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The Forgotten Ninth and Tenth Amendments

by Roger Pilon

It is unremarkable that a section of the American Bar Association, even the Section of Individual Rights and Responsibilities, should title the final session of its program commemorating the bicentennial of the Bill of Rights "The Forgotten Ninth and Tenth Amendments." As Randy Barnett and Suzanna Sherry have reminded us, those amendments were meant to secure the higher law that stands behind the Constitution.[1] Yet within 30 years of the drafting of the Bill of Rights, adjudication based on the concept of a higher law all but disappeared in this country.[2]

It was something of a surprise, then, when Justice Goldberg drew upon the Ninth Amendment in 1965 to find a right to privacy, which helped the Court to strike down a Connecticut statute forbidding the sale of contraceptive devices.[3] Although the Ninth Amendment has since been cited in over 1,000 cases, in all but one of those cases it has played only a supporting role.[4] As for the Tenth Amendment, after a brief revival in 1976, the Court reversed itself only nine years later.[5] Thus, if not entirely forgotten, the Ninth and Tenth Amendments today are hardly alive and well.

Roger Pilon is director of the Cato Institute's Center for Constitutional Studies. This is a revised version of remarks he delivered on August 13, 1991, at the annual meeting of the American Bar Association in Atlanta, Georgia.

Our ambivalence toward the demise of those amendments could not be better illustrated than by comparing the debate that four years ago surrounded the nomination of Judge Robert Bork to the Supreme Court with the debate that today surrounds the nomination of Judge Clarence Thomas. When Bork likened the Ninth Amendment to an inkblot that afforded judges no guidance in interpreting the Constitution, he was supported by conservatives but roundly condemned by liberals. Unlike Bork, Thomas believes that the Ninth Amendment points to the higher law that ought to guide judges in their adjudication, yet he too has been generally supported by conservatives but eyed with suspicion by liberals.

Although a large part of that ambivalence is simple politics, there are deeper issues that help to explain why the Ninth and Tenth Amendments and the higher law they reflect have played so limited a role in our legal history. Before examining those issues, however, we need first to review briefly what the amendments meant to the men who wrote them. We will then be in a position to ask what led to their demise and what must be done to restore them.

Two speakers at Cato's conferences in Moscow played important roles in the August revolution. Anatoly Sobchak (above left), mayor of what was then Leningrad, spoke at Cato's September 1990 conference and was more recently dubbed "the second hero" of the resistance to the coup. Vadim Bakatin, shown above right at Cato's April 1991 conference, has taken on the task of reforming the KGB.

The Original Understanding

Addressed to our rights, the Ninth Amendment states, "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." By contrast, the Tenth Amendment speaks to powers: "The powers not delegated to the United States by the Con-

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The Crime Bill Is a Killer

Chairman's Message

Crime in the United States is a serious problem. The crime bill now being considered in Congress, however, is not a serious solution. A product of mindless Republicans and spineless Democrats, the crime bill is counterproductive, discriminatory, and expensive. Let me count the ways.

Approval of the crime bill would probably *increase* the number of murders. It has been widely reported that the bill authorizes capital punishment for some 51 crimes. What has not been widely reported is that 10 of those crimes involve something other than murder: treason, espionage, transporting explosives with intent to kill, arson of federal property in interstate commerce, the fourth felony conviction of a major drug supplier, drug-trafficking "drive-by shootings," aircraft hijacking, hostage taking, kidnapping, and bank robbery. Those are clearly serious offenses. The problem with authorizing capital punishment for them is that it would eliminate any marginal deterrent effect on the offender who murders the victims of or witnesses to those offenses. That would surely increase the number of hostages, kidnap victims, witnesses to bank robbery, and so on who are murdered. The deterrent effect of a criminal penalty is a function of the severity of the penalty and the probability of arrest and conviction. An increase in the penalty for the crimes listed here would reduce the number of offenders convicted, at the cost of the lives of innocent victims and witnesses.

Second, the bill creates different classes of murders, depending on the status of the victim. The murder of foreign officials, a wide range of federal officials from the president to poultry inspectors, the families of federal officials, state officials assisting federal officials, court officers and jurors, and others would be capital crimes. The bill would not provide a similar deterrent for the 99-plus percent of murders that do not fall under those categories. Similarly, the bill authorizes a police officer's "bill of rights" without addressing the rights of those who are abused by the arbitrary exercise of police power. One might hope that those sections would be ruled unconstitutional as inconsistent with equality under the law.

And third, the bill is expensive, authorizing an additional $3 billion of federal funds for enforcement, incarceration, and the training of police officials. That figure underestimates the total cost, because other provisions would increase the current overcrowding of state prisons and jails. Crime is a serious problem, and additional funding might be appropriate if there were any evidence that it would reduce crime. Sen. Warren Rudman (R-N.H.) expressed what may be a common belief when he said, "Crime in America is inversely proportional to the number of policemen we have on the streets." Unfortunately, there is *no* evidence that a general increase in funding for police and corrections would reduce crime.

The provisions of the crime bill discussed above are broadly supported by the Bush administration and members of Congress of both parties. Most of the controversy has been focused on the provisions affecting gun control and the exclusionary rule. Crime in America is a serious problem, but whatever the merits of those provisions, the crime bill of 1991 is not serious legislation.

In 1723 the English Parliament passed the Black Act, which authorized capital punishment for such heinous offenses as stalking deer in disguise at night, cutting down young trees, and writing threatening letters. The crime bill now before the House is addressed to more serious offenses, but the political incentives to talk tough and legislate stupidly are the same as those that led to the notorious Black Act.

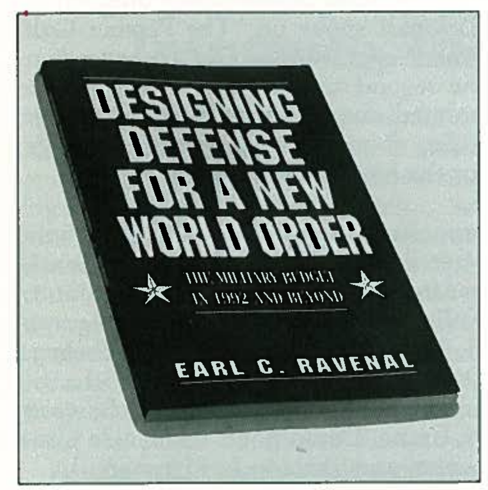
—William A. Niskanen

Ravenal Calls for Spending Cuts

Global Interventionism Is Dangerous and Expensive

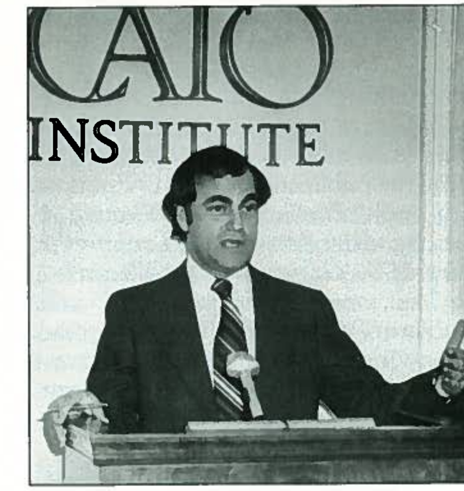
A policy of global intervention, or adopting every country's threats as our own, "is the strategic premise of the Bush administration's post–Persian Gulf defense program," contends former Pentagon official Earl C. Ravenal in a new book from the Cato Institute. Ravenal, a senior fellow at the Institute and Distinguished Research Professor of International Affairs at Georgetown University, argues in *Designing Defense for a New World Order: The Military Budget in 1992 and Beyond* that despite some proposed modest reductions in general purpose forces, the administration's defense program is "a prescription that is still expensive and potentially escalatory." He warns that given the administration's policy assumptions, "the United States is acquiring every nation's enemies."

Ravenal's alternative defense budget, based on a strategy of nonintervention, would save American taxpayers more than $305 billion over the next five years. He contemplates a military force of 1.1 million active duty personnel at the end of that period instead of the administration's projected 1.7 million. His alternative strategy would also phase out such increasingly irrelevant Cold War era commitments as those to NATO and the U.S. troop presence in South Korea.



Ravenal contends that an effort to promote collective security, the essence of President Bush's "new world order," will probably prove futile in the long term. International developments portend the emergence of a system of "general unalignment," which will be characterized by "the extensive fragmentation and 'regionalization' of power" among more than two dozen nations.

