

Cato Policy Report

July/August 1988

Volume X Number 4

The Courts' Assault on Property Rights

by Doug Bandow

In an era of judicial activism judges have remained strangely passive in the face of a sustained government assault on at least one personal freedom: property ownership. Jurists who have consistently circumscribed government's authority to limit public benefits, such as welfare, have stood aside as government eviscerated private property rights.

For the republic's first 150 years the Supreme Court was generally protective of property ownership, utilizing a variety of constitutional tools, including the contracts clause, the commerce clause, and the Fifth, Tenth, and Fourteenth amendments, to strike down legislative encroachments. Thus, unlike the adventurist jurisprudence now engaged in by many judges on the left, those decisions were deeply rooted in the Constitution. As University of San Diego law professor Bernard Siegan has pointed out, "Originally a major pur-

pose for federal judicial review of national and state legislation was to protect property rights."

But under pressure from President Franklin D. Roosevelt and a heavily Democratic Congress, the Supreme Court reversed its course in 1937 and began to uphold virtually every governmental economic intervention. That retreat from longstanding precedent is probably unparalleled in American jurisprudence.

One important victim of the Court's retrenchment was the Fifth Amendment, which states that private property shall not "be taken for public use, without just compensation." Government's power to seize private property through eminent domain has long been considered an essential attribute of sovereignty; one legal treatise called it "necessary to the very existence of government." Nevertheless, it was generally recognized that eminent domain is strictly limited by the Constitution as well as by state constitutions.

Today, however, the legislative and judicial branches are dangerously trans-

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forming a doctrine that was originally intended to facilitate such obviously public projects as road construction. Even the requirement that private property be taken only for a "public use" is effectively being dropped, and more forms of property are being subjected to government seizure. Municipalities have sought to condemn professional football franchises and money-losing factories; 11 California cities tried to forcibly acquire leasing rights to federal land so as to ensure a supply of geothermal energy. As Columbia University law professor Curtis Berger observed, "Local and state legislatures are becoming more inventive," using the power of eminent domain in ways "that 50 and 75 years ago would have seemed very extreme."

Though the judiciary once took the Fifth Amendment seriously, by midcentury the Supreme Court, in a process detailed by Ellen Frankel Paul in *Property Rights and Eminent Domain*, had adopted what it termed the "modern view," holding that the advancement of health and recreation—through the construction of a baseball field, an opera house, or a public housing project, for instance—could also constitute a

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Catherine England, Cato's director of regulatory studies, testifies on revising the Glass-Steagall Act before the House Telecommunications and Finance Subcommittee as John Brown of Bankwatch and Ralph Nader listen.

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The Moral Equivalent of War

Editorial



National service is back, this time under the auspices of the Democratic Leadership Council, headed by Sen. Sam Nunn (D-Ga.). The DLC proposes that young people enlist in either military service or social programs for a term of one or two years, after which each participant would receive a voucher that could be used for college expenses, job training, or a down payment on a home. The current federal student aid programs would supposedly be phased out; student aid would then be available only to national service enlistees, making it "politically unassailable."

The DLC believes that the proposal would entail "sacrifice" and "self-denial" and that it would revive "the American tradition of civic obligation." Its booklet on the proposal does not mention the American tradition of individual rights. The proposal is also intended to "broaden the political base of support for new public initiatives that otherwise would not be possible in the current era of budgetary restraint." In other words, it would be a way for government to hand out benefits by enlisting cheap labor—and just offstage, one can hear the murmur "conscript labor." But not this year.

The last chapter of the booklet, inevitably, is titled "The Moral Equivalent of War," a phrase harking back to the famous 1910 essay in which William James proposed that young Americans be conscripted into "an army enlisted against Nature" that would cause them to "get the childishness knocked out of them, and to come back into society with healthier sympathies and soberer ideas."

The fascination of collectivists with war and its "moral equivalent" is undying. In our time President Carter revived the Jamesian phrase to describe his energy policy, with its emphasis on government direction and reduced living standards. It was to be his peacetime substitute for the sacrifice and despotism of war.

In 1982 British Labour party leader Michael Foot was asked to cite an instance of socialism in practice that could "serve as a model of the Britain you envision," and he replied, "The best example that I've seen of democratic socialism operating in this country was during the second world war. Then we ran Britain highly efficiently, got everybody a job. . . . The conscription of labor was only a very small element of it. It was a democratic society with a common aim."

More recently the American socialist Michael Harrington wrote, "World War I showed that, despite the claims of free-enterprise ideologists, government could organize the

economy effectively." He hailed World War II as having "justified a truly massive mobilization of otherwise wasted human and material resources" and complained that the War Production Board was "a success the United States was determined to forget as quickly as possible." He went on, "During World War II, there was probably more of an increase in social justice than at any [other] time in American history. Wage and price controls were used to try to cut the differentials between the social classes. . . . There was also a powerful moral incentive to spur workers on: patriotism."

Collectivists such as Foot and Harrington don't relish the killing involved in war, but they love war's domestic effects: centralization and the growth of government power. They know, as did the libertarian writer Randolph Bourne, that "war is the health of the state"—hence the endless search for a moral equivalent of war.

As Don Lavoie demonstrated in his book *National Economic Planning: What Is Left?*, modern concepts of economic planning—including "industrial policy" and other euphemisms—stem from the experiences of Germany, Great Britain, and the United States in planning their economies during World War I. The power of the central governments grew dramatically during that war and during World War II, and collectivists have pined for the glory days of the War Industries Board and the War Production Board ever since.

Walter Lippmann was an early critic of the collectivists' fascination with war planning. He wrote, "A close analysis of its theory and direct observation of its practice will disclose that all collectivism . . . is military in method, in purpose, in spirit, and can be nothing else." Lippman went on to explain why war—or a moral equivalent—is so congenial to collectivism:

Under the system of centralized control without constitutional checks and balances, the war spirit identifies dissent with treason, the pursuit of private happiness with slackerism and sabotage, and, on the other side, obedience with discipline, conformity with patriotism. Thus at one stroke war extinguishes the difficulties of planning, cutting out from under the individual any moral ground as well as any lawful ground on which he might resist the execution of the official plan.

National service, national industrial policy, national energy policy—all have the same essence, collectivism, and the same model, war. War, though sometimes necessary, involves mass murder. Why would anyone want its moral equivalent?

— David Boaz

Niskanen Book Honored

Murray, Williams Highlight Annual Public Policy Day

The Cato Institute's third annual Public Policy Day featured lectures by Cato scholars and others. Speakers included *Losing Ground* author Charles Murray and George Mason University economist Walter Williams.

Murray's lecture focused on several of the themes of his new book, *In Pursuit: Of Happiness and Good Government*. He drew upon current research in psychology and sociology to identify the conditions that enable people to lead happy and productive lives. He then considered the sorts of public policy initiatives that could help people attain happiness.

Cato's director of regulatory studies, Catherine England, assessed the prospects of banking reform bills. England said that congressional horse trading will probably result in a far less comprehensive and substantive reform than is needed to eliminate the systemic problems that have devastated savings and loan institutions in Texas and other states. She noted that such problems threaten the stability of the entire financial services industry.



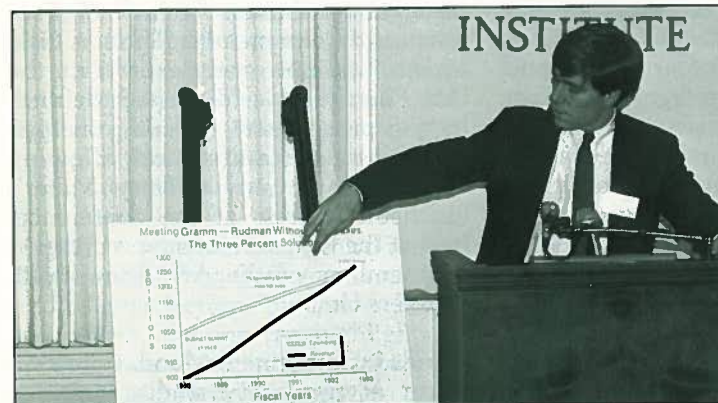
George Mason University economist Walter Williams discusses the conflict between apartheid and capitalism in South Africa.

