





BY PETER GOETTLER

“The delegation of regulations to the executive branch seems to reach new heights as the years roll by.”

PRESIDENT'S MESSAGE

# When Bureaucrats Make the Laws

Many of us share the quaint notion that Congress makes the laws. But today, it often delegates legislating to the executive branch in the form of rulemaking. Then . . . BAM! More burdensome regulations.

Rules and regulations created directly by Congress can be bad enough. The Cato intern program greatly benefits our outstanding young interns and the Institute alike. But the winter and fall class terms, which used to run weeks longer, are now capped at three months to avoid having to provide health insurance that would otherwise be required under Obamacare. We simply can't afford it. Who benefits from this?

The delegation of regulations to the executive branch seems to reach new heights as the years roll by. (The Dodd-Frank financial “reform” mandated over 400 different rulemakings—still unfinished after six years!) But it's an abomination that's been with us a long time. So like long-dead enemies reaching across the years and beyond the grave, ancient laws can still wreak havoc. Like the Fair Labor Standards Act, amended several times but originally passed in 1938. It took only a pen—no phone needed—for the president and the labor secretary to announce back in May significant changes in the rules governing overtime pay throughout the economy. The rule increased the salary level at which employees become exempt from overtime pay requirements from \$23,660 set in 2004 to \$47,476.

Many of you are grappling with these new standards in your businesses; and here at Cato, we are, too. Like most labor regulations, these rules interfere with the private relationship between employers and employees in ways that are difficult to predict and can harm both sides of the relationship. It means for employees below the new threshold, either their hours worked need to be capped where overtime pay kicks in or they'll have to be paid more—which can be difficult for any business or non-profit to bear. I recall my first job, which now would have fallen below the threshold. Being willing to toil for long days allowed me to prove my work ethic; to spend many hours acquiring knowledge, skills, and expertise; and to gain the sense of accomplishment and achievement that came from doing whatever it took to successfully complete a time-sensitive project. Many successful people would never have advanced in their careers if their company had to tell them to go home at 5 o'clock. Worse yet, one of the ways many employers deal with these increased labor costs is by eliminating employees through outsourcing, outside contracting, or automation.

The overactive administrative state has (at least) three terrible consequences. First, the Constitution states that “all legislative powers herein granted shall be vested in a Congress.” It doesn't say, “all legislative powers except those Congress delegates to the president or the faceless bureaucrats of the sprawling administrative agencies.” Our ability to keep government limited, as the founders intended, depends in part on the ingenious separation of powers they devised, as well as recourse to the electoral process when government places burdens on us. The modern administrative state short-circuits both of those important checks.

Second, the regulatory burden has grown out of control. The United States is in the midst of its 11th year of sub-3 percent growth, by far the longest such period of our lives. A regulatory burden that's at an all-time high plays more than a small part in my opinion. The cost of a slow-growing economy falls hardest on the less fortunate, reducing economic opportunity and the upward mobility that's such an important part of the American dream. It also creates anxiety that can be unhealthy for society and counterproductive to the policy debates. Witness, for example, the attack on free trade. There are many important policy failures that are contributing to our weak economy, but I wouldn't count our system of trade—which could be a lot freer—among them.

And a third, tragic consequence of these burdens is the impact they'll have on the young. We meet many entrepreneurs who tell us they'd never be able accomplish today what they did 20 or 30 years ago: building a great enterprise from scratch. To me, this means we're denying the young people of both today and tomorrow the ability to employ their creative energies and vision to reach their dreams. We're also denying everyone the chance to benefit from the great innovations such dreams produce.

Policy failures that deny opportunity to the least fortunate, to today's young, and to future generations emphasize the moral dimension of our work. People cannot live their best lives and flourish unless they are free, and it's simply immoral for them to be denied the opportunity to do so. When we view Cato's mission—and particularly our ongoing battles against regulation—in these terms, it fuels our passion and motivation. As the end of the year approaches and we benefit from the generosity of so many of you, I can't thank our Sponsors enough for making this mission possible.

U.S. lags while world gains

## Global Economic Freedom Rises

This year's *Economic Freedom of the World: 2016 Annual Report*, co-published by the Cato Institute, the Fraser Institute, and over 70 other think tanks around the world, brings grim news for the United States, but good news globally. While the U.S. lags in 16th place for the second year in a row, global economic freedom increased to 6.85 out of 10.

The United States has plummeted in the rankings since the year 2000, when it stood in second place. This decline is largely thanks to a weakening of the rule of law, increasing regulation, and the devastating effects of the wars on terrorism and drugs.

Hong Kong, Singapore, New Zealand, and Switzerland led the rankings. The least economically free countries were Iran, Algeria, Chad, Guinea, Angola, the Central African Republic, Argentina, the Republic of the

Congo, Libya and, in last place, Venezuela.

The United States is not the only large economy lacking in economic freedom—Germany came in at number 30, France at 57, Italy 69, Russia 102, and India and China at 112 and 113.

The index demonstrates that economic freedom matters—nations in the top quartile of economic freedom enjoyed an average per capita GDP of \$41,228 in 2014, compared to just \$5,471 for countries in the bottom quartile. The income of the poorest 10 percent of the population was also much higher in countries with more economic freedom. Life expectancy was over 80 years in the top quartile, compared to just 64 in the bottom, and political and civil liberties were significantly higher in the more economically free countries.

This year's edition of the index takes a close look at Ireland, Venezuela, and the United States, as well as at the relationship between gender disparity and economic freedom. ■

[VIEW THE INDEX AT CATO.ORG.](#)

# Cato News Notes

## SOUTH AFRICA'S LIBERTARIAN MAYOR

Herman Mashaba, a member of Cato's Selection Committee for this year's Milton Friedman Prize, has been elected mayor of Johannesburg. Johannesburg is South Africa's largest city, home to over 4 million people—making it larger than Los Angeles, America's second largest city. Mashaba calls individual freedom his highest value, and told *The Globe and Mail*, "I'm just asking the government to leave us alone." While his own political party, the Democratic Alliance, backs the minimum wage, he denounced it as "an evil system to deprive poor uneducated people of the opportunity to advance."

## CATO STUDY MAKES LATE-NIGHT TV

Alex Nowrasteh's recent study on the risk of immigrants becoming terrorists, which found that the chance of an American being murdered in a terrorist attack by a refugee is 1 in 3.64 billion per year, was featured on both the *Late Show with Stephen Colbert* and the *Daily Show with Trevor Noah*, as well as being cited by numerous other media outlets and Kareem Abdul-Jabbar in his *Washington Post* column. Nowrasteh's timely study, the first ever to conduct a risk analysis of the visa categories that foreign-born terrorists have used to enter the United States, was widely used to refute Donald Trump Jr.'s controversial Skittles analogy—a picture of a bowl of Skittles with the caption "If I had a bowl of Skittles and I told you just three would kill you, would you take a handful? That's our Syrian refugee problem." Nowrasteh used his data to rewrite the proper Skittles analogy: "The chance of any American actually eating the fatal Skittle and perishing is about one in 3.64 billion a year during [a] 41-year time period. Do you eat from the bowl without quaking in your boots? I would."

## SANCHEZ SURVEYED BY THE POST

Cato senior fellow Julian Sanchez was one of six experts surveyed by the *Washington Post* on the presidential candidates' cybersecurity policies and practices. The other five were a former director of the CIA and the NSA, a former general counsel of the NSA, a former privacy officer at Google, a former chief privacy counselor at the Office of Management and Budget, and a former assistant secretary of the Department of Homeland Security.

## LUKEWARMING TOPS AMAZON CHARTS

*Lukewarming*, the new Cato book by Pat Michaels and Chip Knappenberger, was released last year as an ebook, and more recently in an updated and expanded paperback edition. The new edition reached #1 on Amazon's bestseller lists for earth sciences, climatology, weather, and environmental policy. The Kindle version was also #1 in weather. In *Lukewarming*, Michaels and Knappenberger make the case that global warming is neither "hot" (dire) nor "cold" (nonexistent), but lukewarm.



In August Cato co-hosted its annual *Libertarianism vs. Conservatism* debate with the Heritage Foundation, where two interns from each organization debated which is the superior political philosophy (Cato interns at right).



At a Cato Policy Forum, evolutionary psychologist LEDA COSMIDES explored how the human mind's evolved programs affect political attitudes toward systems like socialism. "When we see the modern world, we're seeing it through the eyes of our ancestors," she explained.



Six Cato scholars, including Vice President for Legal Affairs ROGER PILON, spoke to congressional staffers at Cato University on the Hill.



DAVID FRIEDMAN, author of *Machinery of Freedom* and *Future Imperfect*, spoke at Cato's Policy Perspectives 2016 in San Francisco in September.

