

23 April 2010

# Today's Tabloid


PERSONAL NEWS FOR [Ign@limitedgovernmentnetwork.com](mailto:Ign@limitedgovernmentnetwork.com)

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FISCALLY CONSERVATIVE BLOG FEEDS

## Burger Could be Elected SEIU President by Private Ballot, but Presses Labor Board on Card Check [Americans for Tax Reform]

APR 22, 2010 08:12P.M.


Now that Andy Stern has officially resigned from head of the largest and arguably most powerful union, the SEIU, it is time for a successor. Sure, there are several individuals skilled in intimidati... 

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FISCALLY CONSERVATIVE BLOG FEEDS

## New E-Commerce Tax Threatens Privacy Rights [Americans for Tax Reform]

APR 22, 2010 05:25P.M.


The following is cross-posted from [www.StopETaxes.com](http://www.StopETaxes.com). Earlier this year, Colorado became the first state to employ a new and controversial way to force consumers to pay tax on online purchases.&nbsp;.; 

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FISCALLY CONSERVATIVE BLOG FEEDS

## President on taxes: I had hoped to invest in your future..without asking more of you..but I can't [Americans for Tax Reform]

APR 22, 2010 04:41P.M.


"I had hoped to invest in your future by creating jobs, expanding education, reforming healthcare and reducing the debt without asking more of you. And I've worked harder than I&rsquo...; 

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FISCALLY CONSERVATIVE BLOG FEEDS

## SC-01 Update: Paul Thurmond Signs the Taxpayer Protection Pledge [Americans for Tax Reform]

APR 22, 2010 04:35P.M.

Charleston County Councilman Paul Thurmond recently signed the Taxpayer Protection Pledge in his race for South Carolina's First Congressional District. Thurmond is looking to replace retiri... 

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FISCALLY CONSERVATIVE BLOG FEEDS

## Conrad's Budget Proposal [Cato at Liberty]

APR 22, 2010 04:08P.M.

By Tad DeHaven

Senate Budget Committee chairman Kent Conrad has released his budget plan for the next five years. The following are some thoughts on the proposal:

- Conrad proposes total federal spending for FY2011 equal to 25 percent of GDP, which would match the current fiscal year's post-war record.
- Conrad says his proposal will cut spending as a share of the economy by 11 percent. This sounds okay until you realize that out-year spending would still be substantially above the norm at 22 percent of GDP.
- Conrad says his plan will cut the deficit as a share of the economy by 70 percent. But he's starting from a Mount Everest-sized deficit of \$1.4 trillion this year. Besides, his projected deficits for the next five years would add another \$3.9 trillion to the debt.
- Conrad gets to his lower future deficits through tax increases. In addition to marginal tax rate increases on singles earning over \$200,000 (\$250,000 for couples), the alternative minimum tax would increase starting in 2012, and estate taxes in 2011. Conrad says "lawmakers will have to find revenues elsewhere in the budget" to provide AMT and estate tax relief in future years. Assuming Congress doesn't suddenly find the gumption to offset the tax relief with spending cuts, more debt or tax increases elsewhere will be its solution.
- Conrad includes Obama's proposal to freeze non-security discretionary funding for three years. Unfortunately, this segment of spending only amounts to 13 percent of the budget. As Chris Edwards has pointed out, actual spending will be higher as previously authorized stimulus spending sloshes forward.
- Conrad supports throwing more taxpayer money down the drain for failed federal experiments like education and Head Start.
- Conrad's proposal includes a \$2 billion reconciliation instruction, which could be a vehicle for getting more big government with 50 Senate votes. Last year's budget resolution also contained a \$2 billion reconciliation instruction that was used to facilitate passage of the gargantuan health care bill.
- With regard to the nation's long-term fiscal woes, Conrad punts the ball to the president's National Commission on Fiscal Responsibility and Reform. But this commission might be just a

stalking horse for huge tax increases, which aren't "responsible" and isn't "reform."

In sum, there's not much difference between Conrad's proposal and the President's. Both would continue the massive spending, deficits, and debt that are bankrupting the country. 

FISCALLY CONSERVATIVE BLOG FEEDS

## Was There a Libertarian Golden Age? [Cato at Liberty]

APR 22, 2010 04:05P.M.

By David Boaz

Recently I wrote an article arguing that there never was a golden age of liberty and that in particular libertarians should not hail 19th-century America as a small-government paradise, at least not without grappling with the massive problem of slavery. Jacob Hornberger, author of an article that I criticized, responded in *Reason*, and I then responded here. Meanwhile, an interesting discussion took place on a email list of libertarian scholars, and I'm pleased to have gotten the permission of several participants to include some of that discussion here:

**Aeon J. Skoble:** The ideals of freedom which led to the tangible improvements [Boaz] mentions – I'm concerned that those ideals are eroding/have eroded. Example: say you have a robust theory of rights, but your society denies rights to women. That's a contradiction, and the strength of your rights theory contains the foundation for protesting the injustice and remedying it. But if you don't even have a robust rights theory in the first place, there's no foundation for complaining about lost liberty. So my concern is that, all the good progress notwithstanding, liberty as an ideal is weaker than it once was. One thing that's widespread, e.g., is the constant conflation of positive rights and negative rights. And at the same time that positive rights are being accorded the status of negative rights, negative rights are increasingly being viewed as encroachable.

**David Mayer:** In terms of economic liberty and property rights, Americans today are certainly far less free than they were a century ago, or even two centuries ago. What was once a vast realm of human activity that American law left to individuals' freedom of contract (the whole realm of business activity as well as personal life, in terms of what substances individuals may choose to ingest in their own bodies, the wages and hours they can work, whom they can hire or fire, to whom they can sell their property or refuse to sell their property, etc., etc.), has now been almost wholly subjected to the dictates of government, thanks to the rise of the 20th century regulatory / welfare state. Business owners today (to pick one obvious category of Americans – arguably, the most important category, if as I do, you agree with Calvin Coolidge's maxim, "The business of America is business") are certainly far less free today than they were 100 years ago (before the "Progressive" era), or 70 years

ago (before the “New Deal revolution”), or 50 years ago (before the “Civil Rights movement” and the various federal anti-discrimination laws), or 20 years ago (before, say, enactment of the Americans with Disabilities Act) – or even a year ago (before enactment of the Democrats’ health insurance nationalization law).

