

## Libertarianism in the Crosshairs

by Tom G. Palmer

It's a sign of success when your ideas and proposals generate lots of detractors. Judged by that criterion, libertarianism is back in the mainstream of political debate, after being intellectually and institutionally eclipsed for much of the 20th century by various forms of statism and collectivism. And the Cato Institute, as a high-profile advocate of libertarian ideas, is a frequent target of those criticisms.

There are, of course, many hundreds of books published every year that make the positive case for expansive state power and are therefore implicitly critical of libertarianism. The core libertarian ideas of individual rights, of order emerging spontaneously from the enjoyment of rights, and of limited government to protect rights and allow order to emerge are rejected in favor of other conceptions of moral and legal relations, the sources of social order, and the role of government. What is striking is the number of recent works that explicitly engage libertarians, realizing that their arguments must be addressed—or denounced.

In the past few months, I've read a large stack of such books, nine of which I've selected to discuss in this short essay. Some of them are popular works, some are journalistic, and some are scholarly and academic. I'm going to start with the silly, to give the reader an idea of how strange academic criticism can be, and proceed to more serious work deserving of careful study and consideration.

### Bad Enough to Make Grown Men (and Women) Cry

In *Cato's Tears and the Making of Anglo-American Emotion*, University of Michigan English professor Julie Ellison offers an investigation of "the cultural history of public emotion" (p. 2), a worthy project in the course of

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Andrei Illarionov, author of a new Cato book chapter (see p. 15) and adviser to Russian president Vladimir Putin, and José Piñera, co-chair of Cato's Social Security Privatization project, hold a news conference in Moscow to discuss economic reform. (They are flanked by an Interfax representative and a translator.) Piñera's observations on Putin and Russia will appear in the September–October issue of *Foreign Affairs*.

which she attacks libertarianism in an unconscious parody of academic literary criticism. The book's title refers to Cato the Younger's tears at the end of the Roman Republic, as depicted in Joseph Addison's play *Cato*, which inspired the writers of "Cato's Letters," which inspired the American Founders and—two centuries later—the Cato Institute, which brings us to her chapter on "Liberal Guilt and Libertarianism." According to Ellison, "The Cato Institute represents a stoical opposition to liberal sensibility, an exhilarating adamancy that, as we know by now, is historically inseparable from sympathy" (p. 189). (Come again?) Libertarians oppose coercive wealth redistribution "both in itself" (a phrase that is not entirely clear) "and as a metaphor for the expenditure of feeling" (pp. 189–90).

In a critique of an essay of mine on individualism, Ellison congratulates me for understanding "that the individual is a social construct" (p. 190)—something I do not believe. The concept of the individual, like all con-

*Continued on page 10*

### In This Issue



Broder on initiatives, p. 6

Boaz: stealing Microsoft	2
Cato launches new center	3
The legacy of Mises	5
Greenspan to keynote Monetary Conference	5
Broder and Niskanen on initiatives	6
Tobacco settlement unconstitutional	8
WTO and sovereignty	9
Satanic Gases a bestseller	12
Book: freedom's greatest champions	14
China's future	15

# The Theft of Microsoft



**T**hey're stealing Bill Gates's company. When you get past all the legal and economic arguments, that's the essence of the legal decision against the Microsoft Corp. Judge Thomas Penfield Jackson ordered that the company be split into two separate companies, as the Justice Department had proposed. Gates will be allowed to run either the operating systems company or the applications company. But half of the company he has built will be taken away from him.

And that's not all. Microsoft has been ordered to share with its competitors its application programming interfaces—the asset it has spent billions of dollars to create. According to the *Washington Post*, “The judge found that Microsoft used access to the code to hurt its competitors and help its allies.” It's a strange kind of free enterprise system in which companies that create useful products have to give their competitors access to them.

But even then the judge and the Justice Department weren't finished with their assault. Jackson's order establishes a monitoring system whereby the government is given “access during office hours to inspect and copy . . . all books, ledgers, accounts, correspondence, memoranda, source code, and other records and documents.” Jackson even orders Microsoft to “establish and maintain a means by which employees can report potential violations” of the government's regulations “on a confidential basis.” From Microsoft to Microserf.

All the economic debates—has Microsoft helped or hurt technological innovation? What would be the effect on investors of a breakup?—and the legal arguments—has Judge Jackson followed the antitrust laws as written?—are important. But the real issue is that 25 years ago a couple of college dropouts moved to New Mexico and started writing BASIC software for the primitive Altair computer. In 1975 they had 3 employees and revenues of \$16,000. Over the next 25 years they grew to 36,000 employees and revenues of \$20 billion by obsessively figuring out what computer users needed and delivering it to them. Bill Gates, Paul Allen, and eventually thousands of other people put their minds, their money, and their selves into building the Microsoft Corp. What they achieved is now being taken away by Bill Clinton, Janet Reno, and Joel Klein. What's being taken is not just money, not just a company, but the product of their minds. The term “theft of intellectual property” hardly conveys the enormity of what's happening.

Over the years Gates and his colleagues made a lot of people mad, especially their competitors. Some of those competitors delivered a 222-page white paper in 1996 to Joel Klein, head of the Justice Department's Antitrust Division, and urged him to do to Microsoft in court

what they couldn't do in the marketplace. Justice worked closely with the competitors for four years, often showing them sentences or paragraphs in drafts of the department's plans and soliciting their approval. The politics of the case is a far cry from the Platonic ideal of rigorous economists devising the best possible antitrust rules and wise, disinterested judges carefully weighing the evidence.

What lessons will Americans draw from the Microsoft case?

*Don't be too successful.* Success creates envy and attracts government regulators, who seem driven to attack the most productive people in our society. Bill Gates draws praise from the cultural elite when he gives away his money—and he has given away *more than \$20 billion*—but he has done far more good for the world by creating and marketing something useful than by giving away some of the profits he earned.

*Hire a lobbyist.* For about 20 years Gates and his colleagues just sat out there in “the other Washington,” creating and selling. As the company got bigger, Washington, D.C., politicians and journalists began sneering at Microsoft's political innocence. A congressional aide told the press: “They don't want to play the D.C. game, that's clear, and they've gotten away with it so far. The problem is, in the long run they won't be able to.” Politicians told Bill Gates, “Nice little company ya got there. Shame if anything happened to it.” And Microsoft got the message: If you want to produce something in America, you'd better play the game. Contribute to politicians' campaigns, hire their friends, go hat in hand to a congressional hearing and apologize for your

success. In 1995, after repeated assaults by the Federal Trade Commission and the Justice Department, Microsoft broke down and started playing the Washington game. It hired lobbyists and Washington PR firms. Its executives made political contributions. And every other high-tech company is getting the message, too, which is great news for lobbyists and fundraisers.

What lesson should they draw?

*The antitrust laws are fatally flawed.* When our antitrust laws are used by competitors to harm successful companies, when our most innovative companies are under assault from the federal government, when lawyers and politicians decide to restructure the software, credit-card, and airline industries, it's time to repeal the antitrust laws and let firms compete in a free marketplace.

Janet Reno didn't send a SWAT team to Redmond in the middle of the night. But the bottom line is the same: she's using the power of government to steal what the people at Microsoft created.

**“What's being taken is not just money, not just a company, but the product of their minds.”**

—David Boaz

Tom Miller, Ronald Rotunda join Cato

# Cato Launches Center on Government

The Cato Institute has launched a new Center for Representative Government to promote a positive vision of the role government should play in a healthy democracy. The founding director of the center will be John Samples.

Samples spent nearly eight years as director of the Georgetown University Press and as an adjunct professor in the university's Public Policy Institute (a position in which he will continue). At Georgetown University Press, Samples oversaw the publication of nearly 40 books each year in the fields of public policy, political science, religion, and ethics.



John Samples

He previously worked for five years at the Twentieth Century Fund as a vice president and program officer. He supervised research and publishing for the nonprofit public policy research organization, conceiving, overseeing, and marketing research products to the media and the broader policy community. He holds a Ph.D. in political science from Rutgers University.

The center will continue Cato's work on how expansive government often fails to serve the public good. A second goal of the center will be to focus on the broad principles and necessary institutions of limited government and such specific issues as the delegation of

powers, a free and competitive campaign-finance system, term limits, and the role government itself plays in the policymaking process.

Tom G. Palmer, fellow in social thought at Cato, will also be an associate of the center.

◆ Thomas P. Miller has been named director of health policy studies at the Cato Institute. In his new position Miller will examine how



Thomas Miller

market reforms of the current health care system can improve quality, reduce costs, and expand patient choice. Miller was previously director of economic policy studies at the Competitive Enterprise Institute where he specialized in entitlement reform, health care policy, financial-services regulation, and insurance regulation. He holds a law degree from Duke University.

◆ Ronald Rotunda, one of the nation's leading constitutional law scholars, has been named visiting fellow in constitutional studies at the Cato Institute. During his time at Cato he will work with the Institute's Center for Constitutional Studies to analyze recent Supreme Court decisions reviving the principles of federalism that are central to the nation's politi-

cal order. Rotunda, the Albert E. Jenner Jr. Professor of Law at the University of Illinois, is a magna cum laude graduate of both Harvard College and the Harvard Law School, where he was a member of *Harvard Law Review*. He joined the Illinois faculty in 1974 after clerking for Judge Walter R. Mansfield of the Second U.S. Circuit Court of Appeals, practicing law in Washington, D.C., and serving as assistant majority counsel for the Watergate Committee. Rotunda has coauthored the most widely used textbook on legal ethics, *Problems and Materials on Professional Responsibility*, and is the author of a leading textbook on constitutional law, *Modern Constitutional Law*. He is also the coauthor, with John Nowak, of the five-volume *Treatise on Constitutional Law* and the author of several other books and more than 190 articles in various law reviews, journals, newspapers, and books.



