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Cato Policy Report

NOVEMBER/DECEMBER 2015

VOL. XXXVII NO. 6

A New Growth Agenda

BY BRINK LINDSEY

The good news is that the coming years hold out real promise for a new wave of market-oriented regulatory reforms here in the United States. Momentum on this front crested in the late 1970s and early '80s and has been all but defunct for the past couple of decades, but that may well be about to change. The bad news is why: the reason we should be getting our political hopes up is that our economic hopes over the near to medium term are so likely to be dashed.

Let me spell out that bad news a bit. U.S. economic performance in the wake of the Great Recession of 2008–09 has been nothing short of dismal. More than three years passed before real output even returned to its pre-recession level, and a return to the pre-recession growth trend remains nowhere in sight. The story with employment is even worse: yes, the unemployment rate has gradually subsided, but only because the percentage of Americans actually in the work force has sunk to its lowest level since the late 1970s.

Debate still rages over how much of the economy's continuing sluggishness reflects short-term, cyclical factors—in particular, a shortfall in aggregate demand or deleveraging in response to the financial crisis of 2008. It is becoming increasingly clear, however, that slower growth in output and a weak labor market are now the "new normal." In other words, the ongoing economic slump is not just a matter of a temporary gap between current and "potential" output. Rather, the economy has suffered a decline in its potential or full-employment growth rate.

Consider the long-term trends for each of the four major components of economic growth: growth in labor participation, growth in labor skills, growth in investment, and growth in output-enhancing innovation. As I explained in my 2013 Cato paper "Why Growth Is Getting Harder," those trends are now uniformly unfavorable. Average hours worked per capita have fallen since 2000. Growth in so-called labor quality (as measured by years of school completed) has slowed

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BRINK LINDSEY is vice president for research at the Cato Institute. This article was adapted from his recent Cato White Paper "Low-Hanging Fruit Guarded by Dragons: Reforming Regressive Regulation to Boost U.S. Economic Growth."

India's economy is flourishing as never before—140 million people have raised themselves out of poverty in just the last three years. Cato senior fellow JOHAN NORBERG's new public television documentary (pictured above), *India Awakes*, highlights the globalization, economic liberalization, and entrepreneurship that led to this renaissance. Purchase *India Awakes* at www.freetochoosemedia.org.

BY PETER GOETTLER

PRESIDENT'S MESSAGE

The More Things Change . . .

> "Government power is frightening, particularly when it's misused by government officials for their own political ends."

In the week I'm writing this, a new book is being released by Bob Woodward based on hours of interviews with Alexander Butterfield and boxes of files that Butterfield took with him when he left the Nixon White House in 1973. Butterfield, you may recall, was the deputy to Chief of Staff H. R. Haldeman, who, in testimony to the Senate Watergate Committee, divulged the existence of Nixon's Oval Office taping system. Although Nixon would not resign for another 13 months, the president's fate was sealed.

I'll admit I can't get enough of these Watergate books. Part of it might be nostalgia for the events of my childhood, along with the complexity and intrigue of the affair. But a big reason, of course, is the lesson it provides about the abuse of government power. Whether it's sending young Americans into harm's way without compelling national security reasons, wholesale spying on U.S. citizens, mass incarceration and police misconduct, abrogation of property rights, burdensome regulation, or confiscatory taxation—government power is frightening. And this power is of particular concern when it's misused by government officials for their own political ends.

One might think more than enough books have been written about Watergate. But over the years, new ones have brought fresh understanding of the deeply corrupt nature of the Nixon administration and the scale of its abuse of power. I like to think that the blanket misuse of power or disregard for the rule of law elicits condemnation from across the political spectrum, serving to strongly discourage such misconduct. But the vast proliferation of "—gates" in the decades since Nixon tells us this is wishful thinking, as does the fact that censure of such misconduct is often heavily skewed along partisan lines.

The Internal Revenue Service scandal that came to light in 2013 is a chilling example of abuse that should concern everyone. Americans know the formidable power of the IRS. We make jokes about how our own behavior or political and advocacy activity as individuals might earn us investigations or audits. In fact this is gallows humor, reflecting our recognition of how such power might be abused and how outrageous it would be if it were. But the current scandal, along with the misuse of IRS audits under Nixon and other presidents, shows that the temptation to turn this power against enemies or opponents is difficult for politicians to resist.

The IRS's behavior here is audacious. First, it discriminated in the approval of organizations' tax-exempt status based upon their ideology. Second, the agency claimed that subpoenaed emails were lost due to the crash and subsequent destruction of key employee Lois Lerner's hard drive, followed by the revelation that five other IRS employees subject to congressional investigation also lost their emails in "computer crashes." Third, it was subsequently revealed that backup tapes containing 24,000 Lerner emails were destroyed—despite outstanding preservation orders and subpoenas for the emails. And finally, many of us have been struck by the arrogance and high-handedness—and possibly untruthfulness—of IRS commissioner John Koskinen's testimony on these matters.

This scandal is contemptible and ought to enrage all Americans. It appeared to get a lot of attention when it initially broke. (Google the phrase "IRS scandal" and you'll get about 2.5 million hits. That's a lot, although Googling the words "Donald Trump hair" yielded me 50 million hits.) But media interest seemed to wane quickly, particularly regarding the lost emails. George Will has recently called for the impeachment of Commissioner Koskinen, primarily as a way to "test the mainstream media's ability to continue ignoring this five-year-old scandal." And although I always fear the unintended consequences of such impulses, perhaps impeachment of executive branch officials should be considered more widely as a tactic to help bring our fourth branch of government—an out-of-control administrative state—to heel.

One of our goals as libertarians—and a key objective of Cato's work—is to substantially reduce the power of government. There are many reasons for this, but important among them is so that such power may not be turned on us in unjust ways. We thank all of you who, through your generosity, make this work possible. And, speaking of taxes, a byproduct of government's cost is the tax planning in which many of us engage in these waning months of the year. To the extent your own planning includes charitable contributions, please let your favorite pro-liberty think tank figure prominently in them. It has been a great year for me, personally, getting to know Cato's generous and passionate Sponsors. We are so grateful for your dedication to liberty and for the generous sharing of your hard-earned resources that makes Cato's important role in the battle for freedom possible.

Peter

Are you reading these Cato publications?

Cato Periodicals

CATO PUBLISHES A NUMBER OF PERIODICALS, BOTH IN PRINT AND ONLINE, FEATURING EMINENT SCHOLARS ON MATTERS OF LAW AND PUBLIC POLICY. A FEW HIGHLIGHTS FROM OUR FALL ISSUES:

- In *Cato Journal*, investment analysts Robert Arnott, William Bernstein, and Lillian Wu argue that Thomas Piketty is wrong: dynastic wealth is a myth. Cato adjunct scholar Kevin Dowd criticizes central bank stress tests as "mad, bad, and dangerous."

- In *Regulation* magazine, Roderick M. Hills Jr. of New York University School of Law and David Schleicher of Yale Law School make the case that urban city planning could actually help deregulate land use. Pierre Lemieux, the author of *Who Needs Jobs? Spreading Poverty or Increasing Welfare*, warns that the public health movement is no longer concerned with public goods, but with paternalistic political crusades.

- In the annual *Supreme Court Review*, Jonathan Adler and Michael Cannon—both of whom were instrumental in bringing *King v. Burwell* before the Court—publish an in-depth critique of the majority ruling in the Obamacare case. William Eskridge, who co-authored Cato's amicus brief in *Obergefell v. Hodges*, unpacks the marriage equality decision.

- In the October issue of the monthly *Cato Unbound*, Edward Peter Stringham, author of *Private Governance: Creating Order in Economic and Social Life*, argues that private governance plays a crucial and underappreciated role in modern life, while responding essays question whether private governance is truly possible and adequate. ■

CATO NEWS NOTES

"DEEPBILLS" COMPLETED

As of August, the Institute's "Deepbills" project succeeded in adding computer-readable code to every version of all 10,637 bills in the 113th Congress. Cato's XML-format codes reveal every reference to any federal agency or bureau or existing law, and automatically reveal budget authorities. This is a significant achievement for transparency, making it much easier to research and cross-reference the content of federal legislation. "If you're not a data nerd, this achievement may seem pretty arcane," wrote senior fellow Jim Harper, who spearheaded the project. "But if you are a data nerd, please join me in popping a magnum of Mountain Dew to celebrate."