Instead of reflexively intervening in regional conflicts, as Washington did in the Persian Gulf, U.S. policy should be to "quarantine" regional violence and "compartmentalize" regional instability. Compartmentalization, Ravenal insists, can be accomplished better through nonintervention than by "universalizing" every quarrel, which was the instinctive response of the United States in the gulf crisis. Indeed, "incessant and feckless" U.S. intervention can antagonize or neutralize crucial participants in regional balances of power. It also "encourages regional countries to hang back . . . and watch the Americans do the geopolitical work they should be doing for themselves."



Earl C. Ravenal calls for withdrawal from U.S. military commitments in his new book, *Designing Defense for a New World Order.*

U.S. leaders are in danger of drawing dangerously erroneous lessons from the military victory in the Persian Gulf, Ravenal contends. Although the outcome demonstrates that the United States will not be defeated on the battlefield by a Third World opponent, the price of success—especially the cost of maintaining the forces needed to wage similar conflicts in the future—is very high. In the long run, even the price of "success" in such Third World interventionist ventures will be rejected by the American political-economic-social system.

Designing Defense for a New World Order is available from the Cato Institute for $9.95. ■

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IRAs, 1981 Tax Cut Debated

Cato Hosts Party for P. J. O'Rourke's New Book

Cato Events

June 6: More than 400 people filled the ballroom at the Capital Hilton Hotel for the Cato Institute's book party celebrating the publication of P. J. O'Rourke's latest book, ***Parliament of Whores: A Lone Humorist Attempts to Explain the Entire U.S. Government.*** O'Rourke, who also wrote *Holidays in Hell* and *Republican Party Reptile*, told the crowd that "giving money and power to government is like giving whiskey and car keys to teenage boys."

Sen. John McCain talks with P. J. O'Rourke and his wife, Amy Lumet, at Cato's reception for O'Rourke's new book, *Parliament of Whores: A Lone Humorist Attempts to Explain the Entire U.S. Government.*

June 11: At a noon Policy Forum Rep. Bob McEwen (R-Ohio), newly appointed chairman of the Republican Task Force on Tax Policy and Job Creation, outlined **"Five Ways to Spur Investment and Savings in America."** Among his suggestions were capital gains tax cuts, reductions in the Social Security payroll tax, and investment tax credits. Michael R. Darby, under secretary for economic affairs of the Department of Commerce, commented.

June 13: **"New Perspectives for the Nineties"** was the title of a one-day conference held at the Ritz-Carlton Hotel in Chicago. The conference featured a keynote address by Wendy Gramm, chairman of the Commodity Futures Trading Commission, and a luncheon speech by Wayne Angell, a member of the Board of Governors of the Federal Reserve System. David Boaz spoke on educational reform, and R. J. Smith spoke on free-market environmentalism.

Wendy Gramm, chairman of the Commodities Futures Trading Commission, discusses the role of commodities markets and of regulation at Cato's Chicago seminar, "New Perspectives for the '90s."

June 19: **"Competition and the Utility Industry: AT&T Revisited?"** was the topic of debate at a Cato Policy Forum. Doug Houston, associate professor of business economics at the University of Kansas, discussed his proposal for an AT&T-style breakup of the utility community. In response, David Raboy, chief economic consultant for Patton, Boggs & Blow, gave the utility industry's perspective on various reform proposals.

June 20: Cato executive vice president David Boaz spoke on **"400 Years of Failure: The Lessons of Drug Prohibition"** at the first in a series of lectures for Washington summer interns that Cato cosponsors with the Institute for Humane Studies.

June 25: The Sagebrush Rebellion of the early 1980s sought to transfer control of federal lands to state bureaucracies. **"Murmurs of a New Sagebrush Rebellion"** was the topic of a Policy Forum by ecologist Karl Hess, Jr. Hess said there are signs that this time the sagebrush rebels may seek to transfer federal lands not to state governments but to individuals.

June 26: **"Is the Line-Item Veto Constitutional?"** was the issue at a Policy Forum featuring attorney J. Gregory Sidak, who identified four types of veto authority and their constitutionality. Nelson Lund, associate counsel to President Bush, commented.

June 26: **"The Brady Bill: Saving Lives or Sacrificing Liberty?"** was the subject of a Cato Policy Forum. The Brady bill would mandate a seven-day waiting period for the purchase of handguns. David Kopel, former assistant district attorney in Manhattan, argued that the waiting period could actually aggravate violent crime and may provide an administrative tool for denial of the right to bear arms. Sanford Horwitt, political consultant for the Coalition to Stop Handgun Violence, argued that although the waiting period might not do much to stop handgun violence, it would be an important first step.

June 27: Cato senior editor Sheldon L. Richman spoke on **"The Persian Gulf War: New Order or Old Disorder?"** at the second summer intern lecture. He pointed out that President Bush's gulf policy is not likely to make a change for the better in the Middle East.

June 30–July 6: More than 70 people attended Cato's annual **Summer Seminar in Political Economy** at Dartmouth College. The speakers included George H. Smith, Ralph Raico, Richard Ebeling, David Kelley, Nadine Strossen, Leonard Liggio, Fred L. Smith, Jr., Edward H. Crane, David Boaz, Ted Galen Carpenter, and Sheldon L. Richman.

July 18: The ethnic violence in the Balkans was the subject of the third summer intern lecture. Peter Mentzel of the University of Washington discussed the relevance of free trade and other items as he offered tips for **"Defusing the East European Time Bomb."**

July 19: During a lunch-time Policy Forum, debaters examined the question **"Are IRAs Sound Tax Policy?"** Jacob Dreyer of the Investment Company Institute and Joseph Cordes of George Washington University tangled over whether IRAs encourage net savings or merely transfer savings from other sources.

July 25: Is the establishment vision of civil rights a legitimate vision? Is there something better? Clint Bolick of the Institute for Justice discussed such questions in reference to President Bush's pending Supreme Court nomination when he discussed **"Clarence Thomas and a New Vision of Civil Rights"** at a Cato summer intern forum. Bolick, who worked for Thomas, said Thomas was a believer in natural rights and would be more concerned with individual liberty than any other Supreme Court justice has been in many years.

July 29: A panel debate on **"The Reagan Supply-Side Tax Cuts after 10 Years: Economic Miracle or Voodoo Economics?"** was held before a Senate hearing room full of spectators and reporters. Taking the "economic miracle" side were Larry Kudlow, chief economist for Bear Stearns and Company; Arthur Laffer, chairman, Laffer, Canto, and Associates; and Richard Rahn, chief economist, U.S. Chamber of Commerce. Charging "voodoo economics" were Robert S. McIntyre, director, Citizens for Tax Justice; Rudolph Penner, senior fellow, Urban Institute; and Robert Shapiro, vice president, Progressive Policy Institute. Moderating the debate was Fred Barnes, senior editor of the *New Republic.* The argument centered on whether the 1980s were a decade of extraordinary economic growth and to what extent, if any, the 1981 tax-rate cuts were responsible.

July 30: Roger Pilon, William Niskanen, David Boaz, and Melanie Tammen discussed various policy issues at a seminar for the National Forum Foundation's **East European Fellows.** ■

Regulation Looks at Banking System, Insurance, International Trade

The Spring 1991 issue of *Regulation* magazine, Cato's review of business and government, focuses on modernizing the nation's financial system. Senior editor Catherine England leads off the issue by asking "Are Banks Special?" She notes that treating banks as though they were different from other businesses has led to regulation that reduces their ability to compete effectively and "largely remove[s] U.S. banks from the realm of market discipline."

After considering the supposedly special nature of banks, England concludes that "other firms appear ready, indeed eager, to provide traditional banking services through new instruments and in new combinations." Two contrary views of "narrow banking"—a reform in which deposit insurance would be limited to deposits invested in low-risk assets—are also part of the issue. James B. Burnham, the Murrin Visiting Professor at Duquesne University, takes the affirmative position, and Bert Ely, a financial institutions consultant, takes the negative.

Other writers include Scott E. Harrington on "Should the Feds Regulate Insurance Company Solvency?" and Paul G. Mahoney on "Regulation of International Securities Issues." Fred S. McChesney and William J. Carney contribute an article on the battle for control of Time, Inc., while Richard A. Epstein and Saunders MacLane urge the retention of mandatory retirement for tenured faculty.

