IN REVIEW

Boundless Patronage

REVIEW BY GEORGE LEEF

Our highway system and our education system have much in common. Both are dominated by government and most people assume that is necessary. In both we find aggressive lobbies that constantly push for more "investment" for the good of the country. We've long had public schooling and our road network has been built and maintained by government. Sure, neither is perfect, but there's really no alternative—or so most people think.

In his recent book *Highway Heist*, George Mason University economics professor James T. Bennett argues that, concerning roads, the conventional wisdom is wrong. We blundered into government control of roads in the 19th century, and we have repeatedly doubled down on this mistake ever since. An assembly of special interest groups now wields enormous power over transportation policy in Washington and the result is that Americans are saddled with a highway system that is decidedly substandard. It costs too much and delivers too little.

Bennett writes:

> Infrastructure in the form of roads and highways has often been seen as an economic boon, enabling producers to reach wider markets, get their products to market most quickly and cheaply, and expand their choice of suppliers; it also gives employees a broader range of choices in where to work and live, and expands options for consumers as well. It is, obviously, essential to a modern economy. But it is not so obvious that these avenues of conveyance need planning, building, and support by government, whether at the federal, state, or local level. Locating such responsibility in the public rather than the private sector means, perforce, their politicization, and consequently the misapplication of resources due to political pressures exerted by and on behalf of influential political actors.

Sources of boundless patronage / In his early chapters, Bennett explains how the United States got away from the idea that roads were properly a local concern with scant governmental involvement and adopted the belief that governments need to build and maintain this infrastructure. The story begins with a bit of carelessness at the Constitutional Convention when, with the drafting nearly complete, Elbridge Gerry of Massachusetts suggested adding to the power given to Congress to establish post offices the authority to establish "post roads." Exactly what that entailed was not spelled out, but Gerry's handiwork made it into the document by a vote of 6–5.

That troubled two of the young nation's foremost skeptics of government power. Bennett quotes from a letter Thomas Jefferson wrote to James Madison saying that if the federal government became active in the building of roads, it would be "a source of boundless patronage to the executive, jobbing to members of Congress & their friends, and a bottomless abyss of public money." Furthermore, Jefferson warned, governmental involvement would create an "eternal scramble among the members who can get the most money wasted in their State; and they will always get most who are meanest." Prescient words, those.

Ironically, the first federal road project was instigated during Jefferson's presidency, the National Road. Jefferson's secretary of the treasury, Albert Gallatin, wanted the federal government to build a road through the new state of Ohio, saying that it was essential for "cementing the bonds of union." Jefferson went along eagerly, his former strict constructionism forgotten. The door was now open to federal "investments" in roads, canals, railroads, and other internal improvements.

How did things turn out? Just as Jefferson had predicted. After several decades of government-funded internal improvements, the experience was so bad that Michigan, in its state constitution of 1851, included a provision banning public expenditures on them.

From bikes to a behemoth / Bennett's story picks up again in the latter decades of the 19th century when pressure for improved roads began to come from an unexpected source: bicycle enthusiasts. As cycling grew popular, some of its devotees organized to have state governments improve the roads. Led by bicycle-maker Col. Albert Augustus Pope, cycling enthusiasts formed the League of American Wheelmen (LAW). LAW's objective was to upgrade roads, funded by tax dollars.

In those days, road maintenance was a local matter. In communities, men were expected to devote several days per year to working to maintain the roads, which were chiefly used by farmers. Most of them were satisfied with things as they were and did not want to pay taxes for what they saw as a frivolous pastime for the affluent.

LAW's initial efforts were rebuffed, but Pope was undaunted. He undertook a campaign to "educate" Americans on the importance of better roads. Bicycle and

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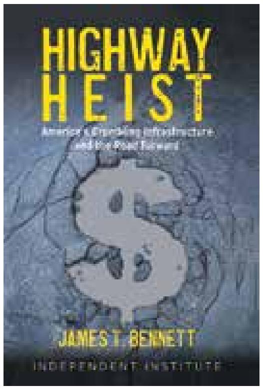


Highway Heist: America's Crumbling Infrastructure and the Road Forward
By James T. Bennett
298 pp.; Independent Institute, 2022

carriage makers joined in, realizing that their products would sell more if the roads were smoother. And he found an ally in the public education system, which favored large, consolidated school districts rather than the numerous little schools found in most of the country's rural hamlets. Improved roads would help them achieve that goal.

In 1892, this Good Roads Movement held a national convention in Chicago, where members set their sights on the enactment of legislation establishing a National Highway Commission. Never mind the lack of constitutional authority for any such entity, said its chief architect, Civil War hero Gen. Roy Stone. It was just "a simple, harmless bill" that was needed because the United States had "the worst roads in the civilized world." It was passed in 1893 and the commission was housed in the Agriculture Department to help mollify farmers.

President Theodore Roosevelt was a supporter of the Good Roads Movement. He argued that improving the nation's roads would not only improve the economy but also "elevate the social and intellectual status of the open country." About the same time, the old "post roads" language came to the fore. The Post Office came up with the concept of Rural Free Delivery (RFD), which would save inhabitants the expense of going into town to pick up their mail. The catch was that the Post Office would only do RFD on roads that were up to its standards. By that tactic, all those rural roads were brought under federal authority.

Ike liked roads / World War I did much to promote centralization of power in Washington, but the big effect on roads wasn't felt until after the war. In 1919, in a huge publicity stunt, the War Department organized a "Transcontinental Motor Train" to drive military vehicles from coast to coast. One of the vehicles was a tank, commanded by a young Army officer named Dwight Eisenhower. The big point was to show the supposed need for federal authority and funding for highway building and maintenance. Nevertheless, the federal gas tax had to wait until 1932, when it was passed as an "emergency" measure to replenish depleted federal coffers.

After leading Allied forces to victory in World War II, Eisenhower was elected president in 1952. One of his objectives was to build a great highway network across America—our version of the German Autobahn. The Good Roads people smelled the money and went about selling the idea in every way they could: national defense, motorist safety, more jobs, saving time, and better evacuation if nuclear war should eventuate. Opposition was negligible and, Bennett writes, Ike's concept had the "sheen of bipartisanship" about it.

But there was plenty of fighting over the details. How would it be paid for? The final bill required a 50/50 federal/state split and the creation of a Highway Trust Fund to be filled with money from the federal gas tax. Tolls would be forbidden on the new Interstate Highway System (IHS). Eisenhower signed the bill in 1956 and soon the work began at a frenzied pace.

Bennett devotes considerable space to the plight of the many Americans who were displaced by highway construction, nearly all of them poor. Many politicians exulted in this "elimination of blight" from cities. Only years later did some politicians, mostly on the left, take notice of the considerable human toll. Bennett notes that it was 1962 before the feds passed a law stipulating that the states had to provide housing information (but not moving expenses) for the tens of thousands of renters who were forced from their dwellings.

Once the IHS network was completed, the road lobby needed a way to keep the spending levels high, particularly during the fiscally frugal Reagan administration. At just the right moment, "policy entrepreneur" Pat Choate published *America in Ruins*, which put a thin intellectual veneer on the notion that our roads were now "crumbling" and more "investment" would pay off handsomely. It helped to fend off efforts to economize on highway projects, as did the tactic of deliberately underestimating project costs in order to get them approved.

Cause for hope? / Bennett sees some reason for optimism that American highway policy might move in a sensible direction, which is to say toward direct user fees. He points out that the gas tax turns all electric vehicle drivers into free riders, a situation that seems unsustainable, and that improvements in toll technology are reducing the opposition to toll roads. Also, federalism is making something of a comeback and Bennett believes that the states would make better use of resources without the heavy hand of Washington.

Even if it's unlikely that we will ever get government entirely out of the road business—Bennett's ideal—at least we can lessen the inefficiency we now endure.

Highway Heist inspires this thought: What if the United States had left the development of roads to free enterprise? We left the development of vehicles up to market competition, at least until federal meddling began with fuel economy standards and now subsidies for electric vehicles. If we had similarly left the development of roads to the free market, we would probably have a rather different highway system than we do now, one that's more efficient and that wouldn't have inflicted such a large human cost with its construction. The natural progress of capitalism would have brought us from the early days of plank toll roads to modern highways without all the "heist." As with other matters where government intervention distorted or prevented private action—here I'm thinking of unemployment insurance, retirement income, welfare, schooling, and the provision of money—government road building has given America decidedly suboptimal results. R

IN REVIEW

Collecting Evidence on Central Banks' Distortions

REVIEW BY VERN McKINLEY

Ever since the early indications of the Great Recession began to appear in late 2007, a mix of government insiders, journalists, and historians have been publishing books about the dangers of high finance and government's attitude toward it. (See "Will We See Another Bumper Crop of Financial Crisis Books?" Spring 2021.) None of these writers has been more prolific than Nomi Prins in releasing consistently strong titles regarding the interventions and distortions of governments, and in particular those of the world's central banks.

In the acknowledgements for her newest book, *Permanent Distortion*, she refers to her "trilogy" of recent books on these topics. *All The Presidents' Bankers* chronicles the development of big banks as wards of the government. (See "Finance According to Non-Academics," Spring 2015.) *Collusion* traces how major central banks worldwide have followed the same script on their interventions since the global financial crisis. (See "Colluding with Central Banks, Not Russians," Fall 2018.) *Permanent Distortion* picks up where the others left off in explaining the evolution of finance and central bank policies during the pandemic, the inflation those policies begot, and the rapid flow of funds into meme stocks and cryptocurrencies.

Genesis of distortion / Prins begins her introduction in a logical place by explaining the book's title:

> The epic divide between finance and the real economy is what I have defined as a *permanent distortion*. This is not a phrase chosen lightly. There's no going back from here. There's a seismic rift between, on the one hand, economic growth, wages, and a decent standard of living and, on the other, market-driven wealth accumulation that during a devastating global pandemic minted nearly five hundred new billionaires in 2020 alone.

