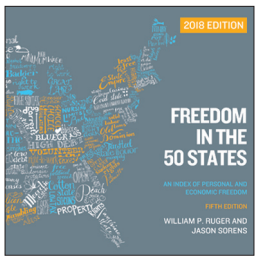

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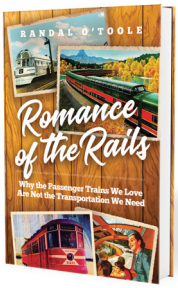

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Cato Policy Report

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The Tangled Mess of Occupational Licensing

BY ANGELA C. ERICKSON

Kine Gueye is a hair braider in Kentucky. She learned to braid hair as she was growing up in Senegal, where "African hair braiding" is a way of life. The art of hair braiding extends back thousands of years in West Africa, and it carries strong social and cultural significance for Gueye and her customers.

When Gueye arrived in the United States, she turned her skills into a job. She sometimes worked 12 hours a day braiding hair in her Louisville home, earning between $80 and $250 per customer. As her practice expanded, so did her family. She got married, had children, and moved her practice into a storefront.

Then the government came knocking.

"She told me she was from the state Board of Cosmetology . . . and that I was not allowed to do hair without a license," Gueye told the Urban News Service. "I told her I had been braiding for years, and I did not know you had to have a license."

Braids, like cornrows, micro braids, and Senegalese twists, require no chemicals or heat and provide relatively easy maintenance for kinky hair. In contrast, the typical styles offered in American salons often use caustic chemicals and heat to straighten hair. Properly handling those chemicals is one of the skills that cosmetology schools teach.

It's worth noting that until very recently Kentucky cosmetology schools didn't teach African hair braiding, and that Gueye doesn't use chemicals in her practice.

Despite her decades of experience and her many happy customers, the decision that the

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Federal Communications Commission Chairman AJIT PAI speaks to audience members at Cato in June. Pai participated in a one-on-one interview at a #CatoDigital event, Net Neutrality: Six Months Later, to discuss evidence that the repeal of the Obama-era regulation has not been the disaster predicted by critics, and in fact investment in broadband infrastructure has already increased.

ANGELA C. ERICKSON is the author of *Barriers to Braiding: How Job-Killing Licensing Laws Tangle Natural Hair Care in Needless Red Tape* and *Putting Licensing to the Test: How Licenses for Tour Guides Fail Consumers—and Guides*, and coauthor of the first edition of *License to Work: A National Study of Burdens from Occupational Licensing.*

BY ROBERT A. LEVY

CHAIRMAN'S MESSAGE

The Commerce Clause, Agency Lawmaking, and the Dusky Gopher Frog

> "The voters have no recourse against unelected bureaucrats."

Few Supreme Court observers expect the current term to be quite as weighty as the term that ended this past June. Still, we're off to a noteworthy start with a case—*Weyerhaeuser Company v. U.S. Fish and Wildlife Service*—that could have profound implications for the scope of the Commerce Clause and the extent to which courts defer to agency interpretations of federal law.

Weyerhaeuser has a long-term timber lease in Louisiana covering 1,500 acres on which the dusky gopher frog, an endangered species, does not live. In fact, all 100 dusky gopher frogs live in one pond in Mississippi. But the U.S. Fish and Wildlife Service interprets the Endangered Species Act to permit restrictions on land that—sometime down the road—might become the frog's breeding ground. Never mind that the Louisiana acreage is not currently inhabited by the frog, hasn't been inhabited by the species for more than 50 years, doesn't play a supporting role hosting the species, and could not become a suitable habitat without substantial alterations and ongoing maintenance. Is it plausible that such property could be considered "critical habitat" that is "essential to the [frog's] conservation," as required by the Act?

"Yes," says the Service. With appropriate site modifications, if the frogs are translocated, that could potentially create a metapopulation. But here's the flaw in that logic: critical habitat must first be habitat, which means a place where the species naturally lives or could naturally live. Yet all parties agree that the dusky gopher frog cannot currently live on the Weyerhaeuser acreage. And because the property is privately owned, the Service can't compel the owners to create a new home for the frog. Ergo, because the land is not habitat, it can't possibly be critical habitat or essential to species conservation. To hold otherwise would allow a federal agency to take jurisdiction over nearly every parcel of private land. And, in this instance, it would cost $34 million in lost development value, according to the Service's own estimate.

The implications are far-reaching. First, there is no constitutional authority for the federal government to regulate land simply because it exists. Under the Commerce Clause, from which the Endangered Species Act supposedly emanates, the litmus test is economic activity. Originally, the Clause was thought to permit regulation only of trade across state borders. But that constraint was radically diluted in 1942 (*Wickard v. Filburn*) to cover any economic act that—in the aggregate—might have a substantial effect on interstate commerce.

A half century later, the Supreme Court was asked whether the Commerce Clause could conceivably extend to a non-economic act—possession of a gun near a school. In *United States v. Lopez*, the Court said "No." Then came Obamacare and its proposed regulation of a non-act—an individual's decision not to purchase health insurance. Although the Court upheld the regulation under the Taxing Power, Chief Justice John Roberts rejected the government's Commerce Clause rationale. Obamacare's mandate to buy insurance was just regulatory bootstrapping—forcing persons to engage in commerce, then proclaiming that they can be regulated because they are engaged in commerce.

Similarly, the mere existence of land does not constitute an act, much less an economic act. Something has to take place on the property to trigger Commerce Clause coverage. Land that isn't inhabited and isn't fit to be inhabited is self-evidently not a habitat, and it isn't, therefore, subject to the Endangered Species Act. Second, and equally important, the Constitution does not let executive agencies amend statutes. Article I states that, "All legislative Powers . . . shall be vested in a Congress" that is accountable to the voters. But suppose that Congress enacts a murky law, and one of more than 300 agencies in Washington, D.C., is empowered to flesh out the details. The voters have no recourse against unelected bureaucrats. And to compound the problem, the Supreme Court ruled in *Chevron v. Natural Resources Defense Council* (1984) that courts must accept an agency's reasonable construction of any ambiguity in a statute that the agency is responsible for administering. Weyerhaeuser isn't asking the Court to rein in Congress's overreaching delegation of lawmaking authority nor to overturn the Chevron doctrine, as legitimate as both of those actions might be. Instead, the petitioners argue sensibly that agencies must operate—even under Chevron's deferential standard—within the bounds of reasonable interpretation. Plainly, it is not reasonable for the U.S. Fish and Wildlife Service to flout the Endangered Species Act by treating land as essential or critical habitat when it isn't habitat at all.

Robert A Levy

The 2018 edition of Freedom in the 50 States

How Free Is Your State?

How free is your state on tax policy? On land-use regulation? What about health insurance, marijuana, or educational freedom? The 2018 *Freedom in the 50 States* holds the answers as the only index to measure both economic and personal freedom at the state level.

Florida jumped eight spots from last year to take first place in overall freedom, with New Hampshire—last year's top state—now in second place. The authors, William P. Ruger of the Charles Koch Institute and Jason Sorens of Dartmouth College, note that Florida and New Hampshire "significantly outpace" the rest of the top five states, which are clustered together. New York once again takes up the rear—it has been the least free state in the union every year since 2000. It also serves as proof that Americans care about freedom—or the lack thereof; about 1.3 million people (more than 9 percent of the state's population) left New York for other states between 2000 and 2012.

OVERALL FREEDOM RANKING

TOP FIVE STATES		BOTTOM FIVE STATES	
1.	Florida	46.	Vermont
2.	New Hampshire	47.	New Jersey
3.	Indiana	48.	California
4.	Colorado	49.	Hawaii
5.	Nevada	50.	New York

For the first time, this edition of the index offers annual data going back to the year 2000 and thus includes a wealth of data on how states have changed in the rankings over the years. Vermont, for example, was the "biggest loser" over the past 16-year period, thanks to fiscal centralization, rising taxes, and increasing regulation. Meanwhile, "Florida's rise since 2009 has been nothing short of stunning," the authors write. The state's improvement is almost entirely because of its improving fiscal policies; its local and state taxes—along with government consumption and debt—have all fallen as a share of the private economy.

