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# Cato Policy Report

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## Big Tech's Big-Time, Big-Scale Problem

BY GEOFFREY A. MANNE AND JUSTIN (GUS) HURWITZ

**H**igh-tech and network industries have a long history of evoking populist scrutiny. New technologies frequently disrupt incumbent, often less centralized, business models and interfere with existing relationships between sellers and consumers. Inevitably, the paradigmatic small-town buggy manufacturer displaced by technological advance directs his ire against the large, distant car companies that make the automobiles responsible for his demise. Even consumers and business owners who benefit from enhanced efficiency or entirely new and beneficial products often end up feeling dependent on them. Adding to that a distrust of firms that operate in geographies or at scales that are distant from typical consumer experiences, critics express their concerns about firms with a single heuristic: big is bad.

Although often framed in more complex antitrust terms—large firms are accused of

employing anticompetitive business practices, including the development of “predatory” innovations designed to expand their reach and thwart potential competition, for example—populist antipathy is, at root, fundamentally about the “bigness” of these high-

tech firms. Companies that owe their success—and their size—to clever implementations of innovative technologies are ultimately decried not for their technology or their business models but for their expansive

*Continued on page 6*



In a photo tweeted by SEN. ORRIN HATCH (R-UT) and later featured on *Meet the Press*, the senator holds up a T-shirt inspired by Cato trade policy analyst Scott Lincicome. Over 700 of these shirts have been sold since a pro-free trade Twitter quip from Lincicome went viral. See page 16.

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## PRESIDENT'S MESSAGE

# Stop!

I sometimes hear criticism that libertarians are too negative. We're always focusing on the bad stuff: out-of-control entitlement programs threatening to bury us, a regulatory state strangling economic growth, military interventions making us less safe, erosion of our civil liberties, attacks on free speech, etc., etc., etc. Some of this comes with the territory: Americans are too sanguine about increases in government power, and it's our job to ring the alarm bells. But I believe much of the criticism is deserved. We can't stop warning people to be wary of government, but we need to spend a lot more time sounding the mantra "Freedom. Is. Awesome!"

We should articulate our optimistic vision continuously. Liberty preserves the moral imperative that each individual owns his or her life, and the evidence is compelling that freedom allows humans to live more meaningful and prosperous lives. In my mind, calls for government action virtually always represent a fear of freedom. For example, that the less fortunate will suffer—rather than benefit—from a free and competitive economy, or that our security will be jeopardized unless we allow incursions on our civil liberties. But we appreciate the complexity of a modern, vibrant society, and don't fear combining it with the highest levels of freedom. Like the Founders, we look to the future with excitement, eager to discover the great things free women and men will create and discover in the years ahead.

So we, indeed, should focus better on the tremendous upsides of liberty. But that doesn't mean we can ever abdicate our responsibility to keep warning of key threats to this future, especially when the political system doesn't seem to care. Could there be a better example than out-of-control federal spending—particularly in light of the recent bipartisan spending blowout? The ability to deficit spend with impunity—so far—has caused both political parties to throw caution to the wind and up the ante on government profligacy. So it falls to Cato and our Sponsors to consistently beat a loud drum, despite being seen as "finger wagers" with a negative message.

The Congressional Budget Office (CBO) recently released its 10-year budget projections and the picture's not pretty. The baseline forecast sees federal spending increasing in the coming decade from \$4.1 trillion this year to \$7 trillion in fiscal year 2028. That's an annual average growth of 5.5 percent. Since the CBO expects inflation to be just over 2 percent annually, that represents rapid real growth in spending. Over this time period, spending on the "Big 3" entitlement programs—Medicare, Medicaid, and Social Security—nearly doubles in nominal terms, from

\$2.1 trillion to \$4.0 trillion. And the debt picture is shocking: deficits will average \$1.2 trillion, or nearly 5 percent of GDP, over the decade, pushing up government debt held by the public from \$16 trillion today to \$29 trillion in 2028.

Unless Congress makes major reforms, these projections are optimistic in a number of ways. For example, they assume that policymakers adhere to discretionary budget caps starting in 2020, even though Congress has repeatedly lifted the caps in the past. And we know that this is only part of the picture, since the unfunded liabilities of the Big 3 are many times this amount.

The economic assumptions underlying these forecasts are benign: no recession, a sub-5 percent unemployment rate, interest rates getting no higher than about 4 percent, and inflation of 2.5 percent or less. And notably, budget-friendly elements of current law—such as expiration of individual tax cuts—are assumed to remain in place. So the CBO report feels like a best-case scenario.

President Trump's initial budget proposal last year highlighted three important things. First, huge (and welcome!) cuts to discretionary spending were required to fund a \$50 billion increase in military spending, for which we don't see the need. But it shows how little flexibility exists as growth in entitlements crowds out the rest of the budget. Second, by putting entitlements off the table, both the administration and Congress punted on the most important part of the spending problem. And third, there exists no spending discipline in either party. The narrative that Republicans were "trapped" by Democrats to exchange higher domestic spending for more dollars for the military lets everyone off the hook too easily. As Chris Edwards has pointed out, there was little to no Republican support for the administration's proposed cuts—but lots of support for more spending most everywhere else.

There's indeed no better marketing strategy for our point of view than putting more attention on the lives of meaning and abundance all people can attain in a free and open society. For this is the bright future that's ours if we follow the vision of the Founders, and it's the legacy we wish to leave future generations. But we can't stop emphasizing the immoral risk to which the freedom and prosperity of these generations is exposed by ever-increasing levels of government spending. This will always be a cornerstone of our work: we will never silence Cato's shouts of "Stop!"

BY PETER GOETTLER

“We need to spend a lot more time sounding the mantra 'Freedom. Is. Awesome!'”

*Broad coalition agrees: military base closures long overdue*

## Cato Spearheads Efforts on Base Closures

**C**ongress has not authorized a Base Realignment and Closure (BRAC) process for 13 years, despite the fact that multiple secretaries of defense have asked for congressional authority to eliminate unnecessary military bases. The most recent Pentagon estimates conclude that the Department of Defense has 19 percent excess capacity, meaning that roughly one in every five facilities are either wholly unnecessary or certain activities could be consolidated into other facilities. This is not only wasteful of American tax dollars, but also it hinders the military's ability to move its resources to where they are actually needed. As Secretary James Mattis recently stated, "Every unnecessary facility we maintain requires us to cut capabilities elsewhere. I must be able to eliminate excess infrastructure in order to shift resources to readiness and modernization."

The Cato Institute is leading the way on efforts to bring BRAC to the forefront of foreign policy debates. Cato's Christopher Preble has been studying the economics of base closures

around the country for several years and has written extensively on the benefits of BRAC. Last year, Preble and the Cato foreign policy team began a concerted effort to increase awareness on the issue, starting with a policy breakfast with representatives from the major stakeholders: the House and Senate Armed Services Committees, the U.S. military, the Association of



REP. ADAM SMITH (D-WA) (left) and Cato's CHRIS PREBLE discuss the need to close unnecessary military bases.

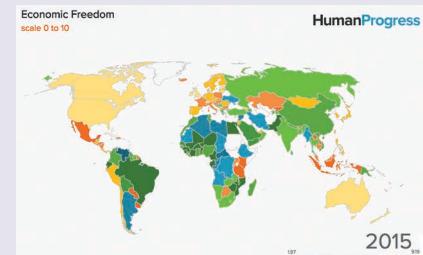
Defense Communities, former BRAC officials, and think tank scholars.

This meeting led to a coalition letter spearheaded by Preble and signed by over 45 experts from over 30 organizations from across the political spectrum, including former Secretary of Defense Leon Panetta, which urged Congress to authorize a new BRAC round. The letter, released publicly in June of last year, explained that, while closing a military base may be temporarily painful for surrounding communities, these communities often adapt and recover, and the majority ultimately benefit from the opportunity to diversify their economies away from their heavy reliance on the federal government. Thanks to Congress's repeated efforts to block closures, the letter warns, "the military has been forced to allocate resources away from the training and equipping of our soldiers, and toward maintaining unneeded and unwanted infrastructure. . . . Meanwhile, many tens of billions of taxpayers' dollars have been wasted."

In March, Rep. Adam Smith (D-WA), the ranking Democrat on the House Armed Services Committee and frequent proponent of BRAC, came to Cato for an event with Preble to discuss the future of BRAC. He warned that as things stand, the military is "hamstrung" in its ability to move assets, making it very difficult to function wisely or efficiently. Preble and Smith also coauthored an article on the topic in the journal *Strategic Studies Quarterly*. Their article provides an extensive overview of the issue, and features two case studies from Preble's research. ■

# Cato News Notes

## THE NEW HUMANPROGRESS.ORG



**H**umanProgress.org, Cato's project to document the improving state of the world with data, charts, and maps, unveiled its new design in March. It features a more intuitive interface and modern design that make it easier than ever for scholars, students, and members of the public to explore the site's wealth of data and articles on how the world is getting better.

## CATO LEADS FIGHT ON QUALIFIED IMMUNITY



**I**n April, *Washington Post* columnist George F. Will cited the Cato Institute's new project opposing the doctrine of qualified immunity during an appearance on *Meet the Press*. "There should be a national discussion—and it's going to be one led by the Cato Institute—about qualified immunity for public officials, including policemen," said Will.