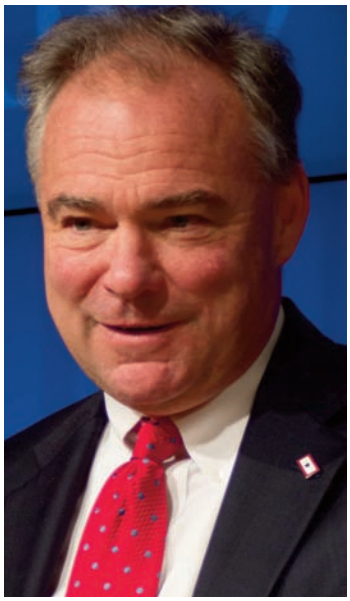
CURBING POLICE MILITARIZATION

October marked the deadline to implement new White House guidelines on the Excess Property Program, or 1033 Program, by which the Pentagon regularly transferred millions of dollars worth of surplus military weapons and equipment to local law enforcement agencies. In the wake of the Ferguson riots, where the sight of local police wielding militarized tanks and weapons alarmed onlookers across the nation, the government will now ban the transfer of certain items, including armored vehicles, grenade launchers, and bayonets, and require "detailed justification" for police use of other "controlled" equipment, like "tactical vehicles" and explosives. Reform of 1033 is an issue Cato's Project on Criminal Justice has been advocating since at least 1999, with the publication of the study "Warrior Cops: The Ominous Growth of Paramilitary Policing." Radley Balko's 2006 Cato White Paper, "Overkill: the Rise of Paramilitary Policing" and his 2013 book *The Rise of the Warrior Cop* were also instrumental in bringing police militarization to public attention.

ONE TO WATCH, IF YOU'RE WATCHING THE WATCHMEN

Wired named Cato scholar Julian Sanchez's Twitter feed one of its "12 Must-Follow Feeds in the World of Security." "Policy analysts can be boring and wonkish," they wrote, "but Julian Sanchez, a senior fellow at the Cato Institute, has a lively passion for politics, privacy, and security that makes his informed feed a must-read." Sanchez studies (and tweets about) the issues at the intersection of technology, privacy, and civil liberties, with a particular focus on national security and intelligence surveillance. You can follow him @Normative.



Four U.S. senators spoke at Cato recently—Sen. David Vitter (R-LA) and Sen. Elizabeth Warren (D-MA) (left) advocated reforming the Federal Reserve's rescue authority, while Sen. Jeff Flake (R-AZ) (second from right) delivered an address on limiting runaway government at Cato University. On the first anniversary of the United States' war against ISIS, Sen. Tim Kaine (D-VA) (far right) criticized both Congress's failure to authorize the war as required by the Constitution and the president's abuse of executive power.

Marc Scribner of the Competitive Enterprise Institute (left), Cato's director of congressional affairs Peter Russo, and Cato senior fellow Jim Harper (at podium) participated in a Capitol Hill Briefing on the Transportation Security Administration's invasive scans and searches—searches that failed to apprehend suspects in 95 percent of recent security tests, and which have in the past been found in violation of legally required administrative procedures.

Omri Ben-Shahar, professor of law and director of the Coase-Sandor Institute for Law and Economics at the University of Chicago Law School, and Thaya Brook Knight, Cato's associate director of financial regulation studies, unfurl the printed version of iTunes' Terms & Conditions from 2010—over 10,000 words, stretching well beyond the length of the room. Ben-Shahar came to Cato to discuss his new book on the ineffectiveness of mandated disclosure, *More Than You Wanted to Know: The Failure of Mandated Disclosure*.

At a Capitol Hill Briefing on September 10, Jessie Hahn, the labor and employment policy attorney for the National Immigration Law Center, explained the perils of mandating E-Verify, the electronic employment eligibility verification program. Hahn argued that E-Verify's high error rate would have a devastating effect on workers, causing thousands of innocent people to lose their jobs.

Michael Cannon, Cato's director of health policy studies, discussed the Supreme Court's dangerous ruling in *King v. Burwell* at the annual Constitution Day conference.

Continued from page 1

considerably. The net domestic investment rate has been trending downward for decades. And total factor productivity (TFP) growth, our best measure of innovation, has slumped again in recent years after an Internet-fueled surge between 1996 and 2004.

Consequently, there are strong reasons for believing that growth in the years ahead will fall well short of the long-term historical average. Between 1870 and 2010, growth in real (i.e., inflation-adjusted) GDP per capita averaged just under 2 percent a year. By contrast, recent long-term growth projections by top academic and government economists point to an average annual per capita growth rate in the range of 1.0 to 1.5 percent—a fairly dramatic decline from the historical trend line.

In a welcome bit of irony, such economic pessimism offers solid grounds for political optimism. Here's the basic logic: there is an inverse relationship between the external conditions for growth, on the one hand, and the incentives for good economic policy-making on the other. When conditions for robust growth are favorable, politicians can indulge in the characteristic vices of their profession—a time horizon bounded by the next election cycle and an overriding focus on dividing the pie rather than making it bigger—and still preside over a thriving economy. When, however, times get tougher, politicians must up their game or else economic performance will suffer. In the latter event, the poll numbers of incumbents start to drop, those of their challengers start to rise, and thus opportunities for policy change improve.

Now, policy change could well proceed in the wrong direction and produce worse results than the status quo. But over the past several decades at least, the general pattern around the world—as documented in the annual *Economic Freedom of the World* reports and similar sources—has been for economic policies to move toward less government control and greater reliance on market competition. And usually, progress in liberalization

> "Growth in the years ahead will fall well short of the long-term historical average."

has been spurred by disappointing economic performance.

If this general pattern holds in the present case, then a protracted period of sluggish growth should open a window of opportunity for pro-market, pro-growth reforms here in the United States. In sunnier times, many bad policies widely understood to create obstacles for growth are left undisturbed because the political price to be paid for changing them doesn't seem worth it: why borrow trouble by attacking policies with powerful defenders if things are going OK anyway? But when the economic climate worsens, politicians come under increasing pressure to do something.

OPPORTUNITY FOR REFORM

Here then is the challenge for supporters of free markets: how can we best take advantage of this window of opportunity? During good times, we are forced to argue that, even if the overall economy seems to be performing well, it could be doing even better with appropriate policy reforms. Now, by contrast, we can reframe our case with a much more compelling sense of urgency: if we do not make difficult but necessary reforms, the economy will perform much worse than in the past. Since people are typically loss averse (they are more concerned about losing what they have than not getting what they want), the growth slowdown makes our case much stronger and more persuasive. But once we reframe our argument, what policy agenda best fits the new frame?

There is no shortage of possible reforms to include. For evidence I refer you to *Reviving Economic Growth*, a new Cato ebook that I edited. The book is a collection of essays by 51 prominent economists and policy experts, all of whom were asked to offer suggestions for improving the U.S. economy's long-term growth outlook. Although a number of reform ideas come up repeatedly, what is striking about the collection is just how wide-ranging and varied the proposals are. Which should not be at all surprising: fiscal and regulatory policies affect the allocation of resources and the climate for innovation along countless different margins, and thus the potential levers for improving overall economic performance are similarly numerous and diverse.

In particular, the major economic policy debates that have dominated Washington and the nation's attention in recent years—the trajectory and composition of federal spending, the level and structure of taxation, health care policy, regulation of the financial sector, what to do about illegal immigration, and climate change and environmental regulation more generally—have important implications for growth. Yet precisely because these debates have already found the spotlight, they are unlikely to supply policy ideas that can take advantage of the political opportunity that the current growth slowdown affords. On all of these hard-fought fronts, battle lines are already clearly drawn and often reflect differences over goals and priorities other than growth. Moreover, opinions are highly polarized along partisan and ideological lines, which in the current political environment is often a recipe for stalemate and gridlock.

What we should be looking for, then, are policy ideas that are not already the subject of high-profile, politically polarized debate. America's growth slowdown is a new problem, and policy responses that address that problem are more likely to gain traction if they are not recycled ideas originally put forward to address other problems. And if a policy idea is already clearly associated with either the left or the right, in today's highly contentious environment it is all but guaranteed that the other side will fight tooth and nail against it—which makes progress of any kind difficult in the absence of large congressional majorities and unified partisan control of the White House

and Congress.

Meanwhile, of course, the items on this new policy agenda need to be effective remedies for slow growth. Since innovation is the ultimate source of long-term growth in advanced countries at the technological frontier, we should focus especially on policy reforms that can facilitate the introduction and spread of new ideas. In other words, we should target policy barriers that inhibit entrepreneurship and the reallocation of resources through competition and "creative destruction."