# Kremlin Hayek on the Charles?

**T**he Ivy League has often been derided by conservatives for the leftward leanings of its professors and students—Harvard University was once dubbed the “Kremlin on the Charles.” But these days, students at Harvard are flocking in ever-greater numbers to a class with a heartening title: “A Libertarian Perspective on Economic and Social Policy,” taught by Jeffrey Miron, director of undergraduate studies in the economics department and also Cato’s director of economic studies. The class is the college’s fourth most popular among undergraduates, and its enrollment nearly doubled over the last year. The *Harvard Crimson* reports:



The College’s fourth most popular course, Economics 1017: “A Libertarian Perspective on Economic and Social Policy,” saw a significant jump in enrollment to 497 undergraduates from 251 undergraduates last year. Economics senior lecturer Jeffrey A. Miron, who teaches Ec 1017, attributed the course’s jump in popularity to the current election cycle, which has seen Libertarian presidential candidate Gary E. Johnson in the spotlight and rising in the polls.

Miron said topics in the course, like the immigration policy and the legalization of drugs in the context of economics, have attracted students during this year’s presidential campaign—which has featured candidates with significantly varying styles and ideologies.

“These are all things that are discussed actively in the political stage, and I think lots of people are interested to be hearing different perspectives,” Miron said.

Johnson’s libertarian ideas are popular among young people beyond Harvard—in a Quinnipiac poll in September, Johnson scored 29 percent among voters 18–34, just behind Hillary Clinton.

**YOU CAN WATCH A CONDENSED PRESENTATION OF MIRON’S HARVARD COURSE, TITLED “LIBERTARIAN PUBLIC POLICY,” BY VISITING [LIBERTARIANISM.ORG/GUIDES](http://LIBERTARIANISM.ORG/GUIDES).**



**N**EAL MCCLUSKEY, director of Cato’s Center for Educational Freedom, testified before the Ways and Means Committee of the U.S. House of Representatives, for a hearing titled “Back to School: Review of Tax-Exempt College and University Endowments.”



**A**t a Cato forum, (left to right) KRISTI LANE SCOTT of the U.S. Department of Justice, MATTHEW FEENEY of the Cato Institute, and TIM ADELMAN of LeClairRyan discussed the future of drones, including both the challenges and opportunities they present.



**A**t a Capitol Hill Briefing, REP. DAVE BRAT (R-VA) and SEN. JEFF FLAKE (R-AZ) discussed their legislation to replace Obamacare with “large” health savings accounts, an idea first proposed by Cato’s Michael Cannon.

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of understanding of economic principles, as so many statist interventions are. While most support for the minimum wage, trade restrictions, or prohibition of narcotics rests on factual misapprehensions of their consequences, the intellectual leaders of these illiberal movements are generally not thoughtless people. They often understand libertarian ideas fairly well, and they reject them root and branch. They believe that the ideas of equality before the law, of rule-based legal and political systems, of toleration and freedom of thought and speech, of voluntary trade—especially among strangers—for mutual benefit, and of imprescriptible and equal individual rights are phony, self-interested camouflage for exploitation promoted by evil elites, and that those who uphold them are either evil themselves or hopelessly naïve.

It's time for advocates of liberty to realize that some people reject liberty for others (and even for themselves) not merely because they don't understand economics or because they will realize material benefits from undermining the rule of law, but because they oppose the principles and the practice of liberty. They don't seek equality before the law; they reject it and prefer politics based on unequal identities. They don't believe in your right to disagree with them and they certainly won't defend your right to do so. They consider trade a plot of some sort. And they prefer a politics of will to one of processes. They will attack anyone for offending their sacred identities. They do not want to "live and let live."

## **IDENTITY POLITICS**

It took decades, but a robustly anti-libertarian and anti-toleration movement on the left side of the spectrum has effectively taken over a great deal of academia in much of Europe, North America, and other countries. Their goal is to use administrative punishment, intimidation, and disruption to suppress all views that they consider incompatible with their vision. This move-

“Political correctness on the left has called forth an equally anti-libertarian reaction on the right.”

ment is rooted in the writings of a German Marxist who studied under the Nazi theoretician Martin Heidegger. His name was Herbert Marcuse, and after he came to the United States he became very influential on the far left.

Marcuse's 1965 essay "Repressive Tolerance" argued that to achieve liberation, or at least his vision thereof, would require

the withdrawal of toleration of speech and assembly from groups and movements which promote aggressive policies, armament, chauvinism, discrimination on the grounds of race and religion, or which oppose the extension of public services, social security, medical care, etc. Moreover, the restoration of freedom of thought may necessitate new and rigid restrictions on teachings and practices in the educational institutions which, by their very methods and concepts, serve to enclose the mind within the established universe of discourse and behavior – thereby precluding a priori a rational evaluation of the alternatives.

For Marcuse, as for his contemporary followers (many of whom have never heard of him), "Liberating tolerance, then, would mean intolerance against movements from the Right and toleration of movements from the Left." Following that script, those who dissent from the new orthodoxy are shouted down, denied platforms, forced into sensitivity reeducation courses, forbidden from speaking, intimidated, mobbed, and even threatened with violence to get them

to shut up. Consider again University of Missouri professor Melissa Click's call to her backers—"Hey, who wants to help me get this reporter out of here? I need some muscle over here!" That was Marcuse's message in action.

Political correctness on the left has called forth an equally anti-libertarian reaction on the right. The far-right movements that are gaining ground in Europe and the "alt-right" fusion of populism and white nationalism in the United States have attracted followers who are convinced that their existence or way of life is threatened by capitalism, by free trade, and by ethnic pluralism, but they have been infuriated and stirred into action by the illiberal left-wing domination of speech and witch hunts against dissidents. In a sense they have become the mirror image of their persecutors. In European parties they have resurrected the poisonous political ideologies and language of the 1930s, and in the United States they have been energized by and attached themselves to the Trump movement, with its attacks on international trade, its denigration of Mexicans and Muslims, and its stirring up of resentment against elites.

The call for politically correct "safe spaces" reserved for minorities is mirrored by white nationalists who call for affirming "white identity" and a "white nation." The doyen of white nationalism, also known as "Identitarianism," in the United States, Jared Taylor, recently told National Public Radio that "the natural tendency of human nature is tribal. When black people or Asians or Hispanics express a desire to live with people like themselves, express a preference for their own culture, their own heritage, there's considered nothing wrong about that. It's only when whites say, well, yes, I prefer the culture of Europe and I prefer to be around white people—for some reason, and only for whites, this is considered the profoundest sort of immorality." One collectivism begets another.

Philosophy professor Slavoz Žižek is an influential voice on the far left, better known

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## “Populist and authoritarian parties have taken over in several states.”

in Europe than America, but with a growing following worldwide. Žižek insists that freedom in liberal societies is an illusion and embraces the common thread tying the illiberal left with the illiberal right. That thread runs through the work of the National Socialist law professor Carl Schmitt, a collaborator of Martin Heidegger who famously reduced “the specific political distinction . . . to that between friend and enemy.” Žižek affirms “the unconditional primacy of the inherent antagonism as constitutive of the political.” Social harmony and “live and let live” philosophies for such thinkers are just so much self-delusion; for them what is real is the struggle for dominance. Indeed, in a very deep sense, the flesh-and-blood individuated person does not even exist for such thinkers, for what truly exists are social forces or identities; indeed, the “individual” is nothing but the instantiation of forces or collective identities that are inherently antagonistic to each other.

### POPULIST AUTHORITARIANISM

Populism often parallels the various forms of identity politics, but adds angry resentment of “elites,” crackpot political economy, and a yearning for a leader who can focus the authentic will of the people. Populist movements have erupted in numerous countries, from Poland and Spain to the Philippines and the United States. Michael Kazin in his book *The Populist Persuasion* offers a definition of populism: “a language whose speakers conceive of ordinary people as a noble assemblage not bounded narrowly by class, view their elite opponents as self-serving and undemocratic, and seek to mobilize the former against the latter.” The normal tendency of such movements is to follow a charismatic leader who, in his or her own person, embodies the people and focuses the popular will.

A common theme among populists is to empower a leader who can cut through procedures, rules, checks and balances, and protected rights, privileges, and immunities and

“just get things done.” In *The Road to Serfdom* F. A. Hayek described that impatience with rules as the prelude to totalitarianism: “It is the general demand for quick and determined central government action that is the dominating element in the situation, dissatisfaction with the slow and cumbersome course of democratic processes which make action for action’s sake the goal. It is then the man or the party who seems strong and resolute enough to ‘get things done’ who exercises the greatest appeal.”

Populist and authoritarian parties have taken over and are cementing their power in several states. In Russia Vladimir Putin has created a new authoritarian government that dominates all other institutions in society and depends on his own personal decisions. Putin and his cronies systematically and completely took over the media and used it to generate a deep feeling of a nation under siege, whose uniquely great culture is constantly threatened by its neighbors, and which is defended only by the strong hand of the leader.

