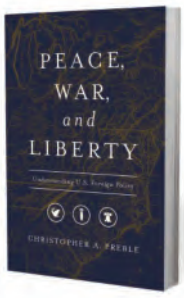

PAX AMERICANA
New book explains U.S. foreign policy
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HARM REDUCTION
Conference tackles opioids, prohibition
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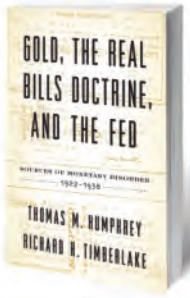

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A new theory on the Great Depression
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Cato Policy Report

MAY/JUNE 2019 **VOL. XLI NO. 3**

Our Broken Justice System

BY CLARK NEILY

Imagine you have omnipotent power over nature but a poor understanding of how it actually works. One day, after being stung during a picnic, you decide to get rid of all honeybees. What would happen? Before long, wide swaths of the terrestrial ecosystem would begin to fall apart. Crops that depend on bees for pollination would fail; various other plants and trees would be unable to reproduce and would start dying off, followed by the countless insects, birds, and mammals that depend on those flora to survive.

This is an apt metaphor for what has happened to America's criminal justice system over the past century as we have taken the very heart of that system—citizen participation, in the form of jury trials—and ripped it right out. The result has been every bit as disastrous for the criminal justice "ecosystem" as the elimination of bees would be for the natural one. And just as the extinction of bees would produce downstream effects that would be difficult to trace back to their true cause, so too does our criminal justice system feature downstream pathologies not obviously connected to the practical elimination of jury trials. Thus, to achieve fundamental reform of America's criminal justice system, we must understand how we managed to kill off the criminal jury trial and, even more important, how we can resurrect it.

The jury trial is the only right mentioned in both the unamended original Constitution and the Bill of Rights. Indeed, the Constitution devotes more words to the subject of jury trials than to any other right. The

Continued on page 8

CLARK NEILY is vice president for criminal justice at the Cato Institute and the author of *Terms of Engagement: How Our Courts Should Enforce the Constitution's Promise of Limited Government*.

PETER GOETTLER, president and CEO of the Cato Institute, addresses attendees at the opening reception for the Institute's art exhibition, *Freedom: Art as the Messenger*, on display now in the public areas of the Cato building in Washington, DC. About half the 400 attendees said they had never been to a Cato event before. See page 5.

BY PETER GOETTLER

PRESIDENT'S MESSAGE

Liberty: The Foundation of Philanthropy

"How do we enable human flourishing?"

I remember that in junior high school, many of my classrooms were adorned with those stock posters that teachers seem to love: generic photographs or landscape scenes with accompanying proverbs. Of course, "proverbs" is one word for the sayings these posters conveyed. "Kitschy" and "clichéd" are others. But to this day, a couple from my eighth-grade homeroom remain in my memory. One said, "The secret of success is this: there is no secret of success." This saying appealed to the budding, teenage liberty lover in 1976. (Heck, it appeals to the hardened, middle-aged liberty lover in 2019!) There are no shortcuts in life. Reason, talent, hard work, grit, perseverance, and determination. These are important ingredients to a successful—and meaningful—existence.

Another saying that has stayed with me has certainly (deservedly?) earned cliché status: "Give a man a fish, and he eats for a day. Teach a man to fish, and he eats for a lifetime." But just because a phrase is well worn—or overused—doesn't make it less true, or less wise. In fact, this idea has animated my family's philanthropic giving over the years. When my wife, Cynthia, and I reached a stage of life at which we thought more seriously about giving, we decided to make organizations that promote and work for human freedom and limited government more than a sideline or a piece of our "political" giving, but rather our primary focus. That's how we became involved with Cato. To us, supporting liberty has always been the equivalent of teaching someone to fish. And because so many of you reading this message are generous supporters of Cato, you likely agree.

How do we create the prosperity that reduces or eliminates material want and lifts people out of poverty? What is the framework that allows humans to be the very best, the most capable, and the most competent they can be? What are the conditions that spur accomplishment and achievement? How do individuals procure the meaning and satisfaction that come from providing for the people they love, or that accrue from confronting—and overcoming—the challenges life deals to each one of us? How do we encourage the ingenuity and creativity that foster the technological development that keeps people fed, productive, healthy, entertained, and safe? How do we, in short, enable human flourishing? The answer to all of these questions is the same: freedom. Preserve the natural rights of humans while limiting the state to the protection of these rights.

A tragedy of the expansive role of modern government is how it undermines the behaviors that represent both the "secret of success" and the way to "catch fish." Human action is undermined by the utopian myth that government action can soften all the rough edges of life, and the results can be crippling for both individuals and society. As Herbert Spencer said, "The ultimate result of shielding men from the effects of folly is to fill the world with fools." Just think of how the illusion of government-provided income and healthcare in retirement has undermined thrift, work ethic, and self-sufficiency in our times.

An equally important reason to prioritize liberty in our philanthropy is to protect the birthright of future generations. We are fortunate to have lived our lives in a relatively free country where we've had the liberty to imagine, build, and achieve our dreams. I never tire of saying that it will be a shameful legacy indeed if our children and grandchildren are denied these same opportunities, buried under mountains of debt and with burdens of government that make realizing their own dreams impossible. Many great entrepreneurs have said that they'd never have been able to build the enterprises they started decades ago in the face of today's regulatory barriers. We must keep clearing the regulatory underbrush and reforming the administrative state so that the visionaries of tomorrow can thrive.

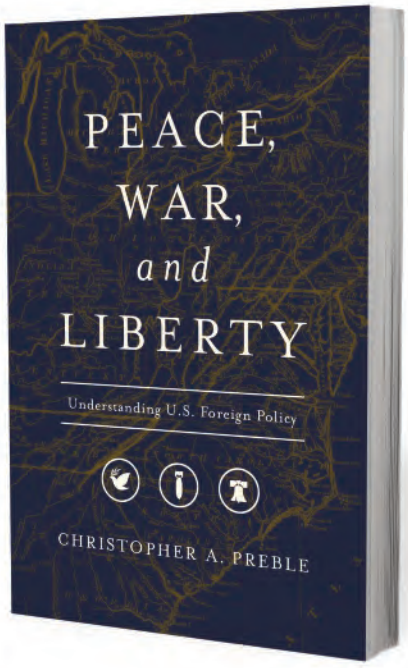
I hope you won't find this note self-serving. Charity is a very personal matter. There are many factors that incentivize Americans' generosity, and a variety of ideas that inform their giving. Sometimes people need to be given a fish right now or they'll die. The direct charity that helps the indigent survive is crucial, and it provides immense satisfaction to the giver. I'm so proud to live in the most generous country ever. But without liberty, the prosperity that makes all philanthropy possible will die. So, liberty is not only a fitting objective of philanthropy, but perhaps the foundation of philanthropy itself. Thank you, as ever, for the generous support that makes Cato's mission and work possible and for making liberty a cornerstone of your generosity.

Libertarianism.org guide to U.S. foreign policy

War Is the Health of the State

In its dealings with the broader world, has the United States been a force for human liberty? Should it be? And if so, how? Christopher Preble, vice president for defense and foreign policy studies at the Cato Institute, set out to answer those questions in his new book for Libertarianism.org, *Peace, War, and Liberty.* As the author notes in the introduction, it is "a short book about a big topic."

