Consumer Finance Monitor Podcast (Season 9, Episode 35): New Institute for Consumer Financial Choice Seeks to Reshape the Consumer Finance Policy Debate

Speakers: Alan Kaplinsky, Todd Zywicki and Tom Miller

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly show brought to you by the Consumer Financial Services Group at the Ballard Spahr Law Firm. And I'm your host, Alan Kaplinsky, the founder and former practice group leader for 25 years and now senior counsel of the Consumer Financial Services Group at Ballard Spahr. And I'll be moderating today's program.

For those of you who want even more information, don't forget about our blog, which also goes under the same name as our podcast show, namely Consumer Finance Monitor. We've hosted our blog since 2011 when the CFPB became operational. So there is a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those in the consumer finance industry. So to subscribe to our blog or get on the list for our webinars, please visit us at ballardspahr.com. If you like our podcast, please let us know about it. You can leave us a review on any major platform where you access our podcast show. And also, please let us know if you have any ideas for other topics we should cover or guests that we should consider inviting to be on our show.

Today's episode focuses on an important new initiative that we recently highlighted on our blog, Consumer Finance Monitor. We wrote the blog on April 4th of this year, and that is the launch of the Institute for Consumer Financial Choice, or as we may refer to it throughout the remainder of our podcast show today, the ICFC. This new institute aims to bring rigorous empirical research and thoughtful policy analysis to some of the most pressing issues in the consumer finance industry with a particular emphasis on promoting consumer choice, innovation and well-functioning markets.

The ICFC formally kicked off its work with a joint launch program on May 14th and 15th, hosted at George Mason University Antonin Scalia Law School. This event held in collaboration with the Federal Trade Commission signaled the Institute's commitment to engaging directly with policymakers and regulators from the outset. The event's first day, which was led by the FTC, featured opening remarks from Christopher Mufarrige, director of the FTC's Bureau of Consumer Protection, as well as our two featured guests today, who I'm about to give a proper introduction to, ICFC co-directors Todd Zywicki and Tom Miller.

It also included two panel discussions that focused on innovations in financial services marketplace and on the implications for consumers, businesses and regulators of new products and tech applications. Second day was led by the ICFC and it featured three panel discussions focused on the findings of a report from the CFPB Taskforce on Federal Consumer Financial Law. This task force released a report in 2021 with extensive recommendations how to improve consumer protection in the financial marketplace. And we're I'm sure going to get into some detail about that in a few minutes. So let me, without further ado, properly introduce the two individuals who are playing the leading roles in this effort to create the institute. Both of them have been guests on our podcast show on multiple occasions.

First of all, Todd Zywicki, who is a George Mason University Foundation Professor of Law and co-founder and co-director of the Institute. Todd is very well known to our audience and indeed the entire consumer finance industry. And as I indicated, he previously chaired the CFPB's Taskforce on Federal Consumer Financial Law. He's written very extensively on consumer credit regulation and market competition. So Todd, a very warm welcome to you.

Todd Zywicki:

Thanks, Alan. It's always great to be with you here.

Alan Kaplinsky:

Okay. And also joining us today is Tom Miller. Tom is a professor of finance at Mississippi State University and a leading empirical researcher on consumer credit markets, particularly small dollar lending and financial inclusion. And I might say a very accomplished tenor saxophone player. Tom, a very warm welcome to you.

Tom Miller:

Thank you, Alan. It's always a pleasure to be talking to you and on the show.

Alan Kaplinsky:

Thank you. Okay. So we're going to start out with some easy softball questions for both and either one of you can answer and feel free to chime in at any time because I like to keep our podcast show very conversational and informal. So let me start at a high level. What prompted the creation of the Institute for Consumer Financial Choice and what gap are you trying to fill in the current policy and academic landscape?

Todd Zywicki:

I'll jump in with that one first, Alan. This is something that Tom and I have talked about for a while, which is coming up with a new way of thinking about consumer financial protection. In many ways, we are still trapped in sort of 1970s Naderite mindset. And what we see are these kind of waves where you might have regulation and deregulation, but what we've though for a long time is necessary is a intellectual structure, a way of approaching consumer financial regulation that isn't just narrowly sort of focused on this continuum between deregulation and regulation, but regulations that can actually help to facilitate competition, facilitate innovation, empower consumers. And we're undergoing this sea change of technology where consumers shopping for products differently, where things are being marketed differently, consumers are unbundling products. We've got new stablecoins and that sort of thing. And so what we wanted to do was be able to fill that void.

And for those who believe that consumers and families know better for themselves than bureaucrats and the government does to come up with better tools to help them accomplish their goals in life rather than the approach that has dominated the CFPB and elsewhere for all these years.

Tom Miller:

Oh, I'm sorry. Yeah, I'd just like to say that also we view the institute as a way to pass the baton, if you will, and collect others into the mission of the Institute and grow this idea, as Todd said, about pushing market-based solutions to consumer choice problems.

Alan Kaplinsky:

Sure, sure. So the next question that I have about your institute is the core mission. I mean, you've described some of it already, but is it primarily about research, policy advocacy, something else? What is the main mission?

