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Hazards of the Individual Health Care Mandate

BY GLEN WHITMAN

The latest fad in health care reform is the “individual mandate”—a law that requires individuals to purchase health insurance and threatens punishment for those who don’t. Massachusetts, under the governorship of presidential hopeful Mitt Romney, has already created a health care policy with an individual mandate as its centerpiece. Gov. Arnold Schwarzenegger has proposed a similar plan for California. And politicians are not alone, as analysts from across the political spectrum have jumped on board. Even analysts who usually favor markets over regulation—like economist Gary Becker, legal scholar Richard Posner, Ron Bailey of *Reason* magazine, and Robert Moffit of the Heritage Foundation—have voiced support for the individual mandate.

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GLEN WHITMAN is associate professor of economics at California State University, Northridge.



Congressmen Jeff Flake (R-AZ) and Charles Rangel (D-NY) don’t agree on everything, but they agree that few policies are more misguided than the U.S. embargo on trade and travel with Cuba. At a June 14 Capitol Hill Briefing, they spoke about the embargo’s ineffectiveness, hypocrisy, and lack of respect for freedom.



BY WILLIAM A. NISKANEN

Chairman's Message

Dumb, Greedy, and Ugly

Congress left town for its August recess with a bipartisan record that was dumb, greedy, and ugly.

The dumbest legislation of the year (so far) was the Senate energy bill. The primary provision of this bill would increase the average fuel economy of new cars, SUVs, and light trucks sold in the United States to 35 mpg by 2020, compared to the current standard of 27.5 mpg for cars and 22.2 mpg for SUVs and light trucks. Since the new fuel economy standard would apparently apply only to the average of all new vehicles, some government czar would have to set the standard for each automobile firm. The new standard, even if achieved, would not reduce fuel consumption in proportion to the increase in fuel economy, because it would reduce the fuel cost per mile and increase the total miles driven. The standard, by reducing the sales of new vehicles, would also reduce the rate at which older vehicles with lower pollution standards are replaced. The second major provision of the bill would increase the required use of biofuels from 4.7 billion gallons this year to 36 billion gallons a year by 2022. This would require more corn than is now produced in the United States, a subsidy of about \$1 a gallon, and a roughly equal amount of petroleum to grow, harvest, and transport the corn and to produce and transport the ethanol. In addition, the mpg from an 85 percent ethanol-based fuel is only about 75 percent the mpg of the same vehicle using gasoline. At best, these two major provisions, at great cost, would only slightly reduce the U.S. demand for oil with no direct effect on U.S. oil imports. At the same time, the Senate bill would reduce the U.S. supply of energy by authorizing new powers to investigate oil company pricing, making penalties for “price gouging,” and denying approval for exploratory drilling in remote fields. Madness!

The greediest legislation of the year was the House farm bill—\$25 billion of tax-financed subsidies a year, most of which will be paid to wealthy farmers that grow one of five crops, plus guarantees of high prices for a few other farm products such as milk and sugar. These measures are not necessary to assure an adequate food supply nor are they effective in reducing farm poverty. Most farm products are supplied without subsidy or price protection, and commercial farmers with an average annual income of \$200,000 receive most of the farm subsidies. Not eligible for most subsidies, many small farmers are hurt by these measures, the result of lower crop prices and higher prices for farmland. Overplanting to increase subsidies leads to environmental damage. And by undermining the potential for negotiations to increase international trade, these measures raise consumer prices and restrict U.S. exports.

All of this is in addition to the huge increase in the use of biofuels required by the Senate energy bill. The supporters of the farm bill no longer make any pretense that it serves the interests of consumers and taxpayers. Brian Riedl of the Heritage Foundation concludes that “lawmakers would be hard-pressed to enact a set of policies more destructive to farmers, taxpayers, consumers, the environment, trade, global anti-poverty efforts . . . than the current farm policies.”

The ugliest legislative debate of the year was over the immigration bill. Senate Republicans blocked a comprehensive immigration bill similar to that which passed the Senate last year when they were the majority party. The bill was not perfect, but it acknowledged that there are about 12 million illegal immigrants already in the United States by allowing illegal immigrant workers to apply for a new “Z-visa” by paying a \$5,000 fine and a \$1,500 processing fee and demonstrating a record of sustained work and no serious crime. Within eight years, the household heads could return to their former home country to apply for permanent residency but would be at the end of the line of the millions who had already applied for this status. Critics of this bill dismissed this provision as “amnesty,” even though it would have been earned by paying a substantial fine and proof of a productive record. With no change in the legal status of the illegal immigrants now in the United States, we are left with the measures to secure the southern border that were approved in 2006—an ugly fence across about one-third of the border plus a substantial increase in border guards and the capacity of the detention centers. There are legitimate concerns about border security, the rule of law, and the fiscal costs of increased immigration. Nevertheless, the defeat of this bill reflects a stronger and uglier nativist sentiment in American politics than we have observed in several decades. In contrast, the United States absorbed a much higher rate of immigration a century ago, primarily from the poorer countries of Europe, without provoking such a nativist political response, and most of those immigrant families became fully assimilated Americans within a generation or so. In the meantime, of course, the United States developed a substantial welfare state, so immigrants now pose a fiscal threat that was not the case a century ago. As I concluded in this space a year ago, however: “Building a wall around the welfare state would eliminate most of the costs of increased immigration to the rest of us. Building a wall around the country, in contrast, is unnecessary, futile, and morally offensive.”

“The supporters of the farm bill no longer make any pretense that it serves the interests of consumers and taxpayers.”

Diplomacy, not war

Cato Scholars Warn against Iran War on Speaking Tour

Iran sits at the nexus of several U.S. foreign policy threats. The Islamic Republic is undermining U.S. operations in Iraq, actively supporting terrorist activity throughout the Middle East, and ignoring numerous United Nations mandates on its nuclear program.

A grant from the Ploughshares Fund has allowed Cato foreign policy scholars to travel the country, address these important issues, and explain to a variety of audiences why war with Iran is not in America's interests. The speaking series, "A Grand Bargain with Iran," lasted from April through September. Events took place in 13 states, including cities such as

the United States has faced in Iraq should illustrate the risks of preemptive action against Iran. Figures such as Sen. Joseph Lieberman have said that the United States "must be prepared to take aggressive military action against the Iranians" because Iran cannot be trusted to negotiate in good faith.

Cato foreign policy scholars have responded on the tour and in the media that while diplomacy may not be a perfect option, it is certainly the best available. In a Policy Analysis published earlier this year, "The Bottom Line on Iran: The Costs and Benefits of Preventive War Versus Deterrence," Cato foreign policy

analyst Justin Logan argued that a study of the history of Iran's foreign policy shows it to be much more rational than many portray it to be. He and the other speakers explained on the tour that if the Bush administration believes the Iranians are not negotiating in good faith, there is a straightforward way to find out: offer them a grand bargain that gives them what they say they want in exchange for giving up a capability to build

nuclear weapons. The bargain would include offering Iran's leaders full diplomatic recognition, normalization of economic relations, and a comprehensive security guarantee in exchange for Tehran to open its nuclear program to international inspections with the assurance that the program will not be used to build nuclear weapons.



Photo: Nick Infusino/The Daily Northwestern

Christopher Preble, director of foreign policy studies at Cato, spoke to an audience of students at Northwestern University at one of the stops on his speaking tour.

Dallas, Chicago, Atlanta, San Francisco, and Seattle. Several of the events were sponsored in conjunction with the World Affairs Council.

On the tour, scholars Ted Galen Carpenter, Christopher Preble, Justin Logan, Stanley Kober, and Leon Hadar advocated a diplomatic solution for the Iranian problem. They argued that the disasters

NEWS NOTES



José Piñera, co-chairman of the Cato Institute's Project on Social Security Choice, was the keynote speaker at a South African symposium on retirement policy. Piñera spoke in Cape Town, Johannesburg, and Durban on the success of social security privatization in Chile and the worldwide movement toward private account systems. South Africa's *Mail & Guardian* newspaper reported, "Chile's reforms have been celebrated globally and adopted in 30 countries since it moved from a bankrupt, pay-as-you-go welfare system, which was funded by taxpayers, to a long-term savings plan with workers providing for their own retirement, with mandatory contributions. The social security system proposed by the South African government is likely to operate along the same lines."