Preble draws upon the famous warnings of the Founding Fathers, who were wary of standing armies and firmly noninterventionist. In addition to opposing war because of its obvious and direct cost in lives and fortunes, libertarians have long called on the deeper observation that, as writer Randolph Bourne once put it, "war is the health of the state." In times of war, limits on state power recede and individual rights are subordinated to military goals.



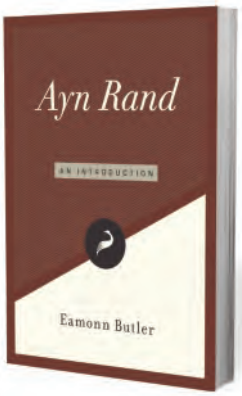
Preble's guide to U.S. foreign policy traces the history of how this radical frontier republic became a globe-straddling empire, intervening at will and taking on the role of global policeman. Directly addressing those who claim U.S. primacy is a necessary bulwark of liberal values, he notes that this history is filled with more tragic errors than triumphant victories. Not only is American interventionism often ineffective, it can even backfire by causing foreign nations to equate democracy, capitalism, and individual rights with American military hegemony.

Cato often refers to its guiding principles as "individual liberty, limited government, free markets, and peace." In this accessible and evenhanded commentary, Preble makes clear how the first three of those all depend on the last. With Americans increasingly war-weary after so many years of seemingly endless brushfire wars and regime-change interventions since 9/11, the principles of peace and a more restrained foreign policy are more important than ever. ■

PURCHASE PRINT OR EBOOK COPIES OF *PEACE, WAR, AND LIBERTY* AT CATO.ORG/STORE.

New from Libertarianism.org

Why does Ayn Rand's work remain so influential? *Ayn Rand: An Introduction* illuminates Rand's importance and explores the ongoing focus on and debates about her perspectives on knowledge, morality, politics, economics, government, public issues, aesthetics, and literature.



LIBERTARIANISM.ORG

FREE EBOOK AVAILABLE AT LIBERTARIANISM.ORG.
PRINT EDITION ON AMAZON.

Cato News Notes

CATO SCHOLAR TESTIFIES ON NATIONAL SERVICE

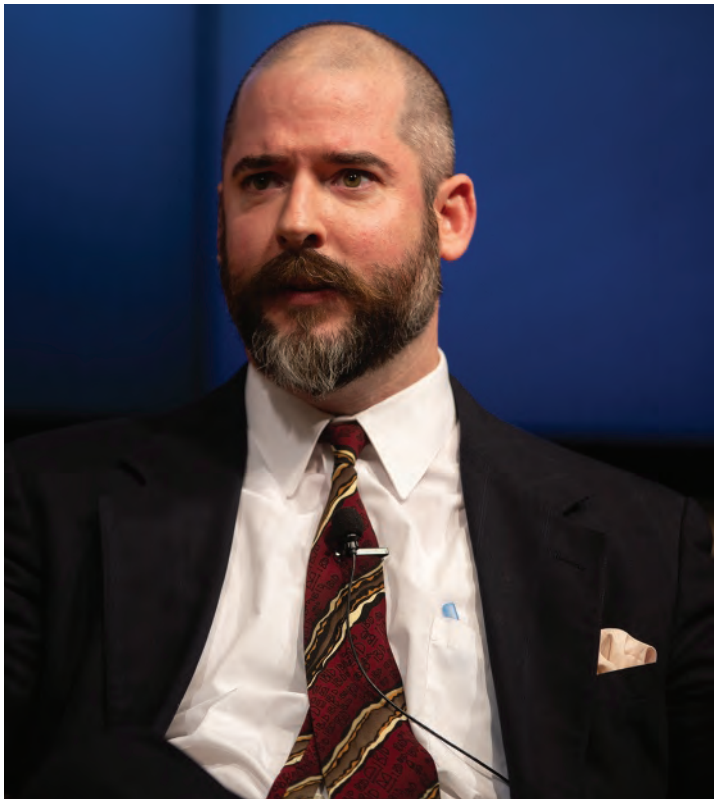
In February, Doug Bandow, a senior fellow at the Cato Institute specializing in foreign policy and civil liberties, testified before the

National Commission on Military, National, and Public Service. The commission heard from both advocates and opponents of reinstating military conscription and possible civilian equivalents. Bandow explained why such a mandatory program would be "more likely to breed cynicism than idealism."

MIKE LEE INTRODUCES JONES ACT REPEAL

Sen. Mike Lee (R-UT) introduced a bill in March to repeal the Jones Act, which has been the target of Cato's Project on Jones Act Reform. The antiquated protectionist law forbids foreign-built, -owned, or -crewed ships from transporting cargo between U.S. ports, thus imposing higher shipping costs and particularly harming Alaska, Hawaii, and Puerto Rico. Cato hosted a conference on the Jones Act in December, and a debate from that event can be found in the Policy Forum section of the January/February issue of *Policy Report*.

Left to right: Cato Senior Fellow JULIAN SANCHEZ moderates a panel discussion with ASHKHEN KAZARYAN of TechFreedom, ALEC STAPP of the International Center for Law & Economics, and LINDSEY BARRETT of the Georgetown University Law Center Institute for Public Representation's Communications and Technology Clinic at Cato's "Who's Afraid of Big Tech?" conference in March.



William Yeatman, the newest research fellow in the Cato Institute's Robert A. Levy Center for Constitutional Studies, speaks at a policy forum in March on the doctrine that judges should defer to regulatory agencies' interpretation of statutes.

Nina Teicholz, author of *The Big Fat Surprise: Why Butter, Meat and Cheese Belong in a Healthy Diet*, speaks in February on the government's history of failure in providing official dietary advice.

Freedom

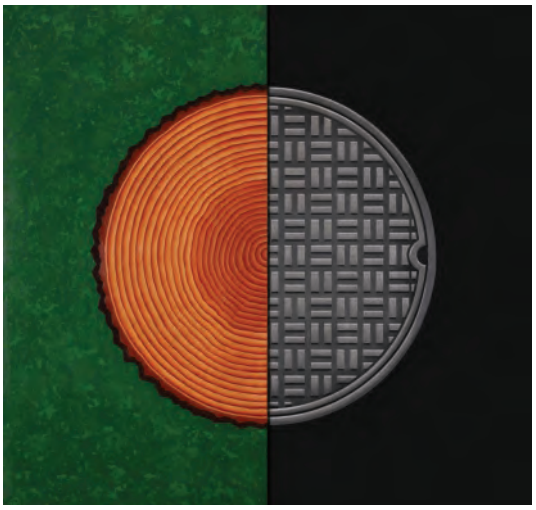
Art as the Messenger

April 11, 2019 — June 14, 2019

Freedom means something different to every person, yet its value is a common bond between Americans. In these polarized times, *Freedom: Art as the Messenger* aims to provide a unifying platform of civility and creativity. Artists from across the country—in a wide range of media—were invited to share innovative and thought-provoking perspectives on freedom and the enduring need for its protection. Out of more than 2,000 submissions, about 90 were selected.

The Cato Institute is proud to present the following selections from its inaugural art exhibition, *Freedom: Art as the Messenger*. The exhibition is free and open to the public from April 11 to June 14, 2019.