Todd Zywicki:

All of the above. And one of the things we talked about in the task force report was the way in which research, policy research and development, we used to call it, is the first thing to figure out how you actually create regulations, enforcement priorities and that sort of thing. And so what we see going on here is first, as Tom said, there's a long tradition of research on consumer financial economics that's kind of been thrown overboard as behavioral economics has taken over and the academy and that sort of thing. And so what we have in mind is essentially a complete pipeline starting with research, starting with recruiting and training economists who can think about and interested in researching economics in an empirically rigorous sort of way, but then taking those ideas and applying them through amicus briefs, through regulatory comments, through public outreach and the stuff, because it's like the research without the application doesn't work and applications without the research doesn't work.

And so our goal is to go through that whole continuum. We've already are in the process of preparing our first amicus brief, and we hope to have more of those to come as we get going.

Tom Miller:

And I would say another thing that we are focused on is education. Todd has taught a consumer financial law course at George Mason at least twice, maybe three times now, and it's a fantastic course. And I've generated a undergraduate course in consumer credit and consumer finance with the idea to look back and focus on all the material that's in the book by Todd and Tom Durkin, Greg Elliehausen on consumer credit. So there's a lot of resources that we can put into these classroom modules, if you will, to take on the road and talk to people about it as well.

Alan Kaplinsky:

Right. So there are a lot of think tanks and academic centers and I guess I would say consumer advocacy groups, many, many of them working in the consumer finance area. Sometimes the scope of what they do is broader than consumer finance. It's consumer affairs and consumer finance is just one very important element of that. But what differentiates the Institute from everything else that's out there?

Todd Zywicki:

And you're right, there is a lot of consumer advocacy groups out there, but very few that I would say are actually advocating for consumers. Very few that are advocating for consumers choice competition and that sort of thing. And there's very few, for whatever reason, free market people or people who are inclined to market solutions have not really focused very much on this area to the extent the research has been done. It's been done by those who are primarily advocates of greater government controls and regulation. And as Tom said, the other part about this is you may have seen recently that former FTC chair, Lina Khan, has just started a new organization at Columbia. And as Tom said, one of the things we're hoping here is to train students and economists who will take these ideas and go into the government to work at the CFPP, to work at the FTC, to work in state AG's offices, to go out maybe into think tanks and mine these ideas to advance a mission.

So there's a lot of people on the other side. There's Tom and me on the other side, but we got them surrounded.

Alan Kaplinsky:

You've got a lot of people to take on. Are the two of you up to the task or have you putting together a secretive army of other participants?

Todd Zywicki:

As far as we could tell, if there is an army, it's very secretive and very small. So we're hoping we can build more people who will be interested in these ideas and interested in exploring them in a more market-friendly and competition-friendly way.

Alan Kaplinsky:

Right, right, right. So you talked about these consumer advocacy groups, and of course they claim that they're representing consumers. I guess I've always considered them the self-appointed spokesman for the consumers. And you claim that's what they say, but that's not really what they're doing. The name of your organization curiously has got the words consumer choice in it. What does this mean in practice, especially in a regulatory environment that often emphasizes consumer protection?

Todd Zywicki:

Yeah, I think one of the things that people need to be reminded is markets themselves protect consumers. Market advertising, name brands, all these sorts of things are all ways of protecting consumers. One of the greatest things that ever happened for consumers was the deregulation of interest rates by the Marquette National Bank case in 1978. And what do we see there? We see massive growth and access to other credit cards for consumers. And when they do that, they mean you have to rely less on payday loans and that sort of thing when people have more access to that. And so what I think we really want are markets that work well for consumers that are transparent. And that process, the invisible hand process that Adam Smith so famously spoke about is the first line of empowering and protecting consumers. The ability to tell your credit card issuer to pound sand if you don't like the way they're treating you.

That's the first line that we know that consumers can get to. And so when we adopt regulations like the Durbin Amendment and take away bank accounts from people, or we adopt use rate ceilings to take credit cards away from people, or we adopt approaches that deny people the opportunities to engage with FinTech providers, that's not protecting consumers. That's just limiting their choices and pushing them to less attractive choices.

Tom Miller:

I would add that another thing is that markets are very nimble. Markets can react. Capital can flow in and out of markets very quickly. Capital's always on the move looking for new ideas and the markets can adjust very quickly versus regulations and laws that can take a long time to change. Whereas if you just look at the world of innovation in FinTech, if we were relying on the regulators and policy Congress to set those boundaries, it's mind-boggling to think how the market has been able to do that.

Alan Kaplinsky:

Right. So I'm wondering how, as you were answering the question, Todd, how you and Tom feel about this very recent development of two FinTech companies that are engaged in lending at high APRs. I won't mention the names of them, but I'm sure you've read about it. And a consortium of I don't know how many consumer advocates and groups have sent a letter to the OCC telling them that they should turn down the application that these two companies have made to I think acquire, I don't think they were de novo banks that they were going to be organizing. I think they wanted to acquire a couple of banks under the Change in Bank Control Act. And the letter just, the sole basis really for attacking these applications is the fact that they charge high APRs sometimes in the three digits. And they consider that synonymous with lack of consumer protection.

What's the reaction to that? And by the way, that might be something the IF, your institute, might counter with its own comment letter.

Todd Zywicki:

Exactly. That's the kind of thing we want to do is bring economic learning to that. I mean simply what do we know? We know that all the evidence we have suggests that whatever the price is, they are high. Number one, APR is not actually a measure of price. It's supposed to be a shopping vehicle, which is something Tom and I have both written about. But that in competitive markets, there's no evidence that they're earning what we would call economic rents, reaping profits off of that once you take account of the cost and the risk involved in lending. And over the long run, what we see is the best thing that ends up happening for consumers is competition brings down rates to a competitive rate. Back in the days when we had use rate ceilings and now when use rate ceilings get reimposed now, two things happen, which is number one is you shrink options for consumers and you come up with these very convoluted workarounds for consumers.

