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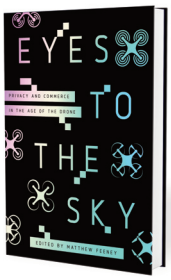

EYES TO THE SKY

The peril and promise of the age of drones

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Cato Policy Report

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Political Sectarianism and the Presidential Cult

GENE HEALY

"The mischiefs of faction," James Madison told us in the *Federalist*, "are sown into the nature of man." So we shouldn't be surprised that Americans, a fractious, combative bunch in the best of times, have never disagreed over politics all that amicably.

Lately though, peering into the Hellmouth of Twitter—or even across the Thanksgiving dinner table—it's hard to miss the signs that partisan contempt has become more pervasive and toxic. The personal has become the political, and politics has become all too bitterly personal. Even Joe Biden has noticed. "Let this grim era of demonization begin to end here and now," the president-elect declaimed in his victory speech last November; it's time to "see each other, not as adversaries, but as neighbors, [to] stop the shouting and lower the temperature, for without unity there is no peace, only bitterness and fury."

But the toxic partisanship that plagues us can't be cured with a change in presidential tone. The modern presidency is a divider, not a uniter. It has become too powerful to be anything else.

GENE HEALY is senior vice president for policy at the Cato Institute and author of *The Cult of the Presidency*.

THE SPONTANEOUS ORDERING OF HATREDS

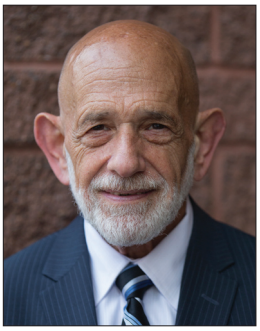
We've entered "an acute era of polarization," two Stanford political scientists report in a 2018 study: during the first two decades of this century, "partisans' mild dislike for their opponents has been transformed into a deeper form of animus."

Henry Adams called politics "the systematic organization of hatreds." But what's been deforming our common life wasn't the result of anybody's central plan. We've been coming apart by accident more than design.

Pursuing our individual preferences—for Republicans, bigger yards and houses, for Democrats, density and walkability—we've literally moved away from people who don't share our politics. In 2004, journalist Bill Bishop dubbed this phenomenon "the Big Sort," and it has only gotten bigger since then. Most counties on the electoral map are now solidly red or blue, and in 2020, roughly 4 in 10 registered voters backing Donald Trump or Joe Biden told pollsters they had no close friends who support the other candidate. A similar ideological siloing has happened online,

Continued on page 6

Ryan Bourne, R. Evan Scharf Chair for the Public Understanding of Economics, participates in an *Intelligence Squared* debate on the proposition "Should Billionaires Be Abolished?" with **Linsey McGoey**, director of the Centre for Research in Economic Sociology and Innovation at the University of Essex, moderated by **Ben Chu**, economics editor for *BBC Newsnight*.



BY ROBERT A. LEVY

CHAIRMAN'S MESSAGE

On Sanctuaries, Nullification, and Commandeering

> "The U.S. Constitution sets a floor, not a ceiling, on individual liberty."

Activists on the left in roughly 200 states, counties, and cities have enacted provisions to limit their participation in federal immigration enforcement. Not to be outdone, conservatives have persuaded some states to bar political subdivisions from enforcing selected state or federal firearm laws. What, then, are the constitutional principles that control the relationship between federal, state, and local governments?

Most important, of course, there's the Tenth Amendment. It provides that the federal government has only those powers specifically enumerated and delegated. All other powers are reserved to the states or to the people. After the Civil War, the Fourteenth Amendment vastly expanded federal authority by allowing federal intervention whenever states violate our rights to due process and equal protection. Additionally, whenever federal and state laws are in conflict, Article VI of the Constitution provides that federal law is supreme and "Judges in every State shall be bound thereby."

Note, however, that the Supremacy Clause binds judges, not state legislatures. So, can state legislatures nullify federal law? No, they cannot. The Framers assigned that task to the courts, not state legislatures. In *Federalist* no. 78, Alexander Hamilton wrote that courts have the duty "to declare all acts contrary to the manifest tenor of the constitution void." James Madison, in his *Report of 1800*, wrote that state "declarations . . . are expressions of opinion, [intended only for] exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect." Three years later, in 1803, Chief Justice John Marshall settled the matter in *Marbury v. Madison*: "It is emphatically the province and duty of the judicial department to say what the law is."

Imagine if state nullification were permitted. Chicago's gun ban would still be in effect. Orval Faubus could have blocked Arkansas school integration. Virginia could bar interracial marriages. Texas might still be jailing gay people for having consensual sex. Plainly, states cannot nullify federal law. But that doesn't resolve the sanctuary question. We also need to know whether states or localities are required to enforce federal laws or enact matching laws.

The answer on both counts is no. In the 1997 case *Printz v. United States*, the Supreme Court ruled that the federal government cannot commandeer state law enforcement authorities to conduct background checks on handgun purchasers. In the 1992 case *New York v. United States*, the Court ruled that Congress cannot force the states to enact specified waste disposal regulations. On the other hand, neither of those holdings meant that a state or locality could impede federal enforcement of federal laws.

The federal government has the authority to enforce its own laws using its own law enforcement personnel. And individuals are not exempt from prosecution by the feds merely because the state or local area where they reside asserts that a law is unwise or even unconstitutional. There is no clause or implied power in either the national or various state constitutions that enables states to prevent federal enforcement.

That raises one final question: If a state, locality, or individual deems a federal law to be invalid, what redress is available? Because the courts have the last word, the proper remedy is a lawsuit challenging the suspect federal rule. Similarly, if an individual believes that his or her rights are violated by a state's nonenforcement, that individual can sue the state government. Then the courts will determine who is right.

To summarize: First, state officials need not enforce federal laws. Second, Congress cannot mandate that states enact specific laws. (Those two principles are now front and center as some states legalize marijuana despite the federal Controlled Substances Act and some states resist the federal push to expand Medicaid.) Third, states may not block federal officials from enforcing federal law—except when courts have held that the law is unconstitutional.

From a libertarian perspective, sanctuary legislation—even when it's soundly structured and properly implemented—should operate as a one-way ratchet. States and localities can always protect our rights more rigorously than the federal government, but they cannot compromise rights that are secured under federal law. The U.S. Constitution sets a floor, not a ceiling, on individual liberty.

Robert A Levy

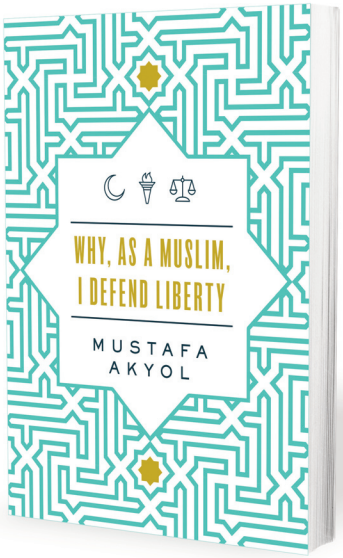
Cato scholar offers personal statement on faith and freedom

The Muslim Case for Liberty

Cato senior fellow Mustafa Akyol is one of the world's most widely recognized scholars on issues of freedom and tolerance in the Muslim world, with a column in the *New York Times* and previous books that have been banned by several authoritarian governments. Once, he was even detained by Malaysia's religious police on charges of violating that nation's religious censorship.

