



# CASCADE UPDATE

Vol. 11, No. 2

Cascade Policy Institute • Portland, Oregon

Summer 2004

## Property Rights for Klamath Water

by **James L. Huffman, J.D.**

The problem we face in the Klamath Basin, as in every environmental controversy, is the allocation of scarce resources. We have a limited supply of water, but potential uses for that water exceed the available supply. This issue is crucial not only for those associated with the Basin, but also for the world at large.

*“There can be no simple solutions to a situation so complex, which is precisely why it is important to underscore the positive role property rights and markets can play.”*

As the Earth’s population continues to grow, the demand for water will continue to increase until we face a worldwide situation

that is similar to the Klamath Basin. What are we to do? While private property rights are not the entire solution, they should be a large part of the answer.

Generally speaking, there are four approaches we might employ to apportion the water. First, we could declare that the water is available for any and all uses. Second, we might declare water a public resource and have the government decide how best to use the water. Third, we could recognize private rights and let individual rights holders decide how to use the water subject to government regulation. Fourth, we could recognize private water rights and not allow government interference.

Allowing unlimited access will probably lead to a “tragedy of the commons,” where everyone has an incentive to use as much as possible and no one has an incentive to manage and protect the resource. In a very real sense, we had a commons in the American West during the 19th century. But in the case of water, individual users quickly claimed rights.



**In the summer of 2001, Klamath Basin farmers and their supporters carried water to a dry irrigation ditch in a symbolic bucket brigade.**

With the creation of Yellowstone and a growing number of forest reservations, federal policy began to favor government ownership of resources. This policy has since resulted in roughly one third of the nation’s land being owned and managed by the federal government. So, ours is a mixed system of

Turn to Water, page 3

### In this issue

- Property Rights for Klamath Water, page 1
- Do Our Rights Come from the Constitution?, page 1
- Tear Down These Walls, page 2
- Competitive Contracting Success Stories, page 4
- Medicare Drug Benefits Miss the Point, page 5
- Preserving the American Dream Conference a Success, page 6
- Essay Competition Winners Named, page 8

### Do Our Rights Come from the Constitution?

by **Jacob G. Hornberger**

Celebrate this Independence Day by remembering where our rights come from. It is commonly believed that the rights of the American people come from the Constitution. Nothing could be further from the truth.

Throughout history, the standard belief was that people were unconditionally subject to the commands of their government. If the king ordered a person to leave his family to fight in a war thousands of miles away, that person would have to obey. The king could control and regulate both lives and property because he

*“Rights such as life, liberty, property and the pursuit of happiness exist independently of government, not because of government.”*

was sovereign and supreme, and the citizens, as subjects, were subordinate and inferior. When the king commanded, people obeyed.

Gradually, people began questioning the notion of the king having unrestricted control over their lives and fortunes. For example, in 1215, with Magna Carta, the king was forced to admit that his powers over the citizenry were limited.

It was in 1776, however, with the publication of the Declaration of Independence, that the historical concept of sovereignty got turned upside down. Government wasn’t sovereign and supreme, Jefferson declared to the world. Individuals

Turn to Rights, page 7

# Tear Down These Walls

During the week of remembrances and ceremonies following the death of Ronald Reagan, I reflected on how this man and his philosophy influenced me and Cascade Policy Institute.

When Reagan burst onto the political stage in 1964 with *The Speech* supporting Barry Goldwater, I was a non-political high school student. By the time I read that speech in college, I was ready to absorb its important messages, including:

*“They say the world has become too complex for simple answers. They are wrong. There are no easy answers, but there are simple answers.”*

*“This is the issue of this election: Whether we believe in our capacity for self-government or whether we abandon the American Revolution and confess that a little intellectual elite in a far-distant*

*capital can plan our lives for us better than we can plan them ourselves.”*

Cascade offers many simple answers to our public policy questions. We also understand that the “little intellectual elite” isn’t always so far away; sometimes it’s right here trying to run our lives in Oregon.

By the time President Reagan told Mr. Gorbachev to “tear down this wall,” the Berlin Wall had become a symbol of how governments try to control their own people. That wall fell peacefully.

At Cascade we work to tear down other walls, such as the public school system’s wall around our children, urban growth boundaries walling in our cities, and the tax and regulatory walls that keep many Oregonians in poverty and many business people from succeeding.