And number two is some of Tom's own research has found you have this regressive effect where higher risk borrowers lose access to credit, but lower risk borrowers, the upper and middle class people actually get lower prices. So now you might understand the political dynamics, which is people who don't use products want to get rid of those products. People who use the products are the ones who want to keep them. I mean, it's pretty simple.

Alan Kaplinsky:

Right, right, right. So how do you respond? I know you mentioned behavioral economics a short while ago, but how do you respond to critics who argue that consumers often make suboptimal financial decisions and as a result require more prescriptive regulation?

Tom Miller:

Well, I would say that we're all making decisions under uncertainty as we move through time. The future's unpredictable and it's risky and everyone has to make those decisions. And by definition, I don't think anybody can make optimal financial decisions, but what they do is make decisions that they think at a moment in time is best for them looking forward, whether it's to buy a house, a vehicle, have children, where to school those children. It's where to look for a job, all those things and how to use credit to shift the timeline from acquiring assets to paying for assets. So I think people who want to have a riskless world, you have to have risk in the world to have reward. And it's the reward that keeps capital flowing to its highest valued use.

Todd Zywicki:

Yeah. And obviously we all make mistakes as Tom said, in terms of making mistakes. And we see clearly a legitimate role for certain types of government regulation like the Truth in Lending Act done correctly to help consumers shop better to minimize avoidable errors. But the problem comes in when you fail to understand the basic economics as we keep coming back to. Think about the CFPB rule for example, that place price controls on credit card late fees. What would be the impact of that? More people will pay late. More people actually borrow more because they can pay late. And what we saw is you end up with people who pay their bills on time, subsidizing those who pay late. Same with the overdraft, the fees. So you've got to have rigorous... So there's economic analysis that can help us to actually create rules, create enforcement things that actually will make consumers more informed and be able to make better choices, learn from those choices in the like.

Alan Kaplinsky:

Let's turn to the research agenda and methodology. Tom, your empirical work is focused on real world data in areas like payday lending and small dollar credit. How will the Institute incorporate that kind of data-driven analysis into its work?

Tom Miller:

Well, data-driven analysis is what fuels peer-reviewed academic publications. And so we'll keep publishing those, looking for opportunities to get data. And I think the ICFC will be a magnet for data and data is this giant magnetic attraction for academics to come and look at problems. And if we have data to show X, that doesn't mean it's the last paper that ever needs to be written on it. Research is a mosaic of findings. And so if we get more and more research on findings, it makes us feel a little stronger about position.

So I'm very excited to get data and get co-authors or put together projects for team members to run with the ball and get it published. And that peer review process is very rigorous and you take a lot of body blows to get a paper across the finish line, but by then it's pretty sharp. And so we're looking to continue doing that.

Alan Kaplinsky:

So in terms of getting peer reviewed, you take a draft of what you've put together, put it on SSRN, or do you have a sort of a network of academics that you send it to for their comment?

Tom Miller:

Well, actually those two things are part of the peer review process, but each academic journal assigns a referee or two or three in some cases. In the past, they were blind reviewed, but because we have the SSRN and websites and whatnot, papers are pretty searchable so people kind of know who the authors are. But the referees at a journal have to pass the paper onto the editor and saying, "I agree with this paper. We should make these changes, but then let's make these changes and publish it in the journal." So that's a very rigorous process that we do SSRN, get publication, we present that paper at various outlets, people comment on it. And it's a very rigorous and soul-bearing type of process, but you can be pretty sure that at the end of the day, you have a good product.

Todd Zywicki:

This is one of our big goals here. And this is one of the advantages of this being based in a university as opposed to an independent organization. We are a university-based research organization. And so this is a big component of what we're talking about. What Tom said is we'd love to be a hub for data where we connect graduate students, connect professors with data sources to be able to do good, rigorous, empirical work in a university setting under our guidance and our learning and that sort of thing. And it's not a coincidence that the very first program that we've done was an academic conference looking at the task force report through I think 16, counting the task force members, scholars writing scholarly analysis and scholarly engagement with the task force report. And so that's a good example of what we want to do is have scholars focused on policy questions and have policy issues that will draw the attention of scholars in a way that's not just blackboard economics and the like.

Some point I've always made is bad research drives out no research. Bad data drives out no data. The only thing to beat the bad data that stuff like Pew and other organizations are often putting out is to have better, more rigorous analysis.

Alan Kaplinsky:

Right. Well, let me ask you this. And that is both of you, Todd and Tom, are obviously recognized as leading experts in the consumer finance area, but I think it's fair to say that you both have a conservative orientation. And will there be a litmus test for people who are interested in getting involved in your organization but may not share the same politics that the two of you have? Or will you try to avoid being labeled as this is the conservative voice, so you take it when you evaluate their work, you know where they're coming from. Okay?

Todd Zywicki:

Absolutely. And if you look at the program we have for the initial task force program, David Silverman was a speaker. We have also invited a number of other scholars, who are unable to make it, Adam Levitin, other people who just were not available. And so that's exactly what we want is we want engagement with these ideas. And what has happened in the past a lot is that they've simply been ignored, that the academic and people who don't share a world, we just talk to each other. And I think it makes a lot of mistakes for them. And so we are really excited to engage with law professors and economists who are interested in engaging with on this and having sort of respectful debate that's rigorous and gets to good results. Like I said, we're not anarchists when it comes to consumer protection. There's a role here.