In a new book for Libertarianism.org, *Why, as a Muslim, I Defend Liberty*, Akyol explores both his own faith and the history of Islamic thought to make the case for freedom. Muslims currently account for more than one in four people on Earth, and most Muslim-majority nations suffer under repressive illiberal regimes, many of which are grounded in a belief in Islamic theocracy.

But it wasn't always this way. During the Middle Ages, liberal thinking and scientific innovation thrived in the Muslim world, while Europe stagnated under feudalism and illiberal religious authoritarianism. Even throughout the 19th century, liberal reformers were a prominent presence in the politics of nations such as the Ottoman Empire and Iran. One of the ironies Akyol notes is that Islamic fundamentalism, far from being ancient, is to a large degree a modern phenomenon, in many instances fueled by anti-Western and anti-colonial backlash.



Across eight chapters, Akyol addresses the need for liberty across the entire spectrum of personal and economic freedoms and takes on misconceptions that Islam is inherently intolerant and oppressive. First, he addresses the misconception that forced conversion and piety enforced by the states are Quranic mandates. He points to the much stronger scriptural case against such laws, citing the verse "There is no compulsion in religion." (2:256)

Akyol further addresses the need to update conceptions of sharia, or Islamic jurisprudence, with the understanding that medieval precedents need not be taken as binding or among the core principles of the faith as outlined in the Quran. Another chapter takes on the case for tolerance of non-Islamic speech, even when it is seen as blasphemous or profane, a key issue in contemporary politics in the Muslim world.

The book also traces the history of a Muslim case for economic liberty and makes the case for reclaiming a heritage of free markets and property rights in Muslim societies. Lastly, he addresses the widespread misconception among Muslims that liberty and democracy are Western conspiracies or impositions rather than being grounded in universal truths.

As the Muslim world continues to grapple with the scourge of authoritarianism, Akyol offers a glimpse of a better future, one where rights are respected and moral and material progress can be made without any need to jettison faith in one of the world's great religions. ■

***WHY, AS A MUSLIM, I DEFEND LIBERTY* IS AVAILABLE FOR PURCHASE FROM MAJOR BOOKSELLERS AND AT CATO.ORG/BOOKS.**

Cato News Notes

THE ROAD TO THE BENCH

Clark Neily, senior vice president for legal studies, testified in March before the House Judiciary Committee's subcommittee on courts about his research into the background experience of federal judges and the overrepresentation of former prosecutors and other advocates for the government. His study on this problem was also cited in a Senate Judiciary Committee hearing by its chairman, Sen. Dick Durbin (D-IL). In May, President Biden notably nominated three former public defenders to serve as federal appellate judges.


NEILY

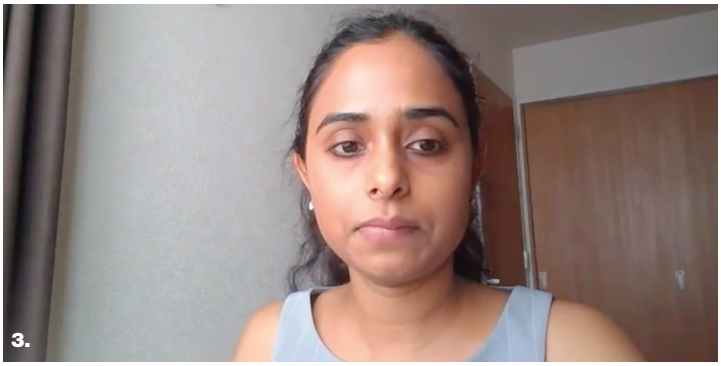
RECOMMENDED READING

The *Financial Times* included *Economics in One Virus: An Introduction to Economic Reasoning through COVID-19*, by Ryan Bourne, R. Evan Scharf Chair for the Public Understanding of Economics at Cato, on its recommended summer reading list, compiled by Martin Wolf, the magazine's chief economics commentator.

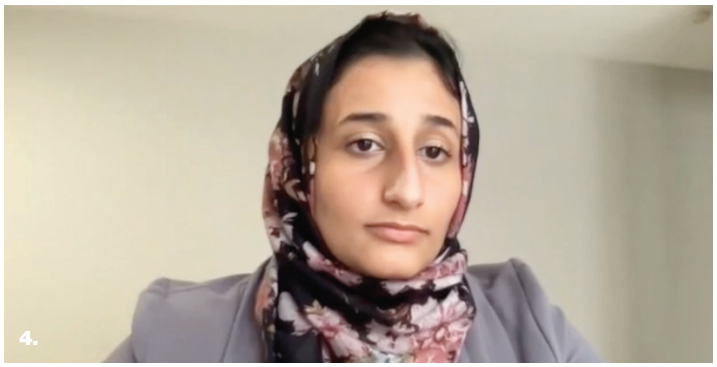
ISLAMIC FREEDOM

Cato senior fellow Mustafa Akyol, whose work focuses on freedom in the Muslim world, was selected by the UK's *Prospect Magazine* as one of "The World's Top 50 Thinkers"—alongside Chinese entrepreneur Zhang Yiming, American entrepreneur Elon Musk, and Russian opposition leader Alexei Navalny.

Aaron Ross Powell (top), director of Libertarianism.org, and **Trevor Burrus** (bottom right), research fellow in the Robert A. Levy Center for Constitutional Studies, interview **Jason Riley** (bottom left), senior fellow at the Manhattan Institute and member of the *Wall Street Journal* editorial board, about his new book *Maverick: A Biography of Thomas Sowell*.



Simon Lester (1), former associate director of Cato's Herbert A. Stiefel Center for Trade Policy Studies, moderates a policy forum with **Henry Gao** (2) of Singapore Management University, **Neha Mishra** (3) of Australian National University College of Law, and **David Weller** (4), director of economic and trade policy for Google, discussing the ramifications of international trade rules for digital goods and services.



Adjunct scholar **John Glaser** (1) and senior fellow **Doug Bandow** (2) participate in a forum in June on America's role in Yemen's ongoing civil war, with **Thomas Juneau** (3) of the University of Ottawa and **Summer Nasser** (4), CEO of Yemen Aid.

Justin Logan (top), senior fellow, moderates a forum with author **Samuel Goldman** (bottom left) of George Washington University about his new book *After Nationalism: Being American in an Age of Division*, with commentary from **Anatol Lieven** (bottom right) of Georgetown University.

Continued from page 1

as partisans personally curate their "Daily Me" of politically congenial news, feeding their conviction that it's *the bastards from the other side* who are ruining this country.

"I can't believe Nixon won; I don't know anyone who voted for him," goes the quote attributed to *New Yorker* film critic Pauline Kael. Apocryphal though it may be, the phrase has become shorthand for the political myopia afflicting people who never meet and therefore can't understand fellow Americans with different political views. If current trends continue, it won't be long before we're all Pauline Kael.

What's worse, we've begun to fear, even hate, those we don't understand. Sixty to seventy percent of Democrats and Republicans now view their political opponents as "a serious threat to the United States and its people." Forty-two percent go so far as to affirm that the other team is "not just worse for politics—they are downright evil."

Political scientists' terms of art for this development—"negative partisanship" and "affective polarization"—tend toward the clinical and anodyne. Even "tribalism" fails to capture the fear and loathing our political differences evoke. "Political sectarianism," a term advanced by a group of scholars last fall in *Science*, comes closer to the mark. Whereas "tribalism" suggests kinship, they explain, "the foundational metaphor for political sectarianism is religion," evoking "strong faith in the moral correctness and superiority of one's sect." Indeed, throughout 2020, the scent of fire and brimstone hovered over scenes of political unrest, from violence at Black Lives Matter protests to the Capitol riot of January 6.