Ronald Rotunda

◆ Cato adjunct scholar Bradley A. Smith, a professor at Capital University School of Law, has been confirmed as a member of the Federal Election Commission after a year-long political struggle. In a Cato Briefing Paper, vice president for legal affairs Roger Pilon

*Continued on page 12*

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*The future of financial regulation*

## Bolick, Gray Debate Internet Wine Sales

◆**April 5:** Some of the 30 states that forbid the direct sale of wine to out-of-state consumers do allow local wineries to make direct sales. At a Cato Policy Forum, “Kids, Wine, and the Commerce Clause,” Clint Bolick of the Institute of Justice argued that the prohibition on direct shipment is not intended to advance temperance objectives, which would be permitted by the Twenty-First Amendment. Rather, he said, the purpose is to discriminate against out-of-state wineries, which would be forbidden by the Commerce Clause. Attorney C. Boyden Gray countered that the Twenty-First Amendment, which lifted Prohibition, grants states regulatory authority over alcohol.

◆**April 5:** J. Joe Ricketts, chairman of Ameritrade, and Terry Savage, syndicated columnist, were the featured speakers at a Cato City Seminar in Chicago. Cato’s Edward H. Crane, Roger Pilon, and Brink Lindsey were among the speakers.

◆**April 6:** The Gramm-Leach-Bliley Act of 1999 eliminated Depression-era walls between the banking, insurance, and securities industries in the United States, creating “financial supermarkets.” At a Cato Policy Forum, “Whither the Financial Services Industry after the Gramm-Leach-Bliley Act of 1999?” Randall Kroszner of the University of Chicago’s Business School argued that, as long as government doesn’t bail out those financial conglomerates, there won’t be a problem with their becoming “too big to fail.” Robert E.

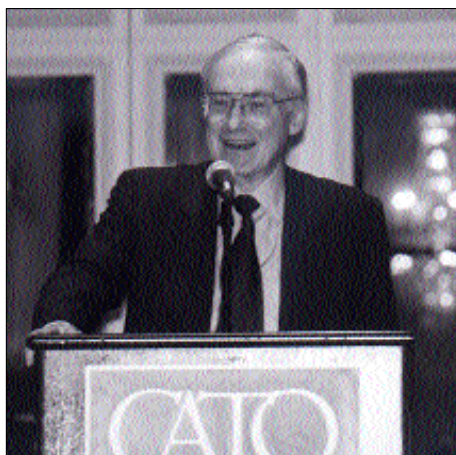
Litan of the Brookings Institution predicted that the wall between banking and commerce will fall as financial institutions continue to compete with other portals.

◆**April 11:** At a Cato Book Forum for *Guide to the Perfect Latin American Idiot*, Carlos Alberto Montaner assailed the populist myths of the Latin American left and right. He blamed them for perpetuating so much misery in the region. Alberto Montaner, who cowrote the book with Alvaro Vargas Llosa and Plinio Apuleyo Mendoza, dissected the beliefs of the “perfect Latin American idiot” as exhibited by political leaders, businessmen, and the intellectual elite who rely on those beliefs to support mercantilism, authoritarianism, and other forms of the closed society. Mark Falcoff of the American Enterprise Institute commented on the book’s popularity and on the heated reaction it has generated in Latin America.

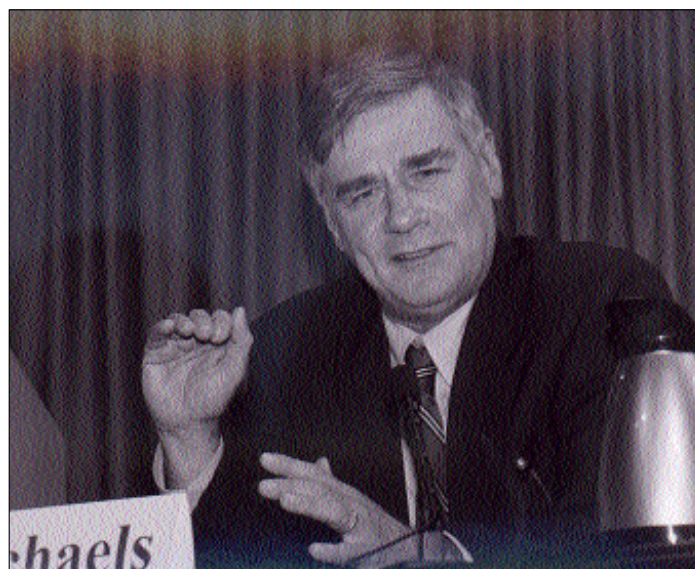
◆**April 27:** A recent Pentagon study, which concluded that the United States should have between 55 and 68 submarines by 2015 and between 62 and 76 vessels by 2025, was discussed at a Cato Policy Forum, “How Many Attack Submarines Does the Navy Need?” Eric Labs of the Congressional Budget Office pointed out that the Navy, which currently builds about one submarine a year at a cost of \$1.5 billion annually, would have to build in some years as many as four submarines at a cost of more than \$6 billion annually in order to reach those goals. Ivan Eland, Cato’s director of defense policy studies, argued that no threat justifies having a large submarine force. He said that, since no great power is likely to field a potent submarine force in the next 20–30 years, the U.S. submarine force could be reduced. Rear Adm. Eugene Carroll, U.S. Navy (Ret.), suggested that instead of building more submarines the Navy should consider increasing personnel so it can leave sub-



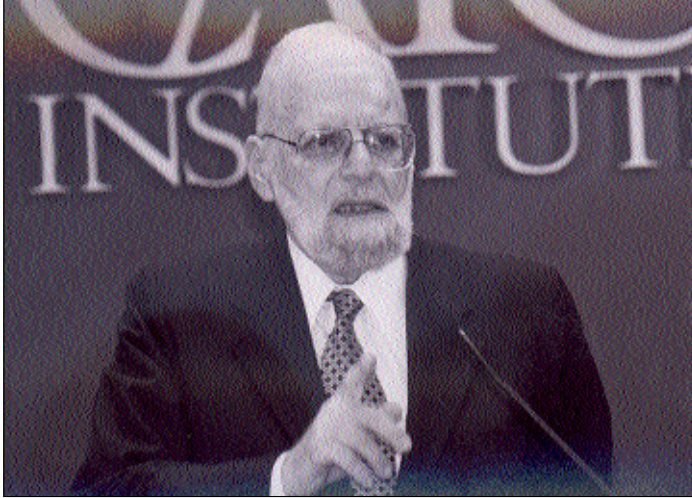
Washington, D.C., police chief Charles Ramsey and Cato’s Timothy Lynch pause as protesters interrupt Ramsey’s speech to a Forum on police corruption.



Wall Street Journal editor Robert L. Bartley keynotes Cato’s May 17 seminar in New York City, where Sen. Rod Grams also spoke.



Senior fellow Pat Michaels discusses his new book, *The Satanic Gases: Clearing the Air about Global Warming*, which was number one on Amazon’s global-warming sales list, at a Cato Book Forum.



Israel Kirzner of New York University discusses his teacher, Ludwig von Mises, at a Cato Forum devoted to Mises' work.

Cato's Robert Levy welcomes C. Boyden Gray (center) and Clint Bolick to a Cato Policy Forum on laws that forbid the shipment of wines to out-of-state consumers.



marines at sea for longer periods of time. Rear Adm. Malcolm Fages, U.S. Navy, stated that independent analysis indicates that the Navy needs 68 attack submarines.

◆**May 4:** At a Cato Forum, "On the Legacy of Ludwig von Mises," Israel M. Kirzner and Don Boudreaux discussed the writings of Mises. Kirzner, who studied under Mises and has published numerous articles and books on Austrian economics, including "Mises and His Understanding of the Capitalist System" in the latest *Cato Journal*, discussed Mises' work and its impact. Boudreaux, president of the Foundation for Economic Education, offered some remarks about the role Mises played during his long association with the organization.

◆**May 16:** America's Founders preferred a system of checks and balances to ballot initiatives, said *Washington Post* columnist and author David Broder at a Cato Book Forum, *Ballot Initiatives: Empowering People or Derailing Democracy?* M. Dane Waters, founder and cochairman of the Initiative and Referendum Institute, countered that ballot initiatives arose in the late 1800s as grassroots efforts to fight government corruption. William A. Niskanen, chairman of the Cato Institute, said ballot initiatives don't undermine the political system; they are another check on the power of legislatures.

◆**May 17:** Robert Bartley, editor of the *Wall Street Journal*, and Sen. Rod Grams (R-Minn.), an advocate of Social Security Privatization, were the featured speakers at a Cato Institute City Seminar in New York. Cato's Edward H. Crane, Darcy Olsen, and Robert A. Levy also spoke.

◆**May 17:** Charles M. Ramsey, police chief of Washington, D.C., discussed the difficulties of rooting out police corruption, pointing out that police departments often lack the internal capacity to do long-term investigations, at a Cato Policy forum, "Dirty Cops and Wrongful Convictions." Jerome Skolnick of New York University said that the War on Drugs has contributed to an increase in police corruption. David B. Kopel said that the move to get more cops "on the beat" has resulted in less oversight.

