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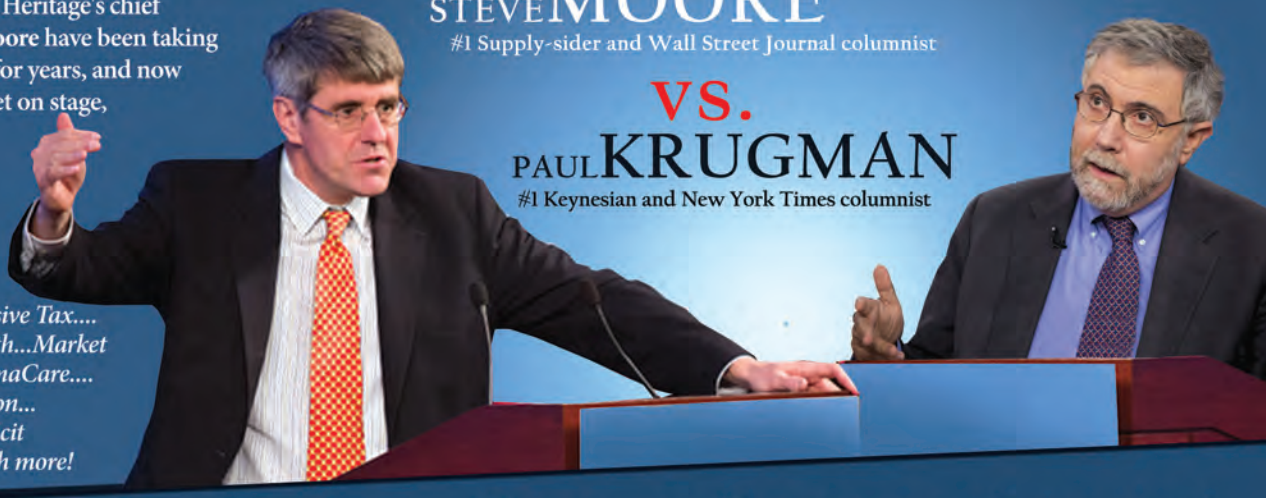
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Free Minds and Free Markets

January 2015
Volume 46, No. 8

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The Reality and Propaganda of War

An honest conversation about foreign policy requires us to confront the brutality and imagery of violence.

THE THREATENING-LOOKING man on the cover of this magazine is an Islamic State (ISIS) terrorist with a British accent who took the lead role in propaganda videos showing the beheading of American journalists James Foley and Steven Sotloff, acts of horrifying brutality that helped propel the United States into war.

Considerably more graphic versions of that image, including a visibly terrified Foley, were run the day after his murder under the headline "SAVAGES" by both of New York's major tabloids—the *Post* and the *Daily News*. The papers received a smattering of criticism in the press and across social media for sensationalism, for insensitivity to Foley's parents, and for amplifying the terrorists' publicity.

So why did we put this image on the cover of **reason**?

This special issue of the magazine is dedicated to the project of applying the clean philosophical and theoretical underpinnings of libertarianism to the messy world we live in. That real world includes several complicating factors that are best illustrated by the cover image.

The first is ISIS itself and what it represents. Since the 1648 Treaty of Westphalia, the inviolability of the nation-state has been the bedrock of international relations theory and action. No matter how awful the government of said state might be to its own residents, other countries maintained a default setting of not interfering with its internal affairs unless and until they spilled over the border in the form of state-on-state aggression. The bulk of international conflict, therefore, was government-to-government.

ISIS—like Al Qaeda, from which it sprang—has complicated that narrative by being a transnational aggressor organization carrying out campaigns of murder, including against Americans, from the murky corners of failed states. Neoconservatives on the right and liberal internationalists on the left have been treating national sovereignty as an archaic obstacle to overcome for most of the post–Cold War era, with a mixed track record at best. But even someone as committed to nonintervention as Ron Paul (see "Dr. Never," page 42) will admit that having the Taliban help plot the 9/11 attacks from the safe haven of a dysfunctional Afghanistan necessitated American military action. So any plausible foreign policy, let alone a libertarian one, needs to grapple with the reality of non-state actors.

ISIS is also the latest excrescence of a militant and expansionist wing of Islam that seeks to impose a retrograde Shariah law upon unwilling human beings, by murderous force if need be. And it is an organization that sprang from the chaos left behind after misguided American military interventions in Iraq and Libya. Too many foreign policy commentators—including not a few self-identified libertarians—will acknowledge only one of the previous two sentences. As Sen. Rand Paul (R-Ky.) says (see "The Conservative Realist?," page 48), "Will they hate us less if we are less present? Perhaps. But hatred for those outside the circle of 'accepted' Islam exists above and beyond our history of intervention overseas."

The younger Paul, amid much controversy, is attempting to apply the principles of intervention-skepticism to the also messy world of national politics. The senator is almost certainly seeking the presidential nomination of a political party that is considerably more hawkish than he, and he has been calibrating his message and positioning—including support

for bombing ISIS—against that backdrop. Which brings us to the next key foreign policy concept our cover image represents: politics, and the underlying public opinion behind it.

ISIS' beheading videos were carefully composed to maximize Western attention and dread, with their native English narrator and stark all-black and all-orange costumes against a tan desert background. The impact was powerful enough to change the course of U.S. foreign policy.

A remarkable 94 percent of respondents in a September NBC/*Wall Street Journal* poll said they had heard about the beheadings, "higher than any other news event the NBC/WSJ poll has measured over the past five years," NBC News reported. Not coincidentally, that same poll found 47 percent of Americans feeling less safe than they did before September 11, 2001, a high-water mark since 9/11 and up from just 28 percent the year before. Surveys throughout the fall showed around three-fifths of Americans favoring sovereignty-busting military action in Syria, versus around only one-fifth just 12 months before. What felt like surging anti-war sentiment in September 2013 had yielded to a kind of passionless, fatalistic interventionism by September 2014, in large part because of these two videos.

Any successful libertarian realism needs to understand and engage with the impact of images, news, and propaganda on a human race with a long track record of rallying around the tribe, particularly in times of duress. You can argue, as Sheldon Richman does in our forum on foreign policy ("In Search of Libertarian Realism," page 26), that "libertarianism means noninterventionism," but that message can fall flat on the ears of a public in mid-panic. Engaging people emotionally—even only to acknowledge their emotion in the course of dosing it with reason—is a necessary step if libertarian foreign policy is going to escape the margins to which it is too often confined.

It's also important to recognize that the propaganda (intentional or not) works in the other direction, too. Many news outlets agonizing over how to portray images of the ISIS videos had no such qualms about showing the worst of U.S. behavior at the notorious Abu Ghraib prison in Iraq (where, in case you have blotted out the memory, U.S. soldiers gave thumbs-up poses next to dead Iraqis, stacked prisoners in naked clumps, and tortured their charges). We at **reason** have long argued not only that it's crucial for citizens to have access to such graphic representations of their government's war making, but that President Barack Obama deserves special scorn for campaigning on releasing all of the Abu Ghraib images, then abruptly changing his mind once handed the awful responsibility of power.

Careening from crisis to crisis, butting in and out of civil wars we little understand, is no way to protect the national or international interest.

Citizens need to be trusted with the visual truth, whether it's pictures of people jumping out of the World Trade Center on 9/11, footage of children maimed by U.S. drone warfare, shots of flag-draped coffins of U.S. soldiers returning from the battlefield, or allegedly inflammatory cartoon caricatures of the Prophet Muhammad.

You can interpret the image on the cover as a scary harbinger of an open-ended transnational war in the Middle East peppered by sporadic moments of gruesome anti-American blowback. Conversely, you can see it as a transparent and desperate attempt to drive up the ransom cost of Western hostages (a key source of ISIS income) and inflate the Islamic State's jihadist P.R. by successfully poking the hornet's nest of Uncle Sam. When we let two lives, no matter how precious and unjustly snuffed out by barbarians who deserve much worse, dictate the course of U.S. foreign policy, that becomes the most glaring reminder yet that American statecraft is rudderless, headline driven, and long overdue for a philosophical and practical course-correction.

So, like *The New York Times* and *USA Today*, we are using a less provocative version of a startling image to illustrate the foreign threat du jour. But unlike most, we also see it as an indictment of the way foreign policy is conducted nowadays. Careening from crisis to crisis, butting in and out of civil wars we little understand, is no way to protect the national or international interest. Yes, libertarians need to get real. But so do the people who actually hold power. ■

Editor in Chief Matt Welch (matt.welch@reason.com) is the co-host of The Independents on Fox Business Network and co-author, with Nick Gillespie, of The Declaration of Independents: How Libertarian Politics Can Fix What's Wrong with America (PublicAffairs).

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William Ruger


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Sheldon Richman


Christopher Preble

William Ruger makes "The Case for Realism and Restraint" (page 29). Ruger, 43, is an assistant professor of political science at Texas State University and a scholar at the Mercatus Center, where he co-wrote *Freedom in the 50 States*. He's also a veteran of the war in Afghanistan. Asked about America's biggest foreign policy mistakes, Ruger says "unnecessary wars deserve top billing." He points to conflicts in Iraq and Vietnam, adding that "the recent intervention in Libya is underrated as a mistake."

Fernando R. Tesón says "Don't Underestimate the Costs of Inaction" on page 34. Tesón, 64, is a professor at Florida State University College of Law. He's the author of the forthcoming *Justice at a Distance* (Cambridge University Press) with **reason** Contributing Editor Loren Lomasky. Tesón served for several years as a diplomat for Argentina's Foreign Ministry, but eventually resigned "to be an academic, and in protest against the human rights violations of the then–Argentine government," he says.

On page 32, Sheldon Richman argues that "Libertarianism Means Noninterventionism." Richman, 64, lives in North Little Rock, Arkansas, is vice president of The Future of Freedom Foundation, and edits its monthly publication, *Future of Freedom*. He's a longtime proponent of noninterventionism. "With Ron Paul's retirement, there is no clear and consistent voice for nonintervention," he says. "Considering the public support for new wars in Iraq and Syria, we can see that noninterventionism has not yet taken root."

Christopher Preble examines "Toward a Prudent Foreign Policy" (page 37). Preble, 47, is the vice president of defense and foreign policy studies at the Cato Institute. He is also the author of three books, including *Terrorizing Ourselves: Why U.S. Counterterrorism Policy Is Failing and How to Fix It* (Cato Institute). The biggest misconception about libertarian foreign policy, he says, is that it's "frequently mischaracterized as 'isolationist,'" which he calls "obviously incorrect." Libertarian reluctance about war "doesn't signal opposition to all wars, or to the use of force generally."

Letters





A Lethal Injection of Reality

Jacob Sullum's interesting column on physician-assisted execution, "A Lethal Injection of Reality" (August/September), aptly illustrated the location between a rock and a hard place in which libertarians frequently find themselves.

Sullum correctly points out that "most people with medical expertise do not want to assist executions because they view it as contrary to their professional ethics." By what euphemism can we justify abortion and how do we square professional ethics with that act? Must our ethics be selective and are we to give certain medical interventions a free pass on those ethics? The smallest minority is the individual, and none are smaller than the life inside a woman's womb.

Dave Quirk
Mosinee, WI

Putin's Russia

Cathy Young ("Putin's Russia," August/September) confirms that Russia is not a great place to live, but she gives too much credence to the Ukrainians and the European Union (E.U.).

As an English expat legally residing in the United States I know how undemocratic, unaccountable, bureaucratic, and intolerant the European Union is—a reason I left England. The E.U. stirred up the problems in Ukraine for its own grand expansion plans.

Ukraine itself has been corrupt and incompetent since independence in 1991. And before that it had a fine history of supporting Hitler and suppressing Jews and other ethnic groups.

The present problems have more to do with E.U. meddling and the "liberal" Ukrainians in Kiev than with Putin, who acted to protect his Russians in Crimea.

Graham Webster-Gardiner
Mims, FL

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Reaction

"The only problem with millennials accepting the notion that the government should manage the economy is that the government by virtue of its structure is not, nor will it ever be, capable of managing anything."
—**reason.com** *commenter "The Realist" in response to "Generation Independent" (October)*

"As someone strongly in favor of criminal justice reform, I'll take the support where I get it. However, the realization that prison is really expensive does not mean that people advocating change care about racial justice."
—**reason.com** *commenter "maddarter" in response to "Rand Paul, Racism, and Prison" (October)*

"I for one (as an Xer) welcomed the term *millennials*. What they were using before, Generation Y, just irritated me, for the reasons that it had no real meaning and the pundits were being obnoxiously lazy in their search for a demographic definition."
—**reason.com** *commenter "Thomas O." in response to "Generational Generalizations Gone Wrong" (October)*

"Explaining to young people that the government is keeping them from doing the things they desire has value, as does letting those that already are natural libertarians and anti-authoritarians [know] that there is a political movement of the like-minded."
—**reason.com** *commenter "SugarFree" in response to "Rise of the Hipster Capitalist" (October)*

Obamacare costs; patent trolling in court; encrypted iPhones; Uber under siege; the Clinton comeback; getting high vs. benefits; we are all mutants now

Recording law enforcement

Candid Camera Cops

Katherine Mangu-Ward

On October 1, a group of 165 volunteers from Washington, D.C.'s Metropolitan Police Department hit the streets wearing body cameras for the first time. The $1 million pilot program will test various configurations of recording devices over the next six months, including cameras mounted on glasses, clipped to the chest, even one perched on the shoulder like a parrot. Officers will be instructed to roll tape at all times, except in "sensitive areas" such as restrooms.

On September 24, when the program was announced at a press conference, Police Chief Cathy Lanier joked that "it's very rare that we're not being videotaped somewhere by somebody anyway. I mean, we're the last people to get cameras, right?" Lanier said she had also instructed officers not to interfere when members of the public choose to make their own recordings.

In an unlikely moment of harmony, even the police union backed the top-down policy change. "People who want to make frivolous complaints, people who want to make false complaints will know that there's evidence to show that those complaints are false," Fraternal Order of Police Chairman Delroy Burton told local news channel WJLA.

In places where body cameras for law enforcement have already been tried, complaints against officers have dropped dramatically—up to 80 percent in D.C. suburbs where the cameras are already the norm. When asked if the existence of a video record encouraged the police or the public to be on good behavior, Lanier answered candidly: "Both."

Yes means yes

iConsent

Robby Soave

People use iPhone apps to find sexual partners. Could they also use an app to signal their intention to actually do the deed with said partners? A California-based developer thought so, but the intriguing concept has several kinks to work out.

The idea was conceived by California businesswoman Lee Ann Allman. Allman's college-aged kids knew people who were worried about running into trouble navigating intimate relationships on campus, given the increased national focus on sexual assault and affirmative consent. California recently approved a first-of-its-kind law defining *consent* as "affirmative, unambiguous, and conscious." The law also mandates procedures for dealing with accused rapists that fall short of robust due process.

Allman thought an iPhone app that facilitated consent could improve on the law's requirements by clearing up some of the confusion that



Couple (Leonido/Yeer)
Irrigation reservoir (Marek Uliasz/Thinkstock)

30 years ago in **reason**



"The imperative of surviving the next election can explain why the political process is short-sighted. But it does not explain why it is *more* short-sighted than the market process."

—Dwight R. Lee, "Patience Is a Market Virtue"

"The good news for the taxpaying public is that projects like Garrison are beginning to arouse constituencies for free-market environmentalism. This new environmental perspective, based on the recognition of property rights, an understanding of the market process, and an appreciation of limited government, provides responsible answers to the issues surrounding resource developments."

—Renee Wyman and John Baden, "The Garrison File: Profile of a Pork Barrel"

—January 1985

occurs when intoxicated students hit the sheets. Her team debuted that app, Good2Go, in September.

Things then quickly went downhill. Negative reviews and concerns about privacy (the app stores information about sexual encounters) surfaced in the press. Apple yanked Good2Go from its app store a mere two weeks after it debuted, and the company released a statement saying that it "was given no further information about why Good2Go was pulled by Apple other than that it violated clause 16.1 of the developer's guidelines and was deemed 'excessively objectionable or crude.'"

Allman says she plans to keep working on the project and re-release it next year as an educational tool without data storage. For now, students who want to put their intentions on record should keep in mind: There is definitely *not* an app for that.

Big bucks for the ACA

Obamacare Costs

Peter Suderman

According to a *Bloomberg Government* report released in September, the startup costs of Obamacare and an associated health technology program are much higher than projected. More than $73 billion has been spent so far, an amount "substantially greater than what the Congressional Budget Office (CBO) initially estimated health reform would cost by this point," the report notes.

About $25 billion of that tab went to implementing an electronic health records program. That program was supposed to save money while making it easier to transfer medical records between providers. But reports indicate that the new systems are being neglected in many places. Where they are used, they rarely communicate with one another. One of the more common uses of the system: exploiting built-in tools to increase billing to Medicare.

Another $2 billion went to the federal health exchange, where citizens can shop for and purchase health insurance plans. The exchange failed dramatically on launch in 2013 and is still not complete.

Grape-stained labor law

Wine Workers

Scott Shackford

The tiny Westover Winery in Castro Valley, California, is open only 10 hours a week and earns about $11,000 a year in profits for owner Bill Smyth and his wife. In order to produce Westover's specialty ports, he has drawn on volunteers, often folks who themselves were learning to make wine. The volunteers were essentially interns or apprentices.

Their work turns out to be illegal. California forbids the use of volunteer labor at for-profit businesses, period. Like a foot crushing grapes, the state's Department of Industrial Relations came down hard on Smyth, fining him $115,000—equivalent to a decade's earnings. As a result, the winery expects to shut its doors by the end of the year.

It's not uncommon for small wineries to use volunteer labor, and the crackdown on Westover has put others on alert, forcing them to send their free workers home and delaying the harvest. Peter Melton, a spokesman for the state, defends a punishment that amounts to destroying the small business, telling the Hayward *Daily Review*: "People should be paid for their labor. The workers' compensation violations are very serious. What happens if someone has a catastrophic injury at the winery?" He neglected to mention that when the winery uses a volunteer instead of an employee, it is also likely to pass along less in taxes to the state.



More games, less crime

Video Correlation

Ronald Bailey

For as long as there have been violent video games, there have been politicians decrying their effects on young minds. In 1993, the Senate held a hearing on games that included clips from fighting game *Mortal Kombat*. More recently, President Obama declared in a 2013 speech that "Congress should fund research into the effects that violent video games have on young minds." The clear implication in both instances was that violent games produce violent behavior.



Yet research published in the August 2014 *Psychology of Popular Media Culture* finds that playing violent video games is in fact correlated with *less* aggression and crime in the real world.

The researchers probed correlations between crime rates and video games sales, Internet searches for game guides, and the monthly and annual release dates of popular violent games. The researchers reported, "Annual trends in video game sales for the past 33 years were unrelated to violent crime both concurrently and up to 4 years »

Winemaker (Benchart/Veer)
Video game (Yuoak/Thinkstock)

Quotes

"I don't want my guns registered in Washington or my marriage. Founding Fathers all got married by going down to the local courthouse. It is a local issue and always has been."

—Sen. Rand Paul (R-Ky.), asked about where he stands on gay marriage, CNN, October 3

"The Nuns on the Bus fought like the devil for health care."

—Vice President Joe Biden, after spending time with the liberal Catholic group Nuns on the Bus, ABC News, September 17

"On any given day, 16 of my members decide they're going to go this way, and all the sudden I have nothing. You might notice I have a few knuckleheads in my conference."

—Speaker of the House John Boehner (R-Ohio), giving a speech to the International Franchise Association, *The Hill*, September 16

Patent Trolling in Court



William J. Watkins Jr.

William J. Watkins Jr., a research fellow at the Independent Institute, is the author of the August monograph *Patent Trolls: Predatory Litigation and the Smothering of Innovation*. Watkins' book argues that patent lawsuits from "nonpracticing entities"—"patent trolls" who accumulate intellectual property just to sue people using similar ideas—cost the U.S. economy billions and deter the diffusion of ideas. In September, Watkins described three important patent lawsuits:

1 In ***NTP Inc. v. Research in Motion Ltd.*** (2005), patent troll NTP brought an infringement action to shut down the BlackBerry system and settled the case for $612.5 million. The U.S. Patent and Trademark Office ultimately reexamined NTP's patents and found they were invalid.

2 In ***eBay Inc. v. MercExchange L.L.C.*** (2006), a unanimous Supreme Court held that a permanent injunction shouldn't be granted upon a mere finding of patent infringement. Prior to this decision, a prevailing party could easily shut down a competitor's business even if the competitor had not acted in bad faith.

3 In ***VirnetX Inc. v. Apple Inc.*** (2012), a jury in the Eastern District of Texas (notoriously easy ground for patent trolls) ordered Apple to pay $368 million for infringement of a technology used in Apple's FaceTime function, despite strong evidence that the technology at issue was only tangentially related to the device's core functions.

› later." In addition, they found that "unexpectedly, monthly sales of video games were related to concurrent *decreases* in aggravated assaults and were unrelated to homicides. Searches for violent video game walkthroughs and guides were also related to *decreases* in aggravated assaults and homicides 2 months later. Finally, homicides tended to *decrease* in the months following the release of popular M-rated violent video games."

The paper does not draw policy conclusions, but the results lend support to one course of action: Relax and let gamers harmlessly murder pixels.

California naloxone access

Overdoses, Overcome

Brian Doherty

In September, California Gov. Jerry Brown signed a bill legalizing access to naloxone from pharmacists without a prescription. The drug, which can reverse opiate overdoses in process, will still not be available over the counter, as the state will require buyers to receive minimal education in its use based on guidelines that are still in development.

The drug, also known by the trade name Narcan, was approved by the Food and Drug Administration (FDA) in 1971. Emergency medical personnel have long used it in the field to save lives, and it can be administered by nasal spray or injection. Several other states have also recently widened the legal availability of the drug, including Washington, Rhode Island, Vermont, New York, and New Mexico.

Naloxone is non-abusable and non-addictive. Departing Attorney General Eric Holder spoke out about the drug's value last March, and the Centers for Disease Control and Prevention estimates that, even with its availability legally restricted, it has saved over 10,000 lives since 1996.

In September, a coalition of urban health officials called the Big Cities Health Coalition recommended that the FDA work on the federal level to expand access to naloxone, including full over-the-counter availability for anyone who thinks they might need it.

Apple locks mobile data

Encrypted iPhones

Ed Krayewski

Apple's latest mobile operating system, iOS 8, has a new security feature. Users' phones will encrypt stored data by default, making that data inaccessible to Apple—even when the government is involved. As the company explained in the privacy note for iOS 8, "It's not technically feasible for us to respond to government warrants for the extraction of this data."

Apple is using this as a selling point. "Unlike our competitors, Apple cannot bypass your passcode and therefore cannot access this data," the company says on its website.

Google followed by announcing that the next iteration of its own mobile operating system, Android, will also encrypt data by default. The current version of Android allows users to choose to have their data encrypted, but this is not the default setting.

Apple can still access data saved onto its cloud storage service and, presumably, will continue to be compelled to honor government demands for that data. In its privacy note, Apple explains that "if we are legally compelled to divulge any information and it is not counterproductive to the facts of the case, we provide notice to the customer when allowed and deliver the narrowest set of information possible in response."

In the first half of 2014, Apple reports, American law enforcement served it with 4,132 "device requests" for 13,743 separate devices. According to Apple, the vast majority of these were in order to recover a stolen mobile phone. The company says it has received 789 "account requests" for 1,739 separate accounts, representing requests that are part of criminal or other law enforcement investigations.

Apple received fewer than 250 national security orders in the first half of 2014. By law, the company is not allowed to say more about those requests than that.

Arizona medical rules

Fingerprinting Doctors

J.D. Tuccille

In April, Arizona lawmakers passed a law requiring physicians renewing or applying for medical licenses to submit fingerprints for mandatory criminal background checks. The requirement isn't just a burden for applicants. It has also tripped up the Arizona Medical Board, which already had a backlog of license applications. The board responded in September to the extra workload by freezing all applications for new licenses.

An official statement assured physicians that "the Board, in conjunction with the Arizona Department of Public Safety and the Federal Bureau of Investigations, is working to resolve the matter as quickly as possible."

More importantly, to avoid paralyzing medical care, the Board allowed physicians already working in Arizona to continue practicing on expired licenses "provided that the



Waiting room (ImageZoo Illustration/Veer)

renewal application was filed timely."

Even before the freeze, Arizona was dogged by a physician shortage. According to a 2010 University of Arizona report, 16 percent of Arizonans lived in areas underserved by primary care physicians in 2008. (The national average is 11.8 percent.)

Within three years, the report said at the time, the state would need hundreds more physicians, dentists, and psychiatrists.

In October, the Arizona Medical Board ended the freeze. At the time, there was a backlog of at least 700 applications from physicians, according to the *Arizona Daily Star*. Many had already been waiting months.

The board did not directly respond to concerns about the delays. It was unclear when the backlogged licenses would be issued.

Car-service crackdowns

Uber Under Siege

Stephanie Slade

The latest municipalities to demand that rideshare services such as Uber cease operating are Anchorage, Alaska, and Tuscaloosa, Alabama. In Tuscaloosa, drivers who defy the injunction face not just penalties but potential arrest. Virginia already tried to prohibit the company from operating within its borders, a rule reversed in August.

By contrast, both California and Colorado have authorized Uber and similar services to operate legally statewide. However, Los Angeles and San Francisco think that Uber is violating aspects of California's regulations and have threatened the company with injunctions. And as of mid-October, the service was operating in Pennsylvania only under emergency temporary authority of the state's Public Utilities Commission, awaiting a final ruling.

Uber may have an ally in the world of academia. The University of Chicago's Booth School of Business recently surveyed a panel of economists on the issue. They all said letting rideshare



(Illustrations: TerryColon.com)

If you are holding a Talk Like a Pirate Day celebration, you might expect someone to show up dressed as a pirate. But when one employee at North Carolina's Richlands Elementary School saw another worker dressed as a pirate, the first staffer reported a suspicious person. Officials then locked down not just the elementary school but all schools in the area.

Officials in the city of Yakima, Washington, fired Sarah Matheny from her job with the city court. They've also asked the state attorney general to investigate her. They say Matheny, who is running for county clerk, used her job to improperly search government databases for information on her political opponents.



Connecticut officials placed Granby Memorial Middle School Principal Mark Foley on leave after discovering he had a second career making horror movies. Nothing about the pictures is illegal, but Superintendent Alan Addley says the films, which contain blood and nudity, made him question Foley's judgment.

In California, Ventura High School Principal Val Wyatt barred the football booster club from selling meals donated by Chick-fil-A at back-to-school night. Wyatt cited company president Dan Cathy's opposition to gay marriage as the reason for the ban. Superintendent Trudy Tuttle Arriaga agreed, saying, "We value inclusivity and diversity on our campus and all of our events and activities are going to adhere to our mission."

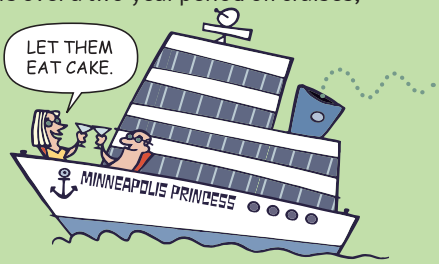
Kyle Bradford saw that a friend didn't care for the cheese sandwich he'd been served in the lunch room at California's Weaverville Elementary School. So Bradford offered him part of his chicken burrito, which also came from the lunch room. School officials caught him and gave Bradford detention. Tom Barnett, superintendent for the Trinity Alps School District, says school policy bans students from sharing food because of hygiene issues, as well as the possibility some students might have food allergies.



Police locked down and searched JFK Middle School in Southington, Connecticut, after someone reported seeing a student wearing a military-style jacket. Police located the student and determined that there was no threat.

The Hall County, Georgia, district attorney's office has dropped a meth possession charge against Ashley Gabrielle Huff. Huff was a passenger in an SUV that got stopped by a Gainesville police officer for a tag light violation. The officer obtained permission to search the vehicle and found a spoon that had some sort of residue on it. A field test indicated it was meth, but the lab results later showed no controlled substances on the spoon. Huff says the residue was from SpaghettiOs.

Community Action of Minneapolis is supposed to provide energy assistance, skills training, and other services for poor people. But a state audit found that it spent hundreds of thousands of taxpayer dollars over a two-year period on cruises, trips, spa treatments, a loaner car, and bonuses for staff and board members.



Charles Oliver

The Clinton Comeback

Peter Suderman

When Bill Clinton was first elected president in 1992, he was widely viewed as an avatar of the New Democrats, a relatively moderate coalition that had grown in response to the perception that the party had tilted too far toward the left. New Democrats thought of Clinton's victory as their biggest success, or at least they did until he took office, according to Joel Kotkin's February 1995 **reason** article, "The Center Folds."