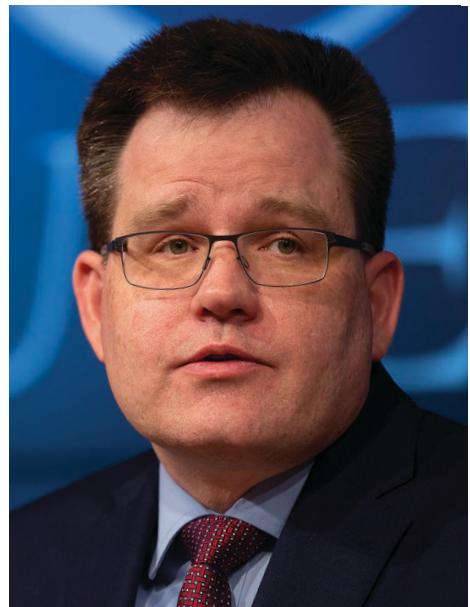
**A**t a Cato Book Forum, author STEVE COLL (left) discussed his new book *Directorate S: The CIA and America's Secret Wars in Afghanistan and Pakistan* with Cato visiting research fellow SAHAR KHAN.



**W**hat can we learn from countries, such as Sweden and Australia, that have successfully liberated their economies and reformed their welfare states? NILS KARLSON (at lectern) discussed the findings of his book *Statecraft and Liberal Reform in Advanced Democracies* at a Book Forum moderated by Cato's IAN VASQUEZ. Karlson described "policy entrepreneurs," such as think tanks, as a crucial part of turning ideas for reform into action.



**I**n March, Cato launched its new campaign to challenge and roll back qualified immunity, a doctrine that shields police officers from being held accountable for misconduct. The Institute marked the launch with a Policy Forum featuring (left to right) Judge LYNN S. ADELMAN of the U.S. District Court for the Eastern District of Wisconsin, WILLIAM BAUDE of the University of Chicago, Cato's CLARK NEILY, and civil rights attorney VICTOR M. GLASBERG.



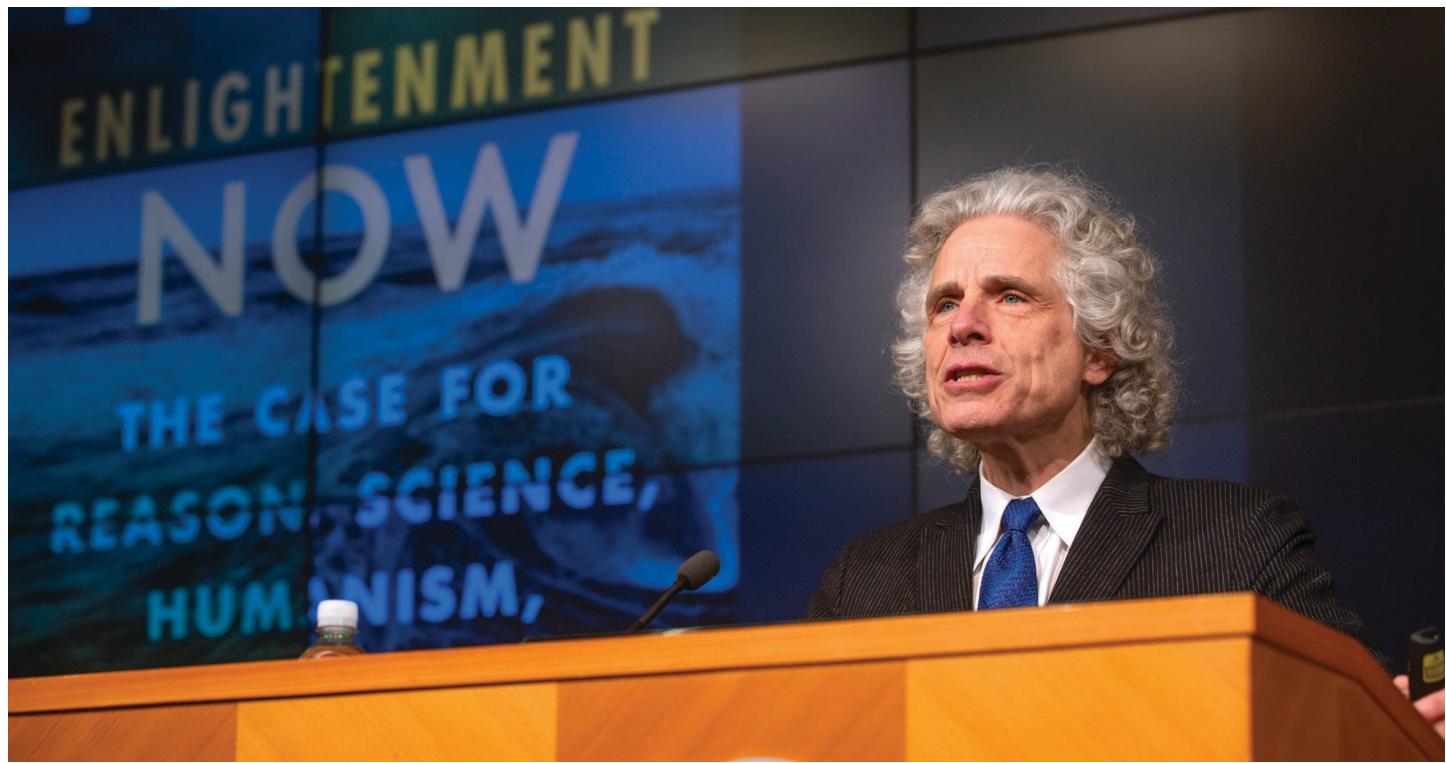
**K**ing Princeton professor KEITH E. WHITTINGTON came to Cato for a discussion of his new book, *Speak Freely: Why Universities Must Defend Free Speech*, which was cited twice the following month in *Washington Post* stories on free speech issues.



JUAN WILLIAMS, author of *Eyes on the Prize*, came to Cato to discuss Timothy Sandefur's new Cato book *Frederick Douglass: Self-Made Man* and review how Douglass's ideas have continued to influence constitutional analysis throughout the years.



THE U.S. Food and Drug Administration prohibits many people from sharing truthful, nonmisleading information about lawful uses of FDA-approved products. At a Cato Policy Forum, (left to right) HOWARD ROOT, the author of *Cardiac Arrest*; CHRISTINA SANDEFUR of the Goldwater Institute; and JESSICA FLANIGAN of the University of Richmond discussed how this FDA gag rule violates patient rights.



IN March, cognitive scientist and public intellectual STEVEN PINKER came to the Cato Institute to deliver a Joseph K. McLaughlin Lecture on his new book, *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress*, which was excerpted in the March–April issue of *Cato Policy Report*.

*Continued from page 1*

operations. Standard Oil, AT&T (in the early 20th century), IBM, AT&T (in the late 20th century), Microsoft, and, most recently, Google, Facebook, Amazon, and (once again) AT&T have regularly found themselves in the crosshairs of antitrust enforcers for growing large by besting (and, often, buying) their competitors.

The size of these companies—among the largest in the American economy—endows them with the superficial appearance of market power, providing competitors and advocates with a rhetorical basis for antitrust action against them. But their problems also extend beyond mere allegations that they are too large: in each case, these companies have also engaged in some conduct disfavored by powerful political actors. The appearance of market power and the firms’ problematic-to-some conduct give rise to calls to use antitrust law to regulate their behavior—or, perhaps most troubling, to constrain their perceived power by breaking them up.

This article is not an apologia for the bad acts of the modern tech industry. There is no question that some of today’s largest companies have transformed society and the economy over the years (not necessarily always for the better) and have engaged in arguably troubling conduct in the process. But whatever the beliefs of those calling for the breakup of Big Tech, the question remains whether it is wise to shoehorn broader social and political concerns into the narrow, economic remit of antitrust law.

By and large, the market is sufficiently powerful to constrain potentially problematic conduct. Consider the discussion that has developed since the disclosure of Facebook’s relationship with Cambridge Analytica. Mark Zuckerberg has been scrambling to make public amends and to stave off a potentially devastating regulatory response, even going so far as to suggest that perhaps platforms like Facebook should be subject to some regulation. Despite those efforts, the reality is

“By and large, the market is sufficiently powerful to constrain potentially problematic conduct.”

that the market is the most effective regulator, and at the time of this writing Facebook has lost over \$75 billion in value.

Alas, the urge to treat antitrust as a legal Swiss Army knife capable of correcting all manner of social and economic ills is apparently difficult to resist. Conflating size with market power, and market power with political power, many recent calls for regulation of the tech industry are framed in antitrust terms. Sen. Elizabeth Warren (D-MA) is one of the worst offenders in this regard:

Today in America competition is dying. Consolidation and concentration are on the rise in sector after sector. Concentration threatens our markets, threatens our economy, and threatens our democracy.

For Senator Warren the antidote is clear: “It is time to do what Teddy Roosevelt did: pick up the antitrust stick again.”

And she is not alone. Abetted by a growing chorus of advocates and scholars on both the left and right, proponents of activist antitrust are now calling for invasive, “public-utility-style” regulation or even the dissolution of the world’s most innovative companies essentially because they seem “too big.” Unconstrained by a sufficient number of competitors, the argument goes, these firms impose all manner of alleged harms—from fake news to the demise of local retail to low wages to the veritable destruction of “democracy.” What is needed, they say, is industrial policy that shackles large companies or that mandates more, smaller firms.

