domestic economies that approach full flexibility, imbalances are likely to be adjusted well before they become potentially destabilizing. In a similarly flexible world economy, as debt projections rise, product and equity prices, interest rates, and exchange rates could change, presumably to reestablish global balance.

We may not be able to usefully deter-

“It is imperative that creeping protectionism be thwarted and reversed.”

mine at what point foreign accumulation of net claims on the United States will slow or even reverse, but it is evident that the greater the degree of international flexibility, the less the risk of a crisis. The experience of the United States over the past three years is illustrative. The apparent ability of our economy to withstand a number of severe shocks since mid-2000, with only a small decline in real GDP, attests to the marked increase in our economy's flexibility over the past quarter century.

Should globalization be allowed to proceed and thereby create an ever more flexible international financial system, history suggests that current imbalances will be defused with little disruption. And if other currencies, such as the euro, emerge to share the dollar's role as a global reserve currency, that process, too, is likely to be benign.

I say this with one major caveat. Some clouds of emerging protectionism have become increasingly visible on today's horizon. Over the years, protected interests have often endeavored to stop in its tracks the process of unsettling economic change. Pitted against the powerful forces of market competition, virtually all such efforts have failed. The costs of any new such protectionist initiatives, in the context of wide current account imbalances, could significantly erode the flexibility of the global economy. Consequently, it is imperative that creeping protectionism be thwarted and reversed.

Václav Klaus: I am convinced that the driving force behind European monetary unification has been strictly political, not economic. This argument is supported by my own personal experience, based on numerous explicit conversations about it with key European political leaders in recent years. The economic arguments have always been marginalized or taken only very superficially. The political ambition has been quite dominant. The euro has always been considered a useful instrument for the creation of the European political union.

I also believe that the largest part of the positive economic impact of European integration, as well as of EU enlargement, has come through the liberalization of trade

and investment and has already been obtained in Europe. The marginal contribution of further economic or non-economic unification will be close to zero, if not negative.

Because of that, neither the birth of the euro nor the next EU enlargement in the year 2004 represents any breakthroughs. Trade patterns are determined by comparative advantage, not by monetary factors. The role of exchange rate risk as a factor determining foreign investment and the cost of capital is relatively small.

Looking at the economic performance of the euro zone in the first years of the euro's existence, even the pro-European activists must admit that the overall expectations of an economic boost and the claims



Václav Klaus: “The driving force behind European monetary unification has been political, not economic.”

that the introduction of the euro would speed up economic growth have not been fulfilled. This is not a surprise to me and, to be fair, not everyone had such expectations. Many of us knew that the formation of a regional common currency is neither a necessary nor a sufficient condition for healthy economic growth.

Eight Central and East European countries will become EU members in May 2004. And in their accession treaties with the EU, signed in April 2003 in Athens—I was one of those who signed it—they promise to enter the euro zone. Many peo-

ple in these countries look forward to it. They expect to gain from euro stability, from decreasing exchange rate risk, from a credible monetary policy. I am struck that they don't see the other side of such an arrangement, because it's more than evident that the transition countries need a maximum of flexibility and should not introduce any artificial rigidities. They should not take actions against their own economic interests for political reasons.

The main costs for them will be the loss of independent monetary policy. Such a loss will have very different effects on them than on the developed and more stable EU member countries of Western Europe. It makes no economic sense for them to have the same interest rates as Germany or France.

These countries will also be hurt by the loss of the possibility of exchange rate movements. Transition countries are in a permanent process of real appreciation. And there is no way, in my opinion, to make it possible with fixed exchange rates, with the inflation and interest rate targets of the Maastricht Treaty, and with stability-backed conditions concerning budget deficits. It simply can't go together.

There is also a very high risk of fixing the exchange rates away from long-term equilibrium, because the convergence process will not be, in the moment of their entry into the euro zone, completed. The result will be the insufficient final exchange rates realignment, a problem we see with some current euro zone members as well.

I am also afraid that the rigidities of a monetary union and a growing macroeconomic disequilibrium will block real convergence and create transfer economics, as in East Germany after reunification. The difference will be that there will not be adequate fiscal transfers, because such fiscal transfers in the contemporary European Union are not available.

So my conclusion is that there is no need for these countries to rush into the euro zone. The euro is here to stay, but I would say that to keep the European single currency will be costly in terms of economic growth and in terms of inevitable fiscal transfers compensating the weaker partners. It may gen-

Continued on page 10

“There is nothing alarming about the fact that Americans spend about a penny of every dollar of our income on products made by the one-fifth of mankind that lives in China.”

POLICY FORUM *Continued from page 9*

erate unnecessary tensions among nations. I think we should be aware of that.

Dan Griswold: A lot of Americans have questions about the economy and about trade with low-wage countries—in particular India and China. There is no denying that the last three years have been brutal for the U.S. manufacturing sector. Only now is manufacturing output beginning to recover from a steep decline in 2001. In the past three years, 2.7 million net manufacturing jobs have been lost. This is a very challenging environment for American companies and many American workers.

The real debate is about why this is happening and what, if anything, Congress can or should do about it. Critics of trade are too quick to blame imports. Even the *Wall Street Journal* the other day had a story that talked about the “onslaught” of imports and “surging” imports, when in fact, imports have been pretty sluggish, or declining, over the last three years. Only now are the monthly import figures getting back up to their highs of the year 2000.

Conventional wisdom assumes that more imports mean less domestic production—a widget we import into the country is one less widget we produce, and we lay off the widget workers. But take a look at the chart. Actually, the truth is the opposite. The chart shows the growth of manufacturing imports and domestic output each year since 1988. And as you can see, in those years when the “surging onslaught” of imports was the greatest, that’s when the growth of domestic manufacturing output was also the greatest. In 2001, when manufacturing output fell, so did manufacturing imports. The reason is simple: Imports and output both rise and fall with domestic growth and demand.

Why the loss of jobs in manufacturing? There are two things working there, one good, one bad. The bad thing is the cyclical collapse in demand, especially among businesses. The other thing happening that has made jobs disappear in manufacturing is dramatic increases in productivity. We can produce more stuff with fewer workers. We produce three times as much as we did in

the 1960s with fewer workers because they’re three times more productive. This is not a bad thing. Rising worker productivity is the foundation of future prosperity.

Now, let me talk about China, because you can’t talk about trade and manufacturing without getting around to China. Imports from China do compete with domestic production—there’s no question about it. U.S. factories have closed. Workers have been laid off because of competition with China. But the numbers are relatively small, and in comparison, trade with China delivers huge benefits to the U.S. economy—most importantly, to American families.



Dan Griswold: “The other thing that has made jobs disappear in manufacturing is dramatic increases in productivity. We can produce more stuff with fewer workers.”

