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**The All-Seeing Eye**

*Before he conked out, he asked Odysseus his name.*

*"Nobody," replied the hero.*

*"Well, Mr. Nobody, I like you," said the Cyclops drowsily. "In fact, I like you so much that I'm going to do you a favor. I'll eat you last."*

With these encouraging words he fell fast asleep. Odysseus jumped up and put his men to work. They put a sharp point on the end of a pole and hardened it in the fire. Then, with a mighty "heave-ho", they rammed it into the Cyclops' eye.

Big Brother is, indeed, watching. Edward Snowden's revelations continue to paint a disturbing picture of a surveillance-State panopticon the extent of which could not adequately have been described in his time by Orwell. And we are only now coming to understand just how much power the federal government has to peer into our personal lives.

This "architecture of oppression" might not seem terribly threatening to those of us sitting comfortably in suburbia watching Netflix original series. But as the State changes the definition of a domestic terrorist by shades, and as it ratchets up the levels of taxation, regulation, and control by degrees, more and more people will come to be thought of as enemies of that apparatus.

In this connected age, we are seeing the early stages of an arms race to reclaim our privacy and rights through what has come to be known as "privacy by design." In this contest, a determined group of people are working together in networks to pull the shades on Big Brother. But Big Brother is powerful.

Who is likely to win this arms race? At the moment it is not clear. Currently there is a small but highly skilled guerilla movement of coders and hackers who are making privacy possible again. And yet constituencies who really value privacy are not nearly large enough. Their numbers will have to grow to form cultural support around privacy

by design, so that rapid adoption and mass dissemination create a powerful unified bloc. Sadly, by the time people experience any unpleasantness associated with mass surveillance, it may be too late to do anything about it.

Counter to this growing privacy movement, however, there is a general popular malaise. Even those who tut about the loss of privacy are largely apathetic. The rest believe that those departments that constitute the surveillance State have our best interests at heart. Some live in mortal fear of terrorist threats. Others think that if people have nothing to hide they also have nothing to fear. But as the State becomes more powerful and more controlling, more people

will have more and more things to hide. Such a vicious cycle will justify enlarging Big Brother. In the twentieth century we saw apparently benevolent State powers turn into full-fledged enemies of the people virtually overnight. Could it happen again?

All of this gives a new twist to Jefferson's admonition that eternal vigilance is the price of freedom. The perennial question, of course, is who will watch the watchers?

In tandem with the "privacy by design" movement is a group concerned with "privacy by statute." For most people who care about privacy, this is the default position. This group believes we should just pass laws that will check this inordinate power. In Texas, for example,

the legislature passed a bill that limits the state's ability to read someone's older emails without probable cause (it had once been the case that the state could read emails

older than 180 days). If you live in Texas, this is now illegal. But not everyone lives in Texas—and it doesn't apply to federal investigators.

All of this is to suggest that to advocates of privacy by design, statutory measures are not nearly enough. Indeed, given the federal government's penchant to bypass the constitution or find any legal loophole necessary, it's become increasingly clear to many privacy advocates that privacy is something that must be coded, not lobbied for.

**C U R R E N T L Y**  
there is a small but highly skilled guerilla movement of coders and hackers who are making privacy possible again. And yet constituencies who really value privacy are not nearly large enough. Sadly, by the time people experience any unpleasantness associated with mass surveillance, it may be too late to do anything about it.

In any case, you are now living in the surveillance State. The federal government has the power to do virtually anything it wants. Soon we and our neighbors will have to decide whether we will become part of that immovable mass of people whose apathy ensures its inertia, or whether we will do something.

If we decide privacy is worth restoring, perhaps we will decide it's time to take a trip to the legislature and make a clever poster that hopefully some conscientious legislator will actually read. Or, maybe—just maybe—we'll decide the best way to take down this great Polyphemus is to network a million Odysseuses and put the power of privacy directly into their hands. **FEE**

# America's Electronic Police State

## *Big brother is not only watching, but gathering more power*

WENDY MCELROY

The modern surveillance state is referred to as the electronic police surveillance State because it uses technology to monitor people in order to detect and punish dissent. The authorities exert social control through spying, harsh law enforcement, and by regulating “privileges” such as the ability to travel. But all of this starts with surveillance.

Information is power. Imagine if agents of the State didn't know where you live. How could it collect property taxes, arrest you, conscript you or your children, or record phone calls? Imagine if the State did not know your finances. How could it snatch your money, garnish your wages, freeze accounts, or confiscate gold? Total information is total power. That's why the surveillance state views privacy itself as an indication of crime—not as one of violence, but as a crime against the State.

### **Beyond the NSA**

The National Security Agency (NSA) keeps making headlines as the quintessential force behind the American surveillance state. Civil rights advocates should be equally concerned about a quieter but no less insidious manifestation: the National Counterterrorism Center (NCTC).

The NCTC coordinates at least 17 federal and local intelligence agencies through fusion centers that amass information on average Americans ([tinyurl.com/nusa3s2](http://tinyurl.com/nusa3s2)). A fusion center is a physical location at which data are processed and shared with government agencies. Fusion centers also receive “tip line” information from public workers, such as firefighters, who report “suspicious” behavior observed during their interaction with people. The Department of Homeland Security (DHS) and the Department of Justice (DOJ) began creating the centers

in 2003. To date, there are 78 acknowledged fusion centers ([tinyurl.com/acu64r6](http://tinyurl.com/acu64r6)).

The stated purpose of fusion centers is to prevent terrorist acts. But, for years, investigations have revealed that the monitoring has been used to exert social control and punish political opposition. In 2007, the American Civil Liberties Union (ACLU) published a report titled, “What's Wrong with Fusion Centers?” ([tinyurl.com/o25uead](http://tinyurl.com/o25uead)) One problem? Mission creep. The scope of their “protective” mission has “quickly expanded” to include the vague category of “all hazards.” The “types of information” gathered were also broadened to include

noncriminal public- and private-sector data.

Two years later, the ACLU issued another paper ([tinyurl.com/l694bd2](http://tinyurl.com/l694bd2)) that sketched the impact of this broadening mission. The ACLU quoted a bulletin

from the North Central Texas Fusion System; law enforcement officers were told it was “imperative” to report on the behavior of their local lobbying groups, including Muslim civil rights organizations and antiwar groups.

Despite warnings, the fusion centers continue to collect data on the “suspicious activities” of noncriminals. In September 2013, the ACLU provided information from “actual Suspicious Activity Report (SAR) summaries obtained from California fusion centers.” Included in the SARs were Middle Eastern males who bought pallets of water, a professor who photographed buildings for his art class, a Middle Eastern male physician whom a neighbor called “unfriendly,” and protesters who were concerned about the use of police force ([tinyurl.com/kgp2g9w](http://tinyurl.com/kgp2g9w)).

If ever one were inclined to let such activities pass because those being watched have been Muslim, remember that power rarely restricts itself to any stated

**THE SURVEILLANCE state was rooted in a desire to stifle political discussion, not to thwart criminal acts.**

goal. As the definition of potential terrorist groups has been expanded to include groups such as the Tea Party ([tinyurl.com/3qy9ght](http://tinyurl.com/3qy9ght)), it has become evident that the line between terror group and political opposition has blurred.

The fusion centers share many characteristics of a surveillance state with the NSA. These characteristics include a disregard for civil rights, secret records, the use of informants, little to no transparency, the targeting of political opponents, and an ever-expanding mission.

In at least one sense, the fusion centers are more typical of the surveillance state. Since Edward Snowden's revelations, the NSA has been under a spotlight that reduces its ability to hide activities such as the warrantless recording of emails and phone calls. But fusion centers still function with little visibility. The NSA is subjected to public controversy, with civil liberty groups pushing to rein in its power. By contrast, the fusion centers are comparatively invisible, which allows them to operate covertly in a manner more typical of a surveillance state.

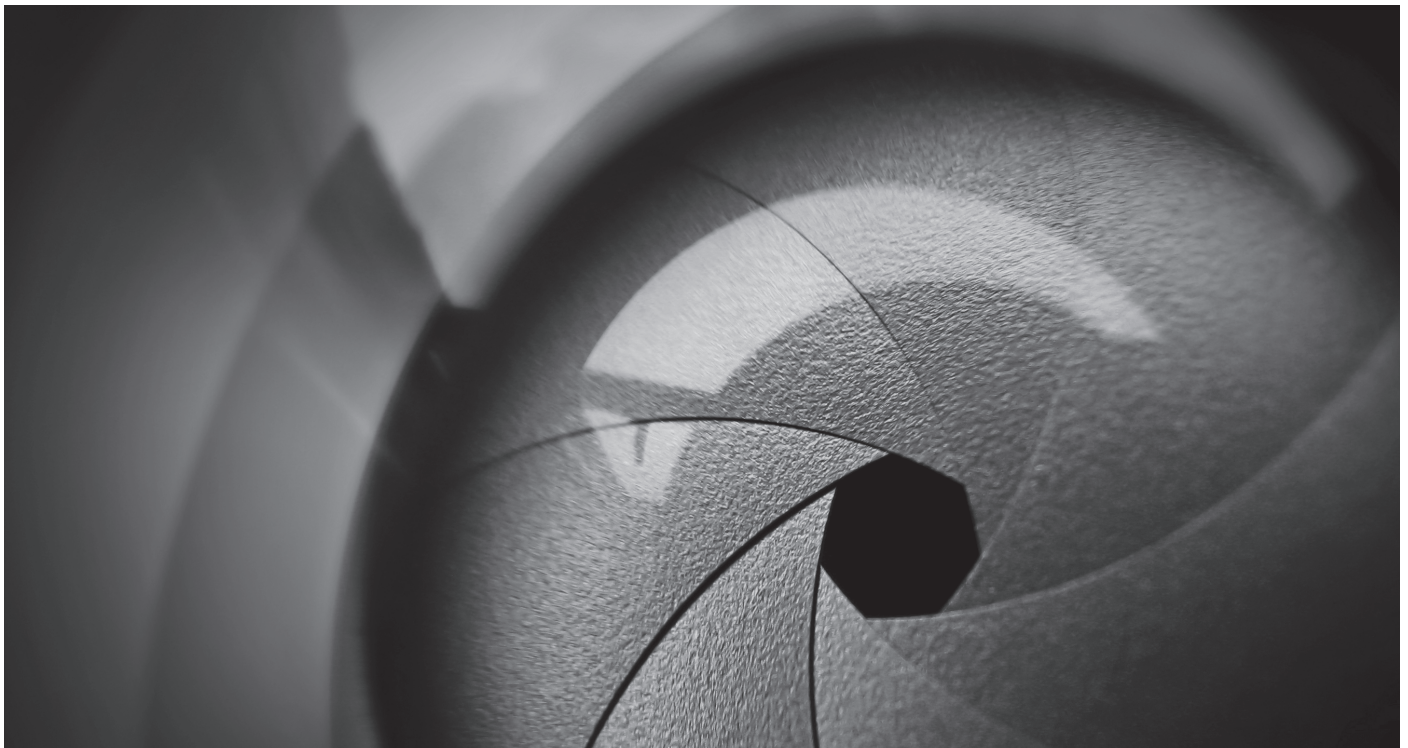
### **J. Edgar would be proud**

The surveillance state was rooted in a desire to stifle political discussion, not to thwart criminal acts. In his book *J. Edgar Hoover and the Anti-Interventionists*,

historian Douglas M. Charles traced the birth of pervasive surveillance back to the Great Debate on whether America should enter World War II. Specifically, President Franklin Roosevelt wanted to support the war and to silence powerful anti-interventionists like the aviator-hero Charles Lindbergh. Thus, Hoover focused on the America First Committee (AFC), in which Lindbergh and several senators were prominent.

Hoover, director of the FBI from 1924 until his death in 1972, is the founding father of the American surveillance state. It arose because national security allegedly required constant vigilance against "the enemy," external and internal. The internal enemy could be individuals or a concept, like communism or terrorism.

As head of the Bureau of Investigation (later the FBI), Hoover initiated the policies of extreme secrecy that bypassed the oversight of data collection. Ironically, Hoover had assumed leadership with a public pledge to end the agency's civil liberty violations. Like surveillance agencies before and since, however, the FBI's public statements directly contradicted its acts. For example, Hoover quietly coordinated with local police in much the same manner as the current fusion centers do. Information on a "suspect's" sexual preferences (especially homosexuality), reports on



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his children and other family, as well as other sensitive data went into unofficial files that were labeled “personal, confidential”; these were inaccessible to unapproved eyes. When tidbits from the secret files were shared, the standard method was through a memo that had no letterhead, no signature, and no other indication of the recipient or sender.

After December 7, 1941 (Pearl Harbor), America's entry into the war became inevitable. Fearing a reduction in his power, Hoover claimed the AFC had gone underground even though the organization had clearly disbanded. Thus, Hoover continued surveillance by lying about the need to counter active subversion.

The gambit worked. Indeed, Roosevelt and subsequent presidents were eager to weaken their opponents. The FBI's growth was phenomenal. Charles explains, “In 1934 the FBI employed 391 agents and a support staff of 451 and was appropriated \$2,589,500.... In 1945, the FBI had 4,370 agents, 7,422 support staff and an appropriation of \$44,197,146.” It embraced illegal wiretapping and trespass, mail monitoring, anonymous informants, pointed investigations by government agencies such as the IRS, the selective enforcement of the laws, and FBI plants in targeted groups.

The Cold War built upon the information-gathering infrastructure. The Cold War's extensive data sharing with foreign governments was also rooted in pre-WWII politics. “A hallmark of the Second World War, Cold War, and War on Terrorism, the intimate intelligence relationship between the United States and Great Britain had its origins during the Great Debate,” writes Charles.

