

# From Executive Overreach to Cato's Deepbills

**A**t a Cato Policy Perspectives event in Beverly Hills in January, the Institute brought together several prominent experts to discuss a wide variety of current issues. The keynote address was given by Tom Campbell, the dean of Chapman University School of Law and a former five-term U.S. congressman from California. Campbell spoke about executive overreach and the dangers of the imperial presidency. Jim Harper, a senior fellow at the Cato Institute, discussed the centrality of information in today's age and what a lack of government transparency means for freedom. Alex Nowrasteh, an immigration policy analyst at the Institute, explained how the country can maximize the market-liberalizing benefits of immigration reform and minimize the potential costs.

**TOM CAMPBELL:** I want to talk to you today about the exercise of executive authority, and I want to begin by saying that I'm grateful to President Obama. Were it not for him, I wouldn't be able to give you all of the following examples of overreach.

President Obama bombed Libya without congressional authorization. He began bombing in Syria in September, with only the claim that ISIS is an offshoot of al Qaeda and hence is covered by the Authorization to Use Military Force resolution after the 9/11 attacks in 2001. The health care law was suspended throughout 2014 by the president alone. He suspended the obligation to carry insurance by anybody who had their insurance coverage changed as a result of his own law. He granted money to states that did not set up their own exchanges, despite the fact that the law says that it's for states that do set up their own exchanges. He ordered the Department of Homeland Security (DHS) not to deport anyone who has been here five years and anyone who has entered the United States under the age of sixteen as long as they're not a security risk, despite what the law itself states. The President further ordered DHS not to deport the parents of children who are citizens of legal residents. He

ordered DHS to provide work permits to these persons who are not here legally.

The President has also appointed members of the National Labor Relations Board during what he called a "recess of the United States Senate," even when the Senate itself did not call it a recess. He has instructed the Department of Justice not to prosecute marijuana sales or possession cases in states where state law has permitted such sales. He has refused to print Jerusalem, Israel, as a place of birth on U.S. passports.

Thank you, President Obama, for giving me the ability to speak today.

It's only fair to put this in context, however. In fact, I want to make the point that President Obama is hardly unique in this regard. Other presidents have exercised a remarkable amount—and even depth—of executive authority in the past. In 1970, President Richard Nixon ordered the Environmental Protection Agency not to release funds that were available and due to New York City. The reason was that, when he totaled up the amount of money available and the total cost of the projects, we had less money than projects. He therefore decided to impound considerable amounts of environmental protection funds, with no guidance from Congress.

In 1951, President Harry S. Truman ordered the United States Army to take possession of the nation's steel mills. He had no statutory authority at all, but went ahead simply because it was during the Korean War and a strike by the United Steelworkers of America was imminent.

In 1940, President Franklin D. Roosevelt traded U.S. naval ships to Britain in return for leases on British naval bases in Newfoundland and the West Indies. He decided to make the trade when Congress refused to authorize sales to the Allies, giving the British U.S. battleships in a time of great need. In 1939, President Roosevelt expunged United States citizens' claims against the Soviet Union by executive agreement with the Soviet Union, unilaterally, with no action from Congress.

In 1916, President Woodrow Wilson paid for U.S. commercial shipping to be armed against U-boat attacks before World War I, even though Congress had forbidden any beligerent actions.

I want to add to this list a quick vignette of my own. In 1999, President Bill Clinton bombed Belgrade, Yugoslavia, for 79 days without the approval of Congress, in order to help Kosovo, then a breakaway province of Yugoslavia. He claimed not to need the approval of Congress, since he was leading a NATO coalition. Yet the War Powers Resolution states that no troops may be inserted into a situation of hostilities, or where hostilities are reasonably imminent, for more than 60 days without the approval of Congress.

On the 61st day, I went to the House floor and made two motions. The first motion was for U.S. troops to be withdrawn from the theater of operations in and above the airspace of Yugoslavia because there had been no declaration of war or authorization to do so. The

second was for the United States to declare war on Yugoslavia. You choose, I told them, but do your job. You are the members of the United States Congress. You're obliged to take a stand.

I'll conclude by saying that in all my years in Congress, the opportunity to bring that vote to the House floor—and then to go to court to uphold the obligation that the members of Congress shall declare war—was the accomplishment of which I'm proudest. I wish the court had taken the lawsuit. I wish the court had done its job. To me, the breach of executive authority stems from two sources. First, presidents exceed their boundaries because Congress lets them, because Congress does not want to take responsibility. Second, the courts abdicate their responsibility to provide a means of resolving disputes between the president and Congress.

In my conclusion on the House floor that evening in 1999, I quoted Abraham Lincoln from 1848, who described war as the “most oppressive of all kingly oppressions,” and saw the requirement that Congress, not the president, declare war as the only way to provide that “no one man should hold the power of bringing this oppression upon us.”

**ALEX NOWRASTEH:** Immigration is one of the most complicated and misunderstood topics in public policy, so it's vital to begin with what the system actually looks like. As law professor Elizabeth Hull wrote, “With only a small degree of hyperbole, the immigration laws have been termed ‘second only to the Internal Revenue Code in complexity.’ A lawyer is often the only person who could thread the labyrinth.”

