

The INDEPENDENT

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VOLUME XI, NUMBER I

Appleby, Cooter et al. Address Policy Forums

With the words “Give me liberty, or give me death,” Patrick Henry sounded the keynote of the American Revolution. After the Revolution, Henry and his supporters blocked the Constitution’s ratification until it bore the essential amendments known as the Bill of Rights. Mindful of these principles, the first generation of Americans reinvented themselves and their society.

On September 7, historians **Joyce Appleby** (Professor of History, UCLA; former President of the American Historical Association and Or-



Renowned historian **Joyce Appleby’s** *Independent Policy Forum* address was broadcast on C-SPAN2. ganization of American Historians) and **Hans Eicholz** (Senior Fellow, Liberty Fund) discussed the ways in which the Founders’ values transformed the early republic and bequeathed a dis-

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Antitrust vs. Competition 2.0

The widely-acclaimed book, *WINNERS, LOSERS & MICROSOFT: Competition and Antitrust in High Technology*, by Independent Institute research fellows Stan J. Liebowitz and Stephen E. Margolis, has been released in a revised paperback edition to include a stinging, new critique of the Microsoft antitrust trial judge’s findings and the proposal to break up the software firm.

“By a long way, *Winners, Losers & Microsoft* is the best single thing to read on this tangle of issues.” — *THE ECONOMIST*

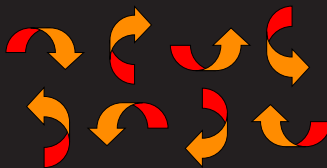
WINNERS, LOSERS & MICROSOFT

*Competition and Antitrust
in High Technology*

Revised Edition

Stan J. Liebowitz &
Stephen E. Margolis

Foreword by Jack Hirshleifer



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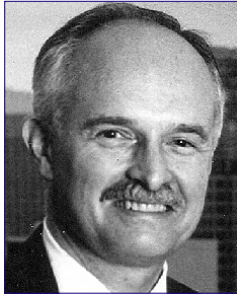
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“The government has chosen and the judge has approved a defective remedy. Its key defect is its logical inconsistency with the claims made in the case,” the authors write in the new appendix to their book. Liebowitz and Margolis find it “difficult to avoid concluding that the purpose of the so-called remedy is not correction, but punishment.”

First published in 1999, and based on peer-reviewed research begun more than a decade

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President's Letter:

Politics and the Leviathan State

The debate over tax reform and reduction is a welcome change from the recent past, but to date, no major proposal is being made that would even reduce taxes to the pre-Clinton or pre-Bush (Sr.) eras. Instead, politicians brag about the fact that per-capita government spending would continue to increase. Yet, prior to the rise of the Leviathan state in America in the 20th Century, the idea that the average person would be forced to pay 40-50% of his or her income to politicians was unheard of. For example, Thomas Jefferson ran on a platform that would abolish *all* federal taxes, and indeed when elected President, he not only did just that, but he set a precedent of *no* federal taxes (except briefly during the War of 1812) that lasted until Abraham Lincoln became President in 1860.

Hence, Leviathan continues to grow uninterrupted in modern America. The reason for this is that the public by-and-large still blindly accepts the view that government power is a force for good that somehow creates the "free lunches" of a safer, healthier, freer, smarter, and more equitable society. And, politicians profit from this situation to enrich themselves and those who keep them in power by forcedly redistributing wealth from an ignorant public to the politically influential few.

Can governments really best resolve social and economic matters or is politics just a con game that suckers the public into a negative-sum, interest-group driven maze, always demanding more and more funding while producing less and less?

Recent **Independent Policy Forums** (see page 1), our books, our quarterly journal, *The Independent Review* (page 5), our media program (page 4), our many student programs (page 7 and 8), and more demonstrate the power of The Independent Institute to challenge the reality of interest-group politics.

Only as a result can the politics of the Leviathan state be profoundly checked.