Roger Pilon (above, at the national convention of the American Constitution Society in July) contributed the essay on the Declaration of Independence to the new edition of the *International Encyclopedia of the Social Sciences*.

***Tax Notes*, the "bible" of tax analysis, ran a lengthy joint interview with **Chris Edwards** and **Dan Mitchell** on July 30. The discussion covered corporate taxes, tax reform, and global tax competition (the subject of Dan Mitchell's cover story in the July-August issue of *Cato Policy Report*). The interview can be found on Edwards's page at www.cato.org.**



CC GOLDWATER brought her grandfather back to the spotlight with her HBO documentary, “Mr. Conservative,” at the same time as many Cato scholars urged a return to the values of Barry Goldwater style conservatism within the GOP. CC Goldwater explained how her father’s life changed her beliefs at a Cato Book Forum on July 12 celebrating a new edition of Goldwater’s *The Conscience of a Conservative*. A panel of commenters included Cato president Ed Crane, who fondly recalled his early political involvement as precinct chairman in Berkeley, California, for the Goldwater presidential campaign. Audience members included famed Washington journalist Helen Thomas.

MICHAEL CANNON, director of health policy studies at Cato, drew media attention for his comments about Michael Moore’s *Sicko* at a Capitol Hill Briefing on June 21. He said that Moore has rightly identified many of the problems with the American health care system, such as overly expensive care and insurance. But, Cannon continued, Moore completely missed the true culprit of those problems: government intervention. The overregulation that distinguishes American health care from most other sectors of the economy should be addressed, Cannon argued.

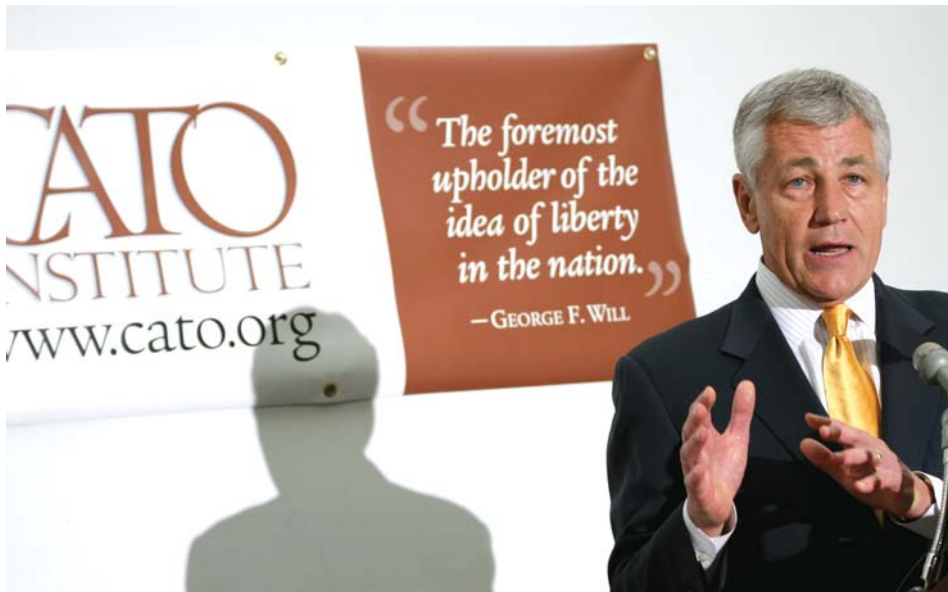




SALLIE JAMES (right) of Cato's Center for Trade Policy Studies listens as House Ways and Means Committee chairman Charles Rangel (D-NY) addresses a packed room in the Rayburn House Office Building. Along with Rep. Jeff Flake (R-AZ), Rangel said the reason the ban on travel and trade with Cuba remains in place is not because Congress firmly supports it—Flake said that if the vote was anonymous, Congress would most certainly overturn it—but because of Florida's large influence on elections. Rangel and Flake recently cosponsored legislation that would lift the travel ban as a first step toward changing U.S. policy toward Cuba.

Author BRYAN CAPLAN and Cato's WILL WILKINSON are amused by Pew Research Center scholar SCOTT KEETER'S comments on Caplan's book *The Myth of the Rational Voter* at a Cato Book Forum on July 17. Caplan, a Cato adjunct scholar at George Mason University, argues that voters are ill-informed about economics and hold biases against the market, which leads to bad policy. His book has been reviewed in the *Economist*, the *New Yorker*, the *New York Times*, and many other places.





SEN. CHUCK HAGEL (R-NE) has taken flak from members of his party for his outspoken critiques of the president’s policies in Iraq. At a Cato Capitol Hill Briefing, Hagel responded to his critics. He argued that Congress is not “meddling” in military affairs when it attempts to change course in Iraq; rather, it is taking up its duty under the Constitution to craft the nation’s defense policy.

CAL DOOLEY, a former Democratic congressman and current president of the Food Products Association, explains to a packed audience at a June 18 Capitol Hill Briefing why Congress should restore President Bush’s Trade Promotion Authority, which expired on July 1. He said that many countries are looking for excuses not to open their economies. If Congress does not renew TPA, it sends the message that the United States is not serious about free trade.



DAN GRISWOLD, director of Cato’s Center for Trade Policy Studies, testified before the House Small Business Committee on June 13 on “The Large Stake of U.S. Small Business in an Expanding Global Economy.” Griswold argued that global markets are full of opportunities for small businesses; he noted that over one-third of U.S. exports to China are produced by small and medium-sized enterprises. He concluded that if Congress really wants to help the American small businessman, it should try to cut barriers to trade.

JUNE 5: *In Defense of Our America: The Fight for Civil Liberties in the Age of Terror*

JUNE 14: Rethinking the U.S. Embargo against Cuba

JUNE 18: Trade Promotion Authority, R.I.P.?

JUNE 21: Health Care on Film: Clips from Sicko and Its Competitors

JUNE 22: Who Owns Your Health Care?

JUNE 28: The Massachusetts Health Plan: A Progress Report

JULY 12: Barry Goldwater: Life, Liberty, and Legacy, with CC Goldwater

JULY 17: *The Myth of the Rational Voter*

JULY 18: America's Next Steps in Iraq, with Sen. Chuck Hagel (R-NE)

JULY 19: Medicaid's Soaring Costs: Time to Step on the Brakes, with Sen. Judd Gregg (R-NH)

JULY 20: Funding the REAL ID Act: Improved Homeland Security or More Washington Waste?

JULY 25: America's High-Stakes Response to the WTO Internet Gambling Dispute

JULY 26: The Perfect Firestorm: Controlling Forest Service Wildfire Costs

JULY 31: Giving Land Rights to the World's Poor



“We cannot tax our way out of our entitlement spending problem. Those tax rates would make France look conservative.”

—SEN. JUDD GREGG (R-NH)
Capitol Hill Briefing, July 19, 2007

CATO CALENDAR

POLICY PERSPECTIVES 2007

New York • Waldorf-Astoria
October 23, 2007

25TH ANNUAL MONETARY CONFERENCE

Washington • Cato Institute
November 14, 2007

Speakers include Ben Bernanke, Yi Gang, Eddie Yue, Fred Hu, Anna J. Schwartz, and Arnold Harberger.

POLICY PERSPECTIVES 2007

San Francisco • Grand Hyatt
November 27, 2007

POLICY PERSPECTIVES 2007

Chicago • The Drake
November 29, 2007

20TH ANNUAL BENEFACITOR SUMMIT

Las Vegas • Four Seasons
February 6–10, 2008

MILTON FRIEDMAN PRIZE PRESENTATION DINNER

New York • Waldorf-Astoria
May 15, 2008

CATO UNIVERSITY SUMMER SEMINAR

San Diego • Rancho Bernardo Inn
July 20–25, 2008

Teaching the ideas of a free society
Cato University in San Diego

More than 150 friends of liberty gathered at the Rancho Bernardo Inn in San Diego from July 22 to 27 for Cato University 2007. Attendees heard from speakers on a wide range of topics, including economic insights by Glen Whitman of California State University at Northridge and lectures on American history from Rob McDonald of West Point and David Beito of the University of Alabama.

