

MODERN MILITARY

A plan for sensible budget priorities

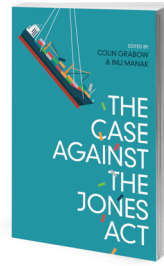
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Cato Policy Report

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Escaping the Partisan Death Spiral

BY LEE DRUTMAN

As we lurch toward another national election, steel yourself for the familiar ride: incendiary threat rhetoric about the end of America as we know it; cramped debates where nobody proposes anything new and nobody changes his or her mind; and the seemingly pointless marshaling of billions of dollars to generate an endless stream of substanceless attack ads to blanket the handful of “swing” states and districts, where perhaps just a few thousand late-deciding low-information voters could determine the fate of the country. Even as we watch what feels like a high-stakes contest, in the end our political future will probably be more endless partisan fighting, endangering basic constitutional norms, and now, thanks to COVID-19, our economy and our health as well. A genuine contest of ideas and visions, it will not be.

To work well, self-governance must be a contest of ideas where competition can drive innovation and change. But because of America’s unusual two-party system, which is largely a product of our antiquated usage of “first-past-the-post” elections, voters will head to the polls this November

with only two realistic choices, unless you don’t mind “wasting” your vote on a candidate who can’t win. For almost all voters, though, there will really be only one choice—both because most voters are reliable partisans, and because most voters live in lopsided districts and states where either a Republican or a Democrat has no real shot of ever winning. The marketplace of political competition is decidedly broken.

But it gets even worse. It’s not just that the political marketplace is broken—it’s that the broken political marketplace is now

breaking the fundamental foundations of modern liberal democracy: the rule of law and adherence to constitutional norms. In the constant jockeying for narrow elusive majorities, partisans are putting short-term gains ahead of long-term stability and disregarding long-standing norms in order to win the next election and humiliate the other side. When “winning” becomes everything, and winning means dehumanizing the other side for short-term gain, it legitimates increasingly extreme behavior on both sides.

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Milton Friedman, seen here sporting a baseball cap at Cato’s 25th anniversary celebration, is just one of many Nobel laureates who have been associated with the Cato Institute and contributed to its vision and policy work. See “Nobel Laureates at Cato” on page 4.

LEE DRUTMAN is a senior fellow in the Political Reform program at New America. He is the author of *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* (Oxford University Press, 2020) and *The Business of America Is Lobbying* (Oxford University Press, 2015).



BY DAVID BOAZ

“
Maybe we shouldn't give any one man as much power as the president now has.
”

EDITORIAL

Reining in Presidential Power

In the past three years, the president of the United States has unilaterally banned foreign nationals from seven predominantly Muslim countries from entering the United States; imposed tariffs on goods coming from Canada, China, Europe, Mexico, and other countries; declared a national emergency in order to shift military funding from congressionally authorized purposes to building a wall on the southern border; bombed the Assad regime in Syria twice; and much more.

President Trump is not the first modern president or presidential hopeful to look for opportunities to rule without the hassle of getting Congress to pass legislation. When President Clinton found a Republican Congress uncooperative, his aide Paul Begala boasted: “Stroke of the pen, law of the land. Kind of cool.” President Obama declared: “We’re not just going to be waiting for legislation. . . . I’ve got a pen, and I’ve got a phone.” Both President George W. Bush and President Obama used executive orders to grant themselves extraordinary powers to deal with terrorism. Running for president in 2016, Hillary Clinton promised executive action on gun control, immigration, corporate political spending, and corporate taxes.

Trump, true to form, has been blunter in claiming extra-constitutional powers. Some have observed that he tends to “say the quiet part out loud.” He says, “When somebody is the president of the United States, the authority is total.” He says that Article II of the Constitution gives him the right “to do whatever I want as president.” He says, “The president of the United States calls the shots [on ending state lockdown orders. Governors] can’t do anything without the approval of the president of the United States.” Vice President Pence echoed him: “Make no mistake about it, in the long history of this country, the authority of the president of United States during national emergencies is unquestionably plenary.” “Plenary,” of course, means “absolute, unqualified, complete in every respect.”

The president also said, in declaring a coronavirus emergency, “I have the right to do a lot of things that people don’t even know about.” He doesn’t in fact have the right to do whatever he wants. But alarmingly, he does—in one sense—have hidden powers we don’t know about. According to Elizabeth Goetein and Andrew Boyle in the *New York Times*, these powers are contained in classified documents known as “presidential emergency action documents.” There may be 50 or 60

of these documents, and as far as we know even Congress doesn’t know what’s in them. Some older such documents “purported to authorize . . . suspension of habeas corpus by the president (not by Congress, as assigned in the Constitution), detention of United States citizens who are suspected of being ‘subversives,’ warrantless searches and seizures and the imposition of martial law.” The word “purported” is right.

Some people don’t think these constitutional niceties matter. When there’s an emergency—war, pandemic, Congress’s refusal to appropriate the money the president wants—you can’t stand on ceremony. You’ve got to get things done, the way they do it in China. As New York leaders argued about school closings, Brooklyn Borough President Eric Adams tweeted: “Who has legal authority to close down @NYCSchools? That’s a conversation for people with time for largely academic conversations. I don’t have the time. I don’t have patience for petty back-and-forths in the middle of a deadly pandemic.”

But public officials should care whether their actions are legal. That’s why both state and federal officeholders are all required to take an oath to support the Constitution.

In his 1973 book *The Imperial Presidency*, Arthur Schlesinger Jr. wrote that the shift of war powers to the president was “as much a matter of congressional abdication as of presidential usurpation.” I wouldn’t want to downplay presidential will to power, but it’s true that Congress has sat by while presidents have acted without authorization.

Consider Senate Minority Leader Chuck Schumer. He pressed President Trump to declare a national emergency to deal with the coronavirus. Then when Trump did that, Schumer urged him not to “indulge his autocratic tendencies.”

Power tends to corrupt. Power is subject to abuse. James Madison observed that we are not governed by angels nor even by “enlightened statesmen,” and Hayek feared that “the unscrupulous and uninhibited” are likely to seek power. So maybe we shouldn’t give any one man as much power as the president now has.

Congress, Article I gives you the power to restrain presidents.

Opportunities persist in the era of social distancing

Cato Internships Go Virtual

Cato's internships have long been one of the Institute's flagship programs, helping prepare the next generation of leaders for liberty. An integral part of this program is the John Russell Paslaqua Intern Seminar Series. All Cato interns take part in more than 40 seminars with the Institute's scholars and policy analysts, covering the range of libertarian theory, history, and Cato's policy work.

With Cato on a work-from-home posture due to the COVID-19 pandemic, the summer 2020 intern class has also had to adapt, with the seminars going virtual along with the rest of their intern experience. But that hasn't stopped Cato from providing an immersive educational experience of the highest quality.



“While it’s tough not to have a material workplace or coworkers to connect with over lunch, my time with Cato so far has offered a glimpse of what a new normal might look like. Though it might lack the glamor of trips to Capitol Hill and roundtables on Think Tank Row, the sub-

stance of my work—the insightful research, the piercing inquiries, and the relentless commitment to pursuing truth in the policy space—remains as strong as ever,” explains Ashley Hitchings, a rising sophomore pursuing economics and data science at the University of Chicago who is interning with Cato’s Herbert A. Stiefel Center for Trade Policy Studies.

“Although we’re all working from home, the scholars in my department still feel very accessible to me,” explains Brandon Beyer, a third-year law student at the University of Notre Dame who is interning with the Robert A. Levy Center for Constitutional Studies. “I have frequent calls, emails, and Zoom chats with them. The department is also doing things like virtual happy hours to reconcile for some of the social aspects of the internship program that are made more difficult by the remote setting.”

While much of the intern seminars remain focused on the usual curriculum, current events have also been a substantial part of the discussion. “The work of Cato during the pandemic proves once again its emphasis on analyzing current relevant issues affecting America and the rest of the world, as a large part of our seminar discussions and assigned projects are related to policies resulting from the COVID-19 outbreak,” according to Camila Goris, a master’s student in applied economics at the University of Minnesota who is interning with Cato’s tax and budget policy team.

Cato’s internships provide crucial career opportunities, and admission is highly competitive. Many of Cato’s own scholars began as Cato interns, and others have gone on to lead impactful careers throughout the world of law, communications, and policy work. Although the current class has been unable to join Cato’s team in Washington as usual, Cato looks forward to welcoming them back as soon as possible and continuing to help with their bright future. ■

MORE INFORMATION ABOUT CATO’S INTERNSHIP PROGRAM, INCLUDING HOW TO APPLY, CAN BE FOUND AT INTERN.CATO.ORG.