Two years in, Clinton's presidency represented a "fundamental betrayal of the New Democrat agenda by the very president whose ascendancy was thought to put the movement's ideas on the political fast track," Kotkin wrote. Clinton ran "as a New Democrat but [governed] as an old one," putting the Democratic Leadership Council (DLC)—the movement's central organization—in "an untenable position" thanks to its members' "personal associations and past associations with the president." Left-wing Democrats who abandoned the DLC agenda, wrote Kotkin, would "only serve to destroy the party as a serious national force."

Almost 20 years later, the left wing of the party is considerably stronger. But the party's march toward progressivism didn't destroy it. Instead, it led to a series of sweeping national victories, culminating with the election of President Barack Obama in 2008 and again in 2012.

But the good times for liberalism may be on the verge of ending. Going into the 2014 midterm election, there was no question that Republicans would gain seats in Congress—the only question was whether the GOP would regain control of the Senate. Meanwhile, Obama's overall poll ratings have been trending downward since late 2012, with Gallup reporting a record low in September, when just 38 percent of the public said it approved of the job he was doing. Surveys show low public support for the president's specific handling of health care, the economy, and foreign policy as well.

Democrats in tight races tried to avoid association with their party's leader. In the run-up to the election, Obama's policies were so widely disliked that it was seen as a gaffe when he said that his "policies are on the ballot" this fall.

And who did the party turn to for support? None other than Bill Clinton, who campaigned for Democratic candidates and begged voters not to cast protest votes against the president.

› services compete on an equal footing with traditional taxi companies "raises consumer welfare." Six in 10 said they agreed strongly with the claim—not that regulators in Anchorage and Tuscaloosa are likely to care.

Workforce gender equality

Women's EDGE

Elizabeth Nolan Brown

Supporters of government initiatives aimed at curbing workplace gender inequality tend to have little faith that markets can address the issue. But it makes good business sense to recruit and value women workers, according to a slew of studies linking a good gender balance with good company performance. For instance, a study of Fortune 500 companies from research organization Catalyst found that those with the highest representation of women on their boards of directors performed significantly better than those with the lowest representation of women. Smart companies have increasingly sought to bring in women, and a new global certification program lets them show off those smarts to consumers, investors, and potential employees.

In August, cosmetics maker L'Oreal USA became the first American company to earn the Economic Dividends for Gender Equality (EDGE) certificate, joining some 60 others worldwide, including Deloitte and Ikea. More U.S. companies, including government contractors and software companies, are in the process of getting certified.

Earning the certification depends on a mix of factors, including a company's efforts to recruit and train women for leadership roles and whether men and women in equivalent positions are paid similarly. Megan Beyer, director of external affairs at the EDGE Foundation, told *The Business Journals* in August that the goal is to reach the point where it's a disadvantage not to be EDGE certified.

Off-the-record forests

War on Cameras

Scott Shackford

The lands managed by the United States Forest Service may technically be public, but that doesn't mean members of the public can just go in there and take pretty pictures anytime they please.

The Oregonian reported in September that the agency was going to start enforcing a rule that requires media outlets to get permission and filming permits, potentially costing up to $1,500, in order to shoot pictures or videos on federally controlled wilderness property. Outlets that defy the rules could face fines of up to $1,000.

First Amendment advocates feared the possibility of censorship from administrators choosing who would get permits. A director interviewed by *The Oregonian* didn't cite any examples of why the policy even exists. Asked whether the rule violates the right of a free press to report, she said there was an exception



Park ranger (Cthoman/iStockphoto)

for "breaking news."

Following criticism, U.S. Forest Service Chief Tom Tidwell told the Associated Press that the permitting rules were intended to apply only to commercial filming, such as a movie production, and not to newsgathering activities. Regardless of intent, at least two television stations have been told they needed permits to film, and the lawyer for the National Press Photographers Association says the language of the rule is so vague as to not make it clear when it applies.

Getting high vs. benefits

Welfare, Drug-Tested

Ed Krayewski

Facing a tight race for reelection in the November midterm election, Gov. Scott Walker (R-Wis.) released a 62-page plan in September called "Greater Prosperity for All." The plan, longer on rhetoric than details, includes an income tax cut of an unspecified amount, as well as a reduction in the amount of time that able-bodied people can receive food stamps and unemployment benefits. It also proposes drug testing welfare recipients.

Florida passed a similar requirement in 2011. That law was struck down earlier this year by U.S. District Court Judge Mary Scriven, who declared she could find "no set of circumstances under which the warrantless, suspicionless drug testing at issue in this case could be constitutionally applied." While that program was in place, only 2.6 percent of recipients tested positive for narcotics (mostly marijuana), a lower rate of drug use than among the general population.

Even still, bills requiring drug testing welfare recipients have been introduced in more than 20 states. Despite Walker's proposal, similar legislation was not introduced in Wisconsin before the 2014 midterms. In 2011, Republican legislators proposed a bill to lower benefits for welfare recipients who fail drug tests. The bill did not pass.

We Are All Mutants Now

Interview by Tracy Oppenheimer



Simon Kinberg

Simon Kinberg is a screenwriter and producer on the latest movie in the long-running X-Men franchise, *Days of Future Past*. The time-travel story follows the adventures of Marvel's mutant superheroes through an alternate version of the 1970s and a dark near-future. Kinberg's résumé includes a slew of Hollywood blockbusters, and he will write and produce the upcoming *X-Men: Apocalypse*, *The Fantastic Four*, and *Star Wars Rebels*.

In July, Kinberg spoke with Reason TV producer Tracy Oppenheimer at San Diego Comic-Con about the politics of superhero films, the legacy of Richard Nixon, and why we all relate to mutants.

Q: Part of why X-Men is so successful is how relatable it is to a wide audience.

A: With the X-Men, there's something inherently relatable to the idea that everybody feels a bit of an outsider, feels a little different, feels like they have something that makes them embarrassed or ashamed. For everybody there's something about mutantcy that we can connect to, relate to.

It's probably truest for teenagers who are sort of going through physical transformations and not in total control of their bodies.

Q: They start out as outcasts, but society grows to accept them. Can you talk about how that might parallel our society?

A: Obviously being different and an outsider, and the majority world being xenophobic and prejudiced against those people, is something that can stand as a metaphor for racism, for sexism, for anti-Semitism, for homophobia.

Different people read mutantcy and anti-mutantcy different ways. [Director] Bryan Singer, when he started the film franchise with *X-Men* and then *X2* and now *Days of Future Past,* he's a big gay rights activist, and the homophobia angle of it was interesting to him. But he's also Jewish, and I think the anti-Semitism was interesting. Magneto is a Jewish character who lost his parents in the Holocaust. So there is an inherently political aspect to it.

Q: It really comes down to individualism. There's good and bad on both sides—on the government, mutants, every walk of life—and it really boils down to the person and their choices.

A: We could have set [the movie] in the '60s when *X-Men: First Class* took place. We could have set it in the '80s. We chose the '70s because it was a particularly dark period in American history, because of what happened with Nixon and because of Vietnam. The movie shows that there is the possibility for evil or nefarious activity on the human side and on the mutant side, and that ultimately people can change. You're not just born good, and you're not just born and destined to be bad.

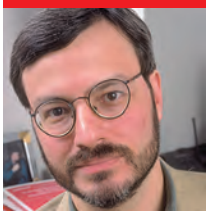
Q: A government program run amok—that story line is somewhat popular in these kinds of movies. What makes that such a usable plot line?

A: I think there's always suspicion of large organizations and immense amounts of power. Whether it's a corporation or government or an evil society of mutants.

Q: And they're working together.

A: Yeah, especially when they're all working together. The '70s is a rich time for that, because there was corruption in the government, and there was maybe more pernicious things happening than even in the '80s and '90s and this last decade.

We wanted to show the human capacity for doing bad, but also the human capacity for doing good and learning a lesson. We had a line actually that was cut out of the movie because it just didn't fit—it was a scene we cut out. But there was a sort of epilogue scene with Nixon. Nixon has a moment where he says, "I don't think these machines are the answer. I think we're going to need some of them on our side." Meaning the mutants.



Ebola, Smoking, and Mission Creep at the CDC

Controlling contagious diseases is just one of many items on the agency's to-do list.

Before Tom Frieden became director of the U.S. Centers for Disease Control and Prevention (CDC) in 2009, his two nemeses were tuberculosis and smoking. Although both are commonly described as threats to "public health," they differ in ways that may help explain the CDC's stumbles in dealing with Ebola.

Tuberculosis, which Frieden helped control in New York City and India as a CDC epidemiologist, is a contagious, potentially lethal disease. Smoking, which Frieden targeted as New York City's health commissioner, is a pattern of behavior that increases the risk of disease.

That distinction matters to people who reject paternalism as a justification for government action. We believe the use of force can be justified to protect the public from TB carriers but not to protect smokers from their own choices.

Frieden rejects that distinction. He sees the goal of public health as minimizing morbidity and mortality, even when they arise from voluntarily assumed risks, and he does not hesitate to rely on state power in pursuing that mission. For him, public health means quarantining and treating disease carriers, but it also means imposing heavy taxes on cigarettes, banning trans fats, and forcing restaurants to post calorie counts.

This understanding of public health is an open-ended license for government meddling. It is also a recipe for mission drift, as reflected in the CDC's ever-widening agenda.

"As the scope of CDC's activities expanded far beyond communicable diseases," explains CDC historian Elizabeth Etheridge, "its name had to be changed." Beginning as a branch of the Public Health Service charged with malaria control in Southern states during World War II, it became the Center for Disease Control in 1970, the Centers for Disease Control in 1981, and the Centers for Disease Control and Prevention in 1992.

Today the CDC's mission includes pretty much anything associated with disease or injury. In 2013 *The New York Times* mentioned the agency more than 200 times. Communicable diseases accounted for 54 of those references, but the topics also included smoking, drinking, electronic cigarettes, obesity, diet, suicide, addiction, driving, sports injuries, contraception, economic inequality, domestic violence, and gun control.

If you visit the CDC's website, you will see that the agency is very interested in your life: what you eat, how much exercise you get, whether you smoke, how much you drink, whether you wear a bicycle helmet, whether you brush after meals, whether you get enough sleep. Lately Frieden and his subordinates even have found time to repeatedly warn us about the menace supposedly posed by e-cigarettes, an innovation that should be welcomed by anyone seeking to reduce tobacco-related disease.

So maybe it's not budgetary constraints so much as a lack of focus that explains the CDC's Ebola-related missteps. Frieden conceded that the CDC should have acted faster in response to the first case diagnosed in the U.S., that it should not have greenlighted air travel by a nurse with an elevated temperature who turned out to be infected, and that its initial protocols for preventing transmission to health care workers, two of whom were diagnosed with Ebola in October, were inadequate.

An Ebola expert told *The New York Times* the original guidelines were "absolutely irresponsible and dead wrong." He added that when he suggested as much to the CDC, "they kind of blew me off."

At the end of September, Frieden was confident that the country was Ebola-ready. "I have no doubt that we will stop it in its tracks in the U.S.," he declared. Two weeks later, he began a press briefing on a different note. "Stopping Ebola is hard," he said.

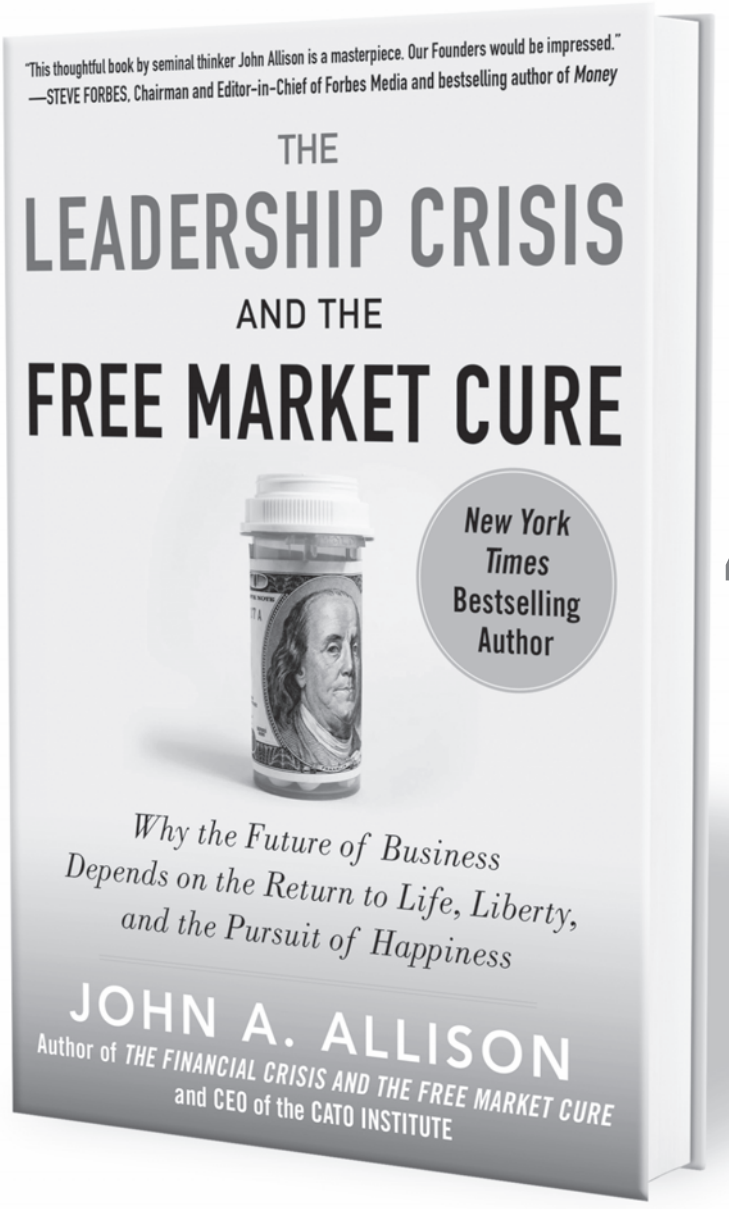
That was four days before President Obama appointed a political hack as his "Ebola czar," charged with coordinating control of the deadly virus. You may wonder: Isn't that Frieden's job? Yes, but he has a lot of other things on his plate.

Senior Editor Jacob Sullum (jsullum@reason.com) is a nationally syndicated columnist.
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New from John A. Allison, President and CEO of the Cato Institute and former Chairman and CEO of BB&T—the highly anticipated follow-up to his *New York Times*, *Wall Street Journal*, and *Washington Post* best-seller, *The Financial Crisis and the Free Market Cure*.

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AVAILABLE NATIONWIDE



Foreign Aid Is a Failure

Throwing good money at bad governments makes poor countries worse off.

It's been almost a decade since one of the deadliest natural disasters in modern history devastated the coast of South Asia. In the final days of 2004, a 9.1-magnitude undersea earthquake triggered a tsunami in the Indian Ocean, killing over 230,000 people in places such as Indonesia and Sri Lanka and leaving thousands stranded without the basic necessities of life.

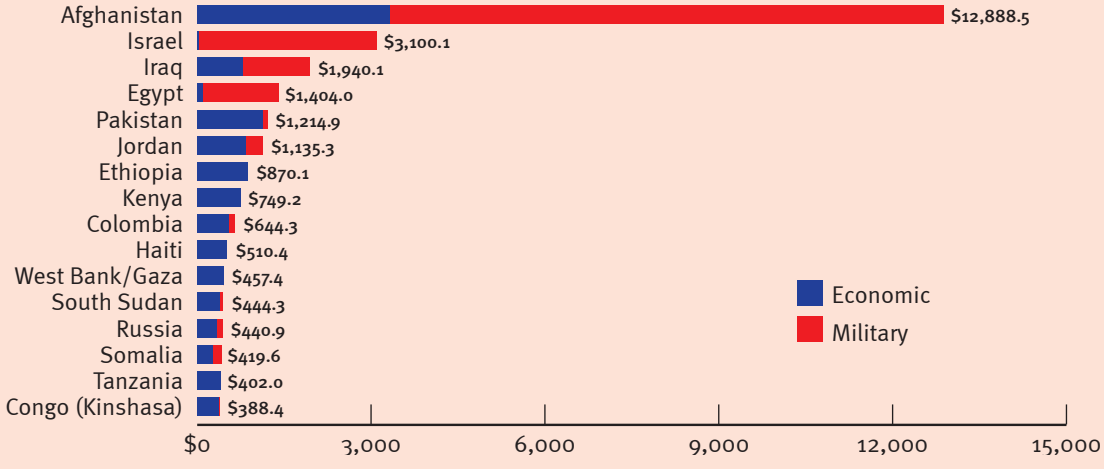
International leaders immediately called on the global community to provide help. What happened after that underscores the flaws in the developed world's approach toward foreign aid: Governments gave generously, pledging more than $10 billion. Yet the humanitarian response to the crisis fell far short, and many desperate needs went unmet.

For years, it was believed that solutions to complex global problems could be engineered if only wealthy nations mustered enough will and funding to see them through. But despite a desire to help and a willingness to give, the international community keeps stumbling to address both short-term crises, such as natural disasters, and longer-term challenges, such as global poverty and economic development.

In his 2013 book *Doing Bad by Doing Good*, the George Mason University economist Christopher Coyne explains why measures intended to alleviate suffering often go so wrong. Most people agree that wealthy countries have some responsibility to help relieve hardship in distressed areas. But while we are usually clear about our goals, we rarely stop to consider whether government can realistically accomplish them. Our efforts abroad tend to be marred by culturally illiteracy. Without meaning to, we frequently create perverse incentives that harm the people we are trying to assist.

Foreign aid is the main tool of state-led humanitarian efforts among wealthy members of the Organization for Economic Co-operation and Development (OECD). While such spending accounts for a mere drop in the bucket of the donating nations' budgets, the combined sum

Top Recipients of U.S. Foreign Aid, 2012 (in millions of U.S. dollars)



Source: *U.S. Overseas Loans and Grants, Obligations and Loan Authorizations*, USAID.
Produced by Veronique de Rugy, Mercatus Center at George Mason University, October 6, 2014.

from governments around the world is enough to cause big problems in developing economies. In Fiscal Year 2013, OECD countries spent a total of $138 billion on foreign aid. From 1962 to 2012, they contributed a cumulative $3.98 trillion.

It was long believed that directing money to stagnant communities could jump-start economic growth. Yet numerous studies have found little evidence that foreign aid actually leads to greater economic development.

Take Africa as an example. To date, the continent has received well over $600 billion in outside assistance. World Bank data show that a majority of African countries' government spending comes directly from foreign aid. Yet much of Africa remains impoverished, and rampant corruption continues.

Dambisa Moyo has a personal perspective on the matter. In her 2009 book *Dead Aid: Why Aid Is Not Working and How There Is a Better Way to Help Africa*, the Zambian-born economist characterizes foreign aid to Africa as an "unmitigated economic, political, and humanitarian disaster" that has actually made the continent poorer. Africans will never see their governments as legitimate, she explains, as long as most of the spending for education and health care comes from foreign countries.

To Moyo, continued aid spending reinforces the perception that African governments are ineffective and makes it nearly impossible for them to break free from dependence on foreign help. Sketching the sad outcome for outside observers, she writes: "Stuck in an aid world of no incentives, there is no reason for governments to seek other, better, more transparent ways of raising development finance."

Of course, no amount of evidence can dissuade a true believer. Among the foreign-aid faithful is the Columbia University economist Jeffrey Sachs, author of 2006's *The End of Poverty* and champion of the United Nations' experimental (and controversial) Millennium Villages Project. Sachs acknowledges that foreign aid often fails, yet he still calls for the design of "highly effective aid programs." He is short on details about the specific changes that would distinguish those ideal programs from existing, mistake-riddled boondoggles.

Sachs takes it on faith that aid programs can be made effective. Unfortunately, he and his acolytes have failed to grapple with the fundamental reason so much aid fails: Governments simply do not have enough information to know what each dollar's best use would be. People are forced to compete for resources in the political arena, and money ultimately goes to those with the most connections, not to those most in need.

Aid providers also have trouble figuring out which investments are most appropriate for a particular developing economy, so money ends up being poured into bad projects. These white elephants not only fail to encourage economic growth but frequently divert scarce resources to destructive ends. Aid money becomes a tool of oppression rather than empowerment. As Moyo put it in a 2009 *Wall Street Journal* essay, "A constant stream of 'free' money is a perfect way to keep an inefficient or simply bad government in power."

New York University's Bill Easterly does an excellent job describing international organizations' tendency to double down on their failures in his 2008 book *The White Man's Burden*. Like governments, multilateral aid institutions can suffer from central-planning paralysis, which makes it difficult to isolate mistakes and find ways to better serve their "clients."

Foreign aid suffers from a principal-agent problem, in which organizations prioritize donors' political and commercial interests over recipients' needs. In 2012, for example, Egypt received $1.3 billion in U.S. military aid. Most of those funds flowed through Foreign Military Financing (FMF), a program that provides foreign governments with grants for the acquisition of U.S. defense equipment and services. One of the program's objectives, according to the State Department, is to "support the U.S. industrial base by promoting the export of U.S. defense-related goods and services." Translated from bureaucratese, that means FMF funnels dollars to foreign governments for the explicit purpose not of helping people on the ground but of benefitting U.S. contractors and manufacturers. The same is true of many other aid programs.

The problems caused by poverty and natural disasters are enormous, but aid's track record suggests that it too often only makes matters worse. Our global neighbors deserve more from us. To serve them well, we must have the humility to admit we don't have all the answers.

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'Enough, For All, Forever'

A report from New York's mixed up, anti-capitalist People's Climate March

The People's Climate March ambled genially down 6th Avenue in New York City on a Sunday afternoon in September. The slogan was "To Change Everything, We Need Everyone." Not everyone showed up, but the march did attract between 300,000 and 400,000 participants, making it by far the largest climate change mobilization in history. Prominent marchers included former Vice President Al Gore, United Nations Secretary-General Ban Ki-Moon, and Sens. Bernie Sanders (I-Vt.), Sheldon Whitehouse (D-R.I.), and Charles Schumer (D-N.Y.), along with such leading environmentalists as Bill McKibben, Vandana Shiva, and Leonardo DiCaprio. The marchers were hoping to pressure the United Nations Climate Summit into promising to adopt stringent measures to prevent catastrophic man-made global warming.

They sorted themselves into various affinity groups: faith-based organizations, scientists, students, labor unions, old folks, organic food enthusiasts, renewable energy proponents, indigenous peoples, and so forth. Wandering through the throngs prior to kickoff, it was apparent that every progressive cause can and does find a home in the climate change movement. The demonstrators' chief demand was "climate justice," which broadly entails redistributing wealth from the countries and industries that have benefited from the consumption of fossil fuels.

"System change, not climate change," was the ubiquitous slogan, and the system that they think needs changing is markets and private property. I overhead one marcher explaining to another, "We must have a better capitalism, better than the malignant corporate system we have now."

Among the chief capitalist villains: Monsanto. The assembled marchers fervently damned the crop biotechnology company despite the fact that modern high yield biotech crops cut CO_2 emissions by 13 million tons in 2012—the equivalent of taking 11.8 million cars off the road for one year. By making it possible to grow more calories on less land, biotech crops helped conserve 123 million hectares from 1996 to 2012. Many of the protesters oddly believe that eating locally grown organic crops—which require more labor and land to produce less food—will somehow help stop global warming. Vegans are right that eating less meat would mean that more land could be returned to forests that absorb carbon dioxide from the atmosphere. On the other hand, researchers estimate that lab-grown meat could cut greenhouse gas emissions by 96 percent relative to farmed meat.

From the sidelines, I spied a man holding a sign that said, "Overpopulation Is Not A Myth." This provoked some marchers to come over to suggest to him that he was blaming the poor for their poverty. He responded that they were not the problem; rich Americans are the problem. Another guy, who was clearly not a marcher, approached to contend that the 19th-century doomsayer Robert Malthus had been proven wrong. The stalwart furiously responded that Malthus would be proved right and that the end was nigh, thanks to out-of-control population growth.

In fact, shortly before the march, the respectable journal *Science* published an article warning that world population will reach 11 billion by the end of this century. But the *Science* study misses the mark, mostly because nearly all of the projected increase—4 billion people—is in sub-Saharan Africa. Demographers at the

International Institute for Applied Systems Analysis counter that the researchers behind the *Science* projections failed to take into account the pace and extent of improved schooling in Africa, which will dramatically lower future population increases.

Fracking aggravated a lot of the demonstrators. Artful placards alluded to another f-word as a way of indicating displeasure. Many asserted that fracking taints drinking water. Yet just the week before the parade, new studies published in the *Proceedings of the National Academy of Sciences* by research teams led by the Ohio State University's Thomas Darrah and the U.S. Department of Energy found that the controversial technique to produce natural gas does not contaminate groundwater. And never mind that burning natural gas produces about half of the carbon dioxide that burning coal does.

Another low-carbon energy source was also a cause of stress for the demonstrators: nuclear power. Some demanded that the Indian Point nuclear power plant on the Hudson River be closed down. This particular petition is just perverse, since nuclear power is a big part of why New Yorkers emit a relatively low average of 8 tons of carbon dioxide per person each year, compared with the U.S. average of 16.4 tons per capita.

No less an environmentalist than James Hansen, the climatologist who testified before Congress back in 1988 that climate change had already begun, declared in a 2013 open letter cosigned by his colleagues Kenneth Caldeira of the Carnegie Institution, Kerry Emanuel of the Massachusetts Institute of Technology, and Tom Wigley of the National Center for Atmospheric Research that "while it may be theoretically possible to stabilize the climate without nuclear power, in the real world there is no credible path to climate stabilization that does not include a substantial role for nuclear power." As it happens, in October, researchers at Lockheed Martin declared that they had devised a cheap fusion reactor that could be deployed in a decade.

While I found much that provoked dismay at the march, there is one placard with which I wholeheartedly agreed: "Enough, For All, Forever." Sadly, many of the marchers oppose the only system that has ever enabled hundreds of millions of people to rise above humanity's natural state of abject poverty.

Did the world leaders who gathered later in the week for the U.N. Climate Summit fulfill the hopes of the earnest marchers? Not so much.

The formal statements at the summit made it clear that there is still a wide gulf between the developed countries and the poorer nations when it comes to who bears responsibility to act and who should pay for that action. When President Barack Obama noted that America is on track to reduce the country's greenhouse emissions by 17 percent below their 2005 levels by 2020, he added: "We can only succeed in combating climate change if we are joined in this effort by every nation—developed and developing alike. Nobody gets a pass." He further observed that emerging economies—China, India, Brazil—are both growing rapidly and emitting ever-higher levels of greenhouse gases.

In total, humanity emitted about 36 billion tons of carbon dioxide in 2013. Roughly speaking, China emitted 10 billion tons, the U.S. emitted 5 billion tons, the E.U. emitted 3.6 billion tons, and India emitted 2.5 billion tons. China now emits more carbon dioxide per capita (7.2 tons) than does the European Union (6.8 tons). The U.S. emits 16.4 tons per capita; for India, the figure is just 1.9 tons per capita.

In his statement, Chinese Vice Premier Zhang Gaoli made it clear that his country expects to get a pass when it comes to reducing the amount of its greenhouse gas emissions. Instead, Zhang reiterated China's pledge to cut its carbon intensity by 40 to 45 percent by 2020 from its 2005 level, noting that it had already achieved a 28 percent reduction. Assuming that China's economy grows at 7 percent per year, some researchers calculate that meeting that carbon intensity goal would actually allow China's carbon dioxide emissions to increase from about 10 billion tons today to as much as 14.7 billion tons by 2020. That increase would nearly equal current U.S. carbon dioxide emissions and is almost two and a half times greater than the two billion tons it argues the U.S. is obligated to cut between now and 2020.

In his summary remarks on the Summit, Secretary-General Moon claimed that the leaders who met there "committed to finalize a meaningful, universal new agreement" next year. As it stands now, that amounts to little more than a pious hope.

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The Crony Capitalism Litmus Test

The Ex-Im Bank won't survive 2015—if the GOP is serious about free market principles.

Timothy P. Carney



Then-House Majority Leader Eric Cantor at the New York Stock Exchange, May 2011 (Spencer Platt/Getty Images)

Rep. Eric Cantor didn't just lose his Virginia Republican primary. He was demolished. Dave Brat—a mostly unknown economics professor from a local college—beat the powerful Republican incumbent by 11 percentage points.

Cantor on June 10, 2014, became the first sitting House majority leader in the history of the job to lose his own party's primary. Nearly every pundit in America called Brat's win a political earthquake, and it didn't seem like much of an exaggeration.

One of the Cantorquake's biggest aftershocks came on Wall Street, where the next morning shares of Boeing dropped 2.3 percent—the biggest decline of all companies on the Dow Jones Industrial average that day. The headline at *Bloomberg News* told the story: "Boeing Tumbles as Cantor Loss Clouds Ex-Im Bank's Future."

