

## City of Angels, Valley of Rebels

by **Geoffrey F. Segal**  
and **Samuel R. Staley**

**T**he American republic owes its existence to the idea that government is legitimate only when it can secure the consent of the governed and that a group dissatisfied with that government may, in the words of the Declaration of Independence, “dissolve the political bands which have connected them” to a political community. This November a group of self-styled revolutionaries in Los Angeles’s San Fernando Valley will test their fellow citizens’ commitment to that principle, when Angelenos vote on whether to allow the valley to break away from LA to become the sixth largest city in the United States.

The valley, a sprawling section of the city on the north side of the Santa Monica Mountains, houses 1.3 million people and encompasses half the city’s land. The area has long had its own sense of civic identity, and a majority of its denizens—about 52 percent at last count—believe they would be better off striking out on their own. But that alone won’t be enough to bring about a separation: a majority of residents citywide will have to be convinced that splitting up is a good idea as well. To realize their independence, secessionists will have to convince a significant portion of the population outside the valley that they should be allowed to leave.

What makes the secession conflict especially bitter is that many Angelenos oppose separation for precisely the same reasons

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**Rep. Jeff Flake (R-Ariz.) argues that the ban on trade with Cuba has failed to dislodge Fidel Castro and that free trade would be more effective at undermining repression, at a Cato Policy Forum on July 23. Dan Griswold of Cato’s Center for Trade Policy Studies chairs the Forum.**

that valley dwellers favor it. Secessionists, in a declaration of independence that echoes the language of Jefferson’s original, cite a “long train of abuses and usurpations” the valley has suffered at the hands of LA’s downtown establishment. High on the list is the persistent gap between what the valley pays the city in taxes and the services it receives. Over the past two years alone, valley taxpayers subsidized the rest of LA to the tune of \$124 million, paying an annual average of 6.3 percent more than they got back in services. In short, the politics running the city provide the basic services necessary to make their downtown stomping grounds livable but leave many other communities feeling disenfranchised by city interest groups and bureaucracies.

Much as the disparity between taxes and services vexes secessionists, the prospect of losing the valley cash cow—and the influence in lobbying for federal funds it brings—frightens other Angelenos even more. Only about 29 percent of voters outside the val-

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# Two Simple Cures for What Ails America



**E**nron, WorldCom, and company failed by making unusually bad business decisions, *not* by violating accounting standards. Almost all of the public debate about the failure of these large corporations, however, has focused on how to improve accounting standards and auditing procedures with little attention to the effects of other government policies on the reasons why corporations fail. Without changes in the policy-related conditions that contribute to corporate failure, improved accounting rules and auditing procedures

will accelerate bankruptcies with little effect on their frequency or magnitude. A blatant violation of accounting rules clearly offends the general public and the political community, but the losses to a corporation's investors, creditors, employees, and local communities are more directly related to the failure of the corporation than to the measures its managers may have taken to delay recognition of its financial weakness.

Corporations go bankrupt when they can no longer meet their obligations to their creditors. This, in turn, is a result of some combination of unusually risky investments and unduly high debt. Bankruptcy is part of the process of reallocating capital; the optimal number of bankruptcies is not zero because the interests of the broader economy are served by corporations being willing to take some risks and to use some amount of debt finance. The primary policy problem is that the current U.S. tax code *increases* the conditions that lead to corporate bankruptcy. The corporate earnings subject to tax, for example, exclude interest payments but not dividends; this leads corporations to use more debt finance than would be the case if the tax treatment of interest and dividends were the same. The combined federal and state corporate income tax rate in the United States is now the fourth highest among the industrial nations, so one should expect American corporations to be relatively dependent on debt finance. Second, for most investors, the tax rate on dividend income is much higher than the rate on long-term capital gains; this leads corporations to rely more on retained earnings and capital gains than on dividends as the return to equity. This bias also leads to several other adverse effects—reducing the cash-flow discipline to meet dividend payments, increasing the incentive to inflate the stock price, and increasing the role of corporate managers relative to investors in the allocation of capital.

The simplest direct way to reduce these tax-related problems is to allow corporations to deduct one-half of their dividend payments from the earnings subject to the corporate income tax. This

would make the combined corporate and personal tax rate on capital gains and dividends about the same for most investors without changing any other feature of the corporate or personal income tax code, roughly eliminating those adverse conditions attributable to the current difference in these rates. Over the past several years, in addition, this would have reduced corporate income tax liability by about \$60 billion a year, substantially reducing the bias in favor of debt finance. Other tax revenues, of course, would increase—due to an improved allocation of capital, increased corporate investment, and higher personal income tax revenues from increased dividend payments. For those who would otherwise be opposed to reducing corporate income tax liability or considering any supply-side benefits of lower tax rates, Cato has long maintained a list of federal corporate welfare spending, the elimination of which would more than offset the reduction of corporate income tax liability.

A second important problem is that both the federal and state governments have passed an accumulation of laws that protect

corporate management against the interests of the general shareholders. The first and most important of these laws is the federal Williams Act of 1968, which requires any person or group that acquires more than 5 percent of the shares of a corporation to provide extensive information within 10 days to the corporation, the exchanges, and the Securities and Exchange Commission, including “if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities,” and increased the authority of the SEC to regulate tender offers. Following this act, the number of

hostile takeovers declined substantially in the 1970s and, following a series of court decisions and state anti-takeover laws beginning in the late 1980s, the number of hostile takeovers again declined substantially in the 1990s. The primary protection of general shareholders against an abuse of authority by corporate management has been substantially eroded by public policy. The second simple cure for what ails American corporations is to begin to reverse this process by repealing the Williams Act of 1968.

A candidate for Congress who endorses these two simple cures—the deduction of one-half of dividends from the earnings subject to the corporate income tax and the repeal of the Williams Act of 1968—would be among the few to demonstrate that they understand what happened to American corporations and the most important policy changes to restore their financial health and integrity.

—William A. Niskanen

**“The primary policy problem is that the current U.S. tax code increases the conditions that lead to corporate bankruptcy.”**

Lynch: "Preserving Our Liberties While Fighting Terrorism"

# Study: Regulations Cost \$854 Billion a Year

Regulations cost the U.S. economy \$854 billion, a full 8.4 percent of gross domestic product, reports Clyde Wayne Crews Jr., Cato's director of technology studies, in the 2002 edition of "Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State." The good news here is that the 2001 *Federal Register* contained "only" 64,431 pages, down 13.2 percent from the previous year. The lure of regulation, suggests Crews, is that it allows Congress to hide the true costs of policies by forcing the private sector to do "for free" that which would otherwise require a tax-funded government agency. To curb regulatory excess, Crews says citizens should demand "no regulation without representation," requiring legislators to confirm new regulatory rules and to publish more precise estimates of annual regulatory costs.

## ◆A Garrison State Won't Stop Terror

The reflexive response of legislators to terrorist attacks on the United States has been a near unanimous call for expanded federal law enforcement powers. But, warns Timothy Lynch, director of Cato's Project on Criminal Justice, there is every indication that proposed anti-terrorism measures

are more likely to invade citizens' privacy and invite abuse than to actually prevent terrorism. In a recent Cato study, "Breaking the Vicious Cycle: Preserving Our Liberties While Fighting Terrorism" (Policy Analysis no. 443), Lynch outlines a series of new powers sought by the president, including expanded authority to arrest, prosecute, deport, and eavesdrop on suspected terrorists, unhindered by traditional judicial checks. As a bulwark against expansion, Lynch suggests three procedural safeguards: the division of "gigantic anti-terrorism legislative 'packages'" into discrete bills, a significant delay between the proposal and passage of new measures, and the incorporation of sunset provisions into laws authorizing new powers.

## ◆Military Reform Vanishes into "Iron Triangle"

Attempts to reform the U.S. military were killed early in 2001 by the "iron triangle of Congress, the defense industry, and the Pentagon bureaucracy," and prospects for transformation remain poor, according to Ivan Eland, Cato's director of defense policy studies, and David Isenberg, a senior analyst at Intellibrige. In a new Cato study, "Empty Promises: Why the Bush Admin-

istration's Half-Hearted Attempts at Defense Reform Have Failed" (Policy Analysis no. 442), Eland and Isenberg compare President Bush's emphasis on military reform in the 2000 campaign with his administration's meager steps



Ivan Eland

toward that goal. During the campaign, Bush emphasized the need to invest in next-generation military technologies and to make forces lighter, more agile, and more readily deployable. But, say the authors, by the time of the most recent Quarterly Defense Report, the rhetoric of transformation had been supplanted by a strategy of incremental fiddling and deferring important decisions.

