

# CONNECTICUT LAW REVIEW

---

VOLUME 48

DECEMBER 2015

NUMBER 2

---

## Colloquium

### Is the Future of the American Dream Bright?: A Panel of the 2014 Federalist Society National Lawyers Convention

KARLYN BOWMAN, LANNY J. DAVIS, NEAL K. KATYAL,  
RACHEL L. BRAND & CHARLES A. MURRAY

*The following remarks were given on November 15, 2014 during a panel of the 2014 Federalist Society National Lawyers Convention. The panel sought to answer the following questions: What is the future for our young—for the best and brightest—and for everyone else? Does the American Dream still apply? Does our current legal and regulatory system offer the young prospects for a more just and better society, or for an overregulated society that stifles enterprise and compromises individual liberty? How do we balance these competing concerns and what role can and should our legal system play? Are efforts to address income inequality through law or taxes beneficial or harmful to the young and their vision of a better society? Recordings of the full conference can be seen at <http://www.fed-soc.org/multimedia/detail/showcase-panel-iv-roundtable-is-the-future-of-the-american-dream-bright-event-video>.*

## COLLOQUIUM CONTENTS

I. INTRODUCTION BY MS. KARLYN BOWMAN .....	563
II. REMARKS BY MR. LANNY J. DAVIS.....	567
III. REMARKS BY PROFESSOR NEAL K. KATYAL .....	569
IV. REMARKS BY MS. RACHEL L. BRAND .....	572
V. REMARKS BY MR. CHARLES A. MURRAY .....	574
VI. QUESTIONS.....	581



Is the Future of the American Dream Bright?:  
A Panel of the 2014 Federalist Society  
National Lawyers Convention

KARLYN BOWMAN,\* LANNY J. DAVIS,\*\*  
NEAL K. KATYAL,\*\*\* RACHEL L. BRAND\*\*\*\*  
& CHARLES A. MURRAY\*\*\*\*\*

**KARLYN BOWMAN:** Good afternoon, everyone. My name is Karlyn Bowman and I'll be moderating this session this afternoon. I'm a senior fellow at the American Enterprise Institute. I will introduce our panelists after my introductory remarks.

I study public opinion polling at AEI. Gene Meyer asked me if I would say a few words about opinions of the Millennials. I'm going to do that briefly, and then we will turn to our panelists.

Thirty years ago the Wall Street Journal commissioned what is probably still the most comprehensive survey ever done on the American dream. In prose that will sound very familiar to you today, the Journal's 1986 report said this: "Changing economic realities in the 1970s and '80s, combined with shifting social and cultural values, have caused many observers to wonder whether the underpinnings of the American dream are eroding. Economists report that median household income peaked in 1973 and has actually declined since." The Journal report continues: "Average weekly earnings were higher in 1962 than in 1985. And the cost of buying a home, a car, and sending one's child to college have all increased faster than wages."

Still, the Journal found that Americans in general and young people in particular were optimistic about their ability to achieve their personal vision of the American dream. In the 1986 survey, young people were the least satisfied age group about their current position on the road to the American dream. Their dissatisfaction was unsurprising, an effect of their place in the lifecycle. They were just starting out and their jobs were probably not very good ones.

In the next question in the survey, however, they were the most

---

\* Senior Fellow and Research Coordinator, American Enterprise Institute.

\*\* Principal, Lanny J. Davis & Associates.

\*\*\* Paul and Patricia Saunders Professor of National Security Law, and Director, Center on National Security and the Law, Georgetown University Law Center.

\*\*\*\* Member, Privacy and Civil Liberties Oversight Board.

\*\*\*\*\* W.H. Brady Scholar, American Enterprise Institute.

optimistic age group about their ultimate position on the road to the dream. Despite the country's big problems in 1986—and the poll defined the top ones then as illegal drugs, crime, diminishing educational quality, and environmental degradation—most people felt that they could reach their version of the dream.

Fast-forward to today. Several major survey organizations, including the Pew Research Center, Reason magazine and Harvard's Institute of Politics, have all done major polls in the last year on the Millennials. Let me quickly sketch some of the major findings and then turn to Millennials' views about the American dream.

Millennials are those born after 1980. There's no clear end point for the group yet. They are the most educated generation in history, especially young women. Today's young women are starting their careers at near-wage parity with young men. Only fifteen percent of young women say that they have faced gender discrimination at work.

Millennials are the most racially diverse generation. Fifty-eight percent of 18-to-29-year-olds are non-Hispanic whites. Around three-quarters of older people are. Millennials are less conventionally religious than the older generation, though most of them say that they believe in God. Two percent of them have served in the military.

Millennials are very savvy technologically, as anyone who has 20-year-old children knows. Eighty-one percent of Millennials are on Facebook, which is fading for them according to Pew, and the median number of friends that they have is 250.

[Laughter.]

Looking at the youngest Millennials in their teen years, Pew reports that more than ninety percent of them are online. They share an enormous amount of information about themselves online. Only nine percent are "very" concerned about third-party access to their data and another thirty-one percent are "somewhat" concerned. Sixty percent are "not very" or "not at all" concerned.

They don't trust a lot of communications channels. They don't trust the government and they don't trust industry. They want more done to protect their privacy but not if it means paying more money for any of this. Millennials are marrying later, though most of them want to marry. About three in ten are currently married. Nearly half of Baby Boomers were married when they were the age Millennials are now.

Most Millennials describe themselves as politically independent. Of the remainder, more say that they are Democrats than Republicans. Young whites in 2012 voted for Romney, young blacks and Hispanics for Obama. Young whites in 2014 voted for Republican House candidates, young blacks and Hispanics for Democratic ones.

Millennials are the most supportive age group of gay marriage and marijuana legalization. In some polls they are slightly more conservative

than their older brothers and sisters on the issue of abortion. In other polls they look pretty much like the population as a whole. Their attitudes on abortion are the exception to a trend of greater social liberalism with each generation.

They're skeptical about but not hostile to government. More of them, in one famous poll, believed that they would see a UFO than see a Social Security check.

[Laughter.]

They are action-oriented and usually supportive of candidates who seem most action-oriented. I think that explains their support for both Newt Gingrich and Barack Obama. They want government to "do stuff," as they would say. More Millennials say government should be doing more to solve the problems than say that government is doing too many things that are better left to businesses and individuals. A majority of voters, by contrast, on Election Day said that government should do less.

They are divided about whether or not the federal government has a responsibility to address income inequality. Older generations say, no, in fact, that is not a federal government responsibility. At the same time, however, they support a minimum wage, a wage floor. At the same time, however, when they're asked whether they want a larger government with more services and higher taxes or a smaller one with fewer services and less taxes, they opt for smaller government.

Their views about business are very similar to their views about government. They're skeptical but not hostile. Forty-seven percent of Millennials in one of the recent polls agreed with the statement, "The strength of this country is mostly based on the success of American business." A third said business gets more credit than it deserves for keeping the country strong. In one poll, fifty-five percent said that they wanted to start their own businesses—perhaps because they don't feel confident that they can count on big government or big business. A very large percentage of them believe that they will be rich.

[Laughter.]

Millennials don't trust either political party on many issues. They believe that when something is run by government, it's usually inefficient. Only eighteen percent consider themselves politically active or engaged. By forty-two to eighteen percent, they believe community service is a better way to solve the nation's problems than political engagement.

So how is this mix of attitudes affecting their views on the American dream? According to Pew's latest 2014 report, the Millennials "have higher levels of student loan debt, poverty and unemployment and lower levels of wealth and personal income than their two immediate predecessor generations, the Xers and the Boomers, had at the same stage of their life cycle." Seventy-one percent in Pew's survey said of them that people their age face more economic challenges compared with their parents'

generation when they were young. Silent majorities, Gen Xers, Boomers, and members of the Silent Generation agree about the challenges.

In the Reason poll, almost three times as many Millennials, forty-six percent (to sixteen percent), said that their generation would be worse off than better off than their parents' generation. Still, they are remarkably optimistic about their *own* future prospects. They are not satisfied with where they are now. If they have jobs, they're at the bottom of the totem poll earning less than other workers. Fewer of them in Pew's polling identify themselves as middle class. In their latest survey, forty-six percent describe themselves as lower or lower-middle class.