The government of Hungary, after securing a two-thirds parliamentary majority in 2010, began to institutionalize control of all organs of the state by ruling Fidesz party loyalists. It depicted its leader, Viktor Orbán, as a national savior and launched an increasingly anti-libertarian agenda of nationalization, cronyism, and restrictions on freedom of speech. Orbán declared that “[We are] breaking with the dogmas and ideologies that have been adopted by the West and keeping ourselves independent from them . . . to construct a new state built on illiberal and national foundations within the European Union.” (“Within the European Union”

translates into “subsidized by the taxpayers of other countries.”)

After Fidesz’s 2010 victory, the leader of the nationalist and anti-market Polish Law and Justice Party Jarosław Kaczyński declared Orbán’s nationalist, populist, and cronyist strategy “an example of how we can win.” Kaczyński managed to combine identity politics with populism to oust the center right government of a country with a growing economy and then began to institute the kinds of populist and protectionist measures that have proven themselves inimical to prosperity. The classical liberal Timbro Institute of Sweden’s 2016 *Timbro Authoritarian Populism Index* concluded that on both left and right, in contemporary Europe “populism is not a temporary challenge but a permanent threat.”

Putin, the pioneer in the trend toward authoritarianism, has poured hundreds of millions of dollars into promoting anti-libertarian populism across Europe and through a sophisticated global media empire, including RT and Sputnik News, as well as a network of internet troll factories and numerous made-to-order websites. Russian media pioneer Peter Pomerantsev in his remarkable book *Nothing Is True and Everything Is Possible* notes that “the Kremlin switches messages at will to its advantages. . . . European right-wing nationalists are seduced with an anti-EU message; the Far Left is co-opted with tales of fighting US hegemony; US religious conservatives are convinced by the Kremlin’s fight against homosexuality.” Clouds of lies, denunciations, denials, and more are issued to undermine the confidence of defenders of classical liberal institutions. It’s a well-financed post-modern assault on truth in the service of dictatorship.

### WHAT TRIGGERS AUTHORITARIANISM?

Such movements are not solely the result of a lack of education. They are deeply ideological in character. They embrace collectivism and authoritarianism and reject individualism and constitutional rules. What has caused them to generate so much popular

support so rapidly?

Current research indicates that authoritarian responses are triggered by the perception of *threats to physical security, group identity, and social status*. When all three are present, conditions are ripe for an explosion of authoritarianism.

Radical Islamist violence, recycled through the 24/7 news cycle to seem even more widespread and common than it is, certainly presents an apparently alarming external threat. Group integrity and status are also at stake. Research by the political scientist Karen Stenner supports the idea that there is an authoritarian predisposition that is triggered by “normative threats,” that is perceptions that traditional views are endangered or no longer shared across a community. Such normative threats trigger a response among those predisposed to authoritarianism to become active “boundary-maintainers, norm-enforcers, and cheerleaders for authority.” Threats to social status further exacerbate such authoritarian responses. The core support for authoritarian populist movements in Europe, as well as the radical fringe of the Trump movement in America, has been less-educated white males, who have seen their relative social status decline as those of others (females and foreigners) have risen. In the United States, white males 30-49 with high school degrees or less have seen their labor force participation rates drop precipitously, to the point where more than one in five are not even seeking work but have left the labor force entirely. Without remunerative and fulfilling work they have experienced a substantial loss of social status. Absolute living standards can rise for all (and living standards and real wages have risen dramatically over the past decades), but relative status cannot rise for all. If some groups are rising, others must be falling. Those in the groups that have been falling and who are predisposed to authoritarianism will be strongly drawn to authoritarian figures who promise to make things right, or to restore lost greatness.

“All those trends are mutually reinforcing: Each demonizes the other.”

### RADICAL ISLAMISM

Radical Islamism mirrors some of the themes of the other anti-libertarian movements, including identity politics (the belief that the community of believers is at war with all infidels), authoritarian populist fears of threats to group identity and social status, and enthusiasm for charismatic leaders who will “Make Islam Great Again.” Radical Islamism even shares with the far left and far right common intellectual roots in European fascist political ideology and collectivist ideas of “authenticity.” The Islamist movement in Iran that created the first “Islamic Republic” was deeply influenced by European Fascist thinkers, notably Martin Heidegger. Ahmad Fardid promoted Heidegger’s toxic ideas in Iran, and his follower Jalal Al-e Ahmad denounced alleged western threats to the authentic identity of Iran in his book *Westoxification*. As Heidegger pronounced after the victory of the Nazi Party, the age of liberalism was “the I-time. Now is the We-time.” Ecstatic collectivism promised to deliver the German people from their “inauthentically historical existence,” and lead them toward “authenticity,” the cause now embraced by social justice warriors, alt-right “identitarians,” and radical Islamists alike.

All those trends are mutually reinforcing: Each demonizes the other; and as one grows, so grows the existential threat against which the others struggle. The growth of radical Islam draws recruits to populist parties in Europe (and America), and the hostility toward Muslims and their alienation from their societies increases the ability of Islamic State and other groups to recruit. At the same time, politically correct social justice warriors cannot bring themselves to condemn radical Islamism—after all, isn’t it just a response to the colonial

oppression visited on non-Christians by the dominant Christian/white/European hegemony?—and often they find themselves not only unable to condemn Islamist crimes, but they even promote anti-Semitism. Indeed, hostility to Jews and to capitalism is a disturbingly common feature of all three movements.

### THE NEED TO DEFEND LIBERTY

The various anti-libertarian movements grow at the expense, not of each other, but of the center, as it were, made up of tolerant producing and trading members of civil society who live, whether consciously or not, by the precepts of classical liberalism. We have seen that dynamic before, in the 1930s, when collectivist movements vied with each other to destroy freedom as fast as they could. The Fascists claimed that only they could defend against Bolshevism. The Bolsheviks mobilized to smash Fascism. They fought each other, but they had far more in common than either wished to admit.

Unfortunately, the best argument that the defenders of civil society typically offer in response to those challenges is that the complex of personal liberty, the rule of law, and free markets creates more prosperity and a more commodious life than the alternatives. That’s true, but it’s not enough to deflect the damaging blows of the illiberal triumvirate of identity politics, authoritarian populism, and radical Islamism. The moral goodness of liberty needs to be upheld, not only in head-to-head encounters with adversaries, but as a means of stiffening the resistance of classical liberals, lest they continue retreating. Freedom is not an illusion, but a great and noble goal. A life of freedom is better in every respect than a life of submission to others. Violence and antagonism are not the foundation of culture, but their negation.

Now is the time to defend the liberty that makes possible a global civilization that enables friendship, family, cooperation, trade, mutual benefit, science, wisdom—in a word, life—and to challenge the modern anti-libertarian triumvirate and reveal the emptiness at its heart. ■

# State Constitutions: Freedom's Frontier

**ARIZONA SUPREME COURT JUSTICE CLINT BOLICK** delivered the annual B. Kenneth Simon Lecture at the Cato Institute's Constitution Day conference in September. The full text of his speech will be published in next year's *Cato Supreme Court Review*.

Today we celebrate, two days prematurely, the 229th anniversary of the signing of the most magnificent national freedom charter ever created. And we do so, appropriately enough, in an institution dedicated to the eternal perseverance of the Constitution and the principles upon which it is based.

And yet when we speak of *the* Constitution, no matter how much we properly revere it, we often overstate its intended importance in the American rule of law. For in our federal system, we have not one constitution but 51. It is part of the masterpiece of federalism that each of us in the 50 states can look for the protection of our rights not to one constitution but two. And in that regard, state constitutions were intended to be primary, not secondary. Indeed, the national Constitution drew greatly from state constitutions, particularly in identifying individual rights that would be protected against the national government. It was not until the Fourteenth Amendment that individuals could look to the national Constitution to protect them against deprivations of freedom visited upon them by state or local governments. Even then, many important individual rights were protected either by state constitutions or not at all.

And yet today, state constitutions are relegated to afterthought. Constitutional law classes rarely mention them. Litigators rarely invoke them. State courts often interpret them as if they are mere appendages of the United States Constitution.

And ironically, despite their professed

commitment to federalism, conservative and libertarian litigation groups have focused almost exclusively on the national Constitution to the exclusion of state constitutions, except when they have no other choice. That emphasis is profoundly unfortunate, for two reasons. First, it overlooks the vast untapped potential of state constitutions as bulwarks for freedom. Second, it concentrates resources in judicial terrain that likely will produce diminishing returns for freedom in the years to come. So even as we pause to celebrate the remarkable resiliency of our nation's constitutional charter, so should we look anew to the state constitutions that were intended to provide the first line of defense against overreaching government.