REFORMING REGRESSIVE REGULATION

In a new Cato White Paper with the curious title of "Low-Hanging Fruit Guarded by Dragons," I take all these factors into account and propose a pro-growth reform agenda that focuses on regulatory policies whose primary effect is to inflate the incomes and wealth of the rich, the powerful, and the well established by shielding them from market competition. To apply a convenient label, let's call these policies "regressive regulation"—regulatory barriers to entry and competition that work to redistribute income and wealth up the socioeconomic scale.

In the paper I identify four main areas of regressive regulation: excessive monopoly privileges granted under copyright and patent law, restrictions on high-skilled immigration, protection of incumbent service providers under occupational licensing, and artificial scarcity created by land-use regulation. Space constraints prohibit an in-depth discussion of those policies here; for details I refer you to the paper. Here I will simply offer some general observations about why targeting these policies seems to me to be the most promising strategy for reversing the growth slowdown—and for taking advantage of the growth slowdown to revive political momentum for economic freedom.

At first blush, these four policy areas seem completely unrelated. They cover highly disparate subject matters, they are administered at different levels of government, and they feature widely varying forms of regulatory apparatus. Notwithstanding all these obvious differences, there are also deep and important similarities. All the policy areas feature regulations that erect explicit barriers to entry—whether in the economist's sense of barriers to market entry, or in the literal sense of barriers to geographic entry. Copyright and patent laws and occupational licensing limit who can engage in particular kinds of commercial activity; immigration laws and zoning regulations limit who can enter or do business within a designated geographic area.

> "I propose a pro-growth reform agenda that focuses on 'regressive regulation.'"

All of these entry barriers undermine economic growth by restricting vital inputs to innovation. Excessive copyright and patent protections restrict the recombination of ideas that is the essence of innovation by making some ideas artificially inaccessible. Immigration laws restrict the inflow of highly skilled individuals who are disproportionately entrepreneurial and innovative. Occupational licensing restricts the formation of new businesses, which are frequently the vessels for new products or new production methods. And zoning restricts urban density, a vital catalyst for the innovative recombination of ideas.

Finally, all these policy domains have similar distributional consequences: all of them redistribute income and wealth to the well-off and privileged. Copyright and patent laws pinch consumers for the benefit of huge corporations. Immigration laws expose America's lowest-skilled workers to intensifying competition from foreign-born workers while shielding high-skilled workers from equivalent competitive pressures. Occupational licensing boosts the earnings of protected incumbents by restricting supply, especially in higher-income professions. And zoning gives windfall gains to wealthy landowners.

LEFT-LIBERTARIAN SYNTHESIS

In all likelihood because of these underlying similarities, none of these policy areas have become zones of ideological or partisan conflict. To be sure, proper policy is vigorously debated in all these areas, but the contending sides are not divided along left-right or Republican-Democratic lines. In striking contrast to the polarization and gridlock that now dominate most national policy debates, opposition to regressive regulatory controls has brought together politicians and policy experts from across the political spectrum.

Thus, in the field of intellectual property, Nancy Pelosi (D-CA) joined forces with Darrell Issa (R-CA) and Ron Paul (R-TX) to oppose the Stop Online Piracy Act, a failed legislative effort to toughen criminal penalties for copyright violations. Among policy experts, leading critics of copyright and patent law excesses include progressives Lawrence Lessig and Dean Baker and libertarians Tom Bell and Jerry Brito.

With regard to high-skilled immigration, a number of bipartisan reform bills have been introduced in recent years. To take a recent example, in January 2015 a group of six senators, including Orrin Hatch (R-UT), Mark Warner (D-VA), and Marco Rubio (R-FL), introduced the Immigration Innovation Act to boost the numbers of both temporary and permanent visas for highly skilled workers. And among policy experts, scholars from the libertarian Cato Institute and the progressive Center for American Progress supported the most recent comprehensive immigration legislation passed by the Senate in 2013.

As to occupational licensing, the Obama administration's latest budget contains a provision to nudge states toward reform; furthermore, this past summer the administration released an excellent report that makes the case for deregulation in this area. Meanwhile, in July 2014, Rep. Paul Ryan (R-WI) released a widely discussed plan for combating poverty. And in the section on regulatory reform, Ryan singled out occupational licensing laws as prime examples

of the "regressive regulations" that too often constrict economic opportunity for the least advantaged. Among policy experts, Alan Krueger of Princeton University, who served as chairman of the Council of Economic Advisers under President Obama, is a leading critic of these regulatory restrictions, while the libertarian Institute for Justice has a long track record of challenging and overturning licensing rules in court.

Zoning is a local issue that has long been thought to have only local consequences, so to date it has not attracted much attention from Washington policymakers. Among policy experts, though, the pattern of support for reform across ideological dividing lines holds here as well. Edward Glaeser, who in addition to teaching at Harvard is affiliated with the libertarian-leaning Manhattan Institute, is among the nation's leading critics of current land-use regulation. Another prominent critic is Matthew Yglesias of *Vox*, who wrote his book *The Rent Is Too Damn High* while he was working for the Center for American Progress.

PUBLIC INTEREST VERSUS VESTED INTERESTS

It's not simply the case that one can find policy experts on both sides of the ideological spectrum who support reform of these regressive regulatory policies. More than that, it's very difficult to find disinterested policy experts anywhere on the spectrum who support the status quo. Certainly, there are strong defenders of both intellectual property protection and zoning, but even in their ranks you will find recognition that current policies are seriously flawed. Thus, the economist Carl Shapiro, a prominent supporter of patents generally, has written, "[While] there is no doubt that the patent system taken as a whole plays an important role in spurring innovation, the general consensus is that the U.S. patent system is out of balance and can be substantially improved." In similar fashion, the economist William Fischel, who has written sophisticated defenses of zoning, acknowledges that its exclusionary impact has increased since 1970 and that the "social and economic costs" of contemporary land use regulation are "not trivial." As far as high-skilled immigration restrictions and occupational licensing are concerned, it is difficult to find any scholar who has anything nice to say about the current state of either.

> "The idea of a left-right coalition to push deregulation may sound farfetched, but it is not without precedent."

This combination of qualities—negative impact on entrepreneurship and innovation, absence of political polarization, and an intellectual consensus in favor of reform—makes regressive regulation an especially inviting target for any campaign to enact pro-growth policy reforms. For all who are interested in better long-term U.S. economic performance, this is the "low-hanging fruit." Reforming these policies is something that we know will make a positive difference, and by "we" I mean the vast bulk of disinterested experts. Yes, it is true that plucking this fruit won't be easy, because the interest groups that benefit from the status quo are politically powerful, well organized, and highly motivated. This is the "guarded by dragons" part of the story. But knowing clearly what needs to be done, however difficult it might be, is an advantage that should not be underestimated.

Pursuing an agenda of curbing regressive regulation would allow us to open a new front in the economic policy debate. Unlike the all-too-familiar policy disputes now ongoing, a campaign against regressive regulation would feature issues new to the national policy spotlight—especially in the case of occupational licensing and zoning, because they occur at the state and local levels and thus are typically ignored by Washington. Meanwhile, the organizing rubric of regressive regulation packages together disparate issues in a novel way and can thereby impart new energy to reform efforts in each of its constituent policy domains.

This new front would look very different from the other, ongoing policy debates. Instead of the opposing forces being arrayed along the left-right axis, here the contest pits an expert consensus across the political spectrum against the interest groups who profit from existing policy. Instead of yet another left-right fight, this time the contest could be framed as a choice between the public interest and vested interests.

The idea of a left-right coalition to push deregulation may sound farfetched, but it is not without precedent. Consider the country's last major episode of pro-market regulatory reform in the late 1970s and early 1980s. During that brief period, price-and-entry regulation of airlines, trucking, and railroads was systematically dismantled; price controls on oil and natural gas were lifted; interest-rate caps for checking and savings accounts were removed; and the AT&T monopoly was ended, paving the way for competition in long-distance telephony. Those too young to remember can be forgiven for associating all of this with Ronald Reagan, but in fact Democrats and progressives played a major role. Jimmy Carter signed the legislation that deregulated airlines, trucking, railroads, and natural gas. On Capitol Hill, Edward Kennedy led the fight for airline deregulation, ably assisted by his aide Stephen Breyer. Yes, the rise of Chicago-school economics and especially the law-and-economics movement supplied momentum for these sweeping policy changes, but so did the activism of Ralph Nader.