Roughly half of what we import from China is consumer products. China is a leading exporter of shoes, apparel, consumer electronics, sporting goods, furniture, and all the things that families would buy at a discount store. And these are products that are bought disproportionately by medium- and low-income families. In fact, according to my calculations, China’s 10th largest trading partner last year was Wal-Mart.

American producers benefit from lower-cost inputs such as machine parts, office products, and plastic moldings. These inputs allow U.S.-based manufacturing compa-

nies to remain more competitive in global markets. And then of course there is the fact that a lot of that production in China is in American-owned factories, which is good for their stockholders and the U.S. stock market.

Imports from China have grown rapidly, but they are nothing like a flood. In 2002, we imported \$125 billion in products from China. To put it in perspective, that’s about 10 percent of our total imports and about 1 percent of the \$10.4 trillion GDP of the United States. There is nothing alarming about the fact that Americans spend about a penny of every dollar of our income on products made by the one-fifth of mankind that lives in China.

There has been no giant sucking sound of U.S. factories and production moving wholesale to China. I have pored over the investment numbers the Department of Commerce puts out, and I am struck, frankly, by how modest the U.S. investment is in China. If the critics were right, U.S. multinationals would be falling over themselves to invest in China to take advantage of the low wages. In reality, U.S. investment in China has been modest and stable. If you look at the period from 1999 to 2002—the most recent four years for which we have figures—the average outflow of U.S. direct manufacturing investment is \$1.2 billion a year. And it has not been going up; it has been quite stable.

That compares to an annual average of \$16 billion in U.S. direct manufacturing investment in the European Union during that same period. Overall, U.S. manufacturers invest much more in rich, high-wage, high-standard foreign countries than they do in China. And the investment that goes to China is less than 1 percent of the approximately \$200 billion a year that is invested here in the United States in manufacturing capacity each year. It is overwhelmed by the net \$20 billion that comes in from other parts of the world.

Many American companies can tell you that investment in places like China and India remains a challenge. The infrastructure there doesn’t work as well. The workers aren’t as well educated. They don’t have the rule of law or, in the case of India, they have

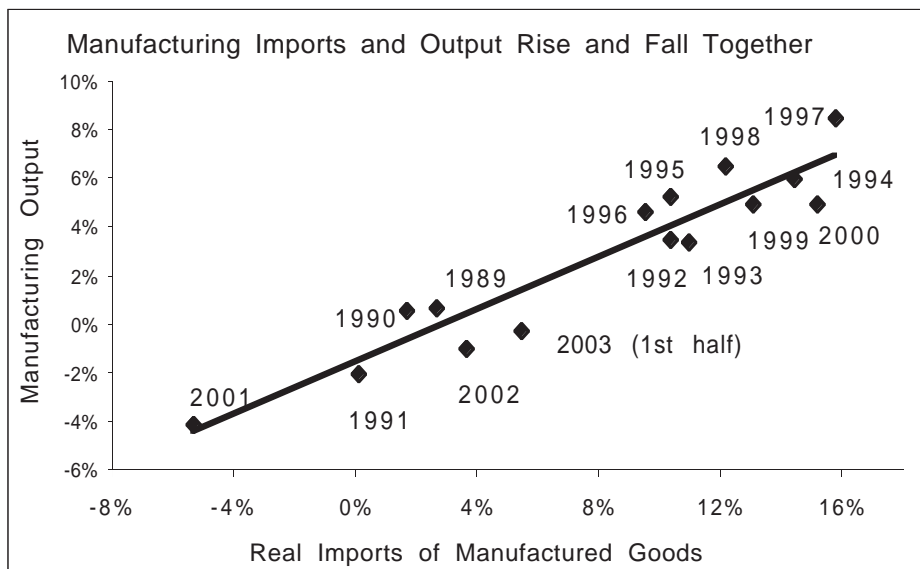
Continued on page 11

POLICY FORUM *Continued from page 10*

too many rules, making it difficult to do business there. That's why those countries are so poor. That's why the wages are so low, because things don't work as efficiently as they do in the developed countries.

While China is the world's fourth leading exporter, it is also the world's sixth leading importer. China is becoming the engine of demand in East Asia. It is rapidly becoming one of the world's top markets for automobile sales. And China has now displaced the United States as the world's number one importer of steel. China is the best friend the U.S. steel industry has right now, but you wouldn't know it from what the industry has been saying. Last year, while America's total exports to the rest of the world were declining, our exports to China were going up by 14 percent.

And what do the people of China do with all those dollars that they earn by selling in our market—the infamous bilateral trade deficit? Well, those dollars come back to the United States. If they don't come back here to buy our exports, they come back here to buy our Treasury bonds.



Sources: Bureau of Economic Analysis, Commerce Department; and Federal Reserve Board.

The Chinese Central Bank is one of the main purchasers of U.S. Treasury notes. That investment helps finance the federal budget deficit. It helps keep interest rates low. And it frees up private savings in the United States for investment in the private economy.

So our trade with China is a blessing three times over. It's a blessing to consumers, who enjoy lower prices at the store, which raises real wages. It's a blessing to producers through rising exports. And it's a blessing through capital inflows that keep domestic interest rates low. ■

News Notes

Gokhale Joins Social Security Project

Jagadeesh Gokhale, one of the nation's leading economists and an expert on entitlement reform, has joined the Cato Institute as a senior fellow. Gokhale, former senior economic adviser to the Federal Reserve Bank of Cleveland, has been on leave from the Fed for the past year, serving as a visiting scholar with the American Enterprise Institute. Gokhale will work with Cato's Project on Social Security Choice, examining the problems of the current Social Security system and helping to design market-based alternatives.



Jagadeesh Gokhale

Gokhale is widely recognized as one of the nation's leading experts on U.S. fiscal policy and its intergenerational impact. His latest book, *Fiscal and Generational Imbalances: New Budget Measures for New Budget Priorities*, coauthored with Kent Smet-

ters, drew widespread attention when it was published by AEI after the Bush administration declined to include it in the federal budget document for which it had been commissioned. Gokhale is also the author of "The Impact of Social Security Reform on Low-Income Workers" and coauthor of "Social Security Privatization: One Proposal" (with David Altig), both Cato Institute Social Security Choice Papers.



Jenifer Zeigler

Jenifer Zeigler has been named a policy analyst at the Cato Institute. She will specialize in welfare and entitlement issues. Previously a Cato research assistant, she holds a law degree and a Master of Public Administration from the University of Missouri. She also worked as a legislative assistant in the Missouri legislature.

