

Texas Public Policy Foundation

# The Soft Tyranny Index

*A Measure of Government Power to  
Command the Economy & Erode Liberty*



The Honorable Chuck DeVore

January 2014



**January 2014**

by The Honorable Chuck DeVore  
Texas Public Policy Foundation

**Table of Contents**

Introduction..... 3  
Executive Summary ..... 3  
Background..... 3  
Rules and Regulations..... 4  
Swarms of Officers..... 6  
Taxes ..... 11  
Spending ..... 12  
The Soft Tyranny Index..... 15  
Applying the Soft Tyranny Index to the States..... 17  
Conclusion: Reducing the Soft Tyranny of  
Government ..... 21  
Endnotes..... 22

# The Soft Tyranny Index: *A Measure of Government Power to Command the Economy and Erode Liberty*

by The Honorable Chuck DeVore

## Introduction

The federal government's sway over the economy—its ability to direct the economic decisions of private citizens and the states—can be quantified. This paper introduces the “Soft Tyranny Index” to measure government's interventionary power.

## Executive Summary

Alexis de Tocqueville developed the concept of soft tyranny in 1835 in *Democracy in America*. Tocqueville, saw the danger of soft tyranny in America when “... a network of small complicated rules ...” acted to reduce citizens to sheep with the government their “shepherd.” Today, more than Tocqueville could have imagined, soft tyranny takes the form of a federal government which directs almost a quarter of the economy through its spending with 137,000 well-trained and highly educated regulators writing tens of thousands of pages of rules every year funded by a complex tax system that takes 14,000 pages to administer.

This paper develops the idea of the Soft Tyranny Index, showing how the government has expanded its power to bend and guide America far more than is commonly realized due to vast improvements in productivity made available to the regulatory bureaucracy. The paper also develops a complementary listing of soft tyranny for the states and shows how states with a lower Soft Tyranny Index perform better economically than states with a high Index. The paper concludes with recommendations for reducing the soft tyranny of government.

## Background

On August 15, 1971, President Nixon issued Executive Order 11615. In 1,113 words in a couple of pages in the Fed-

**Soft Tyranny:** the web of government regulations, laws, and tax and spending policy—robs Americans of liberty and diminishes prosperity

- The power of the regulatory bureaucracy has grown 11-fold since 1960 due to increases in the workforce and productivity improvements.
- The *Federal Register*, government's vehicle for publishing new rules, consistently runs about six times larger today than in the early 1960s.
- Federal spending as a share of the economy has been running at a post-WWII high.
- But, due to the dynamism of the American economy, an Administration and a Congress with the will to do it can significantly pare soft tyranny to levels last seen in the early 1960s.
- It has become vitally necessary to disentangle the finances and regulatory activities of state governments from those of the federal government.

eral Register under the title, “Providing for Stabilization of Prices, Rents, Wages, and Salaries,” the president seized for himself the power to set prices for goods and services in a nation of 204 million people. The broad authority for the president to act was set by Congress the year before when it passed the Economic Stabilization Act of 1970. President Nixon, using the federal government's daily record of rules and official acts, wrote that:

[I]n order to stabilize the economy, reduce inflation, and minimize unemployment, it is necessary to stabilize prices, rents, wages, and salaries...[T]he present balance of payments situation makes it especially ur-

“(Government) covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above the crowd. The will of man is not shattered, but softened, bent, and guided; men are seldom forced by it to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd.”

—Alexis de Tocqueville warning of the dangers of soft tyranny in America

gent to stabilize prices, rents, wages, and salaries in order to improve our competitive position in world trade and to protect the purchasing power of the dollar... Therefore, ... Prices, rents, wages, and salaries shall be [frozen for three months at the levels they were in the previous month with records of prices charged commanded to be kept for] public inspection.<sup>1</sup>

Less than two years later, as the wheels began to come off of President Nixon’s attempt to control prices and wages, he reimposed a temporary price freeze in June 1973 resulting in the spectacle of ranchers stopping cattle shipments, farmers drowning their chickens, and shoppers sweeping supermarket shelves bare in a wave of panic buying.<sup>2</sup>

President Nixon’s bid to control the planet’s largest economy ended in costly failure, with high inflation, an oil embargo likely spurred on by the devaluation of the U.S. dollar, the stagflation of the late 1970s (an unexpected emergence of slow growth and inflation), and the later high unemployment of the double dip recessions. But Nixon’s failure to control the economy for the greater good is not an uncommon occurrence. Government leaders, both elected and unelected, see the power of government as something to be used, so long as the intentions for its use are good.

There are a few basic methods government uses to command its people, all of them ultimately rooted in the use of force.

**First**, government can pass laws that prohibit or demand certain things. In a modern administrative state, these laws more frequently take the form of rules or regulations, as in Nixon’s wage and price controls.

**Second**, government can hire officials to enforce the laws and rules as well as to oversee people to ensure government edicts are followed.\*

**Third**, government can tax its citizens directly or indirectly by borrowing and printing money.

**Fourth**, a government can spend money.

The Soft Tyranny Index measures these four things to determine the extent of the government’s power in the lives of everyday citizens.

## Rules and Regulations

The bulk of 170,000 pages in the *Code of Federal Regulations* are dedicated to seven of 41 titles: a little more than 25,000 pages cover rules for environmental protection; 14,000 pages for the tax code; about 9,000 pages each for agriculture and wildlife; 7,000 for banking; 6,500 for transportation and railroads; and, 6,000 pages for labor.<sup>3</sup> The rules to enforce ObamaCare alone tally up to 10,516 new pages in the *Federal Register*—so far.<sup>4</sup> Contrast this morass of regulations with the *Federal Register*’s sleek first issue, published March 16, 1936, coming in at 11 pages.<sup>5</sup> This is almost enough to make one nostalgic for the limited government days of FDR’s New Deal.

These rules have a cost—both real, in terms of time and money needed to comply—as well as a cost in liberty as the tentacles of soft tyranny restrict action, as illustrated by the following example.

\* From the Declaration of Independence: “He (the King of Great Britain) has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.”

In 1918, Congress passed the Migratory Bird Treaty Act to criminalize the poaching of ducks and other migratory birds. The *Code of Federal Regulations*, Title 50, Wildlife and Fisheries, Part 21—Migratory Bird Permits, expands on the federal law, stating:

*No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit...*<sup>6</sup>

It all seems rather clear—except it isn't.

In the summer of 2011, Federal Fish & Wildlife Service agents chartered a helicopter in North Dakota to look for dead migratory birds in the reserve pools of seven oil and gas exploration firms. They were looking for illegal “takings” of migratory birds, per the regulations developed to flesh out the Migratory Bird Treaty Act of 1918. They found 28 birds that managed to get past the nets commonly put over these retaining pools filled with the muck from the drilling process.<sup>7</sup> Soon, federal prosecutors filed charges against the oil companies—charges that carried criminal penalties as well.

Bud Brigham, owner of Brigham Resources, one of the oil companies accused of “taking” migratory birds without a permit, was held by the government to be personally liable for the deaths of two mallards. He noted that the penalty for the two dead ducks was not only a cash fine, but, “...also, as CEO, I could potentially serve two consecutive six-month terms in prison... It just seems completely absurd to think that you would lock somebody up for something like that. Here I am a father of five with children from 8 to 17 years old, and to think that I could possibly go to prison for this for up to a year, it was very surreal.”<sup>8</sup>

A federal judge was unimpressed, throwing out the charges, calling the law vague and noting in his ruling that a conviction for inadvertent bird deaths under a law meant to deter poaching “would yield absurd results” such as criminalizing farming, driving, cutting brush, owning a cat or owning a building with windows since all of those activities kill millions of birds. The judge even pointed out that power lines kill 174 million birds.<sup>9</sup>

## Arbitrary enforcement of rules and laws is just one of the ways by which the government infringes on the liberties of citizens while encouraging cynicism towards governmental authority.

Wind turbines kill millions of raptors, bats and migratory birds too, but, wind is a politically correct power source these days, while oil and gas aren't. Arbitrary enforcement of rules and laws is just one of the ways by which the government infringes on the liberties of citizens while encouraging cynicism towards governmental authority. Further, an overabundance of laws and regulations, many of them arcane, has led Vikrant Reddy, a senior policy analyst at the Texas Public Policy Foundation's Center for Effective Justice, to note, “On average, every American probably commits about three felonies a day.”<sup>10</sup>

Another way the government engages in soft tyranny is by forcing businesses to bear the financial burden of excessive regulation. For instance, the U.S. Chamber of Commerce estimates that the average regulatory cost for businesses with fewer than 20 employees exceeds \$10,000 per year, about 42 percent higher per employee than larger businesses with 20 to 500 employees.<sup>11</sup> Further, the number of federal rules imposing costs of \$100 million or more on regulated industries jumped 60 percent from 2002 to 2012, from 136 to 224. The Chamber also notes that the number of pages in the *Code of Federal Regulations* has doubled since 1975.<sup>12</sup>

The Congressional Research Service, citing a finding from the Small Business Administration report, put the annual cost of federal regulatory compliance at \$1.7 trillion or \$15,586 per household in 2008.<sup>13</sup> There were about 167,000 federal rules then, about 14,000 fewer than today.

Putting regulatory costs into context, **Figure 1** (*next page*) shows estimated regulatory compliance costs in 2012 as compared to the amount of individual income taxes, corporate income taxes and corporate profits.<sup>14</sup>

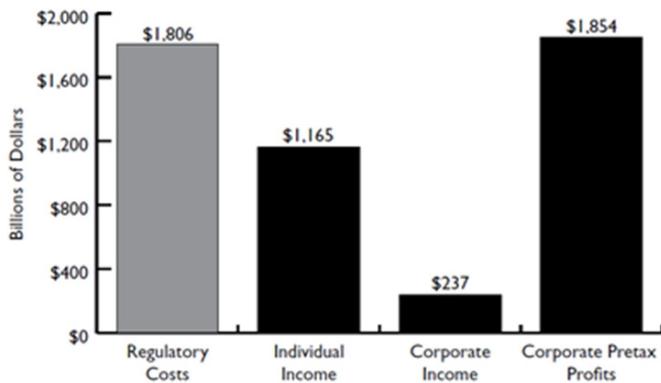


Figure 1—This chart from the Competitive Enterprise Institute shows that regulatory costs almost equal pretax corporate profits, signaling the high and growing burden that regulations place on the economy.

Figure 2 tracks the pace of the issuance of new federal regulations by showing the yearly page count of the *Federal Register*. It is admittedly a rough estimate, since some compact regulations are very costly and some long-winded regulations are cheap; in addition, a few pages simply publish Executive Branch communications (blank pages have been removed from this calculation). But, when measured over time, it is a good proxy for gauging the regulatory output of the federal government.

As a practical measure of how the *Federal Register’s* pages get turned into regulation, a Competitive Enterprise Institute study points out that 66 new regulations were published in the shortened Veterans Day week in November 2013, with 78 published in the prior week—a new regulation was set loose upon America every two hours and 33 minutes over the two week period. The compliance cost for the new “economically significant” regulations issued in 2013 ranged from \$6.42 billion to \$11.82 billion.<sup>15</sup>

The late U.S. Senator Eugene McCarthy (D-MN) observed, “The only thing that saves us from the bureaucracy is inefficiency. An efficient bureaucracy is the greatest threat to liberty.” He said this in 1979 when the *Code of Federal Regulations* contained about 30,000 rules. Today, it has more than 180,000 rules. Thanks to advances in information technology, an efficient bureaucracy has arrived as detailed in the next section of this paper.

### Swarms of Officers

Of course, federal regulators do far more than work publishing rules in the *Federal Register* and their labor output isn’t solely in that domain—they also act to enforce the rules they write, and, in so doing, combine the power of the Legislative, Executive, and Judicial branches of government.