Joan Lobis Brown
Women of an UNcertain Age: Indomitable Baby Boomers # 3
Archival pigment print,
19″ × 13″
2016



William Knight
Urban Suburban
Oil on Gessobord with a satin varnish,
48″ × 48″ × 2″
2017

Beryl Jazvic
The Dreamers
Oil on canvas,
48″ × 72″
2018

Lulu Delacre
Romina
Graphite on vellum with collage elements,
10.5″ × 7.5″
2016

Joey Mánlapaz
Take One
Oil on linen,
42″ × 56″ × 2.5″
2010

Allen Hart
The Harpist
Oil on canvas,
40″ × 30″
2006

Dennis Carrie
Frederick Douglass, 1847
Oil on board,
10″ × 8″
2018

Linda Lowery
Six Dancing Babies
Oil on canvas,
36″ × 72″
2017

Continued from page 1

Founders' intent to put citizen participation at the very heart of our criminal justice system is unmistakable. And yet the criminal jury trial is now all but extinct. More than 95 percent of all criminal convictions today are obtained through plea bargains—that is, supposedly voluntary confessions. One of the most important questions in criminal law and criminal justice reform is why so few people are interested in exercising their right to force the government to prove their guilt beyond a reasonable doubt to the satisfaction of a unanimous jury.

There appear to be two main reasons. First, the plea-bargaining process can be—and often is—extraordinarily coercive. Second, the criminal jury trial itself has been fundamentally transformed over time so that it is much less valuable to criminal defendants now than it was earlier in our nation's history. I will briefly summarize coercive plea bargaining, which gets significant attention, and then discuss in more detail the radical devaluation of the criminal jury trial, which does not receive nearly the attention it merits.

MORE PROSECUTIONS MEANS MORE PLEA BARGAINING

Unknown at the Founding, plea bargaining arose in response to the need to process a rapidly increasing number of criminal defendants through a system that was consciously designed to promote fairness and transparency rather than mere efficiency. The problem became particularly acute during Prohibition, when the government itself became a generator of crime by enforcing widely ignored laws and prompting the creation of a flourishing—but characteristically violent—black market in the production and distribution of alcohol.

Over time, prosecutors found that with the application of enough pressure, nearly any defendant could be induced to confess and thereby spare the government the inconvenience, expense, and risk of a public jury trial. That pressure can be generated in many ways: for example, detaining defendants before trial in a hellscape like Rikers Island, providing systematically underfunded and inadequate defense counsel to indigent defendants, increasing a defendant's exposure to punishment through creative charge-stacking, and establishing vastly excessive mandatory minimum sentences to make an example of those who exercise their right to a jury trial and lose. Perhaps not surprisingly, federal prosecutors—who are typically drawn from the most elite law schools and have clerked for top federal judges—have proven particularly adept at applying the levers of coercive plea bargaining. In the federal system, more than 97 percent of all criminal convictions come from plea bargains. Today's federal prosecutors rarely lose a case because they rarely go to trial.

> "Prosecutors rarely lose a case because they rarely go to trial."

But coercive plea bargaining is only part of the story behind the demise of the criminal jury trial. An equally important but far less appreciated dynamic has been the radical transformation of the American jury and its role in the adjudication of criminal charges.

WHAT IS THE ROLE OF THE JURY?

There are two competing views regarding the proper function of a criminal jury. The one that holds sway today conceives of the jury as a purely fact-finding body. Was the light green or red when the defendant entered the intersection? Did the defendant use this knife to kill that person? Were the representations contained in this company's SEC filings materially misleading, and if so, was the deception intentional? According to the modern understanding, a jury has no other role than to help ensure that the verdict in a criminal case is based upon empirically correct answers to purely factual questions like these.

But the Founding-era conception of the jury was much different. Consistent with centuries of Anglo-Saxon custom and practice predating the Magna Carta, criminal juries were understood to play both a fact-finding role on the one hand and a government-checking and injustice-preventing role on the other. Jurors fulfilled the latter role by refusing to convict when they believed, for whatever reason, that it would be unjust to do so. Thus, for example, colonial jurors in New York famously acquitted the publisher John Peter Zenger of seditious libel for his criticisms of royal governor William Cosby, even though Zenger had plainly committed that crime. This concept is commonly referred to as "jury nullification," but a more precise and less pejorative term is "conscientious acquittal"—the refusal to convict a factually guilty defendant if the jury believes it would be unjust to do so.

Jurors might consider it unjust to convict a factually guilty defendant for many reasons. They might find the prosecution to be politically motivated, as in Zenger's case. They might consider the prosecution's tactics, such as the use of paid informants or threats against the defendant's friends and family, to be unacceptable. Or they might feel that the process had been corrupted by the criminal acts of law enforcement officials, such as the undercover agents who stole hundreds of thousands of dollars' worth of bitcoin during the Silk Road/Ross Ulbricht investigation. But probably the two most common grounds for conscientious acquittal throughout history are a moral disagreement with the law itself and a belief that the proposed punishment is too harsh for the crime.

Consider the breathtakingly harsh penalties for the cultivation and distribution of marijuana under federal law. A person caught growing 1,000 or more marijuana plants—a modest commercial operation in fully

legalized states like Oregon or Colorado—faces a federal mandatory minimum of 10 years in prison. Even worse, if an 18-year-old who is engaged in a perfectly legal sexual relationship with a 17-year-old takes nude pictures of his or her paramour and stores them in the cloud, that constitutes the production of child pornography under federal law, for which the mandatory minimum sentence is a whopping 15 years.

Prosecutors who bring unduly harsh charges against sympathetic defendants ought to be concerned about how jurors might react, particularly if the government's hands are less than clean. Consider the case of Charles Lynch, a Californian suffering from debilitating migraines who had such a miraculous experience with medical cannabis that he decided to open a dispensary to provide others with the same opportunity. Unsure about the interplay between state and federal laws, Lynch placed four separate calls to the Drug Enforcement Administration (DEA), seeking to determine whether it would be permissible for him to operate the proposed marijuana dispensary under federal law. Instead of giving him a flat (and accurate) "no," DEA personnel shuffled him around from one staffer to another until finally he ended up speaking with a representative of the "Marijuana Task Force," who falsely advised him that "it was up to the cities and counties to decide how they wanted to handle the matter." Lynch then opened his dispensary and had been operating it for nearly a year when the DEA raided his home and business, resulting in a multicount federal indictment that included a five-year mandatory minimum prison sentence.

Given that Lynch is being prosecuted for conduct that a clear majority of Americans now think should be legal, should his lawyer be permitted to inform the jury about the five-year mandatory minimum, and is Lynch entitled to a jury instruction advising jurors that they have no obligation to convict him, even if they believe he is factually guilty? Prosecutors throughout the country are adamant that the answer to both questions is no. And the case law generally supports them. Thus, even though the penalties for many federal crimes are expressly stated in the U.S. Code and are easy to look up, prosecutors will go to extraordinary lengths to ensure that jurors remain ignorant of the punishment the government plans to inflict on the defendant if they convict. And even though the Supreme Court has repeatedly acknowledged that jurors have the unquestioned authority to engage in so-called nullification, judges and prosecutors work together to ensure that jurors remain ignorant of that power as well. These efforts include screening potential jurors during voir dire (jury selection) and misleading those who are empaneled into believing that they would be violating their oaths if they acquitted a defendant whose factual guilt they believed had been proven beyond a reasonable doubt.

> "The modern criminal jury is a comparatively toothless institution."

