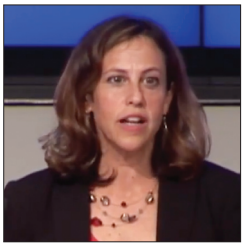

POLICY FORUM

Seeking true justice at the Supreme Court

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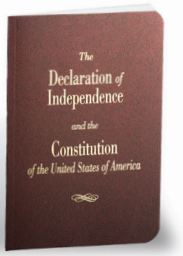
BABY BOOM

Cato welcomes new family members

PAGE 10



CONSTITUTION DAY

Leading scholars gather at Cato for annual event

PAGE 3

Cato Policy Report

NOVEMBER/DECEMBER 2021. VOL. XLIII NO. 6

The Dos and Don'ts of Defending Democracy

BY WALTER OLSON

Laws surrounding elections have taken center stage as Republicans and Democrats fight it out over how we pick our elected representatives. There's a lot at stake, but both parties are missing the mark in important ways, focusing on relatively minor concerns while looming threats go unaddressed.

The debate over state laws requiring voters to show identification at the polls has been especially bitter and polarized. To listen to one side, you might think that the aim of such laws is to achieve "voter suppression" and that supporting them makes you complicit in that conspiracy. To listen to the *other side*, voter ID laws are critical in preventing wide-scale fraud at the polls, and opposing them means you might be complicit in such fraud. (Large majorities of Americans, including both Democrats and Republicans and most nonwhites, approve of voter ID laws, and the Supreme Court has ruled them generally constitutional.)

A study that appeared in the *Quarterly Journal of Economics* in May, however, makes me suspect that this debate is a bit melodramatic. It found, based on extensive data-crunching, that voter ID laws "have no negative effect on registration or turnout, overall or for any group defined by race, gender, age, or party affiliation." Not that the other side is entitled to crow either: the study also found that "strict ID requirements have no effect on fraud, actual or perceived."

As it happens, a lot of claims commonly made about voter suppression on the one hand and ballot integrity on the other are surprisingly hard to validate. Some of the states with the most restrictive rules, for example, are also known for having some of the highest voter turnouts. Early, absentee, and by-mail voting affect when and how Americans vote, but there's much less evidence that they make a big difference in who decides to vote or which side wins.

In the 2020 election, following years of claims of mounting voter suppression, voter turnout soared to a level not previously seen in modern times. The jump was seen

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WALTER OLSON is a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies and co-chair of the Maryland Citizens Redistricting Commission created by Gov. Larry Hogan.

Michael D. Tanner (left), Cato senior fellow and director of the Project on Poverty and Inequality in California, discusses the findings and recommendations of the Project's Final Report with **Eric Garcetti**, mayor of Los Angeles.

BY PETER GOETTLER

PRESIDENT'S MESSAGE

Giving Thanks for Liberty

> "We focus hard on stewarding Cato for the long term."

Last year, the 15 to 20 people for whom I normally cook on Thanksgiving shrank to only 4. We could have fit around the dreaded kids' table. As we leave the pandemic in the rearview mirror, Cynthia and I are very much looking forward to cranking things back up to our normal crowd. I hope you, too, are anticipating a wonderful holiday season spent among the warmth of family and friends.

This dynamic is mirrored in the Cato community events so many of us relish. Last autumn we polled our roster of Cato Club retreat attendees and found that less than a dozen had an interest in attending the weekend, since the pandemic was in full swing. We reluctantly canceled. So it was an immense pleasure to host hundreds of you at the Milton Friedman Prize for Advancing Liberty award dinner a month ago, and many remained to join us for the Cato Club Retreat that same weekend. It was a stirring reminder of how much we missed being together during the past 18 months.

It also reminds us of how much information, feedback, and ideas we share when we gather. It's sobering, but no surprise, that we all share urgent concerns: that the challenges to liberty are as robust as ever, the direction of policy is perhaps the worst in decades, and threats to liberalism and the rule of law have emerged that would have been unthinkable only a few years ago. We all agree this makes Cato's mission even more crucial.

No mission ever succeeds when those advancing it are depressed and despondent. But you've energized us. The positive feedback and strong affirmation for how we're taking on these challenges fires us up. With fewer voices defending free markets, we're devoting more resources to this priority. With so many bad ideas out there—socialism, identity politics, nationalism, protectionism, and more—we're innovating to bring the good ideas—individual liberty, limited government, free markets, and peace—to newer, larger, and younger audiences.

And we continue to adopt a purposeful and strategic approach within each of our policy areas. You'll see this across all our work. But our criminal justice effort under the direction of Clark Neily is, to me, a case study in strategic policy work and the role of a think tank in raising the profile of critical issues, educating the public and policymakers, and—ultimately—stimulating policy change.

For example, as our friends at the Atlas Network recently said, "Just a few years ago, 'qualified immunity' was an obscure legal concept known only to a small handful of lawyers and legal scholars. Now, it's a household term. Uniting advocacy groups and leaders from across the political spectrum, the Cato Institute demonstrated how qualified immunity allows government officials to violate the civil rights of citizens with impunity. They have been so successful that a 2020 survey by the Cato Institute and YouGov found that 63% of Americans favor eliminating the abusive legal loophole." But it's not eliminated yet, so hard work remains.

Like most of our efforts, making qualified immunity a live policy issue encompasses a broad scope of activities at which Cato excels: top-quality policy research and scholarship; a wide range of content and tools to propagate our work and ideas to a large audience; effective engagement and education of policymakers; work to build coalitions across the political spectrum; constructive partnerships with allied organizations such as the Atlas Network and the Institute for Justice; and our polling work to assess the state of public opinion and understand how to message, market, and persuade. This mix of Cato's unique skills ultimately produces our end products: ideas, influence, and impact.

We focus hard on stewarding Cato for the long term, so your investment in our mission is always secure: prudent financial management, effective expense control, accountability for performance and results, and effective succession planning to raise the next generation of Cato and liberty's leaders.

But leading an organization funded by voluntary contributions—the vast majority of which come from individuals—confers a special responsibility upon us. A responsibility to wring the highest level of performance and results—ideas, influence, and impact—from the resources you so generously entrust to us. ■

Free speech, privacy, and federalism

Constitution Day at Cato: Judging the Supreme Court

On September 17, Cato welcomed scholars, practitioners, and the general public back to the F. A. Hayek Auditorium for the 20th Annual Constitution Day Symposium. Held every year on the holiday commemorating the anniversary of the signing of the Constitution in 1787, the symposium features a daylong conference with some of the nation's most accomplished constitutional experts and litigators. The 2021 symposium featured panel discussions on the First Amendment, property and criminal law, constitutional structure, and looking ahead to the Court's new term set to begin in October.

Constitution Day also marks the release of the *Cato Supreme Court Review*, an annual critique of the Court's most important decisions from the term just ended plus discussion about the upcoming term. The *Review* is the first such journal to be released every year. As Ilya Shapiro, Cato vice president and director of the Robert A. Levy Center for Constitutional Studies, explains in the foreword, the *Cato Supreme Court Review* is also "the only [such journal] that approaches its task from a classical liberal, Madisonian perspective, grounded in the nation's first principles, liberty through constitutional government."

Ilya Shapiro, vice president and director of the Robert A. Levy Center for Constitutional Studies, introduces **Rachel E. Barkow**, who delivered the Annual B. Kenneth Simon Lecture.

Among the contributors to this year's *Review* is Bradley A. Smith, former chair of the Federal Election Commission, who explains the implications and reasoning behind *Americans for Prosperity Foundation v. Bonta*. California had required nonprofit organizations to disclose the identity of their donors in their state tax returns. This requirement was a thinly veiled attempt to enable harassment and retaliation against donors to controversial political advocacy groups, especially libertarian and conservative organizations. The policy was originally imposed by California's then-attorney general Kamala Harris, since elected vice president.