How could the loss of a single House seat so thoroughly rattle the stockholders of a giant, profitable, stable company like Boeing, let alone the supporters of an obscure Washington institution like the Export-Import Bank? Boeing, it turns out, is the largest beneficiary of the Ex-Im Bank's loan guarantees, which are typically awarded to foreign companies and governments for the purposes of buying big-ticket items like U.S.-made jets.

And Cantor? He was the political point man tasked with holding down a grassroots insurrection against what many free market champions consider the embodiment of Beltway crony capitalism. His downfall signaled to activists on both sides of the Ex-Im fight that the Tea Party wave of 2010 might be on the verge of forcing the Republican Party to live up to its limited government principles.

In normal times, Congress re-authorizes the Ex-Im Bank every few years with minimal fuss, since both major parties share a broad enthusiasm for corporate welfare. But this time around, as the September 30 deadline for re-authorization approached, an epic battle erupted on the Republican side of the aisle, with free marketeers, libertarians, and Tea Partiers taking on the business lobby over a comparatively tiny but hugely symbolic federal agency.

As issues like war in Syria crowded out the September legislative calendar, the showdown was postponed when lawmakers agreed to a nine-month renewal of the agency, thus pushing the re-authorization battle to as late as June 2015 or as soon as December, should the lame-duck Congress decide to intervene on a longer-term deal. The bruised combatants on both sides



are split over whether the postponement signals business as usual or the first real chance at lopping off this dispenser of political favors.

However it plays after the 2014 elections, the questions at stake remain the same: Do Republicans believe their free market talk? Or is it merely a cover for doing the bidding of business? And if Republicans can't kill or seriously trim a New Deal program that subsidizes foreign governments—mostly to buy Boeing jets—will they ever get serious about fighting corporate welfare?

What Is Ex-Im?

Most people have never heard of the Export-Import Bank of the United States.

Ex-Im exists outside of any cabinet department. Due to special accounting methods, it resides almost entirely outside the federal budget. Even its building is nondescript—the agency is housed in the least impressive structure in the neighborhood immediately around the White House, and that's saying something.

Franklin Roosevelt created Ex-Im in part as a way to subsidize Joseph Stalin. "Since the Bolsheviks had seized power in Russia in 1917, the United States had refused to accept the legitimacy of the new Soviet regime," Ex-Im's official historians William Becker and William McClenahan explain in their 2003 history *The Market, the State, and the Export-Import Bank of the United States*. "Throughout the 1920s, Presidents Harding, Coolidge, and Hoover conditioned recognition on the USSR agreeing to accepted standards of international conduct. That is, they wanted the Soviet government to end its support of revolutionary

activities in other countries, return confiscated property, and accept the international financial obligations of its predecessor government."

But as Hitler's threat grew, FDR's foreign policy advisers and the business lobby pushed for normalized relations *without* conditions. To this end, FDR created the Export-Import Bank, initially capitalizing it with $10 million from the New Deal Reconstruction Finance Corporation. "Roosevelt's executive order of February 2, 1934, authorized the new bank to finance American trade with the USSR," Becker and McClenahan explain.

FDR steadily expanded the agency's purpose beyond the initial goal of helping Stalin, as Cuba and then China became Ex-Im customers. In 1945, Congress passed the Export-Import Bank Act, codifying the agency. Soon, ironically, Eisenhower was sold on Ex-Im's importance as a Cold War tool—the goal was to subsidize Third World countries to win them away from communism, as Becker and McClenahan tell it. Since then, the justification for it has constantly shifted: a foreign policy lever, an international development agency, a weapon in trade wars, and finally a job creator.

Ex-Im subsidizes U.S. exports through a few different financial products that all have one thing in common: they put the U.S. taxpayer on the hook if a foreign customer fails or refuses to pay back a loan. In Fiscal Year 2013, Ex-Im extended $27.3 billion in financing.

Ex-Im's biggest product is the long-term loan guarantee. Over the past three fiscal years, such guarantees made up $52.6 billion of the agency's $95.9 billion in financing. A fairly typical guarantee is the one that the Ex-Im's board of directors approved on August 22: Virgin Australian International Airlines was buying a new batch of Boeing jets and Canadian TD Bank was providing the financing, in the form of a 20-year loan to the Aussie airline. This looks like a regular market transaction until the Ex-Im Bank steps in to guarantee the loan, meaning that if Virgin Australian fails to pay back the Canadian lender, U.S. taxpayers cover the bank's loss.

The long-term loan guarantee program is mostly a subsidy program for Boeing. Of the agency's $52.6 billion in loan guarantees over the past three years, more than half has covered Boeing sales. This isn't a very diversified portfolio, but luckily for Ex-Im (and U.S. taxpayers), purchasers of jumbo jets have a tiny default rate so far.

Ex-Im also makes direct loans—$25 billion over the past three fiscal years. For instance, Ex-Im loaned $1.03 billion to Global Foundries, a semiconductor manufacturer owned by the Emirate of Abu Dhabi. The loan covered Global Foundries' purchase of U.S.-made equipment to build a factory in Germany.

In 2011, Ex-Im loaned $75.8 million at 1.68 percent interest to China's state-owned Industrial Commercial Bank of China (ICBC), whose aircraft-leasing arm was buying private jets from Hawker Beechcraft. ICBC happens to be the largest bank in the world. Hawker, at the time, was owned by Goldman Sachs. So when the largest bank in the world bought corporate jets from Goldman Sachs, Ex-Im greased the skids with a loan from U.S. taxpayers.

Ex-Im also offers smaller financial products, and these are the ones it talks about most. For instance, Miss Jenny's Pickles is a North Carolina–based pickle producer and retailer that began exporting to China in 2011, as the Heritage Foundation's Diane Katz tells it. Around then, Miss Jenny herself—Jennifer Fulton—attended a seminar in North Carolina conducted by Ex-Im CEO Fred Hochberg. Fulton shrewdly hunted down Hochberg's limousine driver and handed him a jar of her brined cucumbers. "They are very

When the largest bank in the world bought corporate jets from Goldman Sachs in 2011, Ex-Im greased the skids with a loan from U.S. taxpayers.

good pickles," Hochberg would later comment. "And as a New Yorker, I know my pickles."

Soon, Miss Jenny had secured Ex-Im credit insurance. If a Chinese grocer doesn't pay Miss Jenny, U.S. taxpayers will foot the bill. These days, Miss Jenny, clad in a pickle-green polo, travels the country with Hochberg, preaching the gospel of Ex-Im. Credit insurance constitutes about 19 percent of all Ex-Im authorizations, overlapping substantially with Ex-Im's small-business portfolio, which also accounts for 19 percent of the agency's financing.

Then Comes the Tea Party

"Ex-Im has long enjoyed broad bipartisan support in the Congress," Boeing Vice President of Government Operations Timothy Keating reminisced in a speech this September. Keating is right. Ex-Im is the perfect totem of Washington bipartisanship. For Democrats, Ex-Im is a New Deal government program that supports manufacturing (where workers are 50 percent more likely to be unionized than in the rest of the private sector) and gives bureaucrats the power to steer money toward things like green energy and women-owned businesses. For Republicans, Ex-Im is pro-trade, pro-business, and pro-Wall Street.

The House re-authorized Ex-Im with a voice vote in 2002 and then the Senate passed the bill by unanimous consent. In 2006, Congress re-authorized the agency again by voice vote and unanimous consent. At times—such as in 2001—some conservatives and a very few liberals put up a fight over the bank, but it never faced a real existential threat.

Then came the 2010 elections, the Tea Party, and the GOP takeover of the House of Representatives, all of which complicated the scheduled 2012 re-authorization of the bank. Many House conservatives said "no way." Tea Party-ish Sens. Mike Lee of Utah, Rand Paul of Kentucky, Marco Rubio of Florida, and Pat Toomey of Pennsylvania—all of whom had to beat the GOP establishment to get to Washington—came out foursquare against the agency.

Then-Minority Leader Mitch McConnell (R-Ky.), who had never objected to Ex-Im in the past, but who would face a Tea Party primary challenge himself in 2014, came out against re-authorization in March 2012, blocking a vote on the bank.

Still, in May 2012, the upper chamber voted 78-20 to renew the bank's charter. Those 20 "nay" votes were the most ever, and they included McConnell, soon-to-be Finance Committee ranking member Mike Crapo (R-Idaho), and other senior Republicans, alongside the new Tea Partiers. In the House, nearly 100 Republicans voted against renewing the charter—also the highest total on record.

Whence this flare-up of anti-corporatism?

First, much of the anger that initially fueled the Tea Party storm was rooted in the 2008 bailouts—AIG, Fannie Mae, Freddie Mac, TARP, Chrysler, General Motors. Corporate welfare joined Obamacare and the national debt on the short list of evils the insurgent Republican candidates promised to battle. Paul, then a Senate candidate in Kentucky, blasted his primary opponent because one of his fund raisers was an AIG lobbyist. Sen. Bob Bennett (R-Utah) and Rep. Bob Inglis (R-S.C.) both lost primaries while being branded as "Bailout Bob."

The anti-establishment, anti–Ex-Im freshman senators —Paul, Lee, Rubio, and Toomey—not only had to beat the party leadership to win their primaries, but they also had to beat K Street: The business lobby firmly backed their primary opponents.

Which brings us to the most important force powering the GOP's nascent free market populism: a new source of money. Traditionally, the business lobby was the primary source of contributions for GOP candidates, which made Republicans wary of alienating big business. But Internet advances and the liberalization of campaign finance laws have decentralized fundraising.

After *Citizens United v. Federal Election Commission*, a 2010 Supreme Court case that voided some campaign finance restrictions, Internet-enabled rivals to K Street sprung up: the "SuperPACs" for Club for Growth, Senate Conservatives Fund, FreedomWorks, and Americans for Prosperity, among others. When House and Senate candidates backed by these new grassroots funders started winning elections against business-backed opponents, it liberated the party from K Street's clutches. With that freedom, and supported by the vote-whipping muscle of the newly powerful Heritage Action For America (HAFA), the lobbying arm of the conservative Heritage Foundation, the anti–corporate-welfare cause began to grow.

In spring 2012, Club for Growth, FreedomWorks, Senate Conservatives Fund, and Heritage Action put Ex-Im

re-authorization on their scorecards, so that a vote for Ex-Im was considered a vote against free markets. Club for Growth even tried to block the re-nomination of Hochberg, the Ex-Im CEO, unless Congress agreed to wind down the agency.

Hochberg easily won reappointment in 2012, just as Ex-Im received votes from a majority of Republicans (and all Democrats) in both chambers, thanks to support from industry players with lots to lose. In other words, the Ex-Im fight of 2012 showed that the Tea Party represented a new force in the party, but that big business still called the shots.

The Battle of 2014

The most important "nay" in Ex-Im's 2012 re-authorization wasn't fiscally conservative budget wonk Rep. Paul Ryan (R-Wis.) or McConnell. It was Texas Republican Rep. Jeb Hensarling. A former chairman of the Republican Study Committee, the conservative caucus within the House GOP, Hensarling was in line to become chairman of the House Financial Services Committee after the 2012 elections.

In June 2013, Hensarling took the occasion of a subcommittee hearing to lay a rhetorical broadside on Ex-Im. "By inserting political considerations into the market," he declared, "the Bank's activities do expose taxpayers to risks while producing a less efficient economy than would otherwise occur in a free market without the Bank's interference. I have long believed that many taxpayers feel that it is indeed time to EXIT the EXIM."

Hensarling's press office blasted these comments out to the media. Democrats griped that he hadn't done the spadework of calling a hearing to discuss, craft, and eventually pass an Ex-Im bill. Finally, in May, Hensarling planted the flag. Speaking at the Heritage Foundation, he said, "Today I call on every Republican in Congress to simply let Ex-Im expire."

Over the summer, Hensarling and his staff went from office to office trying to convince Republicans to let Ex-Im die. Instead of holding a meeting to mark up a re-authorization bill, Hensarling held a June hearing simply to discuss whether the agency should exist, featuring as many Ex-Im critics as customers.

On one level, the persuasion was unnecessary. If a committee chairman doesn't want a bill to pass, he simply doesn't hold a hearing on it and the bill dies.

Unless, that is, the majority party's leadership circumvents normal order and brings the bill straight to the floor. This was how Majority Leader Eric Cantor had passed Ex-Im in 2012. And so after Hensarling's May speech at the Heritage Foundation, a spooked export lobby turned to Cantor.

Yes We Cantor

In party leadership, different people have different jobs, determined by leadership position, geography, seniority, and personal skills. Eric Cantor's job—first as a deputy whip, then as minority whip, and finally as majority leader—was always the same: to be the GOP's No. 1 liaison to Wall Street and one of its main interlocutors with the broader business lobby.

This is why Cantor was the right guy to save Ex-Im in 2012, and it's why K Street and the Chamber again looked to him to save them from Hensarling in 2014.

Brat, the economics professor, made crony capitalism a central theme of his campaign against the heavily favored incumbent. Brat called himself "pro-business" but contrasted himself with Cantor by saying that he was "against big business in bed with big government."

On the night of June 10, Brat shocked everyone outside his immediate family by winning his primary against Cantor, 55 percent to 44 percent. In the victory speech, he swore, "I will fight to end crony capitalist programs that benefit the rich and powerful."

When the stock market opened a few hours later, Boeing's stock sank. It recovered a bit later in the day, but as *Bloomberg* reported, the slide to $134.10 per share was still "the steepest drop since April 10," enough that it "erased a year-to-date gain for the Chicago-based manufacturer."

Cantor's defeat also opened up the majority leader job, which House Majority Whip Kevin McCarthy (R-Calif.), a Cantor acolyte, slid into. McCarthy's first national media hit as presumptive majority leader, days after Cantor's loss, was on *Fox News Sunday*. Host Chris Wallace asked McCarthy, who had voted for Ex-Im in 2012, about the 2014 re-authorization. When McCarthy criticized the agency, Wallace pinned him down: "You would allow the Ex-Im Bank to expire in September?"

"Yes," McCarthy immediately said. "Because it's something that the private sector can be able to do."

That statement kicked the anti–Ex-Im lobby into gear.

Heritage Action has led the charge. The group made killing Ex-Im "a major theme" of weekly calls with its local activists, or "sentinels," according to HAFA President Mike Needham. Sentinels, in turn, brought up Ex-Im at town halls with their congressmen and flooded congressional switchboards with phone calls. Heritage Action also produced two Web videos explaining Ex-Im, and for a while this summer and fall, HAFA's official Twitter account had the words *End Ex-Im* in its avatar.

Needham calls Ex-Im "the Bridge to Nowhere of the corporate welfare fight." In the last decade, conservatives won a symbolic—but ultimately small—victory when they eliminated a beloved earmark benefitting the powerful Sen. Ted Stevens (R-Alaska). Killing that pet project saved taxpayers a few hundred million dollars, but it also broke down the dike. Soon, Republicans had become the anti-earmark party. Activists saw that Ex-Im could be the fight that likewise turned the GOP into the anti–corporate-welfare party.

The Club for Growth and Americans for Prosperity, too, began whipping their grassroots members against Ex-Im. It helped that the free marketeers also had air support—from the country's largest airline.

Delta Force

Concentrated benefits and diffuse costs are the best defense that corporate welfare enjoys. A billion-dollar subsidy to a big company costs each American only $3 in taxes. Who's going to lobby harder on the matter: the subsidizer or the subsidized?

Ex-Im's budget shenanigans exacerbate the problem: The agency's operating expenses are not direct outlays, because Ex-Im is able to cover those with interest charges and origination fees. The agency's real costs are risk and exposure, which is easy to disguise or ignore.

But most of the damage caused by Ex-Im comes from market distortions. Subsidizing one company tends to hurt another. Favorable financing for Miss Jenny's Pickles gives it an advantage over other U.S. pickle producers, who have to compete with Miss Jenny for cucumbers, dill, glass jars, and brand recognition. Subsidizing Chinese steel mills hurts U.S. steel mills. Subsidizing European purchases of U.S. tractors puts upwards price pressure on tractors, which hurts American farmers.

These victims of Ex-Im are unlikely to coalesce into a lobbying force—the harm, while real, is both hidden and diffuse. But in the current fight, one victim has spoken out: Delta Airlines.

In 2013, Delta sued Ex-Im for subsidizing its foreign competitors. Pointing out that about 46 percent of Ex-Im's total outstanding exposure—nearly $50 billion—was to foreign airlines, Delta argued: "These foreign airlines will recoup their investment in their new aircraft faster or reduce ticket prices on competing routes without adversely impacting their relative rate of return on those investments."

Delta executives charged that Air India, having received billions in Ex-Im subsidies over the years, used those artificially cheap Boeings to lower its operating costs, thus crowding out Delta on the New York-to-Mumbai route.

Suddenly, a big American company was lobbying against Ex-Im. This opened the ears of many Republicans, who tend to be more persuaded by business concerns than lofty ideas like free enterprise.

Exporters for Ex-Im

"A government that robs Peter to pay Paul," George Bernard Shaw quipped, "can always depend on the support of Paul."

Delta executives charged that Air India, having received billions in Ex-Im subsidies over the years, used those artificially cheap Boeings to lower its operating costs, thus crowding out Delta on the New York-to-Mumbai route.

Ex-Im's clients have been unabashed about this truism, launching the "Exporters for Ex-Im" campaign, in which profitable subsidized businesses explain how much they enjoy their subsidies.

Leading the pro–Ex-Im charge in 2012 and 2014 has been the U.S. Chamber of Commerce, the largest lobbying organization in the country. The Obama administration appreciated this pro-subsidy lobbying so much that Hochberg, Ex-Im's president, gave Chamber President Tom Donahue the "Chairman's Award" in 2013, to thank him for helping save the bank.

The National Association of Manufacturers joined the Chamber in spearheading the Exporters for Ex-Im Coalition, along with the Nuclear Energy Institute, the Association of Equipment Manufacturers, the Aerospace Industries Association, and other industrial lobbies. Bankers got in the fight, too—the Financial Services Roundtable and the Bankers Association for Finance and Trade both joined. JPMorgan Chase and Wells Fargo also lobbied on Ex-Im, according to their lobbying disclosure forms.

Exporters for Ex-Im over the summer deployed its "Dream Team" of lobbyists, including Haley Barbour, former governor of Mississippi and former chairman of the Republican National Committee, and Dick Gephardt, former House minority leader and former Democratic presidential candidate. On the P.R. front (that is, not lobbying members directly) was former Bush White House Deputy Spokesman Tony Fratto.

Keating, Boeing's vice president and top lobbyist, has been busy as well. He was previously a top aide in the Clinton administration—a "consummate political insider," as the *Seattle Times* describes him. Bill Clinton even called out Keating by name while speaking at Ex-Im's annual conference in 2012.

Keating brags about having lobbied "almost every member of Congress" on behalf of the bank. "We are what America should be," he told the *Seattle Times*, "manufactured here and sold overseas." As for Ex-Im's opponents, Keating brands them as "mostly far-right political consultants, think tanks and congressmen" who "banded together in a fit of ideological road rage to kill the bank."

Even Barack Obama, that self-styled scourge of corporate lobbying, dedicated his August 23 weekly address to boosting Ex-Im and imploring businesses to lobby for renewal. "Your members of Congress are home this month," Obama said, transitioning to his role as lobbyist advisor. "If you're a small business owner or employee of a large business that depends on financing to tackle new markets and create new jobs, tell them to quit treating your business like it's expendable, and start treating it for what it is: vital to America's success. Tell them to do their jobs—keep America's exports growing, and keep America's recovery going."

The Battle Postponed

September was supposed to bring resolution to the Ex-Im fight. Because Hensarling wouldn't pass a re-authorization bill through committee and McCarthy wouldn't circumvent Hensarling to move a bill straight to the floor, Ex-Im's only hope for survival was to ride on the back of some unrelated must-pass legislation before its September 30 expiration date.

Senate Majority Leader Harry Reid threatened to attach a five-year Ex-Im renewal to an omnibus appropriations bill that would fund the government past the end of the fiscal year. The "Continuing Resolution," or "C.R." as it's known on Capitol Hill, would have forced conservatives to either shut down the government on October 1—again—or cave on re-authorizing Ex-Im.

Candidates for the GOP presidential nod will court the conservative base, which sees corporate welfare as a signature vice of both the GOP establishment and Obamanomics. That means most Republican contenders will have to oppose Ex-Im.

Instead of any of that, leaders of both chambers on September 17 agreed to stick a nine-month extension of Ex-Im into a C.R. funding the government through mid-December. The deal passed the House 319-108, and the Senate 78-22.

Conservative groups immediately came out against the short-term extension—any vote for Ex-Im is a vote for corporate welfare, they maintained. "There will be some who profess opposition to Ex-Im while publicly worrying that President Obama and Senate Democrats will consider an extension of the bank as a prerequisite to fund the federal government," Heritage Action CEO Mike Needham wrote in an email. "Ex-Im is the poster child for cronyism and corporate welfare, and conservatives cannot shy away from the national spotlight or allow others to muddle what should be a clear, anti-cronyism, anti–corporate welfare message."

Tea Party enforcers at Heritage Action and Club for Growth felt that conservatives would lose their political leverage after the November election—specifically, when McCarthy won a full term as House majority leader. Their best chance, many conservatives would argue behind closed doors, was to make it clear to McCarthy that he could keep his job only by helping kill Ex-Im.

But many Ex-Im *allies* also hated the nine-month extension. House Minority Leader Nancy Pelosi (D-Calif.) made it clear she wanted any short-term Ex-Im renewal to have the same timing as the C.R., so that opponents of the bank would always be faced with an unpopular government shutdown as their only mechanism for ending the bank. "I'm totally opposed to" a nine-month extension, Pelosi said on September 11. "If you put the date to next June, you are effectively putting a marker as to the demise of the Ex-Im Bank."

Boeing lobbyist Keating was similarly nonplussed, railing in October that "The temporary extension recently enacted in many respects leaves us worse off than before. The extension is to next summer, when in all likelihood the Congress will be more polarized than even now."

Republicans will probably hold more Senate and more House seats in 2015 than in 2014. As of press time, all major election models were predicting a GOP takeover of the Senate.

Still, if you took a poll of both chambers on Ex-Im, more members would favor the bank than oppose it. All Democrats voted for Ex-Im in 2012. About half of Republicans probably support it now.

That means that to win—to kill or significantly pare back Ex-Im—Hensarling, Heritage Action, the Club for Growth, and their allies need to actually change Republicans' hearts. They'll get a boost if November brings victories to Senate challengers being attacked for opposing Ex-Im: John Cassidy in Louisiana, Cory Gardner in Colorado, and Thom Tillis in North Carolina.

Most important might be the presidential primary, which will be in full swing by the May and June re-authorization debate. Candidates for the GOP nod will be courting the conservative base. Increasingly, that base sees corporate welfare as a signature vice of both the GOP establishment and Obamanomics. That means most Republican contenders will have to oppose Ex-Im.

When 29 governors wrote to Congress demanding re-authorization in July 2014, a number of Republican governors declined to sign the letter, including Scott Walker, Mike Pence, Bobby Jindal, Rick Snyder, Chris Christie, and John Kasich. In other words, every governor with 2016 ambitions refused to back Ex-Im, except for Rick Perry.

Fearing next summer's political atmosphere, K Street has begun pushing for a re-authorization vote tied to the C.R. that expires December 17. Proponents hope the Senate will pass a C.R. to fund the government for the rest of the fiscal year—that is, through September 2015—and include in the deal a five-year Ex-Im renewal.

In October, California's Maxine Waters, the top Democrat on the Financial Services Committee, and Gary Miller, the committee's former Republican chair, introduced such a long-term re-authorization. This could set up a fight in the 2014 lame duck session.

If not, the Ex-Im battle will come in 2015. In either case, it will be a test of the Republican congressional leadership: Have they learned a lesson from the public's reaction to the bailouts, from the Tea Party's energy, and from Eric Cantor's defeat? Or will the GOP abandon free enterprise for business, as usual?

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In Search of Libertarian Realism

How should anti-interventionism apply in the real world?

On May 1, 2003, President George W. Bush landed a Lockheed S-3 Viking on the deck of the aircraft carrier *U.S.S. Abraham Lincoln* off the coast of San Diego, then delivered a triumphant speech under a banner that read "Mission Accomplished." "In the Battle of Iraq," the president proclaimed, "the United States and our allies have prevailed."

ISIS video of the beheading of American journalist James Wright Foley



For the next decade, that premature declaration gave way to insurgencies, sectarian warfare, troop surges, corrupt Iraqi governments, 4,000 U.S. combat deaths, even more Iraqi deaths, and $1 trillion in taxpayer money down the drain. The American appetite for war, occupation, and the concomitant surveillance state went on a steady and uninterrupted decline, culminating in the shockingly successful September 2013 public and congressional revolt against President Barack Obama's plans to attack Bashar Assad's regime in Syria. With the occupation of Afghanistan becoming the most unpopular war in recorded U.S. history, and with people telling pollsters they feared their own government more than they feared terrorists, it became possible to imagine a cross-ideological coalition against war, spanning from the progressive left to the constitutional-conservative right, and headed up by the libertarian-leaning Sen. Rand Paul (R-Ky.).

But 2014 has complicated that narrative. The rise of the Islamic State (ISIS) within war-torn Syria, Iraq, and Libya halted the public's decade-long bear market on war, with more Americans favoring combat troops against ISIS in October than in September, in part because of the Islamic State's horrific beheadings of two U.S. citizens.

Land grabs by ISIS across the region gave rhetorical ammunition to hawks and anti-interventionists alike. The influential camp led by Sen. John McCain (R-Ariz.) argued that the battlefield successes of ISIS demonstrated the folly of leaving Iraq too soon and of not toppling Assad when we had the chance. McCain's former campaign sparring partner Ron Paul—Rand's father—countered that watching the Iraqi army abandon its weapons after $26 billion worth of propping up by Washington proved the hopelessness of war and nation-building (see "Dr. Never," page 42). Rand Paul, meanwhile, vacillated between those poles, arguing in one breath that the U.S. should "stay the heck out of [Syria's] civil war," and in the next that America should "destroy" ISIS, though only after congressional debate and vote. (For an interview with the younger Paul, see "The Conservative Realist?," page 48.)

With Rand Paul at or near the top of GOP presidential polls for 2016, the principled non-interventionism of his father is colliding with



President George W. Bush declaring the end of major combat in Iraq, May 1, 2003. (AP Photo/J. Scott Applewhite)

the complications not just of the Islamic State but of Washington politics. If Ron's project is to spread the pure principles of anti-intervention, Rand's is to see how much anti-intervention he can sneak into the mainstream diet. These differing approaches—and the different men behind them—have triggered all sorts of fierce debates about what a libertarian foreign policy really looks like.

The Hoover Institution's Richard Epstein, in a September piece titled "Rand Paul's Fatal Pacifism," criticized libertarians for being "clueless on the ISIS front," arguing that "In principle, even deadly force can be used in anticipation of an attack by others, lest any delayed response prove fatal." Responding at Antiwar.com, **reason** Contributing Editor David R. Henderson countered that "whatever else libertarian non-interventionists believe, few of us have what Professor Epstein calls an 'illusion of certainty.' It is the exact opposite: we are positive that there is great uncertainty. It is this uncertainty that should, in general, cause us to pressure our government to stay out of other countries' affairs."

So who's right? And what should libertarian principles about foreign policy look like after colliding with messy reality? In the pages ahead, we have convened a forum of self-identified libertarians who have a range of informed opinions on U.S. foreign policy. The results are designed to start a debate rather than finish it, to take a thoroughgoing skepticism about intervention into the realm of the real. In short, it's a search for libertarian realism. *—Matt Welch*

The Case for Realism and Restraint

Will Ruger

WHAT ROLE SHOULD the United States play in the world? When we ask that question, we are talking about foreign policy: the sum of our defense policy, trade policy, and diplomatic relations with other countries.

The answer: The U.S. should adopt a foreign policy that is both consistent with a free society and aimed at securing America's interests in the world—in other words, libertarian realism. The goal must be to provide security efficiently without sacrificing other important goals that Americans hold in common.

An important caveat up front: There is no universal, one-size-fits-all foreign policy for the ages. A single, comprehensive policy cannot be applied uniformly to any state at any period in history. Geography, institutional constraints, technology, history, and strategic context will always shape how we conduct foreign policy. So the U.S. today might require a very different approach than it needed during, say, the early Cold War or the first years of the republic.

But *today*, American defense policy should be characterized by strategic restraint; its economic policy must be one of free trade, and its diplomacy ought to be focused on articulating—but not aggressively imposing—liberal values and the benefits of free markets.

Ends and means in politics and war are intimately connected. The primary goal of the state should be to protect the territorial integrity of the United States and the property rights—broadly understood, including throughout the global commons—of the people residing within it. The state is also tasked with securing the conditions that allow for a free people to flourish in America. These elements combine to form the national interest.