For freedom advocates, state constitutions provide significant advantages over their national counterpart. Indeed, if this talk had a subtitle, it would be "if only," as in, "if only the United States Constitution contained these features." Although the national Constitution has many nifty qualities from a freedom perspective, many of which have unfortunately been winnowed away by federal courts, they pale in comparison with state constitutions.

I call these superior features of state constitutions the fabulous five. Foremost among them is that all state constitutions provide protections of individual rights and constraints against government power that are completely unknown to the U.S. Constitution. I will discuss some of those provisions later on, but among those that are common to many state constitutions are explicit rights to privacy, debt limits, and prohibitions against gifts of public funds.

For freedom advocates, exploring state constitutions is like being a kid in a candy store.

Second, many freedom provisions that are similar to provisions in the U.S. Constitution are written more broadly. And even when such provisions are identical to those in the U.S. Constitution, state courts are free to interpret them differently than the federal courts do. But only in one direction: state courts may apply state constitutional provisions as more protective of freedom than their federal counterparts, but not less. I call this the freedom ratchet: the U.S. Constitution provides the floor beneath individual rights, while state constitutions can provide greater but not lesser protection.

Third, state courts have the final word on state constitutional interpretation. In other words, if you prevail on a state constitutional issue, the other side has no recourse to the U.S. Supreme Court, unless of course the state constitution itself violates the national Constitution. That is reason enough for freedom advocates to always consider filing constitutional cases in state courts and to always assert independent state constitutional grounds when doing so.

Fourth, state constitutions often provide greater access to the courts than does the national Constitution, at least as interpreted by the U.S. Supreme Court. For instance, many state constitutions do not contain "case or controversy" requirements. Perhaps most important, unlike federal courts, most state courts recognize taxpayer standing to challenge unconstitutional government spending.

Finally, state constitutions often are far more easily amended than the national Constitution. Arizonans have added numerous freedom provisions to our constitution in recent years, including a prohibition against racial preferences in government employment, contracting, and education; the rights to healthcare autonomy and of terminally ill patients to use experimental

drugs; and a provision authorizing the legislature or the people to forbid the use of state funds to implement federal laws or programs they believe exceed constitutional boundaries.

State constitutions, like the national Constitution, were intended to protect individual rights and restrain government power. Their potential to do so is vast and largely unrealized. Yet hardly unrealizable.

My own epiphany about state constitutions occurred early in my career. Like most lawyers, I never took a course in state constitutional law and hadn't a clue what treasures those mysterious documents contained. But I was about to be schooled on them by, of all entities, the teacher's union, in what was to be the most important case of my young career.

I went to law school in large part to advance educational freedom, especially through school vouchers. Trouble was, there were no voucher programs to defend.

That changed in 1990 with the enactment of the Milwaukee Parental Choice Program. Initially it was a tiny program, limited to 1 percent of the school district's students, who could use a fraction of their state education funds to attend nonsectarian private schools. We had been preparing for years for an attack on voucher programs under the First Amendment's Establishment Clause, but this didn't raise Establishment Clause issues, because religious schools were not included. So the challengers had to look not to the U.S. Constitution but to the Wisconsin Constitution for their line of attack.

There they found three causes of action: the educational uniformity clause, the so-called public purpose doctrine, and the private or local bill clause, which the challengers asserted the program violated because it was passed as part of the state budget rather than as a stand-alone bill. I had never heard of any of these provisions, and I had all of a couple of weeks to fathom and argue them.

For the next two years, we battled over those provisions, winning in the trial court, losing in the court of appeals. The private or local bill clause, in particular, became the bane of my

existence. Ultimately in 1992 we prevailed in the Wisconsin Supreme Court by the resounding vote of 4-3.

But over the course of that grueling struggle, an odd thing happened: I fell in love with my *bête noire*, the private or local bill clause. Once I allowed myself to get past my adversarial



“For freedom advocates, state constitutions provide significant advantages.”

disdain and see it in its natural splendor, I found the stuff of which libertarian dreams are made. A constitutional provision aimed at one of the most odious yet ubiquitous legislative practices: logrolling. Properly applied, the local or private bill clause, contained in numerous state constitutions, requires narrow-interest bills to stand on their own and be voted upon separately in the light of day. No more bridges to nowhere. No more larded up appropriations bills. No more earmarks. If only the U.S. Constitution contained such a provision.

Soon after, a far more pressing issue emerged that required recourse to state constitutional provisions, with results that illustrate perhaps

better than any other the importance and potential for state constitutional guarantees. That issue was eminent domain. Under the guise of economic development, local governments around the country were using eminent domain in reverse-Robin Hood fashion to take property from its owners and give it to others.

The Fifth Amendment, of course, forbids that practice, limiting eminent domain to “public use.” But a body of thought that sometimes dominates the U.S. Supreme Court holds that the Constitution is self-amending, and that the justices’ role is to discover and announce when that happens. Sure enough, the Court discovered that the limitation of the Fifth Amendment had transmuted from public use to the far more forgiving public benefit. So that when my colleagues challenged the taking of Susette Kelo’s little pink house in New London, Connecticut, under the Fifth Amendment, they faced a decidedly uphill task. And we all know the outcome: the neighborhood was bulldozed, the supposed public benefit never materialized, and we all suffered an erosion of our precious liberties.

But at the same time that the fight against eminent domain was being fought and lost in federal courts, my former colleagues and I were waging a similar battle in Arizona state courts on behalf of Randy Bailey, who owned Bailey’s Brake Service in Mesa. Randy inherited the business from his dad and wanted to pass it along to his son. But the city had other ideas: it wanted to take Randy’s shop and several homes to give to the owner of a hardware store who wanted to expand. Under the *Kelo* decision, Randy surely would have come away empty-handed in federal court. But in state court, Randy had a powerful weapon: Article 2, § 17 of the Arizona Constitution.

That provision states, “Private property shall not be taken for private use.” Not only that, but it goes on to say, “Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without

regard to any legislative assertion that the use is public.” This language is over 100 years old! These guys knew what was coming, and they were bound and determined that it would not happen. And sure enough, although the courts previously had not vigorously applied that standard, in Randy’s case they did.

That decision, in my view, exemplifies what federalism and state constitutionalism are all about. And it can be contagious; indeed, several other state courts have also applied their eminent domain provisions more broadly than the U.S. Supreme Court to protect private property rights.

Other state court decisions have expanded the boundaries for freedom. In Arizona, my former colleagues and I at the Goldwater Institute dusted off the Gift Clause of the state constitution, which forbids gifts of public funds to private individuals, corporations, or associations by subsidy or otherwise. At the time, Arizona cities were competing for sales tax revenues by subsidizing retail shopping centers. A Chicago developer landed a nearly \$100 million subsidy to construct a Phoenix mall that was supposed to be so grandiose that we dubbed it the “Taj Mah-Mall.” In its 2010 decision in *Turken v. Gordon*, the Arizona Supreme Court ruled that payments to private companies are unconstitutional unless supported by tangible, enforceable consideration, thus bringing the costly subsidy wars to an end. Dozens of other states have gift clauses in their constitutions as well, which are rarely deployed despite a plethora of government subsidies.

A recent decision by the Texas Supreme Court has special meaning because it involves a right to which I devoted much of my litigation career, but one that the federal courts have almost completely buried: freedom of enterprise. In *Patel v. Texas Department of Licensing and Regulation*, the Texas Supreme Court independently interpreted the state constitution to require greater justification for professional licensing, striking down regulations on eyebrow threading. In a concurring opinion, Justice Don Willett articulated perfectly the necessity of state constitutionalism: “Today’s case arises

under the Texas Constitution, over which we have final interpretive authority, and nothing in its 60,000-plus words requires judges to turn a blind eye to transparent rent-seeking [How often do you read “rent-seeking” in a judicial opinion? Not enough!] that bends government power to private gain, thus robbing people of their innate right—antecedent to government—to earn an honest living. Indeed, even if the Texas Due Course of Law Clause mirrored perfectly the federal Due Process Clause, that in no way binds Texas courts to cut-and-paste federal rational-basis jurisprudence that long

“As state court judges, we swear oaths to two constitutions.”

post-dates enactment of our own constitutional provision, one more inclined to freedom.” Those stirring words are both an exposition of the boundless realm of the possible as well as a call to action.

One area in particular holds special promise: freedom of speech. All state constitutions embody free-speech protections, many are worded differently from the First Amendment, and all can be interpreted more broadly. Despite the First Amendment’s categorical prohibition against abridging freedom of speech, federal courts apply different scrutiny to regulations of different types of speech, such as commercial speech. State courts need not necessarily follow that lead in interpreting their own state provisions. For instance, should commercial speech be relegated to less-protected status under state constitutions? Should the U.S. Supreme Court overturn *Citizens United*, might state constitutions shield corporate speech in the political context?

