

# Three Downloadables from Hoover

Reviewed by *Richard L. Gordon*

## LEVIATHAN: The Growth of Local Government and the Erosion of Liberty

By *Clint Bolick*

208 pages; Stanford, Calif.: Hoover Institution Press, 2004

CLINT BOLICK, A LONG-time practitioner against and critic of intervention by state and local governments, provides a good overview of the problems with such intrusions in his new book, *Leviathan*. As he writes in his introduction, the number and scope of state and local governmental bodies have increased substantially in recent decades and together form a greater threat to liberty than the federal government. However, he notes, this development has gone largely unnoticed by the public. Bolick, whose viewpoint is grounded in a strong civil liberties view of the U.S. Constitution, argues that the nation's political philosophy of separated powers is intended to preserve rights, and the Founders' decision to delegate considerable power to state and local governments was conditioned on limiting state and local ability to restrict civil rights. Thus, the growth in state and local government strikes at the founding ideals of this republic.

Bolick opens the body of the book with a description of the expansion of state and local governmental bodies, which has resulted in agencies that are too numerous for concerned citizens to monitor and limit effectively. He points

**Richard L. Gordon** is professor emeritus of mineral economics at Penn State University. He has written extensively on the economics of energy and other public policies. Gordon may be contacted by e-mail at [rlg3@psu.edu](mailto:rlg3@psu.edu).

to such examples as Robert Moses (the powerful, longtime chief planner of major projects in New York City and New York State), the Port of New York Authority, the Chicago Transit Authority, and the Washington Public Power Supply System to underscore his point.

For civil libertarians and supporters of limited government, Bolick's distressing examples are all too familiar.

The author then turns to the constitutional basis of his position. He summarizes material from the Framers' debate over the Constitution and draws on their arguments to support his claim that the Constitution is intended to limit the power of all governments within the

**Many conservatives defend states' rights, but they show little concern for how the states also impede on individual liberty.**

United States, not just the federal government.

Bolick draws on experience to support his arguments. He points out that many liberals (in the modern U.S. sense that Bolick employs) are all too willing to tread upon individual civil rights that conflict with their policy goals. He then makes the less familiar point that many U.S. conservatives respond to their opponents by defending the notion of states' rights, but they show little concern for how the states also impede individual liberty. That criticism is explicitly directed at the present conservative members of the U.S. Supreme

Court and former judge Robert Bork, a vigorous proponent of states' rights. Bolick emphasizes the Constitution's explicit statements stressing the reservation of rights to the people and he argues that both sides fail to uphold that proposition.

The next and largest part of the book looks at government restrictions on liberty in six different areas of human endeavors: commerce and enterprise, property rights, speech, privacy, racial discrimination, and education. The material that can be discussed in each of those areas is immense, and each has

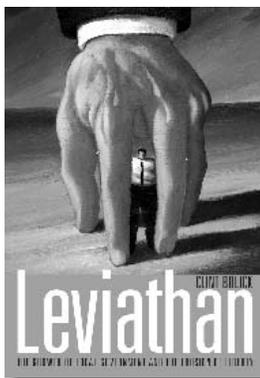
been the topic of countless books. Thus, Bolick can only briefly survey the issues and in the process often reiterates examples that also appear in narrower but deeper reviews.

The section on commerce presents graphic examples of state-sanctioned barriers to entry that reduce competition and force consumers to

accept inferior goods and services at higher prices. Similarly, the property-rights chapter presents such examples of government infringement on personal liberty as the use of eminent domain to secure land for politically favored private projects, the imposition of environmental requirements that arbitrarily restrict property rights, and the abuse of forfeiture provisions in police charges.

Bolick's discussion of restrictions on speech opens with the description of two restrictions on commercial speech: a prohibition on the sale of books on the sidewalk and a storefront sign ordinance. He draws on the infamous Nike case to show how government restricts corporations from defending themselves from attacks. Finally, he points to the newly strengthened laws on electioneering.