The state's role is properly limited to serving these interests rather than meeting the needs of outsiders or of the state itself. However, a libertarian realist foreign policy will have positive benefits for Americans and people of other countries beyond achieving these fairly limited ends.

Realism is important to this schema because, in order to secure our interests properly, we need to understand the world as it is, not as we would like it to be. Realists recognize there are important limiting and complicating factors in politics, just as there are in economics. We can no more wish away the constraints that an anarchic world, the balance of power, and geography impose on statesmen than we can disappear the laws of supply and demand or comparative advantage. We need to understand and adapt to what realism tells us about the laws of international relations.

For example, we might wish we could rely on the rule of law internationally as much as we do domestically, and to maintain a very limited military, if any at all. However, this does not accord with what we've known about international life since Thucydides: The strong often do what they will, while the weak suffer what they must. If you doubt this, look at what is happening in Ukraine.

Realism teaches that power matters significantly in the world, and states can use force to meet a variety of

Will Ruger: We have to be realistic about the danger terrorism poses. It is rarely an existential threat and often best handled by careful intelligence collection, police work, and special operations forces.

goals, some of them malignant. But even great powers face constraints. As we saw in the Iraq War and aftermath, the world—including the comparatively powerless—also gets a vote, placing limits on what the U.S. can impose. Indeed, the application of power often brings negative unintended consequences and even outright failure.

Ultimately, the long-term security of America rests upon the foundation of a strong economy. Free trade is a key ingredient in the recipe for economic growth, and the U.S. should pursue it maximally. As individuals and firms leverage their comparative advantages in the global economy, the ensuing robust growth will allow Washington to better provide for the common defense at a relatively low cost as a percentage of GDP. There are some rare cases, such as specific strategic goods (missile and weapon technology, nuclear materials, etc.) where trade might be limited on security grounds, but we should be leery of rent seekers who use this rationale as a means to nakedly self-interested protectionism.

In the military realm, the watchword of U.S. policy should be *restraint*. The restraint approach harkens back to the traditional American thinking about defense that dominated from George Washington's Farewell Address to the beginning of the Spanish-American War in 1898. It finds its most important modern expression in the work of MIT-affiliated scholars such as Eugene Gholz, Daryl Press, Harvey Sapolsky, and Barry Posen, and in the political realm by Sen. Rand Paul (R-Ky.).

Restraint traditionally has two pillars. First, the U.S. should avoid permanent military alliances and be quite wary of making even temporary commitments in times of peace or war. That will maximize U.S. independence and ensure a free hand to avoid or choose engagements on its own terms. It also means that the U.S. ought to carefully wind down its many security commitments around the globe, including NATO. This pillar of restraint does not rule out wartime coalitions like the one that formed in World War II or that would have emerged after 9/11 to counter our enemies in Afghanistan in the absence of NATO.

Second, the U.S. ought to employ the minimal use of force abroad, consistent with the national interest narrowly defined above. Defense and deterrence will be the primary methods of meeting U.S. security needs. However, this is not the absolute noninterventionism or the functional pacifism often advocated by left-liberals and libertarians. Aggressive military action should be on the table where and when warranted, such as what might have been necessary had the French, in the early 1800s, been unwilling to sell New Orleans and threatened to forcibly close off our trade down the Mississippi. Moreover, defense includes pure pre-emption when necessary, as it was for Israel in the Six-Day War or might be in the future for the U.S. should we have absolutely solid intelligence of an imminent forthcoming attack against American soil or U.S. ships.

Restraint, rooted in realism, requires the maintenance of a very strong—but smaller and more focused—military, with the Navy and the Air Force having the most important roles and the Army sustaining the deepest cuts. Naval and air power will be critical to protect America far from shore should deterrence fail. They also provide power projection capability as needed. But restraint will entail less need for the type of large standing army the U.S. currently maintains around the globe. Of course, a highly professionalized, well-equipped Army (and Marine Corps) will still be needed and ought to be designed for expandability in the event of a significant threat.

Restraint also requires a capable intelligence community, though one focused abroad and respectful of American civil liberties at home.

Restraint is particularly well-suited to the realities of the modern world. The U.S. is exceptionally safe today, despite what you see on Fox News or in *The Wall Street Journal*. The country has an extremely favorable geographic position, with two huge "moats" separating us from strong or threatening powers. It's continent-sized, with plentiful resources, the world's largest economy, and a large, growing population. The neighbors are friendly and comparatively weak, representing zero military threat.

Importantly, the U.S. also has a major military advantage that will remain unrivaled in the decades ahead, even if right-sized in accordance with a restrained realist strategy. Its superior Navy and Air Force together offer an exceptional deterrent capability and the ability to defeat attackers far from our shores. The U.S.'s secure second-strike nuclear capability in particular gives us virtual invulnerability from traditional threats. It is extremely unlikely that any other country would dare attack the U.S. with nuclear weapons or conventional forces.

Of course, the U.S. should be vigilant about the threat posed by explicitly anti-American terrorist groups, especially those that seek to use weapons of mass destruction. However, we also have to be realistic about the danger terrorism poses. It is rarely an existential threat and often best handled by careful intelligence collection, police work, and special operations forces. Nuclear terrorism is also a very *unlikely* scenario for a variety of reasons, though still something we should guard carefully against.

Appropriately, then, restraint does not *a priori* rule out the use of military force against terrorist groups and their state supporters when necessary. Afghanistan in 2001 was one such case where war was justified even within a restraint framework, since the regime in Kabul provided a safe-haven for the notorious terrorist group which carried out the deadly attacks of 9/11.

Another virtue of restraint is that the world today, and especially the balance of power, has changed in a way favorable to American security. Our traditional fear, an emergent Eurasian hegemon, is nowhere on the horizon, not least because any attempt at regional primacy will likely be resisted by neighbors and undermined by nationalism. Russia and China, to name two potential rivals, have internal challenges ahead that dwarf our own domestic problems. Lastly, economic and political developments over the last half-century mean that states such as Japan, South Korea, and our current European allies are plenty rich enough to defend themselves individually or as parts of regional alliances. The U.S. is simply not needed to play the central, stabilizing role it did during the Cold War. Indeed, its continuing deep engagement around the globe only makes it less likely that these countries will take responsibility for their own security, thereby releasing American taxpayers from the cost of their defense.

When your ends are "making the world safe for democracy" or other ambitious do-gooderism, your means are going to involve a permanent and expensive military/foreign policy establishment, always primed for aggressive interventionism. More restrained ends require much more limited means.

Restraint's incompatibility with do-gooderism does not mean that realism is immoral or amoral. There is morality to a realistic foreign policy, especially one connected to liberal values. The state acts justly when it serves its citizens' interests and limits itself to things that people would generally favor contracting out to government (foremost among these is protecting the homeland). But a state with an expansive foreign policy can do a great deal of harm in the world, even if its motives are pure.

A limited, realistic foreign policy is much less likely to require means that threaten the purpose of having government in the first place. State action taken in the name of an activist national security policy can have terrible domestic consequences: civil liberty violations, increased militarization of police, an unaccountable and bloated national security apparatus, more debt and larger deficits, and so on.

The United States, thankfully, can afford to pursue a significantly more restrained foreign policy, spending modestly to maintain forces more than adequate for defense and deterrence. We no longer need to support an extensive web of alliances like those of the early Cold War. Instead, the country can rely on its own economic and military strength, along with temporary alliances during wartime, just as George Washington counseled.

To quote John Quincy Adams, the U.S. needs to stop going "abroad in search of monsters to destroy." Humani-

tarian crises in non-democratic/illiberal regimes do not automatically threaten U.S. interests. Americans should not have to spend their own blood and treasure policing the globe, even assuming that we could do so successfully (which recent history has demonstrated otherwise).

Given that war is the health of the state, and a reliable destroyer of domestic liberty, there are great costs to a free society in maintaining a massive military and using it for anything other than true defense of the homeland. A free society is better off opting for realist-inspired restraint, coupled with economic, diplomatic, and personal engagement with the world.

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Libertarianism Means Noninterventionism

Sheldon Richman

A NONINTERVENTIONIST foreign policy is the natural complement to a noninterventionist domestic policy. Even setting aside the formidable anarchist challenge to the very authority of the state, we can see that government is uniquely threatening to liberty and that this threat warrants keeping the state on as short a leash in the international arena as in the domestic arena—or shorter, because foreign policy will inevitably be conducted covertly.

William Graham Sumner, an anti-imperialist classical liberal of the 19th century, noted that intervention translates to "war, debt, taxation, diplomacy, a grand governmental system, pomp, glory, a big army and navy, lavish expenditures, political jobbery." He should have included conscription on the list. James Madison, who was nobody's libertarian, nevertheless got this right: "Of all the enemies to public liberty war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the domination of the few." He goes on: "In war, too, the discretionary power of the Executive is extended; its influence in dealing out offices, honors, and emoluments is multiplied; and all the means of seducing the minds, are added to those of subduing the force, of the people....No nation could preserve its freedom in the midst of continual warfare."

That constitutes a daunting *domestic* case against military intervention in the affairs of other countries. But there's more. U.S. government policies and technologies developed to efficiently carry out the occupation of foreign societies eventually "boomerang" on Americans at home, as George Mason University economists Christopher Coyne and Abigail Hall convincingly argue in a paper published in the fall 2014 *Independent Review*. As the late Chalmers Johnson, author of three books on American imperialism, used to say, we either dismantle the empire or live under it.

On the foreign side, wars and occupations immorally threaten noncombatants, vital infrastructure, and social institutions, sowing the seeds of despotism and humanitarian disaster.

The ambivalence that some libertarians feel toward strict noninterventionism stems, I believe, from faulty thinking about "national defense." Intervention is often presented as defensive in order to conceal geopolitical and economic objectives. Yet some libertarians defend intervention with a simple bully-on-the-schoolyard model: Anyone would be justified in defending a victim and retaliating against a bully. The problem is that we cannot move seamlessly from individuals on a jungle gym to states in the international arena.

States are comprised of individuals, of course, but as the public choice school of economics teaches, these people face vastly different incentives than private citizens do. Governmental decisionmakers can impose the financial and other costs of their policies on a captive population through taxation, regulation, and (potentially) conscription. Those decision makers rarely suffer personally for their misjudgments. The mystique of the nation-state makes many people credulous about and vulnerable to patriotic appeals for support of "their" government and troops in times of crisis. While heroes on the schoolyard are responsible for their actions, essentially irresponsible political personnel have a dangerously broad range of action that is unique in society.

It's tempting to sum up the public choice case for nonintervention by saying that people in the private and political spheres are similarly self-interested, with different incentives leading to different kinds of behavior. But the economist

Sheldon Richman: Even if a well-intended, risk-free interventionist foreign policy could be conceived in the abstract, its chances of being carried out correctly by any real-world government are virtually nonexistent.

and historian Robert Higgs adds an important amendment: "Whatever its merits as an operating assumption in positive political analysis, the proposition that the people who wield political power are just like the rest of us is manifestly false," he wrote in *The Independent Review* in 1997. "Lord Acton was not just expelling breath when he said that 'power tends to corrupt, and absolute power corrupts absolutely.' Nor did he err when he observed that 'great men are almost always bad men'—at least if 'great men' denotes those with great political power. Among the most memorable lines in Friedrich A. Hayek's *Road to Serfdom* is the title of chapter 10, 'Why the Worst Get on Top.' Hayek was considering collectivist dictatorships when he noted that 'there will be special opportunities for the ruthless and unscrupulous' and that 'the readiness to do bad things becomes a path to promotion and power.' But the observation applies to the functionaries of less egregious governments, too. Nowadays nearly all governments, even those of countries such as the United States, France, or Germany, laughably described as 'free,' provide numerous opportunities for ruthless and unscrupulous people."

The upshot is that even if a well-intended, risk-free interventionist foreign policy could be conceived in the abstract (leaving aside the problem of taxation), its chances of being carried out correctly by any real-world government are virtually nonexistent.

In addition to these incentive and character problems, there is a knowledge problem. Libertarians appreciate the seriousness of this issue in the economic realm: Those who would modify free market outcomes or abolish the market altogether cannot possibly acquire what Hayek called the requisite knowledge of time and place, much of which is tacit. This systemic ignorance guarantees the loss of welfare for society even if the planners have the best intentions.

We find an analogous problem in the managing of foreign affairs. Interfering in a foreign land is likely to bring chaos, thanks to the imperial administrators' ignorance of the target society's complex political, social, religious, sectarian, and tribal dynamics. Invading and occupying another country is like playing Jenga—"the classic block-stacking, stack-crashing game"—while blindfolded and intoxicated. A seemingly innocuous move can produce catastrophic consequences.

There is no better example of these pitfalls than the recent U.S. experience in the Middle East. Before noting some recent lowlights, a word of caution: In viewing the government's record, it can be difficult to distinguish incentive/character problems from knowledge problems. When the same apparent error persists decade after decade, it may not actually be an innocent error, but rather the pursuit of perverse interests. After all, people tend to learn from mistakes. We cannot rule out the possibility that military quagmires represent successful pursuits of geopolitical and economic advantage for particular political and "private" interests.

To pick an arbitrary starting point, in March 2003 President George W. Bush ordered the invasion of Iraq. The intent was to overthrow the government of Saddam Hussein, whom the U.S. government had helped place in power and then later helped to make war on Iran. Officials told the public that decapitating the Iraqi government would not only safeguard Americans—remember those phantom weapons of mass destruction?—but would also win the gratitude of the Iraqis and usher in a liberal democracy.

It did no such thing. With the devil-may-care attitude

of that soused Jenga player, the U.S. invasion and occupation plunged Iraq into chaos, which cost many Iraqi and American lives, disrupted Iraqi society, and produced a new authoritarian regime. Nearly a dozen years later, Iraq is threatened by the Islamic State, a violent organization that grew out of Al Qaeda in Iraq, which did not exist before the U.S. invasion.

In Saddam's Iraq, minority Sunni Muslims dominated the majority Shiites (and Kurds) in a secular regime. Was it ignorance or the pursuit of a hidden agenda that accounts for the U.S. policy makers' seeming obliviousness of the Sunni-Shiite divide in Iraq? Why did the U.S. government carry out a pro-Shiite policy pleasing to Iran, the American foreign-policy establishment's favorite bête noire? (That strained relationship is another product of U.S. foreign policy: In 1953, the CIA ousted a democratic Iranian prime minister and reinstated the despotic Shah, which led to the 1979 Islamic revolution and the U.S. embassy hostage taking, producing the Iran-U.S. cold war that persists to this day.)

The Islamic State is in Syria too. That country became prime real estate for an extremist Islamic insurgency the day President Barack Obama and then–Secretary of State Hillary Clinton declared Syrian President Bashar al-Assad illegitimate and announced that he "has to go." This set the stage for a bizarre new U.S. war in which Assad's most formidable enemy is now America's target. Whatever our (mis)leaders may say, U.S. ground troops in Syria and Iraq are on the table.

It takes an interventionist foreign policy, devised by ignorant and perfidious politicians, to make such a godawful mess. This does not mean that nonintervention would have brought the world only sweetness and light. To slightly modify Adam Smith: "There's a great deal of ruin in the world." But a free American people (we would have to get free first) could better defend themselves without a global empire, which is both bloody and bloody expensive. At least America wouldn't be creating its own enemies, which is what U.S. foreign policy seems best at doing. ■

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Don't Underestimate the Costs of Inaction

Fernando R. Tesón

CURRENT EVENTS IN Syria and Iraq have rekindled talk about humanitarian intervention. The amply documented atrocities perpetrated by the Islamic State (ISIS) range from public beheading to rape, forced conversion, and expulsion. The United States and a few other countries are already attacking ISIS from the sky and giving some aid to resistors on the ground. But these bombings will not be sufficient to stop ISIS' crimes. By all appearances, only a full invasion with ground troops could get the job done. And Americans are weary of invasions.

Most libertarians oppose intervention on principle. But let us take a moment to focus not on principles but consequences. Arguments for or against intervention should always consider costs; the problem lies in calculating those costs. We know that every war kills and destroys. We also know that sometimes war produces a positive result. How do we measure and weigh the outcomes?

I do not have enough information to say with any confidence whether the costs of a full invasion to defeat ISIS would be acceptable. But I can propose two guidelines to help policy makers think through the problem.

First, when contemplating military action, leaders should consider the price of *inaction* as well. Second, the more distant effects—such as future unrest, wars, and massacres—must be evaluated alongside immediate results. These sound like simple things, but they are neglected surprisingly often in public debate over foreign policy.

Here's the tricky part: The effects of intervention, like those of any contemplated human action, have to be evaluated *ex ante*, that is, from the standpoint of the person who is considering whether to act beforehand, and not only *ex post*, that is, when all the effects are known after the fact. Especially when you consider that inaction, too, could have led to unforeseen miseries. In other words, hard though it may be to accept, a disastrous outcome is not itself proof that a decision to go to war was the wrong one.

People who defended the 2003 Iraq War (myself included) did not accurately predict all the bad things that the invasion would enable, including the prolonged insurgency and the continued inability of the Iraqi leadership to preserve the gains of Saddam Hussein's ouster.



The toppled statue of Saddam Hussein in downtown Baghdad, April 2003 (AP Photo/Jerome Delay)

The stronger predictions about the short- and mid-term effects of the war came from non-interventionists, who correctly argued that the invasion would open a Pandora's box in the region. It might therefore be tempting to say that those who make the case for inaction most often (or even always) have the facts (and justice) on their side.

But those who blast the Iraq War are looking at the consequences *ex post*, that is, after a number of bad things are known to have happened. There's nothing wrong with trying to learn from your mistakes, but it's easy to criticize the Iraq decision in hindsight. If events had unfolded differently—if there had been no Baathist insurgency, if the Arab Spring had consolidated some liberal reform, if the democratic institutions in Iraq had taken root—then we would regard the 2003 invasion differently today. Perhaps betting on those outcomes was foolhardy from the start. But because we are human, we tend to believe retroactively that what actually happened was inevitable and what didn't happen was unlikely. But history is not that linear, and acting as if it is can lead to bad decisions in the future.

So how do we go about measuring the most serious immediate costs of proposed intervention? Defeat is obviously the most costly scenario. Runner-up, arguably, is the killing of civilians. Many wars that might seem justified are nonetheless troubling because they will predictably cause the death of a high number of innocent persons. If there is an acceptable level of collateral damage, then a war that exceeds that level is unjustified because it is disproportionate: The harm caused is greater than whatever good the intervention brings about. If defeating ISIS will bring about the deaths of hundreds of thousands of persons, then many would conclude the United States should not act.

But this way of thinking about consequences may be too narrow. What if military intervention causes great harm *now* but improves the lives of millions in the future? Even if invading and defeating ISIS would cause a troubling number of civilian deaths, it is possible that *failure* to intervene would mean death and suffering for millions of more

Fernando Tesón: The terrible consequences of inaction are as hard to gauge as the terrible consequences of invading. It is simply false to assert that in the face of uncertainty it is invariably best not to act.

people for years to come. Balancing present certain harm against future uncertain harm is always problematic. But leaders must evaluate the immediate *and* remote effects of *both* action and inaction when making foreign policy decisions.

I understand that for the U.S. government, the lives of Americans are more important that the lives of foreigners, and the lives of people alive today are more important than the lives of people who will be born later. This is because the U.S. government has a fiduciary duty to protect its current citizens. But that does not mean that the lives of foreigners are irrelevant in the calculus, particularly when we think about the consequences of inaction.

Consider the genocide perpetrated in Rwanda in 1994. If the U.S. had intervened, at a comparably low cost of American lives and money, maybe 800,000 people would be alive today. Many made a principled case for inaction at the time, arguing that it was not the proper role of the United States to act in other nations' affairs. But the cost in human lives—foreign lives, to be sure, but lives nonetheless—received insufficient weight in the discussion, leading to a bad decision.

Assume for a moment that the United States government had ruled out even air strikes against ISIS over understandable fears of short-term costs. ISIS, in that scenario, would be free to solidify its own totalitarian state. In all likelihood, the chances of war and other ills in the region would increase, because the new state's harsh and expansionist worldview would mortally threaten its neighbors. And it's quite possible that the United States would eventually be dragged into the very war it sought to avoid.

All indications are that the Islamic State would be militantly committed to violent strikes against United States' interests everywhere, including on American soil. If a handful of modestly financed individuals could pull off the 9/11 attacks, imagine the damage that a sovereign state exponentially more rich and powerful could inflict.

As Richard A. Epstein wrote in a September essay for the Hoover Institution, one of the classical functions of government is to defend citizens against foreign aggression. It is thus surprising, Epstein argued, to hear many libertarians "unwisely demand that the United States keep out of foreign entanglements unless and until they pose direct threats to its vital interests—at which point it could be too late." An invasion to defeat ISIS, in other words, might be necessary to defend us effectively against future attacks emanating from the Islamic State. I know that similar arguments were made in the lead-up to the Iraq war. But the fact that those arguments were wrong then (if they were wrong) does not mean they are wrong now.

What are the consequences that the U.S. government can reasonably expect would follow from an invasion against ISIS? There are so many possible scenarios that any prediction would be no more than an educated guess. While some would argue that our lack of information one way or the other is an argument against war, my claim is that there is equally an argument against inaction. Our imaginations necessarily fail to conjure all the ways things might go horribly wrong if we expend American blood and taxpayer dollars on war, but are equally lacking when we try to envision the way things might go wrong if we do not act.

The terrible consequences of inaction are as hard to gauge as the terrible consequences of invading. I confess not to know where the consequential calculus leads. But it is simply false to

assert that in the face of uncertainty it is invariably best not to act.

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Toward a Prudent Foreign Policy

Christopher Preble

In domestic policy, libertarians tend to believe in a minimal state endowed with enumerated powers, dedicated to protecting the security and liberty of its citizens but otherwise inclined to leave them alone. The same principles should apply when we turn our attention abroad. Citizens should be free to buy and sell goods and services, study and travel, and otherwise interact with peoples from other lands and places, unencumbered by the intrusions of government.

But peaceful, non-coercive foreign engagement should not be confused with its violent cousin: war. American libertarians have traditionally opposed wars and warfare, even those ostensibly focused on achieving liberal ends. And for good reason. All wars involve killing people and destroying property. Most entail massive encroachments on civil liberties, from warrantless surveillance to conscription. They all impede the free movement of goods, capital, and labor essential to economic prosperity. And all wars contribute to the growth of the state.

An abhorrence of war flows from the classical liberal tradition. Adam Smith taught that "peace, easy taxes and a tolerable administration of justice" were the essential ingredients of good government. Other classical liberals, from Richard Cobden and John Stuart Mill to Ludwig von Mises and F.A. Hayek, excoriated war as incompatible with liberty.

War is the largest and most far-reaching of all statist enterprises: an engine of collectivization that undermines private enterprise, raises taxes, destroys wealth, and subjects all aspects of the economy to regimentation and central planning. It also subtly alters the citizens' view of the state. "War substitutes a herd mentality and blind obedience for the normal propensity to question authority and to demand good and proper reasons for government actions," writes Ronald Hamowy in *The Encyclopedia of Libertarianism*. He continues, "War promotes collectivism at the expense of individualism, force at the expense of reason, and coarseness at the expense of sensibility. Libertarians regard all of those tendencies with sorrow."

Nobel Laureate Milton Friedman stated the issue more succinctly. "War is a friend of the state," he told the *San Francisco Chronicle* about a year before his death. "In time of war, government will take powers and do things that it would not ordinarily do."

The evidence is irrefutable. Throughout human history, government has grown during wartime, rarely surrendering its new powers when the guns fall silent.

Some might claim that a particular threat to freedom from abroad is greater than anything we could do to ourselves in fighting it. But that is a hard case to make. Even the post-9/11 "global war on terror"—a war that hasn't involved conscription or massive new taxes—has resulted in wholesale violations of basic civil rights and an erosion of the rule of law. From Bush's torture memos to Obama's secret kill list, this has all been done in the name of fighting a menace—Islamist terrorism—that has killed fewer American civilians in the last decade than allergic reactions to peanuts. It seems James Madison was right. It was "a universal truth," he wrote, "that the loss of liberty at home is to be charged to the provisions against danger, real or pretended, from abroad."

But surely, some say, the United States is an exceptional nation that serves the cause of global liberty. The United States pursues a "foreign policy that makes the world a better place," explains Sen. Lindsey Graham (R-S.C.), "and sometimes that requires force, a lot of times, it requires a threat or force." By engaging in frequent wars, even when U.S. security isn't directly threatened, the United States acts as the world's much-needed policeman. That's the theory, anyway.

In practice, the record is decidedly mixed. This supposedly liberal order does not work as well as its advocates claim. The world still has its share of conflicts, despite a U.S. global military presence explicitly oriented around stopping wars before they start. The U.S. Navy supposedly keeps the seas open for global commerce, but it's not obvious who would benefit from closing them—aside from terrorists or pirates who couldn't if they tried. Advocates of the status quo claim that it would be much worse if the U.S. adopted a more restrained grand strategy, but they fail

Christopher Preble: Freedom has many champions; it betrays a curious disregard for other freedom fighters' work to suggest that liberty can only flourish under the covering fire of American arms.

to accurately account for the costs of this global posture and they exaggerate the benefits. And, of course, there is the obvious case of the Iraq War, a disaster that was part and parcel of this misguided strategy of global primacy. It was launched on the promise of delivering freedom to the Iraqi people and then to the entire Middle East. It has had, if anything, the opposite effect.

Libertarians should immediately understand why. We harbor deep and abiding doubts about government's capacity for effecting particular ends, no matter how well intentioned. These concerns are magnified, not set aside, when the government project involves violence in foreign lands.

These doubts are informed by Hayek's observations about the "fatal conceit" of trying to control an economy. Throughout his career, the economist convincingly argued that government is incapable, over the long term, of effective central planning. Attempts inevitably fall short of expectations, because human beings always have imperfect knowledge.

This knowledge problem contributes to unintended consequences. These can be serious enough in the domestic context; they're more serious still in foreign policy. Even well-intentioned wars—those designed to remove a tyrant from power and liberate an oppressed people, for example—unleash chaos and violence that cannot be limited solely to those deserving of punishment. And wars always cost us some of our liberty, in addition to blood and treasure.

For all of these reasons—the expansion of state power, the problem of imperfect knowledge, the law of unintended consequences—libertarians must treat war for what it is: a necessary evil. "War cannot be avoided at all costs, but it should be avoided wherever possible," writes the Cato Institute's David Boaz in *Libertarianism: A Primer*. "Proposals to involve the United States—or any government—in foreign conflict should be treated with great skepticism." The obviously desirable end of advancing human liberty should, in all but the most exceptional circumstances, be achieved by peaceful means.

The United States is in a particularly advantageous position to adopt foreign policies consistent with libertarian principles. Small, weak countries might not have the luxury of avoiding wars, but the United States is neither small nor weak. Our physical security is protected by wide oceans and weak neighbors, and augmented by the deterrent effect of nuclear weapons. We get to choose when and whether to wage war abroad, and we could do so by assessing the likely costs against the anticipated benefits.

Instead, as the University of Chicago's John Mearsheimer notes, "The United States has been at war for a startling two out of every three years since 1989," and U.S. policy makers show little regard for how such wars advance U.S. security. Large-scale military intervention is usually irrelevant when dealing with non-state actors such as Al Qaeda, and the U.S. government has no magic formula for reordering Iraqi or Syrian politics, the true breeding ground of the so-called Islamic State.

Although there may be occasions when military force is required to eliminate an urgent threat, thus necessitating an always-strong military, our capacity for waging war far exceeds that which is required in the modern world. Despite the ostensible end of the wars in Iraq and Afghanistan, the U.S. military's non-war budget remains extraordinarily high. In inflation-

continued on page 40

(Jason Keisling)

AMERICANS WANT ACTION AGAINST ISIS...

Should the U.S. conduct airstrikes?



DON'T KNOW/REFUSED (6%)

Should the U.S. send in ground troops?



DON'T KNOW/REFUSED (6%)

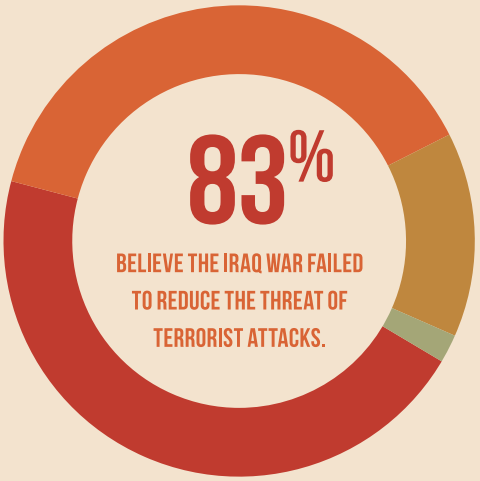
...BUT DO NOT EXPECT QUICK, EASY SUCCESS

How long do you expect the current U.S. military action against ISIS in Iraq and Syria to last?