In another lecture, Williams condemned the South African regime for being anticapitalist. According to Williams, author of the forthcoming book *South Africa's War against Capitalism*, critics of the regime are wrong to contend that apartheid is an example of the excesses of capitalism. He said that apartheid is in fact an example of the horrors of government interventionism;

it denies fundamental economic and civil liberties to South Africans.

Public Policy Day concluded with an address by Cato chairman William A. Niskanen and a reception in honor of the publication of his new book, *Reaganomics: An Insider's Account of the Policies and the People*. Niskanen noted that "Reaganomics was the most ambitious attempt to change the course of American economic policy by any administration since the New Deal. . . . In the end, however, there was no Reagan revolution." Niskanen argued that although the Reagan administration may have constrained the growth of government more than any other administration would have, it failed to make substantive, permanent reforms.

Speeches were also given by Cato senior fellow Doug Bandow, on the World Bank; Cato vice president David Boaz, on drug legalization; Ted Galen Carpenter, Cato's director of foreign policy studies, on America's overextended alliance system; and Dan Mitchell of Citizens for a Sound Economy, on the politics of the federal budget deficit. ■



Dan Mitchell of Citizens for a Sound Economy discusses a federal spending freeze at Public Policy Day.



Cato sponsors from around the country listen to talks at Public Policy Day.

Published by the Cato Institute, *Cato Policy Report* is a bimonthly review that provides in-depth evaluations of public policies and discusses appropriate solutions to current economic problems. It also provides news about the activities of the Cato Institute and its adjunct scholars. *Cato Policy Report* is indexed in *PAIS Bulletin*.

Correspondence should be addressed to: *Cato Policy Report*, 224 Second Street S.E., Washington, D.C. 20003. *Cato Policy Report* is sent to all contributors to the Cato Institute. Single issues are \$2.00 a copy.

ISSN: 0743-605X

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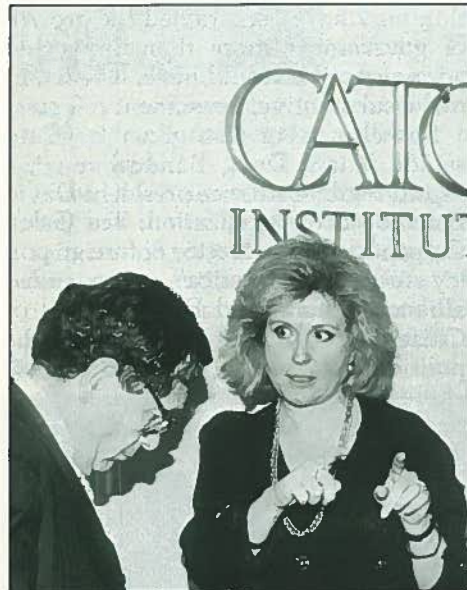
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Health Care, Agriculture, Air Safety Subjects of Forums

Cato Events

March 30: "The Suicidal Corporation: How Big Business Fails America." More than 100 people attended a panel discussion held in conjunction with the release of Paul Weaver's book *The Suicidal Corporation*, copublished by the Cato Institute and Simon & Schuster. The panel included Weaver, formerly a Ford Motor Company executive and now a media fellow at the Hoover Institution; David Gerson, ex-



Regina Herzlinger of the Harvard Business School discusses the benefits of for-profit hospitals at a Cato Policy Forum.



Cato Institute president Edward H. Crane introduces a panel assembled to discuss Paul Weaver's book *The Suicidal Corporation*, consisting of David Gerson of the American Enterprise Institute, Weaver, Patrick Maines of the Media Institute, and Cato chairman William A. Niskanen.

ecutive vice president of the American Enterprise Institute; Cato chairman William A. Niskanen; and Patrick Maines, president of the Media Institute. The discussion, held at the National Press Club, centered around Weaver's assertion that big business is not necessarily procompetition and procapitalism. Having argued that corporate lobbying has been at the root of such destructive economic policies as wage and price controls, protectionism, and massive subsidy programs, he urged American companies to adopt a new spirit of free enterprise.



Cato senior fellow Doug Bandow testifies before the burden-sharing panel of the House Armed Services Committee on the withdrawal of U.S. troops from Korea.

April 7: "Privatization and the Postal Monopoly." Postmaster General Anthony Frank, Office of Management and Budget director James C. Miller III, Federal Trade Commission chairman Daniel Oliver, Council of Economic Advisers member Thomas Gale Moore, and nine other experts on the U.S. Postal Service discussed the merits and prospects of repealing the private express statutes and allowing competition in mail delivery. Miller's luncheon address at the conference, held at the Willard Hotel, was picketed by members of the American Postal Workers Union.

April 13: Catherine England, Cato's director of regulatory studies, testified before the Financial and Telecommunications Subcommittee of the House Energy and Commerce Committee. England, who directs Cato's **Financial Deregulation Project**, described the benefits of allowing banks to compete with securities firms in the provision of services and called for the repeal of the Glass-Steagall Act.

April 14: "Social Benefits of For-Profit Hospitals." Harvard Business School professor Regina Herzlinger contended that investor-owned hospitals make more efficient use of their capital and

labor than the heavily subsidized non-profit hospitals and can therefore provide high-quality health care at lower costs. Nonprofits, she charged, tend to use their tax breaks to maximize the welfare of their doctors rather than their patients.

April 26: "Farming in a World without Subsidies." Dennis Avery, a former senior agricultural analyst at the State Department, warned that farm subsidies and trade barriers are undermining the world's economy. He argued that agricultural trade reform, particularly the elimination of subsidies and tariffs, would yield enormous gains for farmers and consumers. Commenting on Avery's remarks was Dale Hathaway, a former undersecretary of agriculture who currently heads the Consultants International Group, a trade and investment policy advisory firm.

May 10: "How Can We Ensure Aviation Safety?" John M. Albertine, chairman of the Aviation Safety Commission, and Robert W. Poole, Jr., president of the Reason Foundation, debated the findings of the commission's recent report. Albertine called for the removal of the Federal Aviation Administration from the Department of Transportation and the appointment of an air travel "safety czar" with broad oversight powers. Poole countered by proposing to privatize airports and the air traffic control system.

May 17: At the Institute's third annual **Public Policy Day**, Cato sponsors gathered to hear lectures by Cato scholars and others. Among the highlights of the event were Manhattan Institute fellow Charles Murray's discussion of his forthcoming book, *In Pursuit*; George Mason University economist Walter Williams's lecture on capitalism and South Africa; Cato vice president David Boaz's speech on drug legalization; and a proposal for financial services deregulation by Catherine England, Cato's director of regulatory studies. Public Policy Day concluded with an address by Cato chairman William A. Niskanen and a reception in honor of the release of his book, *Reaganomics: An Insider's Account of the Policies and the People*, published for the Institute by Oxford University Press. ■

Russian Book on VOA

Weaver, Niskanen Books Reviewed; Boaz Sets Off Drug Policy Debate

Paul Weaver, whose book *The Suicidal Corporation: How Big Business Fails America* has just been published by Simon & Schuster and the Cato Institute, has been speaking on the topic of the book at prominent forums across the country. He addressed the City Club

Foundation luncheon. His book has been reviewed in the *New York Times*, the *Los Angeles Times*, the *Wall Street Journal*, *Fortune*, *BusinessWeek*, and other publications, and he has appeared on numerous local and national broadcasts.