The Supreme Court sided with the plaintiffs in a 6 to 3 ruling, holding that California was violating the constitutional rights to free speech and association, including anonymous speech and nonpublic association, in what Smith considers "arguably the most important decision on the rights of privacy and association in over 60 years."

Another key case of the past term concerned the nature of federalism and state autonomy, in particular the degree to which states are entitled to control their own election process. Derek T. Muller writes in this year's *Review* about *Brnovich v. Democratic National Committee*, in which Democrats challenged Arizona's changes to election laws banning so-called "ballot harvesting" as well as requiring all voters to vote in their own precincts. Arizona's attorney general Mark Brnovich is himself a past contributor to the *Review* and a speaker at the Constitution Day symposium.

"We are in a time of public skepticism over elections," explains Muller. "The losing side doubts the fairness of the outcome, attributing the loss to suppression, fraud, foreign

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Cato News Notes

WELCOME TO THE TEAM

Cato continues to bring new talent on board to further its mission of individual liberty, limited government, free markets, and peace. Recent additions include

Norbert Michel as vice president and director of the Center for Monetary and Financial Alternatives, Colleen Hroncich as a policy analyst in the Center for Educational Freedom, Gabriella Beaumont-Smith as an analyst in the Herbert A. Stiefel Center for Trade Policy Studies, Faith Jablokow as Cato's new marketing coordinator, and Alexandra Perez as health policy project manager. In addition, Mark Calabria is returning to Cato as a senior adviser. Calabria was previously Cato's director of financial regulation studies before serving as chief economist to Vice President Mike Pence and then as director of the Federal Housing Finance Agency.

FREEDOM SWAG

As the holidays approach, you can find the perfect gift for any lover of liberty (including yourself!) through Cato's partnership with Lands' End, offering Cato-branded merchandise including sweaters, hats, bags, and shirts. Cato apparel can be found at Cato.org/landsend.

Michael F. Cannon (top), Cato's director of health policy studies, moderates a forum on the 25th anniversary of tax-free health savings accounts and their prospects for further improvement and expansion, with **Brian Blase** (left), former congressional and White House analyst, and **John C. Goodman** (right), the "father of HSAs."

The Thirteenth, Fourteenth, and Fifteenth Amendments radically rewrote the Constitution in the aftermath of the Civil War. In September, research fellow **Thomas A. Berry** (top) moderated a book forum with **Kurt Lash** (bottom) of the University of Richmond about his new collection of contemporary primary sources on their framing and ratification, *The Reconstruction Amendments: The Essential Documents.*

Ilya Shapiro, vice president and director of the Robert A. Levy Center for Constitutional Studies, addresses students at the Vanderbilt University Law School about proposals to alter or reform the Supreme Court.

Senior fellow **Justin Logan** (1) moderates a book forum for *Reign of Terror: How the 9/11 Era Destabilized America and Produced Trump* with the author **Spencer Ackerman** (2), contributing editor at *The Daily Beast*, with commentary from **Abigail R. Hall** (3) of Bellarmine University and **Erin M. Simpson** (4), co-host of the *Bombshell* podcast.

Corporate Welfare: Where's the Outrage? is a new documentary from Free to Choose Media, hosted by Cato senior fellow **Johan Norberg** (right) and featuring **John Allison** (left), former president of the Cato Institute and before that CEO of BB&T, one of the largest banks in the United States. The one-hour film examines the causes and consequences of big business subsidies, from the 2008 bailouts to so-called tax increment financing.

Continued from page 1

across racial lines, both in states that had eased ballot rules greatly in response to the pandemic and in those that had made minimal changes or tightened some rules.

One reason that suggests itself: in present-day America there just aren't many eligible persons who want to cast a ballot who are hindered from doing so. A September Morning Consult poll found that by a margin of 44 percent to 33 percent, more Americans thought current rules make it too easy rather than too difficult to vote, with Hispanics, often seen as a group especially vulnerable to strict rules, being split evenly 34–34 percent on the question.

Beyond that, we know less than we may think about which voters choose to stay home and why. For years, for example, it was accepted that high turnout helped Democrats. That was when Republicans were seen as more highly educated and affluent, more likely to have cars and flexible schedules, and sufficiently civic-minded to troop to the polls even on the rainiest day with the dullest choice of candidates. But these generalizations may be reversing. Today the Democrats as a party are more educated and affluent, while Republicans may rely more on the sorts of disaffected, low-attachment voters who may sit out elections unless they connect on a gut level with some candidate. Once past the top of the ticket, Republican candidates did relatively well in 2020's environment of super-high turnout.

SOLUTIONS IN SEARCH OF A PROBLEM

It's not as if either side can claim vindication. Remember when critics predicted that mail-in voting, drop-off boxes, and the like would enable a wave of fraud in 2020? There's no evidence at all that that happened.

As we know, former president Donald Trump reacted to his loss with absurd claims of voter fraud, relying on amateurs who said things that he wanted to hear rather than on professionals with experience in detecting tampering. By now these claims have been refuted so thoroughly that they make for an anchor weighing down more reasoned advocacy of ballot integrity. Recently, an attempt to recount the Arizona vote confirmed that Joe Biden won the state, coincident with revelations that the Trump campaign had internally concluded that there was no truth to wild claims of fraud involving Dominion voting machines, even as it allowed its allies to spread those claims. By humoring Trump allies' falsehoods about last November's count, many national GOP figures have left themselves with scant credibility on the topic.

> "There seems to be a race on both sides to jettison credibility."

But there seems to be a race on both sides to jettison credibility. President Biden demagogically attacked as "Jim Crow on steroids" a bland, middle-of-the-road Georgia election bill that had fairly permissive provisions by nationwide standards. The measure liberalized access to early voting and other alternative ballot methods and sought to address the genuine problem of long lines at some city polling places. A much-assailed provision against giving items of value to electors in line turned out to closely resemble similar, uncontroversial language on the books in New York.

Much of the press hasn't helped, following activists' lead by lumping together a wide range of rule changes as restrictions on "ballot access." Thus, if a state had moved from no early voting at all before the pandemic to 15 days of it at the height, and then proposed to retreat to 10 days' worth next time to reflect more normal conditions, it would end up on a list of states that had supposedly restricted voting rights.

The drumbeat of voter suppression claims helped in the campaign for Congress to pass the so-called For the People Act, or H.R. 1/S. 1, an omnibus bill that proposed an extraordinarily ambitious federal power grab over election law, among many other topics. The bill was assembled from elements—for example, replacing the bipartisan structure of the Federal Election Commission with one-party control—that assured that even the most moderate and pragmatic Republicans would oppose it. (After passing the House on party lines, it foundered in the Senate.)

2020 AND BEYOND

A libertarian's nightmare, H.R. 1 was full of affronts to the Constitution, from federalism-mangling to separation-of-powers problems to likely problems with the Electors Clause, which reserves to state legislatures the power to prescribe how presidential electors are appointed, and the Qualifications Clause, which states that the electors (voters) in House elections "in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature," and does not by its terms bestow on Congress a power to broaden qualifications beyond that. Notably, it also menaced First Amendment liberties, greatly expanding the definitions of "electioneering" and "public communication" so as to chill the speech of nonprofits that speak out on legislation. (It even contained a provision seeking to regulate ads in newspapers and on other media that a federal appeals court *had already struck down* as a violation of the First Amendment.) To top it all, much of the press lazily went along with sponsors' description of it as a "voting rights" bill.

What I'd like to point out about H.R. 1, however, is not its sheer badness but its stuck-in-amber obsoleteness. Cobbled

together from years' worth of progressive messaging bills (Big Money influence! Foreign tampering!), it had virtually no provisions meant to respond to the 2020 election and its aftermath.

And yet, as someone has observed, the proximate threat to the health of American democracy now relates far less to the *casting* than to the *counting* of votes. As University of Chicago law professor William Baude warns, "After the 2020 presidential election, the peaceful transfer of power can no longer be taken for granted." We may argue all day about whether same-day registration should be allowed, ballot lockboxes continuously supervised, and so forth. "But all of those ballots are wasted paper unless the winner takes power and the loser does not."