So far I have emphasized the role of freedom advocates in bringing state constitutional actions. I will conclude my remarks by briefly discussing the role of judges in that context, a

subject to which I hope to return in greater depth soon.

Judges are (or ought to be) bound by the rule of law. Even in my short time on the Arizona Supreme Court, I can attest that taking the rule of law seriously often means departing from personal policy preferences. We are not policymakers. That role is played by the political branches, within their constitutional boundaries.

But as state court judges, we swear oaths to two constitutions, and we ought to take each oath seriously. When a state constitutional issue is presented to us, that oath, in my view, requires us to interpret what the words of our state constitution mean—not what the federal courts have interpreted national constitutional provisions to mean. Unless our state constitutional provisions derive from the national Constitution, what similar provisions of the national Constitution mean is largely irrelevant to our task, and federal court interpretations even more so. In particular, even when federal courts have determined that provisions of the U.S. Constitution have “evolved”—that is to say, they have amended themselves to permit greater government power or protect fewer individual rights—there is no reason to assume that state constitutional provisions have experienced a similar metamorphosis.

Each state developed its organic law to reflect its own values and aspirations. Its meaning often is evident from its text and its history, but rarely from reference to federal jurisprudence. That is what is meant by independent interpretation of state law. As state judges, we are oath-bound to determine what our state constitutions mean. And quite often, they mean to protect freedom.

As a Justice, I draw inspiration, and take my marching orders, from Art. II, § 1 of our constitution: “A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.” If we take those words seriously, we will despite all odds leave to our children and grandchildren a nation more free than we inherited. ■

## Welfare Reform at 20

**T**wenty years ago, then-president Bill Clinton signed welfare reform into law—a moment now considered one of the most important legislative achievements of that era. Did this controversial reform achieve its goal of moving people from welfare to work? At a Cato conference, “Welfare Reform Turns 20: Looking Back, Going Forward,” experts reviewed the law’s legacy and effects, and discussed options for the future. The reality of welfare reform, according to Cato’s Michael Tanner, is that it failed to achieve radical change. “There are actually more than 100 federal anti-poverty programs,” said Tanner. The federal government spends more on welfare now than it did before reform—\$695 billion on these programs, along with another \$280 billion from state and local funding. And while poverty did decline initially after welfare reform, it has gradually increased since and remains roughly where it was before. Speakers included Ron Haskins of the Brookings Institution, Heather Hahn of the Urban Institute, Scott Winship of the Manhattan Institute, and LaDonna Pavetti of the Center on Budget and Policy Priorities.



RON HASKINS of the Brookings Institution (top), HEATHER HAHN of the Urban Institute (at lectern), Cato’s VANESSA CALDER, and ROBERT VERBRUGGEN of *The American Conservative* debated whether welfare reform was a success, a failure, or incomplete.

## Immigration Economics

**I**mmigration is one of the most controversial public policy topics today, with many blaming America’s immigrants for the country’s economic woes. But what do the numbers actually tell us about immigrants’ impact on the economy? At a Cato conference, “Immigration Economics,” experts made the case that immigrants benefit, rather than harm, America’s economy and institutions. Giovanni Peri of the University of California, Davis, argued that there is no clear evidence for immigration as the cause of wage inequality among those with a high school degree or less. “For every immigrant that comes in, not only does a native *not* lose their job, there’s more than one job created,” said Ethan Lewis of Dartmouth College. Other panelists discussed the failures of U.S. border policy, which has actually *encouraged* illegal immigration by preventing workers from circling between America and their home states. A final panel discussed whether immigrants might negatively affect U.S. institutions. Michael Clemens of the Center for Global Development noted that immigration critics have been making this claim for centuries—“There wasn’t any evidence then, nor is there any evidence now,” that immigrants endanger American institutions, he said.



Economist GIOVANNI PERI of the University of California (left) evaluated immigration’s impact on American wages, while Princeton’s DOUGLAS S. MASSEY (top right) critiqued U.S. border policy, and the University of Pennsylvania’s SUSAN M. WACHTER argued that immigration does not necessarily lower housing values.

## Celebrating Our Constitutions—All 51

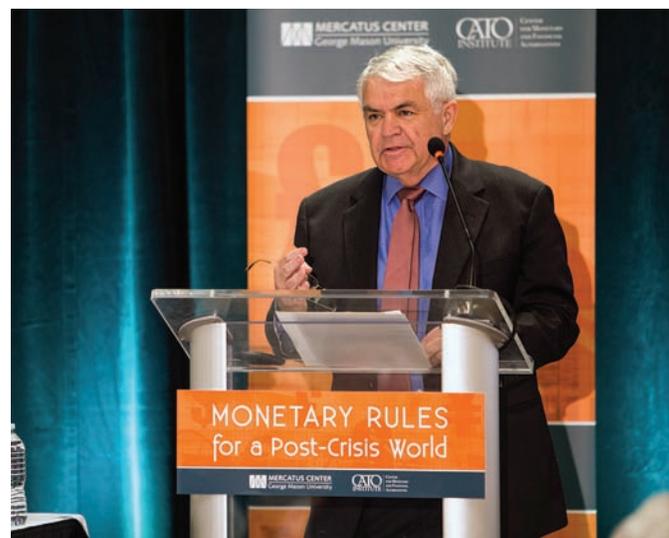
The Supreme Court saw an unusual, often indecisive term this year due to the unexpected death of its senior member, Justice Antonin Scalia. As a result, Cato's 15th Annual Constitution Day Symposium, which, as always, coincided with the publication of the new *Cato Supreme Court Review*, reflected not only on the October 2015 term but on what may lie ahead for the Court. In a panel on civil liberties, for example, Amy Wax of the University of Pennsylvania Law School criticized the Court's inconclusive decision in *Fisher v. University of Texas*, saying that it was based on "feel-good generalities" that grant virtually limitless discretion to university officials to inject race into their admissions decisions. Mark Rienzi, senior counsel at The Becket Fund, which represented the Little Sisters of the Poor in their challenge to Obamacare's contraceptive mandate, warned against seeing the Court's decision to send the case back to the lower courts as merely a "punt." Instead, he argued, the Court vacated precedents on religious liberty from eight different circuits while prohibiting the government from making religious organizations comply with the mandate or pay large fines. The conference closed with the annual B. Kenneth Simon Lecture, delivered by Arizona Supreme Court Justice Clint Bolick, author of four Cato Institute books. Given the uncertainty ahead, Bolick urged libertarian lawyers not to overlook state constitutions in their efforts to better protect liberty. (See page 9.)



(Clockwise from top) LYLE DENNISTON of the National Constitution Center and law professor GLENN HARLAN REYNOLDS, known for his blog Instapundit, discussed the Court's uncertain future. ELIZABETH PRICE FOLEY of Florida International University College of Law warned that without principles and standards the justices risk becoming "politicians in robes."

## Are Monetary Rules the Answer?

Central banks' role in the Great Recession, and the economy's lackluster recovery since, are reviving interest in monetary rules. That revival raises many questions—would the Federal Reserve and other central banks have performed better if they'd adhered to monetary policy rules? Could rules have even prevented the crisis altogether? If so, which rules? At a conference co-hosted by the Cato Institute's Center for Monetary and Financial Alternatives and the Mercatus Center, leading monetary scholars gathered to discuss these questions. Stanford economist John B. Taylor, famous for his "Taylor rule," delivered the keynote address, in which he reviewed the history of monetary policy over the last several decades, and reiterated his support for a "remarkably simple" legislative solution: requiring the Fed to publicize a rule, of their own choosing, used to set policy.



At the Cato-Mercatus conference, "Monetary Rules for a Post-Crisis World," Stanford economist JOHN B. TAYLOR advocated requiring the Fed to publicize a rule to set monetary policy.

# Ranking both personal and economic freedom Freedom in the 50 States

How free is your state? And how could it become more free? The 2016 edition of *Freedom in the 50 States* answers these questions and more—the index provides a thorough ranking of the American states based on how their policies provide freedom in the fiscal, regulatory, and personal realms. It is the most up-to-date and comprehensive freedom index available, as the first of such state rankings to include both personal and economic freedoms in its calculus.

Each state is carefully reviewed on a multitude of policies that affect individual liberty—from taxes and regulations to incarceration rates, drug policies, and gun rights. Along with the rankings and detailed information for each state are policy recommendations tailored to each state to improve its fiscal, regulatory, and personal freedoms. The index also tracks how the states have changed their relative positions over the years.

New Hampshire was the freest state in the Union this year, with high scores on both personal and economic freedom. New York continued to bring up the rear—it's local tax burden is twice that of the average



Newspapers around the country reported their states' standings in Cato's comprehensive new report *Freedom in the 50 States*.

state, and it is the worst state on regulatory policy, thanks in part to rent-control laws.