History never repeats itself, but sometimes it rhymes. As in the 1970s, the U.S. economy today is delivering disappointing results. Back then the problem was "stagflation"; today we worry about a "great stagnation." And once again, the shifting currents of political debate are bringing together unlikely allies with a common interest in reviving prosperity and a common hostility to the entrenched interests that stand in the way. With luck, contemporary reformers can follow their predecessors' good example. ■

Warren and Vitter on "Too Big to Fail"

DURING THE FINANCIAL CRISIS, although the TARP program drew public attention, the bulk of the government's assistance to financial firms came through the Federal Reserve's emergency lending programs. The Dodd-Frank Act attempted to restrict this lending authority, but since its passage the Fed has failed to implement any concrete limitations. On September 16, Sens. David Vitter (R-LA) and Elizabeth Warren (D-MA), who had recently introduced a bill proposing specific limits on the Fed's discretion, came to the Cato Institute to discuss the Fed's authority and how best to curb it. Mark Calabria, director of financial regulation studies at the Cato Institute, moderated the event.

MARK CALABRIA: One of the things that really shook me and shook much of the public during 2008, 2009, were all these things happening that none of us really knew the Fed could do. The reaction in Dodd-Frank's Section 1101 was to say, "Let's tighten this up, let's make sure that this is targeted toward everybody, that it's solvent, that we aren't bailing out firms, we're just helping those that have a little bump in the road." And, of course, about 20 months ago, the Federal Reserve proposed a rule—which, in my opinion, was largely just restating the statute. And so I'd like to start the conversation with: Is this something that the Fed *can* do on their own? If the Fed were listening, what would you say to them in terms of when we see a final rule, what it should look like?

SEN. DAVID VITTER: Well first of all, let me back up a little bit and say that I think the fact that we're here together working on this illustrates how broad and legitimate the concern across America is with "too big to fail," and the fact that it is, unfortunately, alive and well. And if another crisis happened, we're convinced we'd see it again, all over again. And I think the American public is really concerned about that—left, right, and middle. And the fact that we're sort of the political "Odd Couple" working on this, I think it proves how deep and legitimate and broad-based that concern is.

Secondly, could the Fed fix this on its own? Certainly. Have they? Absolutely not. And it's very clear, as you suggested, that they want to preserve maximum flexibility, their ability to do whatever they want, particularly in a crisis. And look, I'm not going to say that's evidence of some evil hidden agenda. That's sort of the natural impulse for an agency, to have as many tools in the toolbox as possible, to not restrict themselves. But it means that if it happens again, we would be assured of same old, same old: bailing out insolvent institutions, very focused bailouts. And so that's why Elizabeth and I think our legislation, which would preclude that, is required.

SEN. ELIZABETH WARREN: Obviously I agree with David on this. I think he's exactly right. This is about "too big to fail," and what it means to the American people. It's about what it means to this economy. It was all created in 2008, 2009. We know about TARP—try Googling "$700 billion" and see how many people were talking about TARP. But

what a lot fewer people were talking about was how the Fed was shoveling money out the back door, in a very quiet way, not to support the financial system overall, but to support very targeted financial institutions. Nine trillion dollars—your money, nine trillion tax dollars—went out the door to just three financial institutions, and it stayed there on average for about 22 months. And, yes, it was loan money, but at an interest rate that I guarantee those three financial institutions couldn't get anywhere in the world except from the Federal Reserve.

So our bill actually has a real history to it in a sense. The first part is "too big to fail," the second part is the response in Dodd-Frank. In Dodd-Frank, Congress came together and they said, look, if the Fed is going to lend any money in the future, in times of distress, we want to know that it's a system-wide problem, not just that one or two financial institutions have a specific problem, and that the problem the financial institution has is not a problem of insolvency—that is, they have made some terrible bets in the market and they're now upside down—but that the problem they've got is one of liquidity because the market itself is freezing up.

And, so, Congress, I think quite reasonably, in Dodd-Frank told the Fed to implement those goals. The Fed said, "Ah, system-wide . . . okay, we probably can't say 'one,' Congress would get really angry about that." So they said, "Two. Two counts as system-wide!" That's it. So that's all they've got to show, that you've got two financial institutions that are in here, asking for money at the same time. Then the next question is "Is this a financial institution that's insolvent?" Now here, the Fed says, "Oh, we know how to measure if it's insolvent—if they haven't yet filed for bankruptcy."

I want you to just think about that for a minute. Because the way I read that is they said, "Well, we're going to set up a little cart right in front of the bankruptcy courthouse and any large financial institution that has prepared the papers and is headed into the courthouse, we'll just intercept and say 'Would you like a trillion dollars from us instead? Because you will qualify, because you have not yet climbed the steps and dropped a piece of paper that files for bankruptcy.'"

Let's face it. That is not what Congress intended in Dodd-Frank, but it is also not what we need in order to try to beat back the "too big to fail" problem. So, what Senator Vitter and I have proposed is just to go back over those three parts. And we talk about system-wide and we say "We didn't think we would have to do this by statute, but come on, guys. *Five* institutions. Let's at least get the number up. And you guys have got to go out there and certify that this is not an insolvent financial institution that's getting this money. At least you're going to have to put your name behind it."

> "'Too big to fail' is, unfortunately, alive and well."

And the third part is that this should be at a penalty rate of interest. It should be five points above what the Treasury bill is. The point here is not to give you below-market rates so that we can subsidize you. The point is to say, if you're having to turn to the Fed for help in a crisis, then the Fed should be like other market lenders. They'll be there as lender of last resort, but you're going to have to pay something extra for it, and your shareholders are going to have to pay extra for it. So we still give the Fed the capacity to move in, but we feel like we've tried to at least put some curbs on this so that we can get "too big to fail" under better control.

CALABRIA: I think that's an incredibly important aspect, reminding people that markets don't work without failure. Neither one of you will be surprised that there's been some criticism, so let's try to raise a couple of those. I won't name them, but a recent federal official testified before Congress and made the argument that we really don't know at the time who's insolvent. We can't figure this out at the time, and you have to just trust our judgment.

WARREN: Really?

CALABRIA: I'm trying to be generous to the critics.

WARREN: But I'm serious. Really? These are supposed to be the supervisors and regulators who are out there looking at the books, assessing the assets every single day. That's their job. And if we're heading into crisis, it's not like we all get up one morning and, with no warning at all, whoa! It's 11:50 and suddenly there's a financial crisis upon us. You know that there's trouble. That means they should be stepping *up* their scrutiny of these institutions. The idea that they can't tell—if that is a serious statement then I am genuinely terrified.

VITTER: I agree. I think they clearly have the ability to ascertain that. Looking in the past, we can clearly say that most of these cases we're talking about were insolvencies and we knew it at the time. And our goal is not simply to limit alternatives in a crisis. Our goal is to do this way ahead of time so that we do other things to head off a crisis. And I think having all of these opportunities and unlimited powers really is a reason for the feds and others not to do things ahead of time to avoid the crisis.

CALABRIA: I sometimes hear the "stuff happens" argument: "Well, you're going along and everything's fine and then, boom, some shock out of the blue and then we've got to bail these guys out, we didn't see it coming." And, so, I certainly worry—and I would be curious whether we share this concern—that

by having the expectation of this facility we change the behavior of the companies themselves, their creditors, their counterparts.

WARREN: I think that goes right to the heart of it. If you advertise to the market that the Fed is here and there's no need for any large financial institution ever to have to go to the bankruptcy courthouse or declare itself insolvent, but, instead, there will be trillions of dollars available to back up these giant institutions, I think that fundamentally changes the behavior of the big banks themselves, the behavior of those who lend them money, the behavior of those who invest in them. And I've got to say in all three cases, not for the better, because it encourages riskier behavior, knowing that there is an option available.

VITTER: If "stuff happens," a legitimate question is: Okay, does having this facility available all over again encourage bad stuff to happen or discourage it from happening? I think it clearly encourages it. And that's exactly the dynamics we're trying to change. There's been study after study after study that says: number one, "too big to fail" is alive and well; number two, it gives megabanks a market advantage, a lower cost of capital, other market advantages that are simply unfair and are onerous to competitor institutions.

CALABRIA: I think the evidence is pretty clear that these have resulted in higher leverage than you would have otherwise. It's important to rely on the financial regulators but to me it's also important that, let's say I had a billion dollars to lend you. If I did lend it to you, I'd probably care what you did with it. I believe Lehman had at least three offers to be bought, and every time, they said, "No, we've got this backup."

WARREN: "We got a better deal somewhere else." And the thing is, you've got to think about that in terms of the behavior that that encourages from Lehman, from its creditors. But it's also what it does to a market overall. So you're a community bank, you're a small bank, or a mid-sized bank, but you're not going to be "too big to fail." You're out there competing for capital, you're competing for investments, and you're competing against somebody that doesn't just have a government guarantee, they've got a government guarantee for free, to back them up. And the more you keep that playing field tilted, over time the more we'll see more concentration in the industry. You're driving one set of competitors out of business and advantaging another set of competitors, a set of competitors that ultimately pose far greater risk to the economy.