Hoover's secret files on political figures made him virtually untouchable. After his death, however, the FBI came under concerted attack for its domestic surveillance. The public was particularly outraged by revelations of how the FBI had targeted popular heroes such as the civil rights leader Martin Luther King, Jr. After the famous August 1963 civil rights march during which King delivered his iconic “I Have a Dream” speech, a top Hoover aide wrote in an internal memo, “In the light of King's powerful demagogic speech ... We must mark him now, if we have not done so before, as the most dangerous Negro of the future in this Nation from the standpoint of communism, the Negro, and national security.” ([tinyurl.com/p36kdr4](http://tinyurl.com/p36kdr4)) Surveillance

of King increased. Among other “information” gathered, the FBI taped an adulterous sexual encounter, which anonymously appeared in the mailbox of King's wife.

FBI investigations into politically oriented groups were officially restricted. Following the 9/11 terrorist attacks and passage of the PATRIOT Act, however, the FBI and other agencies gained the ability to conduct political domestic surveillance. The surveillance state that had been rooted in war and political maneuvering was given new life by the same two factors. It was also given power of which Hoover could only have dreamed.

The ACLU declared in yet another report ([tinyurl.com/mfobfxb](http://tinyurl.com/mfobfxb)), “There appears to be an effort by the federal government to coerce states into exempting their fusion centers from state open-government laws. For those living in Virginia, it's already too late; the Virginia General Assembly passed a law ... exempting the state's fusion center from the Freedom of Information Act. According to comments by the commander of the Virginia State Police Criminal Intelligence Division and the administrative head of the center, the federal government pressured Virginia into passing the law.... There is a real danger fusion centers will become a ‘one-way mirror’ in which citizens are subject to ever-greater scrutiny by the authorities, even while the authorities are increasingly protected from scrutiny by the public.”

Since then, State surveillance has become more secretive and increasingly exempt from both oversight and accountability. Fusion centers now reach into private databases such as Accurate, Choice Point, Lexis-Nexus, Locate Plus, insurance claims, and credit reports. They access millions of government files like DMV records. Why is this important? Various laws have been adopted to prevent the maintenance of databases on average Americans, but if fusion centers access the existing files, especially private ones, they can bypass those laws.

The foregoing is a description of electronic totalitarianism. If its creation is invisible to many people, then it manifests yet another characteristic of a police state: People do not believe their freedom is gone until there is a knock on the door—one that comes in the middle of the night. **FEE**

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# Four Things You Should Know About Mass Incarceration

DANIEL J. D'AMICO

It's now common knowledge: The United States is the world's leading nation when it comes to imprisonment. With an estimated 1,570,400 inmates by the end of 2012—and an incarceration rate of 716 prisoners per 100,000 citizens—the United States holds more human beings inside cages, on net and per capita, than any other country around the globe (and throughout history). In general, we build more prisons, we spend more money on prisons, we employ more prison workers, and we utilize imprisonment for a wider variety of behaviors than anyone else.

Nations like China and Russia likely use more corporal punishment and execute more people. Removing that context from their incarceration rates might make them look less punitive than they really are. Still, it is revealing that only totalitarian regimes, past and present, are serious contenders with the “land of the free” when it comes to the business of incarceration.

Today's total American prison population exceeds the estimated number of citizens detained within the Gulag system under the former Soviet Union. If we include those sentenced but not yet incarcerated, as well as those released upon probation and parole, there are more young black men embroiled in the American criminal justice system than were estimated to be enslaved in America circa 1850. These statistics are not to say that the United States is totalitarian, or based on chattel labor. Instead, these numbers emphasize that, insofar as despotism requires enforcement, our own government is more than capable of imposing serious and pervasive social control.

The terms “mass imprisonment” and “mass incarceration” typically refer to the uniquely modern characteristics of the contemporary prison system, including its rapid growth and racial disparities. The United States is the archetypical case. While the recent media attention given to mass imprisonment is a step in



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the right direction, facets of mass incarceration still remain relatively misunderstood and unrecognized.

Here are four things those interested in free-market economics and the classical liberal tradition should keep in mind when thinking critically about modern global prison trends.

### **1 Private prisons did not cause mass imprisonment.**

Private prisons are derided for profiting off of high crime and for creating corporate incentives to foster tough punishment policies. These statements are both true and disconcerting. But private prisons don't, by themselves, explain the origins, extent, or long-term effects of America's mass incarceration.

For starters, there just aren't that many private prisons as a proportion of the American total. Of the over 1.5 million inmates recorded in 2012, only 128,300 (approximately 8 percent) were held in private facilities, 96,800 of them federally—as opposed to state-contracted. Several other nations with significantly lower total incarceration rates utilize private contractors at higher percentages: For example, England and Wales at 14 percent, Scotland at 17 percent, and Australia at 19 percent.

Private prisons do stand out, though, because the most pronounced area of prison growth has occurred at the federal level—which is where most of the privatization is concentrated.

At both the state and federal levels private prisons represent a sort of budgetary coping mechanism. With high rates of sentenced inmates, but thin budgets incapable of supporting new prisons or their labor forces, states turn to contractors as cost-saving alternatives without significant quality degradations. “Private” (read: state-contracted) prisons tend to hold specialized populations such as juvenile offenders, aging inmates with more extensive medical needs, illegal immigrants, and organized crime leaders because these groups have unique logistical needs that regular facilities can't always accommodate. When objectively compared on a variety of performance margins, there's almost no quality difference between public and private prisons. What matters is the quality of monitoring, accountability, and liability processes. For private firms, running afoul of those constraints often means losing contracts to alternative agencies. For public workers placed by appointment and sometimes election,

though, necessary feedback can be vague and ineffective.

While for-profit prison models do appear conspicuous for creating incentives to lobby for tougher penalty regimes, the incentives that public employees face throughout the criminal justice system are not systematically different. There's no group larger, more concentrated, or more vested in tougher penalties than the employees of service industries surrounding publicly financed and managed criminal justice institutions and penitentiaries.

### **2 Marijuana legalization is not a panacea.**

Drug sentencing has accounted for about a third of the new American prison growth since the late 1970s. Marijuana charges produced a significant proportion of those sentences. But it does not follow that marijuana legalization or clemency would alleviate the problems associated with mass imprisonment. First, even if nonviolent marijuana violators were released, America would still be a world leader in incarceration rates and expenditures. Second, simply put, people adapt.

Marijuana legalization, without broader judicial, legislative, and/or penal reform, may create new opportunities for drug production, consumption, and enforcement, thus shaping outcomes in unforeseeable ways. From the perspective of drug sellers and users, the risks of arrest and incarceration are obviously costs; but complying with formal regulations and licensure under a more legalized regime may also be costly. Higher costs mean less of a behavior and vice versa. But the relevant question is whether a new, legalized regime would be perceived as a higher or lower cost for buyers and sellers than status quo prohibition. It's difficult to predict the outcome with precision. But such a regime would differ structurally from the current one. It wouldn't simply cut marijuana arrests out of the total number.

Take medical marijuana. People with ailments that marijuana can alleviate will benefit from a regime that allows for prescriptions rather than across-the-board prohibition. But a decriminalization regime for just marijuana will shift supply and demand in other markets. For example, current users who are underage under the new regime may end up facing more difficulty accessing weed relative to the status quo. That could lead to decreased consumption, or it could lead them to substitute other drugs. Similarly, current black-market sellers will likely



face lower prices and smaller profit streams for producing and selling pot with competition from legal sellers, making other drug markets more appealing. Just as pot becomes harder for some people to get, other drugs—such as prescription painkillers or mood-altering drugs (such as Xanax)—could become more readily available.

This last point seems also bolstered by the fact that a new network of legal and regulated marijuana sellers will represent a newly concentrated and vested interest group in favor of suppressing the illegal production and distribution of marijuana. I doubt current illegal pot growers and sellers will be the same individuals awarded the privilege of growing and selling weed under legalization. If legitimate production is to be regulated, regulation will require enforcement. It could be the case that enforcement costs and complexity will grow amid marginal decriminalization.

Last, legalization targeted to individual substances without matching fiscal, legislative, and/or penal constraints may simply free up enforcement resources for tougher enforcement of the remaining prohibitions. The potheads freed from prison might simply be replaced by more junkies and cokeheads and their suppliers. Hence the associated inefficiencies and social consequences of prohibition in those drug markets will likely grow, adapt, and tend toward unique and unforeseeable equilibriums.

Prohibition against the pot trade is riddled with bad incentives and inefficiency and should be addressed as such; but many of the most challenging aspects of the criminal justice system—especially mass imprisonment—seem to transcend the relatively smaller issue of illegal weed. Simply legalizing marijuana does not untangle the myriad, complex incentives that allowed for prohibitions initially or the ballooning of the War on Drugs. This tangle of incentives explains the lag between policy reform and the advent of significant public approval for legalization and decriminalization. As long as those incentives and opportunities persist, we should expect political entrepreneurs to manipulate policies and resources for private gain.

### **3 The problems of prison growth transcend drug prohibition.**

Again, at first glance much of America's prison growth appears to have come in lockstep with the War on

Drugs. But other trends suggest drug prohibition is neither the only nor the essential cause of mass imprisonment. Repealing prohibition across substance types would eliminate many of the adaptive problems at play with piecemeal legalization, but that doesn't have enough public-opinion support to make it politically viable. After all, drug prohibition came into being in part because enough of the public wanted it.

Assuming political opinion away for the moment, drug legalization still does not fully resolve the challenges of mass imprisonment. After releasing all nonviolent drug offenders, the United States would retain an extremely large and expensive prison-industrial complex, a bloated and inefficient criminal justice system, and a political process that systematically leverages the tendencies of a largely vengeful public. Instead, some theory and evidence suggest that both drug prohibition and prison growth are likely similar symptoms of broader trends surrounding governments' power to administer violence and regulate social behaviors.

Everyone around the world criminalizes drugs. Only the United States literally fights a war on drugs, and fights it at the federal level both financially and managerially. What sets apart the United States' relationship with drugs and drug enforcement is how we organize our legal and enforcement processes surrounding prohibition.

Crime has been a relatively local issue in most nations throughout time. Neighborhoods, counties, and other smaller jurisdictions generally finance and manage police forces, criminal court systems, and even prison construction and operation. In the United States, the war on drugs is one of several federally managed criminal enforcement strategies, along with immigration controls, homeland security, and tax enforcement. The federal government incarcerates more inmates in federal facilities than does any individual state, and its activities represent one of the largest sectors of prison expansion in recent decades. Second, if one looks at which states are most plagued by mass incarceration, it is easy to notice they are most often border states like Florida, Louisiana, Texas, and California. Those states must enforce their own laws as well as federal sanctions pertaining to drug importation and immigration.

In short, imprisonment patterns and trends lag behind policy and strategic changes. At the same time, central

financing and management of the criminal justice system produce harsher prohibition regimes and set the trend for drug policy.

### **4 Mass imprisonment transcends the American experience.**

Contemporary prison growth has been a relatively global phenomenon. From 1997 through 2007, prison populations grew in 68 percent of nations researched around the world. Developed, Western nations have led this growth in incarceration rate. So what does this mean?

Maybe there's something about American society that just requires more prisons. Or, given similarities in crime trends across countries, maybe the United States is simply overpaying somehow.

Or maybe the United States isn't all that unique, considering just the countries that have experienced a proportionally similar increase in prison populations. Maybe this group of countries shares a characteristic feature that relates to imprisonment.

Recent scholarship on crime, punishment, and mass incarceration has converged upon a mild conclusion familiar to modern macroeconomists: Institutions matter. Nations with similar institutions tend to foster similar cultures, similar criminal justice regimes, and similarly sized prison populations. But the questions remain: What particular institutional arrangements have contributed to the prison status quo and associated problems? And how can they be reformed?

### **Conclusions**

Mass incarceration is not an isolated social problem to be understood devoid of context. The fiscal and quantitative trends surrounding mass imprisonment are paralleled by similar growth trends in drug enforcement, the length and complexity of the criminal code, military interventionism abroad, the adoption of militarized police equipment and tactics domestically, the governmental gathering and storage of information about citizens without warrant or consent, and several other similar trends.

The financing and administration of violent power, measured by all of these trends, has pointed to increased governmental authority. This was true throughout the

twentieth century, and became especially true in recent decades. Since the beginning of the 21st century, such centralization has been mirrored throughout the size and scope of government. Hence measured estimates of economic freedom have sharply declined in recent years, particularly in America.

Various research and theories regarding the causes of crime and punishment imply that they're predominantly shaped by unplanned and complex social factors. Adam Smith and other early writers in the classical liberal tradition believed simple prosperity was the factor most responsible for maintaining low crime rates. Broken-window theories and eyes-on-the-street models suggest these early liberals were correct. When streets are clean, well lit, and filled with commercial and civic activity, there is little opportunity for crime to occur and strong incentives for citizens to participate in the justice process. Steven Levitt infamously demonstrated a statistical correlation between abortion policies and lower violent crime rates. John Lott and Bruce Benson tend to emphasize private activity, like growing gun ownership and increased investment in the security industry.

All imply similarly that punishment policies are probably very difficult to plan strategically, effectively, or optimally. Again, such pervasive trends in the growth of government are not unique to the American context. So changes in particular policies and/or changes in partisan power are likely limited in their abilities to bring full or effective reform. For example, a candidate taking office who is opposed to marijuana prohibition is not likely to change the very real and vested incentives that have allowed the War on Drugs to escalate as it has. Mass imprisonment seems more an endemic feature of how governmental institutions are arranged and have changed throughout the modern era. To promote reform and social change regarding imprisonment will first require a sound and thorough understanding of how institutions, individual behaviors, and social processes relate. **FEE**

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# The Cost of Capital Punishment

*Reconsidering the death penalty is a matter of conscience and constitutionality*

MARC HYDEN

**O**n the evening of March 11, 2014, Glenn Ford was released from Louisiana's death row after 30 years of captivity for a murder that he did not commit. The prosecution had withheld testimony that would have exonerated Ford and relied on faulty forensic analyses. Unfortunately, Ford's story is not unique. It is one of many cases that exemplify the problems with today's death penalty system.