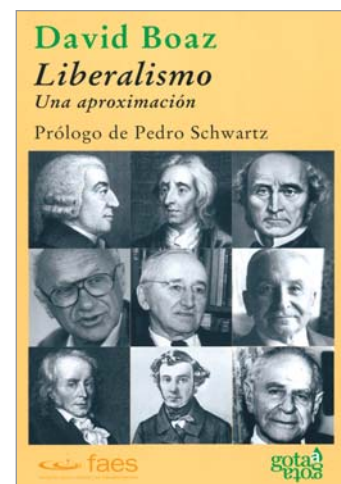
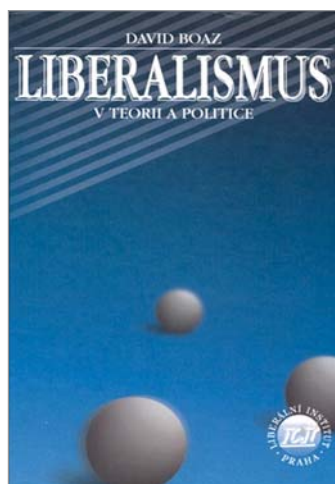
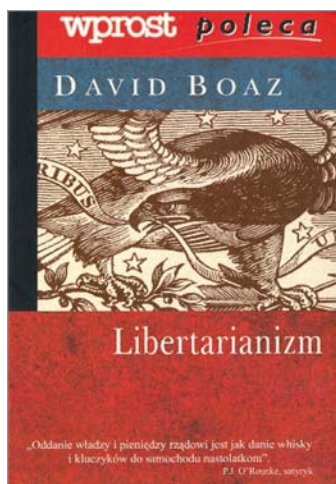
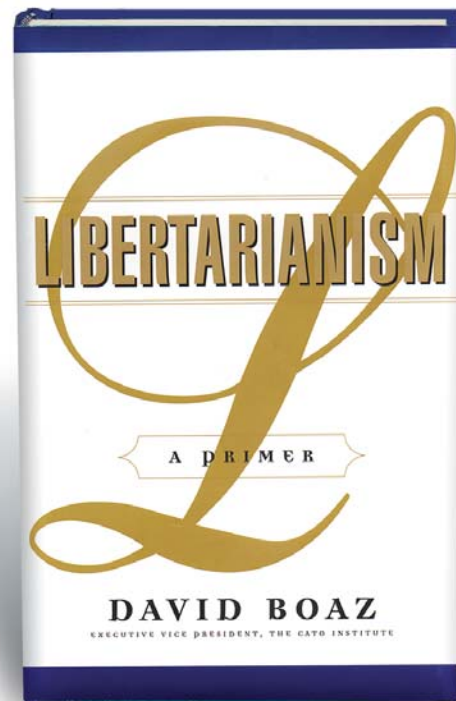


(Above) Attendees Dr. Reid Schindler and wife Linda of Tucson, Arizona. (Upper right) Blazej Moder of Poland receives his diploma at the end of Cato University from Tom Palmer, Cato's vice president for international programs. About 40 of the attendees were college and high school students, who took advantage of their scholarships to eagerly question the speakers about their ideas. (Middle right) A group of attendees question historian Robert McDonald of the United States Military Academy after one of his presentations about the history of the United States from a libertarian perspective. (Bottom right) Cato executive vice president David Boaz and Stanford law professor Marcus Cole were two of the week's speakers.



Libertarianism *around the world* **New Translations Expand Global Reach of Cato's Ideas**

Libertarianism: *A Primer*, the comprehensive introduction to libertarian ideas written by Cato executive vice president David Boaz, is reaching an increasing number of societies around the world. The book has recently been published in Spanish, and coming soon are editions in Chinese, Cambodian, and Arabic. Since its original publication, *Libertarianism: A Primer* has also been made available in (from first row, left) Mongolian, Japanese, Russian, Bulgarian, Polish, Czech, Serbian, and Spanish.



“The individual mandate will do little, if anything, to solve the problem of “free riders” whose health expenses are paid for by the rest of us.”

Continued from page 1

Their support, however, is unjustified. The individual mandate will do little, if anything, to solve the problem of “free riders” whose health expenses are paid for by the rest of us. The mandate will do nothing to decrease the actual cost of health services. Worst of all, the mandate will create a set of political incentives that will likely drive up the cost of health insurance while impeding the adoption of more effective reforms.

Is Free Riding Really the Problem?

Supporters of the individual mandate rely heavily on the problem of uncompensated care. People who lack health insurance nevertheless receive health care in this country, because hospitals and health care providers are unable or unwilling to turn them away. When recipients don't pay for their care, the rest of us end up footing the bill one way or another. Individual-mandate advocates contend, plausibly enough, that we should make the free riders pay for themselves.

But how big is the free-rider problem, really? First, we should note that not all free riders are uninsured. In fact, people with insurance consume almost a third of uncompensated care. Second, not all care received by the uninsured is paid for by others. Analysts at the Urban Institute found that the uninsured pay more than 25 percent of their health expenditures out of pocket.

So how much uncompensated care is received by the uninsured? The same study puts the number at about \$35 billion a year in 2001, or only 2.8 percent of total health care expenditures for that year. In other words, even if the individual mandate works exactly as planned, it will affect at best a mere 3 percent of health care expenditures.

The Problem of Noncompliance

But, of course, the mandate will not work exactly as planned. As anyone who's ever driven over 55 mph knows, mandating

something is not the same as making it happen. Realistically, some individuals will not comply.

Forty-seven states currently require drivers to purchase liability auto insurance. Do 100 percent of drivers in those states have insurance? No. For states with an auto insurance mandate, the median percentage of drivers who are uninsured is 12 percent. In some states, the figure is much higher. For example, in California, where auto insurance is mandatory, 25 percent of drivers are uninsured—more than the percentage of Californians who lack health insurance.

Of course, the number of uninsured drivers might be even higher without mandatory coverage. The point, however, is that any amount of noncompliance reduces the efficacy of the mandate. If the individual health insurance mandate succeeded in forcing half of the uninsured to get coverage, it would arguably affect a mere 1.5 percent of current health care spending (that is, half of the 3 percent of spending that covers uncompensated care for the uninsured; the precise figure would depend on which uninsured people obtained coverage).

With auto insurance, at least there is a reasonable argument that a well-enforced mandate could reduce insurance premiums. When many motorists are uninsured, those who do buy insurance need, and are sometimes required, to buy coverage for damage done to their vehicles by the uninsured. So when the uninsured become insured, others' premiums could fall. But this argument simply doesn't fly in the case of health insurance, because (as already noted) uncompensated care is such a small fraction of overall health spending. Furthermore, more than 85 percent of uncompensated care is paid for by govern-

ments, not by private insurance. That means less than 15 percent of uncompensated care—less than half a percent of all health care spending—contributes to higher private insurance premiums.

None of this means that the uninsured are not a problem. But the problem is not that they cost the rest of us too much. One reason uncompensated care is such a small fraction of health care spending is that uninsured people simply get less health care than others. (Though they do get some; health care and health insurance are not synonymous.) So if the real concern is making health insurance and health care available to those in need, we should focus on health care prices and insurance premiums.

Not all free riders are trying to take advantage of their fellow citizens. For many, health insurance premiums are just too high. Yet the individual mandate does nothing to make insurance more affordable. There do exist regulatory reforms that could make it more affordable, but those reforms are desirable independent of the individual mandate. The mandate seeks to command a better outcome—more insured people—while doing nothing to make it happen. You can't get blood from a stone.

The architects of the Massachusetts plan, recognizing the affordability problem, have already effectively admitted defeat on this front: they have exempted 20 percent of the uninsured from the tax penalties for noncompliance. That's arguably another one-fifth reduction in the already small fraction of health care spending affected by the mandate.

Furthermore, the Massachusetts plan also creates a system of public subsidies (in the form of vouchers) to help low-income people buy insurance. As far as policies to encourage more private coverage go, you could do worse—and it would be possible to have the subsidy without the mandate. But to the extent that the public has to subsidize the formerly uninsured, the free-riding problem has not been solved—it has

“Health care providers have a strong financial incentive to assure that patients have low deductibles and copayments so that they will consume more services.”

merely been shifted. It's wrong to say we “solve” the free-rider problem if all we're doing is paying for the free riders in a different way.

