

LAWRENCE B. SOLUM

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Shapiro & DeNigris on Economic Constitutional Rights & the Poor

Ilya Shapiro and Carl G. DeNigris (Cato Institute and Cato Institute) have posted [Occupy Pennsylvania Avenue: How the Government's Unconstitutional Actions Hurt the 99%](#) (Drake Law Review, Forthcoming) on SSRN. Here is the abstract:

Economic freedom is the best tool man has ever had in the perpetual struggle against poverty. It allows every individual to employ their faculties to a multitude of opportunities, and it has fueled the economic growth that has lifted millions out of poverty in the last century alone. Moreover, it provides a path for individuals and communities to free themselves from coercive government policies that serve political elites and discrete political classes at the expense of the politically weak. Because of their relative political weakness, the poor and lower middle class tend to suffer the most from these inescapable power disparities.

Yet economic freedom — and ultimately, economic growth — is not self-sustaining. This tool of prosperity requires sound principles that provide a framework for cooperation and voluntary exchanges in a free society. Principles equally applied to all and beyond the arbitrary discretion of government actors; principles that provide a degree of certainty and predictability in an otherwise uncertain world. That is, economic freedom requires the rule of law, not men.

In this article, we discuss the corrosive effects that unconstitutional actions have on the rule of law, economic growth and, in turn, on the ability of the poor to improve their economic misfortune. We focus on the institutional dangers and adverse incentives that unconstitutional policies tend to create. These dangers are not just abstract or theoretical; this article shows how specific unconstitutional actions adversely affect the lives of poor Americans. And while Part IV shows that even

constitutional violations by local governments can have disastrous effects, our central theme is that the federal government's disregard for the U.S. Constitution has led to policies that kill jobs, stymie economic growth, and ultimately exacerbate the problems of those living in poverty.