Many states are grappling with the systemic dysfunction plaguing the current capital punishment regime, but they are finding it is difficult, if not impossible, to maintain such a program while reconciling its moral, pragmatic, and philosophical failures. The state ought not kill innocent citizens, but the death penalty carries an inherent and undeniable risk of doing precisely that. Whether through mistakes or abuse of power, innocent people routinely get sent to death row.

Some, like Ford, eventually get out: To date, 10 individuals in Louisiana and 144 nationally have been released from death row because they were wrongly convicted. Many others have been executed despite substantial doubts about the verdict.

The fiscal cost of the death penalty pales in comparison to the human cost, but local, state, and federal governments must justify all spending as they struggle with ongoing budgetary shortfalls. John DeRosier, Louisiana District Attorney for Calcasieu Parish, estimated that a capital case in Louisiana is at least three times more costly than a non-death case. Studies in North Carolina, Maryland, California, and many other states show that capital punishment is many times more expensive than life without parole,

and there's a long history of the death penalty pushing municipal budgets to the brink of bankruptcy and even leading to tax increases.

The fiscal impact of the death penalty is not lost on state governments. But they seem, broadly, more concerned with the fiscal impact part than the death part. Louisiana is currently considering House Bill 71, which is similar to

Florida's "Timely Justice Act," which limits the appeals process. Had this legislation passed earlier, it likely would have led to numerous wrongful executions because it shortens the number of appeals available to death row inmates. Cutting

the appeals process may, in the end, lead to modest cost savings, but the most expensive step in the death penalty process—pretrial activities and the actual trials—are unaffected by this legislation. And these are precisely the stages that produce wrongful convictions. Evidence proving them wrongful often emerges more than a decade after the initial trial, so the nominal savings are not worth the moral cost of executing an innocent person.

The expense passed on to the taxpayers and risk of killing innocent people are often both justified by claims that the death penalty saves lives—it supposedly deters murder and provides the justice that murder victims' families deserve. Multiple scientific studies have actually shown that the death penalty doesn't deter murder. Many murder victims' family members are vocally rejecting this program because it retraumatizes them through a decades-long process of trials, appeals, and constant media attention.

There's no greater authority than the power to take life,

**T H E   S T A T E**  
ought not kill innocent citizens,  
but the death penalty carries an  
inherent and undeniable risk of  
doing precisely that.

and our government currently reserves the authority to kill the citizens it's supposed to serve. This is the same fallible government responsible for the Tuskegee Experiment, overreach including NSA spying, and failures such as the Bay of Pigs. Of course, the death toll from wars the government either started or intensified is staggering. Submitting the power to kill U.S. citizens to the State is unwise considering this history of error and malfeasance.

And states aren't even complying with the standards that allegedly keep the death penalty from falling afoul of the "cruel and unusual" punishment standard.

Many states can no longer obtain the previously used and approved death penalty drugs. So they've started experimenting on inmates with new drug combinations acquired from secret sources. This has led to botched, torturous executions. In Ohio, Dennis McGwire audibly struggled for 25 minutes before he died, and Clayton Lockett's execution in Oklahoma was postponed after he failed to die after 10 minutes. Indeed, Lockett only met his demise due to a heart attack, 30 minutes after the botched execution. Cruel and unusual?

Glenn Ford could have easily been subjected to the same experiences. Louisiana, like many other states, keeps the source of its death penalty drugs a secret. This calls into question the legality and validity of the drugs' manufacturers. Such is far from the level of government transparency required to limit government abuse, misuse, and power.

Most people will agree that the death penalty system is not perfect—but a program designed to kill guilty U.S. citizens *must* be perfect because the Constitution demands zero errors. To date, 18 states and the District of Columbia have abandoned capital punishment, aware that the system is broken and finally convinced, after years of legislative, judicial, and policy "fixes," that it cannot be mended. Other states still believe they can make capital punishment work properly, but they continue to break an already failed program one "fix" at a time. **FEE**

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## LA LLORONA

*Michael Shewmaker*

She hears a voice across the water.  
And weeping to remember, gowned  
in gray, she can't recall her daughter.

Her candle wavers on the altar.  
They say that she was never found.  
She hears a voice. Across the water,

the trees harbor a darker weather.  
An oarless rowboat runs aground  
and drifts again. And like her daughter,

she wades into the drowsy river—  
stone-pocketed, without a sound.  
She hears a voice beneath the water

that lingers like a lover's. Laughter  
almost—but softer, colder, drowned  
by the shy whimpering of a daughter

who understands that what comes after  
is like the weeping of a wound.  
She hears the voice. Her only daughter.  
Their bodies blossom in the water.

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*Michael Shewmaker is a Wallace Stegner Fellow in poetry at Stanford University. He is the recipient of the 2013 Morton Marr Poetry Prize.*

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# The Case for Voluntary Private Cooperation

## *We don't need nations, flags, and armies to make us prosperous*

MICHAEL MUNGER

When I tell Duke freshmen my version of the argument for liberty, they often scoff, “If this is right, how come I’ve never heard it before?” I try to be conciliatory. I offer the kids time to go text their parents. They need to sue those elite private high schools for failing to educate them in even the *basics* of how societies work, and why so many societies fail to work.

Okay, so that’s not all that conciliatory. And my answer plays to mixed reviews, at best.

But it’s the truth. How can it be that some of the world’s most educated young people have never heard the concise version of the argument for voluntary private cooperation? I want to present here the version I have found most useful. And by “useful” I mean profoundly unsettling to people who hear it for the first time.

### **“Markets” are not the point**

To start with, the argument for liberty is not an argument for “markets.” The market vs. State dichotomy was dreamed up by German sociologists in the nineteenth century. Don’t buy into that dichotomy; it’s a rhetorical straitjacket, and in any case it’s not our best argument.

The question is how best to achieve the myriad benefits of voluntary private cooperation, or VPC. Markets are part of that, a useful way of achieving prosperity, but a variety of other emergent social arrangements—more properly viewed under the rubric “society”—are also crucial for prosperity.

The first argument I usually hear, especially from people hearing about VPC for the first time, is this: “If markets are so great, why is most of the world poor?” *The problem is that poverty is not what needs to be explained.* Poverty is what happens when groups of people fail to cooperate, or are prevented from finding ways to cooperate. Cooperation is in our genes; the ability to be social is a big part of what makes us human. It takes actions by powerful actors such as states, or cruel accidents such as deep historical or ethnic animosities, to prevent people from cooperating. Everywhere you look, if people are prosperous it’s because they are cooperating, working together. If people are desperately poor, it’s because they are denied some of the means of cooperating, the institutions for reducing the transaction costs of decentralized VPC.



So forget about explaining poverty. We need to work on understanding prosperity.

There are two reasons that VPC is the core of human prosperity and flourishing.

**1. Exchange and cooperation:** If each of us has an apple and a banana, and I like apple pie and you like banana crème pie, each of us can improve our lot by cooperating. I give you a banana, you give me an apple, and the world is a better place. And the world is better even if there is no change in the total size of our pies. The total amount of apples and bananas is the same, but each of us is happier.

But there is no reason to fetishize exchange. (That's the "markets vs. social/state" dichotomy; don't give away the farm here.) Nobel Prize-winner James Buchanan's central insight was that cooperative arrangements among groups of people are just "politics as exchange." Nonmarket forms of exchange, in which we cooperate to achieve ends that we all agree are mutually beneficial, may be even more important than market exchanges. Banding together for collective protection and taking full advantage of emergent

institutions such as a language, property rights, and a currency are all powerful tools of VPC.

If we cooperate, we can use existing resources much better by redirecting those resources toward uses people value more. So even if we are only thinking of cooperation in a static sense, with a fixed pie, we are all better off if we cooperate. Cooperation is just a kind of sharing, so long as every cooperative arrangement is voluntary. The only way you and I agree with a new arrangement is if each of us is better off.

**2. Comparative advantage/division of labor:** Still, we don't need to be satisfied with making better use of a static pie. Working together and becoming more dependent on each other, we can also make the pie bigger. There is no reason to expect that each of us is well-suited to produce the things each of us likes. And even if we are, we can produce more of it by working together.

Remember, I like apples and you like bananas. But I live on tropical land in a warm climate that makes producing apples difficult. You live in a much cooler place, where

# The Great Inversion

## *Technology like bitcoin flips the logic of collective action*

CARL OBERG

**T**he political logic of "concentrated benefits and diffuse costs" has been with us since day one of democracy. But it was only recently explained effectively by great economists like the Nobel Prize-winning James Buchanan and Mancur Olson.

It works like this: A special interest group such as the sugar lobby wants money in the form of subsidies, tax breaks, scientific study funding, or anything else of value to it. Let's say the package the group wants is worth \$100 million. The benefit is concentrated with that company or industry doing the lobbying at \$100 million.

How much will this cost the American taxpayer? \$100 million is the partially right answer. Of course, as individuals we react to the impact of this corruption not as a \$100 million tax, but rather as a 32-cent tax. (\$100 million divided by 310 million Americans) The costs are diffused over every taxpayer, lessening its impact and

making it more politically palatable to any individual voter.

Are you willing to protest for \$0.32? Will you hit the barricades for \$0.32? Will you use your precious income-earning time to get back that \$0.32? They've already won, because almost no one is willing to lose time or sleep over this—if they even know any individual instance is occurring.

And so the "logic" of Public Choice problems is for spending to increase—seemingly forever—on pet projects and special interests until a crisis is reached and the system has to be reset.

But something interesting happens when you start talking about diffuse systems like the internet and bitcoin—something that hasn't yet been fully examined. This Public-Choice logic gets turned on its head. The systems not only survive, but thrive. Let's look at bitcoin as an example.

The government sees bitcoin as a threat to its monopoly

growing your favored bananas would be prohibitively expensive. We can specialize in whatever we are relatively best at. I grow bananas, you grow apples, and we trade. Specialization allows us to increase the variety and complexity of mutually beneficial outcomes.

Interestingly, this would be true even if one of the parties is actually better at producing both apples and bananas. David Ricardo's "comparative advantage" concept shows that both parties are better off if they specialize, even if it appears that the less productive person can't possibly compete. The reason is that the opportunity costs of action are different; that's all that is necessary for there to be potential benefits from cooperation.

But there is no reason to fetishize comparative advantage. In fact, true instances of deterministic comparative advantage are rare. The real power from specialization comes from division of labor, or the enormous economies of scale that come from synergy. Synergy can result from improvements in dexterity, tool design, and capital investment in a production process

composed of many small steps in a production line, or from innovations, using the entrepreneurial imagination to see around corners. Synergy is not created by the sorts of deterministic accidents of weather, soil quality, or physical features of the earth that economists obsess about. Wool and port production depend on location; human ingenuity can create synergy anywhere that division of labor can be promoted. All the important dynamic gains from exchange are created by human action, by VPC.

### The street porter and the philosopher

Entrepreneurs are more likely to be visionaries than geographers or engineers. Argentina has a comparative advantage, probably an absolute advantage, in producing beef, because of its climate, soil conditions, and plentiful land in the *pampas*. But Argentina is poor. Singapore has next to nothing, and doesn't produce much. But Singapore built both physical (port facilities, storage, housing) and economic (rule of law, property rights, a sophisticated financial system) institutions to promote cooperation.

on money and the power to create federal reserve notes whenever it wants. The federal government jealously guards this power because it allows the government to pay for anything it desires while passing on the true costs of the money printing to the citizenry through inflation. Increased spending (concentrated benefits) and diffuse costs (inflation, which lowers the value of savings) are hallmarks of the current federal monopoly on money.

But as the feds fight against bitcoin and other cryptocurrencies, they will find the tables turned: The beneficiaries of these diffuse systems are legion, and spread far and wide. But the costs of fighting technological advancement and increased monetary freedom are laid squarely at the feet of the government. Investigations, new laws, prosecutions, and new snooping technologies all cost significant time and resources. And the government has just begun to go after crypto-currencies.

The closure of the first Silk Road site and the arrest of BitInstant CEO Charlie Shrem are just the beginning. Meanwhile, the benefits of a robust, changing, and growing crypto-currency community and ecosystem are constantly spreading to more and more people. The government can

stop places like Silk Road and others, but more will pop up, considering the relatively low setup costs and their value throughout a larger user community.

The internet as a whole functions in the same way. Attempts to constrain it, like the Stop Online Piracy Act (SOPA), incur huge costs for the lawmakers who attempt to get them passed. Meanwhile, technology has developed to the point where even if the government were able to constrain or suppress the internet, other networks outside of its control could easily pop up. The darknet already exists, is being actively used by individuals interested in privacy, and could be expanded to address outside infringement of the regular Web.

This is a development that turns the very logic of political action on its head. Thanks to technology and the distributed nature of networks, we are no longer beholden to the political process, majoritarian rule, and the so-called "fair" tax and fiat money regime. The more of the economy we move to the net, the safer we will be and the more distributed power becomes. **FEE**

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And Singapore is rich because those institutions help give rise to powerful synergies.

One could argue, of course, that Singapore has a comparative advantage in trade because of its location at the southern tip of the Malay Peninsula, connecting the Strait of Malacca with all of East Asia. But other nations not blessed with such location rents have used the same model. Portugal in the fifteenth century, Spain and Holland in the sixteenth, and England in the eighteenth century all built huge, prosperous societies by channeling the energies of citizens toward cooperation. None of these countries played well with others, perhaps, but internally they built synergies, so that for each their prosperity and importance in the world was multiplied far beyond what you would have expected just by looking at their populations, their climates, or their soil quality.