Just as in 1986, they were the least satisfied group about their present position. Just as in 1986 they are, in Pew's words, much more upbeat about their financial futures. A third told Pew that they earn enough now to live the life that they want. Another half expect that they will be able to earn enough in the future to live the life they want. Men and women are equally optimistic. Ninety-one percent of those with a college degree and eighty-three percent of those with less education think that they will eventually have enough money.

When asked what is most important in determining a person's success and wealth, the top three responses in the Reason poll were hard work, ambition, and self-discipline. In the poll, fifty-eight percent of Millennials said that most people who want to get ahead can make it if they're willing to work hard. Thirty-five percent said that hard work and determination do not lead to success for most people.

The conclusions from the Wall Street Journal poll about the dream from thirty years ago are remarkably similar to the insights that today's polls provide. Young people believe that the dream has meaning for them. To have freedom in how to live one's life ranks very high in terms of what the American dream means. Becoming wealthy ranks very low.

Young people today, like those surveyed in 1986, believe the dream is harder to achieve than in the past. They are pessimistic about the prospects for all young people. Still, they remain remarkably optimistic about their futures and a personal dream that they will define for themselves.

So that's a very brief introduction to Millennials' attitudes about the dream. And now I'd like to introduce our panelists. I'm going to introduce them all now and then we can begin with Lanny Davis.

Lanny Davis is principal in the Washington law firm of Lanny J. Davis and Associates, which specializes in legal crisis management, and executive vice president of the public relations firm LEVICK. He's been very active in national, state and local politics and served as President Clinton's special counsel. George Bush appointed him to serve on the Privacy and Civil Liberties Oversight Board. He is the author of several books and a regular television commentator.

Neal Katyal is a partner at Hogan Lovells. Prior to joining the firm, he

served as acting solicitor general. He argued successfully several major Supreme Court cases, including the defense of the constitutionality of the Voting Rights Act. He has also served as a law professor for fifteen years at Georgetown University's Law Center. And he told me that he was at the basketball game earlier today.

[Laughter.]

Rachel Brand was appointed by President George Bush to serve as Assistant Attorney General for Legal Policy at the Department of Justice. In that capacity, she served as chief adviser to the attorney general on issues including counterterrorism policy and the overall development of all regulations promulgated by the Department of Justice. Since 2012, she has served as a member of the Privacy and Civil Liberties Oversight Board. In addition, she serves as a senior adviser to the U.S. Chamber's Litigation Center.

My colleague Charles Murray is the W.H. Brady Scholar at the American Enterprise Institute. He first came to national attention in 1984 with the publication of *Losing Ground*, which provided the intellectual foundation for the 1996 Welfare Reform Act. He is the author of *The Bell Curve*, and more recently *Coming Apart*, which describes the unprecedented divergence in American classes over the last half-century. And particularly related to the Millennials, he is the author of *The Curmudgeon's Guide to Getting Ahead: Dos and Don'ts of Right Behavior, Tough Thinking, Clear Writing and Living a Good Life*.

Let's begin with Lanny Davis. Thank you.

[Applause.]

**LANNY J. DAVIS:** Thank you. First of all, thanks for the Federalist Society inviting me. It's great to talk to conservatives who most of the Republican Party would probably not nominate for president. Sorry.

[Laughter.]

It is really a privilege for you to allow me to speak to you. I've talked to you before and been welcomed, even with respectful disagreement. There is a Ninth Circuit judge in the audience who once complimented me at a Federalist Society meeting for giving a good oral argument, even though he voted against me.

[Laughter.]

And Coach Carlos Bea is somewhere in the audience—honored to have you here. And I use that as my opening, that what I'm about to say you will probably disagree with, but you might say I made a good oral argument.

[Laughter.]

My son Josh, my second-generation—I have two older children and six grandchildren. I have a 16-year-old son and a 9-year-old son. And the woman I'm about to be married to for thirty years is here, who is also an

attorney.

My 16-year-old, who is my bridge to the current new generation—I don't know if we would call Josh a Millennial or not—has taught me about one anxiety that addresses our topic today that certainly wasn't the case when I was 16 years old, and my oldest son, who is 45, when he was 16 years old. He's worried after he gets good grades, goes to a good college, maybe—I hope not—goes to law school—I hope not—

[Laughter.]

—he's worried about whether he will get a job. Sixteen years old and he asked me, Dad, will I ever get a job? And I don't think there's been a generation—certainly my parents' generation thought they would do better than their parents' generation. I certainly thought I would do better than my parents' generation. That is part of our history and our culture. It's what makes America great.

A combination of government—whether you're a liberal or private sector, whether you're a conservative—together in some manner of balance since the Framers through Franklin Roosevelt, through Ronald Reagan—we've debated that balance, but we all have agreed that somewhere we'll find the right balance to do better every generation.

And the debate between conservatives and liberals are about that balance. We have certain people that want no government and we have certain people that want all government. The real debate—me and you and everyone—should be how much and what's the balance? But the end result is better for every new generation. I would submit to you this is maybe the first that isn't so sure.

And I can't figure out what to tell my son except that technology has always created doubts among current workforces whether they will be pushed out of a job because of technology, and then sooner or later technology creates jobs. So I said, Josh, you're good in math, you're good in science, and you're certainly better at texting than I am.

[Laughter.]

But I then would like to suggest to you that one reason for the skepticism—skepticism of the Millennials, which I share—is that government has been inefficient and wasteful, but so have big corporations been greedy and inefficient and wasteful. So big institutions young people today, and older people, have skepticism in and we're not sure that the American dream is going to work the way it used to.

But I do think this—and this is my closing comment—I think that there is no future in a mushy American political center to solve problems. I think there is a future—whether it's Millennials or people of my son's generation or people of my generation—there is a future in strong, vigorous debate between people who believe in government somewhat, like myself, people who are real skeptical of government somewhat, like a lot of people in the Federalist Society. That debate has to start from those



principles, and then out of that debate between liberals and conservatives there has to be a sweet spot on every issue where problems get solved.

Mitch McConnell gave one of the most gracious victory speeches that I've heard in my lifetime. I've heard John McCain, during the 2008 concession speech, give one of the best, gracious concession speeches in my lifetime. But both of them were saying the same thing as I believe most people in America wanted to hear: We've got to debate, liberals and conservatives, and tell our children and our grandchildren we're not handing over to them receipts of our credit cards. We're going to hand over to them a society that creates jobs. And somehow there will be a debate among us, liberals and conservatives, that will be civil and that will look for solutions. Thank you.

[Applause.]

**PROFESSOR NEAL K. KATYAL:** Thank you to the Federalist Society for having me here again. And I guess I want to start by saying I am an unabashed American exceptionalist and I do believe that we are the best country on earth. And I think that's true for three reasons: our commitment to individual rights, the structure of our government, and our commitment to equal educational and economic opportunity.

And somewhat ironically, I guess, my experience in representing a man who was accused of wanting to destroy America's greatness is what helps to reaffirm my view in American exceptionalism. I was representing, a few years ago, pro bono, Salim Hamdan, who was accused of being Osama bin Laden's driver, and he was being subject to a trial, a military trial at Guantanamo. I thought that was unconstitutional and brought a suit to prove that.

And for a long time, the Pentagon and the Justice Department wouldn't let me go down and meet with him, meet with my client. They said, look, you know, you—first they said I didn't have clearances. I said, look, I've got more clearances than you can imagine; look me up. They looked me up. They said, okay, you do. They said, but you don't have any need to know. And I said, what do you mean I have no need to know? I have a need to meet my client.

They said, no, you've been making your legal arguments—separation of powers and the like—in the courts and you can do anyway; you don't need to meet your client. And sometimes I can be so deferential to government litigators. I was like, yeah, maybe that's right. I can make these arguments. Then I realized, "heck no, he's my client; of course I get to meet him." So I said, "Could I have that in writing?" And then they let me go and meet him.

[Laughter.]