"There is a religious war going on in this country," Pat Buchanan proclaimed in a notorious speech at the 1992 Republican National Convention. The pundit class recoiled in horror at the time, but it looks as if Buchanan's dark prophecy was just slightly ahead of the trend.

> "So much hinges on which party controls the presidency."

OUR POLARIZING PRESIDENCY

Meanwhile, as our politics took on a quasi-religious fervor, the early decades of the 21st century also saw accelerated concentration of power in the presidency. In the Bush-Obama years, the "most powerful office in the world" grew more powerful still, with dragnet secret surveillance programs, global drone warfare, and an increasing resort to pen-and-phone governance.

That's a volatile mix, law professors John O. McGinnis and Michael B. Rappaport warn in an important recent article, "Presidential Polarization." "The deformation of our government structure" toward one-man rule both intensifies polarization and makes it more dangerous. The original constitutional design required broad consensus for broad policy changes. "Now," McGinnis and Rappaport write, "the president can adopt such changes unilaterally."

Rampant delegation of legislative power to the executive means that the most important rules of our social and economic life no longer "emerge from a process encouraging compromise among legislators of different parties and different factions. . . . Instead, the President's agency heads make federal law." Fundamental questions of governance formerly reserved to Congress, the states, or the people are increasingly settled in winner-take-all fashion by whichever party manages to seize the White House. When so much hinges on which party controls the presidency, is it any wonder it's becoming harder to keep the peace among rival sects?

"We're all in this together" was one of President Barack Obama's favorite rhetorical tropes; it also aptly describes our current dilemma. When one man has the power to reshape broad swathes of American life and law with the stroke of a pen, we raise the stakes of our political differences and risk fostering the sense that *every* election is a "Flight 93 election."

STROKE OF THE PEN, LAW OF THE LAND

That presidential elections have consequences is nothing new, of course. It's a long-standing feature of American politics that when the out-party retakes the office, the new president overturns some of his predecessor's policies with the stroke of a pen. In his first 100 days, for instance, President Bill Clinton reversed two executive orders from the Reagan-Bush era: one had required foreign aid recipients to certify that they wouldn't promote abortion as a method of family planning, and another had ordered federal contractors to post notice that no employee is legally required to join a union. Subsequent Republican presidents turned those policies back on— and Democrats, off again—with the requirements winking in and out of existence every time the office changed parties.

Lately, though, the consequences of a presidential party shift have grown far more sweeping. In 2012, not long after disclaiming the power to unilaterally rewrite immigration law—"that's not how our democracy functions"—President Obama decided that, actually, it is. He issued orders offering lawful status and eligibility for federal benefits to nearly half of the 11 million undocumented immigrants in the country. President Trump moved to unwind those edicts and implement his own, including a travel ban on seven Muslim-majority nations. With a "Dear Colleague" letter to universities receiving federal grants, the Obama administration issued a very broad definition of sexual harassment and pressured schools to lower due process protections for students accused of it. The Trump administration reversed

that policy and raised the burden of proof in campus adjudications.

The "power of the pen" and the party affiliation of the president now govern such questions as these: who gets to come to the United States and who gets to stay, what rules govern free speech and sexual harassment disputes on college campuses nationwide, what apps are permitted on your children's phones, and which sports can they play at school? They may even determine whether you're still on the hook for your student loans. One of the key benefits of "energy in the executive," Alexander Hamilton assured us in the *Federalist*, was that it would ensure "steady administration of the laws." Today, the law itself changes radically every time the White House changes hands.

Worse still, legal changes made by presidential decree may be locked in for as long as the president's party holds the office—even when there's majority support in Congress to overturn them. That's thanks in part to a 1983 Supreme Court decision, *Immigration and Naturalization Service v. Chadha*, holding that attempts to rein in presidential lawmaking must themselves run the gauntlet of the ordinary legislative process, subject to presidential signature or veto. The upshot was to shift the default setting of American government toward presidential unilateralism. The president now enjoys broad power to do as he pleases unless and until Congress can assemble a veto-proof supermajority to stop him.

Trump's veto record illustrates the new dispensation. In 8 of the 10 vetoes issued during his single term, he beat back attempts to reverse unilateral actions a congressional majority opposed. Trump even seized new powers and used the veto to keep them, rebuffing resolutions aimed at overturning his border-wall emergency declaration and, after the targeted killing of Iranian general Qassim Soleimani, another aimed at restraining his ability to wage undeclared war on Iran.

"Trump even seized new powers and used the veto to keep them."

RETURN TO NORMALCY?

There was a moment, late in the 2020 campaign, when President Trump almost seemed to be making the case for his opponent. A vote for Biden, he told the crowd at an October rally, would be a vote for "*boredom*." If we get "Sleepy Joe," "nobody's going to be interested in politics anymore." We should be so lucky.

Credit where due, Joe Biden has managed to deliver a Twitter feed more decorous and dull than his predecessor's. But Donald Trump's incontinent and erratic personality wasn't what made the presidency the central fault line of our polarized republic—it was the vast powers the office has accrued.

In the first days of his administration, President Biden unleashed such a flurry of unilateral edicts that even the *New York Times* editorial board felt compelled to cajole him: "Ease Up on the Executive Actions, Joe." By the 100-day mark, Biden had already issued more executive orders than President Obama managed in his entire first year.

One Wednesday this summer, a single edition of the *Wall Street Journal* featured three stories on Biden edicts with staggering sweep. The TikTok app could remain on American phones for now—with the new president revoking a Trump order aimed at banning the Chinese-owned program. But the Keystone XL pipeline would die, Biden having rescinded a key permit allowing it to cross the U.S.-Canadian border. A third story outlined the Environment Protection Agency's plans to ratchet up wetlands protection under the federal Clean Water Act, vastly expanding restrictions on Americans' use of their own property. By July, Biden had moved on to showerheads, reinstating an Energy Department water-flow standard lifted by Trump. Henceforth, Americans could lawfully douse their domes only at a rate not to exceed 2.5 gallons per minute. The presidency giveth and the presidency taketh away.

Granted, a family fight over water-flow standards is unlikely to ruin Christmas, but the president's unilateral powers extend to many of the issues that divide us most. In a 2019 survey, the Pew Research Center found that on key political questions, the average difference between Red and Blue Americans had more than doubled since 1994. The "partisan gap" now dwarfs past social divides such as the gender gap or the generation gap.

Among the 30 political issues Pew probed, some were more polarizing than others. The more polarizing included environmental regulation, with a 42-point split between Democratss and Republicans on whether "stricter environmental laws and regulations are worth the cost," and immigration policy, with a 47-point gap on whether "the growing number of newcomers strengthens American society." Even in these areas, legislative compromise—on stringency of regulation, or levels and criteria for immigration—might be possible, if presidential dominance had not made legislative bargaining superfluous. "Our warped structure of government creates a shrill debate where people do not need to listen to or to compromise with their fellow citizens to secure their objectives," McGinnis and Rappaport observe.