## ◆Regulators Seek to Keep Airlines Offline

The Internet travel agency Orbitz has become the victim of an "assault on e-commerce being conducted by middlemen who fear erosion of monopoly market power," writes Competitive Enterprise Institute fellow James V. DeLong in a new Cato study, "Online Travel Services:

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Capitol Hill Briefings on terrorism, tax competition, and school choice

# Should We Have Access to Smallpox Vaccine?

◆ **June 4:** The government's plan for containing smallpox will not work in a dense, mobile society, said William J. Bicknell at a Cato Policy Forum, "**Bioterrorism and Smallpox: Ring Containment, Mass Vaccination, or Individual Choice?**" Bicknell, a professor at Boston University's School of Public Health, argued that citizens should be allowed to obtain the vaccine now, as did Charles Peña, Cato's senior defense policy analyst. Richard Levinson of the American Public Health Association endorsed mandatory mass inoculation, but Jonathan Tucker, author of *Scourge: The Once and Future Threat of Smallpox*, cited vaccine complications as a reason for caution.

◆ **June 6:** OECD economist Stefan Tangermann summarized the organization's annual study of national agricultural policies at a Cato Policy Forum, "**Global Farm Subsidy Levels and U.S. Farm Bill Fallout.**" He reported that market-distorting subsidies have decreased, but remain prevalent. Chris Edwards, Cato's director of fiscal policy studies, blasted the recent U.S. farm bill's agricultural subsidies, as did Dan Griswold, associate director of Cato's Center for Trade Policy Studies.

◆ **June 7:** Cato's senior defense policy analyst Charles Peña and fiscal policy analyst Veronique de Rugy delivered a Cato Institute Hill Briefing, "**Defending against Bioterrorism: An Ounce of Prevention,**" at which they made the case for public access to the smallpox vaccine. Peña warned that a bioterror attack could be far more devastating than even chemical or nuclear attacks, and De Rugy argued that a partially immunized population would lighten the burden on public health workers and slow the disease's spread.

◆ **June 12:** A Policy Forum on proposals to require companies to employ anti-piracy technology asked: "**Digital Copy Protection: Mandate It? Ban It? Or Let the Market Decide?**" Rick Lane of News Corporation, and Stewart Verdery, a lawyer for Vivendi Universal, insisted that such requirements were necessary to protect the entertainment industry. Verizon's Sarah Deutsch, Digital Media Association's Jonathan Pot-

ter, and Jonathan Zuck of the Association for Competitive Technology argued for voluntary standards, saying technology mandates would stifle innovation.

◆ **June 14:** At a Cato Institute Hill Briefing, "**Future Enemies in the Ever-Expanding War on Terrorism: Iraq and Who Else?**" two Cato scholars cautioned against widening America's war on terrorism. Ivan Eland, director of defense policy studies, predicted that intervention would only feed anti-U.S. sentiment. Senior defense policy analyst Charles Peña argued that Saudi Arabia was capable of containing Iraq and that an invasion could make Saddam Hussein dangerously desperate.

◆ **June 17:** Selig S. Harrison, author of *Korean Endgame: A Strategy for Reunification and U.S. Disengagement*, spoke at a Cato Book Forum on "**Reducing Tensions on the Korean Peninsula,**" where he argued that, via a series of "synchronized quid pro quos" with the North, the United States could gradually withdraw from the region. Ted Galen Carpenter, Cato's vice president for foreign policy and defense studies, supported military withdrawal but said it should not be contingent on North Korean concessions.

◆ **June 19:** At a Cato Policy Forum on "**Election Reform and Voting Fraud,**" Sen. Christopher Bond (R-Mo.) proposed new legal obstacles to electoral fraud, such as a requirement that voters present photo identification at the polls. *Wall Street Journal* columnist John Fund decried a growing trend toward absentee voting, and the NAACP's Hilary Shelton objected that proposed anti-fraud measures would harm traditionally disenfranchised groups.

◆ **June 19:** Tom Miller, director of health policy studies at the Cato Institute, and two other researchers spoke at a Cato Policy Forum, which asked "**Will More Health Insurance Improve Health Outcomes?**" Their surprising answer: not significantly. Miller critiqued studies purporting to show a correlation, and Ohio State University sociologist John Mirowsky and Theodore Pincus, professor of medicine at Vanderbilt University, presented the results of their

own research showing insurance to be far less important a predictor of health than education and socioeconomic status.

◆ **June 26:** Cato fiscal policy analyst Veronique de Rugy and Heritage Foundation fellow Daniel J. Mitchell looked at the ways U.S. tax policy hobbles American firms in a global economy at a Cato Hill Briefing, "**Greener, More Competitive Pastures: When U.S. Companies Flee the High U.S. Corporate Tax Burden.**" The United States, said de Rugy, presumes to tax the income earned abroad by American firms at a high rate. Mitchell characterized that as a "Dred Scott" strategy, which seeks to make companies the "permanent property of the U.S. government."

◆ **June 27:** The travel website Orbitz has come under severe antitrust scrutiny because many airlines have agreed to list any fare they make publicly available. At a Cato Policy Forum, "**Antitrust Flies High: Is the Orbitz Investigation Good News for Consumers?**" Orbitz's general counsel Gary Doernhoefer pointed out that airlines are free to make the same deal with any other site, but Thomas M. Lenard of the Progress and Freedom Foundation and Andrew B. Steinberg, formerly of Travelocity.com, attacked the arrangement as an attempt to monopolize Internet ticket sales. Competitive Enterprise Institute senior fellow James V. DeLong characterized the Orbitz controversy as an attempt to squelch compe-



At a Cato Hill Briefing on June 26, Veronique de Rugy points out to congressional staffers that high and complex corporate taxes are encouraging U.S. corporations to move their headquarters abroad.

tion, and the Progressive Policy Institute's Robert D. Atkinson praised Orbitz's efficiency.

◆ **June 28:** The Cato Institute's executive vice president David Boaz spoke on the progress of human freedom at a Cato Hill Briefing dedicated to his recent Cato book, *Toward Liberty: The Idea That Is Changing the World*. Boaz observed that, while classical liberalism is not yet triumphant, many authoritarian ideas popular in 1977 have been utterly discredited. He closed with a survey of the core ideas of libertarianism.

◆ **July 8:** At a Cato Hill Briefing, "Where Do We Go from Here? The U.S. Supreme Court and the Future of School Choice," Institute for Justice lawyer Richard Komer; Kaleem Caire of the American Education Reform Council; and David Salisbury, director of Cato's Center for Educational Freedom, outlined the next steps for education reformers following the Court ruling that vouchers are constitutional. Komer discussed state court challenges, and Caire focused on ways to mobilize grassroots support for choice. Salisbury predicted that many different programs would arise from the states' "50 laboratories of democracy."

◆ **July 10:** Following a decision by the Internal Revenue Service to let employees roll over funds in tax-exempt savings accounts for medical expenditures from year to year, a Cato Policy Forum asked, "Will New IRS Tax Rules Put Health Care Consumers in the Driver's Seat?" Rep. Jim DeMint (R-S.C.) hoped that the ruling signaled the start of a shift to consumer-driven health care markets. Doug Kronenberg of Lumenos, Michael Showalter of Definity Health, and Charles Klippel of Aetna all said that consumers become "hungry for information" when given greater control over their own care. Paul Fronstin of the Employee Benefit Research Institute worried that incentives in insurance markets would remain skewed absent further reforms.

◆ **July 11:** Economist Charlotte Twight spoke at a Cato Book Forum devoted to her penetrating analysis of government expansion,

**Thompson Ayodele, director of the Institute of Public Policy Analysis in Nigeria, and James Shikwati, director of the Inter Region Economic Network in Kenya, discussed their efforts to set up free-market think tanks in Africa at a Cato Roundtable Luncheon in May.**



**Sen. Christopher Bond (R-Mo.) talks about the problem of election fraud at a Cato Policy Forum on June 19. John Samples, director of Cato's Center for Representative Government, moderates.**

*Dependent on D.C.: The Rise of Federal Control over the Lives of Ordinary Americans.* The book, Twight said, endeavors to explain why government grows even when popular sentiment opposes increases in state power. *Newsday* columnist James Pinkerton praised the book's exposé of rampant "bureaupreneurialism."

◆ **July 12:** At a Cato Hill Briefing, "Profiling and National IDs: Security and Freedom in a Free Society," Cato's senior fellow in constitutional studies Robert Levy argued that ethnic or religious "profiling" might be permissible in some cases, subject to constitutional constraints. Timothy Lynch, director of Cato's Project on Criminal Justice, said that a national ID card would reduce Americans' privacy without thwarting terrorists, and author Charlotte Twight offered historical examples of innocuous-seeming laws that grew incrementally more intrusive.