> "The question is: Will the insiders control the game?"

VITTER: To me, the ultimate irony is we come out of the crisis, and I think mostly what we've done is create a greater disadvantage to the smaller players who essentially had nothing to do with the crisis. So we've tilted the playing field even further in favor of megabanks, against smaller community banks and credit unions.

CALABRIA: I agree that a lot of this has to be about leveling the playing field. I want to go back to another criticism of your plan: that a penalty rate of 5 percent will scare away anybody from using this facility.

WARREN: You mean they'll say instead, "I'm going bankrupt! I am not going to pay five extra points"? Please. It's just an alternative view of human behavior that I don't buy. They borrowed from Warren Buffett at 10 points. The idea that you won't do it here just makes no sense to me.

CALABRIA: I would agree. Part of this should be making the Fed actually a lender of last resort rather than being a rescuer of first resort.

VITTER: I'd love to see the Fed come up with a similar rule on its own. But quite frankly, even if they were to do that tomorrow, which they're not going to, my concern would be that they can change that at a moment's notice in the middle of a crisis too. So I think, for all sorts of reasons, it's better to have broad parameters like we're talking about in statute.

CALABRIA: This is an odd pairing, as you said, that's worked, because last night the Senate passed a bill on Government-Sponsored Enterprise compensation that you two authored. I'm curious what the interest is from the rest of the Senate in this approach.

VITTER: I think this is sort of a competition between two factors. Number one, the public's legitimate concern with "too big to fail," favoring megabanks, all of that broad-based discussion. Number two, the insider game of these institutions, which are very powerful and influential. And, so far, quite frankly, the public debate hasn't been big enough, loud enough, to overcome the special interest game, but I think it's growing in that direction.

WARREN: I always think of it this way: the public interest here, there is no army of lobbyists representing them. There is no army of lawyers coming in every day to talk to every Senate staff, to make sure that their position is well known. The question is: Will the insiders control the game? Those who've got the lobbyists, those who've got a lot of money on the table but a very small insular group that, frankly, wants to enhance its profits at the expense of the public? Or will we really be there to represent the people who are affected by

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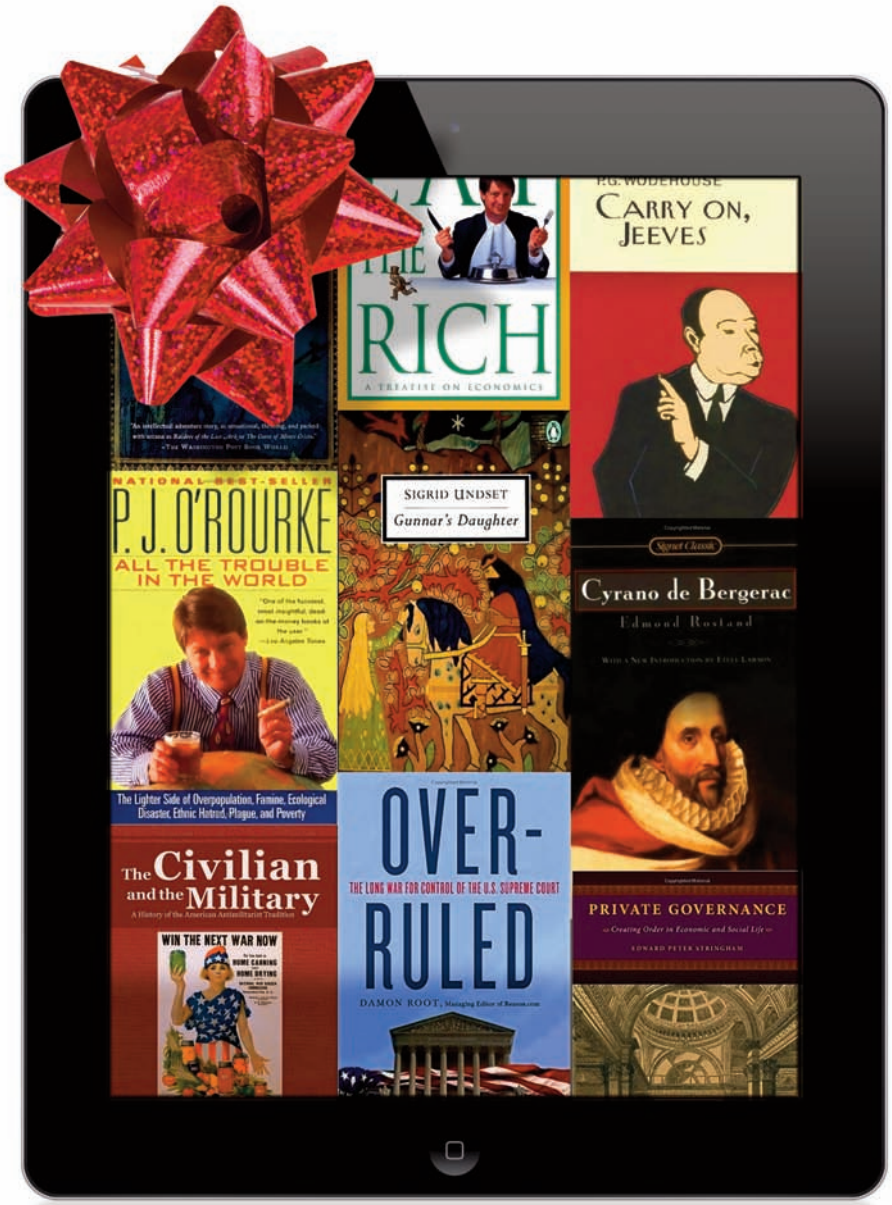
Holiday Book Recommendations

With the holidays approaching, we asked a few colleagues to recommend books that might make good gifts. We hope that you or your loved ones will find some of these ideas appealing.



DAVID BOAZ

EXECUTIVE VICE PRESIDENT AND AUTHOR, *THE LIBERTARIAN MIND*

Eat the Rich and *Parliament of Whores* by P. J. O'Rourke

As I've written before, these two books would make a better course in political economy than you're likely to get in most colleges. In *Parliament of Whores* O'Rourke sets out to discover why government grows so large and intrusive and ends up blaming special interests, democracy, and "us." This is the book that gave us an insight so profound that Cato put it on a T-shirt (available at store.cato.org). "Giving money and power to government is like giving whiskey and car keys to teenage boys."

In *Eat the Rich*, which I think is the single best introductory book on economics, he starts with the right question: "Why do some places prosper and thrive while others just suck?" Supply-and-demand curves are all well and good, but what we really want to know is how not to be mired in poverty. So he headed off to Sweden, Hong Kong, Albania, Cuba, Tanzania, Russia, China, and Wall Street to find out what works. P. J. O'Rourke is one of the funniest writers around. But what people often miss when they talk about his humor is what a good reporter and what an insightful analyst he is.

ANDREW J. COULSON

SENIOR FELLOW, CATO'S CENTER FOR EDUCATIONAL FREEDOM AND AUTHOR, *MARKET EDUCATION: THE UNKNOWN HISTORY*

Carry on, Jeeves by P. G. Wodehouse

P. G. Wodehouse has been called "the greatest musician of the English language." He certainly has a light, elegant touch on the typewriter keys, especially in

his *Jeeves and Wooster* stories, about a bumbling young gentleman (Bertie Wooster) and his staggeringly brilliant valet (Jeeves). But it's difficult to recommend a particular book or short story as the ideal entry-point into the series, which is comprised of numerous short stories. Many of the books will do the trick nicely. Consider, for instance, the collection: *Carry on, Jeeves*, which includes the story of the main characters' first meeting ("Without the Option").

At a conference several decades ago, the long-serving Institute of Economic Affairs director John Blundell was asked if he was optimistic that liberals (in the classical sense) and libertarian policy could ultimately gain ground versus the status quo statism. He emphatically declared that he *was* optimistic, because if he were not he would be forced to stay at home in bed all day reading P. G. Wodehouse and drinking champagne, instead of just doing that for half the day, as he claimed to already be doing. Reading Jeeves and Wooster stories is indeed a restorative, morale-boosting activity, and it teaches a great deal about writing in the process. That makes Wodehouse a good prescription for libertarian readers.

