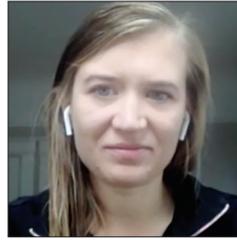




TORT REFORM

How lawsuits have improved

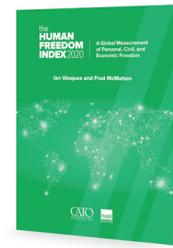
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Cato Policy Report

JANUARY/FEBRUARY 2021. VOL. XLIII NO. 1

Big Tech and Free Speech

BY MATTHEW FEENEY

Former president Donald Trump and President Biden don't seem to agree on much. Before 2020, the differences were already stark, but the ongoing COVID-19 pandemic and the protests sparked by the police killing of George Floyd in Minneapolis have only provided more opportunities for pundits and political operatives to highlight the differences between the two men. Yet significant agreement remains between Biden and Trump, and it is often lost amid the ferocious political rhetoric. Both Trump and Biden have said they want to repeal Section 230 of the Communications Act.

In 1996 Congress passed Section 230, which protects online services from being held liable for the vast majority of content posted by users. The law emerged in the wake of court decisions in the early 1990s that were sending the growing internet industry conflicting rulings about whether internet providers and websites could be held liable for third-party content. Two members of Congress, Rep. Ron Wyden (D-OR) and Rep. Chris Cox (R-CA), wrote Section 230 to ensure that websites were free to moderate content as they saw fit without running the risk of being considered the publishers of third-party content.

MATTHEW FEENEY is the director of Cato's Project on Emerging Technologies.

This agreement is a small part of a growing bipartisan insistence that Big Tech is broken and should be fixed. Yet the proposed fixes risk undermining security, privacy, and the freedom of association while growing the size and scope of government.

Many Republicans and Democrats are unhappy about the state of Section 230, but their complaints have different roots. Republican lawmakers allege that Big Tech companies such as Facebook, Google, and Twitter use their content moderation

policies as weapons in an ongoing anti-conservative crusade. Among the allegations are claims that Google employees tweak the algorithms governing the famous Google search function to hide conservative content. Another allegation, made famous by the conservative commentator Dennis Prager, is that Google-owned YouTube disproportionately limits access to conservative-oriented content. Conservative activists have also raised concerns about so-called

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Brayden Smith, a Spring 2020 intern with Cato's criminal justice team from Las Vegas, Nevada, achieved a five-day winning streak on *Jeopardy!* in episodes aired in December and January. Smith was the last long-running champion in the show's Alex Trebek era, participating in the final week of episodes filmed before Trebek's death from pancreatic cancer.



BY DAVID BOAZ

EDITORIAL

New Faces in Power, Enduring Principles

People often ask what a change in administration will mean for us at the Cato Institute. Obviously, every new president and every change in Congress will mean some shift in which of our ideas are most likely to advance in the policy process.

Some nonprofits find that their funding and membership grow in inverse proportion to the friendliness of the new administration. Conservative groups crowed about doubling their mailing lists in the first year of the Barack Obama presidency. The American Civil Liberties Union (ACLU) reported that its membership quadrupled in the first 15 months following Donald Trump's election and that its online fundraising exploded.

At Cato, we've never experienced that sort of whiplash between Republican and Democratic administrations. Our principles endure no matter who is in the White House.

From the beginning, we have seen ourselves as an independent, nonpartisan, libertarian think tank. Each word in that description matters.

We are independent in that we think for ourselves and are affiliated with no other organization and no special interest. We neither seek nor accept funding from any government. As Ezra Klein, who just left *Vox* to join the *New York Times*, said, "Cato's credibility is derived from its independence."

We are nonpartisan in that we don't line up with either political party. We work with members of both parties on issues where we agree, and we oppose bad policies from either party. Polls of congressional staff have shown that Cato is held in high regard on both sides of the aisle.

We are libertarian: like John Locke and Adam Smith, the American Founders, and Milton Friedman, we believe that free people usually make better decisions for themselves and their families than politicians and bureaucracies can.

And we are a think tank. We take the ideas of great thinkers and apply them to current policy issues. We're not a political party, a lobby, or a grassroots action organization, although the books and studies we produce are used by many such organizations. Through our work, we have been creating a presence for libertarian ideas in Washington and in the national policy debate for more than 40 years.

And now, once again, we face a new administration with a new policy agenda. We have been talking with

the Biden administration and other Democrats about some policy ideas that they might welcome. I expect the administration will also put forth policy proposals that our scholars will be highly critical of.

Shortly after the election, I wrote an article in a Capitol Hill newspaper cautioning the new team not to overreach. I noted that polls showed that voters wanted a change but were not endorsing unaffordable spending programs and a reverse culture war. Biden, I said, "has a mandate for modest normalcy, not revolutionary radicalism. It's not only why he beat President Trump, it's also why he beat Bernie Sanders."

And I offered a few other points a Biden administration should keep in mind. In 2020, 77 percent of Americans called immigration a "good thing" for the country today, up 20 percentage points since 2010. Seventy-five percent of Americans, including 57 percent of Republicans, think undocumented immigrants should be allowed to stay. Ninety percent of Americans think international trade is a good thing, and 70 percent support trade agreements, a substantial increase in recent years.

Fifty-one percent of Republicans and 76 percent of Democrats think marijuana should be legalized, and voters endorsed drug war reforms in seven states and the District of Columbia.

Voters in exit polls expressed support for Black Lives Matter. But in California, where Biden got 63 percent of the vote, a strong majority of voters rejected a return to racial preferences in college admissions.

Californians also rejected expanded rent control and overruled the legislature's demand that Uber and Lyft classify their drivers as employees, which would have wrecked those companies' business model. Illinois voters rejected the governor's tax increase proposal.

Most Americans support expanded diplomacy and trade but less military spending and foreign intervention. An overwhelming majority—74 percent—favor constraining the president's ability to start a war without the approval of Congress.

No matter who is in the White House, our colleagues will continue to publish sound policy analysis that makes the case for our enduring principles of individual liberty, limited government, free markets, and peace.

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not revolu-
tionary
radicalism.”

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.

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 determine 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.

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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.”



In October, senior fellow **Michael Tanner** moderates a book forum for *Welfare for the Rich: How Your Tax Dollars End Up in Millionaires' Pockets—and What You Can Do about It* with the authors, **Lisa Conyers** and **Phil Harvey** of the DKT Liberty Project, with commentary from Tim Carney of the American Enterprise Institute.



1. **Neal McCluskey**, director of Cato's Center for Educational Freedom, moderates a forum with contributors to *School Choice Myths: Setting the Record Straight on Education Freedom*, which he co-edited. 2. **Patrick Wolf**, University of Arkansas. 3. **Tim Keller**, Institute for Justice. 4. **Inez Feltscher Stepman**, Independent Women's Forum. 5. **Ben Scafidi**, Kennesaw State University. 6. *School Choice Myths* co-editor **Corey DeAngelis**, director of school choice at the Reason Foundation.



Lyrissa Lidsky, dean and Judge C. A. Leedy Professor of Law at the University of Missouri, participates in an October policy forum on the Roberts Court’s First Amendment jurisprudence.

Chris Sununu, governor of New Hampshire, participates in the release of Cato’s 2020 *Fiscal Report Card on America’s Governors*, in which he was one of four chief executives to receive the top grade.



Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies, moderates a discussion of *Marriage Equality: From Outlaws to In-Laws* with author **William Eskridge** of Yale Law School and **Maggie Gallagher**, former chair of the National Organization for Marriage.

Continued from page 1

shadow banning—a term used to describe a social media site hiding certain content from users.