24 MONTHS (Average estimate)



Did the war in Iraq reduce the threat of terrorism? Increase it? Make no difference?



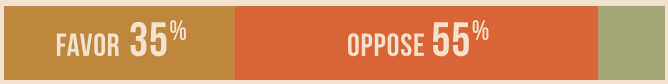
NO DIFFERENCE 45%

INCREASED 38%

REDUCED 14%

DON'T KNOW 2%

Do you favor or oppose arming Syrian rebels with U.S. weapons to help fight against ISIS?



DON'T KNOW/REFUSED (10%)

How likely is it that U.S.-provided weapons given to Syrian rebels will one day be used against American soldiers or U.S. allies?

AVERAGE PREDICTION: 78%



Reason-Rupe National Survey, conducted Oct 1-6, 2014, of 1,004 adults. Margin of error +/- 3.8 percent.

adjusted dollars, Americans annually spend more now than we did, on average, during the Cold War, when we were facing off against a global empire with a functioning army and navy, a modern air force, and thousands of nuclear weapons capable of reaching the United States in a matter of minutes. Al Qaeda and all of its copycats combined can't muster even 1/1000th of the destructive power of the Soviet Union.

If the United States used its military power less often, might that be OK for Americans but worse for everyone else? What if the cause of freedom needs the United States as its champion? People living under a tyrant's heel deserve liberation; the threat of U.S. intervention might convince the petty despot to step down; if not, the sharp end of American military power could deliver him to a prison cell, or the gallows.

Such a view unfairly privileges U.S. military power, and the power of the American state, over the power of ideas. Freedom has many champions; it betrays a curious disregard for other freedom fighters' work to suggest that liberty can only flourish under the covering fire of American arms. The question, therefore, isn't *whether* we should wish to see freedom spread worldwide. The real issue is about how best to do it.

Toward that end, U.S. policies have often been counterproductive, sometimes having the perverse effect of eroding the very concept of individual liberty. Quite a few oppressed people have watched in horror as Iraq has descended into civil war and anarchy. If that is what freedom and democracy look like, they might reasonably conclude, we'll happily opt for something else. Similarly, the United States' entangling alliances with illiberal Arab regimes such as Saudi Arabia make a mockery of Washington's claim to be an advocate for freedom.

This is not an argument against either military power or alliances per se. It is an argument against allowing the world to become overly reliant upon the military power of a single nation. Who's to say, for example, that a more militarily capable European Union would not have proved better able than the United States to deter Russian aggression in Georgia in 2008, and now in Ukraine? Could even modest military capabilities (e.g., a functioning coast guard) better defend Philippine claims to the Scarborough Shoals in their ongoing dispute with China? Might Turkey be fighting the ISIS threat on its border if the Turks didn't believe the United States would do the fighting for them? An international order that is less dependent upon the U.S. military as a vehicle for promoting liberty, and based instead on the presumption that all governments have a core obligation to defend their own citizens, could be a safer one and also a freer one.

Libertarians have traditionally been reluctant to support foreign military interventions. We still should be. We will defend ourselves when threatened. When there is a viable military option for dealing with that threat, and when we have exhausted other means, we may even reluctantly choose to initiate the use of force. Such instances are rare, however, because most of today's threats are quite modest. Libertarians have a very clear sense of the risks associated with military operations. We retain a sober sense of the certainty of unintended consequences and the possibility of failure. We should therefore be skeptical of any claim that preventive war will turn a suboptimal but manageable situation into something much better.

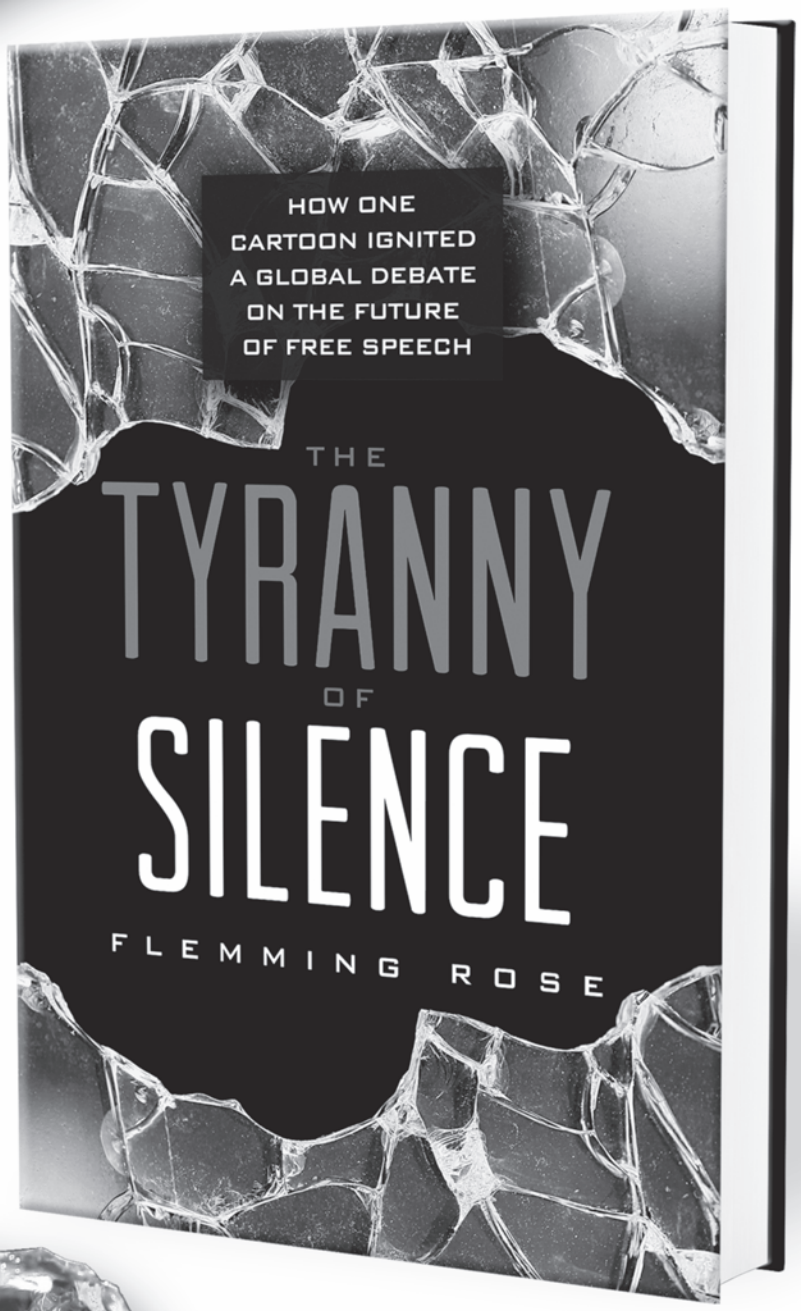
The experiences of the past decade have reaffirmed these truths, and taught us some new lessons, too. Although we marvel at the professionalism and commitment of those who serve in our military, we have been reminded of war's unpredictability, and that the military is always a blunt instrument. Above all, we have learned that the costs of waging wars are rarely offset by the benefits we derive from them.

That does not mean that military intervention is never warranted, or never will be in the future. It does mean that we need to more clearly define those infrequent situations in which war is the last best course of action.

The United States should and will participate in the international system. It must remain engaged in the world. But it is wrong to equate engagement with global military dominance and perpetual warfare. Human liberty exists in spite of, not because of, the power of any one nation, and it is dubious in the extreme to presume that freedom's flame will be extinguished if the United States adopts a more discriminating approach toward the use of force.

Christopher Preble (cpreble@cato.org) is the vice president for defense and foreign policy studies at the Cato Institute.

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Dr. Never

Former Rep. Ron Paul on how 'military interventions by the United States after World War II were all unjustified'

Interview by Matt Welch

On May 15, 2007, at a Republican primary debate in Columbia, South Carolina, longshot presidential candidate Ron Paul shocked the room with his answer to a question about how 9/11 changed America: "Have you ever read the reasons they attacked us? They attack us because we've been over there; we've been bombing Iraq for 10 years."

Then-frontrunner Rudolph Giuliani, visibly agitated, interrupted the proceedings to condemn Paul's "extraordinary statement...that we invited the attack because we were attacking Iraq" and then demand a retraction as the crowd went wild. Campaign reporters, straight and ideological alike, started writing Ron Paul's obituary. *Politico* Executive Editor Jim VandeHei, on CNN's *American Morning* the next day, said that "Rudy Giuliani came off terrific...mostly because he got that softball, where Ron Paul lobs it to him and basically blames the U.S. for the 9/11 attacks....You dream of those moments when you're a candidate, that's for sure." Conservative radio host Hugh Hewitt agitated for Paul to be barred from future GOP debates. *National Review*'s headline captured the media zeitgeist succinctly: "Giuliani Up, McCain Up, Romney Down, and Ron Paul Out—Way Out."

But a funny thing happened on the way to Paul's seemingly inevitable ostracism from the Republican Party for the sin of noninterventionism: His star began to rise, while Giuliani's crashed and burned. Not only would the rambling septuagenarian outpace the famous former New York mayor in both delegates and the popular vote during the 2008 campaign, his message of peace and American pullback electrified a new generation of activists and voters, while Giuliani's hawkish stance has become less popular by the day.

Now retired from Congress after a second, more successful run at the White House, Paul can gaze out at a world and a GOP that has become much more sympathetic to his once-lonely view of the world. His son, Sen. Rand Paul (R-Ky.), has been hanging out near the top of the polls for the 2016 presidential race, selling a more Republican-friendly version of intervention-skepticism. There are entire armies of young libertarian activists—including many recent military veterans —who got their introduction to the philosophy through Ron Paul's bracing criticism of U.S. misadventures abroad. You can't talk about libertarian foreign policy without talking about—and to—Ron Paul. **reason** Editor in Chief Matt Welch caught up with the three-time presidential candidate over the phone in October.

reason: What should we be doing with our foreign policy? How should we approach the world?

Ron Paul: We certainly had some good advice in our early history, and we haven't followed

Ron Paul at the Republican primary debate in Columbia, South Carolina, May 15, 2007 (AP Photo/Mary Ann Chastain)

it. Whether it was Washington or Jefferson, they generally talked about a foreign policy of staying out of the internal affairs of other nations and staying out of entangling alliances. That's 100 percent opposite of what we do.

But on the very positive side, [their advice] was to set an example and have a country that defended liberty, and maybe others would want to follow us. As far as dealing with other nations, it was to strive for peace. The best way to achieve that would be through commerce, through trade. So they were strong believers in that, and I am too.

We're so much better off now with China than we were when I was in high school and we were killing each other. Hopefully we don't drift back into that kind of thing with China.

Those would be the goals that are very, very positive. Along with the moral and constitutional right and obligation for us to have a strong national defense to defend our security, but never to use it to go around the world looking for monsters to destroy, which has been driving our foreign policy, especially these last 15 or 20 years. It just seems like if we don't have somebody, we have to go looking for them. I think that is a policy of disaster, and it's going to bankrupt our country. The policies always fail.

reason: You mention monsters—there *are* monsters in the world, for sure. Whether they are exactly as Washington defines at any given moment is perhaps a separate question. But there are moments when a dictator or a group is committing genocide. What is the role of a U.S. foreign policy in a world with monsters?

Ron Paul: Well, if you know they are monsters, you shouldn't help them, you shouldn't ally yourself with them. That would not be an honest friendship.

If you have a monster like Stalin, who had killed hundreds of millions of people through all methods and [with] what that system did, it would hardly be good advice to say, well, become close military allies, and then divide up the world between the West and the East and have a Cold War for 50 years.

You don't become an ally to them, but neither do you decide that you can change the monsters of the world. Because there are some in every country, and there are some in this country. Our obligations are to deal with some of the warmongers we have here and the infractions of our liberties here at home. But there is no moral obligation, there's no constitutional authority, and there's no practical advantage for us [to go abroad]....We shouldn't be an ally of the Soviets, but we're not going to invade them either.

So that's a big difference from what we do. Either we're close allies with the monsters or then we turn on them and throw them out and put a new monster in place. It's a policy of insanity.

reason: Is there something that the United States and/or the international community should do proactively in response to one country basically gobbling up another one? This is the initial Gulf War scenario: Iraq invades Kuwait. Take the U.S. and its backing of Iraq out of that for a second—should there be some kind of response? What do you do when one country gobbles up another?

Ron Paul: You learn your lesson and you learn not to encourage this. Because actually we had been a close ally with Saddam Hussein. We encouraged him to invade Iran, and he saw that we were friends and did a deal. So then he suggests that he might go into Kuwait and gets a green light from our administrators. I would say that's how you prevent these things from happening.

But once it happens, it's not in our self-interest to sacrifice a lot of American lives to go over and start a war that's still going on. It started in 1990 and here we are 24 years later and we're still fighting this same war? Maybe there would be a balance of power over there right now if we wouldn't have been involved. We're still fighting World War I over there. Those lines are artificial. Who says that there's something sacred about Kuwait? The lines were drawn up by Europeans and maybe some people had a beef about it.

But I think the worst thing to do is to go over there and sacrifice life—American lives—getting involved in a threat that is not a threat to us. It's a threat to them, the instability of that region. That's not our responsibility and things have been made much worse by us assuming that responsibility.

reason: Is there a U.S. intervention after World War II that you think retrospectively was a good idea?

Ron Paul: Not really. And even if I thought so, it was not done properly. If we got involved militarily, I think there should've been a declaration of war.

I was very much aware of the Cold War, and was drafted when the missiles were found in Cuba. The thought crossed my mind—and this is not a conclusive thought—[that] maybe what a president ought to

"Somebody might think it's impractical to be a noninterventionist right now. Well, what if we totally go broke and we've had such violation of our civil liberties that the people rebel and want a decent government over us? Maybe the most practical thing would be to move in the direction of what they call 'impracticality.'"

do under these circumstances is say: Don't expand the war in Vietnam without congressional approval of war, [but] maybe doing something with Cuba made more sense for our national security. Right on our borders and nuclear weapons on our borders; you could make a case for that. I'm glad they didn't do it; I probably would not have supported it. But in comparison, that made a lot more sense.

But for the rest of the stuff that went on over all those years—Vietnam, Korea, everything in Lebanon and the Middle East and even Grenada, going into South America, going into Panama, and continuing the fight with Cuba that was so unnecessary and actually solidified the power of the Castros—I would say that military interventions by the United States after World War II were all unjustified. Had they been justified, they should have been done precisely through the Congress and not a president just arbitrarily starting these wars.

reason: What about the post-9/11, failed-state-that-gives-harbor-to-people-who-attack-us model? Which might be coming up again with ISIS, depending on how that all turns out. But certainly in Afghanistan—although right now it's the least popular war in history and deservedly so. But in an ideal scenario, what militarily do you do when a lousy or a failed state harbors people who then attack the U.S.?

Ron Paul: Well, I don't think the government of Afghanistan attacked us. Yes, it is true that Al Qaeda traveled through there, but they did a lot of training in Germany and Spain and southern Florida in order to attack us here on our homeland.

But you still have to contend with this. I could make a case for the stupidity of World War II by pointing to the stupidity of World War I, but that doesn't answer the question, "What do you do after Pearl Harbor?" You have to retaliate even though we are a contributing factor to the ongoing war. I would say we had to do something.

The authority to go after those individuals precisely responsible, I voted for that. So I guess that might be the exception to what I said earlier. It was a reluctant support, at least to go after those particular individuals. But I also was struggling with that, because that is when I came up with trying to revitalize the concept of a letter of marque and reprisal in order to limit our problems. Because it wasn't a country, it wasn't the whole world, we weren't about to be truly invaded. We had a problem—regardless of how it was created—that maybe by targeting an individual, we might've gotten him very early on. We knew where bin Laden was and it looked like they could've gotten him, but it went on for years and years after that. I think that was a worthwhile thought, but of course no one was interested.

reason: So you think that would be a decent model going forward, instead of the 30-year war that we are apparently now launching in the broader Islamic world?

Ron Paul: I think it would be much better. The big question is what is the practicality of it? The Congress is supposed to write the letter of marque and reprisal. But I think it was easier to target a small group of people—and I do believe it was a small group of people because they couldn't have kept 9/11 secret unless it was a very, very close-knit group. The real conspirators on that all got killed, so there were a lot less [to track down].

Now we have a phenomenon going on that is a pervasive phenomenon. Just recently in a 16-day period there were 350 villages overrun in Iraq. Well, there aren't that many ISIS members. That means there's something wrong with the villagers and the people and the governments. Think of the millions and

"Our opposition is interventionists. They intervene in the economy, they intervene in personal lives, and they intervene overseas. Republicans and Democrats, they endlessly argue about degrees. Should we bomb this week or next week? Should we use cruise missiles? Which company should we buy our helicopters from? It's all details of intervention."

millions of people who claim they hate ISIS. So there must have been some token support. It's sort of a philosophic thing; they're getting a consensus, and to me, I'd have trouble writing the letter of marque and reprisal. It would be different because it's not a 9/11 attack. On 9/11 they bombed our cities. It'd be a lot easier to deal with that by writing a letter because there's the downside of our war in Iraq.

We're seeing all the unintended consequences, all the blowback. Supporting [an Iraqi] government is a total failure. So I think the conditions wouldn't be the same. But I think if you had to go one way or the other, a 30-year war shouldn't be the way to go. And I just think that any time we get involved there it really helps the enemy more than it helps us.

reason: In a Ron Paul universe, would NATO [the North Atlantic Treaty Organization] exist?

Ron Paul: No. I sort of go along with Robert Taft on that one—and Robert Taft wasn't exactly an individual who was an absolutist. He saw this as impractical. His tendencies were for nonintervention, so he thought NATO would commit us to more involvement than need be. Look, NATO is involved in Ukraine. Afghanistan was a NATO war and NATO was involved with Libya. But all that is a cover for us. *We're* NATO. When NATO votes to go in, who pays and where do the weapons come from and who makes the money? It's our weapons producers that make all the money.

reason: Without a NATO, without the current system with America assuming a hegemonic superpower role, if you withdraw all troops from Japan and Korea overnight—which is something that you and I would probably enjoy watching—one would expect that one of the reactions would be that China would say, "Great!" and flex its power more. If we disbanded NATO tomorrow, Russians would be high-fiving each other in the Kremlin and the Baltics would wonder if they're going to survive. What do you think the world would look like and how do you think other actors would act in the face of an American retreat from its role right now?

Ron Paul: There's a little bit of guesswork on how they'd react. But you can go by the history and [conclude] they may act a lot better.

When we're pounding on their borders, when NATO is on the borders of Russia, maybe their reaction is very logical. Once the Soviet system collapsed and we backed off, they started trading. That's why so much trading is going on there. Maybe that would have continued and expanded. That's what I think would have happened.

China doesn't have a history of wanting to have a world empire, but I think because they get pushed, and we go over there and assume that we have control over all the sea lanes over there and that we're going to be involved in their affairs. I don't think China has the history of expansion.

It's the same way with the Iranians. They don't have [that history], yet they're probably top of the list right now of our enemies. They do not have a history [of expansion] unless you go back maybe a thousand years, at least hundreds of years.

So I think the assumption that all of a sudden Russia and China are going to take over—what we ought to look at is [that] they may well take over financially. We're setting the stage for the disintegration of the West, the financial empire, the disintegration of the dollar as the reserve currency of the world.

If people are worrying about a powerhouse, they ought to worry about our policies now in Ukraine, which are insanely driving wedges between the East and West. They're going to get annoyed enough that they would just love to see us go down, and we're not

in the driver's seat. We have the debt and they have the money in the bank. It's exactly opposite of what it was like at the end of World War II.

reason: Do you think that American foreign policy basically post-World War II has overall been a force for good and peace?

Ron Paul: There's a mixed bag. The governments have not been a force for peace, but there's something pretty neat happening in the states. The governments themselves are losing credibility, [but] the people are more likely to speak out. The governments are still as anxious to have wars as ever before for their various reasons, the commercial reasons and who knows what else; at the same time, I see their power weakening and the people speaking out.

For instance, the other day they polled the military and it was something like 72 percent of our military said, "Don't go in [to Iraq and Syria] with boots on the ground." Maybe **reason** recognized it, but where I got the support during the last campaign came from the military. My top three donors were [members of] the Air Force, the Army, and the Navy. Of course, for my opponent the top three were banks. I always thought that would've been interesting news, but that got by the media.

reason: Whenever **reason** opens its doors in D.C., we frequently have members of the military who are passing through or taking 12 months in Washington in between tours. They will come over and say, in a very intense way, "I came to libertarianism because I saw what happened over there and I started listening to Ron Paul." It's a great, unremarked-on source of new libertarians out there.

Ron Paul: I don't know if I can claim any credit, but if it's true I would feel good that I was able to get some people to think differently and not be ashamed of it.

It's been drilled into us that if you're not for these wars, that means you're not for the military, you're not for the Constitution, you're not for defending liberty, and all these things. Yet because there weren't enough libertarians and conservatives to take this [anti-war] position—it was always the wild-eyed Jane Fonda liberal left, they didn't have the credibility and it was easier to attack. Today, though, it's left up to us to defend this and make people feel good so we can win more converts. We don't want to chase the progressives away, and that's why I like to talk to Dennis Kucinich and Ralph Nader and these people, and I hope that the progressives will stick with this. At the same time, I think manning the fort of a less aggressive foreign policy is coming more from the constitutional conservatives and the libertarians.

reason: Speaking of which, there's an interesting [former Rand Paul and Ron Paul adviser] Jesse Benton quote in *The New Yorker* recently where he says, "If Ron were president, he would have had to govern like Rand. Ron is much more of a purist about nonintervention and that's fine, but in many ways Ron's foreign policy can exist only in an academic sense." I'm not necessarily interested in divining divisions between you and your son here, but what of that kind of notion that there is a purist libertarian ideal about nonaggression and nonintervention, but that in both political practice and in geopolitical reality, it couldn't actually work that way?

Ron Paul: Well, the only way you can find out is try it. It's true that pure nonaggression has never existed. Of course, there were experiments with pure communism, too, and that didn't do so well. But no, I don't think you have purities; no perfection. I think we have to try to understand these views and the philosophy. If we come to the conclusion that we definitely think it's better for humankind to pursue [nonintervention], we have to do our best to promote it. What is practical in one generation might be impractical for the next. You just don't know. Somebody might think it's impractical to be a noninterventionist right now. Well, what if we totally go broke and we've had such violation of our civil liberties that the people rebel and want a decent government over us? Maybe the most practical thing would be to move in the direction of what they call "impracticality" that we advocate. Who knows?

I think false expectations are bad; I think you have to be realistic. But I do believe you have to know what you believe in, because our opposition is interventionists. They intervene in the economy, they intervene in personal lives, and they intervene overseas. Republicans and Democrats, they endlessly argue about degrees. Should we bomb this week or next week? Should we use cruise missiles? Which company should we buy our helicopters from? It's all details of intervention. The argument has to be whether intervention is bad or good, and then you have to strive for the nonintervention. Because I think that is the only chance we have to work for a truly peaceful and prosperous world.





The Conservative Realist?

Sen. Rand Paul on ISIS, the Middle East, and when America should go to war

Interview by Matt Welch

On October 23, Sen. Rand Paul (R-Ky.) gave a major foreign policy address at the Center for the National Interest in which he declared himself a "conservative realist," aligning himself with the tradition of Ronald Reagan and Caspar Weinberger. (See "The Case for Conservative Realism," page 50) As he did in a similar February 2013 speech at the conservative Heritage Foundation, the libertarian-leaning 2016 GOP presidential contender attempted to sell his foreign policy vision to fellow Republicans as a middle path between the near-absolute anti-intervention of his (unmentioned) father and the hyper-interventionism of the Washington Republican establishment.

Reaction to the speech varied widely. Anti-tax crusader Grover Norquist, who has long advocated a less interventionist foreign policy, told reporters "I think I just heard Ronald Reagan speaking." The lefty analysis site *Vox* enthused that "Rand Paul just gave one of the

most important foreign policy speeches in decades" because he "declared war on his own party." *The Hill* described the address as "anti-isolationist," while neoconservative *Washington Post* writer Jennifer Rubin scoffed that Paul was "still pretending he's not an isolationist." And so on.

Of particular interest to libertarians looking to probe the senator's foreign policy principles was his seemingly dissonant support for U.S. air strikes against the Islamic State (ISIS) and opposition to intervening in the ongoing Syrian civil war. When Paul first backed hitting ISIS in mid-September, the national political press erupted in a spasm of articles accusing him of politically motivated flip-flopping, a charge the senator testily rejects.

Four days after the speech, **reason** Editor in Chief Matt Welch spoke with Sen. Paul over the telephone to flesh out his notion of realism and probe some limiting principles on taking the nation to war.

reason: You mentioned in your speech that America shouldn't fight wars when there is no plan for victory. And you're still supporting airstrikes against ISIS. How do you visualize our plan for victory while doing airstrikes against ISIS?

Rand Paul: I see the airstrikes really as defending vital American interests, and that would be our embassy in Baghdad as well as our consulate in Erbil. I've been very critical of Hillary Clinton over the last couple of years for her lack of defense for Benghazi. I do think that it is a function of our national defense and our foreign policy that when we do have embassies around the world, we do defend that presence.

reason: But then what would be the limiting factor on that? Because we have embassies all around the world, obviously, and bad things will happen from time to time. So how do you prevent that from being a reason to launch airstrikes anytime some random group of bad guys gets within 15 miles of a place that you control?

Rand Paul: I think actually if you look at the world, you'll find very few of our embassies are actually under threat from war. There's probably a list of 20 that may have some threat. Then you narrow the list down, there's probably only I would think less than five. I would think Libya would have been one of those.

One of the reasons I fault Hillary Clinton is for not recognizing and understanding that Libya probably would have been either at the top of the list or in the

Previous page: Rand Paul with Citadel cadets in Charleston, South Carolina, November 2013 (Richard Ellis/Getty Images)

The Case for Conservative Realism

Rand Paul

The following is an edited excerpt from an address that Sen. Rand Paul gave in front of the Center for National Interest on October 23. You can read the whole speech at **reason.com**.

Americans want strength and leadership but that doesn't mean they see war as the only solution. Ronald Reagan had it right when he spoke to potential adversaries: "Our reluctance for conflict should not be misjudged as a failure of will."

After the tragedies of Iraq and Libya, Americans are right to expect more from their country when we go to war. America shouldn't fight wars where the best outcome is stalemate. America shouldn't fight wars when there is no plan for victory. America shouldn't fight wars that aren't authorized by the American people, by Congress. America should and will fight wars when the consequences—intended and unintended—are worth the sacrifice.

The war on terror is not over, and America cannot disengage from the world. To contain and ultimately defeat radical Islam, America must have confidence in our constitutional republic, our leadership, and our values. To defend our country we must understand that a hatred of our values exists and acknowledge that interventions in foreign countries may well exacerbate this hatred, but ultimately, we must be willing and able to defend our country and our interests. As Reagan said: "When action is required to preserve our national security, we will act."

Will they hate us less if we are less present? Perhaps. But hatred for those outside the circle of "accepted" Islam exists above and beyond our history of intervention overseas.

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The world does not have an Islam problem. The world has a dignity problem, with millions of men and women across the Middle East being treated as chattel by their own governments. Many of these same governments have been chronic recipients of our aid.

When the anger boils over, as it did in Cairo, the anger is directed not only against Mubarak but also against the United States because of our support for Mubarak. Some anger is blowback, but some anger originates in an aberrant and intolerant distortion of religion that wages war against all infidels. We can't be sentimental about neutralizing that threat, but we also can't be blind to the fact that drone strikes that inadvertently kill civilians may create more

top five most dangerous places to be in the world for an American diplomat. Right now probably top of the list would be our consulate in Erbil and our embassy in Baghdad. So I don't think that is a generalized warrant to go to war anytime. In fact, I've also said that the president should have made the case to the Congress and asked for authority to be involved in defense of these embassies and in defense of this consulate. He should have asked for permission from Congress the way the Constitution intends.

reason: What happened to that notion? In September 2013, when you were leading a ragtag army of bipartisan backbenchers against the president, something like 140 congressmen signed a letter saying you can't engage in airstrikes in Syria without coming to us first. What happened to those people and that movement?

Rand Paul: I think there are still a lot of them there. I think, though, there are two sorts of issues. One issue is how you go to war. The other question is whether you go to war.

I think the how you go to war, that coalition is still out there, of people who believe in the Constitution, that Congress declares war. I think that principle actually is a very general principle that includes not only libertarians but conservatives as well.