To make matters worse, there is no way to ensure that subsidies will go only to people who would otherwise be uninsured. Some people who would otherwise have paid their own way will tap the subsidy. As a result, the taxpayers could actually be subject to more cost shifting than before.

Defining the Minimum Benefits Package

If you're going to mandate something, you have to define it. Under an individual mandate, legislators and bureaucrats will need to specify a minimum benefits package that a policy must cover in order to qualify. It's not plausible to believe this package can be defined in an apolitical way. Each medical specialty, from oncology to acupuncture, will pressure the legislature to include their services in the package. And as the benefits package grows, so will the premiums.

Limiting the mandate's scope with vacuous phrases like “basic health care products and services” will not solve the problem, because what is basic to some is crucial to others. Does contraception constitute basic health care? How about psychotherapy? Dental care? Chiropractic? The phrase “medically necessary” is just as problematic, because there is no objective definition of necessity. And even if there were, it wouldn't matter, because the content of the law will be determined by the legislative process. The “basic” package might initially be minimal, but over time it will succumb to the same special-interest lobbying that affects every other area of public policy. If psychotherapy is not initially included in the package, eventually it will be, once the psychotherapists' lobby has its way. And likewise for contraception, dental care, chiropractic, acupuncture, in vitro fertilization, hair transplants, ad infinitum.

This is not mere speculation. Even now,

every state in the union has a list of mandated benefits that any health insurance policy must cover. Mandated benefits have included all of the services listed above—yes, even hair transplants in some states. All states together have created nearly 1900 mandated benefits. Given that medical interest groups have found it worth their time and money to lobby 50 state legislatures for laws affecting only voluntarily purchased insurance policies, mandatory insurance will only exacerbate the problem. If the benefits package is established at the federal level, the incentive to lobby will be that much greater.

Medicare and Medicaid provide further evidence. Given the massive funds at stake in those programs, it should come as no surprise that lobbying has affected the list of covered benefits. A public outcry prevented Viagra from being covered by Medicare and Medicaid, but other drugs and services have not attracted that kind of scrutiny. In 2004, after heavy lobbying by pharmaceutical companies that make anti-obesity drugs, Medicare reclassified obesity as an illness (or rather, removed language saying it was not an illness), thereby clearing the way for coverage of obesity treatments including diet pills, weight-loss programs, and bariatric surgery. Although by law Medicare can pay only for “medically necessary” services, the obesity story aptly demonstrates the subjective and ultimately political meaning of that term.

Mandated benefits drive up insurance premiums; after all, insurance companies can't make more payouts without higher revenues. Existing mandates have increased premiums by an estimated 20 to 50 percent, depending on the state. There is every reason to believe the same process will affect the minimum benefits package

under an individual mandate. As a result, even more people will find themselves unable to buy insurance and decide not to comply. Others will buy the insurance, but only by relying on public subsidies. A health policy intended to rein in free riding and cost shifting will tend to encourage more of the same.

Limiting Flexibility in Health Insurance Policies

In addition to defining a minimum benefits package, an individual mandate must also specify other features of qualifying insurance policies—such as their maximum payouts, deductibles, and copayments. The same political pressures that affect the benefits package will also affect these other characteristics. Health care providers have a strong financial incentive to assure that patients have low deductibles and copayments so that they will consume more services.

In Massachusetts, no health insurance policy with a deductible greater than \$2,000 for an individual or \$4,000 for a family will satisfy the mandate. In addition, qualifying policies may not have any maximum annual or per-condition payout. And this is merely the regulatory starting point for a law that has not yet gone into full effect (some aspects of the plan won't kick in until 2009). We should expect further regulations to accumulate with the passage of time.

Consequently, the individual mandate will have a deleterious impact on the flexibility of health plans. Health care buyers and insurers need the opportunity to experiment with different types of coverage. Higher deductibles and copayments, for example, give patients an incentive to weigh the potential benefits of health services against their costs—a key component of any effective plan to control health care costs. (Health Savings Accounts, or HSAs, could allow people to save tax-free dollars for out-of-pocket health expenses, with unused dollars rolling over to their

“A better approach to health reform would focus on removing, or mitigating the effect of, existing mandates that drive up insurance premiums.”

retirement accounts.) Insurers might also want to experiment with other policies, such as plans that offer full coverage for only certain treatments for particular conditions, while requiring patients to cover the difference in price between covered treatments and more expensive ones. But the individual mandate's one-size-fits-all approach cuts off such innovation at the knees.

Limitations on deductibles and copayments might be justified on grounds that out-of-pocket payments deter patients from getting necessary care. But the evidence does not support that position. In a famous RAND study, patients with first-dollar insurance coverage consumed 43 percent more health care than patients who had to pay a large deductible, and yet the two groups experienced indistinguishable health outcomes. The obvious conclusion is that many health services have negligible benefits, but patients will get them anyway unless they face at least some portion of the costs.

More important, health insurance plans with lower deductibles and copayments are more expensive. Regulations that mandate more generous plans drive up premiums, thereby pricing some people out of the market. The result is more uninsured people, more people insured only via public subsidy, or both.

Free Riders and Hitchhikers

Individual mandates are frequently pitched as an alternative to other forms of regulation. In practice, they will assuredly be accompanied by a package of other interventions—some desirable, most not.

As noted earlier, the Massachusetts plan creates new public subsidies for health insurance. Worse, the plan requires community rating, which means that insurance firms may not charge differential premiums based on health risks. This might seem an attractive idea (everyone should pay the same amount), but, in fact, community rating creates an incentive for

lower-risk patients to go uninsured because the coverage isn't worth the price. The mandate is supposed to prevent dropouts, but compliance cannot be guaranteed.

Community rating also forces low-risk patients to subsidize high-risk patients—another form of cost-shifting. Yet the justification of the individual mandate was to reduce cost-shifting. The subsidy to higher-risk patients generates a political incentive to regulate personal lifestyles—such as diet choices or sexual behaviors—that affect health risks. We have already observed this mechanism at work: the cost of treating motorcycle accident victims has been used to justify helmet laws; the cost of Medicaid to treat cigarette smokers was used to justify lawsuits against the tobacco industry. The public is notably more willing to restrict choice when the costs are socialized—and that means individual liberty is at stake.

Governor Schwarzenegger's proposal, meanwhile, couples an individual mandate with an employer mandate: any employer with 10 or more employees would have to provide health coverage or pay an additional payroll tax. This regulation would constitute a direct tax on employment, as businesses will find it in their interest to hire fewer employees (possibly compensating with more hours per worker) to minimize health insurance costs. Meanwhile, businesses with fewer than 10 employees will have a strong incentive not to expand, as doing so could expose them to the mandate.

Effective health care reform would involve making customers more cost-conscious. The individual mandate, sadly, will tend to shield customers from costs and impede innovations that could push costs down. Rising insurance premiums, as a

result of a growing mandated benefits package, will fuel greater public dissatisfaction with the health care system. Further regulations that hitchhike on the individual mandate will only make matters worse. Ironically, free markets rather than government will likely catch the blame, thus fueling demand for more intrusive interventions into the health care market.

A better approach to health reform would focus on removing, or mitigating the effect of, existing mandates that drive up insurance premiums. States that genuinely want to help the uninsured ought to repeal some or all of their mandated benefit laws, allowing firms to offer low-priced catastrophic care policies to their customers. If special-interest pressures hamper this solution, the federal government could assist by using its power—under the Constitution's interstate commerce clause—to guarantee customers the right to buy insurance policies offered in any state, not just their own. That would enable patients to patronize firms in states with fewer costly mandates. As an added bonus, state legislatures might feel pressure to ease regulations to attract more insurance business from out-of-state customers. Removing mandates would do far more to expand health care coverage than adding new mandates ever could.



THE
MILTON
FRIEDMAN
PRIZE FOR
ADVANCING LIBERTY

**Nominations for the fourth
Milton Friedman Prize for
Advancing Liberty are now open
at www.cato.org/friedmanprize.**

Are Civil Liberties at Risk in the War on Terror?

What is conservative about President Bush's expansion of executive powers in the war on terror? Some conservatives blast the president's warrantless surveillance program, his designation of U.S. citizens as enemy combatants, and other recent controversies as attacks on limited government. Others defend those moves as necessary to protect Americans from violent attack. Bruce Fein, a deputy attorney general under Ronald Reagan and current chairman of the American Freedom Agenda, and Andrew McCarthy, director of the Center for Law and Counterterrorism at the Foundation for the Defense of Democracies, debated the question "Are Civil Liberties at Risk in the War on Terror?" at a Cato Policy Forum on May 24.