Activists on the left have had their complaints about social media content moderation, too, but more recently their concerns are focused on—among other things—white supremacist radicalization. According to some Democratic lawmakers and activists, Big Tech firms have not done enough to tackle this issue. Mass shootings at home and abroad have heightened worries about young people finding themselves in disturbing online rabbit holes that glorify violence and political extremism.

Although elements of the political left and right have been criticizing Section 230, there is a bipartisan group of lawmakers who see its value. Indeed, two members of the House, a Democrat and a Republican, worked together to draft Section 230 in 1996. Yet a bipartisan group of Section 230 critics could prevail over those who view the law as an essential feature of an internet conducive to the free flow of ideas.

In early December, President Trump vetoed the annual National Defense Authorization Act because it didn't include a repeal of Section 230, among other things. The month prior, tech CEOs, including Facebook's Mark Zuckerberg and Twitter's Jack Dorsey, were hauled before Congress for contentious hearings both before and shortly after the 2020 election and were excoriated by both Republicans and Democrats for their content moderation policies.

ARE BIG TECH COMPANIES MONOPOLIES?

At first glance, it might seem as if the arguments of Big Tech critics rest on a solid foundation. After all, you would have to be naïve to deny the cultural dominance of Big Tech firms. Google is not just a noun; it is also a verb. If Facebook were a country, it would be the most populous on Earth.

“Big Tech companies are regularly described as ‘monopolies.’”

While not as popular as Facebook, Twitter is practically a required feature of any modern, successful career in journalism or politics. Amazon's success has made its founder, Jeff Bezos, the wealthiest person in the world. The growth of these firms has allowed them to develop into more diverse companies. Amazon, which first began as an online book retail company, now makes original TV shows and home devices. Google restructured a few years ago and became a subsidiary of the conglomerate Alphabet, which oversees a vast array of research and product development for everything from drones, driverless cars, and artificial intelligence to health care technology.

Many lawmakers and regulators looking at this landscape have raised concerns about free speech. It seems as if powerful market incumbents operate a modern-day public square. In addition, activists, academics, policy professionals, and lawmakers have criticized Big Tech for turning a blind eye to extremism and child abuse. The image of a handful of monopolies determining how and when we can speak, all while facilitating abuse and the fostering of violent extremism, is a frightening one. Fortunately, it rests on crucial misunderstandings.

Among the most important errors often heard in Big Tech debates is the assumption that Google, Facebook, YouTube, and others are monopolies. But this assumption reveals a confusion about how these companies work. Far from being monopolies, the companies are competitors, both with each other and with smaller upstarts.

Users of the most famous Big Tech services pay nothing to the firms. Your Facebook account does not cost you anything, nor do your Google searches. You can visit YouTube to watch videos for free without even setting up an account. This is possible because these firms use advertising to generate the majority of their revenue. Individuals reveal very little of interest to advertisers, but in a large group, individuals using social networking platforms such as Facebook and search tools such as Google reveal information that is very valuable to advertisers. Although Google is the world's most famous search engine and Facebook dominates social media, neither sells search services or social networking. Rather, they sell information that their free services provide.

Despite being competitors, Big Tech companies are regularly described as “monopolies,” and the Department of Justice announced in October 2020 that it would be pursuing an antitrust investigation into Google.

Google has been a particularly common target of bipartisan attacks in recent years, being one of the few companies in the world that is a household name in discussions about monopoly and content moderation. Google owns YouTube, the world's most popular video-sharing website. YouTube's content has provided plenty of ammunition to both the right and the left in their respective fights against Big Tech.

PragerU, an online conservative education resource founded by the conservative commentator Dennis Prager, filed an unsuccessful lawsuit against YouTube claiming violation of its First Amendment rights. The U.S. Court of Appeals for the Ninth Circuit made short work of PragerU's argument, noting that “the Free Speech Clause of the First Amendment prohibits the government—not a private party—from abridging speech.” But not only was PragerU's case legally weak, it also revealed a misplaced

sense of persecution.

YouTube puts some videos into Restricted Mode, a setting users can enable (and which only 1.5 percent of users select). In Restricted Mode, visitors cannot access content that YouTube considers mature. Such content can include depictions or discussions of violence, drug use, sexual situations, and profanity. A filing from a YouTube trust and safety manager filed in the first stage of the PragerU lawsuit revealed that almost 12 percent of PragerU's YouTube videos are not available in Restricted Mode. According to the filing, the same is true of 54.5 percent of *Daily Show* YouTube videos and 28.27 percent of Vox.com's videos. PragerU may not be pleased to have 12 percent of its videos in Restricted Mode, but it is hardly evidence of anti-conservative bias. At the time of writing, almost 2.8 million accounts subscribe to the PragerU YouTube channel. In 2019, the channel received more than 1 billion views.

The political right is not alone in accusing Big Tech of political bias. For example, the World Socialist Web Site wrote a letter to Alphabet and Google executives in 2017, claiming that Google "is manipulating its Internet searches to restrict public awareness of and access to socialist, anti-war and left-wing websites." Black Lives Matter activists also have accused the video-sharing app TikTok and the photo and video social network Instagram of blocking access to content sympathetic to their movement. MoveOn.org, Demand Progress, ClimateTruth.org, Voices for Racial Justice, Daily Kos, and many other left-leaning groups signed a letter to Facebook CEO Mark Zuckerberg expressing their concern that Facebook too often removed content associated with incidents of police brutality, at the behest of police departments.

That elements of both sides of the political aisle perceive political bias in Big Tech is an interesting cultural phenomenon that suggests something about modern

“ The political right is not alone in accusing Big Tech of political bias. ”

political rhetoric, but it doesn't prove such bias exists.

EXTREMISM AND VIOLENCE

Concerns about extremism are on sturdier empirical ground. In the wake of the shootings at mosques in Christchurch, New Zealand, and a synagogue in Pittsburgh, Pennsylvania, Democratic lawmakers expressed their dismay at the state of social media. Shortly after the Pittsburgh shooting, which resulted in the deaths of 11 people, Sen. Mark Warner (D-VA) said, "I have serious concerns that the proliferation of extremist content—which has radicalized violent extremists ranging from Islamists to neo-Nazis—occurs in no small part because the largest social media platforms enjoy complete immunity for the content that their sites feature and that their algorithms promote." Sen. Richard Blumenthal (D-CT) took to Twitter after a shooter murdered 51 people at two mosques in Christchurch, writing, "Facebook & other platforms should be held accountable for not stopping horror, terror, & hatred—at an immediate Congressional hearing."

The shootings in Pittsburgh and Christchurch were particularly notable in Big Tech debates because of how the shooters used social media. The Pittsburgh shooter posted the following on Gab, a social media site linked to right-wing, conspiratorial content: "HIAS [Hebrew Immigrant Aid Society] likes to bring invaders in that kill our people. I can't sit by and watch my people get slaughtered. Screw your optics, I'm going in." The Christchurch shooter livestreamed the mur-

ders to his Facebook page.

While it is undoubtedly the case that the internet provides avenues for people to discover abhorrent views and to build echo chambers, it is not clear that this problem warrants a policy response. Attempts to tackle extremism online risk stifling legitimate speech and entrenching market incumbents. However, the most difficult hurdle to such attempts to overcome is the First Amendment.

In December 2019, a group of Democratic representatives introduced a bill that would establish a commission tasked with researching how online services tackle extremism and would empower the commission to subpoena private companies' communications. Such powers raise significant First Amendment concerns.

As abhorrent as Gab's content and the Christchurch shooting video are, they are legal in the United States. Possessing and sharing images and videos of criminal acts is not, absent very few exceptions such as child pornography, a criminal act in and of itself. Freedom of speech is best protected in the United States, where hate speech is legal. In New Zealand, sharing the Christchurch video is a criminal offense.