Paul Weaver, author of *The Suicidal Corporation*, speaks to the Cleveland City Club.

of Chicago as well as the City Club of Cleveland, in a talk broadcast nationwide on 144 radio stations. In Washington he appeared at a Cato Policy Forum held at the National Press Club, and in Los Angeles he spoke at a Reason

Cato chairman William A. Niskanen received the Adam Smith Award from the Association of Private Enterprise Education at the group's annual convention. Niskanen has made a number of appearances recently to discuss his new book, *Reaganomics: An Insider's Account of the Policies and the People*. He gave the dinner speech, on trade policy, at a West Coast conference of the National Association of Business Economists and led a seminar at the Hoover Institution. Niskanen also testified during the National Economic Commission's hearings on budget policy.

Cato vice president David Boaz's March 17 article in the *New York Times*, which argued that the legalization of drugs would take the huge profits out of drug dealing and reduce urban crime rates, was followed by an explosion of interest in the decriminalization alternative. Baltimore mayor Kurt L. Schmoke, a former prosecutor, has emerged as a leading advocate of legalization; New York state senator Joseph Galiber has introduced a decriminalization bill. The proposal has been featured on the cover



Cato Institute chairman William A. Niskanen autographs his book *Reaganomics* at a reception in his honor.

How Can We Ensure Airline Safety?

Policy Forum

The Cato Institute regularly sponsors a Policy Forum at its Washington headquarters, where distinguished analysts present their views to an audience drawn from government, the media, and the public policy community. A recent forum featured John M. Albertine, vice chairman of Farley Industries and chairman of the presidentially appointed Aviation Safety Commission, and Robert W. Poole, Jr., president of the Reason Foundation.

John M. Albertine: Ten months ago the White House asked us to take a look at the issue of aviation safety. Our report makes several important points. One is that air travel was incredibly safe before deregulation, and it continues to be incredibly safe. We concluded rather strongly that deregulation has had absolutely no effect on safety.

If you're worried about safety, you should get on an airplane and never get off. The most dangerous thing you could do on an airplane, if the flight is longer than two hours, is inhale smoke. During the period in which we were studying the industry, the only air-safety-related accident of note was that a member of the commission fell down in his living room and broke his leg. It's much more dangerous to walk around in the Cato Institute than it is to fly in America's aircraft.

Once I had gotten up to speed on the data, I wondered why we were bothering to do the study at all. Air travel is so safe that it's very difficult to find any meaningful statistics with respect to such questions as whether the margin of safety is eroding. So one of the most important things we did in our report was to come out with an official judgment that there is no urgent safety problem.

However, we look at the industry within the context of the public policy concerns about the subject. If we were allocating resources efficiently, we would probably be worried about a lot of modes of transportation other than air travel. But people demand an enor-

mous level of safety in air travel and do not demand it in other modes of transportation. The obvious reasons are that it's a rather unnatural act to be flying around at 35,000 feet, and one gets a sense of not being in control. People want the system to be incredibly safe, and it is incredibly safe; the question is how we can maintain that safety.

Now, we concluded that the Federal Aviation Administration is a pretty good agency, as government agencies go. So we tried to come up with a model that took the FAA as far out of government, for the purpose of managing the resources within it, as we thought we could and still get attention.



John M. Albertine: "We tried to give as much aid as possible to those who want to see the FAA managed like a private enterprise."

There was a commission on privatization, I'm told. I say "I'm told" because I didn't read anything about its findings. Its report got no attention because it has absolutely no chance of having any meaningful effect on public policy in 1988. In my judgment, it makes no sense to spend 10 months working on a report that's going to get zero attention and calls for policies that would be very difficult to enact even if we had a Republican majority in Congress.

That is why our commission declined to recommend privatization—not because it's not a good idea but because it's an incredible nonstarter. Congress is not going to privatize the FAA. A presidential commission shouldn't conduct itself as if it were a congressional

committee. Its recommendations ought to be somewhere beyond what is politically doable so that it can change the terms of the public policy debate, but if they're so far beyond what is doable as to be ludicrous, it's wasting its time. So instead of saying that the FAA should be privatized, we tried to give as much aid as possible to those who want to see the FAA managed in a way similar to the way a private enterprise is managed.

We talked at length about the crazy civil service and procurement rules, which ought to be done away with. We proposed to take the FAA out of the Department of Transportation, out of the executive branch of government, and out of the appropriations process and make it a user-funded entity that is overseen by a board of governors and at least approximates a private firm.

Whether we can affect the public policy debate remains to be seen. There is a lot of momentum in the industry and in the unions behind the campaign to get the FAA out of the DOT. I think they're going to succeed. Whether it can be gotten out from under the civil service and procurement rules is less clear. The probability of getting it out of the appropriations process is low.

Those are the reasons that we decided to go in the direction that we did rather than propose what many people would prefer—privatization of the FAA. Other than the fact that it's politically impossible, it's a great idea.

Robert W. Poole, Jr.: First I'd like to thank Cato for starting me off on studying this issue. In 1977 Cato gave me a small research grant to look at the Federal Aviation Administration and consider whether we need a federal regulatory agency to deal with aviation, and I have been researching the FAA and air traffic control ever since.

Looking back 10 or 11 years gives one an appreciation of how far the debate on the issue has come. The current conventional wisdom on what is feasible is very different from the conventional wisdom even five years ago.

In 1983, when I wrote a study for the Heritage Foundation outlining a plan

for privatizing air traffic control, it was considered very radical to point out that a system couldn't provide air traffic control services efficiently if it was subject to the federal budget process, civil service rules, federal procurement regulations, and micromanagement by Congress and the administration and if you were trying to fund it through taxes rather than through user fees. Yet the need to eliminate every one of those factors has since become part of the conventional wisdom. They were all cited by the Air Transport Association in 1985, by the National Academy of Public Administration in 1986, by the President's Commission on Privatization early this year, by Transportation Secretary James Burnley in a recent speech to the National Press Club, and finally by the Aviation Safety Commission.

So we've at least come to an understanding that using a tax-supported bureaucracy to deliver air traffic control is not a good idea. The biggest accomplishment of the Aviation Safety Commission is documenting once again—one hopes for the last time—that rather than decaying under airline deregulation, air safety has actually increased.

Unfortunately, instead of stopping with that accomplishment, the commission proceeded to come up with a two-headed monster called the Federal Aviation Authority. I'm afraid what it's proposed is a U.S. Postal Service for aviation—a government corporation that would not be responsive to either the marketplace or Congress. It's a solution to the wrong problem. As the commission noted, we don't have a safety problem in aviation today. However, we do have an infrastructure problem; our current system of funding airports and providing air traffic control does not give us the kind of infrastructure needed in the aviation environment created by deregulation. The commission's proposal would do very little to solve that problem.

What exactly do I mean by an infrastructure problem? We have a system that does not use pricing to allocate resources, that is subsidized by the taxpayer to the tune of more than a billion dollars a year, that makes extensive use of cross-subsidization—transferring revenues from one category of users to another, that tries to do the whole job through centralized planning and cen-

tralized funding, and that is governed by an engineering mentality in which the solution to capacity problems is thought to be asphalt, concrete, and electronics.

Our system puts resources in the wrong place. For example, a lot of money in so-called user taxes is generated at very busy capacity-constrained airports such as La Guardia and Washington National. That money is sent to Washington, and then it is redistributed to airports that don't have significant capacity constraints but are entitled by political formula to a piece of the pie. That system, unlike a pricing system, does not generate the kind of information that tells us what our priorities ought to be and where we really need more capacity. Pricing is the key



Robert W. Poole, Jr.: "We don't have a safety problem in aviation today; however, we do have an infrastructure problem."

to having an infrastructure that can keep pace with a rapidly changing environment.