◆ **July 16:** Matthew Myers of the Campaign for Tobacco-Free Kids and Carlos Angulo of Zuckerman Spaeder LLP accused tobacco companies of making incomplete, misleading, and even false advertising claims at a Cato Policy Forum, "Ads for Reduced-Risk Tobacco: Public Scourge or Protected Speech?" Erik S. Jaffe, chair of the Federalist Society Subcommittee on Advertising Law and Regulation, and American Enterprise Institute scholar John E. Calfee

argued tort law, rather than prior vetting of ads, was the proper remedy.

◆ **July 18:** The Individuals with Disabilities in Education Act may have alleviated the systematic neglect of disabled children in public schools, but at a Cato Hill Briefing, "Troubled IDEA: Perspectives on Federal Special Education Law Reform," Rep. Tom Tancredo (R-Colo.) and Chester E. Finn Jr. of the Thomas B. Fordham Foundation said that it had also paralyzed local special education programs with procedural requirements. Cato Scholars Marie Gryphon and David Salisbury highlighted problems with the program's dispute resolution mechanism and the relative success of voucherlike alternatives. Steve Bartlett, a member of the Presidential Commission on Excellence in Special Education, advocated a shift from procedural to results-based evaluations.

◆ **July 19:** Cato senior fellow Patrick J. Michaels and director of natural resource studies Jerry Taylor examined the threat of human-driven climate change and the wisdom of proposals to mitigate it at a Cato Hill Briefing, "Global Warming: Rational Science, Rational Policy." Michaels charged that advocates of environmental regulation have overstated the likely magnitude of the problem, and Taylor argued that the costly measures supported by environmentalists would only negligibly decrease warming. ■

# Security and Freedom in a Free Society

**O**n July 12 the Cato Institute held a Hill Briefing for congressional staff members in the Rayburn House Office Building. Cato senior fellow Robert A. Levy; Timothy Lynch, director of Cato's Project on Criminal Justice; and adjunct scholar Charlotte Twight, author of *Dependent on D.C.: The Rise of Federal Control over the Lives of Ordinary Americans, discussed racial profiling and national identification cards. Excerpts from their remarks follow.*

**Robert A. Levy:** Racial or ethnic profiling involves the selection by law enforcement officers of persons for investigation or some stronger action on the basis of race or nationality or ethnicity. To shed some light on the profiling question, let's examine whether it is hypocritical for African Americans to oppose profiling blacks in the war against crime but favor profiling Arabs in the war against terrorism. According to the Gallup organization, 71 percent of African Americans approve profiling Arabs to combat terrorism. By contrast, an overwhelming percentage of African Americans condemns racial profiling in the war against crime. Do those two seemingly contradictory positions suggest that there is some underlying hypocrisy? Not necessarily.

The legitimacy of profiling depends on the answers to three questions.

First, how important is the objective of the profile? The gain from a criminal profile can range from, at the low end, identifying a drug dealer, to, at the high end, capturing a serial murderer. The gain from a terrorist profile might reach from halting an airline hijacking that involves a couple of hundred people to preventing a madman from using a weapon of mass destruction.

The potential benefit of a criminal profile, which I don't mean to trivialize, extends at most to saving a small number of lives. That pales in comparison with the potential benefit of a terrorist profile, which can contribute to saving thousands, or hundreds of thousands, of lives. So it seems to me, on that ground alone, rational to scrutinize criminal profiling more rigor-

ously than terrorist profiling.

The second question is, how effective is a racial or ethnic profile likely to be in stopping crime or terrorism? Consider that all the 9/11 terrorists were reportedly of Middle Eastern descent. All criminals, obviously, are not African Americans.

Thus, other things being equal, the fit of a terrorist profile that includes ethnicity is likely to be tighter than the fit of a criminal profile that includes race. Despite that, we have airport screeners performing random searches on 80-year-old women, little kids, airline pilots with proper IDs, and even members of the president's security detail.

There have been eight major terrorist acts against the United States and its allies



**Robert Levy:** "Other things being equal, the fit of a terrorist profile that includes ethnicity is likely to be tighter than the fit of a criminal profile that includes race."

over the past 30 years. In 1972, 11 Israeli athletes were killed at the Munich Olympics. In 1979 the embassy in Iran was seized. In 1983 the Marine barracks in Beirut was blown up. In 1988 Pan Am Flight 103 was bombed. In 1993 the World Trade Center was bombed. In 1995 a federal office building in Oklahoma City was destroyed. In 1998 our embassies in Kenya and Tanzania were bombed. And on September 11 we lost the World Trade Center, part of the Pentagon, and 3,000 American lives. Seven of those eight acts were committed by Muslim male extremists, mostly between the ages of 17 and 40—not by elderly women, not by little kids, not by blacks or whites.

The third question is, what is the potential for abuse? There is no doubt that African-American anxiety about criminal profiling stems in part from our country's troubled history of racial discrimination. We have no comparable history of bias against Middle Easterners, nor have responsible persons suggested that airport searches, for example, are motivated by traditional bigotry toward Arabs or Muslims. The principal objection to profiling is that it can be exploited by officials who are animated by some deeper prejudice. I would argue that African Americans have more cause for concern than do Middle Easterners.

That is not to say that ethnicity by itself is sufficient justification for targeting a suspect. But sometimes ethnicity will add materially to the predictive power of a terrorist profile.

A vital consideration, of course, is the scope of the imposition on innocent people. We should not object, in my view, if law enforcement authorities use profiling simply to limit their investigations. Even the questioning of profiled suspects raises few concerns if the suspects are free not to answer and if they are free to leave. But subpoenas, custodial interrogations, extended detentions, and incarceration are quite another matter.

With that qualification in mind, I want to suggest one narrowly circumscribed example of justified terrorist profiling. The Justice Department recently announced a manhunt for Middle Eastern men who have

ignored deportation orders. Each of those 6,000 targeted individuals—of 300,000 who have been ordered to leave the United States—is from a country that has known al-Qaeda cells. Technically, the selection is based on nationality, but the correlation with ethnicity is obvious. Still, I think that kind of targeting makes sense and complies with the Constitution.

Profiling is objectionable when law enforcement authorities use race or ethnicity as a substitute for suspicious behavior or other credible evidence of wrongdoing as grounds for investigating, apprehending, and detaining suspects. But that is not what is happening in this instance.

## “We should be taking the battle to the terrorists, to their base camps, not transforming our society into a surveillance state.”

The men who are sought are not unidentified potential suspects. They are named lawbreakers. Their names appear in government records. They are not statistical artifacts; they are real people. And their wanted status was triggered by their conduct, not by their nationality. The vast majority of Middle Easterners have nothing to fear from the Justice Department’s campaign, which involves no more than allocating scarce law enforcement resources.

The Constitution, of course, guarantees equal protection to persons who are within U.S. jurisdiction. But there is no constitutional or statutory authority for a lawbreaker to escape punishment. When people break the law, some of their constitutional protections go away. To the extent that they still retain the right to equal protection, that right is not absolute. Government can treat persons unequally, even on the basis of ethnicity, if it has a compelling interest in doing so and adopts the least restrictive means of satisfying that interest.

In this case, the profile is narrowly tailored to cover a small number of individuals from a few selected countries—only persons who have already broken the law and have been ordered to leave the United States. And the government’s interest in preventing terrorist acts that could kill or injure a large number of Americans is, of course, palpable. If law enforcement resources are spread too thin, government is going to default on its foremost obligation—to protect the nation against loss of life, the most precious of our civil liberties.

Next, I want to change the facts slightly and discuss a real-world example of ethnic profiling that, in my view, even though directed at terrorism, is not justified. Under the Immigration and Nationality Act of 1952, the Justice Department recently proposed new regulations requiring that more than 100,000, largely Muslim and Middle Eastern, visa holders register with the government and be fingerprinted.

Students, workers, researchers, and tourists—everybody who is between the ages of 18 and 35, male, and from 20 designated countries—will be covered,



**Timothy Lynch: “The national ID card would require some 250 million people to surrender some of their freedom, some of their privacy, for something that is not going to make us safe from terrorist attack.”**

except U.S. citizens and permanent resident aliens who hold green cards. The fingerprints will then be compared with those in a database of prints of suspected or known terrorists and wanted felons.

