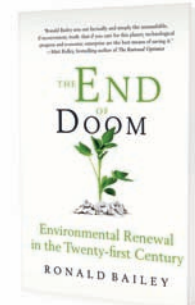




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# Cato Policy Report

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## A Hayekian Theory of Parental Rights

BY STEVEN HORWITZ

**T**he last few decades have seen a dramatic increase in the control that many parents wish to exercise over their children. That desire for control has been reinforced by a variety of institutions, from schools to the police, who have slowly reduced the range of freedom children have. For example, local police are arresting parents who allow their kids to walk to school or play in the park by themselves. In response, we've seen the rise of the "free-range kids" movement which aims at letting parents decide what degree of freedom is right for their kids.

Libertarians are a natural ally for this movement, and more nonlibertarians are beginning to be rightly outraged by the overreach of local authorities in arresting parents who are legitimately exercising their parental rights and best judgment about how to raise their kids. But do libertarians have a coherent theory of parental rights that can provide some intellectual support for free-range parenting? I think they do, and I think it can be found using insights from F. A. Hayek.

**STEVEN HORWITZ** is Charles A. Dana Professor of Economics at St. Lawrence University in Canton, New York, and an affiliated senior scholar at the Mercatus Center in Arlington, Virginia. He is the author of *Hayek's Modern Family: Classical Liberalism and the Evolution of Social Institutions*, out in September from Palgrave Macmillan.

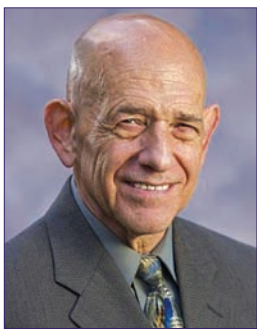
In thousands of pages of written work, Hayek said remarkably little about the family, which is nonetheless one of the most important of all social institutions. Like most other classical liberals, he noted the family's role in conveying important social norms and values, but he had almost nothing else to say about

its role in either the social order in general, or as a key institution of a classical liberal society. In my book *Hayek's Modern Family: Classical Liberalism and the Evolution of Social Institutions*, I try to fill that gap by applying Hayek's intellectual framework to the history

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On the first anniversary of the United States' unauthorized war against ISIS, Sen. TIM KAINE (D-VA) came to the Cato Institute to criticize President Obama's abuse of executive power and to insist that Congress live up to its obligation under the Constitution to authorize any war. Watch for text of his speech in *Cato's Letter* or see the video at [www.cato.org](http://www.cato.org).



BY ROBERT A. LEVY

## CHAIRMAN'S MESSAGE

# Good News and Bad News

**F**irst, the bad news. Arguably the greatest threat to freedom in the United States is the continued growth of the federal government. Entitlement spending is out of control, taxes are confiscatory, regulations are pervasive, and economic liberties—especially property rights and freedom of contract—have been consigned to second-class status. Equally troublesome, many of our political leaders—even those who question the efficacy of government in domestic matters—seem eager to embrace government intervention overseas.

From a constitutional perspective, the accelerating delegation of lawmaking power to administrative agencies is particularly alarming. Our Framers vested all legislative power in Congress. They knew that the potential for tyranny would be reduced if legislative and executive powers were separated. Yet Congress persists in writing murky laws and then authorizing one or more of the 300-plus regulatory agencies in Washington, D.C., to flesh out the details. Those agencies now dwarf Congress when it comes to making rules controlling what Americans can do.

That said, there's good news to report as well. State legislatures—with a push from groups such as Cato and the Institute for Justice—have curbed the worst abuses of eminent domain and civil asset forfeiture. Homeowners now have greater assurance that their property will not be seized for private development, and innocent parties can more easily reclaim assets that, without the owner's knowledge or consent, have allegedly "facilitated" commission of a crime.

The federal judiciary has also become more engaged in binding the political branches with the chains of the Constitution. For example, when Texas and 25 other states challenged President Obama's executive order on immigration, a federal judge ruled that it was a "complete abdication" of the president's duty to enforce the laws—"not simply... inadequate enforcement; [but] non-enforcement... that contradicts Congress's goals."

On the Supreme Court front, despite occasional backsliding, the Court has issued several key decisions vindicating individual rights and constraining government powers.

■ In *Heller v. District of Columbia* (2008) and *McDonald v. Chicago* (2010), the Court rejected the collectivist, militia-only view of the Second Amendment and secured an individual right to bear arms.

■ In *Citizens United v. Federal Election Commission* (2010), The Court overturned provisions of the McCain-Feingold campaign finance law, thereby extending First Amendment protection to corporate and union-sponsored political advocacy.

■ In *National Federation of Independent Business v. Sebelius* (2012), notwithstanding Chief Justice Roberts' inexplicable opinion upholding Obamacare, the Court instituted two significant limitations on federal power. First, Congress may not bootstrap its authority under the Commerce Clause—by compelling persons to engage in commerce and then asserting regulatory dominion triggered by that engagement. Second, Congress may not coerce states to participate in federal programs by imposing onerous conditions on the receipt of federal funds.

■ In the Defense of Marriage Act case, *United States v. Windsor* (2013), the Court barred the federal government from discriminating against married same-sex couples. In *Obergefell v. Hodges*, the Court went even further—applying the Fourteenth Amendment to establish a gender-neutral "fundamental right to marry."

This coming term, the Court will have at least two opportunities to reverse long-standing precedents that have restricted personal freedom. Friends of liberty are guardedly optimistic.

■ In *Friedrichs v. California Teachers Association*, the plaintiff argues she should not be required to pay union dues if she's not a union member. Mandatory dues are essentially compelled speech that subsidize public advocacy.

■ In *Fisher v. University of Texas*, the Court will have yet another chance to rein in racial preferences.

All told, a decidedly mixed bag for libertarians. The executive branch has been a consistent disappointment. Congress has enlarged federal power no matter which party controls the agenda. Only a handful of states and the federal courts have sporadically moved the country in a pro-liberty direction. That certainly underscores the critical importance of judicial appointments by the next president.

*Robert A. Levy*

“The federal judiciary has also become more engaged in binding the political branches with the chains of the Constitution.”

# Ranking Global Freedom

In 1989 political scientist Francis Fukuyama declared “the end of history,” arguing that the death of communism signaled the ultimate triumph of liberal democracy and market capitalism. But it may be that history never quite ends. Since the global economic meltdown of 2008, the idea of freedom has been under threat once again as markets get blamed for a crisis that was grounded at its root in government intervention.

As such, it has become more important than ever to study and interpret

Rank	Country
1	Hong Kong
2	Switzerland
3	Finland
4	Denmark
5	New Zealand
6	Canada
7	Australia
8	Ireland
9	United Kingdom
10	Sweden
11	Norway
12	Austria
12	Germany
14	Iceland
14	Netherlands
16	Malta
17	Luxembourg
18	Chile
19	Mauritius
20	United States of America

the concept of freedom. Several years ago, a number of think tanks—including the Fraser Institute, the Liberales Institut at the Friedrich Naumann Foundation for Freedom, and the Cato Institute—began exploring the possibility of creating a broad measure of freedom around the world. This marked the inception of the newly released *Human Freedom Index: A Global Measurement of Personal, Civil, and Economic Freedom*, by Ian Vásquez, director of Cato’s Center for Global Liberty and Prosperity, and Tanja Porčnik, president of the Visio Institute.

The index presents a broad measure of human freedom—understood as the absence of coercive constraint—using 76 distinct indicators of personal and economic freedom.

“Hard facts must counter the perception that freedom is somehow failing to achieve the goal of a better society while serfdom succeeds,” Detmar Doering, director of the Liberales Institut, writes in the introduction.

And indeed, the findings, which cover 152 countries for 2012 (the most recent year for which data is available), suggest that freedom plays a central role in human well-being. For instance, countries in the top quartile of freedom enjoy a significantly higher per capita income (\$30,006) than those in other quartiles; the per capita income in the least-free quartile is \$2,615.

*The Human Freedom Index* is the most comprehensive freedom index ever created for a globally meaningful set of countries. It offers opportunities for further research into the elaborate ways in which freedom influences, and can be influenced by, political regimes, economic development, and the whole range of indicators of human well-being.