But they made it hard. They made it a thirty-hour trip for me to get down to Guantanamo to meet him, and it was a long, long trip.

And finally I get there and it's really late at night and I finally meet this guy that I've been representing for a year. And he kicks everyone else out of the room except the translator and he says to me, look, I just have one question for you: Why are you doing this? Why are you representing me? And I was, like, such a debater, and so into the type of line-by-line argument law professor kind of thing, I didn't know how to answer it.

For, like, a half-minute I paused and then, like, forty-five seconds in I say to myself, man, you know, I should just stick to being a law professor because I can't answer a simple question. If you want to be a lawyer you've got to be able to answer the questions. Then I thought again, like, five more seconds into it. I said, you know, Justice Ginsburg, when you ask her a question, sometimes she'll pause for a long time before answering, so maybe it's okay. And then I thought, no, he doesn't know who Justice Ginsburg is. He's a guy from Yemen.

[Laughter.]

Anyway, I did say this to him—this is almost verbatim. I said, look, you know, my parents came to America from India. They literally were allowed to bring \$8. That's all they were allowed to bring and they had nothing with them. And they didn't come to America because of the sports teams or something else, or the quality of its soil. They came for one simple reason, which is they knew they could land on its shores and their kids would be treated fairly—maybe not perfectly but fairly and certainly better than any other country on earth. And that has been my experience with this country from start to now.

And I said, look, this military trial order, this is the first time I felt like my country was doing something different. For 200 years we had never set up a system in which foreigners got a different trial than American citizens. We always treated them the same. Literally there's no precedent for this. I said, that's why I'm doing this. And he said, okay, he understood.

So that's the first piece of it, the individual liberties piece, but the second answer, which I couldn't give him at the time because we hadn't won the case, is the one I gave when we did win it in June of 2006 at the Supreme Court. It is a 173-page opinion. And sitting in the courtroom, just to read the condensed version took nearly an hour with the dissents and everything.

I remember, right after, we had to go out on the courthouse steps to the media. Everyone was asking "what does it mean? What does it say?" None of us had had time to read the opinion yet. But I knew what it meant. I said, "look, here's what this opinion really means: This guy, Salim Hamdan, a fourth-grade educated Yemeni, accused of being the worst of the worst, brought his lawsuit against not just anyone but the world's most powerful man. And he did so not in any kind of local traffic court but in the highest court of the land, the Supreme Court of the United States . . .

and he won.”

That to me says something great about our founding design, that our system was strong enough and resilient enough to say even our nation’s most powerful man could make a mistake and that our government would self-correct it. I said, “look, in many other countries Mr. Hamdan would have been shot for bringing his lawsuit, and more to the point—his lawyer would have been shot.”

[Laughter.]

“But America is different. It’s special. And when you think about it, maybe the Guantanamo example doesn’t work for you, but maybe you’ll find the recess appointments case a good one, as you may be glad to see the Court strike down President Obama’s recess appointments unanimously—including with President Obama’s own appointees to the Court. Again, it’s the—

[Applause.]

That’s what the Constitution is about. It’s about saying, look, anyone can make a mistake. You know, Madison, in Federalist 51—if men were angels, we wouldn’t need government. But we do, and we need to divide power, and that’s the genius to me of the American system.

So that to me is the positive note. The somewhat more cautionary note that I have is about the economic opportunity piece of this panel, you know, particularly educational opportunity. I was fortunate. My parents came with nothing but I did get every opportunity, going to great schools and the like, and the country has been amazing to me. I worry about that for the future.

There was a recent study done by the OECD and it surveyed all the different countries around the earth, and it asked the question: If your parents didn’t finish high school, what was the chance that you were going to get a college degree? Well, in Korea it’s fifty-three percent. In much of Europe, which is much more class-restrictive than America, it’s about twenty-five percent. France is twenty-five percent, Sweden twenty-seven, Spain twenty-five, the United Kingdom twenty-four.

So again, this is a statistic on, if your parents didn’t finish high school, what’s the chance you would get a college degree? Roughly a quarter in Western Europe. What’s the statistic for America? Five percent. Five percent if your parents didn’t go to—finish high school. So it’s a five percent chance that you’re going to finish college. And that of course, I think, is a big, big danger to the future of the American dream.

And I think that the solutions—and this is where I want to close and pick up on something that I thought Lanny said so well. The solutions here are not going to be left and right. I mean, we need to have, for example, competition in the public school system. The folks that I talk to on the left have to understand that, that no school should have a monopoly just because of where your kid happens to live. There has to be some more

robust competition in the system.

And similarly, I think on the conservative side there needs to be an appreciation that we need to have to have more funding in various places for schools as well. I mean, the idea that funding is completely irrelevant to educational equality seems to me a tough argument, but that to me—that to me is the debate we should have. And I look forward to your questions, so thanks.

[Applause.]

**KARLYN BOWMAN:** Rachel.

**RACHEL L. BRAND:** Thank you, Karlyn. It's great to be here. It's an honor to be on this very distinguished panel with a couple of old friends of mine, Neal and Lanny. And although I have very different policy and political views from both Lanny and Neal, you're going to hear some areas of agreement between us.

This is a very amorphous topic—is the future of the American dream bright?—and I wondered what in the world I would say about it. What I want to do is, in light of the prospect of a moderated discussion here, make three very high-level points. They're not really related to each other, but they're jumping-off points for consideration of whether the future of the American dream is bright.

First, if you're going to talk about the future of the American dream, you have to start out by asking what the American dream is. And to my mind, the American dream is not about money. It's about freedom. And to be sure, a big part of that is freedom and opportunity to pursue economic potential to the full extent of your own ability. We are the country to which tens of millions of people have come to achieve a higher standard of living, Neal's parents among them. And we're the country that loves the Horatio Alger story. That's very much a part of the American dream.

But it's about a lot more than economic prosperity. It's also about basic human freedoms. The freedom of religion is perhaps the original American dream, going back to the Pilgrims. That is certainly the reason that the people who founded my hometown in Iowa came to America. You wouldn't think of Holland as being the place of religious oppression, but at that time dissent from the official Dutch church was not tolerated, and so they came to America. They even named my hometown Pella after the ancient city of refuge by that same name.

It's also about the freedom of expression. It's about the freedom to speak your mind. It's about the freedom to criticize the government without fear of reprisal. It's about the opportunity to participate in selecting that government. It's about all of those things, the point being that you can't just talk about economics and job prospects when you're talking about the American dream. You have to talk about the whole package.

The second is that when you style a panel discussion in this way—is the future of the American dream bright?—it’s perhaps calculated to elicit the answer no, or to focus on all of the threats to that dream, and there are certainly many of them. But I am constitutionally optimistic like Neal, and I think we don’t often enough take a moment to step back and think about how exceptional this country is.

I’ll just state a few painfully obvious points: We just had an election without violence. We are having this conference blocks from the seat of government that many of us here in this conference are criticizing. We have incredible religious diversity in this country without the kind of violence that plagues other parts of the world. I practice my Christian faith openly with no fear of persecution. And we are a land of economic prosperity. Just ask all the people who come here every year, legally and illegally, to find work. We remain the land of economic prosperity too.

The reason we are able to continue to enjoy all of those freedoms is because many people, including many people in this room, have been constantly vigilant and have fought against threats to the American dream. So I’m not Pollyannaish about this, but with Thanksgiving coming up it’s a good idea to step back and think about how blessed we are to have this starting point as we think about the future of the American dream.

The last point is that you can’t really think about the American dream without thinking about the ways that government is both necessary to and a threat to enjoyment of the American dream. When I say that it’s essential to it, I mean that at the federal level, you cannot have the American dream—we would not enjoy either economic prosperity or liberty—without a secure sovereign state. The government has to ensure the national security. That’s essential.

At the local level, law enforcement is important. People cannot enjoy the American dream if they fear for their safety when they walk out the front door because of street violence.

So there are ways in which the government is essential, but outside of those limited functions that only the government can perform, in large part the government is a threat to the American dream. I’m thinking particularly about over-regulation.