Cato News Notes

DELL AWARDED JOHN BATES CLARK MEDAL

Harvard’s Melissa Dell was awarded the American Economic Association’s prestigious John Bates Clark Medal for her contribution to understanding the role that states and other institutions play in economic development. Among her work on this topic was a Cato research brief, “Nation Building through Foreign Intervention: Evidence from Discontinuities in Military Strategies,” authored in 2016 with Pablo Querubin of New York University.

STUDENT DOCUMENTARIES WIN PRIZES

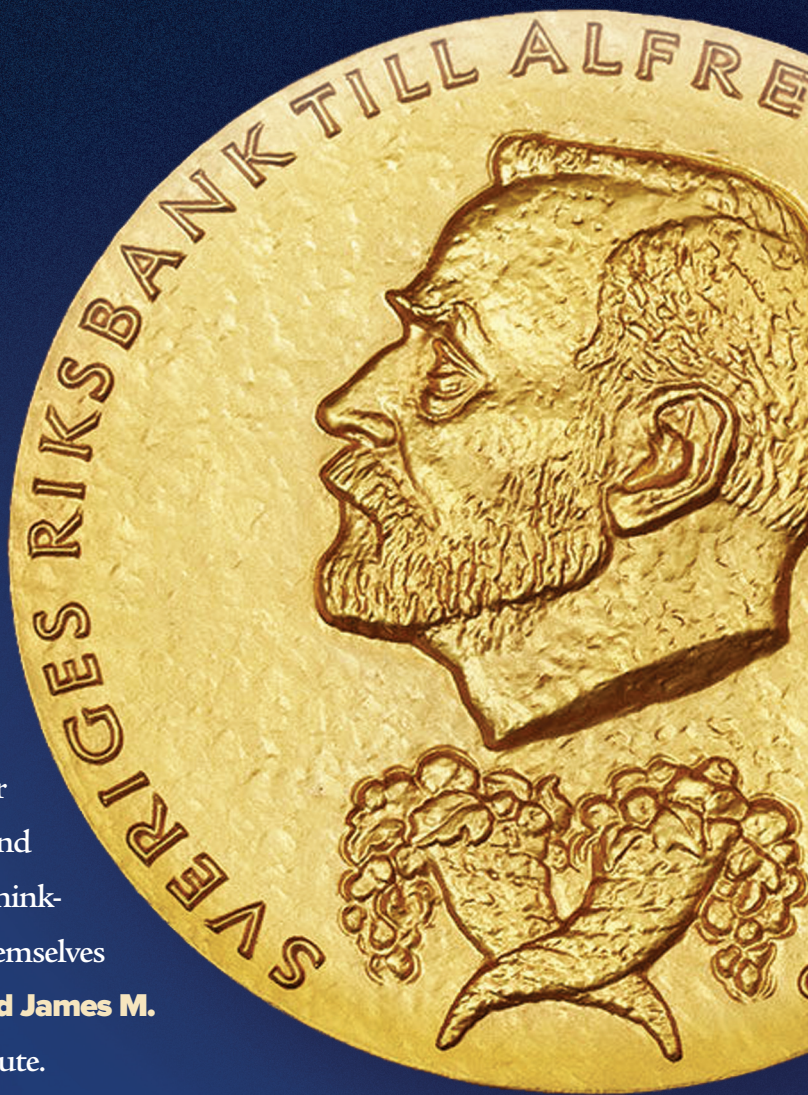
Cato scholars Michael F. Cannon and Ilya Shapiro were featured in short student documentaries for StudentCam, C-SPAN’s annual national video documentary competition for students. Shapiro spoke about presidential power in first-prize winner *Overreach from the Oval Office* by 10th-grade student Thomas McKenna. Cannon appeared in third-prize recipient *Broken* by 9th graders Allison Fan and Evelyn Shue about America’s health care system.

SAMPLES APPOINTED TO FACEBOOK OVERSIGHT BOARD

John Samples, vice president at the Cato Institute, has been appointed to Facebook’s new independent oversight and review board, created to hear appeals on content moderation issues. For more details, see “Cato Takes the Lead in Defending Free Speech Online,” page 14.

Nobel Laureates at Cato

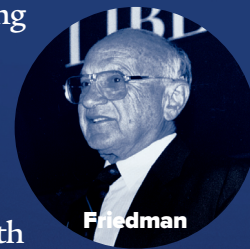
Since its first award in 1969, the Nobel Prize in Economics (technically, the Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel) has been an important catalyst for research agendas in economics and other academic disciplines. Thus, the awarding of the prize to libertarian economists over the past 46 years has both reflected and boosted the resurgence in free-market thinking. Three Nobel Prize winners in particular identified themselves with libertarianism: **F. A. Hayek, Milton Friedman, and James M. Buchanan.** All three also had close ties to the Cato Institute.



Hayek

The first libertarian to receive the Nobel Prize was F. A. Hayek in 1974. In the years leading up to the prize announcement, Hayek had reached a professional and personal nadir. Unable to maintain an academic appointment in the United States, Hayek had returned to Austria to take up a position at the University of Salzburg. With the announcement of the prize in 1974, however, Hayek's ideas and fortunes took a remarkable turn, even though he himself famously expressed misgivings about the propriety of awarding such an honor to economists.

Hayek's influence on Cato is profound. Hayek wrote two of the Cato Institute's first books: *A Tiger by the Tail: The Keynesian Legacy of Inflation and Unemployment* and *Monetary Policy: Government as Generator of the "Business Cycle."* Perhaps more than any other intellectual in the 20th



Friedman



Buchanan

century, Hayek inspired Cato and its researchers to develop policies that ensure a free society. In 1995, thanks to generous Sponsors, Cato's auditorium was named in Hayek's honor.

Two years after Hayek's win, Milton Friedman, then a professor at the University of Chicago, was awarded the prize for his work on monetary theory. This work, along with that of Hayek, was to form the basis of Cato's advocacy of stable money and inspired Cato's first annual con-

ference on monetary policy in 1983. Participants included Fritz Machlup, Anna Schwartz, Gottfried Haberler, future Nobel Laureate **Robert Mundell**, and Allan Meltzer.

One year before the massacre in Tiananmen Square, Cato held its first conference in China, “Economic Reform in China: Problems and Prospects,” at which Friedman spoke. A collection of papers presented at the conference was published in English in 1990, but it remained blocked by the Chinese government until 1993, when Friedman met with then-Communist Party leader Jiang Zemin.

In 2002, Cato inaugurated the Milton Friedman Prize for Advancing Liberty, which is awarded every two years to an individual who has made a significant contribution to the advancement of liberty. Until his death in 2006, Friedman was a frequent guest of honor at Cato events and an enthusiastic supporter of Cato’s work. His influence is felt at Cato even now—he had the opportunity to review an early draft and provide important feedback on a Cato book published in 2019, *Gold, the Real Bills Doctrine, and the Fed*, by Richard Timberlake and Thomas M. Humphrey.

Libertarians have always known that government often fails, but before the pioneering work of James M. Buchanan, why government fails remained somewhat of a mystery. Buchanan’s Nobel Prize in 1986 gave recognition to the already growing movement in the Public Choice school of economics, which provides a lens through which to analyze these failures. His careful study of incentives showed market influences at work even in the “market” for government powers and favors.

For much of his life, Buchanan was an active partner with the Cato Institute. He spoke at numerous Cato events, including the 10th anniversary dinner in 1987 and Cato’s 1990 conference in Moscow, “Transition to Freedom: The New Soviet Challenge.” In addition, Buchanan often wrote for the *Cato Journal*.

Several other laureates have participated in Cato events and publications, including **Angus Deaton**, **Vernon L. Smith**, and even one noneconomist. Peruvian novelist **Mario Vargas Llosa** won the Nobel Prize in Literature in 2010 “for his cartography of structures of power and his trenchant images of the individual’s resistance, revolt, and defeat.” Vargas Llosa has spoken at numerous Cato events, most recently a Joseph K. McLaughlin Lecture in 2017, and his speeches and writing have appeared in a number of Cato publications, including the January/February 2003 issue of *Cato Policy Report* (“Why Does Latin America Fail?”).