Thus, whereas Founding-era jurors generally knew what the punishment would be for the defendant upon conviction, modern jurors rarely do. And whereas Founding-era jurors were likely to be generally familiar with—and supportive of—the historic role of juries in limiting government power and preventing manifest injustices through conscientious acquittal, modern jurors rarely are, both because the practice has fallen into disuse and because the system makes a point of eliminating from the jury pool people who consider conscientious acquittal a legitimate act. As a result, the modern criminal jury is a comparatively toothless institution that plays scant role in constraining the discretion of prosecutors, whose appetite for convictions has helped give America the highest incarceration rate in the world.

WHAT CATO IS DOING

Cato's Project on Criminal Justice considers the practical elimination of citizen participation in the administration of criminal justice through coercive plea bargaining and the diminished power of the jury to be among the American criminal justice system's chief pathologies, and we have devised a strategic plan to challenge it. The centerpiece of that plan is an amicus curiae ("friend of the court") brief campaign designed to challenge the government's preference for purely fact-finding juries whose members are neither advised about nor equipped to fulfill the crucial injustice-preventing role that Founding-era Americans considered to be the essential political function of criminal juries. The campaign includes not only challenges to judges' refusal to instruct jurors regarding nullification and sentencing but also First Amendment challenges to the government's policy of criminalizing third parties' communication of such information to jurors. In fact, the government has no compelling interest in preventing people from communicating to jurors publicly available information about the government's own sentencing policies or information designed to challenge the government's self-serving and anachronistic conception of the jury as a purely fact-finding body. Taken together, these steps could help revive the Framers' understanding that juries have an important, legitimate role in preventing injustices and checking the illegitimate use of government power.

Restoring citizen participation in the administration of criminal justice through what we might call "Founding-era informed juries" is a powerful antidote to the twin travesties of coercive plea bargaining and mass incarceration. Our work on that project has only just begun, but we will not rest until the goal has been achieved. There is simply too much at stake. ■

CRAIG VANGRASSTEK (left) presents his book *Trade and American Leadership: The Paradoxes of Power and Wealth from Alexander Hamilton to Donald Trump*, with commentary from Cato scholars JIM BACCHUS (center) and DAN IKENSON (right).

Cato Senior Fellow MUSTAFA AKYOL meets with Cardinal Angelo Scola, archbishop emeritus of Milan, at an event on Muslim–Christian dialogue hosted by the Fondazione Oasis in February.

JOSÉ LUIS ESPERT, a prominent economist and commentator in Argentina and a candidate in the 2019 presidential election, addresses Cato scholars at a luncheon.

State of Emergency: Presidential Power Run Amok

In February, President Trump proclaimed the existence of a national emergency on the southern border after Congress refused to provide funding for his desired border wall. Invoking the National Emergencies Act, the president aims to bypass Congress and reallocate funds from a variety of sources to build the wall. In March, Cato hosted a forum on presidential emergency powers cosponsored by the American Constitution Society. Among the participants were DEBORAH PEARLSTEIN of the Benjamin N. Cardozo School of Law and ILYA SOMIN, Cato Institute adjunct scholar and professor at the Antonin Scalia Law School at George Mason University.

DEBORAH PEARLSTEIN: Let me begin by saying I think this particular invocation of the National Emergencies Act [NEA] by the president in February is a pretextual invocation of the act. I do not believe there's an emergency, I do not believe the national security establishment believes there is an emergency, and I do not believe the current Department of Defense believes there is an emergency. So, I find it a deeply problematic use of the power. But I think there are a lot of misconceptions about why and what's problematic about it as a matter of law, so in these brief remarks, I want to make three points.

First, the primary legal problem is statutory, not constitutional. Second, the primary problem with the NEA is not a presidential usurpation problem, it's a congressional delegation problem. It's not a problem of the president seizing power, but of Congress giving it away. And third, because I am really determined to end on a note of hope, I think it's entirely possible that Congress might take steps to fix this problem. That's an exciting prospect and something I can't always say.

So, let me start by delving into the legal weeds of what the president did in February and whether one can make a plausible, or indeed successful, legal claim that what he did violates the Constitution and laws of the United States. Notwithstanding the rhetoric on both sides of the aisle on Capitol Hill and the raft of lawsuits challenging Trump's invocation of the emergency power as a violation of the Constitution, the most apparent legal problem here is compliance with the relevant statutes, not the Constitution. The NEA gives the president an enormous amount of power. Congress did this quite deliberately. It's still on the books and, in my judgment, there is no slam-dunk legal argument against its application here. There are a bunch of very good arguments that apply here, but none of these arguments are a surefire winner.

The president issued a declaration and an accompanying fact sheet saying, "This is what I am doing." The fact sheet tells us that he is going to access something on the order of six or seven billion dollars for constructing a wall on the southern border. A little less than half of that money comes from existing statutory authorizations that have nothing to do with the National Emergencies Act at all. That requires no emergency declaration at all. Depending on what he does, various statutory questions of legality may be presented, but we can't answer the legality question until we know more specifically about what the president proposes to do. The remaining three billion or so does require the invocation of the NEA. The NEA, in relevant part, just unlocks other statutory powers. Under all the other acts of Congress authorizing the exercise of powers during a national emergency, the president is authorized to declare such an emergency by the NEA. So, why is this legally complicated?

Number one, the fact sheet issued along with the proclamation says that the president won't touch the NEA-relevant funds until he's first expended the other funds that have yet to be identified. If you're suing, this raises an enormous problem of what lawyers would call "ripeness" under Article III. Also, the NEA grants the president total discretion to identify an emergency.

There are a variety of canons of statutory interpretation that courts use if they determine the meaning of a statute is unclear. There are some rules that the courts employ to try to help inform their judgment, such as the nondelegation doctrine. This is the idea that Congress, because of separation of powers, can't simply give away all its powers to the executive branch. The Supreme Court has long said if there's any question about the meaning of a statute, we'd prefer the meaning that does not create an excessive delegation problem. That canon is available to the courts here, but in fact the Supreme Court hasn't held that a law violates the nondelegation doctrine since 1935. And more problematically, the Court in the national security context defers to executive judgment of what counts as a national emergency. We saw this in the travel ban case, *Trump v. Hawaii*.

The best legal challenge to the current invocation of the NEA is not constitutional, but rather on the underlying statutory authority that the president is trying to invoke. He declared an emergency, and the statute he is trying to use to build the wall is 10 USC § 2808. That law says, "In the event of a declaration of emergency that requires the use of the armed forces, the Sec-

retary of Defense may authorize the secretaries of the military departments to undertake military construction projects that are necessary to support such use of the armed forces." There's a lot of language in there that lawyers can and should use to argue that this is not a permissible use of this statute. The words "require" and "necessary" imply some objective determination that the courts could conclude has not been made. And the statute includes a definition of military construction within it, and it's not at all clear that covers the construction of a border wall, and certainly not a wall on private land. There are plenty of rich statutory arguments to be made there. The best argument here is a statutory argument, but we're not going to get there for some time, depending on how quickly the president wants to move to actually use that claimed authority.

