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The Great Power Auction

Leonard Read reminded us that state power is like a clenched fist. There's not much you can do with a fist, except destroy. And yet many of us are still living in the illusion that if we could just get the right people into power, we can use the fist to change the world for the better.

People we like consistently disappoint us when given access to power. Is it any wonder? They're just people. But without realizing it, a lot of people attribute abilities and virtues to these people that suggest they are somehow superhuman.

True believers and visionaries probably believe in the virtuous leader. The idea is that the true believers and their small circle of rulers can embody the "will of the people" or something like that, so their judgments are fit substitutes for the preferences, desires, and knowledge of everyone on the ground. It's rarely so explicit. But look through the speeches of the last few U.S. presidents and you'll find them claiming powers that don't even exist in comic books.

But those who would institute entirely new societies, cultures, even ways of being can never acquire quite enough power to remake the people over whom they rule. So they work tirelessly to consolidate and expand their power. The consequences in such cases become direr day by day: pervasive surveillance, reeducation camps, down the road to serfdom perhaps and into the Gulag. Of course, corruption—the lying, cheating, and system-gaming—is always along for the ride.

Is it unthinkable that this stuff could happen here? Revelations about the NSA and IRS, just in the past months, make it all seem a lot less far-fetched. The more extreme, twentieth-century examples serve as a reminder of why State power is the biggest threat we face.

And people always need motivation. With each successive election, the process of auctioning off bits of power repeats itself. Curtailing power—and returning as much of it as possible to each of us, to conduct our lives and build our social networks as we see fit—doesn't seem to be on the table anymore. Instead, it's just one set of factions competing with another to see who can force everyone else

to underwrite their favored cronies or participate in their social experiments.

If you look, really look, you'll find a perverse state of affairs. And our national power auction raises serious questions about this rather hoary idea that power can be wielded for good, at least in the long term. The stories of what it winds up doing to people cut across party lines and dog every ideologue who finagles a place at the trough.

The only guaranteed outcome, however, comes from giving up and accepting this as simply the immutable nature of the world. It may be necessary to keep examples of how power actually does corrupt in the front of our minds. But we can choose whether these litanies of abuse become the excuses for giving in or fuel for further innovation and resistance.

It's very easy to be swept up in support of the latest expansion of the State—because it purports to help the poor, or save the environment, or end terrorism, or keep people who aren't like us from coming here. Revisiting the topic of abuse of power can keep us from losing our skepticism of the State. It can wake us up like smelling salts; this stuff always stinks, at any rate.

Once awake, we can fix our sights again on the enormous task of breaking up power. But how?

There's clearly a problem when power and money connect. The liberal progressive answer is to take money out of politics. This view is naive and illiberal, since political expression costs money. On the other hand, conservatives talk a big game about limiting power but, in practice, accept it—which winds up looking hypocritical. Each “side” finds special interests they can tolerate to help them hold on to power. “Left” and “right” act like a cartel and power grows.

The classical liberal/libertarian solution is to decentralize power, leaving less to auction off. That leaves more vested in people to pursue their private lives, building a civil society robust enough to prevent any one group from dominating everyone else. That might seem quaint, but we think it's hard to improve on the wisdom of James Madison:

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

Madison knew that history was already littered with the detritus of civilizations that failed to decentralize power and went through that corruptive process that has its own predictable pattern.

What comes first, the power or the money? Who can say? But the greatest insight of the American Founding was that power corrupts. Madison warned us that the seraphim had long ago departed this world and that cherubim grow up fast when confronted with the auction.

And that's why our belief, tentative but hopeful, is that there is a way forward in decentralization. Only this decentralization may not be a consequence of any Madisonian statecraft. It may very well be a result of social technologies forged by innovators with a desire to upend the status quo—perhaps readers of this very publication who are ready to change the world.

—The Editors **FEE**

Can We Correct Democracy?

TOM W. BELL



Suppose you and your friends want to throw an ice cream party, but you can afford only one flavor. Each of you has a different favorite, so you disagree about which flavor of ice cream to buy. No amount of voting can discover the one best flavor of ice cream for your party; you

simply cannot please everybody.

Democracy evidently does not have all the answers. Yet you and your friends would readily agree to reject some flavors of ice cream. Nobody wants to party with dirt-flavored ice cream, for instance.

The lesson: Democracy works best at correcting mistakes.

Surge Protectors for Democratic Power?

Winston Churchill aptly described democracy as “the worst form of government except all those other forms that have been tried from time to time.” Note well Churchill’s phrasing: that have been tried. Could a new kind of government correct the failings of democracy?

Many sing the praises of democracy, but few trust it to govern well. Even self-proclaimed democracies limit the power of the vote, filtering it through representational mechanisms and setting aside certain rights as beyond simple majority rule. For those limits on democracy, wise people sigh in relief.

Even its most ardent fans admit that democracy in its purest form—a broad franchise giving direct control of all government operations—offers a poor way of running things. Giving total and direct control of the government to the majority of voters can work, if at all, only in the smallest and most intimate of groups. It cannot work at the scale of a city, much less a state.

Yet democracy has the great virtue of giving voters some say in their government. Even as it invites some excesses, it offers hope of preventing others. How can we safely tap the

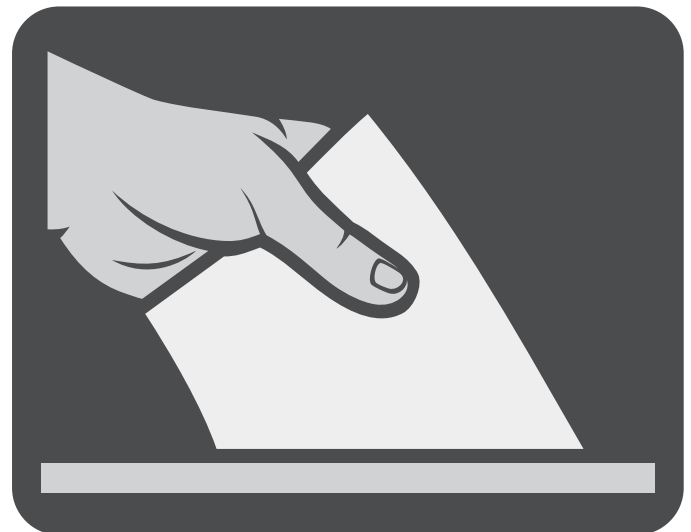
power of democracy without blowing out the fuses that keep government within safe bounds?

Corrective Democracy

A corrective democracy allows voters to do only one thing: Strike down a specified rule. Voters would get a fair shot at any law, regulation, ordinance, or order that offends them. If it failed the corrective vote, the rule would get removed from the books. Think of it as the electoral equivalent of jury nullification.

Corrective democracy qualifies as a type of “disapproval voting,” the general name applied to systems that allow only votes against certain choices. Disapproval voting has seen use in a number of contexts, most famously on reality game shows where participants can vote each other off but also, and more conventionally, in recall elections and no-confidence votes. (Disapproval voting has not evidently attracted much formal study, however, or been put to the broad political use advocated here.)

A corrective democracy could not be used to create a government agency or program; creating new institutions would require the passage of new laws. Corrective democracy thus comes with a powerful built-in limitation.



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Even if the lazy and vicious outnumber the industrious and virtuous—a tragic but unlikely situation—they could not use a corrective democracy to give themselves bread and circuses.

A Broad Franchise with Narrow Powers

The narrow powers afforded by a corrective democracy make it safer to adopt a very broad franchise. Many supposedly advanced democracies deny the vote to ex-felons, a policy that can leave as much as 10 percent of the population of some minority communities unable to vote. Yet who better than an ex-felon to know whether the criminal justice system lives up to its name?

A corrective democracy could let ex-felons vote without worrying that they would, say, elect a pro-felony politician. Indeed, even felons still serving time could vote. Nobody need worry that a few criminals would vote away the protections popular with more law-abiding folk. How likely is it, after all, that bad guys would outvote everyone else on the question of, say, striking a ban on burglary? Not even many burglars would vote for that proposition; even people who sometimes break the law generally enjoy its protection.

Playing with the Variables

If you've made it this far, you probably see the promise of corrective voting but have some questions about the details. Those would and should vary according to circumstances. Allow me to describe one implementation, however, to give you a feel for some of the variables in play.

As already mentioned, corrective voting could safely support a broad franchise—broader than most self-proclaimed democracies allow. In addition to ex-felons, for instance, children might be afforded a vote in matters affecting their rights. And what about a State's non-citizen residents? They can easily find their rights at risk and are not likely to outnumber citizens in votes concerning politically popular immigration controls.

What percentage of the vote would be required to get rid of a challenged law, regulation, ordinance, or order? Different polities might choose different percentages. Simple fairness suggests, however, that a rule should not stand if more than 50 percent of eligible voters disapprove of it.

Even on that simple-majority standard, it would not prove especially easy to get rid of unpopular rules. Every “no” voter has to take the trouble to cast a ballot, after all, whereas just staying home effectively counts as a “yes” vote. The rules on the books thus get a presumption of validity; the burden of changing them falls on challengers.

It is thus unlikely that fundamental rights, such as freedom of expression or religion, would fall prey to a corrective vote. Nonetheless, worries on that front could be assuaged by protecting certain rights with supermajority requirements or completely exempting them from popular challenges. Here as elsewhere, implementation might vary from place to place and from time to time, but the point remains that fundamental rights need not face undue risk of repeal.

How to provide open access to corrective democracy without wasting time on futile votes? Let anyone call an election on any rule, but make losers pay the costs. Apart from perhaps requiring that challengers post bond, this system would let anyone target any law, regulation, ordinance, or order. Elections in a corrective democracy could thus arise directly from voters themselves, the popular will unmediated by party politics, electoral commissions, or arcane devices like the Electoral College.

Not a Scepter but a Sword

Corrective democracy offers democracy, corrected. Because it operates only to trim back government excesses, corrective democracy runs little risk of degenerating into mob rule. It thus gives voters a more direct say in their government without giving them direct access to power.

Corrective democracy is not a lesser form of democracy, however. To the contrary, it affords a safe means to broaden the voting franchise and open up public access to the initiative process. Corrective democracy does not solve every problem of governance—somebody still has to write the rules, for instance—but it does improve on current political mechanisms. Corrective democracy turns voting from a blunt scepter for wielding political power into a sharp sword for defending individual rights. **FEE**

Disclaimer: These are the personal views of Tom W. Bell and not those of any employer, client, or advisee.

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The Man Who Outsourced the Government

An Interview with Oliver Porter

Oliver Porter created and implemented the public-private partnership (PPP) model for Sandy Springs, Ga.—a city of 100,000 people near Atlanta. He has served as the principal advisor for many other new cities and for cities considering the conversion to the PPP model, both in the United States and Japan. He has authored three books on this subject and has agreed to sit down with The Freeman.

The Freeman: Can you describe in a nutshell what Sandy Springs, Georgia, has been able to do—that is, provide a sketch of your model?

Porter: The Sandy Springs model is a public-private partnership (PPP) in which the city contracts with private industry for all of its basic services other than public safety—that is, police, fire, and courts. The model has been an outstanding success, both financially and in response to citizens' service needs, over the seven years since the city's incorporation. Financially: The city has not increased tax rates at all; has paid for a major capital improvement program from savings in the operating budget; has built a \$35 million reserve fund despite a recession; and has no long-term liabilities—that is, no loans, no bonds, and of most importance, no unfunded liabilities for pensions and other benefits.

The Freeman: How much money has the model saved taxpayers there?

Porter: Initially about \$20 million per year—40 percent of the budget for the “basket” of services being provided. These services include: administration; human resources; finance; accounting; purchasing; information technology; the backroom operations for the police, fire, and courts; parks and recreation; transportation (road and sidewalk maintenance, traffic design and control); community development (planning, zoning, permitting, and enforcement); and management of the capital program. Over the life of the contracts, I am comfortable in saying that over \$140 million of the taxpayers' dollars have been saved.

The Freeman: That is truly staggering. But what about the quality of the services?

Porter: Services have been substantially improved under the PPP model. Surveys, both internal and national, have generally rated Sandy Springs services as excellent.

The best indicator of citizen satisfaction may be that in the first election (four years) after the city was formed, the lowest vote total that any incumbent received was 84 percent. That certainly indicates a high level of voter satisfaction with the efficiency and responsiveness of the model.

The Freeman: *The New York Times*, not known for its affinity for anything private, wrote a pretty favorable story about your outsourcing work in Sandy Springs. There were certainly grudging admissions. But one worry the author expressed is that it only worked because Sandy Springs is an affluent area and that outsourced government services are not feasible in poorer areas. What do you think about this concern?

Porter: First, let me say that although Sandy Springs is relatively affluent, it is not a rich enclave. Unfortunately, there were areas of the city that were well below the average income of the metropolitan area. Sandy Springs is a melting pot with a population that includes 30 percent minorities—a growing segment—and over 55 percent apartment dwellers. Five other new cities with varying levels of affluence have been formed, each adopting the PPP model, and all have done well. In my opinion, the model is even more suited for less-affluent communities. These communities need the savings that the model offers, even more than richer areas.

By the way, everything that I am saying about city governments applies equally to counties.

The Freeman: Detroit is insolvent. It's a city that is

essentially dying. If you could say anything to the new “emergency” manager there—Kevyn Orr—what would you say?

Porter: I hope to have the opportunity to meet him in the next month. I would say to him, “If you are in a deep hole, quit digging!” In a crisis, small, incremental steps are not sufficient. Bold initiatives are required. First, look for alternative service methods such as a PPP to produce operating savings; and second, consider the privatization of the city’s assets, to raise funds to be applied to the debt.

The Freeman: Some ideological purists who read this publication might not like the idea of public-private partnerships like those you’ve established. But among those purists, some will have reasonable concerns about corrupt relationships between business and government forming over time. Do you worry about the system in Sandy Springs being corrupted?

Porter: No. All governments have shown an Achilles heel that allows for corruption.

The traditional model for cities is not immune. However, there is less opportunity under the PPP model than would normally be the case. The fact that the elected officials are prohibited from meddling in the day-to-day operations—including the bidding of contracts, hiring and firing of employees, and the granting of license and permits, etc.—is a deterrent to improper dealings. All contracts are granted through competitive bidding that is open to public scrutiny. The initial contract bids were thoroughly scrutinized by a citizens’ committee, then by a volunteer group appointed by the governor, and finally by the elected council.

On a continuing basis, PPPs diminish the opportunity for such unacceptable behavior. Unlike traditional cities, the private contractors have a profit motive that serves as a natural incentive to reduce costs and operate efficiently. Therefore, behaviors such as preferential hiring of friends and relatives, or palm-greasing, that are sometimes prevalent in traditional governments, become a non-issue in the PPP model.

The Freeman: Has anyone copied your model?

Porter: Yes, At least five other cities. There are thousands of existing cities and counties that could benefit from

the model. The only barrier to the adoption of the PPP model is politics. Officials, who have been elected under the traditional form of government, are scared to consider a new model even though it offers better service at lower costs. When I interact with such groups, I point out that their principal job is to serve the citizens—not to provide jobs—and that a part of their job description should be to constantly consider alternative methods for providing service.

The Freeman: We hope to publish this conversation in an issue on the subject of power. And as you know, the way political power works, in part, is that it protects entrenched interests, most of whom have a lot to lose from change in the status quo. It seems to us that the biggest obstacle for people adopting your model is that very power and those who benefit from its existence. What does it take to dislodge these special interests so that the people can see the benefits of privatization?

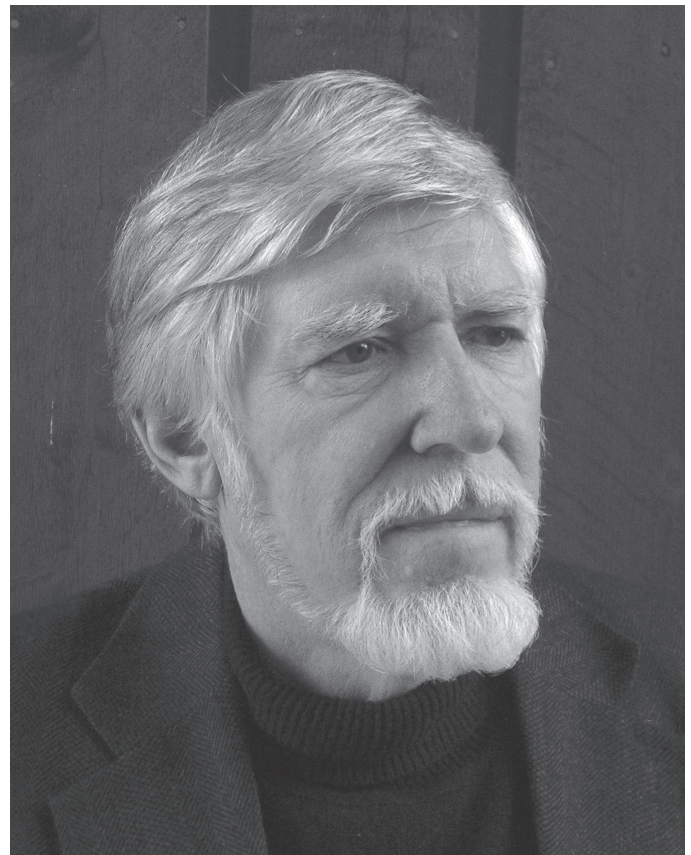


Photo courtesy Oliver Porter

Porter: Unfortunately, it may take a financial crisis: bankruptcy or near-ruin. A number of our cities are near that point. If unfunded liabilities are properly recognized, many more are approaching the crisis state.