New arrivals to the United States will be fingerprinted at entry. From a policy perspective, that rule may be unwise or unnecessary, but it does not, in my view, raise constitutional concerns. Constitutional rights do not vest until a person has actually entered the country.

But the same regulations apply to non-permanent foreigners who are already here legally. To satisfy constitutional concerns, government has to show that its new regulations, when applied to Middle Eastern students and workers and tourists who are already here legally, are an effective and necessary answer to the systemic immigration problems that have compromised national security. That showing has not been made.

Essentially, there are four problems with our immigration system: applicants are not sufficiently screened, they are not monitored closely enough after they are here, they are allowed to overstay their visas with impunity, and no one tracks their departure. The new regulations purport to mitigate those problems. But anyone truly dangerous is not going to show up for registration or fingerprinting. Indeed, the most dangerous persons will likely have entered the country illegally.

And remember, the overwhelming number of targeted persons is going to be entirely innocent. The new regulations, because they apply to people from some but not all countries, raise equal protection as well as due process concerns. The selection of persons is based not on their misconduct but wholly on their nationality. That is a clear example of unrefined profiling that civil libertarians ought properly to condemn.

**Timothy Lynch:** After 9/11, it makes perfect sense for policymakers to review various laws and procedures with an eye to changes that would better protect us from similar attacks in the future. But we should not throw out our freedom and our privacy for any proposal that somebody claims will make us safer. We should not rush into anything.

The national ID card proposal would be a very bad deal for our society, because it would require some 250 million people to surrender some of their freedom, some of their privacy, for something that is not going to make us safe from terrorist attack. The national ID card proposal has been put forward in Washington many times before; in the wake of the September 11 attacks, it is now being packaged as a “security” measure.

Let me begin by dispelling the idea that the card will be a great security device that will make us safe from terrorists. There are several ways that terrorists will be able to get around a national ID card system. Terrorists are evil, but they are not stupid.

It does not take much imagination to see the weak spots in the national ID card system. If terrorists are determined to attack America, they can bribe the people who issue the cards or the people who check the cards. Terrorists will also be able to recruit people who have valid cards—U.S. citizens or lawful permanent residents.

We are told that we should look at countries in Europe, such as France, that already have national ID card systems. OK, let’s look. The people in those countries have surrendered their privacy and their liberty and yet they continue to experience

*Continued on page 8*

# “Many Americans do not realize the virtual treasure trove of detailed data that the federal government requires banks, schools, employers, and now even doctors to collect about us.”

**POLICY FORUM** *Continued from page 7*

terrorist attacks.

I also want to draw your attention to how a national ID card system will affect the Bill of Rights. The Fourth Amendment to our Constitution protects all of us against unreasonable searches and seizures. The quintessential “seizure” under the Fourth Amendment is to be arrested or detained by the police.

The police can seize or arrest a person when they have an arrest warrant or when they have probable cause to believe that the person has just committed a crime in their presence. But the police cannot stop us on the street and demand an ID, at least not under current law. They can *request* an ID. They can *request* that we answer their questions. But the key point is that we can decide whether or not we want to cooperate. The legal presumption right now is on the side of the individual citizen. We do not have to justify ourselves to the police or to the government. The government has to justify its interference with our liberty.

A national ID card system will turn that important legal principle upside down. After enactment of the system, pressure will begin to build to enact laws that will require citizens to produce an ID whenever a government official demands it. I know that is going to happen for two reasons. First, in the countries that already have national ID card systems, the police have acquired such powers.

Second, in this country there already are cases in which the police have arrested Americans for failure to produce IDs. Thus far our courts have rejected such arrests. But if Congress passes a law that says people must produce IDs, the courts may well yield on that point.

Op-eds about a national ID card by Alan Dershowitz at Harvard Law School or Larry Ellison from Oracle present the idea in the best possible light. They tell us that it will be a “voluntary” card and that you will have to present it only at airports. They say there will be no legal duty to produce an ID card.

But, over time, the amount of information on the card will expand. The number of places where you will have to pres-

ent your ID card will expand, and it will eventually become compulsory. And sooner or later a legal duty to produce an ID whenever a government official demands it will be created. I strongly recommend Charlotte Twight’s book, *Dependent on D.C.*, in which she details the ways government power creeps into our lives.

Secretary of Defense Donald Rumsfeld has already warned us to expect more terrorist attacks, so we will see more anti-terrorism proposals in Congress. Perhaps there will be an attack a year from now, and a limited national ID card will be proposed and enacted.

Maybe five years later we will be attacked again, people will die, and law enforcement will go to Congress and say, look, we have a national ID card, but the problem is that it is voluntary. Thus, by increments, we will get the full-blown national ID card system that we see in other countries. If somebody just proposed the same national ID card system that they have in Singapore or France, and we could have an up-or-down debate on that one proposal, then everybody would fully understand what we were going to give up in return for the card. But instead, time after time, we see the government expand in small, incremental steps.

It is very important that we not lose sight of what we are fighting for in the war on terrorism. Our goal should be to fight the terrorists within the framework of a free society. We should be taking the battle to the terrorists, to their base camps, and killing the terrorist leadership. We should not be transforming our society into a surveillance state.

**Charlotte Twight:** As part of the current push for new measures to increase our national security, some members of Congress are calling for computer chips to be put into our driver’s licenses or for other forms of a national ID card. With current technology, a key component of any nation-

al ID card will be a microchip containing biometric information and other data as well as links to a variety of databases.

As Simon Davies, an expert in privacy security and data protection, stated recently: “The modern ID card is no simple piece of plastic. It is the visible component of a web of interactive technology that fuses the most intimate characteristics of the individual with the machinery of the state,” creating a “national surveillance infrastructure.”

As Tim mentioned, legislators and others are likely to push incrementally for such an ID in order to minimize opposition at the outset. Consider what Rep. Jane Harman said in May: “We don’t automatically have to call it a national ID card. That’s a radioactive term. But we can cer-



**Susan Chamberlin, Cato’s director of government affairs, introduces Charlotte Twight, Timothy Lynch, and Robert Levy at a Capitol Hill Briefing.**

tainly think about smart cards for essential functions, and we need the database to support that.” As Steven Levy of *Newsweek* put it, “Translation: Show us your papers.”

A national ID card system unquestionably poses a threat to our privacy. The card would permit vast amounts of personal information about us to be linked. Many Americans do not realize the virtual treasure trove of detailed data that the federal government requires banks, schools, employers, and now even doctors, in addition to many federal agencies, to collect about law-abiding individuals in our country.

Think about something like the Bank



*An ideal textbook in public choice*

# Understanding Government Failure

That politicians frequently act in their own interests is not an earthshatteringly novel idea. The problem of ensuring that rulers serve the common good, rather than their own, which plagues disgruntled citizens everywhere, also plagued ancient philosophers and the authors of the *Federalist Papers*. Of more recent vintage, however, is the insight that the powerful formal tools of economic theory can be deployed to model the self-interested actions of legislators and bureaucrats as effectively as they model those of entrepreneurs in the market. In *Government Failure: A Primer in Public Choice*, a new Cato book, economists Gordon Tullock, Arthur Seldon, and Gordon L. Brady elaborate that insight, as presented in public choice theory, for the lay reader.

Academic work on public choice is somewhat technical, but Tullock, in the book's first section, presents the central concepts using clear language and vivid examples, which make *Government Failure* ideal for undergraduate classrooms as well as casual readers.

Secrecy Act that sailed through Congress in 1970. It required, and still requires, our banks to make copies of our checks and deposit slips, as well as records of other financial transactions. So there are all kinds of government-mandated databases out there, and they can be either embedded in or linked to a national ID card and the computer chip in it.

Moreover, government agencies already have contracted with private firms to purchase additional information about law-abiding American citizens. For example, the *Washington Post* recently reported that the Internal Revenue Service had purchased access to some 10 billion public records of housing, financial, and other personal information about individuals in our country. The same private company, ChoicePoint, Inc., also provides information to other government agencies, including the Federal Bureau of Investigation.

This sort of power inevitably grows. Recall the experience with Social Security numbers. In 1935 the public was promised by government officials that those num-

Tullock's analysis of logrolling—the trading of votes by legislators—for example, shows how democracies are subject to an inverted, destructive form of Adam Smith's invisible hand. Lawmakers, Tullock says, will seek to enrich their constituents through programs that impose a small cost on citizens of other states, even if the net cost of the program is larger than the benefit it provides to a narrow constituency. The aggregate effect of all such bills is often that each district is left worse off than if all had abstained from such rent seeking.