Financial providers do rip off consumers. There are problems out there. And another big one I'll just say that we all should care about and we really will hope we have engagement with is financial inclusion. The consumer finance system works very well for middle class and upper middle class people. It's a marvel, but there are still a lot of people on the edges and we really need to engage in things where people understand. So I was very gratified to see recently, for example, that Robert Shapiro wrote this paper for the Progressive Policy Institute criticizing the Durbin Amendment and acknowledging and sort of reversing his own views that the Durbin Amendment has been devastating for lower income people, devastating for minorities and that it's hardly affected wealthier people at all because of they've just switched over to credit cards. And so we're always learning. We can always learn about better ways to do these things.

And we're really hoping that across a lot of these issues we will find a lot of collaboration with people and we tried to do that in our initial program.

Alan Kaplinsky:

Right. So in terms of research projects that are priorities for the Institute during your first year of operation, I'd like to get your thinking on that, but would one of them be to try to dust off the task force report that got issued during the first, I guess, Trump 0.1 during that administration, but then got deep-six once the Biden administration came into office and they had a new director. Would that be one of the goals? And I'm wondering, I know we don't have a lot of time to get into a tremendous amount of detail, but if that is one of the goals, what would be the major things in that report that you would like to see actually become effective?

Todd Zywicki:

I'll take that and then Tom could chime in. That's why the first program we did is an academic symposium focused on the task force report. Basically three panels. There's three parts to the report. The first is the economics and the economic history. The second part is sort of the institutions and mechanism of consumer financial protection. And the third part is sort of the future. So economics, which is Tom's bailiwick, the law and policy stuff, which is mine, and then the future type stuff. And so we divided up that way, got academic papers. The only requirement we had was you have to discuss something in the task force. You can be critical, you can be descriptive, you can be praising, but you just need to take those ideas and do something with it. And so we're going to collect papers from that and we're going to publish a law review or an economics journal symposium eventually with the idea being to get scholars to engage with that incredible resource.

Because the number of times in the past five years, Alan, where I've opened a law review article or economics journal article and seen people who are trying to reinvent the wheel where it's just like, "Read the report." The report discusses this. The report has all the references. So the report will help you to not make these simple errors. But that's exactly what it was is the report itself was intended to be something that will last for 10 or 20 years and create a policy for researchers, for policymakers, for lawmakers as a capital sort of type thing. And that's sort of why we've taken that as our first place to start with is this is the state of the world. This is the state of the knowledge written by five experts on this stuff. And so let's figure out what's in here and use it as a teaching tool.

It's my primary textbook that I use when I teach to my consumer financial protection class, as Tom said, because it's so rich in thinking.

Alan Kaplinsky:

Yeah. Well, first of all, we did a podcast show on the report with you as our guest and that's available in our archives. But is the report been reinstated to the website of the CFPB? Zach, can you obtain it there?

Todd Zywicki:

Absolutely. It's still there. It's got the red mark on it that says it was created in, as we talked about our podcast, in violation of the Federal Advisory Committee Act, which we never thought we were a federal advisory committee. So that's kind of not surprising. But it's still there. It's still freely accessible. And I urge people to go and look at it. Anybody who's interested in learning anything about this can just go there, look at it. Volume one is an 800-page report. Volume two, it's 101 recommendations on how to improve the consumer financial system that people may be interested in seeing. And they might find some things in there that are surprising to them for somebody who thinks that we are just sort of a conservative outfit of task force people.

Alan Kaplinsky:

Yeah. Yeah. No, I found it to be a treasure trove and still something that I refer to almost anytime I'm delving into an issue related to regulations that are on the books of the CFPB. That taking on that task force sounds like enough to keep you busy for probably the first year, but what other priorities do you have in the area of what I would call new research?

Tom Miller:

Well, I would say that we have at least three things on the drawing board right now. The first one is a simple question is does the MLA actually help service members obtain credit? And we're going to take a swing at that and take a look. We have some data. Actually, an interesting side note is the military itself or the Pentagon does not allow researchers to get access to whether a borrower is a member of the military or not. So we have to figure out a way to get around that to build a dataset. But that's one thing we're doing is looking at does the MLA in fact-

Alan Kaplinsky:

There was some database that allowed a lender to determine is somebody actually in the military, but I guess not, no?

Tom Miller:

No, the credit bureaus have the data. It's just a question of can that data be given to researchers? And that's where the Pentagon has said no. We're also going to do something in the pawn industry. And I don't think anybody knows a lot about pawn. I think the last major study on pawn was done roughly in the early '70s. And so it's been a while, needs an update. It's an interesting source of funds for people. You have to have something to give to a pawn broker to obtain a loan. It's not a loan because you have to pay it back. So they call them loans because it's just a simple way to advertise.

A third one we're doing is we're looking at some ancillary products like gap insurance and extended warranties. And Todd and I have two payday papers that we're looking at for the effects of regulation in the payday loan market. So we've got a pretty rich research agenda already in line for the upcoming year.