Attempts to compel a private company to remove such content would not pass constitutional scrutiny, nor would efforts to compel a private company to disclose communications related to how it deals with legal content. Fortunately, Big Tech firms do take steps to remove extremist content. As the Christchurch shooting video spread across the internet, YouTube jettisoned human moderators and threw AI tools at the problem, willing to embrace false positive takedowns in attempts to purge the video from its platform.

The Google project Jigsaw developed technology designed to identify YouTube users who were at risk of being radicalized by Islamic extremists. The technology has since been used to counter white supremacist

radicalization. That efforts by private companies to address extremist content are not perfect should not prompt lawmakers to pursue legislation, which could well run afoul of the First Amendment.

Democrats are not alone in suggesting proposals that would have worrying implications for free speech online. Sen. Josh Hawley (R-MO) is among the most prominent Republican Big Tech critics and has proposed a number of changes to Section 230. One would remove Section 230 protections from Big Tech companies that display “manipulative, behavioral” advertisements or that collect data to make such advertisements. Another would make Big Tech’s Section 230 protections contingent on a certification from the Federal Trade Commission. This certification would be dependent on Big Tech’s not using content moderation policies that are “biased against a political party, political candidate, or political viewpoint.”

Hawley’s proposals are among the best pieces of evidence of an ideological shift in the Republican Party. Republicans once embraced the rhetoric of limited government and free markets. Today, one of the Republican Party’s rising stars openly calls for a federal agency to influence which content a private company chooses to associate with. The freedom of association is an important feature of free speech. Your freedom to write and submit an article to the *New York Times* is as important a freedom as the *New York Times*’s freedom to reject it.

Attempts to reform Section 230 not only put free speech at risk, they also endanger privacy and security. Sen. Lindsey Graham (R-SC) led a bipartisan effort in 2020 to tackle child sexual abuse material, using Section 230 protections as a carrot to provide incentives to websites. Under Graham’s proposal, called the EARN IT Act, websites would have to earn Section 230 protections by adhering to a set of best practices developed by the attorney general, the chair of the Federal Trade Commission, the secretary

“ Republicans once embraced the rhetoric of limited government.” ”

of Homeland Security, and members appointed by the majority and minority from both houses of Congress.

Civil liberties experts were quick to point out that if the best practices included a ban on end-to-end encryption, the privacy and security of millions of people would be at risk. Fortunately, the EARN IT Act is not necessary to encourage firms to tackle child sexual abuse imagery. Federal law already makes websites responsible for child sexual abuse imagery they fail to report to federal authorities, and the largest Big Tech firms already cooperate to identify and remove such content.

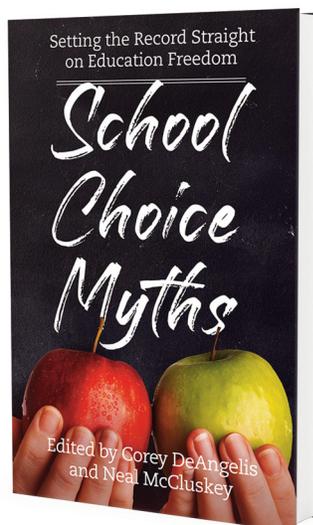
LIBERTIES AT RISK

There is much at stake in ongoing debates about free speech online. When it comes to impact on the exchange of ideas and influence on culture, the development of the internet is perhaps rivaled only by the

invention of the movable-type printing press. The internet not only allows us to discover new ideas; it allows us to find like-minded people and to form communities, whether they are political parties, book clubs, news outlets, or many others. These communities flourish in large part because websites cannot be held liable for the vast majority of content their users post and are free to moderate content as they please.

Accordingly, websites are free to allow visitors to form groups and post content without having to fear that a user’s posting defamatory content will result in costly lawsuits. In addition, they do not have to fear legal reprisals for removing awful but legal content such as beheading videos and images of animals being crushed to death. In such an environment, it is not a surprise that social networking sites have grown into the most popular venues for speech in human history.

Although we have become accustomed to today’s internet, it would be a mistake to take it for granted. Legislative proposals from both the left and the right threaten it. As Congress debates such proposals, we should remember that attempts to reform Section 230 risk infringing on our freedom of association, our freedom of speech, our security, and our privacy. ■



Why *shouldn't* families be able to choose the education that is best for their children?

For decades, opponents have repeated misconceptions about school choice. *School Choice Myths* shatters the mythology standing in the way of education freedom. It is a one-stop guide to everything from the latest research on the effects of school choice on civic engagement to Supreme Court precedent, and it’s a must-have for anyone who wants the best education for their children.

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Tunnels, Bunkers, and Escape Hatches

Jill Carlson is co-founder of the Open Money Initiative, a nonprofit focused on how money is managed in places experiencing hyperinflation, capital controls, and criminalization of free markets. She spoke at Cato's 38th Annual Monetary Conference in November.

“Being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions. . . .”

Life, health, liberty, and possessions: the natural, inalienable rights of mankind. So wrote John Locke in his *Second Treatise of Government*. Locke posited in this same work that government exists to serve the best interest of its people, protecting those natural rights. The legitimacy of government rests in the consent of the governed.

Possessions, or property, have been reiterated as a human right over the course of the centuries since Locke first wrote—enshrined in everything from the United States' Declaration of Independence to the United Nations' Universal Declaration on Human Rights. Nevertheless, executives, judiciaries, legislative bodies, and central banks around the world have continually broken their social contract on this front. They not only have failed to defend the natural rights of possessions and property but have often actively harmed individuals' ability to hold value and to freely transfer and exchange assets. Access to a free, open, and functional financial system is a fundamental human right, albeit one that is continuously violated by states and policymakers globally.

The threats posed to this right by governments are many, varied, and often interconnected. Inflation, confiscation, capital controls, price controls, rationing, bank withdrawal limits, cash shortages, and all manner of similarly restrictive policies are in this category of rights violations. These

violations are often implemented in response to crises: ballooning government deficits, rampant corruption, liquidity and banking crises, sanctions, shortages, sovereign defaults. Sometimes these issues are of the governments' own making. In other scenarios, these are exogenous shocks. Either way, policy responses that restrict the rights of citizens and corporations have become all too common.

These phenomena can be found to varying degrees in nearly every country in the world, playing out either subtly in purportedly freedom-loving democratic societies or much more obviously in authoritarian regimes. Perhaps nowhere, however, have all these phenomena manifested so clearly as they have over the past decade in Venezuela. Rampant government spending as a result of socialist policies led to an economic dependency on oil. The oil price rout of the past half decade—combined with an election, rampant corruption, and prolonged geopolitical tensions with would-be trading partners—has resulted in economic trauma and isolation. The government's responses to these situations have led to hyperinflation of the local currency, capital controls, confiscation of assets, price controls, rationing, and debt default. Just about every possible breach of economic and monetary freedom that could happen has occurred in the past decade in Venezuela.

The solutions that the Venezuelan people have crafted in the face of extreme economic strife are a testament to the people's resilience and also to the depth of the human need for a sound monetary

system, for protected property rights, and for freedom to transact and trade.

I see three ways in which individuals and organizations go about defending their economic rights from government infringement: by accessing alternative financial systems, by hedging their exposure to their failing local economies, and finally by emigrating to freer jurisdictions. I refer to these three approaches as building tunnels, finding bunkers, and using escape hatches.

TUNNELS

The financial system is extremely fragmented. Every currency, every jurisdiction, and every individual or type of institution operates within its own silo. These silos are connected via correspondent banking systems, technology, individuals employed in critical back-office reconciliation roles at banks, legal and compliance teams, communications systems, pools of carefully managed liquidity, market makers, and the many other entities and processes that make up global markets. All of this infrastructure ensures the free flow of capital and goods between and within counterparties. When these paths break down or are cut off, people and organizations find their right to a free and open financial system compromised. In these conditions of restriction, repression, and friction, people build tunnels in order to continue to freely transact and trade.