I don’t think there’s really any doubt that regulation at all levels of government stifles economic prosperity. I also think it’s a threat to liberty, and I’ll get to that in a second. Even President Obama, in issuing an executive order a couple of years ago, recognized that, in the abstract at least, regulation burdens the economy and stifles job creation.

First of all, there’s really no doubt that there is a proliferation of regulations. You could use lots of different metrics to prove that point. You could look at the number of regulations promulgated every year, which is constantly increasing. You could look at the number of “economically significant” regulations promulgated every year. That’s a term of art that

OMB uses. It refers to regulations that cost more than \$100 million.

You could look at the number of pages that new regulations consume in the Federal Register every year, which is over 80,000. You're all lawyers—you know these tricolumnar, dense-print pages in the Federal Register. Imagine 80,000 new pages every year. And then you could look at the cost of regulation, even by the agency's own estimates, which is constantly increasing. Federalist 62 warns against laws "so voluminous they cannot be read." Obviously the federal bureaucracy has not heeded that warning. And the situation is not much better at the state and local level in many jurisdictions either.

Think about the economic consequences of that. Just to use one example—the ozone rule that's coming out from EPA—the EPA estimates the economic cost of that rule alone at \$90 billion. It's the most expensive regulation ever. Now, that's the EPA's own estimate, and you can decide for yourself whether you think federal agencies are incentivized to fully and fairly assess the cost of their own regulations. I would suggest that they lowball it, and independent analysis suggests that the cost of regulation writ large is much higher than what the federal government estimates.

Another problem of regulation is that it's really a direct threat to liberty because many federal regulations carry criminal penalties. There is a whole list of federal statutes, from the Clean Water Act to the Food, Drug, and Cosmetic Act, where the statute says that there are criminal penalties for a violation of a regulation promulgated under the statute. So Congress is giving bureaucrats, who enjoy job protection akin to life tenure, the authority to create the parameters of criminal penalty. Many of those regulations have basically a strict liability *mens rea* standard. That's obviously a problem for liberty.

The last point I'll make is that because regulation, even the best-intentioned and wisest regulation, is going to be a one-size-fits-all solution, it stifles the kind of creativity and innovation that has always underlay the economic prosperity part of the American dream. That's a problem for business, and it's also a problem for the way that nonprofits and charities do their business. I won't go into that now in the interests of time, but perhaps in the discussion we can talk about how philanthropic activity is part of the American dream and how the government stifles that as well.

I'll hand it over to Dr. Murray.

[Applause.]

**CHARLES A. MURRAY:** I want to pick up on what Rachel said, partly because I think that it's a very good framework, and partly because, given the way the acoustics work, the only people I understood were Karlyn and Rachel. I didn't understand a word that Lanny or Neal said. I tried real hard but it was tough.

[Laughter.]

But Rachel, I think, has a whole bunch of points that need elaboration. The first one is the American dream does have two distinct aspects, and one of them is getting ahead—your kids have a better life than you had. That's certainly part of it.

And the other part, what I have sometimes characterized as the American project, is the freedom of individuals to live lives as they see fit so long as they accord the same freedom to everyone else. And that I think was at the very heart of what started the nation, at the heart of what makes the other half of the American dream work. Let me just consider each of those separately because I think we're in a best of times/worst of times situation on that.

With regard to the American dream—occupations and earnings and the rest of it—we've got a really serious problem, a structural problem. On one hand, it remains true that there are all sorts of jobs paying really good money that employers can't hire people for because they can't find enough trained people to do them.

I was in an Uber car being driven by a guy who is finishing up his training course for being an electrical lineman. Electrical linemen, after a year or so on the job, are making six figures, all right? Those kinds of jobs are out there. In that sense, working hard, getting ahead is something an awful lot of immigrants prove is still possible, and also an awful lot of people who don't fall for the line you have to go to college to make a decent living.

[Applause.]

The real problem here is that a whole bunch of jobs are getting hollowed out. It's not electrical linemen who are going to be replaced. It's a lot of white-collar jobs.

Think about somebody like a travel agent, which is a white-collar job. It required intellectual skills. But I use the past tense because I haven't used a travel agent ever since the websites got good for the airlines and the hotels and the rest of it. That same thing is happening with a lot of jobs which required in the past a certain level of cognitive ability and ability to make judgments and decisions, which are now going to be made better, if not already being made better, by computers and other forms of electronic and technological systems.

That's not going to slow down that replacement of people with machines, and we have to face, I think, the reality that as the country continues to get richer, if the marketplace is not rewarding certain kinds of jobs and skills as it used to and it never will again, I, who consider myself a libertarian, say that's something we've got to deal with and it's going to have to be dealt with in creative ways.

I published a book myself saying that—following the example of Milton Friedman and Friedrich Hayek—that I think guaranteed basic

income is the way to go, but there are other ways to do it. But that problem is going to get worse and worse. It has to be dealt with. And those of us on the right and those of us who believe in limited government I think are going to have to add to the list of things that only government can deal with some of these huge structural changes in the economy. But dealing with them does not mean—and this picks up on the next part—making 50,000 new rules for how to do it. I think the solutions ought to be really simple solutions.

And that gets to the point about living life as we see fit so long as we accord the same freedom to everyone else. In this regard I think we are, in some ways, in the best of times. I mentioned Uber a minute ago. Uber is kind of a parable for what is becoming possible. Those of you who are not familiar with it, Uber are these cars that you open up your app on your smartphone. You can see where Uber cars are. You say, send me a car. You can see the driver driving towards you. You hop in the car. The driver takes you where you want to go. You hop out of the car. No credit card, no cash. You just wave goodbye and you're on your way because it's all billed to your account. It's great.

How on earth can this exist, because we all know that in every major city in the country that the politicians are in bed with the taxi drivers and the taxi companies, limiting the services with all the classic kind of collusive capitalism. Uber doesn't ask permission. It just shows up and starts offering its services. And by the time the pols can try to stop them, Uber has already been so convenient for so many people—they have a very powerful constituency that already, in many cities, has simply over-ridden traditional kinds of political collusion which has prevented this kind of innovation.

What Uber is doing is emblematic of a much larger thing that is possible in two different kinds of ways. One of them is that increasing technology has in many ways made a lot of government functions that used to be kind of important not so important anymore, or not important at all.

I'm thinking of the old days. In 1900, if a progressive came up to me and said, you know, we've got to have more active government because we have these small tyrannies, whether they are towns in the South which are oppressing blacks, whether they are company towns which are oppressing people who want to organize, and the rest of it, and only government can extend the needed protections to people, you could make a pretty strong argument for that in 1900. You can't make a strong argument for it now. The economic value of "60 Minutes" finding a small tyranny is so great, the incentives are so great, and this is so great for every news organization in the country, that all sorts of things that could go unnoticed in the past can't go unnoticed now. And the Internet has only made that more so.

Another quick example. In 1900, you could make an argument for the Food and Drug Administration having requirements for listing ingredients,



truth in—truth in labeling, because there were lots of ways in which information was very hard to get. Now information is easy to get on almost anything we use and buy. In all sorts of ways, a lot of the things in—ways in which there were at least temporary failures of the market in the past are no longer failures in the market. It's liberation technology.

But the other aspect of it is exemplified by Uber. The federal government, and actually government, large government in many forms, is akin to the Wizard of Oz. You remember the Wizard of Oz in the movie, the booming voice and the rest of it? Well, if that booming voice, and if the power is directed at individuals—the government is indeed so powerful that regulators and bureaucrats can say to small business people—as they do regularly—if you try to fight this in court we will put you out of business. They say that and we all know it's true.

What we seldom think about as being equally true is the only way that the government can enforce these tens of thousands of regulations, many of which are patently idiotic, is through voluntary compliance. The government can go after one small business person who's violated an idiotic regulation. If 20,000 violate that regulation, they don't have the resources to enforce it. There are ways in which once we realize that the government is, in many respects, the Wizard of Oz, trying to run the country, to micromanage our lives, but can only get away with it because we allow them to, it opens up a variety of strategies for dealing with it.

Now, I am secretly giving you a plug for my next book—

[Laughter.]