The overall freedom scores include both economic and personal freedoms. But across the states, personal and economic freedom are not correlated. Texas, for example, is in the top 10 states for economic freedom but is the least personally free state. "Texans may be unhappy with their last-place personal freedom showing, but it reflects poor criminal justice policies and the fact that the Lone Star State is increasingly behind the curve on marijuana, education, and gambling freedoms," the authors explain. Florida is the number-one state for overall economic freedom, and Maine is the number-one state for overall personal freedom. ■

PURCHASE YOUR COPY AT CATO.ORG/STORE, AND VISIT FREEDOMINTHE50STATES.ORG TO VIEW INTERACTIVE DATA FROM THE INDEX.

Cato News Notes

CATO IS TOP-RANKED AMICUS BRIEF FILER

The blog *Empirical SCOTUS* recently attempted to quantify the quality of amicus briefs filed at the Supreme Court using BriefCatch, a popular legal analytical tool that measures briefs' performances on five criteria: flow, plain English, punchiness, reading happiness, and sentence length. Using this system, they ranked the Cato Institute as the top overall amicus brief filer for the 2017–2018 Supreme Court term. "In an era where some scholars question whether oral arguments have very much utility, briefs—and especially amicus briefs—are thought to play a unique role in Supreme Court decisionmaking," the blog noted. "High-quality writing remains one of the best ways for groups to get the Court's attention, especially when the group does not have the institutional presence of the United States."

BIER WINS JOURNALISM AWARD

In June, Cato's David Bier won "Best Activism Journalism" at the Southern California Journalism Awards for his May 2017 *Reason* magazine piece, "Why the Wall Won't Work: The Legal, Practical, Economic, and Moral Case against Trump's Border Barrier." The judges called his piece "a thorough, brick-by-brick explanation why the Trump wall won't work."

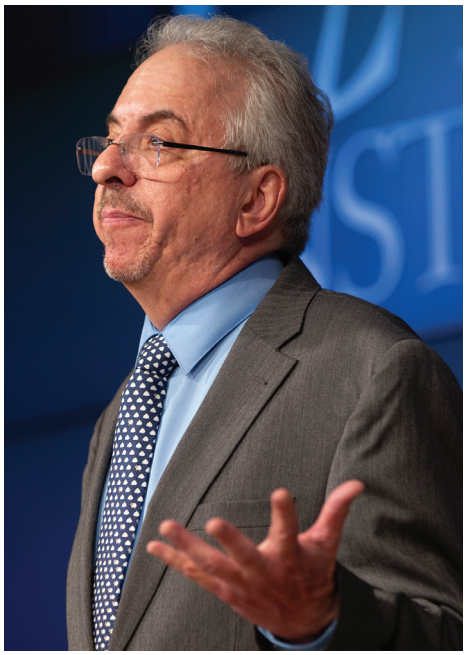
MUSTAFA AKYOL JOINS CATO

Turkish journalist and author Mustafa Akyol joined the Cato Institute as a senior fellow in June. A regular contributing opinion writer for the *New York Times*, Akyol also writes regularly for Turkish publications such as the *Hürriyet Daily News* and for the Middle East–focused *Al-Monitor.com*. Akyol is the author of *Islam without Extremes: A Muslim Case for Liberty*, praised by the *Financial Times* as "a forthright and elegant Muslim defense of freedom." His book has been published in multiple languages but was banned in Malaysia after Akyol was arrested by the country's "religious police" for delivering a lecture on religious freedom.

At a Cato Policy Forum, CHRISTOPER PREBLE, Vice President for Defense and Foreign Policy Studies, discusses the results of a new study showing that support for military intervention abroad declines with each new generation.

At a special private screening of his new documentary *To Err Is Human*, about the prevalence of preventable medical errors, director MIKE EISENBERG (left) listens to comments by Dr. CAROLYN M. CLANCY, Executive in Charge of the Veterans Health Administration.

Philanthropist DONALD E. GRAHAM listens to MARISELA TOBAR (center) and SADHANA SINGH (left), Dreamers who graduated from Trinity Washington University after receiving scholarships from his foundation. In June, the three appeared at a Cato Policy Forum, Private Philanthropy and Immigrant Dreamers.



LAWRENCE NOBLE, former general counsel for the Federal Election Commission, speaks at a Cato Policy Forum in June to mark the 60th anniversary of the landmark Supreme Court case *NAACP v. Alabama*.

JOSEPH R. GOODWIN, U.S. district judge for the Southern District of West Virginia, speaks at a Cato Policy Forum in July on why he now rejects most plea bargains in his court in favor of jury trials.

At a Cato conference in June, ANDY SLAVITT, former acting administrator of the Center for Medicare and Medicaid Services, and GAIL WILENSKY, former administrator of the Health Care Financing Administration, discuss Cato's new book by Charles Silver and David A. Hyman, *Overcharged: Why Americans Pay Too Much for Health Care*.

In July, Cato hosted 30 undergraduate and beginning graduate students with an interest in monetary economics at Alternative Money University, an intensive three-day seminar with leading scholars in the field. Topics covered included those not typically addressed in economics courses, such as monetary history and the workings of unconventional monetary arrangements.

Continued from page 1

government put before Gueye was difficult, if straightforward: spend hundreds of hours and thousands of dollars to get right with the state—and stop earning money in the meantime—or choose another line of work.

The burden Kentucky's government imposed on Gueye was arbitrary, expensive, and a threat to her family's financial security. Her experience is sadly common.

Licensing directly affects more workers today than union membership and the minimum wage combined, but it wasn't always this way. Some government restrictions on who can perform what job have been around for decades. In the 1950s, 1 in 20 workers needed government permission in the form of a license to work. Today licensing has ballooned to ensnare 1 in 4 workers. Most of that expansion is new license regulations for previously unlicensed occupations and the broadening scope of existing licenses.

Licenses are now required not just for doctors, dentists, and lawyers but also for shampooers, makeup artists, travel agents, auctioneers, and home entertainment installers. According to the Council of State Governments, 1,100 occupations were licensed in 2003.

State lawmakers once uncritically accepted dubious arguments for licensing rooted in quality assurance and public health or safety. Only in the past decade have they started paying attention to licensing's substantial effects on wages, consumer prices, and unemployment. Today, state legislators have begun to view licensing for what it often is: naked rent-seeking behavior, compelling would-be entrepreneurs and workers to buy expensive and needless training to secure a license.

WHY OCCUPATIONAL LICENSING?

Cosmetology licensing regulations were created in the 1930s in response to barbering boards that cracked down on hairdressers who were also cutting hair. Hairdressers pushed back and urged the creation of a new license separate from barbering (today it's often under the same licensing board). Much like barbers before them, cosmetologists have also argued for the expansion of their territory. Over the decades cosmetologists have been successful in sweeping numerous practitioners under their restrictions—including estheticians, shampooers, manicurists, makeup artists, hair braiders, and eyebrow threaders.

> "Today licensing has ballooned to ensnare 1 in 4 workers."

The story of state occupational licensing is the same across most occupations. Insiders want to block outsiders—people they deem less professional—from practicing their occupation. Thus, they lobby state legislators or licensing boards to restrict entry into the occupation.

Licensing advocates will typically argue that requiring a state license is necessary to guarantee quality or to protect public health and safety from unprofessional or dangerous workers. However, advocates lobby vigorously to protect their turf by creating barriers to entry with scant evidence that those barriers will improve quality, public health, or public safety. Once an occupation is licensed, workers are motivated to increase the costs to outsiders by changing requirements to include more hours of education, higher grades to pass exams, or increased fees. They are also motivated to block alternatives like Gueye's hair braiding services.

One goal of licensing is to make the occupation appear more professional and standardized. The existence of a license allows licensees to promote the work they do as higher quality. By appearing more professional, workers in the occupation can charge more. Restricting competition also adds to the increased revenues licensees receive. The additional revenues to cosmetologists alone cost consumers $1.7 billion a year, according to a 2002 paper by economists A. Frank Adams, John D. Jackson, and Robert B. Ekelund.

Another stated goal of licensing is to protect public health and safety. Thirty-three states license contractors for home improvements such as landscaping, painting, roofing, or drywall installation. The California Contractors State License Board claims to protect "consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public." Like most occupational licensing boards, the California board has not had to demonstrate that its restrictions actually improve health and safety. The only research done in this area, a 2014 Bureau of Labor Statistics report, shows that licensing has had no effect on worker safety for electricians.