For the benefit of anyone awakening from a long coma, here's what the country went through between Election Day 2020 and Inauguration Day 2021: A president defeated for reelection refused to acknowledge his loss, cried fraud without any reasonable basis, and launched a vain effort to overturn the result through both regular and irregular channels. He and his supporters put various actors—state legislatures and election officials, Congress, the vice president—under pressure to stray from their legally and constitutionally prescribed roles and duties. Most of them resisted that pressure, and the sort of constitutional crisis that would have resulted from a seriously contested succession was averted, with some help from timely judicial rulings.

The lines held. But much depended on the willingness of secretaries of state, election administrators, and other officials to do the right thing. Can we count on that happening next time? And how long can the United States avoid political destabilization or even violence if leaders of both parties regularly portray the other side as intent on stealing or rigging elections, with the result that losses at the polls are rejected as illegitimate and illegal?

> "Another high priority should be to revisit the Electoral Count Act."

FACING THE REAL THREAT

The most critical short-term goal of election-law reform should be to prevent a succession crisis: a situation where control of the presidency is seriously disputed between multiple claimants. That includes measures to shore up the legal and factual certainty of election outcomes while avoiding the sort of demonization and conspiracy talk that encourages political factions to view their adversaries' wins as illegitimate.

A focused defense of electoral institutions might include ballot security measures aimed at ensuring vote counts are fully (as opposed to just mostly) backed by checkable paper trails; reform of state procedures, following the lead of states like Florida, to provide real election-night vote counts and thus lay to rest suspicions that late-reporting cities might have "dumped" anything; anti-hacking safeguards; and steps to clarify the duties, and if necessary narrow the discretion, of state canvassing boards and other bodies in charge of counting.

Another high priority should be to revisit the Electoral Count Act of 1887, a well-intentioned but imperfect law enacted as a response to the ultra-contentious Hayes–Tilden contest a decade earlier in which states had sent conflicting slates of electors to the Capitol. The act laid out rules meant to govern how Congress should address disputes, but its text leaves imprecisions and uncertainties that could use tightening up before the next Electoral College round. It also makes it too easy for partisans to mount constitutionally dubious objections, effectively vesting in Congress more discretion over the results than the Constitution grants.

Under the Electoral Count Act, objections that can delay the process can be filed by as few as one House and one Senate member; a higher threshold would make sense. The act also fails to take advantage of opportunities to clarify that, for example, further objections are out of order if a state has certified a slate of electors without challenge under its own law.

We should also keep an eye on state-level proposals to change how election officials are appointed or removed. But a discerning eye is called for here. It's true that supporters of the former president have filed some bills in state legislatures baldly aimed at helping get their way next time in the Electoral College even if that means disregarding the will of a voter majority. But it only takes one backbencher to introduce a bill, and the awful bills tend not to make it out of committee. Removal of election officials on legitimate grounds such as malfeasance is sometimes necessary and proper, and the last thing we should want is some new federal law promoted as keeping rogue states from removing honest election administrators that also prevents honest states from removing rogue election administrators.

REAL SOLUTIONS

Libertarians, it seems to me, have some useful advice to give election reformers, even beyond the basic "make sure you don't violate the Constitution."

Don't centralize control in Washington, DC. The Framers wisely left election practice decentralized, with most of the work left to obscure local officials such as county canvassing boards and armies of community volunteers. It's true that Congress can prescribe some uniform rules, such as by setting the date for Election Day, and it's also true that the Constitution

adds some further constraints, such as equal protection and noninfringement of the right to vote on the basis of race or sex.

However frustrating it may be to centralizers and systemizers, this decentralization has in fact proved a source of deep resilience. Aside from fostering gradual and piecemeal innovation, it means that there is no figure or agency in Washington that can start bossing around local election officials generally and on short notice. By not entrusting running elections to a single central agency, we have avoided the danger, as economist Steven Landsburg has put it, "of centralizing the power to decide who will yield power."

Technology itself isn't the enemy. Low-tech voting methods aren't intrinsically virtuous or accurate. One time-honored method of verification that regularly shows its creakiness, for example, is signature matching. Colorado, a vote-by-mail state, rejected 29,000 ballots last fall (about 1 in 112) because the mailed signatures didn't seem to match those on file. (Most of the voters got a second chance.) While it seems intuitive, studies show that signature matching is wildly unreliable, bordering on pseudoscience. An individual's signature can vary by a lot, and election bureaucrats are no handwriting experts. While the value of a paper trail is real, fields like banking and inventory control may have much to teach about security and authentication.

> "When good faith is assumed, there's a lot of room for agreement."

Simple is often best. In confronting the genuine evil of gerrymandering, for example, progressive reformers these days tend to reach for complicated mandates designed by academics (as with the briefly hyped "efficiency gap" test) whose assumptions are opaque to nonspecialists and perhaps manipulable. Many Republicans, meanwhile, seem to be content denying that gerrymandering is much of an evil at all. In between, however, much good can be done by adopting simple, long-recognized rules of good districting based on concepts like compactness and respect for county boundaries. These are often understandable to both laypersons and judges, can be made the subject of objective formulas by applying simple math methods, and, as an empirical matter, seem to greatly reduce (although not fully eliminate) the range of discretion within which line drawers can manage to help their political allies and punish their enemies.

Turn down the temperature. Election administration is an imperfect art with plenty of genuine tradeoffs. Don't treat ordinary disagreements as attempts to "rig" results. Conservatives should not act as if there is something wrong with the goal of making voting more convenient. (People like convenience! Not everyone has the same schedule, time demands, or car access.) Liberals should be willing to concede that a practice like "ballot harvesting," in which a single operative can be paid to collect hundreds of absentee ballots, does raise genuine concerns relating to voter privacy, undue pressure, and, yes, security.

When good faith is assumed, there's a lot of room for agreement. Florida, whose election laws were once the butt of national jokes following the Bush-Gore election, is now something of a national leader in good practice. In March, the heavily Republican Kentucky legislature passed by near-unanimous margins a bill that, to quote the *Courier-Journal*, "will make three days of widespread early voting a regular part of the state's future elections and expand people's access to the ballot in other ways while also instituting new security measures."

America has weathered election crises before, and it can get past this one. ■

Continued from page 3

influence, or late-breaking changes to laws—some 'true reason' outside the legitimate political process why a preferred candidate failed." Such was the case in *Brnovich*, in which relatively mundane changes to election law, reflecting common practices in many other states, were challenged as violating the Voting Rights Act due to claimed racially discriminatory intent. Six justices on the Supreme Court disagreed, ruling in Arizona's favor. Mueller observes that "I think it is fair to say that *Brnovich* is the latest in a line of cases suggesting that the federal courts should play a smaller role in the patrolling of how states administer elections."

Each year's Constitution Day symposium also features the Annual B. Kenneth Simon Lecture, a keynote address offered by a distinguished scholar or public intellectual and printed in the next year's *Review*. Last year's speaker was Judge Don R. Willett of the U.S. Court of Appeals for the Fifth Circuit, who addressed civic literacy.

This year's Simon lecturer was Rachel E. Barkow of New York University School of Law, who (among her many accomplishments) clerked for Justice Antonin Scalia as his so-called counter-clerk, a progressive-minded devil's advocate to point out any faults resulting from partisan bias, and served as an appointee by President Obama on the U.S. Sentencing Commission. Barkow addressed America's broken criminal justice system and how the Supreme Court has contributed to mass incarceration (see Policy Forum, page 9). ■

Cato project delivers its final report

How to Fix California

To the rest of the country and the world, California often conjures images of wealth, glamour, and natural beauty: home to Silicon Valley, Hollywood, and Beverly Hills. Those images notwithstanding, the Golden State has the highest poverty rate in the nation, a chronic homelessness crisis, and a widening chasm between the ultrarich and everyone else. All this, in spite of (or to some degree, because of) California having some of the nation's most extensive tax-and-spend policies on welfare and social programs.