**THE HUMAN FREEDOM INDEX CAN BE FOUND AT  
[WWW.CATO.ORG/HUMAN-FREEDOM-INDEX](http://WWW.CATO.ORG/HUMAN-FREEDOM-INDEX).**

## CATO NEWS NOTES

### BATTLING THE MYTHS AROUND TPA

During the Senate debate over Trade Promotion Authority legislation, the *Wall Street Journal* editorial board criticized Sen. Ted Cruz (R-TX), who claimed the bill would permit the Obama administration to unilaterally change immigration law. “The Cato Institute’s Scott Lincicome has demolished this argument,” the *Journal* proclaimed. Lincicome has written extensively on the myths surrounding TPA, arguing that Cruz’s fears are unfounded. “I, and many others here at Cato, would welcome a more modern and open US immigration system (done in an orderly and lawful fashion, of course),” he wrote, “but there’s simply no credible evidence that it’s happening here.”

### A MIXED VICTORY FOR GAY RIGHTS

In a historic decision, the Supreme Court ruled 5-4 that same-sex couples have a constitutional right to marry. The Cato Institute has long fought for equal rights for gay and lesbian couples, and filed a brief with the Court in the case. It was a mixed victory, however: Cato’s senior fellow in constitutional studies, Ilya Shapiro, declared the Court’s majority decision “right for the wrong reasons.” Civil marriage itself should not be proclaimed a “right,” he argued—it is essentially a government benefit, and as such must be distributed without discrimination, under the Equal Protection Clause. “Good for the Supreme Court—and I echo Justice Kennedy’s hope that both sides now respect each other’s liberties,” wrote Shapiro, “but the actual ruling that got us there could’ve been so much more.”

### WHITE HOUSE CITES CATO

Occupational licensing needlessly regulates scores of U.S. workers. A recent White House report—*Occupational Licensing: A Framework for Policymakers*—cited both an essay in Cato’s monthly online magazine, *Cato Unbound*, and an entry in Cato’s online forum, “Reviving Economic Growth,” which will soon be published as an ebook. “Yelp, Angie’s List, and Amazon Reviews all make it easy for past buyers to report their observations on seller quality,” Mercatus Center scholars Tyler Cowen and Alex Tabarrok argued in “The End of Asymmetric Information” for *Cato Unbound*. Thus, they said, one of licensing’s supposed benefits, helping consumers identify quality work, is becoming obsolete. In the growth forum, Dean Baker of the Center for Economic Policy Research made the case for freer trade for both pharmaceutical drugs and foreign-born physicians.





In June, Cato marked the 800th birthday of Magna Carta with a conference. SWAMINATHAN S. ANKLESARIA AIYAR (above), a Cato research fellow, and Harvard University Frank B. Baird Professor of History RICHARD PIPES (bottom right) discussed the history of the rule of law in India and Russia. RICHARD HELMHOLTZ, a law professor at University of Chicago Law School, (top right) explained the emergence of Magna Carta and its effect in England.



At the annual *Libertarianism vs. Conservatism* intern debate, Cato Institute interns WILL DUFFIELD and CHARLES LEHMAN (pictured) championed libertarianism, while Heritage Foundation interns countered with their conservative views. The interns debated a broad array of topics, including immigration, the size of the military, and the morality of the surveillance state.



RONALD BAILEY, an award-winning science correspondent for *Reason* magazine, discussed his new Cato book, *The End of Doom: Environmental Renewal in the 21st Century*, arguing that environmental alarmists have consistently been wrong, while human resourcefulness has always triumphed.





**M**illennials, who now make up nearly a quarter of the U.S. population, have a unique perspective on foreign policy compared with their elders. George Mason University scholars A. TREVOR THRALL and ERIK GOEPNER, the authors of a recent Cato study on the origin of these views, keynoted a panel discussion on how this generation's noninterventionist tendencies might influence U.S. policy.



**A**t a Capitol Hill Briefing, Cato Adjunct Scholar KEVIN DOWD, Professor of Finance and Economics at Durham University, UK, called for an end to the Federal Reserve's "stress tests," arguing that regulatory risk modeling is "worse than useless."



**W**ILLIAM ISAAC, former chair of the Federal Deposit Insurance Corporation (right) and the Cato Institute's director of Financial Regulation Studies, MARK CALABRIA (left), participated in a discussion of *An Unlikely Solution*—a documentary film exploring the phenomenon of Native American tribes entering the business of consumer lending via the Internet.

Continued from page 1

of the family, its functions in the modern world, and how classical liberals might think about issues of family policy. One of the issues I discuss is the question of parental rights. I argue that Hayekian insights should lead us to make a strong defense of parental rights and place a high burden of proof on those who would intervene into families for anything beyond obvious cases of violence or abuse. Parental rights also come with parental obligations to care for their children.

### A HAYEKIAN ARGUMENT FOR STRONG PARENTAL RIGHTS

A key part of Hayek's intellectual framework is the idea that knowledge is dispersed, contextual, and often tacit. No one knows everything, and it is those closest to choices and their direct consequences who are in the best position to know what to do. This argument is at the core of Hayek's objections to socialism and his case for the market: by establishing well-defined and well-protected property rights, we allow people to develop and use their local knowledge in ways that make the best use of resources. In the same way, it is parents who have the right incentives and best relevant knowledge to know what is best for their children. Establishing well-defined and well-protected parental rights encourages parents to act on this local knowledge and thereby helps to ensure the best outcomes for children.

The intimacy of the family provides parents with deep and often tacit knowledge of their child that can be deployed in finding the most effective ways to transmit social rules and norms. A great deal of the parent-child socialization process works through imitation, as imitation is a way to pass on knowledge that otherwise cannot be articulated. The family provides an ideal setting for this sort of imitative learning.

Parents also have strong incentives to make sure that such behaviors are learned. The family remains a major site of social interaction where appropriate behavior will make par-

“Allowing ‘the village’ to raise children is no more likely to succeed than has allowing ‘the village’ to run agriculture or industry.”

ent-child interactions smoother. Parents bear this responsibility in part because other family members may suffer negative external reputation effects due to the misbehavior of their children. Children who do not learn the rules of social interaction will cause their parents to suffer both directly and indirectly, thus providing parents with an incentive to ensure that proper rules are learned.

The family's role in this Hayekian socialization process is complemented by schools, houses of worship, and the other elements of civil society. However, none of them can completely replace the family. Placing the stewardship responsibility for child-raising in the hands of parents gives those with the most knowledge and strongest incentives the right to make the relevant decisions about the children. Where children have clearly defined stewards and where those stewards have the necessary knowledge and incentives, they will be more likely to engage in the sorts of modelling of behavior and explicit instruction concerning social behavior that are the key Hayekian functions of the family. Where responsibility is diffuse, and where those in charge lack the necessary knowledge and incentives, we would expect the same sorts of commons problems we are familiar with in other realms. As a result, allowing “the village” to raise children is no more likely to succeed than has allowing “the village” to run agriculture or industry.

### MAY PARENTS NEGLECT THEIR CHILDREN?

One of the most thorough, and infamous, libertarian discussions of parental rights is in Murray Rothbard's *Ethics of Liberty*. Roth-

bard rightly argues that children possess a right of self-ownership by virtue of being potential adults. This prevents them from being treated strictly as the parents' property. However, Rothbard further argues that, although the child's right of self-ownership prohibits anyone, including the parents, from aggressing against it, that right does not create a “legal obligation to feed, clothe, or educate” the child. “The law, therefore, may not properly compel the parent to feed a child or keep it alive”. To put it in different language, parents cannot abuse their children, but they can neglect them. Their actions may be immoral, but they cannot properly be considered illegal.

The key premise in Rothbard's argument is that if parenthood implied an obligation to feed and clothe, it would mean that the parents were being coerced into doing “positive acts . . . depriving the parent of his rights.” Because Rothbard's version of libertarianism is rooted in natural rights and begins with what he calls the “non-aggression axiom,” any situation in which the state coerces a person (who has not initiated force herself) into acting in a particular way constitutes a violation of that person's fundamental right to not be aggressed against. The natural response is that parents have somehow voluntarily accepted that obligation to care by creating the child in the first place, so that having a child constitutes a form of contractual obligation for the parents. If so, then ensuring that parents do not neglect their children is a matter not of coercion, but legitimate contract enforcement.

Rothbard's response to this criticism is to raise a number of counterexamples that aim to show the absurdity of what he calls the “creation argument.” He rightly asks how this can be true of a child conceived in a rape. But then he also asks how step-parenting, foster parenting, or guardianship can be legitimate if those people did not participate in creating the child. What he seems to miss in this discussion is the idea that the obligation to care for a child does not come



from the act of sexual creation per se, but from the assumption of the legal rights associated with making the child “one’s own.” In most cases, sexual creation and the assumption of rights take place together, as the birth parents take actions to establish that they wish to keep the child and thereby consent to the obligations that come with it being theirs. However, adoptive parents, perhaps even more clearly than in the case of birth parents, must take affirmative steps in the legal system to acquire parental rights, which makes it even clearer that they have consented to the responsibilities to the child that come with such rights. All of the other examples Rothbard mentions are amenable to the same sort of analysis.