◆**May 18:** Global warming has benign or beneficial effects, said Patrick J. Michaels at a Cato Book Forum, *Clearing the Air about Global Warming*. Michaels, coauthor of *The Satanic Gases: Clearing the Air about Global Warming*, said that the world has warmed over the last few decades but that the milder winters have led to greater crop yields and to fewer deaths in winter. Environmental reporter John Fialka of the *Wall Street Journal* commented on the book. ■

## Cato Calendar

### Globalization, the WTO, and Capital Flows:

**Hong Kong's Legacy, China's Future**  
*Cosponsored with Hong Kong Centre for Economic Research*  
 Hong Kong • September 4, 2000  
 Speakers include Joseph Yam, K. C. Kwong, Brink Lindsey, Mark Groombridge, John Greenwood, and Justin Yifu Lin.

### Perspectives on Liberty: Public Policy 2000

Houston • Four Seasons  
 September 20, 2000

### Perspectives on Liberty: Public Policy 2000

San Antonio • Westin Riverwalk  
 September 21, 2000

### Monetary Policy in the New Economy 18th Annual Monetary Conference

*Cosponsored with The Economist*  
 Washington • Cato Institute  
 October 19, 2000  
 Speakers include Alan Greenspan, Robert D. McTeer Jr., William A. Niskanen, Benjamin Friedman, and Mickey Levy.

### Cato University

Montreal • Hotel Omni Mont-Royal  
 October 19-22, 2000  
 Speakers include Charles Murray, Alan Charles Kors, and Tom Palmer.

### Third Annual Conference on Technology and Society

*Cosponsored with Forbes ASAP*  
 Reston, Virginia • Hyatt Reston  
 November 9-10, 2000  
 Speakers include William Schrader, Michael Robertson, and Scott Draeker.

### Perspectives on Liberty: Public Policy 2000

New York • Waldorf-Astoria  
 November 17, 2000

### Thirteenth Annual Benefactor Summit

Cancun • Ritz-Carlton  
 February 21-25, 2001

Updated information on Cato events, including Policy Forums and Book Forums not shown here, can be found at [www.cato.org/events/calendar.html](http://www.cato.org/events/calendar.html).

# Do Ballot Initiatives Undermine Democracy?

**O**n May 16 the Cato Institute sponsored a Book Forum on initiative campaigns. The main speaker was Washington Post columnist David S. Broder, author of *Democracy Derailed: Initiative Campaigns and the Power of Money*. Commenting were M. Dane Waters, president of the Initiative & Referendum Institute, and William A. Niskanen, chairman of the Cato Institute.

**David S. Broder:** The initiative process came to the United States about 100 years ago, imported from Switzerland by populists and progressives worried about the influence of money on legislatures. The purpose was twofold: one, break the power of interest groups, and, two, empower people to write the laws themselves on the ballot.

The system worked pretty well for about 20 or 25 years; it produced a great deal of progressive legislation. Then, from World War I until the famous Proposition 13 in 1978, it was not a dominant form of lawmaking. Today, however, public suspicion of the legislatures is at least as strong as it was 100 years ago, and initiatives are being used increasingly by people and groups on all parts of the political spectrum.

In this day and age, initiatives are both more sweeping in their content and more numerous than they have been for a very long time. Arizona will vote on an initiative to both abolish the state income tax and require that the people vote on future substitute revenue measures that are passed by the Arizona legislature. California will vote on a voucher initiative for the second time. Colorado and a good many other states are likely to be voting on initiatives to close the gun show loophole.

We are beginning to see large numbers of initiatives that have very significant impact, both fiscal and in terms of social policy. Oregon had 65 initiatives being circulated for signatures this year. California on the March ballot had 20 statewide initiatives and referendums. The initiative process is wildly popular everywhere it exists—more than half of Americans now live in states where the initiative is part of the governing process. Why should this be a matter of concern beyond the places where the initiative process exists?

I wouldn't be surprised if we soon have at least one presidential candidate who calls for a constitutional amendment for a national bal-

lot initiative. Is such a thing possible? I think that, with the growing use of the Internet and the growing number of people who have computers in their homes, it is perfectly possible to imagine an electronic kind of initiative-referendum process. Ross Perot talked about electronic town meetings in his 1992 campaign, and that idea now seems practical. The question now is not, Is it practical for the American people to vote even from their homes on legislation? but, Is it desirable? Is there any philosophical reason to concern ourselves about this?

We are talking about a very large and money-driven process. In the 1998 election cycle I was able to verify at least \$250 million spent on initiatives at the state level. That is about \$100 million more than the taxpayers gave



**David Broder: "In this day and age, initiatives are both more sweeping in their content and more numerous than they have been for a very long time."**

the three presidential candidates in 1996 to conduct their campaigns for the presidency.

The Founders were very clear about their objectives. They wanted a strong government. They had lived for a time under the Articles of Confederation, and they knew that a weak central government was ill suited even for the nation that we were at that moment in history. But they were also clear that they wanted a limited government, with checks and balances. They were more intent on protecting freedom than on ensuring efficiency in government. They wanted to be very sure that minority rights, including property rights, were protected. And they wanted to be very sure that, before a new statute was enacted, there was a genuine consensus in society that the law was needed.

Most of those checks and balances, except for the final step of judicial review, are missing from the initiative process. In the initia-

tive process there is no requirement that you consider the views of those who may disagree with you, so that simply never takes place.

Thus, a fundamental part of the legislative process, the accommodation of legitimate but differing needs, is lost in an initiative process. That is what I have found in my reporting. That is why I hope that, before we have a national debate, which I think we will have quite soon, about bringing the initiative process to the federal government, we really look and consider what the pluses and the minuses have been in the states' experience with the initiative process.

**M. Dane Waters:** The initiative and referendum have existed in some form in this country since the 1600s. Citizens of New England placed ordinances and other issues on the agenda for discussion and then a vote in town meetings. Thomas Jefferson first proposed a legislative referendum on the 1775 Virginia State Constitution. The first state to hold a statewide legislative referendum for its citizens to ratify its constitution was Massachusetts in 1778; New Hampshire followed in 1792. Today every state but Delaware requires a final vote of the people before its constitution can be amended.

The initiative movement was intended, not to change our system of government, but to enhance it. James Madison said it best in *Federalist 49*: "As the people are the only legitimate fountain of power, and it is from them that the Constitutional Charter under which the several branches of government hold their power is derived, it seems strictly consonant to the republican theory to recur to the same original authority whenever it may be necessary to enlarge, diminish, or new-model the powers of government."

The modern movement to use the initiative process can be said to have begun in 1978 in California with the passage of Proposition 13, which cut property taxes from about 2.5 percent of market value to just 1 percent. Within two years, 43 states had implemented some form of property tax limitation or relief, and 15 states had lowered their income tax rates. A new report from the National Taxpayers Union makes the case that the tax revolt that began with Proposition 13 in the 1970s would never have occurred without the initiative process.

## “Broder is clearly more concerned than I am that ‘fewer of the decisions that determine the quality and character of our lives and communities are being made in Washington, D.C.’”

The initiative process is vital to reforming our country. But, because it is such an effective tool for curbing the power of government, it is under heavy attack from career politicians who would like to see it destroyed. As William Jennings Bryan said in 1920: “We have the initiative and referendum. Do not disturb them. If defects are discovered, correct them



**Dane Waters:** “Because it is such an effective tool for curbing the power of government, the initiative process is under heavy attack from career politicians.”

and perfect the machinery. Make it possible for the people to have what they want. We are the world’s teacher in democracy. The world looks to us for an example. We cannot ask others to trust the people unless we ourselves are willing to trust them.” That statement is as true today as it was 80 years ago.

Many people try to make the case that the initiative process in this country is unregulated and gives us laws without government. In fact, the initiative process in this country is one of the most regulated in the world. The government sets all the rules: it tells you if you can or can’t collect signatures on a specific issue, how many subjects the issue must be limited to, the size and font of the petition you circulate, how many signatures you must collect and from what areas, how long you have to collect signatures, and who can and can’t collect those signatures. Ultimately the government decides if you can actually get your issue on the ballot. Just yesterday, the secretary of state of Oregon threw out thousands of signatures because the petition was printed on glossy paper. Many of the concerns about initiatives seem unfounded, and so addressing them in turn seems unfounded as well.

Political scientists have found that, whereas 40 percent of all initiatives on the Califor-

nia ballot from 1986 to 1996 passed, only 14 percent of initiatives promoted by special interests passed.

Many people are predisposed to believe that money influences elections. But when it comes to initiative campaigns, the proof does not exist.

In an era of growing government, the people need a mechanism to check government. Many claim that the people already have that check—elections. But that is a fallacy. Most people who support the initiative process and who use the process use it as a tool for addressing single issues. They want for the most part to keep a particular elected official, and so voting that official out of office for failing to deal with one specific issue is considered an extreme step, far more extreme than allowing the people to make laws occasionally.

In 100 years the people have made approximately 800 laws using the initiative process. That is not many considering that an average legislature passes more than 1,000 laws a year. Representative government is not always representative. It is full of imperfections; legislatures pass bad laws and ignore important reforms. Representative government and the initiative process are perfect complements to each other—two imperfect systems of government each designed to help the people and both carefully constructed to balance the weaknesses of one with the strengths of the other.

**William A. Niskanen:** I was a member of the committee that drafted an initiative that is now a part of the California Constitution. The primary wordsmith on that committee is now Supreme Court Justice Anthony Kennedy. And I was chairman of the committee that drafted an initiative that is now part of the Michigan Constitution. In both of those cases, we held extensive hearings around the state and had a lot of interaction with different groups. Every bit as much deliberation went into the preparation of those initiatives as is characteristic of laws coming out of legislatures.