Why is America's most populous state, the one that more than any other exemplifies the American dream around the world, stuck in such dire straits? To answer that question, in spring 2019, Cato launched the Project on Poverty and Inequality in California under the directorship of Cato senior fellow Michael D. Tanner.

Drawing on Cato's decades of research on fighting poverty and producing shared prosperity and human flourishing, Tanner has brought together experts and policymakers to produce new ideas for curing what ails California. The results of that effort have now been compiled into the project's final report, released on October 21.

Alongside a comprehensive and data-intensive overview of the current situation, the report offers 24 specific proposals. Among the report's recommendations is to end exclusionary zoning, the notoriously restrictive land-use policies that have both contributed to a severe housing shortage and perpetuated patterns of racial segregation. However, the state just took a major step in the right direction: abolishing single-family zoning statewide and enabling all residential property owners to, at the very least, split their parcels in two or construct duplexes on their lots. Tanner and other experts assembled by the Project on Poverty and Inequality in California held both public events and private meetings with the sponsors of the legislation, known as Senate Bill 9.

In October, Cato hosted two conferences in California to mark the release of the final report. *Top:* In Los Angeles, **Michael D. Tanner** (left) moderates a panel discussion with **Will Swaim**, president of the California Policy Center; **Michael Lawson**, president of the Los Angeles Urban League; and **Henry Gascon**, director of policy and programs for United Ways of California. *Bottom left:* Supervisor **Jeff Hewitt** (L-Riverside County) discusses the report in Sacramento. *Bottom right:* An attendee participates in a question-and-answer session.

Another topic tackled by the project is criminal justice reform, on which California has been making good progress but still has much more to do. Key recommendations for further progress include drug decriminalization, the decriminalization of sex work and traffic infractions, and the rolling back of recent laws that have criminalized flavored tobacco products and increased the minimum age for tobacco consumption.

On education, Tanner focuses on the systemic failures of California's public schools, notorious for their widely varying quality. Proposed fixes include removing barriers to the growth of charter schools and other alternative models, establishing a tuition tax credit program to finance school choice scholarships for low-income families, and restructuring a bloated pension system that has been consuming school budgets.

On welfare and inclusive growth, the report outlines a number of changes to help Californians stuck in poverty, including rolling back needless occupational licensing; deregulating childcare to reduce costs and increase supply; abolishing asset tests for welfare programs, which discourage savings; and prioritizing cash payments over in-kind benefits and indirect payments.

"If the goal of public policy is to enable every Californian to flourish and rise as far as their talents will take them, it is not nearly enough to simply provide social welfare benefits to those in need," according to Tanner. "Rather, California must remove those policy barriers to economic participation and individual achievement that push people into poverty." ■

THE PROJECT ON POVERTY AND INEQUALITY IN CALIFORNIA FINAL REPORT AND OTHER RELATED PUBLICATIONS AND STUDIES ARE AVAILABLE AT CATO.ORG. THE PROJECT WAS MADE POSSIBLE IN PART BY A GENEROUS GRANT FROM DAVID STEFFY, A HEALTH CARE ENTREPRENEUR AND PHILANTHROPIST, THROUGH THE ORANGE COUNTY COMMUNITY FOUNDATION.

Baby Boom at Cato

In 1986, when baby boomers were rising to prominence, *Newsweek* devoted a full page to Cato as "A Baby Boomers' Think Tank." But now there's a new baby boom at Cato. Many of our Cato colleagues welcomed new family members during 2021.


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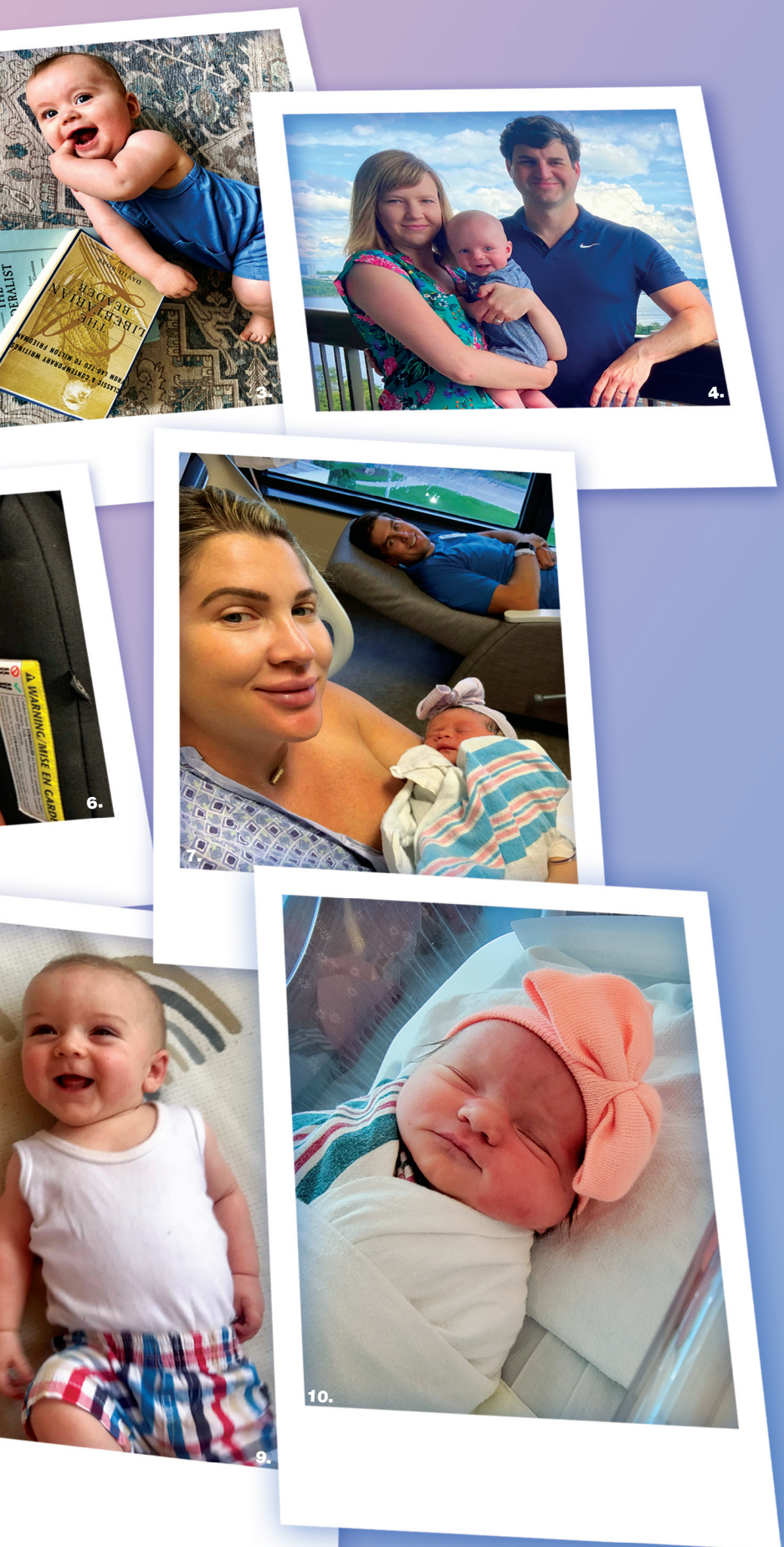


1. Frederick Ramaswami Navamurti, born June 14th and named for his great-great-grandfather Indian politician and freedom fighter Sir C. P. Ramaswami Aiyer and noted abolitionist & women's rights advocate Frederick Douglass. His parents, Victor I. Nava and Cato senior digital outreach manager **Kat Murti**, met as Cato interns in Fall 2011.

2. Senior fellow **Mustafa Akyol** and his wife Rania welcomed baby Danin on April 19, the date on which the embattled farmers stood/And fired the shot heard round the world.