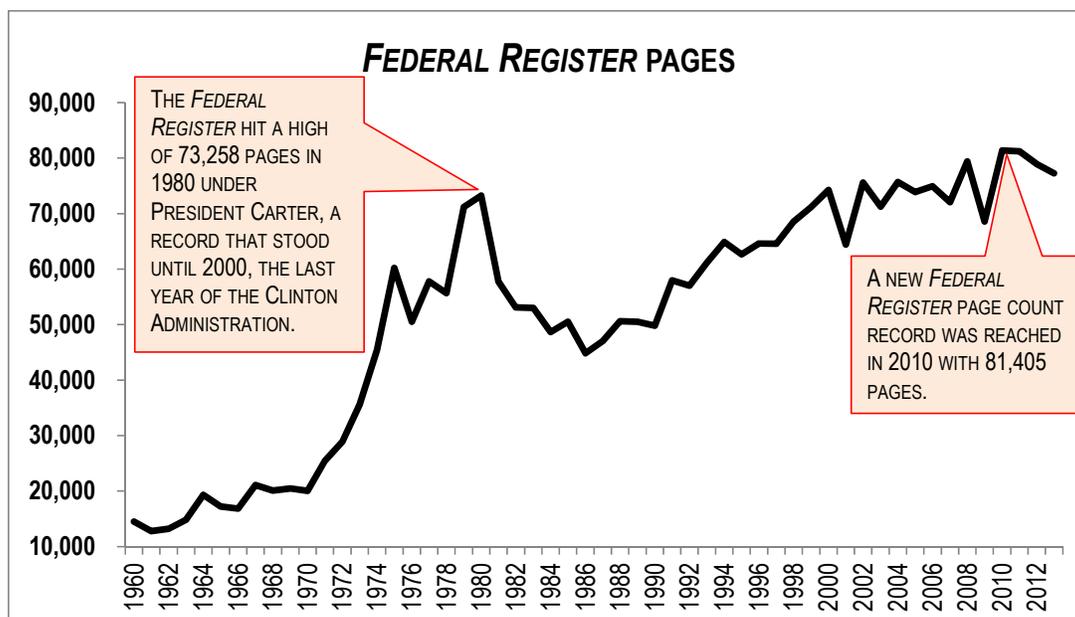


Figure 2—The number of pages published every year in the *Federal Register* is a good proxy for measuring the federal government’s new regulatory burden.

Government power, especially in the hands of an unelected elite, can be tough to face down. An example of how a new grant of authority is generated by Congress, then passed down to the bureaucracy to define and execute, can be seen in the Lacey Act, passed in 1900 and amended several times. The law itself is relatively simple, taking up only 5,575 words over 14 pages in Title 16 U.S. Code Chapter 53, Control of Illegally Taken Fish and Wildlife.<sup>16</sup> But, the real meat of the federal enforcement rests, not in the law drafted by elected officials, but in the regulations written by bureaucrats contained in two titles and six parts of the *Code of Federal Regulations* spanning 217 pages.<sup>17</sup> These rules include this gem of a passage entitled,

“SPECIFICATIONS FOR SLOTHS, BATS, AND FLYING LEMURS (CYNOCEPHALIDAE)”:

§ 14.151 *Primary enclosures.*

(a) *Except as provided in § 14.106(j), ventilation openings must be located on at least two walls of a primary enclosure. When the required ventilation openings are located on two opposite walls of the primary enclosure, these ventilation openings shall comprise at least 16 percent of the total surface area of the ventilated wall. When ventilation openings are located on all four walls, the openings shall comprise at least 8 percent of the total surface area of each wall. At least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure.*

(b) *No more than one sloth, bat, or flying lemur (Cynocephalidae) shall be transported in a primary enclosure. However, a mother and her nursing young being transported for medical reasons, an established male-female pair, a family group, a pair of juvenile animals that have not reached puberty, or other small groups of animals that have been habitually housed together may be shipped in the same primary enclosure...*<sup>18</sup>

Amongst this 217 pages of detailed federal edicts, in addition to the above, are the rules that the federal government drafted to proscribe the illegal importation of wood—rules so dense that a bureaucrat can justify most anything by way of enforcement. Enforcing the Lacey Act and its regulations was the ostensible reason why in 2009 and again in 2011, “...more than a dozen agents with automatic weapons

burst into a Gibson factory in Nashville and seized pallets of ebony fingerboards from Madagascar.” The agents, clad in SWAT gear—overkill for a visit to a working guitar factory—were from the U.S. Department of Justice. The federal raid disrupted operations at one of the largest guitar makers in the world.<sup>19</sup>

Almost two years later, facing an opponent that would spare no expense and fearing a costly legal fight that would end in the firm’s bankruptcy, Gibson’s owners settled with the federal government. They paid a \$300,000 penalty to the U.S. and agreed to make a “community service payment” of \$50,000 to the National Fish and Wildlife Foundation, a non-profit group chartered by Congress.

Curiously, Gibson’s competitors, using the same materials, weren’t raided. Some have suggested that this was because Gibson’s owners gave to conservative causes and politicians, their competitors, to liberal groups and politicians.<sup>20</sup> This raises another danger of a large government exercising power through largely unaccountable bureaucrats. Excessive regulations and large discretion give administrators the power to harass political opponents and their allies through selective enforcement.

Of course, rules don’t write themselves and, as we saw in the case of the Gibson Guitar raids, rules don’t enforce themselves either. That’s where federal workers come into the picture.

Defenders of larger federal government claim that the total civilian federal workforce has been fairly flat since 1960, and that, on a per capita basis, it is some 30 percent smaller today. This is correct, so far as the basic numbers go.<sup>21</sup>

According to a study of federal data by Washington University in St. Louis, since 1960, there have been 78 regulatory agencies (eight have been closed or merged, such as the Office of the American Workplace or the Interstate Commerce Commission).<sup>22</sup> These agencies employed 57,109 regulators in 1960 and an estimated 272,475 in 2010.<sup>23</sup> But, this study includes six agencies with homeland security functions, such as the Coast Guard, Customs and Border Protection, and the Transportation Security Administration, agencies that aren’t regulatory agencies in the classic sense. The study also did not include a separate count for Internal Revenue

Service rule writers. In 2012, the IRS employed 1,300 regulators out of a total IRS workforce of 89,551 to write and maintain the 14,000 page tax code. This is up from 1,280 in 2011.<sup>24</sup>

Excluding homeland security function personnel and the small number of IRS regulators, the number of federal regulators grew from 39,595 in 1960 to an estimated 137,159 in 2013, an all-time high. The largest single regulatory agency in 2013 was the Environmental Protection Agency, a potent regulatory body which employed about 16,731 full-time equivalent workers, or about 12 percent of the regulatory workforce.<sup>25</sup> **Figure 3** (below) illustrates this workforce's strength from 1960 to 2013.<sup>26</sup>

**Productivity**

While Figure 3 shows a general decline in the regulatory workforce from 1995 to 2008, then a jump in the past few years to a point a little higher than prior records, this simple analysis ignores the powerful effect of workforce productivity.

Greater productivity in the private sector allows for greater prosperity. For instance, the first commonly available color television debuted in 1953. It featured a 12.5” console and sold for \$1,000, about \$8,500 in inflation-adjusted dollars,

or a full quarter of an average household’s yearly income then. Today, a 42” LED high definition television sells for \$378. U.S. median household income averaged \$52,762 from 2007 to 2011.<sup>27</sup> This means that an average household can buy a superior big screen TV with 2.6 days of pre-tax household income vs. 90 days of income for a far inferior product 60 years ago.

Since 1960 American nonfarm business productivity has increased 203 percent, meaning that each nonfarm worker produces \$3.03 in real goods and services today for every \$1.00 produced 53 years ago.<sup>28</sup>

But, productivity has a rarely-discussed downside: as workers in the private sector have become more productive, so too have government bureaucrats who write and enforce regulations. And, these regulations impose compliance costs that frequently outweigh their intended benefits.

Think of the bureaucrat’s tools in 1961: the IBM Selectric typewriter was just introduced; the workhorse Xerox 914 could make one black and white copy every 26 seconds; fax machines were nowhere to be found; and 2,000 computers were in use in the entire U.S. A simple letter absorbed far more labor to write and send than a comparable communication today.

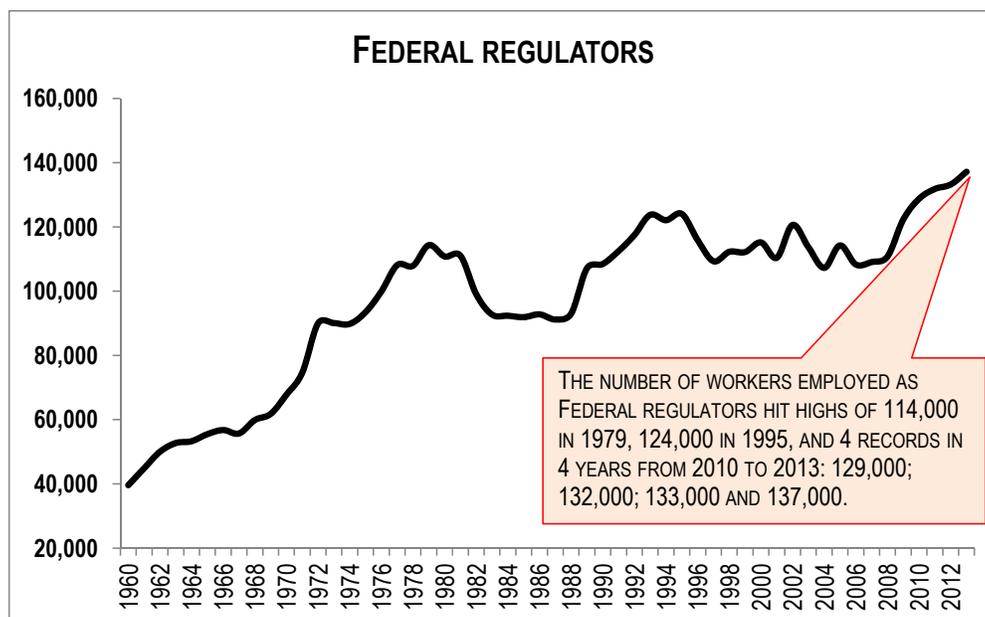


Figure 3—The number of federal workers in the primary regulatory agencies reached a new high every year for the past 4 years.

Accounting solely for the increase in productivity, an individual federal regulator is three times more potent than a half-century ago. When looking at the productivity-adjusted output of the 137,159 federal workers employed by the regulatory agencies in 2013, we see that they can do what would have taken 415,845 regulators to accomplish in 1960 when only 39,595 people worked as federal regulators. Thus, when accounting for productivity, our regulatory workforce today is 11 *times* more powerful today than it was in 1960—this is progress!

To test this proposition, we can compare the number of federal regulators to the number of pages published each year in the *Federal Register*. If federal regulators have enjoyed productivity improvements on par with taxpayers laboring in the private sector, we should see that each regulator is able to produce more pages of rules as time progresses. In the four years from 1960 to 1963, an average of 46,786 regulators produced an average of 13,835 pages in the *Federal Register*, most of those pages being regulations. This means that an average regulator could churn out roughly 0.30 pages of *Federal Register* every year. In the four years from 2010 to 2013, it took an average of 132,742 regulators to write 79,723 pages in the *Federal Register*—or, about 0.60 pages per rules-writing bureaucrat. Thus, each federal regulator in 2010 to 2013 could produce about twice as many words than his counterpart in 1960 to 1963.

**Figure 4** provides visual evidence of this improvement in productivity, showing the total number of federal regulators next to the productivity-adjusted federal regulators as well as the number of *Federal Register* pages published every year. **Figure 5** shows the tight link between *Federal Register* pages and productivity-adjusted federal regulators by running a regression analysis showing an  $R^2=0.8199$ .

### Outsourcing

That the effective power of the federal regulatory complex is 11 times greater than it was in 1960 should be taken as the lowest, most conservative estimate largely due to the increased outsourcing of blue collar and support functions, such as information technology. This outsourcing has made the government workforce even more “efficient” than mere productivity numbers suggest. A federal worker armed with a mop and bucket is far less a threat to liberty and the operation of free markets than a Harvard-trained lawyer working in the antitrust division at the Department of Justice.