There are many reasons these connections can be severed. Sometimes an external party may cut the connection. Sanctions are the most obvious example: other countries limit or halt the movement of funds and goods to a specific jurisdiction. In other cases, the government itself stops the flows. Capital controls and limits on bank withdrawals are representative examples.

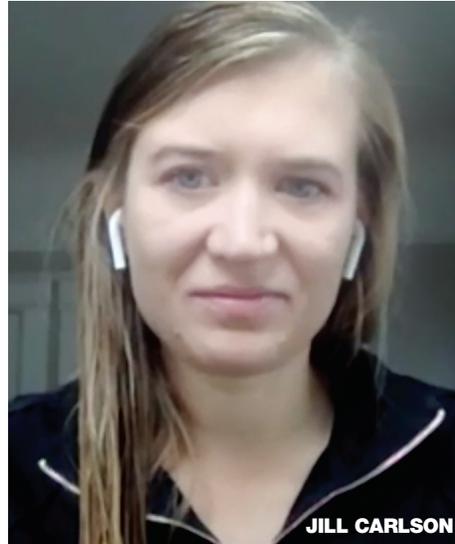
Venezuela has experienced fragmentation

at various levels in the past decade. At the national level, sanctions (in particular those imposed by the United States) have limited the movement of goods and capital into the country. These sanctions, coupled with a sovereign default, have effectively locked the nation-state out of international borrowing markets. If sanctions are keeping international funds out, capital controls are keeping local funds in. Meanwhile, institutions within the country suffer enormous difficulties in transacting business and transferring funds among each other. Because of the fragility of the banking system and the careful monitoring of the liquidity profile of each banking institution, banks do not freely send funds to each other. This is to say nothing of the pain that individuals endure in interacting with these institutions: prohibitively long lines and waits for service, withdrawal limits, and other hurdles. There is nothing free nor open nor functional about this financial system. And yet, through creativity and resilience, people and institutions have dug the tunnels necessary to enable them to continue to operate freely at each of these levels.

Faced with rationing, price controls, and scarcity of goods, people have built networks and made connections at an individual level to enable the continued functioning of markets. Generally, here, these tunnels consist of social networks, whether virtual or literal. Facebook groups and WhatsApp conversations connect individuals in service of helping each other to track down hard-to-find goods such as medicine and hygiene staples. Outside of the digital realm, people leverage their church groups, country clubs, college classmate cohorts, and other communities to find markets for the products and services they need. Facebook, WhatsApp, and these real-world factions work together to send, receive, and exchange currencies outside of the local, hyperinflating bolivar. These social networks rely on trust among

the participants: trust that the group will not be outed to the authorities, trust that counterparties will follow through on their leg of the trade, and trust that the group will come through to source the necessary item, asset, or service.

These money changers also provide conduits in and out of the country, effectively enabling people to evade capital controls.



JILL CARLSON

“
Technology
has opened a
new frontier.
”

Not only do they have six or seven bank accounts and clients at various institutions within Venezuela; they will also have access to bank accounts and customers in other countries, such as the United States or neighboring Colombia. The money changers provide remittance corridors for these countries using an informal network. In such a system, money does not actually cross borders and is therefore not subject to capital controls. Rather, if someone is seeking to remit money from Colombia to Venezuela, they will send Colombian pesos to the changer's Colombian bank account.

The money changer will then transfer the corresponding amount of Venezuelan bolivars from one of his Venezuelan accounts to the recipient on the other side.

When using products that leverage cryptocurrency, such as LocalBitcoins, a Colombian seeking to send money to Venezuela might use an exchange to change pesos into bitcoin and then cash the bitcoin out as bolivars to be deposited in a friend's or family member's account on the Venezuela side.

Thus, technology has opened new, more available tunnels and a new frontier in the fight for economic and monetary rights and freedoms.

BUNKERS

While tunnels help to evade restrictions on the ability to freely spend and make transfers, they are insufficient in the fight to store value effectively. To achieve that, the tunnel must lead to safety: a bunker. In this context, a bunker could be a store of value, a safe haven from volatility or debasement, a refuge from possible confiscation, or a hedge against the local economy. If a tunnel is the conduit by which assets move outside of the formal system, a bunker is the asylum in which assets can be safely held.

Different types of attacks result in the need for different types of bunkers. Inflation, depending on how it manifests, may demand hedges or the positioning of assets in instruments that will offset the deterioration of the value of the currency. It is not always enough to diversify savings and accumulated wealth; sometimes the bunker takes the form of diversified income streams as well. Real estate, foreign currencies, and financial assets are often used as hedges, but goods and products can be equally sound and much more accessible. Hoarding of these products can be a refuge for value. Financial and economic freedom is not only about the right to spend and transfer assets; it is also about a person being able to secure the worth of their assets.

In Venezuela, in the face of inflation, people and organizations tunnel their way to all manner of safe havens. For many, tunneling their assets out of the country altogether is the optimal solution. Corporations and wealthy, well-connected individuals who can move assets offshore do so. For some companies, this means repatriating operations. For people, this may mean moving what money they can to the bunker of a bank account in another country. Tunneling assets to a safe haven can also mean making purchases abroad. Real estate is a popular choice. The best situation of all lies in the carry trades conducted by individuals and organizations alike: taking out a loan in their depreciating local currency and using that money to buy property overseas. The value of the loan trends toward zero as inflation takes its toll, while the property maintains its worth.

These financial havens are generally available only to those with existing international accounts and the means to access them. Those who do not have such connections directly have had to be more creative in diversifying out of the inflating local currency. In many cases, people get access to bunkers through friends or family members. They may not, themselves, have bank accounts or access abroad, but often they know someone who does. It is not uncommon for an aunt to request that her nephew, who attended a university in the United States, hold money in dollars for her in his U.S. bank account. He will effectively serve as her bank, offering an exchange rate and accepting local currency from her. Thus, she can access the relative safety of dollars without having direct access offshore herself.

Bitcoin offers another benefit here. Because bitcoin does not need to be stored in a bank, the frictions of withdrawals and the risk of loss or seizure at the hands of government or institutions are diminished. As long as those who are saving in bitcoin maintain the security of their mobile phones, their assets are securely theirs. Outside of cryptocur-

rency, other methods of achieving seizure resistance also exist. Because there are restrictions on how long a merchant can hold goods on its books, for example, to prevent hoarding, some merchants create multiple entities and effectively launder their products among the entities to evade enforcement. This, too, is a bunker.

Bunkers provide refuge to people and organizations that need to shelter their assets from inflation, from debasement, from volatility, and from vulnerability to seizure and forfeiture. Wherever economic rights are violated, people find ways to

“
Cryptocurrencies
play an important
role.”

defend them, first by building tunnels out of their failing systems and then by finding safe havens in which to store their assets.

ESCAPE HATCHES

Although they are often not acknowledged with the formal status reserved for those fleeing violent conflict, economic refugees are a very real phenomenon. There are situations in which the right to a free, open, and functional financial system is so deeply and routinely violated that there becomes no other choice than to emigrate.

The emigration pattern in Venezuela demonstrates that even the tunnels and bunkers that people have found and created fall short of preserving the freedom needed to reasonably live, let alone thrive. In the three years between 2016 and 2019, 4.6 million people left Venezuela out of a population of roughly 30 million. Most have left to seek the better economic situations of neighboring or friendly countries. This is to say nothing of the numerous cor-

porations that have exited the country, taking their operations with them.

In the case of both companies and individuals, one of the key challenges of exiting lies in being able to take assets along when leaving. Companies have faced confrontations with the socialist government and had to take losses on their Venezuelan operations upon leaving the country. Individuals, too, suffer these challenges. Having assets in a bank account in Venezuela does very little good once a person gets to his or her destination country.