**Glenn Reynolds:** I think that David’s piece is useful in another way: If your narrative is one in which freedoms are always shrinking, and government always growing, it may tend to discourage people from working to make things better. I see a lot of that kind of thing from people on the Right, and it irritates me no end. I remember when the passage of the assault weapons ban was presented as just another downward ratchet in freedom, and yet now the gun issue is such that even lefty Dems are for the most part unwilling to touch it. That, it seems to me, is an example of how freedom can expand even in the comparatively short term.

**Steve Horwitz:** The way I see this is that we’re trying to answer the question “Are we more free?” To do so, we need to address both the “we” and the “free” pieces. I read David as making two points: 1) We need to think carefully about the “we” and recognize, as we all have noted, the major gains in freedom for non-white, non-males (and maybe non-Christians too). 2) But he was also saying there are more freedoms in the calculus than the economic. Even white men are freer along a number of dimensions than they were in the 19th century, when one takes the social realm seriously. Some folks have noted those.

My own view is that one can look at this in the economist’s old tool: the 2 x 2 matrix:

economic freedoms	social freedoms
White men	notable losses
Others	huge gains

I think by any accounting, the NW quadrant is smaller than the sum of the others. We can debate over how much smaller, but if we could somehow aggregate these freedoms, I think there’s no question the total amount of freedom per capita is bigger today than “before.”

**Mark LeBar:** Speaking for myself, I don’t think it’s a matter of economic vs. other freedoms. If I were to put my finger on what I would say seems to me most significant in thinking the losses in NW swamp whatever gains there are elsewhere, I would say it has to do with the loss of respect for contract. That’s not to say there are no gains: as others have pointed out, 2 centuries ago I could not have contracted with women, or Africans, and to the extent non-whites and non-males have been accepted to the relevant moral community, that is indeed an expansion of my liberty as well as theirs. But, as I noted earlier, my authority to bind myself in ways that are not subject to veto by the state is a shadow of what it once was. I won’t enumerate the list again. But not only is that list much smaller, the rightfulness of the state to determine just how much smaller it may be continues to expand virtually without pause, as those on this list will need no reminder. I would say there has

been a sea-change from the idea (however imperfectly implemented) that the flow of authority goes from individuals to the state, to just about exactly the opposite. And that is simply a catastrophic loss to liberty, not just for white males, but for everybody. It’s hard for me to see that there can be good reasons for rejecting either the claim that the authority relation is now generally seen as running the other way, or that that amounts to a massive loss of liberty. And I don’t see imminent prospects for broad change in those attitudes. Hence the pessimism.

**David Olson:** I think that perhaps I am missing something. In reading today’s exchange, I thought that people were working toward a consensus that had largely been reached and summarized by Steven’s email. But now Mark writes that liberty gains to everyone but straight white Christian males are swamped by the liberty losses to white males (and to hypothetical non-whites and females compared to the liberty they might have enjoyed if they’d had full equality 200 + years ago).

I’m very surprised by this statement. The logic of this would seem to lead to the proposition that it would be better if things were still as they were 200 years ago. Would anyone actually make that statement? If not, is there some value in addition to freedom that people are focusing on in deciding the question? (And let’s take medical and dental care advances out of the question to avoid skewing the answer.)

**John Hasnas:** I suspect that no one on the list would disagree with the assertion that between the time of the adoption of the Constitution and the present, the political and legal commitment to a government of limited, enumerated powers has greatly declined. I also suspect that no one on the list would disagree with the assertion that a vastly greater proportion of the population enjoys freedom from illegitimate political and legal restrictions and disabilities than was the case at the time of the adoption of the Constitution. Out of this universal agreement, we have managed to manufacture disagreement by asking a vague question that equivocates on the meaning of the word freedom; to wit, “Are we more free?”

It seems pretty obvious that to the extent that we are free, that freedom is much more widely distributed than in the past. It also seems pretty obvious that to the extent that there is less legal protection against the interference of the federal government with our activities, there is less freedom. Beyond this, the value of determining whether we are more “free” in some unspecified sense escapes me.

**Aeon Skoble:** Actually, I *wasn’t* asking “Are we more free?” – I conceded David’s claim that we were. I was expressing some concern over whether the trend will continue positively or negatively, given that the positive and negative senses of freedom are so frequently conflated (not by members of this list, but in general, both in the academy and among the general public), and that in many quarters the very concept of freedom is in disfavor, and the idea that all rights are subject to encroachment by the state, which is more and more thought of as having limitless power.

**Steve Horwitz:** I agree with Aeon’s concerns. One way to put it is, as I think Mark LeBar did earlier, even if it’s true that we are collectively (per

capita) more free, those gains have come at the weakening of the sacredness of certain principles that affect *everyone's* freedom, especially in the long run. I too share the concern that the last two years have accelerated that process in very problematic ways.

**Stephen Davies:** There's actually general agreement here with the broad argument David made but some mild disagreement over the (probably unanswerable) question of whether the aggregate of total freedom is greater or larger. That wasn't the main thrust of David's piece as I read it though, he was talking about the implications and consequences of the (clearly wrong imho) line that for liberty it's been downhill all the way since the later 18th century. This is a common line as we all know and I think its really problematic. As David says it means you come over as indifferent to the undoubted gains made in some areas by various groups and so as only concerned with the position of one subgroup. This may well be wrong but impressions matter. This line also shows a deeply conservative sensibility and mindset. If you are libertarian in the sense of not liking large or expansive government but deeply conservative in other ways (e.g on questions of social hierarchy or relations between the sexes or family organisation) then you will feel that it's been downhill for a long time. ...

I think the real problem though with the approach David criticises is the way it leads you to behave with regard to current events. Basically you are going to see yourself as playing defence all the time and probably as fighting a losing battle against an inexorable tide of rising coercive statism. This means you will come over as angry, negative, and despondent, which are not attractive qualities. Also you will let the other side set the agenda and then respond to them rather than taking the initiative. This means you spend all your time criticising and attacking proposals that are liberty hostile instead of spending most of your time advocating positive liberty enhancing changes. ...