BRUCE FEIN: I submit that we stand at present at a constitutional crossroads. Why are we here? I think the answer is that, post-9/11, the changes in the Constitution's distribution of powers that have been urged by the president are not temporary, as in all previous crises and wars. Previously, we had always understood that there would be an end date to the war, whether it was the USS Missouri in Tokyo Bay or Appomattox.

But there is no defining endpoint to the so-called war against international terrorism. No one has even conceived of a standard by which a president would stand up and say that there was no risk that anywhere in the world is there a terrorist who wants to kill an American. And thus, we have to consider the issues that I will discuss with Andy today—issues that will be permanently on the American constitutional scene.

I take as the starting point of discussion the revolutionary ideas of the Founding Fathers. That is, that the primary and chief purpose of government is to make us free to develop our faculties and to pursue what Jefferson called happiness. That is the

major purpose of government as conceived in the U.S. Constitution.

It is not to aggrandize government. It is not to build world empires. With that being the standard, the Founding Fathers understood that freedom was the rule, and government intervention to protect security and safety was the exception. There had to be a standard of need or urgency required in order to encroach on freedoms.

The United States, post 9/11, has flipped that customary burden of proof. The basic discourse has been, in justifying these presidential initiatives, that unless it creates a police state that smells like Nazi Germany, let the government do it. And freedom takes a secondary role, creating an inverse of the vision of the Founding Fathers.

Take military commissions. They violate the customary rule that we have an independent judiciary and that one branch should not play judge, jury, and prosecutor. When you combine those three duties in one branch, the likelihood of error is very great. If you are prosecuting someone, you are probably going to decide that he is

guilty if you are also the one who is deciding on the facts and the law. That does not mean that there can never be a need for military commissions. You may need them on the battlefield, where you need evidence that is fresh and there would be chaos without an instant verdict. But there has never been a showing that the military commissions that the president has established—grievous departures from due process—are needed in order to get convictions of people involved in terrorism.

Let me move now to the National Security Agency's warrantless surveillance program. You may recall that after experiencing 40 years of unchecked executive power to gather foreign intelligence, the Church Committee, which published its reports in 1975 and 1976, concluded that secret and unchecked authority caused untold abuses—30 years of secret and illegal mail openings, 30 years of illegal interceptions of international telegraphs, and misuse of the National Security Agency to obtain information to use against political enemies. The committee also concluded that those abuses required some modest congressional check or regulation of the authority to gather foreign intelligence. The Foreign Intelligence Surveillance Act of 1978 was the result. The key to FISA is that when the president is going to target an American on American soil to gather foreign intelligence, under the belief that the U.S. citizen was acting as an agent of a foreign power or somehow in complicity with international terrorism, he has to go to an independent judge and convince the judge that there is serious reason to believe that terrorism was occurring and justified the encroachment on privacy.

Why should we care that there are restraints on the president's ability to search for and seize any conversation he wants? If the president can search everywhere, break and enter our homes, get all of

our e-mails, all of our telecommunications, conversations, then aren't we safer? Because the more information government agents have, the greater the likelihood that sometime, someplace, they will stumble upon some information relevant to thwarting terrorism.

Certainly there is something to that idea. If you have a police state, you can get more information. If you throw everybody in prison, no one is going to commit a crime. But the whole idea of a free society is that we make judgments about relative degrees of risks we take as a community in order to have freedom, not live in jails. That is why we have FISA and the Fourth Amendment.

The president, nonetheless, in the aftermath of 9/11, did not go to Congress and suggest that FISA was unworkable and needed amendment. He just said he was not going to comply with FISA, at least from what the public testimony suggests.

But ask again: What was the need for flouting a federal law directly and flagrantly, and continuing to flout it to this very day? Where was the evidence that, if the administration complied with this warrant requirement, it would not get the intelligence it needed to frustrate al-Qaeda? Nowhere.

So, again, we come back to a situation in which we have resorted to extraordinary methods of gathering intelligence outside of any judicial control or regulation as stipulated by Congress without any showing of need or justification. Now, you can imagine, if there was a great success story in obtaining intelligence that frustrated a terrorist attack because of the violation of FISA, it would be instantly leaked to and appear on the front pages of the *New York Times*, the *Washington Post*, and the *Wall Street Journal*.

Let me go to the next situation, which is the suspension of habeas corpus. What was this great writ all about? It emerged at the time of Magna Carta, when King John had the habit of throwing his political opponents into dungeons on his say-so alone.

The idea of habeas corpus is fundamental because it suggests that, when you have an executive detention, there ought to be

an opportunity for the individual detained to get an independent judicial assessment about whether the detention is legal. Remember, habeas does not create a single right. It just says you can have a judge examine the legality of your detention. It is one of the few rights that were enshrined in the Constitution itself without any bill of rights needed to amend the initial document. And yet, at the behest of the administration, the Congress of the United States has suspended habeas corpus for detainees at Guantanamo Bay.



Bruce Fein

“The Founding Fathers understood that freedom was the rule, and government intervention to protect security and safety was the exception.”

The Constitution acknowledges two situations in which the suspension is proper: in times of invasion or of insurrection or rebellion, neither of which obtains here.

What is the great fear of permitting someone at Guantanamo Bay to file a writ of habeas corpus with a judge and say, “Your Honor, I think I am being held here illegally. I am not an enemy combatant. I have not had involvement in active hostilities against the United States. All I want is a fair hearing.”?

I would have fewer qualms about the detention program without habeas corpus

if we were dealing with members of the Third Reich or people who were openly and notoriously captured by the United States on a battlefield. But 95 percent of the detainees in Guantanamo were not captured by the United States. They were captured by the Northern Alliance—people who had a vested interest in accusing their tribal rivals or ethnic rivals of being al-Qaeda.

That does not mean that everyone at Guantanamo is innocent. It does mean, however, that you have to have a serious process for distinguishing the people who are truly enemy combatants from those who are not. A former commandant of Guantanamo said most people do not belong there. A deputy said the same thing. We have the judicial process to ensure that we make a proper cut. After all, the difference between civilization and barbarism is that civilization cares about punishing only those who are guilty.

Yes, it is possible to reduce the risk of terrorism by creating a police state and eliminating all of our free speech and due process protections, but the price is the end of our Republic. And that is too high a price to pay.

ANDREW MCCARTHY: I want to start where Bruce started, because I think it is a valuable question. Why are we here? I think what we have glossed over is that the reason we are here is what happened before 9/11. By looking at the eight years from the time when the World Trade Center was first bombed until it was ultimately destroyed, we now know a few things as the result of not only the prosecutions that took place in that era but also investigations that have been done since 9/11.

We know that during that eight-year period the United States was struck again and again, on an average of about once a year, in attacks that became more audacious over time: the Trade Center bombing, a later plot to attack New York City landmarks, a plot to take out U.S. airliners over the Pacific, the Khobar Towers bombing, the 1998 destruction of our embassies in Kenya and Tanzania, the 2000 attack on the USS Cole, and finally 9/11.

During that time, the criminal justice system in the United States was not only the point of the counterterrorist spear, it was the entire spear. The counterterrorist strategy of the United States was prosecution in the criminal justice system, with all of the attendant protections that Bruce spoke about.

In nine trials, all in that eight-year period, at a time when the enemy was growing both larger and more audacious, we managed to take out exactly 29 terrorists. And for the most part, those 29, with maybe a handful of exceptions, were about the lowest-ranking players that existed in the jihadist network that carried out all of those attacks.

The system worked in the sense that all the people who were charged were successfully prosecuted and ultimately convicted and sentenced. So as a matter of due process, perhaps that was as a shining example. But as a national security strategy, it was a disaster. It was basically an invitation to be hit again and again. And as a result, of course, we were hit again and again.