Reagan’s record as president was mixed. He was instrumental in confronting and peacefully ending the Soviet threat. He greatly reduced

marginal tax rates which allowed the American economy to rebound. Yet he didn’t make the federal government smaller and the federal deficit grew to new heights.

Even when he failed to achieve some political goal, he remained the perennial optimist about America’s bright future and what free individuals could achieve.

Reagan often said, “The heart and soul of conservatism is libertarianism.”

If he fell short of his goals, he stayed true to his philosophy of smaller government and more individual liberty. For that he earned a special place in this libertarian’s heart.



Steve Buckstein, president

## Cascade Policy Institute

Steve Buckstein..... *President*  
John A. Charles..... *Environmental policy director*  
William B. Conerly..... *Chairman, Board of directors*  
Joseph Coon..... *Administrative assistant*  
Roberta Forbes..... *Director of development*  
Elizabeth Merritt..... *Administrative assistant*  
William Udy..... *Finance director*  
Kurt T. Weber..... *Vice president*  
Nicole Williams..... *Director of CSF-Portland*  
Nicole Williams..... *Director of publications*

## Cascade Update

Nicole Williams..... *Editor*  
Nysara Studios..... *Design*

## Academic Advisors

Michael L. Barton, Ph.D.  
Michael Bliziotis, M.D.  
Chana B. Cox, Ph.D.  
Fred W. Decker, Ph.D.  
Ayse Y. Evrensel, Ph.D.  
James L. Huffman, J.D.  
Richard Meinhard, Ph.D.  
Gerard C. S. Mildner, Ph.D.  
William C. Mitchell, Ph.D.  
Lon L. Peters, Ph.D.  
Randall J. Pozdena, Ph.D.  
Anthony Rufolo, Ph.D.  
Jim Seagraves, Ph.D.  
Fred Thompson, Ph.D.  
Zenon X. Zygmunt, Ph.D.

*Cascade Update* is published quarterly by Cascade Policy Institute, Oregon’s premier public policy research organization. Nothing in *Cascade Update* should be construed as an attempt to aid or hinder the passage of any legislation, or as an endorsement of any candidate.

Cascade Policy Institute  
813 SW Alder, Suite 450  
Portland, Oregon 97205  
(503) 242-0900 • fax 242-3822

info@cascadepolicy.org • www.cascadepolicy.org

## Cascade Welcomes Nicole Williams

Nicole Williams joined Cascade in February as its new director of publications and added the Children’s Scholarship Fund – Portland to her responsibilities in April. Institute vice president Kurt T. Weber states, “In addition to formidable community outreach and organizing skills, Nicole brings excellent management and technical skills to Cascade. We’re proud to have her join the team.”

Prior to joining Cascade, Nicole headed a private language school for five years at The Language Company in Portland, Oregon. There, she gained management and organizational planning experience and honed her education and editing skills. She founded a consulting firm that provides business and cultural research and training for foreign companies interested in marketing products and services in the United States.

In her off hours, Nicole writes and presents business and cultural seminars for international corporations such as DaimlerChrysler. She is

also safety chair of the Boise Neighborhood Association and heads Build Our Safe Neighborhood, a volunteer-based group dedicated to improving safety in her North Portland neighborhood.

Nicole graduated from Southern Oregon University with a Bachelor of Arts in music business and German. She also completed the Oregon Teaching Certification Program at the university.



“Cascade has been in my life since the Westside Max Line opened. My desire to know how such a seemingly inefficient and wasteful project came to exist led me to Cascade. Something told me there had to be faster, less expensive ways to deliver transit services than light rail. Cascade provided those solutions.

“My experience as a teacher in the public school system gave me a real-life lesson that the best way to improve learning is to give parents and students choices about where to go. This first-hand experience dovetails with the solutions advocated by Cascade.”

## Speakers Available!

**Do you need an informed, engaging speaker for your next event? Contact Cascade! We can provide your organization with experts on health care solutions, improving education, free market environmentalism, Personal Retirement Accounts, the philosophy of freedom and more. Contact Cascade vice president Kurt T. Weber today about the next speaker for your group, (503) 242-0900 or kurt@cascadepolicy.org.**

public and private lands. This mix has an inevitable impact on markets in land and other resources. It creates powerful incentives for private interests to influence government policies in ways that will benefit those interests.

Those of us who live in the West have witnessed the expansive public ownership regime of the federal public lands. Most would agree that the results have been mixed. The problem is that public management is by definition political management. Political institutions are just not designed to make day-to-day decisions that are responsive to the rapidly changing world.