Among the other material contained in the book:



■ Bolick's chapter on privacy nicely contrasts the willingness of the Left to protect homosexuals from sodomy laws while it opposes preserving the free-association rights of the Boy Scouts to exclude homosexuals from leadership positions.

■ The civil rights chapter focuses on two examples of undesirable reverse discrimination: pressures to prevent interracial adoption and affirmative action.

■ The public schools chapter highlights Bolick efforts (detailed in his book *Voucher Wars*, published by the Cato Institute) to establish the constitutionality of school vouchers. The author, of course, is president and general counsel of the Alliance for School Choice.

■ His final chapter mainly discusses the role of well-designed litigation in overturning government misuses of power—a topic that he understands well as an affiliate of the Institute for Justice. He concludes by noting the contribution of publicity to furthering those cases.

As suggested, Bolick has undertaken the daunting task of delineating both a unifying concept of rights and the extent of state and local actions undermining individual rights. As also noted, each of his subject areas and his underlying constitutional arguments are the subjects of many book-length treatments. Bolick's book would benefit from more expansive citation of that literature.

Overall, *Leviathan* is a readable overview of the issues, and it is buttressed by a sounder conceptual basis than many jurists have employed. It is worthy of attention and, as a downloadable book, is readily accessible. The main problem is that Bolick tends to slide over major problems. One glaring gap is his failure to give adequate consideration to the conflict between his concern over incoherent judicial thinking and his optimism over successful court cases. My reading is that he feels that despite the drawbacks of the

courts, considerable further success can still occur if the effort is made. Finally, he naturally cannot resolve the problem that rights may conflict—of course, no theory can resolve such disputes. It would be nice, however, if he were to point out that problem.

Thus, the obverse of the well-justified attacks on Robert Moses's high-

## The absence of market pressure on government entities allows them to trade off profits for other goals.

handed, often-ill-advised resolution of conflicts is the gridlock that has subsequently arisen in New York. That is nicely memorialized by the eventual but long-delayed replacement of the ugly Moses-directed coliseum-office building complex in Columbus Circle with the Time-Warner Building. **R**

### COMPETING WITH THE GOVERNMENT: Anti-competitive Behavior and Public Behavior

*Edited by R. Richard Geddes*

120 pages; Stanford, Calif.: Hoover Institution Press, 2004

**R**ICHARD GEDDES'S SHORT book *Competing with the Government* contains four studies of what happens when private enterprise tries to compete with government entities. In the first study, contributors David E. M. Sappington and J. Gregory Sidak sketch the formal economics of competing with government-owned organizations. Geddes provides the second and fourth chapters, the former describing the nature of government action and the latter offering a review of anti-competitive behavior by the U.S. Postal Service. The third study, by Peter J. Wallison, examines the applicability of economic arguments raised in the Microsoft case to government-supported mortgage financing agencies.

The argument against government participation in various market sectors is a familiar one to those concerned with the economics of government action. Clearly, the absence of market pressures on government entities allows them to trade off profits for other goals such as higher revenue or the subsidization of service to groups that politicians wish to favor. Sappington and Sidak flesh out this argument in their chapter. The further concern that access to tax revenues might subsidize further departures from efficient behavior is left tacit.

Geddes's overview starts by discussing the special privileges enjoyed by government-owned ventures and concludes by presenting examples of misbehavior by such entities. His discussion of the special privileges identifies such general advantages as monopoly power, credit guarantees, tax exemption, and exemption from regulation. The utilization part examines such specific abuses as Amtrak's entry into freight services, the Federal Reserve Board's provision of check-clearing services, and the National Weather Service's competition with private forecasting services.

Wallison's chapter offers the premise that Fannie Mae and Freddie Mac, the giant home mortgage underwriting corporations established by Congress, engaged in tying practices not so different from what Microsoft was alleged to have committed. Unfortunately, this intriguing argument proved more than could be handled well in the allotted space. Wallison could present only a short discussion of the economics of tying. Presumably the point of including

the chapter was that the usual economic objections to making tying a "per se" violation of the Sherman Act were applicable to the Microsoft case but not to the mortgage underwriters.