Richard II by William Shakespeare

Another great, but far graver musician of the language gave us the play *Richard II*, which is less widely read than it deserves. Not only is it one of the few written entirely in verse, but it has some excellent character development and soliloquies. Dark stuff, but great. Also, *Henry IV* is a vastly better story (and play, if you ask me) than the better-known *Henry V*.

Foucault's Pendulum by Umberto Eco

Also, I recommend a book that was not written in English but has been well translated: Umberto Eco's *Foucault's Pendulum*. The man is incredibly erudite! Fluent in several languages—living and dead. He seems to know every corner of Europe and much of the world beyond. In this book he weaves a wonderful tale of conspiracies interleaved into world history so cleverly that it is often hard to discern where reality ends and fiction begins. Can be a bit slow to get into, but ultimately a rewarding read. A book I've reread twice.

Cyrano de Bergerac by Edmond Rostand

Finally, consider Edmond Rostand's *Cyrano de Bergerac* if you read French. If you don't, this book alone is worth the effort of learning it. The entire play is not only in verse but in rhyme—something not even Shakespeare gave us. Astonishingly, novelist Anthony Burgess managed to produce a rhyming English translation that preserves the "alexandrine" poetic structure. His translation is a work of poetry in its own right—he finds ways of tweaking the lines so that they not only rhyme and scan in English but so that they capture the feelings and ideas of the original. It is an amazing achievement.

WALTER OLSON

Senior fellow and author, *Schools for Misrule*

Pelle's New Suit by Elsa Beskow

In the picture book *Pelle's New Suit* by Elsa Beskow (1910), little Pelle needs new clothes and begins by shearing wool from the pet lamb he takes care of. He asks his grandmother to card it and she agrees if he will weed her carrot patch. His other grandmother will spin the carded wool into yarn if he will look after her cows in the meantime. The painter says that while paint is no good for coloring yarn, if Pelle will fetch him some turpentine he happens to need from the general store, he can use the change to buy a packet of dye. So Pelle rows off to accomplish that task (yes, rows; this is Sweden, and they might all just live in an archipelago). Amid delicate drawings of village life, this is first a lesson in doing chores with a willing hand, but also a gentle parable in production, exchange, and the division of labor, which includes domestic labor (one of his tasks is to babysit his little sister). At the end, Pelle rejoices in a new suit made by the labor of others—and which he has fully earned.

JUSTIN LOGAN

Director of Foreign Policy Studies

The Civilian and the Military by Arthur Ekirch, Jr.

Ekirch, a libertarian historian best known for his book *The Decline of American Liberalism*, reminds us of the vehement anti-military (not just anti-militaristic) sentiments that suffused the founding of the American republic and lived into the 20th century. Ekirch explains that centralism and militarism worked like a hammer and anvil to destroy the small-R American republican tradition. In an era where elites from the party that calls itself "Republican" unanimously demand that the American military police the world, Ekirch reminds us that the Founders would have made Code Pink sound like Dick Cheney.

ROGER PILON

Vice President for Legal Affairs

Saving Congress from Itself: Emancipating the States and Empowering Their People by James L. Buckley

Former senator and federal appeals court judge Jim Buckley looks systematically at Congress's more than 1,100 grants-in-aid programs—federal grants to state and local governments that have exploded in recent years, constituting 17 percent of the federal budget. Not only do they undermine federal and state budgets, they undermine constitutional federalism as well by chaining states to federal priorities. Buckley offers several steps to end them.

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At a Cato forum, Amir A. Nasr (left), the Sudanese-born author of *My Isl@m: How Fundamentalism Stole My Mind—and Doubt Freed My Soul*, explained how the liberal blogosphere turned him from his jihadist sympathies and opened his eyes to concepts like human rights. Suad Ad. (right), a researcher for Morocco's Arab Center for Scientific Research and Humane Studies, predicted continuing social change in the Muslim world, as the younger generation is increasingly exposed to alternative philosophies and turns from extremism.

Pope Francis is one of the most popular popes in recent history—and, according to some, the most anti-capitalist. John Garvey, the president of the Catholic University of America (center), and Jay W. Richards, a senior fellow at the Discovery Institute's Center on Wealth, Poverty and Morality (left), argued that Francis's comments are consistent with those of previous popes, and may largely be critiques of "cronyism," rather than a truly free market. Michael Sean Winters of the *National Catholic Reporter* (right) countered that Francis's comments *do* constitute a rebuke to free-market principles.

Marking the 800th anniversary of Magna Carta, British historian DAVID STARKEY (left) underscored the importance of the charter's many revisions during a forum for his book *Magna Carta: The Medieval Roots of Modern Politics*. JONAH GOLDBERG, a senior editor at *National Review*, praised Starkey's book and offered his thoughts on how political principles emerge and evolve throughout history.

AUGUST 6: The Fight with ISIS: One Year (and Counting) of Unauthorized War

AUGUST 14: *India Awakes*

SEPTEMBER 2: Race, Housing, and Education

SEPTEMBER 9: Magna Carta and Modern Controversies from Multiculturalism to Political Correctness

SEPTEMBER 10: E-Verify: The Impact of National Employment Verification on Work, Privacy, and Liberty

SEPTEMBER 15: Blessing or Scourge? Capitalism through the Eyes of Pope Francis

SEPTEMBER 16: Reforming the Federal Reserve's Rescue Authority

SEPTEMBER 17: 14th Annual Constitution Day

SEPTEMBER 24: Welcome to Washington: Policy Players and Creative Networking

SEPTEMBER 24–27: Cato Club 200 Retreat (The Cloister, Sea Island, GA)

SEPTEMBER 25: Will the Transportation Security Administration Follow the Law?

SEPTEMBER 29: Islam, Identity, and the Future of Liberty in Muslim Countries

SEPTEMBER 29: *More Than You Wanted to Know: The Failure of Mandated Disclosure*

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Cato Calendar

POLICING IN AMERICA
WASHINGTON • CATO INSTITUTE
DECEMBER 1, 2015
Speakers include Jerry Ratcliffe, Samuel Walker, Peter Kraska, David A. Klinger, and William Jelani Cobb.

CATO INSTITUTE POLICY PERSPECTIVES 2015
CHICAGO • DRAKE HOTEL
DECEMBER 2, 2015

CATO INSTITUTE POLICY PERSPECTIVES 2016
NAPLES, FL
RITZ CARLTON BEACH RESORT
JANUARY 27, 2016

28TH ANNUAL BENEFACTOR SUMMIT
LAS VEGAS • FOUR SEASONS HOTEL
FEBRUARY 25–28, 2016
Speakers include Randy Barnett.

CATO INSTITUTE POLICY PERSPECTIVES 2016
PAOLO ALTO • FOUR SEASONS
APRIL 8, 2016

MILTON FRIEDMAN PRIZE PRESENTATION DINNER
NEW YORK • WALDORF-ASTORIA
MAY 25, 2016

CATO CLUB 200 RETREAT
PARK CITY, UT
MONTAGE DEER VALLEY
OCTOBER 13–16, 2016

29TH ANNUAL BENEFACTOR SUMMIT
NAPLES, FL
RITZ-CARLTON GOLF RESORT
MARCH 2–5, 2017

CATO CLUB 200 RETREAT
LAGUNA BEACH, CA
MONTAGE LAGUNA BEACH
OCTOBER 5–8, 2017

Divisive judgments, from marriage equality to Obamacare

A Tumultuous Term at the Supreme Court

The most recent Supreme Court term was not lacking for contentious subject matter: Obamacare in *King v. Burwell*, same-sex marriage in *Obergefell v. Hodges*, and environmental regulation in *Michigan v. EPA*, just to name a few. And unlike the previous term, which saw record-breaking unanimity in the Court, this year saw a return to split decisions on topics like constitutional rights and civil liberties. In September the Cato Institute published its 14th annual edition of the *Cato Supreme Court Review*, which, as always, was accompanied by a Constitution Day conference, analyzing the legal victories and losses of the last year and previewing the term ahead.

The day opened with Cato's director of health policy studies, Michael Cannon, discussing *King v. Burwell*, in which the plaintiffs alleged that the IRS had illegally issued a rule authorizing tax credits for health insurance through federally established exchanges, when the Affordable Care Act (ACA) had expressly ordered that only states could establish exchanges. As Cannon explained, "The IRS effectively rewrote and expanded the ACA, claiming the power to tax nearly 100 million people, despite clear statutory language saying it could not." The Court acknowledged that this was the "natural reading" of the statute, but nevertheless ruled against the plaintiffs, in order to preserve "the context and structure of the Act." This, Cannon argued, will effectively "transfer the power of the purse and the power of the tax from the people's elected representatives to unelected judges and unelected government bureaucrats."