—where I'm going to tell you how we can do that, but I want to make the broader point right now: It is inconceivable to me that 200 years from now, as national wealth has continued to increase, as technology has empowered individuals in ways we can't even imagine now—it is impossible for me to believe that 200 years from now we will be saying, gee, the best way to run a society is with millions of bureaucrats issuing thousands of rules and doling out goodies in bits and pieces and so forth. It just can't happen. We will be too rich. We will have too many resources to allow that to happen.

So I sometimes use the tagline that I'm a libertarian and libertarians don't do solutions, but let me put it this way: 200 years from now, solutions will have been found and they will have been found in part because we will have the technology and the money to do it. And they will have been found in part because Americans, for all the ways in which we've experienced problems, still retain a profound affection and allegiance to the ideals of freedom that animated the country. Thank you.

[Applause.]

**KARLYN BOWMAN:** Thank you very much, Charles. And thanks to the rest of the panelists. I confess I've read Charles' forthcoming book and

it really is going to be just extraordinary when it comes out.

This setup here doesn't exactly make easy conversation among the panelists and so we're going to have to work around that. And we also want to turn to your questions. And there are microphones placed in the aisles, and if you could perhaps line up at those. But I'd like to begin by asking the panelists if they could—and we've certainly heard a lot about this—perhaps just tell us what they see as the top three obstacles to the American dream.

**LANNY J. DAVIS:** The top three obstacles to the American dream? Republicans, Republicans, Republicans.

[Laughter.]

I'll just say one. And I do agree with Mr. Murray that our liberal government, out-of-control regulations that thwarts individual enterprise—I'm sounding conservative now—is a great fear of mine, and it's unfortunately the case it happens under Republican and Democratic administrations.

I do think that the American dream will be enhanced if my Republican friends, my conservative friends, would say to my son, yes, there will be a Social Security check for you despite the poll results, because we Republicans will support the concept of Social Security, which back in 1935 was being argued against by conservatives, very similar to the individual mandate under the Affordable Care Act: It's anti-liberty to force the young generation to pay to support senior citizens who are about to retire. And there was a social contract that over the years everybody realized, well, I'm going to get old someday myself and there ought to be a Social Security check after all that money I've paid in.

So we have some kind of a possible consensus among liberals and conservatives that we have too many regulations. But we need some kind of balance so that government is there as what we would usually say, as liberals, is a social safety net, but what you could say, as conservatives, that allow individual freedom with the sense that if things go wrong, at the end of the road when you're a senior citizen there will be a Social Security check.

**KARLYN BOWMAN:** Neal.

**PROFESSOR NEAL K. KATYAL:** I still can add one, I think, major threat to the American dream, which is educational opportunity. I guess I've used this to talk about another, which is I guess I'd like our government to be a little more humble. And by that I mean, you know, what Professor Murray was saying a moment ago about a government agency who says, if you sue to challenge these regulations, we'll put you out of business. That idea that the government could use its coercive power

to stop a lawsuit I think is so corrosive to what America is about.

And it's true even in the Guantanamo case. After the Supreme Court granted certiorari, the administration and Congress passed a bill to try and remove from the docket of the Supreme Court that case. That to me was a tragic mistake. I think we should expect our leaders, if they're going to make big decisions on ozone or whatever, to be able to stand up in court and defend those decisions if there are proper and appropriate legal questions to decide. That's part of the Madisonian checks and balances.

And I think we should even go further to start to celebrate checks and balances within each executive branch agency itself. So to me I find it a problem that drone strikes happen or FISA warrants are issued when there's no advocate, no one on the other side who's institutionalized to say, you know, maybe we shouldn't conduct that drone strike, or here's the argument against that, you know, massive dragnet of NSA surveillance, or whatever.

So I think we should be thinking about standing up dissenting institutions precisely because, as Madison said, men aren't angels. Some of those are going to be the external checks and balances we're familiar with, courts, but some of it can be done internally as well. And to do that I think all of us who have been in government and all of those who are still in government need to be a little more humble and embrace the fact that men aren't angels and will make mistakes.

**KARLYN BOWMAN:** Rachel, you began with government regulation. Other ideas of obstacles?

**RACHEL L. BRAND:** Yeah. A more general point—and I was interested in the statistics that you had because I think that, at a very macro level, the very prevalent attitude that the answer to every threat to the American dream is a governmental answer is itself a threat to the American dream. I was sort of dismayed to hear—I think what you said is something like Millennials want the government to do more things, and I think that's a problem.

On the regulatory front, I've already talked about over-regulation, and I should have made the point which Lanny just made, which is this is not a partisan issue. If you look at economically significant regulations, the Bush administration issued more of them than the Clinton administration did. I'm sure the Obama administration has issued more than Bush. It's like a one-way ratchet, right? It's going up all the time regardless of the party of the Administration.

The other problem is that there is very little consideration of the balance of cost and benefit. Some rules have been struck down. The proxy access rule, for example, was struck down for inadequate cost-benefit analysis. It's sort of an arbitrary and capricious inquiry. But if you look at

what the agencies are actually doing, they're not really assessing what the costs and the benefits are and then deciding whether or not to promulgate the rule on that basis. They decide to promulgate the rule and they make the numbers fit the rule.

And in fact, under the Clean Air Act, which is where some of the most expensive rules come from, including that ozone rule I mentioned, the Supreme Court has held that the agency isn't allowed to take economic costs into account. They have a statutory mandate, and economic costs be damned. And so you have these extremely expensive rules that don't just affect power plants. The trickle-down effect and outside-the-fence effect—the cost to every person in the United States—is pretty staggering.

**KARLYN BOWMAN:** Charles?

**CHARLES A. MURRAY:** Well, the problem that we have to solve fairly soon has to do with jobs, because the rate at which jobs are being hollowed out is pretty scary. The good news here is—I'm put in the unfamiliar position of being optimistic, but with regard to the education system I think we can be optimistic—post K-12.

I think that the four-year college, as it has existed in the past, will be transformed over the next decade. Yeah, the Ivies and the prestigious schools and the great state universities will still be there, but the rapid development of distance learning, of all sorts of capabilities and the Internet—there's just simply no way that the overpriced college education that we have right now, which does not lead to people coming into the workplace with skills, it cannot possibly be sustained when you have all sorts of much cheaper alternatives, much better alternatives coming out of the Internet.

It's going to be market-driven. The colleges are not going to be able to resist this revolution, and at the end of it all we will have a much better educational system for preparing people to go out and get jobs which are still needed. So to that degree I am happy to say that our biggest problem is also one for which there is a solution that does not require the government to say okay. It's going to happen, period.

**KARLYN BOWMAN:** Thank you, Charles.

If you can begin lining up if you'd like to ask questions for the panel that would be terrific. And I have another question, though, about what the legal system can do to enhance prospects for the American dream for young people—should be doing.

**LANNY J. DAVIS:** The legal system?

**KARLYN BOWMAN:** The legal system. Anyone want to take that?

**LANNY J. DAVIS:** Yeah.

**KARLYN BOWMAN:** I'm sorry, we have one question on the floor already, and if you could just—

**LANNY J. DAVIS:** I hate to always answer with a joke, but the best thing we can do about the legal system is kill most of the lawyers and start all over again.

[Laughter.]

I think that the legal system has lost track of objectives, which is justice. And there is too much in my world, litigating, and not enough mediation and compromise. I'd like to take alternative dispute resolution and put a lot of lawyers out of business and solve problems that are now decided by litigation. I'd also like to reform the class action laws that allow anybody to use litigation to extort money rather than to get justice. So those are two ideas.

**KARLYN BOWMAN:** Anyone else? Okay. All right, we'll turn to your questions now, starting with you. And if you could identify yourself, please.

**MARK MITTLEMAN:** Mark Mittleman from St. Louis. Just to inject a note of perhaps not my pessimism but someone else's, you probably know about the economist Tyler Cowan, who has recently suggested that the future is one in which fifteen percent of the population will have incredibly satisfying, creative, meaningful lives and the other eighty-five percent, although they may be supported by some form of welfare or have some kind of income, will basically have free Internet, sex, drugs and rock and roll and not a very meaningful life. Is that just a wild guess or is it complete baloney, or do you think there's anything to it?