Parental obligations come when parents engage in the positive act of treating the child as theirs by asserting their parental rights, and thereby accepting the corresponding obligations. In this sense, taking a child home from the hospital is analogous to homesteading: the parents are declaring to others that this child is theirs, and that they thereby accept the responsibilities to care that come with exercising those parental rights. If people bring a child into the world and do not wish to care for it themselves, they have an obligation to arrange for its care by finding someone else who wants to assume those rights and responsibilities.

Children must be cared for, and they are unable to consent to who becomes their caregivers. Therefore the agreement parents enter into when accepting parental rights and responsibilities is not with the infant directly. Instead it is an implicit agreement with “the rest of us” that arises when parents engage in de facto exercises of parental rights that then create de jure obligations to care for (or to arrange for the care of) those children. And this is the reason that all forms of abuse or cruelty, and extreme forms of neglect, should be actionable in a libertarian world. Accepting parental rights, but refusing to accept the corresponding obligations to care for a helpless child, is a form of breach of contract. Again,

“Accepting parental rights, but refusing to accept the corresponding obligations to care for a helpless child, is a form of breach of contract.”

the implicit contract in question is not with the child, but with “the rest of us.” Given the helplessness of infants, someone has to provide for their care, and those who act in ways that exercise parental rights are simultaneously announcing publicly their willingness to accept the obligation to care. Throughout history, we have seen various religious traditions capture this idea through ceremonies such as baptisms, baby-namings, and namakarans. Those have endured because of the importance of that public declaration of acquiring parental rights and accepting parental obligations.

#### VARIETIES OF CONSENT

What Rothbard’s argument relies on is the centrality of consent in the classical liberal tradition as a justification for rights and responsibilities. The paradigmatic example of consent is the express consent that we see in a written contract associated with a negotiated exchange. However, as legal theorist Tom W. Bell has argued, that form of consent lies at one end of a scale of graduated consent and unconsent whose ability to justify the validity of an action will vary. Bell’s scale runs from “express consent” to “implied consent” to “hypothetical consent” and then continues with hypothetical, implied, and express unconsent. Just as contractual language that indicates both parties’ agreement to take specific actions is the strongest form of consent, so is express contractual language that indicates an unwillingness to accept particular actions the strongest form of unconsent.

Bell’s framework of graduated consent

gives us a way of talking about the process by which parents accept the rights and responsibilities of parenthood. Adoption has many of the characteristics of express consent, as parents take affirmative legal steps to acquire the rights of parenthood. By contrast, conceiving a child and bringing him home from the hospital does not involve the express consent of the legal process of adoption. As Bell points out, express consent remains the standard for judging consent, and the other forms are more powerful the closer they are to express consent. Although birth parents never engage in an act of express consent, the express decision to attempt to conceive a child along with the express decision to continue the pregnancy, and then the express decision to keep the child in one’s house after the birth, all add up to a very strong form of implied consent that comes close to express consent, even if there is no specific moment at which the parents explicitly agree to the legal rights and responsibilities of parenthood.

The graduated consent approach also allows us to avoid Rothbard’s logically consistent but offensive conclusion that parents should be legally able to neglect their children. Once we recognize that consent is not a binary choice between express consent and no consent, we can construct a view of parental obligations to children that derives from the parents’ express or implied consensual acceptance of those responsibilities via a variety of forms of actions they undertake to assert their parental rights. Having taken on those responsibilities through forms of consent that are strongly justificatory, failure to discharge them would be legitimate grounds for legal action.

#### THE COMPARATIVE POLITICAL ECONOMY OF PARENTAL RIGHTS

How does this case for parental rights and responsibilities translate into public policy? The newspapers are full of stories of parents who have made choices that clearly are not in the best interests of their children.

Do these cases necessarily require some action on the part of the state or others to stop the parental behavior in question? And if parents are imperfect, will the state or other institutions that intervene in the family necessarily improve upon their parenting?

Another of Hayek's key insights was that no set of social institutions will perform perfectly across the whole range of knowledge and incentives facing human actors. Instead, we must look for those that work *better*, and Hayek's standard of judgment was to prefer those institutions that have built-in powerful ways of informing actors of their mistakes and providing them the incentives to correct them. Mere imperfection in one set of institutions is not automatically a reason to adopt an alternative. We must ask whether the alternative can actually improve upon the mistakes of the status quo. We can apply that framework to the issue of imperfect parenting and the role of the state.

Imagine a case of child neglect, though not physical abuse. The parents are not sufficiently caring for the kids in terms of consistently providing warm clothes or regular, nutritious meals, or medical care. They also leave the children home alone and unsupervised quite a bit and none of them are older than 10. Assume that the children are in no immediate physical danger. It might be tempting to call this a case of "parenting failure" and ask Child Protective Services to intervene, perhaps even removing the children from the home. In the face of such a temptation, the first Hayekian question worth asking is the comparative question "and do what with them?" Is the alternative that the state will offer for the children really better, on net, than their current situation? Suppose that alternative is foster care. There is enough empirical evidence on the problems with foster care, especially short-term placements where the incentive to really behave as a steward for the child is weaker, to be skeptical that it would be an improvement. When we account for the psychological effects on younger children of being taken from their parents and placed with strangers, the comparative analysis

“No set of social institutions will perform perfectly across the whole range of knowledge and incentives facing human actors. Instead, we must look for those that work *better*.”

suggests the case for intervention is even weaker.

In addition, we can ask in the case of parenting failure whether there are other nonstate institutions of civil society that could be brought into play to help these parents perform better (e.g., a religious institution, a neighborhood group, extended family members, etc.). In the specific case of neglect, the problems are often financial, rather than bad parenting per se. Parents may be too poor to afford what others would see as an adequate level of care and/or they may be working so many hours that supervising children is challenging, as is finding the time to cook, shop, or get them to a doctor. In such cases, the sorts of civil society solutions noted above

are far more likely to be appropriate than removing the kids from the home of what are otherwise well-intentioned parents. One of the problems facing state intervention from a Hayekian perspective is knowing all of the fine details of each particular case sufficiently to come up with a solution. In general, those closest to the family are in the best position to understand the problems at hand, imagine an effective solution, and have the incentive to act on that knowledge. Bureaucrats with dozens of cases or more are unlikely to have enough knowledge or incentive when compared to those in the family's local sphere.

Despite not having written much about the particulars of the family, Hayek's theoretical framework gives us a way to think about why we need strong parental rights, why those rights come with corresponding obligations to care for children, and why imperfection in parenting is not a sufficient condition for state intervention. A better understanding of Hayek helps to see why this sort of intervention in families is both unnecessary and counterproductive, and thereby provides intellectual support for the free-range kids movement and its defense of, in the words of the Supreme Court in 1925, the "liberty of parents and guardians to direct the upbringing and education of children under their control." ■

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THURSDAY, NOVEMBER 12 • WASHINGTON, D.C.



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# After *King v. Burwell*

**T**he Supreme Court's decision in *King v. Burwell* upheld President Obama's massive power grab, allowing him to tax, borrow, and spend \$700 billion without congressional approval. This establishes a precedent that could let any president modify, amend, or suspend any enacted law at his or her whim.

As it stands, Obamacare will continue to disrupt coverage for sick Americans until Congress repeals it and replaces it with reforms that make health care better, more affordable, and more secure. Despite the ruling, Obamacare remains unpopular with the American public and the battle to set in place a health care system that works for all Americans is far from over. At a Capitol Hill Briefing in July, Michael Cannon, director of health policy studies at Cato, and Ilya Shapiro, a senior fellow in constitutional studies at the Institute, came together to discuss the impact of *King v. Burwell* on health care reform, the separation of powers, and the rule of law.

**MICHAEL CANNON:** The ink wasn't yet dry on the ruling in *King v. Burwell* before supporters declared that the debate over repealing Obamacare is over. Well, that debate has been declared over so many times at this point that I've lost count. But I believe that Obamacare supporters dodged a bullet with this ruling.

The way the Affordable Care Act (ACA) was written, approved by both chambers of Congress, and signed into law by the president, it gave states the power to block major provisions of the law. States can block the subsidies that are supposed to flow through the health insurance exchanges. They can block the employer mandate and, to a large extent, the individual mandate. The law as written gave states these powers.