Humans build synergies by fostering VPC. Adam Smith's example of the philosopher and the porter is sometimes quoted, but not well understood. The benefits to specialization need not be innate: The street porter might well have been a philosopher if he had had access to the tools that promote VPC. Education and social mobility mean that where one is born has little to do with where one ends up.

The plasticity of human abilities is at least matched by the malleability of social and economic institutions. Human societies need only be limited by what we can think of together. The development of specialization and the consequent increase in productive capacity constitute a socially constructed process, like Smith's "philosopher"—the result of thousands of hours of study, practice, and learning. Smith's porter didn't fail to become a philosopher because of comparative advantage. The porter just failed (or was denied a chance, by social prejudice) to specialize.

### **To be useful, cooperation must be destructive**

The flaw in division of labor is also its virtue. Division of labor and specialization create a setting where only a few people in society are remotely self-sufficient. Further, the size of the "market"—more accurately, the horizon of organized cooperative production—limits the gains from division of labor and specialization. If I hire dozens of people and automate my production of apple pie filling, I can produce more than you, your family, your village, or perhaps even your entire nation can consume. I have

to look for new customers, expanding both the locus of dependency and the extent of improved welfare from increased opportunities to trade.

The same is true for the benefits of specialization. In a village of five people, the medical specialist might know first aid and have a kit composed of Band-Aids and compression bands for sprains. A city of five million will have surgeons who have invented new techniques for performing complex procedures on retinas and the brain, and exotic enhancements in appearance through plastic surgery. A village of 250 people may have a guy who can play the fiddle; a city of 250,000 has an orchestra. Division of labor and specialization, is limited by the extent of VPC.

The power of that statement, taken directly from Adam Smith, is the basis of the argument for VPC. People are assets, not liabilities. Larger populations, larger groups available to work together, and more extensive areas of peaceful cooperation allow greater specialization. Four people in a production line can make 10 times as much as two people; 10 people can make a thousand times more. Larger groups and increased cooperation create nearly limitless opportunities for specialization: not just making refrigerators, but making music, art, and other things that may be hard to define or predict.

VPC allows huge numbers of people who don't know each other to begin to trust each other, to depend on each other. Emile Durkheim, the famed German social theorist, recognized this explicitly, and correctly noted that the market part of division of labor is the least important aspect of why we depend on it. He said, in his masterwork *Division of Labour in Society*, "The economic services that [division of labor] can render are insignificant compared with the moral effect that it produces, and its true function is to create between two or more people a feeling of solidarity."

That "feeling of solidarity" is society—voluntary, uncoerced, natural human society. We don't need nations, and we don't need flags and armies to make us prosperous. All we need is voluntary private cooperation, and the feeling of solidarity and prosperous interdependence that comes from human creativity unleashed. **FEE**

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# Brazil's Bread and Circuses

## *Dirigisme and corruption for the coming World Cup and Olympic Games*

EMMA ELLIOTT FREIRE



Andre Durao/Shutterstock

“The fact that Brazil has been chosen to host the World Cup in 2014 is a reason for us to have a great party and to be very happy,” said President Luiz Inácio Lula da Silva when Brazil was announced as host in October 2007. “Soccer is not only a sport for us. It’s more than that: Soccer for us is a passion, a national passion.” Brazilians agreed, with many dancing in the streets and launching fireworks.

Two years later, Rio de Janeiro was named as host for the 2016 Summer Olympics. The president wept tears of joy and repeatedly said, “Our hour has arrived.”

At the time, the World Cup and Olympics seemed like fantastic opportunities to showcase Brazil on the international stage. These opportunities matter in Brazil, perhaps more than elsewhere: Brazilians still carry chips on their shoulders over Charles de Gaulle’s alleged statement that “Brazil is not a serious country.”

But the aspirations for the World Cup this summer have failed to materialize. There is a palpable sense of disillusionment and pessimism among most Brazilians.

They are expecting the World Cup to be a national humiliation. And average Brazilians have story after shocking story about the ways their government is repressing freedom to ensure the country is presentable during the big event.

For thousands of foreigners traveling to the World Cup, their first glimpse of Brazil will be Confins International Airport in Belo Horizonte. The city, the center of Brazil’s lucrative mining business, will host six matches.

Landing there this past spring, the airport gave me my first hint that something might be wrong with the World Cup preparations. It was supposed to have gotten a facelift. Unfortunately, it was nowhere near ready. Virtually all its ceilings were exposed. Scaffolding stood in most corners. Dust filled the air. The noise levels from construction work meant airline staff and passengers had to shout at each other during check-in.

Things did not improve much when I stepped outside. Construction had rerouted the normal traffic patterns, so just getting out of the parking lot presented a puzzling

challenge. On Avenida Antonio Carlos, the main highway into Belo Horizonte, traffic lanes were clear on both sides, but the center was an enormous construction zone. The city is adding bus lanes that may not be ready for years to come.

### Sky-high costs

Brazil is on course to throw the most expensive World Cup in history. Estimates of the total vary, but it will likely exceed \$14 billion, more than the cost of the previous three World Cups combined.

Brazil decided to use 12 stadiums for the World Cup. South Africa had only 10 when it hosted in 2010. The future use of Brazil's stadiums is shrouded in mystery. One, the Arena da Amazônia, has attracted particular scorn from Brazilians. It's located deep in the Amazon jungle and there is no local top-flight soccer team to fill its 44,000 seats after the World Cup. Moreover, three workers died there in construction accidents. I traveled to Brasilia, the capital city, where I saw the magnificent Estadio Nacional, which seats 72,000. I asked my hosts if the local soccer team will use it after the World Cup. They laughed and said, "That's the million-dollar question." The local team plays in the lower divisions and doesn't attract more than a few thousand fans per match. Brasilia is an affluent city, so the residents can afford tickets to the occasional mega-concert, but that's the only likely use for the stadium.

In preparation for the World Cup, Brazil also undertook massive infrastructure projects. Many will not be completed on time, and those that are ready could actually have a negative impact. "Large parts of these projects are bad for cities instead of good," says Anthony Ling, a Brazilian architect, urbanist, and author of the blog *Rendering Freedom*. "The most obvious examples are urban overpasses. This is a very 'modernist' way of planning, which basically subsidizes individual car use using public funds and eminent domain. Overpasses also kill pedestrian activity around [them], which decreases the accessibility of public transportation." He also says that some cities had their own plans for infrastructure works, but these were altered to suit the World Cup, thus killing their original efficiency.

Most Brazilian cities have areas that are chronically underdeveloped. Brazilians worry what foreigners will

think when they visit and see slums and run-down buildings. "Americans have high standards. They will not be impressed by what they see here," says Gianluca, a lawyer in Brasilia.

### Slums make way for stadiums

Tourists driving down Avenida Antonio Carlos on their way to a match in Belo Horizonte will probably never know that they are driving over former favelas. These slums used to crowd the much-narrower highway. Every city hosting World Cup matches used eminent domain to push through its infrastructure projects. But in many cases, cities didn't even need to bother with that.

"There has been a lot of slum removal, which isn't actually eminent domain because the residents don't have property titles. Thus, they get little or no payment from the government for their houses," says Ling. "Around 80–90 percent of favelas are on government land. They basically homesteaded that land, but they didn't get their titles. It doesn't matter if they've been there for a hundred years, the government can do whatever they want."

Some estimates put the number of people removed from their homes because of the World Cup at around 250,000. Virtually all of them are desperately poor.

The removals drew very little public comment, and certainly very little outrage. Many Brazilians, particularly those on the right wing, even supported them. They see the residents of favelas as invaders who took land that was not theirs.

In addition, they see favelas as fortresses of crime. Many are more or less governed by local drug dealers. "Drug dealers don't only use drugs as power. They control the total area," says Rodrigo Constantino, an economist who writes for *Veja*, one of the Brazil's leading magazines. "People have to pay drug dealers and the owners of *favelas* to use energy or to use television." Thus, many Brazilians favor efforts to end the drug dealers' rule.

Over the past several years, Brazil's government has run a program of "pacifying" favelas by sending elite police units in to retake them. More recently, as the World Cup loomed, the government resorted to even tougher tactics. The military has moved in to occupy several favelas in Rio de Janeiro and will stay there until the World Cup has ended. Many Brazilians are uneasy about this, but they feel it is necessary to control crime.

“I’m very concerned about abuse of police power, but it’s like a battlefield here,” says Constantino. “It’s like the U.S. government’s tactics in Iraq. You have to remember that they’re in Iraq and not New York City. The police enter a favela under heavy gunfire. It’s not like Copacabana. It’s a totally different environment for them to work there. Many policemen die each year in the war against drug dealers in favelas.”

Grant Grobbel is an American who has lived in Brazil off and on for 20 years. He believes the deployment of military troops against Brazilian citizens is normal in the context of Brazil’s history. “Brazil doesn’t have the same restrictions on the military coming in that the U.S. does,” he says. “Brazil has always had top-down control throughout its history. That opens things up for the military to come in as well.”

### **Cracking down on protests**

The favelas are not the only places where the Brazilian government is cracking down. It’s also preparing to keep a lid on social unrest. It will spend roughly \$85 million on security during the World Cup and deploy a security force of 170,000 police and private security contractors. There’s reason for concern: Last summer, massive anti-government demonstrations shook the country.

They started in June 2013 in São Paulo, when a small extreme leftist group protested an increase in bus fares. Soon the protests spread, and millions took to the streets to express a wide range of grievances. Many were unhappy at the public funds being spent on stadiums for the World Cup while Brazil’s hospitals and schools remain substandard.

The government was quick to promise reform, but nothing substantive materialized once the protests fizzled out. “The government became conscious that the people are dissatisfied, but I don’t think they are going to do anything,” says Alexandre Barros, a political risk consultant based in Brasilia.

There are no more large-scale marches, but a few disillusioned individuals are still trying to express their dissatisfaction with the status quo. “Now it’s turning a bit more sour. You get more fires being thrown out into the streets. People weren’t given a voice so their attitude is just to burn things,” Grobbel says.

The Black Bloc, a small group of mask-wearing leftist

anarchists, has been drawing media attention. “They’ve been using the protests,” says Constantino. “They’re like a tiny minority in the protests, but a very organized one with guns and rocks and Molotov cocktails. They have been trying to make violent chaos.”

In February, a videographer named Santiago Andrade was killed by a rocket allegedly set off by protestors. This spurred members of Brazil’s congress to introduce a new anti-terrorism bill that would criminalize violent protests. “The problem is that some articles of the legislation are vague and open a dangerous possibility to criminalize almost every kind of protest against government,” says Bruno Garschagen of the Mises Institute in Brazil. “Ultimately, that legislation will increase the power of government over Brazilian society, especially against its adversaries.”

The bill’s sponsors had hoped to enact it before the World Cup. However, due to concerns over the vague wording, the bill has been delayed pending further congressional debates.

### **Targeting individual protestors**

As part of their efforts to prevent new protests, the Brazilian police have been summoning people who marched last year to police stations for questioning. Juliano Torres, executive director of Students for Liberty in Brazil, received a summons. He joined in some of last year’s protests, carrying signs like, “There is no such thing as a free lunch” and “Privatize the World Cup.”

During the interview, the police asked Torres about his connections to various libertarian groups and wanted to know who funds his work. They showed him pictures of his participation in last summer’s demonstrations. They also had a photo of him in another demonstration that he organized five years ago. After two hours, he was let go and he has not heard from the police again. “I was very worried for two days, but now I think it’s OK,” he says. He believes their only aim was to discourage him from protesting again. In fact, he had already concluded that protesting is a waste of time.

He knows two other people—both with a very different ideological orientation from his—who were also summoned to police stations for similar conversations. “The police are operating in a gray area of the law here. It’s neither legal nor illegal,” Torres says. He is working to

establish a new organization called Instituto Pela Justiça (the Institute for Justice). One of its roles would be to help Brazilian citizens sue the police over these types of summonses.

Constantino believes the police are casting a wide net and that around 1,000 people have been summoned. "They are trying to reach anyone that could be in any way connected to the Black Bloc movement," he says.

Grobbel believes Torres's libertarian ideology is considered dangerous because it shakes the core of Brazilian society. "It all comes down to the question of how Brazil is set up. You have a very large bureaucracy. Society is keyed towards passing an entrance exam, getting a job for the government and then you are set for life. Even in affluent neighborhoods, that's the mentality."

#### Little excitement for the big event

With the dark clouds that are hanging over the World Cup, Brazilians are not in the mood to celebrate. Normally

at this stage, Brazilians would be eagerly debating their national team's prospects. Now, the World Cup is only discussed with derision and sarcasm. The popular phrase "imagina na copa" (imagine during the World Cup) is used whenever something bad like a traffic jam happens. Some Brazilians I met are actually planning to leave the country during the World Cup, and many others told me they wish they could. I got the sense that people want the World Cup to be over already, so they can put it behind them.