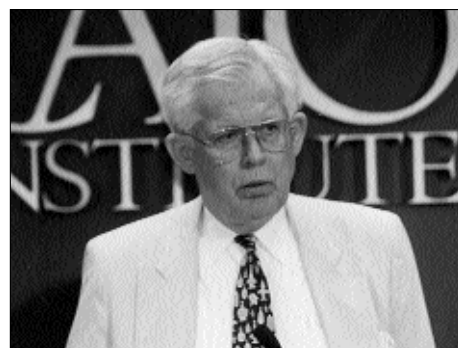
Although I do not support a general substitution of initiatives for the rules approved by legislatures, I support the selective use of initiatives to protect majorities against the coalitions of special interests that often dominate legislatures.

David Broder has written an interesting account of the early history of initiatives

and of some of the more important recent initiative campaigns. I respectfully disagree with him, however, on several issues.

First, the initiative process is best described as “one more check in our system of checks and balances,” not as a process that undermines the system. It is a limit on how far legislatures can go.

Second, most legislation involves some kind of vote trading or logrolling, within an individual bill or over time. Such vote trading is much easier within a legislature than in the general electorate. The current Senate bankruptcy bill, for example, is an important bill to pass, but it also includes a small business tax cut and an increase in the minimum wage. Those three elements are not related. There is no rule of germaneness in the Senate. It is vote trading that leads senators to package this particular set of measures together in one bill. Some of the effects of vote trading are clearly beneficial. Vote trading is the primary political process that protects minority interests against exploitation by the majority. Some of the effects of vote trading are clearly less desirable. Most of what we broadly regard as pork-barrel legislation is the result



**William Niskanen:** “Initiatives can protect majorities against the coalitions of special interests that often dominate legislatures.”

of packaging special-interest measures, none of which would command a majority on its own, in an omnibus bill with enough such measures to be approved by a majority. In either case, the evidence is quite clear that legislatures do not serve majorities very well.

Third, there is a lot of evidence that economic growth is a negative function of increases in government spending and taxes since the prior election. Now why isn’t the ballot box

*Continued on page 9*

*Studies back PNTR, WTO*

# Tobacco Settlement Violates Compacts Clause

**T**he nationwide tobacco settlement of 1998 between the major tobacco companies and the attorneys general of 46 states violates both the antitrust laws and the Constitution, concludes Thomas C. O'Brien in a new Cato study, "Constitutional and Antitrust Violations of the Multistate Tobacco Settlement" (Policy Analysis no. 371). O'Brien, assistant general counsel of Corning Incorporated, reveals that the Master Settlement Agreement signed in November 1998 transforms a competitive tobacco industry into a cartel and erects barriers to entry so that the major cigarette companies can raise prices with impunity. O'Brien's analysis concludes that the MSA violates the antitrust laws and defies both the Commerce Clause and the Compacts Clause (article I, § 10) of the Constitution, which states that "no State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State."

## ◆OSHA's Ergonomics Regulations Based on Junk Science

The Occupational Safety and Health Administration's proposed workplace ergonomics regulations, slated for final approval this year, are based on bad science and should be abandoned, writes employment attorney Eugene Scalia in a new Cato study, "OSHA's Ergonomics Litigation Record: Three Strikes and It's Out" (Policy Analysis no. 370). Scalia says the field of ergonomics is so fraught with uncertainties about the existence and causes of so-called repetitive motion injuries that OSHA's regulatory endeavors should be abandoned. "The premise of ergonomic regulation," Scalia writes, "is that physical exertion is hazardous and causes 'musculoskeletal disorders' such as carpal tunnel syndrome." Yet there is great medical uncertainty about that claim, which, Scalia says, is at the root of myriad problems with OSHA's desire to regulate workplace ergonomics.

## ◆Consumers, Producers Benefit from WTO

By encouraging trade liberalization, the World Trade Organization promotes more vigorous global competition among producers, leading to lower consumer prices, rising worker productivity, and higher living standards, according to a new Cato Institute study. In "WTO Report Card: America's Economic

Stake in Open Trade" (Trade Briefing Paper no. 8), Dan Griswold examines the impact of WTO membership on the U.S. economy and finds that "because of the WTO, Americans are not only better off materially; they're also freer from the power of government to decide what they produce and consume." The paper, first in a series of three that will examine the costs and benefits of the WTO to the United States and the world, analyzes economic trends to test the arguments of globalization's biggest critics.

## ◆American Foreign Policy Must Adapt to Changes in International Structure

The changing dynamics of international relations means that other countries will increasingly challenge and thwart Washington's foreign policy designs, concludes a new Cato Institute study. In "'Isolationism' as the Denial of Intervention: What Foreign Policy Is and Isn't" (Foreign Policy Briefing no. 57), Earl C. Ravenal notes that the Clinton administration, Republican congressional leaders, and the policy advisers of the presidential candidates tend to frame foreign policy as a compromise, professing to reject the role of "global policeman" and yet rhetorically condemning "isolationism." Ravenal argues that they are missing the point, saying, "The real issue is what the United States commits itself to defend—and whether it is actually willing to incur the costs and risks required to fulfill such commitments."

## ◆PNTR Is a Win-Win Proposition

A congressional vote in favor of extending permanent normal trade relations (PNTR) to China is a vote for reform of the Chinese economy, according to a study by the Cato Institute. In "China's Long March to a Market Economy: The Case for Permanent Normal Trade Relations with the People's Republic of China" (Trade Policy Analysis no. 10), Mark Groombridge examines the impact of granting PNTR to China and its subsequent accession to the World Trade Organization and finds that those moves will "benefit, not only the United States and the world trading system, but most directly the citizens of China, millions of whom are still mired in abject poverty." Groombridge, a research fellow with Cato's Center for Trade Policy Studies, analyzes historical and economic data and con-

cludes that China's accession to the WTO will dramatically strengthen the hand of pro-reform leaders.

## ◆Militarizing Environmental Issues Endangers National Security

Categorizing environmental problems as national security threats is a dangerous practice and sets a bad precedent in national security policy, according to a new Cato Institute study, "Green Wars: Making Environmental Degradation a National Security Issue Puts Peace and Security at Risk" (Policy Analysis no. 369). Foreign policy analyst Paul Benjamin argues that "pursuing the abstract goal of 'environmental security' risks militarizing environmental issues and trampling on civil liberties." Involving the U.S. military and intelligence agencies in both domestic and international environmental policy also allows the Environmental Protection Agency and other civilian bureaucracies to meddle in foreign policy and national security issues.

## ◆Sue Your HMO!

The current debate over patients' rights misdiagnoses the problems with the Employee Retirement Income Security Act, according to the Cato study "Legislative Malpractice: Misdiagnosing Patients' Rights" (Cato Briefing Paper no. 57). Study author Greg Scandlen says that the right to sue HMOs for malpractice already exists under state laws and that proposed federal reforms would actually result in poorer health care coverage. "To the extent [an HMO] 'practices medicine,' it is subject to state-based remedies for malpractice," Scandlen writes. He says critics confuse the right to sue HMOs in contract disputes with the right to sue them for malpractice.

## ◆World Bank Buys Off Environmental Critics

The World Bank has attempted to deflect criticism of its lending policies by involving environmental advocacy groups in its projects, according to the new Cato study "The Greening of the World Bank: A Lesson in Bureaucratic Survival" (Foreign Policy Briefing no. 56). James M. Sheehan documents how the bank has appeased its critics by "paint[ing] itself 'green'" and incorporating "sustainable development" into its operations. During the 1980s and early 1990s, environmental nongovernmental organizations (NGOs) protest-





**Dan Griswold and William H. Lash III, authors of a new Trade Briefing Paper on the WTO and U.S. sovereignty, discussed the WTO at a Cato conference last fall.**

ed and denounced bank lending policies on the grounds that the bank was financing projects that led to ecological destruction, human rights violations, and forced resettlements. NGOs have since reversed their criticism of the bank's Global Environmental Facility as they have received dramatic increases in financial support from the bank.

#### ◆Workers Should Own Retirement Funds

Social Security privatization would secure retirement benefits, according to the Cato Institute study "Property Rights: The Hidden Issue of Social Security Reform" (Social Security Paper no. 19). A Social Security system based on privatized individual accounts would provide workers with the benefits and safeguards of actual ownership not currently present in the government-run system, notes Charles E. Rounds Jr., a professor of law at Suffolk University in Boston. One of the most enduring myths of Social Security is that a worker has a legal right to his Social Security benefits, Rounds says. Rounds points out that two important Supreme Court cases, *Helvering v. Davis* and *Flemming v. Nestor*, hold that the payment of Social Security taxes conveys no property or contractual rights to Social Security benefits. As a result, says Rounds, a worker's retirement benefits depend entirely on the political decisions of the president and Congress.

#### ◆Don't Just "Save" Social Security—Improve It

The drive to "save" Social Security obscures the more important goal of ensuring that Amer-

icans retire with enough money to live comfortably, writes Michael Tanner in a new Cato Institute study, "Saving Social Security Is Not Enough" (Social Security Paper no. 20). "The current focus on saving Social Security is misguided," says Tanner, director of Cato's Project on Social Security Privatization. "Merely finding sufficient funding to preserve Social Security fails to address the serious shortcomings of the current system. The question should be not whether we can save Social Security but whether we

can provide the best possible retirement system for American workers. Workers should be allowed to take the money they are currently paying in Social Security taxes and redirect it to individually owned, privately invested accounts, similar to individual retirement accounts or 401(k) plans."