The Council of Economic Advisers' 1988 report contains an excellent discussion of the problem. I'll quote just one sentence from it: "Only with a pricing system that allows operators and air travelers to register the extent to which they value various services will it be possible to plan sensibly for the needs of the future."

Today's backwater airport can be tomorrow's hub. Airlines can change their resource allocation decisions in response to changing market conditions, but a centralized funding process, driven by a bureaucracy and micro-managed by Congress, can't make such

rapid changes. That's the kind of problem that the Aviation Safety Commission did not address.

Everyone says we need more airports. How can we create more capacity? It takes an act of Congress to open a control tower anywhere in the United States! We should be providing incentives for people to fill the need for new airports, but as long as we need an act of Congress just to get a new control tower, we aren't going to get very many new airports.

An engineering approach that involves making a 20-year master plan and cranking out the funds through a grant process simply isn't going to solve the problem. Market pricing would solve the problem in both the short term and the long term. In the short term, market pricing would provide incentives to get the most out of a limited capacity. If a market price was put on takeoffs and landings, people would have to decide whether it was worth paying that price, what size plane to use, and whether to fly at the busiest time, when the price would be high. So market pricing would lead to the highest and best use of a limited capacity.

Then, in the long term, market pricing would generate revenues at precisely the points where the need was the greatest, and if those revenues were allowed to stay there, they would be a means of building more capacity.

That's why those of us who have been talking about privatizing air traffic control and airports have stressed that market pricing is an integral part of the process, and that's why we disagree so strongly with recommendations such as those of the Aviation Safety Commission. Now, Jack may say, We've proposed going from taxes to user fees, so wouldn't that be doing at least part of what you're recommending? The answer is no, because a user fee charged by government is not, would not be, and cannot be a market price.

Government's not in business to charge market prices. When government sets up a system of charging user fees—and we've seen this in waterways and in roads as well as in the aviation system—it always ends up with taxpayers providing part of the revenues, with a lack of peak-hour pricing, and with subsidies going from one category of users to another. In fact, politi-

Aviation Safety (Cont. from p. 7)

cians make their living by arranging transfers of subsidies from one group to another. So it's ridiculous to expect a political system to have user fees that were anything like market prices or to generate the information that market pricing would.

The Federal Trade Commission has recognized that we need a better means of making resource allocation decisions. In "The Deregulated Airline Industry," it observed, "What is missing from FAA rerouting plans is a way to assign priorities to aircraft using heavily traveled routes. Privatization of airport and air control facilities may represent an alternative."

So what should we do? We should decentralize the airport portion of air traffic control. We should allow airports to charge market prices for access and use, allow them to invest the revenues in building capacity, and allow them to control the elements that affect capacity: control towers, runways, landing aids, and so forth. We should also privatize the en route portion of air traffic control, making it a commercial operation that charges market prices and is directly accountable to the various users.

A question that always comes up is, Can we separate air traffic control from safety regulation? Last winter Lynn Helms, a former FAA administrator, told the President's Commission on Privatization that "any attempt to separate out the FAA's different functions would be like trying to unscramble an egg." In the same spirit, the Aviation Safety Commission wrote that because it was "not inclined to gamble on sorting out conflicting assertions about whether safety regulatory functions can be separated organizationally from air traffic control," it could not endorse privatization.

But we don't have to deal with "conflicting assertions"; we can draw on this country's and other countries' experience with private air traffic control that's separate from regulation. The air traffic control system that we had before the government got into it was started by Aeronautical Radio Inc. in 1935. It was operated privately for a year and a half before it was national-

ized under the Civil Aeronautics Act. Right after World War II ARINC, which is still in business and is now a communications services company, set up the air traffic control systems of Cuba and Mexico as private, nonprofit user-owned corporations. The Cuban system remained private for about 15 years, until it was nationalized by Castro; the Mexican system was operated privately for over 30 years.

Radio Suisse has been a private, nonprofit air traffic control operator in Switzerland since the 1930s. The airport portion of air traffic control is decentralized in Britain, and some of it is provided under contract by private firms. Contract air traffic control is also provided by such private firms as Bendix and Lockheed in Saudi Arabia, in other Persian Gulf countries, and to some extent in the Caribbean. A year ago New Zealand converted its air traffic control system to a government corporation. It's supported by user fees, and it's being considered for full privatization. The point is that private air traffic control has a track record.

The FAA in its present form is an anomaly; it is the only significant federal regulatory agency that also in effect regulates itself as a system operator. In recent years many consumer advocates have asked whether that constitutes a built-in conflict of interest. The Aviation Safety Commission's report fails to resolve the problem of having a tradeoff between regulation and operations within a single agency. More important, it fails to identify a mechanism for dealing with the real problem—an outmoded infrastructure—and therefore leaves the aviation system vulnerable to continued delays and congestion. That could increase the pressure for reregulation in the future.

The commission's report is probably going to serve as a stalking-horse for a bill that would simply take the FAA out of the DOT and take it off budget

without making any real reforms. That could be a worse system than the one we have.

The basic economics would remain unchanged under that approach. There would still be taxpayer subsidies, there would still be extensive cross-subsidies, and there would still be centralized planning and grant funding—and that would be a real tragedy.

Unfortunately, that outcome—the preservation of the status quo—seems to be exactly what a number of special interest groups, such as the airline labor unions and the private pilots, would like to see. They are happy with the present system; they benefit from the cross-subsidies. I think a very important opportunity to make fundamental reforms is about to be missed.

Albertine: If the conventional wisdom today is to do the things that Bob advocated 10 years ago, why is such a bad bill moving through the Senate? It's terrific to write reports advocating privatization, but Bob is living on another planet when it comes to dealing with those issues.

The conventional wisdom in the Senate is to make the FAA an independent federal agency, period. That's what the industry wants. The conventional wisdom in the House is worse; it is to do absolutely nothing. Just taking the FAA out from under the DOT, I agree, would create a system that would be worse than the present one. That's why we tried to come up with a proposal that would alter the terms of the public policy debate.

A presidential commission can go two ways. It can go the route of the privatization commission—which probably should have just written a one-line report saying that the FAA ought to be privatized and not spent a lot of time and effort on it—or it can move the process along a little bit and steer it in the right direction. ■

Call for Papers

The Cato Institute seeks papers on public policy issues for the *Cato Journal*, *Cato Policy Report*, and the *Policy Analysis* series. Send papers or proposals to Editor, Cato Institute, 224 Second St. S.E., Washington, D.C. 20003.

Cato News (Cont. from p. 5)

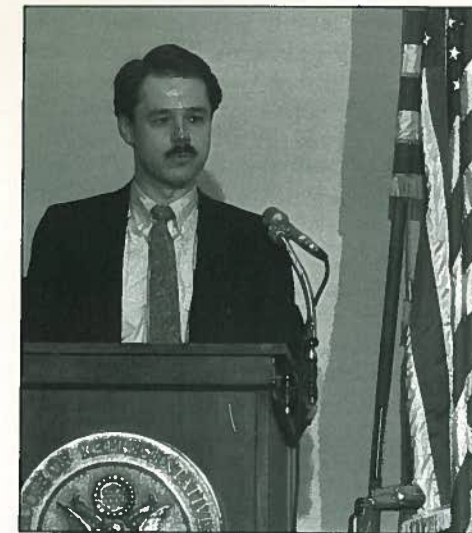
of *Time*, on the front pages of the *Washington Post* and the *New York Times*, and on network news programs.

The Voice of America plans to broadcast the entire Cato Institute book *Friedman and Hayek on Freedom* to the Soviet Union. The Russian-language book, published in 1985, contains three essays by Milton Friedman—"The Relation between Economic Freedom and Political Freedom," "The Power of the Market," and "Created Equal"—as well as "Who, Whom" from F. A. Hayek's *Road to Serfdom*. The book has been widely distributed, both to Russian emigrés and through unofficial channels within the Soviet Union. Vladimir Bukovsky, an emigré, said that the book was "very important for Soviet readers,



especially now, when even the Communist party leaders have had to admit publicly that the socialist economy does not work."