The mood will likely improve a little when the Brazilian national team starts playing, but that will not be enough. "People have the Internet now, and they see that things in Brazil are not that great compared to other countries," says Grobbel. "They're not going to be satisfied with just winning a soccer game." **FEE**

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## NEW FROM THE CATO INSTITUTE

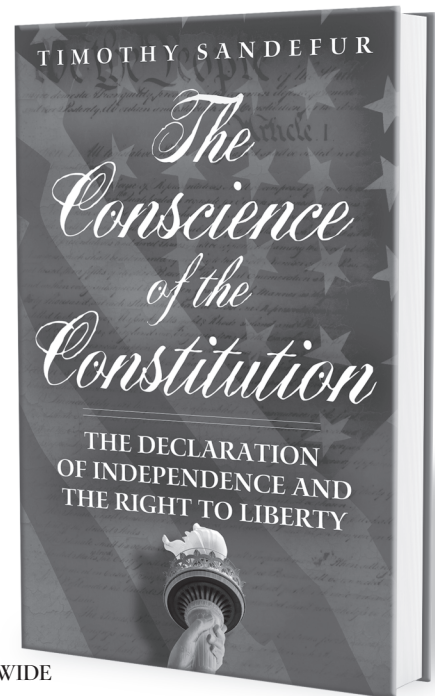
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—GEORGE WILL, writing in the *Washington Post*



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# The Big-Box Effect

*How superstores create unsung benefits for Main Street*

MAX BORDERS



Asheville, North Carolina, is beautiful. Mountains, like the topography in Tolkien, surround an architectural mix for a townscape of 80,000. Design forays from different generations trap the ghosts of literary figures like Tom Wolfe and Carl Sandburg. Yet Asheville does not turn its back upon either its hippies or its hillbillies.

Find a drum circle downtown or people fly-fishing in nearby Blue Ridge streams. There is the cobbled Wall Street thoroughfare and a nice-but-useless roundabout. Investors have renovated early twentieth-century buildings like the Grove Arcade and have welcomed specialty shops that satisfy the tastes of denizens and visitors alike—most of whom can afford driftwood rocking chairs or hand-crafted dolls. Appalachian art infuses earthy mountain-man culture with a touch of fairytale femininity; it resists frills and embraces form in a magical realism that is as much McCarthy as Marquez.

Asheville also proves Marx wrong. Capitalism does not alienate the hand-blown glassmaker from her product; it rather keeps her busy serving a new generation of patrons with refined tastes. These bourgeois bohemians find value in the place where salon sensibilities and folk arts intersect.

And yet Asheville has a Walmart and a Target.

These big boxes are neither central nor obtrusive, but they are there. “People don’t realize how much big-box stores negatively impact the social, economic and environmental fabric of communities,” says Heather

Rayburn of the Mountain Voices Alliance, a local anti-development group. Do they? We often hear that big boxes hurt mom-and-pop shops and ruin communities. This narrative has become a part of contemporary American lore. Is the big box what’s wrong with America?

## Seeing like a State

Another tack against the big box comes from *Salon*, in “Walmart: An Economic Cancer on Our Cities.” The idea here is to use dubious statistical artifacts to prove nebulous points about how Walmart contributes to problems of sprawl and depressed wages.

Charles Montgomery writes:

IS THE BIG BOX  
what’s wrong with America?

The question was simple: What is the production yield for every acre of land? On a farm, the answer

might be in pounds of tomatoes. In the city, it’s about tax revenues and jobs.

To explain, Minicozzi offered me his classic urban accounting smackdown, using two competing properties: On the one side is a downtown building his firm rescued—a six-story steel-framed 1923 classic once owned by JCPenney and converted into shops, offices, and condos. On the other side is a Walmart on the edge of town. The old Penney’s building sits on less than a quarter of an acre, while the Walmart and its parking lots occupy thirty-four acres. Adding up the property and sales tax paid on each piece of land, Minicozzi found that the Walmart contributed only \$50,800 to the city in retail and

property taxes for each acre it used, but the JCPenney building contributed a whopping \$330,000 per acre in property tax alone. In other words, the city got more than seven times the return for every acre on downtown investments than it did when it broke new ground out on the city limits.

When Minicozzi looked at job density, the difference was even more vivid: the small businesses that occupied the old Penney's building employed fourteen people, which doesn't seem like many until you realize that this is actually seventy-four jobs per acre, compared with the fewer than six jobs per acre created on a sprawling Walmart site. (This is particularly dire given that on top of reducing jobs density in its host cities, Walmart depresses average wages as well.)

For enthusiasts of urban hyperplanning, this may seem like a "smackdown." But let's take a closer look.

First, how are tax revenue and jobs relevantly like agricultural yields? It depends on whom you ask: Tax revenues are things that town planners value. Jobs are things that unemployed people value. And tomatoes are things that consumers value. These are all very different constituencies with different values. And the ways in which they are different are important.

For example, why would we ever assume tax revenue is valuable in and of itself? If it goes to some crony or bureaucrat, the boondoggle might very well be less valuable than what those resources would have bought in the productive sector.

Second, why is the relevant calculation here for Minicozzi and Montgomery anything "per acre"—much less taxes and jobs per acre? Such an accounting artifact is only important if we're trying to argue that high density is automatically a good thing and low density is bad. But that's at least part of what's at issue here. So this is nothing more than a circular argument packaged as "urban accounting." I'll

pass over the fact that all of Asheville's pro-density policies have contributed to making it the third most expensive place to live in North Carolina. So if you're measuring unaffordability per acre, Asheville's near the top.

Now, it's no secret that big boxes are able to negotiate all sorts of tax deals with local municipalities. I have no idea whether this is the case in Asheville, but it might be. In any case, cities make the rules, so we shouldn't be so quick to blame big boxes for getting favorable tax treatment—even if we'd like to rid the world of cronyism. But let's assume for the sake of discussion the town fathers are angels—that is, they aren't abusing eminent domain or awarding big boxes crony deals.

A statistical artifact like "tax revenue per acre" is a pretty disingenuous stat when one considers a couple of factors: First, the old Penney's building is a tall building downtown. So it's not going to take up a lot of acreage (it goes up, not out), and it's going to collect a lot in property taxes *because* it's downtown (where property values are higher, often artificially so, due to "smart growth" policies). Of course it's going to bring in more property taxes per acre than less dense outlying areas, where property values are lower due to land values. In almost every natural system in the universe, from galaxies to ecosystems to cities, scaling laws apply. That means dense at the center, less dense at the periphery.

Of course, in this supposed smackdown story, the shopper is left out. It turns out many people like to shop at big boxes. It's cheap, convenient, and you can find parking. That is, instead of workers per acre, there are more inexpensive products per acre. And while some people are willing to feed the meter and fight the parking problems that "walkable city" policies create, it's nice to be able quickly to park and shop. Indeed, if we were to shift the relevant urban accounting criteria, we might find Minicozzi's fetish losing some of its juju. How about other measures: Time spent looking for parking per shopping trip? Money spent on parking per shopping trip? Relative cost per comparable shopping item?

**Big-box effect**

In any case, the wider argument goes that big boxes destroy Mom-and-Pop businesses and undermine community. But I would argue precisely the opposite. Big boxes unleash forces that allow more diverse businesses and communities to form and flourish. Call it the “big-box effect.”

The big-box effect is perhaps an offshoot of—or corollary to—what futurist writer Chris Anderson calls the “long tail.” Thanks, then, to Anderson and Pareto. (I’ll proceed to exploit their insights, sprinkling in a little Adam Smith and David Ricardo, too.) The idea is that a lot of interesting and unique goods and services—rarer ones in smaller markets—will be provided along the “tail” of a distribution curve, especially with internet product aggregation.

First, the big-box effect begins in the big butt of the distribution curve. Products are cheap and abundant here due to economies of scale and reduced stocking and distribution costs. Think of a customer walking into a big box. She can expect to save thanks to the lower prices that flow from these models. When she shops here, she has resources that she would not have had if she’d bought her shaving cream and laundry basket from Mom and Pop—she has *more* discretionary income. Often, she takes this extra income to the boutique thoroughfares downtown. Here, a natural clustering of “long-tail” goods and services—prized for their relative uniqueness—has emerged, co-evolving right along with the big box. Big boxes are thus a necessary part of the new life of Main St. boutiques.

**Mom and Pop**

What of Mom and Pop? It’s not that they all went out of business—although some probably did. It’s that they

changed. Mom and Pop specialized. Indeed, through time, Mom and Pop have *continued* to specialize. It’s simply a myth that these small businesses have gone away. Instead they have adapted to more discriminating tastes and changed to cater to the preferences of people with more discretionary income. What is remarkable about the big-box effect is not that big-box stores devour everything in their paths, forcing us to buy from a faceless corporation

in a monoculture of mediocrity. It is, rather, that they conveniently centralize the mundane and the mass-produced on the outskirts of town.

Now, if you long to buy your shaving cream and laundry baskets from a shop on Main Street, there

**B I G   B O X E S**  
unleash forces that allow more diverse businesses and communities to form and flourish. Call it the “big-box effect.”

is little I can say to change your mind about big-box stores. If I’m downtown, I would personally rather find Counter Culture Coffee and gluten-free desserts served by surly college kids with tattoos and piercings. Aesthetic sensibilities notwithstanding, big-box stores are like giant vacuum cleaners of vapid products and services, despite their footprints. And, paradoxically, they leave lots of cool stuff in their wakes. If the vapid can be centralized and gotten more cheaply on the edges of American towns, it means more interesting, unique, and artsy stuff can now be acquired on Main Street. If I can buy shaving cream for \$0.99 instead of \$1.89 (and tube socks, Tonka trucks, pet food, and a garden hose during the same stop), I am more likely to have money left over for an *objet d’art* for our family mantelpiece.

Now that Mom and Pop have been pushed by economies of scale into boutique businesses, is that really such a bad thing? I think of it as a great benefit of the market. Walmart simply cannot compete when it comes to trilobite sculptures, gourmet coffee, and Swedish massages. Turns out, like in living ecosystems, economic

ecosystems include “few large, many small” creatures in a diverse array.

### Expensive tube socks

So the question for big-box antagonists becomes: Do we really need small, inefficient, and expensive shops to supply us with high-priced tube socks and soap? How vibrant is a “community” where such items are being hocked? And do we really want to say goodbye to all the pottery and scones? Thanks to big boxes, charming downtown areas are evolving into gorgeous window-shopping and restaurant-hopping districts. In the meantime, everyone knows where to get the bare necessities. So while your aesthetic sensibilities might be offended by the big box, perhaps it’s time to admit these stores have an important function. It turns out big boxes exist for a reason: People actually value them.

The big-box effect has happened all over the world, enabling many communities to renew their town centers. In fact, people who are able to reduce their day-to-day shopping costs now have more money to spend on finer things—like roadside produce grown by local farmers. No good-ole-boy can do Mach III razors. And no big box can do homegrown tomatoes and Silver Queen corn.

### Up from poverty

Long-tail benefits are all well and good. But I should at least touch on another positive big-box effect. This one was summed up tidily in 2006 by conscious capitalist Michael Strong, author of *Be the Solution*:

Between 1990 and 2002 more than 174 million people escaped poverty in China, about 1.2 million per month. With an estimated \$23 billion in Chinese exports in 2005 (out of a total of \$713 billion in manufacturing exports), Walmart might well be single-handedly responsible for bringing about 38,000 people out of poverty in China each month, about 460,000 per year.

There are estimates that 70 percent of Walmart’s products are made in China. One writer vividly

suggests that “One way to think of Walmart is as a vast pipeline that gives non-U.S. companies direct access to the American market.” Even without considering the \$263 billion in consumer savings that Walmart provides for low-income Americans, or the millions lifted out of poverty by Walmart in other developing nations, it is unlikely that there is any single organization on the planet that alleviates poverty so effectively for so many people. Moreover, insofar as China’s rapid manufacturing growth has been associated with a decline in its status as a global arms dealer, Walmart has also done more than its share in contributing to global peace.

Eat your heart out, Jeffrey Sachs. We won’t hold our collective breath waiting for Sam Walton’s posthumous Nobel Prize. But it would be nice if big boxes got a little more credit. If big boxes enable the emergence of specialized, town-specific economies and even help people in the developing world emerge from poverty, why is there so much hostility toward them?

People dislike big winners for various reasons. But in Walmart’s case, critics have painted the picture of a Goliath among a million helpless Davids. I think this underdog theory does some work, but I don’t think it explains all the animus. Could it be that big boxes offend the aesthetic sensibilities of elites?

### Big-box shoppers

Big boxes are places where America’s unwashed masses (ordinary people) come to shop. Maybe those who don’t want big boxes in their communities just don’t want the real faces of America in their neighborhoods. They want to live in a bubble of sterility and education only they can afford. They imagine that, with enough political will, all of America can be downtown Asheville, with high-priced organic foods and hemp toilet paper. Their wealth leads them to dream of a Mom-and-Pop utopia across the country—the United States of Greenwich.

But living in that illusion means moving the poor out of their neighborhoods. It means purging one’s community of crass capitalism, dually trucks, and NASCAR T-shirts.



Strange that those who talk of social justice can seem so blind to the needs of the working poor around them. The issue is complicated, of course. Given the size and success of big boxes, it's natural for labor unions, urban planners, and special interest groups to target them. But the fact is, few in the anti-big-box group are willing to acknowledge that they are helping rich people purge their communities of undesirables. An unholy coalition between rich elites and anti-corporate activists thus impedes the benefits of the big-box effect—to the detriment of the poorest people in their communities.

### Conclusion

To hear some of the critics, whole sectors of the charm-economy have been ruined. As we have explained, however, this isn't nearly the case. Evidence suggests that although small businesses have been forced to specialize and adapt, they represent the bulk of the U.S. economy. According to a 2007 U.S. Department of Commerce report, small businesses:

- Employ about half of all private-sector employees.
- Pay nearly 45 percent of total U.S. private payroll.
- Have generated 60 to 80 percent of net new jobs annually over the last decade.
- Create more than half of nonfarm private gross domestic product.

Assuming similar data today, we can't know which businesses are delightful storefront shops and which are auto body shops. But we can point to anecdotal evidence that demonstrates the emergence of specialty shopping in districts once occupied by general stores. And we can certainly conclude that small businesses (Mom and Pop) continue to survive and thrive in modern America. In a positive-sum economy, there is room for market entrants, large and small. Indeed, if I'm right, we can't have the 80 without the 20. **FEE**

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## THE BLACK RIVER

*Charlotte Pencer*

Before the fast food signs dull their yellows  
and reds for the day, before the cars cover

the pot-holed, buckled roads, the city belongs  
to this man walking alone, wearing a suit,

a costume to cover his homelessness. Samsonite  
in hand, he recites his daughter's phone number,

stringing the twos and fours like prayer beads.  
He passes by an iron sculpture of a man half-

sunk in the sidewalk, rowing a boat.  
It slows time until it's almost yesterday.