In sum, this book is a small addition to the literature of government intervention, but it is well worth downloading. **R**



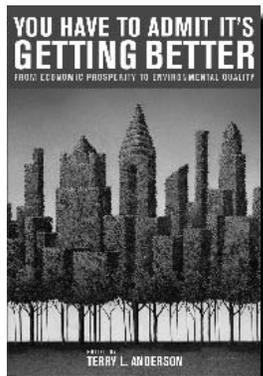
## YOU HAVE TO ADMIT IT'S GETTING BETTER: From Economic Prosperity to Environmental Quality

Edited by Terry L. Anderson

212 pages; Stanford, Calif.: Hoover Institution Press, 2004

**T**HE ANTHOLOGY YOU *Have to Admit It's Getting Better*, edited by Terry L. Anderson, could be renamed *The Skeptical Environmentalist and Friends*. It is largely an effort, in the spirit of Julian Simon and Bjørn Lomborg, to refute excessive claims from environmentalists. Indeed, Lomborg contributes an important chapter to the book with his response to critics of his 2001 lightning rod *The Skeptical Environmentalist*. But there is more to the book than just that.

The book opens with Anderson's introduction, which combines the standard overviews of the contents with discussion of the background. Thus, he begins with a salute to Simon's role in initiating criticism of environmental pessimism, and he concludes with a discussion of Simon's famed wager (a



sucker bet, really) with Paul Ehrlich about future resource prices. The introduction is wrapped up with a good, short discussion of the basic issues of resource scarcity.

Lomborg's chapter comprises roughly a quarter of the book. It opens with a lengthy demonstration that it is his critics, and not Lomborg, who misstate the data. He turns to a discussion of the forces that lead to pessimism and then concludes by replying explicitly to the criticisms of his book that appeared in *Nature* and *Scientific American*. The chapter is well done, but readers need to first be familiar with *The Skeptical Environmentalist* and the responses to that book.

Indur Goklany contributes a chapter discussing the improvements over time in measures of well being involving food supplies, life expectancy, infant mortality, economic development, political rights, and economic freedom. Similar improvements are found in a development index based on life expectancy, education, and per-capita income.

Bruce Yandel, Maya Vijayaraghavan, and Madhusudan Bhattari offer a chapter on the environmental Kuznets curve. Simon Kuznets, a Nobel laureate,

observed that some measures of well being decline in the early stages of development but then they improve. Studies suggest that this process applies to environmental damage; the curve then is a stylized representation of the pattern. The article documents the reality of that claim. A later chapter, by Robert E. McCormack, contends that the Kuznets curve also prevails with greenhouse gas emissions.

B. Delworth Gardner contributes a chapter that nicely summarizes the case for free trade and against the attacks on globalization. He notes, among other points, that economic growth in developing nations typically stimulates environmental quality improvement.

Seth W. Norton provides a chapter that statistically evaluates the relationship between economic performance and the Index of Economic Freedom produced by a consortium of libertarian groups headed by the Fraser Institute and the Cato Institute. Norton prefaces his discussion with a review of concerns about the impacts of growth. While this is far from the first discussion of this topic, it is well done.

The book, like the other two Hoover offerings discussed above, is worth downloading. However, professors interested in using it for a course should probably use it only as a supplement to other material. **R**

## New Books from the IEA Regulation and Privatisation

*Economic Affairs*  
The Journal of the Institute of Economic Affairs

### Lessons from Privatisation

September 2004, Vol 24 No 3

Price \$13.00 and FREE Airmail P&P

The latest issue of *Economic Affairs* focuses on lessons from privatisation, with articles looking at how privatisation and deregulation in energy, telecoms, water and rail benefited consumers, shareholders and taxpayers. The lessons are applied to proposals to privatise the UK postal service. In addition, there are articles on tax policy, freedom and constitutions and the ECB's monetary policy together with columns and reviews.