Should transgender athletes be eligible to compete in women's sports? Per a recent Gallup poll, 62 percent of Americans say no, with a 45-point split between Republicans and Democrats on the issue. The Biden Justice Department asserts that the majority view is based on "misinformation and fear." In a recent brief, the department argued that the logic of the Supreme Court's *Bostock* decision, barring employment discrimination on the

basis of gender identity, extends to educational institutions receiving federal funds. The question will likely be settled via administrative diktat before it's resolved in the courts. Biden's first-day executive order on "Combating Discrimination on the Basis of Gender Identity" set the stage for uniform policies on "access to the restroom, the locker room, [and] school sports" at all levels nationwide.

In the Pew study, racial issues, unsurprisingly, proved among the most polarizing, with Democrats and Republicans 55 points apart on the significance of "white privilege" and whether "racial discrimination is the main reason why many black people can't get ahead these days." Here, too, the president will have his say. In April, Biden's Education Department jumped feet first into the roiling controversy over critical race theory in schools with a proposed rule for federal grants in American history and civics. The proposal endorsed the work of self-described "anti-racist" radical Ibram X. Kendi. It's not yet clear how Biden's executive order on "Advancing Racial Equity" will cash out in terms of policy, but its pledge to root out ill-defined "systemic racism" flirts with Kendi's totalizing approach.

In all likelihood, the worst is yet to come. It has been clear from the jump that in a bitterly divided country with a 50/50 Senate, President Biden would face enormous pressure from the left to bypass a deadlocked Congress and rule by decree.

That's just not who he is, Joe Biden has insisted repeatedly. "I am not going to violate the Constitution," the then-president-elect told civil rights leaders in December. "Executive authority that my progressive friends talk about is way beyond the bounds."

But what's the Constitution between friends? Not much, judging by the president's brazenly lawless extension of the nationwide eviction moratorium in August. The ban was issued by the Centers for Disease Control and Prevention in 2020 on the basis of a Trump executive order. As it was set to expire, President Biden told progressives his hands were tied: the moratorium was unlawful, as five federal courts, a majority of Supreme Court justices, and the president's own legal team had concluded. "Get better lawyers," House Speaker Nancy Pelosi shot back. And Biden caved, ordering the extension while openly admitting, "The courts made it clear that the existing moratorium was not constitutional; it wouldn't stand."

> "Biden's progressive friends have an extensive wish list."

Biden's progressive friends have an extensive wish list, and they're sure to keep the pressure on now that they know he can be pushed around. The *American Prospect* has identified "277 Policies for Which Biden Need Not Ask Permission," including "break up the big banks," "give everybody who wants one a bank account," "make it easier for 800,000 workers to join a union, and much, much more." Senate Majority Leader Chuck Schumer (D-NY) has urged Biden to "call a climate emergency": "he could do many, many things" that wouldn't have to go through Congress. Sen. Elizabeth Warren (D-MA) is after him to declare an executive jubilee on student loans, forgiving up to $50,000 per debtor, at a cost of around a trillion dollars. Should Biden decide to embrace his inner autocrat and "go big" with the pen and the phone, one thing is clear: that's not going to "stop the shouting and lower the temperature."

WHERE DO WE GO FROM HERE?

Are there any reforms that would cool our feverish politics? America's "thought leaders" have no shortage of proposals. They include ineffectual but mostly harmless notions like "Weekly Bipartisan Senate Meetings" and coercive nostrums like "Mandatory National Service."

What's striking is how many reformist prescriptions involve doubling down on presidential activism. In their 2020 book *Presidents, Populism, and the Crisis of Democracy*, for example, political scientists William G. Howell and Terry M. Moe call for investing the president with the "agenda-setting" power to force Congress to vote on his preferred legislation, unamended.

We should be heading in the opposite direction: limiting the damage presidents can do and lowering the stakes of presidential elections. We need to rein in emergency powers, war powers, authorities over trade, and the ability to make law with the stroke of a pen.

But relimiting the presidency isn't enough. We need fewer one-size-fits-all decisions made by the president *and* fewer such decisions made by the federal government. The "Big Sort," by which more Americans have chosen to live near like-minded neighbors, has helped turn our national politics into a winner-take-all death match, but the same conditions ought to enable a reinvigorated federalism. Polling data has long shown Americans trust their state and local governments much more than they trust the feds. Even in the pandemic summer of 2020, 60 percent of respondents professed substantial confidence in their state governments; for local governments, the number was 71 percent. Those numbers argue for devolving more power to states and localities: we'd have less to fight about if the important decisions were made closer to home.

One hopes that Americans will rediscover the "better angels of our nature," put politics in perspective, and rediscover what unites us. Pending that moral awakening, our more pressing need is for structural reforms that limit the harm we might do to each other amid the fog of partisan war. Chief among those is reining in the powers of the commander-in-chief. ■

Has Medical Malpractice Tort Reform Worked?

In a new book for the Cato Institute, *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, a politically diverse group of health care and legal experts examine the track record of tort reform at fixing America's notoriously costly system of medical malpractice litigation and insurance. The book focuses in particular on the experience of Texas after a major overhaul in 2003. In June, Cato hosted a book forum moderated by Sen. Bill Frist (R-TN), himself a medical doctor and former Senate majority leader. Coauthor and Cato adjunct scholar **David Hyman** explained the book's findings, which were challenged by **Richard Anderson**, chairman and chief executive of The Doctors Company, the nation's largest physician-owned malpractice insurer.

DAVID HYMAN: First, to explain the background of our book a little bit, it focuses on Texas, which enacted major tort reform effective for cases filed in 2003 and later. And Texas is also one of the states that has a comprehensive database of medical malpractice claims. So we use that to study all of the surrounding malpractice litigation and insurance. And then we use other available data to analyze some of the same questions nationally, to see if the experience in Texas is representative.

So let me just start by flagging the real issue that physicians are concerned with, which is recurrent crises marked by sudden and dramatic increases in their malpractice premiums. The most recent one was around 2000–2001. If you look at the percentage increase in the malpractice premiums charged by basically every major company, you can see a dramatic increase. We're talking about a 100 percent increase over a relatively short period of time, and that causes real stress for physicians who are used to having premiums be at one level, and then they suddenly double. It can be even higher for certain specialties, especially high-risk specialties.

In 2003, Texas enacted a liability cap, which is the most popular reform idea, and what happened? Caps, it turns out, have a very substantial effect on both the number of paid claims and also the amount that's paid to resolve those claims. What you see is a pretty dramatic decline in both the number of claims and the payout per claim, after Texas enacts this cap, which wasn't a simple flat cap but did heavily constrain noneconomic damages. We saw a 60 percent drop in claims and a 42 percent drop in payout per claim, for a combined effect of 75 percent drop in per capita payouts. So, caps do work. They have a big impact. The question is, what else do they do besides reduce payouts? And at the end, will that fix the problems with the medical malpractice system?

One of the things you often hear in debates over tort reform is the claim that doctors are leaving the market, that we should enact the cap on damages to keep the doctors we have and attract new doctors. But in Texas, we don't find that effect. Basically, we see a continuation of the preexisting trends. You should obviously consider the possibility that a cap might have a different effect in other states, and it might have an effect on certain types of physicians, but not on others. We look at those issues as well and find similar conclusions.

We draw a series of lessons from all of that that I'd like to sketch out for you. The first is we don't find evidence that the medical malpractice system is doing a particularly good job. In fact, we think it's doing a pretty rotten job at the things that we would like it to do. It doesn't adequately compensate people who are entitled to it under our laws—that is, negligently injured patients—and the severely injured are the least well compensated. Second, it doesn't adequately deter negligence.