The Winter 1991 issue of *Regulation* centered on international trade, with Ronald A. Cass's look at the Omnibus Trade and Competitiveness Act of 1988, Philip H. Trezise's article on the GATT Uruguay Round, and Peter Morici's discussion of the lessons from the Canada-U.S. trade agreement. ■

James Buchanan Looks at Europe's Constitution in *Cato Journal*

Nobel laureate James M. Buchanan believes that America's constitutional history is relevant to Europe on the eve of 1992. He presents his interpretation in "An American Perspective on Europe's Constitutional Opportunity" in the Winter 1991 issue of the *Cato Journal.* The issue also includes two articles on Soviet monetary matters: Edgar L. Feige's "Perestroika and Ruble Convertibilty" and Steve H. Hanke and Kurt Schuler's "Ruble Reform: A Lesson from Keynes." Domestic concerns are the subject of other articles, including "The Economics of Regulating Deception" by Paul H. Rubin, "The War on Drugs as Antitrust Regulation" by Gary M. Anderson and Robert D. Tollison, and "The First Minimum Wage Laws" by Clifford Thies. Kevin Dowd contributes an article on options clauses and bank suspension, and Fred S. McChesney discusses "Antitrust and Regulation: Chicago's Conflicting Views."

Nobel laureate James M. Buchanan discusses the lessons of American constitutional history for Europe's 1992 project in the latest *Cato Journal.*

The Spring/Summer 1991 issue will contain papers from Cato's conference held in Moscow in September 1990. ■

The Reagan Tax Cuts after 10 Years: Economic Miracle or Voodoo Economics?

Policy Forum

The Cato Institute regularly sponsors a Policy Forum in Washington, where distinguished analysts present their views to an audience drawn from government, the media, and the public policy community. A recent forum was held on July 29, 1991, the 10th anniversary of the passage of the 1981 income tax cuts. The speakers were Lawrence Kudlow, chief economist with Bear Stearns and Company; Arthur Laffer, chairman of Laffer, Canto, and Associates; Robert S. McIntyre, director of Citizens for Tax Justice; Rudolph Penner, senior fellow at the Urban Institute; Richard Rahn, vice president and chief economist at the U.S. Chamber of Commerce; and Robert Shapiro, vice president of the Progressive Policy Institute. Fred Barnes, senior editor of the New Republic, *moderated. Selections from the forum are printed here.*

Arthur Laffer: The happiest day of my life has to have been the day Reagan took office, and the second happiest was the day Reagan left office, without the economy's having collapsed. As we look back to the 1980s, we notice that old bad arguments never die; in fact, they don't even fade away—especially when they're based on hope.

First of all, when we assess the impact of the Reagan tax cuts, it is important to remember that, although the first bill was passed in 1981, the tax cuts did not take effect the day the bill was passed. They were phased in. Therefore, to judge the economic effects of the tax cuts, you have to begin the analysis when the tax cuts took effect, not when the tax bill was passed. It's amazing how tax cuts don't work until they take effect.

We had a 5 percent cut in October 1981, a 10 percent cut in July 1982, and a 10 percent cut in July 1983. As all of you know, there's no such thing as a mid-year tax cut. You report your income for the whole year, and you pay taxes based on your whole year's income. Therefore, a 5 percent cut in October 1981 was really a 1.25 percent cut for the whole year. Likewise, for 1982 we had a 10 percent cumulative tax cut, and starting on January 1, 1983, we had a 20 percent across-the-board cut. That's when the tax cut really started. So to determine the economic impact of the Reagan tax cuts, you need to start with January 1, 1983. If you do that, you get a very different answer than you would if you were to compare economic performance during one administration with that during another.

Second, you need to judge the arguments by the ex ante criticisms of the time, not by the ex post Monday morning quarterbacking that you hear today. For example, the biggest criticism of the Reagan tax cuts in 1981 was that they would cause annual inflation to be 20, 30, maybe even 40 percent. Not many people argued that inflation would actually fall, as it did, or that the tax cuts would lead to extraordinary economic growth of output and employment.

The third point is on savings rates. Everyone looks at Keynesian savings rates to judge supply-side economics. But the definition doesn't fit the analysis. Savings rates alone are almost irrelevant. Look instead at the creation of productive capital. What really happened when the Reagan tax cuts went into effect was that we took capital that had been very inefficiently placed—in tax shelters, inflation hedges, windmills—and redirected it toward productive uses. What we were doing was making inefficient capital efficient. That caused huge appreciation in the value of existing assets. Thus, while savings rates may have been on the low side, total savings as measured by wealth increased enormously.

Fourth, you must remember what things were like back in 1981 when you judge Reagan's policies. At the end of 1980 the prime interest rate was 21.5 percent. The highest marginal rate on unearned income was 70 percent. The Soviets were still a major threat to the world. The conceptual framework, left over from the 1970s, held that you could tax workers and producers and pay people not to work and not to produce and still expect more people to become workers. That just doesn't make sense.

Attitudes toward trade issues and capital flows are also revealing. Everyone was worried because the United States did not have a trade surplus during the 1980s. But frankly, a trade surplus is a capital account deficit. A trade deficit is a capital surplus. Which would you rather have, investors lined up at your borders trying to get into your country or trying to get out? If they're trying to get in, you're going to have a capital surplus and a trade deficit, plus lots of new jobs and businesses. That is what occurred during the 1980s.

It is true that data on the distribution of income indicate that the tax cuts did not do much for the poor. But remember, one part of our program that was never put into effect was enterprise zones—tax-free zones in the inner cities created to lift the *other* very high marginal tax rate group back into the mainstream of the economy. Enterprise zones were to have been combined with the across-the-board tax cuts.

My last point is that cutting taxes is not a partisan issue. The Democrats often forget that John F. Kennedy gave us a supply-side tax cut back in the 1960s, which was the model for Reagan's tax cuts. Kennedy's tax cut worked then, as Reagan's cuts did in the 1980s. And today we have a Republican governor of California, Pete Wilson, who just raised the income tax and the sales tax. Wilson is no more a supply-side governor than George Bush is a supply-side president, even though they both are Republicans.

Rudolph Penner: My attitude toward the 1981 tax cuts today is exactly the same as it was in 1981. At that time I said the good news was that we'd successfully reduced marginal tax rates and disincentives for savings and work. The bad news was that we couldn't afford all the good news.

The fact that the public debt has risen by $1.6 trillion, or more than tripled, since that time provides more than enough evidence to support that conclusion. The deficit represents a tragic erosion of the nation's wealth and is now large enough to have a noticeable effect on our prospects for improved living standards. Estimates of the potential growth of the economy are constantly being revised downward. Ironically, the mistake was recognized almost immediately, and the nation grudgingly started to increase taxes again; some sort of tax increase occurred in every subsequent year of the 1980s.

Perhaps those tax increases were responsible for the healthy recovery that followed the 1982 recession, the deepest since the Great Depression. I don't really believe that, but I think it's as logical as arguing that the recovery was due to the 1981 tax cuts. Particularly large tax increases occurred under the Tax Equity and Fiscal Responsibility Act of 1982; gasoline and payroll taxes were raised in 1983; the Deficit Reduction Act of 1984 increased business taxes; and less important tax increases occurred in subsequent years.

The tax policy of the 1980s left us with an overall federal tax burden of 19.3 percent of GNP in fiscal 1989, compared with 19.4 percent in 1980, before the tax burden went up in 1981. So the end looked almost the same as the beginning as far as the average tax rate was concerned.

With the help of the 1986 tax reform, the tax system evolved in a way consistent with improving efficiency: marginal tax rates were lowered while the tax base was broadened. But the effects of that laudatory reform on things like personal savings were highly disappointing—even to people like me, who never had much faith in the extraordinary claims of the supply siders but thought that some good might come of the reform. Art Laffer mentioned the efficient use of capital. Actually, the combination of the poorly designed depreciation increase in the early 1980s and the S&L fiasco left us with a nation full of empty office buildings, hardly an efficient use of capital.

Before each tax increase, President Reagan would typically say that he would sign a tax increase over his dead body. He then signed it. He then claimed victory. Recent books suggest that Reagan slept through much of his presidency, but he certainly confused a lot of awake Democrats.

Sen. Daniel Patrick Moynihan and others have charged that the administration never really believed in supply-side economics; it merely seized on tax cuts as a means of starving government and controlling spending in the long run. Reagan himself had some success in convincing the public that the deficits of the 1980s were the fault of the high-spending Congress. But in fact, the Congresses of the 1980s spent almost exactly the amounts that he requested. The arguments were over priorities, not over total spending levels.

For example, between 1983 and 1987 Congress cut Reagan's request for defense spending each year by amounts ranging from $15 billion to $33 billion and then proceeded to spend that money on civilian programs. When Reagan had a chance to reduce the growth of civilian spending significantly in 1985, he really blew it. Sens. Robert Dole and Pete Domenici had courageously managed to convince the Senate to pass significant spending cuts, including cuts in cost-of-living adjustments (COLA) for Social Security recipients. Reagan, at first, backed them; then he became afraid of the elderly and double-crossed the Republican leadership. We would have a very different budget today if the Dole-Domenici initiative had succeeded, and I suspect that the Republicans would still control the Senate. The elderly were convinced in 1986 that the Republicans were against them, but if the COLA cuts had actually passed, they probably would have hardly noticed.