Finally, if I could put my historian's hat on for a minute. We need to distinguish between two different measurements – the size of government (as shown by its share of GDP) and its extent or range (as shown by the number of activities or areas of life that are considered to be its concern). In the first case there's a clear growth (we've all seen the graph). Even there there's Tyler Cowen's argument that a 40% share of a really big GDP is less bad than a 15% share of a much smaller pie. In the second case there's been considerable gains as well as losses. Religious belief, observance etc was once seen as the central concern of government. Now it's a private matter. Governments used to concern themselves with things such as dress, diet and public interactions (under sumptuary laws) and intimate details of people's sexual behaviour (through both church and secular courts). This is no longer true. OTOH there are clearly areas where there's been a shift in the wrong direction such as mood altering substances and firearms or where there's a danger of a bad movement (diet for example).

**The following comments are prompted by Jacob Hornberger's response in Reason.**

**Brad Smith:** Hornberger notes that the concept of what it meant to be free was much broader in the 19th century (something Aeon also touched

on). True, some people were not free – but for those who were, the concept had much more meaning. That's why I think one can agree with both perspectives, that freedom has both gained and lost ground in important ways.

Implicitly, Hornberger notes the extent to which government was simply not a presence in the lives of most people. The average free man could go days, weeks, or even months with no direct contact whatsoever with the government. Hornberger might also have noted that a free man didn't need a passport to travel, or an operator's license to drive his wagon, or a license plate for his horse. In most cases, he didn't need a building permit to add to his home. Even laws that might be on the books (but were perhaps not so ubiquitous as many think) laid lightly on people – laws against prostitution, sodomy, polygamy and such. A gay man in the 19th century might fear great social sanction if his predilections or activities became known, but the idea that the government would interfere with his activities was not really an issue at all, whatever the state code might say. In the 19th century, one certainly didn't need to license one's pets, and one was never harangued by government sponsored advertising to properly cook your eggs or spend time with your children. Today, for white men and for women and minorities, government permeates every aspect of our lives, essentially 24/7/365.

Even as we have expanded the blessings of freedom to more people, society's concept of freedom seems to have narrowed tremendously, to where even many self described libertarians seem to think a 39% income tax bracket is pretty darn acceptable. The boundaries of what it means to be free seem to have retreated, and to have retreated enormously. Thus, even as more people have benefited from freedom, the long term outlook for freedom seems in many ways much more grim.

**Keith E. Whittington:** The overseer or master exercised lawful, violent coercive force over the slave on a daily basis and did so with the full support and backing, if necessary, of the government. Moreover, "the government" (such as slave patrols) often consisted precisely of ad hoc groupings of armed civilians operating under the titular direction of a government official. And the government wasn't always willing to stand ready protect people from coercive private groups who wanted to enforce social conformity. So, on the one hand, some prostitutes might be tolerated if they kept to themselves in the wrong part of town, but on the other hand abolitionist newspapers editors could have their houses burned down and Catholics and Protestants could find themselves becoming armed gangs and rioting to secure their respective neighborhoods. No level of government had an expansive police force in the 19th century, but that just means that social order was generally maintained by other mechanisms. It doesn't necessarily mean that people were free from social order.

**Mark LeBar:** David is certainly right that slavery and the legal subordination of women are blights on the very institutions that were modeling liberty, and especially for those directly affected it is a gross mistake not to recognize what those changes in law and society mean in gains in liberty. But that is an observation that pretty much any decent person, libertarian or not, can be expected to make. There is a distinctiveness to the point of insisting, as Hornberger and Brad do, that

the very liberty that is reaching to more people is radically constrained in many ways. We can grant, it seems to me, that many people are freer in significant ways than they once were, while insisting that the point of liberty itself is in danger of getting lost in the process. That, it seems to me, is a case that libertarians are uniquely in position to make.

**Eugene Volokh:** Prof. LeBar writes, that “what it means to be free is a shadow of its former self.” But is that right, even as to white males? Economic regulation, including of a sort that libertarians much oppose, is not a novel matter. Neither is taxation (which, to be sure, is at a much higher rate than in the past, but I’m not sure that the precise rate is that much a part of “what it means to be free”). Neither is regulation of trade. Neither is restriction on freedom of association. Neither is regulation of guns. Neither is regulation of personal behavior; alcohol prohibition first emerged in the U.S., for instance, in the mid-1800s, and of course the regulation of sexual behavior was far greater in the past than today.

What’s more, all these were favored, I think, by people who believed in freedom, which meant to them (as it does to many lovers of freedom today) freedom subject to at least some constraints aimed at protecting the freedom of others and at protecting the well-being of society. *Liberty* has long been respected and fought for by Americans; but that the late 1700s and late 1800s were liberty-loving times doesn’t mean that the legal systems of that era were particularly libertarian as we libertarians would want them to be. “We all declare for liberty; but in using the same word we do not all mean the same thing.” I don’t think there’s been a past Golden Age of Liberty, in which freedom was generally accepted as meaning something far deeper and broader than what it means today, even for white men.

**Steve Horwitz:** I do think part of what’s going on here are two cross-cutting conversations. Or at least two distinct claims.

1. “Americans, on the whole, are freer than they were, say, 150 years ago.”
2. “Government is more obtrusive in a moment-to-moment or day-to-day way than 150 years ago.”

I actually think both of these are true. The enormous restrictions on the freedom of blacks and women (and others) of 150 years ago, though ultimately backed by the force of the state, did not require the state to be, as it were, “in their faces” on a moment-to-moment basis, as slavery and the second-class status of women were simply part of the institutional furniture (and often policed “privately” as Keith noted and as I noted about domestic violence in my earlier comments).

So it seems to me 1 and 2 are both true if one accepts that slavery and patriarchy don’t require the kind of constant and widespread, if small on each margin, government intervention we have in our own time.

We are collectively more free, I would argue, even though the underlying principles that assured the freedom of those who had such freedom 150 years ago have broken down significantly.