3. **Maria Santos Bier**, manager of corporate and foundation relations, and **David Bier**, research fellow in immigration studies, celebrated the birth of Ezekiel on what his mother called "an otherwise dull and uneventful day here in DC," January 6.

4. **Corie Whalen**, director of media relations,and her husband Kenny Stein welcomed baby Max on March 12.

5. **Chelsea Follett**, managing editor of HumanProgress.org, and husband Andrew welcomed their second child, William.

6. Baby Clara joined two brothers in the home of **Alex Nowrasteh**, director of immigration studies and the Herbert A. Stiefel Center for Trade Policy Studies, and his wife Ladan.

7. Baby Lane joined Director of Development **Jenna Huhn** and husband Wes Eppard in October.

8. **Gabriela Calderon de Burgos**, editor of ElCato.org, and her husband Luis Francisco welcomed Luis to their family, joining three older sisters. He quickly dressed as Captain America and visited the Washington Mall.

9. Research fellow **Will Yeatman** and his wife Nicole added a second son, Mickey, to their family.

10. Just before *Cato Policy Report* went to press, accounting coordinator **Melanie Liebo** and her husband Gary welcomed Irene to their family.

Quarterly periodical has featured leading lights on policy and economics

Cato Journal Ends Four-Decade Run

After more than 40 years, the *Cato Journal* is ending publication with the Fall 2021 issue. Over the decades, the "interdisciplinary journal of public policy analysis"—as its masthead proclaims—has featured scholarly articles on monetary economics and fiscal policy as well as articles on a wide range of other policy issues, from immigration to financial regulations to the COVID-19 pandemic.

As its editor James A. Dorn explains, the *Cato Journal*'s "goal has always been to publish articles that meet high scholarly standards, that are well written and accessible to a wide readership, and that offer market-liberal solutions to complex policy issues."

The *Cato Journal* has long appeared on library and bookstore shelves alongside the nation's major periodicals, and has featured luminaries across numerous disciplines. Highlights from past issues include Nobel laureates James M. Buchanan on the liberal constitution, Milton Friedman on market-based social development, Vernon Smith on the ideas of pioneering economist Ludwig von Mises, and Douglass C. North on institutions and economic development. Federal Reserve chairman Alan Greenspan contributed a piece on the current account deficit, his successor Ben Bernanke wrote about globalization and monetary policy, and then-judge Antonin Scalia squared off with economist Richard Epstein over the role of economic liberty in the judiciary. Other notable contributors have included Anna J. Schwartz, Justin Yifu Lin, Carolyn Weaver, Gertrude Schroeder, and Israel Kirzner.

The *Cato Journal* has also featured book reviews, most recently under its book review editor Trevor Burrus, with critical analysis of some of the most important contemporary works. Amanda Griffiths, editorial director of the Center for Monetary and Financial Alternatives, has most recently served as managing editor.

James A. Dorn, longtime editor of the *Cato Journal*, presents an issue to **F. A. Hayek** (1899–1992), Nobel laureate and Cato distinguished senior fellow.

Clive Crook of *The Economist* praised the *Cato Journal* as "the most consistently interesting and provocative journal of its kind." Milton Friedman considered it to be "exceptional in consistently publishing articles that combine scholarly excellence with policy relevance." The final issue includes articles on the recent internet-driven spike in GameStop stock, how the pandemic has affected the use of cash, and the effects of immigration on entrepreneurship and innovation.

Dorn, in the editor's note for the final issue, expresses his gratitude for everyone who has made the *Cato Journal* possible: "I thank all the authors I have had the privilege of working with over the years to establish the *CJ* as one of the leading policy journals. Special thanks go to Ed Crane, who founded the *Cato Journal* in 1981, and to Arthur Seldon, who founded *Economic Affairs* in 1980. He was a superb editor and my mentor. . . . I also wish to thank all those who have served on the editorial board and the many referees I have relied on to maintain the scholarly rigor of the *CJ*. Bill Niskanen was especially helpful and diligent in the review process. . . . Although the *Cato Journal* is being sunset, it will continue to be available online and serve as a valuable research tool for years to come."

Going forward, Cato is launching a new quarterly journal, *Free Society*, under the editorship of Cato senior fellow and books editor Jason Kuznicki. The first issue of *Free Society* is slated to be published in March of next year, and feature commentary on politics, economics, and culture from a libertarian perspective. ■

Supreme Injustice: How the Court Has Enabled Mass Incarceration

Rachel E. Barkow is the vice dean and Charles Seligson Professor of Law as well as the faculty director for the Center on the Administration of Criminal Law at New York University School of Law. She previously clerked for Justice Antonin Scalia and was appointed by President Obama to the U.S. Sentencing Commission. In September, she delivered the Annual B. Kenneth Simon Lecture at the Cato Institute's 20th Annual Constitution Day Symposium, where she addressed how the Supreme Court has enabled mass incarceration and has effectively gutted the carefully crafted protections the Framers wrote into the Constitution to limit the government's power to impose criminal punishments.

I'm especially happy to spend Constitution Day here at Cato because of the great work Cato does generally defending constitutional rights, and specifically because of Cato's excellent work on criminal justice. Cato is one of the leaders in defending the rights I'm here to talk about, and its work has been outstanding.

Unfortunately, that outstanding defense of the Constitution contrasts pretty starkly with what we see from the Supreme Court. The court has engaged in an almost complete abdication to the government in criminal proceedings, in spite of clear constitutional language and history. That's the topic of my lecture today.

There is plenty of blame to go around for America's rise in mass incarceration. But I'm going to focus on understanding the Supreme Court's role in that because it really is one of the architects of mass incarceration. They might not have intended it, but they have made sure that the foundation of mass incarceration has stayed firmly in place.

America used to look much like the rest of the world when it came to incarceration and the use of criminal enforcement. Until the 1970s, we had stable incarceration rates that looked like other parts of the world, or at least other Western democracies.

Then our use of incarceration started to explode. We now lead the world both in the total number of people who are incarcerated, which is right around 2.2 million people, and in the rate of incarceration per capita. We currently have an incarceration rate of 830 for every 100,000 people. That's more than five times what it was in 1972 when we started this record climb upward. And it's 5 to 10 times higher than other industrialized countries. We have less than 5 percent of the world's population but almost a quarter of the world's prisoners.

Those numbers are shocking, but they're just the tip of the iceberg. One out of every 38 people in the United States is under some form of criminal justice supervision. They're either incarcerated, on probation, or on parole. And in some states and communities, those rates are even higher. For example, in Georgia, 1 out of every 18 people is under some form of state control.

We now live in a country where one out of every three adults has a criminal record. For every 17 people born in 2001, 1 of them will go to prison or jail. It's almost unfathomable, the sheer scale of it, and it's not falling proportionately across the population. Black people bear a disproportionate share of it. African Americans make up a third of the people incarcerated, even though they're only 13.4 percent of the U.S. population. One-third of Black men have a felony conviction, and Black adults are six times more likely to be incarcerated than white adults.

And here too, those national numbers, as shocking as they are, can obscure even more alarming statistics if you look in particular communities. Here in the District of Columbia, more than 75 percent of Black men can be expected to be incarcerated at some point in their lifetime. At our current pace, one out of every three Black men in the country can expect to be incarcerated during their lifetime.

Hopefully, these numbers paint a picture for you that shows you exactly how broad the sweep of criminal punishment is in America, just how many people it's reaching. And I could talk to you about the thousands upon thousands of collateral consequences that are imposed upon people who have convictions, the inhumane conditions that exist in prisons and jails around the country, the lifelong negative consequences.

But instead of giving you the sweep of all this in all its tragic glory, I want to turn to that question: What does the Supreme Court have to do with any of this? What is its role? And before I get to that, I think I need to start with the Constitution. It's Constitution Day, after all. And anyway, that's how I start pretty much every question.