Obamacare supporters dodged a bullet because 34 or 38 states—depending on how you count—did not establish health insurance exchanges, which they needed to do in order for those provisions to take effect. They effectively exercised the vetoes that Congress gave them over portions of the ACA. And eliminating those subsidies would have revealed the full cost of this coverage to enrollees in Health-Care.gov. That is what the Obama administration and its supporters fear. (I do not consider them ACA supporters, by the way, because they do not really support that law as written.)

Nevertheless, the repeal debate is not over and there are a lot of reasons why. First, more than six years after the first draft of Obamacare was introduced in the House, it remains unpopular. In fact, it is as unpopular now as it was when it was enacted more than five years ago. And this is a year and a half into implementation, a year and a half after people have been receiving the benefits under this law, as rewritten by the Obama administration and the Supreme Court. And a lot of the costs of the law have not even taken effect yet: the Cadillac tax, some premium hikes on the horizon, the fact that some of the temporary programs designed to mitigate adverse selection will expire. This law has been unpopular for six solid years, and you know what? Unpopular laws, in a democracy, are always up for repeal.

Second, the Obamacare repeal debate is going to keep going on because Obamacare hurts the sick. Yes, it does insure more people by throwing lots and lots of money at health insurance. But it also threw millions out of their health care plans in 2013—including cancer patients and others with severe illnesses—leaving them with inferior coverage. It threatened to throw millions more out of their plans again until the Supreme Court amended the law in this latest ruling. And it is going to continue to threaten coverage for cancer pa-

tients and others as long as that law remains on the books.

It is not just opponents of the law that are noticing this. If you look at the January 29 issue of the *New England Journal of Medicine*, the lead article is about how Obamacare is pushing insurers into a race to the bottom by jettisoning coverage for HIV patients. There are other studies that have found the same thing happening with other high-cost chronic conditions, like mental illness, diabetes, rheumatoid arthritis, and cancer. This has happened in other markets with Obamacare-like bans on discrimination on the basis of preexisting conditions. There are a number of examples where community rating rules have encouraged insurers to avoid, mistreat, and ultimately dump the sick. And it does not matter that it is only happening with a few insurers now. The *New England Journal of Medicine* article said that a quarter of the insurance plans that they studied displayed these characteristics. But eventually all insurers will have to follow suit. Supporters of the law will likely blame this on greedy insurance companies. But the truth is that it is Obamacare that forces these companies into this race to the bottom, even when insurers are not trying to discriminate against the sick.

Another reason the repeal debate will continue is because Obamacare, and the way it has been implemented, demeans voters. And they feel it. They sense that it demeans them. The way that the Obamacare's architects designed, sold, enacted, and implemented this law has been an ongoing string of insults to the intelligence, the compassion, the dignity, and the sense of fair play of Americans who oppose this policy. Obamacare's architects have lied to the public. They have called voters stupid. They have called opponents evil. President Obama and the Supreme Court have rewritten the ACA now in so many ways

that it disempowered and disenfranchised Obamacare opponents.

Finally, this debate is going to continue because there are ways to provide more secure health coverage to the sick. No one wants the pre-Obamacare world where government had already been making health insurance less secure. But in spite of the tax exclusion for employer-sponsored insurance and all the other things that the government has done to cripple private health insurance markets, they were still innovating to develop products that made health insurance more secure. One example is guaranteed renewability. Another example is preexisting condition insurance, an innovation that was happening right underneath Congress's nose as they were debating the Affordable Care Act. It was first introduced in late 2008, and UnitedHealthcare was getting regulatory approvals in early 2009. What was this product? It was basically an insurance product where, at a cost of just 20 percent of what you would pay for health insurance, you can buy the *option* to purchase that health insurance plan at any time, no matter how sick you get. Even if you develop a preexisting condition, you pay the same rate as everyone else. This was available in 2008. There were further innovations that markets were likely to develop that encouraged insurers to compete to cover the sick rather than to avoid them.

But Obamacare destroyed these innovations. When you think about it, if Obamacare were such an improvement over the status quo ante as it existed before the law, then why do 65 percent of HealthCare.gov enrollees want the freedom to purchase their pre-Obamacare plans? Obviously something is amiss there. Unfortunately, these innovations are not coming back until we get rid of Obamacare, specifically its community rating price controls, and that's why the debate is going to keep happening.

Now, what should Congress do in the wake of *King v. Burwell*? It should stay focused on what it has always been focused on

with regard to Obamacare—which is repealing it. We are not going to get lower costs and more secure health insurance for the sick until this law is off the books.

Repeal is actually more important after *King v. Burwell*. With that ruling, the president and the Supreme Court just created entitlements and imposed taxes on 70 million Americans—employers and individuals—that no Congress ever approved and



“*King v. Burwell* shows that what we are living under right now is an illegitimate law.”

from which Congress specifically exempted those 70 million employers and individuals. The fact that tens of millions of Americans are currently subject to taxes that Congress never approved makes it all the more important that Congress repeal Obamacare. *King v. Burwell* shows that what we are living under right now is an illegitimate law.

I like to say that the Affordable Care Act is imperfect. But, gosh, it is a lot better than what we've got.

**ILYA SHAPIRO:** Look, I'm a simple constitutional lawyer. Essentially everything I know about health care I've learned through litigating two cases, *NFIB v. Sebelius* three years ago and now *King v. Burwell*. Originally, when we were planning this forum, we thought the case could go either way. It was really a 50/50 toss-up, and I thought I could add some value by explaining the nuanced rules of decision: for instance, what does this mean for health care or other types of regulatory policy going forward? Given the Court's opinion, however, all I can say is that there's really very little law, as it were, in the majority opinion. It's as if the whole opinion just said "Affirmed." The reasons don't matter because they don't make any sense whatsoever. Words have whatever meaning the writer wants them to have—which is a far cry from the following judicial opinion: "It is not our job to protect the people from the consequences of their political choices." Now who wrote that? Is that from Justice Antonin Scalia's dissent here in *King v. Burwell*? No. Is it from Justice Anthony Kennedy's (combined with Scalia's) dissent in *NFIB v. Sebelius*? No. It was Chief Justice John Roberts in the majority opinion in *NFIB*.

What's going on here is an unholy confluence of liberal judicial activism and conservative judicial passivism that has found a perfect home with John Roberts. It's not that the Court is liberal. Nor is John Roberts "evolving," as so many justices have in the past. What's going on here is that, well, Obamacare is special. As Scalia pointed out in his dissent, all the normal rules of constitutional—and now statutory—interpretation go out the window when it comes to the Affordable Care Act. Mind you, it wasn't a matter of enforcing the text of the Affordable Care Act. It was rewriting the text in a different way to do what John Roberts thought in his infinite wisdom would cause the least disruption in public policy or the health care system. And it shows why we don't want judges making these kinds of extra-legal de-



terminations, because again this is not a liberal decision. In *NFIB*, the individual-mandate case, Justice Ruth Bader Ginsburg's partial concurrence/partial dissent said that there are no constitutional limits on federal power. That's the liberal position.

Similarly here, the liberal position would have been to say that the IRS gets to do whatever it wants, applying what is known as *Chevron* deference. *Chevron* is a legal doctrine named after a case from more than 30 years ago, which says that when a law is ambiguous, courts are to defer to an agency's interpretation of that law, unless that agency is being arbitrary and capricious. So even if courts might disagree with the agency's determination, as long as it's not completely crazy they'll defer to it. In other words, A, B, C, D, and E are all somewhat plausible interpretations. One might be better; one might be worse. But as long as the agency doesn't go for X, Y, or Z—which are all completely out of left field—they'll be okay. Roberts specifically said in *King v. Burwell* said that that was not what he was doing. This was not an administrative-law, agency-deference case.

And that was backed up in June in the *Michigan v. EPA* case, where Justice Clarence Thomas wrote a concurring opinion on the need to narrow *Chevron*. Justice Scalia's majority opinion there said that the agency's determination was indeed unreasonable and therefore sent it back to the drawing board. But that doesn't mean, I don't think, that in some future instance *Chevron* is going to be narrowed. I don't know if the Court has the five votes necessary to do that. Some people are saying the fact that *Chevron* wasn't expanded is the silver lining in *King v. Burwell*. It sort of is. But again, this is kind of a sui generis opinion, good for the Affordable Care Act only. I'm sure some lower-court judges will use it to buttress some future fanciful statutory interpretations—to say that A is equivalent to Not-A, as it is here—that “exchange established by the state” means “exchange not established by the state.” Possibly,

But really the way that it's written, John Roberts's goal in *King*, as it was in *NFIB*, was to achieve a certain result without really changing legal doctrine, without expanding federal power.