Having said all of those negative things, I still suspect that history will regard Reagan as a highly successful, effective president. He deserves much praise for giving Paul Volcker the independence to quell inflation, despite the deep recession that monetary policy caused in 1982. I believe that Reagan's defense build-up played a considerable role in convincing the Soviets to throw in the towel, and I still have hopes that the tax reform of 1986 will work out better than it appears at the moment.

Lawrence Kudlow, Richard Rahn, and Fred Barnes listen as Arthur Laffer makes a point about the 1981 tax cuts at a Cato forum.

Robert Shapiro: Let me begin by saying that I'm not going to debate the aims of economic policy. I accept that supply siders share the goal that all students of Keynes know to be his, namely, broad-based creation of wealth—although ironically, the supply-side program ended up contributing not to creation of greater wealth but mainly to its reallocation. Instead, I propose to bring basic economic reasoning and data to bear on the supply-side claims. On that basis we can confidently judge the program to have been at best trivial and at worst a botch.

Supply siders, and here I rely on the writings of Lawrence Lindsey, make their case for tax cuts roughly as follows: the stagflation of the 1970s can be traced to constraints on economic vitality imposed by income tax increases, which were the most powerful

(Cont. on p. 8)

Reagan Tax Cuts (Cont. from p. 7)

force behind the growing size of government. But if the disease is the tax burden, then the cure should begin not with tax cuts but with spending. In a system that holds officials accountable to voters, representatives don't raise taxes and then ask what to do with the money. They agree to spend more money, usually to assist those who helped elect them, and then ask how to get it. Supply-side theory seems to be innocent of how democratic politics works.

Moreover, the data show that income taxes are not the driving force behind either federal spending or the federal tax burden. The share of federal spending paid for by income taxes has fallen steadily for 30 years, from 42 percent in the 1960s to 40 percent in the 1970s to 38 percent in the 1980s. And the top marginal income tax rate has been declining for a generation. In contrast, the share of federal spending paid for by working people in Social Security taxes rose from 18 percent in the 1960s to 28 percent in the 1970s and continued to rise, to nearly 30 percent, during the course of the supply-side experiment of the 1980s.

But the heart of the supply-side case is the assertion that cuts in marginal income tax rates restore individual incentives to work, save, and invest, and that the economic growth generated by work, savings, and investment can make the cuts self-financing. As evidence for that, and for the fairness of their approach, supply siders offer numbers showing that high-income people paid more income taxes after the tax cuts than before. Of course they did. In the 1980s the real incomes of the top 1 percent of taxpayers grew five times faster than the incomes of average people. Yet, thanks to supply-side policies, the real tax burden on the wealthy, the share of their total incomes claimed in federal taxes, fell, though it rose significantly for everyone else except the very poor.

And while the share of national income at the top increased, as a whole the economy created new wealth at about the same rate after the supply-side tax cuts as it had before. The rate of real growth in the 1980s was nearly identical to that of the 1970s, and both were much less than the rates during the 1950s and the 1960s—years of very high marginal rates. On a business-cycle basis—including the 1981–82 recession—from January 1983 to the beginning of the current recession, real output grew a sound 4.15 percent a year. But that's actually less than the 4.35 percent yearly growth during the four-year expansion in the second half of the 1970s. And as an economic outcome, neither case is much to brag about, because in both instances most of the growth came from an increase in the number of people working, not from increased worker productivity.

Did the tax cuts then help create the jobs that promoted growth in the 1980s? Twenty million jobs were created after July 1982, when the first large cut went into effect. But that rate of job creation reflects the way our economy normally works, regardless of marginal tax rates. By the data, the overall rate of job creation was slightly lower in the 1980s than in the 1970s, when marginal rates were higher. Some 13 million jobs, for example, were created in just the last four years of the 1970s.

Did the tax program stimulate investment? The data show that real business capital spending did rise faster for two years—1984 and 1985—than during other two-year periods since World War II. But from January 1983 to January 1990, investment as a share of GNP grew at only half the average annual rate of the previous three decades. Did the tax cuts stimulate savings? Certainly not by the government; not by individuals either.

Supply side even failed when it came to spurring entrepreneurship. Since the end of the 1981–82 recession, the number of new businesses incorporated has increased by 3.9 percent a year, compared with 6 percent annual growth in the three preceding high marginal tax rate decades.

Where does that leave us? However badly the supply siders want us to forget that, as David Stockman wrote, "it was all about the new era in free lunches," validated by anecdote, as a macroeconomic event supply-side tax cuts lie somewhere between a washout and a failure. And as E. J. Dionne observed recently, "After nearly a generation, supply side analysis has not achieved a foothold in established economic thought, writing or instruction." The reason is simple. It has no rigorous theoretical or sound evidential basis.

Fred Barnes and Rudolph Penner share a laugh at the Cato forum on the 1981 tax cuts.

Richard Rahn: We're here to look at a testable proposition: did the Reagan tax cuts work as advertised? The last report to President Carter from the Council of Economic Advisers, which came out in January 1981, contained a five-year economic projection. The report claimed that if the Carter policies were followed, the period from 1983 to 1986 would see an average growth rate of 3.7 percent. Remember, that was the Carter administration's ideal world, the best they thought they could do. The Reagan team claimed that they could produce growth of roughly 4.5 percent. The actual growth rate for those four years was 4.1 percent. The Carter team claimed that they would bring inflation down to 7.6 percent, on average, per year. The Reagan team promised to bring it down to an average of about 6 percent. In fact, inflation dropped to 3.4 percent by 1986.

Lester Thurow, one of the leaders of the opposition, claimed on October 17, 1982, "The engines of economic growth have shut down here and across the globe, and they are likely to stay that way for many years to come." He made that statement one month before the longest peacetime economic expansion in our nation's history began. Gardener Ackley, who had been among the leading Keynesian economists and an adviser to many Democrats, said, "What I am ready to predict and to promise is that the effect of the president's program will not be, as he so confidently predicts, to cut the present inflation rate by more than half. The administration projection is that inflation in the consumer price index will decline from 11.1 percent in 1981 to 4.2 percent in 1986. That, I think, would truly be a miracle." Well, as you know, that miracle occurred.

The opponents of Reagan's policies seem to forget what they and their colleagues were saying in the early 1980s. They all were buying the Phillips curve argument. The *Washington Post* editorial page said we could not possibly cut unemployment and have higher rates of economic growth without increasing inflation. But look at the actual performance from the fourth quarter of 1982, when the Reagan policies began to go into effect, until July 1990, when the expansion ended. That's eight consecutive years. I noticed that Dr. Shapiro was taking bits and pieces, pulling out a couple of years here and there when economic performance in the 1970s exceeded that in the 1980s, but you cannot find a continuous eight-year stretch in the high tax rate 1970s in which exports were up by 92.6 percent, business equipment was up by 76.4 percent, manufacturing output was up by 48.3 percent, GNP was up by 32 percent, employment was up by 19.5 percent, per capita income was up by 18.8 percent, private investment was up by 71 percent, and produced durable equipment was up by 76.3 percent. Those are all inflation-adjusted real numbers.

Also, from 1982 to 1990 real federal tax receipts increased by 36.2 percent. I agree, we had a problem on the spending side, but we did not have a decline in revenue. We had a record proportion of our population at work at the end of the decade—63.4 percent, up from 59 percent in 1983.