**CHARLES A. MURRAY:** I'll just jump in and say a great deal of my argument about the problem with jobs comes directly from Tyler Cowan's book *Average is Over*. I think he's right on target.

I think, however, the next step is to say, look, civil society needs a lot of things to get done that aren't getting done. There are ways in which a lot of this human capital can be useful. I'm not suggesting government jobs programs for civil society. I said "civil" society, nongovernmental society. There are ways in which this culture and the society can evolve to develop new, valued places for people that are different from the one that we've known in the past economy, but we will have to do that or we've got exactly the problem that Tyler Cowan described.

**KARLYN BOWMAN:** Any other comments about that?

I could just add a note here about the polls. You see deep skepticism of the federal government—deep skepticism, again, but not hostility to big business and to big government, but there's a remarkable optimism among young people about being able to do things in state and local communities. It's a kind of silver lining. A lot of them have had a civic service requirement, and this I think can pay enormous dividends and perhaps address some of the problems that Tyler has mentioned in his new book.

Yes, you're next.

**BONNIE WACHTEL:** Bonnie Wachtel. Nice to see you all again. A question for Neal Katyal.

First, thank you for coming here today. Number two, I'm going to give you a chance to potentially revise or clarify your remarks.

[Laughter.]

I was really struck by—you opened by quoting a statistic about parents who don't go to high school their kids are unlikely to go to college, which does not say anything about educational opportunity in the United States for, I think, reasons that are obvious to a lot of people in the audience.

And then you also seem to be so totally focused on this issue of going to college. The American dream has to include college. For the elites that are devising these things in government and elsewhere, everybody has to have a career that looks just like ours. And it seems to me there is pushback on the other side of the table for this. This is misguided. This is cruel. This is nothing that we should be pushing. It's utopian. It's going in the wrong direction as opposed to something that is much more tailored to every individual and, again, the needs of the economy that make sense for people of all different levels and inclinations. So I invite you to agree with me—

[Laughter.]

**PROFESSOR NEAL K. KATYAL:** Well, with such a—with such a powerful statement, how could I not agree with you?

[Laughter.]

Look, my point is not that everyone should go to college. That's not what I said. My point is about educational opportunity in that everyone should have the chance, should they wish to go to college, and not have it be determined by who your parents are. Now, why do I think that? Well, there are great statistics on this in the OECD report and other places that say that—just look at page 141 of the report.

It goes through this all and says that if you don't go to college in America, that your median income is a lot lower and your chance of being unemployed is a lot higher. Now, look, I'm not saying that everyone needs to go to college, but those are facts; those are realities. And, yeah, I do think that it's something that we should be talking about. I don't think

there are very many people in this room who didn't go to college.

Now, of course my point is not everyone needs to be in this room, but folks who WANT to be in this room I think should be in this room. And a system that only sends five percent or less when your parents didn't finish high school, compared to Western Europe of all places, a place that always struck me as being incredibly classist, is, I think, a problem. We're risking getting the same people replicating from one generation to another. That's a threat to one version of the American dream. And so that's all I mean to say about it.

**KARLYN BOWMAN:** Charles?

**CHARLES A. MURRAY:** Well, I've written whole books about this subject.

Look, one thing is that the college premium is largely a matter of a screening device whereby, depending on where somebody went to college and what courses they took, you can get some idea of how smart they are. And it is that kind of intellectual ability which is the coin of the realm in a certain set of occupations.

And that generates the premium because everybody—well, you're almost all lawyers so this doesn't count for a lot of you, but for those—anybody who runs a business—and if the only thing they know about an applicant is that the applicant has a BA, they don't even know if that applicant can write a coherent sentence. They've got to know where they went to school. They've got to know what they studied.

The BA is the work of the devil. It has become this artificial emblem of first-class citizenship in this country, and what we desperately need is a system that allows a young person to tell an employer what he or she knows and can do, not where they studied it and how long it took them. We need some kind of certification which allows people to communicate with employers in a much more efficient way than the BA does.

**KARLYN BOWMAN:** Sir?

**RONNIE SAMMS:** I'm Ronnie Samms from the former and possibly future Republic of Texas.

[Laughter.]

My question is to Lanny Davis concerning the civility of debate and discourse between progressives and conservatives.

In 2003, I spent eight wonderful days traveling around Vietnam with Fred Baron, the former campaign manager for John Edwards. He and I were on opposite poles of every political question. We had civil discourse. In fact, he sent me a copy of the *Biography of Ho Chi Minh*, and I sent him a copy of *Atlas Shrugged*.

[Laughter.]

Now, Fred and I got along perfectly well, but we could not have met in a deliberative body and made decisions about the future dream of America. What do we do?

**LANNY J. DAVIS:** This meeting, the way that Neal and I are welcomed here and in previous years, is your answer, because the Federalist Society has a particular philosophy but it's open to debate and ideas, and out of those debates come solutions.

There's an organization called No Label that Joe Manchin and Jon Huntsman have led, that Joe Lieberman has just come in to replace Joe Manchin. And they only ask people to pledge one thing: Stay liberal, stay conservative, but debate, discuss and find solutions that are based on facts, not ideology.

Now, in this particular era that's really difficult. I'm on Fox TV and people on the left think I'm a traitor and I get hate mail. When Hannity yells at me it doesn't matter; I never get a chance to talk anyway.

[Laughter.]

At least you let me talk. But I do really believe that what you guys do, you ladies and guys, and what I hope the American Constitutional—thank you for being the Federalist Society; we do thank you for letting us do a counterpart—that the American Constitutional Society, in the debates that occurred today, are what America needs more of.

I actually think that Jeb Bush is a great man. I hope he's not nominated because he'll be very difficult to beat, because he is somebody who is civil and can debate the issues. I happen to think that Hillary Clinton is a great woman, a great person, one of my oldest friends. I think she is fact-driven. She may come out wrong in your view, but if there happens to be a campaign between Jeb Bush and Hillary Clinton, this country will be proud of the campaign that takes place.

**PROFESSOR NEAL K. KATYAL:** I just want to say one other thing about that. The speaker—the great question—said you and Fred couldn't have met in a deliberative body. There is a deliberative body I'm very familiar with where I practice in which you could have met, and that's the Supreme Court of the United States. And if you look at the statistics the last term, they agreed in two-thirds of all cases. You'd have to go back to the year 1940 to find that degree of unanimity.

There were only twenty-five decisions last term that were not unanimous. And these were not small things. Recess appointments was unanimous. The cellphone privacy case, what I think of as maybe the most important—one of the most important cases in our lifetimes, was unanimous. Major patent decisions were unanimous—big, important things. What's going on?



Well, I think what's going on is the Chief Justice and some of his colleagues are looking across the street in Congress and worried about exactly what the speaker was worried about, that the left and right can't talk to each other, and they're saying, we're the grownups here; we're going to point the way toward what a true deliberative democracy looks like.

**KARLYN BOWMAN:** Thank you. Sir?

**ATTENDEE:** My name is Bernard. I am a French attorney. And I've been for ten years the president of [a legal club] in Paris.

[Laughter.]

I would like to make two remarks on American exceptionalism. The first is one is that that theory was invented by a Frenchman.

[Laughter and applause.]

That Frenchman was named Alexis-Charles-Henri Clérel de Tocqueville.

[Laughter.]

He was a judge, as you know, and he invented that theory two centuries ago in a book named *Democracy in America*. When I met Justice Scalia the first time in this country twenty years ago, he told me he is probably one of our founding fathers.

[Laughter.]

And the second remark is that—and I think this is why the French have some competence about American exceptionalism. I don't think that the American dream is about more or less government. I think it's about two things.

The first is the response to the question, why does government exist? In Europe, ninety percent of the people would say government exists to protect general interests—*l'intérêt général*—and the difference here is that government does exist to protect individual freedom.

And the second thing, which is very important to me I think, is that to be an American and to remain an American you have to remain different. I met many people in this country, especially among liberals, who thought that to look modern, to look brighter they had to think like Europeans. And I think it's completely wrong. This country was founded by people who were very unhappy in Europe and it was founded to be different, to be a different country. So to remain American, please remain different.

