

Vol. 10, No. 2
March/April 2001
\$9.00



Intellectual Ammunition

Research and commentary for elected officials from the nation's leading think tanks.
Visit us online at www.heartland.org

Potshots

The Internet was supposed to be all about freedom. That is why governments want to regulate it.

THE ECONOMIST

Very few private accountants could stay out of jail listing borrowed money as a "surplus." But the borrowing from sharply rising Social Security revenues—generated by full employment—does the trick in the wild world of government accounting.

GEORGE MELLOAN

A third of the nation's CEOs can name more members of the new "Survivor" cast than they can President Bush's cabinet nominees.

ZAY N. SMITH

The American people managed to wage a war of independence, erect a radical new form of government, and weather the storms of financial panic, civil war, depression, and industrialization all without the divinely inspired vision of professional politicians. America was a country founded by political amateurs.

MARK SANFORD

Every act of protection by the state entails a loss of freedom.

ROGER SCRUTON

1999: I will read five books this year. 2000: I will finish the one I started four years ago. 2001: I will finish the comics section of the newspaper this year.

NEW YEAR'S RESOLUTIONS THROUGH THE YEARS

The Tyranny of Public Health

by Jacob Sullum

Public health used to mean keeping statistics, imposing quarantines, requiring vaccination of children, building sewer systems, inspecting restaurants, and reviewing drugs for safety.

Nowadays it means, among other things, raising cigarette taxes, banning alcohol billboards, restricting gun ownership, and forcing people to buckle their seat belts.

In the past, public health officials could argue they were protecting people from external threats: carriers of contagious diseases, fumes from the local glue factory, contaminated water, food poisoning. By contrast, the new enemies of public health come from within; the aim is to protect people from themselves rather than each other.

RISKY BEHAVIOR

Public health practitioners argue they are simply adapting to changing patterns of morbidity and mortality. But in doing so, they are treating behavior as if it were a communicable disease, which obscures some important distinctions.

Behavior cannot be transmitted to other people against their will. People do not choose to be sick, but they do choose to engage in risky behavior. Their choice means the behavior, unlike a viral or bacterial infection, has value to them. It also means they will resist attempts to control the behavior.

Public health officials tend to assume people will change their behavior once they're educat-

ed about the risks associated with it. But that is not always true. In the case of smoking, for example, self-styled defenders of public health seem genuinely puzzled by the fact that so many people persist in this plainly irrational habit. They can't imagine that people might actually be willing to live shorter lives in exchange for the pleasure cigarettes give them. They can't imagine why people would drink, eat fatty foods, refuse to wear seat belts, and otherwise behave in ways frowned upon by the public health establishment. This is not because they can't help themselves; it's because, for the sake of pleasure, utility, or convenience, they are prepared to accept the risks.

AN INVITATION TO MEDDLING

Viewing risky behavior as a contagious disease invites endless meddling. The same arguments commonly used to justify the government's efforts to discourage smoking can easily be applied to overeating, for example.

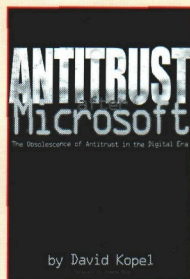
continued on page 3

CONTENTS

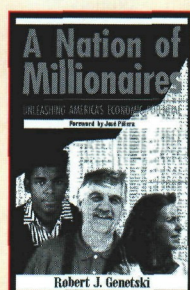
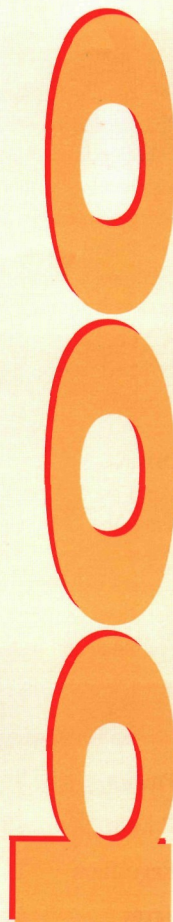
Crime	4	Politics	9
Education	5	Privatization	10
Environment	6	Regulation	11
Health Care	7	Taxes	12
Law	8	Technology	13

Publications available from The Heartland Institute

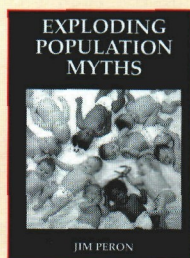
Just call 312/377-4000, or order
online at www.heartland.com