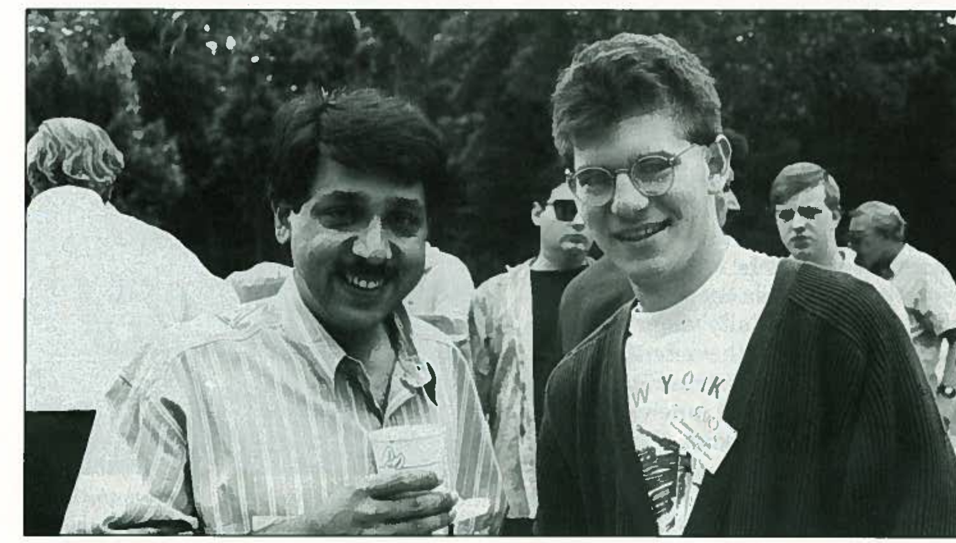
The critics said poverty would increase, but the poverty rate went down each year, and the total number of people in poverty decreased by about 2.5 million by the end of the decade. The misery index (the inflation rate plus the unemployment rate) was almost 20 in 1980, and it is now about 10.

It is unambiguously clear, if you look at what the opponents of Reagan's policies said would happen and at what actually did happen, that the opponents were wrong and the people who advocated the Reagan policies were correct. I think the opposition owes Mr. Reagan and his supporters an apology. ■

Economics, Philosophy Highlighted at Cato's 13th Annual Summer Seminar

Nadine Strossen, president of the American Civil Liberties Union, discusses the Bill of Rights on July 4 at the Cato Institute's annual Summer Seminar in Political Economy.

Philosopher David Kelley outlines the nature of individual rights during two lectures at the Summer Seminar, held once again at Dartmouth College.



Anurag Wadehra of Cincinnati and James Joseph of the University of Chicago Law School talk during a break between lectures.

The 75 participants in the Summer Seminar included people from Mexico, Guatemala, Sweden, and England, as well as immigrants from Peru, India, and China.

Amendments (Cont. from p. 1)

stitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Coming at the conclusion of the founding period—and, quite literally, at the conclusion of the original Constitution and the Bill of Rights—the Ninth and Tenth Amendments can be thought to have summed up that period and those documents. In the Declaration of Independence, the Founders set forth the essence of the higher law: the primacy of the individual; the principle of moral equality, defined by our equal natural rights; and the idea that government, resting on consent, is created not to give us rights but to secure the rights we already have. Through a written constitution, the founding generation then authorized the institutions and powers of government they thought would best secure their rights. Finally, to help ensure that end, they added a bill of rights. And they concluded that document by returning to first principles. Thus the Ninth Amendment makes it clear that the rights enumerated in our founding documents are not the only rights we have, while the Tenth Amendment makes it equally clear that the powers delegated to the federal government are its only powers. Rights were both enumerated and unenumerated; powers, intended to secure those rights, were strictly enumerated.

The debates that surrounded the adoption of the Bill of Rights only reinforce this plain reading of the document's final members. As calls for a bill of rights intensified during the ratification period, those who opposed such a bill objected that it was unnecessary because the Constitution was already a bill of rights. "Why declare that things shall not be done which there is no power to do?" asked Alexander Hamilton.[6] James Wilson reinforced that point by observing that "every thing which is not given is reserved."[7] Moreover, a bill of rights might even prove dangerous, the opponents continued. First, since it is impossible to enumerate all of our rights, enumerating certain rights might be construed as surrendering the rest. And second, declaring as rights what everyone knows to be rights might trivialize all rights, even those that are enumerated.

When a bill of rights proved necessary to ratification, the Ninth and Tenth Amendments were written to guard against those dangers, making it clear that the enumeration of certain rights was not meant to deny or disparage others and that powers were meant to be limited to those that were enumerated. After reviewing the ratification debates, Sherry concludes that "the founding generation envisioned natural rights beyond those protected by the first eight amendments" and that "the framers of the Bill of Rights did not expect the Constitution to be read as the sole source of fundamental law."[8] Indeed, if the Framers intended unenumerated rights to be protected *without* a bill of rights, how can we imagine that those rights were meant to be any less secure *with* a bill of rights?

"During the Progressive Era we stopped thinking of government as a necessary evil, created to secure our rights, and started thinking of it as an instrument for doing good."

Those conclusions are at direct variance with modern constitutional thought, of course, save for in a fairly limited range of cases. Today even liberals call upon judges to find rights within "the four corners" of the Constitution—admittedly, by interpreting its language liberally—while conservatives urge judges to read the document more or less literally—to guard against importing into it their own values. Almost never do modern judges, whether liberal or conservative, purport to go "beyond" the Constitution. When we add the general presumption, which has arisen over the years, that legislation is constitutional—and the expansion of that presumption, especially through the Commerce Clause, to a wide range of activities the Founders would never have imagined—the result amounts almost to the inversion of the Founders' presumptions: enumerated rights, unenumerated powers. Modern practice, in short, runs directly counter to the practice Sherry discerned in her review of the first 30 years of American constitutional jurisprudence: "there is no case during this period in which the courts have upheld an act contrary to natural law on the ground that the law was not in conflict with any constitutional provision."[9]

Legitimacy and the Loss of Confidence

How did we get to this point—where conservatives read the Constitution almost literally, save for the forgotten Ninth and Tenth Amendments, while liberals do the same, save to get the rights or powers they want by stretching the text to the breaking point? Why is it, in short, that the modern mind is so reluctant to repair to the higher law that the Founders thought would inform the broad language of the Constitution, including the Ninth and Tenth Amendments?

The answers to those questions are many, but they all come down to a concern for legitimacy and to a loss of confidence, especially among the judiciary, about the genuine foundations of legitimacy. In a nutshell, over the past two centuries we have seen the foundations of legitimacy shift ever so gradually but ever so clearly from reason to popular will. We have moved, that is, from a constitution of reason to a constitution of will.

Plainly, the Founders thought political legitimacy, including the legitimacy of judicial review, was rooted not in any conception of value or political ends, much less in democratic will, but in the theory of natural rights. The Declaration states that theory as succinctly as it has ever been stated, grounding its self-evident truths in "the Laws of Nature and of Nature's God." Couched in the language of the day, that was simply another way of saying, with John Locke, that the Declaration's principles were grounded in "Reason."

No sooner had those principles been declared, however, than they came under attack. Perhaps the most strident of the critics was Jeremy Bentham, the father of British utilitarianism, who

wrote in 1791 that talk of natural rights was "simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts."[10] Bentham stood in a long line of moral skeptics, stretching from antiquity to today, each of whom argued the impossibility of legitimacy yet had his own second-best solution to the problem of legitimacy.

In time, not surprisingly, those skeptics took their toll on the American judiciary. Playing upon the all-too-human tendency toward self-doubt, they undermined judicial belief in natural rights and propelled judges toward other rationales. With their faith shaken, judges turned naturally to the "clearest" source of law—the written text—and toward a theory that might lend legitimacy to that text. Plainly, the simplest such theory, the easiest to comprehend, held that the Constitution was legitimate because it represented the will of the sovereign, the American people. Thus did the twin premises of legal positivism and democratic rationale take root. Never mind that the Framers had restrained popular will at every turn. When construing the text not as reflecting higher law, which would require judicial understanding and insight to interpret, but as mere positive law, only a theory of sovereignty could lend legitimacy to that text, and the theory of popular sovereignty was as good as—in fact, better than—any other. It lent itself, moreover, to an ever-greater latitude for majoritarian will, which of course has been taken advantage of.

Those conceptual shifts took place only over time, of course. Moreover, they manifested themselves as a fundamental jurisprudential shift only much later, with the New Deal Court. Until then, majoritarian demands had not been so extensive as to lead to the kind of judicial crisis that arose during the New Deal. Nevertheless, the foundations for crisis were being laid all along, especially during the Progressive Era. It was then, in fact, that a crucial shift took place in our conception of government, when we stopped thinking of government as a necessary evil, created to secure our rights, and started thinking of it instead as an instrument for doing good.

The importance of that reconceptualization of government cannot be overstated. It led eventually to what Robert Summers has called America's leading theory of law, "pragmatic instrumentalism," which conceives law to be a practical instrument for accomplishing social goals.[11] With the rise of industrialization and urbanization and the social problems that ensued, with the influence of German idealism and progressive theories of good government conducted by career civil servants, the forces were in place for a fundamental transition in our conception of law—from rights-based to policy-driven law, from judge-made to statutory law, from the law of reason to the law of will. Indeed, it remained only for the judiciary to catch up to modern, progressive thought.