[Laughter, applause.]

**KARLYN BOWMAN:** Sir.

**KAJ AHLBURG:** I'm Kaj Ahlburg, Port Angeles, Washington. I've sensed certain agreement from both ideological sides of this panel that

regulations may be excessive and harmful to the expression of the entrepreneurial spirit in this country. And as a former president of my local business association I can strongly second that. I see all the time existing businesses being unable to expand, and in some cases survive, and new entrepreneurs being discouraged by an avalanche of federal and state unfunded mandates and regulations they just don't have the resources to hire the experts to help them comply with.

How, within a period not 200 years—let us say ten years—can we get to a situation where this is reversed? In the past, changes in administration don't seem to have helped because whichever party is in power may change the rate of increase, it doesn't change the direction.

**LANNY J. DAVIS:** Could I just jump in that the way to get that done is to have Republicans write the regulations but acknowledge that we need some, just as we needed Nixon to go to China to break through the stereotype of not having relations with China?

I don't trust liberal government to cut back on regulations. I do trust Republican government, but it takes a Republican government—I mentioned Jeb Bush as just one of a few that understand that there is some kind of a balance that has to be struck between liberalism and conservatism. All regulations aren't bad. We used to have sweat shops and we agreed that we needed some government intervention in the private marketplace that was unfettered and capable of abuse if left alone.

So there was a Republican president named Theodore Roosevelt who first started us on the road of regulating the private sector. Now we could say—I could say it's gone much too far in the other direction. But I'd love to see Republicans take the lead on regulatory reform while acknowledging that the private sector can sometimes get out of whack and needs to be regulated.

**KARLYN BOWMAN:** Rachel?

**RACHEL L. BRAND:** Well, I can start by being a Republican who agrees that there is need for some amount of regulation. I don't think that any serious Republican would say that there's no need for any kind of regulation. I think the answer to how you get less regulation is an incredible amount of discipline and willingness to make hard and unpopular choices, because there is a constituency for every government program, there is a constituency for every area of regulation, and once something is in place it's exceedingly hard to scale it back.

And it's not just a problem of regulatory agencies. It's also a problem of Congress, because every time there's a scandal in the press there has to be a federal government response, right? There has to be a new statute and they're never taken off the books. If you look at like the criminal statutes,

you can find some absurd examples about it being a criminal violation to misappropriate the image of Smokey the Bear, or whatever, and you can go down in absurdity from there.

There's always the reaction that, oh my gosh, there's a scandal; Congress must do something. And it's because the people call for it. So to get away from that, members of Congress and people in the executive branch are going to have to say, no, you know what, the right response to that is not a new law. It's not a new regulation. It's to leave it to the private sector when appropriate.

**PROFESSOR NEAL K. KATYAL:** This is just a question for Rachel because I don't know, but with statutes at least, sunset clauses have done a pretty good job sometimes of removing offensive statutes from the books. Independent counsel acts as a good example. What about sunsets for regulations? Has that ever seemed to work so that a regulation might go into effect but it's got to be affirmatively re-upped after a certain number of years or something?

**RACHEL L. BRAND:** Well, most statutes don't have sunsets, of course. Some do, and then that's an action forcing thing, especially in the FISA context, for example. Many of the most controversial Patriot Act provisions had sunsets, which is an action-forcing event in future years.

It's not a perfect solution, though, because the best solution is to reduce regulation in the first place, because once you have a regulatory structure, particularly a complex regulatory structure, the regulated industry or part of society adapts to the regulatory structure. And then if you change that regulatory structure, it's extremely difficult and expensive to then adapt to a new regulatory structure.

I fear the same thing is true with sunsets and statutes. They're an easy out for Congress. It's too controversial. They can't come to agreement. Let's just put a sunset in, then we can punt the question for a future year. That's not really the best way of doing business.

**DANIEL KELLY:** Hi, my name is Dan Kelly. I'm from Boston. I've been sitting here this whole time thinking, why are you ignoring this issue? And the issue is the American dream is about hope.

We're not in a permanent caste system. We can escape our parents' circumstances, our own surroundings and succeed, yet we have a permanent underclass in this country made up in large part by minorities who have suffered tremendously under this administration. And yes, we had no violence associated with this election but we're going to have a lot of violence in Ferguson, Missouri a few weeks from now when that grand jury comes out.

And that's a terrible situation, and a large part of the Millennials who

make up those groups do not have any hope. And our government, both Republican and Democrats, have utterly failed that group of people, our brothers, and I'd like to hear you talk about that. Thank you.

**KARLYN BOWMAN:** Charles, would you like to start that?

**CHARLES A. MURRAY:** Well, you're referring to what I call the new lower class in a book called *Coming Apart*. And the problem is that it is increasingly widespread among "plain vanilla" whites. It's not anymore a problem that I think we can reasonably characterize as being concentrated in minority communities. And it consists of dropping out of the institutions of American society, whether it's family or religion or dropping out of the labor force.

If that is to be changed, it is not going to be changed through government programs. It is going to be changed because of a kind of cultural reawakening. I know that sounds wishy-washy and squishy and so forth. The fact is the United States has in the past had at least three religious great awakenings, maybe four, that have had profound effects on secular society—profound effects for the better. The civil rights movement is still another. That was not a religious great awakening but it was certainly a secular movement of that, and over the course of the ten years changed a sea change in the consciousness of Americans about what was being done to African-Americans.

We need something similar to happen in which the elites in this country once again realize their responsibility as stewards of the culture and stewards of right behavior and of values. By that I don't mean that we should be compelling everybody else to go along with what the elites say. I want the elites to start behaving more like Americans did historically, which was to be deeply engaged—

[Applause.]

—to be deeply engaged in the life of their communities. And part of being engaged in the life of their communities is being engaged with everybody. And that used to be true in a way that is no longer true, along with which I think that once the American elites redevelop a sense of seamliness, that would be a big help as well, where it is once again considered being—getting too big for your britches to build a 15,000-square-foot house and all the rest of that, and that you are first and foremost an American; you are not rich or poor.

[Applause.]

**PROFESSOR NEAL K. KATYAL:** I want to agree with the speaker about so much of what was said about hope being the essence of the American dream and about how governments of both parties have failed this class of people, and to agree with Professor Murray on his point,

which is not just governments have failed. Society has failed at this and private institutions and individuals, elites need to do more.

One very powerful example, my wife works with veterans. That's her job. And when you think about what happens to this group of people who have fought for our country and the high rates of diabetes, of heart disease, of unemployment, of so many things, that's a solution—yeah, government can be part of that solution but, man, private industry has to really step up to the plate as well. And I'm proud to see Amazon, GE, other companies now starting to take that mission seriously, but so many still aren't.

And so there's a lot—you know, when we say government has failed, yeah, but there's a lot of other folks who are failing too.

**LANNY J. DAVIS:** I'd also like to remind—a Democrat and a Republican who were role models for me, Robert Kennedy and Jack Kemp, cared a lot about people in the underclass, people of color, and they came to the same conclusion that the private sector was the best answer, not government.

Somebody asked Robert Kennedy—after his Bedford Stuyvesant project was announced inviting capitalism to go into a black neighborhood in Brooklyn and invest and create jobs—you sound like a Republican. And he said—don't be offended, but he said, almost as a joke: I do sound like a Republican because these ideas work, but I mean to do this. And Jack Kemp used to quote Robert Kennedy and say: Enterprise zones sound very conservative, but I mean we've got to care about the underclass in this country, whites and blacks together. So those are two role models for me.

**KARLYN BOWMAN:** Sir?

**ATTENDEE:** Charles Ruffin from Georgia. I read recently where, in the first decade of this century, we lost six million manufacturing jobs. I just wonder if each of you could suggest to us a policy change that you think would assist in our recovery of those manufacturing jobs.

**CHARLES A. MURRAY:** I've pretty much said—

[Laughter.]

—pretty much said what I have to say about that. I want to give a chance to the others. I don't think they will be manufacturing jobs when we create new jobs.