BARRIERS FOR WORKERS

Once Gueye became aware that it was illegal for her to practice her 30-year profession in Kentucky, she faced some hard decisions. Workers like Gueye must decide whether the costs and benefits of licensing are worth entering an occupation. Those who choose to become licensed will benefit from being able to charge more for their services. However, those who cannot afford to become licensed may be out of work, choose a less-preferred occupation, or work illegally.

Gueye could have gotten a cosmetology license, but the education alone would have cost her up to $20,000 and 420 days that she could not spend earning a living. Instead she would have spent time learning about hair cutting, facials, manicuring, hair removal, and numerous other things that have nothing to do with her business.

In occupations whose workers earn less than the national median income, the average licensing costs include nearly a year of education or training, passing an exam, and paying licensing fees (not to mention the costs of education), according to the latest *License to Work* study by the Institute for Justice. For workers on the lowest rungs of the economic ladder, these costs may be prohibitive. The more it costs to enter an occupation, the fewer people will work in it, leaving unlicensed

workers to crowd into other occupations.

Costs vary widely among states. For licensed contractors, education requirements vary from zero hours in Washington to 4 years in California. Education requirements for hair braiders can range from nothing to 2,000 hours. This time and cost commitment has real effects on employment. In 2012, Mississippi had more than 1,200 registered braiders who were required to complete zero hours of education. Neighboring Louisiana had only 32 licensed braiders who were required to complete 500 hours of training.

The varied requirements for licensing among occupations have no apparent link to health or safety. Cosmetologists, on average, must complete a year or more of education, whereas emergency medical technicians, who literally save lives, must complete only a month of training.

Gueye could have responded by moving her business back into her home while trying to hide from the government. Doing so would have meant facing potential fines and dangerous customers. She had moved into a storefront because she felt unsafe inviting strangers into her home to braid their hair. "One day we do a lady's hair, and afterwards, she gets a knife and says she's not going to pay and you can do nothing about it," Gueye explained to Louisville's WAVE TV.

Unlicensed workers operating in the shadow (or informal) economy have a harder time standing up to such threats. Those workers will earn less than they could out in the open. Hiring employees and paying taxes might expose them as unlicensed operators. In 2012 the California contractors board estimated that the shadow economy for home improvement was worth between $60 billion and $140 billion each year.

SMART CONSUMERS

Licensing harms consumers by increasing the price of services and decreasing innovation—without ensuring quality. Consumers may purchase fewer services. For example, those in states with higher costs for cosmetology licenses purchase 14 percent fewer services, according to the paper by Adams, Jackson, and Ekelund. Consumers who choose to save money by hiring unlicensed practitioners may face fewer legal protections. And people who chose to save money by performing potentially dangerous work themselves, like electrical work, place themselves at a greater risk of harm.

> "Occupational licensing impedes safe alternatives and innovations that benefit consumers."

On top of those tradeoffs, consumers still face the costs of finding reputable service providers, despite claims that occupational licensing establishes professionalism and quality. Remember experiences you may have had with a bad haircut, a slow home contractor, an angry nurse, or a painful dental procedure.

Licensing is not a substitute for reputation. Word of mouth is a typical method for finding quality service providers, even in licensed occupations. Today it is easier than ever to find a provider who will best fit your needs. Technology reduces search costs through website reviews from Yelp, Angie's List, and TripAdvisor, for example, and through crowdsourcing on sites like Facebook and Reddit.

In addition to failing to ensure quality, there is little to no evidence that occupational licensing improves health and safety outcomes for consumers. And consumers do not require occupational licenses to feel safe. Consider restaurants. No one working in a restaurant is required to obtain an occupational license. Yet many Americans eat out four to five times a week. Despite the lack of occupational licenses, Americans feel confident enough to consume food prepared at restaurants. Instead of creating barriers for restaurant workers, health departments and customers rely on inspection results and complaints to ensure safety.

Occupational licensing also impedes safe alternatives and innovations that benefit consumers. Although hair braiding, for example, has been around for thousands of years, it was not taught in cosmetology schools until recently (and is still not widely taught). As braids became more popular, cosmetology boards and associations lobbied lawmakers to add hair braiding to the licensing laws—and hair braiders became outlaws.

The same is true in other areas. In 2001 Crest introduced Whitestrips, a product that allowed people to whiten their teeth in the comfort of their home. Entrepreneurs began offering similar products (approved by the U.S. Food and Drug Administration) to consumers in mall kiosks and spas. However, dental boards and associations argued that the entrepreneurs who allowed customers to use these products at their businesses needed to be licensed dentists.

Technology has made it easier not just for consumers to search for providers but also for providers to communicate with customers remotely. But licensing boards are trying to restrict services—such as a simple online eye exam, medical advice by phone or Skype, or online nutritional advice—for consumers in remote areas or those who have difficulty leaving their homes.

THE FUTURE IS BRIGHT

Gueye did not seek out a cosmetology license. She did not find a different job. She refused to stay underground. Instead, Gueye fought the government's stifling regulations. She fought alongside other braiders in Kentucky to defend their right to earn an honest living performing their cultural trade. In a win for Kentucky's hair braiders, Governor Matt Bevin signed a bill in 2016 exempting them from the state's cosmetology regulations.

Fortunately, workers are beginning to push back, and policymakers are beginning to reform occupational licensing across the country. Kentucky is one of 10 states that have recently

exempted hair braiders from cosmetology licensing. Michigan has eliminated 7 occupational licenses—including nutritionists, auctioneers, community planners, and interior designers. New Jersey's governor recently pocket-vetoed the creation of 7 new licenses—such as music therapists, drama therapists, dance therapists, and pool and spa contractors.

Arizona recently passed a bill, drafted by the Goldwater Institute, requiring the government to provide evidence that regulations imposing costs on workers will in fact keep people safe. This innovative law requires evidence that a new licensing regulation will protect public health and safety. It also empowers workers harmed by current regulations to ask the agency to repeal or modify the barriers.

State lawmakers are also challenging local licenses. Wisconsin recently banned local governments from creating new local occupational licenses. State Representative Dale Kooyenga plans to introduce legislation that would remove existing local licenses, like those for Milwaukee's snow plow operators, limousine drivers, home security businesses, and parking lot operators.

Although licensing is primarily a state and local issue, the federal government has also taken action. In 2015 the Obama White House published a report describing the problems of licensing and calling for widespread reform. That same year the Supreme Court ruled against a licensing board, deciding that boards made up of practitioners are legitimate targets for antitrust litigation (*North Carolina Board of Dental Examiners v. Federal Trade Commission*).

> "'We can now be free to work and earn a living without fear.'"

Congress is now considering a bill in response to the Federal Trade Commission case that would help states reform occupational licensing rules. The Restoring Board Immunity Act would give limited legal immunity from antitrust lawsuits if states do one of two things: periodically review licensing boards to detect and end anticompetitive behavior, or place the burden on the government to show that occupational licensing regulations are necessary (as Arizona has already done).

CONCLUSION

On the day of the hair braiders' victory, Gueye told the Institute for Justice, "This is a wonderful day for all the braiders. We can now go about and be free to work and earn a living without fear. Like millions we can now live our American Dream." Gueye's American Dream supports her community by creating jobs and supplying wanted services.

No one should have to spend hundreds of hours obtaining an education that is irrelevant or unnecessary to work in their occupation of choice. Regulators must provide compelling evidence in favor of licensing restrictions before they can prevent people from earning an honest living.

It is time for a cultural shift in the way governments think about occupational licensing. Instead of taking incumbent practitioners at their word, officials need to ask a set of questions: Is there a need for regulation that cannot be solved by the market? What is the evidence that the stated issue is really a problem? What is the minimum level of regulation that would solve that problem?

It may be obvious to start with hair braiders, auctioneers, and other lower-income jobs, but these questions also ought to apply to the various restrictions placed on doctors, dentists, and lawyers. For example, why should an orthodontist be barred from offering low-cost teeth cleanings to his community because he is not merely a dentist?