We have also resorted to regulation of private property in the name of public interest. All regulations affect resource allocation. Indeed, the point of regulation is to produce an allocation different from that produced by an unregulated market. For some, the need to regulate is rooted in market failures that result in external costs and benefits. For others, the need to regulate is centered in a belief that private property and free markets lead to the concentration of wealth and a self-interested exploitation of others—not to mention exploitation of the environment.

Regulation as a political process suffers from shortcomings, however. In theory, the legislature can set regulatory standards and leave it to apolitical agencies to implement the regulations. But regulation poses similar problems to those faced in public management.

***“The Framers of the Constitution understood property to be the foundational right that made all other liberties secure. They also saw private property as essential to the prosperity of the community.”***

The global experiences of the last century should confirm that planned economies do not work and can have devastating consequences for the environment. The alternative to a planned economy is a market economy, but without property and contract rights a market economy is not possible. Property and contract



**In Klamath Falls, James L. Huffman, J.D., addresses public officials, community leaders, farmers and other water users about the role property rights can play in resolving the Klamath Basin problems.**

are the necessary infrastructure of a market economy.

The Framers of the Constitution understood property to be the foundational right that made all other liberties secure. They also saw private property as essential to the prosperity of the community. James Madison stated, “In civilized communities, property as well as personal rights is an essential object of the laws, which encourage industry by securing the enjoyment of its fruits.”

This historic commitment to property as a right foundational to liberty and prosperity did not mean that the use of private property was without limits. But it was not until the Great Depression and New Deal that ours became a regulatory state. Property rights began a long and steady decline from the most revered liberty to one of the least protected. What made this possible was the drawing of a distinction between personal and economic liberties. Both personal liberties, like free speech, and economic liberties, like property, were put to the test. Personal liberties were given special standing under the constitution, requiring important reasons for limiting individual liberty, but economic liberties suffered as the courts deferred to legislative interventions.

So what does all of this have to do with the Klamath Basin? First, we must note that the real world is never as simple as the theories suggest. In the Basin, we need to consider several hundred irrigators, three tribes, two states, six national wildlife refuges, the Bureau of Reclamation, the Forest Service, the Bureau of Land Management, hydropower, outdoor recreation, several communities and a bunch of endangered species. We have a water rights adjudication that has been ongoing since

1975, federal project and natural flow water users, federal and tribal reserved rights, and state mandated instream flows.

There can be no simple solutions to a situation so complex, which is precisely why it is important to underscore the positive role property rights and markets can play. The tendency in difficult situations is to look for a single solution that will eliminate the complexities. Simple solutions are always “top down solutions,” because someone has to be in a position to mandate what will be done. Markets are bottom up and thus seldom part of a grand design.

Without a system of rights to provide a basis for negotiation, we have only political power to rely upon. The better course is to create a private rights system that

includes all water uses, makes rights freely transferable and enforces those rights. If there are market failures even after getting the legal system right, we may be able to correct those failures through regulation or eminent domain. If some users are precluded for reasons of wealth, we might choose to subsidize on a means tested basis. But the default approach should be a system of property rights that will allow markets to assure that water is allocated to the highest value uses.

***“While private property rights are not the entire solution, they should be a large part of the answer.”***

I am not here to claim that property rights and markets are the solution to every environmental and resource allocation problem and that there is no place for public ownership and regulation—there are appropriate situations for both. But on the Klamath, a strong property rights system is clearly the best approach.

**James L. Huffman, J.D., is dean and professor at Lewis & Clark Law School and an academic advisor to Cascade Policy Institute. This article is adapted from his June 8 presentation at the Klamath Falls conference, *Resolving Conflicts in the Klamath Basin through Markets and Property Rights*, organized by the Property and Environment Research Center based in Bozeman, Montana.**

# Competitive Contracting Success Stories

by John A. Charles

Competitive contracting has received much attention during the past decade. One area that offers many opportunities is public transit because most transit agencies have high personnel costs. When labor is subjected to market competition, costs can frequently drop by 50 percent or more.

For example, consider TriMet, Portland's public transit provider. It has a service territory of 575 square miles that spans parts of three counties. Fare box revenues only pay for about 20 percent of TriMet's operating costs and virtually none of its capital expenses. Instead, the agency's operating costs are primarily funded by a regional payroll tax of 0.622 percent, which provides TriMet with over \$170 million each year.