The theory summarized in the book's first part is put into practice in two subsequent sections, where the authors use the tools of public choice theory to analyze policies in the United States and Britain. They show how the dynamic between vote-hungry politicians, pressure groups, and bureaucratic agencies eager to expand their



scope and power drives regulatory decisionmaking. Brady reveals why American trade, environmental, and telecommunications policies are so dysfunctional and how Internet governance could become equally so. Seldon assesses welfare programs on the other side of the Atlantic and concludes that, though politically expedient, they have been socially disastrous. Both agree that even a flawed private sector would more effectively provide a wide array of services.

In the wake of the summer's many corporate scandals, there have been growing calls for government regulation to correct for so-called market failures. This book reminds us always to ask, "Failure? Compared with what?"

*Government Failure* can be purchased (\$18.95 cloth/\$9.95 paper) from Cato Institute Books at 1-800-767-1241 or from the Cato website, [www.cato.org](http://www.cato.org). ■

bers would never be used for anything other than identifying specific Social Security accounts.

But, of course, within just a few years, the government itself began mandating increased usage of Social Security numbers. As described in my book, *Dependent on D.C.*, year by year the government expanded the number of agencies and entities that were required to use Social Security numbers to identify us. And we have reached the point today, I think, where everybody takes it as a given that our Social Security numbers serve as de facto national ID numbers.

Another concern is that, with the new technology, adding additional information or linking additional information to a national ID card will be virtually invisible. How will a person know what's on that card or what it's linked to?

Past abuses of federal data collection power should give us pause about further expanding that authority. Just think about the FBI files in the Clinton White House, about the Nixon administration's abuses

of IRS and FBI files, and all the rest of that long history of abuse.

A national ID system would alter our nation at its very core. As a thought experiment, reread the U.S. Constitution and the Declaration of Independence and then imagine trying to explain a national ID system to the Founders, to James Madison and his fellows.

People will learn to tolerate national IDs if they are required, and that too jeopardizes liberty. Because future generations won't have any other experience, they will think it is the normal course of things to add more and more information to a national ID card.

Finally, I would urge, in considering a national ID card system, that we consider the emerging pattern and not focus our attention on just one piece at a time. In the past we built financial databases, education databases, labor databases, all the rest of it, and we looked at each little slice instead of at the whole picture. I would urge that we look at that whole emerging pattern and ask ourselves: What are we building? What are we becoming? ■

## STUDIES *Continued from page 3*

The Antitrust Assault on Orbitz—and on Consumers” (Policy Analysis no. 441). Orbitz, which was created by five major airlines to provide comprehensive and unbiased flight information, has been subjected to severe antitrust scrutiny following accusations by its main competitors that it will allow airlines to employ “anti-competitive” tactics. But as DeLong points out, the charges make little sense. Orbitz would be no more useful for purposes of collusive “fare coordination” than

any of the other comprehensive sources of fare information.

### ◆ **Censors sans Frontières**

The U.S. Court of Appeals will soon decide whether French laws may be used to censor the online speech of Americans. In “Caught in the Seamless Web: Does the Internet’s Global Reach Justify Less Freedom of Speech?” (Cato Briefing Paper no. 71), Cato adjunct scholar Robert Corn-Revere recounts the story: Yahoo! allowed users to auction off Nazi memorabilia on its U.S. websites and has been ordered by French courts to “dissuade and render impossible” access to those sites by French citizens. Although U.S. courts sometimes enforce the decisions of foreign judges in the spirit of international cooperation, Corn-Revere insists that this one must be rejected as antithetical to both American public policy and First Amendment principle. The precedent that would be set if it is not, he warns, would leave Americans subject to a welter of speech-stifling restrictions, from Chinese laws banning the advocacy of democracy to Singapore’s injunction against material inimical to “public morals.”

### ◆ **Federal Program Disables Education**

A federal program intended to ensure that disabled children received a “free, appropriate public education” has instead engendered hostility between parents and teachers, drowned educators in paperwork, promoted systematic misidentification of students as disabled, and subordinated academic achievement to compliance with bureaucratic requirements, according to Cato scholars Marie Gryphon and David Salisbury. Salisbury, director of Cato’s Center for Educational Freedom, and Gryphon, an education policy analyst, blast the 1975 Individuals with Disabilities in Education Act in “Escaping IDEA: Freeing Parents, Teachers, and Students through Deregulation and Choice” (Policy Analysis no. 444). They suggest allowing states to opt out of IDEA’s requirements by developing their own alternative plans.

### ◆ **A Recipe for Argentine Recovery**

The conventional wisdom about Argenti-

na’s currency crisis is almost precisely backwards, according to Kurt Schuler, a senior economist with the Joint Economic Committee. In a new Cato study, “Fixing Argentina, (Policy Analysis no. 445),” Schuler writes that, contrary to what many pundits have said, the crisis was not precipitated by a persistent overvaluation of the peso or an associated decline in exports. The true culprits, says Schuler, were excessive government debt, burdensome taxes, and rash attempts to escape recession by meddling with monetary policy and forcing “pesofication” of dollar-denominated bank accounts. Schuler prescribes drastic tax reductions coupled with dollarization and a system of privately issued currencies.

### ◆ **Private Accounts Popular despite Parade of Scandals**

Market volatility and a series of high-profile corporate accounting scandals have done little to dull voter enthusiasm for market-based Social Security reform, according to a poll conducted for the Cato Institute by Zogby International just two weeks after the WorldCom accounting scandal was made public. More than two-thirds of likely voters—68 percent—supported the idea of allowing individuals to invest a portion of their payroll tax, and 82.8 percent of those younger than 30 favored private accounts. “While people are clearly concerned about recent market turmoil,” said pollster John Zogby, “there is a fundamental belief in controlling your own retirement that trumps any volatility.”

### ◆ **More Bureaucracy Won’t Deliver “Homeland Security”**

The newly formed Office of Homeland Security and the Homeland Security Council are “an ad hoc and unnecessary duplication” writes Eric R. Taylor in a new Cato Foreign Policy Briefing, “The New Homeland Security Apparatus: Impeding the Fight against Agile Terrorists” (Foreign Policy Briefing no. 70). Because the problem brought to light by the attacks of September 11, 2001, was insufficient information sharing between agencies jealous of their turf, Taylor argues that “yet other layers of bureaucracy” are unlikely to solve the problem. ■

## Cato Calendar

### **Welfare for Politicians: Taxpayer Financing of Elections**

*Washington • Cato Institute  
October 2, 2002*

Speakers include Thomas Finneran, Bradley A. Smith, Thomas Mann, Patrick Basham, and John Samples.

### **International Financial Crises: What Role for Government?**

*20th Annual Monetary Conference  
Cosponsored with The Economist  
New York • Waldorf-Astoria  
October 17, 2002*

### **Portland City Seminar**

*Benson Hotel • October 30, 2002*

### **Seattle City Seminar**

*Four Seasons • October 31, 2002*

### **Chicago City Seminar**

*Drake Hotel • November 7, 2002*

### **Arguments for Liberty: How to Defend Individual Rights and Limited Government**

*Cato University*

*San Diego • Rancho Bernardo Inn  
November 7–10, 2002*

Speakers include Tom G. Palmer, V. Lance Tarrance, Will Saletan, Stephen Cox, and Darcy Olsen.

### **New York City Seminar**

*Waldorf-Astoria  
November 15, 2002*

Speakers include Robert Novak and John McWhorter.

*The Constitution, limited government, and today's challenges*

# Madison's Relevance for the 21st Century

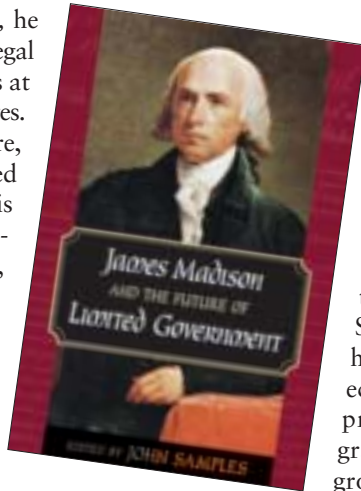
James Madison was the chief architect of the American republic. Though reluctant to accept the title, he was known as the “father of the Constitution,” and through his role in crafting both that document and the hugely influential *Federalist Papers*, he has left his mark on the legal and political institutions at the core of the United States. Yet, in the popular culture, he has always been denied the superstar status of his more flamboyant contemporaries Washington, Jefferson, and Franklin. To celebrate the 250th anniversary of Madison's birth, the Cato Institute has published *James Madison and the Future of Limited Government*, edited by John Samples, director of Cato's Center for Representative Government. This wide-ranging collection of essays reminds us of the enduring relevance and vitality of Madison's ideas.