She places the blame for the permanent distortion squarely on the evolving role of central banks since 2008:

> Today's financial system is as unhinged from the realities of classic capitalism as it is from the economy. Central banks have become money dealers and inequality enablers. When faced with crisis, they zoomed past being lenders of last resort to being arbiters of who wins and who loses in the economy. They are now money-creating machines that are fostering riskier and bigger bubbles than ever before. Their policies are setting up future crises and systemic economic fractures.… They have ensured that the markets are destined to collapse without constant support.

Chaotic discussion / Prins sets the scene in her two initial chapters in a section titled "Chaos." That term, unfortunately, also describes the avalanche of topics covered in the two chapters. The reader is introduced to the concept of a 1920s Ponzi scheme, which segues into a discussion of the Fed's zero interest rate policy (ZIRP), followed by a historical summary of the size of the debt in ratio to U.S. gross domestic product. That ratio stood at 16 percent as Calvin Coolidge was winding down his time in office, at 118 percent as Harry Truman was in the midst of his first term and the nation began paying off its war bonds, settled at a more manageable level of 30–80 percent for the ensuing 70 years, and then "the ratio zoomed to 136 percent in 2020."

Prins lays blame on the Federal Reserve as an enabler of deficit spending and in colluding with central banks worldwide:

> Central banks' extreme reaction to the 2008 financial crisis and what's unfolded since then never had an exit plan. Injecting money into the market whenever a pick-me-up is needed became the norm, not an emergency response.… The big lie was that this money would somehow trickle into the real economy.

Prins then meanders through an onslaught of topics: the inequality effects of the Fed interventions, U.S. GDP growth, the 2008 bailouts during the Great Recession, ZIRP, the 1944 Bretton Woods Agreement, the founding and history of International Monetary Fund (IMF) support programs, convertibility of the U.S. dollar into gold, limitation of banking activities through the Glass–Steagall Act, the growth of the Fed's balance sheet, the U.S. and European foreclosure crisis, the worldwide rise in populism, the reappointment of Fed chair Ben Bernanke, and Europe's debt crisis, among others. These early chapters provide the reader with a case of information overload with all these diverse topics, although in some ways interconnected, that do not hold together very well.

Too late to unwind? / The stated commitment by central bankers during the global financial crisis was that all the interventions would ultimately be removed, or as Bernanke put it in 2009, "At some point, when credit markets and the economy have begun to recover, the Federal Reserve will have to unwind its various lending programs." But as Prins states bluntly in response:

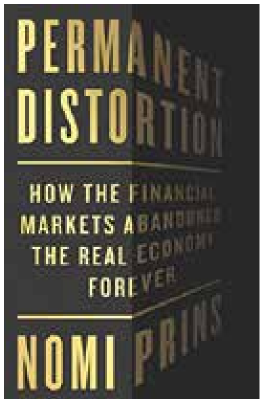
> That unwinding never quite came to fruition.… After more than a decade of artificial monetary policy experiments, one thing was clear: central bankers had demonstrated gross negligence.… Ten years of evidence was surely enough to prove their policies had aggravated the gap between the have and the have-nots. These policies had triggered major repercussions, including social unrest, the Brexit vote, the Yellow vests movement in France, and street battles for Hong Kong's sovereignty.

She summarizes the central banks' playbook as follows:

> The resumption of central banks' almost-free lending of magically created money marked a point of no return. It confirmed the fact that no matter what the problem, the Fed's solution was to chop rates and buy more securities. The reliance of banks, markets, and governments on central bank artificial interventions had become … addictive. The markets could not dare face the reality of returning to a world of normal markets. The dependence on cheap money was too deep. It was during this period of extravagant monetary policy that the perverse relationship between financial markets and the real economy became permanently distorted.

Pandemic distortions / The second book in Prins' trilogy, *Collusion*, was released in 2018. Subsequent events, i.e., the COVID pandemic and the central banks' response, led her to update her story of how central banks cooperate to create global monetary policy. She writes in *Permanent Distortion:*

> Some remedies did soothe people's immediate financial problems. But the extravagant deployment of central bank money sent long-term trends of inequality and asset bubble growth into the stratosphere. The pandemic aggravated the existing distortion between the real economy and the market in the same way that scratching off a scab can result in a permanent scar. It shifted more wealth away from average workers and toward financial elites, who were already amply armored.… The exogenous shock to the financial system caused by the coronavirus spurred central bankers to take "extraordinary action," which to them meant following the same old playbook.



Permanent Distortion: How the Financial Markets Abandoned the Real Economy Forever

By Nomi Prins

352 pp.; Public Affairs, 2022

Even the rhetoric of central banks during the pandemic had the same feel as that relied upon during the global financial crisis. Christine Lagarde of the European Central Bank spoke of the need to deploy programs and borrowing "by as much as necessary and for as long as needed." Current Fed chair Jerome Powell spoke of there being "no limit" to the Fed's commitment to do "whatever it takes for as long as it takes." The collusion Prins described in her previous book continued unabated: "With respect to monetary policy, in the COVID-19 era the symbiotic relationship among central banks, major governments, large private banks and the financial markets continued as it had previously."

Surprise! Inflation / It should have been to no one's surprise that the relentless decade-plus of loose money would lead to an increase in inflationary pressures. Prins traces the evolution of the Fed's inflation narrative from initial questions in January 2021 when Powell belittled the suggestion of inflation as "too low to be material to policy." By April 2021 and later that spring, the Fed began to recognize inflation pressures as "substantive," but said they were "transitory" as the economy recovered from 2020's short but sharp COVID recession. During the summer of 2021, those outside the Fed, such as the managing director of the IMF, began suggesting that building inflation might require "earlier-than-expected tightening of US monetary policy." Finally, in November 2021, Powell admitted that he would "retire the term 'transitory' and … the Fed might begin to wrap up its asset purchase programs."

Prins describes what then happened in a volatile 2022:

> The Fed was caught between another rock and hard place of its own making. Again, the Fed had articulated no exit plan at the onset of the pandemic. So when it signaled a series of rate hikes, markets reacted with stomach-churning choppiness. Trying to serve two masters, the markets and the economy, had again shown itself to be an approach that would never self-correct without pain for both, which became increasingly apparent as 2022 unfolded.

Convincing closing / The final chapters address the timely topics of meme stocks and cryptocurrency and how both phenomena had their genesis in the upheaval and permanent distortion present since 2008. Prins attributes the burst of interest in meme stocks to a desire to bypass the "established Wall Street corridors" and "a clearly rigged system" and the rise of the hyperactive "retail investor."

The movement began with "direct payment applications" such as Cash App and Venmo, which facilitated peer-to-peer transfers without relying on an established bank. The movement really took off with the introduction of the Robinhood app. Prins writes:

> No longer was investing relegated to Wall Street and the mega asset managers that didn't always get it right. It was time for more of Main Street to play its hand.… With such epic support given by the Fed and US government to the largest banks and corporations, it was no wonder those left behind not only questioned why, but finally decided to organize, mobilize and push back.

Robinhood's user base exploded from 2 million in 2017 to 13 million at the depths of the pandemic during the middle portion of 2020.

Permanent Distortion was released in October 2022, so the book was drafted well before the FTX crash, the major cryptocurrency story of 2022. Still, Prins takes on crypto. She explains that Bitcoin was intended to challenge central banks, as

> an alternative value-storing and payment system [that] … could operate independently from the centralized monetary system controlled by central

> banks and major commercial institutions.... [It] was born in the wake of the financial crisis of 2008 and took flight when the pandemic struck in 2020.

Prins puts in context the present significance of crypto: "If there was one invention that symbolized the era of permanent distortion, it was cryptocurrency." With the worldwide uptick in inflation, trust in central banks and their ability to manage fiat currencies began to wilt and was at a decades low. Cryptocurrencies provided an alternative:

> The idea was that the trust in governments, and by extension the activities of their central banks, that underscored fiat currencies would be replaced by trust in bits, bytes, and math ... [replacing] the continuing cycles of financial crisis, central bank mission creep, [and] Wall Street bailouts.... [Bitcoin] was introduced as an idealistic alternative to the status quo, on its way to becoming a practical one.

Prins closes the chapter with a question that holds true in the wake of the recent FTX collapse and vague efforts to halt or ban crypto: "Given the undeniable might and legacy of the established monetary system, even if it evolves digitally, the question remains: can cryptocurrencies and central-bank-created digital ones coexist?"

Conclusion / To sum up *Permanent Distortion:* the book gets off to a slow start but it has a strong finish. If a reader can get past the early explosion of topics, some central to the narrative but others not so much, and is patient enough to wait out Prins' storyline on inflation, meme stocks, and cryptocurrency, the late chapters hold together well. The endnotes are very detailed (70 pages) and would be very useful for central bank researchers.

Permanent Distortion is not my favorite of Prins' trilogy; that honor would go to *All the Presidents' Bankers.* But the new book is a good capper for her history that spans the global financial crisis through the pandemic and its aftermath. R

Understanding Inflation

REVIEW BY RYAN BOURNE

Writing economics books on contemporaneous policy issues is a tough game. You are torn between three types of discussion: using history to illuminate the present, writing educationally to inform the broader public, and trying to use the platform to critique policymakers' thinking and improve outcomes. Few authors can hit all three in one text, particularly on something as contentious as macroeconomic policy. But that's the ambition of *We Need To Talk About Inflation* by Stephen D. King, a British economist who until 2015 was the chief economist at the multinational bank and financial services firm HSBC. The result of his effort is a triumph.