TriMet has a service monopoly and a unionized work force; this is a recipe for high-cost outcomes. The high costs are revealed when TriMet ventures into the world of competitive contracting, which it briefly did in the Cedar Mill area of Washington County.

The Cedar Mill neighborhood is a low-density, mostly unincorporated area west of downtown Portland. TriMet has never provided much bus service to the Cedar Mill area even though it falls within its service region. In 1999, TriMet contracted with Sassy Cab Company to deploy two vans for door-to-door service between riders' homes and other points in Cedar Mill or to the Sunset Transit Station. The private contract was limited to three years to win the approval of TriMet's labor union. Sassy received \$12,700 a month to provide service throughout the Cedar Mill region for 14 hours a day, five days a week.

After Sassy's contract expired, TriMet brought the service in-house and deployed its own two vans and its own two drivers.

Although TriMet immediately cut service from 14 hours to seven per day, TriMet's expenses increased from \$12,700 to \$15,000 a month.

Based on this experience, one would think the TriMet board would do more competitive contracting. However, as a government monopoly, the agency has little incentive to challenge the union because there is no market discipline for high-cost service: Transit consumers' options are limited by law and taxpayers are forced to pay taxes. Thus it's politically easier for TriMet to just pay employees above-market wages and make up the difference through taxation.

*“When Sandy set up its service, it took competitive bids from private firms to operate the shuttles. The city itself has just one municipal transit employee.”*

Some municipal cities have wised up to the benefits of adding competition to the public transport mix, with excellent results. These cities provide a good model for improved services at lower cost to taxpayers.

TriMet's enabling statute allows small jurisdictions to leave the agency's service district under certain circumstances. The city of Wilsonville seceded from TriMet in 1988. Since then, Wilsonville has operated its own transit district. Wilsonville now provides a much higher level of service than was formerly provided by TriMet (e.g., a larger choice of bus runs with greater frequency of service), and riders pay no out-of-pocket fare.

Operating revenues are paid through the same type of regional payroll tax that TriMet

uses, but Wilsonville's tax rate is less than half that of TriMet. Annual boardings were less than 20,000 in 1992, but exceeded 160,000 in 2000. Wilsonville now provides buses to Salem, Oregon City, Canby and to connection points with TriMet.

Another small city, Sandy, successfully withdrew from TriMet at the end of 1999 after six years of lobbying. The city began operating its own transit service in 2000. The primary market for transit is the 10-mile run between Sandy and the Gresham transit center, where passengers can transfer to TriMet's light rail system or several bus routes. This service went from peak-hour only under TriMet to all day plus Saturday service when the city took over.

As in Wilsonville, the Sandy bus system's operating costs are paid for by a local payroll tax that is slightly lower than the former TriMet tax. Again, riders pay no out-of-pocket fare. Ridership on Sandy's buses has nearly doubled, increasing from 77,592 total rides in 2000 to 140,976 in 2003.

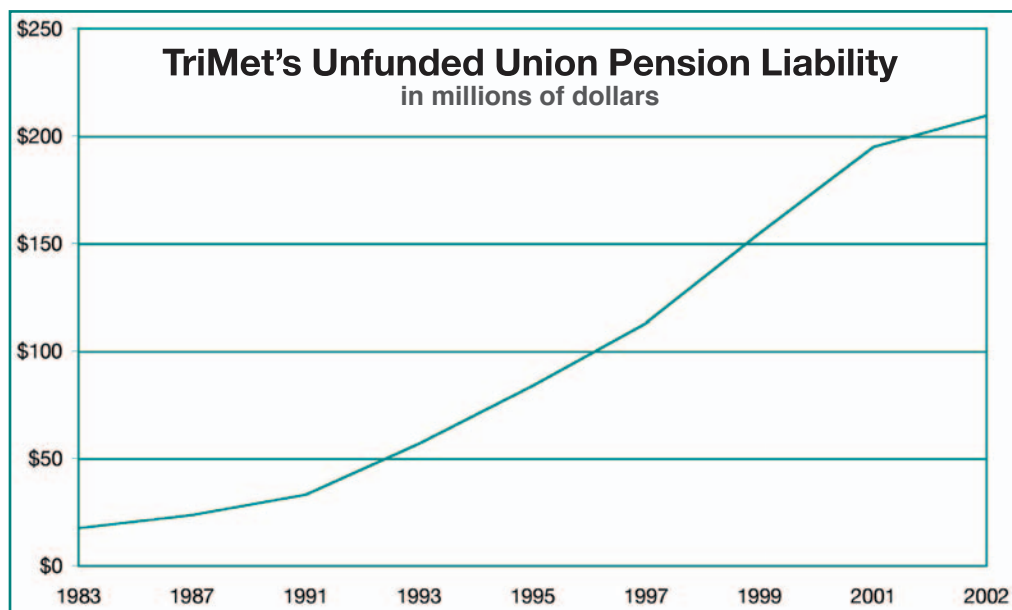
When Sandy set up its service, it took competitive bids from private firms to operate the shuttles. The city itself has just one municipal transit employee.