This view contradicts the past century’s worth of experience and learning. It would require jettisoning the crown jewel of modern antitrust law—the consumer welfare stan-

dard—and returning antitrust to an earlier era in which inefficient firms were protected from the burdens of competition at the expense of consumers. And doing so would put industrial regulation in the hands of would-be central planners, shielded from any politically accountable oversight.

### **WILSON, BRANDEIS, AND THE IGNORANT CONSUMER**

American antitrust law began with the Sherman Antitrust Act of 1890. The Sherman Act, named for Ohio Senator John Sherman, prohibited agreements “in restraint of trade” (that is, collusion) and “monopoliz[ation], or attempt[s] to monopolize.” Importantly, and contrary to common understandings on both the left and right, the purpose of the Sherman Antitrust Act was never particularly clear.

There is ample evidence that it was intended both to proscribe business practices that harmed consumers and to allow politically preferred businesses to maintain high prices in the face of competition from politically disfavored businesses—never mind that modern economics roundly tells us that these two goals are incompatible. This ambiguity isn’t entirely surprising, both because Senator Sherman was fickle and petty in his own purposes for introducing the legislation and because the reigning economic theory of the day was relatively unsophisticated and would remain so for at least another several decades.

The years surrounding the adoption of the Sherman Act were characterized by dramatic growth in the high-tech industries of the day—most notably manufacturing/refining, railroads, and telecommunications—as well as corporate and conglomerate consolidation. For many, the purpose of the Sherman Act was to stem this growth—to prevent low prices and large firms from “driving out of business the small dealers and worthy men whose lives have been spent therein,” in the words of one of the early Supreme Court decisions applying the act. It failed to do so, however, and by the time of the presidential election of 1912, concern

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“ Size simply does not correlate with anything recognizable as ‘consumer harm.’ ”

about large firms had developed as a divisive, populist issue. Woodrow Wilson was elected president largely on a big-is-bad antitrust platform.

The key architect of that platform was Louis Brandeis. Brandeis played an important role in reshaping antitrust and industrial policy in the United States, helping to design the Clayton Antitrust Act and the Federal Trade Commission in 1914, both of which dramatically expanded federal antitrust law. Brandeis's views were informed by a strong belief that large firms could become large only by illegitimate means and could not be trusted. Large firms, unlike their Main Street, mom-and-pop counterparts, operated primarily by deceiving consumers into buying unnecessary and lower-quality products. Stated bluntly, Brandeis's views were informed by a belief that consumers were (in his own words) “servile, self-indulgent, indolent, ignorant.”

#### THE RISE AND FALL OF MID-CENTURY ANTITRUST

As the 20th century progressed, antitrust economics and the study of industrial organization grew increasingly sophisticated. The most prominent early advance in antitrust economics was the development of the Structure-Conduct-Performance (SCP) paradigm, associated with University of California, Berkeley, economist Joe Bain. SCP held that the conduct of firms in an industry, and ultimately their performance, was a function of the overall structure of the industry. One of the predictions of the SCP model is that more-concentrated industries are inherently less competitive, allowing firms to employ anticompetitive conduct (like collusion) to raise prices. Profitability and market performance, in this view, are a function of market structure, not the relative efficiency of competing firms. SCP therefore generally prescribed reducing concentration—for instance, by breaking up firms or challenging mergers—as a way of making industries more competitive. Ultimately, the SCP model proved

to be overly simplistic and fell out of favor relatively not long after it was popularized.

Both SCP and the Brandeisian view of antitrust espouse a preference for smaller firms, though they diverge on the harm of “bigness.” The Brandeisian view holds that big is bad per se, whereas SCP suggests that a market comprising multiple competing smaller firms is comparatively better than a highly concentrated one (which implies larger firms). Neither approach readily admits the possibility that big could be better under appropriate conditions, however.

Yet the weight of subsequent economic research holds that large firms are frequently ideal economic actors for maximizing consumer welfare. Since the Industrial Revolution, and especially in the Information Age, it's not unusual for efficient, competitive markets to comprise only a few big, innovative firms. Unlike the textbook models of monopoly markets, these markets tend to exhibit extremely high levels of research and development, continual product evolution, frequent entry, almost as frequent exit—and economies of scope and scale (i.e., “bigness”). Size simply does not correlate with anything recognizable as “consumer harm.”

While perhaps counterintuitive, this observation means that, in many cases, modern antitrust law actually condones bigness—or, put differently, without additional factors to substantiate potential concern, antitrust law is fundamentally agnostic about the size of firms or the extent of market concentration.

The classic example of the problem with the Brandeisian and SCP approaches to antitrust analysis is the 1966 *Von's Grocery* case. In *Von's Grocery*, the Supreme Court addressed the government's challenge of the 1960 merger of Von's Grocery and Shopping

Bag Food Stores, two grocery chains in southern California that were succeeding in a rapidly changing and increasingly concentrated market for grocery stores. Together, these chains controlled less than 8 percent of a grocery market that was increasingly dominated by a smaller number of big-box supermarkets that were coming into existence as a result of business model innovation, changing demographics, affordable automobiles, and economies of scale enabled in part by new technology.

The market share of the merged chains was insufficient to have any meaningful effect on prices, but it might have been sufficient to give the resulting retail chain the scale it needed to compete. Yet despite the lack of evidence of any anticompetitive effect from the merger, the Supreme Court affirmed the government's challenge, adopting the SCP presumption against increased concentration even where there was no anticompetitive harm.

In *Von's Grocery*, this decision meant breaking up a merger that did not harm consumers, on the one hand, while preventing firms from remaining competitive in an evolving market by achieving efficient scale, on the other. As Justice Stewart noted in dissent:

In fashioning its per se rule, based on the net arithmetical decline in the number of single store operators, the Court completely disregards the obvious pro-creative vigour of competition in the market as reflected in the turbulent history of entry and exit of competing small chains. . . . The Clayton Act was never intended by Congress for use by the Court as a charter to roll back the supermarket revolution.

In other words, by adopting a formalistic rule against increased concentration, the analysis in *Von's Grocery* disregarded the more nuanced market dynamics that justified the merger, thus harming consumers, competitors, and dynamic competition.

In the 1970s, antitrust economists increasingly questioned the small-is-good bias of

Brandeisian and SCP antitrust. Prompted by cases like *Von's Grocery*, antitrust economists realized that small is good as an antitrust ethos lacked empirical and intellectual justification. Moreover, preferring firm size as an analytical dimension for applying antitrust laws could often lead to perverse outcomes in which consumers were harmed and smaller, less efficient competitors were protected. Rather than focusing on naive proxies for conduct and performance, more probing analysis was needed.

#### **ANTITRUST'S PARADOX: PROTECTING COMPETITORS HARMS CONSUMERS**

Robert Bork famously synthesized the lessons of these economists in *The Antitrust Paradox*, the 1978 *urtext* of modern antitrust. Bork argued that the best understanding of the purpose of American antitrust law is the protection of consumers against anticompetitive business practices, and that success on this front is best measured in terms of consumer welfare. Under the consumer welfare standard, we are not concerned with the structure of an industry in the abstract; we are concerned only with the extent to which particular actions of firms within that industry are likely to harm consumers.

But Bork's normative focus wasn't merely the meaning of the Sherman Act or the significance of the consumer welfare standard. For Bork, the paradox of antitrust is that antitrust law, meant to shield *consumers* from anticompetitive business practices, had come to be used to shield *competitors* from competition, at the expense of consumers' welfare.

By its nature, competition disrupts incumbent firms and existing markets. Firms develop new technologies or processes that allow them to offer better products or lower prices than their rivals. This benefits consumers and successful firms alike. Sometimes firms develop new products that disrupt markets entirely, putting a whole generation of firms out of business—again benefitting consumers and successful firms. Horses and buggies are replaced by cars; small grocers are replaced by supermarkets.

“The story of antitrust law for most of the 20th century was one of standard-less enforcement for political ends.”

What Bork saw was that antitrust law was used by unsuccessful firms to constrain the competitive efforts of their rivals. Under the Brandeisian and SCP models, firms that sought to evade the pressures of competition and managers who preferred to extract easy rents than to give their customers better products or lower prices could point to virtually any threat to the status quo as evidence of anticompetitive conduct. If a firm developed a better product, the law could be used to punish its success if the firm grew too large. If a firm developed a better process that enabled it to offer lower prices, competitors could allege that such conduct was illegal because it was “predatory.”

#### **THE POLITICAL ECONOMY OF ANTITRUST REGULATION**

Perhaps the greatest virtue of the consumer welfare standard is not that it is the best antitrust standard (although it is)—it's simply that it *is* a standard. The story of antitrust law for most of the 20th century was one of standard-less enforcement for political ends. It was a tool by which any entrenched industry could harness the force of the state to maintain power or stifle competition.

This is because competition, on its face, is virtually indistinguishable from anticompetitive behavior. Every firm strives to undercut its rivals, to put its rivals out of business, to increase its rivals' costs, or to steal its rivals' customers. The consumer welfare standard provides courts with a concrete mechanism for distinguishing between good and bad conduct, based not on the effect on rival firms but on the effect on consumers. Absent such a stan-

dard, any firm could potentially be deemed to violate the antitrust laws for any act it undertakes that could impede its competitors.