For the cities not yet in crisis, there are several steps that should be taken to open the door to efficiency. First it takes a hero, an elected official, or prominent citizen, who is willing to take the heat that may come from those with vested interests. Such sponsorship should lead to a low-cost study that compares current operational costs, and this is very important, costs for pensions and other benefits, of the traditional city versus the PPP model. There is no risk to the city for such a study. And the cost is quite low compared to the potential payoff. If the study shows the potential for substantial savings, the city should issue RFPs [requests for proposals] for the PPP. Again, there is no risk. If the bids do not show substantial savings (and in most cases they will), the city has no obligation to proceed.

The Freeman: Can state governments do anything to help municipalities adopt your model?

Porter: To date, the states have done little; however, there is much that can be done. Obviously the most effective step would be a requirement that cities, at least, consider alternative models. Funding of comparative studies would be an even more helpful step. Removal of legal barriers to the PPP model that exist in some states is, of course, necessary and desirable.

May I add that not-for-profit organizations and media outlets should also take up the cause of municipal reform. *The Freeman* is to be commended for opening the subject.

The Freeman: Oliver Porter, it's been a pleasure to speak with you.

Porter: Thank you. I hope that the conversation will not end with this interview. I welcome contacts from interested citizens across our nation. **FEE**

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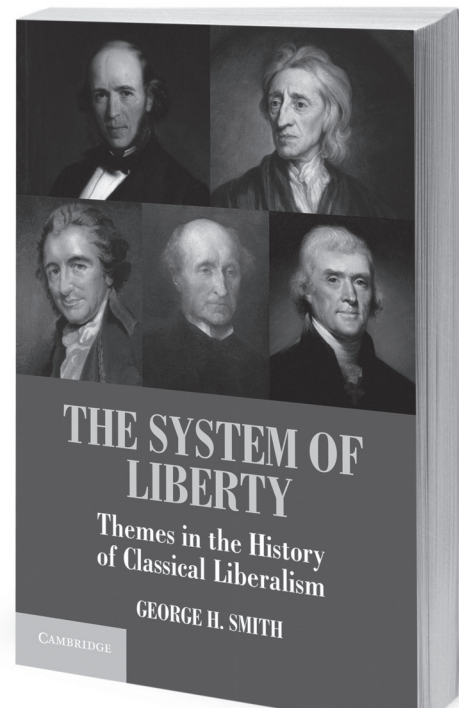
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Common Core: A Tocquevillean Education or Cartel Federalism?

LENORE EALY

When administrators act, they constitute as well as manage. But what is being constituted—Leviathans or self-governing communities of relationships in compound republics?

—Vincent Ostrom

The development of the Common Core, the model school curriculum standards that have been adopted by 45 states, offers us a glimpse into the dark underbelly of the democratic drift toward soft despotism. Proponents tout Common Core as “state-led” and say states “voluntarily adopt” the standards. Philanthropic and corporate America have gotten involved voluntarily. Parents and students—those most intimately affected by the initiative—won’t get to be a part of the voluntarism. But Common Core is so good, the argument goes, they’ll want it anyway.

Bringing greater uniformity to the K–12 curricula across the country is supposed to rescue kids stuck in lousy schools and improve standards for everyone. But policy analysts across the spectrum from Brookings to Heritage are expressing skepticism about the promises accompanying the new standards. And it is quite likely that extending such bureaucratic uniformity from Washington to the state capitols and then to every public school district in the land will pose new risks to America’s federalist experiment in self-government. What’s more, the Common Core movement is pushing increased college matriculation just as students and parents are beginning to reassess the costs and benefits of college tuition.

Apologists for the Common Core seek to allay fears of creeping nationalization with appeals that seem to

invoke the blessing of Alexis de Tocqueville, who admired the energetic voluntary associations Americans once formed in almost every field of endeavor. Tocqueville’s

THE CORE FACT
of the Common Core is that it’s a relentless and coordinated push by philanthropic and bureaucratic experts to shift authority and responsibility to the far-removed high cover of central authorities.

been making a comeback of late, so this defense of the Common Core isn’t in itself surprising. But what happens, we must ask, when state leaders, private donors, and voluntary associations embark on initiatives that don’t align with the principles of federalism necessary for sustaining America’s constitutional order?

All the Best Kinds of Experts

In many ways, the Common Core coalition’s rapid sweep of the country in four short years resembles nothing so much as the social movement for Prohibition a century ago, which led to the passage of the Eighteenth Amendment in 1919 (a police power fiasco that was repealed by the 21st Amendment in 1933). The best sorts of professional experts in education and government are on board, as are philanthropic and corporate America. The motives seem pure: Who doesn’t want schools held to higher standards?

The core fact of the Common Core, though, is that it’s a relentless and coordinated push by philanthropic and bureaucratic experts to shift authority and responsibility from local citizens and independent school districts to the far-removed high cover of central authorities. The

THE RUSH TO JOIN in the national standards movement further alienates responsibility for education from the people whose lives are most intimately tied to what goes on in schools: teachers, students, and parents.

Obama administration quickly tied Race to the Top dollars to Common Core adoption by the states, not only tainting the appearance of the Common Core's voluntary roots but compromising the reality, too. State officials faced new external incentives: Rush to adopt the Common Core standards in order to submit applications for Race to the Top grants. Another carrot was added to the mix: States adopting the Common Core could receive administrative waivers from certain requirements imposed upon them by the much-touted No Child Left Behind legislation passed by Congress in 2001.

Indeed, the campaign for passage and implementation of the Common Core—which now includes a concerted (and corporate-sponsored) advertising campaign—epitomizes the trend toward cartel federalism described by Michael Greve in *The Upside-Down Constitution* (2012). In contrast to constitutional or competitive federalism, which works to discipline government at all levels, Greve describes cartel federalism as a form of bargaining among state governments and local elites that works to strengthen and centralize the national authority in return for attractive political and revenue returns. “A cartel federalism that empowers government at all levels is pathological, and quite probably worse than wholesale nationalization,” writes Greve.

The spring 2013 issue of *Philanthropy* magazine, published by the erstwhile-conservative Philanthropy Roundtable, recounts the “Common Core’s Uncommon

Rise” and depicts the now all-too-common ways cartel federalism and its helpmate, philanthro-policymaking, work to generate and promote policy bandwagons.

In 2008 the American Diploma Project, heavily funded by the Gates Foundation, convened state officials and education reform groups, many of whom saw national standards as a key move to promote greater equity of educational processes and outcomes. “[F]rom those meetings,” *Philanthropy* reports, “emerged the idea of leveraging the cross-state work that the governors and chiefs had been working on with the voluntary mechanism that the American Diploma Project had been using to help states benchmark standards to college and career readiness.”

The new coalition began to make promises to donors, with apparently little attention to what voters in their respective states might have to say in the matter.

“In the early stages of conversation with the foundations, there was a lot of skepticism about whether the states could do this and would do this,” explains Gene Wilhoit, who was until recently executive director of CCSSO. “We didn’t have the entire support we needed when we started the process. So when we sat down with the philanthropic community we had to make some pretty specific promises to them—like having so many states agree to participate in the process, and that those states would sign on to the adoption.” Cash-strapped states did not have the funds necessary to undertake the Common Core project on their own, and funding from the federal government wasn’t desirable from the states’ perspective—governors and education commissioners knew that if voters were to embrace national benchmarks, they would need to be convinced that states were in the driver’s seat.

Once the voluntary sector was co-opted, the rest was politics.

To Educate for Liberty?

The debate over the Common Core is exposing new fault lines in America’s reigning political coalitions. Instrumental in the Obama presidential victories, teachers’ unions have been emerging as opponents of

the Common Core. On the right, meanwhile, opposition to the Core is mounting from more libertarian- and Tea Party-oriented groups, while more neoconservative groups join in support for the new standards. In the *National Review Online*, Kathleen Porter-Magee (Thomas B. Fordham Institute) and Sol Stern (Manhattan Institute) recently tried to set conservatives straight, complaining:

Common Core offers American students the opportunity for a far more rigorous, content-rich, cohesive K–12 education than most of them have had. Conservatives used to be in favor of holding students to high standards and an academic curriculum based on great works of Western civilization and the American republic. Aren't they still?

Such arguments miss the fundamental problem, however, which is that even if national standards could improve education for American students—and this is by no means certain—the rush to join in the national standards movement further alienates responsibility for education from the people whose lives are most intimately tied to what goes on in schools: teachers, students, and parents.

Officials in my state, Indiana, have wisely decided to review the state's decision to adopt the Common Core, but as these things go, the odds are very long for a complete reversal.

OUTSIDE THE COMPLEX

—for those in Guantanamo

Philip Metres

Close enough to see
only their shadows
flickering in distant
metal cages against
prison searchlights.
Close enough to hear
the recorded call
to prayer, sounded
over loudspeakers,
crickets and crashing
surf, human voices
gathering. He could
not see, aiming his
microphone at scraps
of their singing.

If he could hear them,
would their hearts tick
like timers, soft

as plastique, hard-wired
to blow apart? If he could
see them, would he see

the ghosts of faces
he thought he might know
but not place in time?

The embers of their song
lifted from the licks
of some fire invisible

to him, untranslatable
as taps on the underground
pipes hammered by sailors

in the crippled *Kursk*.
Were they trying to
open a hull into certain

death? Were they saying
we can't breathe much longer
in the depths of this sea,

and lift us back to surface?
He drove back home,
played the tapes he made

outside the complex, and heard
only the surf exploding
against rocky shore, wind

whipping the sand.

Philip Metres is the author of Sand Opera (Alice James Books, forthcoming), winner of the 2013 Beatrice Hawley Award, and is the recipient of a 2013 NEA fellowship in literature.

Nevertheless, the deliberations in this state and others may help us elevate the conversation beyond debates over the projected impact of these new standards. It opens the door to asking fundamental questions, such as, whom is education really for? Is education primarily a tool of social control? Is education merely a benchmark for assessing state-to-state and international competitiveness? Or is education more properly the cultivation, student by student, of the knowledge and personal capacity for self-governance? An auspicious moment is arising for political leadership in helping citizens re-examine both the principles of federalism and the role of education in promoting liberty.

No Exit, No Discovery

Regardless of the merit of the proposed standards, it still matters who decides and whether there are rights of exit from the influence of the interlocking directorates of educational “experts,” government agencies, and companies standing to reap the rewards from selling new curriculum-aligned materials and tests to thousands of local school districts and families.

This is exactly the sort of debate over the very possibility of freedom in America that should be enjoined by those who would renew the federal vision of the American founders. Returning to a federal system that promotes liberty does not mean returning to educational arrangements that fail to provide access and opportunity for all children. But it does require renewing one of the perennial questions of a self-governing people, articulated here by Robert B. Hawkins, Jr.: “How can a society so constitute itself that its members will be free participants in a self-governing order and not merely the subjects of the state?”

In considering the role of education today, we must also take account of the ways in which the progress of both liberty and knowledge share dependence on trial-and-error discoveries. Schooling and public policy, therefore, need more of what we have learned about the mechanisms that best support the creation, diffusion, and validation of knowledge.

We understand today through the work of social theorists such as Ludwig von Mises, F. A. Hayek, Michael Polanyi, Michael Oakeshott, and others that the methods

of scientific rationality are not applicable to the management of social problems in which human persons are actors.

Writing in *The Freeman* on behalf of a freer market in education in 1995, Sheldon Richman deftly brought to bear the contrast between a closed universe of knowledge and an open universe, in which discovery remains possible. Richman observed that in government school systems, neither

contracting out nor even charter schools were likely to help us make education better, for “the ends of the educational system are still set by the same small group of officials, who are protected from competition.”

Common Core would build an “aligned” national infrastructure on the basis of what educators “know” at the present time with little apparent room for future competition as to the ends or the means or the methods of education. While educators may increasingly speak a standardized language, the children still may not learn. Worse, treated as educational subjects rather than as human persons, the rising generations may become even less capable of self-governance.

In “Individualism, True and False,” Hayek, invoking the insight of Lord Acton, offers us an antidote to the

THE AMERICAN debate over education should be, in the spirit of genuine American federalism, less concerned with global competitiveness and more attuned to the questions of what social arrangements most contribute to the capacity of the people for liberty.

Common Core's we're-all-in-this-together boosterism: "While individualism affirms that all governments should be democratic, it has no superstitious belief in the omniscience of majority decisions, and in particular it refuses to admit that 'absolute power may, by the hypothesis of popular origin, be as legitimate as constitutional freedom.'"

The American debate over education should be, in the spirit of genuine American federalism, less concerned with global competitiveness and more attuned to the questions of what social arrangements most contribute to the capacity of a people for liberty.

Vincent Ostrom points out the hollow victory of democracy if federalism is abandoned:

Those who continue to assume that the national government, because of its "federal form," is competent to determine all matters that pertain to the governance of American society have fallen into two errors: that of neglecting the limited capabilities of those occupying positions of national authority; and that of considering citizens to be "more than kings and less than men" (Tocqueville [1835] 1945, 2:231), so that they are presumed to be competent to select their national rulers, but incompetent to govern their own local affairs. The "federal form" of the national government is no substitute for a federal system of governance.

But the principles of federalism can be left behind in other ways than outright nationalization of policy. Tocqueville wrote in admiration of America's voluntary associations, but he saw as well that these associations depended on certain habits of the heart, which he thought were cultivated across America by the prevalence of local institutions of self-governance. Such smaller political communities may indeed include schools of all sorts, where people are engaged in both instrumental and civic ends together.

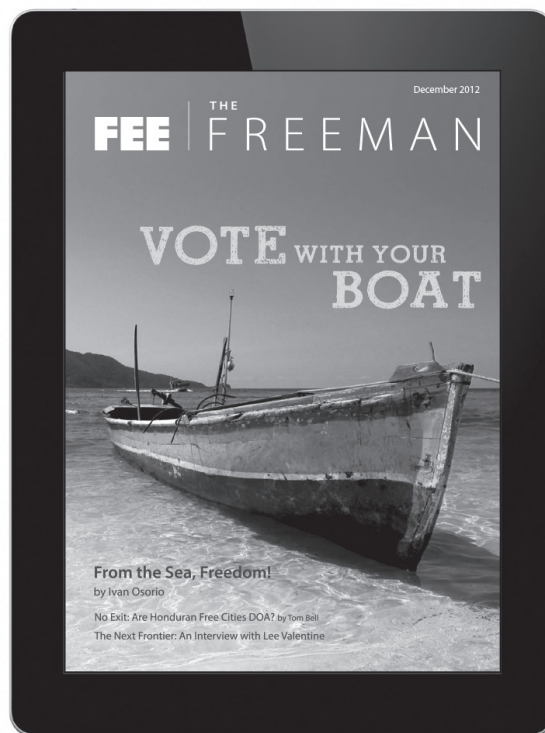
A national curriculum shaping the educational institutions available to American children for the first two decades of their lives might be a wonder, if it could

work. If it does not, shall we celebrate that at least we gave our habits of liberty away voluntarily, with great philanthropic ideals of equity and excellence in mind? Maybe we should consider hedging our bets. **FEE**

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MAX BORDERS

As a proud public school parent, I stand with the current students of the district and for decades to come in supporting this year's school bond proposals. While it may be momentarily cathartic to exact my revenge for past indiscretions on the district's current staff and board, generations of kids will suffer if I unproductively vent my anger. School leaders who have so disappointed me and thousands of other parents will be long gone when the benefits of these bonds are fully realized.