School choice builds on history of educational freedom

Private Accounts Offer Workers a Better Deal

A key argument for Social Security privatization is that private-sector capital markets generate a higher rate of return than the paltry payoff of the current pay-as-you-go system. Critics of Social Security reform have disputed this claim, noting the many complicating factors in making such calculations, including accounting for administrative overhead, increased financial risks, and the costs of transition to a system of personal accounts. In “The Better Deal: Estimating Rates of Return under a System of Private Accounts” (Social Security Paper no. 31), Cato scholar Michael Tanner examines those concerns and concludes that, even accounting for those potential costs, a system of private accounts is a much better deal for today’s workers. Those who urge that equity returns be adjusted downward to reflect increased risk, he says, overlook the fact that a long-term, diversified portfolio of equities is far less risky than day-trading in individual stocks. He concedes that administrative and transition costs reduce the expected return rate but contends that these costs are substantially lower than opponents claim and are already factored into most rate-of-return estimates by proponents of individual accounts.

◆Textiles: Fight the Future

On January 1, 2005, the textile and apparel quota regime that currently governs world trade in textiles is slated to terminate. Thereafter, textiles will be subject to the same World Trade Organization rules as most other manufactured goods. Fearing increased competition from nations with lower labor costs, the textile industry has lobbied fiercely to obstruct and delay liberalization, as trade policy analyst Dan Ikenson details in “Threadbare Excuses: The Textile Industry’s Campaign to Preserve Import Restraints” (Trade Policy Analysis no. 25). At the industry’s behest, U.S. trade officials have exploited ambiguities in the law in order to postpone genuine liberalization as long as possible. The year 2004 will be crucial, Ikenson argues, because the 2005 deadline means that the United States will have no choice but to open textile markets or openly renege on previous pledges.

◆Poverty Trap

It’s hard to disagree with the notion that those who put in a hard day’s work should receive a paycheck large enough to pay for life’s necessities. Unfortunately, as labor consultant Carl F. Horowitz points out in “Keeping the Poor Poor: The Dark Side of the Living Wage” (Policy Analysis no. 493), so-called “living wage” laws are more likely to lock low-skilled workers out of the job market entirely as employers shift their operations to use fewer, higher-skilled workers to save labor costs. The key to improving the plight of the working poor, he concludes, is to ensure that poor workers have the skills needed to command higher wages in the marketplace.

◆Competition Holds Down Taxes

In recent years, high-tax governments have advocated the creation of a global financial reporting system to help them tax their subjects’ foreign investments and prop up their sclerotic economic systems, report Cato adjunct scholar Richard W. Rahn and policy analyst Veronique de Rugy in “Threats to Financial Privacy and Tax Competition” (Policy Analysis no. 491). Those countries complain of “harmful tax competition,” in which low-tax regimes attract a disproportionate share of foreign capital and thereby undermine other nations’ tax bases. Rahn and de Rugy question whether such competition is really a bad thing, pointing out that it encourages better economic policies and greater efficiency in the provision of government services. Moreover, they argue, the proposed information-sharing rules would be a serious threat to financial privacy. Governments are notorious for misusing information originally collected for benign purposes. The only way to ensure financial information is not misused, they conclude, is to prevent it from being collected in the first place.

◆Sales Tax Dot Com?

For decades, the Supreme Court has held that states could only require those businesses with a physical presence in their state to col-

lect sales taxes on their behalf. As Internet commerce has risen, many state authorities have expressed concern about the loss of



Adam Thierer

revenue due to the difficulty of taxing Internet transactions. Some have advocated the creation of a national system of sales tax collection, which would allow sales taxes to be collected on the basis of the jurisdiction of the buyer regardless of the location of the seller. In “The Internet Tax Solution: Tax Competition, Not Tax Collusion” (Policy Analysis no. 494), Cato scholars Adam Thierer and Veronique de Rugy raise several objections to that proposal, pointing out that tax competition can create worthwhile incentives, and that a national “sales tax cartel” would impose substantial compliance costs on “e-tailers,” who would have to take account of the different laws of thousands of local jurisdictions. They offer as an alternative an “origin-based” approach, in which taxes are assessed on the basis of the location of the retailer rather than the consumer.

◆Choice for Kids, Freedom for Schools

School choice advocates have scored impressive victories in recent years, culminating in the Supreme Court’s *Zelman* decision last year, which upheld the constitutionality of school vouchers. To gauge how private schools might react to vouchers with strings attached, H. Lillian Omand, a former program director of the Washington Scholarship Fund, conducted an original survey of more than a thousand private schools, asking them what types of regulation they would be willing to accept in exchange for voucher money. In “The Struggle for School Choice Policy after *Zelman*: Regulation vs. the Free Market” (Policy Analysis no. 495), she reports that a strong majority said they would not accept limits on their freedom to choose their students. More than two-thirds of religious schools said they would not submit to requirements to admit all children regardless of faith and allow students to opt out of religious activities. Omand urges school choice supporters to ensure any voucher or tax credit program is as broad as possible, interferes as little as possible with private school inde-

pendence, and produces minimum economic distortions in the education marketplace.

◆Putting the “Security” Back in “National Security”

America’s “national security” strategy has hardly lived up to its name, argues Charles Peña, Cato’s director of defense policy studies, in “Bush’s National Security Strategy Is a Misnomer” (Policy Analysis no. 496). To the contrary, the Bush administration’s stated goal of remaking the world in America’s image seems like a prescription for increasing resentment against the United States and encouraging more terrorist attacks. Peña recommends a more focused approach, in which U.S. military might is directed against genuine threats like Al Qaeda and the Taliban, while military involvement in other parts of the world is reduced. Peña recommends the prompt withdrawal of troops from Iraq, the severing of ties to Saudi Arabia and other oppressive Middle Eastern states, and a hands-off approach to the Israeli-Palestinian conflict.

◆Bridging the GAAP

Although more efforts need to be made to ensure that corporate accounting rules are applied consistently across firms and across reporting periods, it is impossible to eliminate the need for individual judgment on the part of corporate executives in reporting a company’s financial position, argues George J. Benston of Emory University in “The Quality of Corporate Financial Statements and Their Auditors before and after Enron” (Policy Analysis no. 497). Many of a company’s tangible and intangible assets have no readily available market valuation and are thus prone to manipulation by management. Benston argues that precisely this type of manipulation was responsible for the overstatement of profits at Enron and other companies. Benston recommends “allowing restatements of assets and liabilities only to the extent that those are based on trustworthy numbers, replacing the U.S. rules-based with a principles-based traditional ‘matching concept’ system, and allowing publicly traded corporations to use international accounting standards as an alternative to U.S. GAAP [generally accepted accounting principles].” These

reforms, he says, will help restore investor confidence in corporate accounting reports.

◆Corporate Disclosure Rules: Public or Private?