Todd Zywicki:

One thing I'll add to Tom is the task force report lays out a lot of broad stuff. A lot of the stuff is stuff that needs to be developed further. We have categories of recommendation, the task force report. By far the largest category was not enforcement, it was not rulemaking, it was research. There's so many things we don't know that we would love to dig in. One that's a passion of mine I think is really interesting is problems of rural financial inclusion, for example. Financial inclusion's been studied a lot when it comes to minorities and cities and that sort of thing, but we don't really understand the challenges of rural financial inclusion in the way that say Dodd-Frank has been particularly harmful to rural communities leading to bank closures and that sort of thing. I think another thing we've seen is we need a more resilient financial system.

This is something I'd like to work with our administrative law friends. We've had three major crises, this millennium, 9/11, 2008 financial crisis, COVID. And every time we've kind of scrambled to make the system respond and it's responded incredibly well. I mean, it's been a real marvel of markets, but how do we create a system that has more of that built in? How do we reform this huge overgrowth of regulation? I mean, just think about how archaic mortgage closings are in the world of the internet now. You still got those giant stacks of paper and all these sorts of things. And so what I think we'd like to do over time is lay out our research agenda here, think about what these issues are, and then over time solicit papers, do research round tables, workshops on particular discrete topics that could then be packaged as law review symposium issues or economics journal symposium issues, doing podcasts like this, webinars where we could talk about this with people and turning them into policy relevant type questions.

I mean just one last one is we've seen this now, there's rapid development of stablecoins, cryptocurrency and that sort of thing. But the consumer financial protection system is very underdeveloped when it comes to that stuff. And so how do we go about creating a world in which those are safe and consumers have confidence that they can use those while we don't strangle competition and we don't allow special interests, for example, who don't like competition from disrupting the process. So I think there's a lot of rich opportunities here for us and to engage across the entire ideological and disciplinary spectrum, economists, lawyers and others.

Alan Kaplinsky:

And you haven't even mentioned some of the newer FinTech products like buy now, pay later and earn wage access to new products, relatively new, that have attracted a lot of controversy and a lot of thinking on both sides of the aisle, I guess I could say.

Todd Zywicki:

Yeah. And one of the things we're hoping to do or planning to do and just haven't had a chat yet, Alan, is build up a advisory board from people from industry and the like to tell us what are the cutting edge issues. What should we be focused on and what are the issues that are in play in a regulatory way? And like you said, doing that sort of thing so that we're doing policy relevant research.

Alan Kaplinsky:

Right, right, right. So let's talk about turn to key policy issues. What do you consider the most important issues today? I mean, you've referred to a number of the things you're going to be focusing on, but the question really is where do you think that the Institute can make the most immediate impact?

Tom Miller:

Well, I think a couple places is in an area that I call APR fever and that they have this focus on regulators has this focus on APR, but it's not a true price. But we can educate people on that. We've been talking about it for years. Another thing that I think is an important policy issue is interest rate caps because interest rate caps do not help people that they're designed to help. But every generation of Congress and state legislatures all come up with this idea because it has a great sound like we're going to reduce the cost to you by sticking it to those "evil lenders," but the lenders can just take their capital and go to other places and so they can be regulated out of business. How does that help consumers? And focusing on education on those two issues is a big deal.

I mean, I think we can write amicus briefs and other papers are just kind of like blue, whatever you call them, just a white paper and say, "Here's what matters here in APR, here's what matters in interest rate caps." But we have to keep singing that song, Alan. We have to be out there every time. It's a big battle. Both of those issues and they're not going to go away.

Alan Kaplinsky:

Right, right, right.

Todd Zywicki:

I'll just say I agree. That is a lesson that just seems that we have to learn over and over and over again, that price controls don't work and that they harm the people they're supposed to harm. I would just add two important things. I think the whole payments network and payment system, starting with the Durbin Amendment, now you get the Credit Card Competition Act. These are very delicate, remarkable structures that are very delicately balanced. And the idea that politicians can just blunder in there and start changing the systems without there being disastrous implications I think is just an error. And so understanding how these systems work. And so that's the first amicus brief. It's not about officially with the center, but the first amicus brief that I'm going to be working on since I've been co-director is in the 6th Circuit in the Linney's Pizza case involving the setting of interchange of fees.

The second thing I think that's really worthy of a lot of focus for those of us who are lawyers and also economists is we're seeing this breakdown of the system of dual federalism in banking. We've got these states interfering in interstate commerce. We had, it looked like during the last administration, the Prudential regulators pressuring banks to debank people, but everything's kind of pulling apart at the seams in terms of this marvel of the dual banking system, the ability of state and federal banks to compete on equal grounds and with focus on consumer choice and competition at the center of it as opposed to state power, state authority and the like. And so I think that's something that's going to require some exploration is how do we put our banking system back together, especially in an era now post Loper Bright where so much of the federal regulatory system was built on guidances and informal type things. That's an issue I think I'd like to explore is one of our first projects.

Alan Kaplinsky:

Yeah. I'm amazed we've been talking for quite some time and I don't think we've mentioned AI yet. And I'm wondering, it's sort of an unavoidable topic, the impact of AI in the consumer finance area in the fair lending area and essentially every way that anytime a consumer's going to interface or interact with a bank or another consumer financial services provider, more and more frequently it's going to be through AI or robotics, agentic AI. Are you going to be dealing with that or is that something that you'll put off for a while until it becomes more prevalent, which I don't think is too far away?