Once state and local governments remove unnecessary barriers to entry, more workers like Kine Gueye will be able to have the American Dream. ■

Adoption and the Anti-discrimination Wars

America has had a relatively decentralized and pluralist approach to adoption, with a wide variety of both private and public actors helping to match children with families. But recently, controversies have arisen over what role, if any, is appropriate for religious and other agencies that decline to work with gay parents or that give preference to coreligionists. Is it possible to balance the rights of prospective parents, the belief systems of private agencies, and the urgent need for children to find homes? At a Cato conference, Stephanie Barclay of Brigham Young University, Sarah Warbelow of the Human Rights Campaign, Cato's Walter Olson, and Robin Fretwell Wilson of the University of Illinois discussed this question.

STEPHANIE BARCLAY: I want to start with some first principles that I imagine many of us can agree with. Number one: gay couples can be fantastic parents and should not be banned from adopting or fostering children. Number two: there's a shortage of foster and adoptive homes for foster children. And number three: our policy decisions should ultimately be aimed at what is best for these children, who have suffered so much.

There are 400,000 children right now in foster care nationally, and of those, 100,000 are just waiting to be adopted. Every year, about 20,000 foster children age out, which means that they leave foster care not having been able to find a permanent family. Studies show that these children, who are predominantly minority children, are more likely to end up in poverty.

I also want to clarify the difference between public and private adoption. With private adoption, the paradigmatic example is a teen mother giving up her child voluntarily. That's very different from what we're going to spend most of our time talking about, and that is public adoption, where children have been removed from their homes because they have suffered abuse and neglect, sometimes of unspeakable levels. These children, who need to be adopted, have been placed temporarily in foster homes as wards of the state. Agencies cannot help those children unless they have a contract with the government to do so. The government relies on private agencies because they can't find enough homes on their own. They need all hands on deck.

If a prospective family contacts a private agency, there are a number of reasons why that agency might refer them elsewhere. There are foster agencies that focus exclusively on doing placements for Native American children with Native American families. There are agencies that exclusively find homes for LGBTQ children or that focus on particular medical or behavioral health issues. And so, if, for example, a couple approached an agency that specializes in placing Native American children with Native American families, and that couple didn't have Native American heritage, that agency would say, "We're happy to refer you elsewhere, but that's not our mission."

If a family proceeds with a particular agency, generally that agency will perform a home study, which involves an in-depth evaluation of the family and of any relationships of adults in that family. They will then provide a certification or endorsement of not just that family but those relationships.

And that's where the conflict arises for some faith-based agencies. A religious agency in Michigan, for example, said that they couldn't give a written certification of an unmarried couple, or a same-sex couple. The agency said that same-sex couples could still adopt children in their care if they received that written endorsement through *another* agency—and, in fact, that has happened multiple times in the past. They just cannot provide that document contradicting their religious beliefs.

We are richer as a country when we have a plurality of voices—when we have faith-based and secular agencies serving a range of populations, all working together to bring in as many homes as possible for children who so desperately need them.

SARAH WARBELOW: There's been a lot of attention on this as an LGBTQ issue. And certainly, same-sex–headed families are being excluded by these agencies, despite the fact that they are well qualified and willing to take children in. But these are not the only families that are being excluded. In South Carolina, a Christian adoption agency refused to place children in the care of a very experienced foster family who happened to be Jewish.

We are talking about an emergency in this country, where there are not enough families for children in need. It's outrageous that we would allow agencies to turn away qualified families because they don't fit a narrow model of what an ideal family should look like for that particular agency. We also know that children are not being placed with single parents despite the fact that single women are more willing to take in hard-to-place children—older children, children with disabilities. There are over 2 million LGBTQ people who are interested in adopting and being foster parents. These are also individuals who are willing to take in hard-to-place children.

Much of this debate got kicked off because the state of Virginia was contemplating adopting a regulation that prohibited foster agencies from discriminating against prospective families, including on the basis of sexual orientation and gender identity. The knee-jerk reaction of the legislature

was to adopt a law that allowed these agencies to continue to accept taxpayer funding—including funding from people that they would not serve—in order to refuse to place children in loving families who are willing to accept them into their arms. That is a very serious problem.

Some of the proposals on the table would also allow child welfare agencies to refuse to place children with their biological families, if the agency deemed the person ineligible based on their sexual orientation or gender identity. Think about that—an agency saying, "We would rather place a child in congregate care or with a stranger than place them with a qualified aunt who happens to be lesbian."

Some of these policies also permit discrimination against LGBTQ youth themselves. About 25 percent of youth in the foster care system are LGBTQ. LGBTQ youth are at high risk for rejection from their families and make up around 40 percent of runaway and homeless youth. But some of the proposals and laws that have passed, including in Texas, would allow agencies to place these children with families who are hostile to them, who will subject them to conversion therapy, or refuse to recognize that a transgender child is transgender.

At the federal level, you may have heard of the proposed Aderholt Amendment that was added to the HHS funding bill in the House. This bill would allow for all of those dangers; every single one of them. We need to make sure that all children have every opportunity to be adopted.

WALTER OLSON: Seven years ago, when I first wrote about this problem, I cited a cautionary example: the well-known litigation in *Wilder v. Bernstein*. This was a case in New York City, whose foster care system was run largely by institutions from major religious groups. The groups tended to provide foster placements for their communities; the Catholic agencies would make arrangements for Catholic kids, etc.

Then along came public interest lawyers arguing that this was unconstitutional, that this was religious discrimination, and in particular, that it perpetuated inequalities. The Catholic and Jewish agencies were known for doing an exceptionally good job, but this was not true for the Protestant agencies,


STEPHANIE BARCLAY

> "We are richer in this country when we have a plurality of voices."

which served a largely black population. And this inequality was unacceptable to the litigators. So, the city agreed to scrap the system and cut back drastically on religious matching. The agencies had to adopt something closer to a first-come–first-served method of assignment. They became more like interchangeable outposts in a single foster care system.

Outcomes were already pretty darn bad, and they became even worse as the high-performing religious agencies lost their oomph. Volunteers scattered, and the city's foster care system lurched from crisis to crisis through 26 years of litigation. I hoped, seven years ago, that we would not repeat the same mistakes with adoption. But I fear that we may be doing that.

You don't spend very long in the adoption world without noticing that two groups are tremendously overrepresented. The first is those of intense religious faith, who have a mission to help needy children. And the second group is gay people, who often cannot become parents directly.

And I'm not just talking about the easy cases: the teenage expectant mother who has 25 people who would love to adopt her baby. I'm talking about the hardest-to-place cases: the medically fragile cases, the older sibling groups, the behaviorally challenged kids. So often, it was either the highly religious people or the gay people who would step in for placements that no one else would make.

I think a lot of those cultural collisions, as it were, were beneficial on both sides because both sides had some suspicion to get over about whether the "other group" was really there for the right reasons. But you saw it in action. You saw how much they cared. It became hard to see them as an enemy; not after you saw what they were doing.

And then came the beginning of what may be 26 years of litigation against each other. I've been writing about litigation for more or less my whole adult life, and I know that if you want to go on liking and respecting people, you probably shouldn't be in litigation with them.

I'm critical of some of the same things that Stephanie was critical of, like the idea that by taking one dollar of public money, you must convert to complete nondiscrimination, even if, as an agency, you stand ready to deal with parents who were brought in by other agencies of different religious views. I agree that when you press the logic that far, children will probably wait longer.

But unfortunately, as Sarah very rightly said, a lot of the remedies that we are now hearing often provide a sweeping and absolute right for religious agencies not to be discriminated against over *any* of their decisions; not just defunding but also adverse action.

Let's apply this to a situation like that in the state of Kansas, which has exactly two agencies that the state contracts out with for its foster care system. At least one of them is likely to want one of these religious exemptions. But if that second agency pipes up with its own religious objections, what is the state of Kansas to do? Can it say, "We'd like at least one agency that we deal with to be open to everyone?" That would be adverse action, wouldn't it?

We live with things like the GI Bill for education, in which you can take your GI voucher and go to a seminary if you want. Is there some way of voucherizing child services so that whoever makes the placement can get the subsidy, whether it is a secular or a religious group?

When I began reading about adoption, I realized for about the umpteenth time how glad I was to live in America. We do not have a single government agency that coordinates all adoption, as many European countries do. In America, we have had incredible pluralism, and through all of this, we got some of the highest and most successful adoption rates in the world because just like they used to say about the internet: if you're blocked in one direction, you route around it. This is how so many gay people became parents; they routed around the obstacles in the system. Please don't spoil pluralism. Please work with it.