The current system doesn't send the right signals to physicians—it doesn't tell them "don't do this or that because it will cost you money," which is of course the whole point. That happens for a variety of reasons. Some of it has to do with people who are negligently injured not bringing claims, and some of it has to do with people who aren't negligently injured bringing claims and then being paid for those claims that shouldn't actually be paid.

The process is also very expensive and time-consuming. It's disliked by everyone involved, pretty much across the board. Doctors especially hate it and with good reason. And so the obvious issue is that there's got to be a better way, and what is that? Well, based on this work, we don't think damage caps are the better way, because they don't fix any of the problems we just alluded to. They don't improve compensation. They don't improve deterrence. They don't make the system less expensive or time-consuming, except by making cases go away entirely. And it's not obvious why it would change people's dislike of the system. It makes some of those problems worse.

The next set of key lessons are also rather simple. Premium spikes are real, but we don't find evidence that they're driven by things happening inside the litigation system—that is, the number of claims and the payout per claim. Defense costs are

going up, but they're not going up enough to drive the sorts of premium spikes I mentioned earlier. We also find in Texas and elsewhere that paid claims have declined steadily since 2001, when the last malpractice crisis started, and they've been declining even in states that don't cap damages. And the smaller claims—smaller in terms of dollars, not necessarily in terms of severity of injury—have been steadily disappearing from the system, because they're no longer worth pursuing in a contingency recovery system, where the lawyers only get paid if they win. And medical malpractice insurance premiums, which went up a lot in the last malpractice crisis, have declined. They're now back to the level of the mid-1990s.

Given that we've had three malpractice crises in the last 40-plus years, you should expect another one reasonably soon. So what should we do? We think we should fix the real problems with the system. Doctors are very worried about the risk of personal bankruptcy. We think there's an easy fix to that: so long as the doctor maintains a reasonable amount of insurance, we don't think there should be any personal liability. We also suggest using a no-fault system for small claims. We think more experimentation, including what are sometimes called apology programs or Communication and Resolution Programs are worth experimenting with, along with enterprise liability rather than leaving individual physicians on the hook.

We think institutions ought to be more involved. Private contracts and safe harbors to keep people from being sued when they adhere to the standard of care strike us as plausible improvements. And finally, we think we need better incentives to deliver error-free care. This has little to do with malpractice insurance but a lot to do with how we pay for health care. Sometimes we pay more when physicians and health care institutions make mistakes. We pay them for the original job, and then we pay them to fix their mistakes. That's not something you would do if you were dealing with a car mechanic. It's not something you would see anywhere outside of the health care system. And it's part of the reason why our health care system has the problems that it does, which is the focus of our other book, *Overcharged: Why Americans Pay Too Much for Health Care*. The bottom line is that the proliferation of third-party payment and employer-based insurance creates a lot of these perverse incentives. They're not actually the product of the malpractice liability system, that's just one place where the symptoms show up.


DAVID HYMAN

> "We need better incentives to deliver error-free care."

RICHARD ANDERSON: The Texas tort reforms were extremely effective and did exactly what they were designed to do. The reams of data that were subjected to extensive statistical analysis by the authors and their colleagues basically leave us with a conclusion that the earth is flat. Their conclusions don't match the reality we've seen. Their data, in fact, do not comport with the real world and specifically the Texas professional liability environment before and after the tort reforms of 2003. So let's see where we can find common ground and where we might disagree. One thing, however, right at the start, which we can absolutely agree on is that the system of medical malpractice litigation is broken. Absolutely, we agree on that. And I'll show you some of the ways in which it's broken in just a minute.

One of the points Dr. Hyman and his coauthors make is that the medical malpractice system doesn't provide full compensation to some negligently injured patients and provides especially poor compensation to those with severe injuries. The answer to that from my point of view is yes, it overcompensates some and undercompensates others. The problem is that our adversarial legal system is a draconian combination of adventurism and the lottery.

The authors say our medical malpractice system doesn't create appropriate incentives for providers to exercise care. Yes and no. The shame-and-blame proceedings and the secrecy of many settlements incentivizes defensive medicine. There's no question about that. But the theory here is that the threat of litigation should lead doctors to practice better medicine. The aversion to medical malpractice litigation by physicians is so intense and so universal that if it were possible to stay out of court by practicing better medicine, doctors would do that universally. The real problem is, it's not possible to stay out of court in our system, regardless of how good the medicine you practice is.

Our medical malpractice system is expensive, time-consuming, and leads to hard feelings. The claim in this book is that damage caps don't fix any of these problems, and they make some worse. Well, actually, damage caps clearly do ameliorate the litigation lottery, and they lessen the disproportionate

burden of premiums on practicing physicians. In our $4 trillion health care system, physicians pay about 50 percent of all the medical liability premiums—that is, doctors and not institutions. The burden falls very disproportionately on the physicians, and damage caps do help with that.

The authors state that premium spikes are real but can be caused by factors external to the litigation system. Well, the litigation system is what they are actually caused by. Premium spikes are caused by the number of claims, the payouts per claim as defense costs, the drawn-out length of malpractice litigation, and dysfunctional regulation of the insurance industry. These things all contribute to the steepness of the ups and downs. It takes three to five years from the day a physician pays a premium for protection before the average claim is settled, and yet insurance companies must predict in the premium what the cost of settlement of claims will be three to five years in the future.

When those numbers turn out to be excessive (that is to say, the claims costs are higher than anticipated by the companies and actuaries and so forth), in most states, one must get regulatory approval from the state department of insurance to raise rates. That is a politically fraught process; it's an incremental process and adds years before the risk and liability can match the premium. So you may be looking at a five-to-seven-year gap between a surge in claims or excess claims costs, or costs of defense, and the time when rates can catch up, creating a very steep up-and-down picture.

Yes, nationally, malpractice litigation premiums have been falling since 2005 and are now back to levels of the mid '90s. But why? The reason is that real tort reforms have worked. And because they have worked, and because insurance carriers know that, premiums have gone down to reflect that reduced risk. Insurance companies base rates on the risk and cost of litigation, and in fact, have lowered premiums as that risk has declined.

The average neurosurgeon spends about a quarter of their career defending active claims. Think about that. A quarter of their career is spent in active litigation. When you take out the claims that were ultimately paid, you still get 20 percent. That is a fifth of a neurosurgeon's career spent defending claims that ultimately are found by the legal system to be without merit.


RICHARD ANDERSON

> "Malpractice premiums have been falling since 2005."

This is really very important context, and it brings us to the point of defensive medicine, the distinction between supposedly high risk and low risk. The reality is that there's virtually no such thing as low-risk medicine, in terms of facing malpractice claims. High-risk specialties over the course of a physician's career have statistically a 100 percent likelihood of producing a claim. So-called low-risk specialties over the course of a physician's career have an 80 percent chance of producing a claim. So when this book says, "The medical malpractice system is broken," I couldn't agree more.

If we focus on Texas, we can put its tort reform in context. In the 10 years between 1989 and 1999, the average noneconomic damage award in Texas quadrupled from $318,000 to $1,379,000. Between 1995 and 2002, which is the period just before the tort reforms were implemented, Texas doctors were sued about twice as frequently as doctors in other states, on average. Some counties in Texas averaged more than one claim for every doctor every year. Whole counties had more claims than doctors on an annual basis for a number of years in a row. And again, how much of this is valid medical error that's found to be the case by the courts themselves? Fourteen percent. Eighty-six percent of all claims against Texas doctors in that period were ultimately found to be without merit, and that is still true today.