At least 16 Nobel laureates have been involved in one way or another with Cato events or policy work, and their biographies and work with the Institute can be found at www.cato.org/people/nobel.



Vargas Llosa



Deaton



Mundell



Smith



The Nobel Prize Medal is a registered trademark of The Nobel Foundation.

I call this problem the “two-party doom loop.” The idea is similar to an arms race, or any self-reinforcing feedback loop of escalation. More aggressive actions on one side justify more aggressive actions on the other side. Consider the fights over Supreme Court justices. In response to what Democrats believe was a stolen Supreme Court seat, many on the left are now arguing that if Democrats return to power, they should expand the court. Or consider the escalating fights around voting and redistricting. Each of these fundamental institutions of democracy is becoming increasingly contested, to the point that whichever side loses, the result is inevitably seen as illegitimate. All of this creates tremendous instability and inevitably ratchets up toward the breakdown of liberal democracy, the rise of authoritarianism and extremism, and an existential threat to the free society.

To understand the threat and what to do about it, we need a bit of history on how we got here.

IT ALL GOES BACK TO 1787

Like all good histories of American political institutions, we must start at the beginning: with the Constitutional Convention of 1787. Throughout the hot summer, the Framers wrestled with the fundamental challenge of self-governance: how to set up a system where the people could rule, but still have enough leadership and authority to forge the difficult compromises necessary to build a thriving economy based on the rule of law.

James Madison, the preeminent theorist among the Framers, recognized the core challenge. Any society will have to wrestle with the problem of faction—the diversity of mankind and the variety of opinions, values, and economic interests inherent in any free society. That inevitably involves tradeoffs and shifting coalitions to solve public problems.

Madison’s first great cause had been religious liberty. He would often recite Voltaire’s

“ Madison applied Voltaire’s insight to politics. ”

observation: “If there were only one religion in England, there would be great danger of despotism. If there were two religions, they would cut each other’s throats. But there are thirty religions, and they live together in peace and happiness.”

Madison applied Voltaire’s insight to politics. The key to preventing political tyranny was the same: enough diversity so no group could think itself anywhere close to a majority capable of dominating everyone else. As a result, no one group would need fear domination from any other group. One faction could oppress; two factions would fight for the power of who got to oppress whom. But in a big nation, every faction would be a minority. None would have any illusions of domination. Tyranny averted.

This was why the Framers feared political parties. Their reading of history led them to the conclusion that when political parties formed, there would naturally be just two of them. They would compete for majority status, and this competition would be fundamentally destabilizing. The prize of majority rule would lead the party in power to abuse the rules to rig themselves into permanent majorities. The party out of power would declare the government illegitimate and threaten violence. As they fought, self-governance would collapse into anarchy and tyranny.

George Washington’s Farewell Address is often remembered for its warning against hyperpartisanship: “The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid

enormities, is itself a frightful despotism.” Washington’s successor, John Adams, similarly worried that “a division of the republic into two great parties . . . is to be dreaded as the greatest political evil.”

By decentralizing power, the Framers thought they had come up with an institutional solution to the danger of political parties: the separation of powers and federalism. Such decentralized governance would both limit federal authority and prevent parties from forming in ways that would turn America into that dreaded divided republic.

THE EARLY PARTY SYSTEMS

The early years of American democracy tested this premise mightily. At the elite level, at least, two parties formed quickly, culminating in the contentious and contested election of 1800 between Jefferson’s Democratic-Republican Party and Adams’s Federalist Party—an election that was ultimately decided in the House of Representatives. In the early days of the republic, states would regularly change how they allocated Electoral College votes and voted in congressional elections to suit short-term partisan gains; and judicial jockeying (including court packing and court shrinking) put today’s hardball politics to shame.

But the destabilizing partisan fighting was short-lived, largely because by Jefferson’s second term, the Democratic-Republican Party came to dominate American politics; so much so that America became a one-party system by the early 1820s. But a one-party state is actually a no-party system, and modern mass democracy needs political parties to organize and channel conflict. So by the 1830s, America developed the world’s first great mass party system. And by the 1860s, that party system settled into the regular competition between the same two parties we have today: Democrats and Republicans.

Although America has long had two great parties, the parties themselves were largely incoherent for most of American political history. Both were broad national coalitions

of state and local parties that were little more than loose-fitting brands that came together every four years to fight over their candidate for president and agree on some general platform language to loosely define their principles until necessity or chance changed them into something else.

From the end of the Civil War to the beginning of the New Deal, America's national parties retained their incoherence because most of the important political power was at the state and local level; the federal government had limited power. Some states and cities were better governed than others, and there was plenty of cronyism and corruption throughout the country, but the stakes of national elections were lower than today.

The New Deal and World War II set in motion the first great set of changes by bringing more power to Washington. Given the moderate, consensus-oriented politics of the 1950s, the centralization of power didn't threaten any basic foundations of American democracy. But it did set the stage for the second great change: the civil rights revolution of the 1960s, which truly nationalized American politics for the first time and set in motion a slow and steady realignment that brought us to our current impasse.

SHIFTING PARTY ALIGNMENTS

The Civil Rights Act of 1964 and the Voting Rights Act of 1965 were two of the most significant pieces of legislation in American political history. They ended almost a century of systematic discrimination against African Americans, fundamentally transforming American democracy. Both were passed with overwhelming bipartisan support and with a higher percentage of Republicans than Democrats. And by elevating social issues to the national level, they also set in motion a long, slow realignment of American party politics.

In the 1960s, the Democratic Party was an uneasy coalition of northern liberals and southern conservatives. The Republican Party

“ Party leaders took over near-total power in Congress. ”

was also an uneasy mix of northeastern liberals and western conservatives. During the tumultuous American politics of the 1960s and 1970s, these coalitions became even more untenable as new issues around the civil rights revolution, the Vietnam War, and the new culture wars entered national politics.

By the 1980s, new battle lines were being drawn, and the increased focus on culture war issues continued to nationalize politics. That situation put ever more focus on Washington as the ultimate arbiter of high-stakes battles around issues like abortion and religious freedom. As the parties drew sharper distinctions and party organizations nationalized into rival fundraising and advertising cabals, voters followed the cues. Local issues became less important. Voters focused more on party labels, less on individual character—what mattered now was control of power in Washington.

The great leap forward came in 1994, when Newt Gingrich engineered a strategic shift among Republicans by running, for the first time, a coordinated national congressional campaign in which candidates focused on a consistent party pledge. He spent relentless energy attacking Democrats and drawing sharp partisan distinctions rather than emphasizing their personal records. As Speaker, Gingrich consolidated and centralized power, slashing both budgets and power for congressional committees.

From 1954 to 1994, Democrats had enjoyed what seemed like a permanent House majority, and from 1968 to 1992, Washington appeared to be in a permanent state of divided government, with Democrats running the House of Representatives and Republicans

in the White House. It was this prolonged stalemate that fostered compromise and bargaining-oriented politics, with neither party thinking it was on the verge of total control.

But when Democrats won the White House in 1992 and Republicans took the House in 1994, the dynamics shifted. Now the balance of power was up for grabs every election in Washington. With that much power at stake, it made less and less sense for the two parties to cooperate in the short term (especially for the party out of power, which saw its best shot back to power as showing the alleged incompetence of the governing party).

Party leaders took over near-total power in Congress, and long stretches of divided-government gridlock interspersed by occasional lurches of policymaking under unified partisan control came to define Washington. The long-decentralized policy-focused congressional committee structure that had previously worked out many productive compromises—such as the deregulation of airlines in the 1970s or the 1986 Tax Reform Act—gave way to the command-and-control style, messaging-first, top-down approach to running Congress.

For the first time in American political history, we got two great parties in more than just name. For most of our political history, our parties had been loose, confusing, and overlapping. But now America had two distinct parties without overlap—two competing coalitions vying for narrow power, rallying their voters with two competing visions of American identity, neither of which had room for the other.

The result was not only a dysfunctional Congress but also a burgeoning presidency. With Congress mostly unable to solve problems or just being blindly obstructionist, that left presidents to focus more energies on acting by executive fiat and daring Congress to do anything to stop it.

And in the rare moments of unified control, a partisan Congress has punted on its executive oversight role. After all, with elections increas-

ingly nationalized, the fates of members of Congress are increasingly linked to the popularity of the president. This factor pushes fellow partisans to boost executive power when their party is in power and then complain about executive power when the other party is in power, a blatant hypocrisy.