ROBIN FRETWELL WILSON: Somehow, we have managed to mire children in a culture war. In 20 states, we now have laws where one side is winning, and the other side is losing, all the time. Thirteen states say that the state can't discriminate against religious agencies, and they don't give a tremendous amount of thought, as Walter said, to what that means for couples who want to adopt. Nine states say that agencies can't discriminate against couples—without much thought for what that means for the religious agencies that are doing so much of this important work.

I'm an adopted child myself. My mom and dad literally changed the entire arc of my life. To borrow a phrase from Stephanie, we need all hands on deck. That means that anybody who can give these children a good family should be able to do so. Gay couples have been disproportionately stepping up to


SARAH WARBELOW

> "We are talking about an emergency in this country, where there are not enough families for children in need."

the plate to adopt and foster. In Oklahoma—which just passed a stand-alone, religious adoption agency protection—24 percent of gay couples were raising adopted kids, compared to 4 percent of heterosexual couples.

But I think it also means that we have to keep every one of these agencies, including religious agencies, in the marketplace. Agencies that work in niche markets are successful because the people that they're drawing forward to foster and adopt often share their values. And we should not be glib about that. We need agencies in every niche market, whether they're faith communities, or Spanish-speaking communities, or African-American communities, or LGBT communities.

There's a second point, though, that Sarah has addressed, which is that these are tax-funded agencies turning folks away. In Maryland, Catholic Charities received 70 percent of its funding from federal, state, and local dollars, meaning that a public-money-public-rules position taken in its same-sex marriage legislation would cause them to downsize 70 percent, or possibly close.

So, this brings me to the deep structural problem here: The state is picking winners and losers—the agencies that it allows to do this important work. But these agencies do not get paid until the child is placed. So that means that the agencies bear huge upfront costs to develop families who can foster or adopt. That back-ended payment structure rewards large agencies over small ones, and that yields a natural monopoly.

And there's also a second choke point here that is harming children, and that is that gay couples can't adopt or foster without certification. Now, as Stephanie said, for many religious agencies, their only concern is that they not be asked to pass judgment on a family by certifying the family.

What's needed today is a fairer funding mechanism that pieces off the front-end cost and pays agencies directly. That would draw more agencies to the certification work and reduce the scarcity that leads to clashes. Instead of putting the support for that certification cost in the hands of state-picked agencies, we should put it directly in the hands of the families that are making these commitments to children. In other words, we should empower the prospective foster and adoptive family to hire the agency that best meets their needs.

We have a model for this already. We do this with early childhood development for poorer families, where we give families a certificate and let them choose where to spend it: with grandma, with a Montessori school, or with a Lutheran day school. And that structure has assured us a diversity of providers and given families choice. It has

Continued on page 12

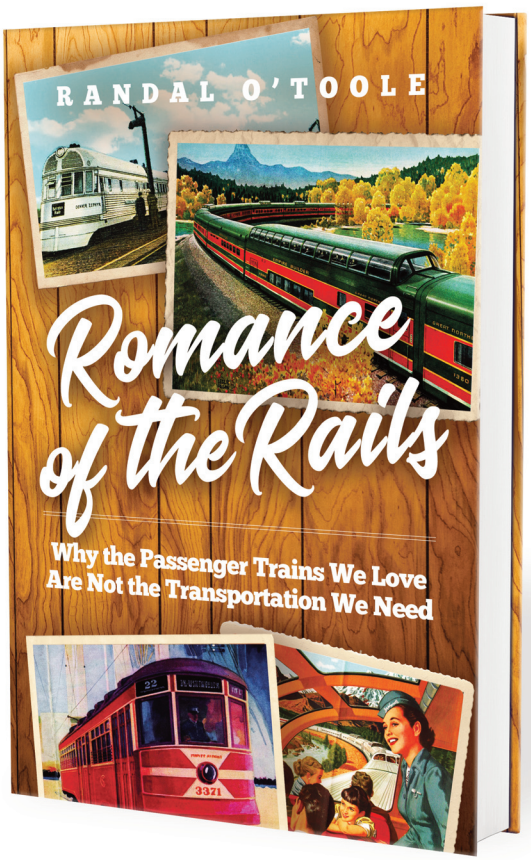
Why a train enthusiast lost faith in subsidized rail

A Fine Romance?

Cato senior fellow Randal O'Toole is a man who loves trains—in fact, he says, "Few people can say they love passenger trains more than I do." He still thrills at the memory of his first ride on a train, at five years old. And he still treasures the model trains—custom painted by his father to match his favorite railroad—that he received for Christmas in his youth. He has spent hours volunteering to lovingly restore a vintage train. He collects train memorabilia: dining car china, old brochures, sleeping car blankets. He even met his wife on a cross-country train trip.

All of that makes O'Toole an unlikely candidate for one of the nation's most vigorous critics of passenger rail. In fact, O'Toole was once an ardent supporter of increased funding for Amtrak and government-funded trains. And yet—as his new book *Romance of the Rails* explains—despite his enduring love for the elegance and nostalgia of train travel, he has since become "completely disillusioned" with the idea of government-subsidized train travel and has come to realize that, as majestic as trains can be, they have little place in the future of mass transit. His book, therefore, is a "love letter to a dying friend," a comprehensive history of how train travel came to be, why it once worked so well, and why it doesn't work anymore.

In city after city, the numbers prove that passenger rail is no longer the best method of transportation for most commuters; new technology, including cheap air travel and ride-sharing, has replaced trains just as trains once replaced steamboats and horse-drawn carriages. Nevertheless, local governments continue to pursue doomed forays into subsidized rail, like Nashville's commuter transit project, the *Music City Star*, whose higher-than-expected operating costs and lower-than-expected revenues have left the city with staggering deficits. By 2016, the total subsidy was more than $28 per ride, so that someone who rode the train to and from work 250 days a year would cost taxpayers more than $14,000. "This means it would have cost less to buy every daily round-trip rider a new Toyota Prius, not just once but every other year for the expected life of the train," O'Toole writes.



O'Toole tackles and debunks all the common refrains of rail enthusiasts, such as, "Why can't America just have great train systems like Europe?" The answer: in reality, Europe's trains are plagued by the same problems as American trains. In Italy, for example, economists have dubbed the country's high-speed rail system "devastating" to the national budget, with dismal ridership numbers. France has built 1,640 miles of high-speed train lines since 1981. But by 2013, France's rail programs were more than $50 billion in debt, and they have continued to lose money while only 10 to 15 percent of French residents regularly use high-speed rail. The United Kingdom has one of the most financially successful train systems, but only thanks to a privatization program that has increased rail passenger miles in the U.K. faster than in any other European nation.

Even in the golden age of trains, O'Toole notes, train transit was an elite, glamorous activity; it has never made much sense as a subsidized travel solution for the masses. The truth is that the romantic fantasy of high-speed rail lines that whisk all Americans to work every day is just that—a fantasy. "I still love passenger trains," O'Toole writes, "but I don't think other people should have to subsidize my hobby." ■

PURCHASE *ROMANCE OF THE RAILS* AT CATO.ORG/STORE AND BOOKSTORES NATIONWIDE.

Continued from page 11

worked across five presidential administrations, from Bush I to Obama and now Trump.

And notice what happens here: Suddenly, we don't have tax-funded agencies deciding to assist or not assist a family with public money. We have *families* deciding where to spend those dollars; families that know best who will make them more comfortable and successful in fostering and adopting children. Common sense and experience show that we, in fact, can take children out of the culture war, where they do not belong. ■

A new edition of a book that was "ahead of its time"

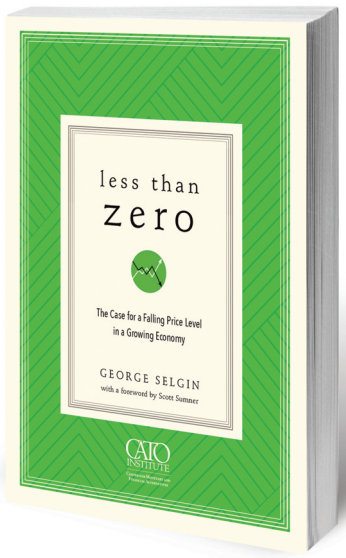
Should Inflation Be Less than Zero?