The question on whether to go to war, I think as events have unfolded, or whether or not we have to have a response or a defense against ISIS, has changed as circumstances have changed. I think when Syria came up a year ago, there were people, myself included, who were loud voices against getting involved in that messy civil war because we felt like it would be counterproductive, and that you actually might enable and embolden ISIS and other radical jihadist groups in that war. I still maintain that.

My main reason for saying that we have to be involved now is that you have a group that is attacking and killing Americans—I think there is a reasonable threat of [them] attacking our embassy or consulate—and also that has frankly declared war on us. Their spokesmen have said that they will come when they are able and that they do consider that they're at war with us.

reason: Do you see the Islamic State as more dangerous and worthy of us coming up with a robust response than, say, you would have seen Al Qaeda or some of jihadists than we eliminate.

The truth is, you can't solve a dignity problem with military force. It was Sec. Robert Gates who warned that our foreign policy has become over-militarized. Yes, we need a hammer ready, but not every civil war is a nail.

***

I support a strategy of air strikes against ISIS. Our airpower must be used to rebalance the tactical situation in favor of the Kurds and Iraqis and to defend Americans and our assets in the region. Just as we should have defended our consulate in Benghazi, so too we must defend our consulate in Erbil and our embassy in Baghdad.

I don't support arming the so-called Sunni moderates in Syria, though. I said a year ago and I say it again now: The ultimate sad irony is that we are forced to fight against the very weapons we send to Syrian rebels. The weapons are either indiscriminately given to "less than moderate rebels" or simply taken from moderates by ISIS. Six hundred tons of weapons have been given to the Syrian rebels, inadvertently creating a safe haven for ISIS.

Although I support the call for defeating and destroying ISIS, I doubt that a decisive victory is possible in the short term, even with the participation of the Kurds, the Iraqi government, and other moderate Arab states. In the end, only the people of the region can destroy ISIS. In the end, the long war will end only when civilized Islam steps up to defeat this barbaric aberration.

This brings me to the last principle I'd like to discuss today: we are only as strong as our economy. Admiral Mike Mullen, then the chairman of the Joint Chiefs of Staff, put it succinctly: the biggest threat to our national security is our debt. A bankrupt nation doesn't project power but rather weakness.

Our national power is a function of the national economy. During the Reagan renaissance, our strength in the world reflected our successful economy.

Low growth, high unemployment, and big deficits have undercut our influence in the world. Americans have suffered real consequences from a weak economy.

Free trade and technology should be the greatest carrot of our statecraft. Promoting free markets should be a priority. The only long-term strategy that will change the world is fostering successful capitalist economies that increase living standards and connect people through trade. ◻

"Four years ago I was an ophthalmologist practicing in a small town. So my worldview might have been a little more narrow at the time because I really wasn't thinking that an ophthalmologist had to have a foreign policy."

their offshoots three or four years ago? Is there a qualitative difference in the type of organization that they have, do you think?

Rand Paul: I think it's hard to compare and contrast. The one thing that many writers have talked about with ISIS is that they control territory and they control munitions and they control access to money, to capital. So in some ways they have a greater degree of organization and ability to be a threat than others would. You could see how if there were a nation that were created called the Islamic State that it would be basically the breeding ground for barbarity. So I think you can make that argument.

You can make some of the argument that in 1998 bin Laden was already sowing, and that him training in Afghanistan was a threat even back into '98. But to give a qualitative or exact differentiation between the two, I don't know if that's helpful.

I think there's a pretty strong argument to be made that this group that took Mosul in a matter of hours, with Erbil not being that far away, that there is some threat to that. As they grow stronger, can we really with certainty believe that anyone is going to defend our embassy other than us in Baghdad? That's the sad state of things over there. For 10 years we were supporting the Iraqi people, supporting the government, giving them arms, training them, but I have my doubts as to whether they're going to show up on the day that ISIS comes rolling in to breach the walls of the embassy.

reason: That looks to me like a Saigon 1975 situation, where we've poured in $26 billion just in military aid in Iraq to prop up the guys who gave the weapons to the bad guys. What do you look at as a nightmare scenario, of the things that could go horribly, horribly wrong in the Middle East if we don't reverse course or if things just don't get better?

Rand Paul: Instead of looking at the nightmare scenario, I'd look at the opposite way: What can we do to try to prevent a nightmare scenario? I think there are several things.

One, I think that encouragement through diplomatic means or through withholding or advancing help to the Iraqi government is something that we ought to do. That would mean that it needs to be a government that is inclusive as well as an army that is inclusive. If they're an army of Shia, they're never taking back any of those cities and [ISIS] will continue to grow and it will basically be a divided Iraq. Maybe that is what ends up happening anyway. But the only chance for the national government to function is for it to be inclusive of Sunnis.

The other thing that could dramatically change the situation on the ground and lessen the risk of ISIS—to our consulate as well as to our embassy—would be to see if we could be part of facilitating a peace agreement between the Kurds and the Turks. The main thing that prevents the Turks from being involved—and they could be involved in a big way—is that they're not sure who they dislike worse; in fact, they probably dislike the Kurds worse than they dislike ISIS. So they're watching things unfold on their border because the people in those towns on the border have been fighting them for 70 years, trying to take Turkish land and make it into a Kurdish homeland. I think there is a possibility for there being a Kurdish homeland as part of Iraq. If that were to happen, and we were to support it, you might find that the Turkish Kurds would maybe be interested in a peace deal that would allow them, the Turks, to be more helpful.

None of this is easy, but I think there is a role for America to be involved with trying to help find a negotiated end or settlement that involves people who live there doing more to try to fix the problem.

reason: You said a couple of different things which may very well be true but might seem to be at least at some tension with one another. The two that stuck out at me were "the war on terror is not over" and "we can't have perpetual war." How do you square that circle, or how do you even visualize an approach that can contain both of those truisms?

Rand Paul: Understanding that people over there dislike us for a variety of reasons. Sometimes they dislike us for our policy and our presence there. But sometimes they also dislike us just because they have an aberrant and bizarre notion of religion that hates people that are not part of the true religion. So, I think it is a combination of both.

I think [we also have to understand] that perpetual war is not going to win. The long war only wins when civilized Islam decides to stamp out this aberrant form. [Hernando] de Soto had an article in *The Wall Street Journal* a couple of weeks ago that we quoted from [in my speech]. In it he talked about the experience in Peru, where they did build up their military presence, they did recruit citizens to be involved in it, but they also recognized that the recruitment to the Shining Path [terrorist group] was often one where people were outside the economy because of government obstruction. So they made it much easier to incorporate people from the nonofficial marketplace into an official marketplace, meaning making it easier to get licenses, easier to sell your stuff on the corner. In doing that, he felt that there was a great deal of lessening of the impetus for people to join the Shining Path. I think [the reformers] have largely won that war.

He studied the problem in Egypt, and I like the way that he looked at the man who committed self-immolation in Tunisia. He wasn't a religious radical. He wasn't really looking so much for religious counterbalance; he was looking basically for economic freedom. [De Soto] mentioned how much off-the-books economy there is in Egypt because of the crony capitalism, that if you can get that as part of the official marketplace then the economy booms and things become more secure, title becomes more certain, and really the impetus for terrorism [recedes].

So there are other ways to fight other than perpetual war, is what I'm trying to say.

reason: How have your travels to the region, your term in office, even the process of running—or, I'm sorry, *not* running for president, just being a nationally prominent politician—how has that, if at all, altered your worldview about U.S. foreign policy?

Rand Paul: Some of it is, four years ago I was an ophthalmologist practicing in a small town. So my worldview might have been a little more narrow at the time because I really wasn't thinking that an ophthalmologist had to have a foreign policy.

I've had some principles that I've had probably for a long time. They're principles that we should obey the law in foreign policy, that the Constitution is important, that our Founding Fathers were very explicit that it would be difficult to go to war and they would have to pass through Congress and that's a messy process, that it probably would be infrequent because you have to have consensus when it happens. That remains a steadfast belief.

The second part, though, is not the process of how it occurs, but the facts of it. I think that's something that good people can debate, but it involves facts and it involves presentation of whether or not something is in our national security interest or a vital American interest. I think that's where the real debate needs to occur. One is how you do it: The Congress should do it, not the president unilaterally. But then when you get to Congress, then it is a debate over the facts, and sometimes reasonable people might disagree on when exactly a vital American interest is broached.

But the thing that we should do is not just make a conclusion [without] a debate. I think probably too often in the past several decades politicians have simply said, "Oh, it's in our national interest." Well, that's a *conclusion*, and that skips the debate. Part of the reason to come into Congress is that then there would be a full-throated debate, hearing the facts, listening to it, discussing whether or not involvement in a region around the world is in our vital interest. But having skipped that step is a serious problem, and I will continue to push when Congress comes back that it is our obligation, it is our role to vote on this. Although it seems a day late and a dollar short to do it four months after the campaign has commenced.

reason: Shifting gears a little bit here, you've been digging deep in the well of George Kennan, and you've read enough of him by now to realize that George Kennan contained multitudes throughout a very long and storied career. He was a huge late-in-life critic of expanding NATO, which a lot of libertarians are against and for whatever reasons I am not. Do you agree with that bit

"Perpetual war is not going to win. The long war only wins when civilized Islam decides to stamp out this aberrant form."

of Kennanism? Do you think we expanded NATO too much?

Rand Paul: There are two sides to the argument. One side says, well if you put them in NATO then Russia won't attack them because they'll know that we'll defend them. The other side says, you put them in NATO and you provoke the bear and you end up having more war. I think some of it depends on exactly what geography we're talking about.

We have included the Baltic nations, but we did not include Georgia or Ukraine, I think, because Georgia and Ukraine had historically been part of Russia for a long, long time. I think it was not advisable to put them into NATO, and at this point in time it is still not advisable. The Baltic nations are part of NATO, and I think that is what it is. We have to approach things from where we are, and not from where we want to be, because I think once people become part of NATO, there's not an undoing part of that process.

reason: Speaking of the world as it is, we are extended into any number of hundreds of bases and troop deployments in Korea and Japan and the usual litany that I don't need to bore us both with. To what extent, even as maintaining a very robust defense, to what extent can or should America withdraw some of its reach or just numbers in places that are relatively peaceful?

Rand Paul: I think the world we live in, it is no longer probably as necessary to have large amounts of land troops in different places. Is it still necessary to have air bases and places to refuel and to have our presence out there as a force for open commerce? For example, since the beginning of the republic we thought there was a role for not letting pirates attack our ships. Is there a role for us around the world? I would say yes.

Over time, even without having a lot of libertarian influence, I think cost influences downsizing greatly. The number of folks that are stationed in Europe, I don't have the exact numbers, but it's considerably less than it was 20 years ago. I think there is definitely an argument to be made that we don't have to have hundreds of thousands of troops forward-deployed, but that we should have good relations with allies, good places to be at port with allies, and there will still be presences in certain places around the world.

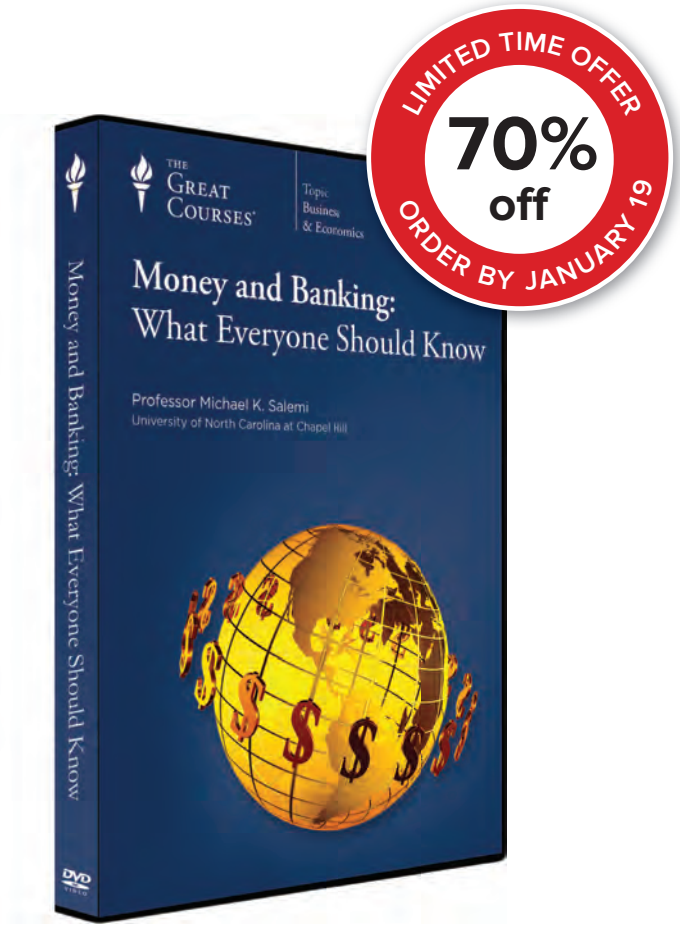
But our goal should not be to be involved in every civil war around the world, but to actually try to be able to defend our interests without being drawn into every war.

reason: I'll end on politics. [In] 2007 it was basically Ron Paul versus nine uber-hawks; 2012, the field starts to look a little bit different, people questioning the Iraq war, at least a little bit. How do you assess the comparative broad strains of the foreign policy debate in the Republican Party heading into the 2016 election?

Rand Paul: I think there are two audiences. The audience in Washington is basically in favor of involvement everywhere, all the time. At the top of both parties, often they're for indiscriminate involvement, I think. But if you talk to the American people, in the Republican Party or the Democratic Party, I think you'll find that, even within the rank and file of the military, there's less enthusiasm for being involved in every civil war around the world, and that people out in the countryside recognize that we have problems here at home: that the economy is still struggling, that we have to defend the country and that we need strong leadership.

I think the vast majority of people are not for sending 50,000 troops back into Iraq at this point. But the vast majority is also for standing up and saying to barbarians that we're not going to let you behead our citizens. So I think it's a little bit of both. I think if you're looking at audiences in Washington you'll find that there's an opinion that doesn't really reflect the American opinion that well.

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Sex, Spice, and Small-Town Texas Justice

A rogue prosecutor makes the war on drugs personal.

Anthony L. Fisher

On the morning of May 7, a law enforcement team headed by the Drug Enforcement Administration (DEA) broke down the door of The Purple Zone, a smoke shop in the small, rural community of Alpine, Texas, owned by 29-year-old Ilana Lipsen. With their weapons drawn, officers pointed the security cameras at the wall and tore apart the store. Lipsen's sister, Arielle, who happened to be on the premises, was pinned to the ground by the butt of one agent's rifle, according to witnesses.

Next, DEA officers raided a nearby apartment also owned by Lipsen. When her tenant, Nicholas Branson, asked to see a search warrant (which they didn't have), a gun-wielding agent reportedly replied, "What are you, a fucking lawyer?"

No illegal substances turned up at either the store or the apartment.



Why did the government go after The Purple Zone? The DEA says the raid was one in a series of nationwide enforcement actions carried out that day with the goal of taking down purveyors of synthetic drugs who funnel their proceeds to Middle Eastern terrorists. It also says that Lipsen was a prime suspect. But as a Jew and avid supporter of Israel, she hardly fits the profile of an Islamic terrorism financier.

A more likely reason: Brewster County District Attorney Rod Ponton is Lipsen's jilted ex-lover, and has been carrying out a personal vendetta against her for the past few years. He prompted federal law enforcement agents to pursue a groundless and expensive crusade against her smoke shop, turning life for Lipsen and her family into a living hell. (Ponton declined to be interviewed by **reason**, and denied the charge.)

Shortly after moving to Alpine at age 18, Lipsen had a brief affair with Ponton, who at the time was a lawyer in private practice. After their tryst ended, she says she caught him driving slowly by her house "like he was stalking me."

After Ponton was elected district attorney for the county that includes Alpine, he started using state resources to go after the smoke shop owner, publicly accusing her of "singular incorrigibility" and "poisoning the youth of the town."

The first raid on The Purple Zone was in 2012, when police seized "spice packets," or synthetic cannabinoids, which Lipsen sold as potpourri in the store's incense section. "You can buy these products online or

Purple Zone owner, Ilana Lipsen (Todd Krainin)







Clockwise from top: DEA, Border Patrol, DHS, and local police raid The Purple Zone (Tom Cochran); Arielle Lipsen's neck after DEA arrest (Tom Cochran); The Purple Zone Smoke Shop, Alpine, Texas (Todd Krainin)

in any gas station or smoke shop in Texas," says Lipsen. Though lab tests revealed no illegal substances, Ponton later moved to indict Lipsen on the grounds that the Controlled Substance Analogue Enforcement Act of 1986 makes it illegal to sell and possess substances that are "similar to controlled substances." The basis of the indictment: three chemicals in the potpourri that were legal in Texas at the time they were seized but would be banned by the federal government a year later. Lipsen was arrested and brought up on felony charges.

In 2014, Ponton convinced the DEA to carry out another raid on The Purple Zone. When the bust turned violent, the DEA attempted a cover-up. At the behest of the U.S. attorney's office, a judge strong-armed Lipsen into signing a letter absolving the agency of any wrongdoing by asserting that she and her sister had attacked the DEA officers first.

Lipsen agreed to plead guilty to charges stemming from both raids in exchange for serving no jail time. To date, she's lost over $100,000 on legal bills and seized property. Now she's ready to move on with her life and is selling The Purple Zone. Of her relationship with the town of Alpine, Lipsen says: "I love it here, but it's become toxic."

Anthony Fisher (anthony.fisher@reason.tv) is a producer at Reason TV. To see a video version of this story, go to **reason.com.**



When Judicial Activists Switched Sides

Deference to elected majorities was a Progressive ideal long before modern conservatives picked up the baton.

Damon Root

On July 1, 1987, President Ronald Reagan introduced the American people to the man he had selected to replace retiring Justice Lewis Powell on the U.S. Supreme Court. Robert Bork "is recognized as a premier constitutional authority," Reagan announced, with the nominee standing by his side. A former solicitor general of the United States, a distinguished former professor of law at Yale University, and a sitting judge on the prestigious U.S. Court of Appeals for the District of Columbia Circuit, Bork did indeed come well qualified for the position. Furthermore, Reagan continued, Bork is "widely regarded as the most prominent and intellectually powerful advocate of judicial restraint," the idea that judges should defer to the will of the majority and refrain from striking down most democratically enacted laws. As a justice, Reagan concluded, Robert Bork "will bring credit to the Court and his colleagues, as well as to his country and the Constitution."

Less than an hour later, Sen. Edward Kennedy of Massachusetts, a prominent liberal Democrat, took to the floor of the Senate to offer a very different take on Reagan's pick. "Robert Bork's America," Kennedy declared, "is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters...and the doors of the Federal courts would be shut on the fingers of millions of citizens for whom the judiciary is often the only protector of the individual rights that are the heart of our democracy."

The basic script for Bork's confirmation process had been set. Following Reagan's lead, Bork's supporters characterized him as the heir to a long and noble tradition rooted in the judicial deference favored by turn-of-the-century Progressives. "I would ask the committee and the American people to take the time to understand Judge Bork's approach to the Constitution," said Republican Sen. Bob Dole of Kansas. "That approach is based on 'judicial restraint'...Now, Judge Bork did not invent this concept," Dole continued. "It has been around for a long time. One of the most eloquent advocates was Oliver Wendell Holmes."

Dole picked a good example. Appointed in 1902, Justice Oliver Wendell Holmes was one of the Supreme Court's earliest and most influential advocates of judicial deference. "A law should be called good if it reflects the will of the dominant forces of the community," Holmes once declared, "even if it will take us to hell."

Bork's Democratic opponents, meanwhile, followed Kennedy's example and zeroed in on the ways that Bork's jurisprudence threatened to upset the political balance. "As I understand what you have said in the last 30 minutes," said Judiciary Committee Chairman Joseph Biden (D-Del.), who was then questioning Bork about whether the Constitution secured a right to privacy, "a State legislative body, a government, can, if it so chose, pass a law saying married couples cannot use birth control devices."

Bork would object to that characterization of his views, but there was no denying that Biden had a point. If the Supreme Court had followed Bork's deferential approach to legislative determinations in the 1965 case of *Griswold v. Connecticut*, it never would have invalidated that state's ban on the use of birth control devices by married couples. Similarly, if the Court had followed Bork's approach eight years later in *Roe v. Wade*, Texas' anti-abortion restriction would still be on the books.

But Bork's supporters also had a point. Reagan and Dole were right: Bork *was* a principled advocate of judicial minimalism. He not only

Robert Bork at his confirmation hearing, September 1987 (Bettmann/Corbis/AP Images)



How the DEA Stole Christmas

If Santa Claus existed, the feds would probably mistake the operation for a drug cartel. So goes the premise of *St. Nic, Inc.* (Southern Yellow Pine), S.R. Staley's comic thriller about a Drug Enforcement Administration operation that nearly takes Christmas down.

Staley, a frequent contributor to **reason**, teaches economics at Florida State when he isn't writing novels. He draws on both careers when describing NP Enterprises, an Arctic software firm and toy distribution network run by one Nicole Klaas. Nicole, the fourth Klaas to run the family business, relies heavily on the skills of the world's little people, for whom the company's polar community is a haven against the discrimination they face down south.

Their cash transactions catch the government's eye, and soon a federal agent is convinced he's found a nest of narco-traffickers. He hasn't spotted any actual drugs, but the *pattern* looks unmistakable. And then a bona fide War on Christmas begins.

—Jesse Walker

opposed what he saw as the Court's liberal activism in *Griswold* and *Roe* but also rejected what he saw as the conservative activism of *Lochner v. New York*, the famous 1905 case in which the Supreme Court struck down a state restriction on economic liberty (over the dissent of Justice Holmes). Indeed, during his confirmation hearings, Bork took pains to remind his interrogators "that there was a time when the word *liberty* in the 14th Amendment was used by judges to strike down [Progressive] legislation." Those conservative and libertarian judges, Bork argued, "were wrong because they were using a concept to reach results they liked, and the concept did not confine them, and they should not have been using that concept."

It was a sentiment worthy of Justice Holmes himself. Yet not only did Bork's ode to legal Progressivism fail to win him any additional Democratic supporters, it almost certainly helped doom his already troubled nomination, which eventually went down to defeat in the Senate by a vote of 58–42. That's because American liberals had long ago abandoned the sort of all-encompassing judicial deference espoused by Oliver Wendell Holmes. Instead, modern progressives like Kennedy and Biden took their cues from a new breed of liberal jurist, best represented by figures such as Earl Warren and William O. Douglas. Those justices had led the mid-20th-century Supreme Court through what has been dubbed a "rights revolution," a busy stretch during which government actions were overturned in the name of voting rights, privacy rights, and many other rights besides. Put differently, in the half century that fell between the presidencies of Franklin Roosevelt and Ronald Reagan, the American left had learned to stop worrying and love judicial activism.

Footnote Four

The story of this sweeping liberal transformation begins in the most humble of places: a footnote. In 1938 the Supreme Court considered the constitutionality of a federal law forbidding the interstate shipment of so-called filled milk, which is basically a milk product made with oil rather than milk fat. The dairy industry viewed the product as a competitor and lobbied successfully for its restriction. Adopting a deferential posture, the Supreme Court concluded that Congress must have had its reasons for passing the Filled Milk Act and voted to sustain the ban. When it came to "regulatory legislation affecting ordinary commercial transactions," the Court declared in *United States v. Carolene Products Co.*, "the existence of facts supporting the legislative judgment is to be presumed."

Lawyers today know this approach as the "rational-basis test." Essentially, it tells judges to give lawmakers the benefit of the doubt and scrutinize a law only if it seems to lack any conceivable connection to a legitimate government interest. In *Carolene Products*, because Congress did have a legitimate interest in monitoring the interstate milk market and because the regulation in question did not appear to be a completely nonsensical way to advance that interest, the Supreme Court made no attempt to determine whether or not Congress had any verifiable scientific evidence for declaring filled milk to be "injurious to the public health." Had the justices looked further, they might have discovered that filled milk was a perfectly safe (and affordable) alternative to whole-fat milk, as countless consumers could have attested.

Armed with the rational-basis test, the Supreme Court proceeded to grant overwhelming deference to a range of regulatory measures. In the 1948 case of *Goesaert v. Cleary*, for example, the Court upheld a Michigan law forbidding women from working as bartenders unless they happened to be "the wife or daugh-

St. Nic, Inc. (cover detail)

ter of the male owner" of a licensed establishment. "We cannot cross-examine either actually or argumentatively the mind of Michigan legislators nor question their motives," declared Justice Felix Frankfurter, a leading Progressive jurist. "Since the line they have drawn is not without a basis in reason," he continued, "we cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling."

Yet at the same time that the Court was committing itself to this near-total submission to lawmakers on the economic front, the justices were testing the bounds of greater judicial action in other realms. As justification for this bifurcated approach, they pointed back to the fine print in the 1938 *Carolene Products* case. In Footnote Four of that opinion, Justice Harlan Fiske Stone explained that while the courts must now presume all economic regulations to be constitutional, "more exacting judicial scrutiny" would still be appropriate in other types of cases. For example, the Court should not automatically defer to a law that appeared to violate "a specific prohibition of the Constitution, such as those of the first ten amendments." In addition, Stone wrote, judicial deference would be equally inappropriate when the law at issue appeared to impact the right to vote or to otherwise impede the "political processes" normally employed by citizens to vindicate their rights. Finally, "prejudice against discrete and insular minorities" may also require a "more searching judicial inquiry." According to Footnote Four, in other words, the Supreme Court need not after all commit itself to the practice of judicial restraint in all cases.

Robert Bork refurbished the Progressive case for judicial restraint into a weapon he might wield on behalf of conservative legal goals.

To the members of the burgeoning civil rights movement, the call for enhanced judicial scrutiny on behalf of "discrete and insular minorities" sounded exactly right. In fact, the NAACP Legal Defense Fund was then asking the courts to breathe real life into the post-Civil War 14th Amendment by securing equal treatment under the law for African Americans. That strategy famously paid off with the Supreme Court's historic 1954 ruling in *Brown v. Board of Education of Topeka, Kansas*, which found racial segregation in public schools to be "inherently unequal" and therefore unconstitutional.

Brown inspired a harsh backlash throughout the country, with segregationists denouncing it as "judicial tyranny." But *Brown* also had its critics on the left, a fact that is sometimes forgotten today. Foremost among them was Learned Hand, recently retired from his position as chief judge of the U.S. Court of Appeals for the 2nd Circuit. Considered by many legal observers to be the greatest judge never to sit on the Supreme Court, Hand was an undisputed icon of the Progressive movement, a revered jurist whose career stretched back to the great battles over the role of the courts that raged during the *Lochner* era.

Born in 1872, Hand studied law at Harvard and went on to serve as a key adviser to Theodore Roosevelt's 1912 Progressive Party campaign for the presidency. One year later, Hand himself appeared on the Progressive ticket as a candidate for the chief judgeship of New York's highest court. In 1914, he joined Herbert Croly in founding *The New Republic*, where he regularly contributed articles and editorials until his appointment to the 2nd Circuit in 1924, where he spent the next three decades. When he died in 1961, *The New York Times* eulogized him as "the greatest jurist of his time."

In February 1958, at the age of 87, Hand returned to Harvard to deliver the Oliver Wendell Holmes Lecture, an annual event featuring a distinguished legal speaker. The theme of his remarks was the fundamental illegitimacy of judicial review and what he saw as the troubling rise of liberal judicial activism. He began with a critique of the "patent usurpation" whereby the Court had transformed itself into "a third legislative chamber." As he explained, such activism was inappropriate no matter what value was at stake. "I can see no more persuasive reason for supposing that a legislature is *a priori* less qualified to choose between 'personal' than between economic rights," he announced. As for the constitutional protections spelled out in the Bill of Rights and the 14th Amendment, "we may read them as admonitory or hortatory, not definite enough to be guides on concrete questions." In Hand's view, the Constitution did not give judges license to go meddling around with the democratic process.

Turning next to *Brown v. Board of Education*, Hand argued that the justices in that case had substituted their own values for those of the Kansas authorities. That, he said, was precisely what conservative justices



Manhattan's Implosions

Imagine the best elements of the hit AMC series *Mad Men*: the attention to period detail of a forgotten America, workplace/managerial jujitsu, hot ladies kissing (sometimes each other!), and a secret so profound that it eventually eats away at the lives of all the major characters. Now transfer that rich, soapy context to... World War II–era Los Alamos?

A little-viewed but increasingly praised drama airing on WGN transplants TV's 21st-century storytelling model to the desperate race to build the first atomic bomb. *Manhattan*, whose first season closed with a flourish in October, conveys the patriotic urgency and almost *Prisoner*-like paranoia of the Manhattan Project, particularly the dysfunction plaguing the underdog implosion research group, led by a character portrayed by a riveting John Benjamin Hickey. By focusing on the unpredictable compromises and shortcuts great scientists flirted with, the show becomes a meditation on the elusiveness of integrity and a cautionary reminder that war is hell on the homefront, too. *—Matt Welch*

had previously done in order to strike down the economic reforms they disapproved of during the Progressive and New Deal periods. *Brown*, he informed his increasingly disquieted audience, was guilty of the same judicial sins that had marred *Lochner*.