—Jason Sabo, lobbyist

In the interest of full disclosure, my wife is head of an innovative private start-up school in Austin. My son is a student there, along with six other great kids. Last week we celebrated the school's first anniversary. My wife was glad to break even. Maybe next year she'll be able to pay herself a small salary. But she isn't really in it for the money.

In our city, however, voters just approved two bonds for the government schools totaling \$489.7 million. Yet despite having to compete with “free” and being forced to subsidize her competition, my wife goes on. You see, she is a true believer—in her educational philosophy, in her school community, and in our son.

Perhaps you can imagine our consternation when we saw this:

We have to break through our kind of private idea that kids belong to their parents or kids belong to their families and recognize that kids belong to whole communities.

Those are the words of Melissa Harris-Perry, a Tulane professor of political science and television personality, speaking in a controversial MSNBC spot.

There is probably no greater threat to real community than the conflation of community with State power. Yet look around: You can see this conflation used almost daily to justify all manner of injustices. And many of these injustices are committed against children.

I realize evoking “the children” is almost always a cheap rhetorical tactic—a conversation killer, maybe the punch line of a joke. But education is as personal for my wife and me as it is an issue of general principle. All around us, people are using the vagaries of community not only to achieve any of a thousand illiberal ends, but to perpetuate the government school system and specifically to propagate the idea that *children are the property of the State*.

At *The Freeman* we're familiar with all sorts of collectivist bromides. Still, if I had read Harris-Perry's

sentence above in isolation, I might have been tempted to give her the benefit of the doubt—especially if we think of community not as the State, but as what it is and should be: the voluntary association of people who find one another, work together, and provide assistance to each other in times of need.

Community is not something that can be fashioned by elites or simply coerced into being. It is an emergent phenomenon. It



spirit of america/Shutterstock.com

is the product of intertwining commitments. Community is built by a free people and held together by invisible bonds—bonds of love, charity, and trust. Community cannot be fashioned by State largesse, central planners, or police power. So, yes, communities can certainly participate in the development of children.

But Melissa Harris-Perry is not talking about real community:

We have never invested as much in public education as we should have because we've always had a private notion of children; your kid is yours and totally your responsibility. We haven't had a very collective notion of these are our children.

Let that settle for a moment.

Award-winning education reformer John Taylor Gatto, who understands real community, has written volumes about the effects on children of 12 years in government schools:

Inevitably, large compulsory institutions want more and more, until there isn't any more to give. School takes our children away from any possibility of an active role in community life—in fact, it destroys communities by relegating the training of children to the ends of certified experts—and by doing so it ensures our children cannot grow up fully human. Aristotle taught that without a fully active role in community life one could not hope to become a healthy human being. Surely he was right. Look around you the next time you are near a school or an old person's reservation if you wish a demonstration.

I don't have to look. I remember it well: "Line up." "Remain in your seats." "Raise your hand." "Open your books." "Head down on your desks." "You're tardy." "No talking." "Pass up your work." It often seems more like an internment camp than a community.

But if Harris-Perry had been talking about a more Aristotelian idea, we might have concluded she was speaking figuratively, perhaps idiomatically about the

relationship between families and communities. After all, we human beings need each other to develop fully, and a good-neighbor ethic is perfectly consistent with an individualism that respects freedom of association. I call it "rugged communitarianism."

But Harris-Perry's worldview is not rugged communitarianism. It is ruthless collectivism. It's a worldview that compels people to sustain a system that cartelizes teachers and alienates children from the very communities in which they will eventually have to live.

What's most troubling to me is that Melissa Harris-Perry claims State ownership of children before a very nice camera, in a most unapologetic fashion, so as to be piped into the living rooms of a lot of people. She represents millions. Her words and image were taken and packaged up by complicit producers, color-treated, and allowed to represent the ethos of an entire television network.

I try to distance myself from TV rhetoric, hysterical talking points, or the otherwise squirrely narratives of an increasingly polarized media. But Harris-Perry's words chilled me to my bones. I knew once I saw that commercial I could never let my child set foot in a government school.

It's not just because I think of my son as belonging to *me*, though admittedly he's mine in some limited sense. I think of my son as also belonging to *himself*, more and more every day. He is in the process of becoming the captain of his own life. He is not the product of a five-year plan. Nor is he a bucket into which any expert's contrived curriculum should be poured like so much thin gruel. At six, he is certainly no pliable drone to be molded by standardization and trained to serve Harris-Perry's collective. And he won't be at 16 or 26, either.

My son, like almost every other child, is an autodidact. Unlike other children, though, he is a member of a dynamic school community that includes people of all ages. He is not the product of a State contrivance—a Skinner Box that requires he sit at attention at one desk arranged 5 x 5 while a State employee reads from a script. My son's school community is much more robust than any institution that purports to prepare children for life by taking them out of it. And his community is as unique as he is, because each member of that community is unique and their collective actions are the product of

intimate, localized processes. The pedagogy offers a living quest, not standardized tests.

In Melissa Harris-Perry, I had seen the face of statist collectivism. It was soft, sweet, and delivered at very low cost to millions in a glossy TV ad. Thankfully, a lot of people were outraged by that MSNBC spot. But some weren't.

In fact, people who think like Melissa Harris-Perry are legion. Many are parents. Generally, they work in education, at all levels, feeding like parasites on the wider economy. In fact, *they are educating most people's kids*. And that is why, year by year, more people sound like Harris-Perry. She is the product of an ideology forged in Bismarck's Germany, refined in Mussolini's Italy, and given expression in our U.S. school system. I'm sure a great chunk of Americans saw the Harris-Perry ad on television and nodded their heads as if someone—*finally*—had brought clear articulation to what they'd secretly believed all along: *Government is our parent*.

As Gatto reminds us: "Institutional leaders have come to regard themselves as great synthetic fathers to millions of synthetic children, by which I mean to all of us. This theory sees us bound together in some abstract family relationship in which the state is the true mother and father; hence it insists on our first and best loyalty."

The public school system—planned for your kids by central power elites—is the status quo. It has been for a long time thanks to the fully subsidized childcare it offers. Those who express any skepticism about this scheme are painted as radicals, or worse—uncaring, atomized individualists. People like Gatto, whom I quoted above, are considered fringe. Why? Because, as Gatto himself reminds us, "The sociology of government monopoly schools has evolved in such a way that a premise like mine jeopardizes the total institution if it spreads." Gatto describes teacher innovation or system critiques of the schools cartel as a "bacillus" the system must eradicate.

Any system is composed of agents who benefit from the system, so the system wants to protect and perpetuate itself. And you know, that's kind of understandable. But behind this dangerous conflation of community and State in education, there is also an ideology. It is like a religion, only its adherents worship government.

Postscript

As my wife enters her second year of operation, she will go forward undeterred. As she competes with government schools, she has a lot working against her. People like Jason Sabo, quoted at the opening of this article, join Melissa Harris-Perry in conflating community with State power despite the high costs of exit and voice. Sabo laments:

The Austin school district has made me literally sit for hours in the cold rain for one of a handful of golden tickets necessary to address the district staff and board for three minutes 12 hours later. The district has continued to demonstrate an inability to meaningfully partner with parents to steer its schools into the future.

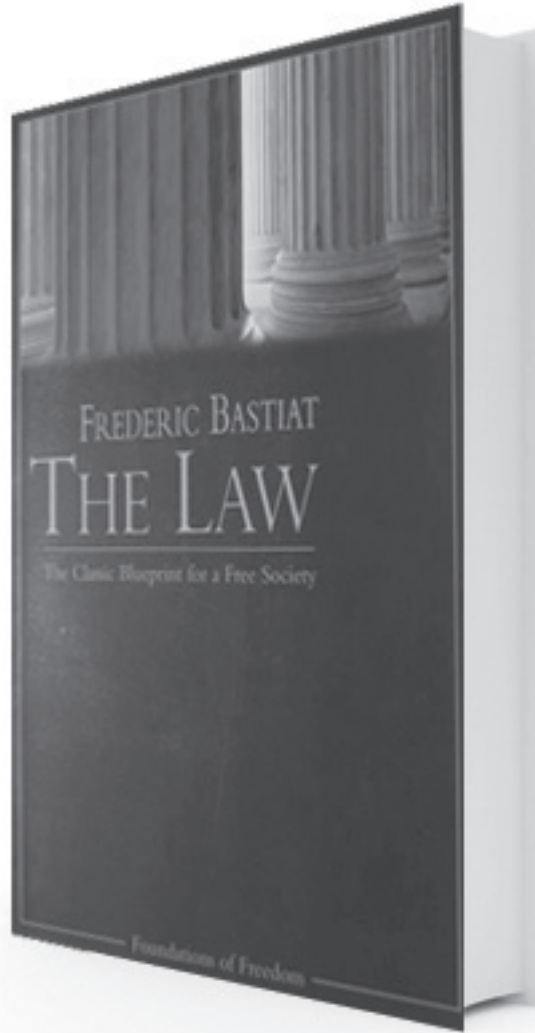
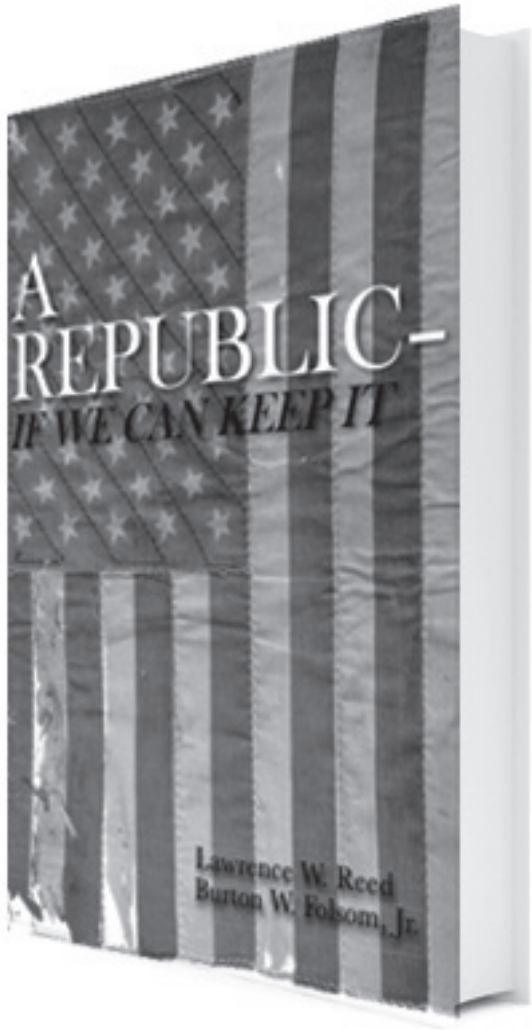
Despite all his lamentations, Jason Sabo is willing to have more of your money taken and dumped into a system that makes him stand in the rain for golden tickets. It reminds me of a family of faith healers wondering why their child's cancer isn't improving. I will leave any Willy Wonka allusions and simply ask: What makes people like Sabo think the system that rations feedback is going to get any better?

Meanwhile, my wife has no problem "partnering with parents." And that is exactly why I am optimistic.

Most people love their kids more than the State. More and more people are seeing that, despite having already to pay for government schools, they want more for their kids and for their neighbors' kids, too. They, like my family, are no longer willing to participate in the Soviet factory model of education and its tendency to alienate children. They, like my family, see there are better, relatively inexpensive alternatives—even if we have to create them ourselves. It's just another way that an alert community can outcompete Leviathan.

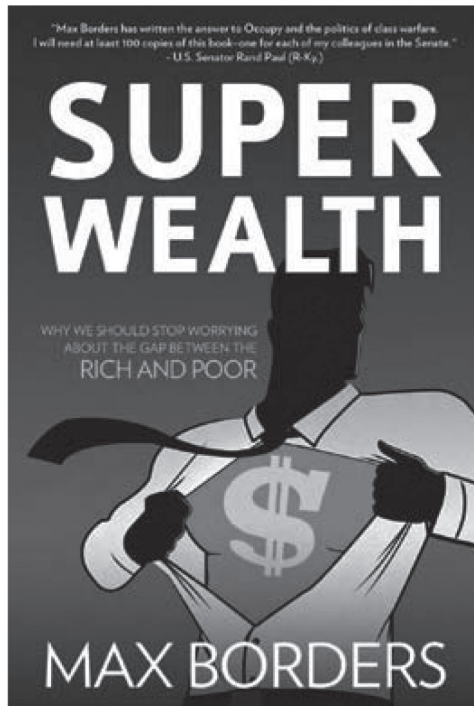
We have to. It's for the children. **FEE**

Max Borders (mborders@fee.org) is the editor of The Freeman and director of content for The Foundation for Economic Education (FEE). He is also the author of Superwealth: Why We Should Stop Worrying About the Gap Between Rich and Poor.



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Gay Marriage Expands Liberty

RICHARD LORENC



Of all the conversations I have with fellow lovers of liberty, those that explore the question of incrementalism tend to be the most provocative. Whatever the issue—implementing school choice, reducing aggression in foreign policy, or dismantling the welfare state—people who agree on the end goal can be worlds apart about the manner and means of reaching it.

So it is today with the issue of gay marriage. Although no libertarian believes it is proper for the State to deny a person his rights based on his sexuality, some, like my debate counterpart, argue that making government-issued marriage licenses available to same-sex couples amounts to an expansion of State power with no upshot for liberty. Only the complete extraction of the State from marriage, in this view, is worth libertarians' efforts.

This line of reasoning, however, is both impractical and needlessly damaging to the cause of liberty.

Legally speaking, marriage is, in fact, an important facet of the freedom of association, resembling any other two-person contract. The most important difference between legal marriage and other types of contract is the social credibility it confers on its participants. Ask the man on the street what a couple needs to become married and he will likely reply that there must be two adults, a religious leader, and a bureaucrat. But if he had to choose one officiant, odds are it would be the bureaucrat. In other words, libertarians have to deal with the fact that most ordinary people think government confers some sort of extra legitimacy on the union between two people.

Given this near-universally accepted role the State now plays in marriage, it will require many more years of preparation to open the Overton Window (tinyurl.com/ysftnb) to the possibility of removing the State from marriage entirely. That individuals in society view the State's role as a necessary element of the marriage process is probably the biggest obstacle to extracting government from marriage, as the idealist would wish.

That is why libertarians should first support the growing momentum behind ending the State's prohibition of gay marriage. Such a stance would be entirely compatible with another libertarian value: the rule of law. Libertarians recognize that for the law truly to rule, it must apply equally to every person regardless of wealth, office, or opinion.

It is vital for libertarians, operating as they must within the political status quo, to work to advance the rule of law in

marriage—first as a means of expanding freedom of association, and also as an opportunity to display our bona fides as supporters of personal liberty to skeptical observers.

Supporting legalized gay marriage would be the only serious way to address unjust, legalized discrimination—exclusion from the law—today and to advance liberty in the future.

My debate opponent was exactly right when he previously wrote, “When you get down to the basics, government licenses serve only to preserve the markets of entrenched classes of people.” Indeed, marriage licenses are similar to occupational licenses in the crucial way that special-interest groups have captured the regulatory apparatus to exclude same-sex couples from contracting. But the similarities really end there.

Indeed, much of this entire debate turns on the fact that marriage is referred to as a “license,” but it is more like a predefined contract. Libertarians should work to abolish any regime that seeks to exclude—implicitly or explicitly—certain types of people from entering into a contract.

Unlike non-libertarian attempts to alter licensing legislation, legalizing gay marriage simply expands the number of potential marriage licenses, removing the arbitrary limit that an opposite-sex definition creates. While legalization leaves the State's authority in place, it forces the State to wield its power in a far less discriminatory way, which is a victory for the rule of law.

One last point. While I do not pretend to speak for Hayek, the libertarian case for same-sex marriage also has distinct Hayekian undertones. Hayek recognized and described the differences between law and legislation, arguing that law is what exists, functions, and persists based on usefulness. Legislation, on the other hand, exists arbitrarily, and is often ignored for its irrelevance or harmfulness. I believe gay marriage is already customary law.

Legal theorist Lon Fuller writes:

Customary law can best be described as a language of interaction. To interact meaningfully men require a social setting in which the moves of the participating players will fall generally within some predictable pattern. To engage in effective social behavior men need the support of intermeshing anticipations that will let them know what their opposite numbers will do, or that will at least enable them to gauge the general scope of the repertory from which responses to their actions will be drawn. We sometimes

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Gay Marriage Does Not Expand Liberty

STEVE ESPOSITO



Marriage has every trapping of a right, and rights should not be subject to licensing. This basic position seems to evaporate into emotion when the topic turns to marriage. But whether it's styling hair, making coffins, or calling your relationship with another person a marriage, no level of government should be licensing these activities to begin with.