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Independent Policy Forums: American Revolution • Nanny State • Guns • Electoral Reform*(continued from page 1)*

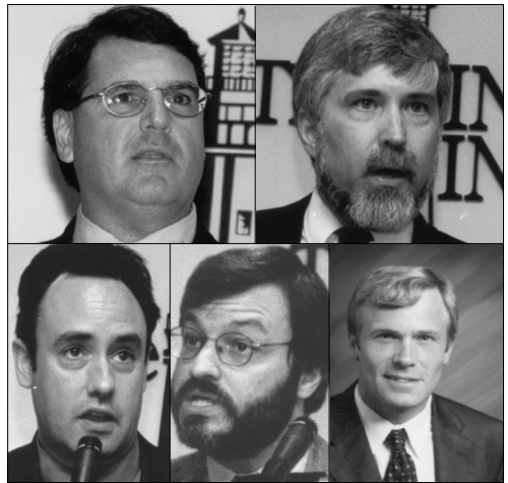
tinctively American mindset to future generations.

As Eicholz explained, the Founders' concept of political autonomy grew out of their view of self-responsibility, as evidenced in the changing usage of the term "self-government" in dictionaries of the era. Eicholz also gave a preview of his forthcoming book, *Harmonizing Sentiments: The Declaration of Independence and the Jeffersonian Idea of Self-Government*.

Appleby, drawing upon her book, *Inheriting the Revolution: The First Generation of Americans*, discussed the impact of four trends in the early republic: political radicalism, religious revivalism, the increasing economic mobility of young adults, and the abolition of Northern slavery. A new American self-concept — "man the doer" — encouraged African-Americans in the North and women throughout the republic to take advantage of new opportunities to live, work, create, and excel.

The talks by Appleby and Eicholz have been repeatedly broadcast on C-SPAN2.

● **PUBLIC HEALTH VS. THE NANNY STATE?** (October 26): Barely a day goes by



(clockwise from top right) **Thomas DiLorenzo, Gary Kleck, Hans Eicholz, Jacob Sullum, and David Kopel** addressed Independent Policy Forums.

without reports of a new "threat" to public health. Serious health hazards, we are told, lurk around every corner — in water supplies, air, soil, beverages, fast food, second-hand smoke, cellular phones, and food irradiation, to name

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Antitrust vs. Competition 2.0: Winners, Losers & Microsoft (Revised Edition)*(continued from page 1)*

ago, **WINNERS, LOSERS & MICROSOFT** shows that high-tech markets face vigorous competition and that the "path dependence" theory which claims such markets are prone to "locking in" inferior products lacks empirical support and merits no place in antitrust cases. Even with the presence of "network effects" — the phenomenon of a product becoming more useful the greater the number of other users of the product — markets do not "lock in" a mar-

ket leader and thereby do not preclude the possibility that a better product will come along and dethrone it.

"Whatever the appeals process brings, Judge Jackson's findings and the litigation that brought them are legal history," say the authors. (**WINNERS, LOSERS & MICROSOFT**, available in 344 pages, paperback (\$19.95 postpaid), 288 pages, cloth (\$29.95 postpaid); online, http://www.independent.org/tii/catalog/cat_WLMS.html) ●

Widespread Acclaim for WINNERS, LOSERS & MICROSOFT

"Liebowitz and Stephen Margolis really know their stuff, and they can write too." — **PAUL A. GIGOT**, Columnist, *The Wall Street Journal*

"Everyone interested in high technology should read this excellent book." — **SAM PELTZMAN**, Professor of Economics, University of Chicago

"Economists Liebowitz and Margolis present powerful evidence." — **NEWSWEEK**

"Innovative and utterly convincing, fascinating and illuminating." — **AMERICAN WAY**

"Systematic, . . . invaluable, . . . the best compilation that anyone has offered." — **WIRED NEWS**

"*Winners, Losers & Microsoft* is of interest to executives in virtually any field." — **UPSIDE**

"Excellent volume." — **CHOICE**

"A compelling case." — **INDUSTRY STANDARD**

"Powerful stuff. . . a very high calibre of scholarship, based on a wealth of new empirical evidence."

— **WILLIAM SHUGHART II**, Robert Hearin Chair in Economics and Finance, University of Mississippi

"Highly recommended." — **JOURNAL OF PRODUCT INNOVATION & MANAGEMENT**

"Any judges, economists, pundits or journalists who discuss technology lock-in without first dealing with the Liebowitz-Margolis critique should have their wrists soundly slapped." — **THE WALL STREET JOURNAL**

"This powerful and fascinating book shows with data and logic that the market, not the government, has been right." — **T. J. RODGERS**, Chairman & Chief Executive Officer, Cypress Semiconductor Corporation

"Excellent book." — **OLIVER E. WILLIAMSON**, Edgar F. Kaiser Professor and Professor of Economics and Law, University of California, Berkeley