But the more power Congress leaves to the president, the more zero-sum the winner-take-all stakes of one election to decide one national leader becomes, thus further exacerbating polarization. This is why the 2020 election feels so existential, yet again. The doom loop is escalating once more and undermining our ability to respond to the COVID-19 pandemic. It is preventing us from breaking out of the false choice between revitalizing the economy and maintaining public health. It also threatens the legitimacy of an election that is likely to be conducted largely by mail.

BREAKING OUT OF HYPERPARTISANSHIP

The future of American democracy depends on breaking this hyperpartisan doom loop. In a politics in which winning the next election becomes everything, we all lose. A relentless focus on winning loses sight of what it is that anybody actually wins. And as the stakes escalate, extremism continues to gain, and the relentless pursuit of short-term victory challenges long-standing constitutional norms.

In the search for solutions, many readers will no doubt see a clear and present solution: federalism. If the federal government ceded more power to the states, and we collectively embraced principles of localism and limited federal government, much of the doom-loop partisanship destroying American democracy would evaporate. The stakes are so high because so much power is up for grabs. It was once the great diversity of local political subcultures that kept the national parties capacious enough that they could contain the multitudes necessary for national-level compromise.

For federalism to work, both parties need to commit to it. But this is the problem with

“ States can be the innovators and incubators of electoral reform. ”

our toxic two-party politics: federalism is the weapon for parties out of power in Washington; federal preemption is the weapon for parties in power. The doom loop of toxic politics undermines federalism.

More federalism may well improve American democracy by placing less pressure on Washington to resolve divisive questions and by putting citizens closer to decisionmaking. But without a change to the underlying electoral system, federalism by itself can't be the solution. Shifting power to the states under the existing two-party system changes the venue but not the underlying fight.

For federalism to work (that is, for states to support distinct political subcultures and experiments), voters need to vote in state and local elections based on state and local issues. Otherwise no basis exists for political responsiveness, and state and local politics are only an extension of national politics, instead of the other way around. This change is unlikely when voters have only national party brands as cues.

Instead, the key to breaking the two-party doom loop is to break the electoral system that perpetuates it and limits competition to just two parties, both of which primarily compete only in safe districts and states. That system is the 15th-century innovation of first-past-the-post plurality elections, with one winner and third parties cast off as spoilers. Most of the advanced world has left behind this antiquated system and embraced versions of proportional representation. One leading version of proportional representation is ranked-choice voting, with multimember districts—a voting system used successfully for a century in both Ireland and Australia.

This change or other electoral reforms like it would give us more parties. With no majority in sight, parties would have to build governing coalitions as they do in every other multiparty democracy. This institutionalizes the kind of compromise and bargaining, the norms of nondomination, that is necessary for effective governance. This is what our Framers understood so well in designing our institutions. Had they accepted the necessity of political parties and if proportional representation had been invented at the time, they almost certainly would have adopted it to support a multiparty system. But with the wisdom of experience, we can improve on the institutional design while keeping to the underlying philosophy.

It's true, we can't expect Washington to solve this problem when it's so broken. But here lies the true potential of federalism in breaking the toxic politics doom loop: states can be the innovators and incubators of electoral reform. Already, Maine has taken the lead, becoming the first state in the nation to adopt ranked-choice voting, a system where voters are allowed to rank their preferences instead of only voting for a single candidate. The winner is tabulated through an automatic series of instant runoffs until one candidate secures a majority, avoiding fears of wasted votes and plurality winners. Berkeley, Oakland, and San Francisco have already used it in mayoral elections, as well. Grassroots efforts in Alaska, Massachusetts, and North Dakota are gaining momentum this year.

Historically, political reform in America has often begun at the state level. As reforms have gained traction and popularity across the 50 states, national politicians have been more willing to embrace them as proven solutions.

The devastating effects of the two-party doom loop are out of control and a clear and present danger. Time is short. American democracy is declining. We are on increasingly precarious ground. The urgency for a more competitive and innovative politics has never been greater. ■

Pandemics, Lockdowns, and Limits on the Police Power

What are the limits on government power in a pandemic? On May 4, **Ilya Shapiro**, director of the Robert A. Levy Center for Constitutional Studies, held a virtual policy forum with one of today's preeminent constitutional theorists, Cato senior fellow and Georgetown University law professor **Randy Barnett**, to discuss the limits of the police power, the rational basis test, and what the government can and can't do in the name of keeping people safe from COVID-19.

ILYA SHAPIRO: We're now into the eighth week of our nationwide shutdowns with the pandemic, and people are feeling restless. Have some governors and mayors gone too far, as a constitutional matter, in telling people to leave public parks or roping off so-called nonessential items in their stores, which are among examples that have gotten national attention? For example, I recently found my local tennis court that I'd been using all this time newly chained up this week, which was a bizarre experience. What about prohibiting gatherings that exceed the maximum number of people, but that still enforce social distancing norms? Now the debate has shifted to opening up and what requirements should still be in place, such as mandatory mask wearing. Federalism and the balance of power between states and Washington are also still in play.

Here to join me in discussing these important issues is Randy Barnett, the Carmack Waterhouse Professor of Legal Theory at the Georgetown University Law Center and a senior fellow at the Cato Institute. Randy is also the coauthor with Josh Blackman of the spectacular *Introduction to Constitutional Law: 100 Supreme Court Cases That Everyone Should Know*.

Let's start with exactly where the state governments are getting this power to impose these shutdowns, and how we should think about these issues that arise

with closing or reopening in waves. Is that constitutional? Is there just a "know it when I see it" test to what's justified or not, and how do we evaluate these situations?

RANDY BARNETT: The basic concept that is at issue here with respect to health and safety laws by the state is called the police power. Everybody is to be forgiven if they don't know what the police power is, because it's not something that's taught in law schools anymore. The reason it's not taught is because some time ago it was decided by the courts that the police power is essentially unlimited and is constrained only by violations of express, fundamental rights that are in the Bill of Rights, like the First Amendment or the Second Amendment. If you don't have a fundamental right at stake, then the police power is almost unlimited. But historically, the police power was a more limited concept, and I think that's what is important for people to know about where it came from.

The police power in a nutshell is the power that states have to protect each of us from having our rights violated by other people. The most obvious examples of police power prohibitions are laws against murder, rape, armed robbery, and other violent crimes. But the state does not have to wait until a right is violated be-

fore it can take action to prevent rights from being violated. Drunk-driving laws are an example of that. Health and safety laws are another example. Building codes are an example. If you want to understand what the principal foundation of the police power is, you can start with the Declaration of Independence. It says, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." Those are each individual liberty rights. And the next sentence says, "That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

The police power is the power that states have to secure the individual rights of "We, the people." So then the question is, "Is that power limited or unlimited?" As I said, under current law, it's more or less unlimited except for fundamental rights or equal protection challenges. What counts as a fundamental right, that's a whole other story. But mostly it has to be an explicitly enumerated right like freedom of speech, though the right of privacy is an unenumerated fundamental right that the courts have also recognized.

Prior to the modern era, and prior to the rise of this fundamental rights approach that came about in the 1950s, what the police power doctrines required is that if governments were pursuing a health and safety measure, they had to be doing so in good faith. That is, they must have provisions or means that are actually being used to have a health and safety benefit and not merely a pretext for a restriction that they might want for other reasons.

Now, how do you tell whether it's an actual restriction or a pretext? Well, you have to look at the fit between the means adopted and the end of health and safety. The government would have to provide an explanation for why this particular restriction on liberty is necessary and proper for protecting health and safety. That's the background of where we are today.

SHAPIRO: So we're now about eight weeks into, "Should there be general orders to shut down?" But what about specific things like visiting parks: is it constitutional for a governor to close a state park generally, even without looking at whether people are socially distancing while they're there?

BARNETT: As I alluded to earlier, courts essentially defer to state legislatures, or governors if they've been given power by their state legislature, to enact these health and safety measures. They largely would not second-guess the wisdom, as they would say, of these measures. And so it would be up to the political process to correct abuses of this power, unless you could identify a fundamental right that's being restricted.

That's the reason why the challenges that you see having some measure of success are lawsuits against measures that are restricting, for example, the free exercise of religion. In Kentucky, there was the case where they prohibited drive-in church services, even if everybody stayed in their car and social distancing was maintained. That particular challenge was successful because it was regarding a recognized, fundamental right, and the restriction seemed to have so little basis in protecting health and safety. If it's a recognized fundamental right (and remember, that's generally limited to enumerated rights), then you might be able to get the government to have to justify what it's doing. But if you're not dealing with an enumerated

right, then you usually won't be able to get much in the way of courts' requiring that sort of test.