#### ◆WTO Membership Is a Wise Exercise of U.S. Sovereignty, Not Its Surrender

If the World Trade Organization were in fact dictating the domestic laws and regulations of its members, it would indeed be a threat to U.S. sovereignty, but the WTO can do nothing of the kind, according to a new paper from the Cato Institute. In "WTO Report Card II: An Exercise or Surrender of U.S. Sovereignty?" (Trade Briefing Paper no. 9), William H. Lash III and Dan Griswold examine the rules and actions of the WTO and find that "membership in the WTO enhances the freedom and the prosperity of Americans without surrendering an inch of national sovereignty." The WTO wields no power of enforcement. It has no authority or power to levy fines, impose sanctions, change tariff rates, or modify domestic laws in any way to bring about compliance. The authors conclude: "Membership in the WTO is not a surrender of U.S. sovereignty but its wise exercise. The WTO encourages the United States to keep its own markets open for the benefit of U.S. consumers and import-using industries. WTO membership also promotes trade liberalization abroad, which opens markets and keeps them open for U.S. exporters." ■

#### INITIATIVES *Continued from page 7*

a sufficient protection against those effects? Because your vote for a candidate reflects a variety of concerns, and elected representatives don't have to serve the interest of the majority on any particular issue. Most candidates of the incumbent party benefit from generally good economic times whether or not their actions have had anything to do with the fact that economic conditions are healthy.

Second is that there is a very strong pro-incumbent bias in our electorate. People prefer continuity in the absence of scandal or really outrageous behavior. So the incumbent as candidate has a big advantage. Given that candidates of the incumbent party benefit from good times and have a strong advantage in the electorate, they can get away with a lot that has nothing to do with the interest of the majority.

So, since we vote on candidates as a package deal reflecting a variety of concerns, there isn't any inherent protection against behavior that does not serve the interest of the majority on particular concerns. An initiative is often the only way to offset this bias in favor of more expansive government.

Fourth, Broder seems concerned about the power of money in initiative campaigns, which is important. But he writes almost as if money had little influence in the outcomes of other political processes. Money is pervasive in our political system. In fact, the amount of money spent on initiative campaigns is a small fraction of the total amount spent on politics in any given election cycle. But where the money for initiative campaigns comes from and how it is spent are often more transparent and visible.

Fifth, the title of Broder's last chapter is quite misleading. Initiatives are not "laws without government." They are a different way of proposing and approving laws. For better or for worse, the government is still there presumably implementing laws that are passed either by the legislature or by initiative.

Finally, and maybe most important, Broder is clearly more concerned than I am that "fewer of the decisions that determine the quality and character of our lives and communities are being made in Washington, D.C." I had better conclude on that rare note of optimism. ■

# “Libertarianism is back in the mainstream of political debate, after being intellectually and institutionally eclipsed for much of the 20<sup>th</sup> century by statism and collectivism.”

## LIBERTARIANISM *Continued from page 1*

cepts, is a social achievement, but “the individual” is not. She then rakes me over the politically correct coals: “Group identities such as those of race, ethnicity, and gender are erased through the machinery of libertarian ‘abstraction’ into judicial essences whose unequal social and economic histories are constitutionally irrelevant. Clearly it is not abstract thinking per se that I oppose, but the link here between masculinity, rationality operating in the service of the individual who wants to ‘produce order,’ and that individual’s resentment of losing control to government that might ‘command’ him” (p. 190). The closest thing to an actual argument in Ellison’s critique is an *ad hominem* argument commonly invoked by collectivist academics, the imputation of sinister motives to apologists for libertarianism (“multinational corporations” figure prominently) and the reduction of statements that could be judged on their logical rigor, historical accuracy, or plausibility to “deft psychological maneuvers” (p. 190).

### From Comedy to Historical Tragedy

A more substantive but nearly as amusing critique of libertarianism is offered in *A Necessary Evil* by Garry Wills. Wills relies on guilt by association, lumping together a wide variety of people whose only common characteristic is a “distrust of government.” For quite different (in fact, opposed) reasons, that list includes criminals and terrorists, as well as Henry David Thoreau, pious pacifists, and advocates of constitutionally limited government. Wills lumps them all together, but his main target is the last group, those who favor limited government, and accordingly the main thrust of the book is to rebut the claim that the American Founders sought to establish a government of strictly limited powers. Wills employs his keen insight to establish that the Constitution of the United States does not, in fact, check, balance, separate, or limit the powers of government. To assert that it does would be to “interpret the document in terms of concepts and words that are not in the document. Nowhere, for instance, does the Constitution mention checks, or balances, or separation of powers, or co-equal branches (or even branches) of government,

or states’ rights (or *any* rights in the original, unamended document)” (p. 57). That strikes me as a pretty weak argument. A document doesn’t have to contain the word “document” to be one, and a constitution doesn’t have to contain the words “separate,” “check,” or “balance,” to do those things.

Philosophy is clearly not Wills’s forte; maybe he does better as a historian. Unfortunately, he is so wedded to his belief that government is a “necessary good” (p. 317) that he twists himself (and the historical documents) into intellectual pretzels in his efforts to rebut the idea that the American constitutional order is one of delegated, enumerat-

point” of Madison’s efforts or not, he does inadvertently show that Madison supported limits on the powers of *both* the federal government and the states, an unsurprising position for an advocate of limited government.

Wills glues together a number of historical claims with a theory of absolutism that is profoundly inconsistent with the general tradition within which the American Founders instituted their constitutional system. He argues that sovereignty is indivisible and absolute, hence not separated and checked: “The idea that sovereignty is indivisible is not vague or mystical, but practical and observable. There cannot be two powers to conclude the whole” (p. 67). Wills suggests, on the basis of such musings, that government cannot be limited by law, since government makes law, and government would then be limiting itself, just as King James argued in 1598: “[A]lthough a just Prince will not take the life of any of his subjects without a clear law; yet the same laws whereby he taketh them, are made by himself, or his predecessors; and so the power flows always from himself. . . . the King is above the law, as both the author and giver thereto.” That’s the very philosophy so many Britons came to America to escape. Wills’s enterprise is a case of political philosophy driving history; the Founders simply *must* have grasped the truth as Wills knows it.

### Books Discussed in This Essay

- Barber, Benjamin R. *A Place for Us: How to Make Society Civil and Democracy Strong*. New York: Hill and Wang, 1998.
- Bird, Colin. *The Myth of Liberal Individualism*. Cambridge: Cambridge University Press, 1999.
- Borsook, Paulina. *Cyberselfish: A Critical Romp through the Terribly Libertarian Culture of High-Tech*. New York: Public Affairs, 2000.
- Ellison, Julie. *Cato’s Tears and the Making of Anglo-American Emotion*. Chicago: University of Chicago Press, 1999.
- Holmes, Stephen, and Cass R. Sunstein. *The Cost of Rights: Why Liberty Rests on Taxation*. New York: W. W. Norton, 1999.
- Lessig, Lawrence. *Code and Other Laws of Cyberspace*. New York: Basic Books, 1999.
- Lieberman, Trudy. *Slanting the Story: The Forces That Shape the News*. New York: New Press, 2000.
- Willis, Ellen. *Don’t Think, Smile! Notes on a Decade of Denial*. Boston: Beacon Press, 1999.
- Wills, Garry. *A Necessary Evil: A History of American Distrust of Government*. New York: Simon and Schuster, 1999.

ed, and therefore limited powers. Thus, to defend the supremacy of the federal government over the states, Wills insists that “the real point” (p. 105) of James Madison’s switch to supporting a bill of rights (after Madison’s earlier argument that enumerating and therefore limiting the *powers* of the federal government made an enumeration of *rights* redundant) was “to give the federal government power to forbid these incursions to *the states*” (p. 105). Whether Wills has revealed “the real

### Power, Power, Everywhere

Ellen Willis, a journalist now affiliated with New York University, offers a more interesting critique of libertarian ideas. In *Don’t Think, Smile*, Willis critically reviews David Boaz’s *Libertarianism: A Primer* and Charles Murray’s *What It Means to Be a Libertarian: A Personal Interpretation*. She takes the authors to task for what she calls their “resolutely pre-Freudian mentality,” which asserts the rational character of human nature and therefore cannot “see morality for what it is—a structure of internalized coercion” (p. 187). Willis, in contrast, sees the world of human relationships as it really is: a system of coercion and power through and through. Thus, offering me a higher wage to induce me to work for you is a form of coercion, just as is threatening to kill me to induce me to work for you. In both cases you wield some power over me (carrots, sticks, whatever). Further, what seems like self-limitation through the achievement

# “Garry Willis suggests that government cannot be limited by law, since government makes law. That’s the very philosophy so many Britons came to America to escape.”

of moral virtue and self-restraint is merely another form of coercion. Willis does not oppose morality per se, but that is because she apparently does not oppose coercion per se: “This is not to say that all moral imperatives are oppressive, any more than all laws are: only that morals are no less socially imposed than laws, and should be no less subject to examination and criticism” (p. 187).

Although Willis takes leftist intellectuals to task for failing to grasp how the omnipotent states they support can crush freedom, she insists that any inequality between or among persons is a source of power, and power of any sort is incompatible with freedom. Thus, “[w]hile it’s unlikely that social coercion—governmental or otherwise—will ever be entirely surpassed, my measure of a good society is the extent to which it functions by voluntary cooperation among people with equal social and political power” (p. 193). Much could be said in criticism of this perspective (and of the historical and economic beliefs in the background), but a central problem with Willis’s approach was expressed by F. A. Hayek in *The Road to Serfdom* and George Orwell in *Animal Farm*: To eliminate such distinctions among persons as ability or wealth, someone must be empowered to do so, and that person or those persons will be unequal in political power to the rest of us, which means that one kind of inequality will merely have been substituted for another. And, given what we know of human motivation and history, such political power will soon be converted back into inequalities of wealth and status, thus compounding the inequality.