The Independent Institute in the News

- California's energy shortage and the appointment of Gale Norton as Secretary of the Interior and Christine Todd Whitman as EPA Director have intensified environmental debate. Accordingly, **Richard Stroup** and **Roger Meiners**, coeditors of the Institute book, *CUTTING GREEN TAPE*, have appeared on radio stations WHAS (2/6) in Louisville, KY; KXEL (2/8) in Waterloo, IA; WAPI (2/8) in Birmingham, AL; and WSKY (2/11) in Gainesville, FL.
- On December 7, the *Honolulu Advertiser* published an op-ed on the U.S.'s foreknowledge of the impending Japanese attack on Pearl Harbor written by Independent Policy Forum speaker and *Day of Deceit* book author **Robert Stinnett**.
- Institute Senior Fellow **Richard Vedder** was quoted on tax issues in the *Atlanta Journal-Constitution* (10/22), *Union Leader* (Manchester, NH, 10/23), and *American Spectator* (February).
- Institute Research Director **Alexander Tabarrok** coauthored an article on DNA and the death penalty with research fellow **Eric Helland** which was published in the *Roanoke (VA) Times* (9/8) and the *St. Louis Post-Dispatch* (9/26). Tabarrok's commentary defending tax cuts for "the rich" ran in *Silicon Valley Business Ink* (San Jose, 10/20) and the *Pittsburgh (PA) Tribune-Review* (11/6). The *Pasadena Star-News*, *San Gabriel Valley Tribune*, and *Whittier Daily* (12/2) ran Tabarrok's op-ed on the "digital divide." *Human Events* (11/24) reported the results of Tabarrok's analysis of erroneous news claims regarding the Florida vote totals. Tabarrok's article opposing pharmaceutical price controls appeared in *Congressional Quarterly Daily*, *Economist*, *Financial Times*, *National Journal Daily*, *National Review*, *Washington Post*, *Washington Times*, and *Weekly Standard* (Sept./Oct.). Tabarrok discussed elections and the stock market on Voice of America Radio (11/1).
- **Stan Liebowitz**, coauthor of *WINNERS, LOSERS & MICROSOFT* (see page 1), dismissed complaints by rival firms over America Online's instant messaging software in the *Sunday Voice* (Wilkes-Barre, PA, 1/28). Liebowitz and his coauthor, **Stephen Margolis**, also wrote a piece for the *Wall Street Journal Europe* (9/11) which addressed attempts in the European Union to block the AOL/Time-Warner merger.
- *The Washington Times* (9/22) ran an op-ed on the Bridgestone/Firestone tire case by **Michael Krauss**, author of the Institute's monograph, *FIRE & SMOKE*. Krauss was also quoted on *FoxNews.com* (10/10) about the Philadelphia city solicitor's efforts to raise funds by filing "recoupment" lawsuits.
- In her national column (Dec./Jan.), Betsy Hart cited a study by **Robert Higgs**, senior research fellow and editor of *The Independent Review*, which calculated that "the average black income has increased much faster than the average white income."
- *Business Information Alert* (Nov./Dec.) published a favorable review for the new Institute book, *AMERICAN HEALTH CARE*, which was also "Pick of the Week" by *ConservativeBookstore.com* and the featured selection of Conservative Book Club.
- Institute Public Affairs Director **Robert Latham** testified before two legislative panels considering a ban on cell phone use while driving (9/21, 10/3), and reporters from several San Francisco Bay Area TV/radio stations interviewed him. He also discussed the issue on the "Lee Rodgers Show" on KSFO-AM (San Francisco, 10/10), the "Pete Wilson Show" on KGO-AM (San Francisco, 10/19), the "Carl Wiglesworth Program" on KTSA-AM (San Antonio, TX, 11/1) and on WIBW-AM (Topeka, KS, 12/29). Latham and Tabarrok jointly appeared to discuss the post-election in Florida on the "Ben Parker Show" on WRKO-AM (Boston, 11/12).
- An op-ed on historical firearms ownership in America by **Stephen Halbrook**, author of the Institute book, *THAT EVERY MAN BE ARMED*, ran in *The Washington Times* (11/5), *Forsyth County (GA) News* (11/8), *Free Lance-Star (VA)* (11/8), *Roanoke Times* (11/19), and *NewsMax.com* (11/3).
- **Fred Singer**, author of the Institute book, *HOT TALK, COLD SCIENCE*, was quoted in the *San Francisco Chronicle* and *Washington Post* (1/23). Singer called a report by the U.N.'s IPCC "a political statement" that does not conform to atmospheric data.
- Research Fellow **Robert Michaels** is a regular commentator on California's energy crisis for KQED-FM (San Francisco) and appeared on KSFO-AM (San Francisco, 2/7). His op-ed, "An Energy Policy in Bell Bottoms," appeared in the *Anza Valley Outlook* (1/19). ●

