

Big wins on civil asset forfeiture, the commerce clause, and the First Amendment

Leading Scholars Gather for Constitution Day

Cato's annual Constitution Day symposium marks the day in 1787 that the Constitutional Convention finished drafting the U.S. Constitution. Cato celebrates that event every year with the release of the new issue of the *Cato Supreme Court Review* and a day long symposium featuring noted scholars discussing the recently concluded Supreme Court term and the important cases coming up.

This year's Constitution Day symposium featured panels on several of the court's most important cases, with participants discussing their contributions to this year's *Review*. Anthony J. Colangelo, professor of law at Southern Methodist University Dedman School of Law, discussed the complicated contours of the double jeopardy clause and the so-called "dual sovereignty" doctrine in *Gamble v. United States*. Cato has long urged the court—unsuccessfully, in this case—to overturn the dual sovereignty doctrine, which allows for the federal and state governments to prosecute conduct for which a person was already acquitted under the other jurisdiction's laws.

Paul J. Larkin Jr. of the Heritage Foundation offered his take on Auer deference (so called for the 1997 case *Auer v. Robbins*), the doctrine that courts should defer to an agency's interpretations of its own regulations. In the 2019 case *Kisor v. Wilkie* the court did not overturn Auer, but it did impose new restrictions on its scope. This will provide important leverage to plaintiffs who challenge arbitrary and unjust actions by regulatory agencies.

Other cases discussed include *Tennessee Wine and Spirits Retailers Association v. Thomas*, in which the court, by a 7–2 vote, struck down Tennessee's protectionist discrimination against out-of-state residents in the liquor business; *Timbs v. Indiana*, in



Top: ELIZABETH SLATTERY of the Heritage Foundation, Supreme Court practitioner and SCOTUSblog co-founder TOM GOLDSTEIN, and JAN CRAWFORD, chief legal correspondent of CBS News, discuss the Court's upcoming term. *Bottom left:* Judge THOMAS HARDIMAN of the U.S. Court of Appeals for the Third Circuit delivers the annual B. Kenneth Simon Lecture on the history of judicial independence. *Bottom right:* TREVOR BURRUS, editor in chief of the *Cato Supreme Court Review*, participates in a panel on what to expect in the now-current October 2019 term of the Supreme Court.

which the court held that the excessive fines clause of the Eighth Amendment restricts states' use of civil asset forfeiture; and *The American Legion v. American Humanist Association*, in which the court ruled that a century-old World War I memorial cross did not violate the establishment clause of the First Amendment. In all three of these cases, the Supreme Court sided with the result urged by the Cato Institute in its amicus briefs.

This year's Constitution Day also marked a milestone for the *Cato Supreme Court*

Review, which is now under a new editor in chief. After editing 11 volumes, Ilya Shapiro has taken over as the new director of Cato's Robert A. Levy Center for Constitutional Studies and has passed editorship of the *Review* to Trevor Burrus. Roger Pilon, who founded both the Center and the *Review*, remains director emeritus and holds the B. Kenneth Simon Chair in Constitutional Studies.

Every year's Constitution Day symposium concludes with the B. Kenneth Simon *Continued on page 13*

Cato polls attitudes on welfare, work, and wealth

And the Survey Says . . .

The results are in for Cato's 2019 Welfare, Work, and Wealth National Survey, a project undertaken by Emily Ekins, the institute's director of polling. In this survey, conducted in partnership with pollster YouGov, 1,700 American adults were asked for their perspectives on a range of economic and public policy issues.