At 183 pages excluding notes, the book is brisk but wide-ranging, superbly written, and full of insight. It somehow manages to cover the theories of inflation, the role of governments in causing inflation, the economic history of inflation, the damage of inflation, the failures of price controls, debates on how to curb inflation, and the pros and cons of inflation-targeting regimes. He does all this without resorting to dry academic analysis or a priori reasoning. Instead, the ideas are largely illuminated through stories and examples, drawing on events as varied as the Roman price controls of 301 A.D. and today's debates about the causes of the 2021–2022 inflation spike.

King is not a strict adherent to any macroeconomic school of thought. For a general reader, the book is better for avoiding such dogmatism. That said, it is clear where his sympathies lie. Milton Friedman and Anna Schwartz were largely correct that inflation is a monetary phenomenon, he says. Yes, supply shocks can lead to jumps in the price level, but inflation's persistence ultimately depends on accommodating those shocks through looser monetary policy. But this belief that "money matters" must be buttressed by a recognition that shifting public trust in money can lead to wild swings in its volatility. As inflation really takes off, people want to reduce their real money balances and buy up other commodities, causing price inflation to soar further. This increase in velocity contributes to inflation even when the money supply is growing relatively slowly. That is a key part of the stories of hyperinflationary collapses—edge cases that help us illuminate the harm inflation causes.

The book is genuinely interesting throughout, yet also wide-ranging, so choosing sections to review is difficult. But three areas where King has a lot of particularly interesting things to say are on how policymakers might think about inflation's persistence, why inflation matters, and the difficulties of alleviating modest inflation.

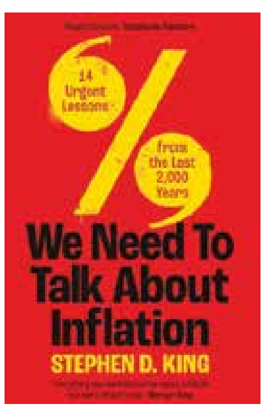
New tests / King began to warn of inflation's return in early 2021. Having subscribed to the mainstream view that inflation had largely been conquered by independent central banks through the 2010s, his thinking coalesced around four fears.

First, he wondered whether the price-depressing effects of globalization in the past had flattered central banks' actual inflation-fighting record and foresaw that some of those benefits of globalization were about to unwind, putting upward pressure on prices. Next, he took seriously what he was hearing about how the pandemic could scar economies' potential to produce goods and services, reducing our economic capacity. Third, he saw that the combination of fiscal and monetary stimulus in response to the pandemic had been huge—meaning that there were very few bank failures and bankruptcies—while unemployment had quickly returned to low levels. And, finally, he began to think that central bankers were guilty of hubris, believing that they'd obviously keep inflation in check because the public would believe they'd keep inflation in check owing to the banks' 2010s record.

We all know what happened next. Central bankers were wedded to a world that no longer existed. They thought the 2021 inflationary pressure was "transitory" and would soon peter out. It did not and, in fact, still looks stubborn across many countries in early 2023, despite the monetary tightening that has occurred so far.

How might monetary policymakers better assess whether inflationary pressures are likely to be more persistent in the future? King posits four "tests" that they should consider. If the answers to the questions are "yes," then our monetary overlords should be alive to the threat of ongoing elevated inflation. The implicit critique is that, by failing to consider these questions this time, central bankers were asleep at the wheel, allowing aggregate demand to outstrip supply.

- **Test 1:** Have there been institutional changes that would suggest an increased bias in favor of inflation? Unfortunately, by 2021, the answer was yes. The Fed's move in 2020 to an average inflation targeting regime is one example. It created a dynamic in favor of above-target inflation, King argues, because the public knew that central bankers would be less likely to react to big overshoots in inflation with big undershoots that risked a bout of much-feared deflation. The use of quantitative easing (QE) for over a decade, too, put downward pressure on bond yields, eroding the value of freely moving bond prices as an indicator of inflationary pressures. And central bank independence paradoxically made the monetary authorities less willing to spell out the inflationary consequences of large amounts of government borrowing when inflation started rising significantly; musing on this would be seen as too political.



We Need To Talk About Inflation: 14 Urgent Lessons from the Last 2,000 Years

By Stephen D. King

240 pp.; Yale University Press, 2023

- **Test 2:** Were there signs of monetary excess? Again, this time, yes. The money supply measure M2 (cash, checking deposits, and easily convertible assets) had risen dramatically during lockdowns, increasing 19 percent in 2020 and then 16 percent in 2021, compared with just 5 percent in 2019. Banks survived, equity markets soared, and then, as the pandemic waned, the velocity of money picked up, putting previously idle money to use. Monetary aggregates might be a bad guide for micromanaging inflation year-to-year, but as a flashing indicator this was incredibly important to be aware of for the big picture. Central banks took their eye off the ball.
- **Test 3:** Were people trivializing or excusing inflation? Yes. Just as in the 1970s, policymakers reached for their time machines and said inflation would soon fall. Soaring energy prices were dismissed as one-off effects and supply chain problems would inevitably unsnarl. Unions were less powerful than in the 1970s, policymakers said, meaning price pressures wouldn't then become wage pressures. What good would it do for central bankers to meet these various supply shocks by also squeezing demand? Whenever we hear such overconfidence about inflation being under control, we should be fearful.
- **Test 4:** Were supply conditions in the economy worsening? It's difficult to assess an economy's supply potential at any given time. But the aftermath of the pandemic was creating worker shortages, lockdowns had led to a lot of fractures in supply chain relationships and uncertainties about consumer demand patterns, China and the United States were in a period of policy decoupling on trade, and then, of course, we saw Putin's invasion of Ukraine. Occam's Razor: the ability for the economy to produce goods and services was impaired. That makes the high level of stimulus we saw even more questionable.

King's four tests incorporate various macroeconomic schools' warning systems for inflation. And even though they were drawn up retrospectively to reflect the experience of the past two years, central bankers should employ them as a useful mental exercise when future shocks hit. Indeed, King would clearly like central bankers to focus more on price stability again. The broadening of their remits to include financial stability and the greening of the economy clearly irks him for diluting policymakers' focus.

Distributional costs of inflation / Why is inflation such a bad thing? Many people conflate inflation with the cost of living and are hostile to it because of the effect a rising price level has on the real value of some fixed forms of income and wealth. But King uses a remarkable statistic to show that this shouldn't be our main inflationary fear.

Germany famously suffered a terrible hyperinflation in 1922–1923, with a *monthly* inflation rate of 322 percent. Yet, remarkably, German real incomes per capita fell only 7.8 percent between 1918 and 1923, considerably less of a decline than seen in the United Kingdom over the same period. In other words, even though prices were shooting up, so were nominal incomes—at least across the economy in aggregate.

The major costs of large bouts of inflation are not that they make us worse off, though for many people they undoubtedly do. No, the three biggest costs of high inflation are:

- it makes economic planning incredibly difficult, causing people to invest time in thinking about inflation to the detriment of more productive activities,

- it leads to extreme redistributions of wealth that are rightly perceived as arbitrary and unfair, and
- it leads to bad policy responses that can make the economy less efficient still.

King's examples of how high inflation affected decision-making in Weimar Germany are striking. One man bought two bottles of beer at the same time, fearing that the price of the second would have risen significantly by the time he'd finish the first. Academics sold their entire libraries of books to purchase a loaf of bread. Every day in an extreme inflation world, people must think more deeply about the effects of their decisions, trying to second-guess what the consequences of inflation are going to be and leading them to make choices they'd rather spurn. Inflation both creates futile work (such as regularly changing menu prices), as well as perverse incentives (King explains how Turkish wholesalers tried to protect themselves against inflation in the 1990s by hoarding washing machines). A lot of businesses don't know if the higher costs they are facing are industry-specific or economy-wide, leading to a misallocation of resources.

And this is what the real income per capita numbers hide: large bouts of inflation create extreme winners and losers in quite undemocratic ways. A sudden bout of inflation obviously makes those on fixed incomes or stable government benefits a lot worse off, while those for whom wage increases occur only infrequently see their purchasing power collapse. On the other hand, those who can borrow heavily and invest the funds in physical assets and real estate, or who have a lot of pricing power over their labor, can often come out of inflationary periods sitting (relatively) pretty. These effects are often arbitrary and politically explosive.

Impulse for bad policies / People will not put up with these disruptions for long before they demand that politicians act. Unfortunately, that can lead to bad policies, such as bailing out some people (a palliative that doesn't solve the underlying inflation problem) or price controls (which create shortages and all sorts of other inefficiencies). King exhaustively and patiently takes on the case for price and wage controls, expertly using the historical evidence to rubbish their prospect of solving inflation.

Deep down, most economists know (or think they know) what is needed to cure inflation: an independent central bank, tightened monetary policy, and fiscal prudence to mitigate the incentive for inflation becoming too high. Yet today we can see that ridding the economy of elevated inflation is easier said than done.

Counterintuitively, King argues that defeating hyperinflations may be easier than the more modest inflation that we see today. The damage of extreme hyperinflations is so obvious and typically is the result of a complete breakdown in monetary discipline. As a result, policymakers and the public are eventually more accepting of the strong medicine needed to bring hyperinflation to an end. A credible push to implement the structural changes needed to eradicate it are unlikely to run up against many hyperinflation "enthusiasts."

In countries such as the United States and UK, with their elevated but more modest inflation rates, the situation is far messier. The current inflation doesn't make economic life impossible. Meanwhile, too many people benefit or at least are not overly harmed by its presence, with a much larger proportion of the population fearing they might lose out from a macroeconomic tightening and the subsequent "disinflation" that squeezing demand causes. So once this sort of modestly high inflation starts, it takes a lot longer to bring it back down sustainably.

Navigating the moment / This well-argued book could not be better timed. For those worried about recent events, how we got here, and what history shows about the difficulty of getting back on track to price stability, King's breadth of research and turn of phrase are invaluable in navigating the moment. It is a near-perfect read for those who closely follow current affairs and have somewhat of a grounding in economics.