*Freedom in the 50 States* is available as a paperback, but you can also visit [Freedominthe50States.org](http://Freedominthe50States.org) to view interactive data from the index. You can even customize the index to your personal preferences—since not everyone values all types of freedoms equally, you can rank specific issues and generate an index tailored to your values.

*Freedom in the 50 States* is the definitive resource on economic and personal freedom in the United States—state legislators can use it to determine how to improve their

policies; scholars can use it to view the impact of local policies and craft better policy alternatives; and, of course, individual citizens can use it to understand their state's policies and make informed personal and political decisions. Its wide-reaching appeal is evident from the array of media that covered its publication, including some of the nation's most influential newspapers, such as the *New York Post* and *New Hampshire Union Leader*. ■

**PURCHASE FREEDOM IN THE 50 STATES AT [CATO.ORG/STORE](http://CATO.ORG/STORE), OR [FREEDOMINTHE50STATES.ORG](http://FREEDOMINTHE50STATES.ORG).**

## New Cato Journal



In the fall edition of *Cato Journal*, Andreas Hoffmann and Gunther Schnabl of Leipzig University examine the consequences of unconventional monetary policy—particularly ultra-low interest rates—arguing that, in large advanced countries, they have discouraged investment and led to adverse distributional effects. Other articles look at

the evolution and impact of the Group of 20, the relationship between special interest groups and government growth, and the “peculiar business” of politics.

**CATO JOURNAL IS AVAILABLE TO READ OR PURCHASE AT [CATO.ORG](http://CATO.ORG).**

## Fall 2016 Regulation

In 1964 Ronald Reagan predicted, like many others, that France's large welfare state had “come to the end of the road.” So why hasn't the French economy ever collapsed? In the Fall 2016 *Regulation*, economist Pierre Lemieux tackles this question. In other articles Jonathan Adler argues that, contra mandatory GMO-labeling laws, there is no consumer “right to know,” Christina Sandefur of the Goldwater Institute exposes the government's recent crackdown on home-sharing, and Keith B. Belton of Pareto Policy Solutions critiques the EPA's new chemical safety standards.



**READ REGULATION AT [CATO.ORG](http://CATO.ORG), OR SUBSCRIBE TO RECEIVE IT QUARTERLY IN YOUR MAILBOX.**



**A**t a Cato Book Forum, ALEX CUADROS, formerly a Bloomberg News reporter covering Brazil's corrupt elites, discussed his new book *Brazillionaires: Wealth, Power, Decadence, and Hope in an American Country*.



**A**t a Cato meeting of young professionals in public policy, Cato policy analyst ERIC GOMEZ and JESSICA DRUN, a Bridge Award Fellow at The National Bureau of Asian Research, debated responses to China's growing power.

# Cato Calendar

## CATO INSTITUTE POLICY PERSPECTIVES 2016

CHICAGO • THE DRAKE  
NOVEMBER 30, 2016

Speakers include Michael Huemer and David Boaz.

## THE STATE OF AMERICAN CRIMINAL JUSTICE

WASHINGTON • CATO INSTITUTE  
DECEMBER 7, 2016

Speakers include Kevin Ring, Marc Maurer, Tracey Meares, Max Geron, and Shira Scheindlin.

## THE 2016 CATO SURVEILLANCE CONFERENCE

WASHINGTON • CATO INSTITUTE  
DECEMBER 14, 2016

## CATO INSTITUTE POLICY PERSPECTIVES 2017

NAPLES, FL • RITZ-CARLTON  
FEBRUARY 1, 2017

Speakers include Jonathan Turley and Jonah Goldberg.

## 29TH ANNUAL BENEFACTOR SUMMIT

NAPLES, FL  
RITZ-CARLTON GOLF RESORT  
MARCH 2–5, 2017

Speakers include Angus Deaton and Kim Kataguirri.

## 40TH ANNIVERSARY CELEBRATION OF THE CATO INSTITUTE

WASHINGTON  
CATO INSTITUTE  
MAY 5–7, 2017

## CONSTITUTION DAY CONFERENCE

WASHINGTON  
CATO INSTITUTE  
SEPTEMBER 18, 2017

## CATO CLUB 200 RETREAT

LAGUNA BEACH, CA  
MONTAGE LAGUNA BEACH  
OCTOBER 5–8, 2017

**AUGUST 1:** *The World According to Star Wars*

**AUGUST 4:** Debate: *Libertarianism vs. Conservatism*

**AUGUST 5:** Policy Perspectives of the Presidential Candidates: Executive Power and the Role of the Presidency

**AUGUST 15:** *Freedom in the 50 States*

**AUGUST 22:** Welfare Reform Turns 20: Looking Back, Going Forward

**AUGUST 23:** *American Umpire*

**AUGUST 24:** #CatoDigital—The Games That Shall Not Be Named: When 21st-Century Media Meets 20th-Century Copyright Ideals

**SEPTEMBER 2:** Immigration Economics

**SEPTEMBER 7:** Monetary Rules for a Post-Crisis World

**SEPTEMBER 9:** Fall Fables and Fallacies: The Truth about Income Inequality

**SEPTEMBER 13:** *Brazillionaires: Wealth, Power, Decadence, and Hope in an American Country*

**SEPTEMBER 14:** Socialism and Human Nature

**SEPTEMBER 14:** Restarting Health Reform with Health Savings Accounts

**SEPTEMBER 15:** 15th Annual Constitution Day

**SEPTEMBER 21:** Welcome to Washington: Make the Most of Your Internship

**SEPTEMBER 23:** Cato Institute Policy Perspectives 2016 (San Francisco, CA)

**SEPTEMBER 26:** Economic and Financial Issues Facing the Next President

**SEPTEMBER 27:** The Domestic Drone Revolution: Risks and Rewards in Perspective

**SEPTEMBER 28:** *Unraveled: Obamacare, Religious Liberty, and Executive Power*

**SEPTEMBER 29:** *You Have the Right to Remain Innocent*

AUDIO AND VIDEO FOR ALL CATO EVENTS DATING BACK TO 1999, AND MANY EVENTS BEFORE THAT, CAN BE FOUND ON THE CATO INSTITUTE WEBSITE AT [WWW.CATO.ORG/EVENTS](http://WWW.CATO.ORG/EVENTS). YOU CAN ALSO FIND WRITE-UPS OF CATO EVENTS IN PETER GOETTLER'S BIMONTHLY MEMO FOR CATO SPONSORS.

# Holiday Book Recommendations

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

**KHRISTINE BROOKES**  
VICE PRESIDENT OF COMMUNICATIONS

*The Wright Brothers*  
by David McCullough

**T**hat Orville and Wilbur Wright were able to build, test, and pilot the first airplanes was an amazing feat in the early 1900s. That they did it with their own money—earned mostly in their small bicycle repair shop—is astonishing. McCullough details, through his usual careful research of personal letters and news reports, how the brothers designed their

first glider, researched the best place to test it, then methodically improved the design after each test flight—all while being largely ignored by both the media and the U.S. government (the latter of which did fund the aerial failures of many of the Wrights' competitors.) When the world did finally learn of the Wrights' accomplishments, it was completely on the brothers' terms. McCullough's telling is a tribute to the spirit of self-reliance and how human beings are far more innovative on their own, without government help.

**TREVOR BURRUS**  
RESEARCH FELLOW AND MANAGING EDITOR  
OF THE *CATO SUPREME COURT REVIEW*

*Just Mercy: A Story of Justice and Redemption* by Bryan Stevenson

**S**tevenson is a Harvard law grad who has dedicated his life to defending the unjustly accused. This quasi-memoir describes some of his most memorable and tragic cases. Stevenson is the founder of the Equal Justice Initiative, headquartered in Montgomery, Alabama. Most of his work is centered in the South, so race unfortunately plays a significant role in many of his cases. The book also recounts important cases he has won at the Supreme Court, including *Miller v. Alabama*, which established that the Constitution's prohibition against cruel and unusual punishment forbids the mandatory sentencing of life in prison without the possibility of parole for juvenile homicide offenders. On top of being a riveting read, *Just Mercy* is another reminder that our justice system is severely broken. Actor Michael B. Jordan is now attached to the forthcoming movie, which will hopefully bring more attention to Stevenson's incredible work.

*Confessions of a Tax Collector: One Man's Tour of Duty inside the IRS*  
by Richard Yancey

**N**ow a successful writer of popular young adult fiction, Yancey was once a tax collector at the IRS. He had the worst job of all: to actually seize the assets of those deficient in their taxes. Yancey humorously, if not somewhat disturbingly, describes the soullessness of the life of a bureaucrat with the job of "feeding the beast," in the words of Culpepper, Yancey's colorful if slightly deranged training officer. Culpepper tells Yancey that his government-granted power makes him a



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“f\*\*\*ing demigod,” and Yancey starts to believe it. A very entertaining read for anyone, but particularly for those interested in the sociology and psychology of the state.