*“Wilsonville now provides a much higher level of service than was formerly provided by TriMet, ... and riders pay no out-of-pocket fare.”*

Compare the above examples to TriMet, which has transformed itself from a relatively small, user-financed agency to a bloated, tax-supported bureaucracy. Financial and organizational trends paint a vivid picture.

- In 1971, drivers constituted 73 percent of TriMet's work force. By 1999, drivers were only 49 percent.
- In 1971, passenger fare revenue paid for 38 percent of all costs. Passenger fares dropped to just 9 percent by 2001.
- Between 1994 and fiscal year 2003/04, TriMet's total salaries and wages increased by 75 percent, annual pension costs by 189 percent and health benefit costs by 179 percent. The number of employees rose by only 25 percent.

In addition, TriMet operates a defined benefit retirement plan for most of its employees. According to TriMet's audited financial statements, its retirement plan costs have been spiraling upward (see figure, left).



Turn to Success Stories, page 7

# Medicare Drug Benefits Miss the Point

by Dr. Greg Nigh

The new Medicare prescription plan supposedly will help lower prescription drug costs. Detractors say it won't. Perhaps we should focus on a more fundamental question: Are seniors taking too many drugs, and how much of that is harmful? Perhaps we should stop encouraging such abuse. Maybe politicians of all stripes should take the "Just say no" message to heart and quit pandering for the elderly vote while pretending to care about their health.

Ironically, the two fundamental goals of health care reform are to lower the price and to provide greater access. These are noble goals, to be sure, but they overlook a fairly significant problem: The health care system we have today has very little to do with either "health" or "care," at least in any meaningful sense of those words. Lowering the price or gaining access to the present system will do nothing to change this fundamental issue.

A significant portion of health care expenditures entail dispensing medications to mask symptoms of underlying disease. Short-term gains in symptomatic relief can be valuable and even essential at times, but a primary care medical system built predominantly upon suppression of symptoms does not make for a satisfied clientele over time, as poll after poll has shown.

Three or four simultaneous prescriptions for one individual are not uncommon. *Pharmacy Review* reported at the end of 2002 that the average person in their 20s fills three prescriptions each year. By the age of 65 that average climbs to 20. Medical services for patients with chronic illness account for 75 percent of the \$1 trillion annual

health care bill in the United States according to the Centers for Disease Control and Prevention.

Unfortunately, once an individual has been diagnosed with a chronic disease, the health care for that individual largely consists of prescriptions to make the symptoms more tolerable. Rarely or never is the focus on addressing the factors that caused arteries to clog, blood sugar to rise, joints to become inflamed or migraines to recur. Instead, a life of escalating prescription dependency begins, leaving both doctors and patient frustrated.

*"A significant portion of health care expenditures entail dispensing medications to mask symptoms of underlying disease."*

But there is an even greater tragedy in this relationship of dependency between the medical system and the chronically ill patient. Medications treating one complaint often compromise overall health in other ways. For example, common medications to treat digestive problems can lead to decreased vitamin and protein absorption. Over time these can lead to their own array of chronic health problems which may seem completely unrelated to digestive function, and which would likely necessitate other medications.

Similar examples are virtually endless. There is no way to know what role medications themselves have played in the rising tide of chronic disease and the concurrent rise in prescriptions to treat them.

Neither doctors nor patients are solely responsible for this cycle of medication madness. Direct-to-consumer drug advertising makes each new drug seem like a wonderful possibility for renewed vitality. Consumers are taught to ask for the latest drugs, and the economics of the industry have constrained both the time and the flexibility that physicians have for patient care, leaving prescriptions as an easy default treatment.