University of Virginia law professor Paul G. Mahoney questions the conventional wisdom that state regulators must set rules for corporate governance and accounting in “Public and Private Rule Making in Securities Markets” (Policy Analysis no. 498). He points out that competition for investors will drive exchanges to create listing rules that give investors confidence in the value of stocks listed on that exchange. The primary counterargument is that exchanges compete for company listings as well as investors, and companies might threaten to switch exchanges if its listing rules were strictly enforced. However, Mahoney points out, an exchange that gains a reputation for not enforcing its own rules will have difficulty attracting investors.

◆How I Learned to Stop Worrying and Love the Bunker Buster

Dictators made skittish by America’s newly aggressive policy of preemption could be pushed over the edge into nuclear proliferation if the United States were to develop nuclear “bunker buster” bombs, argues Cato’s Charles Peña in “Mini-Nukes and Preemptive Policy: A Dangerous Combination” (Policy Analysis no. 499). Proponents of such weapons argue that they are needed to defeat new, deeper bunkers that could be used to house weapons of mass destruction. Yet, notes Peña, even small-yield warheads detonated underground are likely to cause significant radioactive fallout. In addition, mini-nukes threaten to undermine anti-proliferation treaties and reduce nuclear deterrence. If rogue states feel they are likely to be the target of a preemptive strike by the United States and see that the United States has no qualms about using nuclear weapons to accomplish its own military objectives, rogue states are more likely to develop and use weapons of mass destruction themselves.

◆Educational Freedom: Then and Now

Prior to the rise of the common school movement in the 1830s and 1840s, the

American system of education was highly diverse. There was a wide variety of sectarian and nondenominational schools, some subsidized by the state and many entirely private. Many people would be surprised to learn how well this system worked: as early as 1787, two-thirds of the male population could read, and 90 percent of respondents identified themselves as literate in 1850. Detailing the rise of the modern public school system in “Our History of Educational Freedom: What It Should Mean for Families Today” (Policy Analysis no. 492), Cato education policy analyst Marie Gryphon and research assistant Emily Meyer identify some of the less savory elements of the movement for compulsory state education. For example, education reformer Horace Mann based many of his reforms on the regimented Prussian school system. In the 1920s, compulsory schooling laws—the first of which was passed in Oregon—posed a new threat to educational freedom. The Supreme Court struck down the Oregon law as an infringement on the liberty of parents to choose their children’s education. School choice proponents should not lose sight of the larger battle for educational freedom in the political arena.



Marie Gryphon

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◆Presidential Welfare

In “The Failure of Taxpayer Financing of Presidential Campaigns” (Policy Analysis no. 500), John Samples, director of Cato’s Center for Representative Government, compares the real-world results of this system with claims of its proponents. The results are not flattering. Public financing has failed to increase the number of serious presidential candidates in either primary or general elections, has not reduced corruption as perceived by the public, and has cost taxpayers nearly \$2 billion. Candidates in both major parties have announced their intention to opt out of the system for the primaries in 2004 and are likely to do so in future races as well. Public financing of presidential campaigns has failed, Samples concludes, and Congress should repeal the program. ■

HUD's harassment, college speech codes, and the Seinfeld case

Discrimination Laws Threaten Civil Liberties

The civil rights movement scored a string of dramatic victories in the 1960s that steadily dismantled the Jim Crow system that had held black Americans back for close to a century. Since then, the movement has seemed to be a victim of its own success; as genuine state discrimination was outlawed, activists turned their moralizing fury on ever more dubious forms of perceived discrimination by private parties.

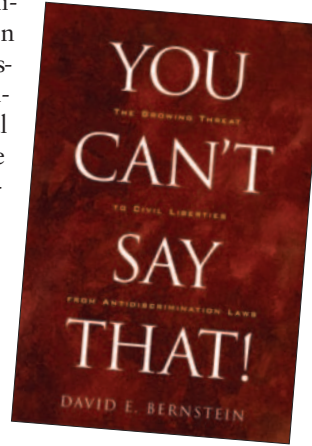
Unfortunately, one person's discrimination can be another person's exercise of civil liberties. In *You Can't Say That!* David Bernstein argues that anti-discrimination activists, in their single-minded determination to stamp out every last vestige of discrimination, have begun to see civil liberties as an obstacle to their egalitarian goals. And they no longer focus their attention on narrow criteria of race and sex. Today's civil rights establishment seeks to eliminate discrimination in an ever-broadening list of categories, including age, height, weight, sexual orientation, and marital status. The result has been a rising tide of litigation that would be farcical if it weren't so expensive.

Although the legal bills are large, the total damage caused by such legal battles is much greater. Bernstein details the many values that are threatened by such litigation, including free speech in the workplace, artistic freedom, political speech, freedom of thought on college campuses, and even the freedom to choose roommates.

One of the most controversial applica-

tions of anti-discrimination law has been workplace sexual harassment, which was rendered illegal by judicial interpretations in the 1980s, making a "hostile workplace environment" a form of gender discrimination. This line of reasoning has been steadily broadened so that today, employers are potentially liable for virtually any speech in the workplace of a sexual nature. Because of the open-ended nature of the liability, many employers have responded by monitoring their employees' communications and prohibiting interoffice romance. Bernstein relates a particularly famous example of egregious sexual harassment litigation, in which a worker relating the plot of an episode of *Seinfeld* that contained an off-color joke was fired from his job after a sexual harassment complaint was filed against him.

Political speech has also been threatened by anti-discrimination law. Under the Clinton administration, the Department of Housing and Urban Development launched legal action against activists opposed to the creation of low-income housing and homeless shelters in their neighborhoods. Bernstein notes that anti-discrimination sanctions have also been imposed on college



professors expressing racially divisive opinions, and that peoples' statements of personal opposition to anti-discrimination law have been used as evidence against them in subsequent discrimination lawsuits.

Freedom of association is another important value threatened by overzealous civil rights prosecutions, Bernstein argues. Discrimination law has been used to force religious landlords to rent to unmarried couples in contravention of their deeply held moral beliefs. In a few cases, anti-discrimination law has even been used to penalize individuals who discriminate in their choice of roommates. While defendants in the latter cases have usually won in court, they were nevertheless left with thousands of dollars in legal bills.

In the face of so pervasive a threat to civil liberties, one would expect the American Civil Liberties Union to be on the front lines defending freedom of speech and expression. Alas, Bernstein says, the ACLU has been crippled by internal divisions, and as a result has not been a consistent defender of civil liberties when they conflict with anti-discrimination law. This is unfortunate, Bernstein argues, because a left-liberal advocate for civil liberties is desperately needed.

You Can't Say That! is available in hardcover for \$20. It can be purchased at bookstores, at www.catostore.org, or by calling 1-800-767-1241. ■

MONETARY *Continued from page 3*

euro has a rocky road ahead, with enlargement likely to exacerbate tensions within the EU, and with rising competition from Asia on the world market.