Compounding the problem, the operative text of the Sherman Act comprises about 170 frustratingly ambiguous words. It is difficult to escape the sense that advocates of the elimination or dilution of the consumer welfare standard seek to co-opt the act's terse ambiguity to invent a sort of “meta-legislation” effectively to enact social preferences that they couldn't convince Congress to adopt outright.

The same high-tech, scale industries that are likely to evoke superficial big-is-bad antitrust concerns are also likely to raise important social, legal, and political questions. The telephone and the railroad reshaped society; the computer began a reshaping of society that the *personal* computer continued and that is still ongoing in today's internet era.

Adapting to the changes wrought by these industries is one of the defining challenges of the 21st century. It could well be the case, as Mark Zuckerberg suggests, that it's time to regulate all or part of these industries. If so, the shape and scope of that regulation is a matter for political debate and social response. But antitrust law is not the proper vehicle for addressing open-ended issues related to social and political values, disconnected from the economic effects of restraints on competition.

One major risk of addressing these concerns through antitrust law—and of weakening the consumer welfare standard in the process—is that applying antitrust law short-circuits the social and political processes that are better suited to addressing the concerns.

Another risk is that such a standard-less antitrust law could be used to impose arbitrary market controls subject only to political whim. The earliest, worst impulses of American antitrust law catered to the would-be industrial planners of the early 20th century. Contemporary calls to weaken the consumer welfare standard are motivated by the demands of

*Continued on page 12*

# The Untold History of FCC Regulation

**P**opular wisdom holds that, before the creation of the Federal Radio Commission, the radio spectrum was in chaos. But as former chief economist at the Federal Communications Commission (FCC) THOMAS HAZLETT documents in his new book, *The Political Spectrum: The Tumultuous Liberation of Wireless Technology, from Herbert Hoover to the Smartphone*, the real story of the radio spectrum is quite different. At a Cato Book Forum, Hazlett was joined by FCC Chairman AJIT PAI to discuss how FCC regulations have hampered innovation for decades, delaying the advent of everything from FM radio to the cell phone.

**THOMAS HAZLETT:** Wireless is a technology so curious that it's named for what it's not. In 1939, at the World's Fair, when wireless television was debuted, the demonstration featured a special television created out of glass, to counter rumors that it featured tiny actors on a miniature stage.

It turned out to be real science, of course, and consumers came to embrace it. With the discovery of broadcasting in the 1920s, a mass-market radio service developed. And it was widely said at that time, and even to this day, that a "market failure" developed: there was a cacophony of competing voices, endemic spillovers creating static interference and inefficient externalities. There had to be centralized, administrative control. Broadcasting stations could not, if left to their own, keep from destroying one another.

But, in fact, that was *not* the history. The robust emergence of radio was under a first come, first served system of property rights in frequencies. The rules were enforced by the U.S. Department of Commerce—the first regulator of radio was the secretary of commerce, Herbert Hoover, 1921–1928. And rules borrowed from common law created an orderly marketplace with brisk development.

Up until about February 23, 1927, when the Radio Act was signed into law. The Radio Act overturned and preempted property rights in frequencies. Instead, a "public interest" standard would be used by regulators to set aside particular frequencies for partic-

ular tasks by particular licensees. A commission would define the wireless services, the communications technologies, and the business models allowed to compete.

This change in law was not due to the chaos of markets, but sprang from a coalition of political and business interests. Political actors, led by Hoover, desired more discretion over who could broadcast and what they said. These policymakers aligned with major commercial radio station owners, incumbents who sought barriers to entry and provided the actual language of "public interest" for the 1927 Act.

The upshot was that a government agency, not competitive market forces, would allocate airwaves. A golden resource in the budding information age was taken off the market. The "political spectrum" was born.

For decades, this system blocked competitive forces and stymied innovation. Gradually, however, the restrictions from the central allocation system loosened. Why and how this process unfolded is still a bit of a mystery. But there are two stories that will illustrate this path to liberalization.

Let's start with one of the great inventors of the 20th century, Edwin Howard Armstrong. He was a Columbia University professor of physics, but he preferred to be addressed as "Major Armstrong"—he was very patriotic and had served in both world wars. He was one of the key contributors to AM technology, and in the early 1920s he was the largest shareholder in the Radio Corporation of America

(RCA) due to the sale of his patents.

In 1934 he came up with a better mouse-trap, FM broadcasting. He had to get permission to deploy his new idea using radio spectrum—and it took some years for the planet's preeminent expert on wireless technology to get his allocation. But finally he did, stations were built, and some 500,000 radio sets in the northeastern United States tuned into high fidelity radio. They experienced the rich, wonderful, quality reception that Armstrong had told them they would.

But in 1945, the FCC reconsidered and uprooted the entire band. The FCC had a "sunspot theory" of radio interference, uniquely applying the threat of solar flares. Armstrong, who would have been the first to worry about interference had the threat been real, objected violently to the move and introduced mountains of scientific evidence against it. To no effect. The FCC, under political pressure, eliminated the FM allocation, making all existing radios worthless. A new band was assigned, but by the time the new radios were designed, no one would buy them. Armstrong, distressed and humiliated, committed suicide in 1954. Had he lived to see FM radio given a straight-up chance to compete, as it finally was in the 1960s, he would have been proud to witness its almost instant domination of the incumbent AM technology.

I tell the Armstrong FM story because that technology actually got *into* the marketplace before it was excluded. The great majority of wireless innovations never made it to market—nipped in the bud.

Alas, progress slowly came. Let's see it by fast-forwarding to 2005. In that year there was another idea for a *new 'n improved* radio. An entrepreneurial company in Cupertino, California, which had very nearly gone bust just a few years before, was thinking about how mobile phones could be made prettier, better, and vastly more functional. And so it

was that Apple invented the iPhone. To work, the device would have to have access to airwaves. Just as had Edwin Armstrong, Steve Jobs needed spectrum.

Yet by 2005, the regime called by its practitioners “mother may I” had been, at least in significant part, reformed. Apple did not have to ask Washington for permission to launch. Instead, the FCC had relaxed restrictions, granting mobile carriers wide latitude to use radio spectrum in flexible ways. This put the onus on the networks to manage their own frequency spaces.

A new spectrum store was open for business, and the mobile carriers approached Apple to sell access to airwaves. Indeed, the networks bid fiercely against each other to host this consumer-pleasing innovation. The price Apple paid for airwave access was negative.

The iPhone took the market by storm, selling in the hundreds of millions globally, instigating the smartphone revolution, and establishing the iconic consumer innovation of this century. And beyond that, a vast ecosystem emerged. There are millions of applications for iPhones and competing Android devices now in the radio space without approval from a commission. This is a level of complexity unheard of in the 1920s or ’30s, when it was said it would be too complicated for businesses to figure out where the rules of the road should be bent to accommodate interfering devices and services. The conflicts would be overwhelming unless carefully avoided by “public interest” spectrum allocations.

In consumer welfare terms, almost the exact opposite was true. Until tight administrative controls were peeled back, the rules maintained a Quiet Zone. The radio spectrum was governed by passive aggressive librarians. Regulators could hardly have known what would happen when the rules were loosened, but they feared it greatly. They sought to prevent the future.

Reforms gradually forged room for new opportunities. By ceding spectrum property

rights to competitors in the marketplace, experiments could be run and the march of technology accommodated. You probably don’t think much about the potential spectrum conflicts that come into play when you tap your smartphone icons. But your Angry Birds and Pandora and Facebook; your map

out, can only be done by open markets.

Proof of concept. Delegating spectrum coordination to private competitors, as now applies to perhaps one-fifth of the most valuable spectrum, has demonstrated its worth. The struggle now is to push reform far deeper into the “political spectrum,” unlocking more of nature’s wireless bounty. The successes are not illusory, and surely not the product of tiny actors on a miniature stage.

**AJIT PAI:** This book is an extraordinary read, and as I was going along chapter by chapter, I thought about one of my favorite philosophers. I refer of course to Yoda, who when instructing Luke in *The Empire Strikes Back* says, “You must unlearn what you have learned.” This book forced me to look at how some of the received wisdom we have accepted uncritically should actually be challenged.

There are a couple of different insights that I found especially salient—number one, that far from empowering the public, the FCC’s style of decisionmaking over the years actually empowers politicians and bureaucrats to make decisions. Many FCC regulators of both parties, across different eras and through different technological debates, found themselves creating a system that essentially vested control in themselves.

In one passage, Professor Hazlett discusses the scarcity rationale for broadcast regulation and the FCC’s paradoxical restriction on cable entry, which would have provided more competition. As the professor puts it, quoting an FCC order from many years ago, “The circularity of this argument bears note. Broadcasting was regulated because spectrum was a physically scarce resource limited by nature. But when ‘spectrum in a tube’—cable—“promised (or threatened) to relax that scarcity, the government was allowed to extend its powers to preserve the very limitations that justified regulation in the first place.” That is such a profound insight. The FCC had been regulating for decades on the basis of a premise which, because of an



“What Herbert Hoover asserted had to be done by the state, it turns out, can only be done by open markets.”

apps and Snapchat and Kindle; your ride share or your Twitter; your dog tracker and cat videos—each potentially interferes with the other. The complexity, barely background noise to you, is universes beyond what might be managed by a central authority. That regulatory structure had to fade away for the new wireless world to evolve.