Nobel laureate James M. Buchanan, inspired by Madison's offhand claim that “if men were angels, no government would be necessary,” reflects on the differences between ethics and politics. Walter Berns of the American Enterprise Institute says Madison erred in assigning no role to the state in the cultivation of religious virtue, but political science professor Michael Hayes defends Madison's position that church-state separation is in the best interests of church and state alike.

The Constitution is, unsurprisingly enough, the planet around which many of the book's pieces revolve. Historians Joyce Lee Malcolm and Robert McDonald examine, respectively, the ways in which Madison's constitution departs from the English legal tradition and from the thought of Thomas Jefferson. Those differences are mild, however, when compared with how greatly we have departed from Madison, as Roger Pilon, Cato's vice president for legal affairs, reveals in his study of how the courts have gradually eroded the doctrine of enumerated powers. If that doctrine is to return from the jurisprudential grave,

writes Judge Alex Kozinski, courts must begin by repudiating the federal spending power, which Madison held to be incompatible with true federalism.

Several authors develop Madison's analysis of the problem of “faction” (“special interest groups” in contemporary jargon), the topic of his classic *Federalist* no. 10. Madison believed that an “extended republic,” which embraced a diverse population and divided political power, could resist the use of government by one group to oppress or exploit others. Some multiculturalist thinkers have held that Madison's project must be updated to better protect minority factions by granting them special rights or group representation. Cato senior fellow Tom Palmer rebuts sev-



eral such claims in his essay, in which he argues that only a regime of individual equality under the law is compatible with liberal principles and Madisonian thought.

Editor John Samples suggests that Madison overestimated the ability of representative institutions to check abuses of state power. Ironically, says Samples, ballot initiatives, a form of the direct democracy that Madison feared, have proven effective at limiting government. If factions have a corrosive effect on democracy in the developed world, they are disastrous in developing countries seeking to build liberal institutions from scratch. James Dorn mines Madison's writings on the rule of law to see what guidance they have to offer the world's emerging democracies.

*James Madison and the Future of Limited Government* can be purchased (\$19.95 cloth, \$10.95 paper) online at [www.cato.org](http://www.cato.org) or from Cato Institute Books at 1-800-767-1241. ■

## Sixth Annual Economic Freedom Study Shows United States Gaining Ground

The United States has the world's third freest economy, trailing close behind Hong Kong and Singapore, according to the *Economic Freedom of the World: 2002 Annual Report*. Economists James Gwartney and Robert Lawson scrutinized 123 countries, measuring government taxes and expenditures, property rights, the soundness of the currency, trade restrictions, and credit and labor regulations. The study, published by Canada's Fraser Institute, the Cato Institute, and a consortium of think tanks from 54 other countries, was inaugurated in 1996 at the urging of Nobel laureate Milton Friedman, who provides this edition's preface.

The study confirms that there is a strong correlation between economic liberty and other standard measures of a nation's welfare, such as life expectancy, economic growth, and per capita income. The United States, which has climbed two spots since last year's report, is followed in the top 10 by New Zealand, Switzerland, Ireland, Aus-

tralian, Canada, and the Netherlands. The Democratic Republic of Congo has the world's least free economy and is joined at the bottom of the rankings by a preponderance of African and former communist nations.

Cato's director of fiscal policy studies Chris Edwards and fiscal policy analyst Veronique de Rugy contributed a chapter on international tax competition, in which they look at how increasing mobility of labor and capital have pressured governments to lower marginal tax rates in order to forestall the flight of industry and attract investment. They also examine the worrying popularity of proposals for “tax harmonization”—the formation of intergovernmental cartels to fix taxes at high levels.

The 2002 edition of *Economic Freedom of the World* can be purchased (\$22.95 paper) from Cato's online store at [www.cato.org](http://www.cato.org) or by phone from Cato Institute Books at 1-800-767-1241. ■

# “Much as the disparity between taxes and services vexes secessionists, the prospect of losing the valley cash cow frightens other Angelenos even more.”

**REBELS** *Continued from page 1*

ley are willing to grant their fellow citizens a civic divorce, and anti-secessionist leaders make no secret of the reason. The rhetoric coming from the various interest groups at the center of the anti-secession coalition sounds remarkably similar: each fears the “erosion of the tax base” and the accompanying “loss of clout.” With cumulative support for secession hovering around 38 percent, valley secessionists find themselves in the position of deer trying to convince ticks of the merits of mutual independence.

## Why LA?

At first glance, Los Angeles is one of the most unlikely places for this sort of decentralizing movement to arise. Southern California is known for many things—sun, surf, glitz, earthquakes—but small government is not one of them. As surprising as it may seem to outsiders, however, grassroots support has been building for almost a century. In 1915 LA officials forced the valley to join the city in exchange for cheap water. That gave rise to tensions and conflicts that persist today. Indeed, many people in the San Fernando Valley identify themselves by community—Van Nuys, Reseda, Northridge—even though those are legally part of the city of Los Angeles. This is the third credible secession attempt; state law blocked two previous movements in the 1960s and 1970s.

The San Fernando Valley separatists, spearheaded by a group called Valley Voters Organized Towards Empowerment (Valley VOTE), are actually only the most visible of three burgeoning secession movements in the City of Angels. On the south side of the mountains, Hollywood is vying for independence too. Many of its 180,000 residents believe that it can no longer function effectively as a “neighborhood” in a sprawling city. Like the valley, it has the resources to support its independence, but the desire for independence there is much less strong. Although a Hollywood independence initiative will be on the ballot this fall as well, polls show that only a quarter of voters, in both Hollywood and the city at large, are prepared to support a break with LA. The third area searching for its

own identity is the harbor section of the city, with about 140,000 people. The harbor area is a pod on San Pedro Bay connected to the main part of the city by a narrow 10-mile finger that only creative annexation and savvy politicians could have manufactured. Clearly, dissatisfaction with the city’s present structure is pervasive and widespread.

Why is secession so attractive to so many people? The city’s geography and political history tell part of the story. LA is one of the largest cities in the nation, with 3.7 million people spread over 470 square miles. In the last century LA has grown big enough to swallow Cleveland, St. Louis, Milwaukee, Minneapolis, Boston, San Francisco, Pittsburgh, and Manhattan.

As the city has expanded, many citizens have begun to feel that a leviathan LA is no longer capable of representing their communities’ interests. Each LA city councilperson represents 246,000 people. Neither Hollywood nor the harbor area is large enough to have a single representative on the LA City Council, even though Hollywood would rank as the nation’s 112th largest city and the harbor area would rank 149th. In contrast, Santa Monica, sandwiched between the Pacific Ocean and LA’s west side, has six city council members and a mayor to govern 84,000 people. In nearby Burbank, five elected officials, including a mayor and vice mayor, govern a city of 100,000.

For years the valley has been systematically denied the proper number of seats on Los Angeles’s 15-member citywide council. The valley was given two seats when, on the basis of the geographic distribution of the city’s population, it should have received four. Then, as the valley’s population grew, it received four seats when it should have received five. In 2003, in a move to quell secession, the valley will get five seats. By that time, however, the valley’s population should have qualified it for nearly six seats, almost half of the city council. The council has consistently gerrymandered the valley, carving off pieces and putting them in districts dominated by other parts of the city.

There is no guarantee that even full representation would relieve the tensions cre-

ated by an oversized city government. Brown University professor of economics and urban studies J. Vernon Henderson explains that “different local communities within the metro area have different public service needs and demands, depending on industrial mix, income, age composition and so on. A metro level government may not have the political flexibility or accountability to differentiate across localities to meet individual community needs.” A government seeking to serve such a large and heterogeneous city faces a dilemma. If taxes are levied and services provided uniformly, the one-size-fits-all result will almost certainly fail to address the different needs of different communities. If instead services are tailored to individual communities, a political tug of war ensues, with each locality trying to maximize its own consumption of services and distribute the costs of providing them across the entire city.

Supporters of secession want what most citizens want—safe neighborhoods, good schools, well-maintained streets, neatly trimmed trees, and efficient garbage collection. They’ve lost faith in the ability of elected officials meeting on the other side of the mountains to make policy that meets their needs and provides services effectively. If existing research is any indication, a smaller LA, with a population about the size of San Diego’s, will be more manageable, more accountable to local residents, and more representative of its neighborhood populations.

## Tyranny of the Status Quo

Most city officials are vigorously fighting all of the secession movements, though they have focused their energy on the San Fernando Valley’s, the strongest of the three. Their tactics show how viciously entrenched bureaucracies and elected officials will fight to defend the status quo.