SHAPIRO: So unless you can point to the Bill of Rights—that is, unless you're talking about a church or a gun shop perhaps—you're out of luck there, the deference is total, there's no limiting principle on that?



ILYA SHAPIRO

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Have some
governors and
mayors gone too far,
as a constitutional
matter?
”

BARNETT: In principle, you're supposed to get what's called rational basis review. That is that the means adopted must be rationally related to a legitimate state end. Health and safety are, of course, a legitimate state end. So then the question is, "Is there a rational relationship?" That was also the historical test across the board for police power questions, and it used to have somewhat more teeth because it was the

only real limit. What changed from the historical test to today is the 1955 case *Williamson v. Lee Optical*, in which the Supreme Court essentially adopted what's still known as the rational basis test, but that I call the conceivable basis test. That is that the court will find that there is a rational basis, if the court can conceive of effectively any possible reason why the legislature or governor might have done it.

Even if the legislature or the governor can't come up with its own explanation, courts will have the duty to make one up for them. If that's the standard that's going to be applied to modern rational basis, which is usually but not always the case, then, of course, you will lose unless you have an enumerated right. This is not the way it was supposed to be after passage of the Fourteenth Amendment.

SHAPIRO: But wouldn't even modern courts look at things differently depending on the facts on the ground? The situation is, after all, different now than it was seven, eight weeks ago. So setting aside how they would have ruled when these orders were first imposed in reaction to the pandemic, let's consider right now. A lot of states and cities are rescinding their orders or reopening in waves. Let's say a governor or a mayor says: "Oh no, no, no, this is even worse than we thought; we are now going to make sure that nobody goes out for anything. Even the grocery store is closed. You have to order your food. Police, if they see anyone outside, instant arrest." Would that not be challengeable?

BARNETT: It should be. And whether it is or not will depend on local judges' deciding whether to give the rational basis test some teeth, as they say. The Institute for Justice has actually made a pretty good living challenging local regulations as irrational and getting local judges, state court judges, or lower federal court judges to go along, notwithstanding what the Supreme

Court has said about the rational basis test. So yeah, you might be able to get a judge to go there and strike something down as irrational. That's stuff that's already happened some. But I suspect that if you went up the chain on appeal and it actually got to the Supreme Court, that by and large, I think it would not have much success.

Let me add one thing. The appropriate approach to the police power is very fact dependent. That is, on the facts is a given means related to the claimed end? So as the facts change, the constitutionality of a measure will change along with them. That's something that most people don't think about. They think if I have a right, then I have a right and you can't do anything to me about it. But with respect to the police power, it's very fact-based. In the beginning of a pandemic, when we don't know anything about this disease, except for the fact that it's killing lots of people in other countries, taking a broad, general measure is likely to be reasonable in light of our lack of knowledge. But as more knowledge comes in, it's imperative under this conception of the police power for the government to become more sensitive to the information we now have and actually make its remedies, its restrictions on liberty, more narrowly tailored to the problem that we have.

Because remember, the key to all of this is, first come rights and then comes government, paraphrasing what the Declaration of Independence says. Just because our rights may be reasonably regulated, doesn't mean we don't have them at all. The reason why it's important that we do still have them, is it continues to put the burden on the government to have to justify what it's doing. Or at least, the government must continue to have a rational explanation on the basis of facts for why it's restricting our liberties. If we didn't have those liberties in the first place, if government was the source of all our lib-

erties, then it could do what it wanted. Because our liberties come first, government really needs a justification for what it's doing.

SHAPIRO: So what you're saying is, under a proper interpretation of the Constitution, there would be more successful applied challenges to certain restrictions,



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First come rights
and then comes
government.”

even if we can all accept that there is a general police power to issue restrictions during a pandemic. Quarantines and the like go back centuries, even before the Constitution. But with modern courts, it largely depends on which judge you draw, I suppose? That is, on whether they will find a particular restriction reasonable or justified?

BARNETT: Exactly. It doesn't have to be correct. It just has to be based on actual facts and justified that way. For example,

take Michigan Governor Whitmer's restriction on what you can buy when you go to Home Depot: it's OK to buy some things, but you can't buy seeds for your garden. I defy the government to come up with a justification for why it's OK for people to go up aisle 12, but it's not OK to go up aisle 14. That's an irrational law, and an irrational law should be unconstitutional under any conception of the police power. Under any conception of the rational basis test, an irrational law that has no justification should not be upheld.

SHAPIRO: Well, I think that Governor Whitmer would reply with arguments: First, we want to decrease traffic flow to the store. And if people are going there for nonessential goods, there'll be more people going there.

And second, since we're only permitting these stores that sell both essential and nonessential goods to open, but we're not permitting the stores that only sell nonessential goods, it's just not fair. So a Walmart that has both food and lawn furniture is allowed to open, but a store that only sells lawn furniture is not allowed to open. So there would be effectively an equal protection problem in not roping off those so-called nonessential goods. What do you think about those arguments?

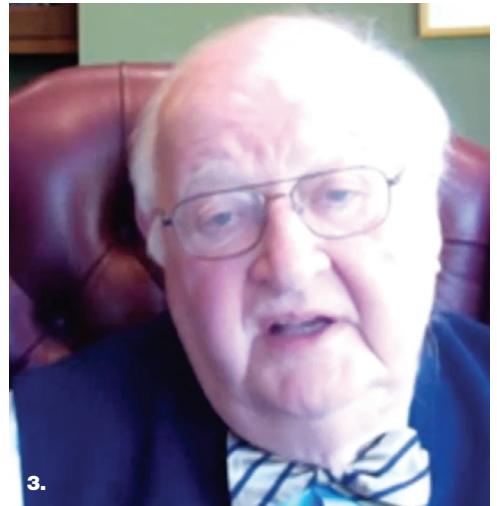
BARNETT: That would have been the argument I would have offered on behalf of the government if they'd asked me to. You do have to ask yourself under the irrationality standard, whether a law is arbitrary; "arbitrary" is another word that's used instead of irrational. Indeed, it's used more frequently than irrational. An arbitrary law is one under which two people are being treated differently without adequate justification, so that's really the hurdle the government should have to meet, and with a lot of these restrictions I think that's a difficult case to make. ■



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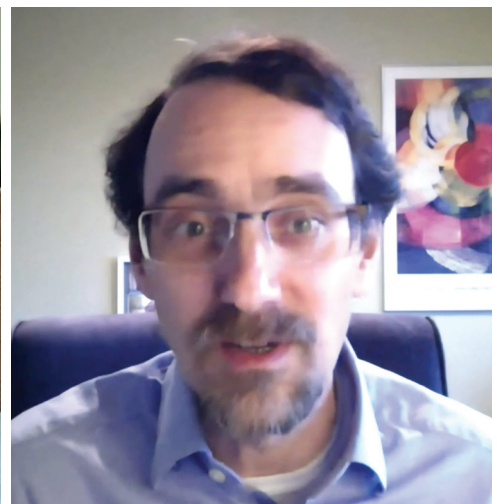


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1. Senior fellow **Marian Tupy**, editor of HumanProgress.org, hosts his new online show, *Covid Tonic*, featuring conversations with renowned scholars on the global impact of COVID-19 and the continued importance of rational optimism. 2. Author and journalist **Matt Ridley**. 3. **Angus Deaton**, Nobel Prize–winning economist. 4. Cato senior fellow **Johan Norberg**. 5. **Deirdre McCloskey** of the University of Illinois at Chicago. 6. **Jesse H. Ausubel** of Rockefeller University.



Christopher A. Preble (left), vice president for defense and foreign policy studies at the Cato Institute, conducts a virtual policy forum on April 22, “What Frightens Us? And Why? Threat Perception During and After COVID-19,” with **Rose McDermott** (center) of Brown University and Cato Adjunct Scholar **Eugene Gholz** (right) of the University of Notre Dame.



On May 27, **Eric Gomez**, director of defense policy studies at Cato, hosted a virtual policy forum on China-U.S. relations after the COVID-19 pandemic with Cato senior fellow **Doug Bandow**, **Bonnie Glaser** of the Center for Strategic and International Studies, and **Michael Swaine** of the Carnegie Endowment for International Peace.