To conclude, Hand made a personal plea for the Court to adopt the method of judicial deference he had been championing for nearly half a century. "For myself," he said, "it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not. If they were in charge, I should miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs."

In time, those eloquent words would come to be celebrated as one of the most powerful statements ever made in favor of judicial restraint. But that eloquence did little to make Hand's message any easier to swallow in 1958, especially for the many young liberals who had cheered *Brown* as among the Supreme Court's finest rulings. As Hand biographer Gerald Gunther later put it, "Warren Court admirers could dismiss the most vocal critics of the Court as extremists; yet here was the nation's most highly regarded judge...apparently joining the Court's enemies."

Into the Thicket

Hand was not the only Progressive veteran to line up against the new liberal order. Felix Frankfurter, a Harvard law professor, protégé of Oliver Wendell Holmes, and New Deal adviser to President Franklin Roosevelt, had been rewarded for his accomplishments when FDR elevated him to the Supreme Court in 1939. But then something unexpected happened. As his colleagues began to apply Footnote Four scrutiny in cases dealing with civil liberties and voting rights, Frankfurter, for the first time in his professional life, found himself out of step with the liberal consensus. By the time he retired in 1962, many young reformers had come to regard him as one of the Supreme Court's leading reactionaries, and not as any sort of progressive at all.

Frankfurter got his first taste of the Court's new direction in a pair of cases dealing with the question of whether public schools may require their students to salute the American flag as part of a daily exercise that included the Pledge of Allegiance. The first case originated in Pennsylvania, where two children, both practicing Jehovah's Witnesses, had refused to salute the flag and were therefore expelled. Their father challenged the law on their behalf, arguing that it interfered with the children's religious liberty.

Frankfurter thought it was an open-and-shut victory for the local school board. "The courtroom is not the arena for debating issues of educational policy," he declared for the majority in the 1940 case of *Minersville School District v. Gobitis*. If a family of Jehovah's Witnesses (or any other sect) wanted to secure accommodations for their religious beliefs, they should do so "in the forum of public opinion and before legislative assemblies rather than to transfer such a contest to the judicial arena."

Yet just three years later, thanks in part to a change in the Court's composition, Frankfurter found himself on the losing side of a nearly identical dispute in *West Virginia State Board of Education v. Barnette*. This time, the Supreme Court ruled in the students' favor.

Frankfurter was furious. "This Court's only and very narrow function is to determine whether, within the broad grant of authority vested in legislatures, they have exercised a judgment for which reasonable justification can be offered," he declared in dissent. Pointing to his own identity as a Jewish American, Frankfurter tartly noted that while

Manhattan (courtesy WGN America)



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JUDICIAL ACTIVISM V. JUDICIAL RESTRAINT

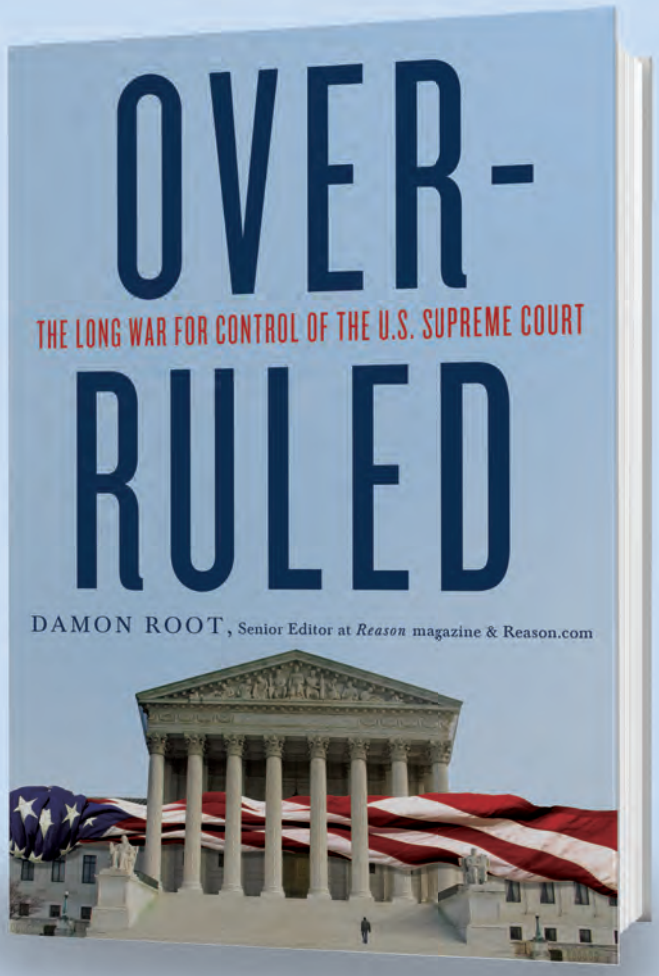
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The Internet Martyr

Aaron Swartz was one of the most promising minds of the Internet Age, but his technological and political talents were abruptly interrupted when the activist, facing the threat of decades in prison, killed himself in January 2013.

The Internet's Own Boy documents Swartz's enormous contributions to information freedom on the Web. He got rich quick helping create the social media site Reddit, but he had little interest in money, and turned to political activism, fighting speech-curtailing bills such as the Stop Internet Piracy Act. Swartz examined the relationship between academic researchers, corporate funding, and government. In doing so, he downloaded millions of academic articles (a crime comparable to taking too many books out of the library) and was nabbed by federal prosecutors who were trying to boost their careers.

Swartz is an important figure and a sympathetic victim, but as a work of storytelling the film harms itself with a sometimes redundant deluge of praise and mourning. *—Zenon Evans*

he knew a thing or two about the plight of religious minorities, that knowledge gave him no license as a judge to stamp his own feelings on the Constitution. "As appeal from legislation to adjudication becomes more frequent, and its consequences more far-reaching, judicial self-restraint becomes more, and not less, important," he warned.

Frankfurter would repeat that warning with even greater volume two decades later in what turned out to be his final opinion as a justice, a long and bitter dissent from the landmark 1962 decision in *Baker v. Carr*. The case dealt with the thorny issue of how a state government apportions its legislative districts in the wake of a census. It originated in Tennessee, where the plaintiffs charged the secretary of state with stacking the deck in favor of rural voters at the expense of the state's growing urban population. According to the challengers, the Tennessee government was violating the basic principle that the Supreme Court would ultimately recognize as "one person, one vote." Writing for the majority, Justice William Brennan agreed. While he did not pass judgment on the constitutionality of Tennessee's current apportionment scheme, Brennan made it clear that the challengers had every right to bring suit and that the federal courts were within their rights to settle the matter in a future case. "The right asserted is within the reach of judicial protection under the Fourteenth Amendment," he held. Two years later, in *Reynolds v. Sims*, Chief Justice Warren went further and nullified Alabama's lopsided districting plan.

In a previous redistricting case, Felix Frankfurter had urged the Court to avoid the matter as a basic act of judicial restraint. "Courts ought not to enter this political thicket," he wrote. Finding himself on the losing side of *Baker*, Frankfurter doubled down on that deferential position. The Court's ruling, he announced in dissent, unleashed a "destructively novel judicial power." Federal judges were now permitted "to devise what should constitute the proper composition of the legislatures of the fifty States," a result he found both offensive and unworkable. "In a democratic society like ours," Frankfurter maintained, "relief must come through an aroused popular conscience that sears the conscience of the people's representatives," not through the courts.

It was not an opinion destined to win Frankfurter any new fans on the American left. Indeed, as legal scholar Noah Feldman recently put it, "With time, it came to seem impossible that a justice who opposed judicial enforcement of voting rights could be considered liberal" at all.

What changed? Certainly not Frankfurter—he remained faithful to the majoritarian jurisprudence of his youth. Back in 1924, outraged over the use of the 14th Amendment to overturn economic regulations, he had called for the repeal of the Due Process Clause in an unsigned editorial written for *The New Republic*. Now, in the twilight of Jim Crow, Frankfurter was still urging the federal courts to butt out of state affairs and let citizens and their elected representatives chart their own political futures. He saw Footnote Four as an escape hatch, one that let federal judges roam free once more to strike down state and federal legislation.

'Penumbras, Formed by Emanations'

The growing tension between Progressive restraint and liberal activism finally exploded when the Supreme Court addressed the issue of reproductive privacy. Under a Connecticut statute dating back to 1879, it was illegal to use "any drug, medical article or instrument for the purpose of preventing conception," as well as to assist, counsel, or otherwise aid any person in the use of such devices. Birth control advocates had

The Internet's Own Boy (Noah Berger)

previously tried to get the Supreme Court to consider the merits of the contraceptive ban on two separate occasions and had been rebuffed both times.

But all that changed with the 1965 case of *Griswold v. Connecticut*. Two agents of the state's Planned Parenthood League, one of whom was a doctor, had been duly charged with dispensing birth-control devices to married couples. The Supreme Court saw its opportunity and tackled the case head-on.

The result was a fractured ruling that still sparks debate. At the heart of the case was a deceptively simple question: Does the Constitution protect a right to privacy? A majority of the Court held that it did, but then quickly divided over precisely how the Constitution managed to do it. Writing for a five-justice majority, Justice William O. Douglas argued that while the right to privacy is not specifically enumerated in the text of the document, various textual provisions do nonetheless protect certain aspects of privacy, such as the Fourth Amendment's guarantee against unreasonable searches and seizures. Furthermore, Douglas argued, those "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." Taken together, the "penumbras" and "emanations" of these "fundamental constitutional guarantees" create a distinct "zone of privacy" that is itself a constitutional right worthy of judicial protection.

In a separate concurrence, Justice Arthur Goldberg agreed that the law "unconstitutionally intrudes upon the right of marital privacy" but instead rested the case more

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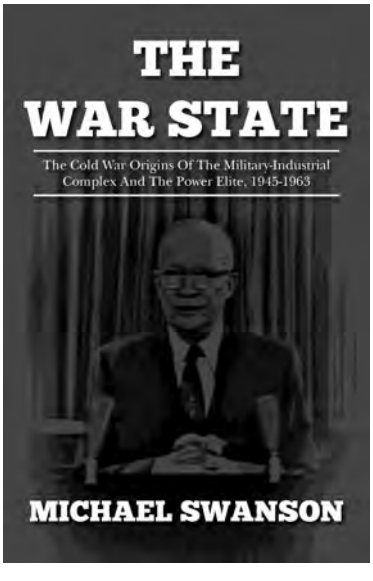
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What's Up, Doc?

At first glance, *The Knick*, a gritty medical drama set in a New York hospital at the dawn of the 20th century, looks like so many other post-*Sopranos* anti-hero dramas: The protagonist, Dr. John Thackery (Clive Owen), is a brooding, middle-aged, upper-middle-class professional with a secret life. In this case, he's both an experimental surgeon and a drug addict. Directed by Steven Soderbergh, the Showtime series is lavish and cinematic, and it often filters history through a knowing contemporary lens, highlighting the racism and class distinctions of the era it's set in.

But *The Knick* isn't just a show about a bad man who often does good. It's about medical innovation and history. It emphasizes endless cost concerns and dwells on how little doctors knew just a century ago, how risky their experiments could be, yet how many lives those experiments would eventually save. In this series, medical experimentation is an intense, madcap enterprise—another way for a drug-addicted doc to get a fix. —*Peter Suderman*

squarely on the language of the Ninth Amendment, which holds, "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." Meanwhile, two other justices, John M. Harlan and Byron White, each filed separate concurrences ruling against the law solely under the Due Process Clause of the 14th Amendment. In short, the Court's liberal majority very much wanted to recognize a constitutional right to privacy, but the justices could not reach any sort of broad agreement over the proper method for doing so.

Why the disarray? Consider again the central proposition of Footnote Four from the 1938 *Carolene Products* decision. It said that the Supreme Court may only engage in "exacting judicial scrutiny" when the government appeared to violate a specific provision of the Constitution, interfere with the political process, or discriminate against "discrete and insular minorities." Simply put, Connecticut's intrusion on marital privacy failed to satisfy any one of those three tests, leaving the justices scrambling for a fix.

Douglas in particular struggled to meet the requirements of Footnote Four. Keep in mind that *Carolene Products* was written in large part as a reaction to cases such as *Lochner v. New York*, which struck down a maximum working hours law for bakery employees, and *Adkins v. Children's Hospital* (1923), which struck down a minimum wage law for women. In each of those cases, the Supreme Court had nullified an economic regulation for violating the unenumerated right to liberty of contract, a right the Court first located in the 14th Amendment's guarantee that no person be deprived of life, liberty, or property without due process of law. Yet as Chief Justice Charles Evans Hughes had declared in *West Coast Hotel Co. v. Parrish*, the 1937 case that overruled *Adkins* and effectively killed *Lochner*, "The Constitution does not speak of freedom of contract," and therefore the Supreme Court would neither recognize it nor protect it. Well, the Constitution does not speak of privacy either, and according to both *Parrish* and Footnote Four, that textual absence was a big problem for Douglas' and his *Griswold* opinion.

Nor did Douglas do himself any favors when it came to crafting his legal arguments. On the one hand, he began by repudiating the liberty of contract line of cases. "Overtones of some arguments suggest that *Lochner v. New York* should be our guide. But we decline that invitation," he wrote. Yet just two paragraphs later, Douglas proceeded to follow *Lochner* anyway when he cited two precedents from the 1920s, *Meyer v. Nebraska* (1923) and *Pierce v. Society of Sisters* (1925), in which the Supreme Court relied directly on *Lochner*'s expansive protection of liberty in order to reach its respective holdings. In *Meyer*, for instance, Justice James C. McReynolds nullified Nebraska's ban on teaching students in a foreign language on the grounds that it interfered with the economic liberty of a Bible teacher who worked at a private school. "Without doubt," McReynolds wrote, citing *Lochner*, the liberty protected by the 14th Amendment "denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life...and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." Two years later, in *Pierce*, McReynolds extended that libertarian principle to overturn Oregon's Compulsory Education Act, which had forbidden parents from educating their children in private schools. "The child is not the mere creature of the state," McReynolds declared. Whether Douglas wanted to admit it or not, *Lochner*'s DNA is plainly evident in his *Griswold* opinion.

The Knick (Mary Cybulski/Cinemax)

'What Has Occurred May Occur Again'

For Justice Hugo Black, enough was enough. *Griswold* was a *Lochner*-ian ruling, and Black had no qualms about denouncing it as such. An ardent New Dealer when he joined the Supreme Court in 1938, Black was outraged by the reappearance of those old legal arguments on behalf of new unwritten rights. "I like my privacy as well as the next one," he declared in his *Griswold* dissent, "but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision."

That remark captures Black's jurisprudence in a nutshell. When it came to the judicial enforcement of unenumerated rights, Black drew a bright line and refused to cross it. "I cannot accept a due process clause interpretation which permits life-appointed judges to write their own economic and political views into our Constitution," he argued, thereby linking *Griswold* to *Lochner*. Indeed, Black's *Griswold* dissent took direct aim at Douglas' use of the libertarian precedent set in *Meyer* and *Pierce*, "which elaborated the same natural law due process philosophy found in *Lochner v. New York*." That approach, he told his colleagues, "is no less dangerous when used to enforce this Court's views about personal rights than those about economic rights."

Much like Learned Hand and Felix Frankfurter, Hugo Black never forgot his outrage over the Supreme Court's earlier use of the 14th Amendment to attack Progressive and New Deal–era legislation. "There is a tendency now among some," Black observed in 1968, "to look to the judiciary to make all the major policy decisions of our society under the guise of determining constitutionality....To the people who have such faith in our nine justices, I say that I have known a different court from the one today. What has occurred may occur again."

Unhappily for these old-line Progressives, however, the call for judicial deference fell on increasingly deaf liberal ears as the 20th century entered its seventh decade. But there was at least one person paying attention to what they had to say. At Yale Law School, a young professor named Robert Bork dusted off the Progressive case for judicial restraint and began refurbishing it into an intellectual weapon he might wield on behalf of conservative legal goals.

"In wide areas of life," Bork would write, "majorities are entitled to rule, if they wish, simply because they are majorities." That approach eventually became the default position of the conservative legal establishment.

But at the same time that Bork was setting the intellectual pace on the right, a new breed of libertarian legal thinkers were beginning to craft an ambitious agenda of their own, one that would soon put them on a collision course with the majoritarian jurisprudence championed by Bork. Why the impending conflict? The answer is simple. Individual liberty comes first, the libertarians declared, not majority rule. r

Senior Editor Damon Root (droot@reason.com) is the author of Overruled: The Long War for Control of the U.S. Supreme Court, from which the article is adapted by permission of Palgrave Macmillan, an imprint of St. Martin's Press LLC.

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Swimming With Sharks

Pop culture isn't always friendly to businessmen, but the ABC show *Shark Tank* portrays entrepreneurial success as fundamentally fair, aspirational, and addictively entertaining.

The program, which began its sixth season this fall, features small business operators pitching for funding to a panel of celebrity venture capitalists, such as Dallas Mavericks owner Mark Cuban and "Queen of QVC" Lori Greiner. If the sharks think the product has merit and commercial possibilities, they invest their own money, become stakeholders, and give everybody a chance to make money. The competition is cutthroat and the sharks can be brutal, but their wisdom is undeniably beneficial, a "teach a man to fish" humanitarianism. By deliberately putting profits first, they have the best chance of helping themselves, the applicants, *and* the consumer.

Shark Tank should be considered the TV standard-bearer for libertarianism, as *Duck Dynasty* is for conservatism. In a fight, my money's on the sharks.

—Robby Soave

How Liberals Put Black America Behind Bars

A surprising new history about race and prison

Thaddeus Russell

The First Civil Right: How Liberals Built Prison America, by Naomi Murakawa, Oxford University Press, 280 pages, $24.95

The United States is the undisputed world champion of incarceration. According to the latest accounting by the U.S. Bureau of Justice Statistics, close to 2.3 million adults are held in federal and state prisons and county jails in the United States, which is roughly 1 percent of the country's adult population and 25 percent of the world's prisoners. The U.S. incarcerates a greater percentage of its total population than any other country in the world, including Cuba, Russia, Iran, and, according to some estimates, North Korea. In addition, 4.8 million Americans are on probation or parole, which means that a total of more than 7 million are under correctional control—some 3 percent of the adult population in the United States. Nearly 60 percent of prisoners are black or Latino and roughly half of all prisoners are serving sentences for nonviolent offenses.

Conventional wisdom holds that mass incarceration of American blacks and Latinos is a result of the "scientific racism" that was established as the dominant racial ideology in the 19th and early 20th centuries and which underlay the Republican "law and order" policies of the 1970s that brought us to our present condition. But in her new book, *The First Civil Right*, Naomi Murakawa upends that narrative, locating the roots of America's "prison state" instead in the progressive reformism that gained ascendancy during World War II. Progressive thinkers overthrew scientific racism as a respectable belief system and replaced it with a set of ideas that were modern and sophisticated but also a more effective rationale for locking up large portions of the population. What Murakawa calls "racial liberalism" was born out of the discourse of ethnic and racial "tolerance" and "equality," which promised liberation but contained a carceral logic.

In prewar America, it was entirely respectable to believe that black people were biologically inferior and inherently prone to criminal behavior. Students in elite universities were assigned Ulrich Bonnell Philips' *American Negro Slavery*, the leading scholarly text on the subject through the first half of the 20th century, which argued that the plantations were "the best schools yet invented for the mass training of that sort of inert and backward people which the bulk of the American negroes represented." Policy makers and intellectuals generally accepted as fact the claim made in Frederick Hoffman's *The Race Traits* and *Tendencies of the American Negro* that "crime, pauperism, and sexual immorality" among blacks were biologically determined. Scientific racism was even extended to many Europeans. The National Origins Act, which severely restricted immigration from southern and eastern European countries as well as from Africa, Asia, and Latin America from 1924 to 1965, was chiefly informed by the work of Madison Grant, an anthropologist who argued that Jews, Spaniards, Italians, Greeks, and northern Africans belonged to an inferior "Mediterranean race."

Progressives overthrew scientific racism and replaced it with ideas that were modern and sophisticated but also a more effective rationale for locking up large portions of the population.

Murakawa, a professor of African

Shark Tank (ABC/Tony Rivetti)

American Studies at Princeton University, argues that during the war against the genocidal Axis this ideology was supplanted by "racial liberalism," an attempt to reform both white racism and black disloyalty with rational, efficient, and coercive state institutions.

The foundational text of racial liberalism was Gunnar Myrdal's *An American Dilemma*, published in 1944, which argued that black "pathologies" were the product not of biology but of slavery, segregation, and discrimination and could be corrected by treating blacks with "scientific social engineering" instead of scientific racism. Myrdal's study was commissioned by the progressive Carnegie Foundation, whose trustees wished to pre-empt the race wars they feared would result from the influx into Northern cities of "untidy" Southern blacks whose habits "were better adapted to cabin life in the palmetto swamps." Understanding that the application of scientific-racist principles to urban blacks would only provoke an unmanageable rage, Myrdal argued that centuries of brutal exploitation and exclusion caused "American Negro culture" to become "a distorted development, or a pathological condition" that was not only debilitating for blacks but also dangerous for whites: "Not only occasional acts of violence, but most laziness, carelessness, unreliability, petty stealing and lying are undoubtedly to be explained as concealed aggression.... The truth is that Negroes generally do not feel they have unqualified moral obligations to white people.... The voluntary withdrawal which has intensified the isolation between the two castes is also an expression of Negro protest under cover."

By forcing blacks to live in "Negro slums" and excluding them from the civilizing influence of white schools, Myrdal argued, racists had created a population of criminals. Myrdal saw black city dwellers "walking the streets unemployed" and "standing around on the corners." Forced into a hostile relationship with whites, barred from assimilating into the dominant culture, and left festering in their social pathologies, blacks had been made to lead lives of lawless danger: "They have a bearing of their whole body, a way of carrying their hats, a way of looking cheeky and talking coolly, and a general recklessness about their own and others' personal security and property, which gives one a feeling that carelessness, asociality, and fear have reached their zenith."

To Myrdal and a generation



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of liberals who followed him, the answer was to modernize, centralize, and enlarge the criminal justice system. In 1947, Harry Truman's President's Committee on Civil Rights reported that by following "practices which preserve white dominance," the police and the courts had led blacks to reject the whole system.

"Out of the discriminatory administration of justice has grown a disregard of the law," the Committee declared, echoing Myrdal's claim about the cause of black criminality.

"People who live in a state of tension and suspicion cannot use their energy constructively. The frustrations of their restricted existence are translated into aggression against the dominant group....It is not at all surprising that a people relegated to second-class citizenship should behave as second-class citizens. This is true, in varying degrees, of all of our minorities. What we have lost in money, production, invention, citizenship, and leadership as the price for damaged, thwarted personalities—these are beyond estimate."

The solution the Committee recom-mended became the blueprint for the American criminal justice system we know today, including "increased professionalization of state and local police forces" and higher salaries to "attract and hold competent personnel." From this came a flood of Democratic legislation that was intended, as Murakawa puts it, to "build a better carceral state, one strong enough to control racial violence in the streets and regimented enough to control racial bias in criminal justice administration." Discretion was taken from potentially racist judges and police and replaced with rational, consistent, and severe rules.

The Boggs Act of 1952 and the Narcotic Control Act of 1956, both of which passed with overwhelming support from Northern liberal Democrats, imposed uniform mandatory minimum sentences for drug-related offenses. "Little Boggs" laws then spread across the states, instituting mandatory and often lengthy minimum sentences for trafficking and possession of narcotics. The numbers of prisoners serving time for drug offenses increased geometrically over the next two decades. More importantly, the 1950s laws established crucial precedents for the later massive escalation in the war on drugs.

National Democratic legislators of the 1960s are well known for the Civil Rights and Voting Rights Acts, which did serve to equalize treatment of the races under the law. They are less well known for a slew of federal crime laws that put record numbers of black and brown people behind bars. The Interstate Wire Act of 1961 and the Gambling Devices Act of 1962 cracked down on interstate gambling, and the Juvenile Delinquency Prevention and Control Act of 1968 authorized block grants that enhanced the states' abilities to incarcerate youth. The cornerstone crime law of Lyndon Johnson's administration was the Omnibus Crime Control and Safe Streets Act of 1968, which is rarely discussed in textbook accounts of Johnson's "Great Society" programs. It established the Law Enforcement Assistance Administration (LEAA), which "swelled the flow of federal funds to state and local police departments" for recruitment and training of officers and began what we now know as the militarization of the police. The

The First Civil Right (cover detail)

LEAA funded the purchase of helicopters, gas masks, infrared cameras, riot gear, smoke and gas grenades, projectiles, launching cartridges, and flares by police departments.

All this, says Murakawa, was "part of a long-term liberal agenda, one that reflected a belief that federally subsidized police recruitment and training could become racially fair." Ironically, it also followed from the assumption that federalized policing would give blacks reason to identify with law enforcement authorities. Democratic Sen. Birch Bayh of Indiana argued for the creation of the LEAA by declaring that "at no time in our history has disrespect for law and those who administer and enforce it been so general and widespread." Similarly, Sen. Joseph Tydings, a Democrat from Maryland, believed that professionalizing the police would correct the "deep-seated belief amongst our Negro citizens that equal law enforcement in police practices does not exist anywhere in our land" and would teach "slum children [to] have respect for the law."

In 1966, a memo from the Office for Law Enforcement Assistance, another "Great Society" crime agency, explained that the "Purpose and Definition of Good Police-Community Relations" was "To encourage citizens to report crime" or "at least, not interfere with arrests and other police work"; "To achieve adequate financial and other support from legislative bodies"; "To improve recruitment"; "To improve respect for law and law enforcement which has a direct relationship to the amount of crime"; "To remove the incidents which can lead to riots"; "To assist in giving the public confidence that the police will enforce the law and provide effective protection without discrimination"; and "To make the police responsive to the public which is essential in a democracy even aside from other pragmatic advantages." As we know from the record of black distrust and antagonism toward police that followed the 1960s, these dreams of socially engineered assimilation did not come true.

Murakawa acknowledges that conservative Republicans did their part to build the prison state, in particular by prosecuting the war on drugs. She details Reagan's astonishingly punitive Comprehensive Crime Control Act of 1984, which nearly eliminated federal parole and allowed for preventive detention of defendants, and the Anti-Drug Abuse Acts of 1986 and 1988, which instituted more mandatory minimum sentences and created the notorious 100–1 disparity in sentences for crack vs. powder cocaine trafficking. But Murakawa shows that most of the intellectual and legal scaffolding of the contemporary American carceral system was erected by Democrats.

The greatest push to criminalize and incarcerate came under Bill Clinton, who oversaw more expansions of mandatory minimum sentences than any other president. His signature crime bill, the Violent Crime Control and Law Enforcement Act of 1994, funded state prison construction and the hiring of 100,000 new police officers, increased mandatory minimums, and applied the death penalty to 60 crimes. Clinton triumphantly declared that the law was "the toughest, largest, smartest Federal attack on crime in the history of our country."

Democratic Sen. Joe Biden of Delaware used the law to respond to the common and erroneous criticism that liberals were soft on crime: "Let me define the liberal wing of the Democratic Party. The liberal wing of the Democratic Party is now for 60 new death penalties. That is what is in this bill. The liberal wing of the Democratic Party has 70 enhanced penalties....The liberal wing of the Democratic Party is for 100,000 cops. The liberal wing of the Democratic Party is for 125,000 new State prison cells."

By the time Clinton left office, the number of people under correctional control was seven times greater than at the beginning of the Johnson administration, and the black-to-white ratio for incarceration rates had risen from 3–1 to 6–1.

As Murakawa says, "there is no mas-ter narrative of conservative ascendance" in the rise of the American prison state. Indeed, it is a classic story of progressive ascendance: of modern efficiency applied to social problems and errant populations more effectively controlled. Progressives are simply better at getting the job done. r

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Alt-Constitution

Rewriting the Constitution without Washington's permission

Brian Doherty

America's Forgotten Constitutions: Defiant Visions of Power and Community, by Robert L. Tsai, Harvard University Press, 352 pages, $35

What do white supremacists and black nationalists, abolitionists and Confederates, utopian socialists and crafty frontiersmen, embattled Indian tribes and mandarin globalist intellectuals have in common? They all wrote new constitutions, hoping to supersede the document adopted in Philadelphia in 1787. In *America's Forgotten Constitutions*, Robert L. Tsai, a professor of law at American University, tells their tales.