But of course, going through the litigation system has enormous costs, and all of these claims have costs with them. In the four years before the 2003 reforms, 50 percent of Texas nursing homes were uninsured because they couldn't find or afford the coverage that was available. In fact, 13 physician liability insurers left the state or went bankrupt prior to 2003.

Of course, tort reforms weren't designed to solve all the problems of Texas health care. That is a Herculean task, and Texas had some particular problems that made it one of the worst states in the country by several metrics. But what the tort reforms were designed to do was to reduce the cost of claims and ultimately to reduce the number of fruitless claims. And were they successful at that? I would say they were extraordinarily successful. Physician insurance premiums have fallen by more than 50 percent after the reforms. And much of that decline came within two years of the reforms. My conclusion is the tort reforms did exactly what they were intended to do. They reduced rates,

they decreased the frequency of fruitless litigation, and they increased access to care.

DAVID HYMAN: I think the objective fact is that medical malpractice crises have been marked not by an increase in malpractice but by an increase in medical malpractice premiums. That causes all sorts of distress for physicians over and above the distress of being sued or worrying about being sued. It's what has prompted legislative campaigns to enact tort reform. And now about 30 states have caps on damages, 9 of them originating in the most recent 2001–2002 crisis.

In terms of what causes it, I should say that the book is about the litigation system. It's not about the insurance system, except sort of incidentally. We talk a little bit about premiums because we have some evidence on that. That's the focus of the book because we're lawyers and law professors writing about what's going on in the courts. But from what we can see on the legal side of things, claims about how the litigation system is driving up insurance premiums don't seem to hold much water.

> "Insurers are rational actors within a system."

If we had seen a sudden increase in the number of claims or a sudden increase in the payout per claim or runaway jury verdicts, then it would be much more plausible that the litigation system was driving what's going on in the insurance system. But we don't see that. We don't see that in states that already had caps going back many decades. We don't see that in states that didn't have caps and still don't. The states that enacted caps in response to recent spikes in premiums, such as Texas, are a sort of intermediate group. So, it's less plausible to us that the litigation system is driving the premium increases. We do see that there are factors that are internal to the insurance market, some of which Dr. Anderson has alluded to, that we think are powerful explanations that don't involve the litigation system.

I'll also just address one specific issue Dr. Anderson raised: we never say anything in the book that suggests that insurance companies are profiteering or are charging more than what the state of the market would imply. Nor do we make any suggestions that they should be regulated to prevent what some people would call profiteering. Insurers are rational actors within a system, and they are working to provide an important and necessary service. So imputing bad motives like that is certainly not what we set out to do. ■

New book explores the new era of drones

A Buzz in the Air

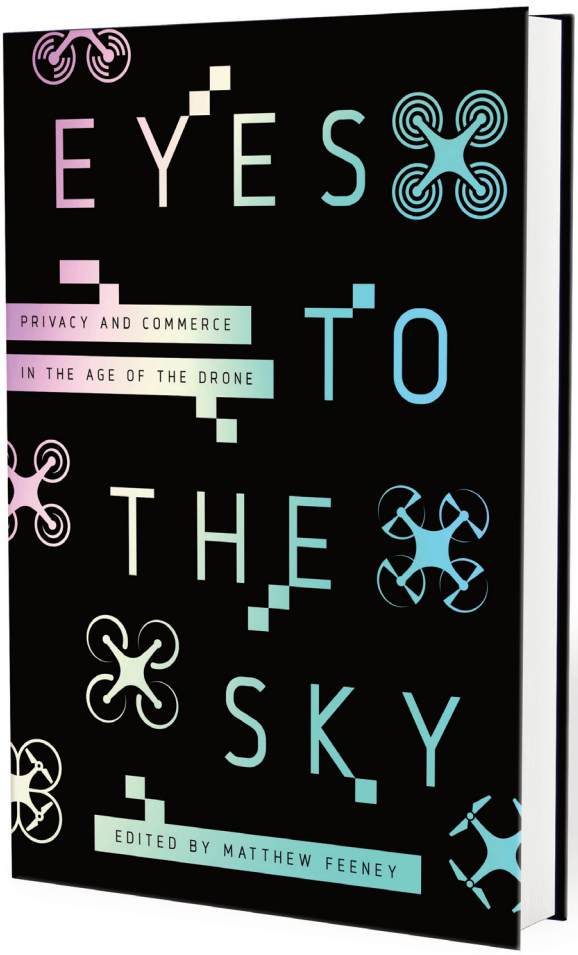
In recent years drones have become more and more ubiquitous. No longer just a weapons platform used to launch missiles at terrorists, today unmanned aerial vehicles (UAVs) are being used for a growing number of civilian and law enforcement purposes.

As drones become cheaper and more capable, the potential uses by both the public and private sectors have raised a host of complex questions. Those issues are tackled in a new book, *Eyes to the Sky: Privacy and Commerce in the Age of the Drone*, edited by Matthew Feeney, director of Cato's Project on Emerging Technologies.

Eyes to the Sky draws together contributions from several leading scholars on the law and technology of drones. In one chapter, technology attorney Sara Baxenberg of Wiley Rein outlines the history of UAV regulation in the United States and the slow-moving bureaucracy's struggles to keep pace with the rate of technological innovations. "These challenges have been particularly significant given the complexity of the U.S. National Airspace System, the Federal Aviation Administration's mandate to ensure aviation safety, and society's deep-seated aversion to aviation-related accidents," she explains. But in spite of these hurdles, the industry continues to make substantial progress.

In another chapter, Laura Donohue, director of Georgetown University's Center on National Security and the Law, explores an age-old question made newly relevant: who owns the airspace over private property? The issue long predates the advent of aviation. The influential medieval legal treatise *Glossa Ordinaria* established a principle that whoever owned the land "controlled everything from the heavens above to hell below."

Drones raise new questions for 20th-century laws that applied federal regulation to "anywhere aircraft can safely navigate," which was interpreted as above 500 feet. Drones, however, can safely operate as low as a few feet, potentially bringing federal jurisdiction all the way down to the ground and impinging on the role constitutionally reserved to the states in defining private property rights.



UAVs also raise new questions about privacy. They can hover as an eye in the sky, providing effectively continuous coverage in ways manned aircraft cannot. The Supreme Court has never squarely addressed the limits of Fourth Amendment protections from aerial surveillance, nor have federal legislators and regulators crafted effective guidelines for the private use of drones. Jake Laperruque, senior counsel for the Constitution Project at the Project on Government Oversight, proposes a set of rules for the use of drone surveillance by law enforcement agencies. As he explains, though federal action has been lacking, "dozens of states have adopted rules and limits on drones, with 18 establishing a warrant requirement for police use of drones."

Laperruque identifies four principles to guide police surveillance using drones. He draws from both Fourth Amendment law and some of the norms that have developed for electronic surveillance: a probable cause warrant requirement, an exhaustion requirement for using less invasive options first, minimization rules to protect persons and property outside the scope of the warranted targets, and a requirement that the government provide logistical information with a justification for the extent of surveillance requested.