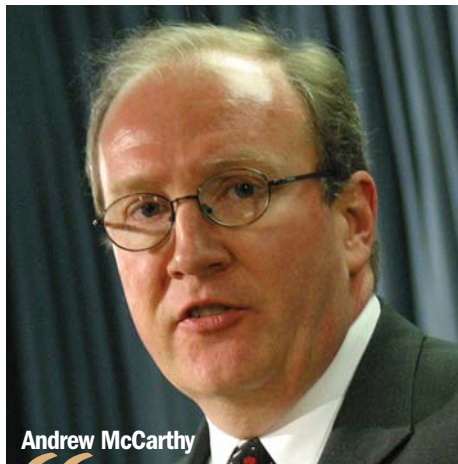
I think Bruce is conflating two things that are very different. There has always been a major difference in the way that our law regards the American body politic and the area of the world that is external to the American body politic.

Bruce started out talking about military commissions as if they were a great aberration. What is actually an aberration is having unlawful enemy combatants in wartime have access to the courts of the United States. The United States has taken in its history more than two million prisoners of war. There has never, until this war and until in fact very recently in this war, been systematic access to the courts of the United States for people who have been captured in wartime.

Now, Bruce says, and I think this is absolutely correct, that this war is a different kind of war and the enemy that we face is a different kind of enemy.

Yes, it is true, when we arrest somebody or we apprehend somebody in this type of a war, there is an issue about whether the person is an enemy combatant or not. But

the other thing that we cannot allow ourselves to forget is that, if you take these particular enemy combatants—and most of them are enemy combatants—and you give them all of the rights that criminal defendants have in the United States, something that has never been done for honorable combatants in the history of the United States, what you are doing necessarily is rewarding the barbarity that is behind al-Qaeda's methods. And rewarding that kind of behavior is a guarantee of getting more of that kind of behavior.



“What is actually an aberration is having unlawful enemy combatants in wartime have access to the courts of the United States.”

The writ of habeas corpus is not suspended for a person unless that person has the right to it in the first place. It has always been the law of the United States that there is a difference between the application of the protections of the Constitution inside the United States to U.S. persons, both citizens and immigrants, and enemy combatants. U.S. persons get the full run of habeas corpus and they always have. But enemy combatants have never systematically been able to have access to our courts.

Each detainee is entitled to make whatever claims he can against his capture

before a combatant status review tribunal. I do not want to pretend that that is the model of due process that Bruce talked about before. It is a difficult proceeding for a combatant to win, although some have won. But it should be a difficult proceeding, because warfare is in essence an executive branch function. There is nothing that says that a court, rather than the executive branch, is a better source of authority for us to rely on in terms of who should be held and who should not be held in wartime.

The law specifically says that the prisoners will also be able to raise the question of whether those proceedings were a violation of the Constitution and the laws of the United States. Now, that does not mean that they will win. The fact that we give them the opportunity to make that challenge does not mean that they actually have rights under the laws and the Constitution of the United States. But the court will at least have a chance and an opportunity to hear that claim articulated and to make a reasoned decision about it.

Moving on to the NSA scandal: the idea of executive authority to overrule statutes or not to enforce statutes did not get invented with George Bush. When FISA was enacted, President Jimmy Carter's attorney general Griffin Bell testified that the president maintained authority to do warrantless surveillance, notwithstanding the statute. When the statute was amended in 1994, Deputy Attorney General Jamie Gorelick testified that the administration at the time maintained the authority to order warrantless searches in national security cases.

The Office of Legal Counsel, headed by Walter Dellinger during the Clinton administration, has elaborate memoranda in it about the duty of the president not to enforce statutes that he believes are unconstitutional. The Congress enacted a War Powers Resolution in 1973. Since then, every U.S. president has refused to enforce it because it is an unconstitutional infringement on his powers.

Has Bush pushed the envelope more than others? I guess that is the legacy. But I think the idea that he invented this issue, or this controversy, is one that just does not

hold up in the historical record.

FEIN: I think that Andy's forceful presentation corroborates my observation. He went into legal arguments and technical distinctions between aliens and U.S. citizens that did not go to the merits of whether departures from customary due process and freedom were warranted.

Notice that he did not try to cite a single instance in which, if you applied regular habeas corpus or FISA, suddenly it would handicap the executive in an improper way in fighting against terrorism. The greatest danger to our civil liberties is the argument that we do not have to think about whether

the customary processes work and we can assume 9/11 created a brave new world.

First of all, the distinctions that he has suggested are invariably there between citizen and noncitizen are not accurate. The president has claimed and asserted the authority to identify persons as illegal enemy combatants if they are U.S. citizens, specifically the famous Hamdi and Jose Padilla. They are U.S. citizens who customarily should enjoy all of the rights of U.S. citizens, including the right to habeas corpus.

Moreover, let's think about that distinction when it comes to the National Security Agency's warrantless surveillance program. As I explained, it does not apply when you are

targeting an alien abroad. Its application and what the administration is seeking to evade is an obligation to get a warrant when it is a U.S. citizen standing on American soil and he or she is suspected of wrongdoing.

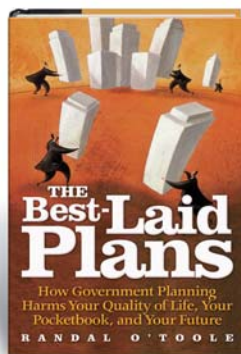
It may be that we are starting at a higher plane of civil liberties because of statutes like FISA, which the president claims is unconstitutional, and Supreme Court rulings. But that means that we must, if we want to protect our freedoms, continue to fight and denounce any encroachment. As James Madison said, "We ought to be alarmed at the first encroachment on any of our civil liberties, not waiting until we are at the precipice."

CATO PUBLICATIONS

The Best-Laid Plans of Bureaucrats Go Wrong, Says New Book

Even people who generally accept markets think there are some areas of policy that are properly the realm of the state alone. Among those areas are transportation, land use, and environmental stewardship. Cato senior fellow Randal O'Toole seeks to change that conventional wisdom with his new book, *The Best-Laid Plans: How Government Planning Harms Your Quality of Life, Your Pocketbook, and Your Future*.

The famous line from the poem by Robert Burns partly inspired O'Toole: "The best-laid schemes of mice and men" tend to go awry. O'Toole begins with the idea that government planners are not somehow immune to the fallibility of human knowledge; indeed, they are in an especially bad position to comprehensively plan our infrastructure and land use because of a number of bad incentives. He then applies this theory to a number of case studies in which government planners stepped in with the best of intentions but ended up with terrible results. As O'Toole writes, with most government plans we can expect that "the costs will be far higher than anticipated, the benefits will prove far smaller, and various unintended consequences will turn out to be worse than even the plan's critics predicted."



Among the examples explored by O'Toole is the city of Portland in Oregon, his native state. Followers of New Urbanism, a school of urban design that promotes dense, walkable, public-transit-oriented developments, revere Portland as a model for "smart growth," as opposed to suburban sprawl. The regional government imposed "smart growth" policies on Portland that included an urban growth boundary that prevented new developments beyond a certain area, forcing the city to grow inward instead of outward. The intention of the policy was to create neighborhoods resembling Greenwich Village. O'Toole argues that the plan actually made Portland resemble Los Angeles, the densest metropolitan area in the United States with the fewest miles of freeway per capita. Portland now also has too

few roads, O'Toole writes, and the cars stuck in stop-and-go traffic have helped to make Oregon's air dirtier than New Jersey's.

O'Toole also investigates the supposed mass transit solution to the traffic congestion problems facing many American cities. Planners who push for more spending on light rail think they can shape people's lifestyles. They think they can bring people out of their suburban homes and cars and into transit-oriented communities. But a major theme of *The Best-Laid Plans* is that planners are on a fool's errand when they try to push the market in a direction it does not want to go. O'Toole explains that transit projects around the world are sops for public money but have little observed effect on people's driving habits and the growth of suburbia. Rail, in his view, is an expensive distraction from market-friendly solutions. He explores how highway tolls can be used to deal with traffic congestion.

Toll pricing is just one application of O'Toole's theory that government's role should not be to supplant the market with the whims of planners. Instead, it should provide the basic rules and framework that allow the market to address social and environmental problems.

The Best-Laid Plans is available at www.catostore.org for \$22.95.

Has “Antitrust” Become Faith More than Law?