Once again more than 200 commentaries from *Byline*, the Cato Institute's daily public affairs radio program, have been collected in a book. *The Best of Byline 1987* serves as an entertaining review of last year's social and political events. Included are commentaries by Tom Bethell on arms control, Michael Kinsley on Reagan administration lawbreaking, Earl Ravenal on Afghanistan, Ed Crane on Black Monday, Don Lambro on privatization, Steve Chapman on Ed Meese, Jeff Rigenbach on drug testing, Tom Haz-



Cato Institute vice president David Boaz speaks on drug legalization at a congressional seminar organized by the Drug Policy Foundation.



F. A. Hayek

lett on AIDS, Nat Hentoff on the First Amendment, Joan Kennedy Taylor on family-leave legislation, Julian Bond on Robert Bork, William Proxmire on the Golden Fleece—and virtually all of them on the Iran-contra affair. *The Best of Byline 1987* will be sent to all Cato sponsors. Additional copies are available from Cato for \$3.00 each. ■

Interns Needed

The Cato Institute seeks interns for fall 1988 and spring 1989. Please contact Gordon Anderson at Cato for more information.

Minimum Wage Hurts the Poor

Raising the minimum wage—as advocated by unions and other special interests—would eliminate the jobs of those who need work most, according to a new study from the Cato Institute.

Matthew B. Kibbe, a fellow at the Center for the Study of Market Processes at George Mason University, writes that the economic damage caused by legislation raising the hourly minimum wage from \$3.35 to \$4.65 by 1990 would be severe. Such a law could result in the loss of as many as 1.9 million jobs by 1995.

Kibbe contends that "behind the rhetoric of economic justice and fairness lie purely self-serving political considerations." Labor unions are "the main political force behind minimum-wage legislation," he argues, because their members' positions "are made more secure by the government policy that eliminates those who might undercut the union wage."

According to Kibbe, teenagers, especially blacks, suffer most when the minimum wage is increased. Those holding low-wage jobs are the first to be fired when higher labor costs force employers to make cutbacks. Furthermore, "because minimum-wage legislation has rendered them unemployable, teenagers cannot gain the experience and skills that would make them employable at higher wages later."

Kibbe notes that only 2.2 percent of the adult workforce is employed at the minimum wage. Thus, congressional supporters of minimum-wage legislation are disingenuous or mistaken when they claim that its chief beneficiaries would be the working poor. "Government cannot create wealth simply by passing new laws," he writes. "Otherwise, Congress would long ago have passed laws prohibiting poverty and establishing a minimum wage of \$100, or even \$1,000, an hour. . . . Wealth is a product of the market process, not of legislative fiat."

Kibbe's paper, "The Minimum Wage: Washington's Perennial Myth," is no. 106 in the Cato Institute's *Policy Analysis* series. It is available from the Institute for \$2.00. ■

Property Rights (Cont. from p. 1)

public use. Nevertheless, condemned property was still expected to be available for use by the general public. But in the 1954 case *Berman v. Parker*, the Supreme Court validated the condemnation of property for urban renewal. Though the justices acknowledged that the government, in seizing land and selling it to private developers, would be "taking from one businessman for the benefit of another businessman," they decided that as long as the goal—in this case, redevelopment—was legitimate, Congress alone could determine "the means of executing the project."

Ignoring the Fifth Amendment

Urban renewal at least alters the use of land to some degree. But in 1984, in *Hawaii Housing Authority v. Midkiff*, the Supreme Court expanded on *Berman* to uphold Hawaii's use of eminent domain to redistribute property to tenants.

As a result of a feudalistic system dating back to Hawaii's days as a monarchy, 72 landholders owned about 47 percent of the acreage in the state. In 1967 the legislature empowered the Hawaii Housing Authority to condemn residential property and sell it to the renters. (The legislature apparently saw nothing wrong with the fact that the state and federal governments together owned 49 percent of Hawaii's land.)

In 1983 the Ninth Circuit Court of Appeals voided the law, describing it as "facially unconstitutional" and as "a naked attempt . . . to take the private property of A and to transfer it to B solely for B's private use and benefit." But the Supreme Court unanimously ruled that the redistribution scheme was "rationally related to a conceivable public purpose" and declined to overrule the "legislature's judgment as to what constitutes a public use." In other words, a government can now legally seize property simply to enrich an influential interest group or voting bloc as long as it declares that doing so would serve a public purpose.

By both expanding the definition of public use and refusing to review Hawaii's public use declaration, the Court rendered the Fifth Amendment's strictures on eminent domain practically

worthless. Only if a government fails to assert any public purpose or makes a claim "palpably without reasonable foundation" can a court intervene to protect individual rights. Thus, the *Midkiff* decision has invited all levels of government to use eminent domain to advance virtually any political, economic, or social goal. The *Wall Street Journal* editorially posited a case in which the federal government condemned the homes of suburban whites and inner-city blacks to promote integration. Indeed, what "public purpose" could not conceivably be furthered through the seizure and redistribution

"Of America's fundamental freedoms, only the right to own property is now subject to 'majoritarian tyranny.'"

of private property?

Not only has the purpose for which property may be seized been expanded, but so has the category of property that may be seized. Over the years the Supreme Court has refused to treat real and intangible property differently, and federal and state courts have sustained the condemnation of such intangible assets as contracts, laundry service, bus routes, and utility franchises. But in two recent cases in which cities sought to condemn National Football League franchises, the notion that intangible property may be taken through eminent domain has been pushed further than ever before.

In 1984 Baltimore Colts owner Robert Irsay moved his club to Indianapolis. Baltimore responded by filing an eminent domain suit. A popular sports columnist wrote that the Colts had been "kidnapped," and local politicians too acted as if they were the team's owners. Frank De Francis, then Maryland's

secretary of economic and community development, said, "We want our team back." Baltimore mayor William Donald Schaefer took a more personal approach, declaring that the city's lawsuit would cause Irsay "to understand how I feel."

The city lost, but only because its case was weak on the facts. The team may not have been legally situated in Baltimore when the city sued, and Maryland courts have no jurisdiction over an Indiana business. Baltimore argued that the actual NFL franchise had not been moved until after the city initiated condemnation proceedings, but Irsay resided in Illinois, the Baltimore Football Club was a Delaware corporation, and the team had removed all of its training gear from its facilities (which were located in the surrounding county, not in the city) even by the time the city council voted to sue.

Legal precedent, however, was on Baltimore's side. In 1982 Oakland went to court in an attempt to prevent the Raiders from moving to Los Angeles. Oakland's suit, city attorney David Self explained, was intended to protect its "social, cultural and psychological" identity. "We got to thinking," Self said. "We can condemn land on which to build a stadium, the purpose of which is to provide a professional sports contest. You only need one more thing to have a contest, and that's a team. Why can't you condemn that, too?"

The California Supreme Court apparently agreed; the justices unanimously refused to dismiss the suit, ruling "that the acquisition and, indeed, the operation of a sports franchise may be an appropriate municipal function." Oakland eventually lost, but likewise on the particular facts of the case, not on the grounds that it lacked a legal right to use eminent domain to acquire a football team.

Rose Bird's Warning

Ironically, the California court's most liberal member, then-chief justice Rose Bird, issued words of warning and concurred in the decision only reluctantly. The power "claimed by the City in this case is not only novel but virtually without limit," Bird wrote. She wondered, for instance, whether "a viable, ongoing business" could be seized and sold "to another private party merely

because the original owner has announced his intention to move his business."