In a later panel, William N. Eskridge Jr., a professor at Yale Law School who co-authored Cato's amicus brief in the same-sex marriage case, expressed disappointment that *Obergefell* had "lost an opportunity to ground this landmark holding on original meaning" of the Fourteenth Amendment.

William Eskridge Jr., a professor at Yale Law school (left), and Steven G. Calabresi, a professor at Northwestern University School of Law, spoke at Cato's Constitution Day conference.

Instead, Justice Anthony Kennedy rested his majority opinion on the fundamental right to marry. This, Eskridge said, leaves the decision open to objections that marriage is not a "libertarian" institution, insofar as one gives *up* some liberties to join into it.

Cato senior fellow Walter Olson discussed the "hijab case," *EEOC v. Abercrombie & Fitch Stores*, which centered around religious accommodation in the workforce. The Court ruled in favor of 24-year-old Samantha Elauf, who was turned down from a job at Abercrombie over her head covering, which violates their "look policy." Abercrombie had countered that Elauf never requested a religious accommodation, thereby placing the burden on them to assume her clothing was a religious choice, while employers are actually discouraged from bringing up religion during an interview. Normally a case like this would generate great public controversy—yet, Olson observed, it was "surprisingly uncontroversial," with both conservatives and liberals rallying behind Elauf. In fact, the Cato Institute was the only private group to file a brief in support of Abercrombie, arguing that Elauf's case "puts the employer in the untenable position of having to inquire into certain sensitive personal information even as such queries themselves are legally disfavored."

The conference concluded with the annual B. Kenneth Simon Lecture, at which a legal scholar presents a paper to be included in the following year's *Supreme Court Review*. Steven G. Calabresi, a professor at Northwestern University School of Law, made the case that the original meaning of the American constitutional documents is "much more libertarian than Justice Scalia, for example, believes." Calabresi first argued that the "ancient constitution," the rights and liberties which Sir Edward Coke believed had been given to England by Edward the Confessor, was essential to how the Founders understood their rights as Englishmen, and informed the early state constitutions. "Fifty-nine percent of the American population in 1791, when the Bill of Rights was ratified, lived in states that had Lockean natural rights guarantees in their state constitutions," he said. He went on to propose that these Lockean clauses are incorporated into Section I of the Fourteenth Amendment, and are the rights "retained by the people" in the Ninth Amendment. "An original public meaning of the Constitution and of its amendments leads inexorably to many, although maybe not all, libertarian outcomes," he concluded. ■

EACH OF THE PRESENTATIONS FROM THIS CONFERENCE CAN BE VIEWED ONLINE AT WWW.CATO.ORG/EVENTS/ARCHIVES. THE 2014–2015 *CATO SUPREME COURT REVIEW* IS AVAILABLE FOR DOWNLOAD AT WWW.CATO.ORG/PUBLICATIONS.

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this? Both in the overall financial system and, God forbid, when we hit the next crisis.

VITTER: I'll give you an example. Months ago, one of the early things I did with others was to have language mandating a study of the costs of "too big to fail" and quantifying that. A pure study, by objective analysts. The megabank lobbyists came out of the woodwork in enormous force. I knew they were there. I certainly understood they would oppose it. Still, it stunned me that they would come out in full force over doing a study and putting some numbers on it. That's the insider game I was trying to describe. We need to overcome that with broad-based public debate.

CALABRIA: I used to often say there's no narrowly defined constituency for financial stability, unfortunately. And of course one of the reasons we're here today is to try to create that. It's one of the reasons that Cato is working with Americans for Financial Reform to try to build broader understanding of this.

I think we can have a stronger and simpler regulatory system. Of course, my little pet peeve is the capital standards and every time they tell us they're going to do these risk weightings and it's going to be ever more complicated and it's just more and more opaque. We've seen the various rounds of the Basel accords end up with lower capital, rather than more, and that's why I'm very sympathetic to a flat, simple leverage ratio that everybody can kind of read and know. So I do think that that, to me, is where the left/right deal is. Simpler, stronger, more transparent.

WARREN: The issue around "too big to fail" is too big for politics. We can't just leave this to business as usual, that a group of insiders will influence those with power, and as a result we'll end up with a set of rules that works for the very largest financial institutions but doesn't work for other financial institutions, doesn't work for the American economy, and doesn't work for the American people. ■

THE FULL EVENT EXCERPTED HERE CAN BE VIEWED ONLINE AT WWW.CATO.ORG/EVENTS/ARCHIVES.

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Overruled: The Long War for Control of the U.S. Supreme Court
by Damon Root

Reason senior editor Damon Root traces the libertarian legal movement from its pre-Civil War origins to its emergence, beginning in the 1970s, from the struggle between liberals and conservatives over the proper role of the courts in interpreting the Constitution. This book is a must-read for those who want to understand the three main judicial theories that are in competition today.

JASON KUZNICKI
Research Fellow and Editor, *Cato Unbound*

Private Governance: Creating Order in Economic and Social Life
by Edward Peter Stringham

Edward Peter Stringham's *Private Governance: Creating Order in Economic and Social Life* (Oxford University Press, 2015) is a startling look at just how little we need the state—and how little the state actually does—in the areas of securing property and contractual rights. The book takes on added significance when we consider that even for libertarians, this is one of the state's core functions. We may not be able to do without the state, but we can do a lot more than we probably imagine.

Systems of Survival by Jane Jacobs

Jane Jacobs is best known for her excellent work on urban planning and the role played within it by what we might term spontaneous order. But a lesser-known work of hers is also worth a read. *Systems of Survival* (Vintage, 1994) is a philosophical dialogue that offers deep insight into conflicts of moral values and why they seem so hard to resolve. Along the way, she explains why science does well in commercial societies, why governments love tampering with agriculture, and whether organized crime is more like a business or like a government, among many other fascinating topics.

MARIA SANTOS
Staff Writer

Gunnar's Daughter by Sigrid Undset

In the early 20th century, Norway was in the midst of a nationalist movement to romanticize its Viking heritage. Sigrid Undset, a young Norwegian author who had meticulously studied Old Norse histories and sagas, considered this movement deeply incorrect and disturbing. She wanted to portray the Viking society as it really was: dark, violent, and barbarous. The result is *Gunnar's Daughter*, a brief and gripping historical novel about an 11th-century woman who is raped by a suitor, and her struggle for survival and vengeance. Undset is much better known for her later trilogy, *Kristin Lavransdatter*, for which she won a Nobel Prize. But *Gunnar's Daughter* is just as engrossing—and much more carry-on friendly for holiday travels.

SALLIE JAMES
Director of Development

All the Trouble in the World
by P. J. O'Rourke

This is the book that made me into a libertarian. P. J. covers the "big issues"—famine, war, the environment—with humor, compassion, and a sense of adventure. He shows why good intentions don't always lead to good policy. A great choice for the "bleeding heart" in your life. ■

Work and Welfare in Europe

Many European countries are known for their generous welfare programs—in Denmark in 2013, the *New York Times* discovered a 36-year-old single mother who had been on welfare since the age of 16, and was collecting about $2,769 in benefits every month. "In far too many countries, welfare remains an economically rational alternative to work," write Cato senior fellow Michael Tanner and research associate Charles Hughes in **"The Work versus Welfare Trade-Off: Europe"** (Policy Analysis no. 779). This dependency harms both welfare recipients and the economy at large. Tanner and Hughes analyze whether this bad incentive system is a natural consequence of the modern welfare state, and how the U.S. system measures up against other countries.


MICHAEL TANNER

IGNORANCE OF INEQUALITY

Various theories associate a country's levels of economic inequality with its political outcomes, claiming that inequality determines how likely a society is to break out into civil war, for example, or how much its citizens will favor redistribution. But, as Vladimir Gimpelson of the Higher School of Economics and Daniel Treisman of the University of California–Los Angeles argue in **"Misperceiving Inequality"** (Research Briefs in Economic Policy no. 32), none of these theories seem to hold up under scrutiny—perhaps, they propose, because in most cases, people simply don't know how high inequality actually is.

DEFENDING NOMINAL GDP TARGETING

Many policy experts believe that nominal GDP targeting would be the best and simplest rule for central banks to adopt. But, despite the idea's popularity, it has received little study within the context of the quantitative frameworks used by central banks. In **"On the Desirability of Nominal GDP Targeting"** (Working Paper no. 32), Julio Garín of the University of Georgia, Robert Lester of Colby College, and Eric Sims of the University of Notre Dame set out to test nominal GDP targeting within the context of a New Keynesian model with both price and wage rigidity. "Overall," they conclude, "our analysis suggests that nominal

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GDP targeting is a policy alternative that central banks ought to take seriously."