*The Independent Review:***Clintonomics • '60s Urban Riots • Medicare**

As a New Democrat, candidate Bill Clinton pledged to break with his party's left-liberal wing in favor of a "centrist" approach to "reinventing" government. But, just how well did President Clinton's economic performance reflect his rhetoric?

In three out of four areas—macroeconomic, fiscal and monetary policy—President Clinton leaned to the center more than his Democratic predecessors, according to economists **John Burns** and **Andrew Taylor**, writing in the Winter 2001 issue of *The Independent Review* ("A New Democrat? The Economic Performance of the Clinton Presidency").

Clinton's regulatory policy, however, was much in keeping with that of the liberal wing of his party. "Clinton's relatively liberal record on regulatory policy is...a product of both his ideology and the realities of fiscal politics in the 1990s," write Burns and Taylor. Those fiscal realities meant that government activism could be practiced more easily through regulation than through wrangling with an antagonistic Congress or coaxing the Federal Reserve.

"Going after Microsoft and tobacco, regulating the health-care sector, calling for minimum-wage hikes and strict ergonomic standards and favoring new environmental regulations shift much of the costs of activism to nongovernmental entities."

It remains to be seen whether politicians who adopt the New Democrat label will pursue low-inflation policy during times of low growth or rising unemployment. Clinton had to face neither and "has already proposed that much of the surpluses should be devoted to propping up Social Security, the largest social welfare program in the U. S.," Burns and Taylor point out.

"Changing times may therefore undermine the New Democrat philosophy, and the public may again see substantial differences between the economic outcomes associated with presidential parties. At least for the moment, however, Clinton has challenged our understanding of the linkage between presidential parties and economic outcomes. He campaigned as a New Democrat, and, when viewed in historical perspective, he has generally governed as one," Burns and Taylor conclude.

(For full article: http://www.independent.org/tii/content/pubs/review/tir53_burns.html.)

• The urban riots of 1960s left an indelible imprint on the national psyche, but their effects on small businesses were largely ignored by government officials and the pundit class. His-

torian **Jonathan Bean** remedies this neglect in his Fall 2000 article, "'Burn, Baby, Burn': Small Business in the Urban Riots of the 1960s."

According to Bean, as America's inner cities burned, the politicians and the pundits came under the sway of the militants' "riot ideology," which held that the riots were a collective protest against racial injustice.

Critics charged that inner-city businesses were guilty of price gouging, selling shoddy



merchandise, and ruthless credit collection, but studies have found that dishonest practices—mostly related to credit sales—were rare. Further, small businesses often provided extra service to their inner-city customers. Half helped customers fill out applications and one-third gave credit when others wouldn't. Nearly all donated to churches or charities.

The businesspeople who survived the riots faced many difficulties. Some merchants reduced their inventory to lower the potential losses of future looting. Many eliminated night hours. And all invested more in security. The physical appearance of these commercial districts deteriorated rapidly.

The Small Business Administration (SBA), which had affirmative action for minority businesses before the riots, was stingy with the aid it doled out to riot victims. Liquor stores and pawnshops, two of the most common targets during the riots, were ineligible for SBA loans.

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Independent Policy Forums: American Revolution • Nanny State • Guns • Electoral Reform

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just a few. Are these genuine health risks that warrant government action? How does politics distort perceptions about public health? Journalist **Jacob Sullum** and economist **Thomas DiLorenzo** addressed these questions.

When the public health movement began, contagious diseases were its focus, but that focus broadened as the regulatory/welfare state expanded, explained DiLorenzo (Prof. of Economics, Loyola College; coauthor, *From Pathology to Politics: Public Health in America*).

The “public health” establishment came to view its domain as anything that poses health risks, including lifestyle choices and “threats” to mental health, such as compulsive gambling.



(left to right) **Robert D. Cooter**, **Randy T. Simmons**, and **Alexander T. Tabarrok** address the Independent Policy Forum, “Can America’s Electoral System Be Fixed?”, with questions from the audience.