Let me extrapolate from that. Looking forward, there's a lesson we can draw to avoid that unholy alliance of liberal activism—rewriting the law—with conservative passivism—restraining and bending



“What’s going on here is an unholy confluence of liberal judicial activism and conservative judicial passivism.”

over backwards to let Congress do whatever it wants. The way we avoid that is to learn the lessons of history.

In the late 1930s and early 1940s, the Supreme Court started going off the rails and eviscerating the doctrine of limited and enumerated powers. It began eviscerating federalism and bifurcating (even trifurcating) our rights, such that some rights are more equal than others. Then, from the 1950s to the 1970s, when the Warren and Burger Courts

continued these “evolving” notions of what the Constitution means, the conservative response to that sort of activism was not: “You’re wrong. Here’s the correct theory of constitutional or statutory interpretation.” Instead and alas, the response was: “Why are you not deferring to the political branches? You are unelected judges. You should be restrained. You should be deferring. You should be sitting on your hands.” And that’s why we have what we have now.

The answer is to appoint judges who are actually committed to judging. We should be fighting for judges who have a proven track record of saying what the Constitution actually is—of engaging with the law—rather than trying to bend over backwards and defer to agencies or to Congress. The judicial branch is a branch of the federal government for a reason. It’s there to check and balance the others.

John Roberts’s background was too smooth in many ways. He checked all the right boxes and excelled at the legal craft, but he never identified as an originalist or movement conservative. It’s clear that he’s a Republican. But it’s never been clear that he was committed to any particular theory of judicial interpretation. So congratulations to him, but future Republican administrations will have to be more careful about what *kind* of conservative they want on the Supreme Court: someone who focuses on restraint (a judicial mode) or someone who has a particular substantive theory of jurisprudence.

Those of you, especially here on Capitol Hill, who are going to the barricades to fight for a proper judiciary, make sure you’re fighting for the right people so that it’s worth the effort. Someone who has displayed loyalty to generic conservatism or some kind of “Red Team, Blue Team” fight is not enough. We need judges who actually are willing to make the difficult “balls and strikes” calls—as John Roberts said at his confirmation hearings—rather than kick the plate a little bit, squint, and call it a strike because Congress “in-

*Continued on page 12*

## *A conference on financial regulation and economic growth*

# Risk, Regulation, and Capital Markets

**E**conomic growth—including, importantly, wage growth—is ultimately driven by increases in productivity. The most effective way of driving productivity is a deepening of the capital stock. Capital, however, only multiplies in a hospitable environment—one of liquid, efficient capital markets with a respect for both contract and property.

Has America lost that hospitable environment? If so, can it be regained? In June, the Institute hosted a conference, “Capital Unbound: The Cato Summit on Financial Regulation,” during which a distinguished panel of experts examined the current state of U.S. capital markets regulation and offered proposals for unleashing a new engine of economic growth. The all-day event was held at the historic Waldorf-Astoria in New York City. Mark Calabria, Cato’s director of financial regulation studies, opened the summit by discussing the foundations of the economic meltdown of 2008.

“Unfortunately, the federal reaction to the financial crisis has been to double down on many of the distortions that drove it,” he said. For instance, policymakers have loaded ever more mortgage risk onto the backs of taxpayers, despite the fact that residential mortgages play a central role in the turmoil. “As unbelievable as it sounds, Washington is again calling for reducing underwriting standards and pushing homeownership as a get-rich-quick scheme for everybody,” Calabria said. “I thought it would at least be a few more years before we went down that path again.”

Joshua Rosner, managing director at Graham Fisher & Co. and coauthor of *Reckless Endangerment*, added that attempts to assign



In June, the Institute hosted “Capital Unbound: The Cato Summit on Financial Regulation” in New York, where a distinguished panel of experts critiqued the state of U.S. capital markets regulation.

blame have prevented policymakers from recognizing the real causes of the crisis. “There’s a false meme in Washington where a lot of the Democrats suggest that it was private markets and a lot of the Republicans suggest that it was government,” he said—when in reality it was both.

Kevin Dowd, a professor at Durham University and an adjunct scholar at the Cato Institute, focused on the problems with the Federal Reserve’s so-called “stress tests.” Using risk modeling, the tests subject banks to various scenarios to determine the capital “buffer” banks need to safely weather poor economic conditions. The problem, Dowd said, is that the models themselves suffer from many fatal flaws. Ending the Fed’s stress tests is a necessary first step toward reducing this “carnage by computing,” Dowd concluded.

Other speakers at the summit included Commissioner Michael Piwowar of the Securities and Exchange Commission; George Selgin, director of the Cato’s Center for Monetary and Financial Alternatives; and

Thaya Knight, associate director of financial regulation studies at the Institute.

In his keynote address, Commissioner J. Christopher Giancarlo of the Commodity Futures Trading Commission highlighted the fact that a return to traditional American prosperity begins with efficient capital markets. “It’s not a matter of opinion,” he said. “It’s a matter of economic fact that everywhere in the world today where there are free and competitive markets, combined with free enterprise, personal choice, voluntary exchange, and legal protection of person and property, you will find the underpinnings of broad and sustained prosperity.”

“Yet here at home,” Giancarlo concluded, “these same elements are under attack by critics of our financial markets. These critics constantly talk about separating markets from risk, as if they have no idea that risk and prosperity are invariably intertwined.” ■

**EACH OF THE PRESENTATIONS FROM THIS CONFERENCE CAN BE VIEWED ONLINE AT [WWW.CATO.ORG/EVENTS/ARCHIVES](http://WWW.CATO.ORG/EVENTS/ARCHIVES).**

*Continued from page 11*

tended” it to be a strike. This is not going to change overnight. It’s not a matter of winning the White House. It’s a matter of picking the

right judges and understanding the climate of ideas such that the proper judicial philosophy isn’t being conservative or minimalist or incrementalist or restrained. It’s about judging

in a particular way and applying the standard tools of statutory and constitutional interpretation regardless of where the political chips may fall. ■



*Bill was originally unveiled at 2013 Cato conference*

## Cato Scholars Differ on USA Freedom Act

**N**early two years ago, Rep. F. James Sensenbrenner (R-WI) first announced his NSA surveillance reform bill, the USA Freedom Act, at a Cato Institute conference. And in June, the USA Freedom Act of 2015—a watered-down and reintroduced version of the original—was signed into law.

In his 2013 speech, Sensenbrenner declared that this legislation would enact sweeping reforms to intelligence-gathering. “Let me make it quite clear,” he said. “It ends the NSA’s ability to collect what they call a ‘metadata program.’” Sensenbrenner, who as chairman of the House Judiciary Committee had introduced the Patriot Act in 2001, expressed outrage over how that legislation had since been abused. “Put simply, the phone calls we make to our friends, our families, and business associates are private and have nothing to do with terrorism or the government’s efforts to stop it.”

But in the end, did the law actually accomplish what Sensenbrenner promised? The privacy community—including Cato scholars—remained divided over the bill up until the day it landed on the president’s desk.

The final version of the bill reauthorized several expiring Patriot Act provisions, but limited bulk collection by stipulating that the government may ask telecom companies for records only when they have “reasonable, articulable suspicion” that a “specific selection term” used to search the records is relevant to a terrorism investigation.

Some organizations and legislators, including Sen. Rand Paul (R-KY), refused to support the bill, depicting it as ultimately a vote for the Patriot Act. Several, such as Rep. Justin Amash (R-MI), pointed to a recent federal court decision which had ruled the government’s previous justification for bulk collection, under Section 215 of the Patriot Act, illegal. Amash argued that to pass legislation in the wake of that ruling would only



REP. F. JAMES SENSENBRENNER (R-WI) announced his NSA surveillance reform bill, the USA Freedom Act, at a Cato conference on October 9, 2013. In June of this year, a modified version of the bill was signed into law.

provide the government convenient new legal justification for its spying—which it would interpret broadly.

Cato homeland security and civil liberties analyst Patrick Eddington agreed with this position, writing that the bill “would effectively represent a repeat of the Protect America Act fiasco of the previous decade—an act of Congress that made legal a previously illegal surveillance program that did exactly nothing to protect the country, while costing billions and subjecting Americans to continued mass surveillance.”