If I were to nitpick, I'd suggest the book could have been more accessible to a yet wider audience if, early on, it had clearly defined inflation (as opposed to relative price changes or even changes in the price level) and explained at a high level how it is measured through consumer price indices. This may have helped dispel the tendency among the public to conflate inflation with some individual price increases, a confusion that leads many ordinary people to not really grasp what inflation is about and to blame businesses and unions for central bank errors.

King also is clearly correct that both supply-side and demand-side factors have driven the surge in the price level since 2021. Yet, one downside of his not outlining his own "model" of the economy is the failure to define his own preferred monetary rule and so make a judgment on what actions central banks should have taken and when. He admits that in periods like what we've lived through, "policymakers are not easily able to distinguish inflationary squalls from periods of inflationary persistence." That is true, but it is difficult to square with his justified criticism of the complacency of the economic establishment in letting the inflation genie out of the bottle of late.

A book cannot do everything, though, and this one was written as the inflationary picture was continually evolving. Overall, it is the best book on the market for using this moment to deliver lessons in history and advice to policymakers. It somehow remains both broad and deep, explaining the perils of ever thinking that inflation is whipped right through to analyzing what went wrong with former UK prime minister Liz Truss's infamous mini-budget.

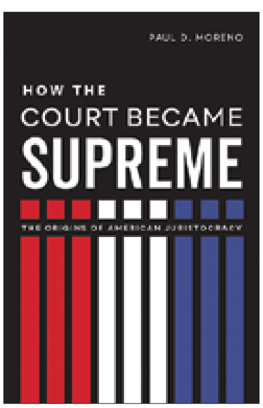
Former U.S. treasury secretary Larry Summers, who also warned about the risk of inflation in early 2021, declares on the back cover, "King's lessons command our attention." If you want to understand inflation better or put today's experience into its proper historical context, you should read this book. R

The Rise of the 'Least Dangerous Branch'

REVIEW BY GEORGE LEEF

After the drafting of the Constitution, there were great debates over ratification in the states. Among the issues raised by the Anti-Federalists was the scope of the power the proposed Supreme Court would have. To allay fears that the Court could become oppressive, Alexander Hamilton penned *Federalist* #78 in which he argued that under the Constitution, the judiciary would be "the least dangerous branch" and that judicial review would protect the people's rights against overreaching by Congress and the executive branch. The possibility of laws that infringed on those rights was foremost in many minds and judicial review was one of the ways contemplated to deal with it. (Another was having a "council of revision" to oversee all enactments and strike down those regarded as beyond the authority of the legislature. That was James Madison's preferred solution, but it wasn't adopted.) The Constitution was ratified and before long the Supreme Court began to exercise its authority to declare laws invalid.

In *How the Court Became Supreme*, Hillsdale College history professor Paul Moreno examines the development of judicial review. He writes: "A hundred years ago, progressives griped about a Court that had taken the side of capital on the 'social question'; half a century ago, conservatives bemoaned a Court that had taken the progressive side in the 'culture wars.' How did we get here?" Through a great deal of research, Moreno provides an answer.



How the Court Became Supreme: The Origins of American Juristocracy

By Paul D. Moreno

346 pp.; Louisiana State University Press, 2022

English roots / As one would expect from a history professor, Moreno digs back in time for the origin of the idea that judges could overrule the decisions of lawmakers. He points to *Dr. Bonham's Case*, which dates from 1610. England's top jurist, Sir Edward Coke, ruled that Parliament could not allow the London College of Physicians to fine and imprison non-member Dr. Thomas Bonham, who had tread upon the guild's turf, because that would make the College a judge in its own case and thus contrary to reason. From that acorn grew the mighty oak of judicial review, both in England and, eventually, its North American colonies.

Late in the 17th century, John Locke argued for a constitutional system of limited government where judges could step in to protect the rights of citizens. Montesquieu would subsequently write that liberty depends on there being a division of power among the legislative, executive, and judicial branches of government. Those ideas took root in America. During the years of turmoil from 1764 to 1775, British officials relied on Parliament's authority to seek general writs, enabling them to search colonists' papers and property as they pleased. The famed lawyer James Otis argued to the Massachusetts Superior Court that it should not issue such writs on the ground that they violated the rights of the people, citing *Dr. Bonham's Case.* John Adams, then a young lawyer, heard Otis's argument and would write in 1817 that it was "the first scene in the first act of opposition to the arbitrary claims of Great Britain."

Marbury / Following independence, there were a few early court decisions invoking judicial review. But the big case came in 1803: *Marbury v. Madison*.

Moreno provides a detailed examination of the issues and the people involved. Chief Justice John Marshall was a cousin to Thomas Jefferson but a political opponent. (Jefferson regarded him "a cunning casuist.") William Marbury was a Federalist appointed to be a justice of the peace at the very end of John Adams' presidency. James Madison was secretary of state to the newly inaugurated Jefferson. Marbury's commission had been signed and sealed but not delivered before the new administration took over, and Madison was not about to aid the Federalists and refused to deliver it. Marbury sued, using a provision of the Judiciary Act of 1791 to take the case directly to the Supreme Court.

Marshall cunningly decided that while Marbury was legally entitled to his commission, he had come to the wrong court because, in passing the Judiciary Act, Congress had unconstitutionally expanded the Supreme Court's jurisdiction. In this, Marshall accomplished two things: First, he declared that the Supreme Court could nullify laws that violated the Constitution. Second, he avoided having to issue the writ of mandamus Marbury sought, which Madison would undoubtedly have ignored, thereby showing the Court's weakness. Moreno also points out that Marbury did not further pursue the case, indicating that the suit was created to yield a certain result—a tactic that would become common in the 20th century.

Just how important was *Marbury*? For decades afterward, few people thought much about the case. Courts didn't cite it. *Marbury* does, however, illustrate what Moreno calls "first tier" judicial review, namely cases where the courts invalidate laws that intrude on the domain of the judiciary. Marshall's famous decision gave the country the Supreme Court that most of the Founders envisioned, but nothing more. Only later would two more tiers emerge: cases where courts struck down laws on other subjects because they conflicted with the Constitution, and cases where the courts used judicial review to make policy.

Striking down laws / The most important tier-two case decided by Marshall was *McCullough v. Maryland* (1824), in which the Court invalidated Maryland's tax on notes of the Bank of the United States. The decision upset the Jacksonians who hated the Bank, but Moreno doesn't find it amiss, writing that Marshall "exercised *juris* prudence, not political prudence. Many of Marshall's successors would maintain the appearance of jurisprudence while using it as a Trojan horse for juristocracy."

Marshall's decision in Marbury gave the country the Supreme Court that the Founders envisioned, but nothing more.

After the Civil War, the Court would become more political. It whittled away much of the 14th Amendment in the *Slaughterhouse Cases*. In *Hepburn v. Griswold* (1869), it ruled against the law requiring that "greenback" paper currency be accepted at face value as legal tender, but the following year, after President Ulysses Grant put two new justices on the Court, it reversed course and upheld the law. The most controversial case of all was *Pollock v. Farmers Loan and Trust* (1895), where the Court declared that the graduated federal income tax was unconstitutional. "The Court," Moreno states, "seemed to go out of its way to invite a reaction—it chose, as one scholar put it, 'the path of most resistance.'" Populists and progressives were furious, but a number of progressives in the legal academy concluded that their best course of action would be to start training lawyers and judges so that they could use judicial review to promote their agenda. Within a few decades that investment would pay huge dividends.

Making policy / The Court took a strong turn toward "legal modernism" with the addition of Justice Louis Brandeis in 1916. The modernists rejected the idea that judges must be bound by the written law and believed they should be free to decide cases according to their own preferences. His fellow justices said that Brandeis practiced *Gefuhlsjurisprudenz*, meaning "jurisprudence by sentiment." This was the beginning of what we now call the "living Constitution" movement.

An increasingly "progressive" Court upheld some strongly interventionist state laws early in the New Deal era (e.g., New York's milk price fixing regulation and Minnesota's moratorium on mortgage foreclosures, both attacks on freedom of contract that the Court had formerly defended). But then in 1935, it turned against several of President Franklin Roosevelt's new statutes, especially the National Industrial Recovery Act, which was held unconstitutional because Congress had delegated excessive power to bureaucrats to run the country.

Those decisions led to Roosevelt's infamous threat to pack the Court with six new justices. Although the legislation to do that met with stiff opposition from his own party, the threat swayed two members to switch over to supporting the New Deal. Within a few years, the remaining traditionalist justices were gone, replaced with reliably pro-government men, and Court jurisprudence changed accordingly.

In the 1938 *Carolene Products* case, Chief Justice Harlan Fiske Stone set the remarkable precedent that the Court would treat some constitutional rights as more important than others. Laws that appeared to infringe upon "fundamental" rights such as voting would be scrutinized, whereas those that infringed upon rights involving contract, property, and business would receive less scrutiny. In practice, that came to mean that as long as there might be any rational basis for a regulation in those areas, the Court would stay out. This was a major leap into what Moreno calls "juristocracy"—the Court declaring that it got to say which constitutional rights were really important and which ones were second-class.

Under Chief Justice Earl Warren, the Court strode much further into judicial supremacy. Warren was noted for caring little about what the law actually said and focused on what he deemed "fair." His first big decision was *Brown v. Board of Education* (1954), declaring "separate but equal" public schools unconstitutional. Among the country's elites, the outcome was very popular, but many legal scholars who applauded it nevertheless found the legal reasoning weak.

Warren and his allies were soon joined by William Brennan, who loved the idea of using the Court to push progressive policy ideas. In the early 1960s, it waded into what had always been regarded as a political question when it declared that state legislatures must be apportioned equally. It changed criminal procedure, mandating that courts use the exclusionary rule to void any evidence obtained in violation of the defendant's rights. It turned welfare into a right and, in *Griswold v. Connecticut* (1965), ruled that states could not limit access to contraceptives because of a "right to privacy." Justice William O. Douglass found various "emanations and penumbras" of other rights in the Constitution. Juristocracy and *Gefuhlsjurisprudenz* were in full flower.