Now whole new sectors are created, and nary a thought is given to the fact that the platform it sits on is a liberalized, deregulated spectrum market that frees the competitive forces that were so recently thought not up to the task at hand. What Herbert Hoover asserted had to be done by the state, it turns

emerging technology, should have been called into question. Yet the agency actually squelched that emerging technology and ultimately disserved consumers.

Which leads to the second major insight that I got from the book in terms of public choice, which is how FCC decisionmaking typically has accommodated rent seeking. The example I liked in particular was the emergence of cellular—or the non-emergence of cellular. I've had the chance to meet the one and only Marty Cooper, who placed the very first cellular call in the early 1970s. And I remember after meeting him and seeing the prototype—this giant cell phone that he used to place that first call—wondering: Why did he place that call in the early 1970s, in the year I was born, yet cellular as we know it didn't emerge until I was pretty much out of law school in the 1990s? The book goes to extraordinary lengths to detail exactly why that was, and one of the reasons was that the FCC was besieged by a couple of different entities that thought this was a competitive threat, or simply didn't want the FCC to be focusing on this new and emerging technology.

The other aspect of public choice that I thought was very interesting was how ultimately this way of decisionmaking has harmed consumers. And quite often this harm to consumer welfare comes under the guise of what the professor calls very humorously throughout the book, "technical reasons." For "technical reasons" we have to prohibit you from exploring this emerging technology, or we have to restrict output.

To me, the "technical reasons" excuse was best shown in 1944, as the professor already mentioned, when the FCC got a couple of petitions with a bold proposal: toss every FM station off its assigned frequency and relocate the entire industry up the dial. All existing equipment—transmitters owned by stations, receivers owned by listeners—would become obsolete. Proponents claimed the frequency switch would help FM stations avoid ionic interference, a

threat alleged to emanate from sunspots. Think about how many decades of consumer welfare were forestalled, or in the immediate years prohibited, because the agency essentially restricted the ability of Armstrong and other FM pioneers to be able to engage in what they were doing best.



**AJIT PAI**  
“The FCC had been regulating for decades on the basis of a premise which should have been called into question.”

The same thing happened with cellular. The professor quotes a study that concluded that, had the FCC proceeded directly to licensing from its 1970 allocation decision, cellular licenses could have been granted as early as 1972, and systems could have been operational in 1973. The study's authors found that the FCC spectrum allocation process caused a 10- to 15-year delay in cellular service. And the professor suggests that actually might be on the *conservative* end of things.

And that leads me to the last key insight, which is that the market mechanism, as he conceives it, has delivered far more value over the years than the amorphous and elas-

tic public interest standard. And with respect to the former, of course, Ronald Coase features very prominently in the book. It really is incredible to think that in the late 1950s and early 1960s he was pioneering an idea that was almost quite literally laughed out of the academy, the halls of Congress, and even the halls of the FCC: this notion that assigning property rights and minimizing transaction costs would ultimately allow the asset itself to be allocated to its highest valued use. The professor quotes a couple of my predecessors at the commission who said that the likelihood of any spectrum being auctioned would be akin to the Easter Bunny winning the Preakness.

I think that the success of Professor Coase's theory has been proven over the years. And as Professor Hazlett mentions in closing, "From electricity to water to pollution allowances to fishing rights, newly constructed markets have fashioned superior alternatives to command-and-control regulation."

The other piece of it, of course, is the public interest standard, and here the professor does a masterful job of elucidating why that standard, all too often, has been amorphous and has been subject to the interpretation of whatever particular majority happens to occupy the FCC. In the best example I can think of, Hazlett talks about how FCC staffers over the years would be given an assignment to approve a broadcast license renewal. "The FCC was well practiced in crafting eloquent documents detailing how any given assignment advanced 'public interest, convenience or necessity.' These statements, required by administrative law, laid a veneer of respectability over processes that might otherwise attract interest from journalists or prosecutors. In one revealing episode, a surprisingly self-confident FCC staffer—tasked with writing up a justification for a license award—asked the chairman of the Commission to describe the policy grounds for this selection." (This is in the mid-1960s.) "The annoyed chairman responded 'You'll think of some.'" In

another case, “the FCC voted to grant a company a TV license, and the staff wrote up an order of more than 100 pages explaining it. For reasons undisclosed, the FCC reconsidered and switched licensees. The staff dutifully revised its order using the original draft as a template, producing an equally glowing public interest justification for the new winner.” I think that makes it critical for us to focus on the facts, to think about principles of economics and to have a view as to consumer welfare as opposed to whatever parochial interest might be badgering us for this or that regulatory favor.

The professor, as I said, offers some great insights, and I would like to think that over the last year and change we have tried to incorporate some of those insights in terms of structure and policy. Last year, I introduced my proposal to create an Office of Economic Analysis. Our hope is to make sure that economic reasoning is not just an after-

thought at the FCC, but a *central* thought as we make our decisions. That is one way to insulate the agency from that kind of “ends justify the means” decisionmaking that I just described.

Additionally, we are giving teeth to Section 7 of the Communications Act. No longer will an innovator have to sit around waiting for years for the FCC to figure out whether or not an invention is in the public interest. We now have a one-year deadline for making these determinations. And we are adopting more market-based solutions—flexible spectrum use, for example, has been a profound benefit to consumers the world over. Instead of determining what the spectrum shall be used for, dictating it from on high and expecting entrepreneurs to make use of it, we let innovators make that decision. And the results speak for themselves. The fact that we have smartphones speaks to the fact that innovators have been able to de-

vote the spectrum to its highest-valued use.

Additionally, we want to minimize infrastructure burdens. Increasingly this is where the rubber meets the road. Next week, for example, we are going to be voting on an order modernizing our regulations to recognize that the networks of the future won’t look like the networks of the past. The small cells of the future and all the guts of the 5G networks need to be evaluated under a regulatory rubric that is different from the one that applied in decades past to 200-foot cell towers.

Our hope is that both in terms of structure and in terms of policy we can make sure that we make decisions that are right for the American people, produce more consumer welfare, and most importantly ensure that when the sequel to this book is written, Chairman Ajit Pai is not going to be featured whatsoever. Except for, hopefully, as an example of something that went right. ■

*Continued from page 8*

similar would-be planners to reshape American industry in their own idiosyncratic image. Regardless of whether that image for the American economy is good (it is not), such designs should be made through the legislative process, not by hollowing out the core of antitrust law and parasitically repurposing it for political purposes.

Today’s promoters of breaking up or strictly regulating Big Tech companies are primarily motivated by political concerns. These undeniably large and pervasive companies have social influence and economic power that rivals and therefore threatens would-be regulators who have spent their careers positioning themselves to wield the power of the state to advance what Thomas Sowell has dubbed the “vision of the anointed.” Thus, Amazon threatens to undermine an aesthetic vision of “local self-reliance;” Facebook and Google are “information gatekeepers” with the power to undermine preferred political narratives; Uber exploits workers, evades

social regulation, and threatens to hasten the decline of labor unions (and their campaign contributions).

Ultimately, from Louis Brandeis to Elizabeth Warren, those who cloak their approach to market regulation in the cloth of “consumer protection” instead of “consumer welfare” start from the premise that consumers *need* protection—from both the market and from themselves—and that learned regulators are best situated to offer this protection. A consumer protection standard is inherently ambiguous, affording regulators the power to structure markets in whatever manner they deem best for consumers. The consumer welfare standard, on the other hand, restricts the conduct of firms and regulators alike, ensuring that both operate in the objective best interest of consumers.

Properly construed, antitrust law has one focus: protecting consumers from anticompetitive conduct. This goal is encapsulated in the consumer welfare standard, and that standard accomplishes it well. We should not

jeopardize that function merely for political expedience, let alone to hastily and surreptitiously implement a particular, politicized industrial policy. ■



AUGUST 2–4, 2018  
RANCHO BERNARDO  
SAN DIEGO, CA

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This monthly series and podcast features highlights from our recent Cato events, such as

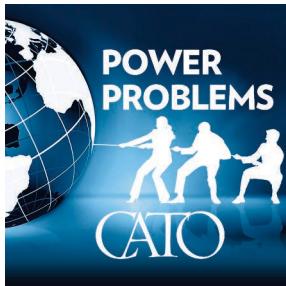
- **Steven Pinker** on his new book *Enlightenment Now*
- **Clint Bolick** on the role of the judiciary
- **Ruth Marcus** and **Emily Yoffe** on campus sexual assault, due



prosperity spared witches

This podcast brings you the best of Cato's print publications in an audio format, including

- **Gary Taubes** on "Our Problem with Sugar"
- **David Hyman** and **Charles Silver** on why Americans pay too much for health care
- **Chelsea Follett** on how economic



In this biweekly podcast, Cato's Trevor Thrall and Emma Ashford offer a skeptical take on U.S. foreign policy and discuss the latest in international security with guests from across the political spectrum, such as

- **Colin Kahl** on Trump and the Iran deal
- **Aaron Mehta** on the defense budget
- **Bronwyn Bruton** on the war on terror in Africa