Most economists once believed that monetary policy should aim at achieving full employment, but we now know that holding unemployment below its natural rate has dangerous consequences. Could it be that another supposed economic ideal—zero inflation—is similarly wrong-headed?

In his 1997 book *Less Than Zero*, Cato's George Selgin first made the case for allowing price levels to vary to reflect changes in productivity. Now, a new edition of *Less Than Zero* from the Cato Institute updates this important and prescient argument for 2018.

In the introduction for this edition, Scott Sumner of the Mercatus Center at George Mason University makes the case that Selgin's book was "ahead of its time" and that it is time to return to Selgin's argument for a productivity norm, where prices would rise or fall inversely to changes in productivity.

Selgin himself, however, contends that his idea is not entirely innovative; over the course of his research, he found that similar arguments have been made by other early 20th-century economists he admired. "Eventually, it became clear to me that—far from being novel—my understanding of deflation had once been almost orthodox, having been shared by prominent economists of many different schools of thought, only to be flung aside in the wake of the Keynesian revolution," he writes. Two decades after its first publication, the ideas in *Less Than Zero* are no longer as radical as they once were, as more economists are arguing for nominal income targeting and speculating about the possibility of "good" deflation. With that new climate in mind, this edition revisits these important and thought-provoking ideas. ■

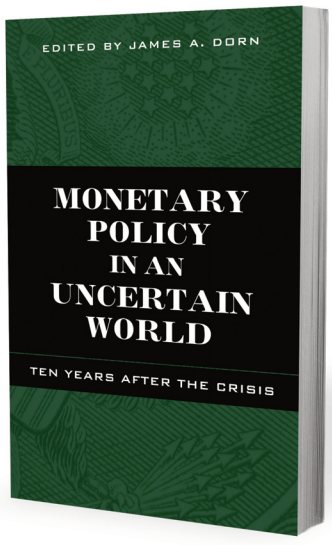


What monetary policy can teach us 10 years after the crisis

Lessons from the Financial Crisis

Now that 10 years have passed since the 2008 financial crisis, what have we learned from the Federal Reserve and other central banks' unconventional monetary policies in the years since? In *Monetary Policy in an Uncertain World*, Cato's James A. Dorn gathers together leading scholars and former policymakers to evaluate the policies pursued in the aftermath of the crisis and to offer ideas for how to move our monetary policy toward a rules-based system that no longer relies on the politicized whims of policymakers. "The so-called knowledge problem—and the limits of monetary policy—need to be widely recognized," writes Dorn. "Policymakers err by paying too much attention to short-term remedies and too little attention to the long-run consequences of current decisions."

Contributors include Cato senior fellow Gerald P. O'Driscoll Jr. on why we should rethink central banking, which he argues is a relatively recent phenomenon; former Federal Reserve governor Kevin Warsh on how to evaluate priorities on the path to normalization; Charles W. Calomiris of Columbia University on a variety of proposed reforms to the Fed's structure and operation; Stanford University professor of economics John B. Taylor on how to implement a rules-based system; and economist Judy Shelton of the Atlas Network on the case for a new international monetary system. ■



PURCHASE PRINT OR EBOOK COPIES OF *LESS THAN ZERO* AND *MONETARY POLICY IN AN UNCERTAIN WORLD* AT CATO.ORG/STORE.

An attendee asks a question (left) at Cato University's College of History and Philosophy, held over three days in August in San Diego. JASON KUZNICKI (right), editor of Cato Books and *Cato Unbound*, made his Cato University debut with a speech on epistemic humility and the inevitable failure of attempts to predict the future.


The New York Times

BREAKING THE IMPASSE ON NORTH KOREA

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U.S. needs immigrant grandparents

Stacy Torres
Xuemei Cao

In September, Cato welcomed its newest senior fellow, MUSTAFA AKYOL, to the Center for Global Liberty and Prosperity. Akyol's recent *New York Times* piece on the role of reason in Islam was censored in the Pakistan edition of the *Times*, leaving a blank space instead.


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Cato scholars attended a wide variety of events over the Summer. 1. ANDREI ILLARIONOV, senior fellow at Cato's Center for Global Liberty and Prosperity, spoke at the American Political Science Association Annual Meeting in Boston. 2. ILYA SHAPIRO, senior fellow in constitutional studies, represented Cato at the Milton Friedman Conference in Australia. 3. COREY DEANGELIS, policy analyst at Cato's Center for Educational Freedom, addressed the Washington Policy Center Solutions Summit. 4. DOUG BANDOW, Cato senior fellow, met with students at the Institute for Principle Studies.

At a Cato Book Forum, author Jeffrey Rosen (left) listens as Hon. Douglas H. Ginsburg, senior circuit judge on the U.S. Court of Appeals for the District of Columbia, comments on Rosen's new book, *William Howard Taft*. Taft was one of the last presidents to take a modest, restrained view of the office's constitutional role.

At a luncheon with Cato scholars, StrategEast founder and president Anatoly Motkin (left) presented his center's first annual Westernization Index, a new effort to track progress and liberalization in the former Soviet Union.

JULY 12: *To Err Is Human*

JULY 19: Plea Bargaining: Good Policy or Good Riddance?

JULY 19: Solomon's Decree: Conflicts in Adoption and Child Placement Policy

JULY 24: Should Cryptocurrencies Be Regulated like Securities?

AUGUST 2–4: Cato University: College of History and Philosophy

AUGUST 8: Is Obamacare Now Optional? New Rule Expands Consumer Protections in Short-Term Health Plans

AUGUST 17: *Tomorrow 3.0: Transaction Costs and the Sharing Economy*

AUGUST 23: #CatoConnects: Freedom in the 50 States

AUGUST 24: *Freedom in the 50 States*

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Cato Calendar

CATO INSTITUTE POLICY PERSPECTIVES 2018
SAN FRANCISCO • ST. REGIS
NOVEMBER 2, 2018

CATO INSTITUTE POLICY PERSPECTIVES 2018
LOS ANGELES • BEVERLY WILSHIRE
NOVEMBER 9, 2018

REASSESSING MONETARY POLICY 10 YEARS AFTER THE CRISIS
36TH ANNUAL MONETARY CONFERENCE
WASHINGTON • CATO INSTITUTE
NOVEMBER 15, 2018
Speakers include Phil Gramm, Claudio Borio, Jeffrey Lacker, Michael D. Bordo, Scott Sumner, Jeffrey Frankel, and George Selgin.

CATO INSTITUTE POLICY PERSPECTIVES 2018
CHICAGO • THE DRAKE
NOVEMBER 30, 2018

THE JONES ACT: CHARTING A NEW COURSE AFTER A CENTURY OF FAILURE
WASHINGTON • CATO INSTITUTE
DECEMBER 6, 2018

CATO INSTITUTE POLICY PERSPECTIVES 2019
NAPLES, FL • RITZ-CARLTON
FEBRUARY 5, 2019

31ST ANNUAL BENEFACTOR SUMMIT
WASHINGTON • CATO INSTITUTE
APRIL 4–7, 2019

CATO CLUB 200 RETREAT
SCOTTSDALE, AZ
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SEPTEMBER 12–15, 2019

Cato's role in a historic Second Amendment victory—and what it means today

The Right to Keep and Bear Arms: 10 Years after *Heller*

In 2002, libertarian lawyers Clark Neily and Steve Simpson—then both of the Institute for Justice—devised a plan to challenge Washington, D.C.'s ban on handguns. At the time, D.C.'s ban was the most restrictive in the nation; law-abiding residents could not even possess a functional firearm within their own homes. Neily and Simpson believed that these unreasonable restrictions were ripe for a constitutional challenge—a challenge that could perhaps make it all the way to the Supreme Court. Five years later, in *District of Columbia v. Heller*, the Supreme Court affirmed for the first time in history that the Second Amendment protects an individual's right to bear arms.

CLARK NEILY (second from right) addresses reporters outside the Supreme Court after oral arguments in *District of Columbia v. Heller* in 2008, along with BOB LEVY and ALAN GURA.