**Keith Whittington:** There is no doubt that you can run through statutes, court decisions and executive actions in the mid-19th century and compare the total to the mid-20th century and conclude that there is more overall government regulation in the latter than the former. The latter is more voluminous and more detailed. My only qualification/concern on this would be to note that while the 19th century regulation is less detailed it could be extremely intrusive (Sunday laws literally shut down all commercial, social and transportation activity in large parts of several states during parts of the 19th century) and that formal government activity was supplemented with informal private activity that was equally stultifying. Without a robust vision of individual self-ownership, to borrow from Mark, that combination of social and governmental regulation could be extremely restrictive of anything we would want to recognize as individual liberty. The battle for the idea of individual liberty, as well as the legal and social reality of it, was an on-going one throughout the 19th and 20th centuries, and I’m not confident how you net out the debits and credits.

**Glen Whitman:** Might it be helpful to ask *why* so many libertarians and conservatives want to say that America used to be more free than it is now?

Aside from sheer misplaced patriotism (which I’m sure is a big piece of the story), I think it comes from the desire to have an answer to the question, so often posed by statist, “When has a laissez-faire system ever worked?” Rather than saying, “I’m advocating an untested idea,” we’d like to be able to say, “Yes, laissez-faire has indeed worked.”

And is that really wrong to say? I think that with respect to specific issues, we can say that (a) the U.S. was freer before, and (b) somehow the country didn’t go to hell in a handbasket. We can say, for instance, that drugs used to be largely legal and we didn’t become a nation of useless addicts. We can say that labor markets functioned without extensive regulation. (Of course, blacks and women were often excluded from those markets — but I’d say the markets functioned \*despite\* their exclusion, not because of it.) We can say that there wasn’t a welfare state, and private charities and mutual aid societies did a fine job of helping those who fell on hard times.

None of which refutes David’s point. Some groups were markedly less free, and everyone was less free in certain ways. But that doesn’t mean we can’t sometimes point to history as a guide, which I suspect is what we really want.

**Stephen Davies:** I think Glen makes an important point here. Quite apart from the argument about how to quantify or compare different restrictions on liberty at different times and in different areas of lie is the question of rhetoric. Why present the story of liberty in the US as one of a decline from a golden age rather than as a story of slow growth in a positive direction or (my own favourite) one of decline in some areas and growth in others? Apart from the reason he gives I think one reason is the dominance of the jeremiad as a form of political argument. This isn’t confined to libertarians of course, in fact it seems sometimes that every political persuasion thinks things are going to the dogs. I think it’s a bad strategy however as well as being questionable.

I do think Mark and Aeon are on to something however in saying that there's been a decline in the ideal of self-government or at least in the degree to which it's articulated and the extent to which it's understood as a complex idea rather than just a matter of doing your own thing. It was a much thicker concept in times past partly because it was associated with lots of other ideas of psychology (the notion of character) and sociology for example – there was a strongly held idea that you couldn't be fully self-governing or independent if you were not economically self supporting and so the idea of freedom was tied in with all sorts of other ideas.

If you look outside the US, Dicey made the argument towards the end of the nineteenth century that there'd actually been a movement away from intrusive paternalistic regulation in the earlier nineteenth century followed by the growth of a new kind of intrusive state action after the later 1880s. He related this to public opinion which for him meant widely held but often unarticulated notions, beliefs and understandings on the part of the population at large or at least the politically active part of it. This kind of account makes more sense to me, particularly if you combine it with an approach that says that while freedom may have increased for some groups it declined for others and that at any one time it was growing in some areas of life while being in recession elsewhere. Complicated and messy but that's history for you.

**Loren Lomasky:** To the extent that a consensus emerges in preceding comments it's that the losses of liberty to white males over the past century or two are juxtaposed against liberty gains for people of color, women, some marginalized others. Enjoying somewhat less than a genuinely full consensus is the proposition that on the liberty ledger the minuses of the former class are outweighed by the pluses of the latter.

Because the balance seemed so patent to me, I've said nothing previously. I now wish to add, though, that it is far from obvious that even establishment white males suffered a liberty deficit over this period, and that not just because of gains with regard to social freedom but even with regard to core economic liberty. Each of the following is an enormous gain for liberty:

- 1) The capacity to pursue one's ends with willing others by forming corporations without any need of special legislative grants;
- 2) Rights of workers to associate freely with each other in pursuit of economic advancement (unions, etc.)
- 3) Military services now performed by paid professionals who volunteer for the job rather than via a draft.


I could go on, but these themselves are not trivial. Each is orders of magnitude more significant on the plus side than, say, Obamacare is on the negative. An enormous number of state actions piss me off, but not to the extent that they blind me to the evident truth that the history of the United States since 1776 is a history of liberty in ascendance.

**David Mayer:** Albert Venn Dicey's *Law and Public Opinion in England in the Nineteenth Century* does indeed identify a "golden age" for liberty,

in (roughly) the middle third of the 19th century, when (according to Dicey's analysis) classical liberal ideas were the dominant opinion (in terms of public policy). That was a "golden age," in Britain, because it was sandwiched in between (again, according to Dicey's analysis) a period of "Old Tory" paternalism (the early 19th-century, continuing from the 18th century) and a period of "collectivism," or socialism (with the rise of the late-Victorian-era welfare state in Britain, in the last third of the 19th century and continuing into the 20th century).

U.S. history is quite different. We were *founded* as, essentially, a classical liberal nation: the American Revolution was based on "radical Whig" ideas – the same ideas that so influenced British public policy during its classical liberal reform period (for example, many of the mid-18th-century radical Whigs who were friends of American independence – men like John Cartwright – were also leaders in the Parliamentary reform movement, culminating in the Reform Act of 1832). But, as I have written elsewhere (see my essay on "Completing the American Revolution" (my *Atlas Shrugged* 50th anniversary essay) in *Journal of Ayn Rand Studies*, Spring 2008) the American "liberal" revolution of 1776 was far from complete. Sure, we founded government explicitly on the protection of individual rights, and we instituted written constitutions to help limit the power of government (a huge advance in the history of world "political science"). But, of course, as David and other participants in this discussion have noted, we did not consistently implement the "new science of politics" implied by the principles of 1776: not only did we retain the institution of slavery and denied full legal equality to women but, in many ways, we retained in the law (mostly in the English common law as received and only slightly modified in American law) much of the older, paternalistic role of government that England had had for centuries and that had been brought over to the English colonies in America. (One simple example: the notion that government may regulate prices of businesses "affected with a public interest" – a concept from English law (one that in the early 17th century was used by apologists for royal absolutism to justify various kinds of economic regulations by the King's government) not only survived in early American law but was used by the U.S. Supreme Court, in its 1877 decision in *Munn v. Illinois*, to justify government fixing of maximum rates for certain businesses – and ultimately, in the 20th century, to justify all sorts of needless government licensing and other restrictions on businesses.)