Where does health care reform fit into this picture? It is without question that the conventional medical system offers excellent emergency care, and enhanced access for these services is vital. Emergency care, though, represents less than 2 percent of the nation's total health care expenditures.

It is possible to think that caring for health means not only relief in the short term, but also an enhanced vitality over the long term. Health care could mean increasing independence from the medical system, rather than ongoing or increasing dependence.

Perhaps we want health care to mean a relationship with a physician who has time to sit and hear how our ailments evolved over time, how they impact our lives, and to tell us how we can be proactive in addressing the causes behind the symptoms.

To create a health care system that we want, we should be so optimistic as to work toward a system that actually cares for our health.

**Dr. Greg Nigh is a naturopathic physician and licensed acupuncturist at Nature Cures Clinic and an associate of Cascade Policy Institute.**

## College Students Tap into Cascade's Research

University of Notre Dame architecture students Maureen Wolfe-Butling (l) and Joe Nickol (c) interview Cascade environmental policy director John A. Charles about the negative impacts of Portland's Smart Growth policies.



Supap Jitta, an economics major at Earlham College (Indiana) consults with Cascade president Steve Buckstein about her proposed senior thesis on education inequity in Oregon.

# Cascade Voices the Issues

Cascade president Steve Buckstein (second from r) waits to respond to Gov. Kulongoski's Chief of Staff Peter Bragdon (l) at May 5 *Oregon Economic and Business Forum* in Portland. Other panelists were (l-r) Portland Development Commission Economic Director Marty Schwab Harris and State Senator Rick Metzger, and Michael Hartman, moderator and editor of *Oregon Business Magazine*.



Oregon Supreme Court staff attorney Bradley Nicholson (l) asks a question of William Maurer, J.D. (c), executive director of the Institute for Justice-Washington Chapter. Maurer spoke at the May 5 Cascade forum *Business Can Beat City Hall*.

On April 19, Cascade and the Federalist Society-Portland Chapter hosted an evening forum for constitutional law professor and author Randy Barnett, J.D. (c), to promote his new book, *Restoring the Lost Constitution: The Presumption of Liberty*. Sharing a laugh with Barnett are Kristian Roggendorf, J.D., president of the local Federalist Society and Jim Huffman, a Cascade academic advisor and dean of Lewis & Clark Law School.



## Preserving the American Dream Conference a Success

by Randal O'Toole

On April 16, participants in the 2004 Preserving the American Dream Conference toured Portland and visited nine high-density housing sites. These ranged from single-family homes to giant transit-oriented developments.

In many cases, the developments could more realistically be called disasters. Tour leaders John A. Charles and Michael Barton, of the Cascade Policy Institute, showed one development that was supposed to have ground-floor shops and apartments above. But with limited parking for shoppers, only three shops were ever rented. Two have since gone out of business or moved.

Another development was vacant for years after the original developer went bankrupt because no one would risk money financing a property with inadequate parking. The development is now open after a new developer



Led by Cascade environmental policy analyst John A. Charles, conference attendees tour Center Commons, and learn that tenants park on the sidewalk daily due to Smart Growth parking space restrictions.

convinced the city to allow it to include hundreds of additional parking spaces.

Also at the conference, Portland activist Jim Karlock produced city records showing various tax abatements.

He described one townhouse that sold for over \$1.5 million, but whose owner pays only \$150 in taxes. Karlock has documented more than \$80 million in tax exemptions and other subsidies in Portland alone.

On Friday evening, 100 people heard a set of alternative visions provided by U.S. Representative Earl Blumenauer, no-growth proponent Andy Kerr and free-market advocate John A. Charles. Blumenauer argued that since we subsidize the auto industry, we need to subsidize transit as well. Curiously, he seemed to believe gas taxes paid by highway users were "subsidies" when spent on roads.

Kerr argued such automobile "subsidies" promote growth, and he believes such growth is bad. While not willing to support all free-market ideas, he could agree with Charles that such subsidies should be eliminated.

The real highlight of the conference came on Saturday. First, South Carolina Representative Joe Neal alerted conference participants to how smart-growth advocates are imposing regulations on rural black landowners and reducing the value of their land.

Second, Kansas City Councilwoman Sandra McFadden-Weaver told the audience that light rail was "ice cream and cake," and that cities should concentrate on providing meat and potatoes before worrying about dessert.