## Big Government as Ally of the Little Guy

Like Willis, political scientist Benjamin Barber in *A Place for Us* tries to grapple with libertarian ideas, but he often relies on historical claims that seem implausible. Thus, he writes, “Big government has always been an ally of the little guy” (p. 5). I wonder, on what planet? Not the one whose history I have studied. Unlike big government, markets are “private, rapacious, and uncivil” (p. 5). According to Barber, “Libertarians think of civil society as a play space for private individuals and for the voluntary and contractual associations they choose to contract into, and treat it as little more than a condition for solitude”

(p. 23). How is being in a voluntary association such as a church, a bowling league, or a Girl Scout troop “a condition for solitude”? Barber sets up a dichotomy between liberty and community and then seeks to take the best and avoid the worst of both, thus articulating a “strong democratic” approach that promises “a place for us between big government and commercial markets, where citizens can breathe freely” (p. 10). Barber is a good and decent man, but his work rests so much on a rather shaky grasp of economic principles (e.g., “People need wages to sustain the buying power upon which their consumption in a market society depends, but productivity does not necessarily need wage earners to sustain it” [p. 128]) and a similarly undefended (and odd) version of the history of the 20th century, indeed, of the past several millennia, that it does not engage directly the other perspectives he considers and rejects, including libertarianism and communitarianism.

## Law as Porridge: The Goldilocks Thesis

Harvard law professor Lawrence Lessig, author of *Code and Other Laws of Cyberspace*, is sorely vexed by the prominent place of “cyberlibertarianism” in the world of high tech. “Cyberlibertarians” apparently fail to understand that “code is law” and that “[t]his code represents the greatest threat to liberal or libertarian ideals, as well as their greatest promise” (p. 6). The problem with “code” or “architecture” as it is now is that it is not subject to political determination: “[I]sn’t it clear that government should do something to make this architecture consistent with important public values?” (p. 59). It turns out that sometimes rules of conduct (private property, freedom of contract, and all that) lead to *too much* privacy and sometimes to *too little* privacy, sometimes to *too much* accountability and sometimes to *too little* accountability, when in fact what we should want is *just the right amount* of privacy and accountability. And, of course, it’s through politics that the Goldilocks option is discovered: “Politics is the process by which we *reason* about how things ought to be” (p. 59).

For Lessig, the problem of Goldilocks is solved by a literal *deus ex machina*: computers themselves. In a discussion of how political bodies could regulate Internet gam-

bling, offshore banking, and the like, Lessig states: “Rules imposed by local jurisdictions could be made effective through their recognition by other jurisdictions. Servers, for example, would recognize that access is conditioned on the rules imposed by jurisdictions” (p. 57). According to Lessig, we can leave the actual determination of what’s *just right* to... “servers.”

In a very personal attack on a libertarian journalist in a chapter titled “What Declan [Declan McCullagh of *Wired Online*] Doesn’t Get,” Lessig insists: “We need to think collectively and sensibly about how this emerging reality will affect our lives. Do-nothingism is not an answer; something can and should be done. I’ve argued this, but not with much hope. So central are the Declans in our political culture today that I confess I cannot see a way around them. I have sketched small steps; they seem very small. I’ve described a different ideal; it seems quite alien. I’ve promised that something different could be done, but not by any institution of government that I know. I’ve spoken as if there could be hope. But Hope was just a television commercial” (p. 233). (The book came with no decoder ring to decipher it.)

More could be said about Lessig’s call for collective reasoning, but I merely suggest that he reread the third book of David Hume’s *Treatise on Human Nature*, where Hume explains the importance of stable rules of property: “The convention concerning the stability of possession is enter’d into, in order to cut off all occasions of discord and contention; and this end wou’d never be attain’d, were we allow’d to apply this rule differently in every particular case, according to every particular utility, which might be discover’d in such an application.” We could title this “What Larry Doesn’t Get.”

## How Libertarians (Especially Those at the Cato Institute) Dominate Everything

Paulina Borsook, in *Cyberselfish*, also laments the prominence of libertarianism among the high-tech set. Rather than a work on law, hers is a very personal (and highly abusive) attack on libertarians involved in the computer and software industries. (Libertarians are called or compared to nerds, sexual “nervets,” “neo-hippies,” Christian

*Continued on page 12*

# “To eliminate distinctions among persons, someone must be empowered to do so. Such political power will soon be converted back into inequalities of wealth and status.”

## LIBERTARIANISM *Continued from page 11*

fundamentalists and “neo-pagans,” terrorists, pornographers, “ungrateful adolescent offspring of immigrants,” and so on—a motley collection, indeed.) In a bow to substantive criticism, Borsook restates Lessig’s main point: “The technolibertarian worldview likes to pretend that there are not social decisions embedded in code, to pretend that technology is neutral” (pp. 239–40). To support that assertion, Borsook points out that search engines don’t always find what you’re looking for. If you want to understand the world around us, set aside Milton Friedman and F. A. Hayek and turn to “Marx and his pal Engels,” who had “relevant things to say about the spread of global capitalism (and much more accurate for the description of what is happening at the end of our own century than at the end of his)” (p. 44). Perhaps Borsook had in mind the theses of the immiseration of the masses and the inevitability of socialist revolution, but if she means only to highlight that Marx noted that the world was changing awfully fast, well, so did everyone else.

Borsook specializes in “color” paid-by-the-word journalism rather than accurate

reporting: “Cato, with its menhir of a HQ smack in the middle of D.C., is among the sleekest and most fearsome of the right-wing, free-market, think-tank conquistadors. Hugely funded since the late 1960s and early 1970s [Cato was founded in 1977 with a budget of \$800,000], it has colonized political discourse in the United States” (p. 66). When done well, color journalism can be enlightening.

Another journalist incensed by libertarians is Trudy Lieberman, director of the Center for Consumer Health Choices at Consumers Union. She devotes a chapter of her book *Slanting the Story*, which describes how terrible people with bad ideas “shape the news” and “dominate public policy debates,” to the Cato Institute’s “1993 assault on Head Start, one of the crown jewels of Lyndon Johnson’s Great Society” (p. 99). That assault consisted of publishing one policy analysis by John Hood, “Caveat Emptor: The Head Start Scam.” But even that is too much for Lieberman, for “Cato’s analysis was an attempt to discredit Head Start by focusing on its weaknesses and offering the right wing’s solutions for fixing them—in this case, eliminate the program” (p. 101). According to Lieberman,

what saved Head Start from Cato’s “assault” was that “the think tank soon turned its attention to Social Security” (p. 113). (A bit more research would have revealed to our crack journalist that Cato published its first book on the case for personalizing Social Security in 1980.) Lieberman portrays the Cato Institute as being like the dastardly Snidely Whiplash, cackling as he ties a damsel to the railway tracks, until his eye is caught by the chance to carry out an even more nefarious deed. The damsel (Head Start) may be saved for now. But beware! “Cato, by its own admission, is in for the long haul. This time destroying Head Start wasn’t worth the effort. But who is to say that Cato won’t try again when Head Start’s sugar daddy [President Clinton] leaves office?” (p. 115). Indeed. And with all of that blatant media bias in favor of limited government, individual rights, free markets, and liberty on their side, who knows what the Cato Institute might accomplish?

### Taxes as the Foundation of Liberty

Distinguished politics and law professors Stephen Holmes and Cass R. Sunstein have launched a frontal assault on the core libertarian idea of individual rights in *The Cost*

## NEWS *Continued from page 3*

explained why Smith’s nomination was controversial: “What is Smith’s ‘crime’? In his scholarly writings, he has challenged the conventional wisdom by arguing that past campaign finance reforms have made the system worse and that most proposed reforms would do the same—and, more important, would violate the First Amendment. He urges an end to limits on both contributions and spending—but with full disclosure. Although Smith’s critics call him ‘radical,’ their attack has raised a question: Just who is the radical? For in case after case, the courts have been on Smith’s side, not on the side of his critics. Indeed, what his critics plainly fear is that Smith, on the FEC, will not be ‘radical’ enough, will not press the ‘robust enforcement’ the courts have repeatedly struck down.”

◆ On May 15 presidential candidate George W. Bush proposed a far-reaching plan to allow

Americans to invest some of their Social Security taxes in privately managed retirement accounts. While he gave few details, the general idea paralleled proposals long put forward by Cato Institute scholars, notably in the 1998 book *A New Deal for Social Security* by Peter J. Ferrara and Michael Tanner.

◆ Palm Pilot and Windows CE users can now get Cato’s Daily Commentary and Daily Dispatch downloaded automatically with AvantGo software. AvantGo comes preinstalled on many hand-held computers, but it can be downloaded free at [www.avantgo.com](http://www.avantgo.com). Users can sign up for the Cato daily downloads at [www.cato.org](http://www.cato.org).

◆ Copies of the Cato pocket Constitution were distributed to all state legislators in the 50 states—more than 7,000 in all. Copies were also given to 2,000 local and national officials from Russia late last year. The officials were brought to the United States under the aus-

pices of the Library of Congress to observe American democracy and civil society. Librarian of Congress James H. Billington accepted Cato’s offer to provide the pocket Constitutions. More than 1.5 million copies of the pocket Constitution have been distributed in the United States, and boxed copies will be showing up in bookstores around September of this year.

