

The Volokh Conspiracy

Koch v. Cato — Woodlief Responds, Frank Comments

Jonathan H. Adler • March 7, 2012 12:48 pm

Here are two more worthwhile posts on the Koch-Cato kerfuffle: One by [Tony Woodlief](#) responding to Jerry Taylor, the other by [Ted Frank](#). Recognizing that not every reader of the VC is interested in this contretemps, I've placed excerpts from both posts below the jump.

[UPDATE: It appears Ted Frank's comment has been taken down. If I can locate a cached copy, I will repost it. Skip Oliva comments [here](#).]

Tony Woodlief, one of the folks proposed as a potential Cato Institute board member by the Koch brothers, has [posted a lengthy response](#) to the [comments by Jerry Taylor](#) I posted over the weekend. It reads in part:

I didn't have a dog in this hunt. I only learned that a shareholder nominated me to the Cato Institute board after Healy, Taylor, and others publicly branded me a heretic. I am, Taylor writes, "a Republican blogger," who complains about libertarians toking up at political meetings. Healy and others dutifully repeat Taylor's charges. . . .

Now, I understand that Taylor is in a tough spot. He needs a conspiracy. Heaven forbid it be a simple contract dispute. Angels prevent that anyone who believes in liberty question why a \$23 million organization doesn't have more impact on public opinion. This has to be about bad people doing secretive things in the dead of night to rob earnest and freedom-loving people of their standard-bearer.

But the thing is, when you start lifting sentences from what someone writes, intellectual honesty — not to mention plain decency — dictates that you

provide context. Maybe that's old-school thinking, way back in the day when we believed in contracts and the rule of law. Maybe libertarianism is all post-modern and stuff now.

Either way, now I do have a dog in this hunt, because I'm one of the people Taylor decided to attack in his fit of self-preservation.

Keep in mind that we're talking about things I wrote ten years ago. My views have changed a bit, and any fair reading of my work will indicate as much, just as it will quickly reveal that I am neither a Republican nor a libertarian-hater. . . .

I also call libertarianism, as Taylor notes, "a flawed and failed religion posing as a philosophy of governance." (Religion? What could I have been thinking? That would imply sects and unquestionable beliefs and bitter squabbles over abstruse distinctions...)

But immediately after, I write: "The reason I will address this topic — and the reason you should care — is because libertarianism represents perhaps the best set of potential political solutions to America's problems..."

The exceedingly clear point, grasped by a wide array of libertarians and conservatives who joined the debate in the comments section of my blog, is that we have to overcome significant hurdles in order to make libertarianism a competitive alternative in the minds of voters. Now, you may disagree with that, but the fact that I believe it does not make me — unless libertarianism has been transmogrified into a church — an "anti-libertarian." . . .

I respect many thinkers associated with Cato. Hearing talks by Tom Palmer and David Boaz brought me into libertarianism as a college student. Bob Levy's work on the gradual erosion of liberty by the courts is essential, and helped me recognize how completely property rights have been stripped from the Constitution. Radley Balko has waged an almost single-handed battle to highlight police abuse, causing me to rethink my decade-old critique that libertarians are overly focused on drug legalization.

I don't know if I could mutter whatever catechism one must repeat to be accepted into the libertarian fold, but I'm certainly no enemy. The pity of it is that Jerry Taylor and other Cato leaders have no qualms about deliberately misleading people to believe otherwise. What's more, I know some of the other people they accuse of being operatives and conspirators, and these accusations ring just as false.

I assume intellectual integrity is essential to the libertarian philosophy, and if so, I wonder who is doing it more harm — someone like me, who has questioned in good faith some of its tenets, or Messrs. Taylor, Healy, and Crane, who appear for all the world like Washington, D.C. bureaucrats trying desperately to keep hold of their tenure.

Ted Frank, [writing at Point of Law](#), also expresses some misgivings at what appears to be the strategy of the Cato Institute's current leadership in this fight. It reads in part:

Part of the problem here is that Ed Crane is pursuing a strategy that maximizes the chance that Ed Crane will stay in power without having to ever answer to the Kochs again, but at the expense of the Cato Institute. If the dispute is long and protracted, [Cato will starve as funding sits on the sidelines](#) and people wary of Crane's allegations are unwilling to do work affiliated with Cato; meanwhile, the bad-mouthing of the Kochs prevents the Kochs from exercising their contractual rights without damaging Cato's reputation. Crane's strategy has made compromise impossible, because he has announced that the Kochs are incompatible with Cato, so there is now no resolution that the Kochs can agree to short of surrender without realizing Crane's self-fulfilling prophecy of a tarnishing of Cato. That metaphorical dousing of the building with gasoline means that now the only outcome that "saves" Cato without significant damage to Cato is if the Kochs cave quickly. Even if Crane backs down from the precipice, he's done irreversible damage, because anything other than total victory by Crane—even a compromise by the Kochs to give Niskanen's shares to a mutually agreeable fourth shareholder and let Crane have life tenure—will now be perceived by the public as an agreement to Koch puppetry.

This may well be the optimal strategy for Cato if Crane correctly believes that the Kochs will damage Cato's independence. Whether that belief is true depends on whether the Koch nominations for the board of people offensive to libertarians reflected malevolence or a sloppy failure of lower-level Koch officials in trying to find board members who could be counted upon to protect the Kochs' interests in maintaining the primacy shareholder agreement against an admitted effort by Cato officials to freeze out the Kochs. . . . If Crane is making his allegations in good faith, one can reasonably then ask why, if the Kochs were so potentially destructive to the movement, Cato tolerated the sword of Damocles for so many decades instead of starting anew or warning its donors of the risk; the schadenfreude of Murray Rothbard fans is the sanest thing I've seen from that camp in years. It's thus difficult not to infer a certain level of disingenuousness in Cato's current litigation position. That position seems to be calculated to maximize the benefit to Ed Crane (either as head of Cato or head of a future hypothetical Cato-in-Exile), rather than Cato and the libertarian movement . . .

For better or worse, Crane's strategy has forced the situation into a game of chicken where what would be best for the movement is if the Kochs agree to a humiliating retreat from their legal rights. That seems an unlikely outcome: if unfair political attacks and threats of IRS audits from the Obama administration (which seems to suffer from Koch derangement syndrome far more than the Kochs suffer from Obama derangement syndrome) haven't deterred the Kochs, bad publicity from Ed Crane won't. The social deadweight loss all around makes me very sad: the world is a better place with a happy and independent and well-funded Cato Institute, and with libertarians training their sights on the dangers to personal and economic liberty rather than internecine squabbles. [Like Jonah Goldberg](#), I want both sides to win.