The Red Rising Trilogy by Pierce Brown

**I** predict that the Red Rising Trilogy, like *The Hunger Games* or *The Martian* before it, is on the verge of exploding in popularity. That’s fitting, since the trilogy is a little bit of both, with a hefty dose of *Game of Thrones* added in. It begins as a familiar, class-based dystopian science fiction, with the main character starting off as a lowly worker at the bottom of the Martian society’s hierarchy. A revolution starts, but that’s just the beginning. The subsequent twists and turns will keep any reader entranced, and the author’s *Game of Thrones*-esque willingness to kill off beloved characters will keep the reader guessing.

JASON KUZNICKI

RESEARCH FELLOW AND EDITOR,  
*CATO UNBOUND*

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*Prison Break: Why Conservatives Turned against Mass Incarceration*

by David Dagan and Steven M. Teles

**I**t’s far from clear to me that conservatives have decisively abandoned mass incarceration, but if they ever do, this book gives a convincing explanation for why they will: Law and order may be well and good, but moderation too is a conservative virtue. Public policy can change, and it does, and sometimes it changes for the better. Dagan and Teles offer a fascinating anatomy of one such change and perhaps a blueprint for others as well.

JOHN SAMPLES

VICE PRESIDENT AND PUBLISHER

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*Good Calories, Bad Calories*

by Gary Taubes

**I** generally do not go around forcing books I have read onto friends and

acquaintances, but people who wander across my path these days get an earful about this work. Gary Taubes tells a story of scientists utterly failing to practice a science of nutrition, a failure fostered in part by government funding and aggravated by federal dietary advice foisted on a gullible public. Read his detailed and disturbing story, consider how much harm was done by bad science and government dietary advice, and wonder what else taken for fact will turn out to be prejudice and blind faith.

TIMOTHY SANDEFUR

ADJUNCT SCHOLAR

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*Arguing about Slavery*

by William Lee Miller

**O**ne of the most moving books I’ve ever read, *Arguing about Slavery* covers John Quincy Adams’s often lonely battle for freedom in his days as a member of Congress in the 1830s and ’40s. For eight years, Adams opposed the “Gag Rule” that forbade Congress from even receiving petitions opposing slavery—in direct violation of the First Amendment. The crisis reached its climax when he introduced a petition calling for secession—which so scandalized southern congressmen that they tried unsuccessfully to expel him. His bold defense of freedom inspired younger politicians like Charles Sumner, William Seward, and others who led the abolition movement to triumph. Miller tells the story with all the drama and passion it deserves.

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*The Time It Never Rained*

by Elmer Kelton

**K**elton isn’t much known outside the Western genre, but his novels transcend that niche and qualify as genuine literature—literature that exalts the virtues of independence and hard work in a way endearing to libertarians. Set in a Texas border town during the awful drought of 1949–57, *The Time It Never Rained* tells the story of

rancher Charlie Flagg’s one-man battle to resist federal agriculture bureaucrats, overzealous Border Patrol agents, and the pressure to compromise his principles. And Kelton tells the story in the taught, evocative style that makes the great Westerns great.

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*The New Trail of Tears: How Washington Is Destroying American Indians*

by Naomi Schaefer Riley

**T**his isn’t a cheerful book—the crisis on America’s Indian reservations is horrific—but it’s an important one, and one of the few books to explain how the poverty, addiction, and despair so rampant in Indian country result from federal restrictions on private property rights and economic liberty. As Riley notes, land on reservations is owned by the government “in trust” for tribes, meaning that individuals can’t own it—or use it to generate capital, start businesses, or create wealth. American Indians are all citizens of the United States, with the same rights to opportunity and equal treatment all other Americans enjoy—yet for over a century, federal bureaucracy has closed those doors and helped reduce an entire ethnic group to poverty. Riley’s profile of the many brave Native Americans working to change things leaves the reader with the message that there is hope—if only we will pay attention.

SALLIE JAMES

DIRECTOR OF DEVELOPMENT

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The Campus Trilogy by David Lodge

**I**f you have never read any novels by academic-turned-novelist David Lodge, you need to do so. His best-known work, and the one I would recommend for those new to the author, is his so-called “Campus Trilogy” of novels parodying academe, and they are brilliantly funny. The final of the series, *Nice Work*, was the first book of Lodge’s that I ever read and I am eternally grateful to the friend who recommended it to me, because I’ve been a devotee of Lodge ever since. ■

# Would the TPP Advance Free Trade? A Scorecard

The controversial Trans-Pacific Partnership agreement between the United States and 11 other countries is the largest U.S. trade agreement in history. Ultimately, the TPP is not truly “free” trade—it is managed trade, including both liberalizing measures and protectionist rules. In “Should Free Traders Support the Trans-Pacific Partnership? An Assessment of America’s Largest Preferential Trade Agreement” (Working Paper no. 39), Cato scholars Dan Ikenson, Simon Lester, Scott Lincicome, Daniel Pearson, and K. William Watson present a chapter-by-chapter analysis of the TPP from a free trader’s perspective, scoring all the deal’s provisions on a scale of 0 (protectionist) to 10 (free trade.) Ultimately they find that the TPP is net liberalizing.

## INEQUALITY MYTHS

Economic inequality is a hot topic this election cycle—but, Cato’s Michael Tanner writes in “Five Myths about Economic Inequality in America” (Policy Analysis no. 797), “Many of the most common beliefs about the issue are based on misperceptions and falsehoods.” While economist Thomas Piketty famously claimed that income inequality is at an all-time high in America, for example, Tanner shows that Piketty and others exclude key factors in their analyses, and thus “considerably” overstate inequality. It’s also demonstrably false that “the rich stay rich; the poor stay poor”—nor, Tanner shows, does more inequality mean more poverty.



## TERRORISM AND IMMIGRATION

Many Americans assume that immigrants and refugees pose a grave threat of terrorism. How accurate are these fears? In “Terrorism and Immigration: A Risk Analysis” (Policy Analysis no. 798), Cato immigration analyst Alex Nowrasteh presents the first terrorism risk analysis of the visa categories that foreign-born terrorists used to enter the United States. “Including those murdered in the terrorist attacks of September 11, 2001 (9/11), the chance of an American perishing in a terrorist attack on U.S. soil that was committed by a foreigner over the 41-year period studied here is 1 in 3.6 million per year,” he finds. He also demonstrates that the type of visa impacts the risk—the chance of an American being killed by a refugee is extremely low, for example, compared to the chance of being murdered by someone on a tourist visa.

**CATO POLICY REPORT** is a bimonthly review published by the Cato Institute and sent to all contributors. It is indexed in PAIS Bulletin. Single issues are \$2.00 a copy. ISSN: 0743-605X. ©2015 by the Cato Institute. Correspondence should be addressed to *Cato Policy Report*, 1000 Massachusetts Ave., N.W., Washington, D.C. 20001. [www.cato.org](http://www.cato.org) • 202-842-0200

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**Simon Lester**..... Trade Policy Analyst  
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**Jon Meyers**..... Art Director  
**Patrick J. Michaels**..... Director, Center for the Study of Science  
**Jeffrey Miron**..... Director of Economic Studies  
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**Johan Norberg**..... Senior Fellow  
**Alex Nowrasteh**..... Immigration Policy Analyst  
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**George Selgin**..... Director, Center for Monetary Alternatives  
**Ilya Shapiro**..... Senior Fellow  
**Brad Stapleton**..... Visiting Research Fellow  
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**Ian Vásquez**..... Director, Ctr. for Global Liberty and Prosperity  
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**Radley Balko**..... Media Fellow  
**Randy E. Barnett**..... Senior Fellow  
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**Christopher Layne**..... Research Fellow, Foreign Policy Studies  
**Gerald P. O’Driscoll Jr.**..... Senior Fellow  
**P. J. O’Rourke**..... Mencken Research Fellow  
**William Poole**..... Senior Fellow  
**Jim Powell**..... Senior Fellow  
**Vernon L. Smith**..... Senior Fellow  
**Teller**..... Mencken Research Fellow  
**Cathy Young**..... Research Associate

**James M. Buchanan (1919–2013)**..... Distinguished Senior Fellow  
**F. A. Hayek (1889–1992)**..... Distinguished Senior Fellow  
**William A. Niskanen (1933–2011)**..... Chairman Emeritus

## LESSONS FROM LEGALIZATION

Over the last four years, four U.S. states have legalized marijuana for recreational use, and more states passed such measures in the 2016 election. Critics argue that permitting recreational use increases drug use and crime, while harming public health and lowering teen educational achievement. In



ANGELA DILLS

**“Dose of Reality: The Effect of State Marijuana Legalizations”** (Policy Analysis no. 799), Cato’s Jeffrey Miron, along with Angela Dills of West-

ern Carolina University and Sietse Goffard of Harvard University, demonstrate that, in fact, state marijuana legalizations have had minimal effect on marijuana use and related outcomes.