So, given where I started—that this is a manifestly pretextual use of the emergency authority, and that the president is trying to exercise it contrary to Congress's disinterest in funding the wall—why is that argument not a slam dunk? Why is this a complicated, long story on how it may or may not be lawful? That leads me to a couple of the problems with the existing National Emergencies Act. Now, some might call the first one an excessive delegation issue; some might call it all three branches shirking their responsibilities. The problem is this: when you have multiple actors involved in decisionmaking, each one knows the other one is involved and so has an incentive for the other to hold the burden of accountability. Congress says, "We're going to authorize this power, but we don't have to take special care in how we craft this statute because the president, in good faith, is going to exercise the determination about how it's going to be exercised. He'll take care of it." Equally, the president can say, "Well, Congress gave me this authority, they must have assumed I'm going to use it in good faith, and therefore I won't worry about it too much and I can blame Congress for giving me the authority in the first place." Both political branches say, "If we really went too far off the deep end here, the courts would step in and check us." And yet for reasons I just mentioned, the courts have developed a variety of doctrines in this area that suggest they tend to defer to the judgment of the political branches. The present problem is that no one branch can really be held accountable for what happens when the president invokes emergency authority.


DEBORAH PEARLSTEIN

> "This is a manifestly pretextual use of the emergency authority."

The other problem is that in 1983, the Supreme Court decided that when Congress engages in lawmaking, it needs to do so as the Constitution says: pass it by both chambers and get the president to sign it or override a veto. The NEA bill was originally drafted in 1976 and said Congress could override the president's veto with a concurrent resolution, that is, without the president getting to sign or veto it. That bypassed the presidential veto that we've just seen invoked. Since *INS v. Chadha* in 1983, Congress amended the NEA to make it consistent with that decision. Now the override of a presidential proclamation does have to pass through the normal legislative process, as we have seen. That means, in effect, the act now, in the post-*Chadha* universe, flips the separation of powers on its head. It takes a supermajority of Congress to disapprove of any presidential invocation of emergency.

Last point: do I have hope? Well, I think it's possible we are living in an era, in part with the current president to thank for it, in which Congress is concluding that it might actually have some important role as a coequal branch in our government, particularly on questions of national security. Not only did it just vote, very significantly, to overturn the president's declaration of emergency for the first time in history, it also voted for the first time under the War Powers Resolution to end U.S. military assistance for Saudi operations in Yemen. Congress has also taken action to override the president on sanctions for certain Russian individuals. The point is this: we have an interesting president, and he's made for interesting times in these longstanding debates on issues of separation of powers.

ILYA SOMIN: I'm going to start by talking a little bit about the current national emergency declaration by the president. I think this goes beyond what exists in the current, fairly broad, jurisprudential and legal framework. I also think there are significant problems with the framework itself, and I'll end by discussing a few possible reforms.

In February, the president declared a national emergency for the purpose of getting money allocated for his border wall that Congress had refused to give him. The statute says that during a period of national emergency, the president may declare that emergency and then adopt these emergency powers. Here's the question that should be raised: is an emergency anything that the president says it is? Does his de-

claring it make it so? Or is he only allowed to declare it in a situation that counts as a sudden crisis or emergency in ordinary language?

I think the second interpretation is better, for a couple of reasons. One is that in general, the Supreme Court has said, quite rightly, that most of the time we should interpret laws in accordance with their ordinary meaning. And the ordinary meaning of an emergency is not anything that I say it is, or any problem that might arise, or a disagreement the president has with Congress over funding. It is, rather, a sudden crisis that requires measures that cannot go through the ordinary legislative process. So just under ordinary meaning, that's the better interpretation. In addition, if you go the other way and you just say the president can declare an emergency anytime he wants for any reason, then you raise a serious constitutional problem.

Although the Supreme Court has been very permissive in letting Congress delegate powers to the executive, they did say there was a limit. And that limit was that there had to be an intelligible principle for when the power might be used. What counts as an intelligible principle is not always easy to say, but at the very least it's not "whenever the president wants to." That's not an intelligible principle even under the Court's permissive approach. The Court has said that, where possible, we should interpret federal laws to avoid constitutional problems, and the best way to avoid one here is to require it to be a sudden crisis, and not just any perceived problem.

What's going on at the border is not a sudden crisis. Undocumented immigration, if you consider that to be a problem, is at low levels in historical terms. The other issue the president has raised is drug smuggling. Most drug smuggling, some 80 percent, actually goes through ports of entry and therefore would not be affected by a wall. So, even if there is a crisis, it has no relationship to the proposed remedy. Finally, if there really were a crisis, it's hard to understand how a wall could possibly be a remedy for it, given that a wall will take several years to build even aside from the legal challenges to it. Therefore, it's a little like saying we have a fire going and we need to stop it quickly, so the remedy is to build a new fire station.

Clearly, even if it's a beautiful and wonderful fire station, it won't put out this particular fire. There's a very obvious mismatch in the claim that there is an emergency and the claim that the wall is a solution for the problem. Secondly, even if you assume that the president can declare an emergency, as Deborah pointed out, it is unlikely that Section 2808 could actually be used to transfer money to the wall, because Section 2808 can only be invoked in situations—in emergencies—that require the use of the military, and there's a longstanding federal law barring the use of the military for domestic law enforcement purposes. That includes immigration enforcement, and it also includes drug enforcement. The thing about this is that, unlike the National Emergencies Act, the Posse Comitatus Act is relatively clear, and it seems to exclude the sort of thing that Trump is trying to do.


ILYA SOMIN

> "What's going on at the border is not a sudden crisis."

Finally, there's an additional issue, which is that in order to get much of the property he would need to build the wall, Trump would need to use eminent domain to condemn private property, maybe even thousands of different properties. Eminent domain requires specific statutory authorization, and I do not think that authorization is present. That said, it isn't a slam dunk, because the law is unclear, so I think broader reforms are desirable.

One important reform is that a declared emergency should no longer be indefinite. Instead it should automatically terminate within a relatively short period of time unless Congress affirmatively endorses it. The Brennan Center for Justice recommends that change, and a bill to do this was recently introduced by Republican Sen. Mike Lee. He and his cosponsors have said that an emergency declaration should end in 30 days. You could argue about the particular time frame, but I think something like that is desirable.

Second, some of the powers on the list of those that could be triggered by an emergency are ones that should just be abolished entirely. I can't go through a full list, but one example is the power to test chemical and biological weapons on unwilling subjects. That seems like a power that the government shouldn't have at all. The other example is the kill switch for shutting down electronic media, including the internet. That's also a dangerous power that we shouldn't leave lying around.

Finally, the statute should make clear that a national emergency is a sudden crisis. In reviewing whether there is an emergency or not, the judiciary should not be deferential to the president. When you're invoking extraordinary powers, as opposed to ordinary ones, there's a good case for the judges to hold the president's feet to the fire instead of just taking his word for it. ■

JACOB HEILBRUNN (left), editor of the *National Interest*, comments at a book forum in March on *Gullible Superpower: U.S. Support for Bogus Foreign Democratic Movements* by Cato Senior Fellow TED GALEN CARPENTER (right).

Panelists discuss the Freedom of Information Act at a February policy forum, "FOIA and You: Tips, Tricks, and War Stories." Left to right: JASON LEOPOLD, investigative reporter, BuzzFeed News; NATE JONES, director of the Freedom of Information Act Project at the National Security Archive; and COLLEEN MURPHY, executive director and general counsel for the Connecticut Freedom of Information Commission.

DOUG BANDOW, Cato senior fellow in defense and foreign policy studies, addresses a Capitol Hill briefing in February on denuclearization negotiations with North Korea and the U.S. alliance with South Korea.