- 1 Lessons from privatisation by David Parker
- 2 Further lessons from privatisation by Martin Ricketts
- 3 Privatisation of energy: was it necessary? by Nigel Essex
- 4 Water privatisation: too much regulation? by Colin Robinson
- 5 The UK railway privatisation: failing to succeed? by David Tyrrell
- 6 It's not too late to privatise Royal Mail by Ian Senior

#### Other Articles:

*Making up history: a comment on Pratten* by E Roy Wientraub, *Reclaiming history: a reply to Wientraub* by Stephen Pratten, *Rethinking tax policies: new ideas from a dead economist* by Kurt Wickman and Christopher Lingle, *Creating a constitutional order of freedom in emerging market economies* by James A. Dorn, and *What monetary policy can do: the clarified approach of the ECB* by Dietrich Schonwitz and the *Morcombe Bay cockle pickers: market failure or government disaster* by John Meadowcroft and John Blundell.



## Successes and Failures in Regulating and Deregulating Utilities

Evidence from the UK, Europe and the USA

Edited by Colin Robinson

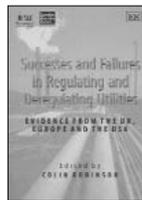
Price \$50.00 and FREE Airmail P&P

This book is the latest annual review of utility regulation and deregulation and contains a series of chapters from leading practitioners in the field which comment on the most significant and up-to-date developments. Two viewpoints are presented on each issue: the first by a distinguished academic or industry expert and the second, a shorter comment, usually by the relevant UK regulator. Together they show how regulation and deregulation are evolving, and highlight the successes which have been achieved and the failures which must be overcome.

The book will be of considerable value to practitioners, policymakers and academics involved in regulatory reform and regulatory economics. It will also be of interest to anyone wishing to gain an overview of international regulatory policies.

Introduction by Colin Robinson

- 1 The failure of good intentions: the collapse of American telecommunications after six years of deregulation by J. Gregory Sidak
- Chairman's comments by David Edmonds
- 2 Road networks: efficiency, externalities and consumer choice by David Starkie. Chairman's comments by Leonard Waverman
- 3 The Enterprise Act: pluses and minuses for competition policy by George Yarrow Chairman's comments by Sir Derek Morris
- 4 Ofcom and light touch regulation by Martin Cave Chairman's comments by Irwin Stelzer
- 5 What to do about the railways? by Chris Nash Chairman's comments by Tom Winsor
- 6 Liberalising utility markets in the European Union



by Frits Bolkestein. Chairman's comments by Philip Fletcher

7 Measuring the success of postal regulators: best practice in postal regulation by Ian Senior. Chairman's comments by Graham Corbett

8 Can regulation address the investment problem? Example from aviation by Doug Andrew. Chairman's comments by Andrew Sentance

9 Gas, electricity and the energy review by Colin Robinson

Chairman's comments by Callum McCarthy

2004, Published in association with the LBS, 0-255 36560-8, 246pp

#### Other Recent Titles:

*Unshackling Accountants* by David Myddelton. Price \$2250

*Free Markets Under Siege* by Richard A Epstein. Price \$13.50

*Climate Alarmism Reconsidered* by Robert L. Bradley jr. Price \$22.50

*Corporate Governance* by Elaine Sternberg. Price \$22.50

*Pricing Our Roads* by Stephen Glaister and Daniel J Graham. Price \$18.00

# iea

The Institute of Economic Affairs  
2 Lord North Street, London SW1P 3LB  
United Kingdom

Web: [www.iea.org.uk](http://www.iea.org.uk)

Tel: 44 20 7799 8900. Fax: 44 20 7799 2137

The IEA is a registered UK charity (no 235 351)

and an incorporated US 501(c)(3)

To order call: +44 20 7799 8900,  
fax: +44 20 7799 2137,  
or visit [www.iea.org.uk](http://www.iea.org.uk)