Estimates of the size of the federal contract workforce vary and don’t carry back very far. A professor who’s tracked federal contract awards estimated that in 2011 there were 7.5 million contractors, or more than three times the total federal civilian workforce of 2.1 million.<sup>29</sup> Further, in the last Bush Administration, he estimated that the numbers of

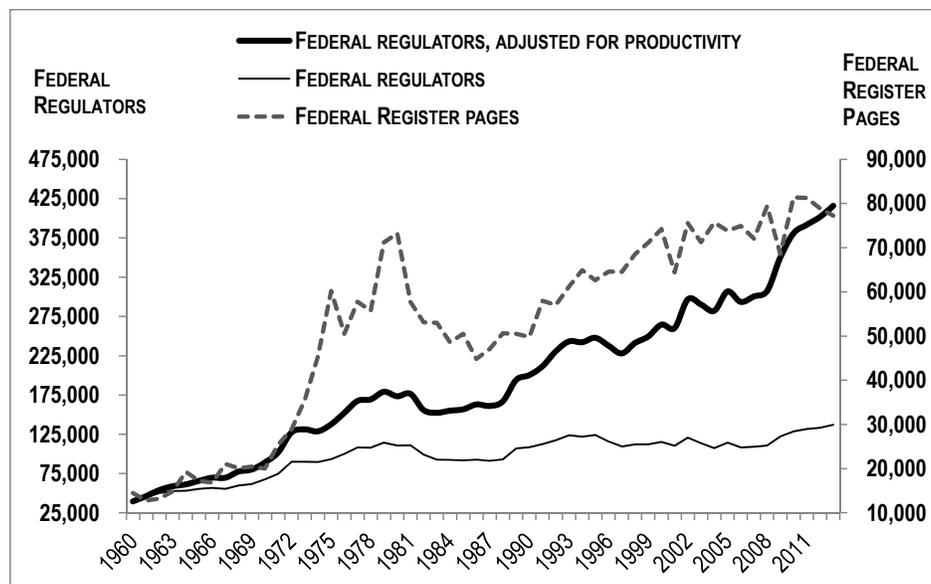


Figure 4—Federal workers, just as their counterparts in the private sector, have seen a three-fold increase in their labor output since 1960, a productivity boost that has clearly increased their ability to draft new rules as published in the *Federal Register*.

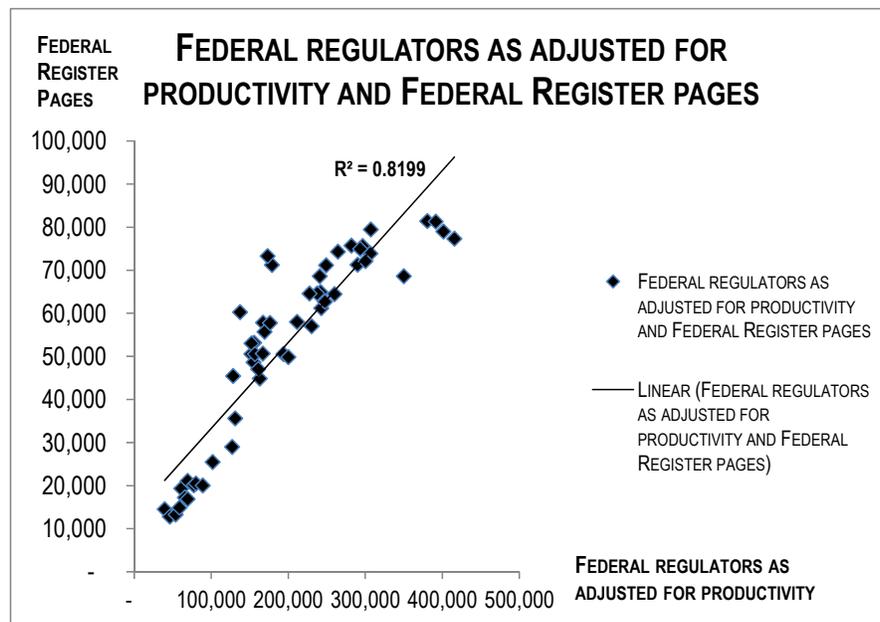


Figure 5—Regression analysis shows a strong link between productivity and the ability of federal workers to publish new regulations, as published in the *Federal Register*.

federal contractors rose 75 percent, from 4.4 million to 7.6 million. Of course, much of this increase was related to the national security demands following 9-11 as this estimate includes Defense workers as well as Transportation Security Agency contracts. Critics of the professor disagree with his methodology.

But, in 2010, Congress passed the Consolidated Appropriations Act (Public Law 111-117) which directed the Office of Management and Budget to track and report federal contractor numbers beginning in 2011. According to the U.S. Government Accountability Office, in fiscal year 2011, civilian agencies spent \$161 billion on contractors, of which 80 percent, or \$126 billion, was used to purchase personnel services such as “professional management and information technology support.”<sup>30</sup> The amount of \$126 billion would, if spent on civilian contractors at an annual cost of \$100,000, secure a workforce of about 1.26 million people. By comparison, in July, 2013, the civilian federal workforce, excluding the Defense Department and the Postal Service, totaled 1.62 million. So, in addition to the productivity gains, federal personnel outsourcing results in an effective workforce that is somewhere between 78 percent larger and 257 percent larger than the number of direct federal employees would suggest.

Increased outsourcing allows government to hire a greater proportion of employees with advanced degrees. Some 37 percent of the employed civilian workforce 25 and older had a college degree in 2012.<sup>31</sup> But 49 percent of federal workers were college graduates with almost half of those holding advanced degrees, more than double the rate of advanced degrees holders in the nation as a whole.<sup>32</sup> This highly educated workforce doesn’t merely shuffle paper—they exert a centralizing influence on the national economy.

### *Federal outsourcing via the states*

Excluding Postal Service employees and members of the military, there were 2.1 million federal employees in August 2013.<sup>33</sup> To those ranks we can add state and local workers, many of whom have been deputized into federal service via programs, such as Medicaid, or mandates, such as the Clean Air Act of 1970.<sup>34</sup> In 1960, 3.3 million people worked for state and local government, excluding those in education. Today there are 8.9 million state and local workers, excluding the 10 million in education, an increase of 174 percent from 1960 or a per capita increase of 56 percent. Many state and local workers, such as public safety personnel, interact directly with the public, but many don’t. So, the effective increase in the power of state and local workers likely falls between a per capita productivity-adjusted number and a simple productivity-adjusted number. Looking at

the former, the state and local bureaucracies are about five times more powerful today on per capita basis than 53 years ago while considering the latter, on an absolute basis, the state and local bureaucracy are a little more than six times more powerful today than in 1960.

Many of these state workers oversee the state implementation of a single federal program: Medicaid. The federal government provides about 35 percent of state budget funding with the largest part of this being federal Medicaid matching funds. About half of Medicaid's medical expenses are covered by the federal government, but most of the administrative costs are absorbed by the states. And, because the federal government sets very restrictive rules for Medicaid, the states are prevented from implementing innovations, such as a sliding scale for payment or co-pays to encourage more efficient use of medical services under the rapidly growing program.

To put the Medicaid program into perspective, in Texas, five agencies with the equivalent of 56,555 full-time employees, discharge the state's public insurance and health responsibilities with billions of dollars in federal funds. By comparison, the Texas Department of Transportation employs the equivalent of 12,000 full-time people to maintain the state's vast network of roads.

This vividly shows how deep federal influence in our lives has become—that tens of thousands of state employees work to administer a federal program and we think little of it, whereas if those same employees were working directly for the federal government, there would likely be more attention drawn to them and their actions.

## Taxes

Tax policy shapes behavior, incentivizing or discouraging activities per policymakers' desires, not the wishes of individual Americans—whatever is taxed, you get less of. Obvious examples of tax policy discouraging activity are “sin” taxes on alcohol and tobacco, which reduce consumption of those items while encouraging use of alternative substances or, as the taxes become burdensome, illegal tax evasion by people smuggling cigarettes or making moonshine and selling their product without paying taxes. Less obvious examples of how tax policy shapes behavior is how the

tax rates for individual income, corporate income or capital gains can affect investment decisions or corporate structures so as to minimize the amount of taxes paid—an activity known as tax avoidance, which is legal, but nonetheless economically distortive.

Thus, federal taxes are included in the soft tyranny index since high tax rates distort economic behavior and invite an ever-increasing array of exemptions, carve-outs, and special deals. Sales taxes are the least distortive of the taxes, but taxes on income, if they must be levied, are best when rates are low and flat and the attendant tax code is simple.

An example of how high tax rates influence economic behavior can be found in one of the dozens of classic American success stories out of California's Silicon Valley.

On August 13, 1981, President Reagan signed the Kemp-Roth Tax Cut which reduced both federal income tax rates and the rate on capital gains taxes. At the time, a young electronics engineer named T.J. Rodgers worked for a big company named Advanced Micro Devices (AMD). In 1982, as the potential for after-tax reward went up, Rodgers founded Cypress Semiconductor. Commenting on taxes in 1993, Rodgers told *The New York Times*, “If the corporate tax rate goes up, I have a lose-lose proposition. I can either put a million dollars less on the bottom line and take the heat from Wall Street, or take a million dollars out of R&D and leave the bottom line alone.”<sup>35</sup> Fifteen years later, still running Cypress Semiconductor as CEO, Rodgers expanded his thoughts on taxation and regulation, telling *Electronic Business* magazine, “I have concluded that, and I'll use a Reagan phrase here, government is a brake on the economy. It's a drag. It's a parasite. Therefore, I go where government leaves me alone and leaves my shareholders alone. And by leaving me alone, I mean two things: I want government out of my pocket and off of my back. And California is both in my pocket and on my back. So I look for places that want business, and there are many places in the world and in the United States that want business. We have sites all over the United States, not in California, and we have sites all over the world and we simply put our investments where we are wanted and that's doing what's required to encourage business to locate there.”<sup>36</sup>

T.J. Rodgers talks of tax rates and regulations, but what about specific efforts by elected officials and bureaucrats to influence economic behavior via the tax code? Title 26 of the *Code of Federal Regulations*, covers the topic of internal revenue. Its 20 parts span about 14,000 pages, many of them proscribing quite specific tax treatment for certain activities, such as this passage:<sup>37</sup>

Example (7). K, the decedent, owned a tree farm. He contracted with L, a professional forester, to manage the property for him as K, a doctor, lived and worked in a town 50 miles away. The activities of L are not considered in determining whether K materially participated in the tree farm operation. During the 5 years preceding K's death, there was no need for frequent inspections of the property or consultation concerning it, inasmuch as most of the land had been reforested and the trees were in the beginning stages of their growing cycle. However, once every year, L submitted for K's approval a proposed plan for the management of the property over the next year. K actively participated in making important management decisions, such as where and whether a precommercial thinning should be conducted, whether the timber was adequately protected from fire and disease, whether fire lines needed to be plowed around the new trees, and whether boundary lines were properly maintained around the property. K inspected the property at least twice every year and assumed financial responsibility for the expenses of the tree farm. K also reported his income from the tree farm as earned income for purposes of the tax on self-employment income. Over a period of several years, K had harvested and marketed timber from certain tracts of the tree farm and had supervised replanting of the areas where trees were removed. K's history of harvesting, marketing, and replanting of trees showed him to be in the business of tree farming rather than merely passively investing in timber land. If the history of K's tree farm did not show such an active business operation, however, the tree farm would not qualify for special use valuation. In light of all these facts, K is deemed to have materially participated in the farm as his personal involvement amounted to more than managing an investment.