FEBRUARY 4: America's Border Wars: Inside the Constitution-Free Zone

FEBRUARY 4: Cato Club Naples 2019

FEBRUARY 5: Cato Institute Policy Perspectives 2019: Naples

FEBRUARY 12: Putting the Ivory Tower Together Again: Identifying and Fixing the Faults

FEBRUARY 13: FOIA and You: Tips, Tricks, and War Stories

FEBRUARY 15: Dealing with North and South Korea: Can Washington Square the Circle?

FEBRUARY 28: *Trade and American Leadership: The Paradoxes of Power and Wealth from Alexander Hamilton to Donald Trump*

MARCH 1: Who's Afraid of Big Tech?

MARCH 1: Cato Institute Policy Perspectives 2019: New York City

MARCH 6: #CatoConnects: Religion and Attitudes about Immigration, Race, and Identities

MARCH 13: Cato Club Naples 2019

MARCH 15: *Prisoners of Politics: Breaking the Cycle of Mass Incarceration*

MARCH 19: *Gullible Superpower: U.S. Support for Bogus Foreign Democratic Movements*

MARCH 20: *Chevron: Accidental Landmark*

MARCH 21: Harm Reduction: Shifting from a War on Drugs to a War on Drug-Related Deaths

MARCH 25: A Real Emergency: Executive Power under the National Emergencies Act

MARCH 25: *Clear and Present Safety: The World Has Never Been Better and Why That Matters to Americans*

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Cato Calendar

FINANCIAL INCLUSION: THE CATO SUMMIT ON FINANCIAL REGULATION
WASHINGTON • CATO INSTITUTE
JUNE 12, 2019
Speakers include Jelena McWilliams.

SPHERE SUMMIT: TEACHING CIVIC CULTURE TOGETHER
WASHINGTON • CATO INSTITUTE
JULY 14–18, 2019

18TH ANNUAL CONSTITUTION DAY
WASHINGTON • CATO INSTITUTE
SEPTEMBER 17, 2019
Speakers include Thomas Hardiman.

37TH ANNUAL MONETARY CONFERENCE
WASHINGTON • CATO INSTITUTE
NOVEMBER 14, 2019
Speakers include Richard Clarida, Paul Tucker, Charles Calomiris, Sarah Binder, and George Selgin.

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

MILTON FRIEDMAN PRIZE PRESENTATION DINNER
NEW YORK • CIPRIANI 42ND ST.
MAY 20, 2020

CATO CLUB 200 RETREAT
BLUFFTON, SC
MONTAGE PALMETTO BLUFF
OCTOBER 1–4, 2020

"The most important book on the Great Depression since Friedman and Schwartz"

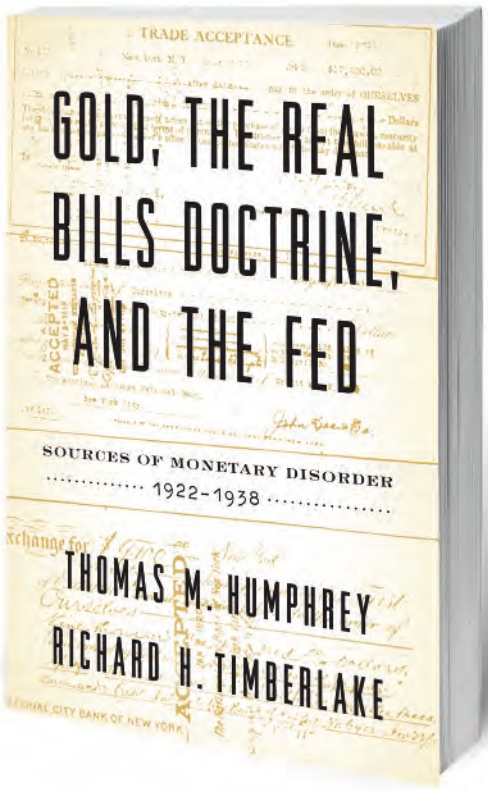
Landmark Breakthrough on the Great Depression

The history of monetary policy and economics is inextricably tied up in the history of the Great Depression. The causes and cures of the economic cataclysm that began in 1929 have been the battlefield on which much of the debate between free-marketeers and central planners has been fought for nearly a century.

Through the Depression itself and for many years afterward, the Keynesian interpretation of its causes reigned supreme as the widely accepted conventional wisdom. In 1963, Milton Friedman and Anna Schwartz upended that consensus with their seminal *Monetary History of the United States*, laying the blame firmly at the feet of the Federal Reserve. In this interpretation, the "Great Contraction"—in which a third of the country's money supply was destroyed over a short timespan—converted a garden-variety recession into the Great Depression.

Gold, the Real Bills Doctrine, and the Fed adds crucial new insight into how and why the Fed enabled this disaster, from two leading monetary historians: Thomas Humphrey, a 34-year research economist at the Federal Reserve Bank of Richmond, together with Richard Timberlake, emeritus professor of economics at the University of Georgia and an adjunct scholar at the Cato Institute.

Their keen insight provides an explanation not only of what the Fed did wrong but also of the flawed theory that drove policymakers to make such a monumental mistake. The so-called real bills doctrine was a widespread theory in the late 19th and early 20th centuries that held that money should only be created through "real bills" that represent transactions of real goods and services in the economy. This theory was one of the cornerstones of the Federal Reserve Act of 1913. Erroneous, though largely innocuous under normal circumstances, this doctrine was the theoretical basis for the Fed's refusal to counteract the collapse of the money supply at the onset of the Depression.



Sen. Phil Gramm, economist and former chair of the Senate Banking Committee, offered glowing praise for this book, writing, "In my opinion, this book is the most important book written on the Great Depression since Friedman and Schwartz." Friedman himself praised an early manuscript prior to his death in 2006, saying that the authors' "emphasis of the Real Bills Doctrine complements in an important way [our] analysis of why Fed policy was so 'inept.'. . . We did not emphasize, as in hindsight we should have, the widespread belief in the Real Bills Doctrine." ■

PURCHASE PRINT OR EBOOK COPIES OF *GOLD, THE REAL BILLS DOCTRINE, AND THE FED* AT CATO.ORG/STORE.

New from the Cato Institute

The Human Freedom Index, copublished with the Fraser Institute and the Liberales Institut at the Friedrich Naumann Foundation for Freedom, is the most comprehensive measure of human freedom in the world that is based on a broad measurement of personal, civil, and economic freedom. The *Index* ranks 162 countries on the basis of 79 distinct indicators using data from 2008 to 2016, the most recent year for which sufficient data are available.

CATO INSTITUTE | DOWNLOAD *THE HUMAN FREEDOM INDEX* AT CATO.ORG/HFI.

Realistic and effective solutions for the opioid crisis

The War on Drug-Related Deaths

The opioid addiction crisis continues to be a hot-button political topic as presidential candidates hit the campaign trail in hard-hit states such as Iowa and New Hampshire. Even as Americans move away from the failed model of prohibition for the relatively innocuous marijuana, the response to far more lethal drugs like opioids still tends to focus on traditional approaches involving interdiction and incarceration. In addition to being harmful and counterproductive, this war-on-drugs mentality precludes many effective harm-reduction measures that could reduce both the lethality and the frequency of overdoses as well as the violence associated with black markets, gangs, and cartels.