Schwartz also warned that the looming pension crisis placed the long-term health of the euro in jeopardy. Like the United States, most European countries have pay-as-you-go pension systems that do not cope well with aging populations. Schwartz and other panelists warned that there would be rising political pressures for inflationary debt relief if governments do not solve their

pension problems before those problems balloon out of control.

An afternoon panel considered the costs and benefits of membership in the euro club. Greek central banker George Tavlakos argued that the euro has been overwhelmingly good for European economies, especially for smaller countries like Greece that have histories of inflation and economic mismanagement. Spanish economist Pedro Schwartz countered that European economic weaknesses are caused by their bloated welfare states, and that the harms caused by the thick rulebook imposed on countries joining the euro area will likely out-

weigh the highly speculative benefits of monetary union.

The final panel of the day focused on the euro's long-term viability. Economist Michael Bordo compared the euro area to the United States, which only achieved full monetary integration with the creation of the Fed in the early 20th century—150 years after political union was achieved. Cato chairman William Niskanen argued that the pension crisis is the biggest threat to the euro's long-term viability.

The papers presented at the conference will be published in a forthcoming issue of the *Cato Journal*. ■

“The justices of the Supreme Court have accomplished what no madman ever could: redact the Constitution by excising important parts of what it says, thereby expanding federal and state power.”

RESTORING *Continued from page 1*

The next passage to be redacted was a limitation on state power: the Privileges or Immunities Clause of the Fourteenth Amendment, which dictates, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” That clause had been added to the Constitution to empower the national government to protect the civil rights of citizens from violation by state governments—a jurisdiction it previously lacked—and to reverse *Barron v. Baltimore*, which held that the Bill of Rights applied only to the federal government.

In 1873, a mere five years after its ratification, the Privileges or Immunities Clause was functionally ripped from the Constitution by a bare majority of the Supreme Court in *The Slaughter-House Cases*, which concerned whether Louisiana’s grant of a monopoly to a state-approved slaughterhouse violated the liberty of other butchers to pursue their lawful occupation. In a five-to-four decision, the majority distinguished two classes of privileges or immunities: national ones that the Court would enforce, such as “the right of free access to [the nation’s] seaports” and the right “to demand the care and protection of the Federal government over [one’s] life, liberty, and property when on the high seas,” and state privileges and immunities that the Court would neglect, which included all the civil rights and liberties that the 39th Congress had tried fruitlessly to protect by enacting this clause.

In the 1903 case of *Champion v. Ames*, the Progressive Era Supreme Court further broadened the Commerce Clause by interpreting the power of Congress “to regulate”—or make regular—commerce between state and state to also include a power to prohibit interstate commerce of which Congress disapproved, in this case lottery tickets. The Commerce Clause was thereby converted from a power to eliminate trade barriers erected by states that restricted free trade into a police power over commerce. Later, when that interpretation was coupled with John Marshall’s expansive reading of the Commerce Power in *Gibbons*, Congress could reach into a state to pro-

hibit commercial activities so long as those activities “concerned” more states than one.

Though permanently loosening the power of Congress to regulate commerce in this way, in cases such as the now-derided *Lochner v. New York*—which struck down a statutory limit on the number of hours per week that bakers could work—the Progressive Era Supreme Court did occasionally use the Due Process Clause to demand some justification for state legislation restricting the privileges and immunities of citizens. It also scrutinized federal laws to see whether they improperly reached wholly intrastate commerce.

In the 1930s, the Supreme Court began pulling back from even this limited review, first by refusing to scrutinize state laws, essentially restoring the unfortunate reasoning of *The Slaughter-House Cases*. Then, in the 1940s, it expanded federal power. In cases such as *Wickard v. Filburn*—upholding a statute that limited the amount of wheat a farmer could grow on his own farm to feed his own animals—the Court effectively ceded to Congress the power both to regulate and to prohibit all intrastate commerce that “substantially affects” interstate commerce.

With these decisions, the Tenth Amendment was also rendered a dead letter. The Tenth Amendment declares, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”—a redundant protection given the first section of Article I that specifies, “All legislative powers, here-in granted, shall be vested in a Congress of the United States.” With the Court’s virtually limitless interpretations of the Commerce Clause and the Necessary and Proper Clause, the enumerated powers doctrine affirmed in both of those passages was, in effect, removed from the text.

Also eliminated in the 1940s was the Ninth Amendment that reads, “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” In the 1947 case of *United Public Workers v. Mitchell*, Justice Reed confusingly asserted, “If granted power is found, necessari-

ly the objection of invasion of those rights reserved by the Ninth and Tenth Amendments, must fail.” In other words, so long as the Court found the existence of a power under its boundless interpretation of the Commerce Clause and the Necessary and Proper Clause, the Ninth Amendment was not violated, which meant it could not possibly ever be violated. So it too was now gone from the text.

Over the past 200 years, then, the Supreme Court has done what someone like Laszlo Toth could never do: take a razor to the text of the Constitution to *remake it from the thing it was into something quite different*. If anything is properly labeled “judicial activism,” this is it. With those clauses removed, the Constitution enforced by the Court is substantially different from the one that you can view in the National Archives, as amended. At the Court’s hands, what was once a system of islands of powers in a sea of individual liberty rights at both the state and the national levels, has become islands of rights in a sea of state and federal power.

The Presumption of Constitutionality

As the Supreme Court gutted the textual limits on the federal government provided by the Commerce Clause, the Necessary and Proper Clause, and the Ninth and Tenth Amendments, and on state governments by the Privileges or Immunities Clause, it adopted in their place what it called a “presumption of constitutionality”—an innovation first employed in the 1931 case of *O’Gorman & Young v. Hartford Fire Insurance*. As Justice Brandeis wrote, “[T]he presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.” *O’Gorman* shows that, well before the so-called Revolution of 1937, the Court was deferring to state legislatures.

As the Brandeis quotation suggests, initially the presumption of constitutionality could be rebutted, at least in theory, by those objecting to a statute’s constitutionality. By the 1940s, however, the presumption became irrebuttable for all practical purposes, at least with respect

Continued on page 16

“Neither penumbras nor emanations could conceal the revolutionary impact of *Griswold*: by protecting an unenumerated right, the Court had escaped the straitjacket of Footnote 4. All hell broke loose.”