Third, Steven Town, a policeman and architectural liaison in the West Yorkshire, England, Police Department, showed how

New Urban "smart growth" in England has resulted in higher crime. Burglary and other crime rates were three to seven times the national average in Britain. Town added burglaries virtually ended when common areas were privatized.

More than thirty presentations followed, among them:

- Tom Rubin showed how rail advocates sometimes distort numbers to make them seem favorable to rail transit.
- Robert Behnke described a low-capacity transit system that could take people nearly door to door at much faster speeds than large buses or rail. He said the system was tried in San Jose, but was abandoned after six months because it had more riders than anticipated!
- Sam Kazman of the Competitive Enterprise Institute played a series of television commercials to show how efforts focused on the benefits of autos, homeownership, and other aspects of the American dream are more persuasive than efforts that were defensive about the potential costs.
- Peter Samuel of *Toll Roads News* showed that when roads become congested, traffic slows down and road capacities decline. The solution is to charge appropriate tolls so traffic volumes never exceed capacity.

Randal O'Toole is senior economist with the Thoreau Institute, author of *The Vanishing Automobile and Other Urban Myths* and organizer of the American Dream Coalition. This article is reprinted from the June 2004 *Environment & Climate News*, with permission of the Heartland Institute.

# Rights . . .

continued from page 1

are. And government officials are subordinate and inferior to the citizenry.

The Declaration emphasizes that human kind has been endowed with certain fundamental and inherent rights that preexist government. In other words, one's rights don't come from the king or from any other government official. Rights such as life, liberty, property and the pursuit of happiness exist independently of government, not because of government.

It also emphasizes that the reason people call government into existence is to protect the exercise of these rights. That is, in the absence of government, antisocial people such as murderers, rapists and thieves would make life quite miserable for everyone else. Therefore, government is needed to arrest, prosecute and punish these types of people.

***“Government wasn’t sovereign and supreme, Jefferson declared to the world. Individuals are. And government officials are subordinate and inferior to the citizenry.”***

What happens when government transgresses its rightful duty of protection and becomes more destructive than what would be the case in the absence of government? The Declaration tells us that it is the right of the people to alter or abolish that government and to implement a new government that is designed to protect, not destroy, the exercise of man's natural or God-given rights.

The quandary, of course, that our Founders faced was whether it was possible to bring a government into existence that would remain limited to an inferior and subordinate

role rather than attempt to assume the more traditional sovereign and supreme role.

In 1787, the Founders attempted to solve the problem by writing a Constitution that called the federal government into existence.



The result was historically significant: The Constitution made it clear that this government, unlike others in history, would not be one of unlimited powers. Instead, by the express terms of the Constitution itself, the federal government would be one of limited, enumerated powers. For example, the powers of Congress are limited to those enumerated in Article 1, Section 8 of the Constitution.

Thus the correct question is not, “What rights does the Constitution give to the American people?” but rather, “What powers does the Constitution grant to the government?” If a certain power is not enumerated, the government is not permitted to exercise it.

Not trusting government officials, however—even democratically elected ones—the American people ensured the passage of the first 10 Amendments to the Constitution. These should more appropriately have been called the “Bill of Prohibitions” than the Bill of Rights. Why? Because a careful examination reveals that they are express restrictions on

government powers rather than a grant of rights to the citizenry.

Some people argued that a Bill of Rights was unnecessary because government's powers were already limited to those enumerated in the Constitution itself. Since the government has not been given the power to regulate speech, for example, there was no reason to have an express prohibition against the regulation of speech.

Fearful, however, of the propensity of government to move toward dominance and control, the people felt safer with express restrictions on the power to interfere with rights that they believed were of the utmost importance. Playing it safe, they included the Ninth Amendment, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

***“The Constitution made it clear that this government, unlike others in history, would not be one of unlimited powers.”***

So the next time someone refers to your “constitutional rights,” remind him or her that people's rights don't come from the Constitution. And if you really want to stimulate thinking, ask him or her whether he or she believes that today the federal government is destructive of the very rights it was designed to protect.

**Jacob G. Hornberger is founder and president of The Future of Freedom Foundation in Fairfax, Virginia and an adjunct scholar to Cascade Policy Institute.**

# Success Stories . . .

continued from page 4

In April 2003, TriMet adopted a new defined contribution pension system that is mandatory for all new hires and optional for existing employees. This will help rein in pension costs, but the long-term damage has already been done.