Neily and Simpson began by approaching Bob Levy—then a Cato senior fellow, now chairman—with their plan, and he agreed to fund the case. Other challenges to D.C.'s gun laws had already been filed, but mostly by criminals whose sentences had been extended for gun possession. Levy, Neily, and Cato's own Gene Healy (after Simpson dropped out due to the press of other work) instead set out to find diverse, law-abiding plaintiffs who would help challenge the often inaccurate stereotypes about the types of people who want to own guns. They found six plaintiffs—all ordinary citizens who simply wanted the ability to defend themselves and their loved ones.

Shelly Parker, their initial lead plaintiff, is an African American woman who lived in a dangerous neighborhood near Capitol Hill. She had made it her personal mission to clean up the neighborhood, installing a security camera in her front window and alerting the police whenever she saw illegal activity on her streets. Those efforts made her an enemy of the local drug dealers, who threatened her and smashed her car windows. She wanted a gun to defend herself, but the District banned her from getting one.

Dick Heller, who would eventually become the lead plaintiff, was a private security guard who was authorized by D.C. law to carry a handgun while protecting government workers at the Thurgood Marshall Judiciary Building, but not in his own home.

Cato senior fellow Tom Palmer, another plaintiff, had previously been threatened in another city because of his sexual orientation, but he was able to ward off the attackers with a handgun his mother had given him. In the District, however, he wasn't allowed to carry such protection.

The *Heller* case was a victory not just for these six plaintiffs, but for all Americans. And the efforts of lead counsel Alan Gura, along with Levy and Neily—now Cato's vice president for criminal justice—have been hailed as a key example of how citizens can affect and animate the Constitution; their efforts have been cited in works such as *Engines of Liberty: How Citizen Movements Succeed* by David Cole, national legal director of the American Civil Liberties Union, and *The Roberts Court: The Struggle for the Constitution* by Marcia Coyle.

Ten years after *Heller*, unfortunately, many of the lower courts have adopted an unduly narrow interpretation of the decision. Tom Palmer even had to return to court when the District continued to prohibit carrying handguns in public until a federal judge overturned that ban in 2014. Nevertheless, there is unquestionably much more gun freedom in America today than there was 10 years ago. There are more states that do not any require licensing at all, more states with "shall issue" permit laws (versus the more restrictive "may issue" laws, which leave permitting decisions to the discretion of local officials), and more states where citizens are free to carry guns outside the home.

While the courts certainly are not as engaged in defending *Heller* as they should be, Neily believes that overall, "Policy and public opinion have been moving in a demonstrably favorable direction that has continued—or even accelerated—since *Heller*." There are many more battles to fight both in the courts and the court of public opinion, but the simple fact that the Supreme Court now acknowledges that every American has the right to own a gun has had profound consequences across the nation. "Is it easier to get a gun after *Heller*? Do Americans have more freedom?" asks Neily. The answer to both, 10 years after *Heller*, is a resounding "Yes!" ■

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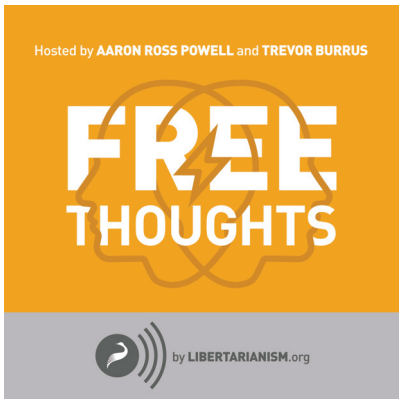

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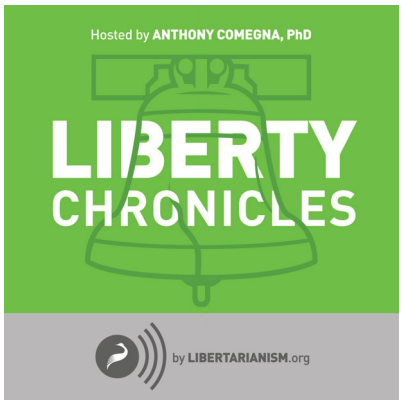

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Sinking the Jones Act

Since 1920, the Jones Act has restricted shipping between U.S. ports to ships that are U.S. owned, U.S. crewed, U.S. registered, and U.S. built. Originally passed to limit U.S. reliance on foreign shipping during World War I, the Jones Act has hung on for nearly 100 years, imposing massive costs on U.S. industry. In **"The Jones Act: A Burden America Can No Longer Bear"** (Policy Analysis no. 845), Cato's Colin Grabow, Inu Manak, and Daniel J. Ikenson explain the history of the law and the many ways in which it harms the American economy and suggest options for reform.

WHY THE GOVERNMENT MAKES A BAD NUTRITIONIST

For decades, the federal government has dispensed dubious dietary advice—like its 1970s warnings to avoid saturated fats and eat more carbohydrates, a recommendation that may have led to subsequent obesity and Type 2 diabetes epidemics. In **"Why Does the Federal Government Issue Damaging Dietary Guidelines? Lessons from Thomas Jefferson to Today"** (Policy Analysis no. 846), Cato's Terence Kealey makes the case that Thomas Jefferson had it right in 1787 when he declared, "Was the government to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now."

THE TRAUMA STATE

Research demonstrates that posttraumatic stress disorder and other aftereffects of trauma tend to make people more violent. Could widespread trauma be affecting military outcomes in places like Afghanistan, which has now experienced 40 years of uninterrupted war? In **"War State, Trauma State: Why Afghanistan Remains Stuck in Conflict"** (Policy Analysis no. 844), Cato's Erik Goepner cites his own experience as a unit commander in Afghanistan, as well as scholarly research, to examine Afghanistan as a "trauma state, stuck in a vicious cycle: war causes trauma, which drives more war, which in turn causes more trauma." Consequently, Goepner makes the case that the United States should decrease its military presence in the country and instead focus on incentivizing a less-corrupt Afghan government.

IMMIGRANTS AND CRIME

In **"Incarcerated Immigrants in 2016: Their Numbers, Demographics, and Countries of Origin"** (Immigration Research and Policy Brief no. 7), Michelangelo Landgrave of the University of California, Riverside, and Cato's Alex Nowrasteh provide an update to their 2017 brief, which was the first nationwide estimate of the incarcerated illegal immigrant population. Once again, they find that all immigrants—legal and illegal—are less likely to be incarcerated than native-born Americans relative to their share of the population.


ALEX NOWRASTEH

UBER'S GENDER GAP

In **"The Gender Earnings Gap in the Gig Economy: Evidence from More Than 1 Million Rideshare Drivers"** (Research Briefs in Economic Policy no. 118), Cody Cook and Jonathan Hall of Uber Technologies, Inc.; Rebecca Diamond and Paul Oyer of Stanford University; and John A. List of the University of Chicago examine why male Uber drivers earn about 7 percent more per hour than women. Uber provides an ideal case study for the gender wage gap, since it sets driver fares through a simple formula, there is no negotiation of earnings, and the authors are able to demonstrate that customer-side discrimination is not materially important. They find that the earnings difference derives primarily from several factors, including that men are more likely to drive in lucrative locations, are willing to drive in areas with higher crime rates and more drinking establishments, and drive more per week and are thus rewarded by Uber's pay structure in which a driver with more lifetime trips earns a greater percent per hour.

THE MYTHICAL LIBERAL ORDER

Donald Trump's presidency has prompted many in Washington to pine for the supposedly lost post-1945 "liberal world order." But in **"A World Imagined: Nostalgia and Liberal Order"** (Policy Analysis no. 843), Patrick Porter of the University of Birmingham argues that this is a harmful ahistorical myth that "erases the memory of violence, coercion, and compromise that also marked postwar diplomatic history." He urges against allowing this false nostalgia to prevent the United States from adopting a more restrained posture abroad.

COPYRIGHTS AND INNOVATION

There are very few empirical studies of how copyrights affect creativity and innovation. In **"Effects of Copyrights on Science: Evidence from the U.S. Book Republication Program"** (Research Briefs in Economic Policy no. 116), Barbara Biasi of Princeton University and Petra Moser of New York University exploit the effects of a World War II program in which the government appropriated all enemy-owned property in the country and granted U.S. publishers six-month licenses to republish the content of German-owned science books. They find that the program resulted in a large increase in citations of the German science books and patents that used information in them.