◆ Throughout May and June, *The Satanic Gases: Clearing the Air about Global Warming* by Patrick J. Michaels and Robert C. Balling Jr., led the global-warming bestseller lists on Amazon.com. When *Cato Policy Report* went to press, the paperback edition of *The Satanic Gases* was no. 1 and the hardcover edition was no. 2 among 303 books on global warming. The Cato book didn’t quite reach the top of the environmental studies list, but it was running well ahead of the Earth Day 2000 reissue of *Earth in the Balance* by Vice President Gore. ■

# “Barber writes, ‘Big government has always been an ally of the little guy.’ I wonder, on what planet?”

of Rights. (I reviewed their book at greater length in the Fall 1999 *Cato Journal*, available at [www.cato.org](http://www.cato.org).) They believe that rights are grants from the state and that “all legal rights are, or aspire to be, welfare rights” (p. 222). According to Holmes and Sunstein, “Rights are costly because remedies are costly. Enforcement is expensive, especially uniform and fair enforcement; and legal rights are hollow to the extent that they remain unenforced. Formulated differently, almost every right implies a correlative duty, and duties are taken seriously only when dereliction is punished by the public power drawing on the public purse” (p. 43). Even “the right against being tortured by police officers and prison guards” (p. 44) is, contrary to traditional liberal thinking, not a “negative” right not to be harmed, but a “positive” right to have monitors hired by the state to supervise the police officers and prison guards: “A state that cannot arrange prompt visits to jails and prisons by taxpayer-salaried doctors, prepared to submit credible evidence at trial, cannot effectively protect the incarcerated against torture and beatings. All rights are costly because all rights presuppose taxpayer-funding of effective supervisory machinery for monitoring and enforcement” (p. 44).

That is but one example of the logical chaos of their alternative to libertarianism, for their theory generates an infinite regress. They argue that I cannot have a right not to be tortured by the police unless the police have an obligation not to torture me, and the police can have an obligation not to torture me only if there are some taxpayer-funded persons (monitors) above the police who will punish them (since “duties are taken seriously only when dereliction is punished by the public power drawing on the public purse”). But do I have a right that the monitors exercise their power to punish the police for torturing me? According to Holmes and Sunstein, I would have such a right only if the monitors had a duty to punish the police, and the monitors would have a duty to punish the police only if there were some other taxpayer-funded persons above the monitors who could (and would) punish the monitors for failing to punish the police, and so on, ad infinitum. For there ever to be a right of any sort, by their reasoning, there would have to be an infinite hierarchy of people threaten-

ing to punish those lower in the hierarchy. Since there is no infinite hierarchy, what Holmes and Sunstein have offered is, not a more sophisticated understanding of rights, but an argument that rights are impossible: If there are rights, then there must be an infinite hierarchy of power; there is not an infinite hierarchy of power; therefore there are no rights.

## A Serious Critique

I finish with one of my favorite books of the year, *The Myth of Liberal Individualism*, a truly thoughtful critique that grapples with libertarian ideas seriously. By thinking through his careful arguments, I learned a good deal from Colin Bird of the University of Virginia, who notes that “it is libertarian, not communitarian, ideas that have had a more direct impact on the politics of the Western countries over the past twenty-five years” but warns that “the secret of libertarianism’s recent success lies precisely in its appeal to an alliance between liberalism and individualism, an alliance that even the critics of liberalism have so far been unwilling to question” (p. 19). For Bird, that alliance is “an unstable alliance of antagonistic principles and ideals” (p. 3) concocted by “cold war liberals” (Mises, Popper, Hayek, and Berlin) to combat Nazi and Bolshevik totalitarianism.

According to such “cold war liberals,” Bird claims, collectivism rests on an untenable belief in a kind of collective entity; but if you don’t believe in collective entities, you’re an individualist, and if you’re an individualist, you have to be a liberal. Bird, however, attempts to deny the connection between liberalism and individualism (which merely reflects “the confusion of cold war rhetoric” [p. 25]); I don’t believe that he succeeds, but in the process of trying he offers a very thoughtful exploration of what individualism means. Although his project involves “liberating us from these cold war assumptions about the priority of the individual over the collectivity,” the argument “is in no way intended as an apology for those regimes that have inflicted horrifying injustices on individuals in the name of a certain view of the common good” (p. 46). Here I believe that Bird has erred, for the fact that collectivist regimes *exterminated* millions of people (e.g., allegedly racial or class enemies) implies that their “view of the common

good” did not refer to a *good common to all of the individuals*. It must instead have referred to the good of a collectivity that exists in some way independent of the individuals, who are dispensable, or to the good of a race, nation, or class whose good is opposed to that of “its” enemies. The Holocaust and the Gulag resulted, not merely from an erroneous “view of the common good,” but from an idea of the *Volk* or the proletariat as collective entities that necessarily excluded Jews, liberals, capitalists, rival collectivists, and others as implacable enemies and that considered even constituent individuals as purely dispensable means to its own ends. (It should also be noted that the arguments connecting individualism and liberty were formulated long before the Cold War, although Bird seems unaware of this.)

Bird considers liberal individualism a “myth” because “there may be no way for a set of public principles to remain neutral about how one ought (not) to act towards oneself *and* for them to embody a claim about the moral inviolability of individuals strong enough to underwrite the ideal of inviolable libertarian rights” (p. 183). That is to say, if you articulate reasons why individuals should be respected, then you cannot consistently argue that those reasons should not be used to override the choices of individuals; if the value of autonomy is the reason we should respect rights, then using your rights to undermine your own autonomy (by becoming intoxicated, for example) is not an allowable use of your rights. On the other hand, if rights are primary and to be respected, then we should violate rights whenever their violation would result in a net diminution of rights violations. I did not find Bird’s argument persuasive, for more reasons than I could develop here (wait for my longer review elsewhere), but I found his arguments far more challenging and well crafted than others I have read recently.

## Conclusion

A movement that calls forth lively criticisms is a movement that is alive and well. The more critiques, the better off libertarians are, especially if they take note of the critiques and learn from them. Who knows, we may be wrong, and a commitment to truth should keep us open to that possibility. ■

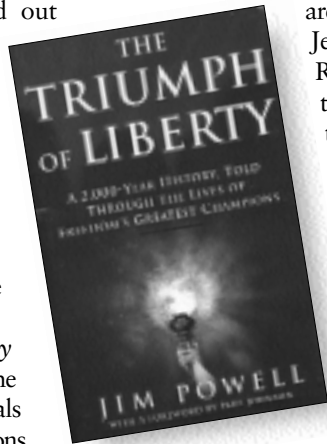
*“A 2,000-Year History, Told through the Lives of Freedom’s Greatest Champions”*

## The Individuals Who Gave Us Liberty

Liberty is a rare and precious thing,” says Cato senior fellow Jim Powell in the introduction to his new book, *The Triumph of Liberty*. Slavery was universal right up to the 20th century; constraints on feudal landowners were the exception; and government killing on an unimaginable scale wiped out entire populations for centuries.

“How, amid such recurring horrors,” Powell asks, “did some people manage to break free? What is the role of ideas in the history of liberty? How much difference can one person make?”

*The Triumph of Liberty* seeks answers by exploring the lives of remarkable individuals who made crucial contributions to liberty during the past two thousand years. “They made it possible for millions of us to do what was unthinkable in past ages: enjoy life, liberty, and the pursuit of happiness,” Powell writes.



As historian Paul Johnson notes in the book’s foreword, “Jim Powell is doing more than anyone else I know to tell the thrilling story of liberty.” Powell, editor of Laissez Faire Books, tells that story by examining what some of history’s greatest freedom fighters thought and how they lived. Some are familiar to us all, such as Locke, Jefferson, Tocqueville, Mises, Rand, and Friedman. Powell also tells of Cicero, who stood up for the higher law and was killed; John Lilburne, who petitioned for the rights of Englishmen and was imprisoned for most of his adult life; William Gladstone, who worked for peace and free trade; and former slave Frederick Douglass, who offered his personal testimony to the horrors of slavery.

Powell reminds us of some lesser known views and anecdotes—John Locke in 1693 objected to government schools and recommended that parents home school their children to nurture the unique genius of each child; Mark Twain, often denounced as

a racist, heaped lavish praise on Chinese immigrants and presided at a large gathering in support of Booker T. Washington and self-help among blacks; at the age of four Adam Smith was briefly abducted by gypsies.

“A terrific read about fascinating people and their ideas, one inspiration after another,” says John Stossel of ABC News. Powell reminds us that individuals make history: Individuals like brilliant scholars and political leaders and aristocrats, but also individuals like the brewer-turned-agitator Sam Adams, the housewife Elizabeth Cady Stanton, and the teacher Maria Montessori.

“A generation of American children are being taught that Malcolm X, Ralph Nader, Gloria Steinem, and William Kunstler are heroes. Please read *The Triumph of Liberty* to your kids. Or go to their school and hit a teacher over the head with it,” says P. J. O’Rourke, Mencken Research Fellow at Cato.

*The Triumph of Liberty: A 2,000-Year History, Told through the Lives of Freedom’s Greatest Champions* by Jim Powell, published on July 4 by the Free Press, is available for \$34.95 from bookstores, online services, or Cato Institute Books at 1-800-767-1241. ■

## The Progress of Global Capitalism

After two world wars, the Great Depression, and experiments with socialism, the world economy again resembles the liberal economic order that began in the 19th century. Capitalism made the 20th century one of unrivaled prosperity, yet critics still fault markets for spreading instability and poverty—citing financial crises in Asia and Russia as evidence. When the Russian ruble fell in August 1998, financier George Soros asserted that “right now, market fundamentalism is a greater threat to open society than any totalitarianism.”

A new Cato Institute book, *Global Fortune: The Stumble and Rise of World Capitalism*, assesses such claims, proposes improvements to the international financial system, and evaluates the prospects that the recent conversion to global capitalism will be sustained.

Rudiger Dornbusch of MIT notes in his chapter that the 20th century was a time of unrivaled prosperity not only for rich countries but also for mankind in general. By most measures, “1900 was the stone age compared with where we stand today,” Dornbusch observes. To keep the world economy on the right track, he advises “a heavy dose of prosperity policies,” including deregulation in Europe and a more expansionary monetary policy in Japan.