Each of these projects had at its heart a colorful man or small group of men (yes, it's pretty much all men) who were spurred to found a polity for their people. It would be fair to describe their efforts as "defiant." Another apt word would be "futile." Over eight substantial case studies, Tsai shows how the rebels were marginalized, co-opted, or crushed.

Consider the little republic of "Indian Stream," which squeezed for itself a temporary autonomy in the interstices of border conflicts between the United States and Canada. Declaring independence in 1832, these frontiersmen—fewer than a thousand of them—lived in what was then a legal netherworld between Quebec and New Hampshire, insisting they were part of neither. After three years of playing their surrounding jurisdictions off one another, the Indian Streamers were crushed by the military might of New Hampshire. (The federal government declined to join in.) But the ideas that animated them survive in America today. The Nevada rancher Cliven Bundy's recent attempts to defy the Bureau of Land Management's restrictions on his cattle grazing, for example, were rooted in one of the same ideas that inspired Indian Stream: a belief, as Tsai puts it, that "true political authority springs from productive use of the land."

The book's other subjects include a socialist communal cult called "Icaria" in mid-19th-century Illinois, the college professors and administrators who designed a one-world nation to quash the threat of nuclear war after World War II, and some Internet racists who encouraged their fellow white supremacists (but no vulgar skinhead ruffians, please) to swamp the Pacific Northwest and eventually break away from the United States. Tsai's subjects span a multiverse of fascinatingly conflicted and failed strivers. Aside from the abolitionist John Brown and his spiritual enemies, the Confederate founders, most of them have remained obscure.

Each story Tsai tells would require a novel to capture in full. The professor does not, alas, have a novelist's eye for incident and character. His stories beg for drama but get scholarly jurisprudence. Tsai is thorough—perhaps too thorough for optimal reader pleasure—in analyzing the political structures found in these various constitutions. He notes that they all followed the apple-pie traditions of "popular decision making, divided powers, and enumerated rights." Even far-out American rebels were American enough to have "accepted the idea that a legitimate claim to rule according to the will of the people must conform to a protocol."



America's Forgotten Constitutions (cover detail)

Most modern Americans would probably see the characters in this book as kooks who didn't amount to much and got what they

deserved. Still, some might feel stirrings of sympathy—say, for John Brown and the constitution he and his compatriots wrote as they plotted the destruction of slavery. The governing compact originally applied to their rebellious army, but they hoped to apply it to an actual living polity once they had some land and more popular support.

Similarly, one might understand why, after decades of slaughter and broken promises, the Indian activists behind the Sequoyah Constitution maneuvered to have a segment of land they controlled join the U.S. as its own state in 1905. And who could blame the disaffected African Americans hoping to carve out their own reparations for slavery in 1971 by settling on a farm in Bolton, Mississippi, and declaring it the Republic of New Afrika, dedicated to free, dignified, agrarian lives? That nascent nation was harassed into defeat and obscurity by federal agents via overwhelmingly forceful armed raids, allegedly just to serve warrants.

But approve or disapprove, you shouldn't ignore history's kooks. Chronicles of failure and defeat say as much about a nation's history and identity as success stories do. The ruthless hegemony of the official U.S. Constitution is an important fact about modern America.

This is true even though that Constitution has itself mutated. The most influential alternate constitution in American history is one Tsai mentions only in passing—what the New Deal economist Rexford Tugwell called the "emergent constitution." You know, the one where the federal government does pretty much whatever it wants, under whatever excuse it pleases, and all too frequently gets away with it. The nature of the "winning" Constitution becomes clearer once one sees what gets crushed beneath the statues and trampled in the parades celebrating the America that is.

The losing constitutions' partisans, meanwhile, practiced what Tsai calls "ethical sovereignty"—power wrapped up in a distinct vision of righteousness. Libertarians would certainly find many things to disagree with in the specifics of these would-be constitutions, which always respected certain liberties for certain people while denying others. (Separatist fanatics tend not to value free expression and free markets very highly.) But studying how and why they failed shows possibilities and pitfalls for political change. At least four do's and don'ts can be gleaned:

1. DO try to mesh with existing legal authority in a way that is not obviously hostile. The Icarians were a typical utopian socialist commune founded in 1848 by the French refugee Etienne Cabet. When he and his crew established a beachhead in Nauvoo, Illinois, in 1851, they persuaded the state to ratify the Icarians' existence as a joint-stock "agricultural society" that constituted its own "body politic and corporate." State legislators were happy for a time to let the Icarians do their own thing in their own space in Illinois. (One wishes Tsai had delved into the specifics of how this political coup was pulled off.)

Tsai calls this practice "interstitial resistance." Libertarians in New Hampshire's Free State Project practice a version of this today, striving both to influence local politics on its own terms and to craft spaces to thrive largely outside—or in defiance of—the state's reach. (In my experiences among the Free Staters, they

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find such attempts to live liberty in chosen fellowship more energizing and exciting than politics.) The Icarians schismed, in typical 19th-century utopian socialist fashion, and eventually their state charter was revoked, long after the community was no longer a thriving entity.

The 21st-century American state's level of officious interference makes this kind of world-within-the-world project unlikely to succeed so well today, on the aboveground level at least. But seeking interstices where you can do your own thing does allow you a certain kind of freedom. And as the New Afrikan Republic activists argued, American localism can allow even small dedicated groups to legitimately elect a sheriff—and "then we will have a [military force] legitimate under U.S. law, made up of people who can be deputized and armed."

Most modern Americans would probably see the characters in this book as kooks who didn't amount to much and got what they deserved.

Before that gets anyone too excited, remember another clear lesson from Tsai's study:

2. DO eschew violence. Claiming political or ideological space in America via violence failed for John Brown and ultimately for the Confederates. It would similarly fail for anyone trying it today.

Violence isn't the only sure losing strategy for large-scale change:

3. DON'T get obsessed with "cultural sovereignty." The Confederates, the Republic of New Afrika, and the white supremacists' fantasy of a "Northwest American Republic" all ran aground against a too-limited notion of who a polity was for—in each case a specific race, pursuing a specific set of lifeways. Tsai calls this "cultural sovereignty," as opposed to the ethical kind, and it just won't work in this multicultural, multiracial nation.

And politics itself can be an insuperable barrier:

4. DON'T assume that interacting with the existing constitutional order will guarantee success. The Indians who developed the Sequoyah Constitution thought they could convince the federal government to make them a state; the globalists behind the "World Constitution" thought the U.S. would ratify a surrender of its sovereignty. Both were mistaken. When you want big change, sometimes exit is required. But as the Republic of New Afrika and Northwest American Republic examples show, exiting American hegemony on the North American continent is quite a trick. Maybe the Seasteading movement, with its ideas about artificial ocean-bound communities, has the right idea: A truly fresh constitution might require a truly fresh homeland.

Even *considering* the above points doubtless marks a movement as already highly marginalized. Tsai does not necessarily recognize this. Having scrupulously taken these eccentric constitutionalists seriously on their own terms, he eventually goes native: He believes "the collective desire to be heard and to be treated as sovereign decision makers worthy of respect can be satisfied to some degree through the publication of a constitution." Constitution making, he writes, "can go some way toward altering public perceptions of an unpopular social group or political movement."

That's unlikely. In modern America, declaring your separation from the constitutional consensus is a good way to make people think you're a bunch of crazies, likely dangerous ones.

The best way to keep a culture's many tense affiliations, tendencies, and peoples together in peace is not a specific portmanteau constitution. It is a generic constitution of liberty—F.A. Hayek's term for a way of governing that respects as many people's rights to manage their own lives and property as possible. None of Tsai's characters were this dedicated to a wider vision of liberty for everyone, which is likely part of why they are remembered by few, revered by fewer.

The original U.S. Constitution, as much as it has failed us and itself, does win that kind of affection, to the extent that it approached the dream of justice under the blessings of liberty. Seeing where it has gotten us, though, the lover of liberty can't help but suspect that something was missing in the idea of a government of constrained powers, created and controlled by a written constitution.

Part of the success of American constitutionalism is that it forever, as Tsai writes, "wrested legal authority from the king and church and ushered in a world in which anyone could state a claim to rule." The last frontier of that process, unexplored even by Tsai's varied and passionate constitutionalists, is the ultimate in sovereignty, neither cultural nor ethical but personal: every man his own Constitutional Convention.

Senior Editor Brian Doherty is the author of four books, including This Is Burning Man (Little, Brown).


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Our Fairy Godfather

Crockett Johnson's brilliant *Barnaby* is back in print.

Jesse Walker

There isn't a model in all of political science that could have predicted the process by which J.J. O'Malley was elected to Congress. The saga began with an extremely garbled press account of O'Malley foiling a robbery, transforming the poker-playing, cigar-chomping layabout into a folk hero. His ambitions sparked, O'Malley made a large donation to the local political machine, hoping it would propel him into office. The party boss intended to double-cross him and elect his opponent, but his plan backfired when he didn't notice O'Malley had paid him in Confederate dollars. When the machine used the cash to bribe a bunch of voters, they responded angrily to the funny money by revolting against their instructions and electing the wrong man.

I'm skipping a few steps along the way, including the part where a radio station airs a political speech delivered by a dog. The point is, the story ends with the voters sending a man to Congress without realizing he's a two-foot fairy with pink wings.

J.J. O'Malley was the co-star of Crockett Johnson's *Barnaby*, a comic strip of the 1940s and '50s that is now being reprinted in a series of books from Fantagraphics. (Two volumes have been published so far, covering the years 1942 to 1945.) The title character is a 5-year-old boy who wishes one night for a fairy godmother. Instead he gets a fairy god*father*: Mr. O'Malley, a W. C. Fields–esque con man of a sprite who alternates between bragging about his alleged powers and finding excuses not to use them. (He does commit actual magic from time to time, often without realizing it, but he prefers to focus on a card trick that he can never quite pull off properly.)

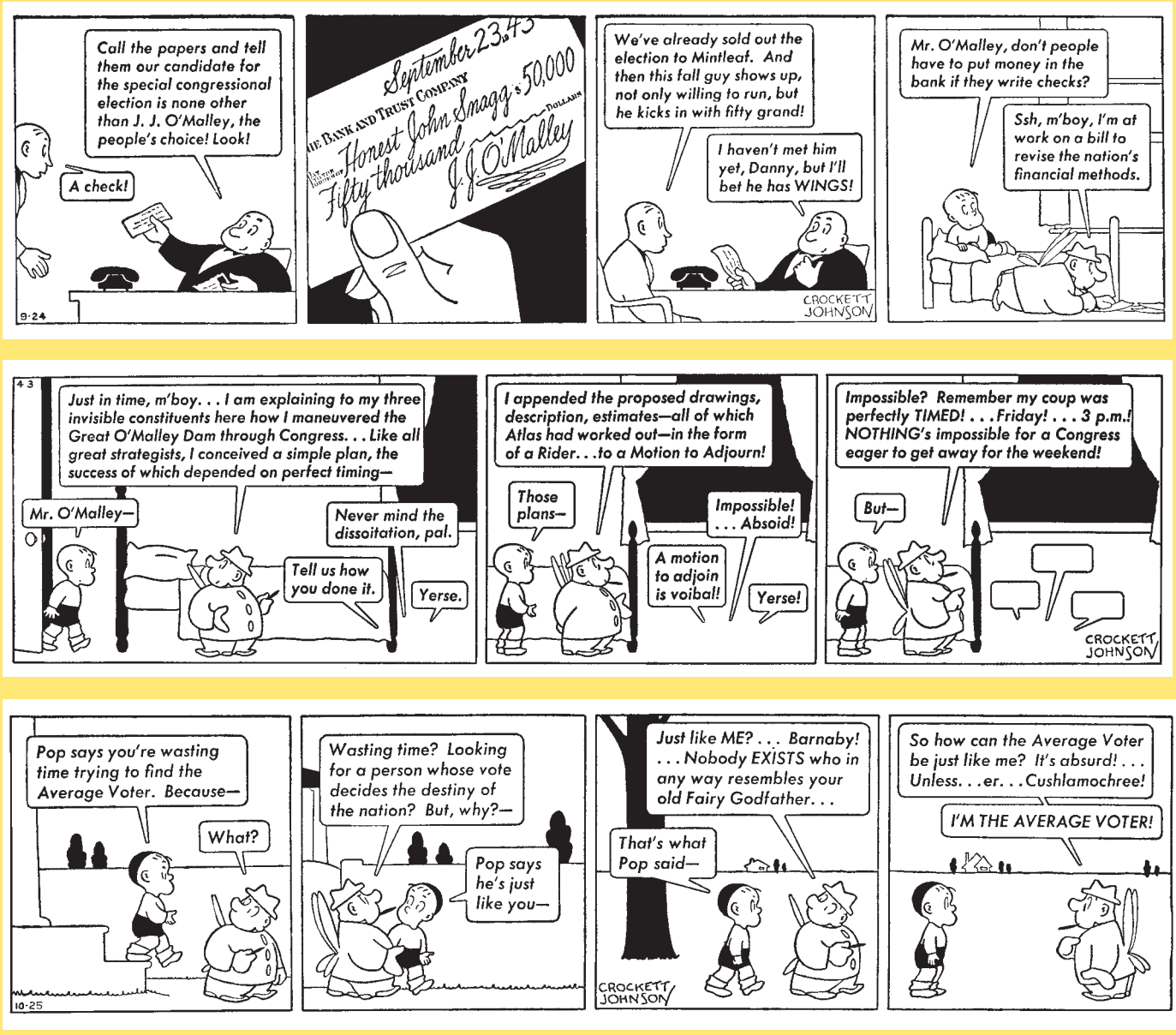
The adults in Barnaby's life insist that O'Malley is merely Barnaby's imaginary friend, setting up a dynamic that is likely to remind the modern reader of *Calvin and Hobbes*. But unlike Hobbes the tiger, whose relationship to reality is ambiguous, there's no chance that O'Malley is just pretend. He is constantly intervening in Barnaby's world, and in the process he wreaks havoc not just in small-scale environments such as a summer camp but in the vaster worlds of politics and high finance. It helps that the grown-ups, unwilling to believe in fairies, keep imagining that O'Malley is something else—a heroic citizen who should be elected to Congress, say, or a business genius whose investments should be emulated.

Barnaby belongs to a tradition of strips, from _Pogo_ to _Bloom County_, that mix kid-friendly fantasy with adult satire.

Barnaby thus belongs to a tradition of strips, from *Pogo* to *Bloom County*, that mix kid-friendly fantasy with adult satire. The cartoons in these two volumes are filled with the daily texture of early-'40s America—air raid wardens, victory gardens, ration books—and its characters make frequent references to politics and popular culture. But Johnson almost always takes aim at larger social trends, allowing his satire to outlive its direct inspirations. When O'Malley opens a congressional investigation of Santa Claus, for example, Johnson is spoofing Rep. Martin Dies (D–Texas) and his attempts to ferret out subversives. The strokes are broad enough, though, that a reader who has never heard of Dies can still enjoy the arc as a shot at witch hunts of all kinds.

Johnson is also willing to let his fondness for sheer absurdity overwhelm the political point he's making. In another sequence, O'Malley and some millionaire ghosts meet to make plans for the 1944 elections. The ghosts are reactionaries, a point Johnson illustrates by giving one of them a watch that runs backward; as the meeting progresses, we are periodically informed, for example, that it is now 1938 and the campaign can promise peace in our time. This is not the world's most sophisticated joke, and Johnson himself eventually turns it in a different direction, putting the time-reversal story to a less political but much funnier use: When the watch reaches October 1929, the meeting breaks up. "Who cares about the election now?" a ghost exclaims. "Stocks are up 50 billion points!"

As the backward-watch gag suggests, Johnson's sympathies were with the left. He began his career drawing editorial cartoons for the radical magazine *New Masses*, and *Barnaby* debuted in *PM*, a fiercely liberal paper. His colleagues at *PM* included Theodor Geisel, a.k.a. Dr. Seuss, and like Seuss he would go on to great success in children's literature: illustrating his wife Ruth Krauss' book *The Carrot Seed*, mentoring Maurice Sendak of *Where the Wild Things Are* fame, and writing many books of his own. The most famous



Barnaby (courtesy Fantagraphics)

of these is *Harold and the Purple Crayon*, a wonderfully strange story in which a boy who looks an awful lot like Barnaby wanders through a series of landscapes that he draws himself. (*Harold* and its sequels may be the most solipsistic books ever written. One of them ends with Harold drawing his own mother and asking her to read him a story.)

Put another way, Johnson went from producing editorial cartoons that directly engaged the material world to creating a comic that mixed that world with fantasy elements, so that events that sound like they spilled out of a boy's imagination are in fact real. From there he went to writing and illustrating books where the boy's imagination is *all* that's real. At the end of his life he was painting abstract pictures with no human beings in them at all. There is a progression of sorts here, though I'm not sure what it says about Johnson's view of the world.

That worldview, at any rate, gave us one of the 20th century's most entertaining comic-strip characters, J.J. O'Malley. He might not be the fairy godmother a boy wants, but he's the egotistical lowlife of a fairy godfather we all deserve. r

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Greg Beato



Stop Complaining About That Flying Car. You Have Amazon.

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In the 20th century, flying cars expressed the ultimate dream of personal autonomy, the power to propel yourself anywhere. In the 21st century, the stuff we want comes to us. For customers in a handful of cities who pay an annual $299 fee, Amazon promises same-day delivery of 500,000 items—everything from groceries to office equipment. "Place your order by 10 AM and have it by dinner," Amazon's website advises.

Soon you might only have to wait until lunch. In January 2014, Amazon patented a process it calls "anticipatory package shipping." Essentially, this involves predicting what items specific customers might buy, shipping those goods to nearby fulfillment centers, and possibly even loading them onto AmazonFresh delivery trucks before an actual order has been placed. This way, they'll be near at hand when the last remaining bottleneck in the company's increasingly efficient distribution chain—the slow-witted customer—finally realizes he has an urge to obtain a digital bath scale post-haste.

What Amazon is moving toward with such capabilities, *Wired* recently suggested, is a "21st-century version of the milkman and the mail carrier combined." And perhaps when it attains that status, it will attempt an even grander feat: Equaling the convenience of the 20th-century ice-cream truck.

In 1926, the citizens of Youngstown, Ohio, could get a Good Humor bar delivered to them without lifting a finger. In the tradition of 19th-century peddlers, ice cream entrepreneur Harry Burt introduced a new technology of predatory retail, equipping a dozen Ford trucks with freezers and going out in search of customers wherever he could find them. A few decades later, the Good Humor fleet had grown to 2,000 trucks and was generating the bulk of the company's sales.

Rising gas prices and a shift toward the less dense suburbs ultimately undermined the power of this mobile distribution network. In the 1970s, Good Humor sold its vehicles to individual private operators. But conditions are shifting again. Our cities are packed with consumers who believe that atoms should arrive on their doorsteps nearly as fast as bits. Pick-up and delivery services proliferate in these places, and bulky and costly physical retail storefronts are beginning to feel like printing presses—obsolescing infrastructure that often adds little value.

Traditional retail won't disappear completely. In a bit of sales theater, Amazon itself is opening a bricks-and-mortar store in New York City that will give its customers there an opportunity to engage in heritage shopping. But if customers still do appreciate the instant gratification you can get at 7-Eleven, not to mention the opportunity to comprehensively assess a peach before purchase, why not combine such functionality with the convenience of mobile?

Amazon has yet to travel this particular last mile. Uber hasn't either. Over the last couple of years, the ridesharing service has dispatched local ice cream trucks to its customers one day each summer. While these events are intended to promote the convenience of Uber, they also complicate the traditional ice cream truck experience in a couple of ways. First the customer has to place an order to initiate a delivery. Then he has to stay chained to a specific address until the truck shows up. This is a step backward from the ultra-convenient approach Harry Burt pioneered in 1926, not a bold leap forward.

Imagine if Amazon's growing fleet of delivery vehicles functioned like true mobile retail units. With its deep knowledge of what people in various neighborhoods are buying, it could turn its trucks into rolling, demographically tailored convenience stores. If you were on the street as one was making its daily rounds through your neighborhood, you could hail it like a cab and purchase the latest model of its Fire Phone with a click of your old Fire Phone. If you were inside your house as a truck approached, your phone would alert with you with a signature jingle (or a well-timed SMS) and you could go outside to greet it.

It's not just that most delivery trucks don't act like truly mobile

(TerryColon.com)

retailers these days. Most mobile retailers don't either. In the wake of the food truck vogue, other forms of truck-based entrepreneurism are starting to show up in cities around the country. There are flower trucks, dog-grooming trucks, skincare studios, clothing boutiques, even a mobile cigar lounge.

For budding entrepreneurs, the appeal of a truck is obvious. Because these other forms of mobile retail don't need kitchen equipment, they're generally much cheaper than a food truck—operators pay an average of around $20,000, according to a poll conducted by the American Mobile Retail Association (AMRA). A lease does not have to be secured. With only 50 to 200 square feet of floor space to fill at any one time, you don't need much inventory either. A mobile retail truck offers micro-entrepreneurs an inexpensive and flexible way to test new concepts and to determine where demand for such goods and services is strongest.

But like food trucks, most mobile retailers aren't that mobile. They drive to a designated spot, stop, and wait for customers. And in the current regulatory landscape, even this limited mobility is problematic. As soon as you start engaging in commerce on a truck, most municipalities require licensing of one sort or another—one reason why Amazon might be happy just to stick with delivery for now.

In addition, the rules and regulations for how mobile retailers can operate vary from city to city. "In Los Angeles, mobile boutique businesses are restricted to operate on private property," says AMRA president Stacey Jischke-Steffe. "Other cities, such as Santa Monica, have a peddler's permit which allows mobile boutiques to operate on public streets."

Jischke-Steffe says she has only heard of a few cases where cities do not allow mobile retailers to operate at all. "I just talked to a mobile boutique owner in South Florida that said some of the smaller towns in south Florida have denied allowing her to operate in any capacity."

Complying with multiple municipal codes undermines some of the flexibility and convenience that makes mobile retail an attractive venue for micro-entrepreneurism. "Here in the Bay Area, you could have an entrepreneur who's trying to sell in five different municipalities as they go to different festivals and outdoor markets," says Sarah Filley, executive director of Popuphood, a small business incubator based in Oakland, California. "As much as they would like to comply, they can't."

To make it easier for California's mobile retailers to operate more mobile-ly, Popuphood advocated for something it calls Standard Popup Regulations Zones, or SPURZ. A bill introduced in the state's legislature last year would have created model guidelines that cities across the state could adopt to regulate mobile retailers and other forms of temporary retail in a more streamlined way. But Gov. Jerry Brown vetoed the bill in September 2014, so now Filley is trying to fund the development of a model ordinance through private sources, then encourage cities to adopt it once it exists.

In the meantime, technology is blurring the lines between retail and delivery in intriguing ways. If the transactions that occur on a truck are consummated by phone, with no actual cash changing hands, is it delivery or mobile retail?

In Oakland, Berkeley, and San Francisco, a food company called Spoonrocket is now offering something that almost qualifies as a 21st century ice cream truck. Every day, its central facility produces a small number of meal choices, and these meals are loaded onto its cars, where they're stored in heating units. Then the cars simply head out to various neighborhoods and wait for customers to order. This way, there's always a car nearby in the areas that Spoonrocket serves, which allows it to deliver orders in 10 minutes or less.

Customers are expected to go out to the curb to complete the meal hand-off. Payments occur in advance online, so there's no other business to slow down the transaction. You just grab your food and go. The service has an app as well—and while you have a default address, you can enter others as well. So if you're walking down the street and you see a Spoonrocket car, you can place an order, provide a local address, and potentially get your meal in seconds rather than minutes.

For the moment, such functionality is limited to Mac & Cheese Italiano with Creamy Pesto or Grilled Chicken Apple Sausage with Chipotle BBQ Sauce. But imagine if Amazon were to embrace this approach. Suddenly, we'd be able to make hundreds, maybe thousands, of staple items appear at our curbs, at speeds that would even make George Jetson jealous.

Contributing Editor Greg Beato (gbeato@soundbitten.com) writes from San Francisco.



(Eric Mutchler)

Meet the 'Reason'

Brian Doherty

Asked why the 3-D-printed metal gun he designed has the word *REASON* emblazoned on its slide, engineer Eric Mutchler says, "Who can argue with reason?"

Mutchler's gun—which was not, alas, named after this magazine—also has the preamble of the Declaration of Independence picked out on the front of the grip, as well as a unique trigger designed to look like its creator's initial, M.

The weapon was made mostly from stainless steel on an EOSINT M 280 3-D printer with a technique called direct metal laser sintering, which uses a laser to heat metal powder. The whole piece, including the inscriptions, can be reproduced using downloadable CAD specs.

Mutchler's day job is with the 3-D printing firm Solid Concepts, which was recently acquired by the publically held Stratasys. Mutchler worked on the Reason (and its predecessor, the 1911, which was released last year and has since been fired over 5,000 times) on his own time. But after the tech press erroneously identified the weapon as a company product, his employer asked him to stop talking to media about the homemade gun.

The machine used to make the Reason costs over a half million dollars. Still, the gun is an example of the wide-ranging artistic, design, and technical possibilities of personalized metal printing, which will almost certainly get progressively cheaper and more widely available.

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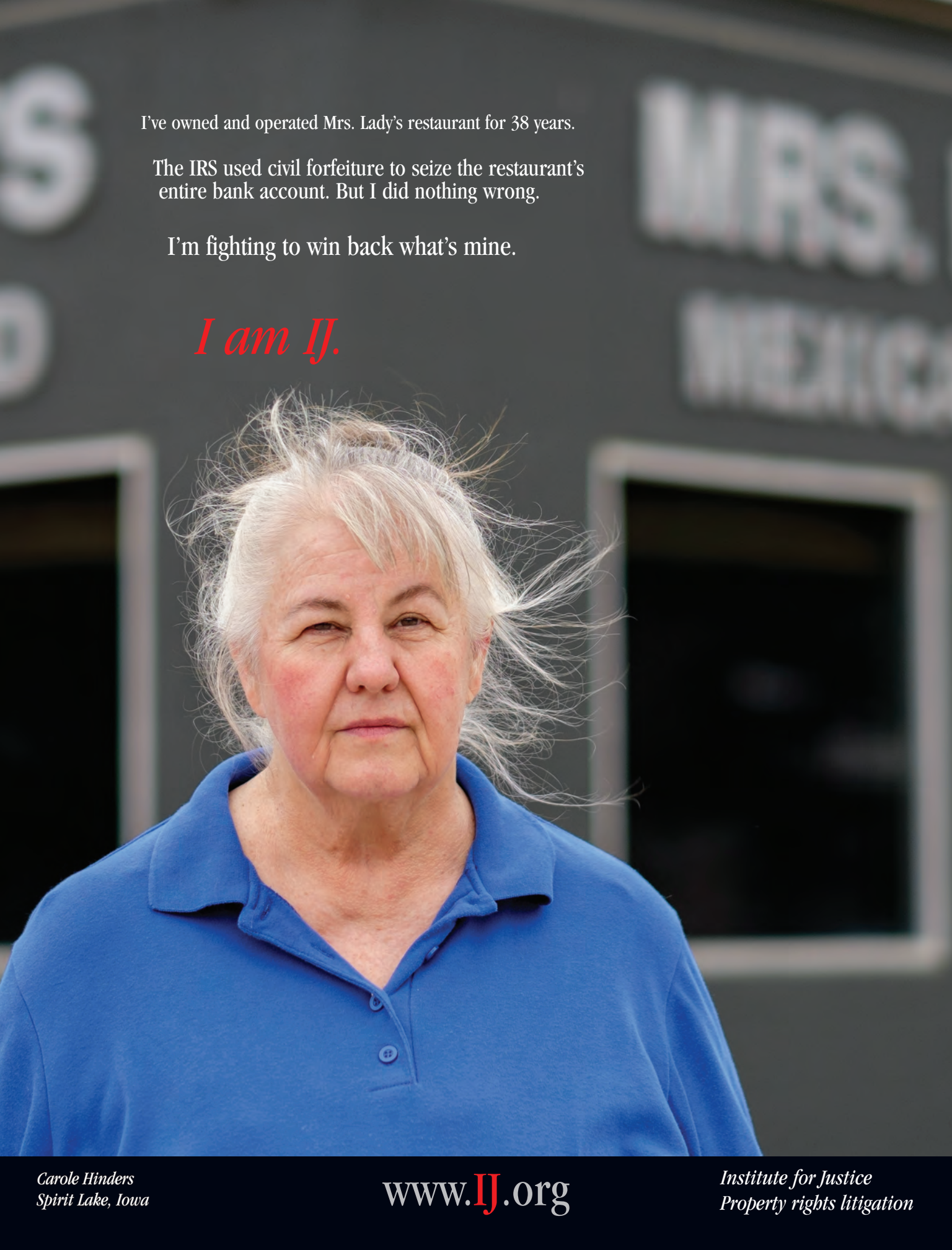
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