So, it's quite true (as several participants in the discussion have noted) that there's not been really any single "golden age" for liberty in the history of the United States. Depending on how you measure it (by the size of government, the magnitude of taxes and spending, or the variety of forms of "legal paternalism," for example), or what aspect you're focused on ("economic" liberty versus "personal" liberty, for example, notwithstanding the artificiality of that distinction), or whose liberty you're focusing on (business owners versus workers and/or consumers, men vs. women, whites vs. blacks, native-born Americans vs. immigrants, etc.), there's no clear pattern: liberty (as a whole) is at once on the ascendance, on the decline, and staying about even, in the American "mixed bag" of freedom/paternalism. But (if I might be permitted to return to the main point of my original post) there's little doubt that government regulation of business – government interference

with the free market – at all levels, and especially at the national level, has been steeply rising, and thus a very important aspect of liberty (economic freedom) has been steeply falling, since the rise of the “progressive” regulatory/ welfare state in the early 20th century. *That* part of American history (the past century or so) most closely resembles the age of “collectivism,” or socialism, that Dickey identified in Britain in the latter third of the 19th century. 

FISCALLY CONSERVATIVE BLOG FEEDS


## Angel Investors [Cato at Liberty]

APR 22, 2010 03:36P.M.

By Chris Edwards

The *Wall Street Journal* has an important editorial today on how the financial “reform” bill being considered by Congress could help kill the angel investment industry in the United States.

Burying angels under new regulations would be part of a one-two knock-out blow for this group of more than 300,000 higher-income Americans who invest directly into start-up companies. The Obama administration’s tax-increase policies would be the other blow, as I testified to the Senate earlier this year.

Angels have played a crucial role in America’s dynamic job-creating economy over the decades. Policymakers would be absolutely crackers to screw up such a successful part of our innovation economy. 

FISCALLY CONSERVATIVE BLOG FEEDS

## Oil Import Make Believe [Cato at Liberty]

APR 22, 2010 03:11P.M.

By Jerry Taylor

A conversation with documentarian Robert Stone regarding Earth Day is featured today in *The New York Times*’s “Dot Earth” online column. In the course of his conversation with the *Times*’s Andrew Revkin, Mr. Stone – who is quite alarmed about our reliance on foreign oil – asks: “How many Americans know that we send about \$800 billion to the Middle East every year for oil?”


Hopefully, not many. According to the U.S. Department of Commerce, the U.S. spent *\$95.4 billion* on crude oil imports from OPEC sources in 2009. But not all OPEC members are from the Middle East. That \$95.4 billion includes dollars spent on oil originating from Algeria (\$6.3

billion), Angola (\$9 billion), Ecuador (\$3.4 billion), Nigeria (\$17.7 billion), and Venezuela (\$23.4 billion) - none of which are in the Middle East. Subtract out that oil and we arrive at *\$35.6 billion* spent on Middle Eastern crude oil (a figure rounded from the original nominal counts. I have used the customs value - that is, the estimated value – of the oil being imported rather than the figures that include additional costs for insurance and transportation because money being spent on insurance and shipping goes to third parties that are not for the most part located in the Middle East. But if one wants to use those slightly higher figures, it won’t change the numbers very much at all).

For what it’s worth, the total amount of dollars Americans sent abroad for crude oil from all sources was \$188.5 billion last year.

Even if the figure *were* \$800 billion, so what? No one is *forcing* refineries to buy crude oil from foreign suppliers. They presumably believe that the oil at issue is more valuable than the money that must be offered to secure said oil and that oil from other sources is more expensive than oil from the Middle East. Hence, they buy. This is by definition a wealth creating transaction for American business enterprises. Foreign trade, Mr. Stone, is a good thing.

The implicit claim, of course, is that there are negative externalities associated with foreign oil consumption. This, however, is faith masquerading as fact (an argument also well made by Cato adjunct scholar Richard Gordon).

Regardless, Mr. Stone overstates the alleged problem by orders of magnitude. 

FISCALLY CONSERVATIVE BLOG FEEDS

## An Actual Example of “Cyberwarfare” [Cato at Liberty “Cyberwarfare”]


APR 22, 2010 02:02P.M.

By Jim Harper

The good thing about this review of the book “Cyber War” by Richard Clarke and Robert Knake is that it actually mentions attacks on computing and communications during warfare.

Messrs. Clarke and Knake are convinced that an Israeli air strike in 2007 against a secret North Korean-designed nuclear facility being constructed in the Syrian desert was a textbook case of cyber-aided warfare. Israeli computers “owned” Syria’s elaborate air defenses, the authors say, “ensuring that the enemy could not even raise its defenses.”

That might actually be “cyberwarfare.”

The rest of the review, and presumably the book, is threat exaggeration and distortion, wrongly characterizing the wide variety of security issues pertaining to computers, communications, and data as having to do with “war.” 

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FISCALLY CONSERVATIVE BLOG FEEDS

## “Papers, Please” in Arizona [“Cato at Liberty” in Arizona]

APR 22, 2010 01:46P.M.

By Jim Harper


The Arizona legislature recently sent Senate Bill 1070 to the governor.

According to this summary from the Arizona legislature, the bill would require Arizona officials and agencies to determine the immigration status of any person with whom they have “lawful contact” where reasonable suspicion exists regarding the immigration status of the person. Any person arrested in Arizona would also have to have their immigration status established and verified with the federal government before they were released.

The documents that can be used to prove legal immigration status under the bill include a valid Arizona driver license, a valid Arizona nonoperating identification license, a valid tribal enrollment card or other tribal identification, or a valid federal-, state- or local-government-issued identification, if the issuing entity requires proof of legal presence before issuance.

If the governor signs the bill, what creates “reasonable suspicion” about immigration status is a question that will have lawyers busy for years.