THE FRUITS OF LOBBYING

How do lobbying efforts and regulatory capture affect the banking industry? In **"Lobbying on Regulatory Enforcement Actions:**

Evidence from U.S. Commercial and Savings Banks" (Research Briefs in Economic Policy no. 117), Thomas Lambert of Erasmus University Rotterdam finds that banks engaged in lobbying activities are significantly less likely to receive severe enforcement action relative to their nonlobbying peers, that they increase their risk-taking, and that they routinely underperform compared with their nonlobbying peers.

REGULATING CRYPTOCURRENCIES

As cryptocurrencies increase in popularity, regulators have begun claiming that they are, in fact, disguised securities offerings operating outside of the law. Since the determination of whether cryptocurrencies are securities affects who can buy, hold, and keep custody of them (among other critical questions), this regulatory uncertainty is having a chilling effect on cryptocurrency markets. In **"Should Cryptocurrencies Be Regulated like Securities?"** (CMFA Briefing Paper no. 1), Cato's Diego Zuluaga argues that regulators should clarify the law by adopting a framework that distinguishes between functional cryptocurrencies, such as bitcoin—which are not securities—and promises of cryptocurrencies, which may in some cases be securities.

THE BENEFITS OF DRUG ADVERTISING

Direct-to-consumer advertising of prescription drugs is highly controversial. Some argue that ads touting the benefits of name-brand medications drive consumers to request unnecessary and expensive drugs, and others contend that they provide patients with valuable information about their treatment options. In **"Promoting Wellness or Waste? Evidence from Antidepressant Advertising"** (Research Briefs in Economic Policy no. 119), Bradley Shapiro of the University of Chicago finds that direct-to-consumer advertising does cause more patients to be prescribed antidepressants, which leads to a direct cost for consumers and insurers. However, he also finds that it causes an increased labor supply, as fewer people miss work, and that these benefits outweigh prescription costs.

HOW RIDE-SHARING MAKES US SAFER

Opponents of ride-sharing services like Uber and Lyft often agitate over their lack of safety regulations. But in **"Ride-Sharing, Fatal Crashes, and Crime"** (Research Briefs in Economic Policy no. 120), Angela K. Dills and Sean E. Mulholland of Western Carolina University find that after Uber enters a market, fatal accident rates generally decline and arrest rates for certain types of crime—including driving under the influence, drunkenness, and aggravated assaults—also decline. They conclude that the services' "ease of use, quick response time, and point-to-point transportation convenience promote safety."

LEGALIZATION PAYS

There are an estimated 11 million unauthorized immigrants in the United States. But despite heated debates over their legalization, few studies have been done on the effects of legalizing them. In **"Understanding the Effects of Legalizing Undocumented Immigrants"** (Research Briefs in Economic Policy no. 121), Joan Monras of Spain's Centro de Estudios Monetarios y Financieros, Javier Vázquez-Grenno of the Universitat de Barcelona, and Ferran Elias of the University of Copenhagen study Spain's legalization of 600,000 undocumented immigrants in 2004 and find, among other things, that legalization significantly increased public revenues because these workers are now paying into the social security system.

MARIJUANA AND HOUSING PRICES

Although 20 states have now legalized medical marijuana, many voters are still wary of legalizing recreational marijuana. In **"Contact High: The External Effects of Retail Marijuana Establishments on House Prices"** (Research Briefs in Economic Policy no. 122), James Conklin of the University of Georgia, Moussa Diop of the University of Wisconsin–Madison, and Herman Li of California State University, Sacramento, find that when Denver medical marijuana stores converted to retail marijuana stores, single-family residences close to a converted store increased in property value by more than 8 percent, compared with houses farther away.

THE COST OF TEACHER STRIKES

How do teacher strikes affect student outcomes? In **"The Long-Run Effects of Teacher Strikes: Evidence from Argentina"** (Research Briefs in Economic Policy no. 123), David Jaume and Alexander Willén of Cornell University find that past teacher strikes in Argentina reduced future earnings for students. "The prevalence of teacher strikes in Argentina means that the effect on the economy is substantial: a back-of-the-envelope calculation suggests an aggregate annual earnings loss of $2.34 billion," they write. ■

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CATO

"To Be Governed..."

IF THEY DON'T ENFORCE THE REGULATION, WILL IT NOT BE COSTLY?

Lawyers for the District argued Wednesday for the dismissal of a lawsuit that challenges city regulations requiring some child-care workers to obtain associate degrees or risk losing their jobs.

The requirements . . . stipulate that child-care center directors must earn bachelor's degrees, and assistant teachers and home-care providers must earn Child Development Associate (CDA) certificates.

—*WASHINGTON POST*, JUNE 22, 2018

About 1,000 teachers in D.C. Public Schools —a quarter of the educator workforce—lack certification the city requires to lead a classroom, according to District education leaders.

—*WASHINGTON POST*, JUNE 22, 2018

ON THE WEALTH OF NATIONS . . .

Tariffs are the greatest! Either a country which has treated the United States unfairly on Trade negotiates a fair deal, or it gets hit with Tariffs. It's as simple as that—and everybody's talking! Remember, we are the "piggy bank" that's being robbed. All will be Great!

—PRESIDENT DONALD TRUMP ON TWITTER, JULY 24, 2018

THIS IS YOUR TRADE WAR ON DRUGS

Brand-new Ford Transit Connect vans, made in Spain, are dropped off at U.S. ports several times a month. First, they pass through customs—and then workers hired by the automaker start to rip the vehicles apart. The rear seats are plucked out. The seat belts in back go, too. Sometimes, the rear side windows are covered with painted plates. Any holes left in the floor are patched over.

This is how Ford Motor Co. tries to get around the half-century-old "chicken tax" . . . a 25 percent U.S. duty slapped on pickup trucks and work vans produced outside North America—10 times the 2.5 percent duty on imported passenger vans. President Lyndon B. Johnson imposed the big tariff aimed at European automakers such as Volkswagen.

—*WASHINGTON POST*, JULY 6, 2018

GREEN ENERGY CORPORATE WELFARE

[NextEra Energy] has grown into a green Goliath, almost entirely under the radar; not through taking on heavy debt to expand or by touting its greenness, but by relentlessly capitalizing on government support for renewable energy, in particular the tax subsidies that help finance wind and solar projects around the country. It then sells the output to utilities, many of which must procure power from green sources to meet state mandates.

—*WALL STREET JOURNAL*, JUNE 19, 2018

SUPPORTS PROHIBITION FOR 37 YEARS, NOW WANTS TO SUBSIDIZE DRUG SELLING

Senate Democratic Leader Chuck Schumer (D-NY) today formally introduced new legislation to decriminalize marijuana at the federal level. The bill . . . creates a new funding stream to help ensure that women and minority entrepreneurs have access to the new marijuana industries in their states.

—SEN. CHUCK SCHUMER, PRESS RELEASE, JUNE 27, 2018

ATTENTION ALEXANDRIA OCASIO-CORTEZ: YOU DON'T HAVE TO GO TO VENEZUELA TO SEE SOCIALISM IN ACTION

The federal government on Monday delivered a withering rebuke of New York City's housing authority, accusing officials of systematic misconduct, indifference, and outright lies in the management of the nation's oldest and largest stock of public housing.

Federal prosecutors in Manhattan said the authority, which houses at least 400,000 poor and working-class residents, covered up its actions, training its staff on how to mislead federal inspectors and presenting false reports to the government and to the public about its compliance with lead-paint regulations.

—*NEW YORK TIMES*, JUNE 11, 2018

THE 1930S CALLED. THEY WANT THEIR POLITICS BACK.

Leftwing politicians are singing the praises of border control while rightwingers call for expanding the welfare state. Old political certainties could be turned upside down in Germany this summer as the far ends of the country's political spectrum both moot a "national social" turn.

—*GUARDIAN*, JULY 22, 2018

I REMEMBER WHEN LIBERALS SUPPORTED FREE SPEECH AND CONSERVATIVES SUPPORTED FREE TRADE

Conservatives, said Justice Kagan, who is part of the court's four-member liberal wing, were "weaponizing the First Amendment."

—*NEW YORK TIMES*, JUNE 30, 2018