It helps to distinguish between a marriage and a marriage *license*. To statisticians, this might not matter: Marriage is whatever the State says it is. To the rest of us, the distinction is meaningful. Marriage *licenses*—slips of fidelity paper—unlock a flow of government benefits and privileges that should not be disbursed at all, let alone disbursed only to a select few.

Marriage licenses have been a favorite tool for much State-imposed misery, for the good of society of course. It hits close to home for me, too, since I'm a white guy and my wife is Asian. Well into the 1960s we would not have been allowed a license in Arizona, Georgia, Montana, Nebraska, Nevada, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia, or Wyoming. It was not just a matter of race either. Some states included nation of ancestry, with Filipinos hardest hit by the restrictions. White people couldn't marry anyone of another race in South Carolina, Texas, or Virginia for much of our nation's history.

Every bit of these restrictions was driven by a ruling set of people who decided for others what a marriage should look like. When some states, and eventually the Supreme Court, ended the miscegenation prohibition, the "solution" was to extend permission to miscegenate, while retaining the rest of the discriminations and the licensing scheme to enforce them.

In Tennessee, couples get a discount on their licenses for completing "marriage counseling." Oddly, all of the counseling is about the marriage and none of it is about the license. That is, the State tells you how to run a marriage. Until you finish that course—just as ignorant about Tennessee domestic law as you entered it—or unless you pay extra to skip it, Tennessee considers the both of you "incapable persons." Our pastor had to go along with this; if he'd married us before we obtained a license, he could have been fined \$500 and lost his own license.

Without a license I could not have given my wife the wedding she wanted, from the minister of our choice. Other than that, my wife and I did not have to worry about license restrictions in 2011 Tennessee. But that does not remove my resentment at the State's injecting itself into the process at every turn.

Governments that recognize the license grant a host of special illiberal privileges to the licensees. That, and only that, is what the same-sex marriage "debate" is about. In 2004, relating to the Defense of Marriage Act (DOMA), the Government Accounting Office identified for the Senate Majority Leader 1,138 federal programs that mention marriage as part of a recipient's qualifications. All of the arguments before the Supreme Court on this topic are about accessing these special privileges and benefits for licensed couples. Incidentally, it's not just the gender of the parties to the marriage that is at issue; it's the number as well. The recent oral arguments in the DOMA case before the U.S. Supreme Court mention in passing that marriage licenses are for *couples* only, and four states have constitutional prohibitions against polygamous marriages because the federal government forced those prohibitions.

Marriage *licenses* are much different from marriage agreements. One thing a marriage license is not, and never has been, is a "contract" between two people. In contracts, the parties get to set terms. In marriages, the parties get to set the terms. In marriage *licenses*, the parties don't get to set any terms whatsoever. The license is between individuals and the *State*, not between you and your partner (or partners), and the State sets the terms. The one constant of the marriage license is the implicit prohibition of sexual relations with a party not named on the license. Other conditions of the license come and go, but this one always remains. In every single state and territory of the United States, if you prove infidelity you can get out of the license. In many, you also gain the possibility of taking your partner to the cleaners, even the possibility of a paycheck for life. Of course, there are other ways out of a marriage license, but that infidelity aspect is still true everywhere a marriage license is involved.

Marriage licenses can also decide how courts will treat paternity. Chicago Bulls great Michael Jordan and his legal team used the "presumption of paternity" principle to fight a lawsuit in Georgia, brought (and now dropped) by a married woman who claimed Jordan was the father of her teen son. Without a license in play, courts rely on scientific genetics.

Marriages are not plain old agreements like any other; they are much more intimate. It is not like a real-estate deal, it is something more special. Even we minarchist libertarians cede sovereigns some authority in tracking land ownership. What we do not expect, invite, or desire is a government keeping track of people as if they were property.

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Gay Marriage Expands Liberty

speak of customary law as offering an unwritten code of conduct. The word code is appropriate here because what is involved is not simply a negation, a prohibition of certain disapproved actions, but also the obverse side of this negation, the meaning it confers on foreseeable and approved actions, which then furnish a point of orientation for ongoing interactive responses.

Despite being disallowed by the federal government and 38 states, same-sex marriage is already law for many couples and their friends and family who witness and approve of their relationships daily. This very real customary law is going up against legislated taboo. Bringing legislation into line with this law not only permits same-sex couples to file their taxes jointly and receive spousal benefits such as Social Security, but also allows gay couples to enjoy the same formal legitimacy as opposite-sex couples.

Libertarians may not like Social Security or any other government goodies that accrue to people by virtue of being married by the State. But we should not conflate our hostility to the welfare State with expanded freedom of association and deference to the rule of law. We simply fight to reduce the size and scope of the welfare state.

As a libertarian, I strive daily to snuff out the all-too-common viewpoint that the State has some unique claim on moral authority. Until that day—mindful of how our classical liberal roots enjoin us to support equality before the law and any expansion of individual liberty, however imperfect—libertarians should accept the challenge of same-sex marriage. It is on the side of justice.

Even if we are not yet living in a world where “anything that’s peaceful” is also legal, we should at least be pleased to work toward a state of affairs in which no group may call upon the force of fiat law to exclude other groups from enjoying the same provisions and protections that the rule of law demands. **FEE**

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Gay Marriage Does Not Expand Liberty

These days, marriages are a public declaration of an intimate relationship, no matter how much of the public they are letting in on the deal and no matter if they follow a faith at all. All of the groups you involve might embrace the union, or they may decide to stop letting you and your spouse hang around. Hey, they have the same freedom to associate *or not* as you and your marriage partner do. Or maybe partners: For Jewish polygamists there might be a Habayit Hayehudi Hashalem temple down the street that will welcome you, or you can form your own, or just not worry about it. Muslims, Nigerian Celestial Christians, and Liberian Lutherans don’t have to worry about their congregations either, if they wish to form a marriage involving more than two people. When you have voluntary arrangements between willing parties, freedom rules the day. That is how marriage has evolved. When you invite the government to the honeymoon, you chase freedom from the scene.

Some incorrectly apply these sentiments to licensed marriage, calling it “a public declaration of a deep and meaningful relationship,” even though you can do that every day and twice on Sunday without a license. Indeed, millions of people denied licenses through the years did just that, and lived married without licenses. In fact, the only form of voluntarily agreed-upon marriage is the unlicensed variety. In our recent history, the government punished people for being married without a license. Is this a problem of marriage, or is this a problem caused by a government licensing scheme?

Where is the libertarian argument for liberty in the general discussion about same-sex marriage? It is absent. When expressing their solidarity with the authoritarian statists, the excuse frequently given is to make things “fair.” Well, if you are some sort of pragmatist who wants to retain all these unlibertarian programs, you are not making anything “fair” by giving special handouts that should not exist anyway to couples with licenses, while excluding the unlicensed. Neither are you extending liberty by perpetuating the licensing scheme.

Striking down DOMA might not be as good as striking the word “marriage” from the federal register. It might even be better than a lot of alternatives. Call it a tangent, call it a significant turn of events, call it what you will. Just don’t call it liberty. **FEE**

Steve Esposito is a former defense contractor and a 30-year veteran of the U.S. Army National Guard and Reserve (Aviation). A reformed Chicago School aficionado, he now embraces the “hard core” Austrian School. He currently lives in Knoxville, Tenn., with his second wife. He can be reached through Twitter (@AustrianAnarchy) and via email at AnarchistsSouffleBook@Gmail.com.

IRS Targeting: As Predictable as Politics

BRUCE YANDLE

On May 14, 2013, Washington was much astir over the news that the IRS had deliberately targeted Tea Party groups for deeper investigation and justification prior to approving applications for non-tax status.

Feeling pressure to make a statement about the matter, President Obama had this to say:

If in fact IRS personnel engaged in the kind of practices that have been reported on and were intentionally targeting conservative groups, then that's outrageous. And there's no place for it. And they have to be held fully accountable. Because the IRS as an independent agency requires absolute integrity, and people have to have confidence that they're ... applying the laws in a nonpartisan way.

The President said what most people were thinking, but his comment about IRS independence came as a shock to Washington insiders.

Shortly thereafter, the talk shows were buzzing over Obama giving the IRS independent agency status, when in fact the IRS is a part of the U.S. Treasury, an executive branch agency headed by a member of the Obama Cabinet. Editorial cartoonist Robert Ariail captured the essence of the situation that left many Americans wondering who is in charge, and if no one is in charge of this independent agency, what might be a taxpayer's fate when doing lonely battle against the IRS. (Ariail also included a hit on the Department of Justice investigation of Associated Press reporters' private conversations and communications, but that is another story.)

Even more disturbing news surfaced after Congress entered the fray and held multiple hearings on the matter. On June 2, 2013, House Oversight and Government Reform Committee Chairman Darrell Issa (R-Calif.) speaking on the talk show "State of the Union", revealed the following exchange between his committee and an IRS witness:

Q: In early 2010, was there a time when you became aware of applications that referenced Tea Party or other conservative groups?

A: In March of 2010, I was made aware.

Q: Okay. Now, was there a point around this time period when [your supervisor] asked you to do a search for similar applications?

A: Yes.

Q: To the best of your recollection, when was this request made?

A: Sometime in early March of 2010.

Q: Did [your supervisor] give you any indication of the need for the search, any more context?

A: He told me that Washington, D.C., wanted some cases.

President Obama expressed shock that government agencies would ever operate systematically to punish the enemies or reward the friends of sitting presidents.

But students of Public Choice, that discipline that uses economic logic to explain political action, were not surprised at all. And why should they be? Public Choice studies tell us that all government action is best seen as



Robert Ariail, *Spartanburg Herald-Journal*

political. All of it. Special interest influence seeps through in unusual but systematic ways. And it doesn't take written orders from the top or telephone calls from the Oval Office to make these things happen. People in politics understand the game; they know which side of the bread receives butter.

On the IRS specifically, Jim Couch and colleagues at the University of North Alabama published research in 1999 that focused on statistical treatment of IRS audit activities as conditioned by political variables. The 1995 audit data were part of annual summaries for IRS districts reported in the Transactional Records Access Clearinghouse (TRAC) at Syracuse University.

The Couch et al. statistical model explained the frequency of those audits across states. Their explanatory variable included whether or not a state senator sat on the IRS senate oversight committee or a representative sat on the house oversight group, the share of votes cast for President Clinton in 1992, and other variables that are thought to be positively associated with audit activity, such as higher levels of earned income tax credits as proxied by the state poverty rate and gambling income.

A direct quote from and summary of the work and findings are shown on the right. As indicated by the plus and minus signs over the variables, audit rates fell when senators or congressmen sat on IRS oversight committees. They fell when a larger share of a state population voted for Bill Clinton and rose for those states with a poor Clinton record. More agents in a state and more gambling mean more audits, as does a higher share of poverty.

In short, politics seem to matter in explaining IRS audit behavior.

These statistical results parallel others that have focused on federal antitrust activity, presidential declarations of national disasters (actions that trigger a flood of federal support), decisions to send combat troops to the front lines in the Vietnam War, and even where Chrysler dealerships would most likely be cancelled when the federal government called the shots during Chrysler's 2009 reorganization.

The antitrust study shows that, all else equal, actions are taken less frequently against firms headquartered in the states and districts of congressmen who sit on antitrust agency oversight committees. The national disaster study examined FEMA activity, adjusted for severity of disasters,

Poitical Influence and the Internal Revenue Service

Jim F. Couch, Keith Atkinson, Tommie Singleton, and Pete M. Williams
CATO Journal, 19(Fall 1999): 313-322.

The Mendoza family was both surprised and alarmed when they received notice from the Internal Revenue Service (IRS) that their home would be confiscated if \$200 in back taxes were not paid, especially in light of the fact that the family had never experienced an previous tax problems. However, it was Patricia Mendoza who was seen on television shouting insults at President Clinton about the deaths of 19 soldiers in Saudi Arabia: "You stink, and those boys died" (Richmond Times Dispatch 1997). Critics of the Clinton Administration are convinced, and perhaps for good reason, that the Mendoza's tax problems are not coincidental.

AUDIT RATE = $\overset{+}{f}$ ($\overset{+}{\text{POVERTY}}$, $\overset{+}{\text{AGENTS}}$, $\overset{+}{\text{GAMBLING}}$, $\overset{-}{\text{SENATE}}$, $\overset{-}{\text{HOUSE}}$, $\overset{-}{\text{CLINTON}}$).

SENATE=ONE if a state's senator is a member of the Senate Taxation and IRS Oversight Committee, zero otherwise.

HOUSE=ONE if a representative within one of the 63 IRS districts is a member of the House Ways & Means Committee.

CLINTON=% of Total Vote in a state cast for Clinton in 1992.

state population, and other variables. The researchers found greater frequency of disaster declarations for politically important states than for others. The authors reported that some 45 percent of FEMA actions were motivated by politics instead of disaster severity. The Vietnam study showed the seniority of a state's House and Senate delegation matters. Higher seniority meant lower troop death rates. The study also found that the stronger a state's linkage to defense industry contracts, the less likely troop units from that state would experience casualties. And the Chrysler study found that the state share of dealerships closed was smaller in states that provided stronger support for Obama's election, but larger otherwise.

These Public Choice statistical findings suggest two things. First, all human beings, even politicians, respond to incentives, whether they are supplying houses, food, or politically determined actions. Second, since this is common knowledge, we must take action to reduce occurrences that corrupt the political process. But how? First, by limiting the domain of government action. Then, when the domain is limited, by requiring transparency and regular agency reports that demonstrate choice neutrality, by encouraging competition from the loyal opposition and by showing constant vigilance. **FEE**

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Grave Robbers:

Anticompetitive Regulations for the Dead

ERIC BOEHM

HARRISBURG, Pa. – The monks of St. Joseph Abbey in Covington, Louisiana, leave this world in the same simple way as they live in it.

And when public interest in their basic, handmade wooden caskets grew, the monks proved to have a shrewd business sense, too. They opened a woodworking shop in 2005 to produce caskets that they sell for about \$2,000 each, far below the average price for a casket in the state.

But where the monks saw an opportunity, a state cartel of funeral home owners and funeral directors saw unwanted competition.

In 2007, the Louisiana State Board of Embalmers and Funeral Directors—eight of the nine members of which are licensed funeral directors—voted to ban the abbey from selling its caskets. Under state law, only licensed funeral directors are allowed to sell caskets, and they are only allowed to do so from state-licensed funeral homes.

Those two simple requirements buried the monks in a tangle of red tape.

To get a license, St. Joseph Abbey would have to build a funeral parlor with room for 30 people, a display room for at least six caskets, an arrangement room, and an embalming room. They also would have to hire a funeral director and pay him a full-time salary.

The monks launched a petition to the state legislature to change the regulations. When that failed, they took the board to court.

In March, a panel of federal judges upheld a lower court ruling in the monks' favor. In a scathing rebuke to the state board, the judges of the 5th U.S. Circuit Court of Appeals wrote that “funeral homes, not independent sellers, have been the problem for consumers with their bundling of product and markups of caskets.”

Open-Market Funeral

The casket-selling laws in Louisiana are unique, but there are regulations on the books in almost every state

designed to protect funeral homes from competition and lower prices.

Joshua Slocum is the executive director of the Funeral Consumers Alliance, a Vermont-based organization that favors a more open market for funeral providers and customers. He says the funeral industry is unlike most other businesses in two key ways.

“For one, there are no repeat customers,” Slocum says glibly. “I have but one life to give to my funeral director.”

Having no repeat customers means there is little in the way of competition for the best services. And since literally everyone has one life to give, there is no shortage of customers.

There is also little market pressure on the establishments because it is rare for anyone to “shop around” for a funeral home in the way he or she might seek the best deal for a cruise or any other once-in-a-lifetime purchase.

This is partially psychological—we have a natural aversion to thinking or talking about the inevitable end of our lives, and cost is rarely in the front of mourning family members' minds.

But do a dead body's final moments above ground or a family's last goodbyes to a loved one require a three-story Victorian home, a \$30,000 embalming room, a Mercedes hearse, and a \$4,000 casket? In most places, you'd have a hard time finding an alternative.

That is slowly starting to change, thanks to entrepreneurs like Verlin Stoll, who believe there is an untapped market for affordable, no-frills funerals that would appeal to those with modest means.

Stoll opened Crescent Tides funeral home in St. Paul, Minnesota, in 2006. He offers low-cost funerals in a nondescript building in an office park that does not have a viewing chapel or other amenities. The basic package at Crescent Tides starts at \$250, about 10 percent of the average Twin Cities funeral.