Other questions addressed in *Eyes to the Sky* include ways to make American regulations more conducive to innovation, the capabilities of drones and their use by the federal government, and the potential commercial uses of drones that are rapidly developing. As UAVs become more and more a part of everyday life, *Eyes to the Sky* offers a critical guide for policymakers for years to come. ■

***EYES TO THE SKY* IS AVAILABLE FROM MAJOR BOOKSELLERS AND AT CATO.ORG/BOOKS.**

Educators participate in Cato's 2021 Sphere Summit

A Well-Rounded Education

Across two four-day sessions in June and July, Cato hosted teachers from grades 5 through 12 for the Institute's first resumption of in-person events. At the Sphere Summit, Cato scholars and outside experts provided professional development to educators on policy issues and civics. This year organizers developed a new hybrid capacity, allowing participants to attend either in person or online.

"The Sphere Summit aims to restore a spirit of civil, constructive, and respectful discourse and engagement and to return facts, analysis, and research to primacy as the vehicles for discussion and debate," explains Allan Carey, director of Sphere Education Initiatives. "Our 2021 summits were by far the most successful to date, bringing together hundreds of educators from across the country, in person and virtually, to advance this mission. It was extremely gratifying to hear them describe this as the best professional development experience they've ever attended, and, for so many of them, to walk away self-identifying as libertarian."

Among the featured speakers were three members of Congress. Rep. Lou Correa (D-CA), Rep. Peter Meijer (R-MI), and Rep. Young Kim (R-CA) addressed both particular policy issues and ways to reach across the aisle and find common ground in our deeply divided, hyperpartisan era.

In addition to the lineup of experts from Cato and other libertarian organizations, Sphere also includes representatives from other think tanks and organizations across the ideological spectrum, including the Center for American Progress, the Heritage Foundation, and the Brookings Institution. Together, they sought to model ways to engage in productive, civil dialogue between people with different political and ideological perspectives.

Top: Senior fellow **Jason Kuznicki** leads a conversation with **Irshad Manji**, educator and author of numerous works on reformist interpretations of Islam as well as racial and religious identity, including her latest book, *Don't Label Me: An Incredible Conversation for Divided Times*. Center: Attendees at dinner during remarks by **Peter Goettler**, president and CEO of the Cato Institute. Bottom: **Jeff Vanderslice**, director of government and external affairs, interviews **Rep. Peter Meijer** (R-MI).

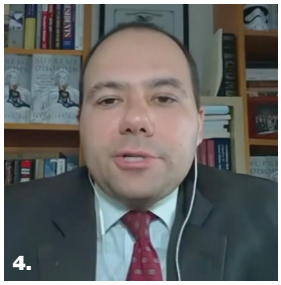



1. **Yascha Mounk**, contributing editor at *The Atlantic*. 2. **Irshad Manji** leads a panel with teachers **Ben Baar** and **Candi Tucker**. 3. **Jane Coaston**, host of "The Argument" podcast for the *New York Times*. 4. **Rep. Young Kim** (R-CA) and **Rep. Lou Correa** (D-CA) participate in a joint interview on reaching across partisan divides. 5. Teachers **DeJuan Parker** and **Staci Garber**.

Attendees were impressed with the quality of the event and the valuable insights and information they will be able to apply in their classrooms going forward. "First and foremost, the Sphere Summit was a great opportunity for me, and I am beyond excited to incorporate the useful strategies, information, etc. in my own classroom and with colleagues," said Shameka Watts, a middle school social studies teacher from Georgia.

"The professionalism and hospitality were beyond what I expected," said Jennifer Romer, a K–12 social studies coordinator from Alaska, explaining that "the plethora of resources and books will be beneficial to bring back to teachers in my district." Scott Yamanashi, an AP teacher in North Carolina, observed that "as a civics junkie and teacher, there are not enough words to express the breadth of what I learned and will take back to the classroom," particularly citing the material on debate-centered instruction and immigration policy. "It will be an experience I never forget and am happy to continue forward!"

Thanks to the generous support of Sponsors, Cato was able to offer scholarships to participants, which covered travel costs and provided room and board for in-person attendees. Going forward, the Sphere Initiative will continue to host professional development seminars for educators at its Sphere Summits and produce materials and video content that teachers can use to further Sphere's mission of "teaching civic culture together." ■



Cato scholars continue to frequently participate as expert witnesses in congressional hearings, both in person and virtually due to the pandemic. 1. **Neal McCluskey**, director of Cato's Center for Educational Freedom, before the Committee on Education and Labor. 2. Adjunct scholar **Dan Quan** at the House Committee on Financial Services. 3. **Jennifer J. Schulp**, director of financial regulation studies, before the House Committee on Financial Services. 4. **Ilya Shapiro**, vice president and director of the Robert A. Levy Center for Constitutional Studies, testifies to the Presidential Commission on the Supreme Court. 5. **David J. Bier**, research fellow, at the House Judiciary Committee's Subcommittee on Immigration and Border Security 6. **Chris Edwards**, director of tax policy studies, before the Subcommittee on Select Revenue Measures of the House Ways and Means Committee. 7. **Michael F. Cannon** (left), director of health policy studies, before the Senate Judiciary Committee's Subcommittee on Competition Policy, Antitrust, and Consumer Rights. 8. **Roger Pilon**, B. Kenneth Simon Chair in Constitutional Studies, at the Senate Committee on Homeland Security and Governmental Affairs.

John C. Goodman, CEO and founder of the Goodman Institute, at a forum for his book *New Way to Care: Social Protections That Put Families First*.

Nicholas Bagley of the University of Michigan Law School at a panel about the FDA's controversial recent approval of Aduhelm, a new drug to treat Alzheimer's.

Cato Calendar

A NEW AGENDA FOR FIGHTING POVERTY AND INEQUALITY IN CALIFORNIA
Sacramento • Sheraton Grand
October 21, 2021

A NEW AGENDA FOR FIGHTING POVERTY AND INEQUALITY IN CALIFORNIA
Los Angeles • Sheraton Grand
October 23, 2021

CATO INSTITUTE POLICY PERSPECTIVES 2021
New York • The Pierre
November 10, 2021
Speakers include Johan Norberg.

POPULISM AND THE FUTURE OF THE FED
39th Annual Monetary Conference
Washington • Cato Institute
November 18, 2021
Speakers include Barry Eichengreen, Raghuram Rajan, Rosa Maria Lastra, George Selgin, and Narayana Kocherlakota.

CATO INSTITUTE POLICY PERSPECTIVES 2021
Chicago • Ritz-Carlton
December 2, 2021

CATO INSTITUTE POLICY PERSPECTIVES 2022
Naples, FL
Ritz Carlton Naples Beach
February 2, 2022

CATO CLUB RETREAT
Bluffton, SC
Montage Palmetto Bluff
September 29–October 2, 2022

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

JUNE 2: America's Role in Yemen

JUNE 4: *After Nationalism: Being American in an Age of Division*

JUNE 10: *Maverick: A Biography of Thomas Sowell*

JUNE 21: Can International Rules Improve Domestic Regulation of Digital Trade?

JUNE 22: *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*

JULY 6: *New Way to Care: Social Protections That Put Families First*

JULY 7: *The Constitution of Knowledge: A Defense of Truth*

JULY 20: Politics, Science, and Money: The Collective Meltdown over the New Alzheimer's Drug

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

How to reverse pandemic-era moves in the wrong direction

The Case for Free Trade in Medicine

In a new study, "Trade Is Good for Your Health" (Policy Analysis no. 918), Cato adjunct scholar James Bacchus makes the case for the "increasing need to free up medical trade to help end the COVID-19 pandemic and secure global health."

During the pandemic, many governments moved in the exact opposite direction. Not only do import tariffs, export restrictions, and other trade barriers continue to hobble the global market for life-saving goods, additional limits were imposed during the pandemic under misguided theories of economic nationalism.