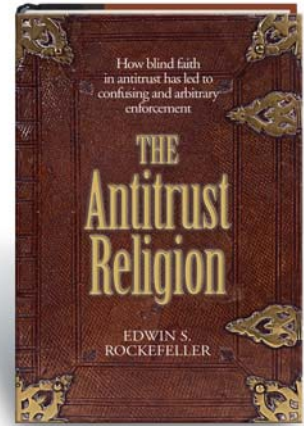
The postal service, public utilities, and roads are often dominated by governments without competition, yet somehow claims of “monopoly” are typically directed at private actors. The U.S. government and the European Union famously sued Microsoft for an alleged software monopoly. Controversy erupted when the Federal Communications Commission proposed to lift limits on media ownership. Most recently, the Federal Trade Commission accused the supermarket chain Whole Foods of trying to buy a natural foods chain in order to eliminate a competitor and keep its prices up. What separates those supposed monopolistic practices by the private sector from the government monopolies is that competition is illegal in the latter case. But what makes a private firm an anti-competitive “monopoly” rather than a winner in a competitive free market?

Edwin S. Rockefeller, an attorney with 50 years of experience with U.S. antitrust laws, argues in his short new book, *The Antitrust Religion*, that this question is more than just a point of confusion; it is an embarrassment for any rational law

enforcement system.

The arbitrariness that Rockefeller sees at the root of current U.S. antitrust law leads him to argue that it most closely resembles a religious faith. As he puts it in the book, “No one has developed a formulation that can distinguish legitimate from illegitimate competitive efforts by a single firm acting alone.” The high priests of antitrust are the lawyers, judges, economists, and policymakers who put their faith in the concept of “market power.” Rockefeller argues that assumptions about the importance of “market power” are based on a false picture of how markets work. The antitrust believers see the market as a static, tangible thing, he says. In reality, the market is a metaphor for a number of dynamic processes.

Unable to capture the complexities of the free market, the antitrust religion relies on economic theories that in Rockefeller’s view bestow the veneer of objectivity and credibility to antitrust law enforcement, but those theories actually rely on hunch and whim. In cases ranging from early antitrust targets like Standard Oil to the Microsoft and IBM cases of today, he



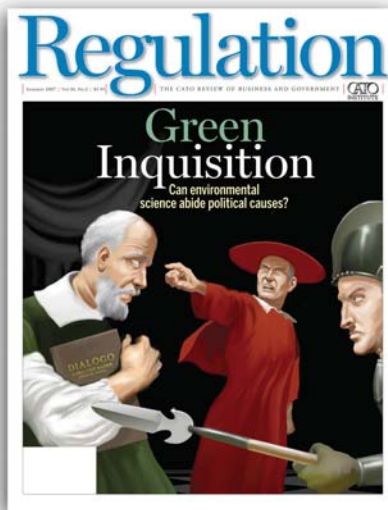
explains why companies are punished for being winners in the market.

Rockefeller emphasizes that antitrust has effects beyond the occasional headline about a new sacrificial lamb, be it Microsoft or another alleged monopolist. We want our entrepreneurs to be free to use their talents to innovate. But Rockefeller writes that the current law creates the incentive for entrepreneurs to hold down sales volume and avoid improvements in price, quality, and service, lest they gain too much market power and become the next targets of the antitrust priests.

The Antitrust Religion is available at www.cato.org for \$16.95 (hardcover).

Regulation Examines the Politicization of Environmental Science

In his book *The Assault on Reason*, Al Gore depicts debates about global warming and other issues as pitched battles between the forces of clearheaded rational science on one hand and the forces of ideologically motivated special interests on the other. In the Summer 2007 issue of *Regulation*, Stanley Trimble of the University of California, Los Angeles, says that the division is not so clean. Indeed, he argues that ideology has hijacked a great deal of scientific research about the environment. Although not politically active himself, Trimble writes about how he can no longer ignore the politicization that has seeped into his own field, soil erosion. Scientists have rejected the results of some studies because it “has” to be true that soil erosion is worse today than in the past. Too many scientists, he argues, believe that they need to inspire



political action and are willing to resort to exaggeration and scare tactics to do so.

In another article, Michael Wachtler of the University of Pennsylvania gives an unconventional account of the decline of

unions in the United States. He sees the rise and fall of unions as a struggle between corporatism and competition. Progressive reform after the Great Depression followed the corporatist model: that the state should cooperate with certain favored groups to craft policy. Roosevelt’s National Industrial Recovery Act and other regulations granted preferential treatment to large labor unions. The following decades saw a gradual move away from corporatism toward liberal pluralism. Unions could not compete when regulations no longer provided them above-competitive prices to pay above-market wages.

Other articles in *Regulation* examine medical malpractice settlements, net neutrality, and the Wal-Mart class action lawsuit.

Subscriptions to *Regulation* are \$20.00 per year and can be purchased from the Cato Institute at 800-767-1241 or at the Cato online bookstore at www.cato.org. *Regulation* articles can be found online at www.cato.org/regulation.

New Book Summarizes What's Known about School Choice

Do charter schools make the students left behind in traditional public schools worse off? Do school vouchers help disadvantaged minority students catch up with richer peers? What effect do vouchers have on racial segregation? Do private schools encourage sectarianism and intolerance? While you may have hunches about the answers to those questions, intuition is not enough; empirical study is needed to answer them. But scrounging through the voluminous amount of research done on American education policy to try to find the right solution to the problems with our schools is a daunting task even for experts.

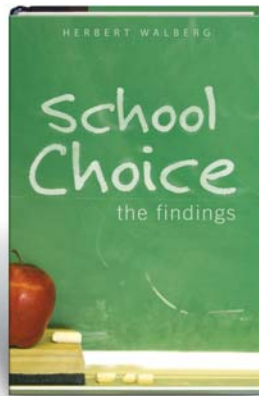
Herbert J. Walberg, one of the country's leading education scholars, has exhaustively compiled the most relevant parts of many of the studies and surveys about charter schools, voucher programs, and private schools and their effectiveness compared with traditional public schools. The result of that research, *School Choice: The Findings*, attempts to answer some of the most pressing questions about how choice and competition can improve American education.

Few people would disagree that the U.S.

educational system is in need of guidance. It costs more to send a child to school in America than in almost any other country in the Western world, and there is little

“Herb Walberg has brought together into one concise document much of what is known about school choice in the United States and around the world.”

—PAUL PETERSON
Harvard University



evidence that America is seeing much bang for its buck. Walberg comes to several conclusions, including the following: Charter schools raise student achievement without dragging down the scores of students

in traditional public schools. Education vouchers seem to improve the achievement of African-American students most of all. Voucher programs in the District of Columbia, Cleveland, Milwaukee, and all other cases generally introduced enrollees to schools with greater racial diversity than the traditional public schools. The most comprehensive surveys find that graduates of private schools are actually more tolerant of different types of people than are graduates of public schools.

Walberg also suggests why the teaching establishment is so resistant to the idea of vouchers. A survey of education professors found that 64 percent of them thought that schools should avoid competition. The same professors are also out of step with consumers of education on what they think a quality education should be. For example, only 37 percent of the professors thought it essential for teachers to learn how to maintain an orderly classroom. Walberg believes those facts help explain why parents and students are mostly satisfied with charter schools and vouchers, in contrast to the education establishment.

School Choice: The Findings (110 pp.) is available at www.catostore.org for \$9.95 paperback and \$14.95 hardcover.

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Portland: The City That Doesn't Work

Many people consider Portland, Oregon, a model of 21st-century urban planning. To halt urban sprawl and reduce people's dependence on the automobile, Portland's plans use an urban growth boundary to greatly increase the area's population density, spend most of the region's transportation funds on various rail transit projects, and promote construction of scores of high-density, mixed-use developments. In "Debunking Portland: The City That Doesn't Work" (Policy Analysis no. 596), Randal O'Toole, Cato senior fellow and lifelong Oregonian, argues that the costs of Portland's planning far outweigh the benefits when judged by the results rather than the intentions. He explains that far from curbing sprawl, high housing prices led tens of thousands of families to move to nearby Vancouver, Washington, and other cities outside the region's authority. O'Toole blames Portland's planners for worse congestion and for draining billions of dollars from essential services to fund an underused transit system. He also investigates how "smart-growth" planning opens the door for abuse by public officials, as was seen in Portland when a 2004 scandal revealed that an insider network known as

the "light-rail mafia" had manipulated the planning process to direct rail construction contracts and urban renewal subsidies to themselves.