The limited experience with privatized transit service in the Portland region shows that contracting out can reduce labor costs by up to 50 percent. Unfortunately, labor agreements

with transit unions limit the expansion of this successful model, but similar results can be achieved by simply increasing the number of public sector providers. Increased competition, even when all the competitors are units of government, helps impose market discipline.

This is an important lesson for political leaders of suburban jurisdictions in the Portland region. Wilsonville and Sandy have left the TriMet district, achieving impressive results

on their own. Most recently, Canby also left TriMet. Transit customers and taxpayers will benefit handsomely if this trend continues.

**John A. Charles is a senior policy analyst at Cascade Policy Institute. This article is adapted from his April 30 presentation at the American Bar Association conference, Privatization of Federal, State and Local Government Services.**

**July 9** – Gerard C.S. Mildner, Ph.D. presents *Should Portland Build Another Baseball Stadium?* at the Governor Hotel in Portland, Oregon.

**July 24-30** – Cato University Summer Seminar. Learn from the best, sharpen your arguments for liberty and meet others who share your passion at Rancho Bernardo Inn, San Diego.

**August 1** – The third annual Lazy Fair Picnic at Blue Heron Park cosponsored by Cascade Policy Institute, the Executive Club, *Brainstorm Magazine*, the Taxpayer Association of Oregon and others.

Event details are online at [www.cascadepolicy.org](http://www.cascadepolicy.org), or call (503) 242-0900.

# Publications

- **Stadium Costs: High and Wide**, Matt Roehr, CFA, Cascade Commentary 2004-16, June.
- **Tame the Oregon Budget Roller Coaster**, Steve Buckstein, Cascade Commentary 2004-15, June.
- **Solutions for the Klamath Basin**, Jane S. Shaw, Cascade Commentary 2004-14, May.
- **PERS to Determine Oregon's Future**, Steve Buckstein, Cascade Commentary 2004-13, May.
- **Helping the Poor Help Themselves**, John Blundell, Cascade Commentary 2004-12, May.
- **The Little Buses That Could**, John A. Charles, Cascade Commentary 2004-11, April.
- **Healthy Forests**, Linda E. Platts, Cascade Commentary 2004-10, April.

Publications details are online at [www.cascadepolicy.org](http://www.cascadepolicy.org), or call (503) 242-0900.

Oregon high school students from Scio to Madras to Molalla recently competed in Cascade Policy Institute's 10th annual Independence Essay Competition. Ultimately, an independent panel of judges selected three students to receive awards for their writings.

This year's competition invited students to discuss liberty, law and the proper role of government in a free society. Students were asked to expound upon one of four quotes from John Stuart Mill, Henry David Thoreau, Albert Einstein and former Oregon Governor Theodore Thurston Geer (1899-1903).

Matthew Cleavenger, a senior at Portland's Lincoln High School, was awarded \$500 for his essay, *Respect for Government*. He highlighted how governments reduce their stature by passing laws they cannot—or will not—enforce. Cleavenger wrote, "Ultimately, government needs credibility. If policy is to be made without any realistic desire to enforce it, then it will inevitably be ignored."

The judges awarded \$250 to Audrey Engel, a homeschool sophomore from Salem. She argued that a limited government is best and presented examples throughout history to show large governments ultimately lead to destruction. Engel stated, "The Founding Fathers held that government has an important role in maintaining order, but that its role is limited in many respects."

Kara Ng, a junior at Valley Catholic High School in Beaverton, earned \$100 for her essay. She discussed the need for and challenge of resistance when government assumes too much power and abuses it. Ng noted, "When our government falls from glory, we the citizens must right the government again with our power through civil disobedience."

Judges for the 2004 essay competition are Ayse Y. Evrensel, Ph.D., Department of Economics, Portland State University; Leslie Spencer, former associate editor, *Forbes*; and Zenon X. Zygmunt, Ph.D., Division of Business and Economics, Western Oregon University.



Matthew Cleavenger



Audrey Engel



Kara Ng

Cascade thanks the sponsors of the 2004 Independence Essay Competition. They include the Bonavia Family Charitable Trust, Centerpoint Graphics and the Friesen Foundation.



**CASCADE  
POLICY  
INSTITUTE**

813 SW Alder, Suite 450  
Portland, Oregon 97205

Non-Profit Org.  
U.S. Postage  
**PAID**  
Portland, OR  
Permit #5764