"A judge whose misguided 'restraint' precludes him from carrying out his full responsibilities is in fact an 'activist,' finding powers that have nowhere been given."

But the New Deal Court was slow to catch up. In fact, not until President Roosevelt threatened to pack the Court with six additional members did it finally get the majoritarian message. Once it did, however, the floodgates were opened. With the Court stepping aside, with its systematic deference to the political branches, those branches were able to move on with their social agenda, unrestrained by any "rights" that might stand in the way of their pursuit of the social good. But to be thus restrained and deferential the Court needed a rationale. After all, for most of its history it had stood athwart the majoritarian engine, albeit by teasing rights out of the text of the Constitution rather than finding them in its higher law background. What now could justify the Court's doing not even that—and permitting unheard of powers besides? In short, what could justify its ignoring both the Ninth and Tenth Amendments?

Justice Stone provided that rationale in 1938 in *Carolene Products*, especially in his famous footnote 4, wherein he distinguished "fundamental" rights—relating to political participation and to "discrete and insular minorities" that might be restricted from such participation—from other, presumably "nonfundamental" rights.[12] Legislative interference with the former, he said, should receive strict judicial scrutiny, whereas interference with the latter, especially with rights exercised in ordinary commercial transactions, should be presumed to be constitutional if it rests upon some rational basis. That dual theory of rights and two-tiered theory of judicial review, aimed at enhancing political participation, are nowhere to be found in the Constitution, of course, nor are they any part of its higher law background. Rather, they were invented out of whole cloth, for political reasons, to enable the New Deal state, its roots in the Progressive Era, to proceed with its political and economic agenda. Unenumerated rights were ignored. Unenumerated powers were allowed—all in the name of the sovereign will.

The transition that had begun a century and more before was now nearly complete; what remained was simply the episodic expansion of "fundamental rights," drawn not from higher law but from "evolving social values." The democratic rationale that had lent legitimacy to a constitution conceived as mere positive law, as a product of sovereign will, now served as the filter through which the document's very terms came to be understood and given a largely political cast. No longer conversant with the higher law of reason, judges could at least understand the ordinary law of will, and whether the commands of that will conflicted with explicit restraints in the Constitution, constraints that were themselves construed as intended to enhance political participation. Defending that "politicization" of the Constitution, John Hart Ely has put the matter straightforwardly: "unblocking stoppages in the democratic process is what judicial review ought preeminently to be about."[13] Indeed, the theory of *Carolene Products*

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Amendments (Cont. from p. 11)

has been called a "great and modern charter for ordering the relations between judges and other agencies of government."[14]

It is not a little ironic, of course, that modern liberals, who expanded the state through Progressive Era regulation, New Deal welfare programs, and Great Society egalitarian efforts, ignoring in the process the unenumerated rights of the Ninth Amendment and the limited powers of the Tenth Amendment, should today be searching the Ninth Amendment for pockets of protection from the ubiquitous state they created. Nor is it without irony that modern conservatives, purporting to rest their constitutional jurisprudence on the intentions of the Framers, should ignore the Framers' intent when it comes to the Ninth and Tenth Amendments and rely instead on the political jurisprudence of the New Deal Court to enable lawmakers at every level of government to regulate our personal lives in countless ways—the theory being that our rights to those lives are nowhere to be found in the Constitution. Because both liberals and conservatives have today bought into the will theory of constitutional legitimacy, neither privacy nor property is secure.

Restoring the Vision

The Founders got it right. They understood that in the end, legitimacy is a function of reason, not of political will. To be sure, it takes some act of political will—or at least some manifestation of political recognition—to get a legal regime going. In the American context, that is what ratification was all about. But that is *all* that ratification was about. That original consent could hardly have made legitimate the terms and relationships that were ratified—as consent to a contract makes legitimate, among the consenting parties, the terms and relationships that are thereby authorized. Ratification could not have done that because its effects, in establishing the legal regime, reached far beyond the ratifying parties. Indeed, the ratifiers purported to be binding not simply themselves but succeeding generations as well. They could not have done that if they had not gotten it right—right as a matter of *substance.* But that substantive legitimacy is a function not of process but of the higher law of reason. Freedom of religion and the right to property are legitimate not because the ratifiers *declared* them to be so—through an act of political will—but because they are *natural* rights. Indeed, those rights would be legitimate even if the ratifying generation had declared them *not* to be so.

If we are to restore the vision of the Founders, the vision of individual liberty and limited government that the Ninth and Tenth Amendments were meant to secure, the first thing we must do is disabuse ourselves of the idea that democratic will per se imparts any real measure of legitimacy. Democratic process may decide an issue, with the majority prevailing over the minority. But that hardly makes the product of that process legitimate. Majority decisions to redistribute property, for example, or to prohibit nonviolent associations, which so many modern statutes do, are simply illegitimate, however large the majority behind them. They are legally illegitimate because they violate the rights protected by the Ninth Amendment (at least) and proceed from powers the Tenth Amendment was meant to make clear were never given. And they are morally illegitimate because in no way do they conform to the higher law that stands behind the Constitution, the theory of natural rights that was meant to inform the document's broad language, guiding judges in their review of such political acts.

When properly understood, then, that review does not require judges to go "beyond" the Constitution. If the document is law by virtue of having been ratified, and if the original understanding was that the text was to be interpreted by reference to principles of a higher law, then judges who repair to those principles for guidance can hardly be said to be acting beyond the scope of their authority. So far is this from judicial "activism" as to be precisely the opposite: a judge whose misguided "restraint" precludes him from carrying out his full responsibilities—like a judge whose misguided "activism" takes him truly beyond the theory of natural rights—is in fact an "activist," finding powers, in effect, that have nowhere been given. The responsibility of the judge is to apply the Constitution as it was meant to be applied—indeed, as it was applied in the early years of the nation.

To do that, however, the judiciary must not only disabuse itself of its misguided belief in the legitimating power of majoritarian will; it must also affirmatively inform itself about the character and content of the higher law. In an age inclined toward moral skepticism, that will not be easy. Nevertheless, it can be done. Indeed, the Founders had a fairly consistent, correct, and confident understanding of that law. Nor is it surprising that they did, since they took their counsel from a fairly commonsense understanding and appreciation of reason.

The primacy of the individual. The idea of moral equality, defined by equal rights. The ultimate grounding of rights in property and promise—not in need, or want, or aspiration, or any other evaluative notion. The presumption in favor of the voluntary, private realm. The suspicion of public power. Those are the elements of the higher law, of the free society, of the vision the Ninth and Tenth Amendments were meant to secure. It is a vision the modern judiciary would do well to revisit. ■

Notes

[1]Professors Barnett and Sherry participated in the ABA program. See Randy Barnett, "Introduction: James Madison's Ninth Amendment," in *The Rights Retained by the People,* ed. Randy Barnett (Fairfax, Va.: George Mason University Press, 1989); Suzanna Sherry, "The Founders' Unwritten Constitution," *University of Chicago Law Review* 54 (Fall 1987): 1127–77.

[2]Sherry, p. 1176.

[3]*Griswold v. Connecticut,* 381 U.S. 479, 491 (1965).

[4]That one case was *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555 (1980).

[5]*National League of Cities v. Usery,* 426 U.S. 833 (1976); *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528 (1985).

[6]The Federalist no. 84 (Modern Library edition, 1937), p. 559.

[7]James Wilson, address to a meeting of the citizens of Philadelphia (1787), in B. Schwartz, *The Bill of Rights: A Documentary History,* vol. 1 (1971), p. 529. Quoted in Barnett, p. 5.

[8]Sherry, p. 1166.

[9]Ibid., p. 1167.

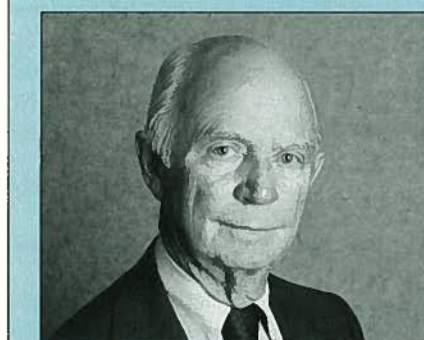
[10]Jeremy Bentham, "Anarchical Fallacies," in *Collected Works,* ed. John Bowring (Edinburgh: William Tait, 1843), vol. 2, p. 501.

[11]Robert Summers, "Pragmatic Instrumentalism: America's Leading Theory of Law," *Cornell Law Forum* 5 (1978).

[12]*United States v. Carolene Products Co.,* 304 U.S. 144, 152 n.4 (1938).

[13]John Hart Ely, *Democracy and Distrust* (Cambridge, Mass., and London: Harvard University Press, 1980), p. 117.