I’m interested in how well practiced Arizonans and Arizona government officials will become at checking the papers of people in their state. I have little to worry about, of course, because I’m not an illegal immigrant.

UCSB history professor Harold Marcuse maintains a fascinating web page about Martin Niemöller’s famous quotation. There are many versions of it in its long history, and there may yet be more. 


FISCALLY CONSERVATIVE BLOG FEEDS

## Earth Day Links [Cato at Liberty]

APR 22, 2010 01:44P.M.

By Chris Moody

Today is the 40th anniversary of Earth Day, a time to highlight and discuss ways to work toward a cleaner planet. Cato’s energy and environment research promotes policies that would help protect the environment without sacrificing economic liberty, goals that are mutually supporting, not mutually exclusive.

- Why we should thank capitalism for environmental gains: “It is businessmen — not bureaucrats or environmental activists — who deserve most of the credit for the environmental gains over the past century and who represent the best hope for a Greener tomorrow.”
- Finding the right balance: “Today, America’s environment is cleaner—and Earth Day has indeed helped ensure that. ...We should renew our promise to keep the environment clean—without adding to human misery or stalling improvements in the human condition.”
- Want clean air? Try this.
- Is high-speed rail really an environmentally friendly alternative to driving and air travel? “Planners have predicted that a proposed line in Florida would use more energy and emit more of some pollutants than all of the cars it would take off the road.” 

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FISCALLY CONSERVATIVE BLOG FEEDS

## Is John Paulson Watching The Kudlow Report? [Larry Kudlow’s Money Politic\$]

APR 22, 2010 01:06P.M.



Billionaire hedge-fund manager John Paulson has received quite a bit of press lately, all arising from his involvement in Goldman Sach's 2007 Abacus deal which netted him a king's ransom of \$1 billion. Say what you will about the man, Mr. Paulson is a terribly smart investor — one of a small handful who accurately predicted the housing market's turn with highly successful bets against mortgage securities.

Now, what is less well known about Paulson is that he has turned rather bullish on the U.S. housing market and the overall economy. In a conference call with investors yesterday, Paulson said he was concerned earlier this year about a potential double-dip recession. But he went on to say that he is “not concerned about that at all today. It's more likely there could be a V-shaped recovery.” Whoa. Mr. Paulson, are you tuning in to The Kudlow Report each night? Of course, I have been discussing — at length — the various and key pieces of evidence that support a clear case for a V-shaped recovery.

Incidentally, Mr. Paulson also remarked that corporate earnings are coming in ahead of expectations, that there's a vibrant credit market, and that the stock market is stronger. Yes indeed, sir.

Heck, I've never seen or owned a synthetic CDO. That's above my pay grade. But I certainly agree with Paulson's take on the economy. (Hat tip to my pal and economics professor Mark Perry of the Carpe Diem blog site. He's been signaling Paulson's call.)

And now for some worrisome news: While stocks did eke out small gains Wednesday, outside of Morgan Stanley's 4 percent rise from a big earnings number, all the big banks got clobbered by an average of around 2 percent. The list includes Goldman, Citi, US Bancorp, JPMorgan, BofA, Wells Fargo, and State Street.

Why did the big boys get hit? Financial regulation is going to pass. That ain't good for banks. First, it may put an end to proprietary trading for these boys. Second, it may squash their lucrative derivatives business. Third, it may take away their too-big-to-fail status.


So be on the lookout for some rocky moments ahead for the big boys on the road to financial reform. While this may be good news for U.S. taxpayers, it's not necessarily so good for the nation's biggest banks.

Another point on this bank bill worth noting: Sen. Blanche Lincoln's derivatives legislation means trading will wind up moving to Chicago, which has much better infrastructure than New York. So, in a sense, you could actually call this a Chicago jobs bill. In the longer term, New York City will be very hurt by this.

Elsewhere, some good news: With 20 percent of the S&P having already reported, roughly 85 percent of the S&P companies have beat expectations. Guess what? If this continues, it will be the best performance since 1993.

On an interesting but somewhat unrelated note, the Treasury and the Fed have unveiled a new \$100 bill with a lot of high-tech security embedded in it. Ben Franklin is still on the front, and it's going into circulation next year. An interesting factoid about the C-note: It's the highest denomination of all U.S. currency and has huge circulation around the world. Over the past 25 years, global demand has pushed these Benjamins up to \$890 billion from \$180 billion, with two-thirds circulating outside the United States. As for me, I'm still waiting for the new Ronald Reagan note.

But let me close with this key point regarding the V-shaped recovery: Rising corporate profits equals rising jobs in the future. If businesses are profitable, they will hire. Bank on it. After all, we witnessed such a steep falloff in employment because businesses were so unprofitable.

Again, I've never owned a synthetic CDO in my life. But I do entirely agree with John Paulson's bullish call for a V-shaped economic recovery. I'm delighted to hear he shares my view. 

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#### FISCALLY CONSERVATIVE BLOG FEEDS

## On Tonight's Kudlow Report [Larry Kudlow's Money Politic\$]

APR 22, 2010 12:59P.M.



**This evening at 7pm ET:**

**PRESIDENT OBAMA ADDRESSES WALL STREET**

CNBC chief Washington correspondent John Harwood reports.

**NO G.O.P. COMPROMISE?**

- Rep. Mike Pence will join us from Washington.

**WALL ST. CULPABILITY**

How Much Blame Does Wall St. Deserve?

- Nicole Gelinas, Manhattan Institute Senior Fellow
- Roger Lowenstein, author of "The End of Wall Street"

**TAX ATTACK: BANK TAX BACK FROM THE DEAD; VAT TAX; BUSH TAX CUTS EXTENSION?; TAXES IN UPCOMING BUDGET**

- Matt Miller, The Daily Beast Columnist; Public Radio's "Left, Right and Center" Host
- Jerry Bowyer, CNBC Contributor/Syndicated Columnist

**MARKETS & ECONOMY**

A V-shaped recovery? Moody's Turns on Greece

- Howard Lutnick, Cantor Fitzgerald Chairman. & CEO
- Peter Navarro, "The Coming China Wars" Author; University Of California - Irvine Business Professor

**Please join us. *The Kudlow Report*. 7pm ET. CNBC.** 

FISCALLY CONSERVATIVE BLOG FEEDS

## Ms. Weaver Goes to Washington [Cato at Liberty]

APR 22, 2010 12:02P.M.