“Real Patriot Act ‘reform’ should substantively bar the government from indiscriminate bulk surveillance,” he said. “Anything less risks laying the groundwork for another decade of abuse.”

On the opposite side of the argument stood some pro-privacy groups; reform-minded senators Ron Wyden (D-OR), Pat Leahy (D-VT), and Mike Lee (R-UT); and Cato senior fellow Julian Sanchez. This group held that modest reforms were better than no reforms at all.

Sanchez deemed it “highly unlikely” that the USA Freedom Act could be inter-

preted as overriding the federal court’s rejection of bulk collection. “At that point I think we’re simply saying the FISC [Foreign Intelligence Surveillance Court] will pervert whatever language is adopted, however clear, and it doesn’t really matter what the legislature does.”

While acknowledging the bill’s obvious shortcomings, he countered that “It’s hard to see how blocking this particular set of reforms makes it any more likely that other important changes to the law will be passed.”

“While the reforms embedded in the USA Freedom Act by no means address the full range of surveillance excesses Americans have learned about over the past two years, they represent a significant step in the right direction—and, at long last, an end to the continuous, reflexive augmentation of government powers to intrude into the private lives of citizens,” he wrote. ■

**ANALYSES BY SANCHEZ AND EDDINGTON, AND VIDEO OF THE 2013 CONFERENCE “NSA SURVEILLANCE: WHAT WE KNOW; WHAT TO DO ABOUT IT,” CAN BE FOUND AT [WWW.CATO.ORG](http://WWW.CATO.ORG).**



**S**ocial Security, Medicare, and Medicaid account for a staggering 48 percent of federal spending. MAYA MACGUINEAS, president of the Committee for a Responsible Federal Budget, participated in a forum on Cato senior fellow Michael Tanner's new book, *Going for Broke: Deficits, Debt, and the Entitlement Crisis*, where Tanner offered solutions for entitlement reform.



**A**t a Cato conference marking the 10th anniversary of *Kelo v. City of New London*, George Mason University law professor ILYA SOMIN discussed his comprehensive critique of *Kelo*, as offered in his Cato/University of Chicago Press book *The Grasping Hand: Kelo v. City of New London*.



**S**EN. JEFF FLAKE (R-AZ) delivered the dinner address for Cato University, speaking on the imperative of limiting runaway government.



**I**n Brazil, a group of young libertarians have sparked a vibrant political movement, drawing as many as a million people to protest marches in April. FABIO OSTERMANN and 19-year-old KIM KATAGUIRI (above), two leaders of the Free Brazil Movement, spoke at Cato University and at a luncheon for scholars about their mission. Elsewhere at Cato University, students browsed through their pocket Constitutions (below) during lectures by law professor Randy Barnett.





In the five years since Obamacare, Republicans have failed to offer a viable solution for health care. At a Cato Book Forum, JOHN C. GOODMAN, founder of the Goodman Institute, outlined his new book, *A Better Choice: Healthcare Solutions for America*, and proposed a new alternative for health care.

# Cato Calendar

**CITY SEMINAR PALO ALTO /  
SILICON VALLEY  
FOUR SEASONS • PALO ALTO, CA  
OCTOBER 23, 2015**

**CATO INSTITUTE POLICY  
PERSPECTIVES 2015  
NEW YORK • WALDORF-ASTORIA  
NOVEMBER 5, 2015**

**RETHINKING MONETARY POLICY  
33<sup>RD</sup> ANNUAL MONETARY CONFERENCE  
WASHINGTON • CATO INSTITUTE  
NOVEMBER 12, 2015**

Speakers include James Bullard, Jeffrey Lackner, Rep. Bill Huizenga, Claudio Borio, Manuel Sanchez, George S. Tavlás, George Selgin, and John B. Taylor.

**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**

**28<sup>TH</sup> ANNUAL BENEFACTOR  
SUMMIT  
LAS VEGAS  
FOUR SEASONS HOTEL  
FEBRUARY 25–28, 2016**  
Speakers include Randy Barnett.

**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**

**29<sup>TH</sup> ANNUAL BENEFACTOR  
SUMMIT  
NAPLES, FL  
RITZ-CARLTON GOLF RESORT  
MARCH 2–5, 2017**

**CATO CLUB 200 RETREAT  
LAGUNA BEACH, CA  
MONTAGE LAGUNA BEACH  
OCTOBER 5–7, 2017**

**JUNE 2:** Capital Unbound: The Cato Summit on Financial Regulation

**JUNE 4:** Magna Carta and the Rule of Law around the World

**JUNE 4:** Math Gone Mad: Systemic Dangers of the Federal Reserve's Stress Tests

**JUNE 11:** Property Rights on the 10th Anniversary of *Kelo v. City of New London*

**JUNE 16:** *Going for Broke: Deficits, Debt, and the Entitlement Crisis*

**JUNE 17:** *An Unlikely Solution: Tribal Development and Consumer Finance*

**JUNE 18:** Millennials and U.S. Foreign Policy

**JUNE 23:** *King v. Burwell*: Previewing the Supreme Court's Obamacare Ruling

**JUNE 23:** Sustaining the American Energy Renaissance

**JUNE 25:** #CatoConnects: Scholars Answer Your Questions on *King v. Burwell*

**JUNE 25:** Air Farce: The EPA's Regulatory "Science" on Airborne Particles

**JUNE 26:** #CatoConnects: Gay Marriage Legalized Nationwide

**JUNE 30:** A History of Free Market Energy Thought

**JULY 9:** In the Wake of *King v. Burwell*: Options for Congress

**JULY 9:** Sovereign Patent Funds—A New Issue at the Nexus of International Trade and Intellectual Property

**JULY 14:** *The Conservatarian Manifesto*

**JULY 17:** The BEPS Project: The OECD,

Tax Policy, and U.S. Competitiveness

**JULY 17:** Choosing in Groups: Analytical Politics Revisited

**JULY 20:** Designer Drugs: A New Futile Front in the War on Illegal Drugs?

**JULY 22:** *A Better Choice: Healthcare Solutions for America*

**JULY 23:** *Going for Broke: Deficits, Debt, and the Entitlement Crisis* (Capitol Hill Briefing)

**JULY 23:** *The End of Doom: Environmental Renewal in the Twenty-first Century*

**JULY 23:** Intern Debate: Libertarianism vs. Conservatism

**JULY 26–31:** Cato University 2015

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## Why environmental alarmists keep getting it wrong

# Refuting the Doomsayers

**M**ore than two decades ago, a PBS producer and former *Forbes* science writer came up with a concept for a book on the psychological appeal of doom. He observed that the classic works of environmentalism—from Rachel Carson’s *Silent Spring* to the Club of Rome’s *The Limits to Growth*—had all confidently predicted their own versions of global catastrophe. Yet not one of these forecasts had come to fruition. “Two decades after these and other dire predictions had been made, I noticed that we were still here and that civilization had not collapsed,” he wrote.

Now Ronald Bailey, an award-winning science correspondent for *Reason* magazine, is back with a fresh perspective on why environmental pessimists continuously lead us astray. In *The End of Doom: Environmental Renewal in the 21st Century*, Bailey provides a detailed examination of the theories, studies, and assumptions that have spurred the current forecasts of calamity. “I aim in this new book to again remind the public, the media, and policymakers that the foretellers of ruin have consistently been wrong,” he writes, “whereas the advocates of human resourcefulness have nearly always been right.”

Why have the doomsayers consistently been such poor guides to the future? One of the most infamous examples of these unfulfilled predictions was Stanford University biologist Paul Ehrlich’s 1968 bestseller, *The Population Bomb*. Ehrlich warned that unbridled population growth would outpace food supply in a matter of years. “The battle to feed all of humanity is over,” he wrote. “In the 1970s the world will undergo famines—hundreds of millions of people are going to starve to death in spite of any crash programs embarked upon now.” Ehrlich compared humanity to a growing cancer.

As Bailey points out, globe-spanning

famines have yet to occur. Instead, average life expectancy has increased and a higher percentage of people are enjoying the benefits of modern technology than ever before. How could Ehrlich have been so off-the-mark? Like all prophets of doom, he wildly underestimated the power of human ingenuity. “Human beings are not like a herd of deer that simply starves to death when it overgrazes its meadow,” Bailey argues. “Instead we seek out new ways to produce more food and do it ever more efficiently.” Breakthroughs in plant breeding spawned the Green Revolution, which dramatically boosted global food production. More people meant more creative minds brought to the task of providing nourishment for the planet.