You may be thinking that the problem is just that the Framers did not anticipate the government would abuse these coercive powers and so the Constitution just doesn't speak to this. And if that were the case, it

certainly wouldn't be the Supreme Court's fault that this all happened under its watch. But the Constitution is not silent on governmental overreach in criminal cases. The Framers didn't let state power in criminal cases slip through the constitutional cracks. It's exactly the opposite.

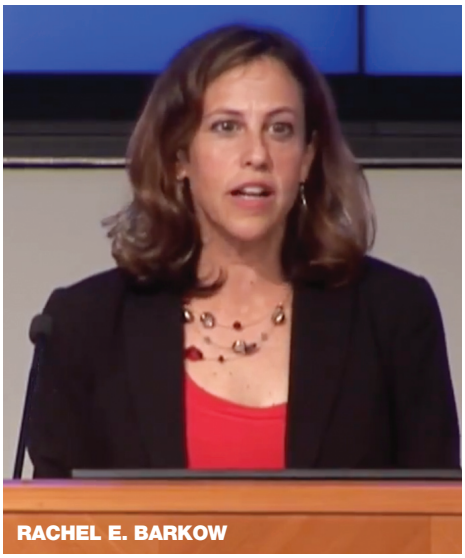
The Framers of our Constitution were well aware of how a state could try to abuse its coercive criminal powers. They knew about the excesses of the "Bloody Code" in England. They feared that majorities would seek to oppress their opponents through the use of criminal law and punishments. They worried obsessively about how a police state could deprive people of their liberty.

Far from being silent on checking the government's power in criminal matters, the Constitution, I would say, is obsessed with it. In fact, one of the animating features is its preoccupation with regulating the government when it comes to criminal powers. Even before the Bill of Rights, the Constitution provided protection for people who had been accused of crimes in the very structural provisions that the document sets out.

The Framers worried about what would happen if you had a Congress that tried to single out their political enemies and disfavored individuals through criminal laws that would target particular people. Alexander Hamilton observed that the creation of crimes after the commission of the fact and the practice of arbitrary imprisonments, "have been, in all ages, the favorite and most formidable instruments of tyranny." They were worried about it. Article I prohibits bills of attainder that target particular people and ex post facto laws that attempt to make things criminal after the fact.

Article II vests the president with the ability to give pardons for all federal offenses except in cases of impeachment. And the Supreme Court has told us this power exists to afford relief from undue harshness or evident mistakes in the operation or enforcement of the criminal law. In other words, the Framers were aware they needed to give the president a way to check government overreach when there was excess punishment and punitiveness.

But what would happen if the legislature and the executive branch were to work together to single out particular groups for prosecution or engage in overreach? The



RACHEL E. BARKOW

> "The Framers didn't think judges would be sufficient protection."

Constitution recognizes this danger, too, and it relies on the judiciary to be a key check on the political branches. Before people can be convicted of a crime, they're entitled to judicial process. We also have federal judges with life tenure and salary protections. In theory, that should give them some independence from the legislature and the executive to ensure that they make fair and impartial decisions.

But the Framers didn't stop there, and this part is critical. They did not trust judges alone. Although Article III judges are relatively more independent than Congress or the executive branch, they are still part of the government. They get government salaries and government pensions. They are part of the government and they're appointed through a process that favors governmental connections. They are going to be naturally sympathetic to parties in power because they're drawn from that same pool.

The Constitution recognizes that. It worries about that. The Framers didn't think judges would be sufficient protection against the possibility of state abuse in criminal cases. And so, the Constitution provides in Article III that the trial of all crimes must be by jury.

To our modern sensibilities, with so few jury trials held today, this may seem antiquated, but it was no afterthought. The Framers did not want anyone to be subject to governmental punishment without agreement from ordinary people. And under the Constitution's structure, the jury would have a bold power to protect people because of the prohibition on double jeopardy. If jurors acquit, that person is free, period. The intention was this would act as a check on all three branches of government.

In addition to all of that, in the Bill of Rights, the Framers once again focused like a laser on criminal excess. Four of the first 10 amendments deal explicitly with the criminal process. The Fourth Amendment regulates the state's policing and investigative powers. The Fifth Amendment acts as a check on the state's executive powers by providing for grand juries and prohibiting the state from prosecuting people twice for the same offense. Its Due Process Clause requires the government to follow proper process before depriving somebody of life, liberty, or property.

The Sixth Amendment, once again, brings up the jury, making clear that they'll be drawn from the community where a

crime occurs. In addition, the Sixth Amendment has a bunch of other rights: speedy and public trial, notice of criminal charges, the right to confront the witnesses against you, the right to the assistance of counsel. And then the Eighth Amendment regulates legislative judgments on punishment by prohibiting cruel and unusual ones and excessive fines.

It's hard to imagine a Constitution that could possibly be more concerned with state overreach in criminal matters. We see constitutional regulation of all aspects of the government's criminal power from investigation to prosecution, from adjudication to the legislation defining punishment.

It's not the case that the Constitution is failing to protect against the government's excess in criminal matters. It's a failure of its guardian, the Supreme Court. The court has failed to protect against government excess through a host of decisions that, in my view, don't bear scrutiny if you care about the Constitution's text, its original meaning, or just plain good government. These decisions only really make sense if your animating principle is an almost pathological deference to the government.

How did we end up with so many people incarcerated? It's an equation with two main factors. We're admitting more people into prisons and jails and/or they're staying longer. It's those two things working together. So, obviously for admissions, the more people that you're charging with crimes and convicting, the more admissions you will see. And then the longer sentences are, the longer they stay. So that means that on any given day, more people will be incarcerated because they're there for longer periods of time. The Supreme Court has been a critical player both in opening floodgates for admissions and in permitting lengthy sentences.

I'm going to start with the court's role in the admissions boom, the meteoric rise in incarceration that began in the early 1970s. It coincides with the Supreme Court giving its official imprimatur to coercive bargaining tactics by prosecutors. These tactics allow prosecutors to threaten people with punishments orders of magnitude greater if those people have the audacity to invoke their right to trial by jury.

Now, colloquially, this is known as plea bargaining, but that is a grotesque misnomer. It's really anything but a bargain for the defendants. It's an absolutely critical condition for mass incarceration because

> “How did we end up with so many people incarcerated?”

you cannot have mass incarceration unless you have mass case processing. And the only way that you can process the number of criminal cases we do in America is if you do away with jury trials.

Why would defendants give up the benefit of a trial by a jury of their peers, their right to make sure that the government can prove its case? Why give up the gold standard that the Constitution and the Framers took such great pains to include? The answer is that defendants aren't giving this up willingly. They're coerced. Prosecutors are threatening them with longer punishments if they go to trial. And as more and more laws have created mandatory minimums, prosecutors have basically full control over exactly what that risk of exposure is. If a defendant is convicted, that minimum is going to kick in no matter what the judge thinks. And as maximums get higher, the prosecutor's charging decisions also dictate somebody's maximum exposure.

In 1971, the Supreme Court not only gave official recognition to the rise in this plea negotiation bargaining in *Santobello v. New York*, the justices actually praised it. They viewed it as a necessity. They observed that if every criminal charge were subjected to a full-scale trial, the states and the federal government would need to multiply by many times the number of judges and court facilities. I'll give them some points for candor there. They basically admit we have to keep things going as they are because of how difficult life would be for judges if we had to have all these trials. That would make things really, really hard for them. What an inconvenience the jury would become!

That's how the court plays a role in having more and more people admitted to our prisons, but it also has played a role in that second factor, which is the length of sentence. And here the court has just completely failed to police sentence length, again in derogation of its duty under the Constitution, which has an amendment dedicated to this.

A majority of the justices agree that the Eighth Amendment does prohibit excessively long sentences. Somewhat frighteningly and in contradiction of language and history, we've had at least three justices—Scalia, Thomas, and Alito—who've thought no sentence of incarceration can be disproportionate, but thankfully a majority has not bought into that. A majority of the court has said yes, you can have excessively long sentences that violate the Constitution.