President Richard Nixon might have thought that his appointments to the Court would turn it away from the activism of the Warren years, but that didn't happen. His choice for chief justice, Warren Burger, didn't change the Court's trajectory. One of Burger's first major decisions was *Griggs v. Duke Power* (1971), where he expanded the Equal Employment Act to say that business testing that had a "disparate impact" on protected minority groups was illegal. Civil rights advocates were amazed and said that they didn't think Burger knew what he had accomplished for them. Then in 1973, Nixon's second appointment, Justice Harry Blackmun, authored the decision in *Roe v. Wade*, where the Court made abortion policy for the entire nation. Again, the result met with favor among those who had come to see the Court as the conscience of the nation, but the decision's reasoning was widely denounced by friends and foes alike. Yale law professor John Hart Ely wrote that Roe "was not constitutional law and gives almost no sense of an obligation to try to be."

While the Court was making new policy in some areas, it had decided to give bureaucrats a free hand to make it in many others. In the 1984 case *Chevron v. Natural Resources Defense Council*, the Court announced that administrative agencies should be given great deference in interpreting the scope of their authority. Moreno comments sagely, "One could say that the Court's administrative law did more to undermine the separation of powers than did its own usurpation of the legislative function."

Originalism? / Is there reason to think the Court might backtrack, applying the Constitution as written rather than as progressives think it should be rewritten, reining in the excesses of administrative agencies, and declining to legislate from the bench? Moreno doesn't have much to say on that score. Originalism offers that possibility, and the current Court ostensibly has a majority who support this view. But justices have long proved creative in finding ways to argue the law and Constitution support their views. Personnel is policy and politics will determine whether we have justices who favor juristocracy.

Is the judiciary still the least dangerous branch? If so, it's only because the legislative and executive have so burst their intended constitutional bounds that the judiciary is tame in comparison. But the legislative and executive were able to do that only with the Court's acquiescence. *R*

Is the *Chevron* Era About to End?

REVIEW BY JONATHAN H. ADLER

No one expected the Supreme Court decision in *Chevron v. Natural Resources Defense Council* would become a landmark of federal administrative law, least of all its author. The 1984 case presented a relatively routine scenario: a federal agency adopted regulations that interest groups opposed, and the courts were called upon to decide whether the agency had overstepped its bounds. Writing his opinion for the Court, Justice John Paul Stevens thought he was applying well-settled principles of judicial review of agency action. As the opinion was unanimous, his colleagues seemed to agree.

But buried in the opinion was a new and deceptively simple test. First, courts must consider whether the relevant statutory text answers the question at hand. If so, courts should follow Congress's command. If, on the other hand, the reviewing court finds the statute ambiguous, it must defer to the agency's interpretation, provided it is reasonable. Before long, this test was dubbed a doctrine, and the rest is history.

For most of the past 40 years, the *Chevron* doctrine has defined the parameters of judicial review of agency action, and *Chevron v. NRDC* is one of the Court's most cited administrative law decisions of all time. Yet a growing number of jurists and commentators have begun questioning the doctrine and how it is applied in federal courts.

Critics maintain *Chevron* encourages courts to abdicate their obligation to say what the law is and makes it too easy for agencies to make policy decisions that are properly left to the legislature. In one of his last opinions for the Court, Justice Anthony Kennedy lamented how the doctrine encouraged "reflexive deference" by lower courts and suggested the Court "reconsider the premises that underlie *Chevron* and how courts have implemented" it. Kennedy's replacement, Justice Neil Gorsuch, would agree. Before he was appointed, then-Judge Gorsuch labeled *Chevron* a "behemoth" that "permit[s] executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design."

In his recent book *The* Chevron *Doctrine: Its Rise and Fall, and the Future of the Administrative State*, Columbia law professor Thomas Merrill expertly assesses the doctrine and where it has gone wrong. The book provides a rich and insightful account of how the Chevron doctrine came to be and how it came to be so controversial. Merrill excavates the pressures Chevron places on rule-of-law values. He also examines how the doctrine could be reformulated in a way that safeguards reliance interests and legislative control of agency action without requiring courts to disregard agency expertise and insight across the board.

Remaking administrative law / Prior to *Chevron*, courts exercised *de novo* review of agency interpretations of federal statutes, meaning they examined the issue without deferring to some previous governmental decision. But the courts also gave due regard to an agency's longstanding and consistent view, particularly if it was first offered contemporaneously with the relevant statute's adoption. Consistent with the 1946 Administrative Procedure Act's instruction that courts "shall decide all relevant questions of law," courts exercised

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"independent judgment" in determining how much weight to give agency interpretations, though what that meant could vary from case to case. Courts accepted that Congress sometimes expects agencies to fill in the interstices of complex statutes or resolve minor ambiguities, while recognizing the broad sweep of agency authority had to be identified by judges rather than administrators.

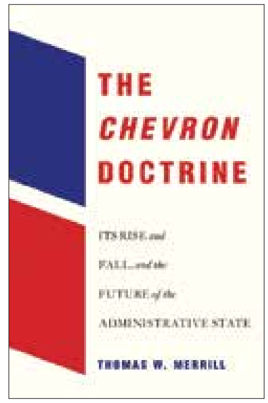
But as Merrill writes, "Then came the *Chevron* decision."

As noted above, no one at the time thought *Chevron* presented "any question about the court–agency relationship in resolving questions of statutory interpretation." Rather, all understood the case to be about how the Clean Air Act was to be implemented. Under that law, "stationary sources" of regulated pollutants were required to obtain permits when making facility changes that could increase emissions. The question was what constitutes a source: each smokestack or opening from which pollutants could emanate, or the facility as a whole? In the case of something like an oil refinery, this difference could be quite substantial, hence the controversy. While the question was clear, neither the text of the act nor the associated legislative history provided an answer.

No one at the time thought Chevron _presented "any question about the court–agency relationship in resolving questions of statutory interpretation."_

Environmentalist groups preferred the former interpretation, as had Jimmy Carter's administration, because it would place more pressure on firms to reduce emissions. Ronald Reagan's administration preferred the latter approach because it would ease regulatory burdens. Accordingly, Reagan's Environmental Protection Agency promulgated regulations adopting the plant-wide definition of "source," and environmentalist groups sued.

The U.S. Court of Appeals for the D.C. Circuit, in an opinion by then–Judge Ruth Bader Ginsburg, rejected the EPA approach. While acknowledging that the text of the law was unclear, she argued that the more stringent interpretation was warranted so as to effectuate the broader goals of the act. The Supreme Court, however, concluded the case presented what was really a policy question—whether to adopt a more stringent or a more flexible regulatory policy—and policy questions of that sort were properly left to the administrative agency charged with implementing the law, in this case the EPA.



The* Chevron *Doctrine: Its Rise and Fall, and the Future of the Administrative State

By Thomas W. Merrill

336 pp.; Harvard University Press, 2022

That *Chevron* would remake administrative law was not clear when the opinion was first issued. "If one reads the entire opinion from beginning to end, one discovers a relatively conventional exercise in judicial review," recounts Merrill. The exception was a brief passage setting forth what would become known as the *Chevron* doctrine, a mere two paragraphs in a 27-page opinion. These two paragraphs "are endlessly quoted or paraphrased in thousands of decisions," yet "do not appear to reflect the standard of review that Justice Stevens actually applied in the decision itself." Nor did the Court announce it was making any change to existing doctrine on judicial review of agency action.

The recognition that these two paragraphs announced a new test for courts to apply was left to the D.C. Circuit, the federal appellate court in which a disproportionate percentage of challenges to federal agency actions are heard. It was there that lower court judges, intent on following the instructions emanating from One First Street, embraced Justice Stevens' two paragraphs as dictating courts' "proper task in reviewing an administrative construction of a statute that the agency administers."

As Merrill explains, the *Chevron* doctrine was embraced because it made things easier for both the judicial and executive branches. "Lower-court judges were drawn to the *Chevron* doctrine because it is refreshingly simple in contrast to the complex matrix of factors that prevailed in the pre-*Chevron* era." No less significantly, "the *Chevron* doctrine was regarded as a godsend by executive branch lawyers charged with writing briefs defending agency interpretations of law." If the relevant statutory language was not clear, agency lawyers could rely upon *Chevron* to defend their "reasonable" interpretations.

Chevron's early defenders, Justice Antonin Scalia in particular, celebrated the doctrine as a way to take policy decisions out of the hands of judges and commit them to the executive branch. Yet it is not clear that is quite what *Chevron* accomplished. As Merrill notes, "The *Chevron* doctrine, in practice, does little to constrain judicial willfulness." In no small part, this is because neither *Chevron* nor subsequent decisions made clear how judges should determine when a statute is sufficiently ambiguous to require that court defer to agencies. Thus, in practice, *Chevron* "translates into … reduced decisional costs for judges and more judicial discretion."

While the language of judicial opinions changed, it's less clear many results did. The rate at which courts accepted agency interpretations appears to have increased only a small amount, but the universe of agency actions under review may have shifted under the new rules. The availability of *Chevron* deference appears to have encouraged agencies to be more aggressive in interpreting the statutes they administer, unearthing new regulatory authority in old statutes when Congress refuses (or simply cannot be bothered) to enact statutory reforms. In this way the doctrine "facilitated the transfer of power from Congress to the administrative state."

It is this effective transfer of power that fuels *Chevron*'s critics. The doctrine emboldens agencies to stretch the bounds of statutory authorizations, and further encourages administrators to embark on new policy initiatives by exploiting the ambiguity of existing statutory delegations instead of turning to Congress. The doctrine has the virtue of providing a deceptively simple test that appears easy to administer. Yet the test is not as simple to apply as it might appear, and it has made it too easy for agencies to revise regulatory requirements and too difficult for courts to police the boundaries of agency authority. Over time, it has become clear that "the doctrine failed to account for settled expectations created by agency interpretations, and failed to acknowledge the importance of a contextual examination of the scope of the agency's delegated authority."