Although government efforts have succeeded in reducing both the amount of legally manufactured prescription opioids and the number of opioid prescriptions, deaths from opioid-related overdoses are nevertheless accelerating. Research shows that the increase is due, in large part, to the substitution of illegal heroin and fentanyl for the now harder-to-get prescription opioids. Attempting to decrease overdose deaths by doubling down on this approach will not produce better results.

In contrast, harm reduction has a success record that prohibition cannot match. Unlike prohibition, harm-reduction strategies begin with the realistic and nonjudgmental premise that there has never been, and will never be, a drug-free society. Akin to the credo of the medical profession—"First, do no harm"—harm reduction avoids measures that exacerbate the harm that prohibition has already inflicted on nonmedical users and focuses on reducing deaths and the spread of disease from drug use.

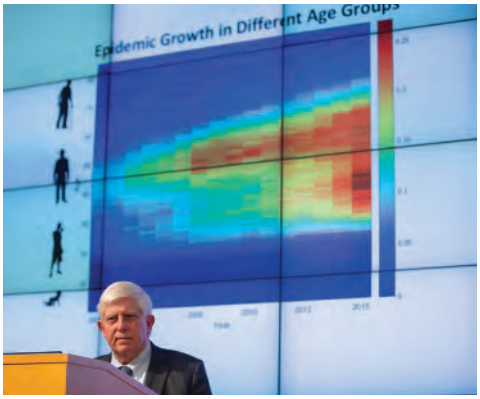
In March, the Cato Institute brought together clinical and research experts in epidemiology, public health, and addiction treatment to examine various harm-reduction policies and their track records. Among the presenters and panelists was former governor Ed Rendell (D-PA), who talked about his experience with safe-injection facilities and needle-exchange programs. These measures have proven to be greatly effective but are often opposed by the Drug Enforcement Agency, which sees them as flouting prohibition.

Other presenters included Jeffrey Miron, director of economic studies for the Cato Institute and director of undergraduate studies in the Department of Economics at Harvard University, and Maia Szalavitz, neuroscience journalist and the award-winning author of *Unbroken Brain: A Revolutionary New Way of Understanding Addiction*. The two discussed Miron's research into the ways that prohibition increases death and disease.

Speakers from universities and safe-injection sites in Vancouver, Seattle, San Francisco, Los Angeles, and Pittsburgh discussed medication-assisted addiction treatment, expanded roles for the overdose inhibitor naloxone, medicinal cannabis, and the changing dynamics of the drug overdose epidemic from 1979 through 2016.

By highlighting these policies and their potential to reduce death, disease, crime, and corruption, the conference helped move forward the goal of its title: "Shifting from a War on Drugs to a War on Drug-Related Deaths." ■

VIDEO AND AUDIO RECORDINGS OF THE HARM-REDUCTION CONFERENCE ARE AVAILABLE AT CATO.ORG.



Top left: DONALD S. BURKE, dean of the University of Pittsburgh Graduate School of Public Health, presents the conference's keynote address. Top right: MAIA SZALAVITZ, author of *Unbroken Brains*. Bottom: ED RENDELL (left), former governor of Pennsylvania, and CLARK NEILY, Cato vice president for criminal justice.

Regulation and the Opioid Epidemic

Opioid overdose deaths have risen dramatically in the United States over the past two decades. The standard explanation for this rise blames expanded prescribing and advertising of opioids beginning in the 1990s. In **"Overdosing on Regulation: How Government Caused the Opioid Epidemic"** (Policy Analysis no. 864), Jeffrey Miron, Greg Sollenberger, and Laura Nicolae find that restrictions on prescribing have the opposite effect. Instead of decreasing opioid overdose deaths, restrictions push users from prescription opioids toward diverted or illicit opioids, which come with a higher risk of overdose.

ASSIMILATION NATION

Concerns about assimilation and loyalty are among the most frequent objections to liberalizing immigration policy. In **"Immigrants Recognize American Greatness: Immigrants and Their Descendants Are Patriotic and Trust America's Governing Institutions,"** (Immigration Research and Policy Brief no. 10), Alex Nowrasteh and Andrew Forrester find that immigrants and their descendants express patriotic sentiments and trust in American institutions at levels similar to or higher than other Americans.

ATLAS SHRUGS

Do tax rates have a measurable effect on the quality and quantity of innovation? In **"Taxation and Innovation in the 20th Century"** (Research Brief in Economic Policy no. 149), authors Ufuk Akcigit, John Grigsby, Tom Nicholas, and Stefanie Stantcheva compile a comprehensive new data set to compare the rate of patent applications versus changes in both state and federal tax policy for both individuals and corporations from 1921–1970. They find economically substantial impacts in how taxes affect the amount, quality, and location of inventive activity.

THE RELIGIOUS CENTER?

Religious conservatives are often thought of as anchoring the right wing of American politics, but the reality isn't quite that simple. In **"Religious Trump Voters: How Faith Moderates Attitudes about Immigration, Race, and Identity"** (Public Opinion Brief no. 2), Cato's director of polling, Emily Ekins, finds that on a range of issues, Trump voters who attend church regularly have opinions that are more moderate or left-leaning than secular Trump voters.


EKINS

LIVE LONG AND PROSPER

One of the most remarkable events in human history has been the "mortality transition," as morality rates have plummeted and life expectancy has risen dramatically. In **"Public Health Efforts and the Decline in Urban Mortality"** (Research Brief in Economic Policy no. 150), D. Mark Anderson, Kerwin Kofi Charles, and Daniel I. Rees find that the effect of massive public health programs in the early 20th century has been overstated by recent research. With the exception of water filtration reducing typhoid fever, they find that most of those programs had little observable effect on mortality.

LOCAL OPTIONS

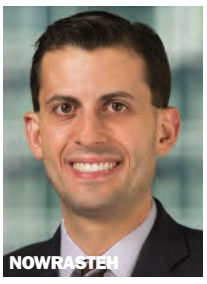
National markets—that is, markets for goods and services that directly compete with each other nationwide—have experienced increasing and controversial levels of concentration, with a smaller number of firms holding rising levels of market share. In **"Diverging Trends in National and Local Concentration"** (Research Brief in Economic Policy no. 151), authors Esteban Rossi-Hansberg, Pierre-Daniel Sarte, and Nicholas Trachter find that the opposite trend holds true in local markets. Concentration has been decreasing for coffee shops, grocery stores, and other local services.

MORE EQUAL THAN OTHERS

Affirmations that employers are "equal opportunity employers" (EEOs) are familiar boilerplate to anybody in the job market. But do those affirmations achieve the desired goal? In **"Do Equal Employment Opportunity Statements Backfire?: Evidence from a Natural Field Experiment on Job-Entry Decisions"** (Research Brief in Economic Policy no. 152), Andreas Leibbrandt and John A. List find a startling and counterintuitive result. In fact, minorities are 30 percent less likely to apply for a job with an EEO statement. Through follow-up interviews, the authors find that such statements trigger anticipation of discrimination, stereotyping, and tokenism. For that reason, they actually reduce the willingness of minorities to apply for a job with an EEO statement compared to listings without such statements.