Once again, cryptocurrencies can play an important role in creating a more accessible path for people to take their savings with them when they leave. As long as a person's phone is not confiscated—or, for more sophisticated users, as long as they can remember their passphrase—cryptocurrency assets can be brought safely across the border.

In the fight to defend their economic rights, many are forced to choose the escape hatch: to exit the system altogether.

CONCLUSION

Since long before John Locke wrote about inalienable rights in the 17th century, people have been battling to maintain their rights. Underground salons have served as bastions of free speech in areas where censorship reigns. Books and texts have persisted in places where they were repressed. Religious practices have persevered even as beliefs were banned. People have long fled their homelands seeking greater freedoms. It is no different when it comes to economic freedoms. Technology, and most particularly cryptocurrency, is for the first time providing people with tunnels, bunkers, and ways of taking their wealth with them when they leave their country. The methods and approaches used in fighting for the right to a free, open, and functional financial system will doubtlessly continue to evolve—and just as surely, people will continue to leverage technology in waging these battles. ■

The promise and peril of new technology

Monetary Conference Examines Digital Currencies

Cato's annual Monetary Conference is the Institute's longest-running event, bringing together leading experts to discuss the most pressing issues in monetary policy. The 38th conference, held virtually on November 19, 2020, featured a slightly different focus than usual: the new world of digital currencies and their potential benefits as well as possible risks.

In his introductory remarks, James A. Dorn, Cato's vice president for monetary studies, noted that the topic is not entirely new to Cato. In 1996, the 14th annual conference focused on the theme "The Future of Money in the Information Age." The proceedings were published a year later along with other articles, including Federal Reserve Chair Alan Greenspan advocating for the private sector to have freedom to innovate digital payment systems. Cato scholars continued to examine the topic over the years, including at a 2016 conference, "Cryptocurrency: The Policy Challenges of a Decentralized Revolution."

Twenty-four years after the Monetary Conference first considered the topic, the prospect of digital currency and online payment systems is no longer hypothetical. Peer-to-peer systems such as bitcoin, launched in 2009, have since grown tremendously. In 2020, the market cap for bitcoin alone was nearly \$200 billion. While this is a small portion of traditional currencies such as the dollar, it is still substantial and poses profound questions about the future of money.

The possibility of competing private currencies has long been a topic of interest to libertarians and free-market economists, including F. A. Hayek. One important question is whether central banks should themselves launch their own digital currencies to compete in this market, alongside both traditional notes and private digital currencies.

In one panel moderated by Jeanna Smi-



Left to right: **Phil Gramm**, former chair of the Senate Banking Committee. **Jeb Hensarling**, former chairman of the House Financial Services Committee. **Jeanna Smialek**, economics and Federal Reserve reporter for the *New York Times*.

alek, Federal Reserve and economics reporter for the *New York Times*, Tobias Adrian, director of the IMF Monetary and Capital Markets Department, noted that in a sense we already have multiple competing currencies: private bank deposits, e-currencies, and asset-backed digital coins known as stablecoins. Into this existing diversity, Adrian contends that central banks may have a role to play in offering their own digital currencies. Lawrence H. White, Cato senior fellow and professor of economics at George Mason University, was more skeptical of the need for public digital currencies, noting that history suggests the market is more than capable of filling this need and that the private sector has led the way in new monetary innovations.

The prospects for privacy and civil liberties were also considered in a panel moderated by Rachel Siegel, Federal Reserve and economics reporter for the *Washington Post*. This is one area in which digital currency advocates see the most potential for new privacy protections, while authorities worry about the lack of surveillance tools they have in the traditional banking system. Jill Carlson of the Open Money Initiative sees these issues as benefits, noting that government surveillance of our money has not always

been benevolent. Martin Chorzempa from the Peterson Institute for International Economics also explained how new private digital options have reduced state control over the economy, but he added that there are real concerns about the possibility of an oligopoly in the market.

The conference's keynote address was offered by Caitlin Long, founder and CEO of Avanti Financial Group and a longtime participant in bitcoin markets. Long offered a series of 10 predictions about the advent of stablecoins, and talked about how they could upend traditional monetary policy.

The 2020 conference also saw the return of two regulars: Sen. Phil Gramm, economist and former chair of the Senate Banking Committee, together with his friend and protégé Rep. Jeb Hensarling, former chair of the House Financial Services Committee. The two former members of Congress, both Texas Republicans, conducted a conversation moderated by John B. Taylor of the Hoover Institution, in which they explored the prospects of digital currency and how it could interact with the future of monetary policy. ■

THE FULL CONFERENCE AND VIDEOS OF EACH PRESENTATION AND PANEL DISCUSSION CAN BE FOUND AT CATO.ORG/EVENTS/38TH-ANNUAL-MONETARY-CONFERENCE.

Human Freedom Index *ranks the state of liberty around the world*

Finding Freedom in an Unfree World

What is freedom? How do we define what is or isn't a free country? It's an ambitious question, and it's one that the *Human Freedom Index* (HFI) uniquely sets out to answer. Now in its sixth annual edition, the *Index* is a collaborative project of the Cato Institute and the Canada-based Fraser Institute, authored by Cato's Ian Vásquez and Fraser's Fred McMahon. While other reports rank countries or jurisdictions on the basis of a particular policy area, such as economic freedom or fiscal policy, the *Human Freedom Index* uses a grand scope to produce a score and a ranked list for almost every country in the world, taking into account almost every relevant measure of freedom for which data exist.

The HFI regards freedom as “the absence of coercive restraint”—the starting point for many advocates of liberty and one of the guiding principles of Cato's mission. But beneath this simple maxim are a wide range of factors to consider. The 2020 HFI, released online in mid-December and available in print in January, uses 76 distinct indicators of personal and economic freedom. These include the rule of law, freedom of movement, freedom of religion, size of government, sound money, free trade, regulation of commerce, and legal equality for women and minorities.

All these factors are evaluated individually using the best available data to produce a score from 0 to 10 for each of the 162 countries in the report. In this edition, which uses data through 2018 (and thus does not reflect COVID-19-related restrictions or recent legal changes in Hong Kong), the average score was 6.93, just barely improved (by 0.01) over the previous year. Derived using the same data and metrics back to 2008, the average score has decreased slightly, by 0.04. Of countries whose measurements are available since 2008, 70

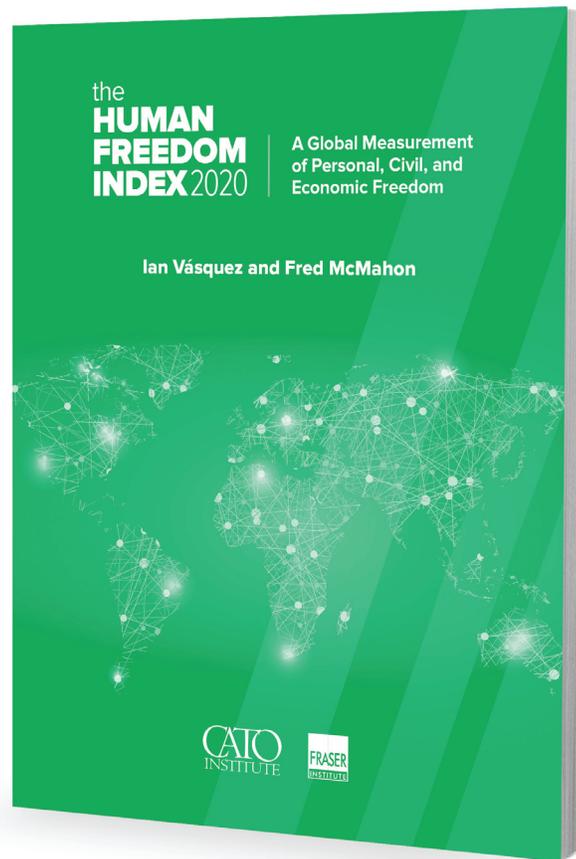
countries have improved their ranking, and 70 countries have seen their score decline.