The “public health” movement is thus an integral component of the Nanny State, which seeks to “protect” individuals from themselves, and in so doing trivializes self-responsibility.

After finding success and riches in attacking the tobacco industry, the Nanny State may soon target obesity with a so-called “fat tax” on junk food, explained Sullum (Senior Editor, *Reason* magazine; author, *For Your Own Good*).

“There is no end to the interventions that can be justified in the name of ‘public health’ as that concept is currently understood,” said Sullum. Hence, “of all the risk factors for disease or injury, it seems, freedom is the most ‘pernicious’” to the Nanny Statists.

● **GUN CONTROL: SEPARATING FACT FROM MYTH** (November 15): Do gun laws reduce violent crime and suicide? Do guns help prevent crime? What gun policies would best ensure public safety while protecting individual liberty? Gun policy experts **Gary Kleck** (Florida State Univ.) and **David Kopel** (Independence Institute) addressed these and related questions.

Kleck, drawing on his book, *Targeting Guns*, an update of his awarding-winning book, *Point Blank*, pointed out an important fact seldom appreciated by gun control advocates: Crime victims use guns to thwart criminals far

more often than criminals use guns.

“Probably the highest estimate of the number of crimes committed in any one year with a gun is about a million, versus about two and a half million defensive gun uses,” said Kleck.

Kleck also discussed the difficulty of keeping guns out of criminal hands. “You could literally seize every gun from every criminal in the entire country today, and a year’s worth of theft would easily re-arm them within a single year—just through theft alone.”

Kopel, editor of the book, *Guns: Who Should Have Them?*, explained that waiting-period laws have virtually no effect on murder rates.

“The evidence indicates that virtually no-

body gets a gun from a regulatable source within a short period of time of the killing,” Kopel said. “In other words, murderers are not last-minute shoppers. They already have a gun long before they get to the point where they’re willing to kill somebody with it.”

● **CAN AMERICA’S ELECTORAL SYSTEM BE FIXED?** (February 6): The “Fiasco in Florida” has intensified calls to reform America’s political system. Is America’s electoral system “broken”? Has it been flawed all along? Should the Electoral College be abolished? Is proportional representation a solution to the paradox of having to choose between the “lesser of two evils”? Can “direct democracy” break the influence of special-interest groups? And perhaps most importantly, will any of these changes improve our lives and protect our freedoms, especially for those most disadvantaged? **Robert Cooter**, **Randy Simmons**, and **Alexander Tabarrok** discussed these issues.

Tabarrok (Research Director, The Independent Institute) began by discussing voting paradoxes that make democracy problematic. The “will of the voters,” he explained, is ambiguous at best, because different voting systems can produce very different outcomes. Even major-

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INDEPENDENT SCHOLARSHIP FUND

To improve children's access to a high-quality education in both K-12 public and private schools, The Independent Institute launched the **Independent Scholarship Fund (ISF)** in 1999. The ISF provides tuition assistance to low- to moderate-income families in the San Francisco East Bay counties of Alameda and Contra Costa. This school year, the ISF has worked with almost 100 schools and has awarded 207 merit-based and need-based scholarships of up to \$1,500 to children entering grades K-12 to attend the private schools of their choice. Nearly 900 applications were received—a clear indicator of the dramatic level of dissatisfaction with the education offered by local school districts.

This spring, the ISF is reopening the application process to new and returning students for the 2001-2002 academic year. The ISF will again award tuition scholarships to

students who demonstrate a desire to learn and excel in school, and to those who otherwise could not afford to attend a private school. Funds permitting, the ISF hopes to award up to 500 scholarships.

The Independent Scholarship Fund, as it continues to expand, will dramatically increase the educational opportunities of disadvantaged children, and encourage significant school reform measures through increased competition among education providers, thereby improving quality and reducing costs for all families.

For further information or to make a tax-deductible contribution, please visit <http://www.independent.org/tii/students/isf.html>, or contact Ms. Katherine Shearer, Director, Independent Scholarship Fund • Phone: 510-632-1366 x120 • Fax: 510-568-6040 • Email: scholarship@independent.org.

The Independent Review: Clintonomics • '60s Urban Riots • Medicare Reform

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"In recent years, historians have given voice to the voiceless, illuminating their subaltern pasts. Yet by ignoring this important element of the urban scene, they have failed to present a complete and accurate picture of our recent past," Bean concludes.