His model has been so successful that Stoll wants to open a second location in nearby Minneapolis, but in order to do so, he has to comply with costly state regulations—like one that requires that he build a \$30,000 embalming room in the second location, despite the fact that he outsources embalming services to a third party and specializes in cremations and other types of funeral services that do not require embalming.

And Stoll already has an embalming room at his St. Paul location; he uses the room for storage because he does not need it.

“This additional expense has forced him to delay expanding his low-cost model to a new community,” said Katelynn McBride, an attorney with the Institute for Justice, a national libertarian public-interest law firm that is fighting the law on Stoll’s behalf. “We just don’t think where funeral homes have no interest in embalming that they should have to build useless facilities.”

The Minnesota Department of Health has argued that embalming rooms are necessary as a matter of public health.

His case is currently awaiting a ruling before a state judge, following oral arguments in early March.

But in many places, onerous regulations on funerals are in retreat.

In Pennsylvania, a federal judge struck down 11 parts of the state’s Funeral Director Law—including an embalming room requirement similar to the one in Minnesota—for being unconstitutional. Like in Louisiana, the rules were written by an unelected panel controlled by licensed funeral directors.

The Keystone State is perhaps the funeral home capital of America. There are more than 1,600 funeral homes in the state, and each performs, on average, fewer than two funerals per week.

In a truly free market, Slocum says, that many funeral homes would never be able to stay in business. After all, how many businesses in other sectors would be able to survive on a single job per week?

But thanks to rules that keep costs high and discourage head-to-head competition that would drive costs down, all those funeral homes remain open and consumers have no idea they are being overcharged.

John Eirkson, executive director of the Pennsylvania Funeral Directors Association, disagrees with the idea that the industry has been captured.

Eirkson also doesn’t see regulations as anti-competitive. Rather, they are important protections that keep

unscrupulous owners from taking advantage of grieving families. Eroding long-standing regulations on the industry means fewer inspections of funeral homes, including inspections of funeral homes’ finances, he warns.

But it is the funeral board that is taking advantage of customers, says Ernie Heffner, who owns a dozen funeral homes across Pennsylvania. He was one

of several plaintiffs who brought the challenge that ended some of the state’s regulations last year—including such minutiae as restrictions on the names of funeral homes and a prohibition on serving food during visiting hours.

“Now I can offer continental breakfast visitations and I can offer dessert visitations in the evening. Is that a bad thing? I don’t think so,” Heffner said.

The changes also open the door to high-efficiency, low-cost funeral homes in Pennsylvania that could adopt Stoll’s successful Minnesota model.

Death may not be proud, but it might finally be getting a little less expensive. **FEE**



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Coca-Capitulation

Coca-Cola Confronts the Politics of Obesity

WENDY MCELROY

Is Coca-Cola being a “conscious capitalist” or is the company capitulating?

A headline on the advertising and technology blog *Ad:Tech* prompted the question for me. “Why Coca-Cola will voluntarily stop marketing to kids,” it read.

“In an entirely voluntary move,” Coca-Cola announced that it would “cease all worldwide marketing efforts to children under 12, put calorie counts on all packaging and labeling and ensure that low-calorie and no-calorie ... beverages are available in every nation on earth where Coca-Cola is sold.”

How “voluntary” are decisions made in an environment that is defined as much by politics and legal penalties as it is by market forces? The evolution of Coca-Cola’s relationship to obesity politics is instructive.

HOW “VOLUNTARY” are decisions made in an environment defined as much by politics and legal penalties as it is by market forces?

Obesity: The Public Health Obsession

In 1952, Dr. Lester Breslow advised a meeting of the American Public Health Association that obesity was “America’s No. 1 health problem.” America’s official obesity rate was then estimated at 10 percent. By 2008, *The Journal of the American Medical Association (JAMA)* found the adult obesity rate to be 32.2 percent for U.S. men and 35.5 percent for U.S. women.

Experts disagree about why obesity rates have increased. Some argue that greater prosperity encourages consumerism. Others point to an expanded definition that subsumes more people, and often arbitrarily so. The dominant explanation today, however, is that the prevalence of high-calorie and unhealthy convenience food causes obesity.

Take McDonald’s. In 1952, there was only one McDonald’s in the world, according to the McDonald’s

website. By 2012, however, there were more than 14,000 spread across the country. To consumer and public-health advocates, this is proof positive of junk food’s guilt. The solution? They want government to control food production and distribution in order to achieve better health outcomes.

As the world’s leading source of sugary drinks, the Atlanta-based Coca-Cola company has received much of the criticism over the years. Over the last decade, a barrage of studies have claimed that products like Coke’s are responsible for both obesity and a surge in health

problems such as childhood diabetes. For example, in 2005, a Tufts University paper titled “Preliminary Data Suggest That Soda and Sweet Drinks Are the Main Source of Calories in American Diet” got widespread coverage. And

as Jack Winkler, professor emeritus of nutrition policy at London Metropolitan University, commented to *The Wall Street Journal*, “Soft drinks are the devil product at the moment.”

Coca-Cola’s Clash with Obesity Politics

Coca-Cola is a politically active corporation. In 2010, it reportedly spent \$4,890,000 on lobbying efforts in the United States, largely to fight the imposition of increased taxes on sugary drinks. In late 2012, when New York City was poised to ban the sale of sodas larger than 16 ounces, Coca-Cola was one of the parties in a successful lawsuit to block the regulation.

The Obama administration is far from the first White House to crack down on health risks. But the Obama years have been a game-changer for the issue of obesity. The soda devil has loomed large in the First Lady’s signature organization Let’s Move, a government-funded drive to

promote health among American children. “[Childhood obesity] isn’t just a policy issue for me. This is a passion. This is my mission,” declared Michelle Obama. “I am determined to ... change the way a generation of kids thinks about food and nutrition.” A part of her mission has been to use monetary rewards to “encourage” states and public schools to remove sugary drinks from school menus and vending machines. In 2011, the U.S. Department of Agriculture (USDA) announced an allocation of \$5.5 million for such motivating “grants.”

The soda-removal campaign is just one facet of a much broader attack by government upon the producers of certain foodstuffs.

A common maneuver in the attack is to establish tax-funded studies that document a public health risk. (Note: Tax funding does not invalidate results, but it should raise the same concerns about bias as corporate funding does.) Then, once health risks are established, the discussion turns quickly to targeting the risk and controlling the problem through regulation. For example, *The New England Journal of Medicine* conducted a poll on whether sugar-sweetened beverages should be regulated by government. Results from the studies are also used to promote tax-funded “awareness” campaigns to alert the public.

This lays the groundwork for the health problem to be addressed by laws or regulations on the federal, state, and local levels. Typical solutions include raising the cost of a good through additional taxes and/or restricting access to it. At the same time, “healthy” alternatives can be encouraged through subsidies or favorable regulation.

The specter of lawsuits also helps obtain “voluntary” compliance by corporations like Coca-Cola. Often the lawsuits revolve around a violation of regulations rather than the health risk itself. A *Bloomberg* headline (March 1, 2013) reported on a recent example: “Coca-Cola Must Face Lawsuit over Orange Juice Labeling.” This growing legal trend has created a new field of experts: namely, obesity and junk food lawyers who compare sugar to tobacco.

Thus, many corporations are pre-emptively conforming to threats of government control in order to avoid expensive lawsuits and bad publicity.

Obama Ups the Ante

Companies like Coca-Cola and McDonald’s are wildly popular. So how are politicians and pressure groups able to whip up support for pushing them around?

For decades, companies like Coca-Cola have been accused of driving up

the cost of medical care for Americans. The accusation has political teeth because the taxpayer has assumed more and more of this cost through programs such as Medicare.

The universal health care program known as Obamacare has made highly personal decisions, such as diet, into a political concern of the public. More health care than ever is paid for by government and it is thus likely to become scarce. This makes the public more favorable to policies that purport to drive down costs and ease access. Food politics fit the bill nicely.

The Obama administration has commended Coca-Cola for its recent adoption of health-promoting policies, but there is reason to believe that its voluntary embrace is more accurately viewed as reluctant compliance.

IF COCA-COLA’S actions are a voluntary response to customer demand, then government regulation is unnecessary. Why waste the tax money? Why restrict the personal choices of the one person who is most impacted by food politics—the consumer?

Consider Coca-Cola's introduction of vending machines that prominently list calorie counts. The move has been described as a voluntary response to consumer demand for fewer calories in soda. And, certainly, if people shift their money toward alternatives, businesses will respond. But the timing of the new vending machines is highly suspicious.

USA Today observes that the installation "comes ahead of a new regulation that would require ... vending machines to post calorie information" and in the wake of "the Supreme Court's decision ... to uphold President Obama's health care ... regulation that would require ... vending machines to post calorie information."

The government is in the uncomfortable position of trying to back companies into voluntary compliance. The position is uncomfortable because if Coca-Cola's actions are a voluntary response to customer demand, then government regulation is unnecessary. Why waste the tax money? Why restrict the personal choices of the one person who is most impacted by food politics—the consumer?

Consumers: Lost in the Shuffle

The political assault on Coca-Cola is usually described in terms of health paladins using power to restrain an unscrupulous corporation. Whatever the truth of that narrative, food politics is also a brutal attack upon consumers who end up forcibly being "protected" from their own choices. Attempts by municipal authorities like Michael Bloomberg to limit salt intake and the size of sodas are but a glimpse of a nanny state writ large. Such moves inspire resistance from adult Americans who have retained enough rugged individualism to believe that consuming sugar is their own business.

It is no coincidence that government's greatest regulatory success with food has been with children, especially in the schools. Unlike adults, children are not viewed as capable of making informed decisions. Such a view facilitates regulation. After all, if children's decisions were treated with respect, it would be difficult to dismiss reports from schools

where children are throwing the mandated "healthy" lunches into garbage cans.

But even admitting (for the sake of argument) that children are incapable of informed consent, the notion of government taking over their choices is odd. That is the role of a parent. Government seems to be saying that parents are also incapable

of informed decisions—or, at least, of decisions with which the government agrees.

Conclusion

There may be valid reasons to criticize the business practices of Coca-Cola and companies like it. But they can't be accused of failing to produce a good that people want to consume. In the presence of more health information than ever, and despite the risks, some consumers still choose sugary drinks because they are tasty and affordable. Delivering those drinks into customers' hands in a convenient and inexpensive manner shouldn't invite opprobrium. Coca-Cola's current policy to *not* deliver those drinks to customers is as much or more a response to gathering government power than to the marketplace. **FEE**

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The Market: This Time It's Personal

The Other Side of the Impersonal Market

SANDY IKEDA

Economics teaches us of the virtues of the impersonal market. Indeed, if we had to know everyone who helped to make our daily bread before we could eat it, we'd all go hungry. But at the same time, when we turn our attention from the marvelous operation of the economic system as a whole toward human action at the "micro" level, another virtue of the free market comes into view in the way it lets us create and destroy social ties. Without that ability, extensive voluntary trade would not be possible either.

Impersonality at the Macro Level

There is no better explanation of how vast, impersonal cooperation works than Leonard Read's classic essay "I, Pencil," in which he elegantly shows that no single person can know all that goes into the making of something as apparently simple as a pencil. That's because a pencil is the tip of an enormous production iceberg, only one of whose roots stretches back, for example, to the iron mines that provide a single input for just one of the tools that go into manufacturing the saw that cuts the wood from which a portion of the pencil shaft is made. The real wonder in this, however, is that no single person has to know. Tens of thousands, probably tens of millions, of people who will never meet nevertheless work together to make a single pencil.

Prices that emerge from the buying and selling of privately owned iron, wood, labor, tools, know-how, etc., as well as the market price of the pencil itself, are key in guiding the decisions at each of the dizzying number of stages of production. Again, no one can know, and no one need know, all of these stages.

Still, each worker, investor, manufacturer,

financier, etc., does need to know, and know with expertise, the people with whom she has to deal in the stages immediately upstream and downstream from her position in the process.

Getting Personal at the Micro Level

Most of us wouldn't hire a plumber without the recommendation of someone we trust, much less make a major investment in a business or lifestyle without first consulting a number of friends, colleagues, and professional advisers of one kind or another. In our daily affairs the personal plays an indispensable role.

My father sold his farm produce to the same market in Phoenix for many years. I recall that while each delivery was being unloaded and weighed he'd sit and chew the fat with the owners and managers of that produce market,



The ability to form and dissolve social connections on the micro level helps solve the macro-level knowledge problem.

while I waited impatiently to start back for home. At the time I didn't appreciate what an important part of doing business those few minutes of socializing were in maintaining trust, as well as keeping in touch with the latest business news and opinion—information that meant much more coming from those guys than it would have coming from some anonymous source.

At the macro level, which encompasses the entire production process of a pencil (or of green onions), markets are highly impersonal. But at each of the myriad stages of that highly complex process, between (for example) the buyers and sellers of the cedar or rapeseed or raw carbon, is a relationship that is necessarily personal to one degree or another.

Of course, voluntary personal connections alone cannot solve the enormous knowledge problem that F. A. Hayek and others have identified. At the same time, however, what individuals have to know at the local level, even with the aid of money prices established on free markets, is enormous. While this may be obvious to most of us, I think it's especially important for those of us who are devoted to understanding and explaining the market process not to lose sight of it, as we are sometimes apt to do when we marvel at the impersonality of the market.

Social Networks and Economic Freedom

Now, competition, by constraining the proclivity of some buyers and sellers to act dishonestly, can relieve many of our day-to-day worries about the trustworthiness of those we have dealings with. And what Elinor Ostrom

might call the “nonmarket bases of the market process,” such as norms of reciprocity, conventions of fair play, and the like, do much the same thing. But as the sociologists Nicolas Christakis and James Fowler have recently written, norms and conventions are transmitted and reinforced though social networks. Prices are too.

Informal connections like I've described can of course exist in less free, more regimented societies. It's just that the freedom to associate with strangers, which is an important part of economic liberty, gives rise to so many more of those connections. True liberty means not only being able to form ties with new people and new social

TRUE LIBERTY
means not only being able to form ties with new people and new social networks, however, but also having the freedom to cut ties to old business partners and customers, as well as to let go of old social networks.

networks, however, but also having the freedom to cut ties to old business partners and customers, as well as to let go of old social networks, including those of friends, family, and community.

The ability to form and dissolve ties to social networks gives greater access to an existing array of diverse knowledge and tastes—much of which may not be useful but some of which undoubtedly is—while expanding the range of that diversity by stimulating new ideas in business, science, and culture. Liberty encourages economic progress and social diversity by giving each the freedom to move, not only from place to place but from one social network to another.

That freedom of movement, in physical and social space, is the essence of the free society. **FEE**

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Advice to Young, Unemployed Workers

JEFFREY A. TUCKER



We are now in the fifth year of very choppy hiring markets for young workers. The latest unemployment numbers once again leave them out from posted gains. Not even the boom in temporary employment included them.

The United States has one of the highest rates of unemployment among 20-to-26-year-olds in the world. Nearly half of the U.S. army of unemployed is under the age of 34. As for those who are hired, there is a huge gap between wage expectations and paycheck realities, which is exactly what you would expect in a post-boom world. A survey by Accenture finds that more than 41 percent of recent U.S. college graduates are disillusioned, underemployed, and not using their college degrees in their work.

The young generation faces challenges unlike any that most people alive have seen. This situation requires new adaptive strategies.

What follows, then, is my letter of advice to young workers.

Dear Young Workers:

Even if it weren't for the economic stagnation, you would already be facing a tough market. That's because you are showing up at the job marketplace nearly empty-handed. Our society long ago decided it was better for you to sit in desks for 16 years than to gain any real work experience in the marketplace that is likely to hire you later.

Even if it were legal for you to work when you are capable of doing so—from the age of maybe 12 or 13—the government has imposed these wage-floor laws that price your services out of the market. Then you are told that if you stay in school, you will get a great, high-paying

job right out of college. Then it turns out that employers aren't interested in you. You are beginning to sense that employers think you have few marketable skills and have no demonstrated predisposition to produce.

Here's the root of the problem: People have been lying to you all your life.

As a young child you were repeatedly fed slogans about the equality of everyone. The urges to compete and win were suppressed in your childhood games, while sharing and caring for others were exalted above all other values.

Then at some point—somewhere between the ages of 7 and 10—something changed. All that caring/sharing stuff ended and a world of dog-eat-dog began. You were expected to get perfect grades, to excel at math and science, to be perfectly obedient, to stay in school for as long as possible. You were told that if you did that, everything would work out for you.