***Revising* Chevron** / Merrill's prescription is more to mend *Chevron* than to end it, though some might view his proposed modifications as a lethal prescription. In his view, courts should "try to figure out where agencies have a comparative advantage and where courts have a comparative advantage, and to assign roles to each institution that reflect how each can make a positive 'marginal' contribution to the process of saying what the law is." Judicial review of agency interpretations of law should not only encourage agencies to make sound interpretive choices and channel discretionary policy choices toward politically accountable institutions. It should also reinforce constitutional and rule-of-law values to protect settled expectations and ensure due process. As he emphasizes, the Constitution establishes a structure of "legislative supremacy" in that all law-making power is vested in the legislature, and administrative agencies only have the power that Congress has chosen to delegate to them (usually, though not necessarily, with the president's concurrence). Accordingly, the real question in *Chevron* cases should not be "Is this language ambiguous?" but rather "Is there persuasive evidence that Congress *actually delegated* authority to the agency to resolve this particular question?"

While no change has been explicit, it appears the Court is beginning to think more deeply about *Chevron*'s premises and how deference should be constrained along the lines Merrill suggests. This is but one reason *The Chevron Doctrine* is a particularly timely book. While the justices seem reluctant to require courts to resolve each and every challenge to agency action on purely textual grounds, it seems to be sending the message that *Chevron* should only apply when the relevant statutory provisions are genuinely ambiguous, not merely when they are complicated or difficult to parse, and only when it is clear Congress delegated such policymaking authority to the agency.

Despite the criticisms, lower courts continue to rely upon *Chevron* with regularity. The same cannot be said at One First Street. *Chevron* has not been relied upon by a majority of the Court to decide a case since 2016. In this regard, *Chevron* has already become something of "the Lord Voldemort of administrative law," as one appellate judge commented, because the justices no longer seem willing to speak its name. And while the justices have not yet opted to reconsider *Chevron*, recent decisions (such as *West Virginia v. EPA*) have narrowed the domain in which *Chevron* applies.

In 1984, *Chevron v. NRDC* remade administrative law. Before the decision turns 40, the Supreme Court may remake *Chevron*. If so, Merrill's book may have helped show the Court how to do it. *R*

An Insider Account of the COVID Financial Crisis

REVIEW BY VERN McKINLEY

Previously in *Regulation*, I wrote that we could soon see a steady flow of books on what might be called the COVID financial crisis. (See "Will We See Another Bumper Crop of Financial Crisis Books?" Spring 2021.) I have since reviewed two books that could be placed in that category: *Trillion Dollar Triage* by Nick Timiraos ("Was It Really Triage?" Summer 2022) and *Permanent Distortion* by Nomi Prins ("Collecting Evidence on Central Banks' Distortions," p. 48).

Alex Pollock and Howard Adler have now contributed what I consider the first "insider" account of this crisis. Pollock worked at the senior management level of the Treasury Department's Office of Financial Research (OFR) from 2019 to 2021, and Adler was the deputy assistant secretary of the Treasury for the Financial Stability Oversight Council (FSOC) from 2019 to 2021. Pollock has two books to his name focused on financial stability topics, while this is Adler's first book.

The element of surprise / *Surprised Again!* is a follow-up to one of Pollock's previous books, 2018's *Finance and Philosophy: Why We're Always Surprised* (Paul Dry Books). In the new book's first chapter, the authors cite Pollock's prior book and explain their rough rule-of-thumb that "financial crises occur on average about once a decade." They then explain how in 2019, as they began to dig into their new duties at Treasury, they calculated that it had been about 10 years since the previous crisis and they put their heads together to compile "a

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long list of various macro-financial worries" that might trigger the next crisis. This made sense given that their responsibilities in their positions at OFR and FSOC included "anticipat[ing] possible future financial crises." Interestingly enough, the authors admit that "the emergence of a new pandemic was certainly not on the list of financial risk factors."

Pollock and Adler note an example of a well-known economist who they claim was surprised by the crisis. In 2017, amid her term as Federal Reserve chair, Janet Yellen commented about the next financial crisis: "I do think we are much safer, and I hope it will not be in our lifetimes. And I don't believe it will be."

One thing I believe the authors should have addressed here is the elements of a "financial crisis"—a term the authors use quite often but do not formally define. They merely conclude that, yes, we did indeed experience a financial crisis in 2020.

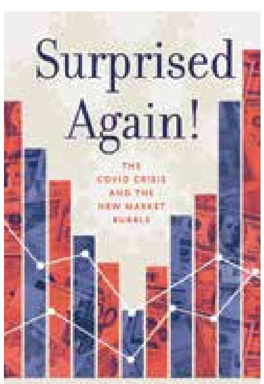
In their discussion of the surprising nature of the crisis and subsequent bailouts, the authors claim that the authorities were surprised and, "in common with the last crisis, the governments and the central banks had no choice but to fly by the seat of the pants, making it up as they went along." Informed by my own work experience and research, I would disagree that the financial authorities "had no choice" when it came to undertaking a round of massive bailouts for nearly every segment of the financial sector.

Bagehot, really? / Pollock and Adler argue in an early chapter that the 19th century English financial writer Walter Bagehot developed "the classic guide for curing a panic in process, like the one in full bloom in March 2020." (See "Would Bagehot Be Smiling?" Winter 2019–2020.) They summarize his methodology as follows: "Central banks should lend early and freely (i.e., without limit), to solvent firms, against good collateral, and at high rates."

The chapter goes on to describe in prose and through graphs the Treasury's individual emergency programs (22 of them during the pandemic); the record federal deficit ($3.1 trillion); the explosion of the Federal Reserve's balance sheet (from $3.8 trillion to $8.5 trillion); the Fed's supporting emergency lending programs, some off-the-shelf and some new (14 of them); and how market interventions affected the monetary aggregates such as M2 (the sum of checking and savings accounts plus quickly liquidated assets), which went from less than $16 trillion to over $20 trillion. They conclude that "aggressive expansion of elastic currency worked to stem the financial panic, as Bagehot said." A chapter near the end of *Surprised Again!* recounts how central banks worldwide followed this same script.

I would disagree that the financial authorities "had no choice" when it came to undertaking massive bailouts of nearly all of the financial sector.

I would disagree with Pollock and Adler's implication that all the recipient firms were solvent (or more rightly "sound," the term Bagehot uses more often in his 1873 book *Lombard Street*), held good collateral, and were charged sufficiently high penalty rates. Unfortunately, the authors do not do a deep analysis of the firms and show whether their characterization or mine is correct.



Surprised Again! The COVID Crisis and the New Market Bubble

By Alex J. Pollock and Howard B. Adler

224 pp.; Paul Dry Books, 2022

What do these industries have in common? / The authors then transition from the big-picture view of the programs and the massive numbers behind the interventions, to the industry-level effects. They dedicate well over half of the book (chapters 4–11) to a deep dive into the individual sectors of the financial industry that changed the most dramatically—for better or worse—during the response to the COVID crisis: money market funds, the financial markets (rightly referred to by the authors as "the everything bubble"), cryptocurrencies, banks, the mortgage market, municipal debt, pension funds, and student loans.

For each of these topics, Pollock and Adler give background on the sector and how the 2020 panic played out and the response of the financial authorities (mostly bailouts either direct or indirect). An assessment of each of these diverse sectors is beyond the scope of this modest-length book review. The authors' explanatory graphs integrated into select comparisons with the analogous interventions in these sectors during the great recession a decade previously and the transition to bubble territory make clear the excessive nature of the interventions. It was truly a case of no major financial market sector left behind in the responsive measures.

A disappointing closing / There is a lot of useful information and data in this book, and it compares favorably with the information and data in the other two books I cited at the beginning of this review. Pollock and Adler make references throughout the book to their audience, using the complimentary monikers "thoughtful reader," "informed reader" and "candid reader." As someone who hopefully falls into those categories, I will have to admit that I was disappointed with the closing of *Surprised Again!*

The authors conclude with a chapter presenting reflections on the crisis and the response by the authorities, followed by an epilogue. Given the rapidly changing financial sector environment, they felt the need to inform readers that the manuscript for *Surprised Again!* was completed in early February 2022, but an epilogue was added to discuss the continued evolution of the sector and provide a snapshot of the industry as of mid-May 2022. Informed readers will note that many of the bubbles created in the described sectors continued to deflate throughout the remainder of 2022 since the release of the book, in particular the crypto and mortgage markets.

The authors are quite critical of the present state of the financial sector throughout the book, especially the seemingly endless cycles (again, timed roughly every 10 years or so) of serious financial crisis. Typically, these final chapters would be dedicated to a number of solutions to this conundrum. But the authors do not suggest cutting back on bailouts. The previously noted reflections only summarize how deadly the pandemic was and then enumerate a few scenarios that could unfold to trigger the next crisis: another housing collapse, a malicious hack of the financial system, an electric system failure, another pandemic, a major war, a combination of the above, or none of the above. This assessment is quite speculative, especially because—as the authors point out—almost no one predicted that a pandemic would trigger a financial crisis in 2020. Where, thoughtful, informed, and candid authors, are the solutions?

At the beginning of the review, I stated that I would classify this book as an insider account, but *Surprised Again!* has a dearth of the typical insights of that genre and provides few surprises for an informed reader. A skim through the endnotes reveals material that a non-insider could have just as easily unearthed and drawn on in composing such a book. Presumably, the authors were in the thick of the response to the financial instability during 2020 at OFR and FSOC, but I don't recall reading any blow-by-blow descriptions of critical meetings or seat-of-the-pants analyses that are so typical of insider accounts. Pollock and Adler do point out that those agencies never cited a pandemic as a potential trigger for a crisis, but how do they grade the overall response from Treasury (where they worked) and the Federal Reserve (whose actions they no doubt observed during that period)? They do not say.