Nearby, a woman brushes her teeth in a bank's  
fountain. He waits to see if she spits. She does.

Yes, this sculpture is yesterday, the lead  
man's knuckle big and hard as his head.

There is never a next shore. Never a new.  
Never a daughter who suddenly forgives.

To be sure, he checks the morning's obituaries.  
Two men died older than he. Two younger.

Beside him, road's warped asphalt could almost  
be mistaken for ripples in a black river.

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*Charlotte Pencer's first full-length poetry collection, Spike, is forthcoming from Black Lawrence Press. A professor of English and creative writing at Eastern Illinois University, she is the editor of The Poetics of American Song Lyrics (University Press of Mississippi, 2012).*

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# Drug Addicts As Rational Actors

## *Rethinking the science of addiction*

CATHY REISENWITZ



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**H**ow do you justify taking away someone's agency? The easiest way is to claim they didn't have it in the first place.

For a long time, both popular media and information sources on the subject have depicted drug addicts as zombies incapable of making rational choices. Helpguide.org describes drug addiction as causing "changes in your brain," which "interfere with your ability to think clearly, exercise good judgment, [and] control your behavior."

Drug use and addiction are a lot more complicated than what we get in most policy debates. These debates are more often driven by political incentives and personal biases than actual evidence. We'll return to this evidence in a moment. Right now, let's unpack this "national conversation" a little more.

According to the National Institute on Drug Abuse, "Although the initial decision to take drugs is voluntary for most people, the brain changes that occur over

time challenge an addicted person's self-control and hamper his or her ability to resist intense impulses to take drugs."

This view is fairly representative. The focus of this accepted wisdom is often about how the brains of addicts are different from those of non-addicts, which gives rise to the idea that if you alter the addict's brain with substances, you alter his or her behavior.

- The National Institute on Drug Abuse claims "drugs change the brain in ways that foster compulsive drug abuse." Its website describes addiction as "a chronic, often relapsing brain disease that causes compulsive drug seeking and use."
- This view is shared by the Drug Enforcement Administration. According to its Drugs of Abuse 2011 resource guide, "Addiction is defined as compulsive drug-seeking behavior where acquiring and using a drug becomes the most important activity in the

user's life. This definition implies a loss of control regarding drug use, and the addict will continue to use a drug despite serious medical and/or social consequences."

And all these statements seem uncontroversial until you get to the fundamental question: *Do drug addicts lose their agency*—that is, their ability to make rational choices?

The prevailing view is that addicts simply lack free will.

But as ubiquitous as that view might be, it's actually a pretty recent development in thinking about addiction. "Historically speaking, the idea of addiction as a brain disease is a very new one," according to the University of Utah's Health Sciences department. "People once saw addiction as a personality flaw and a sign of weakness. This stigma persists in society today and is a major challenge for addicts and the people who treat them." Is it a challenge? Could there be some wisdom in the idea that one is able to find the strength to make better decisions?

In many ways, viewing addicts as victims who need help has improved outcomes and led to better addiction treatment options. However, the view that addicts lack free will no doubt contributes to wrongheaded ideas on the right and left. For those on the right, it is morally permissible to lock up drug offenders; on the left, it's fashionable to think of addiction as a blanket public health problem requiring more State resources for more clinics and more social workers.

But what if addiction didn't mean addicts have no choice? Maybe it really means something closer to this: The addict chooses to use drugs when others wouldn't. In other words, that decision-making process varies from user to user and from addict to addict in nuanced ways. But it's still a decision-making process.

For years, Dr. Carl Hart has been bringing drug addicts into the lab and giving them choices. Would you rather have some crack now or \$20 later? It's like a grimier version of the marshmallow tests for kids. And he's been continually surprised at how rational those choices are. Addicts will often give up more doses of crack for \$5 in cash or a voucher. Every meth and crack addict took \$20 when offered.

Besides the implications this finding has for how to treat addiction, it also raises questions about the ethical

implications and underpinnings of incarcerating addicts and casual users alike.

No doubt the view of addiction as reducing rational actors to agencyless drug-craving automata opens up several ways to evade the questions surrounding whether or not it's ethical to lock someone away for ingesting a certain substance. Put another way, the evasion comes precisely in pegging social costs like crime to that purported lack of agency. So, in some quarters, the rationale goes: *They have to be locked up because they'll just do anything to get their drugs.*

On the other hand, a similar premise can justify requesting expanded budgets to finance less punitive public health measures. And neither of these justifications is always and in every case wrong. Certainly, *some* addicts make poor life choices, engage in criminal activity, and impose social costs due in great part to their addictions. But Hart's work demonstrates that conventional wisdom and popular media tropes get the zombie premise wrong: People are still agents.

In addition, the no-agency view has helped policymakers sidestep the issues of how genetic, environmental, and societal factors can all influence addictive and drug-seeking behaviors. Remember the infamous studies showing drug-addicted rats pushing the button for drugs until they literally starved themselves to death? Dr. Hart's research is exposing the full picture of that study, too, along with some startling implications for humans if said rats are suitable analogs.

"The rats that keep pressing the lever for cocaine are the ones who are stressed out because they've been raised in solitary conditions and have no other options," Dr. Hart said. "But when you enrich their environment, and give them access to sweets and let them play with other rats, they stop pressing the lever."

"The key factor is the environment, whether you're talking about humans or rats," he said.

If drug-addicted humans and rats have more agency than we realized, are cages and clinical complexes the most ethical responses? Treating people as agents again could change the way we think about controlling the social costs of addiction. **FEE**

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# Urban Design and Social Complexity

## *Urban planning risks draining the life out of what it tries to control*

SANDY IKEDA

*This column is drawn from a lecture I gave earlier this year at the University of Southern California on the occasion of the retirement of urban economist Peter Gordon.*



One of my heroes is the urbanist Jane Jacobs, who taught me to appreciate the importance for entrepreneurial development of how public spaces—places where you expect to encounter strangers—are designed. And I learned from her that the more precise and comprehensive

your image of a city is, the less likely that the place you're imagining really is a city.

Jacobs grasped as well as any Austrian economist that complex social orders such as cities aren't deliberately created and that they can't be. They arise largely unplanned from the interaction of many people and many minds. In much the same way that Ludwig von Mises and F. A. Hayek understood the limits of government planning and design in the macroeconomy, Jacobs understood the limits of government planning and the design of public spaces for a living city, and that if governments ignore those limits, bad consequences will follow.

### Planning as taxidermy

Austrians use the term “spontaneous order” to describe the complex patterns of social interaction that arise unplanned when many minds interact. Examples of spontaneous order include markets, money, language, culture, and living cities great and small. In her *The Economy of Cities*, Jacobs defines a living city as “a

settlement that generates its economic growth from its own local economy.” Living cities are hotbeds of creativity and they drive economic development.

There is a phrase she uses in her great work, *The Life and Death of Great American Cities*, that captures her attitude: “A city cannot be a work of art.” As she goes on to explain:

Artists, whatever their medium, *make selections* from the abounding materials of life, and organize these selections into works that are under the control of the artist ... the essence of the process is disciplined, highly discriminatory selectivity *from* life. In relation

to the inclusiveness and the literally endless intricacy of life, art is arbitrary, symbolic and abstracted.... To approach a city, or even a city neighborhood, as

if it were a larger architectural problem, capable of being given order by converting it into a disciplined work of art, is to make the mistake of attempting to substitute art for life. The results of such profound confusion between art and life are neither art nor life. They are taxidermy.

CITIES AREN'T  
deliberately created; they  
can't be.

So the problem confronting an urban planner, and indeed government planning of any sort, is how to avoid draining the life out of the thing you're trying to control.

Viewing cities as spontaneous orders and not as works of art helps to explain the trade-off between scale and order. In general, I believe the larger the scale of a project,

the fewer the discoveries and subtle connections the people who use that space will be able to make.

Placing an apartment building in a commercial block will change the character of that block in unpredictable ways, but the surrounding urban environment can usually absorb the repercussions, and the problems are relatively small. A block-sized mall, however, constrains much further how people can use that space and has a disproportionately larger impact on the neighborhood. And a mega-project that takes up many blocks severely limits the diversity and range of the social connections, as it challenges the planner to substitute her genius for the genius of many ordinary people using their own local knowledge to solve problems only they may be aware of. Making something bigger increasingly limits what people can do and whom they can bump into in the space that it occupies. Scaling up narrows the range of the informal contacts that drive creativity and discovery.

And for a given size or scale of a project, the more the planner tries to predetermine the kinds of activities the people who use it can do in it, the less likely that her design will complement the spontaneous contact that generates and diffuses new ideas. That's what made a lot of traditional downtowns so important. Over time the combination of diverse uses of public space (in the sense I mean here) brought people with different skills and tastes together in large numbers. Design can of course complement that informal contact to a point, but beyond a fairly low level, human design begins to substitute for it.

Of course, small is not always beautiful, and big is sometimes unavoidable. But that makes it even more important that planners appreciate how ramping up scale and intensifying design influence a complex social order.

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### Private planning is much more limited in scale

And I'm not just talking about government projects. Private projects could, in principle, have the same "taxidermic" impact on urban vitality. But as long as a planner's design is small compared to the surrounding space, the loss of complexity and intricacy isn't severe. It's usually when government somehow subsidizes private projects, softening up the budget constraints, that the scale becomes massive and the downside very steep. An example of this can be found about a mile from

where I live in New York. Barclays Center, the new home of the NBA's Brooklyn Nets, grew to an enormous size once the local and state governments offered eminent domain and other large subsidies. Building on a massive scale in an already dense urban environment is typically too expensive, even for a wealthy private developer, without such legal privileges.

A planner can't build an entire city (or even neighborhood)

because she can't begin to design and construct the necessary diversity and social intricacy that happens spontaneously in a living city. And I don't think she should even try to because it can irreparably damage, even kill, the living flesh of a city. What can government do? In the ordinary course of its activities a government can perhaps at best refrain from doing the things that would thwart the emergence of the invisible social infrastructure that gives rise to that diversity, development, and genuine liveliness.

The rest is mostly taxidermy. **FEE.**

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# To Read Well, a Noble Exercise

## *In defense of Thoreau and Walden*

SARAH SKWIRE

Gary North's recent column on Thoreau's *Walden* ([tinyurl.com/meql7zm](http://tinyurl.com/meql7zm)) argues that Thoreau is a "literary scam artist" and that the book itself is a "masterpiece of fraud" that has been inflicted on countless students because of its political agenda. Perhaps in solidarity with those students, North's column consists in large part of quotations from the Wikipedia page on *Walden*, followed by North's responses. Throughout, North asserts that the Wikipedia page is a product of the "academic con-job known as literary criticism" and that it is "high-flying literary analysis."

It would be, in other words, somewhat surprising if I (literary critic and frequent perpetrator of high-flying literary analysis) liked the piece. I don't. I think North misreads Thoreau in almost every way possible.

North's major arguments are as follows:

1. *Walden* is anti-capitalist and pro-Green.
2. *Walden* is a big fake.
3. *Walden* is a badly written book that only has its reputation because it fits into the anti-capitalist/pro-Green agenda.

And all of these arguments are wrong.

But North is correct about one thing. He insists that he wants his readers to "read critically. Decide for yourself." So, let us consider North's arguments against Thoreau, read Thoreau critically, and then decide for ourselves. After all, Thoreau would want us to do the same.

To read well, that is, to read true books in a true spirit, is a noble exercise, and one that will tax the reader more than any exercise which the customs of the day esteem. It requires a training such as the athletes

underwent, the steady intention almost of the whole life to this object. Books must be read as deliberately and reservedly as they were written.

### Did Thoreau hate markets and love Greens?

That Google gives me almost three million hits for a search on the terms "Thoreau" and "hipster" suggests, perhaps, some of what prompts North's vitriol about what he sees as Walden's anti-capitalist and pro-Green agenda. Thoreau's image and writings have been used by the anti-market, anti-capitalist, and pro-Green crowd for generations. But Adam Smith's writings have also been used to argue against markets. Hayek's work has been accused of supporting fascism. The way that a writer's work is used is not necessarily an accurate reflection of the work's contents. For an accurate reflection, we need to, as Thoreau suggests, "read deliberately."

We can begin, I think, by noting that Thoreau possesses a clear understanding of how markets work. Early on in *Walden* he recounts the story of a basket-seller he had observed in Concord.

Not long since, a strolling Indian went to sell baskets at the house of a well-known lawyer in my neighborhood. "Do you wish to buy any baskets?" he asked. "No, we do not want any," was the reply. "What!" exclaimed the Indian as he went out the gate, "do you mean to starve us?" Having seen his industrious white neighbors so well off—that the lawyer had only to weave arguments, and, by some magic, wealth and standing followed—he had said to himself: I will go into business; I will weave baskets; it is a thing which I can do. Thinking that when he had made the baskets he would have done his part, and then it would be the white man's to buy

them. He had not discovered that it was necessary for him to make it worth the other's while to buy them, or at least make him think that it was so, or to make something else which it would be worth his while to buy.

This is right out of any introductory economics or business textbook. It is not enough to have a product or a skill to sell. Someone must also want to buy it. Thoreau treats his writing the same way, and when he finds that he is not selling enough books to support himself in town through his writing, he moves out to the woods to weave his philosophical baskets and "avoid the necessity of selling them." There is nothing wrong with the market here, and nothing wrong with being in business. But if you aren't making a great success of yourself while pursuing your passion, you may need to choose between your passion and material success.