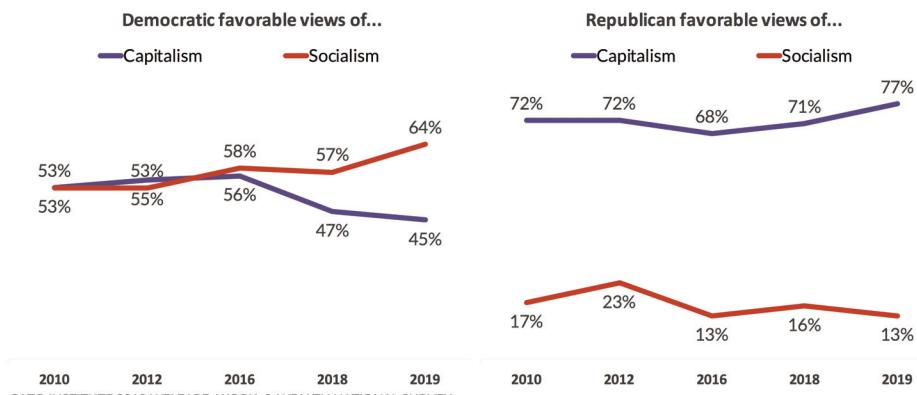
One notable result is the accelerated split between Democrats and Republicans on attitudes toward socialism. In 2016, Democrats were about as favorable toward capitalism (58 percent) as socialism (56 percent). But after President Trump took office, Democrats became more favorable toward socialism. Today, 64 percent of Democrats have favorable opinions of socialism and 45 percent are favorable to capitalism. Republicans continue to have overwhelmingly favorable views of capitalism (77 percent), while only 13 percent have favorable views of socialism. Overall, clear majorities of Americans have a favorable view of capitalism (59 percent) as well as an unfavorable view of socialism (also 59 percent).

Attitudes toward wealth redistribution also break down along partisan lines, with Democrats in favor (58 percent), support among independents at 36 percent, and support among Republicans at 15 percent.

However, when put as a narrower and more concrete policy proposal, a majority of Americans (61 percent) favor raising tax rates for families making more than \$200,000 per year. And despite opposition to wealth redistribution in the abstract, a majority of

Democratic views of socialism improve and capitalism decline during Trump era

Would you say you have a favorable or unfavorable opinion of [capitalism]/[socialism]?

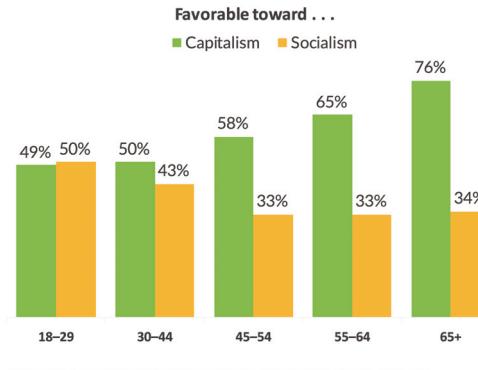


CATO INSTITUTE 2019 WELFARE, WORK, & WEALTH NATIONAL SURVEY

Source: Cato Institute 2019 Welfare, Work, and Wealth National Survey; and Gallup, 2010–2018.

Young Americans are equally favorable toward capitalism and socialism

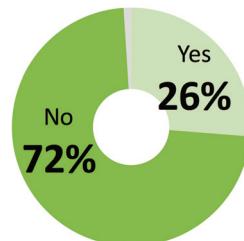
Would you say you have a favorable or unfavorable opinion of [capitalism]/[socialism]?



CATO INSTITUTE 2019 WELFARE, WORK, & WEALTH NATIONAL SURVEY

Most say government doesn't know enough to eliminate poverty in the U.S., even with unlimited funds

If the government were willing to spend whatever is necessary to eliminate poverty in the United States, do you think the government knows enough about how to accomplish that?



CATO 2019 WELFARE, WORK, & WEALTH NATIONAL SURVEY

Note: Don't know/refused 1%; total percent may not sum to 100 due to rounding.

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Lecture. The 2019 lecture was delivered by Judge Thomas Hardiman of the U.S. Court of Appeals for the Third Circuit. Hardiman, who is reputed to be a shortlist candidate for the Supreme Court, spoke about

the history and importance of judicial independence, including how the English experience shaped the decisions of the Framers at the Constitutional Convention. This legacy is alive and well on the Roberts court according to Hardiman, and it plays

a key role in the jurisprudence of Chief Justice John Roberts. ■

COPIES OF THE 2018–2019 CATO SUPREME COURT REVIEW CAN BE VIEWED AT WWW.CATO.ORG/SUPREME-COURT-REVIEW, ALONG WITH COMPLETE AUDIO AND VIDEO OF THE 2019 CONSTITUTION DAY SYMPOSIUM.