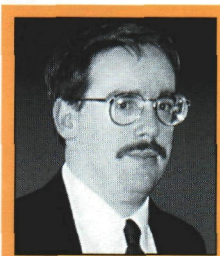
**Antitrust After
Microsoft**
\$8.95 paperback
176 pages



**A Nation of
Millionaires**
\$8.95 paperback
168 pages



**Exploding
Population Myths**
\$4.95 paperback
80 pages



News from the *Heartland*

by John R. La Plante
Managing Editor

Advocates of limited government long have been concerned about judicial activism. They have worried that judges, frustrated with developments in the legislative arena, impose their own policy preferences on the public. Equally dangerous, though, is "executive activism."

One area where executive activism might be seen is in the flurry of "midnight regulations" that accompanies the end of each Presidential administration. Susan E. Dudley, our new columnist for the Regulation department, argues that while it may be coincidental that some regulations are issued at the end of an administration, some are hurried into existence without the usual checks and balances in order to appease certain interests. Sound anything like judicial activism?

Writing in the environment department, Robert H. Nelson and David W. Riggs examine the harmful effects of one specific kind of regulation: the Presidential creation of more lands devoted to wilderness status as "national monuments."

The significance of executive activism was also brought to light, indirectly, during the Senate confirmation hearings of the new Attorney General, John Ashcroft. The charge against him was that he would not enforce laws he fought as a member of the legislative branch. Perhaps this charge was hurled because his critics are well-in-

formed in the practice of executive activism. After all, we've seen plenty of it in the last eight years.

IN THE DEPARTMENTS

Crime columnist Morgan Reynolds explores the possibilities of restorative justice, a "good intentions" proposal that just may work. In the education department, guest columnist Dr. Alan Bonsteel offers another reason for supporting school choice: Under the status quo, one of every four students drops out before high school graduation. Public schools, he reports, often have dropout rates more than ten times higher than achieved by schools of choice.

Health columnist Twila Brase warns that bureaucratization and increasing state control over the field of medicine are discouraging people from entering medical school, which could affect the quality of future physicians. Writing on law, Mami Soupcoff cites several examples of people whose property rights have been trampled by the abuse of eminent domain powers.

President Bush has made a lot of news about his plans to expand the use of the non-government sector in the delivery of social services. Writing in the privatization department, Robin Johnson tells us that governments throughout the country are relying more and more on outside vendors not so much for cost savings, but because there are some things bureaucracies just can't do very well.

Finally, Bill Ahern explains that anything other than an across-the-board tax cut will increase the progressivity of the federal income tax code, and Bartlett Cleland provides a primer on the conflict over privacy regulations.

FAREWELL

Murray Weidenbaum, former Presidential advisor, has written the Regulation department since its inception in *Intellectual Ammunition*. He has taken a sabbatical from his position at the Center for the Study of American Business, and has begged off his duties for *IA* as well. Godspeed, professor.

As always, I welcome your comments about this magazine, especially suggestions for improvement. Write to me at laplante@heartland.org.

Intellectual Ammunition (ISSN 1077-8861) is published bimonthly by The Heartland Institute, a nonprofit, non-partisan research and education organization. Nothing in *Intellectual Ammunition* should be construed as necessarily reflecting the views of The Heartland Institute or as an attempt to aid or hinder the passage of any legislation. Reprint permission is granted, provided sufficient credit is given to The Heartland Institute. Annual subscription with Heartland membership \$49.00; single issue \$9.00. POSTMASTER: Send address changes to The Heartland Institute, 19 South LaSalle, Suite 903, Chicago, IL 60603; telephone 312/377-4000, fax 312/377-5000.

President: Joseph L. Bast ♦ Publisher: Nikki Saret

Editor: Diane Carol Bast ♦ Art Director: Kevin M. Fitzgerald ♦ Managing Editor: John R. La Plante

Contributing Editors: *Crime* Morgan Reynolds, National Center for Policy Analysis; *Education* George Clowes, The Heartland Institute; *Environment* David Riggs, Competitive Enterprise Institute; *Health Care* Twila Brase, Citizens' Council on Health Care; *Law* John E. Kramer, Institute for Justice; *Politics* Ron Faucheaux; *Privatization* Robin Johnson, Reason Public Policy Institute; *Regulation* Susan E. Dudley, Mercatus Center; *Taxes* Bill Ahern, Tax Foundation; *Technology* Bartlett Cleland, Institute for Policy Innovation; *Welfare* Robert Rector, The Heritage Foundation.

continued from page 1

If smoking is a compulsive disease, so is obesity. It carries substantial health risks, and people who are fat generally don't want to be. When deprived of food, they suffer cravings, depression, anxiety, and other withdrawal symptoms.