This same dynamic applies across a wide range of ecological issues. Breaking down the numbers, Bailey finds that—thanks to human ingenuity—many current trends are in fact positive. Cancer rates are falling in America. More and more land is being restored to nature. Increasing wealth is leading to decreasing pollution. And the cost of clean energy will soon fall below that of fossil fuels. As he demonstrates, the way to cement these trends is not to retreat into a maze of paralyzing regulation but to craft our own future.

And yet, this doesn’t seem to have reined in the pessimists. “While the overpopulation dirge has become somewhat muted as a result of their massive predictive failure, many of the more radical environmentalist ideologues still sing the same old Malthusian song,” he writes. The persistence of alarmism, according to Bailey, is both psy-

“Ronald Bailey sets out factually and simply the unassailable, if inconvenient, truth: that if you care for this planet, technological progress and economic enterprise are the best means of saving it.”  
—Matt Ridley, bestselling author of *The Rational Optimist*

## THE END OF DOOM



Environmental Renewal  
in the Twenty-first Century

RONALD BAILEY

chological and political. “Human beings do have a psychological bias toward believing bad news and discounting good news,” he adds. “But besides that, the sciences surrounding environmental issues have been politicized from top to bottom.”

Nevertheless, Bailey offers an ultimately hopeful perspective. “Humanity does face big environmental challenges over the course of the coming century, but the bulk of the scientific and economic evidence shows that most of the trends are positive and can be turned in a positive direction by further enhancing human ingenuity.”

“The end of the world is not nigh,” he concludes. “Far from it.” ■

**VISIT [STORE.CATO.ORG/BOOKS](http://STORE.CATO.ORG/BOOKS), ONLINE RETAILERS, OR BOOKSTORES NATIONWIDE TO GET YOUR COPY OF *THE END OF DOOM* TODAY.**



*A new book on America's alliances with authoritarian regimes*

## The Perils of Friendly Tyrants

“Americans want to believe that their country is a bastion of moral principles and that their government does not violate those values in the course of implementing the nation’s foreign policy,” Ted Galen Carpenter and Malou Innocent write in their new book. But as the United States assumed a global leadership role after World War II, a growing number of relationships were forged in which Washington’s new security partners were, to varying degrees, repressive and corrupt.

In *Perilous Partners*, Carpenter, a senior fellow for defense and foreign policy studies at Cato, and Innocent, an adjunct scholar at the Institute, offer case studies of U.S. engagement with dubious allies, examining the official justifications for these partnerships and assessing their credibility. They look at both the benefits and the costs in blood, treasure, and values to the American republic of more than a dozen specific associations. “We hope that such a treatment will assist both policymakers and the American people strike a proper balance in the future,” they write.

The authors begin by surveying the period when these questionable alliances first formed. “The ethical rot in U.S. foreign policy began early in the Cold War and grew worse as the rivalry with the Soviet Union deepened,” they write. With time, Washington’s actions were not just inconsistent with America’s ideals—they directly undermined them. “It is difficult to square the notion of allegiance to the values of peace, democracy, individual liberty, and the rule of law with the overthrow of democratically elected governments, the provision of financial aid and political support for corrupt autocrats, and in some cases, helping to install and sustain in power murderous sociopaths,” Carpenter and Innocent write. “Yet at times the U.S. government did all of those things.”

In examining each case study—from Latin American strongmen to South Vietnamese dictators—Carpenter and Innocent demonstrate “the acute dilemma” inherent in balancing national security with America’s values. “U.S. leaders cynically referred to some of the most corrupt and brutal dictatorships as members of the Free World, as long as those regimes cooperated with Washington’s geopolitical objectives,” they write.

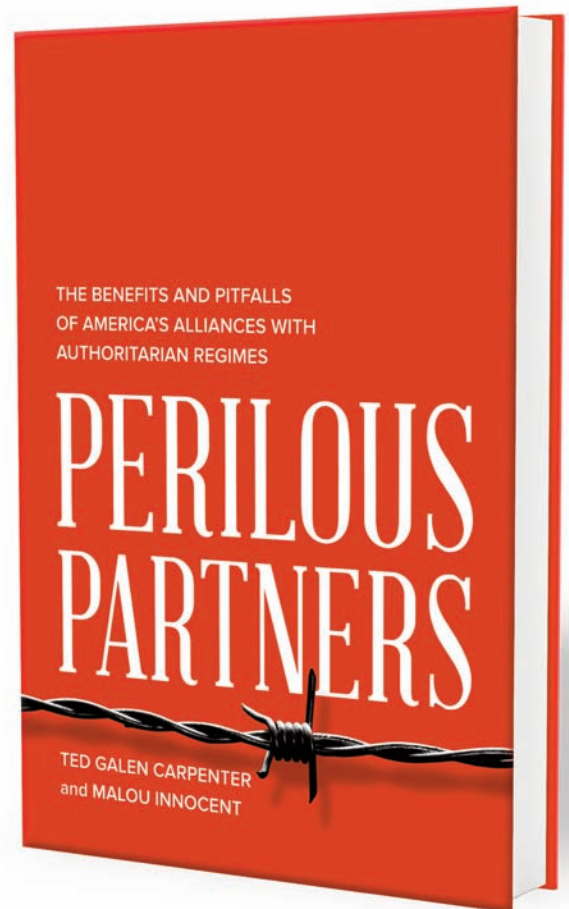
Unfortunately, those coalitions did not dissolve once the Cold War ended. As the authors note, the United States strengthened its commitment to democracy and human rights throughout the 1990s. But that revival didn’t last long. “Once the United States embarked on a new crusade, targeting radical Islamist movements and regimes following the 9/11 terrorist attacks, there was a tendency to revert to old habits and cut ethical corners without sufficient reflection,” Carpenter and Innocent write.

The authors acknowledge that when national survival or other vital interests are at stake, such alliances can be justified. But too often American leaders have sacrificed the moral high ground in pursuit of secondary and peripheral national interests. The authors therefore recommend an ethical pragmatism when it comes to foreign policy, outlining standards to determine when compromising American principles is necessary, when it is questionable, and when it is outright counterproductive. They propose an arm’s-length relationship with authoritarian regimes, emphasizing that the United States will gain little if it deals with the threat of terrorism in ways that

routinely pollute American values.

In the end, Carpenter and Innocent offer a compelling account of perils involved in getting too close to friendly tyrants, injecting historical insight into current dilemmas in order to provide policy prescriptions for the near future. “To promote human rights in some countries and simultaneously support the world’s most savage and illegitimate autocracies may very well reflect Washington’s geopolitical preferences,” they write, “but such inconsistency also highlights an enormous discrepancy between what the U.S. government claims to do and what it actually does.” ■

**VISIT [STORE.CATO.ORG/BOOKS](http://STORE.CATO.ORG/BOOKS), ONLINE RETAILERS, OR BOOKSTORES NATIONWIDE TO GET YOUR COPY OF *PERILOUS PARTNERS* TODAY.**



# The Structural Causes of Federal Government Failure

**M**ost Americans think that the federal government is incompetent and wasteful. Their negative view is not surprising given the steady stream of scandals emanating from Washington. Scholarly studies also support the idea that many federal activities are misguided and harmful. What causes all the failures? As Chris Edwards, Cato's director of tax policy studies and editor of Cato's website *Downsizing the Federal Government*, writes in "Why the Federal Government Fails" (Policy Analysis no. 777), "The causes of federal failure are deeply structural, and they will not be solved by appointing more competent officials or putting a different party in charge." First, federal policies rely on top-down planning and coercion. That tends to create winners and losers, which is unlike the

mutually beneficial relationships of markets. Second, the government lacks knowledge about our complex society. While markets gather knowledge from the bottom up and are rooted in individual preferences, the government's actions destroy knowledge and squelch diversity. Third, legislators often act counter to the general public interest. They use debt, an opaque tax system, and other techniques to hide the full costs of programs. Fourth, civil servants act within a bureaucratic system that rewards inertia. Finally, today's federal budget is 100 times larger than the average state budget, and is far too large to adequately oversee. "Management reforms and changes to budget rules might reduce some types of failure," Edwards concludes. "But the only way to create a major improvement in performance is to cut the overall size of the federal government."