RESTORING *Continued from page 15*

to economic regulation. Thus, in the 1956 case of *Williamson v. Lee Optical*, the Court upheld a state statute prohibiting anyone but a licensed optometrist or ophthalmologist from selling prescription glasses. When restricting liberty, wrote Justice William O. Douglas, the legislature need not have actually had good reasons; it is enough that it *might* have had good reasons:

The legislature *might* have concluded that the frequency of occasions when a prescription is necessary was sufficient to justify this regulation of the fitting of eyeglasses. Likewise, . . . the legislature *might* have concluded that one was needed often enough to require one in every case. Or the legislature *may* have concluded that eye examinations were so critical, not only for correction of vision but also for detection of latent ailments or diseases, that every change in frames and every duplication of a lens should be accompanied by a prescription from a medical expert.

With *Lee Optical* as the norm, what then was left of judicial review?

Enter “Fundamental Rights” vs. “Liberty Interests”

After the New Deal, judicial review came to be defined by a single footnote in a 1938 case. I speak, of course, of Footnote 4 of the case of *U.S. v. Carolene Products*, which established three limits on the presumption of constitutionality, notably: “There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be *within a specific prohibition of the Constitution*, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth.” The second and third limits concerned laws that adversely affected discrete and insular minorities or the political process.

Thus, in Footnote 4 the Court enunciated the modern theory of constitutional rights that, after 1941, was to be applied to both state and federal restrictions on

liberty: *Adopt a loose conception of necessity and presume all acts of legislatures to be valid, except when an enumerated right listed in the Bill of Rights is infringed (or minorities or the political process is affected), in which event the Court will put the burden on legislatures to show that their actions were both necessary and proper.* Gone is the enumerated powers doctrine and in its place is sole reliance on some of the rights enumerated in the Bill of Rights. The particular rights that happened to be enumerated in the Bill of Rights rendered this strategy ingenious. By following it, the Court could allow legislatures a completely free hand in regulating the economy while putting on the brakes when freedom of speech or the press was threatened—but not, of course, the expressed prohibition of the Second Amendment.

Footnote 4 “Plus”

For 20 years, the Supreme Court stayed within this Footnote 4 framework. Then in the 1965 case of *Griswold v. Connecticut*, it struck down a ban on the use and sale of contraceptives because, it said, the law violated a right of privacy. Trying desperately to remain within the confines of Footnote 4 and his opinion in *Williamson v. Lee Optical*, Justice Douglas attempted, now infamously, to ground this right in the “specific guarantees in the Bill of Rights [that] have penumbras, formed by emanations from those guarantees that help give them life and substance.” But neither penumbras nor emanations could conceal the revolutionary impact of *Griswold*: by protecting an unenumerated right, the Court had escaped the straitjacket of Footnote 4. All hell broke loose.

The Court came under withering fire from former New Dealer constitutional scholars who, however much they may have agreed with the outcome, could see no natural stopping point short of a return to the pre-New Deal scrutiny of state and federal legislation. With *Roe v. Wade*, the political stakes were raised enormously, and former New Dealer liberals such as Raoul Berger were joined by political conservatives in lambasting the new “judicial activism” of

the Court in extending protection beyond the Bill of Rights to some unenumerated rights. In response, the Court eventually adopted the following limitation: Only those unenumerated liberties which were deeply rooted in the history and tradition of the American people, or which were implicit in the concept of ordered liberty, would be protected as “fundamental.” All others would be deemed mere “liberty interests” with which Congress and the states could have their way under the post-New Deal rules.

This placed the courts in the business of picking and choosing among the unenumerated rights to distinguish those that were “fundamental” from those that were not. The outcome of such analysis depends almost entirely, however, on how specifically you define the liberty being asserted. The more specifically you define a right—for example, a “constitutional right of homosexuals to engage in acts of sodomy”—the more difficult a burden it is to meet and the more easily the claim can be ridiculed, especially if a particular liberty was unknown at the founding. While “liberty” as a general matter is obviously deeply rooted in our history and traditions, the specific liberty to use contraceptives or drive a taxi obviously is not. Even liberties that existed at the founding, like the liberty to self-medicate, have not to date been deemed “fundamental” by the Court.

Whenever a particular liberty is specified, it is always subject to the easy rejoinder, “Just where in the Constitution does it say that?” And that rejoinder is offered notwithstanding the plain language of the Ninth Amendment: “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” By protecting only (some) enumerated rights, an unadulterated Footnote 4 approach violates the Ninth Amendment’s protection of “others retained by the people.” And while adding protection of some unenumerated “fundamental rights” to Footnote 4 is a step in the right direction, it too denies and disparages others retained by the people. We can do better. We can enforce the Constitution itself.

“The opinion in *Lawrence* was based, not on the right of privacy, but on a right to liberty. It abandoned the post–New Deal fundamental rights/liberty interests dichotomy.”

The Presumption of Liberty

I propose replacing the existing “presumption of constitutionality” and its ad hoc exceptions for certain favored rights with an across-the-board presumption in favor of the liberties or rights retained by the people. According to this approach, it is entirely proper for government to *prohibit wrongful and regulate rightful* acts. By “wrongful,” I mean acts that violate the rights of others. Even if an act is rightful, it may properly be regulated or “made regular” provided that such regulations are shown to be necessary to prevent the future violation of the rights of others.

While courts would need to distinguish rightful from wrongful conduct, that has been their business for centuries as judges developed the common law of property, torts, and contracts, which is nothing less than elaborate bodies of doctrine used to identify when the rights of one person have been infringed by another. Distinguishing rightful from wrongful conduct is a far more appropriate role for judges than distinguishing “fundamental” from non-fundamental exercises of liberty.

More challenging, perhaps, would be the need for judges to assess the necessity of otherwise proper regulations of liberty, but that too is what the judiciary must do when protecting First Amendment liberties. After all, the First Amendment neither forbids reasonable time, place, manner regulations on the rightful exercise of free speech nor protects wrongful speech that constitutes fraud or slander. My proposal simply extends the same protection now afforded to the liberties of speech, press, and assembly to all other rightful exercises of liberty.

A mild form of this approach was recently employed by Justice Kennedy in the case of *Lawrence v. Texas*. The opinion in *Lawrence* striking down a state ban on “sodomy” between members of the same sex is potentially revolutionary for two reasons. First, because it was based, not on the right of privacy, but on a right to liberty. “We conclude,” wrote Justice Kennedy, that “the case should be resolved by determining whether the petitioners were free as adults to

engage in the private conduct in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment to the Constitution.” For the Court the threshold issue was whether the prohibited conduct was an exercise of liberty, or whether instead it was harmful to others—what the Founders would have called “license.”

Second, *Lawrence* is significant because it abandoned the post–New Deal fundamental rights/liberty interests dichotomy. The Court never characterized the liberty in question as “fundamental.” Nevertheless, having found the conduct to be an exercise of liberty, the Court shifted to the state the burden of justifying its prohibition. The Court then rejected as a sufficient justification for prohibition the asserted “immorality” of the conduct. After all, if the mere opinion of a majority of a state legislature that such conduct is immoral is sufficient to justify prohibiting the exercise of a liberty, the legislature’s power would know no limit because no court could gainsay the opinion of the majority that an act is immoral.