Todd Zywicki:

No, I think that's an important issue obviously and it has huge implications here because consumers are going to want to use it. Consumers want to use it to move money to shop better for products. A lot of this ends up interfacing with the 1033 rulemaking by the CFPB who can access your data and that sort of thing. And so figuring out these agency relationships. But I think there's another related issue on that that I've been sort of sounding the alarm on that I think we could do more work on, which is the impact of AI on data privacy and data security, which is this model we've had of passwords and what I call the fortress model is obsolete and we have to stop pretending like it is. And so we need to come up with a system. And you can just imagine when AI starts being able to steal people's passwords and start accessing your data.

Think of that overlaid with things like the internet of things where you want to have your car be able to schedule an appointment and drive and get its oil changed and pay for it and drive back to work. You start thinking about all these systems that are vulnerable to AI and the response has got to be AI and all these questions about data privacy and that sort of thing. So I think it's a huge, huge emerging issue here that people haven't really thought about all of the opportunities and the threats. And one of the things I think that we can contribute to this is I don't think Tom and I, either of us have really well-developed views on this, but I think we're going to be sensitive to the opportunities to this, that we're going to be sensitive about not over-regulating, not doing things out of fear, not doing things out of an obsolete model of data protection or just because that's the way we've always done it, but something that is actually allowing the good guys to innovate, to beat the bad guys when they're innovating.

And that's I think something, a framework that we would be especially conducive to bring to this discussion for people who are interested in thinking about it in that way. Yeah.

Alan Kaplinsky:

Well, I was thinking, actually I wrote a blog I guess about a week ago on the new, I can't remember if it's Maryland law or New York law, I think it's Maryland dealing with surveillance pricing or algorithmic pricing and it's a first of its kind. I wonder what either of you think of the fact that AI is being used today and it's going to be even more used unless it's absolutely prohibited throughout the country to determine what prices or interest rates will be charged to different consumers. And that may be based on their track record. In the past, they willing to overpay for things or are they difficult consumers who have the temerity to try to negotiate prices and AI can figure all that out? How does that fit into the work that you're doing?

Todd Zywicki:

Well, I'll take a step back because this is what I've kind of going back to where we started. First question we have to ask is, are these competitive markets? When an economist would ask is, are there economic rents or wealth transfers here or are they just more efficient ways of doing pricing? And obviously that bothers people, but we do with airline tickets and everything else. I'll give you an example that I think is relevant to this, which is there's some economic evidence that shows that in fact margins on retail stores have gone up over time. And so Lina Khan and those people say, "Oh look, this is a result of monopoly power and the like." But when you actually look into it, what do you see? Margins have gone up for stuff that are sold to high income people. And the reason why is when you've got higher income, you just have less time to shop.

And so you pay [inaudible 00:53:58] people who don't have a lot of income actually shop. And so what we see is over time, Alan, is for example, who is most likely to know their credit card interest rate? Somebody who revolves their debt. Who is most likely to check their balance most frequently is somebody who overdrafts a lot, which is AI has this potential, FinTech has this potential to tailor things very specifically to what consumers want, which in a competitive market. So it starts with the question, is this a competitive market? Do we think that this is a market in which market entry and incentives are aligned to protect consumers? I don't have an answer on algorithmic pricing specifically, but I think that's what bringing economically, an economic way of thinking about it starts with rather than just reflexively saying, "I don't like this."

Alan Kaplinsky:

Yeah. Another thing we haven't talked about very much at all really is the CFPB. Do you see the work that you're doing having some kind of an impact on the CFPB? And when I'm referring to the CFPB, I'm referring to what is currently constituted under acting director vote where it's no secret that they wanted to eliminate the CFPB, but they're on a different trajectory now. I think they're beyond that, but they're going to limit the things that they do. A lot of your ideas, particularly in the task force report, would require more action on their part. Do you see that as something that you think this CFPB is going to be interested in doing?

Todd Zywicki:

Well, we certainly hope so. We wrote the task force report. We knew we were in election year. We had no idea what was going to happen in the election. But yes, but not only that, our first program was co-sponsored by the Federal Trade Commission. And one of the reasons was when we started the idea for this program about a year ago, we weren't sure what was going to be going on with the CFPB. And obviously you mentioned Chris Mufarrige at the beginning, he was in the director's office with Director Kraninger during Trump won at the CFPB. Some of these things I assume will go over to the OCC and the Fed. Some of these things will go to the states. And so regardless of who the audience is, I think this will be relevant. And I think hopefully the CFPB will grab a hold of it on the various things they're doing, the 1033 rule, for example, and things like that.

What we see is a project here that's not just for the next three years. It looks like the CFPB will survive, but hopefully one that will help guide the development of legislation, of regulation, of enforcement for the next two decades, much like the National Commission on Consumer Finance did in the '70s. And so we're not thinking so much on that short-term thing, but definitely the idea is to generate better policy from whoever is generating it.

Alan Kaplinsky:

Right. So Todd, you've done a lot of writing about how innovation has historically expanded access to credit. How do you balance innovation with risk? And AI is very innovative, but there is a lot of risk associated with it in a lot of different ways. I mean, just look at Anthropic's mythos model or AI model that they put together that they basically had all of a sudden everybody panicked, including Anthropic. And they were worried they had created this monster that they couldn't control that was going to hack into all kinds of systems because more so than humans, it could find flaws in the systems that made it very hackable. So how do you do that? How do you balance this innovation risk?