The intricacies of the federal tax code go on thus for thousands of pages of tables and examples. But, even if a taxpayer follows the examples diligently, there is no guarantee that an Internal Revenue agent wouldn't find fault with the submitted tax return—too much complexity can, in fact, breed ambiguity. Indeed, the federal tax code has gotten so byzantine, that the IRS itself said that it takes Americans 6.1 billion hours per year to comply with the code's 3.8 million words (up from 1.4 million in 2001) at an average annual tax preparation cost of \$258 for software and professional help.<sup>38</sup> So, 6.1 billion hours of Americans' valuable time is more than 3 million full-time workers as compared to a federal civilian workforce of 2.1 million.

**Figure 6** tracks the historical tax rates from 1960 to 2013, showing the top individual income tax rate, the top long term capital gains tax rate and the top corporate tax rate.

## Spending

The more money the federal government spends, the greater proportion of the economy it consumes and commands. It matters little if this money is borrowed or taxed or printed: for every dollar spent under the direction of the government, a dollar's worth of goods and services is chained to government's priorities, not individuals' priorities. When government spends money, it commandeers economic activity, essentially buying the time and resources of the citizenry to accomplish objectives the government deems important. These objectives can include such activities as fighting wars, building roads, or providing "free" healthcare for some people—in every case, the thing being funded redirects resources from what would otherwise be freely chosen transactions to those activities favored by the government, substituting the market's preferences with the government's own.

In 2009, as the U.S. reeled from the effects of a recession brought on, or at least worsened by government and its bubble-making marketplace distortions, the new Obama administration signed into law the Car Allowance Rebate System, or "CARS"—commonly known as "Cash for Clunkers." Cash for Clunkers allowed car buyers to trade in older vehicles for more fuel efficient vehicles while receiving vouchers worth \$3,500 to \$4,500.

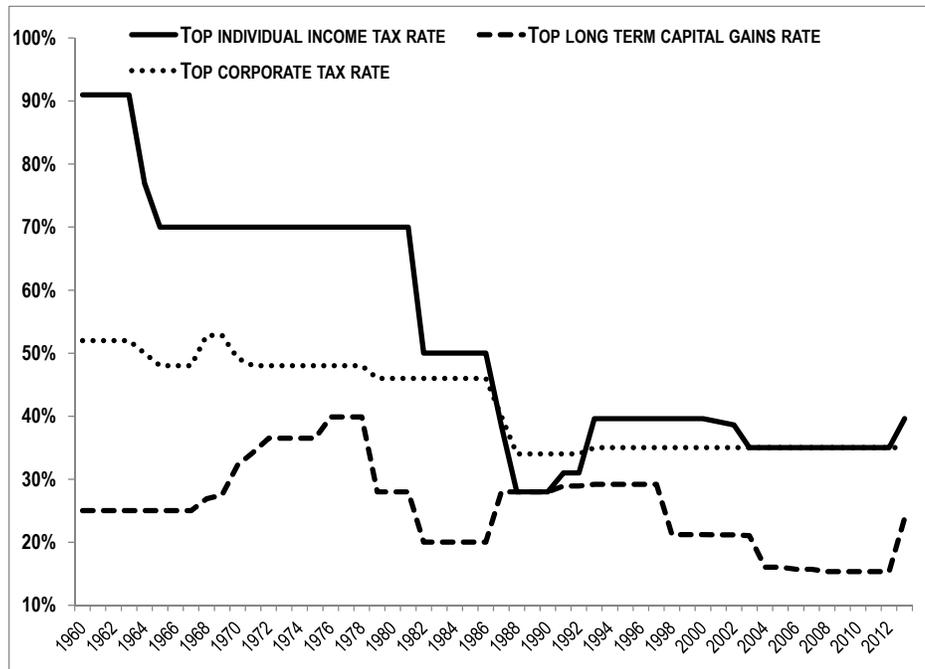


Figure 6—Federal tax rates today are lower than they were in 1960 when the U.S. was still under the heavily progressive tax policies put in place during President Franklin Roosevelt’s time in office.

Columnist George Will observed, “Cash for Clunkers lasted 55 days and ended with confusion that was a preview of things to come. *The New York Times* (Aug. 1, 2009) explained the final surge of demand for clunker funds:

‘Around the country, dealers had put off the laborious task of applying for the rebates ... which requires entering the 17-character identification numbers of each vehicle to be scrapped, scanning images of proof of insurance and filling out other paperwork. The computer system was overloaded, according to the dealers. They said they would finish one page in the application, hit enter and nothing would happen. Eventually a message would appear notifying the dealer that the page had ‘timed out.’ Tom Frew, the business manager at Galpin Motors in Los Angeles, said that he needed 35 tries to register just one of the company’s 11 dealerships on the day that the program opened because of problems with the government website. On Friday, he spent an hour processing just one rebate application, he said.’<sup>39</sup>

Four years later, even those who often advocate for more government disparaged the program. The Brookings Insti-

tution noted that for every \$1.4 million in borrowed federal money for the program, only one job was created with little reduction in carbon emissions, one of the program’s stated objectives, concluding dryly, “In the event of a future economic recession, we would not recommend repeating the CARS program.”<sup>40</sup> The Brookings report found that the \$2.85 billion spent merely shifted car buying forward from what would have happened anyway over the next six months while mainly benefiting “wealthier and more educated Americans.”<sup>41</sup> Further, the program destroyed almost 700,000 used vehicles, driving up the cost of used cars—an unintended consequence of a large government intervention into the economy.

**Figure 7** (*next page*) tracks federal spending as a share of the economy with peaks generally caused by a combination of economic slowdown, which reduces the tax base, and higher spending.

Much federal spending today is in the form of grants to state and local government. According to the Congressional Budget Office, in fiscal year 2011, the federal government sent \$607 billion to state and local government to fund more than 200 programs administered by 30 federal

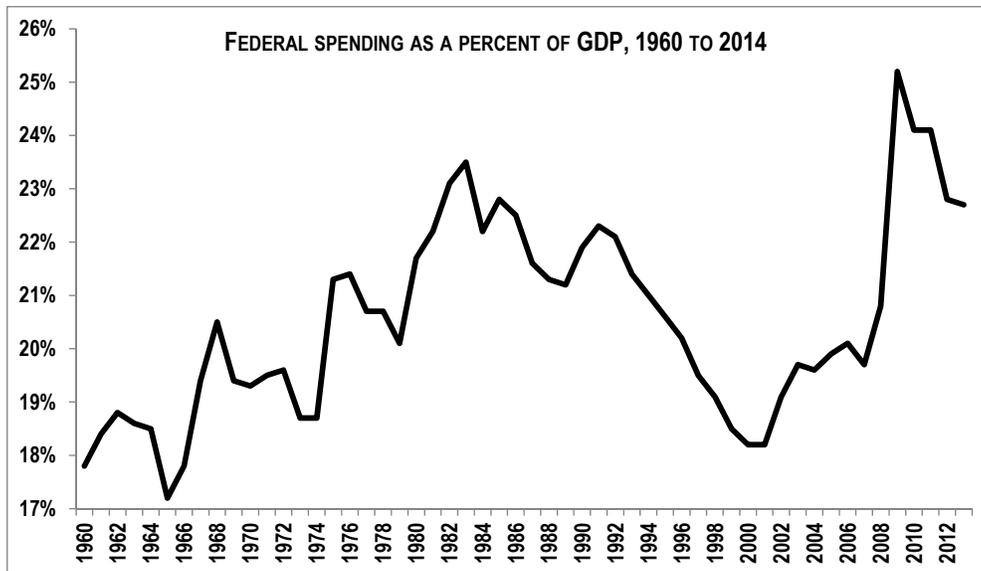


Figure 7—Federal spending as a portion of the economy hit a high of 25.2% as a weak economy and massive supplemental spending programs, such as the Stimulus and “Cash for Clunkers” swelled outlays.

departments and agencies accounting for 17 percent of federal spending.<sup>42</sup>

Figure 8 shows that about two-thirds of the national debt can be attributed to the cumulative total of federal transfer payments to the states. Of course, these borrowed funds come with strict conditions that erode state sovereignty and have been a big driver in the growth of state and local government.

Looking at the Medicaid program’s influence on the Texas economy for perspective, in 2012, the total value of health care and social assistance in the state, both private and government-directed, was \$83 billion.<sup>43</sup> In fiscal year 2012, the state of Texas spent \$5.1 billion on health and human services with 3.7 million people enrolled in the Medicaid program, or about 14 percent of Texans.<sup>44</sup>

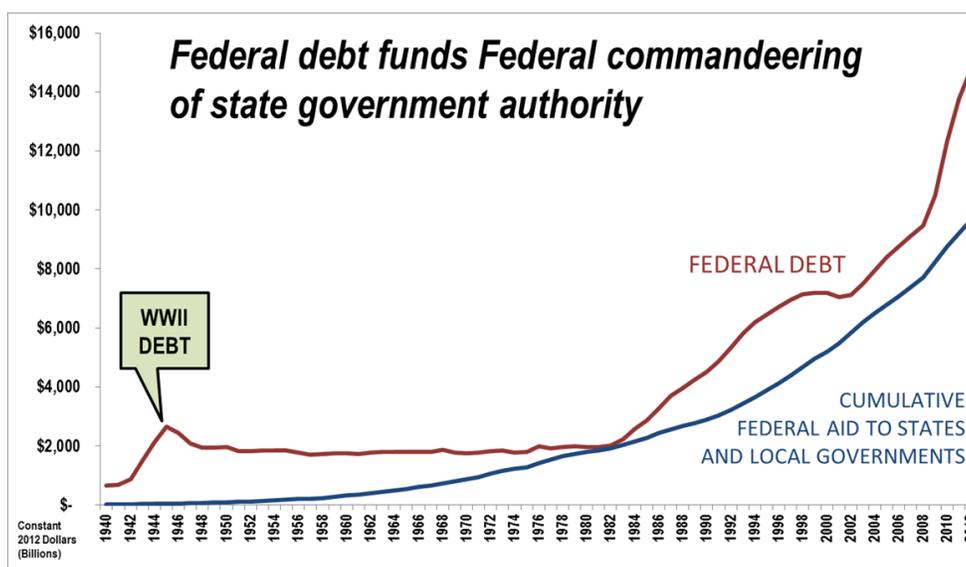


Figure 8—National debt has been largely driven by burgeoning federal aid to the states which in turn has helped to swell government employment at the state and local level.

## The Soft Tyranny Index

The preceding discussion suggests a basic measure of the power of government in a representative democracy to, as Tocqueville wrote, “cover(s) the surface of society with a network of small complicated rules” to bend and guide the “will of man.”

While a candidate, Jimmy Carter deployed the “Misery Index,” the sum of inflation and unemployment, on President Gerald Ford in 1976 when the index read 13.45. Ronald Reagan returned the favor to President Carter during the 1980 election contest when the Misery Index hit its all-time high of 20.76.

Today, however, increased intervention in the monetary system and changes to how inflation and unemployment are calculated make the Misery Index much less useful as a measure for determining the impact of government on our lives. Instead, the “Soft Tyranny Index” provides a way for people to better understand the government’s ability to disrupt the lives of Americans at home and at work.

The Soft Tyranny Index considers: the share of the economy consumed by the federal government; average yearly pages published in the *Federal Register*; the number of productivity-adjusted federal regulators; and three taxes, the top federal income tax rate, capital gains, and corporate taxes.

Figure 9 provides a one-chart overview of the factors detailed previously that, when weighted, make up the Soft Tyranny Index. Federal spending as a percent of the economy hit two highs during the period examined: the early 1980s when Cold War defense spending combined with on-going social spending and payments to service the national debt as well as a recession; and the recent period where an economic slowdown shrunk the base of the economy while massive government intervention—Keynesian stimulus—hiked spending. Figure 9 also tracks the general decline of three important tax rates over time with 2013 seeing an increase. Lastly, on the right axis, the increase in the productive strength of federal regulators tracks closely with their output of *Federal Register* pages.