Although an important step in the right direction, the reasoning of *Lawrence* will require further development to completely fill the gaps still remaining in the Constitution. Conduct that does no harm whatsoever is one thing. But the law of contracts, property, and torts exists to distinguish those harms we may rightfully inflict on others—such as driving one’s competitor out of business by attracting its customers—from those that are wrongfully inflicted—such as blowing up one’s competitor’s store. A statutory prohibition having no cognizable justification is one thing. But how will the Court treat future cases in which regulations are asserted to be “reasonable” means of benefiting the public? Some means-ends scrutiny will be required.

Those are matters that cannot be evaded, however, if we are to restore the lost Constitution. To justify a presumption of constitutionality, the Supreme Court had to eliminate passages that inconveniently stood in the way. A presumption of liberty would hold Congress to its enumerated

powers, and states to their proper police power, while protecting the rights retained by the people and the privileges and immunities of citizens. For, despite the best efforts of the Supreme Court over the past two centuries, all those portions of the text are still to be found in the actual Constitution of the United States. You don’t have to take my word for this. You can look it up. ■

Cato Calendar

16th Annual Benefactor Summit

Del Mar, CA • L’Auberge Del Mar
Resort and Spa
February 25–29, 2004

Liberty, Technology, and Prosperity

Palo Alto • Crowne Plaza Cabana
March 25, 2004

A Liberal Agenda for the New Century: A Global Perspective

Moscow • Marriott Grand
April 8–9, 2004
St. Petersburg • Grand Hotel Europe
April 12, 2004

Milton Friedman Prize Presentation Dinner

San Francisco • Ritz-Carlton
May 6, 2004

Cato City Seminar

New York • Waldorf-Astoria
June 10, 2004

Cato University

San Diego • Rancho Bernardo Inn
July 24–30, 2004

Arguing for Liberty: How to Defend Individual Rights and Limited Government

Cato University
Quebec City • Chateau Frontenac
October 28–31, 2004

Speakers include Tom G. Palmer,
Don Boudreaux, Karol Boudreaux,
Monte Solberg, Gene Healy, and
David Boaz.

For more information, visit www.cato.org

From eminent domain to drug enforcement

Ordinary People Victimized by Government

Few things in America are as frightening as finding oneself in the crosshairs of a government agency. Those are the stories Randall Fitzgerald documents in *Mugged by the State: Outrageous Government Assaults on Ordinary People and Their Property*. Because government agencies have dozens of lawyers and a virtually unlimited budget, challenging such agencies in court is almost always a losing proposition. Even those who win in court frequently find their life savings drained by legal bills.

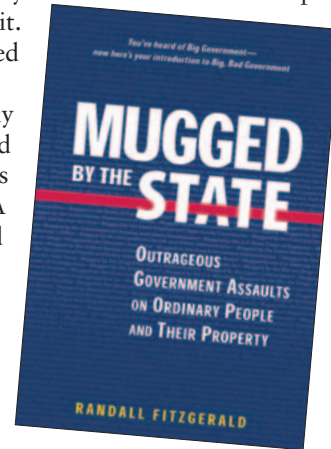
Average citizens who have been victimized by government run amok include:

- A government agency in Atlantic City, New Jersey, attempted to condemn several properties, including the property of an elderly widow living on Social Security, and turn them over to wealthy developer Donald Trump, who wanted to expand his nearby casino. It took more than four years of legal battles to thwart the attempt.
- A frugal doctor seeking to deposit \$316,911 in an account to help support

a local school had his entire life savings of more than \$3 million seized because his bank failed to file a currency transaction report on his deposit. No charges of any kind were filed against the doctor.

- A Maine fish-processing company that had been family owned and operated for nearly a century was forced to close when the FDA banned the processing method used in the plant as a health hazard. To this day, Canadian fish products processed using the same method are legally sold in the United States.
- The owners of a California vineyard locked in a legal battle with the Army Corps of Engineers over alleged damage to wetlands on their property found themselves subject to daily surveillance by army helicopters. After months of harassment, the legal case was dropped because of insufficient evidence, yet the flyovers continued for several more months.

The anecdotes in *Mugged by the State* are powerful reminders of Lord Acton's maxim that power tends to corrupt.



In many cases, the laws being enforced were enacted by well-meaning legislatures; yet by giving bureaucrats arbitrary and unchecked power, such laws make abuse all but inevitable. Although everyone who cares about liberty should read Fitzgerald's book, it is perhaps most desperately needed in state

legislatures and the halls of Congress, which every year churn out a new crop of overweening laws and regulations.

Mugged by the State, published by Regnery for the Cato Institute, is available in hardcover for \$27.95. It can be purchased in bookstores, at www.catostore.org, or by calling 800-767-1241. ■

New Research on Foreign Aid and Growth

The Fall 2003 issue of *Cato Journal* features an in-depth discussion of the relationships among foreign aid, freedom, and economic growth. Several contributors examine empirical evidence of the relationship between economic liberalization and growth rates, and consider why Botswana has succeeded economically when so many of its African neighbors have failed. Ronald Hamowy contributes an examination of "F. A. Hayek and the Common Law." Other articles in the Fall issue examine China's pension crisis, flaws in the corporate income tax, and the role of deposit insurance in preventing bank crises.

International finance has been a frequent topic for the journal this year. Articles in the Spring/Summer issue—based on papers presented at Cato's 2002 Monetary Conference—focus on monetary crises in the Third World. For example, several articles examine Argentina's financial crisis in December 2001. Such crises create difficult moral

dilemmas for international aid agencies like the International Monetary Fund, because refusing to lend assistance will often lead to sovereign default, currency devaluations, and economic chaos—chaos that could spread to neighboring countries with interdependent economies. Granting a bail-out, however, is often only a temporary fix that creates a moral hazard as other nations see that foreign aid agencies will rescue them from the consequences of fiscal profligacy. Contributors identify a variety of factors underlying the Argentine financial crisis, including unrestrained government spending, poor implementation of Argentina's currency board, and the Argentine government's failure to implement credible economic reforms.

Another important debate in the Spring/Summer issue concerns the merits of a global sovereign bankruptcy system. Jeffrey D. Sachs of Columbia University argues that bankruptcy law is needed to prevent the chaos that can often result from multiple creditors scrambling to secure a portion of an insolvent debtor's assets. Economist Anna J. Schwartz counters that sovereign debtors rarely need help restructuring their debt and contends that world attention should be focused instead on ways to prevent sovereigns from accumulating excessive debts in the first place.