Sure enough, the headline of a March 1985 article in *Science* announced, "Obesity Declared a Disease." The article summarized a report by a panel of experts who found that "the obese are prone to a wide variety of diseases."

And it's not just the obese who need to worry. A study published in the *New England Journal of Medicine* found gaining as little as 11 to 18 pounds was associated with a higher risk of heart disease. It attributed 300,000 deaths a year to excessive weight, including one-third of cancer deaths and most deaths from cardiovas-

Treating behavior as if it were a communicable disease obscures some important distinctions. Behavior cannot be transmitted to other people against their will.

cular disease. Surgeon General David Satcher called excessive weight "a major public health problem . . . that deserves much more attention than it receives."

What sort of attention? As early as June 1975, in its *Forward Plan for Health*, the U.S. Public Health Service was suggesting "strong regulations to control the advertisement of food products, especially those of high sugar content or little nutritional value."

Today, people like Kelly Brownell, a professor of psychology at Yale who directs the university's Center for Eating and Weight Disorders, have suggested taxing foods based on their nutritional content. Foods with a high ratio of calories to nutrients would be taxed heavily, while fruits and vegetables might be subsidized.

If this idea strikes most people as ridiculous, it's not because the plan is impractical. There's no logistical reason why people could not be required to weigh in at an approved doctor's of-

fice, say, once a year, and report the results to the Internal Revenue Service for tax assessment.

Although feasible, the fat tax is ridiculous because it's an intrusion by the state into matters that should remain private. Even if obesity is apt to shorten a person's life, most Americans would agree that's his business, not the government's.

Yet many of the same people believe not only that the government should take an interest in whether a person smokes, but that it should apply pressure to make him stop, including tobacco taxes, tax-supported nagging, and bans on smoking outside the home.

New York City lung surgeon William Cahan, a prominent critic of the tobacco industry, has explained the rationale for such policies. "People who are making decisions for themselves," he said, "don't always come up with the right answer."

A COMMON POOL OF WEALTH?

The public health establishment further argues that government intervention is justified because individual decisions about risk affect other people.

A surgeon general's report published in 1979 discussed the controversy over state laws requiring motorcyclists to wear helmets. "Motorcyclists often contend that helmet laws infringe on personal liberties," the report said. "Opponents of mandatory [helmet] laws argue that since other people usually are not endangered, the individual motorcyclist should be allowed personal responsibility for risk. But the high cost of disabling and fatal injuries, the burden on families, and the demands on medical care resources are borne by society as a whole."

This line of reasoning, which is also used to justify taxes on tobacco and alcohol, implies that all resources—including not just taxpayer-funded welfare and health care but private savings, insurance coverage, and charity—are part of a common pool owned by "society as a whole" and guarded by the government. That is a view associated with fascism and communism, not with a free society that respects private property and individual choice.

Most public health practitioners would presumably recoil at the full implications of the argument that government should override individual decisions affecting health because such decisions have an impact on "society as a whole." But former Surgeon General C. Everett Koop—who became famous as a foe of tobac-

co and lately has been campaigning against obesity—seems untroubled.

"I think that the government has a perfect right to influence personal behavior to the best of its ability," Koop writes.

Other defenders of the public health movement forthrightly admit its aims cannot be reconciled with the American tradition of limited government. In 1975 Dan E. Beauchamp, then an assistant professor of public health at the University of North Carolina, argued that the biggest obstacle to improving public health is "the radical individualism inherent in the market model."

"The historic dream of public health that preventable death and disability ought to be minimized is a dream of social justice," Beauchamp said. "We are far from recognizing the principle that death and disability are collective problems and that all persons are enti-

The same arguments commonly used to justify the government's efforts to discourage smoking can easily be applied to overeating.

tled to health protection." Rejecting the distinction between voluntary and involuntary hazards, he complained that "the primary duty to avert disease and injury still rests with the individual."

Beauchamp called upon public health practitioners to challenge "the powerful sway market-justice holds over our imagination, granting fundamental freedom to all individuals to be left alone."

Public health, in other words, is inconsistent with the right to be left alone. Of all the risk factors for disease or injury, it seems, freedom is the biggest.