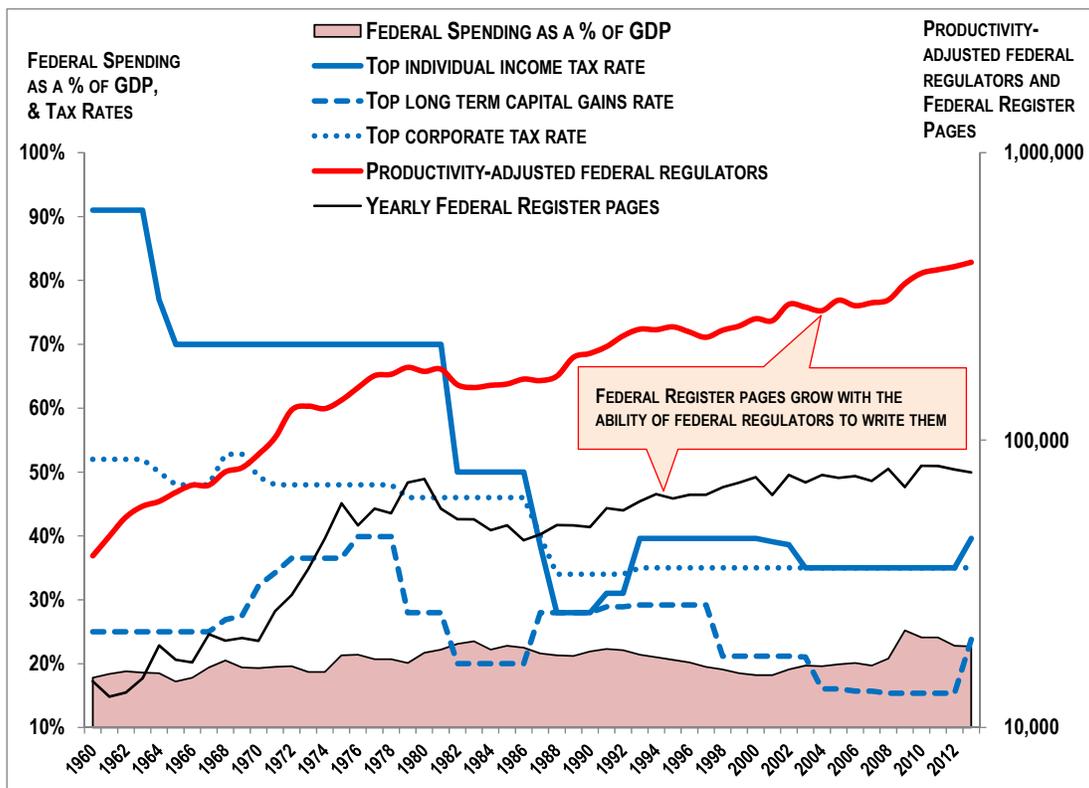


Figure 9—Summarizes the four factors that comprise the Soft Tyranny Index showing a general reduction in tax rates over time but, other than a Reagan-era pause, a general increase in regulatory activity and regulatory power while federal spending as a share of the economy has fluctuated.

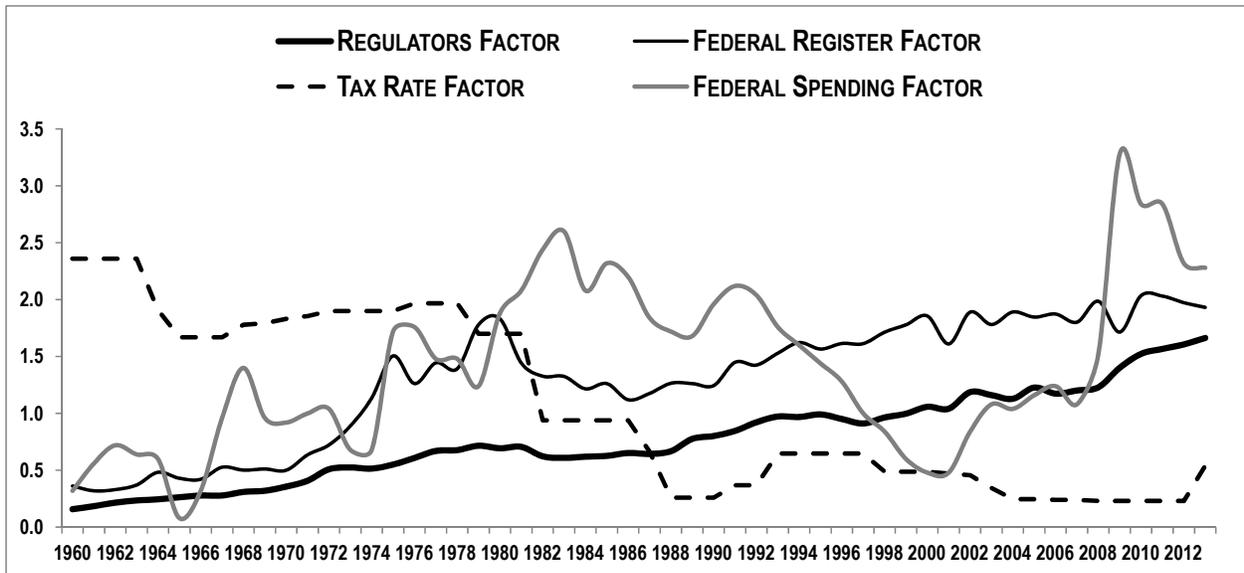


Figure 10—The four Soft Tyranny Index factors plotted over time show their weighted importance to one another with the Regulators Factor averaging at 17 percent of average weight over time, the Federal Register Factor at 29 percent, the Tax Rate Factor at 23 percent, and the Federal Spending Factor at 31 percent.

Figure 10 shows the mathematical representation of Figure 9’s data with each factor, spending, tax rates, regulators, and *Federal Register* pages, boiled down to a single, weighted number.

Figure 11 summarizes data from Figure 10 into one unified index, comparing the index to one of the four factors that produce it: the productivity-adjusted number of fed-

eral regulators. After reaching a high of 6.0 in 1980, the year of Reagan’s election, the index took 29 years to reach a new high of 6.6 in 2009. The index fell to 6.1 in 2012 due to a decline of federal spending as a share of the economy and a decline in the number of *Federal Register* pages published from 81,247 in 2011 to 78,961 in 2012.<sup>45</sup> In 2013, the index jumped back up to 6.4 due to an increase in federal tax rates.

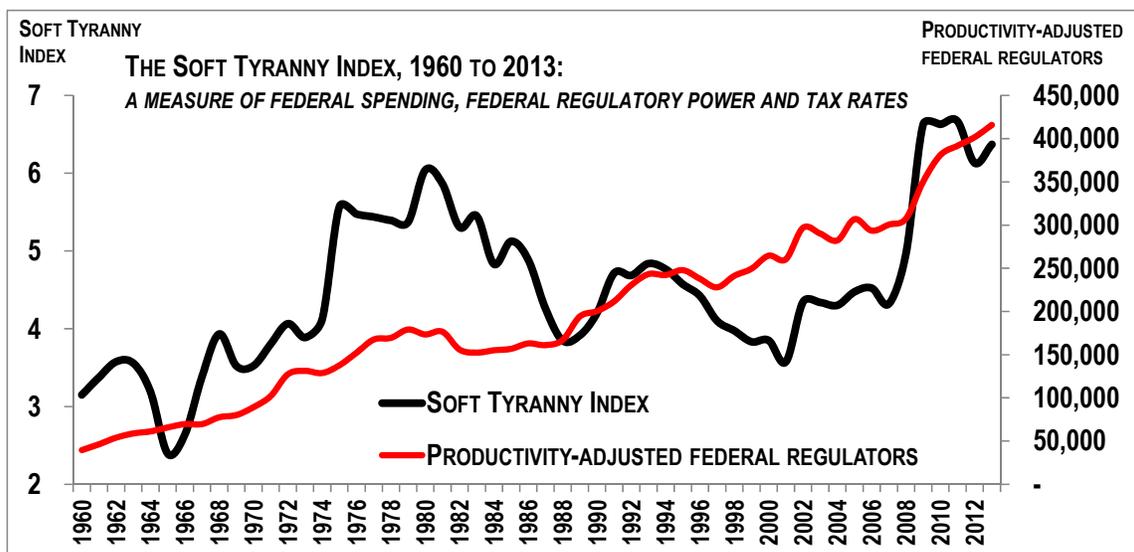


Figure 11—The Soft Tyranny Index hit a high of 6.0 in 1980, only to be eclipsed by new highs of 6.6 in 2009 and 2010, and 6.7 in 2011. In 2013, the Soft Tyranny Index stood at 6.4.

Liberty is its own reward. Freedom from Tocqueville’s enervating and stupefying array of cradle-to-grave rules to avoid the fate of becoming “...nothing better than a flock of timid and industrious animals, of which the government is the shepherd,” is a worthy policy goal in and of itself. That said does the Soft Tyranny Index appear to have any meaningful connection with economic well-being? **Figure 12** suggests so. Figure 12 compares the Soft Tyranny Index to the Misery Index—itself a calculation that adds the official unemployment rate to the rate of inflation—from 1960 to 2013.

As highlighted by Figure 1, there is a high cost associated with regulatory activity. The Competitive Enterprise Institute estimated that the cost of complying with federal regulations was \$1.806 trillion in 2012, an amount greater than the combined tax receipts generated by the individual income tax, \$1.165 trillion, and corporate income taxes, \$237 billion. This regulatory compliance cost is equates to an astounding 12 percent of the national economy’s output of \$15.68 trillion.

By comparison, California, a state known for its burdensome array of regulations—environmental, land use, business and labor—determined in a 2009 study that state-based regulations hit the Golden State’s economy for \$493 billion, or a third of its economy, at a cost of 3.8 million forgone jobs.<sup>46</sup> California’s state and local tax burden was 11.2 percent of income generated in the state in 2011, so, the regulatory burden was estimated to be about three times greater than the tax burden.

## Applying the Soft Tyranny Index to the States

Three of the four main factors that make up the federal Soft Tyranny Index more or less have their counterparts at the state level—the *Federal Register* having no consistent state equivalent. Given that, a state soft tyranny index can be created by factoring: the number of state and local workers not engaged in public safety, education, or utility services including healthcare; the proportion of state and local spending as a share of the private economy; the top income tax rate; and the overall share of state and local taxes as a proportion of a state’s income.

**Figure 13** ranks the states by the first factor considered, the Bureaucracy Factor, showing Indiana as having the leanest bureaucracy in the nation, with Alaska followed by the Washington, D.C. as having the most prolific bureaucracy.<sup>47</sup>

**Figure 14**, the Spending Factor, measures the weight of state and local spending as a share of a state’s economy. As with the federal index which measures the same thing, the greater the government spending in a state, the less room there is for the private sphere.<sup>48</sup>

By this measure, Delaware is the most frugal government, followed by Texas, while Alaska, New Mexico and Mississippi’s economy experience the greatest direct intervention by government spending.

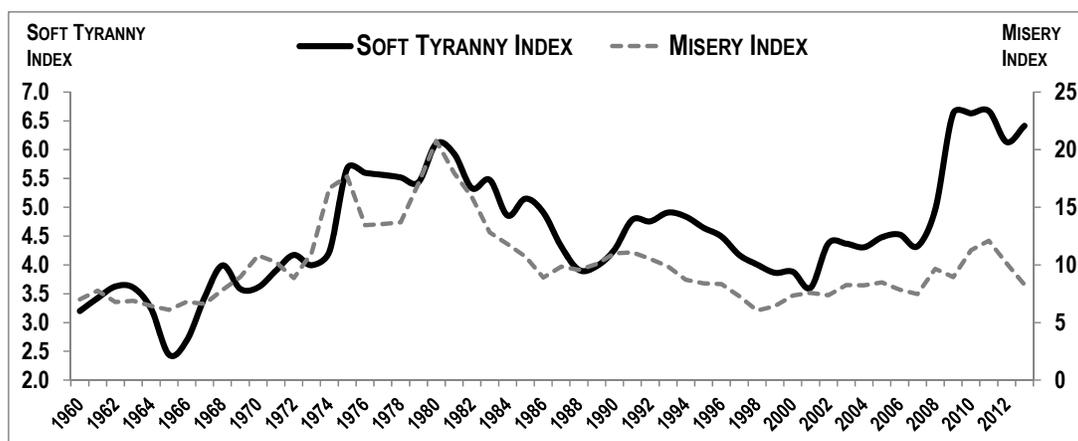


Figure 12—The Soft Tyranny Index, the measure of the federal government’s interventionary power in the economy, lines up with the Misery Index, a measure of inflation and unemployment, suggesting a link.