**LANNY J. DAVIS:** Well, I'll have to dissent on that. We have an automobile industry that's now superior to the manufacturing of cars in Japan for the first time, and maybe doing better. So we have to go back to some of the manufacturing and manufacturing facilities where we are superior because of our technology and our work ethic. So there are some

Rust Belt manufacturing jobs where we can beat the world, but we have to have open borders and free trade in order to decide what manufacturing jobs make sense.

I am going to sound conservative again to say that it can't be the federal government that commands and picks winners and losers, but the federal government did help Detroit turn around. I hope it does turn around. And it did help other industries in the Rust Belt, which are now revived. Take a look at Governor Kasich's victory in Ohio. That's because of the recovery of manufacturing jobs in Ohio. So I have some hope.

**KARLYN BOWMAN:** Sir.

**HARRY LEWIS:** Harry Lewis, New York City. When you're talking about the American dream, there was a panel yesterday about Social Security, Medicare, Obamacare and pensions, meaning public employee pensions. And it was the consensus of this panel—which had, of course, views from both liberals and conservatives—that we're in terrible trouble with entitlement programs in this country, those programs in particular.

The debt is now spiraling out of control and this is a huge obstacle going forward to righting the national ship, if you like. And interestingly, the liberal gentleman on that panel—like you, Mr. Davis—said, but I hope we can save Social Security. That was the one program he expressed hope we could save. So you and he seem to be on the same page with respect to that point.

But my question to the panel is, several years ago Dr. Murray wrote an interesting book called *In Our hands* about replacing the welfare state, in which he proposed what I remember as the Daniel Patrick Moynihan annual income idea, which was that we would eliminate or abolish all of the existing entitlement programs, which the panel yesterday agreed were extraordinarily complex, extraordinarily non-transparent—that is, very difficult to understand, very confusing—creating this huge bureaucracy of horrendous, you know, rules and regulations in which no one could figure out what every American was getting from the system. It's so opaque that you cannot tell whether this system—whether the current entitlement system is fair or not to all Americans.

Dr. Murray's proposal in his book was that we simply replace all of these programs with a single annual payment, if I recall, that could be easily and transparently measured, a single cash payment, in effect, to all adult Americans, just replace this complex bureaucracy—nightmarish bureaucracy, which everyone agreed was spiraling out of control, with a simple, transparent system of payment to all Americans.

**KARLYN BOWMAN:** Question?

**HARRY LEWIS:** Are we at a point now, given everyone's agreement yesterday—I don't know if this panel agrees with it—that the problem is now becoming nightmarish and a genuine threat to the country, that perhaps transitioning to such a plan might be a good idea?

**KARLYN BOWMAN:** Comments?

**CHARLES A. MURRAY:** I still think it's a good idea.  
[Laughter.]

**KARLYN BOWMAN:** It's a good book.

**LANNY J. DAVIS:** There was a proposal that Senator Wyden put forward with Senator Bennett of Utah that instead of Obamacare, which is, by the way, to remind you, a private insurance company competitive marketplace system, which no—

[Laughter.]

—with no public—with no public option, no public option, all private enterprise on the websites. There are too many regulations and lots of things wrong with it, but I love when conservatives forget to say no public option, all private insurance companies, competition on websites.

But I think that Senator Wyden and Senator Bennett did try a different approach, which was essentially to liquefy, to put into cash, into people's hands who have insurance paid through their companies and let them have the option, rather than have the companies pay for their insurance, to go out into the marketplace and liquefy—use cash to have the marketplace work. That proposal was cosponsored by about twenty members of the Senate, ten Republicans and ten Democrats. It might have actually been the alternative to what we now have.

I actually wrote a column—I write a column called Purple Nation Surprise and I praised Senator Wyden and Senator Bennett from Utah. Senator Wyden was so badly beaten up for supporting something that let the market decide on allocating resources in health care that he ultimately withdrew the proposal. Senator Bennett was denied the renomination in Utah.

So to try to touch any programs with something rational that uses the private market better but still has government involved as a referee and an umpire, which is what I think, is politically very difficult in this country.

**KARLYN BOWMAN:** We have only a few minutes left and so I'd like to put two questions on the table. Then any of the panelists can answer them. You, sir, and then the gentlemen behind you.

**ATTENDEE:** All right, my question was specifically to Dr. Murray.

When you were using Uber as an example for businesses going in and essentially, I guess, ignoring the legal structure until the law has a chance, creating something on the ground and having the law—give it a chance to catch up, it sounded as if you may be advocating a kind of civil disobedience until the legal structure could catch up. Were you doing that?

**KARLYN BOWMAN:** And if you could ask your question now, sir?

**ATTENDEE:** And my question is to give Rachel Brand the opportunity to raise the subject that she'd mentioned she'd want to raise in the question period about how the American dream is being threatened with respect to private philanthropic efforts.

**KARLYN BOWMAN:** Okay.

**CHARLES A. MURRAY:** And could you summarize the question because I, again, had a hard time hearing it.

**KARLYN BOWMAN:** Are you advocating civil liberties?

**ATTENDEE:** Civil disobedience.

**KARLYN BOWMAN:** Civil disobedience?

**CHARLES A. MURRAY:** Yes, I am advocating massive systematic civil disobedience underwritten by defense funds. What I want—

[Laughter.]

What I want is for small businesses and individuals to be able to treat government as an insurable hazard—

[Laughter.]

—sort of like locusts and floods, so that—well, I'm not going to go into any more detail than that. You have to buy the book.

[Laughter.]

**KARLYN BOWMAN:** You have to buy the book.

**CHARLES A. MURRAY:** And I also don't want to dominate the conversation.

**KARLYN BOWMAN:** And Rachel.

**RACHEL L. BRAND:** Okay. Well, thank you, Fred, for that question. The thing I was getting to at the end is that I fear that when conservatives talk about the American dream it's viewed as—and I don't mean to offend



all the fans of Ayn Rand in the room—but it's like “everyone will get there on their own merit with no help, and that is all, and if you can't get there on your own, then too bad for you.” But I think it's always been part of the American ethos that communities will help each other, and if somebody needs a little bit of temporary help getting back on track to their pursuit of the American dream, then the community will help them out. And I'm not talking about government. I'm talking about private individuals.

I'm on the board of a nonprofit in Arlington that runs a domestic violence shelter and a family homeless shelter and really focuses on transitioning people to permanent independence in their own pursuit of the American dream. And the problem with government—the threat that government poses there—is that so many social service entities like that are so dependent on government funds that they are stifled in their creativity in helping the communities that they serve.

I see it in the organization I'm on the board of, which has only a minority of the budget from government funds. They want to do creative things and try new things, but they're so rigidly limited in what they can do by the receipt of the government funds that they'd be much better off with purely private funding, taking no government funding, and doing what they could. It's the same issue with regulation in the business sector. The one-size-fits-all solution stifles creativity. The same thing pertains in the nonprofit sector.

**KARLYN BOWMAN:** You have the last question.

**ATTENDEE:** Thank you. I think I'm the only Millennial to ask a question of this panel.

[Laughter.]

**KARLYN BOWMAN:** Yes, that's right.

**ATTENDEE:** This is what I've seen with my contemporaries is diffidence to political party, Democrat or Republican, right or left. What role does pragmatism have to play in the formation of new public policy and getting beyond the seemingly intractable divide, because what I've seen is that—just my own impression is that sometimes things from the right or things from the left, if you put yourself in the box of ideology and then actually apply it to the facts as is, it doesn't always work out the way it's supposed to. And so should pragmatism perhaps play the dominant role—pragmatism and realism play the dominant role in solving these problems?

**LANNY J. DAVIS:** Yes.

[Laughter.]

**RACHEL L. BRAND:** Anybody who's been in government knows, no matter how principled and dedicated to your particular personal philosophy, if you can't be pragmatic you can't succeed. You have to have pragmatism. One of the most frustrating things for me when I was in the government was some people's inability to recognize that if you let the perfect be the enemy of the good, you just can't function that way all the time.

**KARLYN BOWMAN:** Anyone else? Well, I'd like to thank all of you for coming and thank the panelists for a wonderful session. Thank you.  
[Applause.]