From April 29 to May 1, Cato held a virtual conference to critically evaluate the record and future of the Department of Education on the 40th anniversary of its creation. 1. **Neal McCluskey**, director of the Center for Educational Freedom at the Cato Institute. 2. **Jonathan Butcher**, senior policy analyst in the Center for Education Policy at the Heritage Foundation. 3. **Maria Ferguson**, executive director of the Center on Education Policy and former director of communication and outreach services for the Department of Education’s Office of Elementary and Secondary Education. 4. Rep. **Rob Bishop** (R-UT), member of Congress and former high school teacher.

New threats to freedom emerge from attempts to regulate social media

Cato Takes the Lead in Defending Free Speech Online

Social media companies are increasingly coming under fire, with politicians from both parties expressing increasing skepticism of a crucial provision of law that has made the modern internet possible. In May, this conflict escalated when President Trump took aim at social media with an executive order issued after Twitter chose to attach a fact-check link to two of his tweets. But this issue is not new to the Cato Institute, which has been sounding the alarm in defense of free speech, freedom of association, private property rights, and free enterprise on the internet.

Section 230 of the Communications Decency Act is the provision at the heart of this controversy. Passed in 1996, this law makes it possible for social media and user-generated content to be hosted without fear of liability. Simply put, you can sue somebody for defaming you on Twitter or Facebook, but you can't sue Twitter or Facebook because they failed to block or delete this content. Without this shield, no company could take the liability risk of allowing user-generated content. Crucially, the law also provides that companies do not lose this protection because they do take steps to moderate content under their own private standards, which was intended to be encouraged.

Recently, however, this law has become the target of politicized complaints, with President Trump and former vice president Joe Biden both advocating a greater role for



the government in policing online speech.

In March, Cato senior fellow Julian Sanchez organized an all-day conference, "Return of the Gatekeepers: Section 230 and the Future of Online Speech," which brought together experts on law and technology to discuss this new threat and what can be done about it. Nor is this new territory for Cato, which has long sought to defend Section 230.

John Samples, vice president at Cato, has also been directly involved in helping social media companies adopt effective content moderation policies, with the goal of keeping that task firmly in private hands rather than outsourcing it to government censors. In May, Samples was picked as one of 20 eminent notables and free speech scholars to join Facebook's new Oversight Board, an independent limited liability

company created to hear appeals on content moderation for Facebook and its subsidiary Instagram.

Companies like Facebook and Twitter face a difficult challenge in striking the right balance between providing open access for all points of view and holding true to their own policies against truly objectionable content that would drive customers away. As private companies, they are free to experiment and find that balance, and should be able to do so without legal threats or government coercion. Because their websites are ultimately private property, they can set their own standards of behavior just like any other private club or organization. Section 230 makes that possible, whether the person whose content is being moderated is a hateful internet troll or the president of the United States. ■



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Matthew Feeney (top), director of the Project on Emerging Technologies at the Cato Institute, interviews **Adam Thierer** (bottom) at an April 28 forum for his book *Evasive Entrepreneurs and the Future of Governance: How Innovation Improves Economies and Governments*.

APRIL 9: The Economics of Lockdowns

APRIL 10: Coronavirus and the Constitution

APRIL 15: Trade in a Pandemic: Traditional Issues, New Concerns, and Optimal Policy Responses

APRIL 16: *Marijuana Federalism: Uncle Sam and Mary Jane*

APRIL 20: Economic Sanctions during a Pandemic

APRIL 22: What Frightens Us? And Why? Threat Perception During and After COVID-19

Cato Calendar

19TH ANNUAL CONSTITUTION DAY

Online
September 17, 2020
Speakers include Judge Don Willett.

CRISIS: HOUSING AND HOMELESSNESS IN CALIFORNIA

Online • September 22–23, 2020
Speakers include Kevin Faulconer, Micah Weinberg, Lee Ohanian, and Laura Foote.

CATO CLUB 200 RETREAT

Bluffton, SC • Montage Palmetto Bluff
October 1–4, 2020
Speakers include Andrew McAfee, David Katz, and Peter Goettler.

CATO INSTITUTE POLICY PERSPECTIVES 2020

New York • The Pierre
October 16, 2020

DIGITAL CURRENCY: RISK OR PROMISE?

38th Annual Monetary Conference
Washington • Cato Institute
November 19, 2020
Speakers include Jeb Hensarling, Caitlin Long, Lawrence H. White, Eswar Prasad, Jill Carlson, and Jesús Fernández-Villaverde.

CATO INSTITUTE POLICY PERSPECTIVES 2020

Chicago • Ritz-Carlton
November 20, 2020

MILTON FRIEDMAN PRIZE PRESENTATION DINNER

New York • Cipriani
May 26, 2021

32ND ANNUAL BENEFACTOR SUMMIT

New York City • Hotel Sofitel and New York City Yacht Club
May 27, 2021

CATO CLUB 200 RETREAT

Washington • Cato Institute
September 30–October 3, 2021

33RD ANNUAL BENEFACTOR SUMMIT

Carlsbad, CA
Park Hyatt Aviara Resort
February 24–27, 2022

Updated information on Cato Institute events, including cancellations, can be found at Cato.org/events.

APRIL 23: Congress and COVID-19: Is Remote Legislating and Oversight Possible?

APRIL 28: *Evasive Entrepreneurs and the Future of Governance: How Innovation Improves Economies and Governments*

MAY 1: 40 Years of the U.S. Department of Education: Examining Its Past, Present, and Future

MAY 4: Coronavirus and the Constitution II: Issues Attending the Next Stage of the Pandemic

MAY 8: Digital Dollars: In Whom Should We Trust?

MAY 20: Don't Forget People Living in Pain: War on Opioids and Chronic Pain Patients during COVID-19

MAY 21: *The Living Presidency: An Originalist Argument against Its Ever-Expanding Powers*

MAY 26: Nuclear Deterrence with Russia and China: Are U.S. Course Corrections Needed?

MAY 26: Implementing the New NAFTA

MAY 27: Chinese-U.S. Relations after the COVID-19 Pandemic

MAY 28: Privacy in a Pandemic

AUDIO AND VIDEO FOR MOST CATO EVENTS CAN BE FOUND ON THE CATO INSTITUTE WEBSITE AT WWW.CATO.ORG/EVENTS.

The fight to repeal a century of failed protectionism

The Unhappy Birthday of the Jones Act

The Merchant Marine Act of 1920 might sound like an obscure concern, but the consequences of this 100-year-old law are anything but trivial. More commonly known as the Jones Act after its Senate sponsor, this law restricts “cabotage,” the term for shipping between two points within the same country. The Jones Act restricts such shipping to vessels that are American-built, American-owned, and mostly American-crewed, a combination that is almost impossible to satisfy and that has eviscerated America’s domestic cargo shipment capabilities.

That’s why the Jones Act is the target of Cato’s Project on Jones Act Reform and *The Case against the Jones Act: Charting a New Course after a Century of Failure*, a new collection of essays on the topic from leading scholars in the field edited by policy analyst Colin Grabow and research fellow Inu Manak of Cato’s Herbert A. Stiefel Center for Trade Policy Studies.

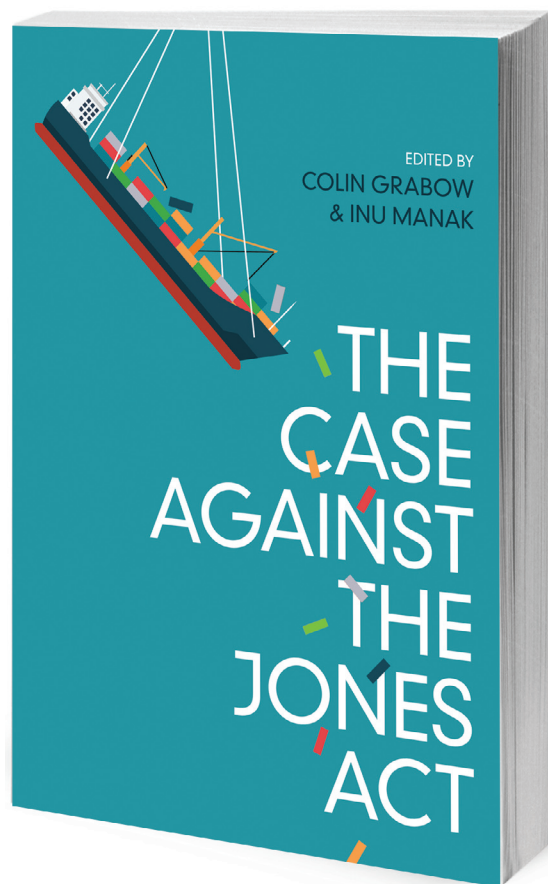
In this comprehensive look at the Jones Act’s costs and failures, everything from environmental damage to traffic congestion to the unintended negative consequences on America’s shipbuilding industry is examined in detail. For example, because there are very few Jones Act-compliant ships and their restricted supply makes them highly expensive, more cargo is pushed onto America’s roads and highways, worsening both pollution and traffic congestion.