It does work out for some. But only a small minority of people are disposed to both compliance and rote learning. And even for those people, not everyone gets what he's been promised. As for the rest, there is no plan in place. Those who fall through the cracks are expected to make it on their own somehow.

How do you make it? It all comes down to remunerative work. And there's the barrier you face right now. You have the desire and you are looking for some institution that values what you have to contribute. But you can't find the match.

Consider: Why does any business hire an employee? It happens based on the belief that the business will make more money with the employee than without it. The business pays you, you do work, and, as a result, there are greater returns coming in than there would otherwise be.

But think through what this means. It means you have to add more value than you take out. For every dollar you earn, you have to make it possible for the business to earn a dollar plus something extra. This task is not easy.

Businesses have costs to cover in addition to your salary. For example, government mandates that businesses be insured. You have to be trained. There could be healthcare costs, too. There are uncertainties to deal with. All of these add to the burden that you place on the business, which adds to the costs of hiring you.

What this means is you have to be more valuable than you think. Why are minimum-wage jobs so hard? Because it's difficult for an inexperienced worker to be worth paying that much. The employer has to extract as much value as possible from the relationship with you just to make that relationship happen at all. That can't happen right away because odds are you are losing the company money in the first months of employment simply because you are untrained. You end up scrambling like crazy just to earn your keep.

If you already understand this rule—that you must add more value than you take out—you now know more than vast numbers of young workers. And this gives you an advantage. While everyone else is grumbling about the workload and low pay, you can know why you are having to hustle so much and be happier for it. You are producing more for the company than you take out. Doing that consistently is the way to get ahead. In fact, it's the key to life.

But in order to get ahead, you have to be a player in the first place. It does little good to sit around and wait for the right job at the right pay. Forget all your expectations. If something, anything, comes along, you should jump on it immediately. No job is too menial, despite what you have



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been told. The goal is just to get in the game. Yes, you have much higher salary expectations, and those might be met someday. But not yet.

The first step is to get into the game at some wage, just something, somewhere. The fear that such work, whatever it is, is somehow beneath you is a serious source of personal undoing. Those who are willing to perform the most “menial” of jobs are the people who can make a good life for themselves. Just because you perceive the job as “menial” does not mean it is not valuable to others and especially, ultimately, to you.

You learn from every job you have. You learn how to interact with others, how a business runs, how people think, how bosses think, and how those who succeed get ahead versus those who fail. Working is a time for learning, as much as or more than school.

People's number-one fear is that their job will somehow define their lives. Hence, they conclude that a job stocking shelves at Walmart will redefine or dumb down who they are. This notion is absolutely untrue. That job is a brick in your foundation.

In order to get any job, you have to do more than drop off a resume or file one online. You have to emerge from the pack. That means that you have to sell yourself like a commodity. You have to market yourself (and marketing is the least-appreciated and yet most-crucial feature of all commercial acts). That is not degrading; it is an opportunity. Find out everything you can about the company and its products. After you apply, you need to go back and back, meet the managers, meet the owners, all

with the goal of showing them how much value you will add to their enterprise.

In this new job, success is not hard, but it requires discipline. Just follow a few simple rules. Never be late. Do first whatever your immediate supervisor tells you to do. Do it much more quickly and thoroughly than he or she expects. When that is done, do some unexpected things that add value to the environment. Never complain. Never gossip. Never partake in office politics. Be a model employee. That's the path toward thriving.

It's not just about adding value to the company. It's about adding value to yourself. The digital age has given us all amazing tools for accumulating personal capital. Get a LinkedIn account and attach your job to your personal identity. Start putting together that essential network. This network is something that will grow throughout your life, starting now and lasting until the end. It could be the most valuable commodity you have outside your own character and skills. Take possession of your work experience and make it your own.

While doing all this excellent work, you need to be thinking about two possible paths forward, each of them equally viable: advance within this one firm or move to another firm. You should go with whichever is to your best advantage. Never stop looking for your next job. This is true now and always throughout your life.

A huge mistake people make is to embed themselves emotionally in one institution. The law encourages this attitude by tying all sorts of advantages to the status-quo job you currently hold. You get health benefits, time off, scheduled raises, and it is always easier to stick with what you know. To do so is a mistake. Progress comes through disruption, and sometimes you have to disrupt yourself to make that progress happen.

To be willing to forgo the security of one job for the uncertainty of another gives you an edge. Average people

around you will sacrifice every principle and every truth for the sake of security. People, with very few exceptions, fear the uncertainty of an unknown future more than the seeming security of a known status quo. They will give up every right and every bit of their souls for the promise of security (whether it be through a paycheck or an armed police officer), even to the point of personal misery or obeying a wicked despot (whether it be a boss or a dictator). You can break free of this tendency, but it takes courage, risk-taking, and a conscious act of defying convention.

IF YOU ALREADY understand this rule—that you must add more value than you take out—you now know more than vast numbers of young workers.

You should always think of yourself as a productive unit that is always on the job market. You can go from institution to institution, always upgrading your skills and hence your wages. Never be afraid to try something new or to plunge into a new work environment.

Clever finance management here is crucial. Never live at the level that matches your income. Your standard of living, instead, should match your next-best employment opportunity, the one you have forgone or the one you might take next. If you stick with this practice—and it requires discipline—you will be free to choose where you work and to take greater risks. You will also develop a cushion should something go wrong.

At the same time, there could be advantages to sticking around one place, even as everyone else around you is moving from here to there. Even if that happens, you should still think of yourself as being on the market. You are governing yourself. Don't let yourself be beholden to anyone, but understand also that no one owes you a living. That's the only way to make clear judgments about your career path.

At every job, you are going to learn so much about human ethics, psychology, emotions, and behavior. Most of what you will learn will be enlightening and encouraging.

Some of it, however, is not pretty and might come as a shock.

First, you will discover that people in general are extremely reluctant to admit error. People will defend an opinion or an action until the end, even if every bit of logic and evidence runs contrary. Sincere apologies and genuine admissions of error and wrongdoing are the rarest things in this world. There is no point at all in demanding apologies or in becoming resentful when they fail to appear. Just move on. Neither should you expect to always be rewarded for being right. On the contrary, people will often resent you and try to take you down.

How do you deal with this problem? Don't get frustrated. Don't seek justice. Accept the reality for what it is. If a job isn't working out, move on. If you get fired, don't seek vengeance. Anger and resentment accomplish absolutely nothing.

Keep your eye on the goal of personal and professional advancement, and think of anything that interrupts your path as a diversion and a distraction.

Second, we all want to believe that doing a great job and becoming excellent at something will lead to personal reward. This is not always or even often true. Excellence makes you a target of envy from those around you who have failed by comparison. Excellence can often harm your prospects for success. Meritocracy exists, and even prevails, but it is realized through your own initiative, and it is never just granted freely by some individual or institution. All personal and social progress comes about because you alone push through the attempts of everyone around you to stop it.

Third, people tend to possess a status-quo bias and prefer to follow orders and instructions; most people cannot imagine how the world around them might be different

through initiative and change. If you can train yourself to imagine a world that doesn't yet exist—to exercise the use of imagination and creativity in a commercial framework—you can become the most valuable person around. You might be among those who can be real entrepreneurs. You might even change the world.

As you develop and use these talents, and as they become ever more valuable to those around you, remember that you are not infallible. The commercial marketplace punishes pride and arrogance and it rewards humility

and the teachable spirit. Be happy for your successes, but never stop learning. There is always more to know because the world is ever-changing, and none of us can know all things. The key to thriving in this life is to be prepared to not only change with it but to get in front of the change and drive it.

From where you are now, unemployed with

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This perception is not true.
There are barriers, to be sure,
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few seeming prospects, your future might look hopeless. This perception is not true. There are barriers, to be sure, but they are there to be overcome by you and you alone. The world does not work like you were told it works when you were a kid. Deal with it and start engaging the reality around you right now just as it is, using intelligence, cunning, and charm. You are the decision-maker, and whether you succeed or fail ultimately depends on the decisions you make.

In many ways, you are a victim of a system that has conspired against you. But you get nowhere by acting like a victim. You don't need to be a victim. You have free will and the capacity for self-governance; indeed, you possess the human right to choose. Today is the day to start exercising it. **FEE**

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Did Capitalism Give Us the Laugh Track?

B.K. MARCUS

The Internet has given new life to old TV shows, reminding us not only of how different things looked several decades ago but also how very different they sounded. If you watch old reruns of shows like *Hogan's Heroes* or *Get Smart*, you may notice that some of the jokes are still funny, but the artificial laughter that accompanies every gag on the sound reel can quickly alienate us from the humor.

“Most critics think that the laugh track is the worst thing that ever happened to the medium,” says University of Minnesota art history professor Karal Ann Marling, “because it treats the audience as though they were sheep who need to be told when something is funny—even if, in fact, it’s not very funny.”

For many, the laugh track represents “commercial culture” in the second half of the 20th century, but was TV comedy’s artificial audience really a product of the market? It looks more like market competition stemmed the tide of this forced frivolity.

The laugh track was originally developed as a radio editing technique to soften the transitions between scenes that were not recorded contiguously, or to enhance live laughter that was not picked up adequately during recording. This editing technique is still called “sweetening.”

The Overdose

But in the indelicate hands of television producers, the audio sweetener turned into a sugar overdose, making sitcoms ever more cloying.

Even Bob Douglass, a laugh-track engineer and the son of “laff-box” inventor Charlie Douglass, recognizes this: “On some of the shows it was abused. They wanted to keep adding more and more laughs, and it would go way overboard. They thought it was going to be funnier, and it wasn’t. A lot of producers would have the laughter almost louder than the dialogue, and that ruins it.”

Television writers from the peak of the laugh-track era stopped aiming for actual laughs and wrote instead for the timing required by the artificial audience: setup, punch line, pause for fake laugh, repeat.

Many writers and creators hated it, and some even fought against it, but the networks usually won these battles. In a 2007 interview, TV producer Lou Schermer spoke for his profession: “Why a laugh track? Because you feel that you are watching the program with a group of people instead of being alone” (*The Archie Show: The Complete Series*, DVD, disc 2).

And the suits seemed to have the numbers on their side: Whenever the studios previewed episodes with and without laugh tracks to test audiences, the laugh-track versions did better.

Dartmouth College psychology professor Bill Kelley studies the brain’s response to humor. He explains, “We’re much more likely to laugh at something funny in the presence of other people. Hearing others laugh—even if it’s prerecorded—can encourage us to chuckle and enjoy ourselves more.”

If capitalism is mass production for the masses, then perhaps the laugh-track-loving executives at the networks were just giving the people what they



Mega Pixel/Shutterstock.com

wanted. Maybe the critics are just snobs, blaming the market for the facts of supply and demand.

The Canned Laughter Cartel

Greater competition in the pursuit of profit, however, has now actually pushed canned laughter into full retreat. The studio system that allowed the laugh track to dominate television had its roots in patterns of government intervention laid down before television even came about.

The earliest days of American radio in the 1920s looked much like the Internet of the 1990s: mostly hobbyists and hardcore techies, with an influx of more mainstream users and a vanguard of entrepreneurs vying to come up with the right models to make the new medium profitable.

Despite what you may have heard about an “anarchy of the airwaves” and the need for the federal government to bring order to the chaos, that is not how broadcasters, listeners, or even government officials perceived radio at the time.

Herbert Hoover, as secretary of commerce, deliberately disrupted the early free market in radio broadcasting. Then he created a cartel of favored cronies in its place. By the time television came around, the model of cartelized mass media was already firmly established.

The result, as Paul Cantor observes, “was a general uniformity in the values portrayed on the national television networks in the 1950s, 1960s, and 1970s and a tendency toward homogeneity in the programming” (*Gilligan Unbound: Pop Culture in the Age of Globalization*, 2003, p. 165).

That homogeneity began to subside in the 1980s, due largely to Rupert Murdoch’s efforts to build a fourth network outside the cartel. To attract TV viewers away from ABC, CBS, and NBC, the Fox network had to air shows that were different, often edgier. At the end of the decade, Fox premiered *The Simpsons*, now the longest-running scripted show in television history and, according to *Time* magazine (December 31,

1999), the twentieth century’s best television series. Notably, *The Simpsons* does not have a laugh track, except on the rare occasion when canned laughter is used briefly and ironically to satirize more traditional sitcoms.

And while researcher Bill Kelley emphasizes the social role of laughing along with a larger audience, when he

DISCIPLINE

Tarfia Faizullah

What kind of disciple
is the girl who learned

how to splint her own
spine? Who can teach her

anything more about
the pliability of bone?

Where is the day she stood
in the nave of a church

overlooking a sea and found
in herself the ancient hymn

of oceanwater? Where is
the room large enough

to reveal to her this thin
peril between land

and water, between
the crooked tilt of her

body and the salted panic
of waves from which it rises?

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compared the results of his subjects' watching *Seinfeld* (with a laugh track) to *The Simpsons* (without), his brain scans suggested that people found the same things funny whether or not they were prompted by the sound of laughter.

While Murdoch had skirted the edges of FCC regulations to create a fourth network, once established, Fox did have to play by the same rules as the big three. Cable television was a different story.

Freedom Isn't Free

For decades, the broadcast cartel had suppressed any emerging technology that threatened its dominance, but it couldn't halt progress forever. When the premium cable channel HBO began to produce original comedies in the 1990s, it needed to attract top talent from the television industry. One of the ways it did so was to offer writers and producers more creative freedom (and less censorship) than they could find at the broadcast networks. The new talent wanted to ditch the laugh track.

Viewers don't seem to miss it: HBO and Cinemax together (both owned by Time Warner) have over 100 million subscribers, and HBO alone pulls in over \$4 billion a year, accounting for a quarter of Time Warner's profits.

Other networks followed their model, first on cable, then eventually in broadcast.

The trend away from engineered laughter can be seen through the Emmys: Of the five shows nominated in 2000 for the Emmy Award for Outstanding Comedy Series, four of the five used laugh tracks. In 2009, seven shows were nominated for the same award, and only one used a laugh track.

So it was outside competition that drove back the laugh track. Artists had resisted and critics had complained, but until the networks perceived a threat to the bottom

line, they stuck with the process they trusted; and until large audiences had a real alternative, they stuck with the programming of the major networks.

The laugh track did emerge as the result of decisions made by private parties—entrepreneurs, entertainers, and engineers—in the pursuit of popularity and profit; no government agency imposed it on the television industry. But when advocates of free enterprise celebrate the blessings of free-market capitalism, competition, and the profit motive, we have in mind voluntary exchanges in a commercial context of secure private property, sound

money, and little or no coercive regulation from the state. Recent history offers us no examples of unhampered markets, but some enterprises are certainly more hampered than others, and radio and television constitute one of the most regulated industries in the American economy.

Commercial television was like this from the beginning, having emerged from a fully developed and

heavily regulated radio industry, but there was nothing inevitable in radio's seizure by the state. It was the result of a deliberate plan by big government and big broadcasters.

Contrary to popular wisdom, the capitalist pursuit of the bottom line does not promote the lowest common denominator. Competition drives diversity (and vice versa). Cartels, like the one Hoover created in the broadcast media, create homogeneity.

Would the laugh track have existed in a free market? Almost certainly. But it took the uniformity imposed by the television cartel to let it dominate so thoroughly, giving artists few options within the industry—and leaving audiences little choice other than the “off” button. **FEE**

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CONTRARY TO popular wisdom, the capitalist pursuit of the bottom line does not promote the lowest common denominator. Competition drives diversity (and vice versa). Cartels, like the one Hoover created in the broadcast media, create homogeneity.

Oil! Price Discovery and Regulation

JACOB BORDEN

Market signals about the relative value of available materials are paramount for widely dispersed people to make rational decisions. Such was the solution to the “knowledge problem” elaborated by F. A. Hayek. A topical example of Hayek’s theory in practice is the decade-long adjustment in the prices of oil and products refined from petroleum. Oil is generally considered a fungible global commodity, and one frequently hears reference to global oil prices as reflecting global supply and demand. But a combination of factors over the past decade has substantively reduced the fungibility of this once-standard product.

Increasingly, oil is a design-specific product; the price you pay at the pump for a gallon of fuel more often reflects local design characteristics than the underlying price of a global commodity. These local design characteristics are exacerbated by regulations that disrupt the market’s price-discovery process.

As recently as December 2001, oil was trading at the 20-year average of \$20 per barrel, even despite the September 11 attacks and the ongoing recession. Over the next seven years, a series of disruptions drove up the price. It became more expensive to do business with the countries that held most of the world’s proven reserves, which two oil-intensive wars did nothing to help. Moreover, oil politics in Venezuela and surging demand from China and other developing nations helped push prices to record highs—over \$130 per barrel—by 2008.