Unfortunately, Bird was not engaging in idle speculation. Many municipalities have begun to assert a proprietary interest in local businesses. In 1981 Detroit used eminent domain to take over 1,100 private homes (in an ethnic neighborhood known as Poletown) in order to obtain a parcel for General Motors, which was planning to move an auto plant out of the city.

In 1984 New Bedford, Massachusetts, prepared to condemn the factory of Morse Cutting Tools, a subsidiary of Gulf & Western Industries, because parent-company officials had announced plans to sell or shut it. "The city," Mayor Brian Lawler declared, "cannot sit by and allow Gulf & Western to liquidate this important part of New Bedford." In a tone resembling that of Baltimore's football fans, the leader of a local union, whose members had refused to consider making wage and benefit concessions to entice prospective buyers, opined, "It's our plant and we are not going to let them take it away from us."

Lawler had originally wanted the city to set up a quasi-public corporation through which it could manage the factory, but after criticism of that plan mounted, he proposed that the state intervene. The *New Bedford Standard-Times*, for instance, had editorialized, "Lord help us, who in city government would we trust to operate a machine tool company when we can't even get the city's sewers finished and the trash disposed of?"

The issue died after Gulf & Western sold the plant to local investors. But if the city had gone to court, it probably would have won. Andrew Buchsbaum, an attorney at Georgetown University's Institute for Public Representation, argued, "There is a public purpose in saving the plant and maintaining the jobs." In the aftermath of *Midkiff*, any judge would likely defer to such a professed goal, even though a municipal takeover would almost invariably hurt the local economy.

Thus, the principle asserted during the New Bedford episode may become a national standard. The city of Chicago went to court to seek permission to seize a local steel factory, and the

Pittsburgh-based Tri-State Conference on Steel, a group of labor and religious leaders, proposed that steel-belt cities condemn and operate money-losing plants. Decisions that upheld such an expansion of the use of eminent domain—"creeping statism," in Bird's words—would give cities unprecedented authority to regulate and control private economic resources.

Moreover, in the aftermath of the Oakland and Baltimore franchise fights, some members of Congress have pushed a regulatory equivalent of eminent domain, introducing legislation that would restrict the reasons sports franchises

"A government can now legally seize property simply to enrich an influential interest group or voting bloc as long as it declares that doing so would serve a public purpose."

could move and establish a federal board to oversee transfers and determine the location of new teams. Private citizens would retain nominal ownership of teams, but the federal government would run them.

The Reagan Courts

Despite recent conservative appointments to the bench, the judiciary has continued its activist course of eliminating virtually all constitutional safeguards of economic freedoms and property rights. (Indeed, the opinions in the *Midkiff* and Raiders cases were written by conservative appointees of Ronald Reagan.) In March 1987 the Supreme Court, implicitly overturning a 65-year-old precedent, upheld governments' authority to impose regulatory restrictions that constitute takings

of property. Pennsylvania had banned coal mining under certain types of land, effectively expropriating 27 million tons of coal, but in *Keystone Bituminous Coal Assn. v. DeBenedictis*, the Court refused to intervene. And this February, in *Pennell v. San Jose*, the Court refused to treat a rent control ordinance that forces apartment owners to subsidize low-income tenants as a violation of the Fifth Amendment.

In only one area does there appear to be a glimmer of hope. In two cases decided in June 1987 the Supreme Court rejuvenated the Fifth Amendment's requirement that governments provide "just compensation" for property that they seize. In *First English Evangelical Lutheran Church v. County of Los Angeles*, the county had rezoned property to prevent the church from rebuilding a recreational center for handicapped children after it had been damaged in a flood. A state court had dismissed the church's suit on the procedural ground that under California law, compensation was due only after a regulation had been ruled to be a taking and the government had decided to maintain it. But in an opinion written by Chief Justice William Rehnquist, a six-member Court majority ruled "that 'temporary' takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings, for which the Constitution clearly requires compensation."

Although the case greatly unsettled land-use planners, its impact is likely to be limited; the Court did not question the county's right to rezone the land, nor did it decide that a regulatory taking had occurred. The justices simply ruled that the county had to compensate the church for all of its losses and sent the case back for trial. Removing the burden of the delay caused by the adjudication process from property owners may prove to be the most important effect of the decision.

In the second case decided last June, *Nollan v. California Coastal Commission*, the commission refused to permit the Nollans to replace their dilapidated beach bungalow unless they granted a public easement on their land. Justice Antonin Scalia, writing for a five-member majority, called the commission's ultimatum "an out-and-out plan

Property Rights (Cont. from p. 11)

of extortion" and ruled that it was constitutionally invalid. If the commission "wants an easement across the Nollans' property, it must pay for it," wrote Scalia.

As in *First English*, the Court refrained from protecting a landowner's right to keep his property; it merely said that he had to be compensated for a taking. Nevertheless, by forcing localities to reimburse landowners for their losses, *Nollan* is likely to reduce the number of de facto regulatory takings, for which compensation was rarely made in the past. No longer will governments be able to effectively seize property for free. Hence, *Nollan* and *First English* have articulated interpretations of public use closer to that of the constitutional scheme. "Our present holding will undoubtedly lessen the freedom and flexibility of land-use planners," wrote Rehnquist in *First English*, but "many of the provisions of the Constitution are designed to limit the flexibility and freedom of governmental authorities, and the Just Compensation Clause . . . is one of them."

In fact, *Nollan* may ultimately have a broader impact than the specific facts of the case indicate, for it represents the first inkling in decades of a judicial renaissance in the protection of traditional economic liberties. Buried in a footnote in the middle of Scalia's opinion is a remarkable observation:

There is no reason to believe (and the language of our cases gives some reason to disbelieve) that so long as the regulation of property is at issue the standards for takings challenges, due process challenges, and equal protection challenges are identical; any more than there is any reason to believe that so long as the regulation of speech is at issue the standards for due process challenges, equal protection challenges, and First Amendment challenges are identical.

In short, whereas during the last five decades the federal courts have consistently upheld economic regulations as long as they were deemed to have met

the meaningless "rational relationship" standard—being rationally related to a legitimate public objective—the Supreme Court has now said that the test may not be appropriate in all property rights cases.

Limiting Majoritarian Tyranny

But the Court still has a long way to go before it will have restored the Constitution's broad protection of private property rights. As the Ninth Circuit Court of Appeals observed in voiding Hawaii's condemnation law (before being overruled by the Supreme Court in *Midkiff*), "The founders of this na-

"The *Midkiff* decision has invited government to use eminent domain to advance virtually any political, economic, or social goal."

tion . . . foresaw that attempts would be made by the states to take away the private property rights of the landed minority. Our Federal Constitution and the Bill of Rights were designed to prevent such abuses by the majority." As the reach of the state continues to expand, the need to adhere to the firm constitutional guarantees of economic liberty will grow ever more urgent.

Of America's fundamental freedoms, only the right to own property is now subject to what the court of appeals bluntly called "majoritarian tyranny." The Supreme Court has nevertheless declined to protect property owners from legislative expropriation. What the Court is doing to economic liberties today, moreover, it could do to free speech, religious freedom, and privacy tomorrow. Then even the most ardent supporters of the public taking of private property might wish they had never opened up a legal Pandora's box by giving government such untrammelled power. ■

Reagan: Worst Protectionist Since Hoover?

Despite his strong rhetoric in support of free trade, Ronald Reagan has proved to be the most protectionist president since Herbert Hoover, a new Cato Institute study charges.

Sheldon L. Richman, director of public affairs at the Institute for Humane Studies, notes that Reagan's veto of the recent congressional trade bill was based almost entirely on the tangential issue of the plant-closing amendment; the president's willingness to accept the rest of a thoroughly protectionist bill was typical of the administration's approach to trade policy. The percentage of imported products that are subject to restrictions has nearly doubled during the Reagan years.