MORE IMMIGRANTS, LESS CRIME

In **"Criminal Immigrants in 2017: Their Numbers, Demographics, and Countries of Origin"** (Immigration Research and Policy Brief no. 11), Michelangelo Landgrave and Alex Nowrasteh review American Community Survey data from the U.S. Census to analyze incarcerated immigrants. The data confirm that all immigrants—legal and illegal combined—are less likely to be incarcerated than native-born Americans relative to their


NOWRASTEH

shares of the population. By themselves, illegal immigrants are also less likely to be incarcerated than native-born Americans.

SEARCH AND DESTROY

One of the main explanations for why minimum wage increases don't always produce the negative effect on employment predicted by standard economics is that higher wages prompt workers to spend more time and effort on searching for jobs, ultimately producing more productive matches. In **"The Minimum Wage and Search Effort"** (Research Brief in Economic Policy no. 153), Camilla Adams, Jonathan Meer, and CarlyWill Sloan find that while minimum wage increases do yield significant increases in worker search effort initially, those effects are transitory and do not persist over time.


MEER

BET ON IT

Until very recently, sports betting was banned in most states by a federal law, the Professional and Amateur Sports Protection Act (PASPA). Last year, however, the Supreme Court ruled in *Murphy v. NCAA* that PASPA was unconstitutional, leaving states free to adopt their own policies. In **"Anyone's Game: Sports-Betting Regulations after *Murphy v. NCAA*"** (Legal Policy Bulletin no. 4), Patrick Moran looks at how states have responded to this decision and recommends that Congress stay out of their way and avoid imposing any new federal regulations, taxes, or fees.

BRIGHT IDEAS

Innovation is the main engine for economic growth, but we know relatively little about the impacts of various policies on innovation. In 2002, a Chinese tax reform provided a rare natural experiment because it applied only to firms started after January 1 of that year. In **"The Impact of Corporate Taxes on Firm Innovation: Evidence from the Corporate Tax Collection Reform in China"** (Research Brief in Economic Policy no. 154), Jing Cai, Yuyu Chen, and Xuan Wang find a strong and robust causal relationship between tax rate and firm innovation.

DOUBLE ENTRY

Should a bank's shareholders be on the hook for its liabilities? The lack of such liability is a common complaint from those who see it as encouraging excessive risk. In **"Reducing Moral Hazard at the Expense of Market Discipline: The Effectiveness of Double Liability before and during the Great Depression,"** (Research Brief in Economic Policy no. 155), Haelim Anderson, Daniel Barth, and Dong Beom Choi examine the double liability policy, which once held bank shareholders liable in addition to the bank itself. They find that double liability backfired, weakening market discipline more than it incentivized prudential risk taking.

MARIJUANA OVER OPIOIDS

Advocates of legal and recreational marijuana have long pointed to a substitution effect whereby marijuana can provide a better alternative for treating pain than opioids. In **"The Impact of Cannabis Access Laws on Opioid Prescribing"** (Research Brief in Economic Policy no. 156), Benjamin McMichael, R. Lawrence Van Horn, and W. Kip Viscusi present the most accurate picture to date of the effect of cannabis access laws on prescription opioid use. They find robust and substantial reductions in opioid prescriptions associated with the adoption of both medical and recreational marijuana legalization, a crucial finding as policymakers continue to debate responses to the opioid epidemic. ■

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"To Be Governed..."

WHO KNEW? TAXES REDUCE DEMAND

[Q:] What are some of the effects of this internet tax on Uganda?
[A:] Well, one of the most striking things is that internet subscriptions have actually gone down. So there are 2.5 million fewer users—people using the internet.

—*MARKETPLACE MORNING REPORT,* FEBRUARY 19, 2019

SOMEONE SHOULD HAVE WARNED THEM THAT THE SUBSIDIES WOULD END

States that expanded their Medicaid health insurance programs are hunting for ways to fund the new enrollees in 2020 as they face a final drop in federal contributions. . . .

Yesterday, the Oregon House approved a measure backed by Gov. Kate Brown (D) to help fund the state's Medicaid program, which faces a $950 million shortfall. The bill would extend new taxes on hospitals and insurance plans for an additional six years, which some lawmakers say will give them more time to come up with long-term health-care dollars.

New Hampshire Gov. Chris Sununu (R) signed legislation over the summer earmarking 5 percent of new profits from the sale of liquor for Medicaid expansion, so no direct taxpayer dollars would need to be redirected. Around the same time, Virginia Gov. Ralph Northam (D) approved two new taxes paid by hospitals to fund that state's new expanded Medicaid program.

California, Louisiana, Arizona, Colorado, Indiana and Minnesota have also implemented higher taxes either on health providers or insurers, or on the sale of alcohol or cigarettes.

—*WASHINGTON POST,* FEBRUARY 21, 2019

. . . AND BY SOCIALISM

Like North Korea now, Vietnam between 1975 and 1995 was crippled by economic sanctions and a U.S. trade embargo.

—NPR, FEBRUARY 26, 2019

WE HAVE ALWAYS BEEN AT WAR IN EAST ASIA

Marine recruit Juan Tellez has no memory of the Sept. 11 hijackings that started the war he may soon be fighting. Why would he? He was born two months after the terror attacks took place.

The Afghanistan war, now in its 18th year, has been going on for so long that some of those volunteering to fight it were still in utero when it began.

—*WALL STREET JOURNAL,* FEBRUARY 26, 2019

"CONFISCATE" IS CERTAINLY THE RIGHT WORD HERE

Warren's plan includes an "exit tax," which would confiscate 40 percent of all a person's wealth over $50 million if they renounce their citizenship.

—NPR, FEBRUARY 26, 2019

NOT ALL MARKETS ARE "FREE MARKETS"

Joo Chang Yang cut her teeth in the jangmadang, or free markets of North Korea's northeast Hamgyong Province, before she defected to the South in 2010 at the age of 19. . . . Joo says that the free market includes luxury goods, such as imported cosmetics, which are sold in many state-run stores discreetly from under the counter. . . . Joo says the real heroes are those who persisted in trading on the free markets despite the risk of arrest and execution.

—NPR, FEBRUARY 26, 2019

CLEAR, SIMPLE, AND WRONG

US Democrat Elizabeth Warren has proposed breaking up tech giants like Amazon, Facebook and Google if elected to the US presidency in 2020. Seeking to stand out in a crowded Democratic field, Ms. Warren told a crowd in Queens, New York, that she was "sick of freeloading billionaires. . . ." One woman at the rally, who was undecided about who to vote for, said: "What I like is that she's proposing big ideas."

—BBC.COM, MARCH 9, 2019

QED

An Egyptian singer has been banned from performing in her home country after suggesting that it does not respect free speech.

—ASSOCIATED PRESS, MARCH 23, 2019

WELL, YEAH, EXCEPT FOR ALL THE DISCRIMINATION

Until about the 1960s, once you got past some number of legacy admissions and athletes, the bulk of the [college] class got in on merit—grades, test scores and high-school recommendation letters.

—DANIEL HENNINGER IN THE *WALL STREET JOURNAL,* MARCH 21, 2019

I'VE HEARD OF STEALING HORSE RACES, BUT THIS IS RIDICULOUS

In an effort to "preserve" the Preakness Stakes' Baltimore location, Mayor Catherine Pugh filed a lawsuit on Tuesday against the Stronach Group to seize the track and prevent moving the race from Pimlico to Laurel. . . . The lawsuit asks the court to condemn both Pimlico and the Preakness Stakes, so that the city may take ownership.

—WYPR-FM, MARCH 20, 2019