But the test the court uses to determine whether a sentence is excessively long is effectively impossible to satisfy. In fact, no sentence has ever been struck down on this test, even in a country where you can get a life sentence for writing a forged check for $88.30. The court uses a test from a concurring opinion of Justice Kennedy in a case called *Harmelin v. Michigan*. Under that test, if you want to challenge your sentence under the Eighth Amendment, you have to show

the sentence is grossly disproportionate. What's "grossly disproportionate?" In the court's view that means you have to show that the state has no reasonable basis for believing it will serve a penological goal.

But penological goals can include deterrence, rehabilitation, retribution. And then this one's the kicker of why you can really never win: incapacitation. If the state says we need to sentence you to a really long time to incapacitate you for a really long time, then the state has a reasonable basis. That's how you get a Supreme Court and lower court decisions that say, for example, it's okay to give someone a 25-years-to-life sentence for stealing a slice of pizza, because that's how you incapacitate them from stealing more pizza.

Here are some real Eighth Amendment cases that the Supreme Court has decided: It's okay to have a mandatory life sentence for someone who has committed three low-level theft offenses that cumulatively total less than $230. It's okay to have a mandatory life sentence without parole for a defendant who had no prior record, when it was his first offense and he possessed 672 grams of cocaine. It's okay to have a 25-years-to-life sentence for someone under California's three strikes law who stole three golf clubs because the defendant had a prior record that included other burglaries and a robbery.

The Supreme Court has effectively taken the judiciary out of the business of checking the state when it comes to long punishments. The court knows how to give greater scrutiny for proportionality because it's done so in other contexts, including its death penalty cases. Its failure to do it in a noncapital context, even though the Constitution is no less relevant in such cases, is really one of the worst examples of a judiciary not enforcing an explicit, constitutional guarantee.

How did we get here? One part of the problem is that there is always a majority on the court that, no matter what their ideological background or their theory of jurisprudence, have a background of representing the government. It is a bench that is drawn overwhelmingly from the pool of government lawyers. These are people who have spent their careers defending and representing the government as prosecutors, or in the Solicitor General's office, or in other positions in the Department of Justice.

> "We have rarely seen justices who have represented regular people."

We have rarely seen justices who have represented regular people, who've seen their stories up close, who've witnessed the toll of governmental abuse and misconduct. Rarer still would be justices who have defended people who are accused of crimes. So, we get a skewed perspective, I think, from justices more inclined to see themselves in the government lawyers who are arguing these cases.

Now, I don't think there are any easy answers to this, but I do want to emphasize in closing one thing that I think is a place to start: diversifying the professional background of the people who serve as judges. Because currently we have a bench that is dominated, just absolutely dominated, by former prosecutors and lawyers who've represented the government. No one has done better research on this than Cato. There is an excellent report by Clark Neily, who looked at the background of federal judges and found that 44 percent were former government advocates compared to just over 6 percent who were advocates for individuals against the government. That's a seven-to-one imbalance. And if we look at those with criminal law experience, how many prosecutors versus defense lawyers, it's a ratio of four to one.

People who care about criminal law need to be vigilant here. Judges really matter, these appointments really matter, and it matters what perspective people are bringing to the bench. ■

Mustafa Akyol, Cato senior fellow, speaks at a Furman University seminar in October on his work reviving liberalism in the Muslim world, including his latest book for Libertarianism.org, *Why, as a Muslim, I Defend Liberty*.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In September, the Center for Monetary and Financial Alternatives hosted the 2021 Cato Summit on Financial Regulation, "Fair Shares: Retail Investors and the Future of Equities Markets." Participants included: 1. **Jennifer J. Schulp**, director of financial regulation studies, 2. SEC Commissioner **Elad Roisman**, 3. Yale University's **Jonathan R. Macey**, Cato adjunct scholar, 4. **Urska Velikonja** of Georgetown University Law Center.

Cato Calendar

POPULISM AND THE FUTURE OF THE FED
39th Annual Monetary Conference
Washington • Cato Institute
November 18, 2021
Speakers include Barry Eichengreen, Raghuram Rajan, Rosa María Lastra, George Selgin, Otmar Issing, and John Cochrane.

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.

AUGUST 13: *Reign of Terror: How the 9/11 Era Destabilized America and Produced Trump*

AUGUST 23: Health Savings Accounts: 25 Years of Restoring Patients' Rights

SEPTEMBER 8: Telehealth's Moment: How States Are Leading the Way

SEPTEMBER 9: Fair Shares: Retail Investors and the Future of Equities Markets

SEPTEMBER 15: *The Reconstruction Amendments: The Essential Documents*

SEPTEMBER 17: 20th Annual Constitution Day

SEPTEMBER 20: *Corporate Welfare: Where's the Outrage?*

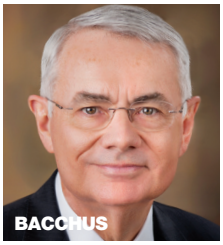
AUDIO AND VIDEO FOR MOST CATO EVENTS CAN BE FOUND ON THE CATO INSTITUTE WEBSITE AT CATO.ORG/EVENTS.

Yearning to Breathe Free

More than 86 million people legally immigrated to the United States between 1783 and 2019. In **"A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day"** (Policy Analysis no. 919), Andrew M. Baxter and Alex Nowrasteh review the history of U.S. immigration policy, including the legal controversies that empowered Congress with its plenary power over immigration and the historical policy decisions that still guide the U.S. immigration system.

GREEN TRADE BARRIERS

The European Commission has proposed a carbon border adjustment mechanism



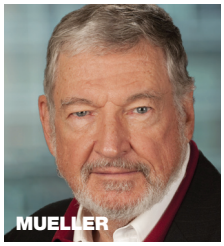
as part of its European Green Deal, requiring importers to purchase carbon emissions certificates for imports into the European Union. This attempt to fight climate change conflicts with the treaty obligations for free trade, as explained by James Bacchus in **"Legal Issues with the European Carbon Border Adjustment Mechanism"** (Briefing Paper no. 125).

SLOW BOAT FROM CHINA

Industrial policies aiming to have the state direct markets are now back in the spotlight in developed countries, such as in Europe and the United States. Many point to China as a supposed success story. But in **"Industrial Policy Implementation: Empirical Evidence from China's Shipbuilding Industry"** (Research Brief in Economic Policy no. 261), Panle Jia Barwick, Myrto Kalouptsidi, and Nahim Bin Zahur focus on China's shipbuilding industry and find that the case for industrial policy success is severely lacking and that interventionist policies and subsidies have generated massive market distortions.

INFORMED CONSENT

America's post-9/11 foreign policy has developed through a complicated interplay of elite policy goals and changes in public opinion. Combing through two decades of survey data, **"Public Opinion on War and Terror: Manipulated or Manipulating?,"** a new white paper by John Mueller, finds that it is difficult for elites to manipulate public opinion on issues of war and terrorism.



WORKERS OF THE WORLD

Should the government require large companies to include worker representatives on their boards of directors? The policy, popular in Europe, has not been adopted in the United States. In **"Labor in the Boardroom"** (Research Brief in Economic Policy no. 262), Simon Jäger and Benjamin Schoefer examine the results of such a requirement in Germany and find that it may lead to agency problems, stifle investment, and thus, ultimately, lower wages.

FAIR PLAY

On July 9, 2021, the Biden administration issued an executive order claiming that competition has weakened across U.S. industries owing to business consolidation and government inaction, enabling large companies to leverage monopoly power over workers, small businesses, and consumers. In **"The Biden Executive Order and Market Power"** (Briefing Paper no. 126), Jeffrey Miron and Pedro Braga Soares explain why those assumptions are flawed and are evidence of a basic misunderstanding of how market power works.