By David Boaz




Today in Washington: actress Sigourney Weaver testifies before the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard of the Senate Committee on Commerce, Science and Transportation Committee on the topic of ocean acidification. Because, you know, she played an environmental scientist in *Avatar*. It's the best fit since Jane Fonda, Jessica Lange, and Sissy Spacek — all of whom had played farm women — testified on America's agricultural crisis.

Congress doesn't have time to vote on presidential nominations. It doesn't bother engaging in serious oversight of presidential power and civil liberties abuses. It looks at the ceiling and whistles as the national debt approaches Greek levels. But members of Congress have time to listen to an actress discuss the topic of ocean acidification.

This seems like a topic for "Really!?! with Seth and Amy" on *Saturday Night Live*. Really, Senate Commerce Committee? You think Sigourney Weaver has important information that you need to know? Really? And you're not just doing this to get yourselves on television? Really!?! And you think the most important thing members of Congress could be doing today is getting their pictures taken with Sigourney Weaver? Really!?!

Of course, this is not just a one-day thing for Sigourney Weaver. She also traveled this month to Brazil to try to stop the construction of a dam. Because who would know better than a Hollywood-Manhattan actress how to make tradeoffs between energy needs and environmental risks in Brazil?

Now let me just say that I'm not arguing that ocean acidification isn't an important topic. And I'm not criticizing *Avatar* or its defense of property rights. I'm just questioning whether Sigourney Weaver, Sissy Spacek,

Jeff Daniels, Nick Jonas, and the Backstreet Boys have the kind of expertise that Congress ought to draw on in deciding how to run my life. Or then again, maybe planning the economy and running other people's lives is farce at best, and Congress should just hold hearings with Will Ferrell and John Cleese. 

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FISCALLY CONSERVATIVE BLOG FEEDS

## New 3-Way Poll in Florida's Senate Race [The Club for Growth]

APR 22, 2010 10:58A.M.


From Rasmussen Reports: If Florida Governor Charlie Crist leaves the Republican Party and enters the U.S. Senate race as an independent candidate, he will begin the campaign in second place. S COMMITTEE. 202-955-5500. 

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FISCALLY CONSERVATIVE BLOG FEEDS

## Happy Earth Day, A Look at Obama's Failed Anti-Growth Energy Policies [Americans for Tax Reform]

APR 22, 2010 09:28A.M.


This Earth Day, Americans for Tax Reform (ATR) takes a look at what this Administration has done for the earth – called for higher taxes, supported job killing legislation, and attempted to incr... 

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FISCALLY CONSERVATIVE BLOG FEEDS

## Louisiana Would Gain \$9.858 Billion From Offshore Drilling [Americans for Tax Reform]

APR 22, 2010 09:19A.M.

With Louisiana facing a predicted \$1.9 billion shortfall and 7.3 percent unemployment, Americans for Tax Reform continues to urge President Obama, Congress, and state elected officials to look t... 

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FISCALLY CONSERVATIVE BLOG FEEDS

## Making Sense of New TSA Procedures [Cato at Liberty]

APR 22, 2010 08:45A.M.

By Jim Harper

Since they were announced recently, I've been working to make sense of new security procedures that TSA is applying to flights coming into the U.S.

"These new measures utilize real-time, threat-based intelligence along with multiple, random layers of security, both seen and unseen, to more effectively mitigate evolving terrorist threats," says Secretary Napolitano.

That reveals essentially nothing of what they are, of course. Indeed, "For security reasons, the specific details of the directives are not public."

But we in the public aren't so many potted plants. We need to know what they are, both because our freedoms are at stake and because our tax money will be spent on these measures.

Let's start at the beginning, with identity-based screening and watch-listing in general. A recent report in the *New York Times* sums it up nicely:

The watch list is actually a succession of lists, beginning with the Terrorist Identities Datamart Environment, or TIDE, a centralized database of potential suspects. . . . [A]bout 10,000 names come in daily through intelligence reports, but . . . a large percentage are dismissed because they are based on "some combination of circular reporting, poison pens, mistaken identities, lies and so forth."

Analysts at the counterterrorism center then work with the Terrorist Screening Center of the F.B.I. to add names to what is called the consolidated watch list, which may have any number of consequences for those on it, like questioning by

the police during a traffic stop or additional screening crossing the border. That list, in turn, has various subsets, including the no-fly list and the selectee list, which requires passengers to undergo extra screening.

The consolidated list has the names of more than 400,000 people, about 97 percent of them foreigners, while the no-fly and selectee lists have about 6,000 and 20,000, respectively.

After the December 25, 2009 attempted bombing of a Northwest Airlines flight from Amsterdam into Detroit, TSA quickly established, then quickly lifted, an oppressive set of rules for travelers, including bans on blankets and on moving about the cabin during the latter stages of flights. In the day or two after a new attempt, security excesses of this kind are forgivable.

But TSA also established identity-based security rules of similar provenance and greater persistence, subjecting people from fourteen countries, mostly Muslim-dominated, to special security screening. This was ham-handed reaction, increasing security against the unlikely follow-on attacker by a tiny margin while driving wedges between the U.S. and people well positioned to help our security efforts.

Former DHS official Stewart Baker recently discussed the change to this policy on the Volokh Conspiracy blog:

The 14-country approach wasn't a long-term solution. So some time in January or February, with little fanfare, TSA seems to have begun doing something much more significant. It borrowed a page from the Customs and Border Protection playbook, looking at all passengers on a flight, running intelligence checks on all of them, and then telling the airlines to give extra screening to the ones that looked risky.

Mark Ambinder lauded the new policy on the Atlantic blog, describing it thusly:

The new policy, for the first time, makes use of actual, vetted intelligence. In addition to the existing names on the "No Fly" and "Selectee" lists, the government will now provide unclassified descriptive information to domestic and international airlines and to foreign governments on a near-real time basis.

Likely, the change is, or is very much like, applying a Customs and Border Patrol program called ATS-P (Automated Targeting System – Passenger) to air travel screening.