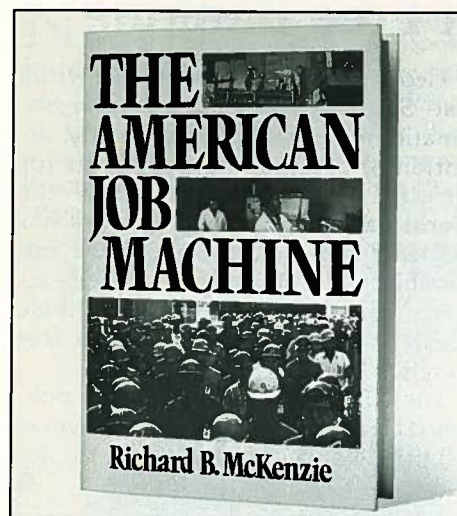
Richman observes that an unprecedented number of restrictions on the importation of textiles and apparel have cost American consumers more than \$20 billion annually. The administration's record in other industries is no better. "Voluntary" restraints on Japanese automakers have raised car prices in the United States, lowered U.S. production rates, and eliminated 32,000 jobs. The auto quotas have also cost American consumers as much as \$11 billion a year and have allowed Japanese companies to begin manufacturing larger cars—in direct competition with Detroit. Protectionism in the semiconductor industry has "created a severe shortage of memory chips and higher prices for American computer makers, putting them at a disadvantage" with respect to foreign competitors.

According to Richman, Reagan's Commerce Department has "redefined 'dumping' in order 'to make it easier to bring charges of unfair trade practices against certain competitors.'" Richman also cites a World Bank study in which U.S. import restrictions in 1984 are estimated to have had "the same effect as a 66 percent income tax surcharge on America's poorest citizens."

Richman's paper, "The Reagan Record on Trade: Rhetoric vs. Reality," is available for \$2.00. ■

Middle Class Not Disappearing

McKenzie Book Refutes Myths about Jobs, Wages



increases, and the damage that mandated benefits would do to small firms, which are the principal engines of job creation and economic growth.

In praising *The American Job Machine*, Murray L. Weidenbaum, former chairman of the Council of Economic Advisers, wrote, "This book wrestles with—and demolishes—some of the most widely held economic myths."

University of Arizona economist Gordon Tullock observed, "McKenzie demonstrates conclusively that the factual basis of unusual concern about our economy today is largely false and that these proposals for 'reform' are mainly misguided."

The American Job Machine is available from the Cato Institute, in cloth for \$24.95 and in paper for \$12.95. ■

Parental Leave Would Cut Wages, Increase Sex Discrimination

A new Cato Institute study warns that mandatory family-leave legislation would increase sex discrimination in the workplace, raise female unemployment, and lower women's wages.

Loyola University economist Deborah Walker writes that "because leave benefits are an added cost, employers would avoid hiring candidates who appeared most likely to use them." Moreover, if the legislation prompted more women to seek employment, "the greater supply of females in the market [would] tend to drive down wage rates" and would "allow employers to discriminate at a low cost, since they would not need to search for the kind of employee they wanted to hire."

Walker cites evidence that family-leave laws in European countries have "effectively decrease[d] the competitiveness of women in the labor market." In the United States, such legislation would do the most harm to women with general skills and little experience or education. Walker also notes that "married women of child-bearing age

. . . would be driven from the labor market or would fail to climb the corporate ladder. These women's employment opportunities would actually decrease."

Industries employing more women, particularly retail and service industries, would incur higher prices "because the cost of implementing the benefit would be higher." The resulting decrease in demand would prompt employers to lay off workers, the majority of whom would be women.

Walker contends that proponents of family-leave legislation focus on the desired end and "do not take the time to understand the process involved in achieving it." She notes that the market economy is a dynamic process and that "to ignore the incentives and decisions of the actors involved in the process is to ignore the fact that the process itself will react to a restructuring."

"Mandatory Family-Leave Legislation: The Hidden Costs" is no. 108 in the Institute's Policy Analysis series. It is available for \$2.00. ■

The Future Bank Regulatory Structure

A Cato Institute Conference
Washington, D.C. November 2, 1988

Three subjects crucial to the future of banking regulation will be considered at this conference: payments system risk, the insulation of banks from nonbank parents and affiliates, and the growing push for international regulation of banks. Speakers will include Wayne Angell, Edward Kane, P. Michael Laub, and Gerald O'Driscoll, Jr.

For more information, contact Catherine England, Director of Regulatory Studies, Cato Institute, 224 Second St. S.E., Washington, D.C. 20003.

Selgin Argues Free Banking Would Create Stable Money; *Forbes*: 'You'll Be Hearing More about Free Banking'

In *The Theory of Free Banking*, a new book from the Cato Institute, George Mason University economist George Selgin refutes many of the traditional assumptions about the efficacy of central banks. He provides the first detailed examination of the principles of free banking and explains why banking institutions and procedures would improve in an unregulated financial environment.

tend to adjust their issuance of currency and deposit holdings in response to changes in the public's demand for money and that competitive forces would keep the money supply stable. His critique also dispels the myth that free banking would lead to inflation and monetary disorder. The book concludes with a proposal for instituting free banking.

The Theory of Free Banking has already received considerable praise. Anna J. Schwartz of the National Bureau of Economic Research called it "a forceful argument," and the University

of Georgia's Richard Timberlake wrote that "Selgin's book brings a formal systematic free banking theory to the attention of professional economists for the first time." Alan Walters of the World Bank noted, "Selgin's work has shattered many myths about the impossibility of a stable free banking system. . . . [He] has launched a debate which is most important for all free societies."

The Theory of Free Banking, published for the Cato Institute by Rowman & Littlefield, is available from the Institute for \$33.50. ■

Adie Book Offers Proposal for Deregulation, Privatization, Divestiture of Postal Service

Despite continual price increases, the performance of the Postal Service has steadily deteriorated over the last 20 years, according to *Monopoly Mail: Privatizing the U.S. Postal Service*, just published by the Cato Institute and Transaction Books. The author, Ohio University economist Douglas Adie, argues that the Postal Service's monopoly over mail delivery and its status as a government corporation are to blame. He offers a detailed proposal for the privatization and deregulation of the Postal Service.

Adie enumerates the Postal Service's failings: an inability to innovate, soaring labor costs, huge deficits, chronic inefficiency, and declining service standards. He notes that whereas monopoly breeds inefficiency, high costs, and stagnation, competition would produce efficiency and innovation. Thus, only by eliminating the Postal Service's monopoly can mail delivery in the United States be improved.

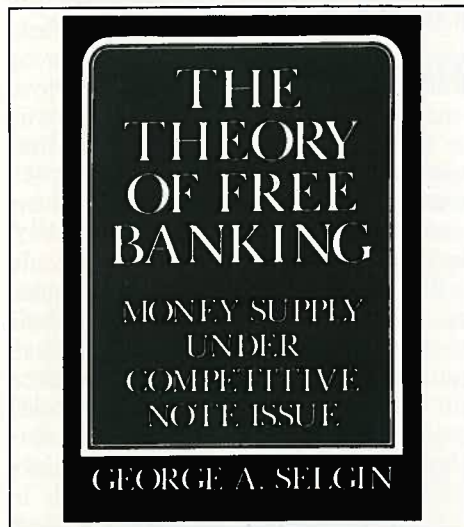
The book includes a discussion of the breakup of AT&T and its implications for the reform of the Postal Service. Adie also examines the impressive record of deregulation in many industries, including the airline industry, and

notes that deregulation would benefit the postal industry as well.

In addition, Adie looks at the experiences of Canada and Great Britain in privatizing government companies and concludes that doing so has brought enormous efficiency gains and consumer benefits to both countries. He then outlines a comprehensive reform of the Postal Service: divestiture of some functions, deregulation of mail delivery, and privatization, with no further monopoly privileges or taxpayer subsidies.