Behind those averages are wide variations. There is a dramatically unequal distribution of freedom. Only 15 percent of the world's population lives in the top quartile of countries in the HFI, and about a third lives in the bottom quartile. Moreover, the gap between the most free and least free countries has widened over the past decade.

One thing that hasn't changed much is which countries come out on top. The nations in the top 10 of the HFI, in order, are New Zealand, Switzerland, Hong Kong, Denmark, Australia, Canada, Ireland, Estonia, and Germany and Sweden (which are tied). The United Kingdom and the United States are tied in 17th place—still near the top but with substantial room for improvement. More worryingly, both have slipped in the relative rankings: the United Kingdom is down five spots compared with the previous edition, and the United States has dropped nine places.

As Vásquez explains, the decline in the ranking for the United States is due to falls in both overall categories of Economic Freedom and Personal Freedom, but the decline in Economic Freedom was the greater of the two. In the economic category, the decrease was due to worse scores for regulation (especially labor regulations), trade, sound money, and rule of law. For personal freedom, the scores for expression and information, religion, and civil justice also declined.

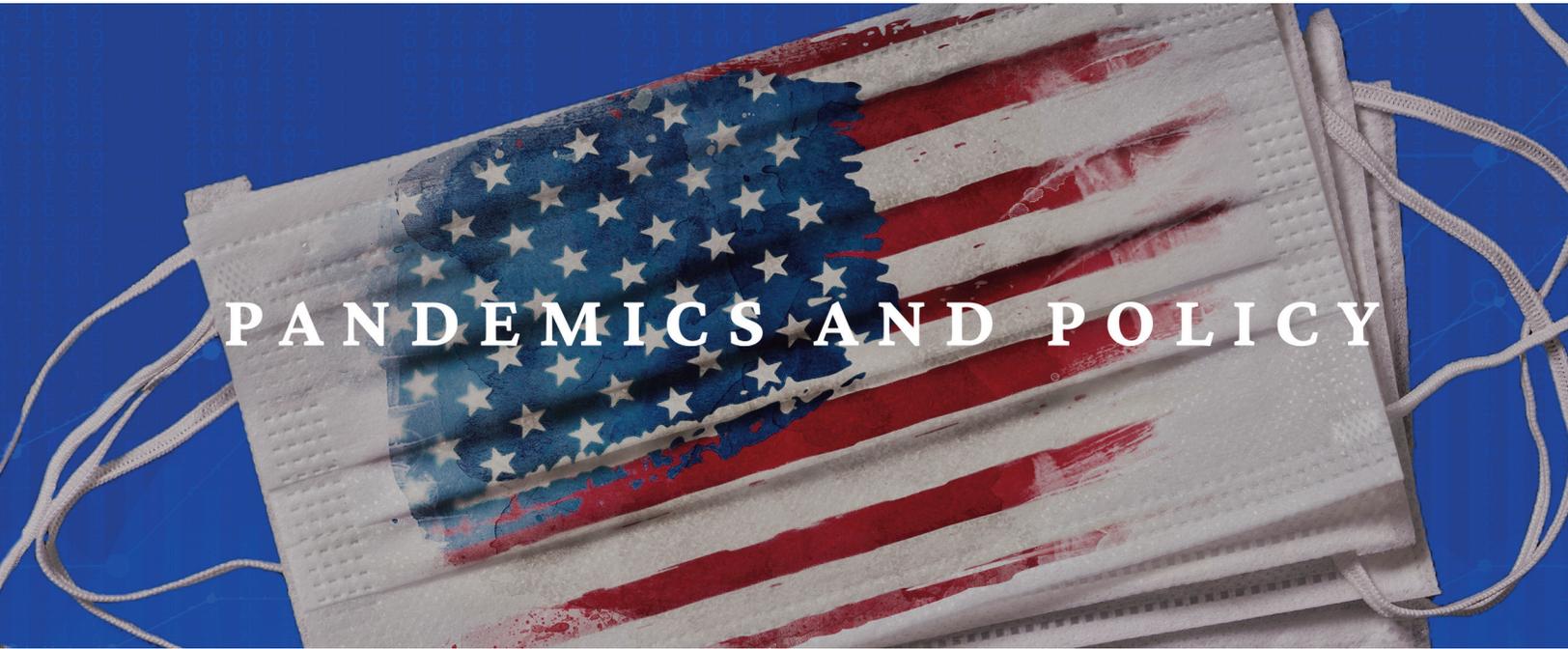
High rankings in the HFI are strongly correlated with both material prosperity



and functioning democracy, with Hong Kong as the substantial outlier on democracy. The authors of the report note that, because the data in this HFI only go to 2018, Hong Kong's score does not reflect the severe crackdown by the Chinese Communist Party that has taken place in the past two years. Still, countries in the top quartile enjoy a per capita income of \$50,340, compared with the least free quartile, which suffers under just \$7,720 average income per person.

By combining all these measures in a way that no other report does, the HFI emphasizes the ways in which the rule of law, liberal democracy, free markets, and ultimately individual freedom are closely interrelated and mutually dependent. It also provides an important data set that can be used to find correlations between freedom and other measures of human flourishing. ■

What went wrong, what we've learned, and how to prepare for the next time.



PANDEMICS AND POLICY



The third great crisis of the 21st century has already inflicted a greater toll in lives lost and economic hardship than 9/11 and the 2008 financial collapse combined. And just as the COVID-19 pandemic has upended our daily lives, it has transformed the political landscape, with governments at all levels exercising emergency powers rarely seen outside the context of total war. With so much at risk, what's needed now is sober, realistic assessment of the choices ahead—a guide to policies that can stem the damage while avoiding permanent transformation of American life and law. The Cato Institute aims to meet that need with its new series, *Pandemics and Policy*.

The *Pandemics and Policy* series provides policymakers with an actionable guide to policies that can harness ingenuity and foster a resilient society capable of meeting the challenges ahead.



READ THE PANDEMICS AND POLICY ESSAYS AT
CATO.ORG/PANDEMICS-POLICY • #CATOCOVID

Continued from page 3

That finally changed with two Supreme Court decisions: *Bell Atlantic Corp. v. Twombly* in 2007 and then *Ashcroft v. Iqbal* in 2009. *Twombly* involved an attempted antitrust suit against major telephone companies, and *Iqbal* was a case involving a Pakistani man arrested after 9/11 who sought to sue senior U.S. government officials. In line with what Olson had urged, the Court adopted restrictions that require more substantive allegations of facts and explanation of the cause of action before plaintiffs can demand wide-ranging and costly discovery.

Another of Olson's critiques concerned the problem known as forum shopping, which had been worsened by doctrinal developments at the High Court. State and federal courts require some nexus, usually geographic, to their defined jurisdiction. "Long-arm" theories of jurisdiction allowed suits to be filed in places with only the most fleeting or tenuous of connections to the alleged wrong. For companies conducting business nationwide, long-arm jurisdiction allowed plaintiffs to effectively pick whichever was most favorable among many courts around the country. Many states became notorious havens for plaintiff-friendly courts.

In response, the business community began to push back through political action and by raising the issue in elections and lobbying. Legislatures in states such as Texas soon began adopting reforms narrowing liberal jurisdictional doctrines. There was also cross-ideological alliance for reform on the Supreme Court, with Justice Ruth Bader Ginsburg joining with some of the Court's conservatives to tighten the "substantial nexus" requirements as a matter of federal constitutional law. These changes, which had long been a focus of Olson's writing, "helped give litigation more predictable outcomes by preventing jurisdiction-shopping to states where courts were unpredictable or hostile to out-of-state defendants," he explains.