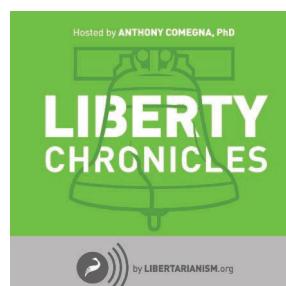


In our Daily Podcast, Cato scholars and other commenters discuss the latest news and libertarian thought in a conversational, informal manner. Some recent issues include

- **George F. Will** on "the awful consensus in Washington"

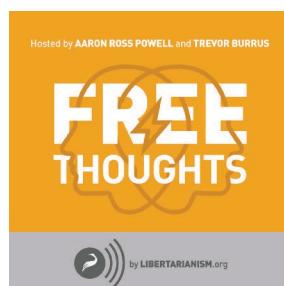
**Trevor Burrus** on gun control

**Terence Kealey** on how government meddles in nutrition



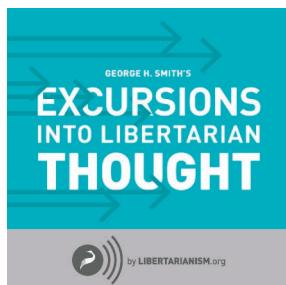
In this podcast from Libertarianism.org, historian Anthony Comegna explores the past from a libertarian perspective. Recent episode topics include

- "The Most Important Election Ever"
- "The Whigs"
- "Social Class and State Power"



This weekly podcast from Libertarianism.org about politics and liberty features conversations with top scholars, philosophers, historians, economists, and public policy experts. Hosted by Aaron Ross Powell and Trevor Burrus, recent guests include

- **Radley Balko** and **Tucker Carrington** on forensics, pseudoscience, and criminal injustice
- **Thomas Sowell** on wealth, poverty, and politics
- **Michael Malice** on North Korea



In this Libertarianism.org podcast, George H. Smith explores the history of libertarian ideas, such as

- "John Locke: The Justification of Private Property"
- "Early Christianity and the Modern Libertarian Movement"
- "Francis Bacon and the Rise of Secularism"

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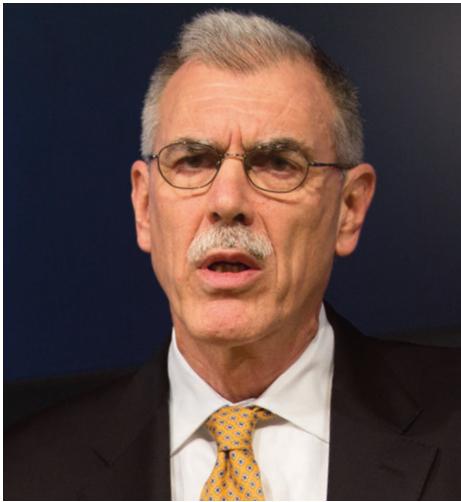




**C**ato's JONATHAN BLANKS interviewed RADLEY BALKO (center) and TUCKER CARRINGTON on their new book, *The Cadaver King and the Country Dentist: A True Story of Injustice in the American South*, which details how a medical examiner and a dentist built careers giving bogus medical testimony that sent many innocent defendants to prison.



**S**chool choice proponents often face concerns that, without forced assimilation in public schools, immigrant groups and cultural minorities such as Muslims will fail to assimilate and appreciate American values. At a Cato Book Forum, Cato's NEAL MCCCLUSKEY interviewed SABITH KHAN (center) and SHARIQ SIDDIQUI about these concerns, as addressed in their book *Islamic Education in the United States and the Evolution of Muslim Nonprofit Institutions*.



**A**t a Cato Policy Forum on public sector unions, former Obama administration Solicitor General DONALD B. VERRILLI JR. declared, “I definitely preferred it when Cato was on my side as solicitor general, but whether Cato was on my side or not, the Cato Institute’s advocacy before the Supreme Court was always a superb level of quality and always contributed in a very meaningful way to the Court’s consideration of the cases before it.”

**FEBRUARY 1:** *Islamic Education in the United States*

**FEBRUARY 5:** Cato Club Naples 2018 (Naples, FL)

**FEBRUARY 6:** Cato Institute Policy Perspectives 2018 (Naples, FL)

**FEBRUARY 7:** Overturning the FDA’s Gag Rule

**FEBRUARY 8:** You May Be a Sex Offender if . . .

**FEBRUARY 8:** *Frederick Douglass: Self-Made Man*

**FEBRUARY 14:** *Statecraft and Liberal Reform in Advanced Democracies*

**FEBRUARY 15:** Should Public-Sector Workers Be Forced to Pay Union Fees?: A Preview of *Janus v. American Federation of State, County, and Municipal Employees*

# Cato Calendar

## CATO UNIVERSITY: COLLEGE OF HISTORY AND PHILOSOPHY

SAN DIEGO • RANCHO BERNARDO INN  
AUGUST 2–4, 2018

Speakers include Tom Palmer, Jacob Levy, Robert McDonald, Christopher Preble, and Jason Kuznicki.

## 17TH ANNUAL CONSTITUTION DAY

WASHINGTON • CATO INSTITUTE  
SEPTEMBER 17, 2018

Speakers include George F. Will.

## CATO CLUB 200 RETREAT

MIDDLEBURG, VA • SALAMANDER RESORT & SPA  
SEPTEMBER 27–30, 2018

## CATO INSTITUTE POLICY PERSPECTIVES 2018

NEW YORK • INTERCONTINENTAL BARCLAY  
OCTOBER 12, 2018

## 4TH ANNUAL CRIMINAL JUSTICE CONFERENCE

WASHINGTON • CATO INSTITUTE  
OCTOBER 18, 2018

## CATO UNIVERSITY: COLLEGE OF ECONOMICS

BOSTON • OMNI PARKER HOUSE  
OCTOBER 25–27, 2018

Speakers include Tom Palmer, Jeffrey Miron, Lynne Kiesling, and Deirdre McCloskey.

## 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

## 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 • FOUR SEASONS RESORT  
SEPTEMBER 12–15, 2019

**FEBRUARY 22:** Political Speech at the Polling Place: A Preview of *Minnesota Voters Alliance v. Mansky*

**FEBRUARY 22–25:** Annual Benefactor Summit (Rancho Mirage, CA)

**MARCH 1:** Qualified Immunity: The Supreme Court’s Unlawful Assault on Civil Rights and Police Accountability

**MARCH 6:** *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress*

**MARCH 8:** International Women’s Day #CatoDigital: Free Women, Free Markets, Free World

**MARCH 14:** The Future of BRAC: A Conversation

**MARCH 15–17:** Cato University: College of Law (New Orleans)

**MARCH 15:** Cato Club Naples 2018 (Naples, FL)

**MARCH 15:** *The Political Spectrum: The Tumultuous Liberation of Wireless Technology, from Herbert Hoover to the Smartphone*

**MARCH 15:** *The Cadaver King and the Country Dentist: A True Story of Injustice in the American South*

**MARCH 19:** Legal Immigration Reforms for the 21st Century

**MARCH 20:** *Directorate S: The CIA and America’s Secret Wars in Afghanistan and Pakistan*

**MARCH 29:** *Speak Freely: Why Universities Must Defend Free Speech*

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.

*How one tweet gained national attention for free trade*

## Cato Makes Free Trade Go Viral

**W**hat began as a pro-free trade Twitter quip from Cato trade policy analyst Scott Lincicome turned into a viral T-shirt that has been purchased over 700 times—including by Sen. Orrin Hatch (R-UT), who displayed it proudly in a photo that appeared in a tweet from Hatch and on *Meet the Press*. (See page 1).

It all started when Lincicome spotted a T-shirt worn by a woman at a Trump rally, which read “Tariff hikes will be GREAT.” Over the past several months, the Trump administration has imposed massive tariffs on steel and aluminum, as well as on hundreds of Chinese electronics, aerospace products, and machinery. Dismayed by these developments, and by the T-shirt’s blithe economic ignorance, Lincicome made a mock-up of his own version of the shirt, reading, “Tariffs not only impose immense economic costs but also fail to achieve their primary policy aims and foster political dysfunction along the way.” Amused by the verbose—but accurate—rebuttal, other Twitter users began spreading it as a hashtag: #TNOIIECBAFTATP-PAAFPDATW. As the joke and hashtag picked up steam, a fellow trade enthusiast began selling real-life versions of Lincicome’s T-shirts on Amazon, and has since sold over 700, with proceeds benefiting the Foundation for Economic Education.

Whether Cato’s scholars are inspiring viral Twitter hashtags or delving into serious research on how proposed trade deals would impact the economy, the confusion and myths that now abound surrounding trade policy make the expert advocacy of Cato’s Herbert A. Stiefel Center for Trade Policy Studies more necessary than ever. The center’s experts have been at the forefront of the policy debate in recent months, advocating for free trade in regular appearances in major newspapers such as the *Washington Post* and

the *New York Times* and on networks including the BBC, NPR, NBC, Fox, and CNN.