Adie concludes that without privatization and deregulation, the Postal Service will be doomed to rising costs, worsening labor relations, and an increasing loss of customers to service providers that are more innovative and efficient. Competition, he argues, would give the Postal Service a chance to enter the 21st century as a modern, productive company. It would also give American consumers a chance to receive the kind of mail service that a complex economy demands.

Monopoly Mail: Privatizing the U.S. Postal Service is available from the Cato Institute, in cloth for \$34.95 and in paper for \$19.95. ■



Selgin uses historical examples and macroeconomic theory to shatter the myth that central banking—as manifested in a government monopoly over the currency supply—is indispensable to monetary stability. In doing so, he presents solid evidence that a free market for money is a better means of achieving monetary stability than either monetary rules or a monetary authority.

In the foreword, University of Georgia economist Lawrence H. White observes, "The outstanding monetary problem of our time is the failure of central banking to deliver the macroeconomic stability its adherents have promised. The Federal Reserve System, in particular, has not carried its own weight. This book offers a promising alternative." *Forbes* recently concurred, noting that "free banking is an idea that you will be hearing much more about in the years ahead."

Selgin argues that free banks would

Friedman, Gilder to Speak

Conference in Shanghai Will Examine Economic Reform

Nobel laureate Milton Friedman, author George Gilder, and Hoover Institution economist Alvin Rabushka are among those who will participate in the Cato Institute conference "Economic Reform in China: Problems and Prospects," to be held September 12-15, 1988, in Shanghai, China.



George Gilder

The conference, cohosted by Cato and Fudan University of Shanghai, will bring together leading American, European, and Chinese scholars, policymakers, and businesspeople to discuss the economic reform that has taken place in China since 1978. The purpose of the conference is to generate a constructive exchange with China's policymakers and intellectuals in order to examine the ways in which markets can better allocate scarce resources and bring the benefits of economic growth to the world's largest country.

Friedman will discuss the relationship between political and economic freedom, one of the subjects of his important book *Capitalism and Freedom*. Gilder's topic will be the role of the entrepreneur in creating prosperity. Rabushka, whose latest book is a comparative study of economic development in Chinese nations, will discuss the lessons that the People's Republic can learn from the successes of other Pacific economies.

Other speakers will include Cato chairman William A. Niskanen on deregulation, Services Group president Gabriel Roth on the private provision of public services, Hong Kong University economist Steven Cheung on the role of ownership and contracts under the new Chinese economic system, land



Milton Friedman

reform expert John Powelson on property rights, and George Mason University economist Don Lavoie on the effects of central planning. Edward Olsen of the Naval Postgraduate School and David M. Lampton of the National Committee on U.S.-China Relations will discuss foreign policy issues.

Chinese speakers at the conference will include Pu Shan of the Chinese Academy of Social Sciences, He Weiling of the Institute for Economic System Reform, Zhou Fusen of the Beijing Financial Market, and Lu Yimin, Chen Wei-Shu, and Wang Xi of Fudan University.

Those interested in attending the conference or receiving further information should contact Sandra H. McCluskey, Director of Public Affairs, Cato Institute, 224 Second Street S.E., Washington, D.C. 20003, (202) 546-0200. ■

Byline Commentator Joan Taylor On Quality of American Education

The Cato Institute's daily public affairs radio program, *Byline*, brings liberal, conservative, and libertarian commentary to more than 200 stations nationwide. Commentators include Tom Bethell, David Boaz, Julian Bond, Stephen Chapman, Edward H. Crane, Tom Hazlett, Nat Hentoff, Don Lambro, William Proxmire, Earl Ravenal, Joan Kennedy Taylor, and Jeff Riggenbach. Following is one recent *Byline* commentary.

An estimated 23 million Americans over the age of 20 are functionally illiterate, and a lot of others are deficient in reading and math skills. Now it turns out that instead of improving what they do, the nation's school districts have been giving students standardized tests whose use and scoring were, to put it mildly, rigged—so that every state and almost every school district in the country could be reported as being "above average." Albert Shanker, president of the American Federation of Teachers, once a vocal supporter of educational tests, has, to his credit, been calling attention to this breakdown of testing,

calling the published test scores "misleading if not downright fraudulent."

Meanwhile, businesses are taking the education of their workers into their own hands. The Polaroid Corporation, for example, has found it necessary to set up an elaborate tutorial program covering material taught in the entire 12 grades of the typical school and has sent 3,000 of its 10,000 employees to take the courses over the last three years. According to a trade magazine survey, 30 percent of American companies with 10,000 or more employees offered some sort of remedial education to their employees in 1987—a figure that has been increasing and is expected to increase even more rapidly over the next 10 years, as the workplace demands even more skills.

Maybe bureaucrats could fake it, at least for a while. But the real test of a school system is the skills of its graduates—and by that standard, it seems that very few school districts are above average.

This is Joan Kennedy Taylor, for *Byline*. ■

"To be governed..."

Charity doesn't begin in this home

Jesse L. Jackson and his wife increased their income...to nearly \$210,000 last year...

They gave \$2,145, about one percent of their income, to charity in 1987.

— *Washington Post*, May 4, 1988

Please allow 4 to 6 weeks for delivery

A new stamps-by-phone service has been expanded nationwide to cope with expected demand for the new [25-cent] stamps, [Postmaster General Anthony] Frank said... Customers may use Visa or Mastercard and the stamps will be mailed to them.

— *Washington Post*, Mar. 23, 1988

Pork barreler in chief

West Virginia political and business leaders applauded yesterday Senate Majority Leader Robert C. Byrd's decision to give up his leadership post in return for the chairmanship of the Senate Appropriations Committee, where he plans to work overtime for his financially beleaguered state...

John Hurd, president of the West Virginia Chamber of Commerce... said he hoped Mr. Byrd's decision would help West Virginia gain "a larger share of the pie, just to put it very bluntly."

— *Washington Times*, Apr. 14, 1988

Hippy-dippy weathermen

Under drug-testing plans submitted to Congress last week, between 3,600 and 3,700 of the nation's weather service employees will be subjected to random testing...

According to the plans, drug impairment by such employees might result in errors of judgment or negligence, misinterpretation or incomplete or inaccurate analysis of weather data or untimely or incorrect reporting of weather conditions.

— *Washington Post*, May 13, 1988

The Reagan Revolution (cont.)

Education Secretary William J. Bennett... predicted his once-endangered department will survive on the strength of the job he's done.

"It's much less likely you'll see abolition of the Department of Education, largely because of me," Mr. Bennett told the Senate Appropriations subcommittee on education.

— *Washington Times*, May 11, 1988

Unlike prohibition?

Legalization [of drugs], in short, is at best a high-stakes gamble—"a very dangerous social experiment," as Dr. Edward Senay of the University of Chicago puts it, "that could have a lot of disastrous consequences."

— *Newsweek*, May 30, 1988

Light begins to dawn at the Times

Although spending on education [in New York] has increased more than 60 percent, to \$7.9 billion this fiscal year, some educators say there has been no marked improvement in the literacy rate or in student performance.

— *New York Times Magazine*, May 15, 1988

Socialism defined

Vietnam is one of the poorest countries in the world... Yet Hanoi justifies the destitution of its people on ideological grounds. "Here the poverty is well-distributed," Vietnam's foreign minister boasted. "So once the poverty is well-distributed there is no social injustice."

— *New Republic*, May 2, 1988

Forerunner of the modern state

Genghis's sons and grandsons... soaked up what good ideas about governing (which to the Mongols meant expropriation, more or less) seemed to be offered by... local empires... Ogodei, Genghis's third son and successor as Great Khan... quickly grasped the logistic advantages of... taxation over burning and pillaging as a means of redistributing wealth.

— *New Republic*, Apr. 18, 1988

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