Todd Zywicki:

Well, here's the interesting thing, Alan, is there's this concept that FA Hayek had called spontaneous order where things are the result of human action, but not human design, meaning millions or billions of people making millions of billions of decisions add up to something. And that's how consumer finance has progressed, which is there's all these consumers out there who have problems they're trying to solve. And what we've discovered is they're going to figure out how to solve those problems whether we like the way they do it or not, which is the reason why literally every single time we've ever tried usury restrictions, we end up with Fat Tony Salerno and the leg breakers because consumers need access to credit to pay bills. When we saw the Durbin Amendment creating these crazy rules, we saw FinTech as a response to that. And so there's this evolution that occurs where technology drives opportunities for consumers.

Consumers are going to embrace those opportunities. Another good example that I argued in my comment on the 1033 rule is screen scraping arose is a workaround from the fact that banks wouldn't make it easy for consumers to share their data. So we came up with this kind of elaborate workaround that was a second best. And so I think my view, and I've written about this as you said, my view is let's acknowledge the realities of the world, let's acknowledge technological development, let's acknowledge the benefits to consumers and why consumers are going to use it, and rather than pretending like we can keep them from doing it and thereby shifting them into less secure, more expensive, more elaborate workarounds, or even illegal lenders and that sort of thing, let's work with the system, let's work with consumers to give them the innovations that are useful while being alert to the dangers.

Alan Kaplinsky:

So let's talk about amicus briefs, regulatory comments, or what I'd call direct participation in these legal and policy debates. You had the program that we already talked about with the FDC, but in terms of amicus briefs, do you have specific ideas right now that you would be able to talk about? What are some of the cases that are out there where you think you could really make an impact?

Todd Zywicki:

Well, as I mentioned, we're about to file an amicus brief in the Linney's Pizza case in the 6th Circuit, but there's a lot of cases going on right now. To put it bluntly, Tom said, "We've got to relearn these lessons every generation." The rise of really dumb counterproductive ideas since the financial crisis, the ideas, these just lame brain schemes that have been implemented, whether it's not allowing credit reporting of consumer medical debts or the did MICA opt-out that you've talked about on the show or interchange fee price supports or for Pete's sake, interest rate ceilings on credit cards. All of these things are premised on a policy belief that these are going to help consumers and courts are not economists. And a lot of times you're going to be getting consumer advocacy groups weighing in support of these things, claiming that they're good for consumers.

And so all those issues that are out there, I think whatever happens with the GENIUS Act and stablecoins I think will be something we'd have something useful to say, but we want to create a network of people who are thinking about this in an economically sophisticated way and file these amicus briefs where we can inform judges, "Here's what the real economic and empirical evidence says about this. And so take this into account when you're making your decisions."

Alan Kaplinsky:

Right, right, right. So there are a lot of stakeholders involved here, right? The industry, academia, government, those that want to engage with the institute, what do they do? Just email you and Tom and tell them what they would like to talk to you about?

Tom Miller:

Well, sure, but I just want to make a point that we don't do research for hire. If people want to help us and generate some ideas in the past, I've always acquired data from people and said, "I'm under no obligation to do anything with it that you want. And I maintain my academic freedom and independence." And people have been okay with that. And I think that's something we have to do. But of course we welcome new ideas. We welcome funding. We welcome ways to provide for growth in the future, but we are independent at the end of the day. And if people have a problem with that, then we just don't need their support really.

Todd Zywicki:

And a good example again was the kickoff program where we got scholars and commentators from all across the ideological spectrum invited some who couldn't attend this time that they want to do in the future. And not because we inherently say it's got to be ideologically diverse, but because they were interesting people. People who met our standards of independent thinkers who are rigorous thinkers who we though would engage in a productive way with material even if they were critical. And so we're not a consulting group, we're not a sort of think tank. We're not a sort of ideological think tank or propaganda group or anything. We're a university-based research organization that is looking for answers that will empower consumers, promote competition, and promote innovation. And anybody who is interested in that agenda, I hope will join us. But our independence is the coin of the realm, which is our value as academics is that we are independent.

We reach our own conclusions. That gives, I think, a credibility to our work that other things do not. But not everybody, especially sometimes more risk-averse parties are okay with not being able to micromanage what we say or do. And Alan, we've been friends long enough that you'll appreciate, and my wife will voucher this. Nobody micromanages what I'm going to say or do. And I think Tom could say the same.

Alan Kaplinsky:

True. Right, right, right. You're right. Or me too. Well, let's talk about a very mundane topic for just very briefly. And that is how do you get funded? Are you funded by George Mason? Do you accept private contributions? I mean, a lot of these, you mentioned early in our podcast that Lina Khan and Lev Menand, I think his name is, at Columbia have organized this new think tank of sorts. And they've got all kinds of funding, federal funding, I think, and funding from maybe the Pew Institute was involved. I don't remember.

Todd Zywicki:

Yeah, millions of dollars from Ford Foundation, [inaudible 01:06:45].

Alan Kaplinsky:

Right. You don't have that, right?

Todd Zywicki:

... organization. Yeah.

Alan Kaplinsky:

Are you going to be seeking that?

Todd Zywicki:

Yeah, we're going to be looking around for foundation funding. And one of the things we run into, frankly, is that conservatives, libertarians, classic liberals, almost like they funded, they just don't really understand how this world works. They don't really understand the importance of what goes on in the agencies. They don't understand the discretion that these things have. They're focused on the White House, they're focused on the DOJ, but explaining to them that what we're doing, the everyday ability of Americans to be able to put food on the table, pay their bills, buy a car, buy a house, that matters a lot compared to a lot of the more esoteric things that people understand. And for whatever reason, those, for one better word, on the left understand that.