Indeed, much of *Walden* reminds an attentive reader of the classics of economics that are so important to friends of free markets. For example, there are echoes of

Adam Smith's concerns about possible problems with the division of labor in Thoreau's question, "Where is this division of labor to end? and what object does it finally serve? No doubt another *may* also think for me; but it is not therefore desirable that he should do so to the exclusion of my thinking for myself." And we can hear Adam Smith again, but also Addison and Steele's *Spectator*, and Leonard Read's *I, Pencil*, in Thoreau's vision of peaceful commerce and the wonders of worldwide trade.

Commerce is unexpectedly confident and serene, alert, adventurous, and unwearied. It is very natural in its methods withal, far more so than many fantastic enterprises and sentimental experiments, and hence its singular success. I am refreshed and expanded when the freight train rattles past me, and I smell the stores which go dispensing their odors all the way from Long Wharf to Lake Champlain, reminding me of foreign parts, of coral reefs, and Indian oceans, and tropical climes, and the extent of the globe. I feel more like a citizen of the world at the sight of



Zack Frank/Shutterstock

the palm-leaf which will cover so many flaxen New England heads the next summer, the Manilla hemp and cocconut husks, the old junk, gunny bags, scrap iron, and rusty nails.

And with his praise of the bravery and stalwartness of the men who operate the railroads, Thoreau gives us as good a summation of McCloskey's bourgeois virtues as one could hope to find.

What recommends commerce to me is its enterprise and bravery. It does not clasp its hands and pray to Jupiter. I see these men every day go about their business with more or less courage and content, doing more even than they suspect, and perchance better employed than they could have consciously devised ... On this morning of the Great Snow, perchance, which is still raging and chilling men's blood, I hear the muffled tone of their engine bell from out the fog bank of their chilled breath, which announces that the cars are coming, without long delay, notwithstanding the veto of a New England northeast snow-storm.

If this is anti-capitalism, let us have more of it.

As for the accusation that *Walden* is "pro-Green," it is worth keeping in mind Thoreau's enormous distrust and detestation of government and of political parties. This is, after all, the man who began his most famous essay by saying, "That government is best which governs not at all," and who notes that government "does not keep the country free. It does not settle the West. It does not educate. The character inherent in the American people has done all that has been accomplished; and it would have done somewhat more, if the government had not sometimes got in its way." That he is used as a shill for a 21st-century political party would have horrified Thoreau, who said of similar co-optings, "If I had known how to name them, I should have signed off in detail from all the societies which I never signed on to; but I did not know where to find a complete list."

But, perhaps without appreciating their political action, Thoreau's convictions about nature and humanity align with Green objectives? Perhaps not. Thoreau loves and

respects the natural world, and is a precise and detailed observer of it. That much is certainly true. And he probably does like most animals and trees more than he likes most humans. But while Greens tend to view human society as a carbuncle on the face of nature, Thoreau sees humans and their activities as an integrated part of the natural world that is equally worthy of observation. "As I walked in the woods to see the birds and squirrels, so I walked in the village to see the men and boys."

And, as Thoreau's fondness for railroads—honorably limited by his concerns for the poor working conditions of those who construct them—suggests, he is no despiser of modern technology. Indeed, in thinking about building his house, he points out,

Though we are not so degenerate but that we might possibly live in a cave or a wigwam or wear skins today, it certainly is better to accept the advantages, though so dearly bought, which the invention and industry of mankind offer. In such a neighborhood as this, boards and shingles, lime and bricks, are cheaper and more easily obtained than suitable caves, or whole logs, or bark in sufficient quantities, or even well-tempered clay or flat stones. I speak understandingly on this subject, for I have made myself acquainted with it both theoretically and practically. With a little more wit we might use these materials so as to become richer than the richest now are, and make our civilization a blessing.

If this is the Green agenda, I am in favor of it.

### Is *Walden* a fake?

Having disposed of—or at least brought up some serious challenges to—the notion that *Walden* is anti-capitalist and pro-Green, it becomes fairly easy to ignore the claim that, because of Thoreau's personal history, the anti-capitalist and pro-Green message of *Walden* make it a big fake. As the book has no such message, it cannot be a fake. But spending a little time thinking about Thoreau's character might not be a bad idea in the face of such accusations.

Everyone knows that Thoreau made pencils. It's a coincidence that North makes much of, that Leonard



Read's great work in praise of the market, "I, Pencil," is an examination of precisely that industry. Thoreau, in fact, saved his family's pencil-making business through a variety of innovative engineering solutions that made "Thoreau pencils" a hotly demanded item that won two awards from the Mechanic Association. Is it a betrayal of that market success that Thoreau, assured of his family's financial stability, then used the financial freedom gained from his success in the market to go and live as he liked? I cannot think that it is.

Had Thoreau engaged in anti-market propaganda, it might have been. But we have seen that he did not. Had Thoreau encouraged all the other young men in Concord, or New England, or America, to walk away from commerce, it might have been. But Thoreau is explicitly uninterested in telling others how to live.

I would not have any one adopt my mode of living on any account; for, beside that before he has fairly learned it I may have found out another for myself, I desire that there may be as many different persons in the world as possible; but I would have each one be very careful to find out and pursue his own way, and not his father's or his mother's or his neighbor's instead. The youth may build or plant or sail, only let him not be hindered from doing that which he tells me he would like to do.

Thoreau's desire is to live as he likes, not to tell others that they must live as he likes.

So why, then, with his capacity for engineering and for business, does Thoreau head for the woods? First of all, he does it because he likes it. Second of all, he does it because he has a philosophical project in mind.

It would be some advantage to live a primitive and frontier life, even in the midst of an outward civilization, if only to learn what are the gross necessities of life and what methods have been taken to obtain them; or even to look over the old day-books of the merchants, to see what it was that men most commonly bought at the stores, what they stored, that is, what are the grossest groceries. For the improvements of the ages have had but little

influence on the essential laws of man's existence: as our skeletons, probably, are not to be distinguished from those of our ancestors.

Thoreau wants to find out what the most basic requirements of human life are and to discover what humans are like when they strip away extraneous things. He also wants to write about it. And he wants to devote as much time to writing and thinking, and as little time to everything else, as he possibly can. So he heads to the woods.

Thoreau's desire to focus on his writing goes a long way to explain his complicated feelings about solitude. Those who want to poke holes in Thoreau love to point out that his great experiment with solitude involved living only two miles from home, one mile from his nearest neighbor, and rather a lot of company. Thoreau doesn't try to conceal any of that in *Walden*. Indeed, his chapter "Solitude" discusses all of these things, as well as his proximity to the railroad. But it's not physical distance and solitude he is seeking. It is the ability "to be alone the greater part of the time" because "a man thinking or working is always alone, let him be where he is." He wants to use solitude as an opportunity to focus his thinking and to work on his writing, but also as a tool to enhance his appreciation for company when he has it. "Society is commonly too cheap. We meet at very short intervals, not having had time to acquire any new value for each other." Thoreau had three chairs in his cabin at Walden for the express purpose of having company. He never intended to be a hermit. Those who fault him because he wasn't one misunderstand his project.

It is worth noting, as well, that one of the reasons Thoreau wanted to select his own society, then shut the door, is a moral one. He abhorred living in a society that tolerated slavery.

One afternoon, near the end of the first summer, when I went to the village to get a shoe from the cobbler's, I was seized and put into jail, because, as I have elsewhere related, I did not pay a tax to, or recognize the authority of, the State which buys and sells men, women, and children, like cattle, at the door of its senate-house. I had gone down to

the woods for other purposes. But, wherever a man goes, men will pursue and paw him with their dirty institutions, and, if they can, constrain him to belong to their desperate odd-fellow society.

The last moral accusation leveled by those who claim that *Walden* is a fake and Thoreau is a fraud is that Thoreau left Walden Pond and returned to Concord after a mere 26 months. Again, Thoreau makes no attempt to hide this fact. He mentions the length of his stay at Walden Pond in the first paragraph of *Walden*. And he explains in the book's conclusion that his departure is purposeful. "I left the wood for as good a reason as I went there. Perhaps it seemed to me that I had several more lives to live, and could not spare any more time for that one." His project was done. He had finished writing *A Week on the Concord and Merrimack Rivers*, drafted *Walden*, and was ready to move on to other things. This is not a failed project. It is a completed one.

If this is fakery, we can no longer recognize truth.

### **Does *Walden* only have its reputation because of its politics?**

I have quoted extensively from *Walden* already and am confident that those quotations will serve as a rebuttal to accusations that Thoreau is a bad writer. Literary tastes can vary, and even the greatest of Thoreau's admirers will agree that sometimes his transcendental raptures can be a bit hard to take. I think Thoreau is a brilliant writer. Not everyone agrees. That's art for you.

More importantly, though, I think that we must consider the possibility that *Walden* has its reputation because many who teach it choose to ignore its politics, which are strongly libertarian and even anarchist. Consider, for example, Thoreau's insistence that "a simple and independent mind does not toil at the bidding of any prince." There is also his distrust of the "do-gooder busy-body":

If I knew for a certainty that a man was coming to my house with the conscious design of doing me good, I should run for my life, as from that dry and parching wind of the African deserts called the simoom, which

fills the mouth and nose and ears and eyes with dust till you are suffocated, for fear that I should get some of his good done to me—some of its virus mingled with my blood. No—in this case I would rather suffer evil the natural way.

and his distrust of the efficacy of aid in general:

There are a thousand hacking at the branches of evil to one who is striking at the root, and it may be that he who bestows the largest amount of time and money on the needy is doing the most by his mode of life to produce that misery which he strives in vain to relieve. It is the pious slave-breeder devoting the proceeds of every tenth slave to buy a Sunday's liberty for the rest.

and his support of practical wisdom and financial responsibility:

Even the *poor* student studies and is taught only *political* economy, while that economy of living which is synonymous with philosophy is not even sincerely professed in our colleges. The consequence is, that while he is reading Adam Smith, Ricardo, and Say, he runs his father in debt irretrievably.

and his respect for the individual:

Individuals, like nations, must have suitable broad and natural boundaries, even a considerable neutral ground, between them.

If this is the politics that will give a book a lifespan of 160 years, with no sign of flagging yet, we should be celebrating. If *Walden* is being so badly taught, both by those who don't like its politics and by those who should, that no one realizes how important it should be for lovers of liberty, then let us acknowledge that our problem is not Thoreau. It is us. **FEE**

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# Explicit Lyrics

*How the music crusaders of the '80s and '90s lost to the Internet*

CHRIS KJORNES

Recently, artist and researcher Nickolay Lamm released a collection of graphs charting changes in pop song lyrics. These images reveal what many critics of contemporary culture have been saying for years: Popular music has become increasingly crass. Maybe this shift is the handiwork of the usual suspects—greedy corporations, say, or an increasingly godless society. But it's just as likely an unintended consequence of the kind of political scheming you'd expect more out of TV dramas than out of real life.

In the early 1980s, Tipper Gore, wife of then-Tennessee senator Al Gore, was on a mission. Outraged after overhearing her daughter listening to the Prince song "Darling Nikki," she took it upon herself to do something about the state of pop music. It resembles a storyline from *House of Cards*: Claire Underwood had the Clean Water Initiative and her campaign against sexual assault in the military; Tipper Gore had the Parents Music Resource

Center (PMRC), a group of Beltway wives dedicated to preserving the moral integrity of the nation's children through a national media campaign designed to educate the public about the prevalence of explicit content in rock music. Her husband, a Democrat representing one of the most religiously conservative states in the country, had his eyes on a 1988 run for the presidency. Senator Gore was therefore more than happy to accommodate his wife's family-values crusade.

But the PMRC's mission went beyond mere education; the organization also sought to re-establish control of children's cultural environment through stricter regulation of music packaging and retail display. The group hoped that political pressure would compel the Recording Industry Association of America (RIAA), a trade organization whose members produced more than 85 percent of available records at the time, to take these steps voluntarily.



Kzenon/Shutterstock

This incident was not the first time that the record industry had been lobbied to better police raunchy lyrics. Religious groups had been staging protests, writing letters, and burning records since Elvis first shook his hips on the Ed Sullivan Show. And artists and entertainers had been fighting obscenity charges for live performances and records for decades. But suing artists and record companies proved ineffective. To be judged obscene, a work had not only to be offensive but deemed lacking “serious literary, artistic, political or scientific value.” A more common strategy for those wishing to clean up music was to push for laws that limited children’s access to questionable material, both through a rating system, similar to the one used by the Motion Picture Association of America, and through restrictions on the placement of certain albums at major retailers.

While record labels bristled at the notion of censorship, most of them carefully monitored and crafted their content to appeal to the broadest audience possible. For example, the first commercial rap record, The Sugarhill Gang’s “Rapper’s Delight,” released in 1979, sounds rather wholesome compared even to recordings of the first live hip-hop performances from 1977 and 1978, let alone the gangster rap that caused a stir in the 1990s.

While the labels could ignore the threats of a few random fanatic groups, the PMRC represented something far more intimidating: the United States Senate, which could back up its threats with regulations.

But Congress could protect the industry, as well as regulate it—at least for a while. In the early ‘80s, analog dubbed cassettes were eating into record-industry profits, and with Sony developing a digital audio recorder for commercial release, industry executives were looking to hedge their risks through a federal tax on all blank audio cassettes and cassette recording equipment. Not only would the tax increase the cost of home recording, the proceeds of the tax would be given to record producers and artists.