Expert testimony was another area in need of reform. Previously, many courts had been relaxed about letting in whatever expert testimony the parties sought to introduce, reasoning that the fact finder could readily evaluate the credibility of conflicting testimony. This policy led to a proliferation of pseudo-scientific evidence and experts for hire who made wild claims departing from consensus in the field. But jurors, ill-qualified to assess the credibility of scientific theories, were often persuaded on the basis of junk science. In 1993, the Supreme Court was persuaded to strike out on a new course and require judges to follow stricter guidelines stipulating that expert testimony be based on legitimate science.

Another problem, often seen as peculiarly American, was that jurors would award massive damages, including punitive damages in absurd amounts far beyond the actual sums in the original dispute. These cases would often garner headlines, and at *Overlawyered* and in his books, Olson helped increase awareness of the issue. In 1996, the Supreme Court again intervened to impose much more

restrictive limits on punitive damages in *BMW of North America v. Gore*, requiring judges to review such awards for proportionality. "This had a big practical effect on runaway jury verdicts," according to Olson.

Not all changes that Olson advocates have been adopted: loser-pays rules and readier availability of sanctions against lawyers for meritless litigation have still been out of reach. Olson continues to write on these and other topics for *Cato*.

Trial lawyers remain a powerful political constituency and often fight back against reform efforts. But intellectual arguments that persuade on their merits can ultimately turn around even legal trends that seem to have a lot of momentum. Olson says he knows that some Supreme Court justices have read his books, though he cautions that it is "speculative" to think of the books as having influenced any particular ruling. Overall, the impact of reform advocates—including Olson—has been substantial, helping to shield Americans from some of the worst abuses that were once common in the courts. ■

The Economist

Books & arts

Dec 5th 2020 edition >

Cold comforts

Our books of the year

Open: The Story of Human Progress. By Johan Norberg. *Atlantic Books*; 448 pages; \$24.95 and £20

Progress depends on openness, this book contends, yet that creates a backlash, since people are hard-wired to fear rapid change. The author marshals arresting examples from every continent and era, ending on an optimistic, timely note. Recent years have seen the rise of populist demagogues who want to pull up drawbridges—but such leaders eventually lose power because they are hopeless at governing.



Ryan Bourne, R. Evan Scharf Chair for the Public Understanding of Economics at Cato, discusses *Leave Me Alone and I'll Make You Rich: How the Bourgeois Deal Enriched the World* with the authors, **Deirdre McCloskey** of the University of Illinois at Chicago and **Art Carden** of Samford University's Brock School of Business.



Lynette Ong of the University of Toronto participates in a policy forum with **Mustafa Akyol**, Cato senior fellow, on China's new authoritarian ideology and its implications for both China and the world.



Deborah Small, executive director and founder of Break the Chains, speaks at a policy forum on how racism pervades the war on drugs along with **Radley Balko**, criminal justice reporter at the *Washington Post* and former Cato policy analyst.

OCTOBER 1: *Welfare for the Rich: How Your Tax Dollars End Up in Millionaires' Pockets—and What You Can Do about It*

OCTOBER 5: Focus on Fiscal Leadership: Release of the 2020 *Fiscal Report Card on America's Governors*

OCTOBER 6: *Marriage Equality: From Outlaws to In-Laws*

OCTOBER 7: *School Choice Myths: Setting the Record Straight on Education Freedom*

OCTOBER 8: *Pernicious Infusion: How Racism Pervades the Drug War, Both Foreign and Domestic*

OCTOBER 12: *John Roberts and Free Speech: A Report on the Roberts Court's First Amendment Jurisprudence*

OCTOBER 16: *China's New Authoritarian Ideology*

OCTOBER 19: *Information Technology and Military Power*

OCTOBER 26: *They Say It Can't Be Done*

OCTOBER 30: *Leave Me Alone and I'll Make You Rich: How the Bourgeois Deal Enriched the World*

NOVEMBER 10: *Race and Medical Licensing Laws*

NOVEMBER 11: *A Fiscal Cliff: New Perspectives on the U.S. Federal Debt Crisis*

NOVEMBER 12: *Trade Policy in a Biden Administration: Back to Normal, or into the Great Unknown?*

NOVEMBER 16: *Open: The Story of Human Progress*

NOVEMBER 17: *Injustice for All: How Financial Incentives Corrupted and Can Fix the US Criminal Justice System*

NOVEMBER 19: *38th Annual Monetary Conference—Digital Currency: Risk or Promise?*

AUDIO AND VIDEO FOR MOST CATO EVENTS CAN BE FOUND ON THE CATO INSTITUTE WEBSITE AT [CATO.ORG/EVENTS](https://www.cato.org/events).

Cato Calendar

AFTER COVID: BUILDING AN INCLUSIVE ECONOMY FOR CALIFORNIA

Online • April 20, 2021

MILTON FRIEDMAN PRIZE PRESENTATION DINNER

New York • Cipriani
May 26, 2021

32ND ANNUAL BENEFACTOR SUMMIT

New York • May 27, 2021

20TH ANNUAL CONSTITUTION DAY

September 17, 2021

CATO CLUB 200 RETREAT

Washington • Cato Institute
September 30–October 3, 2021

CATO INSTITUTE POLICY PERSPECTIVES 2021

New York • The Pierre
October 15, 2021

FIGHTING POVERTY AND INEQUALITY IN CALIFORNIA: A NEW AGENDA

Sacramento • Sheraton Grand
October 21, 2021

CATO INSTITUTE POLICY PERSPECTIVES 2021

Chicago • Ritz-Carlton
December 2, 2021

33RD ANNUAL BENEFACTOR SUMMIT

Carlsbad, CA
Park Hyatt Aviara Resort
February 24–27, 2022

CATO CLUB 200 RETREAT

Bluffton, SC
Montage Palmetto Bluff
September 29–October 2, 2022

Updated information on Cato Institute events, including cancellations, can be found at [Cato.org/events](https://www.cato.org/events).

Libertarians in a Pandemic

When COVID-19 first began to ravage the world, many observers predicted that limited-government principles of libertarians were unsuited to the problem. In “**Government in a Pandemic**” (Policy Analysis no. 902), Thomas A. Firey documents the many ways in which limited government and free-market principles were in fact crucial to the pandemic response, and shows that interventions beyond those limits have yielded poor results.

REGULATORY CHAOS

The Trump administration often created significant new administrative programs on the fly, with dubiously stretched statutory authorities and minimal public input. In “**Trump’s Ad Hoc Administrative State**” (Legal Policy Bulletin no. 6), William Yeatman examines the costs of this process for four of those programs involving almost \$40 billion in benefits and more than \$400 billion in tariffs, announced with only summary notice in the *Federal Register*.

LET THEM WORK

Many European countries have accepted a recent inflow of refugees but imposed strict limits on seeking employment. In “**Lift the Ban? Initial Employment Restrictions and Refugee Labor Market Outcomes**” (Research Briefs in Economic Policy no. 241), Francesco Fasani, Tommaso Frattini, and Luigi Minale find that these policies have substantial, long-term negative impacts on refugees in the labor market, which also contributes to concerns about economic and social assimilation.

OUTSOURCING IMMIGRATION

The Trump administration imposed drastic changes and significantly restricted the

issuance of H-1B visas, used to match skilled immigrants with willing employers in the United States. In “**How Do Restrictions on High-Skilled Immigration Affect Offshoring: Evidence from the H-1B Program**” (Research Briefs in Economic Policy



GLENNON

no. 233), Britta Glennon marshals evidence that by making it more difficult to bring foreign workers to the United States, these changes increased the offshoring of jobs to overseas firms.

