

Cato scholar has helped produce big changes

The Lawsuit Reform Revolution

Cato senior fellow Walter Olson has been described by the *Washington Post* as an “intellectual guru” of tort reform in the United States, and he has led the charge in highlighting and promoting solutions to restrain destructive abuses of the civil litigation system. *dent for Reason.*

First with the Manhattan Institute and then after joining the Robert A. Levy Center for Constitutional Studies in 2010, Olson has authored a series of books on the need for reform. He was also a pioneer of online law, blogging for popular consumption with his website *Overlawyered*. That website, launched in 1999 and concluded in 2020, was widely regarded as the first of its kind and for many years was one of the most popular. Olson also holds a rare distinction: despite being one of the nation’s most influential legal pundits, he is not a lawyer himself. In some ways, this has given him a salutary outsider’s perspective on the system.



People often despair about ever changing America’s litigious culture and its negative consequences. But since he first began writing about reform, Olson has seen many positive changes as both courts and legislators considered the issues he and other critics raised.

In the 1930s, courts began to liberalize the standards for civil litigation, including class action lawsuits. By the 1960s, they also began to replace an older standard of pleadings-driven litigation with a new system of “notice pleading” that allowed extensive discovery to be used to deter-

mine whether there was any claim to be made, in so-called fishing expeditions. As Olson puts it, under this system, “You didn’t have to tell people why you were suing them.”

This led to what became known as the litigation explosion, a phrase Olson borrowed in 1991 for the title of his first book. Lawsuits, long seen as a necessary evil, began to be reconceived as outright good, with positive social externalities—what Olson described as the “invisible-fist theory.” Visionaries in the law schools and elsewhere began promoting the use of litigation to tackle almost every societal ill.

These changes not only made civil litigation easier to file and more lucrative, but also made lawsuits more attractive to use as a weapon, threatening to inflict the costs of response, now ballooning because of the wide-open discovery rules. Even for a defendant who had not injured anyone, the process could be the punishment. Very often, that left settlement as the more rational option against speculative or baseless lawsuits.

By the 1980s, the Supreme Court had begun to rein in the most extreme liability theories and revamp plaintiff-friendly procedure. But the onerous discovery stage and problems with loose “notice pleading”—both major targets of Olson’s criticism—remained.

Continued on page 6

Cato News Notes

WALTER WILLIAMS, RIP



Famed economist and longtime Cato adjunct scholar Walter Williams passed away in early December. Williams

was a pioneer in public education and the popularization of free market ideas. His contributions to Cato included the 1989 book *South Africa’s War against Capitalism*, explaining how the notorious apartheid regime was acutely hostile to the liberating and equalizing forces of markets. A remembrance by David Boaz for Williams and his contributions can be found on the *Cato at Liberty* blog, along with a link to a full catalog of Williams’s contributions for Cato.

PRIZED CONTRIBUTIONS

Natalie Dowzicky recently received the Rising Star Award from America’s Future, as part of its Writing Fellows Alumni Awards, for her thoughtful advocacy of liberty as manager of Cato’s *Libertarianism.org*. Separately, Dowzicky also won the Atlas Network’s John Blundell Elevator Pitch competition for a 60-second description of her work and organization.

30 UNDER 30

Corey DeAngelis, adjunct scholar at the Cato Institute and director of school choice for the Reason Foundation, was named to the *Forbes* 30 Under 30 list in the education category, with the magazine naming him “one of the nation’s leading authorities on school choice and homeschooling.”