"[ATS-P] compares Passenger Name Record (PNR) and information in [various] databases against lookouts and patterns of suspicious activity identified by analysts based upon past investigations and intelligence," says this Congressional Research Service report.

"It was through application of the ATS-P that CBP officers at the National Targeting Center selected Umar Farouk Abdulmutallab, who

attempted to detonate an explosive device on board Northwest Flight 253 on December 25, 2009, for further questioning upon his arrival at the Detroit Metropolitan Wayne County Airport."

Is using ATS-P or something like it an improvement in the way airline security is being done? It probably is.

A watch-list works by comparing the names of travelers to the names of people that intelligence has deemed concerning. To simplify, the logic looks like something like this:

If first name="Cat" (or variants) and last name="Stevens", then \*flag!\*

Using intelligence directly just broadens the identifiers you use, so the comparison (again simplified) might look something like this:

If biography contains "traveled in Yemen" or "Nigerian student" or "consorted with extremists", then \*flag!\*

The ability to flag a potential terrorist with identifiers beyond name is a potential improvement. Such a screening system would be more flexible than one that used purely name-based matching. But using more identifiers isn't automatically better.

The goal—unchanged—is to minimize both false positives and false negatives—that is, people flagged as potential terrorists who are not terrorists, and people *not* flagged as terrorists who are terrorists. A certain number of false positives are acceptable if that avoids false negatives, but a huge number of false positives will just waste resources relative to the margin of security the screening system creates. Given the overall paucity of terrorists—which is otherwise a good thing—it's very easy to waste resources on screening.

I used the name "Cat Stevens" above because it's one of several well known examples of logic that caused false positives. Utterly simplistic identifiers like "traveled in Yemen" will also increase false positives dramatically. More subtle combinations of identifiers and logic can do better. The questions are how far they increase false positives, and whether the logic is built on enough information to produce true positives.

So far as we know, ATS-P has never flagged a terrorist before it flagged the underwear bomber. DHS officials tried once to spin up a case in which ATS-P flagged someone who was involved in an Iraq car-bombing after being excluded from the U.S. However, I believe, as I suggested two years ago, that ATS-P flagged him as a likely visa overstayer and not as a terror threat. He may not have been a terror threat when flagged, as some reports have it that he descended into terrorism after being excluded from the U.S. This makes the incident at best an example of luck rather than skill. That I know of, nobody with knowledge of the incident has ever disputed my theory, which I think they would have done if they could.

The fact that ATS-P flagged one terrorist is poor evidence that it will

“work” going forward. The program “working” in this case means that it finds true terrorists without flagging an unacceptable/overly costly number of non-terrorists.

Of course, different people are willing to accept different levels of cost to exclude terrorists from airplanes. I think I have come up with a good way to measure the benefits of screening systems like this so that costs and benefits can be compared, and the conversation can be focused.

Assume a motivated attacker that would eventually succeed. By approximating the amount of damage the attack might do and how long it would take to defeat the security measure, one can roughly estimate its value.

Say, for example, that a particular attack might cause one million dollars in damage. Delaying it for a year is worth \$50,000 at a 5% interest rate. Delaying for a month an attack that would cause \$10 billion in damage is worth about \$42 million.

(I think it is fair to assume that any major attack will happen only once, as it will produce responses that prevent it happening twice. The devastating “commandeering” attack on air travel and infrastructure is instructive. The 9/11 attacks permanently changed the posture of air passengers toward hijackers, and subsequent hardening of cockpit doors has brought the chance of another commandeering attack very close to nil.)

A significant weakness of identity-based screening (which “intelligence-based” screening—if there’s a difference—shares) is that it is testable. A person may learn if he or she is flagged for extra scrutiny simply by traveling a few times. A person who passes through airport security six times in a two-month period and does not receive extra scrutiny can be confident enough on the seventh trip that he or she will not be specially screened. If a person does receive special scrutiny on test runs, that’s notice of being in a suspect category, so someone else should carry out a planned attack.

“We’ll make traveling often a ground for suspicion!” might go the answer. “False positives,” my rejoinder.)

Assuming that it takes two months more than it otherwise would to recruit and clear a clean-skin terrorist, as Al Qaeda and Al Qaeda franchises have done, the dollar value of screening is \$125 million. That is the amount saved (at a 5% interest rate) by delaying for one month an attack costing \$15 billion (a RAND corporation estimate of the total cost of a downed airliner, public reactions included).

Let’s say that the agility of having non-name identifiers does improve screening and causes it to take three months rather than two to find a candidate who can pass through the screen. Ignoring the costs of additional false positives (though they could be very high), the value of screening rises to \$187.5 million.

(There is plenty of room to push and pull on all these assumptions. I welcome comments on both the assumptions and the logic of using the

time-value of delayed attacks to quantify the benefits of security programs.)

A January 2009 study entitled, “Just How Much Does That Cost, Anyway? An Analysis of the Financial Costs and Benefits of the ‘No-Fly’ List,” put the amount expended on “no-fly” listing up to that time at between \$300 million and \$966 million, with a medium estimate of \$536 million. The study estimated yearly costs at between \$51 and \$161 million, with a medium estimate of \$89 million.

The new screening procedures, whose contours are largely speculative, may improve air security by some margin. Their additional costs are probably unknown to anyone yet as false positive rates have yet to be determined, and the system has yet to be calibrated. Under the generous assumption that this change makes it 50% harder to defeat the screening system, the value of screening rises, mitigating the ongoing loss that identity-based screening appears to bring to our overall welfare.

Hey, if you’ve read this far, you’ll probably go one or two more paragraphs...

It’s worth noting how the practice of “security by obscurity” degrades the capacity of outside critics to contribute to the improvement of homeland security programs. Keeping the contours of this system secret requires people like me to guess at what it is and how it works, so my assessment of its strengths and weaknesses is necessarily degraded. As usual, Bruce Schneier has smart things to say on security by obscurity, building on security principles generated over more than 125 years in the field of cryptography.

DHS could tell the public a great deal more about what it is doing. There is no good reason for the security bureaucracy to insist on going *mano a mano* against terrorism, turning away the many resources of the broader society. The margin of information the United States’ enemies might access would be more than made up for by the strength our security programs would gain from independent criticism and testing.