The assumption underlying the creation, as part of the Dodd–Frank Act reform measures, of the two government creatures the authors worked for was that collectively the financial authorities—armed with sufficient resources—could scan the financial sector and pinpoint the genesis of the next crisis. How wrong that turned out in relation to the 2020 pandemic! Are the financial resources that are sunk into OFR and FSOC ($75 million annually at last count for OFR and $13 million annually for FSOC) money well spent given the evidence of what seems to be a losing battle to predict the next financial crisis? Is the research coming out of OFR under the direction of FSOC useful? Did it help during the financial crisis in some way? Again, even with their insider knowledge, the authors do not say. Given their vantagepoint at Treasury—which is highlighted on the book's back cover, on the publisher's website, and on the book's Amazon page—this reader hoped for more of these classic elements of an insider account. R

Are Economists Harmful?

REVIEW BY PHIL R. MURRAY

In his recent book *The Tragic Science*, University of Denver economist George DeMartino argues that economists have too much influence over public policy and claims that their influence is morally unjustifiable. "Regrettably," he writes, "the risk of harming is ineliminable from economic practice. This is the tragedy of economics."

He contends that economists do not appreciate the harm they do. "Having done the math," he complains, "the economist can assess policy without giving much thought to those the policy will harm." Readers of the book will find plenty of criticisms of how economists think as well as many recommendations for how economists "can do much better."

Salient ignorance / DeMartino begins by introducing the problem of "irreparable ignorance." By that, he means economists "do not and cannot possibly know all they need to know to design interventions that avoid unanticipated consequences." There is "what we don't know now and might someday know, but only after the moment the missing knowledge is needed for decision making." Perhaps an example is not knowing the benefits and costs when regulating ozone levels in the air. There also is that which we might not know because it cannot be known *before* acting. Finally, an economist does not know "what lies beyond the domain of economic expertise—not just at the rudimentary state of economic expertise yesterday or today, but at any conceivable level of the science as conducted by the smarter and better-trained economists of the future." Unfortunately, DeMartino offers no examples of such hubris.

Irreparable ignorance has implications for economic methodology. DeMartino objects to what he calls "*time-travel machines*—economic models that permit [economists] to see tomorrow, today." "The problem with economic time-travel machines," he continues, "is that individuals who populate the economy, just like economists, face irreparable ignorance." One might think that the more we learn, the less there is that we do not know. But the author points out that technological progress simultaneously increases uncertainty. For instance, social media might be useful for entertainment and business, but an unforeseen consequence might be addiction.

He provides an illustration showing that even though the "island of knowledge" grows larger in the "infinite ocean of ignorance," the border between the island and the ocean, called "salient ignorance,"

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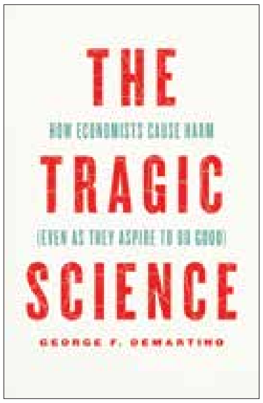
necessarily becomes larger too. One might reason that the more we learn, the better off we will be. However, the author asks us to imagine that as we learn more, both good things and bad things happen. Driving an electric car presumably emits less carbon than a conventional car. But does producing and disposing of the battery harm the environment? "Absent adequate knowledge," DeMartino argues, "the economist at best wields influence without control."



The Tragic Science: How Economists Cause Harm Even as They Aspire to Do Good

By George F. DeMartino

265 pp.; University of Chicago Press, 2022

In such cases, an economist recommends a policy based on a model. Government officials might implement the policy based on the economist's advice. But the economist cannot orchestrate individual behavior following implementation of the policy; the economist cannot guarantee that the policy will produce more benefits to society than costs.

Counterfactuals / Professing cause and effect is standard economic practice. DeMartino gives a good explanation of causality. He writes:

> When economists claim that event *X* is causally related to outcome *Y*, they are typically making one of several kinds of claims, such as (a) through (c):
> a. that *X* is necessary for *Y*
> b. that *X* is sufficient for *Y*
> c. that *X* is necessary and sufficient for *Y*

To understand what DeMartino is discussing, suppose *X* is international trade and *Y* is a high level of income per person. International trade appears to be necessary to achieve a high level of income because, among the nations that do not trade with the rest of the world, one cannot find one with a high income. But international trade does not appear to be sufficient for a high income because there are open economies with middle or low incomes. That is the sense in which trade causes prosperity, though trade alone does not guarantee prosperity.

Professing a causal connection involves counterfactuals. Put simply, "Counterfactuals are stories economists narrate to probe causal mechanisms and to convince themselves and others that they understand why things did and did not, or do and do not, or will and will not happen." An economist who claims that international trade causes a high level of income argues that if the United States did not trade with other nations, we would not have our current high level of income. The problem is that no one can know what would have happened had Americans not traded with people around the world. DeMartino puts it this way: "Economists do not get to run the tape *n* times, alternately treating and not treating identical agents, to establish causal relationships." Counterfactuals explain why economists disagree. Free traders ask where we would be today without being able to interact with the rest of the world. Protectionists ask where we would be today if the industries that were protected had not been protected. The author believes that counterfactual reasoning is a "virtue"; economists who use counterfactuals make each other's theories better.

Harm / When a policy makes some people better off and others worse off, a mainstream economist deems the policy a good one if the beneficiaries gain more than the losers lose. The mainstream economist will not lose sleep worrying about whether winners compensate losers. That reasoning is the gist of what DeMartino calls "moral geometry." He writes about this at length and about what is wrong with it. According to him, welfare economists define "a good life" as getting the goods and services one wants, or "preference satisfaction." "Harm," then, is not getting the goods or services one wants. Because there is more to life than obtaining goods and services, and there are more ways to be harmed besides being denied goods and services, DeMartino judges moral geometry to be inadequate.

To further his case, he points out that some harms are not "reparable" and some are not "compensable." The loss of a loved one, for example, is neither reparable nor compensable. The author posits the following classroom scenario:

> A naïve student might ask, "Can we infer then that a father who loses a daughter owing to his inability to afford essential medical care will be just as well-off after her death provided he receives a lump sum payment in the requisite amount? Are the two states 'with the child but without the money' and 'without the child but with the money' really just two points on the same indifference curve?" The economist *qua* economist will find little help in standard moral geometry in crafting a compelling reply.

The lost daughter cannot be replaced. Money will not make the father happy. DeMartino's point that the father would not equally prefer the loss of a daughter to more money is well taken.

The author calls on economists to "act responsibly." This requires rejecting paternalism and inviting all who have a stake in policy into the policymaking process. Responsible economists recognize that the future is uncertain and that economic models do not enable them to see the future. Given that economists cause harm, they should know more about it.

DeMartino offers the methodology of Decision Making under Deep Uncertainty (DMDU) as an alternative to "reckless" approaches such as cost–benefit analysis. The goal is not to find the best policy, but to find a "robust" policy: one "that performs *well enough* by stakeholders' lights under the widest range of possible futures." DMDU practitioners ask stakeholders how they think the world works and what they think good policy outcomes would be. They strive to imagine a great number of events that may unfold and assess policy outcomes under each event. Among other features of DMDU, policymakers evaluate policy outcomes over time and recommend adjustments.

The author describes the DMDU approach as it applies to the "wicked problem" of allocating the Colorado River's dwindling water supply among millions of people. Economists will encounter some familiar concepts in his summary, such as supply, demand, and tradeoffs. Also, they will find unfamiliar concepts such as "downscaled general circulation model." An engineer working on the problem complains of policymakers—economists among them—who seek "one number." This reader imagines that the one number could be the difference between the benefits and costs of a given solution to the problem of allocating water.

The author's critique should provoke some healthy introspection among economists. Consider free trade. An economist argues that the winners win more than the losers lose, recognizes the plight of the losers, and endorses free trade even if the winners do not compensate the losers. DeMartino demurs. He sees that "opening economies to trade appears to exacerbate inequality *everywhere* by increasing wage inequality between skilled and unskilled workers." He does acknowledge that free trade might be a good policy over the long run. This is the "Paretian promise": free trade creates more benefits to the beneficiaries than costs to those who are harmed in the short run, but over the long run everybody benefits. The author asks: "Is it really the case that displaced workers who suffer [significant and wide-ranging losses] will be made whole through government checks and the lower prices now available at Walmart for the imported goods that they once produced?" He thinks not. He insinuates that only a fool would endure losses in the present so that his or her grandchildren would be better off. He does not directly address the simple argument for free trade, that no third person has any business interfering in peaceful exchange between two others. Perhaps he indirectly rejects that argument by endorsing positive freedom over negative freedom.

Strange interventions / A reader may encounter several opportunities to pick bones with DeMartino. For example, even though he quotes Adam Smith's jibe at the "man of system," he underemphasizes the liberal, laissez-faire tradition. He states, "The economics profession aspires to social engineering." Yet in some cases—including many that DeMartino laments—economists call for *less* government intervention in the economy. Apparently, in his mind these would be "interventions." But is a microeconomist who objects to anti–price gouging legislation on grounds that it will cause shortages a social engineer? Is a macroeconomist who objects to expansionary fiscal policy on grounds that policy lags will produce unintended outcomes a social engineer? Similarly, the author criticizes Alan Greenspan and Ben Bernanke for their faith in financial markets prior to 2008, yet he offers no criticisms of the politicians who attempted to engineer an increase in home ownership.

The student in the classroom discussion above, about the father who lost his daughter, would be better described as among the most perceptive in a career of teaching, not naïve. The economist in the scenario might not be perplexed; he or she could reply that indifference is a concept that is easily applied to goods such as food and clothing, but not so applicable to human life and cash. Furthermore, people buy life insurance because money will help in the event of a loss, not because they expect money to make them indifferent to the loss.