## HOW CONSERVATIVES, PROGRESSIVES, AND LIBERTARIANS CAN UNITE ON ECONOMIC REFORM

The U.S. economy is slowing down. Trends for all the major components of growth are now uniformly unfavorable: labor participation is falling, the pace of human capital accumulation is slackening, the rate of investment is in long-term decline, and growth in



total factor productivity has been low for three of the four past decades. A sudden turnaround is always possible, but there are strong reasons for believing

that U.S. economic growth in the coming years will fall well short of the long-term historical trend. As Brink Lindsey, vice presi-

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dent for research at the Cato Institute, writes in **“Low-Hanging Fruit Guarded by Dragons: Reforming Regressive Regulation to Boost U.S. Economic Growth”** (White Paper), progressives, conservatives, and libertarians have a strong common interest in reversing this slowdown. Unfortunately, agreement on ends need not translate into agreement on means. Nevertheless, Lindsey argues that despite today’s polarized political atmosphere, it is possible to construct an ambitious and highly promising agenda of pro-growth policy reform that can command support across the ideological spectrum. Such an agenda would take aim at policies whose primary effect is to inflate the incomes and wealth of the rich, the powerful, and the well-established. This paper identifies four major examples of what Lindsey calls “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. Focusing on these areas, he argues, would open up a new front in the ongoing policy fight. “Instead of another left-right conflict, the contest could be framed as a choice between the public interest and vested interests,” he concludes.

## HOW MARKETS UNDERMINE CASTE DISCRIMINATION IN INDIA

When India became independent in 1947, its liberal constitution banned caste discrimination and reserved seats for dalits—once called untouchables—in the legislatures, government services, and some educational institutions. These reservations created a thin upper crust of dalits in politics and government services. But caste discrimination remained widespread, especially in rural India. As Cato research fellow Swaminathan S. Anklesaria Aiyar argues in **“Capitalism’s Assault on the Indian Caste System”** (Policy Analysis no. 776), however, major changes were sparked by economic reforms in 1991,

opening up a once-closed economy. One district survey in Uttar Pradesh shows the proportion of dalits owning brick houses up from 38 percent to 94 percent, and the proportion running their own businesses up from 6 percent to 36.7 percent. The Dalit Indian Chamber of Commerce and Industry now boasts of more than 3,000 member-millionaires. For decades, India’s socialist policies achieved only 3.5 percent annual growth. Licenses and permits were required for all economic activity. Upper-caste networks monopolized these and kept dalits out. But the 1991 economic reforms dismantled controls, accelerating growth and competition. “Fierce competition soon ensured that the price of a supplier mattered more than his caste,” Aiyar concludes. “The dalit revolution is still in its early stages, but is unstoppable.”

## YOUNG VOTERS DEVELOP “IRAQ AVERSION”

The Millennial Generation, those born between 1980 and 1997, now represent one quarter of the U.S. population. Compared with their elders, Millennials have distinct attitudes toward foreign policy issues. “The main drivers of Millennials’ foreign policy attitudes fall into two major categories,” write A. Trevor Thrall, associate professor at George Mason University and Cato adjunct scholar, and Erik Goepner, doctoral student in public policy at George Mason University, in **“Millennials and U.S. Foreign Policy: The Next Generation’s Attitudes toward Foreign Policy and War (and Why They Matter)”** (White Paper). The first comprises the trends and events that started or occurred before the Millennials came of age, including the end of the Cold War, the development of the Internet, and the acceleration of globalization. The second includes major events that occurred when they were



between the ages of roughly 14 to 24, including the attacks of 9/11 and the wars in Afghanistan and Iraq. Together, these forces have led to three critical differences between the Millennials’ attitudes and those of previous generations. First, Millennials perceive the world as significantly less threatening than their elders do. Second, Millennials are more supportive of international cooperation than prior generations. Finally, thanks in particular to the impact of the wars in Iraq and Afghanistan, Millennials are also far less supportive of the use of military force.

## THE HIGH COSTS OF E-VERIFY

E-Verify is an electronic employment eligibility verification system intended to weed unauthorized immigrants out of the labor market. A mandate requiring all employers to screen their new hires through federal government databases will likely be included in immigration reform measures contemplated by the 114th Congress. But, according to Alex Nowrasteh, a Cato immigration policy analyst, and Jim Harper, a senior fellow at the Institute, in **“Checking E-Verify: The Costs and Consequences of a National Worker Screening Mandate”** (Policy Analysis no. 775), E-Verify is an intrusive regulation that places the onus of immigration law enforcement on American employers. It’s not only expensive, but also has “a startling degree of inaccuracy.” It could exclude hundreds of thousands of Americans from employment—at least in the short run. And it’s ineffective at preventing unauthorized immigrants from working in the United States, as the experience of Arizona demonstrates. “If E-Verify is mandated nationwide, worker and employer avoidance and noncompliance would cause supporters of interior enforcement of immigration law to seek harsher sanctions on businesses, more punitive measures for unauthorized workers, and a biometric identity system for all Americans—a step that must be avoided,” the authors write. ■

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# CATO

# “To Be Governed...”

## HAHAHA

Veep is the most authentic because it understands the three most important things about life in Washington: the humanity, the banality, and the absurdity. . . .

There is one important element that the show gets wrong: President Meyer and her staff are motivated entirely by self-interest. In my experience, the vast majority of people in Washington—Republicans and Democrats alike—show up to work to serve and improve a country that they love.

—DAN PFEIFFER IN *GRANTLAND*, 06/12/15

## IT'S FORBIDDEN AND COMPULSORY

Several Washington cab companies may miss a June 29 deadline to upgrade at least 6 percent of their fleets to wheelchair-accessible vehicles. . . . Under the D.C. Taxi Act of 2012, the 27 cab companies with fleets of at least 20 taxis were supposed to convert or purchase accessible vehicles. . . .

Independent drivers may not purchase and operate their own wheelchair-accessible taxis.

—WAMU, 06/09/15

## “CRUEL GERMANS” INSIST THAT GREEKS PROMISE TO PAY BACK MONEY THEY BORROWED IN ORDER TO BORROW MORE

Just like that, the image of the “cruel German” is back.

Germany—more specifically, its chancellor, Angela Merkel—has faced years of derision for driving a hard bargain with financially broken Greece, which has received billions in bailouts since 2010. But for both Germany and Merkel, the concessions extracted this week from Athens appear to have struck a global nerve. By

insisting on years more of tough cuts and making other demands that critics have billed as humiliating, Berlin is wiping out decades of hard-won goodwill. . . .

Germany was one of more than a dozen nations that insisted on a tough deal with Greece. But Britain's Daily Mail singled out Germany, saying Greece had surrendered to austerity “with a German gun at his head.”

—WASHINGTON POST, 07/17/15

## SO THE BACKLOG IS BEING REDUCED

Nearly one-third of veterans waiting to receive health care through the Department of Veterans Affairs are already dead, according to an internal VA document provided to The Huffington Post.

—WASHINGTON TIMES, 07/14/15

## THE SCI-FI DYSTOPIA CREATED BY A LACK OF WATER MARKETS

Their two peach trees had turned brittle in the heat, their neighborhood pond had vanished into cracked dirt and now their stainless-steel faucet was spitting out hot air. “That’s it. We’re dry,” Miguel Gamboa said during the second week of July, and so he went off to look for water.

—WASHINGTON POST, 07/19/15

## CRONYISM DOES A GOOD BUSINESS IN MARYLAND

While [former Maryland governor Martin] O’Malley commanded far smaller fees than the former secretary of state—and gave only a handful of speeches—he also seemed to benefit from government and political connections forged during his time in public service.

Among his most lucrative speeches was a \$50,000 appearance at a conference in Baltimore sponsored by Center Maryland, an organization whose leaders include a former O’Malley communications director, the finance director of his presidential campaign and the director of a super PAC formed to support O’Malley’s presidential bid.

O’Malley also lists \$147,812 for a series of speeches to Environmental Systems Research Institute, a company that makes mapping software that O’Malley heavily employed as governor as part of an initiative to use data and technology to guide policy decisions.

—WASHINGTON POST, 07/16/15

## THIS IS THE HOUSING MARKET YOU WANTED, HILLARY CLINTON STAFFERS

For decades, idealistic twenty-somethings have shunned higher-paying and more permanent jobs for the altruism and adrenaline rush of working to get a candidate to the White House. But the staffers who have signed up for the Clinton campaign face a daunting obstacle: the New York City real estate market. . . .

Mrs. Clinton’s campaign prides itself on living on the cheap and keeping salaries low, which is good for its own bottom line, but difficult for those who need to pay New York City rents. . . .

When the campaign’s finance director, Dennis Cheng, reached out to New York donors [to put up staffers in their apartments], some of them seemed concerned with the prospective maze of campaign finance laws and with how providing upscale housing in New York City might be interpreted.

—NEW YORK TIMES, 06/26/15