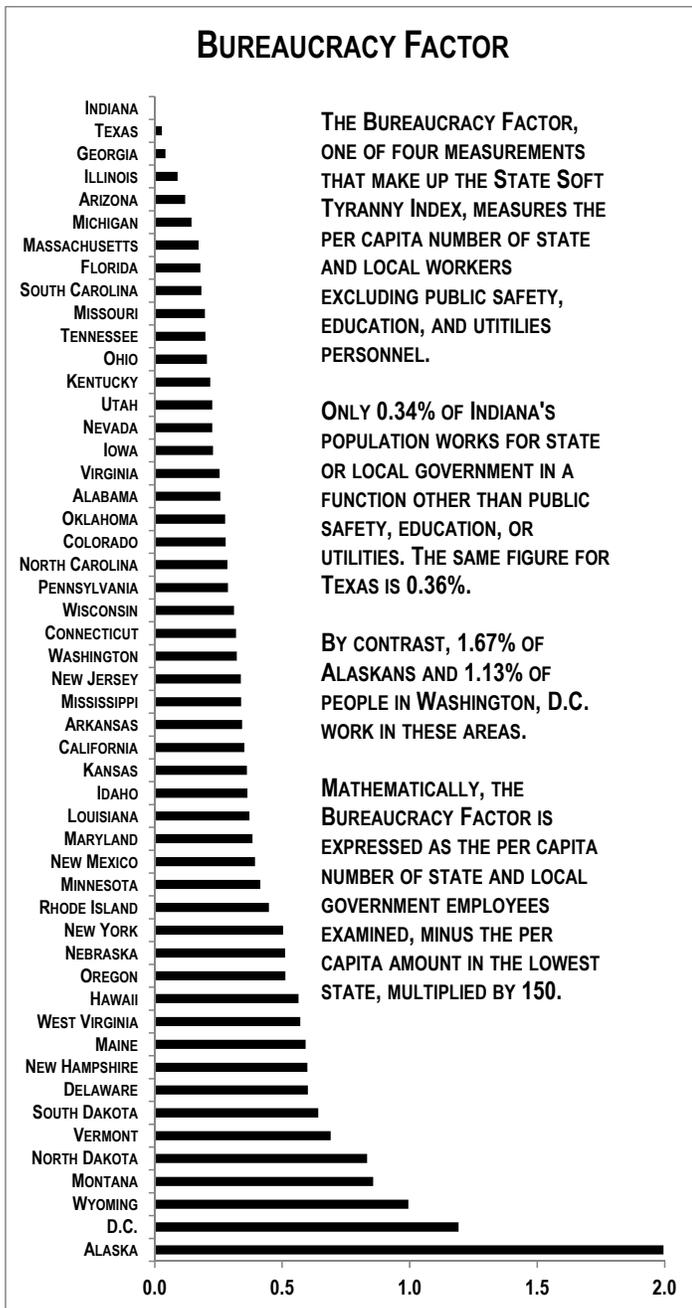


Figure 13—States have vastly different levels of bureaucratic overhead, with some states employing far more regulators and support staff than others.

The Income Tax Factor varies widely across the 50 states and D.C., with nine states having no tax at all on ordinary personal income while California, with the passage of a ballot proposition in 2012, now has the highest state income tax rate in the nation at 13.3 percent.<sup>49</sup> Figure 15 illustrates the relative ranking that income taxes contribute to the State Soft Tyranny Index.

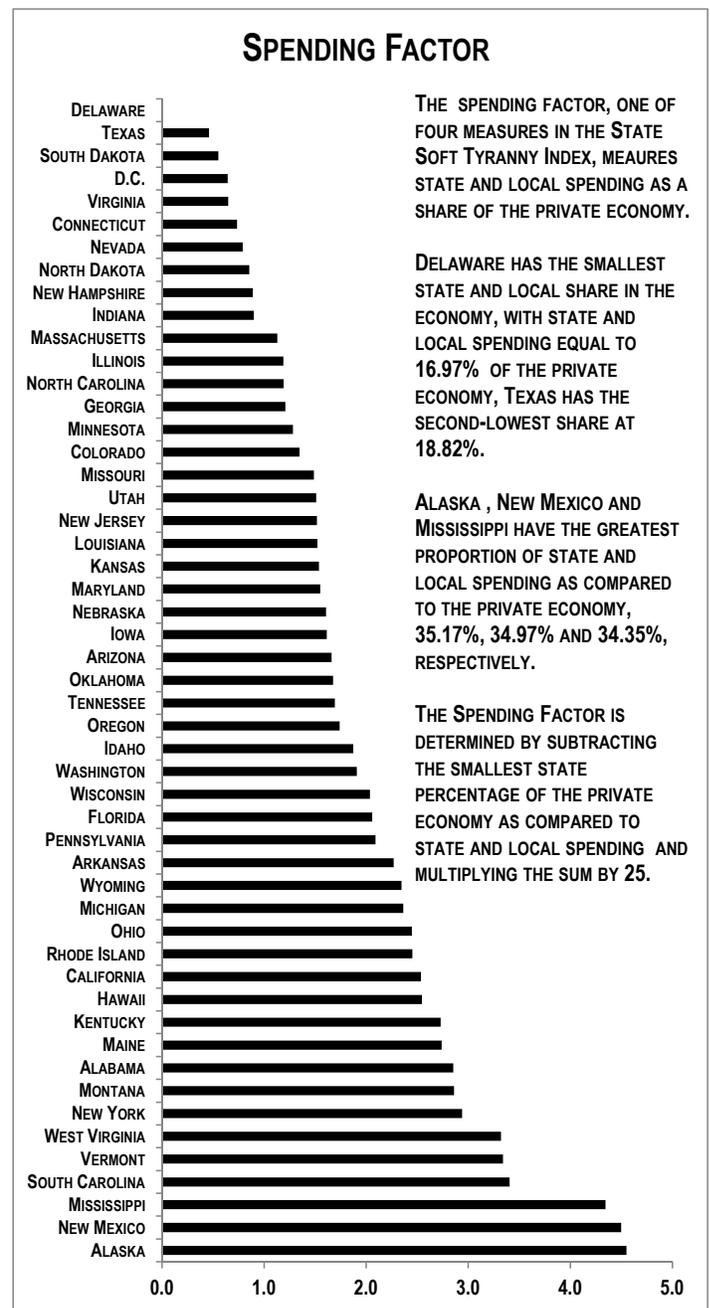


Figure 14—The Spending Factor is the second of four factors making up the State Soft Tyranny Index, it considers state and local spending as a share of the economy, showing vast differences among the states.

Figure 16 provides an overview of the total state and local tax burden as a share of state income for each state. New York, New Jersey, Connecticut, and California are the most-taxed states, Alaska the least, with Texas coming in with the sixth-lowest tax burden.

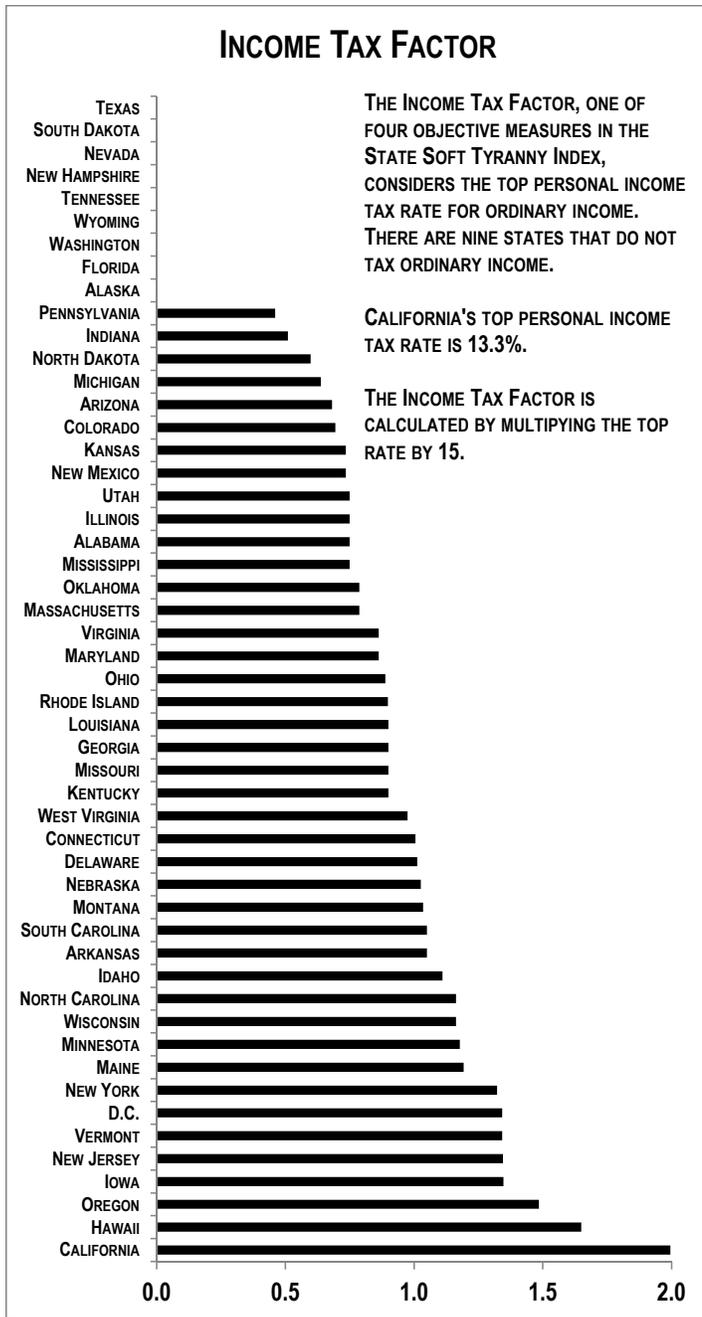


Figure 15—The Income Tax Factor simply measures the top rate on ordinary income, with the understanding that, whatever is taxed, you get less of—and taxing income is a sure way to discourage productive actions.