As it stands, there are basically four ways to come to the United States legally. One, be closely related to a current American. Two, win a spot in the visa lottery. Three, snare one of the few spots for refugees. And four, be a high-skilled worker. This last one, however, includes a lot of regulatory caveats: the quota is limited to 140,000 workers. Only 7 percent

can come from any one country. The company that sponsors each individual has to pay anywhere from \$10,000 to \$35,000. And there is a host of other hurdles.

The category that's missing, you'll notice, is for the low-skilled worker who doesn't have any family here. There is no green card available to these individuals unless they are related to an American. As a thought experiment, if we were to push this system back in time so



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that it applied to our ancestors, none of us would be here today, because virtually none of us would fit into any one of these categories.

Why do people want to come here? Economists have a complicated metric they use called a “place premium.” It's a tool that measures the economic gain for a worker coming to the United States from the particular countries, standardized for worker characteristics such as education. And what it tells us is that a typical Mexican with a high-school degree can expect a threefold increase in wages just by coming to the United States. For Indians and Vietnamese, it's sixfold. For Haitians, it's

tenfold. The median across the developing world is a fourfold increase in income.

Now, I spend a lot of time talking to college students about these facts. One thing I've found is that before they enter the job market, many of them are willing to move across the United States for a 20 percent increase in income. These foreigners are facing magnitudes far greater than that, and yet there is no legal way for them to take advantage of it.

So what does this mean for us? An economist will tell you that productivity is what determines wages. Well, these immigrants are more productive here; that's why they garner higher wages. Capitalism, free markets, the rule of law, and the security that goes along with that allows these workers to be more productive than they are in their home countries. So when they come here, it's not redistributive. It's not like we are making poor countries worse off and the United States better off. We are making the whole world better off because these folks can produce so much more here.

What would happen, then, if we took a radical policy—global open borders—and introduced it tomorrow? What would happen, in other words, if anybody could move to any other country and work legally? The estimate is that global GDP would increase between 50 and 150 percent, which is 35 to 105 trillion dollars in annual extra growth per year. Even in Washington those are big numbers. The present value of this change in policy globally is about 800 trillion dollars in economic growth over the next 20 years or so. It's an enormous, enormous gain. I'm not proposing open borders, but it's important to understand the magnitude of the gains from freer movement of people.

I want to talk about two additional topics that are particularly relevant for libertarians. The first is the welfare state. There are a few legal issues that are particularly important here. Under current law, if you are a legal immigrant with a green card, you have no access to means-tested welfare for the first five years that you are here. There are some small ex-

ceptions that vary by state—with, for instance, emergency medical care—but these benefits are nevertheless highly restricted. Illegal immigrants have no access to means-tested welfare in the United States, with the exception of emergency medical care. Nevertheless, when you compare welfare usage between poor immigrants and poor Americans, which is the relevant metric, you find that poor immigrants, even when eligible, vastly underuse compared to poor Americans. So much so, in fact, that if poor Americans used Medicaid at the same rate and the same benefit levels as poor immigrants, the program would be 42 percent smaller. And the real kicker is that there are no real differences in healthcare outcomes.

Despite this, critics of immigration reform worry that immigrants will disproportionately consume public benefits. Instead, they should support legal changes to the welfare that does exist for immigrants. Eliminating eligibility for certain programs would, in the words of Cato's late chairman emeritus William Niskanen, "build a wall around the welfare state, not around the country." Cato is the only think tank in Washington, D.C., that has written a detailed policy analysis of how to actually do this. We cite the statutes that need to be changed and specify how to change them. In turn, Senator Rand Paul has taken that and written it into a 15-page piece of legislation, taking all of our suggestions save for one.

In short, I like to use immigration as an argument against welfare, rather than using welfare as an argument against immigration.

**JIM HARPER:** Sir Francis Bacon is credited with the saying "knowledge is power." I'm going to talk to you about technology and the conditions that affect your liberty, and I'd like to convince you that information is power. I don't mean power in the legal sense. Rather, I mean raw power, the capacity to direct or influence the behavior of others: your ability to influence the government, as well as the

government's ability to influence you. How do technological conditions affect these relative powers?

You're probably aware of many ways the government collects information about you. One of the most obvious is your filings with the Internal Revenue Service (IRS). These records used to be on paper and were relatively obscure, even to the IRS. But now they're more available to tax authorities because



“The government has been in the dark ages.”

they're often in digital formats. This tax information contains very intimate, telling details about your life.

But there are other ways the government keeps track of you. They take a good close look at you when you fly through the Transportation Security Administration. They collect information on your movement through toll roads. More and more of you are tracked as you walk around a city. Facial recognition will be coming to a state before too long where you'll actually be identified as you pass through urban areas. And of course we all know about recent controversies where the government is collecting information about your communi-

cations. Every phone call you make today—who you call, who you receive calls from, how long the call occurred—will be recorded today in databases held by the National Security Agency. That program still continues, years after we've learned of its existence.