By the time the economic crash brought prices back down to \$39 per barrel, major oil companies had already invested billions in research and development projects to bring new supplies online. These spanned unconventional tar sands, tight shale oil, unconventional natural gas, and even biofuels. As recovery slowly crept along in the United States, oil prices peaked again at \$110 in April 2011. Since then prices have stabilized between \$90 and \$100 per barrel. At that level for light, sweet Texas Tea, it is profitable to fill the marginal barrel with a combination of cheaper and vastly available shale oil, tar sands, and Brazilian sugarcane ethanol.

Regulatory Barriers

But even as global price discovery for oil appears to be reaching equilibrium, in the United States today there is a growing knowledge problem in what actually drives the retail supply of gasoline and diesel. As the global oil slate has gotten heavier, regulatory burdens have only increased already-daunting costs and have kept the American refinery fleet largely inflexible.

Keep in mind that no two refineries are of identical design, capacity, or location, and no new U.S. refinery has been built since 1976. The result is that some refineries today are limited by the amount of asphalt they can accept in their crude, while others are limited more by the capacity to remove sulfur. Only a handful of refiners have elected for the extensive upgrades and regulatory



approvals needed to process large amounts of oil shale or tar sands.

Increasingly stringent specifications simply cannot be met with the available refineries-and-crude mix, and regulatory bottlenecks keep other sources from picking up the slack. A recent example: Last October, one refinery in Southern California was idle for maintenance when a second refinery had to shut down briefly after a power failure. The second outage was enough to send California prices up \$0.53 per gallon above the national average. And since gasoline from outside the state doesn't meet California specifications, gasoline from the remaining California refineries had to be rationed. The United States is thus a patchwork quilt of discrete regulated markets, rather than a single market. This fact, of course, makes fuel prices higher than they would be in a single market.

Then there's ethanol. Since 2007, legislation has mandated increases in the amount of ethanol blended into gasoline. This year 14 billion gallons of ethanol will displace about 10 percent of a fast-shrinking U.S. gasoline market.

But the ethanol mandates confound a separate effort at smog prevention. Most major cities across the country are still considered non-attainment areas for ozone, a contributor to urban smog. Quite a bit of urban smog today comes from the small amount of gasoline leaking out of your gas tank. Especially in the summer, small amounts of evaporated gasoline from each of millions of cars add up to a lot of fugitive emissions.

Ethanol makes evaporation even worse. As refiners have been required to blend in more ethanol, they have had to compromise already-constrained operating conditions and crude slate in order to meet EPA specifications. The result is an even lower yield of gasoline from each barrel, and even higher prices for summer-grade gasoline. The EPA evaporation standard also exacerbates wasteful incentives

from artificial price barriers: Gasoline sold across state and county lines may not be subject to regulation and may therefore be cheaper, making it worthwhile to drive 20 to 30 miles just to buy gasoline.

Diesel

A similar set of regulatory constraints is affecting the supply of diesel. In 2007, the EPA lowered the sulfur limit for on-road diesel to 15 parts per million (ppm), and for the first time it applied the previous specification of 500 ppm to off-road diesel, such as railroad and marine fuels. Last year, the 15 ppm ultra-low-sulfur diesel (ULSD)

specification was applied to off-road diesel as well. Having to meet new specifications has left refiners with three options: use only the lightest and sweetest crudes, operate existing equipment harder and sacrifice yields, or

invest the necessary capital to maintain capacity.

The cumulative effect of all these regulations is to make oil less of an economic "commodity" and more and more a specialty product produced (and priced) based on a combination of source, local production, and refining constraints; regional and state-based environmental regulations; political mandates affecting blending; transportation and pipeline availability; and other factors.

After a decade of price discovery, the growing knowledge base about supplying unconventional fuels has converged on a price point of \$90 to \$100 per barrel of conventional crude. Eventually there will be a benchmark price for tar sands and shale oil, traded at some discount to West Texas Intermediate, the benchmark grade. But despite financial-market transparency for "standard" petroleum benchmarks, there is a growing disconnect between the price of oil and the price and supply of retail fuels in any specific market. **FEE**

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The **UNITED STATES** is a patchwork quilt of discrete regulated markets, rather than a single market.

Guitars, Eccentric Billionaires, and Space Travel

ANDREW HEATON

Recently astronaut Chris Hadfield became a global music sensation, without so much as a nipple slip. He jumped to stardom by a combination of guitar mastery and zero-g singing via a music video he made. *In space.*

It's certainly an odd way of carving a niche in the country-music industry. The standard career track is to develop guitar skills and a drinking problem simultaneously, then write songs about both until you wind up in Nashville. Very few astronauts ever wind up with Grammys—Neil Armstrong never even got nominated. Going through rigorous astronaut training in order to be blasted through the stratosphere in a billion-dollar tin can seems like roundabout career planning, but perhaps that's the standard course for Ontario musicians. I don't know.

While the spacefaring Canuck might have performed his orbital David Bowie tribute as a hobby and not for personal advancement in entertainment, his achievement nonetheless synthesizes a phenomenon that might define humanity's future: combining space travel with the entertainment industry. In fact the next big fusion of the two is already under way.

Most of the space program thus far has been funded with tax dollars. American space exploration began when the Eisenhower administration found itself with a surplus of Nazi rocket scientists. After defeating Hitler, the United States and the Soviet Union snatched up every *Raketenforscher* they could get their hands on, only to realize they had dozens of German guys in lab coats sitting on their hands all day doing nothing. Eisenhower couldn't stand layabouts, so he dared the co-opted Germans to see if they could launch random, blinking, metal objects—like a refrigerator, or a Winnebago—into space.

Four years later NASA leaped ahead in the space race

when President Kennedy suspected that there might be women on the moon. We spent eight years and \$25 billion figuring out how to get to the moon and potentially introduce its inhabitants to JFK. By the time we actually landed there, Nixon had become president, so the space program's main priority shifted to finding novel locations in which to play golf. Then, in the 1980s the Russians ran out of dogs to launch into space, thus formally concluding the Cold War.

Now, in the 21st century, space travel has reached a new and glorious apex: It has been privatized.

You might ask, "What does privatizing space exploration mean to me?" Well, it means that now *everyone* gets a crack at bagging moon babes. And because eccentric moguls are pairing their insane intergalactic ambitions with the profit motive, we will probably build a moon base before you can say "President Gingrich."

Elon Musk, the billionaire tech mogul who founded PayPal, intends to retire on Mars. And he means it. Richard Branson of Virgin Records has graduated from building trains to building rocket planes by forming Virgin Galactic. Director James Cameron and Google's Larry Page are combining forces and investment capital in an asteroid mining company, which will drag asteroids full of platinum and gold back to Earth.

While the startup costs are immense, the profit margin is likewise staggering. There are gold nuggets the size of Houston drifting around the asteroid belt, just waiting to cloak the teeth of Lil Wayne. Enough so that, somewhat ironically, if Cameron and Page pull it off, we could see gold become less valuable than copper within our lifetimes. Rappers would have to resort to other forms of swag, like wearing antique brooches.

An even more fascinating development is Mars One, which seeks to build a permanent settlement on Mars.



Astronaut and musician Chris Hadfield

The brilliance of Mars One is that they are combining the highest of human aspirations (real estate investment) with the lowest of human depravity (reality television). Mars One will acquire part of the funding needed to send four people to Mars in 2022 by offering the film and licensing rights to private investors.

Adam Smith (who did not live on Mars or the moon) stated that government has four functions, the last of which is to fund activities that could not be handled by the private sector, or for which the private sector could not aggregately muster sufficient capital. Space exploration used to fit this bill: In 1957 no single company could have drummed up the necessary funding to launch probes into space. Only a government hell-bent on beating the Russians at everything from chess to rockets could possibly have done so.

Now space exploration has matured and is swiftly becoming the purview of wealthy entertainment moguls. This is the best possible thing that could happen to mankind. Within our lifetimes we will have orbital rocket planes that render flights to Australia brief and palatable. Someday I could send my children to space camp on the moon if I want peace and quiet in my house over the summer.

And all of us, if sufficiently photogenic and entertaining, have a crack at living on Mars. I'm hoping Chris Hadfield will apply, because I think an album about traveling to Mars would be worth purchasing. I would definitely tune in to watch a show featuring him and Megan Fox on a rocket. **FEE**

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The “Great” Writ

The Power of Habeas Corpus in America

ALLEN MENDENHALL

Anthony Gregory • *The Power of Habeas Corpus in America: From the King’s Prerogative to the War on Terror* • Cambridge University Press • 2013 • 416 pages • \$99.00 hardcover

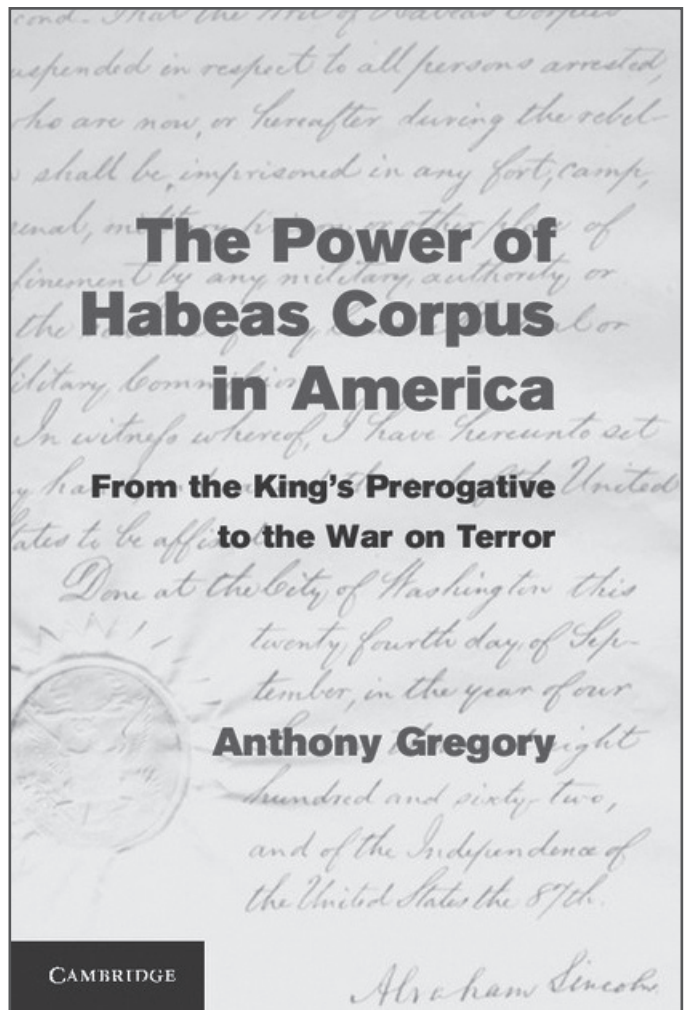
The writ of habeas corpus—Latin for “you have the body”—is known as “the Great Writ.” It generally is a procedural remedy commanding a custodian, such as a sheriff, to bring a detained party, such as a prisoner, before the court to show cause for the detainment and to prove whether the detainment is lawful or justified. If the detainment is not lawful or justified, the detained party may be released.

Sir William Blackstone, whose jurisprudence so influenced the American founders and the course of American history that his four-volume book, *Commentaries on the Laws of England*, continues to sell more copies in the United States than in England, once called the Great Writ “the most celebrated writ in the English law.” The American colonists who studied and praised Blackstone believed that, as Englishmen, they were entitled to the protection of certain fundamental rights, which the British government, under King George III, had selectively recognized and in some cases disregarded in the colonies.

The right not to be detained against one’s will without a hearing or notice of the accusations against him had been recognized for centuries and formed the basis for the writ of habeas corpus. In 1215, King John signed the Magna Carta, which expressly prohibited him and his royal successors from imprisoning, disseizing, committing, or banishing freemen who had not received a judgment of their peers pursuant to the laws of the land. This principle received renewed expression in the Petition of Right during the reign of Charles I and, later, in the Habeas Corpus Act, which called for speedy recourse in the event of an unlawful detainment. The habeas remedy then passed from England to America by way of the common law, and none other

than Thomas Jefferson declared, “Habeas Corpus secures every man here, alien or citizen, against everything which is not law, whatever shape it may assume.”

Nevertheless, Anthony Gregory ably demonstrates in *The Power of Habeas Corpus in America* that the Great



Writ has a spotted and inconsistent history as well as a reputation for hope and freedom that does not align with stark expectations or reality. “Questions have reverberated from England to the United States,” Gregory submits, “over who has the authority to suspend the writ’s privilege and the very meaning of suspension itself. In our own time, no less than in past generations, jurists and scholars have labored to determine who enjoys the writ’s protection, which executive officials must answer to which courts or judges, what defines habeas jurisdiction, and whether its boundaries should shift during emergency.” These vexing questions have become more urgent and complex in a shrinking world burdened with threats of terrorism.

Written Power

Gregory’s scope is wide. He maps more than 400 years of legal history in roughly 400 pages and reminds us that the origin of the habeas remedy was not libertarian: “The king’s courts developed habeas corpus to centralize judicial authority and collect revenue.”

His impressive sweep of history recognizes that “it took centuries before the writ was genuinely turned against the king’s oppression.” Ever since the Norman conquest, if not earlier, the writ of habeas corpus has been tied to royal or governmental prerogative. In the seventeenth century, in fact, the writ served as a procedural mechanism for ensuring that prisoners *remained* in prison rather than being released from prison; in our present era, the government has been able to circumvent the writ to indefinitely detain prisoners captured in the war on terror.

Michel Foucault made a career out of analyzing the paradoxical nature of power—that is to say, the ways in which the State enables forms of liberty in order to demonstrate its ostensibly unrivaled authority to suppress that liberty. Gregory adopts a similar approach, describing how prisoners petition for the writ and how courts and custodians respond. “For every vindication of a custodian’s power,” Gregory explains, “the authority to detain is upheld. For every undermining of a custodian’s power,

AT ONCE A TOOL of liberation and authority, the writ of habeas corpus undermines State authority even as it validates and solidifies that authority. In other words, it enables the very power that it subverts.

there is the affirmation of another official’s power—a judge’s power, to say nothing of the state’s general power to decide whom to detain.”

This Foucaultian line of reasoning surfaces elsewhere in the book and provides a profound challenge to libertarians who would dismiss Foucault’s thinking out of hand. In an astute and potentially groundbreaking moment, Gregory briefly discusses Foucault vis-à-vis the theories of Robert Higgs, Murray Rothbard, and Franz Oppenheimer; the connection between these men might surprise those unaware of the fact that Foucault himself, late in his career, advised his students to read Mises and Hayek.

At once a tool of liberation and authority, the writ of habeas corpus undermines State authority even as it validates and solidifies that authority. In other words, it enables the very power that it subverts. Because it destabilizes institutionalized power ultimately to sustain that power, the writ is, in Gregory’s words, “mythical” and retains an “idealistic mystique.” That makes it all the more important not just to trace the history of this storied remedy, but to “demystify” it and expose it for what it is: a “tool of usurpation and centralization.” In this regard, Gregory’s book is not merely a history but a call for awareness.

Productive Irritation

If Gregory's Foucaultian method is successful, as I believe it is, then it should cause productive irritation among libertarian jurists and jurisprudents who appear to be moving toward stodgy consensus on a number of pressing legal issues. It might be that other pet favorites of these legal libertarians—say, incorporation of the Bill of Rights against the states—are really short-term techniques serving as vehicles to long-term, centralized power. That is not to accuse any particular libertarian of having bad intentions, only to suggest that good intentions can be bound to discursive systems that we do not fully understand. Power is dangerous not because it's obvious, but because it develops gradually out of good intentions and seemingly innocuous actions. All students of spontaneous order ought to know better than

ALTHOUGH
 focused on a single issue—the writ of habeas corpus—Gregory's book has potentially vast ramifications for all areas of libertarian jurisprudence. It is a timely corrective and an impassioned warning to libertarian lawyers, think tanks, and policy analysts who have lost their way and in the name of liberty brought us deeper into statism.

to design or embrace abstract legal theories that endow the instrumentalities of a centralized State judiciary with more nationalized powers, even if those powers seem, at first blush, favorable to liberty.

Sometimes it takes a non-lawyer like Gregory to remind lawyers of the philosophical implications of the practical and everyday functions of the law. Likewise, it takes a philosopher, again like Gregory, to show that a series of small legal victories is really one big loss in a larger scheme. Although focused on a single issue—the writ of habeas corpus—Gregory's book has potentially vast ramifications for all areas of libertarian jurisprudence. It is a timely corrective and an impassioned warning to libertarian lawyers, think tanks, and policy analysts who have lost their way and in the name of liberty brought us deeper into statism.