[14]Owen Fiss, "The Supreme Court, 1978 Term—Forward: The Forms of Justice," *Harvard Law Review* 93 (1979): 6.



Gordon A. Cain, chairman of the board of the Sterling Group, has been named to the Board of Directors of the Cato Institute. He is a chemical engineer and an entrepreneur. Among the companies established by the Sterling Group are Vista Chemical, Sterling Chemicals, and Cain Chemical. Cain has received several awards for scientific and industrial leadership in the petrochemical industry and is a distinguished sponsor of the Technology and Economic Growth Program of Stanford University's Center for Economic Policy Research. He is also a member of Cato's Project '90 Finance Committee.

Ronald J. Whiteside has been named executive vice president for administration of the Cato Institute. He has had a 20-year career in financial services management, most recently at the Credit Union National Association. At Cato he will assume responsibility for administration, personnel, and budget matters. David Boaz remains executive vice president with responsibility for public policy.

New Cato Studies

Prohibition Didn't Work; Neither Does Intervention in Middle East

Alcohol prohibition didn't reduce the consumption of liquor. There's a new conspiracy to raise the price of milk. America's law against dumping is harmful. And the United States needs an ABM system to protect against threats from unstable Third World regimes. Those are the conclusions of some recent Cato Institute studies.

The Failure of Prohibition

The current war on drugs is destined to fail just as the prohibition of alcohol did earlier this century, Mark Thornton, assistant professor of economics at Auburn University, concludes in "Alcohol Prohibition Was a Failure" (Policy Analysis no. 157).

National prohibition of alcohol (1920–33) was "undertaken to reduce crime and corruption, solve social problems, reduce the tax burden, . . . and improve health and hygiene," Thornton writes. Drawing largely on the work of prohibitionists, he shows that Prohibition achieved none of those goals. It even failed to reduce the consumption of alcohol.

"The lessons of Prohibition remain important today. They apply not only to the debate over the war on drugs but also to the mounting efforts to drastically reduce access to alcohol and tobacco and to such issues as censorship and bans on insider trading, abortion, and gambling," Thornton writes.

Disabilities Act—A Burden to Everyone

The Americans with Disabilities Act of 1990 needs to be amended if not repealed to limit the financial burdens imposed on all Americans, says Robert P. O'Quinn, a Washington-based economist, in "The Americans with Disabilities Act: Time for Amendments" (Policy Analysis no. 158).

The goal of the act—integrating disabled individuals into American society as fully as technologically possible—is laudable, O'Quinn writes. But Congress "rejected any cost-based standards for determining what the ADA requires." As a result, "consumer prices may rise and employment may fall. State and local governments may be compelled to raise taxes or cut services to nondisabled Americans. The overall international competitiveness of the American economy may be damaged."

O'Quinn suggests a number of amendments to the ADA that would "significantly limit its costs while actually enhancing the act's ability to integrate disabled people into American society." For example, costs that are not offset by tax credits or grants and that exceed certain minimum amounts should be presumed to be an "undue hardship" on employers or an "undue burden" on the owners of public accommodations.

U.S.–Middle East Relations since World War II

American intervention has not brought stability—much less peace or freedom—to the Middle East, writes Cato Institute senior editor Sheldon L. Richman in "'Ancient History': U.S. Conduct in the Middle East since World War II and the Folly of Intervention" (Policy Analysis no. 159).

The study condemns 45 years of U.S. intervention in the Middle East. Richman writes that it is time for the United States to learn from its costly past mistakes and return to a foreign policy designed to "guard the peace and security of the American people at home, not to extend American power hither and yon for grandiose schemes." He concludes that President Bush's new world order "bodes ill for long-suffering American citizens, who will see their taxes continue to rise, their consumer economy increasingly distorted by military spending, and their blood spilled."

Higher Milk Prices

Farm-state congressmen are launching another crusade to drive up dairy prices via sweeping new controls over dairy farmers and milk sales, writes James Bovard in "Our Next Criminal Class: Milk Bootleggers?" (Briefing Paper no. 13). Federal dairy policy is already costing consumers over $5 billion a year, according to Bovard, yet the new proposals could boost milk

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From the World Bank to Madison's Constitution

Cato Scholars Write for a Wide Range of Magazines

Cato staff members and senior fellows frequently write on a wide variety of policy issues for major newspapers, magazines, and journals and contribute chapters to books. Many of their newspaper articles are reprinted in Cato Clippings, which Cato Sponsors and friends of the Institute receive periodically. To acquaint our readers with some of the other work of Cato authors, we have listed a sample of their recent publications below.

Doug Bandow
"National Service: Building Bureaucracies, Not Character," *Business and Society Review*, Winter 1990.
"Developing Country Debt and the World Economy," *Journal of Economic Development*, Winter 1989–90.
"Insider Trading—Where's the Crime?" *National Review*, April 16, 1990.
"A Call to Civic Service," *The Freeman*, May 1990.
"The New Samaritans," *Christianity Today*, May 14, 1990.
"The IMF: Forever in Its Debt," *Business and Society Review*, Spring 1990.
"National Service: Unnecessary and Un-American," *Orbis*, Summer 1990.
"America's Korean Protectorate after Forty Years," *SISA Journal*, September 1990.
"NATO's Disappearing Mission," *Antithesis*, September/October 1990.
"Seoul Long," *American Spectator*, November 1990.
"Does Uncle Sam Really Need the Bases?" *Defense and Diplomacy Review*, November/December 1990.
"Eco-Terrorism: A New Peril," *European Security Analyst*, December 1990.
"The Oxford Declaration and the Role of the State," *Stewardship Journal*, Winter 1991.
"Gaining Control of the World's Oil," *Business and Society Review*, Winter 1991.

David Boaz
"Journalists and the Drug War," *Liberty*, May 1991.
"The Failure of Prohibition," *Economic Affairs*, February 1991.
"A Drug-Free America—or a Free America?" *University of California–Davis Law Review*, Spring 1991.
"From Russia, with Surprise," *Liberty*, January 1991.
Contributor to "The Vision Thing," *Policy Review*, Spring 1990.

Jim Bovard
"The Federal Job Training Fiasco," *Reader's Digest*, March 1990.
"RCRA: Origin of an Environmental Debacle," *Journal of Regulation and Social Cost*, February 1991.
The Fair Trade Fraud, St. Martin's Press, forthcoming 1991.
Contributor to *Government Intervention in Agriculture*, World Bank, 1990.

Ted Galen Carpenter
"America's China Policy: The Virtue of Patience," in *U.S.-China Policy*, International Security Council, 1990.
"Etats-Unis: Vers un Nouvel Isolationisme?" *Politique Internationale* 48, Summer 1990.
"An Independent Course," *National Interest* 21, Fall 1990.
"Uncle Sam as the World's Policeman: Time for a Change?" *USA Today Magazine*, January 1991.
"The New World Disorder," *Foreign Policy* 84, Fall 1991.

Edward H. Crane
"Private Property and Perestroika," *Vital Speeches of the Day*, November 1, 1990.
"Sophomore Slump: Midterm Grades for the Bush Administration," *Policy Review*, Winter 1991.

James A. Dorn
"Madison's Constitutional Political Economy: Principles for a Liberal Order," *Constitutional Political Economy* 2, 1991.
"Monetary Stability and the Monetary Order: A Comment on Rockoff," in *Unregulated Banking: Chaos or Order?* ed. Forrest Capie and Geoffrey E. Wood, Macmillan, 1990.
"Equality: A Constitutional Perspective," in *The Political Legitimacy of Markets and Governments*, ed. Thomas R. Dye, JAI Press, 1990.

Peter J. Ferrara
"Social Security and the Private Sector," *National Forum*, Spring 1990.
"Social Security: Marching toward Freedom," *National Review*, July 9, 1990.
"Expanding Autonomy of the Elderly in Home Health Care," *New England Law Review*, Winter 1991.

Christopher Layne
"Why the Gulf War Was Not in the National Interest," *Atlantic*, July 1991.
"America's Stake in Soviet Stability," *World Policy Journal*, Winter 1990–91.
"Realism Redux: Strategic Independence in a Multipolar World," in *U.S. National Security Strategy for the 1990s*, ed. Daniel J. Kaufman, David S. Clark, and Kevin P. Sheehan, Johns Hopkins University Press, 1991.