Checkup Needed in Massachusetts

In the spring of 2006 Massachusetts enacted legislation to ensure universal health insurance coverage for all residents. Groups from across the political spectrum, from the Heritage Foundation on the right to Families USA on the left, supported the plan, although the plan had detractors from across the political spectrum as well. In "The Massachusetts Health Plan: The Good, the Bad, and the Ugly" (Policy Analysis no. 595), David Hyman of the University of Illinois argues that there is enough "bad" and "ugly" in the mix to raise serious concerns, particularly when the desire to overregulate the health insurance market appears to be hard-wired into Massachusetts policymakers' DNA. He proposes instead that, if we want to make health insurance more affordable and avoid the "bad" and the "ugly" of the Massachusetts plan, Congress—or, barring that, individual states—should consider a "regulatory federalism" approach. Under such an approach, insurers and insurance

purchasers would be required to subject themselves to the laws and regulations of a single state but allowed to select the state.

The Coming Medicaid Crunch

The Founders knew that the tendency of government is to grow, and the case of Medicaid proves them right like few other examples of big government excess. In "Medicaid's Soaring Cost: Time to Step on the Brakes" (Policy Analysis no. 597), Cato senior fellow Jagadeesh Gokhale lays out the hard data that indicate just how expensive Medicaid will be for future generations. If current policies and trends are maintained, Gokhale estimates that federal Medicaid outlays will take up 36 percent of lifetime federal general revenue taxes paid by males born in 2025 and 69 percent paid by females born in that year. Almost all of the lifetime federal nonpayroll taxes of females born after 2050 will be consumed by their lifetime Medicaid benefits. Gokhale goes on to argue that we cannot tax ourselves out of this mess without creating an unrealistic and crushing tax burden. Gokhale shows that one of the most important steps Congress can take to limit the size of the federal government is to limit the growth of Medicaid.

Put your IRA to work for freedom

This year only, temporary tax rules allow donors aged 70½ or older to withdraw up to \$100,000 tax-free from both regular and Roth IRAs provided the money is donated directly to 501(c)3 such as the Cato Institute.

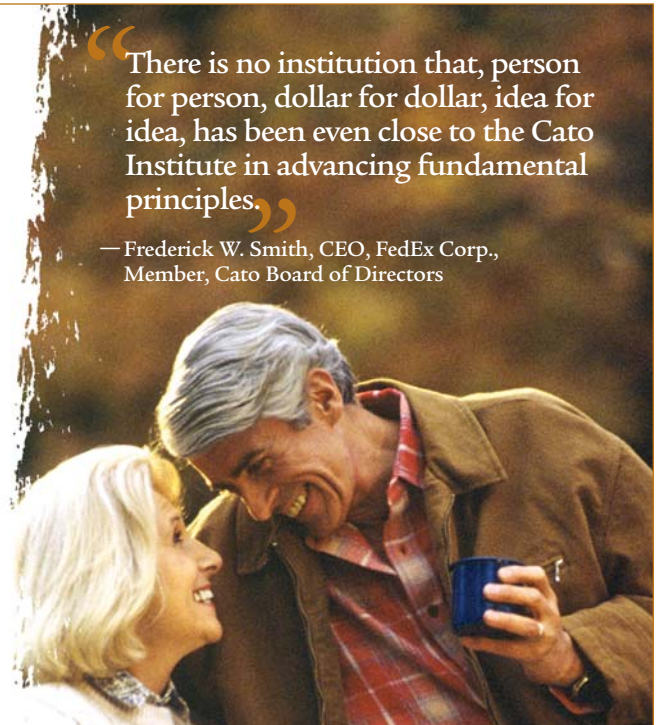
Taxpayers age 70½ and older are required to make annual distributions from their retirement accounts. The distributions are included in the taxpayers' adjusted gross income (AGI), and taxpayers pay taxes on them.

The Charitable IRA Rollover permits taxpayers to make donations directly to charitable organizations from their IRAs without counting them as part of their AGI and, consequently, without paying taxes on them. If you have been thinking of making a substantial gift to Cato, this is a great opportunity.

Whether or not these provisions apply to you, you can always use the Business Reply Envelope in the center of *Cato Policy Report* to make a donation. Your gift strengthens Cato's efforts to defend and advance the cause of liberty in the coming year.

"There is no institution that, person for person, dollar for dollar, idea for idea, has been even close to the Cato Institute in advancing fundamental principles."

—Frederick W. Smith, CEO, FedEx Corp.,
Member, Cato Board of Directors



“To Be Governed...”

THE QUINTESSENTIAL WASHINGTON POST SENTENCE

[T]he president is recommending only \$5 billion in new spending.

—David Broder in the *Washington Post*, July 29, 2007

AND MURDEROUS STATISTICS FOR THE REST OF THE CENTURY, WITH RATHER MORE EFFECT

Murderous anarchists would plague Europe and America for more than a decade [after 1900].

—George Fetherling in the *Wall Street Journal*, July 28, 2007

EXCEPT FOR THOSE WHO LOSE THEIR JOBS

The nation's lowest-paid workers will soon find extra money in their pockets as the minimum wage rises 70 cents to \$5.85 an hour today, the first increase in a decade.

—Associated Press, July 24, 2007

MURDOCH LEARNS WHO HAS THE POWER

Shortly before Christmas in 1987, Senator Edward M. Kennedy taught [Rupert] Murdoch a tough lesson in the ways of Washington. . . .

He engineered a legislative maneuver that forced an infuriated Mr. Murdoch to sell his beloved *New York Post*. . . .

“Teddy almost did him in,” said Philip R. Verveer, a cable television lobbyist. “I presume that over time, as his media ownership in this country has grown and grown, he’s realized that you can’t throw spit wads at leading figures in society with impunity.” . . .

“[Tony] Blair’s attitude was quite clear,” Andrew Neil, the editor of *The Sunday Times* under Mr. Murdoch in London from 1983 to 1994, said in an interview. “If the Murdoch press gave the Blair government a fair hearing, it would be left intact.”

—*New York Times*, June 25, 2007

THE ISLAMOFASCISTS’ REIGN OF TERROR

The insurgents have imposed a strict Islamic creed, and some have even banned smoking, one resident told Capt. Jeff Noll, the commander of Company B of the First Battalion, 23rd Infantry, during his patrol through the neighborhood [in Baquba].

—*New York Times*, June 21, 2007

BETTER LATE THAN NEVER

The Democrats in Congress [have] passed a budget that would mean higher taxes for American families and job creators, ignore the need for entitlement reform, and pile on hundreds of billions of dollars in new government spending over the next five years. . . .

I will veto bills with excessive levels of spending.

—President Bush, radio address, June 16, 2007

ACTUALLY, GAZPROM STOLE IT

The state-controlled energy giant Gazprom on Friday bought a vast natural gas field in Siberia from a unit of British-based petroleum conglomerate BP.

—*Washington Post*, June 23, 2007

WHY IS THE GOOD NEWS ON PAGE 13D?

The rate of death from heart disease in

the U.S. was cut in half between 1980 and 2000 thanks to better medical treatment and a reduction in the incidence of some risk factors, a new study shows.

—*Wall Street Journal*, June 7, 2007

HASH BROWNIES IN THE HALLS OF POWER

Harriet Harman, the deputy Labour leader, today became the eighth Cabinet minister to admit smoking cannabis while at university. . . .

It emerged that not only had Jacqui Smith, the new Home Secretary, smoked the drug but so had two of her ministers with responsibility for law and order. The admission further undermined Gordon Brown’s efforts to demonstrate that he was bringing a moral dimension to his government. . . .

On Wednesday, Mr. Brown announced that she would head a review of drugs strategy, including whether to reverse the earlier decision to downgrade [the penalties for using] cannabis.

—*Telegraph*, July 23, 2007

THAT FABULOUS BRITISH HEALTH SERVICE

A 108-year-old woman has been told she must wait at least 18 months before she receives a new hearing aid.

—*Guardian*, July 30, 2007

HOW MANY YEARS MAKE “PERMANENT”?

President George W. Bush’s nominee to be top military adviser said on Tuesday the United States will be in Iraq for “years not months” . . . “But I don’t see it (Iraq) as a permanent—you know, on a permanent base at this point.”

—*Reuters*, July 31, 2007

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