Yet the question remains: What is a better alternative to the Great Writ that could protect individual rights against unwarranted detention and at the same time avoid the production of power? Gregory doesn't answer this question, but he does suggest that if the writ is to be a liberating remedy, society itself must be more libertarian. In other words, the writ is worthless in a society that does not value freedom; it is a tool that can lead to oppression or liberty, depending on the prevailing ethos of the time and place.

Therefore, for the writ to be an instrument for good, society writ large needs to shift its values toward libertarianism. Of course, that solution pertains to all social problems and would remedy any number of governmental harms. Gregory may not have indicated specific alternative remedies that could replace the Great Writ, but he has shown us that received opinion about government-backed protections can impede our search for liberty. **FEE**

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Hollow Men

SARAH SKWIRE

F. Scott Fitzgerald • *The Great Gatsby* • Charles Scribner's Sons • [1925] 1953 • 159 pages

In whatever afterlife awaits fictional characters, F. Scott Fitzgerald's Jay Gatsby is probably feeling very much at home. After all, Baz Luhrmann's movie got everyone is talking about him again. And in Fitzgerald's novel, everyone is always talking about Gatsby. When narrator Nick Carraway first experiences one of Gatsby's famed parties he notes that amid all the gossip about Gatsby's wealth and mysterious past, and Gatsby's equally mysterious businesses, no one actually seems to know Gatsby at all. "I made an attempt to find my host, but the two or three people of whom I asked his whereabouts stared at me in such an amazed way, and denied so vehemently any knowledge of his movements that I slunk off in the direction of the cocktail table."

Even when Nick finds Gatsby and meets him, he finds himself observing him as if from far away, "standing at the top of the marble steps and looking from one group to another with approving eyes. . . . No one swooned backward on Gatsby, and no French bob touched Gatsby's shoulder, and no singing quartets were formed with Gatsby's head for one link." Gatsby is unknowable and untouchable. It is probably no accident that for all his public display, this most famous inhabitant of West Egg is, to paraphrase M. F. K. Fisher, as private as an egg before it is broken.

In much the same way that the novel's characters are frustrated and critical of Gatsby's unknowability, Kathryn Schultz's widely circulated piece, "Why I Despise the Great Gatsby," asserts, among other charges,

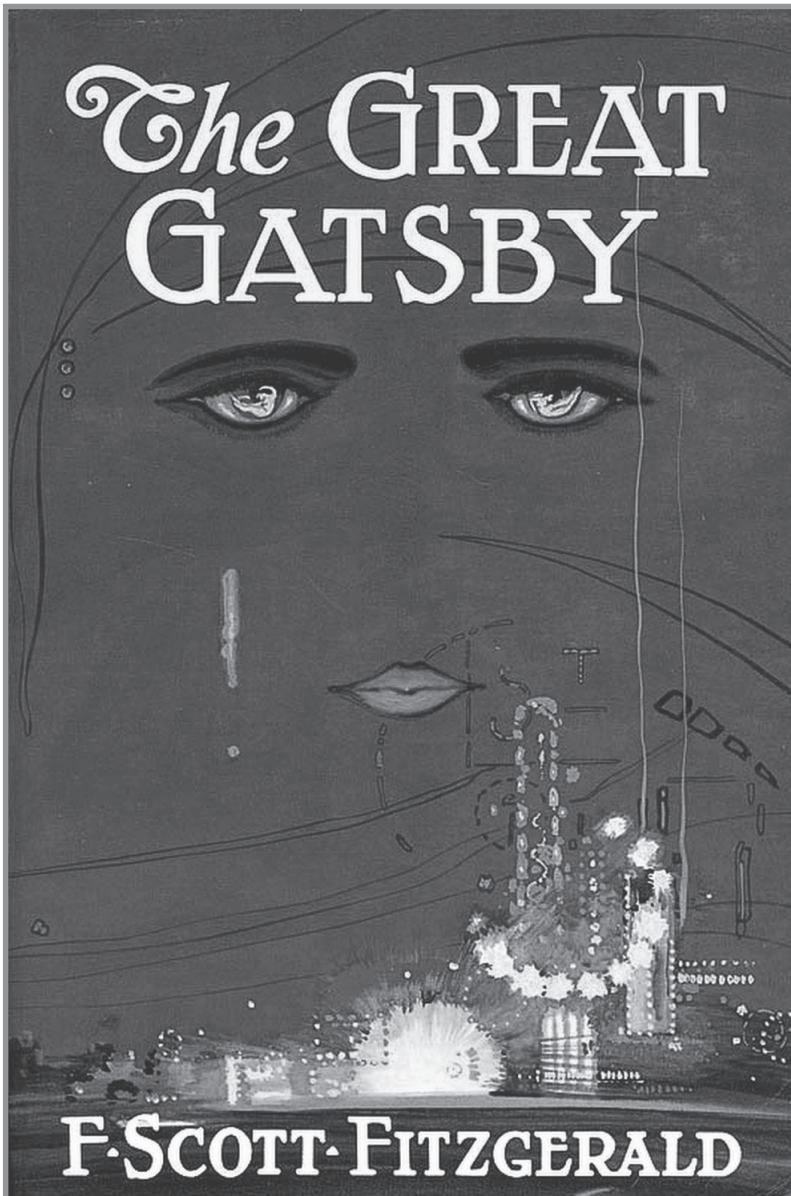
The Great Gatsby is less involved with human emotion than any book of comparable fame I can think of. None of its characters are likable. None of them are even dislikable, though nearly all of them are despicable. . . . It is possible, of course, to deny your readers access to the inner lives of your characters and still write a psychologically potent book: I give

you *Blood Meridian*. But to do that, you yourself must understand your characters and conceive of them as human.

Fitzgerald fails at that, most egregiously where it most matters: in the relationship between Daisy and Gatsby. This he constructs out of one part nostalgia, four parts narrative expedience, and zero parts anything else—love, sex, desire, any kind of palpable connection.

But I have never thought that the story of Jay and Daisy was supposed to be that kind of story—a story where a great love saves people from lives gone wrong. And that certainly doesn't seem to be the story Fitzgerald gives us. Instead, we get something much more complicated and much closer to the kind of criticism of the "glamorous dissipation of the rich, [and our] cheap satisfaction of seeing them fall" that Schultz says she cannot find in the novel.

Gatsby's distance from us and the distance that separates all the novel's characters from one another is not a failure of Fitzgerald's powers. It is a demonstration of them. These are hollow people, with hollow lives, and hollow ambitions. Fitzgerald sees the "glittering swinishness" of the nouveau riche who crowd Gatsby's parties, and of the old-money Tom and Daisy Buchanan, and of the grasping Myrtle Wilson as all the same. While Gatsby's early ambitions suggest that he began better than they, any potential he had is destroyed when he meets Daisy, "and all of a sudden I didn't care. What was the use of doing great things if I could have a better time telling her what I was going to do?" he says. With Daisy as his goal, he heads off to fight in WWI. When he returns from the war to find her married, he is soon good for nothing more than making money through various and



unspecific unsavory deals, in order to spend it wildly to try to attract Daisy's attention. And, as my favorite American literature professor has remarked of Daisy, "She's the perfect demonstration of Gertrude Stein's comment. There's no there there."

The novel is filled with famous images of exactly this kind of hollowness. The towns of East and West Egg, with their "shells" crushed flat on one end; the unseeing eyes of Doctor T. J. Eckleberg, abandoned and dimmed and surveying the ashpiles; the books in Gatsby's library with their uncut pages; Daisy and her friend Jordan floating as if "on an anchored balloon;" and always, always, Gatsby's enormous house—filled with complete strangers at the beginning of the novel, then lit up and empty, and then empty of even the light. If Fitzgerald's characters have no human emotions, it is because their world has none. Cars run off roads. Noses are broken. Couples divorce. Women are dumped into pools. And it all happens amid endless hilarity. No one mourns for Myrtle. No one goes to Gatsby's funeral. If Shultz reads Gatsby and finds it empty, she is reading it right. Gatsby may well be "worth the whole damn bunch of them put together." But the whole damn bunch of them put together isn't worth an empty eggshell. And Fitzgerald knows it.

We are not meant to admire Daisy or Tom or Jordan or even Gatsby. We are not meant to emulate Gatsby's ceaseless longing for Daisy. We are not meant to find it romantic and redemptive when he stretches his arms out to that tiny green light at the end of the dock. We are meant to understand the bitter hollowness of coming back from a war to find out that the visions that sustained one are empty, and that

the world one fought to protect offers nothing more than a valley of ashes and some parties filled with "happy and vacuous laughter." **FEE**

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Take Me Out to the Cleaners

Crony Capitalism and Stadium Funding

MICHAEL NOLAN

For years, taxpayers have been shaken down for money to build ever-fancier stadiums for professional sports teams. It's probably not the most expensive example of cronyism out there. But since it forces everyone to set up tidy little business-and-vanity ventures for guys who are already rich, it's among the most egregious.

According to *Deadspin*, 78 stadiums were built from 1991 to 2004, at a cost of \$85 billion. Taxpayers are on the hook for 61 percent of that. To see just how bad it's gotten, check out the animated charts they put together (tinyurl.com/ag6a4pm).

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The lion's share of the revenue created by the stadiums goes right into owners' pockets. Maybe they pay a nominal rent. Maybe they share some money from the concessions, since it's sort of grimly funny for the cities to be paid in literal peanuts.

Owners are notoriously loath to discuss the profitability of their franchises, except when they need leverage while negotiating new collective bargaining agreements with players. The revenue streams created by stadium deals, however, determine teams' values, according to *Forbes* (tinyurl.com/7d5sgxh). And team values, as *Deadspin* explains, have doubled in the past decade or so.

Meanwhile, whatever scheme is originally cooked up to pay for the bonds—usually soaking tourists, or people who

engage in fancy, rich-people stuff like eating at restaurants and buying lottery tickets—turns out to have been a pipe dream. Or the interest on the bonds goes up. Or the economy craters. Or maybe some mixture thereof (tinyurl.com/k5p26x6). In other words—and sports likes nothing so much as cliché—they wind up overcharging on bread to provide the circus.

How do all these guys pull this off? Usually, a team threatens to leave unless they get new digs—or at least renovations that add more luxury boxes. Fans get loud because that's what they do, politicians sniff some easy votes, and Bob's yer uncle.

It doesn't always work this way, if you believe the Indianapolis Colts (tinyurl.com/lyaysw3), a team with a pretty checkered past when it comes to stadiums and moving. I really want to believe them, because they're responsible for the single greatest event in the history of human achievement (tinyurl.com/2s74kj). But even if they didn't stiff-arm the city into their new stadium, the stadium deal itself still constitutes making some people's leisure-time preferences a matter of law.

It also involved eminent domain abuses (see our coverage here: tinyurl.com/ku4bcf4). Setting aside whether

The STADIUM DEAL
itself still constitutes making some people's leisure-time preferences a matter of law.

eminent domain can ever be anything but abusive, combining it with this legislation of preferences produces deals that always stink.

And I say this as a sports fan myself. I'll be the first to admit that sports fandom partakes of very little rationality. And when it comes to tastes, rationality can get stuffed—you like what you like. That's all the more reason that none of us should be forced to underwrite anyone else's preferences. That it keeps happening beggars belief. If you're in Cincinnati, you'd be lucky if only belief was being beggared (tinyurl.com/67edz87).

The Hail Mary

Of late, though, there have been some faint signs of hope for us liberty types.

You might have heard about the first one. In May, the Florida state legislature refused to hold so much as a vote on a bill to use tax proceeds to renovate SunLife Stadium, home of the NFL's Miami Dolphins. The team got huffy, issuing a threat to move that was veiled only in the sense that cellophane veils sliced cheese.

Besides, everyone else has been doing it. Writing in *Bloomberg*, Aaron Kuriloff and Darrell Preston report that in 1986, Congress touched off the publicly financed building boom by trying to do exactly the opposite (tinyurl.com/cd2sdxl). They tried to end the use of tax breaks aimed at helping cities build schools and hospitals and such. "Lawmakers' revisions instead unintentionally encouraged local officials to borrow even more for pro sports," write Kuriloff and Preston.

If that sounds like a line from a Public Choice study, you ain't seen nothing yet. "You have the costs spread out, with small losses to hundreds of thousands—maybe millions—of people," Dennis Zimmerman, a former economist for the Congressional Research Service, told Kuriloff and Preston.

Those small losses come from shifting money from voluntary transactions into the pockets of the politically connected. But it's hard to see the unseen when you've got a giant stadium blocking your view.



The fallout from this \$2.4 billion boondoggle in Miami includes hopeful signs of pushback against welfare-for-the rich funding deals.

Daniel Korzeniewski/Shutterstock.com

The Squeeze Play

Beyond the Miami deal, though, there has been some recent pushback.

Around the same time the Dolphins were getting the Gerald Ford treatment (tinyurl.com/k4yhjt6), the Minnesota Vikings were showing off the artists' renderings of their new stadium. It's a doozy, too—but what would you expect for a cool billion dollars?

Not exactly a victory for free markets, then. But at least the fight over funding was long and bitter (insert winter pun). It almost didn't even get approved in the first place, and that's with Los Angeles, which already snatched the Lakers away from Minneapolis, allegedly hungry for a football team.

At least L.A.'s stadium, according to news reports (tinyurl.com/8bu6xlp), would have been privately funded by AEG group, to the tune of \$1.2 billion.

The NFL didn't believe AEG could make enough money to pull off the deal anyway. The next time the NFL worries about that with a tax-funded proposal will be the first. The NFL, after all, is a nonprofit seemingly set up for the express purpose of obtaining publicly funded stadiums (tinyurl.com/793a5c4).

Still, Minnesota got the Vikings' owners to split the

tab. In the sports world, that's called a "moral victory," distinguishing it from the kind that gets people paid. In real life, though, both the Dolphins and Vikings episodes represent a kind of progress.

Miami, for instance, got to strike another retaliatory blow for the Marlins Park debacle. Taxpayers found out after the funding was approved that it was actually going to cost them \$2.4 billion over the 40 years it would take to pay off the bonds. This for a team that was turning healthy profits all through the recession, no matter how the team was doing. Voters sacked two mayors and a handful of flunkies as soon as they got the chance.

What's more, the Marlins' Little Havana palace hadn't even lost that new-ballpark smell when the team set about letting the fans know exactly what they thought of them. The manager said some nice things about Fidel Castro just as the season was starting. Then the team had a lousy season, then it dumped every player who might have given fans some hope for the next year. One wonders if they sell those foam "We're #1" fingers at Marlins Park—and if so, which finger exactly is sticking up. The fans seem to have a pretty good idea (tinyurl.com/n7h75mf).

The Airball

I want to hope that at some point all of this, plus the stories about how Olympic host cities tend to fare after the games (tinyurl.com/ya9fxch), will add up to one almighty big kibosh being put on these funding deals. It seemed like a sign of progress when, one morning, I saw the *Indianapolis Star* running a column about the city's deal with its NBA team, the Pacers (tinyurl.com/l2r9zjx). They're on a year-to-year lease—only it's the city paying the team \$10 million to get them to stay. They'd just won

a big playoff game against their main rival, and yet here came the wet blanket.

I mean, get a load of this: "The owners of sports teams arrive at [stadium] negotiations with outrageous demands and tremendous egos—with a deep belief in the idea

that taxpayers are there to subsidize their businesses."

I was ready for the owners to get it with both barrels. But then came the usual pitch, including this howler, explaining that if the Pacers left for, say, Seattle, "[Indianapolis] would lose one of those few things around which the community bonds. Sports provides that

bond." Get that? The community might crumble without this bond, which the State provides. Politicians probably don't mind the insinuation that they are, in a sense, creating the community, but the suggestion is risible, to say the least.

People who sign off on these deals, however, have to rely on things like equating transfers to team owners with "civic pride" or "community bonds" because they don't have any actual numbers on their side. They can claim that consumers get some goods, so the stadium funding isn't just a straight transfer. If you happen to like the local team and be willing to spend some money on them, this looks sort of valid.

But elevating one group's preferences for entertainment into law turns the irrationality of fandom into something more insidious. It's akin to using patriotic-sounding language to demonize dissent and push through, say, an all-powerful surveillance State. The relatively tiny amounts of money involved (you can't even buy a decent invasion for \$85 billion *per year*) might make this stadium thing small beer. But as far as corruption and crony capitalism go, it's also low-hanging fruit. **FEE**

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