Their first instinct is to use the timeworn tactic of fear. City officials have gone on record arguing that a smaller city will be less likely to receive federal grants. They’ve also charged that police and fire services will be inferior, leaving valley residents more vulnerable to fire or natural disaster. Anti-secessionists have resorted to scare tactics so often that a new acronym has emerged—

## “Supporters of secession have lost faith in the ability of elected officials meeting on the other side of the mountains to make policy that meets their needs.”

FUD, for “fear, uncertainty, and doubt.” FUD tactics have become so common that the term is now used as a verb (“there goes the mayor, FUDing again”) whenever Mayor James K. Hahn warns of the dire consequences of secession. By exploiting the more justified fears of contractors and lobbyists whose power and income depend on the city’s size and tax base, Hahn has managed to raise \$2 million for his anti-secession campaign. Most of that money has come in the form of donations of \$10,000 or more, and some donors have found lucrative contracts with the city extended shortly after their checks arrived.

Another primary response, legal maneuvering, has become a staple of the anti-secession movement’s tactical tool chest. The mayor and his staff continually challenge the cost estimates that the Local Area Formation Commission—the government agency that oversees annexations, secessions, and interjurisdictional border disputes—has used to determine the economic viability of the new cities. LAFCO has recommended that the valley pay LA about \$128 million per year in “alimony” to compensate for the loss of valley tax revenue. The payments would decrease by 5 percent annually and finally end after 20 years. That massive expropriation is not enough for Mayor Hahn and other officials, who have asked for annual payments of \$288 million for 25 years. From the three secession areas combined, the city wants a total of \$5.6 billion more in alimony than LAFCO has recommended. The request is based on the brazen proposition that the current government will not shrink at all when secession cuts the size of the region it serves in half. Fifteen of the city’s 41 departments have said that they could not cut \$1 or shed one employee.

Ironically, those tactics are simply reinforcing the views of secessionists. The city appears to be striving yet again to short-change the valley, as it has for decades. The demand for alimony payments seems particularly insulting, since valley residents are effectively being asked to compensate LA for the “harm” of refusing to continue being overcharged for public services. For many, the debate boils down to a political turf war.

### News Notes

**L**ewis E. Randall and Jeffrey S. Yass have joined the Board of Directors of the Cato Institute. Randall is an investor in Washington State. He and his wife Martha have been supporting Cato since the 1970s.



Lewis E. Randall



Jeffrey S. Yass

A graduate of Harvard College, he was an early employee of both Intel and Apple Computer and is on the Board of Directors of E-Trade. Yass is managing director of Susquehanna International Group, LLP, a trading firm specializing in stock options. He is profiled in *The New Market Wizards: Conversations with America’s Top Traders* by Jack D. Schwager and was described as one of “76 Revolutionary Minds” by *Philadelphia* magazine.

Evans Pierre has been named director of broadcasting at the Cato Institute. He is in charge of relations with television and radio broadcasters and also produces CatoAudio. He comes to Cato with 12 years of experience behind the cam-

eras at CNN, C-SPAN, and MSNBC.

Lesley Albanese has been named director of external affairs and given overall management responsibility for Cato’s development department. She has served in the development department for more than five years, at increasing levels of responsibility. She will continue to be the principal organizer of Cato’s Benefactor Summit and the Cato Club 200 Retreat and will oversee Sponsor relations, corporate and foundation support, and direct mail.

Joining the development department this summer is Terry Kibbe, director of development. A veteran of development operations at Judicial Watch and political fundraising, she will work on individual donor solicitation and relationships.



Evans Pierre



Lesley Albanese



Terry Kibbe

### A Global Trend

The valley’s cries for accountability and a government closer to the people are part of an international movement toward more decentralized government. The trend is probably most pronounced in the United Kingdom, where in 1997 Tony Blair’s Labour government quickly moved to make good on a campaign pledge to devolve governance to Wales and Scotland. Scotland already had an independent legal system, but now it has a parliament with the authority to levy income taxes and authorize spending on key programs. The more culturally distinctive Wales, on the other hand, has been less insistent

about its autonomy: it won only the power to make decisions about “secondary” legislative matters, such as housing, health, education, economic development, sports, and tourism. In 1999 both Scotland and Wales elected their first independent legislatures in more than three centuries.

Signs of the devolution revolution are legion. Quebec has long been home to a vocal movement for independence from the national Canadian government. In France critics have argued for decades that money and authority should be devolved from Paris. In India the national government is

*Continued on page 14*

## “The upheaval in Los Angeles should force citizens and policymakers across the nation to question one of the most persistent myths of regional government—the idea that bigger is better.”

**REBELS** *Continued from page 13*

struggling with the difficulties of governing a geographically dispersed and demographically diverse population. The most striking example of devolution is, of course, the breakup of the Soviet Union into 15 successor states, but the same process is also at work within those states and other nations recovering from communism. Countries throughout the former Soviet bloc have, to varying degrees, begun the arduous process of dismantling central bureaucracies and restoring—or manufacturing—local political institutions. For citizens frustrated with bureaucratic indifference and inefficiency, the transfer of authority and power to localities is becoming increasingly attractive. The reason is straightforward: larger governments are less responsive and ultimately less accountable to the governed. In a political system that respects democratic values, the only effective way to serve diverse populations is to put the power to make decisions in the hands of the people most directly affected by them.

The United Kingdom's example is instructive, because that country managed to accommodate devolutionist impulses without an acrimonious split. One major reason is that devolution had become part of a major party platform; Labour had committed to support Scottish and Welsh autonomy before winning control of Parliament. Scotland had a long history of independence, too, which provided a foundation for institutions of local governance. Finally, and perhaps most important, opposition was relatively low because Scotland and Wales were not permanently breaking away from the United Kingdom but only taking control of more functions locally. That difference in approach is significant. One obstacle to greater autonomy for Quebec may be its focus on separation and independence from Canada. Because many Canadians view the Quebecois as secessionists, uninterested in devolution without complete political and functional autonomy, they are less willing than they might otherwise be to cede more limited control.

Had LA city officials followed Blair's lead, they might well have averted the secession controversy entirely. Three years ago,

in a belated effort to quell secession, LA reformed its city charter. Rival commissions—one appointed and one elected—were tasked with rewriting the city's 73-year-old constitution. Though reformers' hopes were high at first, they ultimately won only modest and incremental changes to the city's governance structure, which did little to stem the rising tide of secessionist sentiment.

One of the more interesting proposals rejected by the commissions would have created a system of boroughs similar to those in New York City and London. The citywide government would serve a strategic, regional function while most local services would be provided at the borough level. In London, for example, the central authority has responsibility for transportation, police, and economic development. Boroughs with populations of around 200,000 are responsible for health, human services, education, planning, and other key services. Thus, a true borough system could devolve sufficient power to the community level that secession movements could be quelled or significantly mitigated.

The borough concept has been around in the United States for almost a century; boroughs were even promised to the valley in 1915. They were also promised to Hollywood, Watts, East Los Angeles, and San Pedro in subsequent decades. Nothing ever came of those promises. The commissions ultimately rejected the borough plan, and city officials refused to allow the proposal to be put on the ballot.

What distinguishes the Los Angeles secession movement from the others, aside from its appropriation of the rhetoric of the American Revolution, is the emphasis on local, rather than regional, government and autonomy. LA's secession movement, like Staten Island's nascent desire to secede from New York City, is evidence that greater reliance on regional governance may not be radical enough—power may have to move to the community level.

### Lessons Learned?

Ironically, concerns about local government's ability to solve local problems are spurring some cities to look in the oppo-

site direction. Last fall voters in Jefferson County and Louisville, Kentucky, voted to dissolve the city of Louisville and merge it with the county. This would be the single largest governmental consolidation in 30 years, creating the nation's 19th largest city. Los Angeles is now contemplating the single largest city breakup in U.S. history; Louisville could be the second if it doesn't learn LA's lessons quickly.

The secession movements, in LA and elsewhere, challenge the notion that consolidated regional governments can solve a nation's metropolitan problems. Indeed, if consolidation also includes a lack of representation, loss of local accountability, and entrenchment of the status quo, metropolitan governance may become even less effective, and local government will be even less able to address key issues and problems that matter to citizens. The upheaval in Los Angeles should force citizens and policymakers across the nation to question one of the most persistent myths of regional government—the idea that bigger is better.