As Daniel Ikenson, the director of the center, told NBC, Trump’s latest trade measures are “likely to raise production costs for U.S. businesses, diminish U.S. productivity, squeeze real household incomes, reduce the revenues of U.S. farmers and other export-dependent industries targeted by Chinese retaliation, exacerbate tensions with China and other countries adversely affected by the restrictions, and hasten the demise of the rules-based trading system.” While President Trump has claimed that trade wars are “good, and easy to win,” this is refuted by centuries of American history, as Lincicome detailed in his 2017 Cato Policy Analysis, “Doomed to Repeat It: The Long History of America’s Protectionist Failures.” Lincicome told *Politico* that “Going back 100 years and even dating to the Civil War, you look at the academic analysis of protectionism and the results are pretty much uniformly the same. You have far more costs than benefits and those costs are borne not just by consumers but by American companies and farmers and exporters.”

With new concerning trade policies emerging from this administration at a rapid pace in recent months, Cato scholars’ quick analysis is an invaluable resource for the media and the public: a February *Washington Post* article praised Lincicome’s “epic tweet-storm last week documenting the myriad ways the 2018 Economic Report of the President subverts Trump’s trade rhetoric.” The article went on to cite the many passages that, as Lincicome noted, offer a “stunning



In the cover story for the Spring edition of *Regulation* magazine, Pierre Lemieux explains why President Trump’s tariffs on washing machines amount to corporate welfare.

rebuke” of the president’s own erroneous beliefs on trade—such as “Historically, international trade as a whole has on net increased American productivity, standards of living, and American economic growth.”

It’s hardly surprising that even a White House economic report would make these statements—free trade is one of the rare political areas where there is, in fact, a strong academic consensus across ideologies. As Fareed Zakaria noted on his CNN show, “Trump’s tariffs are opposed by a remarkable array of scholars across the political spectrum, from the conservative Heritage Foundation, to the libertarian Cato Institute, to the center-left Brookings Institution, to the left-wing Center for Economic and Policy Research.” It’s time that politicians acknowledge what scholars already know: free trade is good for everyone. ■

*An introduction to one of liberty's greatest thinkers*

## The Life, Ideas, and Legacy of Ayn Rand

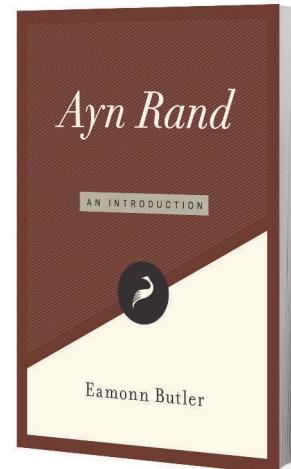
For decades Ayn Rand was the most frequent point of entry to the libertarian movement. Now, 36 years after her death, she remains a polarizing figure—but there is no question that her works are enormously influential. In 1991, a survey conducted by the Library of Congress and the Book of the Month Club found that *Atlas Shrugged* was the most influential book after the Bible. As libertarian author Jerome Tuccille put it: “It usually begins with Ayn Rand.”

In *Ayn Rand: An Introduction*, a new book from Libertarianism.org, Eamonn Butler of the Adam Smith Institute presents a brief primer on Ayn Rand’s life, philosophy, and legacy. Butler provides a concise and easy-to-read guide to Rand’s extensive writings, which range from her world-famous novels

to her nonfiction works on philosophy, as well as plays, movie scripts, speeches, newsletters, broadcasts, and much more.

Butler outlines Rand’s worldview, from her philosophy of how we understand the world to her beliefs on altruism, self-interest, and capitalism, and to her views on art and aesthetics. He addresses frequent criticisms of her ideas, as well as Rand’s responses to these objections. For those interested in exploring Rand’s work in more depth, Butler provides suggestions for how to read Ayn Rand—which works are best to start with and how to get the most out of Rand’s sometimes peculiar style of writing.

Throughout the book, Butler emphasizes how groundbreaking Rand’s ideas were, and how profoundly they have influenced philosophy and policy ever since. Her



extraordinary body of work has provided one of the key foundations for the rise of individualist, capitalist, and pro-freedom ideas in the century since her birth. And as Butler remarks, “Even if you disagree with Ayn Rand, she certainly makes you think.” ■

*How classical liberals understand history*

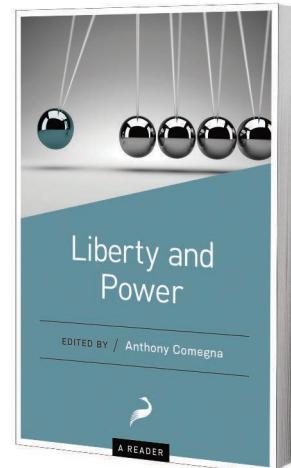
## A Documentary History of Liberty and Power

History is, to a great extent, the story of liberty and power, the struggle between those seeking freedom and those seeking dominance over them—although that may not have been how it was presented in your sixth-grade history classes. In *Liberty and Power: A Reader*, the latest in Libertarianism.org’s Reader series, historian Anthony Comegna presents a documentary tour of this great struggle through an eclectic and engrossing selection of writings, from medieval law codes to tales of 18th-century pirates and the 19th-century libertarian “Locofoco” movement in America.

Comegna first examines the liberal interpretation of history from a theoretical perspective. He then goes on to trace the documentary and ideological origins of early

modern states—the various attempts of people across the world to gain freedom and power through different systems of law, and the gradual democratization and republicanizing of political regimes. He highlights a wide variety of these regimes, from The Law of the Salian Franks, first written in the fifth century as the Western Roman Empire collapsed and German migrants set up feudal societies, to the later Visigothic Code, to the legal privileges awarded by Spain to Christopher Columbus as he set out to conquer the New World, to the bloodthirsty pirates who once ruled parts of the Caribbean.

In the end, Comegna reflects, “perhaps the classical liberal tradition’s ultimate lesson of history, then, is that if we ever want to truly escape it, we must first individually rise ourselves above it and be better than those who



came before us.” This collection offers readers a chance to reflect on the cycle of history and what lessons it holds for libertarians. ■

**DOWNLOAD OR PURCHASE YOUR COPY OF BOTH BOOKS AT LIBERTARIANISM.ORG.**

# Does Higher Pay Mean Better Teachers?

**P**ublic school teachers across the country have gone on strike recently, demanding higher pay. But in “**Double for Nothing? Experimental Evidence on an Unconditional Teacher Salary Increase in Indonesia**” (Research Briefs in Economic Policy no. 105), Joppe de Ree and Halsey Rogers of the World Bank; Karthik Muralidharan of the University of California, San Diego; and Menno Pradhan of the University of Amsterdam study what happened when Indonesia doubled the base pay of teachers. They find that despite significant improvement in teacher satisfaction, the policy did not improve teachers’ efforts or student outcomes.

## NORDIC GENDER EQUALITY

Nordic countries are world leaders in gender equality, and many argue that these countries’ generous welfare policies and gender quotas are the reason why. But in “**The Nordic Glass Ceiling**” (Policy Analysis no. 835), Nima Sanandaji of the European Centre for Entrepreneurship and Policy Reform argues that, in fact, gender quotas have been ineffective, and Nordic countries’ social policies have *negatively* affected women’s careers. He contends that Nordic gender equality predates modern welfare policies by several centuries and is the result of traditional Nordic culture.

## THE DANGEROUS FED POLICY YOU’VE NEVER HEARD OF

In “**FLOORED! How a Misguided Fed Experiment Deepened and Prolonged the Great Recession**” (Working Paper no. 50), Cato’s George Selgin tackles a little-noticed policy at the Federal Reserve that has had grave impacts on the economy. After the financial crisis, the Fed began paying interest on depository institutions’ balances. This in turn led to their adopting a “floor”-type operating system, meaning one in

which changes in the rate of interest paid on excess reserves, rather than open-market operations, became the Fed’s chief instrument of monetary control. Selgin warns that, while this has attracted less attention than other Fed policies, it has “also had more profound and enduring consequences than many of them.”

## THE TRUE RISKS OF ARMS SALES

In “**Risky Business: The Role of Arms Sales in U.S. Foreign Policy**” (Policy Analysis no. 836), Cato’s A. Trevor Thrall and Caroline Dorminey conduct a thorough risk assessment of U.S. arms policy, demonstrating that it is much more dangerous than generally admitted, with the U.S. routinely selling weapons to countries that are embroiled in questionable conflicts, and that risk entangling the United States in unwanted conflicts.

## THE PRICE OF UNIONIZATION

Labor unions not only protect workers’ jobs and wages—they also provide special treatment to members in bankruptcy court. In “**Bankruptcy and the Cost of Organized Labor: Evidence from Union Elections**” (Research Briefs in Economic Policy no. 103), Murillo Campello of Cornell University, Janet Gao of Indiana University, Jiaping Qiu of McMaster University, and Yue Zhang of the Université Catholique de Louvain find that worker unionization negatively affects the wealth of senior, unsecured creditors.

## REFUGEES AND INSTITUTIONS

In “**How Mass Immigration Affects Countries with Weak Economic Institutions: A Natural Experiment in Jordan**” (Working Paper no. 51), Cato’s Alex Nowrasteh and Andrew Forrester, along with Cole Blondin of Middlebury College,



study what happened after Saddam Hussein’s 1990 invasion of Kuwait forced 300,000 refugees into Jordan. Under Jordanian law, these refugees could immediately work and even vote. Not only did this large influx of refugees not harm Jordan’s institutions, their economic institutions substantially improved in the following decade.