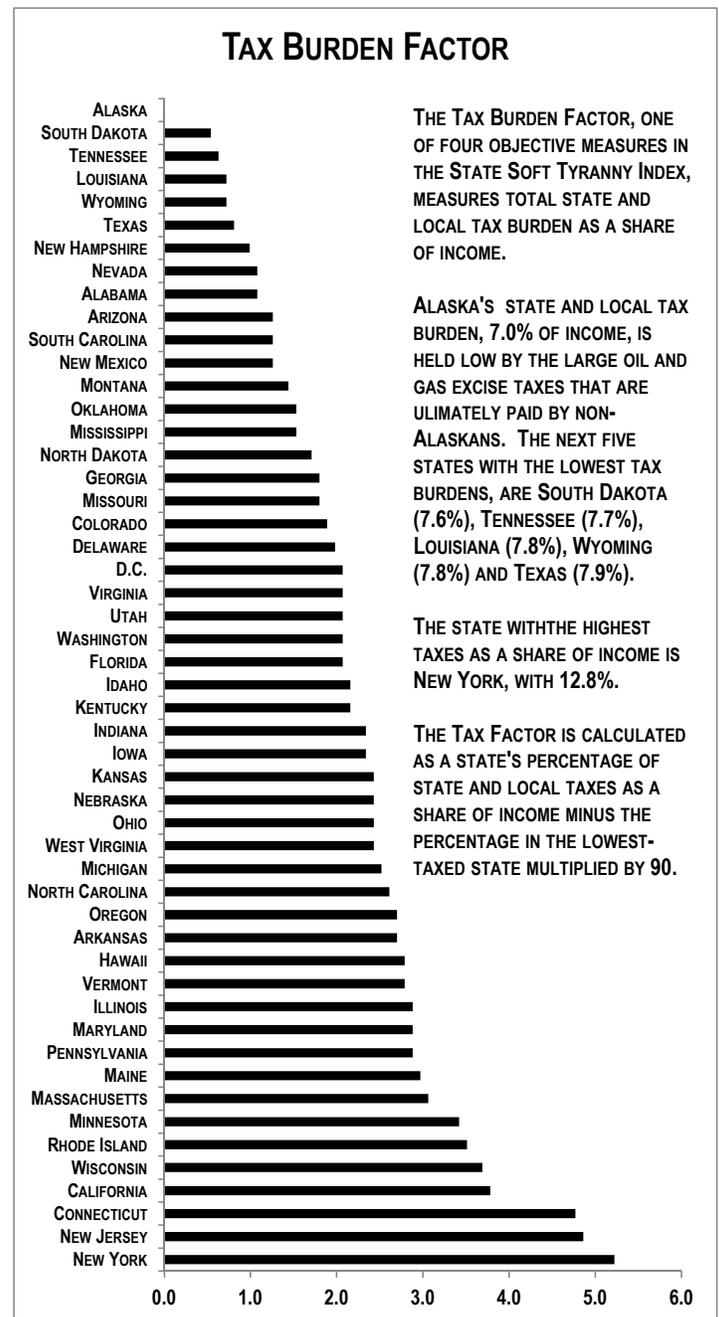


Figure 16—The Tax Burden Factor looks at the overall proportion of taxes as a share of income consumed by both state and local governments, setting at zero the state with the smallest tax burden, Alaska.

Figure 17 displays the State Soft Tyranny Index, a compilation of the four prior objective factors that seek to measure the level of government interference into the economy and into the ability of citizens to order their lives as they see fit.

The best five states listed, Texas, South Dakota, Nevada, New Hampshire, and Tennessee, all have one thing in common: *they lack an individual income tax.*

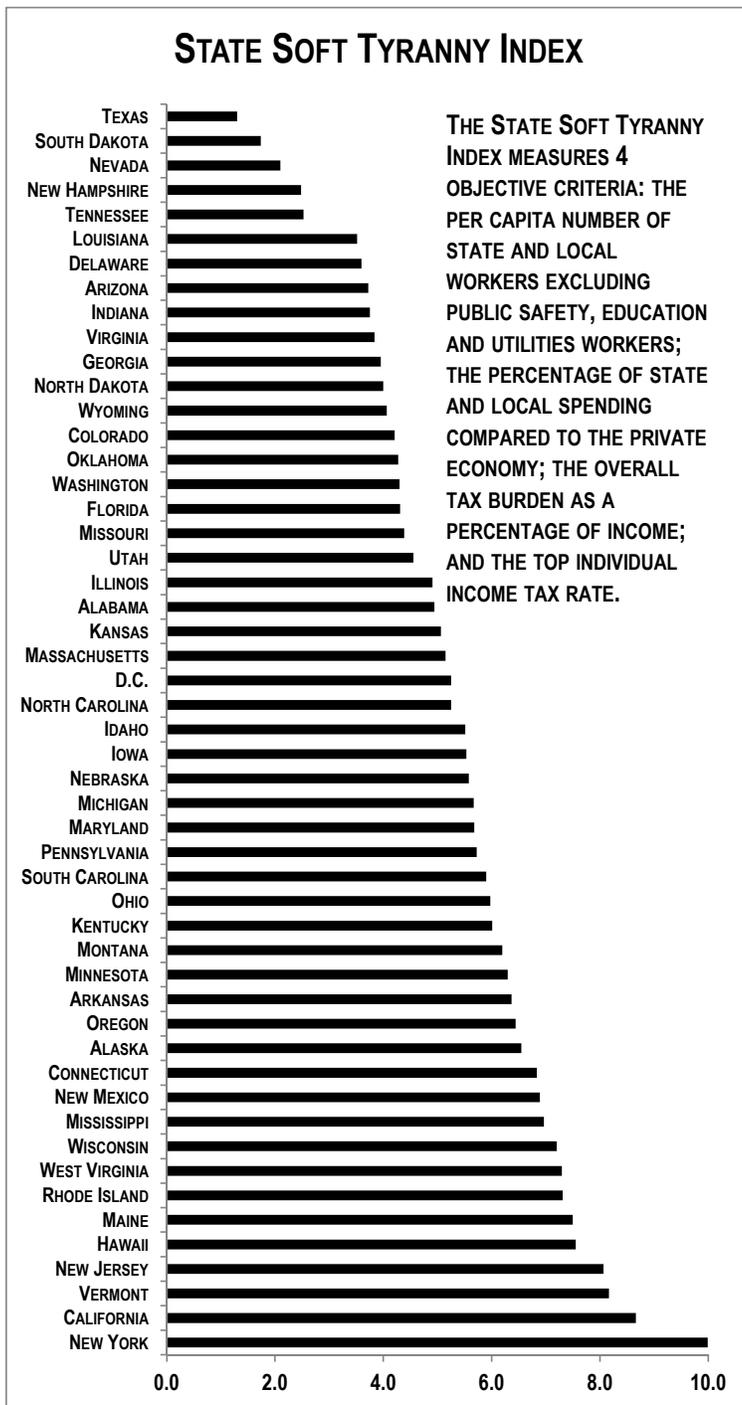


Figure 17—The State Soft Tyranny Index considers four objective factors to arrive at its ranking, with Texas scoring the top rank as the state with the most economic freedom and New York rating as the state with the greatest government intervention in the economy.

Again, liberty is its own reward, but, how did the top and bottom states in the State Soft Tyranny Index perform in two basic measures of economic well-being, economic growth and jobs creation?

According to the U.S. Bureau of Economic Analysis, real private industry GDP grew an average of 22.5 percent among the 10 best states from 2002 to 2012 while the bottom 10 states saw average economic growth of 13.7 percent with Rhode Island’s economy growing an anemic 6.2 percent in the 10-year period, followed by Maine with 7.4 percent then New Jersey’s 7.6 percent. The best performing state in the bottom ten group was Hawaii, which experienced 25.9 percent growth over 10 years, largely buoyed by strong real estate investments from Asia. In stark contrast, the top 10 group was led by Texas, with a robust 35.3 percent growth in its economy followed by Delaware with 27.6 percent. The poorest performing state in the top 10 was New Hampshire with 13.6 percent growth. New Hampshire’s economy is heavily influenced by the larger New England region, especially the Massachusetts economy. The bottom line: the 10 states with the most liberty saw 64 percent more economic growth in 10 years than the 10 states with the greatest amount of Soft Tyranny.

As for jobs, according to the U.S. Bureau of Labor Statistics, the top 10 states in the State Soft Tyranny Index saw nonfarm employment rolls grow by 6.6 percent in the 10 years from October 2003 to October 2013 in contrast to the 10 states at the bottom which experienced an average, unweighted job growth of only 2.3 percent. U.S. job growth for this time was 4.9 percent.

Clearly, the states which carefully foster liberty by keeping soft tyranny in check do better economically than those states which succumb to the temptation to assert they know best how to spend other people’s money and manage other people’s affairs.

When considering the superior economic performance of the 10 states with lowest State Soft Tyranny Index, it is entirely reasonable to expect analogous performance at the national level, if a concerted effort was made to reduce the federal bureaucracy, regulations, spending and taxes.

Lastly, it is instructive to look at how states implement regulations—whether they use a centralized

model dependent on edicts or a flexible system that borrows heavily from the principles of the free market. As the states are the “laboratories of democracy,” ideas as to how to best achieve public policy goals can be gleaned from them.\*

So, while the federal government prefers cumbersome rules and centralization, many states offer a different model. Take, for example, the U.S. Environmental Protection Agency (EPA). It has increasingly resorted to one-size-fits-all edicts from Washington, D.C. to assert control over state pollution control authority. For instance, in spite of the fact that America’s fourth-largest and still rapidly growing city, Houston, Texas, saw its ozone levels decline from 119 parts per billion (ppb) in 1999 to 84 ppb in 2009, meeting the statutory 85 ppb federal ozone standard while hosting the nation’s largest petrochemical industrial complex, the EPA determined that Texas violated the Federal Clean Air Act (CAA).<sup>50</sup> Houston achieved this remarkable result—growing rapidly while reducing pollution—with a home-grown regulatory solution by the name of the Flexible Permit Program. Eschewing a centrally-planned, government-centric program, Texas officials put in place a performance-based permitting regime that sets facility-specific emission caps coupled with a measure of flexibility to operate under the caps. The EPA didn’t like the Texas plan, saying it hides emissions while shielding industrial facilities from more stringent federal requirements. The EPA’s preferred model is to place emission limits on pieces of equipment, rather than entire facilities, thus increasing compliance costs while decreasing economic efficiency.

By August, 2012, the Fifth U.S. Circuit Court of Appeals ruled that the EPA had overstepped its authority in rejecting Texas’ Flexible Permit Program as violating the Clean Air Act.

Many forms of pollution carry with them “externalities”—damage to people, the environment and to the economy at large. Because the average polluter would likely see greater costs in reducing pollution than benefits in reducing externalities, they won’t spend the money to clean up unless compelled to. Private lawsuits by individuals might move a polluter to action, as is the case in England under Common Law with regard to pollution flowing into streams and rivers. More likely, however, the challenge of the tragedy of

the commons presents itself and plaintiffs would find the cost of court action would outweigh any potential awards. Therefore, government action, whether through statute, regulations, fees, fines, criminal or civil charges or other means, is commonly seen as the most direct route to reducing pollution. The key is in doing in a way that produces the greatest benefit in externality reduction for the least harm to both the economy and to individual freedom of action. Texas’ Flexible Permit Program produced significant results at a minimum of economic damage—and for that, Texas was attacked by the federal EPA.

## Conclusion: Reducing the Soft Tyranny of Government

The cost of federal regulation, \$1.8 trillion in 2011, approaches that of federal revenues, \$2.3 trillion in the same year.<sup>51</sup> Reducing the soft tyranny in America must start with reducing the number of regulators and their regulatory output. To do so, Congress must reassert its authority, taking back the enormous grants of power they have lent over the years to the unelected professionals who have taken to increasingly proscribing ever more detailed areas of Americans’ lives.

Returning the Soft Tyranny Index to where it was in 1988, or even 1960, won’t be easy due to the levels of federal spending to which the nation has grown accustomed as well as the massive productivity increases seen by the bureaucracy. However, it would be well worth the effort, in both restored liberty and in the wave of prosperity that it would release.

What might some scenarios that return the Soft Tyranny Index to earlier levels look like? Here are four examples:

Reducing the Soft Tyranny Index to 1988’s level of 3.8 could be done by:

- Laying off or reassigning half of the 137,159 federal employees engaged in regulatory oversight, a workforce level last seen in 1970;
- Limiting the number of new *Federal Register* pages to 20,000, compared to a little more than 77,000 in 2013, a volume also last seen in 1970; and

\* A “state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” – U.S. Supreme Court Justice Louis Brandeis in 1932’s *New State Ice Co. v. Liebmann* decision.

- Reducing federal spending as a share of the economy from 23 percent in 2013 to 22 percent, a reduction that could easily be met by allowing the economy to grow faster than federal spending for just a year or two.
- Limiting *Federal Register* to 27,000 pages, about the same level as was published in 1971; and
- Reducing federal spending as a portion of the economy to the level it was in 2000 and 2001: 18 percent.

Alternatively, reducing the Soft Tyranny Index to 1988's level of 3.8 could also be done by:

- Limiting *Federal Register* to 50,000 pages, about the same level as was published in the three years of 1988 to 1990; and
- Reducing federal spending as a portion of the economy to the level it was in 2000 and 2001, 18 percent.