RIPPLING CONSEQUENCES

The COVID-19 pandemic and its attendant economic shock have exacted a staggering toll on the global economy, with some of the largest GDP contractions since the Great Depression. In “**COVID-19 Is Also a Reallocation Shock**” (Research Briefs in Economic Policy no. 232), José María Barrero, Nicholas Bloom, and Steven J. Davis examine the consequences of this toll for the labor market. As they note, the sudden disruption resulted in millions of workers being displaced and searching for new jobs. The authors undertake to quantify that displacement and document some of its effects.

UNPOLICED POLICE

Qualified immunity is a judicial doctrine that has gutted a key provision of federal civil rights law that is supposed to allow citizens to sue state actors for violation of their constitutional rights. In “**Qualified Immunity: A Legal, Practical, and Moral Failure**” (Policy Analysis no. 901), Jay Schweikert lays out the comprehensive case against this judicial malfeasance and the drastic negative consequences it has

had for America’s justice system and public confidence in law enforcement.

BAILOUT BAMBOOZLE

In 2008–2009, the U.S. Treasury invested almost \$700 billion to stabilize the financial system under the Troubled Asset Relief Program (TARP). Although TARP has long been defended on the grounds that these investments were repaid at a profit, in “**Did Banks Pay Fair Returns to Taxpayers on the Troubled Asset Relief Program?**” (Research Briefs in Economic Policy no. 234), Thomas Flanagan and Amiyatosh Purnanandam find that these returns actually underperformed private investors over the same time period, amounting to a substantial subsidy from taxpayers.

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SUPERPOWER FOLLIES



From 1968 to 2014, the United States gave foreign governments approximately \$470 billion in military aid, much of it ostensibly aimed at combatting terrorism. In **“Paying Them to Hate Us: The Effect of U.S. Military Aid on Anti-American Terrorism, 1968–2014”** (Research Briefs in Economic Policy no. 235), Eugen Dimant, Tim Krieger, and Daniel Meierrieks find that high levels of military aid actually increase the likelihood of anti-American terrorism originating from the recipient nation.

PANDEMICS AND PROTESTS

This past summer, the Black Lives Matter movement gathered large numbers of people outdoors to protest police brutality and killings of African Americans, while at the same time the COVID-19 pandemic still raged and Americans were strongly advised to continue social distancing. In **“Black Lives Matter Protests, Social Distancing, and COVID-19”** (Research Briefs in Economic Policy no. 236), Dhaval M. Dave, Andrew I. Friedson, Kyutaro Matsuzawa, Joseph J. Sabia, and Samuel Safford use cellphone tracking and public health data to show that the protests actually had a negligible effect on the pandemic.

PAID LEAVE

Mandatory paid family leave has long been advocated as particularly important to women and as a policy with the potential to increase their earnings and reduce the wage gap. In **“Do Generous Parental Leave Policies Help Top Female Earners?”** (Research Briefs in Economic Policy no. 237), Gozde Corekcioglu, Marco Francesconi, and Astrid Kunze examine the case of Norway’s 1993 expansion of paid maternity leave and find that it had a

negligible or even possibly negative impact for mothers in the top-earning decile.

WELFARE INCENTIVES

Transfer payments as part of the welfare state have a long history in the United States and long-debated effects on the incentives they create. In **“The Incentive Effects of Cash Transfers to the Poor”** (Research Briefs in Economic Policy no. 238), Anna Aizer, Shari Eli, and Adriana Lleras-Muney examine the lifetime effects of one of the first such programs, the “mother’s pension” adopted by several states between 1911 and 1930. They find that concern about behavioral distortions from such programs may be overstated, with only modest effects visible in the data.

LOCKED IN

More than a fifth of all workers in the United States are engaged in a profession that requires occupational licensing by the government. In **“Occupational Licensing and Labor Market Fluidity”** (Research Briefs in Economic Policy no. 239), Morris M. Kleiner and Ming Xu outline the staggering costs of those licenses on labor mobility, to the detriment of workers.

DEMOCRATIC BACKSLIDING

India is often described as the world’s largest democracy, but the rise of the populist Hindu nationalists under Prime Minister Narendra Modi has provoked concerns that this may no longer be the case. In **“Despite Modi, India Has Not Yet Become a Hindu Authoritarian State”** (Policy Analysis no. 903),



Swaminathan S. Anklesaria Aiyar examines the state of Indian democracy and finds that the trends are troubling but that the worst possibilities have not come to pass and India remains broadly democratic. ■

“Find out why, if you are not an optimist, you should be.”

— VERNON L. SMITH
NOBEL PRIZE–WINNING ECONOMIST



The world is, for the most part, getting better. While major concerns such as climate change, marine plastic pollution, and declining wildlife populations are still with us, many of these problems are already in the process of being ameliorated as a result of favorable economic, social, and technological trends. *Ten Global Trends Every Smart Person Should Know: And Many Others You Will Find Interesting* will provide busy people with beautifully illustrated, quick-to-read, easily understandable, and entertaining access to surprising facts that they need to know about how the world is really faring.

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“To Be Governed...”

UNALIENABLE RIGHT TO USE A PRIVATE COMPANY'S PROPERTY

Acting Secretary Chad F. Wolf today called on Twitter to no longer obstruct Americans' unalienable right to communicate with each other, their government, and its officials on the platform.

— **U.S. Department of Homeland Security, October 30, 2020**

BUYING VOTES (CONT.)

Some voters . . . said they appreciated getting a pandemic stimulus check bearing Mr. Trump's signature, which showed he cared about them.

— **Wall Street Journal, November 8, 2020**

GOOGLE ACCUSED OF SERVING CONSUMERS TOO WELL

Google's dominance in search has drawn more regulatory scrutiny and criticism from rivals and lawmakers in recent months, something that is expected to culminate in the Department of Justice filing an antitrust suit against the company in the coming weeks. . . .

Google has been great for consumers, [competing CEO Barry] Diller said, but it increasingly restricts competitors by making it more expensive to compete in online advertising.

— **Washington Post, October 12, 2020**

BIG BROTHER IS WATCHING YOU, TO LITTLE EFFECT

At one elementary school in southern China, students must send teachers short videos of their dinner each night to verify they are cleaning their plates, according to the state-run *People's Daily*.

— **Washington Post, October 5, 2020**

SO MANY POLICIES THIS COULD APPLY TO

Like every new idea with such good intentions, it turned out disastrous.

— **Washington Post, October 10, 2020**

MAYBE POLITICS ISN'T THE BEST WAY TO IMPROVE THE WORLD

I have voted in 53 local, state and national elections in California, New York and Maryland over 54 years. I don't recall a single moment when my vote helped improve schools.

— **Jay Mathews in the Washington Post, November 7, 2020**

THERE'LL BE TIME ENOUGH FOR ANSWERS WHEN THE VOTIN'S DONE

Joe Biden on Friday again refused to state whether he would attempt to pack the Supreme Court if elected president. . . .

[Reporter Ross] DiMattei said the question of court packing was the “number-one

issue” viewers have asked him about.

“Sir, don't the voters deserve to know . . .” DiMattei asked.

“No they don't deserve—I'm not gonna play [President Trump's] game,” Biden responded.

— **Yahoo! News, October 10, 2020**

SOMEBODY BUY CUOMO A DICTIONARY

New York Gov. Andrew Cuomo (D) responded angrily Monday to sheriffs in the state who said they would not be enforcing COVID-19 restrictions that limit indoor gatherings, including during the upcoming holidays. . . .

“You don't have the right to pick laws that you think you will enforce, and you don't enforce laws that you don't agree with. Right. That's not a law enforcement officer. That's a dictator,” he added.

— **The Hill, November 23, 2020**

YOU DON'T SAY

The penal code states that those who are guilty of hate speech face a fine or up to a year in jail for private comments, and a maximum of three years in jail for public remarks. . . .

Still, not everyone is happy about the aggressive approach Norway is taking when it comes to LGBTQ+ protections. Some opponents believe the amendments threaten free speech.

— **Out.com, November 11, 2020**