Stephen Moore
"Reaganomics in Reverse," *National Review*, February 25, 1991.
"OMB and Budget Reform," in *Failing Marks: A Mid-Term Report on the Office of Management and Budget*, Citizens Against Government Waste, 1991.
"Higher Taxes Aren't the Answer," *Reader's Digest*, December 1990.
"Mixed Blessings: Winners, Losers, and Lessons from the New Immigration Law," *Across the Board*, March 1991.
"A Pro-Growth Tax Agenda for the States in the 1990s," in *A Conservative Legislative Agenda for the States in the 1990s*, Texas Public Policy Foundation, 1991.

Roger Pilon
"Losing Liberty through Judicial Restraint," *Philosophy and Public Policy*, Winter 1990.
"Constitutional Visions," *Reason*, December 1990.
"Individual Rights, Democracy, and Constitutional Order: On the Foundations of Legitimacy," *American Constitution: Journal of Law and Public Policy*, Spring 1991.

Earl C. Ravenal
"The Reagan Doctrine in Its Strategic and Moral Context," *Small Wars and Insurgencies*, April 1990.
"The Case for Adjustment," *Foreign Policy*, Winter 1991.
"The Logic of Nuclear Strategy" and "The Geopolitics of Strategic Defense," in *The Arms Race in an Era of Negotiations*, ed. David Carlton and Carlo Schaerf, Macmillan, 1990.
"The Enduring Relevance of Munich," in *The Meaning of Munich Fifty Years Later*, ed. Kenneth M. Jensen and David Wurmser, United States Institute of Peace, 1990.

Sheldon L. Richman
"The H. L. Mencken Diary: One Year Later," *Menckeniana*, Spring 1991.
"A Long Way from Philadelphia," *Liberty*, July 1991.
"The War of the Words," *Liberty*, September 1991.

Robert J. Smith
"Apocalyptic Environmentalism," *Orbis*, Spring 1991.

Melanie Tammen
"Foreign Aid: Planning for Capitalism," *Reason*, February 1991.
"Western Socialism for Eastern Europe," *USA Today Magazine*, February 1991.
"Kleptocracy-Capitalism in the Soviet 'Second Economy,'" *Journal of Economic Growth*, December 1990. ■

Cato Studies (Cont. from p. 13)

prices another 40 cents a gallon. Congressmen have proposed federal programs to butcher hundreds of thousands of dairy cows, force consumers to drink thicker milk, and dictate how many gallons of milk each dairy farmer can sell. Bovard concludes that instead of imposing new layers of controls, the federal government should end the dairy program and allow the free market to determine milk prices.

Missile Alert

"Despite President Bush's rhetoric about a 'new world order' governed by the rule of law, a new and potentially serious threat to the security of the American people is emerging," writes Channing R. Lukefahr in "Countdown to Disaster: The Threat of Ballistic Missile Proliferation" (Foreign Policy Briefing no. 10). Several ruthless and unstable Third World regimes are pursuing "programs to acquire and deploy long-range ballistic missiles," states Lukefahr, a Cato associate defense policy analyst. But, she adds, "no international agency or coalition will be effective in halting the spread of nuclear and missile technology." Thus, "the virtual inevitability of proliferation also demands that the United States seriously pursue the development and deployment of anti-ballistic missile (ABM) systems."

Funding such Cold War era commitments as NATO "while neglecting missile defenses is an egregious misplacement of priorities," she writes. Without an ABM system, "the American people will be left vulnerable to aggression and blackmail by hostile regimes around the globe."

Anti-Dumping Laws Should Go

An examination of America's anti-dumping law and the details of its application leads to a disturbing conclusion, writes Michael S. Knoll of the University of Southern California Law Center in "Dump Our Anti-Dumping Law" (Foreign Policy Briefing no. 11). According to Knoll, a fundamental ambiguity in definition "is being exploited by protectionist domestic interests, who are using the rhetorical concept of dumping as the basis for their moral and emotional appeal to justify and even expand the existing anti-dumping law." Knoll says that repealing the law against dumping will lower prices for consumers and increase efficiency, as well as set a good example for other nations.

Need for Philippine Bases Questioned

"Washington's recent decision to vacate Clark Air Base in the Philippines is a long-overdue step in the right direction," writes Ted Galen Carpenter in "The U.S. Military Presence in the Philippines: Expensive and Unnecessary" (Foreign Policy Briefing no. 12). Carpenter, Cato's director of foreign policy studies, states that unfortunately, as Clark was being given up, the United States negotiated a new 10-year lease on the Subic Bay Naval Base. "The new base agreement will be extremely expensive for American taxpayers," he writes. "The importance of the Philippine bases was overstated even during the worst stages of the Cold War. American taxpayers should not be burdened with the cost of maintaining a superfluous base in the Philippines." ■

CATO INSTITUTE CALENDAR

New Perspectives for the Nineties
Ritz-Carlton • Atlanta • October 3, 1991
Speakers will include Scott Rasmussen, Edward H. Crane, and Richard Rahn.

New Perspectives for the Nineties
Ritz-Carlton • Boston • October 16, 1991
Speakers will include Gov. William Weld, Walter Williams, and Edward H. Crane.

New Perspectives for the Nineties
Four Seasons • Houston • November 7, 1991
Speakers will include W. Lee Hoskins and Edward H. Crane.

National Energy Policy: Central Planning Reconsidered
Willard Hotel • Washington • January 16, 1992
Speakers will include Gregg Easterbrook, Douglas Bohi, Robert Crandall, Robert Bradley, Fred L. Smith, Jr., Ben Zycher, and Jerry Taylor.

Fourth Annual Benefactor Summit
Ritz-Carlton • Naples, Florida • February 6–9, 1992
Speakers will include Vaclav Klaus and P. J. O'Rourke.

Money in the Transition from Plan to Market
Tenth Annual Monetary Conference
Willard Hotel • Washington, D.C. • March 5–6, 1992
Speakers will include Vaclav Klaus, Allan Meltzer, Antonio Martino, Alan Reynolds, Edgar Feige, Anna J. Schwartz, and Steve H. Hanke.

"To be governed..."

Where is Keynes now that we need him?

States and Cities Fight Recession With New Taxes

—headline in the *New York Times*, July 27, 1991

It costs a lot of money to reduce government

"Give us time," says Anna Kondratas, the assistant secretary of HUD. "The federal government is just starting to do what it should have been doing all along. There's more money in the pipeline than there was before. We are shooting for ending homelessness in the '90s. I would urge people to keep this issue in the public eye. Government will only do what the American people demand it does."

—*Parade Magazine*, July 21, 1991

The more-than-imperial presidency

Q. When Queen Elizabeth and Prince Philip visited the U.S. last month, they reportedly were accompanied by 41 servants. When Presidents Bush, Reagan, and Carter and their wives travel abroad, how many staff members go with them?

A. When traveling abroad together, President and Mrs. Bush reportedly are accompanied by "a minimum of 125 staff members."

—*Parade Magazine*, June 16, 1991

Having already gotten his piece of the pie

As a new homeowner on Cape Cod, [former senator Paul Tsongas] was so appalled by two-hour traffic jams each weekend that he spearheaded a movement that eventually won development controls across the cape.

—*Washington Post*, Apr. 11, 1991

Democracy isn't pretty

[Lyndon B.] Johnson did use his power to aggrandize himself . . . stuffing ballot boxes to defeat [Coke] Stevenson in 1948. But this kind of corruption was endemic in Texas politics—Johnson had lost an earlier U.S. Senate race in 1941 because his opponent fixed the final tally. Had he hewed to the path of virtue, Johnson would never have been elected to the Senate, and those elected in his place would have been his moral and political inferiors.

—John B. Judis in the *Washington Post*, July 21, 1991

A politician's prerogative

[Texas governor Ann] Richards is pondering a dreaded state income tax, having pledged not to introduce one in her campaign.

—*The Economist*, June 22, 1991

The next step is to allow them to tap directly into taxpayers' accounts

Maryland soon will become the first state to distribute welfare and food stamp benefits electronically through cash cards and automated teller machines. . . .

"The goal of all these welfare programs is to help people achieve self-sufficiency," said Betty Joe Nelson, who oversees the food stamp program for the U.S. Department of Agriculture. "We think that electronic benefits are an important ingredient that brings clients that much closer to the mainstream and begins to get people familiar with the commercial banking process."

—*Washington Post*, May 13, 1991

It's a vision thing

It wasn't until the late 1970s, [President] Bush said, that he "seriously started thinking about" running for president.

Why? a student asked.

"I wanted to try to help," said Mr. Bush. "You have to have some motivation, ideological motivation, and I think our administration is doing good things for the country. . . . And I think at my age, and maybe younger too, you want to think that you can contribute to world peace. It's a big, big-picture thing."

—*Washington Times*, May 23, 1991

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