The author convinces this reader that DMDU is both complicated and promising. It may someday be an economist's tool just as cost–benefit analysis and econometrics are today. But curiously there is no mention of price or property rights in DeMartino's description of the DMDU approach to allocating water from the Colorado River.

This reader expects that DeMartino would welcome a discussion of these issues. He claims that his book "should be read not as a treatise but as an invitation to contribute to a new conversation." In that sense his effort is successful. R

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Working Papers ➾ BY PETER VAN DOREN

A SUMMARY OF RECENT PAPERS THAT MAY BE OF INTEREST TO *REGULATION*'S READERS.

Federal Flood Insurance

■ **"Efficient Adaptation to Flood Risk," by Winston P. Hovekamp and Katherine R.H. Wagner. SSRN Working Paper no. 4344415, January 2023.**

Federal flood insurance is available only in communities that have agreed to land-use controls that limit construction in a high-risk area—a so-called "100-year floodplain," known officially as a Special Flood Hazard Area. New construction must be elevated so that the structure's first floor is above the high-water level—the Base Flood Elevation (BFE)—predicted to occur with 1 percent annual probability. Also, existing properties that are "substantially damaged or substantially improved" must be rebuilt with elevation above the BFE. Federal regulation defines "substantially damaged or substantially improved" as repairs or alterations that equal or exceed 50 percent of the market value of the structure before damage or renovation occurred.

Are the elevation requirements cost effective? This paper examines the universe of flood insurance contracts in-force from 2001 to 2017 for the 20 Atlantic and Gulf Coast states. It compares claims for houses that are built in the same decade and ZIP code and experience floods of the same severity, but that face different elevation requirements because of the timing of their construction relative to participation in the flood insurance program.

Houses that were required to be elevated had 30 percent lower damages than non-elevated houses. Expected damage savings are approximately $9,000 over 80 years, assuming a 4 percent discount rate, while the elevation cost for new construction is a one-time upfront investment of $5,000. The elevation of existing houses is much more expensive (their estimate is $40,000) and may only be efficient for a small share of the highest-risk houses.

Corporate Share Buybacks

■ **"The Attack on Share Buybacks," by Harry DeAngelo. SSRN Working Paper no. 4255207, November 2022.**

Corporate share buybacks are under political attack. The 2022 Inflation Reduction Act imposed a 1 percent excise tax on the fair market value of shares repurchased by corporations. Now, President Biden has proposed increasing the tax to 4 percent. (See "Against Taxing Corporate Stock Buybacks," p. 5.)

Opponents of buybacks believe that they enrich managers (whose pay is tied to stock prices) and shareholders at the expense of workers and consumers who would benefit from increased corporate investment. But investors supply capital to firms only if they receive future after-tax distributions (in present value adjusted for risk) that exceed the initial investment in the firms. And taxes on buybacks reduce the future net-of-tax distributions received by shareholders, which in turn reduces the flow of capital into firms, lowering employment levels and total wage payments.

What about large, mature firms that are generating large amounts of cash? If managers are opportunistic, a tax on payouts will be used as an excuse for the company to retain cash and spend it in self-interested ways. If managers are not opportunistic, they retain cash and invest in a variety of financial assets rather than invest in negative present value investment projects that make shareholders worse off.

Automated Regulatory Enforcement

■ **"Man vs. Machine: Technological Promise and Political Limits of Automated Regulation Enforcement," by Oliver Browne, Ludovica Gazze, Michael Greenstone, and Olga Rostapshova. NBER Working Paper no. 30816, January 2023.**

There are many laws and rules on the books, and some of them are rarely enforced. My favorite example is speed limits on interstate highways. On I-270 in suburban Maryland, where I live, the posted limit is 55 miles per hour. If you actually traveled that slowly, you would risk being rear-ended or at least having headlights flashed in your rearview mirror.

Strict laws with limited enforcement might be described as optimal hypocrisy. The laws or regulations satisfy the demands of activists. The lack of enforcement is harder to observe, which allows for the strict laws to not impinge on the behavior of more-numerous voters with more-moderate preferences.

Fresno, CA has outdoor watering restrictions. Since the mid-1990s, Fresno has restricted summer outdoor watering to three nights per week. To detect violations of these restrictions, Fresno had five part-time water cops who issued 3,113 fines in 2016. Violations were rampant because of lack of enforcement: 68 percent of households violated the restrictions at least once in the summer of 2016, but only 0.4 percent of violations were sanctioned. Sounds like speed limits on I-270.

What if enforcement were automatic? Fresno installed smart water meters in all single-family residences that allowed real-time observation of water use. Excessive water use was defined as exceeding 300 gallons per hour. From July through September 2018, Fresno conducted an experiment, randomly assigning households to automatic versus traditional enforcement. The share of households fined for non-compliance grew from 0.1 to 14.3 percent. Improved enforcement reduced violations by 17 percent and violating households by 8 percent per month and decreased summer water consumption by about 3 percent.

But complaint calls to the city increased by 654 percent. Elected officials responded by essentially returning to enforcement hypocrisy. The city enacted a fine moratorium the day after the experiment ended. In April 2019 the city council voted unanimously to lower the maximum financial penalty from $200 to $100, increase the permitted hours of outdoor water use, relax the excessive water use threshold from 300 to 400 gallons per hour, and stipulate that fines cannot be imposed based on meter readings, which ended automatic enforcement.

Hospice Care

■ **"Dying or Lying? For-Profit Hospices and End of Life Care," by Jonathan Gruber, David H. Howard, Jetson Leder-Luis, and Theodore L. Caputi. NBER Working Paper no. 31035, March 2023.**

Hospice care allows patients with a life expectancy of less than six months to receive palliative care at home in return for agreeing to forgo curative therapy. Hospice supporters argue that it improves the experience of dying while reducing Medicare spending.

From 2000 to 2019, the number of for-profit hospice firms quintupled while the number of non-profit firms was roughly unchanged. Medicare spending on the hospice program increased from roughly $2.5 billion in 1999 to over $20 billion in 2019.

The number of patients admitted with a diagnosis of Alzheimer's Disease and Related Dementias (ADRD) has also increased. In 1999, about 4.4 percent of ADRD patient-years included a hospice stay. By 2019 that number had risen to nearly 14.7 percent. ADRD patients now make up 38 percent of hospice episodes and account for roughly half of all hospice episodes that last more than six months.

As for-profit hospices have proliferated, the share of hospice patients who die within six months of admission has fallen. The share of hospice episodes for which the patients died within six months declined from 86.4 percent in 2000 to 79.2 percent in 2018, driven by trends in for-profit care. In fact, only 73.4 percent of 2018 for-profit hospice patients died within six months.

The increase in for-profit hospice providers combined with the increase in ADRD patients and the decrease in patients who die within six months has led to allegations of Medicare fraud by the Justice Department. Since 1999, the largest for-profit hospices have collectively paid hundreds of millions to the Justice Department to settle allegations that they admitted ineligible patients whose life expectancy exceeded six months. In addition, to combat the incentive to admit long-stay patients, Medicare has imposed an aggregate cap on hospice payments per firm that limited reimbursement for six months to $29,205 in 2019.

This paper examines the expenditures and medical outcomes for Medicare fee-for-service recipients over the 2000–2014 period for the five years after they received an ADRD diagnosis. It compares individuals in the same ZIP code before and after a for-profit hospice enters or exits. Patients who live closer to for-profit hospices were weakly more likely to participate, conditional on ZIP-code fixed effects and distance to a non-profit hospice.

The paper estimates that 58 percent of the marginal users of for-profit hospice would otherwise have used no hospice, and 42 percent were diverted from non-profit hospices. Patients induced to hospice who would otherwise have not attended hospice saved Medicare about $44,000 given the cost of the care those patients otherwise would have received, while patients induced from nonprofit hospice had savings that were not different from zero with 95 percent confidence. Five-year mortality effects were concentrated among patients induced into hospice from a no-hospice alternative, with a 15 percent increase in five-year mortality. Patients induced from non-profit hospice had no change in mortality.

For-profit hospices appear to save Medicare money by diverting ADRD patients from more intensive care settings. The Justice Department crackdown and the payment caps would appear to be inappropriate blunt instruments that do not benefit taxpayers.

Water Markets

■ **"The Economic Value of Clarifying Property Rights: Evidence from Water in Idaho's Snake River Basin," by Oliver R. Browne and Xinde "James" Ji. Working paper, June 2021. Recently published: *Journal of Environmental Economics and Management* 119 (May 2023).**

Water in the American West is again in the news. Conventional accounts often blame farmers and their excessive use in places like the vegetable-farming Central Valley. But as University of California, Santa Barbara professor Gary Libecap argued in a book review in *Regulation*: "Farmers are not the source of the problem. … Most would be pleased to sell or lease water that could earn more than is generated in agricultural production." (See "The Problem of Water," Fall 2014.)

However, the development of markets for water has been hampered across the West by the lack of institutional support. Although water rights exist as legal entitlements, states have historically spent few resources attempting to verify or document these rights systematically.

In a recent *Regulation* article, Public Policy Institute of California researcher Andrew Ayres described the slow, painstaking efforts to create groundwater rights in the Mojave aquifer in California. (See "Easier Said than Done," Fall 2021.) This working paper describes a similar effort in Idaho. Between 1987 and 2014, the Snake River Basin Adjudication determined who had legal rights to use water and what trades would be hydrologically permissible, covering 139,000 water rights and 90 percent of Idaho's water use.

The adjudication caused a 140 percent increase in the frequency of water rights trading that moved water to relatively more productive parcels of land. The one-time $94 million in state expenditures to determine the water rights increased the value of Idaho's agricultural output by $250 million per year.