Jacob Sullum is senior editor of *Reason* magazine and author of *For Your Own Good: The Anti-Smoking Crusade and the Tyranny of Public Health* (The Free Press).

Crime

Morgan Reynolds

Morgan Reynolds is director of the Criminal Justice Center at the National Center for Policy Analysis.

Restorative Justice, American Style

FOR MORE INFORMATION...

Restitution as an Objective of the Criminal Justice System. Bruce L. Benson explains the change from restitution to the current criminal justice system—and perhaps back to restitution. (*The Journal of the James Madison Institute*, Winter 2001, 6pp.)



Call 312/377-3000 and request document #1367106



<http://www.heartland.org/pdf/13671f.pdf>

Adjectives in front of the word “justice” are suspicious things. Expressions like “social justice” or “restorative justice” smack of European socialism and gooeey government programs led by woolly headed do-gooders. Justice, plain and simple, is what most people really want.

Occasionally, though, a “good intentions” program comes along that actually works, giving us something besides jails to control crime. Ed McGarrell, criminology professor at Indiana University in Bloomington, has teamed up with the Hudson Institute and the city of Indianapolis to try an experiment in restorative justice with youthful, first-time offenders. The program is based on sound principles, not wishful thinking, so it’s proving successful.

FOCUSING ON VICTIMS

The three principles of restorative justice are first, restoration to the victim; second, offender accountability; and third, reintegration of the offender into the community.

The focus on victims is key, in sharp contrast to the conventional system where victims play little or no role. Once a youth is arrested, a restorative justice coordinator arranges a conference among the violator, the victim, and their respective families and supporters. A trained police officer facilitates at this conference, which gives the victim an opportunity to confront the perpetrator, explain how he or she was harmed, and ask questions of the offender. The goal is to arrive at a reparation agreement in which everyone agrees that the young offender needs to take certain actions to set things straight with both the victim and the wider community. Typical agreements include contrition, service to the victim, and community service.

“Offenders often fear setting up the conference because they’ll have to appear before the eyes of someone they’ve harmed,” says McGarrell. “In contrast to facing the cops, prosecutors, and family courts, it’s hard to look good in front of the victim, her family, and your own family.”

Sometimes a family member changes the dynamics of a conference dramatically. “Our mother took a second job during the summer to earn extra money to take us clothes shopping for the new school year,” an older sister of one victim explained to the offender. “Here it was, the first week of school, and you stole my brother’s new jacket. You’ll never know how much you hurt my Mom and our family.”

Indianapolis has been using restorative justice conferences since 1997. The city has allowed researchers to randomly assign eligible cases—first-time offenders age 14 and younger excluding those held for serious violent crimes—to the traditional system (the control

group) or restorative justice program (the experimental group), yielding equivalent groups of youths and victims for valid comparisons.

REDUCING RE-ARRESTS

During the first two years of the experiment, the restorative justice program has met the needs of victims much better than the conventional system, as well as significantly reducing re-arrests of young offenders. About 230 youths have participated in conferences and a like number in the control group.

Over 90 percent of victims say they were satisfied with how their case was handled under restorative justice, compared to only 68 percent under the other court-ordered methods. Ninety-eight percent of victims said they would recommend restorative justice to a friend in a similar situation; only 24 percent of victims in traditional court programs would say the same.

For offenders, conferences worked better than the typical slap-on-the-wrist rendered by the juvenile system. Over 80 percent attended the conference, reached an agreement, and fulfilled all its terms, compared to only a 58 per-

Occasionally, a “good intentions” program comes along that actually works, giving us something besides jails to control crime.

cent completion rate in the control group.

Following offenders over time, McGarrell and his team find the re-arrest rate for offenders from restorative justice conferences is little more than half that of the offenders from the control group, a dramatic and statistically significant reduction. The city has been pleased enough to expand the project to young second-time offenders.

Is it a panacea? Of course not. Victims are far more willing to cooperate in the case of youthful rather than adult offenders, and for minor property crimes where reparation is feasible. The principles of restorative justice, which resemble those of the civil justice system, apply widely though. Even if adults, probation, and incarceration are involved, contrition and repairing the damage to the victim are not ruled out.

One of the secrets to Japan’s low crime and low imprisonment rate is the use of restorative justice: If the criminal expresses genuine contrition and makes amends to the victim, then the public sector can go somewhat lightly on the criminal. We can do the same here.