Bacchus, a former member of Congress and former chief judge for the Appellate Body of the World Trade Organization (WTO), sees an important opportunity for the WTO to put freeing up global trade in health care at the top of the agenda for its ministerial conference in Geneva in November 2021. As he explains, "the response to COVID-19 has demonstrated that we do not yet have free trade in medicines and other medical goods." For all medical products, the average tariff ceiling pledged by WTO members is 26 percent. But almost one–third of WTO members have an average bound tariff on medical products of more than 50 percent. These import taxes are an immense outlier from the low-tariff regime the WTO has produced for most other goods.

The pandemic also produced a rare and even more harmful policy: export restrictions. India banned exports of respiratory masks and some 26 pharmaceutical ingredients. An executive order issued by President Donald Trump in August 2020 required federal agencies to buy only American drugs and medical supplies. German authorities even halted delivery of 240,000 medical masks to next-door Switzerland.

In total, by the end of 2020, 92 governments had taken a total of 215 measures restricting exports of medicines and medical supplies. As Bacchus explains, medical supplies have been subject to an unwarranted degree of carve-outs from the WTO's general rules against trade barriers. Particularly abused have been provisions for "essential" products and "critical shortages," in spite of past rulings seeking to narrow those exceptions.

"WTO members should eliminate all tariffs on medicines and other medical goods," according to Bacchus. "Practically speaking, this could be done in part by expanding both the membership and scope of the Pharma Agreement," an agreement among many leading economies to liberalize free trade in pharmaceuticals but which most WTO members have not yet joined. He also suggests that the WTO needs new disciplinary measures on export restrictions and should reconsider whether any export restrictions on medical goods should be deemed "necessary" and thus legal.

The ideas for reform do not stop there. "Other worthy ideas for new WTO rules include: promoting transparency in all national measures taken for dealing with COVID-19; waiving 'buy local' requirements for medical goods; eliminating all the nontariff barriers that hinder trade in medicines and medical equipment; adopting international standards to help ensure the safety and the quality of imported medical goods; giving the go-ahead to targeted subsidies for producing new medicines for COVID-19; and reaffirming that WTO rules permit compulsory licensing of needed medicines by developing countries."

With the COVID-19 pandemic having already killed more than four million people worldwide, the need for free and open trade in medical supplies and pharmaceuticals has never been more urgent. As it has for trade more generally, the WTO offers an important mechanism for national leaders to resist domestic political pressure for protectionism and nationalism. Now, the international organization must meet the moment and prioritize much-needed protections for the free flow of medical goods across international borders. ■

Large Bureaucracy Administration

The Small Business Administration has been responsible for implementing two marquee programs as part of the federal government's pandemic response: the $813 billion Paycheck Protection Program and the $367 billion Economic Injury Disaster Loan program. In **"Assessing the Small Business Administration's Pandemic Programs: Not Good Enough, Even for Government Work"** (Legal Policy Bulletin no. 7), William Yeatman finds that both programs reflect gross expansions of dysfunctional frameworks that were already troubled before the pandemic.

DEPRESSING DIRIGISME

In the wake of the COVID-19 pandemic and rising U.S.-China tensions, American policymakers have again embraced "industrial policy," a once-discarded idea for governmental quasi-management of the economy. In a new working paper, **"Questioning Industrial Policy: Why Government Manufacturing Plans Are Ineffective and Unnecessary,"** Scott Lincicome and Huan Zhu offer a framework for understanding the history of industrial policy and why its revival should be unwelcome.

GREEN TRADE

Talks at the World Trade Organization over removing tariffs on environmental goods began in 2014 but have since stalled. In **"Free Trade in Environmental Goods Will Increase Access to Green Tech"** (Free Trade Bulletin no. 80), James Bacchus and Inu Manak urge the new Biden administration to prioritize such trade as part of its commitment to fighting climate change.

DRIVE SOBER

As part of his wide-ranging research into claims that illegal immigrants threaten the safety of Americans, Alex Nowrasteh together with Michael Howard has compiled the evidence on drunk driving in **"Drunk Driving Deaths and Illegal Immigration"** (Immigration Research and Policy Brief no. 20). Nationwide, they find no statistical relationship between higher illegal immigrant population shares and drunk driving deaths. ■

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CATO

"To Be Governed..."

POSSIBLY THE GOVERNMENT IS TOO BIG

The Post did not survey every single agency or office of the federal bureaucracy — a list so long that even the government itself has trouble keeping track. Official estimates of the number of federal agencies range from 118 up to more than 600, depending on how "agency" is defined, according to a 2018 report by the Administrative Conference of the United States.

—***Washington Post*, July 30, 2021**

IF IT'S BIPARTISAN, YOU KNOW IT'S A TAXPAYER BOONDOGGLE

How has the Senate managed to find a rare area of bipartisan agreement and put together a major bill to finance technology and manufacturing? . . .

The current version would spend almost $250 billion over five years.

—**David Leonhardt in the *New York Times*, June 8, 2021**

SCANDAL: 25 PEOPLE PAID ONLY $13.6 BILLION IN INCOME TAX

The results are stark. According to Forbes, those 25 people saw their worth rise a collective $401 billion from 2014 to 2018. They paid a total of $13.6 billion in federal income taxes in those five years.

—***ProPublica*, June 8, 2021**

TERRY MCAULIFFE UNDERSTANDS POLITICS

"He's not Terry McAuliffe, the Clinton fundraiser anymore — he's Terry McAuliffe, the former governor," said Jessica Taylor. . . .

"Now let me tell you, it's a lot easier to raise money for a governor," McAuliffe says in the audio version of [his memoir]. . . . "They have all kinds of business to hand out — road contracts, construction jobs, you name it."

—***Washington Post*, June 12, 2021**

BREAKING: BUSINESSES BELIEVE GOVERNMENT SHOULD SUBSIDIZE THEM

Twenty industry associations and unions sent congressional leaders a letter last week urging action: "To be competitive and strengthen the resilience of critical supply chains, we believe the U.S. needs to incentivize the construction of new and modernized semiconductor manufacturing facilities and invest in research capabilities," the groups wrote.

—***Wall Street Journal*, July 26, 2021**

L'ETAT, C'EST MOI

President Joe Biden signed a sweeping executive order on Friday to promote more competition in the U.S. economy, urging agencies to crack down on anti-competitive practices in sectors from agriculture to drugs and labor. . . .

Biden's action goes after corporate monopolies across a broad swath of industries, and includes 72 initiatives he wants more than a dozen federal agencies to act on.

—**Reuters, July 9, 2021**

PRESIDENTS COME AND GO, BUT LOBBYISTS REMAIN

The brother and former business partner of a top White House adviser. . . reported making $820,000 from lobbying in the first three months of this year, nearly five times what he earned in the same period a year earlier.

—***Washington Post*, July 9, 2021**

SOLAR INDUSTRY'S BUSINESS PLAN

After years of decline, the fragile American solar industry is hoping for a turnabout bolstered by President Biden's plans. . . .

[T]he Biden administration is initially focusing on four industries to bolster with tax breaks or other government support. . . .

Solar power isn't named as an administration priority so far, but it is lobbying for tariff or tax-law support . . . tax credits for solar-panel purchases . . . tax credits that would give domestic panel makers a lift and disadvantage imports . . . require federal contractors to purchase many solar panels from U.S. suppliers.

—***Wall Street Journal*, June 21, 2021**