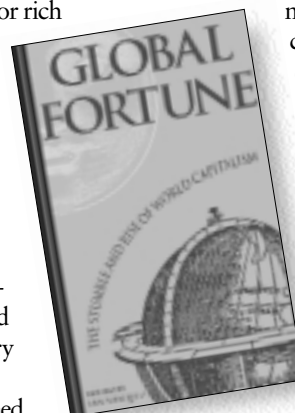
Mario Vargas Llosa, acclaimed novelist and former Peruvian presidential candidate, explains in his chapter that “it is liberaism—more than any

other doctrine—that symbolizes the extraordinary advances that liberty has made in the long course of human civilization.” Even though classical liberalism has won the great battle of ideas over various forms of totalitarianism, Vargas Llosa warns against complacency.

Deepak Lal, a Cato adjunct scholar and the James S. Coleman Professor of International Development Studies at the University of California, Los Angeles, cautions both developed and developing countries that there is no third way between

the free market and socialism. In contrast with Vargas Llosa, however, Lal finds no

*Continued on page 15*



*The future of U.S.-China relations*

# China Needs Liberalism to Prosper

Whether China's future is as a constructive partner or an emerging threat ultimately will depend "on the fate of liberalism in China: a liberal China will be a constructive partner; a nationalistic and authoritarian China will be an emerging threat," writes Liu Junning, an independent scholar in Beijing and one of the contributors to a new Cato Institute book edited by Ted Galen Carpenter and James A. Dorn, *China's Future: Constructive Partner or Emerging Threat?*

Relations between China, Taiwan, and the United States remain a diplomatic flash point. In an examination of those relations, Carpenter, vice president for defense and foreign policy studies at Cato, notes that "Washington's policy toward the People's Republic of China is increasingly notable for its lack of consistency and clarity." If U.S. leaders continue trying to keep China's neighbors dependent on the United States for their security, "the United States will either end up in an armed struggle with the PRC for dominance in East Asia or be compelled to relinquish power to the region's new hegemon."

Kate Xiao Zhou of the University of Hawaii at Manoa argues that China is experiencing a "spontaneous" civil rights movement. Participants "follow no leaders and formulate no explicit credo or doctrine." William McGurn of the *Wall Street Journal* writes that China has opened, not because its leaders want it to, but because modernization is necessary for the country to survive.

Several authors agree that China needs to make more political and economic reforms if it is to become a prosperous democratic country in the first decades of the 21st century. Minxin Pei, senior associate at the Carnegie Endowment for International Peace, argues that while the Chinese Communist Party last year celebrated its 50th year of socialist control, it must thank market reforms for its continued survival: "Pro-market reforms under Deng have seriously eroded the broad social base of the CCP. This change has come about, ironically, precisely because of the relative success of the economic reform in the post-Dung era." Hong Kong University economist David Li writes that reformers in China at times are obsessed with short-term issues when they should be pushing for long-term reforms.

Trade, security, and human rights are also discussed by several of the book's contributors. Dorn, vice president for academic affairs at Cato, argues that China needs a "constitution of liberty" to provide citizens protection from the government. James R. Lilley, former U.S. ambassador to the People's Republic of China, argues that the immediate U.S. priority "should be WTO entry for China and Taiwan. The United States needs to realize that it is imperative that China and Taiwan enter the WTO as closely together as possible."

In an evaluation of China's relationship with Hong Kong, Martin Lee warns that "in Hong Kong, unfortunately, we are beginning to lose our freedoms"—political, economic,



and religious. Lee, chairman of the Democratic Party in Hong Kong, asks, "Why don't [China's leaders] look at Hong Kong, where we still have a pretty good system of law, although it is beginning to go down the slippery slope? If we can keep what we have ... we would be able to provide a shining example for China."

*China's Future: Constructive Partner or Emerging Threat?* (\$10.95 paper, \$19.95 cloth) can be purchased by calling Cato Institute Books at 1-800-767-1241 or via the Cato online bookstore, <http://www.cato.org>. ■

## GLOBAL FORTUNE *Continued from page 14*

necessary connection between democracy and development. According to Lal, developing nations can modernize without westernizing. People in poor countries can easily adapt to, and are eager to attain, economic freedom, but "cosmological beliefs" take longer to evolve and may not be consistent with many values the West wishes to advance.

One key issue analyzed is the future of the International Monetary Fund. Ian Vásquez, director of Cato's Project on Global Economic Liberty and editor of the book, contends that the IMF has become a burdensome third party in the resolution of international debt and financial crises. He calls for direct negotiations between debtors and creditors in which market institutions—insurance, credit, and surveillance—would do much more to stabilize the global financial system than would continued interventions.

Andrei Illarionov, of the Institute of Economic Analysis in Moscow and a key economic adviser to Russian president Vladimir Putin, writes that competing groups that have come to power have preserved the state's role in post-Soviet Russia's economy and used it to redistribute the country's resources to themselves and their allies.

The IMF's proposed role as a "lender of last resort" is addressed by several of the book's contributors. Onno de Beaufort Wijnholds and Arend Kapteyn of the IMF argue that the fund should return to its core function of being an indispensable lender. They contend that there is a "middle ground" between the IMF's being the lender of last resort and being abolished. Lawrence H. White of the University of Georgia notes that there may be times when a lender of last resort is necessary but that the lender shouldn't be a government agency. He concludes that developing countries would be better off without the IMF.

Brink Lindsey, director of Cato's Center for Trade Policy Studies, says that the move to globalization is a recognition that centralized state control has failed.

Frank Gavin of the University of Virginia writes that myths have led some policymakers to call for a return to the Bretton Woods system, which, Gavin contends, was "flawed from the beginning."

*Global Fortune: The Stumble and Rise of World Capitalism* edited by Ian Vásquez can be ordered in cloth (\$18.95) or paper (\$9.95) by calling Cato Institute Books at 1-800-767-1241 or through the Cato Institute's online bookstore at [www.cato.org](http://www.cato.org). ■

◆ **Trying to spend like the government**

Nearly half of the schools participating in Milwaukee’s private school choice program had to return money to the state last year—in two cases, more than \$100,000 each—because, hard as they tried, they couldn’t spend the \$4,894 they were given to educate each of their choice students, records show.

As Milwaukee Public Schools officials prepare to approve a budget for 2000–’01 that comes to about \$9,500 per student, audits of schools in the choice program show they are struggling to spend just half of what is spent by their public counterparts.

“We don’t have to pay for a huge administration and a lot of red tape,” said Lois Maczuzak, an administrator at St. John Kanty School, ...which spent \$3,096 to educate each student, making it the lowest-cost school in the choice program.

Under the program, which lets low-income students attend private and religious schools at taxpayer expense, students in 1998–’99 received vouchers worth either \$4,894 or the choice school’s cost to educate each pupil, whichever was less. This year, the vouchers are worth slightly more than \$5,000.

—*Milwaukee Journal Sentinel*, May 21, 2000

◆ **Busy giddy minds with foreign quarrels lest they look too near unto my state**

Federal investigators have uncovered evidence that some of them believe is sufficient to indict Gen. Augusto Pinochet for conspiracy to commit murder in the 1976 car bombing that killed a former Chilean diplomat and opposition politician, Orlando Letelier, on Washington’s Embassy Row...

Attorney General Janet Reno is committed to pursuing the investigation... “She is extremely committed to seeing that justice is done in the case...” a senior Justice Department official said.

—*Washington Post*, May 28, 2000

◆ **Try to find authorization in the Constitution for any Gore position**

Vice President Gore today kicked off a series of speeches on his “family agenda,” ...announcing a proposal to increase funding for after-school programs by \$11 billion over 10 years. . . .

Next week, Gore plans speeches on cancer prevention, mental health and fatherhood.

—*Washington Post*, May 26, 2000

◆ **Warning: bureaucrat shortage looms**

The federal government is facing a people crisis.

Within five years, about 30 percent of the government’s 1.6 million full-time employees will be eligible to retire. An additional 20 percent could seek early retirement.

While not all will bolt at once, the government seems assured of a huge talent drain at the start of a new century.

—*Washington Post*, May 7, 2000

◆ **Good ideas from India**

A federal appeals court today struck down Ohio’s state motto, “With God, All Things Are Possible,” saying it illegally shows a preference for Christianity over other religions...

The motto...was posted on the Capitol during the tenure of Gov. George Voinovich.

Voinovich, now a senator from Ohio, said he got the idea to place the motto on the Ohio statehouse during a trade mission to India where he saw a government building with the slogan “Government Work Is God’s Work.”

—United Press International, April 25, 2000

◆ **My text for today: there is no controlling legal authority**

Vice President Al Gore gave the commencement address at Columbia Law School in New York on Tuesday.

—*Today*, NBC News, May 17, 2000

◆ **It’s true: every clown has a lobbyist**

On behalf of Ringling Bros. and Barnum & Bailey I object to the characterizations of the circus and performing elephants by Rep. Sam Farr.

—Letter from Joan Galvin, vice president, government relations, Feld Entertainment Inc., in the *Washington Post*, April 10, 2000

◆ **Of course, it’s illegal to own any gun in Washington**

A feud between youths at the National Zoo [in Washington] ended in a hail of gunfire Monday evening. . . .

About an hour after the shooting, Vice President Al Gore announced the shootings at a Democratic fund-raiser in New York City, bringing gasps from the audience that included actress Lauren Bacall. “We really need to have mandatory child safety trigger locks,” Gore told the crowd.

—Associated Press, April 24, 2000

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