Breaking up is a complicated, difficult, and politically divisive issue. Consolidating local governments or regionalizing governmental functions may, as in the case of Los Angeles, perpetuate inefficiency for decades. All government reform efforts are implemented in a political environment, and governments create constituencies that will lobby for maintaining the status quo, making innovation difficult if not impossible. When communities with distinct needs and identities are fused into a single political entity, each may suffer, but separating them again may be no less painful. Los Angeles, then, should serve as both a warning and an inspiration. It reminds us that political bands, once forged, are not easily broken and that consolidation should not be undertaken lightly. But it also shows us that it is possible, even today, for communities to recreate the bold experiment of the Founders, to seek more voluntary and mutually satisfying ways of living together, in short, “to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.” ■

*Authors question whether we can own ideas*

# The Debate over Intellectual Property

Intellectual property (IP) rights, once discussed only in abstruse academic debates, have become a hot-button issue in the Internet era. As new technologies have made it ever easier to circulate perfect digital copies of books, songs, movies, and anything else capable of translation into ones and zeroes, copyright holders and leg-



islators wonder whether intellectual property can be protected, while some philosophers and legal scholars have begun to question whether it ought to be. Partisans of each camp dissect both the theory and the public policy surrounding IP in a new book from the Cato Institute, *Copy Fights: The Future of Intellectual Property in the Information Age*.

The introduction by editors Wayne Crews, Cato's director of technology studies, and Adam Thierer, director of telecommunications studies, surveys the unique problems new technologies raise for traditional approaches to copyright. These should be of special interest to classical liberals, they suggest, because IP seems to generate a conflict between two ordinarily complementary liberal values: the value of free speech and open exchange of ideas and the socially useful incentive effects of a clearly defined property system. In the book, that conflict is played out first at the most abstract level and then in increasingly specific debates over copyright and patent policy.

Cato senior fellow Tom G. Palmer; Chapman University law professor Tom W. Bell; and John Perry Barlow, former Grateful Dead lyricist and cofounder of the Electronic Frontier Foundation, each call into question the legitimacy of IP. In "an economy where the principal article of commerce is indistinguishable from speech," writes Barlow, "efforts to control that arti-

cle of commerce will inevitably control speech." Palmer adds the objection that rights in "ideal objects" will conflict with more ordinary rights of ownership, by preventing us from replicating in our own property certain artworks or inventions. Because there are many other ways for artists and inventors to capture the benefits of their creativity, says Bell, the utilitarian case for IP is weak. Competitive Enterprise Institute senior fellow James DeLong, however, sees few important differences between the arguments for IP and those for rights in tangible property. Support for the latter, he argues, entails support for the former.

Other essays tackle the new challenges for copyright law wrought by such technological innovations as peer-to-peer file transfer systems like Napster and the increasing availability of cheap duplication devices like CD burners. Three controversial issues—the Digital Millennium Copyright Act (DMCA), Digital Rights Management (DRM) technologies, and business method patents—receive special scrutiny, with authors defending and denouncing each in turn.

*Copy Fights* is available (\$19.95 cloth, \$10.95 paper) at Cato's web bookstore, [www.cato.org](http://www.cato.org), or from Cato Institute Books at 1-800-767-1241. ■

## Five Years of HIPAA, 25 Years of Regulation

When the Health Insurance Portability and Accountability Act was passed six years ago, legislators claimed that it would cut health care costs by reducing fraud, protect patient privacy more stringently, and guarantee access to insurance coverage for workers who change jobs. The spring/summer issue of *Cato Journal* (vol. 22, no. 1) exposes the disturbing extent to which HIPAA has failed on each count.

House Majority Leader Dick Armey of Texas calls the hastily passed bill "a classic example of legislative panic" in a review of HIPAA's legislative history, aptly titled "Just Gotta Learn from the Wrong Things You Done." Cato's director of health policy studies Tom Miller and bioethicist E. Haavi Morreim explore market-based alternatives to the federally micromanaged morass of our current medical system. Law professors Richard Epstein and Fred Cate study HIPAA provisions purporting to guard medical privacy and find that, although effective at hampering doctors, they do little to address the more serious threat of government intrusion into private records. Two other pairs of articles exam-

ine the massive costs HIPAA, which has led to only marginal improvements in access to health care for consumers, has imposed on the health industry in the form of convoluted, burdensome regulations and a "fraud prevention" dragnet that frightens and antagonizes innocent doctors.

The latest issue of *Regulation* (vol. 25, no. 2) marks the magazine's 25th year of publication with a series of articles that step back from *Regulation's* customary focus on specific programs and policy proposals to survey the broad regulatory trends of the past several decades. Scholars provide brief overviews of regulatory progress and degeneration in transportation, banking, telecommunications, energy, health, insurance, housing, and public land management.

*Cato Journal* (\$8.00) and *Regulation* (\$5.95) can be purchased from Cato Institute Books at 1-800-767-1241 or from the online Cato Bookstore at [www.cato.org](http://www.cato.org). One-year subscriptions to both magazines are available: *Cato Journal* for \$24.00 (\$6.00 per issue) and *Regulation* for \$20.00 (\$5.00 per issue). ■

**◆Cutting to the bone in those Democratic districts**

The 1994 revolution that gave Republicans control of the House produced a seismic shift in federal spending, moving tens of billions of dollars from Democratic to GOP districts. . . .

Republican House districts received an average of \$3.9 billion in 1995, and that ballooned to \$5.8 billion in 2001, a 52 percent increase, the analysis found. Over the same period, spending in Democratic districts on average increased only 34 percent, from \$3.9 billion to \$5.2 billion.

—*Washington Post*, Aug. 6, 2002

**◆When really it was a lean, efficient font of innovation**

“K-19: The Widomaker” is a great yarn, albeit one that makes the Soviet government at a Cold War peak look like a monolithic red-tape nightmare.

—Paul Clinton, CNN.com, July 18, 2002

**◆Staying away from those handouts**

[New Mexico Republican gubernatorial candidate John Sanchez] writes that [his mother] taught him “that the way up was through hard work, not a hand-out.” He blames Democratic programs for fostering dependency in poor Hispanics.

He does not mention, however, that his mother relied on federal assistance to support the family in its darkest days—receiving welfare, food staples from the Agriculture Department, and Great Society housing subsidies. . . . John himself went to Head Start, starting at age 4.

Asked about this, Sanchez said those

programs “represent the hand up, not the handout.”

—*Washington Post*, June 23, 2002

**◆What a coincidence**

In the 1960s liberal Republican icons like Governor Nelson Rockefeller, Senator Jacob Javits, and New York City Mayor John Lindsay dominated the political landscape, presiding over vast expansions of the welfare state as well as increases in crime and urban blight.

—*New Republic*, June 17, 2002

**◆The law of intended consequences**

The mega-donors and the largest recipients of the kind of “soft money” that will remain unregulated by the new campaign finance law are overwhelmingly liberal and Democratic, according to a study by Public Citizen.

The findings of the study suggest that groups associated with the Democratic Party and liberal causes are likely to be the short-term beneficiaries of the new law.

—*Washington Post*, June 10, 2002

**◆Rep. Leach needs to read Article I, section 8**

One of the side effects of Title IX has been to push colleges (or to give them an excuse) to scrap what are known—unfairly, of course—as “minor” men’s sports. . . .

Rep. Jim Leach, an Iowa Republican, . . . plans to introduce a bill to provide federal funding for college fellowships to help participants in both women’s sports and the men’s sports that lack the clout of football and basketball. In a nice touch,

Leach plans to name them Hastert Fellowships after Dennis Hastert, the Republican speaker of the House who just happens to be a former wrestling coach.

—E. J. Dionne in the *Washington Post*, June 5, 2002

**◆Too bad they didn’t have anything else to do**

FBI agents were listening. Hour after hour, month after month, 10 agents recorded the men’s demands, the brothel keepers’ deals and the prostitutes’ complaints. The agents were listening on Sept. 11, in the days before and in the days after. With 90 calls a day to monitor, the listening post was busy. . . .

With great care, the agents documented the secret life of a high-end brothel. Through more than 5,000 phone calls, they kept listening to the madams, the hookers and the johns, even though the conversations never turned up mentions of mob bosses or hard-core drug dealing—both cited in the FBI’s initial wire-tap application 13 months ago. . . .

After an investigation lasting more than a year, 12 alleged prostitutes and madams were indicted in April on conspiracy and racketeering charges; three others, including two men, were accused of helping the operation.

—*Washington Post*, June 4, 2002

**◆As Hayek says, “social” is an adjective that sucks the meaning out of the noun that follows it**

Bishop Promises Focus on Social Justice

—headline in the *Washington Post*, June 3, 2002

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