REFUTING THE CARBON TAX

Some scholars within conservative and libertarian circles claim that a federal carbon tax would both benefit the environment and boost the economy. But, according to Robert P. Murphy of the Institute for Energy Research, Center for the Study of Science director Patrick J. Michaels, and assistant director Paul C. "Chip" Knappenberger in **"The Case against a Carbon Tax"** (Working Paper no. 33), "Both in theory and practice, economic analysis shows that the case for a U.S. carbon tax is weaker than its most vocal supporters have led the public to believe."

PATENT INFRINGEMENT AND IMPORTED GOODS

Some of the most difficult questions of patent infringement come from overseas manufacturers of imported goods. To deal with these cases, Congress created Section 337 of the Tariff Act of 1930, administered by the U.S. International Trade Commission (USITC). Some experts consider this an inadequate statute, and call for its replacement. In **"Patent Rights and Imported Goods"** (Policy Analysis no. 780), Daniel R. Pearson, a senior fellow at Cato's Herbert A. Stiefel Center for Trade Policy Studies and a former chairman of the U.S. International Trade Commission, explores the difficulties involved in patent infringement, and defends section 337 as "a reasonable and effective means to protect U.S. intellectual property rights from infringing imports."

ISLAM AND HUMAN RIGHTS

Morocco presents a curious study in freedom in the Arab world. Freedom House calls it a "partly free" country: a constitutional monarchy with a freely elected government. Its king holds a divine right to the monarchy, while Islam is the official state religion. But, as U.S.-based Moroccan journalist and human rights activist Ahmed Benchemsi observes in **"Islam and the Spread of Individual Freedoms: The Case of Morocco"** (Policy Analysis no. 778), the country is embroiled in a vigorous debate over individual freedoms, including freedom of conscience and even gay rights. Benchemsi sees hope for the future, but concludes that reform advocates must first band together and "adopt a unified agenda and strategy."

THE IMPACT OF LABOR REGULATIONS

Cross-border acquisitions account for a growing proportion of all acquisitions. In **"Cross-Border Acquisitions and Labor Regulations"** (Research Briefs in Economic Policy no. 33), Ross Levine of the University of California–Berkeley, Chen Lin of the University of Hong Kong, and Beibei Shen of the Chinese University of Hong Kong provide the first-ever assessment of the relationship between cross-country differences in labor regulations and cross-border mergers and acquisitions. They discover, among other things, that "firms find targets in countries with weaker labor regulations more appealing than similar targets in countries with comparatively strong labor regulations."

THE HASTY ASSUMPTIONS BEHIND ELECTRIC CAR SUBSIDIES

State and federal policies subsidize the use of electric vehicles under the presumption that they are beneficial to the environment. But as Stephen P. Holland of the University of North Carolina at Greensboro, Erin T. Mansur of Dartmouth College, Nicholas Z. Muller of Middlebury College, and Andrew J. Yates of the University of North Carolina at Chapel Hill argue in **"Public Policy Evaluation in the Face of Strong Prior Beliefs: The Case of Electric Cars"** (Research Briefs in Economic Policy no. 34), the science behind these alleged benefits is not quite as clear as is generally assumed.

DERIVATIVES: FINANCIAL FRIEND OR FOE?

People like Warren Buffett have popularized the notion that derivatives are "financial weapons of mass destruction." But in **"In Defense of Derivatives: From Beer to the Financial Crisis,"** (Policy Analysis no. 781) Bruce Tuckman of the New York University Stern School of Business rejects these claims as "misleading and false," arguing that many businesses successfully use derivatives to manage risk. He offers the example of a beer brewery, which uses derivatives to hedge against possible increases in the prices of wheat and aluminum.

TAX ENFORCEMENT AND THE LIMITS OF THIRD-PARTY REPORTING

When it comes to tackling tax evasion, rather than tax enforcement through auditing, recent literature recommends verifying taxpayer reports against third-party sources—employer's salary reports, for example. But in **"Dodging the Taxman: Firm Misreporting and Limits to Tax Enforcement"** (Research Briefs in Economic Policy no. 35), Paul Carrillo of George Washington University, Dina Pomeranz of Harvard University, and Monica Singhal of Harvard University reveal the limits to this strategy, particularly in developing countries. They discover that, when notified about discrepancies between their declared revenues and third-party reports, firms simply offset the adjustment by increasing their reported costs. ■

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"To Be Governed..."

WE'RE FROM THE GOVERNMENT, AND WE'RE HERE TO HELP YOU

The four investigators holding clipboards and clad in navy New York State jerseys descended on Lyn's Nail Salon I on Thursday morning. The owner, Andy No Tran, scrambled to show his papers, and stammered when explaining just how many employees he had.

This was a sweep.

But this was not a guns-blazing drama unfolding off Steinway Street in Astoria, Queens. This was a meticulous fact-finding mission through an empty salon that left Mr. Tran with a list of health and safety violations to fix in his tired-looking shop.

"We might come back, and if we see these issues, it's on you," said Anthony Holdorf, an official from the Department of State.

Another investigator warned him that if he did not get workers' compensation insurance for his employees in 48 hours, the state would close him down . . . .

At Cupid Nails & Spa . . . the most serious citation was against Qiu Yanzhu, a recent immigrant from China. She said she was paying Mr. Lu $350 a week to rent space to be an independent manicurist. But she had no renter's license, and when the investigators handed her a cease-and-desist order, requiring a Sept. 2 hearing, she started to cry. . . .

Jeong Lee, the leader of Team 6, and a Labor Department standards investigator who speaks Korean, said she gave workers her number if they wanted to talk away from their boss.

"One of my stops in Brooklyn, the employees ran away and refused to talk to us," Ms. Lee said. "Even if we're there to help them."

—*NEW YORK TIMES*, 08/20/15

LIBERTY: AS EASY AS RIDING A BIKE

Libertarianism, however, is not just a set of policy prescriptions, but an ideology. It is, moreover, a *total* ideology, one that addresses every aspect of how people live. There is a libertarian way of riding a bicycle, of taking your medicine, finding a spouse, giving blood, and even calling a cab (can you say, "Uber?").

—ALAN WOLFE IN *COMMONWEAL*, 08/15/15

CRONYISM AND CELEBRITY WORSHIP?

We've come a long way from my days going door to door for the Children's Defense Fund and earning $16,450 as a young law professor in Arkansas—and we owe it to the opportunities America provides.

—HILLARY CLINTON, 09/01/15

SOPHIA LOREN: SELF-OWNER

My favorite makeup artist is: me. I always did my own makeup since I own myself, and I want to be what I want to be.

—*WALL STREET JOURNAL*, 09/18/15

VENEZUELA BECOMES "ATLAS SHRUGGED"

Venezuelan supermarkets are increasingly being targeted by looters as lines and prolonged food shortages spark frustration in the nation struggling with an economic crisis.

Shoppers routinely spend hours in lines to buy consumer staples ranging from corn flour to laundry soap, turning lines into venues for shoving matches and frequent attempts to plunder shops. . . .

Last Friday one man was killed and 60 were arrested in Ciudad Guayana in southern Venezuela after shops were looted.

—REUTERS, 09/07/15

HEY, WE'VE ALL BEEN THERE

A high-ranking official at the Commerce Department took at least seven government computers home, an IT smorgasbord from iPads to Dell desktops that she rarely used for work. And if that wasn't enough, she allowed her kids to download pornography and "racially offensive materials," an investigation found.

When investigators started asking questions, they said, she tampered with evidence by erasing the offending material on some of the computers.

—*WASHINGTON POST*, 09/02/15

WELCOME TO THE (LIBERTARIAN) JUNGLE

Uber's strident brand of Silicon Valley exceptionalism is clashing with an entrenched French business culture that grants the government and incumbent firms great sway. . . .

Nicolas Rousselet, [who owns] more than half the taxis in Paris, says. . .

"Do we want to live in a libertarian fantasy, where all we have is the law of the jungle?" he says. "That is barbarism."

—*WALL STREET JOURNAL*, 09/18/15

IF D.C. DEFIES ANOTHER FEDERAL COURT, SOMEBODY'S GOING TO JOIN KIM DAVIS IN JAIL

A federal appeals court on Friday struck down the District's one-gun-per-month law as unconstitutional. . . .

The lawsuit is one of many challenges to District regulations that were written after the Supreme Court in 2008 used a D.C. case to declare a Second Amendment guarantee to own a firearm for self-defense.

—*WASHINGTON POST*, 09/18/15