According to its defenders, the Jones Act

is intended primarily as a national security measure, making sure that America has enough cargo ship capacity to assist the military in times of war. By this measure, the Jones Act has almost completely failed. In fact, the Jones Act has done nothing to prevent the near-total collapse of America’s once-thriving shipyard industry, and the small handful of Jones Act-compliant ships are of little use to the military.

The Case against the Jones Act doesn’t just offer explanations of the problems, it also offers concrete solutions. Although total repeal might be preferable, more targeted reforms could still go a long way. They include repealing the crew quotas requiring American citizens to make up at least 80 percent of sailors on Jones Act vessels and providing permanent waivers to Alaska, Hawaii, Puerto Rico, and America’s other island territories, which are especially hard-hit. Because of the Jones Act, it is typically cheaper to ship cargo from the other side of the world to these states and territories than it is from the continental United States.

Although it is of particular interest to those in affected industries, the Jones Act also serves as a case study in how concentrated benefits and dispersed costs can be



used to pass and preserve bad, economically destructive laws. But momentum for reform has been building, thanks in no small part to Cato’s efforts, and *The Case against the Jones Act* offers important new ammunition against one of America’s most misguided laws. ■

THE CASE AGAINST THE JONES ACT IS AVAILABLE AT CATO.ORG/BOOKS AND THROUGH BOOKSELLERS AND ONLINE RETAILERS NATIONWIDE.



Cato Daily Podcast

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Budget priorities to tackle the real threats

Defending America in the 21st Century

The purpose of America's military is to defend the United States from foreign threats. That might seem an obvious enough statement, but what does it actually take to meet that goal? That is the question Cato's defense and foreign policy team sets out to answer in a new white paper, "Building a Modern Military: The Force Meets Geopolitical Realities."

As Cato's Eric Gomez, Christopher A. Preble, Lauren Sander, and Brandon Valeriano explain, "Strategic planners must have a clear-eyed view of both the threats facing the country and the tools necessary to defend its vital interests." That means a realistic assessment that focuses on the actual threats facing the United States, rather than the overly military-focused view that has poured money into dubious defense postures and ever more expensive equipment.

Part of the problem is that threat inflation runs rampant. America's nuclear arsenal and missile defense capabilities are in many ways built around possible adversary scenarios that are not just hypothetical but very unlikely, leading to overspending. Meanwhile, the quest for global dominance through conventional weapons and forces is taking place as the United States' capacity for sustaining that supremacy is waning.

Contingency funds and nearly unlimited "reprogramming" of funds approved by Congress also lead to budget pathologies that ignore all need for restraint, leading to defense budgeting conducted more by inertia than by deliberate planning or cost-benefit analysis.

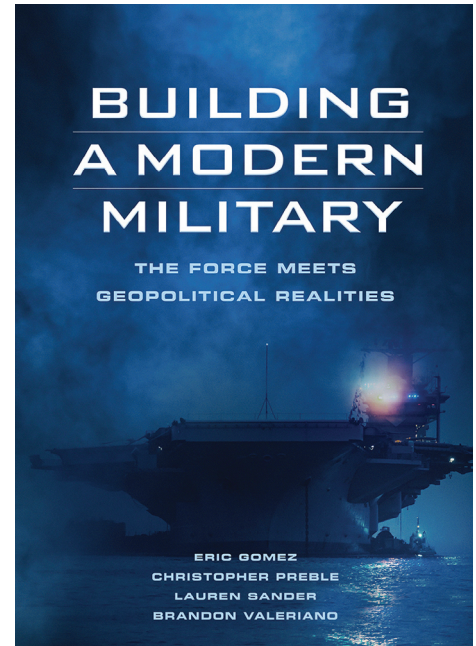
At the same time as spending ramps up in the name of great-power competition with China and Russia, the post-9/11 wars continue to drag on, taxing both budgets and America's ability to respond to other

threats with little discernible benefit. It is time to bring these conflicts to a close.

"Building a Modern Military" offers a detailed set of prescriptions for each branch of the military, as well as addressing major procurement programs like the *Gerald R. Ford*-class aircraft carriers.

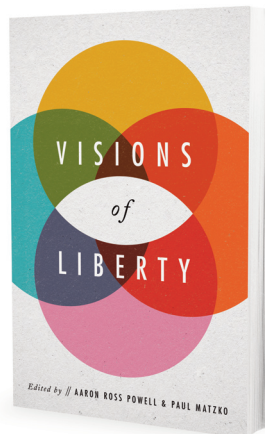
In conclusion, the authors point to a new way forward: "The United States should take advantage of a strategic pause, adopt a grand strategy of self-reliance and restraint, and develop a comprehensive plan for dealing with peer and near-peer competitors and rivals. For at least two decades, the U.S. military has been trapped in a cycle of small-scale wars and nation-building fiascos that have eroded America's unique advantages. Reconstructing U.S. security, therefore, requires a conscious decision to remove U.S. forces from past conflicts, and a fundamental reconceptualization of how the United States will use its forces in the future."

By adopting policies with more emphasis on diplomacy and restraint, the United



States can put its defense resources toward where they are genuinely needed. "Building a Modern Military" offers an important blueprint for how to do that. The white paper and other work from Cato's defense and foreign policy team can be found at cato.org. ■

A Libertarian Vision for 2020 and Beyond



Visions of Liberty is more than an introduction to the broad scope of political liberty. Each of the contributors dares to imagine a future free from the meddlesome and coercive hand of the state, a world where people can use their unleashed ingenuity and compassion to do amazing things for education, health care, finance, and more. *Visions of Liberty* is a dream of a world that might be—one that is truly worth striving for.



PAPERBACK AND EBOOK AVAILABLE AT ONLINE RETAILERS NATIONWIDE.

Brain Drain from the Banks

One of the provisions of the Sarbanes-Oxley Act required investment banks to physically separate their investment banking and research departments and to restrict interaction between them. These restrictions have led to a significant reduction in the bonuses and total compensation of analysts. That's the finding in **"Regulations and Brain Drain: Evidence from Wall Street Star Analysts' Career Choices"** (Research Brief in Economic Policy no. 204) by Yuyan Guan, Congcong Li, Hai Lu, and M. H. Franco Wong. By tracking the industry's best analysts, they find that talent fled the research field after these restrictions were imposed, reducing the amount of information informing stock market decisions.

JUMPING THROUGH HOOPS

Congress created the H-2A visa program to provide for seasonal farm workers. However, the program was little used until recently and still only accounts for about 10 percent of farm labor, with the bulk of the remainder filled by illegal immigrants. In **"H-2A Visas for Agriculture: The Complex Process for Farmers to Hire Agricultural Guest Workers"** (Immigration Research and Policy Brief no. 17), David Bier explains how this burdensome process fails to provide the intended legal alternative to legal immigration.

IS LOCAL BETTER?

Do local governments better adhere to voter preferences? That's often the theory behind decentralization, but in practice the results are dubious. In **"Do Local Governments Represent Voter Preferences? Evidence from Hospital Financing under the Affordable Care Act"** (Research Brief in Economic Policy

no. 205), Victoria Perez, Justin M. Ross, and Kosali I. Simon examine ACA policies that were made optional for state and local governments by Supreme Court rulings, and they find little correlation between these actions and voter preferences as measured by a number of proxies.

THE UNCERTAIN FUTURE

Few forecasts are more important for public finance and public policy than the projected growth in health expenditures. Unfortunately, these projections have real limitations and a poor track record. That's the finding of Daniel Shoag in **"Health Care Spending Projections and Policy Changes: Recognizing the Limitations of Existing Forecasts"** (Research Brief in Economic Policy no. 206).