(For full article, see http://www.independent.org/tii/content/pubs/review/tir52_bean.html.)

• Debates over Medicare reform didn't start with Election 2000. In fact, legislation similar to Medicare had been intensely debated since the mid-1940s. However, its advocates found no way to overcome opposition until 1965, when Medicare's staunchest advocate on the House Ways and Means Committee smuggled Medicare legislation into a bill at the last minute.

Yet as vocal as debates over Medicare have been, very little of that debate has been informed by sound economic principles. This omission, which has stalled any genuine reform of Medicare, is largely the fault of economists, says economist **Robert Helms** in "Medicare Reform: Economics versus Politics" (Fall 2000).

"My criticism is not directed to the economists who have attempted for many years to apply market principles to health-care issues,

but to the larger number of economists who have not," Helms writes. "Moreover, my criticism pertains to the failure of economists to teach the fundamental principles of economics to educated Americans."

To improve the quality of the debate over Medicare, Helms recommends three measures. First, more economists must explain to policymakers and the public that market competition in health care, as in other markets, would improve health care quality. Second, they must explain that competition would also make health care more efficient by allocating scarce resources to higher-valued uses. Finally, they must explain that price controls are destructive of these desirable ends.

Without a concerted effort to impart these principles to a wider audience, Helms argues, Medicare and other health-policy reforms will be victims to political maneuvering, to the detriment of the lives and well-being of Americans. "This lack of education in economics is appallingly evident in Washington, D.C., especially on Capitol Hill," says Helms.

(For full text, see http://www.independent.org/tii/content/pubs/review/tir52_helms.html.)

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Current Opportunities for Students

The Independent Institute's student program provides excellent opportunities. Since 1974, the **Olive W. Garvey Fellowships** have recognized students who have become some of the finest scholars, business and civic leaders, journalists, etc. The program awards \$2,500, \$1,500, and \$1,000 for the three best essays of 3,000 words from college students 35 years old or younger. All entries are reviewed by a panel of distinguished scholars, and the entry deadline is May 1, 2001. This year's topic is "**Does the new economy require a free economy?**"

In today's "politically correct" classrooms, students seldom have the opportunity to learn the principles of free societies so essential to deal with the world they will soon enter. The week-long **Summer Seminars in Political Economy** for high school and college students provides excellent instruction in economics and the principles of a free society. Led by **Joseph Fuhrig** (Professor of Economics, Golden Gate University), college credit is also available.

Student Internships provide students with invaluable experience. **Miguel Rodriguez**, who received his B.A. in political science from the U. of California, researched Institute funding

opportunities. **Chelsea Mao**, a political economy major at the U. of California, researched education for her articles in the *Pittsburgh Tribune-Review*, *Trenton (NJ) Times*, *Manassas (VA) Daily Journal* and *Contra Costa (CA)*



Times. **Scott Esposito**, studying economics and political science at the U. of California, had op-eds on the FDA, California's electricity crisis, and postal systems in the *Pittsburgh Tribune-Review* (11/25), *Los Angeles Daily News* (12/17), and *Commercial Appeal* (Memphis, TN, 1/26).

For more information, please visit http://www.independent.org/tii/students/student_programs.html, **or contact** Mr. Carl Close, Academic Affairs Director • Phone: 510-632-1366 x117 • Fax: 510-568-6040 • Email: cclose@independent.org. ●

Independent Policy Forums

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ity rule with pair-wise voting can lead to a choice which everyone regards as worse than some other possible choice. Although democracy may not be good at representing the "will of the voters," democracy can exert a strong check on gross abuses of government power, he said.

Robert Cooter (Herman F. Selvin Professor of Law and Economics, University of California, Berkeley), discussed many issues developed in his new book, *The Strategic Constitution*. Although well aware of voting paradoxes, Cooter sought to explain how constitutions can organize political competition to give citizens the laws and public goods that they want.

Randy Simmons (Prof. of Political Science, Utah State U.) discussed some of the root causes of government failure, developed in his award-winning book with William Mitchell, *Beyond Politics: Markets, Welfare, and the Failure of Bureaucracy* (The Independent Institute, 1995). (*Independent Policy Forums* are available as audio tapes, videos, or transcripts (\$18.95, \$27.95, \$5.00 postpaid); online, see <http://www.independent.org/tii/forums/events.html>.) ●

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