The *Cato Journal*, published three times a year, is an interdisciplinary journal of public policy analysis edited by James Dorn. Issues can be purchased for \$8 from the Cato Institute at 800-767-1241 or online at www.catostore.org. One-year subscriptions are available for \$24. ■



Vouchers pass Congress in January

Lartigue Plays Key Role in D.C. Voucher Fight

Cato education policy analyst Casey Lartigue Jr. has played a key role in the successful battle to increase educational choice in the District of Columbia. Shortly after his study “The Need for Educational Freedom in the Nation’s Capital” was released in December 2002, Lartigue had a spirited debate with school board president Peggy Cooper Cafritz on the condition of D.C.’s public schools. Two weeks later, Lartigue was interviewed for an hour by guest host Walter E. Williams on the *Rush Limbaugh Show* about the findings of his study. In March, Cafritz became the first of three city leaders to endorse a voucher plan for the District.

During the year Lartigue remained active on the issue of school choice, testifying before Congress in May and having his research cited in congressional testimony by Rep. Jeff Flake (R-AZ). In mid-September, as the issue heated up in Congress, Lartigue was interviewed about choice on the National Black Caucus of State Legislators Radio Hour. A few days later, as Hurricane Isabel passed through Washington, Lartigue filled in for Mayor Anthony Williams as the keynote speaker at a dinner hosted by D.C. Parents for School

Choice. The following day, Lartigue delivered the keynote address to the Frederick Douglass Memorial and Historical Association.

A week later, he made the case for school choice in an extended solo appearance on C-SPAN. That appearance led to Lartigue becoming a regular contributing guest on education issues for Radio One’s provocative program, *Mind Yo’ Business*. Lartigue has also appeared on Howard University Television’s *Evening Exchange*.

In addition to his public activities, Lartigue has worked behind the scenes with parents and school choice activists. Activists in New Jersey, Mississippi, and Kansas City have invited Lartigue to advise them on their school reform initiatives. He has also made on-site visits to schools and attended demonstrations hosted by school choice opponents. In

October, Lartigue joined a group of 18 activists, government officials, and school representatives for a fact-finding tour of Milwaukee’s voucher program.



Casey Lartigue Jr.

the opportunities that school choice presents them and their children.”

“H. L. Mencken advised editorial writers to get out of the office at least once a week,” said Lartigue. “I’ve taken that approach to heart by getting out to talk with parents and other stakeholders in the community about

Select Speaking Engagements, 2003

Black Alliance for Educational Options and Washington Scholarship Fund parent outreach meeting	February 8
Harvard Graduate School of Education, Alumni of Color conference	March 1
Testimony before the House Committee on Government Reform	May 9
National Head Start Association conference	June 27
D.C. Parents for School Choice dinner	September 19
Frederick Douglass Memorial and Historical Association	September 20
Excellent Education for Everyone (Newark, NJ)	October 8
“No Excuses,” Manhattan Institute conference	October 31
Address to freshman legislators in Jackson, MS	November 19

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“Those of us who were fortunate enough to live and be raised in a reasonably free society tend to underestimate the importance of freedom. We tend to take it for granted. It has made us in the West more complacent, so having a prize emphasizing liberty is extremely important.” — MILTON FRIEDMAN



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◆ **California cities have no lower priorities than police and fire protection**

California Gov. Arnold Schwarzenegger . . . has triumphantly repealed the tripling of car taxes that his predecessor, Democrat Gray Davis, approved earlier this year. But that has left cities and counties across California angrily scrambling to replace lost revenue—and may force them to cut funding for police and firefighters.

—*Washington Post*, Dec. 11, 2003

◆ **Cognitive dissonance?**

Well-placed sources said [President] Bush hung up on freshman Rep. Tom Feeney after Feeney said he couldn't support the Medicare bill. The House passed it by only two votes after Hastert kept the roll-call vote open for an unprecedented stretch of nearly three hours in the middle of the night.

Feeney, a former Speaker of the Florida House of Representatives whom many see as a rising star in the party, reportedly told Bush: “I came here to cut entitlements, not grow them.”

Sources said Bush shot back, “Me too, pal,” and hung up the phone.

—*The Hill*, Dec. 3, 2003

◆ **A perfect metaphor**

Everything about the Capitol Visitor Center project just keeps expanding. The hole in the ground that will house it. The architectural complexity of the building. And the bill that taxpayers will pay. . . .

Congress's General Accounting Office

says weak congressional oversight has been a big part of the problem. . . .

What was pitched as a \$71 million project in the early 1990s is creeping toward a \$500 million endeavor, according to a recent GAO review.

—*Washington Post*, Nov. 11, 2003

◆ **What do the taxes pay for?**

Annual property taxes [on Katharine Hepburn's family home in Connecticut] are roughly \$30,000. . . . But a nearly completed revaluation . . . will mean new tax notices in November, and . . . the bill for the Hepburn property could go as high as \$88,000. . . .

On top of that, the borough of Fenwick charges a surtax of \$2,500 to cover the cost of maintaining roads and other services.

—*New York Times*, Oct. 11, 2003

◆ **Paradoxically, price controls reduce supply**

China's central bank has sharply raised the maximum interest rates that banks can charge for commercial loans, a step that, paradoxically, is likely to make credit more widely available to private enterprises and speed China's transformation into a capitalist economy.

—*New York Times*, Dec. 11, 2003

◆ **Balloon payment**

Asked how he would pay for his ambitious AIDS plan, [Gen. Wesley] Clark pointed to a bunch of red, white, and blue balloons. “I can bring this country together,” he said. “I believe we can come together

er on this because I believe in this country. I love those colors, I love the flag.”

—*Miami Herald*, Dec. 1, 2003

◆ **Do as we say, not as we do**

It was not spelled out during the brief get-acquainted meeting at Riverside, California, last week between George W. Bush and Arnold Schwarzenegger, but the president's campaign team is giving firm advice to the governor-elect of California: Don't raise taxes and do cut spending.

—Robert Novak

Chicago Sun-Times, Oct. 24, 2003

◆ **Instead, it's just the most expensive**

Thomas E. Mann, a congressional scholar at the Brookings Institution, said . . . “If the Medicare bill had not passed, we'd look back and say it was the least productive session of Congress in memory.”

—*Washington Post*, Nov. 28, 2003

◆ **A new leaf indeed**

Atty. Gen. Bill Lockyer, one of the most partisan Democrats in California, surprised political insiders on Saturday when he revealed that he had broken party ranks in the recall election to vote for Arnold Schwarzenegger. . . .

Lockyer shrugged off suggestions that his vote for Schwarzenegger would damage his standing among the Democratic faithful and undermine his support in the 2006 election, saying: “I'm just doing what I think is right. It is a new me.”

—*Los Angeles Times*, Oct. 19, 2003

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