## CHINA’S EVOLVING LIBERALIZATION

In **“The Genesis and Evolution of China’s Economic Liberalization”** (Working Paper no. 38), Cato vice president for monetary studies James A. Dorn tells the story of how China’s pro-market reforms, beginning in 1978 under Deng Xiaoping, persevered and succeeded despite great obstacles. “What is striking is that many of the reforms began at the local level and were motivated by the desire for greater economic freedom,” he writes. If the government were to completely get out of the way of these spontaneous reforms, he predicts, China could become a flourishing free market economy.

## THE IRONIC CASE FOR FREE SPEECH

On American college campuses, free speech is under attack—dissenting voices are stifled or chased off campus, while students feel entitled to “safe spaces” to protect them from ideas they find distasteful. Nevertheless, in **“Freedom of Speech under Assault on Campus”** (Policy Analysis no. 796), Daniel Jacobson of the University of Michigan contends that these trends ironically lend support to two classical liberal argu-

ments in favor of free speech—both the utilitarian argument and the argument from natural rights. Jacobson argues, for example, that the negative consequences of stifling speech on campus, such as encouraging cognitive biases, merely bolster the utilitarian argument for free speech.

## A RISKY COMMITMENT?

As China grows in power and Taiwan neglects its own defense investments, should the U.S. continue to bolster its risky security commitment to Taiwan? In **“A Costly Commitment: Options for the Future of the U.S.-Taiwan Defense Relationship”** (Policy Analysis no. 800), Cato policy analyst Eric Gomez contends that the United States should step down from its defense commitment, ideally through an incremental process that gives Taiwan time to shore up its defense and preserves peace with China. “In the long term, the U.S. security commitment to Taiwan is neither beneficial nor advantageous for the United States,” he writes.

## IMMIGRANTS AND HOUSING VALUES

In **“U.S. Immigration Levels, Urban Housing Values, and Their Implications for Capital Share”** (Working Paper no. 37) Cato’s Alex Nowrasteh and Ryan H. Murphy of Southern Methodist University examine the understudied question of to what extent increases in urban housing values are attributable to immigration. They find that in most urban counties in the United States, increased immigration has had only a small affect on the level of real estate prices.

## IS GEOGRAPHIC EXPANSION A RISK?

In **“Does the Geographic Expansion of Banks Reduce Risk?”** (Research Briefs in Economic Policy no. 59), Martin Goetz of Goethe University, Luc Laeven of the European Central Bank, and Ross Levine of the University of California-Berkeley find that, contrary to many theories, geographic expansion *reduces* risk when banks expand

into economically dissimilar local economies. This is important for a number of reasons, including that regulatory agencies have both adopted and are considering regulations such as geographic concentration limits to control bank risk.

## HOUSING AND INCOME CONVERGENCE

At one point in time both janitors and lawyers in New York would have made more money than janitors and lawyers in the Deep South, even after adjusting for housing costs. Today, that has changed—the skyrocketing price of housing in New York means that while lawyers still earn more in New York than in the Deep South, janitors earn less. In **“Why Has Regional Income Convergence in the U.S. Declined?”** (Research Briefs in Economic Policy no. 57) Peter Ganong of the University of Chicago and Daniel Shoag of Harvard University connect rising housing prices thanks to land-use regulations to the convergence of per capita incomes across U.S. states, which has declined just as the population flow from poor to rich states has halted.

## THE COST OF TAX FEARS

Since the Great Recession the U.S. economy has failed to recover at the expected rate. One possible explanation for this is that, in light of the government’s hefty debts and fast-paced spending, households and businesses began operating under the assumption that a higher taxes regime would soon be imposed. In **“Fiscal Sentiment and the Weak Recovery from the Great Recession: A Quantitative Exploration”** (Research Briefs in Economic Policy no. 58), Finn E. Kydland of the University of California, Santa Barbara, and Carlos E. J. M. Zarazaga of the Federal Reserve Bank of Dallas examine this hypothesis, finding that in fact it can account for a good deal of the sluggish recovery, although only if the expectation is that the higher taxes will fall on capital income. ■

## CATO POLICY REPORT

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# CATO

# “To Be Governed...”

### THIS MIGHT MAKE A GOOD MOVIE

Of all the pronouncements that Gov. Andrew M. Cuomo has made about creating jobs in upstate New York, perhaps the most fanciful came in the state's decision to spend \$15 million to build a high-tech film studio in Onondaga County.

The studio—called the Central New York Hub for Emerging Nano Industries—would create at least 350 high-tech jobs, and would, according to Mr. Cuomo, effectively bring Hollywood to central New York. . . .

Most of the governor's optimistic predictions have not yet come to pass. While construction of the film hub was completed last summer, the building sits essentially vacant, and the hub has exactly two employees who work full time.

—*NEW YORK TIMES*, AUGUST 22, 2016

### USING THE INCOME TAX AND SOCIAL SECURITY TO MONITOR OUR LIVES

A new research paper published by the Treasury Department on Monday has found an interesting way around these problems: tax records. By linking the tax returns of same-sex couples who filed jointly in 2014 with their Social Security records, researchers are able to give us the most accurate picture of same-sex marriages to date. . . . The tax data shows same-sex married couples clustering along the coasts, and in urban pockets across the United States. . . . Same-sex female couples are four times more likely to have children than same-sex male couples.

—*NEW YORK TIMES*, SEPTEMBER 12, 2016

### THIS IS SOCIALIZED MEDICINE

Obese people will be routinely refused operations across the NHS, health service bosses have warned, after one authority said it would limit procedures on an un-

precedented scale.

Hospital leaders in North Yorkshire said that patients with a body mass index (BMI) of 30 or above—as well as smokers—will be barred from most surgery for up to a year amid increasingly desperate measures to plug a funding black hole. The restrictions will apply to standard hip and knee operations.

The decision, described by the Royal College of Surgeons as the “most severe the modern NHS has ever seen”, led to warnings that other trusts will soon be forced to follow suit and rationing will become the norm if the current funding crisis continues.

—*THE TELEGRAPH*, SEPTEMBER 2, 2016

### POLITICAL PRESSURE FOR POT PROFITS

The medical-marijuana regulator was worried. None of the 15 companies slated to be approved to grow cannabis were from key swaths of southern and southeastern Maryland even though state law calls for “geographic diversity” in authorizing growers. . . .

—*WASHINGTON POST*, SEPTEMBER 12, 2016

Maryland's black state lawmakers are weighing options to ensure that the state's nascent medical marijuana industry includes its fair share of minority-owned businesses.

—*WASHINGTON TIMES*, SEPTEMBER 14, 2016

### NOT IN MY BACK YARD. NOT IN YOURS, EITHER.

Second homes, often called “granny flats,” have become a new front in the conflict that pits the need for more housing in the country's most expensive cities against the wishes of neighbors who want to preserve their communities. The same battles flare over large developments that might loom over single-family neighborhoods. But even this modest idea for new housing—let homeown-

ers build it in their own back yards—has run into not-in-my-back-yard resistance. . . .

Homes like the Coffees' [in their daughter's back yard], proponents argue, could help ease housing shortages that have made \$2,000-a-month one-bedrooms look like a bargain in cities such as Los Angeles. They could yield new affordable housing at no cost to the public. They could add rentals and economic diversity to more neighborhoods. And they could expand housing options for a population in which baby boomers are aging and millennials are stuck at home. . . .

[But young people are] “slamming into their parents and grandparents' regulatory regimes of strict limits on construction of new housing.”

—*WASHINGTON POST*, AUGUST 7, 2016

### THE PRESIDENT IS NOT THE COMMANDER IN CHIEF OF THE NATION

[Hillary Clinton] said, “Donald Trump simply doesn't have the temperament to be president and commander in chief of the United States.”

—*WALL STREET JOURNAL*, AUGUST 11, 2016

### A CONTINUING LESSON IN THE FAILURE OF SOCIALISM

In a country with one of the world's highest homicide rates, and where carjackings, muggings and kidnappings often go unpunished, the Venezuelan government has arrested or detained at least 9,400 people this year for allegedly breaking laws against hoarding, reselling goods or attempting to stand in line outside normal store hours, according to the Venezuelan human rights organization Movimiento Vinotinto. Many were taken into custody by the Venezuelan troops assigned to police the checkout aisles and the long lines snaking into supermarkets.

—*WASHINGTON POST*, SEPTEMBER 15, 2016