## KEEPING THE DOCTOR AWAY

Increased access to primary care is touted as essential, the theory being that expensive health crises could be avoided if low-income patients went to the doctor regularly. In “**The Effect of Primary Care Visits on Health Care Utilization: Findings from a Randomized Controlled Trial**” (Research Briefs in Economic Policy no. 104), Cathy J. Bradley of the University of Colorado-Denver, David Neumark of the University of California at Irvine, and Lauren Saxe Walker of Virginia Commonwealth University study a randomized controlled trial offering cash to uninsured patients to attend primary care visits. Despite patients’ increased use of primary care, they find no overall reductions in their health care spending.

## LICENSING AND MIGRATION

In “**Is Occupational Licensing a Barrier to Interstate Migration?**” (Research Briefs in Economic Policy no. 106) Janna E. Johnson and Morris M. Kleiner of the University of Minnesota find that occupations with state-specific licensing requirements experience large reductions in interstate migration, which both restricts workers’ earnings—since they often can’t change jobs—and reduces the efficiency of the labor market.

## HOW TORTS AFFECT INNOVATION

In “**Tort Reform and Innovation**” (Research Briefs in Economic Policy no. 99), Alberto Galasso of the University of Toronto and Hong Luo of Harvard University

make the case that changes in the tort system can have a “chilling effect” on innovation. They find that patenting in medical instruments is reduced by roughly 14 percent in the presence of caps on noneconomic damages, for example.

### DO CHILD LABOR LAWS WORK?

In “Perverse Consequences of Well-Intentioned Regulation: Evidence from India’s Child Labor Ban” (Research Briefs in Economic Policy no. 100), Prashant Bharadwaj of the University of California, San Diego; Leah K. Lakdawala of Michigan State University; and Nicholas Li of the University of Toronto examine the effects of India’s 1986 ban on child labor. They find evidence that in fact, the ban increased child labor overall, since a fall in child wages forced the poorest families to have their children work even more.

### THE PRICE OF REVERSING DACA

How would rescinding the Deferred Action for Childhood Arrivals (DACA) program impact the economy? In “A New Estimate of the Cost of Reversing DACA” (Working Paper no. 49), Logan Albright of Free the People, Cato Visiting Fellow Ike Brandon, and M. Kevin McGee of the University of Wisconsin-Oshkosh find that reversing DACA would cost the U.S. economy \$351 billion from 2019 to 2028 in lost income and \$92.9 billion in tax revenue.

### PUBLIC OPINION AND TERRORISM

Since 9/11, the United States has spent an extraordinary amount of time and money ramping up domestic security. Yet the percentage of Americans who say they feel confident that the government could protect them from a terrorist attack has actually declined since 9/11. In “Public Opinion and Counterterrorism Policy” (White Paper), Cato’s John Mueller and Mark G. Stewart of the University of Newcastle examine the curious facts surrounding public opinion on terrorism and its policy implications.

### INEFFICIENT ENERGY EFFICIENCY PROGRAMS

Do expensive government programs to promote energy efficiency benefit the environment? In “Consumers’ Response to State Energy Efficient Appliance Rebate Programs” (Research Briefs in Economic Policy no. 101), Sébastien Houde of the University of Maryland and Joseph E. Aldy of Harvard University evaluate the effects of the State Energy Efficient Appliance Rebate Program. They find that about 70 percent of consumers who claimed a rebate would have bought an approved appliance regardless of the rebates, and 90 percent of them did not contribute to an improvement in energy efficiency.

### ON ABUSE-DETERRENT OPIOIDS

Many policymakers have promoted abuse-deterrent formulations (ADFs) that make opioids more difficult to abuse. But in “Abuse-Deterrent Opioids and the Law of Unintended Consequences” (Policy Analysis no. 832), surgeon and Cato senior fellow Jeffrey Singer demonstrates that these tamper-resistant formulas can have grave unintended consequences. And despite the introduction of ADF opioids in 2010, opioid overdose death rates have continued to rise.

### ARE IMMIGRANTS CRIME-PRONE?

In “Criminal Immigrants in Texas: Illegal Immigrant Conviction and Arrest Rates for Homicide, Sexual Assault, Larceny, and Other Crimes” (Immigration Research and Policy Brief no. 4), Cato’s Alex Nowrasteh uses Texas Department of Public Safety data to measure the conviction and arrest rates of illegal immigrants by crime. He finds that in 2015, the criminal conviction and arrest rates for immigrants—including the rates for illegal immigrants—were well below those of native-born Americans.

### TESLA VS. MICHIGAN

In 2014, Michigan amended its statutes specifically to exclude Tesla from its auto dealer market. Tesla has since sued Michigan

over the amendment. In “Tesla Takes On Michigan” (Policy Analysis no. 834), attorney Will Zerhouni examines this as a case study on state interference with the market on the behalf of more established companies, and evaluates Tesla’s legal arguments and prospects for success.

### MEASURING INEQUALITY

Most research that claims to find rising inequality in the United States relies solely on income data—but income does not tell the whole story of economic well-being. In “Consumption and Income Inequality in the United States since the 1960s” (Research Briefs in Economic Policy no. 102), Bruce Meyer of the University of Chicago and James Sullivan of the University of Notre Dame posit that the consumption patterns of families are a better indicator of economic well-being, and find only a modest rise in consumption inequality over the past five decades. ■

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# “To Be Governed...”

### MEMORIES

#### LIGHT THE CORNERS OF MY MIND

#### MISTY WATERCOLOR MEMORIES

#### OF THE WAY WE WERE . . .

#### WHAT'S TOO PAINFUL TO REMEMBER

#### WE SIMPLY CHOOSE TO FORGET

Raisa Burykina, an 85-year-old pensioner whose father was killed in the battle, said she was pleased to have seen Mr. Putin at the concert.

“Prices went down under Stalin; now they are going up,” said Ms. Burykina, who had a clutch of Soviet orders pinned to her red sweater.

—WALL STREET JOURNAL, FEBRUARY 7, 2018

### BOOTLEGGERS AND BAPTISTS

“The president’s budget proposes to replace in significant part the very successful current system of having SNAP recipients use EBT cards to purchase food,” . . . Jim Weill, president of the Food Research and Action Center, said in a statement.

The proposal is also likely to enrage food retailers — particularly Walmart, Target and Aldi — which stand to lose billions if food-stamp benefits are cut, analysts say. On Monday, the Food Marketing Institute, a trade association for grocery stores, condemned the Harvest Box proposal as expensive, inefficient and unlikely to generate any long-term savings.

—WASHINGTON POST, FEBRUARY 13, 2018

### HOW TO GET A HOUSE UNDER SOCIALISM

Sexual assault and harassment are rife across all sectors of North Korea’s misogynistic society, according to a new report . . .

Many reported that men in positions of authority used their power to take advantage of women.

One woman described going to the mayor’s office to be allocated a house. “I was 32 years old and I must have looked attractive in his eyes. I was raped in his office and received a house in return.”

—WASHINGTON POST, MARCH 8, 2018

### NO TIME TO MAKE THE DONUTS

A French boulanger has been ordered to pay a €3,000 fine for working too hard after he failed to close his shop for one day a week last summer . . .

Under local employment law, two separate regulations from 1994 and 2000 require bakers’ shops to close once a week—though exceptions can be made in specific cases.

—THE GUARDIAN, MARCH 14, 2018

### YOU MIGHT BE, ACTUALLY

I can’t be the only one concerned that an increasing amount of the orange juice Americans consume might be sourced in Brazil and Mexico rather than Florida and California.

—ANDREW FURMAN IN THE WALL STREET JOURNAL, MARCH 23, 2018

### WHEN YOU PUT GOVERNMENT IN CHARGE OF SOMETHING, YOU'RE PUTTING POLITICIANS IN CHARGE

D.C. Council member Trayon White Sr. (D-Ward 8) posted the video to his official Facebook page at 7:21 a.m. as snow flurries

were hitting the nation’s capital . . .

“Man, it just started snowing out of nowhere this morning, man. Y’all better pay attention to this climate control, man, this climate manipulation,” he says. “And D.C. keep talking about, ‘We a resilient city.’ And that’s a model based off the Rothschilds controlling the climate to create natural disasters they can pay for to own the cities, man. Be careful.”

—WASHINGTON POST, MARCH 18, 2018

### SOME SAY ANTI-SEMITISM IS THE SOCIALISM OF FOOLS, BUT SOMETIMES THE SOCIALISM OF FOOLS IS JUST SOCIALISM

President Nicolás Maduro late Thursday briefly outlined his monetary rescue plan. In a country where a dozen eggs can cost 250,000 bolivars (\$5) amid worsening inflation, he would chop three zeros off the currency—arguably bringing the price for those eggs down to 250.

—WASHINGTON POST, MARCH 23, 2018

### AS USUAL

Regulators say they may need more power

—HEADLINE IN THE WASHINGTON POST, FEBRUARY 7, 2018

### CITIES PLAN FURTHER HOUSING SHORTAGES

Lawmakers and advocates in California, Illinois and Washington State are pushing to repeal state laws that forbid rent control or place limits on cities’ ability to regulate rent increases.

—WALL STREET JOURNAL, FEBRUARY 5, 2018