UNFORTUNATE SONS

The long-term effects of the Vietnam draft on the generation directly affected by it have been amply studied. Other studies have shown how shocks and policies that affect one generation can influence succeeding generations. In **"The**

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Intergenerational Effects of the Vietnam Draft on Risky Behaviors" (Research Brief in Economic Policy no. 263), Monica Deza and Alvaro Mezza merge those two strains of research to analyze the effects of fathers' draft eligibility status during the Vietnam era on their children's chance of risky behaviors such as substance abuse or juvenile delinquency.

HOUSES FOR YOU AND ME

California housing has become severely unaffordable. As of February 2021, the median California home price was nearly $700,000, the median condominium price was $515,000, and the median rent for the same month was $1,733. In **"Common-Sense Policy Reforms for California Housing"** (Policy Analysis no. 920), UCLA economist Lee Ohanian outlines the urgently needed changes to increase supply and bring down the sky-high cost of a place to live.

HERMIT KINGDOM

In response to nuclear and missile tests, the international community has tightened sanctions on North Korea. However, are these sanctions working? In **"Effects of Sanctions on North Korea's Refined Oil Prices"** (Research Brief in Economic Policy no. 264), Kyoochul Kim of the Korea Development Institute finds that while trade volumes have declined, the often-neglected measures of internal prices do not reflect the intended economic pain.

TAG AND RELEASE

Electronic monitoring—the well-known "ankle bracelets"—has long been in use as an alternative to incarceration. However, critics allege this less-harsh punishment is less effective at deterring crime. In **"Can Electronic Monitoring Reduce Reoffending?"** (Research Brief in Economic Policy no. 265), Jenny Williams and Donald Weatherburn find that the opposite is the case and that the use of electronic monitoring instead of incarceration drastically reduces recidivism rates.

SUFFER THE CHILDREN

Child tax credits have become increasingly popular on both the left and the right. It's no surprise that they're also generally popular with voters, who believe the concerns of parents and children are a high priority. However, these policies often amount to middle-class subsidies, and their benefits fail to reach children in low-income households who need them the most. That's the finding of **"Who Benefits from the Child Tax Credit?"** (Research Brief in Economic Policy no. 266), by Jacob Goldin and Katherine Michelmore.

ANGELS IN AMERICAN BUSINESS

The role of wealth in the economy is the focus of much policy debate. In **"How Wealth Fuels Growth: The Role of Angel Investment"** (Policy Analysis no. 921), Chris Edwards examines wealthy individuals as "angel" investors, who fund start-up businesses. He demonstrates how such investors provide a unique source of support for America's entrepreneurs, particularly in leading-edge industries.

A BETTER WORLD

Global standards of living have improved astronomically in the past century and a half, but debates over inequality persist. In **"Inequality beyond GDP: A Long View"** (Research Brief in Economic Policy no. 268), Leandro Prados de la Escosura challenges the conventional views of distribution and shows how relative inequality can increase, and has been increasing, at the same time that absolute measures of human welfare improve even for the poorest of the poor.

RACE AND POLICING

Have the Black Lives Matter protests had an effect on reducing the number of fatal interactions with police? Do such protests deter needed policing, spurring an increase in crime? In **"Black Lives Matter Protests, Fatal Police Interactions, and Crime"** (Research Brief in Economic Policy no. 267), Evelyn Skoy finds that protests are associated with a short-term decline in black fatalities from police interactions, but the effect is not persistent. At the same time, there was no correlation between protests and more crime, contrary to claims by conservatives about a hypothesized "Ferguson effect."

FAIR SEAS

Progressives care about mitigation of climate change, assisting the underprivileged, and a revived interest in antitrust measures to break perceived areas of corporate dominance. All these aims are impaired by the Jones Act, a notorious protectionist shipping law, according to Colin Grabow in a new study, **"The Progressive Case for Jones Act Reform."**

SEEN FROM SPACE

The historical legacy of institutions can have a major effect on present-day wealth. In **"Impact of Colonial Institutions on Economic Growth and Development in India: Evidence from Night Lights Data"** (Research Brief in Economic Policy no. 269), Priyaranjan Jha and Karan Talathi examine the long-term effects of British colonial institutions on overall economic development within India using satellite night lights data to compare areas that were once under direct rule versus those under indirect rule. ■

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"To Be Governed..."

IS THIS HOW IT WORKS IN THE CIVICS BOOKS?

Nearly 2,000 companies and organizations have lobbied Congress and the administration this year in an attempt to influence the contours of major new infrastructure spending, an effort that is sure to intensify now that the Senate is hoping to vote within days on their version of the $1 trillion public-works package. . . .

Those groups collectively have spent more than $426 million in their lobbying efforts, which includes trying to sway lawmakers and regulators on far more than just infrastructure, the center's data show. The activity reflects a dramatic uptick from the same period one year ago, when more than 1,300 lobbying operations sought to target Washington on infrastructure. . . .

This year alone, more than 260 companies and other entities large and small have hired new lobbying firms in Washington specifically on infrastructure.

—***Washington Post*, August 4, 2021**

IMAGINE HOW BAD THE OTHER CHOICES WERE

The appointment of [Pedro] Francke, whose politics are similar to those of Sen. Bernie Sanders (I-Vt.), [as economy minister] was considered essential to stop Peruvian markets from going into free fall.

—***Washington Post*, August 11, 2021**

TAX HIKES NOT RAPACIOUS ENOUGH FOR THE NEW YORK TIMES

House Democrats on Monday presented a plan to pay for their expansive social policy and climate change package by raising taxes by more than $2 trillion, largely on wealthy individuals and profitable corporations.

But the proposal, while substantial in scope, stopped well short of changes needed to dent the vast fortunes of tycoons like Jeff Bezos and Elon Musk. . . .

They focused on traditional ways of raising revenue: by raising tax rates on income rather than targeting wealth itself. . . .

In other areas, the committee appears to be making only glancing blows at the wealthiest Americans.

—***New York Times*, September 13, 2021**

WE MEANT WE WON'T TAX THE THINGS WE LIKE

The Biden administration, which has pledged not to increase taxes on households making under $400,000, has said that that promise applies to direct tax increases, not to corporate taxes. They have used the pledge to reject gas-tax increases, but view tobacco use as not a required cost for people to provide for their families, and thus say that those taxes aren't subject to the pledge.

—***Wall Street Journal*, September 14, 2021**

NOT THE ONES WHO HAVE TO PAY FOR IT

A universal basic income would give everyone more money.

—**Ezra Klein, *New York Times*, September 19, 2021**

MORE HOUSING WITHOUT BUILDING HOUSES

[Maryland gubernatorial candidate Douglas] Gansler advocated for renovating existing buildings into affordable housing rather than building entirely new units, citing concerns about urban sprawl.

"I don't think the answer is to build more houses," Gansler said. "There's plenty of houses out there."

—***Talbot Spy*, September 22, 2021**

NO DOUBT

Chip manufacturers . . . are also impatient for Congress to approve $52 billion in federal subsidies to boost domestic semiconductor manufacturing.

—***Washington Post*, September 24, 2021**

ONLY 58 MINUTES LONGER THAN BY CAR

Virginia is expanding Amtrak service in downtown Richmond this week that links to the nation's capital. . . .

The trip to Washington takes 2 hours and 47 minutes.

—***Washington Post*, September 27, 2021**

SWEDISH ECONOMIST ASSAR LINDBECK, 1972: "RENT CONTROL APPEARS TO BE THE MOST EFFICIENT TECHNIQUE PRESENTLY KNOWN TO DESTROY A CITY—EXCEPT FOR BOMBING."

A shortage of accommodation in Stockholm and other cities, is causing a major headache for young Swedes—in a country which has been championing rent controls since World War Two.

Rents are supposed to be kept low due to nationwide rules, and collective bargaining between state-approved tenant and landlord associations.

In theory, anyone can join a city's state-run queue for what Swedes call a "first-hand" accommodation contract.

Once you have one of these highly-prized contracts it's yours for life. But in Stockholm, the average waiting time for a rent-controlled property is now nine years, says the city's housing agency Bostadsförmedlingen, up from around five years a decade ago.

—**BBC, August 26, 2021**