All these data collections increase the power of government. The government is better positioned to access your assets. It knows more about your relationships, business negotiations, health care, spending, and charitable giving. The government knows where you've been and who you've been there with.

At the heart of all this are abstraction and digitization. These things have produced a change in the information circumstances from what we used to live in, where information was mostly analog. Today, much of it is digital. I'm going to talk a little bit about abstraction using the illustration of the dog.

Sometime in our primordial history, we determined that the furry four-legged creature in front of us should be called a "dog." This allowed humans to organize themselves with reference to these animals in wondrous ways compared to the prior status quo. If we project forward a few thousand years, someone came up with the concept of writing, which is a more efficient abstraction on the sound "dog." With writing, you could record the existence of a dog, you could create memories that outlasted the human brain, you could pass along concepts over time and across space without person-to-person communication.

Over the last few hundred years and even in recent decades, abstraction has improved. We've gone from speaking and writing to Morse code, first developed in the mid-19th century, to binary code, which is essentially what's used to communicate on the internet. Now the concept of a dog can be rocketed around the world instantaneously, copied an infinite number of times, and processed over and over again for a variety of uses. This is all good news, but it also means that information about you can be stored, copied, and shared

*Continued on page 13*

liberties officer and general counsel with the Office of the Director of National Intelligence, respectively, offering a broad range of views.

The conference ended with an engaging surprise interview over Skype with NSA whistleblower Edward Snowden. In a remote discussion with Sanchez and ProPublica's Julia Angwin, Snowden said that he was "broadly satisfied" with the reaction to his disclosures. "We have seen a change in public opinion, in public awareness. We have seen an increased openness and innovative spirit in government—not by choice, but by necessity," he said. But "the real change that's happening is actually occurring outside of the

courts, outside of Congress, outside of the executive agencies entirely." The real change, Snowden said, can be found in "the fabric of the internet," as a result of engineers, technologists, and academics worldwide coming together to secure their own technologies and counteract the unprecedented growth of government surveillance. In a poll by the Centre for International Governance Innovation, they found that of those aware of Edward Snowden, 39 percent have taken steps to protect their online security—which, as Snowden pointed out, amounts to over 700 million people worldwide.

Throughout the day, various experts noted that the growth of government sur-

veillance is by no means restricted to spies. Even ordinary law enforcement agencies increasingly employ sophisticated tracking technologies, from face recognition software to "Stingray" devices that can locate suspects by sniffing out their cellular phone signals. "It's often hard to keep track of how tracked we are," Sanchez concluded. As such, it's important to think very carefully about how this unprecedented aggregation of information can be made compatible with a free society. ■

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*Continued from page 11*

nearly infinitely. And that makes a difference to your liberty.

Since the advent of digitization, the government's power to abstract information about you and your life—to acquire, process, hold, and reuse that information—has grown dramatically. As such, the power of governments over individuals and their capacity to influence each of our lives has also grown dramatically. What this means is that under bad circumstances we could lose our freedoms very quickly due to this relative power dynamic.

Now let's see how much power you have, based on the amount of information you have about government. Does anyone know the significance of H.R. 26? It was the first law that the new 114th Congress passed. It's now public law 114-1, also known as the Terrorism Risk Insurance Program Reauthorization Act of 2015. If you didn't know that this law was passed, that's a function of the fact that we have little access to information about what the government is doing.

Now compare this with information about the other aspects of your life. A lot of you probably know that the Santa Ana winds are predicted later today. I'm sure many of you now know what the pressure per square inch of an NFL football is supposed to be. And of course

people are often very familiar with the detailed information on their investments each day. But it's not the same with politics. Over time, we're losing power vis-à-vis the government.

At Cato we're trying to rectify this imbalance, and one of the ways we're doing so is through our Deepbills project. In order to offer more information about the government's deliberations, we've gathered detailed, accessible versions of legislation. We've annotated them in order to make key elements of their content easily readable by computer. Cato's data is now being used by the *New York Times* to flesh out information about the legislation it publishes on its website. Cornell Law's Legal Information Institute also employs the Institute's Deepbills data, helping to inform its 26 million yearly visitors about what Congress is doing. Everyone from Wikipedia to GovTrack, which is the leading private transparency site, uses our data. As such, Americans now have better access to information about who is spending their money.

It's a little shocking that we didn't have this information accessible before. The government has been in the dark ages. But with Cato's work, my hope is that as our access to information catches up, our relative power vis-à-vis government organizations catches up as well—and ultimately liberty flourishes. ■

## New Cato Journal



In the Winter 2015 *Cato Journal*, Weijing Zhang argues that ideas and leadership—not just economic interests—have played a crucial role in China's transition to a liberal society, and will be essential to the country's future. Thomas Mayor takes on Thomas Piketty's argument that free markets are rigged in favor of the wealthy. Elsewhere in the issue, George Bitros argues that central banks cannot be trusted to pursue bubble-neutral policies, Richard Wagner takes on the theoretical underpinnings of welfare economics, and Randall Holcombe suggests that political capitalism should be recognized as a distinct economic system.

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