Rolling back the clock on the Soft Tyranny Index to where it was in 1965, 2.4, after the Kennedy tax cuts went into effect, would be tough, but not impossible, due to the fact that today's tax rates are lower than they were then. This could be accomplished by:

- Laying off or reassigning half of the 137,159 federal employees engaged in regulatory oversight, a workforce level last seen in 1970;

Another way the Soft Tyranny Index could be reduced to 1965's level would be by:

- Restoring the Bush-era tax cuts, only recently increased in 2013;
- Laying off or reassigning a quarter of the 137,159 federal employees engaged in regulatory oversight, to 1988's regulatory workforce size;
- Reducing federal spending as a portion of the economy to the level it was in 2000 and 2001, 18 percent; and
- Trimming the *Federal Register* to 22,500 pages.

None of these steps are beyond the range of possibility and every one of them would boost both liberty and prosperity—all that is needed is a president and Congress with the vision and the fortitude to do it. ★

## Endnotes

<sup>1</sup> "Executive Order 11615" (15 Aug. 1971) from The American Presidency Project at U.C. Santa Barbara, accessed 13 Nov. 2013.

<sup>2</sup> Gene Healy, "Remembering Nixon's Wage and Price Controls," *The DC Examiner* (16 Aug. 2011).

<sup>3</sup> U.S. Government Printing Office, accessed 1 Nov. 2013.

<sup>4</sup> Glenn Kessler, "How many pages of regulations for 'ObamaCare?'," *The Fact Checker, Washington Post* (15 May 2013) accessed 1 Nov. 2013; and Penny Starr, "Waxman on 10,535 Pages of Obamacare Regs: 'Is It Important That I Read It?'," *CNS News* (2 Oct. 2013) accessed 1 Nov. 2013.

<sup>5</sup> From the *Federal Register* website, accessed 24 Oct. 2013.

<sup>6</sup> "Title 50 Code of Federal Regulations—Wildlife and Fisheries, Part 21—Migratory Bird Permits, Subpart B—General Requirements and Exceptions, Section 21.11," accessed 14 Nov. 2013.

<sup>7</sup> Christopher Hellman, "Judge Throws Out Criminal Case Against Oil Companies for Killing Birds at Drilling Sites," *Forbes* (18 Jan. 2012) accessed 14 Nov. 2013.

<sup>8</sup> Paul Strand, "Nation Under Arrest? Oil Exec Charged in Duck Deaths," *CBN News* (1 Sept. 2013) accessed 14 Nov. 2013.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Nicole V. Crain & W. Mark Crain "The Impact of Regulatory Costs on Small Firms," Lafayette College Easton, PA, U.S. Small Business Administration (Sept. 2010) accessed 14 Nov. 2013.

<sup>12</sup> U.S. Chamber of Commerce website, accessed 14 Nov. 2013.

<sup>13</sup> Nicole V. Crain & W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," Lafayette College Easton, PA, U.S. Small Business Administration, (Sept. 2010) accessed 14 Nov. 2013.

<sup>14</sup> "Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, 2013 20th Anniversary Edition," by Clyde Wayne Crews Jr., Competitive Enterprise Institute, Figure 3. Regulatory Costs Compared with Individual Income Taxes, Corporate Income Taxes, and Corporate Pretax Profits, accessed 19 Nov. 2013.

<sup>15</sup> Veronique de Rugy, "Why Do We Have Excess Regulation, and Can We Get Rid of It?," *National Review* (18 Nov. 2013) in reference to Clyde Wayne Crews Jr. study for the Competitive Enterprise Institute "Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, 2013 20th Anniversary Edition."

- <sup>16</sup> For the text of the law, see the Legal Information Institute at the Cornell University Law School, accessed 14 Nov. 2013.
- <sup>17</sup> Title 15 Code of Federal Regulations—Commerce and Foreign Trade, Part 904 – Civil Procedures; Title 50 Code of Federal Regulations—Wildlife and Fisheries, Part 10 - GENERAL PROVISIONS, Part 11 - CIVIL PROCEDURES, Part 12 - SEIZURE AND FORFEITURE PROCEDURES, Part 14 - IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE; and Title 50 Code of Federal Regulations, Part 300 - INTERNATIONAL FISHERIES REGULATIONS.
- <sup>18</sup> "Title 50, Code of Federal Regulations, Chapter 1, Part 14—Importation, Exportation, and Transportation of Wildlife, Subpart J—Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States, SPECIFICATIONS FOR SLOTHS, BATS, AND FLYING LEMURS (CYNOCEPHALIDAE), Section, 14.151 Primary enclosures," accessed 13 Nov. 2013.
- <sup>19</sup> James C. McKinley, "Famed Guitar Maker Raided by Federal Agents," *The New York Times* (31 Aug. 2011) accessed 13 Nov. 2013.
- <sup>20</sup> "Now The Gibson Guitar Raids Make Sense," editorial, *Investor's Business Daily* (24 May 2013) accessed 13 Nov. 2013.
- <sup>21</sup> "Federal government non-Postal Service civilian employees (data series CES9091100001)," U.S. Bureau of Labor Statistics, accessed 4 Nov. 2013.
- <sup>22</sup> Susan Dudley & Melinda Warren, "Growth in Regulators' Budget Slowed by Fiscal Stalemate: An Analysis of the U.S. Budget for Fiscal Years 2012 and 2013" (July 2012) Table A-3, Agency Detail of Staffing of Federal Regulatory Activity, accessed 21 Nov. 2013.
- <sup>23</sup> *Ibid.* and Veronique de Rugy & Melinda Warren, "Regulators Budget Report" (Oct. 2009) Table A-6, Total Staffing of Federal Regulatory Activity, accessed 20 Nov. 2013 as modified by author in removing Homeland Security full-time equivalents from the count of regulators since the Coast Guard, Transportation Security Administration, et al aren't known for writing regulations.
- <sup>24</sup> "Internal Revenue Service Data Book, 2012," Internal Revenue Service, accessed 21 Nov. 2013.
- <sup>25</sup> U.S. Office of Personnel Management, accessed 4 Nov. 2013.
- <sup>26</sup> Susan Dudley & Melinda Warren, "Growth in Regulators' Budget Slowed by Fiscal Stalemate: An Analysis of the U.S. Budget for Fiscal Years 2012 and 2013" (July 2012) Table A-6, Total Staffing of Federal Regulatory Activity.
- <sup>27</sup> U.S. Census Bureau, USA People QuickFacts, accessed 5 Nov. 2013.
- <sup>28</sup> "Databases, Tables & Calculators by Subject, Major Sector Productivity and Costs, Series Id: PRS85006092, Sector: Nonfarm Business, Measure: Labor productivity (output per hour)," U.S. Bureau of Labor Statistics, accessed 4 Nov. 2013.
- <sup>29</sup> Louis Peck, "America's \$320 Billion Shadow Government," *The Fiscal Times* (28 Sept. 2011).
- <sup>30</sup> "Civilian Service Contract Inventories: Opportunities Exist to Improve Agency Reporting and Review Efforts, GAO-12-1007," U.S. Government Accountability Office (27 Sept. 2012), accessed 6 Nov. 2013.
- <sup>31</sup> "Table A-4. Employment status of the civilian population 25 years and over by educational attainment," U.S. Bureau of Labor Statistics, accessed 4 Nov. 2013.
- <sup>32</sup> U.S. Office of Personnel Management, "Common Characteristics of the Government, 2012," Planning and Policy Analysis Data Analysis Group, accessed 4 Nov. 2013 and "Common Characteristics of the Government, 2011," Planning and Policy Analysis Data Analysis Group, accessed 4 Nov. 2013.
- <sup>33</sup> U.S. Bureau of Labor Statistics, federal government non-Postal Service civilian employees, data series, CES9091100001, accessed 4 Nov. 2013.
- <sup>34</sup> U.S. Bureau of Labor Statistics, state government employees (data series CES9092000001) subtract state education employees (data series CES9092161101), plus local government employees (data series CES9093000001) subtract local education employees (data series CES9093161101), accessed 4 Nov. 2013.
- <sup>35</sup> John Markoff, "Conversations/T. J. Rodgers; Not Everyone in the Valley Loves Silicon-Friendly Government," *The New York Times* (7 Mar. 1993), accessed 14 Nov. 2013.
- <sup>36</sup> Suzanne Deffree, "Cypress' T.J. Rodgers: Programmability, politics, and profitability," *Electronic Business* (5 Aug. 2008), accessed 14 Nov. 2013.
- <sup>37</sup> "Title 26, Code of Federal Regulations—Internal Revenue, SUBCHAPTER B—ESTATE AND GIFT TAXES, PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954 § 20.2032A-3 § 20.2032A-3 Material participation requirements for valuation of certain farm and closely-held business real property," pg. 315, accessed 14 Nov. 2013.
- <sup>38</sup> Janet Novack, "Tax Waste: 6.1 Billion Hours Spent Complying with Federal Tax Code," *Forbes* (5 Jan. 2011), accessed 14 Nov. 2013.
- <sup>39</sup> George F. Will, "Cash for Clunkers was a lemon of a program," *The Columbus Dispatch* (7 Nov. 2013).
- <sup>40</sup> Kevin Robillard, "Brookings: Cash for Clunkers was a lemon," *Politico* (30 Oct. 2013).
- <sup>41</sup> *Ibid.*
- <sup>42</sup> "Federal Grants to State and Local Governments," Congressional Budget Office (Mar. 2013), accessed 12 Nov. 2013.
- <sup>43</sup> U.S. Bureau of Economic Analysis, gross domestic product by state, accessed 14 Nov. 2013.
- <sup>44</sup> Susan Combs, Texas Comptroller of Public Accounts, "Comprehensive Annual Financial Report For the State of Texas for the Fiscal Year Ended August 31, 2012," accessed 14 Nov. 2013.
- <sup>45</sup> National Archives and Records Administration, Office of the Federal Register.
- <sup>46</sup> Sanjay B. Varshney, Ph.D., CFA and Dennis H. Tootelian, Ph.D., "Cost of State Regulations on California Small Business Study," California State University, Sacramento (Sept. 2009).
- <sup>47</sup> "State & Local Government Finance Summary Report," U.S. Census Bureau, 2011 and "State Totals: Vintage 2011," U.S. Census Bureau, accessed 27 Nov. 2013.
- <sup>48</sup> "State & Local Government Finance Summary Report," U.S. Census Bureau, and "Gross Domestic Product by State," U.S. Bureau of Economic Analysis.
- <sup>49</sup> The Tax Foundation Individual Income Tax Rates, 2013.
- <sup>50</sup> Kathleen Hartnett White, "EPA Process vs. Texas Results: Flexible Permits: Understanding the Dispute Between the World's Two Largest Environmental Agencies," Texas Public Policy Foundation (Sept. 2010).
- <sup>51</sup> "Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits: 1789-2018," U.S. Office of Management and Budget Historical Tables, accessed 27 Nov. 2013.

## About the Author



**Chuck DeVore** is Vice President of Policy at the Texas Public Policy Foundation, one of America's premier conservative state-level public policy think tanks.

From 2004 to 2010, DeVore represented almost 500,000 people in the California State Assembly in the coastal Orange County region that includes the cities of Irvine, Newport Beach, Laguna Beach, and others. He was the Vice Chairman of the Assembly Committee on Revenue and Taxation and served on the Budget Committee as well. DeVore was honored as the Legislator of the Year by seven groups while the Americanism Educational League named him with their American Spirit Award in 2010, a recognition once given to Ronald Reagan.

DeVore worked in the aerospace industry for 13 years. He was a corporate vice president at the time of his election to the Assembly in 2004.

DeVore served as a Reagan White House appointee in the Pentagon from 1986 to 1988. As Special Assistant for Foreign Affairs his duties included working with Congress to advance the President's foreign and military policy. He later served on staff for a U.S. Congressman.

In 2004, The Claremont Institute named DeVore a Lincoln Fellow.

## About the Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