THE NEVER-ENDING WAIT

As a result of the outdated green card limits, immigrants are waiting in a backlog that has reached an unprecedented length, and the problem is particularly



acute for immigrants from countries with high demand. In **"Backlog for Skilled Immigrants Tops 1 Million: Over 200,000 Indians**

Could Die of Old Age While Awaiting Green Cards" (Immigration Research and Policy Brief no. 18), David Bier underscores the costs of that backlog by comparing projected life expectancy with the waiting time for Indians who have otherwise been approved and are only held up by the country-based quota.

DO WALLS WORK?

Over the course of the past two decades, the United States has ramped up spending on

border security, including the construction of physical barriers along the U.S.-Mexico border. In **"Border Walls and Crime: Evidence from the Secure Fence Act"** (Research Brief in Economic Policy no. 207), Ryan Abman and Hisham Foad examine the data and find little correlation between border wall expansions and decreased crime rates.

HIGH COST OF TRADE SHOCKS

One of the key disputes in President Trump's aggressive trade policies has been the question of how the costs of new tariffs are distributed. In **"The Consumption Response to Trade Shocks: Evidence from the U.S.-China Trade War"** (Research Brief in Economic Policy no. 208), Michael E. Waugh examines these

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distributional effects by looking at consumer behavior. The study finds that changes in trade policy have indeed had a large effect on consumption, with high-tariff countries experiencing at least a 3.8 percentage point decline in new auto sales growth relative to low-tariff countries.

DEVELOPING COUNTRIES

One of the pillars of the World Trade Organization has long been a distinction between developed and developing countries, with the latter receiving preferential treatment in various ways. In **“The Development Dimension: What to Do about Differential Treatment in Trade”** (Policy Analysis no. 887), James Bacchus and Inu Manak question this regime and find that the categorization is widely misapplied with deleterious effects.



MANAK

Organization has long been a distinction between developed and developing countries, with the latter receiving preferential treatment

THE HISTORY OF INNOVATION

Economic growth is transformative, and understanding it is one of the key problems in economics. In **“Innovative Economic Growth: Seven Stages of Understanding”** (Economic Policy Brief no. 3), Terence Kealey and Martin Ricketts examine the history of this idea and our evolving understanding of it from Francis Bacon to modern economists.

MISTRUST IN MEDICINE

Between the 1920s and 1950s, French colonial governments undertook extensive medical campaigns in sub-Saharan Africa aimed at managing tropical diseases. In **“The Legacy of Colonial Medicine in Central Africa”** (Research Brief in Economic Policy no. 209), Sara Lowes and Eduardo Montero find that these campaigns have led to a legacy of mistrust that continues to affect health outcomes to this day.

THE PEOPLE'S REPRESENTATIVES

Congress has long delegated much of its legislative authority to regulatory agencies, often with little oversight or checks and balances. In **“The Case for Congressional Regulatory Review”** (Policy Analysis no. 888), William Yeatman makes the argument for Congress to reassert its role in reviewing and approving major regulations.

THE COLLAPSE OF TRANSIT

The costs of supporting the nation's urban transit industry are rising, yet ridership is declining. That is the conclusion of Randal O'Toole in **“Transit: The Urban Parasite”** (Policy Analysis no. 889), which finds that spending has continued to increase even as consumer preferences have evolved away from mass transit.

AFTER THE BANANA REPUBLICS

Monopsony has long been known to have negative effects, and one of the most striking historical examples was the United Fruit Company and its activities in Central America. In **“Multinationals, Monopsony, and Local Development: Evidence from the United Fruit Company”** (Research Brief in Economic Policy no. 210), Esteban Méndez-Chacón and Diana Van Patten find that one of the most crucial and effective checks on monopsony was the availability of labor mobility. In areas with

greater labor mobility and fewer restrictions, present-day poverty is lower even many decades after the decline of United Fruit.

CRIME AND IMMIGRATION



Illegal immigration and the crimes illegal immigrants commit are notoriously difficult to measure, despite the importance of the question in driving immigration policy. In **“Illegal Immigrant Incarceration Rates, 2010–2018: Demographics and Policy Implications”** (Policy Analysis no. 890), Michelangelo Landgrave and Alex Nowrasteh attempt to answer the question by estimating illegal immigration incarceration rates in the United States. In line with previous findings, they show that illegal immigrants are less likely to be incarcerated than U.S. citizens.

GOODS CROSSING BORDERS

Do liberal democracies avoid war with each other, or is trade the more relevant factor? In **“Does Trade Integration Contribute to Peace?”** (Research Brief in Economic Policy no. 211), Jong-Wha Lee and Ju Hyun Pyun find that trade integration is indeed an important contributor to the decline of interstate wars. ■



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“To Be Governed...”

BECAUSE STATES HAVE NO LOWER PRIORITIES THAN POLICE AND FIRE?

Meeting with Trump in the Oval Office on Thursday, New Jersey Gov. Phil Murphy, a Democrat, said his state could take a \$20 billion to \$30 billion hit from the coronavirus, funds it would need from the federal government.

“This is to allow us to keep firefighters, teachers, police, [emergency medical services], on the payroll, serving the communities in their hour of need,” Murphy said. “And that’s something that we feel strongly about. We don’t see it as a bailout. We see this as a partnership.”

— *Washington Post*, April 30, 2020

BUYING VOTES

[Sen. Kamala] Harris has introduced bills in recent weeks aimed at constituencies she would probably try to woo if she were on the ticket.

— *Washington Post*, May 13, 2020

JUST GIVE US THE MONEY AND GO AWAY

The German government and Deutsche Lufthansa said Monday they have agreed on a €9 billion (\$9.81 billion) bailout deal...

Under the deal—which still needs approval from Lufthansa’s boards, shareholders, and the European Commission—the German government will take a 20% stake in the company and appoint two supervisory board seats.

The agreement caps a weeklong tug of war between Lufthansa’s management and the government over how much control the latter should be given in return for financial support.

Lufthansa Chief Executive Carsten

Spohr had warned against too much state influence on business decisions.

— *Wall Street Journal*, May 25, 2020

YOU ARE NOT OUR MOM, MAYOR

Gov. J. B. Pritzker is allowing Illinois restaurants to open for outdoor dining on May 29. But Chicago won’t be taking advantage of it—not yet, at least.

“I don’t think we’re gonna be ready by May 29. But my hope is that soon in June, we will be ready,” Mayor Lori Lightfoot said Thursday...

“I will say the same thing that I tell my 12-year-old: ‘I don’t care what other people do. You’re my kid.’ I am the mayor of this city.”

— *Chicago Sun-Times*, May 21, 2020

UNFORTUNATELY, NEWSPAPER COLUMNISTS GUSHING OVER DICTATORS ARE NOT ALWAYS ENGAGED IN CONSCIOUS PARODY

During a [1978] strike by pressmen that shut down New York’s major newspapers, this group wrote, designed and distributed a satirical replica of *The New York Times*. Newsstand shoppers were fooled into thinking it was the real thing before looking closely at its title: *Not The New York Times*.

In one parody column, the writer, walking past a pile of skulls to interview Genghis Khan, praised his ability to “get things done.”

— *New York Times*, April 1, 2020

AS A MODERATE SOCIALIST, HE FAVORS THE PRIVATE OWNERSHIP OF TOOTHBRUSHES

Britain’s Labour Party chose as its new leader Keir Starmer, a knighted former

criminal prosecutor and moderate socialist.

— *Washington Post*, April 5, 2020

WANT TO REDUCE THE TRADE DEFICIT? SHUT DOWN THE ECONOMY

The U.S. trade deficit narrowed sharply in February as the spread of the novel coronavirus disrupted global commerce.

— *Wall Street Journal*, April 2, 2020

LOBBYISTS ARE TO APPROPRIATIONS BILLS AS ANTS ARE TO PICNICS

Here in the nation’s capital, business is booming for the influence-peddling business.

Companies and interest groups reeling from the health crisis and economic collapse are snatching up lobbyists and regulatory experts to help them navigate the government bureaucracy for help. That includes figuring out how to get a slice of the roughly \$2 trillion stimulus package approved last week by Congress.

— *Wall Street Journal*, April 1, 2020

At least 25 former officials who once worked for the Trump administration, campaign or transition team are now registered as lobbyists for clients with novel coronavirus needs.

— *Washington Post*, April 30, 2020

AMERICAN CONSUMERS PAY TARIFFS

[President Trump] added that there were other ways to levy extreme penalties on China, such as raising \$1 trillion by imposing tariffs on Chinese imports.

— *Washington Post*, April 30, 2020