In the meantime, the PMRC was getting its way. The centerpiece of its campaign was the September 19, 1985,

congressional hearings before the Senate Committee on Commerce, Science, and Transportation on the vital matter of “porn rock.” During the hearings, senators passive-aggressively questioned artists ranging from hair metal singer Dee Snider to folk singer John Denver, suggesting something needed to be done—and that it would be a shame for the government to have to do it. One of the stars of the hearings ended up being Frank Zappa, who vigorously questioned the purported “education, not legislation” agenda of the hearings.

In all truth, the hearings were not aimed at legislation. Prior to the hearings the RIAA agreed to label cassettes

and albums with explicit lyrics, as the PMRC had recommended, making the proceedings little more than political theater designed to show that the senators involved were in line with the rising tide of 1980s social conservatism.

Early implementations

of music labeling were inconsistent. Labels and artists not only decided what material to label, but what the label in question would say, making the warning label a new medium for expression. For example, the warning label on rapper Ice T’s *The Iceberg/Freedom of Speech...Just Watch What You Say* (1989) read in part, “Parents Strongly Cautioned: Some material may be X-tra hype and inappropriate for squares and suckers.” While proponents of music labeling had called for labeled records and cassettes to be confined to separate rooms in music stores, rooms in which customers would have to show ID before entering, the voluntary labeling of records placed no obligation on the retailer—although many, most notably Walmart, chose not to carry albums with parental advisory labels.

By 1990, a uniform sticker had emerged. Record companies’ concerns that the labeled records would suffer at the cash register proved unwarranted. In an industry that placed a premium on rebelliousness, the warning sticker became a badge of honor among musicians and their teenage fans. The long-held American popular music tradition of coding racy material in symbols and double entendres gave way to overt crassness. Even artists

IF THE PMRC’S aim was to convince the music industry to clean up its act by threatening record labels’ profits, it failed miserably.

who had largely steered clear of controversy in the past, like Michael Jackson, found themselves purposefully cultivating controversy to remain relevant.

If the PMRC's aim was to convince the music industry to clean up its act by threatening record labels' profits, it failed miserably. Not only was the music industry raking in huge profits selling teenagers music more provocative than the Prince song that led to the creation of the PMRC in the first place, but record executives got their music-dubbing tax as well.

The labeling kerfuffle and recording tax were inextricably linked: Hearings on the tax followed the "porn rock" hearings by a couple of weeks. The following year, John Danforth (R-Miss.), who had chaired the "porn rock" hearings, proposed a 35 percent tariff on digital

recorders sold without an anti-recording chip. Al Gore proposed a similar tax the year after that. Gore's act was defeated. The industry finally got what it wanted with the Audio Home Recording Act of 1992, which included a tax on all digital recorders, the proceeds of which were filtered back into the record industry.

Songs still needed radio airplay and video plays on MTV, both of which still fell under the FCC's decency guidelines. Fortunately for record producers, digital recording and editing had significantly lowered the cost of creating multiple versions of a song. Record labels that had once self-censored to reach the broadest possible audience developed an alternative, two-track song model: an explicit version for the album and a cleaned-up one for the radio, allowing artists like Dr. Dre to insult the moral sensibilities of just about anyone while simultaneously getting Top 40 airplay. And it all came from a convenient quid pro quo between an industry looking for favorable treatment and an ambitious politician and his wife.

The music market landscape is very different in the Internet age. Those seeking to rein in raunchy music in 2014 would not be able to confront a single entity like the RIAA. And in the virtual marketplace shelf space is virtually unlimited, so there really is no threat of a recording being

**MEDIA CONSUMERS don't want raw pornography; they want great content. If the artistic license to use the F-bomb helps artists create a better show or song, audiences are more than happy to go along with it.**

kept from consumers by a retailer (though Walmart still carries the torch). More importantly, Internet services and content providers recognize parents' concerns and offer a variety of mechanisms to filter what their children are exposed to. Parents can pre-scan albums on iTunes or Amazon before deciding to purchase them. Internet radio services like Pandora and Google Play are quickly taking the place of radio for teens and have explicit language filters that give parents the option to weed out explicit content. And contrary to alarmist notions that the relative anarchy of the Internet would send the decency standards of popular culture spiraling precipitously down, lyrics may be getting less dirty.

And here *House of Cards* is instructive in a different way. While initially there were great concerns over

explicit content in original television series produced by subscription networks like HBO and Internet content providers like Netflix, all of which operate outside of traditional FCC broadcast content guidelines, television today is not a race to the bottom. The same can be said for the 2012 Supreme Court ruling that threw out fines the FCC levied for fleeting nudity and obscenity on broadcast networks Fox and ABC.

Media consumers don't want raw pornography; they want great content. If the artistic license to use the F-bomb helps artists create a better show or song, audiences are more than happy to go along with it. It is this understanding among audiences, content providers, and producers that has ushered in what many are calling the second great era of American television.

Today, musicians' and music producers' greatest concern is what copyright and royalties will look like in the age of online streaming. As this debate continues, it is important to keep an eye out for those who would use debates about the delivery of and compensation for content as a platform for censoring and shaping the content, as well. We've been down this road before. **FEE**

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# The Good Thing About the Donald Sterling Incident

MICHAEL NOLAN

The NBA's Los Angeles Clippers have become relevant for the first time in decades. They came to dominate the news, however, because their long-reviled owner's stark racism finally handed a smoking gun to somebody. It figures that, just as they got a taste of the on-court success Donald Sterling never seemed all that concerned with, he one-upped them off the court.

In case you don't know, a tape of Sterling telling his girlfriend not to bring black people to his games or to advertise that she associates with them was leaked to gossip website TMZ.

Of course Sterling's comments are despicable. They're so blatant and blunt, I admit my first reaction was astonishment. I thought they had to be fakes. But they didn't leave any room for doubt.

Heck, I wondered how anyone could get up in arms about Magic Johnson. *Magic Johnson?* I'm from the land of Larry Bird (that's "Larry Legend" to you) and I still love Magic.

Well, the tape wasn't a fake. So this is one of the rare, cut-and-dried instances where it's easy to call "racism." There's nothing else to call it. High-profile racial controversies are rarely so simply a matter of good guys vs. bad guys. That doesn't stop people from coming out of the woodwork to portray them as such and, in the process, try to spread guilt far and wide.

So it's kind of a relief that, in this case, there's no real danger of that. There's still a difficult question: How do you deal with a racist? It's a lot more complicated than it sounds; front-office employees might have had a lot fewer options than the players. Sterling might have been little more than a tyrannical boss—everyone, sooner or later, has to learn to put up with one of those—about whom nasty *rumors* floated. Now they aren't rumors.

The key is that now we can prove he acted on his racism. It wouldn't be totally okay if he just harbored these feelings. But at least keeping them inside constrains action to some degree. That doesn't apply here. This case is, if anything, actually *encouraging*.

Here's why: Within hours, the people who do business with Sterling—starting with the players and coach who sell tickets and jerseys and stake him to a slice of the ever-more-lucrative broadcast rights pie—brought the full weight of their social power to bear against him.

Around here, we tend to like spontaneous action. Well, here it is.

The labor-vs.-management framework sportswriters like to apply to collective bargaining agreement negotiations usually rings a little hollow. We're not talking about miners asking not to be killed at work only to see Pinkerton agents set loose on them with clubs and guns.

But in this case, the labor side (well, the one that anyone notices, and the one with leverage) took control of the situation. Active and former players took their protests directly to the public—in interviews, via Twitter and other social media outlets—and made it clear they could and would inflict massive damage on the NBA if management got away with this behavior.

Even former players, like Michael Jordan and Magic Johnson (Jordan is part owner of another NBA team, Johnson part owner of baseball's L.A. Dodgers)—two media-savvy guys if ever there were any—used their platforms to bring pressure. LeBron James took the gloves off, and he's still playing.

Other owners also got into the act, only hedging a little about the authenticity of the tape—Sterling's a litigious sort and likely to start filing lawsuits if there's even a whiff of defamation.

Sponsors moved away as quickly as they could, too.

More to the point, the Clippers were set to boycott a playoff game. Apparently all the other teams playing that night were ready also. I don't know what U.S. labor laws—which tend to have a lot of strict, complex rules about strikes—would say about this. I don't know if the players even cared about that. It doesn't look like they did, and that's how it should be.

Then, of course, NBA commissioner Adam Silver dropped the hammer. I didn't know until this story broke that there was such a thing as an NBA Constitution; apparently it's a secret document only the owners get to see. But it does allow them to force an owner out of the league.

I'm among those who'd like to see racism completely eradicated from human society. I doubt that's a realistic goal, but then neither are permanent peace, justice, and prosperity, and yet I still want those things.

But the approach to that eradication is everything. Consider some extreme scenarios: If mind-control chips could be installed in every potential bigot, the monetary costs would amount to nothing next to all the others (social, psychological, you name it). A couple steps back from that extreme, maybe allowing the State to execute, immediately, anyone who could be shown to have the "wrong" opinions (bigotry, homophobia, violent religious extremism, approval of the New England Patriots) would at least make everyone clam up about it. But then the fights

over who got to be in charge would be even more vicious and divisive than U.S. politics are already. You think arguments over school curricula or who gets to say what a marriage is are nasty?

I don't think outcomes such as these are very likely, and I doubt anyone else does, either. But informal mechanisms of imposing costs on these kinds of attitudes tend to get short shrift. After all, if there's a controversy big enough to break out of the sports pages, politicians are going to get a whiff of it and elbow their way to the front of the pack in responding to it.

I'm aware that a politician was involved here; the players turned to former NBA player and current Sacramento Mayor Kevin Johnson for some advice and leadership. That's a far different scenario. Johnson, after all, *is a former player*. And he has a lot more experience in crisis management, negotiation, leadership, and a host of other skills than NBA players—who've spent most of their lives honing their playing abilities and anyway still have work to do—are likely to have.

Maybe someone would want to mount some kind of First Amendment argument here. But that's bogus: The NBA's relationship to the State is, like that of every other sports league in the United States, pretty murky and distasteful. It still remains a private organization. Private organizations should get a very wide berth to choose the people with whom they'll do business, and who gets let in. That should include giving the boot to a guy this far beyond the pale. Those fleeing sponsors? Well, they were exercising their First Amendment rights, too.

But the point is, this isn't an issue of the State punishing or restricting anyone's speech. The First Amendment protects people who object as much as it does people saying objectionable things. The only meaningful constraints there have to do with matters of civility and etiquette—which the league values—and Sterling had already placed himself well outside of that kind of consideration.



I know there are people who are frustrated—at the very least—that when Sterling sells, he’s going to make a huge profit on the purchase, aside from whatever he’s pocketed since he bought the team in 1982. I’d bet there are plenty of people who want the team simply taken from him, along with the \$2.5 million fine.

And it’s galling that he’s still going to be rich—and probably still a Cro-Magnon bigot—after all of this shakes out. It’s galling whenever lousy people get rich.

The NBA can’t address the infuriating fact that bad people prosper sometimes. But the important point is that it *shouldn’t*. Because rules matter, and the more freedom people have to draw up the rules by which they’ll associate, the more flexibility societies have to address both desires and problems on whatever scale they occur. On the one hand, this is why it’s good to be able to move to another state if you don’t like the regime in your current one. On the other, it’s why the feds are maybe the worst people to, say, weigh in on the proper interpretation of the bylaws of a local Masonic Lodge.

It’s reassuring that the NBA has rules in place that do not restrain it from doing something in a case like this. And, as bad a name as profit has, it’s also doing its backstopping work: If the rules hadn’t allowed the NBA to address this situation this way, well, the players could have hit the owners and the league right where it hurts and walked off the court. There’s no telling if they would have been able to recoup any losses they might have incurred that way. I’m not clear what the rules are on that point. But kudos to every player willing to go to the wall about that.

As a final note, I thought Mark Cuban, the owner of the Dallas Mavericks, showed a lot of guts. I don’t know enough about him to give him any sort of blanket endorsement. But I do like his willingness to go out in public and poke the NBA (and the NFL, even, which I think was recently granted its own SWAT team) when he thinks something stinks.

He aired a concern that, in its complexity, is probably familiar to every libertarian who’s ever so much as thought about states’ rights and had to confront the very real likelihood that, in response, people will accuse him of being pro-slavery and worse. Here’s Cuban’s statement:

“What Donald said was wrong. It was abhorrent,” Cuban said. “There’s no place for racism in the NBA, any business I’m associated with. But at the same time, that’s a decision I make. I think you’ve got to be very, very careful when you start making blanket statements about what people say and think, as opposed to what they do. It’s a very, very slippery slope.”

There’s always a danger in letting the emotional reaction carry the day and calling for someone’s head. I can imagine someone wanting that literally to be taken from Sterling. I can’t blame them. And I don’t see any problem at all with emotions getting involved here. But Cuban’s exactly the sort of guy who, if the NBA is given blanket permission to punish at will for whatever it doesn’t like about an owner, would be kicked out of the league faster than you can say, “Mavericks’ maverick owner.”

So I give him credit here for making this point, even at the risk of some opportunist jumping on his statement as evidence that he *doesn’t really* hate racism—and therefore is probably a racist himself. Or that he actually *defended* Sterling, which ... well, go reread that quote.

But he makes a point about rules and the importance of people being able to form and change them in private groups, and hopefully to serve all members of those groups. I hope this topic comes up more in the following weeks, as the NBA maneuvers to rid itself of Sterling and avoid an avalanche of lawsuits.

But for now, this story is the main headline: [tinyurl.com/ke2fqvm](http://tinyurl.com/ke2fqvm) (warning: maybe not safe for work). And the secondary header is that nobody was just going to submit to whatever solution their “leaders” or our rulers came up with.

Utterly eliminating racism—like, even in its faintest shades, from the innermost hearts of everyone—isn’t easy; it might not be possible. But bigotry can be made a lot more expensive. Too expensive, even, for a guy who hands out Bentleys like other people bum cigarettes. **FEE**

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