And Mick Mulvaney wrote this great column at one point said the conservative movement needs more plumbers, by which he meant you could go in, one of us could walk into the CFPB today and we could say, "We're going to hire anybody we want to. How many people are out there who are actually trained? How many conservatives understand the economics, understand the law and are willing to be dedicated to the kind of goals we're talking about?" And so this is a long enterprise that hopefully conservative foundations will embrace. As you saw, millions of dollars as a startup to Lina Khan from left-wing foundations. But also we would obviously welcome support from industry. General support again is the most important thing. If they like what we're doing and want to support what we're doing in general, we would love to have that as well.

And that's very valuable to us to get feedback on what the emerging issues are, to get their expertise on important issues and to be alerted to opportunities to do things in the like. And so certainly if people are interested, they can reach out to us and obviously individuals as well who might like what we're doing in supporting it. So we're still rubbing a couple of dimes together to get things going. We don't have the Ford Foundation, the Hewlett Foundation dropping seven-figure checks on us, but you can always dream, right?

Alan Kaplinsky:

Right, right, right, right. Well, I have a good idea from you. Why don't you have some kind of fundraiser featuring Tom just playing solo tenor sax?

Tom Miller:

Because we want to make money at a fundraiser.

Alan Kaplinsky:

Let me ask you, we're coming to the end of our program and here's the final question for both of you. And I'd like both of you to comment on this. How do you define success? Let's say a year from now, five years from now, what will make you feel good about the institute that you've created? Let's start this time with you, Tom, and then we'll go to Todd.

Tom Miller:

Okay. Well, if we have this conversation a year from now, we can look back and say, "Here are the things we accomplished over this past year." But right now our institute is Todd and me and we need to grow enough to have an event coordinator or somebody to organize things for us. We have zero staff. We want to have some staff, and we want to have a coordinator who can help coordinate with academics across the country and just keep pushing the ball forward of where can we appear to help spread the message that markets really work well? And so I think we're just really excited. We raised money for our initial event just by the work we've done in the past. We talked to people that we know and they said, "Hey, we want to keep you guys going. We raised enough money to put on our first academic." And it's a big event for our first, it's not a soft launch at all.

Todd Zywicki:

Thanks for that question, Alan. It's a great question. If you wanted to ask me where I would like us to be in five years or 10 years or beyond, I'd like to see that we have a number of scholars out there in our network who are unknown to us now, particularly young scholars who are writing in this area, who are exploiting the data that hopefully we'll be able to get from people in the industry and doing a series of PhD dissertations. And then out there teaching the basics of the economics of consumer finance to a generation of students who become voters and citizens and manage their own affairs. I would say I'd like to see certainly many of my students and hopefully others who are interested in joining us, but several of my students who are on the staff at CFPB or FTC or OCC or in state AG's offices understanding how exciting and important this work is.

And some of Tom's students who are economists at the CFPB and the FTEC and places like that and helping to develop good inside research and policy relevant research. I'd like members of Congress and congressional staff to have us on speed dial. If they're looking for experts, if they're looking for testimony or just sort of analysis of legislation they're considering and that sort of thing. I'd like to be a resource for them so that we can help them or direct them to people in our network who can. And I'd like to be able to better inform the media. Media coverage, media in this area is just terrible. It really is just really the consumer activist talking points regurgitated. It's a very elite sort of worldview that I think is antithetical to the idea that ordinary Americans are actually pretty good at managing their own affairs and their own lives when left to it.

And so they tend to be very pro regulation and they tend to have bought into this sort of binary between more regulation is good for consumers and less regulation is good for industry. And good regulation in our view is good for consumers, it's good for industry, it's good for the economy, but that requires really thinking these through, thinking about how these complex systems work and how to help consumers rather than getting in their way.

Alan Kaplinsky:

Yeah. Well, we've really covered a lot of territory and want to thank both of you, Todd and Tom, for taking the time today to share with us what this institute's all about and really giving us what I would call an inside look at the institute. And I must say what I've heard is extremely impressive. So again, really my thanks to both of you.

Todd Zywicki:

Thank you Alan.

Tom Miller:

Thank you, Alan, for the opportunity to chat with you.

Alan Kaplinsky:

Yeah, let me just offer for our audience a few takeaways that I have in addition to the fact that I learned a lot about the institute today. To me, it represents a significant voice in the consumer finance policy space. One is grounded in rigorous empirical research and a strong emphasis on consumer choice and market outcomes. Second, it comes at a time when many of the important debates in consumer finance, whether involving the charging of fees, small dollar lending or FinTech innovation, turn on fundamental questions about consumer behavior and the proper role of regulation. And third, the Institute appears poised not just to contribute to the academic discourse, but to engage directly with policymakers, regulators and courts in shaping the future of consumer financial services. And I know for one, I'll be watching very closely as the Institute rolls out its research agenda and begins to influence the policy conversation.

And I know I'll be wanting to invite both of you back to the program probably within a year's time to talk about some of the tangible accomplishments that you've made, and I'm sure there are going to be many. So if you enjoyed today's episode, please be sure to let us know about it. Leave us a review on whatever platform you use. And I want to thank all of our listeners also for taking the time to log in and listen to our podcast show today and tell your friends about the show. If you enjoyed it, we love to see expand our